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Federal Judge Upholds Right To Flip Off Virginia Cops

Gadfly motorist vindicated as federal judge says cops cannot stop drivers for flipping them off.

A federal judge told a Virginia sheriff's deputy that he had no right to pull over a car because a passenger flipped him off. On Friday, proceedings advanced in the lawsuit against Patrick County Lieutenant Rob Coleman. US District Judge Jackson L. Kiser had found sufficient evidence to bring the matter to trial.

Brian H. Clark, the irreverent passenger, has a history of annoying authority. In 2016, Judge Martin F. Clark Jr (no relation) banned Brian Clark from entering the county courthouse clerk's office without a lawyer. The judge complained that Clark annoyed his staff with "numerous emails, letters and filings," and the state Supreme Court upheld the order.



Since he could not go inside, Clark waited outside the courthouse on July 25, 2016 while two friends filed court papers on his behalf. While inside, one of those friend, Wendy Inzerillo, overheard the sheriff's deputies saying "Brian doesn't know what we have in store for him" and that he "couldn't wait to see his face when we take him down."

After the papers were filed, Clark left with his sister. From the passenger seat of her car, Clark noticed that several deputies were rushing to their squad cars. He decided to extend his middle finger at Deputy Rob Coleman, who was following close behind. The deputy insisted Clark's gesture was a cause for concern and conducted a traffic stop.

"People do not wave inappropriate or obscene gestures to a law enforcement officer unless something is wrong," the deputy said in a deposition.

Judge Kiser openly mocked this observation.

"Tellingly, he does not allege that he ever asked Clark if he was safe or that he inquired anything of the driver, nor does he assert any other interaction throughout his entire career where an 'obscene' gesture was displayed towards him in an effort to indicate duress or request police assistance," Judge Kiser wrote.

Soon after Clark's sister pulled over, a group of seven police vehicles arrived on the scene. Clark sued everyone who showed up. The judge found that, aside from Deputy Coleman, there was no proof that the officers had done anything other than show up on the scene.

"The evidence establishes that Coleman, acting in his capacity as a deputy sheriff, seized plaintiff without probable cause or reasonable suspicion of wrongdoing," Judge Kiser ruled. "The vehicle was stopped without probable cause or reasonable suspicion, and Coleman's expressed reason for stopping the vehicle is belied by plaintiff's testimony, which I accept as true. Clearly, plaintiff has presented sufficient evidence to show that Coleman, acting under color of law, violated plaintiff's right to be free from unreasonable seizures."

At this stage in the case, the judge must review all the evidence in the light most favorable to Clark. He found Clark had shown a clear violation of his constitutional rights under the First and Fourth Amendments.

"Coleman still lacked any authority to seize him during a traffic stop, and a reasonable officer should have known that any seizure was in contravention of the Constitution," Judge Kiser ruled. "Coleman's claim of qualified immunity is rejected, and Count II will proceed to trial against Coleman."

Coleman has since been promoted to captain. The memorandum opinion in the case is available in a 1.5mb PDF