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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. 34,407

5
6 **NATHAN E. GARCIA,**

7 Defendant-Appellant.

8 **APPEAL FROM THE DISTRICT COURT OF BERNALILLO COUNTY**

9 **Angela Jewell, District Judge**

10 Hector H. Balderas, Attorney General

11 Santa Fe, NM

12 for Appellee

13 Jorge A. Alvarado, Chief Public Defender

14 Kathleen T. Baldridge, Assistant Appellate Defender

15 Santa Fe, NM

16 for Appellant

17 **MEMORANDUM OPINION**

18 **GARCIA, Judge.**

1 {1} Defendant appeals from the revocation of his probation. [RP 173] Our notice
2 proposed to affirm and Defendant filed a memorandum in opposition. We remain
3 unpersuaded by Defendant’s arguments, and therefore affirm.

4 {2} Defendant continues to argue that the evidence was insufficient to support his
5 probation revocation. [DS 6; MIO 4; RP 173] *See generally State v. Green*, 2015-
6 NMCA-007, ¶ 22, 341 P.3d 10 (recognizing that finding of a probation violation must
7 be based on facts sufficient to prove the violation of probation by a “reasonable
8 certainty”). Among other probation conditions, Defendant’s order of probation
9 included the condition that he not violate any laws or ordinances. [RP 109, 134, 136,
10 141, 144] For the reasons detailed in the notice, we hold that the evidence was
11 sufficient to support the district court’s conclusion to a reasonable certainty that
12 Defendant violated this probation condition based on his possession of a stolen
13 motorcycle. *See State v. Martinez*, 1989-NMCA-036, ¶ 4, 108 N.M. 604, 775 P.2d
14 1321 (providing that we review the district court’s decision to revoke probation under
15 an abuse of discretion standard).

16 {3} In concluding that the district court did not abuse its discretion in revoking
17 Defendant’s probation, we continue to acknowledge Defendant’s assertions that the
18 motorcycle was not stolen [MIO 5], that he had instead borrowed the motorcycle
19 from Michelle Salazar [MIO 5], and that he had nevertheless driven a different

1 motorcycle to the store as opposed to the stolen motorcycle. [MIO 5] However, the
2 factfinder was free to reject Defendant’s version of the events and instead consider
3 other evidence, as detailed in the notice, which contradicted Defendant’s version of
4 the events. *See generally State v. Rojo*, 1999-NMSC-001, ¶ 19, 126 N.M. 438, 971
5 P.2d 829 (holding that the factfinder is free to reject the defendant’s version of
6 events). Similarly, we again acknowledge Defendant’s view that Officer Benner’s
7 testimony lacked credibility because the Officer did not control the cameras and could
8 not explain how the surveillance equipment worked so to as to allow an accurate and
9 uninterrupted presentation. [MIO 6] This, however, was a matter of weight for the
10 factfinder to consider. *See generally State v. Ryan*, 2006-NMCA-044, ¶ 20, 139 N.M.
11 354, 132 P.3d 1040 (“It is the factfinder’s prerogative to weigh the evidence and to
12 judge the credibility of the witnesses.”).

13 {4} To conclude, for the reasons set forth in our notice and above, we affirm.

14 {5} **IT IS SO ORDERED.**

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16

TIMOTHY L. GARCIA, Judge

17 **WE CONCUR:**

18
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MICHAEL D. BUSTAMANTE, Judge

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CYNTHIA A. FRY, Judge