769 F.3d 1005
United States Court of Appeals,
Ninth Circuit.

C.B., a minor, Plaintiff–Appellee,
v.
CITY OF SONORA; Mace McIntosh, Chief of Police; Hal Prock, Officer, Defendants–Appellants.

No. 11–17454.
|
Argued and Submitted En Banc March 17, 2014.
|
Filed Oct. 15, 2014.

Synopsis

Background: Disabled elementary school student, who was arrested at elementary school when he was 11 years old, filed complaint against city, police chief, and police officer, asserting claims for [redacted] unlawful seizure and excessive force under § 1983. [redacted] Defendants filed motion for judgment as matter of law (JMOL) and motion for new trial and remittitur. The United States District Court for the Eastern District of California, Oliver W. Wanger, Senior District Judge, 819 F.Supp.2d 1032, denied motions. Defendants appealed. The Court of Appeals, Zilly, Senior District Judge, sitting by designation, 730 F.3d 816, vacated, reversed in part and remanded.

Holdings: On rehearing en banc, the Court of Appeals, Paez, Circuit Judge, held that:

[redacted]

[redacted]

officers' use of handcuffs on a calm, compliant, but nonresponsive 11–year–old child was unreasonable;

[redacted]

[redacted]

Affirmed in part, and reversed in part.

M. Smith, Circuit Judge, filed opinion concurring in part, and dissenting in part, with whom O'Scannlain, Tallman, and Bybee, Circuit Judges, joined in full, and with whom Kozinski, Chief Judge, and Graber and Gould, Circuit Judges, joined as to part I, which is the opinion of the court.

Gould, Circuit Judge, with whom Kozinski, Chief Judge, and Graber, Circuit Judge, joined, filed opinion concurring in part in Judge Paez's opinion and concurring in part in Judge M. Smith's opinion.

Berzon, Circuit Judge, with whom Judge Thomas Joined, filed opinion concurring in part and dissenting in part.

Attorneys and Law Firms

***1009** Stephanie Y. Wu (argued) and Cornelius J. Callahan, Borton Petrini LLP, Modesto, CA, for Defendants–Appellants.

***1010** Julia Levitskaia (argued), John F. Martin, and Georgelle Christina Heintel, Law Offices of John F. Martin, Walnut Creek, CA, for Plaintiff–Appellee.

Appeal from the United States District Court for the Eastern District of California, Oliver W. Wanger, Senior District Judge, Presiding. D.C. No. 1:09–cv–00285–AWI–SMS.

Before: ALEX KOZINSKI, Chief Judge, and DIARMUID F. O'SCANNLAIN, SIDNEY R. THOMAS, BARRY G. SILVERMAN, SUSAN P. GRABER, RONALD M. GOULD, RICHARD A. PAEZ, MARSHA S. BERZON,

RICHARD C. TALLMAN, JAY S. BYBEE AND MILAN D. SMITH, JR., Circuit Judges.

Opinion by Judge PAEZ as to all but Part II.C.1; Opinion by Judge M. SMITH as to Part II.C.1; Partial Concurrence and Partial Dissent by Judge M. SMITH; Concurrence by Judge GOULD; Partial Concurrence and Partial Dissent by Judge BERZON.

OPINION

PAEZ, Circuit Judge:

This case arises out of a decision by Sonora City Police Department officers to handcuff and remove from school grounds an 11-year-old child with attention-deficit and hyperactivity disorder ("ADHD") who was doing nothing more than sitting quietly and resolutely in the school playground. After a seven-day trial, a jury found that the City of Sonora, Sonora Chief of Police Mace McIntosh, and Officer Harold Prock (collectively "Defendants") were liable for violating C.B.'s Fourth Amendment rights and for tortious acts. The district court subsequently entered judgment on the verdict, and Defendants appeal.

We must decide two central issues. First, we must decide whether the district court's supplemental jury instructions were proper. To resolve this question, we also must determine whether litigants may object to civil jury instructions for the first time on appeal and, if so, what standard of review governs such challenges. Second, we must decide whether the district court erred in denying the individual officers qualified immunity on C.B.'s constitutional claims. Additionally, Defendants raise several evidentiary and post judgment arguments, which we also address. After setting forth the factual and procedural background of the case, we turn to the district court's supplemental instructions.

I. FACTUAL AND PROCEDURAL BACKGROUND

A.

On September 28, 2009, sixth-grader C.B. was having a "rough" day at school. C.B. had been diagnosed with ADHD and took prescribed medications to manage his symptoms, but that morning, he had forgotten to take his medications. As a result, he experienced periods of unresponsiveness throughout the day; C.B., his parents, and school officials described this as C.B. "shutting down." The school was aware of C.B.'s ADHD and had an accommodation plan under § 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794, in place for him. The accommodation plan designated Coach Karen Sinclair's office as a safe space where C.B. could go if he was experiencing a "shut down," to calm himself and refocus until he was ready to return to class.

Unfortunately, that day, things did not unfold according to plan. When C.B. experienced a "shut down" during recess, Coach Sinclair tried to convince him to go to her office, but C.B. remained unresponsive ***1011** and refused to leave the playground. According to Coach Sinclair, during this exchange, C.B. "reared up" on three different occasions from the bench where he was sitting. Coach Sinclair then advised C.B. that if he did not come inside, she would call the police. To this, C.B. allegedly responded by saying, "call them." C.B., however, testified that he never moved from the bench or said anything to Coach Sinclair during this interaction.

Coach Sinclair testified that she made the decision to call the police because she was concerned about C.B.'s safety. She explained that her concern was based on an incident two years earlier, during which C.B. had stated that "he was tired of feeling the way he felt and he wanted to go out into traffic and kill himself." Coach Sinclair was particularly concerned because the street outside the schoolyard was a busy thoroughfare. Coach Sinclair admitted, however, that C.B. had never previously attempted to run from her.

At Coach Sinclair's behest, police were called. The police dispatcher broadcast notice to the officers of "an out of control juvenile." When Chief McIntosh arrived at the playground, Coach Sinclair whispered to him, "[r]unner [,] [n]o medicine," and made corresponding hand signals. Chief McIntosh testified that he then sat down next to C.B. and attempted to engage him in conversation, but C.B. was unresponsive. He further testified that Coach Sinclair then "started telling [him] that [C.B.] was out of control, had not taken his medications, was yelling and cussing." She also advised Chief McIntosh that she no longer wanted C.B. on the school grounds. Chief McIntosh did not ask any followup questions about C.B.'s medications or behavior.

C.B. remained completely quiet and unresponsive throughout the time Chief McIntosh was with him.

Coach Sinclair's testimony contradicted much of Chief McIntosh's account. She did not remember Chief McIntosh ever making any effort to engage C.B. in conversation. Beyond her initial statement that C.B. was a "runner" who had not taken his medication, she could not recall conveying any other information to the police until she was subsequently asked whether she wanted C.B. removed from the school grounds, to which she said yes. Specifically, she testified that she did not inform the police why she thought C.B. might run, what medications he was on, C.B.'s history, or what had transpired earlier that day. C.B. recalled Coach Sinclair telling Chief McIntosh only that he was a "runner."

Within a few minutes of Chief McIntosh's arrival, Officer Prock arrived. He testified that when he arrived, C.B. was sitting quietly, looking at the ground. Coach Sinclair also advised him that C.B. was a "runner," but Officer Prock did not learn that C.B. had not taken his medication until much later. Officer Prock tried to engage C.B. in conversation, but he remained unresponsive.

About three and a half minutes after Officer Prock arrived, Chief McIntosh signaled that Officer Prock should handcuff C.B. Officer Prock ordered C.B. to stand up, which he did immediately. He then instructed C.B. to put his hands behind his back—which C.B. again did immediately—and handcuffed him. Notwithstanding the fact that C.B. had not disobeyed a single police order, the officers did not explore alternative options for handling the situation before handcuffing him. When Officer Prock handcuffed C.B., C.B. began to cry, believing that he was being taken to jail.

Once C.B. was handcuffed, the officers and Coach Sinclair escorted him off the playground. Officer Prock then pulled his ***1012** police vehicle around and directed C.B.—still in handcuffs—into the back seat. C.B. complied immediately. During this entire time, no one spoke to C.B. or explained to him why he had been handcuffed, that he was not under arrest, or where the police were taking him. Officer Prock then transported C.B. to his uncle's business. [1] Although Officer Prock's vehicle was equipped with safety locks, making it impossible for C.B. to escape, C.B. remained handcuffed during the approximately thirty-minute ride to his uncle's place of business. C.B. testified that the handcuffs caused him pain and left red marks.

Coach Sinclair, who was also the school disciplinarian, testified that in the three years before this incident, she had summoned police to Sonora Elementary School about fifty times. Of those fifty times, police used handcuffs about twenty times, even though about thirteen of those twenty instances did not involve any known or suspected criminal activity. When Officer Prock was handcuffing C.B., Coach Sinclair asked whether the handcuffs were "really necessary," to which one of the officers replied that it was "procedure." [2] She further testified that she knew this was the police department's procedure because, in her experience, "any time that the police have to take a child off of campus, whether it be medical, drugs, fight, the child is handcuffed." Officer Prock also testified that he understood the police department's policy to permit officers to handcuff any individual they were transporting in the back of a police vehicle.

Following this incident, C.B. experienced a host of psychological and emotional problems, including difficulty sleeping, low self-esteem, anger, irritability, and depression.

B.

C.B. filed this action against the Sonora School District, Coach Sinclair, the City of Sonora, Sonora Chief of Police McIntosh, and Officer Prock, alleging violations of his Fourth Amendment rights, the Americans with Disabilities Act, the Rehabilitation Act, and a number of state law tort claims. C.B. settled his claims against the Sonora School District and Coach Sinclair. After the district court denied Defendants' motion for summary judgment on the basis of, *inter alia,* qualified immunity, the case proceeded to trial against the City of Sonora, Chief McIntosh, and Officer Prock on the following claims: unlawful seizure and excessive force in violation of the Fourth Amendment under 42 U.S.C. § 1983 and false arrest and intentional infliction of emotional distress ("IIED") under state law.

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[redacted] B. v. City of Sonora, 769 F.3d 1005 (2014)

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2.

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B.

Defendants also challenge several of the district court's evidentiary rulings. We review a district court's evidentiary rulings for abuse of discretion. *Gribben v. United Parcel Serv., Inc.,* 528 F.3d 1166, 1171 (9th Cir.2008). We will reverse on the basis of an erroneous evidentiary ruling only if the error was prejudicial. *Harper v. City of L.A.,* 533 F.3d 1010, 1030 (9th Cir.2008); *Tritchler v. Cnty. of Lake,* 358 F.3d 1150, 1155 (9th Cir.2004). Here, the district court did not abuse its discretion in excluding testimony that Coach Sinclair thought that C.B. might be suicidal and in allowing testimony about past incidents in which police had used handcuffs at Sonora Elementary School.

It is undisputed that Coach Sinclair did not, at any point, tell the officers that she thought C.B. might be suicidal, nor did the officers otherwise learn that information. The district court correctly reasoned that testimony that Coach Sinclair thought C.B. might be suicidal was irrelevant; information that the officers did not know could not justify their decision to seize C.B. *See Moreno v. Baca,* 431 F.3d 633, 640 (9th Cir.2005) (recognizing that an outstanding arrest warrant for the plaintiff could not be used to justify his arrest where the arresting officers had no knowledge of the warrant). Moreover, the court stated that if Coach Sinclair's motive for calling the police was questioned, she would be able to testify about the incident in which C.B. told her he wanted to run out into traffic. The court, however, concluded that the prejudicial effect of testimony characterizing C.B. as "suicidal" outweighed any probative value such testimony might have. Where "[t]he record reflects that the court conscientiously weighed the probative value against the prejudicial effect for each piece of evidence," we will not reverse. *Boyd v. City & Cnty. of S.F.,* 576 F.3d 938, 949 (9th Cir.2009).

The district court also did not abuse its discretion in allowing Coach Sinclair to testify about past incidents of handcuffing at Sonora Elementary School. To prove his Fourth Amendment claim against the City of Sonora, C.B. had to prove that the city maintained an unlawful custom or practice that was a cause of his constitutional injury. *See Fairley v. Luman,* 281 F.3d 913, 916 (9th Cir.2002) (per curiam) (citing *Monell v. Dep't of Soc.* ***1022** *Servs.,* 436 U.S. 658, 690–91, 98 S.Ct. 2018, 56 L.Ed.2d 611 (1978)). Here, C.B. sought to do just that by introducing testimony from Coach Sinclair that the Sonora Police Department, as a matter of routine procedure, employed handcuffs any time it removed an elementary school child from school grounds. "We have long recognized that a custom or practice can be inferred from widespread practices or evidence of repeated constitutional violations for which the errant municipal officers were not discharged or reprimanded." *Hunter,* 652 F.3d at 1233 (internal quotation marks omitted); *see also Menotti v. City of Seattle,* 409 F.3d 1113, 1147–48 (9th Cir.2005) (holding that testimony from individuals whom officers prohibited from wearing anti-WTO buttons created a genuine issue of material fact as to whether Seattle had an unconstitutional policy of restricting only anti-WTO speech). The district court properly rejected Defendants' contention that Coach Sinclair's testimony about prior incidents of handcuffing at Sonora Elementary School was irrelevant. Nor can Defendants protest that the evidence was unduly prejudicial because it created an inference of an unlawful municipal custom or policy; that was the very purpose of the evidence. Because the district court's evidentiary rulings were not an abuse of discretion, we will not reverse the judgment on this basis.

C.

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1. [13]

a.

C.B. argues that his seizure violated the Fourth Amendment because the officers lacked probable cause to arrest him. The Fourth Amendment provides: "The right of the people to be secure in their persons ... against unreasonable searches and seizures[ ] shall not be violated...." As a general principle, "Fourth Amendment seizures are reasonable only if based on probable ***1023** cause to believe that the individual has committed a crime." *Bailey v. United States,* —— U.S. ——, 133 S.Ct. 1031, 1037, 185 L.Ed.2d 19 (2013) (internal quotation marks omitted). The Supreme Court has recognized a narrow exception to the Fourth Amendment's probable cause requirement "when special needs, beyond the normal need for law enforcement, make the ... requirement impracticable." *Vernonia Sch. Dist. 47J v. Acton,* 515 U.S. 646, 653, 115 S.Ct. 2386, 132 L.Ed.2d 564 (1995) (internal quotation marks omitted).

In *New Jersey v. T.L.O.,* the Court first recognized that "[t]he school setting ... requires some modification of the level of suspicion of illicit activity needed to justify a search." 469 U.S. 325, 340, 105 S.Ct. 733, 83 L.Ed.2d 720 (1985). Acknowledging that the "privacy interests of school children" must be balanced against the "substantial need of teachers and administrators for freedom to maintain order in the schools," the Court held that, in the school setting, a search by teachers or school officials need only be reasonable under all the circumstances. *Id.* at 341, 105 S.Ct. 733. It explained the reasonableness inquiry as follows:

> Determining the reasonableness of any search involves a twofold inquiry: first, one must consider whether the ... action was justified at its inception; second, one must determine whether the search as actually conducted was reasonably related in scope to the circumstances which justified the interference in the first place. Under ordinary circumstances, a search of a student by a teacher or other school official will be justified at its inception when there are reasonable grounds for suspecting that the search will turn up evidence that the student has violated or is violating either the law or the rules of the school. Such a search will be permissible in its scope when the measures adopted are reasonably related to the objectives of the search and not excessively intrusive in light of the age and sex of the student and the nature of the infraction.

Id. at 341–42, 105 S.Ct. 733 (internal quotation marks, citations, and footnotes omitted). We, and several of our sister circuits, have extended *T.L.O.* to seizures of students by school officials. *Doe ex rel. Doe v. Haw. Dep't of Educ.,* 334 F.3d 906, 909 (9th Cir.2003); *see also Wallace ex rel. Wallace v. Batavia Sch. Dist. 101,* 68 F.3d 1010, 1012–14 (7th Cir.1995); *Hassan ex rel. Hassan v. Lubbock Indep. Sch. Dist.,* 55 F.3d 1075, 1079–80 (5th Cir.1995); *Edwards ex rel. Edwards v. Rees,* 883 F.2d 882, 884 (10th Cir.1989).

T.L.O. is distinguishable from this case in a critical respect: T.L.O. involved the conduct of school administrators, not law enforcement officers. 469 U.S. at 328, 105 S.Ct. 733. We have not yet decided whether *T.L.O.*'s reasonableness standard or, instead, traditional Fourth Amendment rules apply to law enforcement searches and seizures in school settings, and there is no need to do so today. [14] At the time of ***1024** the incident, at least two of our sister circuits had held that *T.L.O.*'s reasonableness standard governs law enforcement conduct concerning school-related incidents in school settings. *See Gray ex rel. Alexander v. Bostic,* 458 F.3d 1295, 1304 (11th Cir.2006) (applying *T.L.O.* in analyzing an unlawful seizure claim against deputy at an elementary school); *Shade v. City of Farmington,* 309 F.3d 1054, 1060–61 (8th Cir.2002) (applying *T.L.O.* to evaluate the legality of a

search conducted by law enforcement officers in conjunction with school officials). Consequently, at the time of this incident, an officer could have reasonably believed that *T.L.O.* governed law enforcement searches and seizures on school grounds for school-related purposes.

Nonetheless, applying *T.L.O.*'s reasonableness standard does not aid Chief McIntosh and Officer Prock. Taking the facts in the light most favorable to C.B., *see Harper,* 533 F.3d at 1021, the officers knew only the following when they decided to handcuff C.B. and remove him from school grounds: (1) the school had reported an "out of control" juvenile; (2) C.B. was a "runner"—whatever that may mean—who had not taken some unknown medication; (3) C.B. sat quietly looking at the ground and never made any movements the whole time police were present; (4) C.B. was unresponsive in the three and a half minutes during which Officer Prock tried to engage with him; and (5) Coach Sinclair wanted C.B. removed from the school grounds.

The officers acted reasonably at the outset by seeking to engage with C.B. to investigate the dispatch that they had received about an "out of control" minor. What they found, though, was a quiet but nonresponsive child. During the entire time police were present, the child did nothing threatening or disobedient. Although Coach Sinclair mentioned that C.B. was a "runner" who had not taken his medication, the officers did not ask a single follow-up question to learn what Coach Sinclair meant and never inquired what had prompted the dispatch. Nor did they consider any less intrusive solutions, such as ordering C.B. to return inside the school building, or asking a guardian to pick up the child. [15] *See T.L.O.,* 469 U.S. at 342, 105 S.Ct. 733 (explaining that a search must not be "excessively intrusive in light of ... the nature of the infraction"). When viewed in relation to these circumstances, the officers' decision to seize C.B. and remove him from school grounds was not reasonable.

Judge Gould contends that this approach overlooks *T.L.O.*'s instruction that a school official's judgment about the rules necessary to maintain school order is entitled to deference. Gould Concurrence at 1038–39. No one seriously questions that principle. Coach Sinclair and other school officials set the rules that govern student behavior, and they may require students to obey their instructions, to take their prescribed medications, to not run away, and so on. The adoption of such rules "presumably reflects a judgment on the part of school officials that such conduct is destructive of ***1025** school order or of a proper educational environment." *T.L.O.,* 469 U.S. at 343 n. 9, 105 S.Ct. 733. "Absent any suggestion that the rule violates some substantive constitutional guarantee," we will defer to the school officials' judgment that the rule furthers school order. *Id.* Coach Sinclair's statement —"[r]unner[,] [n]o medicine"—was so vague, however, that it failed to establish that C.B. was even suspected of violating any school rule. [16]

That detail notwithstanding, at issue here is the reasonableness of the response to a purported violation of a school rule, not the reasonableness of the rule. Judge Gould would defer to Coach Sinclair's determination that C.B. should be removed from campus. Gould Concurrence at 1039–40. But *T.L.O.* does not mandate any deference to a school official's judgment about *the appropriate response* to a rule violation. [17] Instead, *T.L.O.* requires assessing the reasonableness of the school official's search or seizure in response to a rule violation by asking whether it was justified at its inception and whether it was reasonably related in scope to the circumstances that justified the initial intervention. 469 U.S. at 341, 105 S.Ct. 733. There is no question that if Coach Sinclair had removed C.B. from school grounds, our decision would not be based on any deference to her belief that such a seizure was appropriate. If the scope of a school official's search or seizure is not entitled to any deference, then surely, the same search or seizure carried out by a police officer at the behest of that school official must, at minimum, be subject to the same standards; that is, the scope of the ultimate search or seizure must be justified by objective circumstances, not a school official's judgment about the proper course of action. Just because Coach Sinclair wanted C.B. removed from school grounds cannot *ipso facto* make such a seizure reasonable. [18] To suggest otherwise is to eviscerate *T.L.O.*'s requirement that a search or seizure be "reasonably related in scope to the circumstances," *id.,* and effectively to insulate searches and seizures sanctioned by school officials from any review.

Judge Gould also suggests that the need to act quickly prevented the officers from learning more. Gould Concurrence at 1039–40. Certainly, in some circumstances, the need to respond swiftly ***1026** trumps the need to obtain more information. But here, C.B. was calm,

surrounded by multiple adults, and, by Chief McIntosh's own characterization, "[n]ot likely" to run away. Nothing about the situation demanded an immediate response. Under these circumstances, the officers could have, and should have, asked some simple follow-up questions that would have enabled them to determine an appropriate response.

Nor does this position require police officers to engage in an "uncabined investigation" before responding to unfolding events, as the majority intimates. M. Smith Opin. at 1035. This approach only requires police officers to act reasonably under the circumstances. The standard is a familiar one, *see Terry v. Ohio,* 392 U.S. 1, 21, 88 S.Ct. 1868, 20 L.Ed.2d 889 (1968), and local police officers are quite capable of applying it in the real world.[19] There is nothing remarkable about concluding that, in some circumstances, reasonableness requires asking a follow-up question to assess the circumstances before initiating a seizure.

In sum, taking the evidence in the light most favorable to C.B., a reasonable jury could conclude that Chief McIntosh and Officer Prock violated C.B.'s Fourth Amendment rights when they seized him and took him into custody.

b.

We next consider whether it was clearly established on September 28, 2009, that removing C.B. from school grounds was a violation of the Fourth Amendment. "For a constitutional right to be clearly established, its contours must be sufficiently clear that a reasonable official would understand that what he is doing violates that right." *Hope v. Pelzer,* 536 U.S. 730, 739, 122 S.Ct. 2508, 153 L.Ed.2d 666 (2002) (internal quotation marks omitted). [redacted] *Wilson v. Layne,* 526 U.S. 603, 615, 119 S.Ct. 1692, 143 L.Ed.2d 818 (1999) (internal quotation marks omitted); indeed, "officials can still be on notice that their conduct violates established law even in novel factual circumstances," *Hope,* 536 U.S. at 741, 122 S.Ct. 2508. We should be "particularly mindful of this principle in the context of Fourth Amendment cases, where the constitutional standard—reasonableness—is always a very fact-specific inquiry." *Mattos v. Agarano,* 661 F.3d 433, 442 (9th Cir.2011) (en banc). However, where there is no case directly on point, "existing precedent must have placed the statutory or constitutional question beyond debate." *Ashcroft v. al–Kidd,* —— U.S. ——, 131 S.Ct. 2074, 2083, 179 L.Ed.2d 1149 (2011).

At the time of C.B.'s seizure, the law was clearly established that, at a minimum, police seizures at the behest of school officials had to be reasonable in light of the circumstances and not excessively intrusive. *See, e.g., T.L.O.,* 469 U.S. at 341–42, 105 S.Ct. 733; *Doe,* 334 F.3d at 909; *Gray,* 458 F.3d at 1304; *Jones,* 410 F.3d at 1228; *Shade,* 309 F.3d at 1060–61. Although the application of this constitutional principle may not be clear in certain circumstances, *see Safford Unified Sch. Dist. No. 1 v. Redding,* 557 U.S. 364, 378–79, 129 S.Ct. 2633, 174 L.Ed.2d 354 (2009), this "general constitutional rule ... may [still] apply with obvious clarity to the specific conduct ***1027** in question, even though 'the very action in question has [not] previously been held unlawful,' " *United States v. Lanier,* 520 U.S. 259, 271, 117 S.Ct. 1219, 137 L.Ed.2d 432 (1997) (alteration in original) (quoting *Anderson v. Creighton,* 483 U.S. 635, 640, 107 S.Ct. 3034, 97 L.Ed.2d 523 (1987)).

This is such a case. The removal from school grounds of a compliant and calm 11–year–old child—a decision that was made sans any police investigation, without any knowledge of disobedience, and after only minutes on the scene—is an obvious violation of the constitutional principle that the nature of the seizure of a schoolchild must be justified by the circumstances. Even without on-point case law, it is beyond dispute that police officers cannot seize a schoolchild who they do not know to have committed any wrongdoing, who does not appear to pose any threat to himself or others, and who engages in no act of resistance the entire time the officers are present.[20]

Chief McIntosh and Officer Prock do not argue that *T.L.O.* justified seizing C.B. In fact, they argue that [redacted] they reasonably, even if mistakenly, believed they had "reasonable cause"[21] to take C.B. into custody pursuant to California Welfare & Institutions Code sections 601(a) and 625(a). [redacted] *Ctr. for Bio–Ethical Reform, Inc. v. L.A. Cnty. Sheriff Dep't,* 533 F.3d 780, 791–93 (9th Cir.2008); *Grossman*

v. City of Portland, 33 F.3d 1200, 1209 (9th Cir.1994). California Welfare & Institutions Code section 601(a) provides:

> Any person under the age of 18 years who persistently or habitually refuses to obey the reasonable and proper orders or directions of his or her parents, guardian, or custodian, or who is beyond the control of that person ... is within the jurisdiction of the juvenile court which may adjudge the minor to be a ward of the court.
>
> Section 625(a) provides that "[a] peace officer may, without a warrant, take into temporary custody a minor ... [w]ho is under the age of 18 years when such officer has reasonable cause for believing that such minor is a person described in Section 601."

Chief McIntosh and Officer Prock contend that they reasonably thought that C.B. was "beyond the control" of the relevant school officials, who they understood ***1028** to be the custodians of C.B. during school hours. However, taking the facts in the light most favorable to the nonmoving party, no reasonable officer could have thought that C.B. was "beyond the control" of anyone. California case law makes clear that "*by itself,* a single act in violation of parental authority is ordinarily insufficient to establish that the minor is beyond parental control." *McIssac v. Bettye K. (In re Bettye K.),* 234 Cal.App.3d 143, 285 Cal.Rptr. 633, 636 (1991). In *In re Henry G.,* the California Court of Appeal found insufficient evidence that Henry G. was beyond the control of his mother where he did not tell her where he was going, stayed out until 3 a.m., and struck her when she attempted to physically stop him from leaving the house. *Kirkpatrick v. Henry G. (In re Henry G.),* 28 Cal.App.3d 276, 104 Cal.Rptr. 585, 587, 589–90 (1972). Similarly, in *In re D.J.B.,* the court explained that a single act may show that a minor is beyond control only when it is sufficiently serious, and the court held that a single instance of leaving home without parental consent did not rise to such a level. *Bayes v. D.J.B. (In re D.J.B.),* 18 Cal.App.3d 782, 96 Cal.Rptr. 146, 149 (1971). Cases in which a single instance of defiance was sufficient to find that a minor was beyond the control of a parent involved an extraordinarily serious act of defiance. *See Bayes v. David S. (In re David S.),* 12 Cal.App.3d 1124, 91 Cal.Rptr. 261, 263 (1970) (holding that a minor who had told his mother he would be spending the weekend with friends about 40 miles from home but who was actually found about 600 miles away from home attempting to cross the border into Mexico was beyond the control of his parents); *see also In re Bettye K.,* 285 Cal.Rptr. at 636–37.

Here, when viewed in the light most favorable to C.B., the officers did not know of even a single instance of disobedience, much less one serious enough to trigger sections 601(a) and 625(a). C.B. did not take his medicine, but the officers had no basis to conclude that he had refused to do so and did not know what kind of medication it was. C.B. was purportedly a "runner," but the officers had no information that he had actually attempted to run from anyone that day. During the brief period before the officers decided to handcuff him, C.B. did not disobey any of their orders. And, as soon as they initiated the process of handcuffing and removing him from the school grounds, C.B. complied with all of their instructions. In sum, the officers knew of no defiant act by C.B.; any belief that C.B. was beyond the school's control was not reasonable because it lacked any basis in fact. Moreover, even assuming it was reasonable to believe that C.B. had earlier defied a school official by refusing medicine and running, it was apparent that C.B. had not run off school grounds and was, instead, sitting calmly in the school playground. Such a singular instance of disobedience does not even come close to satisfying the statutory requirement that the minor be "beyond the control" of his custodian. *See In re Bettye K.,* 285 Cal.Rptr. at 636–37; *In re Henry G.,* 104 Cal.Rptr. at 587, 589–90; *In re D.J.B.,* 96 Cal.Rptr. at 149; *In re David S.,* 91 Cal.Rptr. at 263. An officer who enforces a state statute "in a manner which a reasonable officer would recognize exceeds the bounds of the [statute] will not be entitled to immunity even if there is no clear case law declaring the [statute] or the officer's particular conduct unconstitutional." *Grossman,* 33 F.3d at 1210. [22]

***1029** Chief McIntosh and Officer Prock argue that their belief that sections 601(a) and 625(a) applied in this instance was reasonable because Coach Sinclair allegedly told Chief McIntosh that C.B. was "out of control," "would run off campus," and was "yelling and cussing." [23] Whatever the merits of the argument that a reasonable officer might have believed that sections 601(a) and 625(a) justified taking a child into custody in light of these additional facts, that is not the scenario presented here. Neither Coach Sinclair nor C.B. —the other witnesses present during this purported exchange —recalls Coach Sinclair making these statements. Although it is possible that C.B.'s and Coach Sinclair's recollections are

incomplete, when taking the facts in the light most favorable to C.B., *see Harper,* 533 F.3d at 1021, it must be assumed that it is Chief McIntosh's account that is inaccurate. [24]

[redacted]

2.

a.

C.B. also argues that the officers used excessive force in violation of the Fourth Amendment when, upon removing him from school grounds, they handcuffed C.B. for twenty-five to thirty minutes. The Fourth Amendment guarantees the right to be free from an arrest effectuated through excessive force. *Graham v. Connor,* 490 U.S. 386, 394–95, 109 S.Ct. 1865, 104 L.Ed.2d 443 (1989); *Wall v. Cnty. of Orange,* 364 F.3d 1107, 1112 (9th Cir.2004). C.B. argues that the officers' conduct was unreasonable under the test set out in *Graham.* Under *Graham,* whether the amount of force employed was excessive depends on "the facts and circumstances of each particular case, including the severity of the crime at issue, whether the suspect poses an immediate threat to he safety of the officers or others, and whether he is actively resisting arrest or attempting to evade arrest by flight." 490 U.S. at 396, 109 S.Ct. 1865.

We have previously applied *T.L.O.*'s reasonableness standard to evaluate whether a school official [redacted] excessive force claim. *See Preschooler II v. Clark Cnty. Sch. Bd. of Trs.,* 479 F.3d 1175, 1179–81 (9th Cir.2007). Additionally, at the time of the incident, at least two of our sister circuits had held that *T.L.O.*'s reasonableness standard governs law enforcement searches and seizures concerning school-related incidents in school settings. *See Gray,* 458 F.3d at 1304; *Shade,* 309 F.3d at 1060–61. We have not yet considered whether *Graham* or *T.L.O.* applies to law enforcement officers' use of force against a student in a school setting, and we do not resolve that question today. But we believe that *Preschooler II, Gray,* and *Shade* could have led a reasonable officer to conclude that *T.L.O.* governs police use of force in response to school-related incidents as well. In no event, however, do we think that an officer could have reasonably believed that *T.L.O.* governs police use of force once a student is in police custody and outside the confines of the school setting, as C.B. was ***1030** throughout the commute to his uncle's place of business.

Ultimately, in our view, whether *T.L.O.* or *Graham* governed Chief McIntosh's and Officer Prock's actions at any given moment is of little consequence. Chief McIntosh's and Officer Prock's use of handcuffs on a calm, compliant, but nonresponsive 11–year–old child was unreasonable under either standard. Other than an assertion that they were told C.B. might run away, Chief McIntosh and Officer Prock offer no justification for their decision to use handcuffs on C.B. During the entire incident, C.B. never did anything that suggested he might run away or that he otherwise posed a safety threat. He weighed about 80 pounds and was approximately 4′8″ tall—by no means a large child. Moreover, he was surrounded by four or five adults at all times. The police department's own policy manual cautions against using handcuffs on children under the age of 14 unless the child has committed "a dangerous felony or when they are of a state of mind which suggests a reasonable probability of their desire to escape, injure themselves, the officer, or to destroy property." Even Chief McIntosh admitted that it was "[n]ot likely" that C.B. could run away. In these circumstances, we conclude that the decision to use handcuffs on C.B. was unreasonable, notwithstanding Coach Sinclair's unexplained statement that C.B. was a "runner." The further decision to leave C.B. in handcuffs for the duration of the half-hour commute to his uncle's business—a commute that took place in a vehicle equipped with safety locks that made escape impossible-was clearly unreasonable.

Judge Smith counters that the use of handcuffs was justified because C.B. might have attempted to run at various points during their interaction, risking serious harm to himself. M. Smith Opin. at 1036–37. But there is no evidence that C.B. was likely to run; even Chief McIntosh himself thought it unlikely that C.B. would be able to flee. *See Tolan v. Cotton,* —— U.S. ——, 134 S.Ct. 1861, 1863, 188 L.Ed.2d 895 (2014) [redacted] "Anything is possible" is not a sufficient basis to handcuff a child who poses no likely threat of any kind.

b.

At the time of the incident, the law was also clearly established that, at a minimum, police use of force in response to school-related incidents had to be reasonable in light of the circumstances and not excessively intrusive. *See T.L.O.,* 469 U.S. at 341–42, 105 S.Ct. 733; *Preschooler II,* 479 F.3d at 1179–81. And the law was clearly established that, as a general matter, police use of force must be carefully calibrated to respond to the particulars of a case, including the wrongdoing at issue, the safety threat posed by the suspect, and the risk of flight. *See Graham,* 490 U.S. at 396, 109 S.Ct. 1865. Although these general standards "cannot always, alone, provide fair notice to every reasonable law enforcement officer that his or her conduct is unconstitutional," *Mattos,* 661 F.3d at 442, "in an obvious case, these standards can 'clearly establish' the answer, even without a body of relevant case law." *Brosseau v. Haugen,* 543 U.S. 194, 199, 125 S.Ct. 596, 160 L.Ed.2d 583 (2004) (per curiam).

Applying handcuffs to C.B., and keeping him handcuffed for the approximately thirty minutes it took to drive to his uncle's business, was an obvious violation of these standards. It is beyond dispute that handcuffing a small, calm child who is surrounded by numerous adults, who complies ***1031** with all of the officers' instructions, and who is, by an officer's own account, unlikely to flee, was completely unnecessary and excessively intrusive. Moreover, none of the *Graham* factors even remotely justified keeping C.B. handcuffed for approximately thirty minutes in the back seat of a safety-locked vehicle.

Chief McIntosh and Officer Prock argue that because they were reasonable in taking C.B. into custody pursuant to the California Welfare & Institutions Code sections 601(a) and 625(a), their use of handcuffs was also reasonable because California Penal Code section 835 provides that an individual under arrest "may be subjected to such restraint as is reasonable for his arrest and detention." Even if California law permitted the level of force used here—which it does not—that would have no bearing on whether the officers violated clearly established federal law. *See Ramirez v. City of Buena Park,* 560 F.3d 1012, 1024–25 (9th Cir.2009). California Penal Code section 835 cannot shield the officers from liability for a clear constitutional violation.

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D.

[redacted]

the Fourth Amendment. However, as set forth in Judge M. Smith's majority opinion, the district court's ruling on Chief McIntosh's ***1033** and Officer Prock's motion for judgment as a matter of law denying them qualified immunity on C.B.'s Fourth Amendment unlawful seizure claim is reversed.

The judgment of the district court is affirmed in part, reversed in part. The judgment against Chief Mace McIntosh is reduced by $15,000. The judgment against Officer Hal Prock is reduced by $5,000.

AFFIRMED IN PART AND REVERSED IN PART.

C.B. shall recover his costs on appeal against the City of Sonora; no costs are awarded against Chief McIntosh and Officer Prock.

III. Conclusion

We conclude that Defendants have not identified any plain error in the district court's jury instructions, the district court's evidentiary rulings were not an abuse of discretion, and Defendants have not shown they are entitled to a settlement offset. Furthermore, we hold that Chief McIntosh and Officer Prock are not entitled to qualified immunity because no officer could have reasonably believed that their use of handcuffs to remove C.B. from school grounds complied with

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