

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FIVE

THE PEOPLE,

Plaintiff and Respondent,

v.

MARK PAUL SOLORZANO,

Defendant and Appellant.

A134033

**(Solano County
Super. Ct. No. FCR285124)**

Defendant and appellant Mark Paul Solorzano (appellant) contends his conviction by jury for willfully and unlawfully delaying peace officers in the performance of their duties is not supported by sufficient evidence. We agree and reverse the conviction on that count.

PROCEDURAL BACKGROUND

In September 2011, the District Attorney for Solano County filed an information charging appellant with possession of a firearm by a felon (former Pen. Code, § 12021, subd. (a)(1))¹ (count 1), unlawfully carrying a concealed firearm (former § 12025, subd. (a)(2))² (count 2), and misdemeanor willfully and unlawfully delaying peace officers

¹ All undesignated section references are to the Penal Code.

Former section 12021 was repealed and reenacted as section 29800 without substantive change. (Stats. 2010, ch. 711, §§ 4, 6, eff. Jan. 1, 2012).

² Former Penal Code section 12025 was repealed and reenacted as section 25400 without substantive change. (Stats. 2010, ch. 711, §§ 4, 6, eff. Jan. 1, 2012.)

attempting to discharge their duties (§ 148, subd. (a)(1)) (count 3). The information further alleged, as to count 2, that appellant was prohibited from possessing a firearm (former § 12025, subd. (b)(4)).

In October 2011, the jury found appellant guilty as charged and found the special allegation true. In December, the trial court imposed a prison sentence of three years eight months,³ but stayed the sentence, placing appellant on probation for three years with the condition, among others, that he serve 180 days in county jail. This appeal followed.

FACTUAL BACKGROUND

On May 25, 2011, at approximately 7:00 p.m., Vacaville Police Officers John Uldall and Michael Strachan, were on patrol in uniform and in a marked police car when they entered a “Park & Ride facility” in Vacaville. The Park & Ride facility is an area where commuters park their cars to pick up a carpool or bus. When they entered the facility, the officers saw appellant standing on the sidewalk near the entrance. He was wearing a backpack.

The officers drove up next to appellant, and Strachan asked him whether he had seen a red Honda speed by. Appellant said he had seen the Honda. Strachan then asked appellant for his name and asked him if he was on probation. Appellant responded with his name and stated he was not on probation. He also refused the officers’ request to consent to a search. The officers broke contact and drove away.

Immediately thereafter, Strachan called the police dispatcher and ran a records check on appellant. The dispatcher advised the officer that appellant was on probation with a search condition.⁴ Upon hearing this information, the officers drove back and

³ The sentence was imposed on counts 1 and 2, and on a felony conviction in another case.

⁴ This testimony was admitted for the purpose of explaining the officers’ subsequent actions, rather than for the truth of the assertion that appellant was on probation. The trial court told the jury the evidence was admitted only for the “limited purpose . . . of explaining why [Uldall] and perhaps [Strachan] did whatever they subsequently did. Consider it for that purpose only and not any other purpose.”

reinitiated contact with appellant. Uldall testified he would not have left appellant the first time had appellant stated he was on probation. The officers got out of their car and appellant obeyed the officers' order that he approach them. One of the officers told appellant that he had lied to them and they were going to search him. Uldall found a .22-caliber handgun in the backpack. The gun was not loaded.

The parties stipulated appellant had a prior felony conviction for grand theft that preceded the date of the charged offenses; the date of the prior conviction was not specified.

DISCUSSION

Appellant contends there is insufficient evidence to support the jury's finding on count 3 that he willfully and unlawfully delayed Uldall and Strachan as they attempted to discharge their official duties. We agree.

“ ‘In reviewing a challenge to the sufficiency of the evidence, we do not determine the facts ourselves. Rather, we “examine the whole record in the light most favorable to the judgment to determine whether it discloses substantial evidence—evidence that is reasonable, credible and of solid value—such that a reasonable trier of fact could find the defendant guilty beyond a reasonable doubt.” [Citations.] We presume in support of the judgment the existence of every fact the trier could reasonably deduce from the evidence. [Citation.] [¶] The same standard of review applies to cases in which the prosecution relies primarily on circumstantial evidence and to special circumstance allegations. [Citation.] “[I]f the circumstances reasonably justify the jury's findings, the judgment may not be reversed simply because the circumstances might also reasonably be reconciled with a contrary finding.” [Citation.] We do not reweigh evidence or reevaluate a witness's credibility.’ [Citation.]” (*People v. Houston* (2012) 54 Cal.4th 1186, 1215 (*Houston*).)

As the trial court instructed the jury, a conviction under section 148 required the prosecution to establish that, on May 25, 2011, (1) Uldall and Strachan were peace officers lawfully performing or attempting to perform their duties; (2) appellant willfully delayed the officers in the performance or attempted performance of those duties; and

(3) when appellant acted, he knew, or reasonably should have known, that Uldall and Strachan were peace officers performing or attempting to perform their duties. (See CALCRIM No. 2656; see also *Yount v. City of Sacramento* (2008) 43 Cal.4th 885, 895.) The court further instructed the jury, “Someone commits an act willfully when he or she does it willingly or on purpose. It is not required that he or she intend to break the law, hurt someone else, or gain any advantage.” The court informed the jury, “The People allege that [appellant] delayed . . . Uldall and Strachan by telling them he was not on probation.”

Appellant contends there is insufficient evidence that he was on probation on May 25, 2011; that he knew he was on probation on May 25, 2011; and that he interfered with a criminal investigation. Because we agree there is insufficient evidence appellant was on probation, we need not and do not reach his other two contentions.

On appeal, the People admit with respect to count 3, the section 148, subdivision (a)(1)) charge, “Given that . . . the trial court instructed the jury that the prosecution was proceeding on the theory that appellant willfully delayed . . . Uldall and Strachan in the performance or attempted performance of their duties by telling them he was not on probation . . . , a conviction required evidence that appellant was indeed on probation.” It is undisputed that, when the officers testified they learned from dispatch appellant was on probation, that evidence was only admitted for the limited purpose of explaining the officers’ subsequent conduct, not for the truth of the statement that appellant was on probation.⁵ Nevertheless, the People argue there is sufficient evidence appellant was on probation because the parties stipulated appellant had a prior conviction for grand theft. The People reason, “Since appellant was obviously not in custody on that conviction on May 25, the jury could have concluded, as a matter of common knowledge, that he was

⁵ The People state we should presume the jury applied the trial court’s limiting instruction to all of the places in the record where references were made to the information obtained from dispatch, including a reference made by defense counsel in cross-examination of one of the officers. We agree. Accordingly, we need not address appellant’s ineffective assistance of counsel claim based on the defense counsel’s reference to that information.

either on parole, probation, or neither, having done his time. That the jury inferred from the conviction that he was on probation was reasonable, especially given the officers' action in quickly returning to make contact with him after speaking with dispatch. . . . In light of . . . Uldall's testimony that there was initially no reason to detain appellant or probable cause to search him, this was the only conclusion the jury could draw from the officers' actions."

We disagree. Because the stipulation did not indicate *when* appellant was convicted of grand theft, the bare fact that he had that prior conviction left no solid basis for the jury to conclude appellant was on probation for that offense on May 25, 2011. As the People acknowledge, it was equally likely appellant was on parole or appellant was no longer subject to law enforcement supervision. The jury was instructed in this case that if it was able to "draw two or more reasonable conclusions from the circumstantial evidence, and one of those reasonable conclusions points to innocence and another to guilt, [it] must accept the one that points to innocence." (See CALCRIM No. 224; *People v. Towler* (1982) 31 Cal.3d 105, 118 (*Towler*)). That does not mean it would be proper for this court to interfere with the verdict simply because we "believe that the circumstantial evidence might be reasonably reconciled with [appellant's] innocence." (*Towler*, at p. 118; see also *Houston, supra*, 54 Cal.4th at p. 1215.) Instead, "the relevant inquiry on appeal remains whether *any* reasonable trier of fact could have found [appellant] guilty beyond a reasonable doubt." (*Towler*, at p. 118; accord, *In re Ryan N.* (2001) 92 Cal.App.4th 1359, 1372.) The answer to that question is no. Absent other evidence, any inference that appellant's prior conviction meant he was on probation "would go beyond deduction to speculation." (*People v. Pearson* (2012) 53 Cal.4th 306, 319.) "The evidence leaves it entirely *possible*" appellant was on probation for the prior offense, "but does not support [such a finding] beyond a reasonable doubt." (*Ibid.*)

Of course, the jury was informed that dispatch told the officers appellant was on probation, but that evidence was not admitted for the truth of the information about appellant's status. On appeal, the People appear to suggest that the bare fact the officers reinitiated contact after speaking with dispatch provided sufficient evidence from which

the jury could infer appellant was on probation. But, although the fact that the officers quickly returned to reinitiate contact with appellant after calling dispatch provided a basis for the jury to infer the officers obtained some relevant information from dispatch, it did not provide a solid basis for the jury to conclude the information the officers received was that appellant was on probation. It was also possible the officers found out appellant was on *parole* and subject to a search condition, or there was an outstanding arrest warrant for him. On the other hand, the testimony the officers told appellant he had *lied* might support an inference the officers found out appellant was on probation. However, to conclude there was sufficient evidence appellant was on probation because of an indirect reference to the information conveyed by dispatch would require us to assume the information conveyed by dispatch was true. In that event, appellant's conviction effectively would be based on inadmissible hearsay, instead of evidence that is reasonable, credible, and of solid value. (See *Houston, supra*, 54 Cal.4th at p. 1215.) As explained in *In re Lucero L.* (2000) 22 Cal.4th 1227, 1244-1245, "As this court has long recognized, ' "[m]ere uncorroborated hearsay or rumor does not constitute substantial evidence." . . . ' [Citations.] Except in those instances recognized by statute where the reliability of hearsay is established, 'hearsay evidence alone "is insufficient to satisfy the requirement of due process of law, and mere uncorroborated hearsay does not constitute substantial evidence. [Citation.]"' ' [Citations.]'"

In all likelihood, it would have been a simple matter for the People to prove with competent evidence that appellant was on probation on May 25, 2011. The People failed to do so, and the evidence in the record did not provide a nonspeculative basis for the jury to find that fact to be true beyond a reasonable doubt. Appellant's conviction on count 3 must be reversed.

DISPOSITION

Appellant's conviction on count 3 is reversed. The matter is remanded to the trial court for resentencing. The judgment is otherwise affirmed.

SIMONS, J.

We concur.

JONES, P.J.

NEEDHAM, J.