

Police Chases and the Constitution

Lately it seems as though there have been more civil rights cases resulting from police chases. The United States Supreme Court, in a *per curiam* opinion, recently had the opportunity to speak to the matter in *Mullenix v. Luna*, 136 S. Ct. 305 (2015).

In the evening hours of March 23, 2010, Sergeant Randy Baker, of the Tulia, Texas Police Department, followed a man to a drive-in restaurant with a warrant for his arrest. When the police officer approached the car and informed the suspect that he was under arrest, the driver sped off. The trooper gave chase, and quickly was joined by other police. Like a bad B-grade movie, the suspect led the officers on an 18-minute chase at speeds between 85 and 110 miles per hour. The suspect driver even called the police dispatcher, claiming to have a gun and threatening to shoot the police officers if they did not cease their pursuit. Those threats were made known to the officers involved in the chase.

The police set up tire spikes on the roadway in three locations. One of the police officers decided to shoot at the car's tires to disable the vehicle. The police officer had not received any training in this tactic, and had not attempted it before. Before receiving any response from other officers, Mullenix exited his vehicle, armed with a service rifle, and took a shooting position on an overpass. He was also listening to his radio to see what the response would be to his request and if the spikes worked first.

As the fleeing suspect approached the overpass, Mullenix fired six shots. The speeding vehicle engaged the spikes, hit the median and rolled over. It was later determined that the driver had been killed by Mullenix's shots, four of which struck his upper body.

A lawsuit ensued, in which the police officer was charged by the suspect's family with violating the Fourth Amendment by using excessive force. The United States Supreme Court said that the police officer had qualified immunity.

"The doctrine of qualified immunity shields officials from civil liability so long as their conduct 'does not violate clearly established statutory or constitutional rights of which a reasonable person would have known.'" A clearly established right is one that is "sufficiently clear that every reasonable official would have understood what he is doing violates that right." Put simply, qualified immunity protects "all but the plainly incompetent or those who knowingly violate the law." *Malley v. Briggs*, 106 S. Ct. 1092 (1986).

The issue for the Supreme Court is whether the police officer acted unreasonably in these circumstances "beyond debate." Excessive force cases involving car chases reveal the "hazy legal backdrop" against which Officer Mullenix acted. By the time Mullenix fired, the fleeing suspect had led police on a 25-mile chase at extremely high

speeds, was reportedly intoxicated, had twice threatened to shoot officers, and was racing towards an officer's location. The United States Supreme Court has written on the subject of high-speed chases previously. In all the cases the United States Supreme Court has decided, a high standard was established for a fleeing car to be able to sue the police. "The Court has thus never found the use of deadly force in connection with a dangerous car chase to violate the Fourth Amendment, let alone to be a basis for denying qualified immunity." *Mullenix v. Luna*, at 310. The court is extremely reluctant to find that the Constitution is violated when a police officer chases someone who is fleeing.

The court simply could not say that Mullenix was plainly incompetent or knowingly violated the law. The dissent looked at the availability of spike strips as an alternative means of terminating the chase. There were judges on the court who believed that deadly force was not required in the *Mullenix* situation. The majority obviously disagreed and had its way.

The case law has not clearly established deadly force as inapplicable in response to police chase cases. It almost appears to be the contrary; that deadly force will be permitted by police officers when fleeing drivers act crazy enough. *Mullenix* also decided there was no jury question. The case was dismissed on summary judgment because based upon the factual record developed, qualified immunity was granted to the police officer as a matter of law.

Qualified immunity is intended to protect police officers in the "hazy border between excessive and acceptable force." Relying upon *Brosseau v. Haugen*, 543 U.S., at 201, 125 S. Ct. 596.

In police chase cases, the courts are clearly going to give the benefit of the doubt to the police officer, especially in extreme circumstances. Qualified immunity will be granted and the case will be thrown out. Qualified immunity, like absolute immunity for judges, is granted to officials who either acted within the bounds of the law or are reasonable in their conduct given the circumstances at issue. A majority of the United States Supreme Court clearly believes that when a driver endangers the police and the public by attempting to evade authorities, it is as though they assume the risk for their own demise or injuries.

If a lower court refuses to find qualified immunity in favor of the police, there is a right to immediate appeal such as occurred in *Mullenix*. One could question whether the pendulum has swung too far to the side of the police, given the heavy-handed tactics by some officers. On the other hand, if a driver determines to be uncooperative in a dangerous way, they have left common sense at the doorstep. In such situations, the police will be given more than just a little wiggle room to carry out their duties, even if it consists of deadly force.

Police driving at high speeds to apprehend fleeing suspects can create their own danger. Typically, in considering qualified immunity, the courts will weigh and balance the misconduct of the fleeing driver against the behavior of the police.

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