ELEVENTH CIRCUIT UPHOLDS IMMUNITY FOR OFFICER AND SCHOOL OFFICIALS IN ARREST OF DISORDERLY PARENT

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On May 4, 2017, the Eleventh Circuit Court of Appeals decided *Yates v. Cobb County School District et al.*[i], in which the court discussed whether the school district, school resource officer and other school officials were entitled to immunity from civil suit after the arrest of a disorderly parent. The relevant facts of *Yates,* taken directly from the case, are as follows:

> Yates's claims stem from an incident during a freshman advisement event at her daughter's high school. Yates became frustrated with the efficiency of the event and, in expressing her frustration to a faculty member, stated, "No, I've had enough. Whoever organized this needs to be shot in the head." Although Yates did not know it at the time, that faculty member, defendant Gillian Moody, was the event's organizer.
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> The next day, the principal, defendant Donnie Griggers, asked a school resource officer, defendant Charles Rogers, to investigate the incident. School employees, including defendants Moody, Katelyn Beer, Renae Kiger, and Kristin King, provided Officer Rogers with statements about what they observed. Several witnesses described Yates as very upset, yelling, and repeating several times the statement that Moody should be shot in the head.
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> Officer Rogers obtained a warrant to arrest Yates for disrupting a public school. Yates was later arrested, but the charge ultimately was nolle prossed. Several months later, an assistant principal at the school, defendant Arthur O'Neill, incorrectly informed Yates during a telephone conversation that a criminal trespass warrant prohibited her from entering school property.[ii]

Yates subsequently sued the school district, the officer, and the various school officials involved. She alleged violations of her First, Fourth, and Fourteenth Amendment rights. The district granted the

defendant's motion for summary judgment and qualified immunity, and Yates appealed to the Eleventh Circuit Court of Appeals.

On appeal, the Eleventh Circuit first noted the law related to qualified immunity for the school officials and school resource officer. Qualified immunity protects government officials from suit when they are acting within the scope of their discretionary authority. If a government official shows that he was acting within the scope of his discretionary authority, the burden shifts to the plaintiff to defeat qualified immunity. In order to defeat qualified immunity, the plaintiff must establish

> **(1) that the facts construed in the light most favorable to the plaintiff show that the defendant's conduct violated a constitutional right; and (2) that the right was "clearly established" at the time of the defendant's conduct**. Grider v. City of Auburn, 618 F.3d 1240, 1254 (11th Cir. 2010). [iii] [emphasis added]

The court can conduct the analysis of the above two prongs in any order. The court also discussed what is necessary for the law to be considered "clearly established." The court stated

> **As to the second prong of the qualified-immunity inquiry, a constitutional right is clearly established if "its contours [are] sufficiently clear that a reasonable official would understand that what [he or she] is doing violates that right** . . . ." Hope v. Pelzer, 536 U.S. 730, 739, 122 S. Ct. 2508, 2515 (2002) (quotation marks omitted). **The critical inquiry is whether the defendant had "fair warning" that his conduct was unlawful**. Vinyard v. Wilson, 311 F.3d 1340, 1350 (11th Cir. 2002). **Law is clearly established by decisions of the Supreme Court, the Eleventh Circuit, or the highest court of the state where the case arose**. Jenkins v. Talladega City Bd. of Educ., 115 F.3d 821, 826 n.4 (11th Cir. 1997). **General statements of the law contained within the Constitution, a statute, or case law may sometimes provide "fair warning" of unlawful conduct**. Willingham v. Loughnan, 321 F.3d 1299, 1301 (11th Cir. 2003).[iv] [emphasis added]

The court next set out to examine the issues. The first issue the court examined was whether the school officials violated Yates First Amendment rights by arresting her for her speech. The Eleventh Circuit noted that Yates did not cite any case nor could the court locate a case, in which the Supreme Court, the Eleventh Circuit Court of Appeals or the Supreme Court of Georgia addressed the extent that school officials could limit a parent's speech at a school event.

While there are United States Supreme Court cases that address speech at school and school events, these cases all address speech by students. The speech in Yates case, however, was the speech of a parent so these cases are not sufficient to create clearly established law to put a reasonable officer or school official on notice regarding the limits of regulating such speech. As such, the court, skipped the first prong of the qualified immunity analysis and chose not to rule on whether the official violated the First Amendment. Rather, they moved directly to the second prong and held that

> [N]o clearly established law gave the defendants fair warning that their conduct in these particular circumstances would violate Yates's First Amendment rights. See Coffin v. Brandau, 642 F.3d 999, 1013 (11th Cir. 2011) (en banc) (explaining that the critical inquiry

> of whether the law provides the defendant with fair warning is undertaken in light of the specific context of the case rather than as broad general propositions).[v]

Thus, the defendants are all entitled to qualified immunity on the First Amendment claim and the court chose not to decide whether or not the defendant's violated Yates rights under the First Amendment.

Next, the court set out to examine the Fourth Amendment false arrest claim. The court first noted the constitutional principles that govern this issue and stated

> **The Fourth Amendment prohibits an officer from making a false statement intentionally or with reckless disregard for the truth in order to obtain a warrant**. See Malley v. Briggs, 475 U.S. 335, 343-45, 106 S. Ct. 1092, 1097-98 (1986); Kelly v. Curtis, 21 F.3d 1544, 1553-54 (11th Cir. 1994). **A defendant police officer "whose request for a warrant allegedly caused an unconstitutional arrest" is entitled to qualified immunity unless "a reasonably well-trained officer in the [defendant officer's] position would have known that his affidavit failed to establish probable cause and that he should not have applied for the [arrest] warrant**." Malley, 475 U.S. at 344-45, 106 S. Ct. at 1098; Grider, 618 F.3d at 1257 (explaining that "**arguable probable cause" is present where reasonable officers in the same circumstances and possessing the same knowledge as the defendant could have believed that probable cause existed**).[vi] [emphasis added]

The specific state statute that Yates was charged with was O.C.G.A. § 20-2-1181 which states in part, that it is "unlawful for any person to knowingly, intentionally, or recklessly disrupt or interfere with the operation of any public school."

The court then examined the facts relevant to whether a reasonable officer could believe that probable cause existed to obtain an arrest warrant for Yates. When the principal asked the school resource officer to investigate the incident, the officer obtained written statements from witness faculty members. Two of the school officials who provided statements were guidance counselors who were working at the event's check-out table. The both wrote that Yates came up to their table, yelled at them, became angrier, and said several times that the event organizer should be shot in the head. One of these counselors was in fact the event organizer. Even after Yates learned that one of school counselors was the event organizer, she still continued to comment that the organizer should be shot in the head. Then, after the counselor checked her out and gave her the needed paperwork, Yates continued complaining about the event and refused to leave until the counselor began to call the school resource officer. Another faculty member provided a statement that she was at a table nearby and heard Yates complaining loudly. Further, she said Yates pounded on her table as she exited and said multiple times that the event organizer should be shot in the head. Lastly, another faculty member wrote a statement and stated that Yates was very upset.

The school resource officers reviewed all of the statements and then personally spoke to each witness who provided a statement. He then believed that probable cause existed to obtain a warrant for Yates for a violation of O.C.G.A. § 20-2-1181. He wrote an incident report and prepared a warrant affidavit. He then went before a magistrate and provided the sworn affidavit and verbal testimony that included the fact that the event organizer was so visibly upset she had to be escorted to her vehicle after the event. The judge found probable cause and issued the warrant. Yates was arrested at her home about

a week later. Later, the prosecutor declined to prosecute the charges after Yates agreed to take an anger management evaluation and write a letter of apology.

When Yates filed suit, she admitted that she said the organizer should be shot in the head but labeled that a "hyperbolic statement." She also denied yelling at the other school officials, and accused them of writing false statement.

As such, part of her Fourth Amendment claim was founded on the allegation that the school resource officer provided false information to the magistrate in order to obtain the warrant. At this stage of the litigation, the court must view the facts in a light most favorable to the non-moving party (the plaintiff, Yates). Thus, even assuming for the sake of argument that the statements were false, the court stated that Yates failed to show that the school resource officer *knew or should have know*n that those statements were false. To the contrary, the statements were all consistent with one another and additionally the officer personally interviewed each witness regarding the incident. As such, the court held that Yates failed to show that the officer intentionally or reckless included false information in the warrant application and therefore, the officer is entitled to qualified immunity because, at a minimum, arguable probable cause existed to believe Yates committed a crime.

Yates final claim examined by the court was the Fourteenth Amendment claim against the school district. A claim against a government entity is sometimes referred to as a *Monell* Claim. In order to succeed on a claim against a government entity such as a school district, the court stated

> **the plaintiff must show that: (1) her constitutional rights were violated; (2) the municipal entity had a custom or policy that constituted deliberate indifference to that constitutional right; and (3) the policy or custom cause the violation. McDowell v. Brown, 392 F.3d 1283, 1289 (11th Cir. 2004)**.[vii]

The court also noted that a "policy" must be enacted by the final policy maker, which is the person who has "the authority and responsibility for establishing final policy with respect to the issue in question" in order to bind the government entity.[viii]

Regarding a "custom or practice", the court stated

> **To establish the existence of a custom, the plaintiff must show a "longstanding and widespread practice**." Craig v. Floyd Cty., 643 F.3d 1306, 1310 (11th Cir. 2011). **An isolated incident will not suffice; rather, a pattern of similar constitutional violations ordinarily is necessary to show that policymaking officials knew of, but failed to stop, the practice.** Id. at 1310-11.[ix]

Yates attempts to argue that the assistant principal who told her by phone and email that there was a criminal trespass warrant prohibiting her from coming to the school was not a final policy maker. As such, that assistant principal's action cannot cause the board of education to incur liability. Further, school district policy states that that only a principal or a school resource officer can issue a criminal trespass warning prohibiting someone from coming onto school property. The court stated

> Based on the summary judgment record, the most that can be said is that O'Neill was misinformed and relayed that misinformation to Yates. The CCSD cannot be held liable

> for O'Neill's actions under a theory of respondeat superior, and evidence of a single incident of misinformation by O'Neill does not show a policy or custom of the CCSD, much less one that was a "moving force" behind any alleged deprivation of Yates's constitutional rights. See Monell, 436 U.S. at 690-94, 98 S. Ct. at 2035-38.[x]

Yates also argued that the school district failed to train the assistant principal and that failure to train led to a violation of her rights. In order to prevail on a "failure to train" allegation, the plaintiff must show (1) that the government entity knew of a need to train in a particular area, (2) was deliberately indifferent to the need to train, and (3) that deliberate indifference to the need to train caused the violation of the plaintiff's rights. In Yates' case, she does not present any evidence that show prior incidents of school officials misinforming parents about criminal trespass warnings or warrants, so this claim must also fail.

Therefore, the court of appeals affirmed the decision of district court granting qualified immunity to the school officials and school resource officer and summary judgment for the school district.

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[i] No. 16-158882 (11th Cir. Decided May 4, 2017 Unpublished)
[ii] Id. at 2-3
[iii] Id. at 5
[iv] Id. at 6
[v] Id. at 8-9
[vi] Id. at 9-10
[vii] Id. at 14
[viii] Id.
[ix] Id. at 15
[x] Id. at 17