

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

Court of Appeals of New Mexico
Filed 5/15/2023 10:45 AM

2 **STATE OF NEW MEXICO,**

3 Plaintiff-Appellee,



Mark Reynolds

4 v.

No. A-1-CA-39402

5 **STEPHEN AGUILAR,**

6 Defendant-Appellant.

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

8 **Dustin K. Hunter, District Court Judge**

9 Raúl Torrez, Attorney General

10 Santa Fe, NM

11 Jane A. Bernstein, Assistant Attorney General

12 Albuquerque, NM

13 for Appellee

14 Bennett J. Baur, Chief Public Defender

15 Santa Fe, NM

16 Mark A. Peralta-Silva, Assistant Appellate Defender

17 Albuquerque, NM

18 for Appellant

19 **MEMORANDUM OPINION**

20 **HENDERSON, Judge.**

21 {1} Defendant Stephen Aguilar pled no contest to possession of a firearm or

22 destructive device by a felon, a fourth degree felony, contrary to NMSA 1978,

23 Section 30-7-16 (2018, amended 2022). Defendant was sentenced to a one-year term

24 of incarceration, followed by eighteen months of supervised probation. Defendant's

1 probation was later revoked based on allegations that he “did purchase, sell, own or
2 possess a firearm or other deadly weapon,” in violation of the conditions of his
3 probation. Defendant appeals, arguing the district court erred in revoking his
4 probation because (1) his due process right to confront witnesses was violated when
5 the district court, according to Defendant, relied on a non-testifying witness’s
6 statement that he possessed a weapon; and (2) there was insufficient evidence
7 presented to support revocation. Unpersuaded, we affirm.

8 **DISCUSSION**

9 **I. Due Process Right to Confront Witnesses**

10 {2} We begin our analysis by determining what standard of review we should
11 apply to Defendant’s due process claim. Defendant asks that we review the district
12 court’s order revoking his probation for an abuse of discretion, or alternatively, for
13 fundamental error if we conclude that the issue is unpreserved. The State responds
14 that the issue is in fact unpreserved, and we should limit our review for fundamental
15 error only. We agree with the State.

16 {3} In order to preserve an issue for appeal, “it is essential that the ground or
17 grounds of the objection or motion be made with sufficient specificity to alert the
18 mind of the [district] court to the claimed error or errors.” *State v. Chavez*, 2021-
19 NMSC-017, ¶ 16, 485 P.3d 1279 (omission, internal quotation marks, and citation
20 omitted). At the probation revocation hearing, when the State asked the detective if

1 anyone had told him the gun belonged to Defendant, Defendant made a simple
2 hearsay objection but did not alert the district court to any claim of constitutional
3 error. This objection did not encapsulate Defendant’s argument on appeal that his
4 due process right to confrontation was violated. Generally speaking, alerting the
5 district court to a confrontation error requires more than a hearsay objection. *See*
6 *State v. Lucero*, 1986-NMCA-085, ¶ 17, 104 N.M. 587, 725 P.2d 266. Accordingly,
7 the issue is unpreserved and we review for fundamental error. *See* Rule 12-
8 321(B)(2)(c), (d) NMRA (providing that appellate courts have discretion to review
9 unpreserved questions involving fundamental error or fundamental rights); *cf.* *State*
10 *v. Martinez*, 2007-NMSC-025, ¶ 25, 141 N.M. 713, 160 P.3d 894 (reviewing a
11 defendant’s Confrontation Clause claim for fundamental error even though the issue
12 was not preserved).

13 {4} Even if we were to assume, without deciding, that the district court erred by
14 admitting the hearsay testimony, we do not conclude that the error was fundamental.
15 *See Campos v. Bravo*, 2007-NMSC-021, ¶ 8, 141 N.M. 801, 161 P.3d 846 (“In
16 conducting such a review, we first determine if error occurred; if so, we next
17 determine whether that error was fundamental.”). We employ the fundamental error
18 exception “very guardedly,” *State v. Garcia*, 1914-NMSC-065, ¶ 19, 19 N.M. 414,
19 143 P. 1012 (opinion upon rehearing), and apply it “only under extraordinary
20 circumstances to prevent the miscarriage of justice.” *State v. Maestas*, 2007-NMSC-

1 001, ¶ 8, 140 N.M. 836, 149 P.3d 933. Accordingly, we will use the doctrine to
2 reverse a conviction only “[(1)] if the defendant’s guilt is so questionable that
3 upholding a conviction would shock the conscience, or [(2)] where, notwithstanding
4 the apparent culpability of the defendant, substantial justice has not been served.
5 Substantial justice had not been served when a fundamental unfairness within the
6 system has undermined judicial integrity.” *Campos*, 2007-NMSC-021, ¶ 18 (internal
7 quotation marks and citations omitted).

8 {5} Defendant seemingly raises both forms of review for fundamental error. We
9 address each in turn. Defendant argues that the only evidence the State introduced
10 of him possessing the weapon was the non-testifying witness’s statement testified to
11 by the detective. However, even if the statement was excluded from the probation
12 violation hearing, our review of the record has not shown that Defendant is
13 indisputably innocent. *See State v. Silva*, 2008-NMSC-051, ¶ 14, 144 N.M. 815, 192
14 P.3d 1192. Defendant also argues that the district court’s error resulted in a
15 fundamental unfairness that undermined the integrity of the judicial system. *See*
16 *State v. Barber*, 2004-NMSC-019, ¶ 16 135 N.M. 621, 92 P.3d 633; *Silva*, 2008-
17 NMSC-051, ¶ 14. To the extent that Defendant raises this strand of fundamental
18 error, he does not present this Court with a developed argument, and thus he failed
19 to meet his burden of establishing such error. *See State v. Fuentes*, 2010-NMCA-
20 027, ¶ 29, 147 N.M. 761, 228 P.3d 1181 (stating that we will “not review unclear or

1 undeveloped arguments [that] require us to guess at what [a party’s] arguments
2 might be”). Therefore we do not conclude the error was fundamental.

3 **II. Sufficiency of the Evidence**

4 {6} Next, Defendant argues that the district court revoked his probation without
5 sufficient evidence that he violated the terms of his probation. The State must
6 establish a probation violation “with a reasonable certainty, such that a reasonable
7 and impartial mind would believe that the defendant violated the terms of
8 probation.” *State v. Green*, 2015-NMCA-007, ¶ 22, 341 P.3d 10. On appeal, we view
9 “the evidence in a light most favorable to the state and indulge all reasonable
10 inferences in favor of the district court’s judgment.” *State v. Williams*, 2021-NMCA-
11 021, ¶ 6, 489 P.3d 949 (alterations, internal quotation marks, and citation omitted).

12 {7} At Defendant’s probation revocation hearing, a police officer who was
13 dispatched to the scene of an aggravated assault, testified that upon arriving, he
14 learned that Defendant was the suspect in the aggravated assault. He further testified
15 that the suspect was in a truck and he began to search for the truck that matched the
16 description that he was given. The police officer found the truck, confirmed its
17 description as Defendant’s truck, and then proceeded to conduct a high-risk traffic
18 stop. During the course of the stop, the police officer saw the front passenger, whom
19 he recognized as Defendant, get out of the truck. The detective testified that he was
20 also called out to the scene of the aggravated assault, where Defendant was identified

1 as the suspect. He arrived at the scene shortly after the police officer and executed a
2 search warrant on the truck. In addition to his testimony that one occupant of the
3 truck said that “the gun belonged to [Defendant]” and that “[Defendant] was in
4 possession of the firearm prior to the stop,” the detective stated that he located an
5 AK-47 in the back floorboard of the truck. According to the detective, the AK-47
6 that he located in Defendant’s truck matched the description of the weapon that was
7 described in the aggravated assault. In light of this testimony provided at the hearing,
8 we conclude that there was sufficient evidence supporting the district court’s
9 revocation of Defendant’s probation.

10 {8} Finally, Defendant asserts that the order revoking probation incorrectly states
11 that he admitted he violated his probation. After reviewing the audio of the hearing,
12 we agree that Defendant did not admit that he violated probation. Given the
13 erroneous finding that Defendant admitted allegations against him, we remand for
14 entry of an amended order correcting that error.

15 **CONCLUSION**

16 {9} For the foregoing reasons, we affirm the revocation of Defendant’s probation.
17 However, we remand for entry of a corrected written order omitting the erroneous
18 finding that Defendant admitted allegations against him.

1 {10} IT IS SO ORDERED.

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SHAMMARA H. HENDERSON, Judge

4 WE CONCUR:

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JENNIFER L. ATTREP, Chief Judge

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ZACHARY A. IVES, Judge