



BODYWEIGHT CONTROL ON A HANDCUFFED SUSPECT CONSIDERED “EXCESSIVE FORCE”

*Spencer v. Pew, No. 21-15521, 2024
WL 4297515, (9th Cir. 2024)*

Background:

In March 2018, Officers Pew and Rozema of the Mesa, Arizona PD were driving in an unmarked unit when another car quickly exited a driveway cutting them off. The officers pulled the vehicle over for the traffic violation and detained the driver and passenger, Joseph Spencer. During the encounter, Spencer gave officers a false name and was subsequently told to step out of the car and put his hands behind his back.

When Spencer exited the car, Officer Rozema grabbed Spencer’s wrist and attempted a rear-wrist lock; however, Spencer resisted and used his shoulder to push Rozema backwards.

A use of force ensued resulting in a near 4-minute struggle. To get Spencer on the ground and handcuffed, Officers used multiple knee and fist strikes. Officer Pew deployed the taser, which had no

effect, then used drive-stun mode three times to gain compliance. The officers repeated commands for Spencer to give up his hands and to put his hands behind his back.

Spencer did not strike, or attempt to strike, either officer during the altercation.

When additional officers responded, Spencer was lying on his stomach and Officers Pew and Rozema only had control of one arm. The officers used their body weight to keep Spencer pinned to the ground and cuffed him using two sets of handcuffs.

Once Spencer was handcuffed, Officer Pew shifted his position so that his knee was on Spencer’s upper back and remained there. Spencer said, “I can’t breathe” and attempted to roll over but Officer Pew prevented him from doing so and continued to hold Spencer down with his knee. Officer Pew stood up a few seconds later and medical personnel arrived to attend to Spencer.

Spencer sued both officers for excessive force in violation of the Fourth Amendment. The District Court concluded that Officers Pew and Rozema were protected by Qualified Immunity.

Spencer filed an appeal in the Ninth Circuit Court of Appeals.

How is Excessive Force Determined?

Generally, officers may use objectively reasonable force to effect an arrest, to prevent escape, or to overcome resistance.

However, because no use of force situation is the same, courts use an objective test to assess the reasonableness of the force used based on the totality



of facts and circumstances of each particular case. The Supreme Court decision in *Graham v. Connor* (1989) outlined several factors that the courts consider in the totality including: (1) the severity of the crime; (2) whether the suspect posed an immediate threat of harm; and (3) whether the suspect was actively resisting arrest or attempting to flee.

In addition to the factors above, Courts also look to previous case decisions to determine whether there was enough governing law to put officers on notice that their conduct was violating a person's right to be free from excessive force.

Issue: When did the Excessive Force occur?

The Ninth Circuit determined the force used leading up to the point of handcuffing was not excessive.

Using the *Graham* factors above, Spencer used his shoulder to push Rozema backwards to resist arrest and continued resisting for nearly four minutes despite commands to comply, the use of the taser, and physical strikes by officers. The Court concluded that the severity of the crime, the threat of harm, and Spencer's active resistance was enough to justify the force used.

However, Spencer's allegations of excessive force were not based only on the force used prior to being handcuffed. Spencer alleged that Officer Pew kneeling on his upper back and neck while he was on the ground, handcuffed, and telling officers he could not breathe, was excessive.

The Court looked at a previous decision with very similar circumstances called *Drummond v. City of Anaheim*, (9th Cir. 2003). In *Drummond*, the suspect

was on the ground, handcuffed, and had two officers on his neck and torso. The Court determined that although Drummond was a threat *before* being handcuffed, once he was secured on the ground, the threat was minimal and there was little or no need to use any further physical force. Thus, the forced used was excessive.

In this case, Spencer was also on the ground, handcuffed, surrounded by multiple officers, and "posed only a minimal threat to anyone's safety." As a result, the Ninth Circuit reversed the District Court's ruling and held that the law was clearly established at the time of the incident (based on *Drummond*) that every reasonable officer would recognize that continued body weight compression on a "compliant prone, and handcuffed [suspect] despite his pleas for air" was excessive. Thus, Officer Pew was not entitled to Qualified Immunity.

Bottom Line:

Once the fight is over – Slow Down. Once a suspect is detained in handcuffs, you must reevaluate the need for further force, and if needed, the type of force to be used.

Every situation is different and there may be times when additional force is necessary; as the Court stated in *Spencer* "some force might have been warranted to check [Spencer's] remaining movements."

However, even minimal force – like bodyweight – can be considered excessive if the situation is safe, the suspect is secure, and there is no immediate threat.

Stay Safe and Informed!