

1 **WO**

2
3
4
5
6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
8

9 Johnny Wheatcroft,

10 Plaintiff,

11 v.

12 City of Glendale, et al.,

13 Defendants.
14

No. CV-18-02347-PHX-MTL

ORDER

15 Before the Court is Defendant Officer Michael Fernandez Motion for
16 Reconsideration (Doc. 299) of this Court's Order denying summary judgment (Doc. 294).
17 Per the Court's request, Plaintiffs Johnny Wheatcroft and minors J.W. and B.W have
18 filed a response in opposition. (Doc. 307.) Upon reconsideration, the Court grants in
19 part and denies in part the motion.

20 **I.**

21 The Court previously set forth this case's background in detail. (Doc. 294 at 1–5.)
22 Defendants Officers Michael Fernandez, Matt Schneider and Mark Lindsey as well as the
23 City of Glendale moved for summary judgment on all of Plaintiffs' counts against them.
24 (Docs. 245 and 274.) The Court's summary judgment order addressed many issues,
25 including denying Defendants' motion as to Plaintiffs' claims for excessive force and
26 civil rights violations. (Doc. 294 at 40.) The Court also implicitly denied Officer
27 Fernandez's qualified immunity claim. (*Id.* at 13–15; 24–26.)

28 ///

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28

2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

16
17
18
19
20
21
22
23
24
25
26
27
28

1 299 at 3.) Plaintiffs dispute that Officer Fernandez thought Wheatcroft struck Officer
2 Lindsey. (Doc. 261 at ¶ 66.) But Plaintiffs’ only support for this assertion is Officer
3 Fernandez’s post-hoc assignment of blame. (*See id.*, citing Doc. 261-2 at 27.)
4 Accordingly, the Court concludes that this is not a material disputed fact, and in the
5 moment, Officer Fernandez believed Wheatcroft struck Officer Lindsey. Based on
6 Officer Fernandez’s position on the drivers’ side of the car, then walking around the car
7 to see Officer Lindsey unconscious on the ground with Officer Schneider trying to detain
8 Wheatcroft, the Court concludes this was a reasonable mistake of fact.

9 To assess whether Officer Fernandez is entitled to qualified immunity, the Court
10 must apply a two-step framework: whether the facts as shown by plaintiff state a
11 violation of a constitutional right; and whether that right was clearly established at the
12 time of the events in question. *Saucier v. Katz*, 533 U.S. 194, 201 (2001). “The doctrine
13 of qualified immunity protects government officials ‘from liability for civil damages
14 insofar as their conduct does not violate clearly established statutory or constitutional
15 rights of which a reasonable person would have known.’” *Pearson v. Callahan*, 555 U.S.
16 223, 231 (2009) (quoting *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982)). “Qualified
17 immunity balances two important interests—the need to hold public officials accountable
18 when they exercise power irresponsibly and the need to shield officials from harassment,
19 distraction, and liability when they perform their duties reasonably.” *Id.* “The protection
20 of qualified immunity applies regardless of whether the government official’s error is ‘a
21 mistake of law, a mistake of fact, or a mistake based on mixed questions of law and
22 fact.’” *Id.* (quoting *Groh v. Ramirez*, 540 U.S. 551, 567 (2004) (Kennedy, J., dissenting)).

23 Here, viewing the facts in the light most favorable to Plaintiffs, the Court finds
24 that Officer Fernandez is entitled to qualified immunity on both Plaintiffs’ excessive
25 force and familial association claims.

26 The Court has already concluded that Officer Fernandez’s mistake of fact
27 regarding who knocked out Wheatcroft was reasonable. Though it is clearly established
28 that an individual has a right to be free from excessive force, and that “force is only

1 justified when there is a need for force,” *Blankenhorn v. City of Orange*, 485 F.3d 463,
2 481 (9th Cir. 2007), a reasonably mistaken officer is justified in using “more force than in
3 fact was needed” when he or she believes that a suspect is “likely to fight back,” *Saucier*,
4 533 U.S. at 205. Plaintiffs argue that Officer Fernandez deployed his Taser against
5 Wheatcroft while he was “defenseless” and he “posed no immediate threat.” (Doc. 307 at
6 2.) Plaintiffs quote *Bryan v. MacPherson*, 630 F.3d 805, 809 (9th Cir. 2010) to argue that
7 “there was no immediate threat.” (*Id.*) But in *Bryan*, the plaintiff was “obviously and
8 noticeably unarmed, made no threatening statements or gestures, did not resist arrest or
9 attempt to flee, but was standing inert twenty to twenty-five feet away from the officer.”
10 630 F.3d at 809. Here, Officer Fernandez testified at his deposition that he “couldn’t see
11 what [Wheatcroft] was holding in his hands” and Wheatcroft was within several feet of
12 an unconscious officer while thrashing around. (Doc. 246-1 at 172). Officer Fernandez’s
13 single use of a Taser in dart mode was reasonable under the circumstances.

14 Likewise, given Officer Fernandez’s mistake of fact and even viewing the facts in
15 the light most favorable to Plaintiffs, no reasonable jury could conclude that Officer
16 Fernandez had a purpose to harm Wheatcroft outside of legitimate law enforcement
17 objectives. The Court has already determined that the purpose to harm standard applies
18 to the five-minute melee between the Defendant Officers and Wheatcroft. (Doc. 294 at
19 24.) Thus, Plaintiffs must prove that Officer Fernandez was driven by “illegitimate law
20 enforcement objectives,” such as “bullying a suspect or getting even.” *A.D. v. California*
21 *Highway Patrol*, 712 F.3d 446, 453 (9th Cir. 2013) (quoting *Wilkinson v. Torres*, 610
22 F.3d 546, 554 (9th Cir. 2010) (internal alterations and quotations omitted)). Plaintiff’s
23 evidence falls short of this standard. (Doc. 307 at 5, *see also* Doc. 246-1 at 172.)
24 Considering Officer Fernandez’s reasonable mistake of fact, no reasonable jury could
25 conclude that illegitimate law enforcement objectives were behind his decision to Tase
26 Wheatcroft one time. Officer Fernandez believed Wheatcroft had struck Officer Lindsey
27 and knocked him unconscious and was still unhandcuffed. Accordingly, his subsequent
28 decision to Tase him was not done with “an illegitimate purpose in mind.” *Id.* (quoting

1 *Porter v. Osborn*, 546 F.3d 1131, 1140 (9th Cir. 2008)).

2 **IV.**

3 Defendants assert that “case law is legion that excessive force claims must be
4 analyzed on an individualized basis.” (Doc. 299 at 7.) A motion for reconsideration may
5 not repeat previously made arguments. LRCiv. 7.2(g). As such, a motion for
6 reconsideration should not be used to ask the court to rethink what it has already thought
7 through in its previous ruling. *Def. of Wildlife v. Browner*, 909 F. Supp. 1342, 1351 (D.
8 Ariz. 1995). Accordingly, mere disagreement with the previous order is an insufficient
9 basis for reconsideration. *Adams v. Symetra Life Ins. Co.*, No. CV-18-0378-TUC-JGZ
10 (LAB), 2020 WL 4814249, at *2 (D. Ariz. Aug. 19, 2020). Defendants’ motion is denied
11 because it relitigates arguments from the summary judgment phase.

12 Officer Fernandez also argues that he is “entitled to common law qualified
13 immunity from Plaintiff’s state law claims.” (Doc. 299 at 9.) But Plaintiff did not allege
14 any state law claims against Officer Fernandez that survived the summary judgment
15 stage. (See Docs. 35, 294.) Nevertheless, the Court, having granted summary judgment
16 for Defendants on Plaintiffs’ remaining § 1983 claims, dismisses Officer Fernandez from
17 this case. Defendants’ remaining arguments, as related to Officer Fernandez’s conduct
18 forming the basis for Plaintiffs’ state law claims, is better suited for a motion in limine,
19 and is denied without prejudice.

20 **V.**

21 Accordingly,

22 **IT IS ORDERED granting in part and denying in part** Defendants’ Motion for
23 Clarification/Reconsideration. (Doc. 299.)

24 **IT IS ORDERED granting** Defendants’ Motion for Summary Judgment (Docs.
25 245 and 274) as to Plaintiffs’ claims for excessive force (Count I) and civil rights
26 violations (Count V) as to Defendant Michael Fernandez. As set forth herein,
27 Defendants’ motion for reconsideration is denied in all other respects.

28 ///

