

FILED

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MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

DANNY LEE MONTS,

Plaintiff-Appellant,

v.

AARON BROWN, Dr.; Chief Executive Officer/Superintendent at Arizona State Hospital; SHANDA SUE PAYNE, Director/Manager of Facility at Arizona Community Protection and Treatment Center; DAVE YOUNG, Health Program Manager at Arizona Community Protection and Treatment Center; ERNEST SUNJO, Resident Program Manager at Arizona Community Protection and Treatment Center,

Defendants,

ERIC DAVIS, Resident Program Specialist at Arizona Community Protection and Treatment Center,

Defendant,

MICHAEL WILEY, Resident Program Specialist at Arizona Community

No. 20-16471

D.C. No.

2:18-cv-00754-DJH-CDB

MEMORANDUM*

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

Protection and Treatment Center; PEGGY
JORGENSEN, Nurse at Arizona
Community Protection and Treatment
Center,

Defendants,

UNKNOWN PARTY, named as John
Doe; Clinical Director at Arizona
Community Protection and Treatment
Center,

Defendant,

ARIZONA COMMUNITY
PROTECTION AND TREATMENT
CENTER,

Defendant,

and

SHAUN G. ANDERSON, Resident
Program Manager at Arizona Community
Protection and Treatment Center,

Defendant-Appellee,

ADAM Z. GRIFFITHS, Resident Program
Specialist at Arizona Community
Protection and Treatment Center,

Defendant-Appellee,

EDDIE DEL CASTILLO, Campus
Support/Security Tech at Arizona
Community Protection and Treatment

Center,

Defendant-Appellee,

RODNEY WASHINGTON,

Defendant-Appellee.

Appeal from the United States District Court
for the District of Arizona

Diane J. Humetewa, District Judge, Presiding

Argued and Submitted November 17, 2022
Phoenix, Arizona

Before: BYBEE, OWENS, and COLLINS, Circuit Judges.

Danny Lee Monts is a resident of the Arizona Community Protection and Treatment Center (ACPTC); Appellees are ACPTC staff members. Monts appeals the district court's grant of summary judgment in favor of Appellees on his excessive force claim. We have jurisdiction under 28 U.S.C. § 1291 and review a district court's summary judgment rulings *de novo*. *Planet Aid, Inc. v. Reveal*, 44 F.4th 918, 923 (9th Cir. 2022). We reverse and remand.

1. In granting summary judgment on Monts's excessive force claim, the district court concluded that Monts had failed to provide sufficient evidence to support his claim that Griffiths struck him while he was restrained. To survive a summary judgment motion, "the non-moving party must come forth with evidence

from which a jury could reasonably render a verdict in the non-moving party's favor." *In re Oracle Sec. Litig.*, 627 F.3d 376, 387 (9th Cir. 2010).

Monts supported his claim with declarations from three other ACPTC residents. Two of those residents were eye witnesses to the alleged assault. The district court gave no credit to these declarations or Monts's own statements for two reasons: (1) Monts's evidence was internally contradictory and (2) Monts's evidence was contradicted by a forensic report prepared by Appellees' expert witness. Neither rationale supports rejection of Monts's evidence at summary judgment.

The contradictions between Monts's accounts of the alleged assault and those detailed in the residents' declarations are immaterial. They do not render Monts's evidence unbelievable to a rational jury. *See Dominguez-Curry v. Nev. Transp. Dep't*, 424 F.3d 1027, 1035–36 (9th Cir. 2005) (discussing how credibility determinations are "exclusively within the province of the factfinder at trial, not the district court on summary judgment"). Although the evidence differs in some specifics, Monts's own testimony and that of his declarants are consistent on the core issue: that Griffiths struck Monts two or more times after he was restrained.

Likewise, Appellees' forensic report does not resolve the genuine disputes of material fact raised by Monts's evidence. A jury could reasonably choose to

believe Monts's evidence rather than the forensic report's post-hoc analysis. *See United States v. Finley*, 301 F.3d 1000, 1016 (9th Cir. 2002) (“[A] jury is free to reject [an expert’s] testimony.”). Moreover, the report does not preclude the possibility that Monts's injuries were caused—at least in part—by punches to the face. Thus, even if a jury chose to credit the forensic report, it would not be obligated to find in Appellees' favor.

2. Having concluded that Monts provided sufficient evidence to support his claim that Griffiths struck him while he was restrained, we turn to whether such conduct would violate Monts's constitutional rights. Excessive force claims brought by those who have been civilly committed are governed by the Fourteenth Amendment. *See Hydrick v. Hunter*, 500 F.3d 978, 997 (9th Cir. 2007), *vacated and remanded on other grounds*, 556 U.S. 1256 (2009). A state actor violates an individual's Fourteenth Amendment rights by “purposely or knowingly” using a level of force that is “objectively unreasonable.” *Kingsley v. Hendrickson*, 576 U.S. 389, 397 (2015).

Crediting Monts's telling of events, Griffiths used intermediate force against him—multiple punches to the face—despite the fact that Monts was restrained by several other staff members. Intermediate force “present[s] a significant intrusion upon an individual's liberty interests.” *Coles v. Eagle*, 704 F.3d 624, 628 (9th Cir.

2012) (quoting *Young v. Cnty. of L.A.*, 655 F.3d 1156, 1161–62 (9th Cir. 2011)). Use of such force against an individual whose conduct “indicates no threat, immediate or otherwise, to . . . others” is objectively unreasonable. *Young*, 655 F.3d at 1165. Based on the record before us, a jury could reasonably conclude that whatever threat Monts presented to others was neutralized when staff apprehended him, and that Griffiths’s conduct therefore constituted excessive force. *See Smith v. City of Hemet*, 394 F.3d 689, 703 (9th Cir. 2005) (en banc) (denying summary judgment on an excessive force claim where a reasonable jury could conclude that the “totality of force used” unreasonably exceeded what was needed to overcome the detainee’s resistance).

3. Appellees argue that qualified immunity protects Griffiths, but they have tied their qualified immunity arguments on appeal to their telling of the facts. In their answering brief, Appellees do not claim that qualified immunity would apply if Griffiths did, in fact, punch Monts while he was restrained. Because we find that a reasonable jury could believe Monts’s version of events, Appellees’ qualified immunity argument fails.

We **REVERSE** the district court’s grant of summary judgment on Monts’s excessive force claim arising out of Griffiths’s alleged use of force against Monts after Monts was restrained and **REMAND** for further proceedings.