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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE, Plaintiff and Respondent, v. JOSE MANUEL LOPEZ, Defendant and Appellant.	G047176 (Super. Ct. No. M14300) O P I N I O N

Appeal from an order of the Superior Court of Orange County, Patricik H. Donahue, Judge. Affirmed.

Allison K. Simkin and Raymond M. DiGuiseppe, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Julie L. Garland, Assistant Attorney General, James D. Dutton and Michael T. Murphy, Deputy Attorneys General, for Plaintiff and Respondent.

* * *

Jose Manuel Lopez appeals from an order denying his petition made under Penal Code section 851.8, to seal and destroy records and to find him factually innocent. The decision made by the trial court was based on conflicting evidence. It is the trial court's duty, not ours, to decide credibility issues. We therefore affirm the order.

Defendant admittedly engaged in a sexual encounter with a woman he had picked up at a bus stop. He claimed it was consensual; she denied consent. The trial court reviewed extensive documentation, permitted defendant, who appeared in pro. per., to give an extensive unsworn statement, heard testimony of defendant's brother, and thereafter ruled "there is reasonable cause that you were arrested and reasonable cause that you are not factually innocent in the matter. So your motion is denied." The fact the district attorney declined to prosecute him does not establish his factual innocence.

As an appellate court recently noted, defendant's burden of proof is very high and we do not reconsider credibility issues. "Appellant suggests that the trial court applied the wrong legal standard because it described the burden under [Penal Code] section 851.8 as 'incredibly high' and suggested it was necessary to find not just reasonable doubt of appellant's guilt, but 'no doubt whatsoever.' We find no error, because the court's characterization of the standard was apt. '"'[F]actually innocent' as used in [section 851.8(b)] does not mean a lack of proof of guilt beyond a reasonable doubt or even by 'a preponderance of evidence.' [Citation.]" [Citation.] Defendants must "show that the state should never have subjected them to the compulsion of the criminal law—because no objective factors justified official action . . . ." [Citation.] In sum, the record must exonerate, not merely raise a substantial question as to guilt. [Citation].' [Citation.]" (*People v. Esmaili* (2013) 213 Cal.App.4th 1449, 1459, italics omitted.)

DISPOSITION

The order is affirmed.

RYLAARSDAM, ACTING P. J.

WE CONCUR:

FYBEL, J.

THOMPSON, J.