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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

In re D.W., a Person Coming
Under the Juvenile Court Law.

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN
AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

D.W.,

Defendant and Appellant.

B275450

(Los Angeles County
Super. Ct. No. JJ19813)

APPEAL from an order of the Superior Court of Los Angeles County, Arthur M. Lew, Judge. Reversed.

Mary Bernstein, under appointment by the Court of Appeal, for Defendant and Appellant.

Xavier Becerra, Attorney General of California, Gerald A. Engler, Chief Assistant Attorney General, Lance E. Winters, Assistant Attorney General, Victoria B. Wilson and Lindsey Boyd, Deputy Attorneys General, for Plaintiff and Respondent.

INTRODUCTION

D.W. appeals the juvenile court's order sustaining a Welfare and Institutions Code section 602 petition alleging that D.W. committed two counts of resisting arrest. D.W. argues that the officers lacked authority to detain him because there was no objective manifestation of criminal activity. We agree and reverse because the officer's directives were unlawful.

FACTS AND PROCEDURAL BACKGROUND

1. D.W.'s Encounter with Police

On November 3, 2015, between 7:45 p.m. and 8:00 p.m., a Los Angeles police officer and his partner working in a gang unit drove into the parking lot of the Jordan Downs Housing Development (Development) at 102nd Street and Juniper in Los Angeles County. As of that time, multiple shootings and homicides had recently occurred inside or just outside the Development. The officer and his partner were patrolling to suppress gang activity.

While in his patrol vehicle, the officer saw 15-year-old D.W. and another person in the Development's parking lot. D.W. appeared to be walking away as if to avoid the officers. The officer and his partner exited their patrol car and the partner ordered the two to stop. They asked D.W. where he lived.

D.W. said he lived "around here," and D.W. continued walking. The officer did not ask further questions or seek clarification. The officers then grabbed D.W. by the arms. D.W. became rigid and pushed his arms away from his body, preventing the officers from handcuffing him. While the officers continued to order D.W. to put his hands behind his back and stop resisting, D.W. kept pushing his hands away. The officers then guided him to a grassy area and brought D.W. to the

ground. The officers continued to give commands; D.W. kept trying to pull away and repeatedly said “no.” Within 30 to 45 seconds, the officers cuffed D.W. and placed him in the patrol car.

The police brought D.W. to the station, where he waived his *Miranda* rights. D.W. stated he knew the police had the authority to detain him and that he did not want to cooperate.

2. *The Penal Code Section 602 Petition and Adjudication Hearing*

On January 4, 2016, the district attorney filed a Welfare and Institutions Code section 602 petition alleging that D.W. had committed two counts of misdemeanor resisting, delaying, or obstructing a public officer (Pen. Code, § 148, subd. (a)(1)).¹ D.W. was on probation at the time.

On May 9, 2016, the juvenile court held a contested adjudication hearing on the charges. Only one officer (referred to above as the partner) testified at the hearing. The officer indicated that he thought D.W. and his companion might be trespassing and stopped him to conduct a trespassing investigation. The prosecutor argued that the officers conducted a valid trespassing investigation and by that walking away from the officers and resisting their efforts to handcuff him, D.W. violated section 148.

Counsel for D.W. argued that there was no reasonable cause to detain D.W. and D.W. had a right to walk away from the police. Counsel asserted that unless the officer had a reasonable suspicion that D.W. committed or was about to commit a crime, the officers lacked the right to detain him. Counsel argued that his client was stopped because of his race: “A black kid walking

¹ All subsequent statutory references are to the Penal Code unless indicated otherwise.

down -- minding his own business, if you don't answer a police officer, . . . if you just don't answer his question, you're subject to arrest just because you didn't answer that question. And that's what we have here."

The court sustained the petition, and ordered that its previous order for home on probation, made August 14, 2015, remain in full force and effect.

DISCUSSION

1. *Standard of Review*

D.W. argues that the evidence is insufficient to support the court's finding that he resisted arrest since the officers' actions were not lawful. "In reviewing a challenge of the sufficiency of the evidence, we apply the following standard of review: '[We] consider the evidence in a light most favorable to the judgment and presume the existence of every fact the trier could reasonably deduce from the evidence in support of the judgment. The test is whether substantial evidence supports the decision, not whether the evidence proves guilt beyond a reasonable doubt.' [Citations.] Our sole function is to determine if any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." (*In re Arcenio V.* (2006) 141 Cal.App.4th 613, 615.) When examining determinations of reasonable suspicion and probable cause, we review the trial court's factual findings for substantial evidence, and review de novo the application of the law to those facts. (*People v. Hernandez* (2008) 45 Cal.4th 295, 299; *People v. Butler* (2003) 111 Cal.App.4th 150, 159 [appellate courts review reasonable suspicion and probable cause determinations de novo].)

2. *Elements of Misdemeanor Resisting Arrest*

The juvenile court found D.W. in violation of section 148. “The 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.” (*People v. Simons* (1996) 42 Cal.App.4th 1100, 1108-1109.) However, “‘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 Chase C.* (2015) 243 Cal.App.4th 107, 114.) It is not a crime to nonviolently resist an unlawful police action. (*Id.* at p. 113) “‘Under California law, an officer is not lawfully performing her duties when she detains an individual without reasonable suspicion or arrests an individual without probable cause.’” (*Id.* at p. 114.)

3. *The Resisting Arrest Finding Was Not Supported by Substantial Evidence*

The State argues that the Development’s reputation for criminal activity combined with D.W. walking away and stating he lived “around here” gave rise to a reasonable suspicion that D.W. was trespassing. We disagree.

Here, the police officers lacked a reasonable suspicion to detain D.W. There was no evidence indicating that he had committed, was committing, or was about to commit a crime. All that could be deduced from the police officer’s interaction with D.W. was that he lived in the area. D.W. could have been visiting someone at the Development or could have lived there himself. We note that whether D.W. was visiting someone at the

Development is unknown because the officers did not investigate trespassing after detaining him.² Also, that D.W. was walking in a neighborhood between 7:45 p.m. and 8:00 p.m., a time in the evening when people still engage in social interaction, also does not give rise to a suspicion of criminal activity. (See *People v. Souza* (1994) 9 Cal.4th 224, 241 [Two people on the sidewalk at 3:00 a.m. talking to the occupants of a car parked in total darkness in a “high crime area,” coupled with the evasive conduct by the occupants of the car and defendant’s sudden flight when the officer directed his patrol car’s spotlight towards the group, justified detention.].)

D.W. did not run away or act in a suspicious manner. Rather, the 15 year old was simply walking through a parking lot with a friend and chose not to interact with the police officers. D.W. had every right to avoid interacting with the officers in that situation. A person approached by a law enforcement officer, who does not have a reasonable ground for detaining that person, “need not answer any question put to him; indeed, he may decline to listen to the questions at all and may go on his way. [Citations.] He may not be detained even momentarily without reasonable, objective grounds for doing so; and his refusal to listen or answer does not, without more, furnish those grounds.” (*Florida v. Royer* (1983) 460 U.S. 491, 497–98.)

Finally, the fact that the detention took place in a high crime area also fails to establish a reasonable suspicion of criminal activity. “Reasonable suspicion . . . cannot be based

² The officers only asked for D.W.’s address when he was taken into custody. The officers did not ascertain whether he was visiting someone at the Development. D.W. was not charged with trespassing.

solely on factors unrelated to the defendant, such as criminal activity in the area.” (*People v. Perrusquia* (2007) 150 Cal.App.4th 228, 233.) The high crime area “justification is so easily subject to abuse that this fact alone should not be deemed sufficient to support the intrusion.” (*In re Tony C.* (1978) 21 Cal.3d 888, 897, superseded by constitutional amendment on another point in *In re Christopher B.* (1990) 219 Cal.App.3d 455, 460, fn. 2.) “ ‘To hold that police officers should in the proper discharge of their duties detain and question all persons in that location . . . would for practical purposes involve an abrogation of the rule requiring substantial circumstances to justify the detention and questioning of persons on the street.’ ” (*Ibid.*)

We conclude the officers were not acting lawfully when they detained and arrested D.W., and therefore substantial evidence does not support the juvenile court’s finding.

DISPOSITION

We reverse the juvenile court’s order.

RUBIN, Acting P.J.

WE CONCUR:

FLIER, J.

GRIMES, J.