

FILED

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

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FELIX SANCHEZ,

Plaintiff - Appellant,

v.

CITY OF HAWTHORNE,
a public entity; et al.,

Defendants - Appellees.

No. 14-55761

D.C. No. 2:13-cv-02539-RGK-E

MEMORANDUM*

Appeal from the United States District Court
for the Central District of California
R. Gary Klausner, District Judge, Presiding

Argued and Submitted March 7, 2016
Pasadena, California

Before: CLIFTON and IKUTA, Circuit Judges and BLOCK,** Senior District
Judge.

Plaintiff Felix Sanchez appeals the district court's grant of summary
judgment in favor of Defendants City of Hawthorne, Hawthorne Police

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

** The Honorable Frederic Block, Senior District Judge for the U.S.
District Court for the Eastern District of New York, sitting by designation.

Department, Officer Jose Gomez, and Officer Sarah Lewis with respect to his claims under 42 U.S.C. § 1983 and California law. Sanchez also appeals the district court's denial of his motion for amended or additional findings seeking consideration of an unpled claim for failure to provide medical care.

(1) The district court, relying on *Scott v. Harris*, 550 U.S. 372 (2007), determined that no reasonable jury could credit Sanchez's account of his injuries and therefore ruled that Defendants were entitled to summary judgment on Sanchez's excessive force claim and assault and battery claim. We disagree. The dash camera video of the incident underlying Sanchez's claims does not "blatantly contradict" the entirety of Sanchez's version of events. At most, the video contradicts one of Sanchez's allegations tangentially related to the allegations of excessive force, namely that Officer Gomez ran past him before he fell from the curb. That Sanchez might have been incorrect as to the sequence of that event does not mean that the jury could not believe other parts of his testimony.

Defendants raise a number of arguments in support of summary judgment that were not addressed by the district court. Although this court may affirm a grant of summary judgment on any basis supported by the record, *Gordon v. Virtumundo, Inc.*, 575 F.3d 1040, 1047 (9th Cir. 2009), none of Defendants' alternative arguments supports that result.

We vacate the summary judgment and remand for further proceedings.

(2) The district court properly denied Sanchez's motion for amended or additional findings. Contrary to Sanchez's assertions, Defendants did not consent to try the unpled failure to provide medical care claim. Defendants specifically objected to consideration of that claim. We therefore affirm the district court's denial of Sanchez's motion.

Each party to bear its own costs.

VACATED AND REMANDED IN PART AND AFFIRMED IN PART.