NOT FOR PUBLICATION

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

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

YMELDA ELENA, an individual; MARIO ELENA, an individual; I. J., a minor by and through her Guardian Ad Litem, Maria Cervantes, individually and as Successor-in-Interest to Decedent Daniel Elena-Lopez,

Plaintiffs - Appellees,

v.

WILLIAM JONES, Jr., individually and in official capacity as a police officer for the Los Angeles Police Department,

Defendant - Appellant,

and

CITY OF LOS ANGELES, a municipal entity,

Defendant.

No. 24-552

D.C. No.
2:22-cv-07651-KK-KS

MEMORANDUM*

Appeal from the United States District Court
for the Central District of California
Kenly Kiya Kato, District Judge, Presiding

Argued and Submitted December 3, 2024
Pasadena, California

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

Before: BEA, OWENS, and KOH, Circuit Judges.

Los Angeles Police Department Officer William Jones, Jr. ("Defendant") appeals from the district court's denial of summary judgment based on qualified immunity in this 42 U.S.C. § 1983 action in which Ymelda Elena, Mario Elena, and minor I.J. by and through her guardian ad litem Maria Cervantes ("Plaintiffs") allege Defendant used excessive force in violation of the Fourth Amendment. "We review *de novo* a denial of summary judgment predicated upon qualified immunity." *Cox v. Roskelley*, 359 F.3d 1105, 1109 (9th Cir. 2004). On interlocutory appeal from the denial of qualified immunity, we have jurisdiction "to resolv[e] a defendant's purely legal . . . contention that [his or her] conduct did not violate the [Constitution] and, in any event, did not violate clearly established law." *Est. of Anderson v. Marsh*, 985 F.3d 726, 731 (9th Cir. 2021) (citation and internal quotation marks omitted). As the parties are familiar with the facts, we do not recount them here. We affirm.

The district court properly denied summary judgment because genuine issues of material fact exist as to whether Defendant is entitled to qualified immunity. "We must affirm the district court's denial of qualified immunity if, resolving all factual disputes and drawing all inferences in [Plaintiffs'] favor, Defendant['s] conduct (1) violated a constitutional right (2) that 'was clearly established at the time of the officer['s] alleged misconduct.'" *Rosenbaum v. City*

of San Jose, 107 F.4th 919, 924 (9th Cir. 2024) (citation omitted). Because the excessive force analysis "nearly always requires a jury to sift through disputed factual contentions, and to draw inferences therefrom, we have held on many occasions that summary judgment . . . in excessive force cases should be granted sparingly." *Smith v. City of Hemet*, 394 F.3d 689, 701 (9th Cir. 2005) (en banc) (citation omitted).

Here, it is undisputed that the decedent, Daniel Elena-Lopez, was holding only a bike lock when Defendant shot him, and that Defendant's bullet entered through Elena-Lopez's back and exited through his chest. Even if Defendant reasonably mistook the bike lock for a gun, taking the facts in the light most favorable to Plaintiffs, Elena-Lopez was turning away from Defendant with the bike lock pointed toward the ground and made no "furtive movement, harrowing gesture, or serious verbal threat" that "might create an immediate threat." *George v. Morris*, 736 F.3d 829, 838 (9th Cir. 2013). Under these circumstances, a genuine issue of material fact exists as to whether Defendant used excessive force in violation of the Fourth Amendment.[1] *See Graham v. Connor*, 490 U.S. 386, 396

[1] Defendant incorrectly asserts that the presence of video footage eliminates any factual dispute. To the contrary, a reasonable juror could find that Defendant's body camera footage comports with Plaintiffs' account. *See Rosenbaum*, 107 F.4th at 921 ("[W]e view the facts in the light most favorable to [the non-movant] unless they are 'blatantly contradicted' by video evidence." (quoting *Scott v. Harris*, 550 U.S. 372, 380 (2007))).

(1989) (laying out the test for whether an officer's use of force was reasonable under the Fourth Amendment). And given our decisions in *Curnow v. Ridgecrest Police*, 952 F.2d 321, 325 (9th Cir. 1991), *George*, 736 F.3d at 838, and *Estate of Lopez v. Gelhaus*, 871 F.3d 998, 1021 (9th Cir. 2017), a genuine issue of material fact also exists as to whether Defendant's conduct violated clearly established law.

"Because [Defendant's] entitlement to qualified immunity ultimately depends on disputed factual issues, summary judgment is not presently appropriate." *Est. of Lopez*, 871 F.3d at 1021.

AFFIRMED.