

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

TERRYL OMARI WILSON,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 85684-COA  
**FILED**  
NOV 13 2023  
ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY *[Signature]*  
DEPUTY CLERK

*ORDER VACATING SECOND AMENDED JUDGMENT OF  
CONVICTION AND REMANDING*

Terryl Omari Wilson appeals from an order for revocation of probation and second amended judgment of conviction. Eighth Judicial District Court, Clark County; Erika D. Ballou, Judge.

Wilson argues the district court violated his right to due process by improperly admitting hearsay testimony during his probation revocation hearing without first applying the requisite balancing standard. Wilson alleges he was prejudiced because he was unable to confront the complaining witness and his probation was revoked based solely on the testimony of persons who were not present during the incident that formed the basis for his probation revocation.

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). The admissibility of evidence at a probation revocation hearing is not governed by the statutory rules of evidence, *see* NRS 47.020(3)(c), but rather by a due process balancing standard, *see Anaya v. State*, 96 Nev. 119, 123, 606 P.2d

156, 158 (1980). Due process requires a probationer be able “to confront and cross-examine adverse witnesses (unless the hearing officer specifically finds good cause for not allowing confrontation).” *Morrissey v. Brewer*, 408 U.S. 471, 489 (1972).

When determining whether evidence is admissible at a probation revocation hearing, “the trial court must exercise its sound discretion after carefully considering the respective interests of the probationer and the State, the purpose for which the evidence is offered, and the nature and quality of that evidence.” *Anaya*, 96 Nev. at 125, 606 P.2d at 156. “The process due a probationer is determined by balancing the strength of the probationer’s interest in confronting and cross-examining the primary sources of the information being used against him against the very practical difficulty of securing the live testimony of actual witnesses to his alleged violation or to his character while on probation.” *Id.* at 123, 606 P.2d at 158. A probationer’s interest in questioning the source of the information is stronger where the evidence is being used for a substantive violation of the conditions of probation. *Id.* However, not every use of hearsay evidence, if reliable, violates due process. *Id.*

Wilson challenges the admission of hearsay evidence that supports the State’s allegation that Wilson violated his probation by committing new acts of domestic violence. Wilson’s probation officer, Officer Conroy, and a police officer, Officer Schatzan, testified at the probation revocation hearing. Officer Conroy, who did not have contact with the complaining witness, testified about alleged incidents of domestic violence. Wilson objected on the grounds that Officer Conroy received his information

secondhand. Without explicitly overruling the objection, the district court stated, "But that's all allowed in a revocation hearing."

Officer Schatzan testified that he and another police officer investigated the domestic violence allegations. Wilson was not present when the officers arrived, but the complaining witness told Officer Schatzan that Wilson had grabbed her neck, pulled her hair, and threatened to hit her. Officer Schatzan observed scratches on the complaining witness's neck, and photographs of the complaining witness's injuries were admitted into evidence over Wilson's objection. Wilson also objected on hearsay and confrontation grounds to Officer Schatzan's testimony regarding what the complaining witness told him. The district court overruled the objection, stating that "based on the *Anaya* decision, hearsay and those sorts of things are allowed in a revocation hearing."

Aside from the district court's reference to *Anaya*, there is no indication in the record that the district court engaged in the due process balancing required by that opinion, or that the district court found good cause for not allowing Wilson to confront the complaining witness. Rather, the district court's broad and unqualified statements that hearsay is allowed in probation revocation proceedings suggest the district court was unaware that it must apply the *Anaya* test or find good cause before admitting the evidence. Therefore, we conclude that the district court abused its discretion by admitting the officers' testimony without first conducting the required due process balancing test and, in turn, by revoking Wilson's probation. Therefore, we vacate the second amended judgment of conviction and remand this matter for a new probation revocation hearing.

Thereafter, the district court may either reinstate Wilson's probation or enter a new order for revocation of probation and second amended judgment of conviction. For the foregoing reasons, we

ORDER the second amended judgment of conviction VACATED AND REMAND this matter to the district court for proceedings consistent with this order.

  
\_\_\_\_\_, C.J.  
Gibbons

  
\_\_\_\_\_, J.  
Bulla

  
\_\_\_\_\_, J.  
Westbrook

cc: Hon. Erika D. Ballou, District Judge  
Law Office of Rachael E. Stewart  
Attorney General/Carson City  
Clark County District Attorney  
Eighth District Court Clerk