

**NOT TO BE PUBLISHED IN OFFICIAL REPORTS**

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA**

**FOURTH APPELLATE DISTRICT**

**DIVISION TWO**

IGNACIO CORTES,

Plaintiff and Appellant,

v.

RIVERSIDE COUNTY SHERIFF'S  
DEPARTMENT et al.,

Defendants and Respondents.

E080424

(Super.Ct.No. CVPS2202172)

OPINION

APPEAL from the Superior Court of Riverside County. Manuel Bustamante, Jr.,  
Judge. Reversed with directions.

Law Office of Joel W. Baruch and Joel W. Baruch for Plaintiff and Appellant.

Cole Huber, Nicole R. Roggeveen; Arias & Lockwood and Christopher D.

Lockwood for Defendants and Respondents.

## I. INTRODUCTION

Plaintiff and appellant Ignacio Cortes appeals from the judgment dismissing his first amended complaint (the FAC), after the trial court sustained general demurrers to the FAC, without leave to amend, by defendants and respondents, County of Riverside (County) and Deputy James Knudsen, a deputy county sheriff and county employee. The FAC alleges a single cause of action for “false arrest/false imprisonment” against County, Deputy Knudsen, and Does 1 through 20 (the Doe defendants). The false arrest allegedly occurred at or about 7:00 p.m. on July 9, 2021 in connection with an arson investigation.

Cortes claims the court erroneously dismissed the FAC, without leave to amend, against County, Deputy Knudsen, and the Doe defendants. County and Deputy Knudsen agree the FAC was erroneously dismissed against the Doe defendants but argue the FAC was properly dismissed, without leave to amend, against themselves.

We conclude that the FAC states a cause of action for false arrest against the Doe defendants, and a vicarious liability claim against the County as the Doe defendants’ employer. (Govt. Code, § 815.2.) But the FAC does not state a false arrest claim against Deputy Knudsen, and Cortes had not demonstrated a reasonable possibility that the FAC can be amended to state a false arrest claim or any other claim against Deputy Knudsen. Thus, we reverse the judgment of dismissal and remand the matter to the superior court with directions to enter a new order (1) sustaining Deputy Knudsen’s general demurrer to the FAC, without leave to amend, and (2) overruling County’s general demurrer.

## II. FACTS AND PROCEDURE

### A. *The Allegations of the FAC*

On June 3, 2022, Cortes filed the original complaint in this action, alleging three causes of action against County, Deputy Knudsen, “Deputy S. Garcia,” and Does 1 through 20. On August 24, Cortes filed the FAC, alleging a first cause of action against all defendants, styled as, “False Arrest/False Imprisonment—Warrantless Arrest/Detention Without Probable Cause. . . ,” and second and third causes of action against the County and Does 1 through 20 for “Use of Excessive Force in Effecting Stop/Detention/Arrest Without Probable Cause. . . .” (second) and “Bane Act Violations—Civil Code Section 52.1 et seq.” (third). In September 2022, Cortes dismissed Garcia and the second and third causes of action, without prejudice, leaving only the first cause of action for “false arrest/false imprisonment” pending against County, Deputy Knudsen, and Does 1 through 20.

The FAC alleges the following: Deputy Knudsen and the Doe defendants were County employees, acting within the scope of their employment in doing the things alleged, and Deputy Knudsen was a member of the “joint task force” involved in the July 9, 2021 arrest of Cortes. Cortes owns a restaurant in Indio and had been “an upstanding member of the business community in Indio for at least 17 years” before his July 9 arrest. Cortes had never before been handcuffed or arrested.

On July 4, 2021, a fire broke out at a gas station and convenience store, which were under construction across the street from Cortes’s restaurant. Cortes “had nothing to do with the fire,” and his restaurant had surveillance cameras which were “focused on”

his “property and building and not on the gas station.” On July 9, “plain-clothes defendant Deputy Knudsen came to” Cortes’s restaurant and, without identifying himself, questioned Cortes “for 30-45 minutes” about the fire and “insinuated” Cortes was “a potential suspect for setting the fire.”

After questioning Cortes, Deputy Knudsen identified himself and asked to view videos taken at the time of the fire from Cortes’s surveillance cameras. Cortes told Deputy Knudsen that Cortes did not “ ‘know much about technology,’ ” but Deputy Knudsen could view the videos after Cortes’s brother arrived at the restaurant around noon. “After the noon hour on July 9, 2021, [d]efendant [Deputy] Knudsen and another law enforcement officer in plain-clothes returned to the restaurant.” Cortes “cooperated” and asked his brother to show the videos to Deputy Knudsen and the other deputy.

“Both defendant deputies watched and played back the video for about four hours and, while they were watching the video, they both questioned [Cortes] and insinuated that he was lying about the fire. At about 4:00 p.m., [Cortes] asked the deputies to leave because he had an appointment. Both deputies did leave, but they were angry and threatened [Cortes] with arrest and seizure of his personal property.”<sup>1</sup>

“[A]t or about 7:00 p.m.” on July 9, 2021, when Cortes “was at or near” the intersection of California Highway 111 and Monroe in Indio, he was suddenly surrounded by “several police cars and at least 10 uniformed deputies from the County of

---

<sup>1</sup> The FAC further alleged that, “when speaking to [d]efendant Deputy Knudsen, [Cortes] was racially profiled and threatened with arrest for hiring illegal aliens in his restaurant.” Deputy Knudsen claimed Cortes “voluntarily signed” a form titled “Consent to Search Computer Equipment/Electronic Data,” but Cortes denied signing the form.

Riverside Sheriff's Department." He was "forcibly placed under arrest for arson" and "shoved into the back of the police car while handcuffed and without his head being protected." He was also "threatened with physical harm before he was handcuffed and his vehicle was searched without a warrant and without consent and without probable cause. [He] was then forcibly transported to a police substation somewhere in Palm Desert and questioned for about three hours and then released. [His] property, consisting of his cell phone, driver's license and hard drive, was confiscated and have never been returned to [him]." Cortez "later learned that, on July 9, 2021, Deputy Knudsen was the affiant on a search warrant that was obtained [issued] at 8:18 p.m. after [Cortes] had been arrested."<sup>2</sup>

*B. The County's and Deputy Knudsen's General Demurrers to the FAC*

In September 2022, County and Deputy Knudsen filed a general demurrer to the FAC, claiming its sole cause of action for "false arrest/false imprisonment" did not state facts sufficient to constitute any cause of action against County or Deputy Knudsen. (Code Civ. Proc., § 430.10, subd. (e).) County and Deputy Knudsen also asked the court to take judicial notice of a search warrant, issued at 8:18 p.m. on June 9, 2021, authorizing the search of Cortes's residence and business. According to the warrant affidavit, the object of the residence search was to retrieve Cortes's cellular phone, and

---

<sup>2</sup> On December 6, 2021, Cortes filed a claim for damages with County pursuant to the Government Tort Claims Act (Govt. Code, § 810 et seq.), claiming \$250,000 in personal and property damages based on the July 9, 2021 incident. (See *Stuart v. Cnty. Of Riverside* (C.D. Cal., Aug. 14, 2023, 2:22-cv-00701-SPG-JEM) 2023 U.S. Dist. Lexis 142821, pp. \*5-\*6; Govt. Code, §§ 905, 910.) County rejected the claim in a letter dated December 7, 2021.

the object of the business search was to retrieve a DVR system located in the office.

Deputy Knudsen was the warrant affiant.<sup>3</sup> Cortes filed an opposition to the demurrer and objected to the request for judicial notice. The County and Deputy Knudsen filed a reply.

### C. *The Trial Court's Ruling*

In a tentative ruling, which became its final ruling, the court took judicial notice of the search warrant<sup>4</sup> and sustained the County's and Deputy Knudsen's general demurrer without leave to amend. The court noted that the County and Deputy Knudsen were each claiming that neither of them were directly liable to Cortes for the alleged false arrest, and the County was also claiming it was not vicariously liable to Cortes through the acts or omission of its employee, Deputy Knudsen.

The court reasoned that, under the Government Tort Claims Act (Govt. Code, § 810 et. seq.), the County's "direct liability" for the tort of false arrest had to be based on statute, and the FAC alleged no facts or statute establishing the County's direct liability. The court also concluded the FAC failed to state a cause of action for false arrest (direct

---

<sup>3</sup> In the warrant affidavit, Deputy Knudsen noted that the residence search would "only" be necessary if Cortes was "at the residence and refuses to open the door for us to retrieve his cellular phone. If the phone is retrieved prior to [Cortes] arriving home and evidence in the phone leads to the residence being a part of the investigation and possible evidence being found in the residence, then the task force will need to go to this location as well."

<sup>4</sup> A court may take judicial notice of the existence, date and time of issuance, and scope of a search warrant, but not the truth of statements in the warrant affidavit and probable cause statement. (*Arce v. Kaiser Foundation Health Plan, Inc.* (2010) 181 Cal.App.4th 471, 482 ["While we may take judicial notice of court records and official acts of state agencies (Evid. Code, § 452, subs. (c), (d)), the truth of matters asserted in such documents is not subject to judicial notice."].)

liability) against Deputy Knudsen because the FAC did not allege Deputy Knudsen personally arrested Cortes on July 9, 2021 or that Deputy Knudsen was present when Cortes was arrested. Instead, the FAC alleged that “ ‘10 uniformed,’ ” and “unidentified” County sheriff’s deputies arrested Cortes. The court also ruled that the false arrest claim against Deputy Knudsen failed because the FAC did not allege Cortes was arrested, but instead alleged that Cortes “was questioned and released (and not, in fact, arrested).”

Next, the court ruled that that, “to the extent” the FAC was alleging Cortes was unlawfully *detained*, but not arrested, Cortes’s false arrest claim against Deputy Knudsen failed under *Mich. v. Summers* (1981) 452 U.S. 692, which held, “a warrant to search for contraband founded on probable cause implicitly carries with it the limited authority to detain the occupants of the premises while a proper search is conducted.” (*Id.* at p. 705.) The court reasoned Deputy Knudsen could not be liable for Cortes’s alleged false arrest, because (1) the FAC alleged Cortes was “detained, questioned, and released within three hours” but not arrested, and (2) under *Mich. v. Summers*, “law enforcement was permitted to detain [Cortes] during the execution of the search warrant, i.e., during the search of his residence (as authorized by the search warrant).” The court also pointed out that “[h]andcuffing does not convert detention into arrest.” Lastly, the court ruled that, because the FAC did not state a claim for false arrest against Deputy Knudsen, the false arrest claim against the County failed “to the extent” it was “based on a theory of vicarious liability,” that is, Deputy Knudsen’s employment as a County sheriff’s deputy.

#### D. *The Judgment of Dismissal and Appeal*

The County and Deputy Knudsen served a proposed judgment dismissing the FAC, with prejudice, as to all defendants, and entering judgment on the FAC in favor of County and Deputy Knudsen. Cortes objected to the proposed judgment, arguing the FAC should not be dismissed against the Doe defendants. Cortes pointed out that the Doe defendants were “identified” in the FAC “as those as yet unknown deputies who physically arrested, or physically participated in the arrest of [Cortes].” Cortes argued the Doe defendants were “still potentially liable” for the false arrest claim alleged in the FAC and there had not been “sufficient time” to ascertain the names of the Doe defendants through discovery.

On November 1, 2022, the court signed the proposed judgment and dismissed the FAC with prejudice, as to all defendants, implicitly overruling Cortes’s objection to the proposed judgment. Cortes filed a timely notice of appeal.

### III. DISCUSSION

#### A. *Standard of Review*

On appeal from a judgment dismissing a complaint after a general demurrer has been sustained without leave to amend, we review the complaint de novo to determine whether it states a cause of action under any legal theory. (*Minnick v. Automotive Creations, Inc.* (2017) 13 Cal.App.5th 1000, 1004.) “The rules by which the sufficiency of a complaint is tested against a general demurrer are well settled. ‘ “ ‘We treat the demurrer as admitting all material facts properly pleaded, but not contentions, deductions or conclusions of fact or law. [Citation.] We also consider matters which may be



judicially noticed.’ [Citation.] Further, we give the complaint a reasonable interpretation, reading it as a whole and its parts in their context. [Citation.] When a demurrer is sustained, . . . without leave to amend, we decide whether there is a reasonable possibility that the defect can be cured by amendment . . . .” ’ ” (*Centinela Freeman Emergency Medical Associates v. Health Net of California, Inc.* (2016) 1 Cal.5th 994, 1010.) We review a trial court’s order sustaining a demurrer without leave to amend for abuse of discretion. (*Salazar v. Target Corp.* (2022) 83 Cal.App.5th 571, 576.)

If there is a reasonable possibility that the defect in the complaint can be cured by amendment, then the trial court abused its discretion in sustaining the demurrer without leave to amend, and we reverse. If not, there has been no abuse of discretion, and we affirm. (*Blank v. Kirwan* (1985) 39 Cal.3d 311, 318.) The burden of proving such a reasonable possibility of amendment “is squarely on the plaintiff.” (*Ibid.*)

#### B. *The Elements of False Arrest*

“ “[F]alse arrest” and “false imprisonment” are not separate torts. False arrest is but one way of committing a false imprisonment . . . .” ’ ” (*Asgari v. City of Los Angeles* (1997) 15 Cal.4th 744, 752, fn.3.) To prevail on a claim for false arrest, a plaintiff must establish three elements: (1) the defendant arrested the plaintiff without a warrant, (2) the plaintiff was harmed, and (3) the defendant’s conduct was a substantial factor in causing the harm. (*Dudgeon v. Cty. of Sonoma* (N.D. Cal., Nov. 18, 2021, No. 19-cv-05615-JCS)

2021 U.S. Dist. Lexis 223201, p. \*42 (*Dudgeon*); *Carcamo v. Los Angeles County Sheriff's Dept.* (2021) 68 Cal.App.5th 608, 618 (*Carcamo*); see CACI No. 1401).<sup>5</sup>

If the plaintiff proves these elements, the defendant has the burden of persuasion to prove the arrest was justified. (*Levin v. United Air Lines, Inc.* (2008) 158 Cal.App.4th 1002, 1018; see CACI No. 1402.) A warrantless arrest is justified when, for example, there is reasonable cause to believe the person arrested has committed a felony, whether in or outside the presence of the arresting officer, or there is reasonable cause to believe the person arrested has committed a misdemeanor in the presence of the arresting officer. (*People v. Donaldson* (1995) 36 Cal.App.4th 532, 537; Pen. Code, § 836, subd. (a).)

### C. *The FAC States a False Arrest Claim Against All Defendants*

#### 1. The Doe Defendants

Cortes claims the FAC alleges sufficient facts to support a tort claim for false arrest against Does 1 through 20 (the Doe defendants); therefore, the court erroneously dismissed the entire FAC and the Doe defendants from the FAC. County and Deputy Knudsen dispute the truth of the FAC's allegations but concede the FAC states a false arrest claim against the Doe defendants.<sup>6</sup>

---

<sup>5</sup> “ ‘False imprisonment involves the intentional confinement of another against the person’s will. The elements are (1) nonconsensual, intentional confinement of a person, (2) without lawful privilege, (3) for an appreciable period of time, however brief.’ ” (*Bocanegra v. Jakubowski* (2015) 241 Cal.App.4th 848, 855.) Penal Code section 236 defines false imprisonment as “the unlawful violation of the personal liberty of another.”

<sup>6</sup> County and Knudsen claim Cortes “falsely alleges that the detention was before the search warrant was issued. To the extent [Cortes] contends he was arrested rather  
[footnote continued on next page]

We agree that the FAC states a cause of action for false arrest against the Doe defendants. The FAC alleges the Doe defendants were sheriff’s deputies, employed by the County of Riverside, acting in the scope of their employment. It alleges that “at or about 7:00 p.m.” on July 9, 2021, Cortes was “at or near” an intersection in Indio, when he was “surrounded by several police cars and at least 10 uniformed” County of Riverside sheriff’s deputies. Cortes was then handcuffed and placed in the back of a police car, his vehicle was searched, and he was “forcibly transported to a police substation somewhere in Palm Desert and questioned for about three hours and then released.” His cell phone, driver’s license, and hard drive were confiscated and were never returned to him.

These allegations support the three elements of a false arrest: they show (1) Cortes was arrested without a warrant, (2) Cortes was harmed, and (3) the Doe defendants’ conduct was a substantial factor in causing the harm. (*Dudgeon, supra*, 2021 U.S. Dist. LEXIS 223201 at \*42.) Indeed, the allegations show Cortes was arrested and not merely detained, or detained in connection with the search warrant that was issued at 8:18 p.m. “An arrest is defined in the Penal Code as ‘taking a person into custody, in a case and in the manner authorized by law.’ ([Pen. Code,] § 834.) It is made by ‘an actual restraint of the person, or by submission to the custody of an officer. ([Pen. Code,]

---

than detained. [Cortes] omitted all of the facts which led to the search warrant and the detention and which would show probable cause to arrest. Defendants concede that these false allegations and the omission of the relevant facts means that the allegations are sufficient for the pleadings stage against the doe defendants. The false allegations against the doe defendants will have to be addressed on summary judgment on remand.”

§ 835.) A detention, on the other hand, has been said to occur ‘if the suspect is not free to leave at will—if he is kept in the officer’s presence by physical restraint, threat of force, or assertion of authority.’ ” (*Evans v. City of Bakersfield* (1994) 22 Cal.App.4th 321, 330, quoting *In re Tony C.* (1978) 21 Cal.3d 888, 895.)

The allegation that at least 10 County sheriff’s deputies took Cortes to a “police substation” against his will, where he was questioned for three hours before he was released, shows Cortes was *arrested*—taken into custody (§ 834)—rather than merely detained. Although “each case must be decided on its own facts,” “actual or threatened physical restraints are the characteristics of a full-blown arrest . . . .” (*In re Tony C.*, *supra*, 21 Cal.3d at p. 895; Pen. Code, § 835.) The FAC also shows Cortes was not detained in connection with the warrant to search his residence (for his cellular phone) and business (for the DVR system), given the FAC alleges, and the search warrant shows, that the search warrant was not issued until 8:18 p.m., after Cortes was arrested at or about 7:00 p.m. Thus, the holding of *Mich. v. Summers*, *supra*, 452 U.S. at p. 705, that “a warrant to search for contraband founded on probable cause implicitly carries with it the limited authority to detain the occupants of the premises while a proper search is conducted[,]” does not apply here.

Cortes claims, and we agree, that the trial court erred in dismissing the FAC against the Doe defendants when the false arrest claim against the Doe defendants was unresolved. Following a successful demurrer by a named defendant, it is appropriate to dismiss the entire action against the named defendant *and any Doe defendants*, if the basis for the named defendant’s demurrer applies to the Doe defendants. (*Pierce v. San*

*Mateo County Sheriff's Dept.* (2014) 232 Cal.App.4th 995, 1020-1021.) This is not the case here. The FAC states a claim for false arrest against the Doe defendants, independently of its allegations against County and Deputy Knudsen.

2. The County and Deputy Knudsen

Cortes next claims the trial court erroneously sustained the County and Deputy Knudsen's general demurrer to the FAC, and its cause of action against the County and Deputy Knudsen for false arrest. We agree that the court should have overruled the County's demurrer based on the County's potential vicariously liability for the Doe defendants' alleged false arrest of Cortes. As the employer of the Doe defendants (the uniformed sheriff's deputies) who are alleged to have falsely arrested or participated in Cortes's false arrest, the County is vicariously liable to Cortes for the Doe defendants' actions in connection with the alleged false arrest. (*Rodriguez v. County of Los Angeles* (2013) 217 Cal.App.4th 806, 810-812; Govt. Code, § 815.2.) Because the FAC states a claim for false arrest against the Doe defendants, and indicates that the Doe defendants were acting in the scope of their County employment in committing the arrest, the FAC states a vicarious liability claim for the false arrest against County.

We disagree, however, that the FAC states a claim for false arrest against Deputy Knudsen. As the County and Deputy Knudsen point out, the FAC does not allege that Deputy Knudsen falsely arrested Cortes or was involved in Cortes's false arrest. An arrest *by the defendant* is an essential element of the tort of false arrest. (*Carcamo, supra*, 68 Cal.App.5th at p. 616; CACI No. 1401.) The FAC alleged Deputy Knudsen, in plain clothes, visited Cortes's place of business on July 9, 2021 and left the business

around 4:00 p.m. Deputy Knudsen is the affiant of the search warrant that was issued at 8:18 p.m., but nothing in the FAC indicates that Deputy Knudsen arrested Cortes or was involved in Cortes's arrest. Rather, the FAC alleges at least 10 *uniformed* deputies arrested Cortes and participated in Cortes's arrest. Thus, the FAC does not state a false arrest claim against Deputy Knudsen.

Cortes has also failed to demonstrate a reasonable possibility that the FAC can be amended to state a false arrest claim, or any claim, against Deputy Knudsen. (*Blank v. Kirwan, supra*, 39 Cal.3d at p. 318.) In his reply brief, Cortes points out that his government tort claim form, which is attached to the FAC, alleges Deputy Knudsen “*was at the stationhouse where plaintiff was taken following his arrest in his vehicle . . . and was then questioned for three hours.*” (Italics added.) But the form does not allege Deputy Knudsen arrested Cortes or participated in Cortes's arrest. To meet its burden of showing there is a reasonable possibility of amendment, a plaintiff “must submit a proposed amended complaint” or “ ‘enumerate the facts and demonstrate how those facts establish a cause of action.’ ” (*Reid v. City of San Diego* (2018) 24 Cal.App.5th 343, 369; *Stein v. Axis Ins. Co.* (2017) 10 Cal.App.5th 673, 685 [“Plaintiffs offered no amended complaint below, and on appeal adduce no specific facts they could allege to cure the complaint as to the AXIS defendants.”].) Cortes has adduced no additional facts indicating Deputy Knudsen arrested or participated in Cortes's arrest. Thus, leave to amend the FAC to state a false arrest claim, or any claim, against Deputy Knudsen was properly denied. (*Ibid.*)

IV. DISPOSITION

The judgment dismissing the FAC against County, Deputy Knudsen, and the Doe defendants (Does 1 through 20) is reversed. The matter is remanded to the superior court with directions to enter a new order (1) sustaining Deputy Knudsen’s general demurrer to the FAC, without leave to amend, and (2) overruling County’s general demurrer. Cortes shall recover his costs on appeal from County. (Cal. Rules of Court, rule 8.278.)

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

FIELDS  
J.

We concur:

RAMIREZ  
P. J.

McKINSTER  
J.