

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

FEB 24 2009

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

GARY WILLIS,

Plaintiff - Appellee,

v.

DIANE MORA,

Defendant - Appellant.

No. 07-16994

D.C. No. CV-04-06542-AWI

MEMORANDUM*

Appeal from the United States District Court
for the Eastern District of California
Anthony W. Ishii, District Judge, Presiding

Argued and Submitted November 21, 2008
Pasadena, California

Before: PREGERSON and HAWKINS, Circuit Judges, and CUDAHY**, Senior
Circuit Judge.

California Parole Agent Diane Mora appeals the district court's denial of her
motion for summary judgment based on qualified immunity. Agent Mora contends
that the officers' initial entry into Plaintiff Gary Willis's hotel room was protected

* This disposition is not appropriate for publication and is not precedent
except as provided by 9th Cir. R. 36-3.

** The Honorable Richard D. Cudahy, Senior United States Circuit
Judge for the Seventh Circuit, sitting by designation.

by qualified immunity, because Agent Mora's mistake that Willis was on parole was reasonable as a matter of law. The remainder of the facts of this case are well known to the parties and will not be repeated here.

We find that the district court did not err in denying Mora's motion for summary judgment, because questions of fact exist as to whether Mora's mistake that Willis was on parole was reasonable. *See Saucier v. Katz*, 533 U.S. 194, 205 (2001) (finding that qualified immunity will attach if "the officer's mistake as to what the law requires is reasonable"). No prior case in our circuit compels a contrary finding.

The officers in *Motley v. Parks*, 432 F.3d 1072 (9th Cir. 2005), were much more thorough than Agent Mora in confirming mistaken information regarding a parolee by consulting accessible resources. In *Motley*, to confirm the address of a parolee, one officer compiled the parolee's information through police records while another officer actually contacted the parolee at the address, obtained direct confirmation from the parolee and his grandmother that the parolee lived at the location at issue, and had personal knowledge that the parolee was on parole. *Id.* at 1080-81. Agent Mora merely glanced at an outdated parole status list, but did nothing further to confirm that Willis was indeed on parole. Furthermore, no urgency existed in Agent Mora's situation to excuse her failure to confirm Willis's

parole status. Thus, questions of fact exist as to whether Agent Mora's actions were reasonable in accordance with Ninth Circuit case law.

Under the facts and circumstances of this case, the district court did not err in denying Mora's motion for summary judgment.

AFFIRMED.