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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

JACQUELINE MEYER,

Plaintiff and Appellant,

v.

WM SUNSET AND VINE, LLC et al.,

Defendants and Respondents.

B283313

(Los Angeles County
Super. Ct. No. BC587463)

APPEAL from a judgment of the Superior Court of Los Angeles County. Daniel S. Murphy, Judge. Affirmed.

Jacqueline Meyer, in pro. per., for Plaintiff and Appellant.

Meyers McConnell Reisz Sideman, Lori E. Sideman and Avery A. Behrle, for Defendants and Respondents.

Jacqueline Meyer appeals from a judgment against her and in favor of respondents Samuel Rivera, WM Sunset and Vine LLC (Sunset and Vine), and Protection Resource Group (Protection Resource) following a court trial. The trial court found against Meyer on her claim for false arrest and related causes of action arising from an incident in 2015 when she was arrested by a security guard (Rivera) following an altercation. Appellant argues that the trial court made various errors in admitting and excluding evidence, and that the evidence does not support the trial court's findings. We reject the arguments and affirm.

BACKGROUND

1. The Incident¹

Rivera worked as a security guard for Protection Resource, which provided security services to Sunset and Vine for a property that it managed at North Vine Street in Los Angeles. The property included a Bed, Bath & Beyond store (Bed & Bath).

On March 6, 2015, Meyer went to the loading dock at the property and began to load cardboard boxes into a shopping cart. Rivera, who was dressed as a security guard, told her that she was trespassing and was not permitted to take boxes from the loading dock. Meyer said she had permission to do so from "Carlos" at Bed & Bath. Rivera told her that the Sunset and Vine property manager had told him she was not permitted to take the boxes.

¹ Because of the deferential standard of review that we must apply, we summarize the facts as reflected in the trial court's findings. As discussed below, those findings were supported by substantial evidence.

The week before this incident, Rivera had also encountered Meyer taking boxes from the loading dock. Rivera let her take the boxes on that occasion but afterward asked the property manager, Richard Purcell, about Sunset and Vine's policy concerning the boxes. Purcell told him that no one was permitted to be on the loading dock or to take boxes without permission from property management. Stores located in the property, such as Bed & Bath, are not authorized to give such permission.

Despite Rivera's instruction to Meyer on March 6, 2015, that she was not permitted to take the boxes, and despite his request that Meyer leave the premises, Meyer persisted in attempting to take the cart out of the loading dock area. Rivera attempted to push the cart back toward the loading dock, but Meyer would not let go.

While the two were struggling over the shopping cart, Meyer deliberately elbowed Rivera on the chin. At that point, Rivera attempted to arrest her. He put a handcuff on one of Meyer's wrists and told her to "comply, comply." Meyer resisted, kicking Rivera on the shin. Eventually they both fell to the ground, where Meyer continued to struggle. Finally, another security officer arrived, and he and Rivera were able to finish placing the handcuffs on Meyer.

They called the Los Angeles police, but the police were unable to respond. Purcell eventually came to the scene and asked what had happened. Because of the delay, Purcell instructed Rivera to release Meyer, on the condition that she stay away from the location. He allowed Meyer to take the boxes and validated her parking.

2. The Trial

Meyer waived a jury trial. Her claims against Rivera, Sunset & Vine, and Protection Resource Group for false arrest, battery, negligence, intentional infliction of emotional distress, and negligent hiring were tried to the court over eight days in May 2017.

In a statement of decision filed May 30, 2017, the trial court concluded that Meyer had failed to prove any of her claims. Based on its factual findings (summarized in part above), the court ruled, among other things, that: (1) Meyer committed a misdemeanor in Rivera's presence and Rivera therefore had the right to arrest her; (2) Rivera used reasonable force in doing so; (3) Meyer violently resisted the arrest; (4) Meyer's conduct posed an immediate threat to Rivera's safety; (5) Rivera did not breach any duty of care; and (6) Rivera did not engage in any outrageous conduct. The court specifically found that Rivera was credible and Meyer was not.

DISCUSSION

1. Standard of Review

When an appellant claims that the evidence at trial was not sufficient to support the findings, this court reviews the record of the trial under the substantial evidence standard. Under this standard, this court must "view the evidence in the light most favorable to the prevailing party, giving it the benefit of every reasonable inference and resolving all conflicts in its favor." (*Bickel v. City of Piedmont* (1997) 16 Cal.4th 1040, 1053.) Our task "*begins and ends with the determination as to whether, on the entire record, there is substantial evidence, contradicted or uncontradicted,*" which will support the verdict. (*Bowers v. Bernards* (1984) 150 Cal.App.3d 870, 873–874.) Substantial

evidence is any evidence that is “‘reasonable in nature, credible, and of solid value.’” (*People v. Bassett* (1968) 69 Cal.2d 122, 138–139.) Testimony from a single witness may suffice. (*In re Marriage of Mix* (1975) 14 Cal.3d 604, 614.)

In reviewing a trial court’s decisions to admit or exclude evidence, this court uses an abuse of discretion standard. (*People v. Williams* (1997) 16 Cal.4th 153, 197.) “‘In general, the trial court is vested with wide discretion in determining relevance and in weighing the prejudicial effect of proffered evidence against its probative value. Its rulings will not be overturned on appeal absent an abuse of that discretion.’” (*People v. Hardy* (2018) 5 Cal.5th 56, 87 (*Hardy*), quoting *People v. Edwards* (1991) 54 Cal.3d 787, 817.)

2. Meyer Has Not Met Her Obligations as an Appellant

On appeal, this court presumes that a trial court’s judgment is correct unless it is shown otherwise. (*Denham v. Superior Court* (1970) 2 Cal.3d 557, 564.) It is the appellant’s burden to show both that the trial court erred and that the error affected the outcome of the trial. (*Shaw v. County of Santa Cruz* (2008) 170 Cal.App.4th 229, 281–282 (*Shaw*).) To do so, an appellant must “present meaningful legal analysis supported by citations to authority and citations to facts in the record that support the claim of error.” (*In re S.C.* (2006) 138 Cal.App.4th 396, 408.) A point that is asserted without argument or authority may be deemed to be without foundation. (*Ibid.*)

Most of Meyer’s brief consists of a narrative of events and interpretations of the evidence from her point of view. As discussed above, on appeal we do not reweigh the evidence or make findings of fact but only determine if the trial court’s

findings were supported by sufficient evidence. Because of this standard, an appellant cannot meet his or her burden on appeal simply by arguing that the opponent's witnesses lied or by pointing out reasons why the trial court should have believed the appellant's evidence rather than the opponent's. And, to support a claim that the trial court made an error in admitting or excluding evidence, an appellant must do more than simply identify the evidentiary ruling and claim that it was erroneous. The appellant must show both why the trial court's decision was wrong and why that decision affected the outcome of the trial. (*Shaw, supra*, 170 Cal.App.4th at pp. 281–282; Evid. Code, §§ 353, 354.)

Meyer's decision to represent herself does not exempt her from the requirements of appellate practice. (*Nwosu v. Uba* (2004) 122 Cal.App.4th 1229, 1246–1247.) A party who represents himself or herself “ ‘is to be treated like any other party and is entitled to the same, but no greater consideration than other litigants and attorneys.’ ” (*Id.* at p. 1247.)

We could decide that Meyer has forfeited her arguments on appeal because she has failed to support them adequately with argument and citations to authority. However, we decline to do so. We have reviewed the evidentiary rulings that Meyer has identified and have reviewed the relevant trial testimony. For the reasons discussed below, we find no error in the trial court's rulings or its findings.

3. Meyer Has Not Shown that the Trial Court Abused Its Discretion in Making Evidentiary Rulings

Meyer apparently contends that four evidentiary rulings by the trial court were incorrect. Meyer asserts that: (1) video

recordings admitted at trial were not properly authenticated; (2) the trial court should have excluded complaint letters that she wrote to her landlord as irrelevant and unfairly prejudicial; (3) the trial court erred in sustaining objections to questions about Rivera's employment history; and (4) the trial court erred in sustaining an objection to a question during cross-examination of a defense expert concerning the contents of a video recording of the incident on March 6, 2015. We find no abuse of discretion in any of these evidentiary rulings.

a. *Admission of the video recordings*

Meyer does not identify any objection to the video recordings at trial, and the record reflects that there were none. Indeed, it appears that the video recordings were admitted by agreement.

Defense counsel initially played a video recording of the incident during cross-examination of Meyer (marked as exhibit 13). During the cross-examination, Meyer's lawyers told the court that the video recording produced during discovery was a different length. They asked for a representation that the video recording had not been altered, which they received from opposing counsel.

The parties later put on the record an agreement that "two copies of the video were going to be introduced. One would be A, and the other would be B." The trial court confirmed that there were two video recordings of different lengths, and that the recordings would be marked as exhibit 13A and exhibit 13B. The court stated, without objection, that "both sides are free to play both of them and to comment on both of them to the witnesses and in closing argument." The exhibits were later moved into evidence, without objection, by *Meyer's* counsel.

Meyer's agreement to the admission of the video recordings at trial forfeits any argument on appeal that the recordings were improperly admitted. (Evid. Code, § 353, subd. (a); *Duronslet v. Kamps* (2012) 203 Cal.App.4th 717, 726 ["To obtain reversal based on the erroneous admission of evidence, the record must show a timely objection making clear that specific ground"].)

b. *Admission of Meyer's letters to her landlord*

The record shows that Meyer waived any relevance objection to the letters at issue. Meyer's counsel initially objected to the letters based upon the fact that they dated back to 2008. Defense counsel then argued that the letters were relevant to Meyer's mental state before the incident. The trial court stated, "It can be used for determining whether that emotional distress was preexisting or was caused by—by this incident." The court explained, "I have to give her some leeway in that regard," and noted that "[i]t's a court trial."

After that explanation, Meyer's counsel agreed that "[i]t does go to weight." The trial court then further explained that "[a] lot of it is irrelevant, but I think the issues as far as the emotional distress was preexisting or not is an issue that she's allowed to inquire into, especially as expert witnesses." Meyer's counsel again agreed, stating, "I think she is allowed to go into it . . . but at some point in time where is the probative value? And I would agree in a court trial it's not the same." The trial court then obtained assurance from defense counsel that she would not take long with the letters, and Meyer's counsel stated, "My objection is overruled."

While the colloquy is ambiguous, Meyer arguably withdrew *any* objection to the letters. At a minimum, Meyer's counsel

clearly agreed that at least portions of the letter were relevant. At best for Meyer, her counsel preserved an objection under Evidence Code section 352 that the relevance of the letters was outweighed by the unfair prejudice they might cause. However, as Meyer’s counsel correctly recognized, the issue of unfair prejudice in a court trial is not the same as in a jury trial. Trial judges are presumed to be capable of weighing the evidence without being prejudiced by portions that they should disregard. (*In re Hernandez* (1966) 64 Cal.2d 850, 851.) We see no error in the trial court’s decision to admit the letters into evidence and to decide later what weight (if any) to give them.

c. *Questions concerning Rivera’s employment history*

The trial court overruled a defense objection to the question whether Rivera had ever been “terminated for lying.” Rivera answered no. The court then sustained an objection to the question whether Rivera was “ever terminated for not telling the whole story.”

Meyer does not identify any offer of proof at trial concerning the answer this question would have elicited, and we have found none in the record.² Moreover, even if an offer of

² No offer of proof is necessary to preserve the right to argue error from a ruling sustaining an objection on cross-examination if the question at issue was within the scope of the direct examination. (Evid. Code, § 354, subd. (a); *Hardy, supra*, 5 Cal.5th at pp. 103–104.) However, the question that Meyer identifies occurred during her *direct* examination of Rivera when her counsel called him to testify in her case in chief. The cross-examination exception to the requirement for an offer of proof therefore does not apply.

proof were not required to preserve the issue for appeal, and even assuming that the answer to the question at issue would have been relevant to Rivera's honesty or veracity under Evidence Code section 786, Meyer presents no argument for why the answer would have affected the outcome of the trial. (See *Shaw, supra*, 170 Cal.App.4th at pp. 281–282; Evid. Code, §§ 353, 354.) The trial court heard the testimony of Rivera and Meyer along with all the other witnesses and viewed video recordings of the incident. The court specifically found that Meyer was not credible and had testified untruthfully. On this record, we cannot conclude that the trial court's ruling on a single question concerning the circumstances of Rivera's termination from prior employment was prejudicial.

d. *Questions concerning the contents of the video recording*

Meyer cites to an evidentiary ruling at volume 5 of the reporter's transcript, page 104. The cite appears to refer to the transcript of the May 23, 2017 session of the trial. Based upon that cite, Meyer apparently takes issue with the trial court's ruling sustaining an objection to questions of a defense expert who opined on the reasonableness of Rivera's conduct.

The questions concerned the expert's review of video recordings of the incident. The trial court sustained objections to questions asking whether it would affect the expert's opinion if the video recordings had been edited. The court asked whether there was any evidence that the video had indeed been edited. Meyer's counsel responded by pointing to Purcell's testimony that he had selected what portions of the video recording to provide to defense counsel. The trial court then permitted the witness to answer counsel's reworded questions concerning the effect of

reviewing *selected* portions—rather than “edited” portions—of the video recording.

Thus, the trial court permitted examination into the topic that Meyer’s counsel wished to explore. The trial court precluded only questions that were based on an improper characterization of the evidence. We find no error.

4. Substantial Evidence Supports the Trial Court’s Findings

A number of defense witnesses contradicted Meyer’s version of the events and supported the conclusion that Rivera acted lawfully and used reasonable force in arresting her.

Carlos Moreno testified that he did not give permission to Meyer to go onto the loading dock to get boxes, contradicting Meyer’s statement during the incident and her testimony on that point. Moreno testified that he did not have authority to provide such permission. Once Bed & Bath discarded its boxes and the boxes were on the loading dock, they were no longer the property of the store.

Rivera testified that he had encountered Meyer taking boxes from the loading dock about a week before the incident. He told her that she was trespassing but allowed her to take the boxes on that occasion. After that encounter, he obtained confirmation from Purcell that no one was permitted to be in the loading dock area or to take boxes from the area without his permission.

Purcell confirmed that the boxes had monetary value. Sunset and Vine received an average of \$500 to \$550 per month for boxes from the loading dock.

Upon encountering Meyer at the loading dock on the day of the incident, Rivera informed her that she was not permitted to

take the boxes. Meyer claimed that she had permission from Carlos at Bed & Bath to take them. From his prior conversation with Purcell, Rivera knew that Meyer was not permitted to be in the loading dock area or to take the boxes, so he blocked and then grabbed the shopping cart in which Meyer had placed the boxes to keep Meyer from taking it.

Rivera testified that he did not use any force against Meyer and did not even intend to arrest her, until she elbowed him in the face. He did not allow her to leave with the boxes in her shopping cart because he had been instructed by Purcell that persons were not to be permitted to take boxes from the loading dock without Purcell's permission. Rivera was concerned that failing to follow that instruction might result in a reprimand or in termination of his job.

Rivera only used force after Meyer had repeatedly struck him and he was concerned for his safety. Rivera did not kick, push or trip Meyer, and did not twirl her as she claimed. He also did not drag her, throw her against the wall or sexually assault her as she alleged.

Rivera called for backup, and his partner called the police. After Meyer was arrested, Rivera offered her water and to use the bathroom if she wished. Rivera released Meyer only because Purcell instructed him to do so when the police were delayed in responding.

From this evidence, the trial court reasonably concluded that Meyer failed to prove any of her claims. Rivera had grounds to arrest Meyer based on his personal observation of her act of petty theft and the battery she had committed against him. (Pen. Code, § 837.) He used only reasonable force and therefore did not commit assault or battery; he was not negligent; and he did not

engage in intentional infliction of emotional distress. (See *People v. Garcia* (1969) 274 Cal.App.2d 100, 105 [private citizen whom the defendant assaulted was entitled to use “such force as was reasonable for defendant’s arrest and detention”].) Because Rivera did not act negligently, there was also no evidence that his employer, Protection Resource Group, acted negligently in hiring him.

DISPOSITION

The judgment is affirmed. Respondents are entitled to their costs on appeal.

NOT TO BE PUBLISHED.

LUI, P. J.

We concur:

CHAVEZ, J.

HOFFSTADT, J.