

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

Court of Appeals of New Mexico

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**STATE OF NEW MEXICO,**

Plaintiff-Appellee,



Mark Reynolds

v.

**No. A-1-CA-42479**

**SELESTINO J. OWEN,**

Defendant-Appellant.

**APPEAL FROM THE DISTRICT COURT OF CURRY COUNTY**

**Fred Van Soelen, District Court Judge**

Raúl Torrez, Attorney General

Santa Fe, NM

for Appellee

Bennett J. Baur, Chief Public Defender

Anne Amicarella, Assistant Appellate Defender

Santa Fe, NM

for Appellant

**MEMORANDUM OPINION**

**ATTREP, Judge.**

{1} This matter was submitted to the Court on the brief in chief pursuant to this Court's general calendar notice with a modified briefing schedule. Having considered the brief in chief, concluding the briefing submitted to the Court provides no possibility for reversal, and determining that this case is appropriate for resolution on Track 1 as defined in the Administrative Order for Appeals in Criminal Cases

1 from the Second, Eleventh, and Twelfth Judicial District Courts in *In re Pilot Project*  
2 *for Criminal Appeals*, No. 2022-002, effective November 1, 2022, we affirm.

3 {2} Defendant appeals from the district court’s order revoking probation. [RP  
4 123-25, 127] The district court found that Defendant violated his probation as  
5 charged in the State’s motion to revoke probation, which alleged that Defendant  
6 violated state law by committing the offense of aggravated driving while intoxicated  
7 (refused testing). [RP 63, 65-67, 74, 123] Defendant argues that (1) there was  
8 insufficient evidence to prove to a reasonable certainty that he violated a state law  
9 by driving his vehicle while impaired [BIC 15], and (2) the State failed to prove that  
10 Defendant signed or reviewed the terms and conditions of his probation and he  
11 therefore had no notice of them [BIC 22].

12 {3} “We review a district court’s decision to revoke probation under an abuse of  
13 discretion standard. To establish an abuse of discretion, it must appear the district  
14 court acted unfairly or arbitrarily, or committed manifest error.” *State v. Green*,  
15 2015-NMCA-007, ¶ 22, 341 P.3d 10 (alterations, internal quotation marks, and  
16 citation omitted). On appeal, we view “the evidence in a light most favorable to the  
17 State and indulg[e] all reasonable inferences in favor of the [district] court’s  
18 judgment.” *State v. Erickson K.*, 2002-NMCA-058, ¶ 21, 132 N.M. 258, 46 P.3d  
19 1258. The state has the burden of proving a probation violation to the district court  
20 with reasonable certainty. *Green*, 2015-NMCA-007, ¶ 22.

1 {4} At the adjudicatory hearing on the State’s motion to revoke probation, the  
2 State called two witnesses, Defendant’s probation officer [BIC 5], and the officer  
3 who conducted the traffic stop and administered standardized field sobriety tests  
4 (SFSTs) on Defendant [BIC 6]. The officer testified, in pertinent part, as follows:  
5 upon initiating the traffic stop, the officer observed Defendant was driving the  
6 vehicle and had bloodshot, watery eyes and slurred speech. [Id.] The officer detected  
7 the odor of alcohol and testified that, upon administration of SFSTs, he noticed  
8 several clues indicating Defendant’s impairment. [BIC 6-7] The officer ultimately  
9 concluded Defendant was impaired and placed him under arrest. [BIC 7] The officer  
10 read aloud to Defendant the New Mexico Implied Consent Advisory regarding a  
11 breath test, and Defendant refused a test. [Id.] During the investigation, Defendant  
12 stated that he had consumed one beer, and the officer observed full, unopened  
13 containers of alcohol in the vehicle. [BIC 8-9]

14 {5} On appeal, Defendant acknowledges that the standard of proof for a probation  
15 violation is not proof beyond a reasonable doubt, *see id.*, but nevertheless urges this  
16 Court to consider case law focusing on the sufficiency of the evidence necessary to  
17 prove the offense of aggravated driving while intoxicated, rather than the standard  
18 of proof for a probation violation based on a violation of state law. [BIC 18] In so  
19 doing, Defendant challenges the reliability of the officer’s testimony [BIC 19-20]  
20 and asserts that the officer’s testimony lacked detail sufficient to corroborate

1 impairment. [BIC 20] Defendant further contends that the State failed to present any  
2 evidence as to Defendant’s “[o]bvious failure on testing,” arguing that his  
3 performance on SFSTs does not support a finding of impairment given that he  
4 performed certain portions without issue and the officer did not explore Defendant’s  
5 purported physical and medical limitations. [BIC 20-21; BIC 6, 8]

6 {6} Despite these assertions, Defendant’s brief in chief makes clear that the State  
7 presented a significant amount of evidence that could support a conclusion that  
8 Defendant violated state law. [BIC 5-9] Defendant’s assertion of contrary evidence  
9 does not demonstrate an abuse of discretion by the district court, nor does it provide  
10 a basis for reversal of the district court’s order. *Cf. State v. Rojo*, 1999-NMSC-001,  
11 ¶ 19, 126 N.M. 438, 971 P.2d 829 (providing that “[c]ontrary evidence supporting  
12 acquittal does not provide a basis for reversal because” the fact-finder is free to reject  
13 a “[d]efendant’s version of the facts”). It is not this Court’s role on appeal to reweigh  
14 the evidence. *See Erickson K.*, 2002-NMCA-058, ¶ 21. Instead, it is the district  
15 court’s role, as fact-finder, to resolve any conflict in the testimony of the witnesses  
16 and to determine where the weight and credibility lie. *See State v. Salas*, 1999-  
17 NMCA-099, ¶ 13, 127 N.M. 686, 986 P.2d 482. On appeal, “[w]e will not second-  
18 guess [the district court’s] credibility determination.” *State v. Multine*, 2025-  
19 NMCA-013, ¶ 27, \_\_\_ P.3d \_\_\_ (A-1-CA-41037, Mar. 20, 2025). Viewing the  
20 evidence in a light most favorable to the State and the judgment below, *see Erickson*

1 K., 2002-NMCA-058, ¶ 21, we conclude that the State presented evidence  
2 establishing with reasonable certainty that Defendant violated the terms of his  
3 probation. *See Green*, 2015-NMCA-007, ¶ 22. As such, we discern no abuse of  
4 discretion by the district court. *See id.*

5 {7} Defendant raises an additional issue regarding notice of the terms and  
6 conditions of his probation [BIC 22], arguing that the State violated his due process  
7 rights by failing to introduce evidence that he signed or reviewed the conditions of  
8 his probation. [BIC 24] Acknowledging that the issue is unpreserved, Defendant  
9 contends that this violation constitutes fundamental error. [Id.] We are not persuaded  
10 by this argument, given that both Defendant’s brief in chief and the record proper  
11 clearly demonstrate that Defendant signed the plea agreement and the district court  
12 read aloud, on the record, the terms of Defendant’s plea agreement, which Defendant  
13 stated he understood. [BIC 2-3; RP 51-56] The record further reflects that Defendant  
14 was provided with a copy of the judgment and sentence, which explicitly listed as a  
15 condition of probation that Defendant “[o]bey federal, state or local laws.” [RP 60-  
16 61]

17 {8} Defendant does not provide argument or citation to authority demonstrating  
18 that the State was required to introduce evidence that Defendant signed or reviewed  
19 his conditions of probation, nor does he assert whether or how he was prejudiced by  
20 the State’s failure to do so. Under our presumption of correctness in the rulings of

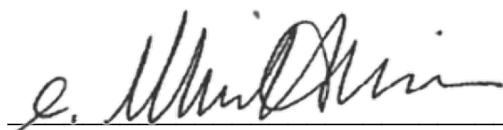
1 the district court, and because Defendant has failed to demonstrate either prejudice  
2 or error, we conclude that the probation revocation proceedings did not violate  
3 Defendant's due process rights or otherwise constitute fundamental error. *See State*  
4 *v. Aragon*, 1999-NMCA-060, ¶ 10, 127 N.M. 393, 981 P.2d 1211 (providing that  
5 there is a presumption of correctness in the rulings or decisions of the trial court, and  
6 the party claiming error bears the burden of showing such error); *see also State v.*  
7 *Neal*, 2007-NMCA-086, ¶ 42, 142 N.M. 487, 167 P.3d 935 (“[I]n order to establish  
8 a violation of due process, a defendant must show prejudice.”); *State v. Silva*, 2008-  
9 NMSC-051, ¶ 13, 144 N.M. 815, 192 P.3d 1192 (clarifying that we employ the  
10 fundamental error exception to the preservation rule “only under extraordinary  
11 circumstances to prevent the miscarriage of justice” (internal quotation marks and  
12 citation omitted)); *State v. Romero*, 2023-NMSC-014, ¶ 6, 533 P.3d 735 (providing  
13 that our two-step analysis for fundamental error requires a threshold determination  
14 that error has occurred).

15 {9} For the foregoing reasons, we affirm.

16 {10} **IT IS SO ORDERED.**

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18   
JENNIFER L. ATTREP, Judge

1 **WE CONCUR:**

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3 **J. MILES HANISEE, Judge**

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5 **SHAMMARA H. HENDERSON, Judge**