



NYMIR Law Enforcement

NEWSLETTER

Scott v. Harris:

MAKING A CASE FOR PATROL CAR CAMERAS

High-speed car chases are often the subject of sensational news coverage. Almost nightly one can turn on the news and watch a protracted car chase, as officers in patrol cars chase a suspect's vehicle down interstate highways, narrow residential streets and alleyways. In reality, high-speed car chases are a dangerous aspect of a patrol officer's duties, and put in jeopardy the lives of the pursuing officers, fleeing suspects, and innocent bystanders. In some instances, an officer is blamed when the chase ends in tragedy. That's when a patrol car camera can be an officer's best friend. The camera captures events as they unfold and often contradicts an accuser's version of the events. Such was the case in the recent United States Supreme Court decision in *Scott v. Harris*, 127 S. Ct. 1769 (2007). (Note: the video footage can be viewed at www.supremecourtus.gov/opinions/06slipopinion.html.)

In *Scott*, the plaintiff was clocked at 73 miles-per-hour in a 55 mile-per-hour speed zone. The Georgia Sheriff's Deputy who clocked the plaintiff's speed activated his blue flashing lights. Instead of pulling over, the plaintiff initiated a high-speed chase down a two-lane road at speeds over 85 miles-per-hour. The pursuing deputy reported the pursuit to dispatch. Defendant, Deputy Timothy Scott, heard the dispatch and joined the pursuit along with other officers.

Deputy Scott eventually took over as the lead pursuit vehicle. More than six minutes after the chase had begun, Deputy Scott received authorization from the supervisor on duty that night to attempt a Precision Intervention Technique ("PIT"), which causes a fleeing vehicle to spin to a stop. He later reconsidered his decision to employ the PIT maneuver because he was concerned the vehicles were moving too quickly to safely execute the maneuver. Instead, once the vehicles were on a rural roadway with no other traffic in sight, Deputy Scott applied his push bumper to the rear of plaintiff's vehicle. The plaintiff lost control of his vehicle and crashed. He was rendered a quadriplegic as a result.

The plaintiff filed suit against Deputy Scott alleging use of excessive force and an unlawful seizure under the Fourth Amendment. In defense, Deputy Scott asserted both qualified immunity and that the force employed was reasonable. He ultimately moved for summary judgment. The Supreme Court considered the following question: can a law enforcement official take actions that place a fleeing motorist at risk of

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In This Issue

The lead article in this edition of the NYMIR Law Enforcement Liability Newsletter focuses on the recent *Scott V. Harris* U. S. Supreme Court Case decision. The use of video evidence from an in car camera made a significant difference in the outcome of this important decision. Following this theme, this edition of the newsletter highlights some of the other technology NYMIR Law Enforcement Department's are using to assist officers in performing their jobs. While this technology has a price, it provides an extra level of liability protection for the law enforcement agency and its officers. Additionally, this technology has provided invaluable evidence that has assisted in mitigating claims and closing them with no payment to plaintiffs.



August 2007

N E W S L E T T E R

Steuben County's Automatic Vehicle Locator System

Located in the southeast portion of New York State along the Pennsylvania border, Steuben County is 1,397 square miles, includes two small cities, and is larger than the State of Rhode Island. After a long planning process, Steuben County activated its "911" system in May of 2005. During the planning process for this system, the 911 Committee decided to implement mobile data computers in all marked police vehicles in every law enforcement agency in the county. Although not required for this type of project, the 911 Committee seriously considered—and recommended—Automatic Vehicle Locators be installed in each vehicle as well.

Knowing where each available unit is located is a huge benefit to dispatchers and reduces response time to incidents. Dispatchers can offer directions to responding units as they watch the unit on the map in relation to the location of the call. This system is a valuable tool to both dispatchers and law enforcement officers. Dispatchers know the location of other available units when dispatching backup. With the mobile data terminals, officers can "see" other units in their area and know how close their backup is. If an officer is unable to radio his/her location or is unreachable by radio, dispatchers know the current location of the unit and can respond promptly. Officers are able to view the unit's location on the map and plan their response accordingly. The Automatic Vehicle Locator (AVL) is recorded on the 911-network server. Supervisors have the authority to "play back" the movement of a unit for a selected time frame. This is beneficial when investigating an allegation against an officer involving his/her location and "delayed response time". As with any technology, it protects the employee acting properly, but can affirm a complaint against an employee as well.



Before the committee selected a method of transmitting data from the county's mobile computers, they researched and tested available options. They found that radio receivers worked well but were not cost effective, and at the time, the technology did not exist to use AVL. Satellite phones worked exceptionally well countywide, but monthly fees for use and equipment were too expensive. Cellular telephone technology was found to work well, but due to large rural areas in Steuben County, coverage was not always available. The committee tested the signal strength and data transmissions from two cellular providers and found that Verizon Wireless had the better coverage area. The committee selected Airlink cellular modems to connect to the Verizon network. The cost of the AVL system was minimal since it is integrated into the cellular telephone modem and antenna, which is used to transmit and receive data with the county's mobile computers. The AVL system uses global positioning satellite technology sending real-time data, which updates every five seconds in the 911 center and within 10 seconds on the mobile computers.

AVL is an inexpensive and cost-effective method to provide additional officer safety, track unit locations and shorten dispatch times using the closest car concept.

Sal Trentanelli, Chief of Police City of Corning Police Department

Orleans County's License Plate Reader Camera System

The Orleans County Sheriff's Department received a License Plate Reader Camera System through a New York State Division of Criminal Justice Services (DCJS) *Operation Impact* Grant. This camera system is mounted on the roof of the police vehicle and instantly reads license plates in the oncoming lane of traffic. The license plate viewed is highlighted on the vehicle's mobile data terminal and is compared to a database of license plates updated daily by the New York State Department of Motor Vehicles (DMV). Each time the mobile data terminal is turned on, the database is automatically updated.



The license plate read is compared against the DMV database. If the insurance or registration has lapsed or if the vehicle has been reported stolen, an audible alarm sounds, alerting the officer to a potential violation. The officer sees the violation and takes appropriate precautions when stopping the vehicle.

The license plate readers cannot differentiate between New York State license plates and license plates from other states. This sometimes results in "false positives". The system also has a feature where local law enforcement can add license plates of parking ticket scofflaws and fugitives to aid in their apprehension.



License Plate Read By Camera and Displayed on Mobile Data Terminal

The cost of this system is approximately \$25,000. Fortunately through the DCJS grant, the unit was provided at no cost to our agency. We placed additional insurance coverage through NYMIR on the vehicle where these cameras are mounted to protect the equipment. Due to our county's significant number of agricultural areas and animal vehicle collisions, this additional coverage is imperative.

Scott D. Hess, Sheriff, Orleans County Sheriff's Department

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SCOTT V. HARRIS *continued*

serious injury or death in order to stop the motorist's flight from endangering the lives of innocent bystanders?

The threshold question on the issue of qualified immunity was whether Deputy Scott's actions violated the Fourth Amendment. In assessing the constitutionality of Deputy Scott's actions, the Court first had to determine the relevant facts. On a motion for summary judgment, this typically means adopting the plaintiff's version of the facts, especially where the plaintiff's version of events differs substantially from the defendant's version. The plaintiff in this case contended that he remained in control of his vehicle, slowed for turns and intersections, and typically used his indicators for turns. The plaintiff further contended that he did not run any motorist off the road, nor was he a threat to pedestrians in a shopping center parking lot. The lower courts agreed that a jury needed to resolve disputed facts that were deemed material.

This was not a typical case however. Fortunately, the videotape from the patrol car's camera spoke volumes. As the Supreme Court held, the videotape shows the plaintiff's vehicle "racing down narrow, two-lane roads in the dead of night at speeds that are shockingly fast. We can see it swerve around more than a dozen other cars, cross the double-yellow line, and force cars traveling in both directions to their respective shoulders to avoid being hit. We see it run multiple red lights and travel for considerable periods



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TASER CAMERAS

Taser International introduced a Taser camera for its Model X26 series TASERS approximately a year ago. The TASER CAM system is an audio-video recording device integrated into a rechargeable TASER X26 power supply that replaces the standard Digital Power Magazine.

The TASER CAM recorder is activated any time the TASER safety is in the off position. This allows officers to capture vital information prior to, during, and after the potential deployment of a TASER X26 device. Video and audio data is downloaded via a USB cable.

The TASER CAM recorder is an optional upgrade compatible with all TASER X26 devices and provides another layer of accountability to support officers' reports. If your department is considering the purchase of Neuromuscular Incapacitation devices, the camera feature is a valuable option to be considered when making this purchase. If your agency already has these devices, the TASER CAM upgrade is well worth considering.



TASER CAM

SCOTT V. HARRIS *continued*

of time in the occasional center left-turn-only lane, chased by numerous police cars forced to engage in the same hazardous maneuvers just to keep up. Far from being the cautious and controlled driver the lower court depicts, what we see on the video more closely resembles a Hollywood-style car chase of the most frightening sort, placing police officers and innocent bystanders alike at great risk of serious injury. Because the videotape so totally discredited the plaintiff's version of events, the Supreme Court held that the lower courts should not have relied on such "visual fiction". Rather, in deciding the defendant's motion, the lower courts should have viewed the facts in the light depicted by the videotape.

Based almost entirely on the videotape, the Supreme Court found that Deputy Scott's actions did not violate the Fourth Amendment. Deputy Scott did not contest that his decision to end the car chase by ramming the plaintiff's bumper constituted a "seizure" under the Fourth Amendment. Nor was there any dispute that Deputy Scott's actions constituted "deadly force." Accordingly, the question for the Court was whether Deputy Scott's actions were reasonable. In determining the reasonableness of Deputy Scott's actions, the Court considered the risk of bodily harm that Deputy Scott's actions posed to plaintiff in light of the threat to the public that Deputy Scott was trying to eliminate. The Court also took into account not only the number of lives at risk, but also their relative culpability. In other words, the plaintiff intentionally placed himself and the general public in danger by unlawfully engaging in a reckless, high-speed chase. On the other hand, those who might have been harmed had Deputy Scott not taken the action he did were entirely innocent. On this basis the Supreme Court found that Deputy Scott's actions were reasonable.

In summary, the Court held that because the plaintiff's conduct presented a real threat of serious harm to innocent bystanders, Deputy Scott was entitled to use deadly force to stop the plaintiff. The videotape from Deputy Scott's camera was absolutely critical to the Court's ruling. Without the video evidence, the Supreme Court would have had no choice but to accept the lower court's finding that a jury had to resolve disputed questions of fact. This case is a high-profile example of the power of video evidence in mitigating a claim against a law enforcement official.

Passenger Compartment Camera



It should be noted that this Decision does not stand for the proposition that deadly force can be used every time a suspect flees. Unfortunately, this Decision creates a case-by-case analysis of whether an officer, given all of the facts and circumstances, could reasonably perceive that a fleeing suspect posed a "substantial and immediate risk of serious physical injury to others." If so, force can be used. The extent of the force that would be deemed "reasonable," again, will be decided on a case-by-case basis.

Digital Recorder – Accessible by Command Staff Only



It is also noteworthy that the Court here decided only the issue of whether the "seizure" of Harris was in violation of Harris' Constitutional rights. Officers need to always consider that the decision to pursue a fleeing suspect carries with it considerations other than whether a course of action will be deemed Constitutional. The New York State "reckless" standard is also applicable to high speed chases that involve injury.

High speed pursuits are fraught with danger. What the Supreme Court has essentially said is that given the indisputable proof that Harris was a substantial threat of danger to others, the actions of Scott were reasonable. Without the videotape, however, the case (most likely) would have been decided by a jury—an uncertain outcome, for sure.

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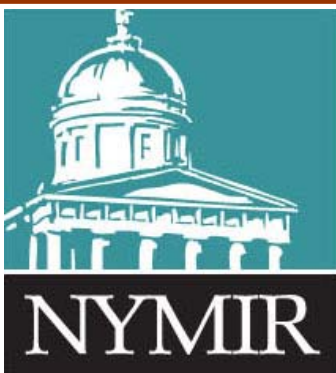
NEWSLETTER



On the Lighter Side

Unanswered Questions

- ◆ Ever wonder about those people who spend \$2.00 a bottle on those little bottles of Evian water? Try spelling Evian backwards: NAIVE
- ◆ If a pig loses its voice, is it disgruntled?
- ◆ Why do croutons come in airtight packages? Aren't they just stale bread to begin with?
- ◆ Why isn't the number 11 pronounced onety one?
- ◆ If lawyers are disbarred and clergymen defrocked, doesn't it follow that electricians should be delighted, musicians denoted, cowboys deranged, tree surgeons debarked, and dry cleaners depressed?
- ◆ If Fed Ex and UPS were to merge, would they call it Fed UP?
- ◆ Do Lipton Tea employees take coffee breaks?
- ◆ What hair color do they put on the driver's licenses of bald men?
- ◆ If it's true that we are here to help others, then what exactly are the others here for?
- ◆ You never really learn to swear until you learn to drive.
- ◆ Ever wonder what the speed of lightning would be if it didn't zigzag?
- ◆ Whatever happened to Preparations A through G?
- ◆ As you recover from this year's tax season and prepare for next year's, did you ever notice when you put the words "The" and "IRS" together it spells "THEIRS"?



We appreciate comments on the newsletter and suggestions for future articles on relevant law enforcement topics. Please feel free to contact us.

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