IN THE SUPREME COURT FOR THE STATE OF IOWA
NO. 19-0214

STATE OF IOWA,
Plaintiff-Appellee

vs.

GREGORY MICHAEL DAVIS,
Defendant-Appellant.

APPEAL FROM THE IOWA DISTRICT COURT
FOR LINN COUNTY,
HONORABLE SEAN McPARTLAND

DEFENDANT/APPELLANT'S FINAL BRIEF AND REQUEST FOR ORAL ARGUMENT

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ROUTING STATEMENT

This case should be retained by the Iowa Supreme Court because it involves a substantial issue of first impression concerning the mandatory inclusion of the insanity instruction as part of the marshaling instruction for murder in the first degree when insanity is raised as a defense. Iowa R. App. P. 6.1101(2)(c).

CASE STATEMENT

The State charged Gregory Michael Davis (G. Davis)[1] with first-degree murder in violation of Iowa Code §§ 707.1, 707.2(l)(a) and 902.7 for the death of Carrie Davis (C. Davis). (App. 15). G. Davis provided notice of insanity/diminished responsibility. (App. 8).

Trial began September 10, 2018 and ended September 14. (TT Vol. 1 1:9–11; TT Vol. 5 1:9–11). G. Davis was convicted of first-degree murder. New counsel was retained for post-trial motions. Counsel raised, inter alia, the following issues to support a new trial: (1) trial court erred in failing to include the insanity defense as part of the marshaling instruction to Murder in the First Degree (App. 28); (2) trial court erred when submitting a jury instruction regarding G. Davis's intoxication at the time of the offense; and

[1] This case involves multiple individuals with the last name Davis. Each individual after the initial introduction will be referenced by their first initial and last name.

(3) ineffective assistance of counsel. (App. 38). G. Davis additionally raised the issue of the diminished capacity instruction included in general intent marshaling instructions. (App. 45). The court overruled the motions. (App. 48). G. Davis filed for reconsideration. (App. 56; App. 62; App. 71) These were denied. (App. 74; App. 79).

On February 1, 2019, G. Davis was sentenced to life imprisonment. (App. 81). Notice of appeal was filed. ((App. 84), Feb. 5, 2019).

FACTS

A. Introduction

Suffering with psychosis, G. Davis stabbed his girlfriend C. Davis 26 times in order to free her from the devil. (TT Vol. 3 60:13–14; 105:3–5). At the time, they were living together at his grandfather's home. (State Trial Ex. 12 21:33–21:50[2]). C. Davis had stab wounds to the head, thorax, and extremities. (TT Vol. 3 95:18–98:6, 100:22–104:19; State Trial Ex. 9[3]). There were several blunt force injuries on her body, head, neck, back and extremities. (TT Vol. 3 106:23–108:4). He wrapped her body in layers of blankets and placed her in a roll of carpet in the back of a trailer. (TT Vol. 2 80:19–81:2). At the time she was found, early stages of decomposition were

[2] DVD of defendant's DCI Interview Oct. 2, 2017
[3] DVD containing 13 photos of C. Davis autopsy

noted. (TT Vol. 3 106:21–22). G. Davis presented expert testimony that at the time of the incident he was experiencing psychosis and did not have the capacity to form intent. (TT Vol. 4 51:19–25, 141:4–12).

B. Background

G. Davis was born December 18, 1989, in Marion, Iowa. (TT Vol. 3 18:3–4). His mother was an accountant and his father in the real estate business. (TT Vol. 3 13:11–16). From a young age, he struggled with feelings of anxiety, embarrassment, depression, and mental health maladies. (TT Vol. 4 72:6–73:24, 102:9–15). From birth through adolescence he required five extensive facial surgeries to address the impact of a cleft pallet on his facial structure and function. (TT Vol. 3 54:14–57:6). His cleft pallet impacted more than how his face looked and functioned. As a result of his facial deformities he struggled in school, was bullied, and began a battle with mental health. (TT Vol. 3 16:12–20, 45:25–46:11, 58:19–59:4; TT Vol. 4 72:6–73:24). His mental health battle eventually led to self-medication through illegal substances—creating an addiction plaguing him to the date of this incident. (TT Vol. 4 144:2–11). His addiction to substances included alcohol, methamphetamine, marijuana, cocaine and prescription drugs. After he was arrested, he tried to commit suicide and was placed on suicide watch in the Linn County Jail. (TT Vol. 127:23–128:17).

G. Davis graduated from Linn-Mar High School. He enrolled in college at Kirkwood. (TT Vol. 3 18:5–21). He was unable to control his addiction, and at the age of 18, at the end of his first semester he entered a drug treatment program for the first time. (TT Vol. 4 101:13–22). He would enroll in drug treatment programs at least four times. (TT Vol. 3 44:9–11).

After drug treatment, G. Davis attempted a second semester of college dropping out and moved to Ohio to work for his brother's landscaping business and flipping houses. (TT Vol. 3 19:15–17; 22:6–20; 23:18–19). His addiction to drugs continued while living in Ohio and he began experiencing heightened levels of paranoia including the belief his home was bugged by the government. (TT Vol. 3 46:16–48:3; Vol. 4 31:21–32:20). While in Ohio, he took over his brother's landscaping business, which quickly failed. (TT Vol. 3 50:9–51:22). While living in Ohio, he met C. Davis and they began dating. (TT Vol. 3 25:8–26:21). After the failure of his landscaping business he moved back home to Marion, Iowa. (TT Vol. 3 25:4–18, 50:9–51:22). C. Davis, a mother of three kids, left her children and spouse and moved to Iowa with G. Davis. (TT Vol. 3 25:4–18).

C. Incident

G. Davis called his mother Katherine Davis (K. Davis) on September 29, 2017, and said, "Carrie is gone." (TT Vol. 3 32:5–13). G. Davis told K.

Davis he thought C. Davis would wake up when the devil was out of her. (TT Vol. 3 60:13–16). K. Davis was unsure what this statement meant, and two days later became concerned and called law enforcement to check on C. Davis. (TT Vol. 3 41:24–42:2).

On October 2, 2017, Marion Police conducted a welfare check at 560 Hillview Drive, Marion, Iowa in response to K. Davis's call. (TT Vol. 2 27:2–23). Officers found C. Davis's body wrapped in a roll of carpet on a trailer in the carport. (TT Vol. 2 29:7–20, 42:7–8). An autopsy showed the death was by twenty-six sharp force injuries and blunt force injuries. (TT Vol. 3 105:3–5, 114:23–115:2).

G. Davis was arrested on October 2, 2017. Body camera footage of the arrest shows G. Davis compliantly walking with officers from the back porch of his parent's home. (State Trial Ex. 10[4] 1:57). Following his arrest, G. Davis told police he was possessed by the devil and thought C. Davis was possessed as well. (Ex. 12 19:28–19:46; 25:26–25:44). G. Davis stated he could barely remember the details of the incident and did not feel totally in control. (Ex. 12 28:00–28:08; 53:48–54:06).

[4] DVD recording of defendant's arrest Oct. 2, 2017

D. Psychiatric Evaluations

Three physicians evaluated G. Davis and presented their opinions at trial. All three testified that G. Davis was genuine and reliable in giving truthful information. (TT Vol. 4 25:4–13, 49:20–24, 127:16–19). Moreover, all said he had a history of mental illness and suffered from substance-induced psychosis. (TT Vol. 4 17:22–18:3; 55:15–56:21; 140:2–3).

Dr. Arthur Konar[5] conducted a psychological evaluation of G. Davis on November 9, 2017. He testified that G. Davis experienced substance-induced psychosis that was in partial remission. (TT Vol. 4 140:2–3). At the time of the offense G. Davis "was undergoing hallucinations and delusions and was not able to essentially keep up with or understand behavior and its consequences." (TT Vol. 4 141:4–7). Due to his psychosis, he was unable to understand how his actions would ultimately affect C. Davis. (TT Vol. 4 141:9–21).

Dr. Konar testified about the many statements made by G. Davis during the psychological evaluation. G. Davis stated he thought C. Davis was the devil and he was the devil. He thought the only way to help her was to kill her, which would allow her to be resurrected because he thought he was Jesus

[5] Dr. Konar is a licensed psychologist in the state of Iowa with health service provider status. He practices clinical counseling psychology.

Christ. (TT Vol. 4 142:15–143:14). At the time of the act, he thought killing her was helping her because Muppet hands would come and bring life back to her and allow her to be free. (TT Vol. 4 142:22–143:7). Dr. Konar testified that as crazy as the statements sounded, they were what G. Davis was thinking during his substance-induced psychosis. (TT Vol. 4 143:8–14).

> To me his state of mind, in terms of the defense, was that he was undergoing hallucinations and delusions and was not able to essentially keep up with or understand behavior and its consequences. . . . What I would say is that Gregory Davis did not have the ability to form intent and was – also did not understand how his behaviors would ultimately affect the individual that he hurt.

(TT Vol. 4 141:4–12). Dr. Gary Keller[6] conducted a psychiatric examination of G. Davis on February 13, 2018. (TT Vol. 4 13:3–7). He diagnosed him with major depressive disorder, anxiety disorder, cannabis use disorder, and amphetamine use disorder with psychosis. (TT Vol. 4 12:24–13:2, 17:22–18:3).

[6] Dr. Keller is a psychiatrist at Iowa Medical Classification Center who reviews inmate needs for medications and treatment. (TT Vol. 4 7:2–4, 9:10–11).

Dr. Arnold Andersen[7] conducted an evaluation on behalf of the Linn County Attorney's office on February 13th, 15th, and 19th of 2018. (TT Vol. 42:7–10; 49:1–4). At trial he testified:

> I concluded that at the time of the alleged crime he did not have the capacity to form the specific intent of a criminal act. He did have the intent to kill Ms. Davis, however, he believed this act was morally right and necessary and that by killing her he would be freeing her of her evil forces and lead to her resurrection and perhaps life in a better location.

(TT Vol. 4 51:19–25). He stated at the time of C. Davis's death G. Davis believed his actions would free her from evil and usher her into a better place. (TT Vol. 4 52:5–15). He testified long-term usage of methamphetamine in high doses tends to cause abnormal mental states. (TT Vol. 4 56:3–13). He then explained that G. Davis was experiencing methamphetamine induced psychosis, which can lead to hallucinations, delusions, hearing voices, and abnormal beliefs. (TT Vol. 4 55:15–56:21).

[7] Dr. Andersen is a physician specializing in psychiatry. He works part-time for the Iowa Department of Corrections as a forensic psychiatrist evaluating inmate competence to stand trial and conducts evaluations of affirmative defenses for insanity or diminished responsibility. (TT Vol. 4 41:22–42:6).

ARGUMENT

I. OMISSION OF THE DEFENSE OF INSANITY IN THE MARSHALING INSTRUCTION FOR MURDER IN THE FIRST DEGREE WAS A CLEAR ERROR OF LAW AND COUNSEL WAS INEFFECTIVE IN FAILING TO OBJECT.

A. Issue Preservation

G. Davis filed a notice of insanity and diminished responsibility. (App. 8). The parties also filed joint instructions recognizing the defense of insanity and the burdens of proof. (App. 11, 12).

The erroneous and glaring omission of the directive "You must then consider the defense of insanity as described in Instructions No. 14–18[,]" in the marshaling instruction for Murder in the First Degree (App. 28) appeared to be unknown until it was raised in the Motion for New Trial. (App. 38). The district court while recognizing that "Defendant is correct that Instruction No. 22 does not mention the insanity defense," determined there was no error. (App. 52).

Also, G. Davis argued it was ineffective assistance of counsel to not object to Instruction No. 22. (App. 56). The court dismissed this argument finding there was no error in the instruction for counsel to object to. (App. 77).

B. Standard of Review

This issue can be reviewed under multiple standards of review.

First, because Jury Instruction No. 22 was so deficient that it infected the trial and resulting conviction, G. Davis's due process rights were violated under article 1, section 9 of the Iowa Constitution, and the Fifth and Fourteenth Amendments to the U.S. Constitution. *Middleton v. McNeil*, 541 U.S. 433, 437 (2004) (quoting *Estelle v. McGuire*, 502 U.S. 62, 72 (1991) ("[N]ot every ambiguity, inconsistency, or deficiency in a jury instruction rises to the level of a due process violation. The question is 'whether the ailing instruction . . . so infected the entire trial that the resulting conviction violates due process.'")).

Second, the district court is required to instruct the jury as to the law applicable to all material issues in the case. *State v. Becker*, 818 N.W.2d 135, 141 (Iowa 2012), *overruled on other grounds by Alcala v. Marriot Int'l*, Inc., 880 N.W.2d 699, 708 n.3 (Iowa 2016). Challenges to jury instructions are reviewed for correction of errors at law. *State v. Spates*, 779 N.W.2d 770, 775 (Iowa 2010). Review is to determine whether the challenged instruction accurately states the law and is supported by substantial evidence. *Id*. Error in giving an instruction requires reversal if it results in prejudice. *Id*. Errors are presumed prejudicial unless the record shows no prejudice existed. *State v. Murray*, 796 N.W.2d 907, 908 (Iowa 2011). Prejudice can be shown if the "instruction could reasonably have misled or misdirected the jury." *Becker*,

818 N.W.2d at 141. Conflicting or confusing jury instruction are presumed prejudicial and require reversal. *Koenig v. Koenig*, 766 N.W.2d 635, 637 (Iowa 2009). An instruction containing a material misstatement of law also requires reversal. *Waits v. United Fire & Cas. Co*., 572 N.W.2d 565, 575 (Iowa 1997).

Third, because Jury Instruction No. 22 failed to adequately represent G. Davis' theory of the case by omitting reference to insanity, this violated his constitutional right to due process under article 1, section 9 of the Iowa Constitution, and the Fifth and Fourteenth Amendments to the U.S. Constitution. A district court's decision that implicates a defendant's constitutional rights are reviewed de novo. *Becker*, 818 N.W.2d at 141. A party is entitled to have their legal theories presented to a jury if supported by the evidence. *Sonnek v. Warren*, 522 N.W.2d 45, 47 (Iowa 1994).

Fourth, because trial counsel did not object to an erroneous jury instruction, this was ineffective assistance of counsel in violation of the Sixth Amendment and article I, section 10 of the Iowa Constitution, and reviewed de novo. *State v. Virgil*, 895 N.W.2d 873, 879 (Iowa 2017). G. Davis must establish, by a preponderance of the evidence, that (1) trial counsel failed to perform an essential duty, and (2) prejudice resulted. *Id.*; *accord Strickland v. Washington*, 466 U.S. 668 (1984). A reasonable probability that without

counsel's errors the proceeding would have resulted differently meets the prejudice prong. *State v. Ondayog*, 722 N.W.2d 778, 784 (Iowa 2006).

And, finally, as the issue was raised through a motion for new trial, specifically Iowa Rule of Criminal Procedure 2.24(2)(b)(5) ("When the court has misdirected the jury in a material matter of law, or has erred in the decision of any question of law during the course of the trial[.]"), the issue is reviewed based on the grounds asserted in the motion. *Fly v. Blauvelt*, 818 N.W.2d 123, 128 (Iowa 2012). Jury instructions are based on legal questions and motions for new trial based on them are evaluated for correction of errors at law. *Ladeburg v. Ray*, 508 N.W.2d 694, 696-97 (Iowa 1993).

C. Factual Background

G. Davis filed a notice of insanity and diminished responsibility. (App. 8). These defenses reflected G. Davis's history of psychosis, anxiety, depression, and suicidal ideation; the symptoms he was feeling and displaying at the time of his relationship with C. Davis, and his psychotic statements to K. Davis and police after the act. (TT Vol. 3 60:13–16; TT Vol. 4 144:2–11; Ex. 12 28:00–28:08; 53:48–54:06). Counsel retained Dr. Konar as an expert to evaluate G. Davis and the State relied on evaluations performed by Dr. Keller and Dr Andersen. All three experts came to similar conclusions: G. Davis's mental state was diminished, and he suffered from psychosis as a

result of prolonged drug usage. (TT Vol. 4 17:22–18:3, 55:15–56:21, 140:2–3). During opening and closing arguments, the defense argued that G. Davis was not guilty by reason of insanity. (TT Vol. 2 18:10–21; Vol. 5 45:4–24). Despite all this evidence supporting G. Davis's insanity at the time of the offense, the trial court failed to instruct the jury that they could consider the defense of insanity as it related to Murder in the First Degree. The jury instruction read as follows:

> The State must prove all the following elements of Murder in the First Degree:
>
> 1. On or about the 28th day of September 2017, the Defendant stabbed Carrie Davis.
> 2. Carrie Davis died as a result of being stabbed.
> 3. The Defendant acted with malice aforethought.
> 4. The Defendant acted willfully, deliberately, premeditatedly and with a specific intent to kill Carrie Davis.
>
> If the State has proved all the elements, the Defendant is guilty of Murder in the first Degree. If the State has failed to prove any one of the elements, the Defendant is not guilty of Murder in the First Degree and you will then consider the charge of Murder in the Second Degree as explained in Instruction No. 30.

(App. 28).

However, all other marshaling instructions provided a different final paragraph guiding the juror's decision when deliberating their verdict as to

the specific offense: As to Murder in the Second Degree, the jury was instructed as follows:

> The State must prove all the following elements of Murder in the Second Degree:
>
> 1. On or about the 28th day of September 2017, the Gregory Davis stabbed Carrie Davis.
> 2. Carrie Davis died as a result of being stabbed.
> 3. The Defendant acted with malice aforethought.
>
> If the State has proved all the elements, the Defendant is guilty of Murder in the Second Degree. *You must then consider the defense of insanity as described in Instructions No. 14–18*. If the State has failed to prove any one of the elements, the Defendant is not guilty of Murder in the Second Degree and you will then consider the charge of Voluntary Manslaughter as explained in Instruction No. 32.

(App. 29) (emphasis added). The court proceeded to follow this pattern for all remaining marshaling instructions by including the direction that "You must then consider the defense of insanity as described in Instructions No. 14–18." (App. 30-37).

By not including "You must then consider the defense of insanity as described in Instructions No. 14–18[,]" in the marshaling instruction for Murder in the First Degree, the jury would logically believe there was something unique about the "defense of insanity" when it came to first-degree murder, and that insanity did not apply to it. This is because the trial court when reading the final instructions to the jury and the instructions in their

written form did not include "You must then consider the defense of insanity as described in Instructions No. 14–18[,]" in the Murder in the First Degree instruction, while all other marshaling instructions contained the language.

D. Instruction No. 22 was Clearly Erroneous

The trial court committed an error of law when it failed to include in Jury Instruction No. 22 a directive to the jury to consider the defense of insanity following a finding that the State had proved all elements of first-degree murder. This was a clear ambiguity, inconsistency, and deficiency in the jury instruction. The court did this for *all* other marshaling instructions, but not for first-degree murder. (App. 29-37).

The error is plainly seen when one looks at the model Iowa Criminal Jury Instructions. The model instructions require that when the insanity defense is submitted, that the defense be included in the marshaling instructions for the jury's consideration. The model instructions state, "Caveat: If the insanity defense is submitted, then the marshaling instruction should be modified accordingly." Iowa Crim. Jury Instrs., 200.9 (Comment) (Dec. 2018).

G. Davis was entitled to have the Murder in the First-Degree instruction properly given to the jury because insanity is a complete defense. *State v. Booth*, 161 N.W.2d 869, 871 (Iowa 1969). "It is the defendant's burden to

plead the defense of insanity . . . [and] [s]uch a plea places the burden of showing defendant's sanity on the State." *State v. Hamann*, 285 N.W.2d 180, 182 (Iowa 1979). Iowa starts with a presumption of sanity and places the burden of showing insanity by a preponderance of the evidence upon the defendant. *State v. Hodge*, 105 N.W.2d 613, 622 (Iowa 1961).

Because there was substantial evidence at trial, the jury was explained the defense of insanity through Jury Instructions No. 14–16. (App. 21-23). However, Instruction No. 22 which outlined the elements of murder in the first degree, failed to direct the jury to utilize Jury Instructions No. 14–16.The parties were aware of the necessity to include an insanity defense instruction along with the marshaling instruction for Murder in the First Degree when they submitted their joint jury instructions. (App. 12). Instruction 22B included the directive: "If the State has proved all of the elements, the defendant is guilty of Murder in the First Degree with Premeditation, Willfulness and Deliberation. You must then consider the defense of insanity as described in Instructions No. _____." (App. 12). Despite it being presented to the court, the language included in proposed Jury Instruction No. 22B did not make it into the final instructions presented to the jury.

The failure of the trial court to instruct the jury that they were to "consider the defense of insanity as described in Instructions No. 14–18[,]" in

the Murder in the First-Degree instruction created an ambiguity and inconsistency with the other marshaling instructions. This ambiguity and inconsistency then resulted in the jury erroneously believing insanity was not applicable for consideration when deliberating on first-degree murder.

Here, the jury was to consider the defense of insanity following a finding that the State has proved all the elements of first-degree murder, *see State v. McMullin*, 421 N.W.2d 517, 519 (Iowa 1988) (finding a trial judge should instruct the jury to consider the insanity defense after a determination the State has proven the elements of the crime charged.), however, it was never given that guidance. If it is true that the trial court has the duty to ensure that the jury understands clearly and intelligently the issues it is to decide, that duty was failed here. *See Sonnek*, 522 N.W.2d at 47 ("It is the trial court's duty to see that a jury has a clear and intelligent understanding of what it is to decide.").

Here, the jury was not directed to consider the defense of insanity if the State had proved all the elements of Murder in the First Degree. And, since juries are presumed to follow the court's instructions, the jury was given two options when considering Murder in the First Degree: Guilty or move onto Murder in the Second Degree. *See State v. Hanes*, 790 N.W.2d 545, 552 (Iowa 2010) ("[G]enerally we presume juries follow instructions. . . ."). There was

no insanity consideration. With only two options, and without insanity, it relieved the State from proving that G. Davis was sane at the time of the offense of first-degree murder. *See Hamann*, 285 N.W.2d at 182 (the burden of showing defendant's sanity is on the State); *United States v. Samuels*, 801 F.2d 1052, 1055 (8th Cir. 1986) (the defendant met his initial burden of producing sufficient evidence to overcome the presumption of sanity, the government then had the burden of establishing beyond a reasonable doubt that he was sane at the time the offense was committed).

What further cements the jury's direction of only two options for Murder in the First Degree, is that *every* lesser included offense marshaling instruction gave the jury three options when considering the lesser offense, from Murder in the Second Degree through Assault Causing Bodily Injury. Murder in the Second Degree provided the script for all lesser included offenses:

> If the State has proved all the elements, the Defendant is guilty of Murder in the Second Degree. *You must then consider the defense of insanity as described in Instructions No. 14–18*. If the State has failed to prove any one of the elements, the Defendant is not guilty of Murder in the Second Degree and you will then consider the charge of Voluntary Manslaughter as explained in Instruction No. 32.

(App. 29) (emphasis added). Three options were given to the jury for each lesser included offense: First, is G. Davis guilty of the specific offense;

second, if the State has proved the elements, consider the defense of insanity; and, third, if the State failed to prove one of the elements of the specific offense, G. Davis is not guilty of that offense, and then consider the next lesser charge.

By not including "You must then consider the defense of insanity as described in Instructions No. 14–18[,]" in the instruction for Murder in the First Degree, the jury was misled and misdirected on a material defense to the most severe crime in Iowa. There was a clear deficiency in Instruction No. 22 which created ambiguity and inconsistency within the entire instructions. Prejudice must be presumed.

E. The Trial Court Failed to Correct the Error Through Iowa Rule of Criminal Procedure 2.24(2)(b)(5)

The trial court was made aware of the error in Jury Instruction No. 22 during post-trial motions. (App. 38). The court was permitted to grant a new trial "when the court has misdirected the jury in a material matter of law." Iowa R. Crim. P. 2.24(2)(b)(5). Even after G. Davis brought the flaw of Jury Instruction No. 22 to the court's attention, the court overruled his motion for new trial to correct the error. (App. 50).

Courts continue to erroneously presume that lay people understand the law presented in jury instructions. Judith L. Ritter, *Your Lips are Moving . . . But the Words Aren't Clear: Dissecting the Presumption that Jurors*

Understand Instructions, 69 MO. L. REV. 163, 170 (2004) ("The assumption that trial jurors can and do follow instructions is expressed in countless appellate decisions."). This presumption was indicated in the trial court's ruling on G. Davis's Motion for New Trial.

> "[T]he jury was fully instructed as to Defendant's claim of insanity and when in deliberations that defense was to be considered, beginning with Instruction No. 14. . . . [T]he jurors had been directed that they 'must consider all of the instructions together' and that '[n]o one instruction includes all of the applicable law. . ."

(App. 49-50).

Empirical studies have shown jurors have difficulty in understanding instructions due in part to ambiguous language, awkward grammatical constructions, and poor organization. Nancy S. Marder, *Bringing Jury Instructions into the Twenty-First Century*, 81 NOTRE DAME L. REV. 449, 454 (2006); *see also* Jennifer S. Hunt, *The Cost of Character*, 28 UNIV. OF FLA. J.L. & PUB. POL'Y 241, 265 (2017) ("Research shows that, on average, jurors only understand about 50%-70% of their instructions. Comprehension is even lower when instructions involve more complex concepts."). Here, the trial court expected the jury to make two leaps within the structure of the jury instructions: (1) apply Jury Instructions No. 14–16 to Jury Instruction No. 22 without a clear directive to do so, and (2) make that application when faced with other instructions that presented a clear directive of when to apply Jury

Instruction No. 14–16. This is asking a jury to overcome poor organization regarding concepts they have little to no working knowledge of.

The jury should have been specifically told in Instruction No. 22 "You must then consider the defense of insanity as described in Instructions No. 14–18[,]" and not asked to interpret through poor organization that they were to apply the directives of Instruction Nos. 14–16 without a clear command to do so in Jury Instruction No. 22.

F. Davis was Prejudiced by the Erroneous Instruction

Here, the record as a whole supports the presumption of prejudice. G. Davis's total defense was that he was suffering from insanity. During closing arguments, the State placed an intentional focus on Jury Instruction No. 22:

> And as you can imagine, this is a trial and lawyers get a chance to speak, and so what I'd like to do is just raise a few points that I hope you find to be worthy of your consideration. What this whole case boils down to really is Instruction No. 22. Because when we talk about the concept of the State having to prove its case beyond a reasonable doubt that's what we're talking about, those four things.

(TT Vol. 5 27:9–16). A power point slide was shown to the jury with the elements of Jury Instruction No. 22 while this argument was being made. The glaring omission of the insanity defense further cemented the jury's belief that insanity was not an option for first-degree murder.

The failure of Jury Instruction No. 22 to direct the jury to consider that insanity was applicable to first-degree murder deprived G. Davis of his only defense. With only two options for first-degree murder (guilty or not guilty), it relieved the State from proving that G. Davis was sane at the time of the offense of first-degree murder. This violated due process under article I, section 9 of the Iowa Constitution and the Fourteenth Amendment because the State was relieved of its burden of proving G. Davis guilty of every element of first-degree murder beyond a reasonable doubt. "Due process entitles a defendant to certain minimal basic procedural safeguards, including the requirement that the prosecution must prove every element of the crime charged beyond a reasonable doubt." *McMullin*, 421 N.W.2d at 519 (citing *In re Winship*, 397 U.S. 358, 364 (1970)).

Moreover, trial counsel was ineffective for filing to object to the material omission. A failure to recognize an erroneous jury instruction and raise a timely objection to preserve the error is a breach of counsel's essential duty. *Ondayog*, 722 N.W.2d at 785. By failing to object to the incorrect instruction—and allowing the State to emphasize the flawed instruction during closing arguments—trial counsel breached an essential duty as Jury Instruction No. 22 did not properly inform the jury about the law regarding use of the insanity defense. The failure to object allowed a jury instruction to

be presented to the jury that was misleading and resulted in prejudice. The misstatement of a material issue changed the outcome of the case and prejudiced G. Davis. *See Burkhalter v. Burkhalter*, 848 N.W.2d 93, 97 (Iowa 2013) (citing *Waits*, 572 N.W.2d at 575 ("Reversal is also required when the instruction contains a material misstatement of law.")).

II. THE DISTRICT COURT MISLED AND MISDIRECTED THE JURY WHEN GIVING AN INTOXICATION INSTRUCTION WHICH WAS NOT SUPPORTED BY THE EVIDENCE.

A. Issue Preservation

G. Davis did not file a notice of defense of intoxication (App. 8), did not make a request for an intoxication instruction in his proposed instructions, (Def. Proposed Jury Inst., Sept. 6, 2018), did not refer to it in his opening statement, (TT Vol. 2 16:13–21:7), and did not argue it during closing arguments. (TT Vol. 5 44:16–52:12). Simply, intoxication was not his defense and was inconsistent with his insanity defense.

The State included an intoxication defense instruction and it was presented to the court in the joint jury instructions. (State Jury Instructions, Sept. 5, 2018; Joint Jury Instructions, Sept. 7, 2018). Before closing arguments, G. Davis requested the exclusion of Instruction No. 19 arguing it did not reflect the defenses raised and the evidence did not support presenting the instruction to the jury. (TT Vol. 5 10:21–11:8). His objection was

overruled, with the court ruling statements made by the experts supported inclusion of the instruction. (TT Vol. 5 11:19–25).

The issue was raised in G. Davis's motion for a new trial and denied by the court. (App. 38; App 52).

B. Standard of Review

This issue can be reviewed under two standards of review.

First, the decision of the district court to include Instruction No. 19 despite the objection of counsel and in opposition of the defenses raised by G. Davis is reviewed for correction of errors at law. *Spates*, 779 N.W.2d at 775 (stating challenges to jury instructions are reviewed for correction of errors at law). Jury instructions should accurately state the law and be supported by substantial evidence in the record. *Id*. Error in giving an instruction warrants reversal if it results in prejudice. *Id*. Errors are presumed prejudicial unless the record shows no prejudice existed. *Murray*, 796 N.W.2d at 908. Prejudice can be shown if the "instruction could reasonably have misled or misdirected the jury." *Hoyman*, 863 N.W.2d at 7.

Second, because the inclusion of Jury Instruction No. 19 was inconsistent with the defenses raised at trial and deficient in presenting evidence submitted in the proceedings, the trial and resulting conviction were infected and G. Davis's due process rights were violated under article 1,

section 9 of the Iowa Constitution, and the Fifth and Fourteenth Amendments to the U.S. Constitution. *Middleton*, 541 U.S. at 437 (quoting *Estelle*, 502 U.S. at 72 ("[N]ot every ambiguity, inconsistency, or deficiency in a jury instruction rises to the level of a due process violation. The question is 'whether the ailing instruction . . . so infected the entire trial that the resulting conviction violates due process.'")). As referenced above, decisions of the district court that implicate constitutional rights are reviewed de novo. *Becker*, 818 N.W.2d at 141.

C. No Intoxication Instruction was Warranted

G. Davis did not want to present the defense of intoxication: He restricted his defenses to insanity and diminished responsibility. (App. 8). There is a difference. Insanity has a specific mental state and serves as a complete defense, and if accepted by the jury requires a not guilty verdict. Iowa Code § 701.4. Intoxication also has a specific mental state, and for this case, could only result in a verdict of second-degree murder. *State v. Caldwell*, 385 N.W.2d 553, 557 (Iowa 1986) ("Voluntary intoxication may not, however, reduce a charge when the crime does not require a specific intent."). The decision of G. Davis's counsel to raise the defense of insanity/diminished responsibility, and not intoxication, is a critical distinction—a distinction based on counsel's knowledge of the case, expert witnesses, and evidence.

G. Davis elected not to present the intoxication defense because it confused and conflated the issues. G. Davis argued this during the conference on jury instructions.

> First off, Your Honor, our defense was insanity or diminished responsibility defense that was filed months ago in this case. We were never claiming that this was an intoxication defense. The instruction specifically says that the defendant claims he was under the influence of drugs at the time of the alleged crime. I don't think that that's what we were trying to prove throughout this case. What we did state was that Mr. Davis had been using drugs for some years, which caused him to be under some type of substance-induced psychosis. We didn't necessarily assert that he was under the influence of drugs at the time of the crime, but that the psychosis was a side effect of the drugs.

(TT Vol. 5 10:21–11:8). The court ignored defense counsel's argument and misinterpreted the facts and forced an intoxication defense on G. Davis when it did not exist. In deciding to give the instruction the court stated:

> Court: I'm going to give Instruction No. 19. I don't think that the defense can offer evidence, which it did in this case, of the defendant's chronic drug use and offer testimony through Dr. Andersen and Dr. Konar that he was under the influence of drugs at the time and then not have this instruction given. So Instruction No. 19 will be included in the set given to the jury.

(TT Vol. 5 11:19–25).

However, there was no evidence of intoxication at the time of the offense as the law requires for an intoxication defense and instruction. Dr. Andersen testified no blood test was performed on G. Davis when he was arrested to determine through a toxicology report whether there was

methamphetamine in G. Davis's system. (TT Vol. 4 54:1–7). Testimony by the experts on G. Davis's methamphetamine usage and the psychosis he experienced as a result of prolonged usage was introduced to help the jury understand a complex medical diagnosis, not to support a temporary intoxication defense. The inclusion of Instruction No. 19 improperly framed the issue, presented an instruction that did not adequately represent the evidence in the case, and led to prejudice within the proceedings.

The jury would see this as inconsistent defenses and it eroded the credibility of G. Davis's insanity defense. The jury would wonder why the defense never mentioned, argued, or brought up intoxication.

Parties are entitled under Iowa law to have their theories of the case presented to the jury if the theory is supported by the pleadings and evidence on the record. *Sonnek*, 522 N.W.2d at 45. In addition to allowing the parties to present their own theories, the trial court must avoid making an argument in the case for either side through jury instructions. *State v. Voelkers*, 547 N.W.2d 625, 632 (Iowa Ct. App. 1996) (citing *State v. Marsh*, 392 N.W.2d 132, 133 (Iowa 1986)). The State and district court's insistence on presenting the jury with Instruction No. 19 outlining the use of voluntary intoxication as evidence towards G. Davis's capacity for specific intent did not match the evidence presented, the defense's theory of the case, worked in favor of the

State's case, and confused the jury regarding the issues leading ultimately to prejudice against G. Davis.

Affirmative defenses are raised by the accused to inform the court of the defendant's theory of the case. They are raised through a timely request filed with the court that simultaneously places the State on notice. *See State v. Ross*, 573 N.W.2d 906, 913 (Iowa 1998) ("Ordinarily, the district court must instruct on a defendant's theory of defense provided the defendant makes a timely request, the requested theory of defense instruction is supported by the evidence, and the requested instruction is a correct statement of the law."). The State's and district court's insistence on including a jury instruction outlining a defense not raised by the defense violated G. Davis's right to present his theory of the case and negated the purpose behind requiring the defense to file a timely request.

Here, all three experts' testimony supported G. Davis's defense of insanity and emphasized drug-usage had led to psychosis. (TT Vol. 4 17:22–18:3; 55:12–14; 140:2–3). Testimony was not presented to support a defense for temporary intoxication on the day in question to negate specific intent.

Instructions on defenses "should not be submitted unless the evidence would sustain an affirmative finding on that issue." *See Booth*, 169 N.W.2d 871. To present an instruction not warranted by the evidence can prejudice

the defendant. Prejudice exists if the "instruction could reasonably have misled or misdirected the jury." *Hoyman*, 863 N.W.2d at 7. Presentation of a jury instruction that prejudices the defendant warrants reversal of charges. *Spates*, 779 N.W.2d at 775. The evidence presented at trial did not support a presentation of Instruction No. 19 outlining intoxication. At trial G. Davis argued Instruction No. 19 was not supported by the evidence. TT Vol. 5 10:18–20. Evidence presented did not support G. Davis having been under the influence of methamphetamine at the time of the crime, but rather that he was experiencing psychosis due to prolonged usage. (TT Vol. 5 10:21–11:8).

D. Conclusion

The prejudice against G. Davis through the trial court's error is absolute. Insanity can serve as an absolute defense to a crime whereas intoxication provides no defense and only serves as proof of specific intent. *State v. Collins*, 305 N.W.2d 434, 437 (Iowa 1981). By insisting on presenting the jury with Instruction No. 19 the trial court confused and conflated the issues the jury needed to decide and made assumptions regarding the facts in the record that did not reflect G. Davis's intent in presenting his defense. Instructions should not "marshal the evidence or give undue prominence to certain evidence involved in the case." *State v. Johnson*, 534 N.W.2d 118, 124 (Iowa Ct. App. 1995) (citing *Marsh*, 392 N.W.2d at 133). The trial court's

decision to present a defense not raised placed unwarranted emphasis on G. Davis's intoxication and distracted from G. Davis's psychosis as a result of intoxication. Inclusion of Jury Instruction No. 19 was an error of law by the trial court that unduly prejudiced G. Davis, impacting his right to a fair trial.

III. THE DISTRICT COURT MISLED AND MISDIRECTED THE JURY WHEN INCLUDING A DIMINISHED RESPONSIBILITY INSTRUCTION WITH LESSER INCLUDED MARSHALING INSTRUCTIONS AND COUNSEL WAS INEFFECTIVE IN FAILING TO OBJECT.

A. Issue Preservation

After trial and through new counsel, G. Davis raised the issue of the improper reference to the diminished responsibility defense within marshaling instructions for the lesser included offenses that lacked specific intent. (App. 56). The district court ruled that the general-intent lesser included offenses were unimportant because the jury convicted G. Davis of murder in the first degree and had no occasion to deliberate about lesser included offenses. (App. 76).

B. Standard of Review

This issue can be reviewed under four standards of review.

First, because the trial court misdirected the jury regarding diminished responsibility and this infected the trial and resulting conviction, G. Davis's due process rights were violated under article 1, section 9 of the Iowa Constitution, and the Fifth and Fourteenth Amendments to the U.S.

Constitution. *See Middleton*, 541 U.S. at 437. As referenced above, decisions of the district court that implicate constitutional rights are reviewed de novo. *Becker*, 818 N.W.2d at 141.

Second, challenges to jury instructions are reviewed for correction of errors at law. *Spates*, 779 N.W.2d at 775. Instructions should accurately state the law and be supported by substantial evidence. *Id*. Error in giving an instruction warrants reversal if it results in prejudice. *Id*. Errors are presumed prejudicial unless the record shows no prejudice existed. *Murray*, 796 N.W.2d at 907. Prejudice can be shown if the "instruction could reasonably have misled or misdirected the jury." *Hoyman*, 863 N.W.2d at 7.

Third, because trial counsel did not object to the erroneous instructions, this was ineffective assistance of counsel in violation of the Sixth Amendment and article I, section 10 of the Iowa Constitution, and reviewed de novo. *Virgil*, 895 N.W.2d at 879.

And finally, as the issue was raised through a motion for new trial, specifically Iowa Rule of Criminal Procedure 2.24(2)(b)(5), the issue is reviewed based on the grounds asserted in the motion. *Fly*, 818 N.W.2d at 128.

C. The Trial Court Misdirected the Jury Regarding General Intent Offenses

As explained under Issue I, the last paragraph of all the marshaling instructions but one followed the following script:

> If the State has proved all the elements, the Defendant is guilty of _____. You must then consider the defense of insanity as described in Instructions No. 14–18. If the State has failed to prove any one of the elements, the Defendant is not guilty of _____ and you will then consider the charge of _____ as explained in Instruction No. ___.

(App. 29-37).

Regarding the reference to "Instructions No. 14–18," the specific instructions were as follows: Numbers 14 through 16 explained insanity, and number 17 and 18 explained diminished responsibility and that it could only be applied to specific intent crimes.

The trial court erred when including the direction for the jury to consider instructions 17 and 18 with the lesser included offenses of Second Degree Murder, Voluntary Manslaughter, Involuntary Manslaughter, Assault Causing Serious Injury, and Assault Causing Bodily Injury—all general intent crimes (App. 29-31, 35, 37). This misled and misdirected the jury.

Diminished responsibility as a defense is a matter of common law. *Anfinson v. State*, 758 N.W.2d 496, 502 (Iowa 2008). It allows a defendant to negate the specific intent element by demonstrating a mental defect that

prevents the capacity to form specific intent. *Collins*, 305 N.W.2d at 437. Diminished responsibility, therefore, only applies to crimes requiring specific intent. *Id.* at 436. Including an instruction with a directive to reference a defense that does not apply is an incorrect statement of the law that misleads and misdirects the jury. *See Hoyman*, 863 N.W.2d at 7.

The trial court is responsible for presenting juries with jury instructions that accurately state the law and are supported by evidence in the record. *Spates*, 779 N.W.2d at 775. The law is clear: the diminished responsibility defense only applies to specific intent crimes. *Collins*, 305 N.W.2d at 437. To present otherwise to the jury is a misstatement of the law and to assume that the jury could figure out on their own how to apply an affirmative defense is in violation of the trial court's role.

Trial counsel failed in an essential duty by not alerting the trial court that jury instructions 17 and 18 should not be referenced in instructions 30, 32, 34, 42, and 44. The prejudice is the jury was misdirected and misled.

D. Conclusion

Jury instructions containing errors of law, such as Jury Instructions numbers 30, 32, 34, 42, and 44, prejudiced G. Davis by misleading and misdirecting the jury. *Hoyman*, 863 N.W.2d at 7. The misdirection creates ambiguities, inconsistencies and a deficiency in the jury instructions which

infect the final conviction thus violating due process. Once the trial court became aware of the erroneous instructions, it should have granted a new trial.

IV. DAVIS WAS DENIED EFFECTIVE ASSISTANCE OF COUNSEL GUARANTEED BY THE SIXTH AMENDMENT AND ARTICLE I § 10 OF THE IOWA CONSTITUTION WHEN TRIAL COUNSEL ELICITED TESTIMONY THAT DAVIS HAD THE SPECIFIC INTENT TO KILL CARRIE DAVIS.

A. Issue Preservation

G. Davis raised his ineffective assistance of counsel claim in his Motion for a New Trial. (App 38). The trial court ruled against G. Davis finding introduction of specific intent was not error because it was an element of first-degree murder and a necessary component of the affirmative defense of diminished capacity. (App. 52).

B. Standard of Review

Trial counsel failed to perform an essential duty when they allowed an expert to opine on G. Davis's possession of specific intent at the time of the incident; this is ineffective assistance of counsel in violation of the Sixth Amendment and article I, section 10 of the Iowa Constitution and is reviewed de novo. *Virgil*, 895 N.W.2d at 879. G. Davis must establish, by a preponderance of the evidence, that (1) trial counsel failed to perform an essential duty, and (2) prejudice resulted. *Id.*; *accord Strickland*, 466 U.S. at 691–92.

C. Trial Counsel's Question Elicited Improper Opinion Testimony

Dr. Arnold Andersen completed an evaluation of G. Davis on behalf of the State of Iowa as part of determining G. Davis's competency to stand trial. (TT Vol. 4 42:7–12). The State elected not to call Dr. Andersen therefore he was called as an expert by G. Davis's trial counsel. *See id*. at 41. Trial counsel did not conduct a deposition of Dr. Andersen. During direct examination, trial counsel asked Dr. Andersen to testify regarding his conclusions following his interview with G. Davis.

> Q: And what did you conclude, Doctor?
>
> A: I concluded that at the time of the alleged crime he did not have the capacity to form the specific intent of a criminal act. He did have the intent to kill Ms. Davis. He, however, believed this act was morally right and necessary and that by killing her he would be freeing her of her evil forces and lead to her resurrection and perhaps to life in a better location.

(TT Vol. 4 51:18–25).

Counsel then asked Dr. Andersen to opine on G. Davis's ability to form specific intent presenting the opportunity for Dr. Andersen to postulate on G. Davis's guilt.

> Q: You concluded that he did not have the capacity to form specific intent at the time he committed that act?
>
> A: If I can nuance a – that a bit. He had the specific intent of killing her. He did not have a specific criminal intent. His understanding was that what he was doing was morally right and necessary. So, yes, he had an intent to kill in order to do the

> second part of the specific intent, to achieve a consequence of freeing her from evil and ushering her into a better place, but he did not have a criminal intent in that at the time he did not believe he was killing her against the law.

(TT Vol. 4 52:5–15). First, the question called for a yes or no answer. Second, Dr. Andersen's response to the question posed by trial counsel went outside the proper testimony of an expert regarding mental capacity and opined on the guilt or innocence of G. Davis. *See State v. Myers*, 382 N.W.2d 91, 97 (Iowa 1986) ("A witness is not permitted to express an opinion as to the ultimate fact of the accused's guilt or innocence."). The line between opinion testimony that is helpful to the jury and testimony that conveys conclusions regarding guilt is an admittedly narrow one, but an essential one. *Id*. at 98. Trial counsel should have requested Dr. Andersen's response be stricken from the record and the question be rephrased to elicit proper expert testimony or directed him to answer the question. Trial counsel could have requested a mistrial.

The role of an expert is to provide the jury with information that will aid in the fact-finding process and assist is ascertaining the truth—not to provide the conclusion a jury should reach. *See Myers*, 382 N.W.2d at 93. Providing an opinion on a defendant's possession of the requisite intent at the time of the crime expands beyond an expert's appropriate role of providing the jury with evidence of a defendant's mental capacity and invades the role of the jury to examine evidence and develop a conclusion.

An essential duty of trial counsel is ensuring expert testimony falls within the rules of evidence. When an expert witness crosses the allowable line and begins opining outside the scope of expert testimony counsel should raise an objection with the court. *See State v. Allen*, 565 N.W.2d 333, 338 (Iowa 1997) (finding trial counsel was not ineffective when they failed to strike expert testimony because it did not convey a conclusion on the defendant's guilt). Failure to request the court strike expert testimony and seek a limiting instruction is a failure of counsel's duty. *See State v. Cromer*, 765 N.W.2d 1, 10 (Iowa 2009) (finding foreseeable danger existed jury would use victim's statement "you guys raped me" as opinion of guilt, in absence of limiting instruction).

D. Conclusion

Expert testimony is analyzed to determine its purpose for the jury and effect on the proceedings. *Myers*, 382 N.W.2d at 93. Here, Dr. Andersen's testimony violated the purpose of expert testimony and prejudiced the proceeding. Trial counsel's question elicited an answer in violation of the principle that no witnesses can opine on a legal conclusion or whether the facts of the case meet a given legal standard. *In re Detention of Palmer*, 691 N.W.2d 413, 418-19 (Iowa 2005) *overruled on other grounds by Alcala*, 880 N.W.2d at 708 n.3. This Court should find trial counsel was ineffective in

allowing inadmissible opinions by Dr. Andersen regarding G. Davis's possession of specific intent in violation of the Iowa Rules of Evidence. *See* Iowa R. Evid. 5.702.

The statements made by Dr. Andersen were outside the scope of allowable expert testimony because they directly stated a conclusion regarding G. Davis's possession of specific intent on the day of C. Davis's death. In addition, Dr. Andersen's statement: "He had the specific intent of killing her. He did not have a specific criminal intent", served to inject confusion into the proceedings and the jury's analysis of specific intent. Trial counsel failed in their essential duty to ensure expert testimony fell within the role of helping the trier of fact and did not cross into opining on G. Davis's guilt. They failed this duty and the statements made by Dr. Andersen prejudiced the proceedings against G. Davis precluding a fair outcome.

V. THE CUMULATIVE EFFECT OF THE CONSTITUTIONAL AND EVIDENTIARY ERRORS VIOLATED DAVIS'S RIGHT TO A FAIR TRIAL AND DUE PROCESS.

A. Issue Preservation

G. Davis properly preserved this issue based on the issues preserved above in his motion for new trial that was denied by the court. (App. 38; App. 45; App. 52).

B. Standard of Review

Because the error claimed is cumulative and therefore a constitutional violation (lack of due process, denial of fair trial), the standard of review is de novo. *State v. Veal*, 564 N.W.2d 797, 802 (Iowa 1997), rev'd other reasons. Defendant must establish a cumulative error. *State v. Pierce*, 287 N.W.2d 570, 575 (Iowa 1980). Defendant must establish he was "denied a fair trial by an accumulation of prejudice." *Id*.

C. Prejudiced by Cumulative Errors

The cumulative and synergic effect of errors committed during trial can deny a defendant a fair trial. *See State v. Carey*, 165 N.W.2d 27, 36 (Iowa 1969) (cumulative effect of errors deprived defendant a fair trial); *State v. Hardy*, 492 N.W.2d 230, 236 (Iowa Ct. App. 1992) (trial injected with several instances of unfair prejudice which, on their own, may not have warranted new trial, but when combined, denied defendant fair trial); *Blum v. State*, 510 N.W.2d 175, 180 (Iowa Ct. App. 1993) (synergetic effect of the conduct of defendant's attorney and the judge was to deny defendant effective representation of counsel). *See also United States v. Chase*, 451 F.3d 474, 480 (8th Cir. 2006) (assessing cumulative impact of misconduct to determine if defendant deprived of fair trial); *United States v. Rivera*, 900 F.2d 1462, 1470 (10th Cir. 1990) (cumulative effect of two or more individually harmless

errors has the potential to prejudice a defendant to the same extent as a single reversible error).

The cumulative and synergetic effect from the (1) deficient Jury Instruction No. 22 (Issue I), (2) improper directive to reference Jury Instruction Nos. 17 and 18 for general intent crimes (Issue II), (3) improper inclusion of Jury Instruction No. 19 (Issue III), and (4) ineffective assistance of counsel in allowing expert opinion on G. Davis's possession of specific intent (Issue IV) denied G. Davis a fair and impartial trial. Each of the errors presented in Issues I through IV adversely influenced the jury's analysis of the issues and application of law to G. Davis's case leading to an unfair, prejudiced outcome at trial.

D. Conclusion

The cumulate and synergetic prejudice resulting from the errors deprived G. Davis of a fair trial, under both article I, section 9 of the Iowa Constitution, and the Fifth and Fourteenth Amendments of the United States Constitution.

CONCLUSION

The Court should grant Gregory Michael Davis a new trial.

NOTICE ORAL ARGUMENT

Counsel requests oral argument.

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CERTIFICATE OF COMPLIANCE

This brief does comply with the type-volume limitation of Iowa R. App. P. 6.903(1)(g)(1) (no more than 14,000 words); this brief contains 9,216 words, excluding the parts of the brief exempted by Rule 6.903(1)(g)(1), which are the table of contents, table of authorities, statement of the issues, and certificates.

This brief complies with the typeface requirements of Iowa R. App. P. 6.903(1)(e) and the type-style requirements of Iowa R. App. P. 6.903(1)(f) because this brief has been prepared in a proportionally spaced typeface using Microsoft Office Word 2010 in font size 14, Times New Roman.