

IN THE SUPREME COURT OF IOWA

---

SUPREME COURT NO. 19-0971  
Clay County No. FECR018393

---

STATE OF IOWA,  
Plaintiff-Appellee,

vs.

MICHAEL JAMES JONES,  
Defendant-Appellant.

---

On Appeal from the Iowa District Court for Clay County  
The Honorable Nancy L. Whittenburg, District Judge

---

BRIEF FOR THE APPELLANT

---

Pamela Wingert  
Wingert Law Office  
1212 18<sup>th</sup> Street  
Spirit Lake, IA 51360  
(712) 336-3911 Phone  
(712) 336-4112 Fax  
pawingert@iabar.org  
APPELLANT'S ATTORNEY

**FINAL**

## **PROOF OF SERVICE AND CERTIFICATE OF FILING**

I certify that on the 8th day of June, 2020 I electronically filed the foregoing with the Clerk of the Supreme Court using electronic filing system (EDMS) and sent notification of such filing to Michael James Jones, Defendant-Appellant, via U.S. Mail at the address listed below.

Michael James Jones  
No. 1019804  
Fort Dodge Correctional Facility  
1550 L Street  
Fort Dodge, IA 50501

/s/ Pamela Wingert  
Pamela Wingert  
Wingert Law Office  
1212 18<sup>th</sup> Street  
Spirit Lake, IA 51360  
(712) 336-3911 Phone  
(712) 336-4112 Fax  
[pawingert@iabar.org](mailto:pawingert@iabar.org)  
ATTORNEY FOR APPELLANT

## TABLE OF CONTENTS

Proof of Service and Certificate of Filing .....	2
Table of Contents .....	3
Table of Authorities .....	4
Statement of Issue Presented for Review .....	5
Routing Statement .....	5
Statement of the Case .....	6 - 7
Statement of the Facts .....	8 - 9
Argument .....	10 - 14
Conclusion .....	15
Notice of Oral Argument .....	16
Certificate of Compliance .....	16
Cost Certificate .....	16

## TABLE OF AUTHORITIES

### CASES

<i>State v. Atkinson</i> , 620 N.W.2d 1 (Iowa 2000) . . . . .	12 -13
<i>State v. Bash</i> , 670 N.W.2d 135(Iowa 2003) . . . . .	12
<i>State v. Carter</i> , 696 N.W.2d 31 (Iowa 2005) . . . . .	11
<i>State v. Cashen</i> , 666 N.W.2d 566 (Iowa 2003) . . . . .	10, 12 - 13
<i>State v. Kemp</i> , 688 N.W.2d 785 (Iowa 2004) . . . . .	11
<i>State v. Kern</i> , 831 N.W.2d 149 (Iowa 2013) . . . . .	11
<i>State v. Reed</i> , 875 N.W.2d 693 (Iowa 2016) . . . . .	10
<i>State v. Reeves</i> , 209 N.W.2d 18 (Iowa 1973) . . . . .	12
<i>State v. Thomas</i> , 847 N.W.2d 438 (Iowa 2014) . . . . .	10 - 11
<i>State v. Webb</i> , 648 N.W.2d 72 (Iowa 2002) . . . . .	10, 11
<i>State v. Yeo</i> , 659 N.W.2d 544 (Iowa 2003) . . . . .	10

### STATUTES AND RULES

Iowa Code Section 124.401 . . . . .	11
Iowa Code Section 124.401(1)(b)(7) . . . . .	6
Iowa Code Section 124.401(5) . . . . .	6
Iowa Code Section 124.413 . . . . .	6

**STATEMENT OF ISSUE PRESENTED FOR REVIEW**

**I. THE DISTRICT COURT ERRED IN DENYING THE MOTION  
FOR A NEW TRIAL**

Authorities

*State v. Atkinson*, 620 N.W.2d 1 (Iowa 2000).

*State v. Bash*, 670 N.W.2d 135 (Iowa 2003)

*State v. Cashen*, 666 N.W.2d 566 (Iowa 2003)

**ROUTING STATEMENT**

Because this case involves the application of existing legal principles to the facts herein, transfer to the Court of Appeals would be appropriate.

Iowa R. App. P. 6.1101.

## STATEMENT OF THE CASE

**Nature of the Case:** This is an appeal from the conviction by jury of Defendant Michael James Jones.

### **Course of Proceedings and Disposition in the District Court:**

Jones was accused in Count I of an Amended Trial Information filed on September 28, 2018 with Possession with Intent to Deliver Methamphetamine in amount more than five grams, a Class B felony, in violation of Iowa Code §§ 124.401(1)(b)(7) and 124.413 and Count II of the Amended Trial Information for Possession of a Controlled Substance, to-wit: Marijuana, a Serious Misdemeanor, in violation of Iowa Code § 124.401(5). (Amended Trial Information)(App. 36). He was convicted on both counts on October 1, 2018. (Criminal Verdict)(App. 62).

Jones filed a Motion for a New Trial and a Motion in Arrest of Judgment on November 13, 2018. (Motion for a New Trial, Motion in Arrest of Judgment)(App. 82, 84). On February 15, 2019, the District Court took up the issues of Jones' Motion for a New Trial and Motion in Arrest of Judgment. (Ruling on Motion for New Trial and Motion in Arrest of Judgment 4/23/2019)(App. 86). On April 23, 2019, the motions were denied and sentencing was scheduled. (*Id.*).

Sentencing was held on May 24, 2019. (Transcript of Sentencing).  
Jones was sentenced to twenty-five years in prison on Count I and 180 days  
on Count II, to be served concurrently. (Judgment and Sentence p. 2)(App.  
96).

## STATEMENT OF THE FACTS

On the evening of December 27, 2016, Michael Jones (Jones) received a phone call from a friend who asked if he would use his Dodge Durango to pull a vehicle from the ditch which had struck a deer. (Transcript p. 39). Jones exited his vehicle with his flashlight and walked into the ditch. (Transcript p. 38). Shortly after Jones arrived, Clay County Sheriff's Deputy Josh Long (Long) came upon Jones walking in the ditch near the damaged vehicle. (Transcript p. 37). Jones explained that someone had already picked up the other driver, because there was a child in the car and the conditions outside were too cold for the child. (Transcript p. 39).

Jones and Long went up the road to look at the deer. (Transcript p. 40). While walking back, Long asked to see Jones' driver's license and Jones went to his vehicle to retrieve the license. *Id.* While the two were walking back, Long spotted a black drawstring bag lying on the ground approximately 12-18" in front of the Durango. *Id.* When he opened it, Long discovered a glass tube with a bulb on the end. *Id.* Long placed it back on the ground and called for another deputy to assist him. (Transcript p. 41). Clay County Sheriff's Deputy Spencer Taylor (Taylor) arrived on the scene. The deputies questioned Jones about the contents of the bag. (Transcript p. 42). Jones stated that the bag was not his and that he did not know what was



in the bag or where it came from. (Transcript p. 42-43). At that point, the deputies detained Jones and placed him in Long's squad car. (Transcript p. 43).

The deputies found what they believed to be baggies of methamphetamine, a glass meth pipe, a marijuana pipe, a HyVee Fuel Saver Card belonging to Danny Titus, a single hollowed-out AA battery containing an amount of methamphetamine and a Kensington Bluetooth Device. (Transcript p. 44-45). A separate set of keys with a Hy-Vee Fuel Saver Card attached was located on the ground. (Transcript p. 48). The second Fuel Saver Card belonged to Angela Riviera. (Transcript p. 49).

Jones was questioned about the items found and denied knowledge or ownership of the contraband found. (Transcript p. 50). The State's witnesses testified the quantity of methamphetamine and packaging were consistent with distribution. (Transcript p. 99).

Jones was convicted of Possession with Intent to Deliver Methamphetamine in amount more than five grams, a Class B felony, and Possession of a Marijuana, a Serious Misdemeanor. Jones was sentenced to twenty-five years imprisonment on Count I to be served concurrently with 180 days on Count II. (Judgment and Sentence)(App. 97). This timely appeal followed on June 10, 2019. (Notice of Appeal)(App. 103).

## ARGUMENT

### I. THE DISTRICT COURT ERRED IN DENYING DEFENDANT’S MOTION FOR A NEW TRIAL.

#### A. Standard of Review.

Challenges to the sufficiency of evidence are reviewed for correction of errors of law. *State v. Cashen*, 666 N.W.2d 566, 569 (Iowa 2003)(citing *State v. Yeo*, 659 N.W.2d 544, 547 (Iowa 2003)). The jury’s verdict will be upheld if there is substantial evidence to support the verdict. *Id.* “In reviewing challenges to the sufficiency of evidence supporting a guilty verdict, courts consider all of the record evidence viewed in the light most favorable to the State, including all reasonable inferences that may be fairly drawn from the evidence.” *State v. Reed*, 875 N.W.2d 693, 704 (Iowa 2016)(quoting *State v. Thomas*, 847 N.W.2d 438, 442 (Iowa 2014)).

#### B. Preservation of Error.

Error was preserved here by raising the sufficiency of the evidence in his motion for judgment of acquittal at the close of the State’s case and in a motion for a new trial. (Transcript of Jury Trial pp. 163-64), (Motion for a New Trial)(App. 84). *See, e.g., State v. Webb*, 648 N.W.2d 72, 76 (Iowa 2002).

### C. Merits

Iowa Code section 124.401 makes it unlawful to “manufacture, deliver, or possess with intent to deliver a controlled substance.” To establish possession of a controlled substance, the State must prove the accused “exercised dominion and control over the contraband, had knowledge of the contraband’s presence, and had knowledge the material was a narcotic.” *State v. Thomas*, 847 N.W.2d 438, 442 (Iowa 2014)(quoting *State v. Kern*, 831 N.W.2d 149, 160 (Iowa 2013)). The State may show either “actual possession” or “constructive possession.” *Id.*

When the accused has not been in exclusive possession of the premises, several factors are considered in determining whether the accused had constructive possession of the controlled substance. Such factors include: (1) incriminating statements made by the accused, (2) incriminating actions of the accused upon the police’s discovery of a controlled substance among or near the accused’s personal belongings, (3) the accused’s fingerprints on the packages containing the controlled substance, and (4) any other circumstances linking the accused to the controlled substance. *State v. Carter*, 696 N.W.2d 31, 39 (Iowa 2005)(citing *State v. Webb*, 648 N.W.2d at 79). Additional factors may be considered when the “premises” involve a motor vehicle:

(1) was the contraband in plain view, (2) was it with the accused personal effects, (3) was it found on the same side of the car seat as the accused or immediately next to him, (4) was the accused the owner of the vehicle, and (5) was there suspicious activity by the accused. *Id.* (citing *State v. Kemp*, 688 N.W.2d 785, 789 (Iowa 2004)).

The factors that would be considered if the contraband had been located in the vehicle may help illuminate the issues here. Here, Jones was not in close physical proximity to the contraband. The contraband was not found in plain view. The contraband was not found with Jones' personal effects and the personal effects of another individual were found in the black bag with the contraband. Jones was the owner of his vehicle but there was no evidence that the contraband was ever located in his vehicle. There was no suspicious activity by Jones.

“Proof of opportunity of access to the place where contraband is found will not, without more, support a finding of unlawful possession.” *State v. Bash*, 670 N.W.2d 135, 137 (Iowa 2003)(citing *State v. Reeves*, 209 N.W.2d 18, 22 (Iowa 1973)). Likewise, in *State v. Atkinson*, the evidence was insufficient to prove constructive possession when the defendant did not have any dominion and control over contraband found in her ex-husband's fanny pack found in a vehicle. 620 N.W.2d 1, 6 (Iowa 2000). The drugs were not in plain view, not on defendant's side of the car, not in her personal effects and she was not the owner of the car. *Id.* at 4.

In *State v. Cashen*, Cashen was found to be in a vehicle with five other people. 666 N.W.2d 566, 571 (Iowa 2003). Because Cashen was not in exclusive possession of the car, there was no inference of possession by

him of the contraband located. *Id.* Cashen’s proximity to the drugs was not enough to show his dominion and control over them. *Id.* at 571-72. “Just as proximity to the drugs should not be used to infer knowledge, it is insufficient to prove control and dominion.” *Id.* at 572 (citing *State v. Atkinson*, 620 N.W.2d 1, 32 (Iowa 2000)). “Simply because a person can reach out and grasp something does not mean he or she has control or dominion over the object.” *Id.* “Our possession statute does not criminalize mere proximity to contraband.” *Id.* at 573.

Viewing the evidence in the light most favorable to the State, the evidence here was insufficient for the jury to find Jones in constructive possession of the drugs discovered on the roadway. There was a complete lack of evidence linking Jones to the drugs found in the open along a public roadway. Although found in a remote location, the circumstances were clear that others had been present at that place in the recent past. Both the motorist who had gone in the ditch and at least one other individual who had given her a ride had been in the vicinity that evening. It was as reasonable to conclude that one of the others who had been there misplaced their drugs as it was to suggest that Jones had been in possession of the drugs. Here, there was no evidence that Jones knew the black bag was present until deputies brought it to his attention, nor was there any evidence that Jones knew the

contents of the bag. While it was just as likely that someone else had discarded the black bag as it was that Jones had done so, Jones had the misfortune of being present when deputies located the bag containing contraband. Unable to find a more suitable scapegoat, they accused Jones of possession of the contraband inside.

## **CONCLUSION**

For all of the reasons discussed above, Defendant-Appellant Michael James Jones respectfully requests that the conviction be vacated, and the case remanded for a new trial in this case.

## **NOTICE FOR ORAL ARGUMENT**

Oral argument is not necessary to assist the Court in resolution of the issues presented in this case. If the Court schedules argument, counsel requests to be heard.

### **CERTIFICATE OF COMPLIANCE WITH TYPE-VOLUME LIMITATION, TYPEFACE REQUIREMENTS, AND TYPE-STYLE REQUIREMENTS**

1. This proof brief complies with the type-volume limitation of Iowa R. App. P. 6.903(1)(g)(1) or (2) because:

This proof brief contains 3,183 words, excluding the parts of the brief exempted by Iowa R. App. P. 6.903(1)(g)(1).

2. This proof brief complies with the typeface requirements of Iowa R. App. P. 6.903(1)(e) and the type-style requirements of Iowa R. App. P. 6.903(1)(f) because:

This proof brief has been prepared in a proportionally spaced typeface using Microsoft Word 2010 in 14 point font size, Times New Roman style.

/s/ Pamela Wingert  
Pamela Wingert  
Attorney for Appellant

### **COST CERTIFICATE**

I hereby certify that the cost of printing Appellant's Proof Brief and Argument was the sum of \$8.00.

/s/ Pamela Wingert  
Pamela Wingert  
Attorney for Appellant