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U.S. COURT OF APPEALS

## NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

TERRENCE TONYAN,

Plaintiff-Appellant,

v.

JOSEPH STUSSY,

Defendant-Appellee.

No. 15-16189

D.C. No. 2:13-cv-01021-JJT

MEMORANDUM\*

Appeal from the United States District Court  
for the District of Arizona  
John Joseph Tuchi, District Judge, Presiding

Submitted November 16, 2016\*\*

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

Terrence Tonyan, an Arizona state prisoner, appeals pro se from the district court's summary judgment in his 42 U.S.C. § 1983 action alleging a Fourth Amendment excessive force claim arising from his arrest. We have jurisdiction under 28 U.S.C. § 1291. We review de novo. *Arpin v. Santa Clara Valley Transp.*

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\* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

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

*Agency*, 261 F.3d 912, 919 (9th Cir. 2001). We reverse and remand.

The district court granted summary judgment on Tonyan's Fourth Amendment excessive force claim after concluding that a reasonable officer could have concluded that Tonyan's bulky clothing concealed a weapon. This finding, however, is unsupported by the record. Further, in Tonyan's verified amended complaint, Tonyan stated that he was unarmed and never threatened any officer by word or action. Thus, viewing the evidence in the light most favorable to Tonyan, Tonyan raised a genuine dispute of material fact as to whether defendant used excessive force by striking Tonyan's bike with his patrol car while Tonyan fled the scene of a burglary. *See Lal v. California*, 746 F.3d 1112, 1115, 1117 (9th Cir. 2014) (setting forth framework for analyzing an excessive force claim under the Fourth Amendment). Accordingly, we reverse and remand for further proceedings on this claim.

**REVERSED and REMANDED.**