IN THE SUPREME COURT OF IOWA

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| STATE OF IOWA, | ) | |
| | ) | |
| Plaintiff-Appellee, | ) | |
| | ) | |
| v. | ) | S.CT. NO. 18-1737 |
| | ) | |
| MARIO GOODSON, | ) | |
| | ) | |
| Defendant-Appellant. | ) | |

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APPEAL FROM THE IOWA DISTRICT COURT
FOR BLACK HAWK COUNTY
HON. JOAL DALRYMPLE (JURY TRIAL & POST-TRIAL MOTIONS), HON. LINDA FANGMAN (ENHANCEMENT STIPULATION), & HON. GEORGE STIGLER (SENTENCING)

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# APPELLANT'S AMENDED FINAL BRIEF AND ARGUMENT AND REQUEST FOR ORAL ARGUMENT

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**CERTIFICATE OF SERVICE**

On February 6, 2020, the undersigned certifies that a true copy of the foregoing instrument was served upon Defendant-Appellant by placing one copy thereof in the United States mail, proper postage attached, addressed to Mario Goodson, No. 1143207, Fort Dodge Correctional Facility, 1550 "L" Street, Fort Dodge, IA 50501.

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VKR/lr/4/19
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## ROUTING STATEMENT

This case should be transferred to the Court of Appeals because the issues raised involve the application of existing legal principles. Iowa R. App. P. 6.903(2)(d) and 6.1101(3)(a).

## STATEMENT OF THE CASE

**Nature of the Case:** This is an appeal by Defendant-Appellant Mario Goodson from his convictions for: First Degree Burglary, a Class B Felony in violation of Iowa Code section 713.3; Operating a Vehicle Without the Owner's Consent, an Aggravated Misdemeanor in violation of Iowa Code section 714.7; Domestic Abuse Assault Causing Bodily Injury, a Serious Misdemeanor, in violation of Iowa Code section 708.2A(2); and Third Degree Sexual Abuse, a Class C Forcible Felony in violation of Iowa Code section 709.4(1)(a) and enhanced pursuant to section 901A.2(3). (Sentence)(App. pp. 40-44).

**Course of Proceedings:** On March 22, 2017, the State charged Defendant Mario Goodson in Black Hawk County FECR217122 with: First Degree Burglary, a Class B Felony in

violation of Iowa Code section 713.3 (Count 1); Willful Injury Causing Bodily Injury, a Class D Felony in violation of Iowa Code section 708.4(2) (Count 2); Operating a Vehicle Without the Owner's Consent, an Aggravated Misdemeanor in violation of Iowa Code section 714.7 (Count 3); and Domestic Abuse Assault (first offense) Causing Bodily Injury, a Serious Misdemeanor in violation of Iowa Code section 708.2A(2)(b) (Count 4). (3/22/17 TI)(App. pp. 5-7).

On October 30, 2017 the State additionally charged Goodson in Black Hawk County FECR222171 with Third Degree Sexual Abuse, a Class C Felony in violation of Iowa Code section 709.4(1)(A). (FECR222171 - 10/30/17 Complaint)(Conf. App. pp. 6-7). The State later included a section 901A.2(3) sentencing enhancement on that charge, based on a prior conviction for a sexually predatory offense (a 1999 conviction for Third Degree Sexual Abuse in Black Hawk County FECR83213). (FECR222171 - 12/13/17 TI)(App. pp. 50-51).

Both cases were ultimately merged into FECR217122.[1] (2/22/18 Motion to Merge; 2/26/18 Order to Merge)(App. pp. 8-9, 12-13). Additionally, the State dismissed the Count 2 charge of Willful Injury Causing Bodily Injury. (Tr.Vol.1 p.8 L.3-13).

A jury trial commenced February 27, 2018, submitting the following offenses: First Degree Burglary (Count 1); Operating Motor Vehicle without Owner's Consent (Count 2); Domestic Assault (Count 3); and Third Degree Sexual Abuse (Count 4)[2]. (Tr.Vol.1 p.1 L.1-25, p.8 L.18-24). Judge Joel Dalrymple presided over trial. On March 6, 2018, the jury returned verdicts finding Goodson guilty as charged on all four counts. (Tr.Vol.5 p.1 L.1-25, p.110 L.20-p.112 L.5); (3/8/18 Order Following Verdict; 3/16/18 Verdict Forms; 4/20/18

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[1] The order directed the State to file an amended Trial Information within FECR217122, which reflected the merged sex offense was being added as Count 5. (2/26/18 Order) (App. pp. 12-13). An amended trial information was filed subsequent to judgment entry. (10/10/18 Amend.TI)(App. pp. 46-49).

[2] The Counts were denominated 1-4 at trial, but were denominated 1-3 and 5 in the amended trial information and at sentencing. See (Sent.Tr. p.1 L.1-p.5 L.6); (Sentence)(App. pp. 40-44).

Nunc Pro Tunc)(App. pp. 14-16, 21-24, 30-31). Goodson subsequently stipulated, for purposes of the section 901A.2(3) enhancement on the Sexual Abuse offense, that he had a prior 1999 conviction for Third Degree Sexual Abuse in Black Hawk County FECR083213. (8/9/18 Tr. p.1 L.1-p.3 L.10, p.14 L.15-p.15 L.3).

On April 5, 2018, Goodson filed a Motion for New Trial which, inter alia, (1) argued the court erred in allowing prior bad acts evidence to be heard by the jury, (2) alleged potential jury misconduct by certain jurors, and (3) alleged an appearance of impropriety based on the presiding judge's interactions with two other jurors. (4/5/18 Mot.New Trial) (App. pp. 25-26). A hearing on the Motion was held April 20, 2018, before the same judge who had presided over trial (Judge Dalrymple). (4/6/18 Order)(App. pp. 27-29); (4/20/18 Tr. p.1 L.1-25). On May 9, 2018, Judge Dalrymple issued a written order denying the Motion for New Trial. (5/9/18 Order)(App. pp. 32-37).

On August 15, 2018, Goodson filed another Motion for New Trial, this time on the basis of newly discovered evidence, namely the recent discovery that Judge Dalrymple had been the same individual who had previously prosecuted Goodson in the 1999 Sex Abuse conviction which acted as the basis for the 901A.2(3) enhancement herein. (8/15/18 Mot.New Trial)(App. pp. 38-39). A hearing on the second motion for new trial was held on September 17, 2018, again before Judge Dalrymple. (9/17/18 Tr. p.1 L.1-25). The court again denied the motion but "[j]ust to avoid even the appearance and any further concerns" directed that sentencing be before a different judge. (9/17/18 Tr. p.6 L.7-25).

A sentencing hearing was held October 4, 2018, before a different judge than had presided over trial. (Sent.Tr. p.1 L.1-25). The sentencing court imposed judgment against Goodson for: First Degree Burglary, a Class B Forcible Felony in violation of Iowa Code section 713.3; Operating a Motor Vehicle without Owner's Consent, an Aggravated Misdemeanor in violation of Iowa Code section 714.7; Domestic Abuse

Assault Causing Bodily Injury, a Serious Misdemeanor in violation of Iowa Code section 708.2A(2)(b); and Third Degree Sexual Abuse, a Class C Forcible Felony in violation of Iowa Code section 709.4(1)(a), enhanced by a prior offense under section 901A.2(3). On the Burglary, the court imposed an indeterminate 25-year term of incarceration and an LEI surcharge. On the Motor Vehicle offense, the court imposed two years of incarceration, a $625 fine plus 35% surcharge, and an LEI surcharge. On the Domestic Abuse, the court imposed one year of incarceration, a $315 fine plus 35% surcharge, and an LEI surcharge. On the Sex Abuse, the court imposed an indeterminate 25-year term of incarceration with a mandatory minimum of 85% to be served before eligibility for parole, imposed a $250 civil sex abuse registry fee, and directed lifetime registration on the sex abuse registry. The court also imposed a five-year no contact order, and ordered Goodson to submit a specimen for DNA profiling. (Sent.Tr. p.19 L.17-p.20 L.21) (Sentence)(App. pp. 40-44).

Goodson filed a Notice of Appeal on October 9, 2018. (10/9/18 NOA)(App. p. 45).

**Facts:** The instant case pertains to a December 23, 2016 incident involving Defendant Mario Goodson and complaining witness Annie Thomas. The State and Defense presented divergent accounts of the incident and the circumstances leading surrounding it.

Goodson and Thomas met in November 2014, and their relationship became romantic. During the summer of 2015, Goodson moved into Thomas's house. Thomas became pregnant, and their child (K.) was born in early 2016. Thomas's seven-year-old daughter from a prior relationship lived in the house, and Goodson's seven-year-old son (D.) from a prior relationship also lived in the house when not at the child's mother's house. (Tr.Vol.2 p.18 L.5-23, p.25 L.21-p.26 L.9, p.135 L.1-10, p.142 L.20-p.143 L.2).

Thomas testified her approximately two-year relationship with Goodson had its ups and downs, and they broke up and got back together about three times. (Tr.Vol.2 p.135 L.11-20).

Goodson moved out in early summer of 2015, and then moved back in a month later when Thomas learned she was pregnant. Goodson again moved out in July 2016, and moved back in about a month later in September 2016. (Tr.Vol.2 p.136 L.4-p.137 L.15).

Thomas claimed that, over the course of the relationship, Goodson grew verbally and physically abusive. (Tr.Vol.2 p.22 L.22-p.23 L.17). An across-the-street neighbor, Jacob Miller, testified he observed a prior incident wherein Goodson allegedly struck Thomas, several months before December 2016. Miller testified he was on his front porch and saw Goodson and Thomas arguing on their own front porch. Miller said he acted like he was not paying attention, but observed Goodson punch or smack Thomas's face. Miller didn't call the police. He testified he later sent Thomas a text to apologize, and to offer that she could come to his house to let things cool down, but Thomas never responded. (Tr.Vol.3 p.29 L.7-p.32 L.9, p.33 L.1-9, p.33 L.24-p.34 L.8).

Thomas testified that in September of 2016, she took legal action to get Goodson out of the house. (Tr.Vol.2 p.23 L.18-p.24 L.12, p.143 L.14-20). She testified Goodson did not return his keys, saying he lost them. (Tr.Vol.2 p.26 L.25-p.27 L.20, p.144 L.4-7). Thomas assumed Goodson moved to his mother's house, though she was not sure. Thomas acknowledged Goodson did not take all his belongings from the house. (Tr.Vol.2 p.28 L.20-23, p.143 L.21-p.144 L.3, p.178 L.2-5).

Thomas testified that, in her opinion, Goodson officially moved out of her home in late September or early October, after legal action was taken in September. (Tr.Vol.2 p.143 L.14-20). She said Goodson did not live there during October or November 2016 in that he was not permanently there. But he would still come and go when he wanted, maybe once a week and sometimes spending the night. To her knowledge he did not have keys at that point, so she would either let him into the house or would leave the door unlocked so he could get in when she wasn't home. She testified she never locked

the doors much. (Tr.Vol.2 p.29 L.4-p.31 L.5, p.32 L.9-14, p.145 L.3-23, p.205 L.13-p.206 L.1).

Thomas testified that in September 2016, she started having a different relationship with somebody else, but Goodson did not know. (Tr.Vol.2 p.32 L.15-p.33 L.11). She testified that on December 8 while at her workplace, Thomas informed Goodson via phone or text that she'd been seeing someone else. According to Thomas, Goodson grew very upset and told her he was going to kill her. Before leaving work that evening, she went to an upper floor of the building to verify Goodson's vehicle was not in the parking lot. (Tr.Vol.2 p.33 L.17-p.35 L.22, p.36 L.15-p.37 L.17). Thomas then left the building and had almost reached her car when she saw Goodson's mother's vehicle and started running back to the building, which was secured with badge-access. (Tr.Vol.2 p.37 L.22-p.38 L.21). Thomas testified when she was almost back to the building, Defendant grabbed her in a headlock, yanked her keys from her, and told her she was coming with him. Thomas testified she tried to scream, but Goodson told her to

stop or he would hit her with her keys. Thomas tried to make her body dead weight, then walked with him because she felt she didn't have a choice. (Tr.Vol.2 p.39 L.3-p.41 L.12).

They got into the backseat of Goodson's mother's car, and Goodson's eight-year-old son D. was in the front seat. According to Thomas, Goodson slapped or hit her twice in the face, then searched her phone for evidence of other guys. Not finding anything, Goodson gave back the phone but continued yelling. D. tried turning around to look at Thomas, but Goodson told him just to play on his phone. (Tr.Vol.2 p.41 L.13-21, p.44 L.23-p.49 L.14). Eventually, Thomas told Goodson to come to her car to smoke a cigarette, and Goodson agreed. After sitting in Thomas's car awhile, Thomas told Goodson she'd go get their son (K.), and then meet Goodson and D. at Thomas's house so they could spend the night with her there. Thomas testified Goodson was happy with that and let her leave. (Tr.Vol.2 p.49 L.23-p.51 L.12).

Thomas testified that after she left the parking lot, she spent the night at her mother's house rather than going home.

According to Thomas, Goodson would have been able to get into her house even though she wasn't home, because the house would have been unlocked as she typically left it ever since she'd started living there. (Tr.Vol.2 p.52 L.2-p.53 L.14-25).

Closed circuit security footage of the December 8 interaction at Thomas's workplace was admitted into evidence as Exhibit AA, and was played for the jury at trial. (Tr.Vol.2 p.14 L.22-p.15 L.20, p.42 L.3-4).

Thomas testified that on the following day, December 9, she reported the alleged assault to Police. (Tr.Vol.2 p.53 L.15-21). In her statement to police she stated that, at the conclusion of the interaction, Thomas promised to meet Goodson "at our house." The statement contained the phrase "at *our* house" rather than "at *my* house", and Thomas initialed the statement just under the words "at our house." (Tr.Vol.2 p.151 L.1-p.153 L.3). Thomas denied telling police Goodson lived at her residence address at that time. (Tr.Vol.2 p.211 L.5-9).

Thomas testified she did not see Goodson again until about fifteen days later, on December 23, 2016. Thomas's sister and mother testified they visited Thomas frequently at her house during the December 8-23 period, but Thomas testified she did not return to her home much during this period for fear that Goodson might come over. (Tr.Vol.2 p.52 L.20-p.53 L.1, p.53 L.24-p.54 L.15; Vol.3 p.96 L.23-p.97 L.8, p.121 L.6-21). Thomas testified she also started making sure to keep her house locked up because of what had been going on with Defendant. (Tr.Vol.2 p.197 L.25-p.198 L.9).

Thomas testified that she'd spent the night of December 22 at the home of her new romantic partner, returning to her home with nine-month-old K. around 12:00-1:00 p.m. on December 23. She testified she went to unlock the front door, but noticed the dead bolt was locked from the inside and realized someone must have been in the house. But not seeing any footprints in the fresh snow, she went to enter through the side door. Thomas testified that, as she was trying to unlock the side door, Goodson opened the door and

grabbed her by the coat saying it's going to be really bad for you this time. (Tr.Vol.2 p.55 L.11-p.56 L.14, p.57 L.22-p.59 L.17; Vol.4 p.5 L.2-24).

Thomas testified she tried to stay calm, so she put K. on the couch and went to the bathroom to have a minute to think. Meanwhile, Goodson grabbed her phone and was looking through it. Goodson followed Thomas into the bathroom and smacked her, causing blood to gush out of her nose. Goodson then hit her causing her head to go back and shatter the vanity mirror. (Tr.Vol.2 p.59 L.24-p.62 L.22).

Thomas testified she tried to get Goodson to calm down, hugging him and telling him they could make it work. (Tr.Vol.2 p.62 L.23-p.63 L.11). Thomas testified she also tried to subtly make her way toward the front door to get out of the house, but Goodson noticed and kicked the coffee table across the room so it blocked the front door. (Tr.Vol.2 p.63 L.23-p.66 L.11).

Thomas testified she'd previously placed a Mace gun in the drawer of the coffee table, having acquired it in the weeks

between December 8-23. She testified that when Goodson was distracted looking at her phone, Thomas tried to grab the mace gun but Goodson threw her face-down on the floor, slammed the mace gun into her hand, and then hit the back of her head with the mace gun. (Tr.Vol.2 p.67 L.11-p.70 L.9). The mace exploded and Goodson went into the kitchen to flush his face with water. Thomas testified Goodson then told her to go in the basement. (Tr.Vol.2 p.70 L.6-p.71 L.5). In the basement, Goodson started looking at her phone again, but Thomas felt the phone was making him angrier so she grabbed it and smashed it into the cement floor. (Tr.Vol.2 p.74 L.4-18). Goodson then became calmer, and they went upstairs to get the baby. (Tr.Vol.2 p.75 L.9-24).

Thomas testified she complained about the mace burning her, so Goodson told her to go get in the shower with the baby, and Goodson got into the shower with them. Thomas then took K. upstairs to get dressed, and told Goodson she was going to take a nap. She lay in bed with the baby and slept for around 30-40 minutes, while Goodson stayed downstairs

cleaning up the house. (Tr.Vol.2 p.75 L.25-p.77 L.25, p.164 L.14-p.165 L.8).

Thomas testified Goodson then came back upstairs, and was angry again about what he'd seen on the phone. According to Thomas, he told her "you're gonna give me the same respect you gave to those niggers", and "give it to me like you gave it to them", which she understood to mean they were going to have sex. Thomas testified she asked Goodson if he had a condom but he responded, "don't make me backhand you. You know we don't use condoms". Thomas testified she was scared and didn't want to get hit again, so when Goodson told her to get on top of him, she did. Thomas testified they had nonconsensual vaginal intercourse, while nine-month-old K. was in the bed asleep next to them. (Tr.Vol.2 p.78 L.1-p.81 L.3, p.165 L.9-17).

Thomas testified once they finished, Goodson got dressed and mentioned needing to leave and go to the doctor because he'd hurt his leg during the December 8 incident. Goodson suggested they go get something to eat after he got back.

Thomas testified she responded he was crazy and needed help, but that he grew angry again, so she just left it alone. (Tr.Vol.2 p.81 L.4-p.82 L.2).

Thomas testified that after Goodson left, she got dressed but couldn't find her keys and realized Goodson must have taken her car without her permission. Thomas took K. and ran to the home of a neighbor to use the phone and call 911. (Tr.Vol.2 p.82 L.3-p.83 L.19). Thomas's 911 call (Exhibit BB) was made at about 3:15 p.m., and was played for the jury at trial. The 911 recording was redacted to omit Thomas's statement to the dispatcher that Goodson had a warrant out for his arrest. (Tr.Vol.2 p.6 L.17-p.7 L.8, p.127 L.17-p.128 L.22, p.159 L.23-p.160 L.1). However, the court later ruled Thomas could testify a warrant resulted from the December 8 incident, and Thomas did so. (Tr.Vol.2 p.185 L.22-p.188 L.19, p.193 L.21-p.196 L.21).

After police and Thomas's sister arrived at the scene, Goodson's mother also arrived, and there was shouting back and forth between her, Thomas, and Thomas's sister

concerning K. Law enforcement asked Goodson's mother to leave, and she did so. (Tr.Vol.2 p.128 L.23-p.130 L.21, Vol.3 p.141 L.4-21).

Thomas left the scene and went to the police station and then to the hospital. The treating Registered Nurse documented swelling or tenderness to Thomas's nose, neck, and hand, and multiple "superficial abrasions" across her body. (Tr.Vol.1 p.60 L.3-p.63 L.20, p.64 L.5-10, p.66 L.5-p.67 L.2).

Later that same day, after Thomas had left the scene, neighbor Tia Miller observed a person matching the description of Goodson's mother drop Thomas's vehicle back at the house and then leave in another vehicle driven by someone else. (Tr.Vol.3 p.21 L.11-p.24 L.18, p.111 L.5-p.112 L.3).

Thomas testified she had no in-person contact with Goodson between December 8-23, though she acknowledged they communicated over the phone. (Tr.Vol.2 p.138 L.25-p.139 L.20, p.209 L.9-p.211 L.4). Thomas acknowledged she

and Goodson went Christmas shopping together at Walmart, but denied this was during the December 8-23 period, suggesting it may have been in November. (Tr.Vol.2 p.154 L.3-23).

Thomas acknowledged meeting Goodson at a Casey's General Store, when he had a flat tire going to his employer's Christmas party. Goodson's son (D.) and another individual were with him at that time. Thomas testified Goodson said he had a gift for K., so she came to get the gift. (Tr.Vol.2 p.155 L.13-p.156 L.19). She testified she was almost certain this in-person interaction was not during the December 8-23 period, but testified she couldn't say she was absolutely certain. (Tr.Vol.2 p.206 L.7-15). She testified the reason she believed she did not see Goodson during December 9-23 is because a warrant was out for Goodson's arrest based on the December 8 incident and she was scared of him. (Tr.Vol.2 p.193 L.21-p.196 L.21). Thomas testified that during one of the telephone conversations she and Goodson had between December 8-23, she understood that Goodson was going to be in Las Vegas for

a period of time in connection with a job search. (Tr.Vol.2 p.178 L.14-20, p.214 L.3-p.215 L.1).

Thomas acknowledged she told police on December 23 that it was a "gray area" when her relationship with Goodson had ended. She testified this was because Goodson still had his big belongings at her house, and because he would still come back to the house whenever he wanted. (Tr.Vol.2 p.201 L.22-p.202 L.10).

Defendant Mario Goodson testified in support of his defense at trial. Goodson testified his and Thomas's relationship had lots of ups and downs. (Tr.Vol.4 p.102 L.7-18). In September 2016 Thomas filed a protection order against him, based on allegations of physical abuse. Goodson never had a court hearing on that matter and felt blindsided, calling the police. The protective order stayed in effect for only a few weeks to a month, and then Thomas lifted it. However, Goodson continued to live at the house with Thomas even during the protective order. (Tr.Vol.4 p.103 L.25-p.105 L.24, p.245 L.24-p.246 L.18). Goodson continued living at the

house from September through December, and continued contributing to the bills throughout this time. (Tr.Vol.4 p.106 L.8-11, p.106 L.24-p.107 L.1).

Goodson testified that on the morning of December 8, he and Thomas had spent the night at the house and woke up together. That evening he and his son D. drove to Thomas's work so Goodson could speak with her. Goodson drove his mother's car at the time because his primary vehicle was one he did not like to drive in the wintertime and his remaining vehicles were either in the shop or non-operable. (Tr.Vol.4 p.107 L.10-p.108 L.23). Goodson testified he got out of his car and ran toward Thomas because he did not know why she was running. He then put his arm around Thomas and asked her if they could walk and talk. (Tr.Vol.4 p.109 L.4-18). Goodson said something to her about causing a scene for no reason. (Tr.Vol.4 p.109 L.23-p.110 L.1, p.188 L.23-p.189 L.1, p.190 L.11-13). They sat in the backseat of Goodson's vehicle because D. was in the front seat. Thomas yelled that Goodson chased her, and when Goodson asked why she was running,

she said she didn't want to talk to him where they were. Goodson denied striking or threatening Thomas in any way. Goodson told Thomas all he wanted to do was talk to her, and there was no need for her to be so animated. (Tr.Vol.4 p. 110 L. 12-p.111 L.16).

At Thomas's suggestion, they moved to her vehicle so they could smoke and talk, without smoking around D. At the end of their conversation, the plan was to meet back at their house. Goodson and D. went to the house and got in using his key, but Thomas did not show up. Goodson called Thomas twice and did get ahold of her, but did not know where she was. (Tr.Vol.4 p.111 L.17-p.113 L.4). Goodson stayed the night at the house.

Goodson communicated with Thomas on December 9, while she was at work, and he saw her that night when she came home. Thomas told him a complaint had been filed against him. She didn't mention an arrest warrant, but told Goodson he needed to talk to an officer, which Goodson did via telephone. Goodson testified there was no problem

between he and Thomas at that time. (Tr.Vol.4 p.113 L.5-p.115 L.2).

Goodson testified that from December 9 through December 23, he continued living at the house with Thomas and K. D was also there periodically, when not at his mother's house. Up until December 23, he and Thomas had only talked very briefly about the December 8 incident, and they were generally getting along during this period. (Tr.Vol.4 115 L.10-p.116 L.11).

Goodson had planned on a trip to Las Vegas to visit family and explore job possibilities at car dealerships. He had put in some job applications and set up interviews for the time he was there, to help him evaluate if he wanted to make the move. (Tr.Vol.4 p.116 L.12-p.117 L.8). Goodson had previously spoken with Thomas about the three of them (Goodson, Thomas, and K.) moving out to Las Vegas, and the topic had caused problems between he and Thomas. (Tr.Vol.4 p.117 L.22-p.118 L.14).

Goodson left on December 15 or 16, spent about four days in Las Vegas, and flew back home on approximately December 20 or 21. When he returned to Waterloo, he first went to his mom's house, and then went to the house he shared with Thomas. Thomas and K. were both at the house when he arrived, and he and Thomas talked about his trip. The conversation was fairly neutral, and they were not experiencing problems at that time. (Tr.Vol.4 p.117 L.9-19, p.121 L.21-p.123 L.2).

Goodson testified that on the evening of December 22, Goodson and Thomas both spent the start of the evening at the house. They were getting along, and had sexual intercourse. Around 6:00-7:00 p.m., Goodson left the house. Goodson phoned Thomas that evening, and learned she had left the house as well. Thomas and Goodson did not sleep in the same bed that night. (Tr.Vol.4 p.123 L.3-16, p.124 L.1-10).

On the morning of December 23, Goodson was at the house but Thomas was not there and Goodson did not know

where she had been the previous evening. (Tr.Vol.4 p.124 L.11-22). Goodson had some positive responses to his interviews in Las Vegas, and was planning on making another trip for more interviews. He therefore worked on packing some bags for the trip. (Tr.Vol.4 p.124 L.25-p.125 L.11).

There was no conventional closet in his and Thomas's bedroom, so anything that needed to be hung up would be in the basement, which functioned as a makeshift closet. Goodson was in the basement packing for his trip when he heard Thomas return home on December 23. Goodson called up to Thomas that he was in the basement. Thomas used the restroom and then came to the basement and asked what he was doing. He told her he was getting a few more things for another trip to Las Vegas. Thomas grew agitated and began yelling about what he was doing in Las Vegas. Goodson went upstairs and into the bathroom to collect more things to pack, but Thomas followed him continuing on about what she thought had happened in Las Vegas. When Goodson didn't react, Thomas tried to throw in his face that it's fine because

she was out last night and had sexual interactions. Things became more heated, and Thomas tried to show Goodson text messages and things on her phone from another guy in an effort to make him mad. When Goodson still didn't react, she tried to press the issue by talking about other situations or occasions. Goodson testified he got "pissed", and punched the mirror in the bathroom with his hand, resulting in a small bleeding cut and scar on his hand. (Tr.Vol.4 p.125 L.12-p.132 L.6).

Goodson testified Thomas started getting loud with him in the bathroom. He testified he grew overwhelmed, and struck her with his hand, backhanded. He wasn't certain where he struck her, but acknowledged it could have been in her face. However, he denied punching her, and he could not recall if she had been bleeding from her nose. (Tr.Vol.4 p.132 L.7-p.133 L.4). Goodson acknowledged that, at some point during the December 23 incident, he had "put [his] hands on" and "hit" Thomas, and that he could be responsible for some

of the marks on her person. (Tr.Vol.4 p.160 L.14-23, p.207 L.11-18).

Responding officers on December 23 photographed suspected blood at the residence. (Tr.Vol.2 p.92 L.7-p.93 L.1, p.94 L.22-p.95 L.7, p.95 L.24-p.96 L.1, p.96 L.23-p.97 L.2, p.106 L.12-p.107 L.5). However, none of the suspected blood was ever tested. (Tr.Vol.3 p.13 L.20-p.17 L.2). Goodson testified the blood on the tissues was his blood from cutting his hand on the mirror. He was not sure where the blood on the bathroom rug, the possible blood splatter high up on the wall, or the possible blood on Thomas's boots came from. As to the blood smear on the side door, he testified there was a previous time he had cut himself and got blood on the door which had never gotten cleaned off. (Tr.Vol.4 p.133 L.5-p.135 L.2).

Goodson and Thomas went into the living room because K. was still on the couch, and was crying. (Tr.Vol.4 p.135 L.3-8). Goodson got K. settled down, then put him down and asked Thomas to go in the kitchen to talk. Goodson testified

the conversation in the kitchen started out cordial, but then Thomas started to get revved up again. There were periods of anger and hostility followed by periods of calm. (Tr.Vol.4 p.135 L.14-p.136 L.15).

Goodson testified he said "fuck that. I'm leaving" but Thomas said "no, you're not going nowhere" and tried to physically put her hands on him. (Tr.Vol.4 p.136 L.16-p.137 L.9). She was also "wailing on" the back of Goodson's head with her right hand. (Tr.Vol.4 p.141 L.12-16). Goodson testified he threw up a little resistance, and that Thomas took off running, so he ran behind her to see what she was doing. Thomas retrieved a mace gun from the coffee table. She was angry and tried to use the mace gun, but Goodson grabbed it, ran into the kitchen, threw the mace gun down, and jumped on it. (Tr.Vol.4 p.137 L.10-19, p.139 L.7-p.141 L.11, p.142 L.1-3). The mace exploded everywhere and Thomas expressed concern it might get on the baby, so Goodson suggested they all just get in the shower to get the mace off. (Tr.Vol.4 p.142 L.4-23). Once in the shower the mood calmed down. After

washing the mace off, Thomas took the baby upstairs, while Goodson finished showering. (Tr.Vol.4 p.145 L.6-p.146 L.3).

After showering, Goodson cleaned up some of the broken glass from the bathroom mirror, and then went upstairs to get dressed. Thomas was playing with the baby on the bed, and she and Goodson talked a bit though not about anything important. The mood had become very calm. (Tr.Vol.4 p.146 L.4-p.147 L.19).

Goodson then went back downstairs to clean up more of the glass, and also to clean up the cut on his hand which had started to bleed again. He then went back upstairs, where he and Thomas had more calm conversation. Thomas put the baby in the crib next to the bed. She and Goodson shed a few tears and began to talk of regret and that this was all for nothing. Goodson testified both of their demeanors was soft and mutually engaging, and that they were making up. They then began kissing, Thomas climbed on top of him, they both disrobed, Thomas kissed his chest and mouth, and they engaged in consensual sexual intercourse. K meanwhile slept

in his crib. Goodson denied making any threats or doing anything that could be perceived as threats. (Tr.Vol.4 p.148 L.17-p.151 L.13).

After the sexual intercourse, there was a little more conversation about things being better and that things shouldn't have gone awry. Thomas seemed more comfortable, had no hostility, and seemed more on the positive side. There was a sense of peace between them. (Tr.Vol.4 p.151 L.14-p.152 L.7).

Goodson testified his leg had been injured from running during the December 8 incident, so he decided to go to a convenient care clinic to find out what was wrong. Goodson asked to use Thomas's vehicle, and she said he could, giving him the keys. As Goodson was leaving, he mentioned they could get something to eat when he got back, and Thomas responded okay. (Tr.Vol.4 p.152 L.8-p.155 L.4).

Goodson drove the five or ten minutes to convenient care, checked in, and was seen by a nurse who took his vitals and preliminary information. But before he could see the doctor,

Goodson received a phone call from his mother who was crying and saying there was law enforcement at his and Thomas's house and she didn't know why. (Tr.Vol.4 p.155 L.5-p.156 L.23). Goodson immediately left the clinic and started driving toward his and Thomas's house, but his mother said not to go there as she didn't know what was going on, so he stopped and parked the car where it was by Hometown Foods. He then walked the short distance to his mother's house. He ultimately gave Thomas's car keys to his mother, and Goodson never returned to the home he'd shared with Thomas. He didn't learn of the specific allegations herein until weeks to a month later. (Tr.Vol.4 p.156 L.24-p.158 L.8, p.234 L.25-p.236 L.8).

Goodson acknowledged he did send angry email correspondence (Exhibit DD)(Ex. App. pp. 27-35) to Thomas sometime after charges had been brought. (Tr.Vol.4 p.159 L.19-24, p.237 L.16-p.244 L.24). Goodson testified he was receiving emails from Thomas too, some of which were as angry in tone as his. Goodson testified he was upset and

frustrated that Thomas had falsified charges against him, that Goodson was no longer able to see his youngest son, and that Thomas was not allowing his mother to have K. (Tr.Vol.4 p.159 L.25-p.160 L.5, p.246 L.19-p.247 L.16). Goodson testified that in referencing "falsified charges" in the email correspondence, he was trying to get Thomas to tell the truth, namely that the charges were false. (Tr.Vol.2 p.242 L.12-p.243 L.11). Goodson testified the emails had been written in hurt, but hadn't acted upon his angry words. (Tr.Vol.4 p.247 L.14-22).

Across-the-street neighbor Jacob Miller testified that Goodson resided at the house with Thomas. He testified there were different times that Goodson would not live there for a week or two at a time. He opined that by December 23, they were split up and Goodson no longer lived there. (Tr.Vol.3 p.35 L.18-p.37 L.23).

Jacob Miller's wife, Tia, also testified that Goodson resided at the house with Thomas. She testified Thomas had kicked Goodson out on more than one occasion, but then

Goodson would reemerge and the two would continue to live together at the house. When asked what months she would see Goodson often, she testified she saw him prior to the December 23 incident, because he lived with Thomas. (Tr.Vol.3 p.21 L.2-9, p.27 L.25-p.28 L.8, p.29 L.3-6).

Several defense witnesses testified they observed Goodson and Thomas together after December 8. John Gray, the romantic partner of Defendant's mother, testified he had seen Goodson and Thomas together in mid-December 2016, around a week before Christmas, when they were leaving to go Christmas shopping. He also testified that he saw Goodson and Thomas together frequently during the end of 2016, and that they were living together at that time. (Tr.Vol.4 p.29 L.1-p.32 L.23).

Julian Roby, a friend and former coworker of Goodson's, testified he last saw Goodson and Thomas together at their house during the second or third week of December, close to Christmas Eve. He also observed Thomas picking up Goodson from Roby's house around December 2016, and testified that

to his knowledge the two were living together at that time. (Tr.Vol.4 p.36 L.4-p.42 L.20).

Alexandra Gillespie, Goodson's former girlfriend, testified she saw Goodson and Thomas together in November or December 2016 when driving by Walmart in Waterloo for Christmas shopping. She testified that, to her knowledge, Goodson and Thomas were living together at that time. (Tr.Vol.4 p.47 L.12-p.52 L.18).

Goodson's former coworker and family friend Marcel Avant testified he observed Goodson and Thomas shopping at Walmart with K. around Christmas in December 2016. He believed the date would have been sometime after December 14. (Tr.Vol.4 p.69 L.2-p.74 L.5).

The mother of Goodson's older child (D) testified that to her knowledge Goodson lived with Thomas through the end of 2016. (Tr.Vol.4 p.56 L.23-p.62 L.11). In his testimony, Goodson acknowledged that many of D.'s things were no longer at the house as of December 23, but he stated that was because he was thinking of making a move to Las Vegas and it

had been in D.'s best interest to start staying with his mom rather than his dad at that time. Goodson testified that by December 23, D. would sleep on the living room sectional when staying over at his and Thomas's house, and there was no longer a bed in D's room at that time (Tr.Vol.4 p.212 L.21-25, p.213 L.11-p.214 L.15, p.245 L.11-23).

Goodson's uncle, Louis Hoskins, testified he last saw Goodson and Thomas together in December 2016. He met Goodson at a Casey's after Goodson got a flat tire. Goodson's son D was in the car with Goodson, and Thomas came out and met them at Casey's. (Tr.Vol.4 p.78 L.3-p.84 L.1). Goodson also testified to that interaction, which he believed occurred on December 10. (Tr.Vol.4 p.165 L.19-p.168 L.21). Goodson also testified that he and Thomas had gone Christmas shopping on three or four different occasions leading up to Christmas 2016 (in anticipation of K.s first Christmas), often running into people at the store. (Tr.Vol.4 p.165 L.165 L.7-18).

During closing argument, Defense counsel urged the jury to conclude that Thomas had falsified the December 23

allegations against Goodson both so that she could have their child (K) to herself, and in retaliation for problems in the relationship. (Tr.Vol.5 p.57 L.13-22, p.78 L.14-20). Counsel emphasized Thomas's testimony that she took a nap in the middle of the alleged December 23 incident, arguing this was inconsistent with her claim of an extensive assault and sexual abuse. (Tr.Vol.5 p.62 L.10-16, p.63 L.3-9). Counsel also emphasized the multiple defense witnesses who had stated Goodson and Thomas continued to reside together through the days leading up to Christmas. (Tr.Vol.5 p.62 L.4-6, p.71 L.22-p.72 L.22).

Other relevant facts will be discussed below.

## ARGUMENT

### I. THE DISTRICT COURT ERRED IN PERMITTING THE STATE TO INTRODUCE EVIDENCE OF GOODSON'S OTHER CRIMES, WRONGS, OR BAD ACTS.

**A. Preservation of Error:** Defense counsel filed a pretrial Motion in Limine seeking to exclude any evidence of Goodson's alleged prior bad acts, including: (a) allegations and video of a December 8, 2016 domestic assault; (b) allegations

by a neighbor that he witnessed Goodson smack Thomas some months prior to the December 23, 2016 incident; and (c) generalized allegations that Goodson was assaultive or abusive. (2/26/18 Def.Mot.Limine)(App. pp. 10-11). The Defense motion in limine was taken up on the first day of trial. At that time, the court denied the motion in limine, but specified that it's in limine rulings were not final and that objection should thus be made at trial to preserve a claim of error. (Tr.Vol.1 p.15 L.11-15, p.35 L.16-p.55 L.10).

Subsequently at trial, defense counsel raised and the court overruled objections to: Exhibit AA, the video of the December 8 incident (Tr.Vol.2 p.14 L.22-p.15 L.20); the mention of a warrant having issued based on the December 8 allegations (Tr.Vol.2 p.193 L.13-p.196 L.4); and Jacob Miller's testimony that he observed Goodson smack or punch Thomas in the face some months before the December 23 incident (Tr.Vol.3 p.30 L.2-p.32 L.9). Error was therefore preserved as to these matters.

However, counsel did not contemporaneously object at trial to Thomas's earlier testimony that Miller had observed a prior incident of assault (Tr.Vol.2 p.112 L.16-p.113 L.16). Counsel also did not specifically and contemporaneously object to Thomas's generalized allegations of prior abuse. For example, Thomas testified: that Goodson had been getting increasingly controlling and more verbally and physically abusive, including previously beating or assaulting her (Tr.Vol.2 p.22 L.22-p.23 L.6, p.32 L.18-21, p.33 L.4-7, p.112 L.16-21, p.142 L.3-7, p.201 L.1-13); that it was common for Goodson to take her keys so she couldn't leave (Tr.Vol.2 p.82 L.7-9); that she had run away upon seeing Goodson on December 8 because she was afraid he would "hurt [her], hit [her], or whatever had been going on" (Tr.Vol.2 p.38 L.25-p.39 L.2); and that she had learned certain "tactics" to try to calm Goodson down when he was upset or abusive (Tr.Vol.2 p.59 L.24-p.60 L.12, p.63 L.9-15). Error was therefore not preserved as to these matters, though counsel did subsequently (following the close of the State's case) make a

motion for mistrial based on the admission of prior bad acts contrary to his motion in limine (Tr.Vol.4 p.7 L.8-p.9 L.19). See State v. Bruno, 204 N.W.2d 879, 887 (Iowa 1973)(trial counsel must make timely objection and secure court's ruling). Defendant respectfully requests that such unpreserved error be considered under an ineffective assistance of counsel framework. State v. Tobin, 333 N.W.2d 842, 844 (Iowa 1983).

Additionally, to the extent the Court does not agree that error was not properly preserved even on the objected-to matters outlined above, Goodson respectfully requests that those matters be considered under an ineffective assistance framework as well.

**B. Standard of Review:** Where preserved for appellate review, evidentiary matters are reviewed for abuse of discretion. State v. DeBerg, 282 N.W.2d 348, 351 (Iowa 1980). If preserved, evidentiary errors require reversal unless the State affirmatively establishes harmlessness. State v. Parker, 747 N.W.2d 196, 209 (Iowa 2008).

Constitutional claims of ineffective assistance of counsel are reviewed de novo. Taylor v. State, 352 N.W.2d 683, 684 (Iowa 1984). A defendant must establish both a breach of essential duty, and prejudice in the form of a reasonable probability of a different result sufficient to undermine confidence in the outcome. State v. Carrillo, 597 N.W.2d 497, 500 (Iowa 1999).

**C. Discussion:** In general, relevant evidence is admissible and irrelevant evidence is not admissible. State v. Taylor, 689 N.W.2d 116, 123 (Iowa 2004); Iowa Rs. Evid. 5.401-5.402. But even relevant evidence "may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice." Iowa R. Evid. 5.403.

Iowa Rule of Evidence 5.404(b) governs the admissibility of other crimes, wrongs, or acts:

> (1) *Prohibited use.* Evidence of a crime, wrong, or other act is not admissible to prove a person's character in order to show that on a particular occasion the person acted in accordance with the character.
>
> (2) *Permitted uses.* This evidence may be admissible for another purpose such as proving motive,

> opportunity, intent, preparation, plan, knowledge, identity, absence of mistake, or lack of accident.

Iowa R. Evid. 5.404(b).

Courts employ a two-step analysis to determine whether prior bad act evidence is admissible. State v. Mitchell, 633 N.W.2d 295, 298 (Iowa 2001). First, the court must decide whether such evidence is relevant to a legitimate factual issue in dispute. Id. If so, the court must then decide if its probative value is substantially outweighed by the danger of unfair prejudice. Id.; Iowa R. Evid. 5.403. An affirmative answer to the second question requires exclusion of the evidence. Mitchell, 633 N.W.2d at 298-99.

Unfair prejudice arises when the evidence would cause the jury to base its decision on something other than the proven facts and applicable law, such as sympathy for or desire to punish a party. State v. Rodriquez, 636 N.W.2d 234, 240 (Iowa 2001). In weighing probative value and unfair prejudice, courts consider the need for the evidence, whether there is clear proof the defendant committed the prior bad act,

the strength or weakness of the evidence on the relevant issue, and the degree to which the fact finder will be prompted to decide the case on an improper basis. Id.

In Taylor, 689 N.W.2d at124-125, the Court determined prior incidents of domestic abuse were relevant to the defendant's intent, which was at issue. The Court reasoned there was "a logical connection between a defendant's intent at the time of the crime, when the crime involves a person to whom he has an emotional attachment, and how the defendant has reacted to disappointment or anger directed at that person in the past, including acts of violence, rage, and physical control." Id. at 125. "In other words, the defendant's prior conduct directed to the victim of a crime, whether loving or violent, reveals the emotional relationship between the defendant and the victim and is highly probative *of the defendant's probable motivation and intent* in subsequent situations." Id. (emphasis added)

Taylor's holding only determined the other acts evidence was relevant to show *intent*.

The emphasis on whether the other acts evidence is relevant to a "legitimate issue" is significant. State v. Sullivan, 679 N.W.2d 19, 25 (Iowa 2004). This is because "the jury is less likely to concentrate on propensity if there is a bona fide dispute on mens rea." State v. Richards, 879 N.W.2d 140, 147 (Iowa 2016)(quoting State v. Henderson, 696 N.W.2d 5, 16 (Iowa 2005)(Lavorato, C.J., concurring specially)). But if there is no real dispute regarding intent, "the only relevancy of such evidence is to show the defendant's criminal disposition or propensity to commit the very crime for which the defendant is on trial." Id.

The other acts evidence herein was not relevant for any legitimate purpose, as Goodson's intent was not a disputed issue. Goodson admitted that he got "pissed" and hit or backhanded Thomas during the December 23 incident. (Tr.Vol.4 p.131 L.10-p.133 L.4, p.160 L.14-23, p.207 L.11-18). However, he denied the extensive assault claimed by Thomas, denied that he had previously moved out and lacked permission to be at the home, denied that he had

nonconsensual sex with Thomas (testifying instead that the two had first made up, and then had consensual intercourse), and stated that he'd had Thomas's permission to take her vehicle to go to the doctor. (Tr.Vol.4 p.133 L.23-25, p.153 L.25-p.154 L.22, p.160 L.21-p.161 L.17). Unlike cases where this Court has found prior acts of domestic violence relevant to show intent, Goodson did not claim the charged incident was accidental. See Taylor, 689 N.W.2d at 124-125 (defendant argued he accidentally broke van window); State v. Newell, 710 N.W.2d 6, 22 (Iowa 2006) (several of defendant's versions portrayed victim's death as accidental.).

However, even if the Court decides the evidence was relevant to a legitimate issue in dispute, the Court must determine whether the probative value of the other acts evidence was substantially outweighed by the danger of unfair prejudice to the defendant. Richards, 879 N.W.2d at 152. The evidence must be excluded if the probative value is substantially outweighed by unfair prejudice. State v. Nelson, 791 N.W.2d 414, 425 (Iowa 2010).

This Court has stated the complaining witness's testimony alone satisfies the clear proof requirement. Richards, 879 N.W.2d at 152. Yet, the allegations of the prior alleged abuse observed by neighbor Jacob Miller several months prior, and the alleged prior abuse of December 8 were heavily disputed. Defense counsel spent considerable time trying to challenge the allegations of this claimed prior abusive conduct.

Further, the Court has "readily acknowledge juries would probably not like someone whom they conclude has repeatedly assaulted a significant other and therefore might develop a desire to punish." Richards, 879 N.W.2d at 152 (citing State v. Liggins, 524 N.W.2d 181, 188–89 (Iowa 1994)). Goodson had a jury trial, and juries are far "more susceptible to deciding the case on an improper basis" than would exist in a bench trial. See Taylor, 689 N.W.2d at 130; State v. Casady, 491 N.W.2d 782, 786 (Iowa 1992).

Additionally, the scope of the prior acts evidence was not limited. The prosecution extensively questioned Thomas

about the prior abuse, and also introduced Jacob Miller's testimony on an incident allegedly observed several months prior. As to the December 8 incident in particular, Thomas provided as much detail as she did concerning the December 23 incident that is the basis of the instant prosecution. Indeed, a video of the December 8 incident was admitted into evidence, and repeatedly played (first in its entirety, and then portions thereof) throughout trial. The December 8 incident was referenced and brought to the jury's attention each day of trial. Because the prior incidents were repeatedly emphasized by the State and heavily disputed by Defendant, defense counsel was forced to address them extensively during cross-examination of the State's witnesses and during Defendant Goodson's testimony, in an effort to discredit them. No cautionary instruction was given, and the jury was likely to consider the other acts evidence for an improper propensity purpose – that if Goodson committed other acts of abuse he more than likely committed the charged offenses.

The evidence of the prior abuse allegations unrelated to the December 23 incident was not admissible. The district court erred in ruling such evidence admissible over the defense challenges thereto. Additionally, to the extent error was not preserved, trial counsel breached an essential duty by failing to properly object, which failure cannot be shown to be reasonable trial strategy.

Goodson was prejudiced by the introduction of the improper evidence. Thomas claimed that Goodson, having previously moved out of the residence, entered her home on December 23 without authorization, surprised and assaulted her when she arrived home, forced her to have intercourse with him, and then took her vehicle without her permission. Goodson, while he admitted that he got "pissed" and struck Thomas during the December 23 incident, denied the extensive assault she claimed, denied that he'd previously moved out such that he would lack permission or authority to be at the home on that date, denied that he had nonconsensual sex with Thomas (testifying instead that the

two made up and then had consensual intercourse), and insisted that Thomas had given him permission to take her vehicle to go to the doctor. The jury had to resolve the disputed evidence to reach its verdicts. The prior acts evidence was unfairly prejudicial and tipped the scales toward conviction. Confidence in the verdicts is undermined, and Goodson must be afforded a new trial whether the issue is considered as preserved error or instead under an ineffective assistance of counsel framework.

**D. Conclusion:** Goodson respectfully requests this Court reverse his convictions and remand for a new trial, excluding the evidence of prior bad acts.

## II. THE TRIAL JUDGE ERRED IN FAILING TO RECUSE HIMSELF (A) FROM TRIAL AND (B) FROM CONSIDERATION OF GOODSON'S POST-TRIAL MOTION ALLEGING IMPROPER CONTACT BETWEEN THE JUDGE AND JURORS.

**A. Preservation of Error:** A "judge's obligation not to hear or decide matters in which disqualification is required applies regardless of whether a motion to disqualify is filed." Iowa Code of Judicial Conduct R. 51:2.11, Comment [2].

**B. Standard of Review:** Review of a judge's recusal decision is for an abuse of discretion. See State v. Millsap, 704 N.W.2d 426, 432 (Iowa 2005).

**C. Discussion:** Subsequent to trial, Goodson filed a Motion for New Trial which, inter alia, (1) argued the court erred in allowing prior bad acts evidence to be heard by the jury, (2) alleged potential jury misconduct by certain jurors, and (3) alleged an appearance of impropriety based on the presiding judge's interactions with two other jurors. (4/5/18 Mot.New Trial)(App. pp. 25-26). A hearing on the Motion was held on April 20, 2018, before the same judge who had presided over trial (Judge Dalrymple). (4/6/18 Order)(App. pp. 27-29); (4/20/18 Tr. p.1 L.1-25).

During the hearing, a number of witnesses were presented, namely: Jurors 12, 25, and 56; three members of the courthouse security staff; Defendant's girlfriend; Defendant's mother; and Defendant. Defendant also introduced security videos of the courthouse entrance (Exhibit

A) and of the fourth floor of the courthouse (Exhibit B). (4/20/18 Tr. p.1 L.1-p.2 L.25).

As pertinent to the issue pertaining to the judge's interactions with two of the jurors: The videos depicted two female jurors entering the courthouse at approximately 9:41 a.m. on March 6, 2018 (the final day of trial), going through security, and then waiting for the elevator. Judge Dalrymple approached and stood with the two jurors at the elevator, and then all three individuals took the elevator to the fourth floor. (4/20/18 Tr. p.58 L.16-24, p.63 L.25-p.65 L.25); (Exhibit A at 9:41:15-9:43:02). Defendant, his mother, and his girlfriend were already on the fourth floor seated on a bench in the hallway. The first camera angle from the fourth-floor security footage depicts Judge Dalrymple and the two jurors exiting the elevator, and walking down the hallway, before they travel out of view at 09:48:10. (Exhibit B ch.16 clip, 09:48:00-09:48:10) Defendant and his girlfriend testified (and Judge Dalrymple's written ruling appeared to acknowledge) that after that point: the judge first led the jurors through one door, disappearing

from view of the hallway; then after some time the judge and jurors remerged into the hallway, and Judge Dalrymple walked the jurors through a different door to the jury's deliberation room. The route taken was not a direct path from the elevator to the deliberation room. (4/20/18 Tr. p.83 L.22-p.84 L.15, p.91 L.4-15, p.92 L.1-19, p.95 L.20-21, p.97 L.15-p.98 L.15, p.104 L.20-p.105 L.18, p.106 L.1-15, p.111 L.12-p.112 L.15, p.117 L.6-16, p.123 L.10-p.125 L.17, p.139 L.16-9, p.146 L.21-p.156 L.2). The second camera angle on the fourth-floor security footage captures the latter part of this journey wherein, after already having reemerged into the hallway, the judge led the jurors through a second door to the deliberation room. (Exhibit B: ch15 clip at 09:49:13-09:49:35).

The defense characterized the route taken by the judge and the jurors as an "out-of-the-way detour to the jury room", rather than directly to the jury room. (4/20/18 Tr. p.141 L.10-18). The judge had stressed during trial that the parties and attorneys should have no interaction with the jurors, and should stay away from the parts of the fourth floor the jurors

were likely to be spending time. (4/20/18 Tr. p.122 L.23-p.123 L.9, p.125 L.25-p.126 L.6, p.141 L.4-9). See also (Tr.Vol.1 p.86 L.6-24). During the new trial hearing, defense counsel expressed concern that the judge's act of waiting with and riding the elevator with the jury members and then taking the jury on "that out-of-the-way detour to the jury room" created an appearance of impropriety. (4/20/18 Tr. p.141 L.10-18). At the conclusion of the hearing, the district court took the matter under advisement. (4/20/18 Tr. p.166 L.13-20).

Judge Dalrymple subsequently issued a May 9, 2018 written order denying the Motion for New Trial. (5/9/18 Order)(App. pp. 32-37). As to the issue concerning the court's interaction with the two jurors, Judge Dalrymple's ruling stated: "During the course of trial there were, in fact, two jury trials being conducted on the fourth floor. Traditionally, the courtroom known as Oberman or 413 is the primary courtroom used for jury trials. The courtroom utilizes a jury room adjacent to the undersigned's chambers. On rare

occasions the courtroom utilized for the above-captioned matter (411) is used by the district court." The ruling further stated: "The undersigned attempted to walk the jurors to the jury room immediately adjacent to his chambers only to discover that the jurors were not affiliated with that [unrelated] trial, but with the trial in the above-captioned matter. Consequently, the Court immediately walked the jurors to their jury room as observed on Defendant's Exhibit B." The ruling continued: "A sum total of 63 seconds exists not otherwise captured on video" and "The Court addressed the path of travel from the video at 9:48:10 to the point depicted at 9:49:13." The ruling also stated: "The undersigned specifically states professionally that no conversations took place between the jurors and the undersigned relative to the trial. The undersigned made an error in assuming the jurors were appearing for the trial occurring in 413 (Oberman)." (5/9/18 Order, p.4-5)(App. pp. 35-36).

On August 15, 2018, Goodson filed another Motion for New Trial, this time on the Basis of Newly Discovered evidence.

That motion stated Defendant had recently discovered the judge presiding over his trial (Judge Dalrymple) had been the same individual who had previously prosecuted Defendant for Third Degree Sexual Abuse in 1999 when employed as a prosecutor with the Black Hawk County Attorney's Office. (8/15/18 Mot.New Trial)(App. pp. 38-39). The judge's prior prosecution of Defendant had culminated in the 1999 Sex Abuse conviction in Black Hawk County FECR083213 that acted as the basis for the 901A.2(3) prior offense enhancement being applied to the Sex Abuse charge in the present case. A hearing on that Motion was held on September 17, 2018 before the same judge who presided over trial (Judge Dalrymple), and the motion was again denied. (9/17/18 Tr. p.1 L.1-25, p.6 L.7-25).

On appeal, Goodson respectfully urges that Judge Dalrymple erred in failing to recuse himself from presiding over Goodson's trial, and Goodson must accordingly be afforded a new trial.

Alternatively, and at minimum, Goodson urges Judge Dalrymple erred in failing to recuse himself from consideration of Goodson's post-trial motions for new trial, which included an allegation of improper contact between the judge and two jurors during trial. If a new trial is not granted, Goodson respectfully requests that Judge Dalrymple's ruling on his motions for new trial be vacated and remanded for a new hearing and consideration before a different judge.

***a). New Trial: Prior service as a prosecutor "in the matter in controversy"***

A defendant has a constitutional right to have a neutral and detached judge. State v. Mann, 512 N.W.2d 528, 532 (Iowa 1994). Iowa Code of Judicial Conduct Rule 51:2.11 sets forth the "standard by which a judge should sua sponte determine the matter of self-recusation." State v. Smith, 242 N.W.2d 320 (Iowa 1976).

It is true that the law "does not require a judge to recuse himself due to prior prosecution of a defendant in an *unrelated matter*." State v. Toles, No. 15–0321, 2016 WL 1358959, at *2

(Iowa Ct. App. April 6, 2016)(emphasis added), *aff'd as to this issue by* State v. Toles, 885 N.W.2d 407, 408 (Iowa 2016). However, Iowa Code of Judicial Conduct Rule 51:2.11(A)(6)(a) does require a judge to recuse or "disqualify himself"[3] where "[t]he judge… served as a lawyer *in the matter in controversy*…." Iowa Code of Judicial Conduct R. 51:2.11(A)(6)(a) (emphasis added). Iowa Code section 602.1606(1)(b) similarly provides that "A judicial officer is disqualified from acting in a proceeding, except upon the consent of all the parties, if… The judicial officer served as a lawyer *in the matter in controversy*…." Iowa Code § 602.1606(1)(b)(emphasis added).

Under the Rules of Judicial Conduct, "[a] judge's obligation not to hear or decide matters in which disqualification is required applies regardless of whether a motion to disqualify is filed." Iowa Code of Judicial Conduct R. 51:2.11, Comment [2]. Further, "A judge should disclose on

[3] Under the rule "[t]he term 'recusal' is used interchangeably with the term 'disqualification.'" Iowa Code of Judicial Conduct R. 51:2.11, Comment [1].

the record information that the judge believes the parties or their lawyers might reasonably consider relevant to a possible motion for disqualification, even if the judge believes there is no basis for disqualification." Iowa Code of Judicial Conduct R. 51:2.11, Comment [5]. Similar principles also apply under Iowa Code section 602.1606. See also Iowa Code § 602.1606(1)(requiring judicial disqualification under enumerated circumstances "except upon the consent of all the parties"); Iowa Code § 602.1606(2)("A judicial officer shall disclose to all parties in a proceeding any existing circumstances in subsection (1), paragraphs 'a' through 'd', before the parties consent to the judicial officer's presiding in the proceeding.").

The United States Supreme Court has recognized that "...an unconstitutional potential for bias exists when the same person serves as both accuser and adjudicator in a case." Williams v. Pennsylvania, 136 S.Ct. 1899, 1905 (2016). "When a judge has served as an advocate for the State in the very case the court is now asked to adjudicate, a serious

question arises as to whether the judge, even with the most diligent effort, could set aside any personal interest in the outcome." Id. at 1906. The Court in Williams thus held "that under the Due Process Clause there is an impermissible risk of actual bias when a judge earlier had significant, personal involvement as a prosecutor in a critical decision regarding the defendant's case." Id. at 1905. In such a case, "the risk of actual bias in the judicial proceeding rises to an unconstitutional level." Id. at 1910. The passage of time does not alleviate the obligation to recuse, "[e]ven if decades intervene before the former prosecutor revisits the matter as a jurist...." Id. at 1907.

In the present case, the 1999 Sexual Abuse conviction Judge Dalrymple had obtained in his former role as prosecutor acted as the basis for the section 901A.2(3) enhancement applied to the Third Degree Sexual Abuse count in the instant prosecution. The judge presiding over Goodson's trial "earlier had significant, personal involvement as a prosecutor in a critical decision regarding the defendant's case". Id. at 1905.

But-for the judge's prior prosecutorial decisions (electing to prosecute the prior allegations, and electing to charge and prosecute the prior allegations as Sex Abuse in the Third Degree rather than a non-sexually predatory offense), the Sex Abuse count of the current proceeding could not be charged or prosecuted with the section 901A.2(3) enhancement.

"…[A] due process violation arising from the participation of an interested judge is a defect 'not amenable' to harmless-error review…." Id. at 1909. "…[A]n unconstitutional failure to recuse constitutes structural error…." Id.

Similarly, under the statutory provisions, when the judge presiding over trial should have been disqualified or recused themselves, the judgment will be reversed and the matter remanded for a new trial. Chase v. Weston, 39 N.W.246, 248 (Iowa 1888) (judge disqualified due to relation to party within the fourth degree; under prior version of disqualification statute). See also State v. Fremont, 749 N.W.2d 234, 244 (Iowa 2008)("The lack of a neutral and detached magistrate is

a structural defect that defeats any application of the harmless error doctrine.").

***b). New Trial: Reasonable basis for questioning impartiality***

Judicial disqualification is also required more generally "in any proceeding in which the judge's impartiality might reasonably be questioned…." Iowa Code of Judicial Conduct Rule 51:2.11(A).

"The standard for determining whether judicial recusal is required under rule 51:2.11(A) because 'the judge's impartiality might reasonably be questioned' is objective, not subjective." In re Howes, 880 N.W.2d 184, 195 (Iowa 2016). "In other words, the test is not whether the judge *actually* questions his or her own impartiality, 'but whether a reasonable person would question it.'" Id. "Proving scienter is not necessary to establish a violation of the rule." Id. "Rather, the appropriate inquiry is whether a reasonable person with knowledge of all the facts might have a reasonable basis for questioning the judge's impartiality such that the judge

deciding a matter would create an appearance of impropriety." Id. In considering whether there is an obligation for recusal under the rule, "drawing all inferences favorable to the honesty and care of the judge whose conduct has been questioned could collapse the appearance of impropriety standard … into a demand for proof of actual impropriety." Id. (quotation marks and citation omitted). "Recusal is required under rule 51:2.11(A) when a reasonable person might reasonably doubt the judge's impartiality because the rule anticipates 'that people who have not served on the bench are often all too willing to indulge suspicions and doubts concerning the integrity of judges.'" In re Howes, 880 N.W.2d at 195 (citation omitted). "Thus, rule 51:2.11(A) operates 'to promote public confidence in the integrity of the judicial process.'" Id.

Here, even if the judge's prior prosecution of Goodson's 1999 sex offense does not qualify as the same 'matter in controversy' under Rule 5:2.11(A)(6)(a), neither is it a wholly "unrelated matter" as was the case in Toles. It is not

unreasonable for a defendant to be concerned that a judge who previously prosecuted him on a sex offense may find it difficult to be impartial when it comes to a subsequent prosecution for *another alleged sex offense* – particularly where the prior sex offense prosecution is the basis for enhancing the penalty in the present case.

Further, the issue created by the judge's involvement in Goodson's prior sex offense prosecution was exacerbated by the fact that the judge apparently had some interaction with two of the jurors outside of the courtroom, taking the elevator with them and then taking them on an "out-of-the-way detour to the jury room". (4/20/18 Tr. p.141 L.10-18). This contact adds to the reasonable basis for questioning the judge's impartiality.

Additionally, upon realizing[4] that he had some contact with jurors outside the courtroom during the pendency of the trial, the judge did not disclose the contact to the parties at that time. This further heightens the reasonable basis for questioning the judge's impartiality. See e.g., In re Howes, 880 N.W.2d at 200 (where appearing attorney "recently represented a judge in a personal matter… and the judge does not disclose that fact to the parties, the judge's impartiality might reasonably be questioned", requiring judge to disqualify herself; not reaching question of whether the former attorney-client relationship itself required recusal, and instead focusing on judge's failure to disclose the facts to the parties).

The fact of the judge's prior prosecution of Goodson in the 1999 sex offense, combined with the interaction (and non-disclosure of the interaction) with jurors outside the

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[4] In his ruling, Judge Dalrymple stated that he had initially mistakenly believed the two jurors were involved in a separate and unrelated trial which was underway at the same time as Goodson's trial. However he ultimately realized his mistake, recognizing the jurors were in fact involved in Goodson's trial, and accordingly walked them to the jury room used for jurors in Goodson's trial. (5/9/18 Order, p.4-5)(App. pp. 35-36).

courtroom created a strong appearance of impropriety requiring recusal.

Goodson must be afforded a new trial.

***c). New Hearing on Motion for New Trial: Personal knowledge and functioning as witness as to post-trial motions for new trial***

Even to the extent this Court declines to hold the judge was not required to recuse himself from trial, Goodson respectfully urges the judge should at minimum have recused himself from consideration of Goodson's post-trial motions for new trial, which motions included an allegation of improper contact between that judge and two jurors outside the courtroom.

In In re Murchison, 349 U.S. 133 (1955) the United States Supreme Court "held that due process disqualified a judge who presided over a proceeding alleging contempt of a grand jury in which the same judge was the grand jury's only member." Fremont, 749 N.W.2d at 240. The "judge in Murchison, had no direct or indirect pecuniary interest, but

due process was nonetheless violated because of the conflicting roles assumed by the judge." Id.

A similar concern is implicit in Rule 51 of the Iowa Code of Judicial Conduct, which requires a judge to disqualify himself if either "[t]he judge has… personal knowledge of facts that are in dispute in the proceeding", or if "[t]he judge knows that the judge… is… likely to be a material witness in the proceeding." Iowa Code of Judicial Conduct R. 51:2.11(A)(1) & (2)(d).

On the issue of whether there was improper contact between the judge and the jurors outside the courtroom, Judge Dalrymple had personal knowledge concerning the facts in dispute and was a material witness in the proceeding. See e.g., (5/9/18 Order, p.4)(App. p. 35) ("The undersigned attempted to walk the jurors to the jury room immediately adjacent to his chambers only to discover that the jurors were not affiliated with [the unrelated] trial, but with the trial in the above-captioned matter. Consequently, the Court immediately walked the jurors to their jury room as observed on

Defendant's Exhibit B."); (5/9/18 Order, p.4-5)(App. pp. 35-36)("As the record reflects at the hearing, the Court and counsel stipulated to the outline and layout of the fourth floor.... The Court addressed the path of travel from the video at 9:48:10 to the point depicted at 9:49:13."); (5/9/18 Order, p.5)(App. p. 36). ("The undersigned specifically states professionally that no conversations took place between the jurors and the undersigned relative to the trial. The undersigned made an error in assuming the jurors were appearing for the [unrelated] trial occurring in 413 (Oberman).").

Indeed, the different judge who later presided at Goodman's sentencing recognized the reality that Judge Dalrymple would have had personal knowledge concerning the facts in dispute and been a material witness in the proceeding. See (Sent.Tr. p.19 L.9-15)("I have read Judge Dalrymple's ruling on the motion for a new trial. And you may or may not be right when you assert that perhaps the better course of action would have been for him not to preside over the hearing

of that motion for a new trial, given that allegedly he was possessing factual knowledge as to what did or did not happen between himself and other jurors….").

Under this circumstance, Judge Dalrymple was required to disqualify himself from presiding over the post-trial motions for new trial. The rulings denying Goodson's post-trial motions for new trial must be vacated, and this matter must be remanded to the district court for a new hearing and consideration of the motions by a different judge.

**D. <u>Conclusion</u>:** Goodson respectfully requests that his convictions be reversed, and this matter be remanded to the district court for a new trial before a different judge.

Alternatively, Goodson respectfully requests that the rulings denying Goodson's post-trial motions for new trial be vacated and remanded to the district court for a new hearing and consideration by a different judge.

## III. WHETHER PRINCIPLES OF MERGER OR DOUBLE JEOPARDY PROHIBITED CUMULATIVE PUNISHMENT FOR BOTH FIRST DEGREE BURGLARY AND THIRD DEGREE SEXUAL ABUSE?

**A. Preservation of Error:** Procedurally defective, illegal, or void sentences may be corrected at any time, State v. Thomas, 520 N.W.2d 311, 313 (Iowa Ct. App. 1994), and are not subject to the usual concept of waiver or requirement of error preservation, State v. Woody, 613 N.W.2d 215, 217 (Iowa 2000).

"Where… the claim is that the sentence itself is inherently illegal, whether based on constitution or statute,… the claim may be brought at any time." State v. Bruegger, 773 N.W.2d 862, 872 (Iowa 2009).

Statutory merger requirements implicate the legality of the sentence. State v. Anderson, 565 N.W.2d 340, 342-44 (Iowa 1997). The Federal Double Jeopardy prohibition against cumulative punishment also implicates the legality of the sentence. See Hill v. United States, 368 U.S. 424, 430 (1962) (challenges to an illegal sentence include whether "multiple

terms were… imposed for the same offense, … [or] the terms of the sentence [were]… constitutionally invalid in any other respect.")(accord Bruegger, 773 N.W.2d at 872)(emphasis omitted).[5] Goodson's claims are thus properly reviewed on appeal despite the absence of an objection before the trial court.

**B. Standard of Review:** Constitutional double jeopardy claims are reviewed de novo, while alleged violations of the merger statute are reviewed for correction of errors at law. State v. Finnel, 515 N.W.2d 41, 43 (Iowa 1994).

**C. Discussion:** The Double Jeopardy Clause of the federal constitution[6] protects against "multiple punishments for the same offense." Brown v. Ohio, 432 U.S. 161, 165

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[5] But see State v. Halliburton, 539 N.W.2d 339, 343 (Iowa 1995)(holding that, in contrast to a statutory merger claim, a constitutional Double Jeopardy claim is not a claim of illegal sentence). While the Iowa Supreme Court's analysis in Bruegger did not overrule this holding explicitly, it did so implicitly.

[6] Unlike the federal constitutional provision, the Iowa constitutional provision prohibits only successive prosecutions after a prior acquittal and does not include the prohibition against cumulative punishment for the same offense. State v. Lindell, 828 N.W.2d 1, 4 (Iowa 2013); Iowa Const. Art. I, § 12.

(1977). See also U.S. Const. Amend. V ("No person shall… be subject for the same offence to be twice put in jeopardy of life or limb…."). The Double Jeopardy Clause of the federal constitution applies to the states through the Due Process Clause of the Fourteenth Amendment. Benton v. Maryland, 395 U.S. 784, 794 (1969).

Iowa's merger doctrine, expressed in Iowa Code section 701.9 and Iowa Rule of Criminal Procedure 2.6(2), codifies the federal double jeopardy protection against cumulative punishment by providing that a defendant cannot be convicted of both a public offense and an "included" offense. Iowa Code § 701.9; Iowa R. Crim. P. 2.6(2). See also State v. Bullock, 638 N.W.2d 728, 731 (Iowa 2002); Anderson, 565 N.W.2d at 343.

Because section 701.9 codifies double jeopardy protections against cumulative punishment, claims are similarly analyzed under the Double Jeopardy Clause and section 701.9. See Halliburton, 539 N.W.2d at 344. In determining whether merger is required and cumulative punishment is prohibited, a court must first determine

whether the crimes the defendant was convicted of "involve the same offense." State v. Lewis, 514 N.W.2d 63, 68-69 (Iowa 1994). This is done by applying the Blockburger v. United States, 284 U.S. 299, 304 (1932) "legal elements test", which test is met if one offense is wholly included in the other. Bullock, 638 N.W.2d at 731-32. If so, the court must then examine whether the legislature intended multiple punishments for the offenses. Id. at 732. See also Halliburton, 539 N.W.2d at 344. Only if legislative intent for multiple punishments is indicated may the offenses may be punished separately even though they meet the Blockburger test for lesser-included offenses. Bullock, 638 N.W.2d at 732.

Under the Blockburger legal elements test, if "[a]ll the essential legal elements of [one offense] are included in the legal elements of the [other] offense", the former is an included offense of the latter. State v. Lange, 495 N.W.2d 105, 107 (Iowa 1992). In applying the legal elements test, a court takes into consideration the manner in which the State chose to charge and prosecute each offense. If, under the applicable

statute, a “greater offense is defined alternatively and the State charges both alternatives, the test for included offenses must be applied to each alternative" charged. State v. Hickman, 623 N.W.2d 847, 851 (Iowa 2001).

In the present case, the offense of First Degree Burglary was marshalled to the jury as follows:

> As it relates to Count 1, the State must prove all of the following elements of Burglary in the First Degree:
>
> 1. On or about the 23rd day of December, 2016, the defendant broke or entered into [address], Waterloo, Iowa.
>
> 2. The residence was an occupied structure as defined in Instruction No. 27.
>
> 3. One or more persons were present in the occupied structure.
>
> 4. The defendant:
>
> a. did not have permission or authority to break or enter into the residence, or
>
> b. did not have permission or authority to remain in the residence, or
>
> c. The defendant's permission or authority to remain in the residence had ended.

5. The defendant did so with the specific intent to commit an assault as defined in instruction 29.

6. During the incident:

a. The defendant intentionally or recklessly inflicted bodily injury as defined in instruction 30 on Annie Thomas, or

***b. The defendant performed or participated in a sex act as defined in instruction 38 with Annie Thomas which would constitute sexual abuse as defined in instruction 36.***

If the State has proved all of the elements the defendant is guilty of Burglary in the First Degree. If the State has failed to prove any one of the elements, the defendant is not guilty of Burglary in the First Degree and you will then consider the charge of Attempted Burglary in the First Degree explained in Instruction No. 20.

(Instruct.19)(App. p. 17)(emphasis added).

In referring to "instruction 36", element 6b of the Burglary instruction directly incorporates the marshalling instruction for the Third Degree Sexual Abuse count, which states:

As it relates to Count 4, the State must prove both of the following elements of Sexual Abuse in the Third Degree:

1. On or about the 23rd day of December, 2016, the defendant performed a sex act with Annie Thomas.

> 2. The defendant performed the sex act by force or against the will of Annie Thomas.
>
> If the State has proved both of the elements, the defendant is guilty of Sexual Abuse in the Third Degree. If the State has failed to prove either one of the elements, the defendant is not guilty of Sexual Abuse in the Third Degree and you will then consider the charge of Assault with Intent to Commit Sexual Abuse as explained in Instruction No. 37.

(Instruct.36)(App. p. 20).

The offense of Third Degree Sexual Abuse (defined in instruction 36) was necessarily included in element 6b of the Burglary offense as charged and submitted to the jury. See (Jury Instruction 19, at element 6b)("The defendant performed or participated in a sex act… with Annie Thomas which would constitute sexual abuse as defined in instruction 36.") (emphasis added). The legal elements test is thus satisfied. Compare Bullock, 638 N.W.2d at 732-33 (elements test not satisfied for merger of First Degree Burglary and *Second* Degree Sex Abuse; *Second* Degree Sex Abuse requires an element not required for First Degree Burglary – either display

of a dangerous weapon or use/threat of force creating substantial risk of death or serious injury).

Where the legal elements test is satisfied, the two charged offenses are considered to be the "same" offense for purposes of double jeopardy and merger. Lewis, 514 N.W.2d at 68-69; Halliburton, 539 N.W.2d at 344. A court must thus determine whether the legislature "clearly indicated" an intent to impose "multiple punishments for the 'same offense.'" Lewis, 514 N.W.2d at 69. Absent a finding of such legislative intent, imposition of separate punishments for the two offenses violates double jeopardy and merger principles. Anderson, 565 N.W.2d at 342-44; State v. Mapp, 585 N.W.2d 746, 749 (Iowa 1998).

While Iowa Appellate Courts have never directly considered the cumulative punishment issue in the context of the two offenses here (First Degree Burglary, and Third Degree Sexual Abuse), appellate courts *have* concluded merger is appropriate as to First Degree Burglary and Assault with Intent to Commit Sex Abuse. Anderson, 565 N.W.2d at 343–

44 (concluding assault with intent to commit sexual abuse resulting in bodily injury merges with first degree burglary, even after specifically referencing Halliburton rule that merger would not be required if legislature intended multiple punishments). See also State v. Jandreau, 846 N.W.2d 529 (Iowa Ct. App. 2014)(finding convictions for first degree burglary and assault with intent to commit sexual abuse should merge); State v. Kolberg, No. 10–1535, 2011 WL 3116959, at *2-4 (Iowa Ct. App. July 27, 2011)(same). It has also been held that First and Second Degree Sexual Abuse merge into First Degree Kidnapping. See Bullock, 638 N.W.2d at 733 (citing State v. Morgan, 559 N.W.2d 603, 611 (Iowa 1997), and State v. Whitfield, , 315 N.W.2d 753, 755 (Iowa 1982)).

Nothing in the language of statutes governing the offenses at issue in the present case evidence a clear legislative intent to authorize multiple punishment for these particular offenses. See Iowa Code § 713.3 (First Degree Burglary); § 709.4 (Third Degree Sexual Abuse).

Defendant acknowledges that in State v. West, 924 N.W.2d 502, 511 (Iowa 2019), our Supreme Court interpreted prior caselaw to "stand for the proposition that where the greater offense has a penalty that is not in excess of the lesser included offense, a legislative intent to permit multiple punishments arises" because "[o]therwise, there would be little point to the greater offense." But the present case is distinguishable. The offense of Third Degree Sexual Abuse generally carries a lesser penalty than the offense of First Degree Burglary. This is thus not a case where "there would never be a reason to charge a defendant with the greater offense." West, 924 N.W.2d at 510 (discussing Halliburton rationale). It is only when the Sex Abuse offense is enhanced under section § 901A.2(3) due to a prior offense that the penalty for the Sex Abuse offense grows. This enhancement is based on *the offender* and not the underlying crime itself. As our Supreme Court has previously recognized, recidivist sentencing statutes are irrelevant to double jeopardy analysis, which analysis focuses on the underlying offenses rather than

the enhanced sentence predicated on the existence of prior convictions. See State v. Tobin, 333 N.W.2d 842, 845 (Iowa 1983). See also State v. Klemme, No. 10-0859, 2011 WL 2112463, at *4 (Iowa Ct. App. May 25, 2011)("…[S]entence enhancements do not create a separate crime."; citing State v. Woody, 613 N.W.2d 215, 217 (Iowa 2000)).

Merger and combining of convictions (under both statutory merger and double jeopardy principles) is therefore required, and the district court herein entered an illegal sentence in failing to merge or combine the offenses. Hickman, 623 N.W.2d at 851. The proper remedy is to vacate the conviction and sentence for the Third Degree Sexual Abuse count. See Whitfield, 315 N.W.2d at 755 (affirming defendant's conviction on the greater offense but reversing conviction on lesser included offense); Mapp, 585 N.W.2d at 749 (same).

Alternatively, if this Court concludes the higher punishment for the Third Degree Sex Abuse offense (based on the prior-offense enhancement) actually renders it the 'higher'

offense, then the proper remedy is to vacate the conviction and sentence for First Degree Burglary. See Whitfield, 315 N.W.2d at 755 (affirming defendant's conviction on the greater offense but reversing conviction on lesser included offense); Mapp, 585 N.W.2d at 749 (same).

**D. Conclusion:** Goodson respectfully requests this Court vacate his judgment and sentence for the Third Degree Sexual Abuse count.

## IV. THE DISTRICT COURT ENTERED AN ILLEGAL SENTENCE IN SPECIFYING THE DURATION OF GOODSON'S SEX OFFENDER REGISTRY OBLIGATION.

**A. Preservation of Error:** Void, illegal, or procedurally defective sentences may be corrected on appeal even absent an objection before the trial court. State v. Lathrop, 781 N.W.2d 288, 292-93 (Iowa 2010); Iowa R. Crim. P. 2.24(5)(a).

**B. Standard of Review:** Illegal sentence claims are reviewed for errors at law. State v. Sisk, 577 N.W.2d 414, 416 (Iowa 1998).

**C. Discussion:** The sentencing court directed Goodson to register as a sex offender for a lifetime duration. See

(Sent.Tr. p.20 L.14-18)("There is also a requirement that you be required to register as a sex offender and that you pay a $250 civil assessment and under 903B.1 there is a *lifetime registration* requirement as well.")(emphasis added); (Sentence, ¶2)(App. p. 41)(imposing "903B.1 *lifetime registry* on sex abuse registry")(emphasis added).

The district court entered an unauthorized and illegal sentence in specifying the duration of Goodson's registry obligation.

A sentencing court lacks authority to determine the duration of the defendant's future registration. Barker v. Iowa Department of Public Safety, 922 N.W.2d 581, 586-87 (Iowa 2019) (citing State v. Bullock, 638 N.W.2d 728, 735 (Iowa 2002)). "…[T]he determination of the length of any required registration is an administrative decision initially committed to the Department of Public Safety." Bullock, 638 N.W.2d at 735. "…[T]herefore…the sentencing court was without authority to determine the length of any future registration by the defendant." Id.

Compare State v. Melick, No. 03-0234, 2004 WL 241530, at *1 (Iowa Ct. App. Feb. 11, 2004). In Melick, nothing in district court's order directing defendant to register "as required by statute" could be read to "requir[e] [Defendant] to register as a sex offender for the rest of his life or for any other specific length of time". Melick, 2004 WL 241530, at *1. Therefore, that "sentence did not exceed the authority of the district court." Id. In contrast, the district court in the present case did specify a "specific length of time" for the registry obligation – for life. Id. In doing so, the district court "exceed[ed] [its] authority", entering an unauthorized and illegal sentence. Id.

The portion of the sentencing order specifying the duration of Goodson's registration obligation ("lifetime registry") should be vacated, and a corrected sentencing order should be entered which omits to specify any duration of an obligation to register. See Bullock, 638 N.W.2d at 735 (Following resentencing, "The court's sentencing order shall not include any determination of the defendant's responsibility

to register as a sex offender."); Barker, 922 N.W.2d at 586-87 (In Bullock, 638 N.W.2d at 735 "[w]e vacated the defendant's sentence because the sentencing court lacked authority to determine the duration of the defendant's future registration.").

**D. Conclusion:** Goodson respectfully requests that the portion of the sentencing order specifying the duration of the registration obligation ("lifetime registry") should be vacated, and a corrected sentencing order should be entered which omits to specify any duration of an obligation to register.

## ORAL SUBMISSION

Counsel requests to be heard in oral argument.

## ATTORNEY'S COST CERTIFICATE

The undersigned, hereby certifies that the true cost of producing the necessary copies of the foregoing Brief and Argument was $3.75, and that amount has been paid in full by the Office of the Appellate Defender.

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