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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

THE PEOPLE,

Plaintiff and Respondent,

v.

TYLER HOWLAND WILLIS,

Defendant and Appellant.

B267329

(Los Angeles County  
Super. Ct. No. 5PH06949)

APPEAL from an order of the Superior Court of Los Angeles County. Jacqueline H. Lewis, Judge. Affirmed in part; reversed in part.

California Appellate Project, Jonathan B. Steiner, Executive Director, and Richard B. Lennon, under appointment by the Court of Appeal, for Defendant and Appellant Tyler Howland Willis.

Kamala D. Harris, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Lance E. Winters, Assistant Attorney General, Margaret E. Maxwell, and Yun K. Lee, Deputy Attorneys General, for Plaintiff and Respondent.

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Tyler Howland Willis appeals from an order, pursuant to Penal Code sections 1203.2 and 3000.08, revoking his parole supervision. The revocation was based on two grounds: (1) Willis violated a parole condition that he not enter without his parole officer's permission any park where children regularly gather; and (2) Willis resisted arrest. We conclude that the evidence is insufficient to support the finding as to the first ground, and agree with Willis's counsel that no arguable issue exists as to the finding on the second ground. Accordingly, we reverse the court's order in part and affirm in part.

### **FACTUAL AND PROCEDURAL SUMMARY**

In October 2009, defendant was convicted of a lewd and lascivious act upon a child under the age of 14. (Pen. Code, § 288, subd. (a).)<sup>1</sup> He was released in March 2012, subject to parole supervision by the Department of Corrections and Rehabilitation (DCR), and required to wear a global positioning system (GPS) device. His conditions of parole included a requirement that he not without permission from his parole officer enter any park where children regularly gather.

On September 2, 2015, the DCR filed a petition to revoke Willis's parole on the grounds that: (1) without his parole officer's permission, he had entered a park where children play; and (2) he resisted arrest. The parties stipulated to a "unitary" hearing for determining probable cause and the merits of the petition.

Willis's parole officer, Mark Muckenthaler, was the People's only witness. Muckenthaler testified that the computer software he used to track Willis's GPS device indicated that Willis was inside Linnie Canal Park in the Venice area of Los Angeles on August 22,

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<sup>1</sup> All subsequent statutory references are to the Penal Code unless otherwise indicated.

2015, from 3:16 p.m. until 3:29 p.m. Muckenthaler authenticated computer screenshots of a map showing Linnie Canal Park and street level photographs of the park created by Google Maps. These images show two sides of the park are adjacent to intersecting streets. A third side is bordered by a walking path adjacent to a canal. The fourth side of the park is bordered by a fence. Some distance beyond the fence is a residential building. The park contains children's play equipment.

The map and photographs are marked with a red dot indicating where the GPS software placed Willis's location within the park. The exhibits do not include a scale of measurement or indicate the dimensions of the park or the distance from any edge of the park to the red dot.

On cross-examination, Muckenthaler said that the information provided by the GPS tracking software was the only evidence he had that Willis was inside the park. When defense counsel asked Muckenthaler about the margin of error of the GPS, he said, "it can vary depending on atmospheric conditions. . . I don't know—several feet, but it's fairly accurate." Upon further questioning, he stated the margin of error could be somewhere between 20 and 50 feet. When asked if he had an estimate of the park's dimensions, he said, "I don't," then added, "[i]t's a small park."

Muckenthaler said that the red dot superimposed on the photographs and the map was "close" to the east border of the park, but he did not know how close, and could not identify the east border on the photographs of the park. When counsel asked Muckenthaler how Willis's location was "pinpointed" on the photographs, Muckenthaler stated, "I don't know. That's how the software works. I can't explain that part." He then added: "Well, it's centered on a longitudinal location. So it will center in on the exact location that he was at, and that doesn't change. Whether there's a park there or

a house there, it's going to place it where he was at, where the [GPS] device reported he was at.”

In response to the GPS data, Muckenthaler and his superior officer decided to arrest Willis for the parole violation. Muckenthaler then requested Willis to report to the parole office. When Willis arrived, he was taken into custody and placed in handcuffs. According to Muckenthaler, as defendant was being escorted outside the building, he pulled away from Muckenthaler and attempted to run. Officers then “restrained [defendant] to the ground.” When he continued to resist, officers placed leg restraints on him. Officers drove him to a county jail facility for booking. As they walked toward the building, officers again restrained him after he “attempted to pull away from” Muckenthaler.

Willis and his girlfriend, Alejandra Frias, testified for the defense. Frias said she and defendant were walking along the canals in Venice around 3:00 p.m. on August 22, 2015. They saw Linnie Canal Park, but “[n]ever stepped foot inside.”

Defendant testified that on August 22, 2015, he and Frias were “walking in the canals” in Venice. He selected the canals for his “date” with Frias because he knew he cannot go near the beach and the “canals seemed like a location where children wouldn’t be present.” When he saw Linnie Canal Park, he “made sure to stay away from it” because he knows he is “prohibited from entering places where children gather.”

Willis explained that he has been making progress in his life, including maintaining employment and attending counseling. He “wouldn’t throw it all away for a stroll in the park.” When asked to explain why the GPS software indicated he was in the park, he said the diagram of the park shows the red dot near the park border next to a sidewalk, and he “could have been there before [he] saw the park.”

Willis said he was arrested when he responded to Muckenthaler's request to come to his office. He complained to Muckenthaler that the handcuffs placed on him were too tight, but insisted that "[a]t no time did [he] resist." The leg restraints that were placed on him were also too tight, but Muckenthaler refused to loosen them.

After hearing argument, the court found that Willis "violated the terms and conditions of supervision by being present in a prohibited area and resisting arrest." The court then revoked Willis's parole and restored parole on the same terms and conditions provided that he be incarcerated in county jail for 180 days.

Willis appealed, and we appointed counsel to represent him. Counsel filed a brief pursuant to *People v. Wende* (1979) 25 Cal.3d 436, raising no issues on appeal and requesting that we independently review the record to determine if the lower court committed any error.

We requested the parties brief the following issue: Whether there is substantial evidence that Willis was within an area prohibited by his parole conditions—a park where children regularly gather—where the data received from his GPS tracking device indicated that he was within a park, his parole officer testified that the device could indicate inaccurately Willis's location by at least 20 feet, and there is no evidence that the distance between the point indicated by the GPS device and the border of the park was at least 20 feet. We have received and considered the requested briefs.

## DISCUSSION

When, as here, an inmate is released from prison subject to parole supervision under section 3000.08, a court may revoke that person's parole and order confinement in county jail for up to 180 days "[u]pon a finding that the person has violated the conditions of parole." (§ 3000.08, subds. (f) & (g).) The trial court may make that finding based on a preponderance of the evidence. (*People v. Rodriguez* (1990) 51 Cal.3d 437, 447.)

We review the court's findings for substantial evidence. (*People v. Urke* (2011) 197 Cal.App.4th 766, 773.) Under the substantial evidence standard of review, our power " 'begins and ends with the determination as to whether, on the entire record, there is substantial evidence, contradicted or uncontradicted, which will support the determination.' " (*People v. Superior Court (Jones)* (1998) 18 Cal.4th 667, 681.) "[S]ubstantial evidence does not mean any evidence, no matter how slight." (*People v. Baker* (2012) 204 Cal.App.4th 1234, 1247.) It is "evidence which, when viewed in light of the entire record, is of solid probative value, maintains its credibility and inspires confidence that the ultimate fact it addresses has been justly determined." (*People v. Conner* (1983) 34 Cal.3d 141, 149.) The evidence offered to establish Willis's location within Linnie Canal Park does not satisfy this standard.

The only arguably substantial evidence of Willis's presence in the park are Muckenthaler's screenshots of a map and photographs, created by Google, upon which the GPS monitoring software superimposed red dots purporting to represent Willis. Initially, we note that there was no expert testimony regarding Willis's GPS monitoring device or the tracking technology, and Muckenthaler admitted that he could not explain how the monitoring software placed the red dot on the map. Although there was no challenge to

the admissibility of the map and photographs, the absence of such foundational evidence weakens their probative value.

The map is a rudimentary representation of the park consisting of an undifferentiated green rectangle extending across two streets and an intersection. This depiction of the park's borders conflicts with the photographs, which show a fence-enclosed park not extending across streets. Moreover, although the photographs show trees in an area outside the park's fence—in the area close to where the GPS software placed Willis—the map does not indicate the location of the fence or its relation to the edges of the green rectangle or the red dot. Although the map may be adequate to satisfy the typical Google user, it is a crude forensic tool at best. More importantly, it not only fails to inspire confidence in the accuracy of its depiction of the park's borders, it is patently inaccurate.

The red dot on the map is placed next to what appears to be the northeast edge of the green rectangle at the back of the park. The map does not provide any scale of measurement, and Muckenthaler did not know the park's dimensions. The street level photographs of the park show people, structures, and trees, which provide reference points for the park's size. Viewing the photographs in a light favorable to the court's finding, the width of the park appears to be approximately 50 feet. If that distance is applied to the map, given the near-edge placement of the red dot, it appears that the GPS software placed him within a few feet of the edge of the green rectangle. This close proximity to the edge makes the GPS's margin of error critically important.

When asked about the margin of error, Muckenthaler initially explained that "it can vary depending on atmospheric conditions." He then answered the question more directly by stating, "I don't know," followed by "several feet, but it's fairly accurate." When pressed for more precision, he indicated that the system could

mislocate the subject by a distance of 20 feet or more. This distance would place him well outside the park.

We do not need to decide whether GPS data can ever constitute substantial evidence that a person is within a prohibited area when the GPS's margin of error is greater than the indicated distance between the person and the boundary of the prohibited area. Here, the problems with the evidence in this case extend beyond the margin of error issue. In particular: (1) There was no evidence from anyone qualified to testify regarding Willis's GPS device or how the monitoring software determined where to place the red dots on the Google map and photographs; (2) The photographs show that the map's borders are inaccurate; (3) The map fails to indicate the location of the fence surrounding the park and its relation to the edge of the map's green rectangle or the red dot; and (4) Although Muckenthaler testified that atmospheric conditions can affect the accuracy of the GPS, there was no evidence as to what and how conditions in this case may have affected the GPS data. Viewed in light of the entire record, the evidence presented by the People does not constitute substantial evidence that Willis was inside the border of Linnie Canal Park.

The Attorney General argues that based upon the maps and photographs of the park, the court could conclude that even if Willis was 20 feet from the red dot "to the left, right, or forward," he would still be within the park. Although 20 feet "to the back" of the red dot would place him outside the park, that distance would put him in the residential building behind the park, and Willis never said he was in that building. Even if we accept the Attorney General's argument about distances to the left, right, and forward, we reject the argument as to the distance to the back of the red dot. A margin of error of 20 feet does not mean that the person is either at the location indicated by the dot or 20 feet away; it means that he could be any distance from the dot up to 20 feet away. He therefore could

have been outside the park and in front of the building, where Willis said he was on a sidewalk.

For all the foregoing reasons, we reverse the court's finding that Willis violated his parole by entering a park where children regularly gather.

Our holding does not affect the court's finding on the second ground for revoking Willis's probation—that Willis resisted arrest. Willis's appellate counsel, who filed a *Wende* brief, did not raise any issue concerning that ground, Willis has not independently raised the issue, we did not request the parties brief any issue concerning that finding, and we have concluded that there is no arguable issue as to that finding. (See *People v. Wende, supra*, 25 Cal.3d at p. 441.)

The court's finding on the second ground is sufficient to support the court's order revoking Willis's parole supervision. (§ 3000.08, subd. (f).) Nevertheless, because the court has discretion in selecting the appropriate response for violating a parole condition (*ibid.*; *People v. Osorio* (2015) 235 Cal.App.4th 1408, 1413), the court should, upon remand, determine the appropriate response in light of our opinion and applicable law.

## DISPOSITION

The court's finding that Willis violated his parole by entering a park where children regularly gather is reversed. The court's finding that Willis resisted arrest is affirmed. The court's order that Willis's parole supervision is revoked and that Willis be confined for 180 days in county jail is vacated. The court shall hold a hearing so that it may exercise its discretion, in accordance with the views expressed in this opinion and applicable law, in selecting a response to Willis's violation of parole supervision.

NOT TO BE PUBLISHED.

ROTHSCHILD, P. J.

We concur:

CHANEY, J.

LUI, J.