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Oct 07, 2013
Court of Appeals
Division III
State of Washington

NO. 314197-III

COURT OF APPEALS, DIVISION III
OF THE STATE OF WASHINGTON

THE STATE OF WASHINGTON, Respondent

v.

MIGUEL FARIAS AMEZOLA, Appellant

APPEAL FROM THE SUPERIOR COURT
FOR BENTON COUNTY

NO. 12-1-01356-3

BRIEF OF RESPONDENT

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RAP 7.2(e)9

I. ISSUE PRESENTED

1. **WAS THERE SUFFICIENT EVIDENCE TO ESTABLISH GUILT BEYOND A REASONABLE DOUBT ON THE COUNT OF UNLAWFUL DELIVERY OF A CONTROLLED SUBSTANCE (METHAMPHETAMINE)?**
2. **WAS THERE SUFFICIENT EVIDENCE TO ESTABLISH GUILT BEYOND A REASONABLE DOUBT ON THE COUNT OF ALIEN IN POSSESSION OF A FIREARM?**
3. **DID THE COURT ERRONEOUSLY IMPOSE A DOMESTIC VIOLENCE ASSESSMENT IN THE AMOUNT OF \$600.00?**

II. STATEMENT OF FACTS

The defendant was charged with one count of Unlawful Possession of a Controlled Substance: Methamphetamine and/or morphine, and one count of Possession of a Firearm without an alien firearm permit. (CP 1-2).

A stipulated facts trial was held on January 30, 2013. (RP¹ 3). The parties submitted police reports, as well as additional "stipulated facts" as part of the record for the court to consider. (CP 18-20, 21-33). The court's findings were that the defendant was in possession of a controlled substance, specifically methamphetamine, and that this

¹ "RP" refers to the verbatim report of proceedings held on January 30, 2013, reported by Court Reporter Cheryl Pelletier.

possession occurred in Benton County, Washington. (RP 5). The court also found that the defendant was in possession of a firearm, that he was not a United States citizen, and did not have a permit to have possession of the firearm. (RP 5-6). Based upon these findings, the defendant was found guilty of both counts. (CP 20; RP 5-6).

As part of the Judgment and Sentence, the court imposed a \$600.00 attorney fee; however, it was listed in the Judgment and Sentence as a domestic violence assessment. (CP 37). It is apparent the placement of the \$600.00 attorney fee assessment was in error. Nowhere in the record did the court indicate it was imposing a domestic violence assessment. (RP 6). The cost bill also clearly establishes the \$600.00 assessment was intended as a court-appointed attorney fee. (CP 43). The State noticed an additional scrivener's error while responding to this appeal. The total amount of fines, which is listed as \$1,460.00, appears to be in error. (CP 37) When adding all of the fines and assessments, the total amount is \$2,460.00. (CP 37).

III. ARGUMENT

A stipulated facts trial requires that a determination be made of the defendant's guilt or innocence. *State v. Johnson*, 104 Wn.2d 338, 342, 705 P.2d 773 (1985). The burden of proof remains on the State. *Id.* The defendant is not precluded from offering evidence or cross-examining

witnesses, but just stipulates to evidence presented by the State. *Id.* at 342-43. The stipulation serves as an agreement by the defendant “that if the State’s witnesses were called, they would testify in accordance with the summary presented by the prosecutor.” *State v. Wiley*, 26 Wn. App. 422, 425, 613 P.2d 549 (1980). The defendant also retains the right to appeal. *Johnson*, 104 Wn.2d at 342.

The actual manner in which the stipulated facts can be entered is not set forth by court rule. Stipulated fact trials have been accomplished by submitting police reports, witness statements, or prosecutorial summaries. See, e.g., *State v. Chervenell*, 28 Wn. App. 805, 807, 626 P.2d 530 (1981) (witnesses statements); *State v. Davis*, 29 Wn. App. 691 694-95 FN 1, 630 P.2d 938 (1981) (summary of facts); *State v. Jacobson*, 33 Wn. App. 529, 533-34, 656 P.2d 1103 (1982) (statements and police reports); *State v. Harper*, 33 Wn. App. 507, 509, 655 P.2d 1199 (1982) (police reports).

In this matter, both a document setting forth stipulated facts and police reports were used. (CP 18-33). It is apparent from the defendant’s briefing that he is only considering the police reports when asking this court to review the sufficiency of the evidence. He completely ignores the “stipulated facts.”

1. THE EVIDENCE WAS SUFFICIENT TO ESTABLISH GUILT OF UNLAWFUL DELIVERY OF A CONTROLLED SUBSTANCE (METHAMPHETAMINE) BEYOND A REASONABLE DOUBT.

Evidence is sufficient evidence to support a verdict if the trier of fact has a factual basis for finding each element of the offense proved beyond a reasonable doubt. *Jackson v. Virginia*, 443 U.S. 307, 319, 99 S.Ct. 2781, 61 L.Ed.2d 560 (1979); *State v. Green*, 94 Wn.2d 216, 221–22, 616 P.2d 628 (1980). The reviewing court will consider the evidence in a light most favorable to the prosecution. *Green* at 221.

To prove Unlawful Possession of a Controlled Substance, the State must prove only “the nature of the substance and the fact of possession.” *State v. Bradshaw*, 152 Wn.2d 528, 538, 98 P.3d 1190 (2004).

The facts submitted support all the essential elements. The police reports establish that Officer Garcia pulled the defendant over while he was driving a vehicle. (CP 23). The defendant was the only person in the car. (CP 23). During the contact, Officer Garcia saw a glass pipe with burnt residue on the driver’s floor board. (CP 23). The defendant stated his prints might be on the glass pipe because he moved some CD's around and might have accidentally touched it. (CP 23). Officer Garcia located an ICE inmate ID card identifying the defendant. (CP 23) A search warrant was executed, and a semi-automatic Ruger pistol was located wrapped in a

jacket behind the passenger seat on the floorboard. (CP 28). Officer Garcia also located a plastic container in the same area. That container stored a plastic bag. (CP 28). The material inside the bag field tested for methamphetamine and was sent to the lab for additional testing. (CP 27, 28).

Additionally, the "stipulated facts" offered include the following facts: 1) On November 23, 2012, Richland Police Officer Ed Garcia stopped a car driven by the defendant; 4) The defendant told Officer Garcia that he borrowed the car from a friend; 6) There were no other people in the car at the time of the stop; 10) Officer Garcia searched the defendant incident to defendant's arrest and found a pill bottle containing pills in the defendant's front pant pocket and a wallet in his right rear pant pocket; 11) The defendant told Officer Garcia he did not have a prescription for the pills found in his front pant pocket; 12) the pills were found to contain morphine sulfate, a schedule I narcotic; 20) Officer Garcia saw through the driver's side window a glass pipe with bunt residue; the pipe was located on the driver's side floor board; 26) During the execution of the search warrant on the Mercury Mystic, officers found several glass pipes, a plastic container holding a white crystal substance, a gun-cleaning rod, ammunition , and a Ruger P85 pistol among other items; and 27) The white crystal material was tested and found to contain

methamphetamine, a controlled substance. (CP 18-20).

The defendant complains that the white crystalline substance has not been proven to be methamphetamine, beyond a reasonable doubt, because the record does not contain a lab report. (App. Brief at 6). It is obvious from the defendant's briefing that he ignores the "stipulated facts" and only relies upon the police reports. "In this case, the only evidence in the record regarding the identification of the white substance found in the vehicle was the police account and the field test." (App. Brief at 6).

The defendant further states in his brief, "The trial court's finding of fact 27, 'The white crystal material was tested and found to contain methamphetamine, a controlled substance' is not supported by substantial evidence." (App. Brief at 10). The defendant misunderstands this document. These are not the court's "findings," they are the stipulated facts offered by the parties, from which the court made this finding of facts. In this matter, the parties stipulated that the white crystalline material was in fact methamphetamine, a controlled substance, and the court properly relied upon this stipulated fact in making its finding that the white crystalline substance was methamphetamine, beyond a reasonable doubt. (CP 20; RP 5-6).

When reviewing all of the facts in the record, it is clear that there is sufficient evidence to support the conviction.

2. THE EVIDENCE WAS SUFFICIENT TO ESTABLISH THE DEFENDANT WAS GUILTY OF ALIEN IN POSSESSION OF A FIREARM.

In the crime of “Unlawful Possession of a Firearm by an Alien,” the State must prove that the defendant is an alien, that the defendant possessed a firearm, and that the defendant did not have an alien firearm license. RCW 9.41.170.

This evidence submitted supports a factual basis for the conviction. The defendant stipulated to the following facts: 28) The defendant is not a U.S. citizen; and 29) The defendant did not provide a permit for the firearm. (CP 20). These facts clearly satisfy the first and third elements of the charge. The defendant argues the remaining facts do not support a finding the defendant was in possession of the firearm.

Possession may be actual or constructive, and constructive possession can be established by showing the defendant had dominion and control over the firearm or over the premises where the firearm was found. *State v. Echeverria*, 85 Wn. App. 777, 783, 934 P.2d 1214 (1997). A vehicle is a “premises” for purposes of this inquiry. *State v. Mathews*, 4 Wn. App. 653, 656, 484 P.2d 942 (1971).

An individual's sole occupancy and possession of a vehicle's keys sufficiently supports a finding that the defendant had dominion and control over the vehicle's contents. *State v. Potts*, 1 Wn. App. 614, 617, 464 P.2d

742 (1969). Similarly here, the defendant was the driver and sole occupant of the vehicle. (CP 18-19) Additionally, the ignition to the vehicle was punched out and it contained license plates belonging to another vehicle. (CP 19). The defendant provided a false name. (CP 23). The defendant stated he borrowed the car from a friend named "Sergio" from Othello, but didn't provide a last name or information to help identify "Sergio." (CP 23). There was no evidence provided to contradict that he had complete dominion and control over the vehicle.

Additionally, the location of the firearm in the vehicle supports constructive possession. The ability to reduce an object to actual possession is an aspect of dominion and control. *State v. Hagen*, 55 Wn. App. 494, 499, 781 P.2d 892 (1989). Here, the firearm was placed behind the front passenger seat, making the ability to reduce the firearm to actual possession easily achievable. (CP 28). The record contains sufficient evidence for a rational trier of fact to find the defendant was in possession of the firearm, and the State would ask the Court to affirm this conviction.

3. THE COURT DID NOT IMPOSE A DOMESTIC VIOLENCE ASSESSMENT. THE COURT IMPOSED A COURT APPOINTED ATTORNEY ASSESSMENT IN THE AMOUNT OF \$600.00.

In a scrivener's error, the court noted a \$600.00 attorney fee assessment in the domestic violence assessment line on the Judgment and

Sentence. (CP 37). The oral record is clear that the court never intended to include a domestic violence assessment. (RP 7). In relation to fines and fees, the court stated "In addition, sir, you will be responsible for \$500 crime victim's assessment; \$1,000 fine; \$100 felony DNA collection fee." (RP 7).

The court then inquired if counsel was appointed or retained, and counsel stated she was appointed. (RP 7). The court then imposed a \$600.00 court appointed attorneys fee. (RP 7). The court also imposed court costs in the amount of \$260.00. (RP 7). It is clear from the record that the court at no time intended to impose a domestic violence assessment. The only assessment in the amount of \$600.00 was for the attorney fee. The placement of this assessment on the Judgment and Sentence was simply a scrivener's error. The remedy for clerical or scrivener's errors in Judgment and Sentence forms is remand to the trial court for correction. *In re Pers. Restraint Petition of Mayer*, 128 Wn. App. 694, 701, 117 P.3d 353 (2005) (citing CrR 7.8(a)); *see* RAP 7.2(e).

IV. CONCLUSION

The State respectfully requests the Court to affirm the defendant's convictions. The \$600.00 charge imposed for domestic violence assessment is a scrivener's error, and the Court should remand to the trial court to correct the Judgment and Sentence.

RESPECTFULLY SUBMITTED this 7th day of October 2013.

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CERTIFICATE OF SERVICE

I certify under penalty of perjury under the laws of the State of Washington that on this day I served, in the manner indicated below, a true and correct copy of the foregoing document as follows:

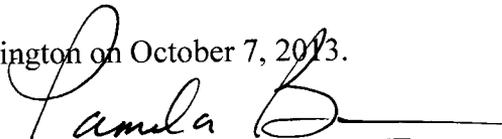
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