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**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION**

FELICIA NICHOLS,  
Plaintiff,  
v.  
CITY OF SAN JOSE, et al.,  
Defendants.

Case No. [14-cv-03383-BLF](#)

**ORDER DENYING DEFENDANT'S  
RULE 50(a) AND (b) MOTIONS**

[Re: ECF 113]

Plaintiff Felicia Nichols brought this action alleging that Defendant Christopher Schipke violated her rights under the Fourth Amendment to the U.S. Constitution. On June 23, 2017, after a four-day trial, the jury returned a partial verdict. *See* ECF 111.

Now before the Court is Defendant's motion for judgment under rule Federal Rule of Civil Procedure 50(a) and (b). Mot., ECF 113. For the reasons discussed herein, the Court DENIES Defendant's motion.

**I. BACKGROUND**

The facts are well known to the parties and the Court need not recite them in detail here. *See* Order Granting in Part and Denying in Part Defs.' Mot. Summ. J., ECF 54. In brief, Felicia Nichols brought this action following an encounter with San Jose Police officers in November 2012. Nichols alleged that the officers violated her constitutional rights. At summary judgment, the Court dismissed Nichols' claims for alleged violations of her First Amendment rights and for *Monell* liability against the City of San Jose. The Court also dismissed all claims against Officer Christopher Ferguson, another officer at the scene on the night of the incident. Only the claims against Officer Schipke for deprivation of the right to be free from unreasonable searches and seizures and the use of unreasonable excessive force remained.

On June 12, 2017, a jury was empaneled, and the trial proceeded for four days. ECF 94, 95, 98, 105. On June 23, 2017, after deliberating for five days, the jury returned a partial verdict.

1 ECF 111. The jury found that Officer Schipke did not unreasonably seize or search Felicia  
2 Nichols in violation of her Fourth Amendment rights. *Id.* The jury deadlocked on Nichols’  
3 excessive force claim. *Id.* at 4.

4 After the Court dismissed the jury, Defendant asked the Court to rule on his Rule 50(a)  
5 motion. The Court ordered the parties to file simultaneous briefing on Defendant’s motion as it  
6 related to the remaining claim. In his motion, Defendant moves for judgment pursuant to Rule  
7 50(a) and (b). Mot. Officer Schipke argues that the evidence presented at trial is insufficient to  
8 establish a constitutional violation for excessive force, and thus that he is entitled to qualified  
9 immunity on Nichols’ claim of excessive force for handcuffing her too tightly. *Id.* at 5. Ms.  
10 Nichols opposes Officer Schipke’s motion, and contends that there was sufficient evidence to  
11 establish a legal basis for a finding that Officer Schipke used excessive force during the  
12 interaction. *See generally* Opp’n, ECF 114.

13 **II. DISCUSSION**

14 A district court may grant a motion for judgment as a matter of law pursuant to Rule 50(a)  
15 or (b) “when the evidence presented at trial permits only one reasonable conclusion,” *i.e.*, “if no  
16 reasonable juror could find in the non-moving party’s favor.” *Torres v. City of Los Angeles*, 548  
17 F.3d 1197, 1205 (9th Cir. 2008) (internal quotation marks omitted); *see also* Fed. R. Civ. P. 50(a)–  
18 (b). “The evidence must be viewed in the light most favorable to the nonmoving party, and all  
19 reasonable inferences must be drawn in favor of that party. If conflicting inferences may be drawn  
20 from the facts, the case must go to the jury.” *Torres*, 548 F.3d at 1205–06 (citation and internal  
21 quotation marks omitted). “A jury’s inability to reach a verdict does not necessarily preclude a  
22 judgment as a matter of law.” *Headwaters Forest Def. v. Cty. of Humboldt*, 240 F.3d 1185, 1197  
23 (9th Cir. 2000), *vacated on other grounds*, 534 U.S. 801 (2001). The same standard applies to a  
24 motion for judgment as a matter of law made after a mistrial because of jury deadlock. *See id.* at  
25 1197 n.4 (“The fact that the motion was granted after a mistrial was declared because of jury  
26 deadlock does not alter the standard to be applied on appeal.”).

27 Based upon a review of the evidence, the Court finds that Officer Schipke is not entitled to  
28 judgment as a matter of law on Nichols’ excessive force claim because Nichols’ evidence could

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support the conclusion that Officer Schipke employed excessive force during his detention of Nichols in November 2012.

A government official sued under § 1983 is entitled to qualified immunity unless the plaintiff shows that (1) the official violated a statutory or constitutional right, and (2) the right was “clearly established” at the time of the challenged conduct. *Plumhoff v. Rickard*, 134 S. Ct. 2012, 2023 (2014) (citing *Ashcroft v. al-Kidd*, 563 U.S. 731, 735 (2011)). Only the first prong is at issue in the instant motion, and therefore, the Court need only determine whether Plaintiff has failed to present substantial evidence to support a claim of excessive force.

A claim of excessive force brought against police officers must be analyzed under the Fourth Amendment’s “reasonableness” standard. *Graham v. Connor*, 490 U.S. 386, 395 (1989); *Smith v. City of Hemet*, 394 F.3d 689, 700–01 (9th Cir. 2005). The “objective reasonableness” of an officer’s use of force in a particular case is determined “in light of the facts and circumstances confronting [him], without regard to [his] underlying intent or motivation.” *Connor*, 490 U.S. at 396–97. “The operative question in excessive force cases is ‘whether the totality of the circumstances justifie[s] a particular sort of search or seizure.’” *Cty. of Los Angeles v. Mendez*, 137 S. Ct. 1539, 1546 (2017) (citing and quoting *Tennessee v. Garner*, 471 U.S. 1, 8 (1985)).

Nichols claims that Officer Schipke used excessive force by engaging in the following conduct: using handcuffs that were so tight that they were painful and caused bruises; ignoring her complaints that the handcuffs were too tight; and slamming her body onto the hood of the police car, among other complaints. Despite this, Officer Schipke addresses only the handcuffing in his motion. Specifically, he argues that Nichols’ testimony that the handcuffs were so tight as to cause pain did not establish a legal basis for a reasonable jury to find that Officer Schipke’s use of handcuffs constituted excessive force. Mot. 3–4. However, in addition to her testimony regarding the handcuffing, Nichols testified that Officer Schipke slammed her upper body onto the hood of the car after she attempted to avoid stares from other officers on the scene by turning her head. She also testified that when Officer Schipke slammed her down on the hood of the car, it felt to her that when he pressed his body against her that he was aroused. The Court cannot review a portion of the evidence in isolation, as Nichols brings a single claim for excessive force based on

1 the totality of the circumstances. *Mendez*, 137 S. Ct. at 1546; Opp’n 4 (arguing that Defendant  
2 ignores the entirety of Nichols’ testimony regarding the incident).

3 Plaintiff also suggests that Defendant ignores her remaining complaints because Baltazar  
4 Jasso, a percipient witness, identified another officer as having slammed Plaintiff on the hood of  
5 the car. Opp’n 5, ECF 114. However, as Plaintiff correctly argues, Ms. Nichols identified Officer  
6 Schipke as the person who slammed her on the hood of the car during her testimony. *Id.* Again,  
7 as Plaintiff states in her brief, the jury is entitled to conclude that Mr. Jasso misidentified the  
8 officer who slammed Ms. Nichols on the car, and that Plaintiff’s identification of Officer Schipke  
9 was correct. *Id.* And, the Court cannot weigh the credibility of the witnesses on a motion for  
10 judgment as a matter of law. *See E.E.O.C. v. Go Daddy Software, Inc.*, 581 F.3d 951, 961 (9th  
11 Cir. 2009) (“[I]n entertaining a motion for judgment as a matter of law, the court . . . may not  
12 make credibility determinations or weigh the evidence.” (citation and internal quotation marks  
13 omitted)).

14 For this reason, the Court cannot conclude that if the jury credited Ms. Nichols’ testimony  
15 completely, it would find that the use of force was reasonable under the circumstances (and thus  
16 constitutional). *Santos v. Gates*, 287 F.3d 846, 853 (9th Cir. 2002) (“[W]e have held on many  
17 occasions that . . . judgment as a matter of law in excessive force cases should be granted  
18 sparingly. This is because police misconduct cases almost always turn on a jury’s credibility  
19 determinations.” (internal citation omitted)).

20 For the foregoing reasons, the Court DENIES Defendant’s motion for judgment as a matter  
21 of law.

22 **IT IS SO ORDERED.**

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24 Dated: July 14, 2017

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BETH LABSON FREEMAN  
United States District Judge