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STATE V. URIOSTE: A PROSECUTOR’S DREAM AND DEFENDER’S NIGHTMARE

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I. INTRODUCTION

In State v. Urioste,

the New Mexico Supreme Court held that information provided by an anonymous tip was sufficiently corroborated to constitute reasonable suspicion to support an investigatory stop. The Urioste decision was the first New Mexico Supreme Court decision to address whether reasonable suspicion existed to justify an investigatory stop based upon an anonymous tip. As such, Urioste serves as a prime example for illustrating the problems with the New Mexico standard for determining reasonable suspicion based upon an anonymous tip. Specifically, the problem with the New Mexico standard is that New Mexico courts apply the totality of the circumstances to determine whether reasonable suspicion exists.

Law enforcement officers are required to have reasonable suspicion prior to making an investigatory stop; however, it is difficult for a police officer to determine what factors support a finding of reasonable suspicion. Unfortunately, the decision in Urioste does not provide meaningful guidance as to what constitutes reasonable suspicion based upon an anonymous tip under New Mexico law. The

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1. 2002-NMSC-023, 52 P.3d 964.
2. Id. ¶ 8, 52 P.3d at 968.
3. Corroboration occurs when a police officer verifies the informant’s facts. See JOSHUA DRESSLER, UNDERSTANDING CRIMINAL PROCEDURE, § 9.04(D) (3d ed. 2002). It is yet to be determined what constitutes sufficient corroboration. See generally Urioste, 2002-NMSC-023, 52 P.3d 964.
4. Urioste, 2002-NMSC-23, ¶ 17, 52 P.3d at 971.
5. See, e.g., State v. Flores, 1996-NMCA-059, ¶ 10, 920 P.2d 1038, 1042 (information given by an unknown informant provided reasonable suspicion for an investigatory stop once the information was confirmed); State v. Bedolla, 111 N.M. 448, 451, 806 P.2d 588, 591 (N.M. Ct. App. 1991) (information provided by an anonymous Crimestoppers’ tip was not sufficiently corroborated to form the basis of reasonable suspicion because “the corroborated portions of the tip were readily available to any member of the public”); State ex rel. Taxation & Revenue Dep’t v. Van Ruiten, 107 N.M. 536, 539, 760 P.2d 1302, 1305 (N.M. Ct. App. 1988) (information provided by an unidentified eyewitness was sufficient to form a reasonable suspicion that the defendant was driving while intoxicated and justified the investigatory stop). Since Urioste, the New Mexico Court of Appeals has decided another reasonable-suspicion case based upon an anonymous tip. See State v. Contreras, 2003-NMCA-129, ¶ 1, 79 P.3d 1111, 1112 (anonymous tip provided sufficient information for a police officer to form a reasonable suspicion to justify a brief investigatory stop of the defendant to confirm or dispel a suspicion of drunk driving). However, Contreras does not change the analysis of this casenote.
6. See State v. Cardenas-Alvarez, 2001-NMSC-017, ¶ 21, 25 P.3d 225, 233 (“In determining whether reasonable suspicion exists, we examine the totality of circumstances.”); State v. Affsprung, 115 N.M. 546, 549, 854 P.2d 873, 876 (N.M. Ct. App. 1993) (“Reasonable suspicion must be judged by the totality of circumstances.”); State v. Estrada, 111 N.M. 798, 801, 810 P.2d 817, 820 (N.M. Ct. App. 1991) (“In deciding the issue, we examine the totality of circumstances at the time of detention.”). But see State v. Gonzales, 1999-NMCA-027, ¶ 20–26, 975 P.2d 355, 359–60 (the court applied the Aguilar-Spinelli two-pronged test, which includes the basis-of-knowledge prong and the credibility prong, to determine whether reasonable suspicion existed based upon a confidential informant’s tip); State v. Eskridge, 1997-NMCA-106, ¶ 19, 947 P.2d 502, 508 (in this reasonable suspicion case, the court stated, “Defendant correctly points out that the trial court erred by testing the reliability of the tip under the ‘totality of circumstances’ test from Illinois v. Gates,... instead of the two-prong Aguilar-Spinelli test adopted by our Supreme Court in State v. Cordova,...”) (citations omitted).
current approach also risks arbitrarily violating a suspect's Fourth Amendment rights.

This casenote will evaluate the status of New Mexico reasonable suspicion law in light of *Urioste*. It will discuss the factual and procedural issues that brought this case to the New Mexico Supreme Court, the background leading to the court's holding, the rationale of the *Urioste* court, an analysis of its decision, and the implications that this decision will have on future police investigatory stops based upon anonymous tips in New Mexico.

II. STATEMENT OF THE CASE

The facts of this case should concern anyone traveling the roads of New Mexico. They begin with an anonymous tip and end with an investigatory stop that balanced away Rudolfo Urioste's Fourth Amendment protection from an unreasonable search and seizure.8

On November 20, 1997, at approximately 4:30 P.M., the Tucumcari Police Department received information from an unidentified informant9 that a Hispanic male with a long black ponytail would be transporting cocaine from Albuquerque to Tucumcari.10 According to the informant, the suspect would be driving a green, older model Ford Econoline van and was expected to arrive in Tucumcari around 10:30 P.M.11 In addition to the suspect's physical description, vehicle description, direction of travel, time, and day, the tip also provided the suspect's residential address in Tucumcari.12 Around 10:00 P.M., Officer Tony Alvidrez of the Tucumcari Police Department relayed this information to Deputy Greg Greenlee of the Quay County Sheriff's Department.13

Deputy Greenlee was familiar with the Ford Econoline van at the address described.14 He drove to that location and observed that the van was not there.15 Then he went to Interstate 40 and drove west toward Albuquerque.16 At approximately 10:14 P.M., Deputy Greenlee saw a green, older model Ford Econoline van driving toward Tucumcari.17 The deputy turned around to follow the van.18 He verified the make, age, and color of the van, as well as the apparent route of the van as consistent with the earlier tip.19

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9. *Id.* ¶ 2, 7, 52 P.3d at 966–67. The court later concluded that the source of the information came from an anonymous tip instead of a confidential informant. See *id.* ¶ 8, 52 P.3d at 968.
10. *Id.* ¶ 2, 52 P.3d at 966.
11. *Id.*
12. *Id.* (1115 South Fifth Street, Tucumcari).
13. *Id.*
14. *Id.* ¶ 3, 52 P.3d at 966 (“At the suppression hearing, Deputy Greenlee testified that he was familiar with the vehicle at the address described above….”). However, neither the court’s opinion nor Deputy Greenlee’s police report revealed how the deputy was familiar with the van or the address.
15. *Id.*
16. *Id.*
17. *Id.*
18. *Id.*
19. *Id.*
Based upon these consistencies, Deputy Greenlee stopped Rudolfo Urioste, who was driving the van. Since Greenlee had been informed that the driver was allegedly transporting cocaine, he suspected that Urioste might be armed so he asked Urioste to get out of the van and submit to a frisk. Deputy Greenlee also asked Urioste whether he had any guns or drugs in his possession. Urioste denied having guns or drugs. However, he did become "overly excited and was becoming defensive." After Greenlee told Urioste that he was going to pat him down, Urioste "became more excited." Deputy Greenlee attempted to place Urioste's hand on the van, at which point, Urioste ran "around the van and east on the interstate." Despite the fact that Deputy Greenlee yelled for him to stop, Urioste kept running toward a field. Deputy Greenlee eventually caught up with Urioste and placed him under arrest. Urioste was arrested for evading and eluding an officer.

Between midnight and 1:00 A.M., several officers conducted a lengthy search of the area for any contraband that Urioste might have thrown away while running. Although nothing was found at that time, cocaine was discovered in a search conducted the next day.

In addition to being charged with evading and eluding an officer, Defendant Rudolfo Urioste was also charged with possession of cocaine. In district court, Urioste entered into a conditional plea to possession of cocaine, reserving the right to appeal his conviction on the issue of suppression of the physical evidence of cocaine. Urioste argued that the evidence of cocaine should have been suppressed because the information leading to his arrest came from an anonymous tip that was not sufficiently corroborated to establish reasonable suspicion as required by the

20. Id. ¶ 4, 52 P.3d at 966.
21. Id. There is no indication in either the court's opinion or in Deputy Greenlee's police report that Urioste consented to the frisk.
22. Id.
23. Id.
24. Officer G. Greenlee, Police Report, Quay County Sheriff's Dep't, Nov. 20, 1999 [hereinafter Police Report].
25. Id.
27. Urioste, 2002-NMSC-023, ¶ 4, 52 P.3d at 966; see also Police Report, supra note 24 ("[H]e turned into a gate area to enter the field.....").
30. Urioste, 2002-NMSC-023, ¶ 4, 52 P.3d at 966.
31. Id. At approximately 10:00 A.M. on the following day, officers searched the area and found a bag with cocaine in the same area where Urioste had been arrested. Police Report, supra note 24. Urioste later admitted that the cocaine was his. Id. The cocaine weighed nine grams and had a street value of $900.00. Id.
32. Urioste, 2002-NMSC-023, ¶ 4, 52 P.3d at 966.
33. Id. ¶¶ 1, 5, 52 P.3d at 966–67. Cocaine is a controlled substance and possession is prohibited under NMSA 1978, § 30-31-23(D) (2003). Although the Urioste opinion states that Urioste “entered into a conditional plea for possession of a controlled substance contrary to NMSA 1978, § 30-31-23(D) (1990),” Urioste, 2002-NMSC-023, ¶¶ 1, 5, 52 P.3d at 966–67, Deputy Greenlee’s police report states that Urioste was charged with trafficking cocaine. Police Report, supra note 24. Trafficking cocaine is a violation of NMSA 1978, § 30-31-20 (2003). In addition, Deputy Greenlee’s police report indicated that Urioste was also charged with tampering with evidence. Police report, supra note 24. Tampering with evidence is a violation of NMSA 1978, § 30-22-5 (2003). However, there is no indication of what happened with the tampering-with-evidence felony charge.
34. Urioste, 2002-NMSC-023, ¶¶ 1, 5, 52 P.3d at 966–67.
Fourth Amendment. The district court disagreed with the defendant for two reasons: (1) the information came from a confidential informant, not an anonymous informant, and (2) the information from the confidential informant and Deputy Greenlee’s corroboration of that information were sufficient to provide the police with reasonable suspicion of criminal activity.

Urioste petitioned the New Mexico Supreme Court for certiorari after losing both arguments on appeal. The New Mexico Supreme Court granted certiorari and reversed in part and affirmed in part, holding (1) the information supplied to Deputy Greenlee came from an anonymous tip, not a confidential informant, and (2) the anonymous tip was sufficiently corroborated to constitute reasonable suspicion to support the investigatory stop. Thus, the issue raised by the New Mexico Supreme Court’s holding in Urioste is the question of what constitutes reasonable suspicion based upon an anonymous tip.

III. BACKGROUND

To properly understand the significance of Urioste, it is necessary to understand the distinction between information supplied to a police officer from an anonymous informant as opposed to that supplied by a confidential informant. Additionally, it is imperative to understand existing Fourth Amendment law, both federal and state, as it relates to probable cause and reasonable suspicion.

A. Anonymous Informants versus Confidential Informants

There is a distinction between information supplied by an anonymous informant and information supplied by one who is confidential. An anonymous informant is one that is, by definition, unknown. When an informant is unknown to law enforcement, courts are less willing to accept the anonymous informant’s tip because the reputation of that informant cannot be assessed. However, this does not foreclose the acceptance of an anonymous tip. An anonymous tip could provide the reasonable suspicion necessary for an investigatory stop "only if accompanied by specific indicia of reliability." Conversely, a confidential informant is one that is known to law enforcement. When an informant is known to law enforcement, courts are more willing to assign validity to that information because the reputation of the confidential informant can be assessed. Further, it is theorized that confidential informants are less likely to...
lie because they can be held responsible if their allegations turn out to be fabricated.  

In Justice Kennedy’s concurring opinion in Florida v. J.L., he suggests a hybrid type of informant: one who maintains his anonymity while making himself known by virtue of his conduct. According to Justice Kennedy, “a tip might be anonymous in some sense yet have certain other features, either supporting reliability or narrowing the likely class of informants, so that the tip does provide the lawful basis for some police action.” For instance, if “the tip predicts future conduct of the alleged criminal,” it may be more reliable. Another example would be “if an unnamed caller with a voice which sounds the same each time tells police on two successive nights about criminal activity which in fact occurs each night” and then provides a third tip. Similarly, informants can place their anonymity at risk with caller identification and voice recordings.

B. The Fourth Amendment Law Governing Probable Cause and Reasonable Suspicion

The Fourth Amendment of the U.S. Constitution prohibits unreasonable searches and seizures. The Fourth Amendment applies to the states through incorporation of the Fourth Amendment by the Due Process Clause of the Fourteenth Amendment. Therefore, evidence obtained in violation of the Fourth Amendment is subject to the exclusionary rule in both federal and state courts. The Fourth Amendment states:

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

U.S. CONST. amend. IV (emphasis added).

Section One of the Fourteenth Amendment states:

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

U.S. CONST. amend. XIV, § 1.

See DRESSLER, supra note 3, § 5.04(B) (“In very general terms, this rule provides that evidence seized by the police in violation of the Fourth Amendment may not be introduced by the prosecution in a criminal trial of the victim of the unreasonable search or seizure.”).


Amendment requires law enforcement officers to obtain valid warrants, based upon probable cause,\textsuperscript{55} prior to conducting a legal search and/or seizure.\textsuperscript{56} Probable cause means “there is a fair probability that contraband or evidence of a crime will be found in a particular place.”\textsuperscript{57} Probable cause exists when

the facts and circumstances within an officer’s personal knowledge, and of which she has reasonably trustworthy information, are sufficient in themselves to warrant a person of reasonable caution in the belief that: (1) in the case of an arrest, an offense has been committed and the person to be arrested committed it; and (2) in the case of a search, a specifically described item subject to seizure will be found in the place to be searched.\textsuperscript{58}

Since \textit{Illinois v. Gates},\textsuperscript{59} the Supreme Court of the United States determines the existence of probable cause using the totality of the circumstances approach.\textsuperscript{60} In \textit{Gates}, the Court abandoned the \textit{Aguilar-Spinelli} two-pronged test\textsuperscript{61} in favor of the totality of the circumstances approach because the Court found the two-pronged test too “rigid.”\textsuperscript{62} However, in \textit{State v. Cordova},\textsuperscript{63} the New Mexico Supreme Court retained the \textit{Aguilar-Spinelli} two-pronged test over the federal totality of the circumstances approach because the “rigid” application has not proved to be a problem in New Mexico courts.\textsuperscript{64}
Prior to 1967, "'searches' and 'seizures' were all-or-nothing concepts" based on the standard of probable cause. In 1967, the Supreme Court of the United States, in *Camara v. Municipal*, suggested a new and reduced standard for allowing searches and seizures in the context of administrative searches based on something less than probable cause. One year later, in *Terry v. Ohio*, the court extended this new and reduced standard to investigatory stops by law enforcement officers. In doing so, the Court articulated the modern stop-and-frisk doctrine based upon a standard of reasonableness.

C. Reasonable Suspicion: *Terry v. Ohio*

There is no U.S. Supreme Court Fourth Amendment case of greater impact than *Terry v. Ohio* with regard to daily activities of the police and people on the street. *Terry* was a groundbreaking case recognizing that, because "searches and seizures can vary in their intrusiveness," so should the standard for determining when a search and/or seizure is reasonable. Thus, the *Terry* Court introduced "a lesser standard of cause than 'probable cause.'" This lesser standard is now known as "reasonable suspicion."

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65. DRESSLER, supra note 3, § 18.01.
67. DRESSLER, supra note 3, § 18.01 ("In *Camara*, the Justices recognized a different form of 'probable cause,' applicable in administrative-search cases, that is based on the general Fourth Amendment standard of 'reasonableness.'" The Court invoked a balancing test to determine "reasonableness." "[T]he individual's and society's interests in the given type of administrative search were weighed against each other.") (footnote omitted)).
68. 392 U.S. 1 (1968).
69. DRESSLER, supra note 3, § 18.01.
70. Id. ("*Terry* transported *Camara*’s 'reasonableness' balancing test from the realm of administrative searches to traditional criminal investigations, and used it to determine the reasonableness of warrantless searches and seizures, rather than merely to define 'probable cause.'"); see also LAFAVE, supra note 43, § 9.1(d) (noting that, in *Camara*, the Court "adopted a lower standard of probable cause for inspection warrants... Thus, a new Fourth Amendment calculus was brought into being—one which was immediately recognized as pointing the way toward the Court's acceptance of the rationale supporting stop and frisk. The balancing test of *Camara* was quoted and relied upon in *Terry v. Ohio.*").
71. 392 U.S. 1 (1968). In *Terry*, a police officer observed two men pacing and peering in front of a store window and then conferring with each other. A third man approached them and engaged in a brief conversation. After the third man left, the other two men resumed pacing, peering, and conferring for about ten minutes. Then the two men walked off together in the same direction that the third man had taken. The officer found this behavior strange and he suspected that the men were "casing a job, a stick-up." As a police officer, he felt that it was his duty to investigate further. The officer approached the three men, identified himself as a police officer, and asked them for their names. In addition, the officer patted the men down to see whether they had weapons. The officer felt a pistol in the breast pocket of defendant’s overcoat and arrested him for carrying a concealed weapon. Id. at 5–7.
72. DRESSLER, supra note 3, § 18.01 ("In terms of daily activities of the police, as well as the experiences of persons 'on the street,' there is no Supreme Court Fourth Amendment case—not even *Katz v. United States*, [389 U.S. 347 (1967)]—of greater practical impact.") (footnote omitted).
73. Id.
74. It is interesting to note that, despite the fact that the Fourth Amendment protects "against unreasonable searches and seizures," the courts interpret cases in terms of whether the search or seizure was reasonable. See U.S. CONST. amend. IV.
75. DRESSLER, supra note 3, § 18.01.
76. See *Terry*, 392 U.S. at 37 (Douglas, J., dissenting). Justice Douglas first coined the term "reasonable suspicion" in his dissenting opinion. Although the majority and concurring opinions mentioned phrases such as "reasonable cause," "reasonableness," "reasonable grounds," "reasonable caution," "articulable suspicion," and "justifiable suspicion," they never referred to the new reduced standard as "reasonable suspicion." See generally *Terry v. Ohio*, 392 U.S. 1 (1968); see also DRESSLER, supra note 3, § 18.01.
In Terry, the Court upheld a brief stop-and-frisk of the suspects, despite the fact that the officer lacked probable cause to arrest the suspects or to search them.\(^7\) This was the first time the Supreme Court held that a person can be seized shy of an actual arrest.\(^8\) Even though the Court held that the pat-down conducted by the officer was a “serious intrusion” on the defendant’s privacy and, thus, a “search,” it was “something less than a ‘full’ one.”\(^9\)

According to Terry, the central inquiry under the Fourth Amendment is whether the particular governmental invasion of a citizen’s personal security is reasonable under the circumstances.\(^10\) To determine the reasonableness of police conduct:

\begin{quote}

it is necessary “first to focus upon the governmental interest which allegedly justifies official intrusion upon the constitutionally protected interests of the private citizen,” for there is “no ready test for determining reasonableness other than by balancing the need to search (or seize) against the invasion which the search (or seizure) entails.”\(^11\)
\end{quote}

Neutral and detached magistrates must evaluate whether a search or seizure was reasonable on a case-by-case basis in light of the particular circumstances.\(^12\) Judges also must assess the facts against an objective standard: “would the facts available to the officer at the moment of the seizure or the search ‘warrant a man of reasonable caution in the belief’ that the action taken was appropriate?”\(^13\)

After Terry, the Fourth Amendment was no longer limited to “full blown searches”\(^14\) and “formal arrests,”\(^15\) which require probable cause. The Fourth Amendment also prohibits unreasonable “stop-and-frisks,”\(^16\) including brief investigatory stops\(^17\) such as the one at issue. The Terry Court decided “stop-and-frisks” merely require reasonable suspicion.\(^18\)

According to the Supreme Court of the United States:

Reasonable suspicion is a less demanding standard than probable cause not only in the sense that reasonable suspicion can be established with information that is different in quantity or content than that required to establish probable cause,

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\(^7\) Terry, 392 U.S. at 30; see also Dressler, supra note 3, § 18.02.

\(^8\) Dressler, supra note 3, § 18.02.

\(^9\) Id.

\(^10\) Terry, 392 U.S. at 19. It is important to note that “reasonable under the circumstances” differs from “reasonable to procure a search warrant.” See generally Dressler, supra note 3, § 18.01.

\(^11\) Terry, 392 U.S. at 20–21 (quoting Camara v. Municipal Court, 387 U.S. 523, 534–37 (1967)).

\(^12\) Id. at 21.

\(^13\) Id. at 21–22.

\(^14\) A “full-blown search” is a search for evidence of a crime. Id. at 8. This differs from a “frisk” of the outer clothing for weapons. Id.

\(^15\) Terry is the initial stage of a criminal prosecution.” Id. at 26. This differs from an “investigatory ‘stop.’” See id. at 8.

\(^16\) “[T]he police should be allowed to ‘stop’ a person and detain him briefly for questioning upon suspicion that he may be connected with criminal activity. Upon suspicion that the person may be armed, the police should have the power to ‘frisk’ him for weapons.” Id. at 10.


\(^18\) See generally Terry v. Ohio, 392 U.S. 1 (1968). However, “[i]f the ‘stop’ and the ‘frisk’ give rise to probable cause to believe that the suspect has committed a crime, then the police should be empowered to make a formal ‘arrest,’ and a full incident ‘search’ of the person.” Id. at 10.
but also in the sense that reasonable suspicion can arise from information that
is less reliable than that required to show probable cause.89

Law enforcement officers possess reasonable suspicion when they are “‘aware of
specific articulable facts’ that, judged objectively, ‘would lead reasonable person
to believe criminal activity occurred or was occurring.’”90

D. Sufficient Corroboration: Alabama v. White

While Terry v. Ohio provides the background for reasonable suspicion, Alabama
v. White91 provides the background for Urioste’s rationale for determining sufficient
corrobration. In White, the police received an anonymous telephone tip indicating
that Defendant Vanessa White would be leaving 235-C Lynwood Terrace
Apartments at a specific time in a brown Plymouth station wagon with the right
taillight lens broken, and she would be driving to Dobey’s Motel.92 In addition,
the tip indicated that White would be in possession of about an ounce of cocaine inside
a brown attaché case.93 The police immediately went to the Lynwood Terrace
Apartments.94 Upon arrival, the police saw a vehicle matching the caller’s
description in the parking lot in front of the 235 building.95 The police officers
observed White leave the 235 building and then drive off in the station wagon.96
The officers followed the station wagon, which took “the most direct route to
Dobey’s Motel.”97 The police stopped White shortly before she reached the motel.98
White consented to a search, which revealed a locked brown attaché case carrying
marijuana.99 White was arrested for possession of marijuana.100 At the station,
the police found three milligrams of cocaine in White’s purse.101

White was charged with possession of marijuana and cocaine.102 She filed a
motion to suppress, which the trial court denied.103 White then pleaded guilty to
both charges, reserving her right to appeal the denial of her motion to suppress.104

89. Alabama v. White, 496 U.S. 325, 330 (1990); see also Terry, 392 U.S. at 22. The Terry Court
recognized that a law enforcement officer “may in appropriate circumstances and in an appropriate manner
approach a person for purposes of investigating possibly criminal behavior even though there is no probable cause
to make a valid arrest.” Id. Based on reasonable suspicion, an officer can “stop” and briefly detain a suspect to
investigate suspicious behavior. To prove that reasonable suspicion existed to make an investigatory stop, a law
enforcement officer must be able to show a detached and neutral judge “specific and articulable facts which, taken
together with rational inferences from those facts reasonably warrant that intrusion.” Id. at 21; DRESSLER, supra
note 3, § 18.01 (Reasonable suspicion is “a lesser standard of cause than ‘probable cause.’”).
90. Urioste, 2002-NMSC-023, ¶ 6, 52 P.3d at 967 (quoting State v. Pallor, 1996-NMCA-083, ¶ 12, 923
P.2d 599, 600).
92. Id. at 327.
93. Id.
94. Id.
95. Id.
96. Id.
97. Id.
98. Id.
99. Id.
100. Id.
101. Id.
102. Id.
103. Id.
104. Id.
According to the Court of Criminal Appeals of Alabama, the police officers did not have the reasonable suspicion required under *Terry v. Ohio* \(^{105}\) to validate the investigatory stop of White's vehicle. \(^{106}\) Since there were differing views in the state and federal courts over whether an anonymous tip may furnish reasonable suspicion for a stop, the U.S. Supreme Court granted the State’s petition for certiorari. \(^{107}\)

The *White* Court concluded that the tip, standing alone, completely lacked the necessary indicia of reliability. \(^{108}\) However, the totality of circumstances revealed that “significant aspects” of the anonymous tip were suitably corroborated to furnish reasonable suspicion to stop White. \(^{109}\) The Court noted that not every detail mentioned by the caller was verified. \(^{110}\) Ultimately, the Court reversed the Court of Criminal Appeals of Alabama and concluded that the anonymous tip in *White* had been sufficiently corroborated to furnish reasonable suspicion to stop White, \(^{111}\) because “significant aspects of the caller’s predictions were verified” \(^{112}\) and because the anonymous tipster was able to predict White’s “future behavior.” \(^{113}\) Thus, the Court found that the investigative stop in *White* did not violate the Fourth Amendment. \(^{114}\)

**E. Insufficient Corroboration: Florida v. J.L. and State v. Bedolla**

A discussion of *Florida v. J.L.* \(^{115}\) and *State v. Bedolla* \(^{116}\) further informs the analysis of the *Urioste* decision because the *Urioste* court distinguished its facts from both *J.L.* and *Bedolla* in supporting its conclusion. In *J.L.*, “an anonymous caller reported to the Miami-Dade Police that a young black male standing at a particular bus stop and wearing a plaid shirt was carrying a gun.” \(^{117}\) Sometime after the police received the tip, \(^{118}\) two police officers were instructed to respond. \(^{119}\) They arrived at the bus stop about six minutes later and observed three black males “just hanging out.” \(^{120}\) *J.L.*, one of the three males, was wearing a plaid shirt. \(^{121}\) Aside from the anonymous tip, the officers had no reason to suspect criminal activity. \(^{122}\) They did not see a gun, and J.L. made no threatening or unusual movements. \(^{123}\) One

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107. *Id.*
108. *Id.* at 329.
109. *Id.* at 332 (emphasis added).
110. *Id.* at 331.
111. *Id.*
112. *Id.* at 332.
113. *Id.*
114. *Id.* at 331.
115. 529 U.S. 266 (2000).
116. 111 N.M. 448, 806 P.2d 588 (N.M. Ct. App. 1991). Although the *Urioste* court cited several New Mexico cases for various principles, it only made a factual comparison with *Bedolla*. See generally *Urioste*, 2002-NMSC-023, 52 P.3d 964.
117. *J.L.*, 529 U.S. at 268.
118. *Id.* (“[T]he record does not say how long.”).
119. *Id.*
120. *Id.*
121. *Id.*
122. *Id.*
123. *Id.*
of the officers approached J.L. and frisked him.\footnote{124} During the frisk, the officer seized a gun from J.L.'s pocket.\footnote{125} Although there were no allegations made against the other two males, the second officer frisked them and found nothing.\footnote{126}

J.L., who was almost 16 years old, was charged under Florida law "with carrying a concealed firearm without a license and possessing a firearm while under the age of 18."\footnote{127} The trial court granted J.L.'s motion to suppress the gun as the fruit of an unlawful search.\footnote{128}

The U.S. Supreme Court unanimously held that the anonymous tip in J.L. lacked sufficient indicia of reliability to justify a stop.\footnote{129} The officers' suspicion that J.L. was carrying a gun arose solely from an unidentified call made from an unknown location.\footnote{130} The tip was not sufficiently corroborated by the officers' observations and it provided no predictive information.\footnote{131} Therefore, the police had no means to test the informant's knowledge or credibility.\footnote{132} The fact that J.L. actually had a gun was not enough to establish that the police officers had reasonable suspicion prior to the frisks.\footnote{133} The Court held that the investigatory stop-and-frisk in J.L. was unconstitutional and a violation of the Fourth Amendment.\footnote{134}

In Bedolla, law enforcement officers received an anonymous Crimestoppers' tip that two men were selling cocaine out of a room at the Navajo Motel.\footnote{135} According to the informant, one of the men had a purple Nissan pickup truck with California plates.\footnote{136} The officers went to the Navajo Motel and conducted surveillance.\footnote{137} More than an hour after their arrival, a purple Nissan drove up.\footnote{138} Three Hispanic males got out of the truck and went into a motel room.\footnote{139} Some time later, four people came out of the Navajo Motel and got into the purple Nissan and a blue Nissan with California plates.\footnote{140} Both vehicles left the motel.\footnote{141} The police officers followed the purple Nissan for about a quarter of a mile and then stopped the vehicle, despite the fact that the officers had not observed any traffic violations or any signs of criminal activity.\footnote{142} The only reason the officers made the investigatory

\footnotesize{\begin{itemize}
  \item 124. \textit{Id.}
  \item 125. \textit{Id.}
  \item 126. \textit{Id.}
  \item 127. \textit{Id.} at 269.
  \item 128. \textit{Id.}
  \item 129. \textit{Id.} at 274.
  \item 130. \textit{Id.} at 270.
  \item 131. \textit{Id.} at 271.
  \item 132. \textit{Id.}
  \item 133. \textit{Id.} ("The reasonableness of official suspicion must be measured by what the officers knew \textit{before} they conducted their search.") (emphasis added).
  \item 134. \textit{Id.} at 269.
  \item 135. \textit{Bedolla}, 111 N.M. at 449, 806 P.2d at 589.
  \item 136. \textit{Id.}
  \item 137. \textit{Id.}
  \item 138. \textit{Id.}
  \item 139. \textit{Id.}
  \item 140. \textit{Id.}
  \item 141. \textit{Id.}
  \item 142. \textit{Id.}
\end{itemize}}
stop of the purple Nissan was because of the anonymous tip.\textsuperscript{143} They simply “wanted to confirm or dispel the information given by the informant.”\textsuperscript{144}

Despite the fact that officers went to the motel and conducted surveillance for over an hour,\textsuperscript{145} the New Mexico Court of Appeals found that the officers failed to sufficiently corroborate the anonymous tip prior to stopping the suspects after they had left the motel and driven off.\textsuperscript{146} The officers’ investigative work “yielded nothing consistent with criminal behavior and corroborated nothing more of the tip than that the purple Nissan vehicle existed, that it had California tags, and that it was driven by an unidentified person.”\textsuperscript{147}

IV. RATIONALE

As a preliminary matter, the \textit{Urioste} court\textsuperscript{148} was faced with the issue of whether the information that led to \textit{Urioste}'s arrest came from an anonymous informant or from a confidential informant. Defendant \textit{Urioste} argued that it was an anonymous informant rather than a confidential one that provided the tip.\textsuperscript{149} \textit{Urioste} based his argument on Deputy Greenlee’s testimony at the suppression hearing where Deputy Greenlee testified that he himself had received the information from Officer Alvidrez of the Tucumcari Police Department, who had received the information from an unidentified third person.\textsuperscript{150} Although Deputy Greenlee testified that Officer Alvidrez had informed him that the third person was a “confidential informant,” “the State never called Officer Alvidrez to testify concerning whether the information was from a known informant whose reputation could be assessed and who could be held responsible if the allegations turned out to be fabricated.”\textsuperscript{151}

Furthermore, \textit{Urioste} argued that the tip must come from a reliable known source or the details in the tip must be “‘reliable in [their] assertion of illegality, not just in [their] tendency to identify a determinate person.’”\textsuperscript{152}

The State contended that the information came from a confidential informant because there was no evidence indicating that the information supplied came from an anonymous tip.\textsuperscript{153} The State asked the court to presume that a confidential informant provided the information that led to \textit{Urioste}'s arrest.\textsuperscript{154} However, the State failed to present evidence that the information was from a known informant.\textsuperscript{155}

\begin{itemize}
\item \textsuperscript{143} \textit{Id.}
\item \textsuperscript{144} \textit{Id.}
\item \textsuperscript{145} \textit{Id.} at 449, 451, 806 P.2d at 589, 591.
\item \textsuperscript{146} \textit{Id.} at 451, 806 P.2d at 591.
\item \textsuperscript{147} \textit{Id.}
\item \textsuperscript{148} Justice Maes wrote the majority opinion in \textit{Urioste}. \textit{Urioste}, 2002-NMSC-023, 52 P.3d 964. Chief Justice Serna, Justice Baca, and Justice Franchini joined the opinion. \textit{Id}. Justice Minzner dissented and filed a separate opinion. \textit{Id.}
\item \textsuperscript{149} \textit{Urioste}, 2002-NMSC-023, \S 7, 52 P.3d at 967.
\item \textsuperscript{150} \textit{Id.} (emphasis added).
\item \textsuperscript{151} \textit{Id.} \S 8, 52 P.3d at 967–68.
\item \textsuperscript{152} \textit{Id.} \S 7, 52 P.3d at 967 (quoting Florida v. J.L, 529 U.S. 266, 272 (2000) (alterations in original)).
\item \textsuperscript{153} \textit{Id.} \S 8, 52 P.3d at 968. Although the State invoked the “fellow officer rule,” \textit{id.}, it seemed to suggest that it was the defendant’s burden to prove that the tip was from an anonymous informant, rather than the State’s burden to prove that the tip was from a confidential informant. \textit{Id.}
\item \textsuperscript{154} \textit{Id.}
\item \textsuperscript{155} \textit{Id.}
\end{itemize}
The New Mexico Supreme Court disagreed with the lower courts’ findings that the information came from a confidential informant. The court held that, based on these facts, the State should have made a stronger showing to establish that the information came from a confidential informant. Since the State failed to establish that the information was from a reliable informant whose reputation could be assessed or from a known source that could be held responsible if the allegations were false, the court analyzed the source of the information as though it were from an anonymous tip rather than a confidential informant.

After establishing that the information came from an anonymous informant, the court then analyzed whether the information provided was accompanied by “specific indicia of reliability” necessary to find sufficient corroboration to support Greenlee’s investigatory stop. To this end, the court engaged in an analysis of the facts surrounding Deputy Greenlee’s investigatory stop.

In its fact analysis, the Urioste court found that Deputy Greenlee sufficiently corroborated the anonymous tip with his own observations when he took necessary actions to do so. First, Greenlee drove to the suspect’s address and verified that the green Econoline van was not there. Upon corroborating that the van was not at the suspect’s home, Greenlee then drove east toward Albuquerque on Interstate 40 to corroborate the presence of the van on the highway as the tipster had reported. While driving east on Interstate 40, Greenlee observed a green, older model Ford Econoline van driving west toward Tucumcari, just as the informant had described. Further, Deputy Greenlee corroborated that the time the informant said that the van was on the interstate was indeed the time that the informant said it would be there. Based on the court’s analysis of Greenlee’s actions, the court found that Greenlee had sufficiently corroborated the facts provided by the anonymous tipster, thereby supplying the requisite reasonable suspicion to support the investigatory stop.

Since Deputy Greenlee had reasonable suspicion to briefly stop and detain Urioste, the court determined that Deputy Greenlee did not violate Urioste’s Fourth Amendment rights.

To reach its conclusion that the anonymous tip was sufficiently corroborated to justify the investigatory stop, the New Mexico Supreme Court compared the facts of Urioste with two U.S. Supreme Court cases, Alabama v. White and Florida v.

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156. Id.
157. Id.
158. Id.
159. Id.
160. Id. § 17, 52 P.3d at 971.
161. Id. § 3, 52 P.3d at 966.
162. Id.
163. Id.
164. Id.
165. Id. § 17, 52 P.3d at 971.
166. Id.
167. 496 U.S. 325 (1990). In White, an anonymous tip was sufficiently corroborated to form the basis of reasonable suspicion to justify the investigatory stop. Id.
Further, the Urioste court made a factual comparison with State v. Bedolla and recognized that State v. Flores adopted the time-oriented analysis of White. Ultimately, the Urioste court reached its conclusion by analogizing its facts to White and distinguishing them from Bedolla and J.L.

A. The Urioste Court Analogized the Facts of Its Case to the Facts of White

The New Mexico Supreme Court held that Urioste "is nearly identical in all relevant respects to White," insofar as the U.S. Supreme Court held that the anonymous tip in question was sufficiently corroborated to furnish reasonable suspicion for the investigatory stop. Specifically, the Urioste court noted that in both White and Urioste the anonymous tips provided descriptions of the suspects’ vehicles and were sufficiently corroborated by the investigating officers.

In White, the tipster indicated that the suspect would be driving a brown Plymouth station wagon with the right taillight lens broken. The police corroborated this information. Similarly, the Urioste tipster reported that the suspect would be driving a green, older model Ford Econoline van. Deputy Greenlee similarly verified this information.

In addition to the corroboration of the vehicle descriptions, the Urioste court noted that both the Urioste tipster and the White tipster were able to predict the defendant’s future behavior. The court posited that this was the most important factor in establishing whether an officer has reasonable suspicion. Because only a small number of people are generally privy to an individual’s itinerary, it is reasonable for police to believe that a person with access to such information is likely to also have access to reliable information about the individual’s illegal activities. When significant aspects of the caller’s predictions were verified, there was reason to believe not only that the caller...
was honest but also that he was well informed, at least well enough to justify the stop.\textsuperscript{181}

The \textit{Urioste} court noted that in both \textit{Urioste} and \textit{White}, the informants correctly told police the time defendants would be at a certain place and where their movements would be taking them.\textsuperscript{182}

If the tipster can be said to be in on an action that is taken by the suspect in the future, from the point of view of the time the tip is given, then as a matter of law, the asserted illegality can be associated with the prediction so as to increase the reliability of the tip.\textsuperscript{183}

In addition to noting those facts that were corroborated by the officers in both \textit{Urioste} and \textit{White}, the \textit{Urioste} court also observed those facts that were not corroborated by the respective officers. Specifically, the \textit{Urioste} court observed that the exact point of origin and the exact destination of the suspect were not corroborated in either \textit{Urioste} or \textit{White}.\textsuperscript{184}

\textbf{B. The Urioste Court Distinguished Its Facts from the Facts of J.L. and Bedolla}

The \textit{Urioste} court distinguished \textit{Urioste} from \textit{J.L.}, where the U.S. Supreme Court held that the police did not have reasonable suspicion to stop and frisk \textit{J.L.}\textsuperscript{185}

Although anonymous tipsters provided the information in both \textit{Urioste} and \textit{J.L.} that led to the defendants’ arrests, the \textit{Urioste} court concluded that these two cases were different because the anonymous informant in \textit{J.L.} did not provide any information with regard to \textit{J.L.’s} future behavior, whereas the anonymous tipster in \textit{Urioste} did. In addition, the \textit{Urioste} court noted that the tip in \textit{J.L.} did not show that the tipster had knowledge of the concealed criminal activity,\textsuperscript{186} whereas the \textit{Urioste} tipster knew where Urioste’s “movements were likely taking him.”\textsuperscript{187}

In addition to distinguishing its facts from \textit{J.L.}, the \textit{Urioste} court also distinguished its facts from those in \textit{Bedolla}, where the New Mexico Court of Appeals held that the police did not have reasonable suspicion to support their investigatory stop.\textsuperscript{188} According to the \textit{Urioste} court, “[t]here was significantly more corroboration”\textsuperscript{189} in \textit{Urioste}, “including a description of the suspect, his vehicle, its destination, its direction of travel, and the time and day the suspect would be traveling on Interstate 40, to bring it out of the purview of \textit{Bedolla}...”\textsuperscript{190} Instead, the \textit{Urioste} court concluded that \textit{Urioste} fell under the purview of \textit{White}.\textsuperscript{191}
In considering both federal and state case law, the *Urioste* court reached its conclusion by analogizing the facts in *Urioste* to the facts in *White* and distinguishing its facts from both *J.L.* and *Bedolla*. Although the majority of the court agreed with this conclusion, there was a sole dissenter. Justice Minzner dissented and filed her own opinion.

C. Justice Minzner’s Dissent

Justice Minzner concurred with the majority’s decision to analyze the information Officer Alvidrez of the Tucumcari Police Department gave Deputy Greenlee as an anonymous tip.\(^\text{192}\) In addition, Justice Minzner concurred with the majority’s decision to compare the facts of *Urioste* with the facts of *White*\(^\text{193}\) and *J.L.*\(^\text{194}\)

However, Justice Minzner dissented from the majority’s holding that there was sufficient corroboration to establish reasonable suspicion prior to stopping Urioste’s van.\(^\text{195}\) In her opinion, this was an invalid investigatory stop under *Terry v. Ohio*\(^\text{196}\) because Deputy Greenlee stopped Urioste on the highway before he had developed the reasonable suspicion required by the Fourth Amendment.\(^\text{197}\) Specifically, Justice Minzner noted that Deputy Greenlee did not see the driver of the van until after he had stopped Urioste.\(^\text{198}\) In addition, Greenlee did not testify that he recognized the van that he stopped prior to stopping it.\(^\text{199}\)

Justice Minzner also disagreed with the majority’s finding that Deputy Greenlee corroborated the tip because he passed by the residence provided by the tipster and observed that Urioste’s van was not there. According to Justice Minzner, the fact that the van was not at the residence provided by the informant when Deputy Greenlee passed by did not corroborate that the van the deputy later observed on Interstate 40 was the van ordinarily located at that residence.\(^\text{200}\)

Although Justice Minzner agreed with the majority that the *Urioste* tipster predicted “future behavior,”\(^\text{201}\) she noted that Deputy Greenlee failed to corroborate any future behavior, because he stopped Urioste before that future behavior could occur.\(^\text{202}\) Consequently, Justice Minzner concluded that the facts of *Urioste* were analogous to *J.L.* rather than those of *White*.\(^\text{203}\) In analogizing to *J.L.*, Justice

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192. *Id.* ¶ 19, 52 P.3d at 971 (Minzner, J., dissenting).
194. 529 U.S. 266 (2000).
198. *Id.* ¶ 22-23, 52 P.3d at 972 (Minzner, J., dissenting).
199. *Id.* ¶ 22, 52 P.3d at 972 (Minzner, J., dissenting).
200. *Id.*
201. *Id.* ¶ 25, 52 P.3d at 972 (“that an Hispanic male with a long black ponytail who lived at 1115 South Fifth Street in Tucumcari would drive from Albuquerque to Tucumcari at about 10:30 P.M.”) (Minzner, J., dissenting).
202. *Id.* (Minzner, J., dissenting) (“[A]lthough the tip did predict future behavior...prior to the stop Deputy Greenlee only observed facts that were consistent with the tip, rather than confirming that the tipster had predicted the suspect’s movements.”).
203. *Id.* ¶ 29, 52 P.3d at 973 (Minzner, J., dissenting). Justice Minzner also noted that *J.L.* is a more recent opinion and was a unanimous result, whereas *White*, the older opinion, was not. *Id.* ¶ 30, 52 P.3d at 973 (Minzner, J., dissenting).
Minzner concluded that Urioste’s Fourth Amendment rights were violated by the investigatory stop on the highway and, therefore, would have granted Urioste’s motion to suppress the cocaine.

V. ANALYSIS & IMPLICATIONS

The Urioste court’s finding that the tipster in this case was anonymous was a reasonable conclusion based on exclusion when the court found that the State failed to prove that the information came from a known source. However, by analyzing whether this anonymous tipster provided the officer with reasonable suspicion under a totality of the circumstances approach, the Urioste court veered from applicable values held by the New Mexico Supreme Court regarding a person’s right to be free from unreasonable intrusion under article II, section 10 of the state constitution.

Accordingly, this analysis will not focus on whether the Urioste court correctly or incorrectly concluded this case based on one fact or another in comparison to one case or another. Such an analysis would be futile. Because the Urioste court applied the totality of the circumstances approach to reach its conclusion, its conclusion is well supported by cases coming down on either side of the question. Thus, any criticism of the Urioste decision is not with the result itself; rather, it is with the court’s affirmation of the totality of the circumstances approach as the test for determining the sufficiency of corroboration based on an anonymous tip in reasonable suspicion cases. This analysis focuses on the concerns inherent in relying upon an anonymous tip as the basis of reasonable suspicion for investigatory stops, including the tensions it creates between an individual’s right to be free from unreasonable detention, law enforcement’s need to use discretion to get its job done, and the judiciary’s need to use its judgment when deciding cases.

By reasoning that the tipster was unknown to law enforcement, the court reasonably found that both the tipster’s reliability and credibility were at issue. However, by applying the traditional post hoc totality of the circumstances approach, the Urioste court missed an opportunity to provide any sort of real framework for determining how to analyze the basis of knowledge and veracity of an anonymous tip to form the basis of reasonable suspicion. This opportunity was well within the grasp of the Urioste court. Specifically, the Aguilar-Spinelli two-pronged test

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204. Id. ¶ 19, 52 P.3d at 971 (Minzner, J., dissenting).
205. Id.
206. See Cordova, 109 N.M. at 213, 784 P.2d at 31 n.1 (rejecting the Gates totality of the circumstances approach and retaining the Aguilar-Spinelli two-pronged test based on an interpretation of the New Mexico Constitution, article II, section 10); N.M. CONST. art. II, § 10 (“The people shall be secure in their persons, papers, homes and effects, from unreasonable searches and seizures, and no warrant to search any place, or seize any person or thing, shall issue without describing the place to be searched, or the persons or things to be seized, nor without a written showing of probable cause, supported by oath or affirmation.”).
207. See Urioste, 2002-NMSC-023, ¶ 7, 52 P.3d at 967.
208. See DRESSLER, supra note 3, § 9.04 (explaining that Aguilar v. Texas, 378 U.S. 108 (1964), first stated the two-pronged test for determining the trustworthiness of informant’s information, which includes the “basis of knowledge” prong and the “veracity” prong while Spinelli v. United States, 393 U.S. 410 (1969), explained the two prongs by asking (1) “How did the informant get the information?”; and (2) “Why should I (the magistrate) believe the person?”). The two-prong test basically seeks to determine the informant’s credibility and reliability. Id.
speaks directly to this concern. The first prong questions the informant’s "basis of knowledge" or credibility. Once the credibility has been established, the second prong seeks to determine the "veracity" or reliability of the information provided.

Although the New Mexico courts apply the Aguilar-Spinelli two-pronged test to determine the "basis of knowledge" and "veracity" of anonymous informants in probable cause cases, the Urioste court chose to affirm a less objective approach in reasonable suspicion cases. However tempting it may be to accept the Urioste court’s perpetuation of the totality of the circumstances approach in New Mexico, it is ill-advised to do so.

One could reason that, because probable cause is a higher standard than reasonable suspicion, it should follow that accountability for ensuring probable cause should also be higher. However, this reasoning is shortsighted and never gets to the core of this issue. As a starting point, the Fourth Amendment protects an individual’s right to privacy against unreasonable searches and seizures. Furthermore, in Terry, the Supreme Court of the United States held that cases involving reasonable suspicion also implicate an individual’s Fourth Amendment rights. The policy underpinning Fourth Amendment jurisprudence is an individual’s right to be free from unreasonable intrusion. Thus, the values underpinning an individual’s Fourth Amendment rights remain the same under both probable cause and reasonable suspicion.

In circumstances that require the lower standard of reasonable suspicion, the Urioste court upholds the use of sufficient corroboration based on the totality of circumstances approach to determine whether an anonymous tipster is reliable and credible. Unlike the Aguilar-Spinelli two-pronged test, which provides a meaningful structure for magistrates to determine the reliability and credibility of an anonymous tipster before issuing any warrant, the sufficient corroboration based on totality of the circumstances approach fails to provide a similarly objective measure to assist officers in their decision-making process. Thus, unlike the Aguilar-Spinelli two-pronged test applied by a magistrate in probable cause

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209. See Cordova, 109 N.M. at 212, 784 P.2d at 31 n.1 (retaining the two-pronged Aguilar-Spinelli test for probable cause determinations and noting that "[b]ecause our holding today is based on our interpretation of the New Mexico Constitution, we do not consider as controlling the principles announced in Gates or the other federal precedents cited in the body of this decision, albeit the reasoning of those opinions informs our results"); see also State v. Eskridge, 1997-NMCA-106, ¶ 19, 947 P.2d 502, 508 ("Our Supreme Court in Cordova retained a two-prong test first articulated (and later abandoned) by the United States Supreme Court to ensure the trustworthiness of an informant’s tip before that tip can be used as probable cause in support of a search warrant.").

210. See supra note 6.

211. See U.S. Const. amend. IV ("The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.").

212. See Terry, 392 U.S. at 16–20 (holding that the Fourth Amendment applies to stop-and-frisk and investigatory stops).

213. See generally id. (discussing investigatory stops and stop-and-frisks that require the reasonable suspicion approach).

214. See generally Urioste, 2002-NMSC-023, 52 P.3d 964.

determinations, the totality of the circumstances approach provides little protection against a police officer's unreasonable investigatory stop in the first instance. Consequently, it is anomalous that the New Mexico courts apply the Aguilar-Spinelli two-pronged analysis to probable cause while applying the totality of circumstances approach to reasonable suspicion. Specifically, by applying the totality of the circumstance approach to cases in which police officers make the determination of reasonableness in the first instance, the Urioste court provides lesser protections to individuals in a situation where it should provide greater protections.

Further, and most importantly, by engaging in an exercise of factual comparisons in an effort to analyze the totality of circumstances particular to one case, the Urioste court lost sight of those principles relied upon by the New Mexico Supreme Court in deciding probable cause cases under article II, section 10 of the New Mexico Constitution. Thus, while the New Mexico Supreme Court has chosen to provide broader probable cause protections by explicitly rejecting the totality of the circumstances approach and retaining the Aguilar-Spinelli two-pronged test, the Urioste court did not apply its same guiding principles to an individual's rights under the reasonable suspicion standard.

In affirming the totality of the circumstances approach, the Urioste court failed to recognize that whether a court sits in judgment of the reasonableness of probable cause or whether it sits in judgment of the reasonableness of reasonable suspicion, the principles underpinning either are nonetheless the same. Thus, these principles should resonate with equal force when a New Mexico court sits in judgment over whether a magistrate validly issued a search warrant under the probable cause standard or whether an officer had reasonable suspicion when acting upon an anonymous tip for purposes of an investigatory stop. Consequently, the Urioste court should have been just as willing to reject the totality of the circumstances approach for reasonable suspicion and, instead, apply the Aguilar-Spinelli test in determining the issue before it.

The Aguilar-Spinelli test enunciates a better-reasoned and structured test to determine whether information from an anonymous tip is reliable and credible. Further, it provides meaningful guidance to law enforcement officers who must make on-the-spot decisions. Moreover, New Mexico courts will be better situated

216. See Cordova, 109 N.M. at 213, 784 P.2d at 32.
217. See N.M. Const. art. II, § 10.
218. See Cordova, 109 N.M. 211, 784 P.2d 30 (1989). New Mexico must provide at least the same amount of protection for criminal defendants as the U.S. Constitution provides. However, New Mexico can also provide greater protection, if it chooses to do so. Fundamental to our federal system of government is that "state courts are absolutely free to interpret state constitutional provisions to accord greater protection to individual rights than do similar provisions of the United States Constitution." Arizona v. Evans, 514 U.S. 1, 8 (1995); see also Goodridge v. Dep't of Pub. Health, 798 N.E.2d 941, 967 (Mass. 2003) ("The genius of our Federal system is that each State's Constitution has vitality specific to its own traditions, and that, subject to the minimum requirements of the Fourteenth Amendment, each State is free to address difficult issues of individual liberty in the manner its own Constitution demands."); State v. Gutierrez, 116 N.M. 431, 863 P.2d 1052 (1993). In Gutierrez, the court provided broader protections under article II, section 10 of the New Mexico Constitution by holding that the good-faith exception to the federal exclusionary rule was incompatible with state constitutional protections.
219. See generally Hawthorne, supra note 215.
to evaluate whether the police had reasonable suspicion prior to the investigatory stop at issue.

In the case of Mr. Urioste, the New Mexico Supreme Court concluded that, based on the totality of the circumstances, the anonymous tip had been “sufficiently corroborated” because the tip was reliable. Consequently, the Urioste court found reasonable suspicion for the investigatory stop. Had the court used the Aguilar-Spinelli test, the Urioste court may or may not have reached a different conclusion. However, application of the more objective Aguilar-Spinelli test would at least provide against reasonableness determinations based on nothing more than one court’s assessment of the facts and a flip of the coin.

It is long accepted that the courts and police officers have discretion to determine probable cause and reasonable suspicion based on the totality of the circumstances approach. However, the Aguilar-Spinelli test would provide our police officers with a better mechanism for determining whether they should act on an anonymous tip in the first instance. Further, if an individual officer’s actions are brought into question, the Aguilar-Spinelli test will provide our courts, in the second instance, with a more objective way to determine whether reasonable suspicion indeed existed. Adoption of this framework coincides with the values underpinning New Mexico’s standard for determining probable cause. Moreover, it would likely lead to better accountability of decision makers, predictability in the law, and efficiency.

Since the New Mexico courts are more protective of individual liberty and equality than the federal courts in terms of probable cause, they should also demand broader protection for fundamental rights when evaluating reasonable suspicion. The Aguilar-Spinelli two-pronged test retained in Cordova provides more

220. Urioste, 2002-NMSC-023, ¶ 6, 10, 17, 52 P.3d at 967, 968, 971.
221. The Urioste court concluded that Urioste and White were “nearly identical in all relevant respects.” Id. ¶ 15, 52 P.3d at 970. However, the reason why the Urioste court chose to analogize its facts with White and to distinguish them from J.L. and Bedolla is unconvincing. The court could have chosen to go either way and its reasoning is unclear. Similarly, the court could have decided Urioste in line with another New Mexico case.
guidance to police officers and jurists because it provides a more structured test than the totality of circumstances approach. Therefore, it can be seen that the Urioste court not only missed out on an opportunity to clarify a less than clear area of the law, it also ignored its own philosophy when failing to reject the totality of the circumstances approach as an adequate test to determine the reliability and credibility of an anonymous tipster in the context of reasonable suspicion. Instead, the Urioste court acquiesced to the federal totality of the circumstances approach and perpetuated existing New Mexico jurisprudence with regard to reasonable suspicion. Its failure to adopt the Aguilar-Spinelli two-pronged test over the federal totality of the circumstances approach is disconcerting and not in line with Cordova.

VI. CONCLUSION

Urioste is the first New Mexico Supreme Court case to address reasonable suspicion based upon an anonymous tip. In affirming the totality of the circumstances approach to form the basis of reasonable suspicion, the Urioste court missed an opportunity to clarify New Mexico jurisprudence and follow its reasoning set forth in Cordova. By perpetuating the more flexible totality of circumstances approach in determining reasonable suspicion, there is a potential risk that the Fourth Amendment right to privacy will soon be eroded. Hopefully, the next time the court is faced with this issue, it will take a stronger position to coincide with its reasoning in Cordova, adopt the Aguilar-Spinelli two-pronged test for reasonable suspicion determinations based upon anonymous tips, and add clarity to New Mexico jurisprudence. Until the New Mexico Supreme Court decides to reject the totality of the circumstances approach in favor of the Aguilar-Spinelli two-pronged test, Urioste will remain a prosecutor’s dream case and a defense attorney’s nightmare.

225. For synonyms of “jurists,” see William C. Burton, Legal Thesaurus 304 (1980).
226. See White, 496 U.S. at 328-29 (describing the difference between the totality of circumstances approach and the Aguilar-Spinelli test and indicating that the totality of circumstances approach requires a “lesser showing”); see generally Hawthorne, supra note 215.
227. See supra note 222.
228. See supra note 6.