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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

THE PEOPLE, Plaintiff and Respondent, v. MIGUEL M. LAM, Defendant and Appellant.	B343281 (Los Angeles County Super. Ct. No. PA098291)

APPEAL from a postconviction order of the Superior Court of Los Angeles County, Daniel Feldstern, Judge. Affirmed and remanded, with directions.

Sally Patrone, under appointment by the Court of Appeal, for Defendant and Appellant.

Rob Bonta, Attorney General, Charles C. Ragland, Chief Assistant Attorney General, Susan Sullivan Pithey, Senior Assistant Attorney General, Noah P. Hill, Supervising Deputy Attorney General, and Michael C. Keller, Deputy Attorney General, for Plaintiff and Respondent.

Miguel M. Lam appeals from judgment following his conviction for inflicting corporal injury on his girlfriend, Maribel R. (Pen. Code, § 273.5, subd. (a)).[1] Appellant contends the trial court erred by failing to sua sponte instruct the jury on accident. He also requests that we independently review sealed proceedings for discoverable information (see *Brady v. Maryland* (1963) 373 U.S. 83 (*Brady*)) and strike a domestic violence probation fee. We strike the fee, find no error in the sealed proceedings, and affirm the judgment.

BACKGROUND[2]

Around 9:30 p.m. on April 1, 2022, Maribel returned to appellant's apartment after consuming several beers. While inside the apartment with her 13-year-old son, Edgar, Maribel confronted appellant over pictures of other women on his phone. Maribel and Edgar left the apartment but returned after realizing Maribel had left her phone. Edgar sat on an outdoor staircase as Maribel walked to the apartment front door, knocked on the security screen, and asked for her phone.

Appellant told her to leave. Maribel knocked again and kicked the screen "hard." Appellant opened the door, pushed Maribel, and struck her face several times with a closed fist. The force broke Maribel's tooth, fractured her jaw, and knocked her to the ground. Her injuries required surgery.

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1 Subsequent references to statutes are to the Penal Code.

2 For ease of reading, we refer to the victim, Maribel R., and her son, Edgar U., by their first names. We intend no disrespect. Maribel and Edgar had difficulty recalling the incident at trial. The prosecution played video recordings of their statements to police.

Appellant's neighbor called 911. The neighbor reported a woman "was hit" by another person. During the call, Edgar yelled out, "You hit my mom," and "You killed my mom, . . ."

Appellant provided vague and evasive answers to responding officers. Maribel and Edgar told officers that appellant pushed Maribel and punched her face. Maribel denied touching appellant during the incident.

At trial, Maribel testified she could not recall if appellant opened the metal door and was "not clear" what caused her injuries. She testified, "After the accident happened, it's when [appellant] opened the door, and he gave [Maribel her] phone." Maribel clarified that the "'the accident'" referred to her injuries ("Fractures in my jaw"). She affirmed telling the prosecutor "the injuries were either caused by [appellant] opening the door or punching" her.

During the defense case, Officer Carlos Rosales testified that Maribel's ex-husband had accused her of assaulting him three months after the incident involving appellant.

Throughout trial, the prosecution argued appellant "brutally assaulted" Maribel. Defense counsel argued Maribel "hit herself in the face with this door" and lied to responding officers to cover up her responsibility.

In October 2024, a jury convicted appellant of inflicting corporal injury on Maribel (§ 273.5, subd. (a)) by personally causing great bodily injury (§ 12022.7, subd. (e)). Appellant was sentenced to the middle term of three years for the underlying offense plus three years for the great bodily injury enhancement. The court imposed a $500 domestic violence probation fine (§ 1203.097, subd. (a)(5)) and other fines, fees, and assessments.

DISCUSSION

I. *Failure to Sua Sponte Instruct on Accident*

Appellant contends the trial court erred by failing to instruct the jury on the statutory defense of accident after Maribel testified her injuries were caused by an "accident." Alternatively, appellant argues his trial counsel was ineffective for failing to request a jury instruction on accident.

The lower court had no sua sponte duty to instruct on accident. An accident instruction informs the jury a person is not guilty of a charged crime if they "acted [or failed to act] without the intent required for that crime, but acted instead accidentally." (CALCRIM No. 3404; see § 26, subd. (5).) The responsibility to provide this instruction "generally extends no further than the obligation to provide, *upon request*, a pinpoint instruction relating the evidence to the mental element required for the charged crime." (*People v. Anderson* (2011) 51 Cal.4th 989, 997 (*Anderson*).)

Appellant acknowledges this holding in *Anderson* but argues it is contrary to "the overriding principal [*sic*] that the trial court has the sua sponte duty to instruct the jury on all general principles of law relevant to the issues raised by the evidence." *Anderson* considered this overriding principle and found it inapplicable to instructions like CALCRIM No. 3404 that relate evidence to elements of an offense. (*Anderson*, *supra*, 51 Cal.4th at p. 996 [""'when a defendant presents evidence to attempt to negate or rebut the prosecution's proof of an element of the offense, a defendant is not presenting a special defense invoking *sua sponte* instructional duties'"].)[3] Thus, even if the

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[3] Appellant's briefs rely on two cases discussing the sua sponte duty to instruct on general principles of law relevant to issues raised

issue of accident was "raised by the evidence" as appellant suggests, his failure to request CALCRIM No. 3404 forfeits his claim of trial error. (*Ibid.*)[4]

Nor has appellant established ineffective assistance in the failure to request CALCRIM No. 3404. To establish this claim, appellant must demonstrate (1) defense counsel's representation was constitutionally deficient; and (2) resulting prejudice. (*People v. Jasso* (2025) 17 Cal.5th 646, 695; see *Strickland v. Washington* (1984) 466 U.S. 668, 688, 693–694.)

Appellant presents no argument on defense counsel's performance. "Absent such a demonstration, we will not speculate [appellant] received ineffective assistance." (*People v. Bolin* (1998) 18 Cal.4th 297, 334.) Where defense counsel's reasons "do not appear on the record, we will not find ineffective assistance of counsel on appeal unless there could be no conceivable reason for counsel's acts or omissions." (*People v. Weaver* (2001) 26 Cal.4th 876, 926.)

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by the evidence. (See *People v. Martinez* (2010) 47 Cal.4th 911, 953; *People v. Gutierrez* (2009) 45 Cal.4th 789, 824.) After considering these cases, the *Anderson* Court found the principle espoused in both inapplicable to CALCRIM No. 3404 and other instructions that relate evidence to elements of an offense. (*Anderson*, *supra*, 51 Cal.4th at p. 996.)

[4] In reaching its decision, the *Anderson* Court disapproved *People v. Gonzales* (1999) 74 Cal.App.4th 382 (*Gonzales*), which raised the same "defense" appellant raises here. (See *Anderson*, *supra*, 51 Cal.4th at p. 998 [the *Gonzales* victim's "injuries were caused when the defendant opened a door . . . and, without intending to do so, struck the victim in the face"].) The Court disapproved *Gonzales* "to the extent [it] hold[s] a sua sponte instruction on accident is required when the defense is raised to negate the mental element of the charged crime." (*Id.* at p. 998, fn. 3.)

Among other conceivable reasons bearing on defense counsel's decision not to request an accident instruction, two come to mind here. First, CALCRIM No. 3404 would have duplicated language appearing in other instructions given to the jury, including guilt beyond a reasonable doubt (CALCRIM No. 220), the union of act and wrongful intent (CALCRIM No. 250), and the elements of willfully inflicting corporal injury on a romantic partner (CALCRIM No. 840).[5] (See *People v. Bolden* (2002) 29 Cal.4th 515, 558–559 [pinpoint instruction that "duplicates other instructions" need not be given].)

Second, the instruction is inconsistent with appellant's defense. Throughout trial, defense counsel argued the only reasonable explanation of the evidence was that Maribel "smacked her face" with the door. (See *People v. Jackson* (2000) 77 Cal.App.4th 574, 580 [section 273.5 proscribes "a very particular" battery resulting from a direct application of force on the victim by the defendant].) By focusing the jury on appellant's *own* conduct, CALCRIM No. 3404 would have diverted its attention from the defense theory that Maribel's injuries were self-inflicted. "Failure to argue an alternative theory is not objectively unreasonable as a matter of law." (*People v. Thomas* (1992) 2 Cal.4th 489, 531; see *People v. Cunningham* (2001) 25 Cal.4th 926, 1007.)

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[5] To convict appellant of the underlying offense, CALCRIM No. 840 required the jury to find "1. [Appellant] willfully inflicted a physical injury on someone with whom [he] has or previously had a dating relationship; [¶] AND [¶] 2. The injury inflicted by [him] resulted in a traumatic condition. [¶] Someone commits an act *willfully* when he or she does it willingly or on purpose."

II. Brady *Review*

Appellant filed a pretrial motion seeking disclosure of confidential personnel files of an officer who initially interviewed him.[6] Appellant's motion sought information "that may be 'potential[ly] exculpatory or used for impeachment'" under *Brady*. Following an in camera review, the court ordered the disclosure of information relating to one sustained complaint, subject to a protective order. (See Evid. Code, § 1043, subd. (b); *People v. Superior Court (Johnson)* (2015) 61 Cal.4th 696, 722 ["the *Pitchess* procedures can, and must, be employed in a way that ensures compliance with defendants' due process rights to receive exculpatory information"].)

Appellant requests an independent review of these materials to protect his constitutional rights. The Attorney General acknowledges the validity of this type of appellate review.

"A trial court's ruling on a motion for access to law enforcement personnel records is subject to review for abuse of discretion." (*People v. Hughes* (2002) 27 Cal.4th 287, 330; see also *People v. Myles* (2012) 53 Cal.4th 1181, 1209 (*Myles*).)

The sealed record in this case includes a full transcript of the in camera hearing, including the court's statements "'for the record'" detailing the documents it examined. (*Myles*, *supra*, 53 Cal.4th at p. 1209.) This is adequate for a meaningful appellate review. (*Ibid.*) After conducting this independent review, we conclude all materials were properly disclosed under *Brady*.

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6 The officer did not testify at trial.

III. *Domestic Violence Probation Fee*

Appellant avers the $500 domestic violence probation fee was improperly imposed because he was sentenced to prison. (See § 1203.097, subd. (a)(5) [fee imposed only when defendant "is granted probation"].) The Attorney General agrees on this point, "and so do we." (*People v. Kirvin* (2014) 231 Cal.App.4th 1507, 1520.) The fee was unauthorized and must be stricken. (*Ibid.*; see *People v. Scott* (1994) 9 Cal.4th 331, 354.)

DISPOSITION

The $500 domestic violence probation fee (§ 1203.097, subd. (a)(5)), is stricken. The clerk of the superior court is directed to prepare an amended abstract of judgment reflecting the deletion of this fee and forward a copy to the Department of Corrections and Rehabilitation. In all other respects, the judgment is affirmed.

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VAN ROOYEN, J.**

We concur:

COLLINS, Acting P. J.

TAMZARIAN, J.

** Judge of the San Luis Obispo County Superior Court, assigned by the Chief Justice pursuant to Article VI, section 6, of the California Constitution.