



1 {1} Defendant Armando Aragon appeals from the revocation of his probation. We  
2 issued a notice of proposed summary disposition, proposing to affirm. Defendant has  
3 filed a memorandum in opposition. After due consideration, we remain unpersuaded  
4 by Defendant’s assertions of error. We therefore affirm.

5 {2} In our notice of proposed summary disposition, we suggested that the State  
6 presented evidence, to a reasonable degree of certainty, that Defendant violated his  
7 probation by damaging the property of another and by using alcohol; therefore, we  
8 proposed to affirm. [*See generally* CN] In his memorandum in opposition, Defendant  
9 renews his challenge to the sufficiency of the evidence to support the revocation of his  
10 probation. [MIO 1] More specifically, Defendant challenges the sufficiency of the  
11 evidence to establish that he willfully damaged property or consumed alcohol. [Id. at  
12 1, 4] *See In re Bruno R.*, 2003-NMCA-057, ¶ 11, 133 N.M. 566, 66 P.3d 339 (“To  
13 establish a violation of a probation agreement, the obligation is on the State to prove  
14 willful conduct on the part of the probationer so as to satisfy the applicable burden of  
15 proof.”).

16 {3} We acknowledge that willful conduct is a requisite. However, as we have  
17 previously stated, “[o]nce the [S]tate offers proof of a breach of a material condition  
18 of probation, [D]efendant must come forward with evidence [to show that his  
19 non-compliance] was not willful.” *State v. Parsons*, 1986-NMCA-027, ¶ 25, 104 N.M.

1 123, 717 P.2d 99; *see also State v. Martinez*, 1989-NMCA-036, ¶ 8, 108 N.M. 604,  
2 775 P.2d 1321 (explaining that probation should not be revoked where the violation  
3 is not willful, in that it resulted from factors beyond a probationer's control).“ [I]f  
4 [D]efendant fails to carry his burden, then the trial court is within its discretion in  
5 revoking [Defendant's probation].” *Martinez*, 1989-NMCA-036, ¶ 8.

6 {4} In this case, the State presented evidence, discussed in greater detail in the  
7 notice of proposed disposition, that Deputy De La Cruz was dispatched to investigate  
8 a domestic disturbance at a trailer park; at the entrance of the trailer park, he made  
9 contact with Defendant who was wearing clothing that matched the description he had  
10 received from dispatch; the deputy spoke with Defendant; Defendant told the deputy  
11 that he knew he was in trouble; Defendant admitted that he had broken a window; the  
12 deputy testified that Defendant smelled like alcohol; Defendant was stumbling as he  
13 walked; Defendant swayed as he stood; and during a pat down for weapons, the  
14 deputy had to hold Defendant upright to keep him from falling. [DS 3-4; MIO 2] The  
15 deputy and Defendant went to the trailer where Defendant's girlfriend was living, and  
16 the deputy observed a broken window in the living room with most of the glass inside  
17 the trailer. [DS 4; MIO 2] Defendant admitted that when he saw his girlfriend look out  
18 the window, he ran toward it, hit it with his closed fist, and it broke; however, he  
19 maintains that he did not intend to break the window. [DS 4; MIO 2-3] Additionally,

1 the State presented evidence that Defendant’s probation officer had discussed the  
2 probation orders and standard conditions of probation with Defendant. [DS 5; MIO  
3 3] This was sufficient to give rise to a reasonable inference that Defendant was aware  
4 that, as part of his probation agreement, he was prohibited from violating the laws of  
5 the State of New Mexico and he was not permitted to possess, consume or use alcohol  
6 while he was on probation. [See MIO 1-2] *See generally State v. Romero*,  
7 1968-NMCA-078, ¶ 17, 79 N.M. 522, 445 P.2d 587 (“An inference is merely a logical  
8 deduction from facts and evidence.” (quoting *State v. Jones*, 1935-NMSC-062, ¶ 21,  
9 39 N.M. 395, 48 P.2d 403)).

10 {5} Defendant has not demonstrated that he offered any evidence to excuse his non-  
11 compliance with the terms of his probation. Instead, he contends that “the evidence  
12 clearly shows that [he] accidentally broke a window and smelled of alcohol.” [MIO  
13 1; *see also id.* at 6]

14 {6} As we discussed in our notice of proposed disposition, to the extent there was  
15 conflicting testimony, contrary testimony is not a basis for reversal. *See State v. Rojo*,  
16 1999-NMSC-001, ¶ 19, 126 N.M. 438, 971 P.2d 829 (“Contrary evidence supporting  
17 acquittal does not provide a basis for reversal because the jury is free to reject [the  
18 d]efendant’s version of the facts.”). Rather it was for the district court to weigh the  
19 evidence and assess credibility, and we will not engage in a reweighing of the

1 evidence on appeal. *See State v. Apodaca*, 1994-NMSC-121, ¶ 3, 118 N.M. 762, 887  
2 P.2d 756 (stating that the appellate court views the evidence in the light most  
3 favorable to the verdict, resolving all conflicts and indulging all reasonable inferences  
4 in favor of the verdict); *State v. Griffin*, 1993-NMSC-071, ¶ 17, 116 N.M. 689, 866  
5 P.2d 1156 (“This court does not weigh the evidence and may not substitute its  
6 judgment for that of the fact finder so long as there is sufficient evidence to support  
7 the verdict.” (internal quotation marks and citation omitted)). To the extent that  
8 Defendant claims that, absent a chemical test, there was insufficient evidence to  
9 establish that he had consumed alcohol [MIO 5-6], we are not persuaded. *See State v.*  
10 *Baldwin*, 2001-NMCA-063, ¶ 16, 130 N.M. 705, 30 P.3d 394 (pointing out that a fact-  
11 finder can rely on “human experience” in deciding whether a defendant was under the  
12 influence); *Sanchez v. Wiley*, 1997-NMCA-105, ¶¶ 2, 19, 124 N.M. 47, 946 P.2d 650  
13 (holding that a witness could rely on his knowledge in testifying that the defendant  
14 was “drunk”).

15 {7} For the reasons stated in this opinion and in our notice of proposed summary  
16 disposition, we affirm.

17 {8} **IT IS SO ORDERED.**

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**MICHAEL D. BUSTAMANTE, Judge**

1 **WE CONCUR:**

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3 **MICHAEL E. VIGIL, Chief Judge**

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5 **RODERICK T. KENNEDY, Judge**