



ELEVENTH CIRCUIT UPHOLDS IMMUNITY FOR SCHOOL OFFICER WHO THREATENED PARENT WITH TASER

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On July 10, 2017, Eleventh Circuit Court of Appeals decided *Simpson v. Vickers et al.*ⁱ, in which the court examined whether a school resource officer used excessive force when he threatened a parent with a Taser when the parent refused to leave his office and then allegedly bumped her with the door as it was shutting. The relevant facts of *Simpson*, taken directly from the case, are as follows:

While monitoring school security cameras, Vickers witnessed Simpson Jr. violate school rules. Simpson Jr.'s assistant principal later met with Simpson Jr., informed him that he would be suspended for the violation, and asked him to sign a disciplinary report. Simpson Jr. refused to sign the disciplinary report, and the next day Mr. and Mrs. Simpson visited Simpson Jr.'s school to review the video footage of the violation. The assistant principal directed them to Vickers.

Mr. and Mrs. Simpson went to Vickers's office to review the video footage, but Vickers had difficulty locating the footage so he asked Mr. and Mrs. Simpson to wait outside his office while he searched for it. They refused. Vickers repeated his request several times and asked Mr. and Mrs. Simpson what he could do to convince them to leave the office. After Mr. and Mrs. Simpson continued to refuse to leave the office, Vickers drew his taser. Mr. and Mrs. Simpson then left the office. As Mrs. Simpson was leaving, Vickers began to close his office door, causing the door to touch Mrs. Simpson. Vickers could not see Mrs. Simpson when he was closing the door and was unaware that the door touched her. After leaving the office, Mr. and Mrs. Simpson met with a different school resource officer who located the video footage and showed it to them.ⁱⁱ

The Simpsons subsequently sued the School District and alleged (1) that Vickers used excessive force against Mrs. Simpson in violation of the Fourth and Fourteenth Amendments when he threatened her with the Taser and closed the door on her, (2) that Vickers committed the state torts of assault and battery against Mrs. Simpson, and (3) that the school district violated Simpson Jr.'s procedural due process rights under the Fourteenth Amendment when they suspended him without allowing him to see the video of his disciplinary infraction. The district court granted summary judgment in favor of Vickers

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and the School District and dismissed the suit. The Simpson's appealed to the Eleventh Circuit Court of Appeals.

The first issue the court of appeals addressed was whether Vickers committed excessive force in violation of the Fourth Amendment when he threatened Simpson with a Taser and then bumped her with the door as he was closing it. The court noted that Vickers is entitled to qualified immunity for discretionary acts that do not violate clearly established law. Clearly established law is court precedent from the Supreme Court, Eleventh Circuit Court of Appeals or the highest court in Georgia (the Supreme Court of Georgia) that is sufficiently factually similar to give fair warning to government officials that certain conduct is unlawful. The court then stated

Mrs. Simpson asserts that Vickers, in drawing his taser and touching her with his office door, used excessive force against her because his conduct amounted to an unreasonable seizure under the Fourth Amendment. *See Graham v. Connor*, 490 U.S. 386, 395, 109 S. Ct. 1865, 1871 (1989) ... **But at the time of Mrs. Simpson's encounter with Vickers, neither a constitutional principle nor case law established that Vickers's conduct constituted an unreasonable seizure. See *D.H. by Dawson v. Clayton Cty. Sch. Dist.*, 830 F.3d 1306, 1318 (11th Cir. 2016) (identifying the ways in which a right may be clearly established). Further, the conduct was not "so egregious" as to compel the conclusion that it violated Mrs. Simpson's Fourth Amendment rights. See *id.*ⁱⁱⁱ [emphasis added]**

As such, the Eleventh Circuit held that Vickers was entitled to qualified immunity on the Fourth Amendment excessive force claim.

The second issue the court examined was whether Vickers committed excessive force in violation of the Fourteenth Amendment when he threatened Simpson with a Taser and then bumped her with the door as he was closing it. Regarding this issue, the court noted that the standard for excessive force under the Fourteenth Amendment is that the force used must "shock the conscience." This standard is actually higher than the Fourth Amendment standard and requires that the force be used with no legitimate purpose. The court examined whether the law was clearly established to put a reasonable officer on notice that his conduct in this case was a violation of the Fourteenth Amendment. The court held

[A]t the time of Vickers's conduct, the law did not clearly establish that the conduct met this shock-the-conscience "criterion." *See Wilson v. Northcutt*, 987 F.2d 719, 722 (11th Cir. 1993) (internal quotation marks omitted).^{iv}

As such, the court granted qualified immunity to Vickers on the Fourteenth Amendment claim.

The third issue before the court was whether Vickers committed state tort of assault and battery in this case. In Georgia, public officials can assert the defense of "official immunity" for suits that involve discretionary actions. The court explained official immunity and stated

In Georgia, official immunity bars "any suit against a public official in his . . . individual capacity" if the official (1) "has engaged in discretionary acts that are within the scope of his . . . authority, and (2) "has not acted in a wil[l]ful or wanton

manner," "with actual malice," or "with the actual intent to cause injury." *Brown v. Penland Const. Co.*, 641 S.E.2d 522, 523 (Ga. 2007).^v [emphasis added]

The court noted that Vickers' interaction with the Simpsons was within the scope of his authority and discretionary, meaning that he used his judgment to decide and choose a course of action. The court also noted that no reasonable jury could conclude that Vickers acted with actual malice, which is an intent to do wrong or cause injury. In fact, it was undisputed that Vickers could not see Mrs. Simpson when he closed the door which allegedly hit her.

Lastly, the court examined the issue of whether the School District committed a procedural due process violation under the Fourteenth Amendment for suspending Simpson Jr. without first allowing him to see the video of the incident. The court first noted the rule that governs this issue and stated

[W]hen a student is suspended for fewer than ten days, the process provided need consist only of oral or written notice of the charges against him and, if he denies them, an explanation of the evidence the authorities have and an opportunity to present his side of the story." *C.B. By & Through Breeding v. Driscoll*, 82 F.3d 383, 386 (11th Cir. 1996) (internal quotation marks omitted).^{vi} [emphasis added]

Here, Simpson was suspended for three days and, prior to the suspension, the assistant principal met with him, discussed the violation, explained the rule violation, and gave him an opportunity to respond. This complies with the legal requirements as stated above. Further, the School District did show the video to the Simpsons the day after the suspension meeting. As such, the school district was entitled to summary judgment.

Thus, the Eleventh Circuit affirmed the decision of the district court in favor of the defendants in this case.

ⁱ No. 17-10486 (11th Cir. Decided July 10, 2017 Unpublished)

ⁱⁱ Id. at 2-3

ⁱⁱⁱ Id. at 5

^{iv} Id. at 6

^v Id.

^{vi} Id. at 7