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IN THE SUPREME COURT OF IOWA

Supreme Court No. 25-0639

STATE OF IOWA,
Plaintiff–Appellee,

v.

RHETT BRYAN WICKETT,
Defendant–Appellant.

APPLICATION FOR FURTHER REVIEW FROM THE IOWA COURT OF APPEALS

Iowa District Court for Warren County
The Honorable Kevin Parker, Judge
Warren County No. AGCR035150

COURT OF APPEALS DECISION FILED JULY 22, 2026
APPLICATION FOR FURTHER REVIEW

Christopher A. Kragnes, Sr. (AT0004355)
KRAGNES & ASSOCIATES, PC
1000 73rd Street, Suite 23
West Des Moines, Iowa 50265
515.282.9200
chris@ktkpc.com
ATTORNEY FOR DEFENDANT–APPELLANT

QUESTIONS PRESENTED FOR REVIEW

I. When an indictable charge results in a lesser-included simple-misdemeanor conviction within a mixed judgment, does rule 6.151 require the appellate court to treat a timely notice of appeal as an application for discretionary review?

II. Did the Court of Appeals apply the correct sufficiency benchmark to the harassment convictions when the unobjected-to marshaling instructions required communication with and specific intent toward each named victim?

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STATEMENT SUPPORTING FURTHER REVIEW

Further review is warranted because the Court of Appeals stopped its analysis of Count III after concluding that Wickett had no direct appeal as of right from his simple-misdemeanor conviction. *State v. Wickett*, No. 25-0639, slip op. at 7 (Iowa Ct. App. July 22, 2026). That proposition is correct but incomplete.

Count III began as an indictable offense. The State charged Wickett with assault causing bodily injury, a serious misdemeanor, and the jury convicted him only of the lesser-included simple assault. (D0040, 2d Am. & Substituted Trial Information at 1 (2/24/2025); D0082 at 3; D0106 at 54:5–9.) *Tyrrell v. Iowa District Court* holds that although a defendant in that posture has no appeal as of right, discretionary review remains available under Iowa Code section 814.6(2)(d). 413 N.W.2d 674, 675 (Iowa 1987).

Rule 6.151 addresses what should occur when the wrong form of appellate review has been invoked. It provides that the case "will not be dismissed, but will proceed as though the proper form of review had been requested." Iowa R. App. P. 6.151(1). The Court of Appeals has applied that procedure in materially similar cases involving lesser-included simple-misdemeanor convictions. See *State v. Berwanger*, No. 23-1949, 2025 WL 403958, at *1 n.1 (Iowa Ct. App. Feb. 5, 2025); *State v. Wassom*, No. 23-1891, 2024 WL 4615751, at *2 (Iowa Ct. App.

Oct. 30, 2024). The Iowa Supreme Court has likewise treated a notice of appeal from a mixed judgment as a request for discretionary review of an included simple-misdemeanor conviction. *State v. Watts*, 801 N.W.2d 845, 850 n.2 (Iowa 2011).

The panel here cited *Tyrrell* only for the absence of an appeal as of right. It did not determine whether rule 6.151 required the proceeding to continue as one for discretionary review or whether substantial justice warranted review under rule 6.106. Count III presented a preserved and separately briefed justification dispute, so the substantial-justice inquiry was not merely academic. That procedural question warrants further review, particularly because Iowa decisions distinguish appellate jurisdiction over a case from limitations on appellate authority to decide particular issues. See *State v. Wilbourn*, 974 N.W.2d 58, 66 (Iowa 2022); *State v. Rutherford*, 997 N.W.2d 142, 144–46 (Iowa 2023).

Further review is independently warranted because the Court of Appeals did not measure the harassment convictions against the unobjected-to marshaling instructions. Instructions 22 and 24 required proof that Wickett "communicated with" each named victim and acted with the specific intent to intimidate, annoy, or alarm that victim. Instruction 18 defined specific intent as acting with a "specific purpose in mind." (D0081, Jury Instructions at 6, 8–9 (2/28/2025)). Trial counsel

agreed to those instructions. (D0106, Tr. Jury Trial Day 2 at 13:19–14:10 (2/28/2025)).

Under *State v. Heiller*, 33 N.W.3d 164, 170, 174–75 (Iowa 2026), and *State v. Mathis*, 971 N.W.2d 514, 518 (Iowa 2022), an unobjected-to marshaling instruction supplies the governing benchmark for sufficiency review. The Court of Appeals instead analyzed the harassment convictions under the statutory "personal contact" formulation and did not separately measure the evidence against the instructed "communicated with" requirement or Instruction 18's "specific purpose in mind" formulation. (Ct. App. Op. 6–7.)

The record contains evidence favorable to the State on both harassment counts. The issue is whether that evidence was reviewed under the elements the jury was actually instructed to find. Further review is warranted so that Counts I and II are evaluated under Instructions 18, 22, and 24.

These issues satisfy the grounds identified in rule 6.1103. Count III presents an important question concerning the proper appellate treatment of a lesser-included simple-misdemeanor conviction within a mixed judgment. Counts I and II present a separate methodological conflict with *Heiller* and *Mathis* because the panel measured sufficiency under the statutory formulation rather than the unobjected-to marshaling instructions governing the verdicts.

STATEMENT OF THE CASE

A jury found Rhett Bryan Wickett guilty of second-degree harassment involving Samuel Daniels (Count I), first-degree harassment involving Josie Wickett (Count II), simple assault involving Samuel Daniels (Count III), and assault causing bodily injury involving Dillion Wickett (Count IV). (D0082, Verdict Forms at 1–4 (2/28/2025)). The district court entered one judgment and imposed concurrent sentences totaling an indeterminate term not to exceed two years. (D0088 at 1–4.) Wickett timely appealed from that judgment. (D0096, Notice of Appeal at 1 (4/15/2025)).

The charges arose from events on July 26, 2024. Wickett went to speak with Chad Daniels, a former childhood friend who later married Wickett's former wife. Wickett first went to the home of Chad's parents. Samuel Daniels and Benjamin Camp came there after learning Wickett was present. Camp testified that Sam asked Wickett to leave, Wickett refused, and Wickett moved close to Sam and said: "You don't want to mess with me, Sam. . . . You mess with me and I'll put you in your mom's flower garden there." (D0105, Tr. Jury Trial Day 1 at 135:5–136:10 (2/27/2025)). Sam gave a more serious account, testifying that Wickett threatened to kill him and bury him in the flower garden. (D0105 at 179:2–24.) Wickett denied making a threat and testified that he said Sam was fortunate not to be "laying over there bleeding in the garden." (D0105 at 222:6–22.)

The encounter later moved to Chad's property. Sam and Chad testified that Wickett turned toward Sam and tried to strike him; Camp did not see a punch but described Wickett moving aggressively and characterized Sam's response as defensive. (D0105 at 138:15–141:13, 147:22–148:3, 160:9–162:11, 181:9–183:23.) Wickett testified that Sam struck him without provocation. (D0105 at 226:2–228:8.) The jury returned only the lesser simple-assault verdict on Count III. (D0082 at 3.)

Josie arrived during the continuing confrontation and intervened when Wickett had Dillion in a chokehold. Josie testified that she remained beside Wickett, asked what he was doing there and what the point of the confrontation was, and heard him respond: "Next time that I come here I'm bringing a gun and killing you-all." She testified that she was frightened and then pulled out her phone in an effort to record him repeating the statement. (D0105 at 205:16–207:8.) Chad described the sequence differently. He testified that Josie appeared to pull out her phone, Wickett said something like "I suppose you're going to start recording me," and Wickett then said he would get a gun and kill "all of you." (D0105 at 165:12–166:2.) Both accounts connect the group statement to an interaction with Josie, although neither describes a threat limited to her alone.

Following the successive confrontations, Wickett was placed in an ambulance and later went to the hospital. He testified that he struck his head when

he went to the ground and that his injuries included stitches above and below one eye, facial bruising and cuts, injuries to his knees, feet, elbow, and forearm, five broken ribs, an injury to his ear from being bitten, and an injury in the orbital area that continued to cause pain. The jury also received Defense Exhibits A through G, photographs documenting Wickett's physical condition after the incident. (D0105 at 10:23–11:18, 232:5–235:22.)

At the close of the State's evidence, trial counsel challenged the sufficiency of both harassment counts. As to Count II, counsel specifically questioned "whether a statement was made and specifically whether it was made to her," and argued the evidence showed generalized statements made during a chaotic confrontation. (D0106 at 5:1–6:7.) Counsel renewed the motion after the defense rested. (D0106 at 11:12–12:5.) Counsel then stated there were "no outstanding objections or concerns" with the final instructions. (D0106 at 13:19–14:10.)

Instructions 22 and 24 required the State to prove that Wickett communicated with the named victim, made the qualifying threat, and acted with the specific intent to intimidate, annoy, or alarm that named victim. (D0081 at 8–9.) Instruction 18 defined specific intent as acting with a "specific purpose in mind" and permitted, but did not require, the jury to infer intent from the natural consequences of an act. (D0081 at 6.) The jury convicted Wickett of second-degree

harassment involving Sam and first-degree harassment involving Josie. (D0082 at 1–2.)

On appeal, Wickett challenged the sufficiency of all four convictions, expressly identifying specific intent for harassment as a disputed element. (Appellant's Br. 9–13.) The State separately defended the evidence involving Sam and Josie and expressly relied on Instructions 22 and 24 as the law of the case. (Appellee's Br. 19–23.) The Court of Appeals affirmed Counts I, II, and IV. It declined to review Count III after stating only that Wickett lacked a direct appeal as of right from a simple-misdemeanor conviction. (Ct. App. Op. 6–9.)

ARGUMENT

I. THE COURT OF APPEALS APPLIED ONLY HALF OF *TYRRELL* AND FAILED TO DETERMINE WHETHER DISCRETIONARY REVIEW OF COUNT III WAS WARRANTED.

A. Under *Tyrrell,* the absence of an appeal as of right requires consideration of discretionary review.

Count III did not begin as a simple misdemeanor. The State charged Wickett with assault causing bodily injury on Count III, in violation of Iowa Code sections 708.1(2) and 708.2(2). (D0040, 2d Am. & Substituted Trial Information at 1 (2/24/2025)). The jury rejected that offense and convicted Wickett only of the lesser-included simple assault, and the court announced the verdict as "guilty of assault, which would be the lesser-included." (D0106 at 54:5–9.) Count III

therefore arrived in the district court's indictable docket and became a simple misdemeanor only by operation of the jury's lesser-included verdict.

That is the precise situation *Tyrrell v. Iowa District Court* addressed. There, the defendant was charged with assault causing bodily injury, an indictable misdemeanor, tried to a jury under district-court procedures, and convicted only of the included offense of simple assault. 413 N.W.2d 674, 674–75 (Iowa 1987). The Court held that such a defendant "has no appeal as a matter of right," but that "he would, of course, have the right to apply for a discretionary review under section 814.6(2)(d)." *Id.* at 675. Because a defendant charged with an indictable offense receives the full protections of district-court practice, "[a]ny further review by an appellate court is purely discretionary." *Id.* at 675–76. *Tyrrell* did not end the analysis at the absence of an appeal as of right; it identified discretionary review as the available route and affirmed without prejudice to the defendant's right to seek delayed discretionary review, because the district associate judge's erroneous advice had caused the ordinary deadline to expire. *Id.*

The Court of Appeals applied only the first half of *Tyrrell*. After resolving the harassment counts, the opinion stated: "As to the assault on Sam, Wickett does not have the right to directly appeal his conviction of a simple misdemeanor." (Ct. App. Op. 7.) It cited *Tyrrell* for that proposition and stopped. (*Id.*) But *Tyrrell* itself holds that the same defendant may obtain discretionary review under section

814.6(2)(d), and the current statute preserves both propositions: no appeal as of right from a simple-misdemeanor conviction, Iowa Code § 814.6(1)(a)(1) (2026), and "[d]iscretionary review may be available" for such a conviction, *id.* § 814.6(2)(d). The opinion recognized the exclusion but never addressed the availability of discretionary review that *Tyrrell* and the statute both supply.

B. Rule 6.151 required the court to treat Wickett's notice of appeal as a request for discretionary review, as the Court of Appeals has done in materially similar cases.

Because Wickett filed a notice of appeal rather than an application for discretionary review, Iowa Rule of Appellate Procedure 6.151 governs the next step. It provides that when "the appellate court determines another form of review was the proper one, the case will not be dismissed, but will proceed as though the proper form of review had been requested." Iowa R. App. P. 6.151(1). The court may treat the initiating documents as seeking the proper form of review and may require supporting filings. *Id.* r. 6.151(2). Rule 6.106(2), in turn, authorizes discretionary review when "substantial justice has not been accorded the applicant." Iowa R. App. P. 6.106(2).

The Court of Appeals has repeatedly applied that procedure to the exact posture presented here. In *Berwanger*, the defendant was charged with interference with official acts causing bodily injury, a serious misdemeanor, but the jury convicted him only of the lesser-included simple misdemeanor. No. 23-1949, 2025

WL 403958, at *1 n.1 (Iowa Ct. App. Feb. 5, 2025). Citing *Tyrrell*, the court held there was no appeal as of right, then applied rule 6.151 to "proceed as though the proper form of review had been requested," and resolved whether the grounds for discretionary review existed. *Id*. *Wassom* did the same with two lesser-included simple-assault convictions returned in a jury trial alongside a serious misdemeanor: the court cited *Tyrrell*, treated the appellate filings as an application for discretionary review under rule 6.151, applied the substantial-justice standard, and only then denied review. No. 23-1891, 2024 WL 4615751, at *2 (Iowa Ct. App. Oct. 30, 2024). Each panel did what the *Tyrrell* rule requires; the panel here did not.

The Iowa Supreme Court has itself used that mechanism to reach a simple-misdemeanor count in a mixed judgment. In *State v. Watts* the defendant was convicted of several class "D" felony drug offenses and one simple-misdemeanor drug-paraphernalia offense in a single judgment; he filed a timely notice of appeal but did not separately apply for discretionary review of the misdemeanor. 801 N.W.2d 845, 850 n.2 (Iowa 2011). Citing section 814.6(2)(d) and *Tyrrell*, the Court applied the predecessor to rule 6.151—then-rule 6.108, containing the same "shall not be dismissed, but shall proceed as though the proper form of review had been requested" language—treated the notice of appeal as a request for discretionary review, and granted the request. *Id.* (citing Iowa R. App. P. 6.106).

Watts confirms the applicability of that procedure here: the Supreme Court treated a notice of appeal as a request for discretionary review of a simple-misdemeanor conviction entered as part of a mixed judgment.

The two Supreme Court decisions that frame appellate jurisdiction confirm that a one-line stop is not enough. *Wilbourn* held that "[a]n appellate court either has jurisdiction over a criminal appeal or it does not," and that once a defendant crosses the jurisdictional threshold "as to one ground for appeal, the court has jurisdiction over the appeal"; the court "may lack authority to consider all issues, but that is a different matter." 974 N.W.2d 58, 66 (Iowa 2022). *Rutherford* reinforced that once jurisdiction exists as to one issue, "we have jurisdiction over the entire appeal even if" other provisions "limit[] our authority with respect to specific issues," because "[o]nce a case is within a court's adjudicatory power, other rules or statutes may limit the court's authority to act, but that does not make those provisions jurisdictional." 997 N.W.2d 142, 144–46 (Iowa 2023). *Wilbourn* and *Rutherford* distinguish appellate jurisdiction over a case from statutory limits on authority to decide particular matters, and *Merten*'s special concurrence recently questioned whether issue-specific discretionary-review practices can be reconciled with that distinction. *Merten*, No. 24-1614, slip op. at 6–9 (Iowa Ct. App. Jan. 28, 2026) (Badding, P.J., specially concurring). The Court need not

resolve that broader question here, because at minimum rule 6.151 required the panel to address the proper form of review.

Count III presented a preserved and nonfrivolous substantial-evidence question. (D0106 at 6:8–21; Appellant's Br. 10–13; Appellee's Br. 24–29.) Camp, the only nonfamily eyewitness to the initial physical confrontation, did not see Wickett swing, although he observed Wickett move aggressively toward Sam and characterized Sam's response as defensive. Sam and Chad testified that Wickett swung first, while Wickett testified that Sam struck him without provocation. The jury rejected the charged bodily-injury offense and returned only the lesser simple-assault verdict. Those competing accounts do not themselves compel reversal, but they presented a developed justification and sufficiency dispute warranting the discretionary determination the panel never made. This distinguishes the request from a futile one: the substantial-justice inquiry under rule 6.106 was a live question the panel never reached. This posture differs from the mixed-judgment cases in which discretionary review was denied. In *Wassom*, the court denied review because the simple-misdemeanor challenges rested chiefly on constitutional arguments never raised below and otherwise turned on a routine evidentiary ruling that worked no substantial injustice. Here, by contrast, the Count III justification question was preserved through counsel's motion for judgment of acquittal and separately briefed by both parties, yet no appellate disposition ever adjudicated it.

Reviewing Count III would therefore not be redundant of any issue the panel already resolved.

Wickett does not ask the Court to hold that every simple-misdemeanor count embedded in a mixed judgment must be reviewed on the merits. He asks the Court to confirm that *Tyrrell*, section 814.6(2)(d), rule 6.106, and rule 6.151 required the Court of Appeals to identify discretionary review as the proper form, treat his filings accordingly, and make the discretionary determination—rather than end at the absence of an appeal as of right. Further review should be granted to establish that procedure and to apply it to Count III.

II. THE HARASSMENT CONVICTIONS MUST BE REVIEWED UNDER THE UNOBJECTED-TO MARSHALING INSTRUCTIONS.

A. The instructions are the governing sufficiency benchmark.

Sufficiency claims are reviewed for correction of errors at law. *State v. Lacey*, 968 N.W.2d 792, 800 (Iowa 2021). A defendant's trial and the entry of judgment preserve a sufficiency challenge without a motion specifying each evidentiary deficiency. *State v. Crawford*, 972 N.W.2d 189, 197–98, 202 (Iowa 2022). Wickett nevertheless made a count-specific motion. He challenged specific intent on Count I and, on Count II, whether the alleged statement was made "specifically" to Josie. (D0106 at 5:1–6:7.)

The final instructions were not merely unobjected to; defense counsel affirmatively approved them. Counsel explained that the State had submitted "a

very good draft," the parties had collaborated with the court, the court adopted the defense's requested change to another instruction, and "there are no outstanding objections or concerns." (D0106 at 13:19–14:10.) Thus, this application does not assert instructional error.

The consequence of that agreement is that the marshaling instructions became the law of the case for sufficiency review. *Heiller*, 33 N.W.3d at 170, 174–75; *Mathis*, 971 N.W.2d at 518. *State v. Uranga* illustrates the opposite situation: when a defendant specifically objects to an erroneous marshaling instruction and requests the correct one, sufficiency is measured against the governing law rather than the rejected instruction. 31 N.W.3d 358, 364–65 (Iowa 2026). Wickett made no comparable objection, so *Heiller* and *Mathis* control.

Instruction 22 required the State to prove that Wickett (1) "communicated with Samuel Daniels, without a legitimate purpose, in a manner likely to cause him annoyance or harm"; (2) "communicated a threat to commit bodily injury"; and (3) did so "with the specific intent to intimidate, annoy, or alarm Samuel Daniels." (D0081 at 8.) Instruction 24 required parallel victim-specific findings involving Josie, with a threat to commit murder or willful injury. (D0081 at 9.) Instruction 18 defined specific intent as acting with a "specific purpose in mind." (D0081 at 6.)

The State recognized the governing measure. Its brief quoted the three elements for each count and stated that the instructions constituted the law of the

case. (Appellee's Br. 19–20.) The Court of Appeals described the elements under Iowa Code section 708.7(1)(b) as purposeful personal contact with the intent to threaten, intimidate, or alarm the victim, followed by the qualifying threat. (Ct. App. Op. 6.) That is the statutory formulation recently applied in *State v. Hall*, 35 N.W.3d 538, 541 (Iowa 2026). But it is not the formulation that governed Wickett's jury. *Hall*, however, arose from a bench trial and applied the statutory personal-contact elements directly; it did not involve the law-of-the-case effect of materially different unobjected-to marshaling instructions, and so it does not govern the sufficiency benchmark here. The statute and the instructions supplied materially different benchmarks, and the legal error is the substitution of one formulation for another; in particular, "communicated with" is a more concrete act requirement that proximity alone does not satisfy. The opinion addressed direction and intent in general terms, but it did so under the statutory personal-contact formulation and did not separately measure the evidence against each element in Instructions 18, 22, and 24—particularly the first element requiring communication with the named victim, without legitimate purpose, in a manner likely to cause annoyance or harm.

The State tried the case on that theory. In closing, the prosecutor told the jury the instructed elements were "the only thing that the State needs to prove. No more, no less." (D0106 at 21:14–17.) The prosecutor then argued the first element

by name—that "the defendant communicated with Samuel Daniels without a legitimate purpose." (D0106 at 21:23–22:2.) The "communicated with" requirement was thus the theory actually submitted, not a distinction raised for the first time after the opinion.

B. Count II required separate findings of communication with and specific intent toward Josie.

The complete record contains more victim-specific evidence than the opinion's abbreviated account suggests. Josie testified that after she separated Wickett and Dillion, she stood next to Wickett and asked what he was doing there and what the point of the confrontation was. According to Josie, Wickett responded, "Next time that I come here I'm bringing a gun and killing you-all." She then pulled out her phone because she hoped to record him repeating the threat. (D0105 at 205:16–207:8.) Chad gave a different sequence: Josie appeared to pull out her phone, Wickett said something like "I suppose you're going to start recording me," and then threatened to get a gun and kill "all of you." (D0105 at 165:12–166:2.)

Those accounts permit a rational jury to find a conversational exchange with Josie. They also permit an inference that the plural statement included her. The application therefore does not rest on the inaccurate premise that Josie merely overheard words directed elsewhere. The narrower question is whether the Court

of Appeals separately analyzed the two instructed findings: communication with Josie and a specific purpose to intimidate, annoy, or alarm Josie.

The opinion's stated reasoning did not perform that analysis. It held that the words could be found directed at Josie because "she was standing beside Wickett when he spoke." (Ct. App. Op. 7.) Proximity is sufficient to establish statutory "personal contact," which requires only visual or physical proximity and does not require oral communication. Iowa Code § 708.7(8)(b) (2024). But Instruction 24 required actual communication with Josie, and Instruction 18 required a specific purpose toward her. Proximity answers the statutory contact question; it does not by itself answer either instructed question.

The distinction is consistent with the Supreme Court's harassment decisions. *Hall* involved a direct threat by a defendant standing approximately two feet from one identified manager. 35 N.W.3d at 540. *State v. Button* involved repeated shooting threats made directly to an identified officer, an express confirmation that the defendant meant the threat, and an attempted kick. 622 N.W.2d 480, 482–85 (Iowa 2001). And *Lacey* involved a defendant who went to one victim's workplace, physically attacked him, and threatened to beat him. 968 N.W.2d at 802–05. In each, the defendant's conduct and the intended victim were directly linked. Harassment does not invariably require that degree of direct interaction. But because the marshaling instruction here required communication with a named

victim and a specific purpose toward that victim, the evidence must support those particular findings rather than proximity alone.

In re D.S. does not create a categorical rule that the defendant must initiate the encounter; *Hall* rejected that reading. *Hall*, 35 N.W.3d at 542–43. But *D.S.* remains relevant for the separate principle that the purposeful contact and the specific intent must concern the charged victim at the same time. 856 N.W.2d 348, 352–55 (Iowa 2014). Here, the direct exchanges described by Josie and Chad may satisfy that requirement. The point is that the court must decide the question from those exchanges and the surrounding circumstances under Instructions 18 and 24, not from proximity alone.

Josie's fear and later installation of security cameras were relevant circumstantial evidence. (D0105 at 206:16–207:6.) *Evans* holds that a jury may infer the intent to threaten, intimidate, or alarm from the normal consequences of the defendant's conduct. 672 N.W.2d 328, 331 (Iowa 2003). But Instruction 18 made that inference permissive rather than required: it permitted, but did not require, the jury to infer intent from the natural consequences of an act. (D0081 at 6.) The effect of the words on Josie was thus a permissible starting point, not a substitute for the finding of specific purpose the instruction demanded. The Court of Appeals should have identified the evidence supporting that purpose and

determined whether the inference was reasonable under the instruction the jury received.

Further review is appropriate even though the State has a substantial record-based response. *Heiller* demonstrates that the elements the jury was instructed to find control on appeal: there, an unobjected-to instruction omitted the statutory element of intent to permanently deprive, and the Court held that because the instruction was not challenged, "it became the law of the case," so review turned only on the elements as instructed. 33 N.W.3d at 174. *Heiller* requires the reviewing court to measure sufficiency against the elements the jury was instructed to find, even when those instructions differ from the governing statute. *Id.* at 170, 174. This Court should apply Instructions 18 and 24 to the full record and determine whether Count II is supported as instructed.

C. Count I is stronger for the State, but the opinion still did not apply the instructed elements.

Count I presents the State's stronger record, but it confirms that the benchmark problem was not confined to Count II. Camp testified that Wickett moved close to Sam, addressed him by name, and warned that if Sam "mess[ed]" with him, Wickett would put him in his mother's flower garden. (D0105 at 135:5–136:10.) Chad and Sam described later physical aggression by Wickett, while Camp described aggressive movement and characterized Sam's response as defensive. (D0105 at 138:15–141:13, 160:9–162:11, 181:9–183:23.) Under *Lacey*

and *Evans*, those words and actions provide substantial evidence for the State. *Lacey*, 968 N.W.2d at 804–05; *Evans*, 672 N.W.2d at 331.

Because the jury rejected the charged murder-threat theory and convicted only of second-degree harassment, review must identify the bodily-injury threat supporting the actual verdict and determine whether the surrounding evidence established the specific purpose required by Instructions 18 and 22. (D0082 at 1.) Camp's direct flower-garden account and the later aggression provide substantial evidence for the State, but that evidence must be assessed under the elements governing the verdict. The opinion instead stated and applied the statutory personal-contact formulation rather than the unobjected-to elements that governed the verdict. As a result, it never separately applied the instructed requirement that Wickett "communicated with" the named victim. *Mathis* and *Heiller* require appellate review of the verdict the jury was instructed to return. Further review should be granted so both harassment convictions are tested against Instructions 18, 22, and 24, with the full record and the jury's actual verdicts in view.

CONCLUSION

The Court should grant further review, vacate the portion of the Court of Appeals decision declining review of Count III, treat Wickett's appellate filings as seeking discretionary review, and review Counts I and II under the marshaling instructions governing the verdicts.

Respectfully submitted,

/s/ Christopher A. Kragnes, Sr.
Christopher A. Kragnes, Sr. (AT0004355)
KRAGNES & ASSOCIATES, PC
1000 73rd Street, Suite 23
West Des Moines, Iowa 50265
515.282.9200
chris@ktkpc.com
ATTORNEY FOR DEFENDANT–APPELLANT

CERTIFICATE OF SERVICE

I certify that on August 11, 2026, I electronically filed this Application for Further Review with the Clerk of the Iowa Supreme Court through EDMS, which served all registered parties. I further certify that a copy was served on Rhett Bryan Wickett by email.
/s/ Christopher A. Kragnes, Sr.

CERTIFICATE OF COMPLIANCE

This application complies with the typeface requirements and type-volume limitation of Iowa Rule of Appellate Procedure 6.1103(5) because it was prepared in a proportionally spaced typeface using 14-point Times New Roman and contains 4,576 words, as counted by LibreOffice Writer's word-count feature, excluding the parts exempted by rules 6.903(1)(i)(1) and 6.1103(5)(a).
/s/ Christopher A. Kragnes, Sr.