



The Second Circuit holds that police officers who handcuffed a teenage train enthusiast because they feared that he was trying to sabotage a train should not have to face a false arrest and other claims based upon the doctrine of qualified immunity



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In *Grice v. McVeigh*, ___ F.3d ___, 2017 WL 4320253 (2d Cir. Sept. 29, 2017), the United States Court of Appeals for the Second Circuit determined that police officers were protected from Plaintiff Gregory Grice's false arrest and other claims based upon the doctrine of qualified immunity after determining that it could not be said that every reasonable officer in their circumstances would know that the conduct complained of violated clearly established law. The undisputed facts are as follows.

In the evening on June 6, 2011, Grice was lawfully watching trains at the Virginia Road railroad crossing in Greenburgh, New York. Grice was seen by a passing driver who told a 911 dispatcher that someone with a red shirt "was actually on the train tracks" and was holding "a little controller." The caller said that the person's behavior seemed "suspicious" and "bizarre." The dispatcher directed police units to investigate "a male white, wearing a red shirt bending down by the tracks with a remote control object in his hands" at "Virginia Road, by the train tracks crossing."

Sergeant Anthony McVeigh of the Greenburgh police arrived at the scene first and was alone. A police officer since 1995, Sgt. McVeigh was commander for some years of Greenburgh's Special Operations Unit. Over the course of a year, Sgt. McVeigh had received several briefings and bulletins about the possibility that terrorists

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would attempt to sabotage railroad tracks. About a month before the encounter with Grice, McVeigh received a circular on attempted rail sabotage in a nearby town.

When Sgt. McVeigh arrived at the crossing, Grice was wearing a red shirt, was holding a camera, and was standing approximately 12-15 feet from the tracks next to a barricade. A backpack was on the ground, and two electronic devices—one with an antenna—were next to him on top of the barricade. One device was a cell phone; the other was a radio scanner. The only deviation from the radioed description of Grice was his race. The dispatcher said that the suspect was white, but Grice is African-American.

Sgt. McVeigh asked Grice what he was doing, and Sgt. McVeigh seemed puzzled when Grice said that he was taking pictures of the trains and listening to Metro North broadcasts. Grice told Sgt. McVeigh that he had a letter from the MTA explaining that what he was doing was “okay.” Grice then suggested that he or Sgt. McVeigh could retrieve that letter from his backpack, but Sgt. McVeigh was concerned that there might be a sabotage device that could be activated remotely. So, Sgt. McVeigh told Grice: “Right now I’m going to cuff you for my safety and your safety . . . Until I find out what’s going on here.”

Lieutenant Frank Farina and several other Greenburgh police officers arrived shortly thereafter. Grice explained to them that he was a “rail fan” who had watched the trains at Virginia Road several times. Sgt. McVeigh responded: “We don’t know what you’re doing out here. It’s very unusual to do what you’re doing. We don’t get complaints like this You’re the first guy in my career that’s ever been sitting next to a train with a radio looking at trains and taking pictures[.]”

MTA officers arrived approximately 15 minutes after Sgt. McVeigh cuffed Grice. The MTA officers began questioning Grice anew, and the tracks were searched for a bomb by officers and a dog. When the search turned up nothing, Sgt. McVeigh asked the MTA officers if he could switch out his handcuffs with the MTA’s, and an MTA officer agreed. Grice was in Sgt. McVeigh’s handcuffs for about 33 minutes. When the

involvement of Sgt. McVeigh and Lt. Farina ended at this point, MTA officers took Grice to an MTA facility, placed him in a cell, interrogated him, and gave him a summons for trespass. The trespass charge was ultimately dropped.

Subsequently, Grice sued several police officers and government entities, including the MTA, seeking damages for his handcuffing, arrest, and prosecution. Grice settled his claims against most of the defendants for a total of \$24,000. The remaining claims that were a part of Grice's appeal to the United States Court of Appeals for the Second Circuit were his claims for false arrest, failure to intercede, and supervisory liability against Sgt. McVeigh and Lt. Farina. The District Court denied the officers' motion for summary judgment, and they appeal, arguing that they are entitled to qualified immunity.

The Second Circuit began its analysis of the officers' appeal by noting that the doctrine of qualified immunity protects officials from liability for civil damages as long as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known. These rights must be clearly established in a particularized sense rather than at a high level of generality. Such rights are only clearly established if a court can identify a case where an officer acting under similar circumstances was held to have acted unconstitutionally. The qualified immunity standard is forgiving and protects all but the plainly incompetent or those who knowingly violate the law.

The Second Circuit concluded that the officers were protected from each of Grice's claims in this suit based upon the doctrine of qualified immunity. As for Grice's unlawful arrest claim, the Second Circuit held that the claim failed because Grice's handcuffing was an "investigatory detention" (otherwise known as a "Terry stop") that never ripened into an arrest and was supported by reasonable suspicion. The Second Circuit determined that Sgt. McVeigh had reasonable suspicion to stop Grice either for unlawful interference with a train or for trespass in violation of New York law. Sgt. McVeigh had been ordered to be on the lookout for sabotage on the railroad, and less than a month earlier, he had received a training circular advising that someone had

attempted to sabotage a railroad in nearby Patterson, New York, using “a homemade device, wrapped in black tape with a radio-control antenna affixed.” The police dispatcher called in a tip from an observer that someone was “bending down by the tracks with a remote control object in his hands,” and Sgt. McVeigh saw someone matching the observer’s description with various electronic devices, some more familiar than others.

Furthermore, Sgt. McVeigh was unaware of any plausible innocent reason that could explain why someone would be taking photos of trains and listening to the railroad’s radio broadcasts. In short, the Second Circuit concluded that Sgt. McVeigh’s suspicion that Grice may have committed a crime was reasonable, and Sgt. McVeigh was entitled to stop Grice to investigate.

Sgt. McVeigh was also entitled to handcuff Grice while he investigated the situation. The Second Circuit found that Sgt. McVeigh’s intent in handcuffing Grice was clear: Sgt. McVeigh was doing so because he was alone, and he was doing so for his own protection. The Second Circuit, relying upon previous cases, stated that handcuffing a suspect during a Terry stop for thirty minutes is not an unreasonable amount of time. Accordingly, the Second Circuit held that the officers were entitled to protection from Grice’s false arrest claim based upon the doctrine of qualified immunity.

The Second Circuit also rejected Grice’s argument that Sgt. McVeigh and Lt. Farina should have intervened and stopped the MTA officers from keeping Grice in handcuffs after they turned Grice over to the MTA officers. The Second Circuit explained that Sgt. McVeigh and Lt. Farina had no authority over the MTA officers to make such a demand, and the MTA officers did not appear to be mistreating Grice. Therefore, the Second Circuit noted that the law requiring Sgt. McVeigh and Lt. Farina to intervene was not clearly established at the time, thereby entitling them to invoke the doctrine of qualified immunity.

Finally, the Second Circuit concluded that Lt. Farina was entitled to qualified immunity on Grice’s supervisory liability claim. The Second Circuit explained that government officials are entitled to qualified immunity on a

supervisory liability claim unless the actions of the supervisor and the subordinate both violate clearly established law. Because the Second Circuit had ruled that Sgt. McVeigh did not violate clearly established law, Lt. Farina was entitled to qualified immunity as well. Accordingly, the Second Circuit reversed the District Court's decision and held that Sgt. McVeigh and Lt. Farina were protected from this suit based upon the doctrine of qualified immunity.

Note: *Court holdings can vary significantly between jurisdictions. As such, it is advisable to seek the advice of a local prosecutor or legal adviser regarding questions on specific cases. This article is not intended to constitute legal advice on a specific case.*