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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE,

Plaintiff and Respondent,

v.

ANTHONY CARLOS DIAZ,

Defendant and Appellant.

B233986

(Los Angeles County
Super. Ct. No. VA115709)

APPEAL from a judgment of the Superior Court of Los Angeles County. Wade D. Olson, Judge. Affirmed.

Law Offices of Pamela J. Voich and Pamela J. Voich for Defendant and Appellant.

Kamala D. Harris, Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Lance E. Winters, Assistant Attorney General, Susan Sullivan Pithey and Louis W. Karlin, Deputy Attorneys General for Plaintiff and Respondent.

Defendant Anthony Carlos Diaz appeals from a judgment entered after he was found to be in violation of probation based on new criminal behavior. He contends that the trial court abused its discretion because its determination was not supported by substantial evidence. We reject defendant's contention and affirm the judgment.

BACKGROUND

In 2009, defendant was convicted in Orange County Superior Court case No. 09NF2966 of unlawful possession of ammunition in violation of former Penal Code section 12316, subdivision (b)(1).¹ Imposition of sentence was suspended and defendant was placed on probation for three years, under specified terms and conditions, including the condition that he obeys all laws. In June 2010, the case was transferred to the Los Angeles County Superior Court, as defendant was then residing in this county.

In May 2011, defendant's probation was summarily revoked when he was arrested and charged with willful infliction of injury on his former girlfriend and mother of their mutual child in violation of section 273.5, subdivision (a), and making a criminal threat in violation of section 422.

The trial court held the probation violation hearing jointly with the preliminary hearing on the new charges. "Jane Doe" (Doe) testified that she and defendant had been in a relationship in 2009 and were the parents of a two-year-old daughter. On April 29, 2011, Doe asked defendant to come to the home of her ex-mother-in-law (not defendant's mother), to talk to her about their daughter. Defendant arrived between 8:00 and 9:00 p.m., and persuaded Doe to go with him in his car by promising to take her to her grandmother's home. Once she was in the car, defendant drove in the opposite direction for about 10 minutes, ignoring her request to let her out of the car.

Defendant drove into the dark, secluded, vine-covered driveway of a house belonging to a neighbor of his grandmother where defendant had taken Doe before to beat her. As soon as defendant parked the car, he began beating Doe, hitting her many times on the face with the back of his hand and with a clenched fist. Defendant then

¹ All further statutory references are to the Penal Code, unless otherwise indicated.

placed himself on top of her and choked Doe with both hands around her neck until she lost consciousness. Doe awoke to hear defendant saying, "Wake up, stupid."

Doe was bleeding from the nose. Defendant handed her a child's blanket to wipe the blood from her face and hands, and then told her he was going to kill her. Defendant said that Doe was lucky he did not kill her "right then and there." Doe was afraid, although she had not feared for her life when defendant had beaten her in the past. Doe explained that it was different this time and she was very frightened of him.

Defendant then drove Doe to a motel where he brought her a bucket of ice to apply to her face. Doe did not go to the police until the next day, when she filed a report and photographs were taken. At the hearing Doe identified the photographs and testified that she looked better in them than she had the day before because she had iced her face all night. One photograph showed marks on her neck. Doe claimed that her nose was broken, although she had sought no medical treatment. She explained that she could feel a lump on one part of the bridge and another area that felt "popped out."

On cross-examination Doe admitted that she had used methamphetamine on April 27, 2011, but denied that she was still under the influence of the drug at time of the beating. She acknowledged that her children had been removed from her custody by authorities the day before the beating, and that she was alleged to have had methamphetamine in her system. Doe admitted that she had never told anyone about defendant's past beatings before reporting the April 29 beating. She did tell a deputy sheriff about the past beatings when she reported the April 29 incident, however. Doe admitted that she did not tell the deputy that her nose was broken and that she was advised to see a doctor, which she did not do.

The trial court held defendant to answer on the new charges and found him to be in violation of probation. On June 23, 2011, the trial court sentenced defendant to the middle term of two years in prison, with total custody credits of 88 days. The court imposed mandatory fines and fees and ordered defendant to provide specimens and samples as required by section 296. Defendant filed a timely notice of appeal.

DISCUSSION

Defendant contends that the trial court's order revoking his probation was unsupported by substantial evidence and was thus an abuse of discretion.

Under section 1203.2, subdivision (a), "a court is authorized to revoke probation 'if the interests of justice so require and the court, in its judgment, has reason to believe . . . that the person has violated any of the conditions of his or her probation'"

(*People v. Rodriguez* (1990) 51 Cal.3d 437, 440, fn. omitted.)

The prosecution must establish a violation of probation by a preponderance of evidence and we review the court's determination on appeal for an abuse of discretion.

(*People v. Rodriguez, supra*, 51 Cal.3d at pp. 444-445.) "[O]nly in a very extreme case should an appellate court interfere with the discretion of the trial court in the matter of denying or revoking probation. . . ." (*Id.* at p. 443.) The court's discretion will not be

reversed unless it was arbitrary or capricious. (*People v. Chandler* (1988) 203

Cal.App.3d 782, 788.) It is defendant's burden to establish an abuse of discretion.

(*People v. Urke* (2011) 197 Cal.App.4th 766, 773.)

Defendant argues that the court's determination was not supported by substantial evidence because the prosecution's sole witness was not credible. The substantial

evidence test is applied when the trial court is required to resolve conflicting evidence.

(*People v. Kurey* (2001) 88 Cal.App.4th 840, 848.) Defendant has not shown that such a review is required here, as the evidence was not in conflict with other evidence and the sole witness did not contradict her own testimony in any significant respect.

Regardless, a review of the evidence to support a revocation of probation would be "limited to the determination of whether, upon review of the entire record, there is

substantial evidence of solid value, contradicted or uncontradicted, which will support the trial court's decision. In that regard, we give great deference to the trial court and resolve all inferences and intendments in favor of the judgment." (*People v. Kurey, supra*, 88

Cal.App.4th at pp. 848-849, fns. omitted.) Further, any substantial evidence argument

must begin with a summary of the evidence in the light most favorable to the court's

ruling. (See *People v. Johnson* (1980) 26 Cal.3d 557, 576.)

Contrary to such standards of review, defendant gives very little deference to the trial court's determination and summarized Doe's testimony in the light most favorable to his argument. Defendant points out that Doe had never reported defendant's beatings in the past, drawing the inference that she was not telling the truth on this occasion. Defendant also argues that had she experienced past beatings, Doe would not have called him to come see her and would not have gotten into his car. Defendant also infers a lack of credibility from Doe's waiting one day to report the beating, failing to seek medical attention, and claiming to set her own nose. Defendant argues that Doe's credibility was also called into question by her admission to having used methamphetamine, as well as the removal by authorities of her children from her custody.

In addition, defendant claims that Doe described an attack that was "immediately launched" "for no apparent reason," after which defendant "calmly" drove her home. Defendant refers generally to 14 pages of reporter's transcript -- the entirety of Doe's testimony -- which we have read without finding such facts. We have found no testimony in the record to the effect that the attack was immediate. In fact, Doe testified that it began after defendant drove for 10 minutes to a place of seclusion, refusing Doe's request to be let out of the car, and saying something like, "[Y]eah, you know this place you already know what happens here." Further, we find no indication in the record that Doe was asked to give a reason for defendant's attack, nor have we found any testimony suggesting that defendant attacked her for no apparent reason or that defendant was calm afterward.

Finally, defendant suggests that Doe's testimony should not be believed because it was not corroborated. "Except where additional evidence is required by statute, the direct evidence of one witness who is entitled to full credit is sufficient for proof of any fact." (Evid. Code, § 411.) Defendant has cited no statute that would require corroboration in this case.

Whether a witness is entitled to "full credit" under Evidence Code section 411 is a matter for the trial court to determine in the first instance. (*People v. Hunter* (1989) 49 Cal.3d 957, 977.) We uphold the trial court's credibility determination unless the

witness's testimony was physically impossible or inherently improbable. (*People v. Young* (2005) 34 Cal.4th 1149, 1181.) The events described by Doe were clearly not impossible. To be found inherently improbable, the testimony must be shown to be “unbelievable per se” when viewed “without resort to inference or deduction.” (*People v. Ennis* (2010) 190 Cal.App.4th 721, 725.) Defendant does not contend that Doe's version of the beating was impossible, and as his argument is comprised solely of inferences and deductions, he has failed to show inherent improbability. (*Ibid.*) We must therefore uphold the trial court's determination that Doe's testimony was credible.

Moreover, Doe's testimony was, in fact, corroborated. As respondent observes, defendant concedes that the photographs in evidence show that she sustained injuries. Defendant argues that these injuries do not corroborate her testimony because they were minor and she did not seek medical treatment. Defendant cites no authority to support his suggestion that a severe injury is an essential element of a violation of section 273.5. A traumatic condition is “a condition of the body, such as a wound, or external or internal injury, including, but not limited to, injury as a result of strangulation or suffocation, *whether of a minor or serious nature*, caused by a physical force. For purposes of this section, ‘strangulation’ and ‘suffocation’ include impeding the normal breathing or circulation of the blood of a person by applying pressure on the throat or neck.” (§ 273.5, subd. (c), italics added.)

The photographs show Doe with a swollen eye and a mark on her neck. Although the injuries do not appear to be severe, they are sufficient to satisfy the traumatic condition element of section 273.5. (See *People v. Wilkins* (1993) 14 Cal.App.4th 761, 769 [redness about the face and nose].) The photographs thus support Doe's testimony that defendant hit her in the face and strangled her until she was unconscious.

We conclude from the evidence that the trial court did not act arbitrarily or capriciously in determining that there was reason to believe that defendant had violated a term of probation. Defendant has thus failed to establish an abuse of discretion.

DISPOSITION

The judgment is affirmed.

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_____, J.
CHAVEZ

We concur:

_____, P. J.
BOREN

_____, J.
ASHMANN-GERST