# Pursuits Claims

## Pursuant to 42 U.S.C. § 1983


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# 42 U.S.C. §1983 Pursuit Cases

Two Types:

(1) Those where the injury occurred by accident; and

(2) Those where the officer intentionally makes contact with the fleeing violator's vehicle.

(Not State Law Tort Claims)

# Fourth Amendment

A seizure is "a governmental termination of freedom of movement through means intentionally applied."

"Brower was meant to be stopped by the physical obstacle of the roadblock – and . . . was so stopped.

Brower v. County of Inyo, 489 U.S. 593, 597 (1989)

# Fourteenth Amendment

The Fourteenth Amendment Due Process Clause is only violated when there is arbitrary conduct that shocks the conscience. The Court explained that "a police officer deciding whether to give chase must balance on one hand the need to stop a suspect and show that flight from the law is no way to freedom, and on the other, the high-speed threat to everyone within stopping range, be they suspects, their passengers, other drivers, or bystanders." The Court concluded that there was no intent by the deputy to cause physical harm to Lewis and consequently no violation of his due process rights. Significantly, however, the Court noted that its finding of constitutional violation did not imply anything about the appropriate treatment of this case under state negligence law.

**Lewis *v. County of Sacramento*, 523 U.S. 833, 853 (1998)**

# Shocks the Conscience

**"Liability under this standard generally requires 'deliberate action intent to harm another.' . . . We have held that 'the sine qua non . . . is a purpose to cause harm.'"**

**Steen v. Myers, 2007 U.S. App. LEXIS 11887 *15 (7th Cir. May 21, 2007)**

# Scott v. Harris

**"A police officer's attempt to terminate a dangerous high-speed car chase that threatens the lives of innocent bystanders does not violate the Fourth Amendment, even when it places the fleeing motorist at risk of serious injury or death."**

**Scott v. Harris, 127 S.Ct. 1769, 1779 (2007)**

# Stopping the Pursuit

**"[W]e are loath to lay down a rule requiring the police to allow fleeing suspects to get away whenever they drive so recklessly that they put other people's lives in danger. It is obvious the perverse incentives such a rule would create: Every fleeing motorist would know that escape is within his grasp, if only he accelerates to 90 miles per hour, crosses the double-yellow line a few times, and runs a few red lights. The Constitution assuredly does not impose this invitation to impunity-earned-by-recklessness."**

**Scott v. Harris, 127 S.Ct. at 1779**

# Videotape

- Impression from reading 11th Circuit decision that "respondent, rather than fleeing from police, was attempting to pass his driving test"
- "Far from being the cautious and controlled driver the lower court depicts, what we see on the video more closely resembles a Hollywood-style car chase"

Scott v. Harris, 127 S.Ct. at 1775

# Videotape (cont'd)

"When opposing parties tell two different stories, one of which is blatantly contradicted by the record, so that no reasonable jury could believe it, a court should not adopt that version of the facts for purposes of ruling on a motion for summary judgment."

Scott v. Harris, 127 S.Ct. at 1776

# Motorcycle Pursuit

"To view the record is to conclude that Abney's . . . driving behavior put other motorists at substantial risk of serious harm. There is abundant and uncontradicted evidence supporting Deputy Coe's conclusion that Abney's driving over the course of the eight-mile pursuit "was a danger for the life of others." It was, therefore, eminently reasonable to terminate the chase in order to avoid further risks to the lives of innocent motorists."

Abney v. Coe, 2007 U.S. App. LEXIS 15841 **12 (4th Cir. July 3, 2007)

# Stopping the Pursuit

- **"We doubt that upon cessation of Coe's pursuit Abney would have been transformed into a model driver. Indeed, Deputy Coe *began* pursuing Abney *because* Abney was driving dangerously."**
- **"To require an officer to end a chase whenever the suspect creates a sufficiently great risk to others is but an invitation to rash conduct."**

**Abney v. Coe, 2007 U.S. App. LEXIS 15841 **16-17 (4th Cir. July 3, 2007) (emphasis in original)**

# "Dreadful Choice"

"Deputy Coe was faced with a dreadful choice. There are high costs to the use of intervention tactics to terminate a police pursuit: such tactics can place fleeing suspects at the risk of serious harm – as the loss of human life here sadly illustrates. But the costs of inaction are also great: If innocent motorists, like the White family, had been the ones to lose their lives, that too would have been a tragedy."

Abney v. Coe, 2007 U.S. App. LEXIS 15841 at **17-18

# Objective Reasonableness

**Officer observed suspect:**

- weave in and out of traffic,
- cross double yellow center line,
- drive on the wrong side of the road
- Force others off the road
- Crash into another person's vehicle
- Ram the officer's vehicle several times

**Beshers v. Harrison, 2007 U.S. App. LEXIS 19289 (11th Cir. August 14, 2007)**

# Beshers v. Harrison

Applying Scott v. Harris,

"Based upon these circumstances, we conclude that if Harrison intentionally used deadly force to seize Beshers, the use of such force was reasonable."

"We therefore hold [the officer] did not violate Beshers' Fourth Amendment right to be free from excessive force."

Beshers v. Harrison, 2007 U.S. App. LEXIS 19289, *21.

# Pursuit Policy

**"[T]he fact that the Randolph County Sheriff's Department may, as a matter of general policy, forbid precision intervention techniques says nothing about whether such tactics are constitutional. It is, in fact, settled law that a violation of departmental policy does not equate with constitutional unreasonableness."**

**Abney v. Coe, 2007 U.S. App. LEXIS 15841 at *19 (citing Davis v. Scherer, 468 U.S. 183, 193-96 (1984))**

# Stop sticks

"Weighing the number of lives at stake as well as the relative culpability, the officers decision to subject Galipo to potentially deadly force to prevent him from endangering innocent lives of members of the public at the upcoming intersection is objectively reasonable as a matter of law. . . ."

Galipo v. City of Las Vegas, 2007 U.S. Dist. LEXIS 34540, *14-15 (D. Nev. May 8, 2007)

# Stop sticks (cont'd)

"The Scott Court did not require the officer to give the suspect an opportunity to appreciate the force about to be used against him and to respond before the officer bumped his car. Galipo refused to stop and was approaching a busy intersection at high speed, thus placing at risk innocent lives."

Galipo, 2007 U.S. Dist. LEXIS 34540 at *15.

# P.I.T.

"Moreover, . . . [the officer] did not see or hear of any public-endangering, evasive action or out-of-control driving by Sharp. His actions suggest he felt he had carte blanche to 'take out' Sharp by whatever means necessary solely because she would not pull over."

**Sharp v. Fisher, 2007 U.S. Dist. LEXIS 54535, *18 (S.D. Ga. July 26, 2007) (granting summary judgment on basis of qualified immunity)**

# Fourteenth Amendment Claim

**"As for the argument that Myers could have stopped the chase and tracked down Hibert the next day, we believe that this is an argument that goes to the question of whether the pursuit was wise, not whether it violated the Constitution."**

**Steen v. Myers, 486 F.3d 1017, 2007 U.S. App. LEXIS 11887, *16 (7th Cir. 2007)**

# Fourteenth Amendment Claim

There might be questions on this record as to whether Myers was negligent, reckless, or even deliberately indifferent to the safety of Hilbert and Philebaum, but under the standard set forth in Lewis those questions are reserved to the state courts and the law of tort.

Steen v. Myers, 2007 U.S. App. LEXIS 11887 at *20.

# 14th Amend Claim (cont;d)

**Under a standard that requires conscience-shocking behavior and an intent to cause harm unrelated to a legitimate governmental interest, the district court was correct that the defendants were entitled to judgment as a matter of law on the claims under 42 U.S.C. § 1983.**

**Steen v. Myers, 2007 U.S. App. LEXIS 11887 at *20.**