

Iowa Supreme Court Nos. 24-0169 & 24-0170
Allamakee County Nos. FECR015756 & FECR015758

IN THE SUPREME COURT OF IOWA

STATE OF IOWA

Plaintiff-Appellee,

v.

DILLON MICHAEL HEILLER

Defendant-Appellant.

APPEAL FROM THE IOWA DISTRICT COURT FOR ALLAMAKEE COUNTY
HONORABLE JOHN BAUERCAMPER

**BRIEF OF AMICUS CURIAE*
AMERICAN CIVIL LIBERTIES UNION OF IOWA
IN SUPPORT OF DEFENDANT-APPELLANT**

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STATEMENT OF INTEREST OF AMICUS CURIAE

The American Civil Liberties Union (ACLU) is a nationwide, nonprofit, nonpartisan organization dedicated to the principles of liberty and equality embodied in state and federal law. The ACLU of Iowa, founded in 1935, is an affiliate of the national ACLU and shares its mission. The ACLU of Iowa works in the courts, legislature, and through public education to defend and advance civil liberties and rights for all Iowans.

The ACLU of Iowa is committed to preserving constitutional limitations on state criminal authority in defense of individual rights and liberties. This amicus curiae brief examines historical territorial restrictions on state jurisdiction rooted in the United States system of federalist government, before examining relevant Iowa case law affirming these principles and rejecting criminal prosecutions of offenses taking place entirely outside Iowa's boundaries, as well as the development of Iowa criminal code. Finally, this brief supports the Appellant's position that territorial jurisdiction is not subject to the defendant's waiver, but must be proven beyond a reasonable doubt. The remedy in cases in which the territorial jurisdiction is exceeded beyond the state's constitutional authority to prosecute crimes in Iowa is to reverse the conviction.¹

For all these reasons, the proper resolution of Mr. Heiller's cases is a matter of substantial interest to the ACLU of Iowa and its members.

¹ See *State v. Rimmer*, 877 N.W.2d 652, 661 (Iowa 2016).

STATEMENT REQUIRED BY IOWA R. APP. P. 6.906(4)(d)

Neither party nor their counsel participated in the drafting of his brief, in whole or in part. Neither party nor their counsel contributed any money to the undersigned for the preparation or submission of this brief. The drafting of this brief was performed pro bono publico.

ARGUMENT

Geographic limitations on states' police power have long been an essential pillar of America's system of democratic federalism. Each state possesses police powers to maintain peace and order within its geographic territory, and to defend and preserve the rights of its people. It is not for any state to impose criminal penalties for conduct occurring outside of its borders and affecting solely the rights of those citizens of another state. While Justice Holmes's "effects doctrine" and subsequent Model Penal Code based amendments have allowed states to extend their territorial jurisdiction, through the adoption of legislation, to multistate criminal conduct and criminal conduct affecting the rights of their citizens, *see Rimmer*, 877 N.W.2d at 661–62 (citing *Strassheim v. Daily*, 221 U.S. 280, 285 (1911), no such crime was charged in these two cases before the Court.

In case number 24-0169, Mr. Heiller was charged with second-degree theft under Iowa Code § 714.1(1) for the taking of a Chevrolet Captiva, and in case number 24-0170 he was again charged with second-degree theft of a Volkswagen Tiguan. The

record does not contain any evidence that any element of either of the alleged thefts occurred in the state of Iowa. Trial testimony from law enforcement indicates that they knew the Captiva was stolen in Campbell, Wisconsin. D0189, Jury Trial Tr., Vol. II at 36:15–38:24 (Dec. 14, 2023). The record indicates that the Tiguan was reported stolen in La Crosse, Wisconsin. D0088, Jury Trial Tr. at 34:17–20 (Jan. 4, 2024). The prosecutor did not charge Mr. Heiller with possession of stolen property under section 714.1(4), for example, but instead charged Mr. Heiller for theft under section 714.1(1). *See* D0150, at 1–2 Am. Trial Info. (Dec. 14, 2023); D0008, Trial Info. (Oct. 9, 2023). With respect to the elements of the theft of the Captiva and the Tiguan, the sole focus of this brief, there was no allegation of any connection with the State of Iowa. In short, the factual basis for the charges at issue in these cases was that Mr. Heiller drove the stolen vehicles in the State of Iowa. Those facts don't support these convictions.

Mr. Heiller was convicted of theft notwithstanding the lack of evidence or any finding that he took possession of either vehicle in Iowa, developed the intent to deprive the owners of the vehicles in Iowa, or that the vehicles belonged to an Iowa owner. Iowa Code § 714.1(1); D0152, at 7 Jury Instructions, Instr. No. 16 (Dec. 14, 2023); D0048, Jury Instructions at 5–6, Instr. No. 13 (Jan. 4, 2024). A majority of a panel of the Court of Appeals characterized the issue as an unpreserved objection to the jury's marshalling instruction. *State v. Heiller*, No. 24-0169, 2025 WL 2538647

(Iowa Ct. App. Sept. 4, 2025). However, as the opinion dissenting in part correctly noted, this Court has unequivocally—and repeatedly—stated that territorial jurisdiction, like subject matter jurisdiction, cannot be waived, and therefore may be challenged at any time. *State v. Heiller*, No. 24-0169, 2025 WL 2538647 (Iowa Ct. App. Sept. 4, 2025) (Tabor, C.J., concurring in part and dissenting in part); *see also State v. Rimmer*, 877 N.W.2d 652, 663 (Iowa 2016); *State v. Liggins*, 524 N.W.2d 181, 184–85 (Iowa 1994). If it is found lacking, the conviction must be reversed and remanded for dismissal.

This understanding of territorial jurisdiction is consistent with its constitutional underpinnings and place in the nation’s federalist history. It is also consistent with this Court’s precedent on the issue, both prior to and since the state legislature adopted and then later amended a provision of the Model Penal Code addressing extraterritoriality. Finally, contrary to the conclusion of the panel majority, the issue is not and has never been treated as waivable, but is essential and may be raised at any time.

I. The Constitutional and Historical Basis for Limitations on Territorial Jurisdiction.

The founders enshrined a right to be tried in the state in which the crime was committed in the Constitution. *See* U.S. Const. art. III, § 2, cl. 3 (“[S]uch [criminal] Trial shall be held in the State where the said Crimes shall have been committed”); *id.* amend. VI (“In all criminal prosecutions, the accused shall enjoy

the right to a . . . trial, by an impartial jury of the State and district wherein the crime shall have been committed . . . ”). At common law, the “territorial principle” provides that territorial jurisdiction should not extend beyond the permissible geographic scope of penal legislation. Wendell Berge, *Criminal Jurisdiction and the Territorial Principle*, 30 Mich. L. Rev. 238, 240 (1931). The “territorial principle,” inherent in the Constitution and recognized in common law, traces its roots to questions of sovereign authority. *Id.*

Balancing power between the states has been one of the greatest challenges in the history of the nation. *See* Elizabeth Earle Beske, *Horizontal Federalism & the Big State Problem*”, 65 Bost. Col. L. Rev. 2685, 2687–88 (2024). Equitable distribution of state power was a significant concern to the drafters of the U.S. Constitution. *Id.* During the writing of the Constitution at the Philadelphia Convention in 1787, the “Great Compromise” combined the New Jersey and Virginia congressional plans to form a bicameral legislative body that sought to balance power between the states. *See* Max Farrand, *The Framing of the Constitution of the United States* 105 (1913). King George III’s extraterritorial prosecution of colonists during the Revolutionary War made defining the limits of prosecutorial balance between the states a priority for the founders. Ryan Kerfoot, Comment, *Territorial Jurisdiction in Ohio Post-Wogenstahl*, 71 Case W. Rsrv. L. Rev. 1147, 1151–52 (2021). The United States Supreme Court accordingly construed territorial jurisdiction narrowly to prevent diminution in state sovereignty. *See, e.g.*

Schooner Exchange v. McFaddon, 11 U.S. 116, 137 (1812) (abrogated on other grounds by *Opati v. Republic of Sudan*, 590 U.S. 418 (2020)); *The Apollon*, 22 U.S. 362, 369 (1824).

To provide maximal protection to competing sovereigns, territorial jurisdiction was understood in an extremely rigid manner—prosecution was only permissible if the entirety of a criminal act, the consideration of the act, and the result of the act occurred within the territory. Wendell Berge, *Criminal Jurisdiction and the Territorial Principle*, 30 Mich. L. Rev. 238, 240 (1931). In the early 1800s, the United States Supreme Court held that “[t]he jurisdiction of the nation, within its own territory, is necessarily exclusive and absolute; it is susceptible of no limitation, not imposed by itself.” *Schooner Exchange*, 11 U.S. at 136. The Court reasoned that jurisdictional authority was a zero-sum game in which the increase of jurisdiction for one sovereign necessarily meant the diminution of the jurisdiction of another sovereign. *Id.* These concerns were reiterated a decade later by Justice Story in *The Apollon*, 22 U.S. at 369 (“The laws of no nation can justly extend beyond its own territories, except so far as regards its own citizens. They can have no force to control the sovereignty or rights of any other nation within its jurisdiction.”) Because the preservation of state sovereignty was so important in the early days of the Republic, and the restriction of territorial jurisdiction was so rigid, interstate territorial jurisdiction disputes were clear cut—only the state in which the criminal act occurred had territorial jurisdiction to prosecute.²

² This was true even in homicide cases, in which a victim was struck in one state and ended up dying in another state. *See, e.g., United States v. Guiteau*, 12 D.C. (1 Mackey)

Ryan Kerfoot, Comment, *Territorial Jurisdiction in Ohio Post-Wogenstahl*, 71 Case W. Rsrv. L. Rev. 1147, 1153 (2021).

Over time, increases in mobility from one state to another resulted in a relaxation of strict territorial limits. *See id.* In 1911, the United States Supreme Court in *Strassheim v. Daily* expanded territorial jurisdiction to include conduct that occurred outside of a state's geographic boundaries but was "intended to produce" and did produce "detrimental effects" there. 21 U.S. 280, 285 (1911).³ As state courts started to integrate the *Strassheim* "detrimental effects" test into their state law, the restraints of territorial jurisdiction, and the strict "territorial principle" began to relax. *See, e.g.*, *State v. Vetrano*, 117 A. 460, 464 (Me. 1923); *State ex rel. Gildar v. Kriss*, 62 A.2d 568, 575 (Md. 1948); *State v. Tickle*, 77 S.E.2d 632, 637–38 (N.C. 1953). Yet, despite this, the underpinnings of state sovereignty still persist to inform state territorial jurisdiction statutes, and territorial jurisdiction remains a key limitation on state authority. *See* Ryan Kerfoot, Comment, *Territorial Jurisdiction in Ohio Post-Wogenstahl*, 71 Case W. Rsrv. L. Rev. 1147, 1158 (2021).

498, 499, 536–37 (D.C. 1882) (holding that New Jersey lacked territorial jurisdiction over the defendant that shot President Garfield, who died in New Jersey, because the shooting actually occurred in the District of Columbia); *State v. Gessert*, 21 Minn. 369, 370 (1875) (finding Minnesota maintained territorial jurisdiction over defendant who stabbed a victim in Minnesota, when the victim later died in Wisconsin).

³ Decades later, the Court expanded territorial jurisdiction again to provide concurrent jurisdiction between a state and the federal government to prosecute on the high seas. *Skiriotes v. Florida*, 313 U.S. 69 (1941).

II. Iowa Authority on Territorial Jurisdiction

Iowa is not unique in this regard, and territorial jurisdiction has been an understood component of Iowa's police power since the beginning. Article V, section 6 of the Iowa Constitution states the district court shall "have jurisdiction in civil and criminal matters arising in their respective districts, in such manner as shall be prescribed by law." Iowa Const. art. V, § 6. Under the Iowa constitution, a district court's jurisdiction is granted solely by law. *See O'Kelley v. Lochner*, 145 N.W.2d 626, 629 (Iowa 1966). In 1860, the statutory grant of that jurisdiction largely resembled the *Strassheim* decision. *See* Iowa Code § 4505 (1860).

Historically, challenges to territorial jurisdiction arose in the context of specific offenses. For example, in *Schultz v. Lainson*, a defendant filed a habeas petition to collaterally attack criminal charges for larceny under sections 5006.11 and 5006.12 of the 1939 Iowa Code. 234 Iowa 606 (Iowa 1944). At the time, section 5006.11 defined larceny of a motor vehicle—"steal, take and carry away . . . any motor vehicle," and 5006.12 provided the territorial jurisdiction component—"[]jurisdiction of such offense may be in the county where such motor vehicle was stolen, or through or into which it was taken, carried, or transported by the person or persons who committed the theft." Based on the construction of larceny as an event that would recur indefinitely while the property was in the rightful owner's possession, the Court ultimately held that territorial jurisdiction was satisfied under 5006.12 because the

defendant stole the property and then brought it into the State of Iowa. *Schultz*, 234 Iowa at 608 (citing *State v. Bennett*, 14 Iowa 479 (Iowa 1863). These constructions of larceny and territorial jurisdiction were repealed and revised when the Iowa criminal code was overhauled in 1978 to integrate large portions of the Model Penal Code. *See* Iowa Code § 803.1 (setting territorial jurisdiction); *see also* Iowa Code § 714.1 (2025) (defining elements of theft); Iowa Code § 714.4 (2025) (defining elements of the lesser included offense of possession of stolen property).

Section 1.03 of the Model Penal Code enumerates the circumstances in which a state may extend territorial jurisdiction to apply their criminal law to extraterritorial conduct. Model Penal Code § 1.03 (1962). The construction of territorial jurisdiction in section 1.03 was intended to extend past the common law norms of strict territoriality to include all conduct that affects a state's interest, so long as it did not result in unfairness upon the person being charged. Model Penal Code § 1.03 explanatory note (A.L.I., Official Draft and Explanatory Notes 1985). In 1976, Iowa joined those states adopting some portion of the Model Penal Code, including its territorial jurisdiction statute. Iowa Div. of Crim. & Juv. Just., *1978 Iowa Criminal Code Revision Process Overview* 1 (1998).⁴ Using the template of section 1.03, the Iowa legislature passed Iowa Code section 803.1. *See* 1976 Iowa Acts 587–88 (codified as

⁴ Available at <https://www.legis.iowa.gov/docs/publications/SD/19514.pdf>.

amended at Iowa Code § 803.1 (2025)).⁵ Section 803.1 limits the court’s criminal jurisdiction to matters in which an element of an offense, or attempt, solicitation, or conspiracy to commit an offense, occurred within the state. Iowa Code § 803.1 (2025).

This Court has interpreted section 803.1 on multiple occasions. In *State v. Liggins*, the Court found that the state had territorial jurisdiction to uphold the defendant’s murder conviction, but reversed the defendant’s convictions for assault, sexual abuse, and kidnapping, because there was not substantial evidence to support a finding that the offenses were committed in Iowa to support territorial jurisdiction. 524 N.W.2d 181, 185–86 (Iowa 1994). The Court held that under section 803.1, “territorial jurisdiction is an essential element of the crime” which must be proven beyond a reasonable doubt. *Id.* at 184–85.

The Court also construed the bounds of territorial jurisdiction in section 803.1 in *State v. Wagner*. 596 N.W.2d 83, 85 (Iowa 1999). There, the Court reversed a conviction for the escape of an Iowa prisoner during transport in Texas. *Id.* at 88–89. Carefully examining each element of the crime of escape in the Iowa Code at the time, the Court determined that for each, neither the defendant’s conduct nor any result of conduct occurred in state. *Id.* at 86.⁶

⁵ Available at https://publications.iowa.gov/50819/1/1976_Iowa_Acts_GA_66_2.pdf.

⁶ In *Wagner*, the Court also rejected the argument that the state had territorial jurisdiction under section 803.1 as a result of the escape’s impact on the interests of the State of Iowa. *Wagner*, 596 N.W.2d at 87 (reasoning that the Legislature, in adopting section 803.1, had specifically not passed that portion of the Model Penal

Following *Wagner*, the legislature enacted House File 2253, which amended section 803.1 to expand territorial jurisdiction to criminal statutes that proscribe conduct occurring outside Iowa's boundaries but impacting Iowa's interests, and further amended Iowa's criminal escape law to provide language to that effect. 2000 Iowa Acts 82–83 (adding subsection (d) to section 803.1 to cover offenses that are “based upon a statute that specifically prohibits conduct wholly outside of the state, and the conduct bears a reasonable relation to a legitimate state interest, and the person knows or should know that the conduct is likely to affect that interest”);⁷ *see also id.* (amending section 719.4(5) to specifically prohibit conduct “committed wholly outside the state”). Contrary to the State’s argument, Appellee Br. 15–16, however, the expanded territorial jurisdiction of section 803.1(d) is of no consequence to these cases. Mr. Heiller was simply not charged or convicted under “a statute that specifically prohibits conduct wholly outside the state.” Iowa Code § 803.1(d). Unlike the amended escape statute, *see* Iowa Code § 719.4(5), none of the elements of second degree theft have *specific* language that would prohibit conduct outside the state. Iowa Code § 714.2(2); D0150, at 1–2 Am. Trial Info. (Dec. 14, 2023); D0008, Trial Info. (Oct. 9, 2023); D0152, at 7 Jury Instructions, Instr. No. 16 (Dec. 14, 2023); D0048, Jury Instructions at 5–6, Instr. No. 13 (Jan. 4, 2024); D0155, Verdict (Dec. 15, 2023);

Code dealing with conduct occurring outside geographic boundaries but impacting the state’s interest).

⁷ Available at <https://www.legis.iowa.gov/docs/publications/iactc/78.2/CH1037.pdf>.

D0049, Verdict (Jan. 4, 2024). These cases are thus not those for which the Court needs to examine the impact of the Legislature’s post-*Wagner* amendment.

Most recently, in *State v. Rimmer*, this Court addressed the real issue in these cases: territorial jurisdiction cannot be waived. 877 N.W.2d 652, 663 (Iowa 2016). In *Rimmer*, the Court applied section 803.1 to a multistate insurance fraud prosecution, in which the defendants lived in Wisconsin and Illinois and had never set foot in Iowa before their extradition. *Id.* at 656–57. The Court began its analysis with a detailed discussion of Iowa’s territorial jurisdiction, explaining that the territorial jurisdiction restraints of the Sixth Amendment of the United States Constitution and article V, section 6 of the Iowa Constitution require prosecution in the district in which the crime occurred, and that any extraterritorial application of state criminal law is subject to fundamental fairness due process analysis. *Id.* at 664 (citing *Liggins*, 524 N.W.2d at 184; *State v. Sumulikoski*, 110 A.3d 856, 866 (N.J. 2015)). This analysis highlighted the distinction between criminal and civil case law to demonstrate that concepts in civil precedent like personal jurisdiction and venue—both of which a defendant may waive, *see, e.g.*, *Sioux Pharm, Inc. v. Summit Nutritionals Int’l, Inc.*, 859 N.W.2d 182, 190 (Iowa 2015) (waiving personal jurisdiction); *PSFS 3 Corp. v. Michael P. Seidman, D.D.S., P.C.*, 962 N.W.2d 810, 818–19 (Iowa 2021) (discussing an agreement to waive venue)—provide little value in analyzing territorial jurisdiction. *Rimmer*, 877 N.W.2d at 661–63. The Court concluded, “Challenges to territorial jurisdiction, which go to the

power of the court to hear the case, cannot be waived.” *Id.* at 663 (citing 21 Am. Jur. 2d Criminal Law § 435 (2008)).

III. Territorial Jurisdiction as a Prerequisite to Criminal Charges

The Court’s unequivocal statement in *Rimmer* is entirely consistent with both its past cases and the broader understanding of the issue. For example, in *Liggins*, the Court favorably cited cases on territorial jurisdiction from Indiana and Maine that also held territorial jurisdiction cannot be waived. *See Liggins*, 524 N.W.2d at 185 (first citing *McKinney v. State*, 553 N.E.2d 860, 863 (Ind. Ct. App. 1990) (“Jurisdiction may not be waived or conferred by consent.”); and then citing *State v. Baldwin*, 305 A.2d 555, 559 (Me. 1973) (“Unlike venue, jurisdiction can never be waived nor can it be conferred upon a Maine Court by consent.”)). The Court in *Liggins* also relied on LaFave, whose treatise similarly identifies territorial jurisdiction at common law as not being waivable. *Id.* (citing 1 Wayne R. LaFave & Austin W. Scott, Jr., *Substantive Criminal Law* § 2.7(b) (1986)); *see also Wagner*, 596 N.W.2d at 85 (also citing LaFave).

In *Rimmer*, then, this Court added its own voice to this body of authority, explaining that one of the principal distinctions between personal jurisdiction and territorial jurisdiction in criminal cases is that territorial jurisdiction cannot be waived, whereas “personal jurisdiction may be established by waiver, consent, or estoppel.” 877 N.W.2d at 663 (quoting *Sioux Pharm, Inc. v. Summit Nutritionals Int'l, Inc.*, 859 N.W.2d 182, 190 (Iowa 2015)). The Court cited 21 Am. Jur. 2d Criminal Law § 435

(2008),⁸ which provides that “[a] court cannot act outside its jurisdiction, even when the parties are willing to agree to such an arrangement.”⁹ *See id.* Stated another way by LaFave, “Courts frequently note that . . . the lack of jurisdiction is not waivable” and can be “raised at any time while the case is pending, even if it is being raised for the first time upon appeal or by collateral attack.” 4 Wayne R. LaFave, Jerold H. Israel, Nancy J. King & Orin S. Kerr, *Criminal Procedure* § 16.4(d) (4th ed. 2015 & Supp. 2025) (citation modified).

There are many such decisions across the country. *See, e.g., Peacock v. State*, 126 N.E.3d 892, 895–96 (Ind. Ct. App. 2019) (“[T]erritorial jurisdiction is a fact that the State must prove beyond a reasonable doubt because jurisdiction may not be waived or conferred by consent.” (internal quotation marks omitted)); *State v. Streater*, 559 A.2d 473, 475 (N.J. Super. Ct. App. Div. 1989) (“[T]erritorial jurisdiction of this State’s courts to convict a person of an alleged criminal offense cannot be waived and may be raised at any time.”); *State v. Dudley*, 614 S.E.2d 623, 626 (S.C. 2005) (same). These holdings, which, like *Rimmer*, consider a lack of territorial jurisdiction as immune from waiver, are consistent with the common law conception of territorial jurisdiction as

⁸ This section of the treatise can now be found at section twenty-five in the most recent edition. 21 Am. Jur. 2d Criminal Law § 425 (2025).

⁹ This Court has repeatedly drawn on American Jurisprudence, Second Edition on Criminal law in answering open questions of statutory interpretation. *See, e.g., State v. Taylor*, 881 N.W.2d 72, 76 (Iowa 2016); *State v. Keeton*, 710 N.W.2d 531, 534 (Iowa 2006); *State v. Booth*, 169 N.W.2d 869, 873 (Iowa 1969).

essential to state sovereignty, “a question so elemental that . . . it cannot be waived by conduct or by consent.” *Dudley*, 614 S.E.2d at 626.

IV. The Lack of Territorial Jurisdiction in These Cases

Territorial jurisdiction is unique. While it maintains characteristics of subject matter jurisdiction, it also implicates, along with state sovereignty interests, the due process rights of individuals appearing before the court. In Mr. Heiller’s cases, the Court of Appeals understandably wrestled with the apparent tension between the two frameworks: Should territorial jurisdiction be treated like subject matter jurisdiction—that is, not waivable? *In re Estate of Falck*, 672 N.W.2d 785, 789 (Iowa 2003). Or, like other elements of the crime which must be proven beyond a reasonable doubt, should territorial jurisdiction be viewed through a due process analysis—that is, extremely important, but typically waivable? *State v. Serrato*, 787 N.W.2d 462, 468 (Iowa 2010).

Mr. Heiller’s cases call for correction and further guidance by this Court. The manner in which this Court has thus far sought to protect these overlapping interests is to apply an analytical framework appropriate to due process principles—requiring that territorial jurisdiction be proven by the state beyond a reasonable doubt as an element of an offense—and to safeguard the jurisdictional interests at play by allowing a challenge to territorial jurisdiction to be raised at any time, not subject to waiver.

Rimmer, 877 N.W.2d at 663; *Serrato*, 787 N.W.2d at 468; *In re Estate of Falk*, 672 N.W.2d at 789. This careful approach is the appropriate one.

In *State v. Bradley*, the Iowa Court of Appeals described territorial jurisdiction as a question of subject matter jurisdiction. 637 N.W.2d 206, 214 (Iowa Ct. App. 2001), *abrogated on other grounds by State v. Jenkins*, 788 N.W.2d 640, 645–47 (Iowa 2010). Subject matter jurisdiction describes a court’s power to adjudicate a general class of actions, not just a particular case. *State v. Yodprasit*, 564 N.W.2d 383, 385 (Iowa 1997). A key feature of subject matter jurisdiction is that it cannot be waived, meaning it may be challenged at any time. See *In re Estate of Falk*, 672 N.W.2d at 789.

This analytic framework makes sense, as territorial jurisdiction, like subject matter jurisdiction, includes this limitation on the authority of a court to adjudicate a particular case. *Rimmer*, 877 N.W.2d at 663 (2016). However, territorial jurisdiction limits not only the courts, but the legislature, in that it “refers to the power of the State of Iowa ‘to create criminal law, especially with respect to the permissible geographical scope of penal legislation.’” *State v. Wagner*, 596 N.W.2d 83, 85 (Iowa 1999) (quoting 2 Wayne R. LaFave & Jerold H. Israel, *Criminal Procedure* § 16.2(a), at 342 (1984)).

At the same time, the Courts recognize the due process interests of an individual in matters of how a state exercises its territorial jurisdiction. To that end, territorial jurisdiction is treated as an element of the crime that the State must prove

beyond a reasonable doubt. *State v. Serrato*, 787 N.W.2d 462, 468 (Iowa 2010) (first citing *State v. Liggins*, 524 N.W.2d 181, 184–85 (Iowa 1994); and then citing *Jackson v. Virginia*, 443 U.S. 307, 316 (1979)).

Where the Court of Appeals erred in Mr. Heiller’s cases is that it considered territorial jurisdiction as merely a due process evidentiary burden, which required the State to prove territorial jurisdiction beyond a reasonable doubt. *State v. Heiller*, No. 24-0169, 2025 WL 2538647 (Iowa Ct. App. Sept. 4, 2025). *Liggins* confirms that it is a due process issue. *See* 524 N.W.2d 181 (Iowa 1994); *see also Jackson v. Virginia*, 443 U.S. 307, 324 (1979) (holding that Criminal defendants have a due process right that criminal convictions be supported by sufficient evidence). *Rimmer* also describes the essential due process inquiry in territorial jurisdiction cases as what “fundamental fairness” requires. *See* 877 N.W.2d 652, 666 (2016) (citing *Lassiter v. Dep’t of Soc. Servs.*, 452 U.S. 18, 24–25 (1981)); *see also* Lea Brilmayer & Charles Norchi, *Federal Extraterritoriality and Fifth Amendment Due Process*, 105 Harv. L. Rev. 1217, 1219–20 (1992). But territorial jurisdiction isn’t only a due process question.

To resolve any remaining ambiguity this Court should (again) explicitly state that the correct analytical framework considers territorial jurisdiction, like subject matter jurisdiction, not to be waivable. Because territorial jurisdiction, like subject matter jurisdiction, cannot be waived, it should be treated like subject matter

jurisdiction when it comes to remedy—if territorial jurisdiction is not satisfied, any verdict rendered also should be void. *See In re Estate of Falck*, 672 N.W.2d at 789.

CONCLUSION

Territorial jurisdiction was lacking in Mr. Heiller’s cases. But the State of Iowa was not without options. The State had ample alternatives which do not encroach on territorial jurisdiction or the individual due process and state sovereignty interests it protects. Potential examples include the better exercise of prosecutorial judgment in charging decisions, coordination with authorities in Wisconsin on charging, and extradition. For example, based on the alleged facts of these cases, while the State might have considered charging Mr. Heiller with possession of stolen property, it was up to Wisconsin, not Iowa, to charge Mr. Heiller with the wrongful taking in Wisconsin. The upshot is that territorial jurisdiction, in turn, safeguards Iowa’s interest in protecting its residents from criminal charges brought by other states for conduct occurring wholly in Iowa.

Territorial jurisdiction, which is lacking in these cases, cannot be waived and may be challenged at any time. Accordingly, the Court should reverse Mr. Heiller’s two theft convictions.

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