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**NOT FOR PUBLICATION**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

LOURDES TOMAN, an individual; ANTONIO PAREDES, an individual; ALAN CASTRO, an individual,

Plaintiffs-Appellees,

v.

DAVIS CRABTREE, Fullerton Police Officer; MICHAEL MCCASKILL, Fullerton Police Officer; DAVID MACSHANE, Fullerton Police Officer,

Defendants-Appellants,

and

PEDROZA, Fullerton Police Officer; PEREZ, Fullerton Police Officer; HERRERA, Fullerton Police Officer; FULLERTON POLICE DEPARTMENT,

Defendants.

No. 22-55082

D.C. No. 8:20-cv-00046-JWH-KES

MEMORANDUM*

Appeal from the United States District Court
for the Central District of California
John W. Holcomb, District Judge, Presiding

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

Argued and Submitted December 7, 2022
Pasadena, California

Before: BEA, IKUTA, and CHRISTEN, Circuit Judges.

Officers Davis Crabtree, Michael McCaskill, and David Macshane (the officers) appeal the district court's order denying them summary judgment in a civil rights action alleging violations of the Fourth Amendment under 42 U.S.C. § 1983. We have jurisdiction under 28 U.S.C. § 1291.

We reverse the district court's denial of qualified immunity to the officers for plaintiffs' claims of unlawful entry into and search of their residence because whether the officers' search fell within the emergency aid exception to the warrant requirement was not beyond debate. *See Kisela v. Hughes*, 138 S. Ct. 1148, 1152 (2018). The district court held that the officers lacked an objectively reasonable basis for concluding that there was an emergency. We agree. As the officers conceded at oral argument, absent an emergency, community caretaking does not justify the warrantless entry into a home. However, under the facts of this case, the officers could have erroneously but not unreasonably concluded that an emergency existed that would have permitted their warrantless entry. *See Martin v. City of Oceanside*, 360 F.3d 1078, 1081–82 (9th Cir. 2004).

We affirm the district court's denial of qualified immunity for the claim of unreasonable seizure based on the officers' arrest of plaintiffs. The officers' argument that the arrests were lawful under section 148 of the California Penal Code because plaintiffs had actively delayed and obstructed officers is contradicted by body camera footage that demonstrates that none of the plaintiffs took any action to obstruct officers other than passively demanding a warrant prior to allowing entry into their home. *See Scott v. Harris*, 550 U.S. 372, 380–81 (2007). Because citizens have a constitutional right to withhold consent to a warrantless entry, *see United States v. Prescott*, 581 F.2d 1343, 1351 (9th Cir. 1978), it is clearly established that such conduct cannot form the basis of a crime.

We also affirm the district court's denial of qualified immunity for the claim that the officers used excessive force when arresting Lourdes Toman. It is obvious that the officers used excessive force because body camera footage shows Lourdes Toman presented no threat to the officers and was seized and handcuffed in a way that caused extensive injuries, including a broken elbow, without being given an opportunity to comply with the officers' commands. *See Brosseau v. Haugen*, 543 U.S. 194, 199 (2004). Therefore, it is beyond debate that Lourdes Toman's Fourth Amendment right was violated. *Kisela*, 138 S. Ct. at 1152.

**AFFIRMED IN PART; REVERSED AND REMANDED IN PART**.[1]

[1] Each party will bear its own costs on appeal.