

## NINTH CIRCUIT AFFIRMS SUMMARY JUDGMENT ON ALL CLAIMS IN OFFICER-INVOLVED SHOOTING CASE

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*Krause, et al. v. County of Mohave, et al., Defendants-Appellees.*,20-16189, 2021 WL 1667042, at \*1 (9th Cir. Apr. 28, 2021)

Ninth Circuit Court of Appeals

April 30, 2021

JSH Attorneys: [Georgia A. Staton](#), [Ravi Patel](#), [Justin Ackerman](#)

The Ninth Circuit Court of Appeals has affirmed the trial court's summary judgement ruling in Defendants' favor in *Krause, et al. v. County of Mohave, et al.* JSH attorneys Georgia Staton, Ravi Patel, and Justin Ackerman represented the County and Officers in both the District Court and Court of Appeals cases, where Plaintiff asserted there were issues of material fact that precluded summary judgment.

After hearing oral argument by JSH appellate attorney Justin Ackerman, the Ninth Circuit affirmed in a Memorandum Decision the trial court's summary judgment ruling. It expressly rejected Plaintiff's attempt to argue that issues of material fact existed. The Court found that Krause created an immediate threat to Officer Selmanson. It also held that the officers properly summoned medical aid which did not violate Krause's Fourteenth Amendment rights. The Ninth Circuit affirmed the individual officers were entitled to Qualified Immunity for their actions as well. Finally, the Ninth Circuit affirmed the dismissal of Plaintiff's state law claims for the same reasons as its rulings on Plaintiff's Section 1983 claims.

**Summary of Case:** At approximately 7:14 p.m. on February 13, 2017, two Mohave County Sherriff's Office ("MCSO") Deputies responded to a 911 call from a Topock, Arizona resident stating that she heard a male voice coming from the direction of the Krause residence, and shortly thereafter, heard what she believed to be a gunshot fired from the same location. Approximately twenty-six minutes after that call, MCSO deputies Selmanson and Schiller arrived at the scene, a mobile home park. Having reviewed the dispatch 911 call prior to arrival, Selmanson stopped to take the woman's report. Schiller continued onward, parking his patrol car in front of the Krause residence.

After taking the reports of nearby residents, Selmanson joined Schiller outside the Krause residence and they approached the trailer. Inside the trailer, but unbeknownst to the deputies, was Drey Krause and his mother. The deputies separated, each taking different positions near the entryway. Selmanson approached the main door, knocked and announced: "Sherriff's office." There was no answer. He knocked and announced a second time, backing away from the door. The porch light turned on and he heard what sounded like someone "fiddling" with the lock. Within seconds, the door began to open and Drey Krause was standing in the doorway holding a shotgun on his right side. Seeing the shotgun, Selmanson twice ordered Krause to "drop the gun" or "put the gun down" as he continued his backward retreat. Nearby neighbors reported hearing the commands loud and clear. Krause then stepped through the doorway and, with the shotgun in hand approached Selmanson. As Selmanson continued retreating backward, he repeated his earlier orders to "Drop the gun." Krause did not respond, but instead continued his advance towards Selmanson and began to raise the shotgun barrel to ninety degrees. With the shotgun barrel pointed at him, Selmanson quickly fired three shots and Krause collapsed to the ground.

The deputies handcuffed Krause and radioed, "shots fired[,] send medical", roughly one minute after the incident. The deputies later testified that because they were hesitant to aggravate any injuries they waited for medical assistance rather than attempt emergency care. Medical personnel arrived on scene approximately eight minutes after the shooting and transported Krause to Valley View Medical Center where he was pronounced dead shortly after arrival.

**Plaintiff's Case:** Krause's family brought suit against the deputies, Mohave County and the Sherriff's Department. Plaintiff argued that material discrepancies existed between Selmanson's account of the shooting taken from his post-shooting interview and the record evidence. Relying primarily on his

expert, Plaintiff argued that Krause was shot while standing his home (not outside), was not facing Selmanson at the time of the shooting, and that Krause did not pose a threat to Selmanson as he was attempting to set his shotgun on the ground. Moreover, Plaintiff argued that Deputies Selmanson and Schiller failed to administer first aid after Krause was shot, which purportedly violated his constitutional rights. With regard to Mohave County, Plaintiff also argued under *Monell* that the County failed to adequately train and supervise Selmanson and Schiller. Finally, Plaintiff raised various state law claims for wrongful death involving negligence and battery.

**Defendants' Case:** The Defense argued that, consistent with the facts stated above, Deputy Selmanson, in full uniform, knocked and announced his presence at Krause's door. Krause eventually answered, but with the barrel of his shotgun protruding out of his door as he exited in a threatening manner. Selmanson justifiably drew his weapon and gave Krause repeated commands to drop the shotgun. Krause continued his aggressive and threatening behavior by moving toward Selmanson and raising the barrel of his shotgun up toward him. Selmanson shot Krause in self-defense, which was an objectively reasonable use of force under the Fourth Amendment. With regard to the administration of medical aid, Defense argued that Selmanson and Schiller had no constitutional obligation to directly administer first aid, but rather, satisfied their duties by immediately calling for medical assistance, which arrived within minutes of the shooting. Defense also argued that Selmanson and Schiller were entitled to qualified immunity based on the same set of facts. Further, Defense argued that Plaintiff's *Monell* claims failed because Plaintiff did not suffer any constitutional injury and Mohave County adequately trained and supervised Selmanson and Schiller. Finally, Defense argued that Plaintiff's state law claims failed because of statutory justification defenses, Arizona's self-defense statutes, common law qualified immunity, and that Arizona has rejected negligence claims in the commission of an intentional tort under *Ryan v. Napier*.

**Result:** The trial court issued two rulings in favor of Defense. First, consistent with Defendant's Daubert Motion, it ruled that Plaintiff's expert was unqualified to offer conclusions on ultimate issues such as whether Selmanson used excessive force and also found that Plaintiff's expert was unqualified to give any ballistics opinions. Following this ruling, and again consistent with the Defense's arguments, the trial court granted summary judgment on all of Plaintiff's claims. It held that Deputy Selmanson's use of force was objectively reasonable under the circumstances. The Court noted that "[f]rom the moment the door opened Krause's actions escalated the threat to the deputies." It also held that Selmanson was entitled to qualified immunity because no case authority put him on notice that his actions violated Krause's constitutional rights. It also held that Deputy Selmanson and Schiller's administration of aid did not violate Krause's Fourteenth Amendment rights, and again, both deputies were entitled to qualified immunity. With regard to Plaintiff's *Monell* claim against the County, the Court held that it failed as a matter of law because there were no constitutional violations, but also held that there was no evidence in the record that the County failed to train or supervise Selmanson and Schiller. Finally, the Court held that Plaintiff's state law claims failed "for (at least) five independent reasons" which included statutory justification defenses, Arizona's self-defense statutes, common law qualified immunity, and that Arizona has rejected negligence claims in the commission of an intentional tort under *Ryan v. Napier*.

[Read the Trial Court Case Summary Here](#)

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**Georgia Staton** has more than 46 years of experience representing governmental entities, including state, counties and cities, as well as school districts and privately-held corporations. She is committed to defending clients on issues involving governmental liability, employment law, personal injury and civil rights. Georgia has tried more than 75 cases to verdict in state and federal court in matters involving wrongful death and claims brought under the Americans with Disabilities Act, Family and Medical Leave Act, Title VII discrimination and sexual harassment claims and retaliation, as well as false arrest and excessive force allegations against law enforcement including pursuit cases and SWAT actions. Georgia is a Certified Specialist in Personal Injury and Wrongful Death.

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**Ravi Patel** focuses his practice on defending clients in matters involving employment and civil rights issues, governmental liability, and education defense. Before moving from Texas to Arizona in 2013, Ravi worked at an insurance defense law firm where he represented corporations, municipalities, and employers in civil rights and employment matters, including Title VII, FMLA, ADA, and wrongful termination. He has also represented clients in FLSA matters and in proceedings before the NLRB.

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**Justin Ackerman** represents clients in federal and state appellate matters in cases involving excessive force, wrongful death, personal injury, bad faith, and premises liability. After graduating as the valedictorian of his class from Phoenix School of Law, Justin worked as a law clerk for the Hon. Michael J. Brown in Division One of the Arizona Court of Appeals. Justin has successfully represented clients and argued before the Arizona Court of Appeals, Arizona Supreme Court, and Ninth Circuit Court of Appeals.

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