C.A. No. 17-56709

IN THE UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

TIMOTHY STREM,

Plaintiff/Appellant,

v.

COUNTY OF SAN DIEGO, SAN DIEGO SHERIFFS DEPUTIES WILLIS (#9925) MYERS (#7284) and DOES 1-5,

Defendants/Appellees.

On Appeal from the United States District Court
for the Southern District of California

Honorable Karen S. Crawford, Magistrate Judge Presiding by Consent
(DC No. CV-15-2120-KSC(JMA), Southern California, San Diego)

APPELLEES' BRIEF

THOMAS E. MONTGOMERY, County Counsel
County of San Diego

By RONALD LENERT

TOPICAL INDEX

Page

TABLE OF AUTHORITIES .... -iii-

INTRODUCTION 1

JURISDICTIONAL STATEMENT 3

ISSUES PRESENTED..3

STATEMENT OF FACTS 4
STATEMENT OF CASE 4 44

0w (4)Tj 2MC /P9.632D 44

TOPICAL INDEX
(Cont'd.)

Page

4. The Claim That Handcuffing A Potentially Suicidal Subject Behind His Back, Who Reportedly Had Access To And Threatened To Use A Gun, Constitutes Excessive Force Was Not A Clearly Established Rule Particularized To The Facts Of This Case 31

B. Strem Claims Only A Generalized Violation Of A Constitutional Right 34

II STREM DOES NOT CHALLENGE SUMMARY JUDGMENT FOR THE COUNTY OF SAN DIEGO 36

CONCLUSION 37

CERTIFICATE OF COMPLIANCE 38

STATEMENT OF RELATED CASES 39

TABLE OF AUTHORITIES

Page

Alexander v. Cnty. of L.A., 64 F.3d 1315 (9th Cir. 1993) 25

Anderson v. Creighton, 483 U.S. 635 (1987) 18

Ashcroft v. al-Kidd, 563 U.S. 731 (2011) 18, 34

Baldwin v. Placer Cty., 418 F.3d 966 (9th Cir. 2005) 25

Beckles v. City of N.Y., 492 F. App'x 181 (2d Cir. Unpub. 2012)

TABLE OF AUTHORITIES
(Cont'd.)

Page

Fogarty v. Gallegos, 523 F.3d 1147 (10th Cir. 2008) 23

Glenn v. Washington Cnty., 673 F.3d 864 (9th Cir. 2011) 33, 35, 36

Graham v. Connor, 490 U.S. 386 (1989) 14, 15

Guite v. Wright, 147 F.3d 747 (8th Cir. 1998) 29

Hansen v. Black, 885 F.2d 642 (9th Cir. 1989) 23, 25

Harlow v. Fitzgerald, 457 U.S. 800 (1982) 14

Hayes v. Cnty. of San Diego, 736 F.3d 1223 (9th Cir. 2013) 33

Hunt v. Massi, 773 F.3d 361 (1st Cir. 2014) 16, 20

Injeyan v. City of Laguna Beach, 645 F. App'x 577
(9th Cir. Unpub. 2016) 27

Jackson v. City of Bremerton, 268 F.3d 646 (9th Cir. 2001) 14, 20, 21, 28

Kingsley v. Hendrickson, 135 S. Ct. 2466 (2015) 13

LaLonde v. Cnty. of Riverside, 204 F.3d 947 (9th Cir. 2000) 27

Meredith v. Erath, 342 F.3d 1057 (9th Cir. 2003) 23, 25

Minor v. City of Chesterfield, 2007 U.S. D)

TABLE OF AUTHORITIES
(Cont'd.)

Page

Palmer v. Sanderson, 9 F.3d 1433 (9th Cir. 1993) 25

Pearson v. Callahan, 555 U.S. 223 (2009) 15, 17, 18, 33

Perea v. Baca, 817 F.3d 1198 (10th Cir. 2016) 23

Redon v. Jordan, 2017 WL 1155342 (S.D. Cal. Mar. 28, 2017) 27

Reichle v. Howards, 566 U.S. 658 (2012) 33, 34

Saucier v. Katz, 533 U.S. 194 (2001) 17, 36

S.B. v. Cnty. of San Diego, 864 F.3d 1010
(9th Cir. 2017) 2, 13, 15, 18, 19, 21, 22, 24, 26, 30, 33

Shafer v. Cnty. Of Santa Barbara, 868 F.3d 1110 (9th Cir. 2017) 22, 24

Sharp v. Cnty. of Orange, 871 F.3d 901(9th Cir. 2017) 23

Sinclair v. Akins, 2017 WL 2274968 (9th Cir. Unpub. May 24, 2017) 26, 27

Thomas v. Dillard, 818 F.3d 864 (9th Cir. 2016) 15

Tolan v. Cotton, 134 S. Ct. 1861 (2014) 15

Tri-Valley CAREs v. United States DOE, 671 F.3d 1113 (9th Cir. 2012) 36

Wall v. Cnty. of Orange, 364 F.3d 1107

TABLE OF AUTHORITIES
(Cont'd.)

Page

Winterrowd v. Nelson. 480 F.3d 1181 (9th Cir. 2007) 30

Wyant v. City of Lynnwood, 2010 WL 128389 (W.D. Wash. 2010) 27

STATUTES

Welfare & Institutions Code
Section 5150 12

28 United States Code
Section 1291 3
Section 1294(1) 3

42 United States Code
Section 1983 .... 2, 13

INTRODUCTION

San Diego County Sheriff's Deputies should not be stripped of their qualified immunity in this case because Appellant Strem fails to demonstrate that the officers violated one of his statutory or constitutional rights; and fails to demonstrate that such a right was clearly established at the time of the challenged conduct.

The first two issues are appropriate for this court to address because the district court concluded qualified immunity shielded the deputies as no case could be located in which officers acting under similar circumstances were found to have used excessive force. The third issue is properly disregarded because the district court did not rule on issues of material fact and assumed all of the facts presented in the light most favorable to Strem.

STATEMENT OF FACTS

It is undisputed that on September 24, 2014, Strem was upset and agitated while on the phone with patient service representative Matthew Hollen. (2 Excerpts of Record ["ER"], 83, 289 (Undisputed Material Fact ["UMF"] 1); Supplemental Excerpts of Record ["SER"] 7-8.) "I remember him saying that he was very tired of it all, sick of being sick. And that he should just end it." (SER 7.) "And he – I believe he said, 'I have these pills and I have a gun and I can just end it now.'" (*Ibid*.) Observing Strem's changed emotional state, as compared to prior conversations, Hollen believed Strem was serious in intending to commit suicide. (SER 8-10; 2 ER 289 [UMF 2].)

Hollen's co-worker Tiffany Branam realized something was wrong as Hollen spoke with Strem. (SER 15-16.) Hollen asked Branam to call their supervisor, indicating Strem said he was going to kill himself. (*Ibid*.) Branam then called 911, relaying information from Hollen indicating Strem threatened to

commit suicide with his pills or his gun. (2 ER 178; SER 17.) The 911 call was placed at 9:57:58 a.m. (2 ER 199.)

At approximately 10:00 a.m., Sheriff's Deputies Willis and Myers were dispatched to Strem's address. (2 ER 122 [Willis pp. 12-30:1][1], 200.) Deputy

At 10:02 a.m., Deputies Willis and Myers arrived on scene. (2 ER 104 [Myers p. 21:3-10], 123 [Willis p. 36:16-22] and 200.) They made contact with a male near the front of the main house and determined it was not Strem. (2 ER 104 [Myers pp. 22:14-24:17], 124 [Willis pp. 39:9-40:24].) This first contact was with Craig Duran, who asserted that he identified himself as Strem's son-in-law and pointed out a detached studio where Strem resided. (2 ER 88-89, 104 [Myers pp. 22:14-24:17], 124 [Willis pp. 39:9-40:24].) The only information deputies relayed to Duran was that they were looking for Strem in response to a radio call. (*Ibid.*) Limited information was provided because Duran's connection to Strem and Strem's condition was unverified at that time. (*Ibid.*)

Myers could hear someone inside the house. (2 ER 105, 107 [Myers pp. 27:8-19, 33:6-13].)

According to Duran, when there was no answer, the deputies asked if Strem had a phone; Duran replied, "yes." (2 ER 89.) Duran was asked to call Strem and have him come outside. (*Ibid*.) Duran tried calling twice with no success. (*Ibid*.) The line was busy. (*Ibid*.) Around the same time, Deputy Willis radioed Dispatch to determine whether the reporting party was still talking with Strem and to have that person ask Strem to come outside. (2 ER 105 [Myers, pp. 25:23-27:7], 125-126 [Willis pp. 43:20-45:5, 45:21-46:5].) The Dispatch event log indicates the radio request occurred at 10:06:33 a.m. (2 ER 126 [Willis pp. 45:21-46:5], 200.) At 10:09:12 a.m., Deputy Willis pre-radioed Dispatch of potential contact with Strem because he heard someone inside the residence. (2 ER 126 [Willis p. 47:8-14], 200.)

When reporting party Branam was called back by Dispatch, she confirmed her office was no longer on the phone with Strem. (2 ER 182.) She described Strem as sounding manic and not normal for Strem. (*Ibid*.) She relayed the doctor's request that Strem be taken in "because he threatened suicide" and was "very unstable." (*Ibid.*) Branam again reported Strem said he had his gun out and was threatening to take pills and shoot himself. (*Ibid*.)

At 10:09:25 a.m., Dispatch told the deputies that on call-back, the reporting party advised Strem was no longer on the land line and that Strem stated he had his gun out. (2 ER 126 [Willis pp. 46:19-47:18], 184, 200.) The deputies took covered positions upon hearing the report Strem had his gun out. (2 ER 105-106 [Myers pp. 26:18-28:8, 30:8-23], 214.) Deputy Willis positioned himself behind the garage of the main building where he could observe the front of Strem's house. (2 ER 106 [Myers 30:16-23], 128 [Willis pp. 56:2-25], 191.) Deputy Myers took a position closer to the front of Strem's house and to the side of the front entrance. (*Ibid*.)

Deputy Willis observed what he perceived as Deputy Myers making verbal contact with Strem with Strem not coming out of the residence. Deputy Willis radioed dispatch advising the subject was refusing to come out and requested additional resources. (2 ER 127 [Willis pp. 50:23-51:19], 184-185, 200-201.) The Dispatch event log indicates this occurred at 10:09:41-42 a.m. (2 ER 201.) The Dispatch transcript showed additional units responding and Dispatch advising "11-45 [suicide] subject at 634 Galaxy Drive. He stated to the hospital that he had a gun out." (2 ER 184-185.)

Deputy Myers recalled that upon taking cover, the two deputies discussed the need for additional resources. (2 ER 107 [Myers, p. 34:1-9].) Deputy Myers then heard a very distinct "click which was what I recognized as part of a gun

making a noise."

It was undisputed that when Strem exited his house, the deputies had legal justification to take him into custody. (2 ER at 56 [Final Pretrial Order at 2:4-5].)

Deputy Willis ordered Strem to put the things in his hands down and turn around multiple times. (2 ER 108 [Myers p. 39:13-20], 129-130 [Willis pp. 60:16-

64:10-66:17].) Deputy Myers observed Strem refuse to place his hands behind his back and that as the deputies took hold of his wrists, Strem became rigid and began to pull his arms up towards his chest. (2 ER 109 [Myers p. 44:2-25].) Strem admitted responding by saying, "I can't do that" and "my natural reaction was to put them by my sides" – "I put my hands as tight against my body as I could." (2 ER 160-161 [Strem pp. 97:14-22, 98:7-25].)[2] He could not remember if he raised his arms. (*Ibid*.)

Deputy Willis gave additional commands to stop resisting and when Strem continued to resist, Strem was taken to the ground, ending up on his back. (2 ER 131 [Willis pp. 66:9-68:20].) Strem continued to resist as deputies rolled him over and resisted until he was handcuffed. (2 ER 110-111 [Myers p. 45:10-19, 48:25-49:8], 131-132 [Willis pp. 68:13-69:5].)

The Dispatch transcript and event log showed Deputy Willis radioing Dispatch that Strem was detained by 10:12 a.m. (2 ER 185, 201.)

Following a pat down and consent search of the residence, the deputies found a loaded .38 caliber revolver in an open shoebox in Strem's bedroom. (2 ER 111-112 [Myers pp. 49:9-54:16], 294.) Strem was transported to the hospital for

---

[2] Strem later modified this testimony, still admitting he stiffened his arms against his body, but asserted he did it because he knew he could not move his arms backwards and trying to prevent what "I knew I was going to occur …" (2 ER 87.)

evaluation on a 72-hour psychiatric hold under Cal. Welf. & Inst. Code § 5150. (2 ER 133 [Willis, pp. 74:11-76:10], 216, 294].)

It is undisputed that the altercation caused Strem pain, concern for his

do so when he actively resisted, and cuffing him behind his back as a protective measure until he could be patted down was both objectively reasonable and the use of the least intrusive means of force. After all, "Not every push or shove, even if it may later seem unnecessary in the peace of a judge's chambers' violates the Fourth

The Ninth Circuit followed *White* in *S.B. v. Cnty. of San Diego*, 864 F.3d at 1015. This Circuit specifically "acknowledge[d] the Supreme Court's recent frustration with failures to heed its holdings." *Ibid*. The *S.B.* Court stated; "[w]e hear the Supreme Court loud and clear." *Ibid*.

Before liability can be imposed on a law enforcement officer, a plaintiff must satisfy a showing of a two prong test. "Qualified immunity shields a police officer from suit under 42 U.S.C. § 1983, unless (1) the officer violated a statutory or constitutional right; and, (2) the right was clearly established at the time of the challenged conduct." *Thomas v. Dillard,* 818 F.3d 864, 874 (9th Cir. 2016), *as amended* (May 5, 2016) (citations omitted). This is not a sequential inquiry and "[c]ourts have discretion to decide the order in which to engage these two prongs." *Tolan v. Cotton,* 134 S. Ct. 1861, 1866 (2014), citing *Pearson v. Callahan*, 555 U.S. 223, 236 (2009) (*Pearson*).

Strem's inquiry into whether Deputies Willis and Myers' use of force was reasonable is misguided. It is undisputed that when Strem exited his house, the deputies had legal justification to take him into custody. (1 ER 5 [citing to Doc. 76 at p. 1].) Under *Graham*, "the right to make an arrest or investigatory stop necessarily carries with it the right to use some degree of physical coercion or threat thereof to effect it." *Graham*, 490 U.S. at 396.

A grab of the wrists to control and handcuff behind the back was an objectively reasonable and least intrusive means of force to detain a reportedly suicidal male who was noncompliant and potentially had a gun on his person or nearby. Strem admittedly reacted by, at a minimum, pinning his arms to his side ns oofasa8sawh

advised officers of recent stomach surgery and showed deputies the scar; arrestee resisted after officers refused to honor request to handcuff in front); *cf. Morreale v.*

> case. Qualified immunity operates in this case, then, just as it does in others, to protect officers from the sometimes "hazy border between excessive and acceptable force," [cite] and to ensure that before they are subjected to suit, officers are on notice their conduct is unlawful.

Ibid.; *accord Mullenix v. Luna*, 136 S.Ct. 305, 308 (2015); *S. B.*, 864 F.3d at 1015.

Thus, the Supreme Court has frequently stated that qualified immunity protects "'all but the plainly incompetent or those who knowingly violate the law.'" *Mullenix*, 136 S.Ct. at 308. The protection of qualified immunity applies regardless of whether the government official's error is a mistake of law, a mistake of fact, or a mistake based on mixed questions of law and fact. *Pearson,* 555 U.S. at 231-232.

A. Strem Fails To Identify Any Clearly Established Rule Particularized To The Facts Of This Case.

Strem must show the asserted constitutional right was clearly established at the time of the officers' alleged misconduct. To be clearly established, "[t]he contours of the right must be sufficiently clear that a reasonable official would understand that what [the official] is doing violates that right." *Anderson v. Creighton,* 483 U.S. 635, 640 (1987). The clearly established law must be "particularized to the facts of the case" and cannot be defined "at a high level of generality." *White*, 137 S. Ct. at 552, citing *Ashcroft v. al-Kidd*, 563 U.S. 731, 742 (2011) and *Anderson*, 483 U. S. at 640; *cf. Mullenix*, 136 S. Ct. at 308 (the inquiry "must be undertaken in light of the specific context of the case, not as a broad

Jackson, 2

Ignoring such adverse authority establishing there is no excessive force in handcuffing behind the back, Strem tries to compensate for the lack of precedent by asking this court to view the issues at a high level of abstract contrary to the dictates of *White* and *S.B.*, and by relying on dicta that "there can be the rare 'obvious case,' where the unlawfulness of the officer's conduct is sufficiently clear…" (Appellant's Opening Brief ["AOB"] at 38, quoting from *District of Columbia v. Wesby*, 138 S. Ct. 577, 590 (2018).) Officers pulling down and handcuffing an agitated, non-compliant, suicidal, potentially armed suspect holding bloody napkin of unknown origin, who admits [illegible] Tw 2n1pei1v-8.2 (se8.3 (t.7 (om)2x(ng)-8s5 (

readily accessible; and none involve handcuffing under concerns that he or an unknown person had already been injured.[4]

---

[4] Strem cites the following cases in support of his argument on disproportionate force:

- *Fogarty v. Gallegos*, 523 F.3d 1147, 1157, 1160 (10th Cir. 2008) (no probable cause to arrest protester for disturbing the peace; protester alleged that he was hit with a rifle-fired projectile as he peacefully played a drum, and offered no resistance to four to five officers who grabbed him and forcibly escorted him through a cloud of tear gas, flexing his wrist so far back for up to five minutes that it tore the tendon; no evidence of danger to police or others);
- *Perea v. Baca*, 817 F.3d 1198, 1201 (10th Cir. 2016) (welfare check of verbal altercation with no weapons reported; officers chased and pushed decedent off a bicycle, struggled with him, and tased him ten times in less than two minutes – tasing continued after decedent under control);
- *Casey v. City of Fed. Heights*, 509 F.3d 1278, 1280 (10th Cir. 2007) (plaintiff returning a file to a courthouse clerk was put into an arm-bar by deputy, continued forward, and was tackled and repeatedly tased. After being handcuffed his head was repeatedly banged into the concrete);
- *Blankenhorn v. City of Orange*, 485 F.3d 463, 478 (9th Cir. 2007) (suspected of misdemeanor trespass with no evidence of threat to officer or public safety, plaintiff was gang-tackled, punched while on the ground and not resisting handcuffing, and put in hobble restraints which made it difficult to breathe);
- *Meredith v. Erath*, 342 F.3d 1057, 1061, 1063 (9th Cir. 2003) (resident who was not the subject of a search warrant for income tax evasion demanded to see the search warrant; agent grabbed resident, threw her to the ground, twisted her arm, handcuffed overtight causing pain for 30 minutes with no evidence of any danger to officers or others);
- *Hansen v. Black*, 885 F.2d 642, 645 (9th Cir. 1989) (concluding triable issues over whether force used to cuff plaintiff was reasonable where there were differing accounts over the distance officers were from plaintiff when they gave commands to not disposed of trash with possibly incriminating material and whether plaintiff hindered their efforts to retrieve it; qualified immunity not addressed);
- *Sharp v. Cnty. of Orange*, 871 F.3d 901, 907-908, 917 (9th Cir. 2017) (qualified immunity affirmed; officers executing an arrest warrant mistakenly

2. The Claim That Painful Application Of Handcuffs

concerns that he or an unknown person had already been injured.[5] The requirement that Strem identify cases with such similar circumstances is not an

---

[5] Strem cites the following cases in support of his painful handcuffing argument, bear no similarity of fact to the case at hand:

- *Meredith v. Erath,* 342 F.3d 1057 (9th Cir. 2003)(plaintiff within building being searched for income tax evasion handcuffed after demanding to see the search warrant);
- *Hansen v. Black*, 885 F.2d 642 (9th Cir. 1989) (concluding triable issues over whether force used to cuff plaintiff was reasonable where there were differing accounts over the distance officers were from plaintiff when they gave commands to not disposed of trash with possibly incriminating material and whether plaintiff hindered their efforts to retrieve it; qualified immunity not addressed);
- *Palmer v. Sanderson*, 9 F.3d 1433, 1436 (9th Cir. 1993)(plaintiff 67 year old male with mobility issues from recent stroke detained on DUI suspicion; two field sobriety tests failed to confirm DUI; Plaintiff grew tired of taking the tests in the rain, returned and sat in his car answering further questions and offering to go to the station and voluntarily submit to sobriety tests; officer then "jerked" plaintiff out of his car and handcuffed him tight enough to cause pain and discoloration of wrists; officer refused to loosen cuffs; held cuffing causing pain and bruising lasting for weeks and failure to loosen cuffs was excessive force analogous to *Hansen v. Black, supra*); g-27.094ffs

exercise in the abstract: these precise circumstances were the foundation for Deputy Willis and Myers' decision to handcuff Strem in the manner they chose. These circumstances indicated that they needed to act quickly to minimize the chance Strem could harm himself or others, to minimize his ability to access a weapon, and to expedite their assessment of his or a victim's injury. None of the cases cited by Strem meet the exacting standard required by *S.B.,* that the deputies were on 'clear notice' that handcuffing Strem under these circumstances was unlawful. *White*, 137 S. Ct. at 552; *accord S.B.*, 864 F.3d at 1015.

To the contrary, Ninth Circuit case law supports the conclusion that a suspect can be painfully handcuffed without constituting excessive force. In *Sinclair v. Akins,* the court found no precedent establishing that "tight handcuffs alone, without any physical manifestation of injury ..., where the initial handcuffing was justified, constituted excessive force." 2017 WL 2274968, at *2 (9th Cir. Unpub. May 24, 2017). The Ninth Circuit upheld the district court's grant of qualified immunity due to plaintiff's failure to identify sufficiently specific

---

because no evidence of exigency justifying unannounced nighttime entry; no facts showing dentist or his wife presented a danger to officers or public);

- *Wall v. Cnty. of Orange*, 364 F.3d 1107, 1109-1111 (9th Cir. 2004) (verbal argument over car service and officers called; plaintiff approached officers seeking to make a complaint and told to leave twice. As plaintiff departed, he was followed by officer who then grabbed him, twisting his arm, cuffed him extremely tight and threw him headfirst into patrol car; held arrested without probable cause and factual disputes precluded summary judgment on whether force used was excessive).

precedent. *Ibid.* Similarly, in *Wyant v. City of Lynnwood,* this Circuit held that "there is no clearly established right to be free from painfree, non-injuring force used to effect an arrest." 2010 WL 128389, at *4 (W.D. Wash. 2010); *see also LaLonde v. Cnty. of Riverside*, 204 F.3d 947, 960 (9th Cir. 2000) (officer refusal to loosen tight handcuffs despite requests; fact-specific inquiry required to determine whether tight handcuffing may constitute excessive force). In *Injeyan v. City of Laguna Beach,* this Circuit found "no precedent placing the conclusion that [defendant's] alleged conduct under the particular circumstances he confronted was unreasonable beyond debate." *Injeyan v. City of Laguna Beach,* 645 F. App'x 577, 579 (9th Cir. Unpub. 2016) (forcibly lifting plaintiff's arms behind her back was not excessive force under the particular circumstances of the case). In *Redon v. Jordan*, a district court held that an officer responding to a suicidal individual who resisted arrest "used no more than the amount of force necessary under the ci

3. The Claim That The Failure To Accommodate An Unconfirmed Advisal Of A Pre-Existing Physical Condition

Strem particularly relies on *Winterrowd,* where unique facts lead the Ninth Circuit to affirm the district court's denial of qualified immunity. *Winterrowd v. Nelson*. 480 F.3d 1181 (9th Cir. 2007). These facts are not comparable to those in our case. In *Winterrowd*, officers were performing a pat-down of plaintiff and did not have probable cause to arrest; there was no indication that plaintiff was currently armed or posed a safety threat; the officers applied greater force after plaintiff screamed in pain; and the officers admitted that they could have effectuated the pat-down without forcing plaintiffs arms behind plaintiff's back. *Id.* at 1181-1186.

Here, deputies were responding to a dispatch call about a suicidal suspect who reportedly had a gun and who then exited his house with a visibly bloody napkin. When Strem would not allow his hands to be placed behind his back, the deputies brought him to the ground to handcuff him. Both parties agreed that the deputies were legally justified to take Strem into custody. (1 ER 5 [citing to Doc. 76 at p. 1].) None of the cases cited by Strem meet the exacting standard required by *S.B.,* that the deputies had been on 'clear notice' that Strem's protest that he a non-visible physical infirmity made their attempts to handcuff him unlawful. *White*, 137 S. Ct. at 552; *accord S.B.*, 864 F.3d at 1015.

---

defendant officers in arresting Beckles was excessive, and they are therefore entitled to qualified

source) cannot be parsed and addressed with individual rules. Strem must identify a rule particularized to the facts of this case that demonstrates the deputies were not authorized to use even the minimal force of handcuffing Strem behind his back. Strem cannot do so, and instead presents misleading hypotheticals and legal holdings based on different circumstances than those confronting the deputies in this case.

Nonetheless, considering Strem's argument that he should have been treated as a suicidal suspect even though he argues he presented no threat to himself or others, he relies on four cases with vastly different factual circumstances than the present case, except that they also involved a suicidal threat by a plaintiff.[7] None

---

[7] Strem cites the following cases in support of his argument on suicidal plaintiffs:

- *Deorle v. Rutherford,* 272 F.3d 1272, 1275-1278 (9th Cir. 2001) (split panel decision) (suicidal drunk male; at least thirteen officers at the scene, some for up to forty minutes. Although the plaintiff wielded weapons at different times, he complied with officer demands to drop them. Plaintiff approached the defendant officer with an unloaded plastic bow and dropped it on command. When the unarmed plaintiff reached a distance predetermined by the officer, the officer fired a potentially lethal twelve-gauge lead beanbag shotgun round without warning, causing "multiple fractures to [plaintiffs] cranium, loss of [plaintiffs] left eye, and lead shot embedded in [plaintiffs] skull.");
- *Drummond v. City of Anaheim,* 343 F.3d 1052, 1054-1055, 1059 (9th Cir. 2003) (responding to reported concerns plaintiff might hurt himself "by darting out into traffic," with no reported weapons and no resistance; officers tackled plaintiff and "[o]nce on the ground, prone and handcuffed, Drummond did not resist the arresting officers. Nevertheless, two officers, at least one of whom was substantially larger than he was, pressed their weight against his torso and neck, crushing him against the ground. They did not remove this pressure

B. Appellant Claims Only A Generalized Violation Of A Constitutional Right.

Strem's constitutional contention is that he has a Fourth Amendment right to be free from unreasonable use of force.[8] This generalized proposition is insufficient to overcome Deputy Willis and Deputy Myers' immunity, as "[q]ualified immunity is no immunity at all if 'clearly established' law can simply be defined as the right to be free from unreasonable searches and seizures." *City &*

denials that he had any mental infirmity or had actually made a suicidal statement. He argues that the deputies were limited to a pat-down of his exterior clothing, despite conceding that custody was justified, and overlooking officer[9] and public safety considerations when officers are confronting an agitated, suicidal, reportedly armed individual holding a bloody object and not complying with commands. He argues of a statutory limitation on force against a suspect that does not pose a threat to others, again without clarifying, and again overlooking that officers were told he was a suicide threat, he was armed with a gun, and they had no idea if his bloody napkin indicated someone else was already injured or that he already harmed himself. He argues he had a right to warnings or less intrusive alternatives, without clarifying, and overlooking that the officers found him non-compliant with several verbal demands and that pulling a suspect to the ground is one of the least intrusive uses of force other than verbal commands, particularly where, by Strem's own admission, he resisted efforts to handcuff him through pinning his arms to his sides.

As with either prong, if a court makes this inquiry and finds that no constitutional right was violated under the alleged facts, the inquiry ends and

held liable under § 1983." *City of Canton v. Harris*, 489 U.S. 378, 385 (1989).

Summary judgment for the County must be affirmed.

CONCLUSION

For the reasons addressed above, the judgment in favor of Deputy Willis, Deputy Myers and the County of San Diego should be affirmed.

DATED: March 26, 2018

Respectfully submitted,

THOMAS E. MONTGOMERY, County Counsel

By: s/ RONALD LENERT, Senior Deputy
Attorneys for Defendants/Appellees County of San Diego, Peter Myers and Vernon Willis
E-mail: ronald.lenert@sdcounty.ca.gov

CERTIFICATE OF COMPLIANCE

Pursuant to Federal Rules of Appellate Procedure, rule 32(a)(7)(C) and Ninth Circuit Rule 32-1, I certify that the attached opening brief is double spaced, typed in Times New Roman proportionally spaced 14-point typeface, the typeface contains 13 characters per inch, and the brief contains 9,408 words of text.

DATED: March 26, 2018 THOMAS E. MONTGOMERY, County Counsel
By: s/ RONALD LENERT, Senior Deputy

STATEMENT OF RELATED CASES

Counsel for Appellees County of San Diego, Deputy Vernon Willis and Deputy Myers is informed that there are no related appeals in the Ninth Circuit.

DATED: March 26, 2018

THOMAS E. MONTGOMERY, County Counsel

By: s/ RONALD LENERT, Senior Deputy
Attorneys for Defendants/Appellees County of San Diego, Peter Myers and Vernon Willis
E-mail:

Timothy Strem v. County of San Diego, et al.;
Ninth Circuit Case No.: 17-56709

CERTIFICATE OF SERVICE