

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

Court of Appeals of New Mexico
Filed 6/1/2026 8:07 AM

2 **STATE OF NEW MEXICO,**

3 Plaintiff-Appellee,



Mark Reynolds

4 v.

No. A-1-CA-42995

5 **MICHAEL FIERRO,**

6 Defendant-Appellant.

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

8 **Lisa B. Riley, District Court Judge**

9 Raúl Torrez, Attorney General

10 Benjamin L. Lammons, Assistant Solicitor General

11 Santa Fe, NM

12 for Appellee

13 Bennet J. Baur, Chief Public Defender

14 Santa Fe, NM

15 Luz C. Valverde, Assistant Appellate Defender

16 Albuquerque, NM

17 for Appellant

18 **MEMORANDUM OPINION**

19 **ATTREP, Judge.**

20 {1} Defendant appeals from the district court's order revoking his probation and

21 imposing the remainder of his sentence. We issued a calendar notice proposing to

22 reverse. The State has filed a memorandum in opposition, which we have duly

23 considered. Unpersuaded, we reverse.

1 {2} In our calendar notice, we proposed to summarily reverse on the grounds that
2 the State failed to present sufficient evidence to establish that Defendant resisted an
3 officer while on probation. [CN 3] Specifically, we proposed that the officer’s
4 testimony at the revocation hearing did not provide sufficient detail about how
5 Defendant resisted to establish that he did resist. [CN 3] Further, we proposed that
6 although the district court took judicial notice of the magistrate court case, which
7 included the officer’s statement of probable cause that provided additional detail
8 about the incident, it was an abuse of discretion by the district court. [CN 4-5] In its
9 memorandum in opposition, the State raises five arguments challenging our
10 proposed disposition.

11 {3} The State makes numerous, albeit brief, arguments about Defendant’s lack of
12 preservation regarding the district court’s judicial notice. First, the State argues that
13 because Defendant did not object to the district court taking judicial notice of the
14 probable cause notice filed in the magistrate court case, he did not preserve the issue
15 for appellate review. [MIO 2] Second, the State argues that the grounds for reversal
16 stated in our calendar notice—that the district court abused its discretion by taking
17 judicial notice of the magistrate court case—were not raised in Defendant’s
18 docketing statement and therefore they are not a proper basis for reversal. [MIO 3-
19 4] Third, the State maintains that taking judicial notice of the probable cause

1 statement, where no objection was raised, is not plain error and the rules of evidence
2 do not apply to proceedings to revoke adult probation. [MIO 3] We are unpersuaded.
3 {4} The district court relied on the judicial notice it took of the magistrate court
4 case to determine there was sufficient evidence to support that Defendant violated
5 his probation, which the State does not deny in its memorandum in opposition.
6 Because Defendant challenged whether there was sufficient evidence, we conclude
7 he could raise the issue for the first time on appeal. *See State v. Sotelo*, 2013-NMCA-
8 028, ¶ 30, 296 P.3d 1232 (explaining that with regard to preservation, this Court has
9 held that challenges to the sufficiency of the evidence may be raised at any time,
10 including for the first time on appeal); *State v. Stein*, 1999-NMCA-065, ¶ 9, 127
11 N.M. 362, 981 P.2d 295 (noting that the question of sufficiency of the evidence
12 implicates a criminal defendant’s right not to be convicted when innocent, therefore
13 it “may be raised for the first time on appeal”) *see also State v. Clemonts*, 2006-
14 NMCA-031, ¶ 10, 139 N.M. 147, 130 P.3d 208 (raising sufficiency of the evidence
15 sua sponte); *State v. Maes*, 2003-NMCA-054, ¶ 5, 133 N.M. 536, 65 P.3d 584
16 (same). We note that even if Defendant had objected to the district court taking
17 judicial notice of the magistrate court case, it would not have remedied the error that
18 the State failed to present sufficient evidence that Defendant violated his probation.
19 Further, the district court’s judicial notice of the magistrate court case was the basis
20 for its finding that Defendant violated his probation, and as a result, it falls within

1 Defendant’s challenge of whether there was sufficient evidence to support the
2 finding.

3 {5} Next, the State points to a recent memorandum opinion filed by this Court,
4 *State v. Russell*, A-1-CA-42419, mem. op. (N.M. Ct. App. Nov. 20, 2025)
5 (nonprecedential), and argues that it supports the district court taking judicial notice
6 of a prior probation order “despite such information being subject to reasonable
7 dispute and not a matter of common knowledge.” [MIO 3] While we agree that the
8 memorandum opinion to which the State cites does affirm an order revoking
9 probation based in part on a judicially-noticed prior order, we conclude that opinion
10 is distinguishable from the instant appeal. In *Russell*, the district court took judicial
11 notice of a specific document—a prior probation order—to support the order
12 revoking probation. Conversely, here, the district court took judicial notice of the
13 existence of the magistrate court case and relied on that existence to find that
14 Defendant violated his probation. [CN 4-5] The district court did not take judicial
15 notice of any particular document as in *Russell*, and therefore was not explicit about
16 which document supported its finding that Defendant violated his probation.

17 {6} Finally, the State argues that Defendant’s argument that the evidence adduced
18 at the revocation hearing was insufficient is meritless because the resistive act that
19 was the basis for the charge occurred after Defendant was taken to the ground. [MIO
20 3] However, as we proposed in our calendar notice, the district court took judicial

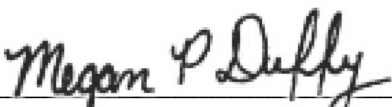
1 notice of the existence of the magistrate court case and relied on that existence to
2 find that Defendant violated his probation. [CN 5] The district court did not
3 explicitly identify what facts or documents it relied on in making its determination.
4 [CN 5-6] Instead, the district court relied on the magistrate court case “as a substitute
5 for more rigorous evidentiary requirements and careful fact-finding,” rather than
6 requiring more detailed direct testimony from the officer. *State v. Garcia*, 2023-
7 NMCA-010, ¶ 26, 523 P.3d 650 (internal quotation marks and citation omitted)

8 {7} For the reasons stated in our notice of proposed disposition and herein, we
9 reverse the district court’s order revoking Defendant’s probation and imposing the
10 remainder of his sentence.

11 {8} **IT IS SO ORDERED.**

12
13 
14 **JENNIFER L. ATTREP, Judge**

14 **WE CONCUR:**

15 
16 **MEGAN P. DUFFY, Judge**

17 
18 **GERALD E. BACA, Judge**