UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

No: 19-3358

Michael A. Lajeunesse

Plaintiff - Appellant

v.

Megan Anne Chambers; KCCI News Station

Defendants - Appellees

Appeal from U.S. District Court for the Southern District of Iowa - Des Moines
(4:18-cv-00348-RP)

JUDGMENT

Before LOKEN, SHEPHERD, and GRASZ, Circuit Judges.

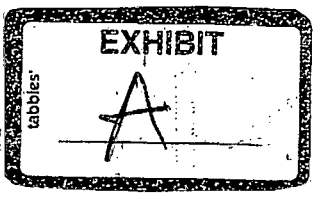
This court has reviewed the original file of the United States District Court. It is ordered by the court that the judgment of the district court is summarily affirmed. See Eighth Circuit Rule 47A(a).

The motion for leave to proceed in forma pauperis has been considered and is granted. The full $505 appellate and docketing fees are assessed against the appellant. Appellant will be permitted to pay the fee by installment method contained in 28 U.S.C. sec. 1915(b)(2). The court remands the calculation of the installments and the collection of the fees to the district court.

January 21, 2020

Order Entered at the Direction of the Court:
Clerk, U.S. Court of Appeals, Eighth Circuit.

/s/ Michael E. Gans



UNITED STATES COURT OF APPEALS
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Appeal from U.S. District Court for the Southern District of Iowa - Des Moines
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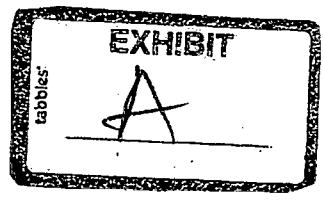
ORDER

The petition for rehearing by the panel is denied.

February 24, 2020

Order Entered at the Direction of the Court:
Clerk, U.S. Court of Appeals, Eighth Circuit.

/s/ Michael E. Gans



UNITED STATES COURT OF APPEALS
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Appeal from U.S. District Court for the Southern District of Iowa - Des Moines
(4:18-cv-00348-RP)

ORDER

Appellant's motion to supplement the record is denied as moot.

January 24, 2020

Order Entered Under Rule 27A(a):
Clerk, U.S. Court of Appeals, Eighth Circuit.

/s/ Michael E. Gans

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

A

No: 19-3358

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Appeal from U.S. District Court for the Southern District of Iowa - Des Moines
(4:18-cv-00348-RP)

MANDATE

In accordance with the judgment of 01/21/2020, and pursuant to the provisions of Federal Rule of Appellate Procedure 41(a), the formal mandate is hereby issued in the above-styled matter.

March 02, 2020

Clerk, U.S. Court of Appeals, Eighth Circuit

THE UNITED STATES DISTRICT COURT FOR THE SOUT
CENTRAL DIVISION FOR IOWA'S FEDERAL AGENC

Agency Case No.: 4:18-cv-00348-RP-RAW

MICHAEL LAJEUNESSE
Plaintiff,

v

MEGAN CHAMBERS, et al,
Defendant.

MOTION ON RELIEF UNDER FED. R. CIV. P. 60(b):

County Attorney's prosecutorial immunity from money damages does not immunize him from injunction relief. Lambert v Polk County, Iowa, 723 F.Supp. 128 (S.D.Iowa 1989).

PROCEDURAL HISTORY AND BACKGROUND FACTS:

The Court had previously dismissed Plaintiff's 42 USCS § 1983. Subsequently, the appeal was under COAs No.: 19 - 1064 wherein they affirmed your decision (citation and dates ommitted).

Plaintiff has already filed for Motion **60(b)** requesting this Court reopens his case for statement(s) made by the defendant(s) in Polk County Docket No.: **FECR299756;** verdict Feb. 8, 2017, as they related to the News Media's allegations as well articles that were published in the paper on **Oct. 14, 2016** (The Des Moines Register & Tribune Co., Carol Hunter).

As of now, under Polk County Docket No.: **PCCE082903**; EDMS - CLERK OF DISTRICT COURT E-FILED 5:04PM ON SEPT. 10, 2019, there was Order from the Court on whether or not weapons had been used and if "that" was enough to change the State's argument "that" weapons were an element of attempted murder; Id, at p. 5 of 6 (Iowa Code § 707.11)? See State v Havemann, **516 NW2d 26, 28** (Iowa 1994) (The mere fact that another attorney disagrees with trial counsel's strategy is insufficient in proving the prejudice prong, emphasis added)?

is not reviewable by federal courts under the due process clause of the federal constitution. Klimas v Mabry, **599 F2d 842, 848-49** (CA8 1979).

Although, if a state law provision somehow guarantess 'A particular defendant the benefit of well-established procedures, well, then, it may result in a denial of due process.' Cox v Hutto, **589 F2d 394, 395** (CA8 1978); See Buchalter v Newyork, **319 US 427, 430-32**, 87 L.Ed. 1492, 1496-97 (1943) (citing 'The conduct of the trial judge and that of the prosecutor misled the jury.' Mooney v Holoham, **294 US 103**, 55 S.Ct. 340, 79 L.Ed. 791, **98 ALR 406** (1935); And, 'That depriving the petitioner of an opportunity to offer evidence in his defense was a denial of due process.' Of Saunders v Shaw, **244 US 317**, 37 S.Ct. 638, 61 L.Ed. 1163 (1917)). **See also Plaintiff's** Memorandum filed under Agency Number: **4:19-cv-00231-RP** (Lajeunesse v Sperflage).

THEREFORE 'All rules and statutes applicable in civil proceedings **SHALL** be made and preserved.' See Iowa Code § **822.7 court to hear application** (2011). See also Iowa Code § **4.1(30)(a)** (under the provisions of Iowa Code § 4.1(30)(a), use of the word "SHALL" imposes a duty. State v Barlett, 2002 Iowa App. LEXIS 878 (2002)).

ii. ACKNOWLEDGMENT OF FACTS AND CONCLUSIONS OF LAW IN JUDICIAL PROCEEDINGS BY THE COURT ARE SUFFICIENT UPON TAKING JUDICIAL NOTICE. RULE 201

'The usual method of establishing adjudicative facts is through the introduction of evidence, ordinarily consisting of the testimony of witnesses.' See 55 Colum. L. Rev. 945 (1955).

'When a court or an agency finds facts concerning the immediate parties -- who did what motive or intent -- the court or agency is performing an adjudi-

cative function, and the facts are conveniently called "adjudicative facts."' (A System of Judicial Notice Based on Fairness and Convenience, in Perspectives of Law, 69, 93 (1964)). Iowa R. of Court, pp. 301-04 (Thomas/West 2008).

PRESUMPTIONS GENERALLY:

In re Estate of Givens, 119 NW2d 191 (Iowa 1963), suggests that presumptions are "evidence" and [t]hat clear satisfactory and convincing evidence is needed to rebut a presumption. See Omaha Indian Tribe (Treaty of 1854) v Wilson, 575 F2d 620 (CA8 1978). See also Federal Rules of Evidence 301.

IN CONCLUSION:

When the Fifth Judicial Branch of the Government dismissed Plaintiff's Postconviction Relief Application by "adjudicating" that 'The use of [w]eapons (or not) was NOT part of the elements[,] or facts, that the state was obligated to prove' --they have opened the doorways of litigation into the matter. See Iowa Jury Instruction 200.21. See also Iowa Code § 702.7 (State v Tusing, 344 NW2d 253 (Iowa 1984) (The Minutes of Testimony under Polk County, Iowa, Docket Number: 05771FECR299756; verdict Feb. 8, 2017 -- clearly say's that I was going to take a "[h]uman lif[e]" inside of a bathtub (emphasis strongly added)).

AS A RESULT please reopen Plaintiff's case and in support thereof would state the following:

> 'We emphasize that the immunity of prosecutors from liability in suits under § 1983 does not leave the public powerless to deter misconduct or to punish that which occurs. This court has NEVER suggested that the policy considerations which compel civil immunity for certain government officials also place them beyond the reach of criminal law. Even judges, cloaked with absolute civil immunity

WHEREFORE the Postconviction Relief Court had concluded: there wasn't enough evidence to show that either (trial or appellate) attorney had provided ineffective assistance of counsel. Ledezma v State, 626 NW2d 134, 141 (Iowa 2001) (if the prejudice prong is defeated, the court need not consider whether there was a failure to perform an essential duty); Sept. 10, 2019 (PCCE082903).

JUDICIAL NOTICE:

This Court previously took Judicial Notice of: State v Lajeunesse, 913 NW2d 275 (Ct App 2018) where 'Chambers told them "Lajeunesse" tried to kill her with a shower curtain and then a plastic bag' (emphasis on original complaint). ECF, Doc. 4 (10/23/18).

Section 822.7 of the Code of Iowa provides the exclusive remedy for challenging a conviction. However, jurisdiction results back to the place of judgment. State ex rel. Goettsch v Diacide Distributors, Inc., 596 NW2d 532 (Iowa 1999) (under the doctrine of the law of the case, legal principles announced and the views expressed by a reviewing court in an opinion, right or wrong, are binding throughout further progress of the case upon the litigants, the trial court and the Supreme Court in later appeals (emphasis on the court's ruling for Postconviction Relief, added)).

i. THE FIFTH JUDICIAL DISTRICT BRANCH OF THE GOVERNMENT WAS AFFORDED AN OPPORTUNITY TO CORRECT CONSTITUTIONAL VIOLATIONS (PCCE082903)

Generally, the failure of a state court to comply with the provisions of state law in its criminal trial is purely a matter of local concern, and,

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF IOWA
CENTRAL DIVISION

MICHAEL A. LAJEUNESSE, Plaintiff, v. MEGAN ANNE CHAMBERS and KCCI NEWS STATION, Defendants.	4:18-cv-00348-RP-RAW ORDER

Before the Court is Plaintiff Michael Lajeunesse's Motion for Relief under Federal Rule of Civil Procedure 60(b). The Court dismissed Lajeunesse pro se § 1983 complaint on October 23, 2018. Initial Review Order, ECF No. 4. The Court also denied a motion for relief from a final judgment under Rule 60(b). *See* Order, ECF No. 23. The judgment of the district court was summarily affirmed by the United States Court of Appeals for the Eighth Circuit on May 30, 2019. ECF No 26.

Lajeunesse again seeks Relief from a Judgment or Order under Fed. R. Civ. P. 60(b). Although he does not state which ground under Rule 60(b) justifies such relief, he refers to a September 10, 2019, ruling from the state district court denying his application for postconviction relief. ECF No. 32 at 1. Lajeunesse contends when the state court denied his application, "they have opened the doorways of litigation into the matter." *Id.* at 4.

This state court ruling has no bearing on Lajeunesse's § 1983 claim. Lajeunesse has not provided any basis for granting relief from judgment in this case. **The motion, ECF No. 32, is DENIED.**

IT IS SO ORDERED.

Dated this ___15th___ day of October 2019.

Robert W. Pratt

ROBERT W. PRATT, Judge
U.S. DISTRICT COURT

PROOF OF SERVICE:

I, Michael A. Lajeunesse, The Plaintiff, have sent Robert J. Pratt, Judge, the following documents and they are pertaining to **Rule 60(b)(2) of the Fed. Rs of Civ. Proc.**; relief from a judgment:

1. Crystal clear color copied picture(s) of Exh. 17 and both 18 from Iowa Dist Ct's Polk County's Docket No: **FECR299-756** (verdict Feb. 8, 2017)... proving that **Ofc. Schabilion-8631** of the Des Moines Police Dept's: Crime Scene Technician, has moved the "curtain" on Oct. 14, 2016? And because of this, you can NOW see that: The shower curtain [stay just like it's been put], or like it's been adjusted (emphasis added).

2. Proof that **Thomas H. MillerAT0005416** intentionally blurred [t]hat Exh. during trial with the "Digital Elmo-machine." (See the attached letter from: **Darren A. PageAT0000271**; See also **I.R.E. Rule 5.902(2)** Self-authentication)

3. State Public Appellate Defender: **Brenda J. Gohrl's** letter stating 'There is nothing in the record reflecting a request or denial of admission for the medical records.'**(FECR299-756)**.

4. A letter from Attorney: **Kelsey L. Knight, Esq.,** and regarding her speaking with "Darren A. Page"; inwhere he states that 'The medical records were inadmissible?'**(See again I.R.E. Rule 5.902(2)**; Officer of the Court (Added).

5. Plaintiff's request**(s)** in obtaining discovery of case number-above and regarding "The Medical records?" (Several atempt(s); all were denied by the Des Moines Public Defender's Office)

6. Here is a copy of Megan's statement(s) to the hospital staff... where she say's that:

'No objects or weapon[s] were used. And --that-- most of trauma was both to the head and neck area(s)' (emphasis strongly added, ~~Your Honor~~).

Subscribed and sworn before me this 13 day of June 2019

Amy Christianson
Notary Public

AMY CHRISTIANSON
COMMISSION NO. 750946
MY COMMISSION EXPIRES
1-29-20

s/M. Lajeunesse
Michael A. Lajeunesse
Clerk: **Rule 25(B), Notary**

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF IOWA
CENTRAL DIVISION

MICHAEL A. LAJEUNESSE, Plaintiff, v. MEGAN ANNE CHAMBERS and KCCI NEWS STATION, Defendants.	4:18-cv-00348-RP-RAW **INITIAL REVIEW ORDER DISMISSING COMPLAINT**

Michael Lajeunesse brings this pro se complaint which appears to be made pursuant to 42 U.S.C. § 1983, with jurisdiction is predicated on 28 U.S.C. § 1343. Lajeunesse is currently incarcerated at the Anamosa State Penitentiary, but all events giving rise to his claims occurred in Des Moines, Iowa prior to his arrest. Lajeunesse seeks leave to proceed in forma pauperis and seeks only monetary damages. He also requests the appointment of counsel.

The Prison Litigation Reform Act requires federal courts to review all prisoner complaints filed against a governmental entity, officer, or employee. 28 U.S.C. § 1915A(a). On review, the Court must identify the cognizable claims or dismiss the complaint, or any part of it, that it determines is frivolous or malicious, fails to state a claim upon which relief may be granted, or seeks monetary relief from a defendant who is immune from such relief. *Id.* at § 1915A(b); *see also* 28 U.S.C. § 1915(e)(2) (listing when court is required to dismiss case).

A claim is "frivolous" if it "lacks an arguable basis either in law or in fact." *Neitzke v. Williams*, 490 U.S. 319, 325 (1989). An action fails to state a claim upon which relief may be granted if it does not plead "enough facts to state a claim to relief that is plausible on its face." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). "The plausibility standard requires a plaintiff to show at the pleading stage that success on the merits is more than a 'sheer possibility.'" *Braden v. Wal-Mart Stores, Inc.*, 588 F.3d 585, 594 (8th Cir. 2009) (quoting *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009)).

A pro se complaint in a proceeding without prepayment of fees must be construed liberally. *See Haines v. Kerner*, 404 U.S. 519, 520 (1972) (per curiam). The Court must weigh all factual allegations in favor of the plaintiff, unless the facts alleged are clearly baseless. *See Denton v. Hernandez*, 504 U.S. 25, 33 (1992) (determination of what is "clearly baseless" is left to discretion of court ruling on *in forma pauperis* petition). Although Federal Rule of Civil Procedure 8(a)(2) does not require detailed factual allegations, "it demands more than an unadorned, the-defendant-unlawfully-harmed-me accusation." *Iqbal*, 556 U.S. at 678 (citations omitted). "Threadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice . . . . Determining whether a complaint states a plausible claim for relief [is] . . . a context-specific task that requires the reviewing court to draw on its judicial experience and common sense." *Id.* at 678-79 (citations omitted). A complaint states a plausible claim for relief when its "factual content . . . allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Iqbal*, 556 U.S. at 678 (citations omitted).

Lajeunesse asserts that on October 14, 2016, Megan Anne Chambers gave to him two pills she had been prescribed for her mental illness. The Des Moines Police came to Chambers's home, and Chambers told them Lajeunesse tried to kill her with a shower curtain and then a plastic bag. The Court takes judicial notice of the proceedings in *State v. Lajeunesse*, FECR299756 (Iowa Dist. Ct. Polk County), and his convictions for attempt to commit murder and willful injury causing serious injury. *Id.* (Jury Verdict Feb. 8, 2017).

Lajeunesse alleges Chambers worked together with the Polk County Attorney to commit perjury to bring about the charges. Lajeunesse asserts he has since suffered emotional distress, financial loss due to his incarceration, and defamation of character.

"To state a claim under § 1983, a plaintiff must allege the violation of a right secured by the Constitution and laws of the United States, and must show that the alleged deprivation was committed by a person acting under color of state law." *West v. Atkins*, 487 U.S. 42, 48 (1988)

(citations omitted). For purposes of § 1983 cases, "color of state law" is analyzed the same as "state action." *Rendell-Baker v. Kohn*, 457 U.S. 830, 838 (1982). Requiring defendants to act under color of state law for purposes of § 1983, excludes private conduct, even if it is discriminatory or wrongful. *Ams. United for Separation of Church & State v. Prison Fellowship Ministries, Inc.*, 509 F.3d 406, 421 (8th Cir. 2007). "However, [i]n certain circumstances the government may become so entangled in private conduct that the deed of an ostensibly private organization or individual is to be treated . . . as if a State had caused it to be performed." *Id.* at 422 (citation and quotation marks omitted) (alteration and omission in original).

The complaint alleges Chambers reported criminal activity by Lajeunesse to the police. Compl. 3, ECF No. 1. "The mere furnishing of information to police officers does not constitute joint action under color of state law which renders a private citizen liable under §§ 1983 or 1985." *Benavidez v. Gunnell*, 722 F.2d 615, 618 (10th Cir. 1983); *see also Myers v. Morris*, 810 F.2d 1437, 1467 (8th Cir. 1987) (reporting suspected criminal acts undertaken on own initiative as private persons not conduct arising under color of state law), abrogated on other grounds by *Burns v. Reed*, 500 U.S. 478 (1991).

To the extent Chambers gave testimony against Lajeunesse at a trial, the claim also fails because witnesses are generally immune from damages for testimony in judicial proceedings. *See Burns*, 500 U.S. at 489 ("witnesses were absolutely immune at common law from subsequent damages liability for their testimony in judicial proceedings even if the witness knew the statements were false and made them with malice" (citation and quotations marks omitted)). The claims against Chambers are without merit and are dismissed.

Lajeunesse next asserts that from October 14, 2016, through February 8, 2017, the KCCI news station broadcasted incorrect information about this incident. Lajeunesse claims the information, which was provided by the police, defamed his character, and caused him to suffer personal injury as a result. Again, there is no showing KCCI was acting under color of state law. Although KCCI may have disseminated information provided by the police department,

Lajeunesse makes no assertions to show how or when the police department became entangled with the news department. Lajeunesse does not identify individuals who worked together to allegedly violate Lajeunesse's constitutional rights. These allegations are too vague to support a claim of entanglement between KCCI and any state actor which is sufficient to constitute state action. *Iqbal*, 556 U.S. at 678 ("Threadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice.").

Further, Lajeunesse does not identify what information KCCI allegedly conveyed or in what way it was defamatory, and is insufficient to state a claim of slander under state law. *See Freeman v. Bechtel Constr. Co.*, 87 F.3d 1029, 1032 (8th Cir. 1996) (finding slander allegations failed to state cognizable claim because plaintiffs "do not identify the defamatory statements with any specificity, they do not identify the manner of oral publication, and they do not allege that Bechtel (that is, a Bechtel agent acting within the scope of that agency) published the statements to a nonprivileged recipient"). The claim against KCCI must be dismissed.

SUMMARY AND CONCLUSION

Plaintiff's motion to proceed in forma pauperis is granted. An initial partial filing fee of $28.30 is assessed with the remainder of the $350.00 filing fee paid to the Clerk of Court from the prisoner's account in accordance with 28 U.S.C. § 1915(b). Because Lajeunesse is proceeding in forma pauperis, he is not assessed the $50.00 administrative fee. A notice of this obligation shall be sent to the appropriate prison official.

The complaint is dismissed. *See* 28 U.S.C. § 1915A(b) (court shall dismiss complaint on initial review if complaint is frivolous, malicious, fails to state claim or seeks monetary relief from defendant who is immune). This dismissal, and any appeal of this order if affirmed as frivolous, will count against Lajeunesse for purposes of the three-dismissal rule in 28 U.S.C.

§1915(g) (prisoner shall not bring civil action in forma pauperis if prisoner has, on three or more prior occasions, brought action that was dismissed as frivolous, malicious, or failed to state a claim unless prisoner is in imminent danger of serious physical injury).

The motion for counsel is denied as moot.

IT IS SO ORDERED.

Dated this ___23td___ day of October, 2018.

Robert W. Pratt

ROBERT W. PRATT
U.S. DISTRICT JUDGE