IN THE SUPREME COURT OF IOWA
Supreme Court No. 23-0055
Boone County No. FECR114749

STATE OF IOWA,
Plaintiff-Appellee,

vs.

CLAYTON CURTIS BROWN,
Defendant-Appellant.

APPEAL FROM THE IOWA DISTRICT COURT
FOR BOONE COUNTY
THE HONORABLE DEREK JOHNSON, JUDGE

APPLICATION FOR FURTHER REVIEW

(Iowa Court of Appeals Decision: October 25, 2023)

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QUESTION PRESENTED FOR FURTHER REVIEW

The Iowa Court of Appeals vacated Brown's convictions because it found insufficient evidence he possessed the firearm under the seat of the car he drove, even though the ammunition for it was near his effects and even though he fled police.

Where a defendant flees police in a vehicle that contains several of his possessions, may a reasonable jury infer that he possessed the firearm under him and in easy reach?

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STATEMENT SUPPORTING FURTHER REVIEW

On October 25, 2023, the Iowa Court of Appeals vacated Brown's conviction and sentence for possession of a firearm as a felon as well as his eluding while exceeding the speed limit and participating in a felony. *State v. Brown*, No. 23-0055, 2023 WL 7014187 (Iowa Ct. App. Oct. 25, 2023). The decision conflicts with this Court's decision in *State v. Ernst*, 954 N.W.2d 50 (Iowa 2021) and *State v. Jones*, 967 N.W.2d 336 (Iowa 2021). *See* Iowa R. App. P. 6.1103(1)(b)(1).

In the appeal Brown urged that the State failed to prove he possessed a firearm in part because "A person might run from police for any number of reasons, and Brown's barred license status . . . is a concrete reason supported by the evidence. Because the flight could give rise to multiple inferences, it is sheer speculation to infer it was because of knowledge of a firearm." Appellant's Br. 40 (citing *State v. Truesdell*, 679 N.W.2d 611, 618 (Iowa 2004)). The Court of Appeals' Panel accepted this logic and reversed: "Brown's guilty conscience or concern about police interactions could have been related to driving while barred as an habitual offender—he had reason for a guilty

conscience even without knowingly possessing the handgun." Slip.Op. at *12.

The Panel's opinion failed to correctly apply this Court's precedent and the deferential standard of review. The jury's verdict demonstrated it had accepted the State's evidence and adopted the common-sense reasoning that Brown fled because he knew a gun was in the vehicle. And as this Court made clear in *Ernst* and reiterated in *Jones*, the State need not disprove alternative scenarios to prevail. *Ernst*, 954 N.W.2d at 57–58; *Jones*, 967 N.W.2d at 339, 343; *see also State v. Bentley*, 757 N.W.2d 257, 262–63 (Iowa 2008). Troublingly, the Panel's opinion appears to have reversed on a theory adverse to the jury's verdict—that someone else may have planted the weapon in the vehicle after Brown abandoned it. *See* Slip.Op. at *10 ("We go a step further and note the record is devoid of any evidence that the gun was even in the vehicle at the time Brown was driving it. The State's evidence clearly established that the gun was under the driver's seat of the vehicle when Officer Slight located the car about forty minutes after he last saw Brown driving it. But there was no evidence regarding who had access to the vehicle during those forty minutes. Plus, Brown was not in or around the car at the time it was located, and the doors were

unlocked."); *cf.* Appellant's Br. at 39–40 (quoting *Truesdell*, 679 N.W.2d at 618–19).

Besides creating a conflict with controlling caselaw, the Court of Appeals' interpretation will result in adverse consequences. The Court of Appeals' reasoning encourages those doing more than one thing wrong to flee. Any one could be the reason for flight, thus none can be. And all undermine proof that any one occurred. Left to stand, the opinion encourages those who illegally possess guns or drugs to flee police. If they abandon the vehicle and are later apprehended, courts applying the Panel's reasoning may unreasonably conclude the State failed to meet its burden of proof. This will have the perverse effect of incentivizing criminal behavior and chilling prosecutorial decisions. To prevent this, the Court should correct the Panel's errors and clarify that common-sense inferences support conviction—Iowa law does not require police to catch a defendant "red-handed" to prove possession. *See Jones*, 967 N.W.2d at 341. The Court should grant review, vacate the Panel opinion, and affirm Brown's convictions.

STATEMENT OF THE CASE

Nature of the Case

The Court of Appeals held the evidence was not sufficient to support Brown's convictions for possession of a firearm as a felon and eluding while participating in a felony. It found insufficient evidence Brown knowingly possessed a firearm. Slip.Op. at *10–12. The State seeks further review.

ARGUMENT

The Panel's opinion failed to correctly apply the standard of review. It undervalued evidence that a reasonable factfinder credited and declined to accept the reasonable inferences that arose from that evidence. The Panel failed to follow this Court's instruction in *Ernst* and *Jones*.

Sufficiency review on appeal is a deferential inquiry: "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.'" *See, e.g.*, *State v. Sanford*, 814 N.W.2d 611, 615, 617 (Iowa 2012); *accord Jones*, 967 N.W.2d at 339 ("[W]e are highly deferential to the jury's verdict."). Circumstantial evidence may prove an element of the crime even if other reasonable inferences could be drawn from it. *Ernst*, 954 N.W.2d at 58–59. "Evidence is not insubstantial merely because we may draw different conclusions from

it; the ultimate question is whether it supports the finding actually made, not whether the evidence would support a different finding." *Jones*, 967 N.W.2d at 339. Accordingly, the State does not have to disprove defense-favorable theories. *Id.* at 342–43; *Bentley*, 757 N.W.2d at 262–6. And here, the State proved the following:

- Brown was driving his girlfriend's car when Officer Slight observed him driving without a seatbelt. Trial I 20:3–18; 52:5–53:1; 59:13–17; 61:4–16; 64:9–21.
- Officer Slight started a traffic stop, Brown fled and ultimately eluded him after reaching speeds above 80 miles per hour. Trial I 20:19–25:22; 26:16–24; 40:7–41:25; *see* Exh.30.
- Once out of sight of police, Brown abandoned vehicle. Police found it parked and unlocked within forty minutes. Trial I 26:25–28:11; 45:19–24.
- The vehicle contained Brown's personal effects, including his wallet and belt. Trial I 29:13–30:2; 19–50:8; Exh.9; Dkt. No. 112. The seats were covered with personal effects, including men's deodorant. *See* Exhs.5, 6, 8–9, Dkt. Nos. 108, 109, 111, 112.

- Officer Slight also found a loaded gun under the driver's seat "tucked back a little bit just close enough to be able to grab." Trial I 47:15–48:4; Exhs.18–19, Dkt. Nos. 120–121.
- Matching ammunition was in the center console and under the front passenger's seat. Trial I 30:3–31:21; 46:25–49:15. The ammunition in the cupholder was next to the console with Brown's wallet. Trial I 30:12–25; 31:11–21; Exhs.5, 10, 12, 15–17, 25, Dkt. Nos. 108, 113, 115, 117–19, 125. Additional ammunition was hidden in a medicine bottle. Trial I 46:22–47:14; Exhs. 14, 16–17, Dkt. Nos. 116, 118–19.
- Brown was a felon, and it was illegal for him to possess a firearm. Trial I 5:6–20.

But in startling contrast, the Panel concluded "all we can say the State established was that Brown was driving the vehicle at about 12:20 p.m., purposely evading Officer Slight when he tried to initiate the stop, and that a handgun was in the vehicle under the driver's seat at approximately 1:00 p.m. when Officer Slight located and secured the vehicle." Slip.Op. at *12. The Panel did not accept the reasonable inferences that arose from the evidence. Troublingly, the Panel

seemed to indulge in inferences and a scenario *contrary* to the jury's verdict:

> We go a step further and note the record is devoid of any evidence that the gun was even in the vehicle at the time Brown was driving it. The State's evidence clearly established that the gun was under the driver's seat of the vehicle when Officer Slight located the car about forty minutes after he last saw Brown driving it. But there was no evidence regarding who had access to the vehicle during those forty minutes. Plus, Brown was not in or around the car at the time it was located, and the doors were unlocked. . . . And while the handgun was found under the seat where Brown was previously sitting, forty minutes elapsed between when he was last seen in the seat and the securing of the handgun and . . . the record is silent as to what took place during that forty-minute window. . . . [The] facts only allow speculation or conjecture that the gun was both in the vehicle at 12:20 p.m. and that Brown knew the gun was stashed under the seat.

Slip.Op. at *10, *11, *12. It discounted the fact of Brown's flight: "Brown's guilty conscience or concern about police interactions could have been related to driving while barred as an habitual offender—he had reason for a guilty conscience even without knowingly possessing the handgun." Slip.Op. at *12. The Panel erred.

This Court has long held that a person's sole control of a space supports a rebuttable presumption of possession of the items within.

See State v. Reeves, 209 N.W.2d 18, 23 (Iowa 1979); *see also State v. Maxwell*, 743 N.W.2d 185, 194–95 (Iowa 2008) (citing *State v. Kemp*, 688 N.W.2d 785, 790 (Iowa 2004)). Likewise, discovery of contraband among or near a person's personal belongings and circumstances linking the person to the contraband can establish possession. *See State v. Reed*, 875 N.W.2d 693, 705 (Iowa 2016). And when the premises of possession are an automobile, they may also consider whether the contraband is with the defendant's personal effects, found on the same side of the car, immediately next to the defendant, or whether the defendant engages in suspicious activity. *See State v. Carter*, 696 N.W.2d at 31, 39 (Iowa 2005). Possession is often proven by inference and the "requirement of proof beyond a reasonable doubt is satisfied if it is more likely than not that the inference of intent is true." *Ernst*, 954 N.W.2d at 57; *Jones*, 967 N.W.2d *see Maxwell*, 743 N.W.2d at 193–94.

Thus, the Panel erred in two ways. First it found the State's proof of Brown's knowledge and possession was based on "speculation or conjecture." See Slip.Op. at *12. Not so. Stated above, the State proved Brown had sole control over the vehicle and that a gun was under his seat. The Panel failed to recognize that possession

is established by inferences in addition to evidence. *Maxwell*, 743 N.W.2d at 193–94; Slip.Op. at *8–9, *10–12. And jurors may rely on common sense and experience to determine the fact of possession, including inferences based on the location of items within a vehicle possessed by a sole driver. *See, e.g.*, *Reeves*, 209 N.W.2d at 23 ("If the premises on which such substances are found are in the exclusive possession of the accused, knowledge of their presence on such premises coupled with his ability to maintain control over such substances may be inferred."); *see also State v. Bunch*, No. 09-0745, 2010 WL 624247, at *3 (Iowa Ct. App. Feb. 24, 2010) (affirming where "Although the vehicle in question was not hers, Bunch was driving it. . . . The crack pipe was located in the area next to the driver's seat where the seat belt latched to its holder. This was the area where Bunch had been sitting. . . . No one else was present in the vehicle with Bunch."). Those inferences are even more persuasive after the driver engages in incriminating behavior. *See State v. DeWitt*, 811 N.W.2d 460, 474–75 (Iowa 2012); *State v. Carter*, 696 N.W.2d at 31, 34 (Iowa 2005); *accord State v. Azure*, No. 20-1380, 2021 WL 4592723 (Iowa Ct. App. Oct. 6, 2021) (evidence of flight by eluding was circumstantial evidence of knowledge possession of

stolen vehicle); *State v. Dawson*, No. 18-0862, 2019 WL 5792566, at *1, *4 (Iowa Ct. App. Nov. 6, 2019) ("When Dawson saw a police vehicle, he sped away. He ran stop signals. He fled on foot. And he hid from police for roughly thirty minutes before he was discovered. . . . [A] jury could reasonably infer Dawson tried to evade police because he possessed the methamphetamine and knew it was contraband."); *State v. Proctor*, No. 18-0898, 2019 WL 2524268, at *2–3 (Iowa Ct. App. June 19, 2019); *State v. Campbell-Scott*, No. 16-0472, 2017 WL 512590, at *2 (Iowa Ct. App. Feb. 8, 2017); *State v. Konvalinka*, No. 11-0777, 2012 WL 1860352, at *5 (Iowa Ct. App. May 23, 2012).

Brown's jury based its verdict not on speculation but on the evidence and the common-sense inferences that arose from them. Brown was a felon. He was alone in a car covered in his possessions as well as ammunition, loose on the floor and hidden within a pill bottle. A gun which could use this ammunition was underneath his seat and within reach. When Officer Slight started a traffic stop, Brown unreasonably took flight because he knew what was in the car. He was so concerned about being found alongside the vehicle that when he parked it he left his wallet and a cell phone containing $100 cash inside. *See* Exhs.6–9, 23, 27–28; Dkt. Nos. 109–12, 124, 126–27; Trial

I 45:19–46:4. From this evidence and his conduct, his jury could sensibly deduce Brown's knowledge and possession of the firearm.

Second, the Panel's opinion shows it misapplied the standard of review and rejected the jury's inferences. Although it did not explicitly say so, it appeared to accept Brown's reliance on *Truesdell*. The Panel accepted Brown's claim his flight was explained by his status as a habitual offender. *Compare* Slip.Op. at *11–12 *with* Appellant's Br. 40. But the presence of a rational alternative inference does not preclude jurors from making an inference of guilt. *See Jones*, 967 N.W.2d at 342–43. The jury's verdict demonstrated it found his status as a felon, his control of the vehicle, his act of flight and abandoning it, and his items within proved he possessed the gun beneath his seat.[1] Brown having two reasons to flee police reinforces the incriminating inference of guilty knowledge. It is illogical that the existence of another incriminating reason to flee made it unreasonable for the jury to accept the other. *See Ernst*, 954 N.W.2d at 58 (rejecting defendant's claim State needed to "disprove all other

[1] The district court cautioned Brown's jury that "A person's mere presence at a place where a thing is found or proximity to the thing is not enough to support a conclusion that the person possessed the thing." Jury Instr. 20 (9/21/2022), Dkt. No. 131; App. 13–14.

reasonable inferences before inferences from circumstantial evidence may be used to prove an element of the offense"); *Jones*, 697 N.W.2d at 342. On these facts, the jury could reasonably determine Brown eluded because he knew he possessed a gun *and* because he was barred. *See, e.g.*, *Campbell-Scott*, 2017 WL 512590, at *2 ("Though there may be numerous reasons Campbell-Scott fled from police, such as his intoxication or the outstanding arrest warrant, the jury could reasonably infer that he did not stop because he knew there were firearms in the vehicle."). The verdicts and the standard of review required the Panel to accept the jury had drawn those inferences. *See Sanford*, 814 N.W.2d at 611, 615, 617. Instead, it rejected them—and failed to apply this Court's holding in *Ernst, Jones,* and *Bentley*:

> While other conflicting scenarios can be postulated, a court "faced with a record of historical facts that supports conflicting inferences must presume—even if it does not affirmatively appear in the record—that the trier of fact resolved any such conflicts in favor of the prosecution, and must defer to that resolution."

Ernst, 954 N.W.2d at 57–58 (quoting *Bentley*, 757 N.W.2d at 263); *Jones*, 967 N.W.2d at 339, 343.

Similarly, the Panel found the State's evidence fell short because it failed to account for the forty-minute gap when Officer Slight lost contact with Brown and the vehicle. *See* Slip.Op. at *10–12. Again, the State need not disprove all other hypotheses that could arise from the facts—including an implausible theory that some unknown person placed the gun under the driver's seat of an abandoned vehicle. *See Bentley*, 757 N.W.2d at 262-63 (quoting *Jackson v. Virginia*, 443 U.S. 307, 326 (1979)) (noting that prosecution does not have "an affirmative duty to rule out every hypothesis except that of guilt"). As this Court made clear in *Bentley* and reiterated in *Ernst* and *Jones*, the State is only burdened with establishing sufficient evidence to support a finding on each element beyond a reasonable doubt. *See Ernst*, 954 N.W.2d at 57, *Jones*, 967 N.W.2d at 342. The State's evidence did so, the jury found so, and the Panel misapplied the highly deferential standard of review when it held otherwise.

Finally, the State notes that if left to stand, the Panel's opinion will yield undesirable consequences. It requires the State to catch a defendant "red handed" within a car to prove a defendant constructively possessed contraband within it—even when significant circumstantial evidence leads to rational inferences of guilt. *Cf.*

DeWitt, 811 N.W.2d at 474–75); *Carter*, 696 N.W.2d at 34. This incentivizes those who illegally possess firearms and controlled substances to flee. If they successfully elude police, they may never face justice. And if they escape and separate themselves from the vehicle, they improve their prospects of defeating a possessing charge. Those who have committed multiple offenses will have a ready defense to any one. None of these outcomes reflect our law. This Court should intervene and prevent incentivizing dangerous behavior like the kind Brown engaged in. It should vacate the Panel's opinion and affirm all of Brown's convictions.

CONCLUSION

The State requests that this Court reaffirm its holding in *Ernst* and *Jones*—an appellate court is to grant all reasonable inferences supporting the jury's verdict and the State need not disprove every possible scenario that arises from the evidence. This Court should vacate the Panel's opinion holding that the State failed to establish Brown knew about a gun under his seat after he eluded police in a vehicle littered with his personal possessions and ammunition. The State asks this Court to affirm each of Brown's convictions.

REQUEST FOR NONORAL SUBMISSION

The Panel's errors are straightforward and the State believes the matter could be resolved without oral argument.

Respectfully submitted,

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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:

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