

No. _____

In The
Supreme Court of the United States

CITY OF EAST CLEVELAND and
TODD CARROSCIA,

Petitioners,

v.

CHARLES HUNT and MARILYN CONARD,
Respondents.

**On Petition For A Writ Of Certiorari
To The Ohio Supreme Court**

PETITION FOR WRIT OF CERTIORARI

WILLA MAE HEMMONS (0041790)
Director of Law
CITY OF EAST CLEVELAND
14340 Euclid Avenue
East Cleveland, Ohio 44112
(216) 681-2169
whemmons@eastcleveland.org
Counsel for Petitioners
City of East Cleveland and
Todd Carroscia

QUESTIONS PRESENTED FOR REVIEW

1. Whether the Trial Court abused its discretion when it denied Petitioners' Motion to Bifurcate the trial.
2. Whether the Trial Court abused its discretion when it advocated for a Minimum Dollar Verdict and Recused a Juror for cause.
3. Whether the Trial Court Abused its Discretion when it Refused Admission of an Expert Witness's Impairment Opinion.
4. Whether the Trial Court Erred to Petitioners' Prejudice When it Allowed Patent Juror Misconduct in the Courtroom.
5. Whether the Verdict went against the Manifest Weight of the Evidence when Testimony showed that Charles Hunt When Facing a Malfunctioning Traffic Light did not look to the Left, in the Direction of the Oncoming Police Car, Prior to Entering the Intersection.
6. Whether the Trial Erred to Petitioners' Prejudice in finding that Officer Carroscia was not on an Emergency Call and failing to Allow the Special Immunity Defense as set forth in R.C. 2744.02(B)(1)(a).

PARTIES TO THE PROCEEDING

(See Caption)

RULE 29.6 STATEMENT

Petitioners are City of East Cleveland and Officer Todd Carroscia. Petitioners do not have a parent corporation or shares held by a publicly traded corporation.

RELATED CASES

Charles Hunt et al. v. Todd Carroscia, et al., Cuyahoga County Court of Common Pleas, Ohio Case No.: CV-09-687106. Dismissal without prejudice filed on June 28, 2011.

Charles Hunt et al. v. Todd Carroscia, et al., Cuyahoga County Court of Common Pleas, Ohio Case No.: CV-11-755540. Case removed to U.S. District Court Case Number 1:11-CV-1320.

Hunt et al. v. City of Cleveland et al., U.S. District Court Northern District of Ohio (Cleveland) Case No.: 1:11-cv-01608-DCN, Pursuant to Judgment Order dated June 28, 2013 and for the reasons set forth in this Court's Memorandum Opinion, the Motion for Summary Judgment filed by Defendants, City of East Cleveland; Todd Carroscia; Ralph Spots; and, Christopher Cargile (Docket # 110), and the Motion for Summary Judgment filed by Defendants City of Cleveland and Officer John Kiggins (Docket # 111), are both granted in part and denied in part. Counts I, II, IV, VI,

RELATED CASES – Continued

and VII are hereby dismissed. This eliminates all federal claims raised by the Plaintiffs. The Court declines jurisdiction over the remaining state law claims and remands the action back to the State Court for disposition of those matters. Judge Donald C. Nugent (C,KA).

Charles Hunt et al. v. Todd Carroscia, et al., Cuyahoga County Court of Common Pleas, Ohio Case No.: CV-11-755540. Case remanded by order of the United States District Court.

Charles Hunt et al. v. Todd Carroscia, et al., United States Court of Appeals for the Sixth Circuit Case No.: 13-3898. Appeal of the federal court decision remanding to the state court.

Charles Hunt, et al. v. City of Cleveland, et al., Eighth District Court of Appeals, Ohio, Case No.: CA-15-103468.

Charles Hunt, et al. v. City of Cleveland, et al., Eighth District Court of Appeals, Ohio, Case No.: CA-17-105953.

Charles Hunt, et al. v. City of Cleveland, et al., Ohio Supreme Court, Case No.: 2019-0554, Decision Released 07/24/2019 declining jurisdiction.

TABLE OF CONTENTS

	Page
QUESTIONS PRESENTED FOR REVIEW	i
PARTIES TO THE PROCEEDING.....	ii
RULE 29.6 STATEMENT	ii
RELATED CASES.....	ii
TABLE OF CONTENTS	iv
TABLE OF AUTHORITIES	vi
OPINIONS BELOW	1
JURISDICTION	1
CONSTITUTIONAL PROVISIONS	1
BASIS FOR FEDERAL COURT JURISDICTION	1
STATEMENT OF THE CASE.....	2
STATEMENT OF FACTS	3
ARGUMENT.....	5
CONCLUSION	7

INDEX TO APPENDICES

APPENDIX A: Opinion of the Eighth District Court of Appeals for Ohio, 3/28/19. COA No. 17-105953	App. 1
APPENDIX B: Order of the Court of Common Pleas, Cuyahoga County, Ohio, 12/11/18. No. CV-11-755540	App. 49
APPENDIX C: Journal Entry of the Order of the Court of Common Pleas, Cuyahoga County, Ohio, 12/11/18. No. CV-11-755540	App. 51

TABLE OF CONTENTS – Continued

	Page
APPENDIX D: Journal Entry of the Order of the Court of Common Pleas, Cuyahoga County, Ohio, 6/8/18. No. CV-11-755540	App. 52
APPENDIX E: Opinion of the Ohio Supreme Court, 7/24/2019. O.S Ct. Case No. 2019-0554....	App. 53

TABLE OF AUTHORITIES

	Page
CASES	
<i>Colbert v. Cleveland</i> , 99 Ohio St. 3d 215, 2003-Ohio-3319, 790 N.E. 2d 781	5
<i>Daubert v. Merrell Dow Pharmaceuticals, Inc.</i> , 509 U.S. 579	5
<i>Havel v. Villa St. Joseph</i> , 131 Ohio St. 3d 235; 2012-Ohio-55236, 963 N.E. 2d 1270	6
<i>Sheppard v. Maxwell</i> , 364 U.S. 333 (1966).....	5
CONSTITUTIONAL PROVISIONS	
U.S. Const. amend. VI.....	5
U.S. Const. amend. IX.....	1
U.S. Const. amend. XIV, § 1	1
STATUTES AND RULES	
28 U.S.C. § 1257(a).....	1
42 U.S.C. § 1983	1
Fed. Rule of Evidence 702	5
Ohio Civ. R. 42(B).....	6

OPINIONS BELOW

The opinion of the Eighth District Court of Appeals, Case No.: CA-17-105953 filed on March 28, 2019 is reproduced in the Appendix A at App. 1.

JURISDICTION

The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(a). The Ohio Eighth District Court of Appeals affirmed the trial court decision on March 28, 2019. The decision of the Ohio Supreme Court denying jurisdiction was on July 24, 2019.

CONSTITUTIONAL PROVISIONS

The Fourteenth Amendment provides: “No State shall . . . deprive any person of life, liberty, or property, without due process of law. . . .” U.S. Const. amend. XIV, § 1.

The Ninth Amendment provides: “The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.”

BASIS FOR FEDERAL COURT JURISDICTION

42 U.S.C. § 1983

STATEMENT OF THE CASE

This case, regarding a police-involved motor vehicle accident, was originally filed on March 10, 2009 in the Cuyahoga County Court of Common Pleas under Case No. CV-09-687106 naming as Defendants, City of Cleveland, Cleveland Police Officer John Higgins, City of East Cleveland, East Cleveland Police Chief Ralph Spotts, East Cleveland Police Officer Todd Carroscia, East Cleveland Police Officer Cargile and John Does 1-20.

On May 19, 2009, Respondents dismissed their Complaint without prejudice. Subsequently, Respondents refiled their Complaint on May 8, 2011. See Case No. CV-11-755540 and on August 3, 2011 this action was removed to the Federal Courts. See U.S. District Court Case No.: 1:11-CV-01608.

On June 28, 2013, U.S. District Court for the Northern District, Eastern Division Judge Donald C. Nugent found all Defendants were entitled to summary judgment on the federal claims, but would decline to exercise pendant jurisdiction over the state claims, and remanded this case to the state court.

On March 31, 2015, the Respondents filed a notice dismissing Defendants, City of Cleveland and Cleveland Police Officer John Higgins without prejudice.

On August 7, 2015, the Cuyahoga County Court of Common Pleas granted partial summary judgment in Petitioners' favor, dismissing all claims except Count V of Respondents' Complaint as against City of East

Cleveland and East Cleveland Police Officer Todd Carroscia (hereinafter “Petitioners”).

On April 17, 2017, a trial was held and the Jury returned a verdict for Charles Hunt in the amount of \$6,119,738; and, for Marilyn Conard for \$1,590,442.

As more fully set forth hereinafter, this Court should find reversible error pursuant to the Assignments of Error presented below.

STATEMENT OF FACTS

On October 5, 2008, Officer Todd Carroscia, while responding to an emergency call was involved in a motor vehicle accident, when his police cruiser collided with a motor vehicle being driven by Appellee Charles Hunt. As a result of this accident, Respondent Charles Hunt and Respondent Marilyn Conard (a passenger in the Hunt vehicle at the time of the accident) were injured.

The background facts find that on October 5, 2008 at approximately 1:59 a.m., East Cleveland Police Officers Todd Carroscia, in police cruiser 3133 and Scott Gardner, in police cruiser 3132 were monitoring activities outside the Cocktail Lounge, located at 12800 Superior Avenue in East Cleveland, Ohio. At about this same time, Respondent Charles Hunt was driving northbound on E. 140th St. in Cleveland, Ohio approaching St. Clair Avenue with Respondent Marilyn Conard as a passenger.

Also, at about the same time, near Noble Road and E. 152nd Street (in East Cleveland, Ohio), Police Officer O'Leary had received a report from dispatch that the motorcycle he had been following was stolen. Officer O'Leary advised dispatch that he was on E. 152nd Street passing the Collinwood football stadium in Cleveland, Ohio; and also asked radio to contact the Cleveland Police Department and to send units to his location.

By way of radio, Officer Carroscia advised dispatch and Officer O'Leary that he was responding to Officer O'Leary's emergency call. While *en route* to Officer O'Leary's location, Officer Carroscia heard further radio traffic from Officer O'Leary advising that he was in the area of 152nd and St. Clair. Officer Carroscia advised Officer O'Leary that he and Officer Gardner were headed to Officer O'Leary's location via St. Clair. While travelling immediately in front of Sgt. Gardner's vehicle, with siren and overhead lights activated, upon approaching the area of E. 140th and St. Clair Avenue, Officer Carroscia observed that the traffic signal displayed a solid green light in his favor. As Officer Carroscia approached the intersection he unavoidably hit Respondent Hunt's vehicle which had entered the intersection.

Although Officer Carroscia had the police cruiser's siren and overhead lights activated, the Hunt vehicle continued into Officer Carroscia's path; and, despite Officer Carroscia's attempt to avoid the collision, by applying his brakes and steering to the left, the two vehicles collided.

As more fully set forth hereinafter, in that Officer Carroscia's actions were neither willful, wanton or reckless this Court should find reversible error.

ARGUMENT

First of all, Ohio state law provides immunity for law enforcement personnel who are responding to an emergency call. *Colbert v. Cleveland*, 99 Ohio St. 3d 215, 2003-Ohio-3319, 790 N.E. 2d 781. The trial Court's intentional disregard of this immunity protection for the City as well as its employee was just another manifestation of its transparent bias towards the Respondents. It took fourteen pages of badgering a potential juror before the court decided to dismiss him for cause. Likewise, the court threw aside all vestige of conducting a neutral and impartial forum in giving a juror, later the forewoman, the opportunity to provide unabated solice to Respondent Conard as well as other Respondent witnesses by providing them tissues and comfort during their testimony. See also, *Sheppard v. Maxwell*, 364 U.S. 333 (1966). And, in another huge departure from Sixth Amendment Petitioner rights, the trial court refused to allow Petitioners' expert witness, Dr. Heath Joliff opinion evidence, Fed. Rule of Evidence 702; See also, *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579, that Hunt was impaired. Video Trial Tr. of Dr. Heath Joliff at p. 66, ln. 12-18 when he drove through the intersection without looking to the left for the approaching police car on an emergency call. This was despite the original trial court judge's order

overruling Respondents' Motion in Limine, Trial Court Journal Entry dated April 14, 2017.

The court's denial of Petitioners' Motion to Bifurcate also exacerbated the element of juror sympathy inasmuch as emotion overcame reason in the jury's determinations. While Ohio Civ. R. 42(B) permits a trial court to order bifurcation of claims when to do so would be "in furtherance of convenience or to avoid prejudice, or when separate trials will be conducive to expedition and economy under R.C. 2315.21(B), the trial court has no discretion to deny a motion to bifurcate the punitive damages issue in a tort case when a party files a motion requesting bifurcation. *Havel v. Villa St. Joseph*, 131 Ohio St. 3d 235; 2012-Ohio-55236, 963 N.E. 2d 1270 at ¶ 26. Indeed, R.C. 2315.21(B) creates a substantive right to bifurcation in tort actions when claims for compensatory and punitive damages have been asserted" *Id.* at ¶ 36. Here Petitioners filed a motion requesting bifurcation, which Respondents did not oppose. Given that Civ. R. 42(B) is superseded by R.C. 2315(B), the trial court's decision denying the motion to bifurcate constitutes reversible error.

CONCLUSION

WHEREFORE; and by reason of the foregoing facts and law, Petitioners City Defendants pray that this Court grant their requested Writ for Certiorari.

Respectfully submitted,

WILLA MAE HEMMONS (0041790)

Director of Law

CITY OF EAST CLEVELAND

14340 Euclid Avenue

East Cleveland, Ohio 44112

(216) 681-2169

whemmons@eastcleveland.org

Counsel for Petitioners

City of East Cleveland and

Todd Carroscia