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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

ESTATE OF DWAYNE ZACHARY,
et al.,

No. 2:06-cv-01652 MCE-PAN

Plaintiffs,

v.

MEMORANDUM & ORDER

COUNTY OF SACRAMENTO,
et al.,

Defendants.

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The Estate of Dwayne Zachary and several of his heirs (collectively, "Plaintiffs"), seek redress from Sacramento County and several individually named members of the Sacramento County Sheriff's Department (collectively, "Defendants") from an altercation between several deputies and Mr. Zachary, which led to Mr. Zachary's in-custody death.

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1 Following testimony at trial, both Plaintiffs and Defendants have
2 each separately moved for a Judgment as a Matter of Law ("JMOL"),
3 pursuant to Federal Rule of Civil Procedure 50(a).¹ For the
4 following reasons, both parties' motions are denied.

5
6 **BACKGROUND**
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8 This action is brought by the heirs of Mr. Zachary, who died
9 while being taken into custody by Sacramento County Sheriff's
10 Deputies. Mr. Zachary was under the influence of three (3) days
11 worth of cocaine and ecstasy at the time of the altercation.
12 Several deputies were originally called to Mr. Zachary's home in
13 response to a 911 call alleging Mr. Zachary had committed
14 domestic violence.² The deputies arrived at Mr. Zachary's
15 residence, who answered the door in what appeared to be an
16 agitated state, and without clothing.

17 The officers entered Mr. Zachary's home with his permission,
18 and proceeded to investigate the domestic disturbance call. As
19 part of police protocol and for officer safety, the deputies
20 handcuffed Mr. Zachary while they investigated the call, and
21 searched his residence. Upon finding no evidence of a domestic
22 violence victim, the deputies left the premises and made their
23 way to their patrol vehicles.

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26 ¹ Unless otherwise noted, all further references to Rule or
Rules are to the Federal Rules of Civil Procedure.

27 ² The deputies responded to investigate a possible violation
28 of California Penal Code § 273.5 upon indication that someone was
attempting to harm another person within a domestic relationship.

1 However, the officers were unable to leave the premises as
2 Mr. Zachary approached them wearing only an open bathrobe (with
3 no undergarments) and one hand behind his back saying something
4 which the deputies did not understand. As a result of this
5 conduct, Mr. Zachary was directed to show his hands which he did
6 not do, instead running back into his home and ignoring the
7 deputies' orders to stop. The deputies followed Mr. Zachary into
8 his home in the course of the foot pursuit.

9 An extended struggle resulted in Mr. Zachary being
10 handcuffed, restrained with maximum restraints, and subsequent
11 death. Plaintiffs sought monetary damages for violations of the
12 Fourth and Fourteenth Amendments.

13 A jury trial commenced on November 15, 2010. On
14 December 13, 2010, Plaintiffs filed a written motion requesting
15 the Court find a JMOL. Specifically, Plaintiffs assert that
16 uncontroverted evidence establishes that Defendants violated
17 Mr. Zachary's Fourth Amendment rights when they entered his home
18 without a warrant, and all subsequent use of force was
19 unreasonable and excessive.

20 At the conclusion of almost eleven days of testimony and
21 evidence, on December 14, 2010, Defendants made an oral motion
22 before the Court for a JMOL pursuant to Rule 50. Defendants
23 renewed their previous oral motion for a JMOL, and presented new
24 arguments to the Court as to why the case had no legally
25 sufficient basis to go to the jury.

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1 **STANDARD**

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3 Under Rule 50(a), if a party has been "fully heard on an
4 issue during a jury trial and the court finds that a reasonable
5 jury would not have a legally sufficient evidentiary basis to
6 find for the party on that issue," then this Court has discretion
7 to resolve the issue by granting "a motion for judgment as a
8 matter of law against the party on a claim or defense that, under
9 controlling law, can be maintained or defeated only with a
10 favorable finding on that issue." See also Reeves v. Sanderson
11 Plumbing Products, Inc., 530 U.S. 133, 149 (2000); Summers v.
12 Delta Air Lines, Inc., 508 F.3d 923, 926 (9th Cir. 2007). Such a
13 motion may be made at any time before the case is submitted to
14 the jury, and contain (1) the judgment sought, and (2) the law
15 and facts that entitle the movant to a judgment. Rule 50(a)(2).

16 In evaluating a Rule 50(a) motion, the Court must draw all
17 reasonable inferences in favor of the nonmoving party, and it may
18 not make credibility determinations or weigh the evidence.
19 Reeves, 530 U.S. at 150. Using "all of the evidence in the
20 record," the Court may also examine a number of factors
21 including, "the strength of the plaintiff's prima facie case,"
22 the probative value of evidence, and "any other evidence" that
23 supports a plaintiff's case. Id. at 148-49, 150. Any evidence
24 that the jury is not "required to believe" should be disregarded.
25 Id. at 151.

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1 ANALYSIS

2 A. Plaintiffs' Motion

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4 In their motion, Plaintiffs contend that overwhelming
5 evidence establishes that, as a matter of law, Defendants
6 violated Mr. Zachary's Fourth Amendment rights when they entered
7 his home without a warrant, and the deputies' use of force was
8 unreasonable and excessive.

9
10 1. Exigent Circumstances

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12 Federal law mandates that a warrantless search "of a
13 dwelling must be supported by probable cause and the existence of
14 exigent circumstances." Fisher v. City of San Jose, 558 F.3d
15 1069, 1075 (9th Cir. 2009) (internal citations omitted). Exigent
16 circumstances are defined to include those that "would cause a
17 reasonable person to believe that entry" into a dwelling was
18 "necessary to prevent physical harm to the officers or other
19 persons." Id. (internal citations omitted). The use of exigent
20 circumstances as justification for a warrantless search is the
21 exception, not the rule, and should be used only in few and
22 "carefully delineated circumstances." U.S. v. Struckman,
23 603 F.3d 731, 743 (9th Cir. 2010) (internal citations omitted).
24 Such exceptions include the need to prevent harm to the officers
25 or others, the hot pursuit "of a fleeing suspect," or any other
26 "consequence improperly frustrating legitimate law enforcement
27 efforts." Id. (internal citations omitted).

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1 Plaintiffs argue that the evidence overwhelmingly
2 demonstrates that the deputies' reentry into Mr. Zachary's
3 apartment violated his Fourth Amendment rights. Viewing the
4 factual record and the evidence presented at trial in the light
5 most favorable to Defendants, a reasonable jury could find that
6 exigent circumstances merited the deputies to reenter
7 Mr. Zachary's home to detain him.

8 The conflict between the officers and Mr. Zachary begins as
9 deputies Spaid, Tallman, and Harmon begin to leave the apartment
10 premises. After exiting Mr. Zachary's apartment, they enter
11 their vehicles and start to drive away. The deputies notice
12 Mr. Zachary coming towards them, wearing only an open bathrobe
13 and exposing his genitals. He was sweating and agitated.
14 According to the deputies, Mr. Zachary had one hand behind his
15 back while shouting towards them. The officers testified they
16 gave Mr. Zachary lawful commands to stop and show his hands for
17 officer safety. They did not know what, if anything, Mr. Zachary
18 was holding behind his back. In the face of a law enforcement's
19 lawful commands, Mr. Zachary disobeyed, and instead retreated
20 quickly into his home. When he ran, the deputies' believed
21 Mr. Zachary was now resisting arrest, and they followed him in
22 hot pursuit.

23 It is reasonable that the jury could infer the facts to
24 conclude that Mr. Zachary's conduct created an exigent
25 circumstance exception for the deputies to enter Mr. Zachary's
26 apartment without a warrant because his conduct was threatening
27 them and the public at large, and he failed to lawfully obey
28 commands in resisting arrest.

1 **2. Excessive Force**

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3 An excessive force claim merits an inquiry as to whether an

4 "officer's actions are objectively reasonable in light of the

5 facts and circumstances confronting them." Bryan v. MacPherson,

6 --- F.3d ----, 2010 WL 4925422 at *3 (9th Cir. Nov. 30, 2010)

7 (internal citations omitted). See also Graham v. Connor,

8 490 U.S. 386, 397 (1989). The actions must be evaluated from the

9 "perspective of a reasonable officer on the scene, rather than

10 with the 20/20 vision of hindsight." Id. Such an inquiry

11 requires the Court to balance "the nature and quality of the

12 intrusion on the individual's Fourth Amendment interests against

13 the countervailing governmental interests at stake. Id. at 396.

14 Once the deputies reentered Mr. Zachary's apartment, he

15 continued to resist arrest and refused to comply with verbal

16 commands. The house had not been cleared for weapons and

17 presented a potentially dangerous situation for the officers and

18 the surrounding community. At some point, one of the officers

19 received a physical injury, which the officers interpreted as

20 felony assault on a peace officer, an additional potential crime

21 committed by Mr. Zachary. The deputies handcuffed Mr. Zachary,

22 but he continued to struggle. Back-up was called. The officers

23 used legal compliance techniques, including the use of asps,

24 batons, tasers, and other restraints to subdue Mr. Zachary.

25 Evidence was presented at trial that the deputies may have been

26 attempting to restrain Mr. Zachary for as long as ten minutes.

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1 At least one deputy testified that his physical struggle with
2 Mr. Zachary made him feel as though he was "in the fight of [his]
3 life."

4 Therefore, balancing Mr. Zachary's Fourth Amendment rights
5 against the governmental interest in protecting peace officers,
6 and the public at large, from someone who resists arrest and
7 refuses to comply with repeated verbal commands, a reasonable
8 juror could find that the deputies use of force was not
9 excessive, but necessary and reasonable in light of the
10 circumstances. Therefore, Plaintiffs' Motion for a Judgment as a
11 Matter of Law is denied.

12
13 **B. Defendants' Motion**

14
15 Defendants deny Plaintiffs' claims, and moved for a JMOL on
16 the following grounds: (1) deputies Tallman, Harmon, and Spaid
17 had objectively reasonable cause to reenter Mr. Zachary's
18 residence; (2) deputy Spaid did not use excessive force against
19 Mr. Zachary; (3) uncontroverted evidence demonstrates that none
20 of the Defendants caused Mr. Zachary's death; (4) Plaintiff
21 heirs' claims under the Fourteenth Amendment are erroneous, as
22 the deputies' conduct in no way "shocked the conscious;" (5) any
23 claims against the County of Sacramento fail under the terms set
24 forth in Monell v. Dep't of Soc. Svcs., 436 U.S. 658 (1978); and
25 (6) no evidence was presented that indicated Sheriff Lou Blanus
26 in any way violated Mr. Zachary's or Plaintiffs' rights.

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1 As to the first, second, and third claims, Defendants
2 Tallman, Harmon, and Spaid argue that exigent circumstances
3 existed to reenter Mr. Zachary's home after the first domestic
4 disturbance investigation, and that none of the deputies, but
5 specifically deputy Spaid³, used excessive force in such a way
6 that ultimately caused Mr. Zachary's death. See supra. In the
7 alternative, deputies Tallman, Harmon, and Spaid argue that they
8 are entitled to qualified immunity. Qualified immunity protects
9 government officials from "liability for civil damages insofar as
10 their conduct does not violate clearly established statutory or
11 constitutional rights of which a reasonable person would have
12 known." Pearson v. California, 555 U.S. 223, 129 S. Ct. 808, 815
13 (2009) (quoting Harlow v. Fitzgerald, 457 U.S. 800, 818 (1982)).
14 The doctrine balances the need to hold public officials
15 accountable when they "exercise power irresponsibly," against
16 protecting those who reasonably perform their duties. Id. The
17 doctrine is an immunity from suit, not a defense to liability.
18 Id. (internal citations omitted).

19 Again, viewing the factual record and evidence in the light
20 most favorable to Plaintiffs, a reasonable jury could find that
21 the deputies' decision to reenter the home constituted a
22 warrantless search, in direct contravention to the evidence the
23 deputies presented at trial.

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27 ³ Deputy Spaid testified that he did not participate in
28 restraining Mr. Zachary, which, arguably, was the ultimate cause
of his death.

1 As plausible as Defendants' assertions are, the jury could
2 rightly find that the deputies had no legally cognizable reason
3 to reenter Mr. Zachary's home, that their testimony is less
4 credible, or any other factual determination not suited for the
5 Court's adjudication. The jury could also find that the
6 officers' subsequent conduct inside Mr. Zachary's home, including
7 the prolonged physical struggle, their use of asps, batons,
8 kicks, punches, maximum restraints, and body weight, caused or
9 contributed to Mr. Zachary's death. At this stage of the case,
10 the conflicting factual testimony is an issue for the jury, and
11 qualified immunity is similarly inappropriate.

12 Defendants' fourth claim also fail as a matter of law.
13 Defendants argue they are entitled to a JMOL because no
14 reasonable jury could find that their conduct shocked the
15 conscious, as required by the Fourteenth Amendment. Plaintiff
16 heirs contend they have a claim for loss of familial relationship
17 with Mr. Zachary as a result of the deputies' actions.

18 Family members have a "Fourteenth Amendment liberty
19 interest" in the companionship of loved ones, and any official
20 conduct of family members that "shocks the conscious" is
21 "cognizable as a violation of due process. Wilkinson v. Torres,
22 610 F.3d 546, 554 (9th Cir. 2010). To determine whether
23 excessive force shocks the conscious, the trier of fact examines
24 whether the circumstances under which the officer acts lends
25 itself to "practical" deliberation. Id. (internal citations
26 omitted). If "deliberation is practical, then an officer's
27 deliberate indifference may suffice to shock the conscious." Id.

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1 But if "a law enforcement officer makes a snap judgment because
2 of an escalating situation, his conduct may only be found to
3 shock the conscience if he acts with a purpose to harm unrelated
4 to legitimate law enforcement objectives." Id.

5 By definition, this constitutional inquiry is factual in
6 nature, weighing the totality of the circumstances and the
7 objective reasonableness of an officer in that particular
8 setting. See id. Each side has refuted the other's factual
9 contentions regarding the deputies' conduct in this setting. A
10 reasonable jury could find that the deputies' use of force on
11 Mr. Zachary constitutes conduct that shocks the conscious, or
12 that their attempts to restrain Mr. Zachary were entirely
13 reasonable. See supra. Therefore, the Court cannot determine
14 the issue as a matter of law.

15 Defendants' fifth and sixth claims argue that no evidence at
16 trial indicated that municipal liability should be found for the
17 County of Sacramento or Sheriff Blanas in his official capacity.
18 Section 1983 of Title 42 of the United States Code authorizes
19 private parties to enforce constitutional rights against any
20 defendant who acts "under the color" of law. 42 U.S.C. § 1983.
21 A plaintiff may hold a municipality liable for any act committed
22 pursuant to official policy, regulation, custom, or usage. Chew
23 v. Gates, 27 F.3d 1432, 144 (9th Cir. 1994) (citing Monell,
24 436 U.S. at 690-91).

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1 The municipal policy need only cause the constitutional
2 violation; it need not be unconstitutional on its face. See
3 Jackson v. Gates, 975 F.2d 648, 652 (9th Cir. 1992). A policy
4 causes injury to the plaintiff when it is "the moving force"
5 behind the constitutional violation. Monell, 436 U.S. at 694. A
6 municipality may also be liable for failing to act, demonstrating
7 "deliberate indifference" to a plaintiff's constitutional rights.
8 City of Canton v. Harris, 489 U.S. 378, 389 (1989). Similarly, a
9 supervisor is liable for any constitutional violations committed
10 by his subordinates if the supervisor participated in or directed
11 the violations, or knew of the actions and failed to prevent
12 them. Taylor v. List, 880 F.2d 1040, 1045 (9th Cir. 1989).

13 Sheriff Lou Blanas was the Sacramento County Sheriff at the
14 time of the incident. He testified at trial that during his
15 tenure, "the buck" stopped with him, and that he was ultimately
16 responsible for the conduct and behavior of his officers.
17 Sheriff Blanas was also responsible for the department's policies
18 and procedures, including supervising deputy training. Based on
19 this testimony, a reasonable jury could absolutely find that both
20 the County, and Sheriff Blanas as supervisor, were liable for
21 Mr. Zachary's death as a result of faulty training, and their
22 failure to implement policies and practices designed to prevent
23 Mr. Zachary's in-custody death.

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1 **CONCLUSION**

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3 Since the Court has discretion to decide a Rule 50 motion,
4 and given the conflicting evidence presented at trial, whether
5 the deputies' conduct was reasonable during the events in
6 question is clearly a question for the jury. Therefore, both
7 Plaintiffs' (ECF No. 166) and Defendants' Motions for a Judgment
8 as a Matter of Law are DENIED.

9 IT IS SO ORDERED.

10 Dated: December 22, 2010

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13 MORRISON C. ENGLAND, JR.
14 UNITED STATES DISTRICT JUDGE