

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

JOE FRAZIER

APPELLANT,

**v.
CITY OF KANSAS CITY, MISSOURI,
ET AL.**

RESPONDENTS.

DOCKET NUMBER WD77294

DATE: April 14, 2015

Appeal From:

Jackson County Circuit Court
The Honorable Sandra Midkiff, Judge

Appellate Judges:

Special Division: Cynthia L. Martin, Presiding Judge, Gary D. Witt, Judge and Zel M. Fischer,
Special Judge

Attorneys:

Laura L. Del Percio and Douglas Ronald Horn, Independence, MO, for appellant.

P. Benjamin Cox, Kansas City, MO, for respondent The Board and Swope
G. Steven Diegel, Kansas City, MO, for respondent City of Kansas City, Missouri.

MISSOURI APPELLATE COURT OPINION SUMMARY

**MISSOURI COURT OF APPEALS
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JOE FRAZIER,

APPELLANT,

v.

**CITY OF KANSAS CITY, MISSOURI,
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RESPONDENTS.

No. WD77294

Jackson County

Before Special Division: Cynthia L. Martin, Presiding Judge, Gary D. Witt, Judge and Zel M. Fischer, Special Judge

Appellant Joseph Frazier was injured when a car in which he was riding was struck by a vehicle that was fleeing from the police. Frazier filed a three-count petition alleging negligence, negligence *per se* and recklessness by the pursuing police officer. The officer and Board of Police Commissioners filed a motion for summary judgment based on the immunities provided to police officers through the doctrines of sovereign immunity and the public duty doctrine. The circuit granted judgment on the negligence and negligence *per se* counts, after which a jury trial took place on the remaining recklessness count. The jury found for the defendants.

In his eight points raised on appeal, Frazier alleges error by the trial court in (1) granting Defendants' motions for partial summary judgment regarding his claims for negligence, (2) excluding portions of the "dash-cam" video evidence, (3) excluding testimony regarding the officer's prior violations of KCPD protocols, (4) admitting evidence of the fleeing suspect's plea of guilty to assault in the second degree by use of a vehicle, (5) admitting evidence of the amount of Frazier's medical bill "write-offs," (6) overruling Frazier's *Batson* challenges, (7) denying Frazier's motion for a new trial because the verdict was against the weight of the evidence, and (8) denying his motion for a new trial based on cumulative error.

AFFIRMED.

Special Division holds:

(1) The trial court was correct in granting partial summary judgment as to his negligence counts to defendants based on its finding that the officer was not the proximate cause of the accident; rather, the actions of the fleeing driver were the proximate cause of the accident. With the causation element negated, Frazier could not prevail on his negligence counts.

(2) The trial court has the discretion to confine testimony to the relevant time periods such that it did not abuse its discretion by excluding portions of the dash-cam video that were recorded before the officer had visual contact with the fleeing vehicle and before the fleeing driver could have known the officer was in pursuit.

(3) The prior protocol violations alleged were two years removed from the incident at issue and did not involve any protocols remotely similar to the violations alleged herein. In order to prove the elements of his claims, Frazier did not need to prove that the officer had previously violated unrelated KCPD protocols, making any previous violations collateral; thus, the trial court did not err in excluding collateral matters.

(4) Because Frazier failed to object to evidence of the fleeing driver's plea of guilty and criminal conviction for vehicular assault when it was first presented before the jury, the trial court did not err in admitting it into evidence.

(5) The admittance of write-offs and credits, which only affects the amount of damages, cannot be considered reversible error where a jury makes no finding of liability against the defendants and awards no damages.

(6) Because he failed to overcome his burden of showing that the defendants' proffered reasons for the strikes of venire members were pretextual for race discrimination, the trial court did not err in overruling Frazier's *Batson* challenges. Further, where two of the three challenges were against potential alternate jurors, and no alternate jurors deliberated, Frazier's constitutional rights were not violated.

(7) Because Frazier's argument that the verdict was against the weight of the evidence failed to include any allegations of prejudice, his argument is undeveloped and fails under Rule 84.04.

(8) Similarly, where there is no argument presented that prejudice resulted from any of the rulings of the trial court, relief will not be granted for cumulative error.

Opinion by Gary D. Witt, Judge

April 14, 2015

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