

## Excessive Use of Force – Ninth Circuit

### Description

Our case today is another question of excessive use of force stemming from the Ninth Circuit Court of Appeals. In this case officers arrive to the scene to handle a perceived violent individual who may or may not have been experiencing a seizure. From the facts in this case, it seems that our suspect, James O'Doan, was of sound mind and was evading police during his "episode". When the officer's taser did not work he used a "reverse reap throw" to subdue the suspect, preventing him from harming himself or anyone around him. Let's see what the Ninth Circuit Court of Appeals had to say about O'Doan's behavior and the officers' response to it.

### FACTS

At 6:47 p.m., on July 15, 2016, April O'Fria called 911 and claimed that her boyfriend, James O'Doan, had experienced an epileptic seizure in the shower, was trying to break windows, and had fled their home naked. Firefighters arrived first and found O'Fria and O'Doan on a busy Reno street "struggling" and "grappling" with each other. O'Doan ran past the firefighters and ignored their requests for him to stop. At this point, the firefighters initiated a "Code 3," which meant something violent was occurring and that police were needed immediately.

In the meantime, police dispatch notified Reno Police Officers Joshua Sanford and Cade Leavitt of the "Code 3" request. While driving to the scene, Officer Sanford saw an EMS advisory on the computer in his police car showing that the 911 caller had reported that the subject was suffering a seizure. Officer Leavitt was not aware that O'Doan had allegedly suffered a seizure.

When the officers arrived, they tried to catch up with O'Doan while identifying themselves as police officers and ordered O'Doan to stop. O'Doan did not comply. Instead, O'Doan turned, faced the officers, clenched his fists, and exhibited "body language" as if he was going to attack the officers. Officer Leavitt tried to deploy his taser on O'Doan but the taser malfunctioned. O'Doan then turned away and moved off quickly. At that point, Sanford approached O'Doan and used a "reverse reap throw" to bring him to the ground. This maneuver essentially involves tripping the subject from behind to throw him off balance and then "guiding" him to the ground with both hands.

After Sanford brought O'Doan down, officers engaged in a "major struggle" with O'Doan, who was "combative." O'Doan thrashed around, "scuffling" with the officers, "kicking and attempting to get up off the ground," and continued to resist attempts to restrain him. The officers repeatedly told O'Doan to stop resisting, but O'Doan did not obey. Firefighters and a third officer who had since arrived on the scene had to help Officers Sanford and Leavitt restrain O'Doan. After his arms were handcuffed behind his back, O'Doan continued to try to kick people, so officers put leg restraints on him. O'Doan received some abrasions and lacerations to various parts of his body during the episode.

Once he was restrained, EMS personnel administered a sedative to O'Doan, who began to relax. O'Doan was then loaded onto a gurney, put into an ambulance, and transported to the hospital. The EMS personnel at the scene, who had training in responding to persons having seizures, did not

believe O'Doan had suffered a seizure. Instead, they believed that O'Doan's behavior was consistent with someone that was on a drug binge.

Officers Sanford and Leavitt went to the hospital and agreed to arrest O'Doan for resisting a public officer and indecent exposure. O'Doan was released into police custody around 9:40 p.m., charged with both offenses and booked into county jail. In the arrest report drafted by Officer Leavitt, and in the police report narratives prepared by both officers, there was no mention of an alleged seizure. However, a supplement to the arrest report noted that O'Doan was brought to the hospital to be "evaluated for his injuries and other possible health issues." The next morning, O'Doan was released on bail. The charges against O'Doan were dismissed several months later.

O'Doan later filed suit against Officers Sanford and Leavitt pursuant to *42 U.S.C. § 1983*<sup>i</sup> alleging that the officers: 1) used excessive force against him, 2) lacked probable cause to arrest him, and 3) prepared deliberately fabricated police reports by omitting any reference to his seizure. In addition, O'Doan sued the City of Reno under the Americans with Disabilities Act (ADA), claiming that the officers failed to make a reasonable accommodation for his epilepsy when they detained him.

After the district court granted the officers qualified immunity and dismissed O'Doan's claim against the city, he appealed.

## **NINTH CIRCUIT OPINION**

The Ninth Circuit Court of Appeals held that Officer Sanford's use of a "reverse reep throw" did not constitute excessive force in violation of the Fourth Amendment's prohibition against unreasonable seizures. The court found that the officers responded to the call for immediate police assistance for a "violent" individual. When the officers arrived, O'Doan was naked and moving quickly on a busy street. O'Doan repeatedly resisted the officers' command to stop and then turned toward the officers in a threatening manner with his fists clenched. The court concluded that the officers acted reasonably in deciding to bring O'Doan under control and that the use of the "reverse reep throw" maneuver was a reasonable way in which to achieve this. The court recognized that the officers' efforts may have prevented O'Doan from harming himself or those around him.

Next, the court held that the district court properly dismissed O'Doan's ADA claim that the officers should have detained him in a less forceful manner that was more appreciative of his epilepsy. The court held that O'Doan did not establish that a lesser amount of force would have been reasonable under the circumstances, especially when O'Doan had refused to comply with several warnings to stop.

Third, the court agreed with the district court, holding that the officers had probable cause to arrest O'Doan after they witnessed him engage in conduct that violated Nevada law. While O'Doan conceded that he violated Nevada law, he argued that the officers should have known that he did not have the requisite mental intent to commit these crimes, as he was in an altered state of consciousness due to an epileptic seizure.

The court disagreed. Once on the scene of a "Code 3" emergency, the officers encountered a mobile individual who appeared to recognize verbal commands and turned to flee at a quicker pace. The court held that the officers could conclude that O'Doan was not in the midst of a seizure at this time, and there is no suggestion that he was. Instead, officers witnessed O'Doan engage in unlawful conduct that

included O'Doan refusing to comply with officers' orders, raising his fists toward them in a threatening manner, and combatively engaging them in a "major struggle." Under these circumstances, the court found that the officers could reasonably believe they had probable cause to arrest O'Doan based on their observations of his conduct.

Lastly, the court rejected O'Doan's claim that the officers violated due process because they did not discuss his reported seizure in their police report and affidavit supporting probable cause. The court commented that it could not locate any clearly established law that would suggest police officers commit a due process violation when they omit from their write-ups initial accounts from an arrestee or others that the arrestee had undergone a seizure at some point before the unlawful conduct.

In this case, the court noted that Officer Leavitt's report stated that O'Doan was transported to a hospital to be "evaluated for his injuries and other possible health issues." The court stated that nothing in clearly established law suggests that the officers were required to provide more detail to avoid violating the Constitution and that the police report likewise did not mention Officer Leavitt's skepticism as to whether O'Doan's claimed seizure had caused his conduct.

## TAKEAWAYS

So, what should we take away from this case? In the court's write up the court concluded that more information is usually better than less detailed information when writing a police report, and that including more specific information about reports of O'Doan's possible seizure would have been preferable. Even though the court held that the officers did not violate clearly established law, as we have said in past legal updates you absolutely need to detail as much as you possibly can in your report. This case originally took place in 2016 and is just now getting through the court system. A lot can be lost from memory in that amount of time. Luckily our officers today added a supplement to their report mentioning "other possible health issues". Another key takeaway here is the fact that Officer Sanford used modern techniques to carefully get O'Doan to the ground. The "reverse reap throw" is a good tactic to use when a taser does not deploy properly as it allows an officer to guide the suspect to the ground carefully. Be sure to update your Use of Force policies frequently.

[We hope to see you at our annual Use of Force Summit in November, live at Mohegan Sun to discuss more modern techniques and examples of proper use of force.](#)

***Ninth Circuit – O'Doan v. Sanford, 991 F.3d 1027***

### **Date Created**

07/12/2021