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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIFTH APPELLATE DISTRICT

In re MICHAEL K., a Person Coming Under the Juvenile Court Law.	
THE PEOPLE, Plaintiff and Respondent, v. MICHAEL K., Defendant and Appellant.	F043767 (Super. Ct. No. 51281) **OPINION**

THE COURT*

APPEAL from a judgment of the Superior Court of Tulare County. Hugo Loza, Commissioner.

Michael B. McPartland, under appointment by the Court of Appeal, for Defendant and Appellant.

Bill Lockyer, Attorney General, Robert R. Anderson, Chief Assistant Attorney General, Jo Graves, Assistant Attorney General, Lloyd G. Carter and Brian Alvarez, Deputy Attorneys General, for Plaintiff and Respondent.

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* Before Vartabedian, Acting P.J., Wiseman, J., and Dawson, J.

On January 28, 2003, a petition was filed pursuant to Welfare and Institutions Code section 602 alleging that appellant, Michael K., feloniously took a vehicle (Veh. Code, § 10851, subd. (a), count one), committed credit card fraud (Pen. Code, § 484g, subd. (a), count two), kidnapped Megan Smith (Pen. Code, § 207, subd. (a), count three), falsely imprisoned Megan Smith (Pen. Code, § 236, count four), and escaped from a juvenile detention facility (Welf. & Inst. Code, 871, subd. (a), count five).

Michael waived his constitutional rights and admitted count one. Count two was dismissed pursuant to a plea agreement. The juvenile court heard evidence on counts three and four. No evidence was submitted on count five. The court found count four, the false imprisonment allegation true, but deferred ruling on whether the offense was a felony or a misdemeanor. Counts three and five were found not true.

The juvenile court found Michael's violation of count four to be a felony, placed Michael on felony probation, and ordered him to serve 150 days in custody. The court calculated Michael's maximum term of confinement to be four years ten months, including offenses aggregated from earlier petitions. On appeal, Michael contends there was insufficient evidence that he committed false imprisonment.

FACTS

On December 5, 2002, Megan Smith, Kevin Searcy, and Michael drove to a home of one of Searcy's friends. Searcy parked his car and went into the friend's home. Smith and Michael waited in Searcy's car. Smith was sitting in a rear seat. Michael was sitting in the front passenger seat. Michael told Smith that he was going to take the car around the block. Smith had seen others do this with Searcy's car, but they always returned the car. Smith initially thought Michael was joking -- that he was just "messing around."

Michael jumped into the driver's seat. Smith was still sitting in the back seat. Smith began to tell Michael that he was going to get into trouble. After driving about a quarter of a mile, Smith told Michael they better go back. Michael told Smith he was going to visit a friend in Visalia and drove onto Highway 99. Smith told Michael not to

take Searcy's car. Smith moved to the front passenger seat because it was easier to talk to Michael.

Michael was driving fast. Smith became scared because she did not know what was going to happen. Smith told Michael they needed to get back. Michael was driving at speeds in excess of 100 miles per hour. Smith kept asking Michael to take her back home. Smith was afraid she would be implicated in the theft of the car. She was also afraid they would get into an accident.

Michael drove up to a gas station on the outskirts of town and told Smith to exit the car. Smith demanded a cell phone or keys to the car because she did not want to be stranded in Visalia. At this time, Smith was very angry with Michael and started cussing at him. Michael called Smith a bitch and told her that if she did not shut up, he would make her leave the car. Smith wanted to hit Michael and was surprised that she did not do so. Smith could tell from the look in Michael's eyes that he was very angry with her.

Michael did not stop the car at the gas station but kept driving in and out of the station as he argued with Smith. Michael also circled around the neighborhood of a friend's house that apparently was his destination. Smith thought Michael was circling around the neighborhood because he did not want her to know the location of the residence.

Smith was yelling at Michael. She refused to leave the car because she did not want to be stranded in Visalia. Smith did not know where she was. Michael refused to give Smith a phone or the car. Michael eventually drove back to Tulare and took Smith home. On the return trip, Michael was speeding and running red lights. Smith was not sure if Michael was in a "right state of mind." Michael drove Smith to her home, dropped her off, and drove away in Searcy's car.

Michael testified that he, Searcy, and Smith were using drugs. They went to a friend's house to buy "weed." While Searcy was in the house, Michael told Smith they should take Searcy's car. Smith was sitting in the front seat. Michael wanted to go to a

friend's home in Visalia to buy some "crank." Michael explained that Smith knew this was his plan and that "she was cool with it." As Smith thought about it, however, she became worried Searcy would call the authorities.

Michael admitted that Smith began asking him to go home. Michael said he discussed the issue with Smith because he could not take Smith to his friend's house. Michael then took Smith back home. Michael explained that Smith was in his face as he was driving. Michael did not believe Smith ever appeared frightened. Michael acknowledged that he might have "hit a hundred" miles per hour as he drove.

The juvenile court found that Michael committed felony false imprisonment because he employed violence when he restrained Smith with force beyond that required for simple restraint. The court found that Michael's excessive speed, which reached 100 miles per hour, coupled with his intoxication on methamphetamine, constituted force beyond that required for simple restraint.

DISCUSSION

Michael contends there was insufficient evidence of misdemeanor or felony false imprisonment because there was no evidence that Michael intentionally restrained Smith and that there was no evidence of menace or violence.

Under Penal Code section 236, false imprisonment is the unlawful violation of the personal liberty of another. Penal Code section 237 makes false imprisonment a felony if it is effected by "violence, menace, fraud, or deceit." The misdemeanor offense requires no force beyond that necessary to restrain the victim. Any exercise of force, or express or implied threat of force, by which the other person is deprived of his liberty or is compelled to remain where he or she does not wish to remain or to go where he or she does not wish to go, is false imprisonment. The elements of misdemeanor false imprisonment are also the elements of the felony. The felony offense requires physical force used for restraint over and above the force reasonably necessary to effect the restraint. Menace means express or implied threat of harm by word or by act. (*People v.*

Babich (1993) 14 Cal.App.4th 801, 806-807; also see *People v. Reed* (2000) 78 Cal.App.4th 274, 280.)

In one case, the defendant backed his van directly toward the victim. To prevent herself from being run over, the victim grabbed onto a spare tire attached to the back of the van. The defendant told the victim he was going to kill her. The defendant proceeded to drive down the highway at speeds as high as 80 miles per hour with the victim holding onto the van. The victim climbed to the roof of the van attempting to enter it as the defendant drove down the highway. Though the defendant stopped the van once to throw out the victim's belongings, every time the victim tried to get off the van the defendant would move it. Eventually, the defendant stopped on the highway and was arrested. (*People v. Bamba* (1997) 58 Cal.App.4th 1113, 1118.)

The court in *Bamba* rejected the contention that there was not substantial evidence of violence or menace. *Bamba* held that the physical force employed by the defendant was greater than the force necessary to effect restraint on the victim, who stayed on the van because she was afraid to get off while the van was moving. The court reasoned that the defendant could have caused the victim to stay on the van by observing the speed limit, but instead drove at 80 miles per hour and swerved the van. (*People v. Bamba*, *supra*, 58 Cal.App.4th at p. 1124.)

The *Bamba* court further found substantial evidence of menace. The express or implied threat of harm required for such a showing went beyond the defendant's express verbal threat to kill the victim. It included the implied threat that if the victim tried to get off the van, the defendant would again try to run over her. (*People v. Bamba*, *supra*, 58 Cal.App.4th at p. 1124.)

Michael argues that he did not commit a violent act and that he never expressly threatened Smith. Michael initially told Smith he was just driving around the block. As soon as he began driving further than that, Smith expressed her concern over taking

Searcy's car.[1] During the trip down Highway 99, Smith expressed her desire to go back. Michael ignored Smith and began driving at speeds in excess of 100 miles per hour. One can reasonably infer from the facts that Michael's response to Smith's demand was to excessively increase the speed of the vehicle. Like the *Bamba* case, Michael drove at high speeds far in excess of what was necessary to effectuate false imprisonment. There was substantial evidence that Michael's conduct involved the use of excessive force and thus satisfies the legal definition of violence as used in Penal Code section 237.

Michael's reckless driving is also evidence his false imprisonment of Smith was done with menace. Michael's driving scared Smith. Michael's heated argument with Smith as he drove is further evidence from which it can be inferred that Michael's conduct was done with menace. Smith could tell Michael was very angry with her. She was afraid Michael would crash the car. Even after he slowed down to legal speed limits, Michael continued his menacing conduct by driving through red lights on his way back to Tulare from Visalia.

Michael argues that he did drive Smith back to her home in Tulare so he did not act feloniously. This argument ignores the substantial evidence in the record that Smith had no desire to go to Visalia and that she made her wishes known to Michael long before they reached town. It is understandable that Smith refused Michael's demand to leave the car in Visalia because she did not want to be abandoned there with no means to get home. Michael's driving was a violent act and an act of implied malice under the holding of the *Bamba* case, which we find dispositive of the instant action.

DISPOSITION

The judgment is affirmed.

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[1] The parties do not argue, nor do we reach, the issue of whether Michael's comment to Smith that he was merely driving the car around the block constituted deceit within the meaning of Penal Code section 237.