

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

NOV 28 2022

FOR THE NINTH CIRCUIT

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

MICHAEL YAROSHINSKY,

No. 21-56173

Plaintiff-Appellant,

D.C. No.

v.

2:19-cv-08255-SB-PD

CITY OF LOS ANGELES, Erroneously
Sued As City of Los Angeles Police
Department; et al.,

MEMORANDUM*

Defendants-Appellees.

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

Submitted November 25, 2022**
San Francisco, California

Before: WALLACE, FERNANDEZ, SILVERMAN, Circuit Judges.

Michael Yaroshinsky appeals pro se from the district court's summary judgment. We have jurisdiction pursuant to 28 U.S.C. § 1291. We review a district

* 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).

court's summary judgment de novo. *See Sulyma v. Intel Corp. Inv. Policy Comm.*, 909 F.3d 1069, 1072 (9th Cir. 2018). We affirm.

First, the district court properly held that Officer Jimenez-Escalante has qualified immunity, as he did not violate any of Yaroshinsky's constitutional rights, and that his state-law claims fail. Yaroshinsky did not produce sufficient evidence that Jimenez-Escalante used excessive force while handcuffing him. "[H]andcuffing is a difficult exercise, often requiring some use of force[.]" *Fargo v. City of San Juan Bautista*, 857 F.2d 638, 642 (9th Cir. 1988), *abrogated on other grounds by Lewis v. Sacramento Cnty.*, 98 F.3d 434, 440 (9th Cir. 1996). Here, at most, Yaroshinsky suffered a rotator cuff disorder, which demonstrates the minimal force used. *See Williamson v. City of National City*, 23 F.4th 1146, 1152 (9th Cir. 2022) (holding that the "intrusion at issue was minimal" despite the plaintiff suffering a torn rotator cuff, a sprained wrist, and mild swelling). Moreover, Jimenez-Escalante adjusted the handcuffs when Yaroshinsky complained. *See Palmer v. Sanderson*, 9 F.3d 1433, 1436 (9th Cir. 1993).

In addition, Yaroshinsky did not produce sufficient evidence that Jimenez-Escalante used excessive force when carrying his weapon. As the district court found, Jimenez-Escalante holstered his weapon within two seconds after entering Yaroshinsky's bedroom. From the perspective of a reasonable officer at the scene, without the benefit of hindsight, Jimenez-Escalante only carried his weapon as long

as, and no longer than, necessary to investigate and secure the scene. *See Williamson*, 23 F.4th at 1151.

Even assuming for the sake of argument there were no exigent circumstances justifying Jimenez-Escalante’s warrantless entry into the residence, Yaroshinsky did not present any precedent holding that his rights were “clearly established law” in a manner “‘particularized’ to the facts of the case.” *White v. Pauly*, 137 S.Ct. 548, 552 (2017). Rather, a reasonable officer may have concluded that Yaroshinsky’s roommate’s physical safety was in danger. *See Bonivert v. City of Clarkston*, 883 F.3d 865, 872 (9th Cir. 2018) (holding that the “clearly established” element of the qualified immunity analysis “protects an officer who reasonably, but mistakenly, perceives facts that would have made his actions lawful”).

Second, the district court properly held that Sergeants Morse, Nelson, and Nily are entitled to qualified immunity, as they did not violate any of Yaroshinsky’s constitutional rights, and that his state-law claims fail. The Sergeants’ decision to arrest and book Yaroshinsky, rather than release him, did not constitute a constitutional violation. Rather, there was independent probable cause to believe that Yaroshinsky committed a misdemeanor. *See Hopkins v. Bonvicino*, 573 F.3d 752, 774 (9th Cir. 2009). Yaroshinsky presented no evidence that the Sergeants improperly exercised their discretion when deciding to arrest him. *See Ballantine v. Tucker*, 28 F.4th 54, 62 (9th Cir. 2022); *cf. Meyers v. Redwood City*, 400 F.3d 765,

772 (9th Cir. 2005) (“California law gives the officer the choice of making the citizen’s arrest or not, but there are powerful incentives to make the arrest.”). In addition, Yaroshinsky has no constitutional or state right to an immediate release following a lawful arrest. *See Higbee v. City of San Diego*, 911 F.2d 377, 379 (9th Cir. 1990); Cal. Pen. Code § 853.6(g).

Last, the district court did not err in holding that the City of Los Angeles has no liability. As Yaroshinsky did not suffer any violations of a constitutional right when Officer Jimenez-Escalante placed him in handcuffs, the City cannot be liable. *See Benavidez v. Cnty. of San Diego*, 993 F.3d 1134, 1153–54 (9th Cir. 2021). Moreover, Yaroshinsky did not establish a practice or policy sufficient to fasten liability to the City. *Id.* at 1154.

AFFIRMED.