

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MONTANA  
MISSOULA DIVISION

CANDI-LEE WEEKS,

Plaintiff,

vs.

BRADLEY F. JOHNSON; BILL DIAL;  
KRISTI CURTIS; KEVIN CONWAY;  
SHANE ERICKSON; CHASE GARNER;  
CHUCK STEARNS; BRIDGER KELCH;  
JOHN MUHFELD; BILL HILL; and  
BRIAN CARTER,

Defendants..

CV 16-161-M-DLC-JCL

FINDINGS &  
RECOMMENDATION

Before the Court is Defendant Whitefish City Chief of Police Bill Dial's Fed. R. Civ. P. 56 motion for summary judgment requesting the Court dismiss this action as against him. Although Plaintiff Candi-Lee Weeks filed a document in response to Dial's motion, the document purports to be an "order" issued by her denying the motion. (Doc. 48.) Weeks otherwise did not file a brief in response to the substance of Dial's arguments advanced in his motion. For the reasons discussed, the Court recommends Dial's motion be granted and Weeks' claims against him be dismissed.

**I. Background**

In this lawsuit Weeks asserts she has a fundamental and inalienable right to travel – via operation of a private vehicle – protected by the United States Constitution which right is unencumbered by any restrictions imposed by the State of Montana such as the requirements for a valid driver’s license and proper licensing and registration of her vehicle. Weeks invokes federal question jurisdiction under 28 U.S.C. § 1331 by asserting claims for relief under 42 U.S.C. § 1983 alleging Defendants violated her fundamental right to travel in various ways on multiple occasions.

Weeks alleges that on October 19, 2016, Chief Dial, Police Officer Shane Erickson, and three other law enforcement officers detained Weeks and her family in their Ford Taurus vehicle during a traffic stop. Brooke Weeks was operating the vehicle at the time. Weeks contends Dial used excessive force against her during the stop in violation of her rights protected under the Fourth Amendment to the United States Constitution.

Dial moves for summary judgment dismissing Weeks’ excessive force claim. He argues, in part, that the doctrine of qualified immunity protects him from liability under the circumstances alleged by Weeks. For the reasons discussed, the Court agrees.

## **II. Applicable Law - Summary Judgment Standards**

Federal Rule of Civil Procedure 56(a) entitles a party to summary judgment “if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.” In deciding a motion for summary judgment, the Court views the evidence in the light most favorable to the non-moving party and draws all justifiable inferences in the non-moving party’s favor. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 255 (1986); *Betz v. Trainer Wortham & Co., Inc.*, 504 F.3d 1017, 1020-21 (9<sup>th</sup> Cir. 2007).

As noted, Weeks did not file a brief in opposition to the substance of Dial’s motion for summary judgment, and the time for doing so has passed. Nonetheless, the Ninth Circuit has made clear that a district court may not grant “summary judgment simply because a party fails to file an opposition or violates a local rule,” and the court must “analyze the record to determine whether any disputed material fact [is] present.” *Ahanchian v. Xenon Pictures, Inc.*, 624 F.3d 1253, 1258 (9<sup>th</sup> Cir. 2010). *See also Martinez v. Stanford*, 323 F.3d 1178, 1182 (9<sup>th</sup> Cir. 2003) (explaining that “a nonmoving party’s failure to comply with local rules does not excuse the moving party’s affirmative duty under Rule 56 to demonstrate its entitlement to judgment as a matter of law”).

Finally, because Weeks is proceeding pro se the Court must construe her

documents liberally and give them “the benefit of any doubt” with respect to Dial’s summary judgment motion. *Frost v. Symington*, 197 F.3d 348, 352 (9<sup>th</sup> Cir. 1999). *See also Erickson v. Pardus* 551 U.S. 89, 94 (2007).

### **III. Discussion**

The relevant facts of the October 19, 2016 traffic stop of which Weeks complains are undisputed. Law enforcement officers effected a traffic stop on the vehicle in which Weeks was a passenger because the vehicle did not display a valid registration/license plate. The officers informed the driver, Brooke Weeks, why they stopped the vehicle, and they directed Brooke to produce a driver’s license. Brooke did not do so.

The officers ordered the vehicle’s occupants, including Weeks, to get out of the vehicle, but they refused to do so. Dial then attempted to coerce them to exit the vehicle. He warned them he would pound on the window of the vehicle if they did not get out. When the occupants refused, Dial pounded on the window to gain compliance. Dial did not smash or break the window, he did not forcibly remove any occupant of the vehicle, and he “did not hit, kick, punch or otherwise physically injure any individual.” (Doc. 46-2 at ¶ 7.) Although none of the occupants exited the vehicle, the officers ultimately permitted them to drive away from the scene.

Qualified immunity renders a law enforcement officer immune from liability when the officer's conduct "does not violate clearly established statutory or constitutional rights of which a reasonable person would have known." *White v. Pauly*, \_\_\_ U.S. \_\_\_, 137 S. Ct. 548, 551 (2017) (citation and quotation omitted). "In determining whether an officer is entitled to qualified immunity, we consider (1) whether there has been a violation of a constitutional right; and (2) whether that right was clearly established at the time of the officer's alleged misconduct." *S.B. v. County of San Diego*, 864 F.3d 1010, 1013 (9<sup>th</sup> Cir. 2017) (citation and quotation omitted). "These two prongs of the analysis need not be considered in any particular order, and both prongs must be satisfied for a plaintiff to overcome a qualified immunity defense." *Shafer v. County of Santa Barbara*, \_\_\_ F.3d \_\_\_, 2017 WL 3707904, \*3 (9<sup>th</sup> Cir. 2017).

Weeks' claim against Dial asserts he used excessive force against her in violation of her Fourth Amendment rights when he pounded on the window of the vehicle during the traffic stop. As background for the analysis of that claim, the Court first confirms the constitutionality of Dial's conduct leading up to, and permitting his use of any force at all. Dial and the other officers lawfully executed a traffic stop based upon probable cause to believe Brooke Weeks was operating a vehicle without a valid registration and license plate, and they lawfully seized all

occupants in the vehicle. Mont. Code Ann. § 61-3-301(1); *Whren v. United States*, 517 U.S. 806, 810 (1996). See also *Brendlin v. California*, 551 U.S. 249, 251 (2007). And the officers possessed lawful authority to order the occupants to exit the vehicle without violating the Fourth Amendment's prohibition against unreasonable seizures. *United States v. Williams*, 419 F.3d 1029, 1030 (9<sup>th</sup> Cir. 2005) (citing *Maryland v. Wilson*, 519 U.S. 408, 410 (1997)). Finally, Dial and the other officers' authority to seize the occupants of the vehicle in this manner "necessarily carries with it the right to use some degree of physical coercion or threat thereof to effect it." *Graham v. Connor*, 490 U.S. 386, 396 (1989).

With that background, the determinative question is whether Dial's use of force was excessive in violation of Weeks' right to be free from unreasonable seizures protected under the Fourth Amendment. *Graham*, 490 U.S. at 394-95. The Fourth Amendment prohibits an officer from exceeding "the bounds of reasonable force in effecting 'an arrest, investigatory stop, or other seizure.'" *Shafer v. County of Santa Barbara*, \_\_\_ F.3d \_\_\_, 2017 WL 3707904, \*4 (9<sup>th</sup> Cir. 2017) (quoting *Graham*, 490 U.S. at 395-96).

The federal courts must analyze excessive force claims "according to the constitutional touchstone of objective reasonableness," and may not take into account an "officer's subjective 'intent or motivation.'" *Shafer*, 2017 WL

3707904, \*4 (quoting *Graham*, 490 U.S. at 397). Thus, “the question is whether the officers’ actions are ‘objectively reasonable’ in light of the facts and circumstances confronting them[.]” *Id.*

The determination of objective reasonableness requires the courts “to balance the ‘nature and quality of the intrusion on the individual’s Fourth Amendment interests against the countervailing governmental interests at stake.’” *Shafer*, at \*4 (quoting *Graham*, at 396). The courts have identified a non-exclusive list of three factors to consider when balancing the referenced competing interests: “(1) ‘the severity of the crime at issue,’ (2) ‘whether the suspect poses an immediate threat to the safety of the officers or others,’ and (3) ‘whether [the suspect] is actively resisting arrest or attempting to evade arrest by flight.’” *Id.*

Finally, a court must judge the reasonableness of the force used “from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight[.]” *Shafer*, at \*4 (quoting *Graham*, at 396). The officer’s perspective is necessary because officers “are often forced to make split-second judgments—in circumstances that are tense, uncertain, and rapidly evolving—about the amount of force that is necessary in a particular situation.” *Graham*, at 397.

Even assuming, without deciding, that Weeks could establish Dial used

excessive force in violation of her Fourth Amendment rights under the foregoing analysis, Weeks would still have to satisfy the second prong of the qualified immunity analysis. *See Pearson v. Callahan*, 555 U.S. 223, 236 (2009) (confirming the court has discretion in deciding which of the two prongs of the qualified immunity analysis to address first). Dial would be entitled to qualified immunity if Weeks' rights, in the context of the specific circumstances of the encounter between Weeks and Dial, were not clearly established at that time. For the reasons discussed, the Court concludes Weeks' rights in that situation were not clearly established.

In assessing whether any particular right at issue was clearly established, the right may "not be defined at a high level of generality." *White v. Pauly*, \_\_\_ U.S. \_\_\_, 137 S. Ct. 548, 552 (2017) (citation and quotation omitted). Rather, the established right "must be 'particularized' to the facts of the case." *Id.* (citation omitted). Although for a right to be clearly established the Supreme Court does not require the existence of "a case directly on point[,]" "existing precedent must have placed the statutory or constitutional question beyond debate." *Id.*, 137 S. Ct. at 551 (citation and quotation omitted). "[C]ase law must ordinarily have been earlier developed in such a concrete and factually defined context to make it obvious to all reasonable government actors, in the defendant's place, that what he

is doing violates federal law.” *Shafer v. County of Santa Barbara*, \_\_\_F.3d\_\_\_, 2017 WL 3707904, \*5 (9<sup>th</sup> Cir. 2017). The unlawfulness of any particular conduct must be apparent in light of pre-existing law. *White*, 137 S. Ct. at 552 (citation omitted). Thus, qualified immunity protects “all but the plainly incompetent or those who knowingly violate the law.” *Id.*, 137 S. Ct. at 551 (citation and quotation omitted).

The Supreme Court has emphasized that to conclude that an officer violated a clearly established right of which a reasonable officer would have known, a court must “identify a case where an officer acting under similar circumstances as [the defendant] was held to have violated the Fourth Amendment.” *Shafer*, 2017 WL 3707904 at \*5 (quoting *White*, 137 S. Ct. at 552). *See also S.B. v. County of San Diego*, 864 F.3d 1010, 1015-16 (9<sup>th</sup> Cir. 2017). Thus, in general terms for purposes of this case, the Court must find legal precedent as of October 19, 2016, that would have put Dial on clear notice that his conduct in pounding on the window would constitute excessive force. *S.B.*, 864 F.3d at 1015.

But a general statement of the right at issue in this case is insufficient. The Court, as required, must define the particular right in the context of the specific circumstances in which Dial acted. The officers had properly effected a traffic stop based upon probable cause, Dial had lawful authority to order Weeks to get

out of the vehicle and, therefore, the officers' seizure of Weeks in that regard did not violate the Fourth Amendment. But Weeks refused to comply with the order to exit the vehicle, and *Graham* establishes that an officer's right to effect a seizure carries with it the right to use some degree of reasonable force. *Graham v. Connor*, 490 U.S. 386, 396 (1989).

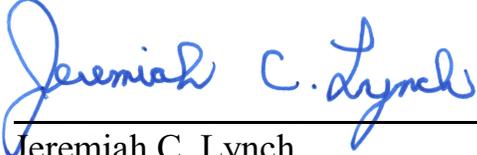
Thus, the question at hand under the second prong of the qualified immunity analysis is whether an officer violates clearly established law when, during a lawful traffic stop, the officer pounds on the window of the vehicle to enforce compliance with a lawful order directed at the passenger of the vehicle telling her to exit the vehicle when the passenger had previously refused to comply with the order. *See Shafer*, at \*5 (narrowly describing the particular right at issue). In view of the requirement that the Court must be able to identify a prior case where an officer acting in a similar manner as Dial under similar circumstances was held to have violated the Fourth Amendment, the Court finds no prior and sufficiently similar case exists which clearly established a passenger's rights in that specific context. The Court cannot conclude that based on existing precedent a reasonable officer in Dial's situation would have understood, beyond debate, that the act of pounding on the vehicle's window in those circumstances constituted the use of excessive force. Qualified immunity is designed to protect officers from liability

in such “hazy” circumstances (*Shafer*, 2017 WL 3707904 at \*5), and Dial’s motion for summary judgment should be granted in this respect.

**IV. Conclusion**

Based on the foregoing, IT IS RECOMMENDED that Dial’s motion for summary judgment be GRANTED based on qualified immunity, and Weeks’ claims against Dial be DISMISSED.

DATED this 14<sup>th</sup> day of September, 2017.

  
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Jeremiah C. Lynch  
United States Magistrate Judge