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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

CHRISTOPHER LULL,  
  
Plaintiff,  
  
v.  
  
COUNTY OF SACRAMENTO, CORY  
STEWART, MICHAEL DOANE, and  
DOES 1 to 100,  
  
Defendants.

No. 2:17-cv-1211-TLN-EFB PS

ORDER AFTER HEARING

This case was before the court on January 8, 2020, for hearing on plaintiff’s motions to compel further deposition testimony from defendant Cory Stewart (ECF No. 48) and for reconsideration of the court’s March 30, 2018 order dismissing plaintiff’s Fourth Amendment claim without leave to amend (ECF No. 49). Attorney Wendy Motooka appeared on behalf of defendant Stewart, and plaintiff appeared pro se. For the reasons stated on the record, plaintiff’s motion to compel further deposition testimony from defendant Stewart is granted.<sup>1</sup> With respect to plaintiff’s motion for reconsideration, the parties are directed to submit supplemental briefs addressing what constitutes a violation of California Penal Code § 148(a)(1), the required

<sup>1</sup> At the hearing, the court granted defendant’s request to file a motion for a protective order seeking to preclude testimony regarding an ongoing investigation pending at the time of Stewart’s original investigation. Stewart has since informed the court that the investigation has concluded and that there is no longer any basis for seeking a protective order. ECF No. 54.

1 elements to establish a violation, and what specific conduct by the plaintiff amounted to such a  
2 violation.

3 This case arises out of plaintiff's July 17, 2016 arrest, which occurred when plaintiff was  
4 loading a kayak onto a vehicle that was parked in a restricted area of a Sacramento County park.  
5 Shortly after commencing this action, plaintiff amended his complaint as a matter of course. Fed.  
6 R. Civ. P. 15(a)(1). The first amended complaint alleged, among other things, that defendant  
7 Stewart violated the Fourth Amendment by arresting plaintiff without probable cause. ECF No.  
8 4. Defendant Stewart moved to dismiss that complaint pursuant to Federal Rule of Civil  
9 Procedure 12(b)(6). ECF No. 10. With respect to plaintiff's Fourth Amendment claim, Stewart  
10 argued that the claim failed because: (1) the first amended complaint's allegations established that  
11 there was probable cause to arrest plaintiff for violation of California Penal Code § 148(a)(1); the  
12 claim is barred by *Heck v. Humphrey*, 512 U.S. 477, 487 (1994) and the doctrine of equitable  
13 estoppel; and Stewart is entitled to qualified immunity. ECF No. 10-1 at 10-15. The court agreed  
14 that plaintiff's Fourth Amendment claim was barred by *Heck* because state court records  
15 submitted by the Stewart showed plaintiff had entered a no contest plea to violating section  
16 148(a)(1) and that his sentencing was scheduled for September 17, 2017. ECF No. 10-2 at 18-19.  
17 The court also concluded that the allegations concerning plaintiff's arrest, although limited,  
18 demonstrated that plaintiff at least nominally obstructed Stewart's ability to perform his official  
19 duties, thereby establishing probable cause for plaintiff's arrest.<sup>2</sup> ECF Nos. 15 & 21.  
20 Consequently, plaintiff's Fourth Amendment claim was dismissed without leave to amend,  
21 although leave to amend was granted for other claims. *Id.*

22 Plaintiff subsequently filed a second amended complaint that included additional factual  
23 allegations surrounding his arrest. ECF No. 22. These new allegations add more detail and assert  
24 that while plaintiff did initially attempt to walk around Stewart, once Stewart physically stopped  
25 plaintiff by placing his hands on plaintiff's chest, plaintiff immediately stopped and placed his  
26 hands in the air and asked if he was being detained.

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27 <sup>2</sup> In light of these findings, the court declined to reach Stewart's judicial estoppel  
28 argument.

1           Stewart again moved for dismissal under Rule 12(b)(6). ECF No. 24. That motion was  
2 granted in part and denied in part. ECF Nos. 34 & 37. Despite the new allegations, plaintiff's  
3 Fourth Amendment claim was stricken since it had previously been dismissed without leave to  
4 amend and plaintiff did not advance an argument in support of reconsidering the prior order. ECF  
5 No. 34 at 4-5. The instant motion for reconsideration now advances such arguments.  
6 Significantly, as it relates to reconsideration, Stewart's motion to dismiss was accompanied by a  
7 request for judicial notice of state court records reflecting that plaintiff's no contest plea to  
8 violating section 148(a)(1) had been withdrawn and his criminal case had been dismissed after  
9 completion of a deferred entry of judgment program.<sup>3</sup> See 24-2 at 16.

10           At the hearing on the instant motion, the parties agreed that plaintiff's Fourth Amendment  
11 claim is not barred by *Heck* because his criminal case was dismissed. Thus, reconsideration as to  
12 that issue must be granted. The plaintiff's claims are not *Heck*-barred. But the parties continue to  
13 dispute whether the second amended complaint's allegations demonstrate that plaintiff's actions  
14 established probable cause for violation of California Penal Code § 148(a)(1). As noted,  
15 plaintiff's amended complaint provides more detail, including the allegation that any attempt to  
16 walk around Stewart ceased the moment Stewart placed his hands on plaintiff's chest and  
17 informed him he was being detained. None of the briefs submitted to date adequately address  
18 whether plaintiff's conduct, as alleged in the second amended complaint, establishes a violation  
19 of California Penal Code § 148(a)(1). They are now directed to do so.

20           Accordingly, it is ORDERED that:

21           1. Plaintiff's motion to compel further deposition testimony from defendant Cory Stewart  
22 (ECF No. 48) is granted. Plaintiff may depose defendant Stewart for two additional hours. The  
23 deposition shall be completed by February 28, 2020.

24           2. The May 3, 2019 scheduling order (ECF No. 41) is modified to extend the discovery  
25 cut-off date to February 28, 2020 for the limited purpose of allowing plaintiff to complete  
26 Stewart's deposition.

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28           <sup>3</sup> The state court records Stewart submitted with his earlier motion to dismiss did not  
reflect plaintiff's participation in a deferred entry of judgment program.

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3. By no later than February 14, 2020, defendant Stewart shall submit a supplemental brief addressing the parameters of California Penal § 148(a)(1) and whether the allegations in the second amended complaint establish a violation of that section. Stewart shall also concurrently email plaintiff a copy of the supplemental brief filed with the court.

4. Plaintiff shall file a response to Stewart's brief no later than February 21, 2020.

DATED: January 30, 2020.



EDMUND F. BRENNAN  
UNITED STATES MAGISTRATE JUDGE