

**IN THE COURT OF APPEALS OF IOWA
NO. 21-1425
DECATUR COUNTY NO. FECR007351**

**STATE OF IOWA,
Plaintiff-Appellee,**

vs.

**GERRY HARLAND GREENLAND,
Defendant-Appellant.**

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

**DEFENDANT-APPELLANT'S APPLICATION FOR FURTHER
REVIEW OF THE COURT OF APPEALS' DECISION DATED
JANUARY 24, 2024**

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QUESTIONS PRESENTED FOR FURTHER REVIEW

1. Did the Court of Appeals err by rejecting Greenland's sufficiency of the evidence claim?
2. Did the Court of Appeals err by rejecting Greenland's merger argument?

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State v. Love, 858 N.W.2d 721, 723 (Iowa 2015).

State v. Schiebout, 944 N.W.2d 666 (Iowa 2020).

State v. Trane, 934 N.W.2d 447, 455 (Iowa 2019).

OTHER AUTHORITY

Iowa Code Section 707.11.

Iowa Code Section 708.3A.

STATEMENT SUPPORTING FURTHER REVIEW

With all due respect, Greenland respectfully submits that the Iowa Court of Appeals' ruling against Greenland on this issue is with all due respect "in conflict with ... decision[s] of this court or the Court of Appeals on an important matter", within the meaning of Iowa R. App. P. 6.1103(1)(b)(1), namely what must be shown for the Iowa Appellate Courts to uphold a verdict of guilty in a criminal case. With all due respect, the Court of Appeals' decision in this case is in conflict with *State v. Trane*, 934 N.W.2d 447, 455 (Iowa 2019) and *State v. Schiebout*, 944 N.W.2d 666 (Iowa 2020).

Furthermore, with respect to the merger argument, with all due respect the Court of Appeals' decision is also respect "in conflict with ... decision[s] of this court or the Court of Appeals on an important matter", within the meaning of Iowa R. App. P. 6.1103(1)(b)(1), namely the merger doctrine. With all due respect, the Court of Appeals' decision in this case is in conflict with *State v. Hickman*, 623 N.W.2d 847, 850 (Iowa 2001) and *State v. Braggs*, 784 N.W.2d 31, 36-37 (Iowa 2010).

STATEMENT OF THE CASE¹

After a bench trial, the District Court 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. Appendix, pg. 29. On September 7, 2021 the District Court sentenced Greenland to a term of 25 years for Attempt to Commit Murder of a Peace Officer, five years for Assault on a Peace Officer, and 30 days for Assault. Order of Disposition. Appendix, pg. 52.

STATEMENT OF THE FACTS

Deputy Randy Arnold testified that he observed Greenland drive towards Sheriff Boswell's vehicle on a tractor. Trial Transcript, pg. 153, Lines 4-7. Arnold testified that the tractor struck Boswell's vehicle and pushed Boswell's vehicle into a ditch. Trial Transcript, pg. 145, Line 11 = pg. 146. Line 14.

ARGUMENT

The Appellant, Gerry Harland Greenland (hereinafter "Greenland") hereby states the following in support of his Application for Further Review of the Court's January 24, 2024 decision in the above-captioned matter.

¹ The undersigned counsel has taken this section and also the Statement of Facts largely from the brief filed by prior counsel (Kelsey Knight) in this case prior to the undersigned counsel's appointment.

I. THE COURT OF APPEALS ERRED BY REJECTING GREENLAND’S SUFFICIENCY OF THE EVIDENCE ARGUMENT.

The standard of review for this issue is for “correction of legal error”. *State v. Scheibout*, 944 N.W.2d 666, 670 (Iowa 2020), citing to *State v. Nall*, 894 N.W.2d 514, 517 (Iowa 2017). In *State v. Schiebout*, 944 N.W.2d 666 (Iowa 2020) this Court noted that “we will uphold the verdict” in a criminal case “on a sufficiency of the evidence claim if substantial evidence supports it. *State v. Trane*, 934 N.W.2d 447, 455 (Iowa 2019)”.

Greenland preserved this issue for further review by his attorney filing a motion in arrest of judgment and motion for new trial. Motion for New Trial. Motion for Arrest of Judgment. Appendix, pg. 47.

With regard to the second paragraph of page 7 of the Court’s opinion, Greenland concedes that Iowa Code Sections 707.11 and 708.3A do not require certain “indices of a peace officer” of his/her status as such to be shown. Iowa Code Section 707.11 and 708.3A. Opinion, page 7, paragraph 3. That being said, those statutes probably omit specific references to such indices because their intended application is general and not limited to the context of enforcement of motor vehicle laws. In contrast, Iowa Code Section 321.279(1) defines an offense that *only* can be committed by operating a motor vehicle. Therefore, it makes sense that Iowa Code Section

321.279(1) makes specific reference to “specific indices a peace officer must display”. Opinion, pg. 7, Paragraph 2. While the state is not required to show that the peace officer “display”ed the “indices” of his/her identity as a peace officer described in Iowa Code Section 321.279(1) in order for Greenland to be convicted pursuant to Iowa Code Sections 707.11(5)(b) and 708.3A(1), Iowa Code Section 321.279(1) certainly provides a good indication of what “indices” of authority (Opinion, pg. 7, Paragraph 2) might be to meet the State’s burden of proof to show that Greenland knew Boswell was a peace officer. There is no indication from Boswell’s testimony that Boswell had his siren on at the time. Trial Transcript, pg. 174, Lines 5-7

Thus, Greenland respectfully submits that while not dispositive of this issue, the failure of the State to show all the indices of Boswell’s authority as a peace officer described in Iowa Code Section 321.279(1), namely the use of a siren, would undermine the idea that Greenland’s convictions were supported by substantial evidence because Iowa Code Section 321.279(1) sets forth indices of a peace officer’s identity as a peace officer that would clearly establish Boswell’s identity as a peace officer, such the activation of a siren – which the record does not establish Boswell did.

Moreover, as noted in the Appellant’s Brief, it is not clear that Greenland could observe Boswell’s uniform when Boswell was in his vehicle and thereby ascertain Boswell’s identity as a peace officer. Greenland would have to look closely at the interior of Boswell’s vehicle while looking through both the tinted glass of the tractor and that of the sheriff’s vehicle. State’s Exhibit 11, State’s Exhibit 14. Greenland also respectfully questions whether “Greenland had a clear view of the front of Sheriff Boswell’s car and the emergency lights as he was driving unobstructed down the driveway before choosing to turn and ram the vehicle.” Opinion, pg. 8, Paragraph 1. Greenland respectfully notes that the rather long engine and hood of the tractor as shown in State’s Exhibit 11 might have deprived Greenland of such a “clear view”. Opinion, pg. 8, Paragraph 1. State’s Exhibit 11. With all due respect, the Court of Appeals’ decision on this issue is in conflict with *State v. Trane*, 934 N.W.2d 447, 455 (Iowa 2019) and *State v. Schiebout*, 944 N.W.2d 666 (Iowa 2020).

II. THE COURT OF APPEALS ERRED BY REJECTING GREENLAND’S MERGER ARGUMENT.

The standard of review is for correction of errors at law. *State v. Johnson*, 950 N.W.2d 21, 23 (Iowa 2020).

While the issue was not preserved for further review, the Court may still consider the question of whether Greenland's sentence was illegal because of the issue of merger because challenges to an illegal sentence may be raised at any time. *State v. Love*, 858 N.W.2d 721, 723 (Iowa 2015).

Greenland respectfully disagrees with the Court of Appeals' conclusion that "[t]he act of switching gears in order to push the vehicle is sufficient to separate the actions into two distinct offenses." Opinion, pg. 13, Lines 3-5. Deputy Arnold does not seem to imply that after striking the sheriff's vehicle the tractor stopped. Trial Transcript, pg. 153, Lines 20-25. Arnold's testimony suggests merely that Greenland shifted to prevent the tractor from stopping and allowing him to push the sheriff's vehicle as part of one continuous act of striking the sheriff's vehicle and pushing it. Trial Transcript, pg. 153, Lines 20-25.

Arnold testified that after the tractor struck the Sheriff's vehicle "it was losing RPM fast. He had to lower the gearing." Trial Transcript, pg. 153, Lines 22-23. Arnold does not say that the tractor had stopped moving at that point. The evidence would suggest that upon contact with the sheriff's vehicle the tractor kept moving without interruption because there is no indication that the tractor actually stopped moving upon striking the sheriff's vehicle. Trial Transcript, pg. 153, Lines 20-25.

Greenland would respectfully maintain that the act of shifting gears is not “sufficient to separate the actions into two distinct offenses” because by shifting gears Greenland was furthering the single combined action of striking and pushing the sheriff’s vehicle. Greenland would respectfully maintain that the action of striking the vehicle cannot be separated from the one continuous action of pushing the vehicle because obviously Greenland could not have pushed the vehicle unless Greenland first struck the vehicle as part of this one continuous action. For these reasons and for all the reasons set forth in the brief and at oral argument, Greenland respectfully maintains that these actions merge and that his convictions and sentences on both cannot be upheld pursuant to Iowa Code Section 701.9. With all due respect, the Court of Appeals’ ruling on this issue is in conflict with *State v. Braggs*, 784 N.W.2d 31, 36-37 (Iowa 2010) and *State v. Hickman*, 623 N.W.2d 847, 850 (Iowa 2001).

CONCLUSION AND PRAYER FOR RELIEF

WHEREFORE, Greenland requests that this Court, sitting *en banc*, please hear this case, review this case further, and reverse the decision of the Court of Appeals in this matter.

WHEREFORE, Greenland requests that this Court please strike the convictions at issue in this appeal and order the District Court to enter an

order reversing the Court's order striking Greenland's convictions with prejudice to the State.

WHEREFORE, only in the alternative, Greenland requests that the Court please strike the convictions at issue in this appeal and grant him new trials with respect to the cases appealed from.

WHEREFORE, Greenland requests that only in the alternative to the foregoing requests, Greenland requests that the Court please strike Greenland's sentences and remand these cases for new sentencing proceedings.

WHEREFORE, Greenland requests that if the Court remands these cases to the District Court, that this Court please order that any further District Court proceedings be conducted by a different judge.

WHEREFORE, Greenland requests that this Court, sitting *en banc*, please hear this case again.

WHEREFORE, Greenland requests that the Court please order any other relief for Greenland that the Court deems to be in the interest of justice.

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**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 1,639 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)(3) 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 a version of Microsoft Word that was produced on or before 2003 in Times New Roman, 14 point type.

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Dated: February 13, 2024

CERTIFICATE OF SERVICE

I certify that on or before February 13, 2024, I, the undersigned counsel served a copy of the Defendant-Appellant's Application for Further Review upon the State by electronically transmitting a copy of the same to Assistant Attorney General Louis Sloven of the Criminal Appeals Division of the Iowa Attorney General's Office through the use of the EDMS system.

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