

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JOE EARL LOVE, SR., a/k/a TOO SWEET,

Defendant-Appellant.

UNPUBLISHED

July 30, 1999

Nos. 210318; 210319

Kent Circuit Court

LC Nos. 96-004528 FH

96-004537 FH

Before: Griffin, P.J., and Wilder and R.J. Danhof*, JJ.

PER CURIAM.

Defendant was charged, on two separate occasions, with delivery of less than 50 grams of cocaine, MCL 333.7401(2)(a)(iv); MSA 14.15(7401)(2)(a)(iv). Defendant pleaded guilty to both charges and the trial court sentenced him to lifetime probation in each case. Defendant was subsequently charged with violating probation in both cases after he tested positive for cocaine in two separately scheduled drug tests. The terms of defendant's probation order prohibited him from using controlled substances and from committing any crimes while on probation. Following the probation violation hearing, the trial court found defendant guilty of probation violation and sentenced him to consecutive terms of one to twenty years' imprisonment for each offense. Defendant now appeals as of right from the trial court's order revoking his probation and imposing sentence. We affirm.

Defendant first argues that the trial court erred in admitting his January 13, 1998, drug test results¹ indicating a positive result for cocaine into evidence at his probation violation hearing because the prosecution failed to lay a proper foundation for admission of the test results, and failed to establish a proper chain of custody. We disagree.

We review a trial court's decision to admit or exclude evidence for an abuse of discretion. *People v Bahoda*, 448 Mich 261, 289; 531 NW2d 659 (1995). Initially, we note that the rules of evidence, with the exception of those pertaining to privileges, do not apply to probation violation hearings. MCR 6.445(E)(1). Further, as noted by both the prosecutor and defendant, even in criminal cases that are subject to the rules of evidence, a perfect chain of custody is not required to admit real

* Former Court of Appeals judge, sitting on the Court of Appeals by assignment.

evidence. *People v White*, 208 Mich App 126, 133; 527 NW2d 34 (1994). Once a proper foundation has been established, “any deficiencies in the chain of custody go to the weight afforded to the evidence, rather than its admissibility.” *Id.*

In the instant case, we conclude that a sufficient foundation was laid for the admission of the drug test results. As the trial court properly noted, “[t]he rules of evidence don’t apply in these [probation] proceedings, so the fact that something is hearsay does not in and of itself exclude it from admission.” Moreover, while the lack of personal knowledge can serve in some cases to undermine the trustworthiness of a document, we agree with the trial court that the instant matter was not such a case. The evidence established that the drug screen form indicating defendant’s positive test results was routinely used for these particular tests. The customary reliance on the form by the probation department provides sufficient indicia of reliability of the information contained in the document to render it admissible for a probation hearing. Further, both the drug screen form and an August 5, 1997 test result indicating a positive result for cocaine were admitted at the hearing without objection. In addition, defendant’s probation officer testified that defendant’s August 5, 1997 and January 13, 1998 urinalysis test results were both positive for cocaine, and that defendant’s alleged use of prescription medicines would not alter that reading. Under these circumstances, the trial court did not abuse its discretion in admitting the challenged evidence at the probation hearing.

We additionally note that even if the test results should not have been admitted into evidence, any such error was harmless since defendant’s positive test for cocaine, and his admission at the probation hearing that he smoked marijuana during his probationary period and that the marijuana may have been laced with cocaine, were also acts constituting clear violations of the terms of his probation.

Defendant next argues that the trial court abused its discretion in revoking his probation because the evidence did not warrant such action. We disagree.

Defendant was placed on lifetime probation on July 14, 1997, yet twice violated this probation within a year; less than one month later on August 5, 1997, and again on January 13, 1998. Under these circumstances, revocation of defendant’s probation was an appropriate exercise of the trial court’s discretion.

Affirmed.

/s/ Richard Allen Griffin
/s/ Kurtis T. Wilder
/s/ Robert J. Danhof

¹ The record shows that defendant also tested positive for use of cocaine on August 5, 1997; however, defendant did not object to the admission of those test results below, and he does not challenge the admission of that evidence on appeal.