

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

**DIVISION II**

STATE OF WASHINGTON,

Respondent,

v.

BRANDON M. COOPER,

Appellant.

No. 40155-0-II

UNPUBLISHED OPINION

Armstrong, J. — Brandon Cooper appeals his Cowlitz County conviction of delivery of a controlled substance, arguing that the State presented insufficient evidence to support the conviction. In a pro se statement of additional grounds (SAG), he argues that the State violated the confrontation clauses of both the United States and the Washington constitutions by failing to produce the informant who participated in the controlled buy that was the basis of the charge against Cooper, and that his counsel ineffectively represented him by failing to raise the confrontation issue at trial. We affirm.

**FACTS**

On August 13, 2008, Cowlitz County Sheriff's detective Jason Hammer supervised a controlled buy by Tomiko Scott Bell, an informant who worked with the Cowlitz County drug task force. Detective Hammer and Detective Timothy Watson met Bell near the Triangle Shopping Center in Longview. Detective Hammer searched Bell, finding only four one-dollar bills. Bell made a call to set up a meeting with the seller in the parking lot of a nearby Arby's Restaurant.

Detective Hammer gave Bell the buy money and Bell walked to the Arby's parking lot

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while the detectives watched from Detective Hammer's car. A vehicle pulled into the Arby's parking lot, and Bell entered the passenger side. The vehicle then pulled out of the lot, drove around briefly, and parked next to the detectives' vehicle. Detectives Hammer and Watson recognized Cooper as the driver of the car. Bell was the only passenger.

After about a minute, Cooper moved the vehicle again, this time driving out of sight around the Triangle Theater. Detective Watson got out of the car and walked toward the theater. He saw the car park in the lot next to the theater. Cooper got out and went to the trunk, where he "d[u]g around" briefly, and then returned to the driver's seat. Report of Proceedings at 74. When the vehicle headed back towards the detectives' car, Detective Watson phoned his observations to Detective Hammer. After Detective Hammer had the vehicle in sight, Detective Watson returned to Detective Hammer's car.

Detective Hammer watched as Cooper's vehicle passed him and drove onto the street. Cooper was alone. Bell returned to Detective Hammer's car and handed him a sales receipt that contained a shard of methamphetamine. Detective Hammer searched Bell again and found neither the buy money, nor anything else of consequence.

At trial, Detective Hammer testified that they were out of sight of Cooper's vehicle for 20 to 30 seconds. Detective Watson testified that there were no more than 10 seconds when he could not see Cooper's car. The detectives explained they had lost contact with Bell by the time of trial; there was a warrant for his arrest, and he did not testify. The jury found Cooper guilty of delivery of a controlled substance.

## ANALYSIS

We turn first to Cooper's claim that the State's failure to present Bell as a witness violated his confrontation rights as guaranteed by the Sixth Amendment and article 1, section 22 of both the United States and Washington constitutions. Both constitutional clauses bar admission of testimonial statements of a witness who does not appear at the trial. *State v. Pugh*, 167 Wn.2d 825, 831, 225 P.3d 892 (2009); *State v. Mason*, 160 Wn.2d 910, 917, 162 P.3d 396 (2007). The State presented no statements made by Bell, only his conduct as described by the detectives. Defense counsel had ample opportunity to question those officers about weaknesses in their observations and the inferences they drew. The State did not violate Cooper's confrontation rights .

Likewise, Cooper's claim that his counsel ineffectively represented him fails. A criminal defendant claiming ineffective counsel must prove (1) that the counsel's performance fell below an objective standard of reasonableness, considering all of the circumstances, and (2) that the counsel's deficient performance prejudiced the defendant. *State v. Thomas*, 109 Wn.2d 222, 225-26, 743 P.2d 816 (1987) (citing *Strickland v. Washington*, 466 U.S. 668, 687, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984)). Because Cooper has not shown a confrontation clause violation, his counsel had no obligation to raise a confrontation right issue.<sup>1</sup>

Also without merit is Cooper's challenge to the sufficiency of the evidence. Evidence is sufficient to support a conviction if, viewed in the light most favorable to the State, it permits any rational trier of fact to find all of the essential elements of the crime beyond a reasonable doubt. *State v. Montgomery*, 163 Wn.2d 577, 586, 183 P.3d 267 (2008). A claim of insufficiency admits the truth of the State's evidence, and we draw all reasonable inferences from that evidence in

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<sup>1</sup> In fact, counsel used the lack of Bell's testimony to emphasize weaknesses in the State's case.

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favor of the State. *State v. Jones*, 144 Wn. App. 284, 301, 183 P.3d 307 (2008). Finally, we defer to the trier of fact on issues of conflicting testimony, credibility of witnesses, and the persuasiveness of the evidence. *Jones*, 144 Wn. App. at 301; *see also State v. Camarillo*, 115 Wn.2d 60, 71, 794 P.2d 850 (1990).

The State proved that Cooper arrived in the parking lot after Bell's telephone call. He met with Bell, and Bell spent a short amount of time in his car. There was no one else in Cooper's car, and there was little time for Bell to have contacted anyone else. Bell had no drugs when he left Detective Hammer's car, and he returned to Detective Hammer with the methamphetamine and without the buy money. This evidence supports a reasonable inference that Bell bought methamphetamine from Cooper.<sup>2</sup>

Affirmed.

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.

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Armstrong, J.

We concur:

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Quinn-Brintnall, J.

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<sup>2</sup> Cooper makes much of the brief periods that Bell was out of the detectives' sight, and the failure to recover the buy money. Those matters pertain to the persuasiveness of the evidence and the credibility of the detectives, matters that were the sole prerogative of the jury. We do not review them. *See Camarillo*, 115 Wn.2d at 71.

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Worswick, A.C.J.