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| STATE V. CONTRERAS |
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STATE OF NEW MEXICO,
Plaintiff-Appellee,
v.
ARTURO CONTRERAS,
Defendant-Appellant.

No. 34,011

COURT OF APPEALS OF NEW MEXICO

August 25, 2015

APPEAL FROM THE DISTRICT COURT OF LUNA COUNTY, Daniel Viramontes,
District Judge

COUNSEL

Hector H. Balderas, Attorney General, Santa Fe, NM. for Appellee

Jorge A. Alvarado, Chief Public Defender, Kathleen T. Baldrige, Assistant Appellate
Defender, Santa Fe, NM, for Appellant

JUDGES

TIMOTHY L. GARCIA, Judge. WE CONCUR: JAMES J. WECHSLER, Judge, CYNTHIA
A. FRY, Judge

AUTHOR: TIMOTHY L. GARCIA

MEMORANDUM OPINION

GARCIA, Judge.

{1} Defendant appeals his conviction for possession of methamphetamine. We issued a calendar notice proposing to affirm. Defendant has responded with a timely memorandum in opposition. We affirm.

{2} Defendant continues to challenge the validity of the arrest warrant on the ground that it did not establish the veracity and basis of knowledge of the confidential informant. See Rule 5-211(E) NMRA. We hold that both knowledge and veracity were established by the successful controlled buys that were executed, and the independent observations of the officer that corroborated the CI(s) statements. Specifically, the affidavit [RP 22-24] provides that the information supplied by the CI was based on first-hand experience, gained by virtue of a direct interaction with Defendant. See *generally State v. Lujan*, 1998-NMCA-032, ¶ 12, 124 N.M. 494, 953 P.2d 29 (observing that when “first-hand knowledge naturally and logically flows from a common-sense reading of the affidavit, that will suffice”). The CI conducted two controlled buys involving Defendant. [RP 23-24] This is sufficient to satisfy the basis of knowledge requirement. See, e.g., *State v. Whitley*, 1999-NMCA-155, ¶ 4, 128 N.M. 403, 993 P.2d 117 (holding that the basis of knowledge requirement was met where, among other considerations, the informant personally observed the defendant); *Lujan*, 1998-NMCA-032, ¶¶ 9, 12 (holding that a controlled buy supplied firsthand knowledge); *State v. Montoya*, 1992-NMCA-067, ¶ 14, 114 N.M. 221, 836 P.2d 667 (holding that the basis of knowledge requirement was satisfied where a confidential informant had personal knowledge, through observation, of the defendant’s activities).

{3} With respect to credibility, the controlled buy supplies strong support for the CI’s credibility. See *generally Lujan*, 1998-NMCA-032, ¶ 10 (observing that a controlled buy bears upon the credibility of a confidential informant, insofar as it “reduces the uncertainty and risk of falsehood about the information provided by [an] informant”); *State v. Steinzig*, 1999-NMCA-107, ¶¶ 23–24, 127 N.M. 752, 987 P.2d 409 (relying on the fact that police officers through investigation and observation independently corroborated various aspects of the information given by the informants as one factor in concluding that the issuing judge could reasonably find that the veracity of the informants had been properly established by the search warrant). As such, we conclude that the district court properly ruled that the affidavit satisfied both the veracity and knowledge requirements.

{4} Defendant continues to challenge the sufficiency of the evidence to support his conviction. [MIO 8] A sufficiency of the evidence review involves a two-step process. Initially, the evidence is viewed in the light most favorable to the verdict. Then the appellate court must make a legal determination of “whether the evidence viewed in this manner could justify a finding by any rational trier of fact that each element of the crime charged has been established beyond a reasonable doubt.” (internal quotation marks and citation omitted) *State v. Apodaca*, 1994-NMSC-121, ¶ 6, 118 N.M. 762, 887 P.2d 756.

{5} In this case, there was testimony that a confidential informant was searched prior to the controlled buys involving Defendant, after which the informant came back with methamphetamine that had been in Defendant’s possession. [MIO 2; RP 23-24] We hold that this was sufficient to support Defendant’s conviction. The jury was free to reject Defendant’s version of events, including his claim [MIO 11] that the CI might have fabricated the controlled buys. See *State v. Sutphin*, 1988-NMSC-031, ¶ 21, 107 N.M.

126, 753 P.2d 1314 (noting that the factfinder is free to reject a defendant's version of events).

{6} The final issue involved an argument that trials counsel was ineffective based upon a failure to perfect the appeal of Defendant's conviction. Defendant agrees that this issue now is moot as his appeal was ultimately perfected. See *State v. Sergio B.*, 2002-NMCA-070, ¶ 9, 132 N.M. 375, 48 P.3d 764 ("An appeal is moot when no actual controversy exists, and an appellate ruling will not grant the appellant any actual relief.").

{7} For the reasons set forth above, we affirm.

{8} IT IS SO ORDERED.

TIMOTHY L. GARCIA, Judge

WE CONCUR:

JAMES J. WECHSLER, Judge

CYNTHIA A. FRY, Judge