

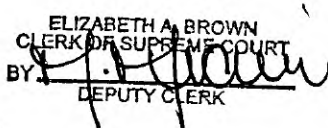
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

RAMON KEVIN MCGEE,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 87448-COA

FILED

APR 29 2024

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY: 
DEPUTY CLERK

ORDER OF AFFIRMANCE

Ramon Kevin McGee appeals from a district court order revoking probation. Second Judicial District Court, Washoe County; Egan K. Walker, Judge.

McGee argues the district court abused its discretion by revoking his probation on the basis that he committed new crimes. The State concedes that there is insufficient evidence that McGee committed new crimes while on probation; however, the State contends there is more than sufficient evidence to uphold McGee's probation revocation on the basis that he absconded. In reply, McGee contends the district court did not find that he had absconded.

The district court may revoke probation if it finds that the probationer committed a non-technical violation of probation, such as absconding. *See* NRS 176A.630(1)(a); NRS 176A.510(8)(c); *see also* NRS 176A.510(8)(a) (defining "absconding" as "actively avoiding supervision by making his or her whereabouts unknown to the Division for a continuous period of 60 days or more"). The district court's written order does not

identify the basis for revoking McGee's probation. However, we may consider the district court's oral findings at the probation revocation hearing to identify the violation and the evidence relied upon to establish it. See *United States v. Sesma-Hernandez*, 253 F.3d 403, 405-06 (9th Cir. 2001); see also *Matos v. State*, 110 Nev. 834, 837, 878 P.2d 288, 290 (1994) ("On appeal, this court may imply findings of fact and conclusions of law if the record clearly supports the lower court's ruling.").

During the hearing, the district court took judicial notice of the fact that (1) McGee had informed the court at sentencing that he was going to "live locally"; and (2) the court had informed McGee at sentencing that he could not leave the state until he had permission from the Division of Parole and Probation (Division) and that if he did leave, "I'll just dump you on whatever underlying sentence I give and I don't want to do that."¹ The district court stated that it "made it abundantly clear [McGee] could not leave the state and he did." The district court further stated that its "issue" was that McGee "gamed the system" by telling "POs here and in California what he knew they wanted to hear. And what he didn't tell them is what the judge had told him, which is don't leave the state and the first thing he did was leave the state." The district court emphasized McGee's flight, stating it could not "overlook the fact that he violated my direct order with his feet by leaving the state." Finally, before any evidence of new crimes was introduced, the district court stated "We're burning time for other cases

¹We note the same judge who presided over McGee's sentencing hearing presided over McGee's probation revocation hearing.

here this morning. This defendant is getting more than his share of the day.” In light of these statements, we conclude the district court implicitly found McGee absconded and that this finding was a basis for revoking McGee’s probation.

McGee also argues there is insufficient evidence to uphold his probation revocation on the basis that he absconded. 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 beyond a reasonable doubt is not required to support a court’s discretionary order revoking probation.” *Id.* Rather, the evidence must merely be sufficient to reasonably satisfy the district court that McGee had absconded. *See id.*

The non-technical violation report, dated September 10, 2022, alleged McGee violated the conditions of his probation by, *inter alia*, failing to follow up with the Division in any form after his intake on January 4, 2022. The report alleged that the Division had attempted to contact McGee to no avail and that McGee was considered to be an absconder as of March 5, 2022.

McGee and a representative of the Division, Officer Kemp, testified at the probation revocation hearing. Officer Kemp testified as follows: (1) McGee’s intake with the Division was delayed because McGee went to California immediately after sentencing; (2) McGee reported to the Division on January 4, 2022; he informed the Division that he wanted to enter an interstate compact so he could reside in California; and he was given the paperwork needed to apply for an interstate compact; (3) McGee

never completed this paperwork and had no contact with the Division from that point forward; (4) on one occasion, the Division attempted to call McGee, the call went to voicemail, the Division left a message, and McGee never responded; and (5) on another occasion, the Division attempted to call McGee, but the phone number had been disconnected. McGee did not dispute that he had left the state after his January 4, 2022, intake; rather, McGee testified that the Division gave him permission to leave the state. McGee did not specify who gave him permission to leave the state or when he was given such permission, and he did not present any evidence to support his claim beyond his own testimony. Based on the evidence presented, we conclude the district court could reasonably find that McGee absconded.

McGee also argues his due process rights were violated because the district court relied on Officer Kemp's testimony. Specifically, McGee contends that Officer Kemp had no involvement in his case and that her testimony was hearsay as it was based solely on her review of the non-technical violation report. McGee did not object to Officer Kemp's testimony below; therefore, we review this claim for plain error. *See Martinorellan v. State*, 131 Nev. 43, 48, 343 P.3d 590, 593 (2015) (stating "all unpreserved errors are to be reviewed for plain error without regard as to whether they are of constitutional dimension"). To demonstrate plain error, an appellant must show that "(1) there was an 'error'; (2) the error is 'plain,' meaning that it is clear under current law from a casual inspection of the record; and (3) the error affected the defendant's substantial rights." *Jeremias v. State*, 134 Nev. 46, 50, 412 P.3d 43, 48 (2018).

The admissibility of evidence at a probation revocation hearing is not governed by the statutory rules of evidence, NRS 47.020(3)(c); instead, it is governed by a due process balancing standard, which considers the interests of the parties and the purpose, nature, and quality of the evidence, *Anaya v. State*, 96 Nev. 119, 123-25, 606 P.2d 156, 158-60 (1980). In particular, the district court must balance “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.*

Although Officer Kemp did not author the non-technical violation report, McGee does not explain why he had a strong interest in confronting and cross-examining the author of the report.² Moreover, Officer Kemp testified that she was assigned to cover the case because the author of the report was on extended medical leave. Although Officer Kemp’s testimony was used to establish a substantive violation of a probation condition, the nature and quality of Officer Kemp’s testimony indicates the testimony was reliable. Unlike in *Anaya*, where a probation

²McGee did not contend below, and does not argue on appeal, that the author of the report gave him permission to leave the state.

officer testified “extensively as to the circumstances of [the] appellant’s arrest” by summarizing the contents of an arrest report, *id.* at 124, 606 P.2d at 159, here, Officer Kemp’s testimony concerned McGee’s contacts with the Division, and Officer Kemp testified that she had reviewed the Division’s records and files in McGee’s case.

In light of the foregoing, McGee fails to demonstrate that it is clear under current law from a casual inspection of the record that the admission of Officer Kemp’s testimony violated his due process rights. Accordingly, we conclude the district court did not abuse its discretion by revoking McGee’s probation, and we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Bulla


_____, J.
Westbrook

cc: Hon. Egan K. Walker, District Judge
Washoe County Public Defender
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk