

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

In re A.L., a Person Coming Under the
Juvenile Court Law.

THE PEOPLE,

Plaintiff and Respondent,

v.

A.L.,

Defendant and Appellant.

E052931

(Super.Ct.No. J234767)

OPINION

APPEAL from the Superior Court of San Bernardino County. William

Jefferson Powell IV, Judge. Affirmed.

Jeanine G. Strong, under appointment by the Court of Appeal, for Defendant
and Appellant.

Kamala D. Harris, Attorney General, Dane R. Gillette, Chief Assistant Attorney
General, Gary W. Schons, Assistant Attorney General, Christopher Beesley and Peter
Quon, Jr., Deputy Attorneys General, for Plaintiff and Respondent.

The minor, A.L., was on probation for a felony adjudication of inflicting corporal injury on his girlfriend. He now appeals after the juvenile court revoked his probation and entered a dispositional order changing his placement. He contends that the items of evidence establishing the violation were improperly admitted. We affirm the dispositional order.

FACTS AND PROCEDURAL HISTORY

The minor's adjudication resulted from an altercation between him and his girlfriend. They were attending a party at a hotel when the minor accused her of cheating on him. During the argument, the minor bit the girlfriend's ear and pinched her thigh. Later that evening, at the swimming pool, defendant threatened to kill her and held her under water by her hair. The police were called, and the minor was arrested. He was placed on probation for a felony adjudication of inflicting corporal injury on a cohabitant.

The minor was placed in his grandmother's home. In January 2011, the minor's mother was also living temporarily in the home. On January 13, the minor's mother attacked him with a knife and cut his hand and face. The grandmother reported this incident to police. The next day, the minor's probation officer decided to check up on the minor. The probation officer, Teneka Hayes, transported the minor to the Youth Justice Center. Among the conditions of the minor's probation were that he not use or possess controlled substances and that he submit to controlled substance tests at the direction of the probation officer. Probation Officer Hayes had another probation officer (Probation Officer Duran) take the minor to the bathroom to provide a urine

sample for testing. A preliminary test of the sample showed it was positive for marijuana and methamphetamine. Because the sample had a preliminary positive result, Probation Officer Hayes arranged to have the sample sent to a laboratory for further screening.

Probation Officer Hayes told the minor that his sample had shown a positive result. She took the minor into a room where they sat together at a table. Probation Officer Hayes asked the minor general questions about school and about his compliance with other terms of his probation. The minor admitted that he had used marijuana that day, and he also admitted drinking alcohol the day before. The minor filled out and signed a “voluntary admit” form, on which he stated that he had used marijuana on January 5, 2011, and had drunk some alcohol the day before. He did not admit using amphetamines or methamphetamines.

On January 19, 2011, a petition was filed alleging that the minor had violated the terms of his probation. At the hearing, held in February 2011, the minor objected to Probation Officer Hayes’s testimony that the minor had, under questioning, admitted using drugs and alcohol. The minor’s counsel objected that the “voluntary admit” form was obtained in violation of the minor’s constitutional rights, as a result of interrogation while the minor was in the custody and control of the probation officer. The trial court overruled the objection, ruling that the minor was not “in custody” for purposes of the exclusionary rule when he was giving information to the probation officer about his compliance with the terms of his probation.

At the revocation hearing, the People also offered, through the testimony of Probation Officer Hayes, the results of the preliminary screening test performed by the other probation officer at the Youth Justice Center, as well as the reports of the more extended laboratory testing performed on the minor's urine sample. The minor's counsel objected to Probation Officer Hayes's testimony as to the preliminary test performed by Probation Officer Duran on grounds of hearsay and lack of foundation, as well as depriving the minor of his opportunity to confront and cross-examine witnesses under *People v. Winson* (1981) 29 Cal.3d 711 and *People v. Arreola* (1994) 7 Cal.4th 1144. The minor's counsel also objected that the People had failed to establish the reliability of the drug test kit. The trial court overruled these objections also, and allowed Probation Officer Hayes's testimony.

The trial court found that the minor had violated the terms of his probation. It entered a dispositional order removing the minor from his grandmother's home, and placing him in an out-of-home rehabilitative program.

The minor now appeals, alleging that the trial court erred in its rulings on the admissibility of the evidence.

ANALYSIS

I. The Juvenile Court Properly Admitted Evidence of the Drug Test Results

The minor urges that the true finding of a violation of probation should be reversed because the court allowed Probation Officer Hayes to testify as to the preliminary and laboratory drug test results, rather than requiring live testimony of either Probation Officer Duran (who supervised the sample collection and made the

preliminary presumptive test) or from the personnel who conducted the detailed laboratory analysis confirming the preliminary test. The minor contends that the prosecutor's failure to produce the additional witnesses violated his right of confrontation and cross-examination under the due process clause; he asserts this evidence was "testimonial" as explicated in *Melendez-Diaz v. Massachusetts* (2009) 557 U.S. 305 [129 S.Ct. 2527, 174 L.Ed.2d 314] (*Melendez-Diaz*) and *People v. Geier* (2007) 41 Cal.4th 555, 605.

A. *Standard of Review*

Generally, a trial court's decision to admit or exclude evidence in a probation revocation hearing will not be disturbed on appeal absent an abuse of discretion. (*People v. O'Connell* (2003) 107 Cal.App.4th 1062, 1066.) However, the minor frames the issue in terms of the scope of the Sixth Amendment confrontation rights required in the context of a probation revocation hearing. The interpretation of the constitutional provision presents an issue of law, which we decide independently. (*People v. Seijas* (2005) 36 Cal.4th 291, 304 [appellate courts should generally apply the de novo standard of review to claims that implicate a defendant's constitutional right to confrontation].)

B. *Admission of the Test Results Did Not Violate the Minor's Confrontation Rights*

In the first instance, the evidence of the minor's preliminary drug test result was not necessarily testimonial. The minor was on probation, and among his conditions of probation he was required to obey all laws, to refrain from using illegal substances, to

participate in rehabilitative efforts as directed by the probation officer, to submit to controlled substance tests when requested, and to cooperate with the probation officer in his program of rehabilitation. The primary purpose of having the minor submit to the test was not to punish him but to monitor his progress and his compliance with the rehabilitative goals of the probation program. This was a nontestimonial purpose.

Secondly, as stated in *People v. Stanphill* (2009) 170 Cal.App.4th 61, “Revocation of probation is not part of a criminal prosecution, and therefore the full panoply of rights due in a criminal trial does not apply to probation revocations.” (*Id.* at p. 72.) *Melendez-Diaz*, *supra*, 557 U.S. 305, and other Supreme Court cases, are consistent with this principle. “[T]he Sixth Amendment confrontation clause applies only to ‘criminal prosecutions,’ and a probation revocation hearing is not a ‘criminal prosecution.’ [Citations.]” (*Stanphill*, at p. 78.) “[T]he confrontation clause is inapplicable to the probation revocation context.” (*People v. Gomez* (2010) 181 Cal.App.4th 1028, 1039.)

Welfare and Institutions Code section 777, subdivision (c), provides that a juvenile court in a modification hearing, “may admit and consider reliable hearsay evidence at the 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.” As the juvenile court found, there was good reason to allow Probation Officer Hayes’s hearsay testimony in this case concerning the presumptive drug test. The minor is a male juvenile, and because of concerns of privacy, it would be more appropriate to

have the test administered by a male probation officer. Nothing indicated that the test had been done improperly, and there was a presumption that the officers had performed their duties correctly.

Under the circumstances, the evidence was the sort of reliable hearsay admissible in a juvenile probation revocation hearing.

The evidence was reliable hearsay, it concerned matters which were nontestimonial, and it was admitted in the context of a probation revocation hearing, not a criminal prosecution. The evidence of the drug screening test was therefore properly admitted.

II. Miranda Warnings Were Not Required

The minor also contends that the juvenile court's finding of a violation of probation should be reversed because the court improperly admitted the minor's signed statement ("voluntary admit" form) into evidence, in violation of his *Miranda* rights. (*Miranda v. Arizona* (1966) 384 U.S. 436 [86 S.Ct. 1602, 16 L.Ed.2d 694].) He complains that the probation officer did not advise him of his rights before questioning him about, among other subjects, his use of drugs and alcohol.

The People argue that the contention should be rejected because the minor's statements, to the effect that he had used marijuana and alcohol that day or within the preceding few days, were not the product of a custodial interrogation. The trial court below agreed with the People's assessment, as do we.

"Whether a defendant was in custody for *Miranda* purposes is a mixed question of law and fact. [Citation.] When reviewing a trial court's determination that a

defendant did not undergo custodial interrogation, an appellate court must ‘apply a deferential substantial evidence standard’ [citation] to the trial court’s factual findings regarding the circumstances surrounding the interrogation, and it must independently decide whether, given those circumstances, ‘a reasonable person in [the] defendant’s position would have felt free to end the questioning and leave’ [citation].” (*People v. Leonard* (2007) 40 Cal.4th 1370, 1400.) “When there has been no formal arrest, the question is how a reasonable person in the defendant's position would have understood his situation. ([*People v. Boyer* (1989) 48 Cal.3d 247] at p. 272.) All the circumstances of the interrogation are relevant to this inquiry, including the location, length and form of the interrogation, the degree to which the investigation was focused on the defendant, and whether any indicia of arrest were present. (*Ibid.*)” (*People v. Moore* (2011) 51 Cal.4th 386, 395.)

Here, giving proper deference to the trial court’s findings and all the factual circumstances surrounding the questioning of the minor, we conclude that the questioning or interrogation was not custodial. The minor’s driving privileges had been revoked as a result of this adjudication. He was therefore unable to drive himself to meet with his probation officer. The minor was brought to the probation officer’s attention in January 2011, as a result of the attack on him by his biological mother, who is a disturbed individual, particularly when she is under the influence of drugs. The mother was allowed temporarily to live in the grandmother’s home after a previous release from custody. Since his own release from custody about two months before the incident in which his mother attacked him, the minor had failed to enroll in

school or to start a batterer's treatment program, as he had been ordered. The grandmother, with whom the minor had been placed, had previously allowed him to stay home and not enroll in school for several years. The probation officer accordingly decided to bring the minor to the youth justice center to meet with him and to evaluate his progress in his rehabilitation plan. At the youth justice center, the minor provided a urine sample that preliminarily tested positive for controlled substances. He also met in a room with the probation officer where they sat at a table together, and she asked him questions, not merely about the positive urine test, but "different questions about school and basic questions trying to find out his compliance or lack thereof in regards to his probation."

The trial court found that, "Clearly," the circumstances included "questions as to the minor regarding possible law violations and/or violation of probation, but it was also questions regarding schooling and other rehabilitative efforts that the probation officer is dedicated and obligated to perform within the course and scope of her duties." The court concluded, on balance, that the interrogation was not custodial, but "one of those necessary reductions [of an] individual's rights," as a consequence of being on probation. We agree. While the minor was required "to do something which would necessitate him to be in a singular place, that is to give a urine sample into a small cup, but that does not rise to the level of an individual being in custody and being under suspicion of a new criminal offense or even a new violation of law."

The minor's probation conditions required him to submit to drug testing. Of necessity, this had to be carried out at some place where the test could be properly

supervised consistent with a juvenile's right to privacy. The minor was incapable of driving himself to the location. He was not under arrest, in handcuffs, or under any threat or compulsion other than the terms of his probation. While at the youth justice center, the minor was never placed in a cell or physically restricted. The tenor of the conversation with his probation officer concerned his general compliance with all the terms of his probation, including enrolling in school and other matters, aside from the presumptively positive urine test. Probation Officer Hayes was not gathering evidence of a new crime with which to charge the minor and, in fact, no new charge was filed arising from the minor's drug use. Under all the circumstances, the minor was not "in custody" for purposes of interrogating him about a criminal charge. His admission that he had used drugs was therefore properly admitted.

The minor urges that this court should not follow *People v. Racklin* (2011) 195 Cal.App.4th 872, on the issue whether a statement made by an in-custody defendant, in the absence of *Miranda* warnings, is nevertheless admissible in probation revocation hearings if there has been no egregious misconduct by law enforcement officers. We need not be detained by this argument, however, in light of the conclusion that the minor's statement here was not the product of a custodial interrogation.

In any case, given that the admission of the drug test results was proper, even if the minor's "voluntary admit" form was improperly admitted into evidence, the evidence was sufficient to support the trial court's finding of a violation of probation.

DISPOSITION

The evidence of the minor's drug use (test results and statements made to the probation officer) was properly admitted at his violation of probation hearing. The juvenile court properly found that the minor had violated the terms of his probation. We affirm the court's dispositional order.

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

McKINSTER
Acting P. J.

We concur:

RICHLI
J.

MILLER
J.