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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.

MARLO J. HEMPSTEAD,

Defendant and Appellant.

B282028

(Los Angeles County
Super. Ct. No. BA446558)

APPEAL from an order of the Superior Court of Los Angeles County, Yvette Verastegui, Judge. Affirmed.

Randall Conner, 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, Steven D. Matthews and Analee J. Brodie, Deputy Attorneys General, for Plaintiff and Respondent.

While on probation, defendant and appellant Marlo Hempstead was arrested for burglary. The trial court found that Hempstead violated the conditions of his probation, revoked probation, and imposed the previously suspended sentence. Hempstead appeals, contending there was insufficient evidence he violated probation. We disagree and affirm the order revoking probation and imposing sentence.

BACKGROUND

I. Hempstead is placed on probation.

On September 13, 2016, Hempstead pled no contest to four counts of vehicle-related offenses and admitted three prior convictions and was sentenced to four years eight months. However, the trial court suspended execution of the sentence and placed Hempstead on three years of formal probation. The court advised Hempstead that a condition of probation was that “any arrests will result in . . . the court imposing that sentence of four years eight months,” unless it was a false arrest.¹

II. Hempstead violates the terms of probation.

Notwithstanding the trial court’s plea to Hempstead not to “blow it,” he was back in court just two months later, having been arrested for burglary on September 28, 2016. The court revoked probation, set the matter for a probation violation hearing in this case, and the People charged defendant with two counts of burglary in a new case. The trial court then held a combined preliminary hearing and probation violation hearing, and Hempstead represented himself.

¹ Accordingly, the minute order stated, “If the defendant sustains an arrest he will be given the 4 years 8 months sentence.”

At the hearing, Detective Robyn Salazar testified that she investigated a burglary of Richard Mayer, who did not testify. Mayer told the detective that, on September 28, 2016, at 6:15 a.m., he left his room at the Embassy Suites. When Mayer returned to his room 30 minutes later, his laptop and black backpack were missing.

Detective Salazar spoke to the hotel's security officer, Arnulfo Cano, and obtained from him the hotel's video surveillance.² The detective identified Hempstead in the video, which showed Hempstead entering the hotel with a brown bag and leaving the hotel with that bag and another, a black bag. According to the detective, Mayer reviewed photographic stills from the video and said that the black bag looked like his.

Hempstead admitted to Detective Salazar that he was the man in the video stills and that he often went to the hotel to see friends and to use their showers. Hempstead, however, could not name the friend he was going to see. He said the black bag was his but could not explain why he did not have it when he entered the hotel. The security officer told the detective that Hempstead had not rented a room that day, and Hempstead admitted to the detective that he did not have a room. According to the detective, the security officer said that Hempstead often entered the hotel, and the security officer suspected he was stealing property.

In his defense, Hempstead testified that he was visiting a friend, Tasha, who was a guest at the hotel on the day of the burglary. Tasha returned a backpack to Hempstead that he had left in her car.

² The court overruled Hempstead's "multiple hearsay" objection to the detective's testimony about what the security officer told her.

III. The trial court imposes the suspended sentence.

Based on this evidence, the trial court found that Hempstead violated the terms of probation and imposed the previously suspended sentence of four years eight months.³

DISCUSSION

Hempstead contends there was insufficient evidence he violated probation. We disagree.

A court may revoke probation “if the interests of justice so require and the court, in its judgment, has reason to believe from the report of the probation or parole officer or otherwise that the person has violated any of the conditions of his or her supervision.” (Pen. Code, § 1203.2, subd. (a); *People v. Leiva* (2013) 56 Cal.4th 498, 504.) The facts supporting revocation of probation may be proved by a preponderance of the evidence. (*People v. Rodriguez* (1990) 51 Cal.3d 437, 439; *People v. Galvan* (2007) 155 Cal.App.4th 978, 982.) The evidence must support a conclusion that the probationer’s conduct constituted a willful violation of the terms and conditions of probation. (*People v. Hall* (2017) 2 Cal.5th 494, 501–503; *People v. Moore* (2012) 211 Cal.App.4th 1179, 1186; *Galvan*, at p. 983.) A trial court’s decision whether to revoke probation will not be disturbed absent an abuse of discretion. (*Galvan*, at pp. 981–982.)

Here, Hempstead’s contention there is insufficient evidence he violated the conditions of his probation rests on a claim of evidentiary error. That is, Detective Salazar’s testimony about what victim Mayer told her was inadmissible testimonial

³ The court also held him to answer on the burglary-related charges in the new case. The court’s holding order is not challenged in this appeal.

hearsay. We agree that that the testimony was inadmissible testimonial hearsay for purposes of the probation violation. The People also appear to agree, having offered no specific response about the testimonial nature of Mayer's statements. Nonetheless, the People do offer two responses: (1) Hempstead failed to object to the testimonial hearsay and (2), there was sufficient evidence to support the court's order even in the absence of Mayer's statements.

First, Hempstead concedes he did not object specifically to Detective Salazar's testimony about Mayer's statements. The general rule is a timely and specific objection on confrontation grounds is required to preserve the issue on appeal. (*People v. Redd* (2010) 48 Cal.4th 691, 730; Evid. Code, § 353.) Hempstead asks that we excuse his failure to object because objection would have been futile. He thus points out that he objected on the ground of "multiple hearsay" to Detective Salazar's testimony about what security officer Cano told the detective. The court overruled that objection because the testimony involved only one level of hearsay, not two. Based on this, Hempstead extrapolates that it would have been futile to object to Mayer's statements on the ground of testimonial hearsay because the court indicated an intent to admit hearsay so long as it was "one level."

We do not agree that the trial court's limited ruling evidences a broad intent to exclude *all* types of hearsay. An objection that evidence constitutes multiple levels of hearsay is different than an objection that it constitutes inadmissible testimonial hearsay. The distinction is crucial here, because *nontestimonial* hearsay may be admitted at probation revocation proceedings if it bears a substantial degree of trustworthiness, i.e., there are sufficient indicia of reliability. (*People v. Maki* (1985) 39 Cal.3d 707, 715–717.) But there must be good cause to admit *testimonial* hearsay. (*People v. Arreola* (1994) 7 Cal.4th 1144, 1158–1159.) Good cause is established when (1) the declarant is unavailable under the traditional hearsay standard, (2) the declarant, although not legally unavailable, can be brought to the hearing only through great difficulty or expense, or (3) the declarant's presence would pose a risk of harm to the declarant. (*Id.* at pp. 1159–1160; *People v. Shepherd* (2007) 151 Cal.App.4th 1193, 1200.)

Because Hempstead did not object to the admissibility of Mayer's statements on the ground they were testimonial hearsay, the People did not have the opportunity to make a good cause showing regarding Mayer's absence, and, moreover, the trial court had no occasion to consider the statements' admissibility on that ground. (See generally *People v. Davis* (2008) 168 Cal.App.4th 617, 627 [requirement of objection on specific grounds "gives both parties the opportunity to address the admissibility of the evidence so the trial court can make an informed ruling, and creates a record for appellate review"].) Had the People been given that opportunity, the record suggests good cause might have been established, because Mayer was in

Texas. We therefore conclude Hempstead forfeited his claim that the trial court erred by admitting Detective Salazar's testimony.

Our conclusion that Hempstead failed to object to Detective Salazar's testimony about Mayer's statements leads to our second conclusion that there was sufficient evidence to revoke Hempstead's probation because he violated at least one condition of probation—that he obey all laws—by committing a burglary, i.e., he entered a building with the intent to commit grand or petty larceny or any felony. (Pen. Code, § 459; e.g., *People v. Smith* (2006) 142 Cal.App.4th 923, 929.) Video surveillance showed Hempstead entering the hotel with a tan bag and leaving it with an additional bag, a black one. Hempstead admitted he was at the hotel but was not a guest. The same day Hempstead was at the hotel, a burglary was reported. Victim Mayer said that the bag pictured in a video still looked like the bag that was missing from his room. This evidence was sufficient to show that Hempstead committed a burglary.⁴

⁴ Because we conclude there was sufficient evidence to revoke probation on this ground, we need not address whether the mere fact that Hempstead was arrested was a sufficient ground on which to base the revocation of probation.

DISPOSITION

The order is affirmed.

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DHANIDINA, J.

We concur:

EDMON, P. J.

LAVIN, J.