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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

THE PEOPLE,

Plaintiff and Respondent,

v.

JEFFREY L. KNIGHT,

Defendant and Appellant.

B235145

(Los Angeles County Super. Ct.  
No. SA073466)

APPEAL from a judgment of the Superior Court of Los Angeles County, H. Chester Horn, Judge. Affirmed.

Hancock & Spears and Alan E. Spears, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Lance E. Winters, Assistant Attorney General, Lawrence M. Daniels and Ana R. Duarte, Deputy Attorneys General, for Plaintiff and Respondent.

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On April 27, 2010, defendant and appellant Jeffrey L. Knight entered a plea of no contest to a charge of assault by means likely to produce great bodily injury (Pen. Code, § 245, subd. (a)(1))<sup>1</sup> of Linda Caseman. Imposition of sentence was suspended and defendant was placed on formal probation for three years. The terms of probation required defendant to: “obey all laws”; “submit [his] person and property to search and seizure at any time of the day or night, by any . . . peace officer, with or without warrant, probable cause or reasonable suspicion”; “not use or threaten to use force or violence on any person”; and “cooperate . . . in a plan for psychological counseling and/or treatment.”

On September 20, 2010, defendant admitted a violation of probation based on threatening a peace officer. Probation was revoked and reinstated on the original terms and conditions, with a requirement that defendant serve 156 days in county jail.

After a formal revocation hearing on August 10, 2011, the trial court again found defendant was in violation of probation. Probation was terminated, and defendant was sentenced to the upper term of four years in state prison. This timely appeal followed.

Defendant contends it was an abuse of discretion to revoke probation because substantial evidence did not support the finding he violated terms and conditions of probation, and the violation was based on defendant’s exercise of his First Amendment right to free speech. We affirm.

## **The Probation Violation Hearing**

### **A. Prosecution Evidence**

On the morning of May 18, 2011, defendant failed to produce a valid train ticket on the Metro Green Line when asked to do so by Deputy Sheriff Carla Roberts. As Deputy Roberts attempted to issue defendant a citation, defendant started yelling, “I don’t

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<sup>1</sup> Hereinafter, all statutory references are to the Penal Code, unless otherwise indicated.

give a fuck what you do. . . . Fuck America and Fuck You.” His explosive behavior caused two passengers sitting nearby to move to another part of the train. Deputy Sheriffs Tapia and Meredith, who were in the train car, heard the disturbance and came to Deputy Roberts’s assistance. Defendant continued yelling loudly. Defendant was told to stand up. He delayed for several seconds before complying. Defendant tried to pull away as Deputies Tapia and Meredith began to handcuff him to detain him. He was warned he would be tasered if he did not comply with the handcuffing. The handcuffs were put on, but defendant continued to resist and yell. Defendant “suddenly pushed forward as if he was going to head butt [Deputy Tapia].” Continuing his resistance, defendant started to kick Deputy Tapia’s legs and spit at Deputy Tapia, hitting him in the face. Deputy Roberts shot defendant in the chest with her taser with a five-second burst. Defendant was momentarily cooperative, but he then again spat at Deputy Tapia. Deputy Roberts tasered defendant again in the chest with a dry stun. When the train arrived at a station, defendant continued cursing, resisting, and trying to pull free as the deputies took him off the train. At the station, they placed him on a bench where he continued kicking at the deputies with his legs. Defendant was hobble-tied until assistance arrived, and he was placed in a patrol car.

## **B. Defense Evidence**

Defendant testified he suffered from bipolar disorder and traumatic brain injury. On the day of his arrest, he was angry and frustrated because his home had been burglarized and he was having trouble clearing up tickets and warrants even though he had served time in jail for them. He did not take his medication that day. A female officer asked him for identification, which he tried to show to her. He was yelling and venting his anger on the train when Deputy Tapia came over and grabbed him by the throat and told him to put his hands behind his back. He was upset but did not spit. He kicked because he was being tasered, but his kicks were not directed at the officers. He is aggressive, but does not realize it, when he does not take his medicine.

### **C. Trial Court's Ruling**

The trial court found defendant in violation of probation. A psychiatric evaluation revealed defendant was bipolar and needed medication. The court stated: “[I]t . . . is incumbent on you that you are always taking [your] medication. Even though . . . you do not see it, you say other people see what seems to be like extreme swings and they are violent in nature. [¶] . . . I think this is a situation that could very easily not only have somebody else injured but yourself injured or even worse, and I think it is incumbent on you to always be taking that medication. And it seems while you're out, that's not always the case and that's what causes the problems. [¶] . . . I think probation is inappropriate in this case. . . . [¶] . . . I think the only way that I can ensure you're taking that medication and that you are not going to be more harm to the general public is to place you in state prison.”

## **DISCUSSION**

### **Revocation of Probation Was Not an Abuse of Discretion**

Defendant contends the order revoking his probation was an abuse of discretion because it is not supported by substantial evidence he resisted the officers. As the revocation order is supported by substantial evidence, we conclude the trial court did not abuse its discretion.

At any time during the probationary period, the trial court may revoke probation when it has reason to believe the defendant has violated any of the terms and conditions of probation. (§ 1203.2, subd. (a);<sup>2</sup> *People v. Johnson* (1993) 20 Cal.App.4th 106, 110.)

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<sup>2</sup> Section 1203.2, subdivision (a) provides in pertinent part: “the court may revoke and terminate . . . probation if the interests of justice so require and the court, in its judgment, has reason to believe from the report of the probation officer or otherwise that the person has violated any of the conditions of his or her probation, has become

The prosecution's burden of proof at a probation violation hearing is preponderance of the evidence. (*People v. Rodriguez* (1990) 51 Cal.3d 437, 441 (*Rodriguez*.) Revocation of probation, like its grant or denial, lies within the discretion of the trial court. (*Id.* at p. 443 ["It has long been recognized that the Legislature . . . intended to give trial courts very broad discretion in determining whether a probationer has violated probation."].)

We will reverse the trial court's decision to revoke probation only if the court exercised its discretion in an arbitrary or capricious manner. (*People v. Delson* (1984) 161 Cal.App.3d 56, 62.) Whether a finding of a probation violation was an abuse of discretion turns on the existence of a legitimate evidentiary basis for the court's finding. "[W]here the trial court was required to resolve conflicting evidence, review on appeal is based on the substantial evidence test. Under that standard, our review is 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. Similarly, all conflicting evidence will be resolved in favor of the decision." (*People v. Kurey* (2001) 88 Cal.App.4th 840, 848-849, fns. omitted.)

"Many times circumstances not warranting a conviction may fully justify a court in revoking probation granted on a prior offense. [Citation.]" (*People v. Vanella* (1968) 265 Cal.App.2d 463, 469 (*Vanella*.) "[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. . . ." (*Rodriguez, supra*, 51 Cal.3d at p. 443.) And the burden of demonstrating an abuse of the trial court's discretion rests squarely on the defendant. (*Vanella, supra*, 265 Cal.App.2d at p. 469.)" (*People v. Urke* (2011) 197 Cal.App.4th 766, 772.)

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abandoned to improper associates or a vicious life, or has subsequently committed other offenses, regardless whether he or she has been prosecuted for such offenses."

Substantial evidence supports finding defendant violated terms and conditions of his probation, giving the trial court discretion to revoke his probation. (§ 1203.2, subd. (a).) There is evidence defendant rode on a public transit car without paying the fare, in violation of section 640, subdivisions (a)(1) and (c)(1), an infraction, which constitutes substantial evidence he failed to “obey all laws,” as required by the terms of his probation. Proof that defendant tried to evade being detained by pulling away, pushing forward spitting, and kicking when the officers were handcuffing him is evidence he failed to “submit [his] person . . . to . . . seizure at any time of the day or night, by any . . . peace officer, with or without warrant, probable cause or reasonable suspicion,” as required by the terms of his probation. Testimony that defendant spit and kicked at the deputies supports a finding that he “use[d] or threaten[ed] to use force or violence on any person,” in violation of his probation. The evidence he did not take his psychiatric medication on the date of the incident was evidence he failed to “cooperate . . . in a plan for psychological counseling and/or treatment,” in violation of his probation. The evidence defendant was a danger to himself and others when he failed to take his prescribed psychiatric medication, and he neglected to take his medication, supported the court’s conclusion the interests of justice required defendant’s probation be revoked. (§ 1203.2, subd. (a).)

The trial court did not abuse its discretion in revoking defendant’s probation. Because substantial evidence supports the finding defendant violated various terms and conditions of his probation, we reject the contention he was punished for exercising his First Amendment right to free speech by yelling foul language.

**DISPOSITION**

The judgment is affirmed.

KRIEGLER, J.

We concur:

ARMSTRONG, Acting P. J.

MOSK, J.