

STATE V. BACA

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**STATE OF NEW MEXICO,
Plaintiff-Appellee,
v.
JOSHUA BACA,
Defendant-Appellant.**

No. 35,623

COURT OF APPEALS OF NEW MEXICO

September 28, 2016

APPEAL FROM THE DISTRICT COURT OF BERNALILLO COUNTY, Michael E.
Martinez, District Judge

COUNSEL

Hector H. Balderas, Attorney General, Santa Fe, NM, for Appellee

Bennett J. Baur, Chief Public Defender, Kathleen T. Baldrige, Assistant Appellate Defender, Santa Fe, NM, for Appellant

JUDGES

MICHAEL E. VIGIL, Chief Judge. WE CONCUR: JONATHAN B. SUTIN, Judge,
TIMOTHY L. GARCIA, Judge

AUTHOR: MICHAEL E. VIGIL

MEMORANDUM OPINION

VIGIL, Chief Judge.

{1} Defendant appeals from the revocation of his probation. We previously issued a notice of proposed summary disposition in which we proposed to affirm. Defendant has filed a memorandum in opposition, which we have duly considered. Because we remain

unpersuaded by Defendant's assertions of error, we uphold the revocation of Defendant's probation.

{2} The pertinent background information was previously set forth. We will avoid undue reiteration here, focusing instead on the content of the memorandum in opposition.

{3} Defendant renews his argument that the State failed to prove that he violated the terms and conditions of his probation by committing the offense of shoplifting. [MIO 5-6] However, as we previously observed, the State met its burden of proof by presenting the eyewitness testimony of the loss prevention officer. [CN 2-3; MIO 2-3] Although Defendant continues to assert that he did not participate in the shoplifting, contending that his girlfriend committed the offense alone, [MIO 6] the district court as finder of fact was not required to credit that testimony. See generally *State v. Sutphin*, 1988-NMSC-031, ¶ 21, 107 N.M. 126, 753 P.2d 1314 ("The fact finder may reject defendant's version of the incident."); *State v. Sanchez*, 1990-NMCA-017, ¶ 10, 109 N.M. 718, 790 P.2d 515 (observing that while acting as the finder of fact at a probation revocation proceeding, the trial court could properly weigh the evidence and the credibility of the witnesses), *abrogated on other grounds by State v. Wilson*, 2011-NMSC-001, 149 N.M. 273, 248 P.3d 315 (2010), *overruled on other grounds by State v. Tollardo*, 2012-NMSC-008, 275 P.3d 110 (2012).

{4} For the foregoing reasons, we affirm.

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

MICHAEL E. VIGIL, Chief Judge

WE CONCUR:

JONATHAN B. SUTIN, Judge

TIMOTHY L. GARCIA, Judge