

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

DEC 13 2019

FOR THE NINTH CIRCUIT

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

MOISES E. PONCE ALVAREZ,

Plaintiff-Appellant,

v.

KING COUNTY, a municipal corporation,

Defendant,

and

ADAM R. BUCHAN, in his individual
capacity; et al.,

Defendants-Appellees.

No. 18-35382

D.C. No. 2:16-cv-00721-RAJ

MEMORANDUM*

Appeal from the United States District Court
for the Western District of Washington
Richard A. Jones, District Judge, Presiding

Submitted December 11, 2019**

Before: WALLACE, CANBY, and TASHIMA, Circuit Judges.

Moises E. Ponce Alvarez appeals pro se from the district court's order

* 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).

denying his Federal Rule of Civil Procedure 59(a) motion for a new trial following a jury verdict for defendants in his 42 U.S.C. § 1983 action alleging excessive force. We have jurisdiction under 28 U.S.C. § 1291. We review for an abuse of discretion. *Kode v. Carlson*, 596 F.3d 608, 611 (9th Cir. 2010). We affirm.

The district court did not abuse its discretion by denying Alvarez's motion for a new trial because there was evidence to support the jury's verdict that defendants' use of force was reasonable and not excessive. *See Kingsley v. Hendrickson*, 135 S. Ct. 2466, 2473 (2015) (describing considerations for evaluating whether use of force was reasonable); *see also Kode*, 596 F.3d at 612 (“[W]here the basis of a Rule 59 ruling is that the verdict is not against the weight of the evidence, the district court's denial of a Rule 59 motion is virtually unassailable. In such cases, we reverse for a clear abuse of discretion only where there is an *absolute absence of evidence* to support the jury's verdict.” (citation and internal quotation marks omitted)).

AFFIRMED.