|    | Please see Rule 12-405 NMRA for restrictions on the citation of unpublished memorandum opinions. Please also note that this electronic memorandum opinion may contain computer-generated errors or other deviations from the official paper version filed by the Court of Appeals and does not include the filing date. |
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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-37193   |
| 5  | CEDRYCH YOUNG,  |
| 6  | Defendant-Appellant.  |
|    | APPEAL FROM THE DISTRICT COURT OF BERNALILLO COUNTY Mark A. Macaron, District Judge   |
|    | Hector H. Balderas, Attorney General<br>Santa Fe, NM  |
| 11 | for Appellee  |
| 13 | Bennett J. Baur, Chief Public Defender<br>Kathleen T. Baldridge, Assistant Appellate Defender<br>Santa Fe, NM   |
| 15 | for Appellant   |
| 16 | MEMORANDUM OPINION  |
| 17 | VIGIL, Judge.   |
|    |   |

Defendant Cedrych Young appeals from an order revoking his probation. We **{1**} issued a calendar notice proposing to affirm. Defendant has responded with a memorandum in opposition. Not persuaded, we affirm.

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- 4 **Issue 1:** Defendant continues to challenge the denial of his motion to suppress. **{2**} [MIO 5] A ruling on a motion to suppress evidence presents a mixed question of law 6 and fact. State v. Garcia, 2005-NMSC-017, ¶27, 138 N.M. 1, 116 P.3d 72. We review 7 || findings of fact using the substantial evidence standard. *Id.* We review the application of law to the facts de novo, viewing the facts in the light most favorable to the prevailing party. *Id*.
- In this case, Defendant claims that the officers lacked exigent circumstances to **{3}** 11 search his residence. [MIO 5] However, there is no need for exigent circumstances 12 because the officers entered the residence after Defendant's wife gave them consent 13 to do so. [MIO 3] See State v. Cline, 1998-NMCA-154, ¶ 18, 126 N.M. 77, 966 P.2d 14 | 785 (holding that the wife, as one with common authority over the premises, has 15 authority to consent to a search).
- 16 4 <u>Issue 2</u>: Defendant continues to challenge the sufficiency of the evidence to support the revocation of his probation. [MIO 7] "In a probation revocation 18 proceeding, the [s]tate bears the burden of establishing a probation violation with a 19 reasonable certainty." *State v. Leon*, 2013-NMCA-011, ¶ 36, 292 P.3d 493. "To

establish a violation of a probation agreement, the obligation is on the [s]tate to prove willful conduct on the part of the probationer so as to satisfy the applicable burden of proof." In Re Bruno R., 2003-NMCA-057, ¶ 11, 133 N.M. 566, 66 P.3d 339; see State v. Martinez, 1989-NMCA-036, ¶ 8, 108 N.M. 604, 775 P.2d 1321 (explaining that probation should not be revoked where the violation is not willful, in that it resulted from factors beyond a probationer's control).

- Here, the district court found that Defendant violated his probation by failing **{5**} to report for his July 3, 2017 probation appointment, and by possession of a firearm. [MIO 4] The State presented evidence that Defendant failed to report on July 3, and Defendant does not provide any indication that he was unable to appear for his appointment. [MIO 4, 7-8] With respect to the firearm, a person is in possession of a firearm when, "on the occasion in question, he knows what [the firearm] is, he knows 13 it is on his person or in his presence[,] and he exercises control over it." UJI 14-130 14 NMRA. Here, Defendant was found sitting on a couch (apparently alone) with a firearm in plain view on the couch. [MIO 3] When the officers came in the house he 16 initially reached for the gun and then hesitated and sat up. [MIO 3] Under these circumstances, we conclude that the definition of possession has been satisfied.
- $18 | \{6\}$ For the reasons set forth above, we affirm.
- 19 [7] IT IS SO ORDERED.

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| 1 2 | MICHAEL E. VIGIL, Judge     |
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| 3   | WE CONCUR:                  |
| 4 5 | LINDA M. VANZI, Chief Judge |
| 6 7 | DANIEL J. GALLEGOS, Judge   |
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