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Police High-Speed Pursuits: Giving Police the Authority to Intervene Before the Public is Harmed

PUBLISHED ON *October 19, 2016* *February 8, 2017* by *Kevin Ballard*

Police Pursuits. The idea brings to mind thoughts of bank robbers fleeing from the police after committing a daring heist, only to be pursued by inept cops that wind up crashing into each other as the robbers drive away in perfect Hollywood fashion. However, police pursuits are rarely as glamorous and thrilling. In reality, they are terrifying and dangerous. In fact, according to the National Highway Traffic Safety Administration (<http://www.nhtsa.gov/>) (NHTSA) more than 5,000 bystanders or passengers have been killed in police pursuits since 1979

In recent years there has been a call for police departments to limit their pursuit of fleeing suspects. A simple google search reveals the continuous calls for police to stop pursuing suspects unless they are considered dangerous or committed known violent felonies. For instance, in Jackson, Mississippi, Councilman Kenneth Stokes (<http://wjtv.com/2016/01/01/jackson-councilman-under-fire-for-telling-citizens-to-throw-rocks-at-police/>), in reference to police pursuits coming into his ward, went as far to suggest to the local population “[l]et’s get rocks, let’s get bricks and let’s get bottles and start throwing

them and then [police] won't come in here anymore." Similarly, in Washington D.C., Charlie Viverette's mother claimed (<http://www.usatoday.com/story/news/2015/07/30/police-pursuits-fatal-injuries/30187827/>) police should not have been chasing the suspect that hit her son, killing him. Like Charlie Viverette's mother, many wish to place the blame for such injuries at the feet of the police rather than the fleeing suspect. In those cases, where the police due pursue a suspect and the pursuit ends with the suspect injured or killed, the police not only face criticism from the public, but the department and the individual officers involved become the subject of a civil rights lawsuit.

TRADITIONAL POLICE METHODS USED TO END HIGH SPEED PURSUITS

In attempting to terminate a police pursuit there are a variety of tactics an officer may use. Officers may attempt to "box" a vehicle (<https://www.youtube.com/watch?v=fX9VlxkGlgY>) in by placing cruisers around the suspect's vehicle and gradually slowing their own speed, forcing the driver to stop. Other methods include using spike stops (<https://www.youtube.com/watch?v=9Wqx-PTeWUw>) or the most notable precision immobilization technique (<https://www.youtube.com/watch?v=qqn8pqsUA8Y>), also known as the "PIT maneuver." During a PIT maneuver, the pursuing officer uses their front push bumper to strike a fleeing vehicles rear quarter panel/bumper of the vehicle, causing the vehicle to spin and end the pursuit. While these are the most common methods, they are not the only methods to end a pursuit. Each of these methods can involve a high degree of danger for the pursuing officers, the public and the fleeing suspect, as evident by this video (<https://www.youtube.com/watch?v=GKJCjbUI6t8>), where a fleeing suspect crashes into a police cruiser while trying to avoid spike strips.

CASE LAW PROTECTING POLICE USE OF FORCE DURING HIGH SPEED PURSUITS

The Supreme Court has addressed the issue of use of force in the context of police pursuits only four times. Two of their decisions dealt with vehicles attempting to flee a scene while officers were nearby. The other two, discussed below, addressed the police use of force during the actual high speed pursuit. In each case, the Supreme Court found that either the officer involved did not violate the Fourth Amendment or was entitled to qualified immunity under 42 U.S.C section 1983 (<https://www.law.cornell.edu/uscode/text/42/1983>).

The Supreme Court in 2007 first addressed the Fourth Amendment and use of force during a police vehicle pursuit. In Scott v. Harris (<https://www.supremecourt.gov/opinions/06pdf/05-1631.pdf>), an officer was found to not have violated the Fourth Amendment when the officer rammed a fleeing suspect off the road. Harris was rendered a quadriplegic after leading the police on a six-minute chase (<https://www.youtube.com/watch?v=qrVKSgRZ2GY>) that ended when Scott used the push bumper of his cruiser to ram Harris' vehicle, causing it to veer off into a ditch. The Court held that Scott did not violate the Fourth Amendment because Harris was an actual and imminent threat to the lives of any pedestrians who might have been present, other civilian motorists and the officers involved in the chase.

Harris argued that police should have ceased the pursuit instead of ramming his vehicle, and by ceasing the pursuit the public would have been equally protected. The Court refused to adopt a rule that would give incentives for suspects to escape simply by speeding, running red lights, and endangering the public. Rather, the Court adopted the more sensible rule that “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.”

The Supreme Court’s second decision involving police pursuits came just last year in November 2015, with the case of Mullenix v. Luna (<https://www.oyez.org/cases/2015/14-1143>). On March 23, 2010, Israel Leija Jr., lead police on high speed pursuit. During the 18-minute chase, Leija and the pursuing officers reached speeds between 85 and 110 miles per hour. Leija phoned the local police dispatcher while fleeing and told them he had a gun and threatened to shoot at the police if they did not abandon their pursuit. The dispatcher promptly relayed this information to all the officers involved.

While other officers pursued Leija, Trooper Mullenix drove to an overpass intending to set up a spike strip. Directly below the overpass another officer waited with a spike strip already deployed. Mullenix decided to consider a different tactic, shooting at the vehicle to disable it however, Mullenix was not trained in such a procedure. As Leija’s vehicle approached the overpass, Mullenix fired six shots, striking Leija four times in the upper body. Leija’s vehicle continued under the overpass, struck the spike strips, hit a median, and rolled. Leija was killed in the incident.

Relying on its precedent, the Supreme Court reversed the lower courts finding that Mullenix did not have qualified immunity. Instead, the Supreme Court held that Mullenix was entitled to qualified immunity because his actions did not violate clearly established precedent *beyond debate*.



CONCLUSION

While some continue to call for the police to stop pursuing only the most egregious or dangerous felonies in the name of public safety, perhaps it is more appropriate for departments to authorize officers to end high speed pursuits in an expedited manner. A fleeing suspect in a motor vehicle becomes a high speed missile aimed at the nearest unlucky innocent bystander who's done nothing more than be in the wrong place at the wrong time. In contrast, it is the suspect who has made the decision to flee in a motor vehicle, placing the public in danger. Perhaps this is why the Supreme Court has never found an officer's actions in a high-speed pursuit to be unreasonable. As Justice Scalia in *Scott* opined,

"we think it appropriate in this process to take into account...their relative culpability. It was [Harris], after all, who intentionally placed himself and the public in danger..."

By adopting a policy that reflects these case precedents, police officers will have the ability, with the constitutional authority, to end high-speed pursuits quickly before the public can be harmed. Rather than chase a suspect's vehicle for 11-minutes or blame the police, perhaps it is time that society places the blame at the feet of the individual who made the conscious decision to endanger the public. By allowing the police to quickly intervene, this will reduce a suspect's ability to crash into innocent motorist or pedestrians. In addition, those cases brought by suspects claiming a violation of the Fourth Amendment for a tactic during a high-speed pursuit that resulted in injury or death to the suspect, trial courts should evaluate each case beginning with a rebuttable presumption that a suspect who flees in a motor vehicle poses a danger to the public and officers. With this presumption, it is evident by Supreme Court precedent that when the police use tactics that include the use of deadly force to stop a high-speed pursuit, the actions by the officers do not violate the Fourth Amendment against unreasonable seizures. By adopting a policy that reflects this precedent, perhaps more innocent lives like Charlie Viverette, can be spared and the culpability of a high-speed pursuit can be placed where it rightfully belongs.

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