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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

THE PEOPLE,

Plaintiff and Respondent,

v.

RAYANNA ERIKA LOPEZ,

Defendant and Appellant.

2d Crim. No. B278859  
(Super. Ct. No. 2015033819)  
(Ventura County)

Rayanna Erika Lopez appeals a judgment following her conviction, after a jury trial, of resisting an executive officer (Pen. Code, § 69), a felony.<sup>1</sup> We conclude, among other things, that 1) the police officer acted lawfully under section 69; 2) the trial court did not err by admitting evidence of a 911 call; 3) the trial court properly instructed the jury with CALCRIM Nos. 3470, 3471 and 3472; and 4) the trial court did not abuse its discretion by ruling there was no material to be disclosed from a police officer's

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<sup>1</sup> All statutory references are to the Penal Code unless otherwise stated.

personnel records during its in camera review on a *Pitchess* motion. We affirm.

### FACTS

On October 24, 2014, the Oxnard Police Department received a 911 call. A police dispatch advised police officers that a neighbor saw a man and a woman fighting and “pushing each other to the ground.”

Police Officer Catherine Moreira received the dispatch with the additional information. This was a “domestic” dispute, and the man and woman were in an “older model” Chevy sedan. She arrived on the scene in less than 10 minutes. Police Officer Edward Murillo arrived shortly thereafter. Moreira was wearing her police uniform and she saw the vehicle mentioned in the dispatch. Moreira testified that on a domestic violence call police do not know whether a person is “a victim” or whether he or she will “turn on you” and be “violent.”

Murillo walked to the “rear driver’s side door” of the Chevy and knocked on the window because he saw the driver getting into the backseat of the Chevy. Lopez and her boyfriend Christopher Colunga were inside. Moreira walked to the “rear passenger side window” of that vehicle where Lopez was sitting. Moreira asked Colunga to open the door. He refused. He was on his phone talking to a lawyer. Moreira told Colunga he “could stay on the phone with his attorney, but he needed to open the door.” She told him if he did not open the door, the police would “[b]ust down the door and bust down the window.”

Moreira testified she was “concerned for [Lopez’s] safety.” She could not determine if “[Lopez] was being held against her will.” The car window was tinted. She could not tell whether Lopez was injured or whether there were weapons inside.

After giving the command to open the door, Lopez opened the door “so fast that it hit [Moreira] in the face,” hit her nose and knocked off her glasses. Moreira grabbed Lopez by her left arm “to get her out of the vehicle.” Colunga grabbed Lopez and “began trying to pull her out of his side of the car.” Lopez kicked and punched Moreira on her arm and chest. Moreira punched Lopez twice in her leg “to get [Lopez] to stop hitting [her].” Lopez continued to kick Moreira. After a struggle, Moreira was eventually able to handcuff Lopez.

Murillo testified he wanted the car door opened “to make sure both parties are okay and nobody is injured.” He saw Lopez kicking Moreira. Lopez and Colunga were arrested.

Lopez testified she did not intentionally hit Moreira in the face with the car door. She did not “intentionally kick” or punch Moreira. Moreira punched her on her head, arms and legs.

#### DISCUSSION

##### *The Officer’s Lawful Performance of Duties under Section 69*

Lopez contends her conviction for resisting an executive officer must be reversed because Officer Moreira was not acting lawfully in the performance of her duties. We disagree.

A person violates section 69 if he or she “attempts, by means of any threat or violence, to deter or prevent an executive officer from *performing any duty imposed upon the officer by law*, or who knowingly resists, by the use of force or violence, the officer, *in the performance of his or her duty*.” (§ 69, subd. (a), italics added.) “Under this penal code provision, an officer must be acting lawfully when the resistance occurs.” (*People v. Sibrian* (2016) 3 Cal.App.5th 127, 133.) “An officer using excessive force is not acting lawfully.” (*Ibid.*)

“An officer may approach a person in a public place and ask if the person is willing to answer questions.” (*People v. Brown* (2015) 61 Cal.4th 968, 974.) “The Fourth Amendment permits brief investigative stops . . . when a law enforcement officer has “a particularized and objective basis for suspecting the particular person stopped of criminal activity.”” “[P]rivate citizens who report criminal activity generally have no bias or motive other than good citizenship, and therefore tend to be reliable.” (*Id.* at p. 982.) A 911 call may provide sufficient reliability to support an officer’s decision to approach a person and investigate. (*Id.* at p. 981.) In reviewing the record, we do not weigh the evidence or decide the credibility of the witnesses. We must draw all reasonable inferences in support of the judgment. (*People v. Culver* (1973) 10 Cal.3d 542, 548.)

Moreira received a police dispatch report about a domestic disturbance describing the location and the descriptions of the man and woman involved. She arrived promptly, and saw the vehicle described in the dispatch report and the man and woman in the back seat of that car.

Moreira testified she wanted to determine if there was “domestic violence” and was concerned for the woman’s “safety.” She had reasonable grounds to approach the vehicle and investigate. “Police officers responding to a domestic violence report have a duty to ensure the present and continued safety and well-being of the occupants.” (*People v. Higgins* (1994) 26 Cal.App.4th 247, 253.)

Moreira decided to arrest Lopez “[a]s soon as [she] got hit in the face with the car door.” Lopez opened the door “so fast” that it hit Moreira in the nose and knocked off her glasses. Lopez testified she did not intentionally hit Moreira with the door. But

the jury was not required to accept her testimony. It could instead rely on the evidence about the speed and impact of the door on Moreira's face.

Lopez contends her testimony shows that Moreira used unreasonable force by hitting her on her head, arms and legs, and that she did not intentionally kick or punch Moreira. But the jury did not find Lopez to be credible.

Moreira testified she tried to remove Lopez from the car by grabbing her arm. She did this to try to get Lopez out of the car to determine if she had been a domestic violence victim, while Colunga pulled Lopez in his direction. Moreira also grabbed the arm to arrest Lopez. Lopez kicked and punched Moreira. Moreira testified she was "being assaulted." The People claim Lopez's "violent reaction" gave Moreira "probable cause to arrest [Lopez] for battery on a peace officer." (§§ 240, 243.) A police officer may ""press forward and make the arrest, using all the force [reasonably] necessary to accomplish that purpose."" (*Hernandez v. City of Pomona* (2009) 46 Cal.4th 501, 519.)

The jury could reasonably infer Moreira used appropriate defensive force. Moreira testified she punched Lopez twice in the leg "to get [Lopez] to stop hitting [her]." She said this was a recognized police tactic called "distraction strikes" under the police department's "DETECT program to get someone's attention." She said, "It distracts them enough time for us to try to do another maneuver." Lopez kicked Moreira five times during Moreira's attempt to place her in handcuffs.

A trier of fact could infer Moreira acted reasonably given the dispatch information and in response to Lopez's violent actions. Substantial evidence supports a finding that Moreira acted in the lawful performance of her duties and that Lopez

violated section 69. (*People v. Bernal* (2013) 222 Cal.App.4th 512, 514 [“Section 69 plainly covers a situation . . . where an officer’s attempt to lawfully restrain defendant was hampered by defendant’s quite forceful attempt to escape that restraint”].)

### *The 911 Call*

Lopez contends the trial court erred by admitting evidence about a 911 call. She claims it was irrelevant and “highly prejudicial.”

Trial courts have “broad discretion” to determine the probative value of evidence and whether its admission is outweighed by “concerns of undue prejudice.” (*People v. Rodrigues* (1994) 8 Cal.4th 1060, 1124.) Appellate courts will not reverse the trial court unless its exercise of discretion was “arbitrary, capricious or patently absurd.” (*Ibid.*)

The defense objected to the admission of 911 tape evidence. The prosecutor noted that on the tape recording of that 911 call Lopez can be heard “screaming.” The 911 tape was played for the jury.

Lopez contends the tape is irrelevant because Moreira testified she did not hear the 911 call. Moreira responded to dispatch information, not the actual call. But Lopez also claims that when the officers arrived, there was no emergency. She argues she and her boyfriend “were not yelling or shouting, they were sitting quietly in the back of the car.” At trial Lopez’s counsel told the jury there was no disturbance. She said, “They don’t get there and see anyone in the street shoving and pushing.”

The prosecutor noted the tape’s relevance. She said it “shows it’s an ongoing emergency and it’s going on as the police officers are responding to the location.” She added, “[I]t is

evidence of the police officers' lawful performance of their duties.” This evidence contradicted the defense version of the facts. It was relevant and highly probative. It was the event that initiated the police response. Lopez has not shown an abuse of discretion.

*CALCRIM Nos. 3471 and 3472*

Lopez contends the trial court erred by instructing the jury with CALCRIM Nos. 3471 and 3472. We disagree.

The trial court gave the jury CALCRIM No. 3471, stating, “*A person who starts a fight has a right to self-defense only if: 1. She actually and in good faith tried to stop fighting; AND 2. She indicated, by word or by conduct, to her opponent, in a way that a reasonable person would understand, that she wanted to stop fighting and that she had stopped fighting. If the defendant meets these requirements, she then had a right to self-defense if the opponent continued to fight.*” (Italics added.)

The trial court gave the jury CALCRIM No. 3472, stating, “*A person does not have the right to self-defense if she provokes a fight or quarrel with the intent to create an excuse to use force.*” (Italics added.)

Lopez contends these instructions were not supported by the evidence. It is error to give an instruction that “has no application to the facts of the case.” (*People v. Guiton* (1993) 4 Cal.4th 1116, 1129.)

Lopez claims the evidence shows that Moreira initiated a fight and consequently these instructions have no application to the facts of the case. But the trial court could reasonably find that Murillo’s and Moreira’s testimony showed Lopez was the initial aggressor of a violent attack on Moreira. It was substantial evidence to support giving these instructions.

*CALCRIM No. 3470*

Lopez contends the trial court erred by giving CALCRIM No. 3470 because it is an incorrect statement of the law.

Lopez claims the instruction provides that to act in self-defense the defendant must use “no more force than was reasonably necessary to defend against that danger.” Lopez argues, “This instruction was erroneous because it allowed [her] to use only the amount of force that was actually necessary to defend herself rather than the amount of force she reasonably believed was necessary to defend [herself].”

The People respond that Lopez cited only one part of the instruction and the full instruction “set[s] out the very standards [Lopez] maintains were missing.” We agree.

This instruction also provides: “A defendant *must have believed* there was imminent danger of bodily injury to himself or herself or someone else or an imminent danger that he or she or someone else would be touched unlawfully. *Defendant’s belief must have been reasonable* and he or she must have acted *because of that belief*. The defendant is only entitled to use that amount of force that a *reasonable person would believe* is necessary in the same situation. . . . When deciding *whether a defendant’s beliefs were reasonable*, consider all the circumstances *as they were known to and appeared to the defendant* and consider *what a reasonable person in a similar situation* with similar knowledge would have believed. *If a defendant’s beliefs were reasonable, the danger does not need to have actually existed.*” (Italics added.) Lopez has not shown error.

*The Pitchess Motion*

The People filed a *Pitchess* motion (*Pitchess v. Superior Court* (1974) 11 Cal.3d 531, 535-537; Evid. Code, §§ 1043-1046)



requesting disclosure of personnel records and complaints against Officer Moreira. The trial court found good cause to conduct an in camera review involving “all complaints from any sources relating to acts of false reports, unlawful detention, unlawful arrest, perjured testimony, and excessive force.” After conducting an in camera review, it found there was nothing “that falls within the . . . scope of the grant of the Pitchess motion. So there is nothing for the city attorney to turn over.”

Lopez requests that we conduct an independent review of the transcript of the in camera hearing. The People do not object. An appellate court reviews that transcript to determine whether “material evidence was wrongfully withheld under *Pitchess*.” (*People v. Gaines* (2009) 46 Cal.4th 172, 183.) We review the trial court’s rulings based on the abuse of discretion standard. (*People v. Samayoa* (1997) 15 Cal.4th 795, 827.) The in camera transcript shows the trial court made a careful and complete inquiry to determine whether material information was contained in Moreira’s personnel records. There was no abuse of discretion.

#### DISPOSITION

The judgment is affirmed.

NOT TO BE PUBLISHED.

GILBERT, P. J.

We concur:

PERREN, J.

TANGEMAN, J.

Gilbert A. Romero, Judge

Superior Court County of Ventura

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Laini Millar Melnick, under appointment by the Court of Appeal, for Defendant and Appellant.

Xavier Becerra, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Lance E. Winters, Senior Assistant Attorney General, Paul M. Roadarmel, Jr., Supervising Deputy Attorney General, David F. Glassman, Deputy Attorney General, for Plaintiff and Respondent.