Court of Appeal, Second Appellate District, Division Six - No. B308778

S283925

IN THE SUPREME COURT OF CALIFORNIA

En Banc

WANDA NELSON, Plaintiff and Appellant,

v.

SANTA BARBARA COUNTY SHERIFF'S OFFICE et al., Defendants and Respondents.

The petition for review is denied.

GUERRERO
Chief Justice

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

WANDA NELSON,

Plaintiff and Appellant,

v.

SANTA BARBARA COUNTY SHERIFF'S OFFICE et al.,

Defendants and Respondents.

2d Civil No. B308778
(Super. Ct. No. 19CV06081)
(Santa Barbara County)

OPINION ON TRANSFER FROM THE SUPREME COURT

Wanda Nelson purports to appeal from an order sustaining a demurrer to her first amended complaint (complaint) without leave to amend. This is appellant's third appeal. In the first appeal we reversed her conviction of involuntary manslaughter. (*People v. Nelson* (Nov. 6, 2017, B271618) [nonpub. opn].) The conviction was based on the theory that appellant had been criminally negligent in leaving unattended a paralyzed patient (Heidi Good) who was under her care. According to this theory, appellant was absent when Good's ventilator became

disconnected. Since no one was present to reconnect the ventilator, Good died from asphyxiation.

The jury acquitted appellant of first and second degree murder. It rejected the People's theory that she had intentionally disconnected the ventilator. We concluded that the evidence was insufficient to support her conviction of involuntary manslaughter because there was no substantial evidence of criminal negligence.

In the second appeal, we reversed the trial court's order finding appellant factually innocent of the murder of Heidi Good. (*People v. Nelson* (May 22, 2019, B290806) [nonpub. opn.].) We concluded: "Reasonable cause exists to believe that [appellant] intentionally killed Heidi by disconnecting the ventilator." (*Id.* at p. 13.)

Appellant subsequently filed a complaint against the Santa Barbara County Sheriff's Office (sheriff), District Attorney's Office (district attorney), and three employees of these offices. The present appeal arises from this action. The defendants are hereafter collectively referred to as respondents. The complaint alleged five causes of action: malicious prosecution, intentional infliction of emotional distress, negligence, false arrest/false imprisonment, and violation of the Bane Act (Civil Code § 52.1). Appellant sought general and punitive damages.

After the trial court ordered that respondents' demurrer be sustained without leave to amend, a judgment of dismissal was not entered. We construe the order as incorporating a judgment of dismissal and treat the appeal as taken from that judgment.[1]

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[1] In the notice of appeal, appellant placed an "x" in a box indicating that she was appealing from a "[j]udgment of dismissal after an order sustaining a demurrer." But the record on appeal

In our original unpublished opinion in this third appeal, we affirmed the judgment of dismissal. (*Nelson v. Santa Barbara County Sheriff's Office et al.* (Dec. 14, 2021, B308778).) The affirmance was based in large part on Government Code section 821.6, which provides, "A public employee is not liable for injury caused by his instituting or prosecuting any judicial or administrative proceeding within the scope of his employment, even if he acts maliciously and without probable cause." (Unless otherwise stated, all statutory references are to the Government Code.)

The California Supreme Court granted appellant's petition for review (S272870). On August 23, 2023, it transferred the matter back to us with "directions to vacate [our] decision and reconsider the cause in light of *Leon v. County of Riverside* (2023) 14 Cal.5th 910 [(*Leon*)]." We vacate our original decision and again affirm.

Factual Background

The underlying facts are complex. They are set forth at length in our two prior unpublished opinions. (*People v. Nelson* (May 22, 2019, B290806); *People v. Nelson* (Nov. 6, 2017,

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does not contain a judgment of dismissal, and the register of actions shows that no such judgment was entered. "An order sustaining a demurrer is not appealable absent an order dismissing the complaint. Although there is no order dismissing the . . . complaint, [respondents have] not requested dismissal of this appeal. Because the case has been fully briefed . . . , we deem the order sustaining the demurrer[] to incorporate a judgment of dismissal . . . ." (*Lucas v. Santa Maria Public Airport Dist.* (1995) 39 Cal.App.4th 1017, 1022.)

B271618).) To provide context to the legal discussion in this opinion, we briefly summarize the material facts.

Heidi Good suffered from amyotrophic lateral sclerosis (ALS). The disease had rendered her a quadriplegic. She was able to breathe only through a ventilator that pumped oxygen into her lungs.

Good employed appellant as a caregiver. One afternoon when appellant was the sole caregiver on duty, she left Good's house and drove to Rite Aid to get medication for Good. According to appellant, while she was gone the ventilator became disconnected. When she returned, Good was dead.

The facts surrounding Good's death led investigators to believe that appellant had intentionally disconnected the ventilator before she left the house. A grand jury indicted her for murder.

Standard of Review

"A demurrer tests the legal sufficiency of factual allegations in a complaint. [Citation.] A trial court's ruling sustaining a demurrer is erroneous if the facts alleged by the plaintiff state a cause of action under any possible legal theory. [Citations.]" (*Lee Newman, M.D., Inc. v. Wells Fargo Bank* (2001) 87 Cal.App.4th 73, 78.)

"[W]e apply the de novo standard of review in an appeal following the sustaining of a demurrer . . . ." (*California Logistics, Inc. v. State of California* (2008) 161 Cal.App.4th 242, 247.) "[W]e assume the truth of all facts properly pleaded in the complaint and its exhibits or attachments, as well as those facts that may fairly be implied or inferred from the express allegations. [Citation.] 'We do not, however, assume the truth of contentions, deductions, or conclusions of fact or law.' [Citation.]"

(*Cobb v. O'Connell* (2005) 134 Cal.App.4th 91, 95.) "We . . . consider matters that may be judicially noticed . . . ." (*Brown v. Deutsche Bank National Trust Co.* (2016) 247 Cal.App.4th 275, 279.)

When "a demurrer has been sustained without leave to amend, unless failure to grant leave to amend was an abuse of discretion, the appellate court must affirm the judgment if it is correct on any theory. [Citations.] If there is a reasonable possibility that the defect in a complaint can be cured by amendment, it is an abuse of discretion to sustain a demurrer without leave to amend. [Citation.] The burden is on the plaintiff . . . to demonstrate the manner in which the complaint might be amended." (*Hendy v. Losse* (1991) 54 Cal.3d 723, 742.)

"'"We will affirm if there is any ground on which the demurrer can properly be sustained, whether or not the trial court relied on proper grounds or the defendant asserted a proper ground in the trial court proceedings."'" (*Kahan v. City of Richmond* (2019) 35 Cal.App.5th 721, 730.)

Plaintiff's Burden on Appeal

On appeal "[t]he plaintiff has the burden of showing that the facts pleaded are sufficient to establish every element of the cause of action and overcoming all of the legal grounds on which the trial court sustained the demurrer, and if the defendant negates any essential element, we will affirm the order sustaining the demurrer as to the cause of action. [Citation.]" (*Martin v. Bridgeport Community Assoc., Inc.* (2009) 173 Cal.App.4th 1024, 1031 (*Martin*); see also *Cantu v. Resolution Trust Corp.* (1992) 4 Cal.App.4th 857, 880 ["Cantu bears the burden of overcoming *all* of the legal grounds on which the trial court sustained the demurrers"].)

The Supreme Court's Decision in Leon

The Supreme Court ordered us to reconsider the cause in light of *Leon, supra*, 14 Cal.5th 910. There, the plaintiff's husband "was shot and killed in the driveway of a mobilehome lot near his home." (*Id.* at p. 916.) Sheriff's deputies left the victim's naked body "exposed and uncovered for hours, in view of both [wife] and the general public." (*Ibid.*) While his body was so exposed, the deputies "searched for the shooter and investigated the shooting. [They] ultimately determined that the shooter had killed himself shortly after killing [the victim]." (*Ibid.*) Because the shooter was dead, no charges were filed. Wife sued the deputies' employer, Riverside County (County), "asserting a single cause of action for negligent infliction of emotional distress." (*Ibid.*)

The trial court granted County's motion for summary judgment. The court ruled that the deputies were immune from liability under section 821.6. Since County was the deputies' employer, it was similarly immune. (§ 815.2, subd. (b).) The Court of Appeal affirmed. The Supreme Court reversed.

The Supreme Court concluded: "[Section 821.6] immunizes public employees from claims of injury caused by wrongful prosecution." (*Leon, supra*, 14 Cal.5th at p. 915.) It does not "confer[] immunity from claims based on other injuries inflicted in the course of law enforcement investigations." (*Ibid.*) The immunity "is narrow in the sense that it applies only if the conduct that allegedly caused the plaintiff's injuries was the institution or prosecution of an official proceeding. But this immunity is broad in the sense that it applies to every such tort claim, whether formally labeled as a claim for malicious prosecution or not. And where it applies, it is absolute, meaning

that 'the immunity is not conditioned on a showing that the defendant acted in a reasonable or procedurally proper manner, or any similar requirement.'" (*Id.* at p. 922.) "If a law enforcement officer has initiated an official proceeding, the officer will enjoy immunity for that conduct under section 821.6, *regardless of whether the officer's conduct may include certain acts described as investigatory.* Where, however, the plaintiff's claim of injury does not stem from the initiation or prosecution of proceedings, section 821.6 immunity does not apply." (*Id.* at p. 924, italics added.)

The Supreme Court held that the deputies' investigatory acts were not protected by section 821.6 because they involved "the investigation of a potential crime, unconnected to the filing of any charges . . . ." (*Leon, supra,* 14 Cal.5th at p. 926.) "Neither [the] text [of the statute] nor legislative history lends support to the County's argument that section 821.6 covers claims of injury caused by acts that are merely investigatory and unconnected to the prosecution of any official proceeding." (*Ibid.*) "[Wife] is not suing the County and its officers for causing an unjust prosecution, but for the officers' lack of care in handling her late husband's body." (*Id.* at p. 930.)

First Cause of Action for Malicious Prosecution

"A plaintiff must plead and prove three elements to establish the tort of malicious prosecution: a lawsuit '(1) was commenced by or at the direction of the defendant and was pursued to a legal termination favorable to the plaintiff; (2) was brought without probable cause; and (3) was initiated with malice.'" (*Nunez v. Pennisi* (2015) 241 Cal.App.4th 861, 872-873.)

The first cause of action for malicious prosecution is against two deputy sheriffs – Charlie Bosma and Matthew Fenske – and

Deputy District Attorney Cynthia Gresser. The complaint alleged that they had "intentionally fabricated evidence and produced false and misleading evidence," ignored and suppressed exculpatory evidence, and "intentionally and deliberately exhibited racial bias in their enforcement of the law to further their personal agendas against low-income, persons of color, such [as] this African-American plaintiff . . . ."

The trial court correctly ruled, "The cause of action for malicious prosecution is barred by the absolute immunity set forth in Government Code section 821.6." The immunity granted by section 821.6 applies to a public prosecutor. (*Miller v. Filter* (2007) 150 Cal.App.4th 652, 666 (*Miller*).) "The immunity is absolute, applying even if the prosecutor 'acts maliciously and without probable cause' [citations], such as by concealing exculpatory evidence [citation]." (*Ibid.*) "Persons appointed as deputy district attorneys must be free to vigorously enforce the law without concerns over the possibility of subsequent damage claims against them." (*Id.* at p. 668.) The immunity also applies to a police officer or deputy sheriff. (*Leon*, *supra*, 14 Cal.5th at p. 915.) The holding of *Leon* is inapplicable because respondents' actions were not merely investigatory. Their actions led to appellant's criminal prosecution.

Appellant "characterizes this case [as] an 'intentional violation of her state constitutional and statutory civil rights to be free from racial and ethnic discrimination.'" She contends, "[T]o the extent that [her] malicious prosecution claim is based on her contention that she was targeted . . . based upon her race, [respondents] cannot be immune." In support of her contention, appellant cites a dissenting opinion in which Justice Grignon said, "Defendants [senior commanders in the Los Angeles Police

Department] owe a duty to plaintiffs to refrain from racial and ethnic discrimination and are not immune from liability for such discrimination." (*Gates v. Superior Court* (1995) 32 Cal.App.4th 481, 526 (dis. opn. of Grignon, J.).) But the case in which Justice Grignon wrote her dissenting opinion did not involve a charge of malicious prosecution or the interpretation of section 821.6. The statute in question was section 845, which immunizes a public entity or a public employee from the payment of monetary damages for failure to provide adequate police protection. Contrary to Justice Grignon's dissent, the majority opinion held that, despite the complaint's allegation of "an ongoing deliberate racially based misallocation of police resources," the "[d]efendants are immune from civil liability for money damages for failing to provide adequate police protection against participants in criminal conduct during a riot." (*Gates, supra,* at p. 494.)

Accordingly, as to the first cause of action for malicious prosecution, appellant has failed to carry her burden of "overcoming . . . the legal ground[] on which the trial court sustained the demurrer . . . ." (*Martin, supra,* 173 Cal.App.4th at p. 1031.)[2]

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[2] For the first time in her reply brief, appellant contends that "Government Code § 821.6 is unconstitutional" to the extent it grants "absolute immunity to prosecutors and law enforcement officers who commit bad acts with malice." The contention is forfeited because it is not supported by meaningful argument with citation to authority. (*Allen v. City of Sacramento* (2015) 234 Cal.App.4th 41, 52 (*Allen*).) It is also forfeited because appellant has not shown good cause for failing to raise the issue in her opening brief. "[W]e do not consider points raised for the first time in the reply brief absent a showing of good cause for the failure to present them earlier. [Citations.] This rule is based on

Fourth Cause of Action for False Arrest/False Imprisonment

Appellant claims the trial court "erred in sustaining [the demurrer to her] cause of action for false arrest/false imprisonment without leave to amend." (Capitalization and bold omitted.) "'"[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.) "The tort of false imprisonment is the nonconsensual, intentional confinement of a person, without lawful privilege, for an appreciable length of time, however short. . . . In California a cause of action for false imprisonment will lie . . . where there has been an unlawful arrest followed by imprisonment . . . ." (*City of Newport Beach v. Sasse* (1970) 9 Cal.App.3d 803, 810.) "Under California law, a police officer is granted statutory immunity from liability for malicious prosecution [§ 821.6], but not for false arrest and imprisonment." (*Asgari, supra*, at p. 752.)

In the fourth cause of action for false arrest/false imprisonment, appellant alleged that Fenske, Bosma and Gresser had "deprived [her] of her liberty without justification" because they had "detained [her] without reasonable suspicion and arrested her[] without probable cause." Appellant further alleged that the sheriff and district attorney "are vicariously liable for the wrongful acts of Fenske, Bosma and Gresser."

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considerations of fairness—withholding a point until the closing brief deprives the opposing party of the opportunity to file a written response unless supplemental briefing is ordered." (*Ibid.*)

The grand jury returned an indictment charging appellant with premeditated murder. Based on the indictment, the court issued a bench warrant for her arrest. (Pen. Code, §§ 945, 979, 981.) The warrant "commanded" law enforcement officers to "forthwith" arrest appellant. (*Id.*, § 981.) They did not have discretion to disobey this command.

In its ruling sustaining the demurrer, the trial court stated: "[Fenske's, Bosma's and Gresser's] involvement in obtaining [appellant's] arrest was limited to their actions in presenting evidence to the Grand Jury; none of them were physically involved in [appellant's] actual arrest pursuant to the warrant, which was effectuated by law enforcement officers of the State of New York." The court concluded, "Under these circumstances, it appears clear that no false arrest/false imprisonment cause of action can legally be stated against defendants, and that the true cause of action which the allegations support is malicious prosecution, which is barred by the absolute immunity provided by Government Code section 821.6."

At the hearing on respondents' demurrer, appellant's counsel stated: "Detective Fenske and Bosma did actually travel to New York to arrest [appellant]." Counsel requested permission to amend the complaint to allege this fact. Counsel did not explain why the result would be different if Fenske and Bosma had arrested appellant. The warrant commanded any law enforcement officer to make the arrest. (Pen. Code, § 981.)

The trial court did not abuse its discretion in denying permission to amend the complaint. Because the arrest was made pursuant to a valid arrest warrant based on a grand jury indictment, respondents could not be liable for false imprisonment. ""The distinction between [malicious prosecution

and false imprisonment] lies in the existence of valid legal authority for the restraint imposed. If the defendant complies with the formal requirements of the law, as by swearing out a valid warrant, so that the arrest of the plaintiff is legally authorized, . . . [h]e is . . . liable, if at all, only for a misuse of legal process to effect a valid arrest for an improper purpose. The action must be for malicious prosecution, upon proof of malice and want of probable cause . . . ." . . .'" (*Collins v. City and County of San Francisco* (1975) 50 Cal.App.3d 671, 677; see also *Scannell v. County of Riverside* (1984) 152 Cal.App.3d 596, 608; *Leon, supra*, 14 Cal.5th at p. 919 [false arrest and false imprisonment '"'"relat[e] to conduct that is without valid legal authority . . ."'"'].)

Third Cause of Action for Negligence

The third cause of action for negligence is against all respondents. It alleged that they had negligently investigated Heidi Good's death and negligently prosecuted appellant. It also alleged that the district attorney and sheriff had "breach[ed] duties imposed by California Government Code § 815.6 by not properly screening, hiring, training, testing, monitoring, supervising, disciplining or investigating potential misdeeds of" deputy district attorneys and deputy sheriffs. Section 815.6 provides, "Where a public entity is under a mandatory duty imposed by an enactment that is designed to protect against the risk of a particular kind of injury, the public entity is liable for an injury of that kind proximately caused by its failure to discharge the duty unless the public entity establishes that it exercised reasonable diligence to discharge the duty."

Leon, supra, 14 Cal.5th 910, is directly on point. Our Supreme Court stated: "[T]he statutory immunity applies to a

public employee who commits covered acts '*even if* he acts maliciously and without probable cause.' (§ 821.6, italics added.) Although this language is certainly broad enough to include traditional malicious prosecution claims alleging malice and a lack of probable cause, the inclusive phrase 'even if' makes clear that the statute is not limited to traditional malicious prosecution claims; suits for damages arising from a *negligent* prosecution are covered too." (*Id.* at p. 922.) The Supreme Court cited "example[s] of a court upholding section 821.6 immunity in a case involving allegations of negligence rather than malice." (*Id.* at p. 922, fn. 3.) Since respondents' allegedly negligent acts were connected to the "initiation or prosecution of an official proceeding," the statutory immunity applies. (*Id.* at p. 930.)

Moreover, as to the alleged breach of a mandatory duty in violation of section 815.6, appellant failed to establish the requisite mandatory *statutory* duty. "[S]ection 815.6 has three elements that must be satisfied to impose public entity liability: (1) a mandatory duty was imposed on the public entity by an enactment; (2) the enactment was designed to protect against the particular kind of injury allegedly suffered; and (3) the breach of the mandatory statutory duty proximately caused the injury." (*B.H. v. County of San Bernardino* (2015) 62 Cal.4th 168, 179.) In explaining its ruling on the section 815.6 issue, the trial court said: "[Appellant] has failed to establish any enactment which is sufficient to support a claim for mandatory duty liability . . . ."

Second Cause of Action for Intentional Infliction of Emotional Distress

In the second cause of action, appellant alleged that Fenske, Bosma and Gresser had "willfully and intentionally caused [her] emotional distress" by committing the same acts

alleged in the first cause of action for malicious prosecution and the fourth cause of action for false imprisonment. As explained above (*ante*, at pp. 11-12), the acts underlying the fourth cause of action constitute malicious prosecution, not false imprisonment. Thus, the trial court correctly ruled that section 821.6 immunized respondents from liability on the second cause of action for intentional infliction of emotional distress. (*Leon*, *supra*, 14 Cal.5th at p. 922 [§ 821.6 immunity "applies to every [claim of injury based on tortious or wrongful prosecution], whether formally labeled as a claim for malicious prosecution or not"].)

Fifth Cause of Action for Violation of the Bane Act

The fifth cause of action is against all respondents. It is based on alleged violations of Civil Code section 52.1 (section 52.1), known as "the Tom Bane Civil Rights Act" (Bane Act). (§ 52.1, subd. (a).) Section 52.1, subdivision (c) provides, "Any individual whose exercise or enjoyment of rights secured by the Constitution or laws of the United States, or of rights secured by the Constitution or laws of this state, has been interfered with, or attempted to be interfered with, . . . may institute and prosecute in his or her own name and on his or her own behalf a civil action for damages . . . ." The proscribed interference encompasses "interfere[nce] by threat, intimidation, or coercion, or attempts to interfere by threat, intimidation, or coercion." (*Id.*, subd. (b).) "[S]ection 52.1 . . . require[s] an attempted or completed act of interference with a legal right, accompanied by a form of coercion." (*Jones v. Kmart Corp.* (1998) 17 Cal.4th 329, 334.) The fifth cause of action lists multiple rights with which respondents allegedly interfered.

In her opening brief appellant claims respondents are not entitled to immunity on the Bane Act cause of action because

"[t]his case involves more than a simple false arrest. Appellant has also alleged that her arrest was in violation of her Fourteenth Amendment rights because it follows a pattern of conduct by the Respondents[] of racial profiling."

The trial court ruled: "With respect to [appellant's] Bane Act claim based upon the alleged violation of her Fourteenth Amendment rights, those relate to the acts taken to institute and prosecute the criminal action against [her]. . . . [A]ll such claims made under the Bane Act . . . are . . . barred by the absolute immunity set forth in Section 821.6." But after the trial court's ruling and effective January 1, 2022, the Bane Act was amended to provide that immunity under section 821.6 does not apply to Bane Act claims. (§ 52.1, subd. (n); Stats. 2021, ch. 409 § 3.) At our request, the parties filed supplemental briefs concerning the amendment of the Bane Act.

When respondents committed the alleged violations of the Bane Act, they were shielded from liability by Government Code section 821.6. (See *County of Los Angeles v. Superior Court* (2009) 181 Cal.App.4th 218, 231-232, disapproved on other grounds in *Leon, supra*, 14 Cal.5th at pp. 923, 930-931 [court "reject[ed] plaintiffs' contention that Civil Code section 52.1 prevails over the Government Code section 821.6 immunity"].) We conclude the amendment of the Bane Act does not retroactively strip respondents of their immunity.

"No part of [the Civil Code] is retroactive, unless expressly so declared." (Civ. Code, § 3.) "Under California law, statutes do not apply retroactively unless a clear intent to make them retroactive clearly appears either on the face of the enactment or from its legislative history or the circumstances of its enactment. [Citations.] [Appellant] has not pointed to any such clear

statement of intent in the language or legislative history of the" Bane Act amendment. (*Cabral v. Martins* (2009) 177 Cal.App.4th 471, 484-485.) We therefore presume the Legislature intended the amendment to apply prospectively. (*Preston v. State Bd. of Equalization* (2001) 25 Cal.4th 197, 222 ["statutes 'are generally presumed to operate prospectively and not retroactively'"].)

Appellant contends the Bane Act amendment applies retroactively because it "'merely clarifies, rather than changes, existing law.'" "Where a statute or amendment clarifies existing law, such action is not considered a change because it merely restates the law as it was at the time, and retroactivity is not involved." (*GTE Sprint Communications Corp. v. State Bd. of Equalization* (1991) 1 Cal.App.4th 827, 833.)

The Bane Act amendment was not merely a clarification of existing law. It deprived "any peace officer or custodial officer" of the section 821.6 immunity they had under the previous version of the Bane Act. (§ 52.1, subd. (n); see *County of Los Angeles v. Superior Court, supra,* 181 Cal.App.4th at pp. 231-232.)

Even if the Bane Act amendment applied retroactively, appellant would not prevail on respondents' demurrer to the fifth cause of action. Because this cause of action "is based on statute, the general rule that statutory causes of action must be pleaded with particularity is applicable." (*Lopez v. Southern Cal. Rapid Transit Dist.* (1985) 40 Cal.3d 780, 795.) "'[T]he plaintiff must set forth facts in his complaint sufficiently detailed and specific to support an inference that each of the statutory elements of liability is satisfied. General allegations are regarded as inadequate. [Citations.]'" (*Shields v. County of San Diego* (1984) 155 Cal.App.3d 103, 112.) Appellant's claim of racial bias and profiling is a general, conclusory allegation. She does not allege

facts from which racial bias and profiling may be inferred. It may not be inferred from the mere fact that, as she states in her opening brief, she was "the only African-American in the scenario." (See *Blank v. Kirwan* (1985) 39 Cal.3d 311, 318, italics added ["'We treat the demurrer as admitting all material facts properly pleaded, but not contentions, deductions or *conclusions of fact or law . . .*'"]; *Maystruk v. Infinity Ins. Co.* (2009) 175 Cal.App.4th 881, 888 ["the complaint alleges conclusions but no facts to support [them] . . . . This factual omission is fatal to the complaint"].)

Moreover, appellant fails to state a cause of action for violation of the Bane Act because she does not allege any specific acts involving respondents' use of threats, intimidation, or coercion. The "provisions [of section 52.1] are limited to threats, intimidation, or coercion that interferes with a constitutional or statutory right." (*Venegas v. County of Los Angeles* (2004) 32 Cal.4th 820, 843.) Appellant's complaint makes conclusory allegations that are devoid of any factual support: her constitutional rights were violated "by utilizing intimidating, frightening and coercive tactics against [her] in reckless disregard of her constitutional rights," and "by threatening or committing acts involving violence, threats, coercion or intimidation." "[C]onclusory allegations of 'forcible' and 'coercive' interference with plaintiffs' constitutional rights are inadequate to state a cause of action for a violation of section 52.1." (*Allen, supra,* 234 Cal.App.4th at p. 69.)

The complaint's following statement is another example of a conclusory allegation: "Prior to the events giving rise to this complaint, [appellant] was racially profiled, intimidated and threatened by SANTA BARBARA SHERIFF'S OFFICE deputies

who initiated traffic stops against [her] without probable cause but for the purpose of causing [her] to be frightened and intimidated." Appellant does not say where or when the traffic stops occurred. Nor does she describe the circumstances underlying the traffic stops or the nature of the alleged threats.

The trial court rejected respondents' argument that appellant had "alleged no facts supporting her conclusory allegations of threats, intimidation, or coercion, and therefore her [Bane Act] cause of action i[s] insufficiently alleged." The court reasoned, "For purposes of demurrer, . . . the coercion in being taken into custody for an event which [appellant] believed did not constitute a crime, is sufficient to allege the deprivation of constitutional rights through coercion."

The trial court's reasoning was erroneous. Irrespective of appellant's belief, there was no coercion or deprivation of constitutional rights within the meaning of the Bane Act because appellant was taken into custody pursuant to a valid arrest warrant based on a grand jury indictment. Appellant does not allege any facts showing that respondents used excessive force in making the arrest. Appellant cannot premise a Bane Act violation on a lawful arrest where the coercion was no greater than that involved in any lawful arrest.

Disposition

Our original decision – *Nelson v. Santa Barbara County Sheriff's Office et al.* (Dec. 14, 2021, B308778) [nonpub. opn.] – is vacated. Upon reconsideration of the cause as ordered by our Supreme Court, the judgment is affirmed. Respondents shall recover their costs on appeal.

NOT TO BE PUBLISHED.

YEGAN, Acting P. J.

We concur:

BALTODANO, J.

CODY, J.

YEGAN, J., Concurring:

The lynchpin of appellant's entire complaint is that she was "targeted" by law enforcement because she is African-American. Viewed objectively, this is questionable even at the demurrer stage. She was "targeted" by law enforcement because Heidi Good died at a time when appellant was supposed to be caring for her safety and well-being. Appellant was indicted by the grand jury for murder. She was arrested pursuant to a valid arrest warrant. She was acquitted of murder. This was a significant victory. But the jury found her guilty of involuntary manslaughter. We reversed. This was also a significant victory.

Frankly, I do not know what actually happened on the day Heidi Good died. This was a major consideration in our reversal of her involuntary manslaughter conviction. But as we explain in the majority opinion, we do know that appellant cannot reach a jury in a civil action by just saying that she was "targeted" because she is African-American.

NOT TO BE PUBLISHED.

YEGAN, Acting P.J.

Colleen K. Sterne, Judge

Superior Court County of Santa Barbara

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