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Constitutional Law: How Fast Is Too Fast? The Court's Race to Find Reasonableness in High-Speed Chases Scott v. Harris, 127 S. Ct. 1769 (2007)

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CASE COMMENT

CONSTITUTIONAL LAW: HOW FAST IS TOO FAST? THE COURT'S RACE TO FIND REASONABLENESS IN HIGH-SPEED CHASES*

Scott v. Harris, 127 S. Ct. 1769 (2007).

*Katie Coxe***

Petitioner, a county deputy, clocked respondent driving 73 miles per hour in a 55-mile-per-hour zone and signaled respondent to pull over.[1] Respondent ignored the signal, sped away, and led petitioner on an erratic high-speed chase down a two-lane road.[2] Nearly ten miles into the chase, petitioner bumped respondent's vehicle; respondent lost control and crashed.[3] As a result of the crash, respondent was rendered a quadriplegic.[4] Respondent filed suit against petitioner under 42 U.S.C. § 1983, alleging a violation of his Fourth Amendment right to be free from unreasonable seizure.[5] Petitioner asserted a qualified immunity defense and filed a

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** J.D. expected May 2009, University of Florida Levin College of Law. I dedicate this Comment to my parents, Mary and Hank Coxe, with gratitude for their love, encouragement and good genes. I am also thankful to Patty Barksdale for her patient guidance and her friendship.

1. Scott v. Harris, 127 S. Ct. 1769, 1772 (2007). This Comment reflects the Supreme Court's version of the facts as gleaned from the videotape; notably, and in contrast to the court of appeals, the Supreme Court declined to adopt respondent's version of the facts due to conflicts between the videotape and respondent's account of the events. *Id.* at 1775-76. The Supreme Court found that the videotape blatantly contradicted respondent's account of the events and that no reasonable jury could believe respondent. *Id.* at 1776.

2. *Id.* at 1772. During the chase, respondent narrowly evaded capture in a parking lot of a shopping center after colliding with petitioner's vehicle. *Id.* at 1773.

3. *Id.* Petitioner initially decided to attempt a Precision Intervention Technique (PIT), which causes a fleeing vehicle to spin to a stop. *Id.* However, petitioner decided to bump respondent's vehicle, instead of implementing PIT, because the vehicles were going too fast to safely execute PIT. *Id.*

4. *Id.*

5. *Id.* at 1773. The Fourth Amendment to the U.S. Constitution states in relevant part: "The right of the people to be secure in their persons . . . against unreasonable searches and seizures, shall not be violated . . . ." U.S. CONST. amend. IV. Respondent specifically contends that petitioner used excessive force in the crash, and use of such force resulted in an unreasonable seizure. *Scott*, 127 S. Ct. at 1773.

motion for summary judgment.[6] Finding that material issues of fact surrounding the qualified immunity issue warranted submission to a jury, the U.S. District Court for the Northern District of Georgia denied the motion.[7] On interlocutory appeal,[8] the Court of Appeals for the Eleventh Circuit affirmed.[9] The Supreme Court granted certiorari and reversed.[10] The Court HELD that an officer's attempt to end a dangerous car chase, that threatens the lives of innocent people, does not violate the Fourth Amendment even when it places the fleeing motorist at risk of serious injury or death.[11]

The Fourth Amendment to the U.S. Constitution grants the right to be free from unreasonable searches and seizures.[12] The U.S. Supreme Court has extended this protection to cover bodily intrusions by the government.[13] The Court in *Tennessee v. Garner*[14] considered whether an unreasonable seizure occurred when a police officer shot and killed an unarmed fifteen-year-old boy who was attempting to flee from the scene of a burglary.[15] Finding the seizure unreasonable, the Court held that an

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6. *Scott*, 127 S. Ct. at 1773. Qualified immunity completely protects the immune party from a suit. Mitchell v. Forsyth, 472 U.S. 511, 517 (1985). "Under the standard of qualified immunity . . . [the party claiming immunity] will be entitled to immunity so long as his actions do not violate clearly established statutory or constitutional rights of which a reasonable person would have known." *Id.* at 524 (internal quotes omitted) (quoting Harlow v. Fitzgerald, 457 U.S. 800, 818 (1982)). In the instant case, the Court did not resolve the issue of qualified immunity because it concluded that petitioner's actions were reasonable. *See Scott*, 127 S. Ct. at 1774, 1779.

7. *Scott*, 127 S. Ct. at 1773.

8. *Id.* Interlocutory appeal is available for an order denying qualified immunity because such an order is "effectively unreviewable" after trial. *Mitchell*, 472 U.S. at 526-27.

9. *Scott*, 127 S. Ct. at 1773-74. The court of appeals, viewing the facts in the light most favorable to respondent, found that petitioner's actions could amount to deadly force under *Tennessee v. Garner*, 471 U.S. 1 (1985), and that a jury could find that use of deadly force during the chase violated respondent's right to be free from excessive force during a seizure. *Scott*, 127 S. Ct. at 1773-74. The court concluded that the law gave "fair notice" to "reasonable law enforcement officers" that such actions were not unlawful. *Id.* at 1774 (quoting Harris v. Coweta County, 433 F.3d 803, 817 (11th Cir. 2005)).

10. *Scott*, 127 S. Ct. at 1774.

11. *Id.* at 1779.

12. U.S. CONST. amend. IV.

13. For example, "[w]henever an officer restrains the freedom of a person to walk away, he has seized that person." *Garner*, 471 U.S. at 7 (citing United States v. Brignoni-Ponce, 422 U.S. 873, 878 (1975)).

14. *Id.* at 1.

15. *Id.* at 3-4. The officer acted pursuant to a Tennessee statute which permitted an officer to use "all the necessary means to effect the arrest" when a suspect flees or forcibly resists after given notice of the officer's intent to arrest. *Id.* at 4-5 (quoting TENN. CODE ANN. § 40-7-108 (1982)).

officer cannot use deadly force to apprehend a fleeing suspect unless using deadly force is necessary to prevent the suspect's escape, and there is probable cause to believe the suspect represents a significant threat of death or serious physical injury to the officer or others.[16]

The Court applied a balancing test to assess the reasonableness of the seizure.[17] It weighed the nature and quality of the intrusion on a suspect's Fourth Amendment interests against the significance of the governmental interests warranting the seizure.[18] In *Garner*, the suspect had a paramount interest in his preserving his life; the Court determined his interest was not outweighed by the government's interest in effective law enforcement.[19] Because the suspect posed no threat to the officer, the Court reasoned his flight did not warrant the use of deadly force.[20]

The Court in *Graham v. Connor*[21] clarified *Garner* by holding that all excessive force claims arising from Fourth Amendment seizures must be analyzed under an 'objective reasonableness' standard.[22] Graham filed a § 1983 action against officers who detained, handcuffed, and threw him into the back of a police car for hurriedly entering and exiting a convenience store.[23] The Court vacated the court of appeals's directed verdict for the officers and remanded for reconsideration of the reasonableness issue.[24]

The Court relied on *Garner*'s balancing test and explained that in determining whether the totality of the circumstances renders a seizure unreasonable, notable considerations include: the severity of the crime, whether the suspect posed an immediate threat to public safety, and

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16. *Id.* at 11. The Court acknowledged the converse of its holding, namely that:

> if the suspect threatens the officer with a weapon or there is probable cause to believe that he has committed a crime involving the infliction or threatened infliction of serious physical harm, deadly force may be used if necessary to prevent escape, and if, where feasible, some warning has been given.

Id. at 11-12.

17. *Id.* at 7-8.

18. *Garner*, 471 U.S. at 8 (quoting United States v. Place, 462 U.S. 696, 703 (1983)).

19. *Id.* at 9. The Court highlighted the intrusiveness of using deadly force as "unmatched" and rejected the contention that "[e]ffectiveness in making arrests requires the resort to deadly force, or at least the meaningful threat thereof." *Id.* at 9-10.

20. *See id.* at 11.

21. 490 U.S. 386 (1989).

22. *Id.* at 397 (citing Scott v. United States, 436 U.S. 128, 137-39 (1978)).

23. *Id.* at 388-89.

24. *Id.* at 399. The court of appeals affirmed the district court's application of a broad substantive due process analysis, which the Supreme Court found incorrect because Graham brought a specific claim and there was a constitutional standard governing his claim. *Id.* at 393-94.

whether the suspect was attempting to flee from arrest.[25] Moreover, reasonableness should be assessed from the perspective of a reasonable officer at the scene.[26] Though agreeing with the majority's Fourth Amendment analysis, concurring Justice Blackmun opined that substantive due process claims should remain available in cases where the use of force was "demonstrably unreasonable."[27]

In *County of Sacramento v. Lewis*,[28] the Court considered whether a police officer violated substantive due process when he caused the death of a suspect during a high-speed automobile chase through a residential neighborhood.[29] The officer pursued the suspect at speeds of over 100 miles per hour;[30] the chase ended after the officer's car skidded into the suspect's tipped over motorcycle and propelled the suspect seventy feet.[31] The suspect was pronounced dead at the scene.[32] The Court rejected the Fourteenth Amendment challenge.[33] It held that the use of excessive force would violate substantive due process only where an officer acts to cause harm unrelated to arresting a suspect, and thus, the officer's conduct would "shock the conscience."[34]

Moreover, the *Lewis* Court reasoned that the Fourth Amendment specifically pertained to unreasonable seizure claims and that it should govern.[35] However, the Fourth Amendment afforded no protection to the suspect because the government's intrusion was unintentional.[36] Nevertheless, by rejecting the suspect's Fourteenth Amendment claim, the

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25. *Id.* at 396.

26. *Graham*, 490 U.S. at 396. The Court explained the logic behind this requirement: "[t]he calculus of reasonableness must embody allowance for the fact that police officers are often forced to make split-second judgments—in circumstances that are tense, uncertain, and rapidly evolving—about the amount of force that is necessary in a particular situation." *Id.* at 396-97.

27. *Id.* at 400.

28. 523 U.S. 833 (1998).

29. *Id.* at 836.

30. *Id.* at 837.

31. *Id.* The chase began after the motorcyclist refused to heed the officer's warnings to stop. *Id.* at 836-37. The chase lasted 1.3 miles before the motorcycle tipped over as the driver attempted to turn. *Id.* at 837. The driver got out of the way, but he was unable to escape before the patrol car skidded into him. *Id.*

32. *Id.*

33. *Lewis*, 523 U.S. at 843.

34. *Id.* at 836.

35. *See id.* at 842. "Where a particular Amendment provides an explicit textual source of constitutional protection against a particular sort of government behavior, that Amendment, not the more generalized notion of substantive due process, must be the guide for analyzing these claims." *Id.* (alteration in original omitted) (citing Albright v. Oliver, 510 U.S. 266, 273 (1994) (plurality opinion of Rehnquist, C.J.)).

36. *Id.* at 844.

Court effectively closed one avenue for potential claims against police officers who use excessive force.[37] It concluded that such claims were more appropriately suited for the Fourth Amendment.[38]

In the instant case, the Court rejected respondent's argument that the *Garner* analysis controlled.[39] Instead, relying on a videotape of the incident as its factual basis,[40] the Court applied an objective reasonableness standard in its analysis.[41] Weighing the nature and quality of the intrusion of respondent's Fourth Amendment interests against the government's justification for the intrusion,[42] the Court determined that petitioner's actions created a high likelihood of serious injury or death to respondent;[43] however, the Court found that the high likelihood of serious injury or death to respondent was equal in weight to the legitimate threat to the lives of the officers, pedestrians, and other motorists who were present during respondent's flight.[44] The Court broke the 'tie' with relative culpability: respondent was wholly responsible for the harm petitioner acted to eliminate and petitioner's actions were reasonable.[45]

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37. *See id.*

38. *See Lewis*, 523 U.S. at 844.

39. Scott v. Harris, 127 S. Ct. 1769, 1777 (2007). The Court characterized *Garner* as factually distinguishable from the instant case. *See id.* Because "*Garner* had nothing to do with one car striking another or even with car chases in general . . . . A police car's bumping a fleeing car is, in fact, not much like a policeman's shooting a gun so as to hit a person, the *Scott* Court held *Garner*'s preconditions inapplicable." *Id.* (quoting Adams v. St. Lucie County Sheriff's Dep't, 962 F.2d 1563, 1577 (11th Cir. 1992) (Edmondson, J., dissenting)). Respondent argued that *Garner* mandated three preconditions before the use of deadly force would have been reasonable under the Fourth Amendment: "(1) The suspect must have posed an immediate threat of serious physical harm to the officer or others; (2) deadly force must have been necessary to prevent escape; and (3) where feasible, the officer must have given the suspect some warning." *Id.*

40. *Id.* at 1774-75. The Court noted that "[f]ar 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." *Id.* at 1775-76.

41. *Id.* at 1778.

42. *Id.*

43. The Court described the balancing "equation" as "weighing the perhaps lesser probability of injuring or killing numerous bystanders against the perhaps larger probability of injuring or killing a single person." *Id.*

44. The Court distinguished the instant case from *Garner* by noting that the risk to respondent was "not the near *certainty* of death posed by, say, shooting a fleeing felon in the back of the head." *Scott*, 127 S. Ct. at 1778.

45. *See id.* In his dissent, Justice Stevens contended that the majority's strict rule was antithetical to "the flexible and case-by-case 'reasonableness' approach applied in *Garner* and *Graham v. Connor*," and that the rule was "arguably inapplicable to the case at hand, given that it is not clear that this chase threatened the life of any 'innocent bystande[r].'" *Id.* at 1785 (alteration in original) (Stevens, J., dissenting).

Significantly, the instant Court rejected respondent's suggestion that the incident could have been avoided had the police ceased pursuit.[46] The Court reasoned that petitioner's actions were sure to end the risk to the public and backing off did not guarantee the same result.[47] Pragmatically, the Court noted an officer would have difficulty notifying a suspect that the officer backed off and ended the pursuit.[48] Moreover, the Court adamantly refused to create a rule that would offer suspects freedom from pursuit if they reached a threshold level of recklessness and endangered enough innocent lives.[49] The instant Court formulated a "sensible" rule: an officer's efforts to end a high-speed car chase endangering innocent lives do not amount to an unreasonable seizure even where the attempt poses a risk of serious injury or death to the fleeing suspect.[50]

The instant Court's rigid rule is adverse to the traditional flexibility of reasonableness in Fourth Amendment analyses.[51] While purporting to trudge "through the factbound morass of 'reasonableness,'"[52] the instant Court applied a simple balancing test that accounted for general, rather than specific, details of the case.[53] The Court's limited factual inquiry produced a paradoxically strict rule for high speed car chases.[54]

Notably, the instant Court rejected *Garner*'s prerequisites to the use of deadly force, contending that the cases were so factually dissimilar that the *Garner* analysis did not apply.[55] The Court recognized that *Garner*'s facts

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46. *Id.* at 1778 (majority opinion).

47. *Id.* at 1778-79.

48. *Id.* at 1779. The Court worried that "[h]ad respondent looked in his rear-view mirror and seen the police cars deactivate their flashing lights and turn around, he would have had no idea whether they were truly letting him get away, or simply devising a new strategy for capture." *Id.*

49. *Scott*, 127 S. Ct. at 1779. The Court strongly worded the rejection, explaining that it was "loath to lay down" such a rule, and that "[t]he Constitution assuredly does not impose this invitation to impunity-earned-by-recklessness." *Id.*

50. *Id.*

51. Notably, in concurring, Justice Ginsberg explained that she did not see the "decision as articulating a mechanical *per se* rule," but rather, she saw the majority's conclusion as "situation specific." *Id.* (Ginsberg, J., concurring). Justice Breyer, also concurring, viewed the rule as "too absolute." *Id.* at 1780 (Breyer, J., concurring). Justice Stevens, however, dissented, he contended that the rule completely contradicted the reasonableness analyses set forth in *Garner* and *Graham*. *Id.* at 1785 (Stevens, J., dissenting).

52. *Id.* at 1778 (majority opinion).

53. *See id.*

54. *See Scott*, 127 S. Ct. at 1779.

55. *Id.* at 1777. "[I]n this case, unlike in Garner, it was respondent's flight itself (by means of a speeding automobile) that posed the threat of 'serious physical harm . . . to others.'" *Id.* at 1777 n.9.

were "vastly different" from the facts at hand and acknowledged its prior reliance on a deeply fact-based analysis.[56] Interestingly, however, the instant Court cursorily weighed the danger to respondent against the danger to the public.[57] It concluded both dangers were likely to have materialized and that, with the two being equal in weight, the respondent's culpability tipped the scale.[58] Thus, the instant Court's surface-level adventure into the factual "morass" ultimately constructed a basic framework for future courts to find similar seizures reasonable.[59]

While the instant Court accounted for two of *Graham*'s factors, it failed to consider that respondent was fleeing from a relatively insignificant crime—speeding.[60] Although that fact would probably not have tipped the scales of reasonableness in respondent's favor, its explicit consideration would have underscored the instant Court's decision to adopt a fact-specific analysis and would provide clearer guidance for future similar cases.[61] Moreover, considering this fact would establish another "tie-breaker" in close cases, analogous (and in addition) to the instant Court's use of relative culpability,[62] without departing significantly from the basic balancing test.[63]

In his dissent, Justice Stevens engaged in the highly fact-specific analysis[64] that the majority failed to undertake. Justice Stevens reviewed the same videotape as the majority;[65] he noted the number of cars respondent passed, the number of intersections respondent drove through when the lights were red, and the number of times respondent pulled into the opposite lane with and without signaling first.[66] Justice Stevens's delicate analysis contrasts with the majority's broad balancing approach.[67] Justice Stevens primarily concluded that significant factual issues warranted a jury's attention, and he disapproved of the majority's strict rule as antithetical to traditional Fourth Amendment analyses;[68] his disapproval warrants consideration.

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56. *See id.* at 1777.
57. *Id.*
58. *Id.* at 1778.
59. *Scott*, 127 S. Ct. at 1778.
60. *Id.* at 1777 n.9.
61. *Id.* at 1778.
62. *Id.*
63. *Id.*
64. *Scott*, 127 S. Ct. at 1781-83, 1785 (Stevens, J., dissenting).
65. *Id.* at 1782-83 (Stevens, J., dissenting).
66. *Id.*
67. *Id.* at 1782-84; *id.* at 1777-79 (majority opinion).
68. *Id.* at 1785 (Stevens, J., dissenting).

In a Fourth Amendment "reasonableness" context, is the majority's simple balancing test preferable to Justice Stevens's fact-sensitive analysis? Justice Stevens's approach might benefit those who flee in a "less dangerous" manner by running two, rather than six or seven, red lights (as respondent did here).[69] Such an intricate analysis, however, would place a heavy burden on courts to know which factors to consider and what weight to give each factor. The majority's balancing test, on the other hand, comports with traditional Fourth Amendment reasonableness analyses in taking into account the harm to the public and the harm to the suspect,[70] but fails to account for facts that might militate in the suspect's favor.[71] Nevertheless, the majority's balancing test provides a clearer framework for courts and will likely yield less disparate results.

Still, a middle ground exists to guide courts: the majority's balancing test molded to the individual facts of each case[72] through consideration of specific factors. First, Justice Stevens's dissent advocates attention to whether less dangerous alternatives to ending the high-speed car chase existed.[73] While not necessarily decisive, evaluation of whether less drastic measures could have achieved a safer result[74] affords some judicial flexibility in the reasonableness analysis without straying far from traditional notions of reasonableness. The majority's use of relative culpability[75] and the *Graham* Court's consideration of the type of crime[76] provide additional markers for a fact-sensitive reasonableness analysis. Finally, the entire seizure analysis should occur from the perspective of a

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69. *Scott*, 127 S. Ct. at 1785 (Stevens, J., dissenting). Justice Stevens discussed facts that were integral to both sides' arguments: (1) respondent ran two red lights but was drove in a "non-aggressive fashion;" (2) petitioner's path "was largely clear;" and (3) petitioner did not warn respondent before ramming him. *Id.* (Stevens, J., dissenting) (quoting Harris v. Coweta County, 433 F.3d 807, 819 n.14 (11th Cir. 2005)).

70. *Id.* at 1778 (majority opinion).

71. *Id.* at 1778.

72. *Id.*

73. *Id.* at 1785 (Stevens, J., dissenting). Justice Stevens noted that "less drastic measures—in this case, the use of stop sticks or a simple warning issued from a loudspeaker—could have avoided such a tragic result." *Id.*

74. The same result in so far as the chase ended with the suspect's capture, but without a tragic end.

75. *Scott*, 127 S. Ct. at 1778.

76. Graham v. Connor, 490 U.S. 386, 396 (1989). The *Graham* Court concluded that Fourth Amendment reasonableness "is not capable of precise definition or mechanical application" but "requires careful attention to the facts and circumstances of each particular case." *Id.* at 396 (quoting Bell v. Wolfish, 441 U.S. 520, 559 (1979)).

reasonable officer on the scene, particularly where the seizure results in death and hindsight invites immediate conclusions of unreasonableness.[77]

Furthermore, courts should follow *Graham* and *Lewis* and use a thorough and balanced analysis to decide unreasonable seizure claims. *Graham* held that all unreasonable seizure claims against law enforcement officers must be analyzed under the Fourth Amendment's reasonableness standard,[78] and *Lewis* rejected a substantive due process excessive police force claim because the force was not directed at causing the harm and did not meet the "shock the conscience" standard.[79] In effect, Fourth Amendment "reasonableness" remains the only check on a police officer's use of excessive force in a high speed chase.[80]

While protecting the innocent public from a dangerous fleeing suspect is of paramount importance,[81] judicial review must also adequately safeguard the suspect from excessive police force. Thus, careful review of an unreasonable seizure claim in a high-speed pursuit should include at a minimum and from the perspective of a reasonable officer on the scene,[82] a consideration of the competing interests of the public and the individual,[83] less dangerous alternatives to ending the pursuit,[84] the relative culpability of the fleeing suspect, and the severity of the crime at issue.[85] Finally, reviewing courts should take into account other factors traditionally relevant to the Fourth Amendment reasonableness inquiry that promote public safety or individual privacy interests.

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77. *Id.* at 396-97.

78. *Id.* at 395. The *Graham* Court held "that *all* claims that law enforcement officers have used excessive force—deadly or not—in the course of an arrest, investigatory stop, or other 'seizure' of a free citizen should be analyzed under the Fourth Amendment and its 'reasonableness' standard, rather than under a 'substantive due process' approach." *Id.* The Court reasoned that "the Fourth Amendment provides an explicit textual source of constitutional protection . . . [unlike] the more generalized notion of 'substantive due process.'" *Id.*

79. County of Sacramento v. Lewis, 523 U.S. 833, 853 (1998).

80. *Id.*

81. Scott v. Harris, 127 S. Ct. 1769, 1778 (2007).

82. *Graham*, 490 U.S. at 396.

83. *Scott*, 127 S. Ct. at 1778.

84. *Id.* at 1785.

85. *Graham*, 490 U.S. at 396.