

**Civil Rights Actions**

**Qualified Immunity Protects Officers Who Fired 15 Shots After High-Speed Chase**



By Alisa Johnson

May 27 — Police officers are entitled to qualified immunity in a civil rights action stemming from their firing of 15 shots into a vehicle that had led them on a high-speed chase, the U.S. Supreme Court held May 27. (*Plumhoff v. Rickard*, U.S., No. 12-1117, 5/27/14)

The court also clarified an issue of appellate jurisdiction that had confused the lower courts.

The case began with a high-speed police chase involving a motorist who fled a traffic stop. The driver led multiple police cars onto a freeway, where one of the officers stated over the radio that the fleeing driver “tried to ram me.” Another officer stated that the driver was “trying to ram another car” and “we do have aggravated assault charges on him.” Later, three officers stated during depositions that the driver appeared to be trying to strike moving police cars. The driver exited the freeway and struck a police vehicle while making a sharp turn.

There were factual disputes. The parties disagreed over whether an ensuing head-on collision with another police car was the result of the driver losing control of the vehicle or was deliberate. The officers surrounded the vehicle and approached it on foot. The parties also disputed whether at that time the driver was pressing the gas or the vehicle was uncontrollably bouncing back and forth off the police cars.

At that point, one of the officers fired three shots into the vehicle. The vehicle reversed, and one officer had to step aside to avoid being hit. Another officer fired 10 shots toward the vehicle as it was moving forward and away from the officers, and a third officer fired two shots. Both the driver and his passenger were killed.

Most of the incident was captured on video by the police cars' cameras.

The survivors of the driver sued, claiming that the officers used excessive force in violation of the Fourth Amendment. They contended both that the Fourth Amendment did not allow the officers to use deadly force to terminate the chase and that, even if it did, the number of bullets fired was too great.

Both the district court and the U.S. Court of Appeals for the Sixth Circuit denied the officers qualified immunity, saying it could not find their actions to be reasonable as a matter of law.

Courts conducting a qualified-immunity analysis must decide whether a constitutional violation occurred and whether the right violated was clearly established. *Saucier v. Katz*, 533 U.S. 194, 69 CrL 337 (2001). Under *Pearson v. Callahan*, 555 U.S. 223, 2009 BL 10668, 84 CrL 444 (2009), judges considering qualified-immunity claims may begin the inquiry by addressing whether the alleged right was clearly established at the time.

**Shooting Was Reasonable**

In an opinion by Justice Samuel A. Alito Jr., the Supreme Court held that the officers' actions were objectively reasonable under the Fourth Amendment and that, even if they were not, the officers would still be entitled to qualified immunity because their conduct didn't violate any Fourth Amendment rule that was clearly established at the time of the events in question.

Although the court could have decided the case by simply holding that there was no clearly established law, it said it would be beneficial to the lower courts to first examine whether there was a Fourth Amendment violation.

The court found this case to be like *Scott v. Harris*, 550 U.S. 372, 2007 BL 12373, 81 CrL 131 (2007), which held that a law enforcement officer did not violate the Fourth Amendment rights of a fleeing motorist during a high-speed pursuit by using his patrol car to ram the other vehicle from behind in a way the officer knew would expose the driver to serious injury or death. The *Scott* court focused on the serious danger the plaintiff's driving posed to the public.

There is no basis to come to a different conclusion here, the court said. The decedent's “flight posed a grave public safety risk, and here, as in *Scott*, the police acted reasonably in using deadly force to end that risk,” it said.

The driver and the pursuing officers exceeded 100 miles per hour, and the chase lasted more than five minutes, during which time the decedent passed more than 24 other vehicles—“outrageously reckless driving,” the court said. Moreover, the chase didn't end when the car came “temporarily to a near standstill” because seconds later, the driver was spinning the wheels and shifting into reverse.

“The record conclusively disproves respondent's claim that the chase in the present case was already over when petitioners began shooting,” the court said. Under these circumstances, a reasonable officer would have concluded

**BNA Snapshot**

*Plumhoff v. Rickard*, U.S., No. 12-1117, 5/27/14

**Holding:** Police officers are entitled to qualified immunity for killing a fleeing driver and his passenger.

**Potential Impact:** Commentators see police given a wide latitude to use deadly force and more opportunities to appeal denials of qualified immunity.

that the driver was about to take off again and that, "if he was allowed to do so, he would once again pose a deadly threat for others on the road," it said.

### **Police May Neutralize Threat**

Turning to the plaintiffs' second contention, the court said, "It stands to reason that, if police officers are justified in firing at a suspect in order to end a severe threat to public safety, the officers need not stop shooting until the threat has ended." The shots were fired over a 10-second span, during which the decedent "never abandoned his attempt to flee" and even kept driving after being shot until he crashed.

As for the passenger who was also killed, the court said she was not a party to the case and that Fourth Amendment rights may not be vicariously asserted.

The court also held that *Brosseau v. Haugen*, 543 U.S. 194, 76 CrL 173 (2004), "squarely demonstrates that no clearly established law precluded petitioners' conduct at the time in question." *Brosseau* held that a police officer did not violate clearly established law when she fired at a fleeing vehicle to prevent possible harm to pedestrians and other drivers. In fact, the facts in this case are even more favorable to the officers, the court said.

The court also ruled that the circuit court properly exercised appellate jurisdiction in this case, saying that the appeal raises solely legal issues.

Justice Ruth Bader Ginsburg did not join the opinion's discussion of the reasonableness of the officers' actions. Justice Stephen G. Breyer did not join the discussion of the reasonableness of the number of shots fired.

### **Ruling Called Favorable to Police**

Jonathan R. Nash, a professor at Emory University School of Law, submitted an amicus curiae brief in the case. He described the decision as "a boon to law enforcement authorities."

"Going forward, one would expect the court's opinion to give law enforcement authorities considerable freedom to use force—even deadly force—to terminate high-speed chases without the fear of generating costly litigation and liability," Nash said.

***"One would expect the court's opinion to give law enforcement authorities considerable freedom to use force—even deadly force—to terminate high-speed chases without the fear of generating costly litigation and liability."***

**Jonathan R. Nash  
Emory University School of Law**

Like Nash, Lisa Soronen, executive director of the State and Local Legal Center, Washington, expressed approval that the court reached the reasonableness of the officers' actions even though it didn't have to. She praised the court's continuing reluctance to second-guess officers' split-second decisions under high stress. "People were really troubled by the video in this case and that the car was stopped briefly; the court wasn't," she said.

Christopher Wimmer, of Emergent Legal, San Francisco, also participated in submitting an amicus brief. According to him, the court took a "factual determination of whether the officers acted

reasonably in this case out of the hands of the more diverse jury pool." Both here and in *Scott*, the court may have relied too heavily on the video of the events "even though a Harvard empirical study we cited demonstrated that the video evidence in *Scott* was subject to varying interpretations, and even though the courts below found that the evidence in this particular case left issues for trial," he said.

"Most troublingly, the court does not seem to have reflected on the impact of its decision on the Seventh Amendment civil jury trial right in this era of pervasive video monitoring," Wimmer said.

Ohio State Solicitor Eric E. Murphy, who also took part in an amicus brief, noted that he and other state officials were interested in the jurisdictional issue. The court's holding on that issue "should have a significant impact for all state and local officials who seek to take early appeals from a trial court's denial of the officials' qualified-immunity claims," he said. "Many lower appellate courts had struggled over when they have jurisdiction to resolve those types of early appeals."

Michael Mosley, of North Little Rock, Ark., argued for the officers. Gary K. Smith, Memphis, Tenn., argued for the plaintiffs.

To contact the reporter on this story: Alisa Johnson in Washington at [ajohnson@bna.com](mailto:ajohnson@bna.com)

To contact the editor responsible for this story: Mike Moore at [mmoore@bna.com](mailto:mmoore@bna.com)

### **For More Information**

Full text at

[http://www.bloomberglaw.com/public/document/Plumhoff\\_v\\_Rickard\\_No\\_121117\\_US\\_May\\_27\\_2014\\_Court\\_Opinion\\_and\\_95\\_CrL\\_292](http://www.bloomberglaw.com/public/document/Plumhoff_v_Rickard_No_121117_US_May_27_2014_Court_Opinion_and_95_CrL_292)

---

Contact us at <http://www.bna.com/contact/index.html> or call 1-800-372-1033

ISSN 1525-2213

Copyright © 2014, The Bureau of National Affairs, Inc. Reproduction or redistribution, in whole or in part, and in any form, without express written permission, is prohibited except as permitted by the BNA Copyright Policy.

