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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. A-1-CA-37018

5 **LORENZO GARCIA,**

6 Defendant-Appellant.

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

8 **Michael Martinez, District Judge**

9 Hector H. Balderas, Attorney General

10 Santa Fe, NM

11 for Appellee

12 Bennett J. Baur, Chief Public Defender

13 J.K. Theodosia Johnson, Assistant Public Defender

14 Santa Fe, NM

15 for Appellant

16 **MEMORANDUM OPINION**

17 **VANZI, Chief Judge.**

18 {1} Defendant Lorenzo Garcia appeals from the district court's order revoking

19 probation. This Court's calendar notice proposed to summarily affirm. Defendant filed

1 a memorandum in opposition to the proposed disposition. Not persuaded by
2 Defendant's arguments, we affirm.

3 {2} The calendar notice proposed to conclude that the State's circumstantial
4 evidence proved Defendant was the driver of the Thunderbird on the date in question
5 with reasonable certainty, on the basis that proof of a probation violation need not be
6 established beyond a reasonable doubt. *See State v. Galaz*, 2003-NMCA-076, ¶ 8, 133
7 N.M. 794, 70 P.3d 784. [CN 3] Defendant does not point to any error with regard to
8 this proposal, but argues that the calendar notice did not address the evidence
9 regarding possession of a firearm. [MIO 2] *See State v. Mondragon*, 1988-NMCA-
10 027, ¶ 10, 107 N.M. 421, 759 P.2d 1003 (stating a party responding to a summary
11 calendar notice must come forward and specifically point out errors of law and fact),
12 *superseded by statute as stated in State v. Harris*, 2013-NMCA-031, ¶ 3, 297 P.3d
13 374. Defendant argues that there was insufficient evidence to support the finding that
14 he violated his probation by possessing a firearm because there was a passenger in his
15 car and he therefore did not have exclusive control over the car. [MIO 3] We affirm
16 the district court's order on the basis that there was sufficient evidence to support the
17 single violation prohibiting Defendant from violating state laws. *See State v. Leon*,
18 2013-NMCA-011, ¶ 37, 292 P.3d 493 (“[A]lthough Defendant challenges the
19 sufficiency of the evidence supporting each of his probation violations, if there is

1 sufficient evidence to support just one violation, we will find the district court’s order
2 was proper.”).

3 {3} Defendant continues to argue that the district court impermissibly shifted the
4 burden of proof from the State by considering his failure to rebut the evidence against
5 him. [MIO 4] The calendar notice proposed to affirm on the basis that “[t]he burden
6 of proving a violation with reasonable certainty lies with the State,” *State v. Green*,
7 2015-NMCA-007, ¶ 22, 341 P.3d 10, and it is only after the State meets its burden of
8 proving the breach of a material condition that Defendant must present evidence to
9 excuse non-compliance. *See Leon*, 2013-NMCA-011, ¶ 36. Defendant does not point
10 to any error in fact or law with the proposed disposition, but continues to maintain that
11 the district court impermissibly shifted the burden to him to rebut the State’s evidence.
12 [MIO 4] *See Mondragon*, 1988-NMCA-027, ¶ 10 (stating that the repetition of earlier
13 arguments does not fulfill the requirement of a defendant to respond to a proposed
14 disposition). We disagree.

15 {4} The State must first meet its burden of proving the violation of a material
16 condition of probation before a defendant is given an opportunity to present evidence
17 excusing non-compliance. *See State v. Martinez*, 1989-NMCA-036, ¶ 8, 108 N.M.
18 604, 775 P.2d 1321 (“Once the state offers proof of a breach of a material condition
19 of probation, the defendant must come forward with evidence to excuse

1 non-compliance.”). “[D]efendant is entitled to present evidence and witnesses . . . in
2 an effort to convince the trial court that his failure to comply with conditions was
3 through no fault of his own.” *Id.* (citations omitted). We conclude that allowing
4 Defendant such an opportunity only after the State has met its initial burden of proof
5 is not an impermissible shifting of burdens.

6 {5} For all of these reasons, and those stated in the calendar notice, we affirm.

7 {6} **IT IS SO ORDERED.**

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9

LINDA M. VANZI, Chief Judge

10 **WE CONCUR:**

11

STEPHEN G. FRENCH, Judge

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EMIL J. KIEHNE, Judge