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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. 29,870

10 **JERRY B. TRUJILLO, JR.,**

11 Defendant-Appellee.

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

13 **Charles W. Brown, District Judge**

14 Gary K. King, Attorney General

15 Santa Fe, NM

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18 for Appellant

19 Hugh W. Dangler, Chief Public Defender

20 Nancy Hewitt, Assistant Appellate Defender

21 Santa Fe, NM

22 for Appellee

23 **MEMORANDUM OPINION**

24 **BUSTAMANTE, Judge.**

1 The State appeals from the district court’s order granting Defendant’s motion
2 to suppress evidence. This Court’s first notice proposed summary affirmance. The
3 State filed a memorandum in opposition to the proposed disposition. We are not
4 persuaded by the State’s arguments, and affirm the district court.

5 The State argues that the judge who issued the search warrant had more than a
6 substantial basis upon which to find probable cause to search the residence. The State
7 points out that “only a probability of criminal conduct need be shown,” and “[i]t is
8 sufficient if there is evidence from which the fact can properly inferred.” *State v.*
9 *Snedeker*, 99 N.M. 286, 290, 657 P.2d 613, 617 (1982). [MIO 7] The State contends
10 that the affidavit requested the issuance of a warrant to search the residence
11 identified, followed by the officer’s assertion of probable cause to believe the
12 residence contained evidence of a crime. We disagree. While the affidavit did
13 identify the address of the residence where the officer spoke to the victim, and
14 asserted probable cause to believe a crime had occurred, it did not indicate why there
15 was probable cause to believe that the alleged crime occurred at the residence
16 identified.

17 The State further argues that the affidavit indicates that upon arrival at the
18 identified address, the officer spoke to the victim, who lived there with her

1 grandparents and Defendant. [MIO 8] However, that is not entirely accurate. While
2 the affidavit indicates that the victim and her brother were adopted by and were living
3 with her grandmother and step-grandfather, it does not state that the residence where
4 the victim was being interviewed was actually the home of her grandparents, the
5 victim's home, or the place where the crime occurred. Also, although both the
6 victim, and a second alleged victim, indicated that the crimes occurred in the
7 perpetrator's bedroom, and evidence could be found there, there was no indication in
8 the affidavit that the bedroom described was located in the very home where the
9 officers were conducting their investigation. It is not enough that the affidavit assert
10 that evidence of a crime can be found in the residence to be searched. The affidavit
11 must assert facts to establish probable cause for believing why such evidence can be
12 found there. That is the problem with the affidavit in this case; the victim could have
13 been at anyone's residence when the officer interviewed her. It would not be unheard
14 of for a victim or a concerned relative to call the police to another person's home to
15 report the crime, particularly where the alleged sexual perpetrator lived in the victim's
16 home.

17 We hold that the affidavit as a whole, together with reasonable inferences drawn
18 therefrom, did not provide a substantial basis for determining that there was probable

1 cause to believe that the evidence described in the affidavit could be found at the
2 residence identified. *See State v. Williamson*, 2009-NMSC-039, ¶ 29, 146 N.M. 488,
3 212 P.3d 376 (stating the standard of review on appeal); *State v. Rubio*, 2002-NMCA-
4 007, ¶ 5, 131 N.M. 479, 39 P.3d 144 (filed 2001) (“Probable cause for the issuance
5 of a search warrant must be established from within the four corners of the supporting
6 affidavit.”). For these reasons, and those stated in the first notice of proposed
7 summary disposition, we affirm the district court.

8 **IT IS SO ORDERED.**

9
10

MICHAEL D. BUSTAMANTE, Judge

11 **WE CONCUR:**

12

JAMES J. WECHSLER, Judge

14

RODERICK T. KENNEDY, Judge