

1 {1} Defendant Jesse Chavez appeals from the district court's order revoking his
2 probation and sentencing him to serve the remainder of his probationary term in the
3 department of corrections. He claims that his right to confrontation under the due
4 process clause of the Fourteenth Amendment was violated when the district court
5 permitted his probation officer to testify regarding the results of his urinalysis (UA)
6 drug test. In response, the State contends that the district court did not err in revoking
7 Defendant's probation because he failed to timely report to the probation office and
8 he tested positive for morphine. In his reply brief, Defendant maintains that he was
9 denied his right to confrontation, and he asserts that the district court's written order
10 revoking his probation was based solely on the drug violation. After duly considering
11 the arguments, we affirm.

12 **BACKGROUND**

13 {2} Defendant pleaded no contest to one count of voluntary manslaughter with a
14 firearm enhancement, pursuant to NMSA 1978, Section 30-2-3 (1994), and a serious
15 violent offense, pursuant to NMSA 1978, Section 33-2-34 (2006, amended 2015), and
16 one count of possession of methamphetamine with intent to distribute, pursuant to
17 NMSA 1978, Section 30-31-20 (2006). Defendant further admitted to having one
18 valid prior felony for habitual offender enhancement purposes, however, the State
19 waived the enhancement provided Defendant successfully completed his sentence,

1 which the parties agreed would not exceed nine years. The district court sentenced
2 Defendant to nine years in prison, suspended all but 364 days and ordered that
3 Defendant serve those 364 days in the Community Custody Program (CCP). The
4 district court further ordered that Defendant was “to be placed on [i]ntensive
5 [s]upervised [p]robation with GPS tracking for five (5) years following release from
6 custody, on condition that Defendant obey all rules, regulations and orders of the
7 [p]robation [a]uthorities, and observe all federal, state and city laws or ordinances.”
8 Defendant was also required to abide by special conditions of probation that he: (1)
9 obtain and maintain full-time employment, education, or both; and (2) abstain from
10 the use of alcohol and illegal drugs.

11 {3} On December 21, 2015, Defendant was released from CCP and ordered by his
12 supervisor to report to the probation office within twenty-four hours of his release. He
13 reported to the probation office at 8:00 a.m. on December 23, 2015—more than
14 twenty-four hours after his release from CCP—and provided a urine sample that tested
15 positive for morphine. Defendant’s probation officer prepared a probation violation
16 report. In his report, the probation officer identified the violation as a drug violation,
17 but detailed both Defendant’s failure to timely report to the probation office and the
18 drug violation as part of his evaluation of Defendant’s adjustment to supervision,
19 which he described as “poor.” The State filed a motion to revoke Defendant’s

1 probation, attached the probation violation report, and alleged that Defendant
2 “violated probation as described in the attached [p]robation [v]iolation [r]eport.”

3 {4} Following a hearing on the State’s motion to revoke Defendant’s probation, the
4 district court entered an order revoking Defendant’s probation, committing him to the
5 department of corrections, and unsatisfactorily discharging him from probation.
6 Defendant now appeals.

7 **DISCUSSION**

8 **I. Basis for District Court’s Finding of a Probation Violation**

9 {5} The parties disagree as to the basis for the district court’s finding of a probation
10 violation. Defendant asserts that the State moved to revoke his probation,
11 “incorporating the probation violation report and alleging that he failed a urinalysis
12 test [UA] and recommending that he be reinstated on probation and assigned directly
13 to the [i]ntensive [s]upervised [p]robation [u]nit with zero tolerance for future
14 violations.” Nevertheless, Defendant acknowledges that the district court revoked his
15 probation because he did not report to the probation office within twenty-four hours
16 of his release from CCP. However, he asserts that pursuant to the written order
17 revoking his probation, “the court changed its basis for revoking [his] probation from
18 the failure to timely report to probation to drug use, incorporating the motion to
19 revoke and probation violation report by reference.” The State, on the other hand,

1 contends that “[t]he only probation violation identified by the district [court] judge at
2 the probation revocation hearing was that Defendant ‘failed the [twenty-four]-hour
3 period’ for reporting to the [p]robation [o]ffice after his release from prison.”

4 {6} We have reviewed the transcript from the revocation hearing and note that, in
5 finding a probation violation, the district court judge stated as follows:

6 And what I am hearing for the first time today is that because he failed
7 the [twenty-four]-hour period, was a day later, that he didn’t really
8 violate. It was very clear from the outset of this case what [Defendant]
9 needed to do, and I’ve been more than lenient with regards to giving him
10 a chance, a chance to clean up his life and to help him out here. But I am
11 finding there’s a violation because number one, it wasn’t within the
12 [twenty-four] hours. And to think that you can just go the next day at
13 eight after he has been on CCP, to me it makes no sense. There was an
14 issue with regards to him supposed to be on GPS, he was supposed to be
15 on GPS, I’m not faulting him for that because it sounds like, from the
16 testimony that I heard, that they were waiting for him to be on ISP for
17 the GPS to be placed on, even though everything that we have here says,
18 immediately once he reports to probation he will be placed on a GPS
19 tracking for five years. So I am finding a violation.

20 {7} The district court entered its written order revoking Defendant’s probation the
21 next day, and pursuant to the form order, the district court found that Defendant
22 “violated paragraph 1 of the [m]otion to [r]evoke [p]robation.” Notably, the motion
23 to revoke does not contain numbered paragraphs. Instead, it contains a single
24 paragraph of text referring to the alleged violation as follows: “The State alleges that
25 [D]efendant violated probation as described in the attached [p]robation [v]iolation
26 [r]eport.”

1 {8} Given that the probation violation report refers to both the failure to timely
2 report and the positive drug test, and at the conclusion of the hearing on the motion
3 to revoke, the district court found that Defendant violated his probation by failing to
4 timely report to the probation office, we conclude that the district court revoked
5 Defendant's probation, at a minimum, as a result of Defendant's failure to timely
6 report to the probation office. To the extent that Defendant argues that the district
7 court changed its basis for revoking his probation from the failure to timely report to
8 the probation office to drug use, or that the oral ruling and written order were
9 inconsistent, we are not persuaded.

10 {9} "We review a district court's revocation of a defendant's probation for an abuse
11 of discretion." *State v. Leon*, 2013-NMCA-011, ¶ 36, 292 P.3d 493. To prove a
12 probation violation, the State is required to establish with a reasonable certainty that
13 such a violation occurred. *State v. Green*, 2015-NMCA-007, ¶ 22, 341 P.3d 10.
14 Applying these standards to the case before us, we conclude the State presented
15 sufficient evidence to prove that Defendant failed to timely report to the probation
16 office, in violation of the district court's order in the underlying judgment that
17 Defendant was required to "obey all rules, regulations and orders of the [p]robation
18 [a]uthorities[.]" This violation alone was a sufficient basis for the district court to
19 revoke Defendant's probation. *See Leon*, 2013-NMCA-011, ¶ 37 (stating that

1 “although [the d]efendant challenges the sufficiency of the evidence supporting each
2 of his probation violations, if there is sufficient evidence to support just one violation,
3 we will find the district court’s order was proper”); *see also Green*, 2015-NMCA-007,
4 ¶ 21, n.3 (declining to reach the issue of whether sufficient evidence supported
5 revocation of the defendant’s probation on the remaining alleged grounds where this
6 Court found sufficient evidence to support a violation on just one ground).

7 **II. Defendant Did Not Preserve the Confrontation Issue**

8 {10} We note that even if the district court had revoked Defendant’s probation solely
9 on the drug-test violation, we would affirm. The only argument Defendant made
10 regarding that violation was not preserved below.

11 {11} Defendant claims that he “was denied due process when the district court
12 ignored his right to confront and cross-examine the chemist who tested his urine and
13 determined the presence of morphine as opposed to oxycodone for which he had a
14 prescription.” *See State v. Guthrie*, 2011-NMSC-014, ¶ 12, 150 N.M. 84, 257 P.3d
15 904 (“The right protected in probation revocations is not the sixth amendment right
16 to confrontation, guaranteed every accused in a criminal trial, but rather the more
17 generally worded right to due process of law secured by the fourteenth amendment.”).
18 “In order to preserve an error for appeal, it is essential that the ground or grounds of
19 the objection or motion be made with sufficient specificity to alert the mind of the trial

1 court to the claimed error or errors, and that a ruling thereon then be invoked.” *State*
2 *v. Varela*, 1999-NMSC-045, ¶ 25, 128 N.M. 454, 993 P.2d 1280 (internal quotation
3 marks and citation omitted); *see also* Rule 12-321(A) NMRA (“To preserve an issue
4 for review, it must appear that a ruling or decision by the trial court was fairly
5 invoked.”).

6 {12} At the revocation hearing, Defendant erroneously argued that the rules of
7 evidence apply and based his objections to the State’s evidence on evidentiary
8 grounds. *See* Rule 11-1101(D)(3)(d) NMRA (providing that the rules of evidence,
9 except for those on privilege, do not apply to “granting or revoking probation or
10 supervised release”). Defendant claimed that his probation officer’s testimony and the
11 drug test results were hearsay, that the State failed to lay a foundation for this
12 evidence, and that the probation officer was not qualified to testify regarding the drug
13 results because he was not the chemist who performed the drug test. We conclude that
14 the evidentiary objections that Defendant raised at the hearing were not sufficiently
15 specific to alert the district court to the confrontation issue that Defendant now argues
16 on appeal. *See State v. Lucero*, 1986-NMCA-085, ¶¶ 12-17, 104 N.M. 587, 725 P.2d
17 266 (holding that denial of right to confrontation may not be raised for first time on
18 appeal, and hearsay objections were not sufficiently specific to alert the district court
19 to claimed constitutional error); *State v. Mora*, 1997-NMSC-060, ¶ 47 n.1, 124 N.M.

1 346, 950 P.2d 789 (holding that the defendant did not preserve his confrontation
2 argument because he failed to object on confrontation grounds or general
3 constitutional grounds), *abrogated on other grounds by Kersey v. Hatch*,
4 2010-NMSC-020, ¶ 17, 148 N.M. 381, 237 P.3d 683; *cf. State v. Ross*,
5 1996-NMSC-031, ¶¶ 24-25, 122 N.M. 15, 919 P.2d 1080 (holding that confrontation
6 issue was preserved for appellate review where the defendant timely objected on
7 general constitutional grounds, in addition to evidentiary grounds, and distinguishing
8 *Lucero* by noting that the defendant in that case made only evidentiary objections to
9 hearsay evidence without suggesting that its admission would violate either the state
10 or federal constitutions), *overruled on other grounds by State v. Tollardo*, 2012-
11 NMSC-008, ¶ 37 n.6, 275 P.3d 110. Therefore, we conclude that this issue was not
12 properly preserved for appellate review.

13 **CONCLUSION**

14 {13} For the foregoing reasons, we affirm.

15 {14} **IT IS SO ORDERED.**

16

17

JULIE J. VARGAS, Judge

18 **WE CONCUR:**

19

1 **MICHAEL E. VIGIL, Judge**

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3 **EMIL J. KIEHNE, Judge**