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## ***LAW ENFORCEMENT OFFICER TRAINING CASE OF THE MONTH***

**By Don Hays**

Month of May – 2024

# LAW ENFORCEMENT OFFICER TRAINING CASE OF THE MONTH Case #1

## Month of May - 2024

### Clements v. City of Elgin, No. 18-CV-3935, 2024 WL 1328759, March 28, 2024.

**THE CASE:** Officers found a mentally disturbed person sitting in her wrecked car. The person was armed with a knife. When the Officers attempted to remove the person from her car, she lunged at the officers while possessing the knife. An Officer shot the person dead. Could the Officer be held liable for using excessive force against a mentally disturbed person?

**FACTS:** On the day in question, a patrol officer noticed a car parked near a closed bike trail. The Officer stopped and approached the parked car. The driver of the car was DeCynthia Clements. The Officer spoke with Clements and noted that she appeared to be having a mental health episode. Additionally, the Officer noticed that Clements possessed a knife. When the Officer returned to his car to run a records check on Clements, Clements drove away. The Officer followed and witnessed Clements run a stop sign. When the Officer attempted to pull Clements over she fled at high speed. The Officer did not chase but reported the incident. A second Officer notice the car Clements was driving crash into a guard rail along a highway. Two Officers responded to the scene of the accident and found Clements sitting in her car with the knife at her throat. When Clements attempted to drive her disabled car away, the Officers blocker her in. The Officers then asked Clements to exit her car. She ignored the Officers. The Officers surrounded Clements' car and decided to wait her out. As the Officers watched, Clements set a piece of paper on fire and tossed into the back of her SUV. The SUV erupted into flames and the Officers decided to try to save Clements. As the Officers approached the SUV, Clements jumped out of the car with the knife still in her hand. She then lunged toward one of the Officers and the Officer shot her dead.

The Estate of Clements sued the Officer and the City he worked for in Federal District Court and alleged that the Officer used excessive force against a clearly mentally disturbed person. The Officer responded that he did not use excessive force and even if he did, he was immune from liability and asked the District Court to dismiss the case.

**ISSUE:** Should the District Court grant the Officer's request to dismiss the case, or should a jury be allowed to decide whether the Officer would be held liable.

**THE LAW:** The doctrine of qualified immunity protects government officials from liability for civil damages in situations in which their conduct does not violate a clearly established statutory or constitutional right. "There are two inquiries in determining whether qualified immunity applies: [1] whether the facts, taken in the light most favorable to the party asserting the injury show that the officer's conduct violated a constitutional right; and [2] whether the right at issue was 'clearly established' at the time of the officer's alleged misconduct." When evaluating the reasonableness of the use of deadly force, the Seventh Circuit has held that Courts should focus on the danger posed by the person to whom the force was applied. This requires asking whether a reasonable officer in the circumstances would have probable cause to believe that the suspect poses an immediate threat to the safety of the officers or others. As a general matter, if the suspect threatens the officer with a weapon, deadly force may be used. And police officers may resort to deadly force even if a less deadly alternative is available to the officers.

**ARGUMENTS:** Before the appellate court, the Officer argued that he was entitled to qualified immunity for liability for any damages arising from his conduct in this case.

**FIRST QUESTION:** Did the Estate produce sufficient evidence to show that the Officer violated Clements' constitutional rights by using excessive force?

**CONCLUSIONS AND REASONING:** To answer this question, the District Court first noted that the parties offered two competing and inconsistent narratives of what occurred during the relevant time. According to the Officer, Ms. Clements exited her SUV and moved swiftly towards the defendant Officer and the other officers with a knife in her left hand. According to the Estate, however, Ms. Clements did not exit the vehicle "aggressively." Instead, she "stumbled out of the vehicle, crouched to get below the smoke, and was shot within one second of her first foot hitting the ground as she fled her vehicle, complying with the Officer's demands that she exit the vehicle." According to the Estate, "As her foot touched the ground, the defendant officer used excessively deadly force to shoot her in the head." "Because Ms. Clements "did not pose an immediate, or any, threat to the safety of the officers and others, and was at most passively resisting arrest, the use of deadly force by Officer Jensen was unreasonable."

The Court declared that its independent review of the footage from the body worn cameras of the officers was fully consistent with the Officers' description of Ms. Clements' actions after she exited the SUV. Specifically, Court concluded that the video footage established that Ms. Clements did not crouch down in place after exiting the SUV but instead rapidly moved towards the defendant Officer and the other officers. Moreover, she did not comply with the officers' command to drop her knife and she did not exit the SUV in a non-aggressive manner. The Court held that because the video footage "firmly settles" the factual issue of what occurred in the moment immediately before and during the defendant Officer's use of force, "there is no genuine dispute about it." The Court concluded that by rapidly moving towards the defendant Officer (who was six to eight feet away) and the other officers with a knife (a deadly weapon) in her hand, Ms. Clements posed a serious threat of death or great bodily harm to the Officer at the time he fired his weapon and the Court found he acted reasonably as a matter of law.

**SECOND ARGUMENT:** Did the Estate establish that the Officer's use of force violated a clearly established right. [If the Estate failed to establish that the Officer violated a clearly established right, the Officer would be entitled to qualified immunity from liability.]

**CONCLUSIONS AND REASONING:** The Estate offered four theories to establish how the defendant Officer violated a "clearly established" right belonging to Ms. Clements: (1) officers cannot create circumstances that give rise to deadly force; (2) passive resistance does not permit lethal force; (3) mere possession of a weapon does not warrant deadly force; and (4) officers must consider mental health when considering the deployment of deadly force. The District Court discussed and resolved each of these theories as follows.

**1. Officers cannot create circumstances that give rise to deadly force.** In response to this theory, the District Court noted that it was Ms. Clements' action in setting her SUV ablaze that was the precipitating event (or intervening cause) which led the officers to approach to rescue her from the burning vehicle. Prior to the fire, the officers were content to wait at a distance until Ms. Clements decided to get out of the SUV. Once Ms. Clements set her SUV ablaze, the officers had two choices: they could remain at a distance to see whether she would voluntarily exit the flaming vehicle and risk the possibility that she was unable or unwilling to do so, or they could move forward to rescue her while taking steps to make sure they were protected from any harm that she might inflict with her knife. They chose the latter course of action, and their hand was essentially forced by Ms. Clements' threatening actions once she emerged from the SUV.

**2. Passive resistance does not permit lethal force.** While the Court agreed that it is unreasonable for an officer to use deadly force on a passively resisting person, Ms. Clements was not engaged in "passive resistance" at the moment that the Officer fired his weapon. Instead, Ms. Clements was rapidly moving towards the Officer (who was six to eight feet way) with a knife in her hand when he fired his weapon.

**3. The mere possession of a weapon does not justify deadly force.** Again, the District Court agreed with this theory. However, the Court also noted that Ms. Clements did not merely possess a knife at the time the Officer fired his weapon. Instead, she was holding a knife as she rapidly moved towards the Officer. The Court declared that if the person of interest threatens the officer with a weapon, deadly force may be used, because the risk of serious physical harm to the officer has been shown."

**4. Officers must consider the mental health of the suspect when considering the deployment of deadly force.** The District Court noted that it is true that the defendant Officer believed that it was possible that Ms. Clements was emotionally disturbed or mentally ill and the Seventh Circuit has "held that mental illness may also be relevant to the reasonableness inquiry." However, the Court also noted that it is equally clear that deadly force may be used if the person of interest threatens the officer with a weapon "[a]nd this is so whether or not the targeted person suffers from a mental illness—the critical consideration is whether he or she poses an immediate threat to the officers or others." Thus, the fact that Ms. Clements may have suffered from a mental health crisis at the time of the incident did not render the Officer's use of force unreasonable given that the video footage establishes that she posed an immediate threat to the physical safety of the officers at the time he fired his weapon.

The Court held that the Estate had not met its burden of establishing that the Officer violated any "clearly established" right of Ms. Clements at the time he fired his weapon. Therefore, the Officer was entitled to qualified immunity from the excessive force claim asserted against him.

**CONCLUSION:** The Court concluded that the defendant Officer's conduct did not amount to a violation of Ms. Clements's constitutional rights and even if it did, the Officer would have been entitled to qualified immunity for liability. Consequently, the Court granted the Officer's motion for summary judgment as to the Estate's excessive force claims.

**QUIZ QUESTIONS FOR THE MONTH OF MAY – 2024 Case #1**

**Clements v. City of Elgin, No. 18-CV-3935, 2024 WL 1328759, March 28, 2024.**

1. In a Federal Civil Rights Action, a police officer may be held civilly liable if the Officer violates the clearly established constitutional rights of a suspect.
  - a. True.
  - b. False.
  
2. As a general rule, the doctrine of Qualified Immunity protects police officers from liability for civil damages for injuries caused by those Officers while engaged in their official duties.
  - a. True.
  - b. False.
  
3. In this case, the Estate of Clements argued that because the defendant Officer used excessive force against a mentally disturbed person, the Officer must have used excessive force. Did the District Court agree with this argument?
  - a. Yes.
  - b. No.
  
4. The defendant Officer argued that because the Estate failed to prove that the right the Officer allegedly violated was clearly established, the Officer was entitled to qualified immunity from liability. Did the District Court disagree with this argument?
  - a. Yes.
  - b. No.

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

### Clements v. City of Elgin, No. 18-CV-3935, 2024 WL 1328759, March 28, 2024.

1. In a Federal Civil Rights Action, a police officer may be held civilly liable if the Officer violates the clearly established constitutional rights of a suspect.

**a. True.** As the Court in this case held, “Section 1983 authorizes private suits to redress deprivations of constitutional rights by state actors. See King v. Hendricks Cnty. Commissioners, 954 F.3d 981, 984 (7th Cir. 2020) (relaying the requirements for showing excessive force against an individual officer under § 1983);

2. As a general rule, the doctrine of Qualified Immunity protects police officers from liability for civil damages for injuries caused by those Officers while engaged in their official duties.

**a. True.** As the Court held, “The doctrine of qualified immunity protects government officials from liability for civil damages in situations in which their conduct does not violate a clearly established statutory or constitutional right. Gupta v. Melloh, 19 F.4th 990, 1000 (7th Cir. 2021).

3. In this case, the Estate of Clements argued that because the defendant Officer used excessive force against a mentally disturbed person, the Officer must have used excessive force. Did the District Court agree with this argument?

**b. No.** The Court held that “Nonetheless, it is equally clear that deadly force may be used if the person of interest threatens the officer with a weapon ‘[a]nd this is so whether or not the targeted person suffers from a mental illness—the critical consideration is whether he or she poses an immediate threat to the officers or others.’ ”

4. The defendant Officer argued that because the Estate failed to prove that the right the Officer allegedly violated was clearly established, the Officer was entitled to qualified immunity from liability. Did the District Court disagree with this argument?

**b. No.** The District Court concluded that the Estate did, in fact, fail to establish that the conduct of the Officer violated a clearly established constitutional right of Ms. Clements. Therefore, the Officer was entitled to qualified immunity from liability.

# LAW ENFORCEMENT OFFICER TRAINING CASE OF THE MONTH

## Month of May - 2024 - Case #2

### People v. Ashontis Hatcher, 2024 IL App (1st) 220455, March 27, 2024.

**THE CASE:** The police witnessed what they believed to be bank fraud being committed. [A person would use a stolen debit card to deposit a fraudulent check into an ATM and then withdraw funds from the account before the bank was aware that the check was bogus.] The police stopped the car the suspects were using to commit the bank fraud and arrested Hatcher, a back seat passenger, even though they did not witness Hatcher, himself, commit the fraud. The police then discovered a firearm in Hatcher's backpack. Was the arrest of Hatcher and the discovery of the firearm legal?

**FACTS:** Two Officers (the arresting Officers) were on duty in plain clothes and driving an unmarked police vehicle on the evening in question. Another Officer (the reporting Officer) informed the arresting Officers that he saw a Nissan stop at a bank. The Officer saw the front passenger exit the Nissan, look at an automatic teller machine (ATM), and return to the vehicle, which drove off. The Officer followed the Nissan to another bank, and the arresting Officers arrived on scene. The Officers monitored the bank's entrance and exit. The reporting Officer told an arresting Officer that he saw the front passenger enter the bank's vestibule, use the ATM, and return to the Nissan. The arresting Officer suspected that the passenger was "card tracking," which was using someone else's debit card to make deposits into a bank account and then withdrawing the funds before the bank discovers that the transactions are fraudulent. The arresting Officer had investigated card tracking previously at that particular bank.

After the Nissan left the second bank, an arresting Officer saw it change lanes without using a turn signal, so he conducted a traffic stop. All three Officers approached the Nissan. Hatcher was in the rear passenger seat of the car. The Officers ordered the front seat passenger to exit the vehicle, arrested him, and recovered an ATM receipt from his hand. The receipt matched a credit or debit card belonging to some other person and that person was not in the vehicle. The receipt indicated that the front seat passenger had used that person's debit card in the ATM transaction at the bank. The officers recovered that person's card from the front passenger door handle. The Officers then ordered the driver and Hatcher to exit the car, which they did. Hatcher was not handcuffed, but he was not free to leave. The officers searched the vehicle "for further evidence of possible bank fraud crimes." They recovered a debit card belonging to yet another unknown person from the center console and a check for \$2007 from the glove box. An Officer saw an open backpack on the floorboard of the rear passenger area where Hatcher's feet had been. He could see a handgun magazine protruding from the backpack's open zipper. From the backpack, the Officers recovered a handgun, a debit or credit card belonging to Hatcher, and several credit cards belonging to people who were also not in the car. The Officers then discovered that Hatcher was under 21 years of age and did not possess a FOID Card or a CCL. Subsequently, Hatcher was charged with a weapons violation.

Hatcher filed a motion to suppress evidence and argued that there was no indication he was involved in criminal activity when the police detained him and searched his backpack. He was not the person the police saw approach ATMs at the two banks, and he complied with the officers' orders. The People argued that the officers had reasonable suspicion to stop the suspect car and probable cause to search it and arrest its occupants based on their suspicion of bank fraud, which was corroborated by the Officers' discovery of bank cards and a check in the vehicle. The trial court denied Hatcher's motion to suppress and concluded that the officers were "conducting a reasonable investigation into a suspicion" of bank fraud, which they substantiated when they found the victim's card near the vehicle's front passenger door handle. In addition, the court found that the officers saw the firearm's magazine "within open sight" because the backpack was open. Following his conviction on the weapons charge, Hatcher brought this appeal.

**ARGUMENTS:** On appeal, the Hatcher contended that the trial court should have granted his motion to suppress the firearm police recovered from his backpack, along with information about his age and lack of a FOID card and CCL. Specifically, Hatcher argued that the "police arrested [him] after searching the car where he had been a passenger and finding a gun in a backpack that was on a rear passenger floorboard." According to Hatcher, his arrest was unjustified because "[p]olice did not observe [him] engage in any unlawful activity before the arrest or determine whether his possession of a firearm was illegal." Hatcher also contends that his "illegal arrest led to the seizure of a gun and information about his age and lack of a FOID card or concealed-carry license."

**ISSUE #1:** Was the original stop of the suspect car by the police legal?

**CONCLUSIONS AND REASONING:** The appellate court found that Hatcher did not dispute that the stop of the car in which he was riding was legal. Therefore, the detention of Hatcher during the traffic stop did not violate the Fourth Amendment.

**ISSUE #2:** Was Hatcher legally ordered to exit the car in which he was a passenger?

**CONCLUSIONS AND REASONING:** The Court held that the following a lawful traffic stop, the police may legally order the driver and passengers out of the vehicle while the officers complete the investigatory stop. Therefore, in this instance, ordering Hatcher to exit the car in which he was a passenger was lawful and did not violate the Fourth Amendment.

**ISSUE #3:** When was Hatcher placed under arrest?

**CONCLUSIONS AND REASONING:** The Court held that the evidence established the following sequence of events: Police stopped the Nissan and ordered the front seat passenger to exit the vehicle. When the passenger exited the Nissan, the officers arrested him and recovered an ATM receipt that matched a bank card belonging to an unknown third party, who was not in the vehicle. The officers found that party's card in the front passenger-side door. Shortly thereafter, the officers ordered the driver of the car and Hatcher out of the vehicle, searched it, and found another bank card belonging to yet another unknown person, who was also not in the vehicle, as well as a check for \$2007. When Hatcher was outside the Nissan, he was not handcuffed, and the officers did not have their weapons drawn. However, an arresting Officer testified that Hatcher was "not free to leave" at that point. An Officer then saw the magazine of a firearm protruding from Hatcher's backpack and recovered the firearm along with several credit and debit cards. An Officer confirmed that Hatcher was detained when these items were recovered from Hatcher's backpack. According to the Appellate Court, a reasonable person in the defendant's position would not have thought that he was free to simply walk away from the Nissan while the officers searched it, particularly because the front seat passenger had already been arrested. Therefore, the Court concluded that the defendant's arrest occurred shortly after he exited the Nissan and before the other Officer searched Hatcher's backpack and recovered the firearm.

**ISSUE #4:** Was Hatcher's arrest legal?

**CONCLUSIONS AND REASONING:** According to the Appellate Court, a warrantless arrest is reasonable only if it is supported by probable cause. Probable cause to arrest exists if the facts known to the officer at the time of the arrest are sufficient to lead a reasonable person to believe that the arrestee has committed a crime. When determining whether officers had probable cause to arrest, the Court examined the totality of the circumstances known to the officers at the time of the arrest. "Whether probable cause exists is governed by commonsense considerations, and the calculation concerns the probability of criminal activity, rather than proof beyond a reasonable doubt." The appellate court noted that when the officers in this case arrested Hatcher, they had already observed the front seat passenger's suspicious behavior at two nearby banks, both of which he traveled to in the Nissan. The officers had also recovered two pieces of evidence of bank fraud from the Nissan: the ATM receipt and the victim's bank card. Given that Hatcher, the front seat passenger, and the driver were all in the Nissan together, the Court held that " 'it was reasonable for the officer[s] to infer a common enterprise among the three men.' " In sum, the Court held that at the time of Hatcher's arrest, the police knew that he was a passenger in a vehicle they had probable cause to believe was being used to commit bank fraud. That was sufficient to provide probable cause for Hatcher's arrest.

**ISSUE #5:** Hatcher argued that his arrest was illegal because his mere possession of a firearm was not a crime and could not serve as the basis for his arrest. The appellate court agreed that the mere possession of a firearm is not a crime. However, it noted that in this case, Hatcher was arrested prior to the discover of the firearm. Therefore, Hatcher's argument was rejected.

**ISSUE #6:** Finally, Hatcher argued that his arrest was illegal because the police failed to show that he was directly engaged in the bank fraud conduct. In response, the Court noted that the police may, in some circumstances, infer a common criminal enterprise among occupants of the same vehicle. In this case, the Court concluded that it was unlikely that an innocent, uninvolved person would be invited to ride along with the front seat passenger as he committed suspected bank fraud. Therefore, Hatcher's arrest was legal.

**RESULT:** The appellate court concluded that the trial court properly denied Hatcher's motion to suppress and affirmed his conviction for AUUW.

**QUIZ QUESTIONS FOR THE MONTH OF MAY – 2024 – Case #2**

**People v. Ashontis Hatcher, 2024 IL App (1st) 220455, March 27, 2024.**

1. When a suspect moves to suppress evidence, the People have the ultimate burden of proving that the search in question was legal.
  - a. True.
  - b. False.
  
2. In this case, did Hatcher complain that the police illegally stopped the car in which he was a passenger?
  - a. Yes.
  - b. No.
  
3. Hatcher complained that he was illegally arrested after the police discovered a firearm in his backpack. Did the appellate court agree with this argument?
  - a. Yes.
  - b. No.
  
4. Hatcher argued that the police lacked probable cause to arrest him because they never actually witnessed him committing any alleged bank fraud activity. The appellate court concluded that Hatcher's mere presence in the car that was being used to allegedly commit bank fraud was enough to justify his arrest.
  - a. True.
  - b. False.



**QUIZ QUESTIONS AND ANSWERS FOR THE MONTH OF MAY – 2024 – Case #2**

**People v. Ashontis Hatcher, 2024 IL App (1st) 220455, March 27, 2024.**

1. When a suspect moves to suppress evidence, the People have the ultimate burden of proving that the search in question was legal.

**b. False.** At a motion to suppress hearing, the defendant has the burden to make a prima facie showing that the evidence in question was obtained by an illegal search or seizure. People v. Brooks, 2017 IL 121413, ¶ 22, 422 Ill. Dec. 850, 104 N.E.3d 417. A prima facie showing means the defendant must establish the factual and legal basis for the motion to suppress. *Id.* When the defendant alleges evidence was the product of an unlawful search or seizure, he must establish that there was a search or seizure and that it was unlawful. *Id.*; People v. Juarbe, 318 Ill. App. 3d 1040, 1049, 252 Ill. Dec. 739, 743 N.E.2d 607 (2001). If a defendant makes a prima facie showing, the burden shifts to the State to present evidence to counter it. Brooks, 2017 IL 121413, ¶ 22, 422 Ill. Dec. 850, 104 N.E.3d 417. The ultimate burden of proof remains with the defendant. *Id.*

2. In this case, did Hatcher complain that the police illegally stopped the car in which he was a passenger?

**b. No.** Hatcher never complained that the police illegally stopped the car in which he was a passenger.

3. Hatcher complained that he was illegally arrested after the police discovered a firearm in his backpack. Did the appellate court agree with this argument?

**b. No.** The Court held that Hatcher was legally arrested prior to the discovery of the firearm. The police were justified in arresting Hatcher based upon the evidence of bank fraud activity they had witnessed.

4. Hatcher argued that the police lacked probable cause to arrest him because they never actually witnessed him committing any alleged bank fraud activity. The appellate court concluded that Hatcher's mere presence in the car that was being used to allegedly commit bank fraud was enough to justify his arrest.

**a. True.** The Court noted that the police may, in some circumstances, infer a common criminal enterprise among occupants of the same vehicle. In this case, the Court concluded that it was highly unlikely that an innocent, uninvolved person would be invited to ride along with the front seat passenger of a car as that passenger committed suspected bank fraud.