



FOURTH AMENDMENT · LEGAL UPDATE · RESOURCES · USE OF  
FORCE

# The Force Must Match the Circumstance

By **Daigle Law Group**

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# The Force Must Match the Circumstance

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As we have discussed in previous training sessions, protests at City Council meetings and town halls are becoming more frequent. Today's case, *Williamson v. City of National City*, took place in a City Council meeting. When evaluating a Fourth Amendment claim of excessive force, the court will ask whether an officer's actions were objectively reasonable considering the facts and circumstances surrounding the incident. While discussing the force used in this case, the court reviewed four previous cases to justify their decision: *Forrester v. City of San Diego*, *Johnson v. County of Los Angeles*, and *Felarca v Birgeneau*, and *Nelson v. City of Davis*.

In *Forrester*, police officers did not act unreasonably in using "pain compliance techniques" against protesters because this use of force was "less significant than most . . . [where] police did not threaten or use deadly force and did not deliver physical blows or cuts." Instead, the officers used "physical pressure . . . on the demonstrators' limbs in increasing degrees, resulting in pain." This was also the case in *Johnson v. County of Los Angeles*, where force was described as "hard pulling and twisting" being used to remove a fleeing armed robbery suspect from a car. In that case the court considered the force to be a "minimal intrusion" under the circumstances. Similarly, in *Felarca v Birgeneau*, police officers' baton strikes and jabs against a mass of student protestors who blocked police from accessing tents erected on campus in violation of university policy was seen as a minimal use of force under the circumstances.

On the other hand, in *Nelson* the court held that shooting someone in the face with a PepperBall when trying to break up a party was a "significant" intrusion where "officers were advised not to shoot pepperballs indiscriminately or at individuals that were not posing a threat," "[t]he possibility of serious injury was apparent to the officers at the time of the shooting," and the PepperBall caused "significant damage to [plaintiff's] eye."

We are highlighting these cases to show you appropriate force versus excessive force under the Fourth Amendment. Let us see how our case today stacks up.

## FACTS

In July 2018, six protestors, including Tasha Williamson, performed a "die-in" at a city council meeting in National City, California related to the death of Earl McNeil, a black man who died in police custody. When the mayor called for order, the protestors refused to stop their demonstration and the council

meeting was adjourned.

A few minutes after the protest began, National City police officers informed the protesters that they would be arrested if they did not leave the podium area. The protesters ignored repeated requests to leave, so the officers began arresting them. The protesters had planned that if they got arrested, they would act as dead weight and refuse to cooperate with being removed. The protestors followed through with this agreement, and officers pulled or carried each of them out.

Officers Lucky Nguyen and John McGough handcuffed Tasha Williamson with her wrists behind her back and brought her to a seated position. When the officers tried to lift Williamson to a standing position, they lost their grip on her and she rolled back to the ground on her stomach. The officers then repositioned Williamson onto her back and tried to lift her again. Officer Nguyen held Williamson under her left arm and Officer McGough held her under her right arm. As they lifted her up, Williamson initially placed her feet under her, but she did not support her own weight. The officers struggled to lift Williamson and pulled her backward by her arms and wrists while she was in a nearly seated position. Williamson was loudly chanting before the officers started removing her from the room. During the approximately 12 seconds that she was being pulled from the room, Williamson screamed continually. As the officers and Williamson approached the exit door, Officer McGough released Williamson's upper right arm and Officer Nguyen dragged her through the doorway alone, by her left wrist and forearm.

In the hallway outside the meeting room, Williamson told the officers that they had hurt her shoulder and they called an ambulance. The officers also double-cuffed Williamson to lessen the tension on her arms and make her more comfortable, but she complained that they were "still pulling" her arms in doing so. Paramedics arrived, evaluated Williamson, and offered to take her to the hospital, but she refused to go with them. The officers then arrested Williamson and took her to a detention facility. After she was released the next morning, Williamson drove herself to the hospital. She suffered a sprained wrist, mild swelling, and a torn rotator cuff.

Williamson sued the officers under 42 U.S.C. § 1983 and California's Tom Bane Civil Rights Act, alleging that they used excessive force against her, in violation of the Fourth Amendment when they pulled her arms and hands while removing her from the council meeting. After the district court denied the officers qualified immunity, they appealed.

Qualified immunity protects a police officer from liability for civil damages under Section 1983 unless the officer violated a clearly established constitutional right. Consequently, to determine if an officer is entitled to qualified immunity, the court must consider: 1) whether the officer's conduct violated a constitutional right, and 2) whether that right was clearly established at the time of the event at issue.

## **NINTH CIRCUIT COURT OPINION**

In this case, the Ninth Circuit Court of Appeals reversed the district court, concluding that the officers did not violate Williamson's Fourth Amendment rights.

The court recognized that the type and amount of force used by the officers was minimal. The officers did not strike Williamson, throw her to the ground, or use any compliance techniques or weapons on her. Instead, the officers held her by her arms and lifted her so they could pull her out of the meeting room after she went limp and refused to leave on her own or cooperate when being removed. The court added that the inherent risk of two officers pulling someone who has gone limp and refuses to move by her own power is not significant. Finally, while Williamson's injuries were not "trivial," the court noted that, if a person reacts more adversely to a use of force than would be reasonably expected by the officers, that does not, by itself, establish that an officer's use of force was excessive.

Second, while it was undisputed that Williamson's crime was minor, that she posed a low threat of harm to the officers, and she was not actively resisting arrest, Williamson did not have the right to prevent the National City from conducting its city council meeting. Officers repeatedly warned the protesters that they had to leave the front of the meeting room, or they would be arrested. When the protestors refused to comply, the council meeting was adjourned "for order to be restored." The court found that Williamson did not identify any "less intrusive means" available to the officers for restoring order so that the city's legitimate business could proceed.

Finally, the court held that the officers' use of force was "appropriately minimal" to achieve the City's interest in responding to illegal conduct and restoring order to the council meeting room. The court noted that Williamson could have avoided or reduced the pain and injury she claimed she suffered from the officers' conduct by cooperating with them and leaving the room under her own power. Her choice not to do so did not render the officers' conduct unreasonable. To conclude otherwise, the court stated, "would be to discount entirely the City's legitimate interests in maintaining order and ensuring that the public's business is not circumvented by people engaging in disruptive, albeit nonviolent, conduct."

## **TAKEAWAYS**

The tagline of today's case is this: the force used must match the circumstance. These protestors were asked to leave repeatedly and chose not to. They then decided to make their bodies limp instead of cooperating with law enforcement. While Williamson's injuries are unfortunate, they could have been avoided if she had cooperated. Law enforcement is there to protect the greater interest of the City, and although these protestors have a right to protest, they cannot disrupt a City Council meeting. Most importantly these officers did everything right, even against protestors that were protesting law

enforcement itself.

**Williamson v. City of National City, 23 F.4th 1146 (9th Cir. 2022)**

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