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1 **IN THE COURT OF APPEALS OF THE STATE OF NEW MEXICO**

2 **STATE OF NEW MEXICO,**

3 Plaintiff-Appellee,

4 v.

NO. A-1-CA-36587

5 **CHRISTOPHER SHAY MENDEZ, JR.,**

6 Defendant-Appellant.

7 **APPEAL FROM THE DISTRICT COURT OF LEA COUNTY**

8 **Gary L. Clingman, District Judge**

9 Hector H. Balderas, Attorney General

10 Santa Fe, NM

11 for Appellee

12 Templeman and Crutchfield

13 Barry C. Crutchfield

14 Lovington, NM

15 for Appellant

16 **MEMORANDUM OPINION**

17 **VANZI, Chief Judge.**

18 {1} Defendant appeals the denial of his motion to suppress. We issued a notice of

19 proposed summary disposition proposing to affirm on October 24, 2017. Defendant

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

4 **DISCUSSION**

5 {2} Defendant continues to argue that the search warrant affidavit was deficient
6 because it did not establish the confidential informant's credibility. [MIO 1] *See State*
7 *v. Steinzig*, 1999-NMCA-107, ¶ 18, 127 N.M. 752, 987 P.2d 409 (stating that a search
8 warrant affidavit must set forth sufficient facts for the issuing judge to independently
9 determine either the inherent credibility of the informants or the reliability of their
10 information); *see also* Rule 5-211(E) NMRA (requiring that when hearsay statements
11 are used to establish probable cause for a search warrant, there must be both a
12 substantial basis for believing the source of the hearsay to be credible and for
13 believing that there is a factual basis for the information furnished).

14 {3} We will uphold an issuing court's determination of probable cause "if the
15 affidavit provides a substantial basis to support a finding of probable cause." *State v.*
16 *Williamson*, 2009-NMSC-039, ¶ 29, 146 N.M. 488, 212 P.3d 376. Probable cause to
17 search a specific location exists when there are reasonable grounds to believe that a
18 crime has been committed in that place or that evidence of a crime will be found there.
19 *See State v. Gonzales*, 2003-NMCA-008, ¶¶ 11-12, 133 N.M. 158, 61 P.3d 867. The
20 degree of proof required to establish probable cause to issue a search warrant is less

1 than a certainty of proof but more than a suspicion or possibility. *State v. Trujillo*,
2 2011-NMSC-040, ¶ 16, 150 N.M. 721, 266 P.3d 1. “A reviewing court should not
3 substitute its judgment for that of the issuing court [but instead should] determine
4 whether the affidavit as a whole, and the reasonable inferences that may be drawn
5 therefrom, provide a substantial basis for determining that there is probable cause to
6 believe that a search will uncover evidence of wrongdoing.” *Williamson*, 2009-
7 NMSC-039, ¶ 29. “[T]he substantial basis standard of review is more deferential than
8 the de novo review applied to questions of law, but less deferential than the substantial
9 evidence standard applied to questions of fact.” *Id.* ¶ 30.

10 {4} Defendant argues that the search warrant affidavit contained no information to
11 show the confidential informant’s credibility, although Defendant’s concedes that the
12 information contained in the affidavit was sufficient to establish the basis of
13 knowledge prong. [MIO 1, 3] We disagree. In this case, the confidential informant’s
14 information that cocaine could be purchased at Defendant’s residence was
15 corroborated by police through a carefully monitored controlled buy, which
16 independently established the information. A controlled buy “bears on the confidential
17 informant’s credibility and thereby addresses both prongs of the *Cordova*
18 (*Aguilar-Spinelli*) test.” *See State v. Lujan*, 1998-NMCA-032, ¶ 10, 124 N.M. 494,
19 953 P.2d 29 (observing that a controlled buy reduces the uncertainty and risk of
20 falsehood about the information provided by the informant); *see also State v. Knight*,

1 2000-NMCA-016, ¶ 20, 128 N.M. 591, 995 P.2d 1033 (recognizing that information
2 independently corroborated by police may import sufficient veracity to a confidential
3 informant); *see also Steinzig*, 1999-NMCA-107, ¶¶ 23-24 (relying on the fact that
4 police officers independently corroborated various aspects of the information given
5 by the informants through investigation and observation as one factor in concluding
6 that the issuing judge could reasonably find that the veracity of the informants had
7 been properly established).

8 {5} Defendant also argues that the search warrant affidavit was deficient because
9 the confidential informant was the only person to identify Defendant as the person
10 selling cocaine during the controlled buy, and Officer Shimer's observations of the
11 controlled buy are not sufficient to establish the informant's credibility. [MIO 2-3] We
12 recognize that police did not independently observe Defendant selling cocaine during
13 the controlled buy. However, the search warrant affidavit did not rely on an
14 identification of Defendant in order to establish probable cause. Officer Shimer's
15 personal observation and monitoring of the controlled buy taking place at Defendant's
16 residence was sufficient to establish probable cause to search the residence, apart from
17 the confidential informant's identification of Defendant. *See State v. Evans*,
18 2009-NMSC-027, ¶ 10, 146 N.M. 319, 210 P.3d 216 (stating that probable cause to
19 search a specific location exists when there are reasonable grounds to believe that a

1 crime has been committed in that place or that evidence of a crime will be found
2 there).

3 {6} For these reasons, we affirm the district court.

4 {7} **IT IS SO ORDERED.**

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6

LINDA M. VANZI, Chief Judge

7 **WE CONCUR:**

8

J. MILES HANISEE, Judge

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EMIL J. KIEHNE, Judge