

No. _____

SUPREME COURT OF NORTH CAROLINA

* * * * *

PATTY C. GREENE,)
Administratrix of the)
Estate of BILLY RAY GREENE,)

Plaintiff,)

vs.)

THE CITY OF GREENVILLE, North)
Carolina, a municipal corporation,)

Defendant.)

From Pitt County
COA No. 12-908

* * * * *

**AMICUS CURIAE BRIEF IN SUPPORT OF PLAINTIFF’S
PETITION FOR DISCRETIONARY REVIEW
(NORTH CAROLINA ADVOCATES FOR JUSTICE)**

Plaintiff’s Petition for Discretionary Review clearly explains why the decision below should be reviewed and reversed. Amicus curiae North Carolina Advocates for Justice submits this short statement to highlight the legal errors made by the Court of Appeals and to comment on the factual similarities between this case and *Jones v. City of Durham*, 361 N.C. 144, 638 S.E.2d 202 (2006), adopting dissenting opinion in *Jones v. City of Durham*, 168 N.C. App. 433, 444, 608 S.E.2d 387, 394 (2005), the controlling case that the Court of Appeals ignored.

I. The Court of Appeals made three fundamental legal errors.

First, the Court of Appeals failed to apply the proper standard of review for an order of summary judgment. “All facts asserted by the adverse party are taken as true, and their inferences must be viewed in the light most favorable to that party.” *Variety Wholesalers, Inc. v. Salem Logistics Traffic Services*, __ N.C. ___, 723 S.E.2d 744, 747 (2012) (quoting *Dobson v. Harris*, 352 N.C. 77, 83, 530 S.E.2d 829, 835 (2000)). Instead of reviewing the evidence in the light most favorable to the non-moving party, the Court of Appeals did precisely the opposite. It ignored powerful evidence supporting the claim of gross negligence, and drew inferences and resolved conflicts in favor of the moving party. If reviewed under the proper standard, the evidence fully supports the trial court’s denial of defendant’s motion for summary judgment.

Second, in determining whether the evidence is sufficient to support a finding of gross negligence, the Court of Appeals should have used the balancing test endorsed by this Court in *Jones v. City of Durham*. Like the plaintiff in *Jones*, the Plaintiff here demonstrated a “high probability of injury to the public despite the absence of countervailing law enforcement benefits.” 168 N.C. App. at 444, 608 S.E.2d at 394.

Third, the Court of Appeals misapplied the test set forth in *Norris v. Zambito*, 135 N.C. App. 288, 520 S.E.2d 113 (1999). Under *Norris*, the following

factors should be considered in determining whether the officer acted with gross negligence: “(1) the reason for the pursuit, (2) the probability of injury to the public due to the officer’s decision to begin and maintain pursuit, and (3) the officer’s conduct during the pursuit.” Slip op. at 6 (citing *Norris*, 135 N.C. App. at 294–95, 520 S.E.2d at 117). Here is the Court of Appeals’ entire analysis of “the reason for the pursuit” in this case:

Relevant considerations under the first prong include whether the officer “was attempting to apprehend someone suspected of violating the law” and whether the suspect could be apprehended by means other than high speed chase. *Id.* at 294, 520 S.E.2d at 117. Here, Officer Campbell smelled marijuana being emitted from a passing vehicle, suggesting a violation of drug laws. Thus, Officer Campbell’s reason for engaging in the pursuit was valid and lawful.

Slip op. at 7.

The first prong of the *Norris* analysis does not begin and end with the officer’s suspicion that someone may be “violating the law.” The spectrum of law violations is wide, ranging from a broken tail light or a whiff of marijuana emanating from a car traveling within the speed limit, to a murder suspect fleeing a crime scene at 100 miles per hour. When assessing the reason for a high speed chase, the court should consider whether “the fleeing suspect presented a danger to the public that could only be abated by immediate pursuit,” *Norris*, 135 N.C. App. at 294, 520 S.E.2d at 117, not simply whether *any* law violation was suspected.

II. The facts in this case are indistinguishable from those in *Jones*.

Undersigned counsel Carlos Mahoney represented the plaintiff in *Jones v. City of Durham*. The facts in Plaintiff's case are indistinguishable from those in *Jones*, which this Court held were sufficient to create a genuine issue of material fact on the question of gross negligence. As in *Jones*, Plaintiff's evidence shows, at a minimum, that:

- Officer Campbell was not pursuing a fleeing felon,
- he was engaged in an emergency response to locate an unknown motorist suspected of a minor criminal violation,
- he was driving at high rates of speed in a congested urban area,
- he was not using his emergency lights and siren,
- he lost control of his vehicle,
- he directly caused the crash killing Mr. Greene and himself,¹ and
- his driving violated mandatory police policies and accepted training standards.

Cf. Jones, 168 N.C. App. at 444, 608 S.E.2d at 394. Following *Jones*, the Court of Appeals should have affirmed the trial court's denial of summary judgment on the issue of gross negligence.

¹ Like Officer Campbell, the officer in *Jones* struck the plaintiff approximately a minute after he began his high-speed response.

CONCLUSION

When the facts are viewed in the light most favorable to the Plaintiff, Officer Campbell's conduct epitomizes gross negligence. If the Court of Appeals decision is allowed to stand, innocent citizens injured or killed by a police officer's extreme recklessness will have no legal recourse.

Plaintiff's Petition for Discretionary Review should be granted.

Respectfully submitted, this the 12th day of March, 2013.

Electronically submitted
Burton Craige
N.C. State Bar No. 9180
Patterson Harkavy LLP
1312 Annapolis Drive, Suite 103
Raleigh, North Carolina 27608
(919) 755-1812
bcraige@pathlaw.com

N.C. R. App. Rule 33(b) certification:
I certify that the attorneys listed
below have authorized me to list their
names on this document as if they had
personally signed it.

Carlos E. Mahoney
N.C. State Bar No. 26509
Glenn, Mills, Fisher & Mahoney, P.A.
P.O. Drawer 3865
Durham, North Carolina 27702
(919) 683-2135
cmahoney@gmfm-law.com

Attorneys for North Carolina Advocates for
Justice

CERTIFICATE OF SERVICE

Undersigned counsel hereby certifies that a copy of this document was sent via first class mail, postage prepaid, addressed as follows:

Gary S. Parsons
D. Kyle Deak
Law Office of Troutman Sanders, LLP
P.O. Drawer 1389
Raleigh, NC 27602-1389

William J. Little, III
Assistant City Attorney
P.O. Box 7207
Greenville, NC 27835-7207

Joseph T. Edwards
Edwards & Edwards, L.L.P.
P.O. Drawer 1425
Greenville, NC 27835-1425

This the 12th day of March, 2013.

Electronically submitted
Burton Craige