

Reasonable Force vs. Reasonable Care: Why California Cops Must Think Beyond the Arrest

Alves v. County of Riverside, No. 23-55532, 2025 WL 1227942 (9th Cir. 2025)

Background:

In July 2019, Riverside County Deputies Gomez and Keeny responded to reports of a man in a mental crisis - Kevin Niedzialek. They found him incoherent, shirtless, shoeless and bleeding from the head. As they approached, Niedzialek advanced toward Deputy Keeny. Deputy Gomez deployed her Taser. As the use of force ensued, the Deputies were able to get Niedzialek to the ground and struggled to handcuff him as he continued to kick and flail his legs.

Even after cuffing him, Niedzialek continued to buck and roll on the ground, and at one point said something to the effect of “need help.” Over the next 45 seconds, the Deputies used their knees and hands to keep Niedzialek in the prone position. Eventually, he stopped moving.

Roughly three minutes, they realized Niedzialek wasn’t breathing. They rolled him over and found a faint pulse. Neither Deputy initiated CPR and instead waited until paramedics arrived. Niedzialek died the following day.

The Lawsuit:

Niedzialek’s successor, Tracy Alves, sued the Deputies and the County of Riverside for excessive force in violation of the Fourth Amendment and negligence under California law.

For the excessive force claim, Alves argued that holding Niedzialek in the prone position while cuffed restricted his breathing and constituted excessive force.

For the negligence claim, Alves argued that the Deputies failed in their duty to move him into a recovery position, monitor his pulse and breathing, and perform CPR when they noticed he was unresponsive.

At trial, the jury found that the Deputies did not use excessive force against Niedzialek, but did find that the Deputies were negligent in their actions.

The County appealed arguing that the verdict was inconsistent: how can force be “reasonable” under federal law but still “negligent” under state law? The County argued, if the negligence claim was analyzed under the same “reasonableness” standard as the excessive force claim, then the jury’s verdict was inconsistent. In other words, the County argued that if the jury found the force was reasonable under the Fourth Amendment, then the Deputies couldn’t have acted “unreasonably” making them negligent.

Reasonableness and Excessive Force:

Generally, officers may only use force that is objectively reasonable to effectuate an arrest, to prevent escape, or to overcome resistance.

However, because no use of force situation is the same, courts consider the objective reasonableness of the force 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.

Reasonableness and Negligence:

Under California negligence law, officers have a duty to act with **reasonable care** when using force against a suspect. If an officer fails to act reasonably, the duty will be breached, and the officer will be liable for injury that was caused by their unreasonable conduct.

Like excessive force claims, the reasonableness of an officer's conduct is determined in light of the totality of circumstances.

Because federal Fourth Amendment law governing excessive force and California negligence law both focus on whether an officer's use of deadly force was reasonable under the totality of the circumstances – aren't the standards the same?

Relying on the California Supreme Court case, *Hayes v. County of San Diego*, the Ninth Circuit answered no.

The California Supreme Court in *Hayes* specifically stated that “the Fourth Amendment’s ‘reasonableness’ standard is not the same as the standard of ‘reasonable care’ under [California negligence] law.” Although both are based on the totality of the circumstances, “state negligence law. . . is broader than federal Fourth Amendment law, which tends to focus more narrowly on the moment when deadly force was used.”

Thus, the California Supreme Court held that a jury could consider an excessive force claim narrowly by focusing on how the force was used in the moment of the shooting while at the same time focusing broadly to consider whether officer acted in negligently or in manner consistent with their overall duty of care before, during, and after the force was used.

The Ninth Circuit applied the California Supreme Court's guidance in *Hayes* to the facts of the case before it.

According to the Ninth Circuit, the jury here could have analyzed the Fourth Amendment claim narrowly by focusing on the amount of force the Deputies applied to Niedzialek after he was handcuffed and determined that the light pressure used to keep him in the prone position was not excessive.

On the other hand, the jury could also have analyzed the negligence claim broadly and concluded that the Deputies breached their duty of care to Niedzialek by unreasonably continuing to restrain him despite no longer moving. The jury could have also found that the Deputies breached their duty of care by failing to put Niedzialek in a recovery position or perform CPR when he became unresponsive.

On this basis, the Ninth Circuit ruled that the jury's verdict was **not inconsistent**. The Ninth Circuit thus affirmed judgment in favor of Alves.

Bottom Line:

Winning an excessive force claim doesn't shield you from a negligence lawsuit. Once the threat ends, your duty of care continues—stay alert, reassess, and act fast if medical help is needed.

Even if the suspect is secure and there is no longer an immediate threat, your duty of care does not end. Continue to monitor the situation and the potential needs and behavior of the suspect – not only for potential threats but also for signs of whether the suspect needs prompt medical attention or intervention.

Stay Safe and Informed!