

APPENDIX

APPENDIX

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App. 1

APPENDIX A

FOR PUBLICATION

**UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

No. 15-56548

D.C. No. 2:11-cv-08110-FMO-FFM

[Filed August 29, 2017]

JAY RUSSELL SHAFER,)
Plaintiff-Appellee,)

v.)

COUNTY OF SANTA BARBARA;)
BILL BROWN, individually and)
as Sheriff of Santa Barbara)
County; SANTA BARBARA)
SHERIFF'S DEPARTMENT,)
Defendants,)

and)

FREDDY PADILLA, No. 2465,)
individually and as a peace officer,)
Defendant-Appellant.)

OPINION

App. 2

Appeal from the United States District Court
for the Central District of California
Fernando M. Olguin, District Judge, Presiding

Argued and Submitted April 6, 2017
Pasadena, California

Filed August 29, 2017

Before: Milan D. Smith, Jr. and N. Randy Smith,
Circuit Judges, and Gary Feinerman.*

Opinion by Judge N.R. Smith

SUMMARY**

Civil Rights

The panel reversed a jury verdict and vacated damage awards in favor of the plaintiff in an action brought under 42 U.S.C. § 1983 alleging that a police officer used excessive force when he used a leg sweep maneuver to take down the plaintiff after he refused to comply with the officer's orders to drop the water balloons he was carrying.

The panel held that viewing all of the facts in the light most favorable to the jury's verdict, there was sufficient evidence to support the jury's finding that the force used by the officer was excessive. The panel

* The Honorable Gary Feinerman for the Northern District of Illinois, sitting by designation.

** This summary constitutes no part of the opinion of the court. It has been prepared by court staff for the convenience of the reader.

App. 3

nevertheless held that the officer was entitled to qualified immunity because, at the time the incident occurred, the law was not clearly established that an officer cannot progressively increase his use of force from verbal commands, to an arm grab, and then a leg sweep maneuver when a misdemeanor refuses to comply with the officer's orders and resists, obstructs, or delays the officer in his lawful performance of duties such that the officer has probable cause to arrest him in a challenging environment.

COUNSEL

Mary Pat Barry (argued), Senior Deputy; Michael C. Ghizzoni, County Counsel; Office of County Counsel, Santa Barbara, California; for Defendant-Appellant.

Steven B. Stevens (argued), Los Angeles, California; Thomas E. Beck, The Beck Law Firm, Los Alamitos, California; for Plaintiff-Appellee.

OPINION

N.R. SMITH, Circuit Judge:

College student Jay Russell Shafer refused to drop water balloons at the request of Santa Barbara Sheriff's Deputy Freddy Padilla. Deputy Padilla then used a leg sweep maneuver to take down and arrest Shafer. Shafer sued Deputy Padilla, asserting violations of his constitutional rights under 42 U.S.C. § 1983. Deputy Padilla asserted the defense of qualified immunity.

The jury found that Deputy Padilla violated Shafer's Fourth Amendment constitutional right to be free from

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