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Division II
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NO. 53420-7-II

**COURT OF APPEALS, DIVISION II
OF THE STATE OF WASHINGTON**

STATE OF WASHINGTON,

Respondent,

v.

CORY N. MASON,

Appellant.

REPLY BRIEF OF APPELLANT,
CORY N. MASON

ON APPEAL FROM THE SUPERIOR COURT OF THE
STATE OF WASHINGTON FOR PIERCE COUNTY
THE HONORABLE KITTY-ANN VAN DOORNINCK, JUDGE

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I. ARGUMENT IN REPLY

Cory Mason was pulled over for driving with broken taillights. Ex. 1 at 14. He provided the officer, Deputy Fry, with a facially valid license. *Id.* Mr. Mason also told the officer that he got a letter from DOL stating that his license was suspended. *Id.* Deputy Fry placed Mr. Mason under arrest and searched him, finding contraband. *Id.* Deputy Fry placed Mr. Mason in the back of his patrol car. *Id.* at 15. He then completed a records check on his computer. *Id.* The records check revealed that Mr. Mason's license was not suspended. *Id.*

This Court must reverse and remand because Mr. Mason was arrested and searched without probable cause. A warrantless search incident to arrest must be preceded by a valid custodial arrest based on probable cause. *State v. O'Neill*, 148 Wn.2d 564, 587, 62 P.3d 489 (2003). Here, Deputy Fry based the arrest on information supplied by Mr. Mason. Ex. 1 at 14. However, this information failed to satisfy the veracity prong of the *Aguilar-Spinelli* test.¹

Courts apply the two-prong *Aguilar-Spinelli* test when the existence of probable cause depends on information supplied by an informant. *State*

¹ *Spinelli v. United States*, 393 U.S. 410, 89 S.Ct. 584, 21 L.Ed.2d 637 (1969); *Aguilar v. Texas*, 378 U.S. 108, 84 S.Ct. 1509, 12 L.Ed.2d 723 (1964).

v. McCord, 125 Wn. App. 888, 893, 106 P.3d 832 (2005) (citing *State v. Cole*, 128 Wn.2d 262, 287, 906 P.2d 925 (1995)). The knowledge prong requires establishing the basis of the informant’s information. *Id.* at 892. The credibility, or veracity, prong requires establishing the reliability of the informant. *Id.* at 892-93. “The veracity prong is satisfied by showing the credibility of the informant or by establishing that the facts and circumstances surrounding the furnishing of the information support an inference the informant is telling the truth.” *Id.* at 893. When police encounter a deficiency in either prong, “independent police investigation” can corroborate the information and cure the deficiency. *Id.*

Division III examined the veracity prong of the *Aguilar-Spinelli* test in *McCord*, 125 Wn. App. 888. In that case, citizen informants reported that Mr. McCord was selling drugs. *Id.* at 891. Police arrested Mr. McCord based on their information. *Id.* Police later obtained a search warrant and found a firearm under a mattress. *Id.* at 891-92. Mr. McCord was tried and convicted of unlawful possession of a firearm. *Id.* at 892.

The *McCord* Court reversed, finding that the application for a search warrant did not establish the credibility of the informants. *Id.* at 893. The police investigation only corroborated “innocuous facts” from the informants’ story. *Id.* at 894. The investigation thus “did not cure the defect in showing the [informants’] reliability.” *Id.* Mr. McCord also challenged

the validity of his arrest. *Id.* The Court held that “[b]ecause the informants’ veracity was not established, the police did not have the authority to arrest Mr. McCord.” *Id.*

Here, the state argues that Mr. Mason’s statement met the veracity prong because it was against his interest. Response at 3-4. This argument ignores the fact that Mr. Mason supplied two conflicting pieces of information to police. Mr. Mason told Deputy Fry that he got a letter from DOL stating his license was suspended. Ex. 1 at 14. But he also provided a facially valid driver’s license to Deputy Fry, contradicting his own statement. *Id.*

Deputy Fry faced contradictory and thus unreliable information in this case. Mr. Mason’s statement did not meet the veracity prong of the *Aguilar-Spinelli* test because it contradicted his facially valid driver’s license. Under these circumstances, Deputy Fry could have investigated to cure the deficiency. *See McCord*, 125 Wn. App. at 293. All he needed to do was complete a quick records check in his patrol car. Instead, he arrested Mr. Mason and only investigated after the arrest. Ex. 1 at 14.

Probable cause did not support this arrest, violating Mr. Mason’s constitutional rights. *See State v. Gaddy*, 152 Wn.2d 64, 70, 93 P.3d 872 (2004) (warrantless searches incident to arrest must be supported by probable cause). This Court should suppress all evidence acquired incident

to this arrest. *State v. Duncan*, 146 Wn.2d 166, 176, 43 P.3d 513 (2002) (“The exclusionary rule mandates the suppression of evidence gathered through unconstitutional means.”).

II. CONCLUSION

Mr. Mason respectfully requests that this Court reverse his conviction and remand.

RESPECTFULLY SUBMITTED this 16th day of January, 2020.



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CERTIFICATE OF SERVICE

I, Stephanie Taplin, declare under penalty of perjury under the laws of the State of Washington that the following is true and correct to the best of my knowledge:

On January 16, 2020, I electronically filed a true and correct copy of the **Reply Brief of Appellant, Cory N. Mason**, via the Washington State Appellate Courts' Secure Portal to the Washington Court of Appeals, Division II. I also served said document as indicated below:

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