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Division II
State of Washington
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NO. 51093-6-II

COURT OF APPEALS OF THE STATE OF WASHINGTON,
DIVISION II

STATE OF WASHINGTON,

Respondent,

vs.

ANGELA M. JANTZI,

Appellant.

BRIEF OF APPELLANT

John A. Hays, No. 16654
Attorney for Appellant

1402 Broadway
Suite 103
Longview, WA 98632
(360) 423-3084

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ASSIGNMENT OF ERROR

Assignment of Error

1. Substantial evidence does not support the trial court's findings during the stipulated facts trial that the defendant committed the crimes charged because the state did not offer and the court did not admit any facts into evidence stipulated or otherwise.

2. The findings of fact the trial court entered after the stipulated facts trial pursuant to RAP 6.1(d) are not supported by substantial evidence.

3. The trial court erred when it imposed discretionary legal financial obligations because substantial evidence does not support the trial court's finding that the defendant has the ability or likely future ability to pay those costs.

Issues Pertaining to Assignment of Error

1. Does substantial evidence support a trial court's finding of guilt following a stipulated facts trial when no evidence stipulated or otherwise is offered or admitted into evidence during the trial?

2. Does substantial evidence support a trial court's finding of fact under RAP 6.1(d) following a stipulated facts trial when no evidence stipulated or otherwise is offered or admitted into evidence during the trial and before the court renders its verdict?

3. Does a trial court err if it imposes discretionary legal financial obligations without substantial evidence to support a finding that a defendant has the ability or likely future ability to pay those costs?

STATEMENT OF THE CASE

By information filed May 24, 2017, and later amended on July 28, 2017, the Kitsap County Prosecutor charged the defendant Angela M. Jantzi with three counts of second degree burglary, one count each of first degree possession of stolen property and third degree retail theft. CP 1-8, 51-62. On the date of arraignment the court found the defendant indigent and appointed counsel to represent her. CP 11. The bail study the court considered at that time noted that the defendant was unemployed and that she claimed she was "bipolar/bpd for 15+ years." CP 10, 12. It also notes that the defendant is single with two dependents. *Id.*

On the day the amended information was filed the parties entered into a drug court contract whereby the state agreed to eventually dismiss the charges if the defendant successfully completed drug court and the defendant agreed to submit to a bench trial upon stipulated facts should she fail to complete the requirements of that program. CP 63-70; RP 1-10. The contract stated the following in regards to the defendant's agreement to submit to a stipulated facts trial should she be terminated from drug court:

I am the Defendant in the above-entitled case. I wish to submit this case on a stipulated record. I am making this stipulation freely and voluntarily. No one has threatened me with harm of any kind

to me or to any other person to cause me to make this stipulation. ***I understand that the Judge will read the police reports and other materials in the Prosecuting Attorney's possession and, based upon those facts, the Judge will decide if I am guilty of the crime(s) as set forth in the information.*** I stipulate that the facts contained within the police reports are sufficient for a trier of fact to find me guilty of the charge(s) presently filed against me. I understand that by this process, I am giving up my constitutional right to a jury trial, my right to hear and question witnesses, my right to call witnesses in my own behalf, my right to contest the stop and or search and seizure of evidence and the voluntariness of any statement I may have given in my case, and my right to testify or not to testify. I understand that by entering this stipulation I give up my right to appeal a finding of guilty by utilizing this process. If I am not a citizen of the United States, I understand that a finding of guilty on this/these offenses(s) is ground for deportation. I also may not be allowed to enter the United States, or may be denied naturalization according to the laws of the United States.

CP 64 (emphasis added).

As far as the defense can tell from the trial record and the record on appeal, at this point in the case the state did not present as an exhibit or file as a document "the police reports and other materials in the Prosecuting Attorney's possession" for the court's consideration should a stipulated facts trial become necessary. RP 1-10; CP 1-136.

The appellant later failed to meet the requirements of the drug court program and was brought back in court on October 5, 2017, upon the state's motion for revocation. CP 99. The defendant's attorney stipulated to the state's motion and the court signed an order revoking her from that

program. CP 99; RP 12-13. As far as appellant can tell from the entire record at trial and the record on appeal, the court then found Appellant guilty of all charges without the presentation or consideration of “the police reports and other materials in the Prosecuting Attorney’s possession” or any evidence at all. RP 12-17. Appellant cannot find any such documents admitted into evidence that day or on any prior day. *Id.*

The following gives the verbatim report of the revocation hearing and stipulated facts trial from the beginning of the hearing to the point the court found Appellant guilty and proceeded to sentencing:

THE COURT: Angela.

THE DEFENDANT: Yes.

THE COURT: I understand you’re dilemma. We did get your letters, and it is still termination from drug court.

THE DEFENDANT: Thank you.

THE COURT: Are you prepared to go now? All right.

This is Cause No. 17-1-00823-9. State of Washington vs. Angela Jantzi. Angela is present in the courtroom she’s represented by her attorney Mr. Murphy. The State is present and represented by Ms. Dennis.

Ms. Dennis, you have a motion?

MS. DENNIS: I do, Your Honor. And I’ve handed forward a motion for termination from drug court for noncompliance.

THE COURT: Mr. Murphy.

MR. MURPHY: Your Honor.

THE COURT: There's a motion on the table.

MR. MURPHY: I was just talking to Ms. Jantzi. She's being clear through her letters what her desires would be, but at this point we don't have a legal objection to the motion as the factual based suspicion.

THE COURT: The motion, therefore, is granted. And, Ms. Jantzi, you're terminated from drug court. And I do find you guilty as charged.

Recommendation.

MS. DENNIS: My recommendations on Count I through III, Your Honor, are for 29 months to be served in the Department of Corrections. That's the top of the range on those offenses. Count IV I'm recommending 14 months, which is also top of the range. Count V is a gross misdemeanor, I'm recommending 364 days. I'm recommending that run consecutive to Counts I through IV. Standard legal and financial obligations should apply.

RP 12-13.

Following brief argument from counsel and a short statement from the defendant the court sentenced the defendant within the standard range. CP 103-114; RP 13-17. The court also imposed the following discretionary legal financial obligations: (1) \$500 Court appointed attorney fee, (2) \$100 Kitsap County Expert Witness Fund "contribution," and (3) \$100 Kitsap County Prosecuting Attorney's Office anti-profiteering fund

“contribution.” Although there was no discussion at sentencing about the defendant’s present or likely future ability to pay these discretionary fees, the court none the less entered the following finding on the issue:

Legal Financial Obligations - RCW 9.94A.760. The court finds that the Defendant has the ability or likely future ability to pay legal financial obligations. The Defendant shall pay by cash, money order, or certified check to the Kitsap County Superior Court Clerk at 614 Division Street, MS-34, Port Orchard, WA 98366, as indicated...

CP 109.

Following imposition of sentence the defendant filed timely notice of appeal. CP 131. The trial court then entered an Order of Indigency appointing appellate counsel at public expense. CP 135-136. The court entered this order in reliance upon a Motion for Order of Indigency in which the defendant stated under oath that she owns no real property, that she owns no personal property, that she has no income from any source, and that she has personal debts in the amount of \$14,000.00. CP 132-134.

ARGUMENT

I. SUBSTANTIAL EVIDENCE DOES NOT SUPPORT THE TRIAL COURT'S FINDINGS DURING THE STIPULATED FACTS TRIAL THAT THE DEFENDANT COMMITTED THE CRIMES CHARGED BECAUSE THE STATE DID NOT OFFER AND THE COURT DID NOT ADMIT ANY FACTS INTO EVIDENCE STIPULATED OR OTHERWISE.

As a part of the due process rights guaranteed under both the Washington Constitution, Article 1, § 3, and the United States Constitution, Fourteenth Amendment, the state must prove every element of a crime charged beyond a reasonable doubt. *State v. Baeza*, 100 Wn.2d 487, 488, 670 P.2d 646 (1983); *In re Winship*, 397 U.S. 358, 364, 90 S.Ct. 1068, 1073, 25 L.Ed.2d 368 (1970). As a result, any conviction not supported by substantial evidence may be attacked for the first time on appeal as a due process violation. *Id.*

In the case at bar, the trial court convicted the defendant of three counts of second degree burglary, and one count each of first degree possession of stolen property and third degree retail theft following a stipulated facts trial. A stipulated facts trial is not a guilty plea. *State v. Drum*, 168 Wn.2d 23, 39, 225 P.3d 237 (2010). Rather, it is an abbreviated bench trial during which the parties agree to have the court render a verdict solely upon its consideration of evidence to which both parties stipulate and present to the court, usually in written form. *State v. Colquitt*, 133 Wn.

App. 789, 137 P.3d 892 (2006).

For example in *State v. Colquitt, supra*, the state charged the defendant with possession of cocaine. The defendant thereafter entered into the county's drug court program. The trial court later terminated the defendant based upon his failures to meet the requirements of the program. Pursuant to the agreement for entry into the program, the case then proceeded to a bench trial based solely upon the stipulated evidence presented to the trial court. That stipulated evidence consisted of a police report, which stated that the defendant at a specific date and time was in possession of a substance that appeared to the office to be rock cocaine and that field tested positive for cocaine. Following conviction the defendant appealed, arguing that substantial evidence did not support his conviction for possession of cocaine.

On review, the Court of Appeals first noted that a stipulated facts trial is not a guilty plea, and that in order to sustain a conviction following such a trial there must still be substantial evidence to support the trial court's finding that the state has proven each and every element of the crime charged beyond a reasonable doubt. The court then went on to conclude that without a stipulation to the sufficiency of the evidence, which was not a part of the agreement, the fact that the substance in question

merely field tested positive for cocaine and appeared to the office to be cocaine did not constitute proof beyond a reasonable doubt that the substance was in fact cocaine. As a result, the court reversed the conviction and remanded for dismissal with prejudice.

The relevant procedural background and facts from *Colquitt* are similar to the procedural background and facts in the case at bar. In both instances a defendant was arrested and charged with a felony. In both cases the defendant entered into a drug court program in which he or she stipulated to the resolution of the case by a bench trial upon stipulated evidence should the court enter an order of termination from the program. In both cases the defendants were terminated for non-compliance. Finally, in both cases the court found the defendants guilty following the agreed stipulated facts trial.

By contrast, there are two critical distinctions between the facts from *Colquitt* and the facts from the case at bar. The first difference is that in *Colquitt* the defendant did not stipulate to the sufficiency of the stipulated evidence once presented to the court. In the case at bar the defendant did stipulate to the sufficiency of whatever evidence that would be presented at trial. The second difference is the critical one in the case at bar. In *Colquitt*, the state actually presented the stipulated evidence to

the court for admission into evidence and for consideration at the bench trial. That stipulated evidence was the police report. By contrast, in the case at bar, the state did not offer any stipulated documents into evidence for the stipulated bench trial. In addition, the trial did not consider any evidence. Rather, the trial court simply found the defendant guilty in the same sentence that it used to revoke the defendant from the program. The exchange went as follows:

THE COURT: The motion, therefore, is granted. And, Ms. Jantzi, you're terminated from drug court. And I do find you guilty as charged.

Recommendation.

RP 12-13.

As the record reveals, the state did not present any "police reports and other materials" as it was allowed to do under the drug court agreement and the trial court certainly did not consider any "police reports and other material." Thus, in the case at bar, none of the elements of any of the charges are supported by substantial evidence because no evidence was offered or admitted at trial nor was any evidence considered by the trial court. Thus, in the case at bar, the trial court violated the defendant's right to due process under Washington Constitution, Article 1, § 3, and United States Constitution, Fourteenth Amendment, when it found her

guilty of the charged crimes. As a result, as in *Colquitt*, this court should reverse the defendant's convictions and remand to the trial court with instructions to dismiss each charge with prejudice.

II. THE FINDINGS OF FACT THE TRIAL COURT ERRED AFTER THE STIPULATED FACTS TRIAL PURSUANT TO RAP 6.1(d) ARE NOT SUPPORTED BY SUBSTANTIAL EVIDENCE.

The purpose of findings of fact and conclusions of law is to aid an appellate court on review. *State v. Agee*, 89 Wn.2d 416, 573 P.2d 355 (1977). The Court of Appeals reviews these findings under the substantial evidence rule, which requires the reviewing court to sustain the trier of facts' findings "if the record contains evidence of sufficient quantity to persuade a fair-minded, rational person of the truth of the declared premise." *State v. Ford*, 110 Wn.2d 827, 755 P.2d 806 (1988). The trial court's findings of fact are considered verities on appeal absent an assignment of error. *State v. Hill*, 123 Wn.2d 641, 870 P.2d 313 (1994).

In the case at bar the trial court entered findings of fact pursuant to RAP 6.1(d) following the stipulated facts trial in this case. CP 100-102. Appellant assigns error to each and every finding of fact and conclusion of law to the extent that it includes a factual finding the trial court entered in this case. Normally, counsel would now list those specific facts and engage in a detailed review of the evidence presented at trial and why that

evidence did not support the trial court's factual findings. Counsel does not do so in this case because, as we set out in the prior argument, the state did not present any evidence during the trial in this case and the trial court did not consider any evidence prior to finding the defendant guilty pursuant to the bench trial upon stipulated facts. Absent the presentation of or admission of any evidence at trial, it logically follows that there is no evidence to support any and all written factual finding by the court, much less substantial evidence.

III. THE TRIAL COURT ERRED WHEN IT IMPOSED DISCRETIONARY LEGAL FINANCIAL OBLIGATIONS BECAUSE SUBSTANTIAL EVIDENCE DOES NOT SUPPORT THE TRIAL COURT'S FINDING THAT THE DEFENDANT HAS THE ABILITY OR LIKELY FUTURE ABILITY TO PAY THOSE COSTS.

A trial court's authority to impose legal financial obligations as part of a judgment and sentence in the State of Washington is limited by RCW 10.01.160(3), which states that the court "shall not sentence a defendant to pay costs unless the defendant is or will be able to pay them." Although the court need not enter written findings and conclusions in regards to a defendant's current or future ability to pay costs, the court must consider this issue and find either a current or future ability before it has authority to impose costs. *State v. Eisenman*, 62 Wn.App. 640, 810 P.2d 55, 817 P.2d 867 (1991).

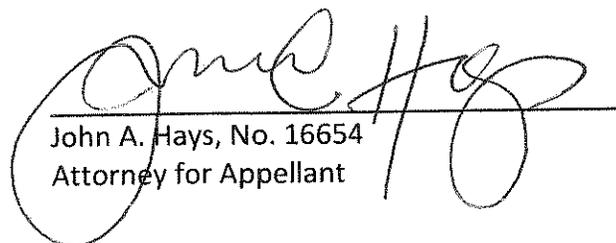
In the case at bar the trial court imposed discretionary legal financial obligations in the form of court costs without any consideration of the defendant's present or future ability to pay those obligations. This evidence included the following facts: the defendant was a 33-years-old single woman, she had two dependants and was unemployed, she had no assets either personal or real, she was \$14,000.00 in debt, she had a mental disability and she was a drug addict who had been unable to follow through with the requirements of a drug court program. These facts do not support the trial court's finding that the defendant had the present or future ability to pay and by this argument the defendant specifically assigns error to that finding of fact. Thus, in this case, the trial court violated RCW 10.01.160(3) when it imposed discretionary legal financial obligations. As a result, this court should reverse the imposition of those discretionary costs and remand for the trial court to vacate those obligations

CONCLUSION

The state failed to present any evidence at the stipulated facts trial in this case. As a result, this court should vacate the defendant's convictions and remand with instructions to dismiss with prejudice. In the alternative, this court should vacate the discretionary legal financial obligations the court imposed because not evidence supports the trial court's finding that the defendant has the present or future ability to pay those obligations.

DATED this 30th day of April, 2018.

Respectfully submitted,



John A. Hays, No. 16654
Attorney for Appellant

APPENDIX

**WASHINGTON CONSTITUTION
ARTICLE 1, § 3**

No person shall be deprived of life, liberty, or property, without due process of law.

**UNITED STATES CONSTITUTION,
FOURTEENTH AMENDMENT**

All persons born or naturalized in the United State, 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 law.

. . .

COURT OF APPEALS OF WASHINGTON, DIVISION II

STATE OF WASHINGTON,
Respondent,

vs.

ANGELA M. JANTZI,
Appellant.

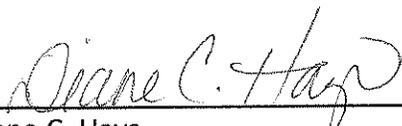
NO. 51093-6-II

AFFIRMATION
OF SERVICE

The under signed states the following under penalty of perjury under the laws of Washington State. On the date below, I personally e-filed and/or placed in the United States Mail the Brief of Appellant with this Affirmation of Service Attached with postage paid to the indicated parties:

1. Ms Tina R. Robinson
Kitsap County Prosecuting Attorney
614 Division Street
Port Orchard, WA 98366
kcpa@co.kitsap.wa.us
2. Angela M. Jantzi, No.402751
Washington Corrections Center
9601 Bujacich Road NW
Gig Harbor, WA 98332-8300

Dated this 30th day of April, 2018, at Longview, WA.



Diane C. Hays

JOHN A. HAYS, ATTORNEY AT LAW

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