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

REPLY BRIEF FOR THE APPELLANT

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PROOF OF SERVICE AND CERTIFICATE OF FILING

I certify that on the 1st 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.

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STATEMENT OF ISSUE PRESENTED FOR REPLY

I. THE STATE FAILED TO PROVE ACTUAL OR CONSTRUCTIVE POSSESSION

Authorities

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State v. Reeves, 209 N.W.2d 18, 23 (Iowa 1973)

State v. Cashen, 666 N.W.2d 566, 572 (Iowa 2003)

State v. Bash, 670 N.W.2d 135, 136 (Iowa 2003)

State v. Reed, 875 N.W.2d 693, 711 (Iowa 2016)

ARGUMENT

Having failed to provide sufficient evidence for constructive possession, Appellee suggests that actual possession was proven at an earlier time as it relates to Mr. Jones. Appellee's Brief at 10. Appellee reaches to *State v. Vance* to support this proposition. *Id.* (citing 790 N.W.2d 775, 784 (Iowa 2010)). In *Vance*, the defendant as the sole occupant of a vehicle was found to have paraphernalia in his pockets and freshly manufactured methamphetamine present in plain sight in a vehicle. 790 N.W.2d at 778-79. An array of items associated with the manufacture of meth were also found in the vehicle and Vance was charged with possession of pseudoephedrine, lithium and anhydrous ammonia with intent to manufacture a controlled substance. *Id.* at 779. Importantly, a receipt for recently purchased cold medicine that contained pseudoephedrine was also found. *Id.* Vance argued that the evidence was insufficient to prove he possessed pseudoephedrine. *Id.* at 784. There was ample evidence that Vance had possessed the pseudoephedrine listed on the CVS receipt sold eight hours before the stop to an individual using Vance's identification card. *Id.*

In contrast, here we have no direct links between this defendant and the contraband in the bag at any time. Mr. Jones was simply the one found closest to the contraband when the deputies arrived. Appellee attempts to

link Mr. Jones to the contraband because it happens to be found near his vehicle and to suggest that proves he possessed it at an earlier time. "[W]here the accused has not been in exclusive possession of the premises but only in joint possession, knowledge of the presence of the substances on the premises and the ability to maintain control over them must be established by proof." *State v. Reeves*, 209 N.W.2d 18, 23 (Iowa 1973). Here, we have the equivalent with others present in the same place at the side of that road albeit at different times. Therefore, proof of possession was required to be presented to the jury in this case.

Appellee points to *State v. Cashen* for the proposition that "proximity to the drugs supported finding possession." Appellee's Brief at 11 (citing 666 N.W.2d 566, 572 (Iowa 2003). A closer look at *Cashen* may prove fruitful. "The only fact relevant to Cashen's alleged dominion and control over the drugs was his proximity . . . Simply because a person can reach out and grasp something does not mean that he or she has control or dominion over the object. A defendant's mere proximity to contraband is insufficient to support a finding of constructive possession." 666 N.W.2d at 572.

Cashen was one of six people in a vehicle where a baggie of marijuana was found. *Id.* at 568. Here, we do not have an exact *Cashen* situation where multiple people are found together in the presence of

contraband, but we do know multiple people had been present at the scene that evening. From the facts of this case as they were presented to the jury, there had been a driver of the vehicle in the ditch, her child, and at least one other person who had picked them both up earlier that evening. (Transcript p. 39). Either of the adults may have dropped the contraband with the bag and keys on the roadway. Mr. Jones was no more likely than the others to have left Fuel Saver cards belonging to two other individuals behind. Indeed, he may have been less likely to have done so if the owners of the Fuel Saver cards had been among those present that evening.

Appellee also finds the condition of the bag's contents shows that it had not been on the roadside for long and must have been placed there by Mr. Jones. Appellee's Brief at 11. As Mr. Jones had explained, the circumstances that brought him to that location had unfolded that December evening. (Transcript p. 39). It had rained the day before but a piece of paper inside the bag was not wet, Appellee argues. Appellee's Brief at 11. The jury certainly could have concluded that the bag had not been on the roadside for long. We know others had been at that exact spot recently. We know that some of the property found was tied directly to others and none of the property was tied directly to Mr. Jones. The condition of the bag may

have been consistent with a recent arrival to the roadbed but that would have been the case if any of the others had left it there, as well.

Appellee may want to hold Mr. Jones accountable for the actions of his Facebook "friend" but friendly associations as in *Cashen* or even marital ones as in *Bash* do not provide sufficient evidence of dominion and control, even for those in proximity to contraband. *See* 666 N.W.2d at 568, *State v. Bash*, 670 N.W.2d 135, 136 (Iowa 2003). Appellee speculates to try to explain the Fuel Saver problem by suggesting that the bag might have been loaned by Mr. Jones to a friend "because friends often loan things to one another." Appellee's Brief at 12. While the Fuel Saver card in the bag belonged to a Facebook "friend" of Mr. Jones, the Fuel Saver card found on the keys belonged to an Angela Riviera with no known connection to others involved in this case. (Transcript p. 49). We are left with a tenuous connection to one of those whose property was found near the contraband and no connection to the other.

The Appellee also finds a guilty conscience in Mr. Jones because of his comment that there probably was nothing good in the black bag. Appellee's Brief at 6. Yet the deputy testified that he could observe paraphernalia at his initial view of the bag which was not "cinched all the

way shut." (Transcript p. 40-41). Mr. Jones' power of observation was no more indicative of guilt than that of the deputy.

More speculation needs to be enlisted to conclude Mr. Jones possessed this methamphetamine merely because preliminary tests showed meth residue on his wallet and driver's license. Appellee's Brief at 12. Appellee goes on to speculate that someone else would not abandon meth because they were under no threat from law enforcement and that it was only logical that it must have been Mr. Jones who abandoned the meth. *Id.* at 13. Mr. Jones was already out of his car checking on the car in the ditch with a flashlight as the deputy drew near. (Transcript p. 37). The deputy had seen the flashlight in the ditch from a mile away. (Transcript p. 38). The Appellee would have you believe that Mr. Jones abandoned the contraband as the deputy approached. Appellee's Brief at 12. If so, Mr. Jones must have planned exceptionally well, bringing his valuable contraband with him to the ditch, along with the Fuel Saver cards of two different individuals and all with the deputy a mile away. We have two named individuals associated with the property found on the road, one of whom had been known by the deputies to use methamphetamine. Logic would dictate that the known meth user whose property was found was likely to be the person who had possessed the meth and other contraband, not Mr. Jones.

Appellee stacks speculation upon speculation in order to try to support a theory of possession in this case but speculation does not provide sufficient evidence in possession cases. "[O]ur cautious approach to the doctrine of constructive possession should not recognize a stack of speculative inferences piled one on top of another as substantial evidence . . ." *State v. Reed*, 875 N.W.2d 693, 711 (Iowa 2016), as amended (May 5, 2016)(Hecht, J., concurring). Appellee offers a number of suppositions to try to link Mr. Jones to the contraband: perhaps Mr. Jones possessed the contraband earlier; perhaps he loaned it to a friend. Suppositions do not provide sufficient evidence of possession of a controlled substance under any theory acceptable to this Court.

CONCLUSION

There was not sufficient evidence before this jury that Mr. Jones actually possessed the contraband at an earlier time nor that he constructively possessed it on the roadway that evening. Defendant-Appellant Michael James Jones respectfully requests that the conviction be vacated, and the case remanded for a new trial in this case.

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/s/ Pamela Wingert
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/s/ Pamela Wingert
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