

# Is the Middle Finger Protected by the First Amendment?

Daigle Law Group

August 13, 2019

It has been a while since we have addressed a “Contempt-of-Cop” case. I’m sure most of you know what I mean when I say “Contempt of Cop” since the term has been with us since the 1960’s and perhaps, even before that. It is a term that we see less and less frequently as officers have come to learn that the authority to seize people comes with clearly established limitations, especially when the offender’s conduct may hurt our feelings but does not rise to criminal conduct.

So, today we look at a recent case out of the 6<sup>th</sup> Circuit. In this case – *Cruise-Gulyas v. Minard*<sup>1</sup> – the court’s opening statement does not bode well for the defendant officer – *‘Fits of rudeness or lack of gratitude may violate the Golden Rule. But that doesn't make them illegal or for that matter punishable or for that matter grounds for a seizure.’*

## **FACTS**

Officer Matthew Minard pulled over Debra Cruise-Gulyas for a speeding violation. At the conclusion of the stop the officer presented the operator with a lesser violation or non-moving violation that resulted in a smaller fine and less points on Ms. Gulyas’ license. It was apparent that the operator was less than satisfied with the reduced fine when she “flipped him off” as she drove away.

Upon seeing Ms. Gulyas’ sign of gratitude, the officer pulled her over 100 yards from the initial stop and amended the ticket to a speeding (moving) violation.

The plaintiff brought suit under 42 USC Section 1983 claiming that the officer violated her 4th Amendment protections by conducting the second stop, her 1<sup>st</sup> Amendment protections, because she had a 1<sup>st</sup> Amendment right to make the gesture and violated her 14th Amendment Due Process rights by restricting her liberty. Minard filed a motion to dismiss on the pleadings, claiming that he was entitled to Qualified Immunity because he did not violate the plaintiff’s constitutional protections or, in the alternative, the rights were not clearly established at the time of the incident.

## **6<sup>th</sup> Circuit Findings**

The appellate court began its review with the 4th Amendment seizure claims. I think we can all agree that the law has clearly established that an officer must have probable cause or reasonable suspicion of a crime or traffic violation to make a traffic stop. More

importantly, the support for the initial stop ends when the stop is completed and any subsequent traffic stop must stand on its own merits, even if the second stop occurs within yards of the first. Under the facts presented here, the 6<sup>th</sup> Circuit determined there were no independent facts to support the second stop absent the gesture made by the operator. Moreover, the gesture alone could not form the basis for the second traffic stop. According to the court – “All in all, the officer clearly lacked authority to stop Cruise-Gulyas a second time”.

With respect to the 1<sup>st</sup> Amendment claim, the court reviewed the facts in light of the 3-part test first enunciated by the 6<sup>th</sup> Circuit in 1999. In order to succeed on a 1<sup>st</sup> Amendment claim the plaintiff must show that:

- The plaintiff engaged in protected conduct,
- The defendant officer took an adverse action against her that would deter an ordinary person from continuing to engage in that conduct, and
- The plaintiff’s protected conduct motivated the officer’s actions at least in part

The court quickly determined that the facts supported the first 2 elements – the operator’s gesture was clearly protected speech and the officer’s actions of conducting the second stop and issuing a more severe penalty constituted “adverse action”. With respect to the third element – whether the officer’s actions were motivated by the protective speech - was a question of fact for a jury to determine.

The court affirmed the trial court’s ruling and the case will now go back for further proceedings.

## **WRAP UP**

For the most part, officers have gotten the message that getting the last word can often lead to costly trouble. There will be times when citizens will express their displeasure with our services and the best thing we can do in those circumstances is tell them to have a nice day and move on.

<sup>1</sup> [Cruise-Gulyas v. Minard](#), #18-2196, 2019 U.S. App. Lexis 7369, 2019 Fed. App. 0043P, 2019 WL 1143852 (6<sup>th</sup> Cir).

---

[Learn more on our website at DaigleLawGroup.com](#)

This publication is produced to provide general information on the topic presented. It is distributed with the understanding that the publisher (Daigle Law Group, LLC.) is not engaged in rendering legal or professional services. Although this publication is prepared by professionals, it should not be used as a substitute for professional services. If legal or other advice is required, the services of a legal professional should be sought.