

**NOT TO BE PUBLISHED IN OFFICIAL REPORTS**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 This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.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 TWO

In re A.W., a Person Coming Under the  
Juvenile Court Law.

THE PEOPLE,

Plaintiff and Respondent,

v.

A.W.,

Defendant and Appellant.

A135327

(Solano County  
Super. Ct. No. J40142)

**I. INTRODUCTION**

Eighteen-year-old A.W. appeals from the juvenile court’s jurisdictional and dispositional orders sustaining the allegation that he resisted a peace officer in the discharge of the officer’s duties (Pen. Code, § 148, subd. (a)(1)),<sup>1</sup> and placing him on probation without wardship. He contends the juvenile court should have rejected the allegation because the prosecution failed to establish that the officers were engaged in the performance of their lawful duties. We will affirm.

**II. FACTUAL AND PROCEDURAL BACKGROUND**

On December 23, 2011, Fairfield Police Officers Joe Uchishiba and Michael Pena were on foot patrol in full uniform at the Solano Mall. They heard a scuffle and saw a number of security guards rushing into a store called Hot Topic. As they approached the

<sup>1</sup> All further unspecified statutory references are to the Penal Code.

store, they saw between five and seven security guards struggling with appellant. They could see rounders of clothing moving around and people running away from the area of the struggle. The officers ran into the store to find out what was going on and to assist the security guards.

Inside the store, Officer Uchishiba saw appellant “thrashing around” as several security guards tried to hold onto him. The guards were yelling at appellant to stop. It appeared that the guards’ attempts to subdue appellant were having little effect.

Officer Pena saw a number of security guards trying to handcuff appellant. Appellant was on his knees and leaning forward; “[h]is hands were outside his body like an airplane.” He was “not allowing his hands to go in front of his body or behind his body.” Officer Pena loudly announced “Fairfield Police Department” several times.

Officer Uchishiba grabbed appellant’s left wrist and left arm in order to “control” appellant, while at the same time yelling that he was a police officer. Officer Pena was also loudly identifying himself as a police officer. Appellant’s long hair obstructed his eyes as he bent forward, so Officer Pena bent over appellant and leaned his head so appellant could see him. Appellant looked Officer Pena in the eyes and the officer stated, “Fairfield Police Department. Quit resisting. Put your hands behind your back.” Appellant asked Officer Pena if he was “the police,” and for that brief moment the struggle stopped. Both officers confirmed that they were police, “and then the struggle was on again.” Appellant resumed thrashing around and tried to get away from the officers.

Officer Pena tried to bring appellant’s right hand behind his back, but appellant was strong and the officer was unable to do so. Officer Pena testified: “Because I don’t know if he’s armed, I can’t see the ground around me. I’ve never met him before. I don’t know what kind of character he has. I delivered a couple of distraction strikes to his jaw area to loosen the grip of his hand.”

The officers were then able to handcuff appellant and place him face down on the ground in a figure four leg lock so they could search him. Appellant was “still thrashing about trying to get away. Resisting us.” The officers told appellant to stop and submit,

but appellant continued to struggle. He was “twisting and turning and he was actually kicking toward [Officer Pena] and another security guard.” Officer Uchishiba placed his knee on the back of appellant’s neck to try to further subdue him. Officer Pena also knelt on him.

The officers got appellant to his feet and asked him to walk out of the store. Appellant “held his legs rigid and refused to walk,” so each officer took one of appellant’s arms and began to take him out of the store. Appellant “began to thrash his head around and tried to pull away . . . .” He shoved Officer Pena as the officers removed him from the store, and “almost headbutted” Officer Uchishiba. Appellant was still struggling and trying to get away. Officer Pena conducted a leg sweep to get him on the ground so the officers “could gain control of him again.” The officers were then able to put a leg restraint on appellant and took him outside the mall to the patrol vehicle.

Appellant was arrested for resisting the officers and trespassing. He was taken to North Bay Medical Center where he received stitches for a wound to his chin.

On cross-examination, Officer Uchishiba agreed that, when he first arrived at the scene of the scuffle inside the store, he could not tell whether appellant was being pushed or was doing the pushing. He did not see appellant in possession of a weapon, but he could not see his hands or inside his clothing. Officer Uchishiba did not hear appellant threaten any of the security guards, but he did hear the guards yelling at appellant to stop resisting.

Officer Pena testified that he did not know what had transpired between appellant and the security guards prior to the officers’ arrival at the store, and assumed that the guards “were trying to take him into custody for some sort of mall-related offense, like disturbing the peace.” Officer Pena testified that, prior to the distraction strikes, appellant did not swing at or kick at any of the guards or the officers. Officer Uchishiba agreed that appellant never took “a fighting stance” toward him and did not punch or strike him with one of his fists.

Both officers testified that they announced themselves as police officers several times, but appellant did not respond to their orders. Officer Uchishiba acknowledged that

while he and Officer Pena were yelling orders at appellant, the security guards were also yelling at appellant.

Appellant testified that he was Christmas shopping at the Solano Mall on December 23, 2011, when he was approached by “three or four” security guards. The guards talked to him, and “[a]fter they were talking to [him], they took [him] to the ground.” There was a lot of yelling, and someone tried to pull his arms or hands behind his back. Appellant’s counsel asked if he had “a specific recollection of while you were on the ground of an officer, a Fairfield police officer, identifying himself as not a security guard but as a Fairfield police officer?” Appellant answered, “No.”

Appellant said he “was getting roughed around a little bit,” and “sometime between sitting on the ground and wrestling with like the security guards, I was handcuffed and on the ground.” Different people were exerting force on him and telling him different things. Prior to being handcuffed, appellant was struck in the face. He did not know if he was hit by a security guard or a police officer; he was not able to distinguish between them. After he was handcuffed, the two officers “carried . . . or . . . walked [him] out of the store . . . .” Appellant testified that he recognized the individuals who were escorting him out of the store as Fairfield police officers “when I was like outside the store. Like maybe leaving the store. Outside the store.” Once outside the store, he “got a leg sweep and landed on the ground on [his] chin.”

Appellant denied ever punching, intentionally kicking, or trying to head-butt the officers. He denied refusing to walk. After being put into the patrol car, he was taken to the hospital and got stitches for the wound on his chin. He still had a scar from it.

On cross-examination, appellant was asked whether, prior to the incident, he had been told not to enter the mall. Appellant responded: “The month before I was told that I was banned, but I never got anything from that. Like it was abrupt. They didn’t really tell me that I was banned.”<sup>2</sup>

---

<sup>2</sup> On redirect, the following colloquy took place:

When he was approached by security guards in Hot Topic, one of the guards asked him to leave. Appellant tried to talk to him, but the guard kept asking him to leave. When appellant tried to leave a couple of minutes later, he “started scuffling with the guards. It was weird.” He was pulled down to the floor. The security guards physically prevented him from leaving the store.

Appellant denied ever raising his voice, but acknowledged that he was “tense” and “confused.” He realized he was being handcuffed as the cuffs went on. He did nothing to prevent his arm from going behind his back. He did not say anything or question why he was being handcuffed.

Appellant was being walked out of the store and he “got like swept.” When asked if he made his legs rigid, he answered, “I think so because it was pretty tense. I was pretty tense.” In response to being asked if he followed the officers’ commands, he replied, “I don’t remember like commands being given specifically.” When asked if he recalled the officers telling him not to resist, appellant said, “There was a lot of things like being said to me. But—.”

Appellant recognized Officer Pena in court and remembered seeing him at Hot Topic: “Like when we were leaving, I saw him. Like his face and stuff. So he was in Hot Topic.” Appellant did “[n]ot . . . specifically” remember noticing the officer during the scuffle and did not “remember him identifying himself.”

---

“[Counsel]: The district attorney asked you a question about a ban. Were you ever provided any documentation as to that ban?”

“[Appellant]: No.

“[Counsel]: Were you ever provided any information as to the duration of that ban?”

“[Appellant]: No.

“[Counsel]: Were you ever provided any information about the scope or geographical area of that ban?”

“[Appellant]: I’m pretty sure it was the Westfield Mall.”

On January 12, 2012, the Solano County District Attorney filed a wardship petition pursuant to Welfare and Institutions Code section 602, subdivision (a), alleging that appellant committed a misdemeanor violation of section 148, subdivision (a)(1), in that he resisted, obstructed, or delayed a police officer.

On March 15, 2012, following the contested jurisdictional hearing, the juvenile court sustained the petition.

At the dispositional hearing on April 26, 2012, the court placed appellant on six months' informal probation without wardship pursuant to Welfare and Institutions Code section 725, subdivision (a).

On April 27, 2012, appellant filed a timely notice of appeal.

### **III. DISCUSSION**

Appellant contends there is insufficient evidence to support the finding that he violated section 148, subdivision (a)(1), because the prosecution failed to show that the officers were engaged in the performance of their lawful duties when they arrested him.

#### *A. Standard of Review.*

When the sufficiency of the evidence is challenged on appeal, we “review the whole record in the light most favorable to the judgment below to determine whether it discloses substantial evidence—that 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.” (*People v. Johnson* (1980) 26 Cal.3d 557, 578.) In viewing the evidence favorably to the judgment, we must also “ ‘presume in support of the judgment the existence of every fact the trier could reasonably deduce from the evidence. [Citation.] If the circumstances reasonably justify the trial court’s findings, reversal is not warranted merely because the circumstances might also be reasonably reconciled with a contrary finding. [Citations.]’ ” (*In re Ryan N.* (2001) 92 Cal.App.4th 1359, 1372.) “The same standard of appellate review is applicable in considering the sufficiency of the evidence in a juvenile proceeding as in reviewing the sufficiency of the evidence to support a criminal conviction.” (*In re Sylvester C.* (2006) 137 Cal.App.4th 601, 605.)

B. *Juvenile Court's Ruling.*

Appellant's counsel argued that the officers used excessive force against an unarmed minor who was on his knees when they approached and posed no "significant danger or risk that justified the level of force that they utilized." Counsel also argued that, upon encountering the security guards engaged with appellant, the police officers had no idea what was going on and made no effort to find out. The officers' "efforts to handcuff [appellant] and use physical force to detain him were at that juncture outside of their lawful duties, and they were not acting appropriately or lawfully."

The court disagreed, finding "as a lawful conclusion that the officers were in the performance of their duties. [¶] They were on duty at the mall to be engaged in security at Christmastime. It's certainly not unusual to see police officers under those circumstances, and Fairfield P.D. did assign them for that purpose.

"They then hear a commotion. They enter into the store, which is appropriate as part of their duties. They see one individual struggling with between five and seven security officers, and they make every effort to try to bring that circumstance under control. [¶] The Court believes that the officers credibly did announce their presence loud enough and under certain circumstances sufficient to alert everybody in the store of their presence. [¶] At that point in time, your client persisted in his struggles with both the officers and then with the police officers.

"I am concerned about the four distraction strikes to his face, but that is a decision that an officer has to make under the heat of the circumstances, and I can't under those circumstances find that that force was unnecessary. And it did result in the officers['] finally being able to place him in handcuffs.

"Then as your client testifies, under the circumstances where he is placed in handcuffs and being led out of the store by the two police officers, he persists in his resistance going rigid, resulting in the officers['] having to do at that point in time a leg sweep, taking him to the ground. [¶] It's unfortunate that he struck his chin, but those things happen when people resist police officers' efforts. That resistance continued

requiring him to be in leg restraints and requiring the officers having to physically carry him out of the mall.

“All of which, in the Court’s opinion, is evidence of delaying, resisting, or obstructing the officers in the performance of their duties. That is a violation of Penal Code Section 148 and brings him within the provisions of Section 602 of the Welfare and Institutions Code.”

C. *Legal Principles.*

Section 148, subdivision (a)(1), provides, in relevant part: “Every person who willfully resists, delays, or obstructs any . . . peace officer . . . in the discharge or attempt to discharge any duty of his or her office or employment, when no other punishment is prescribed,” is guilty of a misdemeanor. To prove a violation of section 148, subdivision (a)(1), the prosecution must establish: “(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.]” (*People v. Simons* (1996) 42 Cal.App.4th 1100, 1108-1109.)

A “[d]efendant cannot be convicted of an offense against an officer engaged in the performance of official duties unless the officer was acting lawfully at the time. [Citation.] ‘The rule flows from the premise that because an officer has no duty to take illegal action, he or she is not engaged in “duties,” for purposes of an offense defined in such terms, if the officer’s conduct is unlawful. [Citations.]’ [Citation.]” (*People v. Simons, supra*, 42 Cal.App.4th at pp. 1108-1109; see also CALCRIM No. 2656.)

When a peace officer employs reasonable force to make a lawful arrest, the officer is acting in the performance of his or her duties; the arrestee is obliged not to resist and has no right of self-defense against such force. (*People v. Adams* (2009) 176 Cal.App.4th 946, 952; *In re Bacon* (1966) 240 Cal.App.2d 34, 52, disapproved on other grounds in *In re Brown* (1973) 9 Cal.3d 612, 623 [“it is the duty of every citizen to submit to *lawful* arrest”]; see also § 834a [no right to use force to resist arrest by a peace officer, whether the arrest is lawful or unlawful].)

Conversely, a peace officer is not engaged in the performance of his or her duties if an arrest is unlawful. Unlawful arrests include those made without probable cause and those involving the officer's use of excessive force. (*People v. Delahoussaye* (1989) 213 Cal.App.3d 1, 7; *People v. Olguin* (1981) 119 Cal.App.3d 39, 45.)

D. *Analysis.*

Appellant's argument on appeal concerns the second element of section 148, subdivision (a)(1), i.e., the requirement that the officers were engaged in the performance of their lawful duties. Appellant contends this element was not established because the officers did not have probable cause to arrest him and because the officers used excessive and unreasonable force. We reject both arguments.

1. *Performance of Lawful Duties.*

Appellant argues that the officers were not performing their lawful duties because they arrested him "without any knowledge of what crime he allegedly committed or attempted to commit," that is, without probable cause. According to appellant, upon arriving at the scene at Hot Topic, the officers should have "commanded the security guards to quiet down and then asked one of them a single clarifying question from the 'who, what, where, how' family. Had they done so, they would have quickly realized that [appellant] had done nothing more than allegedly trespass on the mall's property. But instead of investigating, the officers decided to join the confusion by yelling their own orders at [appellant] and then forcefully arresting him 'for some sort of mall-related offense.'" Appellant argues that the facts and circumstances known to the officers "did not warrant a prudent man in believing that a crime had been committed," the arrest was unlawful, and the finding that he violated section 148 must be reversed. We disagree.

First, as respondent observes, appellant conflates the distinct concepts of probable cause to arrest and performance of duties. A violation of section 148 is not limited to resisting a lawful *arrest*. The statute prohibits willfully resisting, delaying, or obstructing any peace officer in the discharge or attempted discharge of *any duty* of his or her office. (§ 148, subd. (a)(1).) Thus, the statute prohibits interfering with an officer's performance of any duty, the scope of which encompasses more than simply making arrests.

Second, the officers here were performing a lawful duty when they entered Hot Topic to assist mall security. From outside the store, they heard a scuffle and saw a struggle in progress, causing clothing racks to move around and people to flee from the area. The officers rushed in and saw that between five and seven security guards were unable to subdue appellant and stop him from thrashing around. The officers would have been derelict in their duty to protect public safety if they had not intervened to help stabilize the situation and restore order.

Third, we find unpersuasive appellant's contention that the officers were required to investigate or make inquiries before intervening in the struggle. The situation confronting the officers inside the store was unstable and presented a risk to the personal safety of persons in the area as well as that of appellant and the security guards who were trying to subdue him. Under the circumstances, the officers acted reasonably in taking immediate action to end the disturbance and bring the situation under control.

Finally, appellant continued to struggle even after the officers intervened, announced themselves as police officers, and ordered appellant to stop resisting. By then, the officers had probable cause to arrest appellant for the offense of resisting, delaying, or obstructing their efforts. (§ 148, subd. (a)(1); see *People v. Celis* (2004) 33 Cal.4th 667, 673 [probable cause exists when the facts known to the arresting officer would persuade a reasonable person that the arrestee has committed a crime].) Appellant had a duty to submit to the lawful arrest (*In re Bacon, supra*, 240 Cal.App.2d at p. 52) and a duty to refrain from using further force (§ 834a).

## 2. *Excessive Force.*

Next, appellant contends the juvenile court's finding must be reversed because the officers used excessive and unreasonable force in arresting him. An arrest made with excessive force is unlawful. (*People v. White* (1980) 101 Cal.App.3d 161, 167.) Appellant argues that the amount of force the officers used was not objectively reasonable in light of the circumstances confronting the officers when they arrived on the scene. Specifically, appellant contends the officers' use of force was unreasonable because they did not know why the security guards were attempting to subdue appellant,

appellant was on his knees, the officers did not see any weapons, did not see appellant hit or kick anyone, and did not hear appellant make any threats.

Appellant's account of the incident differed in significant respects from that of Officers Uchishiba and Pena.<sup>3</sup> Accepting appellant's assertion that the officers used excessive force would require us to credit appellant's account and reject much of the officers' testimony, which the court found credible. This we will not do. (*People v. Lindberg* (2008) 45 Cal.4th 1, 27 [reviewing court does not reweigh the evidence or reevaluate the credibility of witnesses].)

Moreover, it is clear from the record that appellant was not, as he claims, in a "compliant position." Rather, he was exerting considerable force to avoid being subdued, first by the security guards and then by the police officers. The officers used increasing force to gain control over appellant as less forceful options were unsuccessful. The officers first identified themselves as Fairfield police and ordered appellant to stop resisting and put his hands behind his back. They unsuccessfully tried to subdue him and physically move his hands behind his back before delivering distraction strikes to his jaw in order to place him in handcuffs. Despite being handcuffed, appellant was twisting and turning and attempting to kick Officer Pena and one of the security guards, at which time Officer Pena knelt on appellant in order to search him. The officers got appellant to his feet and asked him to walk out of the store, but appellant held his legs rigid and refused to walk. The officers each took him by one arm to get him out of the store. He resumed thrashing, pushing one officer and attempting to head-butt the other. The officers conducted a leg sweep to regain physical control over him.

The juvenile court expressed concern about the distraction strikes to appellant's face, but concluded that it was "a decision that an officer has to make under the heat of the circumstances." The court could not "under those circumstances find that that force

---

<sup>3</sup> For example, appellant denied doing anything to prevent his hands from going behind his back; he denied attempting to kick or head-butt the officers; he did not know the police were involved until he was outside Hot Topic; and he did not recall being given any commands.

was unnecessary.” The court also found it unfortunate that appellant hurt his chin, but observed that “those things happen when people resist police officers’ efforts.” In light of the facts and circumstances confronting the officers, the force they used to subdue appellant, remove him from the store, and arrest him was not unreasonable or excessive.

#### **IV. DISPOSITION**

The orders appealed from are affirmed.

---

Haerle, J.

We concur:

---

Kline, P.J.

---

Richman, J.