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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION ONE

THE PEOPLE,

Plaintiff and Respondent,

v.

BEN AGUIGUI,

Defendant and Appellant.

A141300

(Solano County
Super. Ct. No. FCR302619)

A jury convicted defendant Ben Aguigui of two drug-related felonies and the misdemeanor of resisting, delaying, or obstructing a peace officer.¹ On appeal, Aguigui argues that the misdemeanor conviction must be reversed because it was supported by insufficient evidence and his trial counsel was improperly prevented during closing argument from making comments about an evidentiary inference. We disagree and affirm.

I.
FACTUAL AND PROCEDURAL
BACKGROUND

On September 20, 2013, Vacaville Police Officer Stuart Tan was conducting surveillance from an unmarked vehicle in a cafe's parking lot when he observed a man

¹The misdemeanor conviction was under Penal Code section 148, subdivision (a)(1). The felony convictions were for possession of methamphetamine under Health and Safety Code section 11379, subdivision (a) and possession of methamphetamine for sale under Health and Safety Code section 11378. All further statutory references are to the Penal Code.

later identified as Dalton Lucero go in and out of the cafe multiple times. Officer Tan then saw Aguigui drive into the parking lot and stop his car. Lucero approached the passenger-side window of Aguigui's car, appeared to have "some type of conversation" with Aguigui, and got into the front passenger seat. Officer Tan observed the two men exchange money. Shortly thereafter, Lucero exited the car and Aguigui drove away.

Believing he had witnessed a narcotics transaction, Officer Tan contacted Vacaville Police Officer Steve Collins, who was patrolling the area with a partner. Officer Collins checked Aguigui's license-plate number and learned the car's registration had expired. He located Aguigui's car as it exited the cafe's parking lot, and he drove up behind it as it was stopped at a traffic signal. While the cars were stopped, Officer Collins noticed Aguigui making "furtive movements," including reaching his arms under the driver's seat and across the center to the passenger floorboard area. After the traffic signal changed, Officer Collins activated his patrol car's emergency lights and initiated a traffic stop of Aguigui's car on the basis of its expired registration tags.

Aguigui pulled over "[i]mmediately," and Officer Collins parked a short distance behind his car. Officer Collins and his partner exited their patrol car. As they approached Aguigui's car, Officer Collins saw Aguigui looking at him through the side mirror while continuing to make "furtive movements" under the driver's seat, as if he were trying to "access or conceal something." When the officers were about five feet from Aguigui's car, Aguigui accelerated his car away from the officers and drove back into traffic. The officers returned to their vehicle and drove after Aguigui. After traveling only ten to fifteen yards, Aguigui pulled over again, and the officers parked behind him. Officer Collins testified that approximately 30 seconds passed between the first and second time that Aguigui pulled over.

As Officer Collins and his partner approached Aguigui's car for the second time, Officer Collins again observed Aguigui making movements under the driver's seat. Aguigui exited the vehicle and was cooperative once detained. He had \$16 in his hand, and a search of his car revealed a black camera bag under the driver's seat containing blue Post-it Notes, a bag containing 1.03 grams of methamphetamine, and a digital scale

with methamphetamine residue on it. Dalton Lucero was later found with .23 grams of methamphetamine in a bindle made out of a blue Post-it Note.

The jury found Aguigui guilty of all three counts with which he was charged. The trial court suspended imposition of sentence and placed him on probation for three years with the condition he serve 180 days in jail.

II. DISCUSSION

A. *Sufficient Evidence Supports Aguigui's Conviction for Resisting, Delaying, or Obstructing a Peace Officer.*

Aguigui first argues that insufficient evidence supported his misdemeanor conviction for resisting, delaying, or obstructing a peace officer because his movement of the car and “furtive movements” did not rise to the level of delay or obstruction. We disagree.

In considering this claim, “ ‘we review the entire record in the light most favorable to the judgment to determine whether it contains substantial evidence—that is, evidence that is reasonable, credible, and of solid value—from which a reasonable trier of fact could find the defendant guilty beyond a reasonable doubt.’ ” (*People v. Avila* (2009) 46 Cal.4th 680, 701.) “ ‘[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.’ ” (*Id.* at p. 703.)

A defendant resists, delays, or obstructs a peace officer in violation of section 148, subdivision (a)(1) if the defendant (1) “willfully resists, delays, or obstructs a peace officer” (2) when the officer is “engaged in the lawful 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.” (*In re J.C.* (2014) 228 Cal.App.4th 1394, 1399.) The offense is “a general intent crime, proscribing only the particular act (resist, delay, obstruct) without reference to an intent to do a further act or achieve a future consequence.” (*In re Muhammed C.* (2002) 95 Cal.App.4th 1325,

1329.) During trial, the prosecution conceded there was no evidence of resistance and proceeded only on the theory that Aguigui delayed or obstructed the officers.

Aguigui argues that the delay between the first and second times he pulled over was “de minimis” and that his “furtive movements” did not delay or obstruct the officers in the performance of their duties. We cannot agree. The element of willful delay or obstruction includes “physical activity . . . [like] flight and concealment, which delay[] the officer’s performance of his official duty.” (*People v. Allen* (1980) 109 Cal.App.3d 981, 983, 986 [holding there was probable cause to arrest defendant for violating section 148].) Officer Collins testified that Aguigui “immediately” pulled over but subsequently accelerated back into traffic as the officers approached Aguigui’s car on foot. Officer Collins and his partner had to return to their patrol car and drive it a short distance in pursuit of Aguigui.² The jury could reasonably conclude from this evidence that Aguigui engaged in flight and delayed the officers in their official duty of executing a traffic stop.

Aguigui also argues that he merely complied “slowly” with the traffic stop and that his actions did not rise to the level of delay or obstruction. He relies primarily on *People v. Quiroga* (1993) 16 Cal.App.4th 961, which held that section 148 does not “criminalize[] a person’s failure to respond with alacrity to police orders.” (*Quiroga*, at p. 966.) However, Aguigui’s initial compliance and subsequent defiance distinguishes this case from *Quiroga*. In *Quiroga*, although the defendant was uncooperative and argumentative in responding to police officers’ orders to sit, to put his hands on his lap, and to stand, the defendant eventually complied “slowly” with each order. (*Id.* at pp. 964, 966.) In contrast, Aguigui defied the officers’ order to pull over after demonstrating that he understood and acquiesced to the order by initially complying with it. (See *ibid.*) Furthermore, the defendant’s lack of cooperation in *Quiroga* consisted

² Officer Collins also testified that Aguigui was engaged in “furtive movements” both before and after pulling over, as though he were “trying to either access or conceal something.” The prosecution’s case relied on these furtive movements as proof of flight and concealment. As the evidence of Aguigui’s flight between stops is sufficient to support his conviction, we need not consider whether these movements also were substantial evidence of delay or obstruction.

mostly of oral criticisms of the police officer, while Aguigui's noncompliance was a physical act of flight. (*Id.* at p. 966.) This act constituted a far more considerable threat to the officers' ability to carry out their official duties.

The circumstances here are more akin to those presented in *In re Muhammed C.*, *supra*, 95 Cal.App.4th 1325. In that case, the defendant continued to talk with a detained subject after making a hand gesture acknowledging a police officer's orders to stop. (*Id.* at p. 1328.) The Court of Appeal determined that the defendant exhibited "defiance" rather than a "mere failure to respond" because the defendant refused to comply after having acknowledged the officers' orders. (*Id.* at p. 1330.) As in that case, substantial evidence was presented here to allow an inference of defiance rather than slow compliance.

We conclude that substantial evidence supports the jury's finding that Aguigui delayed or obstructed the officers in the performance of their duties.

B. Any Error in Sustaining the Prosecutor's Objection to Aguigui's Trial Counsel's Comments in Closing Argument Was Harmless.

In closing argument, Aguigui's trial counsel commented that "[Mr. Aguigui] pulled over as soon as Officer Collins lit him up. He pulls over on the curb. Officers start approaching, and what does Mr. Aguigui do. He moves his car. It's a residential area. He moved his car to better accommodate the officers." The prosecutor objected to the argument on the ground that it assumed facts not in evidence, and the trial court sustained the objection. Aguigui contends that the trial court erred in sustaining the prosecutor's objection because the comments were based on a reasonable inference from the evidence. (See *People v. Hill* (1998) 17 Cal.4th 800, 819.) Even if we accept the dubious assumption that this ruling was improper, we conclude that it was harmless.

A criminal defendant has a constitutional right to have counsel present closing argument to the trier of fact as part of the right to assistance of counsel. (*Herring v. New York* (1975) 422 U.S. 853, 858 & fn. 8.) "At closing argument a party is entitled both to discuss the evidence and to comment on reasonable inferences that may be drawn therefrom." (*People v. Morales* (2001) 25 Cal.4th 34, 44.) Whether the inferences "are

reasonable is a question for the jury.” (*People v. Tafoya* (2007) 42 Cal.4th 147, 181.) While counsel has “ ‘great latitude’ ” in arguing inferences, “counsel may not assume or state facts not in evidence or mischaracterize the evidence” (*ibid.*), and the trial court has “great latitude” and “broad discretion” in limiting the scope of closing arguments (*Herring*, at p. 862). A ruling limiting the content of a closing argument is reviewed for abuse of discretion. (See *People v. Marshall* (1996) 13 Cal.4th 799, 855; see also *People v. Rodrigues* (1994) 8 Cal.4th 1060, 1184-1185.)

We have difficulty concluding that the trial court abused its “great latitude” and “broad discretion” in disallowing the argument that Aguigui moved his car to better accommodate the officers. (*Herring v. New York*, *supra*, 422 U.S. at p. 862.) We find, and Aguigui has identified, nothing in the record to support the proposition that Aguigui moved his car to better accommodate the officers.

But even if we assume that the trial court’s closing-argument ruling was improper, we conclude it was harmless. In coming to this conclusion, we accept without deciding that Aguigui’s claim is subject to the harmless-error standard of *Chapman v. California* (1967) 386 U.S. 18 because it implicates the federal constitutional right to assistance of counsel. (*Herring v. New York*, *supra*, 422 U.S. at p. 865.) Under *Chapman*, an error is harmless if it appears “beyond a reasonable doubt that the error complained of did not contribute to the verdict obtained.” (*Chapman*, at p. 24; see also *People v. Aranda* (2012) 55 Cal.4th 342, 367.)

Here, it is clear that the trial court’s ruling did not contribute to the verdict. Nothing about the ruling prevented the jury from forming *any* reasonable inference it could from the evidence before it that Aguigui was stopped in a residential neighborhood and there was a short time between stops. Furthermore, the jury was instructed under CALCRIM No. 224 that “[i]f you can draw two or more reasonable conclusions from the circumstantial evidence, [and] one of those reasonable conclusions points to innocence and another to guilt, you must accept the one that points to innocence.” Thus, had the evidence supported a reasonable conclusion that Aguigui moved his car for reasons other than delay or obstruction, the jury was precluded from finding him guilty. Based on this

record, we are satisfied beyond a reasonable doubt that the jury would have returned the same verdict even if the prosecutor's objection had not been sustained. (See *Chapman*, *supra*, 386 U.S. at p. 24.)

III.
DISPOSITION

The judgment is affirmed.

Humes, P. J.

We concur:

Dondero, J.

Banke, J.

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