

OCT 05 2015

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

MALIK AUSTIN,

Plaintiff - Appellant,

v.

BRADLEY BAKER,

Defendant - Appellee.

No. 13-15400

D.C. No. 2:10-cv-02467-ROS

MEMORANDUM*

Appeal from the United States District Court
for the District of Arizona
Roslyn O. Silver, District Judge, Presiding

Submitted September 21, 2015**

Before: REINHARDT, LEAVY, and BERZON, Circuit Judges.

Malik Austin appeals pro se from the district court's summary judgment in his 42 U.S.C. § 1983 action alleging the use of excessive force during his pretrial detention. We have jurisdiction under 28 U.S.C. § 1291. We review de novo, *Toguchi v. Chung*, 391 F.3d 1051, 1056 (9th Cir. 2004), and we reverse and

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

** The panel unanimously concludes this case is suitable for decision without oral argument. See Fed. R. App. P. 34(a)(2).

remand.

The district court granted summary judgment on Austin's excessive force claim. However, Austin stated in his declaration that while he was fully shackled and in his cell, Baker drove Austin from a standing position face first into the ground, resulting in significant injury to Austin's forehead. Viewing the evidence in the light most favorable to Austin, he raised a genuine dispute of material fact as to whether Baker's use of force was objectively reasonable in light of the facts and circumstances. *See Kingsley v. Hendrickson*, 135 S. Ct. 2466, 2473 (2015) (discussing the legal standard applicable to excessive force claims brought by pretrial detainees). Accordingly, we reverse and remand for further proceedings.

Baker's motion to submit physical exhibits, filed on November 3, 2014, is granted.

REVERSED and REMANDED.