

**IN THE COURT OF APPEALS OF IOWA**

No. 6-930 / 06-0770  
Filed December 13, 2006

**STATE OF IOWA,**  
Plaintiff-Appellant,

**vs.**

**MICHAEL JAMES VORNBROCK,**  
Defendant-Appellee.

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Appeal from the Iowa District Court for Plymouth County, Robert J. Dull,  
District Associate Judge.

The State appeals the dismissal of a trial information charging Michael James Vornbrock with possession of marijuana in violation of Iowa Code section 124.401(5) (2005). **REVERSED.**

Thomas J. Miller, Attorney General, Bridget A. Chambers, Assistant Attorney General, Darin J. Raymond, County Attorney, and Amy K. Oetken, Assistant County Attorney, for appellant.

Michele Lauters of Law Office of Michele Lauters, Le Mars, for appellee.

Considered by Sackett, C.J., and Zimmer and Eisenhauer, JJ.

**SACKETT, C.J.**

The State appeals from the district court's dismissal of a trial information charging Michael Vornbrock with possession of marijuana, in violation of Iowa Code section 124.401(5) (2005). The State contends the district court erred in granting the motion and finding insufficient evidence to support the charge. We reverse.

On October 11, 2005, the State filed a trial information charging Vornbrock with possession of marijuana, in violation of section 124.401(5). The attached minutes of evidence stated that on July 14, 2005, Le Mars police officers stopped a vehicle driven by Vornbrock but registered to Vornbrock's mother. There were two passengers in the car, one in the front passenger seat and one in the rear seat. Seven seeds, one of which met the statutory definition of marijuana, were found in the vehicle together with "stemmage," which could not be identified as marijuana. The minutes also show a field test of Vornbrock's urine "indicated the possible presence" of THC.

Vornbrock made a motion to dismiss the trial information claiming it failed to show he had knowledge of the presence of a controlled substance and knowledge the material was a controlled substance. The district court granted the motion finding the alleged facts were insufficient to support an inference of knowing possession based on the ruling in *State v. Cashen*, 666 N.W.2d 566, 572-73 (Iowa 2003). The State appeals the district court's ruling.

The State argues the question of whether it has set forth factual basis for an indictment or information under Iowa Rule of Criminal Procedure 2.11(6)(a) is distinct from the question of whether the State can prove its case beyond a

reasonable doubt at trial. The State further contends the proof required at the indictment stage is equivalent to what is needed for arrest and is less than necessary for conviction. Finally, the State contends the facts in the minutes accepted as true conceivably could have constituted the offense charged.

We review the district court's ruling granting a defendant's motion to dismiss for corrections of error at law. *State v. Wells*, 629 N.W.2d 346, 351 (Iowa 2001). A motion to dismiss a trial information is governed by Iowa Rule of Criminal Procedure 2.11(6)(a), which provides:

If it appears from the indictment or information and the minutes of evidence that the particulars stated do not constitute the offense charged in the information, or that the defendant did not commit that offense or that a prosecution for that offense is barred by the statute of limitations, the court may and on the motion of the defendant shall dismiss the indictment or information unless the prosecuting attorney shall furnish a bill of particulars which so states the particulars as to cure the defect.

When considering a motion to dismiss pursuant to rule 2.11(6)(a) we accept as true the facts set out in the bill of particulars and the minutes of evidence. *State v. Marti*, 290 N.W.2d 570, 578 (Iowa 1980). If those facts charge a crime as a matter of law, the indictment is upheld. *Id.*

Vornbrock was charged with possession of marijuana pursuant to section 124.401(5), which states, "It is unlawful for any person knowingly or intentionally to possess a controlled substance." In this case, "[t]o prove unlawful possession of a controlled substance, the State must prove 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 137, 137 (Iowa 2003). The function of a trial information is to

advise a defendant of the crime charged so he or she may have the opportunity to prepare a defense. *State v. Grice*, 515 N.W.2d 20, 22 (Iowa 1994).

The question is whether the facts set forth in the trial information and minutes of evidence could constitute the crime charged. Though scant, the facts in the information and minutes of evidence could, as the State argues, conceivably constitute the offense charged.

**REVERSED.**