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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
FIFTH APPELLATE DISTRICT**

THE PEOPLE,

Plaintiff and Respondent,

v.

RAMIRO CORONA LARA,

Defendant and Appellant.

F061543

(Super. Ct. Nos. VCF225342, PCF189741)

**OPINION**

**THE COURT\***

APPEAL from a judgment of the Superior Court of Tulare County. Joseph A. Kalashian, Judge.

Derek K. Kowata, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Michael P. Farrell, Assistant Attorney General, Michael A. Canzoneri and Charles A. French, Deputy Attorneys General, for Plaintiff and Respondent.

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\* Before Levy, Acting P.J., Cornell, J., and Poochigian, J.

A jury convicted appellant, Ramiro Corona Lara, of resisting an executive officer by force (count 2/Pen. Code, § 69),<sup>1</sup> battery with injury on emergency personnel (count 3/§ 243, subd. (c)(2)), and misdemeanor evading a police officer (count 4/Veh. Code, § 2800.1, subd. (a)).<sup>2</sup> In a separate proceeding, Lara admitted allegations that he had a prior conviction within the meaning of the three strikes law (§ 667, subd. (b)-(i)).

On appeal, Lara asks us to do a *Pitchess*<sup>3</sup> review. Lara also contends: 1) the court imposed an unauthorized fine on his evading a police officer conviction; and 2) his abstract of judgment does not accurately reflect the amount of presentence custody credit the trial court awarded him in the instant case. We have conducted the requested review. We find merit to Lara's two contentions. In all other respects, we affirm.

### **FACTS**

On July 26, 2009, Porterville police responded to the home of Lara's ex-wife who told them that Lara had been to the house to see the child they have in common. When Lara attempted to hug her, she resisted. She said Lara then pushed her into the bedroom and attempted to rape her before fleeing from the residence.

On August 2, 2009, at approximately 11:26 p.m., Tulare County Sheriff's Deputy Brian Holmes attempted to stop a car driven by Lara. Instead of yielding, Lara accelerated, and ran a stop sign before abandoning his vehicle. When Deputy Holmes pursued him, Lara punched him in the face. After Deputy Holmes took out a baton and struck Lara with it, Lara managed to take the baton away and punched Deputy Holmes in

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<sup>1</sup> All further statutory references are to the Penal Code unless otherwise indicated.

<sup>2</sup> Lara was originally charged in count 4 with resisting arrest and with misdemeanor evading a police officer in count 5. However, on July 27, 2010, the resisting arrest charge in count 4 was dismissed and count 5 was designated as count 4.

<sup>3</sup> *Pitchess v. Superior Court* (1974) 11 Cal.3d 531.

the face again. Deputy Holmes was eventually able to subdue Lara with the help of a taser.

On March 25, 2010, the defense filed a *Pitchess* motion seeking records for Deputy Holmes.

On April 16, 2010, the court granted Lara's *Pitchess* motion and conducted an in camera hearing. After the hearing, the court ordered the prosecution to release the name and contact information for a man who had filed a complaint against Deputy Holmes alleging that he had used excessive force.

## **DISCUSSION**

### ***The Pitchess Motion***

Lara requests independent review of the trial court's in camera hearing on his *Pitchess* motion to determine whether any records were improperly withheld. (*Pitchess v. Superior Court, supra*, 11 Cal.3d 531.) We have conducted such an independent review and conclude the trial court did not abuse its discretion in finding no discoverable records except the information, noted above, relating to one complaint. (*People v. Mooc* (2001) 26 Cal.4th 1216, 1229–1232.)

### ***The Unauthorized Sentence***

On October 15, 2010, the court sentenced appellant in the instant case to a four-year term (the middle term of two years doubled to four years because of appellant's strike conviction) on his resisting an executive officer conviction and no time on his conviction for battery on emergency personnel.<sup>4</sup> It also ordered Lara to pay a fine of \$1,000 pursuant to Vehicle Code section 2800.2 on his conviction for evading a police

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<sup>4</sup> The court also revoked Lara's probation in case No. PCF189741, sentenced him to a concurrent two-year term on his conviction in that case for making criminal threats (§ 422), and awarded him 905 days of presentence custody credit in that case consisting of 601 days of presentence actual custody credit and 304 days of presentence conduct credit.

officer, that with penalty assessments increased to \$3,800. Lara contends the court imposed an unauthorized sentence when it ordered him to pay this amount because Vehicle Code section 2800.2 applies only to felony evading a police officer and he was convicted of misdemeanor evading a police officer. Respondent concedes and we agree.

Vehicle Code section 2800.2 provides that the court may impose a fine of \$1,000 to \$10,000 on anyone convicted of felony evading a police officer pursuant to that section. Lara, however, was convicted of misdemeanor evading a police officer pursuant to Vehicle Code section 2800.1. Therefore, we agree that the court imposed an unauthorized sentence when it ordered him pay \$1,000 pursuant to section 2800.2 and \$2,800 in penalty assessments on this amount.

#### ***Lara's Presentence Custody Credit***

In the instant case, the court awarded Lara 657 days of presentence custody credit consisting of 439 days of presentence actual custody credit and 218 days of presentence conduct credit. Lara's abstract of judgment, however, indicates that the court awarded him only 647 days of presentence credit, although it correctly notes that the court awarded Lara 439 days of presentence actual custody credit and 218 days of presentence conduct credit. Lara contends that he is entitled to a total of 657 days of presentence custody credit as calculated by the trial court and that his abstract of judgment contains a clerical error. Respondent concedes and we agree.

“It is, of course, important that courts correct errors and omissions in abstracts of judgment. An abstract of judgment is not the judgment of conviction; it does not control if different from the trial court's oral judgment and may not add to or modify the judgment it purports to digest or summarize. [Citation.]” (*People v. Mitchell* (2001) 26 Cal.4th 181, 185.)

Since Lara's abstract of judgment does not accurately reflect the court's oral pronouncement of judgment, we will direct the trial court to issue an amended abstract of judgment that shows that he is entitled to 657 days of presentence custody credit.

**DISPOSITION**

The \$1,000 fine imposed pursuant to Vehicle Code section 2800.2 and the \$2,800 in miscellaneous penalty assessments are stricken. Additionally, Lara is entitled to presentence custody credit of 657 days consisting of 439 days of presentence actual custody credit and 218 days of presentence conduct credit. The trial court is directed to issue an amended abstract of judgment that is consistent with this opinion and to forward a certified copy to the Department of Corrections and Rehabilitation. In all other respects, the judgment is affirmed.