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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

THE PEOPLE, Plaintiff and Respondent, v. MIKAIL LUQMAN, Defendant and Appellant.	B281557 (Los Angeles County Super. Ct. No. BA432404)

APPEAL from a judgment of the Superior Court of Los Angeles County, Henry J. Hall. Affirmed.

Susan L. Ferguson, under appointment by the Court of Appeal, for Defendant and Appellant.

Xavier Becerra, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Lance E. Winters, Senior Assistant Attorney General, and Colleen M. Tiedemann and Nima Razfar, Deputy Attorneys General, for Plaintiff and Respondent.

INTRODUCTION

Mikail Luqman was convicted of making a false bomb threat and placed on probation. He appeals from the trial court's judgment after an order finding he violated probation by making another bomb threat. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

A. *Luqman Pleads No Contest to Making a False Bomb Threat*

Luqman's son was a patient at Children's Hospital in Los Angeles from October 2014 to January 2015. On April 14, 2015, after the People had charged him with making a criminal threat, Luqman pleaded no contest to maliciously informing another person that a bomb or explosive device has been or will be placed or secreted in a public or private place, in violation of Penal Code section 148.1, subdivision (c). The transcript of the preliminary hearing in that case indicates Luqman approached a nurse who worked at Children's Hospital near a parking structure and said, "I'm going to blow you up," "I am going to blow all of you up," and "I am going to get you."

The court in that case suspended imposition of sentence and placed Luqman on formal felony probation for three years with various terms and conditions. The terms of Luqman's probation required him not to own, use, or threaten to use any dangerous or deadly weapons, not to use or threaten to use force or violence against any person, and to stay at least 200 yards away from and have no contact with Children's Hospital. On the

People's motion, the court dismissed the making a criminal threat count.

B. *Luqman Makes Another Bomb Threat*

Several months later, on July 21, 2015, Carolyn Drummond was working as a telephone operator at Children's Hospital, where she had been working for 17 years. At approximately 10:00 a.m. she received a telephone call that caused her to call security. The caller stated, "I am very upset. I am very upset with you guys. . . . So I am going to plant a bomb in full carnage of this hospital to be—to go off at a certain time." The caller said the bomb would explode at 1:30 p.m. The caller stated, "Your life is in my hands." Drummond tried to connect the call with security so that security personnel could register the call, but the caller hung up before she could make the transfer.

Drummond immediately recognized the voice as the voice of a man who had called three or four times a day about a patient in the hospital. Although she did not remember when these calls occurred, she became "acquainted with" the caller's voice. Drummond stated, "I was very familiar with the voice, because it was a call that, like I say, called every day, maybe three or four times a day requesting this particular patient. So I was very familiar with the voice." She said the person's voice was "very distinctive" and had "an accent." She stated the person was "not a Hispanic person" and "not an American person," but was "very aggressive on the phone."

Miguel Gonzalez, director of support services and a member of the security staff in Children's Hospital, played for Drummond a recording of a voicemail message Luqman had left on the phone of the manager of security. Drummond recognized the voice as

the same voice who threatened to put bombs in the hospital. Los Angeles Police Department detectives played for Drummond a recording of a police interview with Luqman. Drummond listened to the recording twice, on headphones. She again immediately recognized the voice as belonging to the same person who had previously called to speak to a patient and the same person who threatened to bomb the hospital. When asked whether she knew it was the same voice or just thought it might be the same voice, Drummond stated, "I know it was the same voice."

The detectives were unable to trace the hospital's incoming calls. They did search Luqman's phones pursuant to a warrant, but they did not find any information linking Luqman to the crime.

Luqman denied calling Children's Hospital and threatening to blow it up. When asked if he ever made any bomb threats to Children's Hospital in Los Angeles, he stated, "As God is my witness, never. Never." He said he never called Children's Hospital after December 2014, when the hospital banned him from the premises and precluded him from visiting his son there. Luqman said the hospital staff treated him rudely and disrespectfully. Luqman stated that, while his son was in Children's Hospital, he was upset: "I was distraught because they told me that my son had a hole in his head. They said he didn't have a brain. I was the one that gave him the bottle, and they said he would never function. They asked us to abort him, and they told us that he would have a hole in the back of his head and some kind of thing growing out of the back of his neck." Luqman thought Children's Hospital was trying to kill his son.

C. *The Trial Court Finds Luqman Violated the Terms of His Probation*

The trial court stated that the burden of proof was a preponderance of the evidence and that the court had "analyzed the evidence in this case very, very, very carefully" in light of that standard. Indeed, the court stated that, if the standard were beyond a reasonable doubt, the court would not have found a violation of probation. But because the standard was a preponderance of the evidence, the court found the People had met their burden of proving Luqman had violated his probation.

The court found Drummond credible. The court stated she "had absolutely no axe to grind here" and, although she was unsure when the bomb threat phone call occurred, she "was very clear that the bomb threat she received was from the same person who had made all of these calls during the period of time." The court found that "the degree of certainty and the specificity with which Ms. Drummond was able to lay out why it was she identified Mr. Luqman's voice . . . was pretty convincing and was very compelling and established very strongly that it was Mr. Luqman's voice and Mr. Luqman made that threatening call." The court also noted that Drummond testified she had not received and did not know of any other telephone calls to the hospital involving bomb threats.

The court also found it "highly significant" and provided "some additional proof" that Drummond was unable to transfer the call because Luqman "had hung up, obviously being aware or somewhat aware of the fact that these calls could be transferred and recorded. And that's exactly what happened with Mr. Luqman in the underlying case."

In contrast, the court discredited Luqman's testimony, finding he was not "completely truthful with the court" and "not that credible of a witness." The court found Luqman made statements that were "obviously disproved by the records in this case" and lied about his criminal history. The court also stated Luqman was very concerned about his child's situation at the hospital and had "a tendency to act out on that."

The court acknowledged there were weaknesses in the People's case. There were no phone records showing calls from Luqman's phone. Drummond's memory of when the telephone calls occurred was not good, and the dates in her version of the facts did not quite match. At one point during closing arguments, the court stated it understood Drummond testified that Luqman's phone calls to the hospital about his son "occurred up to the period where the bomb threat was made." The court then asked: "If Mr. Luqman's son had been discharged from the hospital seven months before that, how could he be the one who was calling three or four times a day?"[1]

The court concluded: "When you balance all of that together, I think that the standard that is required for a probation violation, that is, the evidence of violation has more convincing force than the evidence against violation, that that standard has been met. And I'm going to find Mr. Luqman in violation of probation based on that evidence." The trial court

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[1] The court indicated at this point in the proceedings it was inclined to find a probation violation, but the court asked counsel to find out the dates Luqman's son was a patient at Children's Hospital. After a recess and a few telephone calls, the attorneys returned to court and stipulated that Luqman's son was a patient at the hospital from October 2014 to January 2015.

refused to reinstate Luqman to probation and sentenced him to three years in jail. Luqman timely appealed.

DISCUSSION

Luqman contends substantial evidence does not support the trial court's finding that he violated the terms of his probation. Luqman argues that "many of the court's findings and inferences . . . were unsupported by the evidence and clearly erroneous."

A. *Applicable Law and Standard of Review*

"Section 1203.2, subdivision (a), authorizes a court 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. [Citation.] "'When the evidence shows that a defendant has not complied with the terms of probation, the order of probation may be revoked at any time during the probationary period.'" (*People v. Urke* (2011) 197 Cal.App.4th 766, 772, fn. omitted; see *People v. Leiva* (2013) 56 Cal.4th 498, 504-505.) "The standard of proof in a probation revocation proceeding is proof by a preponderance of the evidence." (*Urke*, at p. 772; see Pen. Code, § 3044, subd. (a)(5) ["[p]arole revocation determinations shall be based upon a preponderance of evidence"]; *People v. Rodriguez* (1990) 51 Cal.3d 437, 447 ["proof of facts supporting the revocation of probation pursuant to section 1203.2(a) may be made by a preponderance of the evidence"]; *In re Miller* (2006) 145 Cal.App.4th 1228, 1234-1235 ["[a]t a parole revocation hearing proof of the alleged

parole violation must meet the preponderance of the evidence standard"].)

We review the trial court's findings for substantial evidence. (*People v. Urke*, *supra*, 197 Cal.App.4th at p. 773; *People v. Kurey* (2001) 88 Cal.App.4th 840, 848.) On review for substantial evidence, "great deference is accorded the trial court's decision, bearing in mind that '[p]robation is not a matter of right but an act of clemency, the granting and revocation of which are entirely within the sound discretion of the trial court.'" (*Urke*, at p. 773; see *Kurey*, at pp. 848-849 ["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"].) """[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 . . . ."" (*Urke*, at p. 773.)

B. *Substantial Evidence Supports the Trial Court's Order Revoking Luqman's Probation*

Substantial evidence supports the trial court's findings. As the trial court recognized, Drummond was the most important witness, and the court believed her. In making this credibility finding, which we have no authority to second guess (see *People v. Reed* (2018) 4 Cal.5th 989, 1006-1007 ["we cannot reconsider on appeal" the "credibility of [a witness's] testimony and its weight"]; *People v. Houston* (2012) 54 Cal.4th 1186, 1215 ["'[w]e do not reweigh evidence or reevaluate a witness's credibility'"]; *People v. Moore* (2010) 187 Cal.App.4th 937, 940 ["[w]e have no power to reweigh the evidence or judge the credibility of witnesses"]), the trial court recognized Drummond was an independent witness

and emphasized that her aural identification was unhesitant, certain, and emphatic. She stated without qualification that the voice she heard making the bomb threat was Luqman's voice and why she believed it was. The court found her identification was convincing, compelling, and "established very strongly" Luqman made the call. Conversely, the court did not believe Luqman's denials. The trial court did exactly what a trial court, acting as a trier of fact, is supposed to do: consider and carefully weigh the strengths and weaknesses of the evidence, make credibility determinations, and apply the correct legal standard to the evidence. (See *Keating v. Superior Court* (1955) 45 Cal.2d 440, 444 ["[i]t is the duty of a judge when acting as the trier of the facts to pass upon the credibility of witnesses"]; *People v. Williams* (2007) 156 Cal.App.4th 949, 959 [same].)

Luqman points to two statements by the court he claims were erroneous: (1) Luqman, when making the bomb threat, hung up because he knew calls to the hospital could be transferred and recorded, and (2) Luqman made his prior bomb threat over the phone. Luqman asserts that, had the court realized these factual errors, "the outcome would most likely be different."

As noted, the court stated that the fact Luqman hung up the phone before Drummond could transfer or record his telephone call was "some additional proof" Luqman made the call. As Luqman correctly points out, "Drummond testified that the phone system was not capable of making recordings at the time of the underlying case or when the phone threat was made." It is a common misconception, however, perhaps from movies or television shows, that authorities cannot trace telephone calls on

old telephone systems if the calls do not last long enough.[2] The court reasonably could have found that Luqman ended this telephone call with Drummond before she could transfer his call to avoid detection, even if Luqman did not know whether the hospital's telephone system had the present capability to record calls. In any event, even if the court misspoke, there was still substantial evidence to support the trial court's finding. As the trial court stated, "the evidence in the violation hearing came primarily from Ms. Drummond," and the trial court credited her testimony and recognition of Luqman's voice.

The court also stated, erroneously according to Luqman, that making a telephone bomb threat was "exactly what happened with Mr. Luqman in the underlying case." The parties dispute which case the court was referring to by using the phrase

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[2] "It's a Hollywood plot device as old as the Princess phone: The good guys receive a call from the kidnapper/mad bomber/drug lord, they need to string him along for 60 seconds to trace the call, but he's wise to their time constraint and hangs up just short of the one-minute mark." (J. MacDonald, *Can Police Really Trace a Phone Call in 60 (but not 59) Seconds?* (April 21, 2011) Fox Business, par. 1; see *Application of United States of America, etc.* (3d Cir. 1979) 610 F.2d 1148, 1152 [for a telephone company's electronic switching equipment, an "in-progress trace must be completed before the caller hangs up," and "[b]ecause typing the program into the equipment takes less than one minute, in-progress traces generally present no difficulties"]; see, e.g. *People v. Nelson* (Ill.App.Ct. 2013) 2 N.E.3d 613, 615 [victim of telephone harassment "stayed on the phone long enough to trace the number"]; *Williams v. State* (Tex.Ct.App. 1993) 850 S.W.2d 784, 785 ["[sheriff's] deputies told [the victim of telephone harassment] to stay on the line and they would attempt to trace the call"].)

"underlying case." Luqman argues the court was referring to the April 2015 case in which he pleaded no contest, which was based on threats made to a nurse outside the hospital near a parking structure, not on the phone. The People argue "the trial court's reference to the 'underlying case' was related to the bomb threat [Luqman] made over the phone to Drummond" because the court at one point referred to "the underlying offense in this case" as "the making of a bomb threat to a hospital that's full of children."

We need not resolve which proceeding the trial court meant to reference because, even if the court misspoke, there was substantial evidence to support the court's order. Whether Luqman made the two bomb threats in the same medium does not change the fact that he made two bomb threats, both of them directed to Children's Hospital personnel. As the People put it, the trial court "focused on [Luqman's] threatening conduct in both instances and not the method [Luqman] used to carry out his threat."

People v. Eckley (2004) 123 Cal.App.4th 1072, cited by Luqman, is distinguishable. The court in that case held: "A court's reliance, in its sentencing and probation decisions, on factually erroneous sentencing reports or other incorrect or unreliable information can constitute a denial of due process." (*Id.* at p. 1080.) The trial court in *Eckley*, in denying the defendant probation and sentencing her to prison after a jury trial, relied on facts in a probation report whose author did not have access to the trial transcript and that contained statements that were unsupported by, or inconsistent with, the evidence at trial. (*Id.* at p. 1078-1079.) Here, the court relied on evidence the court received in Luqman's probation violation hearing, evidence the court found credible. There was evidence the trial court

discredited or did not use as a basis for its ruling, and, in the court's ruling, there was one potentially inaccurate statement about the "underlying case." But the evidence at the hearing was not factually erroneous, and it was sufficient to support the trial court's order finding Luqman violated his probation.

Luqman also argues "the accuracy of Drummond's voice identification is questionable" for various reasons, including that her conversation with Luqman "was very short," she listened to the two recordings of his voice "for a very short time," she had not heard Luqman's voice for seven months prior to the bomb threat call, and her recollection was incomplete and "lacked . . . independent corroboration." These arguments, however, go to the credibility and weight of her testimony, not whether her testimony, credited as it was, constituted substantial evidence. (See *People v. Elliott* (2012) 53 Cal.4th 535, 585 ["[i]nconsistencies in [the witnesses'] initial descriptions of the perpetrator and any suggestiveness in the lineups or photo arrays they were shown are matters affecting the witnesses' credibility, which is for the jury to resolve"]; see also *People v. Barnwell* (2007) 41 Cal.4th 1038, 1052 ["[e]ven when there is a significant amount of countervailing evidence, the testimony of a single witness that satisfies the [substantial evidence] standard is sufficient to uphold the finding"]; *People v. White* (2014) 230 Cal.App.4th 305, 319, fn. 14 ["under the principles governing review for the existence of substantial evidence, the testimony of a witness is ordinarily sufficient to uphold a judgment 'even if it is contradicted by other evidence, inconsistent or false as to other portions'"].)

Finally, Luqman argues Drummond's identification of Luqman's voice was the product of an unduly suggestive

procedure because she "was presented with a single suspect whom she knew in advance was the person that officers linked to the phone call." Luqman, however, does not provide any authority on the issue of unduly suggestive voice identifications. More important, Luqman did not move to suppress Drummond's identification of his voice, thus forfeiting the argument it was the product of an unfair procedure. (See *People v. Cunningham* (2001) 25 Cal.4th 926, 989 [failure to timely object to photographic identification forfeited the argument the identification was impermissibly suggestive]; *People v. Medina* (1995) 11 Cal.4th 694, 753 [failure to object that the "identification procedure was unduly suggestive and unreliable" forfeited the argument on appeal]; see also *People v. Elliott*, *supra*, 53 Cal.4th at pp. 585-586 ["[i]nsofar as defendant is asserting that unduly suggestive pretrial identification procedures tainted the courtroom identifications, so that the witnesses should not have been permitted to identify defendant in court, defendant has forfeited the claim by failing to make a timely objection or motion to exclude in the trial court"].)

DISPOSITION

The judgment is affirmed.

SEGAL, J.

We concur:

ZELON, Acting P. J.

WILEY, J.*

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* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.