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COURT OF APPEALS
STATE OF NEW YORK

PEOPLE,

Respondent,

-against-

CHRISTOPHER BALDNER,

Appellant.

NO. 55

20 Eagle Street
Albany, New York
May 14, 2025

Before:

CHIEF JUDGE ROWAN D. WILSON
ASSOCIATE JUDGE JENNY RIVERA
ASSOCIATE JUDGE MICHAEL J. GARCIA
ASSOCIATE JUDGE MADELINE SINGAS
ASSOCIATE JUDGE ANTHONY CANNATARO
ASSOCIATE JUDGE SHIRLEY TROUTMAN
ASSOCIATE JUDGE CAITLIN J. HALLIGAN

Appearances:

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Brandon Deshawn
Official Court Transcriber

1 CHIEF JUDGE WILSON: Next case on the calendar is
2 People v. Baldner.

3 MR. INGRASSIA: May it please the court. Good
4 afternoon, Your Honors. John Ingrassia along with Michael
5 Bongiorno, for appellant, Christopher Baldner. Chief Judge
6 Wilson, I'd like to reserve three minutes for rebuttal.

7 CHIEF JUDGE WILSON: Yes.

8 MR. INGRASSIA: Thank you. We appear today
9 before this court to respectfully ask this court to reverse
10 the Appellate Division Third Department's decision and
11 order, which reinstated the depraved indifference murder
12 and depraved indifference reckless endangerment charges
13 against our client. I think in order to understand this
14 case, I would respectfully suggest we really have to look
15 back at the setting in the factual backgrounds of both the
16 2020 Goods incident and the 2019 Muthu incident. That's
17 very important because, as we know, this court held in
18 Feingold in 2007 that the depraved indifference case law,
19 now what the depraved indifference statute requires, the
20 actual subjective mental state showing that heightened
21 recklessness, grave risk of death, along with both
22 depravity and indifference to human life. Starting first
23 with the Goods incident, 2020, I think there are a few
24 things that are undisputed. We know that there was a
25 lawful stop by the state trooper, Christopher Baldner - - -

1 JUDGE GARCIA: Counsel, before we go - - -

2 MR. INGRASSIA: - - - of a speeding motor - - -

3 JUDGE GARCIA: - - - through line by line of the
4 proof, can you frame your argument in terms of the posture
5 of this case? So Feingold, I believe, was conviction after
6 trial, right?

7 MR. INGRASSIA: Correct.

8 JUDGE GARCIA: What you're asking us to do is
9 stop this at a grand jury stage. So there's no development
10 of this proof that you're talking about now. There's no
11 jury that's considering it and considering inferences.
12 What you're asking us to do is, based on a grand jury
13 presentation, to stop the prosecution. And the case that
14 comes to mind, of course, is the more recent one of
15 Edwards, where we talked about that standard.

16 MR. INGRASSIA: Yes.

17 JUDGE GARCIA: And we said it was met. So in the
18 context of Feingold, but more importantly, in the context
19 of Edwards and a grand jury, why isn't it the same result
20 as Edwards?

21 MR. INGRASSIA: Certainly. So I think in order
22 to answer that question, I think we first have to
23 understand, obviously, the court - - - trial court,
24 Appellate Division, or now, obviously, this venue, the
25 Court of Appeals, does have the statutory ability to

1 inspect and reduce and dismiss if the evidence is legally
2 insufficient conceivably, viewing the evidence in a light
3 most favorable to the prosecution and drawing reasonable
4 inferences afforded to the grand jury's finding. I think,
5 Judge, in this case, to get to the question of the Edwards
6 decision, we have entirely different set of facts and
7 circumstances. And again, this goes to the heart of that
8 subjective analysis - - -

9 JUDGE HALLIGAN: Does the - - -

10 MR. INGRASSIA: - - - of depraved.

11 JUDGE HALLIGAN: - - - procedural posture make
12 any difference? How does it matter that we are at the
13 grand jury stage as opposed to as in Feingold, as Judge
14 Garcia said, looking at this after trial on a conviction?
15 Or maybe your view is, it doesn't matter at all.

16 MR. INGRASSIA: My view - - - it matters to the
17 extent of what the actual standard of proof is.

18 JUDGE HALLIGAN: Okay.

19 MR. INGRASSIA: Obviously - - -

20 JUDGE HALLIGAN: And how does that bear? Can you
21 - - -

22 MR. INGRASSIA: Sure. Well, the standard of
23 proof still must be established, certainly at trial, proof
24 beyond a reasonable doubt. But in the grand jury, there is
25 still an applicable standard of proof that's required to be

1 carried by the prosecution.

2 JUDGE SINGAS: And what is it here?

3 MR. INGRASSIA: Reasonable cause to believe,
4 right?

5 JUDGE SINGAS: Uh-huh.

6 MR. INGRASSIA: Which is certainly less of a
7 standard than proof beyond reasonable doubt. But the core
8 elements that this court has defined, particularly in motor
9 vehicle contact cases, still must be met under that less of
10 a standard of reasonable cause to believe.

11 JUDGE RIVERA: So I - - - if I'm understanding
12 you, your view is, if we take the grand jury sufficiency
13 standard, which is, we're going to view the evidence in the
14 light most favorable to the prosecution, we assume that
15 they can establish all of the facts that they argue support
16 their case, draw all the reasonable inferences that one
17 would from that, that as a matter of law, that would never
18 constitute depraved indifference. That - - - I see that
19 that's the only path you have to success here, but correct
20 me if I'm wrong.

21 MR. INGRASSIA: Judge, I apologize. I'm a little
22 bit of hard of hearing.

23 JUDGE RIVERA: Oh, I'm sorry.

24 MR. INGRASSIA: I do have hearing aids.

25 JUDGE RIVERA: I'm saying I understood that your

1 argument could only succeed if you can persuade us that,
2 under the standard that applies in the grand jury context,
3 which is, we're going to view all of the evidence in light
4 most favorable to the prosecution, there are reasonable
5 inferences in their favor, that if we did that, even then,
6 as a matter of law, that would not constitute depraved
7 indifference. I take that that is your position.

8 MR. INGRASSIA: That is correct. Because you
9 still have to - - - the grand jury still has to have
10 sufficient evidence upon review of the appropriate court
11 meeting those necessary core elements. And when we, again,
12 compare the proof in this case, both related to the 2020
13 Goods incident and the 2019 Muthu incident, it falls short
14 of that for several different reasons.

15 JUDGE RIVERA: How is hitting in the 2020
16 incident, hitting that vehicle a second time at over a
17 hundred miles an hour when the pieces of that vehicle are
18 all over the road, how is that not depraved indifference as
19 a matter of law?

20 MR. INGRASSIA: As a matter - - - I think we look
21 back, again, at the context of the setting. Number one, we
22 have a police officer who was drawn into a high-speed
23 pursuit. Number two, we have a police officer who is
24 authorized and legally privileged and who has a duty to
25 enforce the vehicle and traffic law as well as the penal

1 laws of the State of New York. And three, I think if we
2 look at that - - -

3 JUDGE TROUTMAN: Do you take into consideration
4 that it was a vehicle and traffic law violation as opposed
5 to, for instance, an armed robbery?

6 MR. INGRASSIA: I think that is a relevant factor
7 that goes into, for lack of a better word, the equation of
8 determining - - - it's a factor to be considered. But what
9 we do have, okay, is we do have conduct that was not
10 initiated by the appellant, Trooper Baldner, in either of
11 the two incidents.

12 JUDGE TROUTMAN: Well, an officer makes a
13 decision based on their training and the requirements of
14 that training, the protocols that are established as to how
15 to respond to things as they unfold, correct?

16 MR. INGRASSIA: No question about it. And I
17 think in the grand jury, Your Honor, Sgt. Marano testified
18 for the prosecution about - - - he was Trooper Baldner's
19 supervisor - - - about what the protocol is. Trooper
20 Baldner radioed he was in pursuit. The motorist took his
21 pepper spray, called out his mile marker. They put out a
22 red flash, which is essentially radio silence. And Sgt.
23 Marano indicated that this chase, the pursuit, was very,
24 very quick. And in fact - - -

25 JUDGE SINGAS: But there could be another view of

1 this evidence that the pepper spray wasn't taken, and that
2 the person decided to speed away because the trooper was
3 pepper spraying him and his family, and as he took off, the
4 pepper spray fell into his car. I mean, is - - - that's an
5 equally plausible interpretation.

6 MR. INGRASSIA: The - - - that could be. And I
7 would respectfully suggest, though, that that's still not
8 dispositive of what the proper analysis should be is what
9 Trooper Baldner's mental state was. What Mr. Goods did or
10 the reasons why he did is not dispositive as to the
11 determination of this, again, wickedness, evil, brutal,
12 heinous - - -

13 JUDGE HALLIGAN: So - - -

14 MR. INGRASSIA: - - - state of mind.

15 JUDGE HALLIGAN: So there's testimony, I believe,
16 from which you could conclude that the officer hit the
17 vehicle twice, right? And so why wouldn't that be
18 sufficient as a matter of law to allow a jury to consider
19 whether there's depraved indifference?

20 MR. INGRASSIA: We respectfully submit, Your
21 Honor, that it's not consistent with the case law
22 established by this court in motor vehicle contact cases.
23 And I - - -

24 JUDGE HALLIGAN: Well, the case law, I thought,
25 looked, for example, at whether there was evasive maneuvers

1 attempts to avoid a collision. And it seems to me that
2 there's a read of the evidence that that did not take
3 place, and that instead, there was an intentional hitting
4 of the car two times. So wherever a jury might come down
5 in evaluating that, why is it not sufficient to proceed as
6 a matter of law?

7 MR. INGRASSIA: Well, I think I would answer that
8 a couple different ways, Your Honor. Number one, when you
9 spoke of the evidence of nonevasive intentional maneuvers,
10 and this is laid out both in our brief and our reply brief,
11 we believe there was impermissible and improper testimony
12 injected into the grand jury.

13 JUDGE HALLIGAN: Can I ask you specifically about
14 that?

15 MR. INGRASSIA: Sure.

16 JUDGE HALLIGAN: Can you explain - - - I take it
17 this is your reference to the specific comments by Mr.
18 Ruth, and also the specific comment by Mr. Good; is that
19 right?

20 MR. INGRASSIA: Correct.

21 JUDGE HALLIGAN: Okay. So where did you - - -
22 how is that properly before us? Your adversary suggests
23 it's not.

24 MR. INGRASSIA: How is the issue of the
25 admissibility of - - -

1 JUDGE HALLIGAN: Yeah.

2 MR. INGRASSIA: - - - or the inadmissibility,
3 rather. Again, in our reply brief, we address that. If we
4 begin with the premise that this issue certainly was raised
5 in the court below, right? In addition, this court is
6 still charged with the responsibility, as any reviewing
7 court, on grand jury legal sufficiency, with determining
8 whether there is reasonable cause to believe that the
9 elements are met based upon competent and admissible
10 evidence.

11 JUDGE HALLIGAN: I think that the argument that
12 was made was that the question of admissibility was not
13 raised with respect to sufficiency, but only with respect
14 to whether there was a defect in the grand jury proceeding,
15 and so that's why it's not properly before us.

16 MR. INGRASSIA: Judge, I believe, and again, I
17 could be wrong, but I believe in our motion practice, we
18 did raise that, and certainly, during the oral arguments.
19 And there were two oral arguments, one in front of the
20 trial judge, one in front of - - - one in May of 2022, the
21 other one, I believe, in November '22.

22 JUDGE HALLIGAN: Is there a place in the record
23 that you could point us to see where that was raised in the
24 context of sufficiency?

25 MR. INGRASSIA: If I can have a moment. In our

1 reply brief, I think, Judge, we did indicate that - - - on
2 page 10 of our reply brief, we reflect that we also raised
3 the argument in support of the motion to dismiss for legal
4 insufficiency, contending the motion short - - - excuse me,
5 the motion court should not consider incompetent testimony
6 when determining whether there was sufficient evidence to
7 support the depraved indifferent counts.

8 JUDGE HALLIGAN: Yeah.

9 MR. INGRASSIA: Record on appeal 23 through 36,
10 41, and record on appeal 205.

11 JUDGE HALLIGAN: Thank you.

12 MR. INGRASSIA: At oral argument, county court
13 questioned the prosecutor extensively on that issue, and
14 appeared skeptical that the evidence was properly admitted.
15 Record 237 to 244 and record 248.

16 CHIEF JUDGE WILSON: Thank you, Counsel.

17 MR. INGRASSIA: I see that my time's up. Thank
18 you.

19 MR. KELLER: May it please the court. Matthew
20 Keller, for the People.

21 JUDGE TROUTMAN: Applying the standard, viewing
22 the evidence in the light most favorable to the People,
23 what evidence supports the result here in your favor?

24 MR. KELLER: Your Honor, I would first point the
25 court to the conduct itself, as some of the court's



1 questions have already made clear the deliberate collisions
2 - - - and this is in relation to the December 2020 incident
3 - - - the deliberate collisions ten seconds apart at speeds
4 at least of 100 miles an hour with respect to the second
5 collision, 130 miles an hour with respect to the first
6 collision, that - - - you know, there was testimony by the
7 expert and by the two New York State police supervisors
8 that this never - - - not only was the defendant required
9 to ask permission before attempting this, he wouldn't have
10 gotten permission in this instance because of - - -

11 JUDGE TROUTMAN: What do you say - - -

12 MR. KELLER: - - - quick speeds involved.

13 JUDGE TROUTMAN: - - - about defense counsel's
14 claim he was a police officer charged with enforcing the
15 law, and he was simply performing his duty?

16 MR. KELLER: We - - - we're not disputing that at
17 all. He was certainly on duty when he did this. But as
18 Your Honor's question to - - - my adversary suggested
19 police officers are required under every circumstance to
20 follow the training, follow the practices and procedures.
21 And the evidence before the grand jury here was very clear
22 what he was required to do in this situation. Supervisor -
23 - - the supervisor the night of the 2020 incident - - -

24 JUDGE CANNATARO: Do you - - -

25 MR. KELLER: - - - Marano - - -



1 JUDGE CANNATARO: Do you need the expert's
2 testimony, specifically those sections related to the
3 defendant's state of mind in order to have a legally
4 sufficient indictment here?

5 MR. KELLER: Not at all, Your Honor. And we
6 would just rely on the Third Department's decision, which
7 didn't address that question at all in - - - in their
8 lengthy exposition of the evidence, which I think shows
9 that there was significantly more evidence than was
10 required to support a charge here. And again, remember,
11 we're not talking about a finding of guilt after trial.
12 We're talking about a grand jury finding reasonable cause
13 to charge. All you have to look at is what the Third
14 Department did here, and they described all the other
15 evidence that supports the finding. And I would just point
16 the - - -

17 JUDGE RIVERA: But the court has been very clear
18 that depraved indifference really applies to - - - in the
19 rarest of cases. There's a very, very small set of
20 prosecutions that could bear this particular charge. What
21 makes this that kind of a case as a matter of law? As I
22 said before to your friend on the other side, assuming you
23 can establish everything, we're going to view it as
24 favorably to you as the law requires drawing all inferences
25 to you. What gets you there as a matter of law - - -

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MR. KELLER: I - - - I - - -

JUDGE RIVERA: - - - even with this standard that applies at the grand jury?

MR. KELLER: I think there's a short answer to your question and a slightly longer answer, and the longer answer goes back into the initial question of what the evidence was. So I'll give you the short answer first.

JUDGE RIVERA: Uh-huh.

MR. KELLER: The deliberate contact. The expert testified and the accident reconstruction witness also testified that the evidence showed that the defendant steered the front of his vehicle into the rear of the Goods' vehicle twice within ten seconds. You know, Your Honor's most - - - you know, I think the best description of your views and of your question on this was your opinion in the Maldonado case, where you said, what really - - - what you really need to show is evidence of - - - that the defendant just simply did not care what the results of his - - - whether grievous harm resulted. And I think that deliberate collision at these high speeds, the second of which, when the car was in front of him was fishtailing, attempting to regain control, and more specifically, the slight differences in trajectory between the two. In the first one, he mostly hit it front to back. That's why the expert testified it wasn't a pit maneuver. That's a

1 maneuver.

2 JUDGE SINGAS: So why isn't that just
3 recklessness? How do you get to depravity? And do you
4 only get to depravity through inference, or do you have
5 evidence of his subjective intent?

6 MR. KELLER: Well, I think, like most homicide
7 cases, you rarely have direct evidence of the defendant's
8 state of mind. And as this court has made clear in several
9 opinions, you know, circumstantial evidence is just as good
10 to get you there. And here, the circumstantial evidence is
11 the evidence of - - - you know, from the accident
12 reconstructions expert - - - the accident
13 reconstructionists and the expert saying that to
14 deliberately ram a car from behind at speeds, you know, as
15 high as 130 miles an hour, it's just such a high likelihood
16 - - - and this is directly coming from the experts
17 testimony - - - it creates such a high likelihood that
18 death or serious bodily injury is going to result, that you
19 would not do it unless you simply did not care what
20 happened. There's been no allegation here - - - our theory
21 is not that - - - this is not a case like the cases that
22 precipitated Feingold, where prosecutors were too often in
23 - - -

24 JUDGE RIVERA: You're saying it's evil and
25 heinous?

1 MR. KELLER: It is evil and heinous, Your Honor.

2 CHIEF JUDGE WILSON: So are you not relying at
3 all on the alleged lack of concern for the victims post-
4 crash?

5 MR. KELLER: We are relying on that. And that's
6 part of my longer answer, which I was just about to get to,
7 Chief.

8 JUDGE HALLIGAN: Can you address - - -

9 JUDGE CANNATARO: Before you - - - I'm sorry.

10 JUDGE HALLIGAN: Sorry. Can you address when you
11 do that, specifically how the - - - what you call the lying
12 to his supervisors bears on the question? I'm not sure
13 I've seen something like that in our case law as relevant
14 to depraved indifference.

15 MR. KELLER: Yeah. As a general matter, Your
16 Honor, it's relevant to his consciousness of guilt. And I
17 think that's sort of, you know, uncontested and
18 uncontroversial. But where it specifically relates to the
19 depraved indifference finding is that the lying in real
20 time from the moment it happens and then continuing
21 afterwards shows that he's lying about what his state of
22 mind really was. Because had he thought that this was - -
23 - you know, that this was acceptable or authorized under
24 the circumstances as his paper suggests, he would have said
25 that, especially after the grievous harm resulted. There

1 would be some sort of explanation - - -

2 JUDGE RIVERA: But he may be lying because he
3 sees he's - - -

4 MR. KELLER: - - - or some sort of attempt to
5 justify.

6 JUDGE RIVERA: - - - because he thinks he was
7 reckless, made a mistake, not that he's acting with
8 depraved indifference, that he's acting in a way that's
9 evil and heinous.

10 MR. KELLER: I think the fact that he's doing it
11 in real time as it's happening within that ten seconds in
12 between - - - and again, I just want to go back for second.
13 My adversary has argued that this was sort of a split
14 second decision by a police officer just trying to do his
15 job. It was not. There was no - - - the only urgency
16 created by this situation was by the defendant. As the
17 supervisors testified, the training was to when you have
18 someone who flees a stop or who won't stop for you - - -
19 you pursue from a safe distance, and you talk about it with
20 your supervisor. You talk about what your options are.
21 You talk about the road conditions. You talk about the
22 criminal conduct that - - - is it only a vehicle and
23 traffic law? Is it only speeding, or is it something more
24 serious? You talk about who else is in the car.

25 JUDGE GARCIA: Can you - - - can you - - -

1 MR. KELLER: He didn't do any of that.

2 JUDGE GARCIA: Counsel, can you use the first
3 incident as a prior bad act to prove the second? Is that
4 your intent here?

5 MR. KELLER: Well, I - - - I think the court - -
6 - the trial court found, you know, during that lengthy oral
7 argument on the motions that you likely could, but that's
8 not how we charge the case. We charged it as a separate
9 standalone act.

10 JUDGE GARCIA: I have a different question going
11 back to my initial question on the standard. And I'm
12 having some trouble, frankly, understanding how our
13 standard layers on top of the grand jury and a sufficiency
14 analysis. So the standard in the grand jury to return an
15 indictment is what?

16 MR. KELLER: It's - - - you have to find a prima
17 facie case of all the elements of the charges and - - -

18 JUDGE GARCIA: Meaning what's - - -

19 MR. KELLER: - - - reasonable cause to charge.

20 JUDGE GARCIA: Reasonable cause, substantially
21 lower than beyond a reasonable doubt, right?

22 MR. KELLER: Substantially lower than even, I
23 think, preponderance in the court.

24 JUDGE GARCIA: If you do that, you get a true
25 bill, and it's - - - the indictment is valid.

1 MR. KELLER: Yes, Your Honor.

2 JUDGE GARCIA: So now we're taking this analysis
3 of sufficiency, and under our precedent, we're saying, to
4 dismiss an indictment on the basis of insufficient evidence
5 before a grand jury, a reviewing court must consider
6 whether the evidence viewed in the light most favorable to
7 the People, if unexplained and uncontradicted, would
8 warrant conviction by a petty jury. I'm having some
9 trouble understanding how that maps over the grand jury
10 standard because it seems to be holding the prosecution to
11 a higher standard than reasonable cause.

12 MR. KELLER: You - - - I agree with you, Your
13 Honor, that the - - - that that wording is a little bit
14 confusing, but I will - - - I would just point to - - -

15 JUDGE GARCIA: Let me put it to - - - another
16 way. Do you think getting a grand jury true bill could be
17 valid but yet be insufficient under this test?

18 MR. KELLER: Insufficiency in the grand jury is
19 different from legal insufficiency when - - - when you're
20 reviewing a jury's verdict after trial because you're
21 reviewing it with an eye to - - -

22 JUDGE GARCIA: To my - - -

23 MR. KELLER: - - - proof beyond a - - -

24 JUDGE GARCIA: My question - - - the - - -

25 MR. KELLER: Yes. I'm sorry, Your Honor.



1 JUDGE GARCIA: My question is, could you have a
2 valid true bill which you established reasonable cause on
3 the elements, prima facie case, yet when somebody makes a
4 motion like this, it could be determined that it was
5 insufficient?

6 MR. KELLER: No, Your Honor. Because you're
7 still reviewing the grand jury from the standard that it
8 was required to meet.

9 JUDGE GARCIA: So why wouldn't the standard be
10 sufficient evidence to prove - - - to show reasonable cause
11 to believe the defendant committed each of the elements?

12 MR. KELLER: Reasonable cause for a grand jury to
13 find - - -

14 JUDGE GARCIA: Right.

15 MR. KELLER: - - - that under any view of the
16 evidence in our favor - - -

17 JUDGE GARCIA: Why isn't that the standard in a
18 grand jury?

19 MR. KELLER: I think it is. I'm sorry. I may be
20 misunderstanding your question here.

21 JUDGE GARCIA: It seems to be articulated
22 differently, and I was on the court at Edwards, but it
23 seems to be articulated differently as if unexplained and
24 uncontradicted would warrant conviction by a grand jury.
25 It seems to be - - -

1 MR. KELLER: Warrant conviction by a jury at
2 trial, you mean?

3 JUDGE GARCIA: A jury - - - I'm sorry, a petty
4 jury. So what's - - - is there a disconnect there?

5 MR. KELLER: I - - - I think the standard could
6 be phrased maybe a little bit better, but I don't think
7 that there's any question that it's not the same standard
8 as reviewing a jury verdict after there's been a trial when
9 the court has a full record. And I would just point to
10 this court's decision in Jennings, which we cite in our
11 brief, which says, manifestly, this court's decisions
12 reviewing jury verdicts after trial are not - - - are not
13 binding when we're in this context - - - this, you know,
14 grand jury pretrial context. And so I - - - I think Your
15 Honor's question is suggesting, are the two standards
16 ultimately the same? And my answer is, they're not. The -
17 - - the standard - - - the People have a considerably
18 lesser burden here to warrant a trial.

19 JUDGE HALLIGAN: Can you address Scott v. Harris?
20 So there, the Supreme Court said that an officer's attempt
21 to terminate a high-speed car chase, and I think it was
22 using a pit maneuver, didn't violate the Fourth Amendment.
23 And you know, found summary judgment on Section 1983
24 action. So - - -

25 MR. KELLER: So - - -



1 JUDGE HALLIGAN: So the underlying, you know,
2 view, I think, animating Scott is that an officer in that
3 circumstance is attempting to protect the public, and it's
4 a quickly unfolding situation. And the court is going, you
5 know, to provide some leeway there. So how does that bear
6 on what we have here, if at all?

7 MR. KELLER: I don't think it bears, Your Honor,
8 because it's a separate legal question. This - - -

9 JUDGE HALLIGAN: It is a separate legal question,
10 but how does the underlying insight have - - - what do we
11 make of it?

12 MR. KELLER: Initially, I would like to point out
13 that in Scott v. Harris, the - - - the fleeing defend - - -
14 the fleeing plaintiff in that case because it was civil
15 case - - -

16 JUDGE HALLIGAN: Uh-huh.

17 MR. KELLER: - - - the chase had gone on for a
18 lot longer. He already intentionally crashed into the - -
19 - the police officer's car. It was a much more populated
20 area. And most importantly, the police officer asked for
21 and received permission to hit the car.

22 JUDGE HALLIGAN: And so is that what makes it
23 different? Because, you know, there, the Supreme Court
24 said that the civil action couldn't even proceed, right?
25 And here we're talking about a serious criminal charge. So

1 is that what makes the difference? Is there something
2 else?

3 MR. KELLER: It's that, Your Honor, and it's
4 more. This is - - - the - - - the issue before the Supreme
5 Court in Scott was qualified immunity - - -

6 JUDGE HALLIGAN: Yes.

7 MR. KELLER: - - - and what reasonable officer
8 could find would - - - could - - - with his understanding -
9 - - with a reasonable officer's understanding of the Fourth
10 Amendment, what he could reasonably - - -

11 JUDGE HALLIGAN: Yes.

12 MR. KELLER: - - - have thought. In criminal
13 cases, it doesn't work like that. It's the - - - it's
14 subjectively, what was in - - -

15 JUDGE HALLIGAN: Well, but - - -

16 MR. KELLER: - - - this defendant's mind.

17 JUDGE HALLIGAN: - - - I would be surprised, I
18 guess - - - I mean, setting aside the doctrinal points,
19 that if conduct that was reasonable for purposes of the
20 Fourth Amendment in the Section 1983 action was also
21 criminalized and as a serious offense at that. Now, maybe
22 the answer is that the conduct, in fact, is different given
23 the facts. But I just thought it would be helpful to get
24 your view.

25 MR. KELLER: Conduct is certainly different given

1 the facts. It's also, you know, qualified immunity is a
2 policy judgment at the end of the day. It's a policy
3 judgment that we don't want to be - - - you know, we don't
4 want to - - - the courts to be interfering too much into
5 the actions of law enforcement. The - - - our legislature
6 has made no such finding. They could, I suppose. They
7 could pass a statute that qualified immunity extends to
8 criminal liability, but they haven't. And again, the facts
9 are very different. The - - - here, there is no reasonable
10 view of the evidence that what the defendant did here was
11 authorized or was legitimate or was warranted, and at - - -
12 and at minimum, which is all we have to prove at this
13 point, there was a reasonable view that it wasn't
14 authorized.

15 JUDGE CANNATARO: Getting back to the distinction
16 between recklessness and depravity, I noticed during your
17 presentation, you didn't rely in any way on the fact that
18 there were two hits in the 2020 incident. So I take that
19 to mean that you would have legally sufficient evidence of
20 depravity for a grand jury just based on the first hit in
21 2020; is that right?

22 MR. KELLER: I - - - I think we - - - I think - -
23 - at this stage, I think a grand jury could find reasonable
24 cause to indict had there only been one hit, but here we
25 have two. And because - - - I thought I had relied on the

1 two hits. And so let me go through - - -

2 JUDGE CANNATARO: I was waiting for you to draw a
3 distinction, but I don't think you did. I mean, you might
4 have mentioned that there were two, but - - -

5 MR. KELLER: No. No. No. And I - - - I sort of
6 got caught up in - - - when I was going through the list of
7 all the evidence. So let me just go through it again. The
8 - - - the two hits - - - the eyewitness testimony that
9 after they left the stop, within a minute, they didn't even
10 know the officer was behind them, suggesting that he didn't
11 even turn on his siren. That within a minute of them
12 fleeing the stop, the first hit from 130 miles an hour, he
13 hits them from behind. That's the first indication they
14 had that he was behind them, all three surviving - - -

15 JUDGE CANNATARO: I guess my question is, could
16 that be reckless? You know, along the lines of what the
17 dissent was saying below, leaving out the fact that he went
18 back and did it again, could that hit at a high speed
19 without the lights just be reckless behavior?

20 MR. KELLER: I - - - well, the - - - certainly,
21 the manslaughter charge - - - the grand jury voting a
22 manslaughter charge indicates that they did find it
23 reckless, and they found it also met the greater standard
24 of depraved indifference, not only based on the two hits,
25 which I've already discussed, but also the EDR, the event

1 data recorder evidence that he turned into the car, no
2 attempt to avoid. I think the expert said it was the
3 opposite of an avoidance maneuver.

4 JUDGE CANNATARO: Wasn't there something about
5 hitting the brakes in one or both of those hits?

6 MR. KELLER: I - - - the - - - that's what the
7 trial judge relied on primarily for his fin - - - for his -
8 - - you know, reducing and dismissing the depraved
9 indifference charges, was that, you know, he looked at
10 another recent - - - then recently decided Third Department
11 case and said, well, if that guy in that case braked to
12 avoid the - - - then this - - - then this defendant, I
13 can't see how we can charge him. But that's - - -

14 JUDGE SINGAS: Well, isn't there a danger that
15 prosecutors might expand depraved to every situation where
16 a fleeing felon is driving a car, driving at 110, 120 miles
17 an hour. That's not unusual. Hits other cars, people are
18 injured. That's not unusual, right? I mean, that - - -
19 that happens all the time, especially in rural areas where
20 a lot of these crimes are on highways. I mean, isn't there
21 a danger if we find depravity here based on that, that
22 suddenly everything in those situations is depraved versus
23 just reckless? And aren't we supposed to retain depravity
24 for the very wicked cases that we've already outlined?

25 MR. KELLER: I don't think that's a reasonable



1 risk, Your Honor, for three reasons. First, these facts
2 are highly unusual. You know, you don't see facts like
3 this every day. And as this court has said in Heidgen and
4 other cases, the depraved indifference finding is highly
5 fact specific, so it's rare that one case is going to map
6 onto a wide variety of other cases. Number two, a lot of
7 those cases where there might be an incentive or a feeling
8 to charge depraved indifference where a lesser charge is
9 warranted, the vast majority of those cases are intoxicated
10 driving cases. And this court has made that concern clear
11 in its prior decisions. And as the Court has said, as Your
12 Honor said in Maldonado, and Chief Judge Wilson, as you
13 said in your dissent in the Edwards case, the - - - this -
14 - - the legislature has crafted an extremely graduated
15 series of criminal statutes so that the prosecutors can
16 pick from a menu. Here, you do not have an intoxication
17 case. And again, I suppose, you know, the legislature, if
18 it wants to, can do, like, what it did in the intoxicated
19 driving cases and sort of adopt lesser standards, but it
20 hasn't done that. And the only inference that can be drawn
21 from that is that it - - - it wants prosecutors, where the
22 facts warrant it, in the rare cases - - - and again, this
23 is an extraordinary case - - - to charge depraved
24 indifference and charge manslaughter and let the jury hear
25 all the facts on a full record and sort it out.

1 CHIEF JUDGE WILSON: Thank you.

2 MR. KELLER: Thank you.

3 MR. INGRASSIA: Thank you. There's this comment
4 about intentionality. Prosecution can't get to depraved
5 indifference without intentionality. That's the critical
6 distinction between Mr. Ruth's testimony and the
7 impropriety of it. And as Judge Garcia, I think you - - -
8 Mr. Bongiorno and I, on our drive up here this afternoon,
9 were talking about this. The law does say, if
10 uncontradicted, right, or unexplained. So I take that to
11 mean that the court - - - the reviewing court, on legal
12 sufficiently, does have the ability to certainly scan the
13 record. I would respectfully invite the court - - -

14 JUDGE GARCIA: I take it the other way. I think
15 the - - -

16 MR. INGRASSIA: Okay.

17 JUDGE GARCIA: - - - court doesn't have the
18 ability to scan the record. I think it's assuming there
19 isn't anything in the record that contradicts it. I think
20 that's how I take it.

21 MR. INGRASSIA: But there is something in the
22 record here.

23 JUDGE GARCIA: No.

24 MR. INGRASSIA: And I would - - -

25 JUDGE GARCIA: But I think we don't look at that.



1 That's for a jury.

2 MR. INGRASSIA: Well, I would respectfully
3 submit, however, that when you get to that level of whether
4 the evidence is legally sufficient, all evidence in the
5 grand jury should be reviewed.

6 JUDGE GARCIA: Well, that's really not even how
7 it works with a verdict, right? Because we assume the
8 prosecution got every reasonable inference from that
9 evidence. I think it's even lesser standard, it seems,
10 from our cases with respect to the grand jury, which is,
11 they only need to show reasonable cause in the grand jury.
12 And our standard, to me, seems to say their proof on each
13 of those elements assume it's uncontradicted. Do they make
14 it? And it's even then a little bit odd to me because when
15 you're doing a Feingold analysis, what's your end product
16 is a verdict. So you're analyzing, all right, giving the
17 people reasonable inferences, could the jury get to beyond
18 a reasonable doubt? And it almost seems like our standards
19 are layering on some type of verdict standard when really
20 the end game here is an indictment. So it seems to me,
21 it's proof that establishes reasonable cause if
22 uncontradicted for each of the elements.

23 MR. INGRASSIA: So going back, though, you still
24 have to reach that level of depravity and indifference.
25 And our position - - -

1 JUDGE GARCIA: You have to establish reasonable
2 cause, right?

3 MR. INGRASSIA: Under reasonable cause standard,
4 absolutely. And I would respectfully invite the court to
5 look at grand jury exhibits 46 and 47, which lay out the
6 data from the event data recorder, which Mr. Ruth testified
7 to. And again, this wasn't just a braking. This was a
8 very hard almost emergency-like braking in the words of the
9 prosecution's expert witness. That, in the very short time
10 period between the first collision and the second
11 collision, approximately nine and a half, ten seconds, goes
12 to the level of the subjective nature lack of depravity - -
13 -

14 JUDGE RIVERA: That's a great argument to make to
15 the jury.

16 JUDGE CANNATARO: Right.

17 JUDGE RIVERA: But a different inference can be
18 drawn. That's where we're left when we're deciding this is
19 a question of law regarding the sufficiency to the grand
20 jury.

21 MR. INGRASSIA: I'm sorry, Judge?

22 JUDGE RIVERA: I'm saying that's a very good
23 argument to make to the jury at trial. But all we're
24 deciding here as a matter of law is whether or not this was
25 sufficient for the grand jury.

1 MR. INGRASSIA: I understand. But as a matter of
2 law - - - I understand. As a matter of law, I would still
3 respectfully suggest that it still has to be met. The
4 other thing I think that's very important there - - -

5 JUDGE CANNATARO: I'm sorry. It still has to be
6 what? Well, I - - - I missed your - - - over here. I'm
7 sorry.

8 MR. INGRASSIA: Oh, I'm sorry.

9 JUDGE CANNATARO: I missed your last - - - as a
10 matter of law, it still has to be what?

11 MR. INGRASSIA: Make out the necessary elements
12 as depravity - - - depraved indifference has been defined
13 by this court.

14 JUDGE CANNATARO: Of course. But it seems to - -
15 - you seem to be suggesting, in various ways, that we need
16 to look at the totality of what the evidence was before the
17 grand jury and call something out of more innocent
18 explanations, which, by the way, I think is exactly what we
19 carved out in Edwards. We said that there might be other
20 innocent explanations is entirely irrelevant - - -

21 MR. INGRASSIA: Right.

22 JUDGE CANNATARO: - - - to the sufficiency
23 analysis.

24 MR. INGRASSIA: And I'm not suggesting that
25 that's the standard. What I'm suggesting is, looking at

1 all the evidence, it still has to amount to depraved
2 indifference. The other thing I think that's important to
3 look at, Your Honors, is that this was a very dynamic
4 situation, right? Both vehicles were moving - - -

5 JUDGE RIVERA: Why is it what he described - - -
6 because he was asked at the very beginning by at least two
7 of us, what establishes depravity? And at least with the
8 2020 incident, he described the second hit and the timing
9 of it and what was already the condition of the vehicle
10 after the first hit. Why isn't that enough?

11 MR. INGRASSIA: Why isn't that depraved
12 indifference?

13 JUDGE RIVERA: Correct.

14 MR. INGRASSIA: The - - - the second hit?

15 JUDGE RIVERA: As a matter of law.

16 MR. INGRASSIA: I would submit the second hit is
17 not because of the braking. That's the most coming and - -
18 -

19 JUDGE RIVERA: And if there's a different
20 inference that could be drawn regarding that break - - -
21 the break, right? That he's stepping on the brake, does
22 that mean you lose?

23 MR. INGRASSIA: I think the braking and the
24 steering are both relevant. Now, my adversary - - -
25 colleague, he did - - -

1 JUDGE RIVERA: He's presented a different way - -
2 -

3 MR. INGRASSIA: Right. Right.

4 JUDGE RIVERA: - - - of thinking about that. And
5 the - - - and if the jury - - - the grand jurors, excuse
6 me, could have drawn that inference and viewed the evidence
7 that way, strikes me that what you're doing is debating the
8 propriety of the inferences, and that - - -

9 MR. INGRASSIA: But - - -

10 JUDGE RIVERA: - - - we can't do that here.

11 MR. INGRASSIA: - - - looking, though, at the
12 other evidence - - -

13 JUDGE RIVERA: Okay.

14 MR. INGRASSIA: - - - and again, going back to -
15 - - I might sound like a broken record here, but going back
16 to the significant of Mr. Ruth's testimony about the
17 intentionality, because I just don't think they get to
18 depraved indifference without that.

19 JUDGE CANNATARO: Well, let me ask you this about
20 that, and - - - and we'll leave out - - - what's his name?
21 Ruth?

22 MR. INGRASSIA: Mr. Ruth, yes.

23 JUDGE CANNATARO: Yes. Leave out his testimony.
24 And just looking at the acts - - - and there was a
25 question, I think it was from Judge Singas before, about

1 people in other situations - - - situations driving at high
2 rates of speed and engaging in all kinds of obviously
3 reckless conduct. But one thing that I seem to glean from
4 those cases is that they're not - - - they're trying to
5 avoid, you know, hitting people while they're fleeing from
6 a situation. This involves, to me, clearly, sufficient
7 evidence before the grand jury that this was an intentional
8 contact between the cars twice. And the intentionality of
9 it, to me, seems to speak to his state of mind regarding
10 his concern for the consequences of his actions.

11 MR. INGRASSIA: So intentional conduct at those
12 speeds, one can infer an intent to cause serious injury or
13 death. A - - - an indictment seeking - - -

14 JUDGE CANNATARO: Well, I'm saying one might also
15 be able to infer a lack of regard for the consequences of
16 one's action.

17 MR. INGRASSIA: And I think we're getting now
18 into the area that Judge Rosenblatt spoke about, I believe
19 it was in the Sanchez case, about prosecutors - - - the
20 danger of prosecuting intentional acts for depraved
21 indifference when they can't necessarily get to the
22 intentionality. What - - - and we're - - - and obviously,
23 having a discussion here, what was his motivation, to
24 intend to cause death, intend to cause serious injury for
25 having the pepper spray taken? And remember, both vehicles

1 were moving towards each other. The line of cases that
2 this court has held depravity in motor vehicle contact
3 cases deal with a sustained course of reckless driving,
4 usually consisting over miles, intoxication or - - -

5 JUDGE HALLIGAN: Well, this wasn't sustained
6 because the hits, you know, destroyed the car. I mean, it
7 couldn't have continued at that point.

8 MR. INGRASSIA: Right. Because the trooper was
9 trying to get the vehicle to stop.

10 JUDGE HALLIGAN: No. I just mean, you referenced
11 the duration - - -

12 MR. INGRASSIA: Right.

13 JUDGE HALLIGAN: - - - and it seemed to me that -
14 - -

15 MR. INGRASSIA: Right. But it's a relevant fact,
16 right? The other thing is, again, going back to the
17 subjective mental state, doing a job - - - and I think
18 Justice Egan commented on this in his dissent from the
19 Appellate Division, doing a job, but doing it with poor
20 judgment, that's the antithesis of depraved indifference.
21 Perhaps it's reckless. He's indicted for manslaughter,
22 second degree - - -

23 JUDGE CANNATARO: And would you - - -

24 MR. INGRASSIA: - - - would - - - would suffice.

25 JUDGE CANNATARO: Would you categorize those two

1 contacts with the Goods' vehicle as just doing a job - - -
2 I'm sorry - - -

3 MR. INGRASSIA: Well - - -

4 JUDGE CANNATARO: - - - without due care or - - -

5 MR. INGRASSIA: Well, in the context of his
6 pursuit, in the context of the very short distance, in the
7 context of both vehicles moving towards each other, in the
8 context of the trooper having radioed ahead to his sergeant
9 or to dispatch, not gotten any instruction back to
10 terminate the pursuit, which, again, is a relevant factor -
11 - -

12 JUDGE TROUTMAN: Do you take into - - -

13 JUDGE CANNATARO: And no authorization to engage
14 in a pit maneuver, right?

15 MR. INGRASSIA: There's no authorization to make
16 any type of contact.

17 JUDGE TROUTMAN: And was there request for one?

18 MR. INGRASSIA: There was no request for any type
19 of vehicle contact.

20 JUDGE TROUTMAN: And did he give information with
21 respect to what was occurring that, arguably, there's
22 contradictory evidence as to the accuracy of that? And
23 does that matter?

24 MR. INGRASSIA: In the context of that he was
25 rammed by the other vehicle?



1 JUDGE TROUTMAN: And the - - -

2 MR. INGRASSIA: Yeah.

3 JUDGE TROUTMAN: And as to his state of mind,
4 taking into - - -

5 MR. INGRASSIA: The - - - the - - -

6 JUDGE TROUTMAN: - - - consideration the facts
7 and circumstances as they existed.

8 MR. INGRASSIA: There's no question the trooper
9 two times indicated that he was rammed. Again, I think we
10 address this in our main brief in footnote 12 about the
11 context, a dynamic situation, a lot is going on, a high-
12 speed pursuit. He's trying to apprehend a fleeing - - - an
13 unlawfully fleeing motorist at that point in time.

14 JUDGE TROUTMAN: In a traffic case.

15 CHIEF JUDGE WILSON: Thank you.

16 MR. INGRASSIA: Thank you.

17 (Court is adjourned)

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C E R T I F I C A T I O N

I, Brandon Deshawn, certify that the foregoing transcript of proceedings in the Court of Appeals of People v. Christopher Baldner, No. 55 was prepared using the required transcription equipment and is a true and accurate record of the proceedings.

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