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IN THE SUPREME COURT OF IOWA
Supreme Court No. 25-1071
Polk County No. FECR383463

STATE OF IOWA,
Plaintiff–Appellee,

vs.
JAMES BERNARD JOHNSON,
Defendant–Appellant.

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

BRIEF FOR APPELLEE

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STATEMENT OF THE ISSUES PRESENTED FOR REVIEW

I. **Whether the district court erred in dismissing Johnson's motion to dismiss one count.**

II. **Whether the district court erred in declining to instruct the jury on involuntary manslaughter.**

III. **Whether sufficient evidence supports the murder conviction.**

IV. **Whether the district court erred at sentencing.**

ROUTING STATEMENT

James Johnson seeks retention because he believes his constitutional challenges to Iowa Code section 724.26 present a substantial issue of first impression. Appellant's Br. at 10. Because the supreme court has decided *State v. Mahana*, ___ N.W.3d ___, 2026 WL 1699725 (Iowa June 12, 2026), since Johnson submitted his brief, this case no longer presents such an issue. Transfer to the Court of Appeals is appropriate. Iowa R. App. P. 6.1101(3).

NATURE OF THE CASE

Following a Polk County trial, James Johnson was convicted by a jury of murder in the first degree, a class "A" felony, in violation of Iowa Code sections 707.1 and 707.2, with a dangerous weapon enhancement pursuant to section 902.7; and by the bench of possession of a firearm by a felon,[1] a class "D" felony, in violation of section 724.26. D0286, Order of Disposition at 1 (6/20/2025). On appeal, he challenges his convictions and sentence.

STATEMENT OF THE FACTS

Early in the morning on July 27, 2024, Nikki Loffredo's friend dropped her off a few blocks from home on the north side of Des Moines.

[1] After he testified, Johnson removed this charge from the jury's consideration. D0315, Trial Tr., vol. 7 (4/8/2025), at 108:14–115:22; *see also* D0281, Criminal Verdict at 1–2 (5/21/2025).

D0318, Trial Tr., vol. 6 (4/7/2025), at 5:3–24; D0310, Trial Tr., vol. 5 (4/4/2025), at 144:3–19; D0190, Exh. 15, Aerial Map at 1 (4/9/2025); Exh. 33,[2] Banker's Trust Euclid East Entrance Ext. Video at 0:00–1:05. Before walking home, Loffredo purchased a few things at a neighborhood Walgreens. Exh. 52, Walgreens Register Video at 0:00–3:04. She exited the store at 3:41 a.m. Exh. 54, Walgreens Outside Camera Video at 0:00–1:05.

From the Walgreens, Loffredo proceeded south along Cambridge Street, passing by Harding Middle School. Exh. 61, Harding Ext. SW and Main Entry 3 Video at 0:07–1:02. Before she reached the next cross street, East Ovid Avenue, a gold SUV pulled alongside her. Exh. 62, Harding Ext. SW and Main Entry 2 Video at 0:15–0:38.

Someone shot Loffredo multiple times from inside that vehicle, leveling her. Exh. 62 at 0:38–0:43; Exh. 63, 3318 Cambridge Video at 0:20–0:24 (muzzle flashes visible); Exh. 64, 3317 Columbia St. Video at 0:50–0:55 (gunshots audible). The SUV sped off. Exh. 62 at 0:43–0:46.

"I've been shot," Loffredo told a 911 dispatcher. Exh. 10, 911 Call at 0:10–0:14. Law enforcement and emergency personnel arrived on scene shortly and provided aid to Loffredo. D0319, Trial Tr., vol. 2 (4/1/2025), at

[2] Audio and video exhibits in this record lack docket numbers. An order for maintenance of exhibits records their admission. *See* D0271, Order for Maintenance of Exhibits at 1–9 (4/10/2025).

156:3–158:19, 168:12–170:8, 177:20–178:1, 181:12–15, 203:17–22; D0317, Trial Tr., vol. 3 (4/2/2025), at 37:16–45:12. She was able to provide a description of her assailant. The man who shot her was Black, dark-skinned, and wore his hair in dreads. D0319 at 158:23–159:1, 190:16–18; D0317 at 21:5–10. Loffredo said she had not met the man before. D0319 at 190:13–15. Loffredo told police the vehicle was a gold Chevrolet Tahoe. *Id.* at 159:1–2; D0317 at 21:8–9, 47:21–48:16.

Minutes later, Officer Rogelio Apolonio encountered a gold GMC Yukon nearby. D0317 at 48:19–49:12. He initiated a traffic stop and found James Johnson driving the vehicle. *Id.* at 52:5–17. Johnson was the Yukon's sole occupant. *Id.* at 50:3–4; Exh. 148, Apolonio BWC at 1:45–1:47. Johnson denied having anything to do with the shooting. Exh. 148 at 2:00–2:09. When Apolonio asked him for his phone number, Johnson gave one ending in 1409. *Id.* at 3:20–3:30. Apolonio recorded the vehicle's license plate: OPM 199. D0317 at 50:14–16. Apolonio, and other officers who assisted in the stop, looked in the vehicle to see if there was any evidence of a shooting inside; they did not see anything noteworthy. *Id.* at 52:25–53:15. Johnson's license was suspended, so the officers instructed him to procure a licensed driver and then left the scene of the stop. *Id.* at 56:2–8; Exh. 148

at 4:50–5:14. Johnson told the officers he hoped they figured out who committed the shooting. Exh. 148 at 2:49–2:52, 2:57–3:01.

Using surveillance footage, police were able to capture the license plate of the SUV whose occupant shot Loffredo: OPM 199. *See* D0207, Exh. 82, Plate Number at 1 (4/9/2025); D0310 at 103:5–18. A GMC Yukon resembles a Chevrolet Tahoe. D0310 at 90:4–6. That brought them back to Johnson. *Id.* at 103:16–18.

Johnson's cell phone, which actually used a number ending in 7875, was in the vicinity of the shooting at the time of the shooting. D0320, Trial Tr., vol. 4 (4/3/2025), at 116:7–13, 145:11–14, 153:15–160:6; D0193, Exh. 18, Cell Report at 1–2, 8 (4/9/2025). Officers extracted information from that phone. D0310 at 106:14–16. The phone contained a photograph taken on February 18, 2024, showing Johnson holding a black Smith & Wesson gun. *Id.* at 113:21–114:9; D0201, Exh. 76, Gun Photo at 1 (4/9/2025). And it contained at least three videos of Johnson driving with a gun in his lap, taken between February and June 2024. D0310 at 118:20–123:5; Exh. 21, Cellebrite 2.24.24 Video at 0:00–0:10; Exh. 22, Cellebrite 6.19.24 Video at 0:00–0:06; Exh. 23, Cellebrite 6.19.24 Video at 0:00–0:16. In one of those videos, Johnson remarked that he took his gun everywhere because other people are "crazy." Exh. 21 at 0:04–0:10.

Shell casings at the scene of the shooting matched a .40-caliber Smith & Wesson. D0317 at 106:2–107:1. All the shell casings at the scene appeared to have been fired from the same weapon. *Id.* at 107:14–20.

On July 29, Johnson enlisted his friend, Angela Powell, to help him pawn a .40-caliber Smith & Wesson. D0320 at 60:4–12, 65:14–73:8; D0318 at 150:9–151:12; D0196, Pawn Receipt at 1 (4/9/2025). He was unable to pawn the gun himself because he was a convicted felon. D0318 at 151:10–14. After he was charged, Johnson asked Powell to retrieve the gun. D0317 at 205:5–16. Johnson's DNA was found on a magazine associated with the gun. *Id.* at 158:21–24, 161:15–18, 183:20–25, 216:19–217:14; D0197, Exh. 72, Lab Report at 1 (4/9/2025); *see* D0224, Exh. 99, Photo of Gun and Magazines at 1 (4/9/2025).

Officers searched the home belonging to Johnson and his girlfriend, Ashley Dawson. D0320 at 103:1–9. There, officers found an empty gun holster. *Id.* at 103:10–19; D0246, Exh. 121, Photo of Holster at 1 (4/10/2025). Johnson's phone contained a photograph of what appeared to be the same holster holding the same gun visible in other media on Johnson's phone. D0320 at 109:4–20; D0202, Exh. 77, Gun in Holster Photo at 1 (4/9/2025).

Officers brought Johnson in for an interview on August 2. D0310 at 5:15–24, 103:19–23. In that interview, Johnson denied shooting anyone. Exh. 71, Johnson Interview Video at 0:00–0:04, 17:35–17:39, 22:28–22:30. When pressed, he told them a "Percy Cline" was driving his vehicle at the time of the shooting and that, when Cline returned the vehicle, Cline told him, with some urgency, to go home. *Id.* at 1:00–1:30, 3:13–3:24. Despite searches of multiple databases, officers were unable to locate a "Percy Cline." D0310 at 109:4–110:17.

At one point during the interview, Johnson told the officers he was sitting outside a McDonald's at the corner of 6th Avenue & University Avenue when Cline returned his vehicle. Exh. 71 at 3:24–3:51. A review of relevant surveillance footage was unable to corroborate that statement. D0310 at 107:15–109:3.

During the interview, Johnson gave officers a number for his phone that was not the correct number, as he had done when speaking with Officer Apolonio shortly after the shooting. *Id.* at 110:18–111:16. Further, he told the officers his phone did not have service and used Wi-Fi only. *Id.* at 111:17–25. That information was false. *Id.* at 112:1–7.

Johnson was arrested at the end of that interview. *Id.* at 35:5–7. He was held, pretrial, at Polk County Jail. *See id.* at 49:2–4. While there, he

used the jail's electronic messaging system to communicate with Dawson. *Id.* at 6:12–19, 52:2–53:14. In a message to her in March 2025, he confessed to this crime, writing, "I did what the state has accused me of and I denied it because I was scared and that wasn't the real me that night." D0265, Exh. 147, Johnson-Dawson Texts at 7 (4/10/2025); *cf.* Exh. 143, 8.14.24 Phone Call at 1:26–20:08 (phone call between the two strategizing how to prove Johnson's innocence because another committed the crime). He went on to claim that what he did "wasn't intentional," that he "wasn't aiming at [Loffredo]," and that he was "high out of [his] mind" when he shot at Loffredo. D0265 at 4–5. "It was drug fueled," argued Johnson. *Id.* at 1. But, he said, "I'm not a killer." *Id.*

Johnson testified at trial. *See* D0318 at 93:1. He admitted to being a convicted felon, having been convicted of "possession with intent to deliver cocaine and marijuana" in 2019. *Id.* at 108:13–21. He had sold drugs to support his own drug habit and pay his bills. *Id.* at 109:10–15. In 2019, officers had also found a firearm in his possession, he told the jury, which he used for personal protection because drug dealers "handle drugs and money." *Id.* at 109:19–110:5. He admitted he possessed a gun in February and July 2024, even though he knew doing so would violate his parole. *Id.* at 99:4–100:5, 112:1–15. He told the jury he had a "chronic cocaine

addiction and marijuana addiction" in July 2024. *Id.* at 101:8–20, 119:12–18. He described using drugs throughout the day preceding the shooting. *Id.* at 122:25–123:12, 126:19–23, 130:23–131:15, 132:13–14, 134:24–25.

Johnson testified he saw Loffredo as he was driving around, after a night spent delivering food with Powell and smoking marijuana, to avoid returning home and arguing with Dawson. *Id.* at 134:2–137:1. He testified he intended to approach Loffredo and ask if she wanted to either use drugs with him or have sex with him. *Id.* at 137:2–10. When he approached her, she responded angrily. *Id.* at 140:19–141:25. That angered Johnson, who grabbed his gun. *Id.* at 142:10–16. He testified he intended to scare Loffredo. *Id.* He fired the gun four times. *Id.* at 143:3–7. Then he drove off. *Id.* at 143:16–22. He dropped the gun at home. *Id.* at 144:8–145:1. But he "couldn't sit still" at home, and he drove some more. *Id.* Thus, when he was pulled over by Officer Apolonio, the gun was not in the vehicle. *Id.* at 144:23–145:6.

ARGUMENT

I. The district court did not err in denying Johnson's motion to dismiss.

Preservation of Error

Johnson filed a motion to dismiss the felon-in-possession charge, arguing "that Iowa Code [section] 724.26(1), as applied to the non-violent

offenses which led to his felony adjudication, is unconstitutional under both the Second Amendment to the United States [Constitution] as well as Article 1, Section 1A of the Iowa Constitution." D0047, Mtn. Dismiss at 2 (12/16/2024). The court denied his motion. D0065, Order at 1–7 (2/14/2025). The State does not contest error preservation.

Standard of Review

This Court reviews motions to dismiss for correction of errors at law. *State v. Liggins*, 978 N.W.2d 406, 434 (Iowa 2022). "Constitutional issues, however, are subject to de novo review." *Id.*

Merits

The Second Amendment to the United States Constitution states that "[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. In *District of Columbia v. Heller*, 554 U.S. 570, 626 (2008), the Supreme Court cautioned that nothing in that opinion "should be taken to cast doubt on longstanding prohibitions on the possession of firearms by felons." The Court has "repeat[ed] those assurances" in Second Amendment cases decided since *Heller*. *McDonald v. Chicago*, 561 U.S. 742, 786 (2010); *see also United States v. Rahimi*, 602 U.S. 680, 699 (2024); *New York State Rifle & Pistol Association v. Bruen*, 597 U.S. 1, 81

(2022) (Kavanaugh, J., concurring). Notwithstanding these repeated assurances, Johnson seeks to cast doubt on Iowa's prohibition of the possession of firearms by felons.

Litigants bringing constitutional challenges may allege a statute is unconstitutional either facially or as applied to them. "In a facial challenge, the challenger must prove that a statute is totally invalid and therefore, incapable of any valid application." *Summit Carbon Sols., LLC v. Kasischke*, 14 N.W.3d 119, 126 (Iowa 2024) (cleaned up). "An as-applied challenge alleges the statute is unconstitutional as applied to a particular set of facts." *Doss v. State*, 961 N.W.2d 701, 716 (Iowa 2021). Johnson brings as-applied challenges. *See* Appellant's Br. at 40–53.

As this Court well knows, the invocation of the right to bear arms now engenders a bifurcated analysis. When a defendant argues his Second Amendment rights have been violated, courts undertake an analysis pursuant to *Bruen* and *Rahimi*. *State v. Mahana*, __ N.W.3d __, __, 2026 WL 1699725, at *4–5 (Iowa June 12, 2026). Under that analysis, "when a law regulating the possession or use of firearms is challenged, the government must justify it by demonstrating that 'the challenged regulation is consistent with the principles that underpin our regulatory tradition.'" *Id.* at *4 (quoting *Rahimi*, 602 U.S. at 692).

A challenge under the state constitution takes a different path. There, the threshold question is "whether the constitutional provision is even implicated." *State v. Woods*, 23 N.W.3d 258, 275 (Iowa 2025). If so, restrictions of the "fundamental individual right" to keep and bear arms are then "subject to strict scrutiny." *Id.* (quoting Iowa Const. art. I, § 1A). "[T]here is no settled analysis as to how strict scrutiny applies to laws affecting the fundamental right to bear arms, which has historically been interpreted to have accepted limitations." *Id.* (quoting *Dotson v. Kander*, 464 S.W.3d 190, 197 (Mo. 2015) (en banc) (per curiam)).

Under either constitution, Johnson's challenge fails. The following sections explain why.

A. Johnson's Second Amendment as-applied challenge fails.

As *Mahana* explicates, federal courts applying the *Bruen-Rahimi* test have taken different approaches. Under the categorical approach, "the Second Amendment permits disarmament of an individual for any felony conviction." *Mahana*, 2026 WL 1699725, at *5. Other circuits have elected a case-by-case approach. The Sixth Circuit has employed a "dangerousness determination" that requires the court to "focus on each individual's specific characteristics," including his "entire criminal record." *Id.* at *7. The Third Circuit requires courts to "consider all factors that bear on a

felon's capacity to possess a firearm without posing a special danger of misusing firearms." *Id.* (cleaned up). Those factors include "a convict's entire criminal history and post-conviction conduct indicative of dangerousness, along with his predicate offense and the conduct giving rise to that conviction." *Id.* The *Mahana* court found both the categorical and case-specific approaches produced the same result, so it offered analyses under both. *See id.* at *8–9. In so doing, the court noted it was following "either the Sixth Circuit's or the Third Circuit's version of the case-by-case approach." *Id.* at *9.

Likewise, the two approaches produce the same result here. Obviously, under the categorical approach, Johnson's disarmament would be permissible and Iowa Code section 724.26(1) "pass[es] Second Amendment muster." *Id.* at *8. Under the Sixth Circuit's approach, Johnson's two prior felony convictions for possession with intent to deliver demonstrate his dangerousness, tied as drugs are to guns. *See Woods*, 23 N.W.3d at 269 ("Drugs and guns are a dangerous combination." (cleaned up)); *see also* D0065 at 1; D0318 at 108:13–21. Under the Third Circuit's approach, one could also consider Johnson's choice to maintain a firearm while on parole, his decision to always keep that firearm on his person because other people are "crazy," and his addictions to marijuana and

cocaine. *See* D0318 at 99:4–100:5, 101:8–20, 119:12–18, 112:1–15; Exh. 21 at 0:04–0:10. That combination of traits is dangerous, as this case demonstrates. Under either approach, Johnson's disarmament passes constitutional muster under *Bruen* and *Rahimi*.

B. Johnson's as-applied challenge pursuant to Iowa Constitution article I, section 1A fails.

The Iowa Constitution was amended in 2022 to provide:

> The right of the people to keep and bear arms shall not be infringed. The sovereign state of Iowa affirms and recognized this right to be a fundamental individual right. Any and all restrictions of this right shall be subject to strict scrutiny.

See Iowa Acts 2019 (88 G.A.) ch. 168, S.J.R. 18, § 1, and Iowa Acts 2021 (89 G.A.) ch. 185, S.J.R. 7, § 1. "The text of Amendment 1A expressly contemplates valid restrictions on the state constitutional right to possess firearms but requires courts to apply strict scrutiny to a challenged governmental restriction." *In re N.S.*, 13 N.W.3d 811, 826 (Iowa 2024). Under a strict scrutiny challenge "[i]t is the government's burden to show the challenged statute 'serves a compelling state interest and is the least restrictive means of attaining that interest.'" *Id.* at 820 (quoting *Mitchell Cnty. v. Zimmerman*, 810 N.W.2d 1, 6 (Iowa 2012)).

Public safety and law enforcement safety are compelling government interests. *Mahana*, 2026 WL 1699725, at *11; *see also, e.g.*, *Maryland v.*

Wilson, 519 U.S. 408, 413 (1997); *In re Det. of Garren*, 620 N.W.2d 275, 286 (Iowa 2000) (en banc); *State v. Kellogg*, 534 N.W.2d 431, 434 (Iowa 1995). Iowa Code section 724.26(1) is narrowly tailored to protect the public and law enforcement from the threat posed by a felon carrying a firearm. Narrow tailoring "simply demands the challenged law 'not unduly harm members of any . . . group.'" *N.S.*, 13 N.W.3d at 831 (quoting *Grutter v. Bollinger*, 539 U.S. 306, 341 (2003)).

When evaluating an as-applied challenge under article I, section 1A, this Court considers both the defendant's prior criminal record and "the circumstances relating to his current conviction." *Mahana*, 2026 WL 1699725, at *13. Again, Johnson was twice convicted for possession with intent to deliver. He continues to possess a firearm while on parole. D0318 at 99:4–100:5, 112:1–15. He carries that firearm with him everywhere. Exh. 21 at 0:04–0:10. He admits to addictions to both cocaine and marijuana. D0318 at 101:8–20, 119:12–18. He described for the jury how he spent the day prior to this homicide using marijuana. *Id.* at 134:2–137:1. The circumstances of this offense demonstrate that even something as minor as rebuffing his sexual advances provokes him. *See id.* at 137:2–143:22. As applied to Johnson, Iowa Code section 724.26(1) is narrowly tailored to

meet the State's compelling interests in public and law enforcement safety. Johnson's challenge under the state constitution fails.

II. The district court did not err in declining to instruct the jury on involuntary manslaughter.

Preservation of Error

Johnson requested the court instruct the jury on involuntary manslaughter by commission of a public offense. *See* D0315 at 12:8–17:9. The court denied that request. *Id.* at 33:18–37:25. The State does not contest error preservation.

Standard of Review

"A district court's refusal to submit a requested jury instruction is reviewed for correction of errors at law." *State v. Thompson*, 836 N.W.2d 470, 476 (Iowa 2013).

Merits

A. The court did not err in declining to instruct on involuntary manslaughter when Johnson committed a forcible felony.

Johnson argues the court erred in declining his invitation to instruct the jury on involuntary manslaughter as a lesser-included crime of first-degree murder. *See* Appellant's Br. at 53–62; Iowa Code § 707.5(2). The court did not err.

Juries are instructed on lesser-included offenses when the legal test is met. That test "requires the lesser offense to be composed solely of some but not all of the elements of the greater offenses." *State v. Royer*, 436 N.W.2d 637, 639 (Iowa 1989) (quoting *State v. Lampman*, 345 N.W.2d 142, 143 (Iowa 1984)). Following *State v. Jeffries*, 430 N.W.2d 728, 737 (Iowa 1988), courts shall, except in two instances, "automatically instruct on a lesser-included offense if the legal test is met as to a greater offense that has support in the evidence."

One of the two exceptions "is when the defendant stipulates to the dissimilar element of the greater offense." *Jeffries*, 430 N.W.2d at 737. In such cases, "the evidence is conclusive that no lesser-included offense was committed." *Id.*

The second exception "involves lesser-included offenses that do not meet our legal test but are made lesser-included offenses by statute." *Id.* "These lesser-included offenses are examples of the cognate-evidence approach"—that is, these offenses are not lesser-included offenses under the "strict" statutory-elements approach, but they are "related" and have elements in common with the greater offense while also possessing "one or two elements not essential to the greater crime." *Id.* at 731, 737. "Necessarily, in these instances, the trial courts must apply the factual test

to determine if sufficient evidence exists to submit these statutorily mandated lesser-included offenses." *Id.* at 737. That factual test involves determining whether the "foreign elements" of the lesser offense—those not part of the greater offense—enjoy substantial evidence. *Royer*, 436 N.W.2d at 642–43. This analysis is necessary to avoid a conviction for an offense "which the evidence does not legally support." *Id.* at 643.

Involuntary manslaughter is an included offense of first-degree murder by statute. Iowa Code § 707.5(2). That this inclusion is a statutory creation triggers the second exception, which requires application of the factual test. *Royer*, 436 N.W.2d at 642. It was appropriate for the district court to examine the facts of this case to determine if the "foreign elements" of involuntary manslaughter enjoyed substantial evidence. *See id.* at 642–43.

Among the "foreign elements" of involuntary manslaughter, vis-à-vis murder, is the requirement of the commission of either a public offense or "an act." *Compare* Iowa Code § 707.1, *with id.* § 707.5(1). When one unintentionally causes the death of another person "by the commission of a public offense other than a forcible felony or escape," that is felony involuntary manslaughter. Iowa Code § 707.5(1)(a). When one does so "by the commission of an act in a manner likely to cause death or serious

injury," that is an aggravated-misdemeanor version of the crime. Iowa Code § 707.5(1)(b). Applying the factual test to these foreign elements, one asks whether they enjoy substantial evidence. *Royer*, 436 N.W.2d at 642–43.

Johnson contends, in essence, the felony version enjoys substantial evidence because he committed a public offense other than a forcible felony or escape. For this proposition, he cites two underlying offenses that could fit that definition: reckless use of a firearm, pursuant to Iowa Code section 724.30; and the discharge of a firearm in Des Moines city limits, which is prohibited by Des Moines Municipal Code section 70-86(a).[3] Appellant's Br. at 58.

The State would describe Johnson's actions differently. When he fired four shots at Loffredo, he assaulted her. *See* Iowa Code § 708.1(2); D0315 at 38:18–39:16. Because Johnson, a felon, possessed a firearm when he fired those shots, he assaulted Loffredo while participating in a felony—to wit: being a felon in possession of a firearm. *See* Iowa Code §§ 708.3, 724.26.

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[3] A violation of a city ordinance is not a "public offense." Iowa Code § 701.2 ("A public offense is that which is prohibited by statute and is punishable by fine or imprisonment."); *Wright v. City of Cedar Falls*, 424 N.W.2d 456, 458–59 (Iowa 1988) (finding "the term statute as used in section 701.2 refers to an enactment by the general assembly rather than enactment by the legislative body of a city"). As such, it cannot underpin involuntary manslaughter as Johnson contends. *See* Iowa Code § 707.5(1)(a) (requiring a "public offense").

Assault while participating in a felony is itself a felony. Iowa Code § 708.3. As a felonious assault, assault while participating in a felony is a forcible felony. Iowa Code § 702.11(1).

Courts do not conduct the "bottom-up" analysis Johnson urges, starting with the version of the crime under which he bears the least culpability and moving up. Rather, they go something like "top-down." If the evidence supports submission of the felony version of involuntary manslaughter, courts submit the felony version. *See State v. Winnett*, 442 N.W.2d 275, 276–77 (Iowa 1989) (declining to credit defendant's claim that shooting was "an accident," which would have rendered it a non-public-offense "act"); *State v. Inger*, 292 N.W.2d 119, 123–24 (Iowa 1980) (finding no error in district court's refusal to instruct on misdemeanor involuntary manslaughter where "[t]he only possible act attributable to defendant likely to cause death or serious injury is an assault, a public offense"). And if the evidence supports submission of the felony version of involuntary manslaughter, courts do *not* submit the misdemeanor version. *Royer*, 436 N.W.2d at 643 (finding trial court "correctly refused to give" misdemeanor instruction because only acts attributable to defendant were "public offenses"); *State v. Dvorsky*, 322 N.W.2d 62, 66 (Iowa 1982) (noting it is "impossible" to commit a public offense and simultaneously not do so).

The same principle is at play when courts merge offenses: judgment is entered as to one of the merged offenses only, the greater of the offenses. Iowa Code § 701.9. The same principle undergirds *Jeffries*'s idea that "the evidence is conclusive that no lesser-included offense was committed" when the defendant stipulates to the "dissimilar element of the greater offense." *Jeffries*, 430 N.W.2d at 737. When the defendant has stipulated to the elevating element of the greater offense, in other words, courts need not probe for lesser offenses. And the same principle applies to issues of prosecutorial discretion. *See State v. Wissing*, 528 N.W.2d 561, 567 (Iowa 1995) ("When a single act violates more than one criminal statute, the prosecutor may choose which charge to file, even if the two offenses call for different punishments."); *State v. Coffin*, 504 N.W.2d 893, 897 (Iowa 1993) (noting prosecutorial discretion when elements of two crimes overlap).

It would be "anomalous" to subject the same conduct to different punishments "at the whim of the fact finder," and it is unlikely the legislature intended such a result. *Inger*, 292 N.W.2d at 123. Rather, the legislature likely intended more serious punishment for more serious criminal conduct. *See id.* It follows that the legislature's carve-out in section 707.5(1)(a) should be read to exclude defendants who commit the most serious criminal conduct—forcible felonies—from the safe harbor of

involuntary manslaughter. *State v. Ware*, 338 N.W.2d 707, 715 (Iowa 1983) ("It is entirely reasonable to infer from the statutory scheme in chapter 707 that a person who causes death during the reckless commission of a 'forcible felony or escape' cannot be found guilty of the lesser offense of involuntary manslaughter."); *see also, e.g.*, *State v. Ayers*, 478 N.W.2d 606, 608 (Iowa 1991) ("The underlying public offense must be committed recklessly in order to form the basis of involuntary manslaughter."). That comports with the district court's reading of the statute. It does not comport with the bottom-up analysis Johnson proposes.

Because Johnson committed a forcible felony, his claim fails. The "foreign elements" of involuntary manslaughter—that the defendant either commit "a public offense other than a forcible felony or escape" or a non-criminal "act"—do not enjoy substantial evidence, because his commission of a forcible felony enjoys substantial evidence and only one "commission" obtains under this statutory scheme. *See Inger*, 292 N.W.2d at 123–24; *Dvorsky*, 322 N.W.2d at 66; *Ware*, 338 N.W.2d at 715. The district court did not err in declining to submit a jury instruction on involuntary manslaughter when "the evidence [did] not legally support" doing so. *Royer*, 436 N.W.2d at 643.

B. Any error was harmless.

Even if this Court disagrees, any error was harmless. *See State v. Thompson*, ___ N.W.3d ___, ___, 2026 WL 1441825, at *11 (Iowa May 22, 2026) (approving of harmless-error analysis when considering instructional error). The inclusion of an involuntary-manslaughter instruction would not have changed this case's outcome. *See State v. Milam*, 447 N.W.2d 415, 417 (Iowa Ct. App. 1989) (stating harmless-error analysis considers whether a trial error had an effect on the outcome).

The key difference between involuntary manslaughter and murder is the malice aforethought necessary for murder. *See State v. Shekey*, No. 08-1567, 2009 WL 4114147, at *3 (Iowa Ct. App. Nov. 25, 2009). "Malice aforethought" is "a fixed purpose or design to do some physical harm to another that exists before the act is committed." *State v. Newell*, 710 N.W.2d 6, 21 (Iowa 2006) (citation omitted). "[C]ircumstantial evidence is generally used to prove malice." *Id.*

The evidence of Johnson's malice aforethought was overwhelming. *See id.* at 19–20. When rebuffed by Loffredo, he felt aggrieved. *See State v. Buenaventura*, 660 N.W.2d 38, 49 (Iowa 2003) (noting evidence of "quarrels between the defendant and the victim are circumstances that may be used to support a finding of malice aforethought"). He wielded a gun.

See State v. Hall, 214 N.W.2d 205, 210–11 (Iowa 1974) (noting "the willful use of a deadly weapon . . . is evidence of malice"); *State v. Howard*, 14 N.W.3d 763, 769 (Iowa Ct. App. 2024) (considering defendant drawing weapon from overalls). He shot four times. *See State v. Poyner*, 306 N.W.2d 716, 718 (Iowa 1981) ("The multiple wounds . . . supply strong evidence of malice and intent to kill.").

His subsequent actions suggest the malice persisted. *See State v. Kinsel*, 545 N.W.2d 885, 888 (Iowa Ct. App. 1996) (considering post-crime behavior as a "factor" in malice determination). He drove away and took no action to confirm Loffredo's safety or survival. *See State v. Wheeler*, 403 N.W.2d 58, 63 (Iowa Ct. App. 1987) (considering defendant's "subsequent evasive actions" as bearing on his malice aforethought), *overruled on other grounds by State v. Reeves*, 636 N.W.2d 22, 25 (Iowa 2001). When confronted shortly thereafter by police asking about the shooting, he denied any knowledge thereof and offered no assistance. He continued to lie about his involvement. *Cf. State v. Hoot*, 94 N.W. 564, 566–67 (Iowa 1903) (defendant's "subsequent conduct"—living under an assumed name in New Orleans—was "inconsistent in the extreme with any lawful purpose"). From these subsequent actions, the jury could infer the existence of malice preceding and contemporaneous with Johnson's homicidal actions.

These facts come not from inference but straight from Johnson's mouth at trial. Confronted with this evidence of malice, the jury would not have convicted Johnson of a lesser-included offense.

We also know this because the jury had the chance to do so and chose not to. Had the jury believed Johnson acted without the necessary state of mind for murder, it could have convicted him of another offense or acquitted him. The jury chose first-degree murder because all its elements were satisfied. The submission of involuntary manslaughter would not have changed that.

The lack of an acquittal also serves to distinguish Johnson's cited authority on this point. *See* Appellant's Br. at 61–62. In those cases, it appears the jury was given no lesser-included options. *See Royer*, 436 N.W.2d at 638 (noting trial court "fail[ed] to include . . . lesser-included offense instructions requested for each of the three counts"); *State v. Sangster*, 299 N.W.2d 661, 662 (Iowa 1980) (referring to one potential lesser-included offense that was not marshalled). Here, the jury had other options: second-degree murder, attempt to commit murder, willful injury causing serious injury, assault causing serious injury, willful injury causing bodily injury, assault with intent to inflict serious injury, assault causing bodily injury, and assault. D0188, Jury Instructions at 30–41 (Nos. 32–39)

(4/9/2025). To the extent Johnson's argument is premised on a concern the jury "convict[ed] on insufficient evidence rather than let a defendant they believe guilty of some wrongdoing go free," the availability of other lesser-included offenses here moots that concern. *See Jeffries*, 430 N.W.2d at 733.

C. Conclusion

Johnson's commission of a forcible felony precludes submission of the involuntary-manslaughter instruction. Even if this Court disagrees, any error was harmless.

III. Sufficient evidence supports the murder conviction.

Preservation of Error

When a defendant proceeds to trial and is convicted of a crime, "[t]he trial itself raises the issue of the sufficiency of the evidence, and the verdict is the decision on the issue." *State v. Crawford*, 972 N.W.2d 189, 198 (Iowa 2022). The State does not contest error preservation.

Standard of Review

> [This Court] review[s] the sufficiency of the evidence for correction of errors at law. In conducting that review, [it is] highly deferential to the jury's verdict. The jury's verdict binds this court if the verdict is supported by substantial evidence. Substantial evidence is evidence sufficient to convince a rational trier of fact the defendant is guilty beyond a reasonable doubt. In determining whether the jury's verdict is supported by substantial evidence, [this

> Court] view[s] the evidence in the light most favorable to the State, including all legitimate inferences and presumptions that may fairly and reasonably be deduced from the record evidence.

Id. at 202 (marks and citations omitted).

Merits

To convict Johnson of murder in the first degree, the State needed to establish:

1. On or about the 27th day of July, 2024, the defendant shot Nikki Loffredo.
2. Nikki Loffredo died as a result of being shot.
3. The defendant acted with malice aforethought.
4. The defendant acted willfully, deliberately, premeditatedly and with a specific intent to kill Nikki Loffredo.

D0188 at 22 (No. 20). Johnson challenges the sufficiency of the evidence as to malice aforethought, deliberation and premeditation, and specific intent. Appellant's Br. at 64. His challenge should fail.

A. Malice aforethought

"Malice aforethought" is "a fixed purpose or design to do some physical harm to another that exists before the act is committed." *Newell*, 710 N.W.2d at 21 (citation omitted). "It does not mean mere spite, hatred, or ill will, but does signify a disposition which shows a heart regardless of

human life." *State v. LuCore*, 989 N.W.2d 209, 217 (Iowa Ct. App. 2023). "[C]ircumstantial evidence is generally used to prove malice." *Newell*, 710 N.W.2d at 21. "The law allows a presumption of malice aforethought from the use of a deadly weapon in the absence of evidence to the contrary." *State v. Reeves*, 670 N.W.2d 199, 207 (Iowa 2003). A firearm is a dangerous weapon that gives rise to an inference of malice aforethought. D0188 at 27–28 (Nos. 25–26).

Malice aforethought is causal—"the malice must result in the homicidal act." *State v. Bentley*, 757 N.W.2d 257, 265 (Iowa 2008). So it is here. When he was rebuffed by Loffredo, Johnson felt "pissed . . . off" and "disrespected." D0318 at 143:12–15; *see Buenaventura*, 660 N.W.2d at 49. He grabbed his gun with what he said was "the intent to scare her." D0318 at 142:15–16; *see Hall*, 214 N.W.2d at 210–11; *Howard*, 14 N.W.3d at 769. He shot four times. D0318 at 143:6–7; *see Poyner*, 306 N.W.2d at 718. This is sufficient evidence to conclude Johnson possessed malice aforethought.

His subsequent actions suggest the malice persisted. *See Kinsel*, 545 N.W.2d at 888. He drove away and took no action to confirm Loffredo's safety or survival. D0318 at 143:16–22; *see Wheeler*, 403 N.W.2d at 63. When confronted shortly thereafter by police asking about the shooting, he denied any knowledge thereof and offered no assistance. D0318 at 160:21–

161:6. He continued to lie about his involvement. D0318 at 156:1–14; *see generally* Exh. 143; *cf. Hoot*, 94 N.W. at 566–67. From these subsequent actions, the jury could infer the existence of malice preceding and contemporaneous with Johnson's homicidal actions.

B. Deliberation and premeditation

To premeditate "is to think or ponder upon a matter before acting." D0188 at 23 (No. 21). To deliberate is to "weigh in one's mind, to consider, to contemplate, or to reflect." *Id.* Premeditation may be formed in an instant. *See id.* at 24 (No. 22); *Howard*, 14 N.W.3d at 769. It may be shown by the nature of the killing, "including the use of a deadly weapon combined with an opportunity to deliberate." *Buenaventura*, 660 N.W.2d at 48. Premeditation, like malice, may be inferred from the use of a dangerous weapon following the opportunity to deliberate. *Howard*, 14 N.W.3d at 769.

When Loffredo exchanged words with Johnson, causing him to feel "disrespected," and he grabbed his gun, there was sufficient time for him to deliberate and premeditate. D0318 at 143:12–15; *see Buenaventura*, 660 N.W.2d at 49 (discussing defendant's "little spat" with victim); *State v. Gilbert*, 372 So.3d 403, 411 (La. Ct. App. 2023) (defendant's "decision to shoot and kill [victim] was, in fact, based on words"); *cf. United States v. Bagola*, 108 F.4th 722, 727 (8th Cir. 2024) ("Swift but deliberate actions

before shooting can demonstrate that a defendant acted with the requisite premeditation." (cleaned up)). Johnson's challenge to this element fails.

C. Specific intent

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." D0188 at 20 (No. 18). A jury may infer specific intent to kill from a defendant's use of a dangerous weapon "following the opportunity to deliberate." *Id.* at 29 (No. 27); *Howard*, 14 N.W.3d at 769.

Here, Johnson had that opportunity to deliberate and then used a dangerous weapon to kill Loffredo. The jury could have properly inferred specific intent from those facts. *See, e.g.*, *State v. Wilkens*, 346 N.W.2d 16, 20 (Iowa 1984); *State v. Roby*, No. 22-1017, 2023 WL 6292474, at *4–5 (Iowa Ct. App. Sept. 27, 2023).

D. Conclusion

Because each element of the first-degree murder charge enjoys substantial evidence, Johnson's challenge must fail.

IV. The State confesses error as to the sentencing issue.

Preservation of Error

Illegal sentences may be corrected at any time. *Anderson v. Iowa Dist. Ct.*, 989 N.W.2d 179, 181 (Iowa 2023). The State does not contest error preservation.

Standard of Review

Review of a sentence "is for correction of errors at law." *State v. Formaro*, 638 N.W.2d 720, 724 (Iowa 2002).

Merits

The district court required Johnson to participate in a victim-offender dialogue while incarcerated. D0286 at 3. It does not have the authority to do so. *State v. Reed*, No. 24-0256, 2025 WL 2793578, at *6 (Iowa Ct. App. Oct. 1, 2025). The State confesses error. This Court may vacate the invalid part of Johnson's sentence "without disturbing the rest" of the sentence and remand for entry of a corrected sentencing order. *Id.* at *7. The State respectfully suggests this course of action.

CONCLUSION

Iowa Code section 724.26 survives Johnson's constitutional challenges. The district court did not err in declining to submit the lesser-included offense of involuntary manslaughter when such an offense was not legally supported. Sufficient evidence supports Johnson's conviction for first-degree murder. Remand is appropriate to correct Johnson's sentencing order as to the victim-offender dialogue.

REQUEST FOR NONORAL SUBMISSION

The State requests nonoral submission.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

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