IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

ELIJAH GILLYARD, Administrator of the Estate of Lee-Moor Rich, a/k/a Lee More Rich, Deceased	:	**CIVIL ACTION**
v.	:	
CONSTANTINE STYLIOS, TERRENCE FUSSELL, and the CITY OF PHILADELPHIA	:	**NO. 97-6555**

MEMORANDUM and ORDER

Norma L. Shapiro, J. **December 23, 1998**

Plaintiff Elijah Gillyard, Administrator of the Estate of Lee More Rich ("Rich"), filed a civil rights action alleging that defendants violated his substantive due process rights when they were involved in a motor vehicle accident causing the death of pedestrian Rich. Rich brought claims not only against the individual officers involved in the accident, Constantine Stylios ("Stylios") and Terrence Fussell ("Fussell"), but also against the Philadelphia Police Department, and the City of Philadelphia. The action was stayed pending the Supreme Court decision in County of Sacramento v. Lewis, --U.S.--, 118 S. Ct. 1708 (1998), articulating the appropriate standard of care for liability of police officers engaged in high-speed pursuit. The defendants, moving for summary judgment on all claims, argue, inter alia, that Lewis bars plaintiff's claim against the individual officers and the City. For the reasons set forth below, the motion for summary judgment will be granted as to Stylios and Fussell and

denied as to the City of Philadelphia.[1]

FACTS[2]

On the evening of August 19, 1997, a police officer encountered a fight between two inebriated women in a crowd. (Gregg Statement, Pl.'s Mem. Opp'n Defs.' Mot. Summ. J., Ex. 1). The officer's radio request to police headquarters for a police van, punctuated with shouts from the crowd, was heard by officers Stylios and Fussell. (Fussell Dep. at 49-50, Horger Dep. at 7, Musallam Dep. 15-16). Both Stylios and Fussell, interpreting the routine request for a "wagon" as an emergency situation, drove to the requesting officer's location with emergency equipment operating.[3] (Stylios Dep. at 24-27; Fussell Dep. at 147-48). At the same time, Rich and his fiancée, Gwenessa Moore, were walking with their seven-month-old son. (Pl.'s Mem. Opp'n Defs.' Mot. Summ. J., at 1). The family reached the intersection of Twenty-second and Snyder streets. Officers Stylios and Fussell were racing towards the same intersection, each in excess of forty-

[1]Defendant Police Department of the City of Philadelphia is not a separate entity, and is not a proper defendant. See Sorrentino v. City of Philadelphia, 1997 WL 597990, *3 (E.D. Pa. Sept. 16, 1997); Merrell v. Duffy, 1992 WL 168010, *1 (E.D. Pa. July 8, 1992).

[2]The parties vigorously dispute many of the following facts. Upon a motion for summary judgment, this court must take all evidence as set forth in the pleadings and motions and the attachments thereto and construe them in a light most favorable to Rich, the nonmoving party.

[3]Both parties refer to an unrelated request for "back-up" that resulted in an emergency "assist officer" broadcast near the time of the accident. There is evidence that this call went out after the collision, and neither party argues the call influenced the conduct of Stylios and Fussell; the court will consider only the call requesting the prisoner van.

five miles per hour. (Id., at 4). Fussell went through a red light against traffic and Stylios, entering the intersection at the same time, hit Fussell's car. (Id., at 4-5). Rich and the infant were killed by Fussell's vehicle; Moore was injured but survived. (Id., at 5).

DISCUSSION

I. Standard of Review

A court may grant summary judgment "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(c). A defendant moving for summary judgment bears the initial burden of demonstrating there are no facts supporting the plaintiff's claim; then the plaintiff must introduce specific, affirmative evidence that there is a genuine issue for trial. See Celotex v. Catrett, 477 U.S. 317, 322-24 (1986). "When a motion for summary judgment is made and supported as provided in [Rule 56], an adverse party may not rest upon the mere allegations or denials of the adverse party's pleading, but the adverse party's response, by affidavits or as otherwise provided in [Rule 56], must set forth specific facts showing that there is a genuine issue for trial." Fed. R. Civ. P. 56(e).

The court must draw all justifiable inferences in the non-

movant's favor. See Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 255 (1986). A genuine issue of material fact exists only when "the evidence is such that a reasonable jury could return a verdict for the non-moving party." Id. at 248. The non-movant must present evidence to establish each element for which it will bear the burden at trial. See Matsushita Elec. Indus. Co. v. Zenith Radio. Corp., 475 U.S. 574, 585-86 (1986). Before this court are defendants' motions for summary judgment for the individual officers and the City.

II. The Claims Against the Individual Officers

To maintain a civil rights action, a plaintiff must allege defendants deprived him of a federal right while acting under color of state law. See 42 U.S.C. § 1983.[4] "Section 1983 focuses on misuse of power, possessed by virtue of state law and made possible only because the wrongdoer is clothed with the authority of state law." Davidson v. O'Lone, 752 F.2d 817, 826 (3d Cir. 1984), aff'd, 474 U.S. 344 (1986). There is state action if a defendant's "official character is such as to lend the weight of the State to his decisions." Lugar v. Edmondson

[4] 42 U.S.C. § 1983 provides:

> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress....

Oil Co., Inc., 457 U.S. 922, 937 (1982). Here the defendants are police officers for the City of Philadelphia; official actions taken by them while on duty were under color of state law. Screws v. United States, 325 U.S. 91, 110 (1945).

Plaintiff must also establish that defendants violated a constitutional right. Plaintiff claims the police officers (and the City) violated his right to substantive due process guaranteed by the Fourteenth Amendment. Harm resulting from police misconduct rises to the level of a constitutional violation when the police officer's conduct "shocks the conscience." The Supreme Court recently held that police officers are liable under § 1983 for injuries caused during a high-speed pursuit of a suspect only if they act with intent to harm the plaintiff. County of Sacramento v. Lewis, --U.S.--, 118 S. Ct. 1708, 1720 (1998). The Lewis standard also applies when police officers, assisting a fellow officer in a reasonably perceived emergency situation, injure an innocent bystander. But even if the "intent to harm" standard did not apply, Stylios and Fussell would not be liable under the Court of Appeals' pre-Lewis "shocks-the-conscience" standard.

A. Before Lewis

Not every wrong committed by a state actor is actionable under § 1983; only a wrong rising to the level of constitutional violation imposes liability. Lewis, 118 S. Ct. at 1717. The Due

Process Clause of the Fourteenth Amendment was not intended as a "font of tort law to be superimposed upon whatever systems may already be administered by the states." Paul v. Davis, 424 U.S. 693, 701 (1976); the Supreme Court mandates great caution when assessing a claim for violation of substantive due process.[5] Mere negligence by a government agent will not give rise to a constitutional violation, but the degree of fault that will, short of intentional harm, requires individual evaluation. Id. at 1718.

The Court of Appeals has applied a "shocks the conscience" standard to police pursuit cases. See Fagan v. City of Vineland, 22 F.3d 1296, 1303 (3d Cir. 1994)(en banc)("Fagan II"). There may be liability under the Constitution if the official conduct "offend[s] those canons of decency and fairness which express the notions of justice of English-speaking peoples . . . ." Fagan II, 22 F.3d at 1303 (internal quotations omitted). In Fagan II, the Court of Appeals, sitting en banc, found that a prolonged high speed police pursuit of a criminal suspect through mostly residential areas, instigated by a minor traffic violation and resulting in three deaths, including two innocent drivers, did not "shock the conscience." See id.

Here there was no pursuit of a criminal suspect, but the

[5]The Supreme Court has repeatedly cautioned against expansive interpretations of the substantive component of the Due Process Clause. See Collins v. City of Harker Heights, 503 U.S. 115, 125 (1992).

"shocks the conscience" standard is nevertheless appropriate.[6] Although the holding in Fagan II was broad and "made clear that it intended to reach a broad spectrum of substantive due process claims." Carter v. Kane, 938 F. Supp. 282, 285 (E.D. Pa. 1996), its breadth has been called into question by the subsequent opinion in Kneipp v. Tedder, 95 F.3d 1199, 1207-08 (3d Cir. 1996) (stating the "shocks the conscience" standard only applies in police pursuit cases). But see United States v. Johnstone, 107 F.3d 200, 205 (3d Cir. 1997)(referring, without qualification, to the "substantive due process 'shocks the conscience' analysis."). The Kneipp decision arose, indirectly, from the DeShaney line of cases. See DeShaney v. Winnebago County Dep't of Social Servs., 489 U.S. 189 (1989). DeShaney held a state not liable for private wrongs unless it stands in a special custodial relationship to the injured party. See id. at 197-98. Kneipp predicated municipal liability for private wrongs on a state-created danger theory. One element of this theory is a "relationship between the state and the person injured" although the relationship required by Kneipp need not be custodial. Kneipp, 95 F.3d at 1209.

Kneipp distinguished the holding in Fagan II as applying only to police pursuit cases. But Kneipp recognized it was

[6]Plaintiff agrees that the appropriate standard to apply in this case is the "shocks the conscience" standard, but argues that Lewis is inapplicable. (Pl.'s Mem. Opp'n Defs.' Mot. Summ. J. at 36-37 & n.19).

drawing on an analogy to custody cases in premising liability on a state-created danger theory and applying "reckless disregard" rather than "shocks the conscience" as the appropriate standard for substantive due process analysis. Kneipp, 95 F.3d at 1208 n.21 ("[T]he alleged constitutional violation here should be judged by the "reckless disregard" standard, as the rationale for employing such a threshold in custody cases is equally pertinent to the case before us."). The facts here are more analogous to Fagan II than Kneipp. In referring to Fagan II as applying to police pursuit cases, the Court of Appeals did not mean to draw a meaningless distinction between police pursuit of suspected criminals and police response to a call for assistance by fellow officers. The Fagan II "shocks the conscience" standard rather than the Kneipp "reckless disregard" standard applies here.

B. After Lewis

Lewis reasoned that police officers involved in high-speed pursuit of suspected criminals must be afforded great deference in the exercise of their official discretion, because officers must make split-second decisions in such situations without the luxury of prolonged deliberation. See Lewis, 118 S. Ct. at 1719-20. Competing interests, such as the needs to apprehend and protect the safety of the public, make it appropriate to grant more leeway in determining the level of misconduct that will "shock the conscience." See id. at 1720. The Court drew an

analogy to the standard applicable to prison officials confronted with a prison riot; "the police on an occasion calling for fast action have obligations that tend to tug against each other." Lewis, 118 S. Ct. at 1720.[7]

In Lewis, the Court provided a useful and objective yardstick against which courts should measure government action generally. Moreland v. Las Vegas Metropolitan Police Dep't, --F.3d--, 1998 WL 809551, *6 (9th Cir. Nov. 24, 1998)(amended opinion); Radecki v. Barela, 146 F.3d 1227, 1230-32 (10th Cir. 1998). The issue is the extent to which the Lewis rationale extends beyond its facts.

Every court addressing police conduct since Lewis has found its reasoning extends beyond high-speed pursuit of suspected criminals. See Moreland, 1998 WL 809551 at *6-*7 (police officer shooting bystander in gunfight); Schaefer v. Goch, 153 F.3d 793, 797-98 (7th Cir. 1998)(police officer shooting bystander in stand-off with suspect); Medeiros v. O'Connell, 150 F.3d 164, 170 (2d Cir. 1998)(bystander shot by police officer pursuing suspect who had commandeered a school van); Radecki v. Barela, 146 F.3d 1227, 1231-32 (10th Cir. 1998)(bystander shot when officer requested his intervention in struggle with suspect); Jarrett v. Schubert, 1998 WL 471992, *5-*6 (D. Kan. July 31, 1998)(excessive

[7]The Court of Appeals reasoned similarly in an Eighth Amendment claim against prison officials for injuring an inmate during a prison riot. See Sample v. Diecks, 885 F.2d 1099, 1109 (3d Cir. 1989).

use of force by police officer).

The Lewis opinion was not limited to its precise facts. See Schaefer, 153 F.3d at 798 (applying Lewis when "government officers face the sort of unforeseen and rapidly changing circumstances that demand unreflective decisions with potentially grave consequences on every side"); Jarrett, 1998 WL 471992 at *5 ("In emergency situations, a government official will be liable only if he intended to inflict harm on the plaintiff and the government had no justifiable interest in his particular conduct.").

Plaintiff relies on the Fifth Circuit decision in Checki v. Webb, cited with approval in Lewis. See Checki v. Webb, 785 F.2d 534 (5th Cir. 1986)(quoted in Lewis, 118 S. Ct. at 1720 n.13). Checki held that police officers, tailgating plaintiff in an unmarked police car at speeds in excess of 100 miles per hour and physically abusing plaintiff and his companion at a roadblock, were intentionally misusing their police cars in an arbitrary manner. In finding the officers acted in a manner that shocked the conscience, the Checki court emphasized that the officers' conduct raised a jury question whether the conduct was "inspired by malice rather than merely careless or unwise excess of zeal." Id. at 538. This standard is consistent with the intent to harm required by the Supreme Court in Lewis.

Plaintiff also relies on Williams v. Denver, City and County

of, 99 F.3d 1009, 1017 (10th Cir. 1996); however, the opinion has been vacated and remanded for further proceedings consistent with Lewis. See Williams v. Denver, City and County of, 153 F.3d 730 (10th Cir. 1998) (unpublished disposition). The court deciding Williams subsequently found Lewis controlling in a claim against a police officer for creating a dangerous situation harming an innocent bystander. See Radecki v. Barela, 146 F.3d 1227, 1230 (10th Cir. 1998).

Plaintiff claims that the conduct of police officers responding to a fellow officer's radio call and killing two innocent bystanders differs from officers killing a suspect in a high-speed pursuit as in Lewis. Officers Stylios and Fussell were assisting a fellow officer they erroneously believed to be in peril; the officers were on-duty and responding to a police radio request. The fact that they were not pursuing a suspect does not foreclose the application of Lewis. See Rooney v. Watson, 101 F.3d 1378, 1380-81, 81 (11th Cir. 1996), cert. denied, --U.S.--, 118 S. Ct. 412 (1997)("Perhaps [the officer's] driving at a high rate of speed in a non-emergency or non-pursuit situation reveals gross negligence rather than negligence, but it does not transform a state tort claim into a constitutional violation. . . .").

The depositions of numerous police officers and other officials refer to subtle differences in various police calls not

all obvious to an outsider. (Neal Dep. at 57, Nestel Dep. at 116). The depositions also make clear that police officers must make close judgment calls about a situation's potential emergency nature. (Neal Dep. at 123, Smyth Dep. at 58, Stylios Dep. at 59, Harron Dep. at 51-52, Horger Dep. at 83). This is the type of high-pressured decision-making the Supreme Court deferred to in Lewis. See Lewis, 118 S. Ct. at 1720 (police officers "are supposed to act decisively and to show restraint at the same moment, and their decisions have to be made in haste, under pressure, and frequently without the luxury of a second chance.")(internal quotations omitted).

Applying the Lewis standard requiring intentional harm, Stylios and Fussell did not act in a manner that "shocks the conscience." There is no evidence they acted with the intent to harm Rich or anyone else. Officers Stylios and Fussell heard shouting in the background of officer Gregg's request for a "wagon;" it was not objectively unreasonable, as a matter of law, for Stylios and Fussell to treat the request as "an emergency with the potential for serious injury." Triest v. Gilbert, 1997 WL 255668, *7 (E.D. Pa. May 8, 1997), aff'd, 142 F.3d 429 (3d Cir. 1998). There is no evidence that their haste in proceeding to assist Gregg, even if improvident, was malicious; Stylios and Fussell did not violate the Constitution under the Lewis standard.

Even if Lewis does not extend beyond police pursuit of suspects, summary judgment would still be appropriate. If Lewis had not been decided or is inapplicable, the "shocks the conscience" standard previously articulated by the Court of Appeals in Fagan II applies. Under that standard, Stylios and Fussell are also entitled to summary judgment; their actions did not "'offend those canons of decency and fairness which express the notions of justice of English-speaking peoples . . . .'" Fagan II, 22 F.3d at 1303. The events of August 19, 1997 are deeply tragic, but it is the underlying government action that must shock the conscience, not its outcome. Triest v. Gilbert, 1997 WL 255668, at *7; see also Schaefer, 153 F.3d at 798.

The negligence or even gross negligence of officers Stylios and Fussell is not arbitrary abuse of government power and does not violate substantive due process under the Constitution. See Rooney v. Watson, 101 F.3d 1378, 1381 (11th Cir. 1996)(no liability for speeding police officer who seriously injured two individuals while on duty but not responding to an emergency call); Friedman v. City of Overland, 935 F. Supp. 1015, 1020 (E.D. Mo. 1996)(no civil rights liability for alleged reckless conduct of intoxicated police officer who injured plaintiff while driving police car); Smith v. Lexington Fayette Urban County Gov't, 884 F. Supp. 1086, 1094 (E.D. Ky. 1995)(action of police officer causing death of plaintiff while chasing a drunken driver

without activating emergency equipment did not "shock the conscience"). The claims against the individual officers are dismissed; the court need not address whether they had qualified immunity.

III. The Claim Against the City of Philadelphia

Municipal liability is established only by proof that the municipal agency had an official policy or custom permitting or requiring its agent's action. See McMillian v. Monroe County, --U.S.--, 117 S. Ct. 1734, 1736 (1997); Monell, 436 U.S. at 491. "Policy is made when a 'decisionmaker possess[ing] final authority to establish municipal policy with respect to the action' issues an official proclamation, policy, or edict. A course of conduct is considered to be a 'custom' when, though not authorized by law, 'such practices of state officials [are] so permanent and well settled' as to virtually constitute law." Beck v. City of Pittsburgh, 89 F.3d 966, 971 (3d Cir. 1996), cert. denied, 117 S. Ct. 1086 (1997),(quoting Andrew v. City of Phila., 895 F.2d 1469, 1480 (3d Cir. 1990)).

Plaintiff claims that the City of Philadelphia had a custom and policy of not disciplining its officers for violations of Directive 45, instructions regarding the safe operation of police vehicles.[8] The City maintains that, if the individual officers

[8]Directive 45 is a twelve-page directive to all Philadelphia police officers entitled "Safe Operation of Police Vehicles." Plaintiff relies, in particular, on the following provisions:

are not liable under § 1983, then the municipality is not liable.

There is some authority that the resolution of § 1983 claims in favor of individual officers also resolves, a fortiori, any claim against the governing municipality. See Evans v. Avery, 100 F.3d 1033, 1039 (1st Cir.), cert. denied, --U.S.--, 117 S. Ct. 1693 (1997); Estate of Phillips v. City of Milwaukee, 123 F.3d 586, 596-97 (7th Cir. 1997), cert. denied, --U.S.--, 118 S. Ct. 1052 (1998); Temkin v. Frederick County Commissioners, 945 F.2d 716, 724 (4th Cir. 1991), cert. denied, 502 U.S. 1095 (1992); Roach v. City of Fredericktown, 882 F.2d 294, 298 (8th Cir. 1989). But see Williams v. City of Denver, 99 F.3d 1009, 1019 (10th Cir. 1996), rehearing en banc granted and opinion vacated on other grounds, 153 F.3d 730 (10th Cir. 1998) (unpublished disposition); Chew v. Gates, 27 F.3d 1432, 1438 (9th Cir. 1994), cert. denied, 513 U.S. 1148 (1995); Dodd v. City of Norwich, 827 F.2d 1, 8 (2d Cir. 1987), cert. denied, 484 U.S.

> II. Routine Vehicle Operation
> A. Under normal, non-emergency operating conditions, and while responding to routine calls for service, personnel operating police vehicles will strictly adhere to all traffic laws and drive defensively in a safe and courteous manner.
> III. Emergency Vehicle Operation
> A. Personnel will not operate a police vehicle in an emergency manner unless responding to an emergency call for service such as a hospital case, crime in progress, etc., or when in pursuit. (See Directive 6, Section III-C). Emergency calls for service do not include disturbance houses, fights on the highway, reports of crimes, etc. Emergency equipment will not be used during such response unless exigent circumstances exist.

(Directive 45, at 1-2).

1007 (1988).

But in the Third Circuit a municipality can be liable for "failure to train its police officers with respect to high-speed automobile chases, even if no individual officer participating in the chase violated the Constitution," Kneipp, 95 F.3d at 1294. "[M]unicipal liability does not depend automatically or necessarily on the liability of any police officer." Id. at 1213; Fagan v. City of Vineland, 22 F.3d 1283, 1292 (3d Cir. 1994)("Fagan I"). The City of Philadelphia may be liable for its failure to train police officers with respect to emergency use of their vehicles even if Stylios and Fussell did not individually violate the Constitution for lack of the requisite intent. The Court of Appeals may reexamine municipal liability; language in Lewis casts doubt on the continued tenability of this position. See Lewis, 118 S. Ct. at 1718 n.10 (Canton is predicated on "municipal liability for failure to train an employee who causes harm by unconstitutional conduct for which he would be individually liable."). But until the Court of Appeals decides to the contrary, this court must follow the clearly established law in this circuit.

Defendants correctly assert that there is no municipal liability absent a constitutional violation but that does not mean an individual officer must be liable for that violation.

(Defs.' Mem. Supp. Mot. Summ. J. at 17-19).[9] A municipal body may violate the Constitution if its policies reflect deliberate indifference towards the constitutional rights of those with whom its agents have contact. City of Canton v. Harris, 489 U.S. 378, 388 (1989).[10] A municipal body can act only through its agents, so any deliberate indifference must manifest itself through the actions of individuals. Fagan I, 22 F.3d at 1292 (contrary finding would have the illogical result of exonerating a city violating the constitutional rights of others so long as its agents did not cause that violation in a manner that "shocked the conscience.").

Even though a city's liability need not be predicated on that of an individual officer, the plaintiff still must prove a constitutional violation. City of Los Angeles v. Heller, 475 U.S. 796, 799 (1986)(per curiam); Kneipp v. Tedder, 95 F.3d 1199, 1212 n.26 (3d Cir. 1996). If a constitutional violation occurred, the plaintiff must also establish that the municipal defendant caused the violation, that is, "it can be fairly said that the city itself was the wrongdoer." Collins v. City of

---

[9]Many cases involve violations arising only if the individual were also liable, such as an unreasonable search and seizure. See. e.g., City of Los Angeles v. Heller, 475 U.S. 796, 797 (1986)(per curiam); Estate of Phillips, 123 F.3d at 596. Here the City and the individual officers are held to separate and independent standards.

[10]Although the issue of municipal liability was not before the Court in Lewis, Lewis, 118 S. Ct. at 1712, n.2, the Court implicitly acknowledged that Lewis would not apply to municipalities. See id. at 1718 n.10 (referring to the municipal liability standard as deliberate indifference).

Harker Heights, 503 U.S. 115, 122 (1992).

Plaintiff alleges that the City of Philadelphia's practice or policy of not enforcing violations of Directive 45 sanctions police vehicle misuse. (Pl.'s Mem. Opp'n Defs.' Mot. Summ. J. at 52-53). Rich claims the City knew of, and was deliberately indifferent to, the need for increased training, procedures, and discipline to reduce the danger posed by the reckless driving of its officers. Compl. ¶¶ 31-33.

Plaintiff points to a large number of preventable accidents occurring in the course of similar conduct,[11] failure of the police department to discipline officers causing preventable accidents, violating Directive 45 or Pennsylvania traffic laws, and ignored internal requests to enforce safe driving techniques more strictly. (Pl.'s Mem. Opp'n Defs.' Mot. Summ. J. at 11-25). Defendants have presented evidence that the City has made efforts to reduce the number of police automobile accidents, (Defs.' Mem. Supp. Mot. Summ. J. at 21-32 & Exs.), but there is sufficient evidence of an implicit policy sanctioning reckless driving to present a jury issue. (Pl.'s Mem. Opp'n Defs.' Mot. Summ. J. at 11-25 & Exs. 35-88). The court cannot say that a reasonable jury

[11]In his complaint, plaintiff referred to all preventable accidents by police officers; defendants moved to limit this testimony to accidents arising in similar situations. By order dated October 14, 1998, defendants' motion was granted and a hearing will be held to determine relevancy. It is assumed that some of the preventable accidents occurred in similar situations. Even if plaintiff is unable to prove any similar accidents, he has presented other evidence of municipal liability sufficient to deny summary judgment on this claim.

could not find the City of Philadelphia deliberately indifferent to the harm to private citizens caused by its failure to prevent the reckless driving of its police officers; summary judgment will be denied.[12] Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 255 (1986).

An appropriate order follows.

[12]This finding is without prejudice to any subsequent motion for a judgment as a matter of law pursuant to Fed. R. Civ. P. 50(a) or a renewed motion for judgment as a matter of law at the conclusion of trial pursuant to Fed. R. Civ. P. 50(b).

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

ELIJAH GILLYARD, Administrator of the Estate of Lee-Moor Rich, a/k/a Lee More Rich, Deceased	:	**CIVIL ACTION**
v.	:	
CONSTANTINE STYLIOS, TERRENCE FUSSELL, and the CITY OF PHILADELPHIA	:	**NO. 97-6555**

ORDER

AND NOW, this 23rd day of December, 1998, upon consideration of Defendants' Motion for Summary Judgment, Plaintiff's Response and Supplemental Response in Opposition, and Defendants' Reply thereto, and in accordance with the attached Memorandum it is **ORDERED** that:

1. Defendants' motion for summary judgment is **GRANTED** as to defendants Stylios and Fussell. All of the claims against these defendants are **DISMISSED**.

2. Defendants' motion for summary judgment is **DENIED** as to defendant City of Philadelphia.

3. The caption is amended to read:

ELIJAH GILLYARD, Administrator
of the Estate of Lee-Moor Rich,
a/k/a Lee More Rich, Deceased

v.

The CITY OF PHILADELPHIA

Norma L. Shapiro, J.