

IN THE SUPREME COURT OF IOWA

---

STATE OF IOWA,

Plaintiff-Appellee,

v.

MURPHY LEE RUTHERFORD,

Defendant-Appellant.

---

S. CT. NO. 22-0553

APPEAL FROM THE IOWA DISTRICT COURT  
FOR WASHINGTON COUNTY  
HONORABLE MARK KRUSE, JUDGE

---

APPELLANT'S REPLY BRIEF AND ARGUMENT

---

MARTHA J. LUCEY  
State Appellate Defender

THERESA R. WILSON  
Assistant Appellate Defender  
twilson@spd.state.ia.us  
[appellatedefender@spd.state.ia.us](mailto:appellatedefender@spd.state.ia.us)

STATE APPELLATE DEFENDER'S OFFICE  
Fourth Floor Lucas Building  
Des Moines, Iowa 50319  
(515) 281-8841 / (515) 281-7281 FAX

ATTORNEY FOR DEFENDANT-APPELLANT

## **CERTIFICATE OF SERVICE**

On the 8<sup>th</sup> day of December, 2022, the undersigned certifies that a true copy of the foregoing instrument was served upon Defendant-Appellant by placing one copy thereof in the United States mail, proper postage attached, addressed to Murphy Rutherford, No. 6800480, Mt. Pleasant Correctional Facility, 1200 East Washington, Mt. Pleasant, IA 52641.

APPELLATE DEFENDER'S OFFICE

/s/ Theresa R. Wilson

**THERESA R. WILSON**

Assistant Appellate Defender

Appellate Defender Office

Lucas Bldg., 4<sup>th</sup> Floor

321 E. 12<sup>th</sup> Street

Des Moines, IA 50319

(515) 281-8841

[twilson@spd.state.ia.us](mailto:twilson@spd.state.ia.us)

appellatedefender@spd.state.ia.us

TRW/sm/12/22

## TABLE OF CONTENTS

|   | <u>Page</u> |
|---|-------------|
| Certificate of Service .....  | 2           |
| Table of Authorities.....   | 4           |
| Statement of the Issue Presented for Review.....  | 5           |
| Statement of the Case .....   | 6           |
| Argument  |             |
| Division I. <u>State v. Hanes</u> does not foreclose<br>Rutherford’s arguments as to jurisdiction and error<br>preservation. Rutherford has incorporated arguments<br>that were not presented in <u>Hanes</u> ..... | 6           |
| Conclusion .....  | 11          |
| Attorney's Cost Certificate.....  | 12          |
| Certificate of Compliance .....   | 13          |

**TABLE OF AUTHORITIES**

| <u>Cases:</u>   | <u>Page:</u> |
|---|--------------|
| Iowa Supreme Court Attorney Disciplinary Bd. v. Howe,<br>706 N.W.2d 360 (Iowa 2005) ..... | 10           |
| McCarthy v. United States, 394 U.S. 459 (1969) .....                                      | 10-11        |
| Ryan v. Iowa State Penitentiary, 218 N.W.2d 616<br>(Iowa 1974) .....                      | 7            |
| State v. Finney, 834 N.W.2d 46 (Iowa 2013) .....  | 10           |
| State v. Hanes, No. 21-2246, 2022 WL 16702680<br>(Iowa Nov. 4, 2022) .....                | 6, 8-9, 11   |
| State v. Newman, 970 N.W.2d 866 (Iowa 2022).....  | 8            |
| State v. Schminkey, 597 N.W.2d 785 (Iowa 1999) .....                                      | 7, 9         |
| State v. Wilbourn, 974 N.W.2d 58 (Iowa 2022).....   | 7            |
| <u>Court Rules:</u>   |              |
| Iowa R. Crim. P. 2.8(2)(b) (2022) .....   | 8, 11        |

## STATEMENT OF THE ISSUES PRESENTED FOR REVIEW

**State v. Hanes does not foreclose Rutherford's arguments as to jurisdiction and error preservation. Rutherford has incorporated arguments that were not presented in Hanes.**

### **Authorities**

State v. Hanes, No. 21-2246, 2022 WL 16702680 (Iowa Nov. 4, 2022)

State v. Wilbourn, 974 N.W.2d 58, 66 (Iowa 2022)

State v. Schminkey, 597 N.W.2d 785, 792 (Iowa 1999)

Ryan v. Iowa State Penitentiary, 218 N.W.2d 616, 620 (Iowa 1974)

State v. Newman, 970 N.W.2d 866, 869 (Iowa 2022)

Iowa R. Crim. P. 2.8(2)(b) (2022)

McCarthy v. United States, 394 U.S. 459, 467 (1969)

State v. Finney, 834 N.W.2d 46, 54-55 (Iowa 2013)

Iowa Supreme Court Attorney Disciplinary Bd. v. Howe, 706 N.W.2d 360 (Iowa 2005)

## STATEMENT OF THE CASE

COMES NOW Defendant-Appellant Murphy Rutherford, pursuant to Iowa R. App. P. 6.903(4), and hereby submits the following argument in reply to the State's brief filed on November 30, 2022.

While the defendant's brief adequately addresses the issues presented for review, a short reply is necessary to address the Iowa Supreme Court's recent ruling in State v. Hanes, No. 21-2246, 2022 WL 16702680 (Iowa Nov. 4, 2022).

## ARGUMENT

**State v. Hanes does not foreclose Rutherford's arguments as to jurisdiction and error preservation. Rutherford has incorporated arguments that were not presented in Hanes.**

The State is correct in acknowledging that Rutherford did not have the benefit of the Iowa Supreme Court's holding in State v. Hanes when he filed his original brief in this case. See State v. Hanes, No. 21-2246, 2022 WL 16702680 (Iowa Nov. 4, 2022). The State is incorrect, however, in asserting

that Hanes necessarily forecloses Rutherford's claims on appeal.

As to the question of jurisdiction, Rutherford presents certain arguments that do not appear to have been addressed in Hanes. First, that State v. Wilbourn suggests that once the Iowa Supreme Court has jurisdiction over a discretionary sentencing matter, it has jurisdiction over the entire appeal. State v. Wilbourn, 974 N.W.2d 58, 66 (Iowa 2022). This would appear to include any accompanying arguments regarding an inadequate factual basis.

Second, that the challenge to an invalid factual basis supporting a guilty plea is essentially a sentencing issue. The remedy in such a case is to vacate the sentence rather than the plea.<sup>1</sup> Ryan v. Iowa State Penitentiary, 218 N.W.2d 616, 620 (Iowa 1974); State v. Schminkey, 597 N.W.2d 785, 792

---

<sup>1</sup>. Assuming, of course, it is not obvious the defendant has been charged with the wrong crime. See State v. Schminkey, 597 N.W.2d 785, 792 (Iowa 1999) (if defendant has been convicted of the wrong crime, remedy is to vacate the conviction).

(Iowa 1999). The appellate courts are certainly capable of providing such relief on appeal. See State v. Newman, 970 N.W.2d 866, 869 (Iowa 2022) (defining “good cause”).

Whether the plea will actually be vacated is not a matter for the appellate courts, but for the District Court on remand.

As to the question of error preservation, Rutherford is claiming the District Court has an independent duty under Iowa Rule of Criminal Procedure 2.8(2)(b) to reject a plea that is not knowing and voluntary or which lacks a factual basis. Iowa R. Crim. P. 2.8(2)(b) (2022). It does not appear that the defendant in Hanes relied upon this language, opting instead to argue that Rule 2.24(c) allows a court to arrest judgment on its own motion. State v. Hanes, No. 21-2246, 2022 WL 16702680 at \*4 (Iowa Nov. 4, 2022). While the District Court’s ability to arrest judgment is discretionary, its obligation to reject a guilty plea that is either unknowing and involuntary or supported by an insufficient factual basis is mandatory. This is the point recognized by the dissent in



Hanes, and it is a violation that should entitle Rutherford to appellate review. State v. Hanes, No. 21-2246, 2022 WL 16702680 at \*9 (Iowa Nov. 4, 2022) (McDermott, J., dissenting).

In defense of the continued requirement of a motion in arrest of judgment to preserve error, the Hanes Court noted doing away with the requirement would “undermine one of the chief values of guilty pleas: finality.” Id. at \*5. It is worth reconsidering the true value of finality in cases such as this.

One could read the Hanes opinion as suggesting that finality is more important than accuracy, or even guilt. Appellate courts may now excuse the lack of a factual basis for a plea in the interest of affirming a conviction, right or wrong. This should be of particular concern where an element of the offense appears to have been overlooked, as it was here when there was no reference to an intent to “permanently” deprive the complainant of her property. (9/20/21 Written Waiver p. 2)(App. p. 11). State v. Schminkey, 597 N.W.2d 785, 789

(Iowa 1999) (theft under Iowa Code section 714.1(1) requires an intent to permanently deprive someone of their property). Where the absence of an element is readily apparent, any concern regarding finality should yield to the greater interest in ensuring a conviction is valid under the law.

That a defendant chose to plead guilty is irrelevant – defendants may not plead to an unsupported charge, attorneys on both sides should not agree to it, and the court has an obligation to deny it. See, e.g., *McCarthy v. United States*, 394 U.S. 459, 467 (1969) (recognizing defendant may not even realize his actions do not constitute the charge); *State v. Finney*, 834 N.W.2d 46, 54-55 (Iowa 2013) (defense counsel may not allow defendant to plead guilty to charge without factual basis; *Iowa Supreme Court Attorney Disciplinary Bd. v. Howe*, 706 N.W.2d 360 (Iowa 2005) (prosecutor commits ethical violation by amending charge to cowl lamp violation without probable cause).

Finally, the Hanes Court places fault at the feet of criminal defendants for failing to raise the issue before the District Court where it could have been more quickly rectified. State v. Hanes, No. 21-2246, 2022 WL 16702680 at \*5 (Iowa Nov. 4, 2022). But the fault can just as easily be laid at the feet of the District Court, which had the duty to ensure the defendant understood the law in relation to the facts and had an obligation to reject any plea lacking a factual basis. McCarthy v. United States, 394 U.S. 459, 467 (1969); Iowa R. Crim. P. 2.8(2)(b) (2022).

Given the substantive differences between the arguments in Hanes and the arguments presented in this case, the Iowa Supreme Court should review Rutherford's appeal. The Court should grant him the relief available and remand his case to the District Court for further proceedings.

### **CONCLUSION**

For all of the reasons discussed above and in his Brief and Argument Defendant-Appellant Murphy Rutherford

respectfully requests this Court vacate his judgment and sentence and remand his case to the District Court for additional proceedings.

**ATTORNEY'S COST CERTIFICATE**

The undersigned hereby certifies that the true cost of producing the necessary copies of the foregoing Brief and Argument was \$1.67, and that amount has been paid in full by the Office of the Appellate Defender.

**CERTIFICATE OF COMPLIANCE WITH TYPEFACE  
REQUIREMENTS AND TYPE-VOLUME LIMITATION FOR  
BRIEFS**

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

[X] this brief has been prepared in a proportionally spaced typeface Bookman Old Style, font 14 point and contains 1,010 words, excluding the parts of the brief exempted by Iowa R. App. P. 6.903(1)(g)(1).

/s/ Theresa R. Wilson  
THERESA R. WILSON  
Assistant Appellate Defender  
Appellate Defender Office  
Lucas Bldg., 4<sup>th</sup> Floor  
321 E. 12<sup>th</sup> Street  
Des Moines, IA 50319  
(515) 281-8841  
twilson@spd.state.ia.us  
appellatedefender@spd.state.ia.us

Dated: 12/8/22