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IN THE SUPREME COURT OF THE STATE OF IDAHO

* * * * *

STATE OF IDAHO,	)	
	)	Docket No. 40532-2012
Plaintiff-Respondent,	)	
	)	Twin Falls County Case No.
v.	)	CR-2012-3723
	)	
CLAUDE GERALD REX, JR.,	)	APPELLANT'S BRIEF
	)	
Defendant-Appellant	)	
	)	

* * * * *

APPELLANT'S BRIEF

* * * * *

APPEAL FROM THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

* * * * *

HONORABLE MICHAEL R. CRABTREE
District Judge

* * * * *

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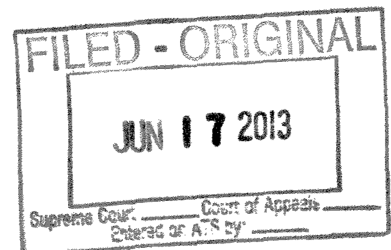

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STATEMENT OF THE CASE

Nature of the Case

Claude Gerald Rex appeals his conviction for Manufacturing a Controlled Substance – Marijuana. Mr. Rex asserts that having two (2) arguably "alive" marijuana plants on the floorboard of his car while merely traveling through the State of Idaho is insufficient to establish the crime of Manufacturing.

Statement of Undisputed Facts

The facts presented at trial are essentially undisputed. On March 16, 2012, at approximately 3:15 p.m., Idaho State Police Officer Troy DeBie initiated a traffic stop on a vehicle driven by Mr. Rex. (Trial Transcript "Tr." p. 7) The reason for the stop was that Officer DeBie observed Mr. Rex's vehicle fail to stop at the stop sign at the intersection of State Highway 74 and U.S. 93 in Twin Falls County. (Tr. p. 8)

Mr. Rex presented his Minnesota driver's license to Officer DeBie, and Mr. Rex told Officer DeBie that he also lived in California. (Tr. p. 13) Mr. Rex was driving a red Acura Integra that had California plates and was registered to Mr. Rex with a California address. (Tr. p. 31) Officer DeBie detected the odor of marijuana and he informed Mr. Rex that he was going to search the vehicle. (Tr. p. 14) Upon exiting the vehicle, Mr. Rex advised Officer DeBie that he had some marijuana in his right front pocket (Tr. p. 14). Mr. Rex was then handcuffed and placed in Officer DeBie's patrol vehicle. (Tr. p. 25)

Mr. Rex's vehicle was then searched, purportedly under both the incident to search and inventory search exceptions to the warrant requirement. (Tr. p. 25-26) On the passenger side floorboard of Mr. Rex's vehicle there was a white bucket that contained two (2) plastic drink cups

that each contained dirt and a small marijuana plant (Tr. pp. 18, 25) Officer DeBie testified at trial that the soil the plants were in was "moist" (Tr. p. 19) and that he believed the plants were "alive" when he retrieved them from Mr. Rex's vehicle. (Tr. p. 23) Pursuant to Idaho State Police policy, the plants were not preserved but rather pulled out of the plastic cups and dried in order to transport to the lab for testing. (Tr. p. 20)

Even though Officer DeBie testified that the soil in the cups was "moist," there was no water or any liquid found in Mr. Rex's vehicle. (Tr. p. 26) Also, there was nothing associated with the creation or maintenance of the plants found in the vehicle – no fertilizer, no plant food, no planting tools, and no gardening implements – nothing. (Tr. p. 26-28)

Mr. Rex told Officer DeBie that he was returning to California after taking his mother to Minnesota. (Tr. p. 30) Officer DeBie found a hotel receipt in Mr. Rex's vehicle, and as part of his investigation into this incident, Officer DeBie contacted the Comfort Inn in Bozeman, Montana. (Tr. p. 36) Officer DeBie subsequently received a fax from the Comfort Inn in Bozeman indicating that Mr. Rex had checked out on March 16, 2012 – the same day Mr. Rex was arrested in Twin Falls County for manufacturing marijuana.

ISSUES PRESENTED

1. Did the District Court err when it denied Mr. Rex's Motion for Judgment of Acquittal?
2. Was the Jury's verdict supported by sufficient evidence in order to uphold Mr. Rex's conviction?

ARGUMENT

A. Introduction

Mr. Rex does not dispute that there were two (2) marijuana plants in his vehicle during his very brief time in Idaho while traveling from Minnesota to California. Mr. Rex challenges his

conviction for Manufacturing in the absence of any evidence presented at trial that he "produced" the plants which is defined as: manufactured, planted, cultivated, grew or harvested (Idaho Code §37-2732 (aa); Instruction No. 11). Mr. Rex submits that the District Court erred by not granting his Rule 29 Motion for Judgment of Acquittal and that failing to do so allowed the jury to base its verdict not on factual or circumstantial evidence, but on speculation and confusion.

B. Standard of Review

A motion for judgment of acquittal must be denied if there is some evidence of guilt produced at trial. *State v Gratiot,* 104 Idaho 782, 663 P.2d 1084 (1983). A motion for judgment of acquittal is to be granted if the record, reviewed in the light most favorable to the state, reflects a total lack of inculpatory evidence at trial. *State v Vargas,* 100 Idaho 658, 659, 603 P.2d 992, 993 (1979).

A similar standard controls for a review of the sufficiency of the evidence for a judgment of conviction entered upon a jury verdict. The standard is whether there was substantial evidence upon which a reasonable trier of fact could have found the prosecution sustained its burden of proving the essential elements of the crime beyond a reasonable doubt. *State v. Hoyle,* 140 Idaho 679, 684, 99 P.3d 1069, 1074 (2004); *State v. Lawyer,* 150 Idaho 170, 172, 244 P.3d 1256, 1258 (Ct.App.2010). A reviewing court cannot substitute its view for that of the jury as to the credibility of the witnesses, the weight to be given to the testimony, and the reasonable inferences to be drawn from the evidence. *Lawyer,* 150 Idaho at 172, 244 P.3d at 1258; *State v. Knutson,* 121 Idaho 101, 104, 822 P.2d 998, 1001 (Ct.App.1991). An appellate court has to consider the evidence in the light most favorable to the prosecution. *Lawyer,* 150 Idaho at 172, 244 P.3d at 1258; *State v. Herrera-Brito,* 131 Idaho 383, 385, 957 P.2d 1099, 1101 (Ct.App.1998). If the

reviewing court determines the evidence is insufficient, the defendant is entitled to acquittal. *See Herrera-Brito,* 131 Idaho at 385, 957 P.2d at 1101.

C. Discussion

Idaho Code §37-2732(A) required the State to prove beyond a reasonable doubt that Mr. Rex manufactured marijuana in the State of Idaho. As noted above, "manufacture" equates to "production" and "production" is defined as: manufactured, planted, cultivated, grew or harvested. In its prosecution of Mr. Rex, the state consistently argued that *State v. Griffith*, 127 Idaho 8, 896 P.2d. 334 (1995), and *State v. Vinton*, 110 Idaho 832, 718 P.2d 1270 (Ct.App. 1986) held that "manufacturing" includes "growing," and that since these plants were in dirt or "moist soil" inside plastic drink cups, and looked "healthy" and "alive" that they were therefore "growing". The District Court, in denying a pre-trial motion to dismiss the Information, did not explicitly agree with the state's interpretation of "growing," but did rule there was sufficient "circumstantial" evidence to make it a jury question. This reasoning was reiterated by the District Court in denying Mr. Rex's Motion for Judgment of Acquittal (Tr. p. 49). However, all the reasonable inferences from the evidence, which is limited to testimony that the plants "appeared healthy" and were in "moist" soil was that whatever acts were done by whomever to make these plants must have been done in *some other state*. There simply was no evidence that Mr. Rex did anything to these plants *in the State of Idaho,* other than have them on the floorboard of his vehicle. The evidence was uncontroverted that Mr. Rex traveled from Minnesota sometime prior to March 15th, 2012, was in Bozeman, Montana on the morning of March 16th, 2012, and was arrested in Twin Falls County the afternoon of March 16th, 2012. Therefore, the jury's verdict was not based upon substantial and competent evidence, but solely on speculation and guesswork.

As to the state's theory of culpability, there was no evidence that the plants were actually

"growing" or whether the plants were "dying". It's clear in reviewing the *Griffith* and *Vinton* cases that the term "growing" means significantly more than simply possessing an allegedly live marijuana plant. In *Griffith* the Court reversed the Trial Court's granting of a judgment of acquittal stating:

> "We find that the trial transcript contains ample evidence that Griffith was involved with the growing of marijuana, and that this activity took place in the presence of children. Brandi, Griffith's step daughter testified that she witnessed Griffith watering the plants. Additionally, Brandi testified that the plants were being grown by Griffith.

Griffith, 896 P.2d at 337. The same type of evidence was noted by the Court in the *Vinton* case to establish that the Defendants had actually grown or produced the marijuana plants at issue.

> ....the four plants in the corral were growing in containers that had been "groomed" to be more productive. He testified that it appeared many of the plants in the plots of 56 and 108 plants had been watered and fertilized with a horse manure mixture or compost. The officer also noted that these plants had been planted in loosely packed soil that would absorb water more readily and that the plants were well camouflaged yet situated to receive a lot of sunlight .... The evidence was clear that the marijuana was cultivated and not wild.

Vinton, 718 P.2d at 1271. It is obvious from the language in the above cases that the term "growing" as applied to the crime of manufacturing marijuana, requires evidence that a person was involved in the production of marijuana plants in the State of Idaho. The only evidence presented at trial is that Mr. Rex had two (2) marijuana plants on his floorboard that may have been alive, but as noted above, it is just as likely these plants were "dying" as opposed to "growing." There was no evidence that Mr. Rex had watered, fertilized, groomed, gave sunlight to or was otherwise engaged in the production, cultivation or manufacture of these plants in Idaho or anywhere else for that matter.

It was this lack of evidence that most certainly confused the jury during its deliberations when it sent notes to the Court that contained the following questions during deliberations:

> "What is defined as "cultivation" in the context of the definition of the manufacturing subset of production."
>
> "Is growing refering (sic) to the actual actions of the plant. Or something else. Please define growing."

(Record on Appeal, P. 184, Confidential Exhibits, P. 25) A jury that sends notes like this during their deliberations is indicative of a jury, while trying to do their best with what they have to work with, that arrived at a verdict that was not based upon sufficient evidence.

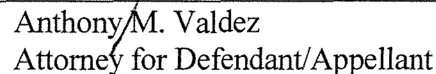
The District Court erred by not granting Mr. Rex's Motion for Judgment of Acquittal, and as a result, Mr. Rex's conviction must be reversed because the evidence is insufficient to support the jury's verdict.

CONCLUSION

For the reasons set forth herein, Mr. Rex respectfully requests that this Court reverse his conviction for Manufacturing.

DATED this 14th day of June, 2013.

VALDEZ LAW OFFICE, PLLC



By________________________
Anthony M. Valdez
Attorney for Defendant/Appellant

CERTIFICATE OF SERVICE

Cheryl L. Smith, secretary with Valdez Law Office, PLLC located at 2217 Addison Avenue East, Twin Falls, Idaho, certifies that on the 14th day of June, 2013, she caused a true and correct copy of the **APPELLANT'S BRIEF** to be forwarded with all required charges prepared, by the method(s) indicated below, to the following:

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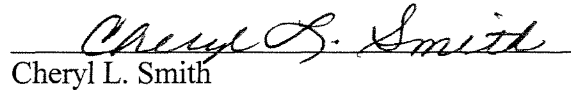
Attorneys for Plaintiff/ Respondent		


Cheryl L. Smith