



IN THE SUPREME COURT OF THE STATE OF NEW MEXICO

STATE OF NEW MEXICO,

Appellee-Respondent,

vs.

S-1-SC-39309

MICHELLE L. PEREA,

Appellant-Petitioner.

APPELLANT-PETITIONER'S REPLY BRIEF

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I. REPLY

Relying on the arguments and authorities already presented in the brief in chief, Michelle Perea offers the following reply to points specifically raised in the State's answer brief.

II. ARGUMENT

A. **The Court of Appeals erroneously reversed the district court's ruling granting Ms. Perea's motion to suppress.**

The State asserts that this Court should affirm the Court of Appeals' memorandum opinion because the Court of Appeals properly distinguished this case from *State v. Belknap*, A-1-CA-35195, mem. op. (N.M. Ct. App. Mar. 6, 2017) (nonprecedential). **[State's AB 18-19]** The State argues that the Court of Appeals correctly concluded that a confidential informant's (CI) first hand observations are *always* sufficient to satisfy the CI's "basis of knowledge." **[State's AB 12-13]** However, the Court of Appeals' misapplied *Belknap* in erroneously concluding that the holding in that case was proper because the defendant was allegedly trafficking marijuana, not methamphetamine as alleged here. *State v. Perea*, A-1-CA-38407, mem. op. ¶ 14, (N.M. Ct. App. Mar. 7, 2022) (nonprecedential). The Court of Appeals also concluded that the CI's first hand observations of methamphetamine automatically satisfied the "basis of knowledge" prong, in further conflict with

Belknap. Perea, A-1-CA-38407, mem. op. ¶ 8.

The State contends that the warrant in *Belknap* failed because the Court of Appeals recognized that the defendant there had a “valid medical marijuana card” and was “authorized to possess and grow a limited amount of marijuana[,]” although those facts were not provided in the affidavit for the search warrant. **[State’s AB 19]** However, those facts were not dispositive of whether the search warrant was supported by probable cause. The *Belknap* Court did not consider that the alleged substance being trafficked was marijuana, which the defendant *may* have legally possessed as a valid medical marijuana card holder, in its review of whether the CI’s statements in the affidavit for the search warrant satisfied the “basis of knowledge” prong sufficient to support probable cause.

An affidavit for a search warrant must state with “particularity the place to be searched and the items to be seized.” *State v. Light*, 2013-NMCA-075, ¶ 22, 306 P.3d 534; U.S. Const. amend. IV. This requirement prevents general searches and ensures that the “search will be carefully tailored to its justifications, and will not take on the character of the wide-ranging exploratory searches the Framers intended to prohibit.” *Maryland v. Garrison*, 480 U.S. 79, 84, 107 S. Ct. 1013. The fact that possession of methamphetamine is illegal does not negate the particularity requirement for search warrants required under the United States Constitution, and does not diminish whether the a CI’s statements satisfy the “basis of knowledge” prong when analyzing whether

probable cause existed to support the issuance of a search warrant.

The affidavit for a search warrant in this case is not supported by probable cause for the same reasons as those in *Belknap*. Irrespective of the substance allegedly being trafficked, both warrants failed to provide how the CI's observations were consistent with his familiarity of the "appearance, packaging methods, pricing, quantity, methods of ingestion, and distribution methods of narcotics." *See Belknap*, A-1-CA-35195, mem. op. ¶¶ 13-14. Moreover, while first-hand observations *may* be sufficient to satisfy the "basis of knowledge" prong, those observations are not *always* sufficient. *See id.* ¶ 11 (concluding that the CI's first-hand observation, alone, was insufficient to satisfy the "basis of knowledge" prong in assessing whether the affidavit for a search warrant was supported by probable cause).

The affidavit in this case failed to establish the basis of the CI's basis of knowledge. The district court properly granted Ms. Perea's motion to suppress and the Court of Appeals erroneously reversed the district court's ruling.

III. CONCLUSION

Ms. Perea respectfully requests this Court reverse the Court of Appeals and affirm the district court's ruling granting Ms. Perea's motion to suppress.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of this pleading was served electronically via Odyssey EFile & Serve to Meryl Francolini (mfrancolini@nmag.gov) at the Attorney General's Criminal Appeals Division this **15th** day of August, 2022.

//S//Carrie Cochran
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