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IN THE SUPREME COURT OF IOWA

STATE OF IOWA, Plaintiff-Appellee, v. RICHARD E. KING III, Defendant-Appellant.	Des Moines County No. AGIN030048 Supreme Court No. 25-1646

APPEAL FROM THE IOWA DISTRICT COURT
FOR DES MOINES COUNTY
HONORABLE JENNIFER BAILEY, ASSOCIATE JUDGE (MOTION TO DISMISS)
HONORABLE MARK KRUSE, JUDGE (TRIAL)

APPELLANT'S BRIEF AND ARGUMENT

Martha J. Lucey
State Appellate Defender

Ryan M. D'Eliseo
Assistant Appellate Defender
rdeliseo@spd.state.ia.us
appellatedefender@spd.state.ia.us

STATE APPELLATE DEFENDER'S OFFICE
6200 Park Ave.
Des Moines, Iowa 50321
(515) 207-9563

ATTORNEYS FOR DEFENDANT-APPELLANT

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STATEMENT OF THE ISSUES PRESENTED FOR REVIEW

I. **The District Court erred in denying Mr. King's motion to dismiss because "peace officer," as used in Iowa Code section 718.2, does not include 'federal agents.'**

II. **Specific intent to deceive is an essential element of the crime; the District Court erred by marshaling it as a general intent crime.**

III. **Where specific intent is an essential element of the crime, the evidence was insufficient to convict Mr. King.**

IV. **Iowa Code section 718.2 is unconstitutional.**

ROUTING STATEMENT

This case should be retained by the Iowa Supreme Court because it presents substantial issues of first impression and substantial constitutional questions as to the validity of a statute. Iowa Rs. App. P. 6.903(2)(*a*)(4), .1101(2)(*a*), (*c*) (2026).

Indeed, virtually every aspect of this case presents an issue of first impression. That's because the statute under review—Iowa Code section 718.2, Iowa's criminal prohibition on impersonating public officials (namely, here, 'peace officers')—has received *no* substantive judicial treatment by any appellate court in Iowa's history, despite a lineage traceable to the state's first codified body of law. *See* Iowa Code § 2671 (1851). The provision has not been cited in any appellate opinion since it was first moved to section 718.2, as part of the 1976 overhaul of the criminal code. *See* 1976 Iowa Acts ch. 1245, § 1802 (codified at Iowa Code § 718.2 (Supp. 1977) (effective Jan. 1, 1978)). Prior to that, the prohibition received only passing references from Iowa's appellate courts. *See McCue v. Wapello Cnty.*, 10 N.W. 248, 252 (Iowa 1881) (noting the existence of this criminal prohibition in an acting-sheriff's lawsuit to recover wages, when distinguishing *de facto* officers who act in "[g]ood faith and [under] claim of right" from

those who act without good faith, making them "criminally liable" (citing Iowa Code §§ 3962, 3963 (1873))); *State v. Bates*, 23 Iowa 96, 98–99 (1867) (rejecting a defendant's argument that the constable who arrested him was "falsely assuming to act as such officer within section 4298 of the [1860 Iowa Code]," and thus that his arrest by the constable was illegal).

This case thus presents unique questions about an area of Iowa law unexplored for nearly two centuries. Specifically, the issues in this case involve the definition of 'peace officer' as used in section 718.2 (in Part I), and whether the term 'falsely' as used therein requires proof of a specific intent to deceive (in Part II). This case also presents a substantial constitutional question as to the validity of section 718.2 under the First, Fifth, and Fourteenth Amendments to the U.S. Constitution and article I, sections 7 and 9 of the Iowa Constitution, if it is interpreted, as instructed to the jury in this case, to proscribe pure speech, without additionally requiring some specific intent or overt act (in Part IV).

NATURE OF THE CASE

Defendant-Appellant Richard E. King III appeals following his trial, conviction, and sentence for impersonating a public official, *viz.*,

a peace officer.[1] *See generally* D00036, Verdict (8/20/25); D0041, Judgment and Sentence (9/22/25); D0067, Trial Tr. (8/20/25).

Mr. King was sentenced to a one-year term of incarceration and an $855 fine, plus a surcharge. D0056, Sentencing Tr. at 12:8–13:15 (9/22/25); *see generally* D0041. The District Court suspended this sentence in favor of two-years' probation, including a requirement to participate in any recommended substance abuse treatment. D0056 at 12:8–13:15; *see generally* D0041; D0044, Order Amending Sentencing Order (9/29/25) (clarifying term of probation for written order).

In this appeal, Mr. King challenges the District Court's denial of his motion to dismiss the charge, *see generally* D0018, Mot. to Dismiss (4/15/25); D0080, Mot. to Dismiss Hearing Tr. (5/6/25); D0022, Def. Br. in Support of Mot. to Dismiss (5/12/25); D0023, State Br. in Resistance to Mot. to Dismiss (5/16/25); D0024, Order on Mot. to Dismiss (6/10/25), as well as his subsequent conviction.

[1] An aggravated misdemeanor. Iowa Code § 718.2 (2024).

STATEMENT OF THE FACTS

On November 16, 2024, Mr. King went to the Wingstop in Burlington. *See* D0067 at 109:17–111:21. He ordered a "five-piece bone-in lemon pepper chicken[,] with ranch," to go. *Id.* at 117:14–22; *id.* at 87:17–23; D0038, State's Exh. 1 at 1 (8/20/25).

Five days later, Mr. King was charged with impersonating a public official. *See generally* D0001, Complaint (11/21/24); *see also generally* D0014, Trial Information (12/30/24). According to the complaint and the minutes of testimony, when Mr. King was at the Wingstop he was "causing issues and harassing patrons" by claiming to be "a 'federal officer of the law' " or "a 'Federal Agent.' " D0001 at 2; Attachment to D0013, Exh. A at 4–6 (12/30/24). Mr. King also allegedly offered to "show people his badge," though no one took him up on it. D0013, Exh. A at 4–6.

On the contrary, by all accounts, no one in the Wingstop ever believed that Mr. King was any kind of peace officer. D0067 at 93:7–8, 100:8–11, 106:1–107:3. Everyone simply ignored him, and then he left. *See id.* at 110:4–7, 111:17–21. The assistant manager only called the police because her general manager (who was not present that evening) advised her to get "a report on file to" prevent Mr. King from

coming back in the future. *Id.* at 86:4–12, 91:20–92:5. By the time police arrived, Mr. King was gone. *Id.* at 110:4–7, 111:17–21.

Mr. King filed a motion to dismiss, arguing that he could not have committed a violation of the statute under which he was charged, Iowa Code section 718.2, because that statute only applies to impersonating *Iowa* peace officers, whereas he was accused of "claiming to be a *federal* agent." D0018 ¶¶ 4–5 (emphasis added). At a hearing on the motion, the District Court requested supplemental briefing as to whether impersonating a federal officer is separately proscribed under federal law. D0080 at 6:17–22, 7:23–8:8.

Unsurprisingly, it is. *See* 18 U.S.C. § 912; *see generally* D0022. But, as the State pointed out, the federal statute is different from Iowa's in a key respect—under the federal statute, "simply claiming to be a federal officer is not enough." D0023 at 2. Instead, "[the federal statute] requires an overt act in addition to" the claim. *Id.* Under Iowa's statute, by contrast, simply saying the words *is* enough; so, as the State noted, it was doubtful whether "[Mr. King]'s conduct could be prosecuted under [the federal statute]." *Id.*

Mr. King agreed as to the differences between the statutes, but argued further that those differences supported his concerns about

the Iowa statute's free speech implications. D0080 at 6:2–16; D0022 at 2. Accordingly, Mr. King urged the District Court to interpret Iowa's statute to similarly require an "*actus reus* [component] to save it from" unconstitutionality. D0022 at 2. The State's only response to these constitutional concerns, other than a blanket denial, was its assertion (made without citation or analysis) that, under the Iowa provision, "[m]erely dressing as a peace officer or other public official is not enough." D0023 at 2.

The District Court denied Mr. King's motion. *See generally* D0024. It reasoned that the statutory phrase "peace officer" was not limited to Iowa peace officers because it was not modified by the qualifier "state," and because to construe the statute in that manner would be "antithetical to [its] purpose," creating a "loophole." *See id.* at 1–2. Accordingly, when Mr. King's case went to trial on August 20, 2025, the District Court instructed the jury that "[a] peace officer is defined as an individual designated by a public authority to enforce the law and preserve public safety whether it be state or federal." D0037, Jury Instructions at 4 (8/20/25) (Instruction No. 14).

At the trial, the State called three witnesses from the Wingstop—the assistant manager, and two teenagers to whom

Mr. King's comment was allegedly directed—as well as two police officers who worked on the case. *See generally* D0067. According to the three witnesses from the Wingstop, Mr. King claimed he was an agent or officer of some kind. After the prosecutor started using terminology interchangeably, however, the teenagers' testimonies became unclear as to *what* kind, exactly, Mr. King claimed to be.

The first witness, the assistant manager, testified that she heard someone claim to be "a federal agent," though she could not positively identify Mr. King. *Id.* at 83:12–17, 85:17–86:2, 89:20–90:14. The second witness, one of the two teenagers, initially testified Mr. King "stated he was like a U.S. Marshal." *Id.* at 97:25–98:1. On redirect, however, the prosecutor (misstating his testimony) asked him a question about "when [Mr. King] was claiming to be a *state* marshal." *Id.* at 101:18–22 (emphasis added). The witness did not correct the prosecutor, and defense counsel did not object. *See id.* Thereafter, the third witness, the other teenager, initially testified about the incident using the same phrase, "state marshal," unprompted. *Id.* at 103:23–25. The prosecutor continued using that phrase in her questioning, *see id.* at 104:12–19, until she again switched, this time to "police officer," *see id.* at 105:3–5. The witness

did not correct her, *see id.*, but when subsequently asked a question on cross-examination, he, unprompted, switched back to "state marshal." *id.* at 105:23–106:4. Defense counsel then asked the witness questions using both "U.S. Marshal" and "state marshal," and the witness answered both questions without correction or clarification. *See id.* at 106:21–107:9.

All three witnesses agreed, though, that they did not believe Mr. King's claim. *Id.* at 93:7–8, 100:8–11, 106:21–107:3. All three also agreed he did no more than make the claim. He was not wearing any uniform, insignia, or other indicia of being a peace officer, such as (despite his alleged offers to show one) a badge. *Id.* at 92:6–13, 100:8–24, 105:3–13, 106:12–107:22.[2] He neither took any overt act in furtherance of his alleged claim (e.g., by trying to arrest someone), *see id.* at 83:12–17, 85:23–86:3, 97:1–98:23, 103:14–104:1, nor sought any sort of benefit (e.g., free wings). *Id.* at 91:16–19, 107:4–9.

[2] Apparently, though, as the State argued in resisting Mr. King's motion to dismiss, if he *had* worn a badge or uniform, *that* would not be a crime under the statute. D0023 at 2 ("Merely dressing as a peace officer or other public official is not enough under § 718.2."). Yet, it maintained that merely saying the words, without more, is. *Id.*

According to the State, however, none of that mattered. *See id.* at 133:11–20, 137:10–14. Whether anybody believed Mr. King, whether he took any overt act in furtherance of his claim, and what his intent or purpose was in making it, were entirely irrelevant. As the State told the jury in closing, "the law doesn't care what the witnesses believed," it only "cares that he made the claim." *Id.* at 137:10–14; *see also id.* at 120:9–17 (arguing, in resisting Mr. King's motion for judgment of acquittal, that, "The Code does not require that the witnesses believed that claim, *just simply that he claimed it*" (emphasis added)); D0023 at 2 (contrasting Iowa Code section 718.2 from 18 U.S.C. section 912). All he had to do was say the magic words: 'I am a [fill-in-the-blank-peace-officer].'

The District Court agreed with the State's interpretation. To wit, at the close of evidence, Mr. King sought to introduce a jury instruction that would have required the jury to find that he spoke "with the purpose to make someone believe he or she is a peace officer." D0032, Def. Proposed Jury Instruction at 1 (8/20/25). Mr. King specifically argued that, without this instruction—i.e., if the State were correct that Mr. King committed a crime under the statute through "just the utterance of a phrase"—the impersonation statute

"is unduly vague or unduly broad and impermissibly burdens free speech." D0067 at 126:12–128:10. Harkening back to the litigation over Mr. King's motion to dismiss, the State resisted, asserting the instruction "has no basis in Iowa case law." *Id.* at 128:14–21; *cf.* D0023 at 2. The District Court agreed with the State that the proposed instruction "would seem to add an element to the statute," and denied Mr. King's request to include it in the final instructions. *Id.* at 129:4–7.

Instead, the District Court instructed the jury that it only needed to find two elements to convict Mr. King: (1) that "[he] falsely claimed to be or assumed to act as a peace officer," (i.e., he made the claim); and (2) "[he] had no authority to do so." D0037 at 4 (Instruction No. 13). Consistent with the District Court's ruling and marshaling instruction, in closing, the State emphasized that all the jury had to find to reach a guilty verdict was that Mr. King said the magic words:

> However, just because [the witnesses] knew that [Mr. King] wasn't a police officer -- or that they didn't believe that he was a police officer, that doesn't make the Defendant any less guilty of this crime.
>
> The Code does not require the victims of a crime like this to believe the Defendant. It does not require them to believe that he was a police officer, it requires the Defendant to claim that he is. It requires them to claim

that he's a peace officer, which is what happened here.

. . .

> And again, I'd like you to remember that the law doesn't care what the witnesses believed. It doesn't care if they believed his claim, it cares that he made that claim, and ladies and gentlemen, I'd like you to find the Defendant guilty. Thank you.

Id. at 133:11–20, 137:10–14.

After deliberating for thirty-nine minutes, the jury returned a guilty verdict. *See id.* at 139:10–141:19; *see generally* D0036.

ARGUMENT

I. The District Court erred in denying Mr. King's motion to dismiss because "peace officer," as used in Iowa Code section 718.2, does not include 'federal agents.'

A. Error Preservation. Mr. King preserved this issue for appellate review by moving to dismiss the trial information. *See generally* D0018; D0022; *see also State v. Childs*, 898 N.W.2d 177, 181 (Iowa 2017). The District Court rejected Mr. King's argument. D0024 at 1–2.

B. Standard of Review. Iowa's appellate courts review both motions to dismiss and questions of statutory interpretation for correction of errors at law. *Childs*, 898 N.W.2d at 181; *State v. Sullins*, 509 N.W.2d 483, 485 (Iowa 1993) (affirming district court's grant of a defendant's motion to dismiss based on its holding that a 'juvenile

court officer' is not a 'peace officer' for purposes of Iowa's interference with official acts statute, section 719.1).

C. Merits. In this case, the State alleged that Mr. King "falsely claimed to be or assumed to act as a peace officer" when he stated he was a "Federal Agent" or "federal officer of the law." D0014 at 1; D0001 at 2; D0013, Exh. A at 4–6. The statute under which Mr. King was charged, Iowa Code section 718.2, provides as follows: "Any person who falsely claims to be or assumes to act as an elected or appointed officer, magistrate, peace officer, or person authorized to act on behalf of the state or any subdivision thereof, having no authority to do so, commits an aggravated misdemeanor." Iowa Code § 718.2.

The question Mr. King raised in his motion to dismiss, and renews now on appeal, is whether the term 'peace officer' as used in that statute encompasses *federal* agents or officers. In other words, was the *Iowa* offense of 'impersonating a peace officer,' as set out in the *Iowa* criminal code, intended to proscribe an offense against the *federal* government? The District Court decided that it was, rejected Mr. King's argument, and adopted the State's interpretation of the statute, expanding the term 'peace officer' to include federal agents.

D0024 at 1–2. Mr. King respectfully submits that the District Court was wrong, and thus, that it erred in denying his motion to dismiss.

In resolving this interpretive question, this Court's "inquiry begins with the language of the statute at issue." *State v. Flynn*, 13 N.W.3d 843, 846 (Iowa 2024). If the "statute is plain and its meaning clear, [this Court] will not search for a meaning beyond the express terms of the statute or resort to rules of construction." *Id.* at 847. If the statute is ambiguous, however, and other interpretive methods fail to resolve the ambiguity, the rule of lenity requires it "be strictly construed in favor of the defendant." *State v. Hearn*, 797 N.W.2d 577, 585–86 (Iowa 2011).

1. 'Peace officer' as used in sections 718.2 and 801.4(11) unambiguously does not include federal officers.

The statutory language here is unambiguous. To commit an offense, one must "falsely claim[] to be or assume[] to act as a[] . . . peace officer." Iowa Code § 718.2. The statute does not mention impersonating a "Federal Agent" or "federal officer of the law," as Mr. King was charged with doing. *Compare id.*, *with* D0001 at 2, *and* D0013, Exh. A at 4–6. So, the question becomes whether the term 'peace officer' as used therein includes such positions. It does not.

The statute itself does not define 'peace officer,' but another provision of the criminal code (Title XVI) does. Iowa Code § 801.4(11). Its definition governs section 718.2. *See id.* (defining "[p]eace officer[]" "[f]or the purposes of Title XVI"). That provision states as follows:

> "*Peace officers*", sometimes designated "law enforcement officers", include:
>
> *a.* Sheriffs and their regular deputies who are subject to mandated law enforcement training.
>
> *b.* Marshals and police officers of cities.
>
> *c.* Peace officer members of the department of public safety as defined in chapter 80.
>
> *d.* Parole officers acting pursuant to section 906.2.
>
> *e.* Probation officers acting pursuant to section 602.7202, subsection 4, and section 907.2.
>
> *f.* Special security officers employed by board of regents institutions as set forth in section 262.13.
>
> *g.* Conservation officers as authorized by section 456A.13.
>
> *h.* Such employees of the department of transportation as are designated "*peace officers*" by resolution of the department under section 321.477.
>
> *i.* Employees of an aviation authority designated as "*peace officers*" by the authority under section 330A.8, subsection 16.
>
> *j.* Such persons as may be otherwise so designated by law.

Id.

Here again, absent from the list is what Mr. King was accused of claiming to be—a 'Federal Agent' or 'federal officer of the law.'

Compare id., *with* D0001 at 2, *and* D0013, Exh. A at 4–6. Accordingly, because Mr. King did not claim to be a 'peace officer' as that term is defined in section 801.4(11) and used in section 718.2, the District Court erred in denying his motion to dismiss. *Cf. Sullins*, 509 N.W.2d at 485–86 ("The statutory language and legislative intent is clear; the terms 'peace officer' and 'juvenile court officer' are not synonymous.").

2. Even if ambiguous, context demonstrates that 'peace officer' as used in section 801.4(11) does not include federal officers.

But even assuming, *arguendo*, some ambiguity exists, continuing the analysis further yields the same conclusion. Although the list of 'peace officers' in section 801.4(11) is nonexclusive, no reasonable reading of the statute places 'federal agents' within its ambit.

Initially, it bears repeating that none of the listed 'peace officers' includes *federal* officers or agents. If the legislature wanted to include them, it would have been easy enough to do so; that it did not indicates they are not included. *Cf. Chandler v. Iowa Dep't of Corr.*, 17 N.W.3d 645, 648 (Iowa 2025) ("The list of potential defendants includes only 'person, group of persons, organization, or corporation'

and does not include the 'employing agency.' The implication is that the employing agency cannot be sued." (citation omitted)).

By explicitly listing some officers, yet conspicuously omitting federal officers, the legislature's intent to not include such officers is clear. Indeed, the Iowa Supreme Court has relied on precisely this reasoning when holding that other types of officers are not 'peace officers' under prior versions of section 801.4(11). *See Twinam v. Lucas Cnty.*, 73 N.W. 473, 474 (Iowa 1897) (holding, under prior version of section 801.4(11), that omission of the term "deputy marshal" meant such deputies are not peace officers, even though "marshals" were specifically enumerated, and reasoning, "When it in the same section names marshals, and neglects to include their deputies, it is manifest that deputy marshals are not to be included"); *Foster & Foster v. Cnty. of Clinton*, 2 N.W. 207, 211 (Iowa 1879) (holding the same as to a "special constable"). From the very beginnings of that provision, federal officers were never included. *See* Iowa Code § 2830 (1851) ("Peace officers are sheriffs of counties, constables, marshals and policemen of cities, towns, and villages respectively.").

Accordingly, if federal officers are to be found within section 801.4(11) at all, it must be through the statute's catchall provision: "[s]uch persons as may be otherwise so designated by law." Iowa Code § 801.4(11)(*j*). But, using the context provided by the enumerated items—all of which describe *state* positions (or a subdivision thereof), or designations made pursuant to *state* authority—it is apparent that the statute is meant to encompass a class of persons whose employment or authority as a 'peace officer' flows from the State of Iowa, not a different sovereign. *See* Iowa Code § 801.4(11). Officers or agents of the federal government do not belong within that class. *Cf. State v. Iowa Dist. Ct. for Warren Cnty.*, 828 N.W.2d 607, 612–13 (Iowa 2013) ("[W]e conclude that the second sentence provides needed context and illustrates the types of conditions the juvenile court may impose. None of the examples given in section 232.46(1) involve changing the placement or custody of the child." (citation omitted)).

Other provisions of Title XVI demonstrate that the legislature is well aware of the difference between 'peace officers' (i.e., *Iowa* officers) and federal officers, and intended to treat the two differently. For instance, in chapter 804, the code explicitly differentiates between

"[a]rrests by peace officers" (Iowa Code § 804.7), "[a]rrests by federal law enforcement officers" (*id.* § 804.7A), and "[a]rrests by out-of-state peace officers" (*id.* § 804.7B). In the section providing for arrests by federal law enforcement officers, the code defines the term "federal law enforcement officer" separately from "peace officer, as defined in section 801.4, subsection 11." *Id.* § 804.7A(1)–(2); *cf. Sullins*, 509 N.W.2d at 484–85 ("It is apparent the legislature recognized and intended a distinction between a juvenile court officer and a peace officer."). But if, as the District Court held, 'peace officer' already includes federal officers and officers from other jurisdictions, why have three separate statutes? *Cf.* Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* 176 (2012) [hereinafter Scalia & Garner, *Reading Law*] (discussing the surplusage canon); *see also id.* at 252–55 (discussing the related-statutes canon, and reading statutes *in pari materia*).

Or consider Iowa Code section 724.4B, which prohibits carrying firearms on school grounds, but provides exceptions for certain enumerated persons. Among them are "peace officer[s]," "federal officer[s]," and "law enforcement officer[s] from another state." Iowa Code § 724.4B(2)(*b*), (*g*). The statute explicitly provides that the

exceptions for 'peace officers' and 'federal officers' apply "whether or not the peace officer *or* federal officer is acting in the performance of official duties." *Id.* sub. (2)(*b*) (emphasis added). This distinct terminology again demonstrates that 'federal officers' are not 'peace officers,' as that term is defined in section 801.4(11). *cf. Sullins*, 509 N.W.2d at 484–85.

And this distinction holds true even outside the context of Title XVI. For instance, in chapter 321 (general provisions for Iowa's motor vehicle laws), the legislature defined 'peace officer' by reference to section 801.4 (and added thereto "every officer authorized to direct or regulate traffic or to make arrests for violations of traffic regulations"). Iowa Code § 321.1(50). In subsequent provisions of that chapter, the legislature still distinguished between "peace officers" and "federal law enforcement officers." *See id.* §§ 321.19(1)(*c*)(1), (4), .189A(1), (2).

And notably, in a case concerning chapter 232, the Iowa Supreme Court found this distinct use of terms dispositive when it affirmed a district court's dismissal of an interference with official acts charge. *See Sullins*, 509 N.W.2d at 484–85. The defendant there, an attorney, was charged with interfering with a 'peace officer' under

Iowa Code section 719.1 when he prevented a 'juvenile court officer' from taking his clients' child into custody without a court order. *Id.* at 484. The Supreme Court held that a 'juvenile court officer' is not a 'peace officer,' as that term is defined in chapter 232, and thus that the charge was properly dismissed. *See generally id.* Importantly, the court noted, even though 'juvenile court officers' are statutorily granted "the powers of a peace officer while engaged in the discharge of duties," they are still defined separately from 'peace officers,' and the two terms are used distinctly, "side by side," throughout chapter 232. *Id.* at 484–85 (quoting Iowa Code § 602.7202(4)).

The same is true here. Based on the foregoing review of the Iowa Code, it is apparent the legislature recognized and intended a distinction between a 'peace officer' and a 'federal law enforcement officer.' *Cf. id.* Accordingly, the same result should obtain here—dismissal of the charge.

3. Additional context demonstrates that 'peace officer' as used in section 718.2 does not include federal officers.

For the foregoing reasons, 'peace officer,' as that term is defined in section 801.4(11), does *not* include federal officers. Because that definition applies to section 718.2, that section, too, cannot be

interpreted to apply to impersonating a federal officer, as Mr. King was accused of doing here. This interpretation is confirmed by reviewing the statutory context more closely surrounding section 718.2.

Section 718.2 is located within Iowa Code chapter 718, entitled "OFFENSES AGAINST *THE* GOVERNMENT." Iowa Code ch. 718 (emphasis added). Use of the definite article, 'the,' indicates that this chapter is directed at offenses committed against one, specific government—the government *of Iowa*—not a multitude of different governments, as the District Court here concluded. *See Doe v. State*, 943 N.W.2d 608, 611 (Iowa 2020) ("[I]t is a rule of law well established that the definite article 'the' particularizes the subject which it precedes. It is a word of limitation as opposed to the indefinite or generalizing force of 'a' or 'an.' " (quoting *Am. Bus Ass'n v. Slater*, 231 F.3d 1, 4–5 (D.C. Cir. 2000)); *see also* Scalia & Garner, *Reading Law* at 221–22 (discussing Michigan case wherein the title of a statute was used to help identify the scope of "vessels" covered by it).

This makes intuitive sense—when the *Iowa* Code delineates 'offenses against *the* government,' without a clear reference to a different government, one can reasonably assume it is referring to the

government *of Iowa*. *Cf.* Iowa Const. pmbl. ("WE, THE PEOPLE OF THE STATE OF IOWA, . . . do ordain and establish a free and independent government, by the name of the State of Iowa . . . ."); *id.* art. III, § 1 (dividing "[t]he powers of the government of Iowa" into three branches); *id.* art. XI, § 8 (fixing "[t]he seat of government" in Des Moines). And, "[n]ormally[,] we read statutory language so it makes sense." *State v. Hoyman*, 863 N.W.2d 1, 14 (Iowa 2015) (citing Iowa Code § 4.4(3)).

The prohibitions surrounding section 718.2 make this intuitive reading explicit—the government referred to in chapter 718 is the *state* government. *See* Iowa Code § 718.1 (prohibiting "insurrection," defined therein as "physical violence" undertaken "with the purpose of interfering with, disrupting, or destroying *the government of the state* or any subdivision thereof" (emphasis added)); *id.* § 718.3 (prohibiting "any person [from] willfully disturb[ing] any deliberative body or agency *of the state*, or subdivision thereof" (emphasis added)). Thus, contrary to the State's and District Court's reasoning, it is not a "loophole" (D0023 at 4; D0024 at 2) that section 718.2 only applies to impersonating public officials *of the state*; it is by design.

That design is also confirmed by section 718.2's legislative history. *See Hoyman*, 863 N.W.2d at 15 ("Another interpretive tool to which we may revert is the law's legislative history and the circumstances of its enactment." (citing Iowa Code § 4.6)). The term 'peace officer' was first added to that provision (at the time, section 13307) in 1929. 1929 Iowa Acts ch. 264, § 1 (codified at Iowa Code § 13307 (1931)). The amendment adding the term was entitled: "AN ACT to amend the law as it appears in section . . . []13307[] of the code, 1927, relating to falsely assuming to be and impersonating officers, so as to extend the provisions thereof to include *state* agents and peace officers." *Id.* (emphasis added). When it added the term 'peace officer' to the statute, the legislature was thus explicitly referring to *state* 'peace officers' only.[3] *See* Scalia & Garner, *Reading Law* at 147–51 (discussing the series-qualifier canon). This was

[3] Prior to the amendment, the provision applied to impersonating "a judge, justice of the peace, magistrate, sheriff, deputy sheriff, coroner, or constable." Iowa Code § 13307 (1927). Notably absent from this list were "[m]arshals and policemen of cities and towns," though the same were considered 'peace officers' under the contemporary version of section 801.4(11). *Id.* § 13405(3). The amendment thus 'extended' the impersonation statute in the sense that it added marshals and policemen of cities and towns to the list of proscribed impersonations, by way of the term 'peace officer,' where they were not included before.

consistent with the statutory definition of 'peace officer' in effect at the time of the amendment, which, like today's statute, listed only state positions (and included a catchall provision). *Compare* Iowa Code § 13405 (1927), *with id.* § 801.4(11) (2024).

D. Summary. For the foregoing reasons, Iowa Code section 718.2 does not apply to impersonating *federal* peace officers. Yet, as the District Court summarized in its ruling on Mr. King's motion to dismiss, "In this case, [Mr. King] is alleged to have acted as a federal peace officer." D0024 at 1. Because the allegations against Mr. King thus failed to "constitute the offense charged," the District Court should have granted his motion to dismiss. Iowa R. Crim. P. 2.11(8)(*a*). Mr. King thus respectfully requests this Court reverse the District Court's ruling and remand for dismissal of the charge with prejudice.

II. Specific intent to deceive is an essential element of the crime; the District Court erred by marshaling it as a general intent crime.

A. Error Preservation. Mr. King preserved this issue for appellate review by proposing a jury instruction that would have required the jury to find he had a specific intent to deceive in order

to convict. *See* D0032 at 1; D0067 at 126:12–128:10. The District Court denied the proposed instruction. D0067 at 128:22–130:2.

B. Standard of Review. Iowa's appellate courts "review challenges to jury instructions under a correction-of-errors-at-law standard." *State v. Cooley*, 21 N.W.3d 137, 141 (Iowa 2025); *Hoyman*, 863 N.W.2d at 7. Where the challenged jury instructions "implicate[] a constitutional right," however, review is *de novo*. *State v. Becker*, 818 N.W.2d 135, 140–41 (Iowa 2012), *overruled on other grounds by Alcala v. Marriott Int'l, Inc.*, 880 N.W.2d 699 (Iowa 2016); *accord State v. Green*, 896 N.W.2d 770, 775 (Iowa 2017).

C. Merits. Mr. King respectfully submits that the District Court erred in denying his specific-intent-to-deceive instruction, instead marshaling the offense to the jury as a "general intent" crime. D0067 at 129:16–21.

As noted at the outset, whether section 718.2 requires a specific intent to deceive is an issue of first impression. That said, the Iowa Supreme Court, in *State v. Hoyman*, recently addressed this question under a similar statute broadly proscribing false statements. *See generally Hoyman*, 863 N.W.2d 1. There, the Court held that a

specific intent to deceive was a necessary element of the offense, required by the statute's use of the term 'false.' *Id.* at 7–16.

In *Hoyman*, a city attorney was charged with committing a fraudulent practice under Iowa Code section 714.8(4). *Id.* at 3–4. That statute prohibits any person from "[m]ak[ing] any entry in or alteration of any public records, . . . knowing the same to be false." *Id.* at 7 (quoting Iowa Code § 714.8(4)). Hoyman was accused of violating this statute by submitting inaccurate bills for his legal services, including some that "billed for trials on some days when no trials had taken place." *Id.* at 3.

Hoyman conceded his billing entries were technically inaccurate, but argued that he "never billed on the whole for more time than he actually spent working on behalf of the city," and "never intended to collect money he had not earned." *Id.* at 4–5. In other words, he argued he had no intent to deceive anyone through his inaccurate bills.

When his case went to trial, however, the district court rejected his argument that specific intent to deceive was a necessary element of the offense. *Id.* at 5–7. Instead, the court instructed the jury that all that was required for a conviction was "that Hoyman made an

entry in a public record or the records of a business and that he knew the entry to be false." *Id.* at 5, 7–8.

On appeal, however, the Iowa Supreme Court reversed, agreeing with Hoyman's reading of the statute. *See id.* at 7–18. Central to the Supreme Court's interpretation was the statute's use of the word 'false.' After noting the distinction between intent to *defraud* and intent to *deceive*, *id.* at 7–10, the Supreme Court reviewed a host of both Iowa and other jurisdictions' caselaw supporting the proposition "that 'false' carries with it the notion of deception," *id.* at 10–13.

For instance, the Supreme Court noted its statement in *State v. Groff* that " '[a] "false" affidavit statement [in a search warrant application] is one which misleads the magistrate,' not merely a 'negligible' untruth." *Id.* at 10–11 (first alteration in original) (quoting *State v. Groff*, 323 N.W.2d 204, 210 (Iowa 1982)). It also noted its broader statement in *Hatcher v. Dunn* that "the word false 'means something more than untrue; it means something designedly untrue, deceitful, and implies an intention to perpetrate some treachery or fraud.' " *Id.* at 11 (quoting *Hatcher v. Dunn*, 71 N.W. 343, 344 (Iowa 1897)).

Next, it noted that Hoyman's interpretation was supported by

Black's Law Dictionary's definition of "falsifying a record," *id.* at 11, as well as a number of decisions from other states interpreting the word 'false' as used in other criminal statutes, *id.* at 11–12 (quoting, e.g., a New York decision, that held, "Where, as in the present case, a criminal statute employs the word 'false', it requires proof of something more than the untrue. Its use imports an intention to deceive" (quoting *People v. Altman*, 372 N.Y.S.2d 926, 929–30 (Nassau Cnty. Ct.1975))).

In one decision the Court highlighted, the Connecticut Supreme Court "explained that while the word 'false' had a broad meaning in everyday usage, it had a specialized meaning in the law." *Id.* at 11. It then quoted the following passage from that court's opinion:

> The use of the word 'falsely' in the statute is of significance. In the vernacular it may mean untrue or designedly untrue, implying an intent to deceive. In jurisprudence, however, the word 'false' implies something more than mere untruth: it imports knowledge and a specific intent to deceive. Thus, the use of the word 'false' in [the statute] imports a requirement of a specific intent to deceive.

Id. (quoting *State v. Tedesco*, 397 A.2d 1352, 1358 (Conn. 1978)).

The *Hoyman* Court also noted, on the other hand, that "instances exist where courts have interpreted false statement laws as not requiring proof of intent to deceive." *Id.* at 12–13. As such, the Court held that the term 'false' in the statute under review was

ambiguous, and turned to interpretive canons to resolve the ambiguity. *Id.* at 13–15.

First, the Court reasoned that adopting Hoyman's interpretation would "avoid untoward results." *Id.* at 13. If the statute were read without an intent to deceive element, "criminalizing any knowingly incorrect entry in a public record, regardless of its significance or insignificance and regardless of whether the maker of the entry intended to deceive anyone, its scope would be breathtakingly broad." *Id.* "For example, under the State's interpretive theory, Hoyman could be prosecuted for using old stationery for his billing that had an incorrect address." *Id.*

Second, the Court observed that "criminalizing *any* entry in a public record that amounted to an intentional untruth"—a necessary consequence of the "breathtakingly broad" interpretation the State advocated—"could raise serious constitutional problems." *Id.* at 13–14. Citing the U.S. Supreme Court's opinion in *United States v. Alvarez*, in which "[a] majority of the Court concluded the Stolen Valor Act violated the First Amendment because it criminalized mere falsity," the *Hoyman* Court reasoned that, by adopting the State's position, it would be "criminalizing the same conduct that *Alvarez*

said could not constitutionally be prosecuted." *Id.* at 14 (citing *United States v. Alvarez*, 567 U.S. 709 (2012) (plurality op.)). "This brings into play the principle of constitutional avoidance, which encourages us to 'steer clear of "constitutional shoals" when possible.' " *Id.* at 14–15 (quoting *State v. Iowa Dist. Ct.*, 843 N.W.2d 76, 85 (Iowa 2014)).

Finally, the Supreme Court looked to "the law's legislative history and the circumstances of its enactment." *Id.* at 15. That analysis revealed section 714.8 was created during the 1976 criminal code overhaul "by bringing together some old offenses and adding some new ones." *Id.* Because "[t]here was no counterpart to the 'public records' portion of section 714.8(4) in prior law," the Supreme Court rejected the inference that "the legislature intended to plow new ground by criminalizing every knowingly untrue statement in a public record." *Id.*

Based on the foregoing analysis, the *Hoyman* Court held "that intent to deceive is an element of the Iowa Code section 714.8(4) crime. A jury instruction that omits an element of a criminal offense is erroneous and not a correct statement of the law." *Id.*

The same analysis applies in this case, and compels the same conclusion. Like section 714.8, section 718.2 prohibits making 'false'

claims: "Any person who *falsely* claims to be or assumes to act as an elected or appointed officer, magistrate, peace officer, or person authorized to act on behalf of the state or any subdivision thereof, having no authority to do so, commits an aggravated misdemeanor." Iowa Code § 718.2 (emphasis added). The *Hoyman* Court's review of caselaw interpreting that word in criminal statutes to require an intent to deceive, as well as the *Hoyman* opinion itself, is thus equally applicable here. *See Hoyman*, 863 N.W.2d at 10–13; *cf. Alvarez*, 567 U.S. at 732 (Breyer, J., concurring in the judgment) (interpreting Stolen Valor Act, which criminalized *falsely* representing oneself as a recipient of military honors, as "criminalizing only false factual statements made with knowledge of their falsity *and with the intent that they be taken as true*" (emphasis added)).

And, like *Hoyman* noted of section 714.8(4), requiring a specific intent to deceive for the crime of falsely impersonating a peace officer "appears to be consistent with the general understanding of the crime," *Hoyman*, 863 N.W.2d at 11 (citing *Falsifying Record*, Black's Law Dictionary (12th ed. 2024)). *See Impersonation*, Black's Law Dictionary (12th ed. 2024) (defining "false impersonation" as "[t]he crime of falsely representing oneself as another person, often a law-

enforcement officer, *for the purpose of deceiving someone*" (emphasis added)).

Turning to interpretive canons, reading section 718.2 to require a specific intent to deceive similarly avoids untoward results and serious constitutional problems (for more on those specifically, see Part IV). *Cf. Hoyman*, 863 N.W.2d at 13–14. Indeed, as this case demonstrates, all that is required for conviction under section 718.2 is that a defendant say the magic words: 'I am a [fill-in-the-blank-public-official].' The State emphasized this in resisting Mr. King's motion for judgment of acquittal, and again in its closing arguments to the jury, arguing, "The Code does not require that the witnesses believed that claim, *just simply that he claimed it*." D0067 at 120:9–17 (emphasis added)); *see also id.* at 133:11–20, 137:10–14. Like in *Hoyman*, then, the State's interpretation requires this Court to read section 718.2 as criminalizing mere falsity, "the same conduct that *Alvarez* said could not constitutionally be prosecuted." *Hoyman*, 863 N.W.2d at 14.

Such a "breathtakingly broad" reading cannot be countenanced. *Id.* at 13. It does not make sense to subject Iowans to two years in prison for mere bravado or puffing. *Cf. id.* at 14

("Normally we read statutory language so it makes sense."); *Alvarez*, 567 U.S. at 736–37 (Breyer, J., concurring in the judgment) (noting that the Stolen Valor Act lacks the limiting features of other prohibitions on false statements, and thus "may be applied where it should not be applied, for example, to bar stool braggadocio"). Instead, a more sensible and practical interpretation of section 718.2 would make it a crime only if the false claim was intended to fool someone. *Cf. Hoyman*, 863 N.W.2d at 14 ("A more sensible and practical interpretation of section 714.8(4) would make it a crime only if the incorrect entry was intended to fool someone."). Indeed, this is explicitly required under a parallel Iowa impersonation statute, prohibiting impersonation of "a peace officer or employee of the department [of public safety]." Iowa Code § 80.16 (not using the word 'falsely,' but including, "with intent to deceive anyone").

Continuing the *Hoyman* analysis—the law's legislative history is largely unrevealing in this instance. From the outset, this law prohibited "falsely" impersonating public officials, Iowa Code § 2671 (1851), suggesting an intent to deceive was always implied, *see Hatcher*, 71 N.W. at 344. But no extant records further contextualize the legislature's choice of terminology.

When it was moved to section 718.2 as part of the 1976 criminal code overhaul, the prior section (section 740.5) was repealed and section 718.2 was created 'anew.' 1976 Iowa Acts ch. 1245, §§ 525, 1802. The statute's use of the word 'falsely' remained consistent; however, its prohibition was substantively modified in another way: Before the overhaul, the statute required a person to "falsely assume to be" an officer "*and* take upon himself to act as such." Iowa Code § 740.5 (1977) (emphasis added). But afterwards, those requirements became separate alternatives. *See id.* § 718.2 (Supp. 1977) ("Any person who falsely holds himself or herself out *or* assumes to act as [a public official] . . . commits an aggravated misdemeanor." (emphasis added)). The reason (if any) for the change, however, was not explained.

The prohibition then took on its current form in the 1985 code, when the phrase "holds himself or herself out" was replaced by "claims to be." *Compare* Iowa Code § 718.2 (1983), *with id.* (1985). This change was made without a specific piece of legislation; likely as part of the directive to the code editor to replace gendered language with gender-neutral language. *See* 1982 Iowa Acts ch. 1217, § 1.

Although legislative history thus does not shed much light on

this issue, a specific intent requirement is consistent with the only, meager though it may be, appellate gloss section 718.2 has received to date. To wit, in *McCue v. Wapello County*, the Iowa Supreme Court described section 718.2 (then, section 3962) as applying only to conduct undertaken in *bad faith*. 10 N.W. at 252.

There, the Supreme Court considered an acting (*de facto*) sheriff's lawsuit to recover wages from a period of time during which someone else was legally (*de jure*) the sheriff. *Id.* at 248–50. The *de facto* sheriff assumed the role for approximately six months when the *de jure* sheriff was indicted for extortion and suspended by the county board of supervisors. *Id.* Later, however, it was determined that the *de jure* sheriff's suspension "was made 'without authority,' " and hence, was "void." *Id.* at 250. Accordingly, the Iowa Supreme Court denied the *de facto* sheriff's claim for wages—because he was never legally the sheriff, he was not legally entitled to them. *Id.* at 251–52.

In so holding, the Supreme Court rejected and reversed the district court's reasoning that the *de facto* sheriff could recover because, even though not legally the sheriff, he was acting "under a claim of right and in good faith." *Id.* at 251–52. This, the Supreme Court held, was a necessary part of being a *de facto* officer—it

prevented him from being criminally liable for *impersonation*, but it did not entitle him "to recover the emoluments of the office." *Id.* at 252 ("Good faith and claim of right are usually, if not always, exercised by *de facto* officers; *if they be absent he is criminally liable*. [1873] Code, §§ 3962–3." (emphasis added)).[4]

There is thus little daylight between this case and *Hoyman*. The same considerations that drove the Supreme Court's holding in that case likewise compel the conclusion that a specific intent to deceive is required here.

D. Remedy. Because the District Court did not instruct the jury on this essential element of the offense, Mr. King respectfully requests that this Court reverse his conviction. Whether the omission of an essential element from marshaling instructions is a structural error or is subject to harmless error review is an open question in Iowa. *Cooley*, 21 N.W.3d at 144; *see also State v. Schuler*, 774 N.W.2d 294, 299–300 (Iowa 2009).[5]

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[4] Fortunately for the *de facto* sheriff, as the Supreme Court went on to note, this did not mean he was without relief. "Doubtless he is entitled to recover from the officer *de jure*, Stewart, the compensation to which he is entitled by contract or by law." *McCue*, 10 N.W. at 252.

[5] The Iowa Supreme Court appears poised to answer this

Mr. King respectfully submits that the error should be treated as structural, mandating reversal. *See State v. Brimmer*, 983 N.W.2d 247, 270–71 (Iowa 2022) (explaining structural errors are those that, *inter alia*, "undermine the ultimate 'determination of guilt or innocence,' " and holding that "[d]epriving a criminal defendant of his right to a public trial is a structural error" (quoting *Neder v. United States*, 527 U.S. 1, 8–9 (1999))); *compare Neder*, 527 U.S. at 8–15 (applying harmless error to omission of essential element from jury instruction), *with id.* at 30–40 (Scalia, J., concurring in part and dissenting in part) (arguing the error is structural).

No matter what the evidence was against him, Mr. King had a right to a fair trial. *State v. Lindaman*, 30 N.W.3d 547, 557 (Iowa 2025) ("Under our constitution, all criminal defendants are entitled to the same type of trial regardless of the strength of the evidence against them."). That right necessarily included a *jury* verdict on guilt or innocence of *all elements* of the charged offenses. *See State v. Crawford*, 972 N.W.2d 189, 195–96 (Iowa 2022); *Sullivan v. Louisiana*, 508 U.S. 275, 277–78 (1993).

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question in *State v. Thompson*, No. 25-0145.

As Justice Scalia argued in his partial dissent in *Neder v. United States*, it would undoubtedly be structural error for a court to omit *all* elements from the marshaling instructions, effectively directing a guilty verdict. *Neder*, 527 U.S. at 33–34 (Scalia, J., concurring in part and dissenting in part). As such, "there is no principled distinction" for treating the omission of even just one element any differently. *Id.* at 33. Just as much as a directed guilty verdict does, allowing harmless error review in this context improperly substitutes the *court's* determination of guilt for the *constitutionally mandated* determination by a *jury*. *Id.* at 31–32 ("[*T*]*he Constitution does not trust judges to make determinations of criminal guilt.*"); *cf. Morissette v. United States*, 342 U.S. 246, 274–76 (1952) ("Had the jury convicted on proper instructions it would be the end of the matter. But juries are not bound by what seems inescapable logic to judges.").

Even assuming a harmless-error review applies, however, the State will be unable to overcome the presumption of prejudicial error "by overwhelming evidence beyond a reasonable doubt." *Schuler*, 774 N.W.2d at 300. No evidence was produced establishing what Mr. King's intent or purpose was in claiming to be a federal agent.

Even the two teenagers could do no more than speculate—and warily, at that—as to why Mr. King claimed to be a federal agent. *See* D0067 at 98:4–7 ("Q. Okay. When he told you that he was a U.S. Marshal, why do you think he did that? A. No clue. To, I don't know, make us think he had authority."); *id.* at 101:18–22 ("[D]id you feel like he was telling you that he was a state marshal in order to get you outside? A. I couldn't say."); *id.* at 104:15–19 ("Q. Okay. Do you know why he was telling you he was a state marshal? A. I do not. There was a whole bunch of information being thrown around that I didn't quite comprehend why."); *see also id.* at 106:1–11 (testifying that Mr. King's statements did not "really correlate[] to each other," and that he was just "rambling").

No other instructions cured this error. Although the marshaling instruction mirrored the language of the statute, including use of the word 'falsely,' as the *Hoyman* Court noted in finding prejudicial error, "[a]n instruction is not necessarily adequate just because it repeats what the statute says." *Hoyman*, 863 N.W.2d at 16. And here, just as in *Hoyman*, "the problem" with simply repeating the word 'falsely' in the instruction without including specific intent to deceive as a distinct element, or at least separately defining the word to include

specific intent to deceive, "is that false has been given two interpretations: (1) knowingly untrue and (2) knowingly untrue and intended to deceive. We cannot assume that the jury gave it the latter interpretation." *Id.* at 15. Thus, under the circumstances, the District Court's error was affirmatively *not* harmless, and the State will be unable to prove otherwise.

At a minimum, this error requires remand for a new trial. *See Cooley*, 21 N.W.3d at 145. But more than that, as argued below in Part III, because the State's evidence was insufficient to convict Mr. King when specific intent to deceive is considered, Mr. King respectfully submits that his conviction and sentence should be vacated and his case remanded for entry of a judgment of acquittal. *See State v. Uranga*, 31 N.W.3d 358, 365 (Iowa 2026) ("Because Uranga made a specific objection, we measure the sufficiency of the evidence against the statutory text in section 692A.105 rather than the erroneous, objected-to marshaling instruction." (citations omitted)).

III. Where specific intent is an essential element of the crime, the evidence was insufficient to convict Mr. King.

A. Error Preservation. Mr. King went to trial and was convicted. *See generally* D0067. This was "sufficient to preserve error with respect to any challenge to the sufficiency of the evidence raised on direct appeal." *Crawford*, 972 N.W.2d at 202.

B. Standard of Review. This Court "review[s] the sufficiency of the evidence for correction of errors at law." *Id.* In doing so, the Court is "highly deferential to a jury verdict, but the verdict must be supported by substantial evidence to stand." *Uranga*, 31 N.W.3d at 364. "Substantial evidence is evidence sufficient to convince a rational trier of fact the defendant is guilty beyond a reasonable doubt." *Id.* (quoting *Crawford*, 972 N.W.2d at 202). "In determining whether substantial evidence supports the jury's verdict," this Court "view[s] the evidence in the light most favorable to the State," making "all legitimate inferences from the record in its favor." *Id.* (quoting *Crawford*, 972 N.W.2d at 202).

C. Merits. For the reasons set forth in Part II, the District Court erred in failing to instruct the jury that a specific intent to deceive is an essential element of the crime. If this Court agrees,

Mr. King respectfully submits further that the State's evidence was insufficient to convict him because the State put forth no evidence of that essential element.

"[T]he Due Process Clause protects the accused against conviction except upon proof beyond a reasonable doubt of every fact necessary to constitute the crime with which he is charged." *In re Winship*, 397 U.S. 358, 364 (1970); *accord Crawford*, 972 N.W.2d at 192. Review of a sufficiency claim requires not simply determining whether the jury was properly instructed, but "whether the record evidence could reasonably support a finding of guilt beyond a reasonable doubt." *Jackson v. Virginia*, 443 U.S. 307, 318 (1979). The evidence presented must "do more than create speculation, suspicion, or conjecture." *State v. Webb*, 648 N.W.2d 72, 76 (Iowa 2002).

The State presented no evidence that would convince a rational trier of fact, beyond a reasonable doubt, that Mr. King had a specific intent to deceive anyone. Instead, the State argued that intent was irrelevant. *See* D0067 at 120:9–17, 133:11–20, 137:10–14. And, as discussed above, even the State's witnesses did not know why Mr. King stated he was a federal agent. *See id.* at 98:4–7, 101:18–22;

id. at 104:15–19 ("Q. Okay. Do you know why he was telling you he was a state marshal? A. I do not. There was a whole bunch of information being thrown around that I didn't quite comprehend why."); *see also id.* at 106:1–11. The State's evidence thus failed to "do more than create speculation, suspicion, or conjecture" on this element. *Webb*, 648 N.W.2d at 76.

Accordingly, because the State's evidence was insufficient to prove that Mr. King intended to deceive anyone when claiming to be a federal agent, Mr. King respectfully submits that his conviction should be vacated and his case reversed for entry of a judgment of acquittal. *See Uranga*, 31 N.W.3d at 368.

IV. Iowa Code section 718.2 is unconstitutional.

A. Error Preservation. Mr. King preserved this issue for appellate review through his motion to dismiss, D0022 at 2, and his proposed jury instruction, *see generally* D0032, by arguing that, if Iowa Code section 718.2 applied to his conduct—if he could be convicted upon "just the utterance of a phrase"—then the statute "impermissibly burdens free speech." D0067 at 126:12–128:10; *see*

also D0080 at 6:2–16. The District Court rejected Mr. King's arguments. *See* D0067 at 128:22–130:2; *see generally* D0024.[6]

B. Standard of Review. Iowa's appellate courts review constitutional challenges—whether raised through a motion to dismiss or through litigation on jury instructions—*de novo*. *State v. Geddes*, 998 N.W.2d 166, 171 (Iowa 2023) (motion to dismiss); *Becker*, 818 N.W.2d at 140–41 (Iowa 2012) (jury instruction).

C. Merits. If this Court disagrees with Mr. King's argument in Part II, and instead holds that Iowa Code section 718.2 can be applied to proscribe, as in Mr. King's case, pure speech, without any overt action and regardless of intent, then Mr. King respectfully submits that the statute is unconstitutional.

Both the U.S. and Iowa Constitutions protect individuals' right to free speech. U.S. Const. amend. I ("Congress shall make no law . . . abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for

[6] Although the District Court's written ruling on Mr. King's motion to dismiss did not explicitly address Mr. King's constitutional argument, both parties subsequently treated the ruling as having addressed it. *See* D0067 at 127:5–22, 128:18–21; *see also id.* at 120:18–121:3.

a redress of grievances."); Iowa Const. art. I, § 7 ("Every person may speak, write, and publish his sentiments on all subjects, being responsible for the abuse of that right. No law shall be passed to restrain or abridge the liberty of speech, or of the press."). They do so not just when convenient—when speech is received as agreeable or harmless. On the contrary, their force is at its zenith when applied to speech thought controversial or dangerous. *See Terminiello v. City of Chicago*, 337 U.S. 1, 4 (1949); *see also Tinker v. Des Moines Indep. Cmty. Sch. Dist.*, 393 U.S. 503 (1969) ("[I]n our system, undifferentiated fear or apprehension of disturbance is not enough to overcome the right to freedom of expression.").

Indeed, "[t]he very purpose of a Bill of Rights was to withdraw certain subjects from the vicissitudes of political controversy, to place them beyond the reach of majorities and officials and to establish them as legal principles to be applied by the courts." *W. Virginia State Bd. of Educ. v. Barnette*, 319 U.S. 624, 638 (1943). "One's right to life, liberty, and property, to free speech, a free press, freedom of worship and assembly, and other fundamental rights may not be submitted to vote; they depend on the outcome of no elections." *Id.* The state and federal constitutions thus enshrine the principle, and serve as a

continuing reminder, that "[f]reedom of speech and thought flows not from the beneficence of the state but from the inalienable rights of the person." *Alvarez*, 567 U.S. at 728 (plurality op.).

The right to free speech is so (rightly) venerated and robustly protected in this country that even *false* statements are accorded the same measure of protection as truthful ones, at least where they cause no appreciable harm. That was the U.S. Supreme Court's holding in *United States v. Alvarez*, 567 U.S. 709, where it "concluded the Stolen Valor Act violated the First Amendment because it criminalized mere falsity." *Hoyman*, 863 N.W.2d at 14. Iowa Code section 718.2 is no different.

As demonstrated by the way the State wielded it in this case, the sweeping reach of section 718.2 "puts it in conflict with the First Amendment." *Alvarez*, 567 U.S. at 722 (plurality op.). Like the defendant in *Alvarez*, Mr. King told a lie, but he did no more than that. *Compare id.* at 713–14 (noting the defendant's claim to be a Medal of Honor recipient was apparently not "made to secure employment or financial benefits or admission to privileges reserved for those who had earned the Medal," rather, it was "but a pathetic attempt to gain respect that eluded him"), *with* D0067 at 136:25–

137:4 (the State speculating that Mr. King lied to gain "respect"). Nevertheless, section 718.2 criminalized Mr. King's speech "entirely without regard to whether the lie was made for the purpose of material gain." *Alvarez*, 567 U.S. at 723 (plurality op.). Whether he shouted his claim from the rooftops or whispered it in a private conversation, the statute would apply with equal force. *Cf. id.* at 722 ("Here the lie was made in a public meeting, but the statute would apply with equal force to personal, whispered conversations within a home.").

Permitting the government such sweeping power to proscribe speech, the *Alvarez* plurality declared, would endorse Orwellian "government authority to compile a list of subjects about which false statements are punishable. That governmental power has no clear limiting principle." *Id.* ("Our constitutional tradition stands against the idea that we need Oceania's Ministry of Truth. See G. Orwell, Nineteen Eighty–Four (1949) (Centennial ed. 2003)."). Just as it shares many of the Stolen Valor Act's troubling characteristics, Iowa Code section 718.2 shares its constitutional infirmity.

Specifically, (1) section 718.2 is unconstitutional because it cannot survive the rigorous strict scrutiny analysis applicable to

content-based regulations of speech. But even if it could, it is still unconstitutionally (2) overbroad in scope and (3) vague, inviting arbitrary and discriminatory enforcement.

1. Iowa Code section 718.2 fails under strict scrutiny.

When this Court considers a constitutional challenge to a statute under the First Amendment or article I, section 7, it first determines the appropriate level of scrutiny to apply. *See State v. Musser*, 721 N.W.2d 734, 743–44 (Iowa 2006). For content-based regulations—i.e., those that prohibit speech "on the basis of the ideas or views expressed"—strict scrutiny applies. *Id.* (quoting *Turner Broad. Sys., Inc. v. FCC*, 512 U.S. 622, 642–43 (1994)); *see also Animal Legal Def. Fund v. Reynolds*, 8 F.4th 781, 784 (8th Cir. 2021). Otherwise, "an intermediate level of scrutiny applies." *Musser*, 721 N.W.2d at 743.

" 'Content-based laws' are 'those that target speech based on its communicative content,' " i.e., based on *what* was said. *Animal Legal Def. Fund*, 8 F.4th at 784 (quoting *Reed v. Town of Gilbert*, 576 U.S. 155, 163–64 (2015)). Content-neutral laws, on the other hand, regulate only *how* speech is conveyed, e.g., "only the time, place, or manner of speech." *Musser*, 721 N.W.2d at 743 (quoting *Consol.*

Edison Co. of N.Y., Inc. v. Pub. Serv. Comm'n, 447 U.S. 530, 536 (1980)).

Iowa Code section 718.2 is a content-based prohibition. *Cf. United States v. Hancock*, 103 F.4th 1261, 1267 (7th Cir. 2024) (holding Indiana's corollary statute is a content-based restriction). It directly targets speech based on *what* was said. To know whether a person, like Mr. King, falsely claimed to be a public official, "an observer must examine the content of the speech to determine whether it is prohibited." *Animal Legal Def. Fund*, 8 F.4th at 784. Accordingly, Iowa Code section 718.2 is a content-based restriction on speech, and strict scrutiny applies.

Under strict scrutiny, content-based prohibitions on speech "are presumptively unconstitutional," and the State bears the burden of proving otherwise. *Id.* (quoting *Reed*, 576 U.S. at 163–64); *see also United States v. Playboy Ent. Grp., Inc.*, 529 U.S. 803, 816–17 (2000) ("When the Government restricts speech, the Government bears the burden of proving the constitutionality of its actions."); *Planned Parenthood of the Heartland, Inc. v. Reynolds ex rel. State*, 975 N.W.2d 710, 731 (Iowa 2022) ("Under strict scrutiny, a law is presumptively invalid, and the burden is on the government to show that the law is

'narrowly tailored to serve a compelling state interest.' " (quoting *Planned Parenthood of the Heartland, Inc. v. Reynolds*, 962 N.W.2d 37, 47–48 (Iowa 2021))). To do so, it must show the statute is "narrowly tailored to promote a compelling Government interest. If a less restrictive alternative would serve the Government's purpose, the legislature must use that alternative." *Musser*, 721 N.W.2d at 744.

The State will be unable to satisfy its burden here. Assuming *arguendo* the State can demonstrate a compelling interest in its prohibition, the sweeping ban imposed by section 718.2 is hardly the most narrowly tailored, least restrictive means available to achieve it. The legislature could easily bring Iowa's statute into constitutional harmony by, consistently with other jurisdictions' statutes (as discussed below), adding a specific intent or overt act requirement. As it stands, though (assuming this Court disagrees with Part II), section 718.2 requires neither.

Indeed, as Justice Breyer noted in his concurring opinion in *Alvarez*, "[s]tatutes forbidding impersonation of a public official" are generally upheld because they "typically focus on *acts* of impersonation, not mere speech, and may require a showing that, for example, someone was deceived into following a 'course [of action] he

would not have pursued but for the deceitful conduct.' " *Alvarez*, 567 U.S. at 735 (alteration in original) (Breyer, J., concurring in the judgment) (quoting *United States v. Lepowitch*, 318 U.S. 702, 704, (1943)).

Justice Breyer's observation was well founded—such requirements have been explicitly cited by many courts in deciding the constitutionality of impersonation statutes. *See, e.g.*, *Hancock*, 103 F.4th at 1269 ("By containing an 'intent' [to deceive] element, Indiana Code § 35-44.1-2-6 targets those people—and only those people—who intend to do the very thing that would threaten the government's compelling interests. *This separates the 'wrongful conduct from otherwise innocent conduct.'* " (emphasis added) (quoting *Elonis v. United States*, 575 U.S. 723, 736 (2015))); *United States v. Bonin*, 932 F.3d 523, 536 (7th Cir. 2019) ("What sets [18 U.S.C.] § 912 apart from the Stolen Valor Act is the requirement of an overt act in conformity with the lie."); *People v. Costley*, No. 19CA0592, 2022 WL 22926685, at *4 (Colo. App. Jan. 6, 2022) ("Proof that the defendant's conduct satisfied the 'acts as such' element is necessary not only to conform to the plain language of the federal statute, but also to prevent the statute from 'unconstitutionally abridging

protected speech.' " (quoting *United States v. Wade*, 962 F.3d 1004, 1010 (7th Cir. 2020))).

Iowa's statute, on the other hand, reaches mere speech. *Cf. Costley*, 2022 WL 22926685, at *4 (holding that the evidence at bar was insufficient to constitute an overt act, but rather, "was only speech," and reversing the defendant's conviction for impersonation). As the State argued below, both to the District Court and the jury, section 718.2 requires only "that he made the claim." D0067 at 137:10–14; *see also id.* at 120:9–17, 133:11–20; D0023 at 2 (contrasting Iowa Code section 718.2 from 18 U.S.C. section 912). Once he said the magic words, he was guilty.

That is precisely the type of limitless, sweeping power to proscribe speech, even false statements, that the Court found unconstitutional in *Alvarez*. *Cf.* 567 U.S. at 723 (plurality op.). Accordingly, Iowa Code section 718.2 cannot satisfy strict scrutiny, and is unconstitutional.

2. Iowa Code section 718.2 is breathtakingly overbroad.

As the strict scrutiny analysis reveals, Iowa Code section 718.2 is also breathtakingly overbroad, *cf. Hoyman*, 863 N.W.2d at 13, and thus, independently unconstitutional.

"[O]verbreadth claims are derived from the Due Process Clause of the Fourteenth Amendment to the United States Constitution and article I, section 9 of the Iowa Constitution." *Formaro v. Polk Cnty.*, 773 N.W.2d 834, 841 (Iowa 2009); *see* U.S. Const. amends. V, XIV; Iowa Const. art. I, § 9. The "analysis applies where a statute sweeps too broadly and substantially chills First Amendment rights." *Formaro*, 773 N.W.2d at 842.

By proscribing pure speech, section 718.2 sweeps far too broadly to pass constitutional muster. When considering the scope of this provision, the fates of actors in a film or theatrical performance, or people (children or adults) dressed up on Halloween, immediately spring to mind. As the State and District Court interpreted it here, there is no reason section 718.2 would not apply in those scenarios. Particularly if, as the State repeatedly emphasized at trial, whether anyone believes the claim is immaterial. D0067 at 120:9–17, 133:11–20, 137:10–14.[7]

[7] The State's single, uncited assertion, before trial, that section 718.2 would not apply to "[m]erely dressing as a peace officer or other public official," D0023 at 2, is palpably in tension with that emphasis, and is not supported by any limiting principle in the statute itself. But even if the State's unsupported assertion were correct (it is not), it is a cold comfort to the unsuspecting actor or

Even if it is *unlikely* that any police officer or prosecutor would actually charge someone based on those facts, that the statute *could* be applied in those instances *at all* is constitutionally problematic—not only because it renders the statute plainly overbroad, but also because it vests unchecked discretion in police and prosecutors to selectively target disfavored individuals (more on that below, in Section IV.C.3). As Justice Breyer remarked in his *Alvarez* opinion, endorsing a statute such as that "provides a weapon to a government broadly empowered to prosecute falsity without more." *Alvarez*, 567 U.S. at 734 (Breyer, J., concurring in the judgment). "And those who are unpopular may fear that the government will use that weapon selectively, say, by prosecuting a pacifist who supports his cause by (falsely) claiming to have been a war hero, while ignoring members of other political groups who might make similar false claims." *Id.*

Halloween partygoer since, under the State's view, while their garb may be of no consequence, they still cannot take the further step of saying, 'I am a [fill-in-the-blank-peace-officer],' regardless of their innocent intent. A child expecting to partake in trick-or-treating would quickly find himself tricked by section 718.2 if he answers the neighbor's friendly greeting, 'Are you a police officer?' the wrong way.

But even outside the theater and the haunted house, section 718.2 casts a long shadow over core expressions of First Amendment freedoms. Take, for instance, satire or parody. As the Sixth Circuit observed, in a civil lawsuit arising out of a defendant's prosecution for (but acquittal of) 'disrupting police functions' through his parody Facebook page mocking the City of Parma Police Department, "Our nation boasts a long history of protecting parody and satire." *Novak v. City of Parma*, 932 F.3d 421, 428 (6th Cir. 2019).

> "[F]rom the early cartoon portraying George Washington as an ass down to the present day, . . . satirical cartoons have played a prominent role in public and political debate." And parody, like all protected speech, need not be high-minded or respectful to find safe haven under the First Amendment. "One of the prerogatives of American citizenship is the right to criticize public men and measures—and that means not only informed and responsible criticism but the freedom to speak foolishly and without moderation."

Id. (omission in original) (citation omitted) (first quoting *Hustler Mag., Inc. v. Falwell*, 485 U.S. 46, 54 (1988), then quoting *Baumgartner v. United States*, 322 U.S. 665, 673–74 (1944)).

But suppose someone were to create a parody social media page—even just a single post—in Iowa, imitating a chief of police, sheriff, legislator, the governor, or (assuming the State is correct that

federal officers are included) the President of the United States. *Cf.* Iowa Code § 718.2 (prohibiting impersonation of "elected or appointed officer[s]").[8] Or what if, in a situation like this case, the speaker filmed his gubernatorial or presidential impersonation as part of a Saturday-Night-Live-style comedy skit? Whether done to draw attention to perceived abuses or incompetence by that official, or just simply to amuse, section 718.2 would make those parodies a criminal offense.

Likewise, the U.S. Supreme Court's opinion in *Alvarez* makes clear that a statute criminalizing mere bravado, puffery, or "barstool braggadocio" goes too far. *Alvarez*, 567 U.S. at 736–37 (Breyer, J., concurring in the judgment); *see also id.* at 721 (plurality op.) (contrasting the Stolen Valor Act with perjury laws, noting, "Sworn testimony is quite distinct from lies not spoken under oath and simply intended to puff up oneself"). But, as this case exemplifies, section 718.2 punishes that as well. The statute does not

[8] *But cf. generally Trump v. Anderson*, 601 U.S. 100 (2024) (per curiam) (leaving open the question of whether, for purposes of the Fourteenth Amendment, Section 3's, disqualification of oathbreaking insurrectionists from holding office, "the Presidency is an office under the United States and the President is an officer of the United States").

discriminate between an impersonator who seeks to use pretended authority to endanger others, and one who merely puffs himself up to attract attention.

Accordingly, as written—and certainly as applied in this case—section 718.2 is "breathtakingly overbroad," *Hoyman*, 863 N.W.2d at 13, and, consequently, unconstitutional.

3. Iowa Code section 718.2 is unconstitutionally vague.

Finally, as the foregoing discussion indicates, Iowa Code section 718.2 is also unconstitutionally vague.

Like the overbreadth doctrine, the void-for-vagueness doctrine arises out of the Due Process Clauses of the U.S. and Iowa Constitutions. *See Geddes*, 998 N.W.2d at 179; U.S. Const. amends. V, XIV; Iowa Const. art. I, § 9. There are multiple components to the doctrine, any of which can independently compel the conclusion that a statute is unconstitutional. *See Geddes*, 998 N.W.2d at 179. Those include that "a statute cannot be so vague that it does not give persons of ordinary understanding fair notice that certain conduct is prohibited," and that a statute must "provide those clothed with authority sufficient guidance to prevent the exercise of power in an

arbitrary or discriminatory fashion." *Id.* (quoting *State v. Nail*, 743 N.W.2d 535, 539 (Iowa 2007)).

As the U.S. Supreme Court has noted, the latter component—preventing arbitrary or discriminatory enforcement by requiring a statute establish sufficient guidance for enforcement—is "the more important aspect of [the] vagueness doctrine." *Kolender v. Lawson*, 461 U.S. 352, 358 (1983). Indeed, the danger in such statutes is that if "the legislature fails to provide such minimal guidelines, a criminal statute may permit 'a standardless sweep [that] allows policemen, prosecutors, and juries to pursue their personal predilections.' " *Id.* (alteration in original) (quoting *Smith v. Goguen*, 415 U.S. 566, 575 (1974)). "It would certainly be dangerous if the legislature could set a net large enough to catch all possible offenders, and leave it to the courts to step inside and say who could be rightfully detained, and who should be set at large." *Id.* at 358 n.7 (quoting *United States v. Reese*, 92 U.S. 214, 221 (1875)).

Iowa Code section 718.2, however, does just that. It has no limiting principle to its application. As this case demonstrates, it casts a net so wide as to swallow any false claim—including, as here, a mere offhand remark—regardless of the speaker's intent or the

surrounding context. It gives law enforcement no standard by which to gauge when a person has violated the statute—or, perhaps more troublingly, when a person engaging in innocent or constitutionally protected conduct has *not* violated the statute.

Take the examples of an actor or Halloween trick-or-treater. One might reasonably assume the statute was not intended to apply to those persons. But, as written, why wouldn't it?

Is it because, under the circumstances, no one would reasonably believe they are actually peace officers? That can't be, since, as the State argued, "the law doesn't care what the witnesses believed." D0067 at 137:10–14. Indeed, it was undisputed at trial that no one *did* believe Mr. King's claim. *See id.* at 93:7–8, 100:8–11, 106:21–107:3.

Nor could it be because, as the State argued below, "[m]erely dressing as a peace officer or other public official is not enough under § 718.2." D0023 at 2. Nothing on the face of the statute supports that limitation. And in any event, most theater performances feature dialogue in addition to costumes. Yet, under the State's reading, officers are expected to know they can't do anything when a person sporting a full police uniform, complete with badge and insignia,

roams the streets, but then have full authority to arrest as soon as the person utters a single phrase.

Does the statue not apply in certain places (theaters) or on certain days (Halloween)? It certainly doesn't say that. And what if Mr. King had made his claim in a theater instead of a Wingstop? Or on Halloween, or April Fool's Day? In all likelihood, he would still have been prosecuted.

Or is it because those circumstances are generally not thought of as 'serious' or 'true' impersonations? But what if Mr. King had claimed to be a Justice of the Iowa Supreme Court, the Governor of Iowa, or the President of the United States? Would he still have been subjected to a trial and punished for his words (the statute certainly applies to impersonating at least the former two officials), or would his claim have been dismissed as outlandish and silly? *Cf. Hoyman*, 863 N.W.2d at 13 ("Any trivial misstatement . . . would become a crime.").

The true answer is that this prohibition does not apply to theater performances, Halloween costumes, and other socially 'acceptable' impersonations only because the state and federal constitutions prohibit it from doing so. The drafters of this law were

well aware of constitutional free speech protections, and likely never intended to infringe upon them here by criminalizing mere words. Indeed, as initially adopted, the statute likely did *not* offend the constitution since, at that time, it required an overt act *in addition to* a false claim. *See* Iowa Code § 2671 (1851). It was not until the statute was revised in the 1976 code overhaul that those requirements became alternative means of committing the offense. *See id.* § 718.2 (Supp. 1977). But to infer that the legislature intended to so seriously test First Amendment waters by tucking such a significant change in the law, over 100 years after it was first adopted, into a minor provision of the code overhaul, is a dubious proposition. *Cf. Hoyman*, 863 N.W.2d at 15 (rejecting the inference that "the legislature intended to plow new ground" in offense added by the 1976 criminal code overhaul).

Still, taking the statute as it exists today, how is an officer supposed to distinguish the 'acceptable' impersonations from the 'unacceptable' ones? There is no textual guidance as to when the statute applies and when it does not. The only clear answer is that section 718.2 leaves police officers and prosecutors with unchecked discretion to decide. That is the very definition of an

unconstitutionally vague statute. *Cf. Kolender*, 461 U.S. at 358 ("As such, the statute vests virtually complete discretion in the hands of the police to determine whether the suspect has satisfied the statute and must be permitted to go on his way in the absence of probable cause to arrest."). An 'I know it when I see it' approach cannot pass constitutional muster.

D. Summary. As the foregoing discussion demonstrates, Iowa Code section 718.2, as interpreted and applied by the State and the District Court in this case, is unconstitutional. Its content-based prohibition infringes upon free speech rights, and fails a strict scrutiny analysis. It is also breathtakingly overbroad and vague in its scope, vesting nearly limitless discretion in law enforcement to arrest any purported impersonator, allowing them to pick and choose which impersonations are worthy of prosecution.

Accordingly, because the statute is unconstitutional, Mr. King respectfully requests this Court vacate his conviction and sentence and remand for dismissal with prejudice.

CONCLUSION

For any or all of the reasons set forth in Parts I and IV, Mr. King respectfully requests this Court vacate his conviction and sentence

and remand for entry of dismissal with prejudice.

Likewise, for the reasons set forth in Parts II and III, Mr. King respectfully requests this Court vacate his conviction and sentence and remand for entry of a judgment of acquittal.

Otherwise, for the reasons set forth in Part II, Mr. King respectfully requests this Court vacate his conviction and sentence and remand for a new trial.

REQUEST FOR ORAL ARGUMENT

Counsel respectfully requests the opportunity to be heard in oral argument on the submission of this appeal. Iowa Rs. App. P. 6.903(2)(*a*)(10), .908(1).

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

This brief complies with the typeface requirements and type-volume limitation of Iowa Rules of Appellate Procedure 6.903(1)(*g*)(1) and 6.903(1)(*i*)(1) because the brief has been prepared in a proportionally spaced typeface using 14-point Bookman Old Style font and contains 13,000 words, excluding the parts exempted by Iowa Rule of Appellate Procedure 6.903(1)(*i*)(1).



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Ryan M. D'Eliseo
Assistant Appellate Defender
Appellate Defender Office
6200 Park Avenue
Des Moines, IA, 50321
(515) 207-9563
rdeliseo@spd.state.ia.us
appellatedefender@spd.state.ia.us

RMD/ls/04/26

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