IN THE SUPREME COURT OF IOWA
Supreme Court No. 21-0877

STATE OF IOWA,
Plaintiff-Appellee,

vs.

SAM DANIEL ABUYOUM,
Defendant-Appellant.

APPEAL FROM THE IOWA DISTRICT COURT
FOR POLK COUNTY
THE HONORABLE ROBERT B. HANSON (MOTION TO SUPPRESS)
AND LAWRENCE P. MCLELLAN (TRIAL), JUDGES

APPELLEE'S BRIEF

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ROUTING STATEMENT

This case can be decided based on existing legal principles. Transfer to the Court of Appeals would be appropriate. Iowa R. App. P. 6.1101(3).

STATEMENT OF THE CASE

Nature of the Case

This is a direct appeal from Sam Daniel Abuyoum's conviction following a guilty verdict on charges of possession of a controlled substance with intent to deliver while in possession of a firearm and failure to affix a tax stamp. He argues that the district court erred when it denied his motion to suppress evidence and his motion for a new trial.

Course of Proceedings

The State accepts the course of proceedings as set forth in Abuyoum's brief as adequate and essentially correct. Iowa R. App. P. 6.903(3).

Facts

On August 11, 2020, Des Moines police responded to several calls regarding shots fired at an apartment complex on Twana Drive in Urbandale. FECR340728 Supp. Tr. P.10 L.22 – P.11 L.14. A witness reported hearing gunshots coming from Abuyoum's apartment and

saw a male lying on the balcony after the shots were fired. FECR340728 Supp. Tr. P.12 Ls.12-16. The witness described the person as "kind of hunched, barely up on the railing." FECR342469 Trial Tr. Vol. II P.40 Ls.11-12. Approaching the apartment, officers noted a broken car window that was consistent with a gunshot fired into the parking lot. FECR340728 Supp. Tr. P.28 Ls.13-20. Abuyoum was standing on the balcony when the officers arrived and denied having heard any gunshots. FECR340728 Supp. Tr. P.12 L.17 – P.13 L.9.

Officers knocked on the door of the apartment and another man, Joseph Odir, answered, opening the door wide enough only to let himself out and immediately closing it behind him. FECR340728 Supp. Tr. P.14 Ls.1-10. The man's body language indicated that he was nervous about them seeing something in the apartment. FECR340728 Supp. Tr. P.14 Ls.4-10. Officers told the man that there were reports of gunshots fired, that a man was seen lying on the balcony, and that they needed to look inside the apartment to verify that no one was hurt. FECR340728 Supp. Tr. P.14 Ls.13-25.

Over Odir's objection, officers entered the apartment and began a sweep to look for potential gunshot victims. FECR340728 Supp. Tr.

P.15 Ls.1-10. They quickly checked the bedrooms and then the balcony, where they saw a spent .45 caliber shell casing. FECR340728 Supp. Tr. P.16 Ls.1-24. After spotting the shell casing, officers handcuffed the occupants of the apartment and called for backup. FECR340728 Supp. Tr. P.19 Ls.1-14. While the occupants were being handcuffed, Abuyoum and another man had locked themselves in a bedroom. FECR340728 Supp. Tr. P.19 Ls.16-19. A backup officer coaxed Abuyoum and the other man out of the bedroom and performed a safety sweep; while performing the sweep he noticed a firearm in plain sight in the closet. FECR340728 Supp. Tr. P.20 L.20 – P.21 L.1. After spotting the firearm, officers obtained a search warrant for the apartment. FECR340728 Supp. Tr. P.21 Ls.1-3.

Executing the search warrant, officers discovered three shoeboxes stacked in the same closet in the north bedroom where they saw the rifle. FECR342469 Trial Tr. Vol. III P.145 L.21 – P.147 L.16. The shoeboxes contained cash and pills. FECR342469 Trial Tr. Vol. III P.145 L.21 – P.147 L.16. One of the boxes also contained Abuyoum's driver license. FECR342469 Vol. III P.147 Ls.14-16. It was later determined that Abuyoum stayed in the north bedroom and shared the closet where the firearm and controlled substances were

found. FECR342469 Vol. IV P.13 Ls.1-7. Additional relevant facts will be discussed as part of the State's argument.

ARGUMENT

I. The District Court Did Not Err When It Denied Abuyoum's Motion to Suppress.

Preservation of Error

The State does not contest error preservation.

Standard of Review

"When a defendant challenges a district court's denial of a motion to suppress based upon the deprivation of a state or federal constitutional right, our standard of review is de novo." *State v. Storm*, 898 N.W.2d 140, 144 (Iowa 2017) (quoting *State v. Brown*, 890 N.W.2d 315, 321 (Iowa 2017)).

Merits

"The Fourth Amendment to the United States Constitution and article I, section 8 of the Iowa Constitution protect persons from unreasonable searches and seizures." *State v. Reinders*, 690 N.W.2d 78, 81 (Iowa 2004) (cleaned up). The protection extends to "persons, houses, papers, and effects," but "the home is first among equals." *Florida v. Jardines*, 569 U.S. 1, 6 (2013). Indeed, "[a]t the Amendment's very core stands the right of a man to retreat into his

own home and there be free from unreasonable governmental intrusion." *Id.* (cleaned up). That said, neither clause prohibits *all* unwelcome intrusions on private property—only unreasonable ones. Both the United States Supreme Court and this Court have recognized "a few permissible invasions of the home and its curtilage." *Caniglia v. Strom*, 141 S.Ct. 1596, 1599 (2021). "Perhaps most familiar, for example, are searches and seizures pursuant to a valid warrant." *Id.*

Even without a warrant, though, law enforcement officers may enter private property "when certain exigent circumstances exist, including the need to 'render emergency assistance to an injured occupant or to protect an occupant from imminent injury.' *Id.* (quoting *Kentucky v. King*, 563 U.S. 452, 460 (2011)); *see also Brigham City v. Stuart*, 547 U.S. 398, 403–404 (2006) (listing other examples of exigent circumstances). The "emergency aid" exception to the warrant requirement is a branch of the "community caretaking doctrine" recognized by the United States Supreme Court in *Cady v. Dombrowski*, 413 U.S. 433 (1973), and under the Iowa Constitution by *State v. Coffman*, 914 N.W.2d 240 (Iowa 2018). The community caretaking doctrine, and specifically the emergency aid exception to the warrant requirement, "involves the duty of police officers to help

citizens an officer reasonably believes may be in need of assistance." *Coffman*, 914 N.W.2d at 244 (quoting *State v. Tyler*, 867 N.W.2d 136, 170 (Iowa 2015)).

Application of the community caretaking doctrine follows a three-step analysis:

> (1) was there a seizure[1] within the meaning of the Fourth Amendment?; (2) if so, was the police conduct bona fide community caretaker activity?; and (3) if so, did the public need and interest outweigh the intrusion upon the privacy of the citizen?

Coffman, 914 N.W.2d at 245. In this case, the State does not contest that officers' entry into Abuyoum's apartment constituted a "search" within the meaning of the Fourth Amendment or article 1, section 8 of the Iowa Constitution. As a result, and as Abuyoum's brief suggests, this Court must decide whether the officers were engaged in bona fide community caretaking activity and whether the public need or interest outweighed Abuyoum's privacy under the circumstances.

The facts available to the officers at the time of the entry were that a witness heard gunshots coming from Abuyoum's apartment

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[1] While the community caretaking doctrine "does not primarily focus on searches," this Court has previously applied the exception to justify searches in several cases. *See State v. Kern*, 831 N.W.2d 149, 173 (Iowa 2013) (collecting cases).

and saw a male lying on the balcony after the shots were fired. FECR340728 Supp. Tr. P.12 Ls.12-16. The witness described the person as "kind of hunched, barely up on the railing." FECR342469 Trial Tr. Vol. II P.40 Ls.11-12. The witness also told officers he heard statements to the effect of "it didn't have to go that far, I was just testing it." FECR342469 Trial Tr. Vol. II P.99 Ls.14-19. The officers also noted a broken car window that was consistent with a gunshot fired into the parking lot. FECR340728 Supp. Tr. P.28 Ls.13-20. When confronted at the door, Odir's body language indicated that he was nervous about them seeing something in the apartment. FECR340728 Supp. Tr. P.14 Ls.4-10.

In *United States v. Huffman*, officers responded to a residence on a call for shots fired. 461 F.3d 777, 784-85 (6th Cir. 2006). Upon arrival, they observed broken windows and shards of glass on the front porch of the home. *Id.* The Sixth Circuit held that the officers were justified in making a warrantless entry under the emergency aid exception. *Id.* It explained:

> Not only did the 911 call report shots fired at 5742 Lonyo, a residential address, but the officers' additional, albeit brief, conversation with neighbors confirmed that shots were indeed fired at the residence. The officers also observed bullet holes in the exterior and

> interior walls of the house—a house that looked as if occupants presently resided there. The unswept shards of glass on the front porch of the residence, along with the officers' belief that the shots had been recently fired, suggested that the risk of danger was still imminent. All of these facts, taken together, created a set of circumstances in which the officers were justified to enter the residence without a warrant. The warrantless entry, moreover, may not be held unconstitutional simply because the reasonable concerns of the officers were not substantiated after-the-fact.

Id. at 785. In this case, the report of shots fired from Abuyoum's apartment, corroborated by the broken car window, the witness's report of a man lying on the balcony, and Odir's suspicious body language, would lead a reasonable officer to conclude that someone inside the apartment had been injured and needed immediate assistance.

The record in this case is also clear that the officers *subjectively* intended to enter the apartment to engage in community caretaking. *See Coffman*, 914 N.W.2d at 257-58. The officers who responded told Odir that they needed to check inside the apartment to ensure that no one was injured. FECR340728 Supp. Tr. P.14 L.14 – P.15 L.10. When they performed the sweep, officers quickly checked the bedrooms and the balcony for injured persons. FECR340728 Supp. Tr. P.15 L.20 –

P.19 L.4. They did not look in cabinets or drawers or containers that could not have concealed a gunshot victim. FECR342469 Trial Tr. Vol. II P.73 Ls.16-20. It was not until they discovered the spent shell casing on the balcony that they handcuffed the occupants, and they sought the search warrant only after an officer observed the firearm in plain view in a bedroom closet during the sweep. FECR340728 Supp. Tr. P.19 L.1 – P.21 L.1.

The third step of the analysis, balancing the public interest against the intrusion on Abuyoum's privacy, supports the reasonableness of the officers' actions. While the States acknowledges that a security sweep of a residence is more intrusive than an officer approaching a vehicle at rest on a public highway, *see Coffman*, 914 N.W.2d at 253, the public interest in giving emergency aid where an officer reasonably believes someone may have sustained a potentially lethal gunshot wound, is even greater. As explained, the sweep was performed quickly and with little intrusion beyond what was necessary to determine whether such a victim was present in the apartment. All of these facts, taken together, created a set of circumstances in which the officers were justified to enter the residence without a warrant.

II. The District Court Did Not Err When It Denied Abuyoum's Motion for a New Trial.

Preservation of Error

Abuyoum argues that his motion for a new trial and the district court's ruling preserved error on his weight-of-the-evidence challenge to his convictions. But his motion for a new trial and his appellate brief do not challenge the weight of the evidence, but rather its sufficiency. Abuyoum moved for judgment of acquittal at the close of the State's case, but his motion was insufficient to preserve error because he did not challenge any specific element. FECR342469 Trial Tr. Vol. IV P.119 Ls.6-13; *see also State v. Brubaker,* 805 N.W.2d 164, 174 (Iowa 2011) ("The motion for directed verdict of acquittal … lacked any specific grounds, and thus, the error was not preserved."); *State v. Crone*, 545 N .W.2d 267, 270 (Iowa 1996) ("The record reveals Crone's attorney did not mention the 'threat' or 'anything of value' elements of the extortion charge in his motion. Accordingly, Crone's motion for judgment of acquittal did not preserve the specific arguments he is now making for the first time on appeal.").

In his motion for new trial, the only argument he advanced was that the evidence presented at trial was insufficient "to support a finding beyond a reasonable doubt" on each conviction. Motion for

New Trial; App. 38-40. At sentencing, Abuyoum conceded that his only argument supporting his motion for a new trial was a sufficiency of the evidence claim. FECR342469 Sent. Tr. P.5 L.18 – P.6 L.13. And on appeal, despite describing his challenge as a weight-of-the-evidence claim, Abuyoum actually argues that "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." Appellant's Br. P.32-35. As the district court explained, a motion for new trial or in arrest of judgment is not a proper vehicle to challenge the sufficiency of the evidence presented at trial. FECR342469 Sent. Tr. P.6 Ls.4-8; *see also State v. Oldfather*, 306 N.W.2d 760, 762 (Iowa 1981) ("A motion in arrest of judgment may not be used to challenge the sufficiency of evidence."). Abuyoum's unpreserved sufficiency of the evidence challenge should not be considered. *See State v. Vansickle*, No. 14-1991, 2016 WL 531066, at *1 (Iowa Ct. App. Feb. 10, 2016).

Standard of Review

Sufficiency of evidence claims are reviewed for correction of errors at law. *State v. Thomas*, 847 N.W.2d 438, 442 (Iowa 2014) (quoting *State v. Sanford*, 814 N.W.2d 611, 615 (Iowa 2012). When

evaluating a sufficiency challenge, evidence is viewed in the light most favorable to the State and all reasonable inferences are drawn to uphold the verdict. *State v. Leckington*, 713 N.W.2d 208, 212–13 (Iowa 2006). "A jury is free to believe or disbelieve any testimony as it chooses and to give as much weight to the evidence as, in its judgment, such evidence should receive." *State v. Liggins*, 557 N.W.2d 263, 269 (Iowa 1996).

Merits

"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). The State may show either "'actual possession' or 'constructive possession.'" *Thomas*, 847 N.W.2d at 442. "Constructive possession exists when the evidence shows the defendant 'has knowledge of the presence of the controlled substance and has the authority or right to maintain control of it.'" *State v. Reed*, 875 N.W.2d 693, 705 (Iowa 2016) (quoting *State v. Maxwell*, 743 N.W.2d 185, 193 (Iowa 2008)).

In this case, the controlled substances and a significant amount of cash were discovered in three shoeboxes stacked in a closet in the north bedroom along with a rifle. FECR342469 Trial Tr. Vol. III P.145 L.21 – P.147 L.16. Abuyoum slept in the north bedroom but shared the closet where the contraband was found. FECR342469 Vol. IV P.13 Ls.1-7. Constructive possession may be inferred when drugs are found on property in the defendant's exclusive possession. *Reed*, 875 N.W.2d at 705. When a person does not have exclusive possession, additional proof is necessary. *Id.* Factors to consider in determining whether the defendant possessed contraband discovered in a jointly occupied residence include: incriminating statements made by a person; incriminating actions of the person upon the police's discovery of a controlled substance among or near the person's personal belongings; the person's fingerprints on the packages containing the controlled substances; and any other circumstances linking the person to the controlled substance. *Id.* at 706.

In this case, paperwork and a driver's license with Abuyoum's name were found in two of the three shoeboxes. FECR342469 Vol. III P.147 Ls.14-16, Vol. IV P.8 L.17 – P.9 L.2. As soon as officers discovered the shell casing on the balcony and decided to handcuff

the occupants, Abuyoum and another occupant fled and locked themselves in a bedroom. FECR342469 Trial Tr. Vol. II P.68 Ls.17-20. When the other occupant left the bedroom, Abuyoum ran across the hallway and locked himself in a bathroom. FECR342469 Trial Tr. Vol. II P.68 Ls.20-22. The location of the shoeboxes in a shared closet in Abuyoum's bedroom, his paperwork and driver's license in two of the three boxes, and his incriminating conduct once officers arrived and began inspecting the apartment provided sufficient evidence for a reasonable factfinder to conclude that Abuyoum—perhaps jointly with other occupants—possessed the controlled substances and the firearm.

CONCLUSION

For the foregoing reasons, Abuyoum's convictions should be affirmed.

REQUEST FOR NONORAL SUBMISSION

Nonoral submission is appropriate for this case.

Respectfully submitted,

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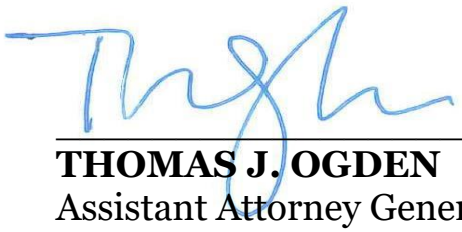

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CERTIFICATE OF COMPLIANCE

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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