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Shooting at Moving Vehicles

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Introduction

The subject of the use of deadly force against the drivers and occupants of moving motor vehicles has become an increasingly troublesome and controversial topic. Sometimes officers have used such force when the driver was accelerating the vehicle towards or near an officer.

Some high profile cases in which vehicle drivers or passengers have died or suffered substantial injuries have resulted in large civil liability awards or settlements, such as the \$7 million settlement in the [Sean Bell](#) case in New York. On the other hand, there certainly have also been instances in which police officers have been seriously injured or even killed by an oncoming vehicle either ignoring the officer's orders to halt or even intentionally targeting the officer for harm, using the vehicle as a weapon. Indeed, in the Sean Bell case, one of the officers was, in fact, struck by the vehicle driven by Bell.

A number of municipal police departments have adopted [policies](#) that restrict or prohibit officers shooting at a moving vehicle. One notable such [policy](#) is that adopted by the Los Angeles Police Department.

That policy provides, in part, that:

“Firearms shall not be discharged at a moving vehicle unless a person in the vehicle is immediately threatening the officer or another person with deadly force by means other than the vehicle. For the purposes of this Section, the moving vehicle itself shall not presumptively constitute a threat that justifies an officer's use of deadly force. An officer threatened by an oncoming vehicle shall move out of its path instead of discharging a firearm at it or any of its occupants. “

The policy text contains a list of reasons for its adoption. The purpose of this article is not to debate the pros or cons of the adoption of such policies, nor does it attempt to summarize police department policies on the subject, which vary greatly from place to place.

Instead, the article takes a look at the issue of civil liability for incidents in which officers have shot at moving vehicles and their occupants. When have courts found such use of deadly force justified? When have they ruled that the firing officers engaged in an excessive use of force? What courts have found permissible and what a particular department's policy mandates, of course, may be at odds in some instances.

At the end of the article, there is a listing of a few helpful resources and references.

Firing in Response to Imminent Threat of Danger

Can officers use deadly force against the driver or occupants of a vehicle after stepping in front of or otherwise coming into the path of a moving vehicle? In essence, many courts, in answering this question, have focused on the usual constitutional test set forth in [Tennessee v. Garner](#), #83-1035, 471 U.S. 1 (1985) for the use of deadly force, whether the officer reasonably believes that they are acting in response to an imminent threat of death or serious physical injury to themselves or other persons.

In [Thomas v. Durastanti](#), #07-3343, 607 F.3d 655 (10th Cir.2010), a federal Bureau of Alcohol Tobacco and Firearms (BATF) agent fired at a vehicle that was trying to elude a stop in a parking lot, narrowly missing another BATF agent, and actually colliding with the firing agent.

The agent arguably fired some shots before the car struck him and some after it did so, after he was knocked aside. The court seemed to believe that he could still have reasonably believed that he was in danger. Additionally, the vehicle and its occupants, having assaulted and attempted to assault the officers, may have also posed a continuing danger to others.

In a lawsuit filed by the man shot by the BATF agent, a federal appeals court noted that while a court considering the issue of summary judgment on the basis of qualified immunity must ordinarily consider disputed facts from the perspective most favorable to the plaintiff, that was not true when there is clear contrary video evidence of the incident at issue.

The man shot by the BATF agent had been an occupant of a vehicle transporting crack cocaine for a planned sale, and the confrontation, which involved BATF agents dressed in plainclothes, as well as a uniformed state trooper, occurred in a parking lot, and the occupants attempted to drive off, at one point placing one of the agents in possible danger.

The driver was shot in the head and the plaintiff suffered a gunshot wound to his leg. The appeals court noted that the use of deadly force is justified when an officer is threatened by a weapon, which may include a vehicle attempting to run over an officer, as arguably

occurred here. The agent argued that the car was accelerating towards him and that he had no way to escape, justifying the use of deadly force.

While there was a dispute about the speed of the car, this could be observed on the marked patrol car's videotape. While the plaintiff claimed that the car slowed or perhaps even stopped, the court found that this was contradicted by the video evidence.

Indeed, the vehicle did strike the agent. Under these circumstances, the court found, the officer's use of deadly force was reasonable. The court rejected the plaintiff's argument that the vehicle occupants were "harmless" individuals who had merely been stopped for a routine traffic violation, since the driver engaged in an assault on the agents, narrowly missing one with his car and actually striking the other.

[Jenkins v. Bartlett](#), #06-2495, 487 F.3d 482 (7th Cir. 2007) is another case in which the court ruled that an officer did not use excessive force in shooting and killing a motorist who hit the officer with a car.

Threats to Officers or to Bystanders

The threat to which the officers are responding through the use of deadly force may be either to themselves or to others, such as bystanders. In [Cordova v. Aragon](#), #08-1222, 569 F.3d 1183 (10th Cir. 2009), relatives of a motorist shot and killed by a police officer at the conclusion of a vehicular pursuit sued the officer and city for excessive use of force. During the pursuit, the motorist had run a red light, tried to ram a police vehicle, and drove on the wrong side of a highway.

The officer was attempting to deploy drop sticks, and the motorist then swerved his vehicle towards him. This was followed by the officer firing four or five times, striking the motorist in the back of the head and killing him.

Affirming summary judgment for both the officer and the city, a federal appeals court first stated that the facts hypothetically could constitute an excessive use of force if, as the defendants accepted for purposes of appeal, the officer did not face immediate danger and no innocent bystanders were nearby.

Qualified immunity, however, was still proper for the officer, since he did not act unreasonably in believing that the potential danger to others justified the use of deadly force under the circumstances. There was no showing of a policy or custom of the city causing the death as required for municipal liability.

In [Marion v. City of Corydon](#), #08-2592, 559 F.3d 693 (7th Cir. 2009), a federal appeals court rejected claims of excessive force against officers who shot at a fleeing grocery store shoplifter. The shoplifter had resisted an officer trying to detain him after he admitted stealing merchandise when confronted outside the store, prevented the officer from using a Taser on him, and fled in his car at high speed.

He drove recklessly, and avoided a rolling police roadblock. Officers on foot shot him as his vehicle came towards them, and when they feared for their safety and the safety of others. The officers who shot mistakenly believed, based on radio transmissions, that the suspect was armed.

"We conclude that, under the totality of the circumstances, it was reasonable for the officers to think that [the plaintiff] seriously endangered officers and innocent bystanders, and it was reasonable for the officers to discharge their firearms in [his] direction to stop him. Thus, there was no Fourth Amendment violation."

The court in [McCullough v. Antolini](#), #08-10176, 559 F.3d 1201 (11th Cir. 2009), found that deputies were entitled to qualified immunity for shooting and killing a motorist who refused to pull his truck over, led them on a high speed chase, refused to show his hands after finally pulling over, and then drove his vehicle in the direction of a deputy standing nearby.

The decedent used his truck in an aggressive manner justifying the belief that he posed a risk of death or serious physical harm to officers or the public. Deputies could also reasonably believe that he was trying to escape, and provided him with an adequate warning before firing.

In [Swann v. City of Richmond](#), #07-1981, 2009 U.S. App. Lexis 1479 (Unpub. 4th Cir.), two officers who fired shots at a vehicle that was coming towards themselves and other officers were found to have acted in an objectively reasonable manner.

A third officer who fired at the driver and another occupant, believing that the shots fired by the first two officers came from within the car, was also acting in an objectively reasonable manner, since he also believed that he was acting in self-defense.

No gun was found inside the vehicle, although drugs were found, and the vehicle occupants had ignored orders to raise their hands and leave the car, instead knocking an officer over and threatening police with the vehicle. Additionally, one of the occupants was observed moving his hands near his waistband and discarding something as he ran to the car.

In [Costello v. Town of Warwick](#), #06-5138, 2008 U.S. App. Lexis 8378 (Unpub. 2nd Cir.), a motorist moved his vehicle, boxed between other cars, forward and backwards, so that an officer acted objectively reasonably in shooting the motorist based on a belief that another officer under the motorist's car was hurt and would suffer additional serious bodily harm. No liability for shooting and killing the motorist was found under these circumstances.

In [Hathaway v. Bazany](#), #06-50602, 507 F.3d 312 (5th Cir. 2007), the court concluded that a police officer acted reasonably within an extremely brief period of time in shooting and killing a teenage motorist whose car struck him as it drove away following a traffic stop.

The officer stated that he had seen the car accelerate towards him and a "determined look" on the face of the motorist, and decided to fire upon realizing that he could not get out of the way. The officer himself testified during his deposition, that he did not know if he fired before, during, or after he was hit by the vehicle.

The court found that it was reasonable to conclude that the shooting and the vehicle striking the officer happened at close to the same time. The trial court excluded offered expert witness testimony by the father of the motorist, who is a police officer, arguing that the defendant officer must have been behind the car at the time of the shooting.

In [Williams v. City of Grosse Pointe Park](#), #05-2409, 496 F.3d 482 (6th Cir. 2007), the court held that a police sergeant acted objectively reasonably in firing at a stolen car, striking the driver in the back of the neck and leaving him paralyzed. The car had been reported stolen, was being driven by a minor, and had evaded attempts to block the vehicle, going into reverse to collide with an officer's cruiser.

When the sergeant pointed his gun at the driver's head, he was knocked down by the vehicle, prior to shooting several rounds. No jury, the court concluded, could reasonably find the use of deadly force unreasonable, based on the driver's decision to flee and the immediate threat of harm the driver posed to the sergeant, pedestrians, and other drivers.

In [Sanders v. City of Minneapolis, Minn.](#), #06-1356, 474 F.3d 523 (8th Cir. 2007), the court held that an officer acted properly in shooting a man who ignored orders to show his hands, and instead backed his car into a security guard's vehicle, followed by accelerating down an alley towards other police officers in his path. The officer's actions were aimed at trying to prevent him from injuring the other officers, and were reasonable under the circumstances, even if the suspect was then experiencing a bipolar episode. Because of this, there was also no violation of the Americans with Disabilities Act (ADA).

Qualified Immunity Defense

Courts have often grappled with whether a defense of qualified immunity is available to officers confronted with making a split-second decision as to whether or not to use deadly force in response to what reasonably appears to them at the time to be a deadly threat from a moving vehicle.

In a case involving the roadside killing of a man by an Alaska State trooper while investigating a suspicious car parked along a highway, a federal appeals court ruled that acting with deliberate indifference is not an adequate standard to constitute conduct "shocking to the conscience" for purposes of stripping the trooper of the defense of qualified immunity on due process claims by the decedent's family. [Porter v. Osborn](#), #07-35974, 547 F.3d 1131 (9th Cir. 2008).

Instead, the court stated, it must be shown that the trooper acted for the purpose of causing harm, which is unrelated to law enforcement objectives.

The officers found the decedent asleep inside what they thought was an abandoned vehicle, and woke him with demands that he exit the vehicle, pepper spraying him, in response to which he reacted in pain, driving his vehicle slowly towards the patrol vehicle, whereupon a trooper fired five shots and killed him.

Because the trial court, in denying a motion for qualified immunity, used the deliberate indifference standard rather than the more demanding measure of culpability of whether the trooper "acted with a purpose to harm" the man "without regard to legitimate law enforcement objectives," further proceedings were required.

In [Green v. Taylor](#), #06-3583, 2007 U.S. App. Lexis 21593 (Unpub. 6th Cir.), the court reasoned that if a vehicle had come to a stop with the engine running, and suspects in the car had their hands in the air or on the steering wheel when officers approached, then an officer who shot and killed a 16-year-old in the vehicle would not have acted reasonably.

If, on the other hand, as the officer claimed, the car was backing up, and threatened the safety of the officers or others, the result could be different. Genuine issues of disputed material fact, therefore, barred qualified immunity for the officers.

Shooting When the Danger Has Passed

Even if an officer or bystander faced a threat of deadly harm from a moving vehicle, that will not constitute a justification for using deadly force against the driver and passengers when the danger has passed.

In [Smith v. Cupp](#), #04-5783, 430 F.3d 766 (6th Cir. 2005), the court reasoned that if a deputy sheriff fired a final fatal shot at an arrestee fleeing in a stolen police car after the vehicle passed him, he violated the arrestee's constitutional rights. The arrestee had been taken into custody for the nonviolent offense of making harassing phone calls, and no longer posed an immediate threat to the deputy after driving past him.

Similarly, in [Sigley v. City of Parma Heights](#), #05-3035, 437 F.3d 527 (6th Cir. 2006), the court ruled that the use of deadly force to shoot and kill a suspect fleeing from the scene of an undercover drug bust was only justified if, at the time of the shooting, the suspect's vehicle posed an imminent danger to officers. Factual disputes as to whether or not that was the case made summary judgment in favor of the shooting police detective improper.

An autopsy showed that the suspect was shot in his mid-back, just left of the midline. After he was shot, he lost control of his car and crashed into several parked cars. He died of bleeding as a result of the gunshot wound.

The question of whether the use of deadly force was justified or not, under these circumstances, the appeals court reasoned, depended on whose version of the events was accurate, i.e., whether the detective or other officers were in danger of being injured by the suspect's car.

Since there were "unresolved factual issues" as to whether the detective was "chasing after" the suspect's car or the car was turning into him when he fired, summary judgment was improper. Further, if the facts were as the plaintiff alleged, the detective was not entitled to qualified immunity, since he would have fair notice that shooting a suspect in the back when he did not pose an immediate threat to himself or other officers was unlawful.

In Bell v. City of Chicago, #01L3148, Circuit Court of Cook County, Illinois, County Department, Law Division, February 6, 2006, reported in Chicago Daily Law Bulletin, p. 1, February 7, 2006, the City of Chicago reached a \$1.75 million settlement with a man who lost an eye when officers fired on the vehicle in which he was traveling as a passenger when he was a 15-year-old.

The vehicle was allegedly then traveling on the sidewalk and towards a group of police officers on the corner. The officers claimed that they fired in self-defense, believing that the vehicle was trying to run them down, and the vehicle did hit one of the officers.

The plaintiff in the lawsuit claimed, however, that the shot that struck him was fired by an officer after the car had passed him by, and when none of the officers were in any further danger from the vehicle. A total of 25 shots were fired at the car.

Resources

The following are some useful resources related to the subject of this article.

- [Firearms Related: Intentional Use](#). Summaries of cases reported in AELE publications.
- Los Angeles Police Special Order: “[Shooting at or from moving vehicles policy](#)” (Feb. 16, 2005).
- [Prohibitions or restrictions on shooting at a motor vehicle](#) (summaries of policies from nine cities).
- [Sean Bell shooting incident](#). Wikipedia article.
- Transcript, Los Angeles Police Department “[Board of Rights rationale on findings of police officer II, Steven Garcia](#)” (Jan. 8, 2008).
- William J. Hagans, “[Pinellas County Sheriff’s Office: deadly force encounters with moving vehicles](#).”

Prior Relevant Monthly Law Journal Articles

- [Civil Liability for Police Pursuit Driving \(I\)](#), 2007 (2) AELE Mo. L.J. 101.
- [Civil Liability for Law Enforcement Pursuit Driving \(II\): Scott v. Harris](#), 2007 (6) AELE Mo. L.J. 101.
- [Civil Liability for Use of Deadly Force-- Part One](#), 2007 (11) AELE Mo. L.J. 101.
- [Civil Liability for Use of Deadly Force-- Part Two. Qualified Immunity and Inadequate Training](#), 2007 (12) AELE Mo. L.J. 101.

- [Civil Liability for Use of Deadly Force-- Part Three. Supervisory Liability and Negligent/Accidental Acts](#), 2008 (1) AELE Mo. L.J. 101.
- [Long v. Honolulu Police Sharpshooter Decision](#), 2008 (5) AELE Mo. L.J. 501.

References:

- Steven D. Ashley and Thomas Aveni, "[Vehicular Assault: Fight or Flight?](#)" [Police and Security News](#) (Sept.-Oct. 2008).
- David Griffith, "[Cops vs. Cars](#)," [Police Magazine](#) (June 2005). [Abstract](#).

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