

THE LOCAL GOVERNMENT LIABILITY BEAT



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Two Traffic Stops, One Violation and the Constitution

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On March 13, 2019, the Sixth Circuit Court of Appeals decided *Cruise-Gulyas v. Minard et al.*,ⁱ in which the court examined whether an officer violated the First and Fourth Amendments when he stopped a driver for giving him “the bird.” The relevant facts of *Cruise-Gulyas*, taken directly from the case, are as follows:

Officer Minard pulled over Debra Cruise-Gulyas for speeding. He wrote her a ticket for a lesser violation, known as a non-moving violation. As she drove away, apparently ungrateful for the reduction, she made an all-too-familiar gesture at Minard with her hand and without four of her fingers showing. That did not make Minard happy. He pulled her over again and changed the ticket to a moving violation—a speeding offense and what counts as a more serious violation of Michigan law.ⁱⁱ

Cruise-Gulyas subsequently sued the officer in federal court for a violation of her Fourth Amendment rights for stopping her a second time, without reasonable suspicion or probable cause,



and a violation of her First Amendment rights for arresting her for exercising free speech. The officer filed a motion for qualified immunity, and the district court denied the motion. The officer then filed an appeal with the Sixth Circuit Court of Appeals. [Note: The plaintiff also sued for Fourteenth Amendment violations but those claims were not part of the appeal and will not be discussed.]

At the outset, it is important to note that when an officer is sued for constitutional violations, he or she is entitled to qualified immunity if the officer was engaged in a discretionary function. A discretionary function is one that requires an officer to make a decision from a variety of options, such as stop someone or do not stop them, arrest or not arrest, and what offense to charge a person under, to name a few. In order to defeat qualified immunity, a plaintiff must show (1) the officer violated a federally protected right, and (2) the right was clearly established such that a reasonable officer would have known the conduct was unlawful.

First, the court discussed the Fourth Amendment claim. The court stated

All agree that Minard seized Cruise-Gulyas within the meaning of the Fourth Amendment when he pulled her over the second time. *Whren v. United States*, 517 U.S. 806, 809-10 (1996). To justify that stop, Minard needed probable cause that Cruise-Gulyas had committed a civil traffic violation, *id.* at 810, or reasonable suspicion that she had committed a crime, *United States v. Arvizu*, 534 U.S. 266, 273 (2002). He could not rely on the driving infraction to satisfy that requirement. Any authority to seize her in connection with that infraction ended when the first stop concluded. *Rodriguez v. United States*, 135 S. Ct. 1609, 1614 (2015).ⁱⁱⁱ [emphasis added]

Thus, in light of the above, the court examined whether the obscene gesture, particularly, “the

bird,” provided a legal justification for the second stop. The Sixth Circuit examined their precedent and stated

Wilson v. Martin explained that, where a girl extended her middle fingers at officers and walked away, her “gesture was crude, not criminal,” and gave the officers “no legal basis to order [her] to stop.” 549 F. App’x 309, 311 (6th Cir. 2013); see *Swartz v. Insogna*, 704 F.3d 105, 110 (2d Cir. 2013) (“This ancient gesture of insult is not the basis for a reasonable suspicion of a traffic violation or impending criminal activity.”).^{iv} [emphasis added]

Thus, since the first stop had ended and Cruise-Gulyas had been released, the second stop required its own justification. Since “the bird” was not a sufficient legal reason to justify the stop, the court concluded the officer violated the Fourth Amendment. This satisfied the first requirement to defeat qualified immunity.

The court then examined if the law was “clearly established” to put a reasonable officer on notice that the conduct was unlawful. The court examined precedent and stated that, although precedent was not factually identical, the precedent did “establish clear, legal principals that answer the questions this case asks.”^v As such, the court held that this was sufficient to satisfy the second requirement to defeat qualified immunity.

Therefore, the court denied qualified immunity on the Fourth Amendment claim.

The court then discussed the First Amendment claim. The court discussed the law related to the First Amendment claim and stated, to succeed,

[The plaintiff] must show that (1) she engaged in protected conduct, (2) Minard took an adverse action against her that would deter an ordinary person from continuing to engage in that conduct, and (3) her protected conduct motivated Minard at least in part. *Thaddeus-X v. Blatter*,

175 F.3d 378, 394 (6th Cir. 1999) (en banc).^{vi} [emphasis added]

The court then examined each element required of the First Amendment claim. Regarding the first element, whether the plaintiff engaged in protected conduct, the court stated

Precedent clearly establishes the first and second elements. Any reasonable officer would know that a citizen who raises her middle finger engages in speech protected by the First Amendment. *Sandul v. Larion*, 119 F.3d 1250, 1255 (6th Cir. 1997) (gesturing with the middle finger is protected speech); see *Cohen v. California*, 403 U.S. 15, 19, 26 (1971).^{vii} [emphasis added]

Thus, the first element was satisfied.

Regarding the second element, whether the officer took adverse action against the plaintiff that would deter an ordinary person from such conduct, the court examined precedent that held that police action that seizes a person and restricts their liberty is considered such adverse action. The court then held that

An officer who seizes a person for Fourth Amendment purposes without proper justification and issues her a more severe ticket clearly commits an adverse action that would deter her from repeating that conduct in the future.^{viii} [emphasis added]

As such, the second element was satisfied.

Lastly, the court discussed the third element, whether the constitutionally protected conduct motivated the police action, particularly the second stop. In this case, the plaintiff alleged that



she was stopped because of the obscene gesture (giving the officer “the bird”). The officer argued that his second stop of the plaintiff is similar to a prosecutor taking a plea deal off the table when a defendant is offensive or a rude to a judge. However, the court noted that, at this stage of the litigation, the evidence was sufficient to deny qualified immunity since the officer had no legal basis for the stop.

As such, the court held the officer violated First Amendment and the law was clearly established such that a reasonable officer would have known that this conduct violated the First Amendment.

The court of appeals then affirmed the denial of qualified immunity for the officer in this case.

Citations

- i. No. 18-2196 (6th Cir. Decided March 13, 2019)
- ii. Id. at 2
- iii. Id. at 3
- iv. Id.
- v. Id. at 4
- vi. Id.
- vii. Id.
- viii. Id.

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