Filed 9/18/17 In re Victor T. CA2/7

**NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS**



IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

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| In re VICTOR T.,<br><br>a Person Coming Under the Juvenile Court Law. | B270105<br><br>(Los Angeles County Super. Ct. No. VJ45152) |
| THE PEOPLE,<br><br>Plaintiff and Respondent,<br><br>v.<br><br>VICTOR T.,<br><br>Defendant and Appellant. | |

APPEAL from an order of the Superior Court of Los Angeles County, Kevin L. Brown, Judge. Affirmed.

Mary Bernstein, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Lance E. Winters, Assistant Attorney General, Susan Sullivan Pithey and Alene M. Games, Deputy Attorneys General, for Plaintiff and Respondent.

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## INTRODUCTION

The juvenile court found Victor T. had violated the house arrest condition of his probation and ordered an extension of his time on probation. He appeals, claiming the juvenile court's finding and order were based on inadmissible evidence. We affirm.

## FACTUAL AND PROCEDURAL BACKGROUND

On December 16, 2015, after Victor (then 15) admitted he had stolen his mother's wedding ring from her jewelry box, the juvenile court sustained a Welfare and Institutions Code section 602 petition alleging he had committed grand theft of personal property (Pen. Code, § 487, subd. (a)) and found the offense to be a misdemeanor. Victor was declared a ward of the court, released to his mother, and placed in the Community Detention Program (CDP) for 60 days. As one of the conditions of his probation, he was ordered to be inside his residence when not in school or attending religious services or medical or dental appointments with a parent.

In this regard, the juvenile court advised Victor: "You are going to be under house arrest for 60 days. In these two months,

you will have to stay in the home unless you go to school or counseling. No friends in the home. You have to be in the house, not on the porch, not in the yard. You will have to follow all the rules I give you and all the rules . . . the probation officer gives you. If you don't, you will be detained, brought back to juvenile hall on the first violation." When the juvenile court asked Victor if he understood, he said he did.

On January 12, 2016, the district attorney filed a probation violation notice (Welf. & Inst. Code, § 777), indicating Victor had violated his probation on multiple occasions (December 24 and 28, 2015, and January 1, 2, 4, 5, 6, 7, 8, and 10, 2016).[1]

At Victor's probation violation hearing on January 27, his probation officer (Denise Williams) testified that all of Victor's movements were reflected in a four-page document entitled "Sentinel Web Patrol," which she had submitted (marked with her own handwritten notations of "violation") in support of her January 11, 2016, report documenting "several" violations of Victor's probation. When she was asked about these violations, the juvenile court sustained Victor's lack of foundation objection, telling the district attorney she had to "lay some foundation."

Williams then testified that in CDP cases, equipment is provided and "anklets . . . are put on the minors with a battery inside the anklet. They are to go home and plug [in] the equipment immediately, the minute they arrive home. They are instructed that the equipment is not to be on the floor, that—not by any appliances. And the equipment—once it's plugged in, it gives us daily activity of all the movements per day." That daily

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[1] Victor was detained on January 11, 2016.

activity of all movements is "automatically retained" in a database as reflected in the Sentinel printout.

In response to the juvenile court's further questioning, Williams testified she had handled CDP cases such as Victor's for 12 years, and each month she reviewed approximately 15 such printouts documenting "home curfew" and attendance violations. In the course of a full day of training and in "ride-alongs" to minors' residences and schools, another probation officer had taught her how to read these printouts—how to know "[i]f someone has left the home when they [were] not supposed to" and how to know if there is a "flaw" requiring service of the equipment. The printout indicates "if there was a leave or an enter." Even if the equipment is not plugged in, the ankle bracelet "starts to read off" and "goes straight to the database."

In addition to reviewing the printout for violations, Williams testified she would "also talk to the family." In Victor's case, she said she had talked with both of his parents. After Williams acknowledged she could not say how the information got from the home to the database, defense counsel again objected that an inadequate foundation had been laid for the admission of the printout of Williams's testimony regarding it.

From Williams's 12 years of experience and the information she had provided, the juvenile court inferred Williams had found Sentinel reports to be accurate "not only based on the information from the equipment but also verifying it with people in the home." Observing that "foundational requirements for probation violation hearing[s] are relaxed," the juvenile court determined "sufficient foundation has been laid."

Williams testified she reviewed the Sentinel printout for the "leave[s] and the enters." Once she identified what she

believed to be "potential" violations based on her review of the printout, she would "follow up" by "contact[ing] the family." "If there is no documentation from the family stating . . . their whereabouts . . . , then they become violations." Williams testified the Sentinel printout in this case documented nine dates on which Victor left his home—sometimes multiple times—on December 24 and 28, 2015, and January 1 (continuing into the following day), 4, 5, 6, 7, 8, and 10, 2016, with no indication of any defects in the equipment.[2] Williams further testified she had "verified" these violations by speaking with Victor's mother and stepfather; neither indicated Victor had been home during any of the times identified as violations.[3] She had also confirmed that none of these violations were during school hours.

On cross-examination, she acknowledged that she did not know how the anklet worked to relay information confirming whether the minor was inside the house, but she testified the

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[2] Williams testified to the following violations (which she had noted as such on the Sentinel printout): December 24, 2015, from 6:19 p.m. to 7:36 p.m.; December 28, 2015, from 6:29 p.m. to 6:36 p.m., from 6:41 p.m. to 6:48 p.m., and from 6:52 p.m. to 7:11 p.m.; January 1, 2016, from 9:51 p.m. to 10:49 p.m., and from 11:49 p.m. to 4:42 a.m. on January 2, 2016; January 4, 2016, from 11:22 p.m. to 11:31 p.m. and from 11:34 p.m. to 11:54 p.m.; January 5, 2016, from 4:19 p.m. to 5:07 p.m.; January 6, 2016, from 6:02 p.m. to 6:12 p.m., from 9:17 p.m. to 9:26 p.m., and from 9:34 p.m. to 9:50 p.m.; January 7, 2016, from 6:56 p.m. to 8:02 p.m.; January 8, 2016, from 3:48 p.m. to 4:35 p.m.; and January 10, 2016, from 7:10 p.m. to 7:42 p.m.

[3] On cross-examination, she conceded she had not mentioned her contact with Victor's parents in her report but said she had noted it in her case file.

minor has "just got to be inside the four walls of the house," and if he leaves, "it goes straight to the data base." Williams testified she knew the equipment was placed in Victor's grandfather's room on the third floor of their three-story house, and it was continuously plugged in according to the printout; if it had been unplugged, the equipment would so indicate on the printout but would still give a reading. Similarly, on the basis of the printout, she knew that the battery in Victor's anklet was fully charged; a low battery would have been reflected in the printout.[4]

Williams testified she had seen "certain homes" where the equipment had not worked "necessarily," and there have been times in the past when, in the case of "a pattern of small violations in a row," she had gone out to a house "to check and make sure to see if it's a true violation." She did not do so in this case on December 28, 2015, when the report indicated three "leave-and-enters" in a row (two for seven minutes each beginning at 6:29 p.m. and 6:41 p.m. and a third for 19 minutes beginning at 6:52 p.m.) because she was on vacation. She testified that when she noted an apparent violation on January 5, 2016, however, she called Victor's residence (at about 4:30 p.m.) and spoke with his stepfather.[5]

After overruling defense counsel's renewed objection concerning inadequate foundation, the juvenile court found Williams to be a "credible witness," "honest and accurate in her

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[4] Williams testified it was Sentinel (and not she) who verified the anklet placed on Victor's ankle was working properly and the equipment was in working condition before it was set up in his home.

[5] According to the Sentinel printout, on January 5, 2016, Victor left at 4:19 p.m. and returned home at 5:07 p.m.

testimony." On the basis of Williams's training and experience and her testimony, the court concluded the equipment was "sufficiently accurate," and Williams had spoken with Victor's mother and stepfather who "verified that [Victor] was not at home during [the relevant] times. That really would be sufficient even . . . without the testimony regarding the equipment. But given the equipment information coupled with the statements [Williams] received from the other two people in the home," the juvenile court found Victor to be in violation of his probation. On February 1, the juvenile court ordered him placed in the CDP on house arrest again, with 22 days of additional credits for a total of 47 days.

Victor appeals.

## DISCUSSION

Victor contends the juvenile court erred in admitting Williams's testimony based on the Sentinel printout, and he argues that without that testimony there was insufficient evidence he violated his probation.[6] We review the trial court's rulings on the admission or exclusion of evidence for abuse of discretion. (*People v. Goldsmith* (2014) 59 Cal.4th 258, 266.) "Specifically, we will not disturb the trial court's ruling 'except on

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[6] Victor actually argues that the court erred by admitting the Sentinel printout, but the printout itself was not admitted. It was marked for identification as People's exhibit 1, but the prosecution never sought or obtained its admission. Rather, Williams's testimony based on the printout was admitted over Victor's objections. We interpret Victor's arguments on appeal as challenging the trial court's admission of that testimony.

a showing the trial court exercised its discretion in an arbitrary, capricious, or patently absurd manner that resulted in a manifest miscarriage of justice.' [Citation.]" (*Ibid.*) Applying this standard, we conclude the juvenile court did not err in admitting Williams's testimony.

Victor's trial counsel objected to the admission of Williams's testimony on the grounds of "foundation" and "hearsay." The prosecution argued that the business records exception to the hearsay rule applied. Victor does not pursue the hearsay objection on appeal.[7]

Instead, Victor argues that the Sentinel printout was not properly authenticated. Although the printout itself was not admitted, authentication was still required before secondary evidence (namely, Williams's testimony) concerning the printout's contents could be admitted. (Evid. Code, § 1401, subd. (b).)

A computer printout "is presumed to be an accurate representation of the computer information . . . that it purports to represent," unless contrary evidence is introduced. (*Id.*, § 1552, subd. (a).) The record contains no contrary evidence. In addition, Williams's testimony constitutes substantial evidence that the Sentinel printout reflected the data generated by the monitoring unit in Victor's home concerning his movements. Because of the operation of the statutory presumption and Williams's testimony, the record contained sufficient evidence to support a finding that

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[7] Previous cases have affirmed the admission, in appropriate circumstances, of computer printouts as business records. (See *People v. Zavala* (2013) 216 Cal.App.4th 242, 246-249; *Aguimatang v. California State Lottery* (1991) 234 Cal.App.3d 769, 797-798; *People v. Lugashi* (1988) 205 Cal.App.3d 632, 641-642.)

the printout was what it purported to be. The trial court therefore did not abuse its discretion by finding that the printout was properly authenticated. (See *People v. Goldsmith*, *supra*, 59 Cal.4th at pp. 266-272.)

Victor also argues that, although Williams testified about her years of experience with the kind of monitoring system used here and the reliability of the system, the prosecution introduced no evidence that the specific monitoring unit used in Victor's home was working properly at the relevant times. The argument fails because no such showing is required. (See *People v. Martinez* (2000) 22 Cal.4th 106, 132 ["our courts have refused to require, as a prerequisite to [the] admission of computer records, testimony on the 'acceptability, accuracy, maintenance, and reliability of . . . computer hardware and software,'" quoting *People v. Lugashi*, *supra*, 205 Cal.App.3d at p. 642]; accord, *People v. Goldsmith*, *supra*, 59 Cal.4th at p. 272 ["accuracy of an individual computer's basic operations will not be scrutinized unless specifically challenged, and even perceived errors go to the weight of the evidence, not its admissibility"].) Williams's testimony supported an inference that monitoring systems of this kind are generally reliable—she had used them many times in the past and had confirmed the accuracy of their readings by interviewing witnesses. In the absence of evidence that the specific monitoring unit used in Victor's home was not functioning properly, no further showing of reliability was required.

Victor argues that the record does contain evidence that the monitoring unit was malfunctioning. First, he points to "anomalous readings" in the Sentinel printout, such as the sequence of three absences of seven, seven, and 19 minutes each

within a 42-minute span on December 28; on January 4 and 6, there were also multiple absences of relatively short duration. We do not find any of those readings sufficiently anomalous to require affirmative evidence that the unit was functioning properly. Although it is possible that those readings (like any others) could have been caused by a malfunction, it is at least equally plausible that the readings are merely accurate reflections of multiple violations. Second, Victor argues that "counsel questioned the range of the Sentinel equipment since that equipment was placed on the top floor of a three-story home." Counsel's questions, however, are not evidence. (*People v. Hamilton* (2009) 45 Cal.4th 863, 928-929.) When Williams was asked, on cross-examination, whether she had ever seen false readings triggered because the monitoring unit was on an upper story and "the kid sleeps in the basement or is in the basement," she answered, "Not really. I mean, every house is different. It's hard to, you know, narrow that down." Counsel next asked, "Is there a proximity that the child must be within the machine that you know of?" Williams answered, "No. He's just got to be inside the four walls of the house." Williams's answers have no tendency to show that the monitoring unit in Victor's home was not functioning properly, so again no affirmative evidence that it *was* functioning properly was required.

For all of these reasons, we reject Victor's arguments that the trial court abused its discretion by admitting Williams's testimony concerning the contents of the Sentinel printout. And because Victor's challenge to the sufficiency of the evidence depends upon his challenge to the admission of Williams's testimony, we must reject the former challenge as well. Given that Williams's testimony was properly admitted, the record

contains more than sufficient evidence to support the trial court's order. Victor does not argue to the contrary.

## DISPOSITION

The order is affirmed.

MENETREZ, J.*

We concur:

ZELON, Acting P. J.

SEGAL, J.

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* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.