



Cops Who Beat a Man After Pulling Him Over for Broken Lights Receive Qualified Immunity

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In 2016, Gregory Tucker was driving in Shreveport, Louisiana, when police pulled him over for broken brake and license plate lights. The stop ended with him on the ground as officers punched and kicked him before arresting him over traffic infractions.

A federal court ruled yesterday that those cops are entitled to qualified immunity, the legal doctrine that makes it difficult to hold government officials accountable in civil court when they violate your rights.

The decision overturns a lower court ruling that denied the officers qualified immunity. Tucker will now have no right to bring his suit before a jury to determine whether damages are appropriate.

After pulling Tucker over on December 1, 2016, Shreveport Police Department (SPD) Officer Chandler Cisco initiated two searches: a pat-down outside of Tucker's car, and a more invasive search next to Cisco's police vehicle. Officers William McIntire and Yondarius Johnson arrived during the latter interaction; four seconds after approaching, McIntire and Cisco forced Tucker to the ground, where he hit his head.

He was not informed he was under arrest.

Officer Tyler Kolb then came on the scene, after which time the four officers began beating Tucker as they tried to place him in handcuffs. "The three videos of the arrest show Defendant Officers repeatedly punching Tucker as he lay on the ground. Each struck him at least once," reads the opinion from the United States District Court for the Western District of Louisiana, authored by District Judge Elizabeth Erny Foote. "Cisco admits to 'multiple hard closed hand strikes' to Tucker's shoulder and rib cage and 'a few additional hard closed hand strikes,' at least two of which were to Tucker's face; a video of the incident shows at least three strikes."

Tucker had "a lot of blood" on his face, Johnson admits. He was arrested and booked for his broken lights, for flight from an officer (another misdemeanor), and for public intimidation—a felony—not because of any physical menace he presented to the officers, but because, according to Cisco, he threatened to pursue legal action against them.

While Cisco says that no officer kicked Tucker, "a dashcam video shows McIntire's thigh moving at least three times in a manner that is consistent with either a knee strike (to which McIntire admits) or a kick," notes Foote. McIntire admitted to "two palm strikes on Tucker's face, a knee strike, at least one punch to the face, and possibly punches to Tucker's back and shoulder blades; his video shows at least two blows."

To decide if officers are protected by qualified immunity, the judges considered whether it was "clearly established" somewhere in a previous court precedent that it is unconstitutional to exert that much force in response to a petty traffic violation.

In searching for the answer, the court outlined a few factors: Tucker didn't initially pull over when Cisco activated his siren, but instead drove for two minutes into a neighborhood and stopped in a driveway. (The officer admits Tucker did not speed.) Another relevant factor: Tucker's legs were kicking while officers tried to handcuff him.

"The movement appears almost involuntary," writes Foote. "Tucker is not aiming his legs in any particular direction. Therefore, although Tucker's legs were moving during some portions of the struggle on the ground, the Court infers that he was not deliberately attempting to kick any of the officers. Moreover, because he was lying face down with four officers surrounding him, the Court also infers that the movement of his legs was not designed to enable him to flee."

The district court concluded that the approach violated "clearly established" case law on the matter. But the U.S. Court of Appeals for the Fifth Circuit disagreed, pointing to granular distinctions in the fact patterns among those previous rulings.

"It certainly strikes me as the pendulum swinging back in the direction of requiring extremely analogous facts in order to avoid qualified immunity," says Clark Neily, the senior vice president for legal studies at the Cato Institute, "because the plaintiff in this case was able to cite a number of excessive force cases that seemed quite analogous, but none of them was directly on point."

This is unfortunately not an unusual ruling. Cops who allegedly stole \$225,000 while executing a search warrant, for instance, were given qualified immunity because there was no court precedent that expressly said stealing, under those exact circumstances, is unconstitutional. This same reasoning has led to qualified immunity for a cop who shot a 10-year-old, two cops who sicked a police canine on a surrendered suspect, and a cop who allegedly kneed a subdued man in the eye multiple times causing lasting damage.

In recent months, the U.S. Supreme Court has attempted to push the pendulum back to center, reversing two qualified immunity rulings from the 5th Circuit on the grounds that they applied too meticulous a standard. In November, the high court rejected a decision that gave qualified immunity to several prison guards who forced a naked inmate into a cell covered in "massive amounts" of human feces and another cell with sewage bubbling up from the floor. In February, the Court reversed another 5th Circuit ruling that gave qualified immunity to a correctional officer who pepper-sprayed an inmate in the face without provocation.

Unless the high court agrees to hear Tucker's petition, he will have no such luck.

"My takeaway from this opinion is that it reflects a really pernicious dynamic among the federal courts of appeals, particularly the 5th Circuit, which is to almost completely marginalize the role of citizen jurors in resolving disputes of this kind," adds Neily. "The basic vision of the

Founders, who viewed citizen juries as indispensable to the civic life of a liberal democracy, and the extent to which judges have almost completely marginalized [that], I think is one of the most remarkable, and yet unremarked, developments of the modern judiciary."