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

CARNELL WILLIAMS-CARNEY	:	**CIVIL ACTION**
	:	
v.	:	
	:	
CITY OF PHILADELPHIA, RYAN POWNALL, MICHAEL CHICHEARO and ERNEST POWELL	:	**NO. 12-4029**

ORDER

AND NOW, this 11th day of June, 2013, upon consideration of the Defendants' Motion for Summary Judgment (Document No. 23) and the plaintiff's response, it is **ORDERED** that the motion is **DENIED**.[1]

/s/Timothy J. Savage
TIMOTHY J. SAVAGE, J.

[1]Although the defendants argue that it is undisputed that the bullet that struck the plaintiff was fired by defendant Ryan Pownall, it is actually a fact question. All three police officer defendants fired shots at the plaintiff. In discovery responses, the defendants disclaimed knowing whose bullet struck the plaintiff. Now, for the first time in this litigation, they claim it was Pownall who fired the shot that crippled the plaintiff. Given the discrepancy in the versions, the jury must determine, if it can, who fired the bullet that struck the plaintiff.

The defendants' qualified immunity argument rests upon their claim that they had probable cause to believe that the plaintiff felony suspect posed a threat. However, there is a factual question as to whether the defendants knew or reasonably believed that the plaintiff had a gun on his person. The defendants' rendition of the facts is subject to a credibility test. In other words, the jury must determine whether the plaintiff's conduct and what the defendants believed he was doing placed them in immediate danger.

Whether the defendant officers acted willfully is a question for the jury. There is ample evidence upon which the jury could conclude that they did act willfully. Therefore, if the jury finds willful misconduct, it may find liability under the Pennsylvania Political Subdivision Tort Claims Act, 42 Pa. C.S.A. Tort Claims Act, 42 Pa. C.S.A. § 8541 *et seq*.

Given the 2005 report prepared by Ellen Ceisler in which she detailed the need for a foot pursuit policy and the City's failure to implement one since 2005, the jury could find deliberate indifference to the problem cited in the report.