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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FIVE

THE PEOPLE,

Plaintiff and Respondent,

v.

BILLY DARENSBURG,

Defendant and Appellant.

A140607

(Alameda County
Super. Ct. No. CH52984)

Appellant Billy Darensburg (appellant) appeals from the trial court's order revoking his probation and imposing a prison sentence. We affirm.

BACKGROUND

In November 2012, appellant pled no contest to two counts of petty theft with a prior theft-related conviction (Pen. Code, §§ 484, subd. (a), 666, subd. (a))¹ and two counts of second degree burglary (§ 459). In December, the trial court suspended execution of appellant's sentence and placed him on probation for five years. One of the conditions of his probation was that he complete six to twelve months in a residential treatment program. In January 2013, progress notes filed by the Alameda County Superior Court's Office of Collaborative Courts Services reported appellant had enrolled in the Volunteers of America residential program on January 24, 2013.

On March 29, 2013, the People filed a petition to revoke appellant's probation following his March 27 arrest. A police report on the incident stated appellant was

¹ All undesignated statutory references are to the Penal Code.

apprehended by a security guard at a grocery store after the guard saw him taking products out of the store without paying for them.

At the beginning of the formal revocation hearing, the People informed the court the security guard and his employer had not responded to subpoenas. The People presented no live witnesses at the hearing; the sole prosecution evidence was an exhibit containing the following documents: an email from Parole Agent Donald Hom to the prosecutor reciting appellant's history at Volunteers of America, a fax the prosecutor received from an employee of the Department of Corrections and Rehabilitation transmitting certain activity reports on appellant's status at Volunteers of America and a Volunteers of America document, and a fax the prosecutor received from an employee of Volunteers of America transmitting different activity reports on appellant's progress in the program. The trial court admitted the exhibit over defense counsel's hearsay objection.

The Volunteers of America document included in the fax from the Department of Corrections and Rehabilitation was a form with the fully pre-printed title, "Volunteers of America Bay Area, Employment Training Information Sheet #1." This document identified appellant's employer as Brown's Paint Away and his work hours as 1:30 p.m. to 8:00 p.m. The document indicated appellant was authorized to leave the Volunteers of America facility at 12:15 p.m. to travel to this employment. The document provided this schedule was for the week of January 29, 2013, to continue "until further notice."

Appellant testified in his defense. He testified that, before March 27, he never failed to return to Volunteers of America when he was expected to return. He failed to return on March 27 only because he was in jail following his arrest. On cross, appellant testified he worked for Brown's Paint Away fixing up houses for banks. He routinely left Volunteers of America at 9:00 a.m. to get to work and had to be back by 9:30 p.m. On March 27, he left the residence at 9:00 a.m., was arrested during his lunch break from work, and had been in custody since that date.

The prosecutor argued the evidence showed appellant violated the conditions of his probation. As part of his argument, the prosecutor pointed to the discrepancy between

appellant's testimony that he left the facility at 9:00 a.m. and the employment training sheet providing appellant was not authorized to leave until 12:15 p.m. Defense counsel noted the employment training sheet stated the hours were to continue until further notice, but argued "we don't have any indication as to whether or not those hours were changed between the time [appellant] began working in January until the time he was arrested in March."

The court found appellant violated his probation. The trial court noted that while appellant entered the Volunteers of America program in January, "I think it's fairly clear that he didn't stay in that program after March 27th, 2013." The court discussed evidence of a "mixed" record of appellant's progress during his time in the program, concluding, "regardless, since the period of March 27th, 2013, until the current period, he hasn't done anything in the program because he's been in jail, and I think there's plenty of reason to find him in violation of his probation." The court imposed sentence of four years imprisonment.

DISCUSSION

Appellant argues the Employment Training Information Sheet was both inadmissible and insufficient to support the trial court's conclusion that appellant violated his probation by leaving Volunteers of America without authorization. We disagree with both arguments.

I. *Admissibility*

The standard governing the admissibility of documentary evidence at a probation revocation hearing depends on the type of evidence. Evidence submitted "as a substitute for the *live testimony* of an adverse witness at a revocation hearing" is inadmissible absent a showing of good cause. (*People v. Arreola* (1994) 7 Cal.4th 1144, 1156–1157, 1159 (*Arreola*).)² "[T]he need for confrontation is particularly important where the

² Good cause is shown, for purposes of hearsay evidence submitted in a probation revocation hearing, "(1) when the declarant is 'unavailable' under the traditional hearsay standard (see Evid. Code, § 240), (2) when the declarant, although not legally unavailable, can be brought to the hearing only through great difficulty or expense, or (3)

evidence is testimonial, because of the opportunity for observation of the witness's demeanor." (*Id.* at p. 1157.) In contrast, documentary evidence "that does not have, as its source, live testimony" is admissible if it is "sufficiently trustworthy to be relied upon by the trial court." (*Id.* at pp. 1156–1157.) "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." (*Id.* at p. 1157.) We review the admission of hearsay evidence at a probation revocation hearing for abuse of discretion. (*People v. Abrams* (2007) 158 Cal.App.4th 396, 400.)

The Employment Information Training Sheet is a completed form document signed by appellant, a Volunteers of America employee, and a parole agent on January 28, 2013. It is a record of appellant's authorized work schedule; both the Volunteers of America employee and the parole agent who signed the document would likely 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*, at p. 1157.) The demeanor of these witnesses would not be a significant factor in the authentication of the document. (See *ibid.*) Accordingly, it is admissible if sufficiently trustworthy. (*Ibid.*)

The Employment Training Information Sheet was signed by appellant the day before its schedule became effective. Appellant testified in his own defense at the hearing but did not claim the signature was not his or the document was otherwise not what it purports to be. Because appellant testified and was fully able, in his testimony, to refute the reliability of the document, but did not do so, we conclude the admission of the

when the declarant's presence would pose a risk of harm (including, in appropriate circumstances, mental or emotional harm) to the declarant." (*Arreola, supra*, 7 Cal.4th at pp. 1159–1160.)

Employment Training Information Sheet was not an abuse of discretion. (See *People v. Maki* (1985) 39 Cal.3d 707, 716 [noting, in analysis concluding documentary evidence was sufficiently trustworthy to be admissible in probation revocation hearing, “[t]he significant factor is the uncontroverted presence of defendant’s signatures on the invoice”].)

II. *Sufficiency of the Evidence*

“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 officer or otherwise that the person has violated any of the conditions of his or her probation’ (§ 1203.2, subd. (a).) ‘As the language of section 1203.2 would suggest, the determination whether to . . . revoke probation is largely discretionary.’ [Citation.] ‘[T]he facts supporting revocation of probation may be proven by a preponderance of the evidence.’” (*People v. Galvan* (2007) 155 Cal.App.4th 978, 981–982.)

On appeal from a probation revocation order, “where the trial court was required to resolve conflicting evidence, review on appeal is based on the substantial evidence test. Under that standard, 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. In that regard, we give great deference to the trial court and resolve all inferences and intendments in favor of the judgment. Similarly, all conflicting evidence will be resolved in favor of the decision.” (*People v. Kurey* (2001) 88 Cal.App.4th 840, 848–849, fns. omitted.)

Appellant contends the Employment Training Information Sheet was insufficient evidence because it was prepared while appellant lived at a Volunteers of America residence with a different Oakland address than the one he lived at on March 27, 2013 and because certain reports from Volunteers of America employees about appellant’s tenure were positive and did not mention any unauthorized departures from Volunteers of America. The Employment Training Information Sheet was not tailored for a certain Volunteers of America residence—it identified only that it was a form for “Volunteers of America Bay Area”—and it did not provide that it only applied during appellant’s tenure

at a certain residence. No end date was indicated to the document's terms or the schedule it set forth. The trial court could reasonably infer from the document that the schedule was still in effect during the remainder of appellant's time in the program, and therefore that appellant was not authorized to leave Volunteers of America until 12:15 p.m., despite his testimony that he routinely left at 9:00 a.m. That Volunteers of America reports on appellant's tenure were silent with respect to whether he left the facility early does not negate this inference. Accordingly, substantial evidence supports the trial court's finding that appellant violated his probation by leaving Volunteers of America before he was authorized to.³

DISPOSITION

The judgment is affirmed.

³ Because we affirm the judgment on this ground, we need not address appellant's other arguments.

SIMONS, Acting P.J.

We concur.

NEEDHAM, J.

BRUINIERS, J.