

**OCT 05 2007**

**CATHY A. CATTERSON, CLERK  
U.S. COURT OF APPEALS**

**NOT FOR PUBLICATION**

**UNITED STATES COURT OF APPEALS**

**FOR THE NINTH CIRCUIT**

JOSHUA KITTS,

Plaintiff - Appellant,

v.

JONATHON MICHAEL ZAUGRA; et al.,

Defendants - Appellees.

No. 05-15604

D.C. No. CV-04-00003-JCC

MEMORANDUM\*

Appeal from the United States District Court  
for the District of Arizona  
James C. Carruth, Magistrate Judge\*\*, Presiding

Submitted September 24, 2007\*\*\*

Before: CANBY, TASHIMA and RAWLINSON, Circuit Judges.

Joshua Kitts appeals pro se from the district court's summary judgment for defendants in his 42 U.S.C. § 1983 action alleging police officers used excessive

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\* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

\*\* Pursuant to 28 U.S.C. § 636(c)(1), the parties consented to proceed before a magistrate judge.

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

force in effecting a pre-arrest vehicle stop of Kitts after he attempted to flee. We have jurisdiction under 28 U.S.C. § 1291. We review de novo, *Rossi v. Motion Picture Ass'n of Am. Inc.*, 391 F.3d 1000, 1002 (9th Cir. 2004), and we affirm.

According to defendants' affidavits Kitts was identified as the primary suspect in an armed robbery and in his attempt to flee, he drove his vehicle toward two police officers. *See Arpin v. Santa Clara Valley Transp. Agency*, 261 F.3d 912, 921 (9th Cir. 2001) (outlining factors in excessive force analysis – severity of the crime, immediacy of the threat the suspect poses, and whether the individual is actively resisting arrest or attempting to flee). Kitts' affidavit failed to raise a genuine issue of material fact as to whether the defendants' use of force was unreasonable under the circumstances. *See Graham v. Connor*, 490 U.S. 386, 397 (1989) (police may use only such force as is objectively reasonable under the circumstances); *Saucier v. Katz*, 533 U.S. 194, 201 (2001) (“If no constitutional right would have been violated were the allegations established, there is no necessity for further inquiries concerning qualified immunity.”).

**AFFIRMED.**