

1 timely memorandum in opposition, which we have duly considered. We remain
2 unpersuaded that our initial proposed disposition was incorrect, and we therefore
3 affirm.

4 **DISCUSSION**

5 {2} Defendant continues to argue in his memorandum in opposition that the search
6 warrant affidavit did not contain sufficient information to establish the confidential
7 informant's basis of knowledge. [MIO 5-6] *See State v. Steinzig*, 1999-NMCA-107,
8 ¶ 17, 127 N.M. 752, 987 P.2d 409 (stating that to support a finding of probable cause
9 the affidavit must establish (1) the informant's "basis of knowledge," and (2) facts
10 showing the informant's "veracity" (internal; quotation marks and citation omitted));
11 *see also* Rule 5-211(E) NMRA (stating that "probable cause" for issuance of a search
12 warrant may be based on hearsay provided there is a substantial basis for believing the
13 source of the hearsay to be credible and for believing that there is a factual basis for
14 the information furnished).

15 {3} We disagree. "Under the 'basis of knowledge' prong of the test, we ask whether
16 the affidavit provides a substantial basis for concluding the informant[] gathered the
17 information of illegal activity in a reliable fashion." *State v. Haidle*, 2012-NMSC-033,
18 ¶ 23, 285 P.3d 668 (internal quotation marks and citation omitted).

19 The basis of knowledge test was satisfied in this case by the confidential informant's
20 statement that he personally observed Defendant in possession of cocaine at his

1 residence in the past seventy-two hours and that he had seen Defendant selling cocaine
2 from his residence in the past. [RP 70-71] *See State v. Montoya*, 1992-NMCA-067,
3 ¶ 14, 114 N.M. 221, 836 P.2d 667 (holding that the basis of knowledge requirement
4 was satisfied where a confidential informant had personal knowledge, through
5 observation, of the defendant’s activities).

6 {4} Defendant argues that affidavit was deficient because it did not specify the
7 specific quantity of cocaine the confidential informant saw or why the informant
8 believed that it was cocaine. [MIO 6] However, the affidavit recites that the
9 confidential informant had participated in controlled buys of narcotics in the past. We
10 therefore believe that the magistrate could reasonably infer that the informant was
11 familiar with cocaine and able to recognize it. [RP 81] *See State v. Lujan*, 1998-
12 NMCA-032, ¶ 10, 124 N.M. 494, 953 P.2d 29 (observing that a controlled buy bears
13 upon the credibility of a confidential informant, insofar as it “reduces the uncertainty
14 and risk of falsehood about the information provided by [an] informant”); *see also*
15 *State v. Rubio*, 2002-NMCA-007, ¶ 8, 131 N.M. 479, 39 P.3d 144 (noting that the
16 confidential informant could be inferred to know what constituted a large amount of
17 cocaine based on evidence showing that he was familiar with cocaine). For these
18 reasons, we affirm the denial of the motion to suppress. Defendant also continues
19 to argue that he was denied due process because the arrest warrant was not served for
20 more than six months after it was issued. [MIO 7-8] In our notice of proposed

1 summary disposition, we indicated that Defendant had not stated in his docketing
2 statement how this issue was preserved below. *See* Rule 12-208(D)(4) NMRA (stating
3 that the docketing statement shall contain a statement of how the issues raised were
4 preserved in the trial court); *see also State v. Varela*, 1999-NMSC-045, ¶ 25, 128
5 N.M. 454, 993 P.2d 1280 (holding that to preserve an issue for appeal, it is essential
6 that a party make a timely objection that specifically apprises the trial court of the
7 claimed error and invokes an intelligent ruling thereon).

8 {5} Defendant has not responded in his memorandum in opposition that this issue
9 was preserved below, and we therefore reject this assertion of error. *See In re Aaron*
10 *L.*, 2000-NMCA-024, ¶ 10, 128 N.M. 641, 996 P.2d 431 (stating that on appeal, the
11 reviewing court will not consider issues not raised in the trial court unless the issues
12 involve matters of jurisdictional or fundamental error). Additionally, to the extent that
13 Defendant's issue can be considered a claim of pre-indictment delay, Defendant has
14 not shown any prejudice due to delay between the issuance of the arrest warrant and
15 his arrest. *See State v. Fierro*, 2014-NMCA-004, ¶ 27, 315 P.3d 319 (stating that a
16 defendant must show prejudice to prevail on a claim of pre-indictment delay).

17 {6} For these reasons, we affirm Defendant's conviction.

18 {7} **IT IS SO ORDERED.**

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LINDA M. VANZI, Chief Judge

1 **WE CONCUR:**

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3 **JONATHAN B. SUTIN, Judge**

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5 **J. MILES HANISEE, Judge**