NOT FOR PUBLICATION

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U.S. COURT OF APPEALS

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

STEVEN DWAYNE BROWN, Plaintiff-Appellant, v. LOS ANGELES COUNTY SHERIFF'S DEPARTMENT; SERGEANT MORALES, as individual and in official capacity as Deputy Sergeant 1700 High Power; DEPUTY SAUCEDO, as individual and in official capacity as Deputy Sheriff; DEPUTY PENA, Deputy Sheriff Escort Prowler as individual; DOMINGUEZ, Deputy Sheriff; individual; DOES, 1-10, Defendants-Appellees.	No. 21-55375 D.C. No. 2:15-cv-00483-FMO-JEM MEMORANDUM*

Appeal from the United States District Court
for the Central District of California
Fernando M. Olguin, District Judge, Presiding

Submitted November 14, 2022**
San Francisco, California

Before: WALLACE, O'SCANNLAIN, and FERNANDEZ, Circuit Judges.

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* 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).

Plaintiff Steven Dwayne Brown appeals from the district court's orders granting Defendants summary judgment.[1] As the facts are known to the parties, we repeat them only as necessary to explain our decision.

I

The district court properly granted Defendants summary judgment regarding Brown's failure-to-protect claim. Brown's assertions that Saucedo (1) instructed Bai to kick Brown in the face and (2) "convinced" Morales to "drag [Brown] to disciplinary segregation" enjoy no record support. Thus, Saucedo is entitled to qualified immunity because no reasonable juror could conclude he "violated" any of Brown's "federal statutory or constitutional right[s]." *See Dist. of Columbia v. Wesby*, 138 S. Ct. 577, 589 (2018).

As for Brown's assertion that Saucedo instructed Bai to attack him, the record, on Brown's own account, shows at most that Saucedo "whispered" something to Bai before Bai attacked Brown. Brown admits he "couldn't hear": "I

[1] Brown asserts in his statement of issues that he seeks review of "[w]hether the district court improperly granted Defendants[']] motion to set aside default judgment." Despite Brown's characterization, the district court set aside a default, not a default judgment. Brown never mentions the issue again and thus develops no argument that the district court abused its discretion in setting aside the default. *Cf. Mendoza v. Wight Vineyard Mgmt.*, 783 F.2d 941, 945 (9th Cir. 1986) ("The court's discretion is especially broad where, as here, it is entry of default that is being set aside, rather than a default judgment."). We decline to review Brown's abandoned argument, which also was not included in his notice of appeal. *See Leer v. Murphy*, 844 F.2d 628, 634 (9th Cir. 1988) ("Issues raised in a brief which are not supported by argument are deemed abandoned.").

don't know what he said exactly."[2] A reasonable juror could not conclude from this record that Saucedo "made an intentional decision" to "put [Brown] at substantial risk of suffering serious harm." *See Castro v. Cnty. of L.A.*, 833 F.3d 1060, 1071 (9th Cir. 2016) (en banc). Indeed, as the district court explained, the record does not show Brown ever faced *any* "substantial risk of serious harm." After all, Bai "had his hands cuffed behind his back and was 15 feet away from [Brown]. [Brown] was in the shower stall behind a locked cell door. [Brown] voluntarily placed his face up against the opening in the bars," which still nonetheless absorbed most of the impact of Bai's kick, such that Brown suffered no injury from it.

As for Brown's allegation that Saucedo "convinced" Morales to have Brown taken to a disciplinary cell, the district court correctly observed that "there is no evidence from which it could be reasonably inferred that Saucedo told Morales to order Dominguez and Pena to take [Brown] to the cell."

Finally, Brown's claim fails for the additional reason that he does not carry his burden of pointing to specific "existing precedent" that "place[s] the statutory or constitutional question beyond debate." *See Ashcroft v. al-Kidd*, 563 U.S. 731, 741 (2011); *Isayeva v. Sacramento Sheriff's Dep't*, 872 F.3d 938, 946 (9th Cir.

[2] Notably, Brown also admits that he has a history of antagonizing Bai and that he "screamed over" to Bai from the shower, the first event in the altercation in question.

2017) ("Once the official pleads qualified immunity, the burden is on the plaintiff to prove . . . that the right was clearly established at the time of the alleged misconduct.").

II

The district court also properly granted Defendants summary judgment regarding Brown's excessive-force claim. As the court found, following the incident with Bai, "[i]t was incumbent upon jail personnel to regain order in the facility and place [Brown] in a secure cell." "Defendants used the minimum force available to them in light of the potential security risks to the module and [Brown's] physical and verbal resistance." Defendants "were faced with moving [Brown], a dangerous, high risk inmate, from the shower cell to a disciplinary cell after he was involved in a dispute with another inmate and while numerous other inmates were out of their cells awaiting transport to court." Accordingly, Defendants' grabbing Brown's shoulder and moving him quickly was reasonable under the circumstances. Moreover, Brown testified that after he fell to the floor and was "mashed against the wall," he explained to Morales that his knee was "really, really hurting" and Morales then allowed him to walk unmolested and at his own pace. Brown also admits he tried to "squeeze back out" of the cell, which of course necessitated the final "push[]" about which he now complains. "In short, construing the evidence in the light most favorable to" Brown, the district court

correctly concluded "that the force used against [Brown] was objectively reasonable in light of the facts know[n] to [D]efendants at the time and the legitimate security interests of the prison." *See Kingsley v. Hendrickson*, 576 U.S. 389, 397 (2015).

In addition, as with his other claims, Brown fails to carry his burden of pointing to specific "existing precedent" that "place[s] the statutory or constitutional question beyond debate." *See al-Kidd*, 563 U.S. at 741; *Isayeva*, 872 F.3d at 946.

III

The district court also properly granted Defendants summary judgment regarding Brown's First Amendment retaliation claim. There is no record evidence connecting any of Brown's prior complaints against Defendants to the incident with Bai. *See Wood v. Yordy*, 753 F.3d 899, 905 (9th Cir. 2014) ("We have repeatedly held that mere speculation that defendants acted out of retaliation is not sufficient."). Nor does the record establish that Defendants "allowed [Bai] to attack or harm" Brown. "Rather," as the district court concluded, "the evidence establishes that the actions taken by Defendants advanced the legitimate penological goals of preserving institutional order and discipline." *See Schroeder v. McDonald*, 55 F.3d 454, 462 (9th Cir. 1995).

In addition, as with his other claims, Brown fails to carry his burden of

pointing to specific "existing precedent" that "place[s] the statutory or constitutional question beyond debate." *See al-Kidd*, 563 U.S. at 741; *Isayeva*, 872 F.3d at 946.

IV

The district court also properly granted Defendants summary judgment regarding Brown's denial-of-self-representation claim. Defendants are entitled to qualified immunity, as Brown fails to carry his burden of pointing to specific "existing precedent" that "place[s] the statutory or constitutional question beyond debate." *See al-Kidd*, 563 U.S. at 741; *Isayeva*, 872 F.3d at 946.

V

Because Brown's claims that there were constitutional violations fail, his *Monell*[3] claim necessarily also fails. *See Jackson v. City of Bremerton*, 268 F.3d 646, 653 (9th Cir. 2001) ("Neither a municipality nor a supervisor . . . can be held liable under § 1983 where no injury or constitutional violation has occurred."). "Moreover," as the district court aptly held, Brown "failed to present any relevant, competent evidence of any policy statements, regulations, officially adopted or promulgated decisions, customs, or practices that caused Defendants to inflict the injuries about which [Brown] is complaining."

[3] *Monell v. Dep't of Soc. Servs. of City of N.Y.*, 436 U.S. 658 (1978).

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The judgment of the district court is **AFFIRMED.**