

UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

Surat v. Klamser

No. 21-1284, United States Court of Appeals for the Tenth Circuit (November 9, 2022)

SUMMARY

In **Surat v. Klamser**, the Tenth Circuit held that an officer's takedown maneuver—slamming a nonviolent misdemeanant face-first into the ground—violated the Fourth Amendment where the arrestee posed no immediate threat and offered only minimal resistance. However, the officer was entitled to qualified immunity because the right was not clearly established at the time of the April 2017 incident; no on-point Supreme Court or published Tenth Circuit precedent placed the unconstitutionality of such force "beyond debate." The court also clarified that the plaintiff's convictions for resisting arrest and obstructing a peace officer did not bar her excessive force claim under **Heck v. Humphrey** to the extent she challenged force used to overcome her resistance, rather than the initial seizure.

CASE DETAILS

COURT	United States Court of Appeals for the Tenth Circuit
WRITING FOR THE COURT	McHUGH; BACHARACH; MORITZ
JURISDICTION	Federal
DECIDED	November 9, 2022
DOCKET	21-1284
DISPOSITION	reversed
PROCEDURAL POSTURE	Interlocutory appeal from the denial of summary judgment based on qualified immunity.
STANDARD OF REVIEW	De novo review of denial of summary judgment on qualified immunity grounds.
PRECEDENTIAL VALUE	Published
PARTIES	Randall Klamser v. Michaela Lynn Surat

TOPICS

- qualified immunity
- fourth amendment
- section 1983
- summary judgment
- interlocutory appeal

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether the district court erred in denying qualified immunity because the force used was reasonable under the Fourth Amendment.
2. Whether the law was clearly established such that a reasonable officer would know the takedown was unconstitutional.

HOLDINGS

1. The use of the takedown maneuver to slam to the ground a nonviolent misdemeanor who poses no immediate threat to the officer or others based on minimal resistance to arrest is unreasonable and constitutes excessive force under the Fourth Amendment.
2. The right was not clearly established because no Supreme Court or published Tenth Circuit precedent addressed sufficiently similar facts, and the out-of-circuit and unpublished cases were distinguishable or not binding.

KEY QUOTATIONS

“the use of the takedown maneuver to slam to the ground a nonviolent misdemeanor who poses no immediate threat to the officer or others based on minimal resistance to arrest is unreasonable and constitutes excessive force under the Fourth Amendment.” (at 21)

“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.” (at 30)

FACTUAL BACKGROUND

In April 2017, Michaella Lynn Surat was celebrating her 22nd birthday at a bar in Fort Collins, Colorado. Police were dispatched for a disturbance involving her boyfriend. Surat lightly bumped Officer Klamser as she walked past. When Klamser arrested her, she attempted to pry his fingers off her arm and pawed at his arms. Klamser then used a takedown maneuver, throwing her face-first to the ground, causing a concussion, cervical spine strain, contusions, and bruising. Surat was convicted of obstructing a peace officer and resisting arrest.

PROCEDURAL HISTORY

Ms. Surat filed a § 1983 action alleging excessive force. Officer Klamser moved to dismiss based on Heck, which was granted in part and denied in part. He then moved for summary judgment based on qualified immunity, which was denied. Officer Klamser appealed.

DISPOSITION

reversed

REMAND INSTRUCTIONS

None explicitly stated; the reversal effectively grants summary judgment to Officer Klamser.

CASES CITED

- Heck v. Humphrey, 512 U.S. 477 (1994)
- Graham v. Connor, 490 U.S. 386 (1989)
- Morris v. Noe, 672 F.3d 1185 (10th Cir. 2012)
- White v. Pauly, 137 S. Ct. 548 (2017)
- Mullenix v. Luna, 577 U.S. 7 (2015)
- Ashcroft v. al-Kidd, 563 U.S. 731 (2011)
- Pearson v. Callahan, 555 U.S. 223 (2009)
- Hope v. Pelzer, 536 U.S. 730 (2002)
- Anderson v. Creighton, 483 U.S. 635 (1987)
- District of Columbia v. Wesby, 138 S. Ct. 577 (2018)
- Tolan v. Cotton, 572 U.S. 650 (2014)
- Scott v. Harris, 550 U.S. 372 (2007)
- Emmett v. Armstrong, 973 F.3d 1127 (10th Cir. 2020)
- Vette v. K-9 Unit Deputy Sanders, 989 F.3d 1154 (10th Cir. 2021)
- Quinn v. Young, 780 F.3d 998 (10th Cir. 2015)
- Casey v. City of Fed. Heights, 509 F.3d 1278 (10th Cir. 2007)
- Fogarty v. Gallegos, 523 F.3d 1147 (10th Cir. 2008)
- Harte v. Bd. of Comm'rs of Cnty. of Johnson, Kan., 864 F.3d 1154 (10th Cir. 2017)
- Hooks v. Atoki, 983 F.3d 1193 (10th Cir. 2020)
- Perea v. Baca, 817 F.3d 1198 (10th Cir. 2016)
- Davis v. Clifford, 825 F.3d 1131 (10th Cir. 2016)
- Shannon v. Koehler, 616 F.3d 855 (8th Cir. 2010)
- Blankenhorn v. City of Orange, 485 F.3d 463 (9th Cir. 2007)
- Smith v. City of Troy, Ohio, 874 F.3d 938 (6th Cir. 2017)
- Patel v. City of Madison, 959 F.3d 1330 (11th Cir. 2020)
- Sconiers v. Lockhart, 946 F.3d 1256 (11th Cir. 2020)
- Long v. Fulmer, 545 F. App'x 757 (10th Cir. 2013)
- Cook v. Peters, 604 F. App'x 663 (10th Cir. 2015)
- Roe v. City of Cushing, 1993 WL 482968 (10th Cir. 1993)

CITED IN

- Surat v. Klamser, Surat v. Klamser, 52 F.4th 1261, 1270-71, 1276 (10th Cir. 2022)
- Surat v. Klamser, Surat v. Klamser, 52 F.4th 1261, 1275-76 (10th Cir. 2022)

