IN THE SUPREME COURT OF IOWA

No. 19-1571

JOHN HRBEK,

Appellant,

v.

STATE OF IOWA,

Appellee.

ON APPEAL FROM THE IOWA DISTRICT COURT
IN AND FOR POTTAWATTAMIE COUNTY
HONORABLE KATHLEEN KILNOSKI, JUDGE

APPELLANT'S FINAL REPLY BRIEF

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CERTIFICATE OF SERVICE

On September 2, 2020, the undersigned certifies that a true copy of the foregoing instrument was served upon the Defendant-Appellant by placing one copy thereof in the United States mail, proper postage attached, addressed to:

John Hrbek #0104465
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ROUTING STATEMENT

The parties agree that the issue presented in this appeal is a substantial issue of first impression about a new statute. It should be retained by the Supreme Court.

Purposes of a Reply Brief

In any reply brief, it is appropriate to do several things. First, the brief can update the case law if there have been any changes since the original brief. There is no such new law.

Second, the brief can reply to specific statements by the State in its brief.

Third, the brief can point out the places in the State's brief where there is an agreement as to certain points, perhaps because the matter was not contested.

STATEMENT OF THE CASE

Course of Proceeding:

The State's Brief says the procedural history of the post-conviction "is only minimally relevant to the pair of legal issues raised in the appeal." (State's Brief p. 15). It should be noted, however, that the history of Hrbek's post-conviction case included a point when appointed counsel allowed the post-conviction to be dismissed and then never told Hrbek the case was dismissed. It was Hrbek's own efforts, pro se, that allowed the case to be reinstated. See Hrbek v. State, 2015 WL 6087572 (Iowa Ct. App. 2015)

This issue cannot be considered without recognizing that sometimes appointed counsel do not do their job.

It should be noted that when he was before the District Court, Hrbek's appointed counsel filed nothing in support of Hrbek's right to file pro se pleadings after July 1, 2019.

ARGUMENT

I

AS A MATTER OF STATUTORY CONSTRUCTION, NEWLY ENACTED SECTION 822.3A SHOULD NOT APPLY TO HRBEK'S POST-CONVICTION, WHICH HAD BEEN FILED PRIOR TO THE ENACTIMENT OF THE STATUTE.

What are the questions presented in this case?

In 2019, the Iowa Legislature passed Senate File 589, which included new section 822.3A. That provision prohibits pro se filings by post-conviction applicants who have appointed counsel. The one exception is that those applicants can file a motion to dismiss counsel.

The statute is silent as to whether the provision would apply to post-convictions that were already on file on July 1, 2019. That is when the statute went into effect.

Since John Hrbek's post conviction case was already filed on July 1, 2019 the initial question that needs to be addressed for this appeal is that question of retroactivity.

If the statute applies to his postconviction case, then the court will have to address the constitutionality of the statute.

Summary of argument

The Iowa Supreme Court has, over the last 30 years, through a series of cases, established a right for post-conviction applicants to file documents in their own cases, even when they are represented by counsel,

Section 822.3A, which became law on July 1, 2019, abrogates that 30 years of case law. It prohibits post-conviction applicants, represented by counsel, from filing “any pro se document, including an application, brief, reply brief, or motion

in any Iowa court." The only thing an applicant represented by counsel can do is file a pro se motion to seek disqualification of counsel.

Hrbek argues that his right to file pro se documents is a substantive right. As such it cannot be applied to postconvictions that had been filed before July 1, 2019.

Points of agreement

1. There seems to be agreement that the question of retroactivity primarily turns on whether the change adversely affects an existing right. See State's brief at pages 18-19. See State v. Macke, 933 N.W.2d 226 (Iowa 2019).

2. The State, in its brief, does not particularly disagree with Hrbek's analysis of the three Iowa Supreme Court cases which established the right for post-conviction litigants to file pleadings, even when represented by counsel. Those three cases were Leonard v. State 461 N.W.2d. 465 (Iowa 1990), Gamble v. State 723 N.W.2d. 443 (Iowa 2006), and Jones v State,731 N.W. 2d 388 (Iowa 2007)

This is important because Hrbek showed that the right to participate in a pro-se capacity, when represented by counsel was, in fact, a carefully crafted part of the statutory right to counsel, under Chapter 822.

3. The State does not particularly dispute Hrbek's analysis that there is authority at this point for the right to counsel in a postconviction being based in part of the Iowa and United States Constitutions.

4. The State also does not take exception to Hrbek's point that sometimes the pro se arguments have been successful. In addition, there have certainly been times when the appointed counsel has performed inadequately.

Responses to specific arguments

1. The State argues that the provision in the Omnibus bill eliminating the right of Applicants to file pro se pleadings is different from other provisions in the bill. State's brief at p. 16-18. The State argues that 822.3A is different because this provision is, in fact, truly procedural, not limiting or abridging any substantive right or existing remedy.

The State, of course, is primarily responding to the Iowa Supreme Court case of State v. Macke, 933 N.W.2d 226 (Iowa 2019). The Macke case dealt with appellate jurisdiction over certain topics, which were reduced by Senate File 589. Macke wanted to use ineffective assistance of counsel to indirectly challenge a guilty plea. Appellate jurisdiction had been limited for both ineffective counsel and guilty pleas by Senate File 589.

The Iowa Supreme Court found that neither of the provisions limiting appellate jurisdiction could be applied retroactively to appeals that were already filed.

The State, of course, argued in the Macke case that these limitations on appellate jurisdiction were only "procedural". The provisions were "procedural" as

they were going to simply direct the appellant to a post-conviction proceeding, in order to raise his complaints.

The Court in Macke recognized that in general, procedural matters could be applied retroactively. Something, however, was not procedural if it, essentially, impaired a right the defendant had acquired earlier. In Macke, the defendant had acquired the right to take a direct appeal after a guilty plea. He had also acquired the right to raise ineffective assistance of counsel in such an appeal.

General discussion of retroactivity

The State argues that the abrogation of Leonard and Gamble, by the prohibition against pro se participation, is just a procedural change. The difficulty is that to some extent almost anything can be characterized as procedural while the other side is characterizing the same thing as substantive.

First of all, as is mentioned above, the right to participate pro se is part of the statutory, and perhaps constitutional, right to counsel, as developed over 30 years. While technically speaking the right to counsel might be found in a law book under "criminal procedure", at the same time, it is almost always characterized as a fundamental right. This right certainly would be a “right” previously acquired under a statute. The General savings provision 4.13 (1)(b) in the Code should apply and prevent the new statute from impairing that right by being applied to existing cases.

There are several clues to statutory construction that are found in the State v. Macke case. Justice Waterman, in his majority opinion, noted that the jurisdiction limiting provision "results in significant disadvantage to some defendants and can mean the difference between freedom and incarceration while the case proceeds," 933 N.W.2d at 233. The right to file pleadings pro se, even when represented by counsel, can avoid the significant disadvantage when an applicant has poorly performing counsel.

Moreover, Macke recognized that there was no language in Senate File 589 addressing the retroactivity question. The legislature certainly knows how to make something specifically retroactive if they choose to do so. Indeed Senate File contained a section on expunging certain old convictions. Division I of that bill, addressing expungement of convictions, contains language making the provision specifically applicable to convictions "that occurred prior to or after July 1, 2019." The bill is silent on whether the limitations on pro se filings apply to already filed cases.

II

IF SECTION 822.3A APPLIES TO HRBEK'S POSTCONVICTION THE STATUE WOULD VIOLATE THE IOWA CONSTITUTION'S PRINCIPLE OF SEPARATION OF POWERS

Preservation of Error:

The State asserts, at page 26 of its brief, that Hrbek did not preserve error with regard to his argument about the separation of powers. The Court should find that Hrbek did enough in his pro se pleadings to allow this claim to be raised on appeal.

First, Hrbek had to file the resistance to the new statute entirely by himself. He had appointed counsel, who took no steps to assist Hrbek in that matter.

Second, Hrbek filed a resistance to the statute on July 24, 2019. In that resistance, Hrbek claimed that the statute violated "the accused procedural rights, statutory rights, state constitutional rights, federal constitutional rights to such a degree…" (App. 9).

At page 4 of his resistance, he said that the statute was not a "reasonable exercise of the legislature's police power" (App. 12).

Hrbek clearly raised a complaint that the statute not only should not be applied to him retroactively, but also was in fact unconstitutional. This should be sufficient to allow this court on appeal to address the separation of powers issue.

Summary of Argument

There are two ways that legislative abrogation of Leonard, Gamble, and Jones would be unconstitutional.

First, there is the argument that there is a constitutional right to counsel in post-conviction cases. That right includes some right to self participation. This was adequately briefed in the opening brief and does not need further development.

The second argument is based on the principle of separation of powers. This is related to the idea that a court has certain 'inherent powers." Hrbek argues that Leonard, Jones, and Gamble amounted to the regulation of parties and their counsel, appearing in front of the District Court. A court has the inherent power to regulate that behavior. Legislative intrusion into that regulation would be unconstitutional.

There is agreement about some portion of the argument.

1. The State, in its brief, does an admirable job of categorizing situations where an inherent power of the court would limit the power of the legislature to legislate about activity in a court case. See State's brief, pages 44-46.

The State recognizes that one category would be where the legislature "usurped the power to decide cases". Klouda v. Sixth Judicial District Department of Correctional Services, 642 N.W. 2d 255 (Iowa 2002) is one such case. In that case, the legislature transferred adjudication of probation revocations from District Judges to Administrative Law Judges. This was unconstitutional because the Iowa Constitution vested the sole power in the court to decide and pronounce judgments.

The second category, according to the State's analysis, is those circumstances where it is "impossible or impractical for a court to exercise its core adjudicative function" (State's brief, page 45). The State recognizes that Hrbek's argument is that the Leonard, Gamble and Jones involve regulation "of the relationship between post-conviction applicants and their counsel". The State seems to acknowledge that this would be a core function.

Specific Responses:

1. The State, at page 46 of its brief, says that it agrees with Hrbek that the new statute "does not revive pre-Gamble practices where PCR Counsel would be ordered to submit a report on the validity or invalidity of claims".

Response: That is not quite wheat Hrbek said in his brief. Hrbek asserted that the prohibition on requiring a "report" remains.

But the problem presented by the new statute will arise when a client has presented a claim in his pro se petition the lawyer does not think has merit. While the lawyer may not be required to file a report with the court, the lawyer would be permitted to proceed essentially while ignoring the claim the Applicant wants to present.

At that point, the only option the client has is to file a Motion to disqualify counsel. Counsel will be disqualified or be replaced if there is "good cause shown". "Good cause", however, may not exist if the lawyer then defends the

lawyer's position at the hearing to remove counsel. That certainly is putting the lawyer into position to publicly criticize the claim of the client.

2. The State says that it "cannot conceive of any situation where it would be necessary for a PCR court to disregard section 822.3A to carry out its core adjudicative function." (page 46)

Response: In fact it is not hard to imagine cases where the limitation on pro se filings would create significant problems.

First of all, and this does not really need discussion, there is the case where the lawyer appointed is incompetent. Certainly, it is easy to say that under those circumstances, the lawyer can be replaced. Unfortunately, given the financial limitations on appointed counsel, there are parts of the State where there are just not that many lawyers on the appointment list.

But there is a more systemic problem presented by the way the statute would work, if pro se pleadings were not allowed.

To start with, the State acknowledges that pro se applications prior to the appointment of counsel can be filed. That initial application can contain claims that appointed counsel will not pursue. Those claims presumably remain in the case unless voluntarily dismissed. They will need to be ruled on based on the Jones decision. The problem, however, is that they cannot be developed by the pro se

applicant during the course of the post conviction between complaint and hearing. He cannot do discovery without the assistance of counsel.

Under those circumstances, the only option for the applicant is to seek to disqualify counsel. This is not an efficient way to run a court proceeding.

Certainly, the core function of the adjudication of claims should include the regulation of the relationship between appointed counsel and the client. The Iowa Supreme Court, since 1990, has struck a balance. A legislature should not be permitted to set that aside.

3. The State asserts at page 47 that "pro se" participants have the same standards as lawyers.

Response: The Iowa Supreme Court does give pro se participants and their pleadings greater leeway than lawyers. See Munz v. State, 382 N.W.2d 693, 697 (Iowa 1985); *see also* Knight v. Knight, 525 N.W.2d 841, 843 (Iowa 1994) (stating that in evaluating pro se filings, "some leeway must be accorded from precision in draftsmanship"); State v. Mulqueen, 188 N.W.2d 360, 365 (Iowa 1971) (recognizing that pro se litigants "'ought not to be held to the niceties of lawyers' pleadings'") (quoting Sanders v. United States, 373 U.S. 1, 22; 83 S. Ct. 1068, 1080-81 (1963)).

4. The State's brief, beginning at page 27, characterizes the new statute as a "legislative enactment" replacing "a judicially created stopgap procedure".

This is argued at some length by the State in its brief'

Response: Leonard, Gamble, and Jones were a set of cases developed over 17 years. Indeed, another 12 years went by before the legislature chose to eliminate the rights created in those cases. This is very different from the situation where the court makes a decision and the legislature comes in the next year or two to change the judicially created circumstance.

One is reminded a little of the case State v. Iowa District Court for Jones County, 902 N.W.2d 881 (Iowa 2017). In that case, the Iowa Department of Corrections (IDOC) reinterpreted a statute from an interpretation it had used for over a decade. The Supreme Court, in a unanimous decision, said that the agency could not simply reverse a determination that had essentially been on the books for that long. The court discussed the Principle of "Stare decisis and Legislative Acquiescence "

> [t]he rule of stare decisis "is especially applicable where the construction placed on a statute by previous decisions has been long acquiesced in by the legislature, by its continued use or failure to change the language of the statute so construed...." State v. Iowa District Court for Jones County, 902 N.W.2d 811, 818 (Iowa, 2017)

General Response

At its core, the discussion of this issue seems to be whether 822.3A impairs the relationship between counsel and client. To some extent, analysis at this point

turns on what happens to that relationship if the client cannot file anything other than a motion to disqualify or fire counsel.

In an ideal world, with trained and careful appointed counsel, there might not be the need to have Court regulation of that relationship.

At the same time, we do not live in an ideal world. Appointed counsel in post-conviction are paid $62 an hour. That is close to the $60 an hour rate appointed counsel was paid in 1980. In most cases today, appointed counsel is relatively inexperienced. The State Public Defender's Office requires private attorneys to undergo some training. But the guidelines are nowhere near the guidelines you have for appointed counsel in criminal cases. Counsel in those cases, particularly with the more serious felonies, has to have actual jury trial experience. See State Public Defender Rules 493-11.3(3) and 11.3(4,5, and 6)

There is no experience requirement for appointed counsel in Iowa postconvictions.

The Courts should have the inherent authority to regulate the relationship between applicants and their appointed counsel. 822.3A interferes with that carefully struck balance and should be declared unconstitutional.

III

THE PROHIBITION AGAINST PRO SE BRIEFS ON APPEAL VIOLATES THE IOWA CONSTITUTION'S SEPARATION OF POWERS

Preservation of Error and Standard of Review

The parties agree that this claim about appellate procedure would not have been addressed by the district court. Preservation of error is not a concern. This court should address the constitutional claim presented.

Introduction

Most of the appellate decisions, so far, interpreting Senate File 589 have addressed the retroactivity of the new statutes, in almost all cases finding the new statutes were not retroactive.

The legislature in Senate file 589 prohibited pro se filings when represented by counsel, including filing briefs. The previous sections of this reply brief have reviewed the provision, 822.3A, that applied to District Court filings for a person such as John Hrbek.

But issue that is also presented in this appeal is the portion of Senate File 589 prohibiting the filing of pro se briefs. The statutory provision is 814.6A, which went into effect on July 1, 2019.

This is what that section says:

> **814.6A. Pro se filings by defendant currently represented by counsel**
> 1. A defendant who is currently represented by counsel shall not file any pro se document, including a brief, reply brief, or motion, in any Iowa court. The court shall not consider, and opposing counsel shall not respond to, such pro se filings.

> 2. This section does not prohibit a defendant from proceeding without the assistance of counsel.
> 3. A defendant currently represented by counsel may file a pro se motion seeking disqualification of the counsel, which a court may grant upon a showing of good cause.

By its language the provision applies to filings on appeal.

Since Hrbek's application for discretionary review was filed after July 1, 2019. Statute 814.6A would apply to it. The statute would appear to prohibit Hrbek filing a supplemental brief in connection with the appeal.

This, of course, sets up a direct conflict between that statute and the pre-existing appellate rule that has, for quite some time, allowed for pro se briefs even when represented by counsel. See Rule 6.901(2). That rule quite specifically provides for pro se supplemental briefs in cases where the party is represented by counsel.

Given that conflict, it will be necessary for this court in this case to address the constitutionality of the legislature essentially abrogating an appellate rule governing the presentation of legal argument.

What are the constitutional provisions?

The Iowa Supreme Court had this to say about the court system in the Planned Parenthood case in 2018.

> We begin by reflecting on the role of the judiciary within our venerable system of government. The Iowa Constitution, like its federal counterpart, establishes three separate, yet equal,

> branches of government. Iowa Const. art. III, § 1. Our constitution tasks the legislature with making laws, the executive with enforcing the laws, and the judiciary with construing and applying the laws to cases brought before the courts.
>
> Planned Parenthood of the Heartland v. Reynolds ex rel. State, 915 N.W.2d 206, 212 (Iowa, 2018)

Here are the provisions:

> **§ 1. Departments of government**
> The powers of the government of Iowa shall be divided into three separate departments--the legislative, the executive, and the judicial: and no person charged with the exercise of powers properly belonging to one of these departments shall exercise any function appertaining to either of the others, except in cases hereinafter expressly directed or permitted.
> IA CONST Art. 3, § 1

> **§ 1. Courts**
> The judicial power shall be vested in a supreme court, district courts, and such other courts, inferior to the supreme court, as the general assembly may, from time to time, establish.
> IA CONST Art. 5, § 1

> **§ 4. Jurisdiction of supreme court**
> The supreme court shall have appellate jurisdiction only in cases in chancery, and shall constitute a court for the correction of errors at law, under such restrictions as the general assembly may, by law, prescribe; and shall have power to issue all writs and process necessary to secure justice to parties, and shall exercise a supervisory and administrative control over all inferior judicial tribunals throughout the state.
> IA CONST Art. 5, § 4

> **§ 14. System of court practice**
> It shall be the duty of the general assembly to provide for the carrying into effect of this article, and to provide for a general system of practice in all the courts of this state.
> IA CONST Art. 5, § 14

With that background this court has resolved the apparent conflict between a Rule that allows pro se briefs with a statute that eliminates that right provided by Rule.

The place to start in the analysis is to recognize that, under the separation of powers, there are certain kinds of rules and regulations a court can have that are part of the inherent power of the court. Legislative efforts to overturn or disturb that regulation can be unconstitutional.

The State's framework of that authority from their brief sets out two different circumstances for the inherent power of the court. One is where the court has the power to decide cases and the legislature takes that power away. This is like the Klouda case, where the legislature gave the power to address probation violations to an administrative law judge who was part of the executive branch.

The second category recognizes some core adjudicative function into which the legislature cannot interfere. Here, the State mentions State v. Hoegh, 632 N.W.2d 885, 888 (Iowa 2001). That case involved the inherent power to appoint a special prosecutor.

The particular provision of the Omnibus crime bill, Section 814.6A, interferes with the appellate court's regulation of the receipt of legal argument. The Supreme Court has promulgated rules that provide for briefs being submitted by counsel. After that submission, there is time for pro se individuals to submit a supplemental brief.

Presumably, such a submission could address issues or arguments that had not been presented by counsel.

There is an old and somewhat confusing case about the inherent power of the court on appeal to establish rules concerning the form and nature of briefs. In Siesseger v. Puth, 234 N.W. 540 (Iowa 1931), there was an issue raised on appeal concerning "the sufficiency of the statement of errors relied upon." Apparently, there used to be a pleading that needed to be filed called "Assignment of Error." This was discussed in the earlier case of Wine v. Jones, 168 N.W.2d 318 (Iowa 1918).

Apparently, at one time the "assignment of error" was a specific pleading. It is not clear whether this was filed with a district court or on appeal. It is clear from these two cases that the assignment of error was a statement to reviewing courts of the errors that the appellant claimed were made.

At some point, the 30th General Assembly passed a statute that said "no assignment of error shall be required in any case at law or equity now pending or

hereafter docketed in the Supreme Court." Section 4136, Code Supplement 1913. At the time the Puth case was decided in 1931, there was a rule of procedure requiring a "short and clear statement showing… the errors relied upon for reversal."

An issue must have arisen in the Puth case as to the adequacy of the statement of reasons advanced by the appellant. In defense, the appellant must have argued that the appeal rule was in conflict with the legislative enactment from 1913.

This caused the Iowa Supreme Court to make several comments about its authority over the presentation of argument to it, including the form of briefs. Here is what the court had to say:

> It will be observed that this rule prescribes and fully points out what the brief of appellant shall contain. The purpose thereof was, and is, to secure a clear, precise, definite, orderly, and comprehensive presentation by appellant of the errors complained of, which it is desired to have reviewed. The rule was designed to aid counsel for appellee to know and understand the exact rulings and matters complained of in the court below and in as clear, definite, and intelligent a manner as possible bring the rulings complained of to the attention of the court. The primary purpose of the rule is to aid and facilitate the work of the court. What the purpose of the Legislature was in repealing the sections of the Code covering the assignment of errors is not material. We have held that the Supreme Court has constitutional power and authority to require an assignment or designation of errors which the Legislature may not take away. Redfield v. Boston P. & M. Co., 178 Iowa, 1275, 160 N. W. 934; Wine v. Jones, 183 Iowa, 1166, 162 N. W. 196, 168 N. W. 318.

Siesseger v. Puth, 234 N.W. 540, 541 (Iowa 1931)

The Court added this:

> The necessity for the assignment, designation, or statement in some form, in law actions, of the errors relied upon for reversal is clearly contemplated by the Constitution (article 5, § 4), which provides: "The Supreme Court shall have appellate jurisdiction * * * for the correction of errors at law, under such restrictions as the General Assembly may, by law, prescribe. * * *" Appellate procedure in general has been prescribed and is regulated by statute. The Legislature has, however, omitted to provide the form or substance of briefs and arguments to be filed, and has enacted that "the parties to an appeal may be heard orally and in writing, subject to such rules as the court may prescribe. * * *" Section 12871, Code 1927. The court therefore is possessed of both constitutional and statutory power to make rules prescribing the form and nature of briefs and arguments to be filed by the parties.
>
> Siesseger v. Puth, 234 N.W. 540, 541 (Iowa 1931)

As we move forward by almost a century, there are now clear rules talking about the form of briefs with the contents of the briefs spelled out. There is also a recognition that sometimes issues that appellants wish to raise may not be raised or adequately raised by their counsel. Under that circumstance, the current rule allows for supplemental pro se briefs. This recognizes the need to have the appellate court be informed of issues that need to be addressed.

Hrbek asserts that the Rule allowing pro se briefs is within the inherent power of the court on appeal to govern the presentation of claims made to it. This includes not only the claims made by appointed counsel, but also claims made by pro se litigants with appointed counsel who wish to raise certain issues.

It is clear that without this ability to submit supplemental briefs, there would be considerable difficulty with appeals.

First of all, a complaining appellant could seek to fire counsel. This seems contemplated by the rule. That would, however, complicate the appeal by involving some court in an adjudication of whether or not it was reasonable to leave out certain claims.

In addition, it would only encourage claims of ineffective assistance of counsel against that appointed counsel in subsequent post conviction litigation.

The Iowa Supreme Court has struck a balance between presentation of claims on appeal and a respect for the ability of appellants to raise issues that were not addressed by appointed counsel in the initial brief.

The court should find the section 814.6A in contravention of the principles of separation of powers, which includes the inherent power of the Courts

CONCLUSION

John Hrbek has been trying to litigate the validity of his first degree murder conviction for a long time. He has struggled at times with his appointed counsel.

Indeed, appointed counsel allowed the case to be dismissed for a number of years, not even telling Hrbek that that had happened.

John Hrbek has been an active participant in his post conviction, but he still wishes to have appointed counsel. There are clearly things that counsel can do that John Hrbek cannot do. If the new statute applies to his post conviction, he would be required to make an impossible choice. If he wanted to continue to file pleadings, he would have to give up the assistance of counsel. If he went with appointed counsel, he would be prohibited from participating in his case by filing pleadings himself.

The statute should not apply to pre-existing post convictions.

If it does apply, the statute should be declared unconstitutional, in violation of the principle separation of powers. For the same reason, Hrbek should be permitted to file pro se briefs on appeal.

RESPECTFULLY SUBMITTED,

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ATTORNEY'S CERTIFICATE OF COSTS

I, Philip B. Mears, Attorney for the Appellant, hereby certify that the cost of preparing the foregoing Appellant's Page Proof Reply Brief was $3.40.

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CERTIFICATE OF COMPLIANCE WITH TYPEFACE REQUIREMENTS AND TYPE-VOLUME LIMITATION

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

[X] this brief has been prepared in a proportionally spaced typeface using Times New Roman in size 14 and contains 4959 words, excluding the parts of the brief exempted by Iowa Rs. App. P. 6.903(1)(f)(1)

/s/ Philip B. Mears — 9-2-2020
Signature — Date