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COURT OF APPEALS  
DIVISION II  
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STATE OF WASHINGTON  
BY                       
DEPUTY

NO. 37450-1-II

IN THE COURT OF APPEALS  
DIVISION II  
OF THE STATE OF WASHINGTON

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STATE OF WASHINGTON,

Respondent,

v.

CARL GREGORY WILLIAMS,

Appellant.

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**SUPPLEMENTAL BRIEF OF APPELLANT**

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## **I. ASSIGNMENTS OF ERROR**

**A. The record does not support the jury's verdict on Count 07.**

## **II. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR**

**A. Whether any rational trier of fact could have found guilt beyond a reasonable doubt based on the evidence contained in the record as to Count 07.**

**B. Whether defendant's conviction on Count 07 should be reversed.**

## **III. STATEMENT OF FACTS**

Count 07 charged the defendant, as an adult over eighteen years of age, with delivery of a narcotic from Schedule III-IV or a non-narcotic from Schedule I-V to someone at least three years younger and under the age of eighteen years between September 12, 2004 and December 16, 2006. The record does not contain any evidence to support the conviction on Count 07 other than the testimony of the complainant K.L. RP 200-07. The record does not contain any evidence to corroborate the accusation. To the contrary, the defendant denied ever smoking marijuana with K.L. or providing her marijuana. RP 352. Jason England, RP 308, Nicholas

Wideman, RP 311-12, Curtis Williams, RP 318, and Judy Williams, RP 344, all deny ever seeing the defendant provide marijuana to K.L. and never saw any indication that he was using marijuana with her or providing it to her at any time. Moreover, although K.L. claimed that Nicholas Wideman allegedly had a discussion with the defendant about supplying marijuana to K.L. and saw her “stoned” at defendant’s residence, Wideman denied that ever occurred. RP 311-12.

#### **IV. ARGUMENT AND AUTHORITIES**

##### **A. The record does not contain sufficient evidence to support the jury’s verdict as to Count 07.**

A challenge to the sufficiency of evidence implicates constitutional due process requirements and may be raised for the first time on appeal. *State v. Martin*, 69 Wn.App. 686, 849 P.2d 1289 (1993).

In reviewing the sufficiency of evidence to support a guilty verdict in a criminal case, the appellate court views the evidence most favorably to the State and determines whether any rational trier of fact could have found guilt beyond a reasonable doubt. *State v. Greene*, 94 Wn.2d 216, 616 P.2d 628 (1980).

The conviction on Count 07 in the case at bench is based solely upon the testimony of the complaining witness K.L. The record contains no evidence corroborating K.L.'s claim that the defendant provided marijuana or smoked it with her at any time. To the contrary, several witnesses called by the defense testified they never saw the defendant smoke marijuana with or provide marijuana to K.L. RP 308, 311-12, 318, 344.

Moreover, while K.L. claimed that Nicholas Wideman allegedly had a discussion with the defendant about supplying marijuana to K.L. and saw her "stoned" at defendant's residence, Wideman denied that ever occurred. As a result, K.L.'s credibility was compromised insofar as her accusations regarding Count 07 are concerned. RP 311-12.

No marijuana was offered by the State to support Count 07. No eyewitnesses were produced to support her claim that the defendant provided her marijuana. Her accusation was in part contradicted by Wideman's testimony, and unsupported by any other witness or evidence of any kind.

In *State v. Eddie A.*, 40 Wn.App. 717, 700 P.2d 751 (1985), Eddie A. was charged with unlawfully contracting to deliver a controlled substance and then delivering a non-controlled substance. Originally

accused of selling amphetamines to classmates in his junior high school, the charge was subsequently amended to delivery of a non-controlled substance. The State did not offer the substance delivered or any expert testimony. The girl who purchased the capsules testified she was supposed to be buying speed but it turned out to be Pamprin. This was apparently corroborated by a witness to the transaction. The trial court rejected the defendant's claim that the state must prove the identity of the substance actually delivered and rendered a guilty verdict. Eddie A. appealed.

On appeal, Eddie A. argued that the State must specifically prove the identity of a non-controlled substance in order to convict. On the other hand, the State contended it only had to prove a controlled substance was offered by the accused and *some* substance was actually delivered pursuant to that offer. The Court of Appeals agreed with Eddie A., and reversed, holding that whether a defendant is charged with delivery of a controlled substance or a non-controlled substance, the State is required to prove the nature of the substance delivered. If the State fails to prove the nature of the substance delivered, it has not established that a crime has been committed. *Eddie A.*, at 719.

As in *Eddie A.*, there is insufficient evidence in the record proving the substance allegedly delivered in the case at bench was in fact marijuana. K. L. claimed it was, as the buyer did in *Eddie A.*, but if the testimony of two witnesses (that the substance was Pamprin) was insufficient in that case, then the unsupported testimony of K.L. (that the substance was marijuana) is likewise insufficient.

*Eddie A.* also argued that the testimony of the buyer was insufficient to establish beyond a reasonable doubt that a delivery occurred. Reviewing the evidence in the light most favorable to the State, the Court of Appeals found that the record contained sufficient evidence to conclude a delivery occurred on the reasonable doubt standard *because* the testimony of the buyer was corroborated by another young woman who witnessed the transaction. Thus, some corroborative evidence beyond the accusation of the buyer should be required to satisfy the reasonable doubt standard. Such corroboration existed in *Eddie A.*, but does not in the case at bench. See *Eddie A.*, at 720.

Washington law specifically provides that a jury may return a conviction based upon the uncorroborated testimony of the complainant alone in a sexual assault case, RCW 9A.44.020(1), but there is no

corresponding statutory authority to justify a conviction based upon the uncorroborated testimony of the complainant in a marijuana delivery case. See RCW 69.50 (Uniform Controlled Substances Act). So, at least as far as the legislature is concerned, while the uncorroborated testimony of the complainant alone may be sufficient to support a conviction in a criminal case based upon allegations of sexual assault, the same is not true in cases involving allegations of drug delivery.

It is well established that a reasonable doubt may be based upon lack of evidence alone. *State v. Bennett*, 161 Wn.2d 303, 165 P.3d 1241 (2007); WPIC 4.01. Taking the record in the light most favorable to the State in the case at bench, there is no evidence to support the naked accusation of the complainant as to the activities alleged in Count 07. There is no direct evidence, no circumstantial evidence, and no other corroboration at all. Where the lack of evidence is deafening, our courts of appeal must be heard to protect the integrity of the standard of proof we have for centuries adhered to and recognized as a hallmark of our system of criminal justice.

**B. The defendant's conviction on Count 07 should be reversed.**

As the record fails to contain evidence sufficient to support the verdict of the jury on the reasonable doubt standard, the defendant's conviction on Count 07 should be reversed. *State v. Eddie A.*, supra.

**V. CONCLUSION**

Based upon the foregoing argument and authorities, the defendant's conviction on Count 07 should be reversed.

Respectfully submitted this 5<sup>th</sup> day of December, 2008.

  
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STEVEN W. THAYER, WSBA #7449  
Attorney for Carl Gregory Williams

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STATE OF WASHINGTON,	)	
	)	
Respondent,	)	
	)	DECLARATION OF
v.	)	SERVICE
	)	
CARL G. WILLIAMS,	)	
	)	
Appellant.	)	

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I declare that on December 5, 2008, a true copy of the Supplemental Brief of Appellant was sent to the following persons via first-class mail, postage prepaid, in an envelope addressed as follows:

Kimberly R. Farr  
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Clark County Jail  
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I declare under penalty of perjury of the laws of the State of Washington that the foregoing is true and correct.

Signed at Vancouver, Washington this 5<sup>th</sup> day of November, 2008.

  
Betty Olesen, Legal Assistant  
Steven W. Thayer, P.S.