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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

JOHN JUSTIN JAMES,

Plaintiff,

v.

SHANT SHEKLANIAN, et al.,

Defendants.

1:08-CV-01943 OWW GSA

MEMORANDUM DECISION RE
DEFENDANTS' CITY OF MADERA
AND OFFICER JASON
GUTKNECHT'S MOTION FOR
SUMMARY JUDGMENT (DOC. 25)

I. INTRODUCTION

Defendants City of Madera and Officer Jason Gutknecht move for summary judgment on all claims brought against them by Plaintiff John Justin James. This motion was originally set for hearing on February 8, 2010. Doc. 25. On January 27, 2010, Plaintiff was granted a continuance to accommodate counsel's staffing problems. Doc. 29. The hearing was reset for March 1, 2010, making Plaintiffs' opposition due February 16, 2010. Plaintiff failed to timely file any opposition or request a further continuance.

II. UNDISPUTED FACTUAL BACKGROUND

A. Officer Gutknecht's Conduct.

On the evening of January 26, 2007, City of Madera Police Officers Shant Sheklanian and Jason Gutknecht were on duty,

1 riding together in a marked patrol vehicle. Undisputed Material
2 Fact ("UMF") # 1. At approximately 11:25 p.m., dispatch advised
3 that there were approximately thirty suspects involved in an
4 altercation outside of the Back Street Bar & Grill in Madera.
5 UMF #2. Dispatch advised that a person with his shirt off was
6 fighting. UMF #3.

8 Upon their arrival on the scene, the Officers encountered
9 numerous subjects in the middle of Modoc Avenue. UMF ## 4-5.
10 Officer Gutknecht heard yelling and screaming, and noticed
11 persons with their shirts off as though they had been fighting.
12 UMF #6. He then exited the passenger side of the vehicle. UMF
13 #7. Officer Gutknecht then encountered a subject who directed
14 Gutknecht's attention to another individual with his shirt off.
15 Gutknecht later learned that the second individual was Plaintiff,
16 Justin Page. UMF #8. Officer Gutknecht ordered Page to sit on
17 the curb. UMF #9.

19 Gutknecht then approached Page near the curb. UMF #10.
20 Plaintiff was aware that Gutknecht was a police officer. UMF
21 #11. Officer Gutknecht asked Plaintiff "what's going on?" UMF
22 #12. Plaintiff responded: "I don't know what's going on." UMF
23 #13. According to Plaintiff, Plaintiff was then tackled from the
24 side by Officer Sheklanian. UMF #14. While the two were falling
25 to the ground, Plaintiff swung at Officer Sheklanian
26 approximately 2-3 times. UMF #15-16.

1 Plaintiff ended up on top of Officer Sheklanian, at which
2 time Plaintiff realized Sheklanian was a police officer. UMF ##
3 17-18. According to Plaintiff, after realizing Sheklanian was a
4 police officer, he took 3-4 steps back and sat on the sidewalk.
5 UMF #19. During this physical confrontation, Officer Gutknecht
6 took action to keep the crowd away from Officer Sheklanian and
7 Plaintiff. UMF #20.

9 Officer Sheklanian then ordered Plaintiff to lie on his
10 stomach. UMF #21. Instead of complying with the order,
11 Plaintiff told Officer Sheklanian that he "didn't do anything
12 wrong." UMF #22. Plaintiff contends that Officer Sheklanian
13 deployed his taser on him "as soon as I got done saying I didn't
14 do anything wrong." UMF #23. Plaintiff was then handcuffed by
15 another police officer, and placed in a patrol vehicle. UMF No.
16 24.

18 B. Facts Related to the City of Madera's Liability.

19 1. General Background.

20 The Madera Police Department ("MPD") is a recognized and
21 fully certified law enforcement agency, in full compliance with
22 the minimum standards set forth by the California Commission on
23 Peace Officer Standards and Training ("P.O.S.T."). At all times
24 relevant to the instant action, it was the policy of MPD that its
25 police officers must comply with general standards in law
26 enforcement. UMF ## 28-29.

1 2. General Use of Force Guidelines.

2 MPD had at all relevant times a written use of force policy
3 that was consistent with state and federal law, and the use of
4 force policies of other police agencies in California and across
5 the nation. UMF ## 31-32. Each new employee at MPD was
6 presented with the policy manual. UMF #33. It was the policy of
7 MPD that police officers shall use only that amount of force that
8 reasonably appears necessary, given the facts and circumstances
9 perceived by the officer at the time of the event, to effectively
10 bring an incident under control. UMF #34. The use of force
11 policy authorized officers to use reasonable force to defend
12 themselves or others, effect an arrest or detention, prevent
13 escape and/or overcome resistance. UMF #35.
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16 3. Pain Compliance and Taser Guidelines.

17 It was the policy of MPD to only apply those pain compliance
18 techniques for which the officer received departmentally-approved
19 training, and only when the officer reasonably believed that the
20 use of such a technique appears reasonably necessary to further a
21 legitimate law enforcement purpose. UMF No. 36.
22

23 Likewise, it was the policy of MPD for an officer to provide
24 a verbal announcement of the intended use of the Taser prior to
25 the application of the Taser, unless doing so would endanger
26 officer safety or was otherwise impractical. UMF #37. The use
27 of a Taser on a subject by authorized personnel was allowed when
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1 circumstances at the time indicated that the use of the Taser
2 would be reasonable to subdue or control a violent or physically
3 resisting subject. UMF #38. The use of the Taser to subdue a
4 potentially violent or physically resisting subject was allowed
5 if (1) the subject has verbally or physically demonstrated an
6 intention to resist; (2) the officer provided a verbal warning to
7 the subject and an opportunity to comply; and (3) other available
8 options reasonably appear ineffective or would present a greater
9 danger to the officer or the subject. UMF #39.

11
12 4. Hiring & Training Practices.

13 MPD followed the standards set forth by P.O.S.T. in hiring
14 officers. It has a selection and screening process that includes
15 an oral interview, a background investigation, a polygraph and a
16 psychological evaluation. UMF #40. MPD officers were required
17 to attend a P.O.S.T. certified academy. UMF #41.

18 It was the policy of the MPD to comply with the officer
19 training requirements outlined by P.O.S.T. UMF ## 42-43.
20 Officers received training in the police academy, field-training
21 programs, on-the-job training, advanced officer courses, and
22 various classes and seminars offered throughout the State of
23 California. UMF ## 44-46.

25
26 5. Supervision.

27 At the time of the subject incident, MPD officers were
28 supervised through a standard chain of command. UMF #48.

1 Officers were supervised on a daily basis, and received yearly
2 written performance reviews. UMF ## 49-50. MPD Officers were
3 expected to comply with MPD policies, practices, procedures, and
4 training requirements, and were subject to disciplinary actions
5 if they failed to do so. UMF #51.

6
7 6. Investigations of Alleged Officer Misconduct.

8 It was the policy and practice of MPD to conduct thorough
9 investigations into allegations of misconduct on the part of its
10 police officers. UMF #53. An administrative investigation could
11 be initiated by a citizen through the presentation of a citizen
12 complaint or internally. UMF #54. It was the policy of MPD to
13 take sufficient corrective action to prevent its employees from
14 committing misconduct. UMF No. 55.

15
16 MPD executive management reviewed the incident at issue in
17 this case. UMF #56. MPD Chief Kime did not request an
18 administrative investigation because he did not believe the
19 evidence suggested that excessive force was utilized, or an
20 improper arrest was made. UMF #57.

21
22 III. STANDARD OF DECISION

23 Summary judgment is appropriate when "the pleadings, the
24 discovery and disclosure materials on file, and any affidavits
25 show that there is no genuine issue as to any material fact and
26 that the movant is entitled to judgment as a matter of law."
27 Fed. R. Civ. P. 56(c). A party moving for summary judgment
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1 "always bears the initial responsibility of informing the
2 district court of the basis for its motion, and identifying those
3 portions of the pleadings, depositions, answers to
4 interrogatories, and admissions on file, together with the
5 affidavits, if any, which it believes demonstrate the absence of
6 a genuine issue of material fact." *Celotex Corp. v. Catrett*, 477
7 U.S. 317, 323 (1986) (internal quotation marks omitted).
8

9 Where the movant will have the burden of proof on an issue
10 at trial, it must "affirmatively demonstrate that no reasonable
11 trier of fact could find other than for the moving party."
12 *Soremekun v. Thrifty Payless, Inc.*, 509 F.3d 978, 984 (9th Cir.
13 2007); *see also S. Cal. Gas Co. v. City of Santa Ana*, 336 F.3d
14 885, 888 (9th Cir. 2003) (noting that a party moving for summary
15 judgment on a claim as to which it will have the burden at trial
16 "must establish beyond controversy every essential element" of
17 the claim) (internal quotation marks omitted). With respect to an
18 issue as to which the non-moving party will have the burden of
19 proof, the movant "can prevail merely by pointing out that there
20 is an absence of evidence to support the nonmoving party's case."
21 *Soremekun*, 509 F.3d at 984.
22

23
24 When a motion for summary judgment is properly made and
25 supported, the non-movant cannot defeat the motion by resting
26 upon the allegations or denials of its own pleading, rather the
27 "non-moving party must set forth, by affidavit or as otherwise
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1 provided in Rule 56, 'specific facts showing that there is a
2 genuine issue for trial.'" *Id.* (quoting *Anderson v. Liberty*
3 *Lobby, Inc.*, 477 U.S. 242, 250 (1986)). "Conclusory, speculative
4 testimony in affidavits and moving papers is insufficient to
5 raise genuine issues of fact and defeat summary judgment." *Id.*
6

7 To defeat a motion for summary judgment, the non-moving
8 party must show there exists a genuine dispute (or issue) of
9 material fact. A fact is "material" if it "might affect the
10 outcome of the suit under the governing law." *Anderson*, 477 U.S.
11 at 248. "[S]ummary judgment will not lie if [a] dispute about a
12 material fact is 'genuine,' that is, if the evidence is such that
13 a reasonable jury could return a verdict for the nonmoving
14 party." *Id.* at 248. In ruling on a motion for summary judgment,
15 the district court does not make credibility determinations;
16 rather, the "evidence of the non-movant is to be believed, and
17 all justifiable inferences are to be drawn in his favor." *Id.* at
18 255.
19

20 21 IV. DISCUSSION

22 A. Claims Against Officer Gutknecht.

23 The Complaint, which is brought under Title 42 U.S.C.,
24 section 1983 ("Section 1983") and the Fourth and Fourteenth
25 Amendments to the United States Constitution, alleges that
26 Officer Gutknecht's "unlawful and malicious physical abuse of
27 Plaintiff..." caused Plaintiff "grievous bodily harm," and
28

1 "deprived [him] of his right to be secure in his person against
2 unreasonable seizure of his person, in violation of the Fourth
3 and Fourteenth Amendments...." Doc. 1, Compl., at 3-4.

4 Officer Gutknecht invokes the defense of qualified immunity,
5 which protects defendants "from liability for civil damages
6 insofar as their conduct does not violate clearly established
7 statutory or constitutional rights of which a reasonable person
8 would have known." *Squaw Valley Dev. Co. v. Goldberg*, 375 F.3d
9 936, 943 (9th Cir. 2004). Qualified immunity requires the court
10 to inquire whether, taken in the light most favorable to the
11 party asserting injury, do the facts alleged show the officer's
12 conduct violated a clearly established constitutional right.
13 *Saucier v. Katz*, 533 U.S. 194, 200-201 (2001); *see also* *Pearson*
14 *v. Callahan*, 129 S. Ct. 808 (2009). If the plaintiff's factual
15 allegations do not establish a violation of a constitutional (or
16 other federal) right, the court need not inquire whether the
17 right was "clearly established." *Pearson*, 12 S. Ct. at 818
18 (permitting court to exercise its "sound discretion" to determine
19 the order in which qualified immunity is analyzed).

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23 1. Personal Participation.

24 Liability for a constitutional tort "arises only upon a
25 showing of personal participation by the defendant." *Taylor v.*
26 *List*, 880 F.2d 1040, 1045 (9th Cir. 1989). Plaintiff must
27 establish the "integral participation" of Officer Gutknecht in
28

1 the alleged constitutional violations. *Jones v. Williams*, 297
2 F.3d 930, 935 (9th Cir. 2002).

3 Here, it is undisputed that the only contact Officer
4 Gutknecht had with Plaintiff was to ask him to sit on the curb,
5 followed by asking him a single question: "What's going on?"
6 Plaintiff does not allege that this conduct implicated his Fourth
7 Amendment rights. *See I.N.S. v. Delgado*, 466 U.S. 210, 216-217
8 (1984) (unless circumstances of encounter with police are so
9 intimidating as to demonstrate that a reasonable person would
10 have believed that he was not free to leave if he did not
11 respond, questioning does not result in detention under the
12 Fourth Amendment). Officer Gutknecht did not attempt to detain
13 Plaintiff prior to the altercation with Officer Shekhanian, UMF
14 ## 10-13, nor did Officer Gutknecht participate in the force
15 applied by Officer Shekhanian, UMF ## 14-17, 21-23. Officer
16 Gutknecht's subsequent participation was limited to keeping the
17 crowd away. Gutknecht had no direct participation in any alleged
18 Fourth Amendment violation.¹

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21 Officer Gutknecht's motion for summary judgment on the
22 Fourth Amendment claim is GRANTED.

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24 2. Fourteenth Amendment Claim.

25 Plaintiff also alleges that his Fourteenth Amendment rights
26 were violated. The central basis for this allegation appears to

27
28 ¹ Plaintiff has not argued that Gutknecht is liable under the
Fourth Amendment for failing to intercede.

1 be Plaintiff's claim of excessive use of force. "Where a
2 particular Amendment provides an explicit textual source of
3 constitutional protection against a particular sort of government
4 behavior, that Amendment, not the more generalized notion of
5 substantive due process, must be the guide for analyzing these
6 claims." *Albright v. Oliver*, 510 U.S. 266, 273 (1994). For this
7 reason, claims of excessive force or unlawful arrest must be
8 analyzed under the Fourth Amendment and its reasonableness
9 standard. *Graham v. Connor*, 490 U.S. 386, 395 (1989).

11 Plaintiff also alleges that he was charged with Penal Code
12 violations based on "false and fabricated" reports of the
13 defendant officers. However, generally, "the due process
14 requirements for criminal proceedings do not include a standard
15 for the initiation of a criminal prosecution." *Albright v.*
16 *Oliver*, supra, 510 U.S. at 283. Although a Plaintiff may bring a
17 Section 1983 claim for false arrest and/or malicious under the
18 Fourth Amendment, see *Galbraith v. County of Santa Clara*, 307
19 F.3d 1119, 1126 (9th Cir. 2002), such a claim requires a showing
20 that the criminal prosecution was induced by fraud, corruption,
21 perjury, fabricated evidence, or other wrongful conduct
22 undertaken in bad faith. See *Awabdy v. City of Adelanto*, 368
23 F.3d 1062, 1067 (9th Cir. 2004). Plaintiff has presented no such
24 evidence.
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27 The Fourteenth Amendment is not implicated in this case.
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1 Office Gutknecht's Motion for Summary Judgment on the
2 Fourteenth Amendment Claim is GRANTED.

3 Because Plaintiff has failed to establish that Officer
4 Gutknecht has violated any federal right, it is not necessary to
5 further examine qualified immunity.
6

7 B. Claims Against the City of Madera

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9 A public entity can only liable under Section 1983 for
10 injuries inflicted pursuant to a governmental "policy or custom."
11 *Monell v. Department of Social Services*, 436 U.S. 658, 691
12 (1978). To establish such liability, the plaintiff must
13 establish that: (1) a violation of constitutional rights
14 occurred; (2) the existence of a municipal policy or custom; and
15 (3) a causal nexus between the constitutional rights violation
16 and the municipal custom or policy. *City of Canton v. Harris*,
17 489 U.S. 378, 385-386 (1989).
18

19 Plaintiff alleges, among other things, that: (1) MPD failed
20 to discipline Officers Shekhanian and Gutknecht, despite having
21 knowledge that the two Officers were involved in several previous
22 excessive force incidents; (2) the City of Madera was aware of a
23 pattern of excessive force and inadequate discipline within MPD,
24 but took no action; (3) MPD intentionally, knowingly, and
25 recklessly failed to properly instruct its officers on the use of
26 force; (4) the Officers were acting pursuant to official policy
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1 and under the direction of MPD Chief Kime and the City; and (5)
2 MPD and the City approved of and/or ratified the Officers'
3 conduct. Compl. at 4-6. However, Plaintiff has presented
4 absolutely no evidence to support these allegations. To the
5 contrary, the undisputed evidence establishes that MPD's policies
6 and procedures are consistent with established standards. See
7 UMF ## 40-52.

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9 The City of Madera's motion for summary judgment on *Monell*
10 claims is GRANTED.

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12 V. CONCLUSION

13 For the reasons set forth above, the City and Officer
14 Gutketch's motions for summary judgment are GRANTED in their
15 entirety.

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17 SO ORDERED
18 Dated: March 8, 2010

19 /s/ Oliver W. Wanger
20 Oliver W. Wanger
21 United States District Judge
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