IN THE COURT OF APPEALS OF THE STATE OF NEVADA

RUBEN GUZMAN,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 71682

FILED

FEB 13 2018

ORDER OF AFFIRMANCE

Ruben Guzman appeals from a judgment of conviction entered pursuant to a guilty plea of trafficking in a controlled substance.[1] Second Judicial District Court, Washoe County; Connie J. Steinheimer, Judge.

Guzman argues the district court erred by denying the claims raised in his pretrial petition for a writ of habeas corpus.[2] First, Guzman argued the State failed to present probable cause to the grand jury to support the charge against him. Guzman asserted the State failed to provide sufficient evidence he had constructive possession of the controlled substance that was discovered in a vehicle in which he was a passenger.

We defer to the district court's determination of factual sufficiency when reviewing pretrial orders on appeal. *See Sheriff, Clark*

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[1]The State argues this court lacks jurisdiction concerning this appeal because Guzman did not designate an appealable order in his notice of appeal. However, the Nevada Supreme Court has already considered this issue, concluded Guzman properly intended to appeal from a judgment of conviction, and directed the appeal to proceed. *Guzman v. State*, Docket No. 71682 (Order Reinstating Briefing, May 5, 2017).

[2]Guzman preserved the right to challenge on appeal the district court's denial of his pretrial petition for a writ of habeas corpus. *See* NRS 174.035(3).

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Cty. v. Provenza, 97 Nev. 346, 347, 630 P.2d 265, 265 (1981). Probable cause to support a criminal charge "may be based on slight, even 'marginal' evidence, because it does not involve a determination of the guilt or innocence of an accused." *Sheriff, Washoe Cty. v. Hodes*, 96 Nev. 184, 186, 606 P.2d 178, 180 (1980) (internal citations omitted). "To commit an accused for trial, the State is not required to negate all inferences which might explain his conduct, but only to present enough evidence to support a reasonable inference that the accused committed the offense." *Kinsey v. Sheriff, Washoe Cty.*, 87 Nev. 361, 363, 487 P.2d 340, 341 (1971).

The district court reviewed the testimony presented to the grand jury and found slight or marginal evidence Guzman committed trafficking in a controlled substance. A DEA agent testified he overheard Guzman and the driver of the vehicle jointly discuss a drug sale with a woman. During the conversation, Guzman and the driver jointly discussed the drugs, informed the woman a tool was needed to access the drugs in the vehicle, and they agreed to take the drugs out of the vehicle at another location. Soon after, a police officer stopped the vehicle and discovered the vehicle contained approximately 20 pounds of methamphetamine in a concealed compartment. The district court concluded this testimony demonstrated Guzman had knowledge of the drugs and he exercised dominion and control over the drugs jointly with the driver of the vehicle. *See Maskaly v. State*, 85 Nev. 111, 114, 450 P.2d 790, 792 (1969) ("Two or more persons may have joint possession of a narcotic if jointly and knowingly they have its dominion and control.").

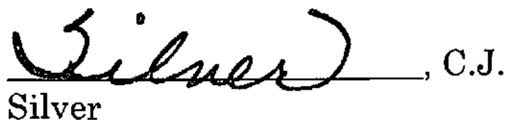
The record reveals the State presented the requisite slight or marginal evidence necessary to support a charge of trafficking in a controlled substance. *See* NRS 453.3385(1); *see also Sheriff, Washoe Cty. v. Shade*, 109 Nev. 826, 830, 858 P.2d 840, 842 (1993) ("In order to hold one for narcotics possession, it is necessary to show dominion and control over

the substance . . . and knowledge that it is of narcotic character. . . . These elements may be shown by direct evidence or by circumstantial evidence and reasonably drawn inferences."). Therefore, Guzman fails to demonstrate the district court erred in denying this claim.

Second, Guzman claimed the State improperly failed to present exculpatory evidence to the grand jury. Guzman stated to a police officer that he was traveling to Fernley to install tiles and had no knowledge the vehicle contained methamphetamine. Guzman asserted a letter from Maria Ortiz was exculpatory because she corroborated his statement regarding the tile work and argued the State improperly failed to present the letter to the grand jury. However, the record before this court does not contain a copy of the letter. As the appellant, it was Guzman's burden to provide this court with an adequate record for review. *See McConnell v. State*, 125 Nev. 243, 256 n.13, 212 P.3d 307, 316 n.13 (2009). Because Guzman did not include a copy of the letter in his appendix before this court, we are unable to review this claim.

Having concluded Guzman is not entitled to relief, we

ORDER the judgment of conviction AFFIRMED.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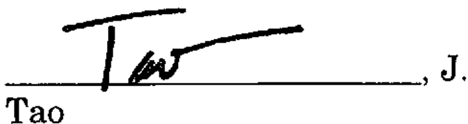
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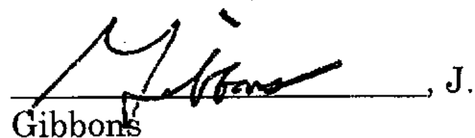
_______________, J.
Gibbons

cc: Hon. Connie J. Steinheimer, District Judge
Law Office of David R. Houston
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk