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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
THIRD APPELLATE DISTRICT  
(Shasta)

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THE PEOPLE,

Plaintiff and Respondent,

v.

JASON CLARK POWERS,

Defendant and Appellant.

C070323

(Super. Ct. No. 11F3203)

After the magistrate denied his motion to suppress evidence (Pen. Code,<sup>1</sup> § 1538.5), defendant Jason Clark Powers pled no contest to attempting to obstruct, resist, or deter an executive officer in the performance of his duty and admitted a prior serious or violent felony conviction in return for a stipulated state prison term of 16 months, the dismissal of all remaining counts and allegations -- including a charge of being a felon in possession of ammunition -- and the dismissal of an unrelated pending case.<sup>2</sup> The court thereafter imposed the stipulated sentence, awarding defendant 55 days of presentence custody credit (37 actual days and 18 conduct days).

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<sup>1</sup> Undesignated section references are to the Penal Code.

<sup>2</sup> The other dismissed count was misdemeanor assault on a peace officer. The dismissed allegations included two strikes and a prior prison term.

In response to a motion pursuant to *People v. Fares* (1993) 16 Cal.App.4th 954, the trial court granted defendant two additional actual days of presentence custody credit, but denied his request for day-for-day conduct credit.

Defendant contends his motion to suppress should have been granted because the officer lacked probable cause to arrest him for any crime. He also renews his contention that he is entitled to day-for-day presentence custody credit. We shall affirm.

#### FACTUAL AND PROCEDURAL BACKGROUND

At the evidentiary hearing on the suppression motion, Shasta County Sheriff's Deputy Kyle Wallace testified as follows:

On May 22, 2011, he reported to an address on Starlight Pines Road in Shingletown in the course of investigating an alleged assault at another residence. It had been reported to him that Angie Powers<sup>3</sup> pushed someone in a front yard; the original dispatch report had said defendant pointed a gun at someone at the residence, but the witnesses Deputy Wallace interviewed there did not confirm that report. Deputy Wallace had been to the Starlight Pines Road residence once before and was familiar with defendant's name. He believed the residence to be the home of Angie Powers and/or defendant.

When Deputy Wallace got out of his car, he saw a chain-link latched gate in front of the driveway. As he began to unlatch the gate, he heard a voice say "Shoot me." He saw defendant standing behind a bush in the adjacent yard.

After Deputy Wallace said he would not shoot defendant, defendant stood behind the fence. Deputy Wallace said he needed to speak to "Jake Powers." Defendant pointed to a dog in the yard, said the dog was Jake Powers, and added "shoot him or shoot me."

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<sup>3</sup> Although Powers had the same last name as defendant, the record does not reveal her relationship to him, if any.

Then he came up to the gate, so that he and the deputy were about two feet apart, separated by the gate.

Deputy Wallace repeated several times that he needed “to speak to Jake and Angie regarding a possible assault.” Defendant said he would “fuck [Wallace] up” if the deputy did not leave. He was screaming and clenching his fists. He continuously repeated his threats to “fuck up” the deputy. His breath and person smelled of alcohol, and it looked as if he had to grab the chain-link fence at least once to keep himself from falling.

Deputy Wallace asked defendant his name; he said “Jason Stevens.” After that, however, he took off his shirt “aggressively,” revealing a tattoo across his stomach that said “Powers.” Deputy Wallace asked defendant if his name was really Powers; defendant “just cursed at [him] and told [him] to fuck you, pretty much. Leave.” He stood back and “squared his feet off” toward the deputy, “as if he was trying to intimidate [him].” He claimed he was house-sitting for the residents and nobody was home.

Due to defendant’s aggressive conduct and the need to complete the investigation by trying to contact “Angie” at her residence, Deputy Wallace called for backup from Deputy Fleming, who had assisted him with the original assault investigation.

Deputy Wallace concluded that defendant was highly intoxicated and unable to care for himself or others. He decided to arrest defendant and told him so.<sup>4</sup> In response, defendant walked away from the fence toward the residence. Deputy Wallace told him to stop because he was under arrest, but defendant kept walking away. He said if the deputy “came into the fence” defendant would “fuck [him] up.”

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<sup>4</sup> Deputy Wallace testified that when he arrested defendant, he told him it was for public drunkenness. The trial court sustained the prosecutor’s objection to the question whether the deputy intended to arrest him for that reason, however.

When Deputy Fleming arrived, the two officers entered the property, placed defendant under arrest, transported him to the county jail, and searched him.<sup>5</sup> During that search, several rounds of .22-caliber ammunition were found in defendant's shirt pocket.

Defendant was charged in a three strikes case with attempting to obstruct, resist, or deter an executive officer in the performance of his duty, being a felon in possession of ammunition, and misdemeanor assault on a peace officer, along with various sentencing enhancement allegations. He moved to suppress all evidence against him (including the ammunition found in his pocket), asserting: (1) there was no basis to arrest him for public intoxication (§ 647, subd. (f)), the purported ground for his arrest, because he was on his own property when the arrest was made; and (2) there was no basis to arrest him for falsely identifying himself to an officer (§ 148.9) because he had not been lawfully detained or arrested when he allegedly gave a false name.

The People's opposition asserted that the officer had probable cause to arrest defendant for obstructing or resisting an executive officer in the performance of his duty, as well as for public intoxication.

The magistrate asked defense counsel whether Deputy Wallace had probable cause to arrest defendant for violating section 69<sup>6</sup> -- which, if so, would make section 647,

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<sup>5</sup> Defense counsel conceded that if the detention were lawful, the jail search would be a lawful search incident to arrest.

<sup>6</sup> Penal Code section 69 provides as follows: Every person who attempts, by means of any threat or violence, to deter or prevent an executive officer from performing any duty imposed upon such officer by law, or who knowingly resists, by the use of force or violence, such officer, in the performance of his duty, is punishable by a fine not exceeding ten thousand dollars (\$10,000), or by imprisonment pursuant to subdivision (h) of Section 1170, or in a county jail not exceeding one year, or by both such fine and imprisonment.

subdivision (f), irrelevant.<sup>7</sup> Counsel replied that while defendant was on his own property, he had an absolute right to tell the officer to leave, and if an officer disregards a request to leave and enters private property without a warrant, even to conduct an investigation, that is trespassing.<sup>8</sup> The court said: “I need case authority for that one.” Counsel did not cite any.

The prosecutor asserted that probable cause existed to arrest defendant under section 69 even before the officer entered the property, because defendant was obstructing or deterring the officer’s lawful investigation by threatening the officer with great bodily harm as he stood outside the gate asking questions. Defense counsel responded that defendant’s threats were not intended to prevent the officer from performing any duty, as required by section 69, because what was going on up to that point was “a consensual contact which is not a duty.”

The magistrate ruled: “Yeah, I think there is definite probable cause for PC 69, more so now that I review my notes and see when the initial statements were made, and what the officer was doing and asking to do at the time those statements were made. So that motion is denied.” Thereafter, defendant entered into the plea agreement previously mentioned.

## DISCUSSION

### I

#### *Motion To Suppress*

Defendant contends the magistrate should have granted his motion to suppress evidence because no probable cause for his arrest existed, whether under section 69,

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<sup>7</sup> The trial court agreed with defense counsel that section 647, subdivision (f), did not apply because defendant was not in a public place when the deputy arrested him.

<sup>8</sup> As noted above, the evidence showed that defendant claimed he was house sitting for the absent and unnamed residents, not that he was on his own property.

section 148, subdivision (a)(1), or section 647, subdivision (f).<sup>9</sup> As we explain, the magistrate correctly found that probable cause existed under section 69. Therefore, we do not address defendant's arguments as to the other statutes.

When reviewing a ruling on a motion to suppress evidence, we view the record in a light favorable to the ruling and defer to the magistrate's factual findings if supported by substantial evidence. We exercise our independent judgment, however, as to whether, on the facts found by the magistrate, the search or seizure was reasonable under the Fourth Amendment. (*People v. Glaser* (1995) 11 Cal.4th 354, 362.)

Probable cause for arrest exists when a person of ordinary care and prudence, knowing the facts known to the arresting officer, would entertain an honest and strong suspicion that the arrested person is guilty of a crime. (*People v. Limon* (1993) 17 Cal.App.4th 524, 537.) Probable cause is measured by an objective standard and does not consider the arresting officer's subjective motivations. (*People v. Nottoli* (2011) 199 Cal.App.4th 531, 557-558; *Gillan v. City of San Marino* (2007) 147 Cal.App.4th 1033, 1045.) If an officer had probable cause to arrest the defendant for one offense, it does not matter that the officer mistakenly arrested the defendant for another offense. (*People v. Rodriguez* (1997) 53 Cal.App.4th 1250, 1263.)

Under section 69, it is an offense to "attempt[], by means of any threat or violence, to deter or prevent an executive officer from performing any duty imposed upon such officer by law." The investigation of a crime report is a lawful part of an executive officer's duties. (*People v. Ervine* (2009) 47 Cal.4th 745, 791.) Threats against an officer performing his legal duty, even if unaccompanied by physical force, may suffice

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<sup>9</sup> The lack of probable cause for an arrest can be raised in support of a motion to suppress evidence obtained as a result of that arrest. (See, e.g., *People v. Rosales* (1987) 192 Cal.App.3d 759.) Here, the police found ammunition in defendant's pocket during their search of him at the jail when they were booking him. At the very least, by his motion to suppress, defendant sought to suppress that ammunition.

to violate the statute. (*People v. Hines* (1997) 15 Cal.4th 997, 1060-1061; *People v. Carrasco* (2008) 163 Cal.App.4th 978, 985.) Thus, for example, if a defendant, attempting to deter an officer from performing his legal duty, profanely orders the officer to leave the defendant's property, while clenching his fists and engaging in other menacing behavior, conviction under section 69 is proper. (*People v. Iboa* (2012) 207 Cal.App.4th 111, 115-120.)

Here, Deputy Wallace came to the address where he reasonably believed defendant and/or Angie Powers lived, in order to pursue his investigation of an assault allegedly committed by one or both of them. Even before the deputy said anything to defendant, defendant shouted belligerently at him. When the deputy -- still standing outside the fence -- made his purpose known to defendant, defendant made it clear he would not cooperate, repeatedly screamed that if the deputy did not leave immediately, defendant would "fuck [him] up," took off his shirt "aggressively," and assumed a stance intended to intimidate. Defendant did enough to create probable cause for his arrest under section 69 before the deputy entered the property. Therefore, it is irrelevant whether the deputy wrongly arrested defendant under color of section 647, subdivision (f). (*People v. Rodriguez, supra*, 53 Cal.App.4th at p. 1263.)

Defendant asserts that he had the right to exclude Deputy Wallace from the property, that a law enforcement officer may not perform a "knock and talk" once a homeowner expressly forbids entry, and that Deputy Wallace's failure to heed defendant's directive to leave the property rendered the deputy's subsequent actions unlawful. These arguments (supported mainly by citation to statutes from other jurisdictions and to lower federal court decisions which are not binding on this court) depend on omitting or misstating the relevant facts.

Even if a homeowner may lawfully exclude from his property a law enforcement officer who lacks a warrant or an exception to the warrant requirement, that legal proposition is irrelevant to this case. When Deputy Wallace decided to arrest defendant, the deputy had not yet entered the property. (It is also worth mentioning, as previously noted, that defendant denied being the owner of the property.)

Similarly, even if defendant's refusal of permission to enter the property could legally have prohibited Deputy Wallace from performing a "knock and talk" as to Angie Powers, defendant's conduct gave probable cause for his arrest under section 69 before the deputy entered the property. Thus, whether the deputy could have knocked on the door without defendant's consent is immaterial.

Finally, defendant did not merely order Deputy Wallace to leave the property: defendant threatened the deputy with bodily harm if he did not leave. Defendant cites no California authority holding that such conduct, when directed at an officer engaged in the performance of his legal duty, does not come within section 69.

Defendant asserts baldly that Deputy Wallace was not engaged in the performance of his legal duty when he arrested defendant because the deputy "was investigating a misdemeanor offense not committed in his presence," "had no arrest warrant or . . . search warrant," and "[t]here was no exception to the warrant requirement." For lack of supporting authority, the argument is forfeited. (See *Kim v. Sumitomo Bank* (1993) 17 Cal.App.4th 974, 979.) It is also frivolous. A law enforcement officer may lawfully investigate a misdemeanor offense even if he did not witness it and does not yet have an arrest warrant or search warrant. And when defendant attempted to deter Deputy Wallace's investigation by threats, the deputy was merely standing in a public place and asking questions, an activity for which he did not need a warrant of any kind.

Defendant asserts that his threats to harm Deputy Wallace did not give probable cause for arrest because they were "conditional" and thus "d[id] not amount to an independent violation of . . . section 422 [making criminal threats]." But since the

prosecutor did not contend and the magistrate did not find that defendant violated section 422, this assertion is a red herring.

Lastly, defendant asserts that Deputy Wallace could have obtained a warrant before seeking to enter the property to interview an occupant. Once again, since defendant violated section 69 before the deputy attempted to enter the property, this proposition is irrelevant.

For all the above reasons, we conclude that defendant has shown no error in the denial of his motion to suppress evidence.

## II

### *Conduct Credit -- Due Process*

Defendant contends the trial court violated his right to due process by denying him day-for-day conduct credit under section 4019 because he never admitted a disqualifying prior conviction. Defendant argues that although he admitted a prior serious or violent felony (mayhem (§ 203)) when he entered his no contest plea, he did so only for purposes of the plea, not for purposes of calculating custody credits. But, as defendant acknowledges in his reply brief, our Supreme Court has now held that section 4019 does not require the prosecution to plead or prove “credit disabilities.” (*People v. Lara* (2012) 54 Cal.4th 896, 901-906.) Defendant’s contention is without merit.

## III

### *Conduct Credit -- Section 4019*

Defendant contends the trial court violated his right to equal protection by denying him day-for-day conduct credit because the amendments to section 4019 which bestow such credit on prisoners whose crimes were committed on or after October 1, 2011 (§ 4019, subs. (b), (c), & (i)) must be read retroactively. Our Supreme Court has also rejected this contention. (*People v. Brown* (2012) 54 Cal.4th 314, 330; see also *People v. Lara, supra*, 54 Cal.4th at p. 906, fn. 9.)

DISPOSITION

The judgment is affirmed.

ROBIE, J.

We concur:

BLEASE, Acting P. J.

DUARTE, J.