

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

NOV 23 2022

FOR THE NINTH CIRCUIT

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

SHERYL DENISE McCARTY, personal
representative of JYLES JON DALE
McCARTY,

Plaintiff-Appellant,

v.

LOGAN JEFFREY EGNOR, #09594;
SANJO SABU, #10423; A. BRANVITS,
#10640; PHOENIX POLICE
DEPARTMENT; EMILY HUSKISSON,
#10512,

Defendants-Appellees.

No. 21-15918

D.C. No. 2:21-cv-00473-MTL-
MTM

MEMORANDUM*

Appeal from the United States District Court
for the District of Arizona
Michael T. Liburdi, District Judge, Presiding

Submitted November 15, 2022**

Before: CANBY, CALLAHAN, and BADE, Circuit Judges.

Sheryl Denise McCarty, as personal representative of Jyles Jon Dale

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

** The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2). McCarty's request for oral argument, set forth in the opening brief, is denied.

McCarty, appeals from the district court's judgment dismissing Jyles Jon Dale McCarty's 42 U.S.C. § 1983 action alleging excessive force and other constitutional claims in connection with his arrest. We have jurisdiction under 28 U.S.C. § 1291. We review de novo a dismissal for failure to state a claim under 28 U.S.C. § 1915A. *Wilhelm v. Rotman*, 680 F.3d 1113, 1118 (9th Cir. 2012). We affirm in part, vacate in part, and remand.

The district court dismissed McCarty's excessive force claim because it concluded that McCarty did not allege sufficient facts concerning his arrest. However, McCarty alleged that defendant Egnor shot him five times with beanbag rounds from a shotgun and then hogtied him, despite the fact that McCarty was not committing a crime, was not resisting arrest, and was not a threat to the police or public. Liberally construed, these allegations are sufficient to warrant ordering Egnor to file an answer. *See Byrd v. Phx. Police Dep't*, 885 F.3d 639, 642 (9th Cir. 2018) (setting forth elements for claim of excessive force during an arrest and explaining that courts have an obligation to construe pro se pleadings liberally); *Young v. County of Los Angeles*, 655 F.3d 1156, 1163-65 (9th Cir. 2011) (explaining that the government has "no reasonable safety concern" justifying the use of significant force where an individual poses no immediate threat to police or the public). We therefore vacate the district court's dismissal of McCarty's excessive force claim only and remand for further proceedings.

Because McCarty does not challenge the district court's dismissal of any claims other than his claim for excessive force, we affirm the district court's judgment in all other respects.

AFFIRMED in part; VACATED in part; and REMANDED.