ELECTRONICALLY FILED FEB 25, 2026 CLERK OF SUPREME COURT

IN THE SUPREME COURT OF IOWA

STATE OF IOWA, Plaintiff–Appellee, v. JAMES BERNARD JOHNSON, Defendant–Appellant.	POLK COUNTY COURT NO. FECR383463 SUPREME COURT NO. 25-1071

APPEAL FROM THE IOWA DISTRICT COURT
FOR POLK COUNTY
THE HONORABLE PAUL D. SCOTT, JUDGE (MOTION TO DISMISS)
& THE HONORABLE JOSEPH W. SEIDLIN, JUDGE (TRIAL AND SENTENCING)

APPELLANT'S BRIEF AND ARGUMENT

MARTHA J. LUCEY
State Appellate Defender

JOSH IRWIN
Assistant Appellate Defender
jirwin@spd.state.ia.us
appellatedefender@spd.state.ia.us

STATE APPELLATE DEFENDER'S OFFICE
6200 Park Avenue
Des Moines, IA 50321
(515) 207-9563

ATTORNEYS FOR DEFENDANT–APPELLANT

TABLE OF CONTENTS

Page

Table of Authorities 4

Statement of the Issues Presented for Review 9

Routing Statement 10

Statement of the Case 10

Statement of the Facts 11

Argument

I. The district court erred by denying Johnson's motion to dismiss his felon in possession of a firearm charge, because Iowa Code section 724.26 is unconstitutional as applied to him 40

A. Iowa Code section 724.26, as applied to Johnson, has no historic analogue, and so violates the Second Amendment to the United States Constitution..... 42

B. Iowa Code section 724.26, as applied to Johnson, is not narrowly tailored to serve a compelling government interest, and so violates Article I, section 1A of the Iowa Constitution 48

Conclusion 53

II. The district court erred by refusing to instruct the jury regarding involuntary manslaughter 53

Conclusion 62

III. The evidence is insufficient to support Johnson's conviction for murder in the first degree 62

Conclusion 74

IV. The district court imposed an illegal sentence by requiring Johnson to participate in a victim-offender dialogue program 74

Conclusion 76

Request for Oral Argument 76

Certificate of Compliance 77

TABLE OF AUTHORITIES

Cases: Page:

AFSCME Iowa Council 61 v. State, 928 N.W.2d 21 (Iowa 2019) 48

Bonilla v. State, 791 N.W.2d 697 (Iowa 2010) 76

District of Columbia v. Heller, 554 U.S. 570 (2008) 45

Godfrey v. State, 962 N.W.2d 84 (Iowa 2021) 68

Heller v. District of Columbia, 670 F.3d 1244 (D.C. Cir. 2011) 49

Int. of N.S., 13 N.W.3d 811 (Iowa 2024) 41, 48, 50

McDonald v. City of Chicago, Ill., 561 U.S. 742 (2010) 42, 45

Mitchell County v. Zimmerman, 810 N.W.2d 1 (Iowa 2012) 48

New York State Rifle & Pistol Ass'n, Inc. v. Bruen, 597 U.S. 1 (2022) 43

Range v. Att'y Gen. United States, 124 F.4th 218 (3d Cir. 2024) 46-47

State v. Bentley, 757 N.W.2d 257 (Iowa 2008) 70

State v. Brown, 5 N.W.3d 611 (Iowa 2024) 56

State v. Buenaventura, 660 N.W.2d 38 (Iowa 2003) 64-65, 70

State v. Conner, 292 N.W.2d 682, 686 (Iowa 1980) 55

State v. Crawford, 972 N.W.2d 189 (Iowa 2022)..... 62

State v. Dalton, 674 N.W.2d 111 (Iowa 2004) 63, 71

State v. Damme, 944 N.W.2d 98 (Iowa 2020)..... 74

State v. Folkers, 941 N.W.2d 337 (Iowa 2020) 62-63

State v. Formaro, 638 N.W.2d 720 (Iowa 2002)..... 75

State v. Fryer, 226 N.W.2d 36 (Iowa 1975)..... 66

State v. Gilroy, 199 N.W.2d 63 (Iowa 1972) 66

State v. Halliburton, 539 N.W.2d 339 (Iowa 1995) 74

State v. Hamilton, 309 N.W.2d 471 (Iowa 1981)..... 63

State v. Hanes, 790 N.W.2d 545 (Iowa 2010) 60

State v. Hess, 533 N.W.2d 525 (Iowa 1995) 75

State v. Jeffries, 430 N.W.2d 728 (Iowa 1988)..... 56

State v. Lacey, 968 N.W.2d 792 (Iowa 2021) 63

State v. Lathrop, 781 N.W.2d 288 (Iowa 2010)..... 74

State v. Lee, 494 N.W.2d 706 (Iowa 1993)..... 70

State v. Liggins, 524 N.W.2d 181 (Iowa 1994)..... 56

State v. Maghee, 573 N.W.2d 1 (Iowa 1997)..... 76

State v. McFadden, 320 N.W.2d 608 (Iowa 1982)..... 55

State v. McNamara, 104 N.W.2d 568 (Iowa 1960) 70

State v. Morris, 677 N.W.2d 787 (Iowa 2004)..... 72

State v. Murray, 796 N.W.2d 907 (Iowa 2011) 60

State v. Reed, No. 24-0256, 2025 WL 2793578
(Iowa Ct. App. Oct. 1, 2025) 75-76

State v. Reeves, 670 N.W.2d 199 (Iowa 2003) 70

State v. Royer, 436 N.W.2d 637 (Iowa 1989)..... 55-57, 61

State v. Sangster, 299 N.W.2d 661 (Iowa 1980) 61

State v. Stallings, 541 N.W.2d 855 (Iowa 1995) 56

State v. Thompson, 836 N.W.2d 470 (Iowa 2013)..... 54-55

State v. Ware, 338 N.W.2d 707 (Iowa 1983)..... 55

State v. Winnett, 442 N.W.2d 275 (Iowa Ct. App. 1989)..... 55

State v. Webb, 648 N.W.2d 72 (Iowa 2002) 63

State v. Woods, 23 N.W.3d 258 (Iowa 2025)..... 41, 49

State v. Woody, 613 N.W.2d 215 (Iowa 2000)..... 75

United States v. Jackson, 110 F.4th 1120 (8th Cir. 2024)..... 44

United States v. Jackson, 121 F.4th 656 (8th Cir. 2024) 45

United States v. Rahimi, 602 U.S. 680 (2024)..... 43

Constitutional Provisions:

U.S. Const. amend. II 42

Iowa Const., art. I, § 1A 48

Statutes and Court Rules:

Iowa Code § 702.11(1) 59

Iowa Code § 707.1 64

Iowa Code § 701.2 59

Iowa Code § 707.2(1)(a) 64

Iowa Code § 707.5(1)(a) 55

Iowa Code § 707.5(2) 55

Iowa Code § 708.1(2)(b–c) 60

Iowa Code § 724.26 41

Iowa Code § 724.27 51

Iowa Code § 724.27(1)(a–b) 51

Iowa Code § 724.30 58

Iowa Code § 901C.3 51

Iowa Code § 901.5 75

Iowa Code § 902.9(1)(c–d) 59

Iowa Code § 903.1(1–2)..... 59

Iowa Code § 907.9(4)(b) 51

Iowa Code § 914.1 51

Iowa Code § 914.4 51

Iowa R. App. P. 6.904(3)(a) 63

Other Authorities:

Des Moines, Iowa, Municipal Code § 1-15 59

Des Moines, Iowa, Municipal Code § 70-86(a)..... 59

Carlton F.W. Larson, *Four Exceptions in Search of a Theory:* District of Columba v. Heller *and Judicial* Ipse Dixit, 60 Hastings L.J. 1371 (2009) 45-46

Adam Winkler, *Fatal in Theory and Strict in Fact: An Empirical Analysis of Strict Scrutiny in the Federal Courts*, 59 Vand. L. Rev. 793 (2006) 49

STATEMENT OF THE ISSUES PRESENTED FOR REVIEW

I. The district court erred by denying Johnson's motion to dismiss his felon in possession of a firearm charge, because Iowa Code section 724.26 is unconstitutional as applied to him.

A. Iowa Code section 724.26, as applied to Johnson, has no historic analogue, and so violates the Second Amendment to the United States Constitution.

B. Iowa Code section 724.26, as applied to Johnson, is not narrowly tailored to serve a compelling government interest, and so violates Article I, section 1A of the Iowa Constitution.

II. The district court erred by refusing to instruct the jury regarding involuntary manslaughter.

III. The evidence is insufficient to support Johnson's conviction for murder in the first degree.

IV. The district court imposed an illegal sentence by requiring Johnson to participate in a victim-offender dialogue program.

ROUTING STATEMENT

This case should be retained by the Iowa Supreme Court because the issue raised involves a substantial issue of first impression in Iowa. Iowa R. App. P. 6.903(2)(a)(4) and 6.1101(2)(c). Johnson argues the permanent ban on possessing firearms imposed by Iowa Code section 724.26 violates the Second Amendment to the United States Constitution and Article I, section 1A of the Iowa Constitution. The Iowa Supreme Court has yet to decide challenges to section 724.26 under the currently-existing legal frameworks, and so retention is warranted.

STATEMENT OF THE CASE

Nature of the Case

The Defendant-Appellant, James Johnson, appeals from his conviction, judgment, and sentence for murder in the first degree, a class A felony in violation of Iowa Code sections 707.1 and 707.2, with dangerous weapon enhancement pursuant to Iowa Code section 902.7, and for possession of a firearm by a felon, a class D felony in violation of Iowa Code section 724.26, following a jury

trial. The district court imposed a sentence of life in prison without the possibility of parole for the murder in the first degree conviction, and an indeterminate term of incarceration not to exceed five years and a suspended fine of $1025 plus 15% surcharge for the felon in possession conviction, with the terms run concurrently to one another. D0286 Order of Disposition pp. 1–3 (6/20/2025). The court ordered Johnson to participate in a victim-offender dialogue program. D0286 p. 3.

Facts

Polk County Sheriff's Deputy Wyatt Grubb was on patrol in Des Moines at 3:39 a.m. on July 27, 2024 when he and his field training officer responded to a report of shots fired at the intersection of Cambridge Street and East Ovid Avenue. D0319 4/1/2025 Trial Tr. p. 155 L. 10–p. 156 L. 13. He observed a woman lying in the front yard of a home, with a male standing near her who said he did not know where the shooter was. D0319 p. 156 L. 14–p. 157 L. 6. Grubb observed blood around the female and that her skin was pale, but she was able to speak and

identified herself as Nikki Loffredo. D0319 p. 157 L. 10–12, L. 21–25. Loffredo had gunshot wounds to both thighs and her right calf, so Grubb and his training officer Deputy Rath applied tourniquets to her legs. D0319 p. 158 L. 6–19. Loffredo said she was shot by a black male with long dreadlocks who was driving a gold Tahoe. D0319 p. 158 L. 24–p. 159 L. 2. Medics arrived and took over care for Loffredo, and Grubb remained at the scene. D0319 p. 159 L. 7–14. A shell casing was discovered in the tire of Grubb's vehicle, which he believed he had driven over when he repositioned his vehicle at the scene. D0319 p. 159 L. 16–23. Grubb was wearing a body camera during these events, and video from that camera was submitted as Exhibit 13. D0319 p. 160 L. 2–14; Exhibit 13 Grubb Body Cam.[1]

Polk County Sheriff's Deputy Trevor Rath was with Grubb, and testified to substantially the same information: they responded to Cambridge and Ovid, discovered Loffredo bleeding heavily from

[1] The State submitted numerous audio and video exhibits, none of which have placeholder docket numbers. Those exhibits are identified by number and a short description throughout this brief.

gunshot wounds to her legs and applied tourniquets, and spoke with her at the scene until she was taken to a hospital. D0319 p. 165 L. 13–p. 170 L. 12.

Des Moines Police Officer Derek Huxford also responded to the scene. D0319 p. 172 L. 15–p. 173 L. 8. Loffredo told him "a dark-skinned black male" she did not know pulled up next to her, said "something to the effect of 'hey, girl, what's up,' then opened fire, striking her three times." D0319 p. 174 L. 5–13. Huxford identified exhibit 16, a map showing the location of the scene. D0319 p. 176 L. 21–p. 177 L. 12; D0191 Exhibit 16 Scene Map (4/9/2025).

Des Moines Police Officer Gage Winter responded to the scene and spoke with witnesses in the neighborhood. One neighbor showed him security camera footage which showed "a gold or tan Chevy Tahoe or Yukon or Suburban, something like that" drive east on Ovid then north on Cambridge, at which point "three or four muzzle flashes out the driver's side window" and Loffredo falling to

the ground were visible. D0319 p. 182 L. 17–p. 184 L. 25. The vehicle then drove north on Cambridge. D0319 p. 184 L. 4–5.

Polk County Sheriff's Deputy Hector Salgado responded to the scene, helped Grubb and Roth provide treatment to Loffredo, and heard the statements which they had described previously. D0319 p. 187 L. 13–p. 191 L. 7. Salgado located three shell casings at the scene; two on the street, and one which was stuck in Grubb's tire. D0319 p. 191 L. 18–p. 193 L. 10.

Des Moines Police Dispatcher Brandi Zawistowski received a 911 call from Loffredo following the shooting. D0319 p. 196 L. 4–12. A recording of the call was submitted as Exhibit 20; Loffredo reports she has been shot by an unknown male. Exhibit 20 911 Call.

Des Moines Police Sergeant Shawn Herman responded to the scene and observed Loffredo receiving medical treatment. D0319 p. 202 L. 14–p. 205 L. 18. Loffredo told Herman she had never seen the person who shot her before, that he had waited for her at an intersection, and that he shot her after asking "something to the

effect of 'Hey, girl, what are you up to'" and she responded "'I don't know you.'" D0319 p. 206 L. 2–12. Herman was wearing a body camera, and video from that camera was submitted as Exhibit 14. D0319 p. 207 L. 8–23; Exhibit 14 Herman Body Cam. Herman testified another officer located a shell casing on the ground near Loffredo, and Herman located two more casings, one in the tire of Grubb's vehicle and another beneath that vehicle. D0319 p. 210 L. 21–p. 211 L. 2.

Des Moines Police Officer Charles Minnehan observed Loffredo receiving treatment, and generally testified to the same things as other officers: Loffredo was wounded and said she had been shot by an unknown Black male with dreadlocks, driving a gold Tahoe. D0317 4/2/2025 Trial Tr. p. 18 L. 12–p. 21 L. 17 (4/2/2025). Minnehan was wearing a body camera, and video from that camera was submitted as exhibit 12. D0317 p. 22 L. 22–p. 23 L. 11; Exhibit 12 Minnehan Body Cam. Minnehan made contact with a person who worked at a school located across the street from the scene, and discussed security camera footage with that person

which showed a "gold-colored SUV" at the scene. D0317 p. 26 L. 16–p. 28 L. 10.

Des Moines Fire Department Senior Medic Kelly Dooley responded to the scene, having received a report that a person had suffered multiple gunshot wounds. D0317 p. 34 L. 17–20, p. 36 L. 2–p. 38 L. 12. The person was alert, and identified herself as Loffredo; Dooley testified Loffredo had lost a significant amount of blood. D0317 p. 39 L. 3–25. Dooley "observed five holes, three in one leg, two in another." D0317 p. 40 L. 1–9. Dooley loaded Loffredo into an ambulance, and during transport Loffredo "closed her eyes and stopped talking, and her breathing had slowed down." D0317 p. 42 L. 7–p. 43 L. 19. They arrived at the hospital in around five minutes, and Dooley reported his observations to hospital staff and transferred Loffredo to their care. D0317 p. 44 L. 1–p. 45 L. 12.

Des Moines Police Officer Rogelio Apolonio responded to the scene, learned the suspect vehicle was a gold Tahoe, and began looking for that vehicle in the area. D0317 p. 47 L. 11–p. 48 L. 16.

At 4:11 a.m. he encountered a gold Yukon, which he testified is similar to a Tahoe, at East 14th and Tiffin. D0317 p. 48 L. 23–p. 49 L. 12, p. 50 L. 22–p. 51 L. 1. He saw the driver was a Black male with dreadlocks, matching the suspect description. D0317 p. 49 L. 21–25. Apolonio conducted a traffic stop on the vehicle, which Johnson was driving. D0317 p. 51 L. 2–p. 52 L. 15. Other officers responded to the scene and searched Johnson's vehicle, finding nothing of note. D0317 p. 52 L. 25–p. 53 L. 13. Video from Apolonio's vehicle and body cameras were submitted as exhibits. Exhibit 132 Apolonio Car Video; Exhibit 148 Apolonio Body Cam Video. Officers released Johnson, but would not let him drive away because he had a suspended license. D0317 p. 56 L. 2–8.

Des Moines Police Crime Scene Investigator Benjamin Campbell arrived at the scene at around 4:00 a.m. and photographed items of interest, including blood on the sidewalk and in a yard; a Walgreens bag, soda can, and purse located in a yard; and the location of three shell casings. D0317 p. 60 L. 18 – p. 72

L. 9, p. 78 L. 10–p. 79 L. 10; D0227 Exhibit 102 Sidewalk (4/10/2025); D0228 Exhibit 103 House (4/10/2025); Exhibit 104 Front Steps and Backpack (4/10/2025); D0230 Exhibit 105 Casing Near Vehicle (4/10/2025); D0231 Exhibit 106 Casing Close Up (4/10/2025); D0232 Exhibit 107 Casing Near Vehicle 2 (4/10/2025); D0233 Exhibit 108 Casing Near Vehicle 3 (4/10/2025); D0234 Exhibit 109 Casing in Tire (4/10/2025); D0235 Exhibit 110 Casing on Street (4/10/2025); Exhibit 111 Casings After Vehicle Moved (4/10/2025); D0237 Exhibit 112 Walgreens Bag on Sidewalk (4/10/2025); D0240 Exhibit 115 Yard (4/10/2025); D0241 Exhibit 116 Sidewalk and Yard (4/10/2025); D0243 Exhibit 118 Walgreens Receipts (4/10/2025). He went to the hospital and collected a pair of shorts Loffredo had been wearing. D0317 p. 79 L. 19–p. 81 L. 19; D0242 Exhibit 117 Shorts (4/10/2025).

Campbell acknowledged that exhibit 114 shows a "defect" in the sidewalk concrete. D0317 p. 89 L. 8–14; D0239 Exhibit 114 Sidewalk (4/10/2025). He agreed exhibit A, submitted by the

defense, showed the same defect or "indentation on the sidewalk," although he denied he took the photograph because he thought the defect was relevant to the investigation. D0317 p. 90 L. 22–p. 91 L. 13; D0266 Exhibit A Sidewalk Mark (4/10/2025). Campbell agreed that some blood spatter "seem[ed] to be heading towards that defect in the sidewalk." D0317 p. 95 L. 24–p. 96 L. 1. He testified that he "missed that defect," and while he would not opine on its significance he admitted he "would have probably placarded [the defect]" had he noticed it. D0317 p. 96 L. 4–p. 97 L. 2. Campbell acknowledged there was another spot of "discoloration" on the sidewalk depicted in exhibit 102 which he also did not indicate with a placard. D0317 p. 97 L. 14–p. 98 L. 5; Exhibit 102 Sidewalk (4/10/2025). Campbell had been trained on interpreting blood-spatter evidence, but "could not say" whether the blood spatter near the sidewalk defects indicated it had come from an exit wound. D0317 p. 92 L. 5–p. 95 L. 1, p. 98 L. 6–16. Campbell agreed a bullet, among other possibilities, could have caused the sidewalk defects. D0317 p. 101 L. 20–p. 101 L. 5.

Des Moines Police Senior Crime Scene Investigator Greg Warren identified three "40 Smith & Wesson" shell casings. D0317 p. 105 L. 21–p. 106 L. 12. Warren inspected the casings under a microscope and concluded based on their markings that they had all been fired by the same firearm. D0317 p. 107 L. 2–20. Warren examined a firearm which was collected during the investigation, and identified shell casings produced when he test-fired that weapon. D0317 p. 110 L. 15–p. 112 L. 23. Warren collected DNA from a person named Angela Powell during the investigation. D0317 p. 110 L. 5–14.

Division of Criminal Investigation Criminalist Kristin Hart microscopically compared the test-fired casings with the casings collected at the scene, and concluded they were fired by the same firearm. D0317 p. 119 L. 20–p. 124 L. 17. Hart also compared a bullet projectile recovered from Loffredo's body to a projectile test-fired from the collected firearm, and determined they were also a match. D0317 p. 131 L. 10 – p. 135 L. 17. She testified that the recovered projectile was a hollow-point bullet, meaning it was

designed to expand upon impact in order to maximize damage and reduce the likelihood of passing through the target. D0317 p. 136 L. 18–p. 138 L. 14.

Hart performed a demonstration using a similar firearm that was collected in the investigation, showing how a semi-automatic firearm operates, including how it discharges spent casings after firing and that one round fires per trigger pull. D0317 p. 139 L. 3–p. 144 L. 16.

Division of Criminal Investigation Senior Crime Scene Investigator Kevin Risk identified a diagram he created of the shooting scene, showing the location of four placards placed during the investigation. D0317 p. 147 L. 11–p. 148 L. 25; Exhibit 17 Scene Diagram (4/10/2025).

Des Moines Police Crime Scene Investigator Lindsay Schmidt took photographs of a gold GMC Yukon collected during the investigation. D0317 p. 150 L. 19–p. 154 L. 17. She collected a DNA sample from Johnson while he was being interviewed by detectives. D0317 p. 154 L. 14–p. 157 L. 4.

Des Moines Police Senior Crime Scene Investigator Jayla Kreiss examined the firearm and two magazines collected during the investigation, looking for DNA or fingerprints. D0317 p. 158 L. 22–p. 159 L. 10. She located latent fingerprints on the firearm and one magazine, which she documented and turned over to a lab. D0317 p. 164 L. 3–21.

Des Moines Police Crime Scene Investigator Krystal Warren attended Loffredo's autopsy, and collected a bullet projectile from Loffredo's body. D0317 p. 166 L. 11–p. 167 L. 13. Warren collected a "bloodstain DNA card" with Loffredo's blood. D0317 p. 167 L. 14–22. Warren also examined the latent fingerprints collected by Kreiss, but was unable to make an identification with them. D0317 p. 168 L. 1–p. 170 L. 2.

Des Moines Police Crime Scene Investigator Tan Huynh took photographs of a 2007 GMC Yukon which was located at Crow Tow in Des Moines. D0317 p. 171 L. 23–p. 172 L. 21. Huynh also swabbed various areas in the vehicle for DNA. D0317 p. 173 L. 2–p. 174 L. 19.

Des Moines Police Detective Darren Bjurstrom collected a .40 caliber Smith & Wesson M&P semiautomatic handgun and two magazines from a pawn shop where it had been pawned by Angela Powell on July 29, 2024. D0317 p. 178 L. 2–p. 187 L. 2.

Angela Powell testified she is friends with Johnson, and they would spend time doing food-delivery work together. D0317 p. 188 L. 8–p. 189 L. 11. Powell said Johnson drove a gold 2007 Yukon which was registered in Powell's name, and identified the vehicle collected during the investigation. D0317 p. 189 L. 17–p. 191 L. 9. Powell met up with Johnson at around 7:00 or 8:00 p.m. on July 26, and they worked in Powell's vehicle until she dropped him off at the Yukon around 9:00. D0317 p. 191 L. 11–p. 192 L. 16. They got back together between 10:30 and 11:30, and they went back to delivering food in Powell's vehicle until around 2:00 or 2:15 a.m., and she dropped him off at the Yukon again. D0317 p. 192 L. 17–p. 193 L. 24. She said that during the times when she and Johnson were together, Johnson smoked marijuana. D0317 p. 206 L. 20–p. 207 L. 12.

Powell said Johnson called her after he was pulled over around 4:11 a.m. on July 27. D0317 p. 194 L. 10–p. 195 L. 10. She saw Johnson later that day, which was her birthday. D0317 p. 195 L. 15–21. Johnson was acting "completely normal" at that time. D0317 p. 196 L. 3–7.

Powell said Johnson contacted her on July 29 and asked her to pawn a gun for him, and she did. D0317 p. 196 L. 8–19, p. 198 L. 2–p. 204 L. 14. She had seen Johnson with a firearm before, and said he sometimes kept it in the door of the Yukon. D0317 p. 196 L. 20–p. 197 L. 24. Johnson went with her when she pawned the firearm, and she gave him the money received for it. D0317 p. 200 L. 13–p. 201 L. 8, p. 204 L. 9–14. Powell said that at some point after Johnson had been arrested, he asked her to obtain the firearm from the pawn shop. D0317 p. 205 L. 5–16.

Division of Criminal Investigation Criminalist Ryan Petruccelli analyzed DNA swabs taken from the firearm and one magazine, and was able to match a sample from the firearm to Johnson's DNA profile; another swab of the firearm revealed DNA from at least

three individuals but too weak for identification, and a swab from the magazine revealed DNA from at least two individuals but too weak for identification. D0317 p. 214 L. 2–p. 218 L. 14; Exhibit 72 Petruccelli Report 1 p. 1 (4/10/2025). He also analyzed DNA swabs from the Yukon, but was unable to identify any usable profile. D0317 p. 218 L. 18–p. 220 L. 7.

Forensic Pathologist Gregory Schmunk conducted an autopsy on Loffredo's body. D0320 4/3/2025 Trial Tr. p. 6 L. 23–25 (4/3/2025). Loffredo had been pronounced dead on July 29, 2024 at 3:52 p.m. D0320 p. 7 L. 7–11. He testified Loffredo's blood "was positive for methamphetamine and amphetamine, which is the breakdown product." D0320 p. 9 L. 15–20. He agreed methamphetamine consumption can cause agitation, hallucination, and "generally erratic behavior." D0320 p. 39 L. 3–16. He agreed the amount of methamphetamine in Loffredo's system could potentially be fatal, although it was not the cause of Loffredo's death. D0320 p. 39 L. 20–p. 40 L. 4.

Schmunk noted "a gunshot wound that went through-and-through the [right] leg" at the calf, from front to back. D0320 p. 11 L. 1–p. 13 L. 2. The wound path was "left to right, front to back, and downward." D0320 p. 14 L. 5–12. The bullet entered "at 12 and ½ inches above the right heel" and exited "at 10 and one-quarter inches." D0320 p. 25 L. 4–11. He noted another gunshot wound to Loffredo's left thigh, which passed through her leg and entered her right thigh. D0320 p. 14 L. 22–p. 15 L. 19. The wound path did significant damage to blood vessels, particularly in the left thigh but also the right, which "was the primary cause of Ms. Loffredo's death, bleeding from those torn and damaged vessels in her left thigh." D0320 p. 15 L. 12–p. 16 L. 25. Schmunk recovered the projectile from Loffredo's right thigh. D0320 p. 17 L. 11–19. He did not believe that projectile struck anything before hitting Loffredo, based on the appearance of the entrance wound. D0320 p. 18 L. 6–17. The wound path was left to right and "slightly in a downward direction." D0320 p. 18 L. 18–24. The bullet entered the left thigh "at 31 inches heel to entry" and exited

at "27 inches heel to exit." D0320 p. 26 L. 23–p. 27 L. 3. He agreed it was unknown which wound occurred first, and that the wound to her left thigh could have occurred while she was down on one knee. D0320 p. 37 L. 12–24. Schmunk did not see any indication the wounds were inflicted at close range, and believed "the firearm was on her left side, probably slightly above her." D0320 p. 19 L. 12–p. 20 L. 10. He determined Loffredo's cause of death was "multiple gunshot wounds," and her manner of death was homicide. D0320 p. 21 L. 22–p. 23 L. 13.

Marla Del Carmen Hernandez lived next door to Ashley Dawson, and testified Johnson was Dawson's boyfriend, whom she knew as "Jay," and lived with Dawson. D0320 p. 44 L. 23–p. 47 L. 4. She said Johnson drove the Yukon seized during the investigation. D0320 p. 47 L. 5–p. 48 L. 14. Hernandez had security cameras outside her house, and she turned over footage from those cameras to a detective. D0320 p. 49 L. 1–22.

Des Moines Police Detective Chase Lohnes met with Hernandez on August 2, 2024, spoke with her about the cameras,

and viewed footage from them. D0320 p. 52 L. 1–p. 53 L. 19. Lohnes testified footage from 3:55 a.m. on July 27, 2024 showed an SUV driving past the residence, then driving past again at around 4:00 a.m., and driving by again at 4:41 a.m. D0320 p. 53 L. 20–p. 54 L. 23. He could not determine anything about the vehicle except that it was "a large SUV." D0320 p. 54 L. 24–p. 55 L. 9.

Rodney Weatherly worked at the pawn shop where Powell had sold the firearm and police later recovered it. D0320 p. 58 L. 7–8, p. 60 L. 4–p. 73 L. 19.

Des Moines Police Detective Matthew Gallaher went to the scene on July 30, 2024, and looked for homes or businesses with video cameras. D0320 p. 75 L. 22–p. 77 L. 25. He obtained video from a residence near the intersection of Columbia and Ovid Street which showed "a light-colored SUV, somewhat consistent with a GMC Yukon" driving through the intersection. D0320 p. 83 L. 1–23. Gallaher said that "just shy of a minute later it sounded like four gunshots could be heard." D0320 p. 84 L. 19–25. He believed he heard four gunshots. D0320 p. 85 L. 1–2. Gallaher

reviewed footage from a Casey's gas station at East 14th and Euclid which showed "a light-colored SUV consistent with a GMC Yukon" driving north on East 14th then turning west on Euclid. D0320 p. 86 L. 8–p. 87 L. 25. Gallaher reviewed footage from a church located near Cambridge and Euclid, and saw Loffredo "walking southbound" and then "[a] short time later . . . an SUV traveling northbound" which was "consistent with [the] shape and size of SUV" observed in other videos. D0320 p. 79 L. 17–p. 91 L. 7.

Des Moines Police Detective Luke Harden observed the Yukon from the investigation on August 1, 2024, driving between Des Moines and Ankeny. D0320 p. 94 L. 18–p. 96 L. 12. On August 2, Harden responded after officers had pulled the vehicle over, and identified the driver as Johnson. D0320 p. 96 L. 16–p. 98 L. 21. Officers took a cell phone from Johnson. D0320 p. 99 L. 3–12. Officers took Johnson to the Des Moines Police Department, and impounded the Yukon. D0320 p. 100 L. 21–p. 101 L. 1. Harden participated in a warrant search of Angela Dawson's home the same day, and located a firearm holster on top of kitchen cabinets.

D0320 p. 101 L. 6–p. 103 L. 19. He also located property with Johnson's name on it. D0320 p. 103 L. 20–p. 104 L. 4. He participated in the search of the Yukon, which located nothing of significance. D0320 p. 111 L. 1–4.

Ashley Dawson dated Johnson for eight years, and lived with him in July, 2024. D0320 p. 113 L. 23–p. 114 L. 21. She said Johnson drove a gold 2007 Yukon. D0320 p. 115 L. 17–25. She testified that at around 1:30 a.m. on July 27, she came home from a family gathering, Johnson was not at home, and they argued by phone. D0320 p. 117 L. 5–p. 118 L. 11. She said it was not unusual for Johnson to be out until 4:00 or 5:00 a.m. on nights when he was delivering food. D0320 p. 118 L. 12–21. Dawson said when she woke up at around 7:00 or 8:00 a.m. on July 27, Johnson was in bed with her. D0320 p. 119 L. 4–7. She said she had seen Johnson with a firearm "not around that time but months prior." D0320 p. 120 L. 24–p. 121 L. 4. She said she had never seen the holster police found at her house. D0320 p. 122 L. 3–8. She testified Johnson used marijuana and cocaine while they were

together, and that he gets agitated easily when under the influence. D0320 p. 124 L. 4–15.

Des Moines Police Detective Matt Towers interviewed Dawson the day police searched her home. D0320 p. 128 L. 13–p. 129 L. 13. He took a video of text messages from around July 27 located on Dawson's phone. D0320 p. 129 L. 25–p. 130 L. 20.

Des Moines Police Detective Benjamin Carter obtained cell tower location data for a phone belonging to Johnson. D0320 p. 141 L. 3–25. He prepared a report mapping the phone's locations from July 26 to 27, 2024. D0320 p. 142 L. 9–p. 172 L. 23; Exhibit 18 Cell Report (4/10/2025).

Des Moines Police Detective Jeffrey Shannon participated in interviewing Johnson after his arrest on August 2, 2024. D0310 4/4/2025 Trial Tr. p. 19–24 (4/4/2025). The interview went from around 4:00 p.m. to around 8:00 p.m. D0310 p. 6 L. 7–11. Johnson said he had been doing food delivery on July 26 2024 until around 7:00 p.m., stopped home for a while, then went back out. D0310 p. 8 L. 4–14. Johnson said he was alone, but may have met

up with Powell or another person at some point. D0310 p. 8 L. 25–p. 9 L. 5. He said he had a friend who lived "around First and Ovid," which is near the shooting scene, and may have been in that area around 2:00 a.m. D0310 p. 9 L. 15–p. 10 L. 6. Johnson said the only people he had seen on the street that night was "a fat white guy wearing a wifebeater, kind of a muscle shirt, and a female." D0310 p. 10 L. 18–p. 11 L. 1. Officers showed him a photo of Loffredo, and Johnson denied knowing who she was or seeing her. D0310 p. 12 L. 3–13. He told officers he had not been on Sixth Avenue that night. D0310 p. 13 L. 24–p. 14 L. 3. He said he did not own a firearm, and had not seen one since 2019. D0310 p. 14 L. 4–16. Officers showed him photos obtained from his phone which showed a firearm, and he said the photos were old. D0310 p. 17 L. 14–p. 18 L. 1. He said he did not know anything about the shooting. D0310 p. 15 L. 23–p. 16 L. 1. He said his phone records would not show he was in the area of the shooting. D0310 p. 19 L. 3–7. He told officers his DNA would not be found on anything related to the shooting. D0310 p. 24 L. 21–25.

Eventually, Johnson told officers he had loaned his vehicle to a man named Percy that night. D0310 p. 27 L. 17–p. 28 L. 6. He said he waited at a McDonald's restaurant while Percy had the vehicle. D0310 p. 29 L. 20–p. 31 L. 2. He said he left his phone in the vehicle while Percy had it. D0310 p. 31 L. 17–18. Des Moines Police Sergeant Jason Hays unsuccessfully attempted to locate Percy in police databases. D0310 p. 42 L. 7–p. 46 L. 5.

Polk County Sheriff's Detention Officer reviewed a call placed by Johnson to Dawson from the Polk County jail on August 4, 2024; in that call, Johnson said he was a passenger in his vehicle when he and the person he knew as Percy saw Loffredo, and Percy shot her. D0310 p. 49 L. 5–13; Exhibit 143 Dawson Jail Call 1. She reviewed another call placed on August 5 from Johnson to Powell. D0310 p. 49 L. 18–25; Exhibit 144 Powell Jail Call 1. She reviewed another call to Powell from later on August 5; during that call, Johnson said he found the firearm in a bag in his yard the day after Percy had been in his vehicle. D0310 p. 51 L. 1–7; Exhibit 145 Powell Call 2. She reviewed another call between Johnson and

Dawson which occurred on March 16, 2025. D0310 p. 51 L. 12–21; Exhibit 146 Dawson Jail Call 2. She reviewed text messages between Johnson and Dawson made while Johnson was in custody. D0310 p. 52 L. 2–p. 53 L. 14; D0265 Exhibit 147 Dawson Text Messages (4/10/2025). In those messages, Johnson acknowledged shooting Loffredo but said it was accidental. D0265 p. 5.

Des Moines Police Detective Ryan Garrett requested and received surveillance footage from the school across the street from the shooting scene. D0310 p. 83 L. 2–22. He investigated various acquaintances of Loffredo's and concluded none of them matched the description of the shooter which she provided. D0310 p. 87 L. 24–p. 88 L. 17. He reviewed surveillance footage and determined the Yukon Johnson drove was consistent with the vehicle that pulled up next to Loffredo prior to the shooting. D0310 p. 92 L. 10–16. He reviewed surveillance footage from a nearby Walgreens and identified Loffredo entering and leaving the store at around 3:40 a.m. D0310 p. 93 L. 6–16. He testified the Yukon drove by Walgreens once while Loffredo was inside, and again around the

time Loffredo was outside, crossing Euclid. D0310 p. 93 L. 17–p. 94 L. 21. Garrett reviewed surveillance footage from two banks, an insurance company, a liquor store, and a library, all of which showed the Yukon driving on Euclid. D0310 p. 95 L. 17–p. 98 L. 25. Footage from a restaurant showed the Yukon turn north on Sixth Avenue, then driving back south toward Euclid a few minutes later; video from a nearby construction company showed the vehicle turning around. D0310 p. 99 L. 4–p. 101 L. 11. Video from a church captured a partial license plate, and Garrett believed it matched the plate of the SUV he knew had been pulled over later that night. D0310 p. 101 L. 20–p. 103 L. 15.

Garrett testified that Johnson said there was an AirTag tracking device on his vehicle, but none was located and no AirTag was associated with Johnson's phone. D0310 p. 104 L. 21–p. 107 L. 11. Garrett reviewed surveillance footage from the McDonald's where Johnson said he waited for Percy to return his vehicle, and neither Johnson nor the Yukon were on that video. D0310 p. 107 L. 15–p. 109 L. 3. Garrett identified photos and videos found on

Johnson's phone depicting what appears to be a Smith & Wesson M&P firearm, and a holster Garrett believed matched the one located in Dawson's home. D0310 p. 113 L. 15–p. 121 L. 17. Johnson's phone also contained searches and text messages about pawning a firearm, which led officers to Powell, who told them where the firearm was. D0310 p. 125 L. 14–p. 128 L. 20. Garrett identified a text message conversation between Johnson and Dawson, during which Johnson suggested he had killed three people in Des Moines, and that someone "got popped the other night 'cause they was running they mouth" to him. D0310 p. 131 L. 18–p. 140 L. 24.

Garrett narrated the videos he had previously described. D0318 4/7/2025 Trial Tr. p. 5 L. 3–p. 33 L. 19. He discussed exhibit 62, a surveillance video showing Loffredo walking down Cambridge toward the intersection with Ovid; the Yukon is visible on Ovid at that intersection, then turning onto Cambridge toward Loffredo, stopping next to her briefly, and Loffredo falls to the ground as the Yukon drives away. D0318 p. 33 L. 23–p. 35 L. 5;

Exhibit 62 Shooting Video 1 at 00:00–00:45. He discussed exhibit 63, another surveillance video showing the incident from a different angle. D0318 p. 36 L. 2–16; Exhibit 63 Shooting Video 2. He discussed exhibit 64, surveillance video from a home in the area showing the Yukon drive past followed by audible gunshots. D0318 p. 36 L. 21–p. 37 L. 17; Exhibit 64 Gunshots Video at 00:01–00:58. He discussed videos showing first responders arriving and the Yukon's movements following the shooting up to the point of the traffic stop, then to Dawson's home afterward. D0318 p. 37 L. 22–p. 42 L. 16. He testified the investigation revealed no ties between Johnson and Loffredo. D0318 p. 44 L. 12–17.

Johnson was in the interrogation room alone for two hours before the interrogation began; he appeared nervous, and was pacing and sweating. D0318 p. 46 L. 23–p. 47 L. 10. During the interview, officers told Johnson he was facing life in prison. D0318 p. 57 L. 15–21. Garrett said it is not unusual for a person to try

and talk their way out of a serious criminal allegation. D0318 p. 58 L. 11–20.

Johnson testified he grew up in Pine Bluff, Arkansas, and that his parents had drug and alcohol issues. D0318 p. 93 L. 16–p. 96 L. 3. He first obtained a gun for protection when he was around 11 years old. D0318 p. 100 L. 8–p. 101 L. 7. He testified he had used cocaine and marijuana for most of his life, and used them on a daily basis as an adult. D0318 p. 101 L. 13–p. 102 L. 17, p. 103 L. 16–24. He did both on the day of the shooting. D0318 p. 103 L. 12–21, p. 123 L. 9–12, p. 126 L. 19–23, p. 130 L. 23–p. 131 L. 15. He acknowledged he has been convicted of cocaine and marijuana offenses. D0318 p. 108 L. 13–p. 109 L. 6.

Johnson met up with Powell on the afternoon of July 26, 2024, and they did food delivery work in Powell's car until around 5:00 p.m. D0318 p. 124 L. 7–23, p. 128 L. 2–9. He picked up Dawson in the Yukon and dropped her off at a party, then met back up with Powell to continue working. D0318 p. 130 L. 1–12. They stopped deliveries at around 2:30 a.m. D0318 p. 132 L. 15–18.

Johnson and Dawson had an argument by phone, so he did not want to go home. D0318 p. 134 L. 9–10, p. 135 L. 16–20. He drove around in the area, and saw Loffredo walking near Euclid. D0318 p. 135 L. 21–25, p. 136 L. 19–p. 137 L. 1. He did not know Loffredo, but wanted to see if she wanted to get high and possibly have sex. D0318 p. 136 L. 9–11, p. 137 L. 2–10. He encountered Loffredo again near the intersection of Cambridge and Ovid; he asked if she wanted to get high, and she asked who he was then told him to "[f]uck off." D0318 p. 137 L. 17–22, p. 140 L. 16–p. 141 L. 25. Johnson wanted to scare her, so he drew his firearm and shot, intending to hit the ground near Loffredo. D0318 p. 142 L. 10–p. 143 L. 11. He drove away quickly and went to Dawson's house; when he could not sleep he went out driving again, and was pulled over. D0318 p. 143 L. 16–p. 145 L. 6. He did not know Loffredo had been hit. D0318 p. 147 L. 17–20.

Johnson had Powell pawn his firearm because he needed money. D0318 p. 150 L. 9–p. 151 L. 12. He acknowledged having a text exchange with Dawson during an argument, in which

Johnson told her "ask the last motherfucker I smoked" and said he could make a death look like an accident, but explained it was all just talk. D0318 p. 152 L. 5–p. 155 L. 25. He acknowledged making false statements to police, including that another person had shot Loffredo. D0318 p. 156 L. 1–14. He explained he was very frightened because police told him he was facing life in prison. D0318 p. 156 L. 25–p. 157 L. 2. He reiterated that he tried to aim at the sidewalk when he fired his gun, and only wanted to scare Loffredo. D0318 p. 159 L. 13–25.

ARGUMENT

I. The district court erred by denying Johnson's motion to dismiss his felon in possession of a firearm charge, because Iowa Code section 724.26 is unconstitutional as applied to him.

Preservation of Error

Johnson filed a motion to dismiss count II of the trial information, which alleged he possessed a firearm as a convicted felon in violation of Iowa Code section 724.26. D0047 Motion to Dismiss (12/16/2024). He argued the restriction on his right to possess a firearm violates the Second Amendment to the United

States Constitution and Article I, section 1A of the Iowa Constitution. The district court rejected both contentions. D0065 Order Denying Motion to Dismiss (2/14/2025). Error was preserved. See State v. Woods, 23 N.W.3d 258, 263 (Iowa 2025) (denial of motion to dismiss preserves constitutional challenge for appeal).

Standard of Review

Constitutional claims are reviewed de novo. Int. of N.S., 13 N.W.3d 811, 820 (Iowa 2024).

Discussion

The district court concluded section 724.26 passes constitutional muster as applied to Johnson under both the Second Amendment and Article I, section 1A. D0065 pp. 3–6. That is incorrect. Section 724.26, as applied to Johnson, forbids "[a] person who is convicted of a felony in a state or federal court" from "knowingly [having] under the person's dominion and control or possession . . . a firearm or offensive weapon . . . ." Iowa Code § 724.26. This restriction passes neither the historic-analogue test

of the Second Amendment nor the strict-scrutiny test of Article I, section 1A.

A. Iowa Code section 724.26, as applied to Johnson, has no historic analogue, and so violates the Second Amendment to the United States Constitution.

The Second Amendment to the United States Constitution provides: "A well-regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed." U.S. Const. amend. II. The Second Amendment right to keep and bear arms is a fundamental right, and its protections apply to state action via the Fourteenth Amendment's Due Process Clause. McDonald v. City of Chicago, Ill., 561 U.S. 742, 791 (2010). The right to bear arms is not "a second-class right, subject to an entirely different body of rules than the other Bill of Rights guarantees that [the Court has held] to be incorporated into the Due Process Clause." Id. at 780. "When the Second Amendment's plain text covers an individual's conduct, the Constitution presumptively protects that conduct. The government must then justify its regulation by demonstrating that it is

consistent with the Nation's historical tradition of firearm regulation. Only then may a court conclude that the individual's conduct falls outside the Second Amendment's unqualified command." New York State Rifle & Pistol Ass'n, Inc. v. Bruen, 597 U.S. 1, 24 (2022) (internal quotation and citation omitted). A "historical twin" to the law at issue is unnecessary, but a "historical analogue" is. Id. at 30. Determination whether a law is sufficiently consistent with the history and tradition of firearm regulation in the United States largely focuses on "why" the law limits the right to bear arms (the harm being addressed), and "how" it does so (the method of addressing the identified harm). United States v. Rahimi, 602 U.S. 680, 681 (2024).

Section 724.26 implicates Johnson's Second Amendment right to keep and bear arms because it forbids him from possessing a firearm under any circumstance, regardless of where he might be or what he might be doing. Forbidding him from having a firearm in his dominion, control, or possession is exactly the same as forbidding him from keeping and bearing arms. Section 724.26 is

a direct restriction on that fundamental right, rather than a restriction on possessing a firearm while engaged in other activity. As the State conceded below, the Second Amendment is squarely implicated by section 724.26. See D0055 Resistance to Motion to Dismiss p. 2 (1/15/2025) ("As section 724.26(1) prohibits a specified classification of persons—in this case, convicted felons—from possessing firearms, it necessarily invokes the Second Amendment.").

Because Johnson met the initial step of establishing the Second Amendment applies to the conduct at issue, the burden fell to the State to establish section 724.26 imposes a permissible restriction on the fundamental right to keep and bear arms. It failed to carry that burden. The State relied primarily on United States v. Jackson, in which the Eighth Circuit concluded there is a history and tradition of disarming those who had "deviated from legal norms," regardless of whether those deviations suggested a propensity for violence. United States v. Jackson, 110 F.4th 1120, 1127 (8th Cir. 2024). But the Jackson decision is deeply flawed, as

explained in the dissent from denial of rehearing en banc. It "deprives tens of millions of Americans of their right 'to keep and bear Arms' for the rest of their lives" without any finding of threat to physical safety and without any way to disprove present dangerousness, by "clinging to a recycled line from *Heller*" which was unnecessary to disposition of that case. United States v. Jackson, 121 F.4th 656, 658 (8th Cir. 2024) (Mem.) (Stras, J., dissenting from denial of rehearing en banc). The line at issue is the Heller Court's statement, repeated in McDonald, that the Court's holdings "should [not] be taken to cast doubt on longstanding prohibitions on the possession of firearms by felons." Jackson, 110 F.4th at 1125 (quoting Heller, 554 U.S. at 626; citing McDonald, 561 U.S. at 786). That statement of dictum is no substitute for an actual historic analogue; it was unnecessary to disposition of either Heller or McDonald, is unsupported by any citation, and has been academically criticized as a throwaway statement designed to foster compromise among the justices. See Carlton F.W. Larson, *Four Exceptions in Search of a Theory:* District

of Columba v. Heller *and Judicial* Ipse Dixit, 60 Hastings L.J. 1371, 1372 (2009) ("The Court offered no citations to support this statement, and its ad hoc, patchy quality has been readily apparent to commentators, who have speculated that it was compromise language designed to secure Justice Kennedy's vote. More cuttingly, Justice Breyer suggested that these exceptions amounted to little more than 'judicial ipse dixit.'") (footnotes omitted). While statements from the United States Supreme Court must be treated with respect, it is inappropriate to allow this particular statement to act as the historic analysis required by Bruen.

On the other hand, the Third Circuit Court of Appeals has conducted a historic analysis to determine whether a historic analogue exists for permanently disarming citizens based on nonviolent offense convictions, and concluded there is none. Range v. Att'y Gen. United States, 124 F.4th 218, 232 (3d Cir. 2024). The court found the Heller dictum insufficient to constitute a proper Bruen analysis, noting that federal firearms restrictions passed in 1938 and 1961 were too far removed from founding-era

law to provide a relevant historic analogue. Id. at 229; see also id. at 229, n. 8 ("The *Heller, McDonald*, and *Bruen* Courts cited no such 'longstanding prohibitions,' presumably because they did "not undertake an exhaustive historical analysis . . . of the full scope of the Second Amendment.'"). And the court found other potential analogues—disarming groups the government distrusted—were insufficient because they would likely be found unconstitutional on other grounds today (as many were based on religious or political beliefs in violation of the First Amendment), and in any event were still based on some notion of dangerousness. Id. 229–230. The court also found unavailing the arguments that those convicted of felonies were commonly executed at the founding, or the existence of forfeiture laws, were sufficiently analogous to the statute at issue. Id. at 230–232.

The same analysis and outcome are warranted here. The State has not pointed to any sufficiently analogous historic analogue, and the Third Circuit's analysis shows none exist. Prosecuting Johnson for mere possession of a firearm, where his

lifetime ban is based on convictions for nonviolent drug offenses, violates the Second Amendment to the United States Constitution.

B. Iowa Code section 724.26, as applied to Johnson, is not narrowly tailored to serve a compelling government interest, and so violates Article I, section 1A of the Iowa Constitution.

Article I, section 1A of the Iowa Constitution provides: "The right of the people to keep and bear arms shall not be infringed. The sovereign state of Iowa affirms and recognizes this right to be a fundamental individual right. Any and all restrictions of this right shall be subject to strict scrutiny." Iowa Const., art. I, § 1A. Strict scrutiny places the burden on the State to prove the challenged law "serves a compelling state interest and is the least restrictive means of attaining that interest." N.S., 13 N.W.3d at 820 (quoting Mitchell County v. Zimmerman, 810 N.W.2d 1, 6 (Iowa 2012) and citing AFSCME Iowa Council 61 v. State, 928 N.W.2d 21, 41 (Iowa 2019)). "Narrow tailoring requires that the law capture within its reach no more activity (or less) than is necessary to advance those compelling ends. An alternative phrasing is that the law must be the least restrictive alternative available to pursue those ends."

Adam Winkler, *Fatal in Theory and Strict in Fact: An Empirical Analysis of Strict Scrutiny in the Federal Courts*, 59 Vand. L. Rev. 793, 800–01 (2006) (internal quotation and footnote omitted). Strict scrutiny is a very demanding standard; in his Heller dissent in the D.C. Circuit, then-Judge Kavanaugh observed "if courts applied strict scrutiny, then presumably very few gun regulations would be upheld." Heller v. District of Columbia, 670 F.3d 1244, 1274 (D.C. Cir. 2011) (Kavanugh, J., dissenting).

At the first step of the analysis, the defendant must establish the conduct restricted by law falls within the scope of Article I, section 1A. Woods, 23 N.W.3d at 275; id. at 283–84 (Oxley, J., concurring specially). Johnson passes this threshold because the conduct at issue is simply possessing a firearm; there is no additional activity implicated, as was the case in Woods. The restricted conduct of possessing a firearm falls squarely within the protection of Article I, section 1A.

Because Johnson's conduct is within the scope of Article I, section 1A, the State bears the burden of establishing the

restriction of section 724.26 serves a compelling government interest and is narrowly tailored to serve that purpose. N.S., 13 N.W.3d at 820. The State asserted its compelling interest was in preventing gun violence, which is a commonly-accepted compelling interest. See D0055 p. 12. But it failed to establish that a blanket ban on *all* felons, without any requirement that their underlying conviction was inherently dangerous or that they, as an individual, are dangerous, is narrowly tailored to serve that interest. The State pointed to the broad assertion that felons in general commit crimes of violence at higher rates than the general public. D0055 p. 13. But that is not sufficient to establish that section 724.26, despite those statistics, is so narrowly tailored that it will not ensnare citizens, and Johnson in particular, who are not more likely than non-felons to engage in violence. The lack of any individualized determination of dangerousness establishes that section 724.26(1) is not narrowly tailored; sweeping, categorical bans fail to ensure that the government's mechanism is the least restrictive means possible to achieve its goal. And the pardon and

restoration provisions of section 724.27 are insufficient to render section 724.26(1) narrowly tailored. See D0055 p. 14 (citing Iowa Code § 724.27). The powers of section 724.27(1)(a–b) are entirely discretionary; the Governor may grant or deny relief for any reason. See Iowa Code §§ 724.27(1)(a–b), 914.1, 914.4. Exercise of that discretion is not legally tied to the State's interest in preventing firearm violence, or any individualized determination of dangerousness. And Johnson is not eligible for expungement of his convictions, because they are felonies and were entered as final convictions rather than deferred judgments. See Iowa Code §§ 901C.3 (permitting expungement of certain misdemeanor convictions), 907.9(4)(b) (permitting expungement following a term of probation issued after a deferred judgment). The total discretion of sections 724.27(a–b), and unavailability of relief under section 724.27(c), mean those provisions are no help in rendering section 724.26(1) narrowly tailored as applied to Johnson.

The district court erred in its analysis by deferring to the legislature's determination that all felony convictions warrant a

lifetime ban on possessing firearms, without concern for dangerousness. See D0065 p. 5 ("While the Defendant argues that non-violent felonies, like those for which he was convicted, should be excluded from the statute, the legislature made a deliberate choice not to carve out exceptions for certain types of felonies," and therefore survives strict scrutiny). Respectfully, this is not analysis, it is circular logic. In any constitutional challenge to a statute, the legislature has spoken; that says nothing about the constitutionality of the law at issue. If the existence of the law itself justifies the existence of the law, there could never be any constitutional review. Furthermore, the court's reliance on the fact section 724.26(1) existed at the time Article I, section 1A was ratified mistakes the Second Amendment historic analogue test for the strict scrutiny test required under the Iowa Constitution. See D0065 p. 6. That the law existed at the time of ratification is entirely irrelevant to application of a strict scrutiny analysis, as it says nothing about whether the law is narrowly tailored.

The district court failed to apply the constitutionally-mandated strict scrutiny analysis. Proper application of that analysis demonstrates a lifetime ban on possession of firearms violates Article I, section 1A as applied to Johnson.

Conclusion

The district court erred in concluding Iowa Code section 724.26(1) is constitutional as applied to Johnson. His conviction for possessing a firearm as a convicted felon should be vacated and the case remanded for dismissal of that count. Furthermore, this Court should take that outcome into consideration when evaluating section II, below, because it impacts whether Johnson's actions could be classified as a forcible felony and thus was not entitled to an involuntary manslaughter instruction.

II. The district court erred by refusing to instruct the jury regarding involuntary manslaughter.

Preservation of Error

Johnson requested a jury instruction on involuntary manslaughter by commission of a public offense pursuant to Iowa Code section 707.5(1)(a). D0315 4/8/2026 Trial Tr. p. 12 L. 16–p.

17 L. 8 (4/8/2026). After hearing from the State, the district court denied that request, reasoning that because evidence suggested Johnson had committed a forcible felony, the possibility he had committed a non-forcible felony offense was irrelevant, and the instruction could not be given. D0315 p. 33 L. 18–p. 37 L. 25. Error was preserved. State v. Thompson, 836 N.W.2d 470, 476 (Iowa 2013) (denial of request for instruction on lesser offense preserves error).

Standard of Review

"A district court's refusal to submit a requested jury instruction is reviewed for correction of errors at law." Id. (citation omitted).

Discussion

The district court concluded that, because the evidence might allow a jury to conclude Johnson committed a forcible felony, no instruction on involuntary manslaughter by commission of a public offense could be given. D0315 p. 33 L. 18–p. 37 L. 25. That is incorrect.

Involuntary manslaughter occurs, as relevant here, "when the person unintentionally causes the death of another person by the commission of a public offense other than a forcible felony or escape." Iowa Code § 707.5(1)(a). Although not in the text of section 707.5(1)(a), the public offense must have been committed recklessly. State v. McFadden, 320 N.W.2d 608, 610 (Iowa 1982) (citing State v. Conner, 292 N.W.2d 682, 686, 689 (Iowa 1980)). "Involuntary manslaughter . . . is an included offense under an indictment for murder in the first or second degree . . . ." Iowa Code § 707.5(2). Because involuntary manslaughter is statutorily an included offense of first degree murder, a marshalling instruction must be given if there is a factual basis in the record for the offense. State v. Ware, 338 N.W.2d 707, 714 (Iowa 1983) (citations omitted). Whether a factual basis exists is evaluated by the substantial evidence standard. Thompson, 836 N.W.2d at 477 (citing State v. Royer, 436 N.W.2d 637, 643 (Iowa 1989)); State v. Winnett, 442 N.W.2d 275, 276 (Iowa Ct. App. 1989). Substantial evidence means evidence which could convince a reasonable juror

of the defendant's guilt beyond a reasonable doubt. State v. Stallings, 541 N.W.2d 855, 857 (Iowa 1995) (citing State v. Liggins, 524 N.W.2d 181, 186 (Iowa 1994)). Importantly, the substantial evidence standard does *not* consider whether the evidence could support a finding of guilt of a different offense. See State v. Brown, 5 N.W.3d 611, 619 (Iowa 2024) ("[E]vidence is not insubstantial merely because we may draw different conclusions from it . . . .").

The court focused on its belief substantial evidence indicated Johnson had committed the forcible felony of assault while participating in a felony, the underlying felony being felon in possession of a firearm. D0315 p. 25 L. 23–p. 26 L. 8. But focusing on whether substantial evidence could support greater, forcible-felony offenses, is not the correct approach. See Royer, 436 N.W.2d at 642 (citing State v. Jeffries, 430 N.W.2d 728, 733 (Iowa 1988) ("[T]he jury may reject all or any part of the state's evidence, whether controverted or not. Logically, then, the possibility of finding a lesser-included offense is always present. Simply put, if the evidence is sufficient to convict of the greater

offense, then, as a matter of law, it is sufficient to convict of any lesser-included offense."). The State's arguments below and the district court's analysis are akin to the previous factual test which was abandoned in Jeffries. See id. ("Under this earlier test, we sought to determine whether the elevating element in the greater offense was established so firmly 'that a reasonable person viewing the evidence could *only* conclude that the major offense, or no offense, has been committed.'"). That view was abandoned for two reasons: "a not guilty plea controverts *all* elements of the offense and requires the State to prove the elements beyond a reasonable doubt," and "the jury may reject all or any part of the state's evidence, whether controverted or not." Id. Essentially, the problem with the previous test was that it allowed the trial court's view of the evidence to usurp the role of the jury as factfinder. Both Royer and Jeffries establish that existence of substantial evidence of a forcible felony does not mean an involuntary manslaughter instruction may not be given. The question is not whether a jury could find that a forcible felony occurred, but

whether they could find involuntary manslaughter occurred. If that possibility exists—meaning substantial evidence of a non-forcible-felony public offense, committed recklessly, which unintentionally caused death—the court must instruct the jury on involuntary manslaughter under the public offense theory.

Johnson specifically noted two public offenses—reckless use of a firearm in violation of Iowa Code section 724.30, and discharging a firearm within city limits in violation of Des Moines Municipal Code section 70-86—for which substantial evidence exists and which are not forcible felonies. D0315 p. 13 L. 11–p. 14 L. 5, p. 23 L. 13–p. 24 L. 22. Reckless use of a firearm occurs where a person "intentionally discharges a firearm in a reckless manner," and is classified as either a class C or class D felony, an aggravated misdemeanor, or a simple misdemeanor, depending on whether serious, bodily, or property injury occur. Iowa Code § 724.30. Discharging a firearm within city limits occurs where a person "fire[s] or discharge[s] any cannon, gun, pistol or other firearm within the city, except as provided in this section or for hunting as

permitted by section 70-84." Des Moines, Iowa, Municipal Code § 70-86(a). Both reckless use of a firearm and discharge of a firearm within city limits are public offenses, acts "which [are] prohibited by statute and [are] punishable by fine or imprisonment." Iowa Code § 701.2; see also Iowa Code §§ 902.9(1)(c–d) (punishment ranges for C and D felonies); 903.1(1–2) (punishment ranges for misdemeanors); Des Moines, Iowa, Municipal Code § 1-15 (where an act prohibited by the municipal code is not designated a municipal infraction or assigned a specific penalty, it is "deemed to be a misdemeanor punishable by a fine not to exceed the maximum amount of dollars as provided in Section 903.1, subsection 1, paragraph a of the Iowa Code."). Neither offense, in any iteration, is a forcible felony. Iowa Code § 702.11(1) ("A 'forcible felony' is any felonious child endangerment, assault, murder, sexual abuse, kidnapping, robbery, human trafficking, arson in the first degree, or burglary in the first degree.").

The record also contains substantial evidence of assault offenses under the "place another in fear of immediate physical

contact" or displaying a firearm iterations.[2] See Iowa Code §§ 708.1(2)(b–c). These offenses are not forcible felonies. A reasonable jury could have concluded any of these offenses was committed recklessly, and that by commission of any of these offenses, Johnson unintentionally caused Loffredo's death. Both a legal and a factual basis exist in the record for involuntary manslaughter, and it was error for the district court to refuse to instruct the jury on that offense.

"Errors in jury instructions are presumed prejudicial unless 'the record affirmatively establishes there was no prejudice.'" State v. Murray, 796 N.W.2d 907, 908 (Iowa 2011) (quoting State v. Hanes, 790 N.W.2d 545, 551 (Iowa 2010)). The State cannot

---

[2] The jury was provided marshalling instructions for assault as a lesser-included offense of murder, but only the "act intended to cause pain or injury" iteration of assault. D0188 Jury Instructions, Inst. No. 34 Assault Causing Serious Injury Inst. No. 37 p. 36, Assault With Intent to Commit Serious Injury p. 39, Inst. No. 38 Assault Causing Bodily Injury p. 40, Inst. No. 39 Assault p. 41 (4/9/2025). As argued below, the marshalled lesser-included assault offenses are not supported by sufficient evidence of specific intent to cause pain or injury. But if this Court disagrees, the marshalled assault offenses are also non-forcible-felony public offenses warranting submission of an involuntary manslaughter instruction.

establish this error was harmless. It is clear that involuntary manslaughter was the defense's goal all along; counsel explained during his opening statement that "I'm going to ask you to find him not guilty of first-degree murder. I'm going to ask you to find him guilty and hold him accountable, but it's going to be for something other than first-degree murder." D0318 p. 91 L. 18–22. But when time came for closing argument, there was no applicable lesser-included offense because no involuntary manslaughter instruction was provided; as a result, counsel argued Johnson was not guilty of the charged offenses, but could not make good on the promise to tell the jury what he *was* guilty of. See D0315 p. 89 L. 13–p. 90 L. 7. And the fact the jury convicted Johnson of murder in the first degree does not establish the error was harmless, because that may not have occurred had the jury had the option of convicting him of involuntary manslaughter. See Royer, 436 N.W.2d at 644 (vacating murder in the first degree conviction and remanding for new trial because district court failed to provide involuntary manslaughter instruction); State v. Sangster, 299 N.W.2d 661, 664 (Iowa 1980)

(vacating burglary in the second degree conviction and remanding for new trial because district court failed to provide trespass instruction). Denying Johnson the requested involuntary manslaughter instruction hamstrung his defense strategy. The State cannot establish that error was harmless.

Conclusion

The district court erred in refusing to submit a jury instruction on involuntary manslaughter. Johnson's conviction for murder in the first degree should be vacated and the case remanded for new trial on that offense.

III. The evidence is insufficient to support Johnson's conviction for murder in the first degree.

Preservation of Error

A defendant preserves error as to the sufficiency of the evidence supporting conviction by going to trial; nothing more is needed. State v. Crawford, 972 N.W.2d 189, 196–98 (Iowa 2022).

Standard of Review

Challenges to the sufficiency of evidence are reviewed for errors at law. State v. Folkers, 941 N.W.2d 337, 338 (Iowa 2020).

A verdict is binding if supported by substantial evidence. Id.; Iowa R. App. P. 6.904(3)(a). "Substantial evidence means such evidence as could convince a rational trier of fact the defendant is guilty beyond a reasonable doubt." State v. Dalton, 674 N.W.2d 111, 116 (Iowa 2004). The evidence is viewed in the light most favorable to the verdict, but the appellate court "must consider all the record evidence, not just the evidence supporting guilt." Id. Appellate review grants "all reasonable inferences that may be fairly drawn from the evidence" in favor of the verdict. State v. Lacey, 968 N.W.2d 792, 800 (Iowa 2021) (citing State v. Webb, 648 N.W.2d 72, 75–76 (Iowa 2002)). The evidence "must raise a fair inference of guilt and do more than create speculation, suspicion, or conjecture." State v. Hamilton, 309 N.W.2d 471, 479 (Iowa 1981).

Discussion

In order to convict Johnson of murder in the first degree, the State was required to establish beyond a reasonable doubt that Johnson shot Loffredo; that he did so with malice aforethought; that he acted "willfully, deliberately, premeditatedly and with a

specific intent to kill . . . Loffredo"; and that Loffredo died as a result of being shot. D0188, Inst. No. 20 Murder in the First Degree Marshalling, p. 22; Iowa Code §§ 707.1, 707.2(1)(a). The evidence is insufficient to establish Johnson acted with deliberation and premeditation, with specific intent to kill Loffredo, or with malice aforethought.

A. The evidence is insufficient to establish deliberation and premeditation.

"Premeditation may be shown through evidence of (1) activity by the defendant to plan the killing, (2) motive based on the relationship between the defendant and the victim, or (3) the nature of the killing, including the use of a deadly weapon combined with an opportunity to deliberate." State v. Buenaventura, 660 N.W.2d 38, 48 (Iowa 2003) (citations omitted). The jury was instructed that to deliberate means "to weigh in one's mind, to consider, to contemplate, or to reflect," and that to premeditate means "to think or ponder upon a matter before acting." D0188, Inst. No. 21 Deliberate Premeditate Definitions, p. 23. The jury was further instructed that "[d]eliberation and premeditation need not exist for

any particular length of time before the act." D0188, Inst. No. 22 Deliberation Premeditation Time, p. 24. The jury was instructed it could, but was not required to, infer premeditation if Johnson used a dangerous weapon and had the opportunity to deliberate. D0188, Inst. No. 27 Dangerous Weapon Inferences 2, p. 29. Finally, the jury was instructed that "a firearm is, by law, a dangerous weapon." D0188, Inst. No 26 Dangerous Weapon Definition, p. 28.

The evidence is insufficient to establish Johnson acted with premeditation and deliberation. There was no evidence suggesting that Johnson planned to kill Loffredo, that he had any prior relationship whatsoever with her, or that he had an opportunity to deliberate before using the firearm. See Buenaventura, 660 N.W.2d at 48. Loffredo told responding officers she had never seen Johnson before, and the investigation located no link between the two. D0319 p. 174 L. 10–13, p. 206 L. 4–6; D0318 p. 44 L. 12–17. Video of the shooting shows the incident, from the time Johnson pulled up beside Loffredo to the time he drove away, took less than

five seconds. Exhibit 62 Shooting Video 1 at 00:37–00:41; Exhibit 63 Shooting Video 2 at 00:20–00:24. Johnson testified he planned to invite Loffredo to come with him, not to do her harm. D0318 p. 136 L. 9–11, p. 137 L. 2–10. No evidence indicates prior animus or planning activity, and the mere seconds which passed from the time Johnson spoke and Loffredo spoke to the time of the shooting indicates no opportunity for deliberation existed. While "premeditation and deliberation need not exist for any particular length of time," they still must occur to sustain a conviction for murder in the first degree. State v. Fryer, 226 N.W.2d 36, 41 (Iowa 1975) (citing State v. Gilroy, 199 N.W.2d 63, 66 (Iowa 1972)). The evidence is insufficient to establish Johnson acted with deliberation and premeditation.

B. The evidence is insufficient to establish specific intent to kill.

Regarding specific intent, the jury was instructed:

> "Specific intent" means not only being aware of doing an act and doing it voluntarily, but in addition, doing it with a specific purpose in mind.
>
> Because determining the defendant's specific intent requires you to decide what he was thinking when an act

> was done, it is seldom capable of direct proof. Therefore, you should consider the facts and circumstances surrounding the act to determine the defendant's specific intent. You may, but are not required to, conclude a person intends the natural results of his acts.

D0188, Inst. No. 18 Specific Intent, p. 20. The evidence is insufficient to establish Johnson acted with specific intent to kill Loffredo.

The evidence established that, after a brief conversation with Loffredo, Johnson fired his pistol downward, toward the ground, in the general area where Loffredo was standing. Two flashes are visible in Exhibit 63[3] when bullets struck the ground, and marks in the sidewalk potentially caused by those impacts are visible in Exhibits A, B, 102, and 114. Exhibit 63 Shooting Video 2 at 00:23; D0227; D0266; D0267 Exhibit B Sidewalk; D0239. Johnson testified he fired toward the ground without any intention of striking Loffredo, and instead only intended to frighten her. D0318 p. 159 L. 13–22. His testimony he fired toward the ground is

[3] Because of how briefly the impact flashes are visible, it is useful to view the exhibit in slow-motion or frame-by-frame. Both flashes occur within the 23-second mark.

corroborated by the exhibits referenced above, and so should not have been disregarded by the jury, nor by this Court. See D0188, Inst. No. 13 Defendant Statements ("Do not disregard the defendant's testimony if other evidence you believe supports it . . ."). But even if the Court assumes the jury disregarded that testimony, the fact remains that Loffredo was only struck in her thighs and calf, and the wound paths are consistent with a downward trajectory. D0320 p. 14 L. 5–12, p. 25 L. 4–11, p. 18 L. 18–24, p. 26 L. 23–p. 27 L. 3. She was not hit in her head or upper body, no vital organs were struck, and she survived for two days after being shot. D0320 p. 7 L. 7–13 (Loffredo passed away on July 29, 2024). The evidence, both direct and circumstantial, indicates a lack of specific intent to kill Loffredo. See Godfrey v. State, 962 N.W.2d 84, 102 (Iowa 2021) (citation omitted) (direct and circumstantial evidence are equally probative); D0188 Inst. No. 12 Evidence Deductions, p. 13. It is insufficient to establish Johnson acted with specific intent to kill.

C. The evidence is insufficient to establish malice aforethought.

Regarding malice aforethought, the jury was instructed:

> 'Malice' is a state of mind which leads one to intentionally do a wrongful act to the injury of another or in disregard of the rights of another out of actual hatred, or with an evil or unlawful purpose. It may be established by evidence of actual hatred, or by proof of a deliberate or fixed intent to do injury. It may be found from the acts and conduct of the defendant, and the means used in doing the wrongful and injurious act. Malice requires only such deliberation that would make a person appreciate and understand the nature of the act and its consequences, as distinguished from an act done in the heat of passion.
>
> 'Malice aforethought' is a fixed purpose or design to do some physical harm to another which exists before the act is committed. It does not have to exist for any particular length of time.

D0188, Inst. No. 23 Malice, p. 25. The jury was further instructed that "[m]alice aforethought may be inferred from the defendant's use of a dangerous weapon," and that "a firearm is, by law, a dangerous weapon." D0188, Inst. No. 25 Dangerous Weapon Malice Inference, p. 27; Inst. No. 26 Dangerous Weapon, p. 28.

"The relationship that must be shown between the state of mind that is malice aforethought and the homicidal act is more accurately characterized as a causal relationship than as a

temporal relationship." State v. Lee, 494 N.W.2d 706, 707 (Iowa 1993)). "In other words, the malice must result in the homicidal act. This concept is the critical aspect expressed by 'malice aforethought.'" State v. Bentley, 757 N.W.2d 257, 265 (Iowa 2008). While malice aforethought need not exist for any particular length of time, it still must exist "before the act is committed." Buenaventura, 660 N.W.2d at 49. Absence of motive "may be considered on the question whether the defendant acted with malice aforethought." State v. Reeves, 670 N.W.2d 199, 207 (Iowa 2003) (citing State v. McNamara, 104 N.W.2d 568, 572 (Iowa 1960)). "[T]he presumption [of malice aforethought from use of a deadly weapon] may be rebutted by evidence showing the killing was accidental . . . ." Id.

The evidence indicates this was an accident caused by recklessly discharging a firearm, not an act based upon malice aforethought. As discussed above, there was no relationship between Loffredo and Johnson which could give rise to ill will. D0319 p. 174 L. 10–13, p. 206 L. 4–6; D0318 p. 44 L. 12–17. All of

the shots were fired downward, toward the ground, as shown by video depicting bullets striking the sidewalk as well as photos showing potential impact marks from those same strikes. Exhibit 63 Shooting Video 2 at 00:23; D0227; D0266; D0267; D0239. That same video indicates Johnson was attempting to fire at the ground in front of Loffredo, but she was accidentally hit as she walked forward. Exhibit 63 Shooting Video 2 at 00:19–00:25. Johnson testified he was not trying to hit Loffredo, and it was an accident. D0318 p. 159 L. 13–22. Johnson acknowledged he was angered by the way Loffredo spoke to him, but that anger only rose to the level of wanting to frighten her, not any fixed purpose to do harm. D0318 p. 143 L. 8–15. The physical evidence corroborates his testimony that he accidentally hit Loffredo, and so that testimony should not be rejected out of deference to the verdict. Dalton, 674 N.W.2d at 116 (appellate court must consider all evidence, not just that supporting guilt); D0188, Inst. No. 13 Defendant Statements, p. 14. Any presumption of malice aforethought stemming from the use of a dangerous weapon was

rebutted by evidence indicating Loffredo was shot accidentally, and the evidence is insufficient to establish Johnson acted with malice aforethought.

D. Remedy

Where evidence is insufficient to support a conviction, but would support conviction for a lesser-included offense, the remedy is to vacate the conviction and remand the case for entry of conviction for the lesser-included offense and resentencing. State v. Morris, 677 N.W.2d 787, 788–89 (Iowa 2004) (per curiam). If this Court concludes the evidence is insufficient to establish Johnson acted with premeditation or specific intent but is sufficient to establish he acted with malice aforethought, his conviction for murder in the first degree should be vacated and the case remanded for conviction and sentencing for murder in the second degree, because that lesser-included offense was marshalled to the jury. D0188, Inst. No. 28 Murder in the Second Degree, p. 30.

If this Court concludes the evidence is insufficient to establish Johnson acted with malice aforethought, that would preclude

conviction for murder in the first degree or murder in the second degree, because malice aforethought is an essential element of both. D0188, Inst. No. 20 Murder in the First Degree, p. 22; Inst. No. 28 Murder in the Second Degree, p. 30. The Court should then consider whether any lesser-included offense which was marshalled to the jury applies. They do not. Each lesser-included offense marshalled to the jury below murder in the second degree includes an element of specific intent to cause some form of injury. D0188, Inst. No. 30 Attempted Murder, p. 32; Inst. No. 32 Willful Injury Causing Serious Injury, p. 34; Inst. No. 34 Assault Causing Serious Injury, p. 36; Inst. No. 35 Willful Injury Causing Bodily Injury, p. 37; Inst. No. 37 Assault With Intent to Inflict Serious Injury, p. 39; Inst. No. 38 Assault Causing Bodily Injury, p. 40; Inst. No. 39 Assault, p. 41. The evidence is insufficient to support that conclusion, for the same reasons it is insufficient to establish specific intent to kill: the evidence indicates Johnson only meant to frighten Loffredo, not to injure her. As a result, no applicable

lesser-included offense was submitted to the jury, and the case should be remanded for dismissal.

Conclusion

The evidence is insufficient to support Johnson's conviction for murder in the first degree. His conviction should be vacated and the case remanded for either entry of conviction and sentencing for murder in the second degree, or dismissal.

IV. The district court imposed an illegal sentence by requiring Johnson to participate in a victim-offender dialogue program.

Preservation of Error

"[I]llegal sentences are not subject to the usual requirements of error preservation and waiver." State v. Halliburton, 539 N.W.2d 339, 343 (Iowa 1995) (citations omitted). The Court may correct an illegal sentence at any time. State v. Lathrop, 781 N.W.2d 288, 292-93 (Iowa 2010).

Standard of Review

"[R]eview of a sentence imposed in a criminal case is for correction of errors at law." State v. Damme, 944 N.W.2d 98, 103

(Iowa 2020) (citing State v. Formaro, 638 N.W.2d 720, 724 (Iowa 2002)).

Discussion

At sentencing, the district court "order[ed] a victim-offender dialogue, if requested by representatives of the victim." D0324 Sentencing Tr. p. 10 L. 24–25. That requirement also appears in the order of disposition. D0286 p. 3. The district court does not have statutory authority to order Johnson to participate in a victim-offender dialogue program.

"An illegal sentence is one that is not permitted by statute." State v. Woody, 613 N.W.2d 215, 217 (Iowa 2000) (citing State v. Hess, 533 N.W.2d 525, 527 (Iowa 1995)). Iowa Code section 901.5 sets out the sentencing options available to district courts. See generally Iowa Code § 901.5. That list does not include ordering a defendant to participate in a victim-offender dialogue program. No other statute provides that authority. State v. Reed, No. 24-0256, 2025 WL 2793578, at *6 (Iowa Ct. App. Oct. 1, 2025) (unpublished table decision). The district court imposed an illegal sentence.

Where an illegal portion of a defendant's sentence is severable, the remedy is to vacate the illegal portion and remand the case for entry of a corrected sentencing order. Id. at *7 (citing Bonilla v. State, 791 N.W.2d 697, 702 (Iowa 2010); State v. Maghee, 573 N.W.2d 1, 7 (Iowa 1997)). Johnson is entitled to that remedy.

Conclusion

The district court imposed an illegal sentence by requiring Johnson to participate in a victim-offender dialogue program. That portion of his sentence should be vacated and the case remanded to the district court for entry of a corrected sentencing order.

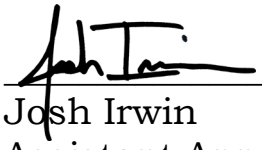
REQUEST FOR ORAL ARGUMENT

Counsel requests to be heard in oral argument.

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

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

> [X] this brief has been prepared in a proportionally spaced typeface Bookman Old Style, font 14 point and contains 12,689 words, excluding the parts of the brief exempted by Iowa R. App. P. 6.903(1)(i)(1).



Dated: *2/24/26*

Josh Irwin
Assistant Appellate Defender
Appellate Defender Office
6200 Park Avenue
Des Moines, IA 50321
(515) 207-9563
jirwin@spd.state.ia.us
appellatedefender@spd.state.ia.us

JI/sm/02/26

Filed: *2/25/26*