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IN THE COURT OF APPEAL OF THE STATE OF  
CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

THE PEOPLE,

Plaintiff and Respondent,

v.

CARLOS JUAN SWITT,

Defendant and Appellant.

B272443

(Los Angeles County  
Super. Ct. No. KA108829)

APPEAL from a judgment of the Superior Court of Los Angeles County, George Genesta, Judge. Affirmed.

James M. Crawford, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Lance E. Winters, Assistant Attorney General, Scott A. Taryle and Timothy L.

O'Hair, Deputy Attorneys General, for Plaintiff and Respondent.

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## **INTRODUCTION**

Carlos Juan Switt appeals from a judgment and 11-year prison sentence, following his conviction for resisting a police officer. He contends the trial court erred in denying his request for an instruction on self-defense or defense of another. He further contends that the court abused its discretion in denying his request to strike a prior “strike” conviction. For the reasons set forth below, we affirm.

## **STATEMENT OF THE CASE**

Appellant was charged with resisting an executive officer (Pen. Code, § 69; count 1)<sup>1</sup> and battery with injury to a peace officer (§ 243, subd. (c)(2); count 2). As to both counts, it was alleged that appellant had suffered six prior convictions resulting in prison terms (§ 667.5, subd. (b)), one of which was a “strike” within the meaning of the Three Strikes law (§§ 667, subds. (d)-(j), 1170.12). Appellant pled not guilty and denied the special allegations.

A jury convicted appellant on count 1, but deadlocked on count 2. The trial court dismissed count 2 on the

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

prosecution's motion. In a court trial, the special allegations were found true.

After denying appellant's oral motion to strike a "strike" pursuant to *People v. Superior Court (Romero)* (1996) 13 Cal.4th 497, the trial court sentenced him to state prison for a total term of 11 years. Appellant timely appealed.

### **STATEMENT OF THE FACTS**

City of Pomona Police Officer Marcus Perez, Jr., testified that on January 22, 2015, he received a call over police radio that a suspect was wanted for grand theft auto. The suspect was described as a male Hispanic, in his early 20's, wearing a dark hoodie and red shorts. The suspect either lived in the area of Abbey and Karesh streets, or frequented that area. According to Officer Perez, that area was "hot" -- it was a known gang area where "there's always something going on."

Officer Perez drove to the location. As he cruised through an alley, he noticed a man -- later identified as Sanchez -- matching the description of the suspect, standing next to an open garage. There were two other males -- later identified as Ramos and appellant -- inside the garage. The officer stopped his vehicle and initiated a conversation with Sanchez. Appellant expressed concern that the officer was speaking with Sanchez, so Officer Perez told appellant that he was investigating a grand theft auto. During the course of Officer Perez's investigation of Sanchez, the officer

detained him, patted him down for weapons, and handcuffed him. Sergeant Baker then arrived as backup.

As Officer Perez began filling out a field identification card for Sanchez, Ramos approached the officer. Sergeant Baker told Ramos to back up. Ramos responded, “Fuck you,” and continued walking toward Officer Perez. Ramos, who was wearing baggy clothing, then moved a hand toward his back pocket, causing the two officers to reach for their guns. However, they did not pull out their firearms. Officer Perez walked up to Ramos and placed his hands on him, intending to handcuff him. Officer Perez felt Ramos “tense[] up.” The officer was able to wrestle Ramos to the ground. Ramos then spun around Officer Perez, and the officer reacted by punching him in the face. He eventually gained control of Ramos.

During this incident, Officer Perez saw appellant come out of the garage and begin fighting with Sergeant Baker. After the incident, Officer Perez observed injuries to Sergeant Baker’s face.

A video recording of the incident, recorded from the dashboard camera of Sergeant Baker’s patrol car, was played for the jury and entered into evidence. Sergeant Baker, who by the time of trial was retired and living in Virginia, did not testify.

Appellant neither testified nor presented an affirmative case.

## DISCUSSION

Appellant contends the trial court erred in failing to instruct the jury on self-defense or defense of another, as affirmative defenses to the charged counts. He further contends the court abused its discretion in denying his *Romero* motion to strike the prior “strike.”

A. *The Trial Court did not Err in Denying Appellant’s Request for a Jury Instruction on Self-Defense or Defense of Another.*

1. *Relevant Factual Background*

Appellant was charged with resisting Sergeant Baker and battery upon the officer. Appellant’s trial counsel requested instructions on self-defense or defense of another, but the court denied the request, finding “no substantial evidence that would give rise to a self-defense instruction” based on the uncontroverted video evidence.

The trial court noted -- and the parties did not dispute - - that the video recording from Sergeant Baker’s dashcam showed appellant “introduc[ing] himself into this event at the time that Officer Perez and Mr. Ramos were still standing and that Officer Perez was attempting to control Mr. Ramos at that point. They were both standing, and . . . he had just went hands-on Mr. Ramos. It was at that point . . . that [appellant] . . . ran out of the garage and was intercepted by Officer Baker.” “If [the] events [had] played out differently where [appellant] had not run out of the garage until such time as Mr. Ramos had been taken to

the ground and/or punched and that [appellant] ran out in that direction at that point in time, there may be an argument . . . that Officer Perez was acting outside of the course and scope of his [duty] as a peace officer by the use of excessive force, and that may be a factual dispute, but that is not the facts that are presented to this court based upon the sequence of events as shown in the video.”

In addition, with respect to defending himself against Sergeant Baker, the video showed that appellant “clearly throws the first blow as Baker is trying to step between him and whatever he was [planning on] doing.” Appellant’s trial counsel conceded this point, stating, appellant “threw the first haymaker. There’s no question about that.”

## 2. *Analysis*

“The trial court is obligated to instruct the jury on all general principles of law relevant to the issues raised by the evidence, whether or not the defendant makes a formal request.’ [Citations.]” (*People v. Rogers* (2006) 39 Cal.4th 826, 866.) Appellant contends there was substantial evidence in the record to support giving an instruction on self-defense or a defense of another. We are not persuaded.

“[O]rdinary self-defense doctrine -- applicable when a defendant *reasonably* believes that his safety is endangered -- may not be invoked by a defendant who, through his own wrongful conduct (e.g., the initiation of a physical assault or the commission of a felony), has created circumstances under which his adversary’s attack or pursuit is legally justified.” (*In re Christian S.* (1994) 7 Cal.4th 768,

773, fn. 1.) Here, it is undisputed that appellant threw the first punch at Sergeant Baker. Moreover, no evidence shows the fight was mutual. For example, there is no evidence that Sergeant Baker threatened appellant before appellant initiated the physical altercation. In short, the facts do not support a self-defense instruction.

With respect to an instruction on defense of another (Ramos), as the trial court properly found, there was no substantial evidence to support giving such an instruction. The video evidence showed that when appellant initiated the physical altercation with Sergeant Baker, Officer Perez had just placed his hands on Ramos. Merely placing hands on Ramos, by itself, is insufficient to support a finding that Ramos was in danger of imminent harm. Thus, there was no legal justification for appellant's actions against Sergeant Baker. As the trial court noted, had appellant initiated the physical altercation with Sergeant Baker after Officer Perez had wrestled Ramos to the ground or had punched him, there might have been sufficient evidence to support giving a defense of another instruction. However, that was not the case here. In short, the trial court did not err in denying appellant's request for instructions on self-defense and defense of another.

*B. The Trial Court did not Abuse its Discretion in Denying Appellant's Romero Motion*

The trial court found true the allegations that appellant had suffered six prior convictions resulting in

prison terms. The convictions occurred in 1996, 2000, 2003, 2009, 2012, and 2013. The 2003 conviction (a first-degree burglary) was also a “strike” within the meaning of the Three Strikes law.

Following the court trial on priors, appellant’s counsel orally moved to strike the “strike” pursuant to *Romero*, *supra*, 13 Cal.4th 497, noting the strike was 12 years old. The trial court denied the motion. It found that following appellant’s strike conviction, “the defendant has definitely not lived a life free from crime, but has been a frequent visitor to our state prison since then, has been a frequent visitor to the judicial system since then with numerous offenses and numerous commitments to state prison. He is not a person described under either *Romero* or *Williams*<sup>[2]</sup> as a person which would come within the even close parameters of the court exercising judicial discretion and striking that in the interest of justice, or that the sentence [that] should be imposed in this case with that strike would be a miscarriage of justice.”

Appellant contends the trial court abused its discretion in denying his *Romero* motion. “[I]n ruling whether to strike or vacate a prior serious and/or violent felony conviction allegation or finding under the Three Strikes law, . . . the court in question must consider whether, in light of the nature and circumstances of [the defendant’s] present felonies and prior serious and/or violent felony convictions,

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<sup>2</sup> *People v. Williams* (1998) 17 Cal.4th 148.



and the particulars of his background, character, and prospects, the defendant may be deemed outside the scheme's spirit, in whole or in part, and hence should be treated as though he had not previously been convicted of one or more serious and/or violent felonies.” (*Williams, supra*, 17 Cal.4th at p. 161.) “[A] trial court will only abuse its discretion in failing to strike a prior felony conviction allegation in limited circumstances,” such as where the resulting sentence is ““arbitrary, capricious or patently absurd”” under the specific facts of a particular case. (*People v. Carmony* (2004) 33 Cal.4th 367, 378.) Here, the trial court considered the appropriate factors and imposed a rational, nonarbitrary sentence. Appellant's criminal history showed he had not reformed following his 2003 conviction. Rather, he continued his criminal conduct, resulting in convictions in 2009, 2012 and 2013 and the current conviction in 2015. The court's determination, based on the totality of the circumstances, that appellant did not fall outside the spirit of the Three Strikes law was well within its discretion. Accordingly, the trial court did not abuse its discretion in denying appellant's *Romero* motion.

**DISPOSITION**

The judgment is affirmed.

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MANELLA, J.

We concur:

WILLHITE, Acting P. J.

COLLINS, J.