

1 Reed moves for summary judgment on his excessive force claim under state and federal
2 law, arguing no genuine dispute remains that Alimbuyao and Miller used excessive force by
3 repeatedly punching and kneeing him after he laid face down on the ground, was handcuffed,
4 and was not resisting. Reed contends this use of force was unreasonable because he had
5 surrendered and was surrounded by several armed officers, including canine officers and a
6 helicopter. Reed also moves for summary judgment on his due process claim, arguing that
7 Alimbuyao engaged in misconduct by releasing property to the passenger in the car Reed was
8 driving and that Ooms and Dennison engaged in misconduct by creating a false chain of custody
9 by claiming to have booked into NLVPD custody credit cards found in the car when the same
10 property was later booked into evidence by LVMPD. Reed contends that his parole was revoked
11 based in part on pictures taken of the credit cards in the front seat of the car.

12 The defendants oppose Reed's motion and move for summary judgment in their favor.
13 Alimbuyao and Miller argue that their use of force was reasonable given Reed's high-speed
14 flight in a stolen vehicle through residential neighborhoods, his continued flight on foot after he
15 crashed the car, his refusal to obey commands to stop, their knowledge that he had conducted an
16 armed carjacking, and his continued resistance while the officers tried to handcuff him. As for
17 the due process claims, the defendants argue there is no constitutional violation arising from a
18 crime scene technician taking photographs of the contents of a vehicle or from a police officer
19 releasing items to the passengers that own those items. Alternatively, the individual defendants
20 argue they are entitled to qualified immunity on all claims. Finally, NLVPD argues it is entitled
21 to summary judgment because there is no basis to impose liability on it under *Monell v.*
22 *Department of Social Services*, 436 U.S. 658 (1978).

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1 The parties are familiar with the facts so I do not recite them here except where necessary
2 to resolve the motions. I deny Reed’s motion because he has not presented sufficient evidence to
3 entitle him to judgment as a matter of law on any of his claims. I deny the defendants’ motion
4 for summary judgment on the unreasonable seizure and excessive force claims. Taking as true
5 Reed’s statement that the headlights for the car he was driving were illuminated, a reasonable
6 jury could find the officers lacked probable cause to initiate the traffic stop that started the series
7 of events leading up to his arrest. Additionally, viewing the facts in the light most favorable to
8 Reed, a reasonable jury could find that Alimbuyao and Miller used excessive force by repeatedly
9 striking Reed after he had surrendered and been handcuffed.

10 I grant the defendants’ motion as to the federal due process claim, however, because
11 Reed has not presented evidence showing that the same evidence was booked into two police
12 departments and because the officers are entitled to qualified immunity. And I grant the
13 defendants’ motion as to NLVPD on the federal claims because Reed has not presented evidence
14 of any NLVPD policy, custom, or practice that caused the alleged use of excessive force or the
15 seizure without probable cause.

16 The defendants did not move for summary judgment on Reed’s state law claims.
17 Because it is possible that Reed’s state law claim in count three can be resolved as a matter of
18 law, I extend the dispositive motion deadline to allow the parties to file dispositive motions as to
19 that claim only.

20 **I. ANALYSIS**

21 Summary judgment is appropriate if the movant shows “there is no genuine dispute as to
22 any material fact and the movant is entitled to judgment as a matter of law.” Fed. R. Civ. P.
23 56(a). A fact is material if it “might affect the outcome of the suit under the governing law.”

1 *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). A dispute is genuine if “the evidence
2 is such that a reasonable jury could return a verdict for the nonmoving party.” *Id.*

3 The party seeking summary judgment bears the initial burden of informing the court of
4 the basis for its motion and identifying those portions of the record that demonstrate the absence
5 of a genuine issue of material fact. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986). The
6 burden then shifts to the non-moving party to set forth specific facts demonstrating there is a
7 genuine issue of material fact for trial. *Sonner v. Schwabe N. Am., Inc.*, 911 F.3d 989, 992 (9th
8 Cir. 2018) (“To defeat summary judgment, the nonmoving party must produce evidence of a
9 genuine dispute of material fact that could satisfy its burden at trial.”). I view the evidence and
10 reasonable inferences in the light most favorable to the non-moving party. *Zetwick v. Cnty. of*
11 *Yolo*, 850 F.3d 436, 440-41 (9th Cir. 2017).

12 To establish liability under 42 U.S.C. § 1983, a plaintiff must show the deprivation of a
13 right secured by the Constitution and laws of the United States and that the deprivation was
14 committed by a person acting under color of state law. *Broam v. Bogan*, 320 F.3d 1023, 1028
15 (9th Cir. 2003). The defendants do not contest that they acted under color of law. Thus, the
16 dispute centers on whether they violated Reed’s constitutional rights.

17 The parties also dispute whether the individual defendants are entitled to qualified
18 immunity. To allay the “risk that fear of personal monetary liability and harassing litigation will
19 unduly inhibit officials in the discharge of their duties,” government officials performing
20 discretionary functions may be entitled to qualified immunity for claims made under § 1983.
21 *Anderson v. Creighton*, 483 U.S. 635, 638 (1987). Qualified immunity protects “all but the
22 plainly incompetent or those who knowingly violate the law.” *Malley v. Briggs*, 475 U.S. 335,
23 341 (1986). I determine whether the defendant officers are entitled to qualified immunity by

1 asking (1) whether the facts viewed in the light most favorable to the plaintiffs establish that the
2 officers violated a constitutional right and (2) “if so, whether that right was clearly established at
3 the time of the event.” *Rosenbaum v. Washoe Cnty.*, 663 F.3d 1071, 1075 (9th Cir. 2011). I may
4 address these two prongs in any order and, depending on the conclusion I reach, I need not
5 address both prongs. *Pearson v. Callahan*, 555 U.S. at 223, 236-37 (2009).

6 A right is clearly established if “it would be clear to a reasonable officer that his conduct
7 was unlawful in the situation he confronted.” *Wilkins v. City of Oakland*, 350 F.3d 949, 954 (9th
8 Cir. 2003) (emphasis omitted) (quoting *Saucier v. Katz*, 533 U.S. 194, 202 (2001)). I make this
9 second inquiry “in light of the specific context of the case, not as a broad general proposition.”
10 *Saucier*, 533 U.S. at 201. An officer will be entitled to qualified immunity even if he was
11 mistaken in his belief that his conduct was lawful, so long as that belief was reasonable. *Wilkins*,
12 350 F.3d at 955.

13 **A. Unreasonable Seizure (Count One)**

14 Reed does not move for summary judgment on this claim, but the defendants do.
15 Viewing the evidence in the light most favorable to Reed, a reasonable jury could find that the
16 officers lacked reasonable suspicion¹ to stop Reed for not having his headlights illuminated
17 because Reed avers that his headlights were on. ECF No. 29 at 5. The defendants do not identify
18 any other basis for stopping Reed. Consequently, the jury will have to resolve if the officers had
19 reasonable suspicion to make the initial traffic stop.

20 The defendants argue they are entitled to qualified immunity on this claim because they
21 were reasonably mistaken about whether the headlights were on. But the defendants do not

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23 ¹ Although Reed argues the officers needed probable cause, the “Fourth Amendment requires only reasonable suspicion in the context of investigative traffic stops.” *United States v. Lopez-Soto*, 205 F.3d 1101, 1105 (9th Cir. 2000).

1 explain how the officers could have been reasonably mistaken about whether the car's headlights
2 were on. According to Alimbuyao's police report, he was driving in the opposite direction from
3 Reed when he noticed a vehicle approaching "with no head lamps illuminated." ECF No. 48-1 at
4 3. I therefore deny the defendants' motion on this claim. Additionally, the defendants do not
5 address the state law portion of count one, so that remains pending as well. *See* ECF No. 29 at 5.

6 **B. Excessive Force (Count Two)**

7 Reed moves for summary judgment on this claim, contending the officers used
8 unreasonable force as a matter of law. The defendants also move for summary judgment,
9 arguing that they used reasonable force as a matter of law or, alternatively, they are entitled to
10 qualified immunity.

11 Excessive force in the course of an arrest is analyzed under "the Fourth Amendment's
12 'objective reasonableness' standard." *Scott v. Harris*, 550 U.S. 372, 381 (2007) (quoting *Graham*
13 *v. Connor*, 490 U.S. 386, 388 (1989)). To determine whether the officers' actions were
14 objectively reasonable in light of the circumstances confronting them, I "balance the nature and
15 quality of the intrusion on the individual's Fourth Amendment interests against the importance of
16 the governmental interests alleged to justify the intrusion." *Id.* at 383 (quotation omitted).

17 Viewing the facts in the light most favorable to the defendants on Reed's motion, a
18 reasonable jury could find Miller and Alimbuyao used reasonable force because Reed engaged in
19 a high-speed flight in a stolen car through residential neighborhoods and the officers learned
20 during the chase that the stolen car was related to an armed carjacking. ECF No. 48-1 at 3-5.
21 According to the officers, Reed tossed a gun out the car window, fled on foot after he crashed the
22 car, disobeyed officer commands to stop, and continued to resist being handcuffed even after he
23 was on the ground. *Id.* at 3-5, 39, 64. A reasonable jury thus could find that the blows Miller and

1 Alimbuyao delivered were reasonable to secure Reed in handcuffs and that all use of force
2 ceased upon successfully handcuffing him. *Id.* at 20, 39, 64. I therefore deny Reed’s motion on
3 this claim.

4 Viewing the evidence in the light most favorable to Reed on the defendants’ motion, a
5 reasonable jury could find Miller and Alimbuyao used unreasonable force by punching and
6 kneeling Reed after he had surrendered, laid on the ground, and submitted to being handcuffed
7 while being surrounded by numerous armed officers. According to Reed, the blows were
8 delivered after he was handcuffed and not resisting. ECF No. 45 at 14-15.² The officers are not
9 entitled to qualified immunity because a reasonable officer would know that delivering multiple
10 strikes with a fist or knee to an unresisting, handcuffed individual is unreasonable. *See, e.g.,*
11 *Blankenhorn v. City of Orange*, 485 F.3d 463, 481 (9th Cir. 2007) (stating a reasonable officer
12 would know that “punching Blankenhorn to free his arms when, in fact, he was not manipulating
13 his arms in an attempt to avoid being handcuffed” violated the Fourth Amendment). I therefore
14 deny the defendants’ motion on this claim. The defendants again do not address the state law
15 component of this claim, so that also remains pending. *See* ECF No. 29 at 7.

16 C. Due Process

17 Reed’s due process claim is based on what he views as discrepancies among various
18 police reports. Alimbuyao’s report indicates that the following items were retrieved by Ooms
19 and “booked as found property” at NLVPD: a Nevada driver’s license belonging to Kriselle
20 Angulo, a Nevada instruction permit and social security card belonging to Alyssa Aromin, and a
21 Bank of America Visa card belonging to Teresita Barinque. ECF No. 48-1 at 6. Dennison’s

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23 ² Reed references video of the incident, but no party has provided me video evidence. *See, e.g.,*
ECF No. 45 at 2. Reed attaches to his motion an exhibit cover page indicating the video is “to be
provided,” but he did not provide it. *Id.* at 20.

1 report documents the impoundment of items related to the gun and ammunition. *Id.* at 23, 27-32.
2 She also reports taking photographs of the stolen vehicle Reed drove. *Id.* at 32. Her report does
3 not document taking any credit cards into custody. The stolen car was released to LVMPD and
4 that police department's property report states that credit cards for Aromin and Angulo were
5 located in the car and taken into LVMPD custody. ECF No. 45 at 39-40. There is no evidence
6 that the same credit cards were taken into custody by both NLVPD and LVMPD, and thus there
7 is no evidence of a chain of custody issue.

8 Moreover, Reed does not explain how any error in documenting the booking of the credit
9 cards (if there was one) undermines the validity of the photographs Dennison took of the car's
10 contents, and Reed alleges the photographs (not the credit cards) are what was presented to the
11 parole board and grand jury. *Id.* at 18. Because this portion of his claim has no factual basis even
12 when viewing the evidence in the light most favorable to Reed, and because he presents no
13 clearly established law that would put the defendants on notice that their conduct was unlawful, I
14 grant the defendants' motion for summary judgment and deny Reed's motion on this portion of
15 his due process claim.

16 Reed also disputes that the passenger signed a property release because the passenger told
17 him she had never signed a property release. *Id.* at 46. He contends that Alimbuyao falsely
18 stated in his report that the passenger signed a release, so Alimbuyao's police report was
19 falsified. Even assuming Alimbuyao falsely stated in his report that the passenger signed a
20 release,³ Reed has not explained how releasing the passenger's property to her, or indicating that
21 she signed a release when she did not, violated his due process rights. Nor has he pointed to
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23 ³ Alimbuyao's report states that a "property release was conducted and the property was released" to the passenger. ECF No. 48-1 at 7.

1 clearly established law that would put an officer on notice that releasing the passenger's property
2 to her or falsely claiming she signed a property release would violate Reed's due process rights.
3 I therefore grant the defendants' motion and deny Reed's motion on his § 1983 due process
4 claim.

5 The defendants did not move for summary judgment on the state law portion of this
6 claim. *See* ECF No. 29 at 11. But because the state law claim in count three might be decided as
7 a matter of law without the need for a trial, I will extend the dispositive motion deadline for the
8 parties to file new motions for summary judgment on this claim only.

9 **D. *Monell* Liability**

10 NLVPD moves for summary judgment on all the federal claims because Reed has not
11 identified or provided evidence of a policy, custom, or practice that was the moving force behind
12 any violations. Reed does not respond to this argument.

13 To sue a local government under § 1983, it is not sufficient to allege a respondeat
14 superior theory of liability for actions of a municipality's employees. *Monell*, 436 U.S. at 691. A
15 plaintiff must allege that the government's policy or custom caused the violation. *Id.* at 694. The
16 injuries must arise from a municipality's "deliberate action" made "pursuant to (1) an official
17 policy; (2) a pervasive practice or custom; (3) a failure to train, supervise, or discipline; or (4) a
18 decision or act by a final policymaker." *Horton by Horton v. City of Santa Maria*, 915 F.3d 592,
19 602-03 (9th Cir. 2019).

20 Because Reed did not respond to this portion of the defendants' motion, he has not
21 pointed to evidence that would raise an issue of fact regarding NLVPD's liability on any of the
22 § 1983 claims. To the contrary, Reed argues that Miller and Alimbuyao's use of force was in
23 violation of NLVPD policy. ECF No. 45 at 15. I therefore grant the defendants' motion as to

1 NLVPD on the § 1983 claims. But because the defendants did not address the state law claims,
2 it is possible that NLVPD may be liable on the state law claims under a respondeat superior
3 theory.


4 **II. CONCLUSION**

5 I THEREFORE ORDER that plaintiff David Reed's motion for partial summary
6 judgment (**ECF No. 45**) is denied.

7 I FURTHER ORDER that the defendants' motion for summary judgment (**ECF Nos. 49,**
8 **53**) is granted in part. The motion is granted as to plaintiff David Reed's due process claim
9 under 42 U.S.C. § 1983 for all defendants. The motion is also granted as to defendant North Las
10 Vegas Police Department on all of plaintiff David Reed's claims under 42 U.S.C. § 1983. The
11 motion is denied in all other respects.

12 I FURTHER ORDER that that the dispositive motion deadline is extended to October 22,
13 2021 for the state law claim in count three only. If neither party files a motion by that date, then
14 the proposed joint pretrial order is due November 15, 2021. If either party files a motion, then
15 the proposed joint pretrial order is due 30 days after I resolve the motion.

16 DATED this 23rd day of September, 2021.

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20 ANDREW P. GORDON
21 UNITED STATES DISTRICT JUDGE
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