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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 REPLY BRIEF AND ARGUMENT

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STATEMENT OF THE ISSUES PRESENTED FOR REVIEW

I. 'Peace officer,' as used in Iowa Code section 718.2, does not include 'federal agents.'

I.A The State cannot rely on the 'person authorized' alternative.

I.B Federal officers are given the *powers of* peace officers, not *designated as* 'peace officers.'

I.C Context favors Mr. King's interpretation.

II. Specific intent to deceive is an essential element of criminal impersonation.

II.A The State's comparator statutes are inapposite.

II.B The State's 'legislative history' argument does not cite any legislative history.

II.C Interpreting section 718.2 without an intent-to-deceive element invites constitutional violations.

II.D Omitting section 718.2's intent-to-deceive element was not harmless.

III. Judgment of acquittal is the correct remedy for Mr. King's sufficiency challenge.

IV. Iowa Code section 718.2, as interpreted by the State and District Court, is unconstitutional.

IV.A Mr. King preserved error for all of his constitutional arguments.

IV.B Section 718.2 does not provide a workable standard and is not narrowly tailored.

ARGUMENT

COMES NOW Defendant-Appellant Richard E. King III, pursuant to Iowa Rule of Appellate Procedure 6.903(4) (2026), and hereby submits the following argument in reply to the State's brief filed on August 11, 2026.

I. 'Peace officer,' as used in Iowa Code section 718.2, does not include 'federal agents.'

A. The State cannot rely on the 'person authorized' alternative.

In arguing against Mr. King's interpretation of Iowa Code section 718.2, the State first attempts to draw this Court's attention away from the "peace officer" alternative, relying instead on the statute's final alternative, prohibiting impersonation of any "person authorized to act on behalf of the state or any subdivision thereof." Appellee's Br. at 17–18 (quoting Iowa Code § 718.2).

But Mr. King was not charged under that alternative. The State's trial information only accused him of "falsely claim[ing] to be or assum[ing] to act as a peace officer or other public officer." D0014, Trial Information at 1 (12/30/24). Indeed, the State did not argue that alternative applied when resisting Mr. King's motion to dismiss, and, accordingly, the District Court did not rule on it. *See* D0080,

Mot. to Dismiss Hearing Tr. at 3:15–4:8 (5/6/25); D0023, State Br. in Resistance to Mot. to Dismiss at 3 (5/16/25); D0024, Order on Mot. to Dismiss at 1–2 (6/10/25). Likewise, at trial, the jury was only instructed to consider the 'peace officer' alternative. D0037, Jury Instructions at 4 (8/20/25) (Instruction No. 13).

Accordingly, the 'person authorized' alternative was never in play in this case; it is a red herring. The State cannot rely on an uncharged portion of the statute to uphold Mr. King's conviction. *See State v. Smithson*, 594 N.W.2d 1, 3 (Iowa 1999). And because its appellate arguments regarding the 'person authorized' alternative were not raised or ruled on below, they are not preserved. *See DeVoss v. State*, 648 N.W.2d 56, 61–63 (Iowa 2002).

But even if the State could rely on the 'person authorized' alternative (it cannot), it would be absurd to say that alternative applies just because a statute authorizes someone "to act on behalf of the State by making arrests in Iowa for Iowa crimes." Appellee's Br. at 17–18. Indeed, *all* "private person[s]" are empowered to make arrests for state crimes. *See* Iowa Code § 804.9. So, by the State's logic, section 718.2 prohibits impersonating *any private person*. Such an absurd result would expand section 718.2 far beyond any

reasonable interpretation. "Normally 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)).

B. Federal officers are given the *powers of* peace officers, not *designated as* 'peace officers.'

The State next argues that federal officers fall within section 801.4(11)(*j*)'s catchall, "such persons as may be otherwise so designated by law," and thus, are 'peace officers' for purposes of section 718.2. Appellee's Br. at 18–20 (quoting Iowa Code § 801.4(11)(*j*)). It points to section 804.7A for the purported 'designation,' wherein the legislature granted federal law enforcement officers " 'the same authority' and 'the same immunity' as state peace officers to arrest Iowans for Iowa crimes." *Id.* at 19 (quoting Iowa Code § 804.7A). But the State's argument elides the distinction between a *designation* and a *grant of authority*, missing the teachings of *State v. Sullins*, 509 N.W.2d 483 (Iowa 1993).

If the legislature had wanted to *designate* federal law enforcement officers *as* peace officers, it could have used language to that effect. For instance, the legislature has provided that "[p]robation officers employed by the judicial district department of

correctional services, while performing the duties prescribed by that department, *are peace officers*." Iowa Code § 907.2(2) (emphasis added); *see also id.* § 906.2 ("Parole officers, while performing their duties as parole officers, *are peace officers* and have all the powers and authority of peace officers." (emphasis added)). Alternatively, it could have directly listed federal officers in section 801.4(11).

But the legislature did not do either; instead, it only granted federal officers the powers and immunities *of* peace officers. Iowa Code § 804.7A. If anything, then, sections 804.7, 804.7A, and 804.7B show the legislature wanted to avoid conflating federal officers with 'peace officers.' *See id.* § 804.7B(2)(*b*) (specifying that "out-of-state peace officers"—including federal officers—"*are not* employees or agents of the state of Iowa or any political subdivision of the state of Iowa" (emphasis added)).

As *State v. Sullins* teaches, this is a distinction with an important—here, dispositive—difference. *See generally* 509 N.W.2d 483. In that case, the defendant was charged with interfering with a 'peace officer' under 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 Iowa Code vests "juvenile court officer[s]

[with] the *powers of* a peace officer while engaged in the discharge of duties." *Id.* (emphasis added) (quoting Iowa Code § 602.7202(4)). Nevertheless, the *Sullins* Court reasoned "[i]t is apparent the legislature recognized and intended a distinction between a juvenile court officer and a peace officer." *Id.* at 485. Indeed, as that Court concluded, "The statutory language and legislative intent is clear; the terms 'peace officer' and 'juvenile court officer' are not synonymous." *Id.* at 485–86.

The key takeaway from *Sullins* for this case, then, is that "the terms 'peace officer' and 'juvenile court officer' are not synonymous," even though juvenile court officers are vested with " 'the powers of a peace officer while engaged in the discharge of duties.' " *Id.* at 484–86 (quoting Iowa Code § 602.7202(4)). Likewise, then, federal officers are not 'peace officers' for purposes of section 718.2, even though they are vested with the powers of peace officers under section 804.7A; the terms are not synonymous. *Cf. id.*

The legislature knows how to choose its words carefully to achieve a specific purpose. Thus, when it wants to refer to both state and federal officers with a single phrase, it knows how to do so. *See, e.g.*, Iowa Code § 808B.1(7) (" 'Investigative or law enforcement officer'

means a peace officer of this state or one of its political subdivisions or of the United States . . . .").[1] It did not do that in section 718.2.

C. Context favors Mr. King's interpretation.

Finally, the State's reliance on the "context clause" of section 801.4 does not move the needle in its favor, *see* Appellee's Br. at 20–24; to the contrary, the statutory context favors Mr. King.

For all the State's arguments about what a section 718.2 offense is "about," it fails to show why its interpretation is required in the context of section 718.2. *See* Appellee's Br. at 21–23. That's because it isn't. To the extent the State is concerned about the dangers of false impersonations of federal officers, those offenders may be deterred by, or, if not, prosecuted under, federal law. *See* 18 U.S.C. § 912.

Contrary to the State's argument, then, context shows that section 718.2 only proscribes impersonations of "*state* agents and peace officers." 1929 Iowa Acts ch. 264, § 1 (emphasis added)

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[1] *See also* S.F. 2108/H.F. 2233, 91st G.A., 2nd Sess. (Iowa 2026) (proposing criminal prohibition on peace officers wearing facial coverings, specifically defining "peace officer" to include "any officer or agent of a federal law enforcement agency or any law enforcement agency from another state"), https://www.legis.iowa.gov/legislation/BillBook?ga=91&ba=SF2108, https://www.legis.iowa.gov/legislation/BillBook?ba=HF%202233&ga=91.

(codified at Iowa Code § 13307 (1931)). That is the language the legislature used to describe its work when first adding the term 'peace officer' to what is now section 718.2. *See id.*

Likewise, section 718.2 is located within chapter 718 of the Iowa Code, entitled "OFFENSES AGAINST *THE* GOVERNMENT." Iowa Code ch. 718 (emphasis added). As the Iowa Supreme Court recently reaffirmed, "the definite article 'the' particularizes the noun that it precedes. *It is a word of limitation that refers to a specific person, place, or thing.*" *Eagle Rise Devs., LLC v. Iowa Dist. Ct. for Clinton Cnty.*, 37 N.W.3d 39, 49 (Iowa 2026) (citation omitted) (emphasis added). This indicates that chapter 718 was only intended to proscribe offenses against the state government, not the federal one.

The State dismisses this important context as merely a "heading[] drafted by the code editor," Appellee's Br. at 23, but overlooks that this title appeared in the act passed by the legislature. *See* 1976 Iowa Acts ch. 1245, ch. 1, div. XVIII. The legislature was thus undoubtedly aware of it, and could have made revisions if it thought that placement or title inappropriate. *See* 2A Norman Singer & Shambie Singer, *Sutherland Statutory Construction* § 47:14 (7th ed. Nov. 2025 update) ("[L]egislatures may include section headings

during the process of enactment, in which case they are part of a bill and are enacted in the same manner as the rest of the act.").

In pointing out that other provisions of chapter 718 explicitly apply to "the government of the state or any subdivision thereof" (e.g., Iowa Code § 718.1), the State misunderstands, and in fact aids, Mr. King's argument. *See* Appellee's Br. at 23–24. To wit, the State is incorrect that Mr. King argues " 'the Government' in the title [of chapter 718] necessarily limited all offenses to just the State *and its subdivisions*." *Id.* at 23 (emphasis added). Rather, Mr. King argues that 'the Government' there means, absent specific language to the contrary, the *state* government—*not* municipalities (or, for that matter, the federal government, the government of Nebraska, or the government of Canada). After all, as the State notes, the "Government *of Iowa*" refers to the overarching state government; municipalities "are distinct government units apart from state government." *Id.* (citing Iowa Const. art. III, § 38A). That is exactly how Mr. King argues it is used here—'*the* government' in the title of chapter 718 is the singular *state* government—not the state and its subdivisions, and certainly not the federal government.

Of course, where specific statutory language includes other governments, that language controls. Far from being superfluous, then, this is where the specific language in statutes like section 718.1 comes in. Absent that language, it would be reasonable to conclude they only applied to the state, not municipalities. By adding 'the state or any subdivision thereof,' the legislature did not include superfluous language, it affirmatively expanded the protections of the relevant provisions to municipalities. With that in mind, if the legislature had wanted to expand section 718.2 to include non-Iowa positions (i.e., federal officers), it certainly knew how to do so.

Indeed, despite the State's earlier reliance on the 'person authorized' alternative of section 718.2, it fails to note that the 'superfluous' language it points to in section 718.1 also appears in section 718.2 in that very alternative: "Any person who falsely claims to be or assumes to act as . . . [a] person authorized to act on behalf of *the state or any subdivision thereof* . . . ." Iowa Code § 718.2 (emphasis added). Every other alternative in section 718.2—"elected or appointed officer, magistrate," and "peace officer"—is general, but this final alternative is specific, and *does* explicitly limit itself to "the state or any subdivision thereof." *Id.* Using the *noscitur a sociis*

canon, this context also supports Mr. King's interpretation. *See* Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* 195–198 (2012) (discussing the *noscitur a sociis* canon).

Finally, regardless of whether the statutory context favors Mr. King or the State, the *text* is always paramount. Courts "are not authorized to expand criminal liability beyond what the legislature has created through the enacted text." *State v. Lind*, 37 N.W.3d 23, 38 (Iowa 2026). "[C]riminal statutes are . . . inelastic, and cannot by construction be made to embrace cases plainly without the letter though within the reason and policy of the law." *Id.* (omission in original) (quoting *State v. Cooley*, 21 N.W.3d 137, 144 (Iowa 2025)).

Here, the text shows that federal officers are not included within section 718.2's reference to 'peace officers.' They are not specifically mentioned there, or in the definition of 'peace officer' under section 801.4(11). Context reinforces this, *see* Appellant's Br. at 26–30, but the text is still paramount.

II. Specific intent to deceive is an essential element of criminal impersonation.

A. The State's comparator statutes are inapposite.

The State first argues that the legislature could have used clearer language if it intended to include an intent-to-deceive element in section 718.2. *See* Appellee's Br. at 29. But that does not mean the language the legislature did use—'falsely'—is insufficient. Indeed, while the State's comparator statutes all use explicit intent-to-deceive phrasing, none of them use the words 'false' or 'falsely.' *See* Iowa Code § 80.16; *id.* § 718B.1; *id.* § 68A.506(1)(*b*). Thus, these other statutes are not useful comparators.

Indeed, those statutes were all passed between 90 and 200 years *after* the Iowa Code first prohibited 'falsely' impersonating public officers.[2] So even if the legislature's preferred diction has changed over time, in the nineteenth century, it likely understood and intended that 'false' impersonation would connote intentional deceptions. *See False Personation*, Black's Law Dictionary (1st ed.

[2] *Compare* Iowa Code § 2671 (1851), *with* 1941 Iowa Acts ch. 93 § 1 (adding section 80.6 (moved to section 80.16 in 2019)), 2011 Iowa Acts ch. 96, § 1 (adding section 718B.1), *and* 2009 Iowa Acts ch. 64, § 1 (adding section 68A.506).

1891) ("The criminal offense of falsely representing some other person and acting in the character thus unlawfully assumed, *in order to deceive others*, and thereby gain some profit or advantage, or enjoy some right or privilege belonging to the one so personated, or subject him to some expense, charge, or liability." (emphasis added)). As the Iowa Supreme Court noted in *Hoyman*, that Court's own caselaw going back to the nineteenth century supported its conclusion—and Mr. King's position here—"that 'false' carries with it the notion of deception." 863 N.W.2d at 10–11 ("[T]he word false 'means something more than untrue; it means something designedly untrue, deceitful, and implies an intention to perpetrate some treachery or fraud.' " (quoting *Hatcher v. Dunn*, 71 N.W. 343, 344 (Iowa 1897))).

The State also glosses over the fact that section 718B.1—Iowa's corollary to the federal statute held unconstitutional in *United States v. Alvarez*, 567 U.S. 709 (2012)—*must* include an intent-to-deceive element. Otherwise, per *Alvarez*, it would be unconstitutional. Relying in part on *Alvarez*'s logic, courts have reached similar conclusions in interpreting corollaries to section 718.2. *See United States v. Hancock*, 103 F.4th 1261, 1269 (7th Cir. 2024). But the State does not explain why section 718.2 is any different—why it can

purportedly omit any intent-to-deceive element (*and* any *actus reus* element), while those statutes could not.

Finally, if the State was correct that explicit intent-to-deceive language is required—if 'false' or 'falsely' is not good enough—then *State v. Hoyman* should have come out differently. *See* Iowa Code § 714.8(4). But the State nowhere argues *Hoyman*'s analysis is flawed or should be overruled. It thus remains the most analogous comparison for this case.

B. The State's 'legislative history' argument does not cite any legislative history.

The State next asserts that "*Hoyman*'s legislative-history analysis confirms" its interpretation, yet it cites no legislative history. *See* Appellee's Br. at 29–31. Instead, it relies primarily on commentary from two secondary sources offering their interpretations of section 718.2 after the 1976 criminal code overhaul. *See id.* (citing Kermit L. Dunahoo, *The New Iowa Criminal Code: Part II*, 29 Drake L. Rev. 491, 591 (1980) [hereinafter Dunahoo]; John J. Yeager & Ronald L. Carlson, *Iowa Criminal Law and Procedure* § 403, at 106 (1979) [hereinafter Yeager & Carlson]). The State's reliance is misplaced for two reasons.

First, although the Iowa Supreme Court cited the Dunahoo article in *Hoyman*, it made sense to do so there because that offense was first created during the 1976 code overhaul and "[t]here was no counterpart . . . in prior law." *See Hoyman*, 863 N.W.2d at 15. Here, by contrast, section 718.2's substantive prohibition—including its use of the word 'falsely'—has been on the books since 1851. The State does not cite any evidence or make any argument regarding what the legislature of 1850–51 intended when it first prohibited 'false' impersonations. Nor do its secondary sources purport to do so. *See* Dunahoo at 591; Yeager & Carlson § 403, at 106.

Second, and relatedly, even taking the secondary sources at face value, they offer little guidance. Neither traces the origins of this law in the 1851 Code, or purports to offer any insight into the legislative process that produced the term 'falsely' in the statute. *See* Dunahoo at 591; Yeager & Carlson § 403, at 106. The Dunahoo article opines that intent to *defraud* is not required, Dunahoo at 591, but as *Hoyman* reasoned, intent to *defraud* and intent to *deceive* are distinct concepts, *see Hoyman*, 863 N.W.2d at 9–10 & n.4. The article also cites the Yeager & Carlson treatise almost exclusively to support its gloss. *See* Dunahoo at 591 & nn. 953–58. The Yeager & Carlson

treatise, in turn, cites no authority for its specific assertions; it provides only general "Library References." *See* Yeager & Carlson § 403, at 106. Notably, at least one of those references supports Mr. King's interpretation. *See* 35 C.J.S. False Personation § 1, at 791 (1960) (" 'False personation' may be broadly defined as an offense consisting in pretending, without lawful authority, to be a particular person in order to deceive others."); *see also* 35 C.J.S. False Personation § 1 (Apr. 2026 update) ("False personation is a specific intent crime.").

Finally, the State's argument that *McCue v. Wapello County*, 10 N.W. 248 (Iowa 1881), lends historical support to its position (*see* Appellee's Br. at 31) misunderstands the nature of 'bad faith.' Bad faith connotes more than just telling a lie—it requires an improper motive or intent. *See Mala Fides*, Black's Law Dictionary (1st ed. 1891) (defining *mala fides*, or "[b]ad faith," as "[t]he opposite of good faith"); *Good Faith*, Black's Law Dictionary (1st ed. 1891) (defining good faith as "*an honest intention* to abstain from taking any unconscious advantage of another" (emphasis added)); *see also Bad Faith*, Black's Law Dictionary (12th ed. 2024) ("Dishonesty of belief, purpose, or motive.").

C. Interpreting section 718.2 without an intent-to-deceive element invites constitutional violations.

The State argues that section 718.2 makes sense without any intent-to-deceive requirement. But its argument is in tension with *Hoyman*, caselaw from other jurisdictions, and its own definition of a 'claim.' The State's brief thus fails to appreciate the constitutional minefield it walks out onto.

To wit, the State argues that, unlike the statute in *Hoyman*, "a false claim of power" under section 718.2 "is a complete wrong in itself." Appellee's Br. at 32–33. But this merely begs the question—what is a *false* claim of power under section 718.2? A faithful application of *Hoyman*'s analysis answers that question, and indeed, reveals a stronger case that intent to deceive is required here. Not only does Black's Law Dictionary confirm the general understanding of false impersonation includes an intent-to-deceive component (*see Impersonation*, Black's Law Dictionary (12th ed. 2024); *False Personation*, Black's Law Dictionary (1st ed. 1891)), but so too does caselaw from other jurisdictions. Indeed, several of the State's own citations support this. *See United States v. Tomsha-Miguel*, 766 F.3d 1041, 1049 (9th Cir. 2014); *United States v. Chappell*, 691 F.3d 388,

393 (4th Cir. 2012); *Murray v. State*, 505 S.E.2d 746, 749 (Ga. 1998);[3] *see also Hancock*, 103 F.4th at 1269; *People v. Thoennes*, 777 N.E.2d 1075, 1080–81 (Ill. Ct. App. 2002).

The State's brief attempts to dismiss the serious overbreadth its interpretation invites—avoided by these other cases via an intent-to-deceive requirement—by proffering the following two arguments that Iowa's statute is sufficiently tailored. Neither withstands scrutiny.

First, the State argues that section 718.2 is not overbroad because it still requires knowledge of falsity. *See* Appellee's Br. at 33–34. But so too did the statute in *Hoyman* separately require knowledge of falsity. *See Hoyman*, 863 N.W.2d at 5. That did not assuage the Iowa Supreme Court's overbreadth concerns. *See id.* at 13. Thus, the distinction between knowledge and specific intent is irrelevant here.

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[3] *People v. Rathert* purported to reject a specific-intent requirement, but struggled to distinguish criminal impersonations from innocent ones without reference to intent. 6 P.3d 700, 706–07 (Cal. 2008). A concurring opinion rightly called out that "the majority offers a cryptic definition [of false personation] that appears to conflict with its own analysis and our case law." *Id.* at 709–10 (Brown, J., concurring). That concurrence instead concluded "the phrase 'falsely personate,' as understood at the time of the enactment of section 529, defines the mental state attached to the act as an intent to mislead others." *Id.* at 712.

Second, the State argues that section 718.2 is not overbroad because it requires a "claim." Appellee's Br. at 34. But the State offers no definition of 'claim' that appropriately tailors section 718.2 to the harms it is intended to prevent.

As the State argues, "[g]iving 'claim' its ordinary meaning, a person must be making a factual assertion to fall within the offense." Appellee's Br. at 34. But that is precisely what Halloween trick-or-treaters, actors, and satirists do—they make a factual assertion they are, e.g., police officers, in order to obtain candy, entertain, or convey a message.

The State denies its interpretation turns on effect on the listener; yet, the closest it comes to meaningfully distinguishing false impersonations from innocent ones is in arguing that "[n]either a child 'playing cops and robbers' nor an adult 'donning a police officer costume at a Halloween party' can 'reasonably be interpreted as stating that they are actually police officers.' " Appellee's Br. at 47 (quoting *Chappell*, 691 F.3d at 399). But that only shows the State's interpretation *does* turn on listeners' perception—i.e., whether an impersonation could 'reasonably be interpreted' in a certain way.

When scrutinized, then, the State's purported distinction is no different than an 'I know it when I see it' approach (i.e., 'there are claims, and then there are *claims*'). Such a standard is, as argued in Mr. King's opening brief and further below, hopelessly, unconstitutionally, vague and overbroad.

The better approach—one that is consistent with the text of section 718.2, consistent with the general understanding of false impersonation, and does not simply leave it to law enforcement and prosecutors to know the difference between a lawful 'claim' and an unlawful one when they see it—is to distinguish trick-or-treaters, actors, and satirists from criminal impersonators based on intent to deceive. *See Hancock*, 103 F.4th at 1269 (reasoning it is "[t]he mens rea requirement [that] saves the hypothetical characters in Hancock's brief"). These impersonators are not actually intending to fool anyone; but *false* impersonators do.

D. Omitting section 718.2's intent-to-deceive element was not harmless.

The State's harmless-error argument applies the wrong test for prejudice, and overestimates the strength of its evidence on specific intent.

"The inquiry 'is not whether, in a trial that occurred without the error, a guilty verdict would surely have been rendered, but whether the guilty verdict actually rendered in *this* trial was surely unattributable to the error.' " *State v. Ross*, 986 N.W.2d 581, 589 (Iowa 2023) (quoting *State v. Shorter*, 945 N.W.2d 1, 9 (Iowa 2020)). The State's harmless-error argument does exactly what this traditional formulation says *not* to do—it imagines a trial that occurred without the error, and argues a guilty verdict would surely have been rendered in *that* trial. The State's harmless-error argument is thus premised on the wrong standard.

When considered under the correct inquiry, the verdict here is inextricably intertwined with the error. The jury had to rely on the erroneous marshaling instruction to reach its verdict—thus, the verdict and the error are inseparable. And even if jurors might have been confused by the instructions or tempted to consider Mr. King's intent, the prosecutor repeatedly told them intent is irrelevant. *See* D0067, Trial Tr. at 120:9–17, 133:11–20, 137:10–14 (8/20/25).

The State's harmless-error argument fares no better under its counterfactual analysis, too. There is not enough evidence from which a reasonable jury could conclude—beyond a reasonable

doubt—that Mr. King specifically intended to deceive anyone. Even the teenagers Mr. King was allegedly trying to 'deceive' could not say that was his goal. *See id.* at 98:4–7, 101:18–22, 104:15–19. As far as one could tell, it seemed Mr. King was just "rambling." *Id.* at 106:1–11. At most, then, the evidence shows only that Mr. King puffed himself up in front of a couple teenagers to get them to stop laughing at him (as he believed they were). *Cf. Alvarez*, 567 U.S. at 721 (plurality op.) ("Sworn testimony is quite distinct from lies not spoken under oath and simply intended to puff up oneself."); *id.* at 736–37 (Breyer, J., concurring in the judgment) (discussing concerns that broad proscriptions of false statements should not reach mere "bar stool braggadocio").

Finally, even if marginally sufficient to support a conviction (it is not), this evidence is not so overwhelming as to make the District Court's omission of an essential element harmless beyond a reasonable doubt. *Cf. State v. Harris*, 891 N.W.2d 182, 189 (Iowa 2017) (finding *Strickland* prejudice from omitted element, even though the State presented sufficient evidence to support it). Accordingly, a new trial is warranted.

III. Judgment of acquittal is the correct remedy for Mr. King's sufficiency challenge.

In a footnote, the State argues that "[i]f this Court disagrees that any error was harmless, then the correct remedy is remand for a new trial, not acquittal." Appellee's Br. at 39 n.2. That's true as far as it relates to the instructional error specifically. But it fails to account for Mr. King's separate sufficiency argument.

As the Iowa Supreme Court held in *State v. Uranga*, if a defendant successfully challenges erroneous marshaling instructions on appeal, appellate courts assess any sufficiency challenge against the legally correct elements, not the erroneous elements used in the district court. 31 N.W.3d 358, 365 (Iowa 2026).

Here, Mr. King raises a sufficiency challenge. Accordingly, for the reasons set forth in his principal brief and those outlined above, Mr. King respectfully requests that this Court hold the State's evidence was insufficient to prove intent to deceive beyond a reasonable doubt, and thus remand for entry of a judgment of acquittal.

IV. Iowa Code section 718.2, as interpreted by the State and District Court, is unconstitutional.

A. Mr. King preserved error for all of his constitutional arguments.

In support of his motion to dismiss, Mr. King pointed out a "meaningful difference" between the federal impersonation statute and Iowa's—namely, Iowa's lacks any *actus reus* element. D0022, Def. Br. in Support of Mot. to Dismiss at 2 (5/12/25). He then argued that this "difference supports [his] argument that Iowa Code § 718.2 is unconstitutionally vague and could be used to prosecute and criminalize protected conduct or speech," whereas "the Federal statute[']s *actus re*[*u*]*s* requirement exists to save it from such accusation." *Id.*; *cf. 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.").

When Mr. King reasserted his constitutional arguments at trial, he specifically referenced his earlier motion-to-dismiss arguments. D0067 at 127:5–11. The State acknowledged Mr. King's "overly broad, vagueness issue was addressed in the Motion to Dismiss," and appeared to reason that the District Court had at least tacitly rejected it before, so it did not need to rule on it again. *Id.* at 128:18–21. The

District Court then considered and ruled on Mr. King's arguments, concluding, "I don't feel [section 718.2 is] vague *or unconstitutional in any respect.*" *Id.* at 129:12–15 (emphasis added). This preserved error on all aspects of Mr. King's appellate arguments.

No technical form of objection is required to preserve a claim for appeal. *See Segura v. State*, 889 N.W.2d 215, 219 (Iowa 2017); *State v. Paredes*, 775 N.W.2d 554, 560–61 (Iowa 2009); *State v. Vowels*, No. 13–1223, 2014 WL 3511852, at *2 (Iowa Ct. App. July 16, 2014). So even though Mr. King may not have, for instance, used the specific phrase 'content-based' when raising this issue before the District Court, his argument that section 718.2 "impermissibly burdens free speech" was sufficient to alert the District Court to it. D0067 at 127:5–11. And, contrary to the State's argument, this was not just another way of arguing the statute is vague or overbroad. Indeed, Mr. King separately identified all three arguments: "[W]e would object or find this that -- that this criminal statute is unduly vague or unduly broad and impermissibly burdens free speech by the way it's currently written." *Id.*

The District Court's ruling (from the bench, in the middle of trial) may not have been as thorough as one might hope, but that too

is no impediment to error preservation. Just the opposite—the Iowa Supreme Court has repeatedly affirmed that even a terse and succinct ruling is adequate to preserve an issue for appeal. *See, e.g.*, *Lamasters v. State*, 821 N.W.2d 856, 864 (Iowa 2012); *see also Vowels*, 2014 WL 3511852, at *2.

Accordingly, Mr. King preserved all aspects of his constitutional arguments on appeal.

B. Section 718.2 does not provide a workable standard and is not narrowly tailored.

To begin, a point of clarity: When the State asserts that "[Mr.] King's constitutional claims on appeal are all premised on the lack of a specific-intent requirement," Appellee's Br. at 39, it is unclear whether the State is referring to its belief that Mr. King's *actus-reus*-based arguments are unpreserved, or if it is claiming that Mr. King did not make any such arguments. In either case, though, the State is incorrect. As outlined above, Mr. King has preserved error for all his arguments on appeal. And, as Mr. King argued in his opening brief, it is the lack of any specific-intent element *and* any *actus-reus* element that renders Iowa's statute unconstitutional. *See* Appellant's Br. at 54.

It is also why Iowa's statute is uniquely problematic. As several courts have reasoned, the presence of one or the other of these elements is why such statutes typically survive constitutional challenges. *See, e.g.*, *Hancock*, 103 F.4th at 1269; *Bonin*, 932 F.3d at 536; *Tomsha-Miguel*, 766 F.3d at 1049.[4] But Iowa's statute—at least as instructed to the jury here—lacks both. Thus, Mr. King was not convicted of impersonating a peace officer *with the intent to deceive* anyone, nor was he convicted of impersonating a peace officer *by acting as such* (e.g., by falsely arresting someone). All he did was say the magic words, 'I am a marshal.'

[4] The State cites only one case in which a false impersonation statute was upheld despite being interpreted to lack both, *State v. Messer*, 91 P.3d 1191 (Kan. 2004). But that case is inapposite for several reasons: For one thing, the *Messer* court did not engage in any substantive analysis—instead, it relied on two prior cases rejecting vagueness and overbreadth claims brought by defendants convicted of falsely claiming to be licensed to practice law. *Id.* at 1193–94 (citing *State v. Marino*, 929 P.2d 173, 177–78 (Kan. Ct. App. 1996), and *State v. Seck*, 58 P.3d 730, 732–33 (Kan. 2002)). Those cases, in turn, are far afield from the facts and arguments presented here. For another, *Messer* was decided long before the U.S. Supreme Court's opinion in *Alvarez*, which clarified the scope of constitutional protections accorded to false statements. *Cf. Hoyman*, 863 N.W.2d at 14 (reasoning that, under *Alvarez*, false records under Iowa Code section 714.8(4) "could *not* be prosecuted as a crime without the presence of some additional element").

1. Section 718.2 is unconstitutionally vague and overbroad.

In resisting Mr. King's constitutional arguments, the State again falls back on its belief that Halloween trick-or-treaters, actors, and satirists are "not actually claiming to be vested with the power of arrest." Appellee's Br. at 47–48. But, as outlined above, the State's attempt to distinguish some 'claims' from others provides no workable standard.

The State is correct that *City of Chicago v. Morales*, 527 U.S. 41 (1999), is instructive; indeed, *Morales* supports Mr. King's position. The Supreme Court there held the loitering statute at issue was vague—not because 'loiter' lacks a commonly understood meaning, but because the statute fails to distinguish when loitering is appropriate from when it is not. *Id.* at 57–58. "[T]he vagueness that dooms this ordinance is not the product of uncertainty about the normal meaning of 'loitering,' but rather about what loitering is covered by the ordinance and what is not." *Id.* at 57. It was "the law's failure to distinguish between innocent conduct and conduct threatening harm" that made it problematic. *Id.*

That is precisely the issue that plagues section 718.2—its vagueness lies in its failure (as interpreted by the State) to distinguish between innocent impersonations and malicious ones. The common understanding of 'impersonation' is broad enough to cover both. *See Impersonate*, Merriam-Webster (listing both innocent and criminal impersonations as "[e]xamples of *impersonate* in a [s]entence"), https://www.merriam-webster.com/dictionary/impersonate (last updated Aug. 28, 2026). But the legislature cannot conceivably have intended to proscribe the latter type; thus, the same "vagueness that doom[ed]" the ordinance in *Morales* dooms section 718.2. *Morales*, 527 U.S. at 57.

The U.S. Supreme Court's opinion in *Kolender v. Lawson*, 461 U.S. 352 (1983), involving a similar loitering statute, is also instructive. The Court held that statute was unconstitutionally vague because it "vests virtually complete discretion in the hands of the police to determine whether the suspect has satisfied the statute." *Id.* at 358–59. "[F]ull discretion accorded to the police to determine whether the suspect has provided a 'credible and reliable' identification necessarily 'entrust[s] lawmaking 'to the moment-to-

moment judgment of the policeman on his beat.' " *Id.* at 360 (second alteration in original) (quoting *Smith v. Goguen*, 415 U.S. 566 (1974)).

The State's analogy to discriminatory enforcement of speed limits is misplaced; indeed, it only highlights the problem section 718.2 presents. *See* Appellee's Br. at 46. Speed limits are not vague because they turn on a specific, *measurable* standard—whether someone is driving over, e.g., 55 miles-per-hour. Officers can *choose not* to pull someone over for driving 56 miles-per-hour, but, critically, they know they *cannot* pull someone over for going 54 miles-per-hour. By contrast, section 718.2 does not tell officers which impersonations are okay and which are not. It thus gives law enforcement and prosecutors virtually unlimited discretion to draw the line themselves.

And the fact that, e.g., a satirist parodying a local police department *might* be able to mount a successful First Amendment defense *after the fact* (*cf.* Appellee's Br. at 52) does not cure this problem. That is no different than "set[ting] a net large enough to catch all possible offenders, and leav[ing] it to the courts to step inside and say who could be rightfully detained, and who should be set at large"—something "[t]he Constitution does not permit."

Morales, 527 U.S. at 60 (quoting *United States v. Reese*, 92 U.S. 214, 221 (1876)); *accord Kolender*, 461 U.S. at 358 n.7.

For much the same reasons that it's vague, section 718.2 is overbroad. The State's argument to the contrary misreads *Alvarez*. The plurality opinion there did point to the federal impersonation statute as one it found "protect[s] the integrity of Government processes, quite apart from merely restricting false speech." *Alvarez*, 567 U.S. at 721. But, as noted above, the federal statute does *not* merely restrict false speech—it also requires intent to deceive and an overt act. *See Bonin*, 932 F.3d at 536; *Tomsha-Miguel*, 766 F.3d at 1049. The Seventh Circuit made this plain: "Because the acts-as-such clause [of 18 U.S.C. section 912] prohibits more than mere lies, it falls outside the scope of *Alvarez*'s holding." *Bonin*, 932 F.3d at 536.

Iowa's statute, on the other hand, *does* prohibits mere lies. As interpreted by the State it this case, it, like the Stolen Valor Act, "seeks to control and suppress all false statements on this one subject in almost limitless times and settings. And it does so entirely without regard to whether the lie was made for the purpose of material gain." *Alvarez*, 567 U.S. at 722–23. Thus, like the Stolen Valor Act, section 718.2 cannot withstand constitutional scrutiny.

2. Section 718.2 is a content-based restriction, and cannot survive strict scrutiny.

The State argues that section 718.2 is content-neutral, but fails to acknowledge the Seventh Circuit's holding in *United States v. Hancock*, 103 F.4th 1261. There, assessing a challenge to Indiana's impersonation statute, the Seventh Circuit had no issue concluding that statute is "a content-based restriction because its application depends on 'the topic discussed or the idea or message expressed.' " *Id.* at 1267 (quoting *Reed v. Town of Gilbert*, 576 U.S. 155, 163 (2015)). Iowa's statute is no different.

The State's citation to the Ninth Circuit's earlier opinion in *United States v. Tomsha-Miguel*, 766 F.3d 1041, does not compel a different result. That Court applied intermediate scrutiny to the federal impersonation statute, reasoning it "criminalizes conduct with 'an expressive element,' as distinct from pure speech." *Id.* at 1048. Again, though, the federal statute contains specific-intent and *actus-reus* components, so it *is* distinct from pure speech. *See Bonin*, 932 F.3d at 536; *Tomsha-Miguel*, 766 F.3d at 1049. The State itself recognized the *actus-reus* distinction when resisting Mr. King's motion to dismiss and making its closing arguments to the jury. *See*

D0023 at 2 ("[S]imply claiming to be a federal officer is not enough [under the federal statute]."); D0067 at 120:9–17, 133:11–20, 137:10–14.

Accordingly, strict scrutiny applies here. Applying that burden, section 718.2 cannot survive because it is not the least restrictive means to achieve the State's interest; on the contrary, less restrictive means are readily identifiable. *Cf. State v. Schadl*, 37 N.W.3d 337, 345 (Iowa 2026). Iowa's statute, like other jurisdictions' corollaries, could require specific-intent-to-deceive, an *actus-reus* element, or both, to bring it into constitutional harmony. The State does not argue that adding either or both would compromise its interest in deterring and punishing false impersonations. Its strict scrutiny argument thus falls flat.

CONCLUSION

For the foregoing reasons and those set forth in Mr. King's principal brief, Mr. King respectfully requests this Court vacate his conviction and sentence and remand for either entry of dismissal with prejudice or a judgment of acquittal. Alternatively, Mr. King respectfully requests this Court vacate his conviction and sentence and remand for a new trial.

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

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