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7 UNITED STATES DISTRICT COURT
8 EASTERN DISTRICT OF CALIFORNIA
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10 PHILLIP SANDERS,
11 Plaintiff,
12 v.
13 OFFICER IGNACIO RUIZ,
14 Defendant.
15

1:06-cv-01264 OWW GSA
ORDER DENYING DEFENDANT
RUIZ'S MOTION FOR
RECONSIDERATION (DOC. 127)

16 I. INTRODUCTION.
17

18 Plaintiff Phillip Sanders ("Sanders") brings this *pro se*
19 action pursuant to 42 U.S.C. § 1983, alleging he was improperly
20 searched and arrested without probable cause by Fresno Police
21 Department ("FPD") officers in violation of his Fourth Amendment
22 rights. The allegations concern arrests of Plaintiff on November
23 30, 2005 by Defendant Officer Mark Bishop ("Bishop") and on May
24 6, 2006 by Defendant Officer Ignacio Ruiz ("Ruiz").

25 Before the court for decision is Defendant Ruiz's motion for
26 reconsideration of the court's denial of Defendants' motion for
27 summary judgment as to Plaintiff's false arrest claim. Defendant
28 Ruiz moves for reconsideration pursuant to Fed. R. Civ. P. 59(e),

1 asking the court to reconsider its decision in light of
2 deposition testimony submitted by Defendant prior to the summary
3 judgment ruling. Specifically, Defendant states the December 29
4 order "does not mention or address the references to Plaintiff's
5 deposition testimony which were included in Defendant's
6 supplemental brief. Defendant's do not know whether the Court
7 considered the contents of the supplemental brief in making its
8 ruling." (Doc. 127 at 2.) Defendant contends the deposition
9 testimony establishes that Plaintiff exhibited objective symptoms
10 of being under the influence of a controlled substance at the
11 time Ruiz arrested him, evidencing he is entitled to qualified
12 immunity.

13 14 II. FACTUAL AND PROCEDURAL BACKGROUND.

15 On September 14, 2006, Plaintiff filed his complaint
16 alleging Officers Bishop and Ruiz violated his Fourth Amendment
17 rights by unlawfully searching and arresting him without probable
18 cause. (Doc. 1.) Defendants filed a motion for summary judgment
19 on November 3, 2008, contending that Plaintiff's probation search
20 condition waived his Fourth Amendment rights, Defendant Officers
21 had probable cause to search and arrest Plaintiff, and Defendant
22 Officers were entitled to qualified immunity. (Doc. 98.) On the
23 same day, Defendants filed a motion to sever the action, arguing
24 the two arrest incidents were unrelated and involved different
25 parties. (Doc. 99.) On December 17, 2008, the motion to sever
26 was granted and separate trial dates were set as to each
27 Defendant. (Doc. 116.) On December 29, Defendants' motion for
28 summary judgment was granted with respect to Plaintiff's unlawful

1 search claims and denied with respect to Plaintiff's false arrest
2 claims. (Doc. 120.)

3 On November 11, 2008, Defendants filed a motion to dismiss
4 pursuant to Fed. R. Civ. P. 41(b) for Plaintiff's failure to
5 comply with a court order. On October 7, 2008, U.S. Magistrate
6 Judge Gary S. Austin granted Defendants' motion to compel and
7 motion for sanctions for Plaintiff's failure to respond to
8 written discovery and failure to attend three properly noticed
9 depositions. Plaintiff was ordered to pay Defendants \$457 to be
10 paid in \$50 installments on the 15th of each month until paid in
11 full. Plaintiff paid the amount due on October 15, but failed to
12 pay the installments due on November 15 and December 15. The
13 motion to dismiss was denied and Plaintiff was ordered to pay the
14 overdue sanctions immediately. (Doc. 139.)

15 The background facts of this lawsuit are set forth in prior
16 rulings. Accordingly, only pertinent facts are repeated and/or
17 described here for the purposes of evaluating Defendant's motion
18 for reconsideration. With respect to the November 30, 2005
19 arrest of Sanders by Ruiz, relying largely on the description of
20 facts as set forth in Defendants' Separate Statement of
21 Undisputed Material Facts ("DSSUMF"), the order on summary
22 judgment stated:

23 Defendant Officer Ruiz observed a vehicle parked in the
24 driveway of 347 W. Almy Street, partially in the
25 driveway and partially on the road, at about 10:47 p.m.
26 during his normal duties. (DSSUMF #30.) The area is a
27 high-gang activity and narcotic use area and the car
28 appeared suspicious to Ruiz because the house was far
back from the road. (*Id.*) Officer Ruiz put a
spotlight on the car and noticed a person sitting
inside. He approached the car on the driver's side.
The driver was Phillip Sanders and Ruiz determined he
was on probation. (*Id.*)

1 Ruiz claims he observed the following symptoms in
2 speaking with Sanders: dilated pupils, no pupillary
3 reaction to light, eyelid tremors and involuntary
4 muscle movements. (DSSUMF #31.) Ruiz states these
5 symptoms are indicated when a person is under the
6 influence of crack cocaine. (Id.) Ruiz contacted
7 dispatch which relayed information that Sanders was on
8 probation with a search and seizure condition and was
9 subject to alcohol and narcotic testing. (DSSUMF #32.)
10 Ruiz maintains he believed Sanders was under the
11 influence of a controlled substance, suspecting crack
12 cocaine usage, and that he was in violation of his
13 probation. (DSSUMF #33.)

14 Ruiz arrested Plaintiff and contacted Plaintiff's
15 female friend, who was in the house, to move
16 Plaintiff's car instead of calling a tow truck to
17 remove the car. (DSSUMF ## 33 and 34.) Defendants
18 attach an FPD event report which lists dates and
19 history Ruiz received when he ran Plaintiff's name with
20 dispatch. Defendants do not provide the police report
21 containing information about the arrest.

22 Plaintiff denies he was under the influence of any
23 substance and claims the officers fabricated the
24 description of his condition.

25 (Doc. 120 at 8-9.)

26 Because Plaintiff filed a response to Defendants' reply
27 brief in support of their summary judgment motion, at oral
28 argument on December 10, 2008, Defendants were given an
opportunity to respond by filing a supplemental brief. In their
supplemental brief, Defendants submitted the following excerpts
from Plaintiff's deposition testimony:

Q. You've had a chance to review Officer Ruiz's police
report; is that right?

A. Yes, I believe I have.

Q. Did you read how he wrote that you displayed
objective symptoms of being under the influence of a
controlled substance?

A. I believe that's in the report. Yes, I believe I

1 glanced at that.

2 Q. What were you doing as far as your interaction with
3 Officer Ruiz? How were you conducting yourself that
4 would cause him to come to that conclusion?

5 A. I don't know. Probably because I was nervous. Like
6 when I first came in, I was nervous today. I was
7 nervous to the point that my hands were almost shaking.
8 My hands were sweaty. My palms are sweaty right now. As
9 far as conduct was concerned, I was nervous. I was kind
10 of nervous and scared. So you know, I can understand
11 why he say, well, his actions were like - man, shoot.
12 You know, I was nervous.

13 (Plantiff's Deposition Transcript at 112:21-113:14.)

14 Another excerpt reads:

15 Q. Going back to Officer Ruiz's report, and as I
16 indicated earlier that in his report he said that you
17 displayed certain objective symptoms of being under the
18 influence. And you've now testified that it could have
19 been because you were nervous, but specifically he
20 observed that you had dilated pupils. Is there any
21 particular reason why you would have had dilated pupils
22 if you weren't under the influence at that time?

23 A. I don't really know. I don't really know how he
24 really conducted, you know. I mean, the officer
25 flashing the light in my eye when I was in the back. He
26 didn't stopwatch it or anything like that. It was just
27 like a real quick. And so I don't really understand how
28 he could come up with the scenario of dilated pupils,
29 and I don't think he conducted any personal tests
30 either, personally. I can't really understand what --
31 the only thing I can really think of, shoot, I know I'm
32 asthmatic and I was probably taking asmatics and pain
33 pills at that time.

34 Q. Why would you be taking pain pills?

35 A. I have a degenerative disk in my lower back.

36 Q. What kind of pain pills?

37 A. I don't know, probably 800 something, ibuprofen or I
38 might have taken something strong to kind of relieve my
39 back pain.

40 Q. He also observed that you had eyelid tremors.

41 A. That probably was nervousness.

1 Q. Involuntary muscle movements.

2 A. Well, when you're nervous your hands - my hands even
3 shake when I'm nervous, all of that.

4 (Plaintiff's Deposition Transcript at 114:23-116:3.)

5 III. DISCUSSION.

6 Federal Rule of Civil Procedure 59(e) permits a motion to
7 alter or amend a judgment within 10 days after entry of the
8 judgment. A motion for reconsideration should not be granted,
9 absent highly unusual circumstances, unless "the district court
10 1) is presented with newly discovered evidence, 2) committed
11 clear error or the initial decision was manifestly unjust, or 3)
12 if there is an intervening change in controlling law." *School*
13 *District No. 1J, Multnomah County Oregon v. ACandS, Inc.*, 5 F.3d
14 1255, 1263 (9th Cir. 1993); *Kona Enterprises, Inc. v. Estate of*
15 *Bishop*, 229 F.3d 877, 890 (9th Cir. 2000). A district court's
16 denial of a motion to alter or amend a judgment pursuant to Fed.
17 R. Civ. P. 59(e) is reviewed for an abuse of discretion. *Far Out*
18 *Productions, Inc. v. Oskar*, 247 F.3d 986, 992 (9th Cir. 2001). A
19 district court abuses its discretion when it bases its decision
20 on an erroneous view of the law or a clearly erroneous assessment
21 of the facts. *Coughlin v. Tailhook Ass'n*, 112 F.3d 1052, 1055
22 (9th Cir. 1997).

23 A motion for reconsideration "is not another opportunity for
24 the losing party to make its strongest case, reassert arguments,
25 or revamp previously unmeritorious arguments." *Jackson v.*
26 *Woodford*, No. 05cv0513-L(NLS), 2008 WL 2115121, at *1 (S.D. Cal.
27 May 19, 2008). District courts "avoid considering Rule 59(e)
28

1 motions where the grounds for amendment are restricted to either
2 repetitive contentions of matters which were before the court on
3 its prior consideration or contentions which might have been
4 raised prior to the challenged judgment." *Costello v. United*
5 *States*, 765 F.Supp. 1003, 1009 (C.D. Cal. 1991).

6 In moving for reconsideration of the denial in part of
7 Defendants' summary judgment motion, Defendant Ruiz does not
8 introduce any new evidence or intervening changes in the law. As
9 such, the only basis on which reconsideration could be granted is
10 if the decision on summary judgment was in clear error or
11 manifestly unjust. Defendant asks the court to reconsider its
12 decision because the order does not mention or address the
13 deposition testimony of Plaintiff submitted by Defendant and
14 Defendant questions whether this testimony was considered.
15 Defendant cites Plaintiff's deposition testimony for the
16 proposition that Plaintiff admitted he exhibited objective
17 symptoms of being "under the influence of a controlled
18 substance," although Plaintiff did not make such an admission,
19 rather, he described his physical reactions as nervousness. As a
20 result, Defendant Ruiz argues he reasonably believed Plaintiff
21 was under the influence of a controlled substance and is entitled
22 to qualified immunity.

23 Defendant argues Plaintiff did not deny in his testimony
24 that he exhibited such symptoms. Defendant further contends
25 Plaintiff claimed he was nervous and possibly on medication for
26 back pain. Defendant states: "If plaintiff was in fact
27 admittedly nervous, such that he was shaking, sweaty, and had
28 involuntary muscle movements; in addition to Officer Ruiz's

1 observations that Plaintiff had dilated pupils, it was reasonable
2 for him to believe, that it was more probable than not, that
3 Plaintiff was under the influence of a narcotic." (Doc. 142 at
4 2.)

5 In ruling on Defendants' motion for summary judgment, the
6 court considered all the evidence submitted by the parties, the
7 parties' briefing papers, and the oral arguments of the parties
8 raised at the hearing. Although the decision does not
9 specifically repeat the deposition testimony Defendant excerpted,
10 it was in fact considered. Defendant did not furnish his arrest
11 report. Along with other evidence, the testimony itself
12 establishes that genuine issues of material fact exist that
13 preclude summary judgment. In one line of questioning,
14 Defendant's counsel asked, "Is there any particular reason why
15 you would have had dilated pupils if you weren't under the
16 influence at that time?" Plaintiff replied: "I don't really
17 know. I don't really know how he really conducted, you know. I
18 mean, the officer flashing the light in my eye when I was in the
19 back. He didn't stopwatch it or anything like that. It was just
20 like a real quick. And so I don't really understand how he could
21 come up with the scenario of dilated pupils, and I don't think he
22 conducted any personal tests either, personally." (Plaintiff's
23 Depo. Tr. at 115:7-14.)

24 In other testimony, Plaintiff testified he was nervous and
25 possibly taking pain medication. However, his responses to these
26 deposition questions are equivocal and, in his opposition to this
27 motion, he describes his response as follows: "I said I don't
28 know, meaning I didn't know why officer thought that because I

1 wasn't high or getting high and I wasn't parked in driveway ether
2 last I disputed the remarks to set record straight and I forgot
3 to note officer ruiz never test me for dilated pupils to make
4 that conclusion...." (Doc. 138.) These amount to denials.

5 Further, as Defendant points out in his moving papers, "[a]t
6 the hearing on defendants' motion for summary judgment, Plaintiff
7 denied exhibiting objective symptoms of being under the influence
8 of an illegal substance at the time of his arrest by Officer
9 Ignacio Ruiz." (Doc. 127 at 2.) At the hearing, Plaintiff
10 denied exhibiting such symptoms and also alleged that both
11 Defendants fabricated their reports of the incidents. The
12 summary judgment order states:

13
14 Officer Ruiz maintains that he observed symptoms of use
15 of a controlled substance by Sanders such as dilated
16 pupils, no pupillary reaction to light, eyelid tremors,
17 and involuntary muscle movements. Sanders argues he
18 exhibited no such symptoms. He asserts that the
19 officers are lying and used his probation status to
20 harass him and arrest him without probable cause. He
21 maintains that he has two witnesses who will attest to
22 this - Glenda Tony and Milesa Nutt.

23 (Doc. 120 at 16-17.) Plaintiff also disputes Officer Ruiz's
24 description of his initial contact with Plaintiff on May 6, 2006.
25 In his declaration in support of the motion for summary judgment,
26 Officer Ruiz stated he made contact with Plaintiff after
27 observing him sitting in his car, which was parked partially in
28 the driveway and partially on the road. (Doc. 98-8 at 2-3.)
Plaintiff denies the encounter with Officer Ruiz began in this
manner and claims instead that the officer followed him home and
turned the police car's lights on him as he pulled into the

1 driveway.

2 It is clearly established that an arrest without probable
3 cause violates a person's Fourth Amendment rights. *Kennedy v.*
4 *Los Angeles Police Department*, 901 F.2d 702, 706 (9th Cir. 1989).
5 Probable cause exists when "under the totality of circumstances
6 known to the arresting officers, a prudent person would have
7 concluded that there was a fair probability that [the defendant]
8 had committed a crime." *Grant v. City of Long Beach*, 315 F.3d
9 1081, 1085 (9th Cir. 2002). Summary judgment based on qualified
10 immunity should be denied if under the plaintiff's version of the
11 facts, the officer could not reasonably believe his conduct was
12 lawful. *Curnow By and Through Curnow v. Ridgecrest Police*, 952
13 F.2d 321, 325 (9th Cir. 1991).

14 In *Act Up!/Portland v. Bagley*, 988 F.2d 868, 873 (9th Cir.
15 1993), the Ninth Circuit stated:

16 Where a Fourth Amendment violation is claimed, the
17 factual issues that may preclude a determination of
18 qualified immunity on summary judgment fall into two
19 categories. First, a determination of reasonable
20 suspicion or probable cause requires an inquiry as to
21 the facts and circumstances within an officer's
22 knowledge. These are matters of fact to be determined,
23 where genuine disputes of a material nature exist, by
24 the fact finder. Second, the determination of what
25 conduct underlies the alleged violation-what the
26 officer and claimant did or failed to do-is a
27 determination of fact.

28 If Sanders's version of events is believed - that he did not
exhibit any objective symptoms of being under the influence of a
controlled substance - then Officer Ruiz could not reasonably
believe the arrest of Sanders was lawful. If Sanders did not
display symptoms of dilated pupils, eyelid tremors, or
involuntary muscle movements, then Officer Ruiz would have no

1 basis to believe Sanders was committing or had committed a crime.

2 For the foregoing reasons, Defendant's motion for
3 reconsideration is DENIED.

4
5 IT IS SO ORDERED.

6 Dated: February 2, 2009

/s/ Oliver W. Wanger
UNITED STATES DISTRICT JUDGE