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NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

TRAVIS SCOTT KING, by and through his Guardian Ad Litem, Breanna Raymundo; BREANNA RAYMUNDO, Plaintiffs-Appellants, v. DEMICHAEL DEWS; et al., Defendants-Appellees, and RONALD DAVIS, Warden, Defendant.	No. 22-15743 D.C. No. 3:19-cv-07722-VC MEMORANDUM* (Filed Jul. 31, 2023)

Appeal from the United States District Court
for the Northern District of California
Vince Chhabria, District Judge, Presiding

Argued and Submitted July 10, 2023
San Francisco, California

Before: BEA, BENNETT, and H.A. THOMAS, Circuit Judges.

While serving a sentence at San Quentin State Prison, Plaintiff-Appellant Travis Scott King was

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

transferred to Marin General Hospital for care. King ran from his room into the hospital hallway, and correctional officers subdued him by pinning him to the ground until hospital staff injected him with Haldol (Haloperidol), an antipsychotic medication. King is now permanently disabled. On de novo review, we affirm the district court's grant of summary judgment for correctional officer Defendants-Appellees. *See Lemire v. California Dep't of Corr. & Rehab.*, 726 F.3d 1062, 1074 (9th Cir. 2013). As the parties are familiar with the facts of this case, we do not repeat them here.

First, no reasonable juror could find an Eighth Amendment violation. When correctional officers act "to resolve a disturbance . . . that indisputably poses significant risks to the safety of" surrounding personnel, the relevant inquiry is "whether force was applied in a good faith effort to maintain or restore discipline or maliciously and sadistically for the very purpose of causing harm." *Whitley v. Albers*, 475 U.S. 312, 320–21 (1986) (cleaned up). In determining whether the use of force was applied maliciously and sadistically, courts assess: "(1) the extent of injury suffered by an inmate; (2) the need for application of force; (3) the relationship between that need and the amount of force used; (4) the threat reasonably perceived by the responsible officials; and (5) any efforts made to temper the severity of a forceful response." *Martinez v. Stanford*, 323 F.3d 1178, 1184 (9th Cir. 2003).

The first factor favors King; he was grievously injured. But the other factors favor the correctional officers. When King ran into the hallway, he created a need

for some force, as it was the officers' duty to prevent him from escaping custody. *See Hughes v. Rodriguez*, 31 F.4th 1211, 1222 (9th Cir. 2022). In assessing how much force to use, the officers had to balance "competing concerns" regarding safety as they made "decisions in haste, under pressure, and . . . without the luxury of a second chance." *Hudson v. McMillian*, 503 U.S. 1, 6 (1992) (cleaned up). Even in the light most favorable to King, the testimony of observing witnesses supports the officers' use of force and their reasonable perception of a threat. One nurse who saw King fight the officers in his hospital room testified it looked like a "brawl" and it appeared King was trying to escape. Another hospital staff member testified she had never seen anyone act as strangely as did King. A second nurse who witnessed the struggle in the hospital room testified that even with the number of people working to restrain King, he "was seemingly overpowering them." And when King and the officers moved to the hallway, nurses on the ward ran away to hide in a locked room because they were afraid. One nurse testified that she felt it was necessary to call the Marin County Sheriff's Department because the situation between King and the officers "had escalated" to "being an unsafe situation" because there was an escaping inmate at the hospital.

Finally, also in the light most favorable to King, the officers tempered the severity of their response. The extremely serious injuries King suffered were the result of his being held prone on the ground during an ongoing struggle. During the altercation (some of

which is on video in the record), King was struggling and thrashing his body in a way that caused a doctor to believe it was necessary to prescribe the immediate intramuscular injection of Haldol. The doctor who prescribed the Haldol did so because he felt it was an "emergency" and he was worried that "both [King] and the staff were in an unsafe situation." King did not merely struggle at the beginning of his encounter with the officers; he was struggling even as the Haldol was being administered. It was only after the injection that King stopped thrashing, and at that point, the officers withdrew their weight.[1] Even in the light most favorable to King, the evidence shows that force was applied in an effort to restore order in the hospital.[2]

Second, we agree with the district court that even if summary judgment was not proper on the issue of whether an Eighth Amendment violation occurred, the correctional officers would be entitled to qualified immunity. Qualified immunity applies in the Eighth

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[1] As the district court accurately stated: "After the injection was administered, King stopped struggling, and everyone involved in the physical restraint released their hold on him."

As the district court also accurately stated: "Prior to that time, there is no indication [the correctional officers] did anything beyond what was necessary to restore order and ensure the safety of staff and patients. No reasonable juror could infer, from the evidence presented at summary judgment, the kind of malicious intent necessary to find an Eighth Amendment violation in an emergency situation like this."

[2] For the same reasons, we affirm the district court's grant of summary judgment on Plaintiffs-Appellants' Fourteenth Amendment claims. *See County of Sacramento v. Lewis*, 523 U.S. 833 (1998).

Amendment excessive force context. *See Hughes*, 31 F.4th at 1220. Under the doctrine, "[g]overnment officials enjoy qualified immunity from civil damages unless their conduct violates 'clearly established statutory or constitutional rights of which a reasonable person would have known.'" *Jeffers v. Gomez*, 267 F.3d 895, 910 (9th Cir. 2001) (quoting *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982)). "The plaintiff bears the burden of pointing to prior case law that articulates a constitutional rule specific enough to alert these officers in this case that their particular conduct was unlawful." *Hughes*, 31 F.4th at 1223 (cleaned up). We may not define clearly established law at a high level of generality. *See City & Cnty. of San Francisco v. Sheehan*, 575 U.S. 600, 613 (2015).

King has identified no Eighth Amendment case with comparable facts. And although King need not identify a factually comparable case if the constitutional violation was so obvious that any reasonable officer would have known they were committing such a violation, *see Taylor v. Riojas*, 141 S. Ct. 52, 53 (2020), as the district court stated, that is not the case here.[3]

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[3] "But here, it was not obvious that the officers needed to stop their bodyweight restraint of King earlier than they did. Until the injection was administered, King continued to struggle. At that time, he was still located in the hallway of a public hospital, surrounded by medical personnel and, presumably, members of the public. And a reasonable officer in that situation could have interpreted his struggling as continued resistance, especially given that none of the observing doctors or nurses raised concerns about King's medical condition until the officers released their bodyweight restraint."

In the light most favorable to King, there are no genuine issues of material fact, and the district court correctly applied the relevant substantive law. *See Lopez v. Smith*, 203 F.3d 1122, 1131 (9th Cir. 2000) (en banc).

AFFIRMED.

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

TRAVIS SCOTT KING, et al., Plaintiffs, v. DEMICHAEL DEWS, et al., Defendants.	Case No. 19-cv-07722-VC **ORDER GRANTING MOTIONS FOR SUMMARY JUDGMENT AND DENYING MOTION TO SEAL** Re: Dkt. Nos. 73, 76, 86 (Filed May 12, 2022)

The defendants' motions for summary judgment are granted.

1. Based on the uncontroverted evidence in the summary judgment record, no Eighth Amendment violation occurred. The evidence uniformly shows that an altercation between King and the officers that began in King's hospital room spilled into the hospital hallway. *See*, *e.g.*, Schwaiger Decl., Ex. EE (hospital security video); Dkt. No. 85-1, at 252–54 (McFarland deposition); Dkt. No. 85-1, at 297–98 (Munsell deposition). After following King into the hallway, Sergeant Dews tackled him to the ground. Dkt. No. 85-1, at 195–99 (Dews deposition). While Dews used his bodyweight to try to restrain King, Officers Nee and Tran secured King in four-point restraints, an endeavor that took "a couple of minutes total." *Id.* at 70–72 (Tran deposition); *id.* at 467 (Nee deposition); *see also* Dkt. No. 73-1, at 7 (Dews declaration) (handcuffs were secured

"mid struggle or late struggle" to the best of Dews' memory). Throughout this time, and even after he was restrained, King continued to struggle, and Dews and Tran, with some help from nearby hospital staff, continued to use their bodyweight to restrain him. *See*, *e.g.*, Dkt. No. 73-1, at 7 (Dews declaration); Dkt. No. 74, at 99 (Tays deposition); Dkt. No. 85-1, at 538 (Dittmar deposition); Dkt. No. 85-1, at 260–61 (McFarland deposition).

A doctor on the hospital's rapid response team was called to the scene and prescribed an antipsychotic medication to calm King down. Dkt. No. 85-1, at 538 (Dittmar deposition); Dkt. No. 74, at 214–15 (McFarland deposition). After the injection was administered, King stopped struggling, and everyone involved in the physical restraint released their hold on him. Dkt. No. 73-1, at 8 (Dews declaration); Dkt. No. 74, at 240 (Bondurant deposition). Only after this occurred did a nurse raise a concern that King was not breathing. Henkels Decl., Exs. B & D (body-cam footage). Until that time, no one in the crowd of medical personnel observing the events had expressed concerns about King's medical condition. According to video footage, the incident in the hallway lasted a little more than nine minutes. *See* Henkels Decl., Ex. G (hospital security video).[1]

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[1] Nurse McFarland testified that people were still restraining King when she raised concerns that he was not breathing. *See* Dkt. No. 85-1, at 263 (McFarland deposition). This is directly contradicted by the video evidence and therefore creates no genuine dispute.

"Where a prison security measure is undertaken to resolve a disturbance[] . . . that indisputably poses significant risks to the safety of inmates and prison staff," the force a prison official uses does not violate the Eighth Amendment when it is "applied in a good faith effort to maintain or restore discipline" rather than "'maliciously and sadistically for the very purpose of causing harm." *Whitley v. Albers*, 475 U.S. 312, 320–21 (1986) (internal quotations omitted); *see also Johnson v. Lewis*, 217 F.3d 726, 733 (9th Cir. 2000). King's escape from his room to the hospital hallway was indisputably a disturbance that posed a significant risk to the medical personnel, patients, and guests on the hospital floor, the officers, and King himself. The situation remained volatile even after he was secured in four-point restraints. He continued to struggle, so much so that hospital employees helped the officers hold him down and a hospital doctor eventually prescribed an antipsychotic medication to calm him. Once the sedative was administered and King stopped struggling, the officers took their weight off him. Prior to that time, there is no indication they did anything beyond what was necessary to restore order and ensure the safety of staff and patients. No reasonable juror could infer, from the evidence presented at summary judgment, the kind of malicious intent necessary to find an Eighth Amendment violation in an emergency situation like this.[2]

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[2] King contends that the deliberate indifference standard should govern his claim because there was no longer an emergency after he was secured in four-point restraints. *See Johnson*,

The closest King comes to creating a genuine dispute of material fact is with the deposition testimony of Standridge, a hospital security guard. Standridge testified that King was "pretty much . . . under control" by the time he arrived. Dkt. 85-1, at 510. When he joined the officers in restraining King, he testified that King's arm was making "slow movements," not "sudden jerks." *Id.* at 506–07. Standridge never saw King try to hit or kick anyone in the hallway, lift himself off the ground, or "aggressively try[] to get free from the hold of the officers." *Id.* at 507–08. Consistent with this testimony, King contends that there is a difference between struggling to resist and struggling to breathe and that he was doing the latter.

But even Standridge's testimony does not create a genuine dispute of material fact. For one, Standridge's testimony is vague as to time; it is unclear at what point Standridge joined the fray and how long he assisted in the restraint of King. But more importantly (and alone sufficient), even Standridge admits the material point summary judgment turns on: King continued to struggle after he was secured in four-point restraints. In the midst of a chaotic situation, the officers had to make decisions "in haste, under pressure,

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217 F.3d at 733–34 (explaining how the Eighth Amendment inquiry differs in a situation where exigent circumstances do not exist). But the record makes clear that the exigency persisted for as long as King continued to struggle in the middle of the hospital hallway surrounded by members of the public. Even applying the deliberate indifference standard, however, there was no Eighth Amendment violation as a matter of law (and the defendants would be entitled to qualified immunity if there was).

and frequently without the luxury of a second chance." *Whitley*, 475 U.S. at 320. Given the nature of the threat to the public, the officers were permitted to continue applying force for as long as King continued to struggle. *Id.*[3]

2. Even if the evidence supported King's characterization of the facts – that after he was placed in four-point restraints, his continued movement reflected a struggle to breathe rather than ongoing resistance – the officers would be entitled to qualified immunity.

The contours of the Eighth Amendment right in these circumstances are not clearly established. King has not pointed to a case finding an Eighth Amendment violation on facts resembling these. The cases he relies upon discuss violations of the Fourth Amendment. *See Lombardo v. City of St. Louis*, 141 S. Ct. 2239, 2240–41 (2021); *Drummond ex rel. Drummond v. City of Anaheim*, 343 F.3d 1052, 1053–54 (9th Cir. 2003); *Greer v. City of Hayward*, 229 F. Supp. 3d 1091, 1094 (N.D. Cal. 2017). But the Eighth Amendment standard governing the conduct of a prison official responding to a safety threat is very different. *Whitley*, 475 U.S. at 319.[4]

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[3] For the same reasons, King has not created a genuine dispute of material fact that the officers' conduct shocked the conscience, thereby violating the Fourteenth Amendment (or the First Amendment, as King alternatively alleges).

[4] While *Greer* also discusses a Fourteenth Amendment claim, it does so primarily under the deliberate indifference standard. *See* 229 F. Supp. 3d at 1108. The discussion of the purpose-to-harm

King need not identify a comparable case if the constitutional violation was so obvious that any reasonable officer would have known they were committing it. *See Kisela v. Hughes*, 138 S. Ct. 1148, 1153 (2018). But here, it was not obvious that the officers needed to stop their bodyweight restraint of King earlier than they did. Until the injection was administered, King continued to struggle. At that time, he was still located in the hallway of a public hospital, surrounded by medical personnel and, presumably, members of the public. And a reasonable officer in that situation could have interpreted his struggling as continued resistance, especially given that none of the observing doctors or nurses raised concerns about King's medical condition until the officers released their bodyweight restraint. In such circumstances, the officers are entitled to qualified immunity.[5]

* * *

Dews' objection to the jail call between King and his sister on relevance grounds is denied. King's motion to seal is also denied without prejudice. It is not enough to state that the documents sought to be sealed are subject to the stipulated protective order. The motion must explain why there is a compelling reason that the information should be rendered inaccessible to the public. *See Center for Auto Safety v. Chrysler*

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standard is cursory and not alone sufficient to put any reasonable officer on notice that the conduct here was unlawful.

[5] For the same reasons, King has not shown that the officers are not entitled to qualified immunity on his First and Fourteenth Amendment claims.

Group, LLC, 809 F.3d 1092, 1096 (9th Cir. 2016). Within 7 days, King must file either a renewed motion explaining why that standard is satisfied here or the unredacted documents on the docket.

IT IS SO ORDERED.

Dated: May 12, 2022

/s/ Vince Chhabria
VINCE CHHABRIA
United States District Judge

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

TRAVIS SCOTT KING, by and through his Guardian Ad Litem, Breanna Raymundo; BREANNA RAYMUNDO, Plaintiffs-Appellants, v. DEMICHAEL DEWS; et al., Defendants-Appellees, and RONALD DAVIS, Warden, Defendant.	No. 22-15743 D.C. No. 3:19-cv-07722-VC Northern District of California, San Francisco ORDER (Filed Sep. 28, 2023)

Before: BEA, BENNETT, and H.A. THOMAS, Circuit Judges.

Plaintiffs-Appellants Travis Scott King and Breanna Raymundo filed a petition for rehearing en banc on August 14, 2023 (Dkt. No. 55). The panel has voted to deny the petition for rehearing en banc. Judges Bennett and Thomas have voted to deny the petition for rehearing en banc, and Judge Bea so recommends.

The full court has been advised of the petition for rehearing en banc, and no judge of the court has requested a vote on whether to rehear the matter en banc. Fed. R. App. P. 35.

The petition for rehearing en banc is **DENIED**.