

JUN 20 2013

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>DEON WADE,</p> <p style="text-align: center;">Plaintiff - Appellant,</p> <p style="text-align: center;">v.</p> <p>FRESNO POLICE DEPARTMENT; et al.,</p> <p style="text-align: center;">Defendants - Appellees.</p>
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No. 12-15252

D.C. No. 1:09-cv-00599-AWI-BAM

MEMORANDUM\*

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

Submitted June 18, 2013\*\*

Before: TALLMAN, M. SMITH, and HURWITZ, Circuit Judges.

California state prisoner Deon Wade appeals pro se from the district court’s summary judgment in his 42 U.S.C. § 1983 action alleging excessive force in connection with his arrest for providing false information to a peace officer. We have jurisdiction under 28 U.S.C. § 1291. We review de novo, *Garcia v. County of*

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\* 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).

*Merced*, 639 F.3d 1206, 1208 (9th Cir. 2011), and we affirm.

The district court properly granted summary judgment on the basis of qualified immunity because Wade failed to show that at the time of his arrest, the law was clearly established that a reasonable officer in defendants' position would have known that the use of non-lethal force was unconstitutional. *See Pearson v. Callahan*, 555 U.S. 223, 232 (2009) (defendants are entitled to qualified immunity where there is no violation of plaintiff's constitutional right or the right at issue was not "clearly established"); *Norwood v. Vance*, 591 F.3d 1062, 1068 (9th Cir. 2010) ("The relevant, dispositive inquiry . . . is whether it would be clear to a reasonable officer that his conduct was unlawful in the situation he confronted." (emphasis, citations, and internal quotation marks omitted)).

**AFFIRMED.**