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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE,

Plaintiff and Respondent,

v.

EDWIN INES,

Defendant and Appellant.

B278780

Los Angeles County
Super. Ct. No. MA055743

APPEAL from an order of the Superior Court of
Los Angeles County, Lisa M. Chung, Judge. Affirmed.

Bird Rock Law Group and Andrea S. Bitar, 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, Assistant
Attorney General, Margaret E. Maxell, Peggy Z. Huang and
Lindsay Boyd, Deputy Attorneys General, for Plaintiff and
Respondent.

Defendant and appellant Edwin Ines appeals from an order terminating his probation and executing his suspended prison sentence. We find no abuse of discretion and therefore affirm.

FACTS AND PROCEDURAL BACKGROUND

1. *The crimes, the plea agreement, and the suspended sentence*

In March 2012 Ines was living with his family in Palmdale.¹ Around 4:30 in the afternoon on March 26, Ines's 13-year-old sister saw him take down a safe from a shelf in their parents' bedroom and drop it on the floor. Ines told his sister to open the safe. Ines was upset because his mother had money that belonged to him but she would not give it to him. At some point, Ines's sister saw him lie on a bed because "his heart was hurting"—he was sweaty and in pain. After Ines's sister declined to open the safe, Ines left the house, went to the back yard, got an axe, returned to the house, and "destroyed" the safe by hitting it with the axe. But Ines still could not get the safe open.

About that time Ines's mother Reyna M. came home in her car.² Ines met her outside. Ines asked her for his money. He had a skateboard in his hands. Ines told Reyna if she did not give him his money, he was going to break the glass on her car. When Ines was unable to break the glass with the skateboard, he got the axe and broke the glass of the driver's side window. Reyna's purse was in the car, between the two front seats. Ines knew his mother had the money in her purse. Ines reached into

¹ As Ines's case settled before trial, we take the facts from the preliminary hearing testimony.

² It is unclear from the testimony whether Reyna was driving a van or a car. For simplicity's sake, we refer to her vehicle as a car.

the car and took the purse. When Ines broke the car window, Reyna was already at the door of the house, about 27 feet away. Reyna managed to get her purse back.

The money in question was Ines's income tax refund. The funds had been deposited into Reyna's account. Reyna did not want to give her son the money because she was afraid he would buy drugs with it. Ines used drugs, and that afternoon "he started crying" and said to his mother, "Mommy, give me my money. Can't you see I'm dying here?" Ines seemed to be under the influence of something.

The People charged Ines with robbery and vandalism.³ The People alleged Ines personally used a deadly or dangerous weapon in the commission of the robbery. At the conclusion of the preliminary hearing, the prosecutor moved to reduce the vandalism charge to a misdemeanor. When they filed the information, the People also added a burglary count.

On July 17, 2012, Ines entered into a plea agreement with the People. Ines pleaded no contest to the robbery count. In accordance with the agreement, the court imposed the upper term of five years in the state prison but suspended its execution and placed Ines on probation for five years. The court gave Ines credit for time served in the county jail and ordered a conditional release to Delancey Street, where Ines was to complete a six-month program. The court ordered Ines "not to own, use, or possess any deadly or dangerous weapons . . . or ammunition" and "not to own, use, possess, buy or sell any controlled substances." Apparently, an issue arose with Delancey Street:

³ The Clerk's Transcript does not include a copy of the felony complaint or the information. We glean the charges from the preliminary hearing transcript.

on August 20, 2012, the court modified probation and ordered Ines to complete a program at the Salvation Army instead.

2. *The probation violation proceedings*

Nearly four years later, on June 28, 2016, Los Angeles County Sheriff's Department deputies executed a search warrant at Ines's home. In his affidavit for the warrant, Deputy Pedro Velazquez stated he and his partner conducted a "controlled . . . purchase" of methamphetamine from Ines at the Palmdale house using an informant. When officers executed the search warrant, Velazquez found a live .380-caliber "Blazer" bullet on the floor of Ines's bedroom and a small plastic bindle of what appeared to be methamphetamine on a shelf.

Sheriff's deputies arrested Ines on August 3, 2016, and the district attorney's office filed a new case against him (Case No. MA069014). On that same day, the court revoked Ines's probation and remanded him on a potential probation violation. The new case and the probation violation case proceeded in tandem for a time. On October 7, 2016, Ines's counsel filed a *Pitchess*⁴ motion seeking complaints of dishonesty and "violation of constitutional rights" against Velazquez. In the motion, Ines stated Velazquez had put him in an interview room at the sheriff's station and threatened to break everything in his family's home to find "the gun that goes with the bullet." Ines also said Velazquez accused him of selling methamphetamine, and Velazquez did not advise him of his *Miranda*⁵ rights before this "interrogation." On November 2, 2016, the superior court granted the *Pitchess* motion in part—as to *Miranda*

⁴ *Pitchess v. Superior Court of Los Angeles County* (1974) 11 Cal.3d 531.

⁵ *Miranda v. State of Arizona* (1966) 384 U.S. 436.

violations—and conducted an *in camera* proceeding. The court found no responsive items to be disclosed.

In the meantime, on October 25, 2016, the People dismissed Ines’s new case, opting to proceed on the probation violation only. On November 2, 2016, the court conducted an evidentiary hearing on the probation violation. Velazquez testified he found the bullet and the small bindle of a “crystal-like substance” in Ines’s bedroom. Velazquez said he asked Ines about the bullet; Ines told him the bullet had fallen out of his mother’s vacuum cleaner and “he picked it up and took it.”

On cross-examination, Velazquez admitted he did not include Ines’s statement about picking up the bullet in his police report. Velazquez testified Ines’s mother Reyna told him “she cleans houses,” “she was cleaning her vacuum cleaner” and the bullet fell out, and Ines “picked it up and took it.” Velazquez said he asked Reyna which client might have had the bullet the vacuum picked up, “and she said she does various houses and[,] like[,] office building[s], and she wouldn’t know which one it came from.”

Ines’s counsel called several witnesses at the hearing. Ines’s probation officer, Michael Daniels, testified he had supervised Ines since April 2013. Daniels said Ines’s performance on probation had been “excellent.” Ines had completed a six-month residential drug treatment program at the Salvation Army before Daniels was assigned to him. Daniels testified Ines was “taking general education[] courses” at Antelope Valley College and was scheduled to complete his two-year program in 2016; Ines hoped then to transfer to a four-year college. Ines had given Daniels documents, including “a semester of grades in terms of grade point average and how he’s doing overall in his course[s].” Daniels stated, however, that Ines “was

on probation for a very, very serious offense” and if he were found in violation “that sentence should be imposed.”

Ines’s mother Reyna testified that the evening before officers arrived with the search warrant, she had heard a noise in her vacuum cleaner, “the bullet came out,” and she “grabbed” it and put it next to her coffee maker in the kitchen. Reyna did not see the bullet again until Velazquez showed her the bullet, which he had in his hand. Velazquez told Reyna he had found the bullet under Ines’s bed but Reyna told him, “[N]o, that bullet was to the side of my coffee maker.” Reyna testified she did not tell Velazquez that Ines had taken “the bullet from somewhere else in the house into his bedroom.” Reyna also testified she had never seen the bindle—which she described as containing “two pills”—before.

Ines’s attorney also called Angela French to testify. Defense counsel had given the prosecutor a written statement summarizing the defense investigator’s interview of French, and the parties agreed it could be read in lieu of French’s testimony at the hearing. French had told the investigator, “[I]t is possible that the bullet found by Re[y]na came from my home.” French said her children had found two bullets in their yard and brought them into the house. French took the bullets and put them in the kitchen. Later, she noticed one of the bullets was missing. French’s children seemed to know nothing about the missing bullet’s whereabouts.

Ines testified on his own behalf. Ines said he had been asleep around 9:00 a.m. on June 28 when the family “all got woken up by the cop breaking into the house.” Ines stated he “hardly remember[ed]” Velazquez being there—he just remembered “a really big guy.” Ines testified he was in handcuffs in the back of the patrol car while the deputies searched the house. Velazquez came out to the car and showed Ines the bullet.

Ines denied having kept a bullet in his room. That bullet, he said, was “possibl[y]” the one his mother had found the evening before when she was cleaning. Ines stated that, notwithstanding his probationary status, “we just didn’t think nothing of it.” Ines denied having told Velazquez that he had picked up the bullet after it fell out of his mother’s vacuum cleaner. Ines testified Velazquez—perhaps in league with Detective Viger—had dropped the bullet in his bedroom. Ines also denied having had the baggie with the “off-white substance” in his room. Ines said he had never seen it before: “I don’t even know where that came from.”

Ines testified he was 20 units away from getting his associate of arts degree in social and behavioral sciences at Antelope Valley College. Ines said he had a 3.8 GPA and was planning to transfer to UCLA.

Ines’s attorney asked the court “to consider a one-year stint in a live-in drug program” if the court found Ines in violation of probation. Counsel noted Ines had “satisfactorily completed a large portion of probation,” was “enrolled in school and 20 units away from graduating,” had an excellent report from his probation officer, and was helping his mother clean houses. The prosecutor asked the court to execute the five-year sentence, arguing that Ines was “calling out law enforcement,” “accusing them of lying [and] planting evidence.”

The court, noting “the lower burden of [proof at] a probation violation hearing,” found Ines in violation “[b]ased on the totality of the evidence.” The court stated, “Mr. Ines has violated his probation, specifically on the issue of not possessing any ammunition and not possessing any drugs.” The court declined to reinstate Ines’s probation. The court stated the underlying crime “was quite serious,” “involv[ing] the use of an axe” and “taking money from his mother’s purse.” While the court “applaud[ed] [Ines’s] success in the educational area,” the

court said Ines did “not appear to show any remorse.” The court stated a drug program would not be of “benefit” as Ines already had completed a program, “now we have this recurrence,” and Ines denied having any drugs in any event. The court then executed the suspended sentence.

DISCUSSION

Ines contends the trial court abused its discretion in finding him in violation of probation because there was a “reasonable explanation for the bullet in [his] home” and the prosecution did not test the substance in the bindle to confirm it was methamphetamine. Ines asserts his “overall . . . progress on probation for almost five years” was “excellent” and “there was no evidence to support the trial court’s conclusion that [he] willfully violated the terms of his probation.”

1. *Governing law and standard of review*

A court may revoke a defendant’s probation when the prosecution proves by a preponderance of the evidence that he willfully violated one or more probation conditions. (Penal Code, § 1203.2, subd. (a); *People v. Rodriguez* (1990) 51 Cal.3d 437, 447 [burden of proof]; *People v. Galvan* (2007) 155 Cal.App.4th 978, 982 (*Galvan*) [willfullness].) The court has “very broad discretion in determining whether a probationer has violated probation.” (*Rodriguez*, at p. 443; *In re Coughlin* (1976) 16 Cal.3d 52, 56 [“probation may be revoked despite the fact that the evidence of the probationer’s guilt may be insufficient to convict him of the new offense”].)

We review the court’s factual findings for substantial evidence. (*People v. Superior Court (Jones)* (1998) 18 Cal.4th 667, 681.) “The standard is deferential: ‘When a trial court’s factual determination is attacked on the ground that there is no substantial evidence to sustain it, the power of an appellate court 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’ ” (*Ibid.*, italics omitted.) In applying this test, we review the evidence in the light most favorable to the court’s ruling and presume in support of the post-judgment order the existence of every fact the court could reasonably deduce from the evidence. (*People v. Kurey* (2001) 88 Cal.App.4th 840, 848.) “In deciding the sufficiency of the evidence, a reviewing court resolves neither credibility issues nor evidentiary conflicts,” and the “[r]esolution of conflicts and inconsistencies in the testimony is the exclusive province of the trier of fact.” (*People v. Young* (2005) 34 Cal.4th 1149, 1181 (*Young*); see also *People v. Ochoa* (1993) 6 Cal.4th 1199, 1207 [reviewing court cannot reweigh the evidence].) If the circumstances reasonably justify the trier of fact’s findings, reversal of the judgment is not warranted simply because the circumstances might also reasonably be reconciled with a contrary finding. (*People v. Lindberg* (2008) 45 Cal.4th 1, 27.)

2. *The court did not abuse its broad discretion in finding Ines in violation of probation and executing the suspended sentence*

Ines contends the court abused its discretion because he did not act willfully. Ines cites *People v. Zaring* (1992) 8 Cal.App.4th 362 (*Zaring*) and *Galvan, supra*, 155 Cal.App.4th 978. Ines argues his case is “quite similar to both” of those cases. Ines is mistaken.

In *Zaring*, a probationer was 22 minutes late to court because she had to take her children to school. (*Zaring, supra*, 8 Cal.App.4th at pp. 366-367.) In *Galvan*, federal authorities had deported the probationer and so he was unable to report to his probation officer in California. (*Galvan, supra*, 155 Cal.App.4th at pp. 981, 983.) Here, by contrast, Ines did not assert that the bullet and the bindle ended up in his bedroom by accident. He

contended that neither the bullet nor the bindle *ever was in his room*, and that the police planted the evidence and falsified their report. The trial court saw and heard the witnesses: Deputy Velazquez, Ines, and the other witnesses Ines called, including his mother and his probation officer. The court was in the best position to judge the respective witnesses' credibility. As noted, under governing law, credibility determinations and the resolution of evidentiary conflicts are the exclusive province of the trier of fact. (*Young, supra*, 34 Cal.4th at p. 1181.)

Whether to reinstate probation or to terminate it is also within the trial court's broad discretion. While Ines was reporting to his probation officer, had completed his drug program, and was attending school, the trial court acted within its discretion in concluding that Ines's possession of a live bullet and of a small amount of methamphetamine constituted a violation of his probation sufficient to warrant execution of his suspended sentence.

3. *The court properly concluded after the in camera hearing on Ines's Pitchess motion that there were no complaints to be disclosed*

Ines asks us independently to review the sealed record of the in camera hearing after the trial court granted, in part, Ines's *Pitchess* motion seeking complaints of misconduct against Deputy Velazquez. The Attorney General has no objection. We review the court's actions and decisions on a *Pitchess* motion for abuse of discretion. (*People v. Prince* (2007) 40 Cal.4th 1179, 1285; *People v. Hughes* (2002) 27 Cal.4th 287, 330.) We have read the entire sealed transcript of the in camera proceeding and find no abuse of discretion in the court's conclusion that the files contain no items to be disclosed as to Velazquez.

DISPOSITION

We affirm the trial court's order finding Edwin Ines in violation of his probation and executing his suspended state prison sentence.

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EGERTON, J.

We concur:

EDMON, P. J.

DHANIDINA, J.