IN THE SUPREME COURT OF IOWA
Supreme Court No. 22-1188
Wright County No. FECR036219

STATE OF IOWA,
Plaintiff-Appellee,

vs.

LUKOUXS BROWN,
Defendant-Appellant.

APPEAL FROM THE IOWA DISTRICT COURT
FOR WRIGHT COUNTY
THE HONORABLE GREGG R. ROSENBLADT, JUDGE

# APPELLEE'S BRIEF

BRENNA BIRD
Attorney General of Iowa

**KYLE HANSON**
Assistant Attorney General
Hoover State Office Building, 2nd Floor
Des Moines, Iowa 50319
(515) 281-5976
(515) 281-8894 (fax)
kyle.hanson@ag.iowa.gov

SCOTT BROWN
Assistant Attorney General

ERIC SIMONSON
Wright County Attorney

ATTORNEYS FOR PLAINTIFF-APPELLEE

FINAL

## TABLE OF CONTENTS

## TABLE OF AUTHORITIES

### Federal Cases



### State Cases

**State Statutes**

**Other Authorities**

## STATEMENT OF THE ISSUES PRESENTED FOR REVIEW

**I. Whether Substantial Evidence Supported the District Court's Finding that the Defendant Had Regained His Competency to Stand Trial.**

Authorities

*Dusky v. United States*, 362 U.S. 402 (1960)
*Miller v. Fenton*, 474 U.S. 104 (1985)
*United States v. Whittington*, 586 F.3d 613 (8th Cir. 2009)
*People v. Taylor*, 949 N.E.2d 124 (Ill. App. Ct. 2011)
*State v. Aswegan*, 331 N.W.2d 93 (Iowa 1983)
*State v. Benson*, 919 N.W.2d 237 (Iowa 2018)
*State v. Byrge*, 614 N.W.2d 477 (Wis. 2000)
*State v. Coley*, 326 P.3d 702 (Wash. 2014)
*State v. Crawford*, 972 N.W.2d 189 (Iowa 2022)
*State v. Edwards*, 507 N.W.2d 393 (Iowa 1993)
*State v. Jackson*, 305 N.W.2d 420 (Iowa 1981)
*State v. Jacobs*, 607 N.W.2d 679 (Iowa 2000)
*State v. Jenkins*, 931 N.W.2d 851 (Neb. 2019)
*State v. Lyman*, 776 N.W.2d 865 (Iowa 2010)
*State v. Lyon*, 293 N.W.2d 8 (Iowa 1980)
*State v. O'Neill*, 945 N.W.2d 71 (Minn. Ct. App. 2020)
*State v. Pedersen*, 309 N.W.2d 490 (Iowa 1981)
*State v. Reeves*, 636 N.W.2d 22 (Iowa 2001)
*State v. Rieflin*, 558 N.W.2d 149 (Iowa 1996)
*State v. Tilden*, 988 S.W.2d 568 (Mo. Ct. App. 1999)
*State v. Wheeler*, 403 N.W.2d 58 (Iowa Ct. App. 1987)
Iowa Code § 321J.2(2)(c)
Iowa Code § 812.8(1)
Iowa Code § 812.8(8)
Iowa Code § 812.9(1)

## II. Whether the District Court Properly Allowed the Parties an Opportunity to Obtain Independent Evaluations of the Defendant's Competency.

Authorities

*Mulhern v. Cath. Health Initiatives*, 799 N.W.2d 104 (Iowa 2011)
*State v. Childs*, 898 N.W.2d 177 (Iowa 2017)
*State v. Rodriguez*, 807 N.W.2d 35 (Iowa 2011)
Iowa Code § 812.3(2)
Iowa Code § 812.8
Iowa Code § 812.8(1)
Iowa Code § 812.8(3)
Iowa Code § 812.8(4)
Iowa Code § 812.8(5)
Iowa Code § 812.8(6)
Iowa Code § 812.8(8)
*ABA Standards for Criminal Justice: Special Functions of the Trial Judge* 6-1.1(a) (3d ed.2000)

## III. Whether the District Court Properly Permitted the Defendant's Competency Hearing to Extend Beyond the Statute's 14-day Directory Guideline.

Authorities

*In re Detention of Fowler*, 784 N.W.2d 184 (Iowa 2010)
*Save Our Stadiums v. Des Moines Indep. Cmty. Sch. Dist.*, 982 N.W.2d 139 (Iowa 2022)
*State v. Childs*, 898 N.W.2d 177 (Iowa 2017)
*State v. Goemaat*, No. 10-0405, 2011 WL 444029 (Iowa Ct. App. Feb. 9, 2011)
*Taylor v. Dep't of Transp.*, 260 N.W.2d 521 (Iowa 1977)
Iowa Code § 4.1(30)(a)
Iowa Code § 812.4(1)
Iowa Code § 812.8(4)
Iowa Code § 812.9(1)

## ROUTING STATEMENT

The Supreme Court should retain this case to correct the standard of review in competency cases. Iowa stands alone in conducting de novo review of the district court's competency findings. *See State v. O'Neill*, 945 N.W.2d 71, 82 (Minn. Ct. App. 2020) ("Except for Iowa, . . . we have found no jurisdiction applying a de novo, fact-reweighing approach on appellate review." (citing *State v. Lyman*, 776 N.W.2d 865, 871 (Iowa 2010))). For the reasons detailed below (pp. 12–16), the Court should take this opportunity to overrule *Lyman*'s mistaken standard of review. *See* Iowa R. App. P. 6.1101(2)(d) (retaining cases that present fundamental and urgent issues of broad public importance).

## STATEMENT OF THE CASE

### Nature of the Case

Defendant Lukouxs Brown was granted interlocutory review of the district court's order finding he is competent to stand trial.

### Course of Proceedings

The State accepts the defendant's statement of the course of proceedings as substantially correct.

**Facts**

Defendant Brown did not like Wayne Smith, his co-worker at the Prestage pork processing facility near Eagle Grove. Minutes at 1, § 1, Dkt. 11; Conf. App. 4.

On February 16, 2021, workers found Smith bleeding from the neck in the processing plant's locker room. *Id.* at 2–3, §§ 4–6; Conf. App. 5–6. As Smith bled to death on the floor, Brown admitted to another co-worker that he had attacked Smith. *Id.* A surveillance video showed Brown had approached Smith from behind and slashed his throat. *Id.* at 4, § 7; Conf. App. 7.

When police arrived, they found Smith lying in large pool of blood and Brown with blood on his hands. *Id.* at 1, § 1; Conf. App. 4. During an interview, Brown admitted cutting Smith's neck with a knife. *Id.* He explained that he had purchased the knife at Walmart a day or two earlier intending to use it to kill Smith. *Id.*

## ARGUMENT

### I. Substantial Evidence Supported the District Court's Finding that Brown Had Regained His Competency to Stand Trial.

#### Preservation of Error

Brown preserved error by resisting at the restoration hearing and receiving an adverse ruling in the district court. *See generally* Ruling (6/17/2022), Dkt. 68; App. 57–75.

#### Standard of Review

For the reasons argued below in section I(A), the Court should apply a correction-of-errors, substantial-evidence review of the district court's finding of competency.

#### Merits

Brown lost the battle of the experts, so this Court should affirm the order finding him competent to stand trial. First, the Court should abandon the ill-conceived de novo standard of review, which does not afford proper deference to the district court's findings of credibility. Second, under the correct standard of review, substantial evidence supports the district court's order assigning credibility to the State's expert. Third, even under a de novo review, the evidence proved Brown was competent to appreciate the charge, understand the proceedings, and assist in his defense.

### A. The Court should return to reviewing competency rulings for substantial evidence, not de novo.

The first step in this case is correcting the standard of review. Until 2010, this Court applied a split standard of review. For claims that the district court failed to adequately address competency, review was de novo. *State v. Lyman*, 776 N.W.2d 865, 871 (Iowa 2010) (citing *State v. Lyon*, 293 N.W.2d 8, 9, 12–13 (Iowa 1980)). But when the district court had ruled on the defendant's competency, "review was at law for substantial evidence." *Id.* at 871–73 (citing *State v. Jackson*, 305 N.W.2d 420 (Iowa 1981); *State v. Aswegan*, 331 N.W.2d 93 (Iowa 1983); *State v. Rieflin*, 558 N.W.2d 149 (Iowa 1996)). *Lyman* overruled *Jackson*, *Aswegan*, and *Rieflin*, imposing a de novo review on all competency questions. *Id.* at 873. That overruling was misguided, makes Iowa an outlier, and wrongly appropriates the district court's duty to assess questions of credibility. As a result, this Court should overrule *Lyman* and return to a substantial-evidence review.

*Lyman*'s reasoning does not hold up to scrutiny. Its justification for overruling decades of caselaw was that competency "implicates a constitutional right," and de novo review applies "when an appeal involves a defendant's constitutional rights." *Id.* at 873. But this logic

would swallow up every type of challenge in criminal cases. For instance, a sufficiency-of-the-evidence challenge "implicates" the constitutional right to proof beyond a reasonable doubt. Or a jury-instruction challenge "implicates" the constitutional right to a jury trial on all essential elements. But the Court has no problem reviewing those issues for correction of errors at law. *State v. Crawford*, 972 N.W.2d 189, 202 (Iowa 2022); *State v. Benson*, 919 N.W.2d 237, 241 (Iowa 2018). Competency is no different. Although trying an incompetent defendant offends due process, reviewing the district court's application of Iowa's competency statute calls for a substantial-evidence standard. *Jackson*, *Aswegan*, and *Rieflin* had it right.

*Lyman*'s de novo standard makes Iowa an outlier. Federal courts recognize that "[d]etermining whether a defendant is competent to stand trial is committed to the discretion of the district court." *United States v. Whittington*, 586 F.3d 613, 617 (8th Cir. 2009) (quotations omitted). Thus, "[t]he competency determination is a factual finding we affirm unless clearly arbitrary or unwarranted, or clearly erroneous." *Id.* Similarly, Iowa's sister states apply standards of review that defer to the district court's findings. *See*

*State v. O'Neill*, 945 N.W.2d 71, 76–77, 81–82 (Minn. Ct. App. 2020) (concluding the competency standard "requires us to accept the district court's factual findings after a hearing, unless they are clearly erroneous" and collecting cases proving "most state jurisdictions also apply clear-error review or its functional equivalent to a district court's competency finding"); *State v. Jenkins*, 931 N.W.2d 851, 864 (Neb. 2019) ("The trial court's determination of competency will not be disturbed unless there is insufficient evidence to support the finding."); *State v. Tilden*, 988 S.W.2d 568, 576 (Mo. Ct. App. 1999) ("[W]here the issue of mental competency has been raised by motion or by the trial court, and has been decided, the standard of review is that the trial court's determination of competency must stand unless unsupported by substantial evidence, without appellate weighing of the evidence . . ."); *People v. Taylor*, 949 N.E.2d 124, 140 (Ill. App. Ct. 2011) ("A trial court's determination that a defendant is fit to stand trial will not be reversed absent an abuse of discretion."); *State v. Byrge*, 614 N.W.2d 477, 491 (Wis. 2000) ("We . . . adhere to the clearly erroneous standard for reviewing circuit court determinations in competency proceedings."). *Lyman* ignores this consensus that the

district court's competency determination deserves substantial deference.

The correct standard of review grants deference to the district court's superior opportunity to assess credibility. Questions of competency, like any mental-health challenge, often involve dueling experts. Such cases turn on deciding which expert is more credible. And the district court that observes the dueling testimony is in the best position to decide issues of credibility. *See, e.g.*, *Byrge*, 614 N.W.2d at 491 ("Because a competency determination depends on the [trial] court's ability to appraise witness credibility and demeanor, 'there are compelling and familiar justifications for leaving the process of applying law to fact to the trial court.'" (quoting *Miller v. Fenton*, 474 U.S. 104, 114 (1985)).

*Lyman*'s superficial reasoning should be overruled. As our neighbor to the north has summarized, "Except for Iowa, . . . we have found no jurisdiction applying a de novo, fact-reweighing approach on appellate review." *O'Neill*, 945 N.W.2d at 82 (citing *Lyman*, 776 N.W.2d at 871). Today the Court should jettison *Lyman*'s aberrant de novo standard and return to the established rule that appellate review

"is limited to whether there is support in the record for the competency finding." *Rieflin*, 558 N.W.2d at 152.

### B. Expert testimony supported the district court's competency ruling.

Under the correct standard of review, this Court should decline Brown's request to reopen the battle of the experts. The district court heard competing expert testimony, and it found the State's expert more credible. "When a case evolves into a battle of experts, we, as the reviewing court, readily defer to the district court's judgment as it is in a better position to weigh the credibility of the witnesses." *State v. Jacobs*, 607 N.W.2d 679, 685 (Iowa 2000) (citation omitted). Dr. Jones-Thurman's expert testimony supported the district court's finding of competency, so this Court should affirm.

Brown challenges the district court's finding that his competency had been restored. Restoration is accomplished when "the defendant has acquired the ability to appreciate the charge, understand the proceedings, and effectively assist in the defendant's defense." Iowa Code § 812.8(1) (2023); *see also Dusky v. United States*, 362 U.S. 402, 402 (1960) ("[T]he 'test must be whether he has sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding—and whether he has a rational as

well as factual understanding of the proceedings against him.'"). The district court must find "by a preponderance of the evidence that the defendant's competency has been restored." Iowa Code § 812.8(5).[1]

On this question, the State presented expert testimony from Dr. Rosanna Jones-Thurman. She holds bachelor's and master's degrees in psychology as well as a Ph.D. in psychology. Hrg. Tr. (5/6/2022)[2] 9:13–20. She is licensed to practice psychology in Iowa and Nebraska. Tr. 9:21–10:3. Her practice includes some treatment, but she spends most of her time examining children and adults. Tr. 8:11–9:12. She has been providing evaluations in Iowa, including competency evaluations, since 1995. Tr. 10:21–11:7. She works for the prosecution

---

[1] Confoundingly, the statute also requires proof by a preponderance of the evidence for Brown's position "that there is no substantial probability the defendant's competency will be restored in a reasonable amount of time." Iowa Code § 812.8(8). This necessity for proof by a preponderance of the evidence in either direction leaves questions about who bears the burden of proof or what the court should do if the evidence is in equipoise. *See Lyman*, 776 N.W.2d at 874 ("We presume a defendant is competent to stand trial. The defendant has the burden of proving his or her incompetency to stand trial by a preponderance of the evidence. If the evidence is in equipoise, the presumption of competency prevails. (citing *State v. Pedersen*, 309 N.W.2d 490, 496 (Iowa 1981)); *State v. Coley*, 326 P.3d 702, 706–09 (Wash. 2014) (applying the presumption of competency and concluding the defendant retains the burden to prove incompetency at the restoration hearing).

[2] Unless otherwise specified, all transcript citations in this brief refer to the hearing on May 6, 2022.

and defense alike. Tr. 11:8–12:7. In Brown's case, the State hired Dr. Jones-Thurman to give an opinion on competency, reimbursing her a reasonable rate for her services. Tr. 12:8–16, 42:20–43:13.

Dr. Jones-Thurman reviewed a variety of records before reaching a decision on Brown's competency. Tr. 12:17–13:7. She looked at investigative reports, including Brown's interview when he admitted planning the killing. State's Ex. 1 at 5–7, Dkt. 62 (Jones-Thurman report); Conf. App. 66–68. She reviewed the monthly progress reports from Drs. Andersen, Keller, and Bayless at IMCC. *Id.* at 7–11; Conf. App. 68–72. And she had police records from Brown's home state of Oregon. *Id.* at 11–13; Conf. App. 72–74.

Next, Dr. Jones-Thurman personally examined Brown in jail. On February 19, 2022, she met with him face-to-face for about 90 minutes. Tr. 13:8–22. Brown told Dr. Jones-Thurman about his family and educational history, his employment, his medical and addiction issues, and his mental health history. Tr. 15:8–16:4, State's Ex. 1 at 1–5, Dkt. 62; Conf. App. 62–66. Brown was able to answer her questions coherently. Tr. 16:5–8.

Dr. Jones-Thurman proceeded with a mental status exam. Tr. 16:8–10. Brown scored in the borderline range on the verbal portion

of the Welscher Adult Intelligence Scale (WAIS). Tr. 19:3–20:7. Although Brown "appeared to have below average intellectual ability," his memory for recent and remote events was "grossly intact," and he "was able to demonstrate ability to do abstract reasoning." State's Ex. 1 at 13–14, Dkt. 62; Conf. App. 74–75. Brown reported that "things have improved 'absolutely'" and that his medications were "helping a lot." *Id.* at 4; Conf. App. 65. Nothing "gave [Dr. Jones-Thurman] any pause or concern in moving forward with [her] evaluation." Tr. 21:8–22:13.

After the examination, Dr. Jones-Thurman determined Brown was competent. She expressed a clear professional opinion that "Mr. Brown is competent to stand trial." State's Ex. 1 at 14, Dkt. 62; Conf. App. 75. She found he possessed adequate intellectual capacity "to understand and help his attorney and aid in his defense." *Id.* at 16; Conf. App. 77. Additionally, "he is able to understand the general principles with the court and the proceedings." *Id.* And he was "able to pay attention, focus, and understand relevant information at trial." *Id.* Dr. Jones-Thurman's report and testimony supported her conclusions on these three points of the competency standard.

First, the examination showed Brown possessed a rational appreciation of the charge. He knew he was charged with first-degree murder, he named the person he was accused of killing, and he explained he did not like the victim. Tr. 23:7–16, 25:5–26:3, State's Ex. 1 at 14–15, Dkt. 62; Conf. App. 75–76. He understood that his sentence would depend on whether he was found guilty and on what degree of homicide. Tr. 27:8–10. He knew that Iowa does not have the death penalty but that his potential sentence would be "quite long." Tr. 27:16–28:9. Although Brown did not use precise legal terminology such as "premeditation," he expressed understanding of the concept by explaining how he formed a plan to kill. Tr. 33:16–34:16. He also knew that he preferred to go to jail rather than be locked in a mental health facility. Tr. 34:23–35:19. These facts supported Dr. Jones-Thurman's conclusion that Brown was "able to appreciate his charges, what he has done, and the potential outcomes and consequences." State's Ex. 1 at 15, Dkt. 62; Conf. App. 76.

Second, the examination showed Brown had a rational understanding of the proceedings. He had familiarity with the criminal justice system from his history of criminal charges in Oregon. Tr. 26:4–19. He understood the "adversarial nature of the

legal process, with his attorney working to help him and the prosecutor as the opponent. State's Ex. 1 at 16, Dkt. 62; Conf. App. 77. "He has a general understanding of the judge, jury, [and] trial." *Id.* at 15; Conf. App. 76; *see also* Tr. 29:24–30:8. These facts supported Dr. Jones-Thurman's conclusion that Brown "is able to understand the general principles with the court and the proceedings." State's Ex. 1 at 16, Dkt. 62; Conf. App. 77.

Third, the examination showed Brown could effectively assist in his defense. Although he scored low on the intelligence test, "He actually has better conversational speech and comprehension of what is going on than what is represented by the IQ test." *Id.* at 15; Conf. App. 76; Tr. 29:2–10. He understood who his attorney was, could articulate his medications and history, and could answer questions. Tr. 29:11–16. He would be able to understand and help his attorney, such as by "disclos[ing] facts pertinent to the proceedings to his attorney." State's Ex. 1 at 15, 16; Dkt. 62; Conf. App. 76, 77; *see also* Tr. 35:20–36:7. And he was "able to manifest appropriate courtroom behavior." State's Ex. 1 at 16, Dkt. 62; Conf. App. 77. These facts supported Dr. Jones-Thurman's conclusion that Brown could "get through a trial and aid his legal team." *Id.* at 17; Conf. App. 78.

The district court, after hearing competing evidence, credited Dr. Jones-Thurman's professional determination. It noted, "The Court was impressed with the methodology used by Dr. Jones-Thurman in conducting her evaluation of the defendant and gives credibility to her findings and conclusions." Ruling at 4, Dkt. 68; App. 60. It accepted her "unwavering" opinion on Brown's restoration to competency. *Id.* The court weighed, at length, testimony from IMCC Drs. Andersen and Bayless. *Id.* at 4–15; App. 60–71. But it returned to Dr. Jones-Thurman's analysis:

> In reviewing all the information contained in the court file, the Court finds that the reported conclusions by Dr. Rosanna Jones-Thurman are clear, concise, well-founded, and on point, and constitute very clear evidence that the defendant is competent to stand trial under the *Dusky* standard and requirements of Iowa Code § 812.

*Id.* at 16; App. 72. The court concurred with her analysis (*id.* at 17; App. 73), showing it found her determination more credible than the competing expert opinions.

Brown's appellate argument misplaces reliance on competing opinions from Drs. Andersen and Bayless and from his own sister. *See generally* Def. Br. at 34–46. In a substantial-evidence review, the appellate court cannot supplant the district court's role of assessing

credibility. "The credibility of witnesses and the weight to be given their testimony is a function of the trier of fact." *State v. Wheeler*, 403 N.W.2d 58, 61 (Iowa Ct. App. 1987), *overruled on other grounds by State v. Reeves*, 636 N.W.2d 22 (Iowa 2001). Even when a defendant like Brown presents competing evidence, the district court need not accept it. *See id.* ("[Expert testimony] may be accepted in whole, in part, or not at all."); *see also Jacobs*, 607 N.W.2d at 685 ("The trial court as trier of fact is not obligated to accept opinion evidence, even from experts, as conclusive.").

In Brown's case, the district court's credibility finding controls. Dr. Jones-Thurman found Brown met the competency standard expressed in *Dusky* and Iowa Code chapter 812. State's Ex. 1 at 16, Dkt. 62; Conf. App. 77. "[H]e is able to appreciate the charges, allegations, consequences, and potential outcomes. He is also able to get through trial and aid his legal team." *Id.* at 16–17; Conf. App. 77–78. That Brown presented competing expert opinions does not matter. In this substantial-evidence review, it was the district court's prerogative to sort through the expert testimony and assign credibility. Dr. Jones-Thurman's professional opinion supports the competency finding, so this Court should affirm.

### C. Even under a de novo review, the evidence proved Brown's competency to stand trial.

Even if this Court were to apply *Lyman*'s incorrect standard of review, the competing expert testimony does not compel a finding in Brown's favor. Brown is too eager to criticize Dr. Jones-Thurman's conclusions while overlooking significant shortcomings in the analysis by Drs. Andersen and Bayless. Comparisons of the doctors' credentials was not determinative, the timing of IMCC's incompetency finding was suspect, and the final incompetency finding was flawed. This record did not require a finding that Brown was incompetent.

#### *1. The doctors' various credentials did not compel a particular result.*

Brown is wrong to dismiss Dr. Jones-Thurman just because "her expertise and experience [do not] match that of Drs. Bayless and Andersen." Def. Br. at 47. Quite true, their experiences do not match. Dr. Jones-Thurman is a doctorate-level, licensed psychologist whose practice focuses on "mostly evaluations," which she has performed in the state since 1995. Tr. 8:11–11:7. And true, as a practicing psychologist rather than a university professor, she "has [not] authored any publications in peer-reviewed publications." Def. Br. at

47. While the State does not question the IMCC doctors' qualifications to perform competency exams, assessing the credibility of expert witnesses' conclusions is more complicated that comparing the thickness of their curricula vitae.[3] That Dr. Jones-Thurman has devoted her career to psychological evaluations—rather than academic research on unrelated topics—enhances her credibility.

Next, Brown makes too much of the doctors' differing roles between treatment and evaluation. He stresses that Dr. Jones-Thurman's "brief interview" did not outweigh "Dr. Andersen's eight-month inpatient relationship with Brown." Def. Br. at 47. Dr. Andersen did spend more time with Brown because his role included restoring Brown's competency. But Brown overlooks that Dr. Jones-Thurman had the benefit of reviewing Dr. Andersen's monthly reports, and her opinion incorporated the observations from those reports. *See* State's Ex. 1 at 7–11, 15–16, Dkt. 62 (Jones-Thurman report); Conf. App. 68–72, 76–77; *see also* Ruling at 4, Dkt. 68; App.

---

[3] For example, the lists of publications by Drs. Andersen and Bayless expose no specialty in competency to stand trial. *See generally* Def. Ex. B, Dkt. 64 (Andersen C.V.); App. -- (containing 527 entries for "eating disorder" but only five for "competence" or "competency"); Def. Ex. A at 4, Dkt. 63 (Bayless C.V.); App. -- (documenting recent research activities in electroconvulsive therapy and none for competency).

60 ("Dr. Jones-Thurman also reviewed the reports and evaluations from IMCC."). Similarly, Dr. Jones-Thurman explained she did not take time to perform certain tests because Dr. Bayless had already completed them, and repeating the tests risked inflating the score with "performance effect." Tr. 50:15–51:1. Dr. Jones-Thurman affirmed that her 90-minute interview with Brown was adequate, and she did not need to see him again for any reason. Tr. 13:19–14:2. In short, assessing credibility cannot be simplified to counting how much face-to-face time each expert spent with Brown.

Brown also places too much weight on Dr. Jones-Thurman being "hired by the State" to perform the competency exam. Def. Br. at 47. Her professional experience includes working for both prosecution and defense clients. Tr. 11:8–22. And she made clear that she was not an advocate for one side or the other: "My role is to give you my opinion about whether I thought he was competent for trial." Tr. 45:20–46:1. Although a factfinder may consider an expert's compensation, the fact that Dr. Jones-Thurman charged a reasonable rate for her services does not destroy her credibility.

### *2. The assertion of incompetency conflicted with months of Brown's progress toward restoration.*

The progression of Dr. Andersen's services draws questions about the reliability of his final determination. To begin, he ended his restoration efforts early. Chapter 812 grants up to 18 months to restore a defendant's competency to stand trial. Iowa Code § 812.9(1). But Brown spent just eight months in restoration before Dr. Andersen declared him unrestorable. *See* Transport Cert., Dkt. 25 (showing transport to IMCC on 5/17/2021); App. 27; Andersen Report at 2, Dkt. 40 (reflecting final evaluation date of 1/24/2022); Conf. App. 53. Thus, Dr. Andersen gave up restoring Brown some 10 months early.

Not only did Dr. Andersen give up early, but also his finding of unrestorability conflicted with months of Brown's progress toward restoration. IMCC's first several updates showed Brown was making progress and recommended continued treatment toward restoration. *See, e.g.*, IMCC Report (8/12/2021), Dkt. 27; Conf. App. 16 (noting Brown "made some limited progress"); IMCC Report (8/12/2021) at 9, Dkt. 28; Conf. App. 25 (prognosing a "modest possibility" of restoration). In November 2021, Dr. Anderson reported Brown showed "substantial improvement in both mental status and knowledge about the court and the proceedings of trial." IMCC

Report (11/16/2021) at 6, Dkt. 34; Conf. App. 39. Dr. Andersen predicted a "moderately good possibility" of restoration. *Id.* And in the penultimate report in December 2021, Dr. Andersen reported that Brown "has shown substantial improvement since admission." IMCC Report (12/16/2021) at 4, Dkt. 39; Conf. App. 45. In particular, he met the competency standard on two of the criteria and was close on the third. *See id.* (finding Brown "appreciates in its essentials his charge," "has a generally rational and factual understanding of the key personnel in court," and "has a moderately effective but not yet adequate ability to assist his defense attorney").

Despite Brown's trend toward restoration, Dr. Andersen's final report made an abrupt 180-degree turn. Dr. Andersen concluded Brown "lacks the capability of ever being restored to competency." IMCC Report (1/24/2022) at 8, Dkt. 40; Conf. App. 60. Contrary to his report from a month earlier, he found Brown had only a "partial appreciation of the charge he faces" and "does not have a rational or a factual understanding of the key personnel in court during trial." *Id.* And Brown now lacked any ability to assist his defense "in even a modest or minimal manner," despite one month earlier having a

"moderately effective" ability to do so. *Compare id.*, *with* IMCC Report (12/16/2021) at 4, Dkt. 39; Conf. App. 45.

The timing of this shift reasonably led the district court to question Dr. Andersen's motives. It noted the "totality of the reports from IMCC . . . that the defendant has made progress" and the "abrupt change with the most recent report." Ruling at 17, Dkt. 68; App. 73. At the hearing, Dr. Andersen had boasted IMCC's record of restoring 75–80% of patients within seven to nine months. *Id.* at 5; App. 61; Tr. 94:22–95:3. And Dr. Andersen's final report came with a cover page stating a "[n]o exceptions" demand to pick up Brown within 14 days, noting the "limited number of beds available" and that "the bed formerly occupied by [Brown] will be filled with another patient." IMCC Report (1/24/2022) at 1, Dkt. 40; Conf. App. 52. Although Dr. Andersen insisted "[w]e never make decision based on bed space," he also admitted that in an "ideal world" he would "keep everybody 18 months." Tr. 119:15–17, 120:18:19.

The "abrupt change" in Dr. Andersen's opinion gave the district court "the impression that IMCC concluded that the clock had run out for the defendant, and since he did not meet in their estimation a number of select criteria within a certain period of time, the

defendant was deemed to be incompetent to stand trial." Ruling at 16–17, Dkt. 68; App. 72–73. Even if this Court were to undertake a de novo review, the progression of IMCC's reports weighs against accepting the abrupt change of opinion in Dr. Andersen's final determination.

### *3. The district court and State's expert raised rational doubts about the IMCC doctors' reasoning.*

The abrupt change in IMCC's opinion converged with other factors supporting Brown's competency. In contrast to Dr. Andersen's contradictory opinions, the district court credited Dr. Jones-Thurman's conclusions as "clear, concise, well-founded, and on point." Ruling at 16, Dkt. 68; App. 72. The court combined her opinion with "many examples in the [IMCC] reports that point to the defendant's competency to stand trial." *Id.* "[E]vidence in their reports over time supports and adds to the opinion and conclusion of Dr. Jones-Thurman." *Id.* at 17; App. 73. Indeed, Dr. Jones-Thurman identified significant shortcomings in IMCC's conclusions, often drawing on kernels from IMCC's own reports.

To begin, the IMCC doctors placed too much weight on Brown's intellectual capacity. For example, Dr. Bayless stressed Brown's low

scores on various intelligence tests, and then he used those scores to infer that Brown would be unable to follow courtroom proceedings or assist his defense. Tr. 61:23–69:25, 75:10–76:9. But a defendant's competency to stand trial depends on more than numbers on a test. Dr. Jones-Thurman explained that Brown "actually has better conversational speech and comprehension of what is going on than what is represented by the IQ test." State's Ex. 1 at 15, Dkt. 62 (Jones-Thurman report); Conf. App. 76. Thus, Brown's diminished cognitive ability was necessary for a finding of incompetency, but it alone did not establish an inability to appreciate the charge, understand the proceedings, or assist in his defense. *See State v. Edwards*, 507 N.W.2d 393, 395 (Iowa 1993) ("A history of mental illness standing alone, however, does not mean the defendant is incompetent." (citation omitted)).

Similarly, the IMCC doctors misperceived facts bearing on their opinion of Brown's competency. For example, Dr. Andersen suggested Brown had identified his attorney as Parker Thirnbeck even though Charles Kenville represented him at the competency hearing. Tr. 101:17–102:8. But as the district court explained, Parker Thirnbeck *was* one of Brown's attorneys, so Brown mistaking his

attorney's name was reasonable. Thirnbeck Appearance (2/17/2021), Dkt. 7; App. 9–10; Ruling at 13–14, Dkt. 68; App. 69–70 ("Parker Thirnbeck and Charles Kenville are in the same office. . . . The Court does not give much significance to Mr. Brown confusing Mr. Thirnbeck and Mr. Kenville."). As another example, Dr. Andersen inferred Brown did not understand the difference between a felony and misdemeanor because he thought "getting a DUI" was a felony. IMCC Report (12/16/2021) at 3, Dkt. 39; Conf. App. 44. But as Dr. Jones-Thurman recognized, Brown has two previous drunk-driving convictions, so he had likely been accurately warned that another conviction would be a felony. State's Ex. 1 at 16, Dkt. 62 (Jones-Thurman report); Conf. App. 77; *see also* Iowa Code § 321J.2(2)(c) (making third-offense OWI a class D felony). That Dr. Andersen made factual mistakes like these diminished the reliability of his competency opinion.

Next, the district court correctly doubted some of Dr. Andersen's methodology. Before his final report, he showed Brown "a half-hour episode of a popular humorous TV series," found Brown "could not remember any of the events or themes of the episode," and therefore inferred Brown "could not follow the proceedings of trial."

IMCC Report (1/24/2022) at 7, Dkt. 40; Conf. App. 59. The district court questioned basing a competency finding on Brown's ability to interpret a TV sitcom. Ruling at 15, Dkt. 68; App. 71. "This seems to be somewhat of an informal test versus the many month[s] of interviews, testing, medication regimens, and formal interviews with the defendant," the court commented. *Id.* Indeed, one would expect Brown to be more capable of recounting events in his own life. *See, e.g.*, State's Ex. 1 at 5–6, Dkt. 62 (Jones-Thurman report); Conf. App. 66–67 (summarizing Brown's detailed admissions to police about the murder and his life history).

More fundamentally, Dr. Andersen struggled to define when a defendant is capable of assisting in his own defense. When pressed on whether Brown could assist his attorneys, Dr. Andersen responded, "It depends on your definition." Tr. 117:16–22. He conceded Brown could assist by answering his attorneys' questions, but said it "depends" whether he could "participate in joint decision making." Tr. 117:6–13. He added, "I think the more demanding and precise definition of effectively assisting, the less he would meet that criteria." Tr. 117:13–15. Dr. Andersen summarized that Brown could assist in his defense "to a limited extent but not to an extensive degree." Tr.

117:22–24. These waffling explanations show Dr. Andersen applied too high of a standard. The competency inquiry does not turn on how well a defendant memorizes legal terminology or on his ability to make judgments on complicated legal strategies—those are tasks where the attorney assists the client. And Brown showed his ability to assist his attorneys by answering their questions and providing accurate information about the crime and his past. *See* Ruling at 16, Dkt. 68; App. 72 (summarizing "various points in the [IMCC] reports [where] the defendant has been able to follow along with questioning and evaluation at IMCC").

Finally, events after IMCC's final evaluation did not compel a finding of incompetency. Dr. Jones-Thurman examined Brown nearly a month after IMCC's last evaluation, making her opinion the most recent professional analysis of Brown's competency. *Compare* IMCC Report at 2, Dkt. 40; Conf. App. 53 (interview date 1/24/2022), *with* State's Ex. 1 at 1; Dkt. 62 (Jones-Thurman report); Conf. App. 62 (evaluation date 2/19/2022). Brown points to a recorded phone call with his sister, which he alleges demonstrated his "regression since his transfer to jail . . ." Def. Br. at 53. But the district court disagreed—it found that despite "some odd statements" in the phone call, "on

balance, the defendant was able to carry on a good conversation" with his sister and "seemed quite able to follow along with the conversation and respond appropriately during the call." Ruling at 6, Dkt. 68; App. 62. And the record showed Brown kept receiving psychiatric care and medication while in the county jail. Stipulation, Dkt. 67; Conf. App. 81.

In sum, a de novo review of the record would not compel reversal. Brown's argument boils down to his preference that the Court follow the IMCC doctors' opinions. But the reliability of their competency analysis is not as clear as Brown perceives. Their final report contradicted their own observations of competency in previous reports. *See* Ruling at 16, Dkt. 68; App. 72 ("Upon reviewing the totality of the reports from IMCC, the Court has noted that there are many examples in the reports that point to the defendant's competency to stand trial."). And both the district court and the State's expert identified deficiencies in IMCC's process and conclusions. The district court correctly credited Dr. Jones-Thurman's "clear, concise, well founded, and on point" conclusion that Brown is competent to stand trial. *Id.* And that conclusion should prevail on appeal.

*  *  *

This case calls for the Court to reassess its shift to de novo appellate review of competency. The State presented substantial evidence of Brown's competency from a qualified, doctorate-level psychologist. Although Brown can point to perceived weaknesses in that opinion, equally the State has identified defects in Brown's request for a finding of incompetency. The district court is the best place to resolve those issues of credibility and to settle the battle of the experts. This Court should rejoin its sister states in conducting a substantial-evidence review and should affirm the order finding Brown competent to stand trial.

## II. The District Court Properly Allowed the Parties an Opportunity to Obtain Independent Evaluations of Brown's Competency.

### Preservation of Error

Brown preserved error by resisting the State's request for an independent evaluation and receiving an adverse ruling in the district court. Order (2/11/2022), Dkt. 46; App. 48–49.

### Standard of Review

"We review rulings on questions of statutory interpretation for correction of errors at law." *State v. Childs*, 898 N.W.2d 177, 181 (Iowa 2017) (quotation omitted).

**Merits**

Brown reads into the statute a nonexistent limitation against independent evaluations. Chapter 812 provided an adversarial hearing to determine whether his competence to stand trial had been restored. And at that hearing, the district court had both express and inherent authority to allow either party to obtain an independent evaluation. The district court did not commit a legal error by receiving Dr. Jones-Thurman's report or testimony, so the competency ruling should be affirmed.

To begin, Brown underestimates the adversarial nature of the restoration hearing. He contends that the restoration-phase proceedings "become less adversarial" and that "the only opinion that is relevant to the court's determination is that of the treating physicians." Def. Br. at 62, 63. But the statute's plain language does not say so. Instead, the statute designates "the director of the inpatient facility" as the person to "*notify* the court." Iowa Code §§ 812.8(1), (3) (emphasis added). That notification then triggers the court "schedule a hearing" and "also issue an order to transport the defendant to the hearing." *Id.* § 812.8(4). If Brown were correct that the court's only option was to rubber-stamp IMCC's determination,

such a ministerial function could be completed on paper. By mandating a hearing with the presence of the defendant, the statute envisions that the parties may litigate the question of restoration. And granting the opportunity for adversarial litigation at a hearing envisions allowing the parties to present evidence in favor of their positions.

In addition to its adversarial structure, the competency statute expressly permits the parties to obtain independent evaluations. It provides, "Any party is entitled to a separate psychiatric evaluation by a psychiatrist or licensed, doctorate-level psychologist of their own choosing." Iowa Code § 812.3(2). Brown declares this independent-evaluation provision "does not apply to the later stages of incompetency proceedings" because it appears as the last line of the section that "addresses the initial allegation" of incompetency. Def. Br. at 60. But the provision's plain language does not make that limitation, so Brown's interpretation would judicially amend the statute to state that the right to an independent evaluation applies "only during the initial stage." *See, e.g.*, *Mulhern v. Cath. Health Initiatives*, 799 N.W.2d 104, 113 (Iowa 2011) ("We determine the legislature's intent by the words the legislature chose, not by what it

should or might have said." (citation omitted)). And the section about restoration does not say a party *cannot* get an independent evaluation at that stage. *See* Iowa Code § 812.8. The district court correctly interpreted the last line of section 812.3(2) as "a stand-alone sentence" that permitted the State to seek a separate evaluation of Brown's competency. Tr. (2/11/2022) at 21:22–22:9.

Even if the statute did not expressly permit an independent evaluation, the district court possessed inherent authority to allow it. Section 812.8 tasks the district with determining whether, by a preponderance of the evidence, a defendant is competent, incompetent, or unrestorable. Iowa Code §§ 812.8(5), (6), (8). Making a reliable determination about mental health relies on the court's consideration of expert opinions from both sides of the controversy. Under analogous circumstances, the Court recognized the district court's inherent authority to compel an independent psychiatric examination of the defendant. In *State v. Rodriguez*, 807 N.W.2d 35, 38 (Iowa 2011), the defendant urged "that our rules [of criminal procedure] do not allow the State to obtain a psychiatric evaluation of a defendant to determine if he or she knowingly, intelligently, and voluntarily waived his or her *Miranda* rights." But the Court noted

the trial judge's "responsibility for safeguarding both the rights of the accused and the interests of the public in the administration of criminal justice." *Id.* at 37 (quoting *ABA Standards for Criminal Justice: Special Functions of the Trial Judge* 6-1.1(a), at 1 (3d ed.2000)). It concluded, "the court has inherent authority under these circumstances to require such an evaluation and that the trial court erred in failing to allow the State to obtain the evaluation." *Id.* at 38. Like *Rodriguez*, the State—and the people of Iowa—deserved a fair opportunity to assess Brown's competency with an independent expert opinion.

Finally, Brown overlooks how his interpretation would hamstring the search for truth in future cases. He liked IMCC's opinion, so he seeks to silence any other expert who dissents. But in the next case, it may be the defendant who disagrees with IMCC's finding of restoration. If IMCC's opinion alone controls, the defense would never be allowed to present a second opinion. Brown himself recognized the incongruity of silencing one side of the adversarial process—he asked that if the district court granted the State's request, that the order "include language that if the defense so chooses to employ its own expert, we can do so." Tr. (2/11/2022) at 23:15–20.

Basic fairness dictates that either party—prosecution or defense—be allowed to secure an independent evaluation of the defendant's restoration to competency. In some, or perhaps many, cases both parties may agree with IMCC's restoration findings. But when the parties disagree, the search for truth necessitates qualified expert testimony on both sides. The district court correctly permitted the State to seek an independent evaluation, so this Court should not disturb the ruling on Brown's restoration of competency.

## III. The District Court Properly Permitted Brown's Competency Hearing to Extend Beyond the Statute's 14-day Directory Guideline.

### Preservation of Error

Brown preserved error by moving to dismiss and receiving an adverse ruling in the district court. Order (3/23/2022), Dkt. 50; App. 54–55.

### Standard of Review

"We review rulings on questions of statutory interpretation for correction of errors at law." *Childs*, 898 N.W.2d at 181.

### Merits

Brown's final complaint misperceives the nature of time guidelines in chapter 812. The statute provides a directory timeline, not a mandatory duty, to hold the restoration hearing within 14 days.

Even if Brown's restoration hearing extended beyond that directory period, he failed to prove prejudice requiring dismissal. And Brown failed to establish a due process violation for being held in jail while continuing to receive psychiatric treatment to preserve his competency to stand trial.

Brown relies on what he calls a "14-day deadline" in the restoration statute. It provides, "Upon receiving a notification under this section, the court shall schedule a hearing to be held within fourteen days." Iowa Code § 812.8(4). The statute, however, does not provide any consequence for holding the hearing after that period. *See id.*

Brown's claim depends on the type of duty section 812.8(4) creates. He declares, without citation, that "[t]he 14-day deadline is mandatory" because it says "shall." Def. Br. at 68. "The word 'shall' imposes a duty." Iowa Code § 4.1(30)(a). But "[d]uties can be either mandatory or directory." *Save Our Stadiums v. Des Moines Indep. Cmty. Sch. Dist.*, 982 N.W.2d 139, 148 (Iowa 2022) (citation omitted).

> "[T]he general rule [is] that statutory provisions fixing the time, form and mode of proceeding of public functionaries are directory because they are not of the essence of

> the thing to be done but are designed to secure system, uniformity and dispatch in public business. Such statutes direct the thing to be done at a particular time but do not prohibit it from being done later when the rights of interested persons are not injuriously affected by the delay."

*Id.* (quoting *Taylor v. Dep't of Transp.*, 260 N.W.2d 521, 523 (Iowa 1977)). Whether a duty is directory or mandatory determines what type of remedy applies. *Id.* at 149. "A mandatory duty 'is essential to the main objective of the statute . . . and a violation will invalidate subsequent proceedings under it.'" *Id.* (quotation omitted). "If a duty is directory, a failure to perform the duty will not invalidate subsequent proceedings unless the individual has suffered prejudice as a result of the violation." *Id.*

To begin, Brown is too quick to assume the district court transgressed the 14-day period. Section 812.8(4) instructs the district court to "schedule a hearing to be held within fourteen days." And the district court *did* hold a hearing within 14 days of when IMCC filed its certification. IMCC Report, Dkt. 40 (filed 2/1/2022); Conf. App. 52–61; "Order Following 812.8(4) Hearing," Dkt. 46 (filed 2/11/2022); App. 48–49. The court decided at the hearing that it needed more information, and it continued the proceedings so the State could

obtain an independent evaluation. But nothing in section 812.8(4)'s instruction to hold a hearing within 14 days also requires the hearing to be completed and a ruling issued within that timeframe.

Next, section 812.8(4)'s 14-day guideline creates a directory, not mandatory, duty. The statute's "principal purpose" is to determine a defendant's restoration to competence, and the 14-day timeline "is designed to assure order and promptness in the proceeding," *See Taylor*, 260 N.W.2d at 522–23. In fact, the 14-day schedule is one of three duties in the statute—it also states the court "shall" order transport of the defendant and that the sheriff of the county holding the hearing "shall" transport the defendant. Iowa Code § 812.8(4). But the statute does not purport to nullify the proceedings if the defendant voluntarily appeared by videoconference or if the sheriff of a different county transported him. Additionally, other provisions in chapter 812 demonstrate the legislature's ability to articulate a mandatory deadline requiring dismissal. *See* Iowa Code § 812.9(1) (stating the criminal charge "shall be dismissed with prejudice" when the defendant's placement for restoration exceeds the maximum term of confinement). In whole, the "shall" duties in section 812.8(4)

ensure order and promptness for the restoration hearing, showing they are directory in nature.

Comparison to past cases confirms that section 812.8(4)'s 14-day timeline is directory. In *Taylor*, a driver sought to dismiss his license revocation because the hearing occurred beyond the 20-day period required by statute. *Taylor*, 260 N.W.2d at 522. The Court disagreed, concluding the "speedy-hearing provision" was "clearly designed to provide order and promptness in the administrative process, the characteristic purpose of a directory statute." *Id.* at 523. In contrast, *Fowler* involved the 90-day speedy-trial limit for sexually violent predators. *In re Detention of Fowler*, 784 N.W.2d 184, 187 (Iowa 2010). The Court found that like the criminal speedy-trial rule, "[a]ny remedy other than dismissal would render a time limitation for trial meaningless." *Id.* at 190.

Brown's circumstances are closer *Taylor*. The 14-day provision directs the court to proceed promptly, but holding the hearing—not promptness—is the primary purpose of the statute. And unlike *Fowler*, section 812.8(4) is not an analogue to the speedy-trial rule. In a criminal case like Brown's, the defendant's right to speedy trial comes from Rule 2.33(2)'s speedy-trial rule, and chapter 812's time

limits do not control. *See State v. Cox*, No. 10-0829, 2011 WL 486543, at *4–7 (Iowa Ct. App. Feb. 9, 2011) (refusing to find a speedy-trial violation even though the defendant's initial competency evaluation extended months beyond the 14-day limit); *State v. Goemaat*, No. 10-0405, 2011 WL 444029, at *2–3 & n.2 (Iowa Ct. App. Feb. 9, 2011) (same); *see also* Iowa Code § 812.4(1) ("A hearing shall be held within fourteen days of the arrival of the person at a psychiatric facility for the performance of the evaluation . . .").

In light of section 812.8(4)'s directory nature, Brown failed to demonstrate prejudice flowing from exceeding the 14-day timeline. He claims he experienced harm by being "held in jail, not a hospital, and was no longer receiving restorative treatment." Def. Br. at 71. But the record proved while he was in the county jail, he kept receiving medication under the supervision of a qualified psychiatrist. Stipulation, Dkt. 67; Conf. App. 81. Brown contends his "medication was adjusted" and that he "experienced a resurgence of the positive symptoms." Def. Br. at 71. But his proof for that resurgence was his sister's testimony about a recorded phone call, and the district court concluded "on balance" the recording showed Brown was "quite able to follow along with the conversation and respond appropriately

during the call." Ruling at 6, Dkt. 68; App. 62. This evidence failed to prove prejudice from accommodating an independent evaluation of his competency.

For the same reason, Brown cannot substantiate a due process violation. He cites cases finding "due process rights of incompetent criminal defendants were violated by being held in jail for weeks or months awaiting restorative treatment." Def. Br. at 72. But Brown's circumstances are distinguishable. First, he was not an incompetent defendant—Dr. Jones-Thurman found him competent to stand trial, and the district court credited her opinion as more reliable. *See* Ruling at 16, Dkt. 68; App. 72. Second, Brown was not denied restorative treatment—IMCC provided months of restorative treatment, and he continued receiving psychiatric care while in jail. *See* State's Ex. 1 at 7–10, Dkt. 62; Conf. App. 68–71 (summarizing IMCC's treatment); Stipulation, Dkt. 67; Conf. App. 81 (showing Brown continued receiving prescription medication under the care of a psychiatrist with 37 years of experience). Unlike defendants waiting on the front end for an initial evaluation and treatment, Brown stood on the back end after being restored to competency. His detention in jail while awaiting trial did not violate his due process rights.

The district court properly denied Brown's motion to dismiss. Section 812.8(4)'s 14-day guideline is directory, not mandatory. As such, Brown was not entitled to dismissal unless the delay caused prejudice. Delay in Brown's case advanced the public's interest in securing evidence to accurately assess his competency to stand trial. *See* Tr. (2/11/2022) at 22:17–18 (showing the district court "balance[ed] the safety of the community against the defendant's due process rights"). And that delay did not inflict constitutional injury because Brown was competent to stand trial, even if he had not yet been declared so. Neither the statute nor the circumstances required dismissal, so this Court should affirm.

## CONCLUSION

The Court should affirm the district court's order finding Lukouxs Brown competent to stand trial.

## REQUEST FOR ORAL SUBMISSION

If the Supreme Court retains the case, oral argument would be appropriate to address the proper standard of review and the novel issues of statutory interpretation.

Respectfully submitted,

BRENNA BIRD
Attorney General of Iowa

**KYLE HANSON**
Assistant Attorney General
Hoover State Office Bldg., 2nd Fl.
Des Moines, Iowa 50319
(515) 281-5976
kyle.hanson@ag.iowa.gov

## CERTIFICATE OF COMPLIANCE

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) or (2) because:

- This brief has been prepared in a proportionally spaced typeface using Georgia in size 14 and contains **7,982** words, excluding the parts of the brief exempted by Iowa R. App. P. 6.903(1)(g)(1).

Dated: November 29, 2023

**KYLE HANSON**
Assistant Attorney General
Hoover State Office Bldg., 2nd Fl.
Des Moines, Iowa 50319
(515) 281-5976
kyle.hanson@ag.iowa.gov