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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

THE PEOPLE,

Plaintiff and Respondent,

v.

FERNANDO ALVIDREZ,

Defendant and Appellant.

B262295

(Los Angeles County

Super. Ct. No. MA059617)

APPEAL from a judgment of the Superior Court of Los Angeles County, Lisa Mangay Chung, Judge. Affirmed.

Marks & Brooklier, Anthony P. Brooklier, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Lance E. Winters, Assistant Attorney General, Scott A. Taryle and Michael C. Keller, Deputy Attorneys General, for Plaintiff and Respondent.

## INTRODUCTION

Defendant Fernando Alvidrez and Ana A.<sup>1</sup> were in a dating relationship that turned sour. Defendant placed a tracking device on Ana's car, showed up unexpectedly at various locations including Ana's work, and called Ana's place of employment, stating that she was being investigated by police. One night, defendant appeared outside a restaurant when Ana was on a date. He confronted Ana when she came outside with her date, slapped her, and carried her to a truck being driven by his nephew. While the nephew drove, defendant fought with Ana and threatened to kill her and dump her body in the desert. When Ana said she was going to report defendant to police, defendant threatened Ana and her family. He also threatened to have Ana deported or to have child protective services take Ana's daughter away from her. When Ana said she was going to call police, defendant took her phone. After Ana got back home and a sheriff's deputy took her back to the restaurant where her car was parked, they found that the car had been vandalized. Following attempts to hide from defendant by storing her car in a tow lot so he could not track her, Ana went to the sheriff's station to report defendant. He was arrested outside the sheriff's station, where he had followed Ana.

The District Attorney of the County of Los Angeles ("the People") charged defendant with making criminal threats (Pen. Code, § 422, subd. (a)<sup>2</sup>), dissuading a witness from reporting a crime (§ 136.1, subd. (b)(1)), vandalism causing over \$400 in damage (§ 594, subd. (a)), stalking (§ 646.9, subd. (a)), and second-degree robbery (§ 211). A jury found defendant guilty on all counts except making criminal threats.

Defendant appealed, arguing that Ana's testimony was so inherently improbable that it cannot sustain the conviction. We do not make credibility determinations on appeal, and Ana's testimony does not meet the very high threshold of inherent improbability. Moreover, other sources of evidence support Ana's version of events. We therefore affirm.

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<sup>1</sup> We refer to the victim by her first name only to protect her privacy. No disrespect is intended.

<sup>2</sup> All further statutory references are to the Penal Code unless otherwise indicated.

## **FACTUAL AND PROCEDURAL BACKGROUND**

### **A. Prosecution case**

Much of the prosecution case rested on the testimony of Ana. Because defendant's argument on appeal is that the evidence fails to support the verdict, the evidence at trial is recounted here in detail.

Ana testified that she met defendant when they were both in federal prison in Los Angeles in 2000. Ana was 18 years old, pregnant, and serving a sentence for transporting drugs. Although Ana was housed on the women's floor and defendant was housed on a men's floor, the inmates on different floors could communicate with each other through the air conditioning vents. Defendant and Ana began a relationship by speaking through the vents.

Ana was released from prison approximately three years later. Defendant was still incarcerated, and they wrote letters to each other about once a week. Ana stopped communicating with defendant after she received a letter from him intended for another woman.

When defendant was released from prison in 2011, he hired a private detective to find Ana. Defendant and Ana began dating. They dated for about six months, and "after that is when all the drama started." Ana testified that defendant was jealous and controlling; for example, he made her change her clothes when he did not like what she was wearing. He regularly would take away her cell phone and not give it back. He would monitor Ana's text messages, and sometimes he would respond to text messages received on her cell phone, pretending to be Ana. Defendant also would take away Ana's purse to pressure her to go places with him. She testified that in those situations, "I didn't have my car keys, my phone to call anyone. I was in a different county, like, place that I don't know."

Ana testified that once, when she threatened to leave defendant, he blocked her exit from the house and hit her, causing her eye to bleed. In another incident, defendant hit Ana and "grabbed my makeup box and he threw it in an alley. He was very

aggressive.” When Ana tried to break off her relationship with defendant, she discovered him hiding in the trunk of her car.

Ana reported defendant to police once, but then did not report any other incident because “he told me that he was going to kill me or my family.” Defendant threatened to call immigration officials to have Ana deported, and also told Ana that he had a gun. She testified that she was afraid of defendant.

Ana also testified that defendant followed her. “[E]verywhere I go, to the mall, to the stores, to work, he will be outside waiting for me. Or sometimes even sitting inside my car when I will get off from work. And it is two, three o’clock in the morning and it is dark, so I open my car and he is sitting inside the car.”<sup>3</sup> Defendant would come to Ana’s house where she lived with her mother and daughter, and the two would fight.

Ana started staying in hotels in an effort to distance herself from defendant. Defendant would sometimes show up at these hotels. Ana testified that on one occasion, the desk clerk told her that a drunk man had been asking for her room key the night before. The following day, the front desk called to ask if a man was staying there. Then there was a knock at the door announcing “housekeeping”; when Ana opened the door, it was defendant. He told her people were coming to kill her and that she needed to leave right away. Fearing for her life, Ana gathered her things and quickly left.

Ana testified that she began to suspect that defendant was tracking her somehow. She discovered a tracking device under the carpet in the trunk of her car. She testified, “[W]hen I found the tracker, I knew I wasn’t going to be able to run away from him. So I ended up seeing him again.” A car repair shop discovered another tracker on Ana’s car. Ana began parking her car in different places and calling cabs to take her to work.

On February 17, 2013, Ana went on a date with another man, Rigoberto Rodriguez, who also testified at trial. On the night of the date, Ana and Rodriguez met outside a restaurant in the parking lot, and had dinner inside the restaurant. During dinner, Ana mentioned to Rodriguez that she was afraid of her ex-boyfriend.

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<sup>3</sup> Ana’s testimony includes some non-traditional tenses; she explained at trial that English is not her first language. We include the testimony herein as it was given at trial.

When Ana and Rodriguez emerged from the restaurant after dinner, defendant confronted them in the parking lot. Ana testified that when she saw defendant, she got between Rodriguez and defendant and told Rodriguez to run. Rodriguez testified that Ana seemed scared. Defendant violently pulled Ana's arm so that she fell down. Rodriguez testified that Ana said defendant was hurting her. Ana testified that defendant slapped her on the face, tried to drag her, and then picked her up and carried her to a black pickup truck. Rodriguez ran inside to call 911; when he emerged 30 to 40 seconds later, Ana and defendant were gone. When questioned by police, Rodriguez later identified defendant from a photograph lineup.

The black pickup truck was driven by defendant's nephew, Joey Nuno. Ana and defendant were in the back seat of the truck, fighting. Ana testified that defendant told her that he was going to kill her and dump her body in the desert. He also kissed her: "[H]e kissed me twice, and then he said that he was going to kill me. That was before he kissed me. And then he said that he was – if I wasn't going to be with him, he wanted his money back." Ana explained that defendant had paid for Ana's car to be painted, and that was the money he wanted back.

Ana testified that the doors on the truck were locked so she could not get out, and she lunged for the steering wheel in an attempt to get the attention of other drivers. She also testified that she was scared: "I thought, you know, that was the end of my life that day." Ana testified that although the truck initially began heading away from her house, she convinced Joey to turn around and drive her home. When they got there and Ana threatened to call the police, defendant took her purse: "[H]e grabbed my purse where my phone, my cell phone, was, and he took it when I told him that I was going to call the cops." Ana tried to grab her purse and phone from the truck, but defendant "pushed me. He closed the door and he left. He took my purse." Defendant never gave Ana her phone back, and she had to get a new one.

Ana used her mother's phone to call 911. Sheriff's deputy Joshua Stamsek responded to the call. He offered to drive Ana to the restaurant to get her car. When they arrived, they discovered that acid had been poured on the car. Ana testified that the paint

on the car was “boiling” and “melting.” Deputy Stamsek testified that “her windshield and her headlight was, like, corrosive. Like melted. And then her paint was chipping; coming, actually, off that part.” Ana did not know if the damage was done before the encounter with defendant in the parking lot or afterward, because she had not seen her car when she and Rodriguez came out of the restaurant. Ana testified that she later asked defendant if he poured acid on her car, and he said he did not. But Ana also testified that in a previous incident, defendant was angry with someone at a bar, and said, “If only I had acid, I will pour it on her.”

Ana testified that defendant called her after midnight the same night. He came to her house and she met him outside “[b]ecause I was scared. I thought that he was going to come back and shoot me or shoot the house, and we have kids at the house. So I was like, you know, he’s going to kill me. Or I just – I was just scared for my family. So I ended up hopping, I was with him in the car. I got in his car.” She testified that she did not call the police again because defendant “had already told me that if he gets arrested, at any point he was going to send somebody to kill my family, or . . . call I.N.S. to pick me up.” She testified that this threat scared her, and explained her reluctance to report anything to the police: “I have a felony already, and I don’t want to lose my daughter. So I thought by going [to police] they were just going to take me in and send me back, deport me back to my country.” She also testified that she thought it would be best to placate defendant for the time being and seek a restraining order when the courts opened.

When defendant picked Ana up from her house, he was “really angry” that she had been out with another man. Defendant took Ana to a hotel, where they argued most of the night. She did not tell him that she had called police, but he knew that police had responded to the incident in the restaurant parking lot. Ana testified, “He said that he had to keep . . . his eyes close to me before I talk to the detectives or else the detectives were going to make me say everything that happened. So he had stayed closer to me.” Defendant took Ana home the following morning.

The following day, Dawn Oldham, a bouncer at the club where Ana worked, got a text message from Ana’s phone that Oldham found to be strange and uncharacteristic of

how Ana would usually text him. After a short text exchange in which Oldham assumed that defendant was texting but pretending to be Ana, Oldham texted, “You better not be hurting her.” A male caller then called Oldham from Ana’s number, and accused Oldham of being a coward for running away from him the night before. Oldham had no idea what the caller meant by that. After further communication, the caller apologized and said he probably had reached the wrong person. Oldham said, “You don’t know who you are messing with. I know you used to hurt Ana . . . . I just want to make sure she’s okay, you know, and don’t hurt her.”

After defendant had taken Ana’s phone, he attempted to communicate with Ana by calling and texting her daughter, her mother, and her mother’s boyfriend, sometimes at two or three o’clock in the morning. Ana testified that defendant said if she gave him her new phone number, he would stop calling her family. When Ana got a new phone, she gave defendant the phone number so he would stop harassing her family members.

Ana’s mother testified that she was afraid that defendant could harm her family. She testified that two grandchildren lived in her house: Ana’s daughter, and Ana’s sister’s son. After the restaurant incident, Ana’s mother began sleeping on the floor of the grandchildren’s bedroom “because I was afraid that maybe [defendant] was – I don’t know if he was going to come by or send someone else to do something to us.”

Three days after the restaurant incident, Ana attempted to get a restraining order against defendant. She filed the required papers and went to the sheriff’s department to have them serve defendant with the documents. Shortly before the scheduled hearing, she discovered that the sheriff’s department had never served defendant. The court set another hearing date, and Ana attempted to have the sheriffs serve defendant again. Again service was never completed, and Ana never got the restraining order.

Ana testified that she regularly communicated with defendant in April 2013. They would call and text each other every day. She would tell him she loved him. They saw each other about once a week. They went out to meals together. Ana explained her reasoning: “That was my only way to – for him not to get physical with me when he finds me. Or that was my only way to keep on – in peace away for a couple of days so I

can go see my daughter and then come back to work.” When asked why she did not contact the police, Ana testified, “Because he told me if I call the police, he was going to kill me or send somebody to kill my family.” Ana testified that she would be nice to him “[b]ecause I didn’t want him to kill me. I even had sex with him” to placate him. Ana explained why she continued to communicate with defendant: “I just had to do it. I had to continue talking to him so he wouldn’t hurt me. So I was just scared.”

Ana warned security at the club where she worked that her ex-boyfriend was stalking her and showed them his picture. Oldham, the club bouncer, testified that when Ana talked about defendant, she seemed “extremely panicked,” “scared,” “horrified,” and “paranoid.” She would have Oldham check the parking lot before she left work, and he would drive with her partway home to ensure no one was following her. Defendant came into the club sometime after the February restaurant incident, and Ana appeared “horrified” and “panicked.” The general manager and Oldham told defendant to leave. Employees at the club posted a security camera picture of defendant near the entrance as one of the people who were not allowed into the club.

Ana had the acid damage on her car repaired at an auto-body shop. The estimate for the repairs was \$8,000. It took about three weeks for the car to be repaired, and in the meantime the body shop loaned Ana a car to drive. She testified that not having a tracking device on the loaner car resulted in “three weeks of peace that I had for a while because I had the rental and I was able to go to stores, my mom’s house, places, because he didn’t know what type of car I was driving. And I could go to a restaurant and eat in peace with my daughter and – until I got my car back. That’s when everything started again.” She also testified that she did not respond to defendant’s calls and texts during this time, because she knew defendant could not find her.

Ana testified that when she was driving her own car with the tracking device on it, defendant would show up at her home, and “at the nail shops when I was getting my nails

done; like, restaurants, hotels.”<sup>4</sup> She testified that defendant would call her and he “would play a game with me, like I know what you are doing. You are at the nail shop, or I’m – you are not at work. Like, he already knew where I was.” After she had her car repaired, Ana took the car to a company “where they scan your car to find any trackers device [sic] and they couldn’t find anything.” Thinking she was safe, Ana went to a hotel and defendant showed up: “He finds me when I am inside my room. I don’t know how he found me again. But he breaks the window. He comes in. And I’m naked because I was doing my makeup. And I am sitting there. Because I thought he was maybe – I don’t know what it was, so I opened the door. He comes in. And he grabs me and he pulls me from the hotel like a block away where he parked his car. And I was naked when I was running in the street.” She continued, “So he takes me to a different hotel, and then he tells me, like, we should go out for dinner, like nothing happened. Like – and I told him, how can you even ask me to go out with you and have dinner when I am naked and I don’t have nothing to wear? But it was more for him like nothing happened.”

Ana testified that she took her car to two additional places, including the car dealership, in an attempt to locate the tracking device she suspected was on her car. They were unable to locate any devices. Because defendant already knew where she was, sometimes she would tell him her location: “Well, he called me. And even if I wouldn’t – never told him where I was, he was going to be there because of the tracker.” Ana also testified that she would be nice to him and call him *mi amor* (my love), because “[t]hat was my only way I know I will survive that night and . . . I had to do it.”

On May 4, 2013, Ana told defendant she was staying in a hotel in Hesperia. Defendant went to the hotel, told her that he had an upcoming court date, told Ana to wait for him if he got arrested. “He told me that I was going to be – he wasn’t going to let me live my life to be with anybody else if it wasn’t with him.” Ana testified that this scared her because “by then he had already told me that he had seen my daughter when she was

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<sup>4</sup> Ana identified various hotels she stayed in during this time period, and provided receipts for those stays.

in school, like, stalking her too.” She testified that she “begged him to leave me alone; that I wasn’t – I didn’t want to hurt him or to get him in trouble. If he will just leave me alone so I can continue my life because I didn’t love him anymore.” Ana testified that defendant cried, and stayed at the hotel, saying that he wanted to think about it. The next morning he was acting strange and asked her to go to the state line with him, near Nevada. She agreed to go “[b]ecause he had already mentioned my daughter a lot that night before.” She felt that she could have told defendant that she did not want to go, “but it was going to be worse” if she refused. As they were driving through the desert, she wondered if he was planning to kill her and dump her body in a desolate area. They went to Las Vegas, shopped for some clothes, and had lunch. Although she had run away from defendant in the past, while they were on this trip she did not run away because defendant had talked about her daughter, and she could not be sure that her daughter would remain safe if she was not with defendant. While they were in Las Vegas, defendant suggested that they get married. Ana told him that she could not because she did not have identification with her.

Two days later, on May 6, 2013, Ana hid her car in a tow lot again for a week. Ana testified that defendant had been “calling all these people up in Hesperia, Victorville, all the people who live up there. And I thought, like, he was really looking for me.” Ana testified, “I was scared. . . . [S]o I decided to store my car and just to be away from him, so he wouldn’t find me.” Defendant also told Ana that he would kill her daughter. In addition, “He said he was going to call child services on me and [sic] because I was working in a gentlemen’s club, and he was going to call I.N.S.” Defendant found out that Ana had spoken to police about him, and he began calling her *traicionera*, which Ana testified means traitor or backstabber.

On May 6, defendant texted her, telling her to answer her phone, saying she had “no respect,” calling her a “sad bitch,” threatening to “cause drama,” calling her a whore, and saying “*vas a pagar*” (you will pay). Around the same time, defendant called the club where Ana worked, telling the manager that detectives were looking for her. On May 7, Ana texted to defendant said she was “walking away,” and she asked defendant to

“please stay away.” On May 8, defendant texted Ana over and over telling her to answer her phone. She responded to defendant, asking him to stop. On May 9, defendant texted, “I have everything prepared to send your things to child protective services. They are going to take [your daughter] from you.” The same day, defendant also texted, “You call me or I will send your family something.” Ana responded, “I called you. I’m in L.A. trying to work. Please stop.”

The owner of the tow lot where Ana stored her car testified that he received calls from a woman inquiring about Ana, which the owner found to be odd. He also received a call from a man saying that his girlfriend left her car there. The owner testified that the male caller “said it was his vehicle and that I should – if I didn’t want to upset him, that I should put it outside so he could pick it up at a later time.” The male caller also told the tow lot owner that he knew where the owner’s children went to school. The owner told the caller that he would need to see proof of ownership before he could release a car, and that if the car was stolen he would cooperate with authorities. The male caller also said that Ana was “his woman and that’s his property” and “I better stay away from her.”

Ana received a phone call from a phone number appearing to be child protective services. A male voice told her she was in trouble, but if she would “put all this . . . paperwork away” involving defendant, “then I don’t have to go to your house and visit your daughter.” Ana immediately suspected that the phone call was not legitimate. She received additional missed calls and a voice mail from the same number. Although Ana testified that she saved the voice mail, it was eventually lost and was not entered into evidence at trial.

On May 13, 2013, Ana was driving from Lancaster to Los Angeles. As she neared east Los Angeles, where defendant lived, defendant called her and said he knew she was in the area. He said he wanted to meet with her, and she suggested that they meet near the sheriff’s station. She parked under a security camera and got out of her car to meet defendant. He grabbed her purse and rifled through it looking for her phone, which she left hidden in her car. When he could not find the phone, he threw her purse to the ground. He told Ana that she “needed to pay him back.”

Ana testified that because defendant had mentioned her daughter and she had received a call purportedly from child protective services, she became increasingly worried about her daughter's safety: "I thought, you know, now he's not after me. Now he's going to be after my daughter." On May 15, 2013, two days after she met defendant near the sheriff's station in east Los Angeles, Ana decided to report defendant to the police. She parked near the sheriff's station in Lancaster, but not at the station because she was afraid defendant would find out that she reported him. Ana met with Detective Elizabeth Sheppard and told her what had been happening. When Ana went back outside, she saw defendant's car. She testified, "I walked back, kind of running to the station. Because I thought he was – you know, by then I thought he was going to shoot me or something. Like, I fear for my life. . . . And I called the detective, and I told her that he was outside."

Detective Sheppard testified that she met Ana in the lobby, and Ana "was out of breath and panicked." Detective Sheppard testified that Ana pointed out defendant's car parked across the street, and, "She was shaking. She was terrified." Detective Sheppard and three other detectives went across the street, and "[b]ecause she had just identified him in the six-pack, I knew what the defendant looked like. And as we approached his car, he came walking out of a restaurant across the street, and we approached him and arrested him."

Detectives recovered a tracking device in defendant's car and a voice-activated audio recorder. Detectives also found a brass law enforcement badge hidden in a vent near the steering wheel of the car. Defendant had two phones with him, and he had a slip of paper in his pocket that had on it Ana's name, her daughter's name, her daughter's father's name, and some addresses and phone numbers. One of the phone numbers was Ana's and the other was for the Department of Children and Family Services (DCFS). Detective Sheppard testified that she checked with DCFS, and there was never a DCFS case opened involving Ana or her daughter. Also written on the slip of paper was, "She is illegal. She could make it go, (arrested.)" Defendant's phone showed that he had called DCFS the day before, on May 14.

Detective Sheppard testified that in her investigation of the case, she discovered a number of purchases made by defendant relating to two tracking devices, such as the devices themselves, battery packs for the devices, and magnetic cases for the devices. She also received all of the data relating to the trackers.

After defendant was arrested, detectives searched Ana's car for a tracking device and initially did not find one. Detective Sheppard suggested that Ana take her car to another service that had better equipment to search for a tracker; Ana did, but no tracker was found. But Ana felt that she was still being followed; at one point a car and a truck were following her despite her speeding up, slowing down, and making evasive turns. Ana called Detective Sheppard again and took the car back for a search. Detective Sheppard called in detectives from the major crimes unit to assist her, and a detective with a long-arm mirror and a flashlight finally was able to find "something that didn't belong" in the car, "in the trunk underneath the carpet, very far up into the area up by the gas tank." Detective Sheppard removed the item and found that it was indeed a GPS tracking device. A fingerprint on the device matched defendant's right middle finger.

Based on the information she obtained from the company that sold the tracking device, Detective Sheppard testified that the device found in Ana's car started generating location, battery, and speed information in November 2012. Detective Sheppard also testified that the tracking devices matched up with Ana's testimony about when and where she had been over the preceding months. Detective Sheppard testified that the tracker showed that Ana's car was parked at or near the restaurant the night of February 17, 2013, when she went on a date with Rodriguez, and that it was later moved when the sheriff's deputy took Ana to pick up her car.

The tracker showed that Ana's car was dropped off at the body shop to repair the acid damage on February 28, 2013. Detective Sheppard testified that the tracker remained in the same area for several weeks while the car was being repaired, but on March 27, the car was driven to a different location and the battery percentage on the tracker jumped from 59% to 100%, showing that the battery pack had been replaced. The owner of the body shop testified that defendant picked up the car from the body shop and

took it for a couple of hours. The body shop owner also testified that defendant paid for the repairs to the car.

Detective Sheppard testified that the tracker data showed that Ana's car was parked at the Hesperia tow lot from May 6 to May 13. The tracker also showed that Ana went to the east Los Angeles sheriff's station on May 13. Detective Sheppard also testified that the tracking device data matched up with Ana's statements about when and where she had stayed at hotels.

Ana testified that she gets panic attacks requiring medication as a result of defendant's stalking.

#### B. Defense case

On cross-examination, defense counsel showed Ana a phone company printout showing text messages from Ana to defendant from April 9 to May 15, 2013. Texts from earlier than that time were not available because they already had been purged by the phone company.

Defense counsel questioned Ana about many of the texts she sent defendant in April 2013 that included expressions of love or terms of endearment. For example, Ana admitted that she texted defendant that she loved him; Ana explained that it was a lie. Counsel asked her why she instructed defendant to "get condoms" on April 14; Ana replied that every time defendant saw her, he wanted sex and "obviously I don't want to get pregnant from a person like him." When asked if she wanted to have sex with defendant, Ana explained that sometimes she "didn't want to, and he will be like, just let me do it." On April 14 defendant and Ana had a text conversation about him gaining access to her hotel room; when he texted that he was able to get in, she responded, "*Que bueno*" (that's good). He then texted, "Miss you," and she responded, "Me too." Ana explained, "I was working at the club, and that was my only way for him not to come and start drama at the place that I was working at that time."

On April 15, Ana texted, "Let me know if you are coming. If not so I can go to work early. Love you." Ana explained that she wanted to know if defendant was going to show up someplace. When defense counsel asked Ana whether she was encouraging

defendant to come see her, she responded, “He was going to be there even if I didn’t call him to come over.” After discussing texts in which Ana used terms of endearment and offered to spend time with defendant, defense counsel asked, “[D]o you think that encouraged him and made him think that you loved him and you want to spend time with him?” Ana explained that defendant thought he was going to be sent back to prison, and “I was more in fear that he was going to overreact in the last few weeks” before he was incarcerated. Defense counsel asked, “Were you trying to make him think that you were in love with him and you wanted to spend time with him? Yes or no?” Ana answered, “Yes, I did.” In another exchange, Ana texted defendant about getting a hotel room. Defense counsel asked if she was “trying to make him think that you were in love with him.” Ana responded, “Well, I didn’t want him to kill me before he got arrested.” When defendant wished her a good night on April 22, Ana interpreted it as a suggestion that he knew she was in bed because he could see the location of the tracker in the car. Ana also testified that in a text in May 2013, the month defendant was arrested for stalking, defendant threatened to kill her in a text message. Detective Sheppard, who had data relating to some of the text messages between defendant and Ana, was unable to corroborate this.

Defense counsel and Ana had a long exchange about whether defendant had threatened to kill Ana’s daughter two, three, or four times. Defense counsel pointed out that Ana signed a paper allowing defendant to pick her daughter up from school in an emergency; Ana explained that she signed it early in their relationship, and had never thought to change it, but that defendant never picked her daughter up from school. Defendant had only been near Ana’s daughter twice.

Defense counsel asked about why Ana got angry when it appeared defendant had another girlfriend. She explained that she was not jealous of the other woman, but “he will be like, yes, I have somebody else. He will come to me. Yes, I have somebody else, but I can’t let you go. Like, I’ll be his pet. Whenever he wants to come around and abuse me and all his anger that he had about his business or whatever he used to come and tell me, he will come and just – will release his anger on me.”

Ana also testified that defendant told her that if he were arrested relating to his actions toward her, nothing would come of it because she was just “a stupid stripper. A dancer.” He told Ana, “I have so much money to hire five attorneys, and they all are going to be attacking you. And you don’t have enough money to even hire one. So they are going to send your ass back to Mexico.” Ana admitted that defendant made some of her car payments. Ana also admitted that of the five phones defendant had taken from her, defendant had bought one of them.

Defense counsel also called Ana back to the stand during the defense case. Ana admitted that she could not clearly remember whether the caller purporting to be from DCFS had specifically referenced defendant by name. Defense counsel also questioned Ana about whether she was in the country illegally. Ana testified that after she was deported to Mexico, someone tried to kidnap her daughter. Defendant sent Ana \$1,000 to reenter the United States illegally with her daughter. Ana also testified that on the night defendant showed up at the restaurant, she did not call defendant, and none of the calls on her phone’s call log for that evening were to or from defendant.

Defendant did not testify. He presented the testimony of a translator, who provided translations of some of the text messages between Ana and defendant. Defendant also presented the testimony of his adult daughter, who said she met Ana while her father was still in prison. Defendant’s daughter said she made one of Ana’s car payments once when defendant asked her to.

Defendant also presented the testimony of his nephew, Joseph Nuno, who was driving the truck on February 17, 2013, the night defendant showed up at the restaurant where Ana was on a date. Nuno testified that on the night of the incident, defendant received a call from Ana indicating that she needed assistance; defendant and Nuno then drove to the restaurant in Lancaster. Nuno was driving his pickup truck while defendant directed him where to go and where to park. After they parked, defendant got out of the truck while Nuno waited for a period of time less than ten minutes. Nuno did not see the initial interaction between defendant and Ana. When defendant came back, Ana was with him. Defendant and Ana were arguing in Spanish, which Nuno could not easily

understand. Nuno did not see defendant knock Ana down or hit her. He testified that defendant did not force Ana into the truck. Defendant and Ana continued arguing and talking loudly in Spanish in the back seat. As they were driving, Ana lunged for the steering wheel three separate times. Nuno then said he would take her home, and Ana seemed to calm down. When she got out of the truck at her house, Ana yelled that she was going to call the police. Ana got out of the truck and came back to the car to get her phone; Nuno was unsure if she ever retrieved it.

Defendant's closing arguments focused on Ana's inconsistent statements. Counsel argued, for example, "Don't try and make sense of somebody like Ana. Don't give her the presumption of sanity. Don't give her the presumption that she is a regular person who thinks like you do. [¶] She's whacked out. There is something wrong with her. She's nuts, and there's no other way to say it. She's a crazy person. And this is the person that the prosecution wants you to believe beyond a reasonable doubt."

The jury found defendant guilty of dissuading a witness from reporting a crime (§ 136.1, subd. (b)(1)), vandalism causing over \$400 in damage (§ 594, subd. (a)), stalking (§ 646.9, subd. (a)), and second-degree robbery (§ 211). The jury found defendant not guilty of making criminal threats (§ 422, subd. (a)). Defendant later moved for a new trial; the court denied the motion. The trial court sentenced defendant to a total of 16 years, four months. Defendant timely appealed.

### **STANDARD OF REVIEW**

Defendant's primary argument on appeal is that Ana's testimony is "inherently improbable" and that Ana was substantially impeached. As a result, defendant argues, there is insufficient evidence to support the verdict on any count. This argument is unpersuasive.

"To determine whether sufficient evidence supports a jury verdict, a reviewing court reviews the entire record in the light most favorable to the judgment to determine whether it discloses evidence that is reasonable, credible, and of solid value such that a reasonable jury could find the defendant guilty beyond a reasonable doubt." (*People v. Rountree* (2013) 56 Cal.4th 823, 852-853.) "The test is whether substantial evidence

supports the decision, not whether the evidence proves guilt beyond a reasonable doubt.” (*People v. Mincey* (1992) 2 Cal.4th 408, 432.) We therefore consider whether a rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. (*People v. Romero* (2006) 140 Cal.App.4th 15, 18.)

With respect to witness credibility, “[w]e may not reweigh the evidence or substitute our judgment for that of the trier of fact.” (*People v. Ewing* (2016) 244 Cal.App.4th 359, 371.) Moreover, “[i]f the circumstances reasonably justify the jury’s findings, the reviewing court may not reverse the judgment merely because it believes that the circumstances might also support a contrary finding.” (*People v. Gonzales* (2011) 52 Cal.4th 254, 295.) “A reversal for insufficient evidence ‘is unwarranted unless it appears “that upon no hypothesis whatever is there sufficient substantial evidence to support”’ the jury’s verdict. [Citation.]” (*People v. Zamudio* (2008) 43 Cal.4th 327, 357.)

“While an appellate court can overturn a judgment when it concludes the evidence supporting it was ‘inherently improbable,’ such a finding is so rare as to be almost non-existent. ““To warrant the rejection of the statements given by a witness who has been believed by a trial court, there must exist either a physical impossibility that they are true, or their falsity must be apparent without resorting to inferences or deductions.”” (*People v. Ennis* (2010) 190 Cal.App.4th 721, 728 (*Ennis*).

## **DISCUSSION**

Defendant argues on appeal that his convictions were not supported by substantial evidence. He argues that Ana’s testimony was inherently improbable because “[h]er utterances of love, invitations to have sex and other matters . . . are totally inconsistent with defendant’s guilt.” Defendant also argues that his convictions are “solely based on a witness whose testimony on the stalking count has been found to be unworthy of belief, particularly since her testimony on those counts is uncorroborated.”

“At trial, ‘it is the exclusive province of the trial judge or jury to determine the credibility of a witness and the truth or falsity of the facts on which that determination depends.’ [Citation.]” (*People v. Hovarter* (2008) 44 Cal.4th 983, 996 [italics omitted].)

Doubts about the credibility of in-court witnesses are therefore left for the jury's resolution. (*Ibid.*) The "inherently improbable" standard for rejecting testimony on appeal is therefore "not merely an enhanced version of implausibility," because the plausibility of testimony is reserved for the trier of fact. (*Ennis, supra*, 190 Cal.App.4th at p. 725.) "Inherently improbable, by contrast, means that the challenged evidence is 'unbelievable per se,' such that 'the things testified to would not seem possible.' (*Lane v. Safeway Stores, Inc.* (1939) 33 Cal.App.2d 169, 175, 91 P.2d 160.) The determination of inherent improbability must be made without resort to inference or deduction, and thus cannot be established by comparing the challenged testimony to other evidence in the case." (*Ennis, supra*, 190 Cal.App.4th at p. 725.) Where an inherent improbability claim "is based entirely on comparisons, contradictions and inferences, it amounts to nothing more than an attack on witness credibility, and cannot be the basis for a reversal of the judgment on appeal." (*Ibid.*)

Here, defendant argues that Ana's actions and testimony are contradictory. That assertion cannot support an inherent improbability claim. Defendant argues that because Ana told defendant she loved him, used terms of endearment, and sometimes interacted with him in ways that seemed voluntary, Ana could not possibly have been the victim of stalking. But Ana testified at trial that she did these things to placate defendant because she was terrified that he would cause problems at work or with her family. When asked why she told defendant where she was, for example, Ana explained that defendant already knew where she was all the time, and if she maintained contact with him at least she would have some warning before he showed up at her location. In the weeks before defendant expected to be arrested on other charges, Ana explained that she was nice to defendant because "I had a fear that the was going to re-hurt me before he got arrested," and "I didn't want him to kill me before he got arrested." Whether it was plausible that Ana had attempted to placate defendant based on her stress and fear was a credibility determination for the jury. Ana's stated motives are not physically impossible, nor can they be deemed false "without resorting to inferences or deductions." (*Ennis, supra*, 190 Cal.App.4th at p. 728.)

Moreover, Ana's testimony was well supported by other evidence in the case. There is substantial evidence that defendant was tracking all of Ana's movements with the tracking device hidden in her car. Detective Sheppard testified in detail about the tracker itself and the related documentation showing that defendant purchased the tracker and gathered the data on it. The body shop owner testified that defendant picked up Ana's car before it was released to Ana, and Detective Sheppard testified that the battery pack in the tracker was replaced the same day. Evidence also showed that defendant's fingerprint was on the tracker found in Ana's car. Rodriguez testified that defendant showed up unexpectedly during his date with Ana, and the phone records showed that Ana had not called defendant that evening, indicating that defendant was monitoring Ana's movements somehow. Detective Sheppard testified that defendant also showed up unexpectedly near the sheriff's station when Ana was there, with a slip of paper in his pocket showing Ana's phone number, Ana's daughter's information, and the phone number of DCFS. Far from indicating that Ana's testimony is impossible, the prosecution presented extensive evidence from multiple sources supporting Ana's version of events.

Defendant's improbability arguments here and at trial focus largely on texts sent in April 2013. Even assuming, for the sake of argument, that Ana's actions were somewhat contradictory then, the evidence nonetheless makes clear that the relationship between Ana and defendant was hostile by May 2013. Ana stored her car in the tow lot in Hesperia for a week so he would stop tracking her, and she stopped answering defendant's texts. She begged him to stop contacting her. Meanwhile, defendant was calling Ana names such as "traitor," "whore," and "sad bitch." He texted to Ana, "You will pay," and, "You call me or I will send your family something." He threatened to have child protective services take Ana's daughter away from her. By May 15, defendant's actions had become so unbearable that Ana finally went to the sheriff's department. Defendant was arrested the same day, apparently after following her by using the tracker. He had Ana's daughter's information in his pocket and his phone showed that he had called DCFS, indicating that he intended to make good on his threats

to disrupt Ana's family. Ana's testimony about the events in May 2013 was further confirmed by the testimony of Detective Sheppard, phone records, tracking device records, the owner of the Hesperia tow lot, and receipts from multiple hotels where Ana stayed in an attempt to draw defendant away from her family. There is no indication in the record that Ana's testimony about the events of May 2013 is inherently implausible.

Defendant compares Ana's testimony to that in *People v. Carvalho* (1952) 112 Cal.App.2d 482. There, a wife testified that her estranged husband kidnapped her at gunpoint. On appeal following a conviction for kidnapping, the Court of Appeal found that because the wife did not take advantage of various chances to escape or call attention to her peril, the "circumstances do not in our opinion reasonably justify the conclusion reached in the court below that the prosecutrix was transported by the use of force and held in captivity through fear on her part." (*Id.* at p. 491.) Defendant argues *Carvalho* is relevant here, because Ana's actions and certain text messages do not support a finding that she feared defendant. But Ana's motives were not impossible, the credibility of her testimony was a question for the jury, and significant evidence corroborated her testimony. Moreover, we agree with the court in *Ennis* that "this is an area of the law in which the age of the precedent—and the changes in understanding about the psychology of victimization since its publication—is relevant." (*Ennis, supra*, 190 Cal.App.4th at p. 731 fn. 3.) To the extent *Carvalho* has any continuing vitality today, it is not relevant in light of the testimony, evidence, and circumstances of this case.

Defendant also argues that the evidence does not support some of the specific findings required for his conviction. He argues, without citations to the record or any legal authority, that one element of stalking, and the vandalism, robbery, and witness intimidation counts are not supported by substantial evidence. Because these assertions in defendant's brief are wholly lacking in citations to authority or evidence, we may treat them as forfeited. "[E]very brief should contain a legal argument with citation of authorities on the points made. If none is furnished on a particular point, the court may treat it as waived, and pass it without consideration. . . ." This principle is especially true when an appellant makes a general assertion, unsupported by specific argument,

regarding insufficiency of evidence. [Citation.]” (*People v. Stanley* (1995) 10 Cal.4th 764, 793.)

Even if we were to consider defendant’s arguments on the merits, however, we would reject them. Stalking is committed by “[a]ny person who willfully, maliciously, and repeatedly follows or willfully and maliciously harasses another person and who makes a credible threat with the intent to place that person in reasonable fear for his or her safety, or the safety of his or her immediate family.” (§ 646.9, subd. (a).) Defendant argues that “the element of willfully and maliciously harassing Ana cannot be met because even Ana indicated she invited his attention and was fooling him.” However, Ana’s testimony made it clear that she did not invite the kind of attention that defendant gave her. There is no evidence that Ana encouraged defendant to secretly track her every move. Moreover, ample evidence from other sources at trial indicated that Ana did not welcome defendant’s harassment, including Rodriguez’s testimony that Ana was scared when they encountered defendant in the restaurant parking lot, Oldham’s testimony that Ana seemed terrified when defendant showed up at the club where they worked, Detective Sheppard’s testimony that Ana seemed panicked when defendant showed up at the sheriff’s station, and Ana’s multiple attempts to free herself from the tracker by having the car searched for devices and stowing her car at the Hesperia tow lot. This element is therefore well supported by the record.

Defendant also argues that the vandalism count is unsupported because “it is totally based on speculation. There is just no evidence linking defendant to this count.” We do not agree that there was “no evidence” linking defendant to the vandalism. The evidence showed that defendant was in the parking lot where Ana’s car was parked on the night it was vandalized. Nuno testified that he waited for up to ten minutes as defendant was out of the truck in the parking lot before he returned with Ana, and Nuno could not see what defendant was doing during that time. Ana testified that defendant was angry that she was on a date with another man, Rodriguez testified that defendant seemed very angry in the parking lot, and Nuno testified that defendant and Ana were arguing when they approached the truck. Moreover, Ana testified that defendant made a

comment about using acid as a weapon when he was angry at a different woman. Ana also testified that while they were fighting in the truck, defendant told her that if she was going to be with another man, she needed to pay him back the money he had paid to have her car painted, suggesting a possible motive for defendant to damage the paint on Ana's car. Reversal for insufficient evidence is unwarranted unless it appears that upon no hypothesis whatever is there sufficient substantial evidence to support the conviction. (*People v. Manriquez* (2005) 37 Cal.4th 547, 577.) A conviction should be affirmed "[i]f the circumstances, plus all the logical inferences the jury might have drawn from them, reasonably justify the jury's findings." (*People v. Tripp* (2007) 151 Cal.App.4th 951, 955.) Here, the jury reasonably could have inferred from the evidence that defendant, who had both motive and opportunity, intentionally and maliciously damaged the paint on Ana's car while it was parked in the restaurant parking lot as Ana was on a date with another man.

Defendant also argues that the counts for dissuading a witness and robbery are unsupported by substantial evidence "[g]iven Ana's lack of credibility and lack of corroboration." However, "unless the testimony is physically impossible or inherently improbable, testimony of a single witness is sufficient to support a conviction." (*People v. Young* (2005) 34 Cal.4th 1149, 1181.) As discussed above, Ana's testimony was not physically impossible or inherently improbable. Her testimony alone is therefore sufficient to support the convictions for both counts.

Defendant was convicted under section 136.1, subdivision (b)(1), which prohibits a person from attempting "to prevent or dissuade another person who has been the victim of a crime or who is witness to a crime" from reporting that crime to police. (§ 136.1, subd. (b)(1).) Ana testified that defendant attempted to dissuade her from communicating with police on multiple occasions, including taking her phone from her the night of the restaurant incident after Ana threatened to call police; telling her after the restaurant incident that he would have to keep her close so she did not disclose too much to police; telling Ana that if he was arrested he would send someone to kill her family; telling Ana that no one would believe a stripper and that he could hire expensive attorneys; telling

Ana that she would be deported if she went to authorities; calling Ana a traitor when she reported him to police and texting “you will pay”; and possibly having someone posing as a DCFS representative call Ana to threaten that her daughter would be taken away. Evidence of the text messages themselves supported Ana’s testimony on this count, and defendant’s texts of “*tracionara*” (traitor), “*vas a pagar*” (you will pay), and “I have everything prepared to send your things to child protective services. They are going to take [your daughter] from you,” were translated from Spanish for the jury. There is ample evidence in the record to support the conviction for dissuading a witness.

“Robbery is the felonious taking of personal property in the possession of another, from his person or immediate presence, and against his will, accomplished by means of force or fear.” (§ 211.) Ana’s testimony about the robbery of her phone was clear. She testified that when defendant and Nuno took her home the night of the restaurant incident, she threatened to call police and attempted to grab her phone. But defendant pushed her away, closed the truck door, and left with her phone. Ana’s uncontroverted testimony alone is sufficient to support the conviction, but her testimony is also corroborated by multiple sources. Nuno testified that Ana tried to retrieve something from the truck when they dropped her off, Oldham testified that defendant contacted him with Ana’s phone the day after he took it, and texts to Ana’s family members show that defendant was attempting to contact her through other means, indicating that Ana did not have her phone. Therefore there was sufficient evidence to support the conviction for robbery as well.

Defendant argues in passing, without any citation to authority, that because there was “palpably insufficient evidence,” “to sustain the convictions in this case would violate the federal due process clause.” As noted above, argument without citation to authority may be deemed waived. Furthermore, we have already found that there is sufficient evidence to sustain the convictions, and therefore this argument is unpersuasive.

**DISPOSITION**

The judgment is affirmed.

**NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS**

COLLINS, J.

We concur:

WILLHITE, Acting P. J.

MANELLA, J.