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Division III
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COURT OF APPEALS
DIVISION III
OF THE STATE OF WASHINGTON

STATE OF WASHINGTON, RESPONDENT

v.

ANTONIO MITCHELL, APPELLANT

APPEAL FROM THE SUPERIOR COURT
OF SPOKANE COUNTY

BRIEF OF RESPONDENT

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I. APPELLANT'S ASSIGNMENTS OF ERROR

The court erred when it denied the defendant's motion to suppress evidence upon a finding that the search of the defendant incident to arrest was lawful as there was probable cause to arrest the defendant based on information the defendant had a warrant for his arrest.

II. ISSUES PRESENTED

Whether law enforcement had reason to arrest the defendant based either on a valid warrant or on the information known at the time of his arrest?

III. STATEMENT OF THE CASE

Antonio Mitchell was charged with one count of Possession of a Controlled Substance (Methamphetamine), by information filed on December 7, 2018. CP 1. The facts surrounding Mr. Mitchell's case are set forth in Judge John Cooney's Findings of Fact and Conclusions of Law. CP 78-80. On December 5, 2018, three officers with the Spokane Police Department responded to an apartment to assist with an unwanted person. CP 78. Officers Conrath, Setzler, and Dunsmoor went into the apartment and encountered a "subject" on the couch. CP 78-79. The possible identity of the subject was the reason Officer Conrath was at the scene. CP 79. He believed the subject could be Antonio Mitchell. *Id.* Officer Conrath had been looking for Mr. Mitchell the previous evening, because "Mr. Mitchell

had a warrant for his arrest from the Department of Corrections.” *Id.* (emphasis added).

The officers determined that the subject was indeed Antonio Mitchell. CP 79. The officers placed Mr. Mitchell under arrest and handcuffed him. *Id.* Officer Conrath called dispatch to confirm the warrant, but prior to receiving confirmation, Mr. Mitchell was searched. *Id.* Officer Setzler discovered methamphetamine after turning out Mr. Mitchell’s pants pocket. CP 2, 79. After this search, the warrant was confirmed. CP 79.

On February 28, 2019, a motion to suppress the evidence found during the search was heard before Judge Cooney. 1 RP 3-16.¹ Judge Cooney heard argument, read the briefs and transcripts, and reviewed body camera video and dispatch recordings. *Id.*; CP 4-13, 14-30, 31-43, 78; Exs. 101, 102.² Ultimately, Judge Cooney denied the motion to suppress. CP 78-80; 1 RP 16-21. In his Findings of Fact and Conclusions of Law, Judge Cooney ruled that the “search incident to arrest provide[d] the authority of law” to justify the search of Mr. Mitchell. CP 80. The arrest

¹ For purposes of this Brief, Respondent will adopt the numbering convention for the Report of Proceedings as set forth in the Brief of Appellant, page 2, fn 2.

² State’s Response to Defendant’s Motion to Suppress was not included for transmittal upon appeal.

itself was supported by probable cause, in the form of a combination of the identification of Mr. Mitchell and the “unconfirmed warrant.” *Id.*

Mr. Mitchell now appeals the denial of his motion.

IV. ARGUMENT

A. STANDARD OF REVIEW

“When reviewing a trial court's ruling on a motion to suppress, [an appellate court must] determine whether substantial evidence supports the trial court's findings of fact and whether the findings of fact support the trial court's conclusions of law.” *State v. Russell*, 180 Wn.2d 860, 866, 330 P.3d 151 (2014) (citing *State v. Garvin*, 166 Wn.2d 242, 249, 207 P.3d 1266 (2009)). The trial court’s conclusions of law are reviewed de novo. *See e.g., State v. Gaines*, 154 Wn.2d 711, 716, 116 P.3d 993 (2005); *State v. Johnson*, 128 Wn.2d 431, 443, 909 P.2d 293 (1996).

Uncontroverted findings of fact are verities on appeal. *See, e.g., State v. Hill*, 123 Wn.2d 641, 644-45, 870 P.2d 313 (1994). The defendant does not challenge any of the court’s findings of fact and, therefore, those facts are to be treated as verities.

B. THE TRIAL COURT PROPERLY DENIED THE DEFENDANT’S MOTION TO SUPPRESS, AS LAW ENFORCEMENT RELIED ON A VALID WARRANT.

The arrest and subsequent search of Mr. Mitchell did not violate article I, section 7, whether because there was authority of law to arrest

Mr. Mitchell based on a valid warrant, or because knowledge of the warrant provided law enforcement with probable cause for the arrest. The trial court found that probable cause existed, but a trial court's decision can be affirmed “on any ground supported by the record.” *State v. Woods*, 117 Wn. App. 278, 280, 70 P.3d 976, 977 (2003); *State v. Michielli*, 132 Wn.2d 229, 242, 937 P.2d 587 (1997).

Article I, section 7 of the state constitution provides: “No person shall be disturbed in his private affairs, or his home invaded, without authority of law.” These protections exceed those provided under the Fourth Amendment, as the Fourth Amendment “precludes only ‘unreasonable’ searches and seizures without a warrant.” *State v. Valdez*, 167 Wn.2d 761, 772, 224 P.3d 751 (2009) (citing *York v. Wahkiakum School District. No. 200*, 163 Wn.2d 297, 306, 178 P.3d 995 (2008)).

The “authority of law” necessary to conduct a search of an individual can be provided by a valid warrant; in the absence of a warrant, a search is per se unreasonable unless it falls within one of the carefully drawn exceptions to the warrant requirement. *State v. Patton*, 167 Wn.2d 379, 386, 219 P.3d 651 (2009). “The State bears a heavy burden in showing that [a warrantless] search falls within one of the exceptions.” *State v. Jones*, 146 Wn.2d 328, 335, 45 P.3d 1062 (2002).

One such exception to the warrant requirement is a search incident to a lawful arrest. *Johnson*, 128 Wn.2d at 447. “[A] lawful custodial arrest is a constitutionally required prerequisite to any search incident to arrest.” *State v. O’Neill*, 148 Wn.2d 564, 585, 62 P.3d 489 (2003) (quoting *State v. Parker*, 139 Wn.2d 486, 496, 987 P.2d 73 (1999)); see also *State v. Moore*, 161 Wn.2d 880, 885, 169 P.3d 469 (2007). It is the arrest itself that provides the necessary “authority of law” to permit a search. *Parker*, 139 Wn.2d at 496-97.

Probable cause is the “absolute standard” for determining whether an arrest is reasonable. *State v. Bonds*, 98 Wn.2d 1, 8, 653 P.2d 1024 (1982).

Probable cause exists where the facts and circumstances within the arresting officer's knowledge and of which the officer has reasonably trustworthy information are sufficient to warrant a person of reasonable caution in a belief that an offense has been committed.

State v. Graham, 130 Wn.2d 711, 724, 927 P.2d 227 (1996) (quoting *State v. Terrovona*, 105 Wn.2d 632, 643, 716 P.2d 295 (1986)). Put another way, “the validity of an arrest depends upon the objective reasonableness of the arresting officer’s belief that probable cause exists.” *State v. Afana*, 169 Wn.2d 169, 183, 233 P.3d 879 (2010). The determination is ultimately based on the “totality of facts and circumstances within the officer’s knowledge at the time of the arrest.” *State v. Barron*, 170 Wn. App. 742,

750, 285 P.3d 231 (2012) (*quoting State v. Fricks*, 91 Wn.2d 391, 398, 588 P.2d 1328 (1979)).

It is undisputed that Mr. Mitchell was the subject of a valid arrest warrant at the time of his contact with law enforcement. No evidence to the contrary has been presented, and no argument to the contrary has been raised. This is not an instance where an arrest was made based on a warrant believed to be valid only later to discover the warrant was, in fact, invalid. *See State v. Nall*, 117 Wn. App. 647, 72 P.3d 200 (2003), *as amended* (Dec. 10, 2003). With a valid warrant, whether “confirmed” or “unconfirmed”, the “authority of law” requirement of article I, section 7, is satisfied. *Afana*, 169 Wn.2d at 176-77. With a valid warrant, the arrest and search of Mr. Mitchell was permissible under the Washington Constitution.

Rather than challenge the validity of the warrant, Mr. Mitchell instead focuses on whether the warrant was “confirmed” at the time of Mr. Mitchell’s arrest. The record below never discusses what a “confirmed” warrant is or means. There has been no argument distinguishing between a “confirmed” versus an “unconfirmed” warrant, nor has there been an explanation how an “unconfirmed” warrant is any less the “authority of law” as a “confirmed” warrant. Without some authority to the contrary, the appeal must fail. RAP 10.3(a)(6); *State v. Reid*, 40 Wn. App. 319, 325, 698 P.2d 588 (1985).

Much is made about Officer Conrath's calls to dispatch to "confirm" the warrant, CP 7-10; 1 RP 7-13, 18-20, but it is unclear what information dispatch would have had that would differ from the information Officer Conrath had himself. As the warrant was issued by the Department of Corrections (DOC), CP 79, both dispatch and Officer Conrath would have had the same basis of knowledge. The warrant could have been "confirmed" only later to be discovered it was invalid due to the unrelated actions of DOC. Had Officer Conrath (or dispatch) relied on a warrant that had been recalled or otherwise cancelled by DOC, the arrest and search of Mr. Mitchell would have been improper.³ *See, e.g., Nall*, 117 Wn. App. 647 (no good faith exception); *State v. Mance*, 82 Wn. App. 539, 918 P.2d 527 (1996) (fellow officer rule; arrest based on a stolen car report that had been cancelled, but not updated by police, lacked probable cause).

Nevertheless, even with an "unconfirmed" warrant, Officer Conrath had probable cause to arrest Mr. Mitchell and search him incident to that arrest. Officer Conrath knew Mr. Mitchell had a warrant for his arrest, and indeed the night before had been looking to arrest Mr. Mitchell. CP 33-34, 37, 79. The next day, Mr. Mitchell was met and identified. CP 38, 79. Given

³ A good faith exception to the valid warrant requirement has been rejected by Washington courts, *see Nall*, 117 Wn. App. at 652-53, yet this court is now asked to require law enforcement to put their complete faith in "confirmed" warrants.

the totality of the circumstances, to include the information about the warrant available to Officer Conrath, the length of time between Officer Conrath learning of the warrant and the contact with Mr. Mitchell, and the positive identification of Mr. Mitchell, law enforcement was justified in its arrest and search.

V. CONCLUSION

Antonio Mitchell had a valid warrant for his arrest. The warrant was the only authority of law necessary to permit the arrest and search of Mr. Mitchell. In the alternative, the totality of circumstances provides probable cause to arrest and search Mr. Mitchell in the absence of a “confirmed” warrant.

Dated this 2 day of December, 2019.

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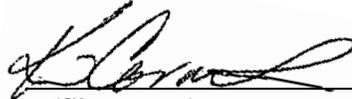
NO. 36703-7-III
CERTIFICATE OF SERVICE

I certify under penalty of perjury under the laws of the State of Washington, that on December 2, 2019, I e-mailed a copy of the Brief of Respondent in this matter, pursuant to the parties' agreement, to:

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12/2/2019
(Date)

Spokane, WA
(Place)



(Signature)

SPOKANE COUNTY PROSECUTOR

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