IN THE SUPREME COURT OF IOWA
Supreme Court No. 21-1043

STATE OF IOWA,
Plaintiff-Appellee,

vs.

JEFFREY LEE STENDRUP,
Defendant-Appellant.

APPEAL FROM THE IOWA DISTRICT COURT
FOR JASPER COUNTY
THE HONORABLE THOMAS P. MURPHY, JUDGE

APPELLEE'S BRIEF

THOMAS J. MILLER
Attorney General of Iowa

KYLE HANSON
Assistant Attorney General
Hoover State Office Building, 2nd Floor
Des Moines, Iowa 50319
(515) 281-5976
(515) 281-4902 (fax)
kyle.hanson@ag.iowa.gov

SCOTT NICHOLSON
Jasper County Attorney

PETER BLINK
Assistant Jasper County Attorney

ATTORNEYS FOR PLAINTIFF-APPELLEE

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ROUTING STATEMENT

The State agrees this case is appropriate for Supreme Court retention, except for a different reason than the defendant urges. The State asks the Court to reexamine its holding on the admissibility of medical examiner testimony in *State v. Tyler*, 867 N.W.2d 136 (Iowa 2015). *Tyler* interferes with the truth-seeking function of trial by artificially limiting expert testimony and depriving the factfinder of specialized knowledge concerning cause and manner of death. Therefore, *Tyler* should either be overruled or limited by expressly approving the use of opinions and hypothetical questions that do not comment on the veracity of another witness.

Medical examiner testimony is crucial evidence in many homicide cases, so this request presents an issue of broad public importance justifying retention and determination by the Supreme Court. *See* Iowa R. App. P. 6.1101(2)(d).

STATEMENT OF THE CASE

Nature of the Case

Defendant Jeffrey Stendrup appeals his convictions following a bench trial finding him guilty of first-degree murder and first-degree robbery.

Course of Proceedings

The State accepts the defendant's statement of the course of proceedings as substantially correct.

Facts

In June 2018, defendant Stendrup had a "falling out" with his longtime friend, victim Jeremy McDowell. Trial Tr. vol. 3, 49:12–16. It ended when Stendrup beat McDowell with a baseball bat, and McDowell never woke up. Trial Tr. vol. 1, 54:7–55:9, Trial Tr. vol. 3, 65:1–25, 70:20–24.

Stendrup engaged in self-help to recover stolen property.

The "falling out" happened when Stendrup was caught in bed with McDowell's girlfriend, Jaycie Sheeder. Trial Tr. vol. 3, 51:4–23. Then, on June 19, Stendrup accused McDowell of helping Stendrup's ex-girlfriend—Shelly Christensen—steal property from his apartment. State's Ex. T-20a (text message # 6579); App. 495. Stendrup threatened, "when I see you I'ma beat your face to the ground you better give me all that shit back." *Id.* (text message # 6570); App. 494; Trial Tr. vol. 2, 98:7–99:13.

On June 20, Stendrup reported to Clive Police that Christensen had stolen property from his apartment and that she took his Honda

and Cadillac. Trial Tr. vol. 1, 84:4–87:7; State's Ex. T-5 (Clive bodycam) at 0:00, 4:30, 8:30, 11:10. He warned, "I'm going to kill that bitch [unintelligible] if you don't find her." State's Ex. T-5 at 14:30. Stendrup was dissatisfied with how long it would take police to follow up and declared, "I'm gonna take care of this myself." *Id.* at 15:50, 17:10; Trial Tr. vol. 1, 92:14–93:11.

Stendrup recruited Andrew Forrest for help getting back the cars Christensen had taken. Trial Tr. vol. 3, 7:24–9:6. When Stendrup discovered where the Honda was, he asked Forrest—who can bench press 365 pounds—to show up in case someone "g[a]ve him a hard time." Trial Tr. vol. 3, 9:7–11:4, 15:10–16:21. Sheeder was with Stendrup. Trial Tr. vol. 3, 9:25–10:8. Stendrup and Christensen yelled at each other, but Stendrup left without the Honda because the police were on the way. Trial Tr. vol. 3, 11:18–13:22.

Early on June 21, McDowell text-messaged Stendrup and Sheeder a tip about where they could find the Cadillac. Trial Tr. vol. 2, 81:18–88:17; State's Ex. T-102 (text-message summary); App. 539–41. Stendrup called Forrest again, who showed up and accompanied Stendrup and Sheeder in an effort to get the keys. Trial Tr. vol. 3, 13:23–14:17, 17:18–23. Stendrup then left a voicemail message for

McDowell threatening, "You better just give me the keys, bud. Otherwise, I'm gonna come find you. I promise you." State's Ex. T-6a (voicemail); Trial Tr. vol. 2, 88:23–90:5.

Stendrup confronted McDowell about the stolen property and beat him with a baseball bat.

Before their "falling out," Stendrup was selling methamphetamine to McDowell, and then McDowell supplied David Anderson. Trial Tr. vol. 3, 44:23–45:16. McDowell was staying at Anderson's home in Colfax, and Stendrup had delivered methamphetamine there before. Trial Tr. vol. 3, 43:8–15, 47:10–48:18. Likewise, Sheeder had been to Anderson's house when she was in a relationship with McDowell. Trial Tr. vol. 3, 45:18–46:8.

Because Stendrup was no longer selling methamphetamine to McDowell, Anderson contacted Sheeder about buying directly from Stendrup. Trial Tr. vol. 3, 51:24–52:7. Stendrup agreed to deal with Anderson, but said he needed to resolve the situation with McDowell first. Trial Tr. vol. 3, 53:6–17. Anderson revealed that McDowell was coming to his house soon, so they made a plan for Stendrup and Sheeder to show up without McDowell knowing they were coming. Trial Tr. vol. 3, 53:18–54:17. They intended to get the stolen property back from McDowell. Trial Tr. vol. 3, 54:18–22.

Early on June 22, McDowell called Anderson and said he was bringing over some methamphetamine. Trial Tr. vol. 3, 54:23–55:9. Anderson alerted Sheeder, who was with Stendrup. Trial Tr. vol. 3, 55:10–18. Stendrup then summoned Forrest for help recovering property from a house in Colfax, anticipating the possibility of problems. Trial Tr. vol. 3, 17:16–21:15. However, Forrest turned back before reaching Colfax because his "old lady" sensed "what's going on" and convinced him not to go. Trial Tr. vol. 3, 21:16–22:22.

McDowell arrived at Anderson's house, and they talked and planned to smoke methamphetamine. Trial Tr. vol. 3, 55:19–56:3. At 1:34 a.m. on June 22, Sheeder called McDowell's cell phone, and they were still on the phone when Sheeder and Stendrup showed up at the house. Trial Tr. vol. 3, 56:14–57:2; State's Ex. T-19a (phone summary[1]) at 2; App. 485.

Stendrup came in the door holding a baseball bat. Trial Tr. vol. 3, 57:6–18. McDowell ran to the kitchen, and Stendrup followed. Trial Tr. vol. 3, 57:19–23. The oven door shattered, and Stendrup demanded that "he wants his shit back." Trial Tr. vol. 3, 57:23–58:8. Stendrup then hit McDowell with the baseball bat in the shoulder,

[1] A color-coded key was admitted as State's Ex. T-19b; App. 491.

knee, and head as he repeated, "Where's my shit? I want my shit." Trial Tr. vol. 3, 58:9–59:14. Anderson went outside and found Sheeder rummaging through McDowell's van, and he pleaded with her to intervene. Trial Tr. vol. 3, 59:15–60:5. Sheeder's phone was still connected to McDowell's phone, so they could hear Stendrup inside the house while he continued beating McDowell and yelling, "where's [my] shit." Trial Tr. vol. 3, 60:6–21.

Anderson went inside and yelled at Stendrup to stop, but Stendrup refused. Trial Tr. vol. 3, 62:25–63:17. When Stendrup came outside, he said he would pay for the damage in the kitchen, but he threatened to "come back and burn my house down with me and my girlfriend in it" if Anderson told anyone. Trial Tr. vol. 3, 63:18–64:21. Stendrup and Sheeder left. Trial Tr. vol. 3, 64:22–23.

McDowell never woke up.

Back inside the house, McDowell was lying face down in the doorway between the kitchen and living room. Trial Tr. vol. 3, 64:24–65:12. Anderson yelled "Jeremy" and shook him, but he did not respond. Trial Tr. vol. 3, 65:13–25. Anderson frantically called girlfriend Doreen Coleman at work and exclaimed that he thought Stendrup had killed McDowell. Trial Tr. vol. 3, 66:1–24, 133:15–

134:6. But Anderson did not call 911 because there were drugs in the house. Trial Tr. vol. 3, 66:25–67:1. He gathered the drugs and took them to friend Tom Wearmouth's house. Trial Tr. vol. 3, 67:10–70:6.

Anderson and Coleman summoned Sheeder back to the house to take McDowell to the hospital. Trial Tr. vol. 3, 67:4–9. McDowell had not moved from his original position. Trial Tr. vol. 3, 70:20–24. When Sheeder arrived, she checked for a pulse and said McDowell was still alive. Trial Tr. vol. 3, 70:7–19. They got help from Wearmouth to load McDowell into the van. Trial Tr. vol. 3, 70:25–73:13. Then Sheeder took off toward the Newton hospital. Trial Tr. vol. 3, 73:14–23.

At about 3 a.m., Sheeder called the hospital emergency room asking for directions. Trial Tr. vol. 3, 169:1–13. When she said her friend had gotten beat up, the nurse told her to call 911. Trial Tr. vol. 3, 169:14–170:17. At 3:13 a.m., Sheeder called 911 and reported that her friend was unconscious and might not be breathing. Trial Tr. vol. 3, 175:7–176:21; State's Ex. T-24 (911 recording).

When police and medics arrived, McDowell had no pulse and was not breathing. Trial Tr. vol. 3, 201:11–203:9. EMT Ryan Volk could tell McDowell had been dead for "some time"—his body was

stiff, bluish in color, and cold. Trial Tr. vol. 3, 203:9–204:13, 208:5–10. Lifesaving efforts did not revive him. Trial Tr. vol. 3, 204:14–208:1.

Forensic evidence linked Stendrup to the baseball-bat beating.

When police searched Anderson's house, they found signs of an altercation in the kitchen—broken glass from the oven door, a knocked over microwave, and spots of blood. Trial Tr. vol. 4, 35:3–16, 43:25–58:18; State's Ex T-37 & T-38 (photos); App. 502–03. There were also some blood spots on the side of the living room sofa just through the doorway from the kitchen. Trial Tr. vol. 4, 58:22–61:6; State's Ex. T-36 & T-51 (photos); App. 501, 507.

Parked outside was Sheeder's Jeep. Trial Tr. vol. 4, 66:3–24. Police found a metal baseball bat by the front passenger seat. Trial Tr. vol. 4, 67:2–21; State's Ex. T-60 & T-61 (photos); App. 508–09.

Lab testing proved blood on the baseball bat matched McDowell's DNA. Trial Tr. vol. 4, 154:10–15; State's Ex. T-76 (DNA report, item 9); App. 511. Two fingerprints on the bat matched Stendrup's known prints. Trial Tr. vol. 4, 184:6–22; State's Ex. T-78 (fingerprint report, item 9); App. 512.

Stendrup confessed to a friend, lied to police, and attempted to influence a witness.

At about 5 a.m. on June 22, Stendrup contacted friend Julie Landry over Facebook Messenger and asked to speak with her in person, pleading, "I'm in trouble I need help." Trial Tr. vol. 1, 46:7–49:5; State's Ex. T-3 (message); App. 482. Stendrup explained that McDowell and Christensen had stolen cars, money, drugs, and TVs from him. Trial Tr. vol. 1, 50:7–52:4. He reported the theft to police but thought they "weren't very much help," so he decided to get the property back himself. Trial Tr. vol. 1, 52:5–21.

Stendrup said he and Sheeder went to a house in Colfax to get his drugs and money back from McDowell. Trial Tr. vol. 1, 53:5–20. Things got "physical" when Stendrup confronted McDowell—he demanded his property back from McDowell while hitting him in the arms, legs, and head with a bat. Trial Tr. vol. 1, 54:7–19, 55:16–18. McDowell went down on the kitchen counter, and then Stendrup grabbed him by the collar and dragged him to the front room. Trial Tr. vol. 1, 54:19–55:5. Stendrup said McDowell was face-down on the floor when he left. Trial Tr. vol. 1, 55:6–15.

Deputy Jeremy Burdess interviewed Stendrup on July 5. Trial Tr. vol. 2, 68:20–69:70:6.[2] Stendrup said McDowell and Christensen broke into his apartment, stole property, and took his Cadillac. State's Ex T-11 (interview video) at 7:26:00. He said McDowell later sent him the location where his Cadillac was found. *Id.* at 7:28:50. But Stendrup repeatedly denied assaulting McDowell or visiting the Colfax house on the night McDowell died. *Id.* at 7:34:50, 7:38:30, 7:40:50, 7:46:45, 7:49:40. 7:57:40.

In January 2019—after Stendrup was charged with robbery and murder—he sent a letter to Dave Anderson asking him to testify falsely. Trial Tr. vol. 3, 80:1–83:5. In particular, the letter asked Anderson to change his story about hearing Stendrup demanding "Where's my shit?" while beating McDowell. Trial Tr. vol. 3, 83:6–84:17, 86:18–87:2; State's Ex. T-22a (letter); App. 498.

[2] The district court's verdict acknowledged Stendrup's motion to suppress the interview video and noted signs that he may have been under the influence of methamphetamine. Verdict (4/26/2021) at 14–15; App. 449–50. The district court decided not to consider the interview "in the interest of caution," but it did not expressly rule the interview was inadmissible. *Id.* at 15; App. 450.

The baseball-bat beating led to McDowell's death.

Dr. Jonathan Thomson, the deputy State Medical Examiner, autopsied McDowell's body. Trial Tr. vol. 5, 44:10–13. McDowell had blunt-force injuries and scrapes to the left side of his face and neck. Trial Tr. vol. 5, 48:22–51:12. His right elbow and right knee had multiple sharp-force injuries consistent with cuts from broken glass. Trial Tr. vol. 5, 51:13–53:24. His left leg, left hip, and back had patterned bruises consistent with being struck by an object. Trial Tr. vol. 5, 53:25–62:10. In particular, the linear-patterned contusions were consistent with the baseball bat bearing Stendrup's fingerprints. Trial Tr. vol. 5, 63:19–64:8.

Internal examination showed the external injuries did not damage McDowell's bones or organs. Trial Tr. vol. 5, 64:9–20. McDowell had natural disease including emphysema and coronary artery disease, with up to 50% blockage of a blood vessel. Trial Tr. vol. 5, 64:21–65:12.

Toxicology found McDowell's blood contained methamphetamine with a concentration of 4900 nanograms per milliliter (ng/ml). Trial Tr. vol. 5, 73:7–25. Dr. Thompson explained that any level of methamphetamine is potentially lethal. Trial Tr. vol.

5, 75:12–15. Methamphetamine stimulates the body to release norepinephrine and causes increased heart rate, raised blood pressure, and constriction of coronary arteries, which can result in abnormal heartbeat called cardiac arrhythmia. Trial Tr. vol. 5, 77:5–79:2.

Dr. Thompson explained it "would be very difficult" to know the precise level of methamphetamine necessary to kill a particular person. Trial Tr. vol. 5, 81:2–82:4. Methamphetamine users build a tolerance to the drug. Trial Tr. vol. 5, 81:23–24. A peer-reviewed study published in a forensic journal showed that people who died of drug-related injury (as opposed to the direct toxicity of the drug) had methamphetamine concentrations up to 6500 ng/ml. Trial Tr. vol. 5, 82:5–84:12. In other words, the person would have survived the 6500-ng/ml level but was killed by an accidental injury instead. Trial Tr. vol. 5, 84:13–19. Similarly, a homicide victim in the study had a concentration of 9300 ng/ml—nearly twice McDowell's level. Trial Tr. vol. 5, 84:20–85:2. Dr. Thompson explained that forensic pathologists cannot rely on toxicology numbers alone to determine what killed the person. Trial Tr. vol. 5, 85:3–12. Forensic studies

reveal that fatal concentrations of methamphetamine range from 1000 to 14,000 ng/ml. Trial Tr. vol. 5, 85:13–86:14.

Additionally, the baseball-bat beating would have caused McDowell's body to naturally release norepinephrine as part of the "fight or flight" response. Trial Tr. vol. 5, 79:11–80:14, 120:10–121:7. Too much norepinephrine can be harmful—especially in a heart with coronary artery disease—by causing a faster and faster heartbeat, which can put the heart into a fatal arrhythmia. Trial Tr. vol. 5, 80:15–81:1.

Dr. Thompson explained that methamphetamine and the assault's natural "fight or flight" norepinephrine combine their effect, both causing elevated heart rate and blood pressure that push the person closer toward death. Trial Tr. vol. 5, 91:24–92:18. "So they can be additive and, you know, increases the likelihood of entering into that ventricular fibrillation, or that abnormal heartbeat, that eventually kills you." Trial Tr. vol. 5, 92:18–21.

ARGUMENT

I. Sufficient Evidence Proved Stendrup's Baseball-Bat Beating Caused the Victim's Death.

Preservation of Error

"[W]hen a criminal case is tried to the court, a defendant may challenge the sufficiency of the evidence on appeal irrespective of whether a motion for judgment of acquittal was previously made." *State v. Abbas*, 561 N.W.2d 72, 74 (Iowa 1997). Stendrup moved for judgment of acquittal challenging proof of causation and received an adverse ruling. Trial Tr. vol. 5, 12:2–13:11, 16:25–19:6.

The State also requests that this Court clarify the admissibility of hypothetical questions asked of the medical examiner. That dispute was subject of extensive pretrial litigation. *See* Motion for Admissibility (11/1/2018), Ruling (3/13/2019), Motion in Limine (5/28/2020), Ruling (9/25/2020); App. 11, 23, 190, 354. At trial, the court accepted the hypothetical questions subject to the defense's objection, but in its verdict decided "it will not consider those very specific questions." Verdict (4/26/2021) at 13; App. 448. The district court, however, did not make clear whether it found the hypothetical questions inadmissible or if it was only exercising caution by not considering them. For his part, Stendrup acknowledges on appeal "It

is unclear from this record whether the district court sustained defense counsel's objection to the hypothetical questions." Def. Br. at 34. Even assuming the district court excluded the evidence, the State was the prevailing party at trial and had no adverse judgment to appeal. *Cf. DeVoss v. State*, 648 N.W.2d 56, 62 (Iowa 2002) (recognizing the relaxed error-preservation rules for evidentiary arguments advanced by the prevailing party). The medical examiner's answers to hypothetical questions were admissible and appear in the evidentiary record, so this Court's sufficiency review should consider them.

Standard of Review

"Challenges to the sufficiency of the evidence are reviewed for errors at law." *State v. Hansen*, 750 N.W.2d 111, 112 (Iowa 2008) (citation omitted). "The district court's findings of guilt are binding on appeal if supported by substantial evidence." *Id.* "Evidence is substantial if it would convince a rational trier of fact the defendant is guilty beyond a reasonable doubt." *Id.* The evidence is viewed in the light most favorable to the State, including legitimate inferences and presumptions that can fairly and reasonably be deduced from the record. *State v. Biddle*, 652 N.W.2d 191, 197 (Iowa 2002). Direct and

circumstantial evidence are equally probative. Iowa R. App. P. 6.904(3)(p).

"We review the district court's evidentiary rulings for abuse of discretion." *State v. Neiderbach*, 837 N.W.2d 180, 190 (Iowa 2013) (citation omitted).

Discussion

Stendrup used a baseball bat to beat his victim, who fell permanently unresponsive and died. Substantial evidence proved the beating was a but-for link in the causal chain leading to death, so the district court properly found Stendrup guilty of first-degree murder. In affirming his conviction, this Court should fix the admissibility of medical-examiner opinion testimony and should halt further encroachment of tort-law principles of causation in criminal cases.

A. The Court should consider all of the evidence presented at trial, including the medical examiner's answers to hypothetical questions.

Stendrup's sufficiency-of-the-evidence challenge begins with a question of what evidence was admitted at trial. In response to the defense's pretrial motion in limine, the district court excluded medical examiner Dr. Jonathan Thompson's conclusions about cause and manner of death, but said it would allow "appropriate

hypothetical questions based on the evidence." Ruling (9/25/2020) at 9–10, 15; App. 362–63, 368. At trial, the court received Dr. Thompson's answers to hypothetical questions subject to the defense's objection. *E.g.*, Trial Tr. vol. 5, 89:18–90:12. But the court refused to make a final ruling, even as the prosecutor sought such a ruling to determine whether to present additional evidence before resting the State's case. Trial Tr. vol. 6, 4:18–5:8. Then, in its verdict, the court believed the hypothetical questions "went too far" and said it "will not consider" the answers to "very specific questions." Verdict (4/26/2021) at 13; App. 448.

On appeal, Stendrup recognizes the unsettled question of admissibility. On cross examination of Dr. Thompson, the defense made an offer of proof that the court would only consider if it overruled the defense's objections. Trial Tr. vol. 5, 113:8–21. Stendrup's appellate argument quotes a portion of that offer of proof, acknowledging, "It is unclear from the record whether the district court sustained defense counsel's objection to the hypothetical questions . . ." Def. Br. at 34 n.3.

In reviewing the sufficiency of the evidence, this Court should consider all of the evidence presented at trial, including the medical

examiner's answers to hypothetical questions. First, the district court's pretrial ruling adequately addressed the defense's concerns by granting more relief than required under controlling law. Second, Dr. Thompson's answers to hypothetical questions were admissible because they assisted the trier of fact without expressing an opinion on credibility of other witnesses. Third, Stendrup's attempt to artificially limit Dr. Thompson's testimony distorts the truth and should be expressly disavowed.

1. The district court already excluded more of the medical examiner's opinion than required by existing law.

The district court's pretrial ruling applied *State v. Tyler*, 867 N.W.2d 136, 151 (Iowa 2015). *Tyler* involved a medical examiner's opinion that the defendant's baby was born alive, which was based on the defendant's disputed police-interview admission that the baby cried before she drowned him in the bathtub. *Id.* at 151. The Court recognized that expert testimony is admissible "'[i]f scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue.'" *Id.* at 153 (quoting Iowa R. Evid. 5.702). But the Court determined a medical examiner's opinion does not assist the trier of fact when it "over-relies

on witness statements or information obtained through police investigation." *Id.* at 156. In *Tyler*, the medical examiner's opinions "were based primarily, if not exclusively, on [the defendant's] inconsistent and uncorroborated statements to police, as opposed to objective medical findings." *Id.* at 163. Additionally, the Court decided the medical examiner's opinions "amounted to an impermissible comment on [the defendant's] credibility" because he "necessarily credited one version of [the defendant's] story over another." *Id.* at 165, 166.

However, *Tyler* made clear it would address expert-opinion challenges on a case-by-case basis. *See id.* at 167 ("[W]e do not create a bright-line rule to govern every criminal case in which a medical examiner is called to testify to a victim's cause or manner of death."). The Court noted "there are circumstances when a medical examiner's opinions on cause or manner of death may assist the jury, even when such opinions are based in part on witness statements or information obtained through police investigation." *Id.* at 162. But medical-examiner opinions are "ordinarily" inadmissible when they are based "largely on witness statements or information obtained through police investigation." *Id.*

A three-justice partial dissent disagreed with the *Tyler* majority's "break[] from long-standing Iowa law liberally allowing expert testimony, including testimony based on witness statements or patient histories." *Id.* at 187 (Waterman, J., dissenting in part). The dissent recognized that medical examiners—like all physicians—must rely on patient history to reach a proper diagnosis. *Id.* at 188–89. When a deceased person cannot supply that history directly, courts "agree that medical examiners may rely on disputed witness testimony, with cross-examination as the proper tool to explore weaknesses in the opinions." *Id.* at 189 (citations omitted). Any such weaknesses "go to the weight of [the expert's] opinion testimony, not its admissibility." *Id.* at 189. The dissent justifiably viewed the majority's disallowance of medical-examiner opinion testimony as "an unwarranted and ill-advised sea change in our heretofore liberal approach to the admissibility of expert testimony." *Id.* at 193.

Under *Tyler*'s case-by-case standard, Stendrup's distinguishable circumstances called for a different result. At the pretrial hearing, Dr. Thompson explained he could not reach his conclusion on cause and manner of death without considering patient history—"that would be malpractice." Hrg. 2/14/2019 Tr. 30:20–31:7.

He relied on information relayed by the county's medical examiner investigator[3] showing McDowell never regained consciousness after the baseball-bat assault. *Id.* at 31:8–16. But unlike *Tyler* in which the opinions "were based primarily, if not exclusively, on [the defendant's] inconsistent and uncorroborated statements to police," 867 N.W.2d at 165, the fact of McDowell's unresponsiveness was corroborated by multiple sources. First, Dave Anderson reported to investigators that McDowell never moved after the assault. Hrg. 2/14/2019 Tr. 51:25–53:4. Second, Julie Landry recounted Stendrup's admissions that he struck McDowell with a baseball bat, that McDowell "went down," that he left McDowell lying face-down in the living room, and that he was not sure if McDowell was still alive. *Id.* 61:4–63:22. Additionally, McDowell abruptly stopped making any phone communications after the assault, indicating he was suddenly and permanently unresponsive. *See* Trial Tr. vol. 2, 93:9–95:6 (summarizing cellphone records showing McDowell had 3,400 text messages and 500 phone calls in the month before the assault, but

[3] Dr. Thompson received this information from Sheriff John Halferty, who serves as a medical examiner investigator under Jasper County medical examiner Dr. Philip Clevenger. Hrg. 2/14/2019 Tr. 32:15–33:10, Trial Tr. vol. 4, 7:23–25, 9:13–10:11.

none after Sheeder's phone call that occurred during the baseball-bat beating). Thus, unlike *Tyler*, Dr. Thompson's opinion relied on the *corroborated* fact of McDowell's unresponsiveness provided by the medical examiner investigator, making it reliable information for the trier of fact.

The district court's pretrial exercise of discretion already granted any relief that was due under *Tyler*. Dr. Thompson relied on corroborated patient history, which resulted in reliable opinions concerning the cause and manner of McDowell's death. Notwithstanding this important distinction from *Tyler*, the district court decided to exclude the doctor's opinions from evidence at trial. That overly cautious miscalculation of controlling law should not be compounded by following Stendrup's request to extend *Tyler* and disregard the expert's answers to hypothetical questions.

2. *The medical examiner's answers to hypothetical questions assisted the trier of fact without expressing an opinion on credibility.*

Asking hypothetical questions is one long-accepted method to offer expert opinion. *See, e.g.*, *State v. Boner*, 203 N.W.2d 198, 200 (Iowa 1972) (citations omitted). "[T]he hypothetical question and the expert's response are intended to assist the trier of fact by allowing

the acceptance of opinion testimony based upon the facts assumed in the question, if the trier of fact should find the assumed facts to be true." 7 Laurie Kratky Doré, *Iowa Practice Series: Evidence* § 5.703:2 (West Nov. 2021 update). Under older case law, "[f]acts stated in a hypothetical question must have support in the evidence." *Poweshiek Cty. Nat. Bank v. Nationwide Mut. Ins. Co.*, 156 N.W.2d 671, 676 (Iowa 1968). But the modern rules of evidence also permit hypothetical questions premised on extrajudicial facts "reasonably relied upon" by experts within the field. Doré, § 5.703:2 (citing Iowa R. Evid. 5.703, 5.705). *Tyler*, for its part, did not address the admissibility of hypothetical questions posed to medical examiners. *See generally Tyler*, 867 N.W.2d at 136.

At Stendrup's trial, Dr. Thompson's answers to hypothetical questions assisted the trier of fact in comprehending the medical evidence. The prosecutor asked Dr. Thompson if some hypothetical facts could help explain the cause of death, and he proceeded to ask questions "if hypothetically Mr. McDowell was assaulted" and remained unresponsive after the attack. Trial Tr. vol. 5, 88:23–89:17. These questions let Dr. Thompson explain the medical consequences if the trier of fact believed certain facts presented by other witnesses.

As such, they remained in line with classic hypothetical questions that form the bedrock of accepted expert-opinion testimony.

Next, the hypothetical questions did not ask Dr. Thompson to improperly comment on the credibility of another witness. *Tyler* disallowed the cause- and manner-of-death opinions because the medical examiner "necessarily" and "selectively" credited the defendant's statements to police. *Tyler*, 867 N.W.2d at 165–66. But in Stendrup's trial, the hypothetical questions did not seek any indirect commentary on whether Dr. Thompson believed other witnesses like Dave Anderson about McDowell's unresponsiveness. Instead, the court was free to draw its own conclusions about the truth of the hypothesized fact, and the answer only guided the court in how to interpret the medical significance of the hypothesized fact. If the court disbelieved the hypothesized fact, then it would equally disregard Dr. Thompson's answers premised on the unproven fact.

Similarly, the hypothetical questions at Stendrup's trial did not vouch for the credibility of another witness. He erroneously invoked the *Dudley-Jaquez-Brown*[4] trilogy involving vouching testimony in

[4] *State v. Dudley*, 856 N.W.2d 668 (Iowa 2014); *State v. Jaquez*, 856 N.W.2d 663 (Iowa 2014); *State v. Brown*, 856 N.W.2d 685 (Iowa 2014).

child sexual abuse cases. *See* Trial Tr. vol. 1, 11:23–12:10. That line of cases prohibited expert testimony that a child's symptoms were consistent with child abuse, because such an opinion expresses the expert's opinion that the child is telling the truth. *Dudley*, 856 N.W.2d at 677–78. In contrast, Dr. Thompson's answers did not express any belief in the truth of the hypothesized fact. Instead, the trier of fact had to make its own determination whether McDowell remained unresponsive. Dr. Thompson's answer only explained the medical implications of that independently proven fact.

This Court's sufficiency-of-the-evidence review should consider Dr. Thompson's answers to the hypothetical questions. His answers were received at trial and were admissible, even though the district court exercised undue caution by deciding not to consider them. *See* Verdict at 13; App. 448. Extending *Tyler* to prohibit hypothetical questions would constitute an even more extreme departure from Iowa's liberal admissibility of expert testimony. And it would do so at the expense of distorting the truth of the expert's opinion.

3. Tyler *should be overruled or limited because it permits parties like Stendrup to distort the truth.*

Stendrup's manipulation of Dr. Thompson's testimony illustrates the need to rethink *Tyler*. Stendrup first artificially limited

the doctor's testimony with evidentiary objections. Then he relies on that artificially limited testimony to draw conclusions about causation that conflict with the doctor's expert analysis. Such tactics interfere with the factfinder's duty to seek truth and do justice.

The heart of Stendrup's causation argument relies on artificially limiting and twisting Dr. Thompson's expert opinion. He contends Dr. Thompson's testimony proved McDowell would have died of a methamphetamine overdose regardless of the baseball-bat beating. *See generally* Def. Br. at 22–35. But Dr. Thompson actually drew the opposite conclusion when answering hypothetical questions—he opined that McDowell would not have died but for the assault and that the assault was the cause of death. Trial Tr. vol. 5, 101:25–102:19. Stendrup's distortion of the truth flows from *Tyler*'s ill-conceived limitation of expert opinion.

The easiest solution is to restore the balance that existed before *Tyler*. The partial dissent in *Tyler* foresaw the difficulties created in this case. *See Tyler*, 867 N.W.2d at 193 (Waterman, J., dissenting in part) (warning the majority had created "an unwarranted and ill-advised sea change"). Rather than artificially limiting expert opinions, the dissent correctly advised that we should "trust our adversary

system to expose weaknesses in an expert's opinions and trust our juries to give appropriate weight to expert testimony." *Id.* at 187. Thus, if a defendant like Stendrup disagrees with the medical examiner's reliance on disputed witness testimony, proper recourse is vigorous cross-examination to explore those weaknesses. *See id.* at 189 ("These weaknesses go to the weight of [the medical examiner's] opinion, not its admissibility.").

If not overruled completely, *Tyler*'s holding should be limited by allowing medical examiners to answer hypothetical questions about cause and manner of death. Lay juries and judges are equipped to make findings of credibility, but they lack the expertise to draw accurate medical conclusions from the facts they find credible. As Dr. Thompson explained, patient history gathered about the decedent is crucial to making reliable diagnoses on cause and manner of death. Trial Tr. vol. 5, 40:11–43:7. Appropriate hypothetical questions permit experts to explain the medical significance of the hypothesized fact while leaving questions of witness credibility for the trier of fact. Accordingly, *Tyler* should be overruled or its holding limited, and this Court's sufficiency-of-the-evidence review should consider the hypothetical questions presented at Stendrup's trial.

B. Stendrup's baseball-bat beating caused McDowell's death.

Stendrup's causation argument mistakes the facts and the law. Contrary to his argument, no evidence proved McDowell died of a drug overdose. Rather, the evidence proved McDowell fell permanently unresponsive after the baseball-bat beating, which supports the district court's finding that the attack led to the fatal heart arrhythmia. Under the current causation standard, the evidence was sufficient to prove Stendrup's conduct killed McDowell.

1. The district court applied the correct causation standard.

The first-degree murder charge required proof that Stendrup killed McDowell. Iowa Code § 707.1. Under the model instruction, this element is satisfied when the defendant's conduct "caused or directly contributed to (victim)'s death." Iowa Crim. Jury Instr. 700.11 (ISBA) (citing *State v. McClain*, 125 N.W.2d 764 (Iowa 1964)).

"'When causation does surface as an issue in a criminal case, our law normally requires us to consider if the criminal act was a factual cause of the harm.'" *State v. Tyler*, 873 N.W.2d 741, 747 (Iowa 2016) (emphasis added) (quoting *State v. Tribble*, 790 N.W.2d 121, 126–27 (Iowa 2010)). "The conduct of a defendant is a 'factual cause

of harm when the harm would not have occurred absent the conduct.'" *Tribble*, 790 N.W.2d at 127 (quoting Restatement (Third) of Torts: Phys. & Emot. Harm § 26, at 346 (Am. Law Inst. 2010)). "We have traditionally labeled this straightforward, factual cause requirement of causation the 'but for' test." *Id.*

Recent cases have questioned whether "legal cause" has any application in criminal cases. In older cases, the Court had noted "that both factual and legal, or proximate, cause may come into play in criminal cases just as in civil tort cases." *State v. Adams*, 810 N.W.2d 365, 371 (Iowa 2012) (citing *State v. Marti*, 290 N.W.2d 570, 584–85 (Iowa 1980)). But the civil tort principles underlying those older cases "have evolved in recent years." *Tyler*, 873 N.W.2d at 749 (citing *Thompson v. Kaczinski*, 774 N.W.2d 829, 839 (Iowa 2009)). Consequently, recent cases have "left open the possibility that criminal causation might still require more than proof of but-for factual causation." *Id.* at 750.

Stendrup wrongly accuses the district court of misstating the law. He interprets the court's finding that "McDowell died as a direct and foreseeable consequence of the baseball bat assault" as applying "the statutory test for declaring a child-in-need-of-assistance." Def.

Br. at 27 & n.1 (quoting Verdict at 23; App. 458). But this myopic reduction ignores the preceding three pages of the court's verdict, which discussed the causation standard from controlling cases such as *McClain*, *Tribble*, and *Tyler*. *See, e.g.*, Verdict at 20; App. 455 (quoting the "directly contributed to" standard from the model instruction); Verdict at 23; App. 458 (quoting the "reasonably foreseeable consequence" standard from *Tyler*). When viewed as a whole, the district court's verdict applied the correct causation standard.

2. Stendrup relies on the false premise that McDowell died from a methamphetamine overdose.

Stendrup builds his causation argument on a faulty factual foundation. He relies on the assertion that McDowell's methamphetamine use was an "independently sufficient cause" of death. Def. Br. at 24, 31, 33. However, the medical examiner rejected that conclusion.

Stendrup misconstrues the medical examiner's testimony. He cites one question when Dr. Thompson agreed McDowell's methamphetamine concentration of 4900 ng/ml "was more than sufficiently toxic to be lethal." Def. Br. at 24 (citing Trial Tr. vol. 5,

104:13–15). But Dr. Thompson explained that *any level* of methamphetamine is potentially lethal. Trial Tr. vol. 5, 75:12–15. He also cautioned it "would be very difficult" to know the precise level of methamphetamine necessary to kill a particular person. Trial Tr. vol. 5, 81:2–82:4. "[Y]ou can't look at just a number. You have to look at it in context of the whole case. You have to look at it in context of the history and the physical examination." Trial Tr. vol. 5, 85:3–12; *see also* 86:5–9 (quoting a medical treatise warning, "Since the degree of tolerance for any drug is impossible to determine at autopsy, attributing significance to isolated postmortem concentration—so that means just looking at the drug—or back calculating to a dose is unwise"). Thus, the 4900-ng/ml concentration was within the potentially fatal range, but Dr. Thompson never said that level was surely fatal for McDowell.

In fact, Dr. Thompson explained other people have survived higher methamphetamine concentrations than McDowell's level. For example, Dr. Thompson related a peer-reviewed study showing individuals survived concentrations of up to 6500 ng/ml but died of an accidental cause such as a traffic collision. Trial Tr. vol. 5, 82:5–84:19. Similarly, a homicide victim in the study had a non-fatal

concentration of 9300 ng/ml—nearly twice McDowell's level. Trial Tr. vol. 5, 84:20–85:2. Cases of direct toxicity of methamphetamine range from 1000 to 14,000 ng/ml. Trial Tr. vol. 5, 85:13–86:14. Although the 4900-ng/ml concentration could be fatal in general, there was no proof that it alone killed McDowell.

Stendrup also misinterprets Dr. Thompson's testimony about whether the assault accelerated McDowell's death. He argues "the State offered no testimony that Stendrup's actions hastened or accelerated McDowell's overdose." Def. Br. at 33. But Dr. Thompson gave a particular reason why he could not draw that conclusion. He explained that finding the assault accelerated McDowell's death would require knowledge that McDowell was already going to die from the methamphetamine. Trial Tr. vol. 5, 114:25–115:5. He agreed, "if it is your belief that the person is not going to die, you can't say something accelerated the death." Trial Tr. vol. 5, 125:21–126:4. Because the medical evidence did not establish that McDowell surely would have died from methamphetamine alone, inquiring about accelerating that cause of death asked the wrong question.

The evidence supported that McDowell had developed a tolerance that could have allowed him to survive higher levels of

methamphetamine. Dr. Thompson explained that methamphetamine users build a tolerance to the drug. Trial Tr. vol. 5, 81:23–24. McDowell was a daily methamphetamine user. Trial Tr. vol. 3, 43:19–25. Stendrup himself said that McDowell was doing "meth" every day and never sleeping, that he was "strung out" in the month before his death, and that he "constantly" smoked methamphetamine. State's Ex. T-11 at 7:17:50, 7:22:20, 7:33:20, 7:39:00. This persistent methamphetamine abuse indicated McDowell would not necessarily die just because he had a high concentration.

Stendrup's house-of-cards causation analysis does not hold up to scrutiny. The evidence refutes his assertion that McDowell's methamphetamine use was the "independently sufficient cause" of death. Without that factual premise, the remainder of his argument falls away. Therefore, this Court should dismiss his faulty analysis and review the evidence in the light most favorable to the verdict.

3. The evidence proved Stendrup's beating caused McDowell's fatal heart arrhythmia.

The totality of the evidence supports the district court's verdict. Stendrup's assault left McDowell unresponsive until he was declared dead less than two hours later. Apart from this commonsense link between the beating and the death, the medical examiner explained

how the assault combined with the methamphetamine and natural disease to cause McDowell's heart failure. The beating was an essential link in the fatal chain of events, so Stendrup's conduct was the but-for cause of death.

The sequence of events linked the baseball-bat beating to McDowell's death. The beating commenced during the 1:34 a.m. phone call with Sheeder. Trial Tr. vol. 3, 56:14–57:2; State's Ex. T-19a (phone summary) at 2; App. 485. By around 3 a.m., McDowell's unresponsive body had been loaded into the van and was en route to the hospital. Trial Tr. vol. 3, 169:1–170:17. Then when medics arrived and examined McDowell, they could tell he had been dead for "some time" because his body was stiff, bluish in color, and cold. Trial Tr. vol. 3, 201:11–204:13, 208:5–10. This temporal relationship between the beating and McDowell's death was consistent with a causal relationship.

Multiple sources confirmed McDowell never woke up after the baseball-bat beating. Dave Anderson recounted Stendrup striking McDowell with a baseball bat, and he could not rouse McDowell by shouting or shaking him after Stendrup left. Trial Tr. vol. 3, 57:6–65:12. McDowell did not move from his position on the floor when

Anderson went to Tom Wearmouth's house to hide the drugs. Trial Tr. vol. 3, 70:20–24. Wearmouth confirmed that McDowell remained unresponsive and had to be carried to the van. Trial Tr. vol. 3, 160:2–19. During the 911 call, Sheeder exclaimed that McDowell had been assaulted and was unresponsive. Trial Tr. vol. 3, 175:7–176:21, State's Ex. T-24 (911 recording). Additionally, phone records showed the McDowell's extensive cellphone usage stopped abruptly at the time of the beating and never resumed. *See* Trial Tr. vol. 2, 93:9–95:6 (summarizing cellphone records showing McDowell had 3,400 text messages and 500 phone calls in the month before the assault, but none after Sheeder's phone call). All of this evidence established that Stendrup's beating caused McDowell's permanent unresponsiveness.

Evidence of McDowell's unresponsiveness matches Stendrup's own admission. Hours after the attack, he contacted Julie Landry and pleaded, "I'm in trouble I need help." Trial Tr. vol. 1, 46:7–49:5; State's Ex. T-3 (message); App. 482. Stendrup reported that he struck McDowell with a baseball bat, that McDowell "went down," and that McDowell was lying face-down on the floor when he left. Trial Tr. vol. 1, 54:7–55:15. This admission reflected Stendrup's consciousness of guilt for causing McDowell's condition.

The medical examiner's testimony explained how the beating caused McDowell's fatal heart condition. Stendrup dwells on the fact that the baseball-bat injuries themselves were "superficial." Def. Br. at 22. But Dr. Thompson never suggested that mechanism of death. Instead, he explained that the beating initiated a release of norepinephrine as part of the body's "fight or flight" response. Trial Tr. vol. 5, 79:11–80:14, 120:10–121:7. Too much norepinephrine—especially in McDowell's heart already afflicted with coronary artery disease—causes the heart to beat faster and faster, which can lead to a fatal arrhythmia. Trial Tr. vol. 5, 64:21–65:12, 80:15–81:1. That "fight or flight" norepinephrine added to the methamphetamine, which also causes increased heart rate, raised blood pressure, and constricted the coronary arteries. Trial Tr. vol. 5, 77:5–79:2. He explained the assault and methamphetamine had an "additive" effect:

> [W]hen you get assaulted, you're activating, again, that flight-or-flight mechanism, or the sympathetic nervous system, which is also what methamphetamine does. So your blood pressure can go up even higher. You can get blood vessel constriction. Your heart rate can go up. And so it shifts you towards that dead end of the spectrum. So they can be additive and, you know, increases the likelihood of entering into that ventricular fibrillation, or that abnormal heartbeat, that eventually kills you.

Trial Tr. vol. 5, 91:24–92:21. This expert opinion supported a finding that the assault's norepinephrine release combined with the methamphetamine to cause the fatal arrhythmia.

The medical examiner's answers to hypothetical questions removed any doubt about causation. Dr. Thompson explained that accepting the fact McDowell remained unresponsive after the beating, then the cause of death would be "sudden cardiac arrhythmia in the setting of methamphetamine toxicity and an altercation with that other individual." Trial Tr. vol. 5, 90:3–20. He explained the immediate unresponsiveness suggested the assault pushed the victim "over the edge" to death. Trial Tr. vol. 5, 92:22–93:9. In particular, Dr. Thompson opined that despite McDowell's methamphetamine concentration of 4900 ng/ml, he would still be alive but for the assault. Trial Tr. vol. 5, 101:25–102:19.

"Events typically have many causes. . . . A person doesn't avoid liability simply because his conduct requires some other conduct to be sufficient to cause another's harm." *State v. Johnson*, 950 N.W.2d 232, 238 (Iowa 2020) (citations omitted). Existing case law accepts that a defendant's criminal act is the cause of death—even if the act alone would not have killed the victim—as long as it was part of the

chain of events leading to death. *See, e.g.*, *Tyler*, 873 N.W.2d 748–49 (finding the defendant's non-fatal punch to the victim's face was "far from attenuated" from other people stomping the victim's abdomen until he died); *Tribble*, 790 N.W.2d at 127–29 (rejecting the defendant's argument that a "confluence" of causes cut off his liability for felony murder); *McClain*, 125 N.W.2d at 771–72 (finding that despite proof the victim would have survived the burn injuries inflicted by defendant but for negligent medical treatment, the negligence did not excuse criminal liability unless it was the sole cause of death); *State v. Smith*, 34 N.W. 597, 601 (1887) (approving a jury instruction stating "it is no defense if another cause or other causes may also have contributed to such death. . . . and this would be so even if at the time [the victim] was affected with heart disease, or afflicted with intoxication, and they contributed also to her death").

These cases reflect the distinction between "multiple causes" and "multiple sufficient causes." Under tort law, "The existence of other causes of the harm does not affect whether specified tortious conduct was a necessary condition for the harm to occur. . . . Tortious conduct by an actor need be only one of the causes of another's harm." Restatement (Third) of Torts: Phys. & Emot. Harm § 26 cmt. c

(2010). The Court has applied this concept to impose hate-crime liability in cases of "dual intents or mixed motives." *See State v. Hennings*, 791 N.W.2d 828, 836 (Iowa 2010) ("One could argue both the boys' presence in the road and their race were but-for causes . . . However, just because the boys' presence in the street was a separate factual cause does not mean race was not also a but-for cause." (quoting Restatement § 26 cmt. c), *overruled on other grounds by State v. Hill*, 878 N.W.2d 269 (Iowa 2016)). "Multiple causes" is distinguished from "multiple sufficient causes," which is a special situation when the harm is overdetermined by separate tortious acts, each of which was sufficient to bring about the harm. Restatement § 26 cmt. i.

Applying these concepts, the evidence proved Stendrup's conduct was one link in the causal chain that led to McDowell's death. The baseball-bat beating was responsible for the "fight or flight" release of norepinephrine that pushed McDowell's heart to beat faster. Even if that event alone was not sufficient to cause death, it combined with the effects of methamphetamine intoxication and natural heart disease to cause McDowell's fatal heart arrhythmia. The lay testimony and expert opinion supported that the assault was an

essential event leading to McDowell's permanent unresponsiveness. Stendrup cannot escape criminal liability just because the effects of the beating converged with other conditions to cause death.

McDowell misplaces reliance on the factually distinguishable case of *Burrage v. United States*, 571 U.S. 204 (2014). The defendant was charged for a death that "result[ed] from" his distribution of heroin. *Id.* at 206. However, a forensic toxicologist could only say the heroin was a "contributing factor" in death because the victim had taken a cocktail of different drugs. *Id.* at 207. Likewise, the medical examiner "could not say whether [the victim] would have lived had he not taken the heroin, but observed that [the victim's] death would have been '[v]ery less likely.'" *Id.* Stendrup's circumstances are different. McDowell fell permanently unresponsive after the baseball-bat attack, providing a temporal link between the assault and death. And unlike the medical examiner in *Burrage*, Dr. Thompson opined the attack pushed McDowell "over the edge" and that he would still be alive but for the beating. Trial Tr. vol. 5, 92:22–93:9, 101:25–102:19.

Stendrup's guilt fits *Burrage*'s description of causation. The *Burrage* Court adopted the traditional but-for test and rejected the government's request to apply a less demanding "contributing factor"

test. *Burrage*, 571 U.S at 214–15. It determined causation can be established if the defendant's conduct was either "an independently sufficient cause" or a "but-for cause of the death or injury." *Id.* at 218–19. The Court specifically recognized that multiple causes satisfy the but-for test "if the predicate act combines with other factors to produce the result, so long as the other factors alone would not have done so—if, so to speak, it was the straw that broke the camel's back." *Id.* at 211. McDowell's death is such a case. The assault-induced norepinephrine dump combined with the effects of methamphetamine and natural disease to push his heart into a fatal arrhythmia. But for the assault, he would have survived.

The facts did not compel the court to accept Stendrup's overdose theory. First, as detailed above in subsection 2 (pp. 40–43), the evidence did not prove that McDowell died solely by overdosing on methamphetamine. Thus, his methamphetamine intoxication was not an "independently sufficient cause," which removes the linchpin from Stendrup's causation analysis. Second, Stendrup relied on outdated conceptions of what constitutes sufficient evidence. In closing argument, he invoked a 1966 case to argue the proof of guilt "must be inconsistent with any rational supposition" and that the

State had to rule out "any logical explanation as to the evidence." Trial Tr. vol. 6, 56:5–24.[5] But just last year, the Court "readily" rejected a similar argument relying on the outdated and long-overruled treatment of circumstantial evidence. *State v. Ernst*, 954 N.W.2d 50, 57 (Iowa 2021).

Substantial evidence supports the district court's verdict. McDowell's death flowed from a convergence of conditions: the "fight or flight" response to the assault, the effects of methamphetamine intoxication, and natural coronary artery disease. The court was not required to accept Stendrup's unsupported theory that methamphetamine alone was an "independently sufficient cause" that excused him of liability. Because Stendrup's baseball-bat beating was an essential and but-for link in the causal chain, this Court should affirm his conviction.

C. Adopting the "scope of liability" standard would not relieve Stendrup's guilt.

Over the last decade, the Court has turned down multiple opportunities to adopt the "scope of liability" test for criminal

[5] Although the defense did not cite a case, it appears this argument refers to *State v. Shipley*, 146 N.W.2d 266, 271 (Iowa 1966), *overruled by State v. Bester*, 167 N.W.2d 705 (Iowa 1969).

causation, but it sometimes conditionally applied the new tort standard. *See, e.g.*, *Tyler*, 873 N.W.2d at 749 ("Even if 'proximate cause' or what we now call 'scope of liability' remains part of the State's causation burden in a criminal case . . . that burden was met here."). Most recently, the Court chose to apply the tort standard for scope of liability within the context of criminal restitution because the restitution statute "expressly relies on civil liability principles." *State v. Roache*, 920 N.W.2d 93, 102 (Iowa 2018). But tort standards for scope of liability do not square with criminal causation, especially in cases of felony murder. And even assuming the tort concepts applied, McDowell's death was within the scope of liability for Stendrup's baseball-bat beating.

If the tort standard were to apply in criminal cases, the broader scope of liability for intentional or reckless torts would control. The Court recognized so in the context of criminal restitution for theft. *See Roache*, 920 N.W.2d at 101–02 ("'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.'" (quoting Restatement (Third) of Torts § 33(b), at 562)); *see also Spreitzer v. Hawkeye State Bank*, 779 N.W.2d 726,

741 (Iowa 2009) ("We readily acknowledge legal causation for intentional torts often reaches a broader range of damages for harm than legal causation reaches in cases involving unintentional torts.").

The standard for intentional torts relaxes the reliance on foreseeability. "An actor who intentionally causes harm is subject to liability for that harm even if it was unlikely to occur." Restatement (Third) of Torts § 33(a). Determining the scope of liability is fact-intensive, but general factors include "the moral culpability of the actor, as reflected in the reasons for and intent in committing the tortious acts, the seriousness of harm intended and threatened by those acts, and the degree to which the actor's conduct deviated from appropriate care." *Id.* § 33(b). However, the tortfeasor "is not subject to liability for harm the risk of which was not increased by the actor's intentional or reckless conduct." *Id.* § 33(c).

Stendrup's attempt to graft an additional element onto felony murder illustrates why the tort standard is not a good fit for criminal causation. He stresses the Restatement's reliance on "the seriousness of the harm intended" and argues "there is no evidence in the record to suggest that Stendrup intended to cause McDowell's death." Def. Br. at 38. But he was convicted of felony murder, which the

legislature has set out as an offense distinct from intentional, premeditated murder. *See* Iowa Code §§ 707.2(1)(a), (b). "[F]oreseeability is irrelevant to the felony-murder rule," which criminalizes killings that occur during inherently dangerous crimes that carry "an undeniable prospect of grave harm to the life of others." *State v. Harrison*, 914 N.W.2d 178, 196 (Iowa 2018). In short, felony murder—as proscribed by the general assembly—did not require proof that Stendrup intended to kill McDowell during the commission of robbery. Adding that element through judicial adoption of a tort standard improperly interferes with the legislature's prerogative to define criminal offenses.

Even if the tort standard applied, Stendrup satisfied it by committing a dangerous and highly culpable attack. He repeatedly struck McDowell with a baseball bat in the shoulder, knee, and head, and he ignored pleas to stop. Trial Tr. vol. 3, 57:6–63:17. By Stendrup's own admission, he hit McDowell multiple times with the baseball bat, dragged him to another room, and left him face-down on the floor. Trial Tr. vol. 1, 53:5–55:15. Stendrup now portrays this assault as "minor." Def. Br. at 38. But there is no such thing as a gentle beating with a baseball bat. Using a dangerous weapon against

another person brings the risk of severe injury and death within the scope of liability.

Additionally, Stendrup's conduct increased the risk of harm. Dr. Thompson explained that the assault released norepinephrine, which can become harmful by increasing heartrate. Trial Tr. vol. 5, 79:11–81:1. It had an "additive" effect with methamphetamine, which "increases the likelihood of entering into that ventricular fibrillation, or that abnormal heartbeat, that eventually kills you." Trial Tr. vol. 5, 91:24–92:21. This medical link differs from Stendrup's comparison to a person getting struck by lightning while running away from armed "hoodlums." Def. Br. at 38–39 (quoting Restatement (Third) of Torts § 33, cmt. f). Unlike an act-of-god lightning strike, the baseball-bat beating had a direct medical link to the elevated heartrate, which increased the risk of McDowell suffering the fatal arrhythmia.

Finally, McDowell's preexisting medical condition did not absolve Stendrup of liability. The autopsy revealed McDowell had coronary artery disease with up to 50% blockage. Trial Tr. vol. 5, 64:21–65:12. Dr. Thompson explained the beating in the midst of coronary artery disease could cause the heart to beat faster and faster and "throw you into that fatal arrhythmia." Trial Tr. vol. 5, 80:15–

81:1. The tort scope-of-liability standard accounts for such a preexisting condition contributing to the harm by incorporating the "eggshell plaintiff" rule. *See* Restatement (Third) of Torts § 31 ("When an actor's tortious conduct causes harm to a person that, because of a preexisting physical or mental condition or other characteristics of the person, is of a greater magnitude or different type than might reasonably be expected, the actor is nevertheless subject to liability for all such harm to the person."). Thus, to the extent McDowell's natural heart condition made him more susceptible to death from the baseball-bat beating, it did not remove the harm from the scope of liability.

In sum, this Court should not reach a different result under the scope-of-liability standard. Tort principles of causation do not translate well to criminal causation, especially for unintentional killings that are criminalized as felony murder. But even assuming the tort rules apply in criminal cases, Stendrup's baseball-bat beating was a highly culpable act that increased the risk of McDowell's death. Therefore, substantial evidence supports Stendrup's conviction for first-degree felony murder.

II. The District Court Soundly Exercised Its Discretion When Denying Stendrup's Weight-of-the-Evidence Challenges.

Preservation of Error

Stendrup preserved error on subsections A and B of his weight-of-the-evidence challenge. His motion for new trial raised similar arguments about the cause of death and about the blood evidence. *See* MNT (6/15/2021) at 7–8, 9–11; App. 467–68, 469–71. This Court should limit its review to those two issues.

Stendrup did not preserve error for subsection C of his argument. He attacks Dave Anderson's testimony as "so self-contradictory that it should be considered a nullity." Def. Br. at 59. But Stendrup's motion for new trial did not include an equivalent argument. Because this issue was neither raised nor ruled upon in the district court, Stendrup failed to preserve error. *See Meier v. Senecaut*, 641 N.W.2d 532, 537 (Iowa 2002) ("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.").

Standard of Review

The district court has broad discretion when ruling on a motion for new trial, and the appellate court will reverse only if the district

court abused its discretion. *State v. Reeves*, 670 N.W.2d 199, 202 (Iowa 2003). An abuse of discretion occurs when "district court exercised its discretion on grounds or for reasons clearly untenable or to an extent clearly unreasonable." *Id.*

Discussion

Stendrup failed to demonstrate an exceptional case requiring a new trial. His motion asked the trial court—the same that sat as factfinder at trial—to reevaluate the evidence. Under the process normally requested following jury trials, the trial court had discretion to set aside the verdict if it determined "that the verdict is contrary to the weight of the evidence and that a miscarriage of justice may have resulted." *State v. Ellis*, 578 N.W.2d 655, 657–58 (Iowa 1998). The trial court's discretion should be exercised with caution and invoked "only in exceptional cases in which the evidence preponderates heavily against the verdict." *Id.* at 659.

On review, the appellate court does not have free rein to reevaluate the evidence. "[A]ppellate review is limited to a review of the exercise of discretion by the trial court, not of the underlying question of whether the verdict is against the weight of the evidence." *Reeves*, 670 N.W.2d at 203. This Court should decline Stendrup's

invitation to substitute the trial court's weighing of the evidence and should affirm the trial court's sound exercise of discretion.

A. The weight of the evidence did not compel Stendrup's overdose theory.

Stendrup first reprises his claim that McDowell died of a drug overdose. In doing so, he misinterprets the medical examiner's testimony and overlooks evidence debunking the overdose theory. The district court did not abuse its discretion by rejecting it.

Stendrup's argument twists the medical examiner's testimony. He latches onto what he calls an "unequivocal" finding that McDowell's methamphetamine concentration of 4900 ng/ml was lethal. Def. Br. at 41. But Dr. Thompson explained it "would be very difficult" to determine what level of methamphetamine is fatal to an individual. Trial Tr. vol. 5, 81:2–82:4. He described studies documenting methamphetamine users surviving higher concentrations but dying of other causes such as accidents—levels up to 6500 ng/ml and 9300 ng/ml. Trial Tr. vol. 5, 82:5–85:2. In fact, documented fatalities from drug toxicity alone range from 1000 to 14,000 ng/ml. Trial Tr. vol. 5, 85:13–86:14. Dr. Thompson made clear that medical examiners cannot rely on numbers alone to determine what killed the person. Trial Tr. vol. 5, 85:3–12. Stendrup's

argument attempts to do just that, so the trial court's rejection of that theory does not demonstrate an abuse of discretion.

Stendrup also stretches the evidence about McDowell's methamphetamine tolerance. McDowell was a daily methamphetamine user. Trial Tr. vol. 5, 81:23–24. As Stendrup said, McDowell "constantly" smoked the drug. State's Ex. T-11 at 7:39:00. Yet Stendrup now argues the record lacks evidence "concerning McDowell's drug use the week prior to his death in which he was unable to get meth for Stendrup." Def. Br. at 42. However, Dave Anderson testified that McDowell had obtained methamphetamine and planned to bring it over on June 21. Trial Tr. vol. 3, 90:1–23. Stendrup himself admitted to a friend that he was trying to recover drugs that McDowell had stolen. Trial Tr. vol. 1, 53:8–18. Thus, the evidence indicates that McDowell did have access to methamphetamine during the last week of his life. And even if he did not have the drug, the record lacks any evidence that a longtime user's methamphetamine tolerance would wane after just one week of abstinence. Therefore, the district court was not obligated to accept Stendrup's supposition that McDowell's had diminished tolerance.

Next, Stendrup places undue weight on evidence about whether McDowell was breathing after the assault. He cites Tom Wearmouth's testimony that he saw McDowell's chest moving (Def. Br. at 46), but the district court did not find Wearmouth to be a credible witness. *See* Verdict at 7; App. 442 (calling Wearmouth "a less-than-average witness"). He also cites Sheeder's 911 call when she said "she thought that McDowell was breathing because his eyes were open" (Def. Br. at 46), but open eyes do not indicate whether a person is still breathing. *See* State's Ex. T-84; App. 517 (showing McDowell's eyes were open during the autopsy). Claims that McDowell remained breathing conflicted with EMT Ryan Volk's experienced opinion that he had been dead for "some time." Trial Tr. vol. 3, 203:9–204:13, 208:5–10. Finally, even accepting that McDowell was unresponsive but remained breathing for some period of time, there was no evidence that such a condition was more indicative of overdose as opposed to an overload of assault-induced norepinephrine.

The weight of the evidence did not preponderate against the district court's causation finding. McDowell was conscious, alert, and conversational until Stendrup came through the door with a baseball bat. Trial Tr. vol. 3, 55:19–25. Stendrup—by his own admission—

struck McDowell multiple times with the bat and left him lying face-down on the floor. Trial Tr. vol. 1, 54:19–55:15. Anderson, Wearmouth, and Sheeder all said McDowell was unresponsive. Trial Tr. vol. 3, 64:24–65:25, 160:2–19, 175:7–176:21. Nobody claimed he ever regained consciousness, moved, or spoke again after the baseball-bat beating. And objective evidence—McDowell's cellphone records—showed a sudden stop in text and phone communications after the assault. *See* Trial Tr. vol. 2, 93:9–95:6. All of this evidence would lead a rational trier of fact to conclude the baseball-bat assault caused McDowell's permanently unresponsive condition. The trial court did not abuse its discretion when denying the motion for new trial.

B. The evidence reconciled the blood found at the crime scene.

Stendrup leaps beyond the evidence when drawing conclusions about the blood evidence. The trial court was free to interpret the evidence and reconcile it with witness testimony, and the blood spots did not compel the court to accept Stendrup's unsupported conclusions. He falls short of demonstrating an abuse of discretion necessitating a new trial.

First, the spots of blood around the kitchen and living room were consistent with the sequence of the assault. Police found blood spots on the kitchen floor among broken glass, on the kitchen cabinets, and on the living room sofa just through the doorway from the kitchen. Trial Tr. vol. 4, 35:3–16, 43:25–61:6, State's Ex. T-36, T-37, T-38, T-51; App. 501–03, 507. This blood evidence matched Anderson's testimony that Stendrup attacked McDowell in the kitchen and that he found McDowell lying unresponsive in the doorway between the kitchen and living room. Trial Tr. vol. 3, 57:6–59:14, 64:24–65:25. Likewise, Stendrup admitted to a friend that he struck McDowell with the bat, that McDowell went down on the kitchen counter, and that he dragged McDowell to the front room. Trial Tr. vol. 1, 54:7–55:15. Therefore, the blood spots were consistent with being left during the assault, not from McDowell regaining consciousness and walking around.

Second, all witnesses testified consistently about the quantity of blood. Stendrup faults Anderson and Wearmouth for not noticing blood on McDowell, around the house, or in the van. Def. Br. at 57–58. But uninterested witnesses testified similarly. Officer Harden did not see any blood in the van. Trial Tr. vol. 3, 188:20–189:1. The

bodycam video recorded McDowell lying on the stretcher, but there was no obvious blood flowing from his right elbow. State's Ex. T-26 at 2:40. And EMT Volk noticed "some spots of blood" (Trial Tr. vol. 3, 211:6–15), but he did not describe large quantities. A postmortem photo of McDowell lying on the stretcher did not depict a large pool of blood either. Trial Tr. vol. 3, 214:1–24, State's Ex. T-29; App. 500. This evidence as a whole suggests Stendrup overestimates how much McDowell bled, not that McDowell woke up and cleaned some of the blood.

Third, the bloody t-shirt did not undermine any witness testimony. Stendrup highlights the "blood-soaked t-shirt" that Dr. Thompson found wrapped around McDowell's arm. Def. Br. at 52. But he cites no evidence about when or how it got there. For example, the shirt does not appear to be wrapped around his elbow when he was loaded onto the stretcher. *See* State's Ex. T-26 (bodycam) at 2:40. Additionally, Dr. Thompson explained that McDowell's body would have been transported and stored on its back, and a postmortem condition called lividity causes blood to drain downward toward the backside, including the bottom of the arms. Trial Tr. vol. 5, 121:21–

122:23. Thus, the t-shirt recovered from the body bag could have gotten bloodstained after McDowell's death.

Nothing supports Stendrup's conjecture that McDowell remained conscious and cleaned up after the assault. The blood evidence was consistent with how witnesses described the baseball-bat attack and its aftermath. The trial court's weighing of the evidence did not constitute an abuse of discretion, so Stendrup was not entitled to a new trial.

C. The trial court could reasonably believe Anderson's testimony.

Stendrup's final weight-of-the-evidence challenge raises ordinary impeachment material. The fact that Anderson made some inconsistent statements was fodder for cross-examination, but it did not require the trial court to disregard the totality if his testimony.

To start, Stendrup stands on shaky legal ground by relying on *State v. Smith*, 508 N.W.2d 101 (Iowa Ct. App. 1993), *cited in* Def. Br. at 59. *Smith* is an aberration that is often cited by defendants but hardly ever followed by the courts. *See, e.g.*, *State v. Cardona*, No. 19-1047, 2020 WL 1888770, at *2 (Iowa Ct. App. Apr. 15, 2020) (noting "the use of this doctrine to vacate a conviction 'is exceedingly rare'"); *see also* Tyler J. Buller, *State v. Smith Perpetuates Rape Myths and*

Should Be Formally Disavowed, 102 Iowa L. Rev. Online 185, 193 (2017) (noting Iowa appellate courts have cited *Smith* in 60 cases but "[n]ot one of these cases has followed *Smith*'s reasoning or reversed a jury verdict on sufficiency grounds"). *Smith* does not grant unlimited permission for the appellate courts to re-weigh witness testimony.

Next, Stendrup's hyperbolic character attack did not require disbelieving Anderson's testimony. He starts by asserting Anderson "served a total of twenty-one years in prison" (Def. Br. at 59), but Anderson had actually served 21 *months*. Trial Tr. vol. 3, 88:18–89:2. Stendrup piles on that Anderson was a methamphetamine user. Def. Br. at 59–60. But so too was everyone else involved in the incident, including Stendrup himself. Trial Tr. vol. 1, 41:2–6. The law does not grant a license to kill just because the victim or witnesses were drug users.

Stendrup's argument highlights normal discrepancies that are best left to the trier of fact. He emphasizes points when he cross-examined Anderson about why McDowell came to the house and how much Anderson knew about the plan to retrieve the stolen property. Def. Br. at 60–63. But even if Anderson attempted to minimize his role in the fatal conspiracy, the phone records verified that he had

indeed exchanged communications with Sheeder in the hour before the assault. *See* State's Ex. T-19a at 1; App. 485 (documenting exchanges between McDowell and Anderson and between Anderson and Sheeder). Nitpicking the details of how Anderson helped arrange the fatal encounter at the house did not change that Stendrup took advantage by showing up and beating McDowell with a baseball bat.

Finally, Anderson's testimony was consistent with independent sources of evidence. He was eyewitness to Stendrup beating McDowell with a baseball bat and McDowell falling unresponsive. Trial Tr. vol. 3, 57:6–60:21, 64:24–65:25. But Stendrup admitted a substantially identical story to Julie Landry—that he went to the house in Colfax to get his drugs and money back from McDowell, that he struck McDowell multiple times with a baseball bat, and that he left McDowell lying face-down on the floor. Trial Tr. vol. 1, 53:5–55:15. Landry had not spoken with any of the other witnesses (Trial Tr. vol. 1, 56:7–20), making her a reliable source to independently corroborate Anderson's testimony. Additionally, the crucial fact that the baseball-bat beating left McDowell unresponsive was verified by his phone records—he had 3,400 text messages and 500 phone calls in the month before, but none after the final phone call when

Stendrup entered the house with the baseball bat. Trial Tr. vol. 2, 93:9–95:6. Thus, Anderson's testimony aligned with other source of evidence.

Stendrup failed to identify any exceptional circumstances requiring a new trial. Inconsistencies in Anderson's testimony were grounds to explore during cross examination, but they did not require the trial court to disregard the totality of his testimony. The weight of the evidence from Anderson and various other sources supported the verdicts, so the district court did not abuse its discretion when rejecting Stendrup's *Ellis* challenge. Accordingly, this Court should affirm.

III. Sufficient Evidence Proved Stendrup's Intent to Commit a Theft When Reclaiming Property with Violent Self-Help.

Preservation of Error

Stendrup moved for judgment of acquittal and specifically argued the intent element of robbery. Trial Tr. vol. 6, 13:12–14:10, 18:21–19:6.

Standard of Review

"Challenges to the sufficiency of the evidence are reviewed for errors at law." *Hansen*, 750 N.W.2d at 112.

Discussion

The evidence left no reasonable doubt about Stendrup's intent to commit a theft. His own statements before, during, and after the confrontation proved he intended to retrieve belongings from the victim's possession. He had no valid "claim of right" defense to use force in those efforts to reclaim property. Therefore, the trial court properly found Stendrup guilty of robbery and felony murder.

Stendrup limits his challenge to the intent element. A person commits robbery by assaulting or threatening another while "having the intent to commit a theft." Iowa Code § 711.1(1). And a person commits felony murder by "kill[ing] another person while participating in a forcible felony" such as robbery. *Id.* § 707.2(1)(b). Intent to commit a theft is "'seldom capable of direct proof,'" so it "will often 'be shown by circumstantial evidence and the reasonable inferences drawn from that evidence.'" *Ernst*, 954 N.W.2d at 55 (quoting *State v. Walker*, 574 N.W.2d 280, 289 (Iowa 1998)).

A. Multiple sources proved Stendrup's intent to retrieve his property by force.

Stendrup's plan to reclaim his property from McDowell showed an intent to commit theft. A person commits theft by "tak[ing] possession or control of the property of another, or property in the

possession of another, with the intent to deprive the other thereof." Iowa Code § 714.1(1). The evidence at trial overwhelmingly proved Stendrup intended to take property he believed was in McDowell's possession.

Stendrup's own words were the most probative evidence of his intent to commit a theft. He made statements of his intent before, during, and after the June 22 murder:

- On June 19, Stendrup sent text messages accusing McDowell of stealing property and threatening, "when I see you I'ma beat your face to the ground you better give me all that shit back." State's Ex. 20a (text message # 6570); App. 494; Trial Tr. vol. 2, 98:7–99:13.
- On June 20, Stendrup reported the theft to Clive Police, but after being told it might take a couple weeks to investigate, he declared, "I'm gonna take care of this myself." State's Ex. T-5 (Clive bodycam) at 15:50, 17:10; Trial Tr. vol. 1, 92:14–93:11.
- On June 21, after Stendrup found his stolen Cadillac, he left a voicemail for McDowell threatening, "You better just give me the keys, bud. Otherwise I'm gonna come and find you. I promise you." State's Ex. T-6a (voicemail); Trial Tr. vol. 2, 88:23–90:5.

- While beating McDowell with a baseball bat, Stendrup repeatedly demanded, "Where's my shit? I want my shit." Trial Tr. vol. 3, 58:9–59:14.
- Hours after the murder, Stendrup explained to Julie Landry that he decided to get his property back by himself because the police "weren't very much help." Trial Tr. vol. 1, 50:7–52:21. He admitted that he went to the house in Colfax to get his stuff back and that he struck McDowell with the baseball bat "while screaming that he wanted his money and he wanted his drugs." Trial Tr. vol. 1, 54:7–19.

All of these statements reflected Stendrup's intent to reclaim his stolen property and to use force if necessary.

In addition to Stendrup's statements, the record supports a finding that he arranged the confrontation at Anderson's house. Anderson testified about the plan for him to contact Sheeder and Stendrup the next time McDowell was at his house so they could show up and confront him. Trial Tr. vol. 3, 53:6–5422. Stendrup protests that McDowell was not "lured" to the house because McDowell had already planned to visit. Def. Br. at 66–67. But quarreling with the details about the exact plan—or how much of the plan they told

Anderson—does not change that Anderson did contact Sheeder right before the assault. Phone records showed McDowell called Anderson at 12:50 a.m. for three minutes, and then Anderson called Sheeder at 12:53 a.m. State's Ex. 19a (phone summary) at 1; App. 484. Thus, objective evidence corroborated the communication that alerted Sheeder and Stendrup about half an hour before they showed up at the Colfax house and confronted McDowell.

Stendrup's attempt to recruit a friend to go with Sheeder did not negate his intent to commit a theft. Stendrup argues that he "did not intend to confront McDowell in the first place" and that instead "he had arranged for a friend, Andrew Forrest, to accompany Sheeder as she went to retrieve some of her personal items." Def. Br. at 68. Forrest was the friend who can bench-press 365 pounds and previously accompanied Stendrup when recovering the cars in case someone "g[a]ve him a hard time." Trial Tr. vol. 3, 9:7–11:4, 15:10–16:21. Even though Stendrup did not directly ask Forrest to commit a robbery, Forrest dropped out of the trip to Colfax because his "old lady" sensed what was going on. Trial Tr. vol. 3, 21:16–22:22. A reasonable factfinder could interpret this evidence as proof that Stendrup enlisted Forrest to be the "muscle" in a recovery that could

turn violent. But more fundamentally, the original plan to send Forrest did not matter—once Forrest backed out, Stendrup changed plans and showed up with a baseball bat to confront McDowell. His intent at that moment is what mattered most.

Stendrup's intent to commit a theft is not defeated by the possibility that he also acted out of hatred toward McDowell. He argues "bad blood had developed between the two men" and suggests he had "an intent to assault McDowell apart from a desire to commit a theft." Def. Br. at 67, 71. But those two intents were not mutually exclusive. Rather, Stendrup's many statements linked the threats and violence to his demands to return stolen property, indicating his hatred of McDowell arose from the theft he was attempting to avenge. *See* State's Ex. T-20a (message # 6570); App. 494 ("[A]nd when I see you I'ma beat your face to the ground *you better give me all that shit back*") (emphasized portion omitted from Def. Br. at 71).

Stendrup's tampering with a witness demonstrated his consciousness of guilt. While awaiting trial, he sent a letter to Anderson pleading with him to testify falsely. Trial Tr. vol. 3, 80:1–83:5. The particular detail he wanted Anderson to change was "you didn't hear Jeff say 'where's my shit'. . ." Trial Tr. vol. 3, 83:6–84:17,

86:18–87:2; State's Ex. T-22a (letter); App. 498. This tampering with a witness—to which Stendrup pled guilty[6]—showed that what he said during the beating was strong evidence of his intent.

Finally, the fact that Stendrup stopped short of completing the theft did not disprove robbery. He argues the trial court was "profoundly incorrect" when ruling, "Whether or not Mr. Stendrup took anything from Mr. McDowell was irrelevant." Def. Br. at 70 (quoting Verdict at 17; App. 452). But Stendrup overlooks that a robbery occurs "with or without stolen property." Iowa Code § 711.1(1). The robbery statute makes clear, "It is immaterial to the question of guilt or innocence of robbery that property was or was not actually stolen." *Id.* § 711.1(2). The verdict's application of this blackletter law was not error. Stendrup could not counteract his previous expressions of intent by recognizing the gravity of his attack and fleeing the scene without rifling through his incapacitated victim's pockets.

The evidence proved Stendrup's plan to reclaim property from McDowell. Taking property from the possession of another person is

[6] Guilty Plea Order (2/15/2021); App. 376.

theft, so the trial court properly concluded the evidence satisfied the intent element of robbery.

B. No "claim of right" defense excused Stendrup's baseball-bat beating.

Even if the property belonged to Stendrup, he had no right to take it back with violent self-help. The theft statute codifies the claim-of-right defense:

> No person who takes, obtains, disposes of, or otherwise uses or acquires property, is guilty of theft by reason of such act if the person reasonably believes that the person has a right, privilege or license to do so, or if the person does in fact have such right, privilege or license.

Iowa Code § 714.4. However, Iowa has long limited this defense to theft charges and has precluded its application to the intent-to-commit theft elements in burglary and robbery. *See State v. Miller*, 622 N.W.2d 782, 785 (Iowa 2000) (finding the claim-of-right defense "is unavailable in a burglary case" and recognizing, "The modern trend among other states has been to decline to recognize the claim-of-right defense to offenses involving force, such as robbery or burglary"); *see also State v. Gillette*, No. 16-2233, 2018 WL 1099139, at *3 (Iowa Ct. App. Feb. 21, 2018) (concluding claim-of-right is not a defense to robbery); *State v. Enochs*, No. 15-1118, 2016 WL 4384655,

at *3 (Iowa Ct. App. Aug. 17, 2016) (same); *State v. Greene*, No. 09-0233, 2009 WL 3379100, at *3 (Iowa Ct. App. Oct. 21, 2009) (same).

Stendrup's conduct went beyond any claim-of-right defense. He argues the record "clearly establishes" that Anderson owned the van and that Anderson gave Sheeder permission to look for her belongings in the van. Def. Br. at 71–72. First, Anderson's control over the van was not so clear. Even though it was registered to him, Anderson himself called it "Jeremy's van" (Trial Tr. vol. 3, 59:19–20), indicating McDowell had possession of the van and its contents. Second, a vehicle owner's permission might negate an automobile-burglary charge by granting a license to enter. *See* Iowa Code § 713.1 (defining burglary to prohibit entry while "having no right, license, or privilege to do so"). But Anderson could not give Stendrup permission to commit acts of violence against McDowell.

The law did not excuse Stendrup's use of force to reclaim his belongings. He tracked down McDowell and beat him with a baseball bat while demanding the return of his property. This conduct proved Stendrup's intent to commit a theft, so the trial court properly found him guilty of robbery and felony murder.

CONCLUSION

The Court should affirm Jeffrey Stendrup's convictions and sentences.

REQUEST FOR NONORAL SUBMISSION

This case involves complex legal issues, so oral argument is likely to assist the Court.

Respectfully submitted,

THOMAS J. MILLER
Attorney General of Iowa

KYLE HANSON
Assistant Attorney General
Hoover State Office Bldg., 2nd Fl.
Des Moines, Iowa 50319
(515) 281-5976
kyle.hanson@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)(d) and 6.903(1)(g)(1) or (2) because:

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KYLE HANSON
Assistant Attorney General
Hoover State Office Bldg., 2nd Fl.
Des Moines, Iowa 50319
(515) 281-5976
kyle.hanson@ag.iowa.gov