

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

**DIVISION II**

STATE OF WASHINGTON,  
Respondent,

v.

VINSON LOUIS WHITE,  
Appellant.

No. 42020-1-II

UNPUBLISHED OPINION

Van Deren, J. — Vinson White appeals his convictions for attempted delivery of hashish while armed with a deadly weapon and for tampering with physical evidence, arguing that they are not supported by sufficient evidence. He also argues that he received ineffective assistance of counsel. Concluding that the State presented sufficient evidence and that White does not establish ineffective assistance of counsel, we affirm.<sup>1</sup>

**FACTS**

In October 2010, Brandon Sanchez was working as a confidential informant for the Thurston County Narcotics Task Force. On October 12, he planned to meet with Lacey Police Department Detective Kevin Landwehrle in order to perform a controlled substances buy.

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<sup>1</sup> A commissioner of this court initially considered White’s appeal as a motion on the merits under RAP 18.14 and then transferred it to a panel of judges.

Sanchez was waiting for Landwehrle at a Safeway store, when White approached him, driving a white car with a passenger. White asked Sanchez for a cigarette, and then he told Sanchez that he had some hashish for sale. White said he had three or four bricks of hashish, which he retrieved from his sock. Sanchez touched one of the bricks and indicated an interest in buying the hashish. While White parked his car, Sanchez called Landwehrle and reported White's offer. White left the other man in the car and approached Sanchez. Sanchez told White that he was waiting for his cousin to arrive with Sanchez's paycheck so that he could pay for the hashish. Sanchez and White both used the Safeway restroom; Sanchez exited the restroom first and again called Landwehrle, who instructed him to walk toward a man wearing a red shirt. That man was Thurston County Deputy Sheriff Jason Casebolt. Casebolt handed Sanchez \$300.

White approached Sanchez and Casebolt. Sanchez introduced Casebolt as his cousin, Jason. Without White's knowledge, Casebolt managed to retrieve the \$300 he had given to Sanchez a few minutes earlier. Sanchez then went back into Safeway on the pretense of cashing his paycheck. White offered to sell Casebolt three ounces of hashish for \$500. Because Casebolt only had the \$300, he offered \$300 for two ounces of hashish. But White suggested that they wait for Sanchez to return with the additional \$200. While waiting, White noticed a "necklace" that Casebolt was wearing. Report of Proceedings (RP) (Mar. 24, 2011) at 25. The "necklace" was actually a parachute cord attached to Casebolt's detective badge. Casebolt showed White the badge and told him that he was under arrest.

White reacted by running into Safeway with Casebolt in pursuit. Casebolt chased White into the men's restroom and saw White enter a stall and close the door. Casebolt tried to kick the stall door open but White was leaning against it. Casebolt heard the toilet flush and decided to

withdraw until backup arrived. Shortly thereafter, White walked out of the bathroom and expressed surprise to see Casebolt and supporting officers waiting for him in the hallway. Casebolt again told White that he was under arrest and ordered him to the ground. White did not comply and “actively resisted” as the officers took him to the ground. RP (Mar. 24, 2011) at 43. During the struggle, White said, “I’ve got a gun, I’ve got a gun, I’ve got a gun on me.” RP (Mar. 24, 2011) at 44. A search of White’s person located a weapon in a holster. Casebolt testified that the weapon appeared operable and was loaded with 17 rounds of hollow point bullets. After securing White, Casebolt returned to the toilet stall and photographed substances floating in the toilet and resting at the bottom of the toilet. He did not attempt to retrieve any of substances because of the biohazard risk.

The State charged White with attempted delivery of hashish while armed with a firearm and with tampering with physical evidence.<sup>2</sup> Landwehrle, Casebolt, and Sanchez testified as described above. White denied possessing hashish, offering to sell hashish to either Sanchez or Casebolt, or flushing drugs down the toilet. The jury found him guilty of both charges and found that he was armed with a firearm during the attempted delivery of hashish.

## ANALYSIS

### I. Sufficiency of the Evidence

White argues that the State failed to present sufficient evidence that he attempted to deliver hashish, that he tampered with physical evidence, or that he possessed a firearm. Evidence is sufficient if, when viewed in a light most favorable to the prosecution, it permits any rational

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<sup>2</sup> The State also charged White with attempted delivery of hashish in an earlier encounter, but the jury acquitted him of that charge.

trier of fact to find the essential elements of the crime beyond a reasonable doubt. *State v. Salinas*, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992). “A claim of insufficiency admits the truth of the State’s evidence and all inferences that reasonably can be drawn therefrom.” *Salinas*, 119 Wn.2d at 201. Circumstantial and direct evidence are equally reliable. *State v. Delmarter*, 94 Wn.2d 634, 638, 618 P.2d 99 (1980). Because it is the trier of fact’s responsibility to resolve credibility issues and determine the weight of the evidence, we defer to it on issues of conflicting testimony, credibility of witnesses, and the persuasiveness of the evidence. *State v. Camarillo*, 115 Wn.2d 60, 71, 794 P.2d 850 (1990); *State v. Walton*, 64 Wn. App. 410, 415-16, 824 P.2d 533 (1992).

A. Tampering with Physical Evidence

White argues that because the State did not present any evidence of what he allegedly flushed down the toilet, it failed to present sufficient evidence that he tampered with any physical evidence. But taking the evidence in the light most favorable to the State, White was in possession of hashish when he entered the toilet stall and was no longer in possession of it when he was arrested, and Casebolt photographed material consistent with hashish in the toilet. The State presented sufficient evidence that White tampered with physical evidence by flushing the hashish down the toilet.

B. Attempted Delivery of Hashish

White argues that because the State did not present evidence that he possessed hashish, it failed to present sufficient evidence that he attempted to deliver hashish. But taking the evidence in the light most favorable to the State, White offered to sell hashish to Sanchez and to Casebolt; he showed Sanchez the hashish, a substance with which Sanchez was familiar; and he let Sanchez

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handle some of the hashish. When Casebolt informed him that he was under arrest, White fled into the bathroom and began flushing the hashish down the toilet. The State presented sufficient evidence that he attempted to deliver hashish.

C. Armed with a Firearm

White argues that because the State did not present evidence that it had test-fired the weapon found in his possession upon his arrest, it failed to present sufficient evidence that he was armed with a firearm during his attempted delivery of hashish. But Casebolt testified that the weapon appeared to be operable and that it was loaded. And while being arrested, White repeatedly told the officers that he had a gun. That evidence, taken in the light most favorable to the State, is sufficient to support the jury's finding that White was armed with a firearm during his attempted delivery of hashish. Further, as noted below, White's trial counsel conceded during closing argument that the weapon constituted a firearm.

II. Ineffective Assistance of Counsel

Finally, White argues that by conceding during closing argument that White was in possession of a firearm, his counsel was ineffective. To establish ineffective assistance of counsel, White must show that (1) his counsel's performance was deficient in that it fell below an objective standard of reasonableness based on all the circumstances; and (2) the deficient performance prejudiced him because, had the errors not occurred, the result probably would have been different. *Strickland v. Washington*, 466 U.S. 668, 687, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984); *State v. McFarland*, 127 Wn.2d 322, 335, 899 P.2d 1251 (1995). But a legitimate trial tactical decision does not constitute ineffective assistance of counsel. *State v. Grier*, 171 Wn.2d 17, 33, 246 P.3d 1250 (2011). But White's defense was denial of attempted delivery of hashish, and he admitted that he had a gun during his arrest. Thus, White's counsel's decision to concede possession of the firearm and argue lack of evidence of hashish possession or attempted sale was a legitimate tactical decision. As such, it was not ineffective.

CONCLUSION

The State's evidence was sufficient evidence to support the jury's verdicts and White's counsel was not ineffective. We affirm his judgment and sentence.

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 in accordance with RCW 2.06.040, it is so ordered.

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Van Deren, J.

We concur:

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Hunt, J.

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Worswick, A.C.J.