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Division II
State of Washington
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Supreme Court No. 97256-7
(COA No. 51093-6-II)

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

v.

ANGELA MARIE JANTZI,

Petitioner.

ON APPEAL FROM THE SUPERIOR COURT OF THE
STATE OF WASHINGTON FOR KITSAP COUNTY

PETITION FOR REVIEW

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A. IDENTITY OF PETITIONER

Angela Marie Jantzi petitions this Court for review of the Court of Appeals' opinion in *State v. Jantzi*, No. 51093-6-II (filed April 30, 2019). RAP 13.1(a), 13.3(a)(1), (b), 13.4(b).

B. COURT OF APPEALS DECISION

The trial court convicted Ms. Jantzi of multiple offenses pursuant to stipulated facts following her unsuccessful participation in drug court. The Court of Appeals rejected Ms. Jantzi's challenge to the sufficiency of the evidence, finding the stipulations of facts and sufficiency to which she agreed as a requirement of drug court participation obviated the need to review the sufficiency of the evidence. Slip Op. at 4-5. In so holding, the Court of Appeals' opinion conflicts with this Court's precedent by finding a defendant's stipulation to a legal conclusion binds a court and prevents appellate review of sufficiency of the evidence. In addition, the Court of Appeals' opinion erroneously conflates a stipulation to facts with a determination of guilt beyond a reasonable doubt and affirms Ms. Jantzi's convictions without a determination that the State met its due process burden of proving every element of the charged offenses beyond a reasonable doubt.[1]

[1] Ms. Jantzi also argued the trial court erred in imposing legal financial obligations (LFOs) without conducting a proper indigency analysis. The Court of Appeals agreed and remanded for a new LFO determination consistent with *State v.*

C. ISSUES PRESENTED FOR REVIEW

In *State v. Drum*[2], this Court held, "By entering a drug court contract, a defendant is not giving up his right to an independent finding of guilt beyond a reasonable doubt" and rejected the claim that a stipulation to sufficiency of the evidence binds either a trial or an appellate court. Nonetheless, the Court of Appeals declined to apply those principles when it failed to conduct a sufficiency analysis because Ms. Jantzi's drug court petition included a stipulation not only to certain facts but also to the sufficiency of the evidence. Should this Court grant review to reaffirm that a stipulation to a legal conclusion neither binds a court nor relieves the State of its due process obligation to prove each and every element beyond a reasonable doubt? RAP 13.4(b)(1), (3).

D. STATEMENT OF THE CASE

Ms. Jantzi agreed to participate in drug court in order to resolve several charges against her. RP 3-10; CP 63-70. The drug court petition required Ms. Jantzi to waive many of her constitutional and statutory rights, including her right to a jury trial, to a speedy trial, to confront witnesses, to present witnesses, to testify, and to challenge the legality of her search, seizure, and statements. CP 64. In addition, drug court

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Ramirez, 191 Wn.2d 732, 426 P.3d 714 (2018). Slip Op. at 2, 5-6. Ms. Jantzi does not petition this Court for review of that portion of the opinion.

[2] 168 Wn.2d 23, 34, 225 P.3d 237 (2010).

participation required Ms. Jantzi to stipulate to the facts of the case, including “the police reports and other materials in the Prosecuting Attorney’s possession.” CP 64. Finally, the drug court petition included a stipulation “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.” CP 64.

Ms. Jantzi struggled to succeed in drug court. CP 77, 89, 91, 93. The State moved to terminate her participation. CP 99. The court granted the motion to terminate and found Ms. Jantzi guilty of all charges without conducting a formal bench trial. CP 97; RP 12-17. Instead, the court found Ms. Jantzi guilty relying on the stipulations to which Ms. Jantzi agreed in the drug court petition. RP 13; CP 100-102.

On appeal, Division One declined to consider Ms. Jantzi’s challenge to the sufficiency of the evidence against her because of the stipulation to the facts and the stipulation to the sufficiency of the evidence contained in the drug court petition. Slip Op. at 5.

E. ARGUMENT WHY REVIEW SHOULD BE GRANTED

A defendant's stipulation to the sufficiency of the evidence is a legal conclusion that cannot bind a court and that cannot relieve the State of its constitutional burden of proof.

1. Due process requires the State to prove every element of the charged offense beyond a reasonable doubt.

The State is required to prove every element of the charged offense beyond a reasonable doubt. U.S. Const. amend. XIV; Const. art. I, § 3; *Apprendi v. New Jersey*, 530 U.S. 466, 477, 120 S. Ct. 2348, 147 L. Ed. 2d 435 (2000); *In re Winship*, 397 U.S. 358, 364, 90 S. Ct. 1068, 25 L. Ed. 2d 368 (1970). A reviewing court must reverse unless it concludes every rational fact finder could have found each essential element beyond a reasonable doubt. *Jackson v. Virginia*, 443 U.S. 307, 319, 99 S. Ct. 2781, 61 L. Ed. 2d 560 (1979); *State v. Vasquez*, 178 Wn.2d 1, 6, 309 P.3d 318 (2013). This requires an appellate court to review whether the evidence is sufficient to support a conviction.

2. A stipulation to facts does not relieve the State of its due process obligation to prove every element of the offense beyond a reasonable doubt.

A stipulation is "an admission 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). Stipulations concede the fact to which the parties stipulate is true.

State v. Wolf, 134 Wn. App. 196, 199, 139 P.3d 414 (2006). Therefore, the State need not present other evidence to prove the fact. *State v. Ellison*, 172 Wn. App. 710, 716, 291 P.3d 921 (2013).

However, the State is not relieved of its due process obligations to prove an element beyond a reasonable doubt when a defendant stipulates to facts. *Abad v. Cozza*, 128 Wn.2d 575, 586, 911 P.2d 376 (1996) (following revocation of deferred prosecution trial court may find defendant guilty only if the stipulated evidence supports conviction). A defendant who stipulates to facts does not waive the State's obligation to sustain its burden of proof. *State v. Colquitt*, 133 Wn. App. 789, 794-95, 137 P.3d 892 (2006) (state "retains the burden of proof" at stipulated facts bench trial following revocation of deferred prosecution). A defendant maintains the presumption of innocence unless and until the court finds sufficient evidence to convict.

3. A stipulation that the evidence is sufficient is a legal conclusion that cannot bind a court.

A deferred prosecution such as drug court participation offers defendants dismissal of the charges if they succeed in a program and comply with the terms of the petition or contract. However, if the prosecution is resumed, the trier of fact must still determine whether the State has proven each element of the charged beyond a reasonable doubt

and may find the defendant guilty only where the evidence sufficiently supports the charge. *See State v. Highley*, 78 Wn. App. 172, 187, 902 P.2d 659 (1995) (noting deferred prosecutions leave "adjudication by plea or trial to a later time"); *State v. Shattuck*, 55 Wn. App. 131, 134, 776 P.2d 1001 (1989) (explaining fact finder must "assess the defendant's guilt" based on stipulated evidence following failed deferred prosecution). The State's ability to rely on stipulated facts does not relieve it of this constitutional obligation.

In *Drum*, this Court considered the validity of a drug court contract that included not only a stipulation to facts but also a stipulation to the sufficiency of the evidence. 168 Wn.2d at 33-38. This Court explicitly rejected the Court of Appeals' conclusion that it could not consider the defendant's challenge to the sufficiency of the evidence because the drug court contract included a stipulation to sufficiency and held courts are not bound by stipulations to legal conclusions. *Id.* at 33-34. This includes a defendant's stipulation to his own guilt. *Id.*

This Court concluded:

> We are troubled by the Court of Appeals' suggestion that a drug court contract clause stipulating to the sufficiency of the evidence results in the defendant waiving his right to a determination of guilt beyond a reasonable doubt. . . . By entering a drug court contract, a defendant is not giving up his right to an independent finding of guilt beyond a reasonable doubt. A trial court

> still has the authority to find the defendant not guilty if it determines that the stipulated evidence does not establish all elements of the crime beyond a reasonable doubt.

Id. at 34. This Court held the defendant's stipulation to the sufficiency of the evidence "was not binding on either the trial court or the Court of Appeals." *Id.*

4. The Court of Appeals accepted Ms. Jantzi's stipulation to the sufficiency of the evidence and failed to review the sufficiency of the evidence, in violation of due process requirements and this Court's opinion in *Drum*.

Applying *Drum*, courts may not simply rely on a defendant's stipulation to the sufficiency of the evidence but must examine the evidence to determine if it, in fact, supports a conviction. This applies not only to trial courts but to appellate courts. The State still must prove every element of the offense beyond a reasonable doubt, and the court must still decide the defendant's guilt or innocence.

Ms. Jantzi appealed her convictions, arguing insufficient evidence supported the court's findings of guilt. The Court of Appeals declined to conduct a sufficiency analysis because Ms. Jantzi stipulated to certain facts and "because Jantzi stipulated to the sufficiency of the evidence, stating, 'I stipulate that the facts contained within the police report are sufficient for a trier of fact to find me guilty of the charge(s) filed against me.'" Slip Op. at 5. This refusal to review a challenge to the sufficiency

of the evidence because of Ms. Jantzi's stipulation to a legal conclusion, which was required in order for her to participate in drug court, directly contradicted this Court's holding in *Drum*. Therefore, this Court should grant review. RAP 13.4(b)(1), (3).

F. CONCLUSION

Ms. Jantzi respectfully requests this Court grant review pursuant to RAP 13.4(b).

DATED this 23nd day of May 2019.

Respectfully submitted,

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APPENDIX 1

Filed
Washington State
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April 30, 2019

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

STATE OF WASHINGTON, Respondent, v. ANGELA MARIE JANTZI, Appellant.	No. 51093-6-II UNPUBLISHED OPINION

WORSWICK, J. — After a trial on stipulated facts, Angela Jantzi was convicted of three counts of second degree burglary,[1] one count of first degree possession of stolen property,[2] and one count of third degree retail theft with special circumstances.[3] Jantzi appeals, arguing that because the trial court did not formally admit evidence at the stipulated facts trial, there was insufficient evidence to find her guilty, and alternatively argues that the trial court erred when it imposed certain legal financial obligations (LFOs).

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[1] RCW 9A.52.030; 9A.08.020.

[2] RCW 9A.56.150.

[3] RCW 9A.56.360(4).

We hold that sufficient evidence supports all of Jantzi's convictions, but that the trial court erred when it imposed certain LFOs. Accordingly, we affirm Jantzi's convictions and remand for the trial court to make a new LFO determination.

FACTS

In March 2017, Jantzi stole merchandise from two different stores. In May 2017, Jantzi burglarized at least three storage units, stealing numerous items of property as well as over $100,000 in cash. The State charged Jantzi by amended information with three counts of second degree burglary, one count of first degree possession of stolen property, and one count of third degree retail theft with special circumstances.

Jantzi petitioned the trial court for placement into the drug court program. At Jantzi's hearing regarding her acceptance into drug court, the State filed the "First Amended Information with attached probable cause statements." Verbatim Report of Proceedings (VRP) (July 28, 2017) at 3. Jantzi acknowledged receipt of the information, waived formal reading, stipulated to probable cause, and asked that the Court accept her into drug court.

The trial court explained the drug court procedures to Jantzi, saying in part, "[Y]ou would be convicted of each charge once the motion to terminate is granted, you don't say a word about it, and I would sentence you to the high end of the standard ranges." VRP (July 28, 2017) at 4. Jantzi acknowledged that she understood the procedures. The trial court then granted Jantzi's petition for drug court.

Jantzi's petition for drug court included a number of statements, waivers, and stipulations. One of Jantzi's statements said, "I also admit at this time that I am guilty of the underlying offense(s)." Clerk's Papers (CP) at 63. She further stated:

> I wish to submit this case on a stipulated record. I am making this stipulation freely and voluntarily. . . . 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.

CP at 64. Police reports regarding Jantzi's crimes were filed in the court file along with her petition.

Jantzi struggled to comply with the drug court program. After Jantzi participated in drug court for just over two months, the State moved to terminate her from drug court for noncompliance. The trial court granted the motion, terminated Jantzi from drug court, and found her guilty as charged at a stipulated facts trial.

The trial court did not inquire into Jantzi's financial ability or indigence. Nonetheless, Jantzi's judgment and sentence stated that she had the ability or future ability to pay LFOs, and contained certain costs and fees, namely a $500 victim assessment fee, a $500 court appointed attorney fees, a $200 filing fee, a $100 DNA (deoxyribonucleic acid) sample fee, a $100 expert witness fee, a $100 Anti-Profiteering Fund fee, and any future determination of restitution.

Jantzi appeals.

ANALYSIS

I. Stipulated Facts Trial

Jantzi argues that because the State did not offer any evidence to the trial court during her stipulated facts trial, the State did not prove any of the elements of the charged crimes. Specifically, Jantzi argues that the trial record does not contain any police reports or other evidence, and that the trial court did not consider such evidence before finding her guilty. Jantzi

challenges every trial court finding, stating that "[a]bsent the presentation of . . . any evidence at trial, it logically follows that there is no evidence to support any and all written factual findings by the court, much less substantial evidence." Br. of Appellant at 13. We disagree.

A stipulated facts trial is not the same as a guilty plea. *State v. Drum*, 168 Wn.2d 23, 39, 225 P.3d 237 (2010). In a stipulated facts trial, the State bears the burden of proving guilt beyond a reasonable doubt, and the trial court must determine guilt or innocence. *State v. Mierz*, 127 Wn.2d 460, 469, 901 P.2d 286 (1995). A stipulation to facts is an express waiver conceding for the purpose of the trial that the facts are true and there is no need to prove the facts. *State v. Wolf*, 134 Wn. App. 196, 199, 139 P.3d 414 (2006). As a result, the trial court is not required to provide the same safeguards for an agreement to trial based on stipulated facts as for a guilty plea. *Mierz*, 127 Wn.2d at 469. Defendants are generally bound by their stipulations. *State v. Ellison*, 172 Wn. App. 710, 716, 291 P.3d 921 (2013).

Here, Jantzi agreed to a stipulated record. She also stipulated that the trial court would read the police reports before determining guilt. Jantzi is bound by her stipulation. *See Ellison*, 172 Wn. App. at 716.

During the proceeding accepting Jantzi into drug court, the State submitted the first amended information with attached probable cause statements. These documents included police reports describing Jantzi's criminal acts. Jantzi acknowledged receipt of the amended information, waived formal reading, stipulated to probable cause, and asked the court to accept her into drug court.

Based on Jantzi's stipulations in her petition for drug court, the State was not required to formally present the police reports as exhibits to the trial court at the trial on stipulated facts. As

a result, the trial court properly had before it the stipulated evidence from the police reports and found Jantzi guilty. We hold that the trial court possessed police reports and other evidence when it determined Jantzi's guilt.

Because Jantzi's sufficiency argument is dependent on her contention that the record is devoid of facts, and because Jantzi stipulated to the sufficiency of the evidence, stating, "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) filed against me," CP at 64, we do not conduct a sufficiency analysis.

II. LFOs

Jantzi argues that the trial court erred when imposing LFOs because it did not consider Jantzi's current or future ability to pay before imposing LFOs. We agree and remand for the trial court to consider Jantzi's LFOs under *State v. Ramirez*, 191 Wn.2d 732, 747-49, 426 P.3d 714 (2018), and RCW 10.01.160, as amended in June 2018.

The legislature amended former RCW 10.01.160(3) (2015), and as of June 7, 2018, this statutory provision limits the type of LFOs a trial court can impose on an indigent defendant and prohibits a trial court from ordering a defendant to pay costs "if the defendant at the time of sentencing is indigent as defined in RCW 10.101.010(3)(a) through (c)." Before this legislative amendment, former RCW 10.01.160(3) prohibited trial courts from imposing costs on a criminal defendant "unless the defendant is or will be able to pay them."

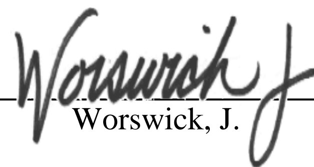
The recent legislation also prohibits trial courts from imposing discretionary LFOs, criminal filing fees, or interest accrual on the nonrestitution portions of LFOs on indigent defendants. RCW 10.01.160(3); RCW 36.18.020(h); RCW 10.82.090; *Ramirez*, 191 Wn.2d at

746. In *Ramirez*, our Supreme Court held that this amendment applies prospectively and is applicable to cases pending on direct review. 191 Wn.2d at 749.

The trial court imposed a $500 victim assessment fee, a $500 court appointed attorney fees, a $200 filing fee, a $100 DNA sample fee, a $100 expert witness fee, a $100 Anti-Profiteering Fund fee, and restitution. Because the recently amended version of RCW 10.01.160(3) requires a trial court to make a threshold determination of whether a convicted defendant is indigent at the time of sentencing before imposing costs, and because the amended statute applies to Jantzi's sentence, we reverse the imposition of LFOs in this matter and remand to the trial court to impose LFOs consistent with the recent legislative amendments and *Ramirez*.

We affirm Jantzi's convictions and remand to the trial court for a new LFO determination.

A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports, but will be filed for public record in accordance with RCW 2.06.040, it is so ordered.



Worswick, J.

We concur:

Lee, A.C.J.

Cruser, J.

DECLARATION OF FILING AND MAILING OR DELIVERY

The undersigned certifies under penalty of perjury under the laws of the State of Washington that on the below date, the original document **Petition for Review to the Supreme Court** to which this declaration is affixed/attached, was filed in the **Court of Appeals** under **Case No. 51093-6-II**, and a true copy was mailed with first-class postage prepaid or otherwise caused to be delivered to the following attorney(s) or party/parties of record at their regular office / residence / e-mail address as listed on ACORDS / WSBA website:

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Date: May 23, 2019

WASHINGTON APPELLATE PROJECT

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