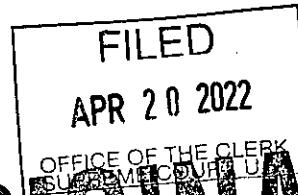


22-104

No _____



In The
United States Supreme Court

ORIGINAL

Martin Rugamba,
Petitioner

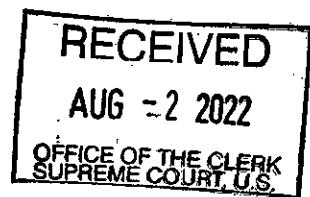
v.
CRST, Inc., et al,
Respondents,

On Petition For A Writ Of Certiorari To
The Court Of United States Court Of Appeals

For The Third Circuit

PETITION FOR A WRIT OF CERTIORARI

Martin
Rugamba
Pro se
P.O.BOX 380941
Brooklyn, NY 11238
4434257214



QUESTION PRESENTED

Whether the police retaliation against an individual who reports their misconducts to FBI/DOJ constitutes municipality custom or practice for the purpose of Monell, where subordinates cause cat's paw effect with tacit acquiescence end result on municipality decision-makers.

LIST OF PARTIES

Martin Rugamba, petitioner, was appellant in the court below, and plaintiff in the district court.

CRST, Inc., Two DMV Employees, CRST Shop Manager (Carlisle yard), CRST Shop Supervisor (Carlisle yard), Larry Yeo, Josh, Brock Ferry, respondents; never appeared in both courts below.

Defendant York was added by the Third Circuit instead of adding Ed Mullins, Robert Burns and Tonya who were objects of my motion to supplement the records, in order to equate the complaints name holders “police, teachers, Unions, etc.” to their real names.

TABLE OF CONTENTS

| | |
|---|----|
| Question Presented..... | i |
| Parties to the Proceedings..... | ii |
| Petition for a Writ of Certiorari..... | 1 |
| Opinion Below..... | 1 |
| Jurisdiction..... | 1 |

| | |
|--|-----|
| Constitutional and Statutory Provisions Involved..... | 2. |
| Statement of the Case..... | 3. |
| A. Statutory Background..... | 13. |
| B. Statement of Facts..... | 8. |
| C. Proceedings Below..... | 17. |
| Reasons for Granting the Writ..... | 18. |
| Conclusion..... | 20 |

INDEX OF APPENDICES

Appendix A- Opinion of the Third Circuit

Appendix B- Dismissal Order of the United
States Circuit Court

Appendix C- Picture of dashboard during
telemetry attack.

Appendix D- Picture of dashboard under normal
conditions.

TABLE OF AUTHORITIES

CASES

Page

| | |
|--|----|
| Adickes v. H. S. Kress Co., 398 U. S. 144 (1970)..... | 15 |
| Bd. of City Comm'r's of Bryan Cty. Okl. V. Brown, 520 U. S. 397?, 404 (1997)..... | 15 |
| Boumedhi v. Plastag Holdings, 489 F. 3d 781 (7 th Cir.2007)..... | 17 |
| Britton v. Maloney, 901 F. Supp. 444 D. Mass 1995)..... | 15 |
| Id. at 450..... | 15 |
| Brown, 520 U. S. at 407, 117 s. ct. 1382..... | 14 |
| Bueniconti, 148 F. Supp. 3d at 440..... | 14 |
| City of Los Angeles v. Heller, 475 U. S. 796, 799 (1986)..... | 19 |
| Ferrara v. Maturo, No. 3: 17-cv-0360 (JCH) (D. Conn. Sep. 25, 2016)..... | 14 |
| Garcetti v. Ceballos, 547 U. S. 410 (2006)..... | 19 |

| | |
|--|------------|
| Gardner v. Broderick (1968)..... | 18 |
| Garrett v. New Jersey, (1967)..... | 18... |
| | |
| Hasting Law Journal, Vol. 44, Issue 3, Article 2, March 1993, P. 551..... | 19 |
| Kneipp v. Tedder, 95 F. 3d 1199 (1996)..... | 11... |
| Leatherman v. Tarrant County Narcotics Intelligence Coordination Unit, 507 U. S. 163, 168 (1993)..... | 16... |
| Monell v. Department of Social Services 436 U. S. 658 (1978)..... | 13...16... |
| Montgomery v. Desimone, 159 F. 3d 120, 127 (3d Cir. (1998)..... | 14... |
| Pennsylvania Police v. Suder,..... | 11... |
| Rosemberg v. Borough of Lansdowne, 2016 WL 161592 at *9 (E. D. PA. 2016)..... | 14 |
| Sharp v. City of Houston,164 F. 3d 923 (5 th Cir. 1999)..... | 15... |

| | |
|---|----|
| Id. At | |
| 935..... | 15 |
| Simpson v. Ferry, 202 F. Supp. 3d. 444 (E. D. PA. 2016)..... | 13 |
| Spalding v. City of Chicago, 186 F. Supp. 3d. 884, 898-99 (N. D. Ill. 2016)..... | 18 |
| Straw v. Fair, 2018 Pa. Super. 125,..... | 12 |
| Sure-Tan, Inc. and Surak Leather Company v. National Labor Relations Board, 407 U. S. 883 (1983)..... | 17 |
| Vann v. City of New York, 72 F. 3d 1040, 1049 (2d Cir. 1995)..... | 16 |

STATUTES AND RULES

| | |
|---|-------------------|
| 28 U. S. C. §1254(1).FRAP 10 (e)..... | 2, 3, 12, 17 |
| First Amendment to the United States Constitution..... | 2, 13, 16, 18, 19 |
| 42 U. S. C. § 1983..... | 2, 13 |
| 49 CFR 396.3 (a) (1)..... | 3, 16 |

Pennsylvania Statute, Title 75 PA. C. S. A.
Vehicle § 1619.....^{43.17}.....

**In The
Supreme Court of the United States
Petition For A Writ Of Certiorari**

Petitioner respectfully prays that a writ of Certiorari issue to review the judgment below.

OPINION BELOW

The opinion of the United States Court Of Appeals appears at Appendix A to the petition and is NOT PRECEDENTIAL. It was issued on January 22nd, 2022 by Third Circuit Judges: McKee, Schwartz and Restrepo.

The opinion of the United States District Court appears at Appendix B to the petition and is unpublished. It was issued on August 31st, 2020 by Hon. John E. Jones III on recommendation from Hon. William I. Arbuckle III.

JURISDICTION

The date on which the United States Court Of Appeals decided my case was January 22nd, 2022.

No petition for rehearing was filed. The jurisdiction in this court is invoked under (28 U. S. C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVE

First Amendment to the United States Constitution

“Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.”

42 U. S. C. § 1983

“Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an

action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable..."

49 CFR 396.3 (a) (1)

"(a) General. Every motor carrier and intermodal equipment provider must systematically inspect, repair, and maintain, or cause to be systematically inspected, repaired, and maintained, all motor vehicles and intermodal equipment subject to its control.

(1) Parts and accessories shall be in safe and proper operating condition at all times. These include those specified in in part 393 of this subchapter and any additional parts and accessories may affect safety of operation but not limited to, frame and frame assemblies, suspension systems, axles and attaching parts, wheels and rims, and steering systems."

FRAP (10) (e)

“(e) CORRECTION OR MODIFICATION OF THE RECORD.

(1) If any difference arises about whether the record truly discloses what occurred in the district court, the difference must be submitted to and settled by that court and the record conformed accordingly.

(2) If anything material to either party is omitted from or misstated in the record by error or accident, the omission or misstatement may be corrected and a supplemental record may be certified and forwarded:

- (A) on stipulation of the parties;
- (B) by the district court before or after the record has been forwarded; or
- (C) by the court of appeals.

(3) All other questions as to the form and content of the record must be presented to the court of appeals.”

Title 75 PA, C. S. A. Vehicle § 1619

“Prohibiti disciplining or discriminating against employees.

(a) General rule.--No person shall discharge, discipline or in any manner discriminate against any employee with respect to the employee's compensation,

terms, conditions or privileges of employment because such employee, or person acting pursuant to a request of the employee:

(1) refuses to operate a commercial motor vehicle which is not in compliance with the provisions of 67 Pa. Code Ch. 231 (relating to intrastate motor carrier safety requirements) and existing safety laws; or

(2) has filed any complaint or instituted or caused to be instituted any proceeding relating to a violation of a commercial motor vehicle safety rule, regulation, standard or order or has testified or is about to testify in any such proceeding.

(b) Unsafe conditions.—No person shall discharge, discipline or in any manner discriminate against an employee with respect to the employee's compensation, terms, conditions or privileges of employment for refusing to operate a vehicle when such operation constitutes a violation of any Federal rules, regulations, standards or orders applicable to commercial motor vehicle safety or health, or because of the employee's reasonable apprehension of serious injury to himself or the public due to the unsafe condition of such

equipment. The unsafe conditions causing the employee's apprehension of injury must be of such nature that a reasonable person, under the circumstances then confronting the employee, would conclude that there is a bona fide danger of an accident, injury or serious impairment of health resulting from the unsafe condition. In order to qualify for protection under this subsection, the employee must have sought from his employer and have been unable to obtain correction of the unsafe condition.

(c) Procedure.--

(1) Any employee who believes he has been discharged, disciplined or otherwise discriminated against by any person in violation of subsection (a) or (b) may, within 180 days after such alleged violation occurs, file or have filed by any person on the employee's behalf a complaint with a magisterial district judge alleging such discharge, discipline or discrimination. Actions brought under this section shall be brought in the court of common pleas if the complaint states a claim for damages in excess of the jurisdictional limits provided by 42 Pa.C.S. § 1515 (relating to jurisdiction and venue) and the plaintiff declines to

waive the portion of his claim exceeding the jurisdictional amount.

(2) Upon request of the employee, the employer or any representative of the employee or employer, the Pennsylvania Public Utility Commission shall assign and direct an investigator with qualifications in motor vehicle safety inspections to examine the vehicle or vehicles in question and render a signed report. Such report shall be *prima facie* evidence of the facts and the conclusions contained therein, and may be introduced in a legal proceeding brought under this section. Any party may call the investigator as if on cross examination in a legal proceeding brought under this section.

(3) If the magisterial district judge or the court of common pleas, after notice and hearing, determines that a violation of subsection (a) or (b) has occurred, the magisterial district judge or court of common pleas has the power to and shall order:

- (i) the person who committed such violation to take affirmative action to abate the violation;
- (ii) such person to reinstate the complainant to the complainant's former position together with the compensation,

including back pay, terms, conditions and privileges of the complainant's employment; and

(iii) compensatory damages.

(4) If an order is issued under paragraph (3), the magisterial district judge or court of common pleas issuing the order, at the request of the complainant, may assess against the person against whom the order is issued a sum equal to the aggregate amount of all costs and expenses, including attorney fees, reasonably incurred by the complainant for, or in connection with, the bringing of the complaint upon which the order was issued."

STATEMENT OF THE CASE

A. STATEMENT OF FACTS

Two State of Iowa DMV Employees proctoring a CDL exam at CRST's facility in Cedar Rapids interrupted the exam by causing it to vanish off the screen of the computer I was taking the exam on.

Ellie, a student-driver coordinator knew I had requested to be teamed up with non-smoker drivers. She required me to drive with a lead

driver who coughed and smoked constantly for over 30 days.

I was driving and came to the Y-intersection in Dallas, TX, as I was moving to take the left, he shouted, "Take the right." A quick glance in my mirror noticed a car in my blind side. I slammed on the brakes; and reported the inadequate guidance. He did not turn in the training report which caused me to go a few days without work assignments.

My next co-driver shouted the same instruction at a Y-intersection, a quick glance in my mirror noticed a bobtail in my blind side. Both of them were trying to get me involved in an accident. Since they did not know each other, they were manipulated.

Larry Yeo, a driver manager, he declined to give me work assignments under the pretext that I do not have a co-driver. He gave me a list of drivers who needed co-drivers, I called all of them, only one was available. Curiously, Yeo failed to effectuate co-driving with him. As a result, the only assignment I did in November 2017 was Houston, TX to Terre Haute, Indiana.

In the mid-December, he teamed me up with the co-driver, the 2nd mentioned above; he took the truck with him during the holidays. I spent the

Holidays, 12/24/17 – 01/11/18 without truck and without work.

Yeo sent me to retrieve a ready-to-drive old tractor from CRST Shop in Carlisle, PA. Since I was making no money under Yeo, I asked his supervisor Brock Ferry to give me another driver manager. He gave me Josh, and he asked the Carlisle shop to give me a new truck, 102911, instead the old one I was there for. Since I was a rookie, I was not entitled to a new truck. I double inspected it.

Under the driver manager Josh, I was assigned 2 loads but delivered none. Both them were snatched from me after pick up then were given to other drivers. I was left to rot in Nebraska where I was under heavy snow around January 22nd, 2018. The opt-idle engine management system failed to work, which means, the heat failed to work on this new truck. It worked on old previous trucks. It was dangerous to sleep in the sleeper berth in frigid weather. District Court said nothing about the defendants manager and supervisor. They disabled the opt-idle on Brock Ferry's request.

I called dispatchers: Jim said that there were no loads out of Nebraska and that I might wait a week or two. Brock Ferry declined having the

truck taken to the nearest dealer of Freightliner dealer to fix the opt-idle; he declined to issue a motel voucher; and denied me the permission to drive to Cedar Rapids where I would have had opt-idle repaired, and where would have stayed in CRST's dormitory for further jobs.

Under driver manager Yeo, before he teamed me up with the 2nd co-driver, Yeo sent me to a Freightliner dealer in Knoxville, TN to pick up a ready-to-drive truck. My preliminary inspection revealed a cracked windshield, a collapsing steering column and a missing registration. After reporting the defects, Yeo asked me to drive the truck. I declined then talked to the dealer's supervisor. The truck was taken back to the shop for 3 more days. I realized that in 5 months I made about \$2,800.00 and should have made at least \$8,000.00.

About January 24th 2018, as I realized my job was plagued with safety issues, I wrote a letter requesting job improvement then quit.

At my new employer, the driver manager Robert Burns and Safety manager Tonya, while they were evaluating my inspection of the truck, Tonya removed the IFTA permit from the permit binder in Bolingbrook, IL. She inspected the binder and removed some pages she deemed old.

Weeks later in Oklahoma, a highway police asked to show IFTA permit. This is when I understood Tonya had removed it. I reported the incident to FBI. A few days later, FBI raided Ed Mullins, the NYPD sergeant, president of the police union. After IFTA incident, Robert Burns escalated the routine bullying to situations that resulted in near-accidents. Using telemetry devices, remote engine monitoring attendants disabled the transmission while I was driving on highways in Dallas, TX, at 2 occasions; I was able to pull over using the momentum of the truck's kinetic energy. On the 3rd occasion, in Lancaster, PA while changing lanes from Highway 30 to highway 287, the Telemetry attendants took over the transmission, I got stuck in the middle of the traffic in 8th gear, 0 MPH. See Exhibit C. The engine would have down shifted with respect to the rate of the MPH, to the lowest gear at 0 MPH. See exhibit D (2nd gear under normal circumstances). In Straw v. Fair, 2018 PA. Super. 125...A hood obstructed the driver's vision, he stopped in the middle of a highway which caused a major accident. He had had the hood latch checked up by 3 shops.. This illustrates the evil motives of the telemetry attendants.

While the case was pending in Third Circuit, I petitioned under FRAP 10 (e) (supplementing

record) to equate the defendants referred in complaint as “police, teachers, unions, etc” to Ed Mullins, Robert Burns and Tonya; and to restore the First Amendment claim I omitted inadvertently in the appeal brief.

B. STATUTORY BACKGROUND

First Amendment Rights Under Monell and Section 1983.

Plaintiff routinely reports the police and its accomplices’ retaliatory misconducts to FBI. The more they perpetrate retaliation, the more plaintiff reports in an endless loop of attrition where no one budges. As a proximate result, plaintiff suffered loss of employment, emotional distress, enjoyment of life, etc.

My protected constitutional rights consist in reporting, free speech, misconducts since 2001 in Los Angeles, CA. The first reports consisted in classroom observations which were followed by retaliations to the point where I sought for FBI protection. District Court disbelief is akin to Hayakawa’s extensional meaning of utterances.

FBI investigates my reports and shares its findings with municipal decision-makers. In *Simpson v Ferry*, 202 F. Supp. 3d 4444 (E. D. PA. 2016), Third Circuit requires, in Monell cases

where failure to supervise is alleged, plaintiff to show that a municipality has “contemporaneous knowledge of the offending incident or knowledge of prior pattern of similar incidents and circumstances under which the supervision’s actions or inaction could be found to have communicated a message of approval to the offending subordinate. Rosemberg v. Borough of E. Lansdowne, 2016 WL 161592 at *9 (E. D. PA. Jan. 14, 2016) (quoting Montgomery v. Desimone, 159 F. 3d 120, 127 (3d Cir. 1998). “Policymakers continued adherence to an approach that they know or should know has failed to prevent tortuous conduct by employees, may establish the conscience disregard for the consequences of their actions – deliberate indifference – necessary to trigger municipal liability.” Bueniconti, 148 F. Supp. 3d at 440 (quoting Brown, 520 U.S. at 407, 117 S. Ct 1382.

The retaliation, violation of free speech would deter or chill a person with usual firmness to pursue the exercise of his free speech. In Ferrara v. Maturo, No. 3:17-cv-0360 (JCH) (D. Conn. Sept. 25. 2016) (he was retaliated against for cooperating with the DOJ in its investigation....(trial Court found that the deprivation was caused by an unlawful practice amongst subordinate officials that was

widespread as to imply constructive acquiescence... and the municipality was the moving force behind the alleged injury." Bd of City Comm'rs of Bryan Cty. Okl. v. Brown, 520 U. S. 397, 404 (1997).

Despite the fact that FBI shares its investigation findings with municipalities, retaliations against plaintiff has become relentless and pervasive. Subordinates misconducts are tacitly acquiesced by decision-makers of municipalities. In Britton v. Maloney, 901 F. Supp. 444 (D. Mass. 1995) (unlike policy which is top-down affirmative decision of a policy maker, a custom develops from bottom-up. Idem at 450.), it is the subordinates, low level,, non-policymakers employees that engage in a certain practice or custom which becomes the "way things are done").

In instant case the custom /practice is defying FBI. The code of silence protects the offending officer, for example, Sharp v. City of Houston, 174 F. 3d 923 (5th Cir. 1999) (plaintiff introduced evidence of retaliation for having violated the code, which had the effect of proving the code's existence. Id. at 935.

Offending officers and their civilians accomplices are a partnership depicted in Adickes v. S. H.

Kress Co., 398 U. S. 144 (1970) (Supreme Court found... there was a conspiracy between Kress and the police). There is no heightened pleading requirements when alleging Section 1983 claim against a municipality. *Leatherman v. Tarrant County Narcotics Intelligence Coordination Unit.* 507 U. S. 163, 168 (1983).

The causes of actions: Negligence, Negligence per se and Constructive Discharge rose out of the retaliatory misconducts in violation of my First Amendment rights. Section 1983 and *Monell v. Department of Social Services*, 436 U. S. 658 (1978). One way to satisfy “deliberate indifference” is to allege “repeated complaints of civil rights violations” and that “the complaints are followed by no meaningful attempts on the part of a municipality to investigate or to forestall further incidents.” *Vann v. City of New York*, 72 F. 3d 1040, 1049 (2d Cir. 1995). The history of reports and past lawsuits support the prongs of “deliberate indifference, tacit acquiescence” with end results of endless retaliations.

The claims of Negligence and Negligence per se show that defendants were under obligation to keep the trucks in good running conditions before releasing them for work assignments. See 49 CFR §396.3(a)(1). Defendants breached that duty

which resulted in less work and wages, and triggered quitting due safety concerns. See Boumedhi v. Plastag Holdings, 489 F. 3d 781 (7th Cir. 2007) (... if continued employment would compromise an employee's personal safety, courts do not expect the employee to remain on the job while the employee tries to remedy the problem." This saved me from anoxia caused by hypothermia. See Kneipp v. Tedder (a drunk woman had brain damage after being exposed to frigid weather by a cop's negligence). Pennsylvania recognizes discharge in violation of public policy. Pennsylvania Police v. Suder, (Citing Sure-Tan, Inc and Surak Leather Company v. National Labor Relations Board, 407 U. S. 883 (1983) (... a labor union with undocumented aliens who got deported following employer reporting them to INS, were found to be constructively discharged in violation of §8(a)(3) of the NLRA). The defendants also violated the State of Pennsylvania statute, Title75 Pa. C.S.A. Vehicle code §1619 — prohibition against discharging, disciplining against employee.

C. PROCEEDINGS BELOW

Plaintiff submitted a motion under FRAP 10(e) to supplement the record following an important findings consisting of the master

minder/orchestrator of retaliation acts against me. Since none of the defendants appeared below, the motion was one-sided stipulation. Third Circuit then added defendant unduly defendant York instead of the people listed in the stipulation: Ed Mullins, Robert Burns and Tonya.

The motion supplementing record also consisted of reinstatement of the First Amendment claim that I had omitted by error in the brief. I had been under attack online while researching the case. I came to the point where the court clerk in Harrisburg helped me look up some statutes online because I could not use my phone and public libraries were closed due to Covid-19.

REASONS FOR GRANTING THE WRIT OF CERTIORARI

Police officers have job protection mechanisms: the Bill of Rights —Garrit v. New Jersey, (1967), Gardner v. Broderick, (1968) that do not seem to benefit cops who denounce other cops. See Spalding v. City of Chicago, 186 F. Supp. 3d. 884, 898-99 (N. D. Ill. 2016) (he reported to the FBI, instead of the chain of command, because FBI was an oversight agency and the report was

made on his own initiative while he was off-duty).

Spalding suggests that cops' First Amendment rights can be insulated from *Garcetti v. Ceballos* reprisals. FBI is an oversight authority and "rats" reporting to FBI will be safer than reporting through the chain of command. Making FBI one of the Monell features will benefit cops as well.

Reining in Heller. *City of Los Angeles*, 475 U. S. 796, 799 (1986) (requiring that some individual officers must have violated the plaintiff's rights before local government can be held liable). See *Hastings Law Journal*, Vol. 44, Issue 3, Art. 2, March 1993; about "Bifurcation of Civil Right Defendant : Undermining Monell in Public Brutality Cases" by Douglass L. Colbert. He makes a case for abandoning bifurcation, and on page 551, he presented a survey of the "Code of Silence" which blocks testimony and tacitly sanctioned by the refusal of police departments to impose any obligation to disclose misconduct by their fellow officers.

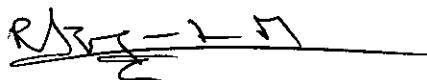
Tacit acquiescence on the part of municipal decision-makers is not always volitional; they adopt it in fear of police gaslighting attacks, and defendant Ed Mullins (matches holder) is an

epitome of it. He dragged New York City officials in the mud to prevent them from adopting certain policies (posting Mayor's daughter private information on the internet calling names the US Congressperson and Health commissioner names, etc. The internet is replete with his misconducts. Defendant Ed Mullins is a good example showing that tacit acquiescence on the part of municipal decision-makers is not always deliberately adopted.

CONCLUSION

Petitioner prays that lower courts' decisions/judgment be reversed and prays for such other reliefs the court deems proper. The petition for a writ of certiorari should be granted.

Respectfully submitted,



Martin Rugamba

Dated : May 15th, 2022