

Civil Rights Update

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U. S. Supreme Court Upholds Police PIT Stops in 8-1 Decision

On April 30, 2007, the United States Supreme Court decided whether a law enforcement official can, consistent with the Fourth Amendment, attempt to stop a fleeing motorist from continuing his public-endangering flight by ramming the motorist's car from behind. *Scott v. Harris*, __U.S.__, 127 S. Ct. 1769 (2007). Or, in the Court's words, "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?"

In March 2001, a Georgia county deputy clocked the respondent's, Victor Harris', vehicle traveling at 73 miles per hour on a road with a 55-mile-per-hour speed limit. The deputy activated his blue flashing lights indicating Scott should pull over. Instead, Scott sped away, initiating a chase down what is in most portions a two-lane road. During the chase, speeds of up to 85 miles per hour were reached.

The deputy radioed his dispatch to report his pursuit and to broadcast the license plate number of the fleeing vehicle. Petitioner, Deputy Timothy Scott, heard the radio communication and joined the pursuit along with other officers. In the midst of the chase, Harris pulled into the parking lot of a shopping center and was nearly boxed in by various police cars. Harris evaded the trap by making a sharp turn, and then collided with Scott's police car, exited the parking lot and sped off once again down a two-lane highway.

Following Harris' shopping center maneuvering, which resulted in slight damage to Scott's police car, Scott took over as the lead pursuit vehicle. Six minutes and about ten miles after the chase had begun, Scott decided to attempt to terminate the episode by employing a "Precision Intervention Technique" (PIT) maneuver, which causes the fleeing vehicle to spin to a stop.

Scott applied his bumper to the rear of Harris' vehicle. As a result, Harris lost control of his car, which left the roadway, ran down an embankment, overturned and crashed. Harris was badly injured and rendered a quadriplegic.

Harris filed a §1983 civil rights action against Deputy Scott and others alleging use of excessive force resulting in an unreasonable seizure under the Fourth Amendment. In response, Scott filed a motion for summary judgment based on an assertion of qualified immunity. The district court denied the motion.

On interlocutory appeal, the United States Court of Appeals for the Eleventh Circuit affirmed the district court's decision to allow Harris' claim to proceed to trial. The Eleventh Circuit concluded Deputy Scott's actions could constitute "deadly force" under *Tennessee v. Garner*, 471 U. S. 1 (1985)

and that the use of such force in this context “would violate [respondent’s] constitutional right to be free from excessive force during a seizure. Accordingly, a reasonable jury could find that Scott violated [respondent’s] Fourth Amendment rights.” *Harris v. Coweta County, Ga.*, 433 F.3d 807, 816 (11th Cir. 2005). The court of appeals further concluded “the law as it existed [at the time of the incident], was sufficiently clear to give reasonable law enforcement officers ‘fair notice’ that ramming a vehicle under these circumstances was unlawful.” *Harris*, 433 F.3d at 817. The court of appeals thus concluded Deputy Scott was not entitled to qualified immunity.

The United States Supreme Court granted certiorari and in an eight to one decision, reversed. In reaching its decision, the Supreme Court first determined whether Deputy Scott’s actions violated the Fourth Amendment. The first step in assessing the constitutionality of Deputy Scott’s actions was to determine the relevant facts. Since the case was decided by the Eleventh Circuit on summary judgment, no factual findings by either a judge or a jury had been made and Harris’ version of the facts differed substantially from the deputy’s version. In qualified immunity cases, this generally means the court will adopt the plaintiff’s version of the facts.

However, the Supreme Court found “an added wrinkle in this case: existence in the record of a videotape capturing the events in question.” *Scott*, 127 S.Ct. at 1775. There were no allegations or indications the videotape was doctored or altered in any way nor any contention that what it depicted differed from what actually happened.

The Supreme Court found that Deputy Scott’s in-car videotape “quite clearly contradicts the version of the story told by respondent and adopted by the court of appeals.” *Id.* For example, the court of appeals adopted respondent’s assertions that, during the chase, “there was little, if any, actual threat to pedestrians or other motorists, as the roads were mostly empty and [respondent] remained in control of his vehicle.” *Harris*, 433 F.3d at 815. The Supreme Court characterized the court of appeals’ opinion as giving the impression “respondent, rather than fleeing from police, was attempting to pass his driving test.”

The court of appeals stated that, taking the facts from the plaintiff’s viewpoint, the evidence showed that Harris remained in control of his vehicle, slowed for turns and intersections, and used his indicators for turns. He did not run any motorists off the road. He was not a threat to pedestrians in the shopping center parking lot, and “by the time the parties were back on the highway and Scott rammed [respondent], the motorway had been cleared of motorists and pedestrians allegedly because of police blockades of the nearby intersections.” *Id.* at 815-816.

According to the Supreme Court, however, the videotape told quite a different story. It showed:

“respondent’s vehicle racing down narrow, two-lane roads in the dead of night at speeds that are shockingly fast. We see it swerve around more than a dozen other cars, cross the double-yellow line, and force cars traveling in both directions to their respective shoulders to avoid being hit. We see it run multiple red lights and travel for considerable periods of time in the occasional center left-turn-only lane, chased by numerous police cars forced to engage in the same hazardous maneuvers just to keep up. 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.” *Scott*, 127 S.Ct. at 1775-76.

The Supreme Court recognized that the standard for summary judgment motions is to view the facts in the light most favorable to the non-movant, but then noted that this applies only when there is a “genuine” dispute of fact. *Id.* at 1776. It then concluded that respondent’s “version of the chase [was] so utterly discredited by the record that no reasonable jury could have believed him.” *Id.*

The Court then addressed whether Harris’ claim of excessive force in the course of making a “seizure” was “objectively reasonable” under the standard set out in *Graham v. Connor*, 490 U.S. 386

(1989). In determining the reasonableness of Deputy Scott's actions, the Court balanced the "nature and quality of the intrusion on the individual's Fourth Amendment interests against the importance of the governmental interests alleged to justify the intrusion." *United States v. Place*, 462 U.S. 696 (1983). Harris posed an actual and imminent threat to the lives of pedestrians who might be present, other motorists and the officers involved. Scott's actions posed a high likelihood of serious injury or death to Harris.

The Court weighed the probability of injuring or killing numerous bystanders against the probability of injuring or killing a single person by taking into account not only the number of lives at risk but also their relative culpability. It was Harris 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 Deputy Scott confronted.

Multiple police cars, with blue lights flashing and sirens blaring, had been chasing respondent for nearly 10 miles, but he ignored their warning to stop. By contrast, those who might have been harmed had Deputy Scott not taken the action he did were entirely innocent. The Court concluded it was reasonable for Deputy Scott to take the action he did.

Harris claimed the innocent public could have been equally protected, and the tragic accident entirely avoided, had the police simply ceased their pursuit. The Court addressed this point by saying the police need not have taken that chance and hoped for the best. Whereas Deputy Scott's action of ramming Harris off the road was certain to eliminate the risk posed to the public, ceasing pursuit was not.

In conclusion the Court stated it is "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." *Scott*, 127 S.Ct. at 1779 (emphasis in original). The Court noted the obvious 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." *Id.*

Instead, the Court adopted a more sensible rule: "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." *Id.*

About the Author

William J. Charnock holds an of counsel position with *Heyl, Royster, Voelker & Allen* in its Peoria office. He practices in the areas of civil rights, first party property claims and commercial defense. Mr. Charnock received his B. A. in 1990 from West Virginia University and his J. D. from West Virginia University in 1994. Prior to joining *Heyl, Royster, Voelker & Allen*, he served as the elected prosecuting attorney of Kanawha County, WV.