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

ROBERT ALAN GIBBS,

No. 2:13-CV-2631-KJM-CMK

Plaintiff,

vs.

FINDINGS AND RECOMMENDATIONS

BOYD, et al.,

Defendants.

_____ /

Plaintiff, who is proceeding pro se, brings this civil rights action. Pending before the court is defendants’ motion for summary judgment (Doc. 43).¹ The motion is unopposed.²

¹ The motion is brought by defendants Boyd and Little (“state defendants”). The motion for summary judgment filed by remaining defendants Edwards and Jackson (“county defendants”) was addressed in findings and recommendations issued on March 4, 2016.

² Plaintiff filed a “Notice of Non-Receipt” on March 30, 2016, in which he states that he has not received a copy of defendants’ motion. There is no proof of service accompanying this document indicating that plaintiff served this notice on defendants or otherwise sought re-service of their motion to a different address. Moreover, a review of the docket reflects that defendants’ motion was served on plaintiff on December 18, 2015, at his address of record at that time – P.O. Box 944255, Sacramento, CA 94244-2550. It was not until February 29, 2016, that plaintiff filed a notice of change of address indicating that he is now incarcerated at the Shasta County Jail in Redding, CA. Therefore, defendants’ motion was properly served.

1 **I. BACKGROUND**

2 **A. Plaintiff's Allegations**

3 This action proceeds on the original complaint against defendants Boyd, Little,
4 Edwards, and Jackson. Plaintiff claims:

5 My property was stolen by dep. Edwards on 12/23/12. My home
6 was searched without a warrant on 3/8/13 by Fish and Game officers
7 Little, Boyd, and Gaveki based upon a false report by Edwards. Sgt.
8 Jackson of Shasta Sheriff knew and did nothing. I had a gun put to my
9 head. Have not been the same since. . . .

10 In a statement attached to the complaint, plaintiff adds:

11 On December 23rd of 2012, I dialed 911 to alert authorities that my
12 truck was stuck in the snow hanging precariously over a cliff. After two
13 days of being stuck in snow and mud, I decided to evacuate from my cabin
14 at Bear Gulch (French Gulch). With me were my three small dogs who
15 were tired and not minding very well. I was wet and muddy over my
16 entire body and had actually slept for about 3 hours in my wet clothes the
17 night before. Night time was approaching yet again and I asked the
18 Sheriff's if they could pick me up or send a cab if I could make it out to
19 the highway. I then started making my way to the highway with my dogs
20 and also a shotgun that belonged to a friend of mine. When I made it to
21 the road and made contact with the deputies they seemed perturbed that
22 they had to come to this side of the county and they were inquiring
23 sarcastically as to how long I had been "tramping." I told them that I was
24 not tramping and that I had a cabin in the area. Even though I had
25 peacefully given them my shotgun and it was now safely stowed in one of
26 the patrol vehicles, they still insisted upon putting me in the back and
handcuffing me. Deputy Edwards then transported me to the Motel 6 on
Twin View Blvd. Where I have stayed many times. After uncuffing me
and allowing me to make sure there was a room available, Deputy
Edwards then informed me that he wanted to take my shotgun for "safe
keeping." I told him that taking my shotgun was unnecessary that there
was no prohibition against weapons at Motel 6, and that he did not have
my permission to do so. Deputy Edwards then told me that he was going
to take my weapon anyway. Because Deputy Edwards is a law
enforcement officer, I was not going to argue further, and Edwards took
the gun. He told me I could claim the gun the next day at the Sheriff's
department. He told me to contact the property officer. But when I
contacted the property officer the next day she told me that I was being
charged with felon in possession and that I could not come pick it up.

Throughout January and February, as mentioned in my letter, I did
complain of what was happening to several Sheriff's employees and
several people at the DA's office, including Sgt. Jackson, Sgt. Dupreaux,
the investigator, and secretaries I spoke to at the DA's. Almost all of the
people I spoke to were very unhelpful, seemed afraid to take action, and

1 seemed more than willing to do anything except help me to resolve the
2 situation. As I ran into more and more brick walls, I found myself
3 suffering from greater and greater level of anxiety and near psychotic
4 levels of anger and frustration. All I wanted them to do was admit they
5 were wrong and to make amends. It was their continued denial and
6 complete apathy towards me that was the greatest disrespect and actually
7 aggravated the situation beyond belief. Essentially, they wanted to get off
8 on a false arrest on the cheap. They made a huge mistake and didn't want
9 to pay for it. They didn't care how it was affecting me or if it continued to
10 cause me psychological damage. Even if I was suicidal and completely
11 depressed for days and weeks at a time, as long as they didn't have to pay,
12 they were fine with it.

13 On March 8th, 2013, one day before my 41st birthday, while in my
14 yard raking up leaves, I simultaneously heard and saw three men with
15 pistols and a rifle and a german shepard [sic] run very fast into my yard
16 screaming for me to lay on the ground. At the time, I did not know these
17 men were Fish and Game and one of them as he ran into the yard was
18 pointing a high powered rifle in the general direction and level with my
19 head. I complied and layed [sic] on the ground at which point I did notice
20 that these men wore uniforms. Within a few second I ascertained who
21 these men were and why they were there. Immediately into interviewing
22 me, the officer I would later learn was Brian Boyd began asking me where
23 my guns were. When I said I had no guns, officer Boyd said I had two 38
24 caliber pistols registered to me. I have never in my life owned a registered
25 38 caliber pistol. It seemed to me at the time that it was just an excuse to
26 make sure I didn't have any weapons (in essence, so the officers could
come in with guns drawn since they didn't have any solid intelligence on
me and didn't know what they were coming into). Officer Boyd also
asked me where my "partner" was, when I said I lived alone and had lived
alone the entire time I have been up here, he said we had information that
there was someone else up here living with you. Again, I believe that this
was Boyd's fabricating intelligence so that he could come in with 3 men
well armed, as added security to him and his men, with no regard to
whether or not I was alone unarmed and would go peacefully. Despite the
fact that they had only the false arrest warrant for the Edwards case,
Officer Boyd and Officer Little did nonetheless conduct an illegal search
of my residence and property. Officer Boyd and Officer Little both
entered my cabin and began asking me "where is the dope" to which I
replied "I don't have any dope." Officer Little noticed some plastic tubs
and asked me what was in them. I told him it was dirty clothes and
hangers, which it was. They also asked me what was in the jars in my
rafters. I told them they were empty. When we went back out into the
yard Boyd asked again where the dope was. I showed him the six plants I
had that were about a foot tall inside a dog cage. After hog tying me with
some kind of a rope and leaving me in the custody of Officer Gauweki,
both Officers Boyd and Little got into their truck and drove up a logging
road on my property, apparently to search for more marijuana. I was then
transported to Shasta County Jail on the felony warrant based upon
Edwards' complaint. My dogs were left in my cabin by Fish and Game
and I was able to leave them enough water and food for about a day. I was

1 told by Boyd that I would probably be processed out in a few hours. But
2 when I got to the jail, I found out that my bail was \$100,000, the premium
3 of which I would have to pay was \$10,000 cash, payable to the bondsmen
4 within one month of my release. On Monday, March 11th, after three days
5 in jail, not knowing if my dogs were ok and not knowing how much longer
6 I would have to wait to get some other kind of release, I agreed to be
7 bonded out.

8 **B. Defendants' Evidence**

9 According to defendants:

10 Plaintiff Robert Alan Gibbs (Plaintiff) alleges that Defendant Brian
11 Boyd (Warden Boyd) and Defendant DeWayne Little (Lieutenant Little),
12 officers of the Department of Fish and Wildlife (DFW), violated his civil
13 rights by entering his property without a warrant based on a false report by
14 Shasta County Sheriff Deputies, and that they entered his property and
15 cabin illegally, without his consent, to search for marijuana.

16 This case was initiated when DFW received complaints that
17 Plaintiff was unlawfully performing streambed alterations. Defendants'
18 primary job duties include investigation of Fish and Game Code
19 violations, such as unlawful streambed alterations.

20 Warden Boyd, who headed the investigation of the streambed
21 alteration complaint for DFW, found that Plaintiff had a \$100,000
22 weapons-related felony warrant for his arrest. Warden Boyd verified the
23 warrant with the Shasta County Sheriff's Department, which issued the
24 warrant. He also verified the warrant with his DFW dispatch. Warden
25 Boyd also found that Plaintiff should be considered dangerous. He took
26 reasonable precautions to ensure safe execution of the arrest warrant and
property search by, among other things, requesting the assistance of two
other DFW officers, including Lieutenant Little.

* * *

On March 8, 2013, at approximately 1:00 p.m., Warden Boyd, his
police K-9, Lieutenant Little, and DFW Warden Aaron Galwey
(collectively the officers), responded to investigate complaints that
Plaintiff Robert Alan Gibbs was unlawfully performing streambed
alterations in a rural mountain area southeast of Buckhorn Summit on
Highway 299. (Citations to defendants' statement of undisputed facts and
evidence omitted).

* * *

Based on the reports he had received about Plaintiff [regarding the
outstanding weapons-related felony warrant], and because Plaintiff was
considered dangerous, Warden Boyd did not think he should make contact
with Plaintiff by himself. He requested the assistance of Lieutenant Little
and Warden Aaron Galwey. He thought their assistance would help to
ensure that Plaintiff's arrest and the investigation of Fish and Game Code

1 violations were executed safely.

2 * * *

3 When the officers attempted to make contact with Plaintiff on
4 March 8, 2013, Warden Boyd drove a DFW truck and Lieutenant Little
5 drove a DFW truck with Warden Galway as his passenger. When the
6 officers reached the road to Plaintiff's property, Warden Boyd parked his
7 truck off of highway 299 at the base of the road to Plaintiff's property,
8 then he and his police K-9 entered the bed of Lieutenant Little's truck.

9 On the drive to Plaintiff's property, Warden Boyd observed
10 environmental damage on the adjacent landowner's property, which he
11 believed Plaintiff had caused based on the complaints he had received and
12 which Plaintiff later admitted. Warden Boyd photographed streambed
13 alteration where Plaintiff admittedly filled stream courses and installed
14 culverts without notification.

15 * * *

16 On the drive to Plaintiff's property, the officers encountered two
17 gates that were on property adjacent to Plaintiff's property. The officers
18 parked at the third gate, which was the entrance to Plaintiff's property.
19 Warden Boyd exited Lieutenant Little's pickup with his police K-9 and
20 walked around the gate, through open fields, and down a narrow roadway.
21 Neither Warden Boyd nor Lieutenant Little ever opened, passed through,
22 or passed over a gate, fence, or any other enclosure to enter Plaintiff's
23 property.

24 Warden Boyd saw smoke coming up through the trees ahead of
25 him. Warden Boyd and Lieutenant Little had handguns, and Warden
26 Galway had a long gun. The officers made contact with Plaintiff outside
his residence and arrested him for the weapons-related felony warrant.
Plaintiff did not resist the arrest. At no time did Lieutenant Little or
Warden Boyd point a gun at Plaintiff's head.

17 * * *

18 Lieutenant Little was concerned about the animals in Plaintiff's
19 cabin, but he was not going to enter the house unless Plaintiff asked.
20 Plaintiff asked Lieutenant Little to take care of the dogs and lock the dogs
21 in his house. Plaintiff also asked Lieutenant Little to retrieve personal
22 items from his cabin.

23 Before entering the house, Lieutenant Little explicitly stated to
24 Plaintiff: "I am confirming right now that you are requesting that I enter
25 your house to retrieve personal items and secure your dogs." Plaintiff
26 responded yes, he authorized Lieutenant Little to enter his house.
Lieutenant Little then stated: "You are sure you want me to go into your
house and based on your consent alone, I have your permission to enter to
secure your dogs and retrieve personal items." Plaintiff again confirmed
his express consent for Lieutenant Little to enter his cabin. Lieutenant
Little confirmed Plaintiff's consent a third time, and again Plaintiff agreed.

1 Defendants' statement of undisputed fact, which plaintiff has failed to challenge, is supported by
2 defendants' declarations as well as excerpts from plaintiff's deposition in this matter.

3 4 **II. STANDARDS FOR SUMMARY JUDGMENT**

5 The Federal Rules of Civil Procedure provide for summary judgment or summary
6 adjudication when "the pleadings, depositions, answers to interrogatories, and admissions on file,
7 together with affidavits, if any, show that there is no genuine issue as to any material fact and that
8 the moving party is entitled to a judgment as a matter of law." Fed. R. Civ. P. 56(a). The
9 standard for summary judgment and summary adjudication is the same. See Fed. R. Civ. P.
10 56(a), 56(c); see also Mora v. ChemTronics, 16 F. Supp. 2d. 1192, 1200 (S.D. Cal. 1998). One
11 of the principal purposes of Rule 56 is to dispose of factually unsupported claims or defenses.
12 See Celotex Corp. v. Catrett, 477 U.S. 317, 325 (1986). Under summary judgment practice, the
13 moving party

14 . . . always bears the initial responsibility of informing the district court of
15 the basis for its motion, and identifying those portions of "the pleadings,
16 depositions, answers to interrogatories, and admissions on file, together
17 with the affidavits, if any," which it believes demonstrate the absence of a
18 genuine issue of material fact.

19 Id., at 323 (quoting former Fed. R. Civ. P. 56(c)); see also Fed. R. Civ. P.
20 56(c)(1).

21 If the moving party meets its initial responsibility, the burden then shifts to the
22 opposing party to establish that a genuine issue as to any material fact actually does exist. See
23 Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 586 (1986). In attempting to
24 establish the existence of this factual dispute, the opposing party may not rely upon the
25 allegations or denials of its pleadings but is required to tender evidence of specific facts in the
26 form of affidavits, and/or admissible discovery material, in support of its contention that the
dispute exists. See Fed. R. Civ. P. 56(c)(1); see also Matsushita, 475 U.S. at 586 n.11. The
opposing party must demonstrate that the fact in contention is material, i.e., a fact that might

1 affect the outcome of the suit under the governing law, Anderson v. Liberty Lobby, Inc., 477 U.S.
2 242, 248 (1986); T.W. Elec. Serv., Inc. v. Pacific Elec. Contractors Ass’n, 809 F.2d 626, 630
3 (9th Cir. 1987), and that the dispute is genuine, i.e., the evidence is such that a reasonable jury
4 could return a verdict for the nonmoving party, Wool v. Tandem Computers, Inc., 818 F.2d 1433,
5 1436 (9th Cir. 1987). To demonstrate that an issue is genuine, the opposing party “must do more
6 than simply show that there is some metaphysical doubt as to the material facts Where the
7 record taken as a whole could not lead a rational trier of fact to find for the non-moving party,
8 there is no ‘genuine issue for trial.’” Matsushita, 475 U.S. at 587 (citation omitted). It is
9 sufficient that “the claimed factual dispute be shown to require a trier of fact to resolve the
10 parties’ differing versions of the truth at trial.” T.W. Elec. Serv., 809 F.2d at 631.

11 In resolving the summary judgment motion, the court examines the pleadings,
12 depositions, answers to interrogatories, and admissions on file, together with the affidavits, if
13 any. See Fed. R. Civ. P. 56(c). The evidence of the opposing party is to be believed, see
14 Anderson, 477 U.S. at 255, and all reasonable inferences that may be drawn from the facts placed
15 before the court must be drawn in favor of the opposing party, see Matsushita, 475 U.S. at 587.
16 Nevertheless, inferences are not drawn out of the air, and it is the opposing party’s obligation to
17 produce a factual predicate from which the inference may be drawn. See Richards v. Nielsen
18 Freight Lines, 602 F. Supp. 1224, 1244-45 (E.D. Cal. 1985), aff’d, 810 F.2d 898, 902 (9th Cir.
19 1987). Ultimately, “[b]efore the evidence is left to the jury, there is a preliminary question for
20 the judge, not whether there is literally no evidence, but whether there is any upon which a jury
21 could properly proceed to find a verdict for the party producing it, upon whom the onus of proof
22 is imposed.” Anderson, 477 U.S. at 251.

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1 **III. DISCUSSION**

2 Plaintiff claims that defendants violated his Fourth Amendment rights by
3 conducting an illegal search of his property. It also appears that plaintiff claims his arrest
4 violated the Fourth Amendment. To prevail on such claims in a § 1983 action, plaintiff must
5 prove that the officers acted without probable cause. See United States v. Collins, 427 F.3d 688
6 (9th Cir. 2005). Defendants argue that plaintiff’s Fourth Amendment claims fail as a matter of
7 law because the undisputed evidence establishes that their actions were supported by probable
8 cause as well as a facially valid warrant.

9 Whether probable cause existed is a question of law. See Beck v. Ohio, 379 U.S.
10 89 (1964). Probable cause exists when officers have a reasonable belief, under the totality of the
11 circumstances, in the probability of criminal activity. See Illinois v. Gates, 462 U.S. 213 (1983);
12 see also Dubner v. City & County of San Francisco, 266 F.3d 959 (9th Cir. 2001); Torres v. City
13 of Los Angeles, 548 F.3d 1197 (9th Cir. 2008). Law enforcement officers may possess probable
14 cause even where the officers’ reasonable belief is mistaken. See Beier v. City of Lewiston, 354
15 F.3d 1058 (9th Cir. 2004). Further, if objective factors establish probable cause for a search or
16 seizure, the officers’ subjective motivations are irrelevant. See Tatum v. City & County of San
17 Francisco, 441 F.3d 1090 (9th Cir. 2006). The officers’ collective knowledge of the facts, not
18 each individual officer’s personal knowledge of the facts, is assessed in determining whether
19 probable cause existed. See United States v. Ramirez, 473 F.3d 1026 (9th Cir. 2007). Finally, it
20 is well-established that an arrest conducted pursuant to a facially valid warrant does not violate
21 the Fourth Amendment. See Baker v. McCollan, 443 U.S. 137 (1979).

22 As to plaintiff’s claim that defendants conducted an illegal search, the court agrees
23 with defendants that the claim is foreclosed because the undisputed evidence establishes that the
24 officers had collective knowledge of facts sufficient to establish probable cause that plaintiff was
25 violating the law. Specifically, the officers observed evidence of illegal streambed alterations.
26 With respect to the search of plaintiff’s cabin, the court likewise finds that judgment in favor of

1 defendants is appropriate because plaintiff repeatedly gave his consent for the officers to enter
2 the cabin. Finally, plaintiff cannot prevail on any claim that his arrest violated the Fourth
3 Amendment because the arrest was carried out pursuant to a facially valid warrant.

4
5 **IV. CONCLUSION**

6 Based on the foregoing, the undersigned recommends that defendants' motion for
7 summary judgment (Doc. 43) be granted.

8 These findings and recommendations are submitted to the United States District
9 Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within 14 days
10 after being served with these findings and recommendations, any party may file written
11 objections with the court. Responses to objections shall be filed within 14 days after service of
12 objections. Failure to file objections within the specified time may waive the right to appeal.

13 See *Martinez v. Ylst*, 951 F.2d 1153 (9th Cir. 1991).

14
15 DATED: September 8, 2016

16 
17 **CRAIG M. KELLISON**
18 UNITED STATES MAGISTRATE JUDGE