

67206-1

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NO. 67206-1-I

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

STATE OF WASHINGTON,

Respondent,

v.

TJUAN BLYE,

Appellant.

FILED
COURT OF APPEALS DIV I
STATE OF WASHINGTON
2012 JAN 19 AM 10:43

BRIEF OF RESPONDENT

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Prosecuting Attorney

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Deputy Prosecuting Attorney
Attorney for Respondent

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I. ISSUES

The trial court entered written findings addressing every element of the crime of possession of a controlled substance. Should the case be remanded for entry of additional findings?

II. STATEMENT OF THE CASE

The defendant, Tjuan Blye, was charged with possession of a controlled substance. CP 53. He moved to suppress the evidence against him, claiming that he had been illegally detained. CP 41-49. Following a factual hearing, the court suppressed evidence found in a search of the defendant's vehicle. The court declined, however, to suppress evidence found on the defendant's person. The court entered certificates pursuant to CrR 3.5 and 3.6. CP 14-19. The appellant's brief does not raise any issues with regard to the factual findings or legal conclusions set out in these certificates.¹

Following these decisions, the defendant agreed to a stipulated trial. He agreed that the court would decide his guilt on the basis of the Affidavit of Probable Cause and the police reports. CP 31 ¶ 4.2. The Affidavit (CP 21-23) is attached to this brief as

¹ The defendant's Statement of Additional Grounds does raise a challenge to his detention.

Appendix B. It states that on March 16, 2010, Everett police arrested the defendant for a parole violation.

While the defendant was en route to the jail where he was going to be booked for the DOC violation, the asked if he was going to be strip searched. Officer Atwood replied he most likely would be strip searched. The defendant said he wanted to work something out. Officer Atwood concluded the defendant likely had a controlled substance on his person. The defendant said he had crack cocaine in his underwear. At the jail, the defendant shook an item out of his underwear and down his left pant leg. The officers retrieved a plastic baggie containing a substance which field tested positive for the presence of cocaine. The substance weighted 6.53 grams.

CP 22. The defendant specifically stipulated: "The controlled substance seized in this case was in fact cocaine." CP 31 ¶ 4.5.

Following the stipulated trial, the court found the defendant guilty. The court entered the following findings and conclusions

5.2 Findings of Fact Regarding Charged Crime(s)

This court considered the agreed documentary evidence, applying the standard that the state must prove all elements of the offense(s) by proof beyond a reasonable doubt. The court makes the following findings of facts: The Defendant, Tjuan Leon Blye, on or about the 16th day of March, 2010, did unlawfully posses a controlled substance, to-wit: Cocaine in Snohomish County, Washington; and the crime was committed while the Defendant was under community custody.

5.3 Conclusion of Law

The defendant is guilty of the crime(s) of: Possession of a Controlled Substance, Crime Committed While on Community Custody.

CP 32 (attached to this brief as Appendix A).

III. ARGUMENT

THE TRIAL COURT ENTERED ADEQUATE FINDINGS.

The defendant claims that the trial court failed to enter findings of fact and conclusions of law. He is wrong – the court entered findings and conclusions. CP 32. Findings are sufficient if they address each element separately, specifically state that the element has been met, and set out the factual basis for each conclusion of law. State v. Banks, 149 Wn.2d 38, 43, 65 P.3d 1198 (2003). Although the findings in this case are short, they cover all of the elements of the crime and support the court’s legal conclusions. See RCW 69.50.4013 (defining crime of possessing controlled substance); WPIC 50.02 (pattern instruction setting out elements of this crime).

In the context of this case, no purpose would be served by remanding the case for more detailed findings. All of the relevant facts are stipulated. At the stipulated trial, defense counsel acknowledged that there “really aren’t any facts in dispute at this

point.” 4/22 RP 3. The stipulated record shows that the defendant was carrying cocaine in his underwear. CP 22. It would be a waste of time and money to remand the case so that the trial court could enter a finding to that effect.

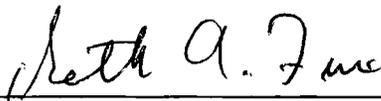
Absent “manifest error affecting a constitutional right,” this court will ordinarily not consider an issue raised for the first time on appeal. RAP 2.5(a)(3). Here, the defendant neither objected to the trial court’s findings nor requested more detailed findings. 4/22 RP 10-11. He has cited no authority indicating that the sufficiency of the findings implicates any constitutional right. Consequently, the sufficiency of the findings cannot be challenged on appeal.

IV. CONCLUSION

The judgment and sentence should be affirmed.

Respectfully submitted on January 18, 2012.

MARK K. ROE
Snohomish County Prosecuting Attorney

By: 

SETH A. FINE, WSBA # 10937
Deputy Prosecuting Attorney
Attorney for Respondent

APPENDICES

Appendix A – Findings and Conclusions (CP 32)

Appendix B – Affidavit of Probable Cause (CP 21-23)

APPENDIX A

V. FINDINGS & CONCLUSIONS

5.1 Understanding of Waiver

The court finds that the defendant's waiver of rights and agreement to a bench trial on agreed documentary evidence was knowingly, intelligently, and voluntarily made.

5.2 Findings Of Fact Regarding Charged Crime(s)

This court considered the agreed documentary evidence, applying the standard that the state must prove all elements of the offense(s) by proof beyond a reasonable doubt. The court makes the following findings of facts: The Defendant, Tjuan Leon Blye, on or about the 16th day of March, 2010, did unlawfully possess a controlled substance, to-wit: Cocaine in Snohomish County, Washington; and the crime was committed while the Defendant was under community custody.

5.3 Conclusion Of Law

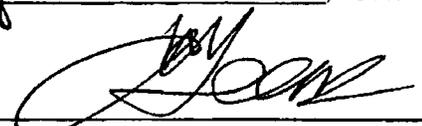
The defendant is guilty of the crime(s) of: Possession of a Controlled Substance, Crime Committed While on Community Custody.

The defendant signed this document in open court in the presence of defense counsel and the undersigned judge. Defense counsel asserted that (check appropriate box):

The defendant previously read the document; or

Defense counsel previously read the document to defendant.

DATED this 22 day of April, 2011.



Judge

Presented by



HALLEY R. HIPPI, 23331
Deputy Prosecuting Attorney

Approved for Entry:



MARK STEPHENS, #26110
Attorney for Defendant



TJUAN LEON BLYE
Defendant

APPENDIX B

FILED

APR 13 2010

SONYA KRASKI
COUNTY CLERK
SNOHOMISH CO. WASH

SUPERIOR COURT OF WASHINGTON FOR SNOHOMISH COUNTY

THE STATE OF WASHINGTON,

Plaintiff,

v.

BLYE, TJUAN LEON

Defendant.

No. 10-1-00550-6

AFFIDAVIT OF PROBABLE CAUSE

Aliases: TJUAN CAMERON, XAVIER KING, PAUL TILLMAN,

Other co-defendants in this case:

AFFIDAVIT BY CERTIFICATION:

The undersigned certifies that I am a Deputy Prosecuting Attorney for Snohomish County, Washington, and make this affidavit in that capacity; that criminal charges have been filed against the above-named defendant(s) in this cause, and that I believe probable cause exists for the arrest of the defendant(s) on the charges because of the following facts and circumstances:

According to reports submitted by the Everett Police Department, the following events occurred in Snohomish County, Washington. Unless specified to the contrary, the undersigned has no personal knowledge of the events described herein.

On March 16, 2010 Everett police officers Atwood and Lee, who were assigned to the department's anti-crime team, were in the vicinity of 23rd and Virginia St. when they saw the defendant entering a store. The officers knew the defendant was on parole. Lee checked his computer and learned the Department of Corrections (hereinafter DOC) had just received a dirty urinalysis on the defendant. Lee advised Atwood this was a DOC violation and told Atwood to stop the vehicle in which the defendant was a passenger.

The vehicle was stopped a short distance away. Officer Lee contacted the defendant at the passenger door to the vehicle and took the defendant into custody. When the defendant's person was searched incident to his arrest, officers found \$750 in cash on his person. The defendant was placed in the rear of the patrol vehicle.

The female driver of the car was told she was free to leave but agreed to remain. A narcotics dog responded and the vehicle was searched, with drug paraphernalia being found inside.

When the defendant was en route to the jail where he was going to be booked for the DOC violation, he asked if he was going to be strip searched. Officer Atwood replied he most likely would be strip searched. The defendant said he wanted to work something out. Officer Atwood concluded the defendant likely had a controlled substance on his person. The defendant said he had crack cocaine in his underwear. At the jail, the defendant shook an item out of his underwear and down his left pant leg. The officers retrieved a plastic baggie containing a substance which field tested positive for the presence of cocaine. The substance weighed 6.53 grams.

The defendant has the following criminal history:

ADULT FELONIES:

VUCSA - Deliver/Manufacture (B) (2 Counts)	12/10/93	Kitsap County	(Cocaine)
Third Degree Assault (C)	10/13/99	Snohomish County	
VUCSA - Possession (C)	4/17/08	Snohomish County	(Cocaine)
VUCSA - Possession With Intent To Manufacture/Deliver (B) (Cocaine)	4/17/08	Snohomish County	
VUCSA - Delivery (B)	5/1/08	Snohomish County	(Cocaine)

ADULT MISDEMEANORS:

1. Obstructing	3/14/93	Kitsap County	
2. Criminal Trespass	3/14/93	Kitsap County	
3. No Valid License/Expired License	3/14/93	Kitsap County	
4. No Valid License/Expired License	7/17/93	Kitsap County	
5. No Valid License/Expired License	10/10/93	King County	
6. Refusal to Give Information	2/20/97	Snohomish County	
7. No Valid License/Expired License	3/29/97	Snohomish County	
8. Possession Drug Paraphernalia	7/15/97	Snohomish County	
9. Driving While Suspend/Revoked	7/19/97	Snohomish County	
10. Driving While Suspend/Revoked	8/14/97	Snohomish County	
11. Driving While Suspend/Revoked	9/12/97	King County	
12. Driving While Suspend/Revoked	9/15/97	King County	
13. Driving While Suspend/Revoked	4/8/98	King County	
14. Driving While Suspend/Revoked	5/28/98	Snohomish County	
15. Possession Drug Paraphernalia	5/28/98	Snohomish County	
16. Driving While Suspend/Revoked	5/12/99	Snohomish County	
17. Driving While Suspend/Revoked	2/24/01	Skagit County	
18. Possession of Marijuana	6/17/02	Snohomish County	
19. Obstructing	10/2/04	Snohomish County	
20. Possession of Marijuana	1/21/05	Snohomish County	
21. Driving While Suspend/Revoked	8/30/05	Snohomish County	
22. Driving While Suspend/Revoked	9/15/05	Snohomish County	
23. Driving While Suspend/Revoked	5/3/06	Snohomish County	

The defendant was on community custody at the time of these events. The district court set bail in this matter in the amount of \$10,000, and the defendant posted that bail before this charge was filed.

I certify (or declare) under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.



CONSTANCE M. CRAWLEY, #11781
Deputy Prosecuting Attorney

DATED this 2nd day of April, 2010 at the Snohomish County Prosecutor's Office.

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FOR THE STATE OF WASHINGTON
DIVISION I

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THE STATE OF WASHINGTON,

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v.

TJUAN BLYE,

Appellant

No. 67206-1-1

AFFIDAVIT OF MAILING

AFFIDAVIT BY CERTIFICATION:

The undersigned certifies that on the 18TH day of January, 2012, affiant deposited in the mail of the United States of America a properly stamped and addressed envelope directed to:

THE COURT OF APPEALS - DIVISION I
ONE UNION SQUARE BUILDING
600 UNIVERSITY STREET
SEATTLE, WA 98101-4170

NIELSEN, BROMAN & ASSOCIATES
320 CENTRAL BUILDING
810 THIRD AVENUE
SEATTLE, WA 98104

containing an original and one copy to the Court of Appeals, and one copy to the attorney for the appellant of the following documents in the above-referenced cause:

BRIEF OF RESPONDENT

I certify under penalty of perjury under the laws of the State of Washington that this is true.

Signed at the Snohomish County Prosecutor's Office this 18th day of January, 2012.

A handwritten signature in cursive script, appearing to read "Seth A. Fine".

SETH A. FINE