

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ROBERT JAMES HILL,

Defendant-Appellant.

UNPUBLISHED
October 16, 1998

No. 203974
St. Clair Circuit Court
LC No.89-000987 FH

Before: Holbrook, Jr., P.J., and Markey and Whitbeck, JJ.

PER CURIAM.

In 1989, defendant pled guilty to the crime of delivery of less than 50 grams of cocaine, MCL 333.7401(2)(a)(iv); MSA 14.15(7401)(2)(a)(iv), for which defendant was sentenced to lifetime probation. On April 30, 1997, defendant was convicted of violating the conditions of his probation by using the illegal substance cocaine. Defendant was sentenced to five days' imprisonment, to be suspended upon payment of a \$100 fine within thirty days of entry of the judgment. Defendant appeals by right, and we affirm.

Defendant first argues that it was error for the trial court to admit the evidence of a drug test given to defendant by his probation officer, because the prosecution failed to lay the proper foundation. *People v Young*, 418 Mich 1, 17-18; 340 NW2d 805 (1983); *People v Vettese*, 195 Mich App 235, 238; 489 NW2d 514 (1992). We disagree. A trial court's discretionary authority regarding the admission of evidence in a probation revocation hearing is broad. MCR 6.445(E)(1); MRE 1101(b)(3). While the court must only consider "evidence that is relevant to the violation alleged, . . . it need not apply the rules of evidence except those pertaining to privileges." MCR 6.445(E)(1). Accord *People v Belanger*, 227 Mich App 637, 643; 576 NW2d 703 (1998) (observing that "[p]robation revocation proceedings are summary and informal and are not subject to the rules of evidence"). Furthermore, the defendant in a probation revocation hearing "is not entitled to a full range of due process rights associated with a criminal trial. *Due process requires only that the revocation proceedings be conducted in a fundamentally fair manner.*" *Id.* at 645, quoting *People v Ritter*, 186 Mich App 701, 706; 464 NW2d 919 (1991) (emphasis added by *Belanger* Court).

After reviewing the record, we cannot conclude that the trial court abused its discretion in admitting into evidence the results of the disputed drug test. The prosecution presented evidence that this drug test is routinely administered in probation offices throughout the state, and that defendant's probation officer had experience in administering the test. Regarding this experience, the officer testified that he had been using the test for approximately one month before administering the test in question to defendant, and that he had continued to use it since that time. Defendant was permitted to question the officer about the procedure actually used to test defendant. Defendant was also given the opportunity to explore the training of the officer in the giving of the tests, his familiarity with the testing methods in general, and his knowledge of the reliability of the tests. Additionally, a test kit exactly like the one administered to defendant was shown to the trial court. The trial court was able to both read the directions that came with the test kit, and to ask the probation officer questions concerning his administration of the test. Given these circumstances, we conclude that the trial court did not abuse its discretion when admitting the test results into evidence. The record shows that the trial court acted in a fundamentally fair manner.

Defendant also argues that the trial court erred in refusing to admit the results of defendant's independent drug tests taken after the drug test administered by the probation officer. Given that defendant could produce no evidence of the independent test's relevancy at the time of the probation hearing, we cannot conclude that the trial court committed an abuse of discretion in refusing to admit these test results into evidence.

Defendant next argues that the trial court erred in finding that probable cause existed to show that defendant had violated his probation by using cocaine. We again disagree. The drug test at issue detected the presence of cocaine in defendant's system. As previously noted, the prosecution presented evidence that defendant's probation officer had experience in administering the test. Indeed, the officer testified that he had administered the test to defendant both prior to and following the test at issue, and in all of these other tests the results had been negative. The officer testified that he knew of no problems associated with using the test. Conversely, defendant produced no evidence to show that this test was unreliable. Viewing this evidence in the light most favorable to the prosecution, we believe that a rational trier of fact could have concluded that defendant had ingested cocaine. Therefore, the trial court did not err in finding by a preponderance of the evidence that defendant had violated the terms of his probation. MCR 6.445(E)(1); *People v Ison*, 132 Mich App 61, 66; 346 NW2d 894 (1984).

Affirmed.

/s/ Donald E. Holbrook, Jr.

/s/ Jane E. Markey

/s/ William C. Whitbeck