

IN THE SUPREME COURT OF IOWA

STATE OF IOWA  
Plaintiff-Appellee,

v.  
MAURICE FREDERICK  
BOONE JR.,  
Defendant-Appellant.

SUPREME COURT NO.  
21-1813

POLK COUNTY NO.  
FECR296139

APPEAL FROM THE IOWA DISTRICT COURT FOR  
POLK COUNTY  
THE HONORABLE SCOTT BEATTIE

APPELLANT'S FINAL BRIEF AND ARGUMENT

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## TABLE OF CONTENTS

TABLE OF AUTHORITIES.....	3
STATEMENT OF THE ISSUES.....	4
ROUTING STATEMENT.....	5
STATEMENT OF THE CASE .....	5
Nature of the Case.....	5
Course of Proceedings.....	6
Statement of the Facts .....	7
ARGUMENT .....	12
I. THE DISTRICT COURT ERRED IN DENYING BOONE’S MOTION TO DISMISS .....	12
CONCLUSION.....	24
REQUEST FOR ORAL ARGUMENT.....	24
ATTORNEY’S COST CERTIFICATE.....	25
CERTIFICATE OF COMPLIANCE.....	26
CERTIFICATE OF SERVICE AND CERTIFICIATE OF FILING .....	27

## TABLE OF AUTHORITIES

### Cases

<i>Couture v. Com.</i> , 338 Mass. 31, 34, 153 N.E.2d 625 (1958) .....	22
<i>In re Estate of Bockwoldt</i> , 814 N.W.2d 215 (Iowa 2012).....	19
<i>Meier v. Senecaut</i> , 641 N.W.2d 532 (Iowa 2002).....	12
<i>People v. Carman</i> , 52 N.E.2d 197, 199 (Ill. 1943) .....	21
<i>Rhodes v. State</i> , 2022 WL 610447 (Iowa App.).....	5, 14
<i>State v. Adams</i> , 810 N.W.2d 365 (Iowa 2012) .....	19
<i>State v. Childs</i> , 898 N.W.2d 177 (Iowa 2017) .....	12
<i>State v. Gansz</i> , 376 N.W.2d 887 (Iowa 1985) .....	14
<i>State v. Howard</i> , 610 N.W.2d 535 (Iowa App. 1999) .....	13
<i>State v. Moran</i> , 709 N.W. 187 (1906).....	13
<i>State v. Romer</i> , 832 N.W.2d 169 (Iowa 2013).....	19
<i>State v. Tipton</i> , 897 N.W.2d 653 (Iowa 2017).....	13
<i>State v. Walden</i> , 870 N.W.2d 842 (Iowa 2015) .....	14, 21
<i>Toussie v. United States</i> , 397 U.S. 112 (1970) .....	14

### Statutes

720 Ill. Comp. Stat. Ann. 5/3-7.....	21
Ariz. Rev. Stat. Ann. § 13-107.....	22
Ark. Code Ann. § 5-1-109 .....	22
Fla. Stat. Ann. § 775.15.....	22
Iowa Code section 708.4 .....	6, 7
Iowa Code section 708.6. ....	6, 7
Iowa Code section 802.3 .....	12, 16
Iowa Code section 802.6 .....	passim

### Other Authorities

5 Wayne R. LaFave., <i>Criminal Procedure</i> § 18.5(a) (4 <sup>th</sup> ed. 2015).....	13
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## STATEMENT OF THE ISSUES

### I. DID THE DISTRICT COURT ERR IN DENYING BOONE'S MOTION TO DISMISS BY HOLDING THAT THE STATUTE OF LIMITATIONS HAD TOLLED BECAUSE HE WAS NOT "PUBLICLY RESIDENT" WITHIN THE STATE?

#### Cases

*Couture v. Com.*, 338 Mass. 31, 34, 153 N.E.2d 625 (1958)

*In re Estate of Bockwolddt*, 814 N.W.2d 215 (Iowa 2012)

*Meier v. Senecaut*, 641 N.W.2d 532 (Iowa 2002)

*People v. Carman*, 52 N.E.2d 197, 199 (Ill. 1943)

*Rhodes v. State*, 2022 WL 610447 (Iowa App.)

*State v. Adams*, 810 N.W.2d 365 (Iowa 2012)

*State v. Childs*, 898 N.W.2d 177 (Iowa 2017)

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*State v. Romer*, 832 N.W.2d 169 (Iowa 2013)

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720 Ill. Comp. Stat. Ann. 5/3-7

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Fla. Stat. Ann. § 775.15

Iowa Code section 708.4

Iowa Code section 708.6.

Iowa Code section 802.3

Iowa Code section 802.6

#### Other Authorities

5 Wayne R. LaFave., *Criminal Procedure* § 18.5(a) (4<sup>th</sup> ed. 2015)

## ROUTING STATEMENT

Retention by the Iowa Supreme Court would be appropriate as this case presents “substantial issues of first impression.” Iowa R. App. P. 6.1101(2)(c). This case involves the important interpretation of the tolling of the criminal statute of limitations found in Iowa Code section 802.6(1). Indeed, the Iowa Court of Appeals recently stated: “From our review of the limited case law on Iowa Code section 802.6, we have found no definition or interpretation of what it means to be ‘publicly resident.’” *Rhodes v. State*, 2022 WL 610447 (Iowa App.). Additionally, guidance is needed for Iowans and law enforcement as to whether the criminal statute of limitations is tolled only when an individual is not physically present in the State or if it is possible to still physically remain within the State’s borders and have the criminal statute of limitations tolled. Accordingly, Appellant respectfully requests that the Iowa Supreme Court retain this case.

## STATEMENT OF THE CASE

### Nature of the Case

This is an appeal following a trial on the minutes and a denial of a motion to dismiss commencing in the District Court for Polk County,

Iowa, the Honorable Scott Beattie presiding. The district court found Maurice Frederick Boone Jr. (“Boone”) guilty of willful injury causing serious bodily injury in violation of Iowa Code section 708.4(1) and intimidation with a dangerous weapon in violation of Iowa Code section 708.6.

### Course of Proceedings

On September 29, 2020, Boone was charged with two counts of attempt to commit murder in violation of Iowa Code section 701.11, two counts of willful injury causing serious injury in violation of Iowa Code § 708.4(1), and one count of intimidation with a dangerous weapon in violation of Iowa Code section 708.6. (APP - 004, Trial Information). After entering a plea of not guilty, Boone filed a motion to dismiss on March 16, 2021. (APP - 008, Motion to Dismiss). A hearing for the motion to dismiss occurred on April 9, 2021, and on May 14, 2021, the district court issued an order denying the motion to dismiss. (APP - 015, Ruling). On August 10, 2021, Boone waived his right to a jury trial by written waiver. (APP - 020, Waiver of Jury Trial). Boone stipulated to a trial on the minutes of testimony on August 10, 2021. (APP - 021, Stipulation to the Minutes of Testimony). On October 20, 2021, the district court entered a

judgment finding Boone guilty of willful injury causing serious bodily injury in violation of Iowa Code section 708.4(1) and intimidation with a dangerous weapon in violation of Iowa Code section 708.6. (APP - 023, Criminal Verdict). On November 30, 2021, the Court sentenced Boone to a term of incarceration not to exceed ten (10) years on each count, to be run consecutive to each other for a total period of incarceration not to exceed twenty (20) years. (APP – 038, Disposition Order). Boone filed a timely notice of appeal on December 1, 2021. (APP - 044, Notice of Appeal).

### **Statement of the Facts**

On May 17, 2016, a shooting occurred on the 1400 block of Des Moines Street in Des Moines, Iowa, wherein Kamaury Watson was shot in the back. (Conf.APP - 008, Minutes of Testimony). Watson was transported to Methodist Hospital where he was successfully treated and discharged. (Conf.APP - 008, Minutes of Testimony). The investigation eventually suggested Maurice Boone (“Boone”) and his brother Brian Boone were the perpetrators. (Conf.APP – 008-015, Minutes of Testimony). Detective Youngblut of Des Moines Police Department located Boone and spoke with him via telephone because Boone was in

Texas at the time. (Conf.APP - 014, Minutes of Testimony). An arrest warrant was issued on June 8, 2016. (4/19/21 Tr. P. 15 ln 22 –24). However, Boone was not arrested and charged until three (3) years later when he was stopped in Nebraska. (4/19/21 Tr. P. 20 ln 13 – P. 11 ln 7). The trial information was filed on September 29, 2020, surpassing the three-year statute of limitations by more than one year and four months. (APP - 004, Trial Information). Boone filed a motion to dismiss asserting that the statute of limitations had expired. (APP - 008, Motion to Dismiss). The trial court denied the motion and a trial on the minutes occurred wherein Boone was found guilty of willful injury causing serious bodily and intimidation with a dangerous weapon. (APP - 038, Order).

At a hearing on the motion to dismiss, Detective Youngblut testified that he first made contact with Boone on May 24, 2016, when Boone returned a phone call. (4/19/21 Tr. P. 10 ln 22 – 25). After some short, interrupted calls, the two finally had a lengthy conversation the following morning. (4/19/21 Tr. P. 14 ln 6 – 21). Boone stated that he was currently in Texas but would be returning to Iowa soon and would meet with Detective Youngblut on May 31, 2016. (4/19/21 Tr. P. 14 ln 6 – P. 15 ln 6). Once Boone returned to Iowa he hired an attorney, Michael Culp.



(4/19/21 Tr. P. 15 ln 6 – 21). At that point, Boone expected communications from Detective Youngblut, or other law enforcement officers would go through Mr. Culp, so Boone did not meet with the detective on the scheduled date. (4/19/21 Tr. P. 39 ln 4 – 9).

Detective Youngblut testified to his efforts to locate Boone after their missed meeting. He visited 700 Walker Street, Boone's known address, but the occupant denied knowing Boone's location. (4/19/21 Tr. P. 11 ln 17 – P. 12 ln 9). He asked Mr. Culp for Boone's address and he twice made contact with Boone's younger brother, Lamont Boone, but his attempts to locate Boone were unsuccessful. (4/19/21 Tr. P. 16 ln 15 – P. 17 ln 16). Detective Youngblut searched Workforce Development databases to see if Boone was receiving any public benefits. (4/19/21 Tr. P. 18 ln 8 – 19). He informed patrol officers of Boone and his family. (4/19/21 Tr. P. 19 ln 6 – 10). Over the years before Boone's arrest, Detective Youngblut made contact several times with Boone's family, but they did not provide any information for him. (4/19/21 Tr. P. 19 ln 11 – P. 20 ln 2). Detective Youngblut also consulted the U.S. Marshals to check if any of their databases could provide insight as to Boone's location. (4/19/21 Tr. P. 27 ln 5 – 13). Eventually Detective Youngblut received a

tip that Boone may have been living in a house off Euclid, but Youngblut was unable to verify the tip in the few hours he surveilled the area. (4/19/21 Tr. P. 28 ln 11 – P. 29 ln 5). Through none of these attempts was Detective Youngblut led to believe Boone was in another state. (4/19/21 Tr. P. 25 ln 8 – P. 29 ln 20).

At the motion to dismiss hearing, Boone testified that at the time of the incident, he was residing at 700 Walker Street and was now living at 3420 East 8th Street in Des Moines where he had been for a few years. (4/19/21 Tr. P. 34 ln 7 – 16). Between May 2016 and September 29, 2020, when he was arrested, Boone left the state for normal short trips and vacations. (4/19/21 Tr. P. 34 ln 17 – 20). He went to Texas for three days in May 2016, Colorado for approximately four days in 2019, Illinois for a couple of days, and Nebraska for a few hours. (4/19/21 Tr. P. 34 ln 17 – p. 36 ln 4).

Over the three-year period, Boone testified that he worked for a friend at a junk removal company and as a welder for Sir Weld a Lot. (4/19/21 Tr. P. 37 ln 10 – 19). These jobs paid in cash. (4/19/21 Tr. P. 37 ln 10 – 19). He stated he did not get his driver's license renewed because that would require him to be in the child support restatement program,

but he had a chauffeur's license. (4/19/21 Tr. P. 37 ln 20 – 23). Boone also testified that he was on food stamps at some point, but they ended, and he did not renew because he no longer needed them. (4/19/21 Tr. P. 38 ln 5 – 16). He believed had Medicaid for at least a portion of the time during the three-year period, but never needed to go to a physician or hospital so he was unsure if the benefits stayed current. (4/19/21 Tr. P. 38 ln 17 – P. 39 ln 3). He maintained a cell phone plan in his name through Straight Talk Wireless. (4/19/21 Tr. P. 40 ln 18 – 25).

Other relevant and necessary facts may be discussed in argument section *infra*.

## ARGUMENT

### I. THE DISTRICT COURT ERRED IN DENYING BOONE'S MOTION TO DISMISS

#### Preservation of Error

Boone filed a timely motion to dismiss asserting a statutory interpretation challenge to the three-year statute of limitations required in Iowa Code section 802.3. (APP - 008, Motion to Dismiss). The district court ruled upon and decided the issue. (APP - 015, Ruling). Accordingly, error was preserved. *See Meier v. Senecaut*, 641 N.W.2d 532, 537 (Iowa 2002) (“It is a fundamental doctrine of appellate review that issues must ordinarily be both raised and decided by the district court before we will decide them on appeal.”)

#### Standard of Review

The standard of review on questions of statutory interpretation is for correction of errors at law. *State v. Childs*, 898 N.W.2d 177, 181 (Iowa 2017). Similarly, the standard of review for a district court's ruling on a motion to dismiss is for correction of errors at law. *Id.*

#### Discussion

Iowa Code section 802.3 provides for limitations on criminal actions, stating: “[i]n all cases, except those enumerated in section 802.1, 802.2,

802.2A, 802.2B, 802.2C, 802.2D, or 802.10, an indictment or information for a felony or aggravated or serious misdemeanor shall be found within three years after its commission.” However, while there is a three-year statute of limitations, the Iowa Code prescribes for periods excluded from limitation:

When a person leaves the state, the indictment or information may be found within the period of limitation prescribed in this chapter after the person's coming into the state, and no period during which the party charged was not publicly resident within the state is a part of the limitation.

Iowa Code section 802.6(1).

The burden is on the state to prove that Boone was not publicly resident so as to toll the statute of limitations. *See State v. Moran*, 709 N.W. 187, 188 (1906); *see also State v. Howard*, 610 N.W.2d 535, 536 (Iowa App. 1999). “Statutes of limitations have traditionally been ‘liberally construed in favor of criminal defendants.’” *State v. Tipton*, 897 N.W.2d 653, 671 (Iowa 2017) (quoting 5 Wayne R. LaFave, et al., *Criminal Procedure* § 18.5(a), at 210 (4<sup>th</sup> ed. 2015)). The Iowa Courts “follow the prevailing view by resolving doubts in favor of the accused when construing statute of limitations. *Id.*”

In analyzing statutes limitations, the Iowa Supreme Court has held that “a statute of limitations is designed to prevent fraudulent and stale actions from arising after a great lapse of time while still preserving the right to pursue a claim for a reasonable period of time.” *State v. Walden*, 870 N.W.2d 842, 845 (Iowa 2015) (quoting *State v. Gansz*, 376 N.W.2d 887, 891 (Iowa 1985)). The United States Supreme Court elaborated on the purpose of a criminal statute of limitations and held the following:

to limit exposure to criminal prosecution to a certain fixed period of time following the occurrence of those acts the legislature has decided to punish by criminal sanctions. Such a limitation is designed to protect individuals from having to defend themselves against charges when the basic facts may have become obscured by the passage of time and to minimize the danger of official punishment because of acts in the far-distant past.

*Id.* (quoting *Toussie v. United States*, 397 U.S. 112, 114–15, (1970)).

As recently recognized by the Iowa Court of Appeals, there “is limited case law on Iowa Code section 802.6, [and] we have found no definition or interpretation of what it means to be ‘publicly resident.’” *Rhodes v. State*, 2022 WL 610447 (Iowa App.). However, in looking at the statute itself, several items can be ascertained.

First, the statute begins with an important clause which effect the entire interpretation of the statute: “When a person leaves the state...” Thus, the tolling provisions of Iowa Code section 802.6, only applies “when a person leaves the state.” In other words, if a person does not leave the State of Iowa, there should be no tolling of the statute of limitations. This position is further strengthened by the language that follows: “the indictment or information may be found within the period of limitation prescribed in this chapter *after* the person’s *coming into the state...*”(emphasis added). Again, this establishes that the tolling may only occur when an individual leaves the State of Iowa and applies only when the individual is outside the State of Iowa.

Accordingly, the State of Iowa must show by a preponderance of evidence that an individual left the state. After that occurs, the State of Iowa then has the burden to establish that the individual returned to the State of Iowa and the indictment or information was filed within the applicable statute of limitations time period. Iowa Code section 802.6. The second clause of the statute allows the time period that the individual was not in the state, to be tolled and be excluded from the statute of limitations period.

Applying this framework to this case, it becomes apparent that the State did not meet its burden. The underlying charges in this case occurred on May 17, 2016. (APP - 004, Trial Information) According to Iowa Code section 802.3, the State was required to file the information or the indictment on or before May 17, 2019. However, the State of Iowa did not file the information until September 29, 2020, or 501 days after May 17, 2019. (APP , Trial Information). Thus, in order to overcome a motion to dismiss, the State Iowa must establish that the statute of limitations tolled for 501 days pursuant to Iowa Code section 802.6(1). In order to do that, the State must establish Boone was outside the State of Iowa for 501 days. The State of Iowa did not meet this burden.

It is certainly true that the State of Iowa was able to establish that Boone was occasionally outside the State of Iowa, however, by the State's own testimony, it was established that the duration was not permanent and did not reach 501 days. At the early onset of the investigation, the State was able to establish that Boone was initially in Texas. (4/19/21 Tr. P. 14 ln 9 – 21). However, it was the understanding of the lead detective that Boone would be returning a few days later and Boone and the detective would meet. (4/19/21 Tr. P. 14 ln 22 – P. 15 ln 6). However, no



meeting occurred, and the State of Iowa was not able to locate him until his ultimate arrest in this case. Importantly, the State of Iowa never established that Boone was outside the State of Iowa for 501 days. Instead, the State of Iowa only could establish that they did not know where Boone was located.

Importantly, Boone testified that he was present within the State of Iowa nearly the entire relevant time period. He testified that he was living in Des Moines at 700 Walker Street both before and after his arrest and then moved to 3420 East 8<sup>th</sup> St. in Des Moines. (4/19/21 Tr. P. 34 ln 7 – 16). Between the incident on May 17, 2016, and the time of his arrest and filing of the trial information, he only left the State of Iowa on a few occasions for “trips and vacations.” (4/19/21 Tr. P. 34 ln 17 – P. 35 ln 19). The State of Iowa introduced no evidence to rebut this testimony or provide any other evidence as to his whereabouts. Because it is the State’s burden to prove that Boone was publicly resident and the State has failed to do so, the motion to dismiss should have been granted.

However, in denying the motion to dismiss, the district court relied on Iowa Code section 802.6(1) “publicly resident” language to deny

Boone's motion to dismiss. Specifically, the district court stated as follows:

In this case, the Court concludes that Defendant was not *publically* [sic] a resident of the State of Iowa for purposes of Iowa Code § 802.6(1) from May 25, 2016, until his apprehension in Nebraska on March 13, 2020. During this time Defendant was either out of state or hid his residence in Iowa from the public. Specifically, he did not renew his driver's license, did not pay child support, did not pay or file taxes, did not work in any official capacity, and did not take advantage of any public benefits. As such, the Court concludes that the statute of limitations was tolled during the period of May 25, 2016, until Defendant was returned to the State on September 21, 2020.

(APP , Order re: Motion to Dismiss P. 4).

In reaching this conclusion, the district court erroneously disregarded the first clause of Iowa Code section 802.6(1) and gave no weight to the fact that the State was unable to establish that Boone was not within the State of Iowa for 501 days. Instead, central to the district court's analysis was the "publicly resident" language found within Iowa Code Section 802.6(1). Boone maintains that solely relying on the "publicly resident" language and disregarding whether the individual is present in the State of Iowa is an incorrect interpretation of Iowa Code

section 802.6(1). However, even in adopting the district court's analysis, the State of Iowa has failed to meet its burden.

When there is a question of statutory interpretation, the courts must determine the legislature's intent. *State v. Romer*, 832 N.W.2d 169, 176 (Iowa 2013). In the process of statutory interpretation, the courts are to give words "their ordinary and common meaning by considering the context within which they are used, absent a statutory definition or an established meaning in the law." *Romer*, 832 N.W.2d at 176 (quoting *In re Estate of Bockwoldt*, 814 N.W.2d 215, 223 (Iowa 2012)). However, because criminal statutes are strictly construed, doubts are to be resolved in favor of the accused. *State v. Adams*, 810 N.W.2d 365, 369 (Iowa 2012).

Webster's dictionary defines "publicly" as: "1) in a manner observable by or in a place accessible to the public: openly." <https://www.merriam-webster.com/dictionary/publicly> (last visited June 17, 2022). Similarly, "resident" is defined as "living in a place for some length of time." <https://www.merriam-webster.com/dictionary/resident> (last visited June 17, 2022). Accordingly, publicly resident must be analyzed in conjunction with each other with publicly being a modifier of resident. The State introduced no evidence to establish that Boone was a

resident at anywhere other than Iowa. Boone provided uncontroverted testimony that he was present within Iowa during the entire relevant time periods. (4/19/21 Tr. P. 34 ln 17 – P. 35 ln 19). It is important to note that this is not a case where there is evidence that the individual was living or residing in a different state. Instead, the evidence presented by the State of Iowa was simply that they did not know where Boone was residing.

Because of Boone’s uncontroverted evidence, the question then falls on whether Boone was *publicly* resident in the state of Iowa. The district court and the State of Iowa assert that Boone was not publicly resident because he did not appear in Workforce Development searches, his family would not tell Detective Youngblut of his whereabouts, he did not have a driver's license, and he did not pay taxes. (4/19/21 Tr. P. 18 ln 4 – P. 20 ln 12). Importantly, none of these items truly establish whether an individual is resident within the State. In fact, these conclusions can create a dangerous precedent that prejudices vulnerable populations such as homeless residents, indigents, and the mentally ill – populations that often overlap and often would not be able to satisfy any of these requirements either. If the standard for publicly resident is that one must

appear on a state database, vulnerable populations and other criminal defendants could have indefinite arrest warrants or indefinite exposure to criminal prosecution, defying the very purpose of a statute of limitations. *See Walden*, 870 N.W.2d at 845.

There appears to be no model language and no consistency among the states regarding tolling provisions for criminal statute of limitations. However, there are states that have similar “publicly resident” language as Iowa’s. For example, Illinois provides the following: “The period within which a prosecution must be commenced does not include any period in which: (1) the defendant is not usually and publicly resident within this State...” 720 Ill. Comp. Stat. Ann. 5/3-7. In interpreting that language, the Illinois Supreme Court has stated that this language “is not based on the legal residence of the defendant. It is based solely upon his absence from the State.” *People v. Carman*, 52 N.E.2d 197, 199 (Ill. 1943). Similarly, when interpreting Massachusetts’ tolling statute of limitations that stated “any period during which the defendant is not usually and publicly resident within the commonwealth shall be excluded in determining the time limited,” the Massachusetts’ Supreme Court stated that this statute “is unambiguous; it provides that the period of

limitation is tolled during *any* period a person accused of crime is absent from the Commonwealth.” *Couture v. Com.*, 338 Mass. 31, 34, 153 N.E.2d 625, 628 (1958).

Further, if the legislature in adopting Iowa Code section 802.6(1) desired this language to include individuals residing in the State of Iowa but were actively evading law enforcement, they could have surely done so. If the State of Iowa legislature had intended “publicly resident within the state” to be interpreted in the manner decided by the district court, the language would have been similar to what is seen in states like Arizona, Arkansas, and Florida. These states, and several others have enacted language that explicitly states that when an individual is not at their normal residence or places of work, the statute of limitations may be tolled. *See e.g.* Ariz. Rev. Stat. Ann. § 13-107 (“The period of limitation does not run during any time when the accused is absent from the state or has no reasonably ascertainable place of abode within the state.”); Ark. Code Ann. § 5-1-109(g) (“The period of limitation does not run: (1)(A) During any time when the accused is continually absent from the state or has no reasonably ascertainable place of abode or work within the state.”); Fla. Stat. Ann. § 775.15(5) (“The period of limitation does not run

during any time when the defendant is continuously absent from the state or has no reasonably ascertainable place of abode or work within the state.”). Yet, Iowa chose not to adopt such language and instead used language similar to what is seen in Illinois and Massachusetts.

The State did not present any evidence to show that Boone was outside of Iowa for an extended period enough to toll the statute of limitations and charge Boone more than one year after the limitations period had expired. Accordingly, the State of Iowa failed to meet its burden and this Court should reverse the district court and grant Boone’s motion to dismiss.

## CONCLUSION

Boone respectfully requests that this Court reverse the district court's denial of his motion to dismiss.

## REQUEST FOR ORAL ARGUMENT

Boone respectfully requests oral argument in this matter.

Respectfully Submitted,

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## ATTORNEY'S COST CERTIFICATE

I, the undersigned, hereby certify that the true cost of producing the necessary copies of the foregoing Proof Brief and Argument was \$0.00, as it was electronically filed.

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## CERTIFICATE OF COMPLIANCE

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

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Dated: October 12, 2022.

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## CERTIFICATE OF SERVICE AND CERTIFICIATE OF FILING

I certify on October 12, 2022, I will serve this brief on the Appellee's Attorney, Iowa Attorney General, by electronically filing it.

I further certify that on October 12, 2022, I will electronically file this document with the Clerk of the Iowa Supreme Court.

I further certify that on October 12, 2022, I sent a copy of this document to the Appellant Maurice Boone # 6742369 at Mount Pleasant Correctional Facility, 1200 E. Washington, Mt. Pleasant, IA 52641.

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