

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

JULIAN L. RUSSELL,

Plaintiff,

vs.

CIVIL ACTION
No. 11-3088-SAC

SCOTT MICHAEL PROFFITT, et al.,

Defendants.

MEMORANDUM AND ORDER

This matter is a civil rights action filed pursuant to 42 U.S.C. § 1983 by a prisoner in state custody. By its Memorandum and Order dated June 23, 2011, the court directed plaintiff to submit a certified financial statement in support of his application for leave to proceed in forma pauperis, to amend his complaint to support the claims of discrimination and racial profiling in a November 2010 traffic stop that culminated in his arrest, and to clarify his claim against the Kansas Highway Patrol (KHP).

A complaint must contain enough "facts to state a claim to relief that is plausible on its face" and the factual allegations "must be enough to raise a right to relief above the speculative level." *Bell Atlantic Corp. v. Twombly*, 550 U.S.

544, 555 (2007)(citations omitted). "Once a claim has been stated adequately, it may be supported by showing any set of facts consistent with the allegations in the complaint." *Id.* at 562. And, while the federal rules do not require a detailed statement of facts, "'a plaintiff's obligation to provide the 'grounds' of his 'entitlement to relief' requires more than labels and conclusions, and a formulaic recitation of a cause of action's elements will not do.'" *Id.*; *Ashcroft v. Iqbal*, ---U.S. ---, ---, 129 S.Ct. 1937, 1949 (2009)("Threadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice.").

Plaintiff filed a timely response. However, he has filed no financial certificate and has provided no clarification for his claim against the KHP. In support of his claims concerning the traffic stop, he provides the report prepared by Trooper Proffitt, his affidavit for probable cause, and a portion of the transcript from the preliminary hearing in *State of Kansas v. Russell*, Case No. 10-CR-160, District Court of Marion County, Kansas. (Doc. 5, Attach.)

The court has reviewed these documents but finds no support in them for plaintiff's claims of discrimination or racial profiling. Rather, the transcript suggests Trooper Proffitt saw plaintiff's car cross the center line and stopped him. After he

approached the car, he detected the smell of burnt marijuana, and a subsequent search of the vehicle revealed the burnt remains of marijuana in the ashtray, approximately 1.5 pounds of marijuana in a bag concealed under a seat, and a handgun. Nothing, however, supports the claim that the stop was discriminatory or the result of profiling.

Accordingly, because plaintiff has failed to provide support for his claims against Trooper Proffitt, has failed to clarify any basis for his claim against the Kansas Highway Patrol, and has failed to supply a financial certificate the court concludes this matter must be dismissed.

IT IS, THEREFORE, BY THE COURT ORDERED this matter is dismissed for failure to state a claim for relief.

IT IS FURTHER ORDERED plaintiff's motion for leave to proceed in forma pauperis (Doc. 2) is denied.

A copy of this order shall be transmitted to the plaintiff.

IT IS SO ORDERED.

Dated at Topeka, Kansas, this 11th day of August, 2011.

S/ Sam A. Crow
SAM A. CROW
United States Senior District Judge