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U.S. COURT OF APPEALS

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UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

GUVEN UZUN, Plaintiff-Appellant, v. CITY OF SANTA MONICA, a Government Entity; et al., Defendants-Appellees, and DOES, 1 through 50 inclusive, Defendant.	No. 21-55785 D.C. No. 2:20-cv-05756-SB-MAA MEMORANDUM*

Appeal from the United States District Court
for the Central District of California
Stanley Blumenfeld, Jr., District Judge, Presiding

Argued and Submitted October 20, 2022
Pasadena, California

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

Before: HIGGINSON,[**] CHRISTEN, and BUMATAY, Circuit Judges.

Plaintiff Guven Uzun appeals the district court's order granting summary judgment for defendants, the City of Santa Monica and two of its police officers, on Uzun's excessive force claim under 42 U.S.C. § 1983 and state-law battery and negligence claims. We have jurisdiction pursuant to 28 U.S.C. § 1291, and we affirm in part, reverse in part, and remand. Because the parties are familiar with the facts of this case, we do not recite them here.

We review de novo a district court's order granting summary judgment, *Evans v. Skolnik*, 997 F.3d 1060, 1064 (9th Cir. 2021), and we may affirm on any ground supported by the record, *M & T Bank v. SFR Invs. Pool 1, LLC*, 963 F.3d 854, 857 (9th Cir. 2020). Summary judgment is appropriate when the record shows "there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). "The evidence of the non-movant is to be believed, and all justifiable inferences are to be drawn in his favor." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 255 (1986). However, a court may disregard the non-movant's version of the facts to the extent it is

[**] The Honorable Stephen A. Higginson, United States Circuit Judge for the U.S. Court of Appeals for the Fifth Circuit, sitting by designation.

"blatantly contradicted by the record, so that no reasonable jury could believe it." *Scott v. Harris*, 550 U.S. 372, 380 (2007).

1. We affirm the district court's order granting summary judgment for defendants on Uzun's first cause of action: excessive force under § 1983. Under *Graham v. Connor*, we determine whether a use of force was excessive by balancing the "'nature and quality of the intrusion on the individual's Fourth Amendment interests' against the countervailing governmental interests at stake," which requires paying "careful attention to the facts and circumstances of each particular case, including the severity of the crime at issue, whether the suspect poses an immediate threat to the safety of the officers or others, and whether he is actively resisting arrest or attempting to evade arrest by flight." 490 U.S. 386, 396 (1989) (quoting *Tennessee v. Garner,* 471 U.S. 1, 8 (1985)).

Uzun contends the officers used excessive force because they failed to double-lock his handcuffs, allowing the cuffs to tighten excessively when Uzun was placed in the patrol car. He maintains Ninth Circuit case law on tight handcuffing establishes that injury alone may suffice to show excessive force, but we are not persuaded. In all but one of the cases Uzun cites, the police officers were unresponsive—often callously so—to a plaintiff's complaints that the handcuffs were painfully tight. *See, e.g.*, *Wall v. County of Orange*, 364 F.3d

1107, 1109–10, 1112 (9th Cir. 2004); *LaLonde v. County of Riverside*, 204 F.3d 947, 960 (9th Cir. 2000); *Alexander v. County of Los Angeles*, 64 F.3d 1315, 1322–23 (9th Cir. 1995); *Palmer v. Sanderson*, 9 F.3d 1433, 1436 (9th Cir. 1993). In the remaining case, the plaintiff did not complain of pain, but a witness testified the officers were "rough and abusive" to the plaintiff when handcuffing her. *See Hansen v. Black*, 885 F.2d 642, 645 (9th Cir. 1989).

Here, body camera footage shows the officers used only the force necessary to handcuff Uzun, and they immediately loosened the handcuffs after hearing Uzun cry out in pain upon sitting down in the patrol car. With the *Graham* framework in mind and viewing the evidence in the light most favorable to Uzun, we hold that no reasonable trier of fact could conclude the officers' behavior constituted excessive force. We therefore affirm the district court's order granting summary judgment on Uzun's excessive force claim.

2. We also affirm the district court's order granting summary judgment for defendants on Uzun's fourth cause of action: state-law battery. Under California law, when an alleged battery was committed by a police officer, the plaintiff must prove "unreasonable force" in addition to the typical elements of the tort. *See Yount v. City of Sacramento*, 183 P.3d 471, 484 (Cal. 2008). At oral argument, Uzun's counsel conceded that this level of force is equivalent to Fourth

Amendment "excessive force." Because we hold the officers did not use excessive force, we affirm summary judgment on Uzun's battery claim.

3. We reverse and remand the district court's order granting summary judgment on Uzun's third cause of action: state-law negligence. The district court ruled this claim was "precluded by the grant of summary judgment for the Officers on the section 1983 claim[]." But California negligence law is broader than federal excessive force law. *See Vos v. City of Newport Beach*, 892 F.3d 1024, 1037–38 (9th Cir. 2018). Uzun only needed to prove the officers had a duty to use due care, they breached that duty, and the breach was the proximate cause of his injury. *Hayes v. County of San Diego*, 305 P.3d 252, 256, 259 (Cal. 2013).

It is undisputed that Officer Valenzuela failed to double-lock Uzun's handcuffs, and Santa Monica Police Department policy states that "[w]hen feasible, handcuffs shall be double-locked to prevent tightening." *See Dillenbeck v. City of Los Angeles*, 446 P.2d 129, 132 (Cal. 1968) (stating "safety rules" are "admissible as evidence that due care requires the course of conduct prescribed in the rule"). Further, Uzun provided evidence that the failure to double-lock his handcuffs caused lasting damage to his radial nerve consistent with a "tight handcuff compression injury." Viewing this evidence in the light most favorable to Uzun, a reasonable trier of fact could conclude the officers were negligent.

Though summary judgment was unwarranted based on the merits of Uzun's negligence claim, defendants also argued the claim was barred by California statutory immunities. The district court suggested that California Government Code sections 815.2 and 821.6 provided an alternate basis for summary judgment on Uzun's state-law claims. But section 821.6 does not immunize police conduct during an arrest, *see Blankenhorn v. City of Orange*, 485 F.3d 463, 487–88 (9th Cir. 2007), and section 815.2 will only immunize the City if there is a separate source of immunity for the officers, *see* Cal. Gov't Code § 815.2(b) ("[A] public entity is not liable for an injury resulting from an act or omission of an employee of the public entity where the employee is immune from liability.").

Defendants argued in the district court that the officers' conduct was also immunized by California Government Code section 820.2, but the summary judgment order did not reach section 820.2. We reverse the district court's order granting summary judgment on Uzun's negligence claim and remand with instructions for the district court to consider in the first instance whether section 820.2 immunizes the officers' conduct.

AFFIRMED IN PART, REVERSED IN PART, AND REMANDED for proceedings consistent with this disposition, with the parties to bear their own costs.