

DISSENTING OPINION OF ACOBA, J.,

I dissent and would uphold the circuit court's suppression of the evidence. In my view, the first prong of the Aguilar v. Texas, 378 U.S. 108, 114 (1964) test ("some of the underlying circumstances from which the informant concluded that the narcotics were where he [or she] claimed they were") was not satisfied. The mere statement that the confidential informant observed the drugs at the residence of Defendant-Appellee Kelly Moniz (Defendant) did not set forth any facts so as to evaluate the basis of that observation. The affidavit must set forth an "adequate basis for the informer's conclusion regarding the location of the objects sought to be discovered[.]" State v. Navas, 81 Hawai'i 29, 36, 911 P.2d 1101, 1108 (App. 1995), aff'd, 81 Hawai'i 113, 913 P.2d 976 (1996). The affidavit does not indicate the circumstances under which the informant had made the observation. The affidavit does not reflect that the informant personally observed Defendant use, sell, or in actual possession of methamphetamine. See State v. Kanda, 63 Haw. 36, 44, 620 P.2d 1072, 1078 (1980) (first prong of Aguilar test was not satisfied where "affidavits fail to state that any of" defendants "were observed accepting bets, transmitting information to or collecting money for the house, or paying the winners"); cf. State v. Delaney, 58 Haw. 19, 22, 563 P.2d 990, 992 (1977) (first prong of Aguilar test was met where informant "witnessed a sale involving hashish" between defendant and unidentified buyer, and

sale was made in informant's "presence"). The affidavit does not indicate where in the residence the informant had observed the methamphetamine. The only information that Hawai'i County Police Department Officer Daryl Fernandez (Officer Fernandez) included in his affidavit is that he personally confirmed the informant's description of the location of the residence and the exterior appearance of the location was accurate. However, the affidavit failed to indicate that Officer Fernandez made any attempt to ascertain who actually resided in the "trailer type home" or owned the premises upon which it was situated.¹

¹ According to the informant, Defendant's "trailer type home" was situated behind a house, and Defendant's parents owned the lot upon which both the house and the trailer were located.