

Police officials fear court ruling will have chilling affect on officers

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YAKIMA, Wash. — It was shortly after midnight the morning of July 17, 2007, when Eddie Ford was pulled over by Yakima police.

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Ford wasn't happy about it. And he wasn't shy about telling police exactly what he thought. He complied with every police order, except to be quiet. For that he was arrested.

Six years later, the case is sending reverberations across the West.

Ford's case eventually ended up before the 9th U.S. Circuit Court of Appeals, where a three-judge panel ruled 2-1 that he had a right to sue the city of Yakima for the arrest.

And while his attorney calls the case a win for free speech, critics say it could hamstring police officers by making them worried about being sued. The court's decision worried the city attorney's office of San Francisco enough that it filed a brief earlier this year on behalf of all California cities and counties supporting Yakima's petition to have the case reheard by the full Court of Appeals.

"Officers need to be able to take action that serves public safety" and there's concern this ruling could make them timid to act, said Gabriel Zitrin, a spokesman for the San Francisco attorney's office.

The request for a full hearing was denied.

Yakima officials don't like the ruling, saying officers acted responsibly and within their discretion when they arrested and jailed Ford, rather than citing him for excessive noise and letting him go. But the city agreed to pay Ford \$65,000 rather than go to court over his lawsuit.

Opting to settle rather than go to trial was "strictly a business decision," said Yakima City Manager Tony O'Rourke, referring to the likelihood of an expensive and protracted court battle with an uncertain outcome.

Ford sees the case as vindication for standing up for his rights.

"It was wrong. The way I was brought up, if you feel something is wrong, you fight for your rights," he said.

The incident started while Ford was driving to his job on the graveyard shift at a local bottling company. A Yakima police cruiser driven by Officer Ryan Urlacher, started following him near the intersection of South First Street and Nob Hill Boulevard because Ford was playing his music loudly.

Ford says police often followed and stopped him because he was a black man driving a nice Cadillac a night.

Sitting at a red light, Ford got out of his car, shrugged his shoulders and asked Urlacher why he was following him. The officer told him to get back in his car, called for backup and then pulled him over.

Ford was frustrated at what he felt was racially based harassment, and he angrily told the police as much during the stop. He didn't threaten them and video from the dashboard camera in Urlacher's cruiser shows he complied with police orders.

Urlacher told another officer “with that attitude, he’s going to get cuffed,” and he repeatedly threatened Ford with jail if he didn’t stop “running his mouth,” according to audio from the dash cam recording.

Urlacher, who had joined the department the previous year, took Ford to jail after a senior police commander, Lt. Nolan Wentz, told him that Ford was a “hot head.”

When Ford cited his right to free speech while handcuffed in the back of Urlacher’s cruiser, the officer responded, “I have the freedom to take you to jail, too. And that’s what’s going to happen.”

A moment later, Urlacher said, “You talked yourself — your mouth and your attitude talked you into jail. Yes, it did.”

Ford was booked in jail and cited for a noise violation, a misdemeanor, which a municipal court judge dismissed, ruling that while his music was likely too loud, he didn’t mean to disturb the peace.

In 2009, Ford filed a federal lawsuit against the city of Yakima, Urlacher and Wentz, claiming that his First Amendment right of free speech had been denied. Represented by Yakima attorney Bill Pickett, he argued that he was arrested because of what he said during the stop.

In 2011, the case was dismissed in U.S. District Court for Eastern Washington by Judge Lonny Suko, who ruled Urlacher was justified in booking Ford based on the agitated and “verbally confrontational way he criticized the police.

Ford appealed the decision to the 9th Circuit Court of Appeals, which in a 2-1 decision last February reversed the lower court’s ruling and said the issue should go to a trial.

The majority court found that a reasonable person would feel that Ford’s right to free speech “was violated when the officers booked and jailed Ford in retaliation for his protected speech, even though probable cause existed for his initial arrest,” due to the noise violation.

The right to criticize and verbally oppose police action without fear of retaliatory arrest is a principal difference between a free country and a police state, the court wrote.

Circuit Judge Consuelo M. Callahan dissented from the majority, saying that a person’s right to free speech is different after he or she has been detained by police.

City officials say a review of the Ford case was included during annual training for city police officers last month, but it was presented as informational and doesn’t change policy, which already prohibits retaliatory arrests.

There was nothing wrong with the arrest or booking into jail, and there is no indication race played a

role whatsoever, Yakima police Chief Dominic Rizzi Jr. said. “We did not lose that lawsuit.”

Because the city settled with Ford, no court has ruled that the officers had violated Ford’s rights. However, the circuit court majority decision did determine that a reasonable jury might find in favor of Ford’s claims.

The take-away for Yakima police officers is “you never know how the courts are going to rule. So, don’t be afraid to do your job,” Rizzi said, and if the courts rule against you, they rule against you. “Things get overturned all the time.”

Rizzi and O’Rourke say the 9th U.S. Circuit Court — which has jurisdiction over Alaska, Hawaii and most Western states, including Washington — is out of sync with other federal appellate courts, and is the court most often overturned by the U.S. Supreme Court.

The city would probably have won in any other circuit, O’Rourke, said.

He and Rizzi noted that the 10th U.S. Circuit Court in Denver reached nearly the opposite conclusion in a similar case.

While the 9th Circuit Court has more decisions overturned than other courts, that’s more due to the large number of cases it handles rather than ideology, said Andy Siegel, who also teaches constitutional law at Seattle University’s School of Law.

Stretching from Arizona to Alaska to Hawaii, it covers nearly 20 percent of the U.S. population and handles more cases than any other circuit court.

Overall, the 9th Circuit Court is mostly ideologically balanced but “its most liberal members are very liberal,” Siegel wrote in an email to the Yakima Herald-Republic.

After Yakima’s petition to have the case reheard with more judges was denied, the city could have asked the Supreme Court to hear an appeal. But city officials decided that option was too expensive and the chance too small that the court would consider an appeal.

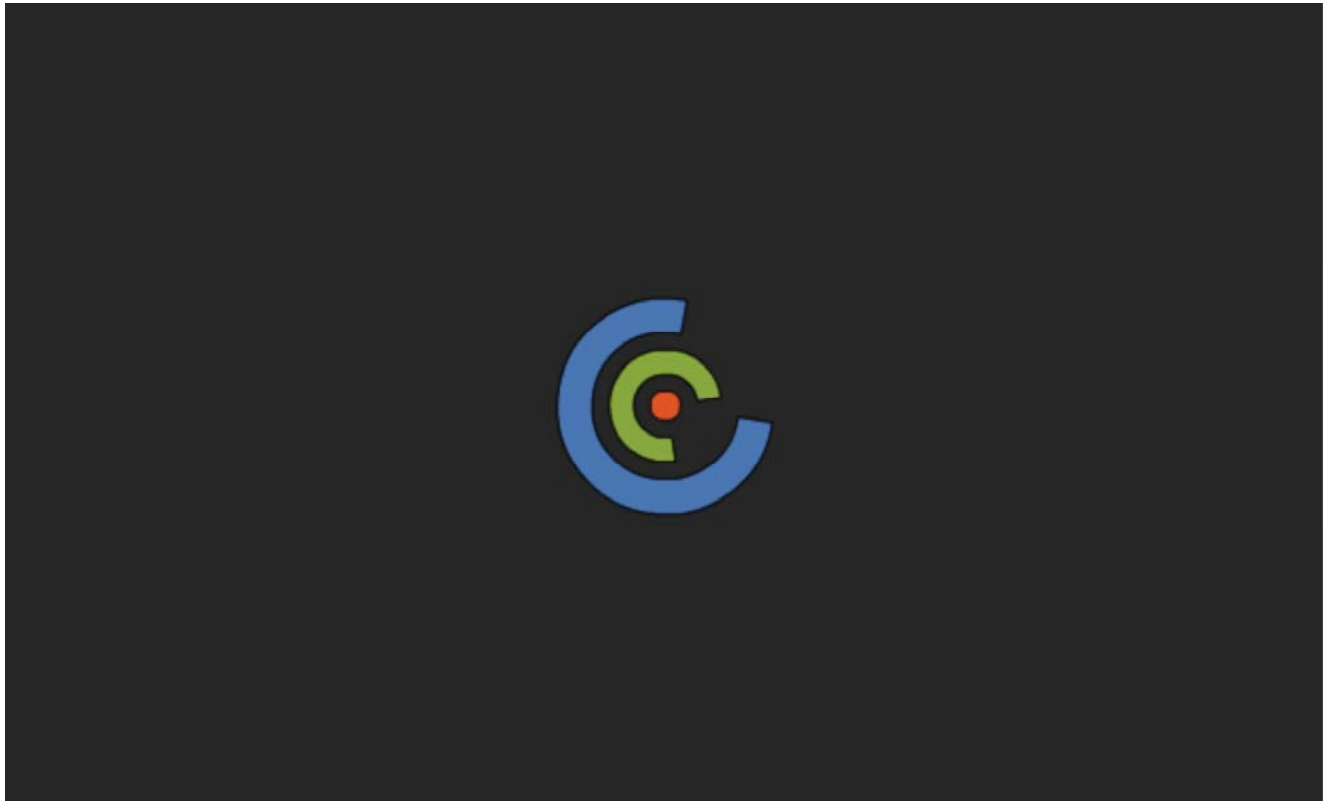
Yakima’s former insurance company, which is responsible for any damages resulting from the lawsuit recommended settling with Ford. If Yakima hadn’t followed that advice, the city would have been on the hook for all costs to resolve the case, O’Rourke said.

Pickett said that’s just cover.

“You paid money because you were wrong, and you wanted to buy up your liability and avoid going to trial,” he said.

The First Amendment covers criticizing the police, he said. “It’s up to (citizens) to hold them accountable. If we don’t, who will?”

- Material from the Yakima Herald-Republic archives and the Associated Press were used in this report.



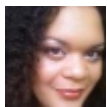
33 comments



Add a comment...

[Comment](#)**Noe Alvarez** · Case Manager at YouthCare

As someone who had once worked at the Yakima Police Dept, I have seen ethnic profiling first hand. It was sickening to my stomach. There is something inherently wrong with equipping high school graduates with state of the art weaponry and a 70-80k salary to enforce "law" w/o any qualification for emotional intelligence, character, and cultural competency. I too used to wear a bullet-proof vest...and boy did it make me feel invincible. But the sooner we realize and accept the beauty of an evolving demographic, the sooner we can begin to grow into a vibrant, multi-colored community. Change is coming Yakima....

[Reply](#) · [Like](#) · about an hour ago**Miranda Bethay** · Grants and Contracts Manager at The Geneva Foundation

I wholeheartedly support this decision. The Yakima police department has abused it's position of power and have antagonized and terrified people of color for far too long. It says something about attitudes towards minorities there when I'm just as nervous driving at night there as when I'm visiting the South. Thank you for taking a stand against the police.

[Reply](#) · [1](#) · [Like](#) · 16 hours ago**Thad Tietsort** · Top Commenter

The nerve ... blame the citizen, blame the court ... Accept your responsibility to doing your job officers. Don't blame the court and say; "They're liberal" because we live in a conservative valley. You would be praising the courts wisdom if it had gone your way. You can't pick and choose your justice.

[Reply](#) · [Like](#) · 21 hours ago**Levelle Anthony** · Wenatchee, Washington

WOW... miss use of authority... the Yakima trend... u be the judge... force wow... the officer is a trip... he provoked it; listen to his interpretation from the beginning... this reminds me of the time a few months ago when the officer shot the dog point blank range seen on you tube... internal investigation needed today to see if we have improve as a force... the more I listen to this it reminds me of tainted police reports to prove the officers lies as truth... wow... we need more of this.... to keep everybody in check... when you grew up in Yakima, we know the types of attitudes that persist here... of course not all law enforcement are like that guy, I can name several good cops... Where do we go from here Yakima? Or do we sweep it under the rug again... and again and again....

[Reply](#) · [1](#) · [Like](#) · 22 hours ago**Cary Bridgeford**

I am pleased that the Yakima Police understand that they are NOT allowed to treat outstanding citizens of our community anyway they choose. Violation of laws are important to be enforced WHEN and only WHEN there is just cause. As a direct result of there poor judgement and unfounded actuzations they have been punished by the same LAWS that they were hired to enforce. Take this seriously YAKIMA POLICE DEPARTMENT. Your not above the law. Chief give these officers training that will benefit you as well as our community. The behavior displayed on this video is unacceptable and not the only occassion that this has happened. Its the first and one of few times that your department has been held responsible for there inappropriate behavior. The one thing I am happy that this officer did do was record his horrible display of the public service that Eddie Ford and many other citizens pay him to do.

[Reply](#) · [2](#) · [Like](#) · Yesterday at 9:27am**Cynthia Westler Ibarra** · Works at Toppenish School District

A moment later, Urlacher said, "You talked yourself — your mouth and your attitude talked you into jail. Yes, it did." A quote from the police officer...You can bet Mr. Eddie Ford being an African American played a big role in his arrest..

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