

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

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

MARY COTTON, in her capacity as
Successor in Interest for Decedent Russell
Dene Cotton; et al.,

Plaintiffs - Appellants,

v.

COUNTY OF SANTA BARBARA, a
public entity; et al.,

Defendants - Appellees.

No. 06-56079

D.C. No. CV-03-07652-GPS

MEMORANDUM*

Appeal from the United States District Court
for the Central District of California
George P. Schiavelli, District Judge, Presiding

Argued and Submitted March 6, 2008
Pasadena, California

Before: SCHROEDER, WARDLAW, and TALLMAN, Circuit Judges.

Russell Cotton's wife and children ("Appellants") appeal the district court's
grant of summary judgment in favor of the County of Santa Barbara and other

* This disposition is not appropriate for publication and is not precedent
except as provided by 9th Cir. R. 36-3.

named defendants (“Appellees”) in their § 1983 lawsuit arising from Cotton’s death while in the custody of the Santa Barbara Sheriff’s Department (“SBSD”). The district court concluded that Appellants failed to raise any triable issue of fact as to (1) whether Cotton was unlawfully arrested, (2) whether SBSB officers used unreasonable force against Cotton, and (3) whether SBSB officers violated Cotton’s constitutional right to receive adequate medical treatment. We have jurisdiction pursuant to 28 U.S.C. § 1291, and although we find that Cotton’s arrest was lawful, we conclude that genuine issues of material fact precluding summary judgment exist as to the claims of excessive force and inadequate medical treatment.

The officers did not violate the Fourth Amendment when they arrested Cotton. Probable cause to believe that Cotton violated the law existed when he kicked out the MHAT vehicle’s window in their presence. *Atwater v. City of Lago Vista*, 532 U.S. 318, 354 (2001) (“If an officer has probable cause to believe that an individual has committed even a very minor criminal offense in his presence, he may, without violating the Fourth Amendment, arrest the offender.”). Appellants’ claim that the arrest violated California Welfare & Institutions Codes §§ 5150 and 5150.1 is misplaced because, even if it were held by the state courts that such an arrest violated state law, that would not give rise to a Fourth Amendment violation.

A reasonable jury could find that Officer Martinez used excessive force against Cotton in violation of the Fourth Amendment. *See Lolli v. County of Orange*, 351 F.3d 410, 415 (9th Cir. 2003) (“The Fourth Amendment sets the applicable constitutional limitations for considering claims of excessive force during pretrial detention.”) (quoting *Gibson v. County of Washoe*, 290 F.3d 1175, 1197 (9th Cir. 2002)). Viewing the evidence in the light most favorable to Appellants, as we must on summary judgment, Officer Martinez pushed Cotton hard into a jailhouse wall, after Cotton said “no” to the officers transporting him across the jail and turned back in the direction from which they had come. Officer Martinez knew that the handcuffed, sixty-two-year-old Cotton suffered from severe mental illness and respiratory difficulty. Under the circumstances, balancing the amount of force used against the lack of provocation, a reasonable jury could find that Officer Martinez’s use of force was excessive. *See Lolli*, 351 F.3d at 415 (“In considering an excessive force claim, we balance the nature and quality of the intrusion on the individual’s Fourth Amendment interests against the countervailing governmental interests at stake.” (internal quotation marks omitted)); *Drummond v. City of Anaheim*, 343 F.3d 1052, 1060 (9th Cir. 2003) (“[T]he degree of force used by the police is permissible only when a strong

government interest *compels* the employment of such force.” (internal alteration and quotation marks omitted) (emphasis in original)).¹

The district court also erred in finding no genuine issues of material fact as to Appellants’ claim that Cotton was deprived of his constitutional right to adequate medical treatment. *See Lolli*, 351 F.3d at 418–19 (“Claims of failure to provide care for serious medical needs, when brought by a detainee . . . who has been neither charged nor convicted of a crime, are analyzed under the substantive due process clause of the Fourteenth Amendment.”). First, the arrest report states that the Psychiatric Health Facility (“PHF”) “repeatedly denied the [officers’] request” to admit Cotton, despite their “agree[ment] that the best place for Cotton would be a mental health facility.” Especially in light of California Welfare and

¹ The dissent seems to make the unsupported suggestion that the government is entitled to use *more* force in a custodial setting than in a public arrest. As the dissent points out, the Supreme Court has recognized that prison administrators have a responsibility to ensure the safety of prison staff, personnel, visitors, and the inmates themselves. *See Whitley v. Albers*, 475 U.S. 312, 320 (1986); *but see Graham v. Connor*, 490 U.S. 386, 399 n.11 (1986) (analyzing excessive force claim under the Fourth Amendment and noting that *Whitley*’s analysis “had no implications beyond the Eighth Amendment context.”). But, of course, the government has a similar responsibility to protect the public and arresting officers. *See Graham*, 490 U.S. at 396. Moreover, the government has far more control in a custodial context, and can therefore more easily prevent situations where the use of force would become necessary. Because “it is the *need* for force which is at the heart of the” excessive force analysis, *Drummond*, 343 F.3d at 1057 (internal quotation omitted), the fact that the force used against Cotton occurred while he was in custody must, if anything, cut against the Appellees.

Institutions Code § 5150.1, which requires that a “peace officer be [allowed] to transport [a] person [on a psychiatric hold] directly to [a] designated facility,” a reasonable jury could find that PHF and its employees acted with deliberate indifference to Cotton’s medical needs in denying him access to the facility. *See Lolli*, 351 F.3d at 419. Second, the officers left Cotton alone in the safety cell without checking his vital signs, after he had been “yelling repeatedly ‘I can’t breath[e], don’t touch me. I can’t fucking breath[e], let me go,’” and after he had been held on his stomach in a four-quarter restraint, during which time he had stopped struggling and began mumbling unintelligibly. As the officers left, Cotton was still “hollering, ‘I can’t breathe,’ . . . [a]mong other things.” A reasonable jury could find that the officers acted with deliberate indifference to Cotton’s medical needs by leaving him alone in the safety cell in the face of compelling evidence of medical distress.²

² The dissent’s assertion that “Cotton was kicking and screaming the entire time the officers were attempting to control him” is belied by the record. Officer Coburn testified that Cotton “became compliant” and “stopped fighting” “shortly after [being] rolled . . . onto his stomach.” Officer Coburn explained that Cotton was moving only his head, “was still challenging, but he wasn’t fighting,” and was “mumbling . . . statements, unintelligible.” Officer Turner testified that Cotton was still complaining that he could not breath, even as the officers were leaving the cell. Given that Cotton had become compliant by this point, the dissent offers no explanation why the officers would need to “evacuat[e] the cell for their own physical safety” before checking Cotton’s vital signs. Viewing the evidence in the light most favorable to Appellants, as we must, a reasonable jury could find that

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The dissent's reliance on *Gregory v. County of Maui*, 523 F.3d 1103 (9th Cir. 2008), to conclude that the force used by police was objectively reasonable and the medical treatment adequate, is misplaced. In *Gregory*, the plaintiff-decedent was resisting arrest, threatening the officers, and suffering from a heart infirmity unknown to the officers who were trying to restrain him. *Id.* at 1104–05. Here, the victim was in police custody; the officers knew he was mentally ill and suffered from respiratory problems, yet they used abrupt and substantial force to subdue him and then walked away, leaving him in an obviously physically distressed condition.

We therefore affirm the district court's grant of summary judgment on Appellants' unlawful arrest claim. We reverse the grant of summary judgment as to Appellants' excessive force claim against Officer Martinez, who pushed Cotton against the wall. Finally, we reverse the grant of summary judgment as to Appellants' claims of deliberate indifference to Cotton's medical needs against PHF and its employees who denied Cotton access to the facility, and the officers who left Cotton unattended without checking his vital signs. We remand for further proceedings consistent with this disposition.

²(...continued)
the officers ignored compelling evidence of Cotton's medical distress.

AFFIRMED in part, REVERSED in part, and REMANDED. Each party shall bear its own costs on appeal.