

POLICE USE OF EMERGENCY VEHICLES

PART 1 – FOURTH AMENDMENT SEIZURES

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On Monday, April 30, 2007, the U.S. Supreme Court rendered its decision in the case of Scott v. Harris, 2007 WL 1237851 (U.S., April 30, 2007), catching the eye of law enforcement administrators and governmental leaders across the country. The case addresses an elemental question regarding liability for the injuries caused by the law enforcement use of emergency vehicles. There are at least two liability issues to consider when examining police use of emergency vehicles, especially in a pursuit situation. These are (1) federal civil rights issues largely arising from the unlawful use of force and the reasonableness of a 4th Amendment seizure; and (2) state tort negligence issues arising from the negligent use of a motor vehicle. The civil rights issues are ultimately determined by the U.S. Supreme Court, and the tort negligence issues are typically determined by the Tennessee Supreme Court's application and interpretation of Tennessee state law.

While Scott v. Harris is a significant and beneficial decision for law enforcement as it relates to police liability and reasonableness of 4th Amendment seizures via Precision Intervention Technique (PIT) or ramming maneuvers. It must be noted that the Scott case deals with the individual who is fleeing and not third parties injured in a pursuit.

This article is the first of two articles addressing these two elements. The Fourth Amendment seizure issue will be addressed here in Part 1. The state tort negligence issues and pursuits under state law will be addressed in Part 2.

In the case of Scott v. Harris, the U.S. Supreme Court was faced with the question of whether a law enforcement official can be consistent with the Fourth Amendment when he attempted to stop a fleeing motorist from continuing his public-endangering flight by ramming the motorist's car from behind. Justice Scalia delivered the opinion (8-1) for the Court and held 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.

It is noteworthy that this lawsuit reached the Supreme Court, not as a result of a trial, but on a Motion for Summary Judgment. The police officer's attorney had filed a Motion for Summary Judgment which was denied by the trial court and denied on appeal by the Eleventh Circuit. The basis for the appeal by Officer Scott was his assertion that plaintiff's suit against him was barred under the doctrine of qualified immunity. Qualified immunity issues are immediately appealable on denial by the trial court to the Court of Appeals. Mitchell v. Forsyth, 472 U.S. 511, 527 (1985).

In this case, Officer Scott (as do many police vehicles in Tennessee and other states) had an in-car camera that recorded the pursuit. Typically, in a Motion for Summary Judgment, the threshold question for the Court is whether “taken in light most favorable to the party asserting the injury, do the facts alleged show the officer’s conduct violated a constitutional right.” Saucier v. Katz, 533 U.S. 194, 201 (2001). In this case, the Supreme Court in fact held that the videotape which captured the events in the pursuit overrides this threshold question. The Court held that:

. . . [t]he record blatantly contradicts the plaintiff’s version of events so that no reasonable jury could believe it, a court should not adopt that version of the facts for purposes of ruling on a summary judgment motion.

The Court found that the video clearly showed that Deputy Scott did not violate the Fourth Amendment. In determining this, the Court reviewed the video and held consistently with Graham v. Connor, 490 U.S. 386 (1989) that the question the Court needed to determine was whether the officer’s actions were objectively reasonable. The video was the key factor in the Supreme Court’s overruling the trial court and Eleventh Circuit’s denial of qualified immunity.

Scalia’s opinion seems consistent with earlier court rulings from the objective reasonableness standard standpoint and in a review of qualified immunity. The difference here is the videotape of the pursuit which clearly takes this case away from the normal presumption. The Court stated: “. . . [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.”

In fact, the Court found by reviewing the video that Harris’ flight from police in this case posed “extreme danger to human life” and clearly posed “an actual or imminent threat to the lives of any pedestrians who might have been present, to other civilian motorists, and to the officers involved in the chase.”

The case is not a pass to allow pursuits at no risk to the pursuer. This case must be construed in accordance with the facts presented through the video. It is a beneficial case to the defense of law enforcement officers. Yet, when reading this decision, it is clear that it deals with the Fourth Amendment and the individual or individuals pursued. The Court was clear when it found: “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.”

Police pursuits are always a risky undertaking and should be engaged in only under appropriate circumstances. If the department has the in-car camera and can show the dangers of the pursuit to the motoring public, then that can greatly enforce the defense of the pursuing officer as related to a seizure under the Fourth Amendment.

Again, Scott v. Harris is a significant victory for law and order in this country. However, liability to innocent third parties is generally judged as a statutory issue governed within each state independently. As to state tort negligence issues and pursuits under state law, stay tuned for Part 2 of “Police Use of Emergency Vehicles” for that discussion.

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