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Civil Liability for Law Enforcement Pursuit Driving (II): Scott v. Harris

An earlier article in this topic examined prior caselaw on the subject of law enforcement pursuit driving from both federal and state courts. On April 30, 2007, however, the U.S. Supreme Court, in the case of [Scott v. Harris](#), No. 05-1631, 2007 U.S. Lexis 4748, issued an important decision, addressing the issue of whether a law enforcement officer can, consistent with the Fourth Amendment, attempt to stop a fleeing motorist from continuing his public-endangering flight by ramming into his car from behind, or "put another way: Can an officer take actions that place a fleeing motorist at risk of serious injury or death in order to stop the motorist's flight from endangering the lives of innocent bystanders?"

This new decision displays the thinking of the current Supreme Court on this topic, provides much food for thought as to what tactics are reasonable to use in the context of police pursuits, and is important to clearly understand, as many accounts in the daily press have grossly oversimplified what the Justices said. We hope that the material that follows will contribute to a better understanding of the legal principles that the decision presents.

Contents

1. The facts of the case and the decision of the appeals court below
2. The Supreme Court decision in Scott v. Harris
3. Specimen Policies and Other Helpful Resources.

1. The facts of the case, and the decision of the appeals court below.

In the appeals court below, in [Harris v. Coweta County](#), No. 03-15094, 433 F.3d 807 (11th Cir. 2005), a county deputy (Timothy Scott) and his supervisor appealed from the denial of their motions for qualified immunity in a federal civil rights lawsuit under 42 U.S.C. Sec. 1983 by a motorist claiming that the deputy violated his Fourth Amendment rights by using excessive force during a high-

speed car chase and that the supervisor improperly authorized the use of that force.

The federal appeals court found that the deputy, who rendered the pursued motorist a quadriplegic when he rammed his vehicle from behind at high-speed, was not entitled to qualified immunity.

The supervisor, however, was ruled to be entitled to summary judgment, as he had not authorized the action that the deputy took, but instead a different safer maneuver, known as a "PIT," which the deputy did not in fact, carry out.

After the motorist's vehicle was clocked as going 73 miles an hour in a 55 mile per hour zone, a deputy flashed his blue lights, but the motorist kept driving at a high rate of speed, passing vehicles on double yellow traffic control lines, and running through two red lights. The deputy radioed in about his pursuit of the vehicle and broadcast its license plate. The pursued vehicle entered an adjoining county, and continued to flee after encountering two police vehicles there.

The pursuing deputy radioed a request for "Permission to PIT him." A "PIT" ("Precision Intervention Technique") maneuver is a driving technique designed to stop a fleeing motorist safely and quickly by hitting the fleeing car at a specific point on the vehicle, which throws the car into a spin and brings it to a stop. The deputy had allegedly not been trained in executing this maneuver, and he and fellow officers did not undergo training on it until after the incident. The defendant supervisor responded to the radio call and granted permission to employ the PIT, telling the deputy to "go ahead and take him out."

At the time, the supervisor allegedly did not know how the pursuit originated, the speeds of the vehicles, the number of motorists or pedestrians on the roadways, or how dangerously the motorist was driving. He allegedly tuned into the transmissions about the pursuit late and did not request additional detail.

After receiving approval, the deputy determined that he could not perform the PIT maneuver because he was going too fast, and instead rammed his cruiser directly into the motorist's vehicle, causing him to lose control, leave the roadway, run down an embankment, and crash, suffering injuries that rendered him a quadriplegic.

Under the circumstances, the appeals court found that the ramming of the motorist's car could constitute a use of "deadly force," although none of the "antecedent conditions" for the use of such force existed in this case, since there was no suspicion that the motorist had committed a crime involving the infliction or threatened infliction of serious physical harm, and prior to the chase, he did not pose an imminent threat of serious physical harm to the deputy or others.

His sole crime when the pursuit began was speeding. "The use of deadly force is not 'reasonable' in a high-speed chase based only on speeding and evading arrest," the court stated, and a high-speed chase of a suspect fleeing after a traffic infraction does not amount to a "substantial threat" of imminent physical harm required before deadly force can be used.

Accordingly, the court reasoned, a reasonable jury could find that the deputy violated the motorist's rights. The appeals court rejected the argument, however, that the supervisor could also be held liable under these circumstances.

While the supervisor authorized a PIT, "a driving technique designed to stop a fleeing motorist safely and quickly by hitting the fleeing car at a specific point on the vehicle, which throws the car into a spin and brings it to a stop," which by definition assumes that the maneuver will be executed at lower speeds by properly trained officers, and therefore can terminate a flight "safely," the PIT was not, in fact, carried out.

The actions the deputy instead took, of ramming the pursued car at a very high speed from behind, were not authorized by the supervisor, so the supervisor could not be held liable for it. The appeals court could not say that the conduct in authorizing a safe PIT that was not executed violated the motorist's rights. It therefore ordered the entry of summary judgment for the supervisor.

The deputy argued that the motorist's driving was so reckless that it should be considered, as a matter of law, to be enough to give him probable cause to believe that his actions created a substantial possibility of imminent physical injury to other motorists and pedestrians. The appeals court rejected this argument, and found that this question was a factual one to be determined by the jury. The appeals court found that the law on the issue on the date of the incident was clearly established, so that the deputy was not entitled to qualified immunity.

The U.S. Supreme Court granted review on the following questions presented by the deputy:

1. Is a law enforcement officer's conduct "objectively reasonable" under the Fourth Amendment when he makes a split-second decision to terminate a high-speed pursuit by bumping a fleeing suspect's vehicle with the push bumper of his police vehicle, because the suspect demonstrated by his conduct that he would continue to drive in a reckless and dangerous manner putting lives of innocent persons at serious risk of death?

2. At the time of the incident, was the law "clearly established" when

neither the U.S. Supreme Court nor any federal court of appeals, including the Eleventh Circuit, which decided the case, had previously ruled that it violates the Fourth Amendment when an officer uses deadly force to protect the lives of innocent persons from the risk of a dangerous and reckless vehicular flight?

The deputy was essentially arguing that the federal appeals court decision establishes a preference for allowing reckless drivers to successfully flee when they have committed a traffic violation such as speeding, despite the fact that such flight at high speed puts other motorists and pedestrians at serious risk of harm.

2. The Supreme Court decision in *Scott v. Harris*.

By an 8-1 vote, with only Justice Stevens in dissent, the U.S. Supreme Court, in an opinion authored by Justice Scalia, essentially agreed with the deputy.

The Court held that, because the chase the driver of the pursued car initiated posed an "immediate" and "substantial" risk of serious physical injury to others, the deputy's attempt to terminate the chase by forcing him off the road was reasonable under the circumstances, so that he was entitled to summary judgment, and could not be held liable for the resulting injuries to the driver when his car was caused to leave the road and crash, rendering him quadriplegic. The deputy had asserted a defense of qualified immunity, which essentially claims that his conduct did not violate any clearly established rights of the plaintiff.

Under [Saucier v. Katz](#), No. 99-1977, 533 U.S. 194 (2001), a court deciding whether an officer is entitled to qualified immunity must, for purposes of the decision, take the facts in the light most favorable to the plaintiff injured party, and determine whether, assuming those facts, the officer's conduct violated a constitutional right.

To credit the plaintiff's version of the events in this case, however, the Court sarcastically commented, one would get the impression that, "rather than fleeing from police," he was "attempting to pass his driving test." He claimed that he remained in control of his car, slowed for turns and intersections, and typically used his indicators for turns, as well as not running any motorists off the road or posing a threat to pedestrians in the shopping center parking lot which the vehicles passed through, and that by the time the vehicles were back on the highway and Deputy Scott rammed his vehicle, the motorway had been cleared of motorists and pedestrians because of police blockades of the nearby intersections.

In the immediate case, however, the Court noted, there was a videotape that captured the events at issue live as they were happening. Because of this and what the videotape showed, the Court found, no reasonable jury could believe the

plaintiff's version of events. Given the existence of the videotape, for purposes of ruling on the qualified immunity determination, the trial court should not adopt the plaintiff's version of the facts. The videotape tells a very different story from the plaintiff's version of events.

In the videotape, the Court noted, we see the plaintiff's vehicle "racing down narrow two-lane roads in the dead of night at speeds that are shockingly fast," swerve around more than a dozen other vehicles, cross the double-yellow line, force cars traveling in both directions to their respective shoulders to avoid being hit. The videotape also displays the plaintiff running multiple red lights, traveling for considerable periods of time in the occasional center left-turn-only lane, and chased by police vehicles which were forced to engage in the same hazardous acts just to keep up.

To view the videotape of the chase at issue in the Scott v. Harris case, which is present on the U.S. Supreme Court's website, click [here](#). Please note that this is a very large file (92 megabytes in size), and that even on a fast Internet connection, it may be slow in loading.

The Justices essentially say that, in cases where such a videotape exists, a trial court may rely on it if it presents a thorough refutation of the plaintiff's version of events, rather than adopting the otherwise legally mandated posture of assuming, for purposes of deciding the issue of qualified immunity, that the plaintiff's version of events is true. **This demonstrates the importance of having cruiser mounted video cameras installed in police vehicles to record such events.** The existence of such a video recording of a police pursuit can, as this case illustrates, make the difference, under the rules that the Court announced, between the denial of summary judgment, resulting in long, drawn out, and expensive litigation, regardless of whether or not the case is ultimately won, and a swift grant of summary judgment, which will terminate the lawsuit against individual defendant officers or supervisors.



**Cruiser Mounted
Video Camera**

In Scott v. Harris, Justice Scalia's opinion states that:

"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 of the most frightening sort, placing police officers and innocent bystanders alike at great risk of serious injury. ...

"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. That was the case here with regard to the factual issue whether respondent was driving in such fashion as to endanger human life. Respondent's version of events is so utterly discredited by the record that no reasonable jury could have believed him. The Court of Appeals should not have relied on such visible fiction; it should have viewed the facts in the light depicted by the videotape."

Once one views the facts in the light depicted in the videotape, the Court found, it is clear that Deputy Scott did not violate the Fourth Amendment, i.e., that his actions were not unreasonable under the circumstances. While the appeals court below seemed to place a good deal of emphasis on the notion that the deputy's actions could constitute "deadly force" under [Tennessee v. Garner](#), #83-1035, 471 U.S. 1 (1985), the U.S. Supreme Court rejected this method of analysis. *Garner*, the Court stated, did not establish a "magical on/off" switch triggering "rigid preconditions" whenever an officer's actions could theoretically constitute "deadly force."

(The plaintiff argued that Deputy Scott's actions were per se unreasonable because all of the purported *Garner* "preconditions" for using deadly force were not met—i.e., 1) the suspect must have posed an immediate threat of serious physical harm to the officer or others, 2) deadly force must be necessary to prevent escape, and 3) where feasible the officer must have given the suspect some warning. In a footnote, the Court's opinion stated that the plaintiff was also taking a quote from *Garner* out of context, concerning the need to prevent escape, and that rather than this being a "precondition" to the use of deadly force, the *Garner* Court was only pointing to it "by way of example" as a circumstance that might support the use of deadly force if a suspect being at large posed an "inherent danger" to society, as opposed to compiling a list of preconditions).

In *Garner*, the opinion continues, the Court simply applied the Fourth Amendment's reasonableness test to the use of a particular type of force in a particular situation (the shooting and killing of a young, slight, and unarmed burglary suspect while he was running away on foot), and stated factors that, if present, might have justified shooting the suspect in that case. The threat posed by the flight on foot of an unarmed suspect, as in *Garner*, the Court noted, is not even "remotely comparable to the extreme danger to human life posed by the pursued motorist in this case.

Garner, the Court argued, has "scant" application to the chase that occurred in Scott v. Harris, which had very different facts—and what really mattered was whether Deputy Scott's actions were reasonable in light of the circumstances. To determine whether such actions are reasonable, a court has to balance the "nature and quality" of the intrusion on the suspect's Fourth Amendment interest versus the importance of the governmental interests justifying the action. Applying this test, Justice Scalia wrote:

"So how does a court go about weighing the perhaps lesser probability of injuring or killing numerous bystanders against the perhaps larger probability of injuring or killing a single person? We think it appropriate in this process to take into account not only the number of lives at risk, but also their relative culpability. It was respondent, after all, who intentionally placed himself and the public in danger by unlawfully engaging in the reckless, high-speed flight that ultimately produced the choice between two evils that Scott confronted."

Those members of the public who might have been injured or killed if Deputy Scott had not forced Harris off of the road, the Court noted, were "entirely innocent," so that it was reasonable for the deputy to take the actions he did to protect them. The Court rejected the plaintiff's argument that the interests of public safety could have been better served if the chase had merely been ended. If the reasoning the plaintiff urged were adopted by the Court and by law enforcement agencies, the opinion stated:

"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 Court had little hesitation in stating that it was "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." (emphasis in original). Instead, the rule that the Court did adopt was that "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." In this case, since the Court found that there was no violation at all of the pursued motorist's rights, it ruled that the deputy was entitled to summary judgment. It therefore found it unnecessary to go on to decide whether any such violation involved "clearly established" rights.

3. Some Specimen Policies and Other Helpful Resources.

While policies on police pursuit driving must be carefully crafted to incorporate

particular local and state circumstances and law, as well as federal constitutional law, in consultation with competent legal counsel, it may be helpful to examine what other departments have done. Accordingly, this article is accompanied by some example policies of various police departments, as well as some other helpful resources, which may be accessed by clicking [here](#).

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