

MAY 19 2014

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

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

BARBARA FOURNIER and BRUCE  
JENKINS,

Plaintiffs - Appellants,

v.

TERRY CUDDEFORD,

Defendant - Appellee.

No. 12-36062

D.C. No. 3:11-cv-00343-AC

MEMORANDUM\*

Appeal from the United States District Court  
for the District of Oregon  
John V. Acosta, Magistrate Judge, Presiding

Submitted May 13, 2014\*\*  
Portland, Oregon

Before: GOODWIN, IKUTA, and N.R. SMITH, Circuit Judges.

Barbara Fournier and Bruce Jenkins (collectively, “Plaintiffs”) appeal the district court’s summary judgment in their 42 U.S.C. § 1983 action. Plaintiffs allege that Clackamas County Sheriff’s Deputy Terry Cuddeford violated their

---

\* 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).

Fourth and Fourteenth Amendment rights when he responded to their 911 call reporting that they were being subjected to an unlawful eviction. We have jurisdiction under 28 U.S.C. § 1291. On de novo review, *Morrison v. Hall*, 261 F.3d 896, 900 (9th Cir. 2001), we affirm.

Plaintiffs failed to raise a genuine dispute of material fact as to whether Cuddeford's conduct constituted state action because Cuddeford was summoned to a scene not of his making after the confrontation had already occurred. *See Meyers v. Redwood City*, 400 F.3d 765, 771-72 (9th Cir. 2005) (holding that police officers who were summoned to a scene not of their making, where the confrontation was not conducted under their purview, "were not so enmeshed in effectuating the repossession that the deprivation and seizure . . . is attributable to the state"); *see also Howerton v. Gabica*, 708 F.2d 380, 383-84 (9th Cir. 1983) (relying on repossession cases to set out the legal framework for state action in a case alleging unlawful eviction).

**AFFIRMED.**