

Gary Dressler v. Bradford Rice, et al.

United States Court of Appeals for the Sixth Circuit Case No. 17-3850

(Appeal from the United States District Court for the Southern District of Ohio Case No. 1:15-cv-606)

David J. Oberly secured a significant victory in the United States Court of Appeals for the Sixth Circuit, in which the appellate court affirmed the award of summary judgment granted to David's client, one of the nation's largest grocers, in a federal civil rights action involving noteworthy Second Amendment implications.

In that case, an individual walked hurriedly into a Cincinnati-area grocery store in a suspicious manner while open carrying his firearm on his hip. At the time, the grocer maintained an unwritten policy of allowing customers to open carry firearms in its stores. Immediately after entering the store, he was approached by the grocer's independent contractor security guard, who instructed the man to return his gun to his vehicle to avoid panic, or that he would not be allowed to shop inside the store. After becoming confrontational, the man was asked to leave the premises. The man completely disregarded the command, and walked hurriedly into the store. He was subsequently arrested and charged for criminal trespassing as a result of his continued failure to leave the grocer's property after being instructed to do so. The plaintiff filed suit against the grocery store, two of the grocer's employees, the security guard and the guard's employer, the two arresting police officers, and the City of Cincinnati, asserting claims for § 1983, § 1985(3), and § 1986 civil conspiracy, false arrest, false imprisonment, and malicious prosecution. The plaintiff's claims were premised principally on the plaintiff's contention that the defendants lacked probable cause to arrest plaintiff for criminal trespass on the day of the incident, and that the defendants violated the plaintiff's Second Amendment rights for revoking his privilege to remain in the store while he was open carrying his handgun. At the district court level, Judge Michael Barrett granted summary judgment in favor of David's clients on all causes of action asserted against the grocery store and its two employees.

On appeal, the Sixth Circuit held that the defendants possessed probable cause to believe the customer was criminally trespassing as a result of the customer's failure to leave the store after the security guard revoked the customer's privilege to remain on the grocer's property, when the security guard twice instructed the customer to return his firearm to his car or leave the store. In addition, the Sixth Circuit rejected the customer's argument that his Second Amendment rights were violated because he was asked to leave the store for reasons relating to the open carrying of his handgun. In doing so, the Sixth Circuit highlighted the fact that a property owner's motive in making a request for someone to leave the premises is irrelevant. As such, even if the security guard mandated that the customer to leave because of his handgun, any such instruction for a customer to leave the premises of a private property owner did not violate the customer's Second Amendment rights. Finally, the Sixth Circuit also held that the customer could not maintain his § 1983 civil conspiracy action against the grocer and its employee because the request made by the employee to the police that the customer be arrested for criminal trespassing did not rise to the level of conduct "under color of state law." Rather, the employee's request amounted only to the utilization of public services by private actors and, more specifically, police assistance in the lawful exercise of self-help, which was not sufficient to convert the employee's private action into state action.

The Sixth Circuit Court of Appeals' full decision can be read here: [Gary Dressler v. Bradford Rice, et al. - Sixth Circuit Opinion](#).