

28973-7-III

COURT OF APPEALS

DIVISION III

OF THE STATE OF WASHINGTON

STATE OF WASHINGTON, RESPONDENT

v.

MICHAEL J. REID, APPELLANT

APPEAL FROM THE SUPERIOR COURT

OF SPOKANE COUNTY

BRIEF OF RESPONDENT

STEVEN J. TUCKER
Prosecuting Attorney

Andrew J. Metts
Deputy Prosecuting Attorney
Attorneys for Respondent

County-City Public Safety Building
West 1100 Mallon
Spokane, Washington 99260
(509) 477-3662

FILED
SEP 13 2016
CLERK OF APPEALS
DIVISION III
STATE OF WASHINGTON
BY _____

28973-7-III

COURT OF APPEALS

DIVISION III

OF THE STATE OF WASHINGTON

STATE OF WASHINGTON, RESPONDENT

v.

MICHAEL J. REID, APPELLANT

APPEAL FROM THE SUPERIOR COURT

OF SPOKANE COUNTY

BRIEF OF RESPONDENT

STEVEN J. TUCKER
Prosecuting Attorney

Andrew J. Metts
Deputy Prosecuting Attorney
Attorneys for Respondent

County-City Public Safety Building
West 1100 Mallon
Spokane, Washington 99260
(509) 477-3662

FILED

SEP 13 2010

COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON
BY _____

INDEX

APPELLANT’S ASSIGNMENT OF ERROR.....1

ISSUES PRESENTED.....1

STATEMENT OF THE CASE.....2

ARGUMENT.....3

 A. THE DEFENDANT WAIVED HIS RIGHT
 TO CHALLENGE THE TRIAL COURT’S
 FAILURE TO GRANT DEFENDANT’S
 MOTION TO DISMISS AT THE END OF
 THE STATE’S CASE.....3

CONCLUSION.....6

TABLE OF AUTHORITIES

WASHINGTON CASES

STATE V. ALLAN, 88 Wn.2d 394,
562 P.2d 632 (1977)..... 4

STATE V. BROADAWAY, 133 Wn.2d 118,
942 P.2d 363 (1997)..... 4

STATE V. BUCHANAN, 138 Wn.2d 186,
- P.2d - (1999)..... 4

STATE V. CARTER, 127 Wn. App. 713,
112 P.3d 561 (2005)..... 4

STATE V. HILL, 123 Wn.2d 641,
870 P.2d 313 (1994)..... 4

STATE V. JOHNSTON, 100 Wn. App. 126,
996 P.2d 629 (2000)..... 4

I.

APPELLANT'S ASSIGNMENT OF ERROR

1. The trial court erred by failing to grant Defendant's motion to dismiss for lack of evidence to prove constructive possession.

II.

ISSUES PRESENTED

- A. DID THE DEFENDANT WAIVE HIS RIGHT TO CHALLENGE THE TRIAL COURT'S FAILURE TO DISMISS AT THE END OF THE STATE'S CASE BY PRESENTING A DEFENSE CASE?
- B. DID THE DEFENDANT'S FAILURE TO CHALLENGE ANY OF THE TRIAL COURT'S FINDINGS OF FACT RENDER THOSE FINDINGS VERITIES ON APPEAL?
- C. IS THERE EVIDENCE FROM WHICH THE TRIER OF FACT COULD FIND THE ELEMENTS OF THE CRIMES BEYOND A REASONABLE DOUBT?

III.

STATEMENT OF THE CASE

“On March 31, 2008, the defendant was driving a motor vehicle in Spokane, WA.” CP 14.

“That Deputy Stevens notified Deputy Frost that the defendant nearly ran her over with his car and asked him to stop the defendant.” CP 14.

“A check with Records showed the defendant to be driving with a suspended license.” CP 15.

“The defendant was arrested for Driving While License Suspended and patted down for weapons only.” CP 15.

“Deputy Frost then placed the defendant in the back seat of his patrol car.” CP 15.

“Deputy Frost noticed his patrol car was rocking violently. The defendant being the only one in the patrol car.” CP 15.

“Deputy Frost had the defendant get out of his patrol car.” CP 15.

“When the defendant was removed, Deputy Frost immediately observed two small baggies of substances identified to be hydrocodone and crack cocaine (controlled substances).”

“Deputy Frost has been a law enforcement officer for sixteen years. He always searches his vehicle after making an arrest, therefore he is certain that these items were not in his patrol car prior to the defendant being placed therein.” CP 15.

“Defendant did not have a prescription for the hydrocodone.” CP 15.

The trial court found the defendant guilty of two counts of Possession of a Controlled Substance. CP 16.

This appeal followed. CP 17-29.

IV.

ARGUMENT

- A. THE DEFENDANT WAIVED HIS RIGHT TO CHALLENGE THE TRIAL COURT’S FAILURE TO GRANT DEFENDANT’S MOTION TO DISMISS AT THE END OF THE STATE’S CASE.

The single error raised by the defendant in this appeal involves the trial court’s failure to grant the defendant’s motion to dismiss for lack of evidence brought at the end of the State’s case.

The presentation of a defense case after the failure of a motion at the end of the State's case waives any right of the defendant to challenge the trial court's denial of the sufficiency motion from that point in the trial. *State v. Allan*, 88 Wn.2d 394, 396, 562 P.2d 632 (1977); *State v. Johnston*, 100 Wn. App. 126, 996 P.2d 629 (2000); *State v. Carter*, 127 Wn. App. 713, 719, 112 P.3d 561 (2005).

The defendant has raised only one issue on appeal and that issue was rendered non-appealable by the defendant's presentation of a defense case. Thus, this appeal has no merit.

The remainder of this brief is presented in the interests of completeness.

The defendant failed to challenge the trial court's Findings of Fact and Conclusions of Law entered on April 14, 2010. By failing to challenge the Findings of Fact, the trial court's Findings of Fact become verities for this appeal. *State v. Hill*, 123 Wn.2d 641, 870 P.2d 313 (1994); *State v. Buchanan*, 138 Wn.2d 186, 978 P.2d 1070 (1999); *State v. Broadaway*, 133 Wn.2d 118, 942 P.2d 363 (1997).

The defendant asserts that there was insufficient evidence that Deputy Frost properly determined that there were no drugs in the backseat area of his patrol car prior to the defendant being placed in the car. The trial court found that the deputy had been a law enforcement officer for sixteen years, always searched his vehicle after making an arrest and was certain that the drugs in question were not in his patrol car prior to the defendant being placed in the patrol car. CP 15. These findings are verities and cannot be challenged.

The defendant asserts that there was insufficient proof that the deputy actually searched his patrol car. The trial court found differently, making findings that Dep. Frost noticed his patrol car rocking violently with the defendant the sole occupant. CP 15. The deputy had the defendant get out of the patrol car. CP 15. After the defendant was removed, the deputy immediately observed two small baggies of substances identified as hydrocodone and crack cocaine. CP 15. Again, these findings were not challenged by the defendant on appeal, thus making the findings verities.

Taking the findings from CP 14 and 15 provides ample evidence to support the trial court's denial of the defendant's motion to dismiss at the end of the State's case.

V.

CONCLUSION

For the reasons stated, the convictions of the defendant should be affirmed.

Dated this 10th day of September, 2010.

STEVEN J. TUCKER
Prosecuting Attorney


Andrew J. Metts #19578
Deputy Prosecuting Attorney
Attorney for Respondent

FILED

SEP 13 2010

COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON
By _____

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION III

STATE OF WASHINGTON,)	
)	
Respondent,)	NO. 28973-7-III
v.)	
)	CERTIFICATE OF MAILING
MICHAEL J. REID,)	
)	
Appellant,)	

I certify under penalty of perjury under the laws of the State of Washington, that on September 13, 2010, I mailed a copy of the Respondent's Brief in this matter, addressed to:

Richard D. Wall
Attorney at Law
221 West Main, #200
Spokane WA 99201

and to:

Michael J. Reid
2718 W. Bowdish #J347
Spokane WA 99206

9/13/2010
(Date)

Spokane, WA
(Place)

G. H. Owens
(Signature)