

NOV 22 2011

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

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

TYRONE EVERETT PAYNE,

Plaintiff - Appellant,

v.

CITY OF MISSOULA; BEN SLATER,

Defendants - Appellees.

No. 10-36022

D.C. No. 9:10-cv-00056-DWM

MEMORANDUM*

Appeal from the United States District Court
for the District of Montana
Donald W. Molloy, District Judge, Presiding

Submitted November 21, 2011 **

Before: TASHIMA, BERZON, and TALLMAN, Circuit Judges.

Tyrone Everett Payne, a Montana state prisoner, appeals pro se from the district court’s summary judgment in his 42 U.S.C. § 1983 action alleging that his Fourth and Fourteenth Amendment rights were violated during a traffic stop. We

* 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).

have jurisdiction under 28 U.S.C. § 1291. We review de novo, *Ramirez v. City of Buena Park*, 560 F.3d 1012, 1019 (9th Cir. 2009), and we affirm.

The district court properly granted summary judgment on Payne’s Fourth Amendment claim because Officer Ben Slater had reasonable suspicion that Payne violated Mont. Code Ann. § 61-8-333(1)(b) before Slater made the traffic stop. *See United States v. Lopez-Soto*, 205 F.3d 1101, 1105 (9th Cir. 2000) (articulating standard). The district court properly granted summary judgment on Payne’s Fourteenth Amendment claim because Payne does not provide evidence that Slater acted in a discriminatory manner or with discriminatory intent. *See Bingham v. City of Manhattan Beach*, 341 F.3d 939, 948 (9th Cir. 2003), *abrogated on other grounds by Virginia v. Moore*, 553 U.S. 164 (2008). Moreover, because Payne has not shown any underlying constitutional violation, liability does not attach to the City of Missoula. *See City of Los Angeles v. Heller*, 475 U.S. 796, 799 (1986) (per curiam).

Payne’s Motion for Submission on Briefs is granted.

City of Missoula’s Motion to File DVD and CD is granted.

AFFIRMED.