

Civil Rights Update

David A. Perkins and Melissa N. Schoenbein
Heyl, Royster, Voelker & Allen, P.C., Peoria

Officers Sued for False Arrest after Arresting Company President

Anthony Zimmerman, owner and president of Premier Forest Products, was arrested for criminal trespass after law enforcement officers found him operating a large construction machine and removing trees from property in Carroll County, Illinois. Zimmerman claimed he had a right to harvest the trees under a timber deed and sued the officers for a violation of his civil rights under 42 U.S.C. § 1983.

This article takes a close look at the qualified immunity doctrine and the protection it provides officers who make well-informed decisions as explained by the Court of Appeals for the Seventh Circuit in its recent decision in *Zimmerman v. Doran*, 807 F.3d 178 (7th Cir. 2015).

Factual Background

Premier Forest Products entered into a contract with Raymond Cichon, a Carroll County landowner, to harvest timber on his property. The contract, titled “Timber Sale Contract and Deed to Timber,” granted Premier access to the property to harvest particular trees. *Zimmerman*, 807 F.3d at 180.

Premier recorded the contract with Carroll County. But soon thereafter, the relationship between the contracting parties began to deteriorate after Cichon learned Premier was harvesting trees from his neighbors’ property and the township’s right of way. Cichon also worried Premier’s equipment was damaging the ground due to heavy rainfall. Due to his concerns, Cichon contacted his attorney who sent Premier a “cease and desist” letter. *Id.* at 180.

Cichon also contacted the Carroll County Sheriff’s Office and asked them to help halt the logging operation. He told the Carroll County dispatcher that he retained a logger to do some work on his land, but the logger had taken more timber than he was supposed to. He further advised the dispatcher that he hired an attorney who served a cease and desist letter on the logger, and that the logger was “pulling in there right now in the darkness to load up some trees.” *Id.* at 180-81. He asked the dispatcher to send an officer to the property right away. The deputy who arrived at Cichon’s property directed Premier’s employees to unload the logs.

Thereafter, Cichon and Anthony Zimmerman, the president and owner of Premier, exchanged heated text messages. Cichon told Zimmerman to stop work on the property until matters could be resolved. Cichon told Zimmerman that if Premier returned to his property that he would call the police for trespassing. Zimmerman ignored Cichon’s warning and had his crew return to the property to load the timber and transport it to the mill. *Id.* at 181.

When Zimmerman returned, Cichon called the Carroll County Sheriff a second time. Chief Deputy Kenneth Sandy and Deputy Ryan Kloepping responded to his call and arrived at Cichon’s property to find timber-cutting operations underway. Zimmerman showed the deputies the contract granting Premier the right to harvest timber and informed them he had not been served with a cease and desist order. *Id.*

Kloepping called Sheriff Jeffrey Doran and the Carroll County State’s Attorney and discussed how to proceed. Both Doran and the State’s Attorney advised that if Cichon wanted Zimmerman to leave, he would have to comply and then pursue a lawsuit against Cichon for breach of contract. The State’s Attorney told Kloepping he could arrest Zimmerman for criminal trespass if he refused to leave the property or returned again. *Id.*

After Zimmerman left the property, Kloepping investigated the situation further. He asked Cichon to send him a copy of the cease and desist order and noticed it had not been served. He then spoke with Cichon’s attorney who informed him that he had not received a return receipt showing delivery of the cease and desist letter. Cichon’s attorney said he was in the process of filing a lawsuit in federal court against Premier because it took numerous trees it did not have permission to harvest. *Id.*

About a day later, Chief Deputy Sandy received a call from Zimmerman who stated that he was back on Cichon’s property cutting wood. Zimmerman told Sandy he had a right to fulfill the contract, but Sandy informed him that he would be arrested for criminal trespass. Deputies Sandy and Kloepping and Detective Rannow went to Cichon’s property where they found Zimmerman removing trees with a large machine and arrested him for criminal trespass. *Id.*

The Section 1983 Claim

Anthony Zimmerman and Premier Forest Products filed a complaint under 42 U.S.C §1983 against Sheriff Jeffrey Doran, Chief Deputy Kenneth Sandy, Deputy Ryan Kloepping, and Detective Michael Rannow of the Carroll County Sheriff’s Office. Plaintiffs alleged a violation of the Fourth and Fourteenth Amendments due to an alleged false arrest and deprivation of property without due process. The district court granted summary judgment in favor of defendants and held that they had probable cause to arrest Zimmerman, were entitled to qualified immunity, and did not violate plaintiffs’ substantive due process rights. *Id.* at 182.

The Court of Appeals’ Ruling

Plaintiffs appealed the decision to the Court of Appeals for the Seventh Circuit arguing that no reasonable officer could have believed there was probable cause to arrest Zimmerman because the timber deed made him the “owner” of the property. In addition, plaintiffs argued the deputies lacked probable cause because they failed to read the timber deed prior to Zimmerman’s arrest. *Id.* at 183.

Plaintiffs also argued, based on two North Carolina cases, that a possessor of a timber deed has a legal right to be on the land under the contract, but the Seventh Circuit found these cases insufficient. Under Illinois law, an individual can be guilty of criminal trespass, even if the initial entry was lawful, if the person refuses to leave the property after receiving notice from the owner to depart. *Id.* (citing *People v. Kraft*, 277 Ill. App. 3d 221, 225 (1st Dist. 1995)).

The Seventh Circuit explained that under the doctrine of qualified immunity, officials are shielded from civil liability if their “conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known.” *Zimmerman*, 807 F.3d at 182. “A right is clearly established if it is sufficiently clear that any reasonable official would understand that his or her actions violate that right.” *Id.*

The court noted that Zimmerman failed to identify any factually similar case that would have alerted the officers that they lacked probable cause for Zimmerman’s arrest. In addition, Zimmerman provided no case law setting forth the rights of a property owner and the rights of a possessor of a timber deed. *Id.* at 182-83.

Under Illinois law, a person commits criminal trespass if a person “enters upon the land of another, after receiving, prior to entry, notice from the owner . . . that the entry is forbidden or remains upon the land of another, after receiving notice from the owner . . . to depart.” *Id.* at 183 (citing 720 ILCS 5/21-3(a)). Zimmerman received notice to depart from both Cichon and the deputies, and, despite clear instructions to depart, Zimmerman chose to remain on the property. This situation fit squarely within the parameters of the criminal trespass statute. *Zimmerman*, 807 F.3d at 183.

Furthermore, the court noted the steps the Carroll County deputies took to investigate the situation, including contacting the State’s Attorney for advice about whether Zimmerman’s actions constituted criminal trespass. It recognized that “[c]onsulting a prosecutor may not give an officer absolute immunity from being sued for false arrest, but it goes far to establish qualified immunity. Otherwise the incentive for officers to consult prosecutors—a valuable screen against false arrest—would be greatly diminished.” *Id.* (quoting *Fleming v. Livingston Cnty., Ill.*, 674 F.3d 874, 881 (7th Cir. 2012) (quoting *Kijonka v. Seitzinger*, 363 F.3d 645, 648 (7th Cir. 2004))).

In addition, the court held that the district court did not err in granting summary judgment to defendants for plaintiffs’ Fourteenth Amendment claim. The officers’ actions did not shock the conscience, especially in light of the repeated warnings from both the deputies and Cichon to leave the property. *Zimmerman*, 807 F.3d at 184 (citing *Remer v. Burlington Area Sch. Dist.*, 286 F.3d 1007, 1013 (7th Cir. 2002) (recognizing that an abuse of power is arbitrary if it shocks the conscience)).

Conclusion

In this case, one of the reasons why the officers were protected by qualified immunity was because no Illinois case law existed that would have put them on notice that a timber deed provided unbridled access to property. Practitioners should keep in mind that law enforcement officers are expected to keep abreast of developments in the case law. Had there been an Illinois decision that provided an outcome similar to the North Carolina decisions plaintiffs cited, the results of this case could have been different.

Determining whether probable cause existed for an arrest is a fact intensive inquiry. Each situation is different, but the deputies made a well-informed decision in this case. For example, they investigated the situation by visiting the property and talking with both parties.

Additionally, and perhaps most importantly, they contacted their superior and the State’s Attorney for advice prior to making an arrest. Their investigation was thorough, and their decision to arrest Zimmerman certainly was not made in haste. As a result, the Seventh Circuit found they had probable cause to arrest Zimmerman and were shielded from civil liability by the qualified immunity doctrine.

About the Authors

David A. Perkins is a partner at *Heyl, Royster, Voelker & Allen, P.C.* Mr. Perkins concentrates his practice in the areas of civil rights, municipal liability, first party property claims, and general tort litigation. He has spoken on a wide variety of subjects, including: civil rights liability, municipal liability, the investigation of fire losses, and first-party



property claims. He is a member of the Peoria County, Illinois State, and American Bar Associations and the Illinois Association of Defense Trial Counsel.

Melissa N. Schoenbein is an associate at *Heyl, Royster, Voelker & Allen, P.C.* In addition to practicing general tort litigation in state and federal courts, she concentrates her work on appellate law in the Seventh Circuit and Illinois appellate courts. Ms. Schoenbein received her undergraduate degree from Bradley University, *summa cum laude*, in 2010 and her law degree, *cum laude*, from Southern Illinois University School of Law in 2013. She clerked for the Honorable Judge Michael M. Mihm in the United States District Court for the Central District of Illinois.

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