

IN THE SUPREME COURT OF IOWA

STATE OF IOWA,

Plaintiff-Appellee,

v.

CHRISTOPHER WILLIAM
THOMPSON,

Defendant-Appellant.

SUPREME CT. NO. 20-1689

APPEAL FROM THE IOWA DISTRICT COURT
FOR POLK COUNTY
HONORABLE SARAH E. CRANE, JUDGE

APPLICANT'S APPLICATION FOR FURTHER REVIEW
OF THE DECISION OF THE IOWA COURT OF APPEALS
FILED APRIL 27, 2022

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CERTIFICATE OF SERVICE

On the 13th day of May, 2022, 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 Christopher Thompson, No. 6203241, Anamosa State Penitentiary, 406 North High Street, Anamosa, IA 52205.

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QUESTION PRESENTED FOR REVIEW

Did both the District Court and Court of Appeals err in applying prior bad acts case law to the admission of irrelevant “state of mind” hearsay under Rule 5.803(3) where no prior bad acts were involved?

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STATEMENT IN SUPPORT OF FURTHER REVIEW

COMES NOW Defendant-Appellant and pursuant to Iowa R. App. P. 6.1103 requests further review of the April 27, 2022, decision in State of Iowa v. Christopher William Thompson, Supreme Court No. 20-1689.

1. The Court of Appeals erred in affirming Thompson's conviction for Murder in the First Degree, a class A felony in violation of Iowa Code sections 707.1 and 707.2 (2019).

2. The Court erred holding that Paula's past state of mind was relevant in determining Christopher's state of mind at the time of the offense. The Court cited State v. Newell for the proposition that the nature of their relationship was probative of Christopher's intent and motive. Opinion p. 10 (citing State v. Newell, 710 N.W.2d 6, 21 (Iowa 2006)). The portion of Newell the Court cited has no application to this case.

3. Newell addressed evidence of intent through the lenses of both hearsay and Iowa Rule of Evidence 5.404(b).

With respect to the first lens, the Newell Court held that the state of mind exception to hearsay had to be relevant to an issue in dispute to be admissible. Id. at 19. In Newell, the hearsay statement was relevant because it directly contradicted Newell's claims that he and his girlfriend had a loving relationship and that her death was accidental. Christopher claimed no such characterizations in this case.

4. The second lens of Newell allowed the use of a defendant's prior bad acts against a victim to show the nature of the relationship and as probative of the defendant's likely intent and motivation. Id. at 21. Iowa R. Evid. 5.404(b) (2021). It is one thing to assume a person intends the natural consequences of their acts and that one's prior assaultive behavior is therefore indicative of their current intent. Both the District Court and the Court of Appeals allowed an inference regarding *Christopher's* intent and motive based upon *Paula's* state of mind without any showing of prior bad acts. Newell's 5.404(b) lens simply did not apply.

5. The erroneous admission of hearsay evidence is presumed to be prejudicial unless the record affirmatively establishes otherwise. Id. at 19. Christopher claimed to act out of impulsive rage and asked the jury to find him guilty of either Voluntary Manslaughter or Murder in the Second Degree. His mental state was very much in dispute, and it was prejudicial to allow the jury to consider irrelevant evidence regarding Paula's state of mind in determining Christopher's state of mind.

WHEREFORE, Thompson respectfully requests this Court grant further review of the Court of Appeals' decision in his case.

STATEMENT OF THE CASE

Nature of the Case: This is an appeal by Defendant-Appellant Christopher Thompson from his conviction, sentence, and judgement for Murder in the First Degree, a class A felony in violation of Iowa Code sections 707.1 and 707.2 (2019), following a jury trial in Polk County District Court. The Honorable Sarah E. Crane presided over all relevant proceedings.

Course of Proceedings and Facts: Christopher generally accepts the Court of Appeals' recitation of the course or proceedings and facts. Additional and disputed facts will be discussed below as necessary.

ARGUMENT

Both the District Court and Court of Appeals erred in applying prior bad acts case law to the admission of irrelevant "state of mind" hearsay under Rule 5.803(3) where no prior bad acts were involved.

Preservation of Error: Error was preserved by the District Court's ruling on the State's Rule 104(a) motion, Thompson's resistance, and Thompson's objections at trial.

(State's Motion for Rule 104(A) Ruling; Resistance to State's Motion for Rue [sic] 104(a) Ruling; 8/20/20 Tr. p. 12 L.15-p. 33 L.4; Tr. Vol. 2 p. 19 L.17-23; Tr. Vol. 3 p. 7 L.2-9, p. 9 L.23-p. 10 L.8)(App. pp. 8-10, 38-39).

Standard of Review: Evidentiary rulings are normally reviewed for an abuse of discretion. State v. Dullard, 668 N.W.2d 585, 589 (Iowa 2003). An appellate court will review rulings on the admission of hearsay, however, for correction of errors at law. State v. Neitzel, 801 N.W.2d 612, 621 (Iowa 2011). The general rule is that “a district court has no discretion to deny the admission of hearsay if the statement falls within an enumerated exception, subject, of course, to the rule of relevance under rule 5.403, and has no discretion to admit hearsay in the absence of a provision providing for it.” State v. Dullard, 668 N.W.2d at 589 (Iowa 2003).

Merits: Defendant-Appellant Christopher Thompson respectfully contends the District Court erred when it permitted Melissa Moylan and Maggie Wood to testify

regarding previous statements made by Paula Thompson, at least one of which was made three months before her death. The statements were hearsay and were not relevant to any legitimate issues in dispute. Thompson was prejudiced by the admission of this testimony and the Court of Appeals erred in upholding Christopher's conviction.

On August 7, 2020, the State filed a motion asking for a Rule 104(a) hearing on the admissibility of certain testimony. (State's Motion for Rule 104(A) Ruling)(App. pp. 8-10).

Melissa Moylan was a close friend of Paula's who would testify that in December 2019 Paula posted a Facebook Live video saying if anything happened to her it was Christopher who killed her. (State's Motion for Rule 104(A) Ruling ¶ 3(a))(App. p. 8). Moylan was also expected to testify regarding a heated argument Paula told her about a month before her death in which Paula told Christopher she was done supporting him financially and he needed to move out of her house. (State's Motion for Rule 104(A) Ruling ¶ 3(a))(App. p. 8).

Maggie Wood was Christopher's probation officer at the time of Paula's death. (State's Motion for Rule 104(A) Ruling ¶ 3(b))(App. pp. 8-9). She was expected to testify that on March 13, 2021, Paula sent her an email saying she was tired of being scared, said he was a drunk, and that the police told her to contact Wood for help. (State's Motion for Rule 104(A) Ruling ¶ 3(b))(App. pp. 8-9).

The State contended the proposed testimony was admissible under Iowa Rule of Evidence 5.404(b) to show Christopher's premeditation, deliberation, specific intent and motive to kill Paula. (State's Motion for Rule 104(A) Ruling ¶¶ 4-7, 10)(App. pp. 9-10). The State also argued that prior acts of violence against a victim are probative and relevant when the accused is prosecuted for the later murder of the victim. (State's Motion for Rule 104(A) Ruling ¶¶ 8-9)(App. p. 9). Finally, the State contended the statements were not hearsay because they were not offered for the truth of the matter asserted but to show Paula's state of mind, present sense

impression, or excited utterance. (State's Motion for Rule 104(A) Ruling ¶ 9)(App. p. 9).

Thompson filed a resistance on August 19, 2020. (Resistance to State's Motion for Rue [sic] 104(a) Ruling)(App. pp. 38-39). Thompson argued the statements were inadmissible hearsay that were not relevant, were not probative, and were not subject to any exception. (Resistance to State's Motion for Rue [sic] 104(a) Ruling ¶¶ 2-3)(App. p. 38). He contended the State had failed to establish the foundation for any hearsay exceptions. (Resistance to State's Motion for Rue [sic] 104(a) Ruling ¶ 4)(App. p. 38).

The District Court held a hearing on the State's motion on August 20, 2020. (8/20/20 Tr. p. 1 L.1-25). The State argued that the proposed evidence went to the nature of the Thompsons' relationship and qualified under the hearsay exception for state of mind. (8/20/20 Tr. p. 4 L.1-p. 6 L.25). The State characterized Paula's statements to Moylan and Wood as present sense impressions, showing her state of

mind, and excited utterances. (8/20/20 Tr. p. 7 L.1-p. 8 L.9, p. 9 L.21-p. 10 L.5). The State argued the testimony was necessary to prove Christopher's intent and that the statements were reliable and consistent with one another and with Christopher's statements to police. (8/20/20 Tr. p. 9 L.9-p. 11 L.15).

Thompson argued that the cases relied upon by the State involved specific instances of conduct and permitted admission of the evidence to rebut defense claims of accident or a loving relationship – defenses Christopher was not raising. (8/20/20 Tr. p. 12 L.16-p. 14 L.18). Christopher claimed the evidence was being used to show propensity. (8/20/20 Tr. p. 14 L.19-p. 15 L.1). He described the Facebook Live video as neither a present sense impression nor an excited utterance but a prediction, and said that Paula later took the video down and told Moylan she was fine. (8/20/20 Tr. p. 15 L.2-p. 17 L.9). Christopher described Paula's statements about her argument with Christopher as

vague, merely an opinion of his character, and not associated with any prior bad acts. (8/20/20 Tr. p. 17 L.11-p. 19 L.15). He complained the State was trying to enter broad character descriptions. (8/20/20 Tr. p. 20 L.7-p. 21 L.3).

As for Wood's proposed testimony regarding the email from Paula, Christopher argued the statement that Paula was scared did not qualify as a present sense impression or excited utterance because Paula had already contacted the police. (8/20/20 Tr. p. 22 L.9-p. 23 L.19). Christopher also referred to a second email in which Paula indicated she was willing to help Christopher so that he did not get into trouble. (8/20/20 Tr. p. 23 L.20-p. 24 L.24).

Christopher faulted the state for trying to offer vague, unreliable character evidence not tied to any specific acts. (8/20/20 Tr. p. 24 L.25-p. 26 L.17). There were no specific acts alleged to fall under Rule 404(b), and the proffered evidence was not tied to Christopher's intent. (8/20/20 Tr. p. 24 L.15-p. 26 L.17).

The District Court disagreed with Christopher that Paula's fear had to be tied to specific acts by Christopher. (8/20/20 Tr. p. 27 L.22-p. 28 L.7). The court found two portions of testimony admissible – Paula's statement to Moylan that she was done supporting Christopher and her request for Moylan's help, and her statements to both Moylan and Wood that she was afraid of her son. (8/20/20 Tr. p. 28 L.8-p. 29 L.14, p. 34 L.24-p. 36 L.3). The court also permitted the State to introduce testimony regarding Paula's Facebook Live video, but only if evidence that she later withdrew the video and told others she was fine was also admitted. (8/20/20 Tr. p. 30 L.20-p. 33 L.2). The court considered these admissible under Iowa Rule of Evidence 5.803(3) regarding then-existing condition. (8/20/20 Tr. p. 33 L.5-16). The court reserved ruling on allegations of fighting and drinking for development at trial. (8/20/20 Tr. p. 33 L.17-p. 34 L.4, p. 36 L.17-p. 37 L.2).

At the final pretrial conference on October 23, 2020, Christopher explained he would make a general objection at trial to the witness' testimony but the objections would be based on the Rule 104(a) conference. (10/23/20 Tr. p. 22-23). The District Court denied Christopher's renewed objection to the ruling on the State's Rule 104(a) motion immediately prior to testimony. (Tr. Vol. 2 p. 19 L.17-23).

At trial, Moylan testified she was a very close friend of Paula and knew Christopher through Paula. (Tr. Vol. 3 p. 5 L.22-p. 6 L.11). Over Christopher's objection, she testified that in December 2019 she saw a Facebook Live video Paula had posted to her account in which she was sitting in her living room whispering he was going to kill her or hurt her, that he was going crazy, and that she was scared. (Tr. Vol. 3 p. 6 L.22-p. 7 L.21). Moylan did not hear any arguing or disturbances in the background, but called the police the next day after she was unable to reach Paula. (Tr. Vol. 3 p. 7 L.22-p. 8 L.10, p. 15 L.15-p. 16 L.15). Paula then called her to let

her know the police had come to her house and that she told them she was fine. (Tr. Vol. 3 p. 8 L.13-p. 9 L.3). She also took down the video. (Tr. Vol. 3 p. 13 L.11-15).

Moylan testified that she had lunch with Paula in February 2020 and Paula told her she had gotten into an argument with Christopher after telling him she would no longer support him and he needed to work. (Tr. Vol. 3 p. 9 L.4-22). Moylan testified that Paula described taking the credit cards out of her purse and cutting them up, causing Christopher to become angry. (Tr. Vol. 3 p. 9 L.4-22).

Wood testified that she had supervised Christopher on probation for seven years. (Tr. Vol. 3 p. 18 L.18-p. 19 L.14). On March 13, 2020, Paula sent her an email saying she was afraid of Christopher, that she had contacted the police who then told her to contact Wood, and asked Wood for help. (Tr. Vol. 3 p. 19 L.15-p. 20 L.14). Wood did not get the email until March 18, 2020. (Tr. Vol. 3 p. 20 L.15-17). Wood testified that the email indicated Paula had already contacted police

but Wood was unaware of any police report generated by Paula's contact. (Tr. Vol. 3 p. 21 L.5-17).

The District Court erred in allowing this testimony. The testimony consisting of Paula's hearsay statements were not relevant to any legitimate issue in dispute. Thompson was prejudiced by the erroneous admission of this evidence and should receive a new trial.

Iowa Rule of Evidence 5.801(c) defines "hearsay" as "a statement that: (1) The declarant does not make while testifying at the current trial or hearing; and (2) A party offers into evidence to prove the truth of the matter asserted in the statement." Iowa R. Evid. 5.801(c) (2021). A court looks to a statement's purpose to determine whether it is hearsay. State v. Mueller, 344 N.W.2d 262, 264 (Iowa Ct. App. 1983). A court uses an objective test to determine the real purpose of the statement, not just the purpose urged by the prosecutor. State v. Sowder, 394 N.W.2d 368, 370-71 (Iowa 1986); State v. Martin, 587 N.W.2d 606, 610 (Iowa 1998).

Hearsay is not admissible at trial unless an exception applies. Iowa R. Evid. 5.802 (2021). Subject to the condition of relevance, a trial court has no discretion to exclude hearsay that properly falls under one of the hearsay exceptions. State v. Newell, 710 N.W.2d 6, 18 (Iowa 2006). At the same time, the court has no discretion to include hearsay that is not covered by such an exception. Id.

Paula's statements to Moylan and Wood were out-of-court statements made while not under oath. They were offered for the truth of the matter asserted – that Paula feared her son.

The District Court admitted the statements under the hearsay exception for “then existing, mental, emotional, or physical condition:

A statement of the declarant's then existing state of mind (such as motive, intent, or plan) or emotional, sensory, or physical condition (such as mental feeling, pain, or bodily health), but not including a statement of memory or belief to prove the fact remembered or believed unless it relates to the validity or terms of the declarant's will.

Iowa R. Evid. 5.803(3) (2021). (8/20/20 Tr. p. 33 L.7-16). In State v. Newell, the Iowa Supreme Court found statements made by a murder victim that she feared her boyfriend, feared for her safety, planned to leave him, but feared he would keep her baby from her qualified under this exception. State v. Newell, 710 N.W.2d 6, 18-19 (Iowa 2006). On their face, Paula's statements of fear to Moylan and Wood would appear to qualify under this exception. There is, however, a caveat.

“The admission of such evidence under this exception is dependent upon the relevancy of the declarant's then existing state of mind, emotion, sensation, or physical condition.” Id. at 19 (citing State v. Buenaventura, 660 N.W.2d 38, 51 (Iowa 2003)). Relevant evidence is any evidence that has a tendency to make any fact of consequence in determining the action more or less probable than it would be without the evidence. Iowa R. Evid. 5.401 (2021). Irrelevant evidence is inadmissible. Iowa R. Evid. 5.402 (2019).

Paula's state of mind and emotional state were not relevant. Unlike in Newell, Christopher was not claiming that he had a loving relationship with his mother or that she died by accident. Christopher specifically disclaimed any such defense. (8/20/20 Tr. p. 14 L.10-18). His defense was not that he did not kill Paula, but that he acted impulsively out of pure rage and without the requisite specific intent, premeditation, deliberation, or malice. (Tr. Vol. 3 p. 178 L.5-p. 180 L.14, p. 181 L.19-p. 183 L.1). He did not ask the jury to find him not guilty, but guilty of either of the lesser included offenses of voluntary manslaughter or second-degree murder. (Tr. Vol. 3 p. 185 L.3-p. 189 L.4).

The Court should also consider the passage of time when assessing the relevancy of Paula's hearsay statements. The most dramatic statement was from a Facebook Live video she posted in December 2019 in which she said she was afraid Christopher would hurt or kill her. (Tr. Vol. 3 p. 6 L.22-p. 7 L.21). That was three months before her death, and it was

also a statement that Paula ended up retracting when the police visited her. (Tr. Vol. 3 p. 8 L.22-p. 9 L.3, p. 13 L.11-18). Paula's statement to Moylan that Christopher became angry after she said she would no longer support him was made "approximately sometime" in February, but did not indicate he made any threats to her. (Tr. Vol. 3 p. 9 L.4-22). The hearsay statements admitted in Newell were made within a month before the death in that case. State v. Newell, 710 N.W.2d 6, 18-19 (Iowa 2006).

Paula's hearsay statements were also vague – they were not tied to any particular incident. Moylan testified Paula said Christopher was "going crazy" in the Facebook Live video, and yet Moylan heard nothing notable in the background of the video. (Tr. Vol. 3 p. 7 L.10-21, p. 15 L.15-p. 16 L.15). Paula, of course, later told took the video down and told officers she was fine. (Tr. Vol. 3 p. 8 L.22-p. 9 L.3, p. 13 L.11-18). Moylan herself never witnessed any arguments between Paula and Christopher, just tension at times. (Tr. Vol. 3 p. 12

L.23-p. 13 L.10). Likewise, Wood testified that Paula told her in an email that she was afraid of Christopher, but did not explain why. (Tr. Vol. 3 p. 19 L.15-p. 20 L.14). Paula's generalized statements of fear, without more, do not provide relevance for the admission of her statements. Compare with id. at 18 (declarant's statements of fear explained in context of assault by Newell, learning something about him that led to her fear, concern Newell would hurt family members); State v. Richards, 809 N.W.2d 80, 95 (Iowa 2012)(declarant's statements of fear made in conjunction with references to abuse).

Finally, particularly as to the Facebook Live video, one must question the credibility of Paula's statements and actions. Paula was known to have a problem with alcohol and had been to treatment multiple times. (Tr. Day 3 p. 10 L.23-p. 11 L.2; Ex. 2 16:48:10-16:49:20, 17:04:30-17:05:15). Her friends indicated there would be times when she was drinking that she would not respond to texts and phone calls.

(Tr. Day 2 p. 29 L.22-p. 30 L.5; Tr. Day 3 p. 16 L.16-p. 17 L.7)

The Facebook Live video must be considered in light of this information. Paula was sitting along in the dark whispering that Christopher was going crazy, and yet there was nothing Moylan saw or heard in the background that corroborated her description. (Tr. Vol. 3 p. 6 L.22-p. 8 L.10, p. 15 L.15-p. 16 L.15). Nor did Paula respond to Moylan's calls and texts.

(Tr. Vol. 3 p. 7 L.22-p. 8 L.10, p. 15 L.15-p. 16 L.15). When confronted by police, Paula took the video down and indicated she was fine. (Tr. Vol. 3 p. 8 L.13-p. 9 L.3, p. 13 L.11-15).

One has to question whether Paula's video was a product of her alcohol abuse. Paula's hearsay statements should not have been admitted.

Both the Court of Appeals and the District Court held that the statements by Paula were relevant because the nature of the Thompsons' relationship was probative of Christopher's intent and motive. (8/20/20 Tr. p. 26 L.21-p. 28 L.25).

Opinion p. 10 (citing State v. Newell, 710 N.W.2d 6, 21 (Iowa

2006)). While Newell does speak to the nature of the relationship being relevant to a defendant's intent or motive, that holding related to the use of prior bad acts evidence under Iowa Rule of Evidence 5.404(b) and not hearsay under 5.803(3).

Newell itself contains two different parts in its analysis. The first part of Newell is directly applicable to this case – that hearsay statements under 5.803(3) can be admissible *if they are relevant to issues in dispute*. State v. Newell, 710 N.W.2d 6, 19 (Iowa 2006) (emphasis added). As discussed above, Paula's hearsay statements were simply not relevant to any issues in dispute.

The second part of Newell – improperly applied by both the District Court and the Court of Appeals – held that a *defendant's prior conduct* toward another person can help to shine light on the nature of their relationship and is therefore probative of the defendant's intent, malice, and motive toward that person. Id. at 21 (discussing Iowa Rule of Evid. 5.404(b)

and citing State v. Taylor, 689 N.W.2d 116, 125 (Iowa 2004)) (emphasis added). This holding in Newell makes sense, as a jury may infer a person intends the natural consequences of his acts. State v. Taylor, 689 N.W.2d 116, 132 (Iowa 2004). If a defendant has been assaultive toward another before, a jury can more easily infer that the defendant was aware of the consequences of his acts and intended them.

As even the State concedes, however, there are no allegations of any prior bad acts committed by Christopher toward his mother. State's Brief pp. 26-29. Newell's analysis under Rule 5.404(b) simply has no application to this case. And yet the Court of Appeals' opinion upholding the admission of the hearsay statements relies on language relevant not to hearsay but to prior bad acts. Opinion p. 10. Neither basis provides a ground for admission.

Inadmissible hearsay is "considered to be prejudicial to the nonoffering party unless otherwise established." State v. Dullard, 668 N.W.2d 585, 589 (Iowa 2003). In such cases, a

reviewing court presumes prejudice and reverses “unless the record affirmatively establishes otherwise.” State v. Newell, 710 N.W.2d 6, 19 (Iowa 2006). Erroneously admitted evidence may not be considered prejudicial if essentially the same evidence is properly in the record. Id. See also Iowa R. Evid. 5.403 (2021)(“The court may exclude relevant evidence if its probative value is substantially outweighed by a danger of one or more of the following: unfair prejudice, confusing the issues, misleading the jury, undue delay, wasting time, or needlessly presenting cumulative evidence.”).

Paula’s hearsay statements offered nothing of value to the jury aside from an awareness of her generalized fear. They did not provide any insight into Christopher’s motivations or intent. Christopher’s blatantly honest admissions to detectives gave the jury a first-hand account of what transpired the night of March 13, 2020. (Ex. 2 16:39:25-16:44:15, 16:53:30-16:53:50, 17:07:20-17:05:40). It was for the jury to determine – *from the properly admitted*

evidence – whether Christopher specifically intended to kill his mother with premeditation and deliberation, or whether he acted impulsively after his mother’s repeated provocations. (Ex. 2 16:39:25-16:44:15, 16:53:30-16:53:50, 17:07:20-17:05:40). And while jurors could infer specific intent and malice from the use of a dangerous weapon, they were not required to do so. (Inst. 19). Statements regarding Paula’s generalized fear of Christopher would likely lead the jury to speculate about a history of violence or threats and contaminate the jury’s consideration of evidence regarding Christopher’s intent.

A jury’s verdict should be based on evidence, not speculation. The hearsay statements of Paula were inadmissible and likely to impact the jury’s decision between Murder in the First Degree, and either Voluntary Manslaughter or Murder in the Second Degree. Christopher was prejudiced by the admission of the statements and he should receive a new trial.

CONCLUSION

The Court of Appeals erred in affirming Christopher Thompson's conviction in light of the District Court's admission of irrelevant and prejudicial hearsay testimony. Thompson's conviction, sentence, and judgment for Murder in the First Degree should be vacated and his case remanded to the District Court for a new trial.

ATTORNEY'S COST CERTIFICATE

The undersigned, hereby certifies that the true cost of producing the necessary copies of the foregoing Application for Further Review was \$3.72, and that amount has been paid in full by the Office of the Appellate Defender.

**CERTIFICATE OF COMPLIANCE WITH TYPEFACE
REQUIREMENTS AND TYPE-VOLUME LIMITATION
FOR FURTHER REVIEWS**

This application complies with the typeface and type-volume requirements of Iowa R. App. P. 6.1103(4) because:

[X] this application has been prepared in a proportionally spaced typeface using Bookman Old Style, font 14 point and contains 4,090 words, excluding the parts of the application exempted by Iowa R. App. P. 6.1103(4)(a).

/s/ Theresa R. Wilson

Dated: 5/13/22

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