ILLINOIS PROSECUTOR SERVICES, LLC

PO Box 722, Carlinville, IL 62626
Phone: (217) 854-8041 Fax: (217) 854-5343
Website: www.ipsllconline.com
E-mail: don@ipsllconline.com

LAW ENFORCEMENT OFFICER TRAINING CASE OF THE MONTH

By Don Hays

Month of July – 2024

LAW ENFORCEMENT OFFICER TRAINING CASE OF THE MONTH

Month of July – 2024 Case #1

Charles Brumitt v. Sam Smith, No. 23-1321, 102 F.4th 444, May 20, 2024.

THE CASE: An Officer found Brumitt lying in a bar parking lot. He was very intoxicated. When the Officer sought to ascertain Brumitt's identity, Brumitt struck the Officer in the face. The Officer responded by striking Brumitt in the face four times. Brumitt was knocked unconscious and suffered numerous injuries. Brumitt then sued the Officer for using excessive force. Will a jury be allowed to decide if the Officer will be held liable for his actions?

FACTS: Officer Smith encountered Charles Brumitt around 3 am while patrolling in his police car. The Officer entered the parking lot of a bar and spotted Brumitt lying down. He left his car to check on Brumitt's wellbeing and to see if there were any warrants for Brumitt's arrest. [The Officer's body camera recorded the incident.] Assuming that Brumitt (who was lying on his side) was drunk, Smith asked if he was okay. Brumitt mumbled, "No," and stopped talking. Smith told Brumitt to talk to him, that he was a police officer, and that he wanted to make sure Brumitt was okay. Still in a muffled voice, Brumitt said he could be "passed out wherever [he] want[s]." Smith disagreed, saying he could "take [him] to jail." Brumitt challenged Smith, "Take me, motherf***er. Take me." Smith responded, "Take you to jail?" [Because of the angle of the parties' bodies in front of the camera, the recording did not fully capture what happened next.] Smith thought he saw a debit card sticking out of Brumitt's pocket (which might have had information needed to check for warrants), he said, "Let's see your ID," and reached for the card. Brumitt began to rise and snarled, "Don't you reach in my butt, damn it. God damn it, don't reach in my butt." Smith responded, "I'll tell you what," and Brumitt insisted, "Damn it, don't do this shit." Suddenly, the clash turned physical. While seated, Brumitt swung his arm at Smith, and his open hand hit Smith's face in a roundhouse swing. Brumitt then slurred, "Get the f*** off me, motherf***er." Having never been hit while on duty, the attack startled but did not injure Smith. Smith grabbed Brumitt's shirt and punched Brumitt's face four times over (at most) four seconds, and saying, "You don't hit me." He described his response as "purely instinctual" and likely based on his training as a competitive fighter. (Smith holds several black belts.). Sometime during the four seconds, Brumitt lost consciousness. Smith did not realize or process that Brumitt was unconscious until after the fourth punch. Brumitt lay still for several minutes while Smith called an ambulance and handcuffed Brumitt, who suffered an acute fracture of his eye socket, a broken nose, and lacerations that required surgery. Brumitt later pleaded guilty to misdemeanor battery and public intoxication.

Brumitt sued Smith and the City that employed him, alleging that Smith violated his Fourth Amendment rights. Smith moved for summary judgment, arguing that he was entitled to qualified immunity because precedent did not put him on clear notice that his actions were unconstitutional. Brumitt replied that Smith's force, enhanced by his martial-arts training, was grossly disproportionate to the threat that Brumitt posed while drunk, and it needlessly continued after Brumitt was unconscious and subdued. The law, Brumitt added, clearly established that an officer may not continue to use force against a person who is subdued; therefore, qualified immunity was inappropriate.

The district court denied the motion for summary judgment. It accepted that Brumitt threatened Smith. But it found that a reasonable jury could decide (as the court itself did) that Smith's use of force was undue because he had no reason to believe that Brumitt was armed, and his threat was "mitigated by [his] apparent intoxication, drowsiness, and lack of coordination." A jury could also find, the court added, that Smith continued to use force on Brumitt after he was unconscious and that, between punches, a reasonable officer would have "see[n] Brumitt with his arms at his sides and his head tilted to the side" and stopped punching. Regarding qualified immunity, the court stated that the right Brumitt asserted—"to be free from force once subdued"—was clearly established. Moreover, the Court added, the parties genuinely disputed whether "Brumitt was unconscious, and thus subdued, after Sergeant Smith's second or third strike" and whether a "reasonable officer would have perceived him as unconscious and had time to recalibrate his use of force." Therefore, the court concluded, it could not determine whether Smith was entitled to immunity. This appeal followed.

ISSUE: Was the Officer entitled to qualified immunity from liability for the force he used against Brumitt?

THE LAW: An excessive-force claim under the Fourth Amendment is governed by the objective reasonableness standard. This standard requires assessing the totality of the circumstances facing the Officer and balancing "the nature and quality of the intrusion on the suspect's Fourth Amendment interests against the countervailing governmental interests at stake. Relevant factors include whether the suspect posed a threat to the Officer, resisted arrest, or tried to flee, as well as the severity of the crime of which he was suspected. However, even if under this standard the Officer used objectively

unreasonable force, he is entitled to qualified immunity if the suspect cannot "demonstrate that the right to be free from the particular use of force under the relevant circumstances was 'clearly established'".

SMITH'S ARGUMENTS: Smith argued that the district court erred in framing Brumitt's right, which it said was clearly established, as the right to be free from force once subdued. Framing the right this way, he maintained, impermissibly viewed the incident with 20/20 hindsight. It also, Smith suggested, wrongly assumed that precedent clearly required reasonable police officers to repeatedly reconsider the use of force throughout an encounter lasting only a few seconds to guarantee that the officers know and react to the precise moment that a suspect becomes unconscious.

CONCLUSIONS AND REASONING: The Court of Appeals agree with Smith that Brumitt had not met his burden of showing that Smith violated a clearly established right. The Court reasoned that when reviewing force for reasonableness, it assess the "facts and circumstances that confronted the officer," without "20/20 hindsight." The Court held that the facts in this case were (1) when Brumitt appeared intoxicated, Smith asked if he was okay and sought his identification; (2) Brumitt dared Smith to take him to jail, cursed at him, and although he was drowsy and uncoordinated, hit Smith in the face with his hand; and (3) Smith responded to that surprise attack with substantial force—four quick punches in four seconds. The Court noted that it would assume that Smith could have interrupted his delivery of force to see Brumitt appear limp. But to conclude that Smith clearly violated Brumitt's right to be free from excessive force, it must assume that a reasonable officer in Smith's position would know instantaneously that Brumitt was unconscious and react accordingly within less than four seconds. The Court held that Brumitt had not, however, identified a case establishing that an officer must do so and must cease force at the precise second a suspect acquiesces. To the contrary, the Court declared that it must "give considerable leeway to a law enforcement officers' assessments about the appropriate use of force in dangerous situations."

Further, the Court decided that Smith also correctly argued that framing Brumitt's right as the right to be free from force once subdued was impermissibly broad. It reiterated that a right is clearly established only if it is clear that "the officer's conduct in the particular circumstances before him" is prohibited. This rule, according to the Court, applied to excessive-force cases. The Court held that although Brumitt was not required to point to an identical case, "every reasonable officer must have understood that" Smith's conduct was unlawful. The Court declared that the principle that officers may not use force on a subdued suspect does not clearly establish that officers must repeatedly reevaluate their use of force throughout an encounter lasting a few seconds to avoid applying extra units of force immediately after a suspect submits. Likewise, the other broad principle that Brumitt invoked—force must be proportionate to a threat—did not put Smith on notice that four fast punches in response to a suspect's unprovoked blow to the officer's face was disproportionate to that blow.

BRUMITT'S ARGUMENTS: 1. Brumitt argued that whether Smith had the chance, during his four-second use of barehanded force, to recalibrate it after Brumitt lost consciousness was a factual question that must be decided by a jury.

CONCLUSIONS AND REASONING: The Court responded by noting that even if a jury resolved this question in Brumitt's favor, the problem remained that no clearly established law required Smith to recalibrate the force throughout a quick, four-second response to a suspect's surprise attack to his face.

2. Second, Brumitt contended that were the Court to conclude that Smith was entitled to qualified immunity, it would establish "a bright-line rule that any assault that takes place within a short period of time be treated as a single use of force."

CONCLUSIONS AND REASONING: The Court of Appeals disagreed. According to the Court, Officers must cease their use of force once a suspect is "known to be subdued." Yet they are entitled to reasonable leeway to permit them time to perceive that the threat level has diminished.

3. Finally, Brumitt argued that "facts ... could support the conclusion that the blows Smith delivered were *on-the-spot punishment*, not reasonably adapted to obtain or keep control" and thus violated clearly established law.

CONCLUSIONS AND REASONING: The Court noted that Brumitt did not explain what those facts were. The Court theorized that it was possible that Brumitt believed that a reasonable jury might discredit Smith's testimony that he perceived Brumitt to be a threat after Brumitt hit him, implying that any force was excessive. However, the Court of Appeals noted that the district court concluded that Brumitt unquestionably posed a threat to Smith by swinging at him, and Brumitt did not challenge the validity of that conclusion.

RESULT: The Court of Appeals concluded that, because Smith's conduct did not violate Brumitt's clearly established Fourth Amendment rights, it must reverse the district court's decision denying the Officer qualified immunity.

QUIZ QUESTIONS FOR THE MONTH OF JULY – 2024 Case #1

Charles Brumitt v. Sam Smith, No. 23-1321, 102 F.4th 444, May 20, 2024.

1. The "objective reasonableness" standard is used in considering allegations of the excessive use of force by police officers.

   a. True.

   b. False.

2. An Officer should not legally continue to use force against a suspect who has be subdued.

   a. True.

   b. False.

3. In this case, the Court of appeals listed three factors to be used in determining whether an Officer's use of force was excessive. Which one of the following was ***not*** one of those factors.

   a. Whether the suspect posed a threat to the Officer.

   b. Whether the suspect resisted the efforts of the Officer.

   c. Whether the suspect had a significant criminal history.

   d. The severity of the crime the person is suspected to have committed.

4. In this case, Brumitt argued that the Officer improperly delivered "on-the-spot punishment" by striking him four times in the face. Does Illinois now prohibit an Officer from using force to "punish" a suspect?

   a. Yes.

   b. No.

QUIZ QUESTIONS AND ANSWERS FOR THE MONTH OF JULY – 2024 Case #1

Charles Brumitt v. Sam Smith, No. 23-1321, 102 F.4th 444, May 20, 2024.

1. The "objective reasonableness" standard is used in considering allegations of the excessive use of force by police officers.

a. True. Brumitt's excessive-force claim under the Fourth Amendment is governed by the objective reasonableness standard. *Plumhoff v. Rickard*, 572 U.S. 765, 774, 134 S. Ct. 2012, 188 L. Ed.2d 1056 (2014). This standard requires assessing the totality of the circumstances facing Smith and balancing "the nature and quality of the intrusion on [Brumitt's] Fourth Amendment interests against the countervailing governmental interests at stake." *Strand v. Minchuk*, 910 F.3d 909, 914 (7th Cir. 2018) (quoting Plumhoff, 572 U.S. at 774, 134 S. Ct. 2012).

2. An Officer should not legally continue to use force against a suspect who has be subdued.

a. True. If the facts and circumstances show that an individual who once posed a threat has become "subdued and complying with the officer's orders," the officer may not continue to use force. See Johnson v. Scott, 576 F.3d 658, 660 (7th Cir. 2009).

3. In this case, the Court of appeals listed three factors to be used in determining whether an Officer's use of force was excessive. Which one of the following was ***not*** one of those factors.

c. Whether the suspect had a significant criminal history.

4. In this case, Brumitt argued that the Officer improperly delivered "on-the-spot punishment" by striking him four times in the face. Does Illinois now prohibit an Officer from using force to "punish" a suspect?

a. Yes. Section 7-5.5(e)(i) of the Criminal Code now provides that a Peace Officer shall not "use force as punishment or retaliation." The *SAFE-T Act* added this provision in 2021.

[***Editor's Note***: **It is interesting to note that the Officer's body camera recorded him saying, "You don't hit me," immediately after he struck Brumitt four times in the face. Could the Officer's words be used to prove that he was "punishing" Brumitt or "retaliating" against him? NEW RULE: Be careful what you say when a body camera is recording**.]

LAW ENFORCEMENT OFFICER TRAINING CASE OF THE MONTH

Month of July - 2024 - Case #2

United States v. Prentiss Jackson, Nos. 23-1708 & 23-1721, --- F.4th ---, 2024 WL 2825539, June 4, 2024.

THE CASE: An Officer witnessed Jackson driving a car at night with unlit head and taillights. After pulling Jackson's car over, the Officer detected the odor of unburnt cannabis coming from Jackson's car. The Officer ordered Jackson to exit his car so that it could be searched. Jackson ran. While running, Jackson tripped and fell. A firearm dropped from Jackson's waistband. Was the discovery of the firearm legal?

FACTS: Shortly after midnight on the morning in question, Prentiss Jackson drove a vehicle with unlit head and taillights. As a result, an Officer conducted a traffic stop. The officer asked for Jackson's driver's license and registration. Jackson did not have his license but produced another form of identification. The officer smelled the odor of unburnt cannabis emanating from the car. He knew the odor came from inside the car, as he had not smelled it before he approached the vehicle. During their conversation about the license and registration, the officer told Jackson he smelled "a little bit of weed" and asked if Jackson and the passenger had been smoking. Jackson said he had, but that was earlier in the day, and he had not smoked inside the car. Through the officer's training, he knew the most common signs of impairment for driving under the influence were the odor of cannabis or alcohol and speech issues. He was also taught to look for traffic violations. Concerned that Jackson might be driving under the influence because of the head and taillight violation, the odor of cannabis, and Jackson's admission that he had smoked earlier, the officer asked Jackson whether he was "safe to drive home." Jackson said he was. His speech was not slurred during the interaction, and his responses were appropriate.

After questioning Jackson about the cannabis smell, the officer asked Jackson to wait for a moment so he could write a warning, to turn the car off, and to hand over the keys. Jackson complied. The officer then said he was going to search Jackson and the car. He asked if there were "guns, knives, drugs, [or] bombs" in the car and told Jackson he could "cut breaks and warnings" if Jackson and the passenger were "honest with [him] up front." Jackson told him none of those items were in the car. The officer then asked Jackson to get out and walk to the back of the car, cautioning Jackson not to reach for his waistband. Before Jackson exited the car, the passenger asked why the officer planned to search the car. The officer told her he could smell cannabis and explained the potential violation of Illinois law. He was ready to write up a warning for the cannabis violation, the officer told them, but he also said he was prepared to make an arrest if Jackson and the passenger were uncooperative and refused to get out of the car and permit a "probable cause" search.

In response to this line of conversation, Jackson acknowledged he had some "weed" and handed the officer a tied-off plastic baggie that appeared to contain about two grams of unburnt cannabis. The officer explained "having weed like th[at was] illegal inside the confines of a vehicle" under Illinois law. The officer again asked Jackson to step out of the car. Jackson complied and walked calmly to the back of the car. The officer intended to pat Jackson down and conduct a field sobriety test. Jackson placed his hands on the trunk. The officer turned to put his flashlight in its holster, and Jackson ran. A few seconds into his flight, Jackson tripped, and a gun fell from his waistband. The officer caught up with Jackson, restrained him so Jackson could not reach the firearm, and arrested him.

Jackson moved to suppress evidence of the gun, arguing it was the product of an unlawful seizure and search. The district court held a suppression hearing during which the officer testified as the only witness, and the government presented his bodycam video. The facts and testimony at the hearing tracked the video evidence. The district court denied Jackson's motion. After the court's decision, Jackson entered a conditional guilty plea, reserving his right to appeal the district court's denial of his motion to suppress. This appeal followed.

ISSUE: Did the District Court properly deny Jackson's motion to suppress?

THE LAW: "Warrantless searches are per se unreasonable under the Fourth Amendment, subject to only certain exceptions." The automobile exception to the warrant requirement allows authorities to search a car without a warrant if they have probable cause. "Probable cause to search a vehicle exists when, based on the totality of the circumstances, 'there is a fair probability that contraband or evidence of a crime will be found in a particular place.' "

ARGUMENT #1: Jackson contended that evidence of the firearm should have been suppressed because the officer did not have probable cause to search him or the car. He argued that the officer relied only on the smell of unburnt cannabis, which he contended did not provide probable cause to search a vehicle under Illinois law.

CONCLUSIONS AND REASONING: The Court of Appeals concluded that Jackson was incorrect in arguing that the only evidence in support of probable cause when the officer announced an intent to search and ordered him out of the vehicle was the odor of unburnt cannabis. The totality of the circumstances, the Court reasoned, provided probable cause to search Jackson and the vehicle. Considering the circumstances of the traffic stop, the Court noted that the officer pulled Jackson over because he had been driving in the dark with unlit head and taillights, a state law violation. After pulling over the car, the officer asked for Jackson's license and registration. But Jackson did not have his license, another state law violation. The Court declared that at any point after this lawful stop, the officer could have ordered Jackson out of the vehicle, even if the officer "ha[d] no reason to suspect foul play." But the officer did suspect further issues—he smelled the odor of unburnt cannabis coming from the car. Although possession of cannabis in certain amounts is legal in Illinois, the smell of unburnt cannabis coming from the car signaled that Jackson had cannabis in the car in an improper container, another violation of Illinois's law. Further, the Court noted that the circumstances also could suggest that Jackson was driving while impaired. When questioned about the smell, Jackson admitted to smoking cannabis earlier. And although Jackson responded to questions and did not seem impaired to the officer, that officer knew that failure to follow the simplest of traffic laws—like turning on your lights just after midnight—could indicate driving under the influence. Thus, the Court held that a search of Jackson and the car was warranted as possibly providing further evidence of criminal conduct.

ARGUMENT #2. Jackson argued that the officer's credibility should be questioned because he failed to conduct field sobriety tests or note any suspicion of impairment in his police report.

CONCLUSIONS AND REASONING: The Court responded Jackson's speculation did not overcome the officer's credible testimony that he intended to perform such a test. Jackson fled prior to any such test, thus depriving the Officer of opportunity of conducting such tests. In any event, the Court noted that the officer's subjective intent did not control the analysis.

ARGUMENT #3. Jackson further argued it was impossible for the officer to smell two grams of unburnt cannabis.

CONCLUSIONS AND REASONING: In response, the Court noted that Jackson provided no evidence that the officer lied about smelling the cannabis. According to the Court, to rebut the officer's testimony and the district court's credibility finding, Jackson had to show that the district court clearly erred in determining that the officer smelled unburnt cannabis and was able to differentiate that odor from burnt cannabis. And he must explain why the district court's implicit determination that the officer's testimony was credible should be reversed. The Court found that Jackson did neither. Finally, the Court noted that the officer's testimony was supported by Jackson turning over a baggie of unburnt cannabis during the traffic stop. Consequently, the Court declared that under the totality of these circumstances, the officer had probable cause to search Jackson and the car.

ARGUMENT #4. Jackson argued that because Illinois has legalized cannabis for adult recreational use, the smell of cannabis alone could not alone provide probable cause for a search or seizure.

CONCLUSIONS AND REASONING: The Court of Appeals declared that under Federal law cannabis was still illegal and, thus, the smell of cannabis alone justified a Fourth Amendment seizure and search. The Court further held that even if this were not the case, the Court held that the officer still had probable cause to search Jackson and the car. The Court reasoned that while Illinois has legalized cannabis for recreational use in some circumstances, as the officer said to Jackson and the passenger during the traffic stop, Illinois retains laws restricting the packaging of and use of cannabis. Jackson did not comply with that requirement, so the smell of unburnt cannabis provided probable cause for a violation of that Illinois law. Specifically, the Court concluded that the smell of unburnt cannabis outside a sealed container independently supplied probable cause and thus supported the direction for Jackson to step out of the car for the search.

CONCLUSION: The Court of Appeals concluded that the central issue in this case was the legality of the officer ordering Jackson out of the car for a search. Federal caselaw indicated that after a lawful stop, an officer can order occupants out of a car, and the totality of circumstances in this case supported probable cause for a search based upon a Cannabis Transportation Violation. Therefore, the smell of unburnt cannabis provided probable cause. After exiting the vehicle, Jackson chose to run, where a firearm fell from his pants. Consequently, the Court of Appeals concluded that the district court correctly denied Jackson's motion to suppress.

QUIZ QUESTIONS FOR THE MONTH OF JULY – 2024 - Case #2

United States v. Prentiss Jackson, Nos. 23-1708 & 23-1721, --- F.4th ---, 2024 WL 2825539, June 4, 2024.

1. The automobile exception to the warrant requirement allows Officers to conduct warrantless searches of automobiles if the Officers have probable cause to believe that the automobile contains evidence of illegal activity.

   a. True.

   b. False.

2. Probable cause exits when Officers have a fair probability to believe that contraband or evidence of a crime might be present in the suspect car.

   a. True.

   b. False.

3. In this case, Jackson argued that the Officer used the odor of cannabis alone to justify probable cause to search Jackson and his car. Did the Court of Appeals agree with this argument?

   a. Yes.

   b. No.

4. Jackson argued that the odor of cannabis alone could not justify a search of Jackson and his car. Did the Court of Appeals agree with this argument?

   a. Yes.

   b. No.

QUIZ QUESTIONS AND ANSWERS FOR THE MONTH OF JULY – 2024 - Case #2

United States v. Prentiss Jackson, Nos. 23-1708 & 23-1721, --- F.4th ---, 2024 WL 2825539, June 4, 2024.

1. The automobile exception to the warrant requirement allows Officers to conduct warrantless searches of automobiles if the Officers have probable cause to believe that automobile contains evidence of illegal activity.

   a. True. "The automobile exception, which allows authorities to search a car without a warrant if they have probable cause. See Collins v. Virginia, 584 U.S. 586, 592, 138 S. Ct. 1663, 201 L. Ed.2d 9 (2018); United States v. Ross, 456 U.S. 798, 807–09, 102 S. Ct. 2157, 72 L.Ed.2d 572 (1982); Carroll v. United States, 267 U.S. 132, 149, 153–56, 45 S. Ct. 280, 69 L. Ed. 543 (1925); United States v. Ostrum, 99 F.4th 999, 1005–06 (7th Cir. 2024).

2. Probable cause exits when Officers have a fair probability to believe that contraband or evidence of a crime might be present in the suspect car.

   a. True. "Probable cause to search a vehicle exists when, based on the totality of the circumstances, 'there is a fair probability that contraband or evidence of a crime will be found in a particular place.' " United States v. Sands, 815 F.3d 1057, 1063 (7th Cir. 2015) (quoting Illinois v. Gates, 462 U.S. 213, 238, 103 S. Ct. 2317, 76 L.Ed.2d 527 (1983)); see Kizart, 967 F.3d at 695.

3. In this case, Jackson argued that the Officer used the odor of cannabis alone to justify probable cause to search Jackson and his car. Did the Court of Appeals agree with this argument?

   b. No. The Court declared that the odor of cannabis was not the only basis for the Officer's action. It noted that the Officer had probable cause to believe that Jackson was illegally transporting the cannabis and, perhaps, Jackson was driving under the influence of cannabis.

4. Jackson argued that the odor of cannabis alone could not justify a search of Jackson and his car. Did the Court of Appeals agree with this argument?

   b. No. The Court declared that both Federal and Illinois law has declared the odor of unburnt cannabis alone is sufficient to provide probable cause to arrest suspects and conduct searches.