

Appeals Court Rules Giving Middle Finger to Police Officer Shouldn't Get You Arrested

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Giving the middle finger is an “ancient gesture of insult,” but it shouldn’t get you arrested, according to the 2nd Circuit Court of Appeals. The court recently reinstated a [civil rights lawsuit](#) filed by a New York man who was arrested for disorderly conduct after using his middle finger to express his displeasure to a police officer conducting a speed trap.

At the time of the incident, John Swartz was a passenger in a vehicle driven by his now wife, Judy Mayton-Swartz. Although she did not violate any traffic laws, the police officer followed the couple to their destination and proceeded to conduct a traffic stop. The officer called back up to the scene, but ultimately told the Swartz and his wife that they were free to go. Although the two sides offered varying descriptions of what happened next, Swartz claims that he sought to approach the officer to explain his actions, stating, “I feel like an ass.” However, another officer stepped in between them and stated: “That does it, you’re under arrest.” The couple later filed a lawsuit against the officers, alleging that their [First and Fourth Amendment rights](#) were violated.

The district court dismissed the suit, accepting the arresting officer’s justification for the traffic stop. It held that the stop was legal because Swartz’s “odd and aggressive behavior directed at a police officer created a reasonable suspicion that Swartz was either engaged in or about to be engaged in criminal activity, such as violence against the driver of the vehicle.”

However, the 2nd Circuit determined that the stop was unlawful, after failing to buy into any of the officer’s proffered reasons for pursuing someone for “giving the finger.” It further held that “gesture alone cannot establish probable cause to believe a disorderly conduct violation has occurred.”

“Surely no passenger planning some wrongful conduct toward another occupant of an automobile would call attention to himself by giving the finger to a police officer,” the court noted in its [opinion](#). “And if there might be an automobile passenger somewhere who will give the finger to a police officer as an ill-advised signal for help, it is far more consistent with all citizens’ protection against improper police apprehension to leave that highly unlikely signal without a response than to lend judicial approval to the stopping of every vehicle from which a passenger makes that gesture,” the panel added.

While the court’s ruling certainly should not be taken as a green light to engage in disrespectful behavior towards law enforcement, it does suggest that police officers may need to develop a thicker skin in order to operate within the parameters of probable cause.