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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

RICK PRANCEVIC,

Plaintiff - Appellee,

v.

DANNY MACAGNI, Individually and as
Chief of Police for the Santa Maria Police
Department; CITY OF SANTA MARIA,

Defendants - Appellants,

COUNTY OF SANTA BARBARA, a
municipal corporation; DAVID
SAUNDERS, Individually; ANN
BRAMSEN, Individually,

Defendants.

No. 11-56798

D.C. No. 2:10-cv-03667-JHN-
AGR

MEMORANDUM*

RICK PRANCEVIC,

Plaintiff - Appellee,

v.

No. 11-56953

D.C. No. 2:10-cv-03667-JHN-
AGR

* This disposition is not appropriate for publication and is not precedent
except as provided by 9th Cir. R. 36-3.

DAVID SAUNDERS, Individually; ANN
BRAMSEN, Individually,

Defendants - Appellants,

DANNY MACAGNI, Individually and as
Chief of Police for the Santa Maria Police
Department; CITY OF SANTA MARIA;
COUNTY OF SANTA BARBARA, a
municipal corporation,

Defendants.

Appeal from the United States District Court
for the Central District of California
Jacqueline H. NGUYEN, District Judge, Presiding

Argued and Submitted February 4, 2014
Pasadena, California

Before: PREGERSON and BERZON, Circuit Judges, and AMON, Chief District
Judge.**

Defendants appeal the district court's denial of qualified immunity. Because
the parties are familiar with the factual background and procedural history of this
case, we need not discuss them here. We have jurisdiction under 28 U.S.C.
§ 1291.

** The Honorable Carol Bagley Amon, Chief District Judge for the U.S.
District Court for the Eastern District of New York, sitting by designation.

We review de novo a district court's order denying summary judgment on the ground of qualified immunity. *Rodis v. City & Cnty. of S.F.*, 558 F.3d 964, 968 (9th Cir. 2009). “[O]ur review is limited to the ‘purely legal issue whether the facts [adduced by the plaintiff] . . . support a claim of clearly established law.’” *Alston v. Read*, 663 F.3d 1094, 1098 (9th Cir. 2011) (citations omitted).

(1) We affirm the denial of qualified immunity with respect to Defendants Danny Macagni, Chief of the Santa Maria Police Department, and the City of Santa Maria. The evidence adduced by Plaintiff Rick Prancevic would support a finding that Chief Macagni banned him from the police department, and did so to punish him for protected speech. Such conduct would violate Prancevic's clearly established First Amendment rights. *See Soranno's Gasco, Inc. v. Morgan*, 874 F.2d 1310, 1319 (9th Cir. 1989) (plaintiff “had a clearly established right to be free of intentional retaliation by government officials based upon that individual's constitutionally protected expression”). We cannot decide in this qualified immunity appeal whether there would be a First Amendment violation even if the facts submitted by Chief Macagni and the City were determined to be true. *See Jeffers v. Gomez*, 267 F.3d 895, 903 (9th Cir. 2001).

(2) We likewise affirm the denial of qualified immunity with respect to the Santa Barbara County District Attorney (“DA”) officials. Prancevic has

adduced evidence that would support a finding that his First Amendment protected speech was a substantial or motivating factor in the DA's decision to transfer his work assignment from Santa Maria to Lompoc. For example, the Chief Trial Deputy of the DA's office testified that Defendant David Saunders was "infuriated" by Prancevic's letter, and "[i]n the meeting," in which Prancevic's transfer was ordered, "the context was obviously punishment." The DA officials are therefore not entitled to qualified immunity at this stage of the case. *See Eng v. Cooley*, 552 F.3d 1062, 1071 (9th Cir. 2009); *Yartzoff v. Thomas*, 809 F.2d 1371, 1376 (9th Cir. 1987) (holding that a transfer of job duties can constitute an adverse employment action). Again, whether there would be a First Amendment violation, or qualified immunity, on the defendants' version of the facts are issues we cannot decide at this juncture.

AFFIRMED.