

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

BYRON AARON GARCIA A/K/A BRYON
AARON GARCIA,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 89372-COA

FILED

SEP 09 2025

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY Melanie J. [Signature]
DEPUTY CLERK

ORDER OF REVERSAL AND REMAND

Byron Aaron Garcia appeals from an order for revocation of probation and amended judgment of conviction. Eighth Judicial District Court, Clark County; Mary Kay Holthus, Judge.

Garcia argues the district court violated his right to due process by revoking his probation. Garcia contends the district court erred by relying on a police arrest report regarding a new offense and the preliminary hearing transcript related to that offense to revoke his probation without first conducting the balancing test required by *Anaya v. State*, 96 Nev. 119, 606 P.2d 156 (1980).

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.*

A probation revocation proceeding is not a criminal prosecution and “the full panoply of constitutional protections afforded a criminal defendant does not apply.” *Anaya*, 96 Nev. at 122, 606 P.2d at 157. Minimum due process requires: (1) notice of the alleged probation

violations; (2) an opportunity for the probationer to appear and speak on his own behalf and to bring in relevant information; (3) an opportunity for the probationer “to question persons giving adverse information”; (4) a hearing before a “neutral and detached” hearing body; and (5) written findings.¹ *Id.* at 122, 606 P.2d at 158 (quotation marks omitted). With regard to a probationer’s right to question and confront witnesses giving adverse information, “[t]he 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” *Id.* at 123, 606 P.2d at 158. One important factor for this balancing is the reason the information is presented: “if evidence is presented . . . to establish a substantive violation of a probation condition, the probationer’s interest in questioning the actual source of the information, and thus testing its reliability, is far stronger than if the information relates merely to his general character while on probation.” *Id.* And as part of its balancing analysis, the district court must assess “the form of the information.” *Id.*

Here, the district court admitted the arrest report and the preliminary hearing transcript related to that arrest to establish Garcia’s violation of the conditions of his probation (committing a new offense) without requiring the State to present live testimony from the witnesses to Garcia’s alleged probation violation. But the district court failed to engage in the balancing required by *Anaya* before admitting and relying on the arrest report and preliminary hearing transcript. Instead of conducting the

¹Transcribed oral findings ordinarily satisfy the written findings requirement, so long as the oral findings make the basis of the revocation and the evidence relied upon sufficiently clear. *See United States v. Sesma-Hernandez*, 253 F.3d 403, 405-06 (9th Cir. 2001).

required balancing, the district court initially appeared ready to revoke Garcia's probation based solely on the arrest report and the magistrate's finding of probable cause, stating at a hearing held prior to Garcia's revocation hearing:

I mean, at the end of the day, he's going to get revoked, but we can do it today or tomorrow because, if there's been a probable cause finding, and based upon the police report I've read, this is -- I will -- if you can show me that you're entitled to something more than what -- what I've got here, I'll look it -- I don't think you are, but if you want to take the time and try and convince me, I'll be happy to let you do that.

Further indication that no balancing was conducted before the evidence was admitted is the fact that the State did not offer any specific argument about difficulties in securing live testimony from the witnesses to Garcia's alleged probation violation. Instead, the State simply argued its position that, because the preliminary hearing had already been "held in the other matter," there was "no need to bring those witnesses again; this case is ripe for revocation." In light of these circumstances, we conclude the district court abused its discretion by admitting and relying on the arrest report and the preliminary hearing transcript without first conducting the required due process balancing test and, in turn, by revoking Garcia's probation. Therefore, we reverse the order for revocation of probation and amended judgment of conviction and remand this matter for a new probation revocation hearing. Thereafter, the district court may either reinstate Garcia's probation or enter a new order for revocation of probation and an amended judgment of conviction.

Garcia also argues he was denied a neutral and detached hearing body because, before the revocation hearing was conducted, the district court judge repeatedly stated she was inclined to revoke Garcia's

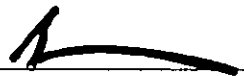
probation based solely on the arrest report and the magistrate's finding of probable cause. "This court exercises its independent review of the undisputed facts to determine if a judge's impartiality might objectively be questioned." *Matter of J.B.*, 140 Nev., Adv. Op. 39, 550 P.3d 333, 340 (2024). While a judge is presumed to be impartial, "in evaluating whether a case should be reassigned, we consider, among other things, whether the original judge would reasonably be expected upon remand to have substantial difficulty in putting out of [the judge's] mind previously-expressed views." *Id.* (internal quotation marks omitted).

In addition to the statement recounted above, the district court judge stated at the same hearing conducted prior to the revocation hearing that she thought "a finding of probable cause is more than enough. On new charges, that coupled with the police report that I'm reading here is more than enough to revoke him." Later, during a bench conference conducted at the same hearing, the judge stated that she would allow Garcia to brief his request for live witnesses at the revocation hearing but said that, if Garcia was unable to convince her, she was going to revoke Garcia's probation "based upon the finding of probable cause in another department" and by "making the police report an exhibit." The judge then stated, "I'll give him until Monday, and then we'll—I mean, the reality is we're going to revoke him on Wednesday. I don't see anything that you're going to convince me of, but--." After concluding the bench conference, the judge stated:

All right, I'm going to give your attorney until Monday to give me his best case or statute or whatever he says is telling me I have to make these witnesses come back in here again, when somebody else has found probable cause already on a lower standard, and the fact that I can release report, quite frankly, even if there wasn't a finding of probable cause, I think you got enough for me to revoke, but I'm going to give him until Monday, and the on Wednesday we'll have the hearing, okay.

During a subsequent hearing, the judge stated that she did not "need a briefing. I know my standards and you haven't really alerted me to anything. I think the finding of probable cause by another Judge is sufficient." In light of the statements made by the district court judge, we are not convinced that on remand for a new probation revocation hearing the judge will be able to set aside her previously-expressed views in this case. Therefore, we order the case transferred to a different judge for all further proceedings. For the foregoing reasons, we

ORDER the revocation of probation and amended judgment of conviction REVERSED AND REMAND this matter to the district court for proceedings consistent with this order.


_____, C.J.
Bulla


_____, J.
Westbrook

GIBBONS, J., dissenting:

While I agree with the majority that the district court erred by failing to conduct the required *Anaya* balancing test before deciding to rely on the arrest report and the preliminary hearing transcript and not forcing witnesses to provide live testimony, I respectfully dissent because the error did not violate Garcia's right to due process.

Garcia was convicted, pursuant to a guilty plea, of felony theft. The district court imposed a 19-to-48-month prison sentence, suspended the sentence, and placed Garcia on probation for an indeterminate term not to exceed two years. Less than two months after entry of the judgment of conviction, a probation violation report was filed alleging Garcia violated the terms of his probation by committing a new felony offense—battery domestic violence with substantial bodily harm. Prior to the revocation of Garcia's probation, a preliminary hearing was held in this related felony battery case where the victim, and two police officers who responded to the scene of the domestic violence incident, testified. Ultimately, the district court revoked Garcia's probation and imposed the underlying prison sentence.

Garcia primarily argues on appeal that his due process rights were violated. Specifically, the district court's determination that the State could submit proof of the probation violation by evidence other than live testimony from the same three witnesses that testified at the preliminary hearing, was improper without findings under *Anaya*.

"Due 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 punctuation omitted). The admissibility, and consequently the consideration of the evidence at issue here, is not governed by the statutory rules of evidence, which do not apply

to probation violation hearings, thereby validating the use of hearsay and other evidence that may be inadmissible at a trial. See NRS 47.020(3)(c). Instead, a revocation hearing 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*, 96 Nev. at 123-25, 606 P.2d at 158-60. Here, the district court did not expressly conduct the required balancing test, and our court therefore must undertake that balancing test to determine whether Garcia's due process right to confront the witnesses was violated when the court admitted the arrest report and the preliminary hearing transcript, without requiring live testimony. See *United States v. Comito*, 177 F.3d 1166, 1170 (9th Cir. 1999) ("[W]hile the district court's failure to perform the balancing test was erroneous, that error is not necessarily fatal. We still must review the underlying question to determine if [the probationer's] confrontation rights were violated, and, if so, whether the violation was harmless beyond a reasonable doubt.").

Beginning with Garcia's interest in the right to confrontation, the arrest report and preliminary hearing transcript² were offered to substantively prove Garcia's alleged probation violation, so his interest in confronting the adverse witnesses was strong. However, Garcia's interest

²The Nevada Supreme Court has determined the district court may rely on police reports at a probation revocation hearing. See *Anaya*, 96 Nev. at 123-24, 606 P.2d at 158-59 (providing that an arrest report can be considered "as [p]rima facie evidence of the facts it contains"). However, the presumptive reliability of an arrest report becomes more questionable where the accuracy of the facts contained in the report are challenged by the probationer. See *id.* at 123-24, 606 P.2d at 158-59. The supreme court has also considered the use of a record from a prior court proceeding at a probation revocation hearing and has determined it "perceive[d] little difficulty in using" a record of the previous proceeding "[w]hen the probationer's right to cross-examine those providing adverse information is scrupulously observed" at the previous proceeding "and an appropriate record is made." *Id.* at 125 n.2, 606 P.2d at 159 n.2.

was counterbalanced by the fact that he had the opportunity to question, and did question, all of the same witnesses at the preliminary hearing in the related criminal case, held approximately one month before the revocation hearing, where the witnesses testified under oath regarding the same subject matter. *See Anaya*, 96 Nev. at 125 n.2, 606 P.2d at 159 n.2. There is no indication in the record that Garcia was limited in his cross-examination of the witnesses regarding the facts constituting his alleged probation violation or that some change in circumstances subsequent to the preliminary hearing warranted cross-examining those same witnesses about the same subject matter again at the revocation hearing.³ And while the arrest report contained facts Garcia challenged, those facts were verified by the witnesses under oath at the preliminary hearing, and Garcia was able to cross-examine the witnesses regarding those facts at the preliminary hearing.

On the other hand, the State's interest in not presenting live testimony relied on the fact that all of the witnesses had recently testified at the preliminary hearing, with the State arguing there was "no need to bring in those witnesses again." Although the State did not offer specific facts about the difficulties of securing those witnesses for the revocation hearing, its position impliedly recognized the practical difficulty and inconvenience in compelling the same witnesses to be in court to testify about the same subject matter as the recently held preliminary hearing, that involved domestic violence. "Whether a particular reason is sufficient cause to outweigh the right to confrontation will depend on the strength of the reason in relation to the significance of the [probationer's] right" and

³The district court continued the proceedings so Garcia could brief his argument regarding his due process right and need to confront these witnesses.

“[i]n some instances, mere inconvenience or expense may be enough.”
Comito, 177 F.3d at 1172.

Balancing Garcia’s technical interest in confronting the witnesses again against the difficulty or even inconvenience to the State in presenting those same witnesses approximately a month after producing them at the preliminary hearing regarding the same underlying facts, *see Anaya*, 96 Nev. at 125 n.2, 606 P.2d at 159 n.2, I conclude Garcia’s due process right to confront the witnesses was not violated when the district court admitted the arrest report and the preliminary hearing transcript without requiring live testimony. Ultimately in this matter, in addition to being able to confront the witnesses at the preliminary hearing, Garcia received written notice of the alleged probation violations, the district court conducted a probation revocation hearing where the State had the burden of proof, Garcia had the opportunity to present the evidence that he chose to present, Garcia was not precluded from calling witnesses, the district court made oral findings clearly describing the evidence it relied on and the basis for revocation, and a different result was highly unlikely had the victim and police officer witnesses appeared. *See Anaya*, 96 Nev. at 122, 606 P.2d at 158 (providing minimum due process requires: (1) notice; (2) an opportunity for the probationer to appear, speak, and present information; (3) an opportunity for the probationer “to question persons giving adverse information”; (4) a hearing before a “neutral and detached” hearing body; and (5) written findings. (quotation marks omitted)).

While the district court made dubious statements about revoking Garcia’s probation prior to conducting the revocation hearing, the district court did not merely rely on the magistrate’s probable cause determination regarding the new offense to conclude Garcia had committed a new offense and thus violated his probation. Rather, at the conclusion of the revocation hearing, the district court independently weighed the

evidence of the probation violation, including the testimony reflected in the preliminary hearing transcript, the arrest report, and the information Garcia presented, and concluded Garcia's conduct was not as good as required by the conditions of his probation because he committed a new offense.⁴

For these reasons, I conclude Garcia's due process rights were not violated and the district court did not abuse its discretion by revoking his probation. Therefore, I dissent and would affirm the order for revocation of probation and amended judgment of conviction.


_____, J.
Gibbons

cc: Chief Judge, Eighth Judicial District Court
Hon. Mary Kay Holthus, District Judge
Clark County Public Defender
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk

⁴To the extent Garcia contends he was denied a neutral and detached hearing body, I disagree because the district court ultimately conducted its own review of the evidence and independently concluded Garcia violated the terms of his probation from the evidence presented at the hearing. See *Canarelli v. Eighth Jud. Dist. Ct.*, 138 Nev. 104, 107, 506 P.3d 334, 337 (2022) (explaining that, unless an alleged bias has its origins in an extrajudicial source, disqualification is unwarranted absent a showing that the judge formed an opinion based on facts introduced during official judicial proceedings, which reflects deep-seated favoritism or antagonism that would render fair judgment impossible) (quotation marks omitted). Notably, Garcia's arguments implicate a challenge to the admissibility and reliability of the evidence, rather than the sufficiency of the evidence, relied on by the district court.