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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE,

Plaintiff and Respondent,

v.

MARQUIS DEION TURNER,

Defendant and Appellant.

G051946

(Super. Ct. No. 14NF4227)

O P I N I O N

Appeal from a judgment of the Superior Court of Orange County, Michael J. Cassidy, Judge. Affirmed.

Gerald J. Miller, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Julie L. Garland, Assistant Attorney General, Charles C. Ragland and Kimberley A. Donohue, Deputy Attorneys General, for Plaintiff and Respondent.

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A jury convicted defendant, Marquis Deion Turner, of one felony charge of false imprisonment and a related misdemeanor charge of resisting, obstructing, or delaying a peace officer in the performance of his or her duties. (Pen. Code, § 148, subd. (a)(1).)¹ In this appeal, defendant challenges only the misdemeanor charge. Defendant argues that when he failed to comply with a peace officer’s repeated orders to sit down, he did not delay or obstruct that peace officer. We disagree and affirm the conviction.

I

FACTS AND PROCEDURAL HISTORY

On October 4, 2014, at around 10:00 p.m., Anaheim Police Officer Ryan Hunter responded to a possible robbery-in-progress dispatch call that had just occurred in a large parking lot of a strip mall in the city of Anaheim.²

While driving to the location in his patrol vehicle on Anaheim Boulevard, the officer saw defendant, who matched the description of the alleged robbery suspect. Defendant was across the street, walking on the sidewalk in the opposite direction of the officer. Defendant was walking alongside a young girl, Maria A., who later testified that she had never met defendant before. Maria A. said that defendant had just approached her on the street, put his arms around her shoulder, and told her he was either going to “beat” or “punch” her if she didn’t walk with him.

The officer made a U-turn on Anaheim Boulevard. As the officer drove closer to the couple from behind, he squawked the air horn of his patrol vehicle and activated the overhead lights, but defendant and Maria A. kept walking away from him. The officer drove just past them and stopped.

¹ Any further undesignated statutory references are to the Penal Code.

² The evidence regarding the alleged robbery is irrelevant to this appeal and is therefore omitted. Further, we refer to the “officer” for clarity, though it appears Hunter was later promoted to a detective position before the trial.

As the officer got out of his patrol vehicle, Maria A. “abruptly turned around and ran away.” The officer walked towards defendant and ordered him “more than three” times to either get down on the ground or to sit down. Defendant initially continued to walk, “but then, he just stopped where he was, and simply stood there.” As the officer got closer he drew his pistol, pointed it at defendant, and continued to give him commands to get down on the ground; again, “more than three” times. The officer then drew his pistol “because of the nature of the call that had come out as a possible armed robbery in progress, and [defendant] was not obeying my commands.” When the officer got close enough, he knocked defendant to the ground by kicking him in the stomach. The officer then holstered his weapon and placed defendant in handcuffs without any kind of a struggle.

A jury acquitted defendant of a felony robbery charge and other lesser included offenses. (§§ 211, 664/211, 212.5, subd. (c).) The jury convicted defendant of a felony charge of falsely imprisoning Maria A., and a misdemeanor charge of resisting, delaying, or obstructing the officer in the performance of his duties by “failing to obey the officer’s order to get on the ground.” (§§ 237, 148, subd. (a)(1).)

II

DISCUSSION

In a sufficiency of the evidence claim on appeal we ask whether a rational fact finder could have concluded defendant was guilty beyond a reasonable doubt. (*People v. Rowland* (1992) 4 Cal.4th 238, 269.) “Reversal on this ground is unwarranted unless it appears ‘that upon no hypothesis whatever is there sufficient substantial evidence to support [the conviction].’ [Citation.]” (*People v. Bolin* (1998) 18 Cal.4th 297, 331.) Evidence is substantial when it is reasonable in nature, credible, and of solid value. (*People v. Ramsey* (1988) 203 Cal.App.3d 671, 682.) We consider the evidence, including the reasonable inferences drawn from the evidence, in the light most favorable to the judgment. (*People v. Valdez* (2004) 32 Cal.4th 73, 104.)

A violation of section 148, subdivision (a)(1), consists of three elements: (1) ““the defendant willfully resisted, delayed, or obstructed a peace officer””; (2) this occurred ““when the peace officer was 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.”” (*People v. Ghebretensae* (2013) 222 Cal.App.4th 741, 759.)

Defendant challenges only the first element on appeal. That is, he argues that merely standing still and failing to obey a peace officer’s orders to get on the ground—without any accompanying form of physical resistance—does not constitute resistance, delay or obstruction. We disagree and find no support for that argument either in the language of the statute, or in the case law that has interpreted it.

“The fundamental purpose of statutory construction is to ascertain the intent of the lawmakers so as to effectuate the purpose of the law. [Citations.]” (*In re Marriage of Harris* (2004) 34 Cal.4th 210, 221, quoting *People v. Pieters* (1991) 52 Cal.3d 894, 898.) “We begin by examining the statutory language, giving the words their usual and ordinary meaning. [Citation.] If there is no ambiguity, then we presume the lawmakers meant what they said, and the plain meaning of the language governs. [Citations.] If, however, the statutory terms are ambiguous, then we may resort to extrinsic sources, including the ostensible objects to be achieved and the legislative history. [Citation.]” (*Day v. City of Fontana* (2001) 25 Cal.4th 268, 272.)

“Every person who willfully *resists, delays, or obstructs* any public officer [or] peace officer . . . in the discharge or attempt to discharge any duty of his or her office or employment, when no other punishment is prescribed, shall be punished by a fine not exceeding one thousand dollars (\$1,000), or by imprisonment in a county jail not to exceed one year, or by both that fine and imprisonment.” (§ 148, subd. (a)(1), italics added.)

In this appeal, the language of section 148, subdivision (a)(1), is plain and we need no extrinsic sources for guidance. While the word “resist” suggests the requirement of a physical act, the alternative proscribed conduct of either “delaying” or “obstructing” a peace officer in the performance of his or her duties does not.

“No decision has interpreted the statute to apply only to physical acts, and the statutory language does not suggest such a limitation.” (*People v. Quiroga* (1993) 16 Cal.App.4th 961, 968 (*Quiroga*)). Section 148 “penalizes even passive delay or obstruction of an arrest, such as refusal to cooperate.” (*People v. Curtis* (1969) 70 Cal.2d 347, 356, fn. 6, disapproved on another ground in *People v. Gonzalez* (1990) 51 Cal.3d 1179, 1222, superseded by statute on another point of law as stated *People v. Centeno* (2014) 60 Cal.4th 659, 676.) In the case of *In re Muhammed C.* (2002) 95 Cal.App.4th 1325, 1330, the appellate court concluded that “a reasonable inference could be drawn that appellant willfully delayed the officers’ performance of duties by refusing the officers’ repeated requests that he step away from the patrol car”

Here, the officer responded to a possible armed robbery-in-progress dispatch call. Defendant matched the description of the suspect and he was walking on a nearby sidewalk. For safety reasons, the officer sought to detain defendant for further investigation by ordering him to get on the ground. Defendant refused to get on the ground after being ordered to do so more than six times; more than three of those orders were at gunpoint. Thus, there was substantial evidence for the jury to reasonably conclude that defendant “delayed” or “obstructed” the officer as he attempted to detain defendant during his investigation of the robbery-in-progress dispatch call.

Defendant quotes only a portion of *People v. Quiroga, supra*, 16 Cal.App.4th 961, for the proposition that under section 148, subdivision (a)(1), “a person’s failure to respond with alacrity to police orders” cannot constitute a violation.

(*Quiroga* at p. 966.) But in *Quiroga*, the appellate court was speaking about that part of the record where it was clear that the defendant actually complied with an officer's orders, although slowly: "It is true that [defendant] complied slowly with [the officer's] orders, but it surely cannot be supposed that Penal Code section 148 criminalizes a person's failure to respond with alacrity to police orders." (*Ibid.*)

Unlike *Quiroga*, there was no evidence that defendant ever complied with the officer's repeated orders to get on the ground, either slowly or otherwise. Further, there was sufficient evidence for the jury to reasonably conclude that defendant had ample time and ability to comply with the officer's orders.

Finally, defendant cites *People v. Wetzel* (1974) 11 Cal.3d 104 (*Wetzel*), for the proposition that merely refusing to move in violation of a peace officer's orders cannot form the basis of a section 148 violation. But as the Attorney General correctly points out, *Wetzel* involved that defendant's assertion of her Fourth Amendment rights. Specifically, the defendant's constitutional right to withhold consent when police officers ordered her to move aside as they tried to enter her home without a warrant. (*Wetzel* at p. 107-108.)

Unlike *Wetzel*, there is nothing in this record to suggest that defendant ever challenged the constitutionality of his detention. Nor does he do so in this appeal.

III
DISPOSITION

The judgment is affirmed.

MOORE, ACTING P. J.

WE CONCUR:

IKOLA, J.

THOMPSON, J.