

IN THE SUPREME COURT OF IOWA  
Supreme Court No. 19-0971

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STATE OF IOWA,  
Plaintiff-Appellee,

vs.

MICHAEL JAMES JONES,  
Defendant-Appellant.

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APPEAL FROM THE IOWA DISTRICT COURT  
FOR CLAY COUNTY  
THE HONORABLE NANCY L. WHITTENBURG, JUDGE

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**APPELLEE'S BRIEF**

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FINAL

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**STATEMENT OF THE ISSUE PRESENTED FOR  
REVIEW**

- I. The State offered sufficient evidence to prove that the defendant possessed methamphetamine and marijuana.**

**Authorities**

*Meier v. Senecaut*, 641 N.W.2d 532 (Iowa 2002)  
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*State v. Thomas*, 847 N.W.2d 438 (Iowa 2014)  
*State v. Vance*, 790 N.W.2d 775 (Iowa 2010)

## **ROUTING STATEMENT**

None of the retention criteria in Iowa Rule of Appellate Procedure 6.1101(2) apply to the issues raised in this case, so transfer to the Court of Appeals is appropriate. Iowa R. App. P. 6.1101(1).

## **STATEMENT OF THE CASE**

### **Nature of the Case**

The defendant, Michael James Jones, appeals following a jury trial, the Honorable Nancy L. Whittenburg presiding. He appeals his convictions for possessing methamphetamine (“meth”) with the intent distribute in violation of Iowa Code section 124.401(1)(b)(7) and possessing marijuana in violation of Iowa Code section 124.401(5). He argues that the State failed to prove that he possessed either drug.

### **Course of Proceedings and Facts**

On a cold December night, the defendant’s friend called him to pull a car out of the ditch. Trial Tr., 37:3–6, 76:19–22. The car crashed after the driver hit a deer. *Id.* at 39:5 to 40:6. When he arrived, no one was there as someone else had picked up the people in the crashed car. *Id.*; *see also id.* at 84:12–15.

A sheriff’s deputy saw the defendant’s hazard lights and parked behind his Dodge Durango. *Id.* at 37:10–19, 126:2–8. The defendant

walked in front of his Durango to talk with the deputy. *Id.* at 38:13–18; Ex.22 (dash cam) at 0:30 to 0:42. After he passed the Durango, he looked back toward the front of the Durango. Trial Tr., 38:13 to 39:2; Ex.22 (dash cam) at 0:30 to 0:42.

The defendant explained that his friend called him to try to pull the car out of the ditch. Trial Tr., 39:5–12. The defendant showed the deputy the dead deer. *Id.* at 40:1–6. As they returned to the Durango, the deputy noticed a black drawstring bag 12 to 18 inches in front of the Durango’s front passenger tire. *Id.* at 40:7–20; Ex.4 (photo); App.60. The deputy could see the bowl of a glass pipe through the opening where the drawstring was not fully cinched. Trial Tr., 40:21 to 41:4. The deputy also found a keyring with two keys and a Hy-Vee Fuel Saver card 10 to 15 feet in front of the Durango. *Id.* at 48:18–25. He called for backup. *Id.* at 41:2–4.

The second deputy arrived and picked up the bag. *Id.* 95:18–20, 97:9–13. The deputies asked the defendant what was in the bag. *Id.* at 96:8 to 97:25. While he claimed not to know, the defendant said “probably nothing good.” *Id.* at 97:19 to 98:1. The deputies opened the bag and found over 7.5 grams of meth and a small amount of marijuana. *Id.* at 98:11–22; Ex.1 (DCI report); App.57; Ex.2 (DCI

report); App.59; Ex.7 (photo); App.61. Most of the meth was held in seven baggies, while some was found in a false battery with a screw off lid. Trial Tr., 137:1–7; Ex.1 (DCI report); App.57; Ex.2 (DCI report); App.69; Ex.7 (photo); App.61. The deputies also found a blue-tooth puck, Hy-Vee Fuel Saver card, dry scrap of paper, glass meth pipe, and a marijuana smoking device. Trial Tr., 44:16–23; Ex.7 (photo); App.61; Tr. Suppression Hr’g, 12:8 to 13:7. The Fuel Saver card belonged to the defendant’s Facebook friend who was a known meth user. Trial Tr., 45:8–13, 105:12–18.

The defendant denied that the bag or drugs were his. *Id.* at 50:13–20, 80:8–10. The defendant postulated that the bag belonged to the same person who left the keys. *Id.* at 50:13–20.

The deputies arrested the defendant. *Id.* at 50:4–25. One inventoried the Durango before impounding it. Tr. Suppression Hr’g, 39:14–20. They found cash and two cell phones. *Id.* at 42:16–21, 57:14–16. After getting a warrant, a deputy searched the phones and found evidence linking the defendant to the blue-tooth puck in the black bag. *Id.* at 43:3–16, 51:12–18, *see* Tr. Pretrial Hr’g, 24:24 to 25:17. At the station, the deputies tested the defendant’s driver’s

license and two \$100 bills found on him for traces of meth. Trial Tr., 61:10 to 62:9. Both tested positive. *Id.* at 62:6–11.

The State charged the defendant with possessing meth with the intent to deliver and possessing marijuana. Trial Info. (1/6/2017); App.6. Before trial, the defendant moved to suppress the impound search and challenged the warrant used to search his phone. Mot. Suppress (11/17/2017); App.9; Mot. Reconsider Suppress (9/20/2018); App.31. The district court suppressed the evidence found on the defendant's phone and the \$557 found in his Durango. Order Mot. Suppress (5/15/2018) at 13; App.24; Order Reconsider Suppress (9/28/2018); App.37.

The case proceeded to jury trial. Trial Tr. In addition to the evidence found at the scene, the State offered DCI reports confirming that the substances in the black bag were meth and marijuana. Ex. 1–2 (DCI reports); App.57–59. The State also offered testimony that the seven baggies of meth were in quantities bought by drug users, the individual packaging was consistent with selling meth, and the meth was worth over \$800. Trial Tr., 137:8 to 139:20, 141:17–22. The defendant argued that the bag and drugs were not his. *E.g., id.* at 184:8 to 186:5.

The jury convicted the defendant as charged. Verdict; App.62. After the district court denied the defendant's post-trial motions and sentenced him, he timely appealed. Order Denying Post Trial Mots. (4/23/2019); App.86; J. & Sentence (5/24/2019); App.96; Not. Appeal (6/10/2019); App.103.

## ARGUMENT

### I. **The State offered sufficient evidence to prove that the defendant possessed methamphetamine and marijuana.**

#### **Preservation of Error**

The defendant preserved error on this challenge by raising the issue and receiving a ruling. Trial Tr., 163:4 to 165:22; *Meier v. Senecaut*, 641 N.W.2d 532, 537 (Iowa 2002).

#### **Standard of Review**

This Court reviews sufficiency claims for correction of errors at law. *State v. Thomas*, 847 N.W.2d 438, 442 (Iowa 2014) (quoting *State v. Sanford*, 814 N.W.2d 611, 615 (Iowa 2012)). It considers all the evidence “in the light most favorable to the State” including reasonable inferences, though it does not consider “just the inculpatory evidence.” *Id.* If the evidence could “convince a rational jury that the defendant is guilty beyond a reasonable doubt,” it is

sufficient. *Id.* The jury is “free to reject certain evidence, and credit other evidence.” *Id.*

### **Merits**

To convict the defendant, the State had to prove that he “possessed [m]eth[]” and “[m]arijuana,” respectively. Instr. Nos. 20, 22; App.72, 73. Here, proving possession required proving that the defendant possessed the bag containing the meth and marijuana.

The defendant argues that “the evidence ... was insufficient ... to find” that he “possess[ed]” meth or marijuana. Defendant Br. at 10, 13. He applies a constructive possession analysis. *Id.* at 11–14; *see* Instr. No. 19; App.71. But the defendant’s possession here is more like the actual possession found in *State v. Vance*, where the State proved actual possession at an earlier time. 790 N.W.2d 775, 784 (Iowa 2010) (“Although the pseudoephedrine was not found on [the defendant’s] person at the time of the stop, substantial evidence supports the jury’s finding that at one time [he] had actual possession of the [contraband].”); *see also State v. Eubanks*, No. 13–0602, 2014 WL 2346793, at \*3 (Iowa Ct. App. May 29, 2014). Several pieces of evidence supported the jury’s finding.

First, a deputy found the meth and marijuana in a bag on the side of the road 12 to 18 inches from the front passenger's tire on the defendant's Durango. Trial Tr., 40:7–20; Ex.4 (photo); App.60; Ex.7 (photo); App.61. The defendant was the only non-deputy there when the bag was found. *See generally* Ex.22. The defendant's proximity to the drugs supported finding possession. *See State v. Cashen*, 666 N.W.2d 566, 572 (Iowa 2003) (noting that “proximity to the drugs [is] pertinent” to proving constructive possession). That the defendant looked back at the drugs as he approached the deputy buttressed that finding. Trial Tr., 38:13 to 39:2; Ex.22 (dash cam) at 0:30 to 0:42.

Second, the bag's condition and contents showed it had not been on the roadside long. Despite rain the day before and continuing damp conditions on the roadside, the bag was quite clean when found. Trial Tr., 46:20 to 48:4; *see Eubanks*, 2014 WL 2346793 at \*3 (using “[un]crushed” status of bag holding drugs recently found in road to support jury's finding that defendant possessed the bag and its drugs). Moreover, a piece of paper inside the bag was not wet. *See id.* (same for bag's dry condition). From those facts the jury could find that the bag had not been by the roadside long. Plus, the glass meth

pipe inside the bag was not chipped or broken. Trial Tr., 43:25 to 44:10. That showed that the pipe had not be thrown by a passing motorist. *Id.*

Third, the Fuel Saver card found in the bag belonged to the defendant's friend. *Id.* at 45:2–13, 104:14 to 105:18. While that could support finding that the friend owned the meth, it could also support finding it was the defendant's bag because friends often loan things to one another. At the least, the Fuel Saver card allowed the jury to eliminate the possibility that the bag belonged to anyone other than the defendant or his friend.

Fourth, when the deputies asked the defendant what was in the bag, he responded “[p]robably nothing good.” *Id.* at 41:16 to 42:4, 97:23 to 98:1. From that, the jury could find that the defendant's answer showed he knew what was in the bag because drugs and drug paraphernalia are illegal, *i.e.* “nothing good.”

Last, preliminary meth tests revealed meth on two \$100 bills found in the defendant's wallet and on his driver's license. *Id.* at 61:10 to 62:11. That allowed the jury to conclude that the defendant possessed meth. From there, the jury was free to find that the meth the defendant possessed was that found in the bag by his Durango.

The defendant argues that the black bag and its drugs could have belonged to whoever crashed the car in the ditch or picked up the stranded motorists. True enough. But the jury was free to reject such a finding. It had good reason to do so. It makes little sense that someone would abandon \$800 of meth when under no threat of detection from law enforcement. And here, the people in the crash left undetected. In contrast, it is logical that the defendant would abandon over \$800 in meth when he saw the deputy approach.

The defendant frames this case as one in which he was in the wrong place at the wrong time. Defendant Br. at 11–14. He suggests his proximity to the drugs is all that supported the jury’s verdict and says that is not enough. *Id.* But as explained, the jury had more than just the defendant’s proximity to the drugs from which it could find he possessed the black bag with its drugs. *See State v. Reed*, 875 N.W.2d 693, 706–07 (Iowa 2016) (“[T]his is not a case where proof of [possession] depends upon a single piece of evidence from which two reasonable inferences could be drawn.” (alteration in original) (quoting *State v. Keeton*, 710 N.W.2d 531, 535 (Iowa 2006))). Because the evidence viewed in the light most favorable to the State

allowed the jury to find that the defendant possessed the meth and marijuana, this Court should affirm.

### **CONCLUSION**

For the foregoing reasons, the State respectfully requests that this Court affirm the defendant's convictions.

### **REQUEST FOR NONORAL SUBMISSION**

This case is appropriate for nonoral submission.

Respectfully submitted,

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A handwritten signature in blue ink, appearing to read "Zach Miller", is written over a horizontal line.

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## CERTIFICATE OF COMPLIANCE

This brief complies with the typeface requirements and type-volume limitation of Iowa Rs. App. P. 6.903(1)(d) and 6.903(1)(g)(1) or (2) because:

- This brief has been prepared in a proportionally spaced typeface using Georgia in size 14 and contains **1,917** words, excluding the parts of the brief exempted by Iowa R. App. P. 6.903(1)(g)(1).

Dated: June 4, 2020



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