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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FIVE

THE PEOPLE,

Plaintiff,

v.

MICHAEL ANTHONY MENDIVIL,

Defendant;

MARTIN HYNES,

Objector and Appellant.

A136613

**(Contra Costa County
Super. Ct. No. 51214188)**

Objector Martin Hynes (appellant), a City of Antioch Police Officer, appeals from the trial court’s order imposing a \$250 fine due to appellant’s failure to return to court promptly upon being recalled to give further testimony at the preliminary hearing in the underlying criminal case. We affirm.

BACKGROUND

Appellant testified on August 7, 2012, at the preliminary hearing in the underlying felony criminal case, *People v. Mendivil*. The defendant was representing himself. At the end of the defendant’s cross-examination of appellant, just before the lunch recess, the defendant told the trial court he had no further questions of appellant but wanted to “keep him for recall.” The court excused appellant from the stand, “subject to recall without subpoena, of course, if we need you back.”

Near the start of the afternoon session, the defendant indicated he wanted to call appellant back to the stand to answer additional questions. The prosecutor told the court she would attempt to reach appellant by phone. After some time, the parties reconvened and the prosecutor said she had been unable to contact appellant. Appellant eventually returned to court at 3:35 p.m. Appellant explained he had been at the gym for an hour without his cell phone. He stated, "That was my error." The trial court stated that the parties had been waiting since 2:00 p.m. and "[w]e have other preliminary hearings backed up behind us. We have other witnesses waiting. We have other pleas to take, other people to arraign and we could do nothing because you weren't here." The court set the matter for an order to show cause "why this court should not impose a fine of \$250 for your failure to be present when you should have been."

On August 21, 2012, appellant appeared with counsel at the order to show cause hearing. Counsel stated that appellant was off duty on the day of the preliminary hearing and that appellant had never previously been recalled. Counsel also pointed out that the court had not ordered appellant to return at a specific time, be available within a certain period, or remain within the city limits.

The court nevertheless imposed the \$250 fine. The court stated, "[t]here is an ongoing duty to be subject to recall if the court tells you you are subject to recall without subpoena." The court had stated earlier, "if you are subject to recall, . . . I would assume you would keep your telephone with you, your cell phone, at all times." The court explained that it was impacted "tremendously" because court business was "at a standstill" while the parties waited for appellant to return.

DISCUSSION

Code of Civil Procedure section 177.5 provides in relevant part, "A judicial officer shall have the power to impose reasonable money sanctions, not to exceed fifteen hundred dollars (\$1,500), notwithstanding any other provision of law, payable to the court, for any violation of a lawful court order by a person, done without good cause or substantial justification."

Although the trial court did not specify under what authority it was acting in sanctioning appellant, appellant's counsel made a reference to "Penal Code 177.5" at the hearing on the court's order to show cause, in arguing that appellant did not violate the court's order. In context, it is clear counsel intended to refer to section 177.5 of the Code of Civil Procedure; the trial court gave no indication it was relying on any other authority in sanctioning appellant. The court's order is reviewed for abuse of discretion. (*Winikow v. Superior Court* (2000) 82 Cal.App.4th 719, 726.)

Although the trial court's verbal order to appellant just before the lunch recess at the preliminary hearing did not specify that appellant was required to remain in the vicinity or to be able to return to the court within any particular period of time, the court's order did state that appellant was subject to recall. The delay in appellant's return to court was due to his failure to monitor his telephone, which did constitute a violation of the court's order that he remain available for recall. The trial court did not abuse its discretion in fining appellant under Code of Civil Procedure section 177.5.

Appellant also contends the court's order must be reversed because it is not in a writing containing a statement of reasons, as required by Code of Civil Procedure section 177.5. (See *People v. Ward* (2009) 173 Cal.App.4th 1518, 1531.) He also contends the court erred in failing to find that he had good cause for violating the court's order. However, those claims have been forfeited because appellant's counsel failed to object on those grounds below. (*People v. McKinnon* (2011) 52 Cal.4th 610, 638.)

DISPOSITION

The trial court's order is affirmed.

SIMONS, J.

We concur.

JONES, P.J.

NEEDHAM, J.