

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

4 {2} **Issue 1:** Defendant continues to challenge the denial of his motion to suppress.
5 [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
8 of law to the facts de novo, viewing the facts in the light most favorable to the
9 prevailing party. *Id.*

10 {3} In this case, Defendant claims that the officers lacked exigent circumstances to
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} **Issue 2:** Defendant continues to challenge the sufficiency of the evidence to
17 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

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

7 {5} Here, the district court found that Defendant violated his probation by failing
8 to report for his July 3, 2017 probation appointment, and by possession of a firearm.
9 [MIO 4] The State presented evidence that Defendant failed to report on July 3, and
10 Defendant does not provide any indication that he was unable to appear for his
11 appointment. [MIO 4, 7-8] With respect to the firearm, a person is in possession of a
12 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
15 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
17 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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MICHAEL E. VIGIL, Judge

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WE CONCUR:

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LINDA M. VANZI, Chief Judge

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DANIEL J. GALLEGOS, Judge