

Tabares v. City of Huntington Beach

United States Court of Appeals for the 9th Cir

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CA Negligence Law is Broader than Federal 4th Amendment Law

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Huntington Beach Police Officer, Eric Esparza, fatally shot Dillan Tabares after the two were involved in a physical altercation. The decedent's mother sued the City and Esparza under 42 U.S.C. §1983 and California negligence law. Esparza brought a motion for summary judgment; the district court granted the motion on both the §1983 and negligence claims. The plaintiff appealed the ruling on the negligence claim. The Ninth Circuit Court of Appeal reversed the district court's summary judgment on the negligence claim.

Why did the Court keep the officer in the case?

In deciding a motion for summary judgment, the Court considers all of the plaintiff's allegations to be true. Let's look at the facts:

Facts:

Officer Esparza was at an intersection in his police unit when he noticed Tabares standing on the sidewalk. Esparza did not know Tabares and had no prior contact with him. Tabares caught Esparza's attention because he was wearing a sweater on a warm day, walking abnormally, made fidgeting, flinching movements with his hands, and looked over in Esparza's direction several times.

Officer Esparza decided to talk to Tabares, parked, exited his vehicle and asked Tabares to stop and talk to him. Tabares responded "no" and while walking away told Esparza to leave him alone. Esparza instructed Tabares to stop walking away multiple times. Tabares turned towards Esparza, began walking back toward him in a confrontational manner, fists clenched, while speaking loudly and aggressively.

Several individuals were recording the incident on their cell phones. Officer Esparza backed up on the sidewalk while instructing Tabares to stop. He then tasered him with no visible effect. Tabares then approached Esparza and punched him in the face. The two began to fight, ending up on the ground with Esparza on top of Tabares, who continued to resist while on his back. Esparza struck Tabares several times. Tabares grabbed at Esparza's belt while Esparza repeated "let go of the gun." Officer

Esparza felt Tabares take an item from his belt, which turned out to be his police flashlight. Esparza stood, drew his gun, and separated from Tabares, as his body camera started recording. Esparza retreated about 15' and saw Tabares holding what was later determined to be, Esparza's flashlight. Three seconds later, Officer Esparza shot Tabares six times.

In this case, the Court found that a reasonable jury *could find* that Officer Esparza should have suspected Tabares had mental health issues and acted unreasonably when dealing with a potentially mentally ill person before using force, and therefore he acted negligently.

The §1983 claim was dismissed because, under 4th Amendment law, the focus was *on the moment* Officer Esparza fired his weapon, which was immediately after he had escaped a violent attack by Tabares, who was then facing him while holding a potential weapon (police flashlight). The negligence claim can be proceed to a jury because, using California law, a jury *could find* that Officer Esparza was negligent in interacting with Tabares before calling for back-up and failed to use de-escalation techniques from the start.

The incident in this case occurred on the morning of September 22, 2017. Since then, the California legislature has passed AB 392, which amended the law on when and how peace officers can use deadly force. The

intent of AB392 is to encourage officers to modify their tactics when confronting suspects with mental health issues and apply less-lethal force or de-escalation techniques.

Take Away

Law enforcement is facing increased scrutiny from activist organizations, news media, prosecutorial agencies and the general public.

If you use deadly force, be prepared to clearly articulate why you did so, including every relevant thing known from the initial call/encounter leading up to the decision to use deadly force - and answer the following:

Did your training or department policy guide your actions? Explain how.

Did you attempt any non-lethal force options before applying deadly force?

Did you consider other non-lethal force options, but concluded they wouldn't be effective? Why?

What caused you to conclude the suspect had the ability, opportunity, and intent to immediately kill or seriously hurt you (or others)?

Stay Safe and Healthy!

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