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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

In re B.M., a Person Coming Under the  
Juvenile Court Law.

THE PEOPLE,

Plaintiff and Respondent,

v.

B.M.,

Defendant and Appellant.

G048353

(Super. Ct. No. DL027889)

O P I N I O N

Appeal from a judgment of the Superior Court of Orange County, Jane L. Shade, Temporary Judge. (Pursuant to Cal. Const., art. VI, § 21.) Reversed and remanded with directions.

Ava R. Stralla, 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, Charles C. Ragland and Stacy Tyler, Deputy Attorneys General, for Plaintiff and Respondent.

No pun is intended when we note that 22 petitions by age 17 must set some sort of record. Number 22 is now before us. It alleges the minor, B.M., assaulted, battered, resisted and obstructed a peace officer. The court found the allegations to be true beyond a reasonable doubt. The court ordered the minor continued as a ward of the Orange County Juvenile Court and committed to juvenile hall for 270 days.

On appeal, the minor contends there is insufficient evidence to support the true findings “as the officers engaged in an excessive use of force against B.M. — an action not in lawful performance of officers’ duties.” The minor requests this court to independently review the sealed transcript and sealed documents relating to his motion made pursuant to the holding in *Pitchess v. Superior Court* (1974) 11 Cal.3d 531. We conclude substantial evidence supports the judgment of conviction. We further conclude the court erred in not ordering four documents provided to defense counsel, and on that basis, we conditionally reverse the judgment of conviction.

## I

### FACTS

#### *The Incident*

Anaheim Police Officer Michael Riddell testified that on November 15, 2012 around 11:00 p.m., he, Officer Killeen and Officer Arellano were dispatched to a residence on South Mountain View Avenue because a juvenile was causing a disturbance. At the scene, the minor “appeared extremely agitated.” He had an aggressive stance, his fists were clenched, and his chest was puffed out. The minor cursed at Riddell and challenged him to a fight. The minor was told to stay seated on a couch, but twice got up. The minor was “fidgety,” his eyes were red and watery and Riddell smelled alcohol. Riddell said: “Based on his demeanor and agitated state, I felt my safety was — I felt that the subject was possibly going [to] fight me.”

According to Riddell, he twice told the minor that “if he got up, I was going to knock him out in attempt to prevent this from escalating.” The minor lunged at

Riddell with clenched fists. At that point, Riddell “struck him as he lunged at me and I guided him to the ground with my partners and placed him in handcuffs.” It was on the left side of the minor’s face that Riddell hit him. The minor spit on Riddell’s shoe, and continued to yell at Riddell, using profanities.

## II

### DISCUSSION

#### *Sufficiency of Evidence*

“[T]he relevant question is whether, after viewing the evidence in the light most favorable to the prosecution, *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.’ [Citation.]” (*People v. Johnson* (1980) 26 Cal.3d 557, 576.) We resolve this question ““in the light of the *whole record* . . . and may not limit our appraisal to isolated bits of evidence selected by the respondent. Second, we must judge whether the evidence of each of the essential elements . . . is *substantial*; it is not enough for the respondent simply to point to “some” evidence supporting the finding . . . .” (*Id.* at p. 577.) Substantial evidence is evidence that is “reasonable, credible, and of solid value.” (*Id.* at p. 578.) Reasonable inferences may be made from substantial evidence. But inferences ““may not be based on suspicion alone, or on imagination, speculation, supposition, surmise, conjecture, or guess work.”” (*People v. Raley* (1992) 2 Cal.4th 870, 891.)

It is unlawful to willfully resist, delay or obstruct any peace officer in the discharge or attempted discharge of any duty. (Pen. Code, § 148, subd. (a)(1).) (Unless otherwise indicated, all further statutory references are to the Penal Code.) “An assault is an unlawful attempt, coupled with a present ability, to commit a violent injury on the person of another.” (§ 240.) “A battery is any willful and unlawful use of force or violence upon the person of another.” (§ 242.) An assault or battery is committed against the person of a peace officer engaged in the performance of duty is committed by

a person who knows or reasonably should have known that the victim was a peace officer. (§ 243, subd. (b); § 241, subd. (c).)

“Determining whether the force used to effect a particular seizure is ‘reasonable’ under the Fourth Amendment requires a careful balancing of “‘the nature and quality of the intrusion on the individual’s Fourth Amendment interests’” against the countervailing governmental interests at stake. [Citations.] Our Fourth Amendment jurisprudence has long recognized that the right to make an arrest or investigatory stop necessarily carries with it the right to use some degree of physical coercion or threat thereof to effect it. [Citation.] Because ‘[t]he test of reasonableness under the Fourth Amendment is not capable of precise definition or mechanical application,’ [citation], however, its proper application requires careful attention to the facts and circumstances of each particular case, including the severity of the crime at issue, whether the suspect poses an immediate threat to the safety of the officers or others, and whether he is actively resisting arrest or attempting to evade arrest by flight. [Citation.]” (*Graham v. Connor* (1989) 490 U.S. 386, 396.)

Here defendant refused to follow the instructions of the police, challenged an officer to fight, clenched his fists and lunged at the police. Considering the totality of the circumstances, a trier of fact could reasonably conclude the amount of force used by the officer was appropriate. Under the circumstances we find in this record, we conclude the juvenile court’s true findings were supported by substantial evidence, including the fact the officers were lawfully performing their duties at the time the minor committed the offenses.

### *Pitchess Motion*

Pursuant to *Pitchess v. Superior Court, supra*, 11 Cal.3d 531, the minor moved the court to make available to defense counsel for examination, inspection and copying, certain documents of the Anaheim Police Department. Specifically, the

requested documents concerned three police officers, Arrellano, Killeen and Riddell with regard to lack of credibility/falsifying police reports; prior acts involving moral turpitude; illegal detentions, arrests, searches and seizures; whether the officers were previously employed by another law enforcement agency; investigation information concerning citizen or law enforcement complaints; and, whether discipline was imposed and the nature of that discipline for each officer.

The court conducted an in camera hearing with the custodian of records, and the court reporter's record of the hearing was placed in a sealed envelope. The court held it found no records to which the minor was entitled. Nonetheless, the court had some of the records photocopied and placed in another sealed envelope.

In *Pitchess v. Superior Court*, *supra*, 11 Cal.3d 531, the California Supreme Court “recognized that a criminal defendant may, in some circumstances, compel the discovery of evidence in [a] law enforcement officer’s personnel file that is relevant to the defendant’s ability to defend against a criminal charge. “In 1978, the California Legislature codified the privileges and procedures surrounding what had come to be known as ‘*Pitchess* motions’ . . . through the enactment of Penal Code sections 832.7 and 832.8 and Evidence Code sections 1043 through 1045.” [Citation.] By providing that the trial court should conduct an in camera review, the Legislature balanced the accused’s need for disclosure of relevant information with the law enforcement officer’s legitimate expectation of privacy in his or her personnel records.’ [Citation.]” (*Garcia v. Superior Court* (2007) 42 Cal.4th 63, 69-70, fns. omitted.) “Unsustained complaints are discoverable as well as sustained complaints. [Citations.]” (*People v. Zamora* (1980) 28 Cal.3d 88, 93, fn. 1.) We review a trial court’s decision denying *Pitchess* discovery for an abuse of discretion. (*People v. Hughes* (2002) 27 Cal.4th 287, 330

The minor requests that we conduct an independent review of the sealed record to determine whether there existed material to which he was entitled. We have

conducted an independent review and conclude the minor was entitled to four documents in the clerks's transcript, pages 507, 509, 511 and 512.

### III

#### DISPOSITION

The judgment is conditionally reversed. On remand the court shall provide defense counsel with the information to which the minor is entitled and permit a reasonable period of time to investigate. The minor shall then be permitted to attempt to demonstrate the earlier denial of discovery prejudiced him at trial. If, after supplying defense counsel with pages 507, 509, 511 and 512 and permitting a reasonable period of time to investigate, the minor cannot establish he was prejudiced by the earlier denial of discovery, the court shall reinstate the judgment as of that date.

MOORE, J.

WE CONCUR:

O'LEARY, P. J.

RYLAARSDAM, J.