

IN THE SUPREME COURT OF IOWA

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

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STATE OF IOWA,  
Plaintiff-Appellee,

vs.

MICHAEL JAMES JONES,  
Defendant-Appellant.

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

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RESISTANCE TO APPLICATION FOR FURTHER REVIEW

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

I certify that on the 5th day of November, 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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## QUESTIONS PRESENTED

### I. THE COURT OF APPEALS CORRECTLY CONCLUDED THAT THE STATE FAILED TO MEET ITS BURDEN OF PROOF

#### Authorities

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

*State v. Thomas*, 847 N.W.2d 438 (Iowa 2014).

### II. THE COURT OF APPEALS DID NOT CONCLUDE THAT CIRCUMSTANTIAL EVIDENCE IS LESS PROBATIVE THAN DIRECT EVIDENCE

#### Authorities

*State v. Kemp*, 688 N.W.2d 785 (Iowa 2004).

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

*State v. Truesdell*, 679 N.W.2d 611 (Iowa 2004).

## **STATEMENT IN RESISTANCE OF APPLICATION FOR FURTHER REVIEW**

The Court of Appeals did not err in reversing this conviction as suggested by the State. The case at bar turned on the unique factual circumstances. Jones was found near contraband in a remote location but that had been recently occupied by at least two other individuals. These facts as shown by both direct and circumstantial evidence failed to provide substantive proof of guilt. The Court of Appeals correctly analyzed these facts as analogous to a jointly occupied vehicle or structure and correctly found the evidence insufficient to support a guilty verdict.

## **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 after it struck a deer. (Transcript p. 39). Jones arrived at the location, 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.* 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).

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 nearby. (Transcript p. 48). The second Fuel Saver Card belonged to Angela Riviera. (Transcript p. 49). There was no known connection with Riviera and Jones. *Id.* Jones was questioned about the items found and denied knowledge or ownership of the contraband found. (Transcript p. 50).

Jones was convicted at trial 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.

## ARGUMENT

### I. THE COURT OF APPEALS CORRECTLY CONCLUDED THAT THE STATE FAILED TO MEET ITS BURDEN OF PROOF

It is not controversial as the Court of Appeals stated in its opinion that “[a]ctual possession occurs when the controlled substance is found on the defendant’s person.” *See* Slip Op. at 7 (citing *State v. Atkinson*, 620 N.W.2d 1, 2 (Iowa 2000)). Appellee argues that the opinion fails to follow precedent establishing that the State can prove actual possession by showing defendant possessed the contraband at an earlier point in time. Application for Further Review p. 4 (citing *State v. Thomas*, 847 N.W.2d 438, 442 (Iowa 2014)). The facts of this case simply did not credibly raise an issue of actual possession at an earlier point in time and so the issue of actual possession was not examined in the Court of Appeals opinion.

A theory of actual possession cannot resurrect this conviction. The same problematic stack of inferences found to be unacceptable to the Court of Appeals as regarding constructive possession would have to be applied to



find actual possession at an earlier time. As was correctly concluded, there was no direct evidence which tied Jones to the contraband, and this remains true if considered at some other earlier time or place.

The opinion did not “muddy the waters” of the law of possession in Iowa, as suggested. *See* Application for Further Review p. 4. Instead, it was the muddied nature of the facts presented to the jury that the Court of Appeals appropriately condemned. For example, the application recites certain evidence in this case, including that along with the contraband, there was a Hy-Vee Fuel Saver card belonging to an individual described as “defendant’s Facebook friend.” Application for Further Review p. 7. Yet it fails to inform that there was a second Fuel Saver card found separately with a set of keys which belonged to an individual named Angela Rivera. There was no known connection between Ms. Riviera and this case. (Transcript p. 49). While the contraband was found near the Jones vehicle, there was ample evidence that at least two others were involved with the property which had been left in that place. The opinion properly considered the lack of sufficient evidence of either actual or constructive possession by Jones.

## **II. THE COURT OF APPEALS DID NOT CONCLUDE THAT CIRCUMSTANTIAL EVIDENCE IS LESS PROBATIVE THAN DIRECT EVIDENCE**

The Court of Appeals opinion does not discount the circumstantial evidence as less probative than the direct evidence. The conviction was reversed because all of the evidence presented to the jury supported only a suspicion of guilt. *See* Slip Op. p. 10. The State’s strongest piece of evidence was Jones’s proximity to the drugs. Slip Op. p. 8. The Court of Appeals correctly noted that “mere proximity to the drugs alone cannot support a finding of constructive possession.” *Id.* (citing *State v. Truesdell*, 679 N.W.2d 611, 618 (Iowa 2004)).

The Court of Appeals considered all of the circumstantial evidence in this case. It concluded that “[t]he circumstances are not wholly inconsistent with any rational hypothesis of his innocence.” *Id.* It was proper for the court to consider all the evidence and to consider it in a light most favorable to the State as it did in this case. The Court of Appeals analyzed the evidence in this case as analogous to a jointly occupied structure or vehicle because others had been recently present at the scene. Slip Op. p. 7. No rebuttable presumption of possession was recognized just as would be the case if multiple individuals had access to a vehicle. *Id.* (citing *State v. Kemp*, 688 N.W.2d 785, 788 (Iowa 2004)).

The factors to consider in “determining whether the defendant possessed contraband discovered in jointly occupied structures” were reviewed and are as follows:

- (1) Incriminating statements made by a person; (2) incriminating actions of the person upon police’s discovery of a controlled substance among or near the person’s personal belongings; (3) the person’s fingerprints on the packages containing the controlled substance; and (4) any other circumstances linking the person to the controlled substance.

*Id.* at 8 (citing *State v. Reed*, 875 N.W.2d 693, 706 (Iowa 2016)). These factors were carefully considered as it related to the facts of this case. *Id.* at 8-10. Upon review, the direct and circumstantial evidence presented here supported only a suspicion of guilt. Slip Op. at 10.

The State is clearly unhappy with the result in the opinion, but the Court of Appeals did not err in carefully considering the established law along with the unique facts of this case in reversing this conviction.

## **CONCLUSION**

For all of the reasons discussed above, Defendant-Appellant Michael James Jones respectfully requests that this Court deny the Application for Further Review and immediately issue procedendo in this case.

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/s/ Pamela Wingert  
Pamela Wingert  
Attorney for Appellant

**COST CERTIFICATE**

I hereby certify that the cost of printing the Resistance to Application for Further Review was the sum of \$6.50.

/s/ Pamela Wingert  
Pamela Wingert  
Attorney for Appellant