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Court of Appeals
Division III
State of Washington

33048-6-III

COURT OF APPEALS

DIVISION III

OF THE STATE OF WASHINGTON

STATE OF WASHINGTON, RESPONDENT

v.

JONATHAN HAAG, APPELLANT

APPEAL FROM THE SUPERIOR COURT

OF SPOKANE COUNTY

SUPPLEMENTAL BRIEF OF RESPONDENT

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I. APPELLANT'S ASSIGNMENTS OF ERROR

A. The trial court erred when it entered Finding of Fact 5: Officer Woodyard stopped the vehicle at Maple and Indiana for traffic violations.

B. The court erred when it entered Conclusion of Law 1: The court determines that Officer Woodyard, under the totality of circumstances presented to her, was reasonably justified in stopping the motor vehicle driven by the defendant.

C. The court erred when it entered Conclusion of Law 3: The vehicle did not have a license plate and the trip permit affixed to the back window was obviously tampered with.

II. ISSUES PRESENTED

1. If the defendant stipulated to the fact that the officer stopped his vehicle for traffic violations, does the invited error doctrine bar him from challenging, on appeal from his conviction after a "stipulated facts" trial, the trial court's finding of fact that the officer stopped his vehicle for traffic violations?

2. If the defendant stipulated for purposes of trial that he was blocking a lane of travel in Spokane as a police officer approached him and the officer was able to observe what appeared to be a forged and altered temporary trip permit in the rear window of his vehicle, do these findings

support the trial court's conclusion of law number one that under the totality of the circumstances, the officer was reasonably justified in stopping the vehicle driven by the defendant?

3. If the defendant stipulated to the fact that as the officer approached his vehicle prior to the stop, she observed what appeared to be an altered or forged trip permit, does this finding support the trial court's conclusion of law number three that the vehicle did not have a license plate and the trip permit affixed to the back window of his vehicle was obviously tampered with?

III. STATEMENT OF THE CASE

Respondent incorporates the facts as previously summarized in its opening brief.

Before trial, Mr. Haag moved to suppress evidence of a controlled substance found in his pocket after the stop of his vehicle. He lost the suppression motion. Mr. Haag proceeded to trial on stipulated facts to preserve the suppression issue for appeal. CP 53-54, 54-55; RP 43-52. After review of the facts agreed to by the parties, the court found Mr. Haag guilty of possession of a controlled substance – methamphetamine. CP 106-109; RP 49-52. Mr. Haag now claims insufficiency of the evidence regarding his conviction on the same facts he stipulated to before trial. His claim has no merit.

IV. ARGUMENT

The crime of unlawful possession of a controlled substance requires proof of two elements: (1) possession (2) of a controlled substance. RCW 69.50.4013(1). Methamphetamine is a controlled substance. RCW 69.50.206(d)(2). A person has actual possession of the drug when he or she has physical custody of the drug. *State v. Callahan*, 77 Wn.2d 27, 29, 459 P.2d 400 (1969).

To determine whether sufficient evidence supports a conviction, an appellate court views the evidence in the light most favorable to the State and determines whether any rational fact finder could have found the elements of the crime beyond a reasonable doubt. *State v. Homan*, 181 Wn.2d 102, 105–06, 330 P.3d 182, 185 (2014). In claiming insufficient evidence, the defendant necessarily admits the truth of the State’s evidence and all reasonable inferences that can be drawn from it. *State v. Salinas*, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992). These inferences “must be drawn in favor of the State and interpreted most strongly against the defendant.” *Id.* at 201.

Following a bench trial, appellate review is limited to determining whether substantial evidence supports the findings of fact and, if so, whether the findings support the conclusions of law. *Id.* at 105. Unchallenged

findings of fact supported by substantial evidence are viewed as verities on appeal. *Id.* at 105.

Substantial evidence exists when it is enough “to persuade a fair-minded person of the truth of the stated premise.” *State v. Russell*, 180 Wn.2d 860, 866-67, 330 P.3d 151 (2014). Stated differently, substantial evidence is “a quantum of evidence sufficient to persuade a rational fair-minded person the premise is true.” *Sunnyside Valley Irrigation Dist. v. Dickie*, 149 Wn.2d 873, 879, 73 P.3d 369 (2003).

“Stipulated facts” trial.

The State has the burden to prove a criminal charge beyond a reasonable doubt. *In re Winship*, 397 U.S. 358, 361–64, 90 S.Ct. 1068, 25 L.Ed.2d 368 (1970); *State v. Smith*, 155 Wn.2d 496, 502, 120 P.3d 559 (2005). However, a defendant may waive the State’s proof requirement to the extent that he or she stipulates to an element of the crime charged. “A ‘stipulation’ is an express waiver that concedes, for purposes of trial, the truth of some alleged fact, with the effect that one party need offer no evidence to prove it and the other is not allowed to disprove it.” *State v. Case*, No. 92293-4, 2016 WL 7175311 (Wash. Dec. 8, 2016).¹ Accordingly,

¹ A stipulated facts trial is still a trial of a defendant’s guilt or innocence.” *State v. Mierz*, 127 Wn.2d 460, 469, 901 P.2d 286 (1995). The burden of proof remains on the State. *State v. Johnson*, 104 Wn.2d 338, 342, 705 P.2d 773 (1985). The stipulation serves as an agreement by the

“[w]hen the parties stipulate to the facts that establish an element of the charged crime, the [finder of fact] need not find the existence of that element, and the stipulation therefore constitutes a waiver of the ‘right to a jury trial on that element.’” *State v. Humphries*, 181 Wn.2d 708, 714-15, 336 P.3d 1121 (2014) (citation omitted). The defendant also waives “the right to require the State prove that element beyond a reasonable doubt.” *Id.* at 715.

A. THE INVITED ERROR DOCTRINE PRECLUDES MR. HAAG FROM ARGUING THAT THE TRIAL COURT’S FINDING OF FACT NUMBER FIVE - THAT THE OFFICER STOPPED HIS VEHICLE FOR TRAFFIC VIOLATIONS - WAS NOT SUPPORTED BY SUBSTANTIAL EVIDENCE BECAUSE HE STIPULATED TO THIS FACT BEFORE TRIAL, RELIEVING THE STATE OF ITS BURDEN TO PROVE IT.

In the present case, Mr. Haag, his lawyer, and the deputy prosecutor presented several stipulated facts for the court’s consideration as to whether Mr. Haag committed the offense of possession of a controlled substance, methamphetamine, on August 28, 2014. The court found Mr. Haag guilty and entered bench trial findings of fact and conclusions of law. The court found, in part, that the officer stopped Mr. Haag for traffic violations. CP 107 (bench trial findings of fact and conclusions of law number five).

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).

Mr. Haag stipulated to this fact for the court's consideration at trial² and conceded the truth of this fact, in addition to other facts, for purposes of the trial court determining whether he committed the offense of possession of a controlled substance. CP 54 (stipulated facts trial finding of fact numbers three and five).

Mr. Haag maintains the officer had no basis to stop his vehicle because there was no traffic violation. Appellant's Supp. Br. at 3-4.³ More specifically, Mr. Haag complains the trial court erred when it entered its bench trial finding of fact number five, wherein the court found Officer Woodyard stopped his vehicle for traffic violations. Appellant's Supp. Br. at 1.

Under the invited error doctrine, a party cannot set up an error at trial and then complain of the same error on appeal. *State v. Ellison*, 172 Wn. App. 710, 715, 291 P.3d 921 (2013), *review denied*, 180 Wn.2d 1014 (2014). In *Ellison*, the defendant signed an agreement stipulating that the court could consider the facts as true and correct and

² Mr. Haag preserved the right to appeal the trial court's suppression order previous to the stipulated facts trial. RP 49. Respondent does not contest that Mr. Haag can challenge the suppression order which was addressed in both parties' opening briefs.

³ References are in conjunction with Mr. Haag's second supplemental brief filed on December 2, 2016.

proved beyond a reasonable doubt. *Id.* After submitting his case for trial on stipulated facts, the trial court convicted the defendant. *Id.* at 714. On appeal, the defendant claimed insufficiency of the evidence. *Id.* at 715. Division Two of this court rejected this argument, holding regardless of whether the State presented insufficient evidence at a CrR 3.6 hearing regarding the same finding of fact, the defendant was bound by his stipulation and the invited error doctrine barred him from challenging the same fact stipulated to at the time of trial. *Id.* at 716. Ultimately, the *Ellison* court held that the invited error doctrine prohibits a defendant from challenging a fact he or she stipulated to at trial. *Id.* at 716.

Like in *Ellison*, Mr. Haag is prohibited from assigning error to a finding of fact he stipulated to before trial. The invited error doctrine prohibits him from challenging the sufficiency of this fact supporting his conviction on appeal.

B. WHERE THE DEFENDANT STIPULATED BEFORE TRIAL THAT HE WAS BLOCKING A LANE OF TRAVEL AS THE OFFICER APPROACHED HIM AND THE OFFICER OBSERVED WHAT APPEARED TO BE A FORGED AND ALTERED TEMPORARY TRIP PERMIT IN THE REAR WINDOW OF HIS VEHICLE, THE TRIAL COURT'S BENCH TRIAL FINDINGS OF FACTS SUPPORT ITS CONCLUSION OF LAW NUMBER ONE THAT UNDER THE TOTALITY OF THE CIRCUMSTANCES, THE OFFICER WAS REASONABLY JUSTIFIED IN STOPPING THE VEHICLE DRIVEN BY THE DEFENDANT.

Mr. Haag next argues the trial court erred when it entered its conclusion of law number one even though he stipulated to facts which support the trial court's conclusion that the officer, under the totality of circumstances, was reasonably justified in stopping the car driven by Mr. Haag. CP 108 (bench trial conclusion of law number one); Appellant's Supp. Br. at 1.

Mr. Haag stipulated before trial that he was blocking a lane of travel in the City of Spokane as Officer Woodyard approached him, Officer Woodyard was able to observe a forged and altered temporary trip permit in the rear window of his vehicle, and, Officer Woodyard subsequently stopped his vehicle. CP 53-54 (bench trial findings of fact numbers two, three, and four), 106-07 (stipulated facts numbers two, three, and five entered into by the parties prior to the commencement of trial). As stated in the State's opening brief, an altered trip permit is a criminal violation and constitutes a gross misdemeanor. RCW 46.16A.320.

The trial court's first conclusion of law was supported by its findings of fact based upon the altered trip permit. Again, the invited error doctrine precludes Mr. Haag from setting up error and then complaining about it on appeal.

C. SINCE THE DEFENDANT STIPULATED BEFORE TRIAL THAT THE OFFICER OBSERVED WHAT APPEARED TO BE A FORGED AND ALTERED TEMPORARY TRIP PERMIT IN THE REAR WINDOW OF HIS VEHICLE, THE TRIAL COURT'S FINDINGS OF FACT SUPPORT ITS CONCLUSION OF LAW NUMBER THREE THAT THE OFFICER STOPPED HIS VEHICLE FOR TRAFFIC VIOLATIONS.

As previously mentioned, Mr. Haag stipulated before trial that the officer stopped him for several traffic violations including what appeared to be an altered or forged trip permit. This stipulated fact supports the trial court's conclusion of law number three that the officer stopped his vehicle for traffic violations.

V. CONCLUSION

The invited error doctrine precludes Mr. Haag from challenging the stipulated facts. The State requests this Court affirm Mr. Haag's conviction for possession of a controlled substance. Mr. Haag stipulated before trial

that he possessed a controlled substance, methamphetamine, at the time of the stop.

Respectfully submitted this 15 day of December, 2016.

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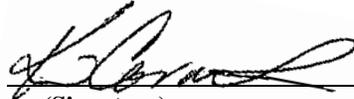
CERTIFICATE OF MAILING

I certify under penalty of perjury under the laws of the State of Washington, that on December 15, 2016, I e-mailed a copy of the Supplemental Brief of Respondent in this matter, pursuant to the parties' agreement, to:

Marie Trombley
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12/15/2016
(Date)

Spokane, WA
(Place)


(Signature)