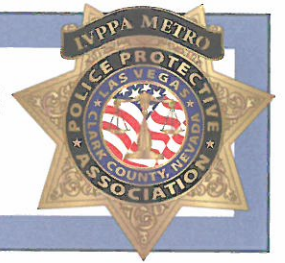





# Las Vegas Police Protective Association Metro, Inc.



To: LVPPA Members  
From: David Roger, General Counsel   
Date: May 29, 2014  
Re: Use of Deadly Force to Terminate Pursuit

This week the United States Supreme Court, in *Plumhoff v. Rickard*<sup>1</sup> decided that officers did not violate the Fourth Amendment, and the tenants of *Graham v. Conner*, when they used deadly force to terminate a high-speed vehicle pursuit. As discussed below, this decision and the earlier opinion in *Scott v. Harris*<sup>2</sup> are very favorable to law enforcement. However, please be mindful of the department's overriding principle of de-escalation.

## *Scott v. Harris*

A Georgia County Deputy observed Harris speeding and attempted to stop the vehicle by activating his emergency equipment. Scott refused to pull over and a high-speed chase ensued. The deputy clocked Scott's vehicle at speeds exceeding 85 miles per hour. Deputy Scott joined the pursuit. The suspect pulled into a shopping center and was surrounded by police vehicles. The suspect collided with Deputy Scott's car and spun out of the trap. The suspect then took off down the street and the pursuit continued.

Deputy Scott received approval to execute a PIT maneuver on the suspect's vehicle. However, Deputy Scott applied his push bumper into

<sup>1</sup> *Plumhoff v. Rickard*, 572 U.S. \_\_\_ (2014).

<sup>2</sup> *Scott v. Harris*, 550 U.S. 372, 127 S.Ct. 1769 (2007).

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the back of the suspect's car. The suspect lost control of his vehicle, ran off the roadway and crashed at the bottom of an embankment. The suspect was injured and rendered a quadriplegic.

Applying the Fourth Amendment analysis of whether the officer's actions were objectively reasonable, the Court explained:

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 respondent, 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 respondent 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 that he did.

Likewise, the Court rejected the notion that officers should terminate pursuits to protect innocent bystanders by stating:

[W]e are loath 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. It is obvious the perverse incentives such a rule would create: Every fleeing motorist would know that escape is within his grasp, if only he accelerates to 90 miles per hour, crosses the double-yellow line a few times, and runs a few red lights. The Constitution assuredly does not impose this invitation to impunity-earned-by-recklessness. Instead, we lay down 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.

### Plumhoff v. Rickard

A Lieutenant stopped a vehicle, driven by Rickard, for operating with only one headlight. When the Lt. asked Rickard to exit the vehicle, Rickard sped away. As officers pursued the vehicle, Rickard drove in excess of 100 miles per hour.

As Rickard left the roadway, he clipped a police vehicle and spun into a shopping center parking lot. Officers exited their cars and fired three rounds into the vehicle as Rickard tried to leave the lot. Rickard was able to maneuver his vehicle around the officers and leave the area. At that point, officers fired another 12 rounds towards Rickard's car. The suspect lost control of the car and crashed into a building. Rickard and his passenger died from gunshot wounds and injuries sustained in the crash.

Recognizing the precedent in the *Scott* case and the reasoning of *Graham v. Connor*, the Court concluded officers acted reasonably when they used deadly force to stop Rickard's flight, which posed a grave public safety risk.

Likewise, the Court rejected the argument that the officers' use of deadly force was excessive in light of the 15 rounds they fired at the suspect vehicle. The Court explained, "It stands to reason that, if police officers are justified in firing at a suspect in order to end a severe threat to public safety, the officers need not stop shooting until the threat has ended."

### Conclusion

It is clear from these cases, that the Courts are reluctant to second guess an officer's decision to use deadly force to end a vehicle pursuit that poses an extreme danger to citizens and officers.

Nevertheless, officers should be cognizant of the Department's pursuit policy and the de-escalation mandates of the use of force policy.