

1 **IN THE COURT OF APPEALS OF THE STATE OF NEW MEXICO**

2 **STATE OF NEW MEXICO,**

Court of Appeals of New Mexico  
Filed 3/27/2024 9:46 AM

3 Plaintiff-Appellee,



Cynthia A. Hernandez-Madrid  
Acting Chief Clerk

4 v.

**No. A-1-CA-41501**

5 **JONATHAN ZARAGOZA,**

6 Defendant-Appellant.

7 **APPEAL FROM THE DISTRICT COURT OF LEA COUNTY**

8 **Michael H. Stone, District Court Judge**

9 Raúl Torrez, Attorney General  
10 Santa Fe, NM

11 for Appellee

12 Bennett J. Baur, Chief Public Defender  
13 Santa Fe, NM  
14 Luz C. Valverde, Assistant Appellate Defender  
15 Albuquerque, NM

16 for Appellant

17 **MEMORANDUM OPINION**

18 **BOGARDUS, Judge.**

19 (1) Defendant appealed following the revocation of his probation. We previously  
20 issued a notice of proposed summary disposition in which we proposed to uphold  
21 the disposition. Defendant has filed a memorandum in opposition. After due  
22 consideration, we remain unpersuaded. We therefore affirm.

1 {2} The relevant background information has been set forth. We will avoid undue  
2 reiteration here, and focus instead on the substantive content of the memorandum in  
3 opposition.

4 {3} Defendant continues to challenge the sufficiency of the evidence to establish  
5 that he violated the terms and conditions of his probation. [MIO 4-7] However, as  
6 Defendant acknowledges, [DS 4; MIO 2-3] Adult Probation & Parole Officer  
7 (APPO) White testified that Defendant failed to complete the court-ordered  
8 treatment program at Step House, as required. This testimony is sufficient to  
9 establish a violation. *See, e.g., State v. Guthrie*, 2011-NMSC-014, ¶¶ 1, 45, 49, 150  
10 N.M. 84, 257 P.3d 904 (concluding that a probation officer’s testimony that the  
11 defendant failed to complete a court-ordered treatment program was sufficient to  
12 establish a probation violation and to support revocation). Although Defendant  
13 challenges the value of APPO White’s testimony on grounds that she lacked personal  
14 knowledge, [MIO 5-7] this does not render her testimony inadmissible or  
15 insubstantial. *See, e.g., id.* ¶¶ 1-8, 17-19, 34, 45-49 (arriving at a similar conclusion  
16 under analogous circumstances). We therefore reject Defendant’s challenge to the  
17 sufficiency of the evidence to establish his willful violation of the terms and  
18 conditions of his probation.

19 {4} Defendant also renews his related contention that the State’s failure to call a  
20 witness from the treatment program to testify violated his right to due process. [BIC

1 7-11] We remain unpersuaded. In *Guthrie*, the Court concluded that the state was  
2 not required to call an individual from a treatment program to testify to the  
3 “objective, negative, and rather routine fact” that the probationer had failed to  
4 complete the program. *Id.* ¶ 46. We similarly conclude that good cause supports the  
5 district court’s decision in this case, and that Defendant’s due process rights were  
6 not violated by the State’s failure to call an individual from the Step House program.


7 {5} We further understand Defendant to newly contend that the district court erred  
8 in permitting APPO White to testify by video. [MIO 9-10] As we previously  
9 observed, [CN 2-3] in probation revocation proceedings, “the full panoply of rights  
10 due a defendant in a criminal trial do not apply.” *Id.* ¶ 10 (alterations, internal  
11 quotation marks, and citation omitted). In this context our analysis of good cause for  
12 not allowing confrontation is “a kind of spectrum or sliding scale,” *id.* ¶ 40, that  
13 balances competing interests in deciding whether confrontation is a procedural  
14 protection that the particular situation demands to achieve the truth-finding goal of  
15 evaluating contested relevant facts. *See id.* ¶¶ 12, 33, 34, 36, 40. In this case, we  
16 discern no reversible error in the district court’s decision to permit APPO White to  
17 testify via video. Although APPO White’s testimony concerning Defendant’s failure  
18 to complete the treatment program was central to the reasons for revocation, this  
19 uncontested testimony was made by a seemingly-neutral third party with no  
20 apparent, nor argued, motive to fabricate. *See id.* ¶ 40 (“On one end of the spectrum,

1 where good cause for not requiring confrontation is likely, we would include  
2 situations in which the state’s evidence is uncontested, corroborated by other reliable  
3 evidence, and documented by a reliable source without a motive to fabricate, . . .  
4 making the demeanor and credibility of the witness less relevant to the truth-finding  
5 process.”). While Defendant does cite authority discussing generally the policy  
6 considerations underlying our general preference for live, in-person testimony,  
7 [MIO 10] we conclude that the balance struck by our Supreme Court in *Guthrie*  
8 weighs in favor of “good cause” and does not require in-person confrontation of  
9 APPO White. Consequently, we conclude that Defendant’s due process rights were  
10 not violated by the allowance of the video testimony.

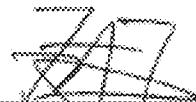
11 {6} Finally, Defendant continues to assert that the district court erred in declining  
12 to hold that more specific testimony identifying Defendant was required. [MIO 11]  
13 For the reasons previously stated, [CN 4] we remain unpersuaded. *See State v.*  
14 *Jimenez*, 2003-NMCA-026, ¶¶ 12, 16, 133 N.M. 349, 62 P.3d 1231, *rev’d in part on*  
15 *other grounds*, 2004-NMSC-012, 135 N.M. 442, 90 P.3d 461 (holding that the  
16 defendant’s voluntary appearance in court, together with defense counsel’s  
17 appearance on his behalf, was sufficient to establish that the defendant was present  
18 to answer the allegation that he had violated his probation; and further concluding  
19 that “a ritualistic proof of identity” in probation revocation hearings is unnecessary).

1 (7) Accordingly, for the reasons set forth in the notice of proposed summary  
2 disposition and above, we affirm.

3 (8) **IT IS SO ORDERED.**

4   
5 KRISTINA BOGARDUS, Judge

6 **WE CONCUR:**

7   
8 ZACHARY A. IVES, Judge

9   
10 JANE B. MOHALEM, Judge