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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION ONE

THE PEOPLE,

Plaintiff and Respondent,

v.

ARIK LEE CALDWELL,

Defendant and Appellant.

A144911

(Mendocino County  
Super. Ct. No. SCUUK-CRCR-14-  
79492-002)

This is an appeal pursuant to *People v. Wende* (1979) 25 Cal.3d 436. Counsel for appellant has reviewed the record in this case and notified his client he has discerned there are no meritorious issues to appeal. He advised defendant of this conclusion by letter and told the client he may file a supplemental brief with this court if he chooses. This communication took place October 26, 2015. More than 30 days have passed and defendant has not submitted any materials supporting further review by this court. We have reviewed the transcripts and filings in this case and find no issues of merit for us to address. We therefore affirm the judgment here.

**STATEMENT OF THE CASE**

In an information filed November 21, 2014, defendant Arik Caldwell (Caldwell or defendant) was charged with two counts of felony resisting arrest, violations of Penal Code section 69.<sup>1</sup> He entered a not guilty plea in December 2014. The case proceeded to

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<sup>1</sup> Unless otherwise stated, all statutory references are to the Penal Code.

jury trial on January 26, 2015. Caldwell was found guilty by the jury on both counts on January 29, 2015.

On March 3, 2015, the trial court denied probation and sentenced defendant to the upper term of three years on count 1, and the middle term of two years on count 2, each sentence to run concurrent. The trial court also imposed a restitution fine (§ 1202.4, subd. (b)) and a parole revocation fine (§ 1202.45).

A timely notice of appeal from the judgment was filed on April 22 and 24.

### **STATEMENT OF THE FACTS**

James Halpin was the part owner and chef of Chief's Smokehouse restaurant in Laytonville. On October 20, 2014, he arrived at his business at 8:00 in the morning. He observed defendant resting on a bench fronting the Laundromat connected to the restaurant. Defendant's personal property was strewn about the front of the entrance.

The mess caused Halpin to tell defendant he had to leave the area and remove his property from the front of the property. He advised Caldwell, "[T]his isn't a campground." Defendant replied he wanted to do his laundry in the business. Halpin told Caldwell he would open the establishment but once Caldwell finished his washing he had to leave. Halpin opened the Laundromat and then entered his restaurant to work. After a few minutes in the restaurant, Halpin noticed defendant was approaching laundry customers to get them to include his laundry in their cleaning. This situation provoked Halpin into advising Caldwell he had to leave the premises. Caldwell got into Halpin's face and began "growling" at him with the words "rah, rah, rah."

The owner then backed away from Caldwell but advised he would call the police if the defendant did not leave. Caldwell told Halpin to go ahead and call the police. The police were then called.

Prior to the arrival of the local police, Halpin saw Caldwell remove property from the Laundromat, including a bucket, mop, and vacuum; he placed them outside the business on the sidewalk. As Halpin began picking up the property and returning it to the

store, he saw Caldwell walk over to a totem pole near the business. Defendant began doing bizarre conduct like “humping” the pole, climbing on various rocks near the pole and pretending he was a bullfighter with cars passing on the road. This concerned Halpin and he asked the police to respond quickly.

Three uniformed police officers did arrive at the business and discussed the complaint with Halpin. The officers involved were Deputy Sheriff Milton Rhine, who was on routine patrol with his training officer, Deputy James Elmore. The pair received a radio call concerning a disturbance at Chief’s drive-in near Highway 101 in Laytonville. The pair arrived in their marked patrol car at the same time Deputy Wyant arrived in his vehicle. Wyant’s patrol car was equipped with a video recording camera, which faced out towards the front of his car. The video recording was played for the jury.

The officers saw Caldwell standing atop the rocks near the business. Rhine approached the defendant and anticipated getting Caldwell down and escorting him from the property. Rhine inquired how defendant felt, to which Caldwell replied he was “just dancing or . . . listening to the music.” When Rhine again asked defendant to come down from the rocks, Caldwell asked the officer, “[W]hat are you going to do if I don’t?” The officer believed he was obligated to get Caldwell to leave the property because of Halpin’s complaint.

Initially, defendant was able to resist Rhine’s attempt to bring him down from the rocks. However Rhine was able to grab Caldwell by his clothing and pull him down from the rocks. While the officer attempted to cuff Caldwell, defendant pushed off and took a swing at the officer, punching Rhine’s hands away.

After Wyant used his taser to deter the defendant, Caldwell was still able to back away from the officers. As the officers jointly approached him, defendant struck Deputy Elmore in the face. Deputy Rhine and Deputy Elmore ended up wrestling with Caldwell on the ground before the three officers were able to control the defendant.

This control of defendant was short-lived. Caldwell again began kicking and thrashing at the officers, even after being hit in the face. At one time, defendant tried to grab something on one officer's duty belt.

Caldwell then kicked Deputy Rhine in the face in the struggle. Finally, defendant was subdued. He did sustain head abrasions and was taken to the hospital for care. His injuries needed stapling by the doctors.

According to Deputy Elmore, the town of Laytonville has regular issues with campers and trespassers. The common situation is the violators will leave the area when the officers ask them to do so. Caldwell's behavior on this date was a clear exception to the common situation.

### **DISCUSSION**

A review of the record supports the jury's determination defendant was guilty of violating section 69. That section prohibits the attempt by threat or violence to deter or prevent an executive officer from performing any duty imposed upon the officer by law, or from knowingly resisting the officer, by the use of force or violence, in the performance of his or her duty. Here the officers were responding to a business owner's request based on suspicious behavior by defendant. The officers believed they could get Caldwell to move on once requested to do so. Instead, the defendant became belligerent and aggressive, refusing to comply with the officers' commands. Section 69 has been properly implemented when an accused simply yells and threatens an officer making an arrest; no actual physical contact is needed for a violation. (*In re M.L.B.* (1980) 110 Cal.App.3d 501, 503–504.) It applies to any duty imposed on an officer by lawful authority. (*People v. Hines* (1997) 15 Cal.4th 997, 1060–1061.) We find the initial confrontation by Caldwell with the officers followed by his resumption of the scuffle after he was apparently subdued sufficient evidence to support the jury's verdicts here. (*Jackson v. Virginia* (1979) 443 U.S. 307; *People v. Johnson* (1980) 26 Cal.3d 557, 578.)

Having found sufficient evidence to sustain the jury's verdict, we have reviewed the record and find no other issues to address. Caldwell was ably represented during the trial at all times. No irregularities are found in the pretrial or trial proceedings.

**DISPOSITION**

We affirm the judgment.

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DONDERO, J.

We concur:

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MARGULIES, Acting P.J.

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BANKE, J.