

CITY COURT:

'OUTRAGEOUS' POLICE CONDUCT NOT
A CONCERN FOR SCOTTSDALE JUDGE



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Scottsdale police set out to “incite” Randon Miller into breaking the law.

It worked. Twice.

Miller had complained for more than a year that police stopping motorists on Scottsdale Road and Frank Lloyd Wright Boulevard routinely had the drivers pull into the parking lot of his restaurant near the intersection, where they were questioned, cited, and sometimes arrested.

These frequent encounters were bad for business. They blocked access to the parking lot, disrupted his customers, and bathed his dining room with flashing red lights as officers issued their tickets or, worse, conducted lengthy investigations to determine if the driver was intoxicated. Not to mention it’s never good for any establishment’s liquor sales to have a line of police cars with flashing lights right outside the front door.



Randon Miller
Owner, Sushi Brokers Restaurant

Miller had griped repeatedly to the police chief and a member of the city council, beginning in 2011, but to no avail. The last straw was when Miller confronted one police officer in the parking lot, who was sitting in his patrol car with his wife for a long period of time on New Year’s Eve in 2012. Miller shouted at the officer that having the squad car parked there was disrupting his business and demanded the officer leave.

Finally, about a week after that incident, Scottsdale police commanders decided to do something about it. Not about Miller’s underlying complaints, but rather that he was complaining so aggressively.

They set up a phony sting operation to target Miller in January 2013.

A patrol officer, his emergency lights flashing, made a traffic stop in front of Miller’s Sushi Brokers restaurant. Inside the stopped vehicle were two undercover officers from the state liquor department.

The idea was to stage the bogus operation in Miller’s parking lot to see how he reacted. If, as predicted, he broke the law by being abusive to officers, he would be arrested. If not, the police and the target vehicle would eventually leave.

“Do you know why I stopped you tonight?” the officer asked the undercover driver, staying in character as he played his part in the ruse.

“To incite the owner of the restaurant,” the driver replied.

Both men laughed.

After about 10 minutes, Miller emerged from the front door of his restaurant and shouted to the officers that they were on private property and that “enough is enough.” At some point, a second patrol car pulled in behind the first, blocking in even more customers’ cars, further clogging the driveway, and adding a second set of flashing emergency lights to the scene.

Miller continued to shout profanity-laced demands that the police leave and stop blocking traffic into his parking lot.

The officer told Miller to be quiet and go back inside, which he did. About 10 minutes later, he reemerged and began shouting new profanity-laced demands that police finish what they were doing and leave his private property.

At that point, the order was given to arrest Miller, who turned and went back into his restaurant. Several officers swarmed him, tackling him to the ground, and punching him at least twice in the kidney. They also ripped the bandages off his fingers, which he'd severely burned in a recent kitchen accident, according to the defense.

"Stop resisting," police shouted.

"I'm not resisting," Miller countered.

Miller was subdued and taken to jail. He was later charged with nine criminal misdemeanor counts.

One year, almost to the day, after the first incident, Scottsdale police targeted Miller again, this time under the guise of conducting a liquor inspection. Miller was at the restaurant with friends and his brother, whom he'd not seen in years. Officers approached him, announced they were there to conduct a liquor inspection, demanded his identification, and started asking him questions. Miller repeatedly said he was not working, and told them to talk to the manager on duty.

After several seconds of tense conversation, Miller finally got up and said:

"I haven't done anything. I'm gonna get up and leave my own restaurant. If you guys beat my ass, you can kiss my ass."

At that point, Miller was again arrested on a variety of new criminal misdemeanor charges.

All of the charges from both incidents went to Scottsdale city court.

'OUTRAGEOUS' CONDUCT

In both cases, Miller's defense was that he was improperly targeted for arrest by Scottsdale police because he'd long complained about their disrupting his business by using his parking lot for traffic stops. There was no crime except what was precipitated by the phony police operations, his lawyers argued.

What Scottsdale police did to Miller was "outrageous government conduct," they said.

Simply put: police just didn't like Randon Miller.

Judge Monte Morgan of Scottsdale Municipal Court didn't buy any of the defense's arguments. After separate trials in which the underlying facts were essentially undisputed, Morgan concluded there was no police misconduct or retaliation against Miller in either case. He found Miller guilty of various charges that included disorderly conduct, failure to obey police, and refusal to provide his name.

The combined sentence Morgan imposed for the convictions amounted to 10 days in jail and \$2,250 in fines plus surcharges and court fees, a tiny fraction of what Miller had already spent on lawyers to fight the charges.

Miller unsuccessfully appealed the convictions in both cases to Maricopa County Superior Court.

What happened to Miller is a stark illustration that there is at best "a patina of due process that doesn't really exist" in city court, said Dennis Wilenchik, one of the lawyers who represented Miller in the appeals.

City court judges work for the city council, and never answer to the public. That makes them susceptible to political pressures from within the city, said Wilenchik, who has been rated one of the top defense lawyers in Arizona. As a result, city judges almost always side with police and prosecutors rather than question the motives, conduct, judgment, or version of events of their fellow city employees.

“Basically they rubber-stamp everything the prosecutor puts in front of them, generally,” Wilenchik said of city judges. “They are afraid to buck anything that’s contrary. There is something flawed in the entire system where you have judges basically answerable to a city council. That’s an inherent conflict and a problem that needs to get rectified.

“They don’t care what lawyers think. They don’t care what the public in general thinks. They are beholden to the people that appoint them. That’s the reality of it. That’s not a good system. That needs to change.”

FAILURE TO ‘CHECK’

City court judges have little protection from political pressures that might come from city councils, police, prosecutors, or other city officials, the Goldwater Institute found in its investigative report [*City Court: Money, Pressure, and Politics Make It Tough to Beat the Rap*](#), published in July. That’s because unlike judges at every other level of the judiciary in Arizona, city court judges do not answer to voters. They are hired, retained, and can be fired by city councils.

The only exception is in Yuma, where city court judges are elected.

That susceptibility to city politics can have dire consequences, as the Department of Justice found in a 2015 investigation of the police and court practices in Ferguson, Missouri. The investigation, triggered by a controversial police shooting that led to riots, found that the city judge in Ferguson was pressured by city officials to continually raise revenue. Since acquittals resulted in no revenue for the city, the only way to do that was via more convictions and abusive fines and collection practices.

The DOJ investigation also found that this emphasis on meeting the demands of city politicians contributed to the court’s failure to be an effective check on improper or illegal police conduct.

“The municipal court does not act as a neutral arbiter of the law or a check on unlawful police conduct,” the DOJ concluded in its Ferguson investigation. “Instead, the court primarily uses its judicial authority as the means to compel the payment of fines and fees that advance the City’s financial interests.”

The method of appointing and retaining city judges in Ferguson is virtually identical to that in Arizona cities, including Scottsdale.

LEGITIMATE OR OUTRAGEOUS

There is not much dispute about what happened to Miller, or that the police targeted him because of the prior confrontations in which he complained about their using his parking lot to write traffic citations. The Goldwater Institute reviewed more than 1,000 pages of court documents and trial transcripts, which all form a consistent picture of the events that led to Miller’s multiple arrests.

Aside from a few details, the only thing in dispute is whether the Scottsdale operations were legitimate law enforcement techniques or an “outrageous” infringement of his rights.

Miller had lodged several complaints against the police using his parking lot since 2011, claiming the stops occurred on a near-daily basis.

Police say that prior to Miller’s first arrest there had been several incidents in which he verbally berated officers as they attempted to conduct investigations or issue citations, which they described as distracting and potentially dangerous.

However, Miller had never been cited or arrested for the prior incidents. He had no criminal convictions at the time.

Police were also unable to produce reports of earlier run-ins. Aside from a single incident in 2012 during which police were investigating a burglary at a nearby bank, they could not cite specific examples of Miller disrupting their investigations.

After Miller confronted the officer on New Year's Eve in 2012, two top administrators in the department decided to put together an operation to "test the complaints" they had gotten from patrol officers. They directed Sgt. Robert Bonnette to come up with a plan. He and Det. John Miller, a liquor enforcement officer with the Scottsdale police, devised the idea of a staged traffic stop in front of Sushi Brokers.

'POLICE STATE'

On the afternoon of January 10, 2013, several undercover officers went into the restaurant and played the part of customers. In all, nine police officers and a video surveillance van would be used in the operation.

Miller arrived about two hours later, around 6:30 p.m.

At about 8 p.m., Bonnette ordered the fake traffic stop to proceed.

Miller came out of the restaurant twice, about 10 minutes apart, and shouted for officers to finish what they were doing and leave his private property. Though his demands were laced with profanity, police acknowledged he never left the sidewalk about 60 to 100 feet away, never used any threatening language, and did not throw any punches, though he did struggle during his arrest.

Defense lawyer Cameron Morgan raised several concerns about the case, all of which he said demonstrated police set out to arrest Miller because they did not like him.

There is no reference in the squad's operations plan to the phony traffic stop.



[Click here](#) to view the staged traffic stop by Scottsdale police.

Det. Miller did record his planning conversations with Sgt. Bonnette, but then destroyed the tape after taking notes for his report.

The recording would have damaged the prosecution's case by showing that arresting Randon Miller "was pre-planned and it was preordained," Morgan argued.

Miller also had a First Amendment right to demand officers leave his property, and to use profanity, so long as it's not threatening, something Bonnette acknowledged in testimony.

"The fact that police would target a citizen at all for merely exercising his first Amendment constitutional rights is shocking, disgusting, fundamentally unfair, unconstitutional, and un-American," Morgan, Miller's lawyer, argued in court. "These were not officers involved in the legitimate discharge of their duties, they were involved in the intentional violation of the civil rights of a person they disliked because of his attitude about police officers. They intended only to arrest him to satisfy their own predilections and animus, not to protect and serve the public.

"[I]f the police are allowed to curb the behavior of everybody they dislike, we are living in a police state."

LEGITIMATE POLICE INVESTIGATION

City prosecutor Caron Close countered that the staged traffic stop was a legitimate police technique, similar to an undercover drug buy. Miller's prior behavior had disrupted and potentially endangered police who were distracted during traffic stops. The operation was devised as a way to safely investigate information that Miller's behavior was creating a danger to officers and a disturbance of the public.

The government also has the right to limit the time, place, and manner of free speech, she said.

Judge Monte Morgan sided with the prosecution on all points.

Judge Morgan's relationship with Scottsdale and his involvement in the Miller case are somewhat unusual. Morgan spent 10 years as the presiding municipal court judge in Scottsdale. However, he became embroiled in a political squabble among city council members in 2010 when they voted not to renew his contract. A few days later, some of his opponents on the council backed down, and he was reappointed to a final two-year term.

"They did it on the basis of political hacking," Morgan, now the city judge in El Mirage, told the Goldwater Institute for the report that was published in July.

After he left the city, Morgan became a Scottsdale judge pro-tem, which means he can hear cases when needed and has the same judicial powers of regular city judges.

Morgan did not reply to recent requests for comment on the Miller cases.

In his verdict, Morgan rejected claims that there was any outrageous government conduct on the part of Scottsdale police. Miller's tirades were not protected by the First Amendment, and there was no retaliation by police against Miller, Morgan found. He also said police have the right to make traffic stops anywhere in Scottsdale.

He found Miller guilty on one count each of disorderly conduct, failure to obey police, and failure to provide his name. Miller was found not guilty on the other charges, including that he engaged in threatening conduct.

In that case, Miller was sentenced to 10 days in jail and \$1,500 in fines, plus surcharges and court fees that nearly doubled the financial penalty. Nine of the jail days were suspended, meaning he did not have to serve them if he stayed out of trouble.

Defense attorney Morgan noted prior to the sentencing that a year and half had elapsed between Miller's arrest and the trial, and Miller had not confronted officers again in that time, even though the traffic stops in his parking lot continued. He added Miller owned restaurants in other cities, but had trouble with police only in Scottsdale.

TARGETED OPERATION

On January 9, 2014, one day short of a year after the first arrest, Scottsdale police put together a new plan to target Miller. A couple of weeks earlier, Miller had been arrested for driving under the influence of drugs or alcohol. Miller had a medical marijuana card, but it had expired a couple of months earlier, according to defense motions. That meant he could be charged with possessing the small amount of the drug found in his car. His blood alcohol content was also above the legal limit.

Scottsdale Det. John Miller, the detective who helped devise the bogus traffic stop in 2013, planned the new operation. Police would stake out Sushi Brokers, then conduct what they would describe as a routine liquor inspection. This time Det. Miller consulted with Close, the city prosecutor, before launching the operation. They discussed Randon Miller's release conditions from the 2013 case, which prohibited him from drinking and driving. Somehow, Det. Miller came to interpret that as prohibiting Randon Miller from drinking alcohol at all.

According to his own police report, Det. Miller was told by Close at that time to "hold Randon in custody and notify her that he was in custody."

Because of that conversation, defense lawyers later tried to get Close disqualified from prosecuting the case, arguing she conspired with police to set Miller up for arrest. Judge Morgan, who again was assigned to handle the new case against Miller, refused because he found no grounds for disqualification.

Undercover officers again staked out the restaurant and waited about an hour for Miller. This time Scottsdale police used six officers and one civilian employee for the operation.



As owner of the restaurant, Miller's presence is not required for police to conduct a liquor inspection. Any manager, or even a bartender or other employee, can get them what they need.

But police waited until Miller arrived with his brother, Ricky, and a few friends, and for them to sit down and begin sharing a bottle of wine, before initiating their enforcement operation.

Det. Miller and Sgt. Rob Hoskin, both in plainclothes with badges hanging around their necks, approached Randon Miller and said they were there to conduct a liquor inspection.

"I'm not here," Miller said, the first of many times he told the officers he was not working and they should talk to the manager on duty to conduct the liquor inspection.

Det. Miller asked Randon Miller what he was drinking, and for his identification. Randon Miller replied he didn't have his driver's license, since police had seized it during the DUI arrest.

He then turned to his guests and said, "This piece of (expletive) here—John Miller," while pointing at the detective.

Hoskin told Randon Miller that "if that finger gets any closer," he would be arrested. Miller put his hand down.

Ricky Miller chimed in, to no one in particular, "Oh, (expletive) shut up."

There was more back and forth, with Det. Miller explaining that the sole purpose of the police being there was to conduct a liquor inspection, Randon Miller telling him he didn't have his identification and to talk to the manager, and Ricky Miller fidgeting but not getting off his barstool.

Finally, Randon Miller said he'd done nothing wrong, but was going to leave, and stood up.

POLICE CONFLICT

What happened next is a confusing muddle of testimony, all from police officers.

Much of the confusion centers around a statement made by Hoskin at that point, when he said, "if you get out of your seat, you're going to be arrested."

Hoskin testified the order was directed at Ricky Miller. Det. Miller testified the order was directed at Randon Miller.

Hoskin testified Ricky Miller stood up. Det. Miller said Ricky remained seated.

Hoskin said Randon Miller "lunged" at him. Other police said he did not make any aggressive moves.

Randon Miller did stand up but did not attempt to leave, police agreed.

In any case, both of the Miller brothers were arrested.

Randon Miller was charged with five criminal misdemeanors, including disorderly conduct, refusing to obey a police officer, placing a police officer in reasonable fear, and resisting arrest. He was also charged with disobeying a lawful order based on the mistaken belief of police that he was prohibited from drinking any alcohol. Judge Morgan found him not guilty on that count and on the charge of placing an officer in reasonable fear, but convicted him on the rest.

Randon Miller was fined \$750 and ordered to participate in a "peace program," essentially anger management classes.

Ricky Miller was found guilty of resisting arrest and failure to obey a police officer. That latter charge was particularly problematic and hinged on a legal technicality.

Defense lawyers argued Ricky Miller was not the subject of any investigation during the incident, and that police had no authority to order him to be quiet and remain seated. Therefore, it was not a lawful order he was required to comply with.

Judge Morgan rejected the argument. He conceded the state statute requires a police order to be lawful for a defendant to be convicted of that crime. However, Ricky Miller was charged under the Scottsdale city ordinance, which does not require the order to be a lawful one, and therefore he was guilty, Morgan ruled.

Had Morgan decided otherwise, Ricky Miller would have been convicted only on the charge of resisting arrest, with no other violations that would be the basis of that arrest.

Ricky Miller was also found not guilty of disorderly conduct.

‘RESISTING’

Randon Miller said in a recent interview with the Goldwater Institute that his troubles with the Scottsdale police have subsided. The cooling-off happened after a chance encounter with Chief Alan Rodbell that led to a detailed discussion of events over the past several years.

As a result of those conversations, Miller decided not to file a federal civil rights lawsuit he had been preparing against the city.

Miller remains leery of Scottsdale police. He acknowledges he was guilty of the DUI, adding he no longer drives. Even at that, he believes the reason he was stopped that night was police were targeting him.

As to the two arrests in his restaurant, and his trials in Scottsdale Municipal Court, Miller says the convictions against him were a foregone conclusion from the beginning.

“It was never any crimes committed,” Miller said. “It was always just the onslaught of failure to obey, resisting. Half the time you don’t even know what’s going on. You are getting beaten. That’s what they call resisting. They all go in and start yelling ‘stop resisting,’ and they just beat me. They know what they are doing.

“Any good judge would have said this is way beyond the scope of police investigations.”

Close, the city prosecutor, said the defense’s claims that Scottsdale police illegally targeted Miller were all heard by the court, which rejected them, and that the judge’s decisions were upheld on appeal.

“I don’t know what else I would say,” she said. “We obviously put our positions out there in the court, and the court ruled on it.”

Close said she does not recall being consulted by police prior to the 2013 operation. As to Det. Miller’s statement that he consulted her prior to going to Sushi Brokers in 2014, Close said that is routinely done by officers if they believe an arrest might occur.

It does not mean police targeted Miller, she said. Her statement, cited by the detective, that he should “hold Randon in custody” does not mean the arrest was preplanned, as the defense claims, Close said.

“I wasn’t part of any plan with the police department,” Close said. “I can tell you it wouldn’t be uncommon for the police department to give me a heads up if they thought they were dealing with someone that could be arrested. I don’t think they had a plan one way or the other, but it was certainly a possibility. And just based

upon past behavior it wouldn't be uncommon for me to say to an officer, 'If you need my assistance, or if the person ends up in custody and they need release conditions argued or anything like that, just let me know. Give me a heads up.' Nothing different here than any other case."

Scottsdale police would not agree to an interview on the Miller cases, but did send a written statement confirming Chief Rodbell and Miller had talked.

"It is our belief that all contacts and interactions with Mr. Miller were conducted in accordance with state law," the statement reads. "At this point we are not going to respond to questions based on contentions or strategies used as part of defense for an adjudicated case. We can confirm that Chief Rodbell has met with Mr. Miller in the past in an effort to understand each other's concerns. We are not in position to comment on the perceptions of Mr. Miller or his counsel as a result of this contact, but are hopeful that the past communications will facilitate more positive interactions in the future."

OUT OF CONTROL

Wilenchik, the lawyer who represented Miller in his appeal, said the system is stacked against defendants in city courts. The political reality in cities is that police and prosecutors have great influence with city council members. Judges are naturally reluctant to make rulings or verdicts that could result in complaints to the council from their fellow city employees.

"Most of the city courts tend to align themselves with affirming prosecutorial decisions," Wilenchik said. "They do not want to be in a position where they are criticized by influences that can affect their tenure.

"You are asking people—in this case, judges—to sort of remove from their brains the fact that if they do buck the city or the prosecution or the police department, there are going to be major consequences to that. One phone call from the police department to the mayor saying 'this guy is out of control' and you're done. They're not going to do that."

Compounding the problem is that there is little chance of overturning a city court verdict on appeal, Wilenchik said.

Appeals from city court go to county superior courts. No new evidence is presented. No witnesses are called.

The superior court can reverse the city court only if it finds the judge erred on a question of law or gave a decision that is plainly contrary to the evidence, and that any mistake "was so important that it likely affected the outcome of the case."

Appeals of cases originating in city court are not allowed beyond the superior court unless the defendant is challenging the validity of a law, fine, or tax.

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“No matter how strong his position was, you cannot change reality,” Wilenchik said of Miller’s appeals. “And the reality is the judges in the superior court reviewing those decisions are not going to overturn them based on the standard of review.

“Everybody knows that you don’t get any fair shake. The courts basically rubber-stamp what happens below, and that is reality, and that’s why I discourage people from even appealing. That’s not a good process where you feel you have an honest and fair shot at justice. The whole system is a mess.”

‘BUDDY-BUDDY SYSTEM’

Bob Littlefield, a former member of the Scottsdale City Council and husband of a current council member, agrees the relationship between city judges and the city prosecutor has been too chummy for years.

Littlefield was the council member who led the drive to get rid of Judge Morgan and a second city judge in 2010. Council members rarely take an interest in what happens in city court, and so tend to rubber-stamp appointments and reappointments. The result is judges are naturally reluctant to do anything that would draw unwanted attention to themselves, such as going against city policies or their fellow city employees, he said.

Littlefield said he took an interest after mounting complaints from defense attorneys and city residents that they were not getting fair treatment in Scottsdale city court. He came to agree that the close relationship between the judges and prosecutors— all fellow city employees who work together on a daily basis—had compromised the independence of the court.

“It’s like a club,” Littlefield said of the relationship between judges and prosecutors. “I think they are just all in it together and they’re all buddies, and that’s the problem. They just all seem to be happy together, and if you’re not a member of the club, then you’re not going to get what you want.”

Close denied there is anything but a professional relationship between prosecutors and judges in Scottsdale, adding she’s heard that complaint before.

Littlefield, who left the council in January 2015, was not speaking about Miller’s case or anyone else’s in particular. However, he was not surprised when told Morgan was selected as the judge to handle Miller’s trial.

“It’s the good-old-boy system again,” he said. “Where else are they going to bring him back but the place where he’s still got friends? That does not surprise me at all. In fact it’s totally consistent with what I’ve come to expect out of this crowd. It’s the buddy-buddy system.”



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