SUPREME COURT NO. 17-0118
POLK COUNTY NO. FECR597552

# IN THE SUPREME COURT OF IOWA

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**STATE OF IOWA,**
Plaintiff-Appellee,

v.

**ANTHONY HARRIS,**
Defendant-Appellant.

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*ON FURTHER REVIEW FROM THE COURT OF APPEALS OF IOWA & THE IOWA DISTRICT COURT IN POLK COUNTY HONORABLE PAUL SCOTT, DISTRICT COURT JUDGE*

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## APPLICATION FOR FURTHER REVIEW OF THE COURT OF APPEALS OF IOWA FROM AN OPINION FILED MARCH 21, 2018

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## PROOF OF SERVICE

On April 10, 2018, I served this application on all other parties by EDMS one copy thereof to their respective counsel and served Appellant at his last known address in Des Moines, Iowa:

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## CERTIFICATE OF FILING

I, Gary Dickey, certify that I did file the attached application with the Clerk of the Iowa Supreme Court by EDMS on April 10, 2018.

Gary Dickey, AT#0001999
*Counsel of Record for Appellant*

## QUESTIONS PRESENTED FOR REVIEW

Whether error is adequately preserved when trial counsel objects to the initial introduction of inadmissible hearsay evidence but fails to make repeated objections to questions calling for the same type of evidence?

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## STATEMENT SUPPORTING FURTHER REVIEW

This Court has long held the view that "once a proper objection has been urged and overruled, it is not required that repeated objections be made to questions calling for the same type of evidence." *Gacke v. Pork Xtra, L.L.C.*, 684 N.W.2d 168, 181 (Iowa 2004) (cataloguing cases). Here, there is no dispute that Anthony Harris' trial counsel objected to the prosecutor's first attempt to introduce inadmissible hearsay evidence, which the court overruled. (11/16/16 Tr. of Herman, Carter, Wilshusen at 17-21). When the prosecutor again introduced similar hearsay evidence, Harris' trial counsel did not object. (11/16/16 Tr. of Herman, Carter, Wilshusen at 102, 114-15). Seizing on trial counsel's failure to repeat his objection, the court of appeals concluded that the "single objection [was] not sufficient to preserve error with respect to all of the challenged evidence." *State v. Harris*, slip op. at 2 (Iowa Ct. App. Mar. 21, 2018). Accordingly, the court below refused to reach the merits of Harris' hearsay objection. In this regard, the court of appeals' decision is contrary to the *Gacke* decision. Because this is an issue that is "a

point of difficulty for many practitioners," the Court should grant further review and clarify the scope of its error preservation doctrine related to the requirement for repetitive objections. Thomas A. Mayes, Anuradha Vaitheswaran, *Error Preservation in Civil Appeals in Iowa: Perspectives on Present Practice*, 55 Drake L. Rev. 39, 60 (Fall 2006).

Further review is also warranted for another reason. At trial, the State alleged that two individuals purchased drugs through hand-to-hand transactions with someone in the car in which Harris was a passenger. Surprisingly, the State called neither witness at Harris' trial. Nonetheless, the State constructed its direct examination of the arresting law enforcement officers in a way to imply that the witnesses had told them they purchased drugs from the vehicle. This type of "backdoor," "implied," or "indirect" hearsay is a recurring problem in the criminal prosecutions in this State. *See State v. Plain*, 898 N.W.2d 801, 811-13 (Iowa 2017), *State v. Huser*, 894 N.W.2d 472, 496-97 (Iowa 2017); *State v. Tompkins*, 859 N.W.2d 631, 640-43 (Iowa 2015). This case presents an ideal vehicle for the Court to

put an end to the State's repeated end run around the hearsay rule.

## STATEMENT OF THE CASE

Following a five day trial, a jury the Iowa District Court for Polk County convicted Anthony Harris of one count of possession of methamphetamines with the intent to deliver in violation of Iowa Code section and two counts of deliver of methamphetamines in violation of Iowa Code section 124.401(1)(c)(6). (App. at 13-17). The district court applied the second or subsequent offender enhancement under Iowa Code section 124.411 and sentenced Harris to three concurrent terms of fifteen years of imprisonment with the requirement that he serve at least one-third of the sentence before he will be eligible for parole. (App. at 20-21). Harris timely filed a notice of appeal. (App. at 25).

## STATEMENT OF THE FACTS

On July 29, 2016, two undercover officers from the vice and narcotics division of the Des Moines Police Department, Shawn Herman and Todd Wilshusen, were conducting surveillance in the 1600 block of Oakland Avenue, which is an area known for drug

activity. (11/16/16 Tr. of Herman, Carter, Wilshusen at 15-16). The officers observed two males inside of a silver Buick Rendezvous parked in an apartment complex. (11/16/16 Tr. of Herman, Carter, Wilshusen at 16). Brandon Ganaway was in the driver's seat while Anthony Harris sat in the passenger's seat. (11/16/16 Tr. of Herman, Carter, Wilshusen at 16). At some point during the surveillance, the officers observed a white male named Blitz Tynnush ride up on a bicycle, engage in a "hand-to-hand" transaction[1] through the passenger-side window of the Rendezvous, put something into his pocket, and then ride away.[2] (11/16/16 Tr. of Herman, Carter, Wilshusen at 17). The officers subsequently stopped Tynnush and recovered a quarter gram of

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[1] Officer Herman testified at trial that a hand-to-hand transaction occurs when a person walks up, gives money to a drug dealer who in turn gives them product, and they part ways. (11/16/16 Tr. of Herman, Carter, Wilshusen at 12).

[2] At Harris's preliminary hearing, the officer Herman testified that he observed Harris get out of the Rendezvous to complete the hand-to-hand transaction. (11/16/16 Tr. of Herman, Carter, Wilshusen at 39-41). At trial, Herman conceded that his prior testimony was inaccurate. (11/16/16 Tr. of Herman, Carter, Wilshusen at 73).

methamphetamines from him. (11/16/16 Tr. of Herman, Carter, Wilshusen at 18).

Approximately ten minutes later, the officers observed a white female approach the Rendezvous on foot. (11/16/16 Tr. of Herman, Carter, Wilshusen at 21). Through binoculars, Officer Herman observed the female named Betty Holden engage in a hand-to-hand transaction and walk away. (11/16/16 Tr. of Herman, Carter, Wilshusen at 22). The officers later stopped Holden and recovered a half gram of methamphetamines from her. (11/16/16 Tr. of Herman, Carter, Wilshusen at 22-23).

Thereafter, the officers called for a marked patrol car to initiate a traffic stop of the Rendezvous. (11/16/16 Tr. of Herman, Carter, Wilshusen at 24-25). The officers searched Ganaway and found two and a half grams of methamphetamines on his person. (11/16/16 Tr. of Herman, Carter, Wilshusen at 29). They also searched Harris and found no drugs or any items commonly known to be associated with drug trafficking. (11/16/16 Tr. of Herman, Carter, Wilshusen at 50-51). Officer Herman interrogated Harris, who stated that "he was not the owner of the

drugs, and that he was just doing it to help a friend." (11/16/16 Tr. of Herman, Carter, Wilshusen at 28). Harris further stated that "he did not sell the drugs to the female . . . [but] he had given her the drugs due to the fact that they had previously had an intimate relationship." (11/16/16 Tr. of Herman, Carter, Wilshusen at 28).

On September 6, 2016, the State of Iowa filed a trial information charging Harris and Ganaway with one count of possession with intent to deliver methamphetamines and two counts of delivery of methamphetamines. (App. at 6-9). Both defendants proceeded to trial. On the third day, the district court granted Ganaway's motion for a mistrial on the basis of the officers' testimony about Harris's statement denying ownership of the drugs. (11/17/16 Trial Tr. at 3-11). The jury found Harris guilty on all counts. (11/18/16 Jury Verdict Trial Tr. at 2-3).

## ARGUMENT

### I. THE COURT SHOULD GRANT FURTHER REVIEW BECAUSE COURT OF APPEALS' HOLDING THAT REPEATED OBJECTIONS ARE REQUIRED TO PRESERVE ERROR IS INCONSISTENT WITH THIS COURT'S PRIOR DECISIONS

As explained in *Gacke v. Pork Extra, L.L.C.*, 684 N.W.2d 168 (Iowa 2004), "[t]his court has long held the view that "once a proper objection has been urged and overruled, it is not required that repeated objections be made to questions calling for the same type of evidence." *Id.* at 181; *see also Nepple v. Weifenbach,* 274 N.W.2d 728, 732 (Iowa 1979); *accord State v. Kidd,* 239 N.W.2d 860, 863 (Iowa 1976) ("Repeated objections need not be made to the same class of evidence."); *State v. Miller,* 204 N.W.2d 834, 841 (Iowa 1973) (" 'The repetition of an objection is needless where the same or similar evidence, already duly objected to, is again offered . . . .' " (citation omitted)). Here, there is no dispute that Harris' trial counsel contemporaneously objecting to the State's introduction of inadmissible hearsay evidence during Officer Herman's testimony:

> Q. (By Mr. Crisp) Upon observing these individuals in the Rendezvous, what happened next?

A. We observed a white male [ride] up to the front of the complex on a bicycle. He got off the bicycle, walked up to the passenger's side of the vehicle where Mr. Harris was seated. He was there for a very brief time. And we observed a hand-to-hand, where they reached in the vehicle and then reached back out. He immediately put something into his pocket and returned to his bike and rode away.

* * *

Q. What happened next after the hand-to-hand exchange and the white male getting back on the bicycle?

A. The individual got on the bike and started driving down the street. We followed him for a distance that we thought would be sufficient so that the two gentlemen in the vehicle wouldn't see us. We approached the male, identified ourselves as police officers. *We had a brief conversation and we recovered a quarter gram of methamphetamine from him.*

* * *

Q. After speaking with Mr. Tynnush, were – would you state and tell the jury, were your observations confirmed?

A. Yes. Per our encounter with Mr. Tynnush, we knew we had in fact seen –

MS. SAMUELSON: Objection. The witness is about to testify to hearsay.

THE COURT: No. That's overruled. Go ahead.

A. Per our encounter –

MR. RODRIGUEZ: Objection to speculation.

THE COURT: Okay. Just so we're specific here. I'm going to tell you what the question is.

After speaking with Mr. Tynnush, would you tell the jury what you stated, were your observations confirmed?

A. Yes.

* * *

Q. Again, not telling us what Ms. Holden stated, but after speaking with her, were your observations confirmed?

A. Yes.

(11/16/16 Tr. of Herman, Carter, Wilshusen at 17-23). It is equally undisputed that Harris' trial counsel did not similarly object to the same hearsay evidence elicited during Officer Wilshusen's testimony:

Q. Without telling us what Mr. Tynnush said, did the conversation with him corroborate with your previous observations?

A. Yes.

* * *

Q. Without telling the jury what [Holden] said, based upon that conversation, were those observations consisted with what you previously observed?

A. Yes.

* * *

> Q. What role did observing Mr. Harris take place to any of the transactions with these individuals, but locating nothing on his person play in the investigation?
> A. Well, we concluded that he was selling methamphetamine for Mr. Ganaway.
>
> Q. And was that conclusion confirmed or assisted by Mr. Harris' statements to Officer Herman?
> A. Yes. As well as our observations *and the conversations we had with the earlier individuals*.

(11/16/16 Tr. of Herman, Carter, Wilshusen at 102, 104-105, 109-110). Seizing on trial counsel's failure to repeat her earlier hearsay objection, the court of appeals held that error had not been preserved on the issue:

> Harris contends the officers' testimony that the stopped persons confirmed the officers' observations was impermissible implied hearsay or impermissible indirect hearsay. But trial counsel did not object to the challenged testimony. Instead, trial counsel made a single objection when it appeared one officer was beginning to testify regarding what one of the stopped persons specifically said to the officer. This single objection is not sufficient to preserve error with respect to all of the challenged evidence.

*State v. Harris*, slip op. at 2 (Iowa Ct. App. Mar. 21, 2018). Because the court of appeals' view of error preservation is directly contrary to this Court's decision in *Gacke*, further review is necessary.

## II. FURTHER REVIEW IS NECESSARY BECAUSE THE DISTRICT COURT ERRED IN ALLOWING THE INTRODUCTION OF INADMISSIBLE HEARSAY FROM ABSENT WITNESSES IMPLYING THAT THEY PURCHASED DRUGS FROM HARRIS

Hearsay "is a statement, other than one made by the declarant while testifying at . . . trial, . . . offered in evidence to prove the truth of the matter asserted." Iowa R. Evid. 5.801(c). Hearsay is not admissible unless it falls within one of several enumerated exceptions. *Id.* 5.802. Before considering the exemptions and exceptions to the rule against hearsay, an inquiry must first be made to determine if the evidence under consideration is "a statement . . . offered in evidence to prove the truth of the matter asserted." *Id.* 5.801(c). If not, it is not hearsay and is excluded from the rule by definition. Prejudice is presumed if a hearsay statement is erroneously admitted, unless the contrary is affirmatively established by the State. *State v. Sowder*, 394 N.W.2d 368, 372 (Iowa 1986).

For reasons that are not readily apparent in the record, the prosecutor did not list Tynnush or Holden as a witnesses in the

minutes of testimony. (App. at 15). Nor did he call either witness to testify at trial. Accordingly, any statements Tynnush or Holden made to the undercover narcotics officers would be inadmissible at trial as hearsay and a violation of the Confrontation Clauses of the U.S. and Iowa Constitutions. *State v. Tompkins*, 859 N.W.2d 631, 640-43 (Iowa 2015). Thus, the prosecutor faced a dilemma in trying to introduce their statements that they obtained drugs from Harris at trial. To get around this, the prosecutor questioned the narcotics officers in such a way as to imply that Tynnush and Holden admitted to obtaining drugs from Harris. (11/16/16 Tr. of Herman, Carter, Wilshusen at 17-21, 23, 102, 104-05, 109-10) (emphasis added). Yet, the hearsay rule cannot be manipulated so easily. Iowa has long recognized that testimony about nonverbal conduct that implies the out-of-court assertion of fact by a non-testifying witness falls within the hearsay rule.

The seminal case is *State v. Dullard*, 668 N.W.2d 585, 590 (Iowa 2003), in which this Court considered the admissibility of a notebook found in the defendant's garage containing the following words:

> B—
>
> I had to go inside to pee + calm my nerves somewhat down.
>
> When I came out to go get Brian I looked over to the Street North of here + there sat a black + white w/ the dude out of his car facing our own direction—no one else was with him.

*Id.* at 588. The State introduced the notebook at trial to tie the defendant to the garage where law enforcement had found other items used for the manufacture of methamphetamines. The court held that the words in the notebook were hearsay because they were "offered solely to show the declarant's belief, implied from the words and the message conveyed, in a fact that the State seeks to prove—Dullard's knowledge and possession of drug lab materials." *Id.* at 591. In other words, even though the notebook was not being offered for the literal truth of the statements contained therein, the matters the State hoped the jury would imply from the words still constituted hearsay.

*Dullard* is particularly relevant to this case because the decision made clear that the implied hearsay rule applied to testimony concerning nonverbal conduct. To illustrate this point,

the Court cited to the oft-quoted discussion in *Wright v. Tatham*, 112 Eng. Rep. 388 (Ex. Ch. 1837), of the sea captain, who after examining his ship carefully, left on an ocean voyage with his family aboard. *Dullard*, 668 N.W.2d at 591. Under the holding in *Wright*, the captain's conduct would constitute hearsay if offered to prove that the ship had been seaworthy:

> [*Wright*] used the illustration to show that such nonverbal conduct would nevertheless constitute hearsay because its value as evidence depended on the belief of the actor. This illustration was important in the court's analysis because the main problem sought to be avoided by the rule against hearsay-an inability to cross-examine the declarant-is the same whether or not the assertion is implied from a verbal statement or implied from nonverbal conduct. Thus, *assertions that are relevant only as implying a statement or opinion of the absent declarant on the matter at issue constitute hearsay in the same way the actual statement or opinion of the absent declarant would be inadmissible hearsay.*

*Id.* at 591 (emphasis added). The reason for this rule is simple. The dangers associated with hearsay statements are the same whether an assertion is express or implied. *Id.* at 594 ("Implied assertions can be no more reliable than the predicate expressed assertion"). For this reason, evidence of nonverbal conduct offered to imply an assertion of fact is hearsay. *Id.* at 594-95.

Here, the State's witnesses testified that they had conversations with Tynnush and Holden, which "confirmed" their observations. The clear implication is that Tynnush and Holden admitted in the conversations to obtaining drugs from Harris. Such statements, if made directly, clearly would be hearsay. The prosecutor's attempted work-around to circumvent the hearsay rule was too clever by half. Because the officer's testimony falls squarely within the *Dullard* rule for implied hearsay, the district court erred in overruling Harris's objection.

Assuming arguendo that the officer's testimony regarding his conversations with Tynnush and Holden was not implied hearsay under *Dullard*, it was still inadmissible under the "indirect" theories of hearsay. This principle was explained in *State v. Judkins*, 242 N.W.2d 266 (Iowa 1976), in which this Court concluded that an expert witness's testimony that his opinion was confirmed by a handwriting expert was inadmissible "indirect" hearsay. *Id.* at 267. As the Court observed, "[i]f the apparent purpose of offered testimony is to use an out-of-court statement to evidence the truth of facts stated therein, *the hearsay objection*

*cannot be obviated by eliciting the purport of the statements in indirect form*." *Id.* at 267-68 (quoting *McCormick on Evidence* § 249 at 593-94 (2d ed)) (emphasis added).

More recently, in *State v. Huser*, 894 N.W.2d 472 (Iowa 2017), the Court found the following questioning to be indirect or "backdoor" hearsay:

> Q: I do have a couple of quick questions. Now, without telling me what Mr. Woolheater said, did he ever speak of Lance Morningstar?
> A: Yes
>
> Q: Without telling me what Mr. Woolheater said, did he ever speak of Deb Huser?
> A: Yes.
>
> Q: And, without telling me what Mr. Woolheater said, did he speak of Vern Huser?
> A: Yes.

*Id.* at 484. The court held that the "don't tell me what he said" line of questioning was designed to encourage the jury to infer the existence of otherwise inadmissible evidence. *Id.* at 496-97. In arriving at its conclusion, the court drew an analogy to *United States v. Check*, 582 F.2d 668 (2d Cir. 1978). In that case, the prosecutor asked an uncover officer to testify about conversations with the defendant. *Id.* at 670. The prosecutor attempted to avoid

hearsay by similarly phrasing his questioning as follows: "Without telling us what [the defendant said to you], what did you say to [the defendant]." *Id.* at 671. Through this strategy, the government indirectly introduced into the record extensive evidence that Check was involved in narcotics transactions. *Id.* at 678-79.

A similar circumstance arose in *State v. Plain*, 898 N.W.2d 801 (Iowa 2017), where an officer testified at trial that he had a conversation with two witnesses about the source of a mark on the wall. *Id.* at 811. Without divulging the witnesses' actual statements, the officer testified that he learned from their conversation that it was a pair of bolt cutters thrown by the defendant that caused the mark. *Id.* This Court held that the testimony constituted inadmissible hearsay rather than evidence explaining responsive conduct because the "State did not ask why the officer took the bolt cutters into evidence but instead what caused the mark." *Id.* at 813.

From *Judkins*, *Huser, Plain* and *Check*, it follows *a fortiori* that the State's introduction of the "conversations" with Tynnush

and Holden to "confirm" the officers' observations that Harris delivered drugs to them was indirect hearsay. While the questioning "did not literally" relate the substance of their conversations, the questioning was "designed to encourage the jury to make the connection." *Huser*, 894 N.W.2d at 497. Accordingly, further review is warranted.

## CONCLUSION

For the reasons articulated herein, Anthony Harris requests this Court grant further review and reverse his conviction.

## COST CERTIFICATE

I hereby certify that the costs of printing the Appellant's application was $0.00, and that that amount has been paid in full by me.

## CERTIFICATE OF COMPLIANCE

1. This brief complies with the type-volume limitation of because:

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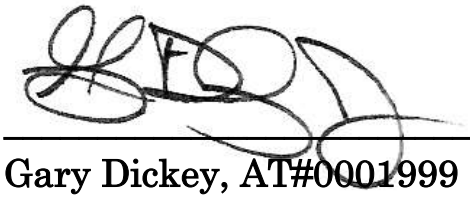

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**IN THE COURT OF APPEALS OF IOWA**

No. 17-0118
Filed March 21, 2018

**STATE OF IOWA,**
Plaintiff-Appellee,

**vs.**

**ANTHONY HARRIS,**
Defendant-Appellant.

---

Appeal from the Iowa District Court for Polk County, Paul D. Scott, Judge.

Defendant challenges his convictions for possession of methamphetamine with intent to deliver and delivery of a controlled substance. **AFFIRMED.**

Gary D. Dickey of Dickey & Campbell Law Firm, P.L.C., Des Moines, for appellant.

Thomas J. Miller, Attorney General, and Martha E. Trout, Assistant Attorney General, for appellee.

Considered by Doyle, P.J., McDonald, J., and Carr, S.J.*

*Senior judge assigned by order pursuant to Iowa Code section 602.9206 (2018).

**MCDONALD, Judge.**

Anthony Harris appeals his convictions for one count of possession of methamphetamine with intent to deliver, in violation of Iowa Code section 124.401(1)(c)(6) (2016), and two counts of delivery of a controlled substance, methamphetamine, in violation of Iowa Code section 124.401(1)(c)(6). He contends the district court erred in receiving implied hearsay or indirect hearsay testimony, and he contends the evidence was insufficient to establish he possessed methamphetamine.

Harris has not preserved for appellate review his challenge to the implied hearsay or indirect hearsay evidence. Two police officers observed Harris make two hand-to-hand drug transactions through the passenger's side window of a parked vehicle. The officers stopped the persons who engaged in the transactions and found them to be in possession of methamphetamine. The stopped persons did not testify at trial. However, the officers testified the stopped persons confirmed the officers' observations that Harris engaged in hand-to-hand drug transactions through the window of the vehicle. Harris contends the officers' testimony that the stopped persons confirmed the officers' observations was impermissible implied hearsay or impermissible indirect hearsay. But trial counsel did not object to the challenged testimony. Instead, trial counsel made a single objection when it appeared one officer was beginning to testify regarding what one of the stopped persons specifically said to the officer. This single objection is not sufficient to preserve error with respect to all of the challenged evidence. *See State v. Schaer*, 757 N.W.2d 630, 635 (Iowa 2008) (addressing error preservation on hearsay); *State v. Farni*, 325 N.W.2d 107, 109 (Iowa 1982) ("Objections to evidence must be

sufficiently specific to inform the trial court of the basis for objecting. This one failed to meet this standard. The trial court ruled on the objection as it was made. Nothing more was required of him."). In a footnote, Harris contends the issue can be addressed as a claim of ineffective assistance of counsel. However, Harris does not even allege he suffered constitutional prejudice. A litigant's "random mention of [an] issue, without elaboration or supportive authority, is insufficient to raise the issue for our consideration." *Soo Line R.R. Co. v. Iowa Dep't of Transp.*, 521 N.W.2d 685, 691 (Iowa 1994). We decline to construct Harris's ineffective-assistance claim for him. We thus conclude error was not preserved on the challenge to the implied hearsay testimony, and we deny Harris's claim of ineffective assistance of counsel related to the same.

Harris argues the evidence is insufficient to establish he possessed methamphetamine. Specifically, there is no evidence he owned the drugs and mere proximity to the drugs is insufficient to show possession. We will uphold the jury's verdict if substantial record evidence supports it. *See State v. Webb*, 648 N.W.2d 72, 75 (Iowa 2002). "Evidence is substantial if it would convince a rational fact finder that the defendant is guilty beyond a reasonable doubt." *Id.* at 75–76. When reviewing the sufficiency of the evidence, we view the evidence in the light most favorable to the State but consider all evidence in the record. *See id* at 76. "The State must prove every fact necessary to constitute the crime with which the defendant is charged. The evidence must raise a fair inference of guilt and do more than create speculation, suspicion, or conjecture." *Id.* (internal citations omitted). "Inherent in our standard of review of jury verdicts in criminal cases is

the recognition that the jury [is] free to reject certain evidence and credit other evidence." *State v. Nitcher*, 720 N.W.2d 547, 556 (Iowa 2006).

To establish possession with intent to deliver, the State was required to prove:

> 1. On or about July 29, 2016, the defendant, or someone he aided and abetted, knowingly possessed methamphetamine.
> 2. The defendant, or someone he aided and abetted, knew that the substance possessed was methamphetamine.
> 3. The defendant, or someone he aided and abetted, possessed the substance with specific intent to deliver it.

The district court submitted the following instruction defining possession:

> A person who has direct physical control over a thing on his person is in actual possession of it.
>
> A person who, although not in actual possession, has both the power and the intention at a given time to exercise dominion or control over a thing, either directly or through another person or persons, is in constructive possession of it. 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.

The evidence, in the light most favorable to the verdict, established Harris had direct physical control over methamphetamine. On the day in question, two narcotics officers were conducting surveillance in an area known for drug trafficking. Using binoculars, the officers observed two males in a parked vehicle. One officer testified with the use of his binoculars he could see everything "perfectly." The officers observed the person on the passenger side of the vehicle conduct two separate hand-to-hand transactions with persons who approached the passenger side of the parked vehicle. One officer testified Harris was "the occupant of the vehicle that appeared to participate in the two hand-to-hand transactions." The other officer testified that he did not see the driver hand

anything to either purchaser. Both of the individuals that approached the vehicle and engaged in the transactions were stopped shortly after and were found to be in possession of methamphetamine. When police eventually intervened, they recovered methamphetamine from the driver of the vehicle. They did not find methamphetamine on Harris's person. Both officers testified it is common for dealers to work in teams, with one person holding the drugs and the other person conducting transactions. Harris admitted he possessed and delivered the methamphetamine. Harris told one of the officers "he was not the owner of the drugs, that he was just doing it to help a friend." Harris also stated that although he did not sell the drugs to the second person who came to the vehicle window, "he had given her the drugs due to the fact that they had previously had an intimate relationship." Harris's statement that he had the drugs and gave them to another person is sufficient to support the jury's verdict.

In light of the foregoing, the judgment of the district court is affirmed in all respects.

**AFFIRMED.**


IOWA APPELLATE COURTS

State of Iowa Courts

| **Case Number** | **Case Title** |
| --- | --- |
| 17-0118 | State v. Harris |

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