



Legal Digest

Vehicle Pursuits and the Fourth Amendment

A Roadmap for Police

By CARL A. BENOIT, J.D.



© Mark C. Ide

A regular part of police patrol involves the stopping of motor vehicles. These stops occur for a variety of reasons, such as to enforce motor vehicle laws or investigate suspicious activity. The vast majority of these motor vehicle stops are uneventful: the vehicle is stopped, the driver is issued a traffic citation, and the police officer and the driver depart the scene. Unfortunately, some vehicle stops do not follow this pattern. Individuals may ignore the command to stop, forcing the pursuit of the vehicle. When police officers engage in the pursuit of

a vehicle, either by initiating the pursuit or assisting other officers pursuing a vehicle, many legal and policy issues are implicated.¹

Over the last 20 years, the U.S. Supreme Court has decided several cases relevant to Fourth and Fourteenth Amendment issues surrounding motor vehicle pursuits. These cases have clarified many of the legal issues arising from police pursuits by identifying the constitutional provisions that govern this activity and setting forth the legal standards by which the police activity will be measured. This article

discusses the application of the Fourth Amendment to motor vehicle pursuits and addresses issues relating to the admissibility of evidence and potential civil liability for injuries or deaths sustained by the subject of the pursuit.

THE FOURTH AMENDMENT

The actions of a police officer may be challenged under the Fourth Amendment by a person who has been seized by the officer.² Such an individual can challenge both the right of the police officer to make the seizure and the manner in which



Special Agent Benoit serves as a legal instructor at the FBI Academy.

“The actions of a police officer may be challenged under the Fourth Amendment by a person who has been seized by the officer.”

the seizure was made under the reasonableness component of the Fourth Amendment. According to the Supreme Court, a seizure may be made by a police officer through either a show of authority or the imposition of force. To determine when a person has been seized by a show of authority, the test devised by the Supreme Court requires a determination of whether “a reasonable person would feel free to decline the officers’ requests or otherwise terminate the encounter.”³ When a police officer signals a driver of a vehicle to pull over and the person complies, a seizure has occurred because a reasonable person would not feel free to ignore the officer’s show of authority.

At this point, the officer’s conduct falls under the scope of the Fourth Amendment requirement that a seizure be reasonable to be lawful. To be reasonable, at the time of the seizure, the police officer must generally

possess either probable cause or reasonable suspicion that the driver of the vehicle or a passenger is involved in activity that violates criminal or motor vehicle laws.⁴ According to the Supreme Court, stopping a motor vehicle is unreasonable “except in those situations in which there is at least articulable and reasonable suspicion that a motorist is unlicensed or that an automobile is not registered, or that either the vehicle or an occupant is otherwise subject to seizure for a violation of law.”⁵

For police officers engaged in the pursuit of a motor vehicle, the more relevant determinations involve whether a Fourth Amendment seizure actually occurred during the course of the pursuit and, if so, when the seizure occurred. Identifying the level and nature of police conduct required to establish whether a seizure has occurred is significant because only conduct determined to

be a seizure is subject to the reasonableness requirement of the Fourth Amendment and may form the basis for a civil lawsuit against the officers or result in the suppression of evidence.

THE ELEMENTS OF A SEIZURE

The Requirement of Intent

In *Brower v. County of Inyo*⁶ the U.S. Supreme Court was presented with the opportunity to clarify the Fourth Amendment seizure issues that arise in the context of the police pursuit of a motor vehicle. In *Brower*, an Inyo County deputy sheriff began chasing a stolen car driven by Brower, a felony under state law. Brower led police on a chase for nearly 20 miles at high speeds to avoid arrest.⁷ At a point during the chase, the deputy radioed a request that a roadblock be established. Acting on this request, deputies placed a tractor-trailer across the highway to block both lanes of the road and put another police car between the tractor-trailer and Brower’s path with its headlights positioned to face Brower. Shortly after the roadblock was set up, the pursuit came to a sudden end when Brower drove past the stationary second police vehicle “at a high rate of speed and slammed into the tractor-trailer rig.”⁸

Brower was killed shortly after impact. In the aftermath of this incident, Brower’s family commenced a civil action

against the police officers and the county of Inyo in federal district court pursuant to Title 42, U.S. Code, Section 1983⁹ (hereinafter section 1983) alleging that the officers violated Brower's constitutional rights by subjecting him to an unreasonable seizure. According to the family's lawsuit, the roadblock used by the police, in addition to the details previously described, was concealed behind a curve in the road and consisted of an unlighted tractor-trailer and a police car in front of the tractor-trailer with its lights positioned to blind Brower. The federal district court dismissed the lawsuit by ruling that it was not unreasonable to establish a roadblock under the circumstances. The family appealed the decision.

On appeal, the Court of Appeals for the Ninth Circuit upheld the lower court decision but found that no Fourth Amendment seizure had occurred. The court of appeals reasoned that there was no seizure under the Fourth Amendment when Brower collided with the roadblock because "[p]rior to his failure to stop voluntarily, [Brower's] freedom of movement was never arrested or restrained" by the police, and because Brower "had a number of opportunities to stop his automobile prior to impact."¹⁰ In reaching its decision, the court of appeals determined

that the facts of the Brower case were similar to cases where the subject of a police pursuit loses control of the vehicle and crashes.¹¹ In those cases, the court of appeals, together with other circuit courts, believed that no seizure occurred. Because there was no seizure, there was no need for the court of appeals to determine whether the police conduct was nevertheless reasonable. The Fourth

“

When a police officer signals a driver of a vehicle to pull over and the person complies, a seizure has occurred....

”

Amendment claim brought by the family was dismissed. The family appealed the decision to the Supreme Court.

The issue before the Supreme Court involved the question of whether the allegations made by Brower's family in their civil lawsuit were sufficient to establish the elements of a valid claim of a violation of Brower's Fourth Amendment rights. In this regard, the Supreme Court focused on the essence of the allegations made by the family

in the civil lawsuit—that the police “sought to stop Brower by means of a roadblock and succeeded to do so.” The Court decided that these actions on the part of the police, if true, were sufficient to “constitute a ‘seizure’ within the meaning of the Fourth Amendment.”¹² In reaching this decision, the Supreme Court provided a detailed discussion of the legal threshold used to determine whether and when a Fourth Amendment seizure has occurred. Initially, the Court noted that a seizure under the Fourth Amendment occurs “only when there is a governmental termination of freedom of movement through means intentionally applied.”¹³ According to the Court, a Fourth Amendment seizure requires the “intentional acquisition of physical control” over a subject, and this control must be willful and not accidental. Because intent is an essential element of a seizure, the Fourth Amendment does not govern “unintended consequences of government action.”¹⁴ However, the intent on the part of the police to seize the subject is not sufficient in itself. In addition to the intention to seize, the seizure must be made by “means intentionally applied” by the police. In regard to this second requirement, the Court noted that when “determining whether the means that terminates the freedom of



movement is the very means that the government intended we cannot draw too fine a line..." but believed that it would be "enough for a seizure that the person be stopped by the very instrumentality set in motion or put in place in order to achieve the result."¹⁵

Applying these two legal requirements of a seizure to the facts of *Brower*, the lawsuit brought by the family properly stated a Fourth Amendment claim because it alleged both essential elements. The family alleged that the police intended to stop Brower and that he was, in fact, stopped by the roadblock, which was the instrumentality put into place to stop Brower. The Supreme Court reversed the decision of the circuit court and remanded the case to the lower courts to determine if the seizure of Brower was reasonable.¹⁶

The Requirement of Control

While not a vehicle pursuit case, *California v. Hodari D.*¹⁷ presented the Supreme Court with an opportunity to clarify the concept of seizure when police are in a pursuit on foot. While patrolling a high-crime area, police officers observed Hodari with a group of three or four other juveniles "huddled around a small red car parked at the curb." When Hodari saw the officers approaching, he ran away. One of the officers began to pursue Hodari on foot, but,

before catching up with him, Hodari threw a rock of crack cocaine on the ground. Shortly after disposing of the cocaine, Hodari was tackled and handcuffed by the police officer. Hodari sought to suppress the cocaine found by the officers by arguing that it had been found as a result of an unreasonable seizure. A lower state court ruled against Hodari and

"...only conduct determined to be a seizure is subject to the reasonableness requirement of the Fourth Amendment...."

refused to suppress the cocaine, but the California Court of Appeals reversed the lower court. The California Court of Appeals ruled that Hodari was seized when he saw the police officer chasing after him because this show of the authority by the police officer would lead a reasonable person to believe that he was not free to end the encounter with the officer. The court further concluded that the seizure was unreasonable because the police officer did not possess information to the level of probable cause or a reasonable suspicion that

Hodari was engaged in any criminal activity to support initiating the foot pursuit.¹⁸ The state of California appealed this decision to the U.S. Supreme Court.

When the case reached the Supreme Court, the legal issue to be decided was whether Hodari was seized by the police officer at the time he dropped the drugs—while Hodari was running away from the police—or, more precisely, whether "a seizure occurs even though the subject does not yield" to a show of authority by police.¹⁹ In answering this question, the Supreme Court determined that there is no Fourth Amendment seizure unless and until the subject actually has been brought under the physical control of the police. Therefore, a seizure occurs when a subject submits to the control of a police officer or when the subject has control physically imposed upon him. In reaching this determination, the Court referred to its decision in *Brower v. Inyo County*²⁰ and noted that it "did not even consider the possibility that a seizure [of Brower] could have occurred during the course of the chase because, as we explained, that 'show of authority' did not produce the stop."²¹ Turning to the facts presented in the case, the Court found that because Hodari did not comply with the police officer's show of authority, Hodari "was not seized until he was tackled."²²

Therefore, the cocaine that Hodari threw to the ground was not the product of an unlawful seizure.

As these cases illustrate, the principles set forth have relevance to the admissibility of evidence in criminal cases that may turn on a determination of the point in time where a seizure has occurred. For example, in *United States v. Swindle*,²³ police officers on a federal task force attempted to stop a vehicle they observed at a house associated with a fugitive. However, when the officers attempted to stop the car, the driver “disobeyed the officers’ order to stop and kept driving.”²⁴ As the driver fled from the police officers, he committed traffic violations and was observed throwing a bag from the car that later was found to contain a large quantity of crack cocaine. The driver ultimately stopped his vehicle and fled on foot. The police officers caught up with and arrested the driver. He was charged with various federal drug crimes. The defendant, Swindle, moved to suppress the bag of cocaine found by the officers on the grounds that it was the product of an unlawful seizure as the officers did not have a legal basis to stop the car he was driving. The trial judge agreed, suppressing the evidence as the police officers did not have either reasonable suspicion or probable cause to

believe that the fugitive was inside the car, and they had not observed Swindle commit any acts prior to the chase that would support the stop. On appeal, the Circuit Court of Appeals agreed that the order made by the police officers to Swindle to pull over was unreasonable because the officers did not possess “enough information on which to reasonably order



[Swindle] to stop.”²⁵ However, as the circuit court noted, the determination of the issue of the admissibility of the cocaine turned on the timing of the seizure. The defendant argued that he was seized when the officers ordered him to pull over and that the officers had no legal basis to stop him. The government argued that Swindle was not seized until he was actually apprehended by the police officers, at which time the officers had sufficient grounds for his arrest based upon what they observed during the pursuit.

The Circuit Court of Appeals, in reaching its decision, referred to the decisions in *California v. Hodari D.* and *Brower v. Inyo County* and, based on these decisions, ruled in favor of the government. Based on the holding in these cases, Swindle was not seized by the police officers because no force had been used to restrain him and he had not submitted to the show of the officer’s authority. Therefore, no seizure occurred until he was physically apprehended by the police, at which time the officers had probable cause to arrest.

These principles also have relevance to the issue of liability in civil cases that may turn on a determination of the point in time, if any, when a seizure has occurred. For example, *Connor v. Dukes*²⁶ illustrates this point. Officer Dukes first noticed Jeffrey Connor after Connor pulled in front of Dukes on his motorcycle. Dukes observed that the motorcycle was missing a tail-light and believed that Connor was driving under the influence of alcohol. Dukes turned on his blue lights and Connor responded by accelerating.²⁷ With Dukes in pursuit, Connor lost control of his motorcycle and was severely injured. Connor commenced a lawsuit pursuant to section 1983 alleging, among other things, that he was deprived of his rights under the Fourth Amendment. Connor



alleged that Dukes' pursuit was so close behind him that he was deprived of the option to stop the chase and, thus, was seized during the pursuit. The U.S. Circuit Court of Appeals dismissed the claim, reiterating that absent the exertion of physical control over the subject, no seizure occurs. Because no seizure occurred, the court declined to consider whether the actions were reasonable.²⁸

Force Used to Stop a Vehicle

If a seizure has occurred, the reasonableness component of the Fourth Amendment requires the justification for the seizure be supported by either probable cause or reasonable suspicion. In addition, according to *Graham v. Connor*,²⁹ the Fourth Amendment also speaks to the manner in which the seizure was made or, more specifically, the use of force in making the seizure. In *Graham*, the Supreme Court decided that claims of excessive force "aris[ing] in the context of an arrest or investigatory stop of a free citizen" are governed by the Fourth Amendment, which guarantees citizens the right "to be secure in their persons...against unreasonable...seizures."³⁰ A balancing-of-interests test is used to determine whether the use of force is appropriate by looking at "the nature and the quality of the intrusion" on the individual's Fourth Amendment rights

against "the countervailing governmental interests at stake."³¹ While the Supreme Court noted that this test "is not capable of precise definition or mechanical application,"³² it requires "careful attention to the facts and circumstances of each particular case, including the severity of the crime at issue, whether the subject poses an immediate threat to the safety of the officers or others, and whether

“

...there is no Fourth Amendment seizure unless and until the subject actually has been brought under the physical control of the police.

”

he is actively resisting arrest or attempting to evade arrest by flight.”³³ The determination of the reasonableness of the use of force is “judged from the perspective of a reasonable officer on the scene, rather than with 20/20 vision of hindsight.”³⁴ Significantly, it is an objective inquiry without regard to the underlying intent or motivation of the officer.³⁵

These standards govern the use of force by police officers seeking to seize a fleeing vehicle. While the standards are stated simply, the application

of the standards can be made difficult because of the varying situations under which seizures are made and the dynamic environment in which pursuits occur.³⁶

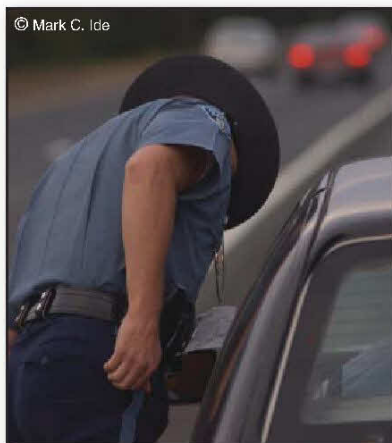
Recently, the Supreme Court addressed the reasonableness of force used to effect a seizure during a police pursuit. In *Scott v. Harris*,³⁷ a Georgia county deputy attempted to stop a car driven by Victor Harris traveling at 73 miles-per-hour in a 55 mile per hour zone. Harris failed to pull over and, instead, led police on a chase at speeds in excess of 85 miles per hour. Deputy Timothy Scott heard the chase called out on the police radio and joined the pursuit. During the pursuit, Harris was nearly boxed in by police cars but was able to evade the officers, striking Scott's police car in the effort. “Six minutes and nearly 10 miles after the chase had begun,” Scott sought permission to stop Harris using a precision intervention technique (PIT) maneuver.³⁸ Scott obtained permission to use the PIT maneuver; however, instead of using it, Scott “applied his push bumper to the rear” of Harris' vehicle.³⁹ Harris lost control of his car, left the roadway, rolled over, and crashed. Harris was rendered a quadriplegic from his injuries.⁴⁰

As a result of the incident, Harris filed suit against Deputy Scott and others under section 1983 alleging that excessive

force was used to effect his seizure in violation of the Fourth Amendment. The district court rejected Deputy Scott's attempt to have the lawsuit dismissed. On appeal, the U.S. Court of Appeals for the Eleventh Circuit affirmed the district court's decision, allowing Harris to bring his Fourth Amendment claim to trial. The court of appeals believed that a reasonable jury could find that Scott violated Harris' Fourth Amendment rights to be free from an unreasonable seizure. Harris appealed to the U.S. Supreme Court.

The Supreme Court first noted that the "decision to terminate the car chase by ramming his bumper into [Harris'] vehicle" constituted a Fourth Amendment seizure as defined by *Brower v. County of Inyo*.⁴¹ Because a seizure clearly had occurred, the Supreme Court noted that the appropriate standard for determining excessive force claims is the objective reasonableness standard set forth in *Graham v. Connor*.⁴² According to the Court, "[t]he question we need to answer is whether Scott's actions were objectively reasonable."⁴³ In making this determination, the Court rejected the claim made by Harris that the case should be decided under the standards set forth in *Tennessee v. Garner*.⁴⁴ The *Garner* case established standards for the use of deadly physical force in the context of an unarmed, fleeing suspect

shot by a police officer solely to prevent his escape.⁴⁵ In *Garner*, the Court ruled the shooting was an unreasonable seizure and set forth the standard required to meet the requirements of the Fourth Amendment to use deadly force.⁴⁶ The Court noted that *Garner* was merely an application of *Graham's* reasonableness test.⁴⁷ Rejecting Harris' argument, the Court explained that the facts of *Garner* were vastly different to those in the



present case and commented that "the threat posed by the flight on foot of an unarmed suspect" is not "remotely comparable to the extreme danger to human life posed by [Harris] in this case."⁴⁸ The Court noted that, regardless of whether the actions constituted deadly force, "all that matters is whether Scott's actions were reasonable."⁴⁹

In determining the reasonableness of the seizure, the Court employed the balancing-

of-interests tests. "[W]e must balance the nature and quality of the intrusion on the individual's Fourth Amendment interests against the importance of the governmental interests alleged to justify the intrusion."⁵⁰ Deputy Scott justified his actions by pointing out the "government interest in ensuring public safety," which must be balanced against the "risk of bodily harm that Scott's actions posed to [Harris] in light of the threat to the public Scott was trying to eliminate."⁵¹ In seeking to determine the risk on both sides, the Supreme Court noted that it was clear that Harris posed "an actual and imminent threat" to pedestrians, motorists, and the police and that Scott's actions "posed a high likelihood of serious injury or death" to Harris.⁵² The Court posed the question and the answer as follows:

So how does a court go about weighing the perhaps lesser probability of injuring or killing numerous bystanders against the perhaps larger probability of injuring or killing a single person? We think it appropriate in this process to take into account not only the number of lives at risk, but also their relative culpability.⁵³ 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 Scott confronted. Multiple police cars, with blue lights flashing and sirens blaring, had been chasing [Harris] for nearly 10 miles, but he ignored their warning to stop. By contrast, those who might have been harmed had Scott not taken the action he did were entirely innocent. We have little difficulty in concluding it was reasonable for Scott to take the action he did.⁵⁴

The Supreme Court also refused to accept the argument made by Harris that the public could be protected by having the police terminate the pursuit.⁵⁵ The Court noted that ceasing the pursuit was no guarantee that Harris would not continue to pose a danger to the public, and the Court was reluctant “to lay down a rule requiring the police to allow fleeing suspects to get away whenever they drive so recklessly that they put other people’s lives in danger”⁵⁶ as the Constitution does not require “impunity earned by recklessness.”⁵⁷ The Court decided to establish a more sensible rule.

A police officer’s attempt to terminate a dangerous high-speed car chase that threatens the lives of innocent bystanders does not violate the Fourth Amendment, even when it places the fleeing motorist at risk of serious injury or death.⁵⁸

Scott v. Harris has provided important guidance for analyzing the use of force to terminate vehicle pursuits when that force is alleged to consist of deadly force. In *Abney v. Coe*,⁵⁹ a motorcyclist died after colliding with a deputy’s car following an 8-mile pursuit. A section 1983 action was commenced by the plaintiffs against the deputy alleging excessive force. The chase was initiated after the

“

...absent the exertion of physical control over the subject, no seizure occurs.

”

deputy observed the motorcyclist commit a traffic violation and ended when the motorcycle collided with the police car.⁶⁰ The motorcycle was knocked off the road and the patrol car ran over it and the driver. The district court refused to dismiss the case against the deputy, ruling that the deputy’s conduct in striking the vehicle could constitute deadly force that was unreasonable because there was no evidence that the motorcyclist posed a serious threat. This deputy appealed.

For purposes of its decision, the court of appeals assumed

that the contact between the vehicles was intentionally made by the deputy and, therefore, a seizure occurred. The court turned to the question of reasonableness. Ignoring the plaintiffs’ claim to the contrary, the court of appeals reviewed the description of the pursuit and found that it was “replete with examples of reckless driving designed to elude the police and executed with little consideration for the lives and safety of other motorists.”⁶¹ The court refused to distinguish the *Harris* case on the basis that this chase occurred during the day, that the speeds were not excessive, or that this pursuit involved a motorcycle. The court of appeals concluded that “[t]his case is similar to [*Scott v. Harris*]” and made the following observation:

In both cases, a motorist refused to stop for police after committing a routine traffic violation; the police pursued the motorist; the motorist employed various tactics to escape capture thereby endangering other motorists and bystanders; a law enforcement officer terminated the chase; and the motorist was injured.

The Court found that the deputy’s actions were reasonable.⁶²

CONCLUSION

Clearly stated Fourth Amendment rules applicable to police vehicle pursuits can be deduced from these cases.

A traffic stop made by a police officer that results in the driver actually submitting to the officer is a seizure under the Fourth Amendment and, thus, subject to its reasonableness requirement. However, when a driver refuses to comply with the order by the police to stop and continues to attempt to evade the authority of the police, there is no seizure while the driver continues to flee. Absent submission to a show of authority, a seizure occurs during a motor vehicle pursuit when the driver comes under the intentional physical control of the police officer by means designed to obtain that control. This occurs if a police officer deliberately rams a vehicle,⁶³ sets up a roadblock to stop the vehicle,⁶⁴ or disables the vehicle through the use of some other technique,⁶⁵ resulting in the vehicle being brought under control. However, if in the course of the pursuit, when a driver is fleeing from police officers who have the intent to stop the vehicle, no seizure occurs if the driver loses control of the vehicle and crashes because control over the driver was obtained by means other than those intentionally sought by the police.

A separate question involves the level of force that officers are permitted to use to obtain control of the vehicle. It is clear that police officers are permitted to use force to stop a vehicle

fleeing from them, but the use of this force must meet the objective reasonableness standard of the Fourth Amendment. In determining whether this use of force is objectively reasonable, police officers are permitted to assess the risk posed to the public by the flight itself (even if the offense for which the pursuit was initiated is relatively minor) and to terminate the pursuit in a manner that may place the driver at risk of serious injury or death.



© brandXpictures

The Fourth Amendment provides guidance for police chases that result in a seizure. When a police officer's actions during a vehicle pursuit do not rise to the level of a seizure, the conduct is governed under the due process clause of the Fourteenth Amendment,⁶⁶ which will be addressed in detail in a future article. ♦

Endnotes

¹ Vehicle pursuits and their aftermath raise significant policy issues that must

be addressed at the local level by elected officials and those appointed to government positions. Officials at this level of government are in a better position to take "account of competing social, political, and economic forces" to determine policy rather than "federal judges interpreting the basic charter of government for the entire community." See *Collins v. City of Harker Heights, Texas*, 503 U.S. 115, 129 (1992).

² U.S. CONST. amend. IV. "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated...."

³ *Brendlin v. California*, 127 S. Ct. 2400, 2405-2406 (2007).

⁴ *Delaware v. Prouse*, 440 U.S. 648 (1979). The Supreme Court has permitted vehicle stops without individualized suspicion of criminal activity in other contexts. See *United States v. Martinez-Fuerte*, 428 U.S. 543 (1976) (border checkpoint); *United States v. Brignoni-Prince*, 422 U.S. 873 (1975) (roving border checkpoint); *Michigan v. Sitz*, 110 S. Ct. 2481 (1990) (sobriety checkpoint); *Illinois v. Lidster*, 124 S. Ct. 885 (2004) (informational checkpoint). But, see *Indianapolis v. Edmund*, 121 S. Ct. 447 (2000) (drug roadblock).

⁵ *Id.* at 663.

⁶ *Brower v. County of Inyo*, 489 U.S. 593 (1989).

⁷ *Brower v. County of Inyo*, 817 F.2d 540, 542 (9th Cir. 1987) rev. by *Brower v. County of Inyo*, 489 U.S. 593 (1989).

⁸ *Id.*

⁹ 42 U.S.C. § 1983 is a federal statute that permits a civil action to be commenced in federal courts against a police officer who deprives any person of rights protected by the U.S. Constitution.

¹⁰ *Brower v. County of Inyo*, 817 F.2d 540, 545-546 (9th Cir. 1987).

¹¹ *Id.* at 546, citing *Galas v. McKee*, 801 F.2d 200 (6th Cir. 1986) that held that there was no seizure when the fleeing driver lost control and crashed.

¹² *Brower v. County of Inyo*, 489 U.S. 593, 599 (1989).

¹³ *Id.* at 597.

¹⁴ *Id.* at 596.¹⁵ *Id.* at 600.¹⁶ *Id.*¹⁷ *California v. Hodari D.*, 499 U.S. 621 (1991).¹⁸ *Id.* at 624, fn. 1. ("California conceded below that [the officer] did not have the 'reasonable suspicion' required to justify stopping Hodari...."). In the same footnote, the Court made the following observation. "That it would be unreasonable to stop, for brief inquiry, young men who scatter in panic upon the mere sighting of police is not self-evident and arguably contradicts proverbial common sense. See Proverbs 28:1. ('The wicked flee when no man pursueth.') We do not decide that point here but rely entirely upon the State's concession."¹⁹ *Id.* at 621.²⁰ *Brower v. County of Inyo*, 489 U.S. 593 (1989).²¹ *Id.* at 628 (internal quotations in the original).²² *Id.* at 629.²³ *United States v. Swindle*, 407 F.3d 562 (2nd Cir. 2005).²⁴ *Id.* at 564.²⁵ *Id.* at 569.²⁶ *Connor v. Dukes*, 917 F.2d 24 (6th Cir. 1990)(unpublished decision).²⁷ *Id.*²⁸ *Supra* note 26.²⁹ *Graham v. Connor*, 490 U.S. 386 (1989).³⁰ *Id.* at 394.³¹ *Id.* at 396.³² *Id.* at 396 (quoting *Bell v. Wolfish*, 441 U.S. 520, 559 (1979)).³³ *Id.*³⁴ *Id.*³⁵ *Id.* at 397. ("An officer's evil intentions will not make a Fourth Amendment violation out of an objectively reasonable use of force, nor will an officer's good intentions make an objectively unreasonable use of force constitutional.")³⁶ *Abney v. Coe*, -- F.3d --, 2007 WL 1893378 (4th Cir. 2007) (Police "chases are by nature dynamic events in which a fleeing suspect attempts often dangerously

to evade capture. [They are characterized by] changes in speed, road conditions, neighborhoods, traffic patterns, flight strategy or intervention techniques....")

³⁷ *Scott v. Harris*, 511 U.S. ___, 127 S. Ct. 1769 (2007).³⁸ The technique is used to cause the fleeing vehicle to spin to a stop.³⁹ *Scott v. Harris*, 511 U.S. ___, 127 S. Ct. 1769, 1773 (2007).⁴⁰ *Id.*⁴¹ *Id.* at 1776, quoting *Brower v. County of Inyo*, 489 U.S. 593, 597 (1989). ("If... the police cruiser had pulled alongside the fleeing car and sideswiped it, producing the crash, then termination of the suspect's freedom of movement would have been a seizure.")⁴² *Graham v. Connor*, 490 U.S. 386 (1989).⁴³ *Scott v. Harris*, 511 U.S. ___, 127 S. Ct. 1769, 1776 (2007).⁴⁴ *Tennessee v. Garner*, 471 U.S. 1 (1985).⁴⁵ *Id.* at 21.⁴⁶ *Id.* at⁴⁷ *Scott v. Harris*, 511 U.S. ___, 127 S. Ct. 1769, (2007).⁴⁸ *Scott v. Harris*, 511 U.S. ___, 127 S. Ct. 1769, 1777 (2007).⁴⁹ *Id.* at 1778.⁵⁰ *Id.* at 1778 (quoting *United States v. Place*, 462 U.S. 696, 703 (1983)).⁵¹ *Id.*⁵² *Id.* In this respect, the Court noted that while Scott's actions posed a "high likelihood of serious injury or death" to Harris, this was "not the near certainty of death posed by, say, shooting a fleeing felon in the back of the head."⁵³ *Id.* at 1778. See also note 10 where the Court notes that while the culpability of the suspect is not relevant to the question of whether a seizure occurred, culpability is relevant to the reasonableness of the seizure.⁵⁴ *Id.*⁵⁵ See also *Abney v. Coe*, -- F.3d --, 2007 WL 1893378 (4th Cir. 2007).⁵⁶ *Id.* at 1779 (emphasis in original)⁵⁷ *Id.*⁵⁸ *Id.*⁵⁹ *Abney v. Coe*, -- F.3d --, 2007 WL 1893378 (4th Cir. 2007).⁶⁰ *Id.* The parties disputed whether the deputy intentionally rammed the motorcycle or whether the contact was accidental.⁶¹ *Id.* A description by the court of appeals indicated that during the 8-mile chase, the deceased committed numerous traffic violations, illegally passed several vehicles, ran at least one other car off the road, and ran a stop sign, causing several vehicles to stop quickly.⁶² *Id.* The court of appeals also addressed an issue common to vehicle pursuit cases—the claim that the police officer violated department policy during the pursuit. The court noted that department policy "says nothing about whether such tactics are constitutional" and is "irrelevant to the question of whether [the deputy's] conduct was consistent with the Fourth Amendment"⁶³ See *Scott v. Harris*, 511 U.S. ___, 127 S. Ct. 1769, 1776 (2007); *Abney v. Coe*, -- F.3d --, 2007 WL 1893378 (4th Cir. 2007).⁶⁴ See *Brower v. County of Inyo*, 489 U.S. 593 (1989).⁶⁵ See *Galipo v. City of Las Vegas*, 2007 WL 1381774 (Nevada District Court, May 10, 2007). (In this case, spike strips were used to terminate a vehicle pursuit. The driver lost control and suffered fatal injuries, although there was a dispute as to whether the subject struck the spike sticks or swerved to avoid them. The district court assumed the spike sticks were struck and analyzed the case under *Scott v. Harris*. The court determined the actions were reasonable.)⁶⁶ U.S. CONST. amend. 14, § 1.

Law enforcement officers of other than federal jurisdiction who are interested in this article should consult their legal advisors. Some police procedures ruled permissible under federal constitutional law are of questionable legality under state law or are not permitted at all.
