

**IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON**

**STATE OF WASHINGTON,**

**No. 28990-7-III**

**Respondent,**

**Division Three**

**v.**

**MAYIRA BALENCIA,**

**UNPUBLISHED OPINION**

**Appellant.**

Sweeney, J. — This appeal follows a conviction for delivery of a controlled substance. The assignments of error focus on the findings and conclusions the court entered following a stipulated facts trial. The appellant contends that the court entered formal findings too late and she was prejudiced by the delay. The findings mirror the court’s oral findings and while they were late, we cannot see the prejudice to the appellant. The appellant also contends that the findings are insufficient to support the elements of the crime for which she was convicted. We disagree. And we affirm the conviction.

**FACTS**

Officers with the Klickitat County Sheriff's Office and the Mid-Columbia Interagency Narcotics Team suspected that Mayira Balencia was selling methamphetamine out of her apartment. They coordinated a controlled narcotics buy using two confidential informants on September 29, 2008.

The officers searched the informants and their car before the buy to assure that the informants had no drugs. The officers then provided the informants with two marked \$50 bills and followed them to the apartment complex where Ms. Balencia lived. The officers watched as the informants entered Ms. Balencia's apartment. The informants gave Ms. Balencia the buy money and she left the apartment with her young child.

Ms. Balencia returned to the complex 15 minutes later as a passenger in a car. She entered the apartment and apparently handed the methamphetamine to one of the informants. The officers followed the informants as they left the apartment complex and retrieved the substance from them. Field tests confirmed that the substance was methamphetamine.

The State charged Ms. Balencia, in February 2009, with delivery of a controlled substance (methamphetamine) and unlawful use of a building for drug purposes. She participated in a drug court program but was terminated from the program in March 2010. The prosecution then proceeded to a stipulated bench trial. The court found Ms. Balencia

guilty of delivery of a controlled substance. Ms. Balencia appealed. The court later entered written findings of fact and conclusions of law:

FINDINGS OF FACT

I.

The confidential informants contacted the defendant with the idea of buying some methamphetamine.

II.

The defendant left the apartment with her child.

III.

The defendant came back later.

IV.

The confidential informants then gave her money.

V.

When the confidential informants came back to law enforcement, they were searched and had methamphetamine.

VI.

The confidential informants apparently would have testified, had they been called, that they had received the methamphetamine from the defendant.

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CONCLUSIONS OF LAW

I.

Beyond a reasonable doubt, the defendant did deliver the controlled substance methamphetamine. Therefore, the defendant is convicted of Count 1.

II.

There is not sufficient evidence to show that the defendant was operating a drug house. Therefore, Count 2 is dismissed.

Clerk's Papers at 86-88.

DISCUSSION

Sufficiency of the Evidence

Ms. Balencia notes that the facts

contained in both the probable cause sheet and the police reports do not state that a transfer of drugs occurred between her and the confidential informants and that she “handed [the informant] back the money,” not the drugs. Report of Proceedings (Mar. 29, 2010) (RP) at 4. From this, she argues that there is no evidence addressing whether she had knowledge of any illegal substance or whether there were others in the apartment who could have delivered the drugs. And the evidence is therefore not sufficient to convict.

The State responds that the statement contained in both the probable cause sheet and the police report is an obvious typographical error, and do not reflect the officer’s handwritten notes. The State argues that the officers intended to write that Ms. Balencia handed the confidential informants the drugs. In any event, the State believes that the facts presented clearly support a finding that a controlled substance was transferred. The State contends that both confidential informants would have testified that Ms. Balencia left the apartment with the buy money and returned with the drugs. The State argues that it can be inferred that Ms. Balencia handed the informants the methamphetamine.

We view the evidence in the light most favorable to the State and determine whether any rational trier of fact could have found the elements of the charged crime beyond a reasonable doubt. *State v. Green*, 94 Wn.2d 216, 220-22, 616 P.2d 628 (1980).

“A claim of insufficiency admits the truth of the State’s evidence and all inferences that reasonably can be drawn therefrom.” *State v. Salinas*, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992). Credibility determinations are for the trier of fact and are not subject to our review. *State v. Camarillo*, 115 Wn.2d 60, 71, 794 P.2d 850 (1990).

The State had to show that Ms. Balencia delivered a controlled substance with knowledge that the substance delivered was a controlled substance. RCW 69.50.401(1). Methamphetamine is a controlled substance. RCW 69.50.206(d)(2). “Delivery” means “the actual or constructive transfer from one person to another of a substance, whether or not there is an agency relationship.” RCW 69.50.101(f).

In a stipulated facts trial, the defendant “by the stipulation[ ] agrees that what the State presents is what the witnesses would say.” *State v. Johnson*, 104 Wn.2d 338, 342, 705 P.2d 773 (1985). Those witnesses are not required to testify.

Here, the facts stipulated to are set out in the probable cause sheet and the police report. Those documents state that Ms. Balencia left the apartment with the money that the informants gave her to buy methamphetamine. She apparently made contact with someone else and returned as a passenger in a car. She then reentered the apartment. When the confidential informants returned to the officers, they had methamphetamine.

Ms. Balencia points to the conflicting evidence in the police reports about the

actual delivery of a controlled substance. The probable cause sheet and the investigative narrative report both state that Ms. Balencia handed the informants “money” upon her reentry to the apartment, not drugs. Ex. 1. The documents read:

CI 1969 said Balencia left with her child and the buy money. CI 1969 said Balencia came back with dope in a reddish burgundy car. When Balencia came into the apartment she handed CI 1967 the money.

Ex. 1. The State argues that the conflict is simply a typographical error, as evidenced by the officer’s handwritten notes. Br. of Resp’t at 6-7. But the handwritten notes were not part of the stipulated record. Further, the notes are not signed and the author is not identified.

There is, nonetheless, ample evidence of Ms. Balencia’s guilt. Ms. Balencia took money from the confidential informants to buy methamphetamine. She left and returned. The informants left the apartment with methamphetamine. The informants would have testified that they received the methamphetamine from Ms. Balencia. *See Johnson*, 104 Wn.2d at 342. There is no evidence in the record that anyone but Ms. Balencia and her child were in the apartment during the delivery. The trial judge then reasonably inferred that she gave the informants the methamphetamine.

This evidence is sufficient to persuade a rational person that Ms. Balencia knowingly transferred a controlled substance to another person in violation of RCW

69.50.401(1) when that evidence is viewed in a light most favorable to the State.

#### Delayed Entry of Findings and Conclusions

The entry of the findings of fact and the conclusions of law were delayed. Ms. Balencia timely filed her notice of appeal on April 19, 2010, and the trial court did not enter written findings and conclusions until February 28, 2011. Ms. Balencia contends that this hampered her ability to properly appeal. And she contends that the court's oral ruling did not provide the necessary factual basis. She contends that the oral ruling did not establish that she had knowledge that the substance may have been a controlled substance. She contends that the oral ruling did not establish the substance was even methamphetamine. She also contends that the oral ruling did not address whether she was alone in the apartment.

The trial judge here had to enter written findings of fact and conclusions of law that addressed each element of the crime separately and stated the factual basis for each element. *State v. Silva*, 127 Wn. App. 148, 151 n.2, 110 P.3d 830 (2005). And those findings and conclusions should be entered promptly. *State v. Vailencour*, 81 Wn. App. 372, 378, 914 P.2d 767 (1996). But we will reverse a conviction for delayed entry of findings only when the defendant can show that she was prejudiced by the delay or that the findings and conclusions were tailored to meet the issues presented in her appellate

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brief. *State v. Gaddy*, 114 Wn. App. 702, 705, 60 P.3d 116 (2002), *aff'd*, 152 Wn.2d 64, 93 P.3d 872 (2004).

Ms. Balencia contends that the lack of findings prejudiced her because the court's oral decision failed to resolve whether she actually delivered the methamphetamine to the confidential informants. She is mistaken. The judge did resolve the issue; he found that the "[c]onfidential informants apparently would have testified had they been called that they had received the um methamphetamine from Ms. Balencia." RP (Mar. 29, 2010) at 6. Regardless, this is a substantive claim of error. It does not support her claim of prejudice due to the delayed entry of findings. Additionally, there is no evidence that the findings were tailored in any way.

The written findings and conclusions regarding the conviction for delivery of a controlled substance were untimely entered on February 28, 2011. But they were based on the evidence taken at trial and were clearly outlined in the court's oral ruling. *See State v. Head*, 136 Wn.2d 619, 624-25, 964 P.2d 1187 (1998). Ms. Balencia, then, had all of the stipulated facts necessary to craft her appeal prior to the entry of the formal written findings.

We affirm the conviction.

A majority of the panel has determined that this opinion will not be printed in the

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Washington Appellate Reports but it will be filed for public record pursuant to  
RCW 2.06.040.

WE CONCUR:

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Sweeney, J.

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Kulik, C.J.

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Korsmo, J.