UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

HUNG VAN NGUYEN, Plaintiff, v. COUNTY OF ORANGE, et al. Defendants.	CASE NO. CV98-5286 NM (Cwx) ORDER GRANTING SUMMARY JUDGMENT FOR DEFENDANT LOS ANGELES COUNTY AND DEFENDANT SAN BERNARDINO COUNTY

I

INTRODUCTION

On July 12, 1998, plaintiff Hung Van Nguyen ("Nguyen") filed a complaint in federal court against defendants County of Orange, Orange County Marshall's Department, Orange County Marshal Michael Corona, Orange County Marshal Investigator Clive Mass, Orange County Sheriff's Department, Orange County Sheriff Brad Gates, County of Los Angeles, Los Angeles County Sheriff's Department, Los Angeles County Sheriff Sherman Block, County of San Bernardino, San Bernardino County Sheriff's Department, and San Bernardino County Sheriff Gary Penrod. Plaintiff alleges one federal and four state claims: 1) deprivation of civil rights in violation of his fourth, fifth, eighth, and fourteenth Amendment rights pursuant to 42 U.S.C. § 1983; 2) negligence; 3) assault and battery; 4) false imprisonment; and 5) intentional infliction of emotional distress.

The County of Los Angeles and the County of San Bernardino (collectively "Defendants"), both filed motions for summary judgment on all claims, asserting the same legal basis for judgment in their favor. Defendants contend that as a matter of law, plaintiff's 14-day detention pursuant to a valid arrest warrant, did not constitute a constitutional violation. Moreover, defendants assert that even were plaintiff to allege a constitutional violation, plaintiff fails to allege that the violation resulted from an official government policy or custom. Finally, defendants assert that plaintiff's state law claims are barred by Civil Code § 43.55 and case law applying this statute, which provide immunity to peace officers and jailers unless an arrest or detention is the product of a facially invalid warrant or malice.

II

RELEVANT FACTUAL BACKGROUND

On Thursday August 28, 1997, plaintiff Hung Van Nguyen was arrested by Orange County Marshall Investigator, Clive Maas, pursuant to an outstanding arrest warrant issued by San Bernardino County. San Bernardino Motion ("S.B. Mot."), Roper Dec., Exh. B. The San Bernardino arrest warrant was issued for Hung Sun Nguyen, aka Tony T. Smith, born on January 14, 1957, five feet four inches tall, with black hair and brown eyes, and weighing 130 pounds. Id. At the time of his arrest, plaintiff produced his California Driver's License and Social Security Card. Pl. Stmt. Gen. Iss., ¶ 6. Plaintiff's driver's license lists his date of birth as January 14, 1957 and describes him as five foot, five inches tall, weighing 135 pounds, having black hair and brown eyes. S.B. Mot., Exh. A.

The next day, plaintiff was transported by County of Orange personnel to the County of Los Angeles for detention pursuant to an outstanding Los Angeles warrant. San Bernardino Statement of Uncontroverted Facts ("S.B. UF"), ¶ 8. On Tuesday, September 2, 1997, plaintiff appeared in court and was ordered detained pursuant to a second outstanding Los Angeles arrest warrant. L.A. Reply to Pl. Stmt. Gen. Iss., ¶ 5.[1] Both Los Angeles County warrants were issued

[1] The Monday following plaintiff's arrest, September 1, 1997, was the Labor Day holiday.

for Tony Trong Smith. Pl. Opp. Mot., Exhs. I & J.[2] Plaintiff was then detained in Los Angeles County until September 8, 1997 when, at the time of arraignment, the court dismissed the two Los Angeles County warrants against plaintiff, but ordered plaintiff detained pursuant to the original outstanding arrest warrant issued by San Bernardino County. Id., ¶ 6.

On September 11, 1997, plaintiff was transported from Los Angeles to San Bernardino, where he was arrested and booked. Id., ¶ 10. The same day, a San Bernardino County Sheriff's Custody Specialist submitted a California Identification report seeking a comparison of plaintiff's fingerprints with the prints of the subject of the San Bernardino warrant. Id., ¶ 16. On September 12, 1997, San Bernardino County Sheriff's Department received the results of a California Identification report indicating that plaintiff was not the correct Hung Nguyen. Id., ¶ 19. Sheriff's Custody Specialist, Edna Sams faxed the California Identification report to the Rancho Cucamonga Superior Court where, that same day, Judge Jeffrey King ordered plaintiff released. Id., ¶ 21.

II

DISCUSSION

A

Applicable Standard

Summary Judgment

Summary judgment is "properly regarded not as a disfavored procedural shortcut, but rather as an integral part of the Federal Rules as a whole, which are designed 'to secure the just, speedy and inexpensive determination of every action.'" Celotex Corporation v. Catrett, 477 U.S. 317, 327, 106 S.Ct. 2548, 2555 (1986)(quoting Fed. R. Civ. P. 1). Summary judgment is appropriate when "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(c).

[2] One of the two Los Angeles County arrest warrants lists Hung Sun Nguyen as an alias for Tony Smith. Pl. Opp. Mot., Exh. I. Both warrants contain the same date of birth and physical description as the San Bernardino arrest warrant. Id., Exhs. I & J.

In a trilogy of 1986 cases, the Supreme Court clarified the applicable standards for summary judgment. See Celotex, supra; Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 106 S.Ct. 2505 (1986); Matsushita Electrical Industry Co. v. Zenith Radio Corp., 475 U.S. 574, 106 S.Ct. 1348 (1986). The moving party bears the initial burden of demonstrating the absence of a genuine issue of material fact. Anderson, 477 U.S. at 256, 106 S.Ct. at 2514. The governing substantive law dictates whether a fact is material; if the fact may affect the outcome, it is material. Id. at 248, 2510. If the moving party seeks summary adjudication with respect to a claim or defense upon which it bears the burden of proof at trial, it must satisfy its burden with affirmative, admissible evidence. By contrast, when the non-moving party bears the burden of proving the claim or defense, the moving party can meet its burden by pointing out the absence of evidence submitted by the non-moving party. The moving party need not disprove the other party's case. See Celotex, 477 U.S. at 325, 106 S.Ct. at 2554.

If the moving party meets its initial burden, the "adverse party may not rest upon the mere allegations or denials of the adverse party's pleadings, but the adverse party's response, by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial." Fed. R. Civ. P. 56(e).

When assessing whether the non-moving party has raised a genuine issue, the court must believe the evidence and draw all justifiable inferences in the non-movant's favor. Anderson, 477 U.S. at 255, 106 S.Ct. at 2513 (citing Adickes v. S.H. Kress and Company, 398 U.S. 144, 158-59, 90 S.Ct. 1598, 1608-09 (1970)). Nonetheless, "the mere existence of a scintilla of evidence" is insufficient to create a genuine issue of material fact. Id. at 252, 2512. As the Supreme Court explained in Matsushita,

> [w]hen the moving party has carried its burden under Rule 56(c), its opponent must do more than simply show that there is some metaphysical doubt as to the material facts.... Where the record taken as a whole could not lead a rational trier of fact to find for the nonmoving party, there is no "genuine issue for trial."

Id., 475 U.S. at 586-87, 106 S.Ct. at 1356 (citations omitted).

To be admissible for purposes of summary judgment, declarations or affidavits must be based on personal knowledge, must set forth "such facts as would be admissible in evidence,"

and must show that the declarant or affiant is competent to testify concerning the facts at issue. Fed. R. Civ. P. 56(e). Declarations on information and belief are insufficient to establish a factual dispute for purposes of summary judgment. Taylor v. List, 880 F.2d 1040, 1045 (9th Cir. 1989).

B

Analysis

Defendants seek summary judgment as to plaintiff's one federal and four state claims. The court addresses plaintiff's claims below.

1. Federal Claim — civil rights violations pursuant to 42 U.S.C. § 1983

Defendant County of Los Angeles argues that plaintiff fails to show that a constitutional violation occurred, or that his 14-day detention resulted from an official policy or custom. L.A. Def. Mot., p. 4.[3] Plaintiff counters that his detention was unduly long, and that the County of Los Angeles failed to use procedures available to them for correctly identifying pre-trial detainees. Pl. Opp. Mot., p. 13.[4] Based upon City of Canton v. Harris, 489 U.S. 378 (1989), the Ninth Circuit has stated four conditions that must be satisfied in order to establish municipal liability for failing to act to preserve constitutional rights: "1) that [the plaintiff] possessed a constitutional right of which he was deprived; 2) that the municipality had a policy; 3) that this policy 'amounts to deliberate indifference' to the plaintiff's constitutional right; and 4) that the policy is the 'moving force behind the constitutional violation.'" Oviatt v. Pearce, 954 F.2d 1470, 1474 (9th Cir. 1992) (quoting Canton, 489 U.S. at 389-91). The court finds that plaintiff

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[3] Los Angeles County also argues that as a state actor, it is not subject to § 1983 liability. See County of Los Angeles v. Superior Court (Peters), 68 Cal.App.4th 1166, 1174-75 (1998)(in establishing policies for the release of persons from a county jail, a sheriff acts as a state official, not a policymaker for the county). Plaintiff counters that Peters was decided after he filed this action and cannot be applied retroactively. Pl. Opp. Mot., p. 17. Defendant does not address this issue in its Reply papers. For the reasons set forth in the balance of this order, the court need not reach that issue.

[4] Plaintiff concedes that the County of San Bernardino's one day detention did not constitute a constitutional violation. Pl. Opp. Mot. to S.B. Mot., p. 8. Thus, plaintiff's federal claim against San Bernardino fails. A plaintiff may recover under § 1983 only when his federal rights have been violated. Quintanilla v. City of Downey, 84 F.3d 353, 355 (9th Cir. 1996).

fails to establish either that he was deprived of a constitutional right or that the alleged deprivation was caused by a municipal policy, custom, or practice.

a) No evidence of a constitutional violation

"[T]he paradigmatic liberty interest under the due process clause is freedom from incarceration." Oviatt v. Pearce, 954 F.2d at 1474. However, every deprivation of liberty does not give rise to a constitutional claim. In Baker v. McCollan, 443 U.S. 137 (1979), police arrested McCollan pursuant to a facially valid warrant and detained him for three days. After McCollan complained repeatedly, the police released him upon discovering that although the warrant bore McCollan's name, he was not the wanted man. Id. at 144. McCollan sued the police under 42 U.S.C. §1983, alleging that his three-day detention violated his Fourteenth Amendment protection against deprivation of liberty without due process. Id. at 142. Although the Supreme Court acknowledged that someone in McCollan's position could not be detained indefinitely, the Court concluded that the detention did not violate due process because the warrant was facially valid and three days was not unduly long. Id. at 144-45.

The Ninth Circuit followed Baker in Erdman v. Cochise County, 926 F.2d 877 (9th Cir. 1991). Erdman was arrested on a warrant that was facially valid but based on charges that already had been adjudicated. He was held for nine days in city jail and three more days in county jail before the error was acknowledged and he was released. Erdman filed suit under §1983. The district court granted summary judgment to the county, and the Ninth Circuit affirmed, holding that the arrest was not a constitutional violation under Baker because the warrant was facially valid. Id. at 881- 882. Moreover, the Erdman court noted that plaintiff presented no evidence that the County habitually made mistakes resulting in dual arrests for the same crime, or that the error in holding plaintiff was intentional. Finally, the court found that plaintiff failed to show the requisite "direct causal link" between his detention and "any municipal policy or custom as required by Canton." Id.

Plaintiff Nguyen was originally arrested pursuant to a valid warrant issued by San Bernardino County for Hung Sun Nguyen, born January 14, 1957, five feet four inches tall, with black hair and brown eyes, and weighing 135 pounds. Plaintiff shares a similar name, identical

date of birth, and comparable physical description with the suspect sought by defendants. Plaintiff notes that he was also held pursuant to two other arrest warrants for Tony T. Smith issued by Los Angeles County. However, the existence of two other warrants — containing substantially identical information, one listing Hung Sun Nguyen as an alias — did not invalidate the original San Bernardino arrest warrant. The San Bernardino warrant remained outstanding throughout plaintiff's detention. Given the similarities between the description of plaintiff and that of the suspect, plaintiff's mistaken arrest, although regrettable, appears to have been neither unreasonable nor intentional.

Nor can the court find, under Ninth Circuit authority, that the length of detention constituted a constitutional violation. In, Erdman the court found a 12-day detention not unduly long. Notably, plaintiff Nguyen's detention was lengthened by three days due to the holiday weekend, a factor noted by the Supreme Court in Baker. 443 U.S. at 146. Although the courts have yet to set a precise time limit on the justifiable length of a mistaken detention based on a facially valid warrant, we cannot say that the additional two days in this case distinguish it from Erdman. Compare Oviatt v. Pearce, 954 F.2d 1470, 1474 (9th Cir. 1992) (114-day incarceration without a hearing constituted § 1983 violation); Coleman v. Frantz, 754 F.2d 719, 723 (7th Cir. 1985) (18-day detention under facially valid warrant but without appearance before magistrate "wholly inconsistent with concept of ordered liberty"). Based on the undisputed facts before this court, plaintiff fails to demonstrate a triable issue of fact establishing a violation of his constitutional rights.

b) No evidence of official government policy or custom

Further, even if a constitutional violation had occurred, plaintiff has not demonstrated that "his deprivation resulted from an official policy or custom established by a municipal policymaker possessed with final authority to establish that policy." Erdman, 926 F.2d at 882. "A plaintiff cannot prove the existence of a municipal policy or custom based solely on the occurrence of a single incident of unconstitutional action by a non-policymaking employee." Davis v. City of Ellensburg, 869 F.2d 1230, 1233 (9th Cir. 1989).

Here, plaintiff presents two arguments: first, that the Los Angeles County defendants

violated an existing policy; and second, that defendants failed to create procedures and policies that would have prevented the misidentification. In support of his first argument, plaintiff contends that defendants failed to "use the California Identification Procedures which were available to them on August 29, 1997 and to specifically implement any and all of their existing policies and procedures used to verify the information contained in the warrant information . . . ." Pl. Opp. Mot., p. 13. However, plaintiff failed to present any evidence that Los Angeles County had a policy of using California Identification reports. Rather, Officer Solomon Patton testified that although the L.A. County Jail was equipped with Live Scan or California Identification machines, the county had no policy to use these machines to verify a detainee's identity.[5]

Moreover, plaintiff presents no evidence that defendant's failure to follow its alleged policy of using California Identification Procedures resulted in repeated incidents of mistaken

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[5] October 22, 1999 Deposition of Patton:
Plaintiff's Attorney ("PA"): So the Cal I.D. procedure would never be used?
Patton: Not to determine if it's the person for the warrant or not.
PA: So at any time is the Cal. I.D. procedure used or the Live Scan used to verify identification in L.A. County Jail for people that claim not to be the individuals while at the jail?
Patton: Not to my knowledge.

Moreover, Patton testified that the Cal. I.D. procedure was of limited utility in verifying a detainee's identity.

County of Los Angeles Attorney: Now, counsel for plaintiff kept asking about the Cal I.D. or the Live Scan identification procedure. So if the prints for the plaintiff were run through and nothing came back, what does that indicate?
Patton: That means there is no record on file for that set of prints.
Attorney: Does that indicate that the person is not the person named in the warrant that initially brought him to the facility?
Patton: No. That just says there's no record on file of those prints.

At oral argument plaintiff's counsel insisted that the true suspect's prints were already on file. The record is silent on the matter. However, on the record before it, the court cannot conclude that because the police may have prints for some subset of suspects named in warrants, the Cal. I.D. procedure or any other should or can reasonably be used to verify the identity of the hundreds of detainees booked into custody daily.

detention or that defendants intentionally detained him, knowing that he was not the suspect identified in the warrant. See Erdman, 926 F.2d at 882 (no policy demonstrated, where plaintiff failed to present evidence that county habitually made mistakes resulting in dual arrests for the same crime, or that the error in holding plaintiff was intentional). As the Ninth Circuit noted in Erdman, "'the word 'policy' generally implies a course of action consciously chosen from among various alternatives . . .'" Id. at 881, quoting City of Oklahoma City v. Tuttle, 471 U.S. 808 (1985). An unintentional act — a mistake or an isolated incident — does not constitute a policy.

Plaintiff's second argument is that defendant Los Angeles County failed to create a policy that would prevent misidentification. Plaintiff contends that "despite its computer technology aided capabilities [Los Angeles County] does not have in place a simple routine procedure to verify identities pursuant to specific warrants . . . . It is inconceivable how as [sic] agency as sophisticated as the County of Los Angles could not easily have identified Plaintiff and verified the warrant information within the same time frame as the County of San Bernardino . . . ." Pl. Opp. Mot., pp. 14-15. Plaintiff appears to assert that by not having a routine procedure in place or by not using technology available to them, the County of Los Angeles deprived plaintiff of his constitutional rights. Yet, plaintiff fails to allege facts suggesting that by not using the California Identification reports in this instance, county officials followed a pattern or custom that "amounts to deliberate indifference" to plaintiff's constitutional rights. Compare Oviatt v. Pearce, 954 F.2d 1470 (sufficient evidence to show that the sheriff was deliberately indifferent to the problem of extended detentions without arraignment, where sheriff knew of at least 19 similar incidents between 1981 and 1989 and county conceded causation).

The deliberate indifference standard was specifically adopted by the Supreme Court in order to ensure that civil rights claims against municipalities attain a certain level of gravity before those entities are compelled to defend themselves at trial. Canton, 489 U.S. at 391-92. That assurance would be eroded if plaintiffs could proceed to trial against a municipality on the basis of a single incident, and without any showing that the failure constituted a pattern or custom or was the result of a conscious and deliberate choice. By limiting his proof to the

unfortunate circumstances concerning a single incident, plaintiff has failed to create a genuine issue of fact as to the alleged "deliberate indifference" of the county. The court cannot deduce a policy of deliberate indifference from bare allegations that the county's procedures were inadequate to prevent a single mistaken detention. Plaintiff has suggested improvements to the county's identification procedures. However, the absence of such procedures does not denote an unconstitutional county policy. Accordingly, the court grants defendants' motion for summary judgment as to plaintiff's federal claim pursuant to 42 U.S.C. 1983.

2. State claims — negligence, assault and battery, false imprisonment, and intentional infliction of emotional distress

Defendants Los Angeles County and San Bernardino County contend that plaintiff's four state claims are barred pursuant to Civil Code 43.55, providing that an arresting authority cannot be held liable when an arrest is made pursuant to a valid warrant. L.A. Def. Mot., p. 10; S.B. Def. Mot., p. 9. Plaintiff counters that triable issues of fact remain concerning his state claims. Pl. Opp. Mot., p. 21.

Civil Code § 43.55 provides: "There shall be no liability on the part of, and no cause of action shall arise against, any peace officer who makes an arrest pursuant to a warrant of arrest regular upon its face if the peace officer in making the arrest acts without malice and in the reasonable belief that the person arrested is the one referred to in the warrant."

In Lopez v. City of Oxnard, 207 Cal. App. 3d 1 (1989), a person arrested for drunk driving gave plaintiff Lopez's name, address and date of birth as his own, and when the person failed to appear in court, a warrant was issued for plaintiff's arrest. After Lopez was arrested on this warrant, the court provided him with a "disposition sheet" to carry with him, stating that he was not the person described in the warrant. Nevertheless, plaintiff was arrested two more times by officers who refused to investigate the validity of the disposition sheet. He sued for negligence, false imprisonment, and intentional infliction of emotional distress. The court of appeals affirmed judgment for defendants. Invoking Civil Code 43.55, the court held that because the warrant accurately described plaintiff, defendants had a reasonable belief that the

arrest was lawful. Id. at 8. The court reasoned that arresting officers were required to "act swiftly and to make on-the-spot evaluations, often under chaotic conditions." Id. at 7.

Moreover, the court held that the personnel at the jail, although not in the same situation as officers on the street, were also justified in ignoring the disposition sheet. Such personnel were entitled to rely on process and orders apparently valid on their face and were not required to look behind a valid arrest warrant to investigate the validity of a "piece of paper" handed to them by plaintiff. Id. at 10-11. The Lopez court distinguished the facts before it from a situation in which jailers were directed by a judge or magistrate to discharge a detainee or dismiss an action. Id. at 12. If a jailer was directed by a court to release a detainee or was put on notice by an official source that further investigation into the validity of the incarceration was required and failed to follow these dictates, the jailer could be held liable for illegal imprisonment. Id.

Here, plaintiff does not contest the validity of the San Bernardino arrest warrant; nor does he allege malice. Given that plaintiff shares a similar name, physical description, and date of birth with the suspect identified in the arrest warrant, both the arresting officer and prison officials had a reasonable belief that the arrest was lawful. Moreover, plaintiff appeared in court September 2nd and again on September 8th. After both appearances, the court ordered plaintiff's continued detention. As in Lopez, there is no evidence defendants had any official notice of irregularity or received an order from a court directing plaintiff to be released. Following the reasoning in Lopez, this court finds that section 43.55 applies, and no state cause of action can arise from the mistaken arrest and detention of plaintiff.

IV

CONCLUSION

For the reasons set forth above, the court grants summary judgment as to all claims in favor of defendants Los Angeles County and San Bernardino County.

IT IS SO ORDERED.

DATED: March 3, 2000

Nora M. Manella
United States District Judge