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# Force, Flight & Immunity: A Dive into the Controversy of Parsons v. City of Ann Arbor

By **Daigle Law Group**

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# Force, Flight & Immunity: A Dive into the Controversy of *Parsons v. City of Ann Arbor*

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The Court of Appeals for the Sixth Circuit issued a decision in *Parsons v. City of Ann Arbor*, a case that grapples with the issues of qualified immunity, alleged excessive use of force, and state law assault and battery allegations. The situation stemmed from a heated encounter between a law enforcement officer and an uncooperative individual during an investigatory detention outside of a local college bar.<sup>1</sup>

## Summary

In November of 2018, Drew Parsons traveled to Ann Arbor, Michigan, to visit his girlfriend who was away at college. A night out at a well-known local college bar turned sour as Parsons and his girlfriend were found overindulging in alcohol, leading to their expulsion from the Bar. During the process, Parsons became physically aggressive, landing a blow to the face of James Roche, the bar manager.

Just before midnight, Officer Kandt was on patrol near the bar and noticed Parsons for the first time. The entire interaction was recorded on Kandt's dash and body cameras. Parsons was visibly inebriated and was being escorted out of the bar. His shirt was disheveled, and he was engaged in a heated exchange with the bar staff. Upon approaching the scene, Officer Kandt was informed by the bouncer that Parsons had assaulted Roche.

Despite attempts from Parsons's girlfriend to de-escalate the situation and take him home, Officer Kandt intervened. He separated Parsons from his girlfriend and the bar staff and initiated an investigatory detention. Officer Kandt commanded Parsons multiple times to place his hands behind his back. However, Parsons resisted and even placed his hand on Officer Kandt's wrist.

In response to Parsons's continued resistance, Officer Kandt resorted to physically restraining him, leading to an altercation that resulted in injuries to Parsons. These included facial cuts, a broken finger, and a concussion. Parsons had also reportedly experienced social anxiety and panic attacks since the incident.

Parsons was charged with attempting to assault, resist, and obstruct a police officer, to which he pled no contest. Subsequently, Parsons filed a lawsuit against Officer Kandt and others, alleging excessive use of force and deliberate indifference under § 1983, as well as state law assault and battery.

Officer Kandt sought summary judgment, which the district court granted, citing qualified immunity for the § 1983 claim and state law governmental immunity for the assault and battery claim.

The court ruled that Officer Kandt had not violated any constitutional rights and had not acted in bad faith, hence granting him immunity. Parsons later lodged an appeal.

On appeal, the Sixth Circuit considered whether it was clearly established in November 2018 that a police officer could not use a takedown maneuver during investigatory detention against an individual who had acted aggressively, was noncompliant, and appeared to be attempting to flee. The Sixth Circuit found that it was not.

Parsons accused Kandt of using excessive force during his arrest, which he argued was a violation of his Fourth Amendment rights. Kandt, in his defense, invoked the protection of qualified immunity.

Parsons cited five cases as evidence that it was clearly established that Kandt's actions were unconstitutional. The Court's analysis acknowledged that takedown maneuvers are excessive when dealing with a generally compliant suspect, and the police should not use physical force against a subdued, non-resisting subject.

However, because the circumstances of this case were distinguishable from the Court's precedent regarding takedown maneuvers that amount to excessive force, the Sixth Circuit affirmed the lower court's decision to grant summary judgment and found that Officer Kandt did not violate a clearly established right and therefore, was entitled to qualified immunity.

In their reasoning, the court considered the following factors as a basis for finding that the encounter between Parsons and Kandt was dissimilar to those five cited cases. Officer Kandt was the sole officer present, dealing with an intoxicated individual who had just assaulted another person, and video evidence confirms that Parsons was not generally compliant. When instructed to place his hands behind his back, Parsons initially complied but then quickly pulled his hands away, stood up from the police car, and turned away from Kandt. There is no clearly established principle that prohibits officers from taking aggressive, non-compliant individuals to the ground during an investigatory detention, especially when their actions suggest they might try to flee.

In addition to the excessive force claim, the court also had to consider Parsons's state assault and battery claim against Kandt. Under Michigan law, assault and battery are considered intentional torts, but an officer is protected from such claims if three conditions are met: they were acting during their employment and within their authority, they acted in good faith and without malice, and their actions were discretionary rather than routine.

Parsons argued that Kandt did not act in good faith, but the court disagreed. Kandt only used the takedown maneuver after Parsons refused to comply with his instructions and seemed like he was going to run. Furthermore, Kandt was the only officer on the scene, and Parsons had just committed a violent act. Given these circumstances, the court found that Kandt's actions were objectively reasonable and showed good faith.

Lastly, the court considered whether Kandt's actions were discretionary or routine. Discretionary actions require personal judgment, while routine actions are more about following orders or performing duties with little choice involved. In this case, the court found that Kandt's decision to use a takedown maneuver was discretionary since it required judgment in response to Parsons's aggressive behavior and refusal to comply.

The Court ruled that Officer Kandt is entitled to state law governmental immunity from Parsons's assault and battery claim. The rulings from this case provide valuable insights into the legal protections available to police officers and the factors courts consider when assessing claims of excessive force and assault and battery.

*Parsons v. City of Ann Arbor* offers several crucial takeaways for law enforcement officers navigating the nuances of qualified immunity, use of force, and state law assault and battery claims.

This case reaffirms the principle that when assessing the applicability of qualified immunity, a close examination of the specific circumstances of an encounter is essential. In this instance, Parsons being visibly inebriated, having recently committed an assault, disregarding the officer's commands, and exhibiting potential flight behavior all contributed to the court's decision that Officer Kandt did not violate any "clearly established" right, thus granting him qualified immunity.

Moreover, for state assault and battery claims, officers should be aware of the three conditions under which they are protected. Specifically, they need to be acting within the scope of their employment and authority, demonstrate good faith and lack of malice, and ensure that their actions are discretionary in nature, requiring judgment rather than just routine execution of duty. In Kandt's case, his decision to employ a takedown maneuver was deemed discretionary due to the challenging circumstances he encountered, further cementing his protection from liability.

Finally, the case underscores the importance of detailed evidence, such as body and dash camera footage, in substantiating an officer's account of events and demonstrating the context in which decisions were made. Overall, officers should approach situations with a keen understanding of the standards and protections provided by both federal and state laws, ensuring that their actions are always based on an objective assessment of the situation at hand.

<sup>1</sup> Parsons v. City of Ann Arbor, No. 22-1338, 2023 U.S. App. LEXIS 11715 (6th Cir. May 12, 2023)

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