NOT FOR PUBLICATION

FILED

JAN 16 2025

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

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

KEVIN LOYNACHAN, in his individual capacity and as successor-in-interest to Decedent Chad Loynachan; JANICE LOYNACHAN, in her individual capacity and as successor-in-interest to Decedent Chad Loynachan,

Plaintiffs-Appellees,

v.

DARLENE SMILEY, in her individual capacity as a law enforcement officer for Siskiyou County,

Defendant-Appellant.

No. 24-1024

D.C. No. 2:22-cv-00841-WBS-JDP

MEMORANDUM*

Appeal from the United States District Court
for the Eastern District of California
William B. Shubb, District Judge, Presiding

Submitted January 14, 2025**
San Francisco, California

Before: H.A. THOMAS, MENDOZA, and JOHNSTONE, Circuit Judges.

* 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).

Defendant Darlene Smiley appeals the district court's denial of her motion for summary judgment. She contends that she is entitled to qualified immunity on Plaintiffs Kevin and Janice Loynachan's Fourth Amendment excessive force claim.[1] We lack jurisdiction and thus dismiss the appeal.

We have jurisdiction over an interlocutory appeal of a district court's denial of a defendant's summary judgment motion based on qualified immunity. *Jeffers v. Gomez*, 267 F.3d 895, 903 (9th Cir. 2001) (per curiam). Our jurisdiction, however, is limited to questions of law and "does not extend to claims in which the determination of qualified immunity depends on disputed issues of material fact." *Id.* In other words, for us to have jurisdiction over this appeal, Smiley must present "a legal issue that does not require [us] to 'consider the correctness of [Plaintiffs'] version of the facts.'" *Cunningham v. City of Wenatchee*, 345 F.3d 802, 807 (9th Cir. 2003) (quoting *Johnson v. Jones*, 515 U.S. 304, 312 (1995)).

Smiley's appeal is a challenge to the sufficiency of the evidence. She concludes that (1) deadly force was the only alternative left for her and that "[t]here is no evidence her fight with Inmate Loynachan could have ended by any other means other than use of her firearm"; and (2) Plaintiffs offer "not a single

[1] Plaintiffs Kevin and Janice Loynachan bring this action on behalf of Chad Loynachan, their son.

fact that would have put a reasonable officer on notice that Inmate Loynachan had decided to stop his assault . . . ."

1. Smiley ignores certain evidence in the record and inconsistencies in her testimony regarding whether deadly force was her only alternative. For example, Smiley testified that she was face-to-face with Loynachan when she shot him in the abdomen with the gun in her right hand. Yet the coroner noted that the bullet entered the right side of Loynachan's abdomen and went right to left, indicating that he could have been turned away from Smiley when she shot him. Smiley herself, moreover, stated that Loynachan was "trying to get away." While Smiley challenges Plaintiffs' expert reports, she does not challenge the coroner's testimony or acknowledge that her own testimony conflicts with the physical evidence.

The severity of the struggle is also in dispute. Loynachan was unarmed, shackled at the legs, and restrained with handcuffs that attached to a "belly chain" that wrapped around his waist. Smiley's testimony that Loynachan continuously headbutted her forehead is not entirely consistent with the record evidence, as she had no injury to her forehead or the top of her head. And, as the district court noted, Smiley testified that she was able to create some space between herself and Loynachan during the altercation.

2. Smiley's conclusion that Plaintiffs present no evidence that would have put a reasonable officer on notice that Loynachan decided to flee also ignores

evidence. Smiley asserts that "even if the Court indulges this 'theory' [that Loynachan decided to flee], . . . [w]hatever *unspoken thought* Loynachan may have had in the fraction of a second before lethal force was used would have been of no value to Deputy Smiley in her calculation as to when she needed to resort to lethal force." But this argument misses the mark because the evidence here speaks to Loynachan's *position* when he was shot, not his state of mind. Evidence that Loynachan may have been turned away from Smiley at the time he was shot is itself evidence that could have put Smiley on notice that he had decided to flee.

Overall, Smiley consistently "challeng[es] the factual determinations underlying [the] district court's denial of qualified immunity" and asks us to reweigh the evidence, all of which is inappropriate in an interlocutory appeal. *Est. of Anderson v. Marsh*, 985 F.3d 726, 733 (9th Cir. 2021).

DISMISSED.