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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 REPLY 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 3

Statement of the Issue Presented for Review..... 5

Statement of the Case 6

Argument

The district court erred by refusing to instruct the jury regarding involuntary manslaughter 6

Conclusion 13

Certificate of Compliance..... 14

TABLE OF AUTHORITIES

Cases: Page:

Cedar Rapids Cmty. Sch. Dist. v. Pease, 807 N.W.2d 839 (Iowa 2011) 8

Jaquith v. Royce, 42 Iowa 406 (Iowa 1876) 9

John Deere Dubuque Works of Deere & Co. v. Weyant, 442 N.W.2d 101 (Iowa 1989) 8

Keeble v. United States, 412 U.S. 205 (1973) 12

State v. Ceron, 573 N.W.2d 587 (Iowa 1997) 9

State v. Dvorsky, 322 N.W.2d 62 (Iowa 1982) 8

State v. Inger, 292 N.W.2d 119 (Iowa 1980) 8

State v. Jeffries, 430 N.W.2d 728 (Iowa 1988) 7, 10

State v. Mikesell, 479 N.W.2d 591 (Iowa 1991) 12

State v. Miller, 841 N.W.2d 583 (Iowa 2014) 12

State v. Royer, 436 N.W.2d 637 (Iowa 1989) 6-7, 11

State v. Thompson, 836 N.W.2d 470 (Iowa 2013) 7

State v. Tipton, 897 N.W.2d 653 (Iowa 2017) 8

State v. Turecek, 456 N.W.2d 219 (Iowa 1990) 11

Wright v. City of Cedar Falls, 424 N.W.2d 456 (Iowa 1988) 8

Statutes:

Iowa Code § 707.5(1)(a) 7

Iowa Code § 707.5(2) 7

STATEMENT OF THE ISSUE PRESENTED FOR REVIEW

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

STATEMENT OF THE CASE

COMES NOW the Defendant–Appellant, pursuant to Iowa R. App. P. 6.903(4), and hereby submits the following argument in reply to the State's brief filed on or about June 17, 2026. While the Appellant's brief adequately addresses the issues presented for review, a short reply is necessary to address certain contentions raised by the State.

ARGUMENT

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

The State is incorrect that no error occurred, and is also incorrect that the error was harmless.

A. The district court was required to give an involuntary manslaughter marshalling instruction because substantial evidence supports the conclusion that Johnson committed a non-forcible-felony public offense which resulted in death.

If a legal and factual basis exist for submitting a lesser-offense instruction, a district court must provide that instruction upon request. See State v. Royer, 436 N.W.2d 637, 644 (Iowa 1989) (reversing murder conviction because district court failed to give

requested involuntary manslaughter instruction which had a legal and factual basis). In a murder trial, the legal basis for an involuntary manslaughter instruction always exists, because involuntary manslaughter is a statutorily-designated lesser offense of murder. State v. Thompson, 836 N.W.2d 470, 477 (Iowa 2013); Iowa Code § 707.5(2). That leaves only the factual basis, which asks whether substantial evidence exists to support the lesser offense.[1] Thompson, 836 N.W.2d at 477 (citing State v. Royer, 436 N.W.2d 637, 643 (Iowa 1989)). For the version of involuntary manslaughter at issue in this case, the question is whether there is substantial evidence that reckless commission of a non-forcible-felony public offense caused Loffredo's death. Iowa Code § 707.5(1)(a).

[1] The factual test is a nullity for true lesser-included offenses, where the greater offense contains all elements of the lesser, because if there is substantial evidence of the greater offense there will always be substantial evidence of the lesser. State v. Jeffries, 430 N.W.2d 728, 737 (Iowa 1988). It is necessary for statutorily-designated lesser offenses, where the lesser offense contains an element which the greater offense does not. Id.

"Substantial evidence" is a low bar; it means any evidence from which a hypothetical jury could reasonably conclude or infer that the elements of an offense have been established. State v. Tipton, 897 N.W.2d 653, 692 (Iowa 2017). "Evidence is not insubstantial merely because different conclusions may be drawn from the evidence." Cedar Rapids Cmty. Sch. Dist. v. Pease, 807 N.W.2d 839, 845 (Iowa 2011) (citing John Deere Dubuque Works of Deere & Co. v. Weyant, 442 N.W.2d 101, 105 (Iowa 1989)).

Johnson does not argue that both the D felony and aggravated misdemeanor versions of involuntary manslaughter should have been instructed, or that the latter is supported by substantial evidence, which were the questions at issue in Inger and Dvorsky upon which the State relies. See Appellee's Brief pp. 28–29 (citing State v. Inger, 292 N.W.2d 119, 123 (Iowa 1980), State v. Dvorsky, 322 N.W.2d 62, 66 (Iowa 1982)). Furthermore, the State is incorrect that a municipal ordinance violation does not constitute a public offense for purposes of section 707.5(1)(a). The State relies on Wright v. City of Cedar Falls, 424 N.W.2d 456, 458–59 (Iowa

1988), which held that conviction for a municipal ordinance violation is not subject to a claim for postconviction relief. Appellee's Brief p. 26 n. 3. But the Iowa Supreme Court has clarified that Wright's interpretation of public offense is limited to postconviction relief claims; to interpret public offense to exclude ordinance violations in other contexts leads to absurd results, including forbidding police from making an arrest for the violation. State v. Ceron, 573 N.W.2d 587, 590–92 (Iowa 1997). "Thus, the true reasoning of *Wright* sprang not from a statutory definition of 'public offense' but rather from language in chapter 663A indicating the legislature did not intend the provisions of that chapter to apply to ordinance violators." Id. at 591. The Court reaffirmed that Jaquith v. Royce defines municipal ordinances as public offenses in other contexts. Id. "[W]here a city ordinance is made to promote the public peace, safety and convenience, and provides for a penalty of a fine, the violation of the ordinance is a public offense . . . ." Jaquith v. Royce, 42 Iowa 406, 409 (Iowa 1876).

Substantial evidence supports that Johnson committed reckless use of a firearm in violation of Iowa Code section 724.30 and discharge of a firearm within city limits in violation of Des Moines Municipal Code section 70-86(a). The State's arguments to the contrary all rest on the incorrect notion that, because substantial evidence may support forcible-felony offenses, it cannot support other offenses which are not. That approach places courts in the role of juries, and has been rejected in Iowa with regard to lesser-offense instructions. See State v. Jeffries, 430 N.W.2d 728, 738 (Iowa 1988) ("[O]ur modified approach places the factual determination of a lesser-included offense in the hands of the jury, where it belongs. Trial courts should not be in the business of reviewing the record and weighing the evidence to determine when a lesser-included offense instruction should be given."). Courts determine whether substantial evidence supports giving a lesser-offense instruction, and juries determine whether that lesser offense applies. The district court erred in declining Johnson's requested involuntary manslaughter jury instruction.

B. The district court's failure to provide an involuntary manslaughter instruction was not harmless.

The Iowa Supreme Court has recognized that if conviction for a greater offense rendered failure to instruct on a lesser offense harmless, all such failures would be rendered harmless and beyond appellate review. State v. Turecek, 456 N.W.2d 219, 222 (Iowa 1990). The Court has rejected such an approach:

> A severable error-free adverse verdict on a factual issue which would be required to vindicate an additional legal theory has been recognized in other situations as a predicate for harmless error. This has not been the case, however, with respect to issues involving lesser-included offenses in criminal cases. The distinction undoubtedly rests on the belief, seldom articulated, that if the jury had been given an alternative it might have reached a different result. While this approach involves a certain degree of supposition, it is a view that has been consistently applied.

Id. "[E]ven when the State's evidence is undisputed, it does not elevate it to a verity." State v. Royer, 436 N.W.2d 637, 639 (Iowa 1989) (citation and internal quotation omitted). The Court has recognized this distinction between theoretical guilt and an actual finding of guilt by a jury presented with all required options:

> True, if the prosecution has not established beyond a reasonable doubt every element of the offense charged,

> and if no lesser offense instruction is offered, the jury must, as a theoretical matter, return a verdict of acquittal. But a defendant is entitled to a lesser offense instruction—in this context or any other—precisely because he should not be exposed to the substantial risk that the jury's practice will diverge from theory. Where one of the elements of the offense charged remains in doubt, but the defendant is plainly guilty of some offense, the jury is likely to resolve its doubts in favor of conviction.

State v. Miller, 841 N.W.2d 583, 587 (Iowa 2014) (quoting Keeble v. United States, 412 U.S. 205, 212–13 (1973)). The Miller Court observed that failure to submit a lesser-offense jury instruction is especially prejudicial when the trial defense is based upon asking the jury to convict on that lesser offense. Id. at 596 ("[F]ailure to instruct the jury as to a lesser included offense that formed a primary part of the defendant's defense is generally prejudicial.") (citing State v. Mikesell, 479 N.W.2d 591, 591–92 (Iowa 1991) (per curiam)). That is exactly what occurred here: in opening statements, defense counsel set the stage to ask the jury to convict Johnson of involuntary manslaughter, but then was unable to do so because of the instructional error. D0318 4/7/2025 Trial Tr p. 91 L. 18–22 (4/7/2025) ("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."); D0315 p. 89 L. 13–p. 90 L. 7 ("Go back in that deliberation room. Do not find him guilty of first-degree murder. Do not find him guilty of second-degree murder. Do not find him guilty of willful injury. Do not find him guilty of attempted murder. That's not what happened here."). Under these circumstances, the State has not carried its burden of establishing the instructional error was harmless.

Conclusion

The district court erred in refusing to submit a jury instruction on involuntary manslaughter. The State has failed to establish that error was harmless. Johnson's conviction for murder in the first degree should be vacated and the case remanded for new trial on that offense, with the district court ordered to provide an involuntary manslaughter instruction upon request.

CERTIFICATE OF COMPLIANCE WITH TYPE-VOLUME LIMITATIONS, TYPEFACE REQUIREMENTS AND TYPE-STYLE REQUIREMENTS

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 1,481 words, excluding the parts of the brief exempted by Iowa R. App. P. 6.903(1)(i)(1).



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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/7/26

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