

IN THE UTAH COURT OF APPEALS

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State of Utah,)	MEMORANDUM DECISION	
)	(Not For Official Publication)	
Plaintiff and Appellee,)		
)	Case No. 20040439-CA	
v.)		
)	F I L E D	
Richard T. White)	(August 11, 2005)	
)		
Defendant and Appellant.)	<table border="1"><tr><td>2005 UT App 349</td></tr></table>	2005 UT App 349
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First District, Brigham City Department, 031100328
The Honorable Ben H. Hadfield

Attorneys: Dee W. Smith and Randall W. Richards, Ogden, for
Appellant
Amy F. Hugie, Brad C. Smith, and Benjamin C.
Rasmussen, Brigham City, for Appellee

Before Judges Billings, Bench, and Greenwood.

PER CURIAM:

Richard T. White appeals his jury conviction on one count of assault of a police officer and one count of interfering with arrest. We affirm.

White argues that the evidence was insufficient to support his conviction. A defendant challenging the sufficiency of the evidence "must marshal all of the evidence in support of the [verdict] and then demonstrate that the evidence, including all reasonable inferences drawn therefrom, is insufficient to support the [verdict] against an attack." State v. Larsen, 2000 UT App 106, ¶11, 999 P.2d 1252 (quotations and citation omitted). White has not marshaled the evidence and thus has failed to meet his obligation. White's failure to marshal the evidence and show that it could not support the verdict allows this court to affirm the verdict on this basis alone. See State v. Widdison, 2001 UT 60, ¶61, 28 P.3d 1278.

White also argues that his trial counsel was ineffective by failing to move for a directed verdict based on the alleged insufficiency of the evidence. To prove ineffective assistance of counsel, White must show that his counsel's performance was

objectively deficient and that counsel's performance prejudiced White. See State v. Kelley, 2000 UT 41, ¶25, 1 P.3d 546 (quotations and citations omitted). However "[f]ailure to raise futile objections does not constitute ineffective assistance of counsel." Id. at ¶26. We have examined the State's evidence and can see no possibility that a motion for a directed verdict would have succeeded. See State v. Montoya, 2004 UT 5, ¶29, 84 P.3d 1183 (reciting the standard of review for the denial of a motion for a directed verdict). Consequently, a motion for a directed verdict would have been futile and counsel's failure to make the motion does not constitute ineffective assistance of counsel.

Accordingly, White's conviction and sentence are affirmed.

Judith M. Billings,
Presiding Judge

Russell W. Bench,
Associate Presiding Judge

Pamela T. Greenwood, Judge