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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FIVE

THE PEOPLE,

Plaintiff and Respondent,

v.

SAEED J. IBRAHIM,

Defendant and Appellant.

A141628

(San Francisco County
Super. Ct. No. CT10005884)

Saeed Ibrahim (Ibrahim) appeals from an order denying his motion for a declaration of factual innocence under Penal Code section 851.8. He contends the court erred because there was no reasonable cause to believe he committed the offenses for which he was arrested. We will affirm the order.

I. FACTS AND PROCEDURAL HISTORY

In February 2010, Ibrahim was arrested for assault with a deadly weapon and resisting, delaying, or obstructing a peace officer in the performance of his or her duties. (Pen. Code, §§ 245, subd. (a)(1), 148, subd. (a)(1).)¹ Charges were not filed, or they were filed and then dismissed.

In February 2011, Ibrahim brought a lawsuit against the City and County of San Francisco in superior court, alleging a civil rights violation and numerous torts in connection with his arrest. The case was removed to federal court. In October 2012, the federal court entered a stipulation and order for dismissal of the lawsuit with prejudice.

¹ All statutory references herein are to the Penal Code.

On October 30, 2013, Ibrahim filed a petition in the superior court for a declaration of factual innocence and the sealing and destruction of his arrest records. Respondent opposed the petition, presenting the police report, excerpts from the depositions of Ibrahim and police officers, and transcripts of police interviews. Respondent also pointed out that the version of events Ibrahim provided in his petition differed from the account he gave police in an interview shortly after the incident.²

A. Facts

The evidence presented to the court included the following.

On the evening of February 22, 2010, an employee of Extreme Auto Recovery (identified in the proceedings as “Repo Man”) went to Ibrahim’s home to repossess a Lincoln Town Car due to Ibrahim’s failure to make payments. Repo Man identified himself to Ibrahim’s wife, who said Ibrahim was not home but would return in about 10 minutes. Seeing the Town Car in Ibrahim’s garage, Repo Man parked his tow truck across Ibrahim’s driveway and waited.

Ibrahim’s wife called Ibrahim and said a man with a tow truck was there to repossess the Town Car. Ibrahim knew the creditor had previously notified him that it intended to repossess the car.

Ibrahim drove home and saw Repo Man sitting in the driver’s side of the tow truck blocking his driveway. According to Repo Man’s statement to police, Ibrahim pulled alongside Repo Man’s tow truck and yelled, “[W]hy are you blocking my driveway?” Repo Man replied that he was there to retrieve the Town Car. He got out of his tow truck and stood on the sidewalk, within two feet from his vehicle.

Ibrahim quickly backed up his car (an Audi) and then drove forward, over the curb and onto the sidewalk, toward Repo Man. Repo Man yelled: “[H]ey stop! What are you doing? You’re gonna hit me with your car.” Although Repo Man tried to get out of the way, the passenger-side mirror of Ibrahim’s Audi struck Repo Man’s left hip

² In its respondent’s brief, respondent asserts that Ibrahim’s petition was untimely because it was not filed within two years of the arrest (§ 851.8, subd. (l)), but the People forfeited the issue by failing to raise it in the trial court.

as Ibrahim drove over a lawn and parked diagonally in his driveway. Ibrahim jumped out of his Audi and charged toward Repo Man, who said he was going to call the police because Ibrahim had hit him with his car. Ibrahim replied that he did not care and to “go ahead call the cops.” Ibrahim went into his house and slammed the door, and Repo Man called 911.³

Repo Man told the 911 dispatcher repeatedly that Ibrahim had hit him with his car. He continued: “No, I don’t need a paramedic, . . . I wanna file charges and I want to get the unit because the car that I am looking for is in the garage and I want somebody to come out here because now it’s gone from— [¶] . . . [T]he car that I am looking for is in the garage.”

San Francisco Police Department officers arrived and approached the front gate to Ibrahim’s house. The gate, which was locked, led to a storage area, which led to Ibrahim’s front door and garage. Officer Siguido knocked on the gate and identified himself as a police officer. Within seconds, Ibrahim emerged from his front door and walked to the gate. He was “very hysterical,” yelling and screaming, and looked as if he “was starting to lose it.” Siguido asked Ibrahim if he hit Repo Man with his car, and Ibrahim yelled, “[T]hat’s bullshit,” claiming “they [were] just trying to get back at [him]” and he had “court papers” for the car. Officers asked Ibrahim to open the gate and come outside so they could talk to him, but he refused and yelled, “I’m not opening the gate.” He grew progressively angrier and screamed at the officers. After he again refused to come outside and started to walk away, Sergeant Bohanan ordered him to open the gate in an attempt to detain him and learn his side of the story; Ibrahim said no. Bohanan warned Ibrahim that he would be detained at gunpoint if he continued to refuse, and Ibrahim walked backward toward his front door. Bohanan drew his firearm, but Ibrahim continued to walk toward his door. Believing that Ibrahim was a flight risk, Siguido

³ Ibrahim offered a different account, contending he drove onto his neighbor’s driveway and parked diagonally across his own driveway, without hitting Repo Man, and Repo Man then threatened him as Ibrahim walked toward his house.

pushed the gate open and, with the assistance of other officers, placed Ibrahim into the prone position and handcuffed him.⁴

B. Trial Court's Order

After a hearing on Ibrahim's petition on February 19, 2014, the court denied the petition, finding that Ibrahim failed to meet his burden.

This appeal followed.

II. DISCUSSION

Ibrahim contends the court should have found that he was factually innocent of the charges for which he was arrested.

A. Section 851.8

Under section 851.8, a finding of factual innocence "shall not be made unless the court finds that no reasonable cause exists to believe that the arrestee committed the offense for which the arrest was made." (§ 851.8, subd. (b); *People v. Esmaili* (2013) 213 Cal.App.4th 1449, 1458 (*Esmaili*)). The petitioner has the initial burden of showing there was no reasonable cause; if the petitioner makes this showing, the burden shifts to the respondent to show reasonable cause. (§ 851.8, subd. (b).)

Reasonable cause is merely "that state of facts as would lead a man of ordinary care and prudence to believe and conscientiously entertain an honest and strong *suspicion* that the person is guilty of a crime." (*Esmaili, supra*, 213 Cal.App.4th at p. 1458; *People v. Adair* (2003) 29 Cal.4th 895, 904 (*Adair*). Italics added.) The petitioner's burden is therefore extremely high and the record "must *exonerate*, not merely raise a substantial question as to guilt." (*Esmaili, supra*, 213 Cal.App.4th at p. 1459, italics added.) In ruling on the petition, the court may consider "declarations, affidavits, police reports, or

⁴ Ibrahim had a different recollection of his exchange with the police. By his account, he denied hitting Repo Man with his car and cordially responded to the officers' questions for about 20 minutes. Then one of the officers asked him to open the gate, and when he asked why, an officer pointed his gun at Ibrahim's head from two feet away, threatened to "blow his f—g head off," and told other officers to break down the "door." Police broke through the gate, pushed Ibrahim face-first to the ground, and handcuffed him.

any other evidence submitted by the parties which is material, relevant, and reliable.” (§ 851.8, subd. (b).)

In our review of the denial of a petition for factual innocence, we “defer to the trial court’s factual findings to the extent they are supported by substantial evidence, but independently review the record to determine whether the defendant sustained his burden [of proof].” (*Esmaili, supra*, 213 Cal.App.4th at pp. 1457-1458; see *Adair, supra*, 29 Cal.4th at pp. 904-906 [de novo review, but appellate court is bound by factual findings supported by substantial evidence].)

B. Assault With a Deadly Weapon

Assault with a deadly weapon requires proof that a defendant (1) did an act with a weapon other than a firearm that by its nature would directly and probably result in the application of force to a person, (2) acted willfully, (3) was aware of facts that would lead a reasonable person to realize that his act would result in the application of force to someone, and (4) had the present ability to apply force with a deadly weapon other than a firearm. (§ 245, subd. (a)(1); see *People v. Golde* (2008) 163 Cal.App.4th 101, 108 (*Golde*).) A car may be a deadly weapon. (*People v. Russell* (2005) 129 Cal.App.4th 776, 782.)

1. Reasonable Cause

There was reasonable cause to believe that Ibrahim assaulted Repo Man with a deadly weapon. Repo Man informed the police that, after Repo Man said he was there to repossess the Town Car, Ibrahim drove his Audi over a curb and onto a sidewalk toward Repo Man and, despite Repo Man’s warning and attempt to get out of the way, Ibrahim’s Audi struck Repo Man’s left hip. These facts, if true, would lead a reasonable person to entertain an honest and strong suspicion that Ibrahim willfully used the car in a manner that would result in force applied to Repo Man, with the present ability to do so. Moreover, the officers’ observations at the scene suggested the veracity of Repo Man’s account. Ibrahim’s Audi was parked diagonally across his driveway, as if it had been driven over the curb, across a lawn, and past Repo Man’s

tow truck, where Repo Man said he was standing. Street parking was available, suggesting that Ibrahim was not merely trying to find a parking place for his vehicle, but driving purposely toward Repo Man. Ibrahim was angry at the scene, as Repo Man had reported, and he expressed outrage over Repo Man's intent to repossess the Town Car, indicating a motive for assault. (See *People v. Ibarra* (2007) 156 Cal.App.4th 1174, 1193 [motive may be a factor tending to show that a defendant is guilty of assault].) In addition, it would be reasonable to conclude that, if Ibrahim had not committed the assault, he would have been more cooperative with the officers' investigation.

2. Appellant's Arguments

Ibrahim contends there was no reasonable cause to believe he committed an assault with a deadly weapon because Officer Chu relied on only three facts in deciding to arrest Ibrahim: (1) the angle at which Ibrahim's Audi was parked, (2) Ibrahim's demeanor, and (3) Repo Man's alleged injury. For the reasons stated above, however, the facts were sufficient to establish reasonable cause—an honest and strong suspicion—that Ibrahim had committed the charged crime.

Ibrahim argues that he parked his Audi at an angle merely because it was the only way he could pull the car into his driveway, which was blocked by the tow truck, and he did not want to get a ticket the next morning by parking on the street. That might be one interpretation of the evidence, but it is not the only one. Another reasonable interpretation is that, in fact, he tried to hit Repo Man with his Audi because he was angry that the Town Car was being repossessed. In any event, whether Ibrahim intended to injure Repo Man is immaterial; it is necessary only that his driving actions toward Repo Man were willful and that a reasonable person would appreciate that they would result in the application of force. (§ 245, subd. (a)(1); *Golde, supra*, 163 Cal.App.4th at p. 108 [assault does not require that a defendant have a specific intent to cause injury, or that he have a subjective awareness of the risk of injury].)

Ibrahim also complains that the police never asked to see the “court papers” he said he had, which supposedly would have shown he was lawfully in possession of the Town Car. He urges that an officer exercising ordinary care would have investigated whether Ibrahim lawfully owned the Town Car before concluding that his agitation meant he had committed an assault. This argument is untenable, however, because there is no evidence that these papers would have shown he was current on his payments and thus rightfully indignant about the repossession; indeed, Ibrahim admitted in his petition and his deposition that he was behind on his payments. In any event, whether the repossession was warranted or not, Ibrahim’s anger over the repossession supports a reasonable suspicion that he assaulted Repo Man.

Finally, Ibrahim argues that photos taken at the scene showed no visible injury to Repo Man, Repo Man told the 911 dispatcher he did not need medical assistance, and he refused medical treatment when it was offered. Assault, however, does not require proof of actual physical injury. (*People v. Griggs* (1989) 216 Cal.App.3d 734, 739-740.) Indeed, the fact that Repo Man had no visible injury confirms the credibility of his claims that he did not require medical assistance.

C. Resisting or Obstructing

The elements of the crime set forth in subdivision (a)(1) of section 148 are (1) the defendant willfully resisted, delayed, or obstructed a peace officer; (2) the officer was engaged in the performance of his or her duties at the time; and (3) the defendant knew or reasonably should have known that the person was a peace officer engaged in the performance of his duties. (*People v. Christopher* (2006) 137 Cal.App.4th 418, 431.) Section 148, subdivision (a) targets verbal interference with law enforcement as well as nonverbal conduct such as flight or physical interference. (*People v. Quiroga* (1993) 16 Cal.App.4th 961, 968.)

1. Reasonable Cause

There was reasonable cause to believe Ibrahim violated section 148, subdivision (a)(1). The officers were engaged in the performance of their duties when they

attempted to speak with him during their investigation of the alleged assault with a deadly weapon. There is no dispute Ibrahim knew they were police officers conducting an investigation. By that time—after speaking with Repo Man and observing the scene—the officers had at least a reasonable suspicion, if not probable cause to believe, that Ibrahim had committed the assault. Ibrahim willfully resisted, delayed, and obstructed the officers and their investigation by refusing to speak with them outside the gate and by walking away from them toward his house, in defiance of their orders. (See *Smith v. City of Hemet* (9th Cir. 2005) 394 F.3d 689, 695-696 (*Smith*) [refusing to comply with officer’s order to come off porch constituted violation of § 148, subd. (a)(1)]; *People v. Lloyd* (1989) 216 Cal.App.3d 1425, 1429 [walking away from officer who demanded identification during lawful detention constituted probable cause to arrest for violation of § 148, subd. (a)(1)]; *In re Michael V.* (1974) 10 Cal.3d 676, 681-683 [fleeing from officers during investigatory detention provided probable cause to arrest for resisting, delaying, or obstructing]; *In re Joseph F.* (2000) 85 Cal.App.4th 975, 985 [hostile and aggressive refusal to obey officer’s request to stop on school grounds provided sufficient evidence for unlawful resistance].)

2. Appellant’s Argument

Ibrahim contends he did not violate section 148 because he resisted an *unlawful arrest*. (Citing *Smith, supra*, 394 F.3d 689.) He argues that the police entered the curtilage of his residence by breaking open the locked gate and unlawfully arrested him inside the vestibule of his home without a warrant, consent, or exigent circumstances. No exigent circumstances existed, he urges, despite the police report asserting that he posed a flight risk when he refused to open the gate and walked toward his house, which might have contained a weapon.

Ibrahim’s argument is misplaced. Ibrahim unlawfully obstructed and delayed the officers when the officers were still outside his gate, where they were entitled to be in the lawful performance of their duties, *before* they entered and arrested him. As indicated by the very case Ibrahim cites, the officers’ conduct *after* Ibrahim resisted

them in violation of section 148, subdivision (a)(1) does not show there was a lack of reasonable cause to believe he had violated that statute. (*Smith, supra*, 394 F.3d at pp. 695-696 [a conviction under § 148, subd. (a)(1), based on conduct before an arrest, is not necessarily rendered invalid by the officers' subsequent use of excessive force in making the arrest].) The statute broadly prohibits resisting peace officers in the performance of their duties, not merely resisting arrest.

III. DISPOSITION

The order is affirmed.

NEEDHAM, J.

We concur.

JONES, P. J.

BRUINIERS, J.