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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

THE PEOPLE,

Plaintiff and Respondent,

v.

CHANCE BRIAN MACAIRE,

Defendant and Appellant.

2d Crim. No. B269702
(Super. Ct. No. F489562)
(San Luis Obispo County)

Chance Brian Macaire appeals from the judgment entered after the trial court had revoked his probation. He was sentenced to prison for three years for assault by means of force likely to produce great bodily injury. (Pen. Code, § 245, subd. (a)(4).) Appellant contends that, because the revocation of probation was based on hearsay evidence, he was deprived of his

due process right to confront and cross-examine adverse witnesses. We affirm.

Probation Violation Hearing

At the beginning of the hearing, the prosecutor played a recording of a 911 call made by Julie Hooper. Hooper said that her "ex-boyfriend" had just spat at her. During the call, Hooper interjected: "He's coming after me right now! . . . He's coming after me right now! I'm pregnant!" The telephone call was then disconnected.

Hooper was the People's first witness. She testified that appellant was her boyfriend and the father of her two children. She refused to testify about the incident in question. Because of her refusal, the trial court found her to be unavailable.

The next witness was Deputy Mark Lewis, who had responded to the 911 call. Upon his arrival, he saw Hooper "crying next to her vehicle." She said that, during an argument, appellant had spat at her. When appellant realized that Hooper was calling 911, he "grabbed the phone from her and threw it to the ground, breaking it." He then "grabbed her by the shoulders and threw her to the ground and . . . hit her." On the ground, Lewis saw a cell phone with a shattered screen.

Deputy Lewis described Hooper as "emotional." "She said that she was unwilling to press charges, but was extremely frightened of [appellant's] actions." Hooper told Lewis that she was nine months pregnant with appellant's child.

The People's last witness was Officer Victor Sanchez. He was off duty and inside a restaurant when he saw appellant with a closed fist "making a motion like throwing punches

towards" Hooper, who was on the ground. He did not see appellant strike Hooper.

Appellant testified that he and Hooper had argued. He denied that he had spat at her, pushed her, or punched her.

Appellant's counsel argued that the evidence was insufficient to establish a violation of probation because it primarily consisted of Hooper's hearsay statements. The admission of these statements violated appellant's "due process right to confrontation."

The court concluded that Hooper's statements were admissible under the spontaneous statement exception to the hearsay rule. (Evid. Code, § 1240.)[1] It found "[t]he hearsay evidence . . . to be reliable" and "corroborated by the observations of . . . Officer Sanchez." "[T]hey all fit together and . . . add[] up to substantial evidence."

Discussion

"Although probation violation hearings involve the criminal justice system, they are not governed by all the procedural safeguards of a criminal trial. [Citations.] Specifically the Sixth Amendment's right of confrontation does not apply to probation violation hearings. [Citation.] A defendant's right to cross-examine and confront witnesses at a violation hearing stems, rather, from the due process clause of

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[1] Evidence Code section 1240 provides: "Evidence of a statement is not made inadmissible by the hearsay rule if the statement: (a) Purports to narrate, describe, or explain an act, condition, or event perceived by the declarant; and (b) Was made spontaneously while the declarant was under the stress of excitement caused by such perception."

the Fourteenth Amendment. [Citation.]" (*People v. Abrams* (2007) 158 Cal.App.4th 396, 400.)

Appellant asserts: "While [Hooper's] statements were found by the court to have satisfied the requirements for the hearsay exception of a spontaneous statement, appellant had an alternative explanation and was deprived by the witness' refusal to testify of any opportunity to test and confront her statements. [¶] . . . [T]his procedure deprived him o[f] due process."

We disagree. In *People v. Stanphill* (2009) 170 Cal.App.4th 61, the court held that "spontaneous statements under [Evidence Code] section 1240 are a special breed of hearsay exception which automatically satisfy a probationer's due process confrontation/cross-examination rights . . . ." (*Id.*, at p. 81.) The court reasoned: "'The theory of the spontaneous statement exception to the hearsay rule is that since the statement is made spontaneously, while under the stress of excitement and with no opportunity to contrive or reflect, it is *particularly* likely to be truthful. As explained by Wigmore, this type of out-of-court statement, because of its "superior" trustworthiness, is "*better than* is likely to be obtained from the same person upon the stand . . . ." [Citation.] Unlike other hearsay exceptions in which the unavailability of a witness makes it "necessary" to resort to hearsay as a weaker substitute for live testimony [citation], the spontaneous statement exception involves a "necessity" of a different sort: "[T]hat we cannot expect, again, or at this time, to get *evidence of the same value* from the same or other sources" [citation] and "[t]he extrajudicial assertion being better than is likely to be obtained from the same person upon the stand, a necessity or expediency arises for resorting to it." [Citation.] This is why unavailability of the declarant as a witness need

never be shown under this exception. [Citations.]' [Citation.]" (*Ibid*.)

The reasoning of *Stanphill* is persuasive. Appellant does not argue that the trial court abused its discretion in ruling that Hooper's statements met the requirements of the spontaneous statement exception to the hearsay rule. Appellant has therefore failed to show that the admission of her statements violated his due process right to confront and cross-examine adverse witnesses. (*People v. Stanphill*, *supra*, 170 Cal.App.4th at p. 81.)

Disposition

The judgment is affirmed.

NOT TO BE PUBLISHED.

YEGAN, J.

We concur:

GILBERT, P. J.

PERREN, J.

Michael L. Duffy, Judge

Superior Court County of San Luis Obispo

Jonathan B. Steiner, Executive Director, Richard B. Lennon, Staff Attorney, under appointment by the Court of Appeal, for Defendant and Appellant.

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