Filed 12/31/12 In re P.B. CA2.1

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

In re P.B., a Person Coming Under the Juvenile Court Law.	B239071 (Los Angeles County Super. Ct. No. PJ45267)
THE PEOPLE, Plaintiff and Respondent, v. P.B., Defendant and Appellant.	

APPEAL from a judgment of the Superior Court of Los Angeles County, Morton Rochman, Judge. Affirmed with directions.

Tanya Dellaca, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Lance E. Winters, Senior Assistant Attorney General, Linda C. Johnson, Supervising Deputy Attorney General, and Toni R. Johns Estaville, Deputy Attorney General, for Plaintiff and Respondent.

P.B. appeals from the juvenile court's order declaring her a ward of the court after sustaining a petition alleging she committed grand theft from the person of another, and resisted, delayed or obstructed a peace officer attempting to discharge his duties. Appellant contends there is insufficient evidence to support her conviction on either count. We remand the matter to the juvenile court with instructions to calculate appellant's predisposition credits and otherwise affirm.

PROCEDURAL BACKGROUND

In November 2011, 15-year-old defendant P.B., was the subject of a Welfare and Institutions Code section 602 petition alleging that she committed grand theft from the person of another (Pen. Code, § 487, subd. (c);[1] count 1); and resisted, delayed or obstructed a peace officer attempting to discharge his duties (§ 148, subd. (a)(1); count 2).

The juvenile court sustained the petition, finding both counts 1 (a felony) and 2 (a misdemeanor) true beyond a reasonable doubt. The court declared appellant a ward of the court, and ordered her suitably placed. This appeal followed.

FACTUAL BACKGROUND

On the afternoon of September 30, 2011, 12-year-old Manuel B. went to a football game at Sylmar High School. While at the high school, Manuel found himself walking with appellant, whom he did not know, and her male companion, and appellant asked if she could "borrow" Manuel's cell phone.

Manuel held his phone out to appellant in his open palm and appellant took it. Appellant never made a phone call. Instead, she asked her companion for a phone number, appeared to punch random numbers into the phone and then ran off with Manuel's phone. Manuel was scared; he did not run after appellant and did not report the incident to anyone, but two security guards had witnessed the incident.

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[1] All undesignated statutory references are to the Penal Code.

A few minutes later, school police officer George Flores overheard another officer telling appellant she could not attend the game and had to leave. Flores watched appellant move away from the ticket booth. At about the same time, Flores received information that appellant was the suspect in a robbery that had just been reported at the football game, and he was ordered to detain her. Flores followed appellant who, by then, was running toward the front of the school. As he ran after her, Flores, dressed in his full uniform ("badge, gun, belt, everything") shouted, "Stop," "Stop running," and "School police" at appellant, who at most three or four car lengths in front of him. There was one bystander between Flores and appellant. Appellant turned back to looked toward Flores at one point, but continued sprinting away to avoid him. Appellant was apprehended by other officers.

Appellant presented no evidence in her defense.

DISCUSSION

1. Grand theft from the person of another

Appellant maintains there is insufficient evidence to support the trial court's finding that she committed grand theft from the person of another because there is no evidence she intended to steal at the time she took Manuel's phone. She insists that, at most, the evidence shows she meant to borrow the phone and only developed the intent to steal it after the phone was in her possession. We disagree.

a. Standard of proof

"The standard of proof in juvenile proceedings involving criminal acts is the same as the standard in adult criminal trials." (*In re Jose R.* (1982) 137 Cal.App.3d 269, 275.) We apply the usual standard of review governing claims by criminal defendants challenging the sufficiency of the evidence. We review the record in the light most favorable to the judgment to determine if it discloses substantial evidence such that a reasonable trier of fact could find appellant guilty beyond a reasonable doubt. We presume in support of the judgment the existence of every fact the juvenile court reasonably could have deduced from the evidence, defer to its evaluation of the credibility of the witnesses, and resolve all evidentiary conflicts in support of its decision.

(*In re Ryan N.* (2001) 92 Cal.App.4th 1359, 1371–1373.) If circumstances reasonably justify the court's findings, reversal is not warranted even if the evidence might also reasonably support a contrary finding. (*People v. Rodriguez* (1999) 20 Cal.4th 1, 11; *In re Brandon G.* (2008) 160 Cal.App.4th 1076, 1079–1080.) The test is whether substantial evidence supports the juvenile court's conclusion, not whether guilt has been established beyond a reasonable doubt. The judgment will not be set aside for insufficiency of the evidence unless there exists no hypothesis upon which there is sufficient substantial evidence to support it. (*People v. Bolin* (1998) 18 Cal.4th 297, 331; *In re Cesar V.* (2011) 192 Cal.App.4th 989, 994–995.) The same standard of review applies to cases such as this involving circumstantial evidence. (*People v. Catlin* (2001) 26 Cal.4th 81, 139.)

b. Governing law

Section 487, subdivision (c) makes it a felony offense for a person to, among other things, steal, take, or carry away the personal property of another with the specific intent permanently to deprive the owner of his property. (See CALJIC 14.02; *People v. Cuccia* (2002) 97 Cal.App.4th 785, 796.) The defendant must harbor the intent to steal at the time the victim is dispossessed of the property. (*In re Jesus O.* (2007) 40 Cal.4th 859, 867.) Intent is rarely susceptible of direct proof. To determine if the intent has been established, we consider whether it may be inferred from facts and surrounding circumstances, i.e., determined by circumstantial evidence. (See *People v. Cole* (1985) 165 Cal.App.3d 41, 48.)

c. Substantial evidence supports the juvenile court's findings

We conclude the evidence supports the juvenile court's finding that appellant intended permanently to deprive Manuel of his cell phone when she took it from his hand. Appellant asked Manuel if she could borrow his phone, which he took to mean she wanted to use it to place a call. But, once appellant had possession of the phone, she did not make a call. Rather, she only pretended to do so before running off when Manuel asked if she planned to give it back.

Appellant insists this evidence shows she intended only to use the phone when she took it from Manuel's hand. One could reasonably infer from this evidence that appellant did not form the intent to steal the phone until after it was in her possession. Indeed, even Manuel testified, in a somewhat disjointed fashion, that at one point he may have believed appellant "was going to give [the phone] back." But the juvenile court's conclusion that appellant intended to steal the phone from the outset is also reasonably inferred from the evidence. There is no evidence appellant made any effort to restore the phone to Manuel's possession. And, Manuel seemed to realize he was wrong to trust appellant almost as soon as he had handed her the phone, because something about her conduct made him suspicious and he was concerned about whether he would get it back. The evidence is susceptible to both interpretations. Nevertheless, the trial court's finding that appellant committed grand theft from the person of another must be upheld because the record supports an inference that she intended to steal the phone when she took it from Manuel on the pretense of borrowing it to place a call.

2. Resisting Arrest

Appellant also maintains that count 2 cannot stand because there is insufficient evidence that she willfully resisted, obstructed or delayed an officer in the performance of his duties. Specifically, appellant insists there is insufficient evidence to show that she heard Flores yelling at her to stop or that she knew his commands were directed at her. The record reflects otherwise.

a. Governing law

To establish a violation of section 148, subdivision (a)(1), the prosecution must show that (1) the defendant willfully resisted, delayed, or obstructed a peace officer, (2) who was engaged in the performance of his duties, and (3) the defendant knew or reasonably should have known the other person was a peace officer engaged in the performance of his duties. (§ 148, subd. (a)(1); *In re Muhammed C.* (2002) 95 Cal.App.4th 1325, 1329.) "The offense is a general intent crime, proscribing only the particular act (resist, delay, obstruct) without reference to an intent to do a further act or

achieve a future consequence. (*In re Muhammad C.*, at p. 1329.) As with appellant's first assertion of error, this contention is reviewed for substantial evidence.

One can resist, delay or obstruct an officer in the discharge his duties in a number of ways, one of which is to run from an officer attempting to effect a detention of that person. (See *In re Andre P*. (1991) 226 Cal.App.3d 1164, 1175.)

Appellant does not contest that Flores was a peace officer engaged in the performance of his duties when he was attempting to detain her. Instead, she insists the evidence is insufficient to show that she knew or should have known that he was trying to stop her because there was another person on the sidewalk at the time Flores was yelling, "stop running," and she could have believed that Officer Flores's commands were directed at that person.

But Flores testified that he yelled at her to "stop," "stop running" and "school police" at appellant alone, as she ran from him. There is no evidence that the bystander Flores passed on the street while chasing appellant was moving, let alone that he had been or was running, hence no reason why Flores would ever have ordered that person to stop running. The only evidence was that appellant ran from a uniformed officer chasing after her who was yelling at her to stop, and that she continued running until other officers caught her. There is no evidence to support a conclusion that appellant reasonably could have believed Flores's command to stop was directed at another pedestrian, who was either standing still or at least not running, rather than at anyone other than herself. The record contains sufficient evidence to support an inference that appellant knew or should have known that Flores's order to stop was directed at her. Her failure to comply with that order constitutes, as the juvenile court found, intentional resistance, delay or obstruction with Flores's ability to perform his duties as a peace officer.

3. Confinement credit

Appellant contends, and the Attorney General concedes, that the juvenile court erred by failing to award and calculate her credit for time spent in custody prior to the juvenile court's sustaining of the petition.[2]

At the disposition portion of appellant's hearing on January 5, 2012, the court set appellant's maximum period of confinement at three years and four months "aggregated" and ordered her to remain detained pending acceptance at a suitable placement facility. The court did not mention any predisposition custody credits being awarded for time appellant spent in custody pending her adjudication. The adjudication/disposition minute order states: "Minor is given predisposition credit of PROBATION days. CALCULATE." A juvenile court must calculate and give credit for the number of predisposition days in custody, including time spent in juvenile hall. (§ 2900.5, subd. (d); *In re Pedro M.* (2000) 81 Cal.App.4th 550, 556–557.) The court may not delegate that duty. (*In re Emilio C.* (2004) 116 Cal.App.4th 1058, 1067.) Thus, the court here failed to fulfill its responsibility.

Here, a December 13, 2011 probation report reflects that appellant was arrested and released on September 30, 2011, the day she committed the instant offenses. A nondetained petition was filed on November 29, 2011. But another probation report states that a warrant for the cell phone theft was issued on November 17, 2011 and appellant was "detained" on November 18, 2011.[3] A minute order from November 29, 2011 reflects that appellant was to remain in custody pending a hearing on December 13,

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[2] Appellant did not object to the juvenile court's erroneous delegation of the calculation of her custody credits. Nevertheless, section 1237.1, which prohibits raising errors in custody credit calculations on appeal unless the claim was raised in the trial court, does not apply in juvenile appeals. (*In re Antwon R.* (2001) 87 Cal.App.4th 348, 350–352.)

[3] The instant petition was filed on November 29, 2011. At that time appellant was on probation from a previously sustained petition and, as the Attorney General points out, it is unclear whether the November 17 warrant is related to the instant petition. However, the November 29, 2011 minute order states that appellant was to remain in custody.

2011. The probation report states that appellant had been detained for 26 days.[4] Minute orders from December 13, 2011and January 4, 2012 each reflect that appellant was detained. A January 5, 2012 minute order regarding disposition, reflects that appellant was detained pending suitable placement.

The parties agree that appellant is entitled to an award of predisposition custody credits. However, the record contains insufficient information to enable us to determine the proper number of predisposition custody credits to which she is entitled.[5] Accordingly, the matter must be remanded to the juvenile court to calculate appellant's predisposition credits. (*In re Antwon R., supra*, 87 Cal.App.4th at p. 353; *In re Pedro M., supra,* 81 Cal.App.4th at p. 557.)

DISPOSITION

The matter is remanded to the juvenile court with instructions to calculate appellant's predisposition credits. In all other respects, the judgment is affirmed.

NOT TO BE PUBLISHED.

JOHNSON, J.

We concur:

ROTHSCHILD, Acting P. J.

CHANEY, J.

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[4] 26 days corresponds to the time from November 18, 2011, the day appellant was detained on a warrant, to the date of the December 13, 2011 report.

[5] Appellant claims she is entitled to 50 days' credit for the time she spent in custody on September 30, 2011, and between November 18, 2011 and January 5, 2012. But, as noted above, it is not clear that the instant petition was the basis for the November 17 warrant.