

1 {1} The State appeals the district court's order suppressing evidence in this case.
2 We issued a notice of proposed disposition proposing to reverse the district court's
3 decision, and Defendant has responded with a memorandum opposing the proposed
4 reversal. Having carefully considered the arguments raised in the memorandum in
5 opposition, we continue to believe that suppression of the evidence in this case was
6 erroneous. Therefore, for the reasons stated below and in our notice of proposed
7 disposition, we reverse.

8 {2} In the notice of proposed disposition we pointed out that the district court
9 specifically found that Defendant consented to the officers' entry into Defendant's
10 hotel room. We also noted that the methamphetamine suppressed by the district court
11 was located in plain view, lying in a pile on a table next to a pipe, and that Defendant
12 admitted the substance was methamphetamine. Under those circumstances we
13 proposed to hold, contrary to the district court's determination, that the officers could
14 seize the methamphetamine without a warrant and field-test it. *See State v. Ochoa*,
15 2004-NMSC-023, ¶ 9, 135 N.M. 781, 93 P.3d 1286 (holding that items may be seized
16 without a warrant if the officer was lawfully positioned when the evidence was
17 observed, and the incriminating nature of the item was immediately apparent).

18 {3} In response, Defendant argues that New Mexico has consistently expressed a
19 preference for a warrant. However, Defendant concedes that exceptions to the warrant

1 requirement exist, including consent and plain view. In addition, he admits that “the
2 substance on the hotel table was in plain view.” [MIO 8] Defendant disagrees,
3 however, with our assertion that the incriminating nature of the evidence was
4 immediately apparent, and that the officers therefore had probable cause to seize the
5 methamphetamine. [MIO 8] Defendant characterizes Officer McCasland’s testimony
6 as saying that while his “experience led him to suspect that the substance on the table
7 was methamphetamine, he could not know for certain unless he first field-tested it.”
8 [MIO 9]

9 {4} However, Officer McCasland’s lack of certainty does not preclude a finding of
10 probable cause; probable cause does not require absolute certainty. *See State v.*
11 *Gonzales*, 2003-NMCA-008, ¶ 12, 133 N.M. 158, 61 P.3d 867. The methamphetamine
12 in this case was lying in a pile on the hotel table, next to a pipe, and Officer
13 McCasland immediately suspected it was contraband as a result of his training and
14 experience. The presence in plain view of this substance resembling contraband, next
15 to an item of paraphernalia commonly used to ingest such substances, coupled with
16 Defendant’s admission that the substance was methamphetamine, provided him with
17 probable cause to seize the substance. *See, e.g., State v. Bomboy*, 2008-NMSC-029,
18 ¶¶ 17, 18, 144 N.M. 151, 184 P.3d 1045 (holding that officer had probable cause to
19 seize methamphetamine found during an automobile stop, and evidence therefore

1 should not have been suppressed, where methamphetamine was contained in baggies
2 that were located in plain view and officer recognized contents as contraband).

3 {5} Since the officers validly seized the methamphetamine, they were also entitled
4 to perform a field test on the substance to confirm Officer McCasland's belief that the
5 substance was contraband. *See, e.g., State v. Rivera*, 2010-NMSC-046, ¶ 19, 148 N.M.
6 659, 241 P.3d 1099 (discussing *United States v. Jacobsen*, 466 U.S. 109 (1984), and
7 its holding that a field test of a substance is not a search subject to the Fourth
8 Amendment)). We note that Defendant has not argued that under the New Mexico
9 Constitution a field test of a substance would be considered a separate search that
10 would be subject to a new and distinct warrant requirement, above and beyond the
11 requirement applied to the initial seizure. We decline to make it on behalf of
12 Defendant. Therefore, we hold that the plain-view exception, which allowed the
13 officers to seize the methamphetamine found on the table, also allowed the officers
14 to perform a field test on that substance.

15 {6} At several places in the memorandum in opposition, Defendant mentioned the
16 fact that he had not been given his *Miranda* warnings when he admitted that the
17 substance on the table was methamphetamine. [MIO 2, 3] However, Defendant did not
18 attempt to develop an argument based on *Miranda*, and we therefore do not address
19 such an argument. *See Headley v. Morgan Mgmt. Corp.*, 2005-NMCA-045, ¶ 15, 137

1 N.M. 339, 110 P.3d 1076 (explaining that we do not review undeveloped or unclear
2 arguments on appeal).

3 {7} Based on the foregoing discussion and on the analysis set out in the notice of
4 proposed disposition, we reverse the grant of Defendant's motion to suppress in this
5 case and remand for further proceedings.

6 {8} **IT IS SO ORDERED.**

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MICHAEL D. BUSTAMANTE, Judge

9 **WE CONCUR:**

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CYNTHIA A. FRY, Judge

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J. MILES HANISEE, Judge