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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

In re J.R., a Person Coming Under the
Juvenile Court Law.

THE PEOPLE,

Plaintiff and Respondent,

v.

J.R.,

Defendant and Appellant.

E054086

(Super.Ct.No. J228183)

OPINION

APPEAL from the Superior Court of San Bernardino County. William
Jefferson Powell IV, Judge. Affirmed.

Maureen M. Bodo, under appointment by the Court of Appeal, for Defendant
and Appellant.

Kamala D. Harris, Attorney General, Dane R. Gillette, Chief Assistant Attorney
General, Julie L. Garland, Assistant Attorney General, Barry Carlton and James H.
Flaherty III, Deputy Attorneys General, for Plaintiff and Respondent.

Defendant and appellant J.R. (minor), a ward of the juvenile court (Welf. & Inst. Code, § 602)¹, appeals following a disposition order removing him from parental custody and placing him in the custody of the probation department, detained in juvenile hall, awaiting placement in an appropriate facility. Following a contested section 777 hearing, the juvenile court found that minor had violated two conditions of his probation—that he not associate with other gang members, and that he not associate with his cohort in a previous burglary, Eli I. Minor now contends that the court erred in admitting certain photographs into evidence. We find no error and affirm.

PROCEDURAL BACKGROUND

On July 20, 2009, the San Bernardino County District Attorney's Office filed an original petition pursuant to Welfare and Institutions Code section 602, alleging one count of battery. (Pen. Code, § 242.) Minor admitted the allegation, and the court declared him a ward, ordered that he remain in his mother's custody, and placed him on probation. One of his probation terms prohibited him from associating with any persons he knew to be a probationer, parolee, or gang member (term No. 20).

In February 2010, minor admitted that he violated his probation by being absent from school without a valid excuse. Minor was continued on probation.

¹ All further statutory references will be to the Welfare and Institutions Code, unless otherwise noted.

In June 2010, minor admitted to violating his probation again, this time by failing to report to his probation officer. The court continued him as a ward in his mother's custody.

On March 18, 2011, the district attorney filed a subsequent Welfare and Institutions Code section 602 petition, alleging one count of second degree commercial burglary. (Pen. Code, § 459.) It was also alleged that the burglary was committed for the benefit of a street gang. (Pen. Code, § 186.22, subd. (b)(1).) Minor admitted the burglary, and the court dismissed the gang allegation, along with another count that was alleged. However, the parties stipulated that gang terms would be added to minor's probation. The court continued minor on probation. One of the added conditions prohibited him from associating or communicating with Eli I., his coparticipant in the burglary (term No. 30).

On May 26, 2011, the district attorney filed a petition alleging that minor violated his probation. Specifically, the petition alleged that: he violated term No. 20 when he was found in the presence of known gang members on May 13, 2011; he violated term No. 30 when he was found in the presence of Eli I. on May 13, 2011; and he violated term No. 32 by failing to register his address with the local law enforcement agency. Minor denied the first two allegations, and the court dismissed the third. Following a contested hearing, the court found the allegations true. The court continued minor as a ward and ordered him into out-of-home placement.

ANALYSIS

The Court Properly Admitted the Photographs into Evidence and Found Minor in Violation of His Probation

Minor argues that the court abused its discretion in admitting certain photographs of him with other gang members and Eli I. (exhibits 1-4) into evidence. He claims the photographs were not properly authenticated. He further contends that the court erred in admitting a picture taken of his Facebook page (exhibit 5), without any evidence that he created or maintained the Facebook page. Minor specifically points out that there were conflicting testimonies presented at the hearing regarding the date the photographs were taken. All of the photographs were admitted to show that minor violated his probation by being in the company of gang members and Eli I. Thus, he argues that since the court improperly admitted them, the court's finding that he violated his probation must be reversed. We disagree.

A. The Photographs (Exhibits 1-5)

On May 13, 2011, Eli I.'s iPhone (the iPhone) was confiscated. Eli I.'s probation officer, Andrea Rubio, found photographs on the iPhone. Printed copies of those photographs were admitted into evidence at the contested hearing. Exhibit 1 was a photograph depicting several individuals, including Eli I. and minor, at Gladys E.'s house. Exhibit 2 was a photograph depicting mostly the same people as in exhibit 1. Exhibits 3 and 4 were photographs depicting minor and an unidentified person throwing gang signs.

Officer Rubio looked through Eli I.'s Facebook contacts on his iPhone also. She found minor listed as one of Eli I.'s Facebook friends, and she clicked on minor's name, which provided a link to his Facebook page. On the Facebook page, she found a post which referred to "chilling with the homies from CIM." CIM (Crazy Insane Mexicans) is the name of a street gang. The post was dated "11 days ago," and Officer Rubio saw the post on May 26, 2011. Rubio also saw another post that referred to "all my bros from that CIM." The end of that post said, "13 days ago." Officer Rubio took a picture of minor's Facebook page showing those posts. That picture was admitted into evidence as exhibit 5.

B. Standard of Review

"The trial court holds wide discretion to determine whether evidence is admissible, and such a determination will not be disturbed unless there is a clear showing that the court has abused its discretion. [Citation.]" (*In re Troy D.* (1989) 215 Cal.App.3d 889, 902.)

C. The Court Properly Admitted the Photographs

Minor contends the court abused its discretion in admitting the photographs that were found on the iPhone because they were not sufficiently authenticated. We note that although minor initially asserts that exhibits 1-4 were not adequately authenticated, his argument essentially focuses on exhibits 1 and 2. We find no abuse of discretion.

Evidence Code section 1401, subdivision (a), requires "authentication of a writing . . . before it may be received in evidence." A photograph is a "writing" and

thus must be authenticated. (*People v. Beckley* (2010) 185 Cal.App.4th 509, 514.) “A photograph or other writing may be authenticated by ‘the introduction of evidence sufficient to sustain a finding that it is the writing that the proponent of the evidence claims it is.’” (*Ibid.*; see also Evid. Code, § 1400; *People v. Bowley* (1963) 59 Cal.2d 855, 859 [videotaped recording is authenticated by evidence “that it accurately depicts what it purports to show”].)

Here, the photographs at issue were properly authenticated. At the June 20, 2011 contested hearing, Probation Officer Isaac Zaragoza testified that after the photographs were recovered from the iPhone, he showed exhibits 1 and 2 to Gladys E., and she helped him identify the people in the pictures. All of the people in the pictures in exhibits 1 and 2 were members of CIM. Officer Zaragoza testified that Gladys E. told him the photographs were taken at her house on May 13, 2011, at a celebration in honor of her birthday. He also testified that all the individuals in the photographs were throwing gang signs. Gladys E. testified at the hearing as well. She said that the pictures were taken at her house, and she identified minor and Eli I. in the pictures.² Additionally, Officer Rubio testified that exhibits 3 and 4 were photographs depicting minor and an unidentified person throwing gang signs.

Minor claims that, in order to sufficiently authenticate the photographs, “the prosecution needed to present either a witness who could say, ‘I took these

² We note that when asked at the hearing when the pictures were taken, Gladys E. replied, “probably about . . . a year ago.” This testimony was inconsistent with her previous statement to Officer Zaragoza. (See *post.*)

photographs and the prints accurately represent what I saw that day,’ or a witness who could say, ‘I was present when person X took those photographs, and the prints accurately represent what I saw that day.’” Minor cites *People v. Arguello* (1967) 65 Cal.2d 768, 776, which says that the “[t]estimony of a person present at the time a picture was taken that it accurately depicts what it purports to show is a legally sufficient foundation for its admission into evidence.” He argues that since Officer Zaragoza was not present when the picture was taken, his testimony with regard to laying a foundation for the admission of exhibit 1, was “irrelevant.” While the testimony of a person present when the picture was taken is *a* legally sufficient foundation for admission of the picture, *Arguello* does not hold that such testimony is *required* to authenticate pictures. Similarly, contrary to minor’s other claim, “the testimony of the *photographer* is not necessary to establish admissibility of a photograph [Citations].” (*People v. Richardson* (1968) 258 Cal.App.2d 23, 30 (*Richardson*), italics added; see also, *People v. Doggett* (1948) 83 Cal.App.2d 405, 409.) “[A]ll that is required is testimony of a witness that the photograph is a correct representation of the object it portrays [Citation].” (*Richardson*, at p. 30.) As discussed *ante*, several witnesses testified that the photographs depicted minor, Eli I., and other gang members at Gladys E.’s house throwing gang signs, and Officer Zaragoza testified that the photographs were taken on May 13, 2011.

There is no apparent dispute that the photographs accurately represented the scenes depicted. However, minor takes issue with *when* the actions depicted took

place (i.e., when the pictures were taken). He asserts that the pictures were evidence of a probation violation only if the gathering occurred in 2011.

Although the evidence showed that the gathering occurred on May 13, 2011, minor argues that Officer Zaragoza's testimony regarding that date was based on hearsay statements by Gladys E. However, "[t]he court 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." (§ 777, subd. (c).) "As 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. [Citation.]" (*People v. Brown* (1989) 215 Cal.App.3d 452, 454-455.) Here, Officer Zaragoza testified that when he talked to Gladys E. about the photographs, she was forthcoming because she realized that he was not there to accuse her of being involved in any criminal activity with the gang. He further testified that, based on his experience as a probation officer, he did not notice her exhibit any characteristics, such as hesitation, facial expressions, uncomfortableness, or body language, that indicated she was lying to him. Thus, he believed she was telling the truth when she provided him with the information regarding the photographs. In light of this evidence, there was no reason to believe that the information Gladys E. gave Officer Zaragoza was unreliable. Therefore, the

court properly admitted Officer Zaragoza's testimony regarding Gladys E.'s statements, and the court could consider it.

Minor also asserts that Officer Zaragoza's testimony concerning the date the pictures was taken was flatly contradicted by the sworn testimonies of Gladys E. and Eli I. He points out numerous times that at the contested hearing, Gladys E. and Eli I. both testified that the photographs were taken at her house in 2010, not in 2011, and that the party took place on May 12, not May 13. He adds that Gladys E. testified that minor was not even at her house on May 12, 2011, and that Eli I. testified that minor was not there on May 13, 2011.

Minor apparently believes that the inconsistencies in the testimonies somehow prove that Officer Zaragoza's testimony was insufficient to authenticate the photographs. Rather, the inconsistencies simply call into question the credibility of the witnesses. "[T]he credibility of witnesses and the weight to be accorded to the evidence are matters exclusively within the province of the trier of fact." (*People v. McCleod* (1997) 55 Cal.App.4th 1205, 1221.) We "'accord due deference to the trier of fact and [do] not substitute our evaluation of a witness's credibility for that of the fact finder.'" (*People v. Ochoa* (1993) 6 Cal.4th 1199, 1206.) This principle applies with equal force to appellate review of juvenile court findings. (*In re Muhammed C.* (2002) 95 Cal.App.4th 1325, 1328.) Here, in making its decision to order minor into placement, the court specifically found that Gladys E. and Eli I. were not credible. The court stated that minor's "gang members came in and lied to this Court about his involvement in this case. They were not very good liars. Their stories were fairly

transparent. But it's quite clear [minor] is still associating with his gang and they are still doing everything they can to help him." We note that at the hearing when Gladys E. was asked when the picture in exhibit 1 was taken, she first said she did not remember. She then changed her answer and said, "It was probably about like a year ago." The court clearly had reason to doubt her testimony regarding the date, especially in light of Officer Zaragoza's unequivocal testimony that she previously told him the pictures in exhibits 1 and 2 were taken on May 13, 2011.

In sum, the photographs were properly authenticated, and the court did not abuse its discretion in admitting them. Furthermore, the court evaluated the credibility of the witnesses, weighed the evidence, and properly found minor in violation of his probation.

D. Any Error Regarding the Admission of Officer Rubio's Testimony Was Harmless

Minor makes various other arguments regarding Officer Rubio's testimony. Officer Rubio, who looked through Eli I.'s iPhone and took a picture of minor's Facebook page (exhibit 5), testified about what could and could not be done with pictures on an iPhone, based on her experience with her own iPhone. Minor contends that the court erred in allowing "a lay witness without relevant technical knowledge [regarding how iPhone's work]" to testify as to when exhibits 1-4 were taken. With regard to exhibit 5, he argues that there was no evidence presented that the page Officer Rubio took a picture of was minor's Facebook page, or that he actually posted the messages, or that the pictures on the page were not altered.

In addition, minor complains about Officer Rubio's testimony concerning statements made to her by David C., who was one of the individuals present in the pictures in exhibits 1 and 2. She testified that he told her the pictures were taken on May 13, 2011. Minor complains that the court erred in admitting the evidence of David C.'s statements to Officer Rubio because they were unreliable hearsay, and because the prosecution failed to show that David C. was unavailable to testify.

We conclude that, even if the court somehow erred in admitting Officer Rubio's testimony, any error was ultimately harmless. The facts alleged in the notice of a section 777 petition to change, modify, or set aside a previous order only need to be established by a preponderance of the evidence. (§ 777, subd. (c); *In re Eddie M.* (2003) 31 Cal.4th 480, 501.) Exhibits 1 and 2 alone established, under the preponderance standard, that minor associated with known gang members, including Eli I., on May 13, 2011, as alleged in the petition.

Finally, we note that minor asserts the key issue in this case as *when* he was at Gladys E.'s house, based on the premise that he was only in violation of his probation if the gathering took place in 2011. Through his convoluted and indirect arguments regarding the photographs, he appears to be claiming that the court's finding that he violated probation must be reversed because the testimonies of Gladys E. and Eli I. showed that the gathering took place in 2010, not 2011. However, even if the gathering at Gladys E.'s house took place in 2010, the court still could have found him in violation of probation. The petition alleged that he violated his probation by associating with Eli I. (term No. 30) and persons he knew were probationers or gang

members (term No. 20). Term No. 30 was imposed in 2011, but term No. 20 was imposed in 2009. Thus, even if the gathering occurred in 2010, minor still would have been in violation of his probation.

DISPOSITION

The judgment is affirmed.

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HOLLENHORST
Acting P. J.

We concur:

KING
J.

CODRINGTON
J.