

1 {1} Defendant-Appellant Chester Tiley (Defendant) appeals from his convictions
2 for larceny, conspiracy, and disposing of stolen property. We previously issued a
3 notice of proposed summary disposition in which we proposed to uphold the
4 convictions. Defendant has filed a joint memorandum in opposition and motion to
5 amend the docketing statement. After due consideration, we affirm.

6 {2} We will begin our discussion with the issue originally raised in the docketing
7 statement. Because we find nothing in the memorandum in opposition which could
8 be said to renew the claim of ineffective assistance of counsel, that argument is
9 deemed abandoned. *See generally State v. Billy M.*, 1987-NMCA-080, ¶ 2, 106 N.M.
10 123, 739 P.2d 992 (observing that an issue listed in the docketing statement but not
11 addressed in the memorandum in opposition is deemed abandoned).

12 {3} We will turn next to the motion to amend, by which Defendant seeks to raise
13 two new issues. For the reasons discussed at greater length below, we conclude that
14 neither is viable. We therefore deny the motion. *See State v. Moore*,
15 1989-NMCA-073, ¶ 42, 109 N.M. 119, 782 P.2d 91 (providing that a motion to amend
16 the docketing statement will only be granted if the issues are viable), *superceded by*
17 *statute on other grounds as stated in State v. Salgado*, 1991-NMCA-044, ¶ 2, 112
18 N.M. 537, 817 P.2d 730.

1 {4} First, Defendant contends that the district court erred in denying his motion for
2 mistrial after a prospective juror stated that he had worked at the local detention
3 center, and he had “dealt with” Defendant there. [MIO 5-6; RP 161] Defendant
4 contends that this prejudicial and extraneous comment compromised his right to a fair
5 and impartial jury. [MIO 6- 8]

6 {5} We are unpersuaded. The other venire members, when questioned, all either
7 stated that they could be fair and impartial, or indicated that they did not feel
8 prejudiced by the comment. [MIO 6; RP 161-62] Under the circumstances, the denial
9 of the motion for mistrial did not constitute an abuse of discretion. *See, e.g., State v.*
10 *Swick*, 2012-NMSC-018, ¶¶ 67-70, 279 P.3d 747 (concluding that the trial court did
11 not abuse its discretion in denying a motion for mistrial, where the jurors indicated
12 that an outburst in court would not affect their fairness and impartiality in deciding the
13 case based on the evidence presented); *see generally State v. Sacoman*,
14 1988-NMSC-077, ¶¶ 17-18, 107 N.M. 588, 762 P.2d 250 (holding that “extraneous
15 information creates a presumption of prejudice that may be rebutted by showing that
16 no prejudice actually occurred,” and ultimately, “[w]hether the presumption of
17 prejudice has been overcome rests in the sound discretion of the trial court”).

18 {6} The second issue that Defendant seeks to raise by his motion to amend is a
19 challenge to the sufficiency of the evidence. [MIO 9-12]

1 {7} In reviewing the sufficiency of the evidence, we analyze “whether direct or
2 circumstantial substantial evidence exists and supports a verdict of guilt beyond a
3 reasonable doubt with respect to every element essential for conviction.” *State v. Kent*,
4 2006-NMCA-134, ¶ 10, 140 N.M. 606, 145 P.3d 86. Furthermore, “we must view the
5 evidence in the light most favorable to the guilty verdict, indulging all reasonable
6 inferences and resolving all conflicts in the evidence in favor of the verdict.” *State v.*
7 *Cunningham*, 2000-NMSC-009, ¶ 26, 128 N.M. 711, 998 P.2d 176.

8 {8} Below, the State presented evidence that over 13,000 feet of cable with a value
9 in excess of \$2,500 had been stolen. [MIO 4; RP 177-79] Law enforcement officers
10 testified that tire tracks observed at the scene and depicted in a series of photos were
11 consistent with the treads on Defendant’s truck, [MIO 5; RP 189-91] and footprints
12 observed and photographed at the scene were also consistent with Defendant’s shoes.
13 [RP 189] Wire, climbing hooks, and cutting tools were discovered in an accomplice’s
14 vehicle. [MIO 3; RP 188] Finally, the owner and one of the employees of a salvage
15 operation testified that Defendant and his accomplice had come to the business
16 together and sold hundreds of pounds of copper wire to them, of a similar nature and
17 appearance to the cable that had been unlawfully removed. [MIO 3-4; RP 170-71,
18 174] This constitutes sufficient direct and circumstantial evidence to support all of the
19 essential elements of the offenses at issue. [RP 223, 226, 227]

1 {9} In his memorandum in opposition Defendant does not dispute the foregoing.
2 Instead, he focuses on perceived inadequacies and omissions in the testimony of the
3 witnesses, the documents, and the physical evidence. [MIO 9-10] In light of these
4 considerations, Defendant urges the Court to reweigh the evidence. [MIO 9] This we
5 cannot do. *See generally State v. Fuentes*, 2010-NMCA-027, ¶ 13, 147 N.M. 761, 228
6 P.3d 1181 (“[W]e will not reweigh the evidence nor substitute our judgment for that
7 of the fact finder provided that there is sufficient evidence to support the verdict.”
8 (internal quotation marks and citation omitted)).

9 {10} Accordingly, for the reasons stated above and in the notice of proposed
10 summary disposition, Defendant’s convictions are AFFIRMED.

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

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MICHAEL D. BUSTAMANTE, Judge

14 **WE CONCUR:**

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16 **JAMES J. WECHSLER, Judge**

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18 **JONATHAN B. SUTIN, Judge**