

OCT 05 2016

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

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

NATHANIEL JOHNSON,

Plaintiff-Appellant,

v.

KELLY, Corrections Officer, Sergeant; et
al.,

Defendants-Appellees,

and

JOYCE and MITEALL,

Defendants.

No. 15-15890

D.C. No.

2:11-cv-01858-JAD-VCF

MEMORANDUM*

Appeal from the United States District Court
for the District of Nevada
Jennifer A. Dorsey, District Judge, Presiding

Submitted September 27, 2016**

Before: TASHIMA, SILVERMAN, and M. SMITH, Circuit Judges.

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

** The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

Nathaniel Johnson appeals from the district court's summary judgment in his 42 U.S.C. § 1983 action alleging excessive force and due process claims. We have jurisdiction under 28 U.S.C. § 1291. We review de novo. *Jones v. Williams*, 791 F.3d 1023, 1030 (9th Cir. 2015). We vacate and remand.

In granting summary judgment on Johnson's excessive force claim, the district court did not have the benefit of the Supreme Court's recent decision in *Kingsley v. Hendrickson*, 135 S. Ct. 2466 (2015) which held that the appropriate standard for evaluating an excessive force claim involving a pretrial detainee is objective unreasonableness. Accordingly, we vacate the district court's summary judgment of Johnson's excessive force claim and remand for further proceedings.

We do not consider Johnson's due process claim because Johnson does not raise this claim on appeal.

All pending requests are denied.

The parties shall bear their own costs on appeal.

VACATED and REMANDED.