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TRAINING BULLETIN

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Subject: Can Speech Alone Be A 148 PC Violation?

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CLIENT ALERT MEMORANDUM

To: All Sheriffs & Chiefs of Police

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CAN SPEECH ALONE BE A PENAL CODE 148 VIOLATION?

On December 18, 2015, the California Court of Appeal held, in the case of *In re Chase C.*, that a minor did not violate PC 148 when he encouraged others to not cooperate with a sheriff's deputy.

The court stated that "we are asked to decide a novel issue regarding whether a minor urging his cohorts not to cooperate with a police investigation rises to the level of a violation of Penal Code section 148? This case requires us to determine when a refusal to cooperate with police becomes unlawful interference with police activity under section 148."

Facts

On May 2, 2014, at approximately 4:50 p.m., San Diego Sheriff's Deputy Scott Hill was approached by a group of middle school children, who told him that two high school aged children had tried to sell them drugs. The middle school children described the suspects with enough detail that Hill believed he would be able to find the two suspects they were describing.

"Hill set out in his patrol car and within two minutes had located two individuals who matched the suspects' descriptions 'completely.' The two individuals were with a group of approximately eight other minors, all of whom Hill estimated to be about 16 years old. In approaching this group, Hill parked his patrol car, got out, and specifically addressed the two individuals who matched the suspects' descriptions. Hill told the other minors that they were free to go."

"Hill ordered the two suspects to sit down on the curb. One of the suspects, 'Jason or Jacob McBride,' cooperated right away. The second suspect, Brandon Hewgley, refused to sit down and questioned Hill about why he was being detained. At this point, one of the nonsuspect minors, Chase, began telling Hewgley 'not to listen to [Hill] or obey, not to do what [Hill] was telling him to do.' Hill testified that the purpose of his investigation initially was to determine whether the two suspects had been trying to sell drugs to the middle school children, and that he had no

need to contact any of the other minors in the group.”

“Hill also testified that Hewgley was already refusing to comply *before* Chase told Hewgley that he should not cooperate. In contrast, Hill testified that McBride did not resist him at any time, in spite of Chase's audible protests. Hewgley remained noncompliant throughout the contact and Hill could not say whether or not this was due to Chase's verbal protestations.”

Hewgley became somewhat combative and was placed in the patrol car and Hill called for backup. When they arrived, the officers detained and handcuffed the nonsuspect minors, ‘for their safety and [the officers'] safety.’ Another deputy testified that the purpose of detaining the nonsuspect minors who remained on the scene was ‘to get their information and to make sure that they didn't have any contraband on their person and they were not involved in any type of drug sales activity.’ Chase continued to protest, telling the other minors, ‘Don't listen to him. This is bullshit. Don't tell him anything. Don't say shit.’”

Chase refused to give his name or his parents' information at the scene, stating that he was pleading the Fifth Amendment and he was ultimately handcuffed and arrested. “Chase did not at any time, however, physically resist [the deputy], run away, or require any use of force. Nor did Chase physically resist or obstruct Hill in his performance of his duties. Finally, once Chase was arrested and placed in the patrol car, . . . Chase became ‘extremely’ cooperative and remained so while at the station.”

Chase was charged with resisting, delaying, or obstructing a peace officer in violation of section 148, subdivision (a)(1). On March 6, 2015, an adjudication hearing was held, at which the juvenile court found the allegation against Chase to be true. On March 27, 2015,

the court adjudged Chase a ward of the court under Welfare and Institutions Code section 602 and placed him on formal probation for one year or until Chase's 18th birthday, whichever was longer. The Court of Appeal reversed the judgment.

Court Discussion

“The elements of a violation of section 148, subdivision (a)(1) are the following: (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.”

However, noted the court, “it is no crime in this state to *nonviolently* resist the unlawful action of police officers.” (emphasis added.) Additionally, “(u)nder 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.”

“In analyzing the charge of resisting a peace officer, we see distinct constitutional and statutory issues with respect to Chase's conduct (1) in telling Hewgley not to cooperate, (2) in telling the nonsuspect minors not to cooperate, and (3) in refusing to disclose his identity to police prior to being placed in a patrol car.”

“Chase's verbal criticism of Hewgley's detention did not violate section 148 because it was protected political speech. Speech is generally protected by the First Amendment, even if it is intended to interfere with the performance of an officer's duty, *provided no physical interference results.*” (emphasis added.)

Furthermore, Chase encouraged the nonsuspect minors not to provide their

information to officers. However, the evidence was insufficient to show a violation of section 148 based upon this act because the officers were not engaged in the lawful performance of their duties.

“In this case, there was no lawful detention or arrest of the admittedly nonsuspect minors. Hill testified that the tip he received described only McBride and Hewgley. When Hill encountered the suspects with the large group of minors, he told the nonsuspect minors (including Chase) they were free to go. Instead of leaving the scene, the minors ‘chose to stay’ and protest Hill's decision to detain McBride and Hewgley. However, the fact that the minors chose to stay after they were told they were free to go did not make them subject to detention.”

Finally, the court addressed the fact that Chase refused to provide identification and other information and encouraged the others to withhold it, as well. Chase was already detained, along with the other nonsuspect minors, when backup deputies arrived on scene. A deputy testified that his reason for arresting Chase, who was admittedly not the target of the initial investigation, was Chase's refusal to provide his information and his instructing the other minors not to cooperate.

“At this point, Chase's conduct did not violate section 148 because it did not delay or obstruct a peace officer in the discharge of any duty within the meaning of the statute. Chase's arrest had already been effected. Chase's noncooperation did not serve to delay or thwart his detention, as he was already detained. And it was still premature to ask the questions needed for booking Chase in jail.”

HOW THIS AFFECTS YOUR AGENCY

The issue of what constitutes resisting arrest and, more specifically, what constitutes a 148

violation is frequently subject to debate. The court discussed several cases where speech alone *would* constitute a PC 148 violation. But, generally speaking, speech without physical interference will not be considered resisting arrest.

“Chase did not initially comply with the officer's order that he be quiet, refusing to cooperate until he was placed in handcuffs. Chase argued with the officers and asserted what he took to be his rights” However, “Chase eventually complied with the deputies' requests for identification. Chase's eventual cooperation en route to the station is dispositive.”

The court also notes that “(w)hile the act of refusing to disclose one's identity *at the booking stage* of arrest ‘unquestionably’ obstructs a police officer in the discharge of his or her duties, a mere ‘refusal to disclose personal information following arrest for a misdemeanor or infraction cannot constitute a violation of Penal Code section 148.’”

“Chase's refusal to identify himself, not just preceding booking but before even being placed in a patrol car, was protected conduct under the Fifth Amendment. Only if Chase had refused to provide his identity at the booking stage, or had provided false identifying information, would his conduct violate section 148.”

This case helps in explaining how one can analyze behavior and speech to determine whether or not it constitutes a 148 violation. As we know, many prosecutors are reluctant to file on such cases because the circumstances are often very subjective.

As in all matters involving the law, it is imperative that you confer with and receive advice and guidance from your agency's legal counsel. As always, if you wish to discuss this case in greater detail please feel

free to contact me at (714) 446 – 1400 or via email at mjm@jones-mayer.com.

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