STATE OF MINNESOTA | DISTRICT COURT

COUNTY OF [redacted] COUNTY | [redacted] JUDICIAL DISTRICT

Court File No.: [redacted]

State of Minnesota,

Plaintiff,

vs.

[redacted]

Defendant.

ORDER GRANTING MOTION TO DISMISS

This matter came on before the Honorable [redacted], Judge of [redacted] District Court, pursuant to the Court's Order for Briefing Schedule and Pre-Trial Hearing Date, dated November 6, 2020.

The State of Minnesota is represented by [redacted], Esq.

Defendant [redacted] is represented by Elizabeth Duel, Esq.

Based upon the evidence adduced, arguments of counsel, and all of the files, records, and proceedings herein,

DISCUSSION

1. **Procedural Posture.** On October 12, 2020, Defendant filed a motion to dismiss. At an October 19, 2020 pre-trial hearing, the parties discussed submitting the case upon a stipulation and police reports. A second pre-trial hearing was scheduled for November 16, 2020, to set a briefing schedule.

2. On November 5, 2020, Defendant filed the relevant stipulations and police report. The State filed its memorandum in opposition to the motion to dismiss on the same day. Defendant's counsel contacted the Court on November 5, 2020, indicating an intent to file a memorandum in support of the October 12, 2020, motion to dismiss and inquiring if the Court would prefer to strike the November 16, 2020, pre-trial hearing and set a briefing schedule pursuant to the parties' proposed schedule.

3. The Court issued an Order for Briefing Schedule and Pre-Trial Hearing Date on November 6, 2020, stating that it would take this matter under advisement upon the filing of the final memorandum outlined in that Order. A pre-trial hearing was scheduled for Monday, February 22, 2021, at 3:15 p.m., in [redacted] District Court, to be held via Zoom.

4. This matter was taken under advisement on December 4, 2020.

5. **Factual Background.**[1] On March [redacted], 2020 at 9:43 a.m., there was a report made to [redacted] Police of a hit and run accident that had just occurred near the intersection of [redacted] and [redacted].

6. At 9:52 a.m., [redacted] Police stopped the Defendant driving a vehicle that matched the description of the hit-and-run vehicle. The stop was at [redacted] Street just south of the [redacted] overpass in [redacted]. Defendant was stopped driving the same vehicle involved in the accident in [redacted]. The distance between the accident and the stop location was approximately 8.8 miles.

7. On March 30, 2020, a complaint was filed in Court File Number [redacted] ("[redacted] Case"), charging the Defendant with Gross Misdemeanor Third Degree DWI and Misdemeanor Fourth Degree DWI by the City of [redacted]. On April 3, 2020, an amended Complaint was filed into the [redacted] Case, additionally charging [redacted] with Gross Misdemeanor Fifth Degree Drug Possession.

8. On May 21, 2020, the Defendant was charged in the instant case, Court File Number [redacted] ("[redacted] Case"), by the City of [redacted], from the same date of offense, with Misdemeanor Traffic Collision - Driver Involved Fails to Stop for Collision - Driven or Attended Vehicle, Misdemeanor Traffic Collision - Failure to Notify Owner of Damaged Property - Fixtures, and Misdemeanor Traffic - Reckless driving; Drives Consciously Disregarding a Substantial or Unjustifiable Risk.

9. The [redacted] Case resolved on June 1, 2020, whereby Defendant was convicted on the Misdemeanor Fourth Degree DWI charge, the Gross Misdemeanor Third Degree DWI charge was dismissed, and the Gross Misdemeanor Fifth Degree Drug Possession charge was continued for dismissal. For both remaining charges, the Defendant is on probation for one (1) year on the condition that she have no same or similar offenses. Additionally, on the DWI charge, the Defendant was sentenced to stayed jail time, a fine, and a condition that she complete a chemical assessment and MADD panel.

10. **Analysis.** Defendant argues that the instant case constitutes serialized prosecution in violation of Minnesota Statutes Section 609.035, subdivision 1, which states:

> Except as provided in subdivisions 2, 3, 4, and 5, and in sections 609.2114, subdivision 3, 609.251, 609.2691, 609.486, 609.494, 609.585, and 609.856, and Minnesota Statutes 2012, section 609.21, subdivision 1b, if a person's conduct constitutes more than one offense under the laws of this state, the person may be punished for only one of the offenses and a conviction or acquittal of any one of them is a bar to prosecution for any other of them. All the offenses, if prosecuted, shall be included in one prosecution which shall be stated in separate counts.

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[1] The parties stipulated to the facts in paragraphs five through eight of this Order in their November 5, 2020, Stipulations for Motion Filed by [redacted] on October 12, 2020. The parties further stipulated that the Court may consider as evidence, for the purposes of this motion, the police reports from both incidents.

The Defendant asserts that she was charged in the [redacted] Case "with the same date of offense and offenses arising out of the same behavioral incident as the instant case, which is being charged in a separate prosecution." Mem. in Supp. of Mot. to Dismiss 3. Based on the [redacted] Case resolving on June 1, 2020, the Defendant argues that the prosecution in the instant case is barred.

11. The double jeopardy clauses of the United States[2] and Minnesota[3] constitutions protect criminal defendants from "three distinct abuses: a second prosecution for the same offense after acquittal; a second prosecution for the same offense after conviction; and multiple punishments for the same offense." *State v. Calmes*, 632 N.W.2d 641, 649 (Minn. 2001) (citing *State v. Humes*, 581 N.W.2d 317, 320 (Minn. 1998)). Thus, "multiple sentences for multiple offenses committed as part of the same behavioral incident are prohibited." *State v. Barthman*, 938 N.W.2d 257, 265-66 (Minn. 2020) (citing *State v. Ferguson*, 808 N.W.2d 586, 589 (Minn. 2012)).

12. "Whether a defendant's offenses occurred as part of a single course of conduct is a mixed question of law and fact." *State v. Jones*, 848 N.W.2d 528, 533 (Minn. 2014). Minnesota law provides separate tests for determining whether multiple offenses arose from the same behavioral incident, depending on whether the offenses are multiple intentional crimes or include both intentional and nonintentional crimes. *State v. Bauer*, 792 N.W.2d 825, 827-28 (Minn. 2011) (*Bauer II*); *State v. Bauer*, 776 N.W.2d 462, 478 (Minn. Ct. App. 2009) (*Bauer I*), *aff'd*, 792 N.W.2d 825 (Minn. 2011). A hit-and-run offense is a traffic violation and general-intent crime. *State v. Corning*, 184 N.W.2d 603, 606 (Minn. 1971). The Minnesota courts treat DWI offenses as nonintentional crimes. *State v. Fletcher*, 867 N.W.2d 242, 253 (Minn. Ct. App. 2015) (citing *State v. Clement*, 277 N.W.2d 411, 413 (Minn. 1979); *State v. Johnson*, 141 N.W.2d 517, 525 (Minn. 1966)). Thus this case involves both intentional and nonintentional crimes.

13. In cases in which the multiple offenses include both intentional and nonintentional crimes, Minnesota courts require that "the offenses (1) occurred at substantially the same time and place and (2) arose from a continuing and uninterrupted course of conduct, manifesting an indivisible state of mind or coincident errors of judgment." *Bauer I*, 776 N.W.2d at 478. In this consideration, "a reviewing court must determine whether the offenses were based on a single behavioral incident, or rather, divisible conduct." *State v. Butcher*, 563 N.W.2d 776, 784 (Minn. Ct. App. 1997) (citing *Mercer v. State*, 290 N.W.2d 623, 626 (Minn. 1980)). "Divisibility of conduct under Minn. Stat. § 609.035 depends on the divisibility of defendant's state of mind, not the separability of his actions." *Id.* (citing *State v. Krech*, 252 N.W.2d 269, 272-73 (Minn. 1977)).

14. The test for a single behavioral incident is "not mechanical and involves examination of all the facts and circumstances by the trial court." *State v. Bishop*, 545 N.W.2d 689, 691 (Minn. Ct. App. 1996) (citing *State v. Banks*, 331 N.W.2d 491, 493 (Minn. 1983)). "The State bears the burden of proving, by a preponderance of the evidence, that a defendant's offenses were not part of a single behavioral incident." *State v. Bakken*, 883 N.W.2d 264, 270 (Minn. 2016); *Barthman*, 938 N.W.2d at 266.

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[2] The United State Constitution provides: "[N]or shall any person be subject for the same offence to be twice put in jeopardy of life or limb." U.S. Const. amend. V.

[3] The Minnesota Constitution provides: "[N]o person shall be put twice in jeopardy of punishment for the same offense . . . ." Minn. Const. art. I, § 7.

15. *Occurred at Substantially the Same Time and Place.* The State points out that in this matter "[t]here is a difference of nine minutes and almost nine miles and the crossing of a municipal boundary." State's Mem. in Opp. to Mot. to Dismiss 2.

16. Courts have considered varying amounts of time and length of distances as constituting "substantially the same time and place." *See Johnson*, 141 N.W.2d at 525 (the defendant's infractions of driving while under the influence and driving over the centerline "occurred during a continuous and uninterrupted operation of his automobile, which took place within a period of a few minutes and a distance of two blocks."); *State v. Corning*, 184 N.W.2d 603, 605 (Minn. 1971) (the defendant's infractions of failure to stop and leave information at the scene of an accident and DWI were a continuous and uninterrupted course of conduct where the officer saw the defendant leaving the accident while still investigating at the scene, and the officer pursued the defendant and stopped the car approximately three blocks from the scene of the accident); *State v. Gladden*, 144 N.W.2d 779, 783 (Minn. 1966) (the defendant's infractions of "careless driving and driving while under the influence occurred during a continuous and uninterrupted operation of his car, which took place within a few minutes and 8 blocks."); *State v. Voss*, No. A16-1753, *5 (Minn. Ct. App. 2017) (the defendant's infractions of DWI and assault satisfied the first prong of the test where the DWI occurred shortly after the assault offense and within four miles of the assault victim's residence); *State v. Finn*, 203 N.W.2d 114, 115 (Minn. 1972) (the defendant's offenses of unauthorized use of a motor vehicle and reckless driving occurring within five minutes of each other and over a distance of three miles were committed at substantially the same time and place and occurred during "the continuous and uninterrupted course of driving."); *State v. Boucher*, 176 N.W.2d 624, 625 (Minn. 1970) (the defendant's multiple reckless driving offenses and a failure to stop for a stop sign offense commencing in in Roseville and terminating in St. Paul constituted one behavioral incident).

17. In at least one unpublished opinion, *State v. Patton*, the Court of Appeals held that the "very short distances" in the cases cited to above were distinguishable from the 6.5 mile distance the defendant traveled in *Patton*, noting that the parties cited to no Minnesota case law holding that a distance of that amount constituted "substantially the same [place]." No. A19-0477, 2019 WL 6284167, *3 (Minn. Ct. App. Nov. 25, 2019). Comparing the distance traveled in these cases requires, however, the context of the time involved in traveling that distance. In *Patton*, the defendant was similarly involved in a car accident without stopping, was then followed by the party reporting the incident to dispatch for some undetermined amount of time, where after officers were able to locate and stop the defendant's truck and arrest defendant for a DWI; these events occurred over at least the course of thirty minutes, though the Court in *Patton* noted that the district court found no evidence as to precisely when the first offense occurred. *Id.* at *1, 3. In the instance case, the distance traveled was approximately nine miles, but it was traversed in only nine minutes, likely in large part because the defendant entered Interstate 94 ("I-94") immediately after the first offense, according to the police reports.

18. Here, where the offenses occurred approximately nine minutes and nine miles apart, and Defendant traveled this distance largely on [redacted] prior to the exit upon which the [redacted] police stopped her, the Court finds that the offenses occurred in "substantially the same time and place."

This case is unlike those in which the amount of time exceeds even single digits in length of time. *See Patton*, 2019 WL 6284167, at *3 (finding that thirty minutes was not substantially the same time); *State v. Bishop*, 545 N.W.2d 689, 692 (Minn. Ct. App. 1996) (concluding that the defendant's driving conduct, which was interrupted on two separate occasions, three hours apart, for driving with a cancelled license and a DWI were separate offenses that occurred at different times and places); *State v. Wurst*, 350 N.W.2d 482, 483 (Minn. Ct. App. 1984) (concluding that driving conduct undertaken as part of a police chase, and then an hour later in a reckless manner, were not part of the same behavioral incident).

19. To the extent that the State argues that the offenses occurring in different municipalities inherently results in their occurrence in a "substantially" different time or place under the rule, the State has put forth no case law supporting this contention. Minnesota courts have previously held that offenses occurring while in a motor vehicle throughout multiple municipalities occurred in substantially the same time and place arose out of a continuous and uninterrupted course of conduct on the part of defendant. *Boucher*, 176 N.W.2d at 625, 627 (defendant was issued citations for reckless driving by the municipalities of Roseville, St. Paul, and Minneapolis, as well as a citation by the municipality of Falcon Heights for failing to stop for a stop sign, yet the Court held that his conviction in the Roseville municipal court constituted a bar to prosecution procedures in the St. Paul municipal court); *see also Voss*, No. A16-1753, *7-8 (the Court accepted the State's concession and assumed, without deciding, that a careless driving offense at issue in Maple Grove arose out of the same behavioral incident as a driving while intoxicated offense in Rogers, noting that "a subsequent prosecution in a separate jurisdiction does not violate Minn. Stat. § 609.035 *when the offenses do not arise from the same behavioral incident*") (emphasis added) (citing *State v. Butterfield*, 555 N.W.2d 526, 531 (Minn. Ct. App. 1996); *State v. Secrest*, 437 N.W.2d 683, 685 (Minn. Ct. App. 1989)).

20. Further, the argument that the mere crossing of a municipal border between multiple criminal offenses alone, or even significantly, causes the offenses to be in a substantially different place or time would lead to absurd results; defendants committing crimes near municipal or county boarders would be more likely to cross such lines amidst their actions, and thus more likely to be subject to multiple sentences than defendants acting in the geographical middle of a municipality or county.

21. Regardless, in this case, the State's attempt in its briefing to distinguish other cases involving the crossing of municipal or county lines from the present case by arguing that such movement is a significant consideration in the analysis focuses more on whether the specific types of offenses involved in those cases constitute an indivisible state of mind, rather than focusing on the issue of distance in physical location and the span of time of the offense. The issue of the indivisible state of mind, however, is properly addressed in relation to the second prong of the same behavioral incident test.

22. The Court finds that the offenses occurred in "substantially the same time and place," and thus satisfy the first prong of the single behavioral incident test.

23. *Arose from a Continuing and Uninterrupted Course of Conduct, Manifesting an Indivisible State of Mind or Coincident Errors of Judgment.* Minnesota courts have addressed

cases featuring similar charges to those at issue in this matter, but reached different conclusions as to this prong based on the specific underlying facts.

24. In *State v. Corning*, for example, the defendant was involved in an automobile accident while under the influence of alcohol. 184 N.W.2d at 604-05. The defendant left the scene of the accident without exchanging the requisite information. In doing so, the defendant inadvertently drove around the block and was then arrested three blocks away by police who had arrived at the accident scene. *Id.* at 605. The defendant was charged with leaving the scene of an accident and driving under the influence. *Id.* at 605. The Minnesota Supreme Court concluded that the offenses arose out of the same behavioral incident because the conduct supporting the charges occurred at substantially the same time and place, and "the influence of alcohol was an important factor which could have caused [the defendant] to leave the scene of the accident without providing the necessary information, to confusedly circle the block, and to exhibit signs of erratic driving behavior for which he was subsequently arrested." *Id.* at 607.

25. In *State v. Crohn*, the defendant was also under the influence of alcohol when he left the scene of an accident. No. A07-1962, 2009 WL 172883, *1. The defendant struck the mailbox of an off-duty police officer and entered the ditch across the street from the officer's home before driving away. *Id.* The officer followed the defendant, who continued driving to drop off two friends who were also in the vehicle. *Id.* The Court in *Crohn* differentiated these facts from those in *Corning* by noting that "while the conduct underlying the convictions in *Corning* occurred over a short duration," the *Crohn* defendant

> had been drinking since the afternoon, had consumed alcohol at more than one location, and had transported the men between several destinations. After hitting the mailbox, appellant dropped off [one of his friends] and drove another five to six miles before stopping at [the other friend's home] and being arrested by police.

Id. at *4.

26. The Court in *Crohn* indicated it could not conclude that these convictions arose from a continuous, uninterrupted course of conduct because it is impossible to determine whether appellant's conviction for DWI was based on conduct that occurred prior to, at the time of, or after, leaving the scene of the accident." *Id.* (citing *State v. Reiland*, 142 N.W.2d 635, 638 (Minn. 1966) (concluding that offenses of driving after revocation and criminal negligence did not arise out of the same behavioral incident because it was unclear whether the driving after revocation conviction arose from driving that occurred before, during, or after the negligent act)). The *Crohn* Court further stated that

> [u]nlike in *Corning* where the defendant was severely intoxicated and arguably unaware of his actions, [Crohn] made a conscious decision to leave the scene and continue to drop off his friends. Therefore, these offenses are divisible because appellant's decision to operate a motor vehicle was separate and distinct from his decision to leave the scene of the accident.

Id.

27. The State's argument this case emphasizes that "[t]he decision of the defendant to leave the scene of the accident is not necessarily controlled by whether she was impaired at the time of the accident. Impairment is not an element of the offense of leaving the scene of an accident and the intent to avoid responsibility and liability for damages to another vehicle is certainly a motivation to flee the scene." State's Mem. in Opp. to Mot. to Dismiss 2. The State further asserts that "[t]he decision of the defendant to leave the scene of the accident is not necessarily controlled by whether she was impaired at the time of the accident," and therefore argues that the defendant "did not have 'an indivisible state of mind' nor was the decision to drive away from the accident while impaired necessarily a 'coincident error of judgement.'"[4] *Id.* The accident, the State argues, "occurred as an interruption in the defendant's decision to drive a motor vehicle to [redacted], Minnesota. The accident was an interruption in the defendant's course of conduct, even though there is no indication that the defendant actually stopped at the scene of the accident." *Id.*

28. Though impairment is not, in fact, an element of the offense of leaving the scene after an accident, as it is for driving while intoxicated, neither the Court in *Corning* or *Crohn*, which featured similar charges, indicated these types of charges, or the elements of said charges in combination, prevented Section 609.035, subdivision 1 from applying.[5] Those cases, rather, emphasized the particular factual scenario surrounding the two offenses to differentiate whether an indivisible state of mind or coincident errors of judgment was present.[6]

29. Looking to the facts, this case falls somewhere between *Corning* and *Crohn*. The nine minutes and almost nine miles between the offenses in this case are certainly larger and longer than the three blocks in which an officer was able to intercept the defendant in *Corning* after the accident; in that case, that short window of time strongly supported the presence of a continuing and uninterrupted course of conduct and indivisible state of mind. Unlike *Crohn*, however, the defendant here did not make multiple stops after the accident, nor was she followed for the entire length of her trip after the initial offense by an officer. Officers in search for the vehicle following

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[4] The State also states that "[t]he defendant's decision to drive a motor vehicle after consuming alcohol occurred at some unknown place, probably not in [redacted], and likely hours earlier." State's Mem. in Opp. to Mot. to Dismiss 2. These facts, however, are not among those stipulated to by the parties for the purposes of this motion.

[5] The Court of Appeals, in its unpublished opinion in *Patton*, did not reach the second prong of the single behavioral incident test, though it referenced *State v. Kooiman*, 185 N.W.2d 534, 536 (Minn. 1971) in a footnote of the opinion in relation to this prong. 2019 WL 6284167, *3 n.3. In *Kooiman*, the Court held that the offenses of "drunkenness" and criminal negligence involving a vehicular accident that killed a man did not arise out of the same behavioral incident because they did not manifest an indivisible connection between the defendant's "state of mind and judgment." 185 N.W.2d at 536. The Court stated that "[d]riving a vehicle is in no way necessary to the offense of drunkenness" and it was unclear when the drunkenness offense occurred, "since it was a continuing violation whether [the defendant] was driving or not." *Id.* The DWI charge here, however, clearly involves driving a vehicle, an act which was logically undertaken at the same time as the accident occurred and the Defendant thereafter fled.

[6] The State also attempts to differentiate several cases cited to by Defendant in relation to the substantially same place and time and indivisible state of mind or coincident errors of judgment by emphasizing the particular charges at issue in this case. The State asserts that "[a] DWI or careless driving offense occurring on a highway necessarily occurs over a span of time and distance and is not confined to a specific moment," whereas, "[t]he essence of a leaving the scene of an accident crime is confined to a very specific location and has unique duties for the driver to remain at the scene and give all the information." State's Suppl. Mem. in Opp. to Mot. to Dismiss 1-2. Similarly, the State notes that the charge of hit and run is "quite different and distinct from the DWI in [redacted] Minnesota. The elements of the charges are vey [sic] different, and proof of the DWI does not establish any of the elements of the leaving the scene charge." *Id.* at 2. This argument fails for the same reasons discussed above.

the accident here were alerted by dispatch to be looking for the particular vehicle, which had sustained clear damage according to the police reports. Moreover, the fact that some time elapsed before the police were able to locate the Defendant after she fled the accident, a mostly unavoidable reality for charges in which the driver does not stop at an accident, does not detract from the fact that she would have had a similar level of intoxication nine minutes earlier during an accident which prompted the officer to be searching for her vehicle in the first place.

30. This continued driving, without stopping at the scene of the accident or otherwise deviating from her driving behavior represents a continuing and uninterrupted course of conduct. *See, e.g.*, *Johnson*, 141 N.W.2d at 525 (where crossing the centerline and straddling it for a period prior to continuing driving did not interrupt the defendant's course of conduct in driving while intoxicated); *Krech*, 252 N.W.2d at 273 (where the defendant leading officers on a high-speed chase involving various traffic offenses and that culminated with the defendant accelerating directly towards an officer in an attempt to cause bodily harm did not interrupt the continuous course of conduct with an "indivisible purpose devoted to successfully avoiding the police officers."); *but cf. Voss*, No. A16-1753, *6-7 (where the defendant parking and exiting his vehicle to assault a victim, then stepping back into his truck and driving away was an "entirely separate" offense when an officer later stopped the defendant to investigate the assault report and noticed several indicia of intoxication).

31. As to manifesting an indivisible state of mind or coincident errors of judgment, the Defendant's behavior reflects a decision not to stop at the scene of the accident due to her alcohol consumption, whether in an effort to avoid liability for the accident due to her intoxicated state, or simply because she was so intoxicated that her senses or reasoning capabilities in determining she was involved in an accident and thus needed to stop were diminished.[7] *See, e.g.*, *Corning*, 184 N.W.2d at 607 ("[T]he most logical explanation of the sequence of events and circumstances would seem to be that the influence of alcohol was an important factor which could have caused relator to leave the scene of the accident without providing the necessary information, to confusedly circle the block, and to exhibit signs of erratic driving behavior for which he was subsequently arrested. Contrary to showing isolated or divisible acts, this conduct would seem to be indicative of reasoning ability and actions dulled by alcohol."); *Johnson*, 141 N.W.2d at 525 (concluding the offenses of driving while intoxicated and crossing the center line both manifested "an indivisible state of mind" because "[t]he error in judgment as to where on the roadway he should drive his car was clearly coincident with the initial error to drive after drinking" and "[t]he defendant's goal was to drive his car from one point to another, and in so doing, both his condition and the manner in which he drove were traffic offenses.").

[7] Though it is true that an individual could make the choice to continue to drive instead of stopping as required by law after a vehicle accident, as noted previously relating to the elements of the different offenses, that does not necessarily bar these charges' status as a single behavioral incident. It is the particular facts of the case that control whether the offenses arose from a continuing and uninterrupted course of conduct, manifesting an indivisible state of mind or coincident errors of judgment. The sequence of events and actions of the Defendant in this case reflect a connection between decision to drive while intoxicated and to subsequently fail to stop after being involved in an accident while driving intoxicated.

32. The State has thus not carried its burden to show, by a preponderance of the evidence, that a defendant's offenses were not part of a single behavioral incident.[8] *Bakken*, 883 N.W.2d at 270; *Barthman*, 938 N.W.2d at 266.

ORDER

1. Defendant's Motion to Dismiss is hereby GRANTED and this matter hereby DISMISSED.

BY THE COURT:

[redacted]
Jud District Court Judge
[redacted]2021 2:56 PM

Dated: [redacted], 2021

The Honorable [redacted]
Judge of [redacted] County District Court

[8] The State asserts that "the City of [redacted] has no authority or duty with respect to the victim in the current case, and granting the defendant's motion has the potential to disregard the victim's rights." State's Suppl. Mem. in Opp. to Mot. to Dismiss 2. The Court notes, however, that the individuals involved in the accident have alternative remedies for harms caused to them in the form of personal injury, insurance claim, or property damage civil suits.