Motor Vehicle Pursuit Liability

By Brian S. Batterton

Liability for police pursuits originates from two separate sources. The first is federal constitutional law, particularly the Fourth and Fourteenth Amendments. Fourth Amendment liability is possible when an officer, through a means intentionally applied (such as P.I.T., ramming, or stop sticks), causes injury to a suspect. Fourteenth Amendment liability occurs when there is injury to a third party or where the suspect is injured but the officer(s) did not use force against the suspect. For example, the suspect crashes on his own or the suspect or officer crashes into an innocent third party. The second source of vehicle pursuit liability is state law. State law liability comes in the form of specific state statutes or case law relating to negligence or governmental vehicle use.

Federal Claims

In light of United States Supreme Court precedent, federal constitutional liability for vehicle pursuits is extremely limited. In the City of Sacramento v. Lewis, officers observed a speeding motorcycle being ridden by Willard and carrying a passenger, Lewis. Officers attempted to stop the motorcycle and it fled. The officers pursued the motorcycle in a chase that lasted about 75 seconds and covered approximately 1.3 miles, at times reaching speeds up to 100 miles per hour (mph). The motorcycle subsequently crashed, and Lewis fell in the path of a police car that was following only about 100 feet behind. The officer struck Lewis and killed him. Lewis’ estate sued the officers for violating his Due Process rights under the Fourteenth Amendment. The United States Supreme Court held the following:

A violation of due process occurs only when the police officer has a “purpose to cause harm unrelated to the legitimate object of arrest.” It must be this type of purposeful harm in order to shock the conscience.

Therefore, since 1998, there has been very limited liability for 14th Amendment Due Process claims for injuries to third parties and suspects who crash on their own (not due to force intentionally applied by the police).

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In contrast to Fourteenth Amendment liability which originates when someone is accidentally injured, Fourth Amendment liability is possible when an officer intentionally applies some type of force to the suspect’s vehicle, and an injury to the suspect results. In April of 2007, the United States Supreme Court decided *Scott v. Harris*, which involved a pursuit where the police seriously injured a suspect when they rammed him off the road to end a vehicle pursuit. The pursuit in Scott began when he was clocked traveling 73 mph in a 55 mph speed zone. Scott fled the traffic stop and caused a pursuit that lasted approximately 10 miles. During the pursuit, Scott sped through a shopping center and crashed into a police car. He drove over 90 mph on two lane roads, and he swerved around at least 12 other motorists. He also caused cars to stop, and he ran through red lights. Additionally, there were multiple police officers in pursuit of the suspect. Finally, the lead officer rammed Scott which caused him to run off the road and crash. Scott was rendered a quadriplegic. He subsequently sued Deputy Harris 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 officer’s 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.

On August 14, 2007, the 11th Circuit Court of Appeals decided *Beshers v. Harrison*, in which they applied the rule set forth in *Scott v. Harris*. In *Beshers*, City of Taccoa (GA) officers received a report that a man who appeared to be intoxicated, later identified as Beshers, entered a convenience store and attempted to steal beer. In Georgia, this is the misdemeanor crime of theft by shoplifting. An officer responded to the store and viewed video surveillance footage of the suspect’s truck.

A short while later, the officer observed a truck matching the description of the suspect vehicle. The officer watched the truck as it pulled out of a gas station onto a busy four-lane road and failed to stop at a stop sign. At this point the officer initiated a traffic stop by activating his blue lights. Beshers continued to drive a few hundred yards and stopped in a shopping center just long enough to let his passenger out of the truck. Beshers then drove out of the parking lot back onto the highway and fled. By now, the officer had activated both his blue lights and his siren and was in pursuit. At this point the suspect was driving approximately 55 mph in a 45 mph speed zone, he was weaving through traffic, and he occasionally straddled the both southbound lanes.
At this point the pursuit was approaching two other police officers. One officer was ordered to attempt to block the suspect by driving into his path. This officer did as ordered, and rather than stopping, Beshers crossed the center line and drove toward oncoming traffic to get around the officer. Once around the officer, Beshers returned to the correct side of the roadway.

Another officer joined the pursuit which brought the total number of police vehicles directly involved in the pursuit to four. Beshers continued to weave through traffic and force numerous motorists to the side of the road. As he approached one intersection, his lane was blocked by a car that was stopped at a red light. Beshers drove onto the shoulder to go around this car and subsequently crashed into the car. He continued to flee after the collision.

Beshers then turned onto a narrow, winding two-lane country road that had homes on both sides of the road. He continued to pass vehicles by crossing the double yellow center line (at least six times) and forced other motorists to pull to the side of the road. Beshers was driving 55 to 65 mph at this point of the pursuit. An officer finally passed Beshers after several attempts in an effort to slow him down. Beshers countered by crossing the center double yellow line in an attempt to swerve around the officer. The officer swerved in order to counter Beshers move and Beshers rear-ended the police car. Beshers then swerved back onto the correct side of the road and the officer followed. However, Beshers was not done trying to pass the officer. He then swerved onto the shoulder and began passing the officer on the right. As Beshers’ car passed the officer, he attempted to swerve back onto the roadway. At this time the front passenger side of the police car made contact with the rear quarter panel of Beshers’ truck which caused the truck to skid and flip several times. Beshers died at the scene.

The court noted that, based upon the video tape, a reasonable juror could conclude either that the officer intentionally made contact with Beshers truck or that it was an accident caused by Beshers not completely clearing the police car before swerving back onto the road. Thus, whether or not the officer intentionally struck Beshers’ truck could go either way. However, since this was an appeal of a “motion of summary judgment,” the factual dispute must be viewed in favor of Beshers. Thus, for the purpose of this appeal, the court assumes that the officer intentionally made vehicular contact with Beshers vehicle in order to end the pursuit. This is important because it means that the case will be controlled by the Fourth Amendment.

As a reminder, vehicle pursuits are Fourth Amendment cases when the officer, through a means intentionally applied, seizes the suspect. Fourth Amendment cases are governed by a standard of “objective reasonableness.” This simply means in light of the facts and circumstance of the particular case at issue, were the officers actions objectively reasonable, without regard to the officer’s underlying intent or motivation. This involves a determination of whether a reasonable officer would have believed the level of force was necessary in the situation at hand.

Cases such as this, where the force used was likely to result in serious bodily injury or death, were governed by the standards of deadly force set forth in Tennessee v. Garner. Recently however, the United States Supreme Court limited the applicability of Garner when dealing with
vehicle pursuits in its decision in *Scott v. Harris*. The 11th Circuit then examined the reasoning of the United States Supreme Court in *Harris* to this case.

First, the court stated that it did not matter whether or not the officer’s actions constituted deadly force as long as the officer’s actions were *reasonable*.

Second, the court took into consideration that the risk of bodily harm that the officer’s actions pose to the suspect must be weighed against the governmental interest of ensuring public safety and eliminating the threat caused by the fleeing suspect. The Supreme Court said that:

> When considering this risk "we think it appropriate in this process to take into account not only the number of lives at risk, but also their relative culpability. It was the suspect, after all, 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 that the officer confronted." 

Third, the court rejected the proposition that the police can protect the public by calling off the pursuit. Rather, the court reasoned that calling off a pursuit does not guarantee that a suspect will stop driving recklessly and may create “perverse incentives” for suspects to flee and drive recklessly to evade arrest.

Lastly, the 11th Circuit considered the Supreme Court’s rule from *Harris*. Particularly, the Supreme Court held

> A police officer’s 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.

When applying the reasoning of the United States Supreme Court in *Harris* to the facts of this case, the 11th Circuit noted that the defendant officer in this case had reason to believe that Beshers was a danger to the pursuing officers and other motorist and was driving under the influence of alcohol. After all, the officer observed Beshers weaving through traffic, crossing the double yellow center line, driving on the wrong side of the road and forcing other motorist off of the road. The officer witnessed Beshers crash into another car and flee from the scene, and he was also personally struck by Beshers’ truck while traveling 55 to 65 mph. The court then stated that “as in *Harris*, Beshers ‘intentionally placed himself and the public in danger by unlawfully engaging in the reckless, high-speed flight.’” It was, after all, Beshers who “ignored the ‘multiple police cars, with blue lights flashing and sirens blaring’ that had been chasing him for nearly 15 minutes.” Based upon the facts above, the 11th Circuit concluded that if [the officer] intentionally used deadly force to seize Beshers, the use of such force was reasonable.

It should also be noted that, although this case was not decided under the Fourteenth Amendment standard, the officer would most likely have no liability had this standard been applied. In review, to have Fourteenth Amendment liability the officer would have to act with a
**purpose to cause harm unrelated to the legitimate object of arrest such that the officer’s conduct would be said to shock the conscience.** This standard would not seem to apply here because, the officer’s pursuit of Beshers was only intended to affect the arrest and not to cause harm in any way beyond that purpose.

Therefore, federal liability is currently very limited regarding vehicle pursuits.

**State Claims**

Law enforcement managers must not only consider potential liability for pursuits in federal court, but must also consider various sources of liability under state law. Various states have motor vehicle tort claims statutes that govern liability for negligence under state law. This article will now consider state claims in several states.

**Georgia**

First, we will look at Georgia where sovereign immunity, designed to offer immunity from liability to government entities, is waived by statute in claims for the negligent use of a covered motor vehicle in regards to municipalities and counties. In 2007, total liability can reach $450,000 and as of January 1, 2008 this will increase to $700,000 depending on the number of people injured. However, if a municipality or county has an insurance policy with limits that are higher than required by statute, then the maximum amount of liability will be the policy limits. The only law enforcement agencies this waiver of immunity does not apply to are state agencies. They are governed by the State Tort Claims Act which is not discussed in this article.

Further, in Georgia, there are different legal standards to apply when determining whether liability exists. These standards are applied according to who is injured and who causes the injury. These categories are as follows: (1) A suspect being pursued by police crashes into an innocent third party; (2) A police officer pursuing a suspect crashes into an innocent third party; and (3) A police officer crashes into a suspect or otherwise causes a suspect who is fleeing to be injured.

We will now examine the first category. If a suspect who is being pursued by police crashes into an innocent third party, then the officer’s pursuit shall not be considered a proximate cause of the injury or damage unless the officer acted with reckless disregard for proper law enforcement procedures in the officer's decision to initiate or continue the pursuit. Additionally, even though there was a reckless disregard for law enforcement procedures, the existence of this reckless disregard shall not in and of itself establish causation for liability.

Evidence required to defeat a summary judgment motion by a government entity in a situation such as this is usually only an expert opinion that the officer’s decision to initiate the pursuit was in reckless disregard for proper law enforcement procedure.

In light of O.C.G.A. § 40-6-6(d)(2), the question arises as to what constitutes “proper law enforcement procedure.” Generally, in Georgia, this will most likely be considered the law enforcement agencies own pursuit policy. Thus, if an officer in Georgia initiates or continues a
pursuit in reckless disregard of proper law enforcement procedures (the agency’s own pursuit policy), and an innocent third party is injured as a result, the agency may have liability under state law, even though there is no liability under federal law.

The second possibility for liability in Georgia is when an officer in pursuit of a suspect crashes into an innocent third party and causes injury. In this situation, the issue would be whether the officer drove “with due regard for the safety of all persons.” In *Williams v. Solomon*, a police officer who was pursuing a suspect crashed into Williams, an innocent third party, when he drove through a stop sign without activating his emergency equipment. The issue was whether the officer drove with due regard for the public’s safety in accordance with O.C.G.A. 40-6-6(d)(1). The court did not answer this issue however, because under Georgia law in existence at the time of the case, the officer was entitled to official immunity and the city was entitled to sovereign immunity. Now, due to a statutory waiver of sovereign immunity, this defense would not be available to a city or county in a case such as this. Thus the legal standard that would apply is the due regard standard of O.C.G.A. § 40-6-6(d)(1). It is interesting to note that this case is one which prompted the Legislature to change the law and waive sovereign immunity regarding negligent operated motor vehicles.

The final possibility for liability in Georgia is when an officer in pursuit of a suspect causes injury to the suspect. In the City of *Winder v. McDougald*, an officer initiated a pursuit of a suspect, who later turned out to be a 14 year old female who had taken her parents car, for driving without headlights. The juvenile driver subsequently lost control of her vehicle and crashed into a telephone pole which resulted in her death. An expert stated that the officer acted “in reckless disregard of proper law enforcement procedures” in deciding to continue the pursuit. In the lawsuit, the Supreme Court of Georgia had to decide whether this “reckless disregard” standard was appropriate. The court decided that the intent of the Legislature in enacting O.C.G.A. § 40-6-6(d)(2) was to limit liability to circumstances where the suspect injures an innocent third party and it did not intend to expand liability of officers and agencies where suspects are injured as a result of the pursuit. Thus, when suspects are injured in the pursuit, liability will only exist if an officer acts with “actual malice,” which is an actual intent to cause injury or a deliberate intent to do wrong. If actual malice is not found, the officer is entitled to official immunity, because the decisions to initiate a pursuit and the driving during pursuit, are held to be discretionary acts. In Georgia, when an officer is performing a discretionary act, he is entitled to official immunity from suit as long as he did not act with actual malice. This standard has been held to apply even where the officer violates his own agencies policy and bumps a fleeing vehicle which results in the death of the fleeing suspect.

In conclusion, most effective way for an agency to limit their liability from pursuits is to have current policy that accounts for various sources of liability and proper police practices, provide training to officers on the policy and enforce the policy. A pursuit policy should encompass general “best practices” in pursuits and balance the need to apprehend the suspect with the risk posed to the public by continuing the pursuit. After the agency writes the policy, each officer should receive training on the policy and any pursuit intervention techniques allowed for in the policy. It is not sufficient, in a high liability area such as pursuits, to write a policy and place it an

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officer’s “mailbox.” Lastly, the policy must be enforced. If an agency has a great policy, but that policy is not followed, it will be easy for a plaintiff’s expert to conclude that an officer did not comply with “proper law enforcement procedures,” particularly the agencies own policy.

South Carolina

In South Carolina, local government entities and the state have immunity from liability if the incident from which alleged liability is incurred involved “the exercise of discretion or judgment by the governmental entity or employee or the performance or failure to perform any act or service which is in the discretion or judgment of the governmental entity or employee.” However, it is not enough to merely show that the government agent was acting in a discretionary capacity; it must also be shown that the government agent acted within accepted professional standards in his effort to resolve the situation before him.

This is illustrated in Clark v. South Carolina Department of Public Safety. The facts of this case are as follows:

On April 5, 1997, at approximately 1:30 a.m., a trooper observed Johnson driving a van erratically, speeding (57 mph in a 45 mph zone) and failing to use his turn signals. The trooper activated his blue lights and siren and attempted to stop the van, but Johnson did not stop. The trooper called in the van’s license plate number and advised dispatchers that he was pursuing the van.

During the pursuit, Johnson stopped the van in a gravel parking lot. The trooper exited his vehicle and approached the van. Johnson then suddenly put the van in reverse and attempted to run over the trooper. He then sped off and the pursuit continued. Johnson subsequently ran off the left side of the road and spun around. The trooper testified that he radioed in his belief Johnson was going to wreck.

Another trooper joined the pursuit and attempted to slow the van by pulling in front of it. Johnson drove around this trooper. This second trooper then took the number two position in the pursuit. The secondary trooper in the pursuit then took over most of the radio communications so the lead trooper could focus on the pursuit.

The pursuit continued as dispatchers notified the troopers the van had been reported stolen. Traffic was light as they drove through a straight portion of the road. The lead trooper then attempted to pass Johnson on the left to get in front of the van in order to slow its speed, but was unsuccessful when Johnson tried to run him off the road. As Johnson continued to flee, he ran a red light at an intersection, and narrowly missed colliding with another car. The troopers slowed when they proceeded through the intersection.

Johnson encountered a pickup truck in his lane of traffic approximately five or six miles before reaching the North Carolina border. He tried to pass the truck on the right in the emergency lane, but the truck also pulled to the right. Johnson immediately swerved to the left, crossed the centerline, and collided head-on with Clark’s van. The van became airborne before crashing into
the woods and catching fire. Clark died as a result of the collision.

During the pursuit, there were two sergeants on duty. One testified that he was the district supervisor on call that night. This sergeant inquired whether a supervisor was needed when he heard the trooper originally broadcast the pursuit, but he could not recall whether he had actually monitored any portion of the pursuit. The other sergeant did not monitor the pursuit because he was handling the administration of a breathalyzer examination. However, this sergeant responded to the scene after the collision.\textsuperscript{xviii}

Clark’s (the plaintiff) expert testified that the standard of care for a vehicle pursuit requires the involved officers to continuously evaluate risks of the pursuit in comparison to the need to apprehend the suspect. This expert then testified that he believed the pursuit should have been terminated because it was apparent, the longer the chase continued, that Johnson was not going to stop. He also stated that supervisors should have fully monitored the pursuit.

In finding that the pursuit should have been terminated, the Court of Appeals considered four facts. First, it was apparent the Johnson would do whatever it would take in order to escape. Second, Johnson attempted to run a trooper off the road at one point and then almost collided with another vehicle. Third, Johnson was within five or six miles of the North Carolina border at which point the troopers would have been required to terminate the pursuit. Lastly, the troopers realized a crash was imminent which was evidenced by the fact that he radioed that information to a dispatcher. Based on these facts, the “heightened dangerousness of the pursuit” required that it should have been terminated.\textsuperscript{xxi}

The Supreme Court of South Carolina agreed with the analysis of the Court of Appeals. The Court went on to state

\begin{quote}
\textit{Police officers have a duty to apprehend those who violate the law and the decision to commence or continue pursuit of a fleeing suspect is, by necessity, made rapidly. However, a police officer's paramount duty is to protect the public. We acknowledge circumstances exist when it is reasonable for a police officer to adopt a course of conduct which causes a high risk of harm to the public. Nevertheless, such conduct is not justified if the public is subjected to unreasonable risks of injury as the police carry out their duties. We conclude that a law enforcement officer is not immune from liability under Section 15-78-60(5) for the decision on whether to begin or continue the immediate pursuit of a suspect.}\textsuperscript{xxii}
\end{quote}

Thus, in order to qualify for discretionary immunity, the government (by its agent) must have, when faced with alternatives such as to pursue or not to pursue, weighed the competing alternatives and utilized accepted professional standards to resolve the issue before them. In Clark, because the Court concluded that the troopers did not act within accepted professional standards, immunity was denied. The jury subsequently returned a
verdict of $3.75 million which was apportioned 80% to Johnson and 20% to the Department of Public Safety. The judgment against the Department was further reduced to $250,000 due to state law at that time.

Kentucky

Lastly, we will examine pursuit liability in the Commonwealth of Kentucky. In Kentucky, government officers have qualified immunity from liability when they undertake discretionary acts; however, they have no immunity for negligently performed ministerial acts. In Yanero v. Davis, the Supreme Court of Kentucky described qualified immunity for public officers being sued in their individual capacities as follows:

Qualified official immunity applies to the negligent performance by a public officer or employee of (1) discretionary acts of functions, i.e., those involving the exercise of discretion and judgment, or personal deliberation, decision, and judgment; (2) in good faith; and (3) within the scope of the employee's authority.

An act is not necessarily "discretionary" just because the officer [or employee] performing it has some discretion with respect to the means or method to be employed [emphasis added].

Thus, in order to be shielded by qualified immunity for negligent acts, the government officer must have been involved in a discretionary act, undertaken in good faith, and within the scope of the government official's authority. However, just because the government officer has some level of discretion with respect to the method of the act, does not, in and of itself, make the act discretionary.

The opposite, then, of a “discretionary” act, is a “ministerial” act. A ministerial act is one which “requires only obedience to the orders of others, or when the officer's duty is absolute, certain, and imperative, involving merely execution of a specific act arising from fixed and designated facts.” Government officials have no immunity for negligently performed ministerial acts.

In Jones v. Lathram, the Supreme Court of Kentucky applied the above rules to pursuit liability. This case began when a trooper answered a call for assistance from a deputy where the deputy was last heard over the radio telling a motorist “I said get back in your car!” After this radio transmission, the deputy could not be reached. The trooper activated his emergency lights and siren and drove in “emergency” mode toward the deputy. When the trooper entered into a blind intersection, he collided with a truck, killing the driver. The driver’s estate sued the trooper.

The trial court dismissed the case against the government based on sovereign immunity. Further the trooper was found to have qualified immunity because he was performing a discretionary function when driving in emergency mode. The Court of Appeals affirmed the decision of the trial court and the plaintiff appealed to the Supreme Court of Kentucky.

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The issue before the court was whether the act of driving in emergency mode is discretionary, thus entitling officers to qualified immunity for negligence, or ministerial, thus not affording the liability protection of qualified immunity for officers.

The court then applied the rule in *Yanero* to this case. In doing so, they held the following:

> the act of safely driving a police cruiser, even in an emergency, is not an act that typically requires any deliberation or the exercise of judgment. Rather, driving a police cruiser requires reactive decisions based on duty, training, and overall consideration of public safety... Upon the foregoing analysis, we conclude that whether [the] trooper was negligent in operating his police cruiser, with due regard being given to all the facts and circumstances, is a question for resolution by the trier of fact. As such, summary judgment was inappropriate and this cause is remanded to the trial court for further consistent proceedings.xxxv

In other words, the court held that the act of driving a police vehicle in emergency mode is not a discretionary act that requires deliberation, but rather a ministerial act where the officer makes decisions based upon duty, training and considerations of public safety. Thus, the trooper was not entitled to qualified immunity, and, as such, the case should go to a jury to decide whether or not the trooper drove negligently.

**Conclusion**

In conclusion, we see that liability under the Fourth and Fourteenth Amendments to the United States Constitution has been greatly limited under *Scott v. Harris* and *Sacramento v. Lewis*. However, individual state statutes and case law constitute a separate area of liability in which officers and policy makers alike must be familiar. Just in this article, we see from the survey of Georgia, South Carolina and Kentucky, that liability under state law varies greatly. Since this area of law may differ greatly from state to state, policy makers are encouraged to consult with their county or city attorneys in implementing policy in the area pursuits and emergency vehicle operation. As always, general legal questions on this and other topics can be directed to patc.com in the email newsletter section.

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ii *Id.*
vi 471 U.S. 1 (1985)
vi *Scott v. Harris*, at 1778
viii *Id.*
ix *Id.*
x *Id.* at 1779
xii\textit{Beshers} at 21 (quoting \textit{Harris} at 1778)

xiii \textit{Id.}

xiv \textit{Id.}

xv O.C.G.A. § 36-92-2

xvi O.C.G.A. § 40-6-6(d)(2)

xvii \textit{Id.}


xx O.C.G.A. § 40-6-6(d)(1)

xxi 274 Ga. 122 (549 S.E. 2d 341) (2001)


xxiii \textit{Id. at} 867

xxiv \textit{Id. at} 868

xxv O.C.G.A. § 40-6-6(d)(1)

xxvi \textit{Id. at} 867


xxviii \textit{S.C. Code Ann. § 15-78-60(5)}


xxx \textit{Id. at} 577

xxxi \textit{Id. at} 578

xxxii \textit{Id. at} 578-579

xxxiii \textit{Yanero v. Davis,} Ky., 65 S.W. 3d 510 (2001)

xxxiv \textit{Id. at} 522

xxxv \textit{Id.}


xxxvii \textit{Id. at} 53-54