Filed 10/18/16 In re Christian S. CA2/6

**NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS**



IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

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| In re CHRISTIAN S., a Person Coming Under the Juvenile Court Law. | 2d Juv. No. B268723<br>(Super. Ct. No. 1436300)<br>(Santa Barbara County) |
| THE PEOPLE,<br><br>Plaintiff and Respondent,<br><br>v.<br><br>CHRISTIAN S.,<br><br>Defendant and Appellant. | |

Christian S. (minor) appeals from the judgment entered after the juvenile court sustained a wardship petition filed pursuant to Welfare and Institutions Code section 602. The court found true allegations that minor had committed two misdemeanor offenses: resisting a peace officer (count 1 - Pen. Code, § 148, subd. (a)(1))[1] and carrying a switchblade knife (count 2 - § 21510, subd. (b)). The court specified a maximum confinement time of one year on count 1 and six months on count 2. Minor was placed on probation on condition that he be confined in Los Prietos Boys Camp for 180 days, but the court suspended execution of the camp commitment.

[1] All statutory references are to the Penal Code unless otherwise stated.

Minor claims that the evidence is insufficient to support the juvenile court's findings. We affirm the true finding on count 1 but reverse the true finding on count 2.

*Procedural and Factual Background*

Minor was initially placed in the Juvenile Drug Court Program. As a condition of his entry into the program, he agreed to "stipulate to the facts in law enforcement reports" and "give up [his] right to confront and cross-examine witnesses." Had he successfully completed the program, the deputy district attorney would have asked the court to dismiss the wardship petition. Minor failed to complete the program, so the matter was set for a contested jurisdictional hearing.

No live testimony was presented at the jurisdictional hearing. Pursuant to minor's prior agreement to "stipulate to the facts in law enforcement reports," the parties stipulated to the facts stated in a police report written by Officer Felix Diaz of the Santa Maria Police Department. The facts are as follows: At approximately 1:00 a.m., Officers Diaz and Whitney were on "special patrol" in an unmarked vehicle in the Evans Park housing area of Santa Maria. The police report does not say whether they were in uniform. The special patrol was in response to "a recent spike in criminal activity in several areas of the city including the Evans Park housing area." Other officers "had just left the area after a report of several gang members fighting" there. The other officers had arrested "several" persons "for various charges," but "several [persons] had run from the area."

"[I]t was past curfew." Officer Diaz saw a group of juveniles, including minor, "in the center of the park." The juveniles were standing in front of the screen door of a residence. "The juveniles appeared to be causing a disturbance and did not appear to belong [there]." The police report does not describe the nature of the "disturbance." Diaz asked the juveniles if they lived at the residence. They replied that they did not and "were trying to get a ride."

Minor was 16 years old. Officer Diaz asked him "to walk over to me." Minor refused and turned away from Diaz with "his hands in his pocket[s]." When Diaz tried to grab minor's right arm, minor "immediately pulled away from [Diaz]." Diaz

"was able to grab a hold of [minor's] sweater and he continued to pull away." Eventually, Diaz "was able to grab [minor's] right arm and lay him on the grass." Diaz put minor in handcuffs and "stood him up," but "he immediately again began pulling away advising us to get off of him." Diaz then "placed [minor] under arrest."

During a search incident to the arrest, Diaz found a "switch blade" in minor's pocket. The blade was approximately 3.5 inches long. At the police station, a detective identified minor as a "Northwest gang member."

At the jurisdictional hearing, the deputy district attorney argued: "Detective Felix Diaz, being out on patrol, common sense tells you that they're in uniform, so [minor] knew that [Diaz] would be a police officer. And he was performing his duty and investigating the high crime area and the fact the juveniles were out past curfew. So I believe that when [minor] pulled away, he was committing a [violation of section] 148." Defense counsel protested, "[T]his officer was in an unmarked patrol vehicle. There's no indication that he was in uniform. . . . Therefore, the minor . . . did not know and it's not reasonable for him that he should have known that these . . . were officers engaging in lawful activity." The juvenile court found the allegations of the petition true beyond a reasonable doubt without explaining the reasons for its finding.

*Resisting a Peace Officer in Violation of Section 148(a)(1)*

"'The legal elements of a violation of section 148, subdivision (a)[(1)] 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. [Citations.]' [Citation.]" (*In re Muhammed C.* (2002) 95 Cal.App.4th 1325, 1329.)

*Substantial Evidence Supports the Finding that Officer Diaz Was Engaged in the Performance of His Duties*

Minor contends that Officer Diaz was not "properly engaged in the performance of his duties when he arrested [minor] because he lacked a reasonable suspicion for detaining [him]." "[B]ecause there was nothing improper about [minor's]

refusal to cooperate with his illegal detention, Officer Diaz had no legal basis to handcuff him and place him under arrest."

Minor asserts that it is a question of law, subject to de novo review on appeal, whether Officer Diaz was engaged in the performance of his duties when he detained minor. We disagree. That Diaz was engaged in the performance of his duties is an element of the crime of resisting a peace officer. Because appellant claims that the evidence is insufficient to prove this element, we apply the substantial evidence standard of review. (*People v. Battle* (2011) 198 Cal.App.4th 50, 62 ["when a criminal defendant claims insufficiency of the evidence on a particular element of the crime of which he was convicted, we presume the evidence of that element was sufficient, and the defendant . . . must present his case to us in a manner consistent with the substantial evidence standard of review"].)

"Our review is governed by the same principles applicable to adult criminal appeals. [Citation.] Our function is 'to determine whether the record contains any substantial evidence tending to support the finding of the trier of fact, and in considering this question we must view this evidence in the light most favorable to the finding.' [Citation.] Substantial evidence is evidence that is reasonable, credible, and of solid value such that a reasonable trier of fact . . . 'could have found the essential elements of the crime beyond a reasonable doubt.' [Citation.]" (*In re Chase C.* (2015) 243 Cal.App.4th 107, 113.)

"'A detention is reasonable under the Fourth Amendment when the detaining officer can point to specific articulable facts that, considered in light of the totality of the circumstances, provide some objective manifestation that the person detained may be involved in criminal activity.' [Citation.]" (*People v. Casares* (2016) 62 Cal.4th 808, 837-838.) We need not decide whether under this standard the evidence is sufficient to justify minor's detention. The police may lawfully detain a juvenile curfew violator. (Welf. & Inst. Code, § 625.5, subd. (c); *In re Ian C.* (2001) 87 Cal.App.4th 856, 860.) A reasonable trier of fact could have found beyond a reasonable doubt that, in detaining minor, Officer Diaz was engaged in the performance of his duty

to enforce Santa Maria's curfew ordinance. In the police report Officer Diaz noted that "it was past curfew."

Minor argues that he was not in violation of the curfew ordinance because he was not "loitering" as that term is defined in the ordinance. Section 6-3.02 of the Santa Maria Municipal Code provides, "It is unlawful for any minor to loiter upon the public street, avenues, highways, roads, alleys, sidewalks, parks, playgrounds, or other public grounds, public places, parking lots or vacant lots in the City during the hours between 11:00 p.m. and 6:00 a.m." "'Loiter' has the same meaning as in California Penal Code Section 647(h)." (*Id*., § 6-3.01(c).) Thus, "'loiter' means to delay or linger without a lawful purpose for being on the property and for the purpose of committing a crime as opportunity may be discovered." (§ 647, subd. (h).)

It would be improper for this court to decide that, based on the Santa Maria curfew ordinance's definition of "loiter," substantial evidence does not support the juvenile court's finding that Officer Diaz was engaged in the performance of his duties when he detained minor. The ordinance was not before the juvenile court and is not part of the record on appeal. The juvenile court was not asked to take judicial notice of the ordinance. Minor's counsel did not object when the deputy district attorney argued that Diaz "was performing his duty and investigating . . . the fact the juveniles were out past curfew." Because the curfew ordinance was "not presented at the trial that was actually held," the specific language of the ordinance "cannot be considered in evaluating the sufficiency of the evidence that was presented." (*People v. Banuelos* (2005) 130 Cal.App.4th 601, 607.)

Even if the juvenile court had taken judicial notice of the curfew ordinance, a reasonable trier of fact could have found beyond a reasonable doubt that, in detaining minor, Officer Diaz was engaged in the performance of his duty to investigate a suspected curfew violation. (See Welf. & Inst. Code, § 625.5, subd. (c).) Diaz had reason to suspect that minor was "loitering" within the meaning of the ordinance. Minor may have been one of the "several gang members" who had fought each other in Evans

Park and "had run from the area" upon the arrival of the police, who "had just left the area."

*Substantial Evidence Supports the Finding that Minor Knew or Should Have Known that Diaz Was a Peace Officer*

Minor claims that "there is insufficient evidence . . . demonstrating that [he] knew or should have known Officer Diaz was an officer of the law when he accosted [minor.]" We "'must . . . presume in support of the judgment the existence of every fact the trier could reasonably deduce from the evidence.' [Citations.]" (*People v. Johnson* (1980) 26 Cal.3d 557, 576-577.) Minor must have realized that Diaz was a peace officer when he was handcuffed, yet he continued to resist. According to the police report, Diaz put minor in handcuffs and "stood him up," but "he immediately again began pulling away advising us to get off of him." Minor's resistance upon being handcuffed is sufficient to show a violation of section 148, subdivision (a)(1). We reject minor's contention that his knowledge of Diaz's peace officer status at the time of handcuffing "was too late."

*Switchblade Knife*

Minor maintains that the evidence is insufficient to show that the knife he was carrying was a "switchblade knife." "'[S]witchblade knife' means a . . . spring-blade knife, snap-blade knife, gravity knife, or any other similar type of knife, the blade or blades of which are two or more inches in length and which can be released automatically by a flick of a button, pressure on the handle, flip of the wrist or other mechanical device, or is released by the weight of the blade or by any type of mechanism whatsoever." (§ 17235.)

Minor notes that "the knife itself was not presented as evidence" at the jurisdictional hearing and that "the record is silent as to whether the knife . . . actually functioned as a switchblade." The police report includes a photograph of the knife with the blade in the fully open position.

At the jurisdictional hearing, minor's counsel objected that Officer Diaz's statement in the police report about finding a "switch blade" in minor's pocket was

"speculation." The juvenile court responded: "[Y]ou're agreeing to the facts as contained in the report. If the officer says it's a switchblade - guess what? - it's a switchblade." Counsel replied, "Right."

Minor stipulated to the "facts" stated in the police report. He did not stipulate to Officer Diaz's legal conclusions. That the knife constitutes a "switchblade knife" as defined by section 17235 is a legal conclusion. There is no evidence that the knife's blade "can be released automatically by a flick of a button, pressure on the handle, flip of the wrist or other mechanical device, or is released by the weight of the blade or by any type of mechanism whatsoever." (*Ibid*.) The police report gives no explanation of the release mechanism. "We are required to construe criminal statutes strictly. [Citation.] The [police report] does not measure up to the requirement of substantial evidence to meet the statutory description strictly construed." (*In re Roderick S.* (1981) 125 Cal.App.3d 48, 52.)

The People argue, "The picture of the knife in the police report . . . depicts a button on the knife that the juvenile court could reasonably conclude substantiated the opinion [that it was a switchblade] and enables it to function as a switchblade." But no evidence was presented that pressing this button "automatically" releases the knife's blade. (§ 17235.)

The knife was booked into evidence. The deputy district attorney told the court: "I did not produce it today. There was not enough time to bring it in for today's hearing." When appellant objected to Officer Diaz's legal conclusion that the knife was a switchblade, the trial court should have required the deputy district attorney to produce the knife.

*Disposition*

The juvenile court's true finding on count 2, carrying a switchblade knife in violation of section 21510, subdivision (b), is reversed for insufficiency of the evidence. In all other respects, the judgment is affirmed.

NOT TO BE PUBLISHED.

YEGAN, Acting P. J.

We concur:

PERREN, J.

TANGEMAN, J.

Arthur A. Garcia, Judge

Superior Court County of Santa Barbara

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Elizabeth K. Horowitz, under appointment by the Court of Appeal, for Defendant and Appellant.

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