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EXCEPT AS AUTHORIZED BY APPLICABLE RULES.  
See Ariz. R. Supreme Court 111(c); ARCAP 28(c);  
Ariz. R. Crim. P. 31.24



DIVISION ONE  
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IN THE COURT OF APPEALS  
STATE OF ARIZONA  
DIVISION ONE

STATE OF ARIZONA, ) 1 CA-CR 08-0662  
)  
) Appellee, ) DEPARTMENT E  
)  
) v. ) **MEMORANDUM DECISION**  
) (Not for Publication -  
) Rule 111, Rules of the  
WILLIAM RANDOLPH HICOK, ) Arizona Supreme Court)  
)  
) Appellant.)  
)  
)  
)

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Appeal from the Superior Court in Mohave County

Cause No. CR-2007-0076

The Honorable Robert R. Moon, Judge

**AFFIRMED**

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Terry Goddard, Attorney General Phoenix  
By Kent E. Cattani, Chief Counsel,  
Criminal Appeals/Capital Litigation Section  
and Adriana M. Rosenblum, Assistant Attorney General  
Attorneys for Appellee

Dana P. Hlavac, Mohave County Public Defender Kingman  
By Jill L. Evans, Deputy Public Defender  
Attorneys for Appellant

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H A L L, Judge

¶1 Defendant, William Randolph Hicok, appeals his convictions and sentences for possession of dangerous drugs for sale (methamphetamine), a class two felony, and possession of drug

paraphernalia, a class six felony. For the reasons set forth below, we affirm the trial court.

### **FACTS AND PROCEDURAL HISTORY<sup>1</sup>**

¶2 When carrying out a warrant for defendant's arrest, a Mohave County Deputy found drugs and other incriminating items on defendant's person and in a resulting search of a fifth-wheel trailer in the area. Specifically, the police found a scale, pipes, a ledger, several mobile phones, and \$10,400 in cash wrapped in small bundles. They also found 47.74 grams of methamphetamine, contained in small baggies and labeled by quantity, with a street value of over \$2,290.

¶3 Before trial, the parties filed a written stipulation to admit a Scientific Examination Report (the Report) prepared by a criminalist at the Arizona Department of Public Safety into evidence. The stipulation provided that the Report would be "admitted into evidence without foundation," and that its preparer would not be called as a witness because she was on family leave. The Report identified the contents of the baggies found in the

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<sup>1</sup> "[W]e view the evidence in the light most favorable to sustaining the verdict and resolve all reasonable inferences against the defendant." *State v. Latham*, 223 Ariz. 70, 72, ¶ 9, 219 P.3d 280, 282 (App. 2009) (quoting *State v. Mincey*, 141 Ariz. 425, 432, 687 P.2d 1180, 1187 (1984)).

search as methamphetamine, and reported the quantities of the drug found in the fifth-wheel trailer and on defendant's person.

¶14 The jury found defendant guilty of both offenses. The court sentenced him to concurrent prison terms of 15.75 years and 3.75 years, and ordered him to pay \$5,410 in fines. Defendant timely appealed. This court has jurisdiction pursuant to the Arizona Constitution, Article 6, Section 9, and Arizona Revised Statutes (A.R.S.) sections 12-120.21(A)(1) (2003), 13-4031 (2001), and -4033(A) (Supp. 2008).

#### DISCUSSION

¶15 Relying on *Boykin v. Alabama*, 395 U.S. 238 (1969) (holding that a defendant must be aware of the direct consequences of a guilty plea), defendant claims the trial court fundamentally erred by allowing him to stipulate to admission of the Report without advising him of the consequences of that stipulation and obtaining a "knowing, voluntary, and intelligent waiver" of his rights. Defendant reasons that the stipulation was "tantamount to a guilty plea" because the Report contained evidence of all three elements of the possession of dangerous drugs for sale charge: that he knowingly possessed a dangerous drug, that he possessed a usable amount of the drug, and that he intended to sell or transfer some or all of the drug. A recent Arizona Supreme Court decision, *State*

*v. Allen*, 223 Ariz. 125, 127, ¶ 11, 220 P.3d 245, 247 (2009), precludes this argument and compels us to affirm.

¶16 Defendant's counsel stipulated to the Report's admission as evidence and did not object to its admission at trial. Defendant has therefore forfeited his right to relief on appeal on this basis unless he can establish that fundamental error occurred. *State v. Martinez*, 210 Ariz. 578, 580 n.2, 115 P.3d 618, 620 n.2 (2005) (explaining that a defendant who fails to object at trial forfeits the claim rather than "waiving" it unless defendant can show fundamental error).

¶17 Fundamental error is "error going to the foundation of the case, error that takes from the defendant a right essential to his defense, and error of such magnitude that the defendant could not possibly have received a fair trial." *State v. Henderson*, 210 Ariz. 561, 567, ¶ 19, 115 P.3d 601, 607 (2005) (quotation omitted). We place the burden of persuasion on the defendant in a fundamental error review to discourage a defendant from taking his chances on a favorable verdict, "reserving the 'hole card' of a later appeal" on a matter that was wholly curable at trial, and then seeking reversal on appeal. *Id.* (quotation omitted). Therefore, to prevail under this standard of review, a defendant must establish that error occurred, that the error was fundamental, and that the error resulted in prejudice. *Id.* at ¶ 20, 115 P.3d at 607.

¶18 After the parties filed briefs in this case, the supreme court's decision in *Allen* rejected the "tantamount to a guilty plea" standard. 223 Ariz. at 128, ¶¶ 15-17, 220 P.3d at 248. In *Allen*, a defendant to a marijuana possession charge stipulated to the fact that he was in possession of a usable amount of marijuana. *Id.* at ¶ 6. The defendant argued that the stipulation was "the practical equivalent of a guilty plea" because it agreed to two of the three elements of the charged offense, and did not contest the third element. *Id.* at ¶ 12. The court rejected the argument, reasoning that "stipulations to facts combined with 'not guilty' pleas are 'simply not equivalent to a guilty plea for *Boykin* purposes, even if the stipulation is to all elements necessary to a conviction and even if it might appear to a reviewing court that the stipulation serves little purpose.'" *Id.* at 127-28, ¶ 14, 220 P.3d at 247-48 (quoting *Adams v. Peterson*, 968 F.3d 835, 842 (9th Cir. 1992)).

¶19 We can identify no reason to depart from *Allen* in this case. The report set forth the chemist's finding as to the nature and amount of the substances seized during the defendant's arrest and the subsequent search of the fifth-wheel trailer. Defendant's stipulation to admit the report without further foundation did not require defendant to waive his constitutional rights as a

precondition to its admission. Therefore, we reject defendant's claim to the contrary.

**CONCLUSION**

¶10 For the foregoing reasons, we affirm defendant's convictions and sentences.

      /s/        
PHILIP HALL, Judge

CONCURRING:

      /s/        
SHELDON H. WEISBERG, Presiding Judge

      /s/        
JOHN C. GEMMILL, Judge