

MAY 06 2011

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

NOT FOR PUBLICATION
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

WALTER WILLIAM GAGE,

Plaintiff - Appellant,

v.

CITY OF BAKER CITY, a municipal corporation; MICHAEL REGAN, MICHAEL HARRIS and BRIAN HARVEY, in their individual capacities, and as police officials for the City of Baker City,

Defendants - Appellees.

No. 10-35345

D.C. No. 6:09-cv-06107-AA

MEMORANDUM*

Appeal from the United States District Court
for the District of Oregon
Ann L. Aiken, Chief District Judge, Presiding

Submitted May 4, 2011**
Portland, Oregon

Before: **KOZINSKI**, Chief Judge, **BEA** and **IKUTA**, 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 concludes this case is suitable for decision without oral argument. See Fed. R. App. P. 34(a)(2).

Unrebutted evidence shows that Gage appeared to be intoxicated even before he failed three field sobriety tests. He can't demonstrate that the officer lacked probable cause to arrest him. See United States v. Buckner, 179 F.3d 834, 837 (9th Cir. 1999).

AFFIRMED.