

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

NOV 14 2025

FOR THE NINTH CIRCUIT

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

JOHN DEONARINE,

Plaintiff - Appellant,

v.

MONICA AGUILAR, Erroneously Sued As Lopez; LOPEZ, Police Officer, Los Angeles Police Dept., Serial No. 40598, individual and official capacity; ROSALES, Police Officer, Los Angeles Police Dept., Serial No. 43819, individual and official capacity; MORALES, Sergeant, Police Officer, Los Angeles Police Dept., Serial No. 30184, individual and official capacity; MCNULTY, Lieutenant, Police Officer, Los Angeles Police Dept., Serial No. 35649, individual and official capacity,

Defendants - Appellees.

No. 24-3665

D.C. No.

2:22-cv-03353-JLS-ADS

MEMORANDUM*

Appeal from the United States District Court
for the Central District of California
Josephine L. Staton, District Judge, Presiding

Submitted November 12, 2025**

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

** The panel unanimously concludes this case is suitable for decision without oral argument. See Fed. R. App. P. 34(a)(2).

APPENDIX
A

Before: SCHROEDER, RAWLINSON, and NGUYEN, Circuit Judges.

John Deonarine appeals from the district court's summary judgment in his 42 U.S.C. § 1983 action alleging false arrest against officers of the Los Angeles Police Department. We have jurisdiction under 28 U.S.C. § 1291. We review de novo. *Lowry v. City of San Diego*, 858 F.3d 1248, 1254 (9th Cir. 2017) (en banc). We affirm.

The district court properly granted summary judgment because the undisputed evidence shows that his arrest was supported by probable cause. *See Fortson v. Los Angeles City Att'y's Off.*, 852 F.3d 1190, 1192 (9th Cir. 2017) (concluding that the plaintiff's false arrest claim failed because his arrest was based on probable cause); *see also Smith v. Agdeppa*, 81 F.4th 994, 997 (9th Cir. 2023) ("When, as here, we have videotape of the events, we view the facts in the light depicted by the videotape." (citation and internal quotation marks omitted)). The district court properly rejected Deonarine's argument that the subsequent finding of factual innocence undermined probable cause. *See Trenouth v. United States*, 764 F.2d 1305, 1307 (9th Cir. 1985) ("[A] peace officer who arrests someone with probable cause and in good faith is not liable for false arrest simply because the innocence of the suspect is later proved." (citation, alteration, and internal quotation marks omitted)); *see also* Cal. Penal Code § 851.8(i)(1) ("Any finding that an arrestee is factually innocent . . . shall not be admissible as evidence

in any action.”).

The district court did not abuse its discretion in denying Deonarine’s request for leave to amend the complaint to add a claim for malicious prosecution because amendment would have been futile. *See Lathus v. City of Huntington Beach*, 56 F.4th 1238, 1243 (9th Cir. 2023) (“Although leave to amend should be given freely, denying leave is not an abuse of discretion if it is clear that granting leave to amend would have been futile.” (citations and internal quotation marks omitted)); *see also Lassiter v. City of Bremerton*, 556 F.3d 1049, 1054-55 (9th Cir. 2009) (“[P]robable cause is an absolute defense to malicious prosecution.”).

The district court did not abuse its discretion in admitting Deonarine’s arrest record. *See Hyer v. City & County of Honolulu*, 118 F.4th 1044, 1055 (9th Cir. 2024) (“A district court’s evidentiary rulings are reviewed for abuse of discretion.”); *see also* Cal. Penal Code § 851.8(k) (providing that records sealed following a finding of factual innocence are admissible into evidence in a civil action filed by the arrestee against the arresting officers).

The district court did not abuse its discretion in denying Deonarine’s motion for reconsideration because Deonarine failed to set forth any basis for relief. *See Guenther v. Lockheed Martin Corp.*, 972 F.3d 1043, 1058 (9th Cir. 2020) (setting forth standard of review and grounds for reconsideration).

All pending motions are denied.

AFFIRMED.

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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

JOHN F. DEONARINE,

Plaintiff,

v.

LOPEZ, et al.,

Defendants.

Case No. 2:22-03353 JLS (ADS)

ORDER ACCEPTING UNITED STATES
MAGISTRATE JUDGE'S REPORT AND
RECOMMENDATION

Pursuant to 28 U.S.C. § 636, the Court has reviewed Defendants' Motion for Summary Judgment (Dkt. No. 52), Plaintiff's Opposition to Defendants' Motion for Summary Judgment (Dkt. No. 55), Plaintiff's related filings (Dkt. Nos. 56-58), Defendants' Reply (Dkt. No. 60), the Report and Recommendation of United States Magistrate Judge (Dkt. No. 66), and Plaintiff's Objection with Points and Authorities to Report and Recommendation of United States Magistrate Judge (Dkt. No. 68).

The Court has engaged in a *de novo* review of those portions of the Report and Recommendation to which objections were made and overrules the objections.

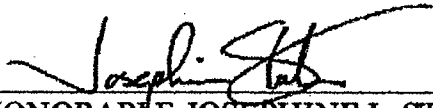
APPENDIX
B

1 Specifically, with regards to the objection asserting that reasonable cause and probable
2 cause are identical in meaning (Dkt. No. 68 at 32); this is incorrect. Reasonable cause,
3 as used in Cal. Penal Code § 851.8(b), is distinct from probable cause and is “understood
4 to refer to a determination made after all relevant evidence comes to light.” Tennison v.
5 California Victim Comp. & Gov’t Claims Bd., 62 Cal. Rptr. 3d 88, 97 (Cal. Ct. App.
6 2007). Probable cause is determined based on information known at the time of the
7 arrest. See Blankenhorn v. City of Orange, 485 F.3d 463, 475 (9th Cir. 2007). The
8 Court accepts the findings and recommendations of the Magistrate Judge.

9 Accordingly, IT IS HEREBY ORDERED:

- 10 1. The Report and Recommendation (Dkt. No. 66) is accepted;
- 11 2. Defendants’ Motion for Summary Judgment (Dkt. No. 52) is granted;
- 12 3. The case is dismissed with prejudice; and
- 13 4. Judgment is to be entered accordingly.

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15 DATED: March 28, 2024



16 THE HONORABLE JOSEPHINE L. STATON
United States District Judge

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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

JOHN F. DEONARINE,

Plaintiff,

v.

LOPEZ, et al.,

Defendants.

Case No. 2:22-03353 JLS (ADS)

REPORT AND RECOMMENDATION OF
UNITED STATES MAGISTRATE JUDGE

This Report and Recommendation is submitted to the Honorable Josephine L. Staton, United States District Judge, pursuant to 28 U.S.C. § 636 and General Order 05-07 of the United States District Court for the Central District of California.

I. INTRODUCTION

Before the Court is Defendants Monica Aguilar (erroneously sued as Defendant Lopez), Carlos Rosales, Matthew McNulty, and Robert Morales' (collectively, "Defendants") Motion for Summary Judgment (the "Motion"). (Dkt. No. 52.) Plaintiff

APPENDIX
C

1 John F. Deonarine opposed the Motion. (Dkt. No. 55.)¹ Defendants filed a Reply.

2 (Dkt. No. 60.) The Court held a hearing on the Motion on December 6, 2023.

3 (Dkt. No. 64.) Having reviewed the parties' briefing, relevant legal authority, and the
4 record in this case, the Court grants the Motion and dismisses the case with prejudice.

5 **II. UNDISPUTED MATERIAL FACTS**

6 After a review of the parties' briefing, the Court finds the following undisputed
7 material facts.² On May 19, 2020, police officers Aguilar (referred to as Lopez
8 throughout the parties' fact statement) and Rosales responded to a radio call that a
9 private security guard (Plaintiff) in North Hollywood would direct the officers to a
10 burglary suspect. (Dkt. No. 52-6 at 2, Defs.' Amended Separate Statement of
11 Undisputed Facts; Dkt. No. 58 at 2, Pl.'s Statement of Material Facts in Dispute
12 (collectively "UF") No. 1.) Defendants Aguilar and Rosales arrived at a car dealership
13 where Plaintiff had indicated he would be. (UF Nos. 2-3.) Defendants Aguilar and
14 Rosales then confirmed Plaintiff was the security guard who had called regarding a
15 burglary suspect. (UF Nos. 3-4.) Plaintiff stated he was carrying a firearm. (UF No. 4.)
16 Plaintiff explained to Defendants Aguilar and Rosales that he had called the police
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18 ¹ Plaintiff filed his opposition in several parts. There is Plaintiff's Opposition to
19 Defendants' Motion for Summary Judgment, which contains Plaintiff's exhibits
20 (Dkt. No. 55); Plaintiff's Declaration (Dkt. No. 56); Plaintiff's Memorandum of Points
21 and Authorities in Support of Plaintiff's Opposition (Dkt. No. 57); and Plaintiff's
22 Statement of Material Facts in Dispute. (Dkt. No. 58.)

23 ² Plaintiff opposes nearly every asserted undisputed fact of Defendants by stating
24 "Plaintiff does not dispute Defendants acting under color of law. Disputes all records
related to false arrest/false imprisonment." (Dkt. No. 58.) The Court has not credited
this boilerplate language as a dispute of material fact where Plaintiff has not provided
admissible evidence to dispute a particular fact or specified what portion of each
asserted undisputed fact he is disputing.

1 because he sought the officers' assistance while he questioned people near a transient
2 encampment who might have information on a burglary suspect. (UF No. 8.) Officer
3 Rosales asked Plaintiff if he had his concealed carry license with him. (UF No. 9.)
4 Plaintiff said he worked for a private security company and only had his guard card with
5 him. (Id.) The card Plaintiff provided the officers was a "Permit for Exposed Firearm"
6 only. (Id.) Officer Rosales asked Plaintiff if he had any documentation stating that he
7 could carry a concealed weapon and he said he did not. (UF No. 10.) Plaintiff admitted
8 he understood he was not allowed to carry a concealed weapon without a permit but did
9 so because the gun was for his personal protection. (UF No. 11); see also (Dkt. No. 52,
10 Ex. 4, Rosales Video 1 at timestamp 20:40-21:50.) After a discussion about the legality
11 of Plaintiff's firearm between he and Defendants Aguilar and Rosales, Defendant
12 Rosales advised Plaintiff that he was going to be detained and placed in handcuffs
13 pending an investigation into Plaintiff's firearm. (UF No. 12.) Officer Aguilar recovered
14 Plaintiff's firearm that was holstered in his waistband; the gun was loaded with a
15 magazine and one round in the chamber. (UF No. 13.) Defendant Aguilar used LAPD
16 approved resources to verify who the firearm was registered to; the firearm returned to a
17 registered owner named Michael Castro under serial number WBO34. (UF No. 14.)
18 Officer Morales then arrived to assist the investigation into Plaintiff's firearm.
19 (Dkt. No. 57 at 6.)³ Plaintiff was advised that he was going to be arrested and
20 transported to the North Hollywood Station for pre-booking. (UF No. 15.) Defendant
21 McNulty was the watch commander at the North Hollywood Station where Plaintiff was

22
23 ³The Court restates certain factual allegations from the briefing only to provide context.
24 It relies only on the undisputed material facts and the supporting evidence to decide the
merits of the motion for summary judgment.

1 pre-booked. (Dkt. No. 57 at 7.) The Los Angeles City Attorney's office later charged
2 Plaintiff with violating Penal Code § 25400(a)(2) (carrying a firearm capable of being
3 concealed upon the person) and Penal Code § 25850(a) (carrying a loaded firearm while
4 in any public place or on any public street in an incorporated city). (UF No. 20.)
5 Prosecutors ultimately dismissed the criminal complaint, however, and Plaintiff then
6 sought and received a factual innocence determination from the superior court.
7 (UF No. 21.)

8 **III. ADMISSIBILITY OF DEFENDANTS' EVIDENCE**

9 Plaintiff asserts that several of Defendants' exhibits to the Motion should be
10 deemed inadmissible.⁴ Plaintiff objects to Defendants' inclusion of the criminal
11 complaint filed against him (Dkt. No. 52, Ex. 2), and the arrest report documenting his
12 arrest (*id.*, Ex. 3.) (Dkt. No. 57 at 10.) Plaintiff objects on the grounds that those
13 exhibits were ordered sealed and destroyed pursuant to the superior court's factual
14 innocence order. (*Id.*) Defendants do not address Plaintiff's evidentiary objections.

15 The superior court's factual innocence finding was pursuant to Cal. Penal Code
16 § 851.8. (Dkt. No. 55, Ex. B.) Section 851.8(b) mandates that:

17 the court shall order the law enforcement agency having jurisdiction over
18 the offense, the Department of Justice, and any law enforcement agency
19 which arrested the petitioner or participated in the arrest of the petitioner
20 for an offense for which the petitioner has been found factually innocent
under this section to seal their records of the arrest and the court order to
seal and destroy the records, for three years from the date of the arrest and

21 ⁴ Defendants did not file evidentiary objections in response to Plaintiff's cited evidence.
22 In addition, Defendants confirmed during the December 6 hearing that they do not
23 object to the admissibility of Plaintiff's Exhibits A and B. "Defects in evidence submitted
24 in opposition to a motion for a summary judgment are waived 'absent a motion to strike
or other objection.'" *Fed. Deposit Ins. Corp. v. New Hampshire Ins. Co.*, 953 F.2d 478,
484 (9th Cir. 1991) (quoting *Scharf v. United States Atty. Gen.*, 597 F.2d 1240, 1243 (9th
Cir.1979)).

1 thereafter to destroy their records of the arrest and the court order to seal
and destroy those records.

2 However, Section 851.8(k) carves out an exception under the following circumstances:

3 No records shall be destroyed. . . if the arrestee or a codefendant has filed a
4 civil action against the peace officers or law enforcement jurisdiction which
made the arrest or instituted the prosecution and if the agency which is the
5 custodian of the records has received a certified copy of the complaint in the
civil action, until the civil action has been resolved. Any records sealed
6 pursuant to this section by the court in the civil actions, upon a showing of
good cause, may be opened and submitted into evidence.

7 Plaintiff argues, without legal citation, that Section 851.8(k) is only intended “to aid the
8 plaintiff’s access to records.” (Dkt. No. 57 at 11.)

9 Plaintiff filed a civil action, so the documents in Defendants’ Exhibits 2 and 3 are
10 excepted from destruction. While those documents should be sealed, good cause exists
11 to unseal them because they are relevant to this action. The Court denies Plaintiff’s
12 objections to Defendants’ Exhibits 2 and 3.

13 **IV. DISCUSSION**

14 **A. Summary of Motion**

15 The Motion seeks summary judgment on Plaintiff’s false arrest⁵ claim on the
16 grounds that (1) body cam footage from the incident directly contradicts Plaintiff’s
17 allegations and therefore the evidence should not be viewed in the light most favorable
18 to the non-moving party; (2) Defendants had probable cause to arrest Plaintiff; and
19 (3) Defendants are entitled to qualified immunity. (Dkt. No. 52.) In opposition,

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21 ⁵ Plaintiff’s Complaint asserts only one cause of action, referred to as both “false
22 arrest/false imprisonment.” (Dkt. No. 1 at 4.) A Section 1983 claim for false arrest or
23 false imprisonment is treated interchangeably, as false arrest is one way of committing
24 false imprisonment. See George v. City of Long Beach, 973 F.2d 706, 710 (9th Cir.1992)
(to prevail on a § 1983 claim for false arrest and false imprisonment, a plaintiff would
have to demonstrate that there was no probable cause to arrest him).

1 Plaintiff argues that (1) the Motion should be denied because Plaintiff was declared
2 factually innocent by the superior court and therefore Defendants falsely arrested him;
3 (2) Plaintiff's deposition testimony creates a dispute of material fact regarding whether
4 there was probable cause to arrest Plaintiff for allegedly carrying a concealed firearm
5 without a concealed carry license; (3) Defendants mis-cite caselaw; (4) Plaintiff's
6 evidence would move a reasonable jury to find in his favor; and (5) Defendants failed to
7 establish the defense of qualified immunity because a reasonable officer would have
8 known they were violating Plaintiff's clearly established right to carry a firearm given his
9 licensing. (Dkt. No. 57.)

10 **B. Legal Standard**

11 A grant of summary judgment is appropriate when "there is no genuine dispute
12 as to any material fact and the movant is entitled to judgment as a matter of law."
13 Albino v. Baca, 747 F.3d 1162, 1168 (9th Cir. 2014) (quoting Fed. R. Civ. P. 56(a)). A fact
14 is material if the dispute over that fact may affect the outcome of the lawsuit under
15 governing law. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986). A dispute is
16 genuine if a reasonable jury could return a verdict for the non-moving party based on
17 the evidence. Id. The moving party bears the initial burden of demonstrating the
18 absence of a genuine issue of material fact. Celotex Corp. v. Catrett, 477 U.S. 317, 323
19 (1986). Once the moving party has met their burden, the non-moving party must set
20 forth specific facts showing that there is a genuine issue for a trial. Matsushita Elec.
21 Indus. Co., Ltd. v. Zenith Radio Corp., 475 U.S. 574, 587 (1986). The Court must view
22 all evidence in the light most favorable to the non-moving party, and all reasonable
23 inferences must be drawn in the non-moving party's favor. McSherry v. City of Long
24 Beach, 584 F.3d 1129, 1135 (9th Cir. 2009).

1 When a plaintiff is pro se, the Court “must consider as evidence in [plaintiff’s]
2 opposition to summary judgment all of [plaintiff’s] contentions offered in motions and
3 pleadings, where such contentions are based on personal knowledge and set forth facts
4 that would be admissible in evidence, and where [plaintiff] attested under penalty of
5 perjury that the contents of the motions or pleadings are true and correct.” Jones v.
6 Blanas, 393 F.3d 918, 923 (9th Cir. 2004).

7 **C. False Arrest**

8 “A claim for unlawful arrest is cognizable under § 1983 as a violation of the
9 Fourth Amendment, provided the arrest was without probable cause or other
10 justification.” Dubner v. City & Cnty. of San Francisco, 266 F.3d 959, 964 (9th Cir.
11 2001). To prevail on a Section 1983 claim for false arrest or false imprisonment,
12 Plaintiff must “demonstrate that there was no probable cause to arrest him.” Cabrera v.
13 City of Huntington Park, 159 F.3d 374, 380 (9th Cir. 1998). Probable cause “is not a
14 high bar.” Kaley v. United States, 571 U.S. 320, 338 (2014). “Because the probable
15 cause standard is objective, probable cause supports an arrest so long as the arresting
16 officers had probable cause to arrest the suspect for any criminal offense, regardless of
17 their stated reason for the arrest.” Edgerly v. City and Cnty. of San Francisco, 599 F.3d
18 946, 954 (9th Cir. 2010). Moreover, probable cause can rest on an objectively
19 reasonable but mistaken understanding of the law. See Heien v. North Carolina, 574
20 U.S. 54, 60-61 (2014); see also Olsen v. City of Henderson, 648 Fed. App’x 628, 631 (9th
21 Cir. 2016) (“The issue is whether defendant Nichols had probable cause to believe that
22 the statute was violated, and probable cause exists even if he made a reasonable mistake
23 of law or fact.”).

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1 **1. Plaintiff's Factual Innocence Argument**

2 Plaintiff asserts that Defendants cannot be entitled to summary judgment
3 because he was ultimately found innocent of all charges. Plaintiff argues that
4 "Defendants are not entitled to Summary Judgment as a matter of law as the
5 February 24, 2022 Superior Court Finding of the Plaintiff to have been factually and
6 legally innocent. . . means that the Defendants engaged in false arrest and false
7 imprisonment." (Dkt. No. 55 at 2-3.) Defendants argue that the finding of factual
8 innocence is not dispositive as to whether they had probable cause when they arrested
9 Plaintiff. (Dkt. No. 52 at 10 n.4.)

10 For probable cause, the inquiry is not whether the suspect actually committed the
11 offense, but rather whether a reasonable officer, based on information known to them at
12 the time, had probable cause to think that the suspect could have committed the offense.
13 See Blankenhorn v. City of Orange, 485 F.3d 463, 475 (9th Cir.2007). A finding of
14 factual innocence is premised on a finding pursuant to Cal. Penal Code § 851.8(b) that
15 "no reasonable cause exists to believe that the arrestee committed the offense for which
16 the arrest was made." Reasonable cause is distinct from probable cause, and a finding of
17 factual innocence is not sufficient to conclude there was a lack of probable cause. See
18 Buckheit v. Dennis, No. C 09-5000 JCS, 2012 WL 1166077, at *29 (N.D. Cal. Apr. 6,
19 2012), aff'd, 573 Fed. App'x 662 (9th Cir. 2014) ("Factual innocence and probable cause
20 are two distinct issues."); see also Yang v. Boudreaux, No. 1:21-cv-00148-BAM, 2021 WL
21 4066460, at *11 (E.D. Cal. Sept. 7, 2021) (reasoning that "a finding of factual innocence
22 is not sufficient to establish that there was no probable cause for the arrest."); Ross v.
23 City of Tustin, No. SACV 18-2219 JVS (DFM), 2020 WL 1269839, at *8 (C.D. Cal. Jan. 7,
24 2020) ("The Court agrees that a finding of 'factual innocence' has no bearing on whether

1 it was reasonable at the time to justify the officers' arrest of Ross.”).

2 A finding of factual innocence does not establish that Defendants lacked probable
3 cause to arrest Plaintiff. Plaintiff relies on People v. Chagoyan for the proposition that
4 “[e]stablishing factual innocence, within the meaning of Penal Code section 851.8,
5 entails establishing as a prima facie matter not necessarily just that the arrestee had a
6 viable substantive defense to the crime charged, *but more fundamentally that there was*
7 *no reasonable cause to arrest him in the first place.*” 107 Cal. App. 4th 810, 816–17
8 (2003), as modified (May 1, 2003) (emphasis added). But Plaintiff is not correct.
9 Reasonable cause is distinct from probable cause. Chagoyan is not applicable to the
10 question of whether Defendants had probable cause to arrest Plaintiff, as a defense to
11 his false arrest claim. The superior court’s factual innocence finding does not establish
12 that Defendants lacked probable cause to arrest Plaintiff.

13 **2. Was There Probable Cause for Plaintiff’s Arrest?**

14 Defendants argue that they had probable cause to arrest Plaintiff on the grounds
15 he was carrying a concealed firearm without a license and carrying a loaded firearm in
16 public. They assert that Plaintiff “could not produce a concealed carry permit, or other
17 appropriate identification, when asked and whose convoluted explanations for this
18 failure made little sense.” (Dkt. No. 52 at 8.) In addition, Defendants argue that
19 because the “examination of the weapon at the scene revealed that the gun had a full
20 magazine and a round in the chamber,” there was probable cause to arrest Plaintiff for
21 carrying a loaded weapon in public. (Id. at 9.) Specifically, Defendants assert that the
22 following facts establish probable cause for Plaintiff’s arrest:

23 Here, the officers were faced with an armed individual who could not
24 produce a concealed carry permit, or other appropriate identification, when
asked and whose convoluted explanations for this failure made little sense.

1 Furthermore, Plaintiff admitted that he understood he was not allowed to
2 carry a concealed weapon without a permit but did so nevertheless because
3 the gun was for his personal protection. Plaintiff also admitted that he had
4 attempted to apply for a concealed carry permit in Los Angeles County in
the past but had been denied such a permit. An examination of the weapon
at the scene revealed that the gun had a full magazine and a round in the
chamber.

5 (Id. at 8-9.) In addition, Defendants submitted the officers' body cam footage as Exhibit
6 4 to the Motion. (Dkt. No. 52, Ex. 4.) Defendant Rosales' body cam footage shows that
7 Plaintiff told Defendants several times during their interaction that he was "armed
8 concealed." See (Dkt. No. 52, Ex. 4, Rosales Video 1 at timestamp 33:50-34:13.)

9 Plaintiff disputes at least a portion of these asserted facts and disputes that those
10 facts could create probable cause. Plaintiff asserts it is undisputed that Defendants
11 knew he was a security guard with an "Exposed Firearm Permit." Plaintiff asserts that
12 the deputy city attorney represented to the superior court at Plaintiff's arraignment that
13 she reviewed Defendants' body cam footage and it showed that Plaintiff's firearm was
14 exposed rather than concealed. (Dkt. No. 57 at 7-8.) Plaintiff asserts that based upon
15 that information, the deputy city attorney withdrew the criminal complaint against
16 Plaintiff. (Id.) In addition, Plaintiff argues that his deposition testimony creates a
17 dispute of fact because he testified that his firearm was not concealed, but rather openly
18 holstered. (Id. at 12.) Coupled with the superior court's finding of factual innocence,
19 Plaintiff argues this establishes there was no probable cause for his arrest.

20 In short, Plaintiff argues there is a dispute of material fact regarding whether his
21 firearm was open or concealed. If it was openly carried, there would be no probable
22 cause to arrest Plaintiff for a lack of a concealed carry permit and possession of a loaded
23 firearm in public, since Plaintiff also had an Exposed Carry Permit. If the firearm was
24 concealed, then Defendants had probable cause to arrest Plaintiff because it is

1 undisputed he did not have a concealed carry permit.

2 However, Plaintiff has failed to establish there is a dispute of a material fact.
3 Plaintiff proffers his deposition testimony, which is self-serving, and a transcript of what
4 a deputy city attorney stated to a superior court about what she saw when she watched
5 the body cam footage. The transcript of the deputy city attorney is hearsay evidence by a
6 person without personal knowledge of the actual events. On the other hand, Defendants
7 submit the arrest report and the body cam footage, both of which reflect statements by
8 Plaintiff that he was carrying a concealed weapon. Plaintiff cannot create a dispute of
9 material fact through deposition testimony that contradicts his prior statements. See
10 Block v. City of Los Angeles, 253 F.3d 410, 419 n.2 (9th Cir. 2001) (“A party cannot
11 create a genuine issue of material fact to survive summary judgment by contradicting
12 his earlier version of the facts.”). Furthermore, evidence “that is not based on personal
13 knowledge and is hearsay is inadmissible and cannot raise a genuine issue of material
14 fact sufficient to withstand summary judgment.” Skillsky v. Lucky Stores, Inc., 893 F.2d
15 1088, 1091 (9th Cir. 1990). The deputy city attorney’s statement cannot create a dispute
16 of material fact.

17 In light of Plaintiff’s own statements captured by the body cam footage, no
18 reasonable jury could find that Defendants lacked probable cause to arrest Plaintiff. See
19 Scott v. Harris, 550 U.S. 372, 380 (2007) (at summary judgment, the court should not
20 adopt the non-moving party’s version of facts if they are blatantly contradicted by the
21 record and no reasonable factfinder could conclude otherwise.) Plaintiff tells
22 Defendants at least three times that he is “armed concealed” over the course of the body
23 cam footage. (Dkt. No. 52, Ex. 4, Rosales Video 1 at timestamp 33:50-34:13.) Plaintiff
24 also repeatedly tells Defendants that he knew he could not carry a concealed firearm

1 without a proper permit, but was doing so “for my personal protection.” (Id. at
2 timestamp 20:40-21:50.) Probable cause is not a high bar. Kaley, 571 U.S. at 338. The
3 Court must only determine whether a reasonable officer, based on information known to
4 them at the time, had probable cause to think that Plaintiff was carrying a concealed
5 firearm without a concealed carry permit. See Blankenhorn, 485 F.3d at 475. In light of
6 the body cam footage, the Court finds that it is an undisputed fact that Plaintiff told
7 Defendants he was carrying a concealed firearm. It is undisputed that Plaintiff told
8 Defendants he did not have a concealed carry permit. Defendants had reason to believe
9 that Plaintiff was breaking the law because he had told Defendants he was carrying a
10 concealed firearm without a concealed carry permit. That is all that is necessary for
11 probable cause.

12 **D. Qualified Immunity**

13 Defendants assert that they are entitled to qualified immunity. (Dkt. No. 52 at
14 10.) The Court has found that there was no constitutional violation, so the question of
15 qualified immunity need not be decided. See Dehne v. City of Reno, 222 Fed. App’x 560,
16 562 (9th Cir. 2007) (“The issue of qualified immunity does not arise where there was no
17 violation of a statutory or constitutional right.”); see also C.F. v. Capistrano Unified Sch.
18 Dist., 656 F. Supp. 2d 1190, 1194 (C.D. Cal. 2009), aff’d sub nom. C.F. ex rel. Farnan v.
19 Capistrano Unified Sch. Dist., 654 F.3d 975 (9th Cir. 2011) (a finding that there was no
20 constitutional violation means the qualified immunity defense is moot). The Court
21 declines to address the parties’ qualified immunity arguments.

22 **V. LEAVE TO AMEND**

23 Plaintiff requests leave to amend his Complaint (the “Request”) to add a
24 malicious prosecution claim within his Opposition. (Dkt. No. 57 at 20.) Defendants’

1 Reply does not address the Request. In assessing whether a case should be dismissed
2 with prejudice and without leave to amend, five factors should be considered: (1) bad
3 faith; (2) undue delay; (3) prejudice to the opposing party; (4) futility of amendment;
4 and (5) whether the plaintiff has previously amended his complaint. Nunes v. Ashcroft,
5 375 F.3d 805, 808 (9th Cir. 2004). The Court has found that Defendants had probable
6 cause to arrest Plaintiff. Probable cause "is an absolute defense to malicious
7 prosecution." Lassiter v. City of Bremerton, 556 F.3d 1049, 1054-55 (9th Cir. 2009).
8 Amendment would be futile because Plaintiff cannot state a claim for malicious
9 prosecution. The Court denies the Request.

10 **VI. CONCLUSION**

11 For the foregoing reasons, it is recommended that the District Judge issue an
12 Order (1) accepting this Report and Recommendation; (2) granting the Motion for
13 Summary Judgment, (Dkt. No. 52); (3) dismissing the case with prejudice; and
14 (4) entering judgment accordingly.

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16 IT IS SO ORDERED.

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18 Dated: December 28, 2023

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/s/ Autumn D. Spaeth
THE HONORABLE AUTUMN D. SPAETH
United States Magistrate Judge

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UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

JAN 29 2026

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

JOHN DEONARINE,

Plaintiff - Appellant,

v.

MONICA AGUILAR, Erroneously Sued As
Lopez; et al.,

Defendants - Appellees.

No. 24-3665

D.C. No.

2:22-cv-03353-JLS-ADS

Central District of California,

Los Angeles

ORDER

Before: SCHROEDER, RAWLINSON, and NGUYEN, Circuit Judges.

The petition (Docket Entry No. 47) for panel rehearing is denied.

No further filings will be entertained in this closed case.

APPENDIX

D

**Additional material
from this filing is
available in the
Clerk's Office.**