

APPELLATE DIVISION
SUPERIOR COURT OF CALIFORNIA
COUNTY OF ORANGE

ELECTRONICALLY FILED
Superior Court of California,
County of Orange

05/08/2018 at 07:51:57 AM
Clerk of the Superior Court
By eClerk, Deputy Clerk

THE PEOPLE,

Plaintiff and Respondent,

v.

ARTHUR LOPEZ,

Defendant and Appellant.

CASE NO. 30-2016-00833841

(Super. Ct. No. 15HM12251)

OPINION

Appeal from a judgment of the Superior Court of Orange County, Harbor Justice Center, Thomas A. Delaney, Judge. Affirmed.

* * *

Defendant Arthur Lopez appeals his convictions of damaging a wireless device to prevent usage to notify law enforcement (Pen. Code, § 591.5) and child abuse (Pen. Code, § 273a, subd. (b)).

FACTUAL AND PROCEDURAL HISTORY

The Orange County District Attorney filed a misdemeanor complaint against Defendant for domestic battery (count I), damages to a wireless device to prevent usage to notify law enforcement (count III), and two counts of battery (count II as to John Doe (Defendant's son), and count IV as to Jane Doe (Defendant's daughter)). A jury found Defendant not guilty on counts I and II, but guilty on counts III and IV. Defendant was sentenced and timely appealed.

At trial, Defendant's wife, Mrs. Lopez, testified she attempted to stop Defendant from hitting their son (John Doe), and a struggle ensued. During the struggle, she threw

Appendix A

her cellphone to their daughter (Jane Doe) to call 911. Defendant asked for the phone, but the daughter threw the cellphone back toward Mrs. Lopez. Defendant then hit the daughter in her back, knocking the air out of her.¹ Defendant picked up the phone and went to another bedroom.

DISCUSSION

Defendant contends on appeal that the trial court erred by not giving sua sponte jury instructions for self-defense, defense of property, and accident, and specific intent as to count III.

Jury Instructions for Self-Defense and Defense of Property

Defendant argues the instructions for self-defense and defense of property should have been given with respect to counts III and IV.

“The trial court has a duty to instruct sua sponte regarding a defense ‘only if it appears that the defendant is relying on such a defense, or if there is substantial evidence supportive of such a defense and the defense is not inconsistent with the defendant's theory of the case.’ [Citation.] [W]hen the trial court believes ‘there is substantial evidence that would support a defense inconsistent with that advanced by a defendant, the court should ascertain from the defendant whether he wishes instructions on the alternative theory.’ [Citation.]’ [Citation.]” (*People v. Gonzales* (1999) 74 Cal.App.4th 382, 390.) Substantial evidence is “ ‘evidence which, if believed by the jury, was sufficient to raise a reasonable doubt.’ [Citations.]” (*People v. Salas* (2006) 37 Cal.4th 967, 982–983.)

Defendant points to the not guilty verdict on count I for domestic battery of Mrs. Lopez to support his position that a self-defense instruction for counts III and IV would have yielded a similar result. However, there was no separate self-defense instruction for

¹ Mrs. Lopez testified the daughter dropped the phone after Defendant hit her, but Defendant and the daughter testified she threw the cellphone back to Mrs. Lopez before being hit by Defendant.

²
Appendix A

count II, the child abuse charge concerning John Doe, and the jury still acquitted Defendant of that count. There was no evidence Defendant was defending himself or any property when he took away the cellphone and hit his daughter in the back. The cellphone belonged to his wife, not him. His daughter was not attacking or attempting to attack Defendant when he hit her. Moreover, Defendant did not rely on those defenses at trial. Accordingly, the trial court did not err in in this regard.

Jury Instruction for Accident

There is no sua sponte duty to instruct on accident. (*People v. Anderson* (2011) 51 Cal.4th 989, 997-998.) Moreover, Defendant agreed with the trial court that the defense of accident did not apply. Nonetheless, there was no substantial evidence to support giving a jury instruction on accident. “ ‘The accident defense amounts to a claim that the defendant acted without forming the mental state necessary to make his or her actions a crime.’ [Citation.]” (*Id.* at p. 998.) Defendant testified he grabbed the phone and took it to the other bedroom and hit his daughter for defying him and not giving him the phone. There was no evidence suggesting his actions were accidental. Therefore, the trial court was not required to provide the jury with an instruction on accident.

Jury Instruction for Violation of Penal Code section 591.5 (Count III)

Defendant claims the trial court failed to properly instruct the jury that a finding of specific intent was required to prove a violation of Penal Code section 591.5.

The following instruction for a violation of Penal Code section 591.5 was provided: “To prove the defendant is guilty of this crime, the People must prove that: [¶] 1. Defendant maliciously removed, injured, destroyed, damaged, or obstructed the use of any wireless communication device; [¶] 2. Defendant did so with the intent to prevent the use of the device to summon assistance or notify law enforcement or any public safety agency of a crime[.] [¶] Someone acts maliciously when he intentionally does a wrongful act, or when he acts with wrongful intent to annoy or injure someone else.”

In accordance with the CALCRIM No. 250 series (union of act and intent) the court also instructed the jury that (1) "The People must prove not only that the defendant did the acts charged, but also that he acted with a particular intent. The instruction for each crime explains the intent required;" and (2) "The following crime requires a specific intent or mental state: Injuring a Wireless Device with Intent to Prevent the Reporting of a Crime, as charged in Count 3. For you to find a person guilty of this crime, that person must not only intentionally commit the prohibited act, but must do so with a specific intent. The act and the specific intent required are explained in the instruction for that crime."

Defendant argues the trial court "never told the jury anything about the required specific intent: The specific intent to prevent the reporting of any crime to law enforcement." The record does not support his contention. As stated above, the instruction on count III specifically states that the People must prove Defendant committed the act "with the intent to prevent the use of the device to summon assistance or notify law enforcement or any public safety agency of a crime[.]" Therefore, the jury was properly instructed on the specific intent required to find Defendant violated Penal Code section 591.5.

DISPOSITION

The judgment is affirmed.

David A. Hoffer

David Hoffer
Presiding Judge

Martha Gooding

Martha Gooding
Judge

Nathan Scott

Nathan Scott
Judge

SUPERIOR COURT OF CALIFORNIA,
COUNTY OF ORANGE

MINUTE ORDER

DATE: 05/25/2018

TIME: 07:38:00 AM

DEPT:

JUDICIAL OFFICER PRESIDING: Appellate Panel

CLERK: Michael Porter

REPORTER/ERM:

BAILIFF/COURT ATTENDANT:

CASE NO: 30-2016-00833841-CL-MC-CJC CASE INIT.DATE: 02/08/2016

CASE TITLE: People of the State of California vs. Lopez

CASE CATEGORY: Civil - Limited CASE TYPE: Misc Complaints - Other

APPEARANCES

There are no appearances by any party.

Appellate Panel Judge(s):

Hon. David A. Hoffer, Presiding Judge

Hon. Martha K. Gooding, Judge

Hon. Nathan R. Scott, Judge

Trial Court Case Number: 15HM12251

The petition for review and appointment of counsel for a writ of habeas corpus is denied.

Appendix B

DATE: 05/25/2018

MINUTE ORDER

Page 1

DEPT:

Calendar No.

10

SUPERIOR COURT OF CALIFORNIA, COUNTY OF ORANGE

MINUTES

Case : 15HM12251

Name : Lopez, Arthur

02/26/2019 09:01:11 AM

Date of Action	Text
01/11/2016	At 12:00 PM, jurors left the jury room for lunch recess.
01/11/2016	At 01:35 PM, jurors returned to the jury room to resume deliberations.
01/11/2016	At 2:28 PM, the jurors informed the bailiff that a verdict has been reached. Counsel notified by the Court Clerk.
01/11/2016	Again in open court at 03:31 AM, Defendant present with counsel. People duly represented. Sworn jurors present in their proper places.
01/11/2016	Proceedings recorded electronically.
01/11/2016	The Court finds the defendant <u>NOT GUILTY</u> of 243(e)(1) PC, A LESSER OFFENSE necessarily included within the offense charged in count 1 of the Original Complaint. <i># 2 Lesser</i>
01/11/2016	Count disposition <u>Not Guilty of lesser included offense</u> by Court entered in error for <u>count(s) 1</u> . Correct disposition should reflect: <u>Not Guilty of lesser included offense by Jury.</u> <i># 2 Lesser</i>
01/11/2016	VERDICT: We the jury in the above entitled action find the defendant <u>NOT GUILTY</u> as to <u>count 1</u> as charged in the Original Complaint. Juror # 11, Foreperson. Verdict read, filed, and incorporated herein by reference. <i># 1</i>
01/11/2016	VERDICT: We the jury in the above entitled action find the defendant <u>NOT GUILTY</u> as to <u>count 2</u> as charged in the Original Complaint. Juror # 11, Foreperson. Verdict read, filed, and incorporated herein by reference. <i># 3</i>
01/11/2016	VERDICT: We the jury in the above entitled action find the defendant <u>GUILTY</u> as to <u>count 3</u> as charged in the Original Complaint. Juror # 11, Foreperson. Verdict read, filed, and incorporated herein by reference. <i># 1</i>
01/11/2016	VERDICT: We the jury in the above entitled action find the defendant <u>GUILTY</u> as to <u>count 4</u> as charged in the Original Complaint. Juror # 11, Foreperson. Verdict read, filed, and incorporated herein by reference. <i># 2</i>
01/11/2016	Not Guilty Verdict Form on Lesser Included Offense to <u>Count 1</u> filed.
01/11/2016	Unsigned verdict forms. filed.
01/11/2016	Redacted Not Guilty Verdict Form as to Count 1 filed.
01/11/2016	Redacted Not Guilty Form on Lesser Included Offense to <u>Count 1</u> filed.
01/11/2016	Redacted Not Guilty Verdict Form as to <u>Count 2</u> filed.
01/11/2016	Redacted Guilty Verdict Form as to <u>Count 3</u> filed.
01/11/2016	Redacted Guilty Verdict Form as to <u>Count 4</u> filed.
01/11/2016	Jury Instructions Given filed.
01/11/2016	Pursuant to Code of Civil Procedure 237(a)(2), all juror identifying information ordered sealed and filed.
01/11/2016	Packet of unfiled documents containing confidential juror information is filed and sealed pursuant to Code of Civil Procedure 237(a)(2).
01/11/2016	Court thanked and excused the Jury.
01/11/2016	Alternate juror(s) notified by telephone and excused.
01/11/2016	Actual days of trial: 3 days.
01/11/2016	Court advises Counsel of his intent to set bail at \$10, 000.
01/11/2016	No objection by People.
01/11/2016	Motion by Defense to release defendant on his own recognizance..
01/11/2016	Motion argued.
01/11/2016	Motion denied.
01/11/2016	Sentencing set on 01/14/2016 at 08:30 AM in Department H6.

Appendix C

Court of Appeal, Fourth Appellate District, Division Three - No. G056467

S252084

IN THE SUPREME COURT OF CALIFORNIA

En Banc

SUPREME COURT
FILED

THE PEOPLE, Plaintiff and Respondent,

NOV 28 2018

v.

Jorge Navarrete Clerk

ARTHUR LOPEZ, Defendant and Appellant.

Deputy

The petition for review is denied.

CANTIL-SAKAUYE

Chief Justice

Appendix D
12

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION THREE

THE PEOPLE,

Plaintiff and Respondent,

v.

ARTHUR LOPEZ,

Defendant and Appellant.

G056467

(Super. Ct. Nos. 30-2016-00833841,
15HM12251)

ORDER

Appellant's "Request for Reconsideration Due To Court's Error Dismissing
Appellant's Appeal Order of 9/13/18" is DENIED.

O'Leary, P.J.

O'LEARY, P. J.

Appendix F

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE,

Plaintiff and Respondent,

v.

ARTHUR LOPEZ,

Defendant and Appellant.

G056467

(Super. Ct. Nos. 30-2016-00833841,
15HM12251)

O R D E R

THE COURT:*

On June 18, 2018, appellant filed a notice of appeal from the appellate division ruling “affirming of Misdemeanor convictions & Denial of Petition for Review & Denial of Writ of Habeas Corpus Attorney Appointment.” This court advised appellant that it was considering dismissing the appeal on the basis that appellant filed a notice of appeal from an order or ruling that is not appealable to this court. (Cal. Const., art. VI, § 11; Pen. Code, § 1466.) Appellant was invited to file points and authorities to explain why the appeal should not be dismissed.

On July 6, 2018, appellant filed a request for an extension of time to file his points and authorities. On July 9, 2018, this court deferred appellant’s request for an extension of time and advised appellant the court was considering treating the notice of appeal filed on June 18, 2018, as a petition to transfer. (Cal. Rules of Court, rule 8.1006.) Although appellant did not file a petition for transfer in the appellate division, and the time for appellant to petition for transfer had already expired, (Cal. Rules of Court, rules 8.1006, 8.1006(b)) this court extended the time periods set forth in rule 8.1008(a)(1) of the California Rules of Court to July 30, 2018, for the court to consider transfer to this court on its own motion and ordered appellant to file an informal letter brief advising the court

Appendix E 13

whether appellant's notice of appeal should be treated as a petition to transfer appellate division case number 30-2016-00833841 to this court for review. On July 20, 2018, appellant filed an informal letter brief stating "Appellant's answer to this specific question is No."

On July 30, 2018, the court filed an order denying appellant's request for a 60 day extension of time to file points and authorities to explain why the appeal should not be dismissed, and on the court's own motion appellant received a 32 day extension to file his points and authorities by August 31, 2018.

In lieu of filing points and authorities, on August 30, 2018, appellant filed "Plaintiff's Request for Stay on Case # G056467 and all other Related Cases for Good Cause Related to Federal Injunctive Petition under case # E064559 and United States Supreme Court Filed Petition For Writ of Certiorari related to case # G054262."

Appellant's request for a stay is DENIED.

On the court's own motion and for good cause, the appeal in case number G056467 is DISMISSED. "Upon adjudication of the case by the appellate department . . . an appeal may not properly lie with this court or with the District Court of Appeal unless that court should order the case transferred to itself for hearing and decision pursuant to California Rules of Court, [former] rules 61-69 [current rules 8.1000-8.1018.]" (*People v. Allenthorp* (1966) 64 Cal.2d 679, 682-683.)

BEDSWORTH, ACTING P. J.

* Before Bedsworth, Acting P. J., Fybel, J., and Goethals, J.

Appendix E
2 14

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION THREE

THE PEOPLE,

Plaintiff and Respondent,

v.

ARTHUR LOPEZ,

Defendant and Appellant.

G056564

(Super. Ct. Nos. 30-2016-00833841,
15HM12251)

O R D E R

THE COURT:*

The petition to transfer from the Appellate Division of the Orange County Superior Court is DENIED. (Cal. Rules of Court, rule 8.1006.)

O'LEARY, P. J.

* Before O'Leary, P. J., Bedsworth, J., and Goethals, J.

Appendix G

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION THREE

THE PEOPLE,

Plaintiff and Respondent,

v.

ARTHUR LOPEZ,

Defendant and Appellant.

G056467

(Super. Ct. Nos. 30-2016-00833841 &
15HM12251)

O R D E R

The court is considering treating the notice of appeal filed on June 18, 2018, as a petition to transfer (Cal. Rules of Court, rule 8.1006). On the court's own motion, the time periods set forth in California Rules of Court, rule 8.1008 (a)(1) to order transfer are extended to July 30, 2018.

Appellant is ORDERED to file no later than July 20, 2018, an informal letter brief advising the court whether appellant's notice of appeal should be treated as a petition to transfer appellate division case number 30-2016-00833841 to this court for review.

Appellant's request for an extension of time to file points and authorities to explain why the appeal should not be dismissed is deferred pending appellant's filing of the informal letter brief in response to this order.

Appellant's request for appointment of counsel is DENIED.

O'Leary, P.J.

O'LEARY, P. J.

Appendix H H

Appellant Opening Brief - By Court Appointed
Atty. Robison
+ Harley
IN Part

STATEMENT OF CASE

Appellant was charged by Complaint no. 15HM12251 with one count of violating Pen. Code § 273.5(a) - Count I: domestic battery with corporal injury; two counts of violating Pen. Code § 273a(b) - Counts II and IV: child abuse; and one count of violating Pen. Code § 591.5 - Count III: injuring a wireless device with intent to prevent a crime report. CT 3-4.¹ Appellant plead not guilty. CT 61. Following a jury trial appellant was found not guilty of counts I and II and guilty of count III and IV. CT 80. Imposition of sentence was suspended and appellant was sentenced to four years of informal probation upon the following terms and conditions, among others: 60 days jail as to count IV and 30 days CalTrans physical labor in lieu of 30 days jail as to count III. CT 83. Appellant filed a timely notice of appeal.

STATEMENT OF APPEALABILITY

This appeal is from a final judgment of conviction in a misdemeanor case to the Appellate Division of the Orange County Superior Court and is authorized by Pen. Code § 1466 subd. (2)(A).

STATEMENT OF FACTS

PROSECUTION CASE

On Sunday, November 22, 2015 around 3:30 p.m. appellant's wife, Mrs. Lopez ("Lopez") was at the movies with her two older daughters, and appellant was at a soccer game with her two younger sons. After appellant picked the girls up from the movies and began driving the family home, he

¹ CT refers to the Clerk's Transcript followed by the relevant page number. RT refers to the Reporter's Transcript followed by the relevant page number.

Appendix
1

said he was going to whip his son with a belt three times because he didn't listen to him during the soccer game. RT 46-47. Once they got home, appellant shut the windows, got a belt and walked into the kid's room where his son was. RT 48-49. Appellant said nothing when Lopez told him not to hit his son with a belt. RT 50. After Lopez heard her son scream she got between appellant and her son. RT 50. Lopez said if appellant hit the son again, she would call the police. Appellant pushed Lopez aside and whipped his son again with the belt. The son was screaming and crying. Lopez scratched appellant as she pushed him away. Appellant grabbed Lopez from behind and started squeezing her, grabbing her wrists, kicking her legs, and pushing her against the mirrored closet for 30 seconds. RT 51. Lopez threw her cell phone on the ground and told her daughter to call the police. RT 54. When her daughter picked up the phone, appellant hit her in the back of her left shoulder causing her to drop the phone. Appellant picked up the phone and walked into his bedroom. RT 58-59. Lopez told her daughters and older son to put on their shoes and they went down the stairs and were running to the leasing office to call the police when appellant caught her son. Lopez kept running until she saw a young boy with a cell phone and called her sister. RT 60-62.

Lopez told her sister to call the police. After she gave the phone back to the boy she ran back to the apartment. When she got back to the apartment, appellant and the kids were gone. RT 63-64. The police arrived and took her statement. RT 65. Lopez suffered a bruise on her leg and a rug burn on her elbow. RT 66-67, 69-70.

Appendix² F
19

During the struggle with Lopez, Lopez pushed appellant and scratched his face. RT 83.

Thirteen year old Jane Doe testified that during the afternoon of Sunday November 22, 2015 appellant picked Lopez, her sister, and their younger brother up from the movies. While driving home, appellant and Lopez started arguing about money. When they arrived home, appellant told her older brother to go to his room. Appellant grabbed a belt to hit his son when Lopez pushed him away. Appellant pushed Lopez off him and Lopez dropped the phone. Jane Doe picked up the phone. Appellant told her to give the phone to him and Lopez told her to call 911. Jane Doe threw the phone towards Lopez and got hit in the back. Lopez got the phone and ripped the crucifix off appellant. Gathered the kids and ran out of the apartment. RT 98-102. Appellant followed, gathered the kids up, put them in the car, and drove to a park in Balboa Peninsula. RT 103-105. Jane Doe went into a bathroom to call her aunt to tell her where they were. RT 106.

After they were done playing, appellant and the kids began driving home because hopefully Lopez had calmed down and would not go crazy again. Appellant also told the kids to behave, that it was Lopez' fault, that the crazy stuff was happening, and that he had everything under control until Lopez ran them out of the apartment. RT 108-109.

Kelli Maurer was the sister of Lopez. Late afternoon on November 22, 2015, Lopez called sounding panicked and saying I need your help. I need you to call somebody, call the police. When Maurer asked Lopez what was going on, Lopez said I need to hurry up and get back, I got to go, and he's attacking

the kids and hung up. RT 123. Maurer called 911 and said I don't know what's going on but I think something is happening with my sister and her kids. About 45 minutes later, Maurer's niece called and said they were down by the pier and that they were okay but she didn't know if Lopez was okay and hung up. Maurer called the leasing office asking them to swing by and tell Lopez to call Maurer. About 8 minutes later, Maurer's niece called again and said appellant doesn't know she's calling Maurer. Maurer hung up and called the police department and gave them the location of her niece. About a half-hour later, Lopez calls and says the police got the kids back and that she was going to pick them up. Maurer went to appellant's apartment and waited until the police brought Lopez and the kids back. RT 125-128. Maurer saw a major bruise on her sister's leg. Her sister was distraught. Her old niece was clearly upset but the younger niece was very quiet. The older nephew was very angry. RT 128-130.

Shawn Dugan of the Newport Beach Police Department ("NBPD") put out a dispatch to locate appellant and his children. Appellant and his children were contacted on Balboa Peninsula. RT 142-143. Dugan took a photo of appellant showing a 2-3 inch scratch on his face and that Lopez caused. RT 170-171. The police determined that appellant was the primary aggressor and was therefore taken into custody. RT 172.

Officer Matthew Biagi, NBPD, pulled appellant and his four kids over on 32nd Street and West Balboa. RT 181. Appellant had a cut under his eye. When Lopez responded to take custody of the kids, she appeared a little down but relieved. RT 184-185.

DEFENSE CASE

Appellant testified that he was married to Lopez for 14 years and that he takes care of his four children. RT 228. On the afternoon of November 22, 2015 appellant drove his two sons to a soccer game in the Bellflower-Downey area. RT 231. During the game appellant noticed his older son appeared discouraged and disengaged. RT 232-233. When appellant called his son, he did not respond. RT 233-234. Appellant and his sons left to go home. RT 234-235. They picked up Lopez and the two daughter and drove home. RT 236-237. Appellant discussed the need to discipline his older son for not honoring his father so he told his son to go to his room RT 234, 238. Appellant closed the windows for privacy. When appellant tried to close the door Lopez barged in and hit him with the door and prevented him from closing the door. Lopez then pushed appellant with her hands and arms knocking him off his feet. RT 239-240. Lopez was aggressive, belligerent and irrational. Appellant made sure Lopez would not get hit by keeping her away from him while he spanked his son one time on the butt and left the room. RT 241, 243. Lopez followed and swiped at appellant's face at least one time cutting his face. RT 244. Appellant said "get away from my face" twice. Lopez then swiped at appellant's neck with a crucifix and yanked it three times until she was able to dislodge it from the rope. RT 244-245. Appellant told Lopez to get away from him. Lopez busted a button off appellant's shirt. RT 245. Both appellant and Lopez reached for the phone which Lopez ended up grabbing and tossing it to their daughter. Appellant asked for the phone but his daughter threw it back to Lopez. Appellant spanked his daughter on her shoulder with

his open hand. RT 246-247. Appellant picked up the phone. RT 248. He walked into his younger son's room to put some space between Lopez and himself. RT 2540. Appellant told his kids to stay inside the apartment because Lopez was acting belligerent and irrational. RT 251. Lopez had appellant's three older kids run down the stairs, outside the apartment, and into the parking lot. RT 253. Appellant stopped the three older kids, went back inside the apartment to get his youngest kid, and put all the kids inside his car and drove the kids to Balboa. RT 253-255.

While they were playing at the beach, his older daughter never asked to use the cell phone. Appellant and his children were returning home when he was stopped by the NBPD with their guns drawn. RT 259-261. Appellant wished his acts of disciplining his son and daughter were kept private. RT 265. The only people who struggled for the phone were appellant and Lopez. RT 271-273. The cell phone first came into appellant's possession when appellant and Lopez were struggling for control. RT 274. Appellant wasn't thinking about who Lopez wanted to call while they were struggling for the phone. RT 278. Appellant hit his daughter because she disobeyed his request, she was being defiant and she threw the phone on the floor away from him and towards Lopez. RT 281. Appellant felt she deserved to be spanked one time on the shoulder for being defiant in an environment that was already irrational. RT 281-282.

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Pages 7-11
missing

D. Noah Lopez

Similar to Cheryl, Noah Lopez should be excluded from the protective order because although he was an “alleged victim as to Count II of the complaint, a jury acquitted appellant of any violation of section 273a(b), child abuse against Noah. Unlike the son in *Beckemeyer*, appellant was not convicted of actually assaulting Noah. For the record, Noah did not testify in trial. Instead, Cheryl testified that appellant intended to discipline Noah. RT 47-49. Apparently, appellant shut the window, grabbed a belt out of the closet and proceeded to discipline his son. RT 48. Tatiana testified Cheryl intervened before appellant could discipline his son. RT 110. Appellant explained his actions to his son and admitted to spanking once. RT 241, 243. In light of the jury’s not guilty verdict, there is no reason to believe appellant actually assaulted or committed a crime against Noah. Therefore, this court should modify the protective order to exclude Noah.

CONCLUSION

For the aforementioned reasons, appellant humbly and respectfully requests that this court reverse the trial court’s order denying any and all motion to modify his criminal protective order issued pursuant to Pen. Code § 1203.097 that the trial court enter a new and different order granting appellant’s no violent contact order.

Dated: May 3, 2017

ROBISON D. HARLEY, JR.
Attorney for Appellant
ARTHUR LOPEZ

Page 13 missing

Appendix J

Instead, the court defined the word “maliciously” as it appears in Pen. Code § 591.5. Although the definition of maliciously was consistent with the definition contained in Pen. Code §7(4), the court never specified the precise specific intent required for any conviction for violating Pen. Code § 591.5. Maliciously has been described as the specific mental state required for a conviction for any crime that use the word “maliciously” in its definition (i.e., mayhem in violation of Pen. Code § 203); however, any crime that has the element of “maliciously” required for any conviction (including mayhem) is still a general, not a specific intent crime. See e.g., *People v. Villegos*, (2001) 92 Cal.App.4th 1217, 1226; *People v. Sekona*, (1994) 27 Cal.App.4th 443, 453.

Thus, the court’s instruction correctly defining the mental state of maliciously without specifying that the required specific intent to prevent the reporting of a crime to law enforcement constitutes error. Moreover, the instructional error was aggravated by omitting any mention of “law enforcement or any public agency” as the intended object or target of the attempted reporting.

Finally, the evidence supporting the conviction for violating Pen. Code § 591.5 (Count III) was weak, at best. After the wife heard appellant’s son scream, she grabbed the phone, went into the kid’s room, and got between the son and appellant. The wife said if you hit the son again, she was going to call the police. With that appellant pushed the wife aside and hit the son again. At that time, the wife pushed appellant away and said she was going to call the police. Appellant grabbed the wife from behind, bear hugged her and pushed her against the mirrored closet for about 30 seconds. RT 50-51. Appellant

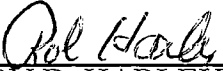
was trying to get the wife to release the cell phone by squeezing her, grabbing her wrist, kicking her leg, and throwing her against the mirrored wardrobe. The wife said “call 911, call the police” and she threw the phone on the ground. The daughter picked the phone up and attempted to put in the pass code. RT 56-58. Appellant hit the daughter in the back left shoulder, she dropped the phone, backed up and started crying. Appellant picked up the phone and turned around. The wife pushed appellant away and told him to leave them alone. She asked for the phone and appellant turned around and left. RT 159. The wife told the kids to put on their shoes because they were going to the apartment complex to call the police. They all left appellant in the apartment to go to the leasing office. RT 60. On the way the wife borrowed a cell phone from an 8 year old kid and called her sister. RT 62. She returned to the apartment without calling the police and saw that appellant, the kids, and the family car was gone. RT 64.

Given the inaccurate and woefully deficient instruction on the specific intent relevant to any violation of Pen. Code § 591.5 as well as the weakness of the prosecution case on that particular charge, the error is prejudicial under any standard of review and a reversal is required.

CONCLUSION

Individually and collectively the instructional errors require reversal of counts III and IV.

Dated: March 22, 2017



ROBISON D. HARLEY, JR.
Attorney for Appellant
ARTHUR LOPEZ

Appendix F

30-2016-00833841

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF ORANGE
CENTRAL JUSTICE CENTER

MAY 23 2018

DAVID H. YAMASAKI, Clerk of the Court

BY: B. MCADAMS, DEPUTY

APPELLATE DIVISION

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF ORANGE,

CENTRAL JUSTICE CENTER

THE PEOPLE OF THE STATE OF)
CALIFORNIA,)

CASE NO: 30-2016-00833841

Plaintiff/Appellee,)

Superior Ct. No. 15HM12251

vs.)

ARTHUR LOPEZ,)

Defendant/Appellant.)

**PETITION FOR REVIEW AND FOR
APPOINTMENT OF COUNSEL
FOR A WRIT OF HABEAS CORPUS**

APPEAL FROM THE SUPERIOR COURT OF ORANGE COUNTY

HONORABLE JUDGE THOMAS A. DELANEY

JUDGE PRESIDING

ROBISON D. HARLEY, JR.
Attorney at Law
SBN: 68984
825 N. Ross Street
Santa Ana, California 92701
Tele: (714) 972-8141
Facsimile: (714) 972-8107

Appendix K
27

**PETITION FOR REVIEW AND FOR
APPOINTMENT OF COUNSEL FOR A
WRIT OF HABEAS CORPUS**

Appellant/petitioner, Arthur Lopez, respectfully petitions this court for review of the decision rendered on 5/8/18 in the above entitled case and further petitions this court for the appointment of counsel to pursue a writ of habeas corpus in the above entitled case on the grounds that appellant was convicted by a biased jury and was represented by incompetent counsel who also had a conflict of interest with petition.

Said request is based on Exhibit A, attached hereto and incorporated by reference herein.

Dated: May 23, 2018

Respectfully submitted,

ROBISON D. HARLEY, JR.
Attorney for Appellant
ARTHUR LOPEZ

EXHIBIT A

DECLARATION OF ARTHUR LOPEZ IN SUPPORT OF APPELLANT /
PETITIONER FOR REVIEW AND WRIT OF HABEAS CORPUS



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Name: ARTHUR LOPEZ
Address: 2251 Bloomfield Lane
Corona, Ca 92882
Phone: 949.467.0937
Fax: _____
In Pro Per

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CASE NUMBER:
Superior Ct 15HM12251

ARTHUR LOPEZ

Plaintiff

v.

Declaration of ARTHUR LOPEZ
IN Support of Appeal, Petition
For Review and Writ of Habeas Corpus

Defendant(s).

(Enter document title in the space provided above)

Most Honorable Judges of the California Appeals Division Court please accept ARTHUR LOPEZ's Declaration In Support of his Petition for Review.

The following material facts and events related to the incident of November 22, 2015 are not only relevant but of major significance to the detrimental outcome of not only his arrest, incarceration and trial but also to all the consequences that ensued.

To Begin, the arresting officer Mathew Biagi

1 and Supervisor/Detective/Interviewing Officer
2 Shawn Dugan failed to charge or arrest
3 Cheryl Lopez despite repeated conveyances
4 by ARTHUR Lopez of her repeated assaults
5 upon ARTHUR Lopez and his desire to press
6 charges against her. Moreover, the two
7 Newport Beach Police Officers withheld this evidence
8 prompting ARTHUR Lopez to revisit the
9 Newport Beach Police Department in Mid
10 December 2015 to provide a written statement
11 of the same reiterating Cheryl Lopez's assault
12 upon ARTHUR Lopez which left three cuts
13 to the right side of his face. This written
14 statement was with the approval of the Public Defender.
15 These acts of omission and bias by the police
16 officers undoubtedly prejudiced the jury against
17 Arthur Lopez @ trial and was premeditated
18 by the officers as they avoided discussing the
19 matter with ARTHUR Lopez in the patrol
20 vehicle and @ the station on 11/22/15.

22 In addition, after Public Defender Christopher Lee
23 was assigned to this case he quickly displayed
24 a hesitation with ARTHUR Lopez's defense.
25 In fact, during a hearing in Judge Matthew
26 Andersson's court room he sent a substitute
27 Public Defender and he also refused to allow
28 Arthur Lopez to exercise his wish to a speedy

December 1, 2015

1 trial. This issue came to a climax
2 when ARTHUR Lopez conveyed his request for
3 a new Public Defender since ARTHUR Lopez
4 understood he was not being represented
5 fairly or competently. However, upon making
6 the switch known to Christopher Lee he
7 promptly responded that this was not possible
8 since there was no other Public Defender that
9 would provide representation for ARTHUR Lopez
10 since everyone there "Hated" him. Ultimately,
11 ARTHUR Lopez did not get a new
12 Public Defender nor did the trial start
13 within the Speedy Trial - 30 day period.
14 In addition, initially Judge Doug Hatchimony
15 was assigned ARTHUR Lopez's case and much
16 to ARTHUR Lopez's surprise he did not
17 recuse himself from the case despite
18 being a personal friend and employer of
19 Cheryl Lopez's sister Kelli Maurer
20 since she babysat his two children (Boys and Girl)
21 for years and she was the actual caller
22 to "911" on 11/22/15 since Cheryl Lopez
23 never called @ any time for assistance or
24 any other reason. ARTHUR Lopez brought this
25 to the Public Defender attention and after seeking
26 a meeting in chambers a switch to
27 Judge Thomas Delaney was made; However,
28 ARTHUR Lopez later learned this judge is

3
Page Number

CV-127 (09/09)

PLEADING PAGE FOR A SUBSEQUENT DOCUMENT

1 married to an officer/employee of the Office
2 of the District Attorney - Orange County and
3 although ARTHUR LOPEZ wished to disqualify
4 this judge, Public Defender Christopher Lee
5 counseled against making the disqualification.
6 Moreover, ARTHUR LOPEZ much later learned
7 Judge Thomas Delaney represented the
8 Los Angeles Unified School District in a
9 lawsuit as defense counsel where a
10 destroying of evidence charge was made
11 by the Plaintiff's and subsequently to this
12 Judge Delaney left the Law Firm and
13 was appointed the post of Superior Court
14 Judge. This is of major significance
15 since ARTHUR LOPEZ had previously filed
16 a Civil case in Federal District Court that
17 ultimately reached the United States Supreme
18 Court (Case # 4-1414) and this case was
19 also a school district but in Orange County.
20 ARTHUR LOPEZ provided a copy of the Brief
21 to Public Defender Christopher Lee in
22 preparation of the defense. In fact, this
23 Civil case against the Orange County school
24 district for violations of the McKinley-Vento Federal Act
25 explain possibly in part his early comment
26 and revelation that everyone "hated" ARTHUR
27 LOPEZ "here" (Harbor Justice Center).
28 Soon after, ARTHUR LOPEZ understood during

4

Page Number

1 the jury selection that many bias
2 jurors were called for interview and in
3 some instances they appeared to be cleared
4 to serve. The biases included a favorable
5 bias towards Police, bias favorably towards
6 very conservative disciplinary guidelines for children,
7 and also bias towards school administration.
8 It is for these reasons that I have requested
9 the jury selection processes/audios be
10 released for identifying the bias juror(s).
11 During the trial Public Defender Christopher
12 Lee failed to challenge certain witnesses
13 or even question them competently. In fact,
14 the issue related to one of the misdemeanors
15 convictions regarding the impaired phone
16 never prompted an inspection of the phone
17 nor was it ever introduced as evidence.
18 In addition, the unreasonable protective
19 order related to three of the four
20 children of ARTHUR LOPEZ who are
21 not part of this Appeal was not
22 adequately challenged from the onset
23 and to this day remains unmodified
24 despite repeated requests by ARTHUR LOPEZ
25 since the "brotherhood alliance" amongs
26 the judicial officers seems to prevent
27 the exercising of authority to render just
28 modifications in this case. In fact, one of these

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Page Number

1 involved judges in the denial of the
 2 sought after modification was arrested
 3 at her home not long after the
 4 9/12/16 hearing. During this hearing
 5 in fact ARTHUR Lopez was made
 6 aware of an additional malicious
 7 prosecution by the Newport Beach Police
 8 Department and the Orange County
 9 District attorney. This revelation ended
 10 upon the dismissal of the charge and
 11 closing of the case 37 days later.

12 Public Defender Christopher Lee also made
 13 himself unaccessible before and after the
 14 trial. He also refused to issue
 15 subpoenas to the Newport Beach Police
 16 Dept. upon my request for purposes of
 17 discovery, this dereliction of duty, substandard
 18 representation and defense, inept trial
 19 conduct, illadvised conduct of a relentless
 20 appeasement to the D.A. and the Bench
 21 have caused Arthur Lopez tremendous
 22 +lenjia's legal Representation and have
 23 deprived him of his United States Constitutional
 24 Rights under the Sixth Amendment - Depriving
 25 a Speedy Trial, Impartial Jury, Assistance of
 26 Competent Counsel.

27 For all these reasons ARTHUR Lopez
 28 submits respectfully this declaration In support

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of the Petition for review.

Respectfully,

Arthur Lopez

May 15, 2018

~~Arthur Lopez~~

7

Page Number

represent Arthur Lopez on various civil cases involving Union Bank and housing matters and Family Law - Civil matters 2012 - present.

Judge Doug Hatchimongi - Newport Beach Superior Court Harbor Justice Center

Employs sister, Kelli Mauere, of Plaintiff's assailant Cheryl Lopez from whom plaintiff has been seeking a Restraining order from Superior Court in O.C. and Riverside County. Colleague of Judge Thomas Delaney and Judge Stephanie George who was arrested by Orange County

Sheriff in late 2016 after denying Plaintiff modification of Protective Order so as to regain custody of three of four of his children on 9/12/16 following a false arrest and malicious prosecution that led to 37 days of incarceration on a bogus charge which was dismissed and is part of Federal Civil litigation against Josh Vincelet, N.B. PD Case # SACV17-001

California Supreme Court Chief Justice Tani Lorne Cantil-Sakauye - also Director of Judicial Council of California

married to retired Sacramento Police Officer and oversees system of Deprivation of Plaintiff's U.S. Constitutional Civil Right - Active Case

Deprivation of Plaintiff's U.S. Constitutional Civil Rights - Active Civil Case in Litigation

Appendix 2
2012

Under Glass

37

June 19th 2018

Cover

Key Participants of "Children Custody Interference"

Superior Court of Harbor Justice @ Newport, Beach

ISHM12251 - Presiding Judge Thomas A. DeLaney formerly Defense Attorney for L.A. Unified School District in a suit involving students and defense found to be destroying evidence. Also, Married to District attorney of Orange County. D.A. is under Federal Investigation for manipulating informants. Same District attorney office was involved in a Malicious Prosecution case which is in litigation under Case # 17-00488 Lopez v Joshua Vencelet (Newport Beach Police Department (Newport Beach) involved in withholding evidence to manipulate trial of Arthen Lopez (Officers Mathew Biagi + Shawn Dugan - arresting officers on originating case for trial of ISHM12251)

Arthen Lopez

Appendix L

78

Kathleen O'Leary, Presiding Judge of the California Court of Appeals for the 4th District, 3rd Division is married to Kenneth Balcock who is the director of the Public Law Center 601 Civic Center Dr. S., which runs Pro-Se Clinic @ the U.S. District (which staffed Sr. Attorney who derailed through counsel Plaintiff Arthen Lopez civil case against M&FG. Union Bank in 2/16 - Case is currently w/ U.S. Court of Appeals 9th circuit. Public Law Center refused to

1064



U. S. Department of Justice

United States Attorney
Central District of California

CIVIL RIGHTS COMPLAINT FORM

The United States Attorney's Office is charged with enforcing federal civil rights laws within the Central District of California, which includes the following seven counties: Los Angeles, Orange, Riverside, San Bernardino, San Luis Obispo, Santa Barbara, and Ventura. We therefore welcome information that brings to our attention possible violations of federal civil rights laws occurring within any of these counties.

Appendix ✓

Person Filing Complaint:

Name: ARTHUR LOPEZ
Address 1: 2251 Bloomfield Lane
Address 2: _____
City, State Zip: Corona, Ca 92882
Phone: 949 467 0937 E-mail: _____

Person / Entity you are filing complaint about:

Name: Cheryl Lopez and Superior Court of California - California Court of "Corruption Officials" Appeals
Address 1: _____
Address 2: California Courts and Law Enforcement and
City, State Zip: depriving Plaintiff ARTHUR LOPEZ California Supreme of His Civil Rights of Equal Protection Court
Phone: _____ E-mail: _____
Under the Law and Due Process of

Nature of Alleged Civil Rights Violation(s) (check all that apply):

- Disability Rights or Access
- Housing Discrimination
- Education
- Police / Law Enforcement Misconduct
- Employment Discrimination
- Prisoner / Rights of other Institutional Persons
- Bias / Hate Crimes
- Voting Rights

Other (specify): Official Corruption Depriving Plaintiff/Petitioner ARTHUR LOPEZ of Equal Protection Under THE LAW and Due Process Refusing to grant ARTHUR LOPEZ a Restraining Order - Criminal and Civil against Ex Spouse CHERYL LOPEZ Despite years of unlawful and Abusive Behavior against ARTHUR LOPEZ as described herein and in Court filings.

See Case Info attached #165001283

6054262

RIC1802970

6069559

RIC170178

39

14 - Amendment Deprivation. //

Deprivation of Civil Rights 14th, 1st, 4th, 5th (Freedom of Speech Amendments)

Please clearly describe the relevant incident(s). Include as much information as possible, including the date, place, nature of the incident(s), contact information for any witnesses and copies of any relevant documents. Please do not send original documents - if originals are needed, they will be requested. (Attach additional page(s) if necessary.)

Cheryl Lopez has Physically Assaulted ARTHUR LOPEZ
on 11/22/15 and witnessed and testified by oldest daughter (of both)
Cheryl Lopez also participated in a Malicious Prosecution of Arthur
Lopez by providing false statements which caused in part the
false imprisonment for 37 days of Arthur Lopez. Moreover, Defendant
Cheryl Lopez also cashed check payable to ARTHUR LOPEZ and
without ARTHUR'S knowledge, consent or signature Cheryl Lopez

Are additional pages attached? Yes No If so, how many? #1661.55

Are you represented by an attorney in this matter? Yes No Robison Harley

If yes, please provide the following information:

Attorney Name: Attorney Robison Harley - Court Appointed

Firm Name: _____
Address 1: 825 No. Ross Street for 2 Appeals

Address 2: _____
City, State Zip: Santa Ana, CA 92701

Phone: 714 972 8141 E-mail: N/A

Have you filed a lawsuit concerning this matter? Yes No

If yes, please provide the following information:

Case Name: LOPEZ v. JUSTIN VINCELET Various Law Enforcement Agencies neighboring Police Precincts

Case Number: SACV 17-00488 (Newport Beach)

Court in which filed: U.S. Central District - S.A. Police Dept. Ronald Reagan

Current status: IN Litigation

ARTHUR LOPEZ IS NOT REPRESENTED
by an attorney on this case.

Appendix

2064

40

Have you filed a complaint about this matter with any other federal, state or local agency?

Yes No

Local Police - District #111 - California Attorney General -
of O.C. California Dept. of Justice

If yes, please provide the following information:

Agency Name: California Court of O.C. Superior of CA - Riverside Co. Superior Court
Family Court (O.C. + Riverside)
Contact Person: Superior Court Appeals CA Court of Appeals 4th District 3rd Division
and 2nd Division
Phone Number: and California Supreme Court

The volume of complaints prevents us from responding to every complaint we receive. Be assured, however, that we will carefully consider the information you have provided us to determine whether a violation of the federal civil rights laws may have occurred and if so, whether this Office has enforcement authority with respect to such a violation. If we determine that your complaint raises a potential violation of federal civil rights laws that would be within the jurisdiction of this Office to investigate and /or that further information from you is necessary for our investigation, you will be contacted.

PLEASE UNDERSTAND THAT SUBMITTING THIS COMPLAINT FORM HAS NO EFFECT ON ANY STATUTE OF LIMITATIONS OR OTHER FILING REQUIREMENTS THAT MIGHT APPLY TO ANY CLAIM YOU MAY HAVE.

FURTHER, BY SUBMITTING THIS CLAIM YOU HAVE NOT COMMENCED A LAWSUIT OR OTHER LEGAL PROCEEDING, AND THIS OFFICE HAS NOT INITIATED A SUIT OR PROCEEDING ON YOUR BEHALF.

IF YOU BELIEVE YOUR CIVIL RIGHTS HAVE BEEN VIOLATED, AND INTEND TO BRING A LAWSUIT, YOU SHOULD ALSO CONTACT A PRIVATE ATTORNEY.

Please sign and date below to indicate your understanding of the terms above and verify the accuracy of all factual representations contained in this complaint form.

Signature: Arthur Lopez
Date: June 18th, 2018

Send completed complaint form and any relevant documents to the following address:

Attn: Civil Rights Unit Chief, Civil Division
United States Attorney's Office
300 North Los Angeles Street, Suite 7516
Los Angeles, California 90012
(213) 894-2879 (Phone)
(213) 894-7819 (Fax)

Appendix

41 3 of 4

June 18th, 2018

Other related Restraining Order Requests

Cases:

California Supreme Court; Case# S242910

S240134

S247603

S248949

RIC1802970

Superior Court of California, County of Riverside

Case# RIC1722606

RIC1722112

RIV1701781

RIV1800123

Superior Court of California, County of Orange

RIV1800376

CA Court of Appeals 4th District 2nd Div;

Case# 168001283

Restraining Order Request

Case# E070307

E069559

E070663

4th District 3rd Div.

Case# GOS4262

Restraining Order Request

4 of 4

42

Appendix Z

1 2.) Question Presented:

2 Should the State of California and its State
3 Courts be required to honor Civil Rights
4 guaranteed by the United States Constitution,
5 14th Amendment including but not limited
6 to not making or enforcing any law
7 that abridges the privileges or immunities
8 of the citizens of the U.S. nor
9 deprive Due Process on matters related
10 to Restraining Orders regardless of
11 cultural custom, social system, religious
12 beliefs, nor gender or racial bias
13 irrespective of the impact on
14 Parental Custodial Rights.
15

16 Statement of Facts

17
18 Plaintiff petitioned for a Criminal Protection
19 Restraining Order against the defendant
20 on October 20, 2016 @ the Superior Court
21 of California, County of Orange Lamoreaux
22 Justice Center 341 City Drive West, Orange, CA
23 following his release, of October 18, 2016,
24 from 307 days of incarceration as an
25 entirely innocent person. Plaintiff's Petition
26 initially denied the Temporary Restraining Order
27 on the same day by Hon. Judge Daphne Sykes Scott
28 (Appendix D) and was ordered to return on November 10, 2016

Appendix M

15

Page Number

43

See Appendix

1 for a hearing. Plaintiff appeared on 11/10/16
2 in Pro Per, and again was denied the Restraining
3 Order by the same judge in Dept. 471. Plaintiff
4 filed his petition for the Restraining Order
5 under his Divorce proceedings Case #
6 16D001283 as instructed and under which
7 Plaintiff was granted a Restored Single Status
8 on or about September 7, 2016. Moreover, the
9 Custody of Plaintiff's four minor children
10 is also being administered by the same
11 Divorce Case # and by the same judge.
12 This is significant since the issuance of
13 Plaintiff's petitioned Restraining Order
14 against the defendant would contradict the
15 established Custody arrangements made
16 by this court following the issuance of
17 the 3 year Protective Order by the Superior
18 Court of Ca, County of Orange - Harbor Justice
19 Center under Case # 15HM12251 on 1/14/16.
20 Also note the issuance of that protective order
21 includes Plaintiff's three other minor children
22 that have no participation in Plaintiff's
23 misdemeanor convictions that are on appeal
24 and which is in contradiction to established
25 Case law under California's Second Appellate
26 District, in People v. Carlos Reginald Delasosaranda
27 (2014 DJDAR 7959) whereby Plaintiff's Non-Victim
28 three children are barred from being included in such

Appendix A

16
Page Number

44

See Appendix

1 Protective Order (see appendix M) especially since
2 one of the three children was asleep in a
3 separate room during the events of Nov. 27, 2018
4 and the second child was Basis for a
5 "Not Guilty" verdict in Favor of Plaintiff
6 after his trial of January 2016 under case
7 # 15 HM12251. It would appear the
8 court abused there authority in a
9 violation of Plaintiff's Double Jeopardy
10 protections here as well.

11 Nevertheless, following the denial on Nov. 10, 2016
12 Plaintiff proceeded to file an appeal with
13 the California Court of Appeals, 4th District,
14 Division Three located @ 601 W. Santa Ana Blvd
15 Santa Ana, Ca 92701 - 714 571.2600 under
16 Case # G054262. This court subsequently
17 affirmed the lower courts denial and
18 Plaintiff Petitioned Review to the Supreme
19 Court of California. However, the
20 Supreme Court refused to Review and
21 refused to Reconsiders its original
22 rejection. These two denials are dated
23 May 25, 2018 and June 13th, 2018 respectively.
24

25 Now as to the specific deprivation of
26 Plaintiff's Civil Rights under the
27 14th amendment Due Process guarantees,
28 Plaintiff will itemize the flagrant

Appendix M

X

See Appendix

violations here;

- 1.) Lamoreaux Justice Center - Hon. Judge Daphne Sykes Scott not only failed to recognize Plaintiff's cuts to his face and physical assault by the defendant on November 22, 2015 as sufficient evidence to grant Restraining order under Ca. Family Code 6203, but also permitted a proceeding in Court to move forward despite being made aware from the onset by Plaintiff that the defendant and her attorney had failed to serve Plaintiff with proper Notice, in advance of 8:30 scheduled hearing on November 10, 2016, of there substitution of Attorney required filing. In fact, Hon. Judge Scott responded she was not aware of the advance notice requirement when asked by Plaintiff (transcript Pg. 43 reflects this exchange and complete transcript has been submitted in the record under Case # B054262) (appendix G) Moreover, Defendant's atty Boehm proceeded to file a false proof of service afterwards and this was noted in Plaintiff's Appeal repeatedly (see Appendix "X") 14th Amendment Rights also deprived.
- 2.) Lamoreaux Justice Center - Hon. Judge Daphne Sykes Scott failed to recognize Plaintiff's

Appendix M 18

Page Number

46

See Appendix

1 false arrest, false imprisonment and
2 malicious prosecutions initiated by the
3 defendants false accusations, misrepresentation
4 trickery which culminated in 37 days
5 of incarceration until Honorable Judge Sannon
6 Dismissed the bogus charge was more
7 than sufficient evidence to grant the
8 petitioned restraining order under 14th amend.
9 Ca Family Code 6203 (a) (1) (b) (c) See
10 Appendix "J" - Dismissal of bogus charge
11 after review of Prosecutors evidence and
12 in consideration of Plaintiff's Due Process
13 Rights.

14
15 3.) California Court of Appeals failed to recognize
16 Plaintiff's rights under the 14th amendment
17 and ignored and/or erred by not
18 recognizing the fraudulent filings by the
19 defendants atty with respect to failed
20 substitution of Atty Notice and Service.
21 (See Appendix J). This court also violated
22 Plaintiff's Due Process rights by
23 ignoring Plaintiff's repeated request
24 to reverse the lower court's denial despite
25 conducting a hearing without authority
26 since the attorney representing the defendant
27 was disqualified to provide representation.
28 This court also failed to recognize Plaintiff's

Appendix M

19
Page Number

47

XL

See Appendix A, B, C and D

1 oldest daughter's trial testimony identifying
2 the defendant as the penetrating aggressor.
3 (Transcript from Trial - Case # 1511M12251
4 entered into record @ Lamoreaux
5 Justice Center under 165001283 reflecting
6 daughter - witness testimony as Jane Doe).
7 See Appendix G - Page 6.
8

9 4.) Moreover the Court of Appeals under
10 Case # 15054262 repeatedly obstructed
11 justice by refusing filings. In fact,
12 as a matter of policy and standard
13 business practice the Court of Appeals
14 of California obstructs justice
15 everyday by not accepting any filing
16 without advance proof of service
17 even when it requires service by the
18 Orange County Sheriff. More specifically
19 on March 23rd and March 28th, 2018
20 this court rejected Plaintiff's Request
21 for Reconsideration despite California
22 Rules of Court 8.63 (3) and 8.60 permit
23 Extending Time to File and In addition,
24 the order of March 23rd, 2018 specifically
25 cited a Good Cause element desired
26 which was provided on March 28, 2018 and
27 was also rejected (See Appendix B, and C and
28 G and H). In fact, this court has

Appendix M

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48

Page Number

See 11
11

JL

1 gone as far as locking the front door
2 prior to the 4:30pm. closing time to
3 prevent Plaintiff from filing a rehearing/
4 reconsideration request as was the
5 case on March 22, 2018 and which was
6 reported to the California Highway Patrol
7 Officer on Duty providing security
8 and for which an Incident Report #
9 was provided by the Captain the
10 following day. It is worthwhile
11 noting that the Orange County Sheriff
12 in Santa Ana on Main Street artificially
13 delayed Plaintiff on this same afternoon
14 to impede Plaintiff from reaching
15 the Court of Appeals earlier since they
16 need to provide the proof of service
17 document before this court will
18 accept the filing and as such assist
19 in the obstruction of justice. Moreover,
20 this Court has absolutely NO parking
21 lot or parking facilities in the immediate
22 area which also creates a barrier
23 from reaching this location.

24
25 4) Now then we turned to the California
26 Supreme Court who also failed to
27 provide a review of the lower courts
28 decision in violation of California

Appendix M

21
Page Number

49

See Appendix

XV

1 Rules of Court Rule 8.500 (a) (1) (b) (c) (e).
2 Whereby Plaintiff is afforded the right
3 to Petition Review and when a
4 Reconsideration Request is made timely
5 which was done at the Court of Appeals
6 on March 23 and 28th, 2018 timely
7 since the Opinion was released
8 February 26th, 2018 and February consisted
9 of 28 days in the month and moreover
10 Plaintiff submitted Good Cause for
11 Extending time of limitations that
12 may exist on March 28th, 2018
13 (See Appendix G and H and I).
14 Moreover, Plaintiff's Petition for Review
15 was submitted by U.S. Mail on
16 May 7, 2018 to the San Francisco
17 Clerk of the Court and was stamped
18 filed on May 9, 2018. This timeline
19 reflects Plaintiff's filing of the
20 rejected Reconsideration request
21 of March 23 and March 28, 2018
22 by May 7th, 2018 which is within the
23 30 days + 10 days as the Supreme
24 Court requires. Moreover, Plaintiff
25 submitted a Good Cause Statement to
26 extend time. However, again the
27 State Court has deprived Plaintiff of
28 Due Process. Consequently, the

Appendix M

22
Page Number

50

H.

See Appendix

1 systematic policy of the California State Courts
2 and the State of California ongoing
3 deprivation of United States Constitutional
4 Civil Rights including guarantees of every
5 U.S. Citizen under the 14th amendment
6 is being perpetrated to in essence
7 deprive male hatino, Minority Parents
8 these Parental Rights by creating a bias
9 favorable to the female, white caucasian
10 parent in establishing Parental Custodial
11 Rights in Divorce Proceedings. This
12 manipulation of Parental Rights regardless
13 of Cultural custom, social system, religious
14 beliefs, gender or racial bias is not
15 only a violation of fundamental Civil
16 Rights but also harmful to the development
17 of a Fatherless child and as such a
18 violation of International Humanitarian Law
19 For all these reasons Plaintiff seeks
20 from this highest court of the
21 United States of America the restoration
22 of the 14th amendment protections and
23 guarantees within the State of California
24 and its courts to include Equal Protection
25 Under Law and Due Process of Law in
26 all Restraining Order matters even when
27 Parental Rights of the female parent is
28 negatively impacted by coming out of equal justice.

Appendix M

23

Page Number

SI

JA

See Appendix

L> 14th Amendment

All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Section 2

exh 'a'

73

6

↳ 6th Amendment

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence

Exh B 74
7

People v. Prince

[Crim. A. No. 13378. Appellate Department, Superior Court, Los Angeles. January 9, 1976.]
THE PEOPLE, Plaintiff and Respondent, v. PAUL HENRY PRINCE, Defendant and Appellant

(Holmes, J., with Marshall, P. J., and Alarcon, J., concurring.)

COUNSEL

Paul Henry Prince, in pro. per., for Defendant and Appellant.

John E. Howard, Acting District Attorney, and Daniel L. Bershin, Deputy District Attorney, for Plaintiff and Respondent.

OPINION

HOLMES, J.

[1a] This case, and nine companion cases, decided this day, that were consolidated for briefing, involve the novel and important questions: (1) Is it necessary for the record on appeal to show that the trial court expressly advised an unrepresented defendant accused of a public offense classified as an infraction, fn. 1 as distinguished from a misdemeanor or felony, that he has the right to be represented by privately retained counsel fn. 2; and, if so, (2) is it necessary that the record reflect an express, knowing and intelligent waiver by such defendant of counsel before he may validly enter a plea of guilty or nolo contendere or be brought to trial by the court without representation by counsel. fn. 3

We decide that in such cases it is not necessary for the record to disclose an express admonition of defendant by the court of defendant's right to employ counsel or a knowing and intelligent waiver of counsel, [55 Cal. App. 3d Supp. 23] unless special circumstances are disclosed that make lack of such a showing unreasonable.

The Sixth Amendment of the Constitution of the United States declares that "[i]n all criminal prosecutions, the accused shall enjoy the right to ... have the Assistance of Counsel for his defense."

Section 15 of article I of the California Constitution declares that "[t]he defendant in a criminal cause has the right ... to have the assistance of counsel for the defendant's defense, to be personally present with counsel. ..." fn. 4

In the case of *In re Johnson* (1965) 62 Cal. 2d 325 [42 Cal. Rptr. 228, 398 P.2d 420] defendant was one of a large number of defendants, charged with traffic offenses, assembled in the arraignment court. He was not represented by an attorney. The judge made an opening statement of constitutional rights to the assembled defendants, then arraigned each individually. The defendant Johnson pleaded guilty to 5 traffic complaints fn. 5 and was sentenced to 5 consecutive maximum terms of 180 days in jail. On appeal the defendant conceded that the judge's opening statement of constitutional rights included the subject of right to counsel, but the record reflected no express waiver by defendant.

After quoting the California Constitution's guarantee of right to counsel fn. 6 the court in *In re Johnson* said, at page 329: "... [T]here can be no doubt that the fundamental constitutional right to the assistance of counsel at all stages of the proceedings (see *Gideon v. Wainwright* (1963) 372 U.S. 335 [83 S. Ct. 792, 9 L. Ed. 2d 799, 93 A.L.R.2d 733]; *People v. Douglas* (1964) 61 Cal. 2d 430, 434 [1] [38 Cal. Rptr. 884, 392 P.2d 964]) is, in California at least, not limited to felony cases but is equally guaranteed to persons charged with misdemeanors in a municipal or other inferior court. (In *re Masching* (1953) 41 Cal. 2d 530, 532 [2] [261 P.2d 251]; *In re McCoy* (1948) 32 Cal. 2d 73, 76 [1] [194 P.2d 531]; *In re* [55 Cal. App. 3d Supp. 24] *Jingles* (1946) 27 Cal. 2d 496, 498 [1] [165 P.2d 12]; see also Pen. Code, § 686, subd. 2, and § 690.)" The *Johnson* case preceded establishment in 1968 of the category of "infractions," distinguished from misdemeanors, as a class of crimes and public offenses. (Pen. Code, § 16.)

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Brewer v. Williams, 430 U.S. 387

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Supreme Court of the United States

Argued October 4, 1976 ; March 23, 1977;

No. 74-1263

Reporter

430 U.S. 387 * | 97 S.Ct. 1232 ** | 51 L.Ed.2d 424 *** | 1977 U.S. LEXIS 64 ****

BREWER, WARDEN v. WILLIAMS

Prior History: [****] CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CI

Core Terms

Interrogation, questions, exclusionary rule, waived, trip, talk, constitutional right, rights, absence of counsel, right to counsel, circumstances, consulted, reliable, incriminating statement, proceedings, suppression, murder, state court, arrived, police officer, courts, presence of counsel, habeas corpus, incriminating, confess, elicit, ride, police conduct, convicted, deterrent

Case Summary

Procedural Posture

The Court granted certiorari to determine whether the United States Court of Appeals for the Eighth Circuit was correct in determining that respondent was entitled to a new trial due to the deprivation of the right to counsel.

Overview

Respondent was arrested for the abduction of a missing girl. His attorney advised him that police officers would be transporting him to another city, that the officers would not interrogate him, and that he should not talk to the officers until consulting with the attorney. After respondent's arraignment, another attorney similarly advised respondent. The officers gave respondent Miranda warnings. During the trip, respondent expressed no willingness to be interrogated. In the car, one officer discussed how expected snow might make recovery of the body and a Christian burial impossible, and that respondent was the only one who knew where the body was. Respondent eventually led the officers to the body. The Court held that respondent was entitled to a new trial because he was deprived of the Sixth Amendment right to assistance of counsel, as judicial proceedings had been initiated against him before the start of the car ride, and the officer deliberately set out to elicit information from him when he was entitled to the assistance of counsel. Respondent did not waive his right to counsel because he consistently relied upon the advice of counsel in dealing with the authorities.

Outcome

The Court affirmed and held that respondent was entitled to a new trial because he was deprived of the right to assistance of counsel.

ask id

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