ELECTRONICALLY FILED AUG 12, 2026 CLERK OF SUPREME COURT

IN THE SUPREME COURT OF IOWA
Supreme Court No. 25-0959
Woodbury County No. FECR118538

STATE OF IOWA,
Plaintiff–Appellee,

vs.

CURTIS JAMES COTTON,
Defendant–Appellant.

APPEAL FROM THE IOWA DISTRICT COURT
FOR WOODBURY COUNTY
THE HONORABLE JEFFREY A. NEARY, JUDGE

BRIEF FOR APPELLEE

BRENNA BIRD
Attorney General of Iowa

BENJAMIN PARROTT
Assistant Attorney General
Hoover State Office Building, 2nd Floor
Des Moines, Iowa 50319
(515) 281-5976
Benjamin.Parrott@ag.iowa.gov

JAMES D. LOOMIS
Woodbury County Attorney

ATTORNEYS FOR PLAINTIFF–APPELLEE

TABLE OF CONTENTS

TABLE OF AUTHORITIES 3

STATEMENT OF THE ISSUES PRESENTED FOR REVIEW 6

ROUTING STATEMENT 7

NATURE OF THE CASE 8

STATEMENT OF THE FACTS 9

ARGUMENT 14

I. The district court correctly instructed the jury on causation. 14

A. The right to present a defense does not include the right to present an erroneous legal argument. 16

B. *Hubka* is one application of a broader rule of causation. 18

C. The Restatement (Third) of Torts also does not relieve Cotton of liability. 22

D. The district court correctly instructed the jury according to *State v. Adams*. 23

E. No prejudice occurred. 25

II. No prosecutorial error occurred. 28

III. The district court should enter a nunc pro tunc order correcting the sentencing order. 35

CONCLUSION 36

REQUEST FOR NONORAL SUBMISSION 36

CERTIFICATE OF COMPLIANCE 37

TABLE OF AUTHORITIES

Federal Cases

Cole v. Roper, 623 F.3d 1183 (8th Cir. 2010) 29

Darden v. Wainwright, 477 U.S. 168 (1986) 28

Holmes v. South Carolina, 547 U.S. 319 (Iowa 2006) 16, 17

Parker v. Matthews, 567 U.S. 37 (2012) 28

United States v. Scheffer, 523 U.S. 303 (1998) 16

State Cases

Belhak v. Smith, 21 N.W.3d 535 (Iowa 2025) 31

Borough v. Minneapolis & St. L.R. Co., 197 N.W. 312 (Iowa 1924) 25

Lamasters v. State, 821 N.W.2d 856 (Iowa 2012) 15

Martin v. State, No. 12-2240, 2014 WL 69542 (Iowa Ct. App. Jan. 9, 2014) 32

Meier v. Senecaut, 641 N.W.2d 532 (Iowa 2002) 15

Royal Indem. Co. v. Factory Mut. Ins. Co., 786 N.W.2d 839 (Iowa 2010) 28

Spreitzer v. Hawkeye State Bank, 779 N.W.2d 726 (Iowa 2009) 23

State v. Adams, 810 N.W.2d 365 (Iowa 2012) 8, 14, 15, 23, 24, 25

State v. Anderson, 448 N.W.2d 32 (Iowa 1989) 33

State v. Bishop, 387 N.W.2d 554 (Iowa 1986) 29

State v. Blanks, 479 N.W.2d 601 (Iowa Ct. App. 1991) 32

State v. Burns, 119 Iowa 663, 94 N.W. 238 (1903) 32

State v. Carey, 709 N.W.2d 547 (Iowa 2006) 31, 33, 34

State v. Coleman, 907 N.W.2d 124 (Iowa 2018) 34

State v. Cooley, 21 N.W.3d 137 (Iowa 2025) 15

State v. Freeman, 297 N.W.2d 363 (Iowa 1980) 25

State v. Garcia, 616 N.W.2d. 594 (Iowa 2000) 7, 19, 20

State v. Graves, 668 N.W.2d 860 (Iowa 2003) 28, 29

State v. Hess, 533 N.W.2d 525 (Iowa 1995) 35

State v. Hubka, 480 N.W.2d 867 (Iowa 1992) 7, 17, 18, 19

State v. May, No. 04-1170, 2005 WL 3477983 (Iowa Ct. App. Dec. 21, 2005) 31, 32

State v. Morrison, 368 N.W.2d 173 (Iowa 1985) 34

State v. Murray, 512 N.W.2d 547 (Iowa 1994) 18, 19, 20

State v. Parker, 747 N.W.2d 196 (Iowa 2008) 26

State v. Plain, 898 N.W.2d 801 (Iowa 2017) 26, 28

State v. Rutledge, 600 N.W.2d 324 (Iowa 1999) 15

State v. Sallis, No. 23-1588, 2025 WL 1066522 (Iowa Ct. App. April 9, 2025) 27

State v. Schaul, No. 15-0466, 2016 WL 2745934 (Iowa Ct. App. May 11, 2016) 27

State v. Thompson, 35 N.W.3d 569 (Iowa 2026) 14, 15

State v. Thornton, 498 N.W.2d 670 (Iowa 1993) 28, 31

State v. Tribble, 790 N.W.2d 121 (Iowa 2010) 15, 25

State v. Webb, 244 N.W.2d 332 (Iowa 1976) 32, 33

State Statutes

Iowa Code §§ 321J.2 and 707.6A(1) 8

Iowa Code § 702.11 35

Iowa Code § 707.6A..... 35

Iowa Code § 707.6A(1)..... 24

State Rule

Iowa R. App. P. 6.907..... 35

Other Authorities

Restatement (Second) of Torts § 443 (1965).....20

Restatement (Third) of Torts: Liability for Physical Harm § 29.....22

Restatement (Third) of Torts: Liability for Physical Harm § 33(b).....23

Restatement (Third) Torts § 27 cmt. c.....25

STATEMENT OF THE ISSUES PRESENTED FOR REVIEW

I. **The district court correctly instructed the jury on causation.**

II. **No prosecutorial error occurred.**

III. **The district court should enter a nunc pro tunc order correcting the sentencing order.**

ROUTING STATEMENT

Transfer to the Court of Appeals is appropriate because this case can be decided based on existing legal principles governing causation in criminal cases. Iowa R. App. P. 6.1101(3). Cotton asks the court to clarify whether the "scope of liability" analysis from the Restatement (Third) of Torts applies in criminal cases. Appellant's Br. at 9. Cotton did not mention the Restatement or scope of liability in district court, making this case a poor vehicle for the change he desires.

Cotton also seeks to overrule *State v. Hubka*, 480 N.W.2d 867 (Iowa 1992), and thereby allow the jury to decide whether a victim's failure to wear a seatbelt was a superseding cause of injury or death. Appellant's Br. at 10. But *Hubka* is merely one application of a broader rule that an intervening act must be the sole proximate cause of the harm to be a superseding cause that breaks the causal chain and relieves a defendant of liability. *See State v. Garcia*, 616 N.W.2d. 594, 597 (Iowa 2000). The Court should not change that longstanding rule in a case where, under any legal rubric, Cotton's intoxicated driving caused the accident and death.

In his routing statement, Cotton asserts the district court stated it was "fundamentally unfair" to allow the State to present evidence that the victim was ejected from the vehicle while preventing Cotton from arguing

the failure to wear a seatbelt caused the death. This is not quite right. In context, the district court agreed with Cotton's recitation of the case law and the facts presented at trial. D0241, Trial Tr. Vol 4 at 8:20–9:15. The court did not agree that a fundamental unfairness occurred. This case does not meet the criteria for retention.

NATURE OF THE CASE

Curtis Cotton appeals from a conviction for homicide by vehicle in violation of Iowa Code sections 321J.2 and 707.6A(1), a class "B" felony. Cotton argues that the district court erred by instructing the jury on causation in a way that violated his constitutional right to present a defense. The district court correctly instructed the jury that the victim's failure to wear a seatbelt cannot be the sole proximate cause of her death. Cotton did not preserve arguments that the district court's instructions failed to comply with *State v. Adams* and should have adopted Restatement (Third) of Torts principles governing the "scope of liability." Because the district court applied well-established rules to preclude Cotton's seatbelt argument, it did not violate the right to present a defense.

Cotton also argues the prosecutor committed a "golden-rule" error by asking the jury to place itself in the victim's shoes. The State's advocacy was tied to the facts and sought to highlight that Cotton could easily seek to

blame the victim because she was deceased and could not testify. The fleeting reference did not affect a verdict supported by overwhelming evidence.

Cotton also argues his crime is not a forcible felony and then asks to reform the sentencing order to eliminate that notation. The State agrees. The conviction should be affirmed with directions to enter an order nunc pro tunc to deselect the forcible-felony box in the sentencing order.

STATEMENT OF THE FACTS

On February 21, 2023, Curtis Cotton drove his girlfriend's car to the Hard Rock Casino, in Sioux City, Iowa. D0239, Trial Tr. Vol. 3 at 193:24–196:5 (4/24/2025). Entering the parking lot, Cotton's driving was "aggressive," "fast," and "erratic," and he bumped another car as he parked. D0239, Trial Tr. Vol. 3 at 49:7–51:10; Exhibit 10-3. Cotton and his girlfriend, Ashley Bond, were at the Casino from 2:03 p.m. to 3:42 p.m. and drank two mixed drinks containing Rumple Minz (a 100-proof liquor) and Red Bull (a caffeinated beverage). D0239, Trial Tr. Vol. 3 at 51:11–18. Cotton finished his second drink as he walked out the door. D0239, Trial Tr. Vol. 3 at 51:19–22.

Cotton then drove away from the casino aggressively, erratically, and demonstrating poor decision-making. D0239, Trial Tr. Vol. 3 at 51:23–

52:3; Exhibit 10-14. Headed back home to Omaha, Cotton drove recklessly, averaging 84 miles per hour over an 8-mile stretch of southbound Interstate 29 where the speed limit was 65 and 70 miles per hour. D0239, Trial Tr. Vol. 3 at 82:19–83:3. Cotton reached 92 miles per hour. D0239, Trial Tr. Vol. 3 at 84:9–21.

Apart from excessively speeding, Cotton also recklessly maneuvered through traffic. D0240, Trial Tr. Vol. 2 at 89:4–19 (4/23/2025). Another driver, Rachel Fagan, was driving in the left lane to allow a different vehicle to merge onto the interstate when she first noticed Cotton approaching rapidly from behind. D0240, Trial Tr. Vol. 2 at 89:4–90:18. Luckily, Fagan was able to pass the merging vehicle and then shift back to the right lane to avoid Cotton, who veered right—as if to pass her on the right—but then veered back to the left and "flew by." D0240, Trial Tr. Vol. 2 at 90:19–92:6. Fagan thought to herself that the vehicle was going to cause an accident. D0240, Trial Tr. Vol. 2 at 91:1–3. She watched the vehicle driving "erratically, bobbing between the two lanes" ahead of her. D0240, Trial Tr. Vol. 2 at 94:6–95:24. Then she saw "the silver vehicle fly out the right side into the ditch and it rolled several times. And [she] saw a body fly out of the vehicle." D0240, Trial Tr. Vol. 2 at 94:16–19.

Semitruck driver Jason Steele also witnessed the crime. Steele was driving in the right lane and noticed Cotton's vehicle approaching rapidly from behind. D0240, Trial Tr. Vol. 2 at 59:15–60:25. There was also a pickup truck overtaking Steele in the left lane, and a car ahead of Steele. D0240, Trial Tr. Vol. 2 at 61:1–7. As soon as the pickup truck was one car length ahead of Steele's semitruck, Cotton came alongside Steele "in a big hurry to try to split the gap to pass [Steele] and pass the pickup" by merging into the right lane in front of Steele. D0240, Trial Tr. Vol. 2 at 62:1–13. Cotton then

> made it to the right lane and realized that there was a car in front of them, slammed on the brakes very hard directly in front of me, and then jerked the wheel to come back to the left, and then proceeded to lose control of the car.

D0240, Trial Tr. Vol. 2 at 62:1–18. Steele believed the car was being driven "very recklessly." D0240, Trial Tr. Vol. 2 at 63:7–9. He saw the vehicle dart into the ditch and then start to roll. D0240, Trial Tr. Vol. 2 at 63:10–18. After one rotation, he "watched a person come out of the passenger side" "like a rag doll." D0240, Trial Tr. Vol. 2 at 64:19–65:3. Ashley hit the ground and the car rolled on top of her. D0240, Trial Tr. Vol. 2 at 64:7–15. Steele did not see the passenger make any sudden movements or grab the steering wheel—either on the day of the crash or when watching the video at trial. D0240, Trial Tr. Vol. 2 at 77:9–84:25.

Steele's view was captured by a camera fixed to the dash of his truck. D0240, Trial Tr. Vol. 2 at 65:11–66:14. He reported the accident and provided the video to law enforcement. *See* Exhibit 19.

Two motorists stopped immediately. They observed Cotton rummage around in the backseat of the overturned vehicle but never go to check on Ashley until police arrived. D0240, Trial Tr. Vol. 2 at 96:2–98:19. He also did not call 9-1-1. D0240, Trial Tr. Vol. 2 at 12:1–9.

Law enforcement arrived on the scene within four minutes. D0228, Trial Tr. Vol. 1 at 162:4–10 (4/22/2025). The first officer on scene noted Ashley had a light pulse but within minutes her pupils dilated and her pulse and breathing stopped. D0228, Trial Tr. Vol. 1 at 166:5–167:22. Officers and then emergency medical personnel attempted CPR and deployed an IED (which advised no shock) until a helicopter arrived and transported Ashley to a hospital. D0228, Trial Tr. Vol. 1 at 167:23–169:25. Ashley died of blunt force injuries from the accident, including brain and spinal cord hemorrhaging, fractured bones including the pelvis, and lacerated internal organs. D0239, Trial Tr. Vol. 3 at 165:3–171:2; 183:14–184:4.

Multiple law enforcement officers observed Cotton to have bloodshot and watery eyes along with a strong odor of alcoholic beverage. D0228, Trial Tr. Vol. 1 at 171:11–23; D0240, Trial Tr. Vol. 2 at 117:14–25; 182:14–

18. His emotions varied widely. D0228, Trial Tr. Vol. 1 at 171:18–23; D0240, Trial Tr. Vol. 2 at 113:21–24. At one point, Cotton was warming himself in the front passenger seat of a patrol vehicle while officers were busy with other tasks; Cotton climbed out of the vehicle and urinated near the passenger door of the patrol vehicle. D0240, Trial Tr. Vol. 2 at 117:4–13. Trained to detect intoxicated driving, these officers suspected Cotton was under the influence of alcohol or drugs and obtained a search warrant to test his blood. D0228, Trial Tr. Vol. 1 at 175:1–23. The resulting blood draw occurred approximately four hours after the accident and revealed a BAC of 0.124 grams per 100-milliliters. D0240, Trial Tr. Vol. 2 at 202:2–7; D0239, Trial Tr. Vol. 3 at 124:7–13. Factoring in a burn-off rate of 0.010 to 0.025 per hour, Cotton's BAC was higher by 0.040–0.10 at the time of the accident. D0239, Trial Tr. Vol. 3 at 130:15–131:3. He also had marijuana in his system. D0239, Trial Tr. Vol. 3 at 143:24–144:5.

Cotton lied to law enforcement officers, repeatedly and adamantly saying that Ashley was the driver. D0240, Trial Tr. Vol. 2 at 187:1–11; Exhibit 5. He never mentioned to anyone that Ashley had grabbed the wheel while he was driving, causing the accident. D0240, Trial Tr. Vol. 2 at 203:2–10. Road conditions were good that day, and the accident occurred on a straight and flat portion of the interstate. D0240, Trial Tr.

Vol. 2 at 25:5–11; 112:20–113:3; D0239, Trial Tr. Vol. 3 at 31:16–19. Cotton's vehicle was in good working order. "There was no mechanical issues with the vehicle that would have led to this crash." D0239, Trial Tr. Vol. 3 at 44:19–46:5. Instead, Cotton's intoxicated driving caused the crash. D0239, Trial Tr. Vol. 3 at 90:1–2.

ARGUMENT

I. The district court correctly instructed the jury on causation.

Preservation of Error

"Error preservation applies to jury instructions." *State v. Thompson*, 35 N.W.3d 569, 581 (Iowa 2026). Cotton preserved only some of the errors he alleges on appeal.

In the district court, Cotton argued Instruction 12 was incorrect. D0241, Trial Tr. Vol. 4 at 23:21–42:1 (4/25/2025); Instruction 12 ("Ashley Bond's failure to wear a seatbelt cannot be a sole proximate cause of her serious injury or death."). As a corollary, he argued that being prevented from arguing that the victim's failure to wear a seatbelt was the sole proximate cause of the crash violated his right to present a defense. D0118, Resistance to Motion in Limine (4/25/2025).

By contrast, Cotton did not reference the Restatement (Third) of Torts or argue for causation principles tied to a risk-based analysis or scope-of-liability analysis. Similarly, he did not cite *State v. Adams*, 810

N.W.2d 365, 371 (Iowa 2012), or argue that the district court's instructions violated that case. Indeed, *Adams* is a "factual" causation case, whereas Cotton's argument—both in the district court and on appeal—deals with legal causation. *See id.* at 372 ("Our review of this case leads us to conclude that this is just such a 'normal' case in which "our law . . . requires us to consider if the criminal act was a factual cause of the harm.' " (quoting *State v. Tribble*, 790 N.W.2d 121, 126–27 (Iowa 2010)).

The court should not entertain Cotton's new arguments for the first time on appeal. *See Lamasters v. State*, 821 N.W.2d 856, 862 (Iowa 2012) (" 'It is a fundamental doctrine of appellate review that issues must ordinarily be both raised and decided by the district court before we will decide them on appeal.' *Meier v. Senecaut*, 641 N.W.2d 532, 537 (Iowa 2002)."); *State v. Rutledge*, 600 N.W.2d 324, 325 (Iowa 1999) ("Nothing is more basic in the law of appeal and error than the axiom that a party cannot sing a song to us that was not first sung in trial court.").

Standard of Review

Iowa's appellate courts " 'review challenges to jury instructions under a corrections-of-errors-at-law standard.' " *Thompson*, 35 N.W.3d at 574 (quoting *State v. Cooley*, 21 N.W.3d 137, 141 (Iowa 2025)).

Merits

Cotton asserts the district court's causation instructions were erroneous in several ways—some preserved, some unpreserved—that combined to violate his right to present a defense. Because the instructions were correct, Cotton's right to present a defense was satisfied.

A. The right to present a defense does not include the right to present an erroneous legal argument.

Cotton primarily argues his right to present a defense was denied when the district granted the State's motion in limine, preventing him from arguing the victim's failure to wear a seat belt was the proximate cause of her death. The evidence was irrelevant (and would cause confusion) because it could not have equated to a superseding cause as a matter of law.

" '[S]tate and federal rulemakers have broad latitude under the Constitution to establish rules excluding evidence from criminal trials.' " *Holmes v. South Carolina*, 547 U.S. 319, 324 (Iowa 2006) (quoting *United States v. Scheffer*, 523 U.S. 303, 308 (1998)). The U.S. Constitution secures "a meaningful opportunity to present a defense," but is subject to rational rules by the states. *Id.* "This right is abridged by evidence rules that infringe upon a weighty interest of the accused and are arbitrary or disproportionate to the purposes they are designed to serve." *Id.* (quotations and marks omitted). Yet, most well-established rules of

evidence—like those governing irrelevant or unfairly prejudicial evidence—do not present a due process problem. *Id.*

Here, evidence that Ashley Bond did not fasten her seatbelt was irrelevant under Iowa law. In short, " a defendant cannot escape criminal responsibility for homicide merely because factors other than his acts contributed to the death, provided such other factors are not the sole proximate cause of death." *State v. Hubka*, 480 N.W.2d 867, 869 (Iowa 1992). Stated otherwise, "the alleged contributory negligence of a homicide victim may not be used as a defense in a subsequent homicide prosecution." *Id.* "Even assuming the lack of seat belts or other restraints as *a* proximate cause of the victims' deaths, *i.e.*, that this was a 'substantial factor' contributing to their deaths, it certainly was not the *sole* proximate cause thereof." *Id.* at 870 (emphases in original). Here, no reasonable juror would have concluded that Cotton's intoxicated driving, highlighted by his recklessness, was not a proximate cause of Ashley's death.

Importantly, Cotton fails to recognize that the district court *did* allow him to reference the fact that the victim was not wearing a seatbelt. The district court explained: "So I'm not going to prevent you from making reference in your argument that she wasn't wearing her seatbelt or that they weren't wearing their seatbelts, but I'm going to prevent you from arguing

that that's the cause of her death." D0241, Trial Tr. Vol. 4 at 10:10–14. That was the court's role. "[R]ules that restrict an actor's responsibility under theories of superseding cause are for the court to apply rather than the jury." *See State v. Murray*, 512 N.W.2d 547, 550 (Iowa 1994).

The court also allowed defense counsel to argue that the State had not carried its burden to prove that Cotton's intoxicated driving was a substantial factor in Ashley's death based on the facts of the case. D0241, Trial Tr. Vol. 4 at 10:19–13:9. And in closing argument, defense counsel argued that the State failed to prove Cotton's driving was a substantial factor in Ashley's death—in part because she was not wearing her seatbelt. D0241, Trial Tr. Vol. 4 at 62:1–15. The court only prevented Cotton from arguing that the failure to wear a seatbelt was the sole proximate cause—because longstanding law governing causation does not allow it. The right to present a defense guarantees the right to present a party's version of the facts; it does not guarantee the right to make legally erroneous arguments.

B. *Hubka* is one application of a broader rule of causation.

Recognizing that *Hubka* defeats his claim, Cotton seeks to distinguish it or have it overruled. The court should not accept that invitation.

Cotton seeks to distinguish *Hubka* because the victims in *Hubka* were children, whereas Ashley was an adult. But the controlling rationale in

Hubka was not that that the victims bore no responsibility, it was that Hubka's actions remained an operative factor—a "substantial factor." 480 N.W.2d at 870. The same is true here.

Zooming out, an act must be a factual and legal cause of death for criminal liability to attach. In other words, two conditions must be met to establish causation: "the event would not have occurred without the act; [and] the act made the event more likely." *State v. Garcia*, 616 N.W.2d 594, 596 (Iowa 2000) (quoting *State v. Murray*, 512 N.W.2d 547, 550 (Iowa 1994)). The first condition speaks of cause-in-fact or "but for" causation. The second condition is necessary "to rule out cases in which . . . the act did not create the kind of dangerous condition that would make such events more likely to occur." *Id.* Cotton's argument in the district court spoke to the second, where *Hubka* governs.

Yet, *Hubka* is merely one application of a broadly applicable rule that an intervening cause is only a superseding cause when it is the sole proximate cause. 480 N.W.2d at 869. In other words, the "defendant can be relieved of criminal responsibility if an intervening act breaks the chain of causal connection between the defendant's actions and the victim's death." *Garcia*, 616 N.W.2d at 597.

Certain principles limit the reach of this doctrine. As the Iowa Supreme Court explained, only rarely will an intervening force become a superseding cause:

> The intervention of a force which is a normal consequence of a situation created by the actor's negligent conduct is not a superseding cause of harm which such conduct has been a substantial factor in bringing about.

Murray, 512 N.W.2d at 551 (quoting Restatement (Second) of Torts § 443 (1965)) (emphasis in *Murray*). In this context, "normal" does not mean "usual" and it does not rely on foreseeability. *Id.* (quoting Restatement (Second) of Torts § 443 cmt. b). "It means that the court or jury, looking at the matter after the event, and therefore knowing the situation which existed when the new force intervened, does not regard its intervention as so extraordinary as to fall outside of the class of normal events." *Id.* (quoting Restatement (Second) of Torts § 443 cmt. b).

Strictly speaking, Ashley's act of not fastening her seatbelt preexisted Cotton's intoxicated collision. Thus, it should not be considered an intervening act. But even as an intervening act, it should not relieve Cotton of liability for creating the exact type of harm that befell Ashley.

An act is a legal cause of harm if the act created the type of dangerous condition that would make such events more likely to occur. *Garcia*, 616 N.W.2d at 596–97. The evidence in this case demonstrated that intoxicated

driving creates the type of dangerous condition (an inability to maintain proper control of an automobile) that would make deadly traffic accidents more likely to occur.

Alcohol is a nervous system depressant that "interferes with the brain's ability to communicate with muscles, which leads to decreased coordination." D0239, Trial Tr. Vol. 3 at 86:19–87:1. Alcohol also "delays the brain's processing speed, making it harder to react to unexpected situations." D0239, Trial Tr. Vol. 3 at 87:2–4. It affects cognitive ability, field of view, and depth perception—"making it difficult to judge proximity and speeds of other vehicles." D0239, Trial Tr. Vol. 3 at 87:5–11. These negative outcomes increase as the level of alcohol consumed rises. D0239, Trial Tr. Vol. 3 at 87:12–14. Alcohol also affects judgment. D0239, Trial Tr. Vol. 3 at 15–17. In short, alcohol is bad for divided-attention tasks like driving. D0239, Trial Tr. Vol. 3 at 129:1–16. Marijuana also negatively impacts driving. D0239, Trial Tr. Vol. 3 at 149:1–13.

All these negative effects of alcohol were apparent in Cotton's driving. He exercised poor judgment in speed and maneuvering; he failed to react appropriately to changing conditions; and he ultimately failed to control his vehicle. These are exactly the dangerous conditions expected from intoxicated driving, and they remained operative as the car rolled through

the ditch and regardless of whether Ashley wore a seatbelt. Instruction 11 conveyed the correct law defining proximate causation.

C. The Restatement (Third) of Torts also does not relieve Cotton of liability.

Perhaps recognizing that longstanding law on legal causation is against him, Cotton argues Iowa courts should adopt a "scope of liability" analysis from the Restatement (Third) of Torts used for negligence. As noted above, Cotton did not preserve this argument in the district court.

Nonetheless, the evidence would have resulted in a conviction under the newer risk-based standard found in the Restatement (Third) of Torts. Under that standard, an actor's "scope of liability" "is limited to those physical harms that result from the risks that made the actor's conduct tortious." Restatement (Third) of Torts: Liability for Physical Harm § 29. The heightened risk of collision is what makes intoxicated driving a crime (and tortious). Ashley's harm (death) resulted from a collision that occurred due to Cotton's intoxicated driving. Therefore, the physical harm in this case resulted from the risks that made the conduct criminal, satisfying the risk-based standard.

Further, to the extent this court looks to the Restatement (Third) of Torts, the scope of liability for intentional and reckless torts would provide a better fit in a criminal case than the standard for negligence cases. "An

actor who intentionally or recklessly causes harm is subject to liability for a broader range of harms than the harms for which that actor would be liable if only acting negligently." Restatement (Third) of Torts: Liability for Physical Harm § 33(b); *Spreitzer v. Hawkeye State Bank*, 779 N.W.2d 726, 741 (Iowa 2009) (recognizing broader scope of liability for intentional and reckless torts). One who intentionally or recklessly causes harm should be liable for any harm whose risk was increased by his conduct, even if it was unlikely. Restatement (Third) Torts § 33(a). Driving an automobile under the influence is reckless and increases the risk of accidents. By increasing the risk of the harm, Cotton legally caused the harm in this case—even under a scope-of-liability analysis.

D. The district court correctly instructed the jury according to *State v. Adams*.

Facing an uphill battle on proximate causation, Cotton turns to factual causation, citing *State v. Adams*. He failed to preserve the claim, having failed to cite *Adams* below. That case cannot help him anyway.

In *State v. Adams*, an intoxicated driver, operating a vehicle with one functioning headlight, struck and killed a bicyclist in the middle of the night, then fled the scene. 810 N.W.2d at 367. Adams argued "his trial counsel was ineffective in failing to challenge the State's proof of a causal (factual) connection between his criminal act and the victim's death and in

failing to challenge the district court's jury instruction addressing the State's burden of proof of factual causation." *Id.* at 372 n.7. Thus, *Adams* addresses only cause-in-fact, it does not deal with legal cause. The court explicitly refrained from addressing legal cause. *Id.* at 372 n.7.

As the court explained, "the causation question in a prosecution under Iowa Code section 707.6A(1) asks whether the victim's death would have occurred in the absence of the defendant's criminal act—intoxicated driving." *Id.* at 372. In explaining this standard, the court explicitly rejected an argument that the State must establish the driver's intoxicated state contributed to the accident, holding Iowa Code section 707.6A(1) "does not impose a burden on the State to prove a specific causal connection between the defendant's *intoxication* and the victim's death." *Adams*, 810 N.W.2d at 371 (emphasis in original). Certainly, "the statute demands more than mere proof that the defendant's driving caused the death of another person." *Id.* But that does not mean the intoxication must have caused the death.

Instead, *Adams* held, the Iowa Code requires "proof of a factual causal connection between a specific criminal act—'intoxicated driving'—and the victim's death." *Id.* at 371. The instruction given in *Adams* failed this requirement because it required only that "Defendant's actions

unintentionally caused the death." By contrast, the court urged "district courts to use the uniform instruction in cases of this type." *Id.* at 373 n.8. That instruction, "would expressly require proof that the defendant's act or acts set out in element 1 (the criminal act of intoxicated driving) caused a death." *Id.* That is exactly how the district court instructed the jury in this case. *See* Instruction 10.

As the Iowa Supreme Court explained in *Tribble*, its "principles of factual causation do not relieve a person of criminal responsibility based on multiple acts when each act is regarded as a factual cause." 790 N.W.2d at 129 (citing Restatement (Third) Torts § 27 cmt. c, at 378 ("A defendant whose tortious act was fully capable of causing the plaintiff's harm should not escape liability merely because of the fortuity of another sufficient cause."). Cotton's intoxicated driving cased Ashley's death.

E. No prejudice occurred.

If the court's instructions contained an error, it was harmless. The evidence overwhelmingly established that Cotton caused Ashley's death under any standard of causation.

"Courts rarely attain perfection in instructing juries." *Borough v. Minneapolis & St. L.R. Co.*, 197 N.W. 312, 313 (Iowa 1924). And a criminal defendant is entitled to a fair trial, not a perfect one. *State v. Freeman*, 297

N.W.2d 363, 367 (Iowa 1980). Thus, "[w]hen a nonconstitutional error is claimed, as in this case, the test is whether the rights of the objecting party have been 'injuriously affected by the error' or whether the party has 'suffered a miscarriage of justice.' " *State v. Parker*, 747 N.W.2d 196, 209 (Iowa 2008) (quotation omitted). In other words, reversal is inappropriate when the error is harmless. *Id.*

The court considers "a variety of circumstances in determining the existence of harmless error, including the existence of overwhelming evidence of guilt." *Id.* "The presumption of prejudice is overcome when the jury received 'strong evidence' of a defendant's guilt." *State v. Plain*, 898 N.W.2d 801, 817 (Iowa 2017). The evidence in this case was more than strong.

The State's evidence proved Cotton operated while intoxicated under all three alternatives—under the influence, alcohol concentration of 0.80, and presence of a controlled substance in Cotton's blood. He does not contest this.

As the district court noted even before ruling that Cotton could not argue the failure to wear a seatbelt is not a superseding case, the thrust of Cotton's defense was that Ashley grabbed the wheel: "And I will also say that the defense appears to me to be primarily based upon the suggestion

that she reached over and pulled the steering wheel." D0241, Trial Tr. Vol. 4 at 10:4–6. The only evidence of that was Cotton's own self-serving and unbelievable testimony. Neither the eyewitnesses nor the video evidence supported it. And Cotton had no credibility because he lied to police more than two dozen times on the day of the crime—adamantly denying he was the driver.

On the other hand, the evidence that Cotton's intoxicated driving caused the crash was ironclad. *See State v. Sallis*, No. 23-1588, 2025 WL 1066522, at *6 (Iowa Ct. App. April 9, 2025) (holding evidence that alcohol impairs driving "combined with the evidence concerning Sallis's intoxication—provides substantial evidence to support the jury's conclusion that Sallis's intoxicated driving caused Vickers's death."); *State v. Schaul*, No. 15-0466, 2016 WL 2745934, at *4 (Iowa Ct. App. May 11, 2016) (concluding evidence of a defendant's intoxication combined with an expert's testimony that "blood alcohol content as low as .05 can result in lack of coordination, slowed reaction time, diminished ability to pay attention, decreased peripheral vision, and a slower ability to adapt to changes in light" constituted substantial evidence of factual causation).

Finally, the scope-of-liability analysis was meant to eliminate confusion, not to tilt the playing field, or change outcomes. Indeed, "[t]he

concepts embodied in the Restatement (Third) . . . have largely been adopted from various sections of the Restatement (Second)." *Royal Indem. Co. v. Factory Mut. Ins. Co.*, 786 N.W.2d 839, 849 (Iowa 2010). Any instructional error would not have affected the outcome.

II. No prosecutorial error occurred.

Preservation of Error

The State does not contest error preservation.

Standard of Review

The district court has broad discretion in ruling on claims of prosecutorial error, and appellate court review of those rulings is for abuse of discretion. *State v. Thornton*, 498 N.W.2d 670, 676 (Iowa 1993); *State v. Plain*, 898 N.W.2d 801, 811 (Iowa 2017). Cotton argues the standard of review should be de novo because prosecutorial error is based on due process. Yet, Cotton did not assert a constitutional error in his motion for new trial. Indeed, federal courts have held multifactor prosecutorial misconduct analyses like that described in *State v. Graves*, 668 N.W.2d 860 (Iowa 2003), do not present federal constitutional claims. *Parker v. Matthews*, 567 U.S. 37, 49 (2012) (per curiam) ("The highly generalized standard for evaluating claims of prosecutorial misconduct set forth in *Darden* bears scant resemblance to the elaborate, multistep test employed by the Sixth Circuit here."). By contrast, *Darden v. Wainwright*, 477 U.S.

168 (1986), establishes the simple standard for federal prosecutorial misconduct claims. *Cole v. Roper*, 623 F.3d 1183, 1194 (8th Cir. 2010). Even so, judicial application of the multifactor test set out in *Graves* demands more discretion from the district court—and correspondingly more deference by an appellate court—than the simpler test from *Darden*. Either way, "the trial court is in the better position to determine if prejudice resulted from the prosecutor's conduct because that court observed the alleged misconduct and the jury's reaction." *State v. Bishop*, 387 N.W.2d 554, 561 (Iowa 1986).

Merits

Cotton asserts the State committed prosecutorial error during rebuttal argument. Specifically, Cotton asserts the prosecutor made a "golden rule" violation by asking the jury to place itself in the victim's shoes. To the contrary, the prosecutor employed an "embellishment of oratory" to point out that it was easy for Cotton to blame the dead victim.

Recall, Cotton adamantly told police that he was not the driver. When video evidence refuted that claim, he had to change his story. For the first time at trial, he asserted that Ashley grabbed the steering wheel before the accident. The State cross-examined Cotton by pointing out twenty-two times Cotton failed to tell law enforcement or medical professionals that

Ashley caused the accident by grabbing the wheel. D0239, Trial Tr. Vol. 3 at 230:4–11. In response, Cotton claimed that he lied to police to *protect* Ashley:

> Well, my explanation for the reasons why I didn't tell the truth was because after witnessing and experience [sic] what I just went through, knowing that she grabbed the wheel, I didn't want it to be the blame or the cause for the accident, nor her death, if she didn't make it.

D0239, Trial Tr. Vol. 3 at 231:1–8.

Defense counsel's closing focused on the victim: "Ashley Bond grabbed the wheels [sic] causing Mr. Cotton to pull up to the left because of that. That's what caused the vehicle to make that abrupt change and then fly out of control." D0241, Trial Tr. Vol. 4 at 60:21–24.

In rebuttal, the prosecutor responded to Cotton's focus on the victim by reference to the facts:

> Now, the defendant said that he was not truthful because he was trying to protect Ashley, the love of his life. They were going to get married. Apparently he got over that and decided he wasn't going to protect her anymore. I don't need to do that anymore, I'm going to take the stand. He's protecting himself. That's what he's doing. He's protecting himself from what he did on that day and the person that he wants to blame is the one person who is not here to defend herself.
>
> The traumatic and sad irony of that, the one person who can't come and say what happened in contrast to the defendant's story, is Ashley Bond. She has no voice. But she does. It's you. You are her voice for what happened when the accident happened.

D0241, Trial Tr. Vol. 4 at 63:22–64:12.

A "golden rule" argument is one that directly asks the jurors to put themselves in the victim's position or look at the case through the eyes of the victim. *Belhak v. Smith,* 21 N.W.3d 535, 543 (Iowa 2025). Such arguments are disfavored because they ask the jury to decide the case on something other than the law and the facts. *Id.*

By contrast, here the State was asking the jury to accept its evidence, and to reject Cotton's testimony, by pointing out that that it is easy to blame the victim when she cannot testify due to being deceased. In other words, "the prosecutor's purpose was to call the jurors' attention to the circumstances of the victim or of a witness, for the purpose of discussing the evidence and helping the jurors to understand the actions or testimony of that person." *State v. May*, No. 04-1170, 2005 WL 3477983, at *7 (Iowa Ct. App. Dec. 21, 2005). In such cases, courts have held the argument to be proper. *Id.*

" 'In closing arguments, counsel is allowed some latitude. Counsel may draw conclusions and argue permissible inferences which reasonably flow from the evidence presented.' " *State v. Carey*, 709 N.W.2d 547, 554 (Iowa 2006) (quoting *State v. Thornton*, 498 N.W.2d 670, 676 (Iowa 1993)). "[A] prosecutor is allowed to use embellishments of oratory and

express ideas in the prosecutor's own way." *Martin v. State*, No. 12-2240, 2014 WL 69542, at *7 (Iowa Ct. App. Jan. 9, 2014). Indeed, it has long been the advocate's duty.

> The sorrowing, "gray-haired parents," upon the one hand, and the broken-hearted "victim of man's duplicity," upon the other, have adorned the climax and peroration of legal oratory from a time "whence the memory of man runneth not to the contrary," and for us at this late day to brand their use as misconduct would expose us to just censure for interference with ancient landmarks.

State v. Blanks, 479 N.W.2d 601, 604 (Iowa Ct. App. 1991) (quoting *State v. Burns*, 119 Iowa 663, 671, 94 N.W. 238 (1903)). Here, the prosecutor employed rhetoric, but not in a way urging the jurors "to place themselves in the position of the victim and decide the case from that perspective." *May*, 2005 WL 3477983, at *7.

And if any error occurred, there was no prejudice. For, "it is not a prosecutor's misconduct which entitles defendant to a new trial; it is the prejudice which results therefrom and which prevents the trial from being a fair one." *State v. Webb*, 244 N.W.2d 332, 333 (Iowa 1976). Factors relevant to this question include:

> (1) the severity and pervasiveness of misconduct; (2) the significance of the misconduct to the central issues in the case; (3) the strength of the State's evidence; (4) the use of cautionary instructions or other curative measures; and (5) the extent to which the defense invited the misconduct.

Id.

Taken together, these factors show the jury in this case convicted Cotton based on the law and the record evidence. First, the purported misconduct was not persistent. "Prejudice results from persistent efforts to inject prejudicial matter before the jury. Prejudice can, but usually does not, result from isolated prosecutorial misconduct." *State v. Anderson*, 448 N.W.2d 32, 34 (Iowa 1989) (quotations and marks omitted). Instead, it occurred exclusively during rebuttal argument. This is an area where the courts " 'cut a little slack' to prosecuting attorneys." *Carey*, 709 N.W.2d at 559. And the remarks were not severe. They are much different than other remarks that have been labeled misconduct—like disparaging the defendant or confusing the burden of proof.

The reason Cotton lied was not a central issue in the case. The accident occurred on video, and a blood draw confirmed what multiple trained law enforcement officers had already observed—Cotton was intoxicated. Indeed, the jury was able to view his demeanor in many minutes of video.

The strength of the State's case also disproves prejudice. "The most important factor in our determination of whether any prosecutorial misconduct rose to the level of prejudice to demonstrate a due process

violation is the strength of the State's evidence." *State v. Coleman*, 907 N.W.2d 124, 141 (Iowa 2018). "Clearly, the stronger the case against the defendant, the less likely the jury is to look beyond the record." *Carey*, 709 N.W.2d at 669. Again, the evidence was overwhelming.

Also, the court inoculated against any prejudice by clearly and repeatedly instructing the jury to decide the case based on the evidence, and not the statements of lawyers. *See* D0190, Preliminary Jury Instructions at 5 (4/25/2025) (explaining statements of lawyers not evidence); at 6 ("In considering the evidence, make deductions and reach conclusions according to reason and common sense."); at 7 ("Decide the facts from the evidence."); at 8 ("You must determine whether the defendant is guilty or not guilty from the evidence and the law in these instructions."); at 8 ("As you consider the evidence, do not be influenced by any personal sympathy, bias, prejudices or emotions."). "A jury is presumed to have followed its instructions absent evidence to the contrary." *State v. Morrison*, 368 N.W.2d 173, 176 (Iowa 1985).

And, finally, Cotton's line of defense demanded that the State point out the common-sense notion that Ashley could not challenge Cotton's story because she had tragically died. Any error was not prejudicial.

III. The district court should enter a nunc pro tunc order correcting the sentencing order.

Preservation of Error

The State does not contest error preservation.

Standard of Review

Review is for errors at law. Iowa R. App. P. 6.907.

Merits

Cotton argues the district court erroneously checked a box indicating that homicide by vehicle is a forcible felony. The State agrees. Although Iowa Code section 707.6A is like a forcible felony in that the court cannot defer or suspend judgment or sentence, it is not one of the felonies listed in Iowa Code section 702.11.

The district court made a clerical error. "An error is clerical in nature if it is not the product of judicial reasoning and determination." *State v. Hess*, 533 N.W.2d 525, 527 (Iowa 1995). "The district court may correct a clerical error in a judgment entry through issuance of a nunc pro tunc order." *Id.* If an appellate court determines there has been a clerical error, it should affirm and "direct the district court to enter an order nunc pro tunc to correct the judgment entry." *Id.* The court should affirm Cotton's conviction and sentence and remand to allow the district court to fix the clerical error with a nunc pro tunc order.

CONCLUSION

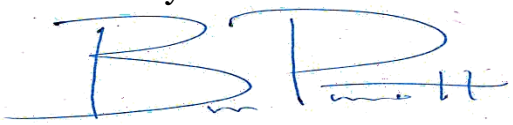
A fair trial, free of prosecutorial error, overwhelmingly proved that Cotton's intoxicated driving caused the Ashley's death. The conviction should be affirmed.

REQUEST FOR NONORAL SUBMISSION

This case is appropriate for submission without oral argument.

Respectfully submitted,

BRENNA BIRD
Attorney General of Iowa



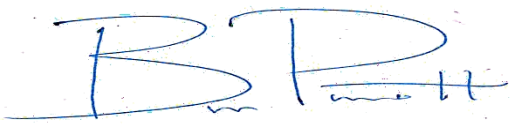
BENJAMIN PARROTT
Assistant Attorney General
Hoover State Office Bldg., 2nd Fl.
Des Moines, Iowa 50319
(515) 281-5976
Benjamin.Parrott@ag.iowa.gov

CERTIFICATE OF COMPLIANCE

This brief complies with the typeface requirements and type-volume limitation of Iowa Rs. App. P. 6.903(1)(g) and 6.903(1)(i)(1) or (2) because:

- This brief has been prepared in a proportionally spaced typeface using Georgia in size 14 and contains **6,651** words, excluding the parts of the brief exempted by Iowa R. App. P. 6.903(1)(i)(1).

Dated: August 12, 2026



BENJAMIN PARROTT
Assistant Attorney General
Hoover State Office Bldg., 2nd Fl.
Des Moines, Iowa 50319
(515) 281-5976
Benjamin.Parrott@ag.iowa.gov