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3
4 UNITED STATES DISTRICT COURT
5 NORTHERN DISTRICT OF CALIFORNIA

6 JAMI TILLOTSON,
7 Plaintiff,

8 v.

9 CITY OF SAN FRANCISCO, et al.,
10 Defendants.
11

Case No. [15-cv-04014-DMR](#)

**ORDER ON CROSS MOTIONS FOR
SUMMARY JUDGMENT**

Re: Dkt. Nos. 45, 48

12 Plaintiff Jami Tillotson filed a civil rights action claiming that she suffered constitutional
13 violations committed by the City of San Francisco, as well as San Francisco Police Sergeant Brian
14 Stansbury and Officer Brian Kneuker (together, the “Defendant Officers”), in connection with her
15 January 27, 2015 arrest. Defendants now move for summary judgment and Plaintiff moves for
16 partial summary judgment. [Docket Nos. 45 (Defs.’ Mot), 48 (Pl.’s Mot).] Having considered the
17 parties’ oral argument and written submissions, the court grants Defendants’ motion and denies
18 Plaintiff’s motion.

19 **I. BACKGROUND**

20 **A. Factual Background**

21 The following facts are undisputed, unless otherwise noted.

22 At the time of the events in question, Plaintiff Jami Tillotson was a San Francisco Deputy
23 Public Defender. Jaylen Jackson was one of her clients.

24 Sergeant Stansbury is an investigator for the San Francisco Police Department (“SFPD”).
25 Stansbury created a crime alert related to the January 20, 2015 burglary of an office building and
26 attempted burglary of another office building. The crime alert included photos of the two male
27 suspects at one of the buildings taken from a high-definition surveillance video. According to
28 Stansbury, the photos clearly depicted the clothing worn by the suspects in the photos. One

1 suspect wore a dark colored jacket with a horizontal bar across the chest. Stansbury also stated
2 that the suspects' faces were clear enough that they could be identified by someone familiar with
3 them. The crime alert provided a description of the burgundy Dodge Magnum car in which the
4 suspects fled, and included Stansbury's contact information. Stansbury distributed the crime alert
5 to the SFPD via department-wide email.

6 Another SFPD Officer, Edmund Huang, believed that he recognized the two suspects in
7 the crime alert as Jaylen Jackson and Frederick Harris. He emailed that information to Stansbury
8 on January 27, 2015. Later that day, Huang, who was appearing at traffic court at San Francisco's
9 Hall of Justice, saw Jackson and Harris standing outside a courtroom. He observed that Harris
10 was wearing a jacket with a white horizontal stripe, similar to the jacket worn by the suspect in the
11 crime alert photos. Huang took two photos of Jackson and Harris with his cell phone and emailed
12 them to Stansbury, notifying him that the two burglary suspects were presently standing in the
13 hallway at the Hall of Justice. As Huang was departing, he ran into Officer Yamamoto, who
14 worked at Southern Station with Stansbury. Huang told Yamamoto that the suspects pictured in
15 Stansbury's crime alert were at the Hall of Justice, and Yamamoto told Huang that he would relay
16 the message to Stansbury. There is no evidence in the record about whether or when Stansbury
17 received either of Huang's emails. Huang never received a response from Stansbury to either of
18 the emails.

19 Stansbury was scheduled to testify at the Hall of Justice on the same day. While waiting to
20 testify, Stansbury learned from Yamamoto that the crime alert burglary suspects had been seen by
21 Huang in a different courtroom. Stansbury went to that courtroom to see the two men and
22 immediately recognized them as the suspects from the crime alert. According to Stansbury, the
23 men were wearing some of the same clothing that they had been wearing in the crime alert photos.

24 Stansbury left the courtroom and called for a plainclothes unit to follow the suspects to see
25 if they drove the car that had been involved in the burglary. After waiting briefly and receiving no
26 response, Stansbury requested backup uniformed officers to assist him in temporarily detaining
27 Harris and Jackson to identify and photograph them. According to Stansbury, he wanted to take
28 photos of the suspects in order to do a side-by-side comparison with the crime scene photos to

1 make sure that the suspects and clothing matched. He ultimately planned to use the photos to
2 obtain an arrest warrant.

3 Officers responded to the scene. After Jackson and Harris exited the courtroom, Stansbury
4 identified himself as a police officer, informed them that they were being detained, and asked
5 them to stand against the wall. Both suspects complied. Stansbury then asked them for their
6 identification. Around this time, a San Francisco Deputy Public Defender, Landon Davis,
7 observed Stansbury's interactions with Jackson and Harris and approached Stansbury. He
8 identified himself as an attorney and demanded to know why Jackson was being detained by
9 Stansbury, and if he was free to go. In response, Stansbury told Davis that he was detaining
10 Jackson in order to take photos for a police investigation, that Jackson would be free to go in a
11 couple of minutes, and that that was the only information he could give Davis. Stansbury testified
12 that he was concerned that revealing further information could compromise the active
13 investigation of the two men whom he believed to be serial burglars. He asserted that he was
14 concerned that revealing more information could tip off Jackson and Harris about the investigation
15 and potentially cause them to dispose of evidence such as the clothes they were wearing at the
16 time of the burglary, stolen property, and cell phones. Stansbury further testified that he was
17 worried that revealing the specific details of his investigation could compromise the safety of other
18 police officers who would later become involved in the investigation.

19 While this was happening, another San Francisco Deputy Public Defender, Sangeeta
20 Sinha, went to the Hall of Justice's holding tank to tell Plaintiff that officers were interrogating her
21 client outside the courtroom.¹ Plaintiff immediately came out into the hallway and Sinha started
22 to film the officers and suspects with her cell phone.

23 Plaintiff's encounter with Stansbury and eventual arrest was captured on multiple videos
24 taken from approximately the same angle, partially facing the two suspects who are seen standing
25 against the wall, from their left side. Baumgartner Decl., Oct. 6, 2016, Ex. D (Videos 1, 5, 7);
26 Lacy Decl., Oct. 20, 2016, Ex. H (YouTube Video); Lacy Decl., Oct. 6, 2016 (Decl. ISO Pl.'s

27 _____
28 ¹ There is no evidence in the record about the matter(s) in which Plaintiff represented Jackson.

1 MSJ), Ex. A. The videos show Stansbury facing the two men, with Jackson on the left side and
2 Harris on the right. Harris is wearing a dark colored jacket with a horizontal white stripe across
3 the chest. The record also contains a “Combined Incident Video Transcript” from the Office of
4 Citizens Complaints, which appears to be the transcription of two videos taken by Deputy Public
5 Defenders Sinha and Davis. Lacy Decl. Ex. G (Transcript).²

6 The opening of Defendants’ Video 1 shows that Stansbury took notes while speaking to
7 Harris and Jackson. Plaintiff walked over to stand to the left of Jackson, a few feet from the wall,
8 facing Stansbury. Stansbury then told Plaintiff, “[t]his is a police investigation right now. We’ll
9 be done in about 2 minutes. If you’re going to stand here and interrupt, it’s going to take longer,
10 okay.” Transcript. In response, Plaintiff said, “[w]ell I’m counsel so I’d like to be present and can
11 you tell me what he’s being charged with?” She then stepped away from the wall, closer to
12 Stansbury. Stansbury then stated, “[h]e’s not being charged with anything counsel. You’re
13 prolonging the detention. . . . [s]o if you stand aside we can be done with this in minutes.”
14 Transcript. Stansbury turned away and exited the video frame and Plaintiff stepped toward
15 Jackson, standing next to him. A female voice off-camera is heard saying, “Mr. Harris, Mr.
16 Jackson, you don’t have to answer any questions.” Transcript. A few seconds later, Plaintiff
17 walked away from where she was standing next to Jackson and exited the frame. She re-entered
18 the frame about ten seconds later and moved to stand at her client’s left side. Video 1 ends shortly
19 thereafter. The beginning of Video 7 overlaps with the end of Video 1, opening with Plaintiff
20 exiting the frame. After Plaintiff re-entered the frame, she walked to Harris and said “[inaudible]
21 to get your attorney.” Video 7 at 0:16. She then walked back to Jackson, who showed Plaintiff
22 his cell phone while Plaintiff appeared to write something on her hand.

23 About 15 seconds later, Stansbury’s voice is heard saying “I can just take some pictures
24 and you will be free to go.” Transcript. Stansbury appeared to be speaking to Harris, because
25 Harris turned toward the sound of his voice. Plaintiff took a few steps forward and stated, “no,
26 he’s not represented by us, but he’s saying, he’s denying . . .,” while shaking her head. Transcript.

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28

² Neither side objected to the accuracy of the transcript of the videos.

1 At that point, the video shows that Plaintiff had moved a few feet away from the wall, closer to
2 Stansbury and partially in front of Harris. Stansbury is heard saying, “counsel, counsel . . . can I
3 talk to you for a second?” while moving to the left of Plaintiff, to which Plaintiff responded, “sure.
4 I’m right here.” Transcript. According to Stansbury, his “goal was to talk to her off to the side,
5 answer her questions to the best that [he] could, so that [he] could take pictures of Mr. Harris and
6 Mr. Jackson, not have their detention prolonged anymore [sic] than it already had been.”

7 Stansbury Dep. 77.

8 Stansbury then said to Plaintiff, “why don’t you come over here please?” He positioned
9 himself in front of her with his back to the video camera, and said “[I]ook, you can either step
10 aside, we’ll take pictures, we can do this in two minutes. Or we can make this longer.”
11 Transcript. Plaintiff did not move aside and responded, “I’m pretty sure that we’re okay here. We
12 don’t need to have pictures taken. Thank you.” Transcript. Stansbury testified that “at that
13 moment in time, it became very clear to [him] that no matter what [he] did, whether it was trying
14 to talk to her and answer her questions or to de-escalate the situation, she was not going to move
15 out of the way.” Stansbury Dep. 84. The video shows that Stansbury replied to Plaintiff, “I need
16 you to—no, you’re not pretty sure . . . if you continue with this, I will arrest you for resisting . . .
17 [inaudible].” In response, Plaintiff stated, “please do.” Transcript.

18 Plaintiff then said to someone off-camera, “he’s going to arrest me.” Transcript. Taking
19 handcuffs from an officer nearby, Stansbury told Plaintiff, “you are under arrest. Please turn
20 around and put your hands behind your back,” after which she turned and he handcuffed her
21 without apparent incident. Transcript. Another video labeled “YouTube video” shows that after
22 being handcuffed, Stansbury asked the officers, “will one of you guys please take her downstairs
23 and [inaudible].” Transcript. Plaintiff turned back towards Stansbury and said, “[t]here’s no 148
24 here. I’m representing . . . I am representing my . . . I am representing my client here. There is no
25 148. I am not resisting arrest. There is no 148.” Transcript. Another officer, Defendant Kneuker,
26 then asked, “ma’am. Ma’am, please step over here,” and escorted Plaintiff down the hallway,
27 away from the cameras. Transcript. Stansbury then took photos of Jackson and Harris.

28 Video 5 depicts Kneuker holding Plaintiff’s upper arm and escorting her to the stairway

1 and down the stairs to a door marked “SFPD.” Plaintiff testified that Kneuker was holding her
2 “tightly” and that his grip was “rough enough that it jerked [her] body a little bit.” Tillotson Dep.
3 109. She also testified that Kneuker “was holding [her] so tightly that [she] couldn’t move
4 naturally, [and] that [she] was being dragged a little bit.” Tillotson Dep. 115.³

5 The Office of Citizens Complaints (“OCC”) conducted an investigation into a complaint
6 about Plaintiff’s arrest. In a letter to Plaintiff dated December 9, 2015, the OCC summarized its
7 preliminary findings, sustaining Plaintiff’s allegation of “Unwarranted Action against a police
8 officer for making an arrest without cause.” Lacy Decl. Exs. L; M (Complaint Summary Report).
9 It did not sustain Plaintiff’s allegation of “Unnecessary Force against a police officer for using
10 unnecessary force.” Lacy Decl. Ex. L.

11 **B. Procedural History**

12 Plaintiff filed the complaint on September 2, 2015 against the City of San Francisco (“San
13 Francisco), Stansbury, Kneuker, and Sergeant Gary Buckner, Sergeant Douglas Farmer, Officer
14 Patrick Woods, and Officer Matthew Eng. Plaintiff stipulated to dismiss Defendants Buckner,
15 Farmer, Woods, and Eng. See Defs.’ Mot. at 1, 3. Plaintiff alleges the following causes of action:
16 1) 42 U.S.C. § 1983 (“section 1983”) claim for violation of the Fourth Amendment against
17 Stansbury and Kneuker; 2) 42 U.S.C. § 1985 (“section 1985) claim for conspiracy to violate
18 Plaintiff’s civil rights against Stansbury and Kneuker; 3) section 1983 claim for municipal liability
19 against San Francisco; 4) intentional infliction of emotional distress against Stansbury and
20 Kneuker; 5) violation of California’s Bane Act, California Civil Code section 52.1 against
21 Stansbury and Kneuker; 6) assault and battery against Stansbury and Kneuker; and 7) negligence
22 against Stansbury and Kneuker.

23 **II. LEGAL STANDARDS**

24 A court shall grant summary judgment “if . . . there is no genuine dispute as to any material
25 fact and the movant is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(a). The burden
26

27 ³ Both sides refer to Plaintiff’s abrupt stop at the top of the stairway, and Kneuker shouting at her,
28 “ma’am, ma’am.” However, the evidence cited for this, Tillotson’s deposition, is not in the
record.

1 of establishing the absence of a genuine issue of material fact lies with the moving party, see
2 *Celotex Corp. v. Catrett*, 477 U.S. 317, 322-23 (1986), and the court must view the evidence in the
3 light most favorable to the non-movant. See *Scott v. Harris*, 550 U.S. 372, 378 (2007) (citation
4 omitted). A genuine factual issue exists if, taking into account the burdens of production and
5 proof that would be required at trial, sufficient evidence favors the non-movant such that a
6 reasonable jury could return a verdict in that party’s favor. *Anderson v. Libby Lobby, Inc.*, 477
7 U.S. 242, 248. The court may not weigh the evidence, assess the credibility of witnesses, or
8 resolve issues of fact. See *id.* at 249.

9 To defeat summary judgment once the moving party has met its burden, the nonmoving
10 party may not simply rely on the pleadings, but must produce significant probative evidence, by
11 affidavit or as otherwise provided by Federal Rule of Civil Procedure 56, supporting the claim that
12 a genuine issue of material fact exists. *TW Elec. Serv., Inc. v. Pac. Elec. Contractors Ass’n*, 809
13 F.2d 626, 630 (9th Cir. 1987) (citations omitted). In other words, there must exist more than “a
14 scintilla of evidence” to support the non-moving party’s claims, *Anderson*, 477 U.S. at 252;
15 conclusory assertions will not suffice. See *Thornhill Publ’g Co. v. GTE Corp.*, 594 F.2d 730, 738
16 (9th Cir. 1979). Similarly, “[w]hen opposing parties tell two different stories, one of which is
17 blatantly contradicted by the record, so that no reasonable jury could believe it, a court should not
18 adopt that version of the facts” when ruling on the motion. *Scott*, 550 U.S. at 380.

19 Where, as here, the parties have filed cross-motions for summary judgment, “[e]ach
20 motion must be considered on its own merits.” *Fair Hous. Council of Riverside Cty., Inc. v.*
21 *Riverside Two*, 249 F.3d 1132, 1136 (9th Cir. 2001). “In fulfilling its duty to review each cross-
22 motion separately, the court must review the evidence submitted in support of each cross-motion.”
23 *Id.*

24 **III. CLAIMS NO LONGER AT ISSUE**

25 In her opposition to Defendants’ motion, Plaintiff did not address and/or conceded her
26 claims for section 1985 conspiracy, municipal liability, negligence, assault and battery, and
27 punitive damages. Accordingly, those claims are dismissed with prejudice.
28

1 **IV. DISCUSSION**

2 **A. Fourth Amendment Claims**

3 **1. Unlawful Seizure**

4 **a. Legal Framework**

5 “The Fourth Amendment prohibits ‘unreasonable searches and seizures’ by the
6 Government.” *United States v. Arvizu*, 534 U.S. 266, 273 (2002) (citing *Terry v. Ohio*, 392 U.S.
7 1, 9 (1968)). In *Terry*, the Supreme Court elaborated a three-tier structure of Fourth Amendment
8 jurisprudence. See *United States v. Erwin*, 803 F.2d 1505, 1508 (9th Cir. 1986) (summarizing
9 *Terry*). “The first tier consists of those law enforcement activities, such as police questioning
10 conducted pursuant to valid consent, that do not constitute searches or seizures governed by the
11 Fourth Amendment.” *Erwin*, 803 F.2d at 1508.

12 “The second tier consists of limited intrusions such as pat-downs of the outer clothing (or
13 ‘frisks’) and brief investigative detentions. To justify these ‘limited’ searches and seizures, law
14 enforcement officials must possess a reasonable, articulable suspicion that the suspect has recently
15 committed a crime or is about to commit one.” *Id.* During a so-called *Terry* stop, police officers
16 are entitled to employ reasonable measures to protect themselves and others in potentially
17 dangerous situations. *Allen v. City of Los Angeles*, 66 F.3d 1052, 1056-57 (9th Cir. 1995).
18 However, “[i]nvestigative stops based upon suspicion short of probable cause are . . .
19 constitutionally permissible only where the means utilized are the least intrusive reasonably
20 available.” *Kraus v. Pierce Cty.*, 793 F.2d 1105, 1108 (9th Cir. 1986). “[A]n investigative
21 detention must be temporary and last no longer than is necessary to effectuate the purpose of the
22 stop. Similarly, the investigative methods employed should be the least intrusive means
23 reasonably available to verify or dispel the officer’s suspicion in a short period of time.” *Florida*
24 *v. Royer*, 460 U.S. 491, 500 (1983).

25 “The third tier comprises ‘full scale’ searches or arrests requiring probable cause.” *Erwin*,
26 803 F.2d at 1508; *Kraus*, 793 F.2d at 1108 (“Where more than a limited intrusion occurs, an arrest
27 occurs and probable cause is required.”).

28 **b. Analysis**

1 Plaintiff moves for summary judgment on the ground that there was no probable cause for
2 her arrest. Defendants also move for summary judgment on this claim, arguing that the arrest was
3 supported by probable cause. In the alternative, Defendants assert that they are entitled to
4 summary judgment based on qualified immunity.

5 “Under the Fourth Amendment, a warrantless arrest requires probable cause.” *United*
6 *States v. Lopez*, 482 F.3d 1067, 1072 (9th Cir. 2007) (citing *Michigan v. Summers*, 452 U.S. 692,
7 700 (1981)). Probable cause to arrest exists when officers have knowledge or reasonably
8 trustworthy information sufficient to lead a person of reasonable caution to believe that an offense
9 has been or is being committed by the person being arrested. *Id.* (citing *Beck v. Ohio*, 379 U.S.
10 89, 91 (1964)). “Alternatively, this court has defined probable cause as follows: when ‘under the
11 totality of circumstances known to the arresting officers, a prudent person would have concluded
12 that there was a fair probability that [the defendant] had committed a crime.’” *Id.* (citing *United*
13 *States v. Smith*, 790 F.2d 789, 792 (9th Cir. 1986). While conclusive evidence of guilt is not
14 necessary under this standard to establish probable cause, “[m]ere suspicion, common rumor, or
15 even strong reason to suspect are not enough.” *McKenzie v. Lamb*, 738 F.2d 1005, 1008 (9th Cir.
16 1984) (citing *Henry v. United States*, 361 U.S. 98, 101 (1959)). “Probable cause is lacking if the
17 circumstances relied on are susceptible to a variety of credible interpretations not necessarily
18 compatible with nefarious activities.” *Gasho v. United States*, 39 F.3d 1420, 1432 (9th Cir. 1994)
19 (citations omitted).

20 Probable cause must be determined at the time the arrest is made. Facts learned or
21 evidence obtained as a result of a stop or arrest cannot be used to support probable cause unless
22 they were known to the officer at the moment the arrest was made. *City of Portland*, 73 F.3d at
23 236 (citing *Wong Sun v. United States*, 371 U.S. 471, 482 (1963)). “Where the facts or
24 circumstances surrounding an individual’s arrest are disputed, the existence of probable cause is a
25 question for the jury.” *Harper v. City of Los Angeles*, 533 F.3d 1010, 1022 (9th Cir. 2008) (citing
26 *McKenzie*, 738 F.2d at 1008).

27 Here, the Defendant Officers contend that probable cause existed to arrest Plaintiff for
28 violation of California Penal Code section 148(a)(1). Section 148 provides that a person “who

1 willfully resists, delays, or obstructs any . . . peace officer . . . in the discharge or attempt to
2 discharge any duty of his or her office or employment” is guilty of a misdemeanor. Cal. Penal
3 Code § 148(a)(1). While section 148(a)(1) is “often referred to as a statute prohibiting ‘resisting
4 arrest’ . . . the statutory prohibition is much broader than merely resisting arrest.” Hooper v. Cty.
5 of San Diego, 629 F.3d 1127, 1130 (9th Cir. 2011). The elements of the crime are as follows: “(1)
6 the defendant willfully resisted, delayed, or obstructed a peace officer, (2) when the officer was
7 engaged in the performance of his or her duties, and (3) the defendant knew or reasonably should
8 have known that the other person was a peace officer engaged in the performance of his or her
9 duties.” Yount v. City of Sacramento, 43 Cal. 4th 885, 894-95 (2008) (citation omitted). “The
10 offense is a general intent crime, proscribing only the particular act (resist, delay, obstruct) without
11 reference to an intent to do a further act or achieve a future consequence.” In re Muhammed C.,
12 95 Cal. App. 4th 1325, 1329 (2002). While section 148(a)(1) “is most often applied to the
13 physical acts of a defendant . . . [it] ‘is not limited to nonverbal conduct involving flight or forcible
14 interference with an officer’s activities.’” Id. (citation omitted) (quoting People v. Quiroga, 16
15 Cal. App. 4th 961, 968 (1993)). Nonetheless, “the statute must be applied with great caution to
16 speech.” Quiroga, 16 Cal. App. at 968.

17 **i. Plaintiff’s Motion for Summary Judgment**

18 Plaintiff moves for summary judgment on her wrongful arrest claim. She argues that the
19 Defendant Officers lacked probable cause to arrest her for violating section 148(a)(1) for two
20 reasons.

21 First, she argues that Stansbury’s investigation of Jackson and Harris was “unlawful”
22 because Officer Huang had already taken photographs of the suspects at the Hall of Justice and
23 sent them to Stansbury. Additionally, Stansbury described the photographs that he used in the
24 crime alert as “high quality” and sufficiently clear to enable him to immediately recognize Jackson
25 and Harris when he saw them in the Hall of Justice. Therefore, Plaintiff argues, Stansbury already
26 had all the information he needed for his investigation of Jackson and Harris. Since any detention
27 of the suspects was unnecessary and “harassing,” Plaintiff “did not interrupt any legitimate police
28 investigation.” Pl.’s Mot. at 7-8. This argument is without merit. Plaintiff identifies no law that

1 prohibited Stansbury from taking additional photographs of the suspects as part of his
2 investigation. There is also no evidence in the record that Stansbury had received or seen Huang’s
3 photos at the time he detained Jackson and Harris. Moreover, the question of whether Stansbury
4 needed to take additional photos of Jackson and Harris is not relevant to the question of whether
5 Stansbury had probable cause to arrest Plaintiff for delaying or obstructing his investigation in
6 violation of section 148(a)(1). The standard for evaluating the lawfulness of the arrest is whether
7 Stansbury had a reasonable belief that Plaintiff committed the offense of delaying or obstructing
8 his investigation. See Lopez, 482 F.3d at 1072; see also Terry, 392 U.S. at 27-28.

9 Plaintiff next asserts that she is entitled to summary judgment on her wrongful arrest claim
10 because the Defendant Officers arrested her for engaging in protected speech, to wit, asserting
11 Harris’s right to refuse to identify himself by being photographed. She argues that the First
12 Amendment protected her right to object, and that engaging in protected speech alone may not
13 serve as the basis for a violation of section 148(a)(1). Plaintiff cites SFPD General Order 5.03,
14 which provides that a person’s “refusal or failure to produce identification is not unlawful, and an
15 officer may not threaten a person with arrest solely for his or her refusal to identify himself or
16 herself.” Lacy Decl. ISO Pl.’s MSJ Ex. E.⁴

17 “The First Amendment protects a significant amount of verbal criticism and challenge
18 directed at police officers.” Houston v. Hill, 482 U.S. 451, 461 (1987). The Ninth Circuit has
19 observed that “while police . . . may resent having obscene words and gestures directed at them,
20 they may not exercise the awesome power at their disposal to punish individuals for conduct that
21 is not merely lawful, but protected by the First Amendment.” Duran v. City of Douglas, Ariz., 904
22 F.2d 1372, 1378 (9th Cir. 1990); see also Mackinney v. Nielsen, 69 F.3d 1002, 1007 (9th Cir.
23 1995) (“verbal challenges to the police are protected. . . . verbal protests [can] not support an
24 arrest under § 148.”).

25 Notwithstanding this principle, given the existence of material factual disputes, Plaintiff is

26 _____
27 ⁴ Stansbury testified that he was familiar with General Order 5.03 and that he understood that
28 Jackson and Harris had the “right and prerogative not to [identify themselves] if they chose to do
so.” Stansbury Dep. 103-104.

1 not entitled to summary judgment on the theory that she was arrested for verbally objecting to
2 Stansbury taking photos of Harris. The video of the incident shows that after Stansbury said to
3 Harris, “I can just take some pictures and you will be free to go,” Plaintiff moved toward
4 Stansbury, and placed herself partially in front of Harris, while voicing her objection and shaking
5 her head. Video 7 at 1:22-28. The Defendant Officers argue that this evidence shows that
6 Stansbury arrested Plaintiff for her physical interference with his attempt to photograph Harris,
7 and not her verbal challenge. While Plaintiff argues that she “did not step in front of Mr. Harris to
8 block [Stansbury’s] view,” (Pl.’s Opp’n at 16), she does not dispute the fact that she stepped closer
9 to the two men while objecting to Harris’s being photographed. The Defendant Officers’
10 argument is buttressed by the fact that Stansbury did not attempt to arrest any other deputy public
11 defender who voiced objection, even though Davis questioned Stansbury about his detention of
12 Jackson, and another person (presumably an attorney) is heard off-camera telling Harris and
13 Jackson that they don’t have to answer any questions. Therefore, whether Plaintiff was arrested
14 for protected speech alone is disputed.⁵ For these reasons, Plaintiff’s motion for summary
15 judgment is denied.

16 **ii. Defendants’ Motion for Summary Judgment**

17 The Defendant Officers contend that they are entitled to summary judgment on Plaintiff’s
18 wrongful arrest claim because the undisputed facts show that Plaintiff delayed and obstructed
19 Stansbury’s investigation by requiring him to turn his attention to her and away from the subjects
20 of his investigation. Defendants concede that speech alone is insufficient to establish probable
21 cause for a violation of section 148(a)(1), but argue that in addition to her words of opposition, she
22 repeatedly refused to step aside, and also physically obstructed the investigation by positioning
23 herself between Stansbury and Harris, the suspect he intended to photograph.

24
25 ⁵ Additionally, the footage of the incident does not show that Harris actually objected to being
26 photographed or identifying himself. It also does not show that Plaintiff objected to Harris
27 identifying himself to the officers. According to the video and transcript, in relation to
28 Stansbury’s statement about photographing Harris, Plaintiff said only, “no, he’s not represented by
us, but he’s saying, he’s denying . . .”, and “[w]e don’t need to have pictures taken.” Video 7 at
1:22-1:28, 1:40; Transcript. Thus, it is not clear that Plaintiff and Harris actually invoked Harris’s
right not to identify himself, so this fact is disputed.

1 Video 1 shows that when Plaintiff arrived at the scene of the detention, Stansbury informed
2 her, “[t]his is a police investigation right now. We’ll be done in about 2 minutes. If you’re going
3 to stand here and interrupt, it’s going to take longer, okay.” Plaintiff responded by identifying
4 herself as Jackson’s counsel and stating, “I’d like to be present and can you tell me what he’s
5 being charged with?” Video 1 at 1:18. Stansbury then stated, “[h]e’s not being charged with
6 anything counsel. You’re prolonging the detention. . . . [s]o if you stand aside we can be done
7 with this in minutes.” Transcript. After Stansbury turned away from Plaintiff and exited the
8 frame, Plaintiff returned to her client’s side. A short time later, Stansbury’s voice is heard on
9 Video 7 saying, “I can just take some pictures and you will be free to go.” Video 7 at :1:20;
10 Transcript. The video shows Harris and Plaintiff turning towards the sound of Stansbury’s voice,
11 with Plaintiff moving forward and to her left, away from her client and closer to Harris. She then
12 told Stansbury, “no, he’s not represented by us, but he’s saying, he’s denying . . .”, while shaking
13 her head. Video 7 at 1:22-1:28; Transcript. At that point, the video shows that Plaintiff moved
14 away from the wall toward Stansbury and partially in front of Harris. Id. After that, Stansbury
15 twice asked to speak with Plaintiff, and then said “[l]ook, you can either step aside, we’ll take
16 pictures, we can do this in two minutes. Or we can make this longer.” Video 7 at 1:30;
17 Transcript. In response, Plaintiff did not move aside and stated, “I’m pretty sure that we’re okay
18 here. We don’t need to have pictures taken. Thank you.” Video 7 at 1:40; Transcript. Following
19 this exchange, Stansbury threatened, “if you continue with this, I will arrest you for resisting . . .
20 [inaudible],” to which Plaintiff responded, “please do.” Transcript; Video 7 at 1:43.

21 The Defendant Officers contend that the evidence shows that Stansbury had probable cause
22 to arrest Plaintiff for delaying or obstructing his investigation by physically and verbally
23 interfering with his attempts to photograph the suspects, citing *Muhammed C.*, 95 Cal. App. 4th at
24 1330, in support. In *Muhammed C.*, a minor refused repeated requests by police officers to step
25 away from the window of a patrol car where the minor was speaking to a suspect who had been
26 placed in the car. Id. at 1328. One of the officers testified that he had to stop processing the
27 suspect’s car in order to “deal with” the minor. Id. The court upheld the minor’s conviction for
28 violating section 148, holding that the trial court reasonably inferred that the minor willfully

1 delayed the officers' performance of their duties based on his refusal to obey the officers' repeated
2 requests that he step away from the patrol car. *Id.* at 1330. Here, the Defendant Officers argue
3 that Plaintiff's actions included stepping toward Stansbury and partially in front of Harris, and
4 communicating her refusal to allow Stansbury to proceed by shaking her head and saying, "[w]e
5 don't need to have pictures taken." Moreover, they argue that Plaintiff refused to comply with
6 Stansbury's requests that she step aside, and after Stansbury warned her of the possibility that she
7 would be arrested, Plaintiff maintained her opposition to Stansbury's request by responding,
8 "please do." The Defendant Officers argue that on this evidence, no reasonable juror could
9 conclude that Stansbury lacked probable cause to arrest Plaintiff for violating section 148(a)(1)
10 since she delayed or obstructed his investigation.

11 In response, Plaintiff reiterates her argument that she was arrested for purely verbal
12 conduct, arguing that she merely "voice[d] an objection" to Stansbury's attempt to photograph the
13 suspects. *Pl.'s Opp'n* at 16. While it is undisputed that Plaintiff moved closer to Stansbury while
14 objecting to Harris's being photographed, she argues that she did not raise her hands to block the
15 camera, nor did she step in front of Harris to block him from Stansbury's view. In contrast,
16 Stansbury testified that Plaintiff "blocked [his] ability to take a picture of Mr. Harris," and that
17 Plaintiff was obstructing his view of Harris and his jacket. *Stansbury Dep.* 67-68. The angle of
18 the video that depicts Plaintiff's movements with respect to Stansbury and Harris does not clearly
19 show whether Stansbury's view of Harris was obstructed in any way. Although it is a close
20 question, viewing the evidence in the light most favorable to Plaintiff, the court cannot say that no
21 reasonable juror could determine that Plaintiff merely voiced her objection and did not physically
22 obstruct Stansbury's investigation. A jury could therefore conclude that Stansbury arrested
23 Plaintiff for her verbal challenge alone, which the Defendant Officers concede is insufficient for a
24 violation of section 148(a)(1). Therefore, summary judgment is denied on that basis.

25 The court next turns to the question of whether the Defendant Officers are entitled to
26 qualified immunity. The doctrine of qualified immunity protects government officials "from
27 liability for civil damages insofar as their conduct does not violate clearly established statutory or
28 constitutional rights of which a reasonable person would have known." *Harlow v. Fitzgerald*, 457

1 U.S. 800, 818 (1982). The analysis involves two inquiries. First, taken in the light most favorable
2 to plaintiff, the court must ask whether the facts alleged show that the officer’s conduct violated a
3 constitutional right. *Saucier v. Katz*, 533 U.S. 194, 201 (2001). If the answer is “no,” then the
4 court need not inquire further before ruling that the officer is entitled to qualified immunity. *Id.*
5 If, however, “a violation could be made out on a favorable view of the parties’ submissions,” the
6 court must examine “whether the [constitutional] right was clearly established.” *Id.* The court
7 may exercise its discretion in deciding “which of the two prongs of the qualified immunity
8 analysis should be addressed first in light of the circumstances in the particular case at hand.”
9 *Pearson v. Callahan*, 555 U.S. 223, 236 (2009).

10 “The linchpin of qualified immunity is the reasonableness of the official’s conduct.”
11 *Rosenbaum v. Washoe Cty.*, 663 F.3d 1071, 1075 (9th Cir. 2011) (citation omitted). “The
12 relevant, dispositive inquiry in determining whether a right is clearly established is whether it
13 would be clear to a reasonable officer that his conduct was unlawful in the situation he
14 confronted.” *Saucier*, 533 U.S. at 202. “If the law did not put the officer on notice that his
15 conduct would be clearly unlawful, summary judgment based on qualified immunity is
16 appropriate.” *Id.*

17 Under Ninth Circuit law, “[b]ecause the standard for probable cause is well settled, the
18 question with respect to whether an unlawful arrest violated clearly established law is ‘whether it
19 is reasonably arguable that there was probable cause for arrest—that is, whether reasonable
20 officers could disagree as to the legality of the arrest such that the arresting officer is entitled to
21 qualified immunity.’” *Sialoi v. City of San Diego*, 823 F.3d 1223, 1233 (9th Cir. 2016) (quoting
22 *Rosenbaum*, 663 F.3d at 1076) (emphasis in original). Even if the arrest was made without a
23 warrant and without probable cause, however, “the officer may still be immune from suit if it was
24 objectively reasonable for him to believe that he had probable cause.” *Rosenbaum*, 663 F.3d at
25 1078 (emphasis in original).

26 The court concludes that it was objectively reasonable for Stansbury to believe that he had
27 probable cause to arrest Plaintiff for violating section 148(a)(1), even if the belief was in error.
28 After refusing Stansbury’s repeated requests to step aside, Plaintiff stepped partially between the

1 officer and the suspect while shaking her head and voicing her objection to his photographing
2 Harris, saying “[w]e don’t need to have pictures taken.” Her final response to Stansbury’s request,
3 which he accompanied with a warning about possible arrest, was continued opposition—“please
4 do [arrest me].” A reasonable officer in Stansbury’s position could have believed that he or she
5 could lawfully arrest Plaintiff for willfully attempting to obstruct or delay the police investigation
6 by preventing Stansbury from taking photographs of the suspects, and that the arrest would not
7 violate any clearly established constitutional right. See, e.g., *Muhammed*, 95 Cal. App. 4th 1325
8 (affirming section 148 conviction where defendant delayed officers’ performance of their duties
9 by refusing repeated orders to move away from patrol car); *Sorgen v. City & Cty. of San*
10 *Francisco*, No. C 05-03172 TEH, 2006 WL 2583683, at *5 (N.D. Cal. Sept. 7, 2006) (finding
11 qualified immunity applied where the plaintiff repeatedly refused police orders to move back
12 while officer attempted to arrest plaintiff’s friend). Stansbury is therefore entitled to qualified
13 immunity, and the court grants the Defendant Officers’ motion for summary judgment as to
14 Plaintiff’s wrongful arrest claim.

15 2. Excessive Force

16 The Defendant Officers next move for summary judgment on Plaintiff’s excessive force
17 claim, arguing that they used reasonable force in effecting her arrest and escorting her to the
18 holding tank. At the hearing, Plaintiff stated that this claim is based upon the theory that any force
19 used to effectuate her arrest was excessive because her arrest was unlawful, and conceded that her
20 excessive force claim rises and falls with her wrongful arrest claim. Since the court finds that the
21 Defendant Officers are entitled to qualified immunity on Plaintiff’s wrongful arrest claim,
22 summary judgment is granted on Plaintiff’s excessive force claim.

23 B. Intentional Infliction of Emotional Distress

24 In order to establish a claim for intentional infliction of emotional distress, Plaintiff must
25 show “(1) extreme and outrageous conduct by [Defendants] with the intention of causing, or
26 reckless disregard of the probability of causing, emotional distress”; (2) that Plaintiff “suffer[ed]
27 severe or extreme emotional distress; and (3) actual and proximate causation of the emotional
28 distress by [Defendants’] outrageous conduct.” *Hughes v. Pair*, 46 Cal. 4th 1035, 1050 (citations

1 and quotation marks omitted). “A defendant’s conduct is ‘outrageous’ when it is so ‘extreme as to
2 exceed all bounds of that usually tolerated in a civilized community.” *Id.* at 1051 (citations and
3 quotation marks omitted). Behavior “may be considered outrageous if a defendant . . . abuses a
4 relation or position which gives him power to damage the plaintiff’s interest.” *Cole v. Fair Oaks*
5 *Fire Dept.*, 43 Cal. 3d 148, 155 n.7 (1987).

6 The Defendant Officers assert that they are entitled to summary judgment on Plaintiff’s
7 intentional infliction of emotional distress claim, arguing that such a claim based on an arrest
8 requires Plaintiff to prove that the arresting officer had “no reason” to believe that the person
9 arrested committed an offense. *Defs.’ Mot.* at 17 (citing *Whitaker v. Alameda Cty.*, No. C 12-
10 05923 JSW, 2013 WL 5442200, at *7 (N.D. Cal. Sept. 30, 2013)). Since the Defendant Officers
11 are entitled to qualified immunity on Plaintiff’s wrongful arrest claim, Plaintiff has failed to
12 establish the requisite “extreme and outrageous conduct” by Defendants to maintain a claim for
13 intentional infliction of emotional distress. Summary judgment is thus appropriate on this claim.

14 **C. California Civil Code section 52.1 (Bane Act)**

15 Finally, the Defendant Officers move for summary judgment on Plaintiff’s California Civil
16 Code section 52.1 claim. California Civil Code section 52.1, the Bane Act, gives rise to a claim
17 where “a person or persons, whether or not acting under color of law, interferes by threats,
18 intimidation, or coercion, or attempts to interfere by threats, intimidation, or coercion, with the
19 exercise or enjoyment by any individual or individuals of rights secured by the Constitution or
20 laws of the United States, or of the rights secured by the Constitution or laws of this state.” Cal.
21 Civ. Code § 52.1(a). To prevail on a Bane Act claim, a plaintiff must demonstrate, *inter alia*,
22 “intimidation, threats or coercion.” *Jones v. Kmart Corp.*, 17 Cal. 4th 329, 334 (1998).

23 Plaintiff’s Bane Act claim is based upon the Defendant Officers’ alleged wrongful arrest
24 and use of excessive force. Since the court grants Defendants summary judgment on Plaintiff’s
25 arrest and excessive force claims, it also grants summary judgment on Plaintiff’s Bane Act claim.
26 See *Reynolds v. Cty. of San Diego*, 84 F.3d 1162, 1170-71 (9th Cir. 1996) (“because there is no
27 federal constitutional violation and no conduct specified which constitutes a state constitutional
28 violation, there is no conduct upon which to base a claim for liability under 52.1.”).

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V. CONCLUSION

For the foregoing reasons, Defendants’ motion for summary judgment is granted in its entirety. Plaintiff’s partial motion for summary judgment is denied.

IT IS SO ORDERED.

Dated: January 17, 2017

