

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

2012 IL App (3d) 110616-U

Order filed June 20, 2012

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

A.D., 2012

VILLAGE OF BOLINGBROOK,)	Appeal from the Circuit Court
)	of the 12th Judicial Circuit,
Plaintiff-Appellant/Counter-Defendant,)	Will County, Illinois,
)	
v.)	Appeal No. 3-11-0616
)	Circuit No. 09-AR-2442
CARTER E. LARRY,)	
)	Honorable
Defendant-Appellee/Counter-Plaintiff.)	Susan T. O'Leary,
)	Judge, Presiding

JUSTICE O'BRIEN delivered the judgment of the court.
Presiding Justice Schmidt and Justice McDade concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court did not err when it denied plaintiff's motion for a judgment notwithstanding the verdict where the evidence established that its conduct was willful and wanton.

¶ 2 Plaintiff Village of Bolingbrook brought a negligence action against defendant Carter Larry to recover for damages to one of its squad cars that was involved in an accident with a vehicle driven by Larry. He filed affirmative defenses and a counterclaim alleging the Bolingbrook's officer's conduct was willful and wanton. A jury found in favor of Larry and against Bolingbrook on

Bolingbrook's negligence action and in favor of Larry on his counterclaim. Bolingbrook appealed. We affirm.

¶ 3

FACTS

¶ 4 Plaintiff Village of Bolingbrook filed a negligence complaint against defendant Carter Larry, who asserted affirmative defenses and a counterclaim, alleging the conduct of Bolingbrook's police officer was willful and wanton. The complaints resulted from a motor vehicle accident that occurred on August 8, 2009, involving on-duty Bolingbrook police officer James Block and Larry, an off-duty Bolingbrook police lieutenant, who was Block's supervisor. When the accident occurred, Block was responding to a police call, traveling eastbound on Boughton, and Larry was traveling northbound on Delaware. Boughton is a four-lane road, with two lanes in each direction, east and west, and a dedicated left turn lane. Delaware is a two-lane residential street, with a dedicated right-turn lane for northbound traffic and a 25-mile- per-hour (mph) speed limit. The intersection of Boughton and Delaware is controlled by a traffic light. Block entered the intersection on a red light, with the squad's emergency lights activated, and was struck by Larry's vehicle. Bolingbrook sought to recover \$20,358 in damages to the squad car Block was driving. Larry sought to recover for damages to his vehicle and his medical expenses. The parties engaged in mandatory arbitration. The arbitrator found for Bolingbrook in the amount of \$14,251 on its negligence claim and against Larry on his counterclaim. Larry rejected the award and the matter proceeded to a jury trial.

¶ 5 At trial, Larry testified as an adverse witness for Bolingbrook as follows. The accident occurred at approximately 5:15 a.m. on a Sunday morning. He had finished his shift supervising a night platoon patrol division and was driving home in his personal vehicle, a Toyota Rav 4. As he approached the intersection of Boughton and Delaware, the light was green for Delaware traffic. He

was traveling 25 mph and maintained his speed as he entered the intersection. He looked both ways before entering the intersection but did not see any vehicles approaching. There were no other northbound vehicles and there was no oncoming traffic. He noticed two vehicles also traveling eastbound on Boughton that were stopped at the red light. One was a Bolingbrook squad car readying to turn right onto Delaware. The other vehicle was a pickup truck waiting in the through lane for the light to turn green. There was a six-foot privacy fence on the northwest corner of the intersection that obstructs the vision of northbound drivers, who are not able to see eastbound traffic on Boughton. Due to the obstructed view, Larry would not have been able to see Block until the squad car was almost in the intersection. Larry did not see or hear Block's vehicle prior to the collision. The collision occurred in the middle of the intersection. The front of his vehicle hit the rear passenger quarter panel of the squad car. At all times, he had the green light. It did not change to yellow prior to his entering the intersection, while he entered the intersection, or at the time of the collision.

¶ 6 State statute and Bolingbrook General Order No. 29 dictate an officer's actions when responding to a call. General Order No. 29 instructs that when responding to a priority call, an officer must use the squad's emergency lights and siren, make a complete stop before entering an intersection, and "yield due caution to oncoming traffic and/or property" in the intersection. Under an emergency call response, a complete stop is not required but an officer must "yield due caution" as to the right-of-way and use emergency lights and siren. It is within the officer's discretion to classify the type of response call. Larry classified the call to which Block was responding as a priority call for service. In his view, Block violated General Order No. 29. Block did not follow the requirements of the order for either a priority or an emergency call by failing to either stop or use both the emergency lights and the siren. The videotape from Block's dashboard camera was played for

the jury. Although the video was not included in the record on appeal, the testimony demonstrates that the video established that Block had stopped at other intersections but did not stop at Boughton and Delaware but maintained his speed while entering the intersection against the red light.

¶ 7 Bolingbrook traffic officer James Daunis responded to the scene, completed an Illinois motorist report, and provided Larry a copy. In designating accident vehicles on such reports, unit 1 is determined to be the at-fault vehicle. The report Larry received at the scene designated Block's squad car as unit 1. When he reported to work that night, Block informed him that the accident report had been changed and copy of the new report was in his mailbox. The amended report indicated Larry's vehicle as unit no. 1. He had been told that Daunis was required to change the report so that a police vehicle was not indicated to be at fault. Only the first page of the report had been provided him. He did not see the second page, which included a narrative, until his deposition. The narrative stated that he told Daunis at the scene that he entered the intersection on a yellow light, which he denied. He was aware that a police disciplinary board determined not to take action against Block.

¶ 8 Officer James Block testified. At the time of the accident, he was responding to a death investigation, although the only information he knew about the call was that a frantic woman called 911 and screamed, "He is dead." He was not the primary responder but a secondary officer. He categorized the call as an emergency response, necessitating lights and sirens. Only his squad's emergency lights were activated. He did not activate the sirens. He did not feel use of the siren was necessary "due to the time of day, the light amount of traffic, and the visibility where I have the LED lights on top of my car that are very visible." He admitted his actions violated General Order No. 29 but determined that courtesy for the residents justified the violation. Because it was 5:15 on a

Sunday morning, he did not want to awaken the neighborhood residents by using the siren. He acknowledged that the lights and siren requirement is to inform other drivers that he will be coming through the intersection.

¶ 9 Block's testimony continued. He was traveling around 40 mph but slowed to 30 mph when he entered the intersection. The traffic light was red as he approached and entered the intersection. He went around the two vehicles in the through lanes by using the left turn lane. He was aware that the privacy fence on the northwest corner obstructed the intersection. In his view, vehicles on Delaware would see the emergency lights in spite of the obstructed view. On entering the intersection, he was "trying to watch both ways" as well as watch the light on Delaware. Prior to him moving into the left turn lane, he noticed that the light for Delaware traffic had turned yellow. He went through the intersection as the Delaware light was turning from yellow to red. At that point, all four lights were red. He noticed the headlights of Larry's vehicle with his peripheral vision. He then saw Larry's Toyota, which appeared to be crossing over the white line designating the crosswalk. He was unable to take evasive action to avoid the collision. The accident review board investigated the collision and determined he was not at fault.

¶ 10 Bolingbrook police officer Jill Regalado testified. She was stopped at the red light at Boughton where it intersected with Delaware. She saw Block's squad car as it passed her. Its lights were activated. She did not see it behind her or hear its siren. She did not see Larry's vehicle until the collision. The Boughton light was red when the collision occurred. She could not see the lights for Delaware. She heard the call from dispatch to which Block was responding. She categorized it as a priority call because of the lack of information about the circumstances. She was unfamiliar with General Order No. 29, but based on her in-court review of the order, she would classify Block's call

as an emergency call.

¶ 11 Bolingbrook traffic officer James Daunis testified that he responded to the accident scene, where he spoke to both Larry and Block. He was unable to make a fault determination. He listed Block's vehicle as unit 1 on the traffic report because the Illinois Department of Transportation (IDOT) directs that unless fault is determined, the striking vehicle is listed as unit 1. At the scene, he believed Block's squad to be the striking vehicle. After he returned to the police station, he realized that Larry's vehicle had struck the squad car. He had been preoccupied at the scene due to concern for his fellow officers' safety. He later wrote an amended report indicating Larry's vehicle as unit 1. No one required him to change the report. In the narrative of the second report, he indicated that Larry entered the intersection on a yellow light. He acknowledged that Block would have violated General Order No. 29 if he entered the intersection without both lights and siren activated. In his personal experience, he always activated both lights and siren when responding to an emergency call.

¶ 12 Bolingbrook stipulated to damages in the amount of \$20,358, and rested. Larry testified in his case-in-chief. He described General Order No. 29 as a "hard, fast policy" that is stricter than the requirements under state statute. He always used his lights and sirens to alert oncoming traffic when responding to an emergency call, especially when entering an intersection. Block violated General Order No. 29 by failing to activate his siren. Block's justification for violating the order was improper. The defense stipulated to damages of \$22,456, and rested.

¶ 13 Bolingbrook moved for a directed verdict on Larry's counterclaim, arguing that there was insufficient evidence that Block acted in a willful and wanton manner. The trial court denied the motion. The parties presented closing arguments. Instructions were provided to the jury, including

Bolingbrook General Order No. 29 which sets forth the department's directives for police call responses and states that its provisions do not relieve an responding unit "from the duty of driving with due regard for the safety of all persons, nor do such provisions protect the driver from the consequences of reckless disregard for the safety of others." Instructions for the jury also include section 11-105 of the Illinois Motor Vehicle Code, which provides that when responding to an emergency incident, an officer may "proceed past a red or stop signal or stop sign but only after slowing down or stopping as may be required and necessary for safe operation." 625 ILCS 5/11-205(c)(2) (West 2008). The jury found in favor of Larry and against Bolingbrook on its claim and for Larry on his counterclaim in the amount of \$22,456. Bolingbrook brought a posttrial motion for a judgment notwithstanding the verdict (JNOV) or a new trial. The trial court denied the motion, finding that the jury verdict was not against the manifest weight of the evidence. Bolingbrook appealed.

¶ 14

ANALYSIS

¶ 15 On appeal, we consider whether the trial court erred when it denied Bolingbrook's motion for a judgment notwithstanding the verdict (JNOV) or a new trial. Bolingbrook argues that a JNOV in its favor would be proper because the evidence did not support the jury's finding that its officer's conduct was willful and wanton. It asserts that the facts do not establish that Block's actions were willful and wanton in that he did not show a reckless disregard for the safety of others. It further asserts that Block's failure to activate the squad's siren or to comply with General Order No. 29 does not constitute willful and wanton conduct.

¶ 16 A JNOV should be entered where all the evidence, viewed in a light most favorable to the opponent, so overwhelmingly favors the movant that no contrary verdict based on the evidence could

ever stand. *Pedrick v. Peoria & Eastern R.R. Co.*, 37 Ill. 2d 494, 510 (1967). This court reviews a trial court's denial of a motion for JNOV *de novo*. *Hudson v. City of Chicago*, 378 Ill. App. 3d 373, 387 (2007).

¶ 17 The Illinois Local governmental and Governmental Employees Tort Immunity Act (Act) provides as follows:

“A local public entity is not liable for an injury resulting from an act or omission of its employee where the employee is not liable.”
745 ILCS 10/2-109 (West 2008).

“A local public employee is not liable for his act or omission in the execution or enforcement of any law, unless such act or omission constitutes willful and wanton conduct. 745 ILCS 10/2-202 (West 2008).

" 'Willful and wanton conduct' as used in this Act means a course of action which shows an actual or deliberate intention to cause harm or which, if not intentional, shows an utter indifference to or conscious disregard for the safety of others or their property. This definition shall apply in any case where a 'willful and wanton' exception is incorporated into any immunity under this Act.” 745 ILCS 10/1-210 (West 2008).

¶ 18 A defendant's acts are willful and wanton when they “have been committed with actual or deliberate intention to harm or with an utter indifference to or conscious disregard for the safety of others.” *Nelson v. Thomas*, 282 Ill. App. 3d 818, 829 (1996), quoting *Breck v. Cortez*, 141 Ill. App.

3d 351, 360 (1986). Whether conduct is willful and wanton is a question of fact for the jury. *Murray v. Chicago Youth Center*, 224 Ill. 2d 213, 236 (2007), quoting *Schneiderman v. Interstate Transit Lines, Inc.*, 394 Ill. 569, 583 (1946). Violating internal guidelines “ ‘does not normally impose a legal duty, let alone constitute evidence of negligence, or beyond that, willful and wanton conduct.’ [Citation].” *Shuttlesworth v. City of Chicago*, 377 Ill. App. 3d 360, 368 (2007), quoting *Wade v. City of Chicago*, 364 Ill. App. 3d 773, 781 (2006). However, the jury may consider it along with other evidence in reaching its determination of whether the defendant acted willfully and wantonly. *Hudson*, 378 Ill. App. 3d at 405.

¶ 19 Bolingbrook relies on *Williams v. City of Evanston*, 378 Ill. App. 3d 590 (2007), as support for its argument that Block’s conduct was not willful and wanton. In *Williams*, the plaintiffs brought an action alleging willful and wanton conduct against the defendant city to recover for injuries they sustained when a city ambulance collided with their vehicle in an intersection in which they had the right of way. *Williams*, 378 Ill. App. 3d at 591-92. The ambulance was traveling on an emergency call with its lights and sirens activated when it entered the intersection from a secondary street and collided with the plaintiffs. *Williams*, 378 Ill. App. 3d at 592. The trial court granted the defendant’s summary judgment motion, determining that the evidence did not establish a genuine issue of material fact as to whether the conduct of the city’s ambulance driver was willful and wanton. *Williams*, 378 Ill. App. 3d at 599. *Williams* is factually distinguished. The ambulance’s lights and sirens were activated, and while the ambulance driver admitted he did not stop at the stop sign, he stated he did pause and slow his speed before entering the intersection. *Williams*, 378 Ill. App. 3d at 593. The ambulance driver also acknowledged that the view of the intersection was partially obstructed by an apartment building on the corner but submitted that he was able to see the intersection without

obstruction as he slowed and entered it. *Williams*, 378 Ill. App. 3d at 593. The reviewing court affirmed the trial court's grant of summary judgment in favor of the city, finding that there was no genuine issue of material fact that ambulance driver's conduct was not willful and wanton. *Williams*, 378 Ill. App. 3d at 601. The *Williams* court noted that even if the ambulance driver had violated a department guideline requiring him to stop before entering the intersection and despite an obstructed view, his conduct would have been negligent, not willful and wanton. *Williams*, 378 Ill. App. 3d at 601.

¶ 20 In contrast, Block entered the intersection on a red light. He did not slow his speed, in spite of his knowledge that the view of Boughton traffic was obstructed at the intersection. He used the emergency lights but did not activate the siren. Block recognized that the department's standard operating procedure required that he either activate his lights and siren and stop before entering the intersection if responding to a priority call or activate the squad's lights and siren if on response to an emergency call. He considered he was responding to an emergency call but acknowledged he was the secondary responding officer. He admitted that he violated the police department's General Order No. 29, as to protocol for both priority and emergency calls. Block testified that he opted to respond without activating his siren because it was early on a Sunday morning, traffic was light and he wanted to be courteous to the residents of the neighborhood. In addition to Block's admitted violation of department guidelines, the evidence supports the jury's finding that he demonstrated a conscious disregard of the proper procedures when responding to a call and a reckless disregard for the safety of other motorists. He entered an intersection against the light, without using a siren, knowing that northbound drivers on Delaware, the cross street, had an obstructed view of the intersection. Daunis and Larry each stated that they use both lights and sirens when entering an intersection in response

to an emergency call. Larry stated he did so in order to warn other motorists. Regalado stated that she would use short bursts of siren to warn motorists when entering an intersection. As apparently demonstrated in the videotape, Block stopped at other intersections before entering them but failed to do so at Boughton and Delaware. The jury was able to view the videotape from Block's dashboard camera and use it in determining whether Block's conduct was willful and wanton.

¶ 21 We find the evidence presented did not so overwhelming favor Block that a contrary verdict could not stand. Rather, we consider that the jury's finding that Block's conduct was willful and wanton was supported by the evidence, which the jury determined established that Block's course of conduct evinced "an utter indifference to or conscious disregard for the safety of others or their property." 745 ILCS 10/1-210 (West 2008). We find that the trial court did not err in denying Bolingbrook's motion for a judgment notwithstanding the verdict.

¶ 22 For the foregoing reasons, the judgment of the circuit court of Will County is affirmed.

¶ 23 Affirmed.