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U.S. COURT OF APPEALS

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

ASHLEY RICE, individually and as Special Administrator of the Estate of Robert Wenman, Plaintiff - Appellant, v. CITY OF NORTH LAS VEGAS; ROBERT JAMESON; SKYLER LEE; JASON LAWRENCE; BARNEY BRUCKEN; ANN TAYLOR; MARK SURANOWITZ, Defendants - Appellees.	No. 23-2935 D.C. No. 2:20-cv-01542-JCM-DJA MEMORANDUM*

Appeal from the United States District Court
for the District of Nevada
James C. Mahan, District Judge, Presiding

Argued and Submitted October 9, 2024
Las Vegas, Nevada

Before: CHRISTEN, BENNETT, and MILLER, Circuit Judges.

Ashley Rice, individually and as the representative of the estate of her father, Robert Wenman, brought this action under 42 U.S.C. § 1983 against Officer

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

Robert Jameson of the City of North Las Vegas Police Department, various other officers, and the City. The complaint asserted several claims arising from Jameson's fatal shooting of Wenman: excessive force in violation of the Fourth Amendment, deprivation of the Fourteenth Amendment right to familial association, municipal liability under *Monell v. Department of Social Services of City of New York*, 436 U.S. 658 (1978), and state-law torts of battery and negligence. The district court granted summary judgment to the defendants on all claims, and Rice appeals. We have jurisdiction under 28 U.S.C. § 1291, and we affirm.

We review the district court's grant of summary judgment de novo, viewing the evidence in the light most favorable to Rice, the nonmoving party. *Gordon v. County of Orange*, 6 F.4th 961, 967 (9th Cir. 2021) (citing *Bravo v. City of Santa Maria*, 665 F.3d 1076, 1083 (9th Cir. 2011)).

1. We begin by considering the Fourth Amendment claim. To overcome Jameson's defense of qualified immunity, Rice must show, first, that Jameson violated a right guaranteed by the Fourth Amendment and, second, that the right was clearly established at the time he acted. *Tolan v. Cotton*, 572 U.S. 650, 655–56 (2014) (per curiam). An officer's use of deadly force "is a seizure subject to the reasonableness requirement of the Fourth Amendment," *Tennessee v. Garner*, 471 U.S. 1, 7 (1985), so our inquiry focuses on whether Jameson's use of force was

"objectively reasonable based on his contemporaneous knowledge of the facts," *Deorle v. Rutherford*, 272 F.3d 1272, 1281 (9th Cir. 2001). Because Jameson's actions in this case were objectively reasonable, he did not violate the Fourth Amendment.

The "'most important'" factor bearing on the reasonableness of deadly force "is whether the suspect posed an 'immediate threat to the safety of the officers or others.'" *Mattos v. Agarano*, 661 F.3d 433, 441 (9th Cir. 2011) (en banc) (quoting *Smith v. City of Hemet,* 394 F.3d 689, 702 (9th Cir. 2005) (en banc)). It is undisputed that, moments before the shooting, Wenman raised his gun in the general direction of other officers. Jameson's view of the officers was limited by the narrow field of view of his rifle's scope. Based on his experience and training, he knew that the officers were outside of the BearCat and standing behind it. He also knew that Wenman had been walking back and forth—as Jameson later explained, he believed that Wenman was "trying to create an angle on the officers on the backside of the Bear Cat." Because of Jameson's positioning and Wenman's movements, Jameson could not be certain whether Wenman had a direct line of sight to the officers in the moments before the shooting. Thus, when Wenman pointed a gun in the officers' direction, it was objectively reasonable for Jameson to conclude that Wenman posed an immediate threat of harm to them. *See George v. Morris*, 736 F.3d 829, 838 (9th Cir. 2013) ("[T]he Fourth Amendment [does not]

always require[] officers to delay their fire until a suspect turns his weapon on them. If the person is armed . . . a furtive movement, harrowing gesture, or serious verbal threat might create an immediate threat.").

Rice argues that Wenman never actively resisted arrest or attempted to flee, and that his alleged offenses did not justify the use of lethal force because he lacked criminal intent. She also argues that Jameson failed to use less intrusive alternatives against someone who was experiencing mental distress and failed to warn Wenman that he might employ deadly force. Those factors are relevant in assessing the reasonableness of deadly force, *see Nehad v. Browder*, 929 F.3d 1125, 1136–39 (9th Cir. 2019), but even if they favored Rice, they would not materially alter our analysis in light of the objective reasonableness of the imminent threat that Jameson perceived, which here is the dispositive factor.

Although Wenman was never formally placed under arrest, he was non-compliant with the officers' commands. His mental state did not change the danger he posed in resisting the officers while holding a deadly weapon that he pointed in the officers' direction. *See Estate of Strickland v. Nevada County*, 69 F.4th 614, 621 (9th Cir. 2023) (noting that officers knew that man's mental illness made it unlikely he would "respond to directions in a normal or expected manner"). As to less intrusive means, officers need not "exhaust every alternative before using justifiable deadly force." *Forrett v. Richardson*, 112 F.3d 416, 420 (9th Cir. 1997)

(citing *Plakas v. Drinski*, 19 F.3d 1143, 1148 (7th Cir. 1994)). And the requirement of a warning "is not a one-size-fits-all proposition that applies in every case or context." *Smith v. Agdeppa*, 81 F.4th 994, 1006 (9th Cir. 2023). Rice has not shown that a deadly-force warning would have been practicable under the circumstances here. *See Gonzalez v. City of Anaheim*, 747 F.3d 789, 794 (9th Cir. 2014) (en banc).

Even if Jameson's conduct did violate the Fourth Amendment, he would still be entitled to qualified immunity because the right at issue was not clearly established. "A Government official's conduct violates clearly established law when, at the time of the challenged conduct, '[t]he contours of [a] right [are] sufficiently clear' that every 'reasonable official would [have understood] that what he is doing violates that right.'" *Ashcroft v. al-Kidd*, 563 U.S. 731, 741 (2011) (alterations in original) (quoting *Anderson v. Creighton*, 483 U.S. 635, 640 (1987)). We consider the specific conduct at issue and do not analyze whether rights are clearly established "at a high level of generality." *Kisela v. Hughes*, 584 U.S. 100, 104 (2018) (per curiam) (quoting *City & County of San Francisco v. Sheehan*, 575 U.S. 600, 613 (2015)). In the particular factual circumstances of this case, Rice has identified no authority that would have put Jameson on notice that he would violate the Fourth Amendment by using lethal force against an individual who had repeatedly refused officers' commands to give up his gun and raised it

multiple times in the direction of the officers. *Cf. Kisela*, 584 U.S. at 105–06 (finding it "far from an obvious case in which any competent officer would have known that [the use of deadly force] would violate the Fourth Amendment" where an armed individual "refused [police] commands to drop his weapon" and "the police believed (perhaps mistakenly)[] that the man posed an immediate threat to others").

2. The district court did not err in granting summary judgment for Jameson on Rice's Fourteenth Amendment familial-association claim. Such a claim arises when an official's deliberately indifferent conduct "shocks the conscience" and the official "had time to deliberate before acting or failing to act in a deliberately indifferent manner," *Lemire v. California Dep't of Corr. & Rehab.*, 726 F.3d 1062, 1075 (9th Cir. 2013), or when the official "acted with a purpose to harm unrelated to a legitimate law enforcement objective," *Ochoa v. City of Mesa*, 26 F.4th 1050, 1058 (9th Cir. 2022). Rice argues that Jameson had a "secret plan" to shoot Wenman, but that allegation is unsupported by the record. Because Jameson's conduct was not deliberately indifferent (and was constitutionally reasonable), and because Jameson acted with a legitimate law enforcement objective, he did not violate the Fourteenth Amendment.

3. Although Rice named several other individual officers as defendants, she has not argued that they violated Wenman's rights directly, nor has she argued that

they were "integral participants" in Jameson's alleged constitutional violations. *See Peck v. Montoya*, 51 F.4th 877, 891 (9th Cir. 2022). The district court therefore correctly granted summary judgment in favor of those defendants.

4. The district court also correctly granted summary judgment for the City on the *Monell* claims. A *Monell* claim requires the existence of an underlying constitutional violation, and no officer violated Wenman's constitutional rights. *See Scott v. Henrich*, 39 F.3d 912, 916 (9th Cir. 1994).

5. The district court correctly granted summary judgment for the defendants on the state-law claims. As to negligence, the defendants did not breach any duty of care to Wenman because Jameson's use of lethal force was reasonable. Even assuming that the reasonableness inquiry under the Fourth Amendment is not identical to the reasonableness inquiry under Nevada's negligence law—an issue that the Nevada Supreme Court has declined to address, *see Paulos v. FCH1, LLC*, 456 P.3d 589, 595 n.2 (Nev. 2020)—the "totality of the circumstances surrounding [the] use of deadly force" leads us to conclude that the defendants did not breach any duty to Wenman, *Hayes v. County of San Diego*, 305 P.3d 252, 263 (Cal. 2013) (applying an alternative inquiry that looks more broadly to an officer's conduct preceding the use of force). As to battery, Rice has forfeited any argument that the claim can survive without a determination that Jameson used excessive force. *See Orr v. Plumb*, 884 F.3d 923, 932 (9th Cir. 2018) (noting that arguments

not raised in a party's opening brief are deemed forfeited).

AFFIRMED.