

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

RACHEL RENEE RAHRABAUGH,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 69500

FILED

JUL 26 2016

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *J. Hendrich*
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from an order for revocation of probation and amended judgment of conviction. Eighth Judicial District Court, Clark County; Douglas Smith, Judge.

On June 26, 2015, the district court convicted appellant Rachel Rahrabaugh, pursuant to a guilty plea, of injuring or tampering with a motor vehicle. The district court sentenced Rahrabaugh to a jail term of 9 months, ordered the sentence to be suspended, and placed Rahrabaugh on probation for a period not to exceed 3 years.

On October 16, 2015, the Division of Parole and Probation filed a violation report alleging Rahrabaugh violated the conditions of her probation by contacting the victim. On November 9, 2015, the Division of Parole and Probation filed a new violation alleging Rahrabaugh violated the conditions of her probation by contacting the victim on a different date than previously listed in the prior violation report. Thereafter, the district court conducted a probation revocation hearing, revoked Rahrabaugh's probation, and imposed a sentence of 270 days with 54 days of credit for time served.

Rahrabaugh claims the district court violated her due process right to confront and question witnesses giving adverse information at

formal revocation hearings. Rahrabaugh argues the State's sole witness was a probation officer who did not investigate either of the alleged incidences, was not personally familiar with the evidence supporting the alleged violations, and presented only hearsay testimony. Rahrabaugh also claims the district court abused its discretion by admitting evidence of text messages.

The decision to revoke probation is within the broad discretion of the district court, and will not be disturbed absent a clear showing of abuse. *Lewis v. State*, 90 Nev. 436, 438, 529 P.2d 796, 797 (1974). Evidence supporting a decision to revoke probation must merely be sufficient to reasonably satisfy the district court that the conduct of the probationer was not as good as required by the conditions of probation. *Id.*

However, "[d]ue process requires, at a minimum, that a revocation be based upon verified facts so that the exercise of discretion will be informed by an accurate knowledge of the probationer's behavior." *Anaya v. State*, 96 Nev. 119, 122, 606 P.2d 156, 157 (1980) (internal quotation marks and brackets omitted). To this end, a "probationer has a due process right to confront and question witnesses giving adverse information." *Id.* at 123, 606 P.2d at 158.

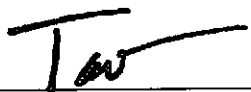
Our review of the record reveals the officers who investigated the violations were not present at the revocation hearing and the State's sole witness had no firsthand knowledge of appellant's alleged violation. Additionally, the State's sole witness' testimony was presented to demonstrate a substantive violation of probation. Therefore, we conclude Rahrabaugh's due process right to confront and question her accusers may have been violated. We further conclude, however, that any error was harmless.

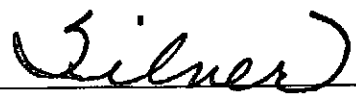
At the probation revocation hearing, Rahrabaugh acknowledged text messages were sent from her phone to the victim during both incidences. Some of the messages contained pictures of her. We conclude the district court did not abuse its discretion by admitting evidence of the text messages because the State presented sufficient evidence to authenticate the text messages as being sent by Rahrabaugh. *See Rodriguez v. State*, 128 Nev. 155, 157, 273 P.3d 845, 846 (2012).

Based on Rahrabaugh's own testimony and the text messages, the district court could reasonably find that Rahrabaugh's conduct was not as good as required by the conditions of her probation. Accordingly, we

ORDER the order for revocation of probation and amended judgment of conviction AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Silver

cc: Hon. Douglas Smith, District Judge
Clark County Public Defender
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk