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

STATE OF IOWA,
Plaintiff-Appellee,

vs.

MICHAEL JAMES JONES,
Defendant-Appellant.

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

APPLICATION FOR FURTHER REVIEW

(Decision Date: Oct. 7, 2020)

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QUESTIONS PRESENTED FOR REVIEW

Can the State prove that the defendant actually possessed drugs when the drugs are not found on the defendant's person?

Is circumstantial evidence less probative of guilt than direct evidence?

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STATEMENT SUPPORTING FURTHER REVIEW

The Court of Appeals made two errors that conflict with this Court's decisions on important matters when it reversed the defendant's, Michael Jones, convictions for possessing methamphetamine ("meth") with the intent to distribute and possessing marijuana. *See* Iowa R. App. P. 6.1103(1)(b)(1).

First, the Court of Appeals stated that actual possession only "occurs when the [drug] is found on the defendant's person." Slip Op. at 7. But this Court has held that the State can prove actual possession by showing "that contraband was in [the defendant's] physical possession at some point in time." *State v. Thomas*, 847 N.W.2d 438, 442 (Iowa 2014). The concepts surrounding drug possession have, at times, "created murky jurisprudence." *State v. Bash*, 670 N.W.2d 135, 141 (Iowa 2003) (Cady, J., dissenting). This Court should not allow the Court of Appeals opinion to re-muddy the waters.

Second, the Court of Appeals treated circumstantial evidence as less probative than direct evidence even though "direct and circumstantial evidence are equally probative" for "proving guilt." *Compare* Slip Op. at 9–10, *with State v. O'Connell*, 275 N.W.2d 197, 205 (Iowa 1979). The Court of Appeals relied on *State v. Truesdell*,

679 N.W.2d 611, 618–19 (Iowa 2004) as support to reject reasonable inferences the jury could have drawn to find guilt. Slip Op. at 9–10. But such a conception of inferences treats circumstantial evidence as less probative than direct evidence. This Court should grant further review to confirm that *Truesdell* did not reinstate the rule disfavoring circumstantial evidence.

STATEMENT OF THE CASE

Nature of the Case

The State seeks further review from a Court of Appeals decision. Iowa R. App. P. 6.1103.

Course of Proceedings

The State charged the defendant with possessing meth with the intent to deliver and possessing marijuana. Trial Info. (1/6/2017); App.6. The jury convicted him as charged. Verdict; App.62–63.

He appealed. Not. Appeal (6/10/2019); App.103. The Court of Appeals reversed his convictions, concluding that the State offered insufficient evidence. Slip Op. at 10. It ordered the district court to dismiss the charges. *Id.* The State seeks further review.

Facts

On a cold December night, a sheriff's deputy saw a Dodge Durango with its hazard lights flashing. Trial Tr., 37:3–19, 76:19–22, 126:2–8. He parked behind the Durango and noticed a car in the ditch. *Id.* at 37:3–19, 126:2–8. The defendant explained to the deputy that his friend called him to try to pull the car out of the ditch. Trial Tr., 39:5 to 40:6.

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 an opening where the drawstring was not cinched. Trial Tr., 40:21 to 41:4. He called for backup. *Id.* at 41:2–4.

A second deputy arrived, picked up the bag, and asked the defendant what was in it. *Id.* 95:18–20, 96:8 to 98:1. The defendant claimed not to know but said "probably nothing good." *Id.* at 97:19 to 98:1. In the bag, deputies found over 7.5 grams of meth, most of it in seven baggies; a small amount of marijuana; a dry scrap of paper, even though it rained the day before; a glass meth pipe; a Hy-Vee Fuel Saver card belonging to the defendant's Facebook friend who was a known meth user; and a marijuana smoking device. *Id.* at 35:25 to 36:12, 44:16–23, 45:8–13, 47:22 to 48:4, 98:11–22, 105:12–18, 137:1–7; Ex.1 (DCI report); App.57; Ex.2 (DCI report); App.59; Ex.7 (photo); App.61; Tr. Suppression Hr'g, 12:8 to 13:7. The meth was worth $800. Trial Tr., 137:8 to 139:20, 141:17–22.

The defendant denied that the bag or drugs were his. *Id.* at 50:13–20, 80:8–10. He guessed that the bag belonged to someone in the crashed car. *Id.* at 50:13–20.

The deputies arrested the defendant. *Id.* at 50:4–9. At the station, the defendant driver's license and two $100 bills found in his wallet tested positive for traces of meth. Trial Tr., 61:10 to 62:15.

ARGUMENT

I. The Court of Appeals erred by concluding that the State could only prove that the defendant actually possessed drugs by finding drugs on his person.

Standard of Review

This Court reviews sufficiency claims for correction of errors at law. *Thomas*, 847 N.W.2d at 442 (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 all reasonable inferences." *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

A. The Court of Appeals decision conflicts with this Court's holdings that the State can prove actual possession by showing that a defendant physically possessed drugs "at some point in time."

The Court of Appeals failed to follow this Court's precedent. It stated that "[a]ctual possession occurs when the controlled substance is found on the defendant's person." Slip Op. at 7 (citing *State v. Atkinson*, 620 N.W.2d 1, 2 (Iowa 2000)). It reasoned that, "because the deputy did not find the controlled substance on [the defendant's] person," he "did not have actual possession of the drugs." *Id.*

But that analysis conflicts with this Court's holding that "the distinction between actual possession and constructive possession does not turn on whether a defendant was apprehended with the contraband, but on whether there is sufficient evidence that contraband was in his or her physical possession at some point in time." *Thomas*, 847 N.W.2d at 442 (citing *State v. Vance*, 790 N.W.2d 775, 784 (Iowa 2010)). In other words, "[a]ctual possession may be shown by … circumstantial evidence." *Vance*, 790 N.W.2d at 784. This was an actual possession case because the State used circumstantial evidence to prove possession of the bag with drugs at a prior time. Because the Court of Appeals analysis conflicts with this Court's decisions and led to an erroneous reversal, this Court should grant further review to re-affirm its precedent. *E.g*. *Thomas*, 847 N.W.2d at 442.

B. The State proved that the defendant possessed the bag with drugs found by his Durango.

To convict the defendant of possessing meth with the intent to distribute and possessing marijuana, the State had to prove that he possessed the bag with meth and marijuana found by his Durango. *See* Instr. Nos. 20, 22; App.72, 73. As in *Thomas*, the State's possession theory was that the defendant possessed the drugs shortly

before police arrived and dropped them to avoid detection. *See Thomas*, 847 N.W.2d at 443–44. And like in *Thomas*, the State relied on several pieces of evidence from the scene to allow the jury to infer that the defendant had possessed the bag with the drugs shortly before it was found by law enforcement.

First, a deputy found the meth and marijuana in a bag on the side of the road 12 to 18 inches from the Durango's front passenger tire with no one there but the defendant. Trial Tr., 40:7–20; Ex.4 (photo); App.60; Ex.7 (photo); App.61; Ex.22. The defendant's proximity to the drugs supported finding 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 damp conditions outside, the bag was quite clean when found. Trial Tr., 46:20 to 48:4. Moreover, a piece of paper inside the bag was dry. From those facts, the jury could infer the bag had been dropped recently.

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. The jury could find that the defendant's answer showed that he knew drugs and drug paraphernalia—*i.e.* "nothing good"—were in the bag.

Fifth, officers found $800 worth of meth in the bag. A jury could find that a person would not abandon $800 of meth unless under duress. And it could infer the defendant abandoned the meth because only he encountered law enforcement by the wrecked car.

Last, 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 could reasonably find that the meth the defendant possessed was that found in the bag by his Durango.

This evidence allowed the jury to find that the defendant actually possessed the meth and marijuana found in the bag just before the deputy arrived. Sufficient evidence supported his convictions, this Court should reverse the Court of Appeals decision.

II. The Court of Appeals erred by concluding that circumstantial evidence is less probative than direct evidence.

Standard of Review

The same sufficiency standard applies. *See Thomas*, 847 N.W.2d at 442.

Merits

In 1979, this Court held: "For purposes of proving guilt beyond a reasonable doubt, direct and circumstantial evidence are equally probative." *State v. O'Connell*, 275 N.W.2d 197, 205 (Iowa 1979). Today that principle is so axiomatic that parties need not cite authority for it. *See* Iowa R. App. P. 6.904(3)(p); *see also* Jury Instr. No.9; App.66.

Even though direct and circumstantial evidence are "equally probative" for "proving guilt," the Court of Appeals faulted the State for relying on circumstantial evidence instead of offering direct evidence. Slip Op. at 9–10. It stated: "There is no direct evidence tying [the defendant] to the drugs, and no one inference establishes

[the defendant] … knew of the drugs and had control and dominion over them." *Id.* at 9. It then rejected the reasonable inferences of guilt that the jury could have drawn from the State's evidence because the jury could have found an innocent explanation. *Id.* at 9–10 (citing *State v. Schurman*, 205 N.W.2d 732, 734 (Iowa 1973)). Finally, it observed that "[t]he circumstances are not wholly inconsistent with any rational hypothesis of his innocence[,]" "[s]o we are not satisfied this evidence was sufficient" to convict. *Id.* at 10.

In conducting its analysis, the Court of Appeals relied on two cases that predate *O'Connell*. Slip Op. at 10 (citing *Schurman*, 205 N.W.2d at 734 and *State v. Keyser*, 130 N.W.2d 701, 704 (Iowa 1964)). *Schurman* and *Keyser* hold that the State must disprove every rational hypothesis of innocence to obtain a conviction on circumstantial evidence alone. But *O'Connell* overruled both cases when it announced that direct and circumstantial evidence are equally probative. 275 N.W.2d at 205.

The Court of Appeals also relied on *State v. Truesdell*, 679 N.W.2d 611, 618–19 (Iowa 2004). Slip Op. at 8–10. It cited *Truesdell* for the proposition that when "two reasonable inferences can be drawn from a piece of evidence, … such evidence only gives rise to a

suspicion, and, without additional evidence, is insufficient to support guilt." *Id.* at 9 –10 (quoting *Truesdell*, 679 N.W.2d at 618–19). But that statement recasts the pre-1979 rule that circumstantial evidence must be not only consistent with guilt but also inconsistent with any rational theory of innocence. To the extent *Truesdell* might be read to revive the pre-1979 conception of circumstantial evidence, *Thomas*, 847 N.W.2d 438, confirmed that it did not. In *Thomas*, this Court found sufficient circumstantial evidence that the defendant possessed drugs found in a bedroom even though he argued someone else may have placed them there. *Id.* at 443–47. The *Thomas* dissent cited the same passage from *Truesdell* upon which the Court of Appeals relied. *See id.* at 458 (Hecht, J., dissenting). But the majority in *Thomas* confirmed that "[d]irect and circumstantial evidence are equally probative." *Id.* at 447.

Here, the Court of Appeals analysis misapplied the law. It refused to treat circumstantial evidence the same as direct evidence by requiring the State to prove that circumstantial evidence is "wholly inconsistent with any rational hypothesis of … innocence." Slip Op. at 10. But for "purposes of proving guilt beyond a reasonable doubt, direct and circumstantial evidence are equally probative." *E.g.,*

O'Connell, 275 N.W.2d at 205. And the Court of Appeals was required to consider all the evidence "in the light most favorable to the State," including all reasonable inferences." *Thomas*, 847 N.W.2d at 442. This Court should grant further review to confirm once and for all that circumstantial evidence is as probative as direct evidence.

CONCLUSION

For the foregoing reasons, the State requests that this Court grant further review, reverse the Court of Appeals decision, and affirm the district court's judgement.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

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