

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

JUN 04 2009

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

VERNON K. SMITH,

Plaintiff - Appellant,

v.

GARDEN CITY, IDAHO; JIM
BENSLEY, Chief of Police; ANGELA
LYTHGOE, Police Officer; JOHN and
JANE DOES, I through X,

Defendants - Appellees.

No. 08-35323

D.C. No. 1:06-CV-00317-EJL-LMB

MEMORANDUM*

Appeal from the United States District Court
for the District of Idaho
Edward J. Lodge, District Judge, Presiding

Submitted June 2, 2009**
Portland, Oregon

Before: O'SCANNLAIN, FERNANDEZ and FISHER, 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).

Vernon K. Smith appeals the district court's grant of summary judgment and award of attorneys' fees to defendant-appellees. We have jurisdiction under 28 U.S.C. § 1291 and affirm.

Defendant-appellees' submissions show that Officer Lythgoe reasonably relied on data from her mobile computer terminal showing that Smith's registration had expired, and that any prolongation of the stop was due to Smith's belligerence. The only evidence Smith proffered in support of his claims is an affidavit lodging unfounded accusations and asserting facts outside his personal knowledge. This submission is insufficient to create any genuine issue of material fact. *See S.E.C. v. Phan*, 500 F.3d 895, 909 (9th Cir. 2007). We therefore conclude that Officer Lythgoe had reasonable suspicion to stop Smith's vehicle and did not unreasonably prolong the stop. *See United States v. Miguel*, 368 F.3d 1151-52 (9th Cir. 2004). Smith waived all other claims by failing to adequately present them in his briefs on appeal. *See United States v. Kimble*, 107 F.3d 712, 715 n.2 (9th Cir. 1997).

Because Smith's claims lacked any foundation in fact or law, the district court properly concluded that Smith, a licensed attorney, was unreasonable for bringing this action seeking \$1,000,000 in damages for a 20-minute traffic stop, the duration of which was partially caused by Smith's belligerence. We thus conclude

that the district court did not abuse its discretion by awarding defendants \$5,063.00 in attorney's fees. *See Barry v. Fowler*, 902 F.2d 770, 773 (9th Cir. 1990).

AFFIRMED.