



Catalyst

Will The Police Who Flipped Woman's SUV Face Charges?

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On the evening of July 9, 2020, Janice Nicole Harper was traveling in her car on Highway 67 in Arkansas when police lights suddenly appeared in her rearview mirror.

Dashcam footage from the incident shows Harper, who was pregnant at the time, slowing her vehicle, switching on her hazard lights, and steering to the side of the road. Before she could stop or find an exit to pull over at, however, Arkansas State Trooper Rodney Dunn rammed her SUV, causing the vehicle to flip over.

Footage then shows Dunn approach the upside-down SUV and tell Harper to climb out of her passenger-side window.

“Why didn't you stop?” he is heard asking.

“Because I didn't feel like it was safe!” Harper cries out in obvious distress.

“Well, this is where you end up,” Dunn responds as Harper, then pregnant, struggles to exit the vehicle. “I thought it would be safe to wait until the exit.”

“No ma'am, you pull over when law enforcement stops you.”

No Charges, Still on Active Patrol

If any ordinary citizen had intentionally rammed a pregnant woman's vehicle, flipping it over in an attempt to stop her from speeding, they would be facing several criminal charges and a large payout to the victim. However, because Rodney Dunn is an Arkansas State Trooper, he is unlikely to do either.

Indeed, since this dangerous incident occurred, Dunn has remained on active patrol duty. No criminal charges were brought against him, despite performing an action—a maneuver known as a Pursuit Intervention Technique—that easily could have killed Harper and her unborn child. He is, however, facing civil charges.

Harper is suing Dunn and his two supervisors, Sgt. Alan Johnson, and Arkansas State Police Director Col. Bill Bryant for negligence for using the PIT maneuver on her. According to the lawsuit, Harper was driving 84 miles per hour in a 70-mile-per-hour zone. Dunn turned on his lights to signal for Harper to pull over, which she responded to by slowing her speed to 60 miles per hour, turning on her hazard lights, and moving into the right travel lane to pull off of the highway in a safe manner. Because of the pitch black darkness and the reduced shoulder on the side of the highway, Harper wanted to find a safer place to pull off. Less than three minutes had transpired from the beginning of the pursuit when Dunn performed the maneuver, ramming Harper's vehicle and causing it to crash into the concrete median and flip over.

Although Dunn recklessly endangered Harper's life (and her unborn child's) with an excessive use of force, it's unlikely he will be forced to pay restitution because of privileges afforded to law enforcement that the rest of us don't get.

Qualified Immunity Protects Police From Consequences

In the state of Arkansas, a driver is well within their rights to use hazard lights to signal to an officer that they are going to pull off the road when they find a safe place. In fact, that's exactly what the State Police's "Driver License Study Guide" says drivers *should* do.

Under "What to do When You Are Stopped," it says to use "emergency flashers to indicate to the officer that you are seeking a safe place to stop." So, even if Harper was being pursued for a more serious traffic offense, she should have still been allowed to follow these rules. The fact that she was only being pulled over for speeding just adds to the absurdity of the officer's actions. As a pregnant woman driving on the highway alone and at night, it is only common sense for Harper to have pulled into a well-lit area with a wider shoulder. (This action protects police officers as well as citizens, it should be noted.)

This case demonstrates the urgency of abolishing qualified immunity, which is a legal principle that gives government officials, like law enforcement, immunity from civil suits unless the plaintiff's rights were violated by the official in a "clearly established statutory or constitutional rights of which a reasonable person would have known."

If a non-officer had flipped someone's car for simply speeding, there is little doubt they would face civil and criminal charges. But qualified immunity will most likely protect Dunn (once again) from facing the consequences of his actions. Even if Harper were to win this lawsuit, the payout would come from taxpayer money, not Dunn's pockets.

How did we get here? The genesis of qualified immunity is nearly as suspect as the law itself. The doctrine was essentially created out of thin air by the Supreme Court in 1960, with no legal basis or mass public support. The statute includes something called the "Clearly Established Law Requirement."

Because of the nature of this requirement, police officers are protected from consequences even if they violated someone's civil rights if a court hasn't previously ruled the exact actions to be unconstitutional in a prior case. Because of the fact that specifics in different cases can differ greatly, this allows for a lot of room for officers who acted unconstitutionally to get off scot-free.

Government Employees Should Not Have the Privilege to Violate Your Rights

Abolishing qualified immunity would hold officers liable for infringing on citizens' rights, and act as an effective deterrent from these incidents occurring in the first place. If law enforcement understands that they (and not the local government) will have to pay for violations of civil rights, they would be less likely to violate those rights in the first place.

According to Clark Neilly of the Cato Institute, "Qualified immunity is a judge-made defense," referencing the fact that it was made up in the Supreme Court rather than by the legislative process.

"[Qualified immunity] enables police and other government officials to escape liability for violating people's rights..." wrote Neilly. "This has enabled cops to escape liability for everything from stealing property while executing a search warrant to savaging an unresisting suspect with a police dog."

Because there aren't many cases of state troopers recklessly using the PIT maneuver to flip a driver for speeding, there is a good chance that qualified immunity would apply in this case, and protect Dunn.

Qualified immunity is un-American. It flouts the philosophy on which our constitutional republic was founded, as was clearly articulated in the Declaration of Independence:

"We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness.—That to secure these rights, Governments are instituted among Men, deriving their just powers from the consent of the governed,—That whenever any Form of Government becomes destructive of these ends, it is the Right of the People to alter or to abolish it."

Right in the introduction of the document, our founding fathers made sure to emphasize that the sole purpose of government is to protect our rights. As agents of the government inaugurated by the Declaration of Independence, that is what cops are supposed to do. "Protect and serve," like it sometimes says on their squad cars. Not lord it over us like we're mere peons—like Trooper Dunn did when he damn near killed a pregnant lady and then lectured her for not respecting his badge. That's the kind of government we fought a Revolution to get free of.

When government officers violate the rights of citizens, as Trooper Dunn did when he flipped Janice Harper's car, they are flipping upside-down the very purpose of their job and of the American government. Then we have the tyrannical state of affairs described by Frederic Bastiat in his classic work, *The Law*:

"The law perverted! The law — and, in its wake, all the collective forces of the nation — the law, I say, not only diverted from its proper direction, but made to pursue one entirely contrary! The law becomes the tool of every kind of avarice, instead of being its check! The law is guilty of that very iniquity which it was its mission to punish!"

And qualified immunity makes such perversions of the law more frequent and more entrenched, because it systematically shelters officers of the law who commit them.

Abolishing qualified immunity is key to preventing police abuse. It's also the American thing to do.

