No. 21-1043
Jasper County No. FECR022121

IN THE
SUPREME COURT OF IOWA

STATE OF IOWA.,

Appellee,

v.

JEFFREY LEE STENDRUP,

Appellant.

ON APPEAL FROM THE IOWA DISTRICT COURT
IN AND FOR JASPER COUNTY
THOMAS MURPHY, DISTRICT COURT JUDGE

BRIEF FOR APPELLANT

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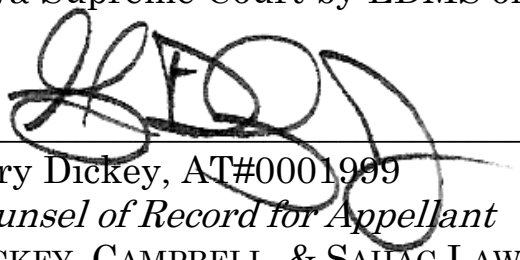
PROOF OF SERVICE & CERTIFICATE OF FILING

On May 4, 2022, I served this brief on all other parties by EDMS to their respective counsel, and I mailed a copy of this brief to Mr. Stendrup at the Iowa State Penitentiary.

I further certify that I did file this brief with the Clerk of the Iowa Supreme Court by EDMS on May 4, 2022.



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ROUTING STATEMENT

In this appeal, Jeffrey Stendrup asks the Court to definitively decide whether the Restatement (Third) of Torts applies to criminal cases. For this reason, the Iowa Supreme Court should retain this case.

STATEMENT OF THE CASE

Jeffrey Stendrup appeals from a judgment and sentence following his conviction for first-degree murder and first-degree robbery.

On September 7, 2018, the State of Iowa charged Stendrup and Jaycie Sheeder by trial information with first-degree murder in violation of Iowa Code section 707.2(1)(b), a class "A" felony, for the death of Jeremy McDowell. (App. at 8). On December 28, 2018, the district court severed Stendrup's trial from Sheeder's. (App. at 13). Approximately two months later, the State filed an amended trial information again charging Stendrup with first-degree murder but also adding a second count of first-degree robbery in violation of Iowa Code section 711.2, a class "B" felony. (App. at 19).

While the case was pending, the State of Iowa charged Stendrup in a separate trial information with suborning perjury in violation of Iowa Code section 720.3 and tampering with a witness in violation of Iowa Code section 720.4. (App. at 28). The court entered an order merging the cases. (App. at 31). While awaiting

trial, Stendrup entered guilty pleas to the charges of suborning perjury and tampering with a witness. (App. at 372, 376).

A six-day bench trial to the Honorable Thomas Murphy commenced on February 19, 2021. On April 26, 2021, Judge Murphy announced his verdict finding Stendrup guilty of both first-degree murder and first-degree robbery. (App. at 459). On July 23, 2021, the court sentenced Stendrup to life in prison for murder and twenty-five years in prison robbery. (App. at 476-477). The court imposed the sentences concurrently to each other but consecutively to sentences imposed for the perjury and tampering convictions. (App. at 476-477).

Stendrup timely appealed. (App. at 480).

STATEMENT OF THE FACTS

Jeffrey Stendrup and Jeremy McDowell were best friends and regular methamphetamines users. (Trial Tr. Vol. 3 at 43:23-25 to 45:1-9) (App. at 492). Stendrup supplied methamphetamines to McDowell who would distribute it to others. (Trial Tr. Vol. 3 at 44:23-25 to 45:1-9). Around the beginning of June 2018, McDowell learned that Stendrup was

sleeping with his girlfriend Jaycie Sheeder. (Trial Tr. Vol. 1 at 50:25 to 51:1-10; Vol. 3 at 51:4-11). In retaliation, McDowell slept with Stendrup's girlfriend, Shelly Christensen, and help her steal cars, money, and drugs from Stendrup. (Trial Tr. Vol. 1 at 52:3-4, 60:13-16).

Between June 17, 2018, and June 19, 2018, Stendrup and McDowell exchanged angry text messages with each other. (App. at 492). On June 17, 2018, McDowell indicated he wanted to die. (App. at 493). On June 19, 2018, McDowell indicated that he had contemplated suicide. (App. at 494). Stendrup threatened to physically assault McDowell. (App. at 492).

On the morning of June 20, 2018, Stendrup appeared at the Clive police station. (Trial Tr. Vol. 1 at 52:5-21, 86:12-25 to 89:1-23)(App. at 483). Stendrup reported to an officer that Shelly stole cash, keys, and Mr. Stendrup's Cadillac. (App. at 483). The Clive Police never made public the fact that Stendrup reported the theft. (Trial Tr. Vol. 1 at 91:11-18). Witness Julie Landry, however, knew about the report. (Trial Tr. Vol. 1 at 52:5-21). Stendrup's visit with the Clive Police was recorded on an officer's

body camera. (App. at 483). Stendrup was emotional. He told the officer that he was going to look for Shelly and that the police better find her before his friends did, or Shelly would not "be around." (App. at 483).

Stendrup made several efforts to recover his vehicle and his property including enlisting his acquaintance, Andrew Forrest, to help him. (Trial Tr. Vol. 3 at 8:5-25 to 12:1-24). On June 21, 2018, Stendrup and Sheeder asked Forrest to help Sheeder retrieve some belongings from a location in Colfax. (Trial Tr. Vol. 3 at 31:14-25 to 33:1-24).

Colfax is where, at the time, Dave Anderson and Doreen Coleman shared a residence. (Trial Tr. Vol. 3 at 42:1-15). Anderson and Coleman were friends with McDowell. (Trial Tr. Vol. 3 at 43:8-25). Ander Anderson met Stendrup before June 22, 2018. Once, Stendrup delivered methamphetamine to McDowell while Anderson was present. (Trial Tr. Vol. 3 at 46:19-25 to 48:1-18). Anderson knew Sheeder through her prior relationship with McDowell. (Trial Tr. Vol. 3 at 45:18-25 to 46:1-8).

Anderson and Coleman were regular methamphetamine users, and they got their meth from McDowell. (Trial Tr. Vol. 3 at 74:17-25, 99:14-16). The falling out between Stendrup and McDowell prevented Anderson and Coleman from obtaining meth. (Trial Tr. Vol. 3 at 89:14-25 to 90:1-9). Anderson arranged McDowell to come to his residence in Colfax during the night of June 21 and early morning of June 22, 2018. (Trial Tr. Vol. 3 at 90:1-24). Anderson told Sheeder about the meeting. (Trial Tr. Vol. 3 at 97:4-10).

At some point, McDowell arrived at Anderson's Colfax residence. While he was at the residence, McDowell took a call from Sheeder. The call began at 1:34 a.m. and lasted 686 seconds, or over 11 minutes. (App. at 484). While Forrest initially indicated that he would accompany Sheeder in Colfax, he ultimately did not go. (Trial Tr. Vol 3 at 21:16-25 to 22:1-19). Instead, Stendrup went to Colfax with Sheeder.

During Sheeder and McDowell's call, Stendrup came into Anderson's residence with a baseball bat. (Trial Tr. Vol. 3 at 57:6-18). Stendrup yelled at McDowell, "where's my shit? I'm going to

kill you." (Trial Tr. Vol. 3 at 102:16-21). Stendrup chased McDowell to the kitchen and repeatedly hit him with the bat. (Trial Tr. Vol. 3 at 57:7-25 to 58:1-20). Anderson heard glass break and observed some of the blows. (Trial Tr. Vol. 3 at 57:7-25 to 59:1-10). Unable to stop Stendrup, Anderson ran outside of the home where he found Sheeder going through his van. (Trial Tr. Vol. 3 at 59:15-25 to 60:1-5). Sheeder's phone was still connected with McDowell's, and Anderson could hear commotion in the house was coming through the speaker phone. (Trial Tr. Vol. 3 at 60:6-13). Unable to get Sheeder to intervene, Anderson went back into the house. (Trial Tr. Vol. 3 at 62:19-25 to 63:1-2). Stendrup left and warned Anderson not to tell anyone what happened. Stendrup apparently did not take anything from Mr. McDowell. (Trial Tr. Vol. 3 at 64:6-23, 106:14-16).

Nobody called 911 to report any activity at the Colfax residence. Instead, Anderson gathered all his drugs and took them to another Colfax resident, Tom Wearmouth, for safekeeping. Sheeder returned to Anderson's house. She told him that she thought McDowell was still alive so they agreed she take

him to a hospital in Newton. (Trial Tr. Vol. 3 at 70:13-25 to 73:1-23). Anderson and Sheeder tried to put McDowell in a van but he was too heavy. Anderson sought and received help from Wearmouth. (Trial Tr. Vol. 3 at 112:13-15).

On June 22, 2018, at 3:08 a.m., Sheeder called the Newton Hospital and indicated she was in route with a person who needed urgent medical care. (Trial Tr. Vol 2 at 97-21-25 to 98:1-3). Law enforcement and paramedics met Sheeder before she got to the hospital. On June 22, 2018, at 3:39 a.m., following consult with a physician, paramedics declared McDowell dead. (Trial Tr. Vol. 3 at 205:22-25 to 207:1-19).

Deputy state medical examiner, Dr. Jonathan Thompson, conducted an autopsy of McDowell. His report diagnosed McDowell with sudden cardiac arrhythmia, complicated by an altercation with another person and methamphetamine use. (App. at 519). The report indicates that McDowell suffered patterned contusions and superficial wounds. (App. at 527). A toxicology report revealed that McDowell had a methamphetamine level of 4,900 nanograms per milliliter. (App.

at 530). Dr. Thompson opined that McDowell's methamphetamine use was at least as recent as the day of his death. (Trial Tr. Vol. 5 at 108:2-17). According to Dr. Thompson, any level of methamphetamine can be fatal. Methamphetamine acts to cause an increased heart rate, increased blood pressure, and a coronary artery spasm that can lead to fatal arrhythmia. (Trial Tr. Vol. 5 at 78:5-25 to 81:1). Based solely on his autopsy findings, Dr. Thompson could not say that any of the blunt force injuries from the Stendrup's altercation caused McDowell's death. (Trial Tr. Vol. 5 at 103:10-22). But, he believes that a level of methamphetamines of 4900 nanograms per milliliter "is more than sufficiently toxic to be lethal." (Trial Tr. Vol. 5 at 104:13-15).

A six-day bench trial to the Honorable Thomas Murphy commenced on February 19, 2021. On April 26, 2021, Judge Murphy announced his verdict finding Stendrup guilty of both first-degree murder and first-degree robbery. (App. at 459). On July 23, 2021, the court sentenced Stendrup to life in prison for murder and twenty-five years in prison robbery. (App. at 476-477). The court imposed the sentences concurrently to each other

but consecutively to sentences imposed for the perjury and tampering convictions. (App. at 476-477). This appeal followed. (App. at 480).

ARGUMENT

I. STENDRUP'S MURDER CONVICTION MUST BE VACATED BECAUSE THE EVIDENCE IS INSUFFICIENT AS A MATTER OF LAW TO ESTABLISH THAT HIS CONDUCT CAUSED MCDOWELL'S DEATH

Error Preservation

Stendrup preserved error by filing a pre-trial motion to dismiss, which the district court denied. (App. at 34, 354).

Further, Stendrup submitted proposed jury instructions that correctly stated the law with respect to causation. (App. at 401, 402).

Stendrup also moved for judgment of acquittal on the basis that the State failed to produce sufficient evidence that his conduct was a but-for cause of McDowell's death. (Trial Tr. Vol. 5 at 129:3-25 to 130:1-7; Vol. 6 at 12:2-25 to 13:1-11).

Additionally, Stendrup asserted in closing argument that the State had not produced sufficient evidence to establish that his

conduct was a but-for cause of death. (Trial Tr. Vol. 6 at 63:22-25 to 64:1-14).

Lastly, Stendrup filed a post-trial motion challenging the sufficiency of the evidence concerning causation, which the court considered and denied. (App. at 462-467, 474).

Scope and Standard of Review

The Court reviews the denial of a motion to dismiss for errors at law. *State v. Olsen*, 848 N.W.2d 363, 366 (Iowa 2014). Review of issues involving statutory interpretation is also for errors at law. *Id.*

The Court reviews challenges to the sufficiency of the evidence for correction of errors at law. *State v. Webb*, 648 N.W.2d 72, 75 (Iowa 2002).

Analysis

A. Applicable legal principles

A person commits first degree murder under the following circumstances: (1) the person willfully, deliberately, and with premeditation kills another person; or (2) the person kills another person while participating in a forcible felony. Iowa Code §

707.2(1),(2). Under either alternative, the State must prove that a defendant "killed" another person. *See Webster's Third New Int'l Dictionary* 1242 (2002) (first definition of "kill" is "to deprive of life: put to death; cause the death of"); *Black's Law Dictionary* at 1002 (10th ed. 2014)(defining "kill" as "[t]o end life; to cause physical death"); *Model Penal Code* § 210.1 & .2 (murder requires proof that the defendant "cause[d] the death of another"). That requires proof that "the criminal act was the factual cause of harm." *State v. Tyler*, 873 N.W.2d 741, 748 (Iowa 2016) (quoting *State v. Tribble*, 790 N.W.2d 121, 126-27 (Iowa 2010)). "The conduct of a defendant is a factual cause of harm when the harm would not have occurred absent the conduct." *Tribble*, 790 N.W.2d at 126; *see also Wharton's Criminal Law* § 26, at 146 (15th ed. 1993) ("Where the statute involves a specified result that is caused by conduct, it must be shown, as a minimal requirement, that the accused's conduct was an antecedent 'but for' which the result in question would not have occurred"). As Professor LaFave explains, when crimes are defined "to require not merely conduct but also a specified *result* of conduct, the defendant's conduct

must be the 'legal' or 'proximate' cause of the result." 1 Wayne R. LaFave, *Substantive Criminal Law* § 6.4, at 464 (2d ed. 2003) (emphasis added). In other words, "it must be determined that the defendant's conduct was the cause in fact of the result, which usually . . . means that but for the conduct the result would not have occurred." *Id.* And, "[i]n addition, even when cause in fact is established, it must be determined that any variation between result intended . . . or hazarded . . . and the result actually achieved is not so extraordinary that it would be unfair to hold the defendant re-sponsible for the actual result." *Id.*

B. The testimony at trial did not establish that Stendrup's conduct caused McDowell's death

The record in this case affirmatively establishes that Stendrup's altercation with the baseball bat was not the but-for cause of McDowell's death. The state medical examiner, Dr. Thompson, testified that McDowell's wounds from the altercation were superficial and not life-threatening:

> Q. I want to talk to you about your opinions as to the cause of death based solely upon the findings of your autopsy. After you performed your autopsy, it was your opinion that the blunt force injuries were not life-threatening?

A. That's right. Just the -- the physical component of the injuries themselves only involved the skin; the upper layer of the skin. I think one of them might have involved a muscle as well. I don't recall which one. But none of them involved the internal what I call the viscera, which is just the organ. So there was no bony injuries. There was no injuries to the -- the organs. There was no blood inside the body.

(Trial Tr. Vol. 5 at 103:10-22). Accordingly, Dr. Thompson concluded that the injuries inflicted by Stendrup could have independently caused McDowell's death:

Q. In your scientific medical opinion, based solely on the autopsy findings none of the injuries you observed could have anatomically caused Mr. McDowell's death; right?

A. That's correct.

* * *

Q. Sure. In your medical opinion, the injuries from the blunt force trauma from the assault were not sufficient alone to kill Jeremy McDowell?

A. Yeah, just from an anatomic standpoint, typically, if you have injuries, you can injure an internal organ, you bleed, and then you die as a result of that, that bleeding.

(Trial Tr. Vol. 5 at 103:23-25 to 104:1-12). Dr. Thompson's testimony also established that McDowell's methamphetamine use was more than sufficient to independently cause his death:

Q. And the 4,900 nanograms per milliliter is more than sufficiently toxic to be lethal; is that right?
A. Yes, sir.

(Trial Tr. Vol. 5 at 104:13-15). Without evidence that Stendrup's conduct could have independently caused McDowell's death but-for causation standard cannot be met as a matter of law.

The decision in *Burrage v. United States*, 571 U.S. 204 (2014), illustrates why Stendrup's conduct did not cause McDowell's death as a matter of law. *Burrage* involved a long-time drug user, Joshua Banka, who died following an extended drug binge. *Id.* at 206. Prior to his death, he purchased one gram of heroin from the defendant, Marcus Burrage, and consumed it intravenously on two separate occasions on the same night. *Id.* The Government charged Burrage with unlawfully distributing heroin to Banka and that "death . . . resulted from the use of that substance." *Id.* (citing 21 U.S.C. § 841(b)(1)(C)).

At trial, the Government introduced evidence that Banka had heroin, codeine, alprazolam, clonazepam, and oxycodone present in his system at the time of his death. *Id.* at 207. A

forensic toxicologist testified that Burrage's heroin was a "contributing factor" to Bank's death, but he could not say whether Banka would have lived had he not taken the heroin. *Id.* The Iowa state medical examiner came to a similar conclusion that Banka died of "mixed drug intoxication" with heroin, oxycodone, alprazolam, and clonazepam all playing a "contributing" role. *Id.*

Burrage moved for a judgment of acquittal on the basis that Banka's death did not result from the heroin use because there was no evidence that heroin was a "but-for cause of death." *Id.* The district court denied the motion on the basis that all the Government was required to prove was that the heroin was a "contributing cause of Joshua Banka's death." *Id.* at 208. The Eighth Circuit Court of Appeals affirmed on the basis that the contributing cause standard correctly stated the law. *United States v. Burrage*, 687 F.3d 1015, 1021 (8th Cir. 2012).

The United State Supreme Court reversed. Writing for a unanimous court, Justice Scalia explained that the "results from" language of section 841(a)(1) requires proof of "actual causality."

Burrage, 571 U.S. at 211. Actual cause, in turn, "requires proof that the harm would not have occurred in the absence of—that is, but for—the defendant's conduct." *Id.* "This but-for requirement is part of the common understanding of cause." *Id.* Consequently, the Court reversed Burrage's conviction, holding that "where use of the drug distributed by the defendant is not an independently sufficient cause of the victim's death or serious bodily injury, a defendant cannot be liable under [section 841(b)(1)(C)] unless such use is a but-for cause of the death or injury." *Id.* at 218.

From *Burrage*, it necessarily follows that the record is insufficient to conclude that Stendrup's conduct was a "but for" cause of McDowell's death. As the State's expert conceded, Stendrup's conduct was "not sufficient alone to kill Jeremy McDowell." (Trial Tr. Vol. 5 at 104:6-9). But, the ingestion of methamphetamines was "more than sufficiently toxic to be lethal." (Trial Tr. Vol. 5 at 104:13-15). Thus, Stendrup's conduct "is not an independently sufficient cause of the victim's death" as a matter of law. *Burrage*, 571 U.S. at 218.

C. The district court applied an incorrect standard of causation in arriving at its first-degree murder verdict

In its findings of fact, conclusions of law, and verdict, the district court correctly identified that "[c]ausation is an issue in this case" and that "[t]he conduct of the defendant is a 'factual cause' of harm when the harm would not have occurred absent the conduct." (App. at 454, 456). As to factual cause finding, however, the court found:

> The court is firmly convinced that Mr. McDowell died as a direct and foreseeable consequence of the baseball bat assault.

(App. at 458). This conclusion misstates the law. It is not whether a harm is a "direct and foreseeable consequence" of the defendant's actions.[1] Instead, it is whether "the harm would not have occurred absent the conduct." *Tribble*, 790 N.W.2d at 127. Here, the answer is plainly "no."

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[1] The direct-and-foreseeable-consequence standard is a statutory test for declaring a child-in-need-of-assistance. *See* Iowa Code § 232.2(6)(o); *In re A.H.*, 2014 Iowa App. LEXIS 1264 at 41 (Iowa Ct. App. Dec. 24, 2014). It has no counterpart in criminal law.

D. The district court misapplied caselaw concerning criminal causation

The district court's erroneous application of the causation element stems from its misreading of caselaw. For example, the district court declined to follow *Burrage* on the basis that causation under Iowa law is different that under federal law. (App. at 454, 456) ("The court considered *Burrage*. The court must follow Iowa law"). This is incorrect. While *Burrage* involved the statutory interpretation of the "results from" language in 21 U.S.C. § 841(a)(1), (b)(1)(A)-(C), the Supreme Court's analysis of the "but-for" causation standard was drawn from the historical understanding of causation in criminal cases. *Id.* at 210 (citing W. LaFave, *Substantive Criminal Law* and the ALI *Model Penal Code*). More importantly, the Iowa Supreme Court has made clear that but-for causality remains an essential element of causation in criminal law. *State v. Roache*, 920 N.W.2d 93, 101 (Iowa 2018) ("Factual causation is determined through a "but for" test"); *Tyler*, 873 N.W.2d at 748-49 (identifying "but-for" causation as a requirement in criminal cases). *State v. Hennings*, 791 N.W.2d 828, 835 (Iowa 2010) ("to find a defendant guilty under section

729A.2, the jury must determine beyond a reasonable doubt the defendant would not have acted absent the defendant's prejudice") *partially overruled on other grounds by State v. Hill*, 878 N.W.23d 269, 274 (Iowa 2016); *Tribble*, 790 N.W.2d at 127 ("We have traditionally labeled this straightforward, factual cause requirement the 'but for' test"). In short, there is not one but-for causation standard under federal law and another under Iowa law.

The district court compounded the error by relying upon a hodgepodge of caselaw that has no relevance to the facts of this case. For example, the district court's ruling cites to the *State v. McClain*, 256 Iowa 175, 125 N.W.2d 764 (1964), in which the defendant set his wife on fire. *Id.* She died thirteen days later from complications from the burns she sustained. *Id.* at 179; 125 N.W.2d at 766. At trial, the judge instructed the jury that:

> You have been instructed that one of the propositions which must be proved by the State beyond a reasonable doubt is that fire set and ignited by the defendant on the person of Pearl McClain resulted in her death.
>
> In this connection you are instructed that if such unlawful acts of the defendant, if any, committed as hereinbefore defined in these instructions, caused the

> death of Pearl McClain or directly contributed thereto, then such acts resulted in the death of Pearl McClain within the meaning of these instructions; and this is true even though such acts of the defendant, if any, were not the sole cause of her death, and even though negligent medical treatment subsequent to injuries by burning joined and operated in conjunction with such original injuries by burning to result in the death of Pearl McClain and even though the said Pearl McClain would not have died had it not been for such negligent medical treatment.

Id. at 189; 125 N.W.2d at 772. The Iowa Supreme Court affirmed, holding that it is "well established that negligent treatment or neglect of an injury will not excuse a wrongdoer unless the treatment or neglect was the sole cause of death." *Id.*

This case is easily distinguishable from *McClain*. The issue in *McClain* centered more around proximate cause than but-for cause. There was no dispute that the harm in *McClain* (death from medical neglect) would not have occurred absent the defendant's earlier conduct (setting his wife on fire). Rather, the question presented was whether the hospital's negligence was a supervening event that should excuse the defendant's liability.

The same is not true in this case. Here, the evidence established that Stendrup's conduct was not independently

sufficient to cause McDowell's death, but the use of methamphetamines was. Unlike in *McClain*, there is no evidence that Stendrup's conduct was part of a series of events that resulted in McDowell's methamphetamine overdose. Consequently, nothing in *McClain* provides any support for the court's verdict.

The court below next cites to *State v. Smith*, 73 Iowa 32, 34 N.W. 597 (1887), in which the defendant assaulted his wife who later died. *Id.* at 39-41, 34 N.W. at 600-01. The wounds found on the decedent's body were not sufficient to cause her death without the concurrent conditions of heart disease and intoxication. *Id.* The Iowa Supreme Court nonetheless affirmed Smith's murder conviction, explaining:

> It surely ought not to be the law that because a person is afflicted with a mortal malady, from which he must soon die, whether his ailment be caused by natural or artificial causes, another may be excused for acts of violence which hasten or contribute to or cause death sooner than it would otherwise occur. Life at best is but of short duration, and one who causes death ought not to be excused for his act because his victim was soon to die from other causes, whatever they may be, and in the case at bar we think the jury were warranted in finding that the violence of the defendant contributed to or caused or accelerated the death of his wife.

Id. at 41, 34 N.W. at 601-02.

Smith is also distinguishable. Unlike in this case, *Smith* involved multiple contributing factors—each of which was insufficient to cause death. Thus, *Smith* stands for the unremarkable rule that when there are multiple concurrent causes of death, conduct which hastens or contributes to a person's death is a cause of death. LaFave, 1 *Substantive Criminal Law* at § 3.12; R.M. Perkins & R.N. Boyce, *Criminal Law*, 783-84 (3rd ed. 1982). In other words, conduct is a but-for cause if it "combines with other factors to produce the result, so long as the other factors alone would not have done so – if, so to speak, it was the straw that broke the camel's back." *Burrage*, 571 U.S. at 211. "Thus, if poison is administered to a man debilitated by multiple diseases, it is a but-for cause of his death even if those diseases played a part in his demise, so long as, without the incremental effect of the poison, he would have lived."2 *Id.*

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[2] Both *Burrage* and the Iowa Supreme Court recognize another exception to the but-for requirement when evidence is presented of "multiple sufficient causes." *See Burrage*, 571 U.S. at 214-15; *Hennings*, 791 N.W.2d at 835 n.3. In such a circumstance,

This case does not involve multiple concurrent causes. It involves an independently sufficient cause (methamphetamine use) coupled with an independently insufficient cause (Stendrup's altercation with the baseball bat). In any event, the State offered no testimony that Stendrup's actions hastened or accelerated McDowell's overdose.[3] Consequently, *Smith* provides no guidance on the causation issue in this case.

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the Iowa Supreme Court has adopted "a legal rule that simply declares multiple causes that alone would have been a factual cause under the 'but for' test to be factual causes." *Hennings*, 791 N.W.2d at 835 n.3. The multiple sufficient causes doctrine does not apply in this case because, as Dr. Thompson testified, Stendrup's conduct was not sufficient to cause McDowell's death alone. (Trial Tr. Vol. 5 at 103:10-25 to 104:1-15).

[3] In an offer of proof made conditionally in response to hypothetical questions posed by the prosecutor, Dr. Thompson testified that he could not opine whether Stendrup's actions accelerated McDowell's death:

> Q. You cannot give an opinion that the assault accelerated Mr. McDowell's death; right?
> A. The -- The -- I think the problem with that is then I would have to know he was going to die.
>
> Q. Right.
> A. And I -- I, you know, don't have that capability.
> Q. Okay.
> A. So I -- *I couldn't say he -- it accelerated. I would only feel comfortable in saying it contributed.*

Lastly, the district court cites to the *Tyler* decision in which the Iowa Supreme Court considered causation in the context of an assailant who punched the victim in the face, knocking him to the ground, followed by a group of others who jumped and stomped on him while he was defenseless. *Tyler*, 873 N.W.2d at 744-45. The autopsy revealed the victim's death was not cause by Tyler's blows to the head, but by tears to the mesentery caused by the stampeding blows to the abdomen. *Id.* at 745, 747. On the issue of but-for causation, the Iowa Supreme Court found that "if Tyler had not hit [the victim], knocked him to the ground, and put him in a position of relative helplessness, he would not have died that night from the stomping and kicking that immediately followed." *Id.* at 748. Accordingly, without the initial assault, the ensuing violence would not have occurred, and the victim would have survived. The same cannot be said in this case. Stendrup's non-lethal altercation was not inextricably linked to McDowell's

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(Trial Tr. Vol. 5 at 113:8-25 to 115:1-8)(emphasis added). It is unclear from the record whether the district court sustained defense counsel's objection to the hypothetical questions and whether the offer of proof was considered part of the record.

methamphetamines use such that the latter would not have occurred in the absence of the former.

In the end, the district court's reliance on various soundbites from *McClain*, *Smith*, and *Tyler* decisions is misplaced. In all these respects, those decisions offer no guidance on the causation issue in this case. Accordingly, the court's ruling and verdict was the produce of clear error and must be reversed.

E. The district court erred in failing to apply the scope-of-liability analysis in deciding whether Stendrup's conduct caused McDowell's death

The causation inquiry does not end at but-for causation. There must be "sufficient causal relationship between the defendant's conduct and the proscribed harm" such that criminal liability is justified. *Tribble*, 790 N.W.2d at 126. Historically, this requirement was satisfied through the requirement of establishing proximate cause beyond a reasonable doubt. *State v. Wissing*, 528 N.W.2d 561, 564 (Iowa 1995) ("proximate cause serves as a requirement that there be a sufficient cause relationship between the defendant's conduct and a proscribed harm to hold him criminally responsible").

In 2009, the law of causation changed when Iowa Supreme Court adopted the Restatement (Third) of Torts: Liability for Physical and Emotional Harm (ALI 2010). *See Thompson v. Kaczinski*, 774 N.W.2d 829, 836-39 (Iowa 2009). "Then, in a succession of criminal cases in 2010 and 2011, [the Court] applied the updated law of tort causation from *Thompson* and the Restatement (Third) in the criminal context." *Tyler*, 873 N.W.2d at 749. But, the Court has stopped short of a full-throated adoption of the scope-of-liability framework in criminal cases. *Id.* (reserving the question of whether the scope-of-liability framework has replaced the proximate cause standard in criminal cases); *see also Roache*, 920 N.W.2d at 102 ("We expressly left open whether we would replace the legal or proximate cause analysis in criminal cases with the scope-of-liability approach of the Restatement (Third)").

Noting the uncertainty as to the state of the law, Stendrup's counsel argued for application of the scope-of-liability framework to the causation question. (07/23/21 Sentencing Hr'g Tr. at 7-9)(App. at 402). Under the scope-of-liability framework, an

"actor's liability is limited to those harms that result from the risks that made the actor's conduct" illegal. Restatement (Third) of Torts at § 29. "An actor who intentionally or recklessly causes harm is subject to liability for a broader range of harms than the harms for which that actor would be liable if only acting negligently." *Id.* § 33(b). But, "an actor who intentionally or recklessly causes harm is not subject to liability for harm the risk of which was not increased by the actor's intentional or reckless conduct." *Id.* § 33(b). "The 'scope of risk' created by an intentional [act] might be conceived as the harm intended or substantially certain to occur." *Id.* § 33, cmt. a. It is a fact-intensive inquiry that requires consideration of the moral culpability of the actor as reflected in the reasons for committing the tortious acts, the seriousness of harm intended and threatened by those acts, and the degree to which the actor's conduct deviated from appropriate care. *Id.* § 33(b).

The district court failed to address the scope of liability element in its ruling. This failure prejudiced Stendrup because his conduct did not fall within the scope of liability for his

intentional conduct. Most notably, there is no evidence in the record to suggest that Stendrup intended to cause McDowell's death. Indeed, the State expressly declined to pursue first-degree murder based on premeditation and deliberation. (Trial Tr. Vol. 1 at 37:6-7). Moreover, the injuries resulting from the altercation with the bat were minor—"only involv[ing] the skin." (Trial Tr. Vol. 5 at 103:10-22). While painful, the injuries were the type that a person would simply "walk off" without requiring hospitalization. (Trial Tr. Vol. 4 at 112:5-9). The fact that Stendrup had the opportunity to inflict fatal blows with the baseball bat but caused only minor injuries indicates that he did not intend to cause McDowell's death. On these facts, a reasonable juror could conclude that McDowell's injury is outside the scope of liability. Indeed, this case closely resembles an example in the Restatement (Third) of Torts in which the actor's conduct falls outside the scope of liability:

> After leaving a shopping mall one night, Joe was confronted by Alex and Rob, two young hoodlums who approached Joe with threatening gestures and words, and who were carrying martial-arts weapons. Joe began to run from Alex and Rob, but was struck by lightning, causing Joe serious burns. Alex and Rob,

> despite their assault on Joe, are not liable for his harm because their assault, while a factual cause of Joe's burns, did not increase the risk of being struck by lightning and suffering burns.

Restatement (Third) of Torts § 33, cmt. f. It goes without saying that the reason that assault with a dangerous weapon is prohibit under Iowa Code chapter 708 is not to reduce the incidences of methamphetamine overdoses. That is not to say that Stendrup's conduct is beyond prosecution. It simply means that he cannot be held to account for a methamphetamine overdose because he inflicted minor injuries to McDowell close in time to his death.

II. STENDRUP'S MURDER CONVICTION IS CONTRARY TO THE WEIGHT OF THE EVIDENCE

Error Preservation

Stendrup preserved error by filing a post-trial motion for new trial, which the court considered and denied. (App. at 462-467, 474).

Scope and Standard of Review

Review of a district court's denial of a motion for new trial is for abuse of discretion. *State v. Nitcher*, 720 N.W.2d 547, 559 (Iowa 2006).

Analysis

A motion for new trial asserting a verdict is contrary to evidence under Iowa Rule of Criminal Procedure 2.24(2)(b)(6) should be granted only if, after weighing the evidence and considering the credibility of witnesses, the court concludes the verdict is "contrary to the weight of the evidence" and a miscarriage of justice may have occurred. *State v. Ellis*, 578 N.W.2d 655, 658-59 (Iowa 1998). The "weight of the evidence" refers to a determination that "a greater amount of credible evidence supports one side of an issue or cause than the other." *Id.* at 658. All evidence is considered, not just that of an inculpatory nature. *State v. Huser*, 894 N.W.2d 472, 490 (Iowa 2017). The evidence presented "must raise a fair inference of guilt and do more than create speculation, suspicion, or conjecture." *State v. Hamilton*, 309 N.W.2d 471, 479 (Iowa 1981).

A. The district court's finding that Stendrup's conduct was a factual cause of McDowell's death is contrary to the weight of the evidence

The only credible evidence in the record concerning McDowell's cause of death comes in the form of scientific findings

of his autopsy. Dr. Thompson testified unequivocally that "the injuries from the blunt force trauma from the assault were not sufficient alone to kill Jeremy McDowell." (Trial Tr. Vol. 5 at 104:2-12). He was equally unequivocal that "4,900 nanograms per milliliter is more than sufficiently toxic to be lethal." (Trial Tr. Vol. 5 at 104:13-15). Based on this testimony, it is clear that the non-life-threatening injuries from the assault "merely played a nonessential contributing role" in McDowell's death. *Burrage*, 571 U.S. at 212. Because Stendrup's conduct was "not an independently sufficient cause of [McDowell's] death," he cannot be liable for first-degree murder. *Id.* at 218.

Despite Dr. Thompson's straightforward testimony, the district court downplayed the lethality of McDowell's methamphetamines use to conclude it would not have been enough alone to cause his death:

> While Mr. McDowell had high levels of methamphetamines in his system, he was a long term serious methamphetamines user. Mr. McDowell's tolerance must be considered. If he was dangerously close to overdose, the court can only conclude that the methamphetamine level, combined with the beating,

> pushed Mr. McDowell's norephinephrine levels too high. The beating cause Mr. McDowell's death.

(App. at 459). There is no evidence—let alone the weight of the evidence—to support the Court's findings in this paragraph. The testimony at trial was the McDowell was a daily user of methamphetamines. (Trial Tr. Vol 3 at 43:23-25). The credible evidence in the record is that McDowell used methamphetamines the day he died. (Trial Tr. Vol 5 at 108:2-17). But, for at least a week prior to his death, McDowell was unable to get meth because Stendrup was his supplier, and they had a falling out. (Trial Tr. Vol. 3 at 48:19-25 to 49:1-17). As far as Anderson knew, McDowell did not have another methamphetamines supplier. (Trial Tr. Vol. 3 at 89:14-17). There is no evidence in the record concerning McDowell's drug use the week prior to his death in which he was unable to get meth from Stendrup. Moreover, Dr. Thompson expressly disclaimed any ability to draw conclusions about an individual's drug tolerance:

> Q. In fact, that specific article you're referencing, does it tell you not to use just that number in determining a cause of death?

A. Well, I have another article here. This is from a book. It's called *Principles of Forensic Toxicology*, the Fifth Edition. And in it they have a title -- they – they have a chapter on amphetamines, which includes methamphetamines. And it's under the Postmortem heading.

And it states -- it reads: As is true with most abused drugs, tolerance makes it very difficult to use blood and tissue concentrations as predictors of cause or contribution to death. Studies state amphetamine blood concentrations of 2 to 3 milligrams per liter have been seen in tolerant addicts, while methamphetamine slash amphetamine concentrations in fatal cases have ranged from less than 1 milligram per liter to greater than 14 milligrams per liter.

And then it states: Since the degree of tolerance for any drug is impossible to determine at autopsy, attributing significance to isolated postmortem concentration -- so that means just looking at the drug -- or back calculating to a dose is unwise.

* * *

Q. And you -- you testified on direct examination about tolerance. You're not able as a medical examiner to quantify an individual's drug tolerance?

A. That's correct.

(Trial Tr. Vol. 5 at 85:13-25 to 86:1-9, 117:22-25). Similarly, Dr. Thompson was unable to quantify how McDowell's norepinephrine levels were affected by the assault:

Q. In layman's terms, sometimes we hear the word an adrenaline dump. Do you know what I'm talking about?

A. Is that similar to an adrenaline rush?

Q. Or an adrenaline rush --

A. Okay.

Q. -- yes. So --

A. Yes.

Q. So you -- you have that first fight-or-flight reflex, where you get excited in response to whatever the stimulus is, and then you -- you come down from that rush; is that right?

A. Yes.

Q. Okay. So, in other words, an individual doesn't have a sustained adrenaline level; they can't sustain that forever; is that right?

A. That's correct.

Q. So when Mister -- So if an individual takes methamphetamines it -- it stimulates that adrenaline reflex; is that right?

A. Yes.

Q. And so you're unable as a medical examiner to make a determination whether Mr. McDowell -- whether an individual is coming down from an adrenaline rush at the same time another event that causes adrenaline takes place; you wouldn't be able to do that?

> A. No, I cannot. That's -- That's very common in people that use methamphetamines. Sometimes they'll do it for days on a time. And you -- essentially, you deplete all that norepinephrine that we talk about; and then the meth user will try to use more and more and more because they want that high. But they can't because their norepinephrine levels are essentially depleted. So – And that's I think sometimes called a -- a crash. And then they, you know, eventually stop and then sleep for days on end. But, yeah, you're exactly right. I can test a level of methamphetamine in the blood, but I don't know, you know, where on that curve of -- of norepinephrine he would be on.

(Trial Tr. Vol. 5 at 116:9-25 to 117:1-21). Further, Dr. Thompson testified that he could not measure the degree to which McDowell's ventricular fibrillation was attributable to the methamphetamines use as opposed to the assault. (Trial Tr. Vol. 5 at 118:1-22).

The district court also cites as persuasive the testimony from the paramedic, Ryan Volk, that McDowell had been dead for some time prior to his attempt to resuscitate him. (App. at 458-459). Volk's opinion was based upon his observation of McDowell as being cyanotic, stiff, and cool to the touch. (Trial Tr. Vol. 3 Trial Tr. at 203:6-25 to 208:1-8). Dr. Thompson testified, however, no reliable conclusion about the time of death can be drawn based

upon the temperature of the deceased's body and the extent of rigor mortis. (Trial Tr. Vol. 5 at 93:11-25 to 94:1-25).

Moreover, the greater weight of the evidence in the record is that McDowell was breathing after the assault even if he was not responsive. (Trial Tr. Vol. 5 at 126:15-23) ("To me unresponsive means you're not moving. You're not talking. You could still be breathing. You could still have a heart rate"). Anderson did not check to see whether he was breathing. (Trial Tr. Vol. 3 at 110:17-25 to 111:1-4). But, Wearmouth testified that McDowell was breathing when he was there because he "could see his chest moving." (Trial Tr. Vol. 3 at 160:16-19, 162:15-19). Likewise, Sheeder told the 911 dispatch that she thought McDowell was breathing because his eyes were open. (Trial Tr. Vol. 3 at 170:6-13).

In short, the district court's verdict is based entirely upon findings that Dr. Thompson testified could not be made with scientific certainty. The greater weight of the evidence is that McDowell's methamphetamine use was the factual case of his

death. Stendrup's conviction, therefore, must be reversed and remanded for a new trial.

B. The district court's first-degree guilty verdict is irreconcilable with the blood evidence at the scene

The cornerstone of the district court's first-degree murder verdict is its finding that "McDowell was conscious when Mr. Stendrup began beating Mr. McDowell with a bat . . . [and] *McDowell was unresponsive immediately after the beating and never become* (sic) *responsive*." (App. at 458) (emphasis added). The evidentiary support for the district court's finding comes from the testimony of the State's eyewitness David Anderson. According to Anderson, he arranged for McDowell to come over to his residence in the early morning hours of June 22, 2018, to deliver drugs. (Trial Tr. Vol. 3 at 54:25 to 55:1-9). Anderson informed Sheeder and Stendrup that McDowell would be at his house, and they agreed to come over to meet McDowell "to resolve their issues . . . to get [Stendrup's] stolen property back." (Trial Tr. Vol. 3 at 54:18-20). When McDowell arrived, he delivered to Anderson a quarter ounce of methamphetamines. (Trial Tr. Vol. 3 at 55:21-25, 68-1). Anderson, himself under the influence of

methamphetamines, could tell that McDowell was already high on methamphetamines when he arrived. (Trial Tr. Vol. 3 at 75:2-5). Nonetheless, they agreed to smoke more meth together. (Trial Tr. Vol. 3 at 55:21-25, 68:1). Sheeder called McDowell, and they talked while Anderson was in the bathroom. (Trial Tr. Vol. 3 at 56:17-25 to 57-1-5).

As Anderson exited the bathroom, Stendrup come into the residence with a baseball bat and followed McDowell into the kitchen. (Trial Tr. Vol. 3 at 57:6-16). Anderson heard Stendrup say to McDowell, "Where's my shit, I'm going to fucking kill you." (Trial Tr. Vol. 3 at 102:16-21). Anderson followed them to the kitchen and observed Stendrup strike Anderson a couple of times with the bat. (Trial Tr. Vol. 3 at 58:13-25 to 59:1-8). He then went outside where he saw Sheeder looking through his van. (Trial Tr. Vol. 3 at 59:15-23). Anderson told Sheeder that she needed to stop the fight, and she responded that he needed to take care of it himself. (Trial Tr. Vol. 3 at 60:21-25 to 61:1-24). Sheeder was still on the phone with McDowell, and Anderson, therefore, could hear everything that was going on. (Trial Tr. Vol.

3 at 60:6-13). Thereafter, Anderson went in the house to the kitchen and yelled at Stendrup to stop. (Trial Tr. Vol. 3 at 63:11-17). When Stendrup did not stop immediately, Anderson went back outside. (Trial Tr. Vol. 3 at 63:13-17). Within a few seconds, Stendrup headed out the door of the house. (Trial Tr. Vol. 3 at 64:3-23). Stendrup told Anderson that he would pay for the damage to the house but said he would come back and burn down his house if Anderson told the police. (Trial Tr. Vol. 3 at 64:16-21).

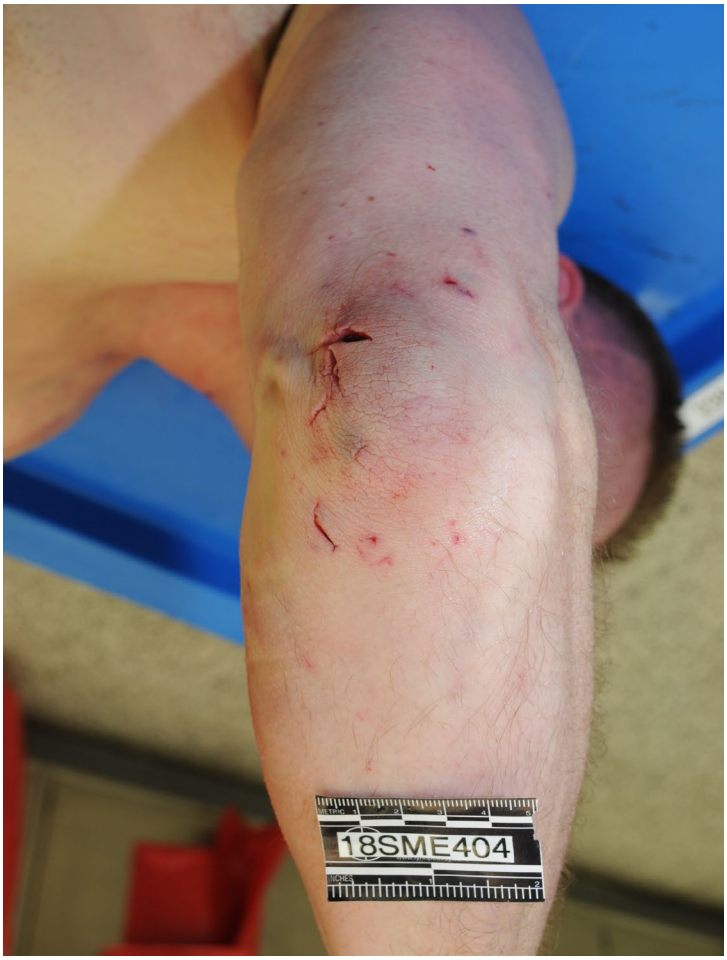
Anderson went back inside to find McDowell face down on his left side on the floor between the kitchen and the living room. (Trial Tr. Vol. 3 at 65:1-3). McDowell's torso was in the living room, his legs in the kitchen, and his waist "right about in the middle of the doorway. (Trial Tr. Vol. 3 at 108:2-25 to 110:1-6). Anderson did not observe any blood on McDowell or in the area around him. (Trial Tr. Vol. 3 at 112:1-3). Anderson shook McDowell and tried to feel for a pulse, but he did not respond. (Trial Tr. Vol. 3 at 65:13-21). Anderson went back outside and called his girlfriend Doreen Coleman who was working at a local convenience store. (Trial Tr. Vol. 3 at 66:15-16). Because there

were drugs in the house, Anderson did not call 911. (Trial Tr. Vol. 3 at 66:25 to 67:1). After calling Coleman, Anderson gathered up the drugs and took them to his neighbor Tom Wearmouth's house. (Trial Tr. Vol. 3 at 67:10-20).

When Anderson returned from Wearmouth's house, McDowell was still in the same position as when he left. (Trial Tr. Vol. 3 at 70:20-24). They rolled McDowell onto his back so that he was upwards facing. (Trial Tr. Vol. 3 at 120:24-25 to 121:1). Sheeder, a trained CNA, checked McDowell's pulse, cradled his head, and told Anderson that he was still alive. (Trial Tr. Vol. 3 at 70:13-19). Anderson pulled around his van, and they attempted to move McDowell, but he was too heavy. (Trial Tr. Vol. 3 at 71:8-11). Anderson went to Wearmouth's house to enlist his assistance. (Trial Tr. Vol. 3 at 71:21-22 to 72:1-2). The three of them moved McDowell from the house to the van, and Sheeder drove him to the hospital. (Trial Tr. Vol. 3 at 72:10-25 to 73:1-21).

Anderson's testimony that McDowell collapsed during the altercation and never regained consciousness is irreconcilable with the blood evidence at the scene. For example, there is no dispute

that Stendrup sustained a laceration to his right elbow during the altercation:



(App. at 518). Dr. Thompson testified that that McDowell had "12 sharp force injuries to his right elbow." (Trial Tr. Vol. 5 at 52:4-11). In his opinion, the injuries to the right elbow would have resulted in "significant loss of blood" that he assumed would have required stitches. (Trial Tr. Vol. 5 at 112:11-25 to 113:1-6). When

McDowell presented for examination, Dr. Thompson observed a blood-soaked t-shirt wrapped around McDowell's arm:

(Trial Tr. Vol. 5 at 111:22-25 to 113:1-7)(App. at 547, 548). In addition, photographs from the scene reveal several blood stains on the coach in Anderson's living room:

(App. at 507). There is blood on the stereo cabinet in Anderson's living room. (App. at 542, 543, 544). There are blood stains in several different areas of the kitchen: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STATE'S
EXHIBIT # T-41
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STATE'S
EXHIBIT # T-45
06.22.2018 12:57


E-FILED 2021 FEB 18 1:16 PM JASPER - CLERK OF DISTRICT COURT
STATE'S
EXHIBIT # T-48
06.22.2018 13:33


STATE'S
EXHIBIT # T-50
06.22.2018 13:34

(Ex. 47, 48, 50)(App. at 504, 505, 506, 546). Yet, there is only a small amount of blood on the carpet in the area in which McDowell is supposed to have collapsed:

(App. at 545).

The court's finding that "McDowell was unresponsive immediately after the beating" is entirely at odds with the evidence at the scene and witness testimony. Taken together, the physical evidence establishes that McDowell had a gash on his right elbow, which left blood stains in at least six different areas of the kitchen. Additionally, substantial blood from the cut seeped into the t-shirt the medical examiner found tied to McDowell's elbow. Anderson testified that he was not aware of anything that would have led him "to believe that [Stendrup and McDowell] moved from the kitchen to the living room" during the fight. (Trial Tr. Vol. 3 at 121:2-10). Yet, there are blood stains in several areas on the sofa and stereo cabinet in the living room. According to Anderson, the altercation was "once continuous sequence of events" in which McDowell would not have had time to clean up the blood. (Trial Tr. Vol. 3 at 114:10-13). Remarkably, Anderson never observed any blood on McDowell, in the area in which he purportedly collapsed, or in the kitchen. (Trial Tr. Vol. 3 at 77:11-16, 112:1-6). Curiously, Anderson cannot explain how the blood

spots got onto the sofa and stereo cabinet. (Trial Tr. Vol. 3 at 113:6-25 to 114:1-9). Nor can he explain the blood-like discolorations on his kitchen counter. (Trial Tr. Vol. 3 at 114:22-25 to 116:1-20)(Ex. 49).

Wearmouth's testimony does not support the district court's findings of fact either. According to Wearmouth, McDowell was not wearing a shirt when he arrived to help move him. (Trial Tr. Vol. 3 at 159:13-18). Despite the deep cut on McDowell's elbow, Wearmouth did not observe any blood on Anderson, Sheeder, McDowell, or inside Anderson's van. (Trial Tr. Vol. 3 at 162:20-24). Nor did he get any blood on himself while he helped carry McDowell to the van. (Trial Tr. Vol. 3 at 163:7-9).

It blinks reality to believe from the evidence at trial that McDowell was able to cause several blood stains on the sofa and stereo cabinet, soak his t-shirt full of blood, and then clean himself up to the point that neither eyewitness observed any blood on him—*all while he was nonresponsive laying in the doorway between the living room and kitchen*. But, this finding is the lynchpin to the district court's verdict. From the finding that

McDowell collapsed during the fight and never regained consciousness, the court concluded the beating "push Mr. McDowell's norepinephrine levels too high" and caused his death. (App. at 459). Remove that evidence from the equation, and the whole theory of causation falls apart.

C. Anderson's trial testimony is so self-contradictory that it should be considered a nullity

Generally, the credibility of the witnesses is left to the trier of fact. *State v. Mitchell*, 568 N.W.2d 493, 503 (Iowa 1997). In *State v. Smith*, 508 N.W.2d 101 (Iowa Ct. App. 1993), however, the court of appeals recognized an exception to that rule where "[t]he testimony of a witness is so impossible and absurd and self-contradictory that it should be deemed a nullity by the court." *Id.* at 103. This is a case in point.

The Court would be hard pressed to find less credible witness in the entire Northwest Reporter system. For starters, Anderson was previously convicted of credit card fraud and served a total of twenty-one years in prison. (Trial Tr. Vol. 3 at 88:22-23). At the time of McDowell's death, Anderson and his girlfriend were daily users of methamphetamines, which Anderson supported by

trafficking drugs. (Trial Tr. Vol. 2 at 161:16-22; Vol. 3 at 99:14-22). On the night of McDowell's death, Anderson was admittedly "under the influence of methamphetamine." (Trial Tr. Vol. 3 at 74:22-25 to 75:1-5). The district adopts substantially all of Anderson's testimony but strangely omits these characteristics from its findings of fact.

During the State's direct examination of Anderson, he testified that Stendrup and McDowell's falling out meant that he lost "the ability to get methamphetamine from Jeremy McDowell" because McDowell "had no other source of methamphetamines other than Mr. Stendrup." (Trial Tr. Vol. 3 at 48:19-25 to 49:1-16, 89:8-13). Paradoxically, Anderson was able to purchase a quarter ounce of methamphetamines from McDowell the day before his death. (Trial Tr. Vol. 3 at 55:2-9, 68:1). When confronted about this contradiction on cross-examination, Anderson simply declared, "Apparently he found another place to get it." (Trial Tr. Vol. 3 at 90:1-14). Also on cross-examination, Anderson conflicted his earlier testimony that he lost the ability to get methamphetamines when he admitted to purchasing one ounce of

methamphetamines from Sheeder around nine or ten o'clock on the evening of June 21, 2018. (Trial Tr. Vol. 3 at 91:3-6). In fact, Anderson had so much methamphetamines in his house that he had to bag it up and stash it at Wearmouth rather than calling 911 or attempting to resuscitate his friend of fifteen years. (Trial Tr. Vol. 3 at 111:8-25).

Anderson's explanation for McDowell's presence at his house on June 21st is even more convoluted. Initially, he testified that McDowell had previously arranged to come over to his house on June 21st to deliver methamphetamines that Anderson had purchased the previous night. (Trial Tr. Vol. 3 at 90:20-23). After Sheeder delivered one ounce of methamphetamines to Anderson, he called McDowell to come over to "hang out" and "get high with him." (Trial Tr. Vol. at 93:2-25 to 95:1-24). Anderson did this because that that's what they would do to "help each other out" when "one of [them] had some [methamphetamines] and the other didn't." (Trial Tr. Vol. at 95:1-14). Of course, that is not at all consistent with his testimony concerning their prior plans for McDowell to come over to deliver methamphetamines that he

apparently acquired from another source. It gets worse. On cross-examination, defense counsel impeached Anderson with his prior deposition testimony in which he stated that he called McDowell an hour after talking to Sheeder and invited him over under the false pretense of helping McDowell bond his girlfriend out of jail. (Trial Tr. Vol. 3 at 93:2-25 to 951-24).

Similarly, on direct examination Anderson testified that he reached an agreement with Stendrup and Sheeder for them to come to his house to retrieve stolen property:

> Q. Was -- Was there an agreement between the defendant, yourself, and Jaycie Sheeder to meet at your house?
> A. Yes.
>
> Q. Did Jeremy McDowell know about this agreement?
> A. He did not.
>
> Q. What was the purpose of meeting at your house?
> A. To resolve their issues and for Jeff to -- to get his stolen property back.
>
> Q. Okay. To retrieve stolen property?
> A. Right.

(Trial Tr. Vol. 3 at 54:12-22). When pressed about the agreement cross-examination, however, Anderson disavowed any agreement

with Stendrup and Sheeder to obtain stolen property from McDowell at his house:

> Q. Okay. And when -- when you talked to Mr. McDowell after buying methamphetamines from Ms. Sheeder, do you tell him to bring over Jeff's stuff?
> A. No.
>
> Q. Okay. So how would it be possible for Mr. Stendrup to get his stuff back?
> A. They -- Because they were going to discuss making arrangements to do so. I don't know. I can't tell you what Jeff was thinking or what -- what Jaycie was thinking.
>
> Q. Okay. So your understanding was that they were not going to come over to your house to reclaim the property at your house?
> A. If he had it with him, I suppose they – they would have.
>
> Q. Okay. But you have no knowledge --
> A. I didn't have any knowledge exactly what was stolen. So I wouldn't know.

(Trial Tr. Vol. 3 at 97:20-25 to 98:1-11). As in *Smith*, Anderson's "testimony as a whole is self-contradictory, lacks experiential detail, and describes scenes . . . that border on the surreal." *Smith*, 508 N.W.2d at 104.

III. BOTH OF STENDRUP'S CONVICTIONS MUST BE REVERSED BECAUSE THE EVIDENCE IS INSUFFICIENT TO ESTABLISH THAT HE HAD THE SPECIFIC INTENT TO COMMIT A THEFT

Error Preservation

Stendrup preserved error by moving for judgment of acquittal at the conclusion of the evidence, which the trial court denied. (Trial Tr. Vol. 5 at 129:10-25 to 130:1-6; Vol. 6 at 13:4-25 to 15:1-25, 18:21-25 to 19:1-6).

Scope and Standard of Review

The Court reviews challenges to the sufficiency of the evidence for correction of errors at law. *Webb*, 648 N.W.2d at 75.

Review of a district court's denial of a motion for new trial is for abuse of discretion. *Nitcher*, 720 N.W.2d at 559.

Analysis

A. Applicable legal principles

To establish felony murder, the State must prove beyond a reasonable doubt that Stendrup killed McDowell while he was participating in the predicate forcible felony of robbery. Iowa Code § 707.2(1)(b). In turn, to establish first-degree robbery, the State was required to prove beyond a reasonable doubt:

1. On or about the 21st day of June, 2018, the Stendrup had the specific intent to commit a theft.

2. To carry out his intention or to assist him in escaping from the scene, with or without the stolen property, the Stendrup committed an assault on Jeremy McDowell; and

3. Stendrup was armed with a dangerous weapon.

See id. §§ 711.1, 711.2; Iowa Crim. Jury Instr. 1100.1. Without a finding that Stendrup committed robbery, there can be no felony murder conviction.

The district court's analysis supporting its robbery verdict follows in three steps. First, Stendrup and Sheeder arranged to have McDowell come to Anderson's house in Colfax. (App. at 451). Second, Stendrup beat McDowell with a bat while asking, "Where's my shit?" (App. at 451). Third, Sheeder went through the van McDowell drove while the altercation transpired. (App. at 451-452). From these findings, the court concluded that "Mr. Stendrup and Ms. Sheeder were at the Colfax residence to take property that was in Mr. McDowell's possession and control." (App. at 452).

The evidence is insufficient as a matter of law to support any of these findings. Instead, the court's conclusions are the product gross distortions of the record. In the very least, the court's verdict is contrary to the weigh of the evidence. Accordingly, Stendrup's robbery and felony-murder convictions must be reversed.

B. The evidence is insufficient to support the district court's finding that Stendrup and Sheeder arranged to have McDowell at Anderson's Colfax residence

The first link in the district court's chain of logic supporting its robbery verdict is the finding that "Mr. Stendrup, individually and with Ms. Sheeder, arranged to have Mr. McDowell be at the Colfax residence." (App. at 451). The clear implication from this finding is that Stendrup, Sheeder, and Anderson conspired to set up McDowell. For this fact, the court draws the inference that Stendrup acted with the specific intent to commit a theft. The record, however, does not remotely support this finding.

Anderson testified that McDowell was not lured to his house in the early morning hours of June 21st. Instead, McDowell was "already coming over to [Anderson's] place" to deliver

methamphetamines that he purchased the previous day. (Trial Tr. Vol. 3 at 92:16-21). In other words, it was not a set up because, as Anderson testified, he and McDowell "had already prearranged" for him to come over to the house. (Trial Tr. Vol. 3 at 96:5-13).

C. The court's finding that Stendrup beat McDowell with a bat while asking, "Where's my Shit?" grossly misrepresents the record evidence

The court also made the following finding:

> Mr. Stendrup acted to further the commission of a theft. Mr. Stendrup confronted Mr. McDowell with a bat, and beat Mr. McDowell with the bat, while Mr. Stendrup asked: "Where's my shit?"

(App. at 451). This finding takes Stendrup's statements out of context. According to Anderson, Stendrup's full statement to McDowell preceding the altercation was, "Where's my shit? *I'm going to kill you*." (Trial Tr. Vol. 3 at 102:13-22)(emphasis added). The district court's omission is significant because it reflects an intent to assault McDowell apart from a desire to commit a theft.

The court's ruling also overlooked several other items of exculpatory evidence in the record. First, the court failed to mention that Stendrup did not intend to confront McDowell in the

first place. Instead, he had arranged for a friend, Andrew Forrest, to accompany Sheeder as she went to retrieve some of her personal items. (Trial Tr. Vol. 3 at 15:10-25 to 17:1-9). Stendrup was not even planning to go to Colfax until Forrest pulled out around 1:00 a.m. (Trial Tr. Vol. 3 at 23:11-15). Had he had his way, Stendrup would not have even gone to Anderson's house. On top of that, Forrest testified that Stendrup never asked him to assault McDowell or steal anything from him:

> Q. Okay. Regarding that, or the situation that you never made it to Colfax -- okay? -- did Mr. Stendrup ask you to steal anything?
> A. No.
>
> Q. Did Mr. Stendrup ask you to assault anyone?
> A. No.
>
> Q. Did Mr. Stendrup ask you to rob anyone?
> A. No.
>
> Q. Did he ask you to steal anything?
> A. Absolutely not.
>
> Q. In essence, you were there to help carry some stuff to the car; and if things went south, you were there to protect whoever was there?
> A. Correct.

(Trial Tr. Vol. 3 at 32:10-23).

The court makes no mention of the testimony of Julie Landry's testimony that Stendrup did not go over to Anderson's to violently confront McDowell:

> Prosecutor: Did he tell you he was going because he wanted the drugs and money back?
>
> Landry: Um, hm. Well, I'm not saying like it was a confrontation like he was going to go out there, and you know, he had every intentions of kicking his ass or anything like that. It's just to basically confront his friend with, you now, the knowledge that he knew that Jeremy was sleeping with the Shelly girl and that he knew that, you know, that it was them that came in and, you know, stole the stuff and stole the cars.

(Ex. 101 at 19:35-20:10; Trial Tr. Vol. 1 at 65-68). Nor does the court mention Anderson's testimony that he did not believe that Stendrup came over with the intent to rob McDowell:

> Q. You would not have set up the meeting if you thought that the falling out would continue; right?
> A. Correct.
>
> Q. You didn't think that there was going to be a physical fight?
> A. No.
>
> Q. And in terms of reclaiming the property, you had no belief that they were going to reclaim the property with any violence?

A. Correct.

Q. Mr. Stendrup did not tell you he wanted to meet with Mr. McDowell at your house to rob him?
A. No.

Q. Jaycie Sheeder did not say that to you?
A. No, she did not.

(Trial Tr. Vol. 3 at 100:6-20).

It must also be emphasized that *Stendrup did not take anything from McDowell*. (Trial Tr. Vol. 2 at 188:19-25). To the contrary, McDowell had $415 in cash in his wallet along with a baggie of methamphetamines in his pocket at the time of death. (Trial Tr. Vol. 188:21-25 to 190:1-13). Inexplicably, the district court remarked, "Whether or not Mr. Stendrup took anything from Mr. McDowell is irrelevant." (App. at 452). This finding is profoundly incorrect. While the court may not find the fact that Stendrup did not take anything to be outcome determinative, it is definitely probative on Stendrup's state of mind before, during, and after the altercation. To hold that it is "irrelevant" is clear error.

Lastly, the court turns a blind eye to the evidence presented at trial of the mutual resentment between Stendrup and

McDowell. It bears repeating that McDowell found Stendrup in bed with his then-girlfriend. In response, McDowell had sex with Stendrup's girlfriend. (Trial Tr. Vol. 1 at 60:13-16; Vol. 3 at 51:4-19). It's not surprising then, that Stendrup declared, "I want to kill you" upon seeing McDowell at Anderson's house. (Trial Tr. Vol. 3 at 103:7-9). The text messages leading up to the assault corroborate the bad blood that had developed between the two men. On June 19, 2018, for instance, Stendrup texted McDowell, in part, "You're a bunch of fucking bitches, little punk mother fuckers. You're a fucking little faggot, Jeremy. *And when I see you, I'm going to beat your face to the ground*." (App. at 492)(emphasis added).

D. The fact that Sheeder went through van that McDowell drove is not evidence of intent to commit a theft because she had the owner's consent to retrieve her property

The last link in the district court's logic chain is the finding that "Ms Sheeder was going through the van McDowell drove" while the altercation took place. (App. at 451-452). This fact, however, does not carry the weight the district court suggests. The record clearly establishes that Anderson – *not McDowell* –

owned the blue van that Sheeder looked through during the altercation. (Trial Tr. Vol. 3 at 98:10-25). And, Sheeder had Anderson's permission to look through the van and retrieve her personal property. (Trial Tr. Vol. 3 at 98:10-25). Nothing in the record suggests that Stendrup's confrontation with McDowell was necessary to allow Sheeder the right to look through Anderson's van for her personal belongings.

The Iowa Supreme Court has emphasized that reviewing the sufficiency of the evidence requires consideration of "evidence in the record, *including evidence that does not support the verdict*." *State v. Petithory*, 702 N.W.2d 854, 856-57 (Iowa 2005) (emphasis added). "Evidence raising only suspicion, speculation, or conjecture is not substantial." *State v. Leckington*, 713 N.W.2d 218, 221 (Iowa 2006). The district court's ruling omits several material aspects of the record that prove Stendrup did not act with the specific intent to commit a theft during the altercation. When considered in the proper context, the court's findings of fact do not support the robbery and felony-murder verdicts beyond

suspicion, speculation, or conjecture. Accordingly, Stendrup's convictions must be reversed.

CONCLUSION

For these reasons, Jeffrey Strendrup asks this Court to reverse his convictions.

REQUEST FOR ORAL ARGUMENT

Jeffrey Stendrup requests to be heard in oral argument.

COST CERTIFICATE

I hereby certify that the costs of printing the Appellant's brief was $27.75, and that that amount has been paid in full by me.

CERTIFICATE OF COMPLIANCE

This brief complies with the typeface requirements and the type-volume limitation of Iowa R. App. P. 6.903(1)(*d*) and 6.903(1)(*g*)(1) or (2) because:

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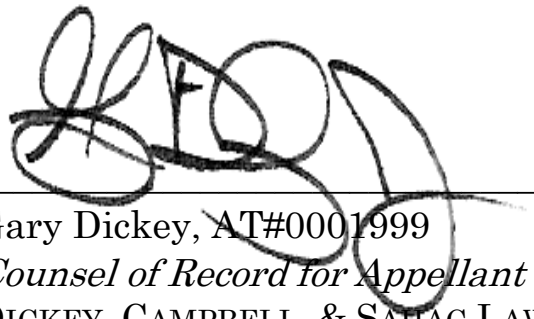

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