United States District Court,
N.D. California.

Fernando RONQUILLO,
Plaintiff.
v.
CITY OF BURLINGAME, et al,
Defendants.

No. C 04-1557 WDB

March 28, 2005.

Rodel E. Rodis,Law Offices of Rodel E. Rodis,San Francisco, CA, for Plaintiff.

Gregg Anthony Thornton, Esq., Selman Breitman, LLP, San Francisco, CA, for Defendants.

ORDER AND MEMORANDUM OPINION GRANTING DEFENDANTS' MOTION FOR SUMMARY JUDGMENT

BARZIL, Magistrate J.

INTRODUCTION

On October 9, 2003, Burlingame police officers, including Officer Farber and then-Detective Castle, FN1 detained Mr. Ronquillo while they investigated whether he was the suspect in a car jacking that had occurred at gunpoint shortly before he was detained. FN2

FN1. Chuck Castle has retired. Declaration of Chuck Castle in Support of Motion for Summary Judgment or, in the Alternative, Motion for Partial Summary Judgment, filed February 25, 2005, ("Castle Decl."), at para. 2. For the sake of clarity, we refer to him as Detective Castle throughout.

FN2. Evidence in the record indicates that the victim of the car jacking called 911 approximately eight minutes before Officer Farber stopped Mr. Ronquillo. Declaration by Heather Farber in Support of Motion for Summary Judgment or, in the Alternative, Motion for Partial Summary Judgment, filed February 25, 2005 ("Farber Decl.") at Ex. A (Call History Report at lines 1 and 12); *see also,* Declaration by Marilyn Johnson in Support of Motion for Summary Judgment or, in the Alternative, Motion for Partial Summary Judgment ("Johnson Decl."), filed March 9, 2005.

Mr. Ronquillo does not challenge the lawfulness of the officer's initial decision to detain him in order to determine whether he was the car jacker. At this juncture in the proceedings, Mr. Ronquillo is pursuing (1) a

claim that the officers subjected him to excessive force, (2) a claim that the officers detained him for a period of time that was "unreasonable" as that term is construed in the Fourth Amendment, and (3) a "*Monell*" claim alleging that the City of Burlingame, Chief of Police Palmer and Sergeant Ford failed to properly train and/or supervise their police officers. *See,* Complaint, filed April 21, 2004; Consent to Continue Litigation, filed February, 14, 2005; Order Following February 10, 2005, Further Case Management Conference, filed February 14, 2005.

On February 25, 2005, defendants filed their Motion for Summary Judgment Or, in the Alternative, Motion for Partial Summary Judgment ("Motion"). On March 23, 2005, the Court conducted a hearing in connection with defendants' Motion.

For the reasons stated below, the Court GRANTS defendants' Motion in its entirety.

Because we are entering a judgment in favor of defendants, we want to take special care, at the outset, to describe to Mr. Ronquillo some of the principal legal propositions that must guide our disposition of this case. The norms that Mr. Ronquillo has invoked here, *i.e.,* the laws that he says the officers violated, are rooted in the Constitution of the United States, which is the source of the most fundamental and essential rules of governance in this country. The rights that the Constitution protects are extremely important-to all of us. So the courts take very seriously claims that agents of government have violated such rights.

It also is true, however, that police officers face dangers and difficulties of the most acute nature-and that they perform a function that is critical to the safety and security of all the people who live in our communities. In meeting their responsibilities to protect us from violent crime, police officers often are required to act quickly and to make decisions in highly pressured environments. Frequently they must make such decisions on the basis of information that is, necessarily, incomplete or not fully verified. In these settings, they must balance their duty to protect the people of the community from serious harm against their duty to honor the rights of the innocent.

When police officers are acting in the field, in the crucible of pressures that arise when violent criminal conduct has been reported or is threatened, all of us, citizens and courts alike, must give them a reasonable zone of discretion in which to act. When the police are trying in good faith to protect us, we cannot expect them to be perfect. They are human. They are not all-knowing. They are regularly exposed both to danger and to aggressive, unpredictable people. They see so much harmful conduct, so much suffering and pain, that they learn that they must take care to protect not only the public, but also themselves. It follows that when the harms they are trying to prevent are grave, or the crimes they are investigating have caused serious harm, it is reasonable for the police to err on the side of caution-to worry a bit more about innocent people being killed than about innocent people being inconvenienced or embarrassed.

The Constitution, as a source of norms of great sweep, recognizes these facts of life and human limitation. It permits the police to impose upon interests that it protects up to a point-as long as the goals the police are trying to achieve are important and the imposition on the rights the Constitution protects is not severe. The Constitution gives officers who are proceeding in good faith some room, some latitude, as they make judgments about how to do their important jobs. In other words, the Constitution recognizes that police officers could not possibly do their jobs if their every act was subject to after-the-fact scrutiny from some safe office building under a standard that demanded perfection. If they had to work in such an environment, officers would be frozen into inaction by a constant fear of being sued or fired for any misstep.

So the Constitution recognizes that the choices police officers make about how to meet their responsibilities may well be perfectly lawful even if they are not perfect (in methods or timing) and even if, along the way, the course of action the officers take causes some harm to competing interests or rights that are constitutionally fundamental.

Because of considerations like these, the terms "reasonable" and "unreasonable" as used in this kind of setting have unique legal meanings. They are phrases of legal art that are not defined by the common sense views of the population at large, but by the special circumstances and knowledge that inform good faith police work.

STANDARD ON SUMMARY JUDGMENT

To succeed on a motion for summary judgment, the moving party must establish that, under facts that are not subject to genuine dispute, that party is entitled to judgment as a matter of law. Federal Rule of Civil Procedure 56(c). In reviewing a motion for summary judgment, the Court considers the evidence in the light most favorable to the party against whom the judgment is sought.

Stated in lay terms, a motion for summary judgment by defendants is a request to the Court for a ruling that, even if we consider the evidence in the best possible light for plaintiff, the evidence is insufficient (as a matter of law) to support a finding by the trier of fact (jury) that plaintiff has proved all required elements of his claims. If the Court grants defendants' motion plaintiff is not entitled to present his (legally insufficient) evidence to a jury, and the Court must enter judgment in defendants' favor.

DISCUSSION

Defendants contend that, even when the evidence is considered in the light most favorable to Mr. Ronquillo, no rational jury could find that defendants used excessive force or that they detained plaintiff for a period that violated the Fourth Amendment. Defendants also contend that even if a jury were to conclude, after the fact, that defendants used "excessive" force or that the period of time that plaintiff was detained was excessive (as assessed under constitutional standards), the officers remain protected by qualified immunity because it was not clear at the time and under the circumstances that the force used was "excessive" or that the period of detention was unreasonable. Finally, if the evidence does not support a finding that the individual officers violated a constitutional right of plaintiff's, it is defendants' position that plaintiff cannot sustain his "*Monell*" claim against the remaining defendants.

As previously stated, on summary judgment we must determine whether the evidence considered in the light most favorable to plaintiff would permit a rational trier of fact to find that defendants violated plaintiff's rights. This inquiry appears to subsume the first step of the Supreme Court's test for determining whether defendants are entitled to qualified immunity.

A court required to rule upon the qualified immunity issue must consider, then, this threshold question: Taken in the light most favorable to the party asserting the injury, do the facts alleged show the officer's conduct violated a constitutional right?

Saucier v. Katz, 533 U.S. 194, 201, 121 S.Ct. 2151, 150 L.Ed.2d 272 (2001).

If Mr. Ronquillo's version of the facts could not support a finding that a defendant violated a constitutional norm then the Court's inquiry is over, and the Court must grant that defendant's motion for summary

judgment with respect to that claim. On the other hand, if the evidence viewed in the light most favorable to Mr. Ronquillo could make out a constitutional violation then we proceed to the second prong of the qualified immunity test.

"[T]he next, sequential step is to ask whether the right was clearly established. This inquiry ... must be undertaken in light of the specific context of the case, not as a broad general proposition...." Saucier, 533 U.S. at 201. The particular question that the Court must answer is "whether it would be clear to a reasonable officer that his conduct was unlawful in the situation he [or she] confronted." Id., at 202; *see also,* Jackson v. City of Bremerton, 268 F.3d 646 (9th Cir.2001). If the officer "reasonably, but mistakenly," believes that her conduct was lawful in the particular circumstances as she reasonably perceived them, she is entitled to qualified immunity. *Id.,* at 205. More recently, the Court has framed the question this way: did the state of the law at the time the challenged conduct occurred give defendants fair warning that their alleged treatment of Mr. Ronquillo was unconstitutional? Hope v. Pelzer, 536 U.S. 730, 741, 122 S.Ct. 2508, 153 L.Ed.2d 666 (2002). "This is not to say that an official action is protected by qualified immunity unless the very action in question has previously been held unlawful ... but ... in the light of pre-existing law the unlawfulness must be apparent." Id., at 739.

Below we consider defendants' Motion on the merits with respect to each claim (and the first step of the *Saucier* test for qualified immunity).

I. *Plaintiff's Claim for Excessive Force*

We follow a two-step process to determine whether, when considering the evidence in the light most favorable to plaintiff, a rational trier of fact could find that defendants' conduct constitutes "excessive force." First, we "evaluat[e] the nature and quality of the intrusion [by considering] 'the type and amount of force inflicted" ' in detaining plaintiff. Jackson, 268 F.3d at 651-2 *quoting* Chew v. Gates, 27 F.3d 1432 (9th Cir.1994). "Next, the court must balance [plaintiff's] alleged intrusions against the governmental interests at stake." *Id*.

Even if we credit fully Mr. Ronquillo's version of the detention, the nature and quality of the alleged intrusions were minimal. Officer Farber was behind plaintiff on the sidewalk and yelled for him to stop. When Mr. Ronquillo looked behind him he saw that she and an unknown number of additional police officers behind her had their guns drawn. Supplemental Declaration by Gregg A. Thornton in Support of Motion for Summary Judgment Or, in the Alternative, Motion for Partial Summary Judgment, filed March 8, 2005, at Ex. A. (Ronquillo Deposition) (hereafter "Ronquillo Depo.") at 41 -47. FN3 However, Mr. Ronquillo was unsure whether all the guns were pointing at him or were merely in the officers' hands. Ronquillo Depo., at 57-58. Officer Farber ordered plaintiff to lie down on the ground. After plaintiff complied he felt a "knee on [his] back" for "less than a minute." Ronquillo Depo., at 53. Officer Farber testified that she "instructed Mr. Ronquillo to place his hands behind his back." Farber Decl., at para. 11. FN4 An officer then handcuffed plaintiff's hands behind his back. Plaintiff does *not* remember anyone grabbing his hands and manually putting them behind his back. Ronquillo Depo., at 53-54. Plaintiff's version of the evidence could not support a finding that an officer handcuffed him in a rough manner. Similarly, at no point does plaintiff testify that the handcuffs were too tight or hurting him in any way.

FN3. Pages 70-73 of plaintiff's deposition were inadvertently omitted from the copy submitted as Exhibit A to the Supplemental Thornton Declaration. These pages can be found attached to the Errata to the Supplemental Declaration of Gregg A. Thornton ..., filed on March 9, 2005.

FN4. Plaintiff's Opposition indicates that an officer told Mr. Ronquillo "to put his hands in the middle of his back," and he complied. Opposition at 2:26-27. However, plaintiff does not cite evidence in the record, so we can only assume Officer Farber's Declaration is the evidentiary basis for this statement.

Next, the officers rolled plaintiff on his right side or his back and searched and emptied his pockets. Ronquillo Depo., at 54-61. Mr. Ronquillo estimates that he was lying on the ground, either on his stomach, his right side or his back for between one and two minutes. Ronquillo Depo., at 59-61. After that, plaintiff contends two officers held his upper arms and lifted him to a standing position. Ronquillo Depo., at 59. He does *not* recall if those officers injured or hurt his arms or shoulders when they lifted him. Ronquillo Depo., at 59. This version of the events also could not support a finding of excessive force.

At some point, according to Mr. Ronquillo, Detective Castle held plaintiff's right shoulder and "pulled [him] on the side" to ask plaintiff a question, and around that same time each of two officers held one of his arms and "pulled" him to the curb. Ronquillo Depo., at 62 and 67. FN5 Again, Mr. Ronquillo does *not* contend that the officers "pulled" him roughly or in a manner that otherwise hurt him or caused him injury. Finally, Mr. Ronquillo asserts that Officer Farber twice put her hand on the right side of his face and pushed his face "very hard" so that he was looking straight ahead. Ronquillo Depo., at 61-62 and 67-68.

FN5. Mr. Ronquillo first states that Detective Castle pulled him aside before Officer Farber pushed his face but then changes his mind and states that Detective Castle pulled him aside after Officer Farber pushed his face. Ronquillo Depo., at 62-63.

Balancing the alleged intrusions against the governmental interests at stake, we HOLD that no rational jury could find that the minimal physical intrusion on plaintiff was unreasonable under the circumstances. In doing so we consider factors such as "the severity of the crime at issue, whether the suspect poses an immediate threat to the safety of the officers or others, and whether he is actively resisting arrest or attempting to evade arrest by flight." *Id., quoting* Graham v. Connor, 490 U.S. 386, 396, 109 S.Ct. 1865, 104 L.Ed.2d 443 (1989). Moreover, we assess these factors "from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight." Graham, 490 U.S. at 396. We also must consider the officers' conduct in toto-rather than focus on any particular action in isolation. Gallegos v. City of Los Angeles, 308 F.3d 987, 991 (9th Cir.2002).

The crime to which the officers responded was severe. According to Ms. Malouf (the victim), the suspect was armed and had forced her, with her infant daughter, to drive to an ATM and give him $300.00 cash. See, Attachment to Letter, filed October 6, 2005, (Declaration of Gloria Malouf) ("Malouf Decl.") at para.para. 3-9. After she gave him the cash he directed her to drive to another bank and demanded her purse and other financial details about her credit cards. *Id*. She then stopped the car at the train station, exited the car with her infant, and ran from him. *Id*. Although plaintiff did not resist arrest, the officers reasonably could believe that the perpetrator of the crime they were investigating posed a serious danger to the police and the community.

Ms. Malouf and Officer Farber were walking in the vicinity of California Drive and Burlingame Avenue, the intersection where she ran from the suspect during the crime, when Ms. Malouf saw a man, yelled

"there he is," and ran back to Lamourette, the store into which she ran when fleeing the perpetrator. Malouf Decl., at para. 11; Farber Decl., at para. 6. Officer Farber followed Ms. Malouf and asked her for a description of the man she had just seen. Ms. Malouf had reported to the police that the suspect was wearing dark sunglasses and a straw hat, and she told Officer Farber that the suspect she had just seen was "wearing dark sunglasses and a green hat." Malouf Decl., at para.para. 4 and 12; Farber Decl., at para. 7; Call History Report at lines 1-6 and 12-13; Johnson Decl.

We also note that Ms. Malouf has stated that the perpetrator was wearing "dark clothing," and plaintiff testified that, on October 9, 2003, he was wearing black pants and a black sweatshirt. Malouf Decl., at para. 4; Ronquillo Depo., at 51. It is not clear from the record whether Ms. Malouf communicated to Officer Farber that the suspect was wearing dark clothing. When Officer Farber returned to the intersection of California and Burlingame (again, the scene of the crime) she saw plaintiff wearing dark sunglasses and a green hat. Ronquillo Depo., at 51-52; Farber Decl., at para. 8.

No rational trier of fact could find that it was unreasonable for Officer Farber to believe that plaintiff was likely an armed and dangerous suspect. Plaintiff concedes as much by not claiming that the officer did not have probable cause to arrest him (let alone reasonable suspicion to support a detention). In order to protect themselves and the community the officers had to quickly gain control of the potentially dangerous suspect and eliminate his ability to draw a weapon. Even if Ms. Malouf was hysterical when she identified plaintiff, no rational jury could find that it was unreasonable for the officers to err on the side of caution and assume that her identification was accurate until otherwise negated. FN6

FN6. We acknowledge that the Call History Report indicates that, during plaintiff's detention, the Burlingame Police issued a county wide roadblock for Ms. Malouf's vehicle and that this could suggest that the police did not believe that plaintiff was in fact the perpetrator. Call History Report at line 18; Johnson Decl., at Ex. B. Equally accessible, however, is the conclusion that the police-who had not yet located the vehicle in the vicinity of the crime-were concerned that the perpetrator was not working alone and that perhaps a partner in crime had fled with the vehicle.

As previously stated, the intrusions as described by plaintiff are minimal. The most physical contact occurred during handcuffing and standing plaintiff up. Per Mr. Ronquillo's testimony he was handcuffed within one minute, rolled over and searched within one or two minutes, and then lifted to his feet-all without causing any injury or inflicting any substantial pain. "It is well settled that when an officer reasonably believes force is necessary to protect his own safety or the safety of the public, measures used to restrain individuals, such as stopping them at gunpoint and handcuffing them, are reasonable." Alexander v. County of Los Angeles, 64 F.3d 1315, 1320 (9th Cir.1995) (overruled by *Saucier* with respect to test for qualified immunity in context of excessive force). Considering the evidence in the light most favorable to plaintiff, we HOLD that no rational jury could find that the force the officers used was excessive in these specific circumstances. The officers were acting on a positive identification that plaintiff was an armed suspect who had just committed a serious crime in that very location-and the force they used neither injured plaintiff nor was any more than necessary to establish control while conducting appropriate follow up investigation.

The remaining alleged excessive physical conduct amounts to Officer Farber twice pushing plaintiff's face "very hard" to face forward, Officer Farber telling plaintiff to "shut up" when he asked for information, and keeping plaintiff in handcuffs until the police finally concluded that plaintiff was *not* Ms. Malouf's perpetrator.

Plaintiff does not allege that Officer Farber hit or slapped his face. Nor would plaintiff's testimony support a finding that Officer Farber "shoved" his face as stated in plaintiff's Opposition. Plaintiff agreed that Officer Farber "*placed* her hand on the right side of [his] face ... [a]nd pushed [his] face so that [he was] looking forward again." Ronquillo Depo., at 61-62 (description by defense counsel to which plaintiff responded "That's right.") emphasis added. Plaintiff's testimony supports a finding that the second time Officer Farber pushed his face forward it was so Ms. Malouf could view him to determine whether he was, in fact, the perpetrator. Ronquillo Depo., at 67-69.

Plaintiff's testimony also would support a finding that Officer Farber told him to "shut up" at three points in the detention and that, at one of those junctures, she said it more than once. Ronquillo Depo., at 55, 56(she "kept" saying it), and 62. The evidence will *not* support a finding that she told "him to 'Shut up!' *every* time he spoke to ask what was going on." Opposition at 8 (emphasis added). Nor will plaintiff's testimony support a finding that Officer Farber "shouted" or "scream[ed]" at plaintiff. Opposition at 6 and 8. Moreover, plaintiff has cited no legal authority for the position that being told to "shut up" or even being yelled at could amount to "excessive force."

As explained more fully in section II below, we HOLD that no rational jury could find that it was unreasonable for the police to proceed with Ms. Malouf's second identification of plaintiff, even after Officer Kashiwahara learned that Mr. Ronquillo had left his car at Putnam Chevrolet for servicing as he had stated.

Until Detective Castle finally confirmed that Ms. Malouf did not think plaintiff was the perpetrator it was reasonable for the police to conduct themselves as if plaintiff was a dangerous criminal and keep him in handcuffs. FN7 Plaintiff has cited no legal authority for the position that the mere fact of being handcuffed, without the handcuffs being too tight or otherwise causing any pain, while the police did their job and finally concluded that plaintiff was not their man constitutes a Constitutional violation.

FN7. We disagree with a suggestion that the Constitution required the officers to remove the handcuffs after confirming plaintiff was unarmed. It was reasonable to keep plaintiff, who they believed was likely a dangerous criminal, handcuffed to avoid the possibility that he could obtain control over one of the officer's firearms or more easily escape.

Finally, we note that when asked to "run through the reasons why [plaintiff is] unhappy about the way [the officers] detained [him]" plaintiff says *nothing* about the physical contact. Plaintiff states the following.

Okay. First ... they mistreated me. My rights, they did not give me my-they ignored me quite a while till I find out what's going on. They didn't even-they have no concern. It's just like they have a cause. They don't even have concern what's going on with me, whether, you know, if I'm doing okay.

And except they treated me as a non-U.S. citizen because of my color. FN8 Something like that.

FN8. Plaintiff has not pursued a claim that the officers' conduct was motivated by race.

Even up to the-even up to the end when they released me, they even tell me this, that they still know my

whereabouts; if something comes up, they could pick me up.
Even-nobody even, "How do you do, Mr. Ronquillo? Can we help you with something?" Nothing. It's just like you're a convicted felon, convicted person. Something like that.

They didn't even offer to give me a ride, to get me to where I wanted to go, and ... as if they are not officers, that they're not concerned for the citizens.

And plus this gentleman who asked me why am I there in their city. I went to their city. I gave them business. I bought a car in their city. I was from the East Bay. That's it. It's just their cause. They don't have any concern. They're just like ...

[F]rom the beginning, as if I'm the person right away, I am the criminal right away, the way they treated me up to the last minute. Well, when they body-searched me, if it is an armed carjacking, they find out I don't have any gun, they should ease up on me. They should answer all my questions. Up to the end when they released me, they should have concern about me.

I was out there looking for a restaurant. I was so hungry. I have blood pressure. They didn't even ask me how am I doing, "Is there anything I can help you?" If they are policemen. Nothing.

It's just like, you know, as if they are the lord of the street because they're the policemen. They never even offered me a ride to get me to Putnam Chevrolet. They didn't even ask me, "Can I offer you a drink?" or "Are you okay?"

My situation is just like-when they're holding me on both arms right on the car-I'm a real estate agent. I'm a public figure. A lot of people are looking at my face, a lot of people are looking at me. If somebody finds me that-it's just like I'm a convicted person right there.

I was so mad. I was-you know. If they are a policeman, they should be rational, they should be level-headed. You know, this is not, "You are already convicted." From the beginning, I was convicted already from them.

After, when they cleared my alibi, I guess, 'cause they went to Putnam Chevrolet, when they find out that I was telling the truth and when they find out that I don't have any gun, they should ease up on me.

Ronquillo Depo., at 81-84. Defendants' counsel gave plaintiff a full, open opportunity to identify all the conduct by defendants that made him unhappy. Plaintiff does not complain that *any* of the officers' physical contact was painful or caused him physical injury. Nor does he contend that the officers engaged in gratuitous physical contact.
Plaintiff is upset because he does not feel the police treated him courteously or with appropriate respect. While we do not condone rude language or discourteous treatment, we cannot find that it rises to the level of a Constitutional violation, certainly not one for "excessive force." We also note, for the record, that Detective Castle described two potential justifications for the way the police conducted themselves at the scene-specifically that they avoided conversation with plaintiff and did not ask Mr. Ronquillo questions about his identity and where he had just been. Deposition of Chuck Castle, filed March 17, 2005 ("Castle Depo."), at 53-54 (explaining that (1) officers who will *not* be assigned to interview a suspect if he is arrested do not ask the suspect questions, presumably to avoid influencing the investigation and (2) prior to "Mirandizing" a suspect the officers avoid asking questions in order to avoid any challenge based on those

rights at a later suppression hearing.)

For the above reasons, we conclude that, taken in the light most favorable to plaintiff, no rational jury could conclude that the evidence supports a claim for excessive force. Accordingly, we GRANT defendants' Motion for summary judgment of plaintiff's claim that the officers engaged in excessive force in violation of Mr. Ronquillo's Fourth Amendment right not to be subjected to unreasonable seizures.

Because we conclude that plaintiff's evidence does not support a claim for excessive force, we need not ask whether qualified immunity would protect the officers from this claim.

II. ***Plaintiff's Claim for Excessively Long Seizure/Detention***

As previously stated, plaintiff does *not* argue that defendants had no legal basis to stop him and investigate. He contends instead that defendants' investigation continued for an unreasonably long time. The primary basis for plaintiff's claim that defendants detained him for an unreasonably long period appears to be his contention that it took 15 or more minutes for defendants to release him after Officer Kashiwahara learned that plaintiff had left his car at Putnam Chevrolet for servicing, as plaintiff had claimed.FN9

FN9. It is unclear whether plaintiff contends that he waited to be released for 15 minutes or for 30 minutes after Officer Kashiwahara spoke to someone at Putnam Chevrolet. Opposition at 7 ("more than 30 minutes"), 8 ("more than 15 minutes") and 10 ("30 minutes or so"). At no point does plaintiff specify the evidentiary basis of these conclusions. For reasons described *infra* we conclude that the evidence could support a finding that defendants detained plaintiff for up to 15 minutes after Officer Kashiwahara left Putnam Chevrolet.

Viewing the evidence in the light most favorable to plaintiff we FIND that no rational jury, considering the totality of the circumstances, could conclude that the officers detained plaintiff for an unreasonably long period.

"An investigative stop is not subject to strict time limitations as long as the officer is pursuing the investigation in a 'diligent and reasonable manner." ' Haynie v. County of Los Angeles, 339 F.3d 1071, 1076 (9th Cir.2003) *citing* U.S. v. Sharpe, 470 U.S. 675, 686-87, 105 S.Ct. 1568, 84 L.Ed.2d 605 (1985).FN10 If "the police diligently pursued a means of investigation that was likely to confirm or dispel their suspicions quickly, during which time it was necessary to detain [plaintiff]," the officers have not violated the Constitution. Sharpe, 470 U.S. at 689; Haynie, 339 F.3d 1071; Gallegos, 308 F.3d at 993. In order to evaluate whether the officers unnecessarily delayed their investigation we use "common sense and ordinary human experience" to consider the law enforcement purposes and the "time reasonably needed to effectuate those purposes." U.S. v. Sharpe, 470 U.S. 675, 685-6, 105 S.Ct. 1568, 84 L.Ed.2d 605 (1985).

FN10. All of the parties treat the detention as an investigative stop, as opposed to an arrest, despite the fact that plaintiff appears to concede that the Ms. Malouf's identification provided "probable cause" to arrest Mr. Ronquillo. Opposition at 7:24-26. Our query is whether defendants' conduct was reasonable under the circumstances. *Accord,* Gallegos v. City of Los Angeles, 308 F.3d 987, 992 (9th Cir.2002).

It is important to emphasize that the Ninth Circuit directs us to consider the circumstances in their totality

rather than using a "divide and conquer" method of evaluation wherein the Court would consider each of the officer's distinct actions or decisions in isolation. Gallegos, 308 F.3d at 991.

As explained, a motion for summary judgment requires us to determine whether plaintiff could muster sufficient evidence to permit a jury to find in his favor on each claim he asserts, and, in making this determination, we consider the evidence in the record in the light most favorable to plaintiff. We start by considering plaintiff's testimony. We have carefully read plaintiff's deposition.FN11 To the extent possible we rely on the representations in plaintiff's deposition. However, plaintiff's deposition does not provide us with all of the relevant evidence necessary to create a picture of the events of October 9, 2003. The reasons for this are understandable. First, we note that Mr. Ronquillo's deposition was taken more than a year after the event, and, by his own admission, his memory is vague and uncertain with respect to some particulars. *E.g.,* Ronquillo Depo., at 33, 38, 41, 44, 46, 47, 49, 50, 53, 54, 57-59, 66, 67, 69, 70, 72, and 73. Some examples of Mr. Ronquillo's uncertainty can be found in his recounting of the amount of time that passed with respect to various events of that day. Mr. Ronquillo frequently (and appropriately) gives his best estimate. However, these estimates often are in the form of ranges of time, and these ranges are, in some cases, significant (*e.g.,* 5-15 minutes). *E.g.,* Ronquillo Depo., at 67. Uncertainty such as this creates a not insubstantial amount of elasticity or vagueness in Mr. Ronquillo's testimony.

FN11. For the sake of clarity we refer here only to plaintiff's deposition which contains the vast majority of plaintiff's presentation of the facts. We have, however, read and considered the admissible portions of plaintiff's brief declaration.

Second, plaintiff does not have personal knowledge with respect to all of defendants' conduct. For example, plaintiff cannot testify about any of defendants' investigative activity conducted at Lamourette, the store in which Ms. Malouf was situated, or about Officer Kashiwahara's activity at Putnam Chevrolet.FN12

FN12. In his declaration, filed March 15, 2005, Mr. Ronquillo states that Jorge Rodriguez, the Putnam Chevrolet service agent who served plaintiff on October 9, 2003, described the content of Mr. Rodriguez' October 9, 2003, conversation with Officer Kashiwahara. Mr. Ronquillo's testimony about the contents of this conversation constitutes hearsay. Therefore, we do not consider it. As stated at the hearing, the content of that conversation does *not* affect our ruling.

For these reasons, we are compelled, as would be the jury, to look at other sources of evidence for information about what transpired on October 9, 2003. Accordingly, we consider, to varying degrees, testimony from Detective Castle, FN13 Officer Kashiwahara, Officer Farber, and Ms. Malouf as well as the Call History Report as explained by Ms. Johnson.FN14 Of course, unlike the jury, we must consider this evidence in the light most favorable to plaintiff.

FN13. As stated on the record, we are somewhat troubled by the disparities between the testimony in Detective Castle's declaration, signed February 22, 2005, and that given two weeks later at his deposition on March 7, 2005. It appears that he signed his declaration (under penalty of perjury) without actually reading it or, alternatively, without believing it to be true. For example, in his declaration Detective Castle states that he "heard radio communication indicating that ... Officer Heather Farber had contacted the man suspected of robbing, ..." Castle Decl., at para. 4. On the other hand, at his deposition he testifies, "I don't have specific recollection of the transmission....I know that the radio is what keys me to what is going on but I don't have

recollection of the transmission." Castle Depo., at 8. Similarly, in his declaration Detective Castle states that Officer Kashiwahara "called from Putnam and confirmed that Mr. Ronquillo's car was in for service at that time." Castle Decl., at para. 12. In contrast, during his deposition Detective Castle testifies that Officer Kashiwahara reported to him that plaintiff's car was at Putnam Chevrolet "after ... the showup" [second identification by Ms. Malouf] when Detective Castle had returned to the scene to release plaintiff and saw Officer Kashiwahara there. Castle Depo., at 36, 40-1, 45. We also note that the language used in Ms. Malouf's declaration, dated Oct 6, 2004, and that used in the February 22nd Castle declaration are *nearly identical* except that the speaker changes, suggesting that the Castle declaration was intentionally crafted to corroborate Ms. Malouf's earlier declaration. *Compare,* Castle Decl., at para. 10-12 & Malouf Decl., para. 15-18.

FN14. We also note that none of the parties seems to have an impeccable memory. For example, Detective Castle explicitly admits that he does not have any reliable recollection about timing or sequencing of the events that transpired on October 9, 2003. Castle Depo., at 18:15-16 ("What I can tell you, counselor, is at no time [sic] I look at my watch, okay?"), 40:9-10 ("I can't tell you the sequence of events, counselor it is totally inconsequential at that time.").

Officer Kashiwahara, whose testimony plaintiff urges us to accept, also reveals some failures of memory. For example, Officer Kashiwahara testifies that the amount of time between when he first left the scene of plaintiff's detention and when he returned to it was in the range of 10-15 minutes. Deposition of Kevin Kashiwahara, filed March 17, 2005, ("Kashiwahara Depo."), at 39. The Call History Report, however, indicates that he left the scene at 12:35 and was en route back at 13:00, a total of 25 minutes. We do not point out these failures of memory as criticism of the deponents but only to note that the truth cannot be established with absolute certainty.

Viewing the evidence in this light, we HOLD that a rational jury could only conclude that plaintiff's low estimates about the amount of time that passed with respect to any particular event are substantially more accurate than his high estimates. We make this finding with the assistance of the objective Call History Report. The Call History Report submitted by defendants provides an objective record of the time at which at least some of the relevant events occurred.FN15 The Call History Report is a record regularly maintained in the course of business, and plaintiff has not challenged its accuracy. When we compare plaintiff's "low" estimate time line and plaintiff's "high" estimate time line to the times in the Call History Report we see that plaintiff's low estimates tend to closely match the times provided in the Call History Report for particular events-whereas the high estimates place events significantly after the time documented in the Call History Report. For example, if we add plaintiff's high estimate for each period plaintiff would not have been released until somewhere around 1:30 p.m., about one half hour *after* the time Officer Kashiwahara dropped plaintiff back at Putnam Chevrolet. Call History Report at line 30; Johnson Decl.

FN15. Evidence in the record indicates, and plaintiff does not dispute, that most entries are typed into the Call History Report contemporaneously with the occurrence about which the officer is reporting from the field. Johnson Decl., at Ex. B; *see also,* Kashiwahara Depo., at 46; Transcript of March 23, 2005, hearing. Entries not typed contemporaneously with the event they describe should bear a time stamp that is out of sequence. *Id.*

Although it has no bearing on our decision we note for the record that Ms. Johnson appears to have erroneously assumed that Lamourette was the scene of the crime and states that the address of that business is 295 California Drive. Johnson Decl., at Ex. B. All other witnesses have placed Lamourette on Burlingame

Avenue. Malouf Decl.; Plaintiff's Depo.; Castle Depo., (all indicating that plaintiff was detained on California Drive and Ms. Malouf was situated around the corner on Burlingame Avenue).
With the above evidentiary setting in mind, we now consider the evidence of what transpired on October 9, 2003.

It is undisputed that Officer Farber stopped plaintiff at 12:20 p.m.FN16 Call History Report at lines 12-13; Johnson Decl. Nor is it disputed that within the next two minutes the Burlingame police had ordered plaintiff to the ground, handcuffed him, obtained his identification, and lifted him to a standing position. Ronquillo Depo., at 39-61; Call History Report at lines 14-16; Johnson Decl. According to plaintiff, he then told Officer Farber his "alibi" and she (and the other officers) "ignored" him for 15-20 minutes. Ronquillo Depo., at 66.

FN16. Because no findings can turn on the number of seconds that have passed following the last whole minute, we refer simply to the hour and minutes and omit the seconds even though they are provided with respect to some events on the Call History Report.

Plaintiff does not dispute that Detective Castle was in charge of directing the investigation. Castle Depo., at 44; *accord* Ronquillo Depo., at 64. Therefore, once Officer Farber heard plaintiff's "alibi" she was required to pass it on to Detective Castle. We note that the Call History Report indicates that less than 15 minutes after plaintiff was handcuffed and standing Officer Kashiwahara arrived at Putnam Chevrolet to confirm that plaintiff's car was in for service. Call History Report at line 21; Johnson Decl. Therefore, objective evidence demonstrates that defendants acted on plaintiff's "alibi" during the period he felt "ignored." Accordingly, we assume Officer Farber passed the information on to Detective Castle who, within that same time frame, directed Officer Kashiwahara to check it out. Kashiwahara Depo., at 23; Castle Depo., at 35-36.FN17

FN17. Plaintiff seems to testify that Detective Castle left the scene *before* plaintiff told Officer Farber that he had just come from Putnam Chevrolet. Ronquillo Depo., at 65-66. However, Officer Kashiwahara testifies that he and Detective Castle were at the scene when Detective Castle instructed him to go to Putnam to check out plaintiff's story. Kashiwahara Depo., at 23. The Call History Report demonstrates that Castle and Kashiwahara had this discussion by 12:34 at the latest (because Officer Kashiwahara arrived at Putnam at 12:35). Call History Report at line 21; Johnson Decl. Therefore, it appears that Detective Castle was at the scene with plaintiff at some point during the 15 minute time frame in which plaintiff felt ignored.

Next, plaintiff testifies, he was "pulled" to the curb where he stood for "quite a long period of time. Say 5 to 10 minutes. Or say 15 minutes." Ronquillo Depo., at 67.

Undisputed evidence supports an inference that during that 5 to 15 minute period Detective Castle talked with Ms. Malouf and attempted to persuade her to take a second look at plaintiff to confirm that they had the right man. *E.g.,* Castle Depo., at 14-18; Malouf Decl., at para. 14-16. There is no dispute that Ms. Malouf was extremely upset. Detective Castle, who at that time had worked in law enforcement for at least 28 years, stated that Ms. Malouf

[e]mphatically, adamantly, refused and I am not exaggerating. It was the biggest "no" that I have encountered in a long time in dealing with a victim.

Castle Depo., at 5 and 14; *see also,* Castle Decl., at para. 7. Ms. Malouf corroborates the fact that she refused for some time to come take a second look at plaintiff. Malouf Decl., at para. 14.

Ms. Malouf finally agreed to take a second look after Detective Castle obtained a disguise for her. Castle Depo., at 18-19. Unbeknownst to plaintiff at the time, Detective Castle then had Ms. Malouf driven to a point across the street from plaintiff from which she viewed him for several minutes in an effort to confirm her earlier identification. Castle Depo., at 19-29.FN18 Ms. Malouf concluded she could not confirm the identification from that distance, so she was driven within a few feet of plaintiff at approximately 12:42 p.m. (Based on the time line established by plaintiff's low estimates). FN19

FN18. Ms. Malouf, however, testified that she was driven by Mr. Ronquillo a number of times. Malouf Decl., at 16 ("we drove by Mr. Ronquillo a number of times"). For our purposes it is inconsequential whether she was parked across the street viewing him or rode by him multiple times. Therefore, for purposes of this motion we accept Detective Castle's representation that Ms. Malouf was parked across the street from Mr. Ronquillo for some time.

FN19. Ronquillo Depo., at 37-69. For the reasons stated *supra* in the text, we accept the time line created by plaintiff's low time estimates. There is no line item in the Call History Report detailing the time Ms. Malouf was driven to view plaintiff. Nothing in the Call History Report contradicts a finding that Ms. Malouf was parked a few feet from plaintiff at approximately 12:42.

Therefore, while plaintiff waited for between 5 and 15 minutes Detective Castle did his best to convince an hysterical Ms. Malouf to take a second look, succeeded, obtained a disguise for her, had her driven to a point across the street from plaintiff and, when she could not confirm the identification from that distance, had her driven right next to plaintiff. Based on the evidence about the magnitude of Ms. Malouf's fear and the fact that Detective Castle accomplished all this in a 5 to 15 minute period, no rational trier of fact could find that Detective Castle was anything other than efficient and diligent in his effort to assess the accuracy of Ms. Malouf's initial identification of plaintiff.

According to the Call History Report, Officer Kashiwahara left Putnam Chevrolet at 12:43 p.m. Viewing the evidence in the light most favorable to plaintiff, Officer Kashiwahara radioed Detective Castle at that time and told him that plaintiff had left his car at Putnam Chevrolet for servicing as plaintiff had stated.FN20 The evidence therefore supports an inference that Detective Castle learned that plaintiff's car was at Putnam Chevrolet for servicing at roughly the same time that Ms. Malouf was viewing plaintiff. After Ms. Malouf got a close up view of plaintiff as he stood on the edge of the sidewalk, Detective Castle took Ms. Malouf back to Lamourette, where she finally disclaimed her original identification. Malouf Decl., at para. 18. Detective Castle then returned to the scene, and plaintiff was released at about 1:00 p.m. (13:00).FN21

FN20. At this juncture, we note with some concern that Detective Castle's testimony seems to be something of a moving target. In his declaration filed February 25, 2005, he testifies under oath that Officer Kashiwahara "called from Putnam" to verify plaintiff's contention that his car was in for service as Ms. Malouf was disclaiming her earlier identification of plaintiff. Castle Decl., at para. 12. Two weeks later, however, he testifies at his deposition that he did not find out the results of Officer Kashiwahara's trip to Putnam Chevrolet until after Ms. Malouf had disclaimed her earlier identification of plaintiff *and* Detective Castle was back at the scene releasing plaintiff. He states that Officer Kashiwahara was present at the scene

when the Detective returned and that Officer Kashiwahara then told Castle that Putnam Chevrolet had confirmed that plaintiff's car was in for servicing at that time. Castle Depo., at 36 and 45.

We also note for the record that Officer Kashiwahara testifies that he radioed Detective Castle with the information, but Detective Castle testified that he did not carry a two-way radio. Kashiwahara Depo., at 25; Castle Depo., at 36.

Because we consider the evidence in the light most favorable to plaintiff, these concerns do not affect our ruling.

FN21. Plaintiff testified that he waited for some time *after* the handcuffs were off until Officer Kashiwahara volunteered to take him back to Putnam.

Q. Was there any other incident that occurred while you were on the street there after the handcuffs came off and before you were taken back to Putnam?

A. When I asked if somebody can take me to the Putnam Chevrolet, that *took a while* for them to respond, to take me to Putnam Chevrolet. They're still talking. I was still standing there, but the handcuffs were off already. There's no more handcuffs. They're still conversing something. They're still talking. I was there standing by myself. Still nobody is telling me what's going on, what is the crime, what have I done wrong.

Ronquillo Depo., at 76 emphasis added. Pursuant to the Call History Report, plaintiff was returned to Putnam Chevrolet by 13:04. Plaintiff testified that he waited for some time after the handcuffs came off until Officer Kashiwahara volunteered to take him. Therefore, we infer that plaintiff was out of handcuffs at the *latest* by 13:00. Because that would leave a mere four minutes to wait around for "a while," get in Officer Kashiwahara's patrol car and drive to Putnam Chevrolet, in all likelihood he was actually released from the handcuffs before 13:00. *See also,* Malouf Decl., para. 19 ("scene was breaking up" as she was transported to the police station) and Call History Report at line 28 (indicating Malouf was en route to station at 12:59); Johnson Decl.

Mr. Ronquillo later submits a declaration stating that he "was released from [his] handcuffs on October 9, 2003 only after Officer Kashiwahara had returned to the scene." Declaration of Fernando Ronquillo in Opposition to Motion for Summary Judgment ..., filed March 15, 2005, ("Ronquillo Decl."), at para. 3. Because the Call History Report shows that Officer Kashiwahara was en route to the scene at 13:00, Mr. Ronquillo attempts to establish that he was not released from his handcuffs until after 13:00. This declaration is inconsistent with his earlier testimony that he waited *out of handcuffs* for some time ("a while"). We FIND that Mr. Ronquillo's later self-serving declaration is insufficient to overcome the clear import of his earlier deposition testimony.

We also acknowledge that Officer Farber testified that she "was instructed to release Mr. Ronquillo ... [and] did so and the scene was cleared by 12:47:37." Farber Decl., at para. 14. She derived the times listed in her declaration from the Call History Report. *Id.,* at para. 16. It appears that Officer Farber misread the Call History Report. The line item for 12:47 states "Code 4 and secure at residence at 1247 hrs." The Johnson

Declaration together with Officer Kashiwahara's testimony indicate that the line item at 12:47 on the Call History Report means that no further assistance is needed at *Ms. Malouf's residence* where Officer Kashiwahara and Officer Harmon had gone to see whether the perpetrator was there.
In *Gallegos v. City of Los Angeles,* officers mistakenly believed Mr. Gallegos was a burglary suspect, pulled over his vehicle, ordered him out of his truck at gunpoint, handcuffed him, placed him in the back of a patrol car, and drove him to the scene of the crime for identification. Gallegos, 308 F.3d 987 (determining that investigatory stop had not matured into a full blown arrest). Once at the scene a witness told the officers that Mr. Gallegos was not the suspect. The police detained Mr. Gallegos for a total of 45 minutes to an hour before returning him to his truck. *Id.* The Ninth Circuit concluded that the Los Angeles police officers had conducted a valid investigatory stop and that the length of time the investigation consumed did *not* violate Mr. Gallegos' rights. *Id.*

The case at bar presents facts materially similar to those in *Gallegos*. Considering defendants' efforts in their entirety, as *Gallegos* directs us to do, plaintiff has identified no evidence from which a reasonable trier of fact could conclude that defendants unnecessarily delayed their investigation into whether Mr. Ronquillo was the man who had car jacked Ms. Malouf. Gallegos, 308 F.3d at 992 *citing* Terry v. Ohio, 392 U.S. 1, 88 S.Ct. 1868, 20 L.Ed.2d 889 (1968) (important question is whether officers' actions "involve[d] any delay unnecessary to the[ir] legitimate investigation"). Accordingly, we FIND that under facts that are not subject to dispute, considering the detention and investigation as a whole, plaintiff's claim that the officers detained him for an unreasonably long period fails as a matter of law. As in *Gallegos,* "this investigative stop worked as it should. The detention was brief, calculated solely to make sure they had the right man, and resulted in [Mr. Ronquillo's] prompt vindication." Gallegos, 308 F.3d at 992.

Furthermore, even if we were to consider in isolation plaintiff's primary objection, *i.e.,* that defendants should have released him as soon as Officer Kashiwahara learned that plaintiff had left his car at Putnam Chevrolet for servicing, we would rule in defendants' favor.

First, we reject the suggestion that, once Officer Kashiwahara learned that plaintiff's car was at Putnam Chevrolet as he had stated, it was unreasonable for defendants to continue holding him while they arranged a second opportunity to assess Ms. Malouf's identification. "The Fourth Amendment does not mandate one and only one way for police to confirm the identity of a suspect. It requires that the government and its agents act *reasonably*." Gallegos, 308 F.3d at 992 (emphasis in original). Ms. Malouf had made a positive identification of an armed and dangerous perpetrator,FN22 plaintiff and the perpetrator both wore dark clothes, and plaintiff was walking in the location in which the crime had recently occurred. Even after learning that plaintiff had left his car at Putnam Chevrolet for servicing as he had stated, it would have been *un* reasonable to *let plaintiff go* without having the victim take a second look. One can hardly imagine a police officer allowing a positively identified dangerous suspect to go free without asking the victim to make a second field identification simply because a service provider confirmed that the suspect recently had brought his car in for servicing. We, and the police, can imagine multiple scenarios in which this kind of "alibi" could not foreclose the possibility that plaintiff was the perpetrator.FN23

FN22. Even though Officer Farber did not see plaintiff at the moment Ms. Malouf yelled "there he is" plaintiff clearly matched the description Ms. Malouf gave Officer Farber.

FN23. For example, the service agent simply could have made an error about whether Mr. Ronquillo was just there or the suspect could have had his car parked in the area where he intended to commit his crime

and quickly drove the car in for service to create an "alibi" or the service agent could have been friends or otherwise associated with the suspect and could have been lying to the police to provide cover for his friend.

Moreover, although we do *not* rely on it in granting defendants' Motion, we note that it is not even clear from the record that Officer Kashiwahara obtained enough information from Putnam Chevrolet's service agent to fully exculpate plaintiff. Officer Kashiwahara, the only person other than the service agent with personal knowledge about that conversation, testified only that he had asked the service agent whether Putnam was in fact "working on a vehicle belonging to Mr. Ronquillo that he brought in." Kashiwahara Depo., at 24. When plaintiff's counsel asked Officer Kashiwahara whether he had asked what time plaintiff brought the vehicle in the officer responded that he did not remember whether he had asked that question. Kashiwahara Depo., at 24; *accord,* Castle Decl., at para. 12 ("Officer Kashiwahara called from Putnam and confirmed that Mr. Ronquillo's car was in for service at that time."). Plaintiff's statements about what Mr. Rodriguez told him constitute inadmissible hearsay, and we do not consider them.FN24

FN24. In their depositions neither plaintiff nor Officer Kashiwahara knew the service agent's full name. On March 15, 2004, plaintiff submitted a declaration claiming that the service agent was Jorge Rodriguez. We have no reason to reject that contention.

Finally, even if plaintiff's "alibi" was fully exculpatory, plaintiff's testimony together with the Call History Report demonstrate that Officer Kashiwahara was leaving Putnam Chevrolet having learned that plaintiff's car was at Putnam for servicing at the *same* time that Ms. Malouf was looking at plaintiff-approximately 12:42-12:43. Ronquillo Depo., at 32-70; Call History Report at line 24; Johnson Decl. Because the police acquired each of the two separate exculpatory inputs at about the same time, no rational trier of fact could find that it was unreasonable for Detective Castle to continue with the identification in progress, return Ms. Malouf to the Lamourette, confirm her conclusion that plaintiff was not the perpetrator, and return to the scene to release plaintiff. In our view, considering the evidence in the light most favorable to plaintiff, this entire process took roughly 15 minutes.FN25

FN25. *See,* footnote 21, *supra*.

Because we find no constitutional violation, we need not address the issue of qualified immunity. Nonetheless, we note for the record that even if Mr. Ronquillo's version of the facts stated a constitutional claim, we would rule that defendants are entitled to qualified immunity. In light of the Ninth Circuit's 2002 opinion in *Gallegos,* we could not say that, on October 9, 2003, it was clearly established that the manner in which defendants conducted their investigation violated plaintiff's constitutional rights.FN26

FN26. We recognize that the issue in *Gallegos* was whether the officers' investigatory stop had turned into an arrest-not solely whether the duration of the stop was excessive. However, the underlying question in both cases is whether the detention was reasonable under the circumstances. Additionally, *Gallegos* considered whether the Los Angeles officers caused unnecessary delay. Given the strong similarities between the police conduct in *Gallegos* and that before us we are compelled to follow the Ninth Circuit's conclusion that an investigatory stop such as these is reasonable under the circumstances and does not involve unnecessary delay. 308 F.3d at 992.

III. Monell *Claims*

Because plaintiff has failed to establish that any of the officers violated a constitutional right held by plaintiff, the Court also must GRANT defendants' Motion for summary adjudication of the *Monell* defendants. Orin v. Barclay, 272 F.3d 1207, 1217 (9th Cir.2001).

IV. *The Court Recognizes That Mr. Ronquillo's Experience Was Frustrating and Embarrassing*

As explained at the March 23, 2005, hearing, the Court understands Mr. Ronquillo's frustration and ire about having been detained so publicly. That is the unfortunate by-product of a system that must permit police officers a reasonable amount of latitude to enable them to protect society. In another case in which the plaintiffs were detained as a result of mistaken identification the Ninth Circuit states this.

It is indeed unfortunate that the [plaintiff was], mistakenly apprehended and detained. There is no question that every innocent citizen would resent and feel wronged by the actions of the police officers in this case, who obviously made a mistake. The difficulty, however, is that police officers' duties necessarily involve danger. Although they cannot recklessly or knowingly violate a citizen's rights, they nonetheless may act in an objectively reasonable and diligent manner in pursuing reasonable suspicion to apprehend perpetrators of crime. It is, as we have noted, unfortunate that innocent people sometimes may be detained. The officers, however, in diligently pursuing their duties in good faith should not have to fear harassing litigation or monetary damages as long as their conduct is objectively reasonable under the circumstances.

Alexander, 64 F.3d 1315, 1322. The law "accepts the risk that officers may stop innocent people." Gallegos, 308 F.3d at 992 quoting Illinois v. Wardlow, 528 U.S. 119, 126, 120 S.Ct. 673, 145 L.Ed.2d 570 (2000). "Courts cannot prevent mistakes such as this from taking place; we can only ensure that mistakes are kept to a minimum by requiring officers to act reasonably, for articulable reasons, and not on a hunch." *Id.,* at 992.

The Court sincerely hopes that this process has provided Mr. Ronquillo with some understanding of what he endured and why. We further hope that this understanding permits Mr. Ronquillo to gain closure and let go of some of his agitation, so that the experience does not impair his enjoyment of life.

CONCLUSION

For the reasons stated above, the court GRANTS defendants' Motion in its entirety. Judgment will be entered on plaintiff's claims for excessive force and unreasonably long detention in violation of the Fourth Amendment in favor of defendants and against plaintiff. Judgment also will be entered on plaintiff's "*Monell*" claims in favor of defendants and against plaintiff.

IT IS SO ORDERED AND ADJUDGED.

N.D.Cal.,2005.
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