



SCOTT V. HARRIS

The final word on State claims



By Brian S. Batterton, J.D.

Written For and Distributed by Public Agency Training Council. For duplication & redistribution of this article, please contact the Public Agency Training Council by phone (1.800.365.0119), or by email (newsletter@patc.com).

Harris v. Coweta County, et al., No. 07-13941, 2008 U.S. App. LEXIS 353 (11th Cir. 2008)

In 2007, the United States Supreme Court decided *Scott v. Harris*¹, which vastly limited Fourth Amendment liability arising from vehicle pursuits. This case began in 2001, when Victor Harris was clocked traveling 73 mph in a 55 mph speed zone. Harris fled the traffic stop and caused a pursuit that lasted approximately 10 miles. During the pursuit, he sped through a shopping center and crashed into a police car, he drove over 90 mph on two lane roads, he swerved around at least 12 other motorists, he caused cars to stop, and he ran through red lights. There were multiple police officers in pursuit of the suspect. Finally, the lead officer, Deputy Scott, rammed Harris which caused him to run off the road and crash. Harris was rendered a quadriplegic. He subsequently sued Deputy Scott for violating his Fourth Amendment rights and alleged that it was not reasonable to use deadly force to end the pursuit because he had only committed a traffic violation. Therefore, the issue before the United States Supreme Court was as follows: *Can an officer take actions [pursuit intervention] that place a fleeing motorist [suspect] at risk of serious injury or death in order to stop the suspect's flight from endangering the lives of innocent bystanders?* The Court held the following:

A police officers attempt to terminate a dangerous, high-speed car chase that threatens the lives of innocent bystanders does not violate the 4th Amendment, even when it places the fleeing motorist at risk of serious injury or death.

In light of this rule, there is very little federal constitutional liability for officers and law enforcement agencies when they injure suspects using various pursuit intervention tactics when the suspect is placing the lives of innocent bystanders at risk.

The case was then remanded back to the Eleventh Circuit Court of Appeals and they vacated their earlier denial of Deputy Scott's qualified immunity. However, the case did not end there. On final appeal, Victor Harris argued against the district courts earlier grant of summary judgment to Coweta County and Deputy Scott on this state law (Georgia) claims for negligence and battery.

©2008 Article published in the free PATC E-Newsletter

Link to Article online: <http://www.patc.com/weeklyarticles/scott-v-harris-state-claims.shtml>
www.patc.com | www.llrmi.com | www.fsti.com | www.school-training.com | 1-800-365-0119

The issue before the court was then whether there is sufficient evidence to support a finding that Deputy Scott acted with “actual malice or actual intent to cause injury.” This is the legal standard in Georgia which is required to defeat the officers state immunity, known as official immunity.

The Eleventh Circuit first noted that Georgia has a statute that states the following:

When a law enforcement officer in a law enforcement vehicle is pursuing a fleeing suspect in another vehicle and the fleeing suspect damages any property or injures or kills any person during the pursuit, the law enforcement officer's pursuit shall not be the proximate cause or a contributing proximate cause of the damage, injury, or death caused by the fleeing suspect unless the law enforcement officer acted with reckless disregard for proper law enforcement procedures in the officer's decision to initiate or continue the pursuit.ⁱⁱ

However, as the court noted, this statute on pursuit liability and causation refers to situations when suspects crash into, and injure, third parties. When the suspect crashes and injures only himself, the rule is different.ⁱⁱⁱ In the *City of Winder v. McDougald*, a juvenile female was killed when she crashed her parent's car while fleeing from police. The Supreme Court of Georgia concluded that

..because the legislature enacted [OCGA 40-6-6] subsection (d)(2) to limit liability when a fleeing suspect injures an innocent person...the legislature did not intend simultaneously to expand liability to cover injuries to the fleeing suspect...the fleeing suspect may be able to recover for her own injuries if an officer acts with an actual intent to cause injury.^{iv}

The court noted that the Georgia Supreme Court has previously defined “actual intent to cause injury” as “an actual intent to cause harm to the plaintiff, not merely an intent to do the act purportedly resulting in the claimed injury... This definition of intent contains aspects of malice, perhaps a wicked or evil motive [emphasis added].”^v Georgia has further termed this “actual intent to cause injury” as “actual malice.” “Actual malice” has been defined as a “deliberate intent to do wrong.”^{vi}

The Eleventh Circuit Court of Appeals, after an examination of Georgia law and the evidence presented in this case, determined that Harris did not present any evidence of malice or an “actual intent to cause injury” on the part of Deputy Scott. Therefore, summary judgment for all

ⁱ *Scott v. Harris*, 127 S.Ct. 1769 (2007)

ⁱⁱ *O.C.G.A. § 40-6-6(d)(2)*

ⁱⁱⁱ *Harris v. Coweta County, et al.*, No. 07-13941, 2008 U.S. App. LEXIS 353 (11th Cir. 2008) (citing *City of Winder v. McDougald*, 276 Ga. 866, 583 S.E.2d 879 (Ga. 2003))

^{iv} *Harris*, No. 07-13941 at 4-5 (quoting *Winder v. McDougald*, 583 S.E.2d at 880-881)

^v *Kidd v. Coates*, 271 Ga. 33, 518 S.E.2d 124 (Ga. 1999)(quoting *Frame v. Boatmen's Bank*, 782 S.W.2d 117, 121 (Mo. App. 1989))

^{vi} *Murphy et al. v. Bajjani*, 282 Ga. 197, 203, 647 S.E.2d 54, 60 (Ga. 2007)