

Passenger who beat his Uber driver should drop his countersuit

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Uber passenger allegedly beats driver, then sues

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Editor's Note: Marc J. Randazza is a Las Vegas-based First Amendment attorney and managing partner of the Randazza Legal Group. Randazza's scholarly writing can be found [here](#). The opinions expressed in this commentary are his.

CNN —

Until now, the classic definition of "chutzpah" has been "that quality enshrined in a man who, having killed his mother and father, throws himself on the mercy of the court because he is an orphan."

If he possesses no other quality, Benjamin Golden at least has that one.

Golden achieved 15 minutes of fame in October thanks to Uber driver Edward Caban, who posted his dashcam video of Golden drunkenly attacking him. The video shows Golden slumping over drunk, Caban insisting he get out of his car, and then Golden beginning to peacefully leave the car, when he thinks better of doing so (peacefully) and he starts bashing Caban in the head. Caban then pepper sprays Golden, chasing him out of his car.

Golden then made an on-air apology, claiming that the guy in the video “did not reflect who he really is.” Golden at least said all the right things, including “I’m ashamed.”

video

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Unsurprisingly, Caban sued Golden for the attack. Then, the public forgot all about it and moved on to the next shiny object.



Until now.

Golden has decided to countersue Caban for \$5 million. Golden claims Caban’s dashcam video of the attack violates a California law prohibiting surreptitious recording of private conversations. He claims publishing the video violated his privacy rights, caused him emotional distress, and that Caban assaulted him.

This is a foolish move by Golden, both legally and practically.

Legally, Golden’s case is flawed. He relies upon California Penal Code Section 632, which makes it illegal to eavesdrop on communications without all parties’ consent, if one of the parties reasonably believes that the conversation is confidential. Golden claims he had that expectation (P5. ¶26) and as a result of the “unlawful recording” he suffered distress and humiliation.

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Many years ago, I drove a taxi. I speak from experience when I say that passengers in a cab often act like they are in a confessional. They spoke from the heart, confident that I wouldn’t recognize them again. That bond between passenger and cabbie is short and honest. But, the few times that I had any trouble, I keyed my microphone to let the dispatcher know that I needed assistance.



An Uber is a little different; nobody has a radio connecting them to dispatchers. And, there is a reasonable expectation that the conversation between a passenger and a driver is just the two of you. Had Golden been only embarrassingly drunk, and Caban posted the video just to

humiliate him, Golden might have a case. Once he began bashing Caban in the head, it was foreseeable that Caban would try to call for help. Golden could claim that he did not expect that Caban could call anyone on his cell phone while being punched in the head, but that is not the kind of logic from which he can build a reasonable expectation of privacy.

Lets assume that Golden did have enough of an expectation of privacy to trigger Section 632. He misses the law's exception in Section 633.5, which allows a party to record evidence reasonably believed to relate to the commission of a crime, including a violent felony. Golden was ultimately not charged with a felony, just misdemeanor assault charges. Nevertheless, I find it unlikely that a court will split that hair.

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Given Golden's condition, it was reasonable for Caban to assume that Golden might get violent. Turning the camera on, just in case, would be "reasonable" under those circumstances. Had Golden peacefully left the car, that would have been the end of it – but when he attacked Caban, even post-hoc justifications became valid.



Nevertheless, this doesn't even begin to scratch the surface of how foolish Golden is for bringing these claims. Don't get me wrong, I actually do have some sympathy for Golden. Sure, he brought this on himself by getting violent with Caban, who did nothing to deserve it. And Caban deserves compensation for what Golden did to him.

But, while Golden is the victim of his own poor judgment, he is also a victim of the times. In the near past, he may have been held accountable in the real world (or "meat space") to Caban, and that would be that. But, now, with nearly constant video and audio surveillance, it remains in cyberspace long after meat space would forget.

We have become a society in which there are no more "mistakes" that we can put behind us. Donald Sterling makes a racist comment, and it is preserved forever. We have no right to be forgotten, although, perhaps we need one.

As a policy consideration, I do not think Golden's misadventures on that one drunken night should have made him an immortal example of bad behavior. I'm not saying he didn't get what he deserved, but should he be forever known as "that guy"?

I thought not until Golden filed his ill-advised claims. If you want a "right to be forgotten," it probably isn't a good idea to do something to immortalize yourself. Much like Mario Costeja Gonzalez (the plaintiff in the Right to be Forgotten case) he will, ironically, never be able to be forgotten now.

Golden just re-energized this story. He singlehandedly went from a guy who had one bad videogenic night to someone who has some inescapable character issues. After all, many people have done silly things in a drunken stupor, but Golden thought this latest move through, with counsel, and still decided it was a good idea. He seems to be making bad decisions all over again – and this time, not ones that we should forgive.