

Part IV Deadly Force- Scott v. Harris.

Hi. I'm Tim Miller and this is Part IV of our podcast series on use of force. In the last section, we discussed Tennessee v. Garner and situations when deadly force with a firearm was objectively reasonable. Over the years, it has been clearly established that deadly force is a reasonable force option when the officer has probable cause to believe that the suspect poses an immediate threat of death or serious bodily harm to the officer or others. While a warning adds to the reasonableness of any force options, it is not always feasible.

B. Scott v. Harris – Another Form of Deadly Force

For several years some of the lower courts believed that Garner set the standard for using deadly force and that in the case of a fleeing suspect, Garner only authorized deadly force in cases where the officer had probable cause to believe that the *suspect committed a crime involving the infliction or threatened infliction of serious physical harm*. The Court Garner envisioned someone who posed an inherent danger to society merely by being at large - like a serial killer. Then came Scott v. Harris.

Victor Harris was not a serial killer; he was a speeder. He was clocked driving 73 miles per hour in a 55-mile-per-hour zone. Harris fled when the officer activated the cruiser's overhead lights and so began a high-speed pursuit that would leave Harris a paraplegic.

Officer Scott soon joined the chase. And six minutes, and nearly 10 miles after the chase began, Scott terminated it. Scott applied the push-bumper on his cruiser to the rear of Victor Harris' car. At the speeds both cars were traveling, Scott's actions posed a high likelihood of death or serious bodily harm to Harris. Harris lost control of the car. It crashed and Harris was nearly killed.

Harris sued. Scott moved to dismiss the case against him on grounds of qualified immunity. But the district court and

Part IV Deadly Force- Scott v. Harris.

11th Circuit denied Scott's request because Harris did not pose the inherent danger to society by being at large that was envisioned in Tennessee v. Garner. In other words, Harris had not committed the crime involving the infliction or threatened infliction of serious bodily harm before the chase began. Scott petitioned the Supreme Court for review.¹

The Supreme Court reversed the 11th Circuit. The Court said that the Garner decision was simply an application of Fourth Amendment's "reasonableness" test that was announced in Graham v. Connor. Garner did not establish "...a magical on/off switch that triggers rigid preconditions..." for using deadly force. In each case, "...we must...slosh our way through the fact bound morass of reasonableness." On that basis the Court stated, "We think it is quite clear that Deputy Scott did not violate the Fourth Amendment."

Prior to applying the push-bumper, Scott watched Harris racing down narrow, two-lane roads in the dead of the night and at speeds in excess of 85 miles per hour. Harris swerved around more than a dozen other cars, crossed the double yellow line, and forced cars traveling in the opposite lane to the shoulder of the road to avoid being hit. He ran multiple red lights. He traveled for considerable periods of time in the occasional center left-turn-lane. Harris did all that while being chased by numerous police cars forced to engage in the same hazardous maneuvers, just to keep up. The Court stated that, "The car chase that [Harris] initiated in this case posed a substantial and immediate risk of serious physical injury to others... Scott's attempt to terminate the chase by forcing [Harris] off the road was reasonable..."

But why not stop the chase? Mr. Harris argued that the public would have been protected, and the tragedy avoided, if the police simply ceased their pursuit. But accepting that argument would create problems for law enforcement. The police had no way of knowing that Harris would stop. The Court also stated that, "...we are loath to lay down a rule requiring the police to allow fleeing suspects to get away

¹ Scott was the petitioner; hence the case is captioned *Scott v. Harris*.

Part IV Deadly Force- Scott v. Harris.

whenever they drive so recklessly that they put other people's lives at danger."

Scott's decision had foreseeably tragic and permanent consequences for Mr. Harris. "So how does a court go about weighing the perhaps lesser probability of injuring or killing numerous bystanders against the ... larger probability of injuring or killing [Harris]" stated the Court. "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 [Harris], 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 [Officer] Scott confronted." Had Scott not taken the action he did, entirely innocent people may have suffered the same or worse consequences than Harris.

Let's stop again. When we come back, we will discuss intermediate weapons and when they are an objectively reasonable force option.