

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

JUL 18 2022

FOR THE NINTH CIRCUIT

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

FRED DEVINE,

Plaintiff-Appellant,

v.

CHAPMAN, Unknown; et al.,

Defendants-Appellees,

and

PHOENIX POLICE DEPARTMENT; et al.,

Defendants.

No. 21-16207

D.C. No. 2:19-cv-05745-SMB-
MTM

MEMORANDUM*

Appeal from the United States District Court
for the District of Arizona
Susan M. Brnovich, District Judge, Presiding

Submitted July 12, 2022**

Before: SCHROEDER, R. NELSON, and VANDYKE, Circuit Judges.

Fred Devine appeals pro se from the district court's summary judgment in

* 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).

his 42 U.S.C. § 1983 action alleging excessive force in connection with his arrest. We have jurisdiction under 28 U.S.C. § 1291. We review de novo. *Toguchi v. Chung*, 391 F.3d 1051, 1056 (9th Cir. 2004). We vacate and remand.

Devine argues that he was never served with a copy of the body camera video footage relied upon by the district court in awarding summary judgment to defendants. It is a “firmly held main rule that a court may not dispose of the merits of a case on the basis of *ex parte*, *in camera* submissions.” *Am.-Arab Anti-Discrimination Comm. v. Reno*, 70 F.3d 1045, 1069 (9th Cir. 1995). Because the record is unclear as to whether Devine was served with a copy of the body camera footage, we vacate the judgment and remand for further proceedings, including a determination by the district court as to whether Devine had an opportunity to review the video footage in preparing his opposition to summary judgment.

Devine’s request for an update on the status of his appeal (Docket Entry No. 21) is denied as moot.

The parties will bear their own costs on appeal.

VACATED and REMANDED.