

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

No. 18-35038

2/27/19

Gary Oram, Jr.,
Appellant,
V.

The City of Dillon; et al.,
Appellee.

DktEntry: 29-1

Before: FERNANDEZ, SILVERMAN, and WAT-
FORD, Circuit Judges.

Ninth Circuit Memorandum
Submitted February 19, 2019

Gary A. Oram, Jr., appeals pro se from the district court's summary judgment in his 42 U.S.C. § 1983 action alleging constitutional claims in connection with his arrest for assault. We have jurisdiction under 28 U.S.C. § 1291. We review de novo. Glenn v. Washington County, 673 F.3d 864, 870 (9th Cir. 2011). We affirm.

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

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

The district court properly granted summary judgment on Oram's unlawful arrest claim because Oram failed to raise a genuine dispute of material fact as to whether Haggard and Alvarez arrested him without probable cause. See *United States v. Lopez*, 482 F.3d 1067, 1072 (9th Cir. 2007) (probable cause for a warrantless arrest exists "when officers have knowledge or reasonably trustworthy information sufficient to lead a person of reasonable caution to believe that an offense has been or is being committed by the person being arrested"); see also *Yousefian v. City of Glendale*, 779 F.3d 1010, 1014 (9th Cir. 2015) ("The mere existence of some evidence that could suggest self-defense does not negate probable cause.").

The district court properly granted summary judgment on Oram's excessive force claim because Oram failed to raise a genuine dispute of material fact as to whether Haggard and Alvarez used an unreasonable amount of force against him. See *Espinosa v. City & County of San Francisco*, 598 F.3d 528, 537 (9th Cir. 2010) (explaining framework for analyzing an excessive force claim).

The district court properly granted summary judgment on Oram's equal protection claim because Haggard and Alvarez were entitled to qualified immunity under the circumstances. See *Ashcroft v. al-Kidd*, 563 U.S. 731, 741 (2011) (discussing qualified immunity and noting that a right is clearly established only if "every reasonable official would have understood that what he is doing violates that right" (citation and internal quotation marks omitted)).

The district court properly granted summary judgment on Oram's conspiracy and Monell claims because Oram failed to demonstrate an underlying

Constitutional violation. See *Lacey v. Maricopa County*, 693 F.3d 896, 935 (9th Cir. 2012) (a claim of conspiracy under § 1983 does not exist without an underlying constitutional violation); *Johnson v. City of Seattle*, 474 F.3d 634, 638- 39 (9th Cir. 2007) (“[M]unicipalities are only liable under Section 1983 if there is, at minimum, an underlying constitutional tort.”); See also *Monell v. Dep’t of Soc. Servs.*, 436 U.S. 658, 691-93 (1978).

The magistrate judge did not abuse its discretion in its disposition of the parties’ various discovery motions, including its awards of sanctions under Rule 37 for Oram’s failure to attend his deposition, and its denial of Oram’s reconsideration motion of its order denying the motion to compel production of the dispatch records. See *R & R Sails, Inc. v. Ins. Co. of Penn.*, 673 F.3d 1240, 1245 (9th Cir. 2012) (setting forth standard of review for discovery rulings and sanctions).

The magistrate judge properly exercised its jurisdiction in ruling on Oram’s various non-dispositive motions. See *Parsons v. Ryan*, 912 F.3d 486, 495 (9th Cir. 2018) (setting forth standard of review); see also 28 U.S.C. § 636(b)(1)(A) (listing matters over which magistrate judges have jurisdiction).

We reject as meritless Oram’s contentions that the district court and the magistrate judge denied him due process, the district court acted outside its jurisdiction in dismissing the conspiracy claim, and the clerk’s bills of costs violated his due process rights and right against double jeopardy.

We do not consider arguments raised for the first time on appeal, or matters not specifically and distinctly raised and argued in the opening brief. See *Padgett v. Wright*, 587 F.3d 983, 985 n.2 (9th Cir.

(2009).

Oram's requests to bifurcate, to serve Johnson, and for an in limine ruling, set forth in the opening and reply briefs, are denied.

Oram's motion for leave to transmit physical exhibits (Docket Entry No. 12) is denied.

Affirmed.

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Gary Oram, Jr.,
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v.

The City of Dillon; et al.,
Appellee.

DktEntry: 31

Before: FERNANDEZ, SILVERMAN, and WAT-
FORD, Circuit Judges.

Order Denying Motion for Rehearing and Rehearing
en-banc.

Filed May 28, 2019

The panel has voted to deny the petition for panel
rehearing.

The full court has been advised of the petition for
rehearing en banc and no judge has requested a vote
on whether to rehear the matter en banc. See Fed. R.
App. P. 35.

Oram's petition for panel rehearing and petition
for rehearing en banc (Docket Entry No. 30) are denied.

No further filings will be entertained in this closed
case.

IN THE UNITED STATES DISTRICT COURT FOR
THE DISTRICT OF MONTANA BUTTE DIVISION

No. 2:15-cv-00047-BMM

GARY ORAM, JR.,
Plaintiff,

v.

THE CITY OF DILLON, CETH HAGGARD,
JEREMY ALVAREZ, and JACOB JOHNSON

Defendants.

Dist.Doc: 145

Before: United States District Court Judge Brian
Morris.

Order: Dismissing Claim, Jacob Johnson.

Filed: August 23, 2017.

Plaintiff filed his Complaint in this case on September 14, 2015. (Doc. 1). A summons was issued for Defendant Jacob Johnson (Johnson) on September 28, 2015. (Doc. 7). Federal Rule of Civil Procedure 4(m) requires service of a summons and complaint within 90 days after the filing of the complaint. The Court issued an Order on December 28, 2016, requiring Plaintiff to show cause by January 27, 2017, why his claims against Johnson should not be dismissed for failure to effect service on Johnson. Plaintiff has failed to respond to the Court's Order. There is no indication in the record that Plaintiff effected service on Johnson.

The Court dismissed all of Plaintiffs claims against Defendants Ceth Haggard, Jeremy Alvarez, and the City of Dillon, with prejudice, on December 20, 2016. (Doc. 132).

Accordingly, IT IS ORDERED:

1. All claims against Defendant Jacob Johnson are dismissed without prejudice for failure to effect service on Johnson.
2. The Clerk is directed to enter a judgment that dismisses all claims against Defendants Ceth Haggard, Jeremy Alvarez, and the City of Dillon, with prejudice; and dismisses all claims against Defendant Johnson without prejudice.

DATED this 23rd day of August 2017.

s/Brian Morris, United States District Court
Judge.