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Idaho Supreme Court
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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,

Plaintiff-Respondent.

vs.

BRIAN EBOKOSIA,

Defendant-Appellant,

S.Ct. No. 46176-2018
Elmore Co. CR20-17-03673

REPLY BRIEF OF APPELLANT

Appeal from the District Court of the Fourth Judicial District of the State of Idaho
In and For the County of Elmore

HONORABLE NANCY BASKIN
Presiding Judge

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II. ARGUMENT IN REPLY

There is not Sufficient Evidence to Prove Mr. Ebokosia was Guilty Either as a Principal or as an Accomplice.

The state argues the facts sufficed to show Mr. Ebokosia was guilty as either a principal or accomplice. It is incorrect.

First, the state's claim that Mr. Ebokosia likely knew of the presence of the marijuana due to the length of the trip (State's Brief, pg. 11) is insufficient as a matter of law. Mere knowledge of the marijuana's presence does not show constructive possession; both knowledge and control of the contraband must be present. *State v. Garza*, 112 Idaho 776, 777, 735 P.2d 1087, 1088 (Ct. App. 1987). Thus, even if Mr. Ebokosia was aware the driver of the vehicle was operating "the 'load car' in a marijuana trafficking convey" (State's Brief, pg. 11), that only shows knowledge. Likewise, "[t]he relative lack of luggage and suitable attire" (*id.*) in the passenger compartment only suggests knowledge of the presence of marijuana in the trunk, not control thereof. And, the presence of personal use amounts of marijuana in the passenger compartment is no evidence whatsoever that Mr. Ebokosia had any control over the marijuana in the truck. Finally, the "evidence of resolute efforts to conceal the odor of marijuana" (State's Brief, pg. 12) only suggests Mr. Ebokosia was aware of the presence of marijuana, either in the passenger compartment or truck. There was no evidence that the efforts to conceal the odor of marijuana – whether resolute or not – were made by Mr. Ebokosia, as opposed to the driver, or a third party. A rational jury could not have found Mr. Ebokosia had control on this evidence because "[m]ere presence at, acquiescence in, or silent consent to, the

planning or commission of a crime is not sufficient to make one an accomplice." R 79.

The state next claims that Mr. Ebokosia lied to Deputy Gutierrez by claiming "the *purpose* of the trip was to view the scenery in the redwoods in Oregon." (State's Brief, pg. 12) (emphasis added). The deputy, however, testified that both Mr. Severn and Mr. Ebokosia said "they were coming from Oregon and visiting, sightseeing in the redwoods, and were heading back home." T pg. 139, ln. 8-10. The deputy did not say they claimed sightseeing was the purpose of the trip as opposed to an activity undertaken during the trip. The statements they were coming from Oregon and were going home were both true. And the sightseeing statement was never shown to be untrue, as sightseeing would certainly be one activity during any trip to coastal Oregon. Thus, there was no evidence that Mr. Ebokosia lied to the officer about sightseeing and no inference of guilt can be drawn.

Militating against guilt, the district court found there was no evidence that Mr. Ebokosia owned or rented the car. He did not have access to the trunk, as he was not in possession of car keys. He was not the driver, but was in the front passenger seat when the vehicle was stopped. No marijuana was found on his person. "Further, there was no evidence that the bags or packaging that housed the marijuana contained anything tying them to Defendant or indicating that they, or their contents, belonged to him." R 124-125. Further, Mr. Ebokosaa was "very calm, collected, quiet" during the stop while "[t]he driver was unusually nervous." T pg. 135, ln. 20-22. Mr. Severn's statement that "we're fucked" does not mean that

Mr. Ebokosia was engaged in a joint enterprise with him. The state engages mere speculation when it suggests it does. More likely, Mr. Severn was simply expressing the on-the-street truth that both of them were going to be arrested, charged and tried for his crime. That all came true. Further, Mr. Ebokosia was unable to post bond and was incarcerated pre-trial, had to retain and pay for private counsel, and was unjustly convicted on insufficient evidence. Thus, as it turned out, Mr. Severn was absolutely correct, but not because Mr. Ebokosia had control over the marijuana.

III. CONCLUSION

The state's claim that it "presented circumstantial evidence that [Mr.] Ebokosia was a knowing and active part" of a plan to traffic marijuana is incorrect. At most, it showed Mr. Ebokosia should have known of the presence of the marijuana in the truck, but it did not show that he had any control over that marijuana. This is one of those rare cases where the state has not produced either constitutionally sufficient evidence required under *Jackson v. Virginia*, 443 U.S. 307, 319 (1979), or the substantial evidence required by Idaho case law. *See State v. Kraly*, 164 Idaho 67, 423 P.3d 1019, 1021 (2018) ("Evidence is substantial if a reasonable trier of fact would accept it and rely upon it in determining whether a disputed point of fact has been proven."). Thus, in light of the above and the Opening Brief, Mr. Ebokosia asks the Court to vacate the judgment and sentence, and order that a judgment of acquittal be entered.

Respectfully submitted this 29th day of April, 2019.

/s/ Dennis Benjamin
Dennis Benjamin
Attorney for Appellant

CERTIFICATE OF COMPLIANCE AND SERVICE

The undersigned does hereby certify that the electronic brief submitted is in compliance with all of the requirements set out in I.A.R. 34.1, and that an electronic copy was served on each party at the following email address(es): Idaho State

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Dated and certified this 29th day of April, 2019.

/s/Dennis Benjamin
Dennis Benjamin