
IN THE SUPREME COURT OF IOWA

21-1425

STATE OF IOWA

v.

GERRY HARLAND GREENLAND

**APPEAL FROM THE IOWA DISTRICT COURT
IN AND FOR DECATUR COUNTY
HONORABLE JUDGE JOHN LLOYD**

APPELLANT’S FINAL BRIEF AND REQUEST FOR ORAL ARGUMENT

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PROOF OF SERVICE

I hereby certify that on April 25, 2023 I did serve two copies of the proof Brief within on the parties listed below, by mailing a copy thereof to the following:

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I further certify that on April 25, 2023 I will file this document by submitting the Appellant's Brief via electronic filing with the Clerk of the Supreme Court. Participants in the case who are registered with the EDMS will be served by EDMS.

/s/Kelsey L. Knight
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STATEMENT OF ISSUES PRESENTED FOR REVIEW

I. APPELLANT’S SENTENCE WAS ILLEGAL BECAUSE ASSUALT OF A PEACE OFFICER AND ATTEMPT TO COMMITT MURDER OF A PEACE OFFICER MERGE.

Authorities:

State v. Anderson, 565 N.W.2d 340 (Iowa 1997)

State v. Powers, 278 N.W.2d 26 (Iowa 1979)

State v. Bragg, 784 N.W.2d 31 (Iowa 2010)

II. APPELLANT’S CONVICTION IS NOT SUPPORTED BY SUBSTANTIAL EVIDENCE BECAUSE APPELLANT WAS NOT AWARE HIS ACTIONS WERE DIRECTED AT A PEACE OFFICER AND THE EVIDENCE DOES NOT SUPPORT A FINDING OF INTENT TO ASSAULT OR ATTEMPT TO MURDER A PEACE OFFICER.

Authorities:

State v. LeGear, 346 N.W.2d 21 (Iowa 1984)

State v. Bass, 349 N.W.2d 498 (Iowa 1984)

State v. Robinson, 288 N.W.2d 337 (Iowa 1980)

ROUTING STATEMENT

This case involves the application of existing legal principals. Transfer to the Court of Appeals is appropriate. Iowa R. App. Pro. 6.1101(3)(a).

STATEMENT OF THE CASE

Nature of the case:

Gerry Greenland (hereinafter “Appellant”) appeals his convictions for Attempt to Commit Murder of a Peace Officer, a Class B Felony in violation of Iowa Code sections 707.11(2) and 707.11(5)(a), Assault on a Peace Officer, a Class D Felony in violation of Iowa Code section 708.1, 708.3A(1) and/or (2), and Assault Causing Bodily Injury, a Serious Misdemeanor in violation of Iowa Code sections 708.1(2) and 708.2(2). Appellant also appeals his sentence of a term of incarceration for 25 years for Attempt Commit Murder of a Peace Officer, 5 years for Assault on a Peace Officer, and 30 days for Assault Causing Bodily Injury.

Course of Proceedings:

On June 3, 2019, the State charged Appellant with Attempt to Commit Murder of a Peace Officer, a Class B Felony, in violation of Iowa Code sections 707.11(2) and 707.11(5)(a), Intimidation with a Dangerous Weapon, a Class C Felony in violation of Iowa Code section 708.6(1), Assault on a Peace Officer, a Class D Felony in violation of Iowa Code section 708.1, 708.3A(1) and/or (2), and Assault Causing Bodily Injury, a Serious Misdemeanor, in violation of Iowa Code sections 708.1(2) and 708.2(2). (Trial Information) (App. p. 5). On March 3, 2021, the State moved for a hearing on Appellant’s competence. (Motion for Hearing on Competence) (App. p. 8). Following a hearing on March 26, 2021, the district

court found that Appellant's competency had been restored per Iowa Code section 812.8(5). (Order Finding Competency Restored) (App. p. 10).

Appellant waived his right to a jury trial on May 19, 2021. (Waiver of Jury Trial) (App. p. 12). The district court then set a bench trial for June 21, 2021. (Order for Trial to Court) (App. p. 14). Following the bench trial, the district entered a verdict of guilty for Attempt to Commit Murder of a Peace Officer, Assault on a Peace Officer, and Assault Causing Bodily Injury on July 16, 2021. (Findings of Fact, Conclusions of Law and Verdicts) (App. p. 29). The State dismissed the charge of Intimidation with a Dangerous Weapon at the start of trial due because a tractor is not a dangerous weapon within the meaning of the statute. (Trial Tr. 7:16 – 8:22).

Appellant filed a Motion for New Trial and Motion in Arrest of Judgment on August 24, 2021. On the same day, the district court entered an order which denied both motions. (Order Denying Motion for New Trial and Motion in Arrest of Judgement) (App. p. 49). On September 7, 2021, the district court sentenced appellant to a term of 25 years for Attempt Commit Murder of a Peace Officer, 5 years for Assault on a Peace Officer, and 30 days for Assault. (Order of Disposition) (App. p. 52). The sentences were run concurrently, with a mandatory minimum of 25 years for Attempt to Commit Murder of a Peace Officer. (Order of

Disposition) (App. p. 25). A Notice of Appeal was timely filed on October 6, 2021. (Notice of Appeal) (App. p. 57).

Statement of the Facts:

At trial, Appellant's nephew Trevor Greenland (hereinafter, "T. Greenland"), testified that on the day of the alleged incident, he was working on his grandfather's pick-up truck with the family's hired farmhand. (Trial Tr. 13:10-21). T. Greenland then testified that sometime after they began working, Appellant approached them and spoke with them. (Trial 13:23 – 25). T. Greenland then testified that he and the hired farmhand attempted to "pull start" the truck by pulling it with the tractor. (Trial Tr. 13:25 – 14:3). After Appellant noticed what his nephew and the farmhand were doing, he exchanged words with them and struck T. Greenland in the face. (Trial Tr. 18:19 – 19:8). T. Greenland then testified that a fight broke out between himself, Appellant, and the farmhand. (Trial Tr. 19:9-15).

Following the altercation, T. Greenland testified that Appellant unhooked the pickup truck from the tractor and drove it into the "shop" which is a large garage on the farm where the incident took place. (Trial Tr. 23:3-8). T. Greenland's father, who is also Appellant's brother, arrived on the scene at some point during this confrontation. (Trial Tr. 23:22-25). Next, T. Greenland testified that Appellant came back out of the shop on foot, with a crowbar in hand. (Trial Tr. 25:12-17). T. Greenland's father picked up a pipe in response. (Trial Tr. 25:12-21). Appellant then

abandoned the crowbar and went back into the shop with T. Greenland's father following close behind. (Trial Tr. 25:22 – 26:3). T. Greenland then testified that Appellant drove the tractor out of the shop and tried to run T. Greenland's father over. (Trial Tr. 26:1-15).

By the time Appellant drove the tractor back out of the shop, the bale spears had been attached to the tractor. (Trial Tr. 27:1-3). The bale spears stick out approximately six feet. (Trial Tr. 85:6-14). When raised, they are approximately five and a half feet off the ground. (81:15-25). T. Greenland testified that at this point, Appellant struck his father's pickup truck with the tractor, ramming it with the bale spears. (Trial Tr. 27:12-14). T. Greenland then called the sheriff's department. (Trial Tr. 27:9-14). He got into his vehicle and drove away but testified that he was still able to see Appellant driving the tractor and chasing around the hired farmhand and his father. (Trial Tr. 30:12 – 32:25). T. Greenland later testified that he did not witness Appellant's alleged chase with the tractor. (Trial Tr. 44:18-25). Later, on redirect, T. Greenland testified that he did see Appellant chasing his father and the hired farm hand with the tractor. (Trial Tr. 47:1-14). Eventually, T. Greenland made his way back to the farm along with his father and hired farmhand. (Trial Tr. 53:5-17). T. Greenland did not see the tractor run into the deputy's vehicle. (Trial Tr. 53:11-17).

Appellant's brother, Monte Greenland (hereinafter, "M. Greenland"), testified that he arrived on the farm while Appellant was in the shop, before the bale tines were attached to the tractor. (Trial Tr. 57:5 – 58:21). M. Greenland testified that Appellant drove out of the shop with the bale tines attached to the tractor, and attempted to ram his truck. (Trial Tr. 61:14-19; 62:1-11).

Eventually, M. Greenland caught up with T. Greenland and the hired farmhand and waited for law enforcement to arrive. (Trial Tr. 66:11-25). M. Greenland then testified that when deputies arrived, he warned them about Appellant ramming vehicles with the tractor. (Trial Tr. 67:17 – 68:4). By the time M. Greenland came back to the property, the officers had coaxed Appellant out of the tractor and were arresting him. (Trial Tr. 69:12 – 70:1). M. Greenland was unable to recall whether the officers' vehicles had emergency lights on as they responded to the incident. (Trial Tr. 70:17-20). M. Greenland testified that he did attempt to get away from Appellant as Appellant drove the tractor about the farm and stated that "it was easy to get away from him because a tractor only goes - - that tractor probably only runs about 14 - - 14 mile an hour...." (Trial Tr. 77:17 – 78:3). Further, "it takes a little concentration" to operate the bale spears. (Trial Tr. 86:20-25).

Deputy Randall Arnold, one of the responding officers, testified that he saw Appellant accelerate and drive toward Sheriff Boswell's vehicle. (Trial Tr. 143:4-7). Deputy Arnold described Deputy Boswell's vehicle as unmarked, however, the

lights were flashing as the tractor approached. (Trial Tr. 143:8-16). (State's Exhibit 15). At the time of the impact, Deputy Arnold testified that Appellant was driving the tractor down the farm's driveway toward the road, and Sheriff Boswell, who had been driving toward the farm, had stopped and attempted to reverse the vehicle. (Trial Tr. 145:1-10). Deputy Arnold testified that that the tractor impacted Deputy Boswell's vehicle, then drove into a nearby ditch where both vehicles eventually came to a stop. (Trial Tr. 145:11 – 146:14).

Next, Deputy Arnold testified that he and another deputy approached the tractor, guns drawn, and ordered Appellant to shut off the tractor and put up his hands. (Trial Tr. 146:18-24). Appellant complied. (Trial Tr. 146:25 – 147:3). The deputies "extracted" Appellant from the tractor and arrested him. (Trial Tr. 147:11-15).

Additional facts will be discussed when relevant.

ARGUMENT

I. **APPELLANT’S SENTENCE WAS ILLEGAL BECAUSE ASSUALT OF A PEACE OFFICER AND ATTEMPT TO COMMITT MURDER OF A PEACE OFFICER MERGE.**

Preservation of Error:

Illegal sentences are excluded from the principles of error preservation in cases were “...a trial court has stepped outside the codified bounds of allowable sentencing. In other words, the sentence is illegal because it is beyond the power of the court to impose.” *State v. Tindell*, 629 N.W.2d 357, 359 (Iowa 2001), *quoting*, *State v. Ceasar*, 585 N.W.2d 192, 195 (Iowa 1998).

Standard of Review:

The standard of review for an illegal sentence is correction of errors at law. *State v. Oetken*, 613 N.W.2d 679, 686 (Iowa 2008).

Discussion:

Where a lesser-included offense is merged with the greater offense, a conviction on the lesser-included offense is void. *State v. Anderson*, 565 N.W.2d 340, 344 (Iowa 1997). The test for determining whether an offense is a lesser included offense is as follows:

[U]nder the legal test the lesser offense is necessarily included in the greater offense if it is impossible to commit the greater offense without also committing the lesser offense. If the lesser offense contains an element not required for the greater offense, the lesser cannot be included in the greater. This is because it would be possible in that situation to commit the greater without also having committed the

lesser. In using this test, we look to the statutory elements rather than to the charge or the evidence.

State v. Jefferies, 430 N.W.2d 728, 740 (Iowa 1988). Whether it is impossible to commit the lesser included offense when committing the greater turns on the elements of each offense. *Id.* In *State v. Powers*, the Iowa Supreme Court found that assault is a lesser-included offense of attempt to commit murder. *State v. Powers*, 278 N.W.2d 26, 28 (Iowa 1979). In *State v. Bragg*, the Court found that it is impossible to commit attempted murder without also committing an assault. 784 N.W.2d 31, 36-37 (Iowa 2010).

The elements of Assault on a Peace officer as outlined in the Uniform Criminal Jury Instructions¹ are:

1. The defendant did an act that was intended to
 - (a) cause pain or injury, (b) result in physical contact that was insulting or offensive, or (c) place the peace officer in fear of an immediate physical contact that would have been painful, injurious, insulting or offensive to him.
2. The defendant had the apparent ability to do the act.
3. The act was done either
 - (a) with the specific intent to cause a serious injury, or
 - (b) while using or displaying a dangerous weapon.
4. At the time of the assault, the defendant knew Sheriff Ben Boswell was a peace officer.

¹ The district court utilized the Uniform Jury Instructions when formulating its ruling. (Findings of Fact, Conclusions of Law and Verdicts) (App. p. 29).

See Iowa Code sections 708.1, 708.3A (2019); *see also* Uniform Jury Instruction 800.3.

The elements of Attempt to Commit Murder of a Peace Officer as stated by the district court are:

1. The defendant operated a vehicle in such a way as to bring it into contact with another vehicle.
2. By his acts, the defendant expected to set in motion a force or chain of events that would cause or result in the death of a peace officer.
3. When the defendant acted, he specifically intended to cause the death of the peace officer.

See Iowa Code section 707.11(5)(b); *see also* Uniform Jury Instruction 700.19.

An individual cannot “expect to set in motion a force or chain of events that would cause or result in the death of a peace officer” without also doing

“...an act that (a) cause pain or injury, (b) result in physical contact that was insulting or offensive, or (c) place the peace officer in fear of an immediate physical contact that would have been painful, injurious, insulting or offensive to him.”

See Uniform Jury Instructions 700.19, 800.3; *see also* Iowa Code sections 707.11(5)(b), 708.1, 708.3A (2019). Further, one cannot “set into motion a force or chain of events that would cause or result in the death of a peace officer” without “having the apparent ability to do so” or without “(a) with the specific intent to cause a serious injury, or (b) while using or displaying a dangerous weapon.” *See Id, See also Bragg*, 784 N.W.2d at 36-37. Both offenses also require the victim to be a peace

officer. *See Id.* The only difference is that the assault statute does not contemplate the victim's death, that is, the level of injury expected to occur varies between the two statutes. *See Id.* This variance is nonetheless immaterial, as causing one's death undoubtedly involves a harmful or offensive physical contact. *See Id.*

Here, the district court convicted Appellant of both Assault on Persons in Certain Occupations – Peace Officer – With Intent to Inflict Serious Injury and Attempt to Commit Murder of a Peace Officer. (Findings of Fact, Conclusions of Law, and Verdicts) (App. p. 29). The district court sentenced Appellant to 5 years for Assault on Persons in Certain Occupations and 25 years with for Attempt to Commit Murder of Peace Officer. (Order of Disposition) (App. p. 52). This sentence is illegal because assault merges with attempted murder. *See Bragg*, N.W.2d at 36-37; *see also Anderson*, 565 N.W.2d at 344. Accordingly, Appellant's sentence should be reversed and remanded for resentencing.

II. APPELLANT'S CONVICTION IS NOT SUPPORTED BY SUBSTANTIAL EVIDENCE BECAUSE APPELLANT WAS NOT AWARE HIS ACTIONS WERE DIRECTED AT A PEACE OFFICER AND THE EVIDENCE DOES NOT SUPPORT A FINDING OF INTENT TO ASSAULT OR ATTEMPT TO MURDER A PEACE OFFICER.

Preservation of Error:

Historically, a motion for judgement of acquittal at the end of the State's evidence and at the close of trial has been required to preserve error for a claim of

insufficient evidence. *See State v. Truesdell*, 679 N.W.2d 611, 615 (Iowa 2004). Appellant did make a motion for a judgement of acquittal at trial at the close of the State's evidence. (Trial Tr. 196:15 – 199:1). After the verdict, Appellant filed a motion for new trial and a motion in arrest of judgement. (Motion for New Trial) (App. p. 47) (Motion in Arrest of Judgement) (App. p. 47). The district court denied Appellant's motion for new trial. (Order Denying Motion for New Trial and Motion for Arrest of Judgement) (App. p. 47). However, a motion for judgement of acquittal is no longer required to preserve error for a claim of insufficient evidence. *State v. Crawford*, 972 N.W.2d 189, 202 (Iowa 2022).

.... Iowa's appellate courts can review a defendant's challenge to the sufficiency of the evidence raised on direct appeal without regard to whether the defendant filed a motion for judgment of acquittal. A defendant's trial and the imposition of sentence following a guilty verdict are sufficient to preserve error with respect to any challenge to the sufficiency of the evidence raised on direct appeal.

Id.

Standard of Review:

Sufficiency of the evidence claims are reviewed for correction of errors at law. *State v. Jones*, 967 N.W.2d 336, 339 (Iowa 2021). The Court views the record of the evidence in the light most favorable to the state, including all reasonable inferences that may be fairly drawn from the evidence. *State v. Tipton*, 897 N.W.2d 653, 692 (Iowa 2017). The Court will uphold a verdict if substantial evidence supports it. *Id.* Evidence is considered substantial if, when viewed in the light most favorable to the

State, it can convince a rational jury that the defendant is guilty beyond a reasonable doubt. *Id.*

Discussion:

“Our standard of review is well settled. A verdict will be upheld where there is substantial evidence to support the charge.” *State v. LeGear*, 346 N.W.2d 21, 23 (Iowa 1984). “Substantial evidence means such evidence as could convince a rational trier of fact the defendant is guilty of the crime charged beyond a reasonable doubt.” *Id.* “The evidence is viewed in the light most favorable to the State, including legitimate inferences and presumptions which may fairly and reasonably be deduced from the record.” *State v. Bass*, 349 N.W.2d 498, 500 (Iowa 1984). “We consider all the evidence at trial, not just the evidence that supports guilt.” *State v. Robinson*, 288 N.W.2d 337, 340 (Iowa 1980).

A. WHETHER APPELLANT WAS AWARE HIS ACTIONS WERE DIRECTED AT A PEACE OFFICER.

Both elements for Assault on a Peace Officer and Attempted Murder of a Peace officer require that the suspect is aware that the targeted individual is a peace officer. *See* Iowa Code sections 708.1, 708.3A (2019) (Assault on a Peace Officer); *see also*, Iowa Code section 707.11(5)(b) (2019) (Attempted Murder of a Peace Officer). The district court found that Appellant knew the person occupying the vehicle was a peace officer. (Findings of Fact, Conclusions of Law, and Verdicts) (App. p. 29).

The district court stated as follows in its verdict:

He observed the fully marked vehicle operated by Deputy Arnold enter the driveway with its emergency lights operating. He attempted to ram that vehicle. He then did ram the tractor into another vehicle that had emergency lights that were operating and that had entered the driveway shortly after Deputy Arnold's vehicle.

(Findings of Fact, Conclusions of Law, and Verdicts) (App. p. 29). However, it does not follow that because Appellant allegedly chased down one marked vehicle that he was aware the occupant of the unmarked vehicle was a peace officer.

State's Exhibit 15 shows the sheriff's vehicle after the impact with the tractor. (State's Exhibit 15) (App. p. 27). The impact occurred in broad daylight, as is visible in the photo. (State's Exhibit 15) (App. p. 27). The deputy's vehicle was also unmarked. (State's Exhibit 15) (App. p. 27). The vehicle does have lights, but they are distinct from those of a marked law enforcement vehicle. (State's Exhibit 15) (App. p. 27). Deputy Randall described his own, marked vehicle as having "top lights and a big yellow 'Sheriff' down the sides." (Trial Tr. 134:9-12). Whereas the vehicle impacted by the tractor has LED lights on the interior, the bottom of the vehicle and on the front license plate, but no markings to indicate it's a deputy's vehicle. (Trial Tr. 143:11-16) (State's Exhibit 15) (App. p. 27).

Iowa Code section 708.3A does not provide a definition for "peace officer". See Iowa Code section 708.3A. Iowa Code section 707.11(5)(b) defers to Iowa Code section 801.4(11) to define a "peace officer", the section merely includes sheriffs

and deputies in the definition of a peace officer without describing factors to identify them by. *See* Iowa Code sections 707.11(5) and 801.4(11)(a). Iowa Criminal Jury

Instruction 1920.1 Eluding a Peace Officer list the following elements:

1) On or about the ___ day of _____, _____, the defendant was driving a motor vehicle; 2) The defendant willfully [failed to bring the motor vehicle to a stop or otherwise eluded] [attempted to elude] *a marked official law enforcement vehicle driven by a uniformed peace officer after being given a visual and audible signal to stop.*

(Emphasis Added).

Here, the deputy was driving an unmarked vehicle, in daylight, and it is unclear from the record whether the deputy had activated the vehicle's siren. (State's Exhibit 15) (App. p. 27). (Trial Tr. 169:8-10). It is also unclear, if the sheriff was uniformed, whether Appellant saw who was driving the vehicle. Given the lack of markings on the vehicle, the ambiguity of whether the vehicle's sirens were activated, and of whether Appellant had seen that the sheriff was uniformed, the conclusion that Appellant knew the vehicle's occupant was a peace officer is not supported by substantial evidence. *See LeGear*, 346 N.W.2d at 23.

B. WHETHER APPELLANT ACTED WITH THE INTENT TO ASSAULT OR ATTEMPT TO MURDER A PEACE OFFICER.

Both the Assault and Attempted Murder statutes Appellant was convicted under require that Appellant intended the consequences of his actions, either to cause the sheriff's death or to cause serious injury. *See* Iowa Code sections 708.1, 708.3A

(2019) (Assault on a Peace Officer); *see also*, Iowa Code sections 707.11(5)(b) (2019) (Attempted Murder of a Peace Officer). However, the record does not support the district court's conclusion that Appellant intended to cause serious injury or death to the sheriff. (Findings of Fact, Conclusions of Law, and Verdicts) (App. p. 29).

The district court found intent based upon Appellant lowering the bale spears as he approached the sheriff's vehicle, indicating an intent to harm the sheriff. (Findings of Fact, Conclusions of Law, and Verdicts) (App. p. 29). Nonetheless, there exists evidence that this was not Appellant's intent. It is possible Appellant was attempting to place the bale spears under the vehicle but wasn't aware the bale spears could not be lowered far enough to fit under the vehicle. During testimony the bale spears were distinguished from a forklift, because unlike the forks of a forklift, the bale spears angle upward. (Trial Tr. 80:23 – 81:14). Further, none of the other vehicles previously impacted by Appellant were occupied. (Trial Tr. 26:21-25; 27:12-25).

The district court also found that Appellant acted with intent because the tractor and attached bale spears is a dangerous weapon, and intent may be inferred by the use of a dangerous weapon. (Findings of Fact, Conclusions of Law, and Verdicts) (App. p. 29). However, the tractor was not moving very quickly, an estimated 14 miles an hour. (Trial Tr. 77:24 – 78:3). Additionally, the bale spears did not penetrate

all the way through the door of the sheriff's vehicle, in fact, one of them remained completely outside the vehicle. (State's Exhibit 11). Given these facts, it cannot be said with certainty that the tractor was "actually used in a way to indicate the user intended to inflict death or serious injury, *and* when so used is capable of inflicting death". (Findings of Fact, Conclusions of Law, and Verdicts) (App. p. 29). *See also*, Uniform Criminal Jury Instruction 200.21. (*Emphasis added*). Accordingly, the evidence is insufficient to support the conclusion that Appellant acted with the intent to attempt to murder or assault a peace officer.

CONCLUSION

For the aforementioned reasons, Appellant respectfully requests the Court reverse Appellant's conviction for lack of sufficient evidence, or alternatively, reverse Appellant's sentence and remand to correct Appellant's illegal sentence.

REQUEST FOR ORAL ARGUMENT

Notice is hereby given that upon submission of the cause to the Supreme Court of Iowa, Appellant hereby requests to be heard in oral argument.

/s/ Kelsey Knight
Kelsey Knight

ATTORNEY'S COST CERTIFICATE

I hereby certify that the cost of printing the foregoing Appellant's Proof Brief and Argument was the sum of \$ 5.80.

/s/ Kelsey Knight
Kelsey Knight

**CERTIFICATE OF COMPLIANCE WITH TYPE-VOLUME
LIMITATION, TYPEFACE REQUIREMENTS, AND TYPE-STYLE
REQUIREMENTS**

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

this brief contains 3,694 words, excluding the parts of the brief exempted by Iowa R. App. P. 6.903(1)(g)(1).

2. This brief complies with the typeface requirements of Iowa R. App. P. 6.903(1)(e) and the type-style requirements of Iowa R. App. P. 6.903(1)(f) because:

this brief has been prepared in a proportionally spaced typeface using Microsoft Word in fourteen (14) point Times New Roman.

/s/ Kelsey Knight
Kelsey Knight

4/25/2023
Date