

NOV 19 2007

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

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

NATHANIEL TURNER, JR.,

Plaintiff - Appellant,

v.

MATTSON,

Defendant,

and

B. KIRKHAM, CO #8211 sued in
individual & official capacity,

Defendant - Appellee.

No. 05-16654

D.C. No. CV-00-00018-SMM

MEMORANDUM *

Appeal from the United States District Court
for the District of Arizona
Stephen M. McNamee, District Judge, Presiding

Submitted November 13, 2007 **

Before: McKEOWN, TALLMAN and CLIFTON, Circuit Judges.

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

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

05-16654

On September 6, 2007, this court issued an order directing appellees to show cause why the district court's summary judgment in this matter should not be summarily reversed and remanded, based on appellee's answering brief, which concedes that the district court erred in granting summary judgment on appellant's excessive force claim because there are material issues of disputed fact relating to the use of force in this matter. The parties have not responded to the September 6, 2007 order.

Upon review of the record and appellees' answering brief, this court hereby summarily reverses the district court's order granting appellees' motion for summary judgment on appellant's excessive force claim. *See United States v. Hooton*, 693 F.2d 857 (9th Cir. 1982) (per curiam) (summary affirmance appropriate where result is clear from face of record). This matter is remanded for further proceedings consistent with this disposition.¹

REVERSED and REMANDED.

¹ We acknowledge and thank pro bono counsel for their work on this appeal.