

**STATE OF LOUISIANA**

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**NO. 2000-KA-0515**

**VERSUS**

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**COURT OF APPEAL**

**ALLISON HODGE AND  
ROGER HODGE**

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**FOURTH CIRCUIT**

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**STATE OF LOUISIANA**

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***TOBIAS, J., CONCURS***

I agree with the result of the affirmation of Roger Hodge's conviction. The finding of marijuana on his person coupled with the other circumstances shows that he violated the law. No error relates to his conviction and sentence.

I respectfully concur in the reversal of Allison Hodge's ("Allison") conviction for the following reasons:

Jackson v. Virginia, 444 U.S. 307, 99 S. Ct. 2781, 61 L.Ed.2d 560 (1979) requires an appellate court to determine whether, viewing the evidence in a light most favorable to the prosecution, any rational trier of fact could have found the defendant guilty beyond a reasonable doubt. In this case I question how much one can assume and infer from the mere fact that two individuals are husband and wife.

In this case, no direct evidence links Allison to the marijuana found. The circumstantial evidence is so extraordinarily weak that I find as a matter of law such does not reach the level of proof of guilt beyond a reasonable doubt.

I find State v. Maresco, 495 So.2d 311 (La. App. 4 Cir. 1986), writ denied, 500 So.2d 419 (La. 1987), especially persuasive as to why Allison cannot be convicted in this case. The majority fails to address that which I regard as the gravamen in Maresco, namely, that Maresco's conviction was reversed because no evidence showed that he lived on the premises where the drugs were found or that he knew that the diazepam was in the bedroom.

First, the tax bill from the Louisiana Department of Revenue and Taxation issued to the Hodges, addressed to them at 2267 St. Claude Avenue ("the premises"), and found on the premises does not prove that Allison lived at or worked at the premises. The tax bill is not found in the record having apparently been lost by the clerk's office of the Criminal District Court. Thus, we do not know what type of tax bill it was and what tax period it covered. (How recent was it?)

Second, no marijuana was found on Allison. No evidence shows she knew marijuana was in the building, in the dryer, on her husband's person, in the pocket of the man's jacket in the closet, or in the bag of the Caucasian

female on the premises.

Third, no fingerprints were taken from the bags of marijuana, the scale, or from anything in, on or about the premises.

Fourth, no evidence shows that Allison worked in the plant shop located in the front portion of the premises. No evidence shows that she resided in the apartment portion of the premises. No evidence shows that any woman's clothing was found in the residential portion of the premises. (The photographs of the premises introduced in evidence have also been lost; they might have shown women's clothing, but this court cannot determine if such is the case because no one testified as to the types of clothing in the closet.) In the absence of such evidence in the record, one cannot presume that she resided with her husband in the premises.

Fifth, no evidence establishes that the confidential informant identified a female on the premises handling marijuana.

Sixth, no evidence was presented to show that any marijuana had been used inside or outside the premises. No drug paraphernalia was found about the premises.

Seventh, evidence that the Hodges were living in the premises together was introduced over defense counsel's objection. The evidence came from a police officer testifying to the conclusion, but no foundation

was laid to his conclusion support as to that proffered fact. The officer stated his conclusion over the objection of defense counsel without enunciating how he came to the conclusion.

Eighth, all evidence points to Roger Hodge running the plant business. Ergo, one should presume he ran the marijuana “business.”

Ninth, Allison was only physically observed in the business portion of the premises. The record is silent as to whether she was behind a counter (which would imply she was conducting business on the premises.) No evidence is presented to show she had access to the residential portion of the premises.

Finally, in these day of varying definitions of what constitutes a “family” and of what precisely a marriage means other than a civil contract, I cannot say that merely being husband and wife is sufficient to show that Allison is guilty of attempted possession of marijuana. It is equally possible that Allison was coincidentally on the premises at the moment the police arrived. She could have been separated and there to merely converse with her estranged husband. She could have been there to collect alimony. The prosecution has the burden to call someone (such as a neighbor) to say that Allison lived or worked on the premises. A police officer could have testified (but did not) that women’s clothing was on the premises. Although

I recognize that one might ask why Allison did not call a witness to testify that she did not live or work on the premises, one must remember that a defendant has a burden to show nothing when the prosecution omits an essential element of its case. A defendant can rely upon the prosecution's burden to prove directly or by clear inference that he or she has violated a law. And not every individual has a friend who can attest to some facts; this world has shy people and private people whose lives few, if any, know anything about.

The burden of proof in this case was on the State and it, in essence, failed to prove every element of its case against Allison.