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

2 **STATE OF NEW MEXICO,**

3 **Plaintiff-Appellee,**

4 **v.**

No. 34,838

5 **NICHOLAS G.,**

6 **Child-Appellant.**

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

8 **Daniel Bryant, District Judge**

9 Hector H. Balderas, Attorney General

10 Santa Fe, NM

11 for Appellee

12 Jorge A. Alvarado, Chief Public Defender

13 Nina Lalevic, Assistant Appellate Defender

14 Santa Fe, NM

15 for Appellant

16 **MEMORANDUM OPINION**

17 **HANISEE, Judge.**

18 {1} Appellant Nicholas G. (Child) appeals from the bench trial adjudication for
19 larceny (\$250 or less). Our notice proposed to affirm, and Child filed a timely
20 memorandum in opposition pursuant to a granted extension of time. We remain

1 unpersuaded by Child’s arguments and thus affirm.

2 {2} In issue (a), Child continues to argue there is a lack of sufficient evidence to
3 support the district court’s adjudication that Child committed larceny. [DS 4; MIO 2]
4 *See State v. Dowling*, 2011-NMSC-016, ¶ 20, 150 N.M. 110, 257 P.3d 930 (setting
5 forth the standard of review). As provided in our notice, evidence was presented that
6 Child was seen crawling near Victim’s desk near Victim’s purse [DS 1-2, RP 34, 48],
7 that money was subsequently found to be missing from Victim’s purse [DS 2], and
8 that in response to his encounter with Principal Speck, Child handed over money in
9 his possession that exactly matched the amount and denominations that were missing
10 from Victim’s purse. [DS 2; RP 35] For the reasons detailed in our notice, we
11 conclude that this evidence was sufficient to support the adjudication of larceny. *See*
12 *NMSA 1978, § 30-16-1(A) (2006)* (defining larceny as “the stealing of anything of
13 value that belongs to another”); *see also State v. Sparks*, 1985-NMCA-004, ¶ 6,
14 102 N.M. 317, 694 P.2d 1382 (defining substantial evidence as that evidence which
15 a reasonable person would consider adequate to support a defendant’s conviction).

16 {3} In holding that the evidence was sufficient, we acknowledge Child’s continued
17 arguments that there were opportunities for others to have taken the money from
18 Victim’s purse [DS 2] and that the State should have introduced the bills or
19 photographs thereof to see if the bills returned to Victim were marked with Victim’s

1 initials as they had been purportedly marked. [DS 2; MIO 3-4] As we emphasized in
2 our notice, however, these were matters for the factfinder to consider. *See, e.g., State*
3 *v. Roybal*, 1992-NMCA-114, ¶ 5, 115 N.M. 27, 846 P.2d 333 (reiterating that
4 appellate courts do not invade the province of the factfinder by second guessing its
5 decisions concerning witness credibility or the weight of the evidence). We affirm.

6 {4} In issue (b), Child continues to argue that his confrontation rights were violated
7 “because the State did not present any photographs or other evidence of the allegedly
8 stolen money.” [MIO 4; DS 4] As support for his continued argument, Child refers to
9 *State v. Franklin*, 1967-NMSC-151, 78 N.M. 127, 428 P.2d 982, and *State v. Boyer*,
10 1985-NMCA-029, 103 N.M. 655, 712 P.2d 1. [MIO 4] We understand Child to refer
11 to Victim’s testimony that her money had been folded and had her initials on it, and
12 to argue that had Child been able to examine the money or photographs of the money
13 that he handed to the Principal, it would have lacked any initials or folds, thereby
14 supporting his testimony that he did not take Victim’s money. However, it was not
15 necessary for the State to produce the actual money or photographs of it at trial,
16 because Child was able to exercise his due process rights by confronting the witnesses
17 who testified against him. *See, e.g., State v. Telles*, 2011-NMCA-083, ¶ 14, 150 N.M.
18 465, 261 P.3d 1097 (recognizing that the right of confrontation “guarantees the
19 accused in a criminal trial the right to be *confronted with the witnesses against him*”

1 (emphasis added) (internal quotations and citation omitted)). We affirm.

2 {5} Lastly, in issue (c), Child again relies on *Franklin and Boyer* and continues to
3 argue that his “search” without his parent present violated NMSA 1978, Section 32A-
4 2-14 (2009) (setting forth the “basic rights” for a child subject to the Delinquency
5 Act). Child provides that, while not certain, he believes this issue was preserved.
6 [MIO 5] For the reasons explained in our notice, we disagree with Child’s assertion
7 that he was “searched” by the Principal, as the facts provide that he handed over the
8 money without any search. [RP 35] Nevertheless, there is no requirement in Section
9 32A-2-14 that requires that a parent be present during any “search” or, for that matter,
10 during any encounter or questioning between a principal and a child, or even during
11 a “custodial interrogation.” *See In re Adoption of Doe*, 1984-NMSC-024, ¶ 2, 100
12 N.M. 764, 676 P.2d 1329 (providing that where a party cites no authority to support
13 an argument, we may assume no such authority exists); *see also State v. Martinez*,
14 1999-NMSC-018, 127 N.M. 207, 979 P.2d 718 (noting that the Legislature has not
15 established a requirement that parents be notified about a custodial interrogation of
16 their juvenile child). We affirm.

17 {6} To conclude, for the reasons detailed in our notice and discussed above, we
18 affirm.

19 {7} **IT IS SO ORDERED.**

1

2

J. MILES HANISEE, Judge

3 **WE CONCUR:**

4

5 **MICHAEL D. BUSTAMANTE, Judge**

6

7 **RODERICK T. KENNEDY, Judge**