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

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

THE PEOPLE,

Plaintiff and Respondent,

v.

A.L.,

Defendant and Appellant.

F066853

(Super. Ct. No. 11CEJ600217-2)

**OPINION**

**THE COURT\***

APPEAL from a judgment of the Superior Court of Fresno County. James A. Kelley, Judge.

Kristen Owen, 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, and Louis M. Vasquez, Deputy Attorney General, for Plaintiff and Respondent.

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\* Before Cornell, Acting P.J., Gomes, J. and Kane, J.

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Following a jurisdictional hearing, the juvenile court found true the allegation that defendant, A.L., committed misdemeanor resisting, delaying, and obstructing a peace officer in the performance of his duties (Pen. Code,<sup>1</sup> § 148, subd. (a)(1)).<sup>2</sup> Following the subsequent dispositional hearing, the court declared defendant a ward of the court, placed him on home probation, and set a maximum term of confinement of one year. On appeal, defendant contends (1) there was insufficient evidence to support the court's jurisdictional finding, and (2) the court erred in setting a maximum term of confinement. We agree with defendant's second contention and will strike the specification of the term of confinement. In all other respects, we will affirm the judgment.

**FACTS**

On July 16, 2012, at approximately 7:40 p.m., defendant and a few other juveniles went into a liquor store in Fresno. When the store clerk refused to sell defendant cigarettes, defendant exchanged words with the clerk and then punched and broke a small window at the store. The damaged window was later replaced for \$50 or \$60.

At 7:45 p.m., Fresno Police Officer Caleb Janca was dispatched to the liquor store to investigate a report of petty vandalism. Based on the clerk's description of the person who broke the window, Officer Janca recognized defendant as the suspect and went to defendant's apartment complex located about half a block from the liquor store.

When Officer Janca arrived at the apartment complex, defendant and his mother were standing outside talking with Officer Janca's partner, Officer Tofer. Janca explained he sent Tofer there ahead of him to make contact with defendant to see if there was "anything that could be done, at least civilly, to resolve the issue."

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<sup>1</sup> Further statutory references are to the Penal Code unless otherwise specified.

<sup>2</sup> The court found not true an allegation of misdemeanor vandalism (§ 594, subd. (b)(2)(A)).

When Officer Janca arrived, he stayed silent while Officer Tofer was speaking with defendant and his mother to see what kind of resolution could be reached. Officer Janca's initial intent was not to detain defendant but to see what his side of the story was. Officer Janca did not engage defendant in any way until defendant apparently interrupted ("interjected") Officer Tofer, at which point Officer Janca asked defendant to calm down.

Defendant responded to Officer Janca telling him to calm down by becoming "irate" and telling the officer he had no reason to be there and that he should leave. When defendant became irate, he turned to face Officer Janca and raised his voice almost to a yell.

Officer Janca responded to defendant by trying "to make a reasonable effort to detain him to calm him down." Janca explained he "tried to grab one of [defendant's] arms to apply a wrist block control hold." The officer was unsuccessful because defendant pulled away from him. At the same time, defendant's mother stepped between defendant and the officer.

When Officer Janca tried to grab defendant's arm, he had already made the decision to detain defendant because defendant's demeanor was becoming increasingly aggressive towards himself and his partner. When defendant's mother stepped between Officer Janca and defendant, she was also yelling. Officer Janca could not specifically recall what she was yelling but documented in his report that she was yelling at defendant to stop resisting

Officer Janca tried to grab hold of defendant's arm a second time. Both officers had to grab defendant to control him. Defendant was yelling loudly as the officers tried to get handcuffs on him. Defendant also kept tensing his body, making it hard for them to manipulate his limbs.

Once defendant was handcuffed, he made it difficult for Officer Janca to take him to the patrol car. He did not walk and kept tensing his muscles. When Officer Janca

finally got defendant inside the patrol car, the officer drove defendant over to the liquor store where he was identified by the store clerk.

When defendant was initially placed in the back of the patrol car, he was screaming loudly and making “like growling heavily, panting noises.” He appeared to be “very, very, very upset.” After Officer Janca took defendant out of the car at juvenile hall, he noticed defendant had spat all over the seat and back window.

### ***The defense***

Defendant’s mother, N.P. (mother), testified she was talking with the other officer, when Officer Janca arrived. While Officer Janca was patting defendant down, mother heard defendant say, “Mama, he touched my penis in the wrong way.” Officer Janca said he did not do that, grabbed defendant by the arm, and threw defendant in his car.

According to mother, Officer Janca put handcuffs on defendant without any assistance from Officer Tofer, who was just standing there. Only five to seven seconds passed from the time Officer Janca searched defendant to the time he put defendant in the car.

Defendant was crying when he was being handcuffed and mother told him to calm down. Mother denied that defendant was angry, that he tensed up, or did any of the things Officer Janca described.

## **DISCUSSION**

### ***I. Sufficiency of the Evidence***

In evaluating the sufficiency of the evidence in a juvenile proceeding, the court must review the whole record in the light most favorable to the judgment below to determine whether it discloses 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. (*In re Christopher F.* (2011) 194 Cal.App.4th 462, 471.)

Section 148, subdivision (a)(1) provides, in relevant part, “[e]very 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. Thus, “[t]he legal elements of a violation of section 148, subdivision (a) are as follows: (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. [Citation.]” (*In re Muhammed C.* (2002) 95 Cal.App.4th 1325, 1329.)

Defendant challenges the sufficiency of the evidence on the second element, arguing he did not violate section 148, subdivision (a)(1), because Officer Janca was not acting lawfully when he attempted to detain defendant and therefore was not engaged in the performance of his duties when defendant resisted him. We disagree.

The legal basis upon which a peace officer may detain a citizen has been explained as follows: “[I]n order to justify an investigative stop or detention the circumstances known or apparent to the officer must include specific and articulable facts causing him to suspect that (1) some activity relating to crime has taken place or is occurring or about to occur, and (2) the person he intends to stop or detain is involved in that activity.” (*In re Tony C.* (1978) 21 Cal.3d 888, 893, superseded on other grounds by Cal. Const., art. I, § 28.) “The corollary to this rule, of course, is that an investigative stop or detention predicated on mere curiosity, rumor, or hunch is unlawful, even though the officer may be acting in complete good faith.” (*Ibid.*, citing *Terry v. Ohio* (1968) 392 U.S. 1, 22.)

It is true that when Officer Janca arrived at defendant’s apartment complex, defendant appeared to be talking calmly with Officer Tofer, and there was no evidence defendant was doing anything to resist, delay, or obstruct that officer’s investigation into the alleged vandalism. However, Officer Janca noticed that defendant started to look nervous when he saw Officer Janca arrive. Moreover, Officer Janca had simply asked defendant to calm down, when defendant responded disproportionately by becoming irate, yelling at the officer, and telling the officer to leave. Under these circumstances,

which reflected a display of increasing emotional agitation by defendant towards the police officers, Officer Janca could reasonably determine it was appropriate to detain defendant for their protection. Thus, the evidence was sufficient to support a finding that Officer Janca was engaged in the performance of his duties when defendant resisted the officer's attempts to detain him.

Defendant does not quarrel with the proposition that, in carrying out an investigation, police officers may take reasonable steps, including detaining a suspect, to protect themselves from violence. However, defendant complains "there was no evidence that [he] became violent, or that there was a need to defuse a violent situation" and suggests he was merely "verbally rude and raised his voice." Defendant's suggestion is belied by the evidence just discussed of his emotional volatility during the police encounter, which gave Officer Janca reasonable grounds to suspect defendant was about to become violent. The potential for violence was also indicated by the fact defendant's mother apparently saw a need not only to yell at her son but also to insert herself *physically* between defendant and Officer Janca. On the record before us, we have no difficulty concluding that substantial evidence supports the juvenile court's finding that defendant resisted, delayed, and obstructed Officer Janca in the performance of his duties in violation of section 148, subdivision (a)(1).

## ***II. Maximum Term of Confinement***

Defendant contends, and the People concede, the juvenile court erred in setting a maximum term of confinement because defendant was not removed from the physical custody of his parent. We agree and will strike the specification of the term of confinement. (*In re Matthew A.* (2008) 165 Cal.App.4th 537, 541.)

### **DISPOSITION**

The maximum confinement term set by the juvenile court is stricken. In all other respects, the judgment is affirmed.