

No. 44645-6-II
Cowlitz Co. Cause No. 12-1-00801-6

**COURT OF APPEALS, DIVISION II
OF THE STATE OF WASHINGTON**

STATE OF WASHINGTON,

Respondent,

v.

ALEJANDRO BUSTOS-OCHOA,

Appellant.

BRIEF OF RESPONDENT

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I. ANSWERS TO ASSIGNMENT OF ERROR

1. There was substantial evidence to support the jury's verdict.

II. STATEMENT OF THE CASE

The Respondent generally accepts the Appellant's recitation of the facts with the following additions. Detective Streissguth monitored the phone conversation that set up the controlled buy operation. RP 31. He visually observed the name of the person the informant was calling and understood from the context of the conversation that a methamphetamine transaction was to occur. RP 31. Streissguth specifically checked the gas cap when he searched the vehicle initially. RP 31. When he searched the vehicle again after the controlled buy, he found methamphetamine, as expected. RP 44. He identified the defendant as the person who was driving the suspect vehicle on the night of the transaction. RP 47. The amount of methamphetamine under the gas cap was consistent with the amount they meant to purchase. RP 47. The buy money was not found when they searched the informant and his vehicle after the controlled buy. RP 47-48.

III. ARGUMENT

A. THERE WAS SUFFICIENT EVIDENCE TO SUPPORT THE JURY'S VERDICT

There was sufficient evidence to support the jury's verdict. The test for sufficiency of the evidence is whether any rational trier of fact could have found guilt beyond a reasonable doubt. *State v. Green*, 94 Wn.2d 216, 221, 616 P.2d 628 (1980). All reasonable inferences are drawn in favor of the verdict and interpreted most strongly against the defendant. *State v. George*, 146 Wn.App. 906, 919, 193 P.2d 693 (2008); *citing State v. Gentry*, 125 Wn.2d 570, 597, 888 P.2d 1105 (1995). As this court noted in *State v. Summers*, "in determining whether the necessary quantum of proof exists, the reviewing court need not be convinced of the defendant's guilt beyond a reasonable doubt but only that substantial evidence supports the State's case." 107 Wn.App. 373, 28 P.3d 780 (2002). The question becomes, drawing all rational inferences in favor of the State and against the defendant, whether any rational trier of fact could find the defendant guilty beyond a reasonable doubt and whether such a finding would be supported by substantial evidence. The answer is yes.

The Appellant's arguments are only persuasive if the court were to draw inferences against the State. Appellant gave an exhaustive analysis of all the various problems and possibilities with the State's theory, but is never able to show in any substantial way that the theory is impossible or even unlikely. The most rational explanation given the facts at the trial was that the Appellant provided the methamphetamine to the informant. The facts, and all their

inferences, support this explanation. While it is *possible* that a third party put the one ounce of methamphetamine that was ordered from a fellow with the same name as the Appellant under the gas cap of the informant's car, it is not likely. Even if it were likely, the law is clear, inferences are drawn in favor of the jury's verdict. The evidence supports the jury's finding that the Appellant delivered the controlled substance.

The Appellant relies on two "facts" to support their theory regarding a lack of substantial evidence; however, neither is sufficient to overcome the presumption in favor of the verdict. The first "fact" is that no witness saw the defendant possess or deliver methamphetamine. This is true in a literal sense, in that there was no witness to an actual hand-to-hand exchange. However, the obvious inference to be drawn when an informant calls and orders up some methamphetamine, is searched and found to have no methamphetamine, then the person he called shows up, meets with him briefly, and then when searched again the informant has methamphetamine, is that the person that showed up and was witnessed meeting him delivered him the methamphetamine. This is the principle behind a "controlled buy," where one sends an informant in empty and he comes back with drugs. Even though the officers did not see the direct hand-to-hand exchange, the circumstantial evidence

is substantial and more than sufficient to allow a reasonable trier of fact to infer that a hand-to-hand transaction took place.

As to the second "fact," the Appellant maintains that because the informant was out of sight for some period of time, it leaves open the possibility that a third party delivered the drugs. Again, while that possibility exists, there is substantial evidence to support what the jury ultimately concluded, that the source of the drugs was the Appellant and not some mysterious unnamed third party.

While the Appellant posits a number of different scenarios, none of them rationally rule out the possibility that the Appellant actually delivered the drugs. In order to survive a sufficiency claim, it is not necessary to rule out all other possible explanations, only that substantial evidence supports the verdict. Here, where detectives arranged a buy operation, searched the informant before and after the transaction, and maintained surveillance on the informant, however imperfect, sufficient evidence was presented to support the jury's verdict. The conviction should be affirmed.

IV. CONCLUSION

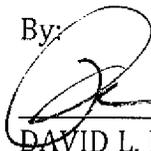
There was substantial evidence to support the jury's verdict.

The conviction should be affirmed.

Respectfully submitted this 15th day of January, 2014.

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By:



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CERTIFICATE OF SERVICE

Michelle Sasser, certifies that opposing counsel was served electronically via the Division II portal:

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I CERTIFY UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THAT THE FOREGOING IS TRUE AND CORRECT.

Signed at Kelso, Washington, on the 15th day of January, 2014.

Michelle Sasser
Michelle Sasser

COWLITZ COUNTY PROSECUTOR

January 16, 2014 - 2:57 PM

Transmittal Letter

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