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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	NO. 47215-2019
Plaintiff-Respondent,)	
)	KOOTENAI COUNTY NO.
v.)	CR28-18-20481
)	
EMILIE MARIE BARKER,)	REPLY BRIEF
)	
Defendant-Appellant.)	

REPLY BRIEF OF APPELLANT

**APPEAL FROM THE DISTRICT COURT OF THE FIRST JUDICIAL
DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE
COUNTY OF KOOTENAI**

**HONORABLE JOHN T. MITCHELL
District Judge**

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TABLE OF CONTENTS

	<u>PAGE</u>
STATEMENT OF THE CASE	1
Nature of the Case	1
Statement of the Facts and Course of Proceedings	1
ISSUE PRESENTED ON APPEAL	2
ARGUMENT	3
There Was Insufficient Evidence To Support The Jury’s Finding That Ms. Barker Was Guilty Of Conspiracy To Prepare False Evidence, And Conspiracy To Intimidate A Witness, As The State Failed To Present Any Evidence That Ms. Wastweet Knew L.N.’s Recantation Was False	3
CONCLUSION.....	4
CERTIFICATE OF SERVICE	4

STATEMENT OF THE CASE

Nature of the Case

A jury found Emilie Barker guilty of conspiring with Sherri Wastweet to prepare false evidence, conspiring with Ms. Wastweet to intimidate a witness, and with destruction of evidence. On appeal, Ms. Barker challenges her convictions on the two conspiracy charges.¹ She asserts the State failed to present any evidence that Ms. Wastweet knew that L.N.'s recantation was false, which is an element in both preparing false evidence and intimidating a witness, and therefore the State failed to prove Ms. Wastweet had the requisite criminal intent to be a part of a conspiracy with Ms. Barker. In response, the State relies upon evidence showing that Ms. Wastweet and Ms. Barker were close, and Ms. Wastweet recorded L.N.'s recantation and encouraged L.N. to inform those involved in the underlying case of her recantation, as evidence showing that Ms. Wastweet knew the recantation was false. (Respondent's Brief, pp.7-16.) The State's argument is without merit.

Statement of the Facts and Course of Proceedings

The statement of the facts and course of proceedings were previously articulated in Ms. Barker's Appellant's Brief, and they are repeated herein only where necessary to address the State's appellate argument.

¹ Ms. Barker does not challenge her conviction for destruction of evidence in this appeal.

ISSUE

Was there insufficient evidence to support the jury's finding that Ms. Barker was guilty of conspiracy to prepare false evidence, and conspiracy to intimidate a witness, where the state failed to present any evidence that Ms. Wastweet knew L.N.'s recantation was false?

ARGUMENT

There Was Insufficient Evidence To Support The Jury's Finding That Ms. Barker Was Guilty Of Conspiracy To Prepare False Evidence, And Conspiracy To Intimidate A Witness, As The State Failed To Present Any Evidence That Ms. Wastweet Knew L.N.'s Recantation Was False

The State correctly acknowledges, “if Wastweet did not know that L.N.’s recantation was false, she could not have been a co-conspirator because she would not have been agreeing to commit either of the two underlying crimes, each of which requires such intent or knowledge.” (Respondent’s Brief, p.6.) The State then points to evidence that Ms. Wastweet was close to Ms. Barker (and her son, Mr. McGrath), notes that Ms. Barker and Ms. Wastweet communicated both before and after Ms. Wastweet recorded L.N.’s recantation, and quotes from the recorded recantation extensively. (Respondent’s Brief, pp.7-16.) The State concludes,

the evidence of multiple communications both before and after the recording was made coordinating and planning the making and use of the recording, combined with evidence Wastweet followed the script during the course of the actual recording, shows Wastweet’s knowledge that she and Barker were preparing false evidence through a coerced and scripted recantation. The evidence and testimony presented at trial, and the reasonable inferences therefrom, support the jury’s finding that, beyond a reasonable doubt, Wastweet and Barker shared all the intent and knowledge required for conspiring to commit the crimes of preparing false evidence and intimidating a witness.

(Respondent’s Brief, p.16.)

But none of the evidence the State relies upon shows that Ms. Wastweet knew that L.N.’s recantation was false. The State did not allege that Ms. Wastweet witnessed Mr. McGrath’s abuse of L.N., nor did it claim L.N. told Ms. Wastweet that her original allegations were true. (*See generally*, Tr.) While the State provided evidence that Ms. Barker knew L.N.’s recantation was false (Ex. 2: 06:13 – 06:39), there is no evidence that Ms. Barker shared this information with Ms. Wastweet. In fact, L.N. repeatedly told Ms. Wastweet during the recorded call that

Mr. McGrath had not touched her inappropriately. (Ex. 3B.) There was simply no evidence presented to the jury that Ms. Wastweet knew that L.N.'s recantation was false.

The State failed to present sufficient evidence that Ms. Barker and Ms. Wastweet conspired to prepare false evidence, as alleged in Count I, and conspired to intimidate a witness, as alleged in Count II.

CONCLUSION

Ms. Barker respectfully requests that this Court vacate her convictions for conspiracy to prepare false evidence, and conspiracy to intimidate a witness, and to remand her case to the district court for resentencing on her destruction of evidence conviction.

DATED this 7th day of July, 2020.

/s/ Jason C. Pintler
JASON C. PINTLER
Deputy State Appellate Public Defender

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 7th day of July, 2020, I caused a true and correct copy of the foregoing APPELLANT'S REPLY BRIEF, to be served as follows:

Delivered via e-mail:

KENNETH K. JORGENSEN
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/s/ Evan A. Smith
EVAN A. SMITH
Administrative Assistant

JCP/eas