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# Municipal Policy That Gives Discretion to Police May Form Basis for Municipal Liability

## FACTS:

In two separate incidents, Grand Rapids Police Department (GRPD) officers stopped and questioned individuals. The first individual (Johnson) was stopped in a parking lot after a complaint was received that he was looking into vehicles. In the second incident, an officer stopped an individual (Harrison) after observing him give someone a large model train engine. During these investigatory stops, photographs and fingerprints were taken in accordance with GRPD's "photograph and print" (P&P) procedures. A P&P involved an officer's ability to take a person's photograph and fingerprints whenever an officer deemed it necessary given the facts and circumstances of the situation. Neither Johnson nor Harrison was arrested for any crime. Johnson and Harrison subsequently sued the city and the police officers involved claiming, in part, that their Fourth Amendment Federal Constitutional rights against an unreasonable search and seizure had been violated when the officers performed P&Ps without probable cause, lawful authority, or lawful consent.

The lawsuits against the city and its officers were filed pursuant to federal law (42 USC 1983). "Establishing municipal liability under 42 USC 1983 requires proof that (1) a person's federal or statutory rights were violated and that (2) the violation was caused by a policy or custom of the municipality." A constitutional violation is attributable to a municipality if "the action that is alleged to be unconstitutional implements or executes a policy statement, ordinance, regulation, or decision officially adopted and promulgated by that body's officers." Liability may also be based on widespread practice of a governmental custom which has not received formal approval. [Quotes attributable to Michigan Supreme Court in its decision.]

In response to motions for summary disposition, the Kent County Circuit Court found in favor of the city and the officers. On appeal, the Court of Appeals affirmed, holding that the city could not be held liable since the plaintiffs had failed to demonstrate that any of the alleged constitutional violations resulted from a municipal policy or a custom so persistent and widespread as to practically have the force of law. The plaintiffs appealed to the Michigan Supreme Court. [For purposes of the appeal to the Michigan Supreme Court, it was assumed that the plaintiffs' Fourth Amendment Rights had been violated.]

## QUESTION:

Were the alleged violations of plaintiffs' constitutional rights which occurred during the P&P process caused by a policy or custom of the city?

## ANSWER:

YES. The Michigan Supreme Court held that accepted, though unwritten, practices of executing governmental policy may give rise to liability. The Court noted that use of municipal resources to develop and implement practices and procedures can be evidence supporting the existence of official policy. Further, a municipality may be held liable for unlawful actions that it sanctioned or authorized in addition to those specifically ordered. Finally, the Court held the plaintiffs had shown that the policy or custom was the "moving force" or cause of the violation.

*Johnson v Vanderkooi, No. 156057 (July 30, 2018)*

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