IN THE SUPREME COURT OF IOWA
Supreme Court No. 24–0769
Polk County No. FECR371596

STATE OF IOWA,
Plaintiff-Appellee,

vs.

LYNN MELVIN LINDAMAN,
Defendant-Appellant.

APPEAL FROM THE IOWA DISTRICT COURT
FOR POLK COUNTY
THE HON. CHARLES C. SINNARD, JUDGE (SUPPRESSION)
& THE HON. DAVID NELMARK, JUDGE (TRIAL)

REPLY BRIEF OF CROSS-APPELLANT

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STATEMENT OF THE ISSUES PRESENTED FOR REVIEW

I. Lindaman filed a notice of appeal from a judgment of conviction and sentence. The State filed a cross-appeal. Appellate jurisdiction to resolve issues raised in the appeal is proper under section 814.6(1). Should this Court dismiss the State's cross-appeal?

II. Lindaman invoked his right to an attorney. But then, he reinitiated a conversation about an interview and told the officers that he wanted to talk with them "now." The district court ruled that officers did not violate Lindaman's right to counsel by speaking with him after that (and accepting his *Miranda* waiver, before the interview). Was that incorrect?

III. Did the district court err in finding that the officers violated section 804.20? And if not, did it err in assuming that there was a causal connection between that purported violation and Lindaman's voluntary admissions, as required for suppression?

RESPONSE TO CROSS-APPELLEE'S ARGUMENT

I. This Court has appellate jurisdiction over the cross-appeal because it has jurisdiction over *the whole* appeal.

Lindaman's brief renews arguments that he made in his motion to dismiss the State's cross-appeal. *See* Def's Br. (3/7/25) at 10–18; Motion to Dismiss (5/22/24). This Court previously ordered the issue to be submitted with the appeal. *See* Order (6/20/24).

Lindaman asks "[w]hat remedy does the State seek, given that it has already obtained . . . a conviction as charged?" *See* Def's Br. at 11. Lindaman is right that, if this Court affirms his conviction, then the cross-appeal issue is moot. But if this Court orders a retrial, then the admissibility of evidence of Lindaman's confession is *not* moot. In that event, reversal of the ruling that suppressed evidence of the confession will matter greatly.

Lindaman argues that the State "continues to conflate cases" about appellate jurisdiction, including *State v. Rutherford*, 997 N.W.2d 142, 146 (Iowa 2023). *See* Def's Br. at 14–15. Lindaman argues that *Rutherford* and cases like it are "specifically limited to the context of a defendant's appeal following a guilty plea." *See id.* at 15. But the State is making a point about *the rationale*, as stated with general applicability to all criminal appeals: "An appellate court either has jurisdiction over a criminal appeal or it does not." *See Rutherford*, 997 N.W.2d at 144 (quoting *State v. Wilbourn*, 974 N.W.2d

58, 66 (Iowa 2022)). Once appellate jurisdiction exists, Iowa appellate courts "have *jurisdiction* over the entire appeal." *See id.* at 146. Lindaman had a right of appeal under section 814.6(1)(a). He filed a notice of appeal. Just as finding good cause under section 814.6(1)(a)(3) meant the *Rutherford* court "had jurisdiction over the entire appeal"—and not just the specific issues for which there was good cause to appeal—so too, here. Once a party establishes appellate jurisdiction "as to one issue," that gives this Court jurisdiction to resolve *all* issues raised in the same appeal, because they all arise within "a class of cases over which [it has] appellate jurisdiction." *See id.* at 145–46.

As a fallback, Lindaman argues that "*Rutherford* would stand for the position that the appellate court does not have the authority to hear the State's cross-appeal." *See* Def's Br. at 15. That's wrong. *Rutherford* explained that a statute like section 814.7 "otherwise limits our *authority* with respect to specific issues raised in the appeal" over which it may have jurisdiction. *See Rutherford*, 997 N.W.2d at 146. But no similar statute limits this Court's authority to resolve the issue raised by the State in this cross-appeal.

Lindaman argues, at length, that various statutes that give the State a right of appeal or access to discretionary review should be read to limit the jurisdiction (or maybe authority) of a court to hear the State's cross-appeal. *See* Def's Br. at 11–14. But statutes defining *the defendant's* right of appeal

and access to discretionary review don't limit the scope of issues that *they* can raise, once some component of the appeal triggers appellate jurisdiction.[1] That's the point of *Rutherford* and *Wilbourn*: for the purpose of jurisdiction, it didn't matter that the court wouldn't have had appellate jurisdiction over the guilty-plea challenge in *Rutherford* or the challenge to the agreed-upon sentence in *Wilbourn*, if either had been raised alone. Once each appellant raised an issue that put the appeal within the jurisdiction of the court, that was that—the court had jurisdiction over the whole appeal, *including* claims that wouldn't pass the applicable test for appellate jurisdiction, on their own. *See Rutherford*, 997 N.W.2d at 144–46; *Wilbourn*, 974 N.W.2d at 66. Nor did the appellate court lack authority to consider any such tag-along claims simply because they had hitched a ride, or by some implied limitation that arose from the jurisdictional analysis. *Rutherford* found it lacked authority over a particular challenge because of the *express* limitation in section 814.7 that "otherwise limits [its] authority with respect to specific issues raised."

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[1] Indeed, Lindaman is not just challenging a judgment of conviction—he is also challenging the correctness of various pretrial/mid-trial rulings. *See* Def's Br. (10/11/24), at 14–55. If failure to take an interlocutory appeal meant that a party waived error in all non-final orders and rulings, or if it extinguished appellate jurisdiction over those challenges when raised later as part of an appeal from a final judgment, then most of Lindaman's claims on appeal would be similarly out of reach. *But see* Iowa R. App. P. 6.103(4) ("Error in an interlocutory order is not waived by . . . proceeding to trial" and may be challenged "on appeal of the final order or judgment").

See Rutherford, 997 N.W.2d at 146. And *Wilbourn*, finding no such statute that would limit its authority over the challenge to the agreed-upon sentence, actually *considered and resolved* that tag-along claim. *See Wilbourn*, 974 N.W.2d at 66–68. If statutes creating appellate jurisdiction worked in the way that Lindaman suggests, that would have been impossible—*Wilbourn* would have read section 814.6(1)(a)(3) to either partially strip jurisdiction or impliedly limit the authority of the appellate court to resolve that claim. But it did not, because those statutes don't work that way.

Lindaman asserts that "[n]o support in case law can be found" for the proposition that "a defendant's appeal permits the state to appeal," or that *any* party's valid invocation of appellate jurisdiction can allow the court to consider another party's claims on appeal. *See* Def's Br. at 15–16. The State already explained where it found support for that proposition in case law. *See* Resistance (5/24/24), at ¶4–5. Lindaman addresses *none* of those cases. He does not address *Stew-Mc Development* or *General Electric*, which both held "where one of the several parties to the action appeals and jeopardizes any part of the judgment, a party may cross-appeal against any other party to the litigation within the time allotted for cross-appeals." *See Stew-Mc Development, Inc. v. Fischer*, 770 N.W.2d 839, 846 (Iowa 2009) (quoting *State ex rel. Iowa Dept. of Transp. v. General Elec. Credit Corp.*, 448

N.W.2d 335, 340 (Iowa 1989)). He does not respond to the observation from *General Electric* that the applicable rule of appellate procedure "does not designate the parties against whom a cross-appeal may be filed, nor does it extend or restrict the right of cross-appeal to any particular litigants." *See General Elec. Credit Corp.*, 448 N.W.2d at 340; *cf.* Iowa R. App. P. 6.101(2). Nor does he dispute that courts interpret the rules of appellate procedure to "streamline the appellate process" by favoring cross-appeals over piecemeal or precautionary appeals. *See General Elec. Credit Corp.*, 448 N.W.2d at 339; *Stew-Mc Development*, 770 N.W.2d at 845–46; *accord Halvorson v. Bentley*, No. 15–0877, 2016 7403703, at *8–9 (Iowa Ct. App. Dec. 21, 2016).

Cross-appeals by the State are not common. Lindaman is right that this is a unique case (though wrong to call it "bizarre"). *See* Def's Br. at 18. But that just means that he is wrong to assert that the sky will fall unless this Court rejects the cross-appeal on procedural grounds. The State has not made a habit of taking cross-appeals from judgments of conviction and sentence (and, as Lindaman points out, it usually stands to gain nothing if a cross-appeal succeeds). But the appellate rules authorize *any* litigant to take a cross-appeal if they choose to do so. *See General Elec. Credit Corp.*, 448 N.W.2d at 340. The State is entitled to even-handed application of the same rules, when justice requires it to act.

II. The district court did not err in declining to suppress Lindaman's confession on his alternative claim that the officers violated his right to counsel by listening to and granting his request to speak to them further.

Preservation of Error

Lindaman urged this alternative basis for suppressing his confession below. *See* D0043, MTS (9/18/23); D0042, Brief (9/18/23), at 7–10. This means he may urge this Court to affirm on that basis, now. *See Rivera v. Clear Channel Outdoor*, LLC, 7 N.W.3d 734, 739 (Iowa 2024).

Standard of Review

Rulings that deny a motion to suppress on a constitutional challenge are reviewed de novo. *See State v. Park*, 985 N.W.2d 154, 168 (Iowa 2023) (quoting *State v. Hauge*, 973 N.W.2d 453, 458 (Iowa 2022)).

Merits

The district court summarized the evidence that bears on this claim:

> . . . After officers explain that he is already under arrest and they are executing a search warrant at his home, they ask if he has any questions. Lindaman responded by saying, "If I talk to you now, does that mean I don't have to go to the police station?" (Exhibit 1 at 12:45:06). Myers then informs Lindaman that he will still be under arrest regardless, but she would like to talk to him, but that he asked for an attorney. Lindaman then says, "I can talk to you right now, I guess." (Exhibit 1 at 12:45:25).

D0108, MTS Ruling (12/17/23), at 2; *accord* D0293, MTS Tr. (11/9/23), 16:23–18:4 & 21:1–14; D0099, MTS Ex. 1. The district court ruled that Lindaman had invoked his right to counsel at that earlier point—and yet:

> . . . Lindaman reinitiates a conversation about answering questions and then agrees to speak with the detectives without an attorney present. Lindaman inquires with the detectives about his options and asks if he speaks with them now if he has to go to the police station. After the detectives clarify that he would still be under arrest, but they would like to speak with him but can't because he has requested his attorney, Lindaman says "I can talk to you right now, I guess." Lindaman later reaffirms this position by signing a waiver of his *Miranda* rights prior to any questioning by the detectives.
>
> Because Lindaman reinitiated the conversation with detectives about answering questions and, as part of that conversation, expressed his willingness to speak to the detectives without counsel present, there was no violation of the right to counsel, and the Motion to Suppress must be denied on this ground.

D0108, MTS Ruling, at 5. Lindaman challenges that ruling. But it was right.

An arrestee can reinitiate a conversation with officers after invoking his right to counsel, via a request that "evince[s] a willingness and a desire for a generalized discussion about the investigation." *See State v. Harris*, 741 N.W.2d 1, 6 (Iowa 2007) (quoting *Oregon v. Bradshaw*, 462 U.S. 1039, 1044 (1983)). Lindaman argues that his statement "was due to the cajoling of law enforcement" and he was "provoked to inquire about the alternatives if he were to participate in 'talking.'" *See* Def's Br. at 34–35. None of that is true. He was simply informed that he *could* change his mind and decide to speak with the officers, if he wanted to. *See* D0099, MTS Ex. 1, at 1:40 ("If you at any time change your mind and you wish to speak to us, we're willing to talk to you, okay?"). He was not promised any "alternatives" to arrest. To

the contrary, when he asked whether talking to officers would mean that he didn't need to go to the station, the officer told him that he was under arrest and was going to be taken to the station—even if he *did* choose to talk to them. Lindaman said that he understood that. *See id.* at 1:53–3:08. No promises or "cajoling" occurred.[2] The officer did just what *Bradshaw* recommended: she "immediately reminded the accused" that he had a right to an attorney which he had already invoked and which would stop officers from talking with him unless he told them that *he* wanted to talk. *See Bradshaw*, 462 U.S. at 1046; D0099, MTS Ex. 1, at 3:45–4:06; *accord State v. Hurdel*, No. 21–1173, 2022 WL 10827368, at *3–4 (Iowa Ct. App. Oct. 19, 2022) (affirming ruling that rejected a similar "cajoling" challenge, absent any evidence of cajoling); *cf. State v. Russaw*, 278 A.3d 1, 24 & n.24 (Conn. Ct. App. 2022) (rejecting a similar challenge because "this case does not involve a situation in which the police suggested that the defendant was being arrested and booked only because he would not talk to them without an attorney," and that police had answered defendant's question on that topic by clarifying that he "would be placed under arrest . . . at that time regardless" even if he spoke with them).

[2] *State v. Polk* is inapposite. There, impermissible promises of leniency required reversal, so *Polk* did not address the claim that Lindaman implies that it addressed. *See State v. Polk*, 812 N.W.2d 670, 676–77 (Iowa 2012).

Lindaman was not merely acquiescing or responding to an attempt by officers to reinitiate questioning. It is true that the officer told him: "If you at any time change your mind and you wish to speak to us, we're willing to talk to you." *See* D0099, MTS Ex. 1, at 1:39–1:46. But that "does not constitute reinitiation of interrogation or its functional equivalent." *See State v. Ortega*, 813 N.W.2d 86, 96–97 (Minn. 2012) (rejecting similar challenge when the officer "expressed his willingness" to speak with Ortega and then, in response to Ortega's statements, "accurately advised Ortega that they could speak . . . at that time only if Ortega elected to waive his prior invocation of counsel"). And that was a full minute before Lindaman conveyed his desire to speak to officers, in response to remarks on an *unrelated* topic (when he was notified of the search of his house and asked whether he had questions about that).[3] *See* D0099, MTS Ex. 1, at 2:33–3:44. Lindaman was not "being badgered by police officers." *See Bradshaw*, 462 U.S. at 1044. Rather, it was Lindaman who returned to the topic, when he expressed "a willingness and a desire for a generalized discussion about the investigation." *See id.* at 1045–46. And officers did not commence any further questioning until they read him the

[3] Generally, even "asking for consent to search a defendant's property immediately after the defendant invokes his rights does not render a later statement by the defendant inadmissible." *See State v. Pauldo*, 844 S.E.2d 829, 837–38 & n.9 (Ga. 2020) (collecting cases).

Miranda advisory and confirmed he was waiving those rights—knowingly and voluntarily, without "cajoling." *See* D0099, MTS Ex. 2, at 4:30–5:10.

Lindaman made his own decision to reinitiate a conversation with the officers about his offense conduct. At no point was he cajoled, provoked, or otherwise pressured to do so. Lindaman was not entitled to suppression of his confession on this basis, and the district court was correct to say so.

III. The district court erred in finding that the officers violated section 804.20. It also erred in determining that the proper remedy was the suppression of a voluntary confession that had no causal connection to the supposed violation.

Lindaman mischaracterizes the State's position. The State isn't arguing that this Court needs to "overturn *Hicks* and its progeny." *See* Def's Br. at 19. Nor is the State arguing that suppression is improper because Lindaman said he wanted to make a call "for an inappropriate reason." *See id.* at 29. Rather, its point is that the gloss that *Hicks* put on section 804.20 makes sense when applied to implied-consent test decisions—but not here. The text of the statute doesn't require or support it. It makes no sense to say officers did not "permit" Lindaman to make a phone call when they *told him that he could do so*, as they sat him next to a phone and a phone book (and gestured towards them). Lindaman accuses the State of trying to benefit from violating section 804.20. *See* Def's Br. at 25–29. But in the absence of a causal connection between the alleged violation and the confession, suppression grants Lindaman a windfall.

A. Lindaman was seated next to a phone and phone book. He was told that he "can definitely make a phone call." And Lindaman was also told that he had the power to stop the interview at any time. On these facts, it would contort reality to say that officers didn't "permit" him to make a phone call.

The text of section 804.20 only requires officers to "permit" arrestees to make phone calls. It doesn't require officers to "direct the detainee to the phone and invite the detainee to place his call or obtain the phone number from the detainee and place the phone call himself." *See State v. Hicks*, 791 N.W.2d 89, 97 (Iowa 2010). That's multiple layers of judicial gloss, applied to ensure that section 804.20 provides "a reasonable opportunity to make a phone call" for OWI suspects facing a time-sensitive implied-consent choice through a haze of probable intoxication. *See id.* at 92–93 & 96–97. It is true that this portion of *Hicks* did not explain its new layer of gloss with reference to implied consent—it just said those actions should be required "[b]ecause of the disparity in power between detaining officers and detained suspects during the detention process." *See id.* at 96–97. If that were just a holding about what it means to "permit" a call, then it would be an atextual policy decision about what the statute should have said, not what it *does* say. *See Marcus v. Young*, 538 N.W.2d 285, 289 (Iowa 1995) (noting Iowa courts "are to be guided by what the legislature actually said, rather than what it should or could have said" and thus "cannot, under the guise of construction,

enlarge . . . the terms of a statute as the legislature adopted it."). But *Hicks* was really deciding whether the officer gave Hicks "a reasonable opportunity to make a phone call" (and it decided he hadn't, because he "never directed Hicks to the phone" and instead "elected to continue to delay [his] requests" with booking tasks and unrelated conversation). *See Hicks*, 791 N.W.2d at 97. *Hicks* noted that such a requirement is *itself* judicial gloss on section 804.20 that it adopted in implied-consent cases like *Bromeland* and *Didonato*. *See id.* at 96 (quoting *Bromeland v. Iowa Dep't of Transp.*, 562 N.W.2d 624, 626 (Iowa 1997)); *id.* at 97 (citing *Didonato v. Iowa Dep't of Transp.*, 456 N.W.2d 367, 371 (Iowa 1990)). So everything *Hicks* said about how to give arrestees "a reasonable opportunity" to call or consult is only relevant within the band of cases implicating that specific bit of judicial gloss: implied-consent cases.

This is the best way to read *Hicks* because any time an Iowa court is talking about whether an arrestee was given a "reasonable opportunity" to call or consult under section 804.20,[4] it is necessarily reading and applying section 804.20 "in a pragmatic manner, balancing the rights of the arrestee and the goals of the chemical-testing statute." *See State v. Lamoreux*, 875

[4] There are 69 cases that cite section 804.20 and include the phrase "reasonable opportunity." Of those, only *one* is an Iowa prosecution that mentioned it outside of implied consent: *State v. Lane*, No. 14–1449, 2015 WL 8388361, at *4 (Iowa Ct. App. Dec. 9, 2015). *Lane* will be discussed later on, as a cautionary tale. All of the others are implied-consent cases.

N.W.2d 172, 177 (Iowa 2016) (quoting *State v. Tubbs*, 690 N.W.2d 911, 914 (Iowa 2005)); *accord State v. Shaffer*, 774 N.W.2d 854, 856 (Iowa Ct. App. 2009) (quoting *Tubbs*, 690 N.W.2d at 914). The "reasonable opportunity" requirement exists because of *State v. Vietor*, which set out to "reach some accommodation" between implied consent and the predecessor statute to section 804.20. *See State v. Vietor*, 261 N.W.2d 828, 830–32 (Iowa 1978). *Vietor* recognized that the predecessor statute created "a limited statutory right to counsel before making the important decision to take or refuse a chemical test under implied consent procedures," which "must be exercised within a period which will still permit a test to be taken." *See id.* at 831. And it said that statutory requirement is "ordinarily" satisfied if the suspect "was allowed to make . . . telephone calls"—and it is not satisfied if the suspect was "denied that *opportunity*." *See id.* at 831–32 (emphasis added). *Bromeland* and *Didonato* both relied on *Vietor*; both cases applied and developed that emerging requirement with logic that specifically applied to implied consent. *See Didonato*, 456 N.W.2d at 371 (stating that officer must afford the suspect "an actual opportunity to consult with counsel or a family member before submitting to [or refusing] the chemical test," which is enough to ensure "the purposes behind the statute are served"); *Bromeland*, 562 N.W.2d at 626 (holding "a person arrested for OWI" or otherwise subject to "proceedings

under the implied consent law" has "a limited right to contact an attorney under section 804.20," and that entails a right to "a reasonable opportunity to contact an attorney"—which "[g]enerally . . . is satisfied by allowing the arrestee to make a telephone call" before the testing decision). *Hicks*, in turn, relied on *Bromeland* and *Didonato*—and no other authority—in that section of the opinion. *See Hicks*, 791 N.W.2d at 96–97. So it was always opining on a requirement that is *not* part of section 804.20, but is instead a unique bit of judicial gloss that only ever governed the interplay between section 804.20 and implied-consent procedures. It should be read and applied accordingly.

That's why there aren't any cases that address whether officers have given the suspect a "reasonable opportunity" if they inform him that he can make phone calls if he wants to, *then* immediately read his *Miranda* rights (which includes telling him that he can stop the interview for any reason) and receive an unqualified waiver. *Miranda* rights generally can't be invoked to stop implied consent (and attempts to do so can be counted as a refusal, which is then admissible over a Fifth Amendment objection). *See Vietor*, 261 N.W.2d at 830–31. *Miranda* advisories are given *outside* of the context of implied consent, where there is no "reasonable opportunity" requirement. Instead, the inquiry under section 804.20 is whether officers "permitted" a phone call "without unnecessary delay after arrival at the place of detention."

See State v. Starr,[5] 4 N.W.3d 686, 692 (Iowa 2024) (quoting Iowa Code § 804.20). Of course, Lindaman is correct (as is *Starr*) that section 804.20 "applies to all persons who have been arrested, not just persons arrested on suspicion of drunk driving." Def's Br. at 21 (quoting *Starr*, 4 N.W.3d at 693). But the "reasonable opportunity" requirement is a layer of judicial gloss that *doesn't* apply outside of implied consent—so it isn't mentioned or applied in *Starr*, or in any other published non-OWI case that applies section 804.20. Those cases just apply the statute's actual text. *See Starr*, 4 N.W.3d at 698–700. Logically, *Hicks*'s second coat of judicial gloss is similarly inapplicable.

Officers succeed in "permitting" an arrestee to make a phone call if the arrestee knows that they could choose to make one. That logically defies any one-size-fits-all rule that treats specific acts as indispensably necessary or automatically sufficient. Lindaman argues that it shouldn't matter that he wasn't drunk (or maybe he was), and that the district court was correct that these officers had the same affirmative duties that were described in *Hicks*—which they violated when they did not "say aloud in some form or another: 'if you want to call your wife, use the phone next to you." *See* Def's Br. at 22–

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5 Factually, this case differs from *Starr*, where the officer read the *Miranda* advisory and the suspect never unambiguously waived his rights, then *later* mentioned calling his father to "have him get a lawyer," at which point the officer told him "[t]hat wouldn't happen today." *See Starr*, 4 N.W.3d at 689–90. Nobody ever told Lindaman that he couldn't make a phone call.

25. But that can't be right—especially not if there *is* a reasonable-opportunity requirement that applies here. Reasonableness under the circumstances is fact-dependent. Applying *Hicks* mechanically would refuse to recognize that Lindaman—a doctor who spoke fluent English and showed no behavioral or physical signs of intoxication—could understand what officers were saying and make his own decisions with less hand-holding than an illiterate drunk would have needed. A person's apparent level of awareness/understanding should matter in any analysis of whether enough was done to "permit" them to call or consult, within the meaning of section 804.20.

Consider *Lamoreux,* where the defendant argued that officers violated section 804.20 by letting him consult with his attorney in a booking room "equipped with a camera and a microphone" that were "visible to people sitting in the room." *See Lamoreux*, 875 N.W.2d at 175. The Iowa Supreme Court held that "the presence of the audio and camera monitoring would have been obvious" to both Lamoreux and his attorney, and neither of them chose to "turn the audio off, cover the camera, or request another room." *Id.* at 180–81. In other words, "[n]othing in the record indicates that Lamoreux's attorney was not 'permitted' to consult confidentially and in private with his client; rather, the attorney [and Lamoreux] made a decision to go ahead and consult . . . without privacy." *See id.* at 181. The fact that the recording

equipment was obvious and not "surreptitious" was important, as was the fact that the attorney knew that it could be disabled and "had been known to turn off the microphone in the past"—because it meant that the officers didn't have to *inform them* about the recording system in order to "permit" them to consult confidentially, if they chose to do so. *See id.* at 180–81. Any other approach would have "interpret[ed] section 804.20 as granting relief from a set of circumstances that were clearly accepted at the time"—which *Lamoreux* correctly refused to do. *See id.* This illustrates how an arrestee's level of awareness and understanding of particular circumstances matters in determining whether an officer's actions in that specific case were enough to "permit" a call/consultation (or a reasonable opportunity for one)—and a one-size-fits-all rule that ignores any other relevant facts is clearly incorrect.

Miranda advisories can help convey that an arrestee is "permitted" to make a phone call, especially when an arrestee is *also* told that they can use a phone or make a call if they want to. *Moorehead* considered the effect of a *Miranda* advisory that stood alone. It held that the *Miranda* waiver did not "rectify" an ongoing violation of section 804.20 because the advisory "d[id] not address the right to contact *a family member*." *See State v. Moorehead*, 699 N.W.2d 667, 675 (Iowa 2005). This implies that, if it *had*, that would have rendered all of the arrestee's subsequent statements admissible. Here,

when Lindaman asked for his phone to call his wife to cancel a haircut, he was told that he could "definitely make a phone call." *See* D0099, MTS Ex. 2, at 3:37–3:43. And shortly after that, Lindaman heard, acknowledged, and waived his *Miranda* rights. Lindaman would have understood that making a phone call (to anyone) was something he could do, and that he could stop the interview to do it. This is another reason why it is rare for a court to suppress a voluntary, *Mirandized* confession on a challenge under section 804.20. *See generally State v. Bowers*, 661 N.W.2d 536, 541 (Iowa 2003) ("We have never declared that a violation of section 804.20, which is not also a violation of *Miranda*, will in all instances require suppression of a resulting confession."). *Miranda* rights help to dispel the power disparity that was identified as the basis for adding new gloss in *Hicks*, by giving arrestees the unfettered power to end any questioning and to interpose counsel to assist them in interacting with police. *Compare Hicks*, 791 N.W.2d at 97 (noting intent to address "the disparity in power between detaining officers and detained suspects during the detention process"), *with Moran v. Burbine*, 475 U.S. 412, 426–27 (1986) (explaining that *Miranda* advisories help reduce coercive effect of custody "by giving *the defendant* the power to exert some control over the course of the interrogation," and that advisories serve that purpose if they ensure "the suspect clearly understood that, at any time, he could bring the proceeding

to a halt or, short of that, call in an attorney to give advice and monitor the conduct of his interrogators"). *Hicks* makes sense when applied in a context where *Miranda* advisories generally shouldn't be given and where *Miranda* rights can't be invoked to end interactions with police—so, implied consent. But where *Miranda* rights *can* be invoked, it is appropriate to consider the effect of an advisory and voluntary waiver (together with other facts) when determining if the arrestee was "permitted" to make a phone call.

Under Lindaman and the district court's view, officers weren't even "permitting" Lindaman to make a call when they left him alone in the room with the phone and phone book, later on, for close to an hour. *See* D0099, MTS Ex. 2, at 1:33:30–2:27:10. This makes no sense, especially given that he had been told that he could "definitely make a phone call." *Id.* at 3:37–3:43. But this is what happens when courts misapply *Hicks*. In *State v. Lane*—the single Iowa opinion that mentions a reasonable-opportunity requirement in section 804.20, outside of the context of implied consent—the court found an officer violated section 804.20 because he "should have advised Lane of his right to call his mother" with the cell phone that Lane held in his own hand. *Lane*, 2015 WL 8388361, at *2–3. This is a cautionary tale about how *not* to apply *Hicks*: its specific duties to direct/invite arrestees to make a phone call should—at *most*—be a guideline for implied-consent cases, not hard-and-fast

requirements for *all* investigations. It is nonsense to say that officers didn't "permit" Lane to use his own phone to make any call he wanted (or that he had no reasonable opportunity to do so, as he sat in a room alone). Similarly, Lindaman was clearly being "permitted" to make phone calls while he sat in the interview room by himself, with phone and phone book within reach, for an extended length of time (after being told that he could make phone calls).

That matters for two reasons. First, it establishes that any violation of section 804.20 that *preceded* Lindaman's statements didn't *cause* them (as argued in the next section), since he didn't try to call anyone when he *was* permitted to do so. *See* State's Br. at 62–63. Second, it helps illustrate why the *Miranda* advisory matters. If Lindaman was "permitted" to make calls while he sat in that room without officers present (after being told he could definitely make phone calls), and the *Miranda* advisory told him that he had a right to end any interview and banish the officers, that means that he could invoke his *Miranda* rights as a way to demand an opportunity to make calls (which, again, he knew they would allow him to do). If the thing that stood between Lindaman and being "permitted" to make a call was the presence of officers and the ongoing interview (which is the thesis of any ruling that he wasn't given any "reasonable opportunity" for calls *before* the interview), then the *Miranda* advisory that gave him the power to end that interaction

whenever he wanted must have effectively "permitted" him to get rid of that obstacle and make a phone call (if he chose to, which he didn't). Any other result "interpret[s] section 804.20 as granting relief from a set of circumstances that were clearly accepted at the time," which this Court should continue to refuse to do. *See Lamoreux*, 875 N.W.2d at 180–81.

Lindaman was told that he could "definitely make a phone call." *See* D0099, MTS Ex. 2, at 3:37–3:43. He sat next to a phone and phone book in plain view, and within his reach. He voluntarily waived his *Miranda* rights; he knew that he could stop the interview at any time. His opportunity to make a phone call was ongoing for the interview's entire duration, as he sat next to that phone and phone book and chose *not* to stop the interview to use them. The ruling that officers did not "permit" him to do so and therefore violated section 804.20 is incorrect, and this Court should reverse it.

B. Even if officers violated section 804.20, it was error to suppress Lindaman's confession because it had no causal connection to the purported violation.

The State hasn't disputed that, generally, "[p]rejudice is presumed upon a violation of section 804.20." *See* State's Br. at 62 (quoting *State v. Walker*, 804 N.W.2d 284, 296 (Iowa 2011)). But this presumption depends on a causal connection between the violation and evidence being challenged. When the facts establish a *lack* of a connection, that presumption vanishes.

And "[t]o apply the exclusionary rule in the absence of a causal connection between the [officer's] illegal activity and the challenged evidence 'would put the police in a worse position than they would have been in absent any error or violation.'" *See State v. McMickle*, 3 N.W.3d 518, 522 (Iowa 2024) (quoting *State v. Naujoks*, 637 N.W.2d 101, 112 (Iowa 2001)). Lindaman is right that the State should not benefit from a violation of section 804.20—but nor should it be penalized by the loss of evidence which it would have obtained anyway, absent the supposed violation.

In OWI cases, that presumption of prejudice is usually *not* overcome because the implied-consent decision and any test results are time-sensitive. It is usually impossible to know whether a test decision/result would change if an OWI arrestee had placed a call—or even if they just *tried* to do so (both because the time that passed during a phone call would affect any test result, and because an intoxicated arrestee might change their test decision after an unrelated/uncompleted phone call for reasons that elude sober minds). But here, the challenged evidence isn't a chemical test result or a refusal—it's a voluntary and *Mirandized* confession from a sober doctor, in fittingly clinical detail. *See* D0099, MTS Ex. 2, at 20:00–21:34 & 24:25–27:12. This is not a situation where the arrestee is unstable/unpredictable in a way that

creates a real likelihood that a slightly different course of events (or even the same events in a different order) would have produced a different result.

Even that, ordinarily, wouldn't establish a lack of a causal connection between an alleged violation of section 804.20 and a voluntary confession. But here, two critical facts dispel any whiff of a causal connection.

First, Lindaman specifically asked to use his own phone to "call [his] wife to cancel [his] haircut." D0293, MTS Tr., 22:25–24:27 & 38:10–39:15; D0099, MTS Ex. 2, at 3:37–3:43; D0108, MTS Ruling, at 2. It was clear that he was voicing a request to make a single call with a clearly defined purpose. *Accord* D0099, MTS Ex. 1, at 0:55–1:02 (asking the officers at the moment of arrest: "Can I call and cancel my haircut?"). Lindaman argues that he said that he wanted his phone *both* to call his wife *and* to cancel his haircut—so, two separate calls. *See* Def's Br. at 29–30. That is not what anyone who was in the room understood him to be saying, for good reason—that would be a very strange way to word a request to make two separate calls.[6] In any event, Lindaman doesn't argue that calling his wife would have made a difference in his decision, either. And that makes sense, because the record establishes

[6] Specifically, "call my wife and [verb]" implies that the caller performs the verb action during that call. Replacing that verb with a noun—such as a request to "call my wife and my barber"—would have produced the kind of parallel construction that would suggest two separate calls.

that after her conversation with Lindaman on the prior evening (in which he told her about how he touched HK), she chose never to speak to him again. D0350, Trial Tr. vol. 4, 85:4–86:9 ("That was the last time I spoke to him."); *cf.* D0208, Depo. Tr. (1/25/24), 8:15–9:1 (stating that she filed for divorce in the "first week or two in July," soon after conversation on June 27). This is not an argument that section 804.20 was not violated because Lindaman asked to use his phone for an "inappropriate reason." *See* Def's Br. at 29–30 (discussing *State v. Garrity*, 765 N.W.2d 592, 596 (Iowa 2009)). Rather, it just points out the lack of a causal connection between the alleged violation and Lindaman's confession, because there is no reasonable possibility that making the specific kind of call (or calls) Lindaman said he wanted to make would have changed his voluntary decision to admit the facts he admitted.

Second, as mentioned in the previous section, Lindaman was left alone in that room with the phone and phone book for about an hour, after those admissions—and he *never tried* to place a single call, during that time (nor did he ever request contact information from his phone, or anything else he might conceivably have needed to make a phone call). *See* D0099, MTS Ex. 2, at 1:49:30–2:27:10. This was covered in the State's initial brief on this issue. *See* State's Br. at 19 & 62–63. Lindaman responds as though the State aired a general screed against exclusionary remedies. *See* Def's Br. at 25–29. His

brief does not cite *McMickle* or respond to arguments that *McMickle* applies because there was "no causal connection between the illegal activity and the challenged evidence," and that his confession was "wholly independent of any violation of section 804.20 and should not have been suppressed." *See McMickle*, 3 N.W.3d at 522; State's Br. at 62–64. That's because there isn't a good argument that can overcome the video evidence that Lindaman had no interest whatsoever in making phone calls, and that "handing him a phone would have had no effect on what happened next." *See* State's Br. at 58; *cf. State v. Krutsinger*, No. 16–0963, 2017 WL 1733181, at *2-3 (Iowa Ct. App. May 3, 2017) (rejecting a challenge that officers did not fully discharge their duty under *Hicks* because the arrestee's response to being told that he could call an attorney "showed he did not want to call an attorney at that time").

So even if the officers violated section 804.20, Lindaman's confession would still be "wholly independent of any violation of section 804.20 and [thus] should not have been suppressed." *See McMickle*, 3 N.W.3d at 522. The district court erred in ruling otherwise. This Court should reverse that ruling so that the confession can be admitted on retrial (if necessary).

CONCLUSION

The State respectfully requests that this Court reject each of Lindaman's challenges and affirm his conviction. If it doesn't, the State requests that this Court reverse the ruling that suppressed his interview.

REQUEST FOR NONORAL SUBMISSION

Nonoral submission is appropriate.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

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