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Court of Appeals
Division III
State of Washington
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No. 365930

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

Chelan County Superior Court
Cause No. 18-1-00540-04

State of Washington, Respondent

v.

Don Phillip Stentz

BRIEF OF RESPONDENT

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I. STATEMENT OF THE ISSUES

Under CrR 4.2(d) was there a sufficient factual basis to support Mr. Stentz's guilty plea to Residential Burglary when (1) Mr. Stentz directed another person to enter the victim's residence (while she was gone) and take a number of items including two of the victim's firearms, and (2) that person subsequently complied with Mr. Stentz's instructions and burglarized the victim's residence?

II. STATEMENT OF THE CASE

On August 14, 2018, officers arrested Nate Wooten after a witness saw Mr. Wooten driving the witness's vehicle (without the witness's permission). CP 6-9. Mr. Wooten advised officers that he had been instructed by Mr. Stentz to go to Ms. Summers' house and take a black duffel bag and two rifles; Mr. Stentz had also provided Mr. Wooten a map and address for the victim's house, as well as the victim's name, employer location, work days and hours (so that the victim would not be at the house when Mr. Wooten went there). CP 6-9.

After being shown a picture of the victim's house by officers, Mr. Wooten confirmed it was the house he burglarized, and the victim confirmed she owned the two rifles that were stolen. CP 6-0. Mr. Stentz denied telling Mr. Wooten to go into the house. CP 6-9.

The affidavit of probable cause was supplemented by the following discussion on the record between the court and the deputy prosecutor (for which Mr. Stentz was present):

THE COURT: Mr. Van Winkle, can you explain the burglary. What occurred.

MR. VAN WINKLE: Yes, Your Honor. On the date listed in the report, if this case were to go to trial, the evidence would show that Mr. Stentz recruited Nathan Wooten, who had been a cellmate of his, to go into Patricia Summers's residence and retrieve property; and that that was without Ms. Summers's permission.

THE COURT: So it's not alleged that Mr. Stentz went into Ms. Summers' property, but he had someone else do it?

MR. VAN WINKLE: Correct. And, when Mr. Wooten was arrested, he had, on him, a map of how to get to that property, a map of Ms. Summers's - - where she worked, her work schedule, her vehicle, and information on how to get there, all of which Mr. Wooten would testify were drawn for him and provided to him, by Mr. Stentz.

RP 36.

In his statement on plea of guilty, Mr. Stentz indicated he was entering an Alford plea and agreed that if the case went to trial, there was "a substantial likelihood of conviction" and further agreed that the court could "review the police report . . . and/or the Affidavit of Probable Cause, in the court file, to establish a factual basis for the plea." RP 35; CP 21. The trial court considered both Mr. Van Winkle's statements as well as the

affidavit of probable cause (discussed previously) in finding a factual basis for Mr. Stentz's plea to residential burglary. RP 35-37.

III. ARGUMENT

A. The issue of whether a factual basis for the plea existed was not preserved for appeal and is thereby waived.

Under RAP 2.5(a)(3), an appellate court does not generally review issues for the first time on appeal unless they relate to a manifest error affecting a constitutional right. *See also, State v. Robinson*, 171 Wn.2d 292, 304 (2011) (“party’s failure to raise an issue at trial waives the issue on appeal unless the party can show the presence of a ‘manifest error affecting a constitutional right.’”). For an error to be manifest, Mr. Stentz must show actual prejudice. *State v. O’Hara*, 167 Wn.2d 91, 99 (2009) (quoting *State v. Kirkman*, 159 Wn.2d 918, 935 (2007)).

Whether the trial court ascertained a factual basis for a guilty plea does not constitute an error of constitutional magnitude. *In re Hilyard*, 39 Wn. App. 723, 727 (1985); *In re Hews*, 108 Wn.2d 579, 592 (1987) (establishment of a factual basis is not an independent constitutional requirement, and is constitutionally significant only insofar as it relates to the defendant’s understanding of his or her plea).

In the present case, the court made it clear to Mr. Stentz that he was guilty of the residential burglary because, although never entering the

residence himself, Mr. Stentz nevertheless recruited and assisted (by providing information) another person in breaking into the victim's home and stealing guns. RP 36; CP 6-9.

Mr. Stentz cannot establish either an error of constitutional magnitude or actual prejudice. Based on the affidavit of probable cause as well as the discussion on the record regarding the factual basis, Mr. Stentz understood he was not being accused of going into the victim's residence himself; rather he was accused of encouraging and directing another person to enter the house and take items. Because Mr. Stentz failed to preserve the factual basis issue and it doesn't constitute a manifest error affecting a constitutional right, the issue is waived.

B. There was a sufficient factual basis supporting Mr. Stentz's guilty plea.

Even if this Court determines this issue is of constitutional magnitude and that Mr. Stentz has shown actual prejudice, there was nevertheless a factual basis for the plea.

A court shall not enter a judgment upon a plea of guilty unless it is satisfied there is a factual basis for the plea. CrR 4.2(d); *State v. Newton*, 87 Wn.2d 363, 368 (1976). The court may consider any reliable source of information in the record to determine whether a factual basis exists, including the prosecutor's factual statement. *State v. Osborne*, 102 Wn.2d 87, 95 (1984). With respect to accomplice liability, the constitutional right

of an accused to be informed of the charges against him is not violated when he is found guilty as an accomplice, even though the information did not expressly charge him as such. *State v. Johnston*, 85 Wn. App. 549, 555 (1997) (citing *State v. Rodriguez*, 78 Wn. App. 769, 771 (1995)). More directly, a finding of guilt “may be sustained upon evidence that the defendant participated . . . as an aider or abetter, even though he was not expressly accused of aiding and abetting and even though he was the only person charged in the information.” *State v. McDonald*, 138 Wn.2d 680, 688 (1999) (quoting *State v. Carothers*, 84 Wn.2d 256, 260 (1974)).

Following this reasoning, because a person may be convicted as an accomplice without the information specifically alleging it, a trial court may equally rely on accomplice liability in establishing a factual basis for a guilty plea. Mr. Stentz provides no authority that a trial court must specifically identify whether the factual basis is for principal or accomplice liability, nor does Mr. Stentz provide any authority that a defendant’s plea requires an express election of principal or accomplice guilt. And from a practical perspective, this election is not necessary because the two types of criminal liability are treated equally. *See State v. Trout*, 125 Wn. App. 403, 409 (2005) (“Criminal liability applies equally to a principal and an accomplice”).

For the crime of residential burglary, a person is guilty if he entered or remained unlawfully in a dwelling with the intent to commit a crime against a person or property therein, and any person (with knowledge of the crime) is equally guilty of this crime if he aided the principal in planning or committing it. RCW 9A.52.025(1); RCW 9A.08.020(1), (3)(a)(ii).

In the present case, there was a factual basis to convict Mr. Stentz of residential burglary. Mr. Wooten unlawfully entered the victim's residence and stole two rifles from her, and it was Mr. Stentz who directed him to commit this crime and provided him ample and detailed information to facilitate it.

IV. CONCLUSION

Based on the foregoing reasons, this Court should affirm Mr. Stentz's convictions.

DATED: August 29, 2019

Respectfully submitted:



Ryan Valaas, WSBA # 40695
Deputy Prosecuting Attorney

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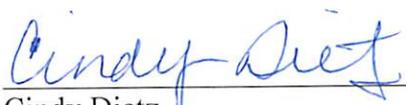
IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION III

STATE OF WASHINGTON,)	
)	No. 36593-0-III
Plaintiff/Respondent,)	Chelan Co. Superior Court No. 18-1-00540-1
)	
vs.)	DECLARATION OF SERVICE
)	
DON PHILLIP STENTZ,)	
)	
Defendant/Appellant.)	

I, Cindy Dietz, under penalty of perjury under the laws of the State of Washington, declare that on the 29th day of August, 2019, I caused the original BRIEF OF RESPONDENT to be filed via electronic transmission with the Court of Appeals, Division III, and a true and correct copy of the same to be served on the following in the manner indicated below:

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Connell, WA 99326		Courts' Portal

Signed at Wenatchee, Washington, this 29th day of August, 2019.



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August 29, 2019 - 11:15 AM

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