

SEP 25 2012

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

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>ROBERT HACKWORTH, Jr.,</p> <p>Plaintiff - Appellant,</p> <p>v.</p> <p>P. RANGEL, Correctional Officer,</p> <p>Defendant - Appellee.</p>
--

No. 11-17538

D.C. No. 1:06-cv-00850-AWI-MJS

MEMORANDUM*

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

Submitted September 10, 2012**

Before: WARDLAW, CLIFTON, and N.R. SMITH, Circuit Judges.

California state prisoner Robert Hackworth Jr. appeals pro se from the district court’s summary judgment in his 42 U.S.C. § 1983 action alleging excessive force. We have jurisdiction under 28 U.S.C. § 1291. We review de

* 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).

novo. *Bruce v. Ylst*, 351 F.3d 1283, 1287 (9th Cir. 2003). We vacate and remand.

The district court granted summary judgment on Hackworth's excessive force claim on the basis that it was barred under *Edwards v. Balisok*, 520 U.S. 641 (1997) and *Heck v. Humphrey*, 512 U.S. 477 (1994). However, success on the merits of Hackworth's excessive force claim does not necessarily imply the invalidity of his of rule-violation conviction. *See, e.g., Smith v. City of Hemet*, 394 F.3d 689, 693 (9th Cir. 2005) (en banc) (§ 1983 action was not barred by *Heck* because "the excessive force may have been employed against [plaintiff] subsequent to the time he engaged in the conduct that constituted the basis for his conviction"). Furthermore, the rule established in *Heck* is not an evidentiary doctrine and, therefore, cannot bar evidence in a § 1983 action. *See Simpson v. Thomas*, 528 F.3d 685, 696 (9th Cir. 2008). Accordingly, we vacate the district court's summary judgment and remand for further proceedings consistent with this disposition.

The parties shall bear their own costs on appeal.

VACATED and REMANDED.