UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 09-20630-CR-GOLD(s)

UNITED STATES OF AMERICA,

v.

CRAIG D. BREEDLOVE,

Defendant.
_________________________________/

POST-TRIAL MOTION FOR JUDGMENT OF ACQUITTAL BASED ON LACK OF EVIDENCE OF ANY CRACK CONSPIRACY OR THE REQUIRED ESSENTIAL ELEMENTS OF CRACK POSSESSION

Defendant Craig D. Breedlove ("Breedlove"), by and through undersigned court-appointed defense counsel, hereby respectfully moves for judgments of acquittal notwithstanding the verdicts on those portions of the indictment charging a conspiracy to possess crack cocaine with the intent to distribute and a substantive offense of possession of crack cocaine with the intent to distribute related to a small amount of approximately 14 grams that was found by police hidden inside a closed compartment in the car driven and controlled by Mazard. Defense moved for judgment of acquittal under Rule 29 after the government rested its case. The Court reserved its ruling. The defense timely renewed its motion. The Court once again reserved and requested submission of this written motion by September 29, 2010.

Even under the light most favorable to the government, the evidence was insufficient to prove that Breedlove had any knowledge that Mazard had 14 grams of crack hidden inside of a closed compartment in the ceiling of his vehicle or that Breedlove ever intended to distribute the crack cocaine. Discussion of the trial evidence best illustrates where the proof was lacking as to the required essential elements of knowledge and intent to distribute.

The taped telephone calls between "Leslie Bull" and the informant followed by taped calls between Breedlove and the informant conclusively show that this particular law enforcement operation had a target of obtaining nine ounces of cocaine *powder*. ***Crack cocaine was never mentioned at all***. Breedlove always made it clear that he was not the source of the cocaine and informed the informant he was waiting on a source to provide the cocaine. Nine ounces of cocaine *powder* was what the police operation targeted and what Breedlove attempted to deliver to the informant and awaiting police. The vehicle that delivered the nine ounces of powder belonged to Mazard. The crack was found in a closed compartment in the ceiling while Mazard waited in his vehicle and defendant was outside walking in the parking lot. Co-defendant Mazard was charged with several prior sales of crack cocaine and was proven to be the source of the cocaine powder seized by the police. Defendant's post-arrest statement was not admitted as trial evidence.

The trial evidence as to the crack cocaine was limited to the grams found by police hidden inside a closed compartment located in the ceiling of Mazard's vehicle and the mere fleeting presence of defendant in the vehicle. There was no evidence that Breedlove had either touched the crack cocaine or explored the closed car compartment. Therefore, the government offered neither proof of Breedlove's knowledge of the crack cocaine hidden inside Mazard's vehicle nor any proof of Breedlove's intent to distribute any crack. The evidence failed to show that Breedlove was ever involved in any other transactions with Mazard beyond the controlled *powder* delivery.

A court should grant a motion for judgment of acquittal under Federal Rule of Criminal Procedure 29 only when "the evidence, viewed in the light most favorable to the Government, is such that a reasonably minded jury must have a reasonable doubt as to the existence of any of the essential elements of the crime charged." *United States v. White*, 562 F.2d 587, 589 (8th Cir.1977) (citations omitted); *United States v. Ojeda*, 23 F.3d 1473, 1475 (8th Cir.1994) (*citing White*).

To prove the "crack charges" against Breedlove, the government was required to establish beyond a reasonable doubt that he knowingly possessed the hidden crack and intended to distribute it. The sole issue is whether there was sufficient proof for a jury to find Breedlove knowingly possessed

with intent to distribute those grams of crack cocaine found by the police hidden inside a closed compartment inside the ceiling of Mazard's car while Breedlove was outside the vehicle in the parking lot.

To prove knowing possession, the government must prove Breedlove had actual or constructive possession of the crack. *Ojeda*, *supra*, 23 F.3d at 1475 (citation omitted). The government may prove constructive possession through proof of a defendant's "ownership, dominion or control over the contraband itself, or dominion over the premises in which the contraband is concealed." *Id.* (citation omitted). As the Fifth Circuit has explained, "knowledge can be inferred from control of the vehicle in some cases; however, when the drugs are hidden, control over the vehicle alone is not sufficient to prove knowledge." *United States v. Garza*, 990 F.2d 171, 174 (5th Cir.1993) (*citing United States v. Richardson*, 848 F.2d 509, 513 (5th Cir.1988)). Here, Breedlove had no control over the vehicle belonging to and driven by Mazard. The crack was not in plain view and no evidence indicated that Breedlove knew of the existence of the hidden crack cocaine or had any intent to distribute it. No more than rank speculation supports the convictions involving crack. *See United States v. Windom*, 19 F.3d 1190, 1201 (7th Cir. 1994) (insufficient evidence that defendant had the requisite authority to determine disposition of the drugs found in a closed backpack,

where narcotics from the controlled buy were not linked in any way to the narcotics found in the backpack); *United States v. Teffera*, 985 F.2d 1082 (D.C.Cir. 1993) (insufficient evidence to convict defendant of possession with intent to distribute cocaine base, either on theory of aiding and abetting or on theory of constructive possession, when cocaine was found in pants of codefendant who arrived on same bus as defendant, though there was evidence that defendant and codefendant were traveling together; there was no direct evidence that defendant knew that codefendant possessed cocaine); *cf. United States v. Rosas-Fuentes*, 970 F.2d 1379, 1382 (5th Cir. 1992) (insufficient evidence that vehicle passenger knew of marijuana in gas tank to support his conviction for conspiracy to possess with intent to distribute; government had to show that defendant controlled, or had power to control, either vehicle or contraband found in vehicle's gas tank; mere proximity to marijuana was not enough to show constructive possession); *United States v. Valdez*, 859 F.Supp. 1235 (S.D.Iowa 1994) (insufficient evidence defendant knowingly possessed cocaine found in vehicle he was driving to support conviction for possession with intent to distribute; there was no evidence he touched packages or explored hidden compartment). Moreover, there was simply no evidence whatsoever that defendant Breedlove agreed to possess any cocaine base ("crack") with the intent to distribute it.

The prosecution did not present an iota of evidence to show any agreement to possess crack cocaine with intent to distribute it nor did it meet its burden of proving the essential elements of the crack possession charge. "[T]he court will not allow speculation to substitute for proof by inferring from [Breedlove]'s possession of the [cocaine powder] his constructive possession of the [crack] in the [closed compartment of Mazard's vehicle]." *Windom*, *supra*, 19 F.3d 1190, 1201 (brackets added); *accord Teffera*, *supra*, 985 F.2d at 1085 ("A jury is entitled to draw a vast range of reasonable inferences from evidence, but may not base a verdict on mere speculation.").

WHEREFORE, Breedlove moves for an appropriate Order directing that judgments of acquittal be entered as to the charged crack conspiracy, *see* Count 2 (conspiracy to possess *with the specific intent to distribute* at least 50 grams of cocaine base [i.e., "crack"] and a "detectable amount" of cocaine and marijuana), and the charged substantive crack possession. *See* Count 15 (possession *with the specific intent to distribute* at least five grams of "crack cocaine" and a "detectable amount" of cocaine) (emphasis added).

Respectfully submitted,

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

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UNITED STATES OF AMERICA,

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CRAIG D. BREEDLOVE,

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REPLY TO GOVERNMENT'S RESPONSE IN OPPOSITION TO POST-TRIAL MOTION FOR JUDGMENT OF ACQUITTAL BASED ON LACK OF EVIDENCE OF ANY CRACK CONSPIRACY OR THE REQUIRED ESSENTIAL ELEMENTS OF CRACK POSSESSION

Defendant Breedlove ("Breedlove"), by and through undersigned court-appointed counsel, hereby replies to the government's response in opposition to Breedlove's timely post-trial motion for judgments of acquittal notwithstanding the verdicts on those portions of the indictment charging a conspiracy to possess "crack" cocaine with the intent to distribute it and a substantive offense of crack possession with the intent to distribute related to an amount of approximately 14 grams of crack that was found hidden inside a closed "compartment of the ceiling console ('headliner') of the truck", *see* Government's Response at p.2, driven and controlled by defendant Mazard. Breedlove timely moved for judgments of acquittal under Fed.R.Crim.P. 29. The Court requested that the parties submit their legal arguments in writing.

The government presented insufficient evidence to convict Breedlove of the "crack" offenses even when the most favorable light is cast upon the prosecution's case. The trial evidence was woefully insufficient to prove ***Breedlove had any knowledge*** that Mazard had hidden grams of crack inside of a closed compartment in the ceiling console ("headliner") of his truck or ***that Breedlove ever intended to distribute the crack cocaine***.

Neither the tape-recorded conversations between "Leslie Bull" and the confidential informant (CI) nor the subsequent taped conversations between Breedlove and the CI even remotely mentioned the subject of crack cocaine. As far as Breedlove was concerned, the CI sought and obtained his delivery of nine ounces of cocaine ***powder*** and ***nothing else***. Breedlove underscores that crack was ***not*** mentioned. *See* Exhibit 39 at Tabs 6-15. Breedlove always made clear that he was not even the source of the cocaine powder, and that he had to wait on the source. Nine ounces of cocaine ***powder*** was all that this law enforcement operation sought to have Breedlove deliver. The truck where the grams of crack were found concealed was driven and controlled by Mazard. The evidence adduced at trial showed that Breedlove was no more than a passenger "given a ride" to deliver Mazard's ***powder***. *See* Government's Response at p.3 (Mazard's "*modus operandi*" was to have others "deliver narcotics he was distributing").

While Breedlove concedes that the evidence showed him making a ***single delivery of nine ounces of cocaine powder*** that belonged to Mazard, there was no evidence whatsoever of his involvement with the crack found. Co-defendant Mazard was charged with several prior sales of crack cocaine and was proven to be the source of the cocaine powder seized by the police. The grams were found in a closed compartment in the ceiling ("headliner") of Mazard's rented truck while Breedlove was walking in the parking lot.

Opposing counsel's detailed discussion of the trial evidence supports Breedlove's argument that the record was devoid of evidence to establish the required essential elements of either his knowledge of the presence of crack or his intent to distribute the crack cocaine. *See* Government's Response at pp.3-5 (Breedlove ***not mentioned*** in "*Mazard's drug-trafficking business at the Angels Plaza*"); *id*. at pp.5-7 (Breedlove also ***not mentioned*** concerning "*September 22, 2008: Mazard prepares a cookie of crack cocaine and then distributes the crack to a confidential informant*").

On March 3, 2009, Breedlove briefly entered the stage for a "cameo" delivering nine ounces of cocaine ***powder*** obtained from supplier Mazard. [1] Alternative suppliers were discussed during the tape-recorded conversations. Mazard was ultimately the alternative source available at the opportune time.

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[1] The government's references to the distribution of "the 9-piece of cocaine" refers to the nine ounces of ***powder*** that Breedlove delivered, ***not "crack."***

The recorded conversations between "Leslie Bull," also known as "Leah," and the CI clearly reflect discussion of alternative suppliers that could fill the order placed by the investigation. "Leah" was originally going to sell and bring the "quarter" [kilogram], or nine ounces of powder, for $4,500. The CI stalled asking for time to get the buy money. *See* Exhibit 39, Tab 6. "Leah" vouched for the quality of her cocaine supply ("It's amazing."). *Id*. The subsequent taped conversations between the CI and Breedlove similarly showed Breedlove as a "middle person" searching for a "connection" to fill a nine-ounce order. *Id*., Tab 8 at pp.2-3 ("Leah can go; somebody has to go with me… *because, see, my homeboy don't got that much on him so he's going to take me to his place so we could get that, weigh that… I'm the middle person, but at the same time, you know, my connection … got connections….*"). Breedlove's source (his "homeboy") could not handle the weight ordered but had agreed to take Breedlove to his source ("his place"). Indeed, the CI complained that Breedlove had to go through intermediaries to get the requested amount. *See* Exhibit 39, Tab 9 at p.3 ("…you have to go through this person, he got to go through another person…this is ridiculous, you know. I got the money, all you got to do is bring the product."). Clearly, Breedlove's "connection" had another "connection" to Mazard who was able to fill the order for "the product" - nine ounces of cocaine ***powder***.

Given that the evidence against Breedlove was strictly limited to this single isolated transaction, there was no evidence of his participation in the charged conspiracy of longer duration involving Mazard as its protagonist. *See United States v. Dekle*, 165 F.3d 826 (11th Cir. 1999) (where evidence only shows a buy-sell relationship, fact that drug sales are repeated, without more, does not support an inference that the buyer and seller have the same joint criminal objective to distribute drugs so as to establish a conspiracy to distribute); *accord United States v. Colon*, 549 F.3d 565 (7th Cir. 2008) (regular purchases of cocaine from dealer did not render defendant a coconspirator with dealer; and regular purchases of cocaine also did not render the defendant aider and abettor of narcotics trafficking conspiracy).

The 13.5 grams of crack cocaine fortuitously found hidden inside a closed compartment in the ceiling ("headliner") of Mazard's truck cannot be imputed to Breedlove because there was insufficient evidence to suggest either his knowledge of the concealed "stash" of crack, or his intent to distribute the crack cocaine. The suggestion that Mazard and Breedlove jointly possessed the hidden grams may only be supported by exercising a "stretch of the imagination." *See United States v. Teffera*, 985 F.2d 1082, 1085 (D.C.Cir. 1993) ("A jury is entitled to draw a vast range of reasonable inferences from evidence, but may not base a verdict on mere speculation.").

*The 13.5 grams of crack were **not found in plain view**. It required a trained canine to sniff out the "stash" and a search by an arresting officer to find it. See* Government's Response at p.10 ("…a K-9 unit arrived. The dog alerted to the center console and the 'headliner' area above the console. [Officer] Andollo searched the inside of the truck and found [the 13.5 grams of crack] in a compartment in the headliner."). There was no evidence that Breedlove either touched the crack cocaine or explored the compartment in the ceiling.

The government offered neither proof of Breedlove's knowledge of the "stash" hidden in Mazard's truck nor any proof of Breedlove's intent to distribute the crack. *The evidence failed to show that Breedlove was ever involved in any other transactions with Mazard beyond the **powder** delivery. See United States v. Dekle*, 165 F.3d 826 (11th Cir. 1999) (where evidence only shows a buy-sell relationship, fact that drug sales are repeated, without more, does not support an inference that the buyer and seller have the same joint criminal objective to distribute drugs so as to establish a conspiracy to distribute). Here, the trial evidence did not even show repeated transactions between Breedlove and Mazard. The proof against Breedlove was ***limited to one transaction*** – a controlled delivery of nine ounces of cocaine ***powder*** – and preceding taped conversations arranging that requested ***powder*** delivery. That is insufficient to impute either knowledge or intent to distribute crack.

The government's response relies heavily on the distinct rationale of the decision in *United States v. Thompson*, 473 F.3d 1137 (11th Cir. 2006), erroneously suggesting that the case is "analogous and refutes Breedlove's argument that the evidence is insufficient." Government's Response at p.12.

Thompson is readily distinguishable, and it cannot be extended to the facts of this case. Thompson argued that the "district court erred in denying his motion for a judgment of acquittal because no rational jury could have found beyond a reasonable doubt that he possessed the drugs and firearms" that had been seized during the search of an Atlanta apartment. *Thompson*, 473 F.3d at 1142. Thompson advanced the contention that the trial evidence against him "proved nothing more than his presence in the apartment some time before the search was conducted." *Id.* He was not present at the time of the police search that resulted in the seizure of a "*potpourri*" of drugs and firearms. The Eleventh Circuit teaches us that "[t]o convict [Breedlove] the government must have proved beyond a reasonable doubt that he ***knowingly*** possessed the drugs ***with intent to distribute them***. *United States v. Poole*, 878 F.2d 1389, 1391 (11th Cir.1989)." *Id.* (emphasis and brackets added). Breedlove did not ***know*** that Mazard had hidden grams of crack inside of a compartment in the ceiling ("headliner") of Mazard's truck. No ***evidence*** showed otherwise. He cannot intend to distribute "crack" ***unknown*** to him.

Thompson "simply argue[d] that there was not enough evidence to prove that he was the person who possessed [drugs]." *Id.* at 1142 (brackets added). Breedlove is aware that "[p]ossession can be actual or constructive and can be shown through direct or circumstantial evidence." *Id.* (brackets added; citations omitted). Breedlove emphasizes that constructive possession exists *only where the defendant has dominion or control over the drugs or over the premises where the drugs are located. Id.* (*citing United States v. Molina*, 443 F.3d 824, 829 (11th Cir.2006) ("[A] person who owns or exercises ***dominion and control*** over a ... residence in which contraband is concealed may be deemed to be in constructive possession of the contraband....")) (emphasis added; citation omitted). Therefore, a defendant's "mere presence in the area of the contraband or awareness of its location is not sufficient to establish possession." *Id.* at 1142 (citations omitted). There is no evidence on the trial record suggesting that Breedlove was even aware of the location Mazard had selected to conceal his crack "stash" inside of his truck vehicle. The evidence does not support any inference that Breedlove exercised any "dominion" or "control" over the grams of crack cocaine stashed by Mazard, much less over Mazard's truck wherein the grams of crack were concealed. There was insufficient evidence that Breedlove either knowingly possessed the crack with intent to distribute or conspired to possess the seized crack.

Although Thompson was not present during the police search of the apartment, the police did find documents belonging to him on a bed in one of the bedrooms beside powder and crack cocaine ***in plain view***. *Thompson*, 473 F.2d at 1139. There lies one of the crucial distinctions that debunk the analogy drawn by the government between *Thompson* and *Breedlove*. Here, Breedlove was a passenger in Mazard's truck on a singular ***powder*** delivery, and the grams of crack were ***not in plain view***. The crack "stash" hidden by Mazard was only found after a canine sniff and a search by a police officer. *See* Government's Response at p.10 (describing efforts made to find crack). Other documents found during the search conducted in the *Thompson* case included traffic citations for infractions that Thompson had committed while driving the car of his co-defendant Park who was arrested at the apartment. Here, there was no trial evidence showing a continuous relationship between Breedlove and Mazard. The evidence showed only one isolated transaction between Breedlove and Mazard on or about March 3, 2009. Breedlove's fleeting presence as a passenger on a delivery errand near the general area where the "crack stash" was found did nothing more than create the mere suspicion of guilt. Based on speculation rather than reasonable inference, the government suggests "joint, constructive possession of the crack cocaine that was concealed in [Mazard's] truck." Government Response at pp.11-12.

In *Thompson*, the trial evidence linked Thompson to the same location where the drugs had been found. Documents that undisputedly belonged to Thompson were found beside powder and crack cocaine ***in plain view*** on one of the beds in the apartment. The documents "established a continuous relationship between Thompson and Deidric Park, a resident of the apartment who was arrested when the police executed the warrant and who was unquestionably involved in the distribution of the drugs." *Thompson*, 473 F.3d at 1142-43. Some of the documents showed that Thompson had received traffic tickets while driving Parks' car less than one-and-a-half miles from the location six weeks before the police search. Other documents including Thompson's Red Cross application were dated one day before the apartment search, which took place shortly after the informant purchased drugs at the apartment. *Id*. at 1143. No such "continuous relationship" between Mazard and Breedlove was shown by the evidence adduced at trial.

A major distinction between *Thompson* and *Breedlove* that invalidates the analogy being erroneously suggested by the government to this Court is "the fact that Thompson testified." *Id*. Breedlove ***did not testify*** at the trial. Thompson testified he had no involvement with drug sales in the apartment, but he provided conflicting testimony about whether he had ever been in the apartment. On direct examination, Thompson testified that he had been in

the apartment. On cross-examination, he testified that he was never there. Because he testified in his own defense at trial, the trial court in *Thompson* "permitted the government to introduce for impeachment purposes evidence of six prior felony convictions, as well as evidence that Thompson had given false testimony at an earlier hearing in the case and that he had a history of giving false names to the police." *Thompson*, 473 F.3d at 1143. The jury had the opportunity to hear Thompson's testimony, to observe his demeanor, and to evaluate his truthfulness. The Eleventh Circuit wisely concluded that "[i]f the jury concluded that Thompson was lying, as it had plenty of reason to do, the jury was entitled under *United States v. Brown*, 53 F.3d 312, 314 (11th Cir.1995), and similar decisions to infer that the opposite of his testimony was true." *Id*. at 1143. The jury inference supported in *Thompson* cannot be extended to this case because Breedlove *did **not** testify at trial*. Therefore, the inapposite *Thompson* holding does ***not*** support the "finding that Breedlove possessed with intent to distribute… *five grams or more of crack cocaine*." *See* Government's Response at 14 (emphasis in original).

The government sidesteps the cases cited by Breedlove to demonstrate that the facts of this case do not support a finding of constructive possession. It relies instead on cases that imputed possession among co-conspirators, but Breedlove and Mazard did not conspire to possess the crack for distribution.

Only speculation and conjecture support the government's argument that "a rational jury could reasonably infer that Mazard and Breedlove planned to distribute the 9-piece [nine ounces] to one customer and distribute the cookie of crack to somebody else, and that Breedlove would be the one who physically delivered the 9-piece and the cookie." Government's Response at p.15. There was no evidence to suggest that the grams of crack fortuitously found by the police were to be distributed to "somebody else" or that Breedlove had agreed to deliver the seized crack. Breedlove did not act as navigator of Mazard's truck, as he was following the directions provided by the CI. *See* Government's Response at p.15 (Breedlove received the CI's instructions). There was no basis "to infer that he had enough control over [truck's] progression and destination to constitute constructive possession." *United States v. Maspero*, 496 F.2d 1354, 1359 (5th Cir. 1974). Therefore, *Maspero* lends absolutely no solace to the government's position. Likewise, Breedlove had no ownership, dominion, or control over the hidden crack or dominion or control over Mazard's truck. *See United States v. Leonard*, 138 F.3d 906, 909 (11th Cir. 1998) ("Constructive possession exists when a defendant has ownership, dominion, or control over an object itself or dominion or control over … the vehicle in which the object is concealed."). There was insufficient evidence to convict Breedlove of the "crack" charges.

Evidence of Breedlove's prior conviction for *actual possession* of cocaine on his person on February 12, 2008 with the intent to deliver, *see* Exhibit 44 (admitted at trial over defense objection), cannot support a conviction based on *constructive possession of crack* concealed inside somebody else's truck more than a year later on March 3, 2009.

To prove the "crack charges" against Breedlove, the government was required to establish beyond a reasonable doubt that he knowingly possessed the hidden crack and intended its distribution. The sole issue is whether there was sufficient proof for a jury to find Breedlove knowingly possessed with intent to distribute those grams of crack cocaine found by the police hidden inside a closed compartment in the ceiling ("headliner") of Mazard's truck while Breedlove was outside the vehicle walking in the parking lot.

As the Fifth Circuit has explained, "knowledge can be inferred from control of the vehicle in some cases; however, when the drugs are hidden, control over the vehicle alone is not sufficient to prove knowledge." *United States v. Garza*, 990 F.2d 171, 174 (5th Cir.1993) (*citing United States v. Richardson*, 848 F.2d 509, 513 (5th Cir.1988)). Here, Breedlove had no control over the vehicle driven by Mazard. The crack was ***not*** in plain view, and no trial evidence indicated that Breedlove knew of the existence of the hidden crack cocaine or that he had intent to distribute it. Rank speculation

supports the convictions involving "crack." *See United States v. Windom*, 19 F.3d 1190, 1201 (7th Cir. 1994) (insufficient evidence that defendant had the requisite authority to determine disposition of the drugs found in a closed backpack, where narcotics from the controlled buy were not linked in any way to the narcotics found in the backpack); *cf. United States v. Rosas-Fuentes*, 970 F.2d 1379, 1382 (5th Cir. 1992) (insufficient evidence that vehicle passenger knew of marijuana in gas tank to support his conviction for conspiracy to possess with intent to distribute; government had to show that defendant controlled, or had power to control, either vehicle or contraband found in vehicle's gas tank; mere proximity to marijuana was not enough to show constructive possession); *United States v. Valdez*, 859 F.Supp. 1235 (S.D.Iowa 1994) (insufficient evidence defendant knowingly possessed cocaine found in vehicle he was driving to support conviction for possession with intent to distribute; there was no evidence he touched packages or explored hidden compartment). Moreover, there was simply no evidence whatsoever that defendant Breedlove agreed to possess the "crack" with the intent to distribute it.

The prosecution failed to present an iota of evidence to prove any agreement to possess crack cocaine with intent to distribute it nor did it meet its burden of proving the essential elements of the crack possession charge.

"[T]he court will not allow speculation to substitute for proof by inferring from [Breedlove]'s possession of the [cocaine powder] his constructive possession of the [crack] in the [closed compartment of Mazard's vehicle]." *Windom*, *supra*, 19 F.3d 1190, 1201 (brackets added); *accord Teffera*, *supra*, 985 F.2d at 1085 ("A jury is entitled to draw a vast range of reasonable inferences from evidence, but may not base a verdict on mere speculation.").

WHEREFORE, Breedlove moves for an appropriate Order directing that judgments of acquittal be entered as to the charged crack conspiracy, *see* Count 2 (conspiracy to possess *with the specific intent to distribute* at least 50 grams of cocaine base [i.e., "crack"] and a "detectable amount" of cocaine and marijuana), and the charged substantive crack possession. *See* Count 15 (possession *with the specific intent to distribute* at least five grams of "crack cocaine" and a "detectable amount" of cocaine) (emphasis added).

Respectfully submitted,

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