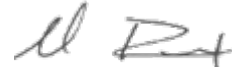


IN THE COURT OF APPEALS OF THE STATE OF NEW MEXICO

Court of Appeals of New Mexico
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Opinion Number: _____

Filing Date: September 28, 2026


Mark Reynolds

No. A-1-CA-41763

STATE OF NEW MEXICO,

Plaintiff-Appellant,

v.

JUSTIN SNEED,

Defendant-Appellee.

APPEAL FROM THE DISTRICT COURT OF CURRY COUNTY

Ben Cross, District Court Judge

Raúl Torrez, Attorney General

Santa Fe, NM

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Albuquerque, NM

for Appellant

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Santa Fe, NM

for Appellee

OPINION

YOHALEM, Judge.

{1} The State appeals the district court's order granting Defendant Justin Sneed's
motion to suppress evidence seized from his residence pursuant to a search warrant.
The State argues that the affidavit for the search warrant submitted to the issuing
judge¹ was sufficient to establish probable cause under the *Aguilar-Spinelli* test² and
the district court erred in finding to the contrary. *See State v. Cordova*, 1989-NMSC-
083, ¶ 17, 109 N.M. 211, 784 P.2d 30 (concluding that the *Aguilar-Spinelli* test best
effectuates the principles behind Article II, Section 10 of the New Mexico
Constitution). We agree with the State that the affidavit provided a substantial basis
to support the issuing judge's finding of probable cause under Article II, Section 10
of the New Mexico Constitution. In addition to supporting the district court's order
suppressing the evidence, Defendant argues in the alternative, that even if this Court

¹The search warrant in this case was issued by Judge Van Soelen in the Ninth Judicial District Court rather than by the magistrate court as stated in the parties' briefs. We therefore refer to the "issuing judge" rather than the "magistrate" or the "magistrate court" throughout this opinion. *See State v. Evans*, 2009-NMSC-027, ¶ 12, 146 N.M. 319, 210 P.3d 216 (concluding that an appellate court's inquiry as to the sufficiency of the factual basis for probable cause "focuses on the *issuing* judge's conclusion as to probable cause," not the reviewing court's conclusion).

²*See Aguilar v. Texas*, 378 U.S. 108 (1964), *abrogated by Illinois v. Gates*, 462 U.S. 213 (1983); *Spinelli v. United States*, 393 U.S. 410 (1969), *abrogated by Gates*, 462 U.S. 213. New Mexico courts use the *Aguilar-Spinelli* test to analyze state constitutional questions regarding the sufficiency of affidavits that rely on an informant's hearsay.

1 concludes that the issuing judge had probable cause to issue the warrant, we should
2 nonetheless affirm the district court's order suppressing the evidence because
3 evidence outside the four corners of the affidavit showed that law enforcement
4 intentionally misrepresented facts and omitted material information from the
5 affidavit. Assuming without deciding that the affidavit includes the deliberate
6 misrepresentations and omissions argued by Defendant, we conclude that the
7 challenged information is not sufficiently material that "had the information been set
8 out or correctly stated in the affidavit, it would have altered a reasonable magistrate's
9 [or issuing judge's] determination of probable cause." *See State v. Donaldson*, 1983-
10 NMCA-064, ¶ 17, 100 N.M. 111, 666 P.2d 1258. Therefore, we conclude on this
11 basis as well that the district court erred in suppressing the evidence seized pursuant
12 to the warrant.

13 **DISCUSSION³**

14 **I. The Affidavit Established Probable Cause to Search Defendant's** 15 **Residence**

16 **A. Standard of Review of Probable Cause to Issue a Search Warrant**

17 {2} We review the question of whether an affidavit establishes probable cause to
18 issue a search warrant under a substantial basis standard of review. *See State v.*
19 *Williamson*, 2009-NMSC-039, ¶ 29, 146 N.M. 488, 212 P.3d 376. "Limiting our

³We describe the pertinent facts in the discussion section as to each issue rather than providing a background section.

1 review to the four corners of the affidavit, we must determine whether the affidavit
2 as a whole, and the reasonable inferences that may be drawn therefrom, provide a
3 substantial basis for determining that there is probable cause.” *State v. Perea*, 2025-
4 NMSC-035, ¶ 14, 578 P.3d 1135 (text only) (citations omitted). “[T]he substantial
5 basis standard of review is more deferential than the de novo review applied to
6 questions of law, but less deferential than the substantial evidence standard applied
7 to questions of fact.” *Williamson*, 2009-NMSC-039, ¶ 30.

8 {3} Under the substantial basis standard, the deference owed by this Court is to
9 the issuing judge or magistrate who authorized the warrant, not to the district court’s
10 ruling on the motion to suppress. *See Perea*, 2025-NMSC-035, ¶ 15 (“A reviewing
11 court should pay great deference to the magistrate’s [or issuing judge’s]
12 determination of probable cause.” (internal quotation marks and citation omitted);
13 *State v. Evans*, 2009-NMSC-027, ¶ 12, 146 N.M. 319, 210 P.3d 216 (“If we conclude
14 that the [issuing judge’s] conclusions as to probable cause were correct, we uphold
15 those conclusions regardless of the decision reached by the district court.”). Our
16 review, however, is not a rubber stamp. *Perea*, 2025-NMSC-035, ¶ 16. The issuing
17 judge’s decision “must be objectively reasonable under all [of] the circumstances.”
18 *See id.* Our careful review for objective reasonableness is “especially important
19 when dealing with the search of a home.” *See id.* (internal quotation marks and
20 citations omitted) “[I]f the factual basis for the warrant is sufficiently detailed in the

1 search warrant affidavit and the issuing court has found probable cause, the
2 reviewing courts should not invalidate the warrant by interpreting the affidavit in a
3 hypertechnical, rather than a commonsense, manner.” *Williamson*, 2009-NMSC-
4 039, ¶ 30 (alteration, internal quotation marks, and citation omitted).

5 **B. The Probable Cause Requirement**

6 {4} Both the Fourth Amendment to the United States Constitution and Article II,
7 Section 10 of the New Mexico Constitution “require probable cause to believe that
8 a crime is occurring or seizable evidence exists at a particular location before a
9 search warrant may issue.” *Williamson*, 2009-NMSC-039, ¶ 14 (internal quotation
10 marks and citation omitted). “The fundamental inquiry is whether there is probable
11 cause to believe there will be evidence of a crime at a particular location.” *Evans*,
12 2009-NMSC-027, ¶ 25 (emphasis omitted). To meet this constitutional requirement,
13 “sufficient facts [must be] presented in [the] sworn affidavit to enable the [issuing
14 judge] to make an informed, deliberate, and independent determination that probable
15 cause exists” to believe that evidence of a crime will be found at the stated location.
16 *State v. Gonzales*, 2003-NMCA-008, ¶ 11, 133 N.M. 158, 61 P.3d 867, *abrogated*
17 *on other grounds by Williamson*, 2009-NMSC-039, ¶ 29.

18 {5} Like the issuing judge, we determine whether there is probable cause
19 exclusively from the affidavit. *See Cordova*, 1989-NMSC-083, ¶ 5. Only
20 information within the four corners of the affidavit is relevant. *See State v. Barker*,

1 1992-NMCA-117, ¶ 2, 114 N.M. 589, 844 P.2d 839 (“Probable cause for issuance
2 of a search warrant must be established from within the four corners of the affidavit
3 tendered in support of the warrant.”).

4 {6} When the evidence in an affidavit that supports probable cause is “hearsay in
5 whole or in part,” as it is in this case, the affidavit must provide sufficient
6 information to show that “there is a substantial basis [(1)] for believing the source
7 of the hearsay to be credible and [(2)] for believing that there is a factual basis for
8 the information furnished” by that source. Rule 5-211(E) NMRA. Rule 5-211(E)
9 codifies the two-part test described in *Aguilar v. Texas*, 378 U.S. 108 (1964),
10 *abrogated by Illinois v. Gates*, 462 U.S. 213 (1983), and *Spinelli v. United States*,
11 393 U.S. 410 (1969), *abrogated by Gates*, 462 U.S. 213. *See Cordova*, 1989-NMSC-
12 083, ¶¶ 7-10. Although the *Aguilar-Spinelli* test has been replaced in the analysis of
13 the Fourth Amendment to the United States Constitution by a “totality of the
14 circumstances” test adopted by the United States Supreme Court in its decision in
15 *Gates*, New Mexico’s state courts continue to apply the *Aguilar-Spinelli* test when
16 deciding questions of state constitutional law. *See Cordova*, 1989-NMSC-083, ¶ 17
17 (concluding that “our present court rules [adopting the *Aguilar-Spinelli* test] better
18 effectuate the principles behind Article II, Section 10 of [the New Mexico]
19 Constitution than does the ‘totality of the circumstances’ test set out in *Gates*”).

1 **1. The Warrant and the Affidavit**

2 {7} The court issued a warrant authorizing a search of Defendant's residence
3 based on a supporting affidavit prepared by Sergeant Sandoval, a law enforcement
4 officer assigned to the Region V Drug Task Force. The warrant authorized officers
5 to search for narcotics and for evidence of drug trafficking, including firearms and
6 other objects commonly used by drug traffickers.

7 {8} The affidavit submitted to secure the search warrant provided the following
8 information attributed to the confidential informant (CI), referred to in the affidavit
9 as "the source":

10 Affiant was made aware of a male identified as [Defendant] who was
11 selling narcotics from his residence In conducting this
12 investigation, affiant used one confidential source. The source is
13 familiar with controlled substances, through extensive association with
14 drug traffickers and users. Source has established their credibility and
15 reliability by providing information that has been independently
16 verified by other sources of information. This source has never relayed
17 inaccurate or dishonest information to law enforcement. In addition, the
18 source has made no less than three controlled purchases of controlled
19 substances. . . . Based on the facts, I believe the source[']s information
20 to be credible and reliable.

21 I was contacted by the source who had information on a drug dealer
22 they identified as [Defendant]. Source told agent within [seventy-two]
23 hours of May 24[,] 2023[,] they observed [Defendant] with a large
24 amount of cocaine in his possession. Source stated [Defendant] had this
25 large amount of [c]ocaine at his residence[,] which was described to be
26 . . . in Clovis[,] New Mexico. Source stated it was in a large lunch bag
27 [that] had cocaine inside of it and it was located in the kitchen above
28 the sink in a cabinet[. S]ource described it to look as though it was
29 possibly [twenty] ounces of cocaine. Source also described [Defendant]

1 to have a firearm in his vehicle[] as well. . . . Source also informed me
2 that [Defendant] does have in his possession a lot of firearms.

3 In addition to this information attributed to the CI, the affidavit included information
4 gathered by law enforcement, including, in relevant part, (1) verification on a police
5 data system that the address provided by the CI was, in fact, Defendant's residence;
6 (2) information from police records that Defendant had been "found guilty of
7 trafficking narcotics[, first] offense in August 2013"; (3) information provided to the
8 affiant, Sergeant Sandoval, by Sergeant Orozco of the Clovis Police Department,
9 "that [Sergeant Orozco] had seen a social media post in the past showing [Defendant]
10 firing a fully automatic AR style firearm"; and (4) Sergeant Sandoval's sworn
11 statements, "In my training and experience it is common for someone to have
12 packaging, digital scales, and finger scales used in the distribution or trafficking of
13 illegal narcotics," and "I know drug traffickers to communicate sales of narcotics
14 through their cellular devices, and keep ledgers of how much they have sold and to
15 who for how much money . . . [and also] I know drug traffickers to be armed so to
16 keep from being robbed of their narcotics or money from the sales of narcotics."

17 {9} Based on this affidavit, the judge issued a warrant to search Defendant's
18 residence for illegal narcotics, narcotics paraphernalia, and for a list of items
19 identified by Sergeant Sandoval in his affidavit as commonly associated with drug

1 trafficking, including firearms. The warrant also authorized the search of
2 Defendant's car for firearms.⁴

3 **2. The *Aguilar-Spinelli* Test for a CI's Hearsay Information**

4 {10} Defendant contends on appeal that the hearsay information provided by the
5 CI and contained in the affidavit does not provide a substantial basis to support the
6 issuing judge's determination that there was probable cause for the issuance of the
7 warrant under the *Aguilar-Spinelli* standard. Defendant argues that the affidavit does
8 not adequately explain the underlying circumstances from which Sergeant Sandoval
9 concluded that the CI was credible or the underlying basis of knowledge supporting
10 the reliability of the CI's information. Defendant also contends that the affidavit fails
11 to establish probable cause for trafficking cocaine and that therefore including
12 firearms, digital scales, and other items relating to trafficking as items subject to
13 search and seizure was not supported by probable cause.

14 {11} The State points in response to similar statements that were found sufficient
15 by our appellate courts to establish probable cause to believe a CI credible, and to
16 establish the basis of knowledge and the reliability of the information conveyed by

⁴Officers executing the warrant found and seized twenty ounces of cocaine in what they described in their inventory as a lunch pail, eleven pistols, three rifles, a shotgun, body armor, loose and boxed ammunition, as well as five digital scales, five cell phones, five boxes of baggies, and other items associated with drug trafficking. All of the items seized (with the exception of a firearm found in a car that was not Defendant's) were found in the residence. No evidence was found in or seized from Defendant's vehicle.

1 the CI. The State argues that the affidavit satisfied both prongs of the *Aguilar-*
2 *Spinelli* test, allowing the issuing judge to find probable cause that evidence of both
3 possession of cocaine and trafficking of cocaine would be found in Defendant's
4 residence.

5 {12} We begin with the first prong of the *Aguilar-Spinelli* test—the requirement
6 that the affidavit show “a substantial basis for believing the [CI]”—referred to as the
7 credibility or veracity prong. *See Cordova*, 1989-NMSC-083, ¶ 11.

8 **3. The Credibility or Veracity Prong**

9 {13} Defendant's challenge to the adequacy of the affidavit to establish the CI's
10 credibility focuses on three alleged shortcomings. Defendant claims that (1) the
11 affidavit failed to disclose to the issuing judge that the CI was a criminal informant,
12 rather than a citizen informant; (2) the affidavit relied solely on the CI's participation
13 with law enforcement in controlled purchases of narcotics; and (3) Sergeant
14 Sandoval's sworn statement in the affidavit that the CI provided information
15 “independently verified by other sources” is meaningless. We are not persuaded by
16 any of these three arguments.

17 {14} First, Defendant's claim that the affidavit failed to disclose to the issuing
18 judge that the CI was a criminal informant is not supported by our review of the
19 affidavit's language. The affidavit describes the CI as someone who “is familiar with
20 controlled substances through extensive association with drug traffickers and users.”

1 It goes on to describe the CI's involvement in several controlled purchases arranged
2 by law enforcement, work that is often performed by criminal informants.
3 Reviewing both this information and the remaining information in the affidavit as a
4 whole, interpreting its terms in a commonsense and realistic fashion, without
5 imposing a requirement of elaborate specificity, as New Mexico precedent directs,
6 we conclude that the issuing judge was adequately informed that the CI was a
7 criminal informant. *See State v. Trujillo*, 2011-NMSC-040, ¶ 19, 150 N.M. 721, 266
8 P.3d 1 (“[R]eviewing courts should not invalidate the warrant by interpreting the
9 affidavit in a hypertechnical, rather than commonsense, manner.” (alteration,
10 internal quotation marks, and citation omitted)).

11 {15} Defendant next argues that the affidavit relies solely on the CI's work with
12 law enforcement making controlled purchases of narcotics. This Court has held in
13 *State v. Vest*, 2011-NMCA-037, 149 N.M. 548, 252 P.3d 772, that information about
14 a CI participating reliably in officer-supervised controlled purchases of drugs is not
15 alone sufficient to satisfy the veracity prong of the *Aguilar-Spinelli* test. *See Vest*,
16 2011-NMCA-037, ¶ 17. The reason a CI's reliable participation in controlled
17 purchases does not alone satisfy the veracity prong is that making a controlled
18 purchase is not sufficiently similar to obtaining and providing law enforcement with
19 information concerning an ongoing crime—the task that must be credibly performed
20 to support the issuance of a search warrant. *See id.* (concluding that information

1 solely about the CI's participation in controlled purchases of narcotics "does not
2 directly bear upon the informant's previous reliability in obtaining and relating
3 information about criminal activity"). The affidavit in this case, however, unlike that
4 in *Vest*, does provide information bearing upon the CI's previous reliability in
5 obtaining and relating information to law enforcement about criminal activity. Much
6 like the affidavit found sufficient to satisfy the credibility prong of the *Aguilar-*
7 *Spinelli* test in *Cordova*, the affidavit in this case states that, "Source has established
8 their credibility and reliability by providing information that has been independently
9 verified by other sources of information," and that "[t]his source has never relayed
10 inaccurate or dishonest information to law enforcement." See *Cordova*, 1989-
11 NMSC-083, ¶ 20.

12 {16} Although the affidavit does not provide detail about the information provided
13 to officers by the CI in the past, our Supreme Court in *Cordova* accepted similar
14 descriptions of a CI's prior reliable performance as sufficient to establish their
15 credibility, concluding that so long as the issuing judge could infer "that the
16 reference to information supplied by the informant in the past involved information
17 that was relevant to a police investigation," the issuing judge's determination of
18 probable cause would not be disturbed. See *id.* The affidavit here, like the affidavit
19 in *Cordova*, was sufficient to create an inference that the information provided by
20 the CI and verified by others related to a criminal investigation. We therefore reject

1 Defendant's claim that the affidavit relied solely on the CI's participation with law
2 enforcement in controlled purchases of narcotics.

3 {17} Finally, we do not agree that Sergeant Sandoval's sworn statement in the
4 affidavit that the CI provided information "independently verified by other sources"
5 is meaningless. When understood in the context of the CI providing information
6 related to a criminal investigation, the statement that the information provided by
7 the CI was "independently verified by other sources," informs the issuing judge that
8 similar information about a crime provided by the CI in the past was credible and
9 reliable. Therefore, we conclude that there is a substantial basis in the affidavit for
10 the issuing judge's determination that the credibility/reliability prong of the *Aguilar-*
11 *Spinelli* test was satisfied. *See Vest*, 2011-NMCA-037, ¶ 18 (recognizing that
12 "minimal details can be sufficient to demonstrate a [CI]'s reliability").

13 **4. The Basis of Knowledge Prong**

14 {18} In applying the second prong of the *Aguilar-Spinelli* test—the basis of
15 knowledge prong—"we ask whether the affidavit provides a substantial basis for
16 concluding the informant[] gathered the information of illegal activity in a reliable
17 fashion." *State v. Haidle*, 2012-NMSC-033, ¶ 23, 285 P.3d 668 (internal quotation
18 marks and citation omitted). This prong "requires that the affidavit include a factual
19 basis for the information furnished, so that the judge [or magistrate] may make an
20 independent determination of probable cause." *State v. Lujan*, 1998-NMCA-032,

¶ 4, 124 N.M. 494, 953 P.2d 29; see Rule 5-211(E) (requiring a substantial basis “for believing that there is a factual basis for the information furnished”).

{19} Defendant argues that the information contained in the affidavit did not satisfy the basis of knowledge prong because the affidavit fails to state clearly: (1) whether the CI saw Defendant with cocaine in his personal, physical possession or just in Defendant’s home, (2) exactly when and why the CI was at Defendant’s home, (3) how the CI knew the cocaine was “in the kitchen above the sink in a cabinet”, (4) if the CI saw guns, (5) whether the CI bought drugs from Defendant or saw Defendant sell drugs to others, (6) how the CI recognized the drugs as cocaine, (7) whether the CI observed objects commonly used for trafficking in Defendant’s house, including scales, cell phones, firearms, cash or other items, and (8) whether the CI recently saw a firearm in Defendant’s car. Defendant also claims that the information that Defendant had been convicted of trafficking nine years previously and the report that a law enforcement officer saw Defendant with a “fully automatic AR style firearm” on Defendant’s social media post does not provide sufficient corroboration to cure any deficit in the affidavit concerning specifically the search for firearms.

{20} The State contends in response that the affidavit allowed the issuing judge to reasonably infer that the CI had first-hand knowledge of the commission of a crime based on CI’s personally observing and describing a large lunch bag filled with approximately twenty ounces of cocaine in a kitchen cabinet above the sink in

1 Defendant's home. According to the State, the CI's description of the cocaine, its
2 specific location, the estimate of the amount, and its unusual packaging and location
3 in Defendant's home is sufficient factual detail from which the issuing judge could
4 reasonably infer that the CI personally observed evidence relating to the commission
5 of both possession and trafficking of a controlled substance on the premises sought
6 to be searched. We agree with the State.

7 {21} Our Supreme Court recently addressed the information necessary to meet the
8 basis of knowledge prong of the *Aguilar-Spinelli* test in its opinion in *Perea*, a case
9 that, much like this one, involved the issuance of a warrant for the search of a home
10 based on a CI's description of observing narcotics in a defendant's home. See 2025-
11 NMSC-035, ¶ 3. Our Supreme Court in *Perea* clarified that the basis of knowledge
12 prong requires reliable evidence of only the two matters essential to establish
13 probable cause for a search: (1) that the items sought to be seized are evidence of a
14 crime, and (2) that the criminal evidence sought "is located at the place to be
15 searched." *Id.* ¶ 17 (internal quotation marks and citation omitted).

16 {22} The Court then turned to examine the factual basis described by the CI to
17 establish these two essential elements. *Perea* concludes that the basis of knowledge
18 prong can be satisfied by the CI's first-hand observation, but emphasizes that mere
19 assurances that the CI personally observed criminal conduct is not sufficient. *Id.*
20 ¶ 23. Even an affidavit based on first-hand observation must include "some of the

1 underlying circumstances from which the informant concluded that the facts were as
2 [they] claimed they were.” *Id.* (emphasis, internal quotation marks, and citation
3 omitted). In other words, it is insufficient for a CI to simply claim that they have
4 first-hand knowledge of a crime; they must provide the specific circumstances,
5 describing the crime they observed and the location of the evidence of that crime.

6 {23} The Court also explained that, on the other hand, an explicit statement
7 confirming that the CI observed the crime in the location claimed is not always
8 required. *See id.* ¶ 24. An affidavit need not state that the CI personally observed the
9 facts described if the CI is otherwise credible and the tip is sufficiently detailed to
10 be self-verifying. *See id.* A tip is self-verifying when it is sufficiently detailed to
11 create a reasonable inference that the information either is based on first-hand
12 observation or based on something that could only be known by someone who is
13 intimately connected with the wrongdoing. *See id.* These requirements allow the
14 issuing judge or magistrate to confirm that the CI’s claims are reliably based on
15 personal knowledge rather than rumor or reputation. *See id.* ¶¶ 25-26.

16 {24} Applying this analysis to the affidavit here, we conclude that the affidavit
17 provided sufficient facts supporting the CI’s personal knowledge of the commission
18 of a crime in Defendant’s home. The issuing judge properly relied on the affidavit,
19 which states, in pertinent part:

20 [W]ithin [seventy-two] hours of [the date the warrant was sought the
21 CI] observed [Defendant] with a large amount of cocaine in his

1 possession. [The CI] stated [Defendant] had this large amount of
2 [c]ocaine at his residence[,] which was described to be . . . in Clovis[,]
3 New Mexico. [The CI] stated it was in a large lunch bag [that] had
4 cocaine inside of it and it was located in the kitchen above the sink in a
5 cabinet[. The CI] described it to look as though it was possibly [twenty]
6 ounces of cocaine.

7 {25} This statement, by its express use of the word “observed,” by the specificity
8 of the description of the unusual location and packaging of the cocaine, and by its
9 description of the amount, establishes that the CI personally observed an illegal
10 substance in Defendant’s home. The affidavit provides enough factual detail to allow
11 the issuing judge to reasonably infer that the CI had personally observed the evidence
12 described, giving the judge “probable cause to believe that a search [of Defendant’s
13 home would] uncover evidence of wrongdoing.” *See Williamson*, 2009-NMSC-039,
14 ¶ 29.

15 {26} In addition to challenging the sufficiency of the information provided by the
16 CI to establish a substantial basis to believe that possession of a controlled substance
17 was occurring in Defendant’s home, we understand Defendant to argue that the
18 terms of the warrant authorizing the seizure of items associated with trafficking—
19 firearms, cell phones, cash—are overbroad because the affidavit failed to establish
20 probable cause for trafficking. Although our Supreme Court in *Perea* recently
21 decided that to support issuance of a search warrant, an affidavit need only establish
22 probable cause to believe that *any crime* is occurring in the location claimed, and
23 need not establish that the highest level of crime claimed is occurring, *Perea* did not

1 address the overbreadth argument made here. *See* 2025-NMSC-035, ¶ 32 n.2 (noting
2 that overbreadth was not argued by the appellant, and would not be considered by
3 the Court).

4 {27} We need not address Defendant’s overbreadth argument in this case either
5 because we conclude that the affidavit established probable cause to believe
6 evidence of trafficking would be found. The affidavit in this case describes in detail
7 the CI’s first-hand observation of the cocaine, naming the specific location where
8 the cocaine was observed (in a kitchen cabinet, over the sink), describing the
9 container holding the cocaine (a large lunch bag), and estimating the amount
10 observed at twenty ounces. The affidavit states that the CI is familiar with controlled
11 substances “through extensive association with drug traffickers and users,” thus
12 providing a basis for the CI’s ability to estimate the amount observed. Sergeant
13 Sandoval describes the amount of cocaine observed by the CI as a “large amount,”
14 which he treats throughout the affidavit as consistent with trafficking. *Cf.*
15 *Donaldson*, 1983-NMCA-064, ¶ 25 (“Proof of possession of a large quantity of a
16 controlled substance, inconsistent with personal use, is sufficient proof of trafficking
17 in a controlled substance.”). Sergeant Sandoval relies on the “large amount” of
18 cocaine to opine, based on his experience and training, that it is likely that there will
19 be digital and finger scales, cellular devices, and ledgers, as well as firearms, all
20 items associated with drug trafficking, found in Defendant’s home. Finally, Sergeant

1 Sandoval reports that police records show that Defendant has a conviction for
2 trafficking in the past. Although such a conviction is not sufficient to establish
3 probable cause, it can be relied on to help corroborate other current evidence. *See*
4 *Vest*, 2011-NMCA-037, ¶ 21 (“[E]ven though information is not sufficient to
5 provide probable cause does not mean that it cannot serve as corroborative
6 information of an informant’s credibility or reliability.”).

7 {28} This affidavit provides a basis in the first-hand observation and personal
8 knowledge provided by the CI, together with the experience and corroborative work
9 of Sergeant Sandoval, for the affidavit’s conclusion that evidence of trafficking is
10 likely to be found in Defendant’s home. The affidavit allows the issuing judge to
11 confirm that the CI’s claims concerning trafficking are reliably based on personal
12 knowledge rather than rumor or reputation. *See Perea*, 2025-NMSC-035, ¶ 26. We
13 therefore agree with the State that the affidavit established probable cause for both
14 possession and trafficking of cocaine.

15 {29} We agree with the issuing judge that both prongs of the *Aguilar-Spinelli* test
16 were satisfied by the affidavit in this case. We therefore affirm the issuing judge’s
17 finding of probable cause and the issuance of the warrant to search Defendant’s
18 home, and reverse the district court’s contrary conclusion.⁵

⁵No evidence was seized from Defendant’s car. We, therefore, do not address Defendant’s argument that the affidavit failed to establish probable cause for the search of his car.

II. Omissions and Misrepresentations in the Affidavit

{30} Defendant next argues that the district court's suppression of the evidence, even if not supported by the four corners of the affidavit, is justified by what Defendant claims are material misrepresentations and omissions of fact by law enforcement made either deliberately or with a reckless disregard for the truth. In making this claim, Defendant relies on precedent both in this Court and in the federal courts allowing a defendant to present evidence or make an offer of proof to the district court to prove that the affidavit that otherwise is sufficient to establish probable cause contains material falsehoods or omissions, and that these falsehoods and omissions were made deliberately or with reckless disregard for the truth by law enforcement. *See Donaldson*, 1983-NMCA-064, ¶ 16; *Franks v. Delaware*, 438 U.S. 154, 155-56 (1978). In addition to establishing that the challenged statements or omissions were made deliberately, or with reckless disregard for the truth, *Donaldson* and *Franks* provide that a defendant must also establish the materiality of the false statements or omissions to the finding of probable cause. *See Donaldson*, 1983-NMCA-064, ¶¶ 16-17; *Franks*, 438 U.S. at 155-56. Statements are sufficiently material to invalidate the search warrant if, "because of their inherent probative force, [they] give rise to a substantial probability that, had the [omitted] information been set out or [had the false information been] correctly stated in the affidavit, it would have altered a reasonable [court's] determination of probable cause."

1 *Donaldson*, 1983-NMCA-064, ¶ 17; see *United States v. Gladney*, 48 F.3d 309, 313
2 (8th Cir 1995) (same).

3 {31} Defendant claims the affidavit was deliberately materially false because it: (1)
4 omitted details about the CI's criminal behavior in the past, and (2) falsely stated
5 that the CI had "observed" Defendant with drugs in his home. Defendant proffered
6 some evidence challenging whether the CI had "observed" Defendant physically in
7 the home, and provided information missing from the affidavit showing that the CI
8 had recent probation violations, had falsified a urine test, and according to Sergeant
9 Sandoval, did "some stupid stuff." This evidence was provided in the context of
10 Defendant's motion to obtain the identity of the CI. Defendant never alleged at the
11 hearing on the identity motion that the misrepresentations were made deliberately or
12 with reckless disregard for their truth by law enforcement. The district court,
13 therefore, made no findings of fact on either the falsity of the statements, the
14 materiality of the omissions, or the deliberate nature of law enforcement's
15 misrepresentations either in the context of the motion to disclose the identity of the
16 CI, or in the context of Defendant's motion to suppress. At most there is a suggestion
17 in some of the district court's findings that the court may have relied on facts outside
18 the affidavit in concluding that the affidavit failed to establish probable cause and in
19 suppressing the evidence seized.

1 {32} Even assuming the challenged statements and omissions in the probable cause
2 affidavit here were found by the district court to be both false and made deliberately
3 or with reckless disregard for the truth by law enforcement, the warrant must be
4 upheld nonetheless unless Defendant establishes that the misrepresentations and
5 omissions are material to the issuing judge's probable cause determination and that
6 the issuing judge would have decided differently had they been aware of the truth.
7 See *Donaldson*, 1983-NMCA-064, ¶¶ 16-17. In other words, Defendant must
8 establish, after removing any false statement, that the affidavit's remaining content
9 is insufficient to establish a substantial basis for the issuing judge's finding of
10 probable cause, see *id.* ¶ 16, or that "the affidavit, if supplemented by the omitted
11 information, could not support a finding of probable cause." See *Gladney*, 48 F.3d
12 at 313 (internal quotation marks and citation omitted). Defendant admits in his brief
13 on appeal that the materiality requirement must be met.

14 {33} We address first Defendant's claim that information about the CI's criminal
15 history and Sergeant Sandoval's statement that the CI "does some stupid stuff" is
16 material to the probable cause determination and, if known to the issuing judge
17 would have altered a reasonable judge's determination of probable cause. Defendant
18 alleges that this information was material to the issuing judge's determination that
19 the CI was credible under the *Aguilar-Spinelli* test.

1 {34} We are not persuaded that this information is material to the credibility prong
2 of the *Aguilar-Spinelli* test. The credibility prong does not require the affidavit to
3 provide or the issuing judge to explore the CI's criminal history and character.
4 Although recognizing that there is no surefire way to determine that a criminal CI is
5 not fabricating information, "[w]e accept past performance as indicia of veracity
6 because of the probability that the uncertain present result will be the same as in the
7 past." *State v. Knight*, 2000-NMCA-016, ¶ 20, 128 N.M. 591, 995 P.2d 1033,
8 *holding limited on other grounds by Williamson*, 2009-NMSC-039, ¶ 29. As we have
9 already determined, the affidavit includes sufficient information about the CI's
10 history of providing reliable information about ongoing crimes to law enforcement
11 to meet the credibility requirement under our precedent, and the omitted information
12 about this CI's criminal past would not undermine this finding.

13 {35} We next address Defendant's claim that the affidavit falsely stated that
14 Defendant physically observed the Defendant in the home when the CI saw the
15 cocaine. We are not persuaded that Defendant's physical presence in the home is
16 material to whether there was probable cause to issue the warrant. We have
17 concluded previously in this opinion that the only information that is material to the
18 issuing judge's finding of probable cause to issue a warrant is information that (1) a
19 crime is occurring, and (2) it is occurring in the location specified. *See Perea*, 2025-
20 NMSC-035, ¶ 17. We note that the warrant issued here was not an arrest warrant

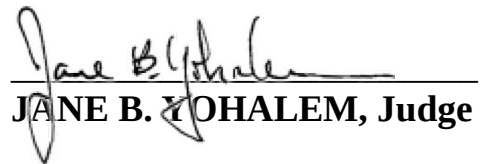
1 directed at a search of Defendant's person and did not require Defendant's physical
2 presence to establish that the crimes of possession and trafficking of cocaine were
3 occurring in the home. Whether Defendant was physically in possession of the
4 cocaine is not material or even relevant to the issuing judge's determination that
5 there was probable cause that a large amount of cocaine would be found in
6 Defendant's home.

7 {36} Even if we assume, without deciding, that the two statements Defendant
8 highlights are deliberate falsehoods, deliberate omissions, or were made with
9 reckless disregard for the truth, we conclude that Defendant cannot show that these
10 falsehoods and omissions, if known to the issuing judge, would have altered the
11 probable cause determination. Therefore, to the extent the district court relied on the
12 evidence or proffer made by Defendant alleging deliberate falsehoods and
13 omissions, it erred in invalidating the warrant and suppressing the evidence seized
14 on this basis.

15 **CONCLUSION**

16 {37} We reverse the district court's decision suppressing the evidence seized by the
17 search of Defendant's home, and remand for further proceedings consistent with this
18 opinion.

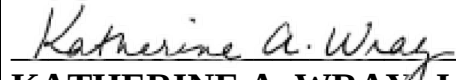
19 {38} **IT IS SO ORDERED.**

20 
21 **JANE B. YOHALEM, Judge**

1 **WE CONCUR:**

2 

3 **ZACHARY A. IVES, Judge**

4 

5 **KATHERINE A. WRAY, Judge**