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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

ALAN D. ZANGER,

Plaintiff - Appellant,

v.

CITY OF PASADENA; et al.,

Defendants - Appellees.

No. 07-56872

D.C. No. CV-06-05376-ABC

MEMORANDUM\*

Appeal from the United States District Court  
for the Central District of California  
Audrey B. Collins, District Judge, Presiding

Argued and Submitted March 12, 2009  
Orange, California

Before: HAWKINS, BERZON and CLIFTON, Circuit Judges.

Alan D. Zanger appeals from the district court's order granting summary judgment in favor of Sergeant Mike Villalovos, Officer Mario Calderon, and Officer Gregory Sabalone on his 42 U.S.C. § 1983 claim for false arrest and Cal. Civ. Code § 52.1 claim for false arrest and deprivation of his free speech and press

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\* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

rights. Zanger also appeals the district court's order granting summary judgment in favor of the City of Pasadena and Pasadena Police Department on his 42 U.S.C. § 1983 claim for violation of his Fourth Amendment rights. We affirm.

“Government officials enjoy qualified immunity from civil damages [for § 1983 claims] unless their conduct violates ‘clearly established statutory or constitutional rights of which a reasonable person would have known.’” *Jeffers v. Gomez*, 267 F.3d 895, 910 (9th Cir. 2001) (quoting *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982)). The Individual Defendants “are entitled to [qualified immunity] only if the facts alleged and evidence submitted, resolved in [Zanger's] favor and viewed in the light most favorable to him, show [1] that their conduct did not violate a federal right; or, [2] if it did, the scope of that right was not clearly established at the time.” *Blankenhorn v. City of Orange*, 485 F.3d 463, 471 (9th Cir. 2007). Exercising our discretion to examine the two qualified immunity prongs in either order, we first address whether the unlawfulness of the arrest in this case was “clearly established.” *See Rodis v. City & County of San Francisco*, -- F.3d ----, No. 05-15522, 2009 WL 579510, at \*3 (9th Cir. Mar. 9, 2009).

Assuming probable cause to arrest did not arise, the Individual Defendants are entitled to qualified immunity because “the law did not put the officer[s] on notice” that arresting Zanger “would be clearly unlawful.” *See Saucier v. Katz*, 533

U.S. 194, 202 (2001), *overruled on other grounds by Pearson v. Callahan*, --- U.S. ---, 129 S. Ct. 808 (2009). Particularly given the Ninth Circuit’s decision in *United States v. Mayo*, 394 F.3d 1271, 1276 (9th Cir. 2005), “existing precedents would [not] have alerted the police officers that we would find a violation.” *See Fogel v. Collins*, 531 F.3d 824, 833 (9th Cir. 2008); *id.* at 834 (“The test for qualified immunity is whether *any* reasonable officer would make the constitutional error in question . . .”). Neither of Zanger’s explanations for the unusual appearance of phony license plates on his rental car entirely held up after investigation. *See United States v. King*, 472 F.2d 1, 6-7 (9th Cir. 1973) (finding probable cause to arrest passengers in a car that turned out not to be stolen for grand theft auto “upon their failure to give a satisfactory explanation” as to why the license plates were registered to another vehicle). Zanger’s remark to one of the officers that he sometimes removes the license plates from his own vehicle when he goes to film sets to avoid being identified further revealed a potential deceptive motive for attaching phony licence plates. The fact Zanger was driving a rental car would not rule out a similar motive as his identity could still be discovered from rental records. Under these circumstances, a reasonable officer could conclude probable cause existed for the arrest.

The Individual Defendants are also entitled to civil immunity on Zanger's state law claims since "at the time of the arrest, [they] had reasonable cause to believe the arrest was lawful." Cal. Penal Code § 847(b)(1) (2005); *see also Blankenhorn*, 485 F.3d at 486-87. Zanger failed to offer sufficient evidence that he was arrested in retaliation for his exercise of freedom of speech or press rights. *See Karam v. City of Burbank*, 352 F.3d 1188, 1194 (9th Cir. 2003) (holding that "speculation as to [an officer's] improper motive does not rise to the level of evidence sufficient to survive summary judgment").

To prevail on his claim against the City Defendants, Zanger must identify "a deliberate policy, custom, or practice that was the 'moving force' behind the constitutional violation he suffered." *Galen v. County of Los Angeles*, 477 F.3d 652, 667 (9th Cir. 2007). Zanger "has suffered no constitutional injury" from being asked to waive his *McLaughlin* rights since he refused to do so; therefore, the fact that the City Defendants have a policy of asking arrestees to waive their *McLaughlin* rights "is quite beside the point." *See City of Los Angeles v. Heller*, 475 U.S. 796, 799 (1986) (per curiam).

Zanger provided no proof that he was transferred to the L.A. County Jail in retaliation for his refusal to waive his *McLaughlin* rights. The City Defendants instead supplied overwhelming evidence that Zanger was transferred to

accommodate his medical conditions. Zanger offered nothing to suggest that the City Defendants' explanation for his transfer was pretextual. *See Taylor v. List*, 880 F.2d 1040, 1045-46 (9th Cir. 1989) ("A summary judgment motion cannot be defeated by relying solely on conclusory allegations unsupported by factual data.").

**AFFIRMED.**