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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

ANTRANIK KEVORKIAN, Plaintiff and Appellant, v. CITY OF PASADENA et al., Defendants and Respondents.	B263895 (Los Angeles County Super. Ct. No. BC532548)

APPEAL from a judgment of the Superior Court of Los Angeles County. Rolf M. Treu, Judge. Affirmed.

Antranik Kevorkian, in pro. per., for Plaintiff and Appellant.

Michele Beal Bagneris, City Attorney, and Frank L. Rhemrev, Assistant City Attorney, for Defendants and Respondents.

Antranik Kevorkian filed a complaint for damages against the Pasadena Police Department (hereafter the Department)[1] alleging a violation of his civil rights and related torts based on a claim that he suffered a false arrest. Kevorkian's action was based on being arrested; he did not allege the use of excessive force in the arrest. The Department filed a motion for summary judgment (MSJ) arguing that the police officers had probable cause to arrest Kevorkian. The trial court granted the MSJ and entered judgment in favor of the Department. We affirm.

FACTS

The Criminal Case Protective Restraining Order

The People initiated a criminal action charging Kevorkian with elder abuse (count 1; Pen. Code, § 368, subd. (b)(1)) and battery (count 2; Pen. Code, § 242). At the arraignment hearing, the court issued a restraining order pursuant to Penal Code section 136.2. It directed Kevorkian not to come within 100 yards of Movses Kevorkian (Kevorkian's father) and Susan Kevorkian (Kevorkian's sister), and included "stay-away orders" identifying a specific location: 541 N. Sierra Madre Villa Avenue, Pasadena, which the record shows to be Movses Kevorkian's residence. The restraining order provided that it would expire three years from the date of issuance. Kevorkian was served with the restraining order in the courtroom.

Thereafter, the People amended the accusatory pleading to add a second count of battery (count 3; Pen. Code, § 242), and, in accord with the terms of a negotiated plea agreement, Kevorkian pleaded nolo contendre to the two battery counts. During the course of the plea hearing, the prosecutor advised the trial court that she had told Kevorkian that he could obtain his belongings from his father's residence "through the Pasadena Police Department, but other than that, [he was] not to go to the location to obtain anything without a police escort." The court agreed, and advised Kevorkian: "In order to get your belongings, you go to the Pasadena Police Department. They will make arrangements with you to get your belongings. You are not to go to the residence

[1] Our reference to the Department includes defendants and respondents City of Pasadena, Sergeant Mike Bugh, Officer Eric Butler, and Officer Matthew Chavarin.

for any reason . . . . [¶] Just to make it really clear, you are not to go to the house on your own."[2] The court placed Kevorkian on summary probation for three years, on condition he serve 40 days in the county jail.

The Arrest

On November 4, 2012, Herayr Kevorkian (Kevorkian's brother) was at Movses Kevorkian's residence at 541 N. Sierra Madre Villa Avenue and called the police requesting a police officer to keep the peace. Officer Chavarin responded to the home. While en route, he received information from another officer who relayed that he knew Kevorkian, and that there was a restraining order against him that required him to stay 100 yards away from Movses Kevorkian and Susan Kevorkian.

When Officer Chavarin arrived at the home, he spoke to Herayr Kevorkian who stated that Kevorkian had driven to the location in the U Haul truck that was parked on the street, about 30 feet in front of the home. Herayr Kevorkian told Officer Chavarin that Kevorkian had walked away from the home, northbound, when he heard that police had been called.

Sergeant Bugh also responded to the call. He found and detained Kevorkian on a nearby street about a block away from the Movses Kevorkian's home. Moments later, Officer Butler arrived at Sergeant Bugh's location with Kevorkian. Sergeant Bugh and Officer Butler searched Kevorkian, and found a key to a U-Haul truck in his pants pocket. Kevorkian offered an explanation for his presence in the area — he told the officers that he "was waiting for a phone call from [his] brother Abraham [who] had just left to go pick up his wife and kids from church and was coming back to go to 541 Sierra Madre Villa Ave and help [Kevorkian] pick up [his] belongings."[3] Sergeant Bugh and

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[2] On October 28, 2012, Kevorkian went to the police station where he talked to Sergeant Bugh about how he could retrieve his belongings from his father's house. Sergeant Bugh warned Kevorkian that he would be arrested if he violated the restraining order issued in his criminal case.

[3] In a declaration in support of his opposition to the Department's MSJ, Kevorkian provided a much more extensive explanation of the events that transpired on November

Officer Butler drove Kevorkian back to the home on Sierra Madre Villa Avenue. The key recovered from Kevorkian opened the U-Haul truck parked in front of the home. When the officers opened the truck, they found a backpack inside the vehicle containing property belonging to Kevorkian.

The officers arrested Kevorkian for violating a court order. The officers transported Kevorkian to the police station; he remained in custody until the Los Angeles Superior Court released him on November 13, 2012.

In Kevorkian's lawsuit for damages against the Department, his complaint alleged that, on November 6, 2012, two days after he was arrested, the Pasadena City Attorney filed a misdemeanor criminal complaint charging him with violating a court order. (See Pen. Code, § 273.6, subd. (a).) Further, Kevorkian alleged that, on November 26, 2012, the Los Angeles Superior Court dismissed the Penal Code section 273.6 charge pursuant to Penal Code section 1385, "in the interests of justice." The record shows that, on November 26, 2012, in his underlying criminal case the Los Angeles County Superior Court held a probation violation hearing, and that Kevorkian (represented by a bar panel attorney) admitted that he had violated his probation.

The Civil Rights Lawsuit

In January 2014, Kevorkian, represented by legal counsel, filed a complaint against the Department alleging five causes of action listed respectively: violation of civil rights pursuant to 42 United States Code section 1983 based upon false arrest; false imprisonment; negligent training of officers and negligent performance of police duties resulting in an unjustified arrest; unreasonable search and seizure in violation of

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4, 2012 near his father's home, including that his brother Abraham had driven the U-Haul truck to the home, while Kevorkian drove a separate car and parked away from the home. The quoted material above, recounted from Kevorkian's declaration, is all the information that we see in the record concerning what Kevorkian stated to the police at the scene of his arrest. In short, there is no explicit statement set forth in Kevorkian's declaration attesting that he denied to the police that he had been at his father's home, or that he told the police that his brother Abraham had driven the U-Haul truck to the home, while he drove a different car and parked away from the home.

California Constitution article1, sections 7(a) and 13; and intentional infliction of emotional distress. All of Kevorkian's causes of action were based on his arrest near his father's home on November 4, 2012.

In September 2014, the Department filed an MSJ supported by evidence showing the facts summarized above. Kevorkian filed an opposition to the MSJ supported by his own declaration and a declaration from his brother, Abraham Kevorkian. The opposition evidence showed that Abraham Kevorkian drove the U-Haul truck to the Sierra Madre Villa Avenue location, and that Kevorkian drove a separate car and parked away from the father's home to wait for Abraham to call with arrangements for them to get Kevorkian's belonging out of the home.

The court granted the MSJ and entered judgment in favor of the Department.

Kevorkian filed a timely appeal.

DISCUSSION

Kevorkian claims he presented evidence showing that he did not violate the criminal restraining order, and that this means the trial court erred in granting the Department's MSJ. We disagree.

"'A defendant is entitled to summary judgment if the record establishes as a matter of law that none of the plaintiff's asserted causes of action can prevail.' [Citation.] The pleadings define the issues to be considered on a motion for summary judgment. [Citation.] As to each claim as framed by the complaint, the defendant must present facts to negate an essential element or to establish a defense." (*Ferrari v. Grand Canyon Dories* (1995) 32 Cal.App.4th 248, 252.) When the defendant makes the requisite prima facie showing, the burden shifts to the plaintiff to demonstrate the existence of a triable issue of material fact. (*AARTS Productions, Inc. v. Crocker National Bank* (1986) 179 Cal.App.3d 1061, 1064-1065.) "There is a triable issue of material fact if, and only if, the evidence would allow a reasonable trier of fact to find the underlying fact in favor of the party opposing the motion in accordance with the applicable standard of proof." (*Aguilar v. Atlantic Richfield Co*. (2001) 25 Cal.4th 826, 850.)

The foundational premise for all of Kevorkian's arguments is that the Department's burden on its MSJ was to prove that he did not have consent to be at the home on Sierra Madre Villa. In other words, Kevorkian seems to argue that the Department had to present evidence proving that he violated the restraining order. Kevorkian's arguments do not persuade us to reverse. His arguments betray a misunderstanding of the nature of his case, which, as the lawyers at the hearing on the Department's MSJ recognized, involved the issue of probable cause to arrest, not actual criminal guilt. The issue in Kevorkian's civil lawsuit for money damages was not whether he was guilty of violating the restraining order, but whether the police arrested him in accord with the bounds of his protected civil rights, that is, whether the police had probable cause to arrest him for violating the protective order. Given this focus, we find the trial court correctly ruled that the police officers at the scene had probable cause to arrest Kevorkian.

The test for determining probable cause for an arrest does not involve application of a "precise definition or quantification in to percentages because it deals with probabilities and depends on the totality of the circumstances." (See *Maryland v. Pringle* (2003) 540 U.S. 366, 371.) Thus, when a court is tasked with deciding whether probable cause for an arrest existed, it applies this test: "Probable cause to arrest exists if facts known to the arresting officer would lead a person of ordinary care and prudence to entertain an honest and strong suspicion that an individual is guilty of a crime. [Citation.]" (*People v. Kraft* (2000) 23 Cal.4th 978, 1037.) Further, Penal Code section 836, subdivision (c)(1), provides: "When a peace officer is responding to a call alleging a violation of a domestic violence protective or restraining order issued under . . . Section 136.2 . . . and the peace officer has probable cause to believe that the person against whom the order is issued has notice of the order and has committed an act in violation of the order, the officer shall, consistent with subdivision (b) of Section 13701, *make a lawful arrest of the person without a warrant and take that person into custody whether or not the violation occurred in the presence of the arresting officer*. . . ." (Italics added.)

To defeat a conclusion in his case that the police had probable cause to arrest him, Kevorkian argues that the police should not have accepted his brother's statements in the phone report and in his report at the scene because they were not trustworthy. He argues his brother's statements that Kevorkian had been at the home were insufficient to support a determination by the police that probable cause existed for Kevorkian's arrest because the police did not corroborate the brother's statements. We disagree. To the extent a police officer should corroborate a reporting witness's statements in evaluating whether probable cause for an arrest exists, there is enough corroboration in Kevorkian's case. First, Sergeant Bugh had personal knowledge that Kevorkian was subject to restraining order because Kevorkian had spoken to Sergeant Bugh at the police station a week or so before his arrest. Second, police found Kevorkian near the Sierra Madre Villa Avenue home, which supported his brother's report that Kevorkian had driven to the family home in a U-Haul truck which was parked in front of the home. Third, Kevorkian had the key to the U-Haul truck in his possession. The fact that a backpack belonging to Kevorkian was found in the truck further corroborated the brother's report that Kevorkian had driven to the home.

Kevorkian's showing in his opposition to the Department's MSJ, that there was an alternative explanation for the U-Haul truck at the home and for his presence on a nearby street, does not defeat the trial court's conclusion that the officers at the scene had probable cause to believe a crime had been committed. Specifically, that Kevorkian had been at the father's home on Sierra Madre Villa Avenue. Here, a careful reading of Kevorkian's declaration is critical. Kevorkian's countering evidence in his opposition to the Department's MSJ did not explicitly show that he gave information to the police that could have caused them pause in evaluating whether they had probable cause to arrest him for being at his father's home. As we noted above, Kevorkian's evidence showed that he told the police that he was "waiting for a phone call from [his] brother Abraham [who] had just left to go pick up his wife and kids from church and was coming back to go to 541 Sierra Madre Villa Ave and help [Kevorkian] pick up [his] belongings." Such a statement to the police did not refute the statements by Kevorkian's brother that

Kevorkian had been at the home. Kevorkian's declaration did not explicitly attest that he told the police officers at the scene that he had not been at the father's home. Thus, when the officers were considering whether probable cause existed to arrest Kevorkian for a crime, they had his brother's reports showing that a crime had been committed, and they had Kevorkian's explanation for why he was in the area, and they did not have an explicit protestation from Kevorkian that he had not committed a crime.[4]

Further, even assuming that the police officers at the scene were presented with conflicting reports of the events concerning whether Kevorkian had actually been at the father home, we would find the trial court correctly ruled that the officers had probable cause to arrest Kevorkian, as a matter of law. Here, *Peng v. Mei Chin Penghu* (9th Cir. 2003) 335 F.3d 970 (*Peng*) is instructive. In *Peng*, Los Angeles County Deputy Scott Gage responded to a "family disturbance" dispatch. When Deputy Gage arrived at the family home, he spoke to the victim, Mei Hu, who only spoke Mandarin Chinese, with her son interpreting. Mei Hu, via her son, told Deputy Gage that the suspect, Hsien Peng, had come to the family home to discuss a land dispute and, during the discussions, Peng had asked Mei Hu for some documents so that he could copy them. When Mei Hu refused to hand Peng the documents, he grabbed the documents in Mei Hu's hands, and when she refused to let go, he raised a fist as though he was going to strike Mei Hu, and she released the documents. When Deputy Gage spoke to two other witnesses, they told a similar story about the grabbing of the documents, but could not recall whether Peng had raised his fist. After hearing from the victim and the two witnesses, Deputy Gage arrested Peng for robbery. Peng was released from custody when the district attorney determined there was insufficient evidence to press charges. (*Peng, supra,* 335 F.3d at pp. 972-974.) Peng thereafter filed a complaint under 42 United States Code section 1983 alleging a violation of his Fourth Amendment rights because Deputy Gage lacked

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[4] Even if Kevorkian was given permission to come to the house, on the condition that the police were present to keep the peace, Kevorkian was in violation of the restraining order by being less than 100 yards from the home before police arrived. Kevorkian walked away from the home when the police arrived, making this assertion dubious and also demonstrating Kevorkian's consciousness of this violation.

probable cause to arrest him. In the context of a motion for summary judgment, the federal district court ruled that Deputy Gage had qualified immunity, a ruling based in part on a finding that the deputy had probable cause to arrest Peng. The Ninth Circuit Court of Appeals affirmed the district court's summary judgment ruling.

The circumstances in *Peng* are nearly a mirror image of the circumstances involved in Kevorkian's section 1983 case also alleging a false arrest, except that Deputy Gage arrested Peng for a felony, robbery, whereas the Pasadena police in Kevorkian's case arrested him for a misdemeanor, a violation of a court restraining order. This distinction makes no difference. As we have pointed out, an officer may arrest a defendant for violating a restraining order when the violation is not in his presence. Beyond this, the *Peng* court's analysis of the probable cause question is spot on for application in Kevorkian's current case.

In *Peng*, the court of appeals implicitly found that the domestic violence setting of an arrest may be considered in an examination of whether the arresting officer correctly determined that probable cause for an arrest existed. As stated in *Peng*: "[D]omestic disputes present a responding officer with situations involving great potential danger to occupants of the household. If the officer hesitates to act, his [or her] hesitancy may lead to the occurrence of preventable violence." (*Peng, supra*, 335 F.3d at p. 977.) The *Peng* court then looked at the facts presented to Deputy Gage at the scene, and acknowledged that the deputy was presented with possibly disputed reports, but concluded the officer had probable cause to arrest for the following reasons: "[An] officer who is investigating a domestic dispute must make snap decisions regarding whether there is probable cause to arrest. Where, as here, the victim alleges that force, or a threat of force, existed, it is important for officers to err on the side of safety for the victim in order to prevent further violence and allow the parties to cool down. . . . We are satisfied that Gage made a reasonable investigation under the circumstances before he arrested Peng. . . . We conclude that the presence of a factual dispute regarding a victim's complaint at the scene of an alleged domestic disturbance does not defeat probable cause if: 1) the victim's statements are sufficiently definite to establish that a crime has been committed; and

2) the victim's complaint is corroborated by either the surrounding circumstances or other witnesses." (*Id.* at pp. 978-979.)

We come to the same conclusion in Kevorkian's current case. Even assuming the officers at the scene had been presented with some evidence tending to show that Kevorkian had not committed a crime, specifically, an express statement by Kevorkian that he had not been at the home, they would still have had probable cause to arrest based on the statements of his brother, and all of the surrounding circumstances. A reasonable and prudent police officer at the scene on Sierra Madre Villa Avenue, taking into account all that he or she had heard and observed, could entertain an honest and strong suspicion that Kevorkian had violated a court order.

For the reasons explained above, we find no fault with the trial court's conclusion that, as a matter of law, the officers at the scene who arrested Kevorkian had probable cause to effect the arrest. Because the officers had probable cause to effect Kevorkian's arrest, none of Kevorkian's causes of action, all of which are premised on a claim of a wrongful arrest, are viable.

DISPOSITION

The judgment is affirmed. The Department is to recover costs on appeal.

BIGELOW, P.J.

We concur:

FLIER, J.

GRIMES, J.