



QUALIFIED IMMUNITY · RESOURCES · USE OF FORCE

How Qualified Immunity is Affected by Clearly Established Law

By **Daigle Law Group**

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Our case today from the Tenth Circuit covers qualified immunity and excessive force and brings up another case that is important to note when handling qualified immunity: *Heck v. Humphrey*. While we often discuss qualified immunity cases, many of them are dismissed under *Heck v. Humphrey*. In *Heck v. Humphrey*, the Supreme Court held that a plaintiff could not bring a civil-rights claim for damages under § 1983 based on actions whose unlawfulness would render an existing criminal conviction invalid. In other words, the Supreme Court held that a defendant cannot claim damages for an allegedly unconstitutional conviction or imprisonment without showing that the conviction or sentence has been overturned in some way. The defendant must also exhaust state court remedies before bringing a §1983 action forward. When applying this to excessive force cases, the court must compare the plaintiff's allegations of excessive force to the offense they committed.

FACTS

Michaella Surat was celebrating her birthday at a bar. Officers Klamser and Pastor were dispatched to the bar in response to a disturbance involving Surat's boyfriend, Mitchell Waltz. One officer spoke with Waltz as the other officer spoke with the bouncer. Surat attempted to exit the bar and lightly bumped Officer Klamser as she walked past him.

Surat approached Waltz and tried to leave the bar with him. Upon learning from the bouncer that Waltz was involved in the disturbance, Officer Klamser yelled to Officer Pastor that Waltz was not free to go. Officer Pastor began interviewing Waltz and Surat tried to interfere by walking toward Waltz. Officer Klamser blocked Surat from obstructing the interview and placed Surat under arrest and held her by her wrist. Surat attempted to pry Officer Klamser's fingers off of her arm and pawed at his arms. Officer Klamser then used a takedown maneuver to take Surat to the ground.

Surat was charged with obstructing a peace officer and resisting arrest. She pleaded not guilty to both charges and asserted a theory of self-defense, arguing she used physical force against Officer Klamser to defend herself from what a reasonable person would believe to be the use of unlawful physical force. The jury rejected her theory of self-defense and convicted her of both charges.

Surat then sued. The trial court ruled *Heck v. Humphrey* did not bar Surat's claim that Officer Klamser used excessive force to take her to the ground. Officer Klamser shifted to a defense based on qualified

immunity. The court declined to grant qualified immunity, ruling a jury could find Officer Klamser's takedown unreasonable. The trial court also ruled Officer Klamser's force violated clearly established law. Officer Klamser appealed.

TENTH CIRCUIT COURT OPINION

The Tenth Circuit court first looked at the reasonableness of the takedown, applying *Graham v Connor*. The court stated that to determine the effect of Heck on an excessive-force claim, the court must compare the plaintiff's allegations of excessive force to the offense they committed. The court agreed a reasonable jury might find Officer Klamser's takedown violated Surat's right to be free from excessive force, because: 1) Ms. Surat was arrested for two misdemeanor offenses, committed in a particularly harmless manner, 2) She did not pose a threat to Officer Klamser or others after he initiated the arrest, 3) Although she did minimally resist arrest, Officer Klamser's alleged use of force against Ms. Surat—using a takedown maneuver to slam her face into the ground—was not proportionate given her level of resistance.

However, when determining if the law was clearly established at the time Officer Klamser arrested Surat, the court held that it wasn't. None of the precedent identified by Ms. Surat would have made it clear to every reasonable officer that throwing Ms. Surat to the ground in response to her minimal resistance would violate the Fourth Amendment. As a result, Officer Klamser is entitled to qualified immunity.

TAKEAWAYS

This case presents a less frequently discussed route to qualified immunity, namely the requirement that the law must be clearly established at the time of the incident for an officer to be denied qualified immunity. While the court ruled that excessive force was indeed used, the nature of this incident was not enshrined in law within the Tenth Circuit at the time. However, this ruling sets a precedent that could lead to the denial of qualified immunity in similar cases going forward.

Surat v. Klamser, 2022 WL 16826568 (10th Cir. 2022)