

JUN 24 2008

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

ALEXIS CASTILLO,

Plaintiff - Appellant

v.

CITY AND COUNTY OF SAN
FRANCISCO; PERRY HOLLIS, Officer;
SCANNLAN; KASTEL; COUNTY OF
SAN METEO; RON ROTH; DAVID
SMITH; SHERYL WOLCOTT, District
Attorney,

Defendants - Appellees.

No. 06-16087

D.C. No. CV-05-00284-WHA

MEMORANDUM*

Appeal from the United States District Court
for the Northern District of California
William H. Alsup, District Judge, Presiding

Argued and Submitted March 12, 2008
San Francisco, CA

Before: REINHARDT, NOONAN and FISHER, Circuit Judges

Appellant Alexis Castillo (“Castillo”) brought this action under 42 U.S.C. §
1983 against the City and County of San Francisco, the County of San Mateo, and

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

several individual defendants (“appellees”), alleging false arrest in violation of the Fourth Amendment and California state law. The district court granted summary judgment to the appellees. We have jurisdiction under 28 U.S.C. § 1291, and we affirm.

To determine whether the officers had probable cause to arrest, we consider “whether at that moment the facts and circumstances within [the officers’] knowledge . . . were sufficient to warrant a prudent man in believing that the petitioner had committed or was committing a criminal offense.” *Beck v. Ohio*, 379 U.S. 89, 91 (1964). A police officer’s “subjective reason for making [an] arrest need not be the criminal offense as to which the known facts provide probable cause.” *Devenpeck v. Alford*, 543 U.S. 146, 153 (2004); *see also id.* (“[A]n arresting officer’s state of mind (except for the facts that he knows) is irrelevant to the existence of probable cause.”)

We conclude that the police officers had probable cause to arrest Castillo for violating California Penal Code § 12020, which makes it a crime for a person to “carr[y] concealed upon his or her person any dirk or dagger.” Although the statute is susceptible to some silly interpretations, Castillo concedes that the item found in his carry-on luggage could be construed as a “dirk” or “dagger” under the statute. The item was not found in his clothing or on his body, but some California courts

have interpreted “concealed upon his . . . person” to include items carried inside bags or suitcases. *See People v. Blackshire*, No. BA266368, 2006 WL 2948975 (Cal. Ct. App. Oct. 17, 2006); *cf. People v. Dunn*, 132 Cal. Rptr. 921 (Cal. App. Dep’t Super. Ct. 1976). Further, California courts have interpreted the definitional language in § 12020(c)(24), which states that the item must be “capable of ready use as a stabbing weapon,” to refer to the item’s intrinsic properties – such as whether it could be used as a stabbing weapon without intervening mechanical manipulation – and not its accessibility. *See People v. Luke W.*, 88 Cal. App. 4th 650, 656 (Cal. Ct. App. 2001). Castillo does not dispute that the item was capable of ready use as a stabbing weapon in its unaltered state.

In the alternative, even if the officers lacked probable cause to arrest Castillo under California Penal Code § 12020, we conclude that they would be entitled to qualified immunity because it was not “clearly established” under California law that Castillo’s actions were not criminal. *See Rodis v. City & County of San Francisco*, 499 F.3d 1094, 1100 (9th Cir. 2007). Given that some of California’s courts have given a broad construction to the language of § 12020, these courts “failed to provide the officers in this case with the requisite level of guidance to put them on notice that [their conduct] in these circumstances” violated Castillo’s

Fourth Amendment rights. *See Boyd v. Benton County*, 374 F.3d 773, 783 (9th Cir. 2004).

An objectively reasonable police officer could have believed Castillo was committing a criminal offense, and so there was probable cause to arrest him under the Fourth Amendment and California state law. Further, even if Castillo's rights were violated, the officers are entitled to qualified immunity because the law was not clearly established. Thus, the individual defendants are not liable under § 1983. Lastly, Castillo has not raised any issue of triable fact as to whether the entity defendants failed to train their officers in a way that showed "deliberate indifference" to his rights. *See Mateyko v. Felix*, 924 F.2d 824, 826 (9th Cir. 1990).

AFFIRMED.