



1 officer by driving in the opposite of traffic), California Vehicle Code § 2800.4 (driving recklessly while  
2 evading a peace officer), California Penal Code § 30305(a)(1) (possession of ammunition by a person  
3 prohibited from owning or possessing a firearm), and California Penal Code § 69 (obstruction or  
4 resistance of an officer through the use of threat or violence). Plaintiff pleaded no contest to each of  
5 these charges, and was sentenced to more than fourteen years in prison.

6       Significantly, the Supreme Court determined that a claim for the use of excessive force during  
7 an arrest is barred where the lawfulness of the officer's actions is a prima facie element of the offense.

8 *Heck v. Humphrey*, 512 U.S. 477, 486 n.6 (1994). Specifically, the Court determined,

9       We hold that, in order to recover damages for allegedly unconstitutional conviction or  
10 imprisonment, or for other harm caused by actions whose unlawfulness would render a  
11 conviction or sentence invalid, a § 1983 plaintiff must prove that the conviction or  
12 sentence has been reversed on direct appeal, expunged by executive order, declared  
13 invalid by a state tribunal authorized to make such determination, or called into  
14 question by a federal court's issuance of a writ of habeas corpus, 28 U.S.C. § 2254. A  
15 claim for damages bearing that relationship to a conviction or sentence that has not  
16 been so invalidated is not cognizable under § 1983. Thus, when a [plaintiff] 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. But if the district court determines  
that the plaintiff's action, even if successful, will not demonstrate the invalidity of any  
outstanding criminal judgment against the plaintiff, the action should be allowed to  
proceed, in the absence of some other bar to the suit.

17 *Id.* at 487-88.

18       To be convicted of a violation of Cal. Penal Code § 69, it must be established that the officer  
19 was engaged "in the performance of his duty." Cal. Penal Code § 69. This requires that the officer be  
20 engaged in the "lawful" performance of his official duties. *See People v. Simons*, 42 Cal. App. 4th  
21 1100, 1108 (1996). Plaintiff's claim for the use of excessive force implies the arrest was "unlawful"  
22 because "it is a public offense for a peace officer to use unreasonable and excessive force in effecting  
23 an arrest." *People v. Olguin*, 119 Cal. App. 3d 39, 45 (1981). Thus, a determination that the  
24 defendants used excessive force in the course of the arrest would require a finding that the officers were  
25 not engaged in the lawful performance of his duty, and that the conviction under Section 69 is invalid.  
26 *See Heck*, 512 U.S. at 487; *see also Smithart v. Towery*, 79 F.3d 951, 952 (9th Cir. 1996) ("a criminal  
27 conviction arising out of the same facts stands and is fundamentally inconsistent with the unlawful  
28 behavior for which section 1983 damages are sought, the 1983 action must be dismissed")

