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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE,

Plaintiff and Respondent,

v.

AARON VERMONT JACKSON,

Defendant and Appellant.

A132730

(Alameda County
Super. Ct. No. CH49934)

Defendant, Aaron Jackson, appeals from a judgment entered upon a jury verdict that found him guilty of possession of a firearm by a felon (Pen. Code, § 12021, subd. (a)(1)),¹ carrying a loaded firearm in a city (§ 12031, subd. (a)), possession of MDMA (Health & Safe. Code, 11377, subd. (a)), and resisting arrest (§ 148, subd. (a)(1)). This appeal concerns only his conviction for resisting arrest, and he asserts three grounds for reversal. Jackson challenges the sufficiency of the evidence to support the conviction; argues that the trial court erred in failing to sua sponte instruct the jury that section 148 does not criminalize an accused's failure to respond to a police order with alacrity; and claims that he received ineffective assistance of counsel. There was ample evidence to support the jury's verdict and the jury was properly instructed. Accordingly, Jackson's ineffective assistance claims are meritless. We shall affirm.

¹ All further statutory references are to the Penal Code unless otherwise indicated.

FACTUAL AND PROCEDURAL HISTORY

Officer Ben Reinke testified that while patrolling a high-crime area of Hayward, he observed Jackson and an unknown person dart across Tennyson Road in front of oncoming traffic. Officer Reinke pulled his unmarked patrol car into the parking lot of 981 Tennyson Road, where he saw Jackson and the other suspect enter after they crossed the street. His intention was to make contact and issue citations for their violation of Vehicle Code section 21954 (crossing outside of crosswalk). Officer Reinke testified that when he pulled into the parking lot, both individuals were looking directly at him. Jackson turned, quickening his pace as if preparing to run, while the unknown suspect climbed over a spiked fence. Officer Reinke yelled loudly, “[p]olice. Get on the ground,” as he ran after Jackson. Officer Reinke said that Jackson did not heed his command, but rather kept going and picked up his pace, “like he was starting to run.” Then he stopped near the hood of an SUV, where he fumbled around with his clothing and made a dipping motion with his shoulders. Approximately five to six seconds after he ordered Jackson to stop and get on the ground, Officer Reinke reached him near the front end of the SUV and physically detained him with handcuffs.

Further investigation led to the recovery of a loaded pistol beneath the SUV and the discovery of a tablet of MDMA (commonly known as ecstasy) in Jackson’s pocket. The Alameda County District Attorney filed an information charging Jackson with possession of a firearm by a felon, carrying a loaded firearm in a city, possession of MDMA, and resisting a police officer. A jury found Jackson guilty on all counts. He was sentenced to five years in prison. Jackson timely appealed and argued only for reversal of the conviction for resisting arrest.

DISCUSSION

I. *Resisting Arrest*

In reviewing Jackson’s insufficiency of the evidence claim, the record must be reviewed in its entirety in the light most favorable to the judgment to determine whether it discloses substantial evidence. (*People v. Johnson* (1980) 26 Cal.3d 557, 575–578.) Substantial evidence is “evidence which is reasonable, credible, and of solid value —

such that a reasonable trier of fact could find the defendant guilty beyond a reasonable doubt.” (Id. at 578.)

Jackson was charged with violating section 148, subdivision (a), which provides in part: “Every person who willfully resists, delays, or obstructs any public officer, peace officer . . . in the discharge or attempt to discharge any duty of his or her office or employment” is guilty of a misdemeanor. (Pen. Code, § 148 (a)(1).) To demonstrate that a defendant violated this section, the prosecution must prove that “(1) the defendant willfully resisted, delayed, or obstructed a peace officer, (2) when the officer was engaged in the performance of his or her duties, and (3) the defendant knew or reasonably should have known that the other person was a peace officer engaged in the performance of his or her duties. [Citations.]” (*In re Muhammed C.* (2002) 95 Cal.App.4th 1325, 1329.) Only “delay” as it pertains to the first element of section 148 is at issue on appeal.

In review of the entire record, we conclude there was substantial evidence supporting the jury verdict that Jackson delayed a police officer in the discharge of his duty.² According to Officer Reinke’s testimony, the police had probable cause to detain Jackson after the officer observed him step out into the street and fail to yield to oncoming traffic, in violation of Vehicle Code section 21954. Officer Reinke pursued Jackson into the parking lot of 981 Tennyson Road to contact him about the violation. Jackson quickened his pace away from the officer’s unmarked patrol car as it pulled into the parking lot. After Officer Reinke identified himself as police and shouted, “[g]et on the ground,” Jackson kept walking away and looked like he was preparing to run. As Officer Reinke pursued Jackson through the parking lot, he stopped near the hood of an SUV and dipped down to fumble with his clothing. It took approximately five to six seconds for Jackson to comply with the order from the time Officer Reinke yelled “[p]olice. Get on the ground” to the moment he was physically detained by the officer.

² Delay is not specifically defined in the context of the statute, but the dictionary defines delay as “put off, postpone.” (See Merriam-Webster Online Dictionary, <http://www.merriam-webster.com/dictionary/delaying>.)

The jury reasonably could have found that Jackson's affirmative defiance and evasion of Officer Reinke's instructions to get on the ground delayed the investigation into Jackson's suspicious behavior and possible violation of the Vehicle Code. In the context of this situation and under the totality of the circumstances, Jackson's conduct increased the dangerousness of the encounter, causing delay that was potentially serious. Thus, there was substantial evidence to support the jury's verdict.

Furthermore, we reject Jackson's contention that the statute allows for varying degrees of delay. Jackson concedes that a flight from officers that leads to a prolonged search clearly violates section 148. (See *People v. Allen* (1989) 109 Cal.App.3d 981, 984.) However, in support of his position that section 148 does not criminalize a failure to respond with alacrity to police orders, Jackson relies principally on *People v. Quiroga* (1993) 16 Cal.App.4th 961 (*Quiroga*). He misconstrues the holding of that case, and it is inapplicable to the present circumstances.

In *Quiroga*, police investigating a party detected marijuana. (*People v. Quiroga*, supra, 16 Cal.App.4th at p. 961, 964.) At the party, defendant stood and began to walk out of the room. Primarily for safety reasons, officers ordered him to sit on the couch even though he was not suspected of criminal activity. (*Ibid.*) Defendant opposed the officers' instructions as well as the police presence at the party before complying with the order. (*Ibid.*) It is this delay that Jackson claims stands for the proposition that section 148 does not criminalize a person's failure to respond with alacrity. (*Id.* at 966.) But there was no suggestion in *Quiroga* that the defendant attempted to flee from the officers. Moreover, his verbal opposition to their actions and presence was protected First Amendment speech, a key fact in *Quiroga*. The case is thus inapplicable to the present circumstances, which more closely resemble the usual situation of a defendant fleeing from an investigatory detention. (*Id.* at 967.)

It is the function of the finder of fact, not this court, to weigh the evidence, consider witness credibility, and determine the facts. (*Leff v. Gunter* (1983) 33 Cal.3d 508, 518.) Delay, as it pertains to section 148, is a matter of fact. In review of the

record, we conclude that there was substantial evidence supporting the jury's factual determination that Jackson delayed an officer in the discharge of his duty.

II. *Trial Court's Instructions*

Jackson argues that the trial court also erred by not instructing the jury sua sponte that section 148 does not criminalize an accused's failure to respond to a police order with alacrity. We do not agree. A trial court must, even in the absence of a request, instruct on general principles of law that are closely and openly connected to the facts and that are necessary for the jury's understanding of the case. (*People v. Jennings* (2010) 50 Cal.4th 616, 667–68.) It is the defendant's obligation, however, to request any clarifying or amplifying instructions that fall outside general principles of law. (*People v. Estrada* (1995) 11 Cal.4th 568, 574.) A defendant's failure to request such instructions at trial forfeits appellate review of this claim. (*People v. Lang* (1989) 49 Cal. 3d 991, 1024.)

The trial court properly instructed the jury on general principles of law as they apply to section 148 because the instruction identified the elements of the offense and were consistent with the mutually requested jury instruction (CALCRIM No. 2656) sought by both the prosecution and defense. Incorporation of Jackson's suggested instruction would engraft varying degrees of delay on section 148, which is an interpretation yet absent from the statutory scheme and case law. Thus, the instruction as given adequately informed the jury of the general principles that define a violation of section 148 and the court was under no duty to sua sponte provide further clarifying instructions.

III. *Ineffective Assistance of Counsel*

Jackson claims that he received ineffective assistance of counsel because, in closing arguments, his counsel did not address the sufficiency of the evidence related to delaying the officer, and did not request the jury instruction regarding a defendant's failure to respond to an officer with alacrity.

Courts employ a two-part analysis when considering ineffective assistance of counsel, and Jackson's showing fails to satisfy either part. In order to prevail on a claim

of ineffective assistance, a defendant must show that counsel's performance fell below an objective standard of reasonableness under prevailing professional norms. (*Strickland v. Washington* (1984) 466 U.S. 668, 688.) Additionally, a defendant must show prejudice flowing from counsel's performance. (*People v. Williams* (1997) 16 Cal.4th 153, 214–15.) “The record must demonstrate a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. A reasonable probability is a probability sufficient to undermine confidence in the outcome.” (*Strickland, supra*, 466 U.S. at p. 694.) Strategic choices by informed counsel are “virtually unchallengeable.” (Id. at p. 690.) “ ‘Generally, only when ignored issues are clearly stronger than those presented, will the presumption of effective assistance of counsel be overcome.’ [Citation.]” (*Smith v. Robbins* (2000) 528 U.S. 259, 288.)

We reject any claim of ineffective assistance of counsel due to a failure to request an instruction based upon the alacrity with which a defendant must respond to an officer. Because, as we have discussed, a defendant's alacrity has not yet been recognized as a legitimate consideration in a case brought under section 148, counsel was not ineffective for failing to request such an instruction.

We also reject the ineffective assistance claim premised on counsel's failure to argue there was insufficient evidence to find the defendant guilty of violating section 148. The evidence before the jury on the resisting arrest charge came from the arresting officer. He characterized Jackson as moving away from him and about to run for it when he was apprehended. In light of this testimony, counsel made the reasonable strategic decision to argue that the section 148 charge was invalid because Officer Reinke used excessive force when he pulled his gun. She told the jury: “So basically what we have is Mr. Jackson standing in front of a Jeep on the left headlight and then he walks a few steps to the right headlight. He's walked a few steps. The officer tries to dramatize it and says that Mr. Jackson somehow is about to run. I'm not sure. I don't think that's enough to pull out a gun.”

In context, counsel's argument disputed both the evidence of Jackson's attempted flight or delay and the legality of the officer's display of lethal force to detain him. In

short, we concur with trial court’s observation at sentencing that defense counsel “did everything in [her] power to represent [Jackson] under the law.” We disagree with both of Jackson’s claims based upon possible insufficient representation.

DISPOSITION

The judgment is affirmed.

Siggins, J.

We concur:

Pollak, P.J.

Jenkins, J.