IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

STATE OF WASHINGTON, Respondent, v. SCOTT BRYAN SILVAS, Appellant.	No. 37936-8-II UNPUBLISHED OPINION

Van Deren, C.J. — We remanded to the trial court to reconstruct the record to review Scott Silvas's claim that the evidence was insufficient to convict him of drug possession and driving under the influence (DUI) charges because the prosecutor did not submit, and the trial court did not admit, any evidence against him. After reviewing the supplemented record, we hold that the trial court did review and rely upon police reports—to which Silvas stipulated—contained facts sufficient for a guilty finding. We affirm Silvas's drug possession and DUI convictions.

FACTS

Scott Silvas appealed his convictions for drug possession and DUI entered at a bench trial. *State v. Silvas*, noted at 151 Wn. App. 1019, 2009 WL 2159658, at *1. In a declaration, he stipulated to facts sufficient to find guilt, "I stipulate that the facts contained within the investigation reports are sufficient for a trier of fact to find me guilty of the charge(s) presently

filed against me." *Silvas*, 2009 WL 2159658, at *1 (quoting *Silvas* Clerk's Papers at 27).

He argued that his convictions violated his due process rights because, when he signed a diversion agreement, "the trial court did not inform him of probation and community custody terms that would be imposed at sentencing." *Silvas*, 2009 WL 2159658, at *1. We held that this argument fails.[1] *Silvas*, 2009 WL 2159658, at *3.

He also argued that the evidence was insufficient to convict him because the prosecutor did not submit, and the trial court did not admit, any evidence against him. *Silvas*, 2009 WL 2159658, at *1. We remanded to the trial court "to reconstruct the record . . . because the record [wa]s insufficient for our review of Silvas's claim that the State did not present sufficient evidence to support his convictions." *Silvas*, 2009 WL 2159658, at *4. Specifically, we held that the record does not "allow us to review whether the police reports or other investigation reports were examined by the trial court." *Silvas*, 2009 WL 2159658, at *2.

On November 12, 2009, the State moved the Clallam County Superior Court "for an order . . . identif[ying] the police reports and/or investigative reports that the Superior Court reviewed and relied upon when it entered a guilty verdict." Supplemental Clerk's Papers (Supplemental CP) at 40. This motion included an affidavit from Deborah Kelly, who appeared for the State at trial, and police reports of Silvas's arrest for drug possession and DUI.

On December 3, 2009, the superior court admitted Kelly's affidavit and the police reports to supplement the record. The court also recorded its own "recollection of events" at trial,

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[1] Silvas first requested a stay of appellate proceedings, pending the outcome of *State v. Drum*, 143 Wn. App. 608, 181 P.3d 18 (2008), *aff'd on other grounds*, No. 81498-8, 2010 WL 185786 (Wash. Jan. 21, 2010). But he later withdrew the request. We note that because the Supreme Court affirmed our decision in *Drum*, our holding on Silvas's due process argument remains intact. *See* No. 81498-8, 2010 WL 185786.

including its scrutiny of at least one of the police reports, when "any one of those reports would have been sufficient to [find] guilt." Report of Proceedings (RP) (12/03/2009) at 10, 12. It also entered findings, conclusions and order of guilt, criminal minutes, and a minute order, sealing portions of the file.

On January 7, 2010, the State moved this court to supplement the clerk's papers with the superior court's (1) findings, conclusions, order of guilt, (2) criminal minutes, (3) exhibit list, (4) minute order, and (5) the State's November 12, 2009 motion to the superior court. Silvas made no objection to the State's motion and requested us to make a final decision on this appeal. We granted the State's motion.

ANALYSIS

A criminal defendant must have a "'record of sufficient completeness'" to allow appellate review of potential errors. *State v. Classen*, 143 Wn. App. 45, 54, 176 P.3d 582 (internal quotation marks omitted) (quoting *State v. Larson*, 62 Wn.2d 64, 66, 381 P.2d 120 (1963)), *review denied*, 164 Wn.2d 1016 (2008). "The usual remedy for a defective record is to supplement the record with appropriate affidavits" and have the judge who heard the case resolve any discrepancies. *State v. Tilton*, 149 Wn.2d 775, 783, 72 P.3d 735 (2003); *see also* RAP 9.3, 9.4, 9.5. But "where the affidavits are unable to produce a record which satisfactorily recounts the events material to the issues on appeal," we must order a new trial. *Tilton*, 149 Wn.2d at 783.

We concluded that, because "Silvas stipulated that the information contained in the police reports was sufficient to convict him, the actual reports need not be admitted into evidence because the substance of the reports is immaterial." *Silvas*, 2009 WL 2159658, at *2. Instead, we held that "[w]hat is material is some assurance that the reports were before the trial court and

that the trial court reviewed them and relied upon them to enter the guilty verdicts." *Silvas*, 2009 WL 2159658, at *2.

Now the record is supplemented with an array of documents that gives us "assurance" that the trial court reviewed and relied upon the police reports. These documents include: (1) Kelly's affidavit, which states, "I provided the police reports for the judge to review"; (2) the superior court's own "recollection of events" at trial, including its scrutiny of at least one of the police reports, when "any one of those reports would have been sufficient to . . . [find] guilt"; and (3) the findings, conclusions and order of guilt, which states, "The Court previously reviewed the . . . police reports on June 4, 2008 [and] the facts contained in the investigative reports are sufficient for a finding of guilt." Supplemental CP at 48; RP (12/03/2009) at 10, 12; Supplemental CP App. A at 1. Accordingly, we hold that the trial court reviewed and relied upon the police reports and Silvas's sufficiency argument fails.

We affirm the trial court's judgment and sentence on Silvas's drug possession and DUI charges.

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 pursuant to RCW 2.06.040, it is so ordered.

Van Deren, C.J.

We concur:

Bridgewater, J.

Penoyar, J.