



It is well settled in Oklahoma that before one may be convicted of possession of a controlled drug the State must prove that the accused had the requisite knowledge, dominion and control. See, *Magann v. State*, 601 P.2d 123 (Okla. 1979), [no link other than the accused was the driver of the stopped car in which marijuana was found. In *Magann*, he made no incriminating or conflicting statement that it was his (same is true in this case)]; *Freeman v. State*, 617 P.2d 235 (Okla.Cr. 1980), [truck the accused was driving was searched after his arrest on unrelated charges. Marijuana was located under the front seat and an unmarked container of pills was found in the glove compartment. Prescription pills issued to his ex-wife were located on the dashboard. Testimony at trial revealed that no inquiry had been made of the accused, his wife or the father who owned the truck, as to the ownership of the pills.]; *Doyle v. State*, 759 P.2d 223 (Okla.Cr. 1988), [drugs found not on the accused but on premises that several people had access to]; *Staples v. State*, 528 P.2d 1131 (Okla.Cr. 1974)[see cases cited from other jurisdictions which have held that the mere presence of the accused in the confined area or an automobile interior where illegal drugs are found is not sufficient to convict]; see also, *Hishaw v. State*, 528 P.2d 1131 (Okla.); *Brown v. State*, 481 P.2d 475 (Okla. 1971).

Defendant is presumed innocent until contrary is proved, and in case of reasonable doubt as to whether his guilt is satisfactorily shown he is entitled to be acquitted. *Jackson v. State*, 403 P.2d 518 (Okla. 1965).

It is the duty of a trial judge to direct a verdict for the defendant when he deems the evidence insufficient to substantiate the charges. *Snow v. State*, 325 P.2d 754 (Okla. 1958). Where the allegations of the information and the proof are insufficient to make out the offense sought to be charged, a directed verdict should be entered for the defendant. *Simpson v. State*, 267 P.2d 1008 (Okla. 1954).

Where the evidence raises a mere suspicion of guilt of the accused, it is insufficient to sustain conviction; suspicion is not proof, and the court should direct a verdict under such circumstances. *Thigpen v. State*, 462 P.2d 270 (Okla. 1969). It is incumbent upon the state to prove every essential element of the crime charged by evidence beyond a reasonable doubt, and a conviction based upon circumstances which raise merely suspicions will not be allowed to stand. *Beard v. State*, 410 P.2d 567 (Okla. 1965).

Proof which amounts only to suspicion or mere probability is not sufficient to put before a jury. *Murphy v. State*, 666 P.2d 236 (Okla. 1983).

To support a conviction, facts and circumstances proved must not only be consistent with and point to accused's guilt, but they must be inconsistent with his innocence. Same case later state, the state must prove, by evidence beyond a reasonable doubt, every essential element of the crime charged. *Dowell v. State*, 94 P.2d 956 (Okla. 1939).

Where the circumstances are as consistent with innocence as guilt, defendant's motion for directed verdict should be granted. *Parnell v. U.S.*, 64 F.2d 324 (Okla. 1933).

A directed verdict should be granted if all substantial evidence is as consistent with innocence as with guilt. *Moore v. U.S.*, 56 F.2d 794 (C.C.A. Okla. 1932). Unless there is substantial evidence of facts excluding every other hypothesis except guilt, the trial court must direct a verdict for the accused. *Sullivan v. U.S.*, 283 F. 865 (C.C.A. Okla. 1922). A conviction based on circumstantial evidence cannot be sustained if the proof does not exclude every reasonable hypothesis but that of guilt, and proof amounting only to a strong suspicion or mere probability is insufficient. *Roth v. State*, 582 P.2d 1397 (Okla. 1975); *Staples v. State*, 528 P.2d 1131 (Okla.); *Brown v. State*, 481 P.2d 475 (Okla. 1971).

This motion is submitted in good faith and not for any improper purpose.

Wherefore, premises considered, Defendant prays that this court grant the matters requested herein and dismiss this case and grant any other equitable and proper relief.

Respectfully submitted,

Glen R. Graham OBA 12110  
Attorney for Defendant  
1612 S. Cincinnati Ave.  
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VERIFICATION

STATE OF OKLAHOMA )  
COUNTY OF TULSA ) ss.

GLEN R. GRAHAM, attorney for the Defendant, upon oath duly sworn state that I have read the aforesaid instrument and motions and the matters stated therein are true and correct to the best of my information and belief.

\_\_\_\_\_  
GLEN R. GRAHAM

SUBSCRIBED AND SWORN to before the undersigned notary public on this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

My commission expires:

\_\_\_\_\_  
NOTARY PUBLIC

CERTIFICATE OF SERVICE

This is to certify that the undersigned hand delivered a true and correct copy of the above document to the Office of the Tulsa County District Attorney, 9<sup>th</sup> Floor, Tulsa County Court House, 500 S. Denver Ave., Tulsa, Oklahoma.

By: \_\_\_\_\_  
GLEN R. GRAHAM