

APR 27 2009

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

ANDRE RAMON CRAVER,

Plaintiff - Appellant,

v.

DARREN ALLBEE,

Defendant - Appellee,

and

SACRAMENTO COUNTY; et al.,

Defendants.

No. 07-16766

D.C. No. CV-03-01979-GEB/EFB

MEMORANDUM *

Appeal from the United States District Court
for the Eastern District of California
Garland E. Burrell, Jr., District Judge, Presiding

Submitted April 13, 2009**

Before: GRABER, GOULD, and BEA, Circuit Judges.

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

** The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

Andre Ramon Craver, a California state prisoner, appeals pro se from the district court's judgment in favor of Deputy Darren Allbee following a jury trial in his 42 U.S.C. § 1983 action alleging excessive force while he was a pretrial detainee. We have jurisdiction under 28 U.S.C. § 1291. We review for an abuse of discretion the district court's formulation of jury instructions and review de novo a claim that the instructions misstate the law, *Duran v. City of Maywood*, 221 F.3d 1127, 1130 (9th Cir. 2000) (per curiam), and we affirm.

The district court properly provided a Fourth Amendment jury instruction because "the Fourth Amendment sets the applicable constitutional limitations for considering claims of excessive force during pretrial detention." *Gibson v. County of Washoe*, 290 F.3d 1175, 1197 (9th Cir. 2002) (internal quotation marks and citation omitted). A specific Fourteenth Amendment jury instruction was not then needed.

We do not consider Craver's contention that the jury verdict was not supported by substantial evidence because Craver failed to provide us with the trial transcript. See 9th Cir. R. 10-3.1(d) & (e); *Bemis v. Edwards*, 45 F.3d 1369, 1375 (9th Cir. 1995) (rejecting appellant's argument where appellant failed to provide the trial transcript and the transcript was necessary for resolution of the issue on appeal).

Craver's remaining contentions are unpersuasive.

AFFIRMED.