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See Ariz. R. Supreme Court 111(c); ARCAP 28(c);
Ariz. R. Crim. P. 31.24



DIVISION ONE
FILED: 09/27/2012
RUTH A. WILLINGHAM,
CLERK
BY: sls

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

IN RE ARIEL R.) 1 CA-JV 12-0070
)
) DEPARTMENT D
)
) **MEMORANDUM DECISION**
) (Not for Publication -
) 103(G), Ariz. R.P. Juv. Ct.;
) Rule 28, ARCAP)
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Appeal from the Superior Court in Maricopa County

Cause No. JV182433

The Honorable Larry Grant, Judge

AFFIRMED

William G. Montgomery, Maricopa County Attorney
by Diane Meloche, Appeals Bureau Chief/
Deputy County Attorney
and Lisa Marie Martin, Deputy County Attorney
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Phoenix

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Mesa

P O R T L E Y, Judge

¶1 The juvenile appeals the determination that she violated her probation. She argues that the court erred by relying on unreliable hearsay and, as a result, the State failed to prove that she violated her probation. Because we disagree, we affirm her adjudication.

FACTS AND PROCEDURAL BACKGROUND

¶2 The juvenile was placed on probation after admitting to three counts of criminal damage and simple assault, all misdemeanors. Some seven months later, she was continued on probation after admitting to another simple assault. Less than two months later, a petition to revoke her probation was filed. After the probation violation hearing,¹ the court found that she had violated probation by failing to meet with her probation officer as required, and reinstated the seventeen year old on probation.

DISCUSSION

¶3 The juvenile challenges the admission of the testimony of the juvenile's probation officer. We review the admission of evidence for an abuse of discretion. *State v. Roscoe*, 184 Ariz. 484, 491, 910 P.2d 635, 642 (1996); *In re Jonah T.*, 196 Ariz. 204, 208, ¶ 15, 994 P.2d 1019, 1023 (App. 1999) (citing the

¹At the outset of the hearing, the State dismissed the count that alleged that the juvenile had run away.

predecessor to Ariz. R.P. Juvenile Court 32(E)(3) that the court can admit any reliable evidence which may include hearsay). And, we review whether there was sufficient evidence to demonstrate by a preponderance of the evidence that the juvenile violated probation. *Matter of Appeal in Maricopa Cnty. Juvenile Action No. J-82718-S*, 116 Ariz. 232, 233, 568 P.2d 1130, 1131 (App. 1977); Ariz. R.P. Juv. Ct. ("Rule") 32(E)(2).

¶14 Despite the fact that her signature appears below the statement avowing that "I have read and understand the Conditions of Probation, and have had them explained to me," the juvenile argues that the testimony of the probation officer was unreliable hearsay. We disagree.

¶15 After the probation officer identified the juvenile in open court, she testified that another officer, the OD,² had reviewed the terms of probation with the juvenile after her disposition. The probation officer also testified that she made a specific appointment with the juvenile, but the youngster did not appear as agreed and never contacted her.

¶16 The juvenile unsuccessfully argued that a directed verdict was appropriate because there was no evidence that she signed the terms of probation or that anyone reviewed them with her. The court, however, found that the document containing the

² Although the initials "OD" were not defined, there is no indication that the juvenile court judge, as the trier of fact, did not understand what the initials represented.

terms of probation was a business record. The court then determined that the evidence demonstrated that: (1) the juvenile had been placed on probation on October 25, 2011; (2) Term 12 was one of her probation terms; (3) there was evidence that in the usual course of business the terms are reviewed by another probation officer immediately after the disposition; and (4) despite agreeing to the arrangement to meet with her probation officer, she never showed up. As a result, the court found that the juvenile violated probation Term 12 - to meet with her probation officer as directed.

¶17 We find no abuse of discretion. First, because the record demonstrates that the juvenile court judge had adjudicated the juvenile delinquent and placed her on probation prior to the probation revocation filing, he was familiar with the juvenile and her history. The court essentially took judicial notice of the information contained within the legal and/or social files that are maintained pursuant to Rule 19.

¶18 Second, although the probation officer did not know the other probation officer who read the terms of probation to the juvenile after her prior disposition, the document was admitted as a business record. Ariz. R. Evid. 803(6); *Bohsancurt v. Eisenberg*, 212 Ariz. 182, 187-88, ¶ 21, 129 P.3d 471, 476-77 (App. 2006) (stating that when in the ordinary course of business a public record is maintained by a public

agency it can still be a public record). Consequently, the juvenile court did not abuse its discretion by relying on the business records exception to review the terms of probation.

¶9 Although the juvenile argues that *State v. Portis*, 187 Ariz. 336, 929 P.2d 687 (App. 1996) supports her argument that the probation officer's testimony was unreliable hearsay, we find the case inapposite. There, the issue was whether there was a viable chain of custody between the urine sample that had been collected from the probationer and the positive result for cocaine. *Id.* at 338-39, 929 P.2d at 689-90. The State initially was unable to prove a causal connection between the defendant, the urine sample and the results. *Id.* at 338, 929 P.2d at 689. After the court granted the State a continuance to attempt to correct the defect, it could only demonstrate that it telephonically discovered that an unknown assistant, who was a recovering addict, stated that the positive sample came from the defendant, even though the unknown assistant might have been terminated for a positive sample. *Id.* Accordingly, we found that the circumstances of the information did not demonstrate that the hearsay was reliable. *Id.* at 339, 929 P.2d at 690.

¶10 Here, the circumstances presented to the juvenile court judge suggested reliability. Despite the fact that the testifying probation officer did not know the Durango facility probation officer who reviewed the terms of probation with the

juvenile,³ the unidentified probation officer signed the terms of probation. His signature, coupled with the terms of probation and the testimony about the practice of the juvenile probation department after a juvenile is placed on probation, demonstrated that the probation officer's testimony that the probation terms had been reviewed with the juvenile "warrant[ed] trust" that it was reliable hearsay. *Id.* Consequently, the court did not abuse its discretion by finding the probation officer's testimony reliable hearsay pursuant to Rule 32(E)(2).

¶11 Similarly, because the court was entitled to rely on the testimony of the probation officer, it could also rely on the signed terms of probation. As a result, the court found that the juvenile had violated her written probation terms by failing to meet with the testifying probation officer at the time and place the juvenile had agreed to meet. Consequently, the court did not abuse its discretion by finding by a preponderance of the evidence that the juvenile violated her probation.

³ The unidentified probation officer also reviewed the terms of probation with the juvenile when she was first placed on probation on April 22, 2011.

CONCLUSION

¶12 Based on the foregoing, we affirm the determination that the juvenile violated her probation and the resultant disposition.

/s/

MAURICE PORTLEY, Presiding Judge

CONCURRING:

/s/

ANDREW W. GOULD, Judge

/s/

JON W. THOMPSON, Judge