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Court of Appeals
Division II
State of Washington
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NO. 53420-7-II

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

STATE OF WASHINGTON,

Respondent,

v.

CORY N. MASON,

Appellant.

Appeal from the Superior Court of Pierce County
The Honorable Kitty-Ann van Doorninck

No. 18-1-00114-7

BRIEF OF RESPONDENT

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I. RESTATEMENT OF THE ISSUES

- A. Whether probable cause supported appellant's arrest.
- B. Whether petitioner's statement that his license was suspended satisfied the veracity prong of the *Aguilar-Spinelli* test.
- C. Whether petitioner's statement that his license was suspended satisfied the basis of knowledge prong of the *Aguilar-Spinelli* test.

II. STATEMENT OF THE CASE

The undisputed facts are related by Deputy Fry in his report, admitted as Exhibit 1. CP 33-36; 4/1/19 VRP 6.

On 1-4-18 at 2349 hrs, I was on 138th Ave Kpn at SR 302. I saw the listed vehicle, WA #B10391L, travelling west on SR 302. As it went by, I saw that it did not have any working tail lights. I turned to catch up to the vehicle as it quickly turned north onto 140th Ave Kpn. As I got behind the vehicle, I saw that it had expired registration tbs; 10/17. I activated my emergency lights to stop the vehicle. It slowed, but continued almost two blocks on the residential street before stopping.

I contacted the driver, (A) Mason. I explained to Mason why I had stopped him. I asked him for his driver's license. He handed me a WA Driver's license. Mason then told me his license was suspended. He added that he had received a letter in the mail reference his failing to pay a fine.

Exhibit 1, page 14. The parties agreed that appellant (hereinafter defendant) told the investigating deputy that the letter he had received was "from DOL." CP 34.

Deputy Fry then placed defendant under arrest, handcuffed him, and searched him. *Id.* Methamphetamine was found. Exhibit 1, page 14-15. It

was determined after the methamphetamine had been found that defendant's driver's license was not suspended. Exhibit 1, page 15.

Defendant was charged with one count of possession of a controlled substance—methamphetamine. CP 1. Defendant moved to suppress that methamphetamine. 4/1/19 VRP 6-17; CP 10-19. Following a suppression motion based upon stipulated facts, defendant's motion was denied by the trial court. CP 33-36. Defendant was subsequently found guilty of possession of methamphetamine. CP 37-47.

Defendant filed his notice of appeal on the day he was sentenced. CP 52; CP 37-47.

III. ARGUMENT

A. Defendant's arrest was based upon probable cause.

Respondent agrees with defendant that defendant's arrest should be evaluated under the *Aguilar-Spinelli* test. *State v. Gaddy*, 152 Wn.2d 64, 71, 93 P.3d 872, 876 (2004). "Under that test, an informant's tip can furnish probable cause for an arrest if the State establishes (1) the basis of the informant's information and (2) the credibility of the informant or the reliability of the informant's information. *State v. Cole*, 128 Wn.2d 262, 287, 906 P.2d 925 (1995). To satisfy both parts of the *Aguilar-Spinelli* test, the State must prove the underlying circumstances which the trier of fact 'may draw upon to conclude the informant was credible and obtained the

information in a reliable manner.”” *State v. Vickers*, 148 Wash.2d 91, 112, 59 P.3d 58 (2002).” *State v. Gaddy*, 152 Wn.2d at 71–72.

A police officer has discretion to make a full custodial arrest or to issue a citation for the offense of driving while license suspended. *State v. Pulfrey*, 154 Wn.2d 517, 525–27, 111 P.3d 1162 (2005). In this case Deputy Fry made a custodial arrest. Exhibit 1, page 14. Defendant was properly searched incident to that arrest. *State v. O'Neill*, 148 Wn.2d 564, 585–86, 62 P.3d 489 (2003).

Petitioner asserts that the arrest was not supported by probable cause.

1. The veracity prong of *Aguilar-Spinelli* is satisfied.

The veracity prong requires that the affidavit contain information from which a determination can be made that the informant is credible or the information reliable. *State v. Ollivier*, 178 Wn.2d 813, 849–50, 312 P.3d 1, 21 (2013) (citing *State v. Jackson*, 102 Wn.2d 432, 435, 688 P.2d 136 (1984)). The State may satisfy the *Aguilar/Spinelli* test's veracity prong in two ways: 1) by establishing the informant's credibility; or 2) demonstrating that the circumstances under which the informant furnished the information may support the informant's credibility. *State v. Lair*, 95 Wn.2d 706, 709–10, 630 P.2d 427 (1981); *State v. McCord*, 125 Wn.App. 888, 893, 106 P.3d 832 (2005).

In this case, the veracity prong was satisfied in the first manner because the defendant himself admitted that his license was suspended. Exhibit 1, page 14. “It is clear that an informant's veracity for the purposes of Aguilar may be established when he makes statements against his penal interest.” *State v. Jones*, 706 P.2d 317, 328 (Alaska 1985) (citing *United States v. Harris*, 403 U.S. 573, 91 S.Ct. 2075, 29 L.Ed.2d 723 (1971)). The statements against penal interest at issue in *Harris* and *Jones* were statements made by an informant.¹ *Id.* This case concerns statements against penal interest made by the defendant himself. Exhibit 1, page 14.

“People do not lightly admit a crime and place critical evidence in the hands of the police in the form of their own admissions. Admissions of crime, like admissions against proprietary interests, carry their own indicia of credibility-sufficient at least to support a finding of probable cause to search.” *Harris*, 403 U.S. at 585 (Opinion of Burger, J.).²

Defendant argues that Deputy Fry was “obligated to try to corroborate”³ his statements, but that is not true, because defendant easily satisfies the veracity prong as a reliable informant.

¹ *Jones* also notes, discussing *Harris*, that the probable cause inquiry is distinct from the *corpus delicti* inquiry. *Jones*, 706 P.2d at 328.

² Per Westlaw, the second sentence in the quoted language has been cited verbatim by courts in 28 states.

³ Appellant's Brief at 13-14.

2. The basis of knowledge prong of *Aguilar-Spinelli* is satisfied.

“To satisfy the “basis of knowledge” prong, the informant must declare that he personally has seen the facts asserted and is passing on first-hand information.” *State v. Jackson*, 102 Wn.2d 432, 437, 688 P.2d 136, 140 (1984). Notice from the Department of Licensing that the person’s driver’s license has been suspended is sufficient first-hand information. *State v. Gaddy*, 152 Wn.2d at 71-72. The only difference between *Gaddy* and this case is that in *Gaddy* the police officer received notice of the suspension via a mobile data terminal located within his police vehicle (*Gaddy*, 152 Wn.2d at 67) while in this case defendant received notice of his suspension via a letter. Exhibit 1 at page 14, CP 34. While the police officer in *Gaddy* had current information from DOL, defendant had his own firsthand knowledge as the other party to the license suspension process. Defendant had firsthand knowledge as to whether he has ever taken any action to get his license suspension lifted. In this case, Deputy Fry could infer from defendant’s admissions that defendant’s license suspension was ongoing—it is what defendant said, and defendant was in a position to know.

Defendant argues that he told the arresting officer that he “believed his license was suspended.” Appellant’s Brief at 1, 8-9. That is false. The relevant fact is expressed in Exhibit 1 at page 14: Mason then told me his

license was suspended.” “Telling” is substantially different from “believing.” This difference is also expressed in the undisputed facts, which defendant does not challenge. CP 34 (Undisputed Fact 5).

Due process requires that the Department of Licensing’s license suspension procedures provide both notice and a meaningful opportunity to be heard. *Bellevue v. Lee*, 166 Wn.2d 581, 589, 210 P.3d 1011, 1015 (2009). Washington’s procedures are due process compliant. *Id.* Deputy Fry could therefore reasonably conclude that a person whose license has been suspended would have received notice of that license suspension. *Id.* Defendant not only told Deputy Fry his license was suspended, defendant also told Deputy Fry that he had received a letter from DOL. CP 34 (Undisputed Fact 5).

“At the time of arrest, the arresting officer need not have evidence to prove each element of the crime beyond a reasonable doubt. The officer is required only to have knowledge of facts sufficient to cause a reasonable person to believe that an offense had been committed.” *State v. Gaddy*, 152 Wn.2d at 70. (citing *State v. Knighten*, 109 Wn.2d 896, 903, 748 P.2d 1118 (1988)).

A subsequent check with the Department of Licensing (after the search in question) indicated that defendant’s license had not been suspended. That does not alter the fact that at the time of the arrest a

reasonable person would believe that defendant's driver's license was suspended because defendant told them—and defendant was a person who would know if his license was suspended.

Defendant asserts his argument is based upon the *Aguilar-Spinelli* test, but argues that the test is “totality of the circumstances.” Compare Appellant's Brief at 10-13 (arguing *Aguilar-Spinelli*) and Appellant's Brief at 11 (citing the appropriate test); *Id.* with Appellant's Brief at 10 (arguing “totality of the circumstances). Defendant provides neither a veracity prong analysis nor a basis of knowledge prong analysis. That separate analysis is necessary. See *State v. Z.U.E.*, 183 Wn.2d 610, 616-17, 352 P.3d 796 (2015). The *Aguilar-Spinelli* test better reflects article 1, section 7's more stringent requirements. *Id.*, n.2 (citing *State v. Jackson, supra*). It is thus more protective of defendant's rights. *Id.*

B. The State does not seek to justify the search in this case on the basis of a permissible frisk for weapons in the course of an investigative detention.

Defendant was told he was under arrest and he was handcuffed before he was searched. Exhibit 1, page 14. That amounts to a formal arrest. *Id.* Alternatively, the State does not seek to justify the seizure of the drug paraphernalia and the drugs in this case as incident to a weapons frisk—the record presented is insufficient to support that conclusion. This case is a probable cause case, not an investigative detention case.

IV. CONCLUSION

Deputy Fry had probable cause to believe petitioner's driver's license was suspended. That probable cause authorized a search incident to arrest. Further investigation established that defendant's driver's license was not suspended, but that does not vitiate the fact that probable cause authorized defendant's prior arrest and prior search.

The trial court's order denying defendant's motion to suppress was appropriate and the judgment in this case should be affirmed.

RESPECTFULLY SUBMITTED this 20th day of December, 2019.

MARY E. ROBNETT
Pierce County Prosecuting Attorney



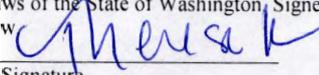
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Date

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PIERCE COUNTY PROSECUTING ATTORNEY

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