IN THE SUPREME COURT OF IOWA

No. 19-1425

STATE OF IOWA,	)
Plaintiff-Appellee,	)
	)
vs.	)
	)
BRYAN DWIGHT HENDERSON	)
Defendant-Appellant.	)

APPEAL FROM THE DISTRICT COURT FOR LINN COUNTY
THE HONORABLE JUDGE FAE HOOVER

APPELLANT'S FINAL BRIEF

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State v. Black, 324 N.W.2d 313 (Iowa 1982).

State v. Craig, 562 N.W.2d 633 (Iowa 1997).

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State v. Richardson, 798 N.W.2d 349 (Table) 2011 WL 649086 (Iowa Court of App. 2011).

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State v. Lyon, 862 N.W.2d 391(Iowa 2015).

State v. Robinson, 859 N.W.2d 464 (Iowa 2015).

STATEMENT OF THE CASE

[ ]

Nature of the Case

This is an appeal of the Linn County District Court Judgment and Sentence order entered by the Honorable Judge Fae Hoover on or about, August 26, 2019 (following the August 26, 2019 contested sentencing hearing), wherein Defendant-Appellant Bryan D. Henderson has filed a Notice of Appeal on August 26, 2019. Appeal has been perfected by timely filing of the Notice of Appeal and by Combined Certificate.

Course of Proceedings

Defendant was the subject of a two count Criminal Complaint filed March 14, 2018 with two counts, first, Sexual Abuse in the Third Degree in violation of Sections 709.1, 709.4(1)(a), 903B.1, AND second, Dissemination/Exhibition of Obscene Material to Minors in violation of 728.2 of the Iowa Criminal Code. App.4. Defendant was then charged by Trial Information on April 25, 2018 with those same 2 counts under those same Code sections. App.9.

Defendant filed a Written Guilty Plea pursuant to *Alford* on or about May 6, 2019, pursuant to an amended charge, Indecent Contact with a Child in violation of Iowa Code Section 709.12(1)(d), an Aggravated Misdemeanor. App.17,13. The Amended Trial Information was filed on May 7, 2019, wherein Count I was Sexual Abuse Third Degree, Count II Indecent Contact with a Child, Count III Dissemination/Exhibition of Obscene Materials to Minors. App.13. Defendant pled guilty under an *Alford* plea to an amended charge, Count II Indecent Contact with a Child, with the agreement that he could argue for any disposition available to the Court except agreeing that he "would not request Deferred Judgment." App.17. In the plea Defendant, in the Factual basis section, stated that there was evidence sufficient to find him guilty and added in the plea section that he "did not commit offense but could be found guilty." App.17.The Plea was accepted by the Court on May 13, 2019 and set for Sentencing order entered on the same date. App.17. The sentencing hearing was held August 26, 2019 wherein at the outset of State's case First Assistant Nicholas Maybanks made an oral motion to dismiss Counts I and III of the Amended and Substituted Trial Information filed May 7, 2019. App.13, 35.

At sentencing on August 26, 2019 Defendant was sentenced to 2 years in prison, indeterminate . App.35-36. Defendant challenges in this appeal the sentencing and disposition. App.65. Notice of Appeal was filed and this appeal brought. App.65.

STATEMENT OF FACTS

Defendant, Bryan Henderson, was accused of sexual contact with a 13 year old girl, L.H., on or about March 12, 2017. App.5. Defendant was L.H.'s grandfather's neighbor at the time of this incident. App.5. Defendant was divorced and lived with his 3 children at his home in Cedar Rapids, 3139 Pebble Drive SW, of whom he shared joint physical care with his ex-wife. App.5, Tr.11:1-2, 13:16-19.). His oldest daughter, who was 14 years old at the time, was friends with L.H. with L.H. spending time at Mr. Henderson's house. App.5. It was alleged that L.H. went to her grandfather's house next door to the defendant's residence to take care of his dogs. App.5. It was alleged by the Minutes that Henderson asked L.H. to help him carry a toolbox into his house, that they went inside, and talked in the kitchen. App.5. The State further alleged that Henderson, in this

conversation told her that her mom was upset because "she was not getting sex." App.5. The allegation then states that Defendant showed L.H. a pornographic video on his phone of a "woman having anal sex" and that he was commenting on the video to L.H. App.5. The Minutes state that the following occurred thereafter:

> The defendant then asked this witness if she wanted to see his penis. The defendant then undid his pants, pulled his pants and underwear down to the floor, and displayed his penis to her. The defendant asked this witness to touch his penis. The defendant then pulled this witness' hand over to him and put her two fingers on his penis. The defendant commented to her that his penis was soft like a baby's butt. The defendant then told her to lick it. The defendant then pushed her head down to his penis and made her put her mouth on his penis. The defendant then forced her to perform oral sex. This witness will describe the defendant as standing up straight and that she was bending over. The defendant then heard noises in the back hallway and quickly pulled up his pants and went to see who was coming. The defendant then told his daughter, who was present in the other room, to go back to her room and when he came back, he told this witness that she could not tell anybody about it because he would get his kids taken away. The defendant then told this witness that this witness needed to show him her bottom, gesturing to her genital area, so that he would have something against her. This witness told the defendant she was going to so him the top, gesturing to her breasts area, and that she did not want to show him the bottom. The defendant said no, he wanted to see the bottom because she did not have anything. This witness then pulled her pants and underwear down to the floor and the defendant commented on this witness' pubic hair saying it was just like her hair. The defendant asked her if she had ever been touched and this witness said no. The defendant then used his hands to touch her vagina. This witness will describe that the defendant was going all around her vagina but did not put his fingers inside of her. The defendant told this witness that his daughter, Olivia, was at church.

> The defendant then began to show this witness the various cameras inside of his house. The defendant had been forcing her to stay in the kitchen to perform the aforementioned acts because there were no cameras in the kitchen area and he did not want it to be on video. This witness asked the defendant where all the cameras go to and the defendant took her downstairs to show her. The defendant's bedroom is downstairs. Once they were downstairs, the defendant pulled his pants down again and began masturbating until he ejaculated into a t-shirt. The defendant then made this witness perform oral sex on him again. The defendant grabbed her hand, pulled her over and pushed her head down onto his penis again, making her perform oral sex and pushing her head until she did it. This witness was able to force his hand back and pull away, looked at the time and said it was getting late so she needed to go home.

App.5-6. Defendant was then said to have agreed with L.H. that she should go and she left. App.6. Amber Haufle, L.H.'S adoptive mother, reported the incident to Cedar Rapids Police on August 3, 2017 – five months after the alleged incident. App.6. The Minutes of Testimony alleged that the revelation of the March incident to Ms. Haufle occurred as follows:

> This witness will testify that she is the adoptive mother of L.H. This witness will testify that L.H. was 13 years old on or about March 12, 2017. This witness will testify that on or about August 3, 2017, she was trying to hook a sound bar up to their TV and was not able to get it done so she had texted the defendant to help her. This witness will testify the defendant began getting flirtatious with her in his text message and that her daughter, Lydia, saw the text messages when she took this witness' phone to change the music that was playing. L.H. went upstairs and after a few minutes, this witness went to check on her and found her crying. This witness asked L.H. what was going on and L.H. said that if she told her then someone would get in trouble and it was something big. That is when L.H. explained to her what happened with the defendant. L.H. stated that she did not tell this witness before because with everything going on with her grandpa she did not want to add to this witness' stress level.

App.6. On the May 6, 2019 jury trial date Mr. Henderson entered into a Plea Agreement under an *Alford* agreement to the amended charge of Indecent Contact with a Child. App.17, 13. *North Carolina v. Alford,* 400 U.S. 25 S.Ct. 160 L.Ed.2d 162 (Supreme 1970). This reduction from a Sexual Abuse Third Degree (a C Felony) to an Aggravated Misdemeanor was in exchange for pleading guilty by saying that there was "substantial evidence that he could be found guilty" with the agreement that he would not ask for a Deferred Judgment. App.17. Defendant maintained that he did not commit the offense and in the Presentence Investigation stated that he "was innocent." App.21.

At sentencing the Court first heard from the victim, L.H., whose Victim Impact Statement (the only one presented and which was filed following the hearing) was read by her mother, Ms. Haufle. Victim did not speak. Tr.4:6-25. No other evidence was presented by the State. Tr.6:25 to 7:5. The State argued for a term of prison. Tr.7:21-22. The Defense then presented seven documents C, D, E, F, G, H, I, which were filed prior to hearing, and Defense made reference to the same. App.39, 41, 50, 53, 55, 57, 64. Defendant had entered and maintained to sentencing a plea that

there "was evidence sufficient to [a] finding that [he] was guilty as charged." App.17. Defendant (by counsel) acknowledged at sentencing that he had pled guilty and was not asserting innocence, that he was taking responsibility. Tr.13:23-25. Defendant (by counsel) acknowledged at sentencing that prison was a possible sentencing option and that the State was requesting 2 years in prison, but the defense request was for suspended prison. Tr.14:10-14. The Court imposed 2 years in prison and ordered immediate custody and Defendant was transported to the Linn County Jail. App.35. Tr.20:6-10, 18:9-15.

STATEMENT OF GOOD CAUSE FOR APPEAL FOLLOWING PLEA

Iowa Code section 814.6(1)(a)(2019) was modified by Senate File 589 enacted on May 16, 2019 and effective July 1, 2019. This Code section now provides that Defendants must establish "good cause" in order to appeal a sentence following a guilty plea in all non A felony cases. Good cause in this case is that Defendant pled guilty under an *Alford* plea and the resulting prison term wherein Defendant consistently asserted innocence including in the PSI. The instant circumstances of this case include the single witness (L.H.) accusing Defendant, a five-month delay in reporting, the lack of physical evidence, and now Defendant was sentenced to prison. The Court should review the sentence as good cause exists herein.

ROUTING STATEMENT

This case should be transferred to the Iowa Court of Appeals pursuant to the criteria of [Iowa R. App. P. 6.1101(3)(a) (2015)] as a case which involves questions of applying existing legal principles.

ARGUMENT I

THE DISTRICT COURT ABUSED ITS DISCRETION IN SENTENCING DEFENDANT TO PRISON AND THE COURT RELIED ON IMPERMISSIBLE FACTORS AND DID NOT MAKE SUFFICIENT FINDINGS ON THE RECORD TO SUPPORT THE SENTENCE

Standard of Review:

The standard of review in cases where Defendant disputes the sentence entered by the Trial Court is for abuse of discretion. "An abuse of discretion occurs when the trial court exercises its discretion 'on grounds clearly untenable or to an extent clearly unreasonable.'" *State v. Rodriguez*, 636 N.W.2d 234, 239 (Iowa 2001)(quoting *State v. Maghee*, 573 N.W.2d 1, 5 (Iowa 1997)). "A sentence will not be upset on appellate review unless the defendant demonstrates an abuse of trial court discretion or a defect in the sentencing procedure, such as trial court consideration of

impermissible factors." *State v. Wright*, 340 N.W.2d 590, 592 (Iowa 1983). Where the Trial Court has relied on improper factors, the appellate remedy is to remand and order that the Defendant receive a new sentencing hearing. *State v. Dozal*, 2006 WL 3019025 (Iowa Ct. App.) citing *State v. Black*, 324 N.W.2d 313, 315 (Iowa 1982). "Our review of sentencing procedures is for an abuse of discretion. *State v. Millsap,* 547 N.W.2d 8, 10 (Iowa App.1996). Such abuse will only be found if the district court's discretion was exercised on grounds or for reasons clearly untenable or to an extent clearly unreasonable. *Id." State v. Craig,* 562 N.W.2d 633, 634 (Iowa 1997).

Preservation of Error:

Following a contested sentence hearing on August 26, 2019 (and resulting Judgment and Sentence order on August 26, 2019) Defendant filed a timely Notice of appeal.

Argument:

The Court heard from the victim's mother via reading L.H.'s Victim Impact Statement, received seven exhibits from Defendant including an employer and his children, arguments of counsel, and from the Defendant. The Court in sentencing Mr. Henderson had before it the myriad options of any sentencing judge, with in this case there being no mandatory minimum sentence. The Trial Court is required to "state on the record its

reason for selecting the particular sentence." Iowa R.Crim.P. 2.23(3)(d). The Court did not address Defendant's age, education, employment family situation, or other potentially mitigating factors. In applying its discretion, the court should weigh and consider all pertinent matters in determining a proper sentence including the nature of the offense, the attending circumstances, defendant's age, character, and propensity, and chances for reform. *State v. Laffey*, 600 N.W.2d 57, 62 (Iowa 1999). Quoting *State v. Richardson,* 798 N.W.2d 349 (Table) 2011 WL 649086 (Iowa Court of Appeals 2011). In this sentencing following an *Alford* plea the Court did not state on the record the ways in which the sentence was carefully selected. *North Carolina v. Alford,* 400 U.S. 25, 37, 91 S.Ct. 160, 167, 27 L.Ed.2d162, 171 (1970) (holding "express admission of guilt ... is not constitutional requisite to the imposition of [a] criminal penalty"). *State v. Knight*, 701 N.W.2d 83 (Iowa 2005).

The Court impermissibly relied on a previous conviction and cited such on the record. Tr.19:15-21. The Court specifically cited the following:

> The reasons for the Court's sentence today include the nature of the charge. I have reviewed Mr. Henderson's prior criminal history. This is the second offense involving -- an offense involving a minor. The Court finds that imposing a prison term will certainly hold Mr. Henderson accountable for his behavior, and it will deter others in the community from similar behavior.

Tr. 19:15-21. The problem with this statement by the Court is that it is either somewhat misleading or simply incorrect. Per the PSI the prior conviction was for Child Endangerment. App.21. What the Court is likely alluding to is that that case involved allegations of sexual contact with a minor, but that is not what the conviction was. While it is correct that this is the second offense involving a minor, a misdemeanor conviction for Child Endangerment cannot be used to – not even simply in the eyes of the Court – somehow impact the sentence in an Indecent Contact with a Child case. That case is Linn County cause number FECR091562 wherein Defendant was charged with Sexual Abuse Third Degree but was convicted on Child Endangerment with No Injury pursuant to Iowa Code Section 726.6(7) (2011). Treating that case as a prior act involving a child relies on an unadjudicated allegation, as the conviction was not resulting from the allegation of sexual contact with a child.

Iowa Code Section 726.6 does not contemplate that an offense against a child is sexual. The section appears as follows:

> 726.6 Child endangerment.
>
> 1. A person who is the parent, guardian, or person having custody or control over a child or a minor under the age of eighteen with a mental or physical disability, or a person who is a member of the household in which a child or such a minor resides, commits child endangerment when the person does any of the following:

a. Knowingly acts in a manner that creates a substantial risk to a child or minor s physical, mental or emotional health or safety.

b. By an intentional act or series of intentional acts, uses unreasonable force, torture or cruelty that results in bodily injury, or that is intended to cause serious injury.

c. By an intentional act or series of intentional acts, evidences unreasonable force, torture or cruelty which causes substantial mental or emotional harm to a child or minor.

d. Willfully deprives a child or minor of necessary food, clothing, shelter, health care or supervision appropriate to the child or minor s age, when the person is reasonably able to make the necessary provisions and which deprivation substantially harms the child or minor s physical, mental or emotional health. For purposes of this paragraph, the failure to provide specific medical treatment shall not for that reason alone be considered willful deprivation of health care if the person can show that such treatment would conflict with the tenets and practice of a recognized religious denomination of which the person is an adherent or member. This exception does not in any manner restrict the right of an interested party to petition the court on behalf of the best interest of the child or minor.

e. Knowingly permits the continuing physical or sexual abuse of a child or minor. However, it is an affirmative defense to this subsection if the person had a reasonable apprehension that any action to stop the continuing abuse would result in substantial bodily harm to the person or the child or minor.

f. Abandons the child or minor to fend for the child or minor s self, knowing that the child or minor is unable to do so.

g. Knowingly permits a child or minor to be present at a location where amphetamine, its salts, isomers, or salts of isomers, or methamphetamine, its salts, isomers, or salts of isomers, is manufactured in violation of section 124.401, subsection 1, or where a product is possessed in violation of section 124.401, subsection 4.

h. Knowingly allows a person custody or control of, or unsupervised access to a child or a minor after knowing the person is required to

> register or is on the sex offender registry as a sex offender under chapter 692A. However, this paragraph does not apply to a person who is a parent or guardian of a child or a minor, who is required to register as a sex offender, or to a person who is married to and living with a person required to register as a sex offender.

In sentencing the Defendant on January 31, 2013 The Honorable Thomas Koehler found Defendant guilty under a plea agreement and sentenced his under 726.6(7), Child Endangerment with no injury. It is impermissible for the Court to use that conviction as a 'first' crime involving a child in the purview of sentencing on an Indecent Contact with a child. Additionally, the State also emphasized this point and referred to the Child Endangerment conviction as a marker in support of a prison term in the case at bar. Tr.9:5-10. While Defendant concedes that the allegation FECR091562 contained sexual contact involving a child, that was denied, never adjudicated, and instead the conviction was as to placing a child at risk of, including but not limited to "[k]nowingly acts in a manner that creates a substantial risk to a child or minor s physical, mental or emotional health or safety." Iowa Code Section 726.6. It seems that the Court was attempting to treat the Defendant as a predator and that is an unsupported finding.

The Court made no findings as to how the sentence was appropriate for the Defendant and how it would either protect or benefit the community. Tr.19:7 to 20:21. The only findings by the Court was as follows:

> I further need to inform you again, Mr. Henderson, that given the nature of this charge, it is considered a sexually predatory offense, and what that means is in the future, should you ever be charged with an offense -- a sex-related offense, you will face more serious penalties because of the conviction and the judgment -- the guilty plea that you made previously and the judgment that the Court is entering today. The reasons for the Court's sentence today include the nature of the charge. I have reviewed Mr. Henderson's prior criminal history. This is the second offense involving -- an offense involving a minor. The Court finds that imposing a prison term will certainly hold Mr. Henderson accountable for his behavior, and it will deter others in the community from similar behavior. The sentencing order will also include that Mr. Henderson shall participate in and successfully complete the sex offender treatment program. A portion of that may be completed during the prison term.

Tr.19:7-25. The Court failed to provide sufficient basis for the imposition for the maximum term of incarceration, while acknowledging that the herein does not involve the question of consecutive sentences. *Id*. Whether imposed or suspended the imposition of a two-year prison term is a punishment for which the Court must make independent and specific findings. *State v. Witham*, 583 N.W.2d 677, 678 (Iowa 1998), citing Iowa Code §901.3(7) (1997). See also *State v. Oliver*, 588 N.W.2d 412, 415 (Iowa 1998) ("although the suspension of the sentence prevents or delays its execution, it does not alter its character as a sentence of confinement") citing *State v. Patterson*, 586 N.W.2d 84, 84 (Iowa 1998). Iowa Code §901.5(9) (2011) provides as follows as to the required notice to the defendant by the Court:

> If the defendant is being sentenced for an aggravated misdemeanor or a felony, the court shall publicly announce the following:
>
> *a.* That the defendant's term of incarceration may be reduced from the maximum sentence because of statutory earned time, work credits, and program credits.
>
> *b.* That the defendant may be eligible for parole before the sentence is discharged.
>
> *c.* In the case of multiple sentences, whether the sentences shall be served consecutively or concurrently.

The Court did not advise the defendant as required in Iowa Code §901.5(9) (2017). Further, the Court did not address Defendant's age, education, employment family situation, or other potentially mitigating factors. Though the sentencing court has discretion under Iowa Code §901.5 (2011) to enter the sentence it feels appropriate, that sentence must be supported by findings. See *Oliver* at 415. The Court did not reference any of Defendant's exhibits. App.39, 41, 50, 53, 55, 57, 64. The Court did not refer to or respond in any way to anything in Defendant's allocution. The only references by the Court are 1. Henderson's criminal history 2. The nature of the offense and 3. That this is a "second offense involving -- an offense involving a minor." Tr.19:15-21. Nothing about his education, his family, his character letters, his employment history including over 10 years with the same employer. The Court did say that this sentence would "certainly hold

Mr. Henderson accountable for his behavior, and it will deter others in the community from similar behavior" without providing any reasoning, without articulating the reasons. Tr.19:15-21.

Iowa Rule of Criminal Procedure 2.23(3)(a) and (d) provide that the Court is required to ask the defendant whether he or she "has any legal cause to show why judgment should not be pronounced against him or her." *State v. Nosa*, 738 N.W.2d 658, 660 (Iowa Court of Appeals 2007). I.R.Cr.P. 2.23(3)(d) continues that prior to the court's rendition of judgment "counsel for the defendant, and the defendant personally, shall be allowed to address the court where either wishes to make a statement in mitigation of punishment." *Id.* Court's reasoning for the sentence in this case does not address any of those mitigating factors. Tr.19:15-21. The Judgment and Sentence order did include language as to parole and how the sentence can be reduced, and the sentencing order provided the following:

> The reasons for this sentence include the nature of the charge, Defendant's prior record and the fact that this is the second offense involving a minor, and the belief that this sentence will provide the greatest benefit to the Defendant and the community. The Court also considered that (sic) parties' plea agreement.

App.35-36. This does not show that the Court followed I.R.Cr.P. 2.23(d) in having considered the right exerted.

ARGUMENT II

THE COURT FAILED TO FOLLOW THE PROCEDURE PROVIDED BY IOWA CODE SECTION 901.4B

Standard of Review:

The standard of review in cases where Defendant alleges that the Court did not follow requirements of the Iowa Code is for correction of errors at law. *State v. Lyon*, 862 N.W.2d 391 (Iowa 2015). The review here is whether the Court violated Iowa Code Section 901.4B. "[W]e review the defendant's challenge of the district court's interpretation of [an Iowa Code Section] for correction of errors at law." *State v. Lyon*, 862 N.W.2d 391, 394 (Iowa 2015) quoting *State v. Robinson*, 859 N.W.2d 464, 476 (Iowa 2015).

Preservation of Error:

Following a contested sentence hearing on August 26, 2019 (and resulting Judgment and Sentence order on August 26, 2019) Defendant filed a timely Notice of appeal.

Argument:

Iowa Code Section 901.4B is in its entirety as follows:

> 901.4B Presentence determinations and statements. 1. Before imposing sentence, the court shall do all of the following: a. Verify that the defendant and the defendant's attorney have read and discussed the presentence investigation report and any addendum to the report. b. Provide the defendant's attorney an opportunity to speak on the defendant's behalf. c. Address the defendant personally in order

> to permit the defendant to make a statement or present any information to mitigate the defendant's sentence. d. Provide the prosecuting attorney an opportunity to speak.
> 2. After hearing any statements presented pursuant to subsection 1, and before imposing sentence, the court shall address any victim of the crime who is present at the sentencing and shall allow any victim to be reasonably heard, including, but not limited to, by presenting a victim impact statement in the manner described in section 915.21. 3. For purposes of this section -victim- means the same as defined in section 915.10.

This section now requires that the procedure of sentencing hearings is presentation by the Defense first, then the State. That did not happen in this case and therefore the sentencing procedure on August 26, 2019 herein violated Iowa Law as of July 1, 2019. The court should remand this case for a new sentencing hearing given this error. This was not harmless error as Defendant cites this as a direct violation of this very new statute, but nonetheless a statute.

CONCLUSION

Mr. Henderson was sentenced to prison following his *Alford* plea wherein he recognized that the evidence was substantial and that it was likely he would be found guilty despite his assertion that he did not do what was alleged and at no time admitted any sexual contact with the minor child. The Court heard from the victim via her mother reading a statement, from the State, from Defense and the Defendant, and have exhibits from Defendant in support for his request for suspended prison. The Court did

not articulate based on adjudicated offenses and on evidence why prison would be serve the community, rehabilitate Defendant, and hold Defendant accountable. Instead the pronouncement and Judgment and Sentence told him he was going to prison and the reason was because he was previously charged with a sex offense, pled to a non sex offense, and now pled under an *Alford* plea to an aggravated misdemeanor. Further, the requirements of Iowa Code Section 901.4B were not followed. Mr. Henderson should be granted a new sentencing hearing so that he is afforded a full, fair hearing to be hear and adjudged without reference to or reliance on an unadjudicated sex offense.

REQUEST FOR ORAL ARGUMENT

Counsel for Bryan Henderson respectfully requests that he be heard in oral argument upon the submission of this case.

ATTORNEY COST CERTIFICATE

I certify that the true cost of producing the required copies of this brief was $ __1.00_____. I paid that amount in full.

_____*/s/ Thomas J. Viner* _____
Thomas J. Viner AT0008104

CERTIFICATE OF COMPLIANCE WITH TYPE-VOLUME LIMITATION, TYPEFACE REUIREMENTS, AND TYPE-STYLE REQUIREMENTS

1. This brief complies with the type-volume limitation of Iowa R.App. 6.903(1)(g)(1) or (2) because this brief contains **4651** words excluding the parts of the brief exempted by Iowa R.App.P. 6.903(g)(1).

2. This brief complies with the typeface requirements of Iowa. R. App. P. 6.903(1)(e) and the type-style requirement of Iowa. R. App. P. 6.903(1)(f) because this brief has been prepared in a proportionally spaced typeface using Word 2016 in 14-point Times New Roman font.

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CERTIFICATE OF FILING AND SERVICE

I, Thomas J. Viner, hereby certify that I have filed this Final Brief by the EMDS filing system on January 13, 2020.

Clerk of the Supreme Court of Iowa

Iowa Attorney General.

The Linn County Attorney First Assistant Nicholas Maybanks will be notified by email with this Final Brief also on this date.

_____*/s/ Thomas J. Viner* _____
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