

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

JUL 2 2019

FOR THE NINTH CIRCUIT

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

BRIAN BALLENTINE; et al.,

No. 17-16728

Plaintiffs-Appellees,

D.C. No.

v.

2:14-cv-01584-APG-GWF

LAS VEGAS METROPOLITAN POLICE  
DEPARTMENT,

MEMORANDUM\*

Defendant,

MIKE WALLACE, Sergeant; JOHN  
LIBERTY, Lieutenant,

Defendants,

and

CHRISTOPHER T. TUCKER, Detective,

Defendant-Appellant.

Appeal from the United States District Court  
for the District of Nevada  
Andrew P. Gordon, District Judge, Presiding

Submitted and Submission Deferred March 15, 2019\*\*

---

\* 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).

Resubmitted June 28, 2019  
San Francisco, California

Before: W. FLETCHER, WATFORD, and HURWITZ, Circuit Judges.

In this 42 U.S.C. § 1983 action, the plaintiffs allege that Las Vegas police officers arrested them in retaliation for protected speech. The district court denied in part the officers’ motion for summary judgment seeking qualified immunity, and this appeal followed.

In *Nieves v. Bartlett*, the Supreme Court held that a plaintiff pursuing a First Amendment retaliatory arrest claim must generally plead and prove the absence of probable cause for the arrest. 139 S. Ct. 1715, 1723-24 (2019) (abrogating *Ford v. Yakima*, 706 F.3d 1188 (9th Cir. 2013) (per curiam)). The Court noted, however, “that the no-probable-cause requirement should not apply when a plaintiff presents objective evidence that he was arrested when otherwise similarly situated individuals not engaged in the same sort of protected speech had not been.” *Id.* at 1727. Because neither the district court nor the parties had the benefit of *Nieves* when the order on appeal was decided, we vacate that order and remand for further proceedings in light of *Nieves*.

**VACATED AND REMANDED.**