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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FOUR

THE PEOPLE, Plaintiff and Respondent, v. MICHELE TERESA MUSSEN, Defendant and Appellant.	A120626 (Sonoma County Super. Ct. No. SCR-477918)

A jury convicted defendant Michele Teresa Mussen of two misdemeanor offenses arising out of a confrontation she had with county code enforcement officers sent to her property to investigate a minor zoning violation. The jury acquitted defendant of battery and felony grand theft and found her guilty of the lesser offense of petty theft (for taking permit papers), and also guilty of resisting or obstructing a sheriff's deputy who was called to the scene. (Pen. Code, §§ 148, subd. (a)(1), 484, subd. (a), 488.) Defendant appeals, and challenges the sufficiency of the evidence to support her conviction. We affirm the judgment.

I. FACTS

Denise Ward is a code enforcement officer for the County of Sonoma (County). As a code enforcement officer, Ward investigates complaints that property uses or conditions are in violation of legal requirements set by the County building and zoning code; conducts site inspections; and works with property owners to bring property into compliance with the County code. The County received a complaint that defendant's

property was in violation of the zoning code because it had an occupied travel trailer on the premises.

On the afternoon of December 13, 2005, Ward and another code enforcement officer, Michael Lueders, went to defendant's property to investigate the complaint. Defendant operates a business on the property, Country Side Kennels. Ward and Lueders drove to the property, parked their car, and walked to the office. It was about 2:00 p.m. A sign on the office said "out to lunch." The code enforcement officers knocked on the door and, receiving no answer, were about to leave when a woman came out of the office. The officers identified themselves, said they were investigating a complaint, and asked to speak to the property owner. The woman went to find the property owner, defendant. Defendant came from the direction of the house opposite the office and approached the officers.

The officers explained the purpose of their visit and they, with defendant, walked to the site of the trailer being investigated. Code enforcement officer Ward saw that the trailer had water and septic pipes attached and told defendant that the trailer was therefore considered occupied, which was a code violation. According to Ward, defendant became "very angry" and "upset." Defendant told the officers no one was living in the trailer, and opened the trailer so the officers could see it was used for storage. She forcefully kicked and pulled some pipes from the trailer, threw the pipes, and yelled at the officers "Is this enough. Is it. Is this better." The officers tried to calm defendant. Defendant thought she was going to be cited for a code violation, and asked a number of times if Ward had a citation for her. Ward told defendant that the occupied trailer, while a zoning violation, did not mean there were any tickets or penalties involved. Ward explained that defendant would receive "just a notice" of violation and would have 30 days to comply. Defendant did not calm down and Ward grew concerned for her safety. The officers decided to leave.

The officers walked toward their car and defendant remained behind near the trailer. As the code enforcement officers split to go to opposite sides of the car, defendant came up to Ward. Ward was carrying paperwork relating to the complaint she

was investigating, including the complaint, a parcel map, and building permits. Ward had rolled the paper (about four to ten sheets) into a cylinder and held it in her hand, close to her side. Defendant, in one sweeping motion, struck Ward's left breast, grabbed her arm, and yanked the County paperwork from Ward. Ward experienced immediate pain and a burning sensation in her left breast and, later, pain in her shoulder. Defendant ran away with the paperwork. Ward started crying, and called 911.

Deputy Anthony King of the County Sheriff's Department was dispatched to defendant's property to investigate a reported battery. The deputy was in uniform and driving a marked patrol car. Deputy King arrived at the property and spoke with code enforcement officers Ward and Lueders. Ward was standing with her arms crossed over her chest and looked scared. The code enforcement officers told the deputy that defendant became upset with them, struck Ward in the chest, and took paperwork. Ward pointed to defendant as the woman who struck her, and the deputy decided to contact defendant "[t]o find out [defendant's] side of the story; find out what took place."

Deputy King made eye contact with defendant and started to walk toward her. Defendant walked away. The deputy, within voice range of defendant, yelled at her to stop. Defendant continued to walk away and went behind a building. Deputy King ran after defendant. He regained sight of her after rounding the building and yelled at her, saying if she did not stop that he would take her to jail. Defendant stopped and turned around to face the deputy. Deputy King walked up close to defendant and asked her "what happened" but she did not answer. Defendant looked upset and had a scowl on her face. Defendant then turned away from the deputy and started to walk away from him. Deputy King later testified that he could not allow defendant to walk away from him because he "was still continuing an investigation."

Deputy King reached out and grabbed defendant's arm. She pulled back, yelled, and struggled to get away. Defendant dropped to the ground and the deputy shouted at her to stop, and told her she was under arrest. Defendant "went wild," and "flailed around and rolled," as the deputy tried to put her in handcuffs to take her into custody. Deputy King ordered defendant to stop and told her again that she was under arrest.

During this struggle, a man came up behind Deputy King with raised fists and shouted at the deputy to let defendant go. Deputy King shouted at the man to get away while trying to subdue defendant. Another deputy arrived and took the man into custody, while Deputy King handcuffed defendant. Defendant was placed in the patrol car. Deputy King received minor scrapes on his hands from his struggle with defendant.

II. PROCEDURAL HISTORY

When arrested, defendant was charged with misdemeanor battery and misdemeanor resisting and delaying a peace officer in the performance of his duty. (Pen. Code, §§ 148, subd. (a)(1), 242, 243, subd. (a).) A misdemeanor complaint with those same charges was filed soon after the incident, in December 2005. The prosecution later filed a felony complaint and, as ultimately charged, accused defendant of misdemeanor battery, misdemeanor resisting an officer, and felony grand theft of property from the person of another. (Pen. Code, §§ 148, subd. (a)(1), 242, 243, subd. (a), 487, subd. (c).)

A jury trial was held in October 2007. The jury found defendant not guilty of battery and the lesser included offense of assault. The jury also found defendant not guilty of grand theft but found her guilty of the lesser included offense of petty theft. Defendant was also found guilty of resisting a peace officer. The court denied defendant's motion for a new trial. The court suspended imposition of sentence and placed defendant on probation, with the condition that she complete 40 hours of community service. This appeal followed.

III. DISCUSSION

Defendant, through appellate counsel, contends that there is insufficient evidence to support her conviction. Specifically, she maintains: (1) there is insufficient evidence of petty theft because the paperwork defendant took from code enforcement officer Ward recorded information that remains in the County's possession, thus no one was permanently deprived of the possession of property, and defendant never intended any deprivation of property because she thought she was entitled to the paperwork; and

(2) there is insufficient evidence of resisting a peace officer in the discharge of his lawful duties because Deputy King unlawfully seized defendant. Both contentions are meritless.

A. Substantial evidence supports the conviction for petty theft

"The elements of theft by larceny are well settled: the offense is committed by every person who (1) takes possession (2) of personal property (3) owned or possessed by another, (4) by means of trespass and (5) with intent to steal the property, and (6) carries the property away." (*People v. Davis* (1998) 19 Cal.4th 301, 305.) "The act of taking personal property from the possession of another is always a trespass unless the owner consents to the taking freely and unconditionally or the taker has a legal right to take the property." (*Ibid.*, fns. omitted.) The intent to steal "is the intent, without a good faith claim of right, to permanently deprive the owner of possession." (*Ibid.*)

There is overwhelming evidence here that defendant took possession of personal property (County papers) possessed by code enforcement officer Ward without Ward's consent and without legal right to the papers or any good faith claim of right. Defendant concedes that the papers belonged to Ward but contends that the evidence at trial indicated that defendant thought the papers were a citation to which she was entitled. The claim is wholly untenable. Ward explained to defendant that there were "no penalties, no tickets, no nothing," just a notice of violation that defendant would have 30 days to cure and the matter would be closed. The circumstances also refute any claim that defendant thought she was collecting a written citation intended to be delivered to her, as defendant forcefully ripped the papers from Ward's hand as Ward was leaving the premises.

There is also no merit to defendant's claim that defendant did not deprive Ward of any property because the stolen paperwork was only a copy of information retained in the County's office. Items of minimal intrinsic value support theft convictions. (*People v. Cuellar* (2008) 165 Cal.App.4th 833, 839.) Even a mere piece of paper, like a lottery ticket or check, possesses some slight intrinsic value and will support a petty theft conviction. (*Id.* at pp. 838-839; accord *People v. Martinez* (2002) 95 Cal.App.4th 581, 583-584 [soap, shampoo, and hot water]; *People v. Franco* (1970) 4 Cal.App.3d 535,

541-542 [an empty cigarette carton]; *People v. Leyvas* (1946) 73 Cal.App.2d 863, 864 [gasoline rationing stamps].)

B. Substantial evidence supports the conviction for resisting a peace officer

The elements of resisting a peace officer are: " ' "(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." ' " (*Yount v. City of Sacramento* (2008) 43 Cal.4th 885, 894-895.) Implicit in the second element is the rule that the officer was acting lawfully. "The rule flows from the premise that because an officer has no duty to take illegal action, he or she is not engaged in 'duties,' for purposes of an offense defined in such terms, if the officer's conduct is unlawful." (*People v. Gonzalez* (1990) 51 Cal.3d 1179, 1217.) Accordingly, California (and other jurisdictions) has a long-standing rule that one cannot be convicted of an offense against a peace officer engaged in the performance of his duties unless the officer was acting lawfully at the time. (*Ibid.*)

Defendant argues on appeal that Deputy King was not acting lawfully when he detained her to investigate a reported battery, and thus there is insufficient evidence that defendant interfered with Deputy King in the performance of his lawful duties. We disagree, and find the detention proper.

The evidence establishes that Deputy King was dispatched to investigate a battery. Upon arriving at the scene, the code enforcement officers reported to him that defendant struck Ward and took paperwork from her. Defendant argues that this information amounted to no more than allegations of a misdemeanor battery, and that Deputy King had no authority to make an arrest for a misdemeanor committed outside his presence. (Pen. Code, § 836, subd. (a).) The argument is mistaken for two separate reasons. First, Deputy King did not know at this stage of the investigation whether a misdemeanor or a felony had been committed. As Deputy King testified at trial, an officer's criminal investigation is not limited by the initial characterization of the offense by dispatch, nor by a victim's preliminary report, but must be informed by further investigation in the

field. While defendant was not initially charged with a felony, she was later held to answer for felony theft for allegedly taking property from Ward. Second, and more importantly, Deputy King did not immediately arrest defendant at this point and thus his authority to do so is largely irrelevant. The deputy started with an investigatory detention, as was proper. A peace officer is entitled to detain a suspect to investigate a crime, whether the crime is a felony, a misdemeanor, or just an infraction.

Deputy King was therefore entitled to approach defendant and command her to stop. Defendant seems to concede, in her briefing on appeal, that Deputy King was entitled to detain her temporarily to investigate Ward's complaint, but argues that the deputy exceeded his authority and the allowable limits of the detention when he grabbed her arm to hold her in place after she failed to respond to his question about what happened and started to walk away. Defendant maintains that she had a Fifth Amendment right not to respond to the officer's inquiries and, having "invoked her Fifth Amendment right," was free to walk away. (U.S. Const., 5th Amend.) Defendant, relying on *Terry v. Ohio* (1968) 392 U.S. 1, 29, and its progeny, argues that an officer has the right to question a detained suspect, but the suspect has an equal right not to answer the officer's questions. (See *People v. Quiroga* (1993) 16 Cal.App.4th 961, 969, fn. 2 [detainee's refusal to identify himself or answer questions is protected speech].) As a preliminary matter, we note that defendant did not unambiguously invoke her Fifth Amendment right against self-incrimination. Deputy King asked defendant "what happened." Defendant did not answer the deputy, scowled, then turned and walked away. We also note that the detention here was not based on a mere suspicion of unspecified criminal activity, but based on a complaint amounting (at the least) to a misdemeanor.

In any event, any right to remain silent did not include the right to leave the scene. One does not have the right to walk away from a lawful detention. If an officer has adequate grounds to effect a temporary detention, the suspect's flight from the officer constitutes probable cause to arrest the suspect for resisting an officer in the performance of his duties. (*People v. Allen* (1980) 109 Cal.App.3d 981, 985-987.) In *Allen*, police

officers saw a group of people standing around an open car trunk filled with jackets, and suspected appellant Allen of receiving and selling stolen property. (*Id.* at pp. 983-985.) When the police approached appellant with the clear intention of detaining him, he hurriedly walked away, then ran and hid in bushes. (*Id.* at p. 984.) The court found this conduct sufficient to support arrest for resisting or delaying an officer in the discharge of his duties. (*Id.* at pp. 986-987.) The court observed: "Since the officer had the legal right, indeed duty, [citation] to detain appellant, appellant, if he was aware of the officer's desire, had the concomitant duty to permit himself to be detained. [Citation.] Therefore, on the face of the statute [Penal Code section 148, subdivision (a)(1)] it would appear that the physical activity that appellant engaged in, flight and concealment, which delayed the officer's performance of his official duty, violated the statute." (*Id.* at pp. 985-986, italics omitted.)

In re Gregory S. (1980) 112 Cal.App.3d 764 is also instructive. In that case, a neighbor complained that appellant Gregory threw a mud ball at her, and Deputy Sheriff Flores approached the teenager in his front yard to investigate. (*Id.* at pp. 770-771.) The events then took a turn remarkably similar to the facts here. The deputy told appellant he was investigating a complaint, wanted to talk to appellant, and asked appellant's name. (*Id.* at p. 771.) "Appellant responded that he did not have to talk to the officer and began to leave. The officer took appellant by the arm, whereupon appellant struggled and attempted to pull away. The officer advised appellant that he was under arrest for delaying and obstructing a public officer in the discharge of his duty. The struggle intensified and appellant started to swing at the officer." (*Ibid.*) The juvenile court found that appellant Gregory S. had resisted, delayed, or obstructed an officer in the discharge of his duties. (*Id.* at p. 770; Pen. Code, § 148, subd. (a)(1).)

This District Court of Appeal affirmed the juvenile court's finding against a challenge to the sufficiency of the evidence. (*In re Gregory S., supra,* 112 Cal.App.3d at pp. 770, 781.) As here, the appellant in *In re Gregory S.* argued "that his response to the detention was a proper exercise of his constitutional right to remain silent; that the officer could not lawfully insist that he answer any question; and therefore appellant's conduct

was not a violation" of Penal Code section 148. (*Id.* at p. 776.) The court assumed, for the sake of discussion, that a violation of Penal Code section 148 may not be premised on a refusal to answer questions. (*Ibid.*) But the court found that the detention did not end when appellant refused to talk to the officer, and thus appellant was not free to walk away. (*Ibid.*) "In detaining a person a police officer is not restricted to mere questioning but may conduct other limited investigation. [Citation.] The present case would have justified other reasonable procedures. For instance, the officer could have required appellant to wait briefly while he asked [the complaining neighbor] to confirm her identification." (*Id.* at pp. 776-777.) Likewise, Deputy King was authorized here to require defendant to wait while he asked Ward to confirm her identification. Defendant, even if entitled to stand silent, was not entitled to walk away.

The court in *In re Gregory S., supra,* 112 Cal.App.3d at p. 778, also ruled that it is proper for an officer to grab a fleeing detainee's arm, contrary to defendant's assertion here that Deputy King exceeded the permissible scope of the detention by grabbing defendant's arm when she started to walk away from him. The court in *In re Gregory S.* observed: the officer's "action in holding appellant's arm to prevent his departure was within his authority to detain. It is implicit in a lawful detention that the person detained is not free to leave at will and may be kept in the officer's presence by physical restraint, threat of force or assertion of authority. [Citation.] [¶] Officer Flores' use of physical force here was made necessary only by appellant's unlawful attempt to end the officer's lawful detention. As such, the restraint was reasonable both in nature and timing." (*Ibid.*)

Similarly, Deputy King was entitled to use the minimal force of grabbing defendant's arm when she peremptorily started to walk away from the deputy as he was conducting a lawful investigatory detention. Substantial evidence supports defendant's conviction for resisting, delaying or obstructing a peace officer in the performance of his duties.

IV. DISPOSITION

The judgment is affirmed.

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Sepulveda, J.

We concur:

_____
Ruvolo, P. J.

_____
Rivera, J.