

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

KENYATA HUTCHINSON,)	Case No. 1:09-cv-2052-LJO-JLT
Plaintiff,)	FINDINGS AND RECOMMENDATIONS TO ORDER DISMISSING COMPLAINT
vs.)	
PATRICK MARA, JOSHUA FINNEY AND JAMES JONES OF THE BAKERSFIELD POLICE DEPARTMENT, sued in their individual capacities, JOHN DOES 1-50,)	
Defendants.)	
_____)	

On November 24, 2009, Plaintiff Kenyata Hutchinson (“Plaintiff”), a state prisoner proceeding pro se, filed a civil rights complaint according to 42 U.S.C. § 1983, against Bakersfield Police Department Officers Patrick Mara, Joshua Finney and James Jones. On December 2, 2009, the Court granted plaintiff’s request to proceed *in forma pauperis*. (Doc 5)

Because Plaintiff has been granted leave to proceed IFP, this Court must “screen” his complaint under 28 U.S.C. § 1915(e)(2)(B), and dismiss the action if it is frivolous or malicious, fails to state a claim on which relief may be granted, or seeks monetary relief against a defendant who is immune from such relief. 28 U.S.C. § 1915(e)(2)(B)(i),(ii) and (iii); see Noll v. Carlson,

1 809 F. 2d 1446, 1448 (9th Cir. 1987 (citing Franklin v. Murphy, 745 F. 2d 1221, 1228 (9th Cir.
2 1984)). If the Court determines that the complaint fails to state a claim, leave to amend may be
3 granted to the extent that the deficiencies of the complaint can be cured by amendment. Lopez v.
4 Smith, 203 F.3d 1122, 1127-1128 (9th Cir. 2000) (en banc).

5 **1. Section 1983 complaint**

6 Plaintiff's complaint seeks damages under 42 U.S.C. § 1983, which provides in pertinent
7 part that:

8 Every person who, under color of any statute, ordinance, regulation, custom, or
9 usage, of any State or Territory or the District of Columbia, subjects, or causes to
10 be subjected, any citizen of the United States or other person within the
11 jurisdiction thereof to the deprivation of any rights, privileges, or immunities
secured by the Constitution and laws, shall be liable to the party injured in an
action at law, suit in equity, or other proper proceeding for redress. . .

12 42 U.S.C. § 1983.

13 To plead a § 1983 violation, the plaintiff must allege facts from which it may be inferred
14 that (1) plaintiff was deprived of a federal right, and (2) the person who deprived plaintiff of that
15 right acted under color of state law. West v. Atkins, 487 U.S. 42, 48 (1988); Collins v.
16 Womancare, 878 F. 2d 1145, 1147 (9th Cir. 1989). To warrant relief under § 1983, the plaintiff
17 must allege and show that the defendants' acts or omissions caused the deprivation of the
18 plaintiff's constitutionally protected rights. Leer v. Murphy, 844 F.2d 628, 633 (9th Cir. 1993).
19 "A person deprives another of a constitutional right, within the meaning of section 1983, if he
20 does an affirmative act, participates in another's affirmative acts, or omits to perform an act
21 which he is legally required to do that causes the deprivation of which [the plaintiff complains]."
22 Id. There must be an actual causal connection or link between the actions of each defendant and
23 the deprivation alleged to have been suffered by the plaintiff. See Monell v. Department of
24 Social Services, 436 U.S. 658, 691-692 (1978) (citing Rizzo v. Goode, 432 U.S. 362, 370-371
25 (1976)).

26 ///

27 ///

1 **2. Analysis**

2 **A. Summary of the Allegations**

3 Plaintiff alleges that on November 24, 2007, he was visiting a relative's house when a
4 van arrived. The van was filled with, as it turns out, members of the Special Enforcement Unit
5 of the Bakersfield Police Department who were assigned to gang enforcement. Plaintiff asserts
6 that he did not realize that the occupants of the van were police officers and thought that they
7 may be gang members. Fearing that violence would soon erupt, Plaintiff ran.

8 Plaintiff was stopped by police officers and arrested. Plaintiff alleges that he was "falsely
9 arrested" for violations of California Health & Safety Code section "113515.5"¹, Penal Code
10 section 186.22 and Penal Code section 148. In essence, Plaintiff was arrested for being in
11 possession of narcotics, for being a member of a street gang and for resisting arrest.

12 In his complaint, Plaintiff seems to assert that his arrest was improper because the
13 probable cause declaration supporting his arrest was written in two different handwritings and
14 because the officers who testified at his trial, denied that the handwriting belonged to them.
15 Likewise, he asserts that Officer Mara falsified the probable cause declaration in some other
16 manner. Moreover, Plaintiff asserts that Officer James improperly relied upon a citizen
17 informant who advised the officer that drugs were being sold where Plaintiff's arrest occurred.
18 Finally, Plaintiff asserts also that the officers acted improperly in using an unmarked police
19 vehicle and dressed in "unusual police gear" which allowed them to enter the area the location
20 without prior notice to those located there.

21 Plaintiff admits that he was convicted of the crimes noted above and was sentenced to
22 prison as a result. Review of the docket of the Kern County Superior Court in case number
23 BF121526B entitled People v. Kenyata Hutchinson, reveals that on August 27, 2009, Plaintiff
24 was convicted of the violations described above and was sentenced to 13 years in prison, with
25

26 _____
27 ¹There is no such California Health & Safety Code section. Based upon the allegations in
the complaint, in which Plaintiff asserts that he was arrested for being in possession of a bindle of
cocaine base, presumably, Plaintiff is referring to Health & Safety Code § 11351.5.

1 two years suspended or stayed and credit for 99 days already served..² Moreover, Plaintiff is
2 currently seeking judicial review of his conviction in the Fifth District Court of Appeal in case
3 number F058988.

4 **B. The complaint must be dismissed because it seeks to invalidate the state court**
5 **conviction**

6 Plaintiff asserts that his arrest was unlawful because it was not supported by probable
7 cause. Plaintiff alleges that the probable cause declaration was improper because it was written
8 in two different hands and the officers who testified at his trial denied that the handwriting was
9 theirs. In addition, Plaintiff seems to claim that the defendants improperly relied upon
10 information from a citizen informant regarding the sales of drugs at the location where Plaintiff's
11 arrest occurred. Finally, Plaintiff asserts that the probable cause declaration prepared by
12 Defendant Mara contained falsified information.³

13 To prevail on a section 1983 claim for false arrest, a plaintiff must demonstrate that the
14 officers did not have probable cause to arrest him. McKenzie v. Lamb, 738 F.2d 1005, 1007 (9th
15 Cir. 1984). The "crucial inquiry" is whether there was "probable cause to make the arrest."
16 Barry v. Fowler, 902 F.2d 770, 772 (9th Cir. 1990). "[P]robable cause may be founded upon
17 hearsay and upon information received from informants, as well as upon information within the
18 affiant's own knowledge that sometimes must be garnered hastily." Franks v. Delaware, 438
19 U.S. 154, 165 (1978).

21 ²A federal court may take notice of facts that are capable of accurate and ready determination
22 by resort to sources whose accuracy cannot reasonably be questioned. Fed. R. Evid. 201(b); United
23 States v. Bernal-Obeso, 989 F.2d 331, 333 (9th Cir. 1993). The record of state court proceeding is
24 a source whose accuracy cannot reasonably be questioned, and judicial notice may be taken of court
25 records. Mullis v. United States Bank. Ct., 828 F.2d 1385, 1388 n.9 (9th Cir. 1987); Valerio v. Boise
26 Cascade Corp., 80 F.R.D. 626, 635 n. 1 (N.D.Cal.1978), *aff'd*, 645 F.2d 699 (9th Cir.); *see also*
27 Colonial Penn Ins. Co. v. Coil, 887 F.2d 1236, 1239 (4th Cir. 1989); Rodic v. Thistledown Racing
Club, Inc., 615 F.2d 736, 738 (6th. Cir. 1980). As such, the internet websites for the Kern County
Superior Court and the California Courts of Appeal, containing information relating to Plaintiff's
criminal case, is subject to judicial notice.

³It appears that Plaintiff is alleging that the report falsely reported the number of bindles of
cocaine base that were found at the scene. Likewise, it appears that Plaintiff is asserting that because
there were two different handwritings. However, due to the ambiguity of the complaint, the Court
cannot be certain that this is Plaintiff's meaning.

1 It appears from the face of the complaint, that the issue of the sufficiency of the probable
2 cause declaration was before the Kern County Superior Court and was decided unfavorably to
3 Plaintiff. On the alleged facts, a finding that there was no probable cause to arrest Plaintiff
4 would "necessarily imply" that his conviction for the charges outlined was invalid. This is not
5 permitted. In Heck v. Humphrey, 512 U.S. 477, 486-487 (1994), the Supreme Court held,

6 [I]n order to recover damages for allegedly unconstitutional conviction or
7 imprisonment, or for other harm caused by actions whose unlawfulness would
8 render a conviction or sentence invalid, a § 1983 plaintiff must prove that the
9 conviction or sentence has been reversed on direct appeal, expunged by executive
10 order, declared invalid by a state tribunal authorized to make such determination,
11 or called into question by a federal court's issuance of a writ of habeas corpus, 28
12 U.S.C. § 2254. A claim for damages bearing that relationship to a conviction or
sentence that has not been so invalidated is not cognizable under § 1983. Thus,
when a state prisoner seeks damages in a § 1983 suit, the district court must
consider whether a judgment in favor of the plaintiff would necessarily imply the
invalidity of his conviction or sentence; if it would, the complaint must be
dismissed unless the plaintiff can demonstrate that the conviction or sentence has
already been invalidated.

13 Id., at 486-487, (footnote omitted). As a result, this Court is required to dismiss the action.

14 Wallace v. Kato, 549 U.S. 384, 394 [If the civil suit would impugn the plaintiff's conviction,
15 *Heck* requires dismissal.].

16 **C. The Eighth Amendment does not apply to Plaintiff's claim because he was**
17 **not a convicted prisoner at the time of his arrest.**

18 Although Plaintiff appears impose liability based upon a violation of the Eighth
19 Amendment, based upon his claims that arise at the time of his arrest, rather than after his
20 conviction, the Eighth Amendment does not apply. "The Eighth Amendment's prohibition of
21 'cruel and unusual punishments' applies only 'after conviction and sentence.'" Lee v. City of Los
22 Angeles, 250 F.3d 668, 686 (9th Cir. 2001). On the other hand, the Fourth Amendment protects
23 a suspect from warrantless arrest unless there is probable cause for a police officer to believe that
24 an offense has been or is being committed. Devenpeck v. Alford, 543 U.S. 146, 152 (2004).
25 Therefore, the claim brought under the Eighth Amendment must be dismissed.

26 ///

27 ///

1 prejudice;

2 3. That the claims brought directly under Article I, Section 7 and 13 of the California
3 Constitution be dismissed with prejudice;

4 4. That the claims brought directly under California Penal Code section 236 be
5 dismissed with prejudice.

6 These Findings and Recommendations are submitted to the United States District Judge
7 assigned to this case, pursuant to the provisions of 28 U.S.C. § 636 (b)(1)(B) and Rule 304 of the
8 Local Rules of Practice for the United States District Court, Eastern District of California.

9 Within fourteen (14) days after being served with a copy, any party may file written objections
10 with the Court and serve a copy on all parties. Such a document should be captioned "Objections
11 to Magistrate Judge's Findings and Recommendations." Replies to the objections shall be filed
12 within seven (7) days after service of the objections. The District Judge will then review the
13 Magistrate Judge's ruling pursuant to 28 U.S.C. § 636 (b)(1)(C). Failure to file objections within
14 the specified time may waive the right to appeal the District Judge's order. Martinez v. Ylst, 951
15 F.2d 1153 (9th Cir. 1991).

16
17 IT IS SO ORDERED.

18 Dated: January 21, 2010

/s/ Jennifer L. Thurston
UNITED STATES MAGISTRATE JUDGE