IN THE SUPREME COURT OF IOWA

STATE OF IOWA Plaintiff-Appellee, v. SAM ABU YOUM, Defendant-Appellant.	S.CT. No. 21-0877

APPEAL FROM THE IOWA DISTRICT COURT
FOR POLK COUNTY
HONORABLE ROBERT B. HANSON & LAWRENCE McLELLAN, JUDGES

APPELLANT'S BRIEF AND ARGUMENT

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CERTIFICATE OF SERVICE

On the 20th day of April, 2022, the undersigned certifies that a true copy of the forgoing instrument was served upon the Defendant-Appellant by placing on copy thereof in the United States mail, proper postage attached, addressed to Sam Abu Youm No. 6229533, Fort Dodge Correctional Facility 1550 "L" Street, Fort Dodge, IA 50501-5767.

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ROUTING STATEMENT

This case should be transferred to the Court of Appeals because the issues raised involve applying existing legal principles. Iowa R. App. R. 6.903(2)(d) and 6.1101(3)(a).

STATEMENT OF THE CASE

Nature of Case. Defendant-Appellant, Sam Abu Youm, appeals from the judgment, conviction, and sentence for two counts of possession of a controlled substance with the intent to deliver in violation of Iowa Code section 124.401(1)(c)(8) with the weapons enhancement pursuant to Iowa Code section 124.401(1)(e) and two counts of failure to possess tax stamp in violation of Iowa Code section 453B.3 NS 453b.12 following a jury trial and sentencing in the Polk County District Court, the Honorable Robert B. Hanson presiding at suppression hearing and the Honorable Lawrence McLellan presiding at trial and sentencing.

Course of Proceedings. On January 12, 2021, defendant was charged by Trial Information with two counts of possession of a controlled substance with the intent to deliver

and failure to possess a tax stamp. (Trial Information) (App. pp. 4-6).

On March 16, 2021, defendant filed a motion to suppress. (Mot. To Supp.) (App. pp. 9-11). The motion was denied. (Order 4/9/21) (App. pp. 12-14).

Jury trial commenced on April 12, 2021. (Cover). Defendant was found guilty on all counts. (Verdict Forms) (App. pp. 32-37).

The court sentenced defendant to terms of imprisonment of 20 years on each count of possession of a controlled substance with the intent to deliver to be served concurrently. (Order 6/2/21) (App. pp. 41-45). On the counts of failure to possesses tax stamp, defendant was sentenced to five years on each count to be served concurrently but consecutively to the 20 year sentences for a total of 25 years. (Order 6/2/21) (App. pp. 41-45). Defendant was assessed fines and surcharges which were suspended. (Order 6/2/21) (App. pp. 41-45).

Defendant filed Notice of Appeal on June 25, 2021. (Notice of Appeal) (App. pp. 46-47).

Background Facts. In the early hours of August 11, 2020, Heather Devine called the Des Moines Police Department to report gunshots at the apartment complex where she resides. (Vol. II Tr. p. 31 Line 24 – p. 32 Line 5). Heather testified that she heard four or five shots. (Vol II Tr. p. 33 lines 3-5). Heather's husband, Robert, went outside to meet the police. (Vol. II Tr. p. 33 Lines 6-10).

While Devine was outside, he heard yelling and someone say that they had just gotten it and that it shouldn't have gone down that way. (Vol. II Tr. p. 35 Lines 13-25). Devine saw a person half-propped on a balcony railing of a top floor apartment in another building in the complex. (Vol. II Tr. p. 36 Lines 1-3). Devine pointed out the building to the police when they arrived. (Vol II Tr. p. 36 Lines 9-11).

Sargent Theodore Stroope was one of the officers that spoke with Robert Devine. (Vol. II Tr. p. 60 Line 16 – p. 61 Line 5). Stroope said that Devine told him that the gunshots came from apartment 20 in the other building. (Vol. II Tr. p. 60 Line 25 – p. 61 Line 5). Stroope walked over to the building

and saw defendant on the balcony. (Vol. II Tr. p. 61 Line 16-25). Stroope asked defendant if he had heard or seen anything and defendant replied that he had not heard anything. (Vol. II Tr. p. 61 Line 16 – p. 62 Line 13). Stroope said that he was coming up. (Vol. II Tr. p. 62 Lines 9-13).

Stroope and another officer went to the apartment door. (Vol. II Tr. p. 62 Line 20 – p. 64 Line 25). Stroope knocked on the door which was answered by Joseph Odir. (Vol. II Tr. p. 62 Line 20 -p. 63 Line 15). Odir came into the hallway and closed the door behind him. (Vol. II Tr. p. 63 Line 20 – p. 63 Line 15).

Stroope asked Odir if anyone was hurt and Odir replied that everything was fine and that they were just playing video games. (Vol. II Tr. p. 63 Line 22 – p. 63 line 13). Stroope told Odir that there was strong evidence that gunshots had come from the apartment and the officers walked past Odir and into the apartment to determine if anyone was injured. (Vol. II Tr. p. 63 Line 22 - p. 66 Line 2).

While the officers were checking the bedrooms, the defendant came in from the balcony and objected to the search. (Vol. II Tr. p. 66 Lines 3-17). Stroope spotted a spent shell casing on the balcony and ordered that the apartment occupants be handcuffed for safety. (Vol. II Tr. p. 66 Lines 18-24).

When the order to handcuff everyone was given, defendant ran down the hallway and into a bedroom that was occupied by Ater Jok and locked the door. (Vol. II Tr. p. 68 Lines 9-23). Jok left the bedroom and defendant then went to the bathroom and locked himself in. (Vol. II Tr. p. 68 Lines 9-23). While he was in the bathroom, defendant called 911 to report that the officers were in the apartment illegally. (Vol. II Tr. p. 70 Lines 18-24). After a short time, defendant exited the bathroom. (Vol. II Tr. p. 68 Line 9 – p. 69 Line 6).

While doing a second search of the apartment, Officer McCarville saw the top of a rifle in a closet in the north bedroom. (Vol. II Tr. p. 73 Line 8 – p. 74 Line 8, Vol. III Tr. p 13 Line 8 – p. 14 Line 1). The apartment was cleared of

occupants and secured while a search warrant was obtained. (Vol. II Tr. p. 75 Lines 4-17). Three spent shell casings were located in the grass beneath the balcony that matched the shell casing that was found on the balcony. (Vol. II Tr. p. 79 Line 12 – p. 80 Line 4). The shell casings were .45 ACP caliber which was the same caliber as the rifle that was found in the closet. (Vol. II Tr. p. 80 Line 5 – p. 81 Line 16). Additional spent .45 ACP shell casing were found in the kitchen trash. (Vol II Tr. p. 82 Lines 8-22).

Three shoeboxes were found in the closet of the north bedroom. (Vol. III Tr. p. 60 Line 24 – p. 61 Line 15). In a blue shoebox there was a baggie containing ten multicolored pills. (Vol. III Tr. p. 136 Lines 4-16). Identifications belong to Odir and Sergio Abuyoum were also found in the blue shoebox. (Vol. III Tr. p. 61 Lines 16-22). In a black shoebox there were three baggies of multicolored pills which totaled to 228 pills and a forth baggie that contained 52 blue pills. (Vol. III Tr. p. 146 Line 17 – p. 147 Line 3). A brown shoebox contained

defendant's identification and $752 in cash. (Vol. III Tr. p. 33 Lines 11-23, p. 72 18-23).

The police determined that defendant, Joseph Odir and Atir Jok were staying in the apartment. (Vol IV Tr. p. 12 Lines 17-23). The police were informed that defendant slept in the north bedroom and shared the closet with the other occupants. (Vol. IV Tr. p. 12 Line 25 – p. 13 Line 7). Defendant told the officers that he shared the apartment with Joseph Odir, but also said that he did not live there when he was told that the officers were applying for a search warrant. (Vol. IV Tr. p. 14 Line 5-19, p. 17 Line 24 – p. 18 Line 10).

The pills were submitted to the crime lab for identification. (Vol. III Tr. p. 107 Lines 13-23). A total of six out of the 290 pills that were submitted were tested. (Vol. III Tr. p. 116 Lines 17-21, p.118 Lines 11-14). Five of the pills were positive for eutylone, a positional isomer of pentylone, a schedule I controlled substance. (Vol. III Tr. p. 108 Line 9 – p. 109 Line 7). One of the pills tested positive for Fentanyl and tramadol. (Vol. III Tr. p. 109 Lines 8-10). None of the baggies

containing the pills had drug tax stamps attached. (Vol. IV Tr. p. 98 Lines 7-17).

Fingerprints were lifted from the rifle, but there was not enough detail to make a comparison. (Vol II Tr. p. 48 Lines 2-22). A photograph of a fingerprint located on the rifle was submitted to a national database, but no matches were returned. (Vol. II Tr. p. 48 Lines 2-22).

Yasmeen Ibrahim testified that she has known defendant for 19 years. (Vol. IV Tr. p. 122 Lines 19-25). Yasmeen said that defendant has lived in several places in Des Moines and did not know who lived at the apartment in question. (Vol. IV Tr. p. 123 Line 19 – p. 124 Line 12). Yasmeen testified that Sergio Abuyoum was defendant's brother. (Vol. IV Tr. p. 123 Lines 7-18).

ARGUMENT

I. The District Court Erred in Overruling Defendant's Motion to Suppress Evidence.

A. <u>Preservation of Error</u>: Error was preserved by defendant's motion to suppress and the district court's ruling on the motion. (Mot. To Supp., Order 4/9/21) (App. pp. 9-14).

B. Standard of Review: We review the denial of a motion to suppress on constitutional grounds de novo. *State v. Wilkes*, 756 N.W.2d 838, 841 (Iowa 2008); *State v. Heuser*, 661 N.W.2d 157, 161 (Iowa 2003).

C. Discussion:

Defendant filed a motion to suppress evidence that was obtained as a result of an unlawful search of the apartment. (Mot. To Supp.) (App. pp. 9-11). Defendant move to incorporate the testimony and exhibits from a suppression hearing that was held in a companion case, Polk County FECR340728, charging defendant with other offenses arising from the same incident. (Mot. To Incorporate) (App. pp. 7-8). The district court granted the motion to incorporate. (Supp. Hrg. Tr. p. 2 Line 18 – p. 6 Line 7). The district court denied that motion to suppress and held that the community caretaking exception justified that officers' entry and search of the apartment. (Order 4/9/21) (App. pp. 12-14). In the court's ruling, the count incorporated the ruling from the companion case that denied the motion filed in that case.

(Order 4/9/21, FECR340728 Ruling 1/14/21) (App. pp. 12-31).

The Fourth Amendment provides, "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated." U.S. Const. Amend. IV. Article I, section 8 of the Iowa Constitution requires that "[t]he right of the people to be secure in their persons, houses, papers and effects, against unreasonable seizures and searches shall not be violated." Iowa Const. art. I, § 8.

Defendant challenged the initial entry into the home, warrantless search and the tainted search warrant under both the Fourth Amendment to the United States Constitution and Article I, section 8 of the Iowa Constitution. (Mot. To Supp.)(App. pp. 9-11). While these provisions use nearly identical language and were generally designed with the same scope, import, and purpose, this Court jealously protects its authority to follow an independent approach under our state constitution. *State v. Ochoa*, 792 N.W.2d 260, 267 (Iowa

2010). The Court's approach to independently construing provisions of the Iowa Constitution that are nearly identical to the federal counterpart is supported by Iowa's case law. *See e.g., State v. Ochoa*, 792 N.W.2d at 267; *State v. Cline*, 617 N.W.2d 277, 285 (Iowa 2000), *overruled on other grounds by State v. Turner*, 630 N.W.2d 601, 606 (Iowa 2001). Even where a party has not advanced a different standard for interpreting a state constitutional provision, the Court may apply the standard more stringently than federal case law. *State v. Bruegger*, 773 N.W.2d 862, 883 (Iowa 2009). When a defendant raises both federal and state constitutional claims, the Court has discretion to consider either claim first or consider the claims simultaneously. *State v. Ochoa*, 792 N.W.2d at 267.

The Iowa Supreme Court has recognized the preference for search warrants. *See State v. Angel*, 893 N.W.2d 904, 911 (Iowa 2017). That preference is especially strong when defendants challenge a search of their home under the state constitution. *See State v. Short*, 851 N.W.2d 474, 502 (Iowa

2014) (expressing "little interest in allowing the reasonableness clause to be a generalized trump card to override the warrant clause in the context of home searches").

Subject to a few carefully drawn exceptions, warrantless searches and seizures are per se unreasonable." *State v. Lewis*, 675 N.W.2d 516, 522 (Iowa 2004). Courts recognize exceptions to the warrant requirement for searches based on consent, plain view, probable cause coupled with exigent circumstances, searches incident to arrest, and emergency aid. *Id.* The State bears the burden to prove an exception applies. *State v. Watts*, 801 N.W.2d 845, 850 (Iowa 2011).

The United States Supreme Court recognized the community-caretaking exception to the warrant requirement in *Cady v. Dombrowski*, holding: "Local police officers ... engage in what, for want of a better term, may be described as community caretaking functions, totally divorced from the detection, investigation, or acquisition of evidence relating to the violation of a criminal statute." 413 U.S. 433, 441 (1973). Community-caretaking has three subdivisions: "(1) the

emergency aid doctrine, (2) the automobile impoundment/inventory doctrine, and (3) the 'public servant' exception." *State v. Tyler*, 867 N.W.2d 136, 170 (Iowa 2015). The emergency-aid and public-servant doctrines are "analytically similar"—though critics brand the public-servant category as "amorphous" and at risk of "swallowing up constitutional restrictions on warrantless searches all together." *See State v. Coffman*, 914 N.W.2d 240, 245 (Iowa 2018); *id.* at 263 (Appel, J., dissenting).

In determining whether there has been an unreasonable search, the Court has adopted a two-step approach. S*tate v. Breuer*, 577 N.W.2d 41, 45 (Iowa 1998). *See also State v. Fleming*, 790 N.W.2d 560, 564 (Iowa 2010)("The two-step privacy test is often helpful in resolving cases under the Iowa Constitution…"). First, the defendant must have a legitimate expectation of privacy in the area searched. *State v. Breuer*, 577 N.W.2d at 45. If so, then the Court will consider whether the State has unreasonably invaded that protected interest.

Id. Defendant had an expectation of privacy in the apartment. *State v. Fleming*, 790 N.W.2d at 564.

Officer Stroope was told by Robert Devine that he heard what may have been a pellet gun, or maybe a bigger gun. (FECR340728 Supp. Tr. p. 12 Lines 3-16). Devine was inside his apartment when he heard the sound. (FECR340728 Supp. Tr. p. 12 lines 3-16). Devine pointed out apartment 20 to the officers and said that he saw a male lying on the apartment balcony. (FECR340728 Supp. Tr. p. 12 Lines 3-16).

Stroope walked on the lawn over to the apartment where he saw defendant on the balcony talking to a women who was on the lawn. (FECR340728 Supp. Tr. p. 12 Lines 17-23). Stroope asked defendant if he had heard any gunshots and defendant replied that he had not. (FECR340728 Supp Tr. p. 12 Line 17 – p. 13 Line 9). Stroope and another officer entered the building and went to the apartment door. (FECR340728 Supp. Tr. p. 13 Lines 6-9).

Joseph Odir answered the door and did not want the officers to enter the apartment without a warrant.

(FECR340728 Supp. Tr. p. 14 Line 1 – p. 15 Line 10). The officers searched the apartment and did not find any gunshot victims. (FECR340728 Supp. Tr. p. 16 Line 17 – p. 17 Line 24). The rifle was found in the bedroom closet in a subsequent search after the occupants of the apartment had been handcuffed. (FECR340728 Supp. Tr. p. 20 Line 4 – p. 21 Line 3). The officers then secured a search warrant and performed a more thorough search which uncovered the drugs. (Vol. III Tr. p. 136 Lines 4-16)

Defendant has a reasonable expectation of privacy in the apartment as Joseph Odir testified that he is the lessee of the apartment and that defendant and Atir Jok have resided at the apartment. (FECR340728 Supp. Tr. p. 50 Line 19 – p. 51 Line 5).

In order for the emergency-aid doctrine to apply, the information available to the officers must have been such that a reasonable person believed emergency action was necessary. *State v. Emerson*, 375 N.W.2d 256, 258-59 (Iowa 1985). All of the incriminating evidence was found after the officers forced

their entry into the apartment. The admissibility of the evidence discovered after entry hinges on whether "a reasonable person would have believed an emergency existed." *State v. Carlson*, 548 N.W.2d 138, 141 (Iowa 1996). In other words, (1) was the officer conducting bona fide community caretaking activity and (2) did the public's need for that activity outweigh the intrusion on defendant's interest in his home. *See State v. Coffman*, 914 N.W.2d 240, 244-45 (Iowa 2018).

"When it comes to the Fourth Amendment, the home is first among equals." *Florida v. Jardines*, 569, U.S. 1, 6 (2013). "At the amendment's 'very core' stands 'the right of [person] to retreat into [their] own home and there be free from unreasonable governmental intrusion. *Id.* "Warrantless invasion of the home was the 'chief evil' the Fourth Amendment and article 1 section 8 each sought to address." *State v. Kern*, 831 N.W.2d 149, 164 (Iowa 2013). Therefore, when a police officer walks into a citizen's home without warrant or invitation or even permission, that entry

constitutes a substantial 'intrusion upon the privacy of the citizen." *State v. Crawford*, 659 N.W.2d 537, 543 (Iowa 2003).

The conduct taken by the officers that evening prior to their entry into the apartment did not indicate that an emergency existed. Devine told Stroope that he thought it was a pellet gun that he heard and that it might have been something bigger. (FECR340728 Supp. Tr. p. 26 Lines 15-18). Devine did not observe anyone fire a gun, nor could he say how many people were on the apartment balcony our outside the apartment. All Devine could tell the officers with any certainty at the time of the shots is that he heard a noise while he was inside his own apartment. Devine assumed that the noise came from apartment 20 because he saw someone on the balcony and overheard a conversation coming from the direction of the apartment.

After talking with Devine, the officers did not rush over to the apartment to look for injured persons. Nor did they immediately enter the apartment but rather knocked at the door and waited for someone to answer their knock. If the

officers believed that there might be injured persons in the apartment, they would have acted with haste. Officer Stroope did not ask defendant if they were any injuries. The officers' actions of pushing past Mr. Odir and entering the apartment were based on Devine's assumptions.

The officers' actions or words leading up to their entry into the apartment did not display a reasonable belief that there were people in need of aid inside the apartment. In the instant case, the officers had no evidence that an emergency situation existed in the apartment. No incrimination evidence was uncovered until after entry into the apartment.

CONCLUSION

For the reasons set forth above, defendant respectfully requests that his conviction and sentence be vacated and the case be remanded to the district court for further proceedings.

II. The District Court Erred in Overruling Defendant's Motion for a New Trial Based on the Weight of the Evidence.

A. Standard of Review: "We generally review rulings on motions for new trial asserting a verdict is contrary to the weight of the evidence for an abuse of discretion." *State v. Ary*, 877 N.W.2d 686, 706 (Iowa 2016). "A district court abuses its discretion when it exercises its discretion on grounds clearly untenable or to an extent clearly unreasonable[,]" which occurs when the district court decision "is not supported by substantial evidence or when it is based on an erroneous application of the law." *State v. Hill*, 878 N.W.2d 269, 272 (Iowa 2016).

B. Preservation of Error: Error was preserved by defendant's motion for new trial and the district court's ruling. (Mot. For New Trial, Sent. Tr. p. 4 Line 7 – p. 7 Line 19) (App. pp. 38-40).

C. Argument: Under Iowa Rule of Criminal Procedure 2.24(2)(b)(6), a district court may grant a motion for new trial "[w]hen the verdict is contrary to law or evidence." Iowa R.

Crim. P. 2.24(2)(b)(6). "A verdict is contrary to the weight of the evidence only when 'a greater amount of credible evidence supports one side of an issue or cause than the other.' " *Ary*, 877 N.W.2d at 706 (Iowa 2016) (*quoting State v. Shanahan*, 712 N.W.2d 121, 135 (Iowa 2006). The district court reaches this determination by applying the weight-of-the-evidence standard, which requires the district court to decide "whether 'a greater amount of credible evidence' suggests the verdict rendered was a miscarriage of justice." *Id.* This standard is broader than the sufficiency-of-the-evidence standard because it allows the district court to examine the witnesses' credibility, yet more demanding since it only provides the district court the opportunity to grant a motion for new trial where there is more evidence to support the alternative verdict than the rendered verdict. *Id.* Given this exacting standard, a district court should only grant a motion for new trial "in the extraordinary case in which the evidence preponderates heavily against the verdict rendered." *Id.*

Defendant was convicted of possession of a controlled substance with the intent to deliver with the firearm enhancement and while in possession and control of a firearm and failure to possess tax stamps. (Verdict Forms) (App. pp. 32-37). The weight of the evidence does not prove beyond a reasonable doubt that defendant had constructive or actual possession of the controlled substances or a firearm.

Possession may be actual or constructive. *State v. Thomas*, 847 N.W.2d 438, 442 (Iowa 2014), *State v. Jones*, No. 19-0971, 2021 WL 5751464, at *3 (Iowa Dec. 3, 2021). "Unlawful possession of a controlled substance requires proof that the defendant: (1) exercised dominion and control over the contraband, (2) had knowledge of its presence, and (3) had knowledge that the material was a controlled substance." *State v. Bash*, 670 N.W.2d 135, 137 (Iowa 2003).

Actual possession exists when the contraband "is found on the defendant's person." *Id.* In contrast, "constructive possession occurs when the defendant has knowledge of the presence of the controlled substance and has the authority or

right to maintain control of it." *Id.* " . . ., our appellate courts have clarified a defendant can be in actual possession of a controlled substance when the controlled substance is found on the defendant's person or "when substantial evidence supports a finding it was on [the defendant's] person 'at one time.' " *Thomas*, 847 N.W.2d at 442 (*quoting State v. Vance*, 790 N.W.2d 775, 784 (Iowa 2010)); *see Vance*, 790 N.W.2d at 784 ("Although the pseudoephedrine was not found on Vance's person at the time of the stop, substantial evidence supports the jury's finding that at one time Vance had actual possession of the pseudoephedrine with the intent to manufacture methamphetamine."; *State v. Eubanks*, No. 13-0602, 2014 WL 2346793, at *3 (Iowa Ct. App. May 29, 2014) (noting "[t]he statute criminalizes 'possession' " and "the State can prove past possession, whether actual or constructive").

In other words, a jury can find a defendant was in actual possession of a controlled substance even when the defendant was not "caught red-handed and in physical possession at the time of the stop or arrest." *Eubanks*, 2014 WL 2346793, at *3,

State v. Jones, No. 19-0971, 2021 WL 5751464, at *3 (Iowa Dec. 3, 2021). There was no evidence that the controlled substances in this case was ever "on the person" of the defendant.

"The existence of constructive possession turns on the peculiar facts of each case." *State v. Webb*, 648 N.W.2d 72, 79 (Iowa 2002) (citing *State v. Harris*, 647 So.2d 337, 339 (La. 1994)). There are several factors that the Court examines to determine whether a defendant had constructive possession of contraband. *State v. Kemp*, 688 N.W.2d 785, 789 (Iowa 2004). These factors are: (1) incriminating statements made by the defendant, (2) incriminating actions of the defendant upon the police's discovery of drugs among or near the defendant's personal belongings, (3) the defendant's fingerprints on the packages containing the drugs, and (4) any other circumstances linking the defendant to the drugs. *Id.* (citing *State v. Cashen*, 666 N.W.2d 566, 571 (Iowa 2003)).
No one factor is dispositive; the Court considers all of the facts and circumstances in the case. *See State v. Cashen*, 666

N.W.2d at 571 ("Even if some of these facts are present, we are still required to determine whether all of the facts and circumstances . . . allow a reasonable inference that the defendant knew of the drugs' presence and had control and dominion over the contraband.").

Defendant did not have exclusive possession of the apartment or exclusive access to the place where the controlled substances were located. Nor Was there evidence that defendant had actual knowledge of the presence of the controlled substances. There was no evidence as to who placed the pills in the shoeboxes or when they were placed there. There was testimony from an officer that the residents of the apartment shared the closet. (Vol. IV p.12 Line 25 – p. 13 Line 7). All of the residents as well as others visiting the apartment would have had access to the closet. When there are multiple residents of an apartment, it is unlikely that every resident is aware every item that is present in the apartment. Just as proximity to the drugs should not be used to infer knowledge, it is insufficient to prove control and dominion.

State v. Atkinson, 620 N.W.2d 1, 3 (Iowa 2000); *accord Pena v. State*, 465 So.2d 1386, 1388 (Fla.Dist.Ct.App.1985); *People v. Huth*, 45 Ill.App.3d 910, 4 Ill.Dec. 472, 360 N.E.2d 408, 413 (1977). *State v. Cashen*, 666 N.W.2d at 572.

The pills were found in the black shoebox and the blue shoebox. (Vol. III Tr. p. 145 Line 21 – p. 147 Line 7). Paperwork with defendant's name was located in the blue shoebox, but there was no testimony as to who placed the paperwork in the shoebox. (Vol IV Tr. p. 8 Line 17 – p. 9 Line 2). There was mail addressed to Sergio Abu Youm in the blue shoebox. (Vol. III Tr. p. 147 Lines 17-25). Sergio Abu Youm is defendant's brother. (Vol. IV Tr. p. 123 Lines 7-18). Defendant's identification was found in a brown shoebox which did not contain any controlled substance. (Vol. III Tr. p. 147 Lines 4-16).

Because the State relied on solely on circumstantial evidence to establish the essential elements of knowledge and possession, in order to support the guilty verdict the circumstances had to be "entirely consistent with [the]

defendant's guilt, wholly inconsistent with any rational hypothesis of his innocence, and so convincing as to exclude any reasonable doubt that the defendant was guilty of the offense as charged." *See State v. Reeves*, 209 N.W.2d 18, 21 (Iowa 1973). Such is not the case here. Any finding that defendant knowingly or intentionally possessed the baggies of pills would be based on nothing more than speculation, suspicion, or conjecture. *See State v. Webb*, 648 N.W.2d 72, 76 (Iowa 2002)(citing *State v. Hamilton*, 309 N.W.2d 471, 479 (Iowa 1981)). The evidence presented was insufficient to find defendant knew of the presence of any controlled substance in the apartment and/or exercised control and dominion over any controlled substance.

The weight of the evidence in this case preponderates heavily against the verdict rendered. The district court erred in overruling defendant's motion for a new trial.

CONCLUSION

For the foregoing reasons, the Defendant-Appellant requests the court vacate the defendant's conviction and remand the matter for a new trial.

NONORAL SUBMISSION

Counsel requests not to be heard in oral argument.

ATTORNEY'S COST CERTIFICATE

I, the undersigned, hereby certify that the true costs of producing the necessary copies of the foregoing Brief and Argument was $4.28 and that amount has been paid in full by the Office of the Appellate Defender.

CERTIFICATE OF COMPLIANCE WITH TYPEFACE REQUIREMENTS AND TYPE-VOLUME LIMITATION FOR BRIEFS

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) because:

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/s/ Robert P. Ranschau Date: 4/20/22

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