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

7 **STATE OF NEW MEXICO,**

8 Plaintiff-Appellant,

9 v.

NO. 31,140

10 **SHEENA POWELL,**

11 Defendant-Appellee,

12 and

13 **STATE OF NEW MEXICO,**

14 Plaintiff-Appellant,

15 v.

**No. 31,139
(Consolidated)**

16
17 **FERNANDO RAMIREZ,**

18 Defendant, Appellee.

19 **APPEAL FROM THE DISTRICT COURT OF BERNALILLO COUNTY**

20 **Jacqueline D. Flores, District Judge**

21 Gary K. King, Attorney General

22 Santa Fe, NM

23 Ralph E. Trujillo, Assistant Attorney General

24 Albuquerque, NM

25 for Appellant

1 D. Eric Hannum
2 Albuquerque, NM
3 for Appellee Powell
4 Guadalupe Preciado
5 Albuquerque, NM
6 for Appellee Ramirez

7 **MEMORANDUM OPINION**

8 **VANZI, Judge.**

9 The State has appealed from the district court's orders suppressing the evidence
10 against Defendants Powell and Ramirez for lack of probable cause in obtaining the
11 same search warrant of the same residence shared by Defendants. We issued two
12 notices of proposed summary disposition, proposing to affirm both suppression
13 orders. The State filed a motion to consolidate the appeals, which we granted,
14 consolidating the cases under the case number 31,140. The State filed a memorandum
15 in opposition to our notices. We have considered the State's arguments and remain
16 unpersuaded that there was probable cause to support the search warrant issued by the
17 magistrate judge. We therefore affirm the district court's orders suppressing the
18 evidence against Defendants.

19 On appeal, the State asks whether the district court erred by finding that a
20 concerned citizen's (CC) visit to Defendants' residence pursuant to an ongoing

1 relationship between the two combined with the CC's knowledge that illegal narcotics
2 were at the residence based on the CC's firsthand knowledge was insufficient to show
3 that the CC had the requisite basis of knowledge to justify approval of the search
4 warrant. [DS 6]

5 Focusing on the magistrate judge's finding of probable cause under the
6 substantial basis standard of review, we proposed to hold that the search warrant,
7 based on the hearsay statements of a confidential informant, did not meet the two-
8 pronged *Aguilar/Spinelli* test. See *State v. Evans*, 2009-NMSC-027, ¶ 12, 146 N.M.
9 319, 210 P.3d 216 ("Our inquiry focuses on the issuing judge's conclusion as to
10 probable cause." (emphasis omitted)); *State v. Williamson*, 2009-NMSC-039, ¶ 29,
11 146 N.M. 488, 212 P.3d 376 (overruling in part all previous case law to the extent that
12 the cases applied a de novo rather than substantial basis standard of review); *In re*
13 *Shon Daniel K.*, 1998-NMCA-069, ¶ 9, 125 N.M. 219, 959 P.2d 553 (setting forth the
14 two-pronged *Aguilar/Spinelli* test). We proposed to hold that the affidavit was
15 insufficient because it did not provide the basis for the CC's knowledge or time frame
16 for when the knowledge may have been acquired; and it did not state whether the
17 information relied upon was gathered in a reliable way and contained no facts
18 indicating that the CC was credible or whether the information in the affidavit was
19 accurate and worthy of belief. We also proposed to reject the State's argument that

1 even without an express basis for the CC's knowledge, the corroborating details in the
2 affidavit were sufficient to be self-verifying or to ultimately satisfy probable cause.

3 In its response to our notice, the State disagrees with our reading of the
4 affidavit. [MIO 4] The State does not argue that we have misunderstood the facts or
5 the law; it simply disagrees with our application of the law to the facts and asks us to
6 infer that the CC had personally and recently observed Defendant's large-scale drug
7 trafficking operation from the CC's vague statement that the CC had an ongoing
8 relationship with Defendant Ramirez for six unspecified months. The State also asks
9 us to accept the veracity and reliability of the CC's basis of knowledge based on the
10 anonymous Crimestoppers phone call, containing even less specific but corroborating
11 details, and the officer-affiant's confirmation of the CC's details concerning
12 Defendant Ramirez's vehicle. [MIO 6-8]

13 We have recounted and considered these facts in our notice. We remain
14 unpersuaded that the affidavit "provided . . . sufficient information to permit the court
15 to evaluate (1) the basis for the affiant's and any informant's knowledge indicating the
16 information relied upon was gathered in a reliable way; and (2) facts indicating that
17 the informant or informants are credible or the information in the affidavit is accurate
18 and worthy of belief." *In Re Shon Daniel K.*, 1998-NMCA-069, ¶ 9. Because the
19 affidavit lacked all the necessary detail required for a finding of probable cause for the

1 reasons stated in the notices and in this opinion, we affirm the district court's ruling
2 that the warrant was invalid and the resulting suppression of the evidence.

3 **IT IS SO ORDERED.**

4
5

LINDA M. VANZI, Judge

6 **WE CONCUR:**

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8

CELIA FOY CASTILLO, Chief Judge

9
10

MICHAEL D. BUSTAMANTE, Judge