Cops use taser on woman while she recorded arrest of another man

“You a dumb bitch,” video captures cop saying after yanking victim from car.

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A 36-year-old Baltimore woman claims she was tased by police and arrested while filming the arrest of a man with her mobile phone, according to a lawsuit to be served on the Baltimore City Police Department as early as Thursday.

Video of the March 30 melee surfaced online this week. Police erased the 135-second recording from the woman’s phone, but it was recovered from her cloud account, according to the Circuit Court for Baltimore City lawsuit (PDF), which seeks $7 million.

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Kianga Mwamba was driving home from a family gathering in March. Stopped in traffic, she began filming the nearby arrest of a man who she says was kicked by police.

“You telling me I can’t record,” the woman says on the video as police tell her to move on.

“I’ll park. I’ll park. I’ll park,” the woman is heard saying in her own recording.

All of a sudden an officer says, “Out of the car. Out of the car.”

She was yanked out. “He burning me. He burning me,” the woman is heard screaming.

The lawsuit comes as at least one state, Illinois, moves to ban the recording of the police amid calls across the nation for cops to be equipped with body cameras to help prevent future police scuffles resulting in deaths. President Barack Obama has also weighed in on the issue, announcing last week that the administration would provide $75 million in funding to police departments to purchase body cameras. Even before Obama’s announcement, local police departments were gobbling them up as fast as they could in the aftermath of the Ferguson, Missouri death of Michael Brown.

Mwamba was arrested on charges of assault for allegedly trying to run over two officers. Charges were dropped, and she suffered cuts and bruises.

At the end of the tape, an officer says, “You a dumb bitch, you know that?”

“What did I do?” she asks.

“You just tried to run over an officer,” the officer responds.

While in custody, she gave her phone to an officer to show the video that she didn’t try to run over anybody. The video was allegedly erased from the phone in what her attorney, Joshua Insley, described in a telephone interview as a “coverup.”

The police department said in a statement that the language the officer used was “both offensive and unacceptable.”

“The video does not capture enough information to draw definitive conclusions about what transpired before, during, and after the arrest,” the department said. “What is clear is that the language used is unacceptable and will not be tolerated.”

The suit, filed last week, said the police “attacked” the

woman, “dragged” her from her vehicle, and “threw her onto the street, handcuffed her, tasered her, called her a ‘dumb bitch,’ and kept her restrained.”

The suit says the officers arrested Mwamba and “threw her face-down on the street” to “prevent the disclosure of the video taken of them beating a handcuffed man.”

That handcuffed man was 27-year-old Cordell Bruce, who faces assault charges on allegations of striking an officer outside a nightclub—charges Bruce denies. The video does not capture him being beaten by police.

Class Action Lawsuit Over Apple DRM Stumbles Because Plaintiffs Aren’t Actually In The Class

Here is another article “Why Attorneys are Scum Bags”.

I have written a few times about the long-running class action lawsuit against Apple alleging that its use of DRM on music (the “FairPlay” system) violated antitrust laws by locking users into Apple’s platform. The case is interesting on a few different levels – including the question of whether or not DRM could lead to antitrust violations (very interesting…) and showing how quickly the technology world changes (music DRM is basically long gone). However, with the trial being held this week, a new stumbling block arose late in the game. Apple lawyers have pointed out to the judge in the case, Yvonne

Gonzalez Rogers, that neither of the two women named as plaintiffs actually qualify to be in the class.
As you might imagine, that makes for a difficult class action lawsuit, when you don't have any actual plaintiffs.

Specifically, after testimony this week, Apple realized that the iPod that one of the plaintiffs owned was purchased outside of the period of time covered by the class action lawsuit. Apple stopped using Fairplay in March 2009, so the class action lawsuit only applies to iPods bought between September 2006 and March 2009. That's a problem when the main plaintiff actually bought hers in… July 2009.

> *After plaintiff Marianna Rosen testified on Wednesday, Apple attorneys said they checked the serial number on her iPod Touch and found it was purchased in July 2009. In a letter sent to the court late Wednesday night, Apple lawyer William Isaacson said it appears the other plaintiff, Melanie Wilson, bought iPods outside the relevant time frame or, in one instance, purchased a model that didn't have the specific version of software at issue in the case.*
>
> *Isaacson, who suggested the lawsuit can't proceed without a plaintiff, said he's asked for proof that either woman had purchased an iPod covered by the case. Plaintiffs' attorney Bonny Sweeney said her side is checking for other receipts. She conceded that Wilson's iPods may not be covered, but she also noted that an estimated 8 million consumers are believed to have been purchased the affected iPods.*

In other words, the class action lawyers are admitting that they may not have a plaintiff, but say it doesn't matter because they can find another one without too much trouble.

And of course, this just reinforces what a total scam so many class action lawsuits are. I have written about this for years. While the basic idea may seem sound, the reality is that most class action lawsuits are just about ways for class

action lawyers to get super wealthy. They seek out anything they can sue over, find a stand-in plaintiff whose only job is basically to be the name on the lawsuit, and then when the final payout comes, the lawyers take a huge chunk, the stand-in plaintiff gets a small amount, and the rest of the class splits a further tiny amount. It's not about righting wrongs. It's about enriching class action lawyers. The very fact that the lawyers in this case admit that they can toss out their plaintiffs and bring in others seems to highlight what a total joke this whole thing is.

Still, someone really, really, screwed up on the lawyers' side. How the hell do you set up a class action lawsuit without first confirming that your plaintiff is in the class? That seems like a total and complete fuck up.

Thankfully, Judge Rogers seems to recognize that this is not a good situation:

> *"I am concerned that I don't have a plaintiff. That's a problem," the judge said in court Thursday afternoon at the end of the trial's third day of testimony in Oakland.*

As interested as I am in the idea that DRM might be anticompetitive, I'm still troubled by the abuse of class action lawsuits (and related antitrust efforts in general as well). This particular case just seems like a total mess.

Supreme Court Says Law Enforcement Can't Search

Mobile Phones Without A Warrant

The Supreme Court released its ruling in the Riley/Wurie cases that examine whether or not the police can search through your mobile phone without a warrant. Both the Riley and Wurie cases basically deal with the same issue, though one (Riley) involves a smartphone, while the other (Wurie) is about a more old-fashioned flip phone. I had significant problems with the government's arguments in defending such warrantless searches and so did the Supreme Court, which has made it clear that police **cannot** search phones without a warrant.

In short, the Supreme Court actually believes in the 4th Amendment. This ruling is likely to become a very key one in a number of other upcoming questions about where the 4th Amendment applies to new technologies. The Court recognizes that existing precedent allows for searches of *physical* containers, but thankfully declines to accept the government's argument that searching digital devices is the same thing. First, it notes that a big part of the reasoning that allowed the search of physical containers was to make sure there weren't any dangerous weapons. Here (despite the claims of some rather confused police) the Court realizes this is ridiculous.

> *Digital data stored on a cell phone cannot itself be used as a weapon to harm an arresting officer or to effectuate the arrestee's escape. Law enforcement officers remain free to examine the physical aspects of a phone to ensure that it will not be used as a weapon—say, to determine whether there is a razor blade hidden between the phone and its case. Once an officer has secured a phone and eliminated any potential physical threats, however, data on the phone can endanger no one.*

The ruling basically says that if the data on the phone is important, law enforcement can go get a warrant and then do the search later. It's not an emergency situation that needs to be viewed immediately. The court completely brushes off the argument from the government that remote wiping capability means content searches may be urgent by basically saying that it's not likely to happen very often or to be much of an issue. In short, this hypothetical situation of remotely wiping phones isn't likely to be a real problem – and notes that police have alternative ways to deal with that hypothetical "risk."

The court digs into just how different a digital device is than a physical container, and how the implications for allowing a search would be extreme.

> *Cell phones differ in both a quantitative and a qualitative sense from other objects that might be kept on an arrestee's person. The term "cell phone" is itself misleading shorthand; many of these devices are in fact minicomputers that also happen to have the capacity to be used as a telephone. They could just as easily be called cameras, video players, rolodexes, calendars, tape recorders, libraries, diaries, albums, televisions, maps, or newspapers.*
>
> *One of the most notable distinguishing features of modern cell phones is their immense storage capacity. Before cell phones, a search of a person was limited by physical realities and tended as a general matter to constitute only a narrow intrusion on privacy…. Most people cannot lug around every piece of mail they have received for the past several months, every picture they have taken, or every book or article they have read—nor would they have any reason to attempt to do so. And if they did, they would have to drag behind them a trunk of the sort held to require a search warrant in Chadwick, supra, rather than a container the size of the cigarette package in Robinson.*

More important than that is how this impacts your privacy:

> *The sum of an individual's private life can be reconstructed through a thousand photographs labeled with dates, locations, and descriptions; the same cannot be said of a photograph or two of loved ones tucked into a wallet. Third, the data on a phone can date back to the purchase of the phone, or even earlier. A person might carry in his pocket a slip of paper reminding him to call Mr. Jones; he would not carry a record of all his communications with Mr. Jones for the past several months, as would routinely be kept on a phone.*
>
> *Finally, there is an element of pervasiveness that characterizes cell phones but not physical records. Prior to the digital age, people did not typically carry a cache of sensitive personal information with them as they went about their day. Now it is the person who is not carrying a cell phone, with all that it contains, who is the exception.*

And, from that, the court notes, the world with smartphones is a very different world:

> *In 1926, Learned Hand observed … that it is "a totally different thing to search a man's pockets and use against him what they contain, from ransacking his house for everything which may incriminate him." … If his pockets contain a cell phone, however, that is no longer true. Indeed, a cell phone search would typically expose to the government far more than the most exhaustive search of a house: A phone not only contains in digital form many sensitive records previously found in the home; it also contains a broad array of private information never found in a home in any form— unless the phone is.*

Furthermore, the court notes that it's not just the storage on the phone that's at issue, but the fact that most phones reach out into the cloud:

> *To further complicate the scope of the privacy interests at stake, the data a user views on many modern cell phones may not in fact be stored on the device itself. Treating a cell phone as a container whose contents may be searched incident to an arrest is a bit strained as an initial matter…. But the analogy crumbles entirely when a cell phone is used to access data located elsewhere, at the tap of a screen. That is what cell phones, with increasing frequency, are designed to do by taking advantage of "cloud computing." Cloud computing is the capacity of Internet-connected devices to display data stored on remote servers rather than on the device itself. Cell phone users often may not know whether particular information is stored on the device or in the cloud, and it generally makes little difference.*

The ruling then walks through and rejects each of the attempts by the government to offer up ways in which it should be allowed to search phones. One important one involves the government's argument that the ruling in Smith v. Maryland (which we've discussed a lot – covering how there's no privacy expected in data handed to third parties) means retrieving the phone's call log is permitted. However, here the court notes this is **not** the same thing.

> *We also reject the United States' final suggestion that officers should always be able to search a phone's call log, as they did in Wurie's case. The Government relies on Smith v. Maryland,… which held that no warrant was required to use a pen register at telephone company premises to identify numbers dialed by a particular caller. The Court in that case, however, concluded that the use of a pen register was not a "search" at all under the Fourth Amendment. …. There is no dispute here that the officers engaged in a search of Wurie's cell phone. Moreover, call logs typically contain more than just phone numbers; they include any identifying information that an individual might add, such as the label "my house" in Wurie's case.*

The court also – importantly – highlights how attempts by the government to claim that looking through photographs on a phone is "analogous" to looking through photos in a wallet are not, in fact, analogous:

> *But the fact that a search in the pre-digital era could have turned up a photograph or two in a wallet does not justify a search of thousands of photos in a digital gallery. The fact that someone could have tucked a paper bank statement in a pocket does not justify a search of every bank statement from the last five years. And to make matters worse, such an analogue test would allow law enforcement to search a range of items contained on a phone, even though people would be unlikely to carry such a variety of information in physical form.*

That tidbit seems like it could be quite useful in future cases in which the government defends its collection of *bulk* data. That said, the court does note (in a footnote clearly directed at this issue) that this ruling is *not* about such bulk collections:

> *Because the United States and California agree that these cases involve searches incident to arrest, these cases do not implicate the question whether the collection or inspection of aggregated digital information amounts to a search under other circumstances.*

That said, the framework discussed in the ruling does, quite strongly, suggest that the Supreme Court will be fairly skeptical towards the government's defense of bulk collections. Now we just need to wait for a case challenging those programs to actually reach the Court.

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