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policing with perspective

MPTC IN-SERVICE: UPDATE 5¹

High speed pursuit dangers

High speed pursuit is such a dangerous activity that officers may be responsible for crashes that occur even after their pursuit has ended. *Harrison v. Town of Mattapoisett*, 78 Mass. App. Ct. 367 (2010):

- **Facts.** At 10:40 a.m., Sergeant Richmond of the Acushnet police department observed William Lessa, a “known suspect,” traveling through Acushnet toward Mattapoisett in a Dodge pickup truck. Lessa was not engaged in any criminal activity, but Sergeant Richmond was aware that Lessa had at least seven outstanding warrants for his arrest, including the commission of a felony (B&E of a residence), larceny, and drug offenses.

Richmond was operating an unmarked police vehicle, so he called for a marked police cruiser to apprehend Lessa. He did not signal or follow Lessa, and no other Acushnet police officers became involved.

Since Acushnet and Mattapoisett operate on a shared radio frequency, Officer Robert Dumas of the Mattapoisett police department overheard the alert. He spotted Lessa, activated his blue lights and began to pursue the vehicle. Lessa immediately accelerated. When he neared an intersection, Lessa almost hit a police officer working a road detail. Officer Dumas radioed the dispatcher that Lessa was failing to stop and gave his location. At this point, another Mattapoisett cruiser got involved.

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The chase proceeded onto Route 195 westbound. Lessa changed directions twice by driving his vehicle over the median strip. As Lessa drove towards the Fairhaven town line, Officer Dumas's supervisor ordered him to notify the Fairhaven police. Dumas did and Fairhaven Officer Peter Joseph joined the chase. Officer Dumas remained in the lead, with Officer Joseph having been ordered by his superior to follow and observe.

Lessa drove his vehicle at speeds of up to 100 mph, causing civilian vehicles to swerve. According to Officer Joseph, there was "a lot" of traffic on the road. When it appeared Lessa was going to exit the highway onto Route 18, Officer Dumas's supervisor ordered him to terminate the pursuit. The cruisers turned off their blue lights and sirens and slowed down.

Lessa exited the highway onto Route 18 and entered a highly populated commercial and residential area. Seconds after the chase was called off, Lessa sped through a stop sign and collided with Roberta Harrison's vehicle.

The officers did not see the crash, but arrived at the scene shortly after it happened. Lessa was issued a citation charging him with: (1) failure to stop for a police officer; (2) operating recklessly so as to endanger; (3) operating after suspension; and (4) speeding.

Seeking compensation for her injuries, Roberta Harrison filed suit against the towns of Mattapoisett, Fairhaven, and Acushnet, as well as the State Police. A Superior Court judge threw out Harrison's suit based on his view that the police did not cause the accident because it occurred after they ended their pursuit.²

However, the Appeals Court disagreed and reinstated Harrison's lawsuit against Mattapoisett and Fairhaven. Her cases against Acushnet and the State Police were dismissed because they had not been involved in the actual pursuit.

- **Analysis.**
 - **Immunity.** Under Massachusetts law, the government may not be sued for the misconduct of a third party *unless* its employees were the "original cause" of the harm suffered by the victim. To be the "original cause," the behavior of the public employees must have significantly contributed to creating the condition or situation that resulted in the victim's injuries.

Here, the Mattapoisett and Fairhaven officers engaged in a high-speed chase. Lessa nearly hit a police officer working a detail; he drove onto a major highway at high speed; motorists had to swerve to get out of his way; and twice Lessa changed directions by driving over the median strip.

² Technically, the judge granted summary judgment to the police departments based on their "immunity" under the public duty rule of G.L. c. 258, § 10(j), which prohibits a plaintiff from recovering for the acts of a third party (in this case, the defendant Lessa) which were not directly caused by the acts of a public official (in this case, the police).

Observing his reckless driving, the officers chose to continue pursuing him at high speed. This affirmative act helped create the specific situation (i.e., Lessa's flight) that resulted in the plaintiff's harm.

The fact that the officers stopped the chase before Lessa hit Harrison's vehicle did not influence the Appeals Court because it occurred "only seconds before the crash."

- **Negligence.** The key question in this case – as in any negligence case -- is whether the officers should have anticipated that someone in Roberta Harrison's position might be seriously harmed as a result of *their* behavior.³

While the Appeals Court recognized the need for police to apprehend criminals, it also pointed out the extreme danger of high speed pursuits. For example, in 2003, there were an estimated 35,000 police pursuits across the United States:

- Almost 40% (or 14,000) resulted in crashes.⁴
- 350 involved pursuit-related fatalities.
- One-third of those killed were innocent bystanders.⁵

Recognizing this danger, many cities and towns, including Mattapoisett and Fairhaven, have extensive guidelines relating to high speed pursuit. The policies call for pursuing officers to balance the risk of continued pursuit against the risk the suspect presents to the community. The officer must stop when it becomes apparent that the pursuit itself presents more danger than letting the suspect go.

In this case, Lessa was first observed operating his vehicle normally, not engaged in any criminal activity. The officers knew his identity and where he was probably going – facts which call into question the wisdom of maintaining a wild pursuit in the first place.

- **Procedural note.** To be clear, the Appeals Court did not decide that the police *were* negligent, it simply ruled that there was enough information to justify submitting the case to a jury. That said, the real value of *Harrison* is it reminds us all of the grave danger posed by pursuit.

What follows are key considerations for officers facing the important decision about whether to pursue a vehicle.

³ The legal word for this concept is "foreseeability."

⁴ Statistics compiled by the National Highway Traffic and Safety Administration's Fatality Analysis Reporting System (FARS) for 2003, as reported in O'Connor and Norse, *Police Pursuits: A Comprehensive Look at the Broad Spectrum of Police Pursuit Liability and Law*, 57 Mercer L.Rev. 511, 511-512 (2006) (Police Pursuits).

⁵ The latest final statistics compiled by FARS (1987-2007 Final & 2008 ARF) show that in 2007, there were 425 pursuit-related fatalities, of which 119 were innocent bystanders. The court noted that because the statistics are compiled by voluntary submission, "some organizations estimate that the figures could be twice as high as stated by FARS." See *Police Pursuits*, supra at 512 n. 3.

Principles for high speed pursuit

Know your departmental policy intimately because it is usually more restrictive than legal requirements. Consequently, following your internal guidelines will be sufficient to ensure legal compliance. Know your policy intimately, so that you can explain your decisions and pursuit conduct in relation to its provisions.

Any pursuit poses a risk of danger to you, other officers, occupants of the pursued vehicle, and the public. There is no such thing as a “safe” pursuit. For one thing, you never know the driving skill of the operator in the car being chased. His ineptitude can threaten your safety -- sometimes more than a weapon can.

Accept that oftentimes pursuit is just not worth the risk. Better (at times) to allow a suspect to temporarily escape than to jeopardize citizen and officer safety with pursuit.

Realistically assess your emergency driving ability because all officers do not have the same driving skill. Be realistic in your assessment. As Clint Eastwood says: “You’ve got to know your limitations . . .”

Don’t see pursuit as “entertainment”. Let’s face it, high speed pursuit can be exciting. This is why officers have to consciously avoid the temptation to see pursuit as a form of entertainment. It is too dangerous, with the potential for too many unanticipated tragedies, to be motivated by an officer’s desire for fun.

Don’t see pursuit as a “challenge” to your authority. The most disastrous pursuits often stem from the pursuing officer’s “ego.” A mindset that promotes poor judgment is the belief that an escaping vehicle makes you “look bad” or poses a “challenge” to your authority. Avoid having your decisions influenced by these kinds of thoughts. It’s not personal; the authority you exercise is granted to you by the community.

Remember, it is always up to you to stop. Most often, you are in the best position to decide whether the conditions make it unreasonable to continue.

Recognize that a supervisor, who is not in the heat of the moment, may be able to exercise the best judgment. We’re all human, and it is easy to get caught up in the actual pursuit so that you lose sight of the bigger, public safety picture. That is why virtually every department empowers a supervisor to suspend a pursuit. Don’t view this authority as a reflection of a lack of trust in your judgment. Rather, this policy provides an appropriate check on the human tendency to lose perspective in high stress moments.

Consider the following conditions in evaluating whether to continue or to stop.

- **Nature of the violation/offense and the potential hazard created by pursuit.**
- **Likelihood of successful apprehension.**
- **Volume, type, speed, and direction of traffic.**
- **Nature of the location (e.g., is it residential? business? school zone?).**
- **Weather and road conditions.**
- **Your driving skills and the condition and type of police vehicle you are operating.**