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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION ONE

In re D.O., a Person Coming Under the  
Juvenile Court Law.

THE PEOPLE,

Plaintiff and Respondent,

v.

D.O.,

Defendant and Appellant.

A137762

(Del Norte County  
Super. Ct. No. JDSQ126068)

Minor D.O. appeals the juvenile court’s order revoking probation. He asserts the court should have issued a formal written order, rather than ruling from the bench on the record, and also erred in admitting evidence that he tested positive for marijuana use. We affirm.

**BACKGROUND**

In October 2012, the juvenile court sustained a three-count delinquency petition against D.O.

On December 5, 2012, the Del Norte County Probation Department filed a petition under Welfare and Institutions Code section 777<sup>1</sup> alleging the minor violated probation

<sup>1</sup> All further statutory references are to the Welfare and Institutions Code unless noted.

by consuming marijuana, as shown by a November 30, 2012, urine sample. A second section 777 petition, filed January 7, 2013, alleged another instance of marijuana consumption, as shown by a December 28, 2012, urine sample.

A contested hearing on the two violations took place on January 23, 2013.

D.O. conceded Officer Veerkamp collected a urine sample on December 28, 2012, and was satisfied with the chain of custody as to it. However, he questioned the integrity of other samples. Accordingly, Officers Rosentrader, Parker, Yancy Williamson, and Ramsey Williamson each took the stand and described the same general process of witnessing, labeling, and shipping for analysis of minors' urine samples.

Rosentrader recalled taking samples from D.O., and testified, after refreshing his recollection from labels shown to him, that he collected a urine sample from D.O. on November 30, 2012. He knew he had collected samples from D.O. during the November timeframe, but had no independent recollection of the exact dates. Parker similarly testified he collected a sample from D.O. on December 14, 2012. Ramsey Williamson similarly testified to collecting a sample on December 26, 2012. Yancy Williamson testified to no specific collection.

John Martin of Redwood Toxicology also testified. D.O. stipulated Martin was qualified as an expert in toxicology and forensic science. Martin described how Redwood receives and processes samples shipped from Del Norte County Probation, checking each received sample for integrity and logging it. He then described three tests performed on urine samples suspected of containing marijuana: an immunoassay screening test, a second radioimmunoassay test, and finally a confirming liquid chromatography test. Martin is on site for the second test and certifies the results of that test. He also is the final signature on the third, confirming test. Although others with training may do much of the testing, he oversees that work.

At this point, D.O. objected to Martin offering testimony about specific lab results, arguing such testimony should be excluded as hearsay and as based on lab records that were inadmissible. The court overruled these objections.

Martin then testified a November 30 sample, labeled as coming from the minor and taken by “R.”, tested positive for, and was confirmed as containing, marijuana, and showed ingestion of marijuana prior to the sample date. Martin similarly testified to the testing of a December 14 sample, which was labeled as coming from the minor and taken by “Parker” (also marked with a “P.”) and a December 28 sample, labeled as coming from the minor and collected by “J. Veerkamp.” (but also marked on the chain of custody section with a “J.D”). Martin stated the data obtained from these samples showed renewed ingestion of marijuana between the sample dates.

D.O. presented no evidence. The deputy district attorney submitted the matter without argument. Defense counsel only stated he had “already made my objections, and I think that is before you.” The juvenile court then ruled on the record as follows:

“All right. Based on the evidence and by a preponderance of the evidence, it appears that the minor did violate his probation by having dirty urine samples for marijuana, both November the 30th, as alleged in the petition of December 5th, and, again, on December 28th, as alleged in the petition of January 7th, 2013. I do find him in violation of probation.”

The trial court committed the minor to juvenile hall for 10-20 days, with all but four to eight days stayed. The minor appealed.

## **DISCUSSION**

### ***“Oral” Order***

The juvenile court revoked probation in an oral ruling from the bench. D.O. contends due process required the court to issue a separate written statement of the “evidence relied on and reasons for revoking parole.” (*Morrissey v. Brewer* (1972) 408 U.S. 471, 489 (*Morrissey*) [at a minimum, due process requires “a written statement by the factfinders as to the evidence relied on and reasons for revoking parole”].)

D.O. made no such objection before the juvenile court, and thus forfeited any dispute over the form of the court's ruling. (See *People v. Partida* (2005) 37 Cal.4th 428, 435 [failure to make due process objection to admission of evidence forfeits contention on appeal].) In any case, the court's ruling was memorialized in the reporter's transcript, and thus "complies with *Morrissey's* directive" for a written statement. (See *People v. Woodall* (2013) 216 Cal.App.4th 1221, 1239–1240; *People v. Moss* (1989) 213 Cal.App.3d 532, 534–535.)

### ***Evidentiary Issues***

D.O.'s overarching evidentiary assertion is that there is insufficient "admissible" evidence to support the revocation order. His principal complaint is that the prosecution never introduced the laboratory reports, themselves, into evidence, and, instead, presented the testimony of live witnesses, including Martin, a toxicologist and forensic scientist at the laboratory. According to D.O., the testimony of these witnesses did not fully establish the chain of custody and is inadmissible hearsay as to the laboratory results.

### ***Chain of Custody***

A chain of custody is adequate when the party offering the evidence shows to the satisfaction of the trial court that, " " "taking all the circumstances into account including the ease or difficulty with which the particular evidence could have been altered, it is reasonably certain that there was no alteration. [¶] The requirement of reasonable certainty is not met when some vital link in the chain of possession is not accounted for, because then it is as likely as not that the evidence analyzed was not the evidence originally received. Left to such speculation the court must exclude the evidence." ' ' ' ( *People v. Catlin* (2001) 26 Cal.4th 81, 134 (*Catlin*).) However, when there is only the barest speculation that the evidence was altered, " " "it is proper to admit the evidence and let what doubt remains go to its weight." [Citations.]' [Citations.]" (*Ibid.*)

D.O. asserts there is no evidence his urine samples were in fact received at Redwood Toxicology, and specifically complains there is no testimony from anyone at Redwood who actually handled his samples. He also points out Rosentrader, who could not independently recall taking a sample on a particular date, had to rely on a copy of the sample's label for that information. And as to the December 28 sample, labeled as collected by "J. Veerkamp," defendant notes the label also contains a marking "J.D."

Martin, however, gave a detailed explanation of Redwood's protocol for handling samples upon intake, in which samples are logged and checked for integrity. (See *People v. Hall* (2010) 187 Cal.App.4th 282, 296–297 (*Hall*); cf. *People v. Jimenez* (2008) 165 Cal.App.4th 75, 79–80 [no testimony about protocols].) Although Martin did not describe in detail how D.O.'s samples, in particular, were handled, there is nothing to suggest any problem on that score, and D.O. asked no questions of Martin regarding this matter.

“ ‘While a perfect chain of custody is desirable, gaps will not result in the exclusion of the evidence, so long as the links offered connect the evidence with the case and raise no serious questions of tampering.’ ” (*Catlin, supra*, 26 Cal.4th at p. 134; see also *Hall, supra*, 187 Cal.App.4th at p. 296 [“it is proper to presume that an official duty has been regularly performed unless there is some evidence to the contrary,” even if “unclear who labeled, sealed, and transported the evidence envelope”].)

Here, there was adequate evidence connecting the evidence with the case and there was no evidence raising a “serious question” of tampering. Rosentrader's reliance on a label to refresh his recollection is not problematic. Nor is the presence of the initials “J.D.” *in addition to* a marking indicating J. Veerkamp was the collector (J.D. is easily a mis-transcription of J.V. for J. Veerkamp). In short, D.O. has posited nothing but bare speculation his urine samples were altered, which is insufficient to establish any abuse of discretion by the juvenile court in concluding an adequate showing had been made as to

chain of custody. (See *Catlin, supra*, 26 Cal.4th at p. 134 [chain of custody ruling reviewed for abuse of discretion].)

### ***Hearsay***

“Probation revocation proceedings,” whether for juveniles or adults, “are not ‘criminal prosecutions’ to which the Sixth Amendment applies.” (*People v. Johnson* (2004) 121 Cal.App.4th 1409, 1411 (*Johnson*); *In re Eddie M.* (2003) 31 Cal.4th 480, 504, 506 [“No meaningful difference exists between section 777(c) and Penal Code section 1203.2(a) . . . . In each case, nothing akin to a criminal prosecution is involved.”].) Instead, a due process standard is used to determine whether hearsay evidence admitted during revocation proceedings violates a defendant’s rights. (*Morrissey, supra*, 408 U.S. at p. 482.) “[D]ue process is flexible and calls for such procedural protections as the particular situation demands.” (*Id.* at p. 481.)

Section 777, governing juvenile probation revocation proceedings, provides the court “may admit and consider reliable hearsay evidence at the [probation revocation] hearing to the same extent that such evidence would be admissible in an adult probation revocation hearing, pursuant to the decision in *People v. Brown* [(1989) 215 Cal.App.3d 452] and any other relevant provision of law.” (§ 777, subd. (c).) *Brown* held a probationer’s confrontation rights were not infringed by allowing a police officer’s testimony regarding the results of a drug test even though he had not been involved in the laboratory testing. (*Brown*, at pp. 454–455.) The court held “[a]s long as hearsay testimony bears a substantial degree of trustworthiness it may legitimately be used at a probation revocation proceeding. [Citations.] In general, the court will find hearsay evidence trustworthy when there are sufficient ‘indicia of reliability.’ [Citation.] Such a determination rests within the discretion of the trial court and will not be disturbed on appeal absent an abuse of discretion.” (*Ibid.*)

In determining whether hearsay “bears a substantial degree of trustworthiness” such that it may be admissible at a probation revocation hearing, courts have

distinguished between “testimonial” hearsay and nontestimonial hearsay. (*Johnson, supra*, 121 Cal.App.4th at pp. 1410–1413.) If the hearsay evidence sought to be introduced is testimonial in nature, such as prior testimony, “good cause” must be established for its admission. (*People v. Arreola* (1994) 7 Cal.4th 1144, 1158–1159 (*Arreola*)). The “need for confrontation is particularly important where the evidence is testimonial, because of the opportunity for observation of the witness’s demeanor.” (*Id.* at p. 1157.)

In contrast, if the hearsay evidence is nontestimonial in nature, it may be admissible if it bears sufficient indicia of reliability. (*People v. Maki* (1985) 39 Cal.3d 707, 715–717 (*Maki*)). “Generally, the witness’s demeanor is not a significant factor in evaluating foundational testimony relating to the admission of evidence such as laboratory reports, invoices, or receipts, where often the purpose of this testimony simply is to authenticate the documentary material, and where the author, signator, or custodian of the document ordinarily would be unable to recall from actual memory information relating to the specific contents of the writing and would rely instead upon the record of his or her own action.” (*Arreola, supra*, 7 Cal.4th at p. 1157.) Accordingly, in the context of probation revocation hearings, a “laboratory report does not ‘bear testimony.’” (*Johnson, supra*, 121 Cal.App.4th at p. 1412.)

D.O. challenges the conclusions of these cases in the wake of *Bullcoming v. New Mexico* (2011) \_\_ U.S. \_\_ [131 S.Ct. 2705] (*Bullcoming*), *Melendez–Diaz v. Massachusetts* (2009) 557 U.S. 305 (*Melendez–Diaz*), and *Crawford v. Washington* (2004) 541 U.S. 36 (*Crawford*). None of these cases dealt with probation revocation proceedings.

In *People v. Gomez* (2010) 181 Cal.App.4th 1028 (*Gomez*), the court considered whether *Melendez–Diaz* barred the admission of a probation report which included information gleaned from “electronic probation records” showing the probationer did not report to the probation department as directed, attend counseling sessions, make

restitution payments, and submit verification of his employment. (*Gomez*, at pp. 1038–1039.) The court held “[a]lthough the probation report would constitute testimonial hearsay under the expansive definition developed in recent confrontation clause cases, such as *Melendez–Diaz* . . . the confrontation clause is inapplicable to the probation revocation context. But within the parameters established by the body of precedent applicable to probation revocation, we conclude that the probation report was admissible and its admission did not violate defendant’s due process right of confrontation.” (*Gomez*, at p. 1039.)

Moreover, in the more recent case of *People v. Barba* (2013) 215 Cal.App.4th 712—a Sixth Amendment case—the appellate court concluded DNA lab results were not testimonial because “(1) they were generated by a lab technician pursuant to standardized procedures; (2) even though [the defendant] had been charged with the crime, lab technicians . . . have no idea what their results might show, and DNA testing is routinely used to inculcate or exonerate those charged with crimes; and (3) the accusatory opinions came from expert witness Reynolds, who was subject to vigorous cross-examination.” (*Barba*, *supra*, 215 Cal.App.4th at p. 742.) As a result, the defendant’s confrontation rights were not violated by the expert’s testimony about the lab results, even though the testing was done and documented by a subordinate. (*Id.* at pp. 742–743.)

D.O. cites to *People v. Shepherd* (2007) 151 Cal.App.4th 1193 (*Shepherd*), which ruled the good cause standard of *Arreola*, rather than the more lenient standard of indicia of reliability in *Maki* and *Johnson*, applied to a witness’s live testimony regarding a declarant’s out-of-court statement. However, *Shepherd* is decidedly different from the case at hand. There, the defendant was accused of violating his probation by consuming alcohol. (*Shepherd*, at p. 1196.) The court found a violation based solely on the hearsay testimony of his probation officer that a program administrator at the treatment program had told him Shepherd was dismissed after smelling of, and testing positive for, alcohol. No documentary or other evidence of alcohol consumption was introduced, and it was not

clear from the probation officer's testimony whether the program administrator, herself, had observed Shepherd's alleged probation violation, or whether she was simply reporting what she had been told by others. In reversing the revocation order, the *Shepherd* court concluded the program administrator's out-of-court statement to the probation officer was testimonial within the meaning of *Crawford* and *Arreola*, and the defendant had no opportunity to cross-examine the one person who purportedly observed defendant's alcohol consumption, thereby depriving defendant and the court of the opportunity to observe the accuser's demeanor. (*Shepherd*, at pp. 1198–1199, 1203.) Here, in contrast, there are no such levels of hearsay and total lack of personal involvement by a sole witness.

While some of Martin's testimony was, indeed, hearsay, this testimony had ample indicia of reliability to satisfy due process concerns and thus be admissible at a probation revocation hearing. Martin was qualified as an expert in forensic science and toxicology. He testified and was subject to cross-examination about the procedures used at Redwood Toxicology for receiving evidence for analysis, chain of custody, tests performed and results of the laboratory tests. Though Martin, himself, did not conduct the tests, he personally reviewed and certified the second and third confirmatory tests on defendant's samples. (See *Bullcoming, supra*, 131 S.Ct. at p. 2722 (conc. opn. of Sotomayor, J).) Defendant had the opportunity not only to cross-examine Martin, but to call other witnesses. Accordingly, the trial court did not abuse its discretion in admitting Martin's testimony about the laboratory results.

#### **DISPOSITION**

The order revoking probation is affirmed.

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Banke, J.

We concur:

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Margulies, Acting P. J.

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Dondero, J.