

UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 93-7456  
Summary Calendar

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UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

JUAN DeANDA, JR.,

Defendant-Appellant.

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Appeal from the United States District Court  
for the Southern District of Texas  
(CR-B-85-560-1)

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(March 15, 1994)

Before POLITZ, Chief Judge, GARWOOD and BARKSDALE, Circuit Judges.

POLITZ, Chief Judge:\*

Juan A. DeAnda, Jr. appeals the revocation of his probation, contending that the trial judge's decision lacks a sufficient evidentiary basis. We affirm.

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\*Local Rule 47.5 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that Rule, the Court has determined that this opinion should not be published.

### Background

In June 1987 DeAnda pleaded guilty to escaping from a treatment center in violation of 18 U.S.C. § 751(a). He received a pre-guidelines sentence of five years imprisonment, all but 120 days of which was suspended, subject to probation. The probation was revoked in March 1990 when DeAnda was found guilty of possession of marihuana and possession of ammunition. A five-year sentence then imposed was suspended after 145 days, again subject to probation for the remainder of the term. That probation would have expired in October 1993. A condition of probation required DeAnda's participation in a drug and alcohol addiction treatment program.

In June 1990 and May 1992 the probation office filed petitions alleging that DeAnda had breached his probation by consuming alcoholic beverages. No action was taken on those petitions when DeAnda agreed to rejoin the substance abuse treatment program.

On May 11, 1993 the probation office filed the instant petition for revocation, alleging that DeAnda had violated the terms of his probation by possessing a gun and threatening his wife. After a hearing, at which DeAnda, his wife, the probation officer, and a former Brownsville police officer testified, the district court revoked DeAnda's probation, sentenced him to two years imprisonment, and recommended that he be considered for a substance abuse rehabilitation program. DeAnda timely appealed.

### Analysis

At the revocation hearing, Amparo DeAnda, defendant's wife, recanted the account she had given to both the probation officer and the police officer responding to her call for help. At the time of the incident Mrs. DeAnda told the police officer and probation officer that DeAnda had a gun and ammunition and had threatened to kill her. The probation and police officers both emphatically testified that Mrs. DeAnda was frightened when she spoke with them and both believed her when she said that DeAnda had a gun and had threatened her.

A reading of the record reflects that this is a classic case turning on the trial judge's critical credibility evaluations. The questioning by the court clearly demonstrates the trial court's concern that Mrs. DeAnda was testifying under compulsion. The probation officer testified about a meeting in the probation office a few weeks before trial during which Mrs. DeAnda said that she had been contacted by DeAnda's brother but would still tell the truth about what happened. Confronted with this testimony, Mrs. DeAnda would not say that the probation officer was mistaken but testified only that she did not remember what her brother-in-law had said. Further, during the probation officer's testimony the court felt it necessary to instruct DeAnda to stop glaring at his wife. At conclusion of the first day of the hearing the court directed that the police officer be brought in to testify, as a court witness, if necessary. The former officer was located and brought in. He testified at length as capsulated above.

We will not reject the obvious credibility assessments made by the district court. DeAnda's contention on appeal that his testimony and his wife's recanting of the reports she made to both the probation officer and the city policeman adequately establishes that he did not violate his probation is not persuasive. The court credited the testimony of the probation officer and the police officer as reflective of the events at the DeAnda residence on the day in question.

In addition to the traditional deference given to credibility calls by the trier-of-fact, in a probation revocation hearing the decision by the court need only be supported by a modicum of evidence.<sup>1</sup> The record before us adequately supports the revocation decision which we review only for an abuse of discretion.<sup>2</sup> We find no such abuse.

AFFIRMED.

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<sup>1</sup>**United States v. Irvin**, 820 F.2d 110 (5th Cir. 1987); **United States v. Francischine**, 512 F.2d 827, 829 (5th Cir.), cert. denied, 423 U.S. 931 (1975) ("Probably evidence rising to the level of substantial evidence is not even required, absent arbitrary and capricious action in the revocation.").

<sup>2</sup>**Francischine**.