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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.

SONNY R. ROSAS,

Defendant and Appellant.

B267829

(Los Angeles County  
Super. Ct. No. 5PH08040)

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

Heather E. Shallenberger, under appointment by the Court  
of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Gerald A. Engler,  
Chief Assistant Attorney General, Lance E. Winters, Assistant  
Attorney General, Steven D. Mathews and Analee J. Brodie,  
Deputy Attorneys General, for Plaintiff and Respondent.

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Defendant Sonny Rosas appeals from an order revoking his parole after he removed a court-ordered electronic monitoring device from his ankle. We find no error, and thus we affirm.

### **FACTUAL AND PROCEDURAL BACKGROUND**

In July 2014, Rosas was convicted of failing to register as a sex offender pursuant to Penal Code section 290.018, subdivision (b) and was sentenced to 16 months in county jail.<sup>1</sup> Rosas was released from custody in January 2015, subject to special conditions of parole. Among other conditions, Rosas was required to “participate in continuous electronic monitoring” by wearing a global positioning system (GPS) monitor.

On October 7, 2015, the California Department of Corrections and Rehabilitation (CDCR) filed a petition for revocation of parole. The petition alleged Rosas violated the terms and conditions of his parole by removing his GPS monitor.

#### *A. Prosecution Evidence*

The prosecution’s evidence consisted of the testimony of Rosas’s parole agent, Michael Contreras. Contreras testified that he became Rosas’s parole agent in August 2015. He instructed Rosas that he was not allowed to remove the GPS monitor.

On October 2, 2015, Contreras received an alert indicating that Rosas had tampered with or removed his GPS monitor. Contreras located Rosas at a foot spa on Wilshire Boulevard in Los Angeles. When Contreras arrived, Rosas was not wearing the monitor; Contreras found it wrapped in a sock with the ankle strap cut. Contreras placed Rosas under arrest. When Contreras asked Rosas why he had removed the GPS monitor, Rosas

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<sup>1</sup> All undesignated statutory references are to the Penal Code.

initially said he had taken it off due to a rash on his leg. Rosas “smirk[ed]” as he said this. Rosas then asked Contreras if he wanted to know the “real reason” he had taken off the GPS monitor. Rosas said he removed the monitor because he wanted to see Contreras, and if he tampered with the monitor, “I knew you would do your job, and I knew you would come to see me.” Rosas said he wanted to see Contreras because he loved him.

*B. Defense Evidence*

Rosas testified that he was 64 years old and had circulation problems in his ankles. On October 2, 2015, his right ankle became swollen, causing the strap on the GPS monitor to be extremely painful. Rosas took three ibuprofen, but that did not relieve the pain. Rosas therefore entered a foot spa in order to get treatment to relieve the pain. He planned to call Contreras after the treatment if Contreras did not contact him first, but he believed he had to cut off the device immediately in order to get relief. He knew if he cut the strap, Contreras would be alerted.

Rosas testified that the day prior to this incident, he had called Contreras to say that he was not sure that the GPS monitor was working properly, and Contreras told him not to worry about it. Rosas agreed that he had never given Contreras medical documentation of his circulation problems. He also conceded that he told Contreras he loved him, but said he did not mean it in a sexual manner.

*C. Parole Revocation Order*

The court found Contreras to be “very credible,” and it found by a preponderance of the evidence that Rosas violated the terms or conditions of his parole by removing his GPS monitor. The court revoked Rosas’s parole and ordered him to serve 180 days in county jail. Rosas received 30 days of custody credit.

Rosas timely appealed from the parole revocation order.<sup>2</sup>

### DISCUSSION

Rosas contends the trial court abused its discretion when it revoked his parole because there was sufficient evidence to support a necessity defense. For the reasons that follow, we disagree and affirm.

The court may revoke parole “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.” (§ 1203.2, subd. (a).) The prosecution must prove the parole violation by a preponderance of the evidence. (§ 3044, subd. (a)(5).) We review the trial court’s finding of a parole violation for substantial evidence (*In re Powell* (1988) 45 Cal.3d 894, 909), reviewing the record to determine whether “there is substantial evidence of solid value, contradicted or uncontradicted, which will support the trial court’s decision.” (*People v. Kurey* (2001) 88 Cal.App.4th 840, 848.)

The CDCR sought revocation of Rosas’s parole under section 3010.10. Subdivision (b) of that section states: “A person who is required to register as a sex offender pursuant to Section 290 shall not remove, disable, render inoperable, or knowingly circumvent the operation of, an electronic, GPS, or other monitoring device affixed to his or her person as a condition of parole, when he or she knows that the device was affixed as a condition of parole.” This section does not apply if the removal “is

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<sup>2</sup> The parole revocation order is appealable as an order after judgment pursuant to section 1237, subdivision (b). (*People v. Osorio* (2015) 235 Cal.App.4th 1408, 1412.)

performed by a physician, emergency medical services technician, or by any other emergency response or medical personnel when doing so is necessary during the course of medical treatment” or “is authorized or required by a court, or by the law enforcement, probation, parole authority, or other [responsible] entity.” (§ 3010.10, subds. (c)(1), (2).)

Rosas admits that he removed his GPS, but he argues he did so out of necessity. By way of background, “‘[t]he necessity defense is very limited and depends on the lack of a legal alternative to committing the crime. It excuses criminal conduct if it is justified by a need to avoid an imminent peril and there is no time to resort to the legal authorities or such resort would be futile.’ (*People v. Beach* (1987) 194 Cal.App.3d 955, 971.)” (*People v. Verlinde* (2002) 100 Cal.App.4th 1146, 1164, disapproved on other grounds in *People v. Cook* (2015) 60 Cal.4th 922.) To establish a necessity defense, there must be “‘evidence sufficient to establish that [defendant] violated the law (1) to prevent a significant and imminent evil, (2) with no reasonable legal alternative, (3) without creating a greater danger than the one avoided, (4) with a good faith belief that the criminal act was necessary to prevent the greater harm, (5) with such belief being objectively reasonable, and (6) under circumstances in which [he] did not substantially contribute to the emergency.’ [Citation.]” (*Verlinde, supra*, at pp. 1164-1165.) The defense has the burden of proving necessity by a preponderance of the evidence. (*People v. Lee* (2005) 131 Cal.App.4th 1413, 1429; *People v. Waters* (1985) 163 Cal.App.3d 935, 938; see also *People v. Neidinger* (2006) 40 Cal.4th 67, 79.)

There is substantial evidence in the record before us that Rosas violated the terms of his probation and that such violation

was not justified by necessity. With regard to the first element of the necessity defense, the trial court was not required on this record to conclude that Rosas violated the law to prevent a “significant evil”—here, debilitating pain. Although Rosas testified that he suffered from circulation problems that made wearing the ankle bracelet painful, he conceded that he never provided Contreras with medical documentation of this condition.<sup>3</sup> Moreover, according to Contreras’s testimony—which the court found “very credible”—Rosas did not claim prior to his arrest that he had removed the GPS monitor because of swelling and pain. Instead, he told Contreras he cut the monitor off because of “a rash” and because he “wanted to see” Agent Contreras. The court credited this testimony, stating that “[Rosas’s] words seem to point out what [his] purpose was [in removing the GPS monitor] . . . he was looking to get Agent Contreras to come to him.”

Even assuming Rosas was acting in good faith to prevent a significant evil, the record supports the trial court’s conclusion that Rosas was not without adequate legal alternatives. Rosas testified he had called Contreras the day before to express his concern that the GPS monitor was not working properly, and there is no evidence indicating why, in this instance, he was unable to call Contreras to inform him he was suffering pain and to request permission to remove the monitoring device. In addition, Rosas did not present any evidence as to why he could not pursue other legal alternatives, such as calling 911. Had he

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<sup>3</sup> Rosas claimed he failed to provide Contreras with medical documentation because “I had a thousand other things that I was dealing with.”

pursued a legal alternative, such as getting authorization from Contreras or having the monitor removed by medical professionals, Rosas could have brought himself within an exception to section 3010.10. Because Rosas did not present evidence demonstrating why he was unable to lawfully remove the GPS monitor, he did not establish the absence of adequate legal alternatives.

Finally, the trial court was not required on this record to conclude that Rosas had a good faith belief in the necessity of cutting off the GPS monitor. According to Contreras's testimony, Rosas "smirk[ed]" when he said he had taken off the monitor because of a rash, and then told Contreras that the "real reason" he had removed it was so that Contreras would "come to see" him. Taken together, the trial court reasonably could have concluded Rosas's words and demeanor were inconsistent with a good faith belief in the necessity of removing the monitor.

**DISPOSITION**

The parole revocation order is affirmed.

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EDMON, P. J.

We concur:

LAVIN, J.

STRATTON, 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.