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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIFTH APPELLATE DISTRICT

In re JAYDEN M., a Person Coming Under the
Juvenile Court Law.

THE PEOPLE,

Plaintiff and Respondent,

v.

JAYDEN M.,

Defendant and Appellant.

F063353

(Super. Ct. No. JW125448-02)

OPINION

APPEAL from a judgment of the Superior Court of Kern County. Peter A. Warmerdam, Juvenile Court Referee.

Gillian Black, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Michael P. Farrell, Assistant Attorney General, Ward A. Campbell and Sean M. McCoy, Deputy Attorneys General, for Plaintiff and Respondent.

Following a contested jurisdictional hearing, the juvenile court found true allegations that Jayden M. (appellant) unlawfully purchased and possessed tobacco and tobacco paraphernalia (Pen. Code, § 308, subd. (b))¹ (count 1); resisted and obstructed a peace officer (§ 148, subd. (a)(1)) (count 2); and violated probation (Welf. & Inst. Code, § 777, subd. (a)(2)) (count 3). The court ordered that appellant continue on probation with a placement at Camp Owen, after which he would be released to the custody of his mother.

On appeal, appellant contends there is insufficient evidence to support the finding that he obstructed or delayed a peace officer because the officer was not engaged in the lawful performance of his duties when he detained appellant. He also contends that the juvenile court erred when it denied his motions to suppress and dismiss. We disagree and affirm.

STATEMENT OF THE FACTS

At 7:00 a.m. on June 14, 2011, Bakersfield Police Officer Felipe Juarez was dispatched to a home on Park Way, in the City of Bakersfield. Upon arrival, he discovered appellant sleeping in a chair in the backyard of the home. Juarez asked appellant what he was doing outside, and appellant said his mother would not allow him inside. Juarez had no information about why he had been dispatched to this address, so he decided to contact appellant's mother to determine why she had called the police, and asked that appellant remain in the chair while he did so.

As Officer Juarez approached the back door of the house, appellant stood up and ran out of the backyard. Juarez ordered appellant to stop numerous times, but he continued to run. Appellant was eventually apprehended and the officer "took him to the ground." Appellant was uncooperative and struggled. Juarez struck appellant once in the face with his fist and once in the midsection with his knee to subdue and handcuff him.

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

After appellant was placed in handcuffs, Officer Juarez did a “quick search” for weapons and escorted him back to his mother’s house. At the residence, Juarez searched appellant and found a Bic lighter, a glass tobacco pipe, and an empty container that had an odor of marijuana.²

Appellant, age 16, testified on his own behalf that he was asleep in a chair in the backyard all night because his mother would not let him into the house because he was not following her rules. When Officer Juarez woke him, appellant told him what he was doing outside. Appellant acknowledged that he knew Juarez was an officer because he was in full uniform, but claimed he never heard Juarez tell him to stop running. Appellant got up and ran because he “freaked out” and did not know whether he was going to be arrested. He knew Juarez was chasing him, but claimed that he knelt down on the ground to surrender. According to appellant, while Juarez chased him, the officer fell and when he resumed the chase, he was angry and said he was going to “beat [his] ass.” Juarez then slammed appellant down, hit him approximately five times in the face, and struck him once with his knee. Appellant denied struggling with Juarez. Appellant admitted he had a container with marijuana residue in it in his possession at the time.

DISCUSSION

I. THE LEGALITY OF THE DETENTION

Appellant contends there is insufficient evidence to support the findings that he obstructed or delayed an officer because Officer Juarez was not engaged in the lawful performance of his duty when he detained appellant. We disagree.

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

² The testimony regarding the odor of marijuana was allowed; when the prosecutor asked Officer Juarez whether he located anything else, Juarez said marijuana residue. Appellant objected to the testimony regarding marijuana residue, and the court sustained the objection.

support a criminal conviction. (*In re Cheri T.* (1999) 70 Cal.App.4th 1400, 1404; *In re Jose R.* (1982) 137 Cal.App.3d 269, 275.) In either type of case, we must determine whether, on the entire record viewed in the light most favorable to the People, a rational trier of fact could find the defendant guilty beyond a reasonable doubt. (*People v. Ochoa* (1993) 6 Cal.4th 1199, 1206; *People v. Jones* (1990) 51 Cal.3d 294, 314.) “In making this assessment the court looks to the whole record, not just the evidence favorable to the respondent to determine if the evidence supporting the verdict is substantial in light of other facts. [Citations.]” (*People v. Holt* (1997) 15 Cal.4th 619, 667.)

“Substantial evidence” in this context means “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; accord, *People v. Hill* (1998) 17 Cal.4th 800, 848-849.)

For a violation of section 148, subdivision (a)(1), the prosecution must prove: (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. (§ 148, subd. (a)(1); *In re Muhammed C.* (2002) 95 Cal.App.4th 1325, 1329.) Thus, before a person can be convicted of this offense, there must be proof beyond a reasonable doubt that the officer was acting lawfully at the time the offense against him was committed. (*In re Manuel G.* (1997) 16 Cal.4th 805, 815; see also *People v. Gonzalez* (1990) 51 Cal.3d 1179, 1214-1215 [prosecution must prove every element of the charged offense beyond a reasonable doubt].) “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....’ [Citation.]” (*In re Manuel G., supra*, at p. 815.)

Appellant argues that Officer Juarez was not acting lawfully because the detention was not reasonable. Appellant is correct that well-established rules governing police

conduct apply here: that an investigative stop or detention is justified if the circumstances known or apparent to the officer include specific and articulable facts that make the officer suspect (1) some activity related to crime has taken place, is occurring or is about to occur, and (2) the person to be stopped is involved in that activity. The requisite facts must be such as would cause any reasonable officer in a like position, drawing on his or her training and experience, to suspect the same criminal activity and the same involvement by the person in question. (*In re Tony C.* (1978) 21 Cal.3d 888, 893.)

According to his testimony, Officer Juarez responded to a relatively early morning call from appellant's mother and found appellant asleep in the backyard. Appellant told him he was outside because his mother would not allow him into the residence. Juarez, who was provided no further information when dispatched, then determined that he needed to contact appellant's mother "to validate his statement; make sure that's the reason he wasn't inside." Juarez ordered appellant to stay in the chair while he made contact with his mother. Juarez then ran, leading to a struggle between the two and the eventual apprehension of appellant. The question presented is thus whether Juarez's actions were reasonable.

After having learned of a call to the police department by appellant's mother, from police dispatch, and speaking to appellant, a minor, it was reasonable for Juarez to suspect either that appellant might be beyond the control of his parent (Welf. & Inst. Code, § 601) or that appellant's mother failed to provide adequate care for him (Welf. & Inst. Code, § 300, subds. (b), (c)). In order to investigate either situation, Juarez requested that appellant remain seated while he contacted his mother inside the house. Juarez's action in detaining appellant for the length of time it would take to contact his mother in the residence was reasonable.

Section 148, subdivision (a)(1), uses the word "delays" in addition to "resists" and "obstructs." Officer Juarez had the legal right, indeed duty, (see *In re Tony C.*, *supra*, 21 Cal.3d at p. 894) to detain appellant. Therefore appellant, "if he was aware of the

officer's desire, had the concomitant duty to permit himself to be detained." (*People v. Allen* (1980) 109 Cal.App.3d 981, 985-986.) Thus, appellant's flight and struggle with Juarez delayed the officer's performance of his official duty, violating the statute.

Appellant relies on *In re Eskiel S.* (1993) 15 Cal.App.4th 1638 (*Eskiel*), in which an officer on patrol heard a report of a possible gang fight involving 10 to 12 people, including one possibly armed. While the officer proceeded to that location, he was advised by broadcast from other units that they were pursuing several people on foot through a park. The officer drove to the other side of the park to cut off the persons being pursued. He saw several individuals and ordered them to stop. They instead attempted to conceal themselves in a nearby creek. After being ordered to reveal themselves, the defendant and three others exited the creek. A pat-down search of the defendant revealed a bag of cocaine. The defendant was subsequently convicted of possession and resisting arrest. (*Id.* at pp. 1641-1642.)

The defendant brought a motion to suppress the evidence on the ground that the detention was unlawful. He interposed a "*Harvey-Remers-Madden*"³ objection to admission of the evidence of the contents of the radio broadcast the officer overheard. The officer testified at the suppression hearing that the only reason he detained the defendant was because he was fleeing from other officers and thereby resisting arrest. None of the other officers testified at the suppression hearing and the prosecutor failed to establish an evidentiary basis for the information contained in the broadcast. (*Eskiel, supra*, 15 Cal.App.4th at p. 1642.) The court in *Eskiel* found that the radio broadcast, which could not be traced back to its source, was nothing more than an anonymous tip,

³ A "*Harvey-Madden*" or "*Harvey-Remers-Madden*" objection is based on the holdings in *People v. Harvey* (1958) 156 Cal.App.2d 516, *Remers v. Superior Court* (1970) 2 Cal.3d 659, and *People v. Madden* (1970) 2 Cal.3d 1017. These three cases established the "collective knowledge" rule, which was reaffirmed by the California Supreme Court in *People v. Ramirez* (1983) 34 Cal.3d 541, 544-552.

and the officer's observation of the defendant in the general location identified in the broadcast was "wholly insufficient to justify a detention." (*Id.* at p. 1644.) Since the detention was unlawful, the defendant's suppression motion should have been granted. In addition, the defendant's flight from the attempted unlawful detention could not support the finding that the defendant had resisted arrest. (*Ibid.*)

We find *Eskiel* distinguishable from the facts present here. While Officer Juarez arrived at the residence without information regarding the nature of the summons, other than that appellant's mother had called, he immediately found appellant who admitted that he had been excluded from the house by his mother. Such information directly provided Juarez with reasonable suspicion that appellant could have been a delinquent or at risk. As stated in *Eskiel*, "Undoubtedly, if [the officer] had come upon a gang fight or a person armed with a rifle it would not be necessary to rely upon the radio broadcast to furnish reasonable suspicion to detain." (*Eskiel, supra*, 15 Cal.App.4th at p. 1644, fn. 2.) Here Juarez personally had reasonable suspicion to detain appellant.

Appellant also argues that, even if the initial detention was lawful, Officer Juarez's use of unreasonable force rendered the arrest unlawful. Where an arrest is made with excessive force, the arrest is unlawful. (*People v. White* (1980) 101 Cal.App.3d 161, 167.)

Appellant's account of the arrest differed from Officer Juarez's account. But appellant's assertion that there was excessive force that rendered his arrest unlawful would require that we credit appellant's account of the arrest and reject the testimony of Juarez, which the trial court found credible. This we cannot do. (*People v. Lindberg* (2008) 45 Cal.4th 1, 27 [reviewing court neither reweighs evidence nor reevaluates a witness's credibility].)

Substantial evidence supports the juvenile court's finding that the detention was lawful and that appellant committed a violation of section 148, subdivision (a)(1) and his claim to the contrary is rejected.

II. MOTION TO SUPPRESS

Appellant contends that the juvenile court's denial of his suppression motion was error and, as a result, the juvenile court's true finding on count 1 must be vacated. Officer Juarez's search following appellant's arrest led to the discovery of the tobacco paraphernalia evidence underlying the court's true finding of a violation of section 308, subdivision (b). As argued by appellant, since "flight alone does not provide probable cause for arrest," his arrest was not lawful, the subsequent search was not lawful and the true finding on count 1 must be reversed. We disagree.

Following the People's case, the court heard and denied appellant's motion to suppress evidence pursuant to Welfare and Institutions Code section 700.1. Denial of a motion to suppress evidence under Welfare and Institutions Code section 700.1 is subject to the same standard of review as a denial of a motion to suppress evidence under Penal Code section 1538.5. The juvenile court finds the facts, selects the applicable rule of law, and finally applies the rule of law to determine if there has been a constitutional violation. (*People v. Carter* (2005) 36 Cal.4th 1114, 1140.) The factual determinations of the court are reviewed for substantial evidence. (*Ibid.*) We independently review the court's selection of law and application of that law to the facts. (*Ibid.*)

In order to determine whether Officer Juarez had cause to arrest appellant, we first ascertain when the arrest occurred and what that arresting officer knew. (*People v. Price* (1991) 1 Cal.4th 324, 409.) We must accept the trial court's express or implied findings on disputed factual issues in the first step of this inquiry where those findings are supported by substantial evidence. (*Ibid.*) We then decide whether the officer's knowledge at the time of the arrest constituted adequate cause. For this question we use our independent judgment. (*Ibid.*)

As discussed above, the evidence before the court was that Officer Juarez had some reasonable suspicion that appellant was either a delinquent or at risk. He was

therefore entitled to detain him for the purpose of dispelling or confirming those suspicions quickly and by the least intrusive means. (*In re Antonio B.* (2008) 166 Cal.App.4th 435, 440.) Juarez asked appellant to stay in the chair while he contacted appellant's mother in the house. Appellant then ran, causing the officer to chase him. When he attempted to apprehend him, appellant struggled to keep his hands free and brought his knees up, physically resisting Juarez's efforts to detain him. When a peace officer has the legal right to detain a person, and that person delays or obstructs the officer, the person commits a misdemeanor. (§ 148, subd. (a)(1); *People v. Allen, supra*, 109 Cal.App.3d at pp. 985-986.) At this point, Juarez had probable cause to arrest appellant for obstructing or delaying an officer in the performance of a lawful duty.

Incident to a lawful arrest, a police officer may search and seize items from an arrestee's person. (*People v. Diaz* (2011) 51 Cal.4th 84, 90.) The search may also include entry into defendant's pockets. (*In re Charles C.* (1999) 76 Cal.App.4th 420, 424; *People v. Limon* (1993) 17 Cal.App.4th 524, 536.) The lawful search incident to appellant's arrest led to the discovery of the tobacco paraphernalia evidence underlying the court's true finding on count 1.

We find no merit to appellant's argument that the juvenile court erred when it denied his motion to suppress or that the juvenile court's true finding on count 1 must be vacated.

III. MOTION TO DISMISS

Appellant contends that the juvenile court erred when it denied his motion to dismiss counts 1 and 2 of the petition for insufficiency of the evidence, pursuant to Welfare and Institutions Code section 701.1. We disagree.

Welfare and Institutions Code section 701.1 is substantially similar to Penal Code section 1118 and as such is treated identically. (*In re Anthony J.* (2004) 117 Cal.App.4th 718, 727.) Under section 1118.1, a defendant can move for a judgment of acquittal based on insufficiency of the evidence before submission of the case to the trial court or jury.

(See *People v. Hatch* (2000) 22 Cal.4th 260, 269, fn. 5 [section 1118.1 gives the defendant “the power to move for an acquittal for insufficient evidence as a matter of law”].)

“The standard applied by a trial court in ruling upon a motion for judgment of acquittal pursuant to section 1118.1 is the same as the standard applied by an appellate court in reviewing the sufficiency of the evidence to support a conviction, that is, “whether from the evidence, including all reasonable inferences to be drawn therefrom, there is any substantial evidence of the existence of each element of the offense charged.” [Citation.] ‘The purpose of a motion under section 1118.1 is to weed out as soon as possible those few instances in which the prosecution fails to make even a prima facie case.’ [Citations.] The question ‘is simply whether the prosecution has presented sufficient evidence to present the matter to the jury for its determination.’ [Citation.] The sufficiency of the evidence is tested at the point the motion is made. [Citations.]” (*People v. Stevens* (2007) 41 Cal.4th 182, 200.)

We independently review a trial court’s ruling under section 1118.1 as to the sufficiency of the evidence to support a conviction. (*People v. Cole* (2004) 33 Cal.4th 1158, 1213.)

Appellant was charged in count 1 of unlawful purchase and possession of tobacco and tobacco paraphernalia (§ 308, subd. (b)) and in count 2 with resisting and obstructing a peace officer (§ 148, subd. (a)(1)). At the close of evidence, appellant moved to dismiss both counts for insufficiency of the evidence.

Appellant argues the motion to dismiss as to count 1 should have been granted because his arrest was unlawful, the subsequent search was not a search incident to a lawful arrest, and the evidence obtained thereby should have been excluded. According to appellant, the only evidence supporting count 1 was the Bic lighter, tobacco pipe and an empty container found on his person. Since the evidence was unlawfully seized, absence of any evidence warrants dismissal of count 1.

Appellant argues the motion to dismiss as to count 2 should have been granted because he was not lawfully detained at the time he fled from Officer Juarez. Because

the detention was not lawful, Officer Juarez was not acting in the lawful performance of his duties, and appellant's flight did not resist, delay, or obstruct the officer in the performance of his duties, as required by section 148, subdivision (a)(1), and count 2 should have been dismissed.

Here, there was substantial evidence to support the juvenile court's denial of appellant's motion to dismiss. As discussed at length above, Officer Juarez had an articulable suspicion that appellant was either a delinquent or an at-risk youth. In order to ascertain what the situation was, Juarez asked appellant to stay in the chair while he went to talk to appellant's mother. But appellant ran and Officer Juarez pursued him. Once Juarez was able to physically seize appellant, appellant obstructed and delayed Juarez's attempt to detain him. At this point, Juarez had cause to arrest appellant. When he did so, a search incident to the arrest discovered the tobacco paraphernalia.

The juvenile court did not err by denying appellant's motion to dismiss under Welfare and Institutions Code section 701.1, and we reject his claim to the contrary.

DISPOSITION

The judgment is affirmed.

Franson, J.

WE CONCUR:

Gomes, Acting P.J.

Detjen, J.