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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.

SON THANH TRAN,

Defendant and Appellant.

2d Crim. No. B280194
(Super. Ct. No. GA099232)
(Los Angeles County)

After being charged with felony resisting arrest and attempting to take a firearm from a peace officer (Pen. Code,¹ § 148, subd. (d)), a jury convicted Son Thanh Tran of resisting a peace officer, a misdemeanor (§ 148, subd. (a)). The trial court sentenced him to one year in county jail.

Tran contends the evidence presented at trial was not sufficient to sustain his conviction. He also asks us to determine whether the trial court abused its discretion when it denied

¹ All further statutory references are to the Penal Code.

disclosure of some of the information he sought at an in camera *Pitchess*² hearing. We affirm.

FACTUAL AND PROCEDURAL HISTORY

Tran sat in a car parked outside Edward Sanfilippo's home. When Sanfilippo's wife passed by, Tran "bother[ed]" and "harass[ed]" her, asked her name, and asked where she lived. Sanfilippo went outside and asked Tran why he was parked in front of his house. Tran replied that he was "looking for the governor or the mayor." Sanfilippo called the police to report Tran's odd behavior. He called again 20 minutes later when Tran kept looking toward his house, making his wife "kind of paranoid."

Officers Robert Barada and Donovan Jimenez arrived 15 minutes after Sanfilippo's second call. Tran gave his identification to Officer Barada. Officer Jimenez asked Tran to step out of the car, but Tran refused. Officer Jimenez asked him again to step out of the car. Tran again refused.

Officer Vincent Salazar then arrived on the scene. He could see Tran fidgeting and moving about in the car and looking in the rearview and side mirrors. Officer Salazar was concerned Tran had a weapon, so he asked Tran to step out of the car. Tran asked for a supervisor. Officer Salazar said that one would be called, and again asked Tran to exit the vehicle.

Because Tran's vehicle did not have a handle on the outside, Officer Salazar reached through the open window to open the door. He and Officer Barada then stood between the open door and the driver's seat. Tran shifted toward the center console and braced his arms against the steering wheel. He then moved

² *Pitchess v. Superior Court* (1974) 11 Cal.3d 531.

over to the passenger seat, put his foot against the floorboard, and pulled away when the officers tried to grab him.

Officer Salazar grabbed Tran's arm and applied a twistlock control hold, while Officer Barada grabbed Tran's other arm. Tran pulled away from the officers, kicked at them, and flailed his arms. Officer Salazar felt a tug at his hip and saw Tran grab his gun holster. He yelled, "He's grabbing my gun, he's grabbing my gun!" He drew his baton and struck Tran in the chest and face. Tran then grabbed the baton, and Officer Salazar yelled, "He's got my baton, he's got my baton!"

Officer Barada shot Tran with a Taser. The officers pulled Tran out of the car. When Tran was on the ground, Officer Jimenez knelt on his back and handcuffed him. Tran sustained injuries to his face.

DISCUSSION

Resisting a peace officer

Tran contends there was not sufficient evidence to support his conviction for resisting a peace officer because Officers Barada, Jimenez, and Salazar were not engaged in the lawful performance of their duties when they detained him. More specifically, Tran contends: (1) the officers did not have reasonable suspicion to detain him, and (2) even if they did, they used excessive force to do so. We disagree with both contentions.

To sustain a conviction for resisting a peace officer, there must be sufficient evidence that the officer was lawfully performing their duties. (*People v. Ghebretensae* (2013) 222 Cal.App.4th 741, 759.) An officer is not lawfully performing their duties if they detain a suspect without reasonable suspicion or use excessive force to make an arrest. (*In re Chase C.* (2015) 243

Cal.App.4th 107, 113; *People v. White* (1980) 101 Cal.App.3d 161, 167 (*White*).)

We review for substantial evidence whether Officers Barada, Jimenez, and Salazar were lawfully performing their duties when they detained Tran. (*People v. Jenkins* (2000) 22 Cal.4th 900, 1022.) We examine “whether, on the entire record, a rational [jury] could find [Tran] guilty beyond a reasonable doubt. [Citations.]” (*People v. Barnes* (1986) 42 Cal.3d 284, 303.) We ““view the evidence in a light most favorable to [the prosecution] and presume in support of the judgment the existence of every fact the [jury] could reasonably deduce from the evidence.” [Citations.]” (*Ibid.*) ““[I]t is the exclusive province of the . . . jury to determine the credibility of a witness and the truth or falsity of the facts upon which a determination depends” [Citation.]” (*Ibid.*) “[I]f the verdict is supported by substantial evidence, [we] must accord due deference to the trier of fact and not substitute [our] evaluation of a witness’s credibility for that of the [jury]. [Citations.]” (*Id.* at pp. 303-304.)

1. Tran’s detention was reasonable

“A detention is reasonable under the Fourth Amendment when the detaining officer can point to specific articulable facts that, considered in light of the totality of the circumstances, provide some objective manifestation that the person detained may be involved in criminal activity.” (*People v. Souza* (1994) 9 Cal.4th 224, 231.) This is a less demanding standard than probable cause, but nevertheless requires “more than an ‘inchoate and unparticularized suspicion or ‘hunch.’” [Citation.]” (*United States v. Sokolow* (1989) 490 U.S. 1, 7.) Thus, “to justify an investigative stop or detention the circumstances known or apparent to the officer must include

specific and articulable facts causing him to suspect that (1) some activity relating to crime has taken place or is occurring or about to occur, and (2) the person he intends to stop or detain is involved in that activity.” (*In re Tony C.* (1978) 21 Cal.3d 888, 893.)

Whether reasonable suspicion exists takes into account “commonsense judgments and inferences about human behavior. [Citation.]” (*Illinois v. Wardlow* (2000) 528 U.S. 119, 125.) We review the jury’s factual findings for substantial evidence. (*People v. Glaser* (1995) 11 Cal.4th 354, 362.) We independently determine whether, based on those facts, the detention was reasonable. (*Ibid.*)

The facts known to the officers here provided the requisite reasonable suspicion to detain Tran. Sanfilippo called the police to report that Tran harassed his wife. A defendant’s harassing behavior can contribute to a finding of reasonable suspicion. (*Wood v. Emmerson* (2007) 155 Cal.App.4th 1506, 1521-1522.) When Sanfilippo asked Tran why he was in the neighborhood, he provided nonsensical answers. A defendant’s deceptive or misleading answers can contribute to a finding of reasonable suspicion. (*People v. Allen* (1975) 50 Cal.App.3d 896, 901; *People v. Shoemaker* (1971) 16 Cal.App.3d 316, 320.) Officer Salazar observed Tran fidgeting and moving about in his car and looking in the rearview and side mirrors. A defendant’s furtive glances and movements can contribute to a finding of reasonable suspicion. (*People v. Amos* (1961) 190 Cal.App.2d 384, 387-388.) And “[n]ervous, evasive behavior is a pertinent factor in determining reasonable suspicion. [Citation.]” (*In re H.M.* (2008) 167 Cal.App.4th 136, 144.)

The possibility of an innocent explanation for Tran's behavior did not deprive the officers of reasonable suspicion to detain him. (*In re Tony C.*, *supra*, 21 Cal.3d at p. 894.) The detention was reasonable.

2. *The officers did not use excessive force*

A peace officer may not use excessive force to detain a suspect. (*White*, *supra*, 101 Cal.App.3d at p. 167.) Determining whether the force used is reasonable “requires careful attention to the facts and circumstances of each particular case, including the severity of the crime at issue, whether the suspect poses an immediate threat to the safety of the officers or others, and whether [the suspect] is actively resisting arrest or attempting to evade arrest by flight. [Citation.]” (*Graham v. Connor* (1989) 490 U.S. 386, 396.) Whether Officers Barada, Jimenez, and Salazar used reasonable force to detain Tran “is a pure question of fact” for the jury to determine. (*People v. Delahoussaye* (1989) 213 Cal.App.3d 1, 8.)

Substantial evidence supports the jury's finding that Officers Barada, Jimenez, and Salazar used reasonable force to detain Tran. Officers Salazar and Barada grabbed Tran when he was actively resisting arrest: He pulled away, disobeyed their commands, braced himself in the car, and kicked at the officers. An officer may employ force in such a situation. (See *People v. Gutierrez* (2009) 174 Cal.App.4th 515, 517-519 [officer's attempt to pepper spray defendant reasonable where defendant refused to obey officer's commands and punched officer in the face]; *In re Joseph F.* (2000) 85 Cal.App.4th 975, 990 [officer's attempt to grab defendant and apply a wristlock reasonable where defendant refused his commands and officer did not use weapon].) We need not decide whether Officer Salazar's use of

his baton, Officer Barada's use of his Taser, or Officer Jiminez's act of kneeling on Tran's back was reasonable because Tran's crime was complete before any of those actions occurred. (*In re Charles G.* (2017) 14 Cal.App.5th 945, 956 [physical resistance and refusing officer's requests violates section 148].)

The Pitchess hearing

Tran requests that we examine the materials disclosed at the in camera *Pitchess* hearing to determine if the trial court abused its discretion when it denied disclosure of certain information in the officers' personnel files. There was no abuse of discretion.

When a defendant files a *Pitchess* motion, the custodian of records must present to the trial court all potentially relevant documents in an officer's personnel file for in camera review. (*People v. Mooc* (2001) 26 Cal.4th 1216, 1228-1229.) During the review, the custodian should state what documents were deemed irrelevant to the defendant's request. (*Id.* at p. 1229.) The court should make a record of the documents it examined and state whether they should be disclosed. (*Id.* at pp. 1229-1232.)

The trial court granted Tran's *Pitchess* motion requesting information in the personnel files of Officers Salazar and Barada relating to excessive force, fabricated evidence, and false police reports. It conducted an in camera *Pitchess* review and ordered the disclosure of one relevant item. We have reviewed the transcript of the in camera proceedings. The trial court complied with the procedure set forth in *Mooc*.

DISPOSITION

The judgment is affirmed.

NOT TO BE PUBLISHED.

TANGEMAN, J.

We concur:

GILBERT, P. J.

YEGAN, J.

Jared D. Moses, Judge

Superior Court County of Los Angeles

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