

**UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF
CALIFORNIA**

Jimenez v. City of Sacramento

Jimenez · No. 2:22-cv-02004-DJC-CSK · Decided May 8, 2025

OPINION

Jimenez v. City of Sacramento

PER CURIAM.

1 2 3 4 5 6 7

8 UNITED STATES DISTRICT COURT

9 EASTERN DISTRICT OF CALIFORNIA

10

11 TINA MARIE JIMENEZ, No. 2:22-cv-02004-DJC-CSK

12 Plaintiff, 13 v. ORDER 14 CITY OF SACRAMENTO, as a municipal corporation; RYAN 15
FRANZEN, in his individual capacity; COREY C. STACKHOUSE, in his 16 individual capacity;
MICHAEL CASE, in his individual capacity; and MELVIN 17 P. CUCKOVICH, in his individual
capacity, 18 Defendants. 19 20 On November 6, 2020, four Sacramento Police Department
officers, trying to 21 locate Isais Martell, arrived at the home of Plaintiff Tina Jimenez, a known
contact of 22 Martell. An altercation ensued after Jimenez attempted to prevent the officers from
23 accessing her car, which was parked in the driveway of her home, resulting in one of 24 the
officers forcibly handcuffing and restraining Jimenez. Jimenez brings this suit 25 under 42 U.S.C.
§ 1983 and Monell v. Department of Social Services of City of New 26 York, 436 U.S. 658
(1978), alleging four causes of action: (1) an officer used 27 unreasonable force while restraining
Jimenez, (2) the other officers failed to intercede 28 while Jimenez was being unjustly and
forcibly detained, (3) the officers conducted 1 unreasonable searches of her car by placing a GPS
tracker in it during a traffic stop 2 and later retrieving that tracker while she was detained, and (4)
the City of Sacramento 3 has an unlawful practice of conducting illegal searches and using
unreasonable force. 4 (See ECF No. 1 at ¶¶ 38–61.) Defendants move for summary judgment of
the claims. 5 (ECF No. 16.) For the reasons discussed below, the Court GRANTS in part 6
Defendants’ Motion as to Plaintiff’s fourth cause of action (Monell claim for 7 unconstitutional
placement of GPS tracking devices) and DENIES Defendants’ Motion 8 as to Plaintiff’s first,
second, and third causes of action, and DENIES in part as to 9 Plaintiff’s fourth cause of action
(Monell claim for unreasonable force).

10 FACTS

11 Sacramento Police Department officers Ryan Franzen, Corey C. Stackhouse, 12 Melvin P.
Cuckovich, and Michael Case (collectively “Officers”) visited Plaintiff Tina 13 Jimenez’s house

on November 6, 2020. (ECF No. 1, hereinafter “Compl.” ¶ 10; see 14 ECF 20-2, Undisputed Material Facts, hereinafter “UMF,” No. 9.) When the Officers 15 arrived at the house’s front door, they were met by Salena, a family member of 16 Jimenez. (Compl. ¶ 12; UMF No. 9.) The Officers informed Salena that they were 17 there to perform a “parole search” of Isais Martell and asked whether he was present 18 at the property. (Compl. ¶ 13; see UMF No. 10.) Isais Martell is a known participant in 19 California’s Post Release Community Supervision (PRCS) program. (UMF No. 1.) 20 Salena informed the Officers that Martell was not present. (Compl. ¶ 14.) Salena then 21 fetched Jimenez, who informed the Officers that Martell did not live at the property 22 and that his “probation” form listed an address that was different from hers. (Id. 23 ¶¶ 18–19.) The Officers then made a statement implying that Martell’s car was 24 present, to which Jimenez replied that the car in question — a 2007 Infiniti M45 — was 25 actually hers. (Id. ¶¶ 20–21; see UMF Nos. 7, 12.) Jimenez asserts that the car was 26 purchased by and registered to her, and she has only on rare occasions allowed family 27 members or associates to drive it. (Compl. ¶ 21.) 28 1 Jimenez had allowed Martell to use her car on at least two prior occasions. 2 Four days prior, on November 2, 2020, Martell and Jimenez were pulled over for a 3 traffic stop, during which the Officers searched the car but did not uncover any 4 evidence of a crime. (Id. ¶ 23; UMF No. 1.) Martell was driving the car at the time of 5 the traffic stop. (Compl. ¶ 21; UMF Nos. 1–2.) Additionally, on an unspecified date 6 several months earlier, the Officers saw Martell driving the vehicle without Jimenez 7 present. (UMF No. 5.) 8 While at her house, the Officers requested access to Jimenez’s vehicle, which 9 she refused. (Compl. ¶ 24; UMF No. 11.) The Officers then asked her for her car keys, 10 to which Jimenez responded that she did not have them, and that they were with her 11 mother who “lives past Davis, [California].” (Body-Worn Camera (“BWC”) X81368533 12 of Officer Franzen at 02m55s-3m0s; see UMF Nos. 11, 14.) Ignoring her protests, 13 Officer Franzen approached the vehicle, which was apparently unlocked, and opened 14 the driver’s side door. (Compl. ¶ 24; UMF No. 15.) Meanwhile, Jimenez approached 15 the vehicle and physically obstructed the officer from further opening the door. (See 16 Compl. ¶ 25.) Officer Franzen then forcibly restrained Jimenez using wrist ties. (See 17 id. ¶ 26; see also UMF No. 19.) Jimenez asserts she felt an immediate sensation of 18 severe pain and exclaimed to the Officers that she believed her arm was broken and 19 to release her. (Compl. ¶ 27.) Instead, the Officers placed her in the back of a police 20 vehicle and called paramedics. (Id. ¶ 28; UMF Nos. 27.) While Jimenez was inside the 21 police vehicle, Officer Franzen returned to Jimenez’s vehicle, which had its trunk 22 opened by one of the other Officers. (Compl. ¶ 29; UMF Nos. 18–21.) Officer 23 Stackhouse whispered something to Officer Franzen along the lines of “you grab it,” 24 and Officer Franzen then retrieved a GPS-monitoring device from the trunk of the 25 vehicle and put it in his pocket. (Compl. ¶¶ 29–31; see UMF Nos. 24–26; see also BWC 26 X81368533 of Officer Franzen at 05m55s-06m02s.) Officer Franzen then closed the 27 trunk; no additional search of the vehicle was conducted. (Compl. ¶ 32.) 28 1 Officer Franzen cited Jimenez for violating California Penal Code section 148 2 (resisting, delaying, or obstructing a peace officer).

(Id. ¶ 33; UMF No. 28.) Before 3 issuing the citation, Officer Franzen noted to his colleagues that California Penal Code 4 section 148 is “good for everything else. It’s good for having to twist her up, 5 especially since she’s complaining of pain now.” (Compl. ¶ 33; BWC X81368533 of 6 Officer Franzen at 6m45s–7m12s, see 13m43s-14m05s.) The misdemeanor criminal 7 complaint against Jimenez was later dismissed. (Compl. ¶ 37.)

8 LEGAL STANDARD

9 The Federal Rules of Civil Procedure provide that summary judgment is 10 appropriate when “there is no genuine dispute as to any material fact and the movant 11 is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(a); see *Celotex Corp. v. 12 Catrett*, 477 U.S. 317, 322 (1986). One of the principal purposes of Rule 56 is to 13 dispose of factually unsupported claims or defenses. See *Celotex*, 477 U.S. at 325. 14 Therefore, the “threshold inquiry” is whether “there are any genuine factual issues that 15 properly can be resolved only by a finder of fact because they may reasonably be 16 resolved in favor of either party[,]” or, conversely, “whether it is so one-sided that one 17 party must prevail as a matter of law.” *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 18 250–52 (1986). But “the mere existence of some alleged factual dispute between the 19 parties will not defeat an otherwise properly supported motion for summary 20 judgment[.]” *Id.* at 247–48. “Only disputes over facts that might affect the outcome of 21 the suit under the governing law will properly preclude the entry of summary 22 judgment.” *Id.* at 248. 23 On summary judgment, the moving party always bears the initial responsibility 24 of informing the court of the basis for the motion and identifying the portions of the 25 record “which it believes demonstrate the absence of a genuine issue of material fact.” 26 *Celotex*, 477 U.S. at 323. If the moving party meets its initial responsibility, the burden 27 then shifts to the opposing party, which “must establish that there is a genuine issue of 28 material fact” *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 585 1 (1986). To meet its burden, either party must “(A) cit[e] to particular parts of materials 2 in the record, . . . or (B) show[] that the materials cited do not establish the absence or 3 presence of a genuine dispute, or that an adverse party cannot produce admissible 4 evidence to support the fact.” Fed. R. Civ. P. 56(c)(1). 5 For the non-moving party to succeed and avoid summary judgment, the non- 6 moving party “must do more than simply show that there is some metaphysical doubt 7 as to the material facts.” *Matsushita*, 475 U.S. at 586. Rather, the non-moving party 8 must produce enough evidence such that “the ‘specific facts’ set forth by the 9 nonmoving party, coupled with undisputed background or contextual facts, are such 10 that a rational or reasonable jury might return a verdict in its favor based on that 11 evidence.” *T.W. Elec. Serv., Inc. v. Pac. Elec. Contractors Ass’n*, 809 F.2d 626, 631 (9th 12 Cir. 1987). In other words, for the moving party to succeed, the Court must conclude 13 that no rational trier of fact could find for the non-moving party. *Matsushita*, 475 U.S. 14 at 587. However, so as not to “denigrate the role of the jury[,] . . . [c]redibility 15 determinations, the weighing of the evidence, and the drawing of legitimate 16 inferences from the facts are jury functions,” and so the Court draws all reasonable 17 inferences and views all evidence in the light

most favorable to the non-moving party. 18 *Anderson*, 477 U.S. at 255; see *Matsushita*, 475 U.S. at 587–88.

19 DISCUSSION

20 Plaintiff Jimenez challenges Officer Franzen’s use of force against her, the other 21 Officers’ failure to intercede to stop the unlawful use of force, and the subsequent 22 search of her vehicle as being in violation of the Fourth Amendment of the U.S. 23 Constitution and 42 U.S.C. § 1983. Additionally, she alleges that the Sacramento 24 Police Department employed a pattern of unconstitutional conduct resulting in 25 unlawful searches, seizures, and citing of individuals for resisting arrest, in violation of 26 *Monell*. Defendants seek summary judgment on each of these claims. 27 //// 28 //// 1 A. The November 2, 2020, Search of Jimenez’s Vehicle, Which Resulted in 2 the Placement of a GPS Tracking Device, Was Lawful. 3 Typically, the Fourth Amendment protects individuals “against unreasonable 4 searches and seizures . . . [without] probable cause.” U.S. Const. amend. IV. However, 5 formerly incarcerated individuals who participate in California’s PRCS program are 6 subject to search or seizure without warrant. *People v. Douglas* (“*Douglas*”), 240 Cal.

7 App. 4th 855, 862 (2015), as modified on denial of reh’g (Oct. 19, 2015); Cal. Pen.

8 Code § 3465. An officer’s knowledge that an individual is enrolled in the PRCS 9 program is a sufficient basis for a lawful search or seizure of that individual or their 10 property. *Douglas*, 240 Cal. App. 4th at 862. While the PRCS program is distinct from 11 parole and probation, California courts have analogized participation in the PRCS 12 program to being on parole. See *Douglas* 240 Cal. App. 4th at 860; see also *United* 13 *States v. Miller*, 694 Fed. App’x. 609, 610 (9th Cir. 2017) (“California appellate courts 14 have likened PRCS to parole.”). 15 Although not raised in her Complaint, Jimenez alleges in her subsequent 16 briefing that the search of her vehicle and the initial placement of the GPS device was 17 unconstitutional because she herself was not a participant in the PRCS program, and 18 thus, the Officers would need to establish probable cause that a crime was occurring 19 to conduct a search. (ECF No. 20 at 6-7, hereinafter “*Opp’n*.”) But, during the

20 November 2, 2020, traffic stop, Martell was driving Jimenez’s car. (UMF No. 1.)

21 Martell is a known participant in the PRCS program. (*Id.*) Because the Officers knew 22 Martell is a participant in the PRCS program, the Officers had a lawful basis for 23 stopping and searching the vehicle. Martell, as the driver of the vehicle, undisputably 24 had control over it, sufficiently enabling the Officers to stop it, search it, and place the 25 GPS tracking device. See *United States v. Korte*, 918 F.3d 750, 757 (9th Cir. 2019) (it is 26 lawful for officers to place GPS tracking devices in vehicles operated by parolees). 27 Accordingly, the officers did not commit a constitutional violation by stopping and 28 placing a GPS tracker on the vehicle while Martell was operating it. 1 B. The November 6, 2020, Search of Jimenez’s Vehicle, Which Resulted in 2 the Removal of the GPS Tracking Device, Was Unlawful. 3 Individuals who are not on parole or are not participants in a parole-like 4 program (e.g., PRCS) have the full protection of the Fourth

Amendment. See U.S. 5 Const. amend. IV. 6 The question the Court must confront is whether the period between the 7 Officers' sighting of Martell operating Jimenez's vehicle some time prior without 8 Jimenez, and then on November 2 with Jimenez, is sufficient to establish a reasonable 9 belief in the Officers that Martell had control over the vehicle during the November 6 10 incident. Jimenez asserts, as she did on November 6, that the car was in her sole 11 possession, that Martell was not present, and that she did not consent to a search of 12 her vehicle. (Compl. ¶ 24; UMF No. 12.) Jimenez argues that because Martell was not 13 in the possession of her vehicle, the Officers did not have a basis to search her vehicle 14 without probable cause or a warrant. 15 It is entirely reasonable for the Officers to believe that Martell had dominion 16 over Jimenez's vehicle while he was driving it. See *United States v. Fultz*, 146 F.3d 17 1102, 1105 (9th Cir. 1998) (noting that a third party has actual authority over a 18 container if they have mutual use of and joint access or control over that container); 19 see also *United States v. Lopez*, 474 F. Supp. 943, 947 (C.D. Cal. 1979) (drawing a 20 privacy right distinction between passengers and "those individuals who have had 21 control of the vehicle or the keys"). However, viewing the facts in the light most 22 favorable to Plaintiff as the non-moving party, that belief is not reasonably supported 23 by the information available to the Officers on the night of November 6. When the 24 Officers arrived at Jimenez's house, it quickly became apparent that Martell was not 25 present, and that the owner of the vehicle, Jimenez, did not consent to a search of her 26 property. The Officers otherwise had no basis or underlying probable cause that a 27 crime was occurring that would enable them to search the car parked in her driveway. 28 While it is true that Martell used Jimenez's vehicle at least twice over the time span of 1 several months, "[t]he sporadic and limited availability [of a car] does not comport with 2 the formal 'joint control arrangements'" recognized by courts. *United States v. Kovac* 3 ("Kovac"), 795 F.2d 1509, 1511 (9th Cir. 1986). 4 Jimenez had a reasonable expectation of privacy in her vehicle, which was 5 parked in front of her residence, out of the presence of Martell. The Court finds that 6 the facts support Jimenez's expectation of privacy, and that the Officers violated her 7 Fourth Amendment rights by searching her property without her consent or a 8 reasonable suspicion that a crime was occurring. 9 C. Whether Officer Franzen Used Unreasonable Force Against Jimenez and 10 Whether the Other Officers Had a Duty Intervene Cannot be Resolved on 11 Summary Judgment. 12 While the Officers searched Jimenez's vehicle in violation of her Fourth 13 Amendment right to privacy, it appears Jimenez used her body to obstruct Officer 14 Franzen from further accessing the vehicle. (See UMF No. 17; BWC of Officer 15 Stackhouse X81067653 at 03m17s–03m19s.) As a result, Officer Franzen physically 16 restrained Jimenez in handcuffs, causing her to experience pain. (See UMF No. 19; 17 Compl. ¶ 27.) The remaining Officers did not intervene. (Compl. ¶ 26.) 18 Officer Franzen argues that any use of force against Jimenez was reasonable 19 under the circumstances. The Fourth Amendment of the United States Constitution 20 protects against unreasonable uses of force. U.S. Cont. Amend. IV. But whether an 21 officer's use of force is unreasonable is often a question of fact better suited for a jury, 22 rather than a court, and thus is

not always appropriate for summary judgment. *Glenn v. Wash. Cnty.*, 673 F.3d 864, 878 (9th Cir. 2011) (“We recognize that the officers have offered evidence that could support a verdict in their favor . . . But on summary judgment, the district court is not permitted to act as a factfinder. The circumstances of this case can be viewed in various ways, and a jury should have the opportunity to assess the reasonableness of the force used after hearing all the evidence.”); *Liston v. Cnty. of Riverside*, 120 F.3d 965, 976 n.10 (9th Cir. 1997), as amended (Oct. 9, 1997), 1 (“We have held repeatedly that the reasonableness of force used is ordinarily a question of fact for the jury.”) The Court recognizes that the scope of force used by Officer Franzen against Jimenez may support a number of conclusions, making it unfit for adjudication at the summary judgment stage. A reasonable decisionmaker, after viewing the video of the interaction between Officer Franzen and Jimenez, could plausibly conclude either the force used was justified under the circumstances, or alternatively that Officer Franzen did not use reasonable force. Accordingly, the Court cannot resolve the question of whether the Officers used unreasonable force against Jimenez and leaves that question to future consideration by a jury. Jimenez also alleges that during the altercation between her and Officer Franzen, Officers Stackhouse and Cuckovich failed to intervene to prevent Officer Franzen from committing a constitutional violation. “[P]olice officers have a duty to intercede when their fellow officers violate the constitutional rights of a suspect or other citizen.” *United States v. Koon*, 34 F.3d 1416, 1447 n.25 (9th Cir.1994) (collecting cases establishing a duty to intercede), rev'd in part on other grounds, 518 U.S. 81 (1996). As Defendants note, that duty applies when an officer is present when such a violation by another officer occurs, and when the witnessing officer has sufficient time to properly intervene. See *Cunningham v. Gates*, 229 F.3d 1271, 1289–90 (9th Cir. 2000); (ECF No. 16 at 18.) But, as discussed in the preceding paragraph, whether Officer Franzen committed a constitutional violation in his use of force against Jimenez cannot be resolved at this juncture. And while it is not disputed as to whether Officers Stackhouse and Cuckovich witnessed Officer Franzen’s alleged use of unreasonable force, the issue of whether they had time to properly intervene is also an unresolved question of fact, and therefore not suitable for summary judgment. Because the threshold question of whether Officers Stackhouse and Cuckovich had a duty to intercede depends on a finding that a constitutional harm has occurred which has not yet been determined, Jimenez’s claim that the Officers failed that duty cannot be defeated by Defendants on summary judgment. See *Pearson v. Callahan*, 555 U.S. 1223, 236 (2009) (giving district courts discretion to look to whether a constitutional harm has occurred before determining whether a defendant is entitled to qualified immunity). D. The Officers Are Not Entitled to Qualified Immunity. Defendants also argue that they are entitled to qualified immunity. A government official is entitled to qualified immunity from a claim for damages unless the plaintiff raises a genuine issue of fact showing that: (1) “a violation of a constitutional right,” occurred and (2) that the right was “clearly established at the time of [the] defendant’s alleged misconduct.”

Pearson, 555 U.S. at 232. When determining whether a right was clearly established, “existing precedent must have placed the statutory or constitutional question beyond debate.” *Kisela v. Hughes*, 584 U.S. 100, 104 (2018) (internal quotations omitted). “Because the focus is on whether the officer had fair notice that [their] conduct was unlawful, reasonableness is judged against the backdrop of the law at the time of the conduct.” *Brosseau v. Haugen*, 543 U.S. 194, 198 (2004). And while courts must not define clearly established law with a high level of generality, *District of Columbia v. Wesby*, 583 U.S. 48, 63 (2018), a “general constitutional rule already identified in the decisional law may apply” to similar factual scenarios, *Bonivert v. City of Clarkston*, 883 F.3d 865, 872 (9th Cir. 2018) (internal quotations omitted). See *Polanco v. Diaz*, 76 F.4th 918, 930, n.8 (9th Cir. 2023) (“We routinely rely on the intersection of multiple cases when holding that a constitutional right has been clearly established.”) “For purposes of qualified immunity’s clearly established prong, there does not have to be a case directly on point.” *D’Braunstein v. Cal. Highway Patrol*, 131 F.4th 764, 773 (9th Cir. 2025) (internal quotations omitted). In other words, there is no strict requirement that “the very action in question has previously been held unlawful.” *Anderson v. Creighton*, 483 U.S. 635, 640 (1987). In general, it is not permissible for a police officer to search a vehicle without a warrant. See *Katz v. United States*, 389 U.S. 347, 357 (1967) (“[S]earches conducted outside the judicial process, without prior approval by judge or magistrate, are per se unreasonable under the Fourth Amendment — subject only to a few specifically established and well-delineated exceptions.”). Jimenez had a valid Fourth Amendment right to the privacy of her vehicle, which was parked in front of her residence, and away from Martell, who was last known to access it four days prior. Existing caselaw at the time of the Officers’ visit to Jimenez’s house should have put the Officers on notice that they must have a supportable and reasonable suspicion that the vehicle was Martell’s before they conducted their search to retrieve the GPS tracking device. These cases include *Motley v. Parks*, 432 F.3d 1072, 1080 (9th Cir. 2005) (en banc), overruled in part on other grounds by *United States v. King*, 687 F.3d 1189 (9th Cir. 2012), in which the Ninth Circuit recognized the important Fourth Amendment protections that apply to both people with parole status, such as Martell, and to third parties, such as Jimenez. In *Motley*, the Ninth Circuit held that “[g]enerally, a condition of parole that permits warrantless searches provides officers with the limited authority to enter and search a house where the parolee resides, even if others also reside there. But they have to be reasonably sure that they are at the right house.” *Id.* at 1079. This safeguard of “[r]equiring officers to have probable cause to believe that a parolee resides at a particular address prior to conducting a parole search protects the interest of third parties.” *Id.* at 1080. And in *United States v. Grandberry*, 730 F.3d 968 (9th Cir. 2013), the Ninth Circuit held that there must be strong evidence that a parolee resides at a specific address before an officer can search that location. The *Grandberry* court recognized that while parolees may be subject to warrantless searches of their residences as a condition of their release, “[u]nder our precedents . . . , before

conducting a warrantless search of a residence pursuant to a parolee's parole condition, law enforcement officers must have probable cause to believe that the parolee is a resident of the house to be searched." 730 F.3d at 973 (internal quotations omitted).¹ This is a "relatively stringent standard." *United States v. Franklin*, 603 F.3d 652, 656 (9th Cir. 2010), quoting *United States v. Howard*, 447 F.3d 1257, 1262 (9th Cir. 2006).² These cases identify an already-existing expectation that an officer should have some level of certainty that the property they are searching indeed belongs to the parolee. Because Jimenez is not a parolee, the question for the Court is whether Martell, who is a parolee and who had access to the vehicle four days prior, would lead the Officers to reasonably suspect that Jimenez's vehicle was in Martell's control. Kovac, a decision issued well before the events in question, is a helpful guide when weighing whether Martell's limited access amounted to control over Jimenez's vehicle. 795 F.2d at 1510–1511. In Kovac, a woman was stopped when driving away from a drug dealer's home and admitted that she saw drugs at the home, allowing the officers to then get a search warrant for the home. *Id.* at 1510. The drug dealer argued that the officer's stopping of the woman's car violated his Fourth Amendment right. *Id.* He posited that because (1) the car was parked in front of his home during prior officer surveillance, (2) he had driven the car once during that period, (3) his wife had a key to the car, and (4) he and his wife had permission to use the car, he therefore had an expectation of privacy in the vehicle. *Id.* The Ninth Circuit rejected that argument. It contrasted ownership of the car against the drug dealer's sparing use of it, noting that "[the drug dealer] did not own the car and thus did not have an inherent right to control the car." *Id.* Further, the Ninth Circuit noted that the drug dealer was not "present at the stop so as to be exercising actual control of the vehicle." *Id.* at 1511. "The sporadic and limited availability of [the woman's car] to [the drug dealer] does not comport with the formal 'joint control' arrangements which Grandberry quotes from *United States v. Howard*, 447 F.3d 1257, 1262 (9th Cir. 2006) and *Motley v. Parks*, 432 F.3d 1072, 1080 (9th Cir. 2005). Both cases have been overruled in part on other grounds. See *United States v. King*, 687 F.3d 1189 (9th Cir. 2012). Despite this, Grandberry recognizes that Howard and Motley still provide applicable rules regarding necessary probable cause before searching a parolee's residence. 730 F.3d at 973. "We have recognized as conferring a legitimate expectation of privacy on a defendant in a place he does not own." *Id.* In essence, limited access to a vehicle does not equate to control over that vehicle, especially when the person in question is not physically present when an officer wants to conduct a search. Applying Kovac here, the fact that Martell used the vehicle once in the previous four days, and an additional time some months earlier, does little to establish he had control at the time the Officers effectuated the second search. Martell was not physically present when the Officers conducted the second search. And, Jimenez gave the Officers ample notice that the vehicle was hers, explicitly telling them so when they arrived. Jimenez also fairly points out that Martell's parole address does not list her home address, and that she told the Officers that her mother, and not Martell, possessed the vehicle's keys.

Together, these facts establish that the vehicle 13 belonged to Jimenez and was within her control, rather than Martell's. Considering 14 the strong constitutional protection from unwarranted seizures, the Officers' being on 15 notice that the vehicle belonged to Jimenez, and the fact that Martell had not been 16 seen in the vehicle for several days, the Court concludes that the Officers had no basis 17 for conducting the second search. Further, given the body of caselaw requiring an 18 officer's sufficient degree of knowledge that an effect indeed belongs to a parolee 19 before searching it, the Officers should have reasonably known such a search was 20 impermissible. See Grandberry, 730 F.3d at 973–76; see also Motley, 432 F.3d at 21 1079–80. 22 Defendants argue that the applicable Fourth Amendment standard was not 23 established until the Ninth Circuit decided *United States v. Dixon*, 984 F.3d 814 (9th Cir. 24 2020), which was issued a month after the incident occurred, and thus was not clearly 25 established at the time the Officers searched Jimenez's vehicle. (See ECF No. 16 at 26 14.) But while it is true that *Dixon* is more squarely on all fours with this case, it did not 27 2 While Jimenez refers to it as a "probation" address, it is apparent to the Court that she is referring to 28 Martell's PRCS/parole address 1 break new ground or develop any new legal theory: it merely synthesized existing 2 caselaw, including Grandberry and Motley, that already established the proposition 3 that in order to search a parolee or their effects, officers must have a sufficient "degree 4 of knowledge" that the search condition applies to the place or object to be searched. 5 *Dixon*, 984 F.3d at 821, quoting Grandberry, 730 F.3d at 974–75. Indeed, the *Dixon* 6 Court described the current state of the law as follows: "We have explained that to 7 conduct a search of property pursuant to [a supervised release condition], the 8 individual subject to it must 'exhibit[] a sufficiently strong connection to [the property 9 in question] to demonstrate 'control' over it.'" *Dixon*, 984 F.3d at 818, quoting *Korte*, 10 918 F.3d at 754 and Grandberry, 730 F.3d at 980. The fundamental thrust of these 11 cases is that a third party who is not a parolee is fully protected by the Fourth 12 Amendment, and if an officer is going to conduct a search, they must satisfy the 13 relatively stringent probable cause requirements that what they are searching belongs 14 to the parolee and not an innocent third party. See Motley, 432 F.3d at 1080. It is 15 unsurprising that *Dixon* relied on these previous cases given that they all address the 16 fundamental right of a person against unreasonable searches and seizures under the 17 Fourth Amendment, and the Court views this principle as being applicable at the time 18 of the Officers' search of Jimenez's vehicle. See *Bonivert*, 883 F.3d at 872. 19 Accordingly, the Court finds that the Officers are not entitled to qualified immunity 20 related to the search of Jimenez's vehicle. 21 Separately, Defendants argue that the Officers would be entitled to qualified 22 immunity for their use of force against Jimenez. However, it is clearly established law 23 that officers cannot use unreasonable force when detaining or arresting an individual. 24 See *Creal v. City of Fairfield*, No. CIVS06560WBSPANJFM, 2007 WL 2019624, *3 (E.D. 25 Cal. July 10, 2007) ("The right not to be subjected to unreasonable force during an 26 arrest is clearly established. Police may use only such force as is objectively 27 reasonable under the circumstances."), citing *Graham v. Connor*, 490 U.S. 386, 397 28 (1989). As to the first prong of

the qualified immunity analysis, whether a 1 constitutional violation occurred, that question is left to the jury to decide in the first 2 instance. 3 E. Jimenez Has Not Demonstrated that the Sacramento Police Department 4 Employs an Unlawful Practice of Placing GPS Trackers in Violation of Monell. 5 Jimenez alleges that the Sacramento Police Department employs an illegal and 6 systemic practice of unconstitutional searches (including the unlawful use of GPS 7 tracking). Under Monell, a plaintiff must first allege in their complaint that a public 8 actor's tort is the result of: (1) an official government policy; (2) a "longstanding 9 practice or custom which constitutes the standard operating procedure of the local 10 government entity"; (3) the act of an "official whose acts fairly represent official policy 11 such that the challenged action constituted official policy"; or (4) an instance where 12 "an official with final policy-making authority delegated that authority to, or ratified the 13 decision of, a subordinate." Price v. Sery, 513 F.3d 962, 966 (9th Cir. 2008) (internal 14 quotations omitted); see Monell, 426 U.S. 658. An individual must suffer a 15 constitutional injury for Monell to apply. City of L.A. v. Heller, 475 U.S. 796, 799 16 (1986). To substantiate her claim, Jimenez relies on the statements of Officer Franzen 17 that he was "trained by his supervising officers to install/plant tracking devices without 18 a warrant." (Opp'n at 2.) 19 Here, the Court has found that the placement of the GPS tracking device in 20 Jimenez's car was valid and that no constitutional violation or tort occurred due to the 21 car's operation by Martell when the tracking device was placed. A Monell claim 22 cannot be raised if no harm occurred. Therefore, Jimenez's claim that the placing of 23 GPS tracking devices is a prohibited tort that establishes a claim under Monell must 24 fail.3 25 //// 26 //// 27 3 Jimenez does not articulate that the Sacramento Police Department employs an unlawful practice of 28 retrieving the GPS devices. (See ECF Compl. ¶ 60; Opp'n at 12–13.) 1 F. Jimenez's Monell Claim for Unreasonable Use of Force Cannot be Decided 2 Until a Jury Considers the Threshold Question of Whether Unreasonable 3 Force Was Exerted. 4 Jimenez levies an additional Monell claim based on Officer Franzen's use of 5 force against her and the other Officers' failure to intervene. Specifically, she asserts 6 that the Sacramento Police Department has an unconstitutional practice of charging 7 individuals with a violation of California Penal Code section 148 (resisting, delaying, or 8 obstructing a peace officer) to "justify [the Officers'] use of unreasonable force." 9 (Opp'n at 13.) As noted earlier, whether there was a constitutional violation in the first 10 instance is a question that must be submitted to the jury. As to the existence of an 11 official practice, Jimenez points to evidence that may substantiate an official 12 government policy of charging individuals with Penal Code section 148 to justify the 13 use of force. See Price, 513 F.3d at 966; see also Monell, 426 U.S. 658. In his 14 deposition, Officer Franzen appears to admit that he has been trained to charge an 15 individual with a section 148 violation when that individual being arrested complained 16 of force being used against them.4 (See ECF No. 20-1 at 104.) Accordingly, 17 Defendants are not entitled to summary judgment on this Monell claim. 18 //// 19 //// 20 4 Specifically, the Court finds that the inconclusive nature of Officer Franzen's responses in the following 21 exchange between him and Jimenez's attorney

creates a factual question as to whether there is policy or training that encourages the use of Penal Code section 148 citations for individuals who experience 22 a use of force by officers: 23 Q: “Have you ever been trained – as a peace officer, have you ever been trained to charge someone with a [Penal Code section] 148 [violation] because one of the reasons is because the suspect has 24 claimed that he or she was injured by yourself or a fellow officer, yes or no?” A: “If they were injured because of 148, yes?” 25 Q: “What does that mean, if they were injured because of a 148? A: “Well, I imagine you were asking were they complaining of pain due to some use of force; correct? 26 Q: “Correct?” A: “Then yes.” 27 (ECF No. 20-1, 104:7–18.) While there is certainly ambiguity in the answer in light of the questions 28 asked, that ambiguity must be resolved by a jury.

1 CONCLUSION

2 For the reasons discussed above, the Court GRANTS in part Defendants’ 3 | Motion for Summary Judgment (ECF No. 16) as to Plaintiff's fourth cause of action 4 | (Monell claim for unconstitutional placement of GPS tracking devices) and DENIES 5 | Defendants’ Motion as to Plaintiff's first, second, and third causes of action, and 6 | DENIES in part as to Plaintiff's fourth cause of action (Monell claim for unreasonable 7 | force). 8 9 IT IS SO ORDERED. 10 | Dated: May 7, 2025 Donal J Ch brett Hon. Daniel alabretta

" UNITED STATES DISTRICT JUDGE

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