

IN THE SUPREME COURT OF IOWA
Supreme Court No. 22-1367

STATE OF IOWA,
Plaintiff-Appellee,

vs.

SCOTT RANDOLPH LUKE,
Defendant-Appellant.

APPEAL FROM THE IOWA DISTRICT COURT
FOR CERRO GORDO COUNTY
THE HONORABLE KAREN KAUFMAN SALIC, JUDGE

APPELLEE'S BRIEF

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FINAL

TABLE OF CONTENTS

TABLE OF AUTHORITIES.....	3
STATEMENT OF THE ISSUE PRESENTED FOR REVIEW	5
ROUTING STATEMENT.....	6
STATEMENT OF THE CASE.....	6
ARGUMENT.....	10
I. The District Court Acted Within Its Proper Discretion in Imposing an Indeterminate Two-year Prison Sentence on Luke’s Conviction for Domestic Abuse Assault, Second Offense and Gave Adequate Reasons for Running that Sentence Consecutively to Luke’s Sentence in His Probation Revocation Proceeding.	10
CONCLUSION	22
REQUEST FOR NONORAL SUBMISSION.....	23
CERTIFICATE OF COMPLIANCE	24

TABLE OF AUTHORITIES

State Cases

<i>State v. Atkins</i> , No. 20-0488, 2021 WL 3895198 (Iowa Ct. App. Sept. 1, 2021).....	17
<i>State v. Cooley</i> , 587 N.W.2d 752 (Iowa 1998).....	11
<i>State v. Damme</i> , 944 N.W.2d 98 (Iowa 2020).....	10
<i>State v. Evans</i> , 671 N.W.2d 720 (Iowa 2003)	19
<i>State v. Evans</i> , 672 N.W.2d 328 (Iowa 2003).....	19
<i>State v. Formaro</i> , 638 N.W.2d 720 (Iowa 2002).....	12
<i>State v. Hill</i> , 878 N.W.2d 269 (Iowa 2016)	13, 19, 20
<i>State v. Hogge</i> , 420 N.W.2d 458 (Iowa 1988)	18
<i>State v. Jacobs</i> , 607 N.W.2d 679 (Iowa 2000)	20
<i>State v. Johnson</i> , 445 N.W.2d 337 (Iowa 1989).....	20
<i>State v. Luedtke</i> , 279 N.W.2d 7 (Iowa 1979)	19
<i>State v. Lumadue</i> , 622 N.W.2d 302 (Iowa 2001)	19
<i>State v. McIver</i> , No. 20-0225, 2021 WL 609076 (Iowa Ct. App. Feb. 17, 2021).....	17
<i>State v. Messer</i> , 306 N.W.2d 731 (Iowa 1981).....	11, 12
<i>State v. Smaniotto</i> , No. 17-0901, 2018 WL 2084830 (Iowa Ct. App. May 2, 2018)	21
<i>State v. Stanley</i> , 344 N.W.2d 564 (Iowa Ct. App. 1983)	12, 20
<i>State v. Sumpter</i> , 438 N.W.2d 6 (Iowa 1989)	12
<i>State v. Thacker</i> , 862 N.W.2d 402 (Iowa 2015).....	19, 20
<i>State v. Thompson</i> , 856 N.W.2d 915 (Iowa 2014).....	18, 19, 21

State v. Uthe, 542 N.W.2d 810 (Iowa 1996)19

State v. Wilbourn, 974 N.W.2d 58 (Iowa 2022) 11

State v. Zaruba, 306 N.W.2d 772 (Iowa 1981) 11, 12, 13

State Statutes

Iowa Code § 814.6 (2021)10

Iowa Code § 902.6 (1981).....12

State Rule

Iowa R. Crim. P. 2.23(3)(d)18

**STATEMENT OF THE ISSUE PRESENTED FOR
REVIEW**

**I. The District Court Acted Within Its Proper Discretion
in Imposing an Indeterminate Two-year Prison
Sentence on Luke’s Conviction for Domestic Abuse
Assault, Second Offense, and Gave Adequate Reasons
for Running that Sentence Consecutively to Luke’s
Sentence in His Probation Revocation Proceeding.**

Authorities

State v. Atkins, No. 20-0488, 2021 WL 3895198
(Iowa Ct. App. Sept. 1, 2021)
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State v. Evans, 672 N.W.2d 328 (Iowa 2003)
State v. Formaro, 638 N.W.2d 720 (Iowa 2002)
State v. Hill, 878 N.W.2d 269 (Iowa 2016)
State v. Hogge, 420 N.W.2d 458 (Iowa 1988)
State v. Jacobs, 607 N.W.2d 679 (Iowa 2000)
State v. Johnson, 445 N.W.2d 337 (Iowa 1989)
State v. Luedtke, 279 N.W.2d 7 (Iowa 1979)
State v. Lumadue, 622 N.W.2d 302 (Iowa 2001)
State v. McIver, No. 20-0225, 2021 WL 60907
(Iowa Ct. App. Feb. 17, 2021)
State v. Messer, 306 N.W.2d 731 (Iowa 1981)
State v. Smaniotto, No. 17-0901, 2018 WL 2084830
(Iowa Ct. App. May 2, 2018)
State v. Stanley, 344 N.W.2d 564 (Iowa Ct. App. 1983)
State v. Sumpter, 438 N.W.2d 6 (Iowa 1989)
State v. Thacker, 862 N.W.2d 402 (Iowa 2015)
State v. Thompson, 856 N.W.2d 915 (Iowa 2014)
State v. Uthe, 542 N.W.2d 810 (Iowa 1996)
State v. Wilbourn, 974 N.W.2d 58 (Iowa 2022)
State v. Zaruba, 306 N.W.2d 772 (Iowa 1981)
Iowa Code § 814.6 (2021)
Iowa Code § 902.6 (1981)
Iowa R. Crim. P. 2.23(3)(d)

ROUTING STATEMENT

This case can be decided based on existing legal principles. Therefore, transfer to the Court of Appeals would be appropriate. Iowa R. App. P. 6.1101(3).

STATEMENT OF THE CASE

Nature of the Case

This is a direct appeal by the defendant from his sentence following a guilty plea to the charge of domestic abuse assault, second offense, in violation of Iowa Code sections 708.2A(1) and 708.2A(3)(b) (2021).

Course of Proceedings

On April 14, 2022, the State filed a trial information in the district court for Cerro Gordo County charging Scott Randolph Luke with domestic abuse assault impeding breathing or circulation of blood causing bodily injury, a class D felony in violation of Iowa Code sections 708.1(2)(a), 708.2A(1), and 708.2A(5) (2021). Information; App. 18-20. Pursuant to a plea agreement, the State amended the charge against Luke to domestic abuse assault, second offense, an aggravated misdemeanor, in violation of Iowa Code sections 708.2A(1) and 708.2A(3)(b) (2021). The State also agreed to dismiss

the remaining counts¹ and simple misdemeanors pending against Luke. The plea agreement did not bind the parties to any particular sentencing recommendation or bind the court to any particular sentence. Motion to Amend; Order to Amend; Plea of Guilty; App. 27, 28, 21-26.

The district court accepted Luke's guilty plea. Order Accepting Plea; App. - -. Luke appeared for sentencing on August 15, 2022, before the Honorable Karen Kaufman Salic. Judgment & Sentence; App. 30-32. At that same hearing, the district court considered a pending probation revocation application in Cerro Gordo County case number FECR030393. Luke admitted that he violated his probation and asked the court to move immediately to disposition and to combine that dispositional hearing with the sentencing hearing in this case. Tr.² p. 9, lines 4-20. The district court revoked Luke's probation in case number FECR030393 and required him to serve the sentence originally imposed. Tr. p. 18, lines 10-15; Order

¹ There was no other count pending in this case number; the trial information alleged a single count of domestic abuse assault. Trial Information; App. 18-20.

² All references to the transcript are to the transcript of the hearing on probation revocation, disposition, and sentencing held on August 15, 2022.

Regarding Probation Revocation Proceedings (FECR030393); App. 34-36.

In the case at bar, the district court ordered Luke to serve an indeterminate two-year sentence. The court made that sentence consecutive to the sentence imposed following revocation of Luke's probation in case number FECR030393. The court suspended a fine in the amount of \$855 and the 15% surcharge. Judgment & Sentence; App. 30-32. The court also continued the no-contact order previously entered. *Id.*; Extension of No Contact Order; App. - -.

Luke filed his timely notice of appeal on August 16, 2022. Notice of Appeal; App. 33.

Facts

Because Luke pled guilty, there are few facts in the record regarding his offense. However, in his written guilty plea, Luke agreed that the district court could consider the minutes of evidence in determining whether there was a factual basis for his guilty plea. Written Guilty Plea; App. 21-26. The minutes show that on April 6, 2022 at around 9:03 p.m., officers were dispatched to Luke's residence in response to a 911 call. When officers arrived, one of the officers went to the back door of the residence. He knocked several

times before both Allyssa Luke and Scott Luke answered the door.

Allyssa immediately went out and showed the officer red marks around her collar bone area and scratches on her neck. Minutes of Evidence (report of Officer Mark Tiedemann); Conf. App. 16-17.

Allyssa Luke told the officer that she had been in the car after dropping the kids back off from their home visit when Scott Luke came to the car and started pounding on the doors of the car. Allyssa stated that when she got into the house Scott demanded that she open her safe, where she kept her tax return money, but she refused to do so. Allyssa stated that Scott then started choking her, to the point where she lost consciousness for a moment. She reported that Scott Luke drug her to the sofa, where he punched her in the stomach and chest. Allyssa showed the officer a red, circular mark under her left breast. Allyssa advised that while this was all happening, Scott made a statement asking Allyssa if she wanted to die. When asked about the scratches and red mark, Scott Luke told the officer that he had not touched Allyssa and suggested that the marks had been made by the children and the family dog. Minutes of Evidence (report of Officer Mark Tiedemann); Conf. App. 16-17.

ARGUMENT

I. The District Court Acted Within Its Proper Discretion in Imposing an Indeterminate Two-year Prison Sentence on Luke’s Conviction for Domestic Abuse Assault, Second Offense, and Gave Adequate Reasons for Running that Sentence Consecutively to Luke’s Sentence in His Probation Revocation Proceeding.

Preservation of Error/Jurisdiction

The State does not challenge jurisdiction.³ Iowa Code section 814.6 prohibits appeal from a guilty plea unless the defendant shows good cause for his appeal. *See* Iowa Code section 814.6 (2021). The Court has held that good cause exists to appeal from a conviction following a guilty plea when the defendant challenges his sentence rather than the guilty plea, the defendant received a discretionary sentence that was neither mandatory nor agreed to as part of his plea bargain, and he is appealing that sentence and asking for resentencing without challenging his guilty plea or conviction. *State v. Damme*, 944 N.W.2d 98, 105 (Iowa 2020). Here, Luke is challenging only his sentence and the sentence was neither a mandatory one nor an agreed-upon sentence. There is, therefore, good cause for Luke’s appeal.

³ Luke addresses good cause in Division I of his appellate brief.

Neither does the State challenge error preservation as Luke was not required to raise in the district court his challenge to the alleged abuse of the trial court's sentencing discretion, *State v. Cooley*, 587 N.W.2d 752, 754 (Iowa 1998), or its alleged failure to give adequate reasons for the sentence imposed, *State v. Wilbourn*, 974 N.W.2d 58, 68 (Iowa 2022).

Standard of Review

The standard of review is for abuse of discretion. The trial court's discretion in sentencing matters is broad. *State v. Zaruba*, 306 N.W.2d 772, 774 (Iowa 1981); *State v. Messer*, 306 N.W.2d 731, 732 (Iowa 1981).

Merits

Scott Luke challenges the district court's decision to impose a prison sentence on Luke's conviction for domestic abuse, second offense, and to run that sentence consecutively to the sentence imposed after Luke's probation was revoked in Cerro Gordo County case number FECRO30393. Luke contends that his prison sentence was an abuse of the district court's discretion and that the district court did not give adequate reasons for making his sentences consecutive. His claims should be rejected. The district court's

sentencing decision was well within its proper discretion and the court's written sentencing order provided an adequate explanation of the reasons it chose to impose consecutive sentences.

The court's discretion in sentencing matters is broad. *Zaruba*, 306 N.W.2d at 774; *Messer*, 306 N.W.2d at 732. "The trial court, within the limits of applicable statutes, [has] the discretion to select a sentencing combination that would 'provide maximum opportunity for the rehabilitation of the defendant, and for the protection of the community from further offenses by the defendant and others.'" *State v. Stanley*, 344 N.W.2d 564, 567 (Iowa Ct. App. 1983) (quoting Iowa Code § 902.6 (1981)). "[T]he decision of the district court to impose a particular sentence within the statutory limits is cloaked with a strong presumption in its favor, and will only be overturned for an abuse of discretion or the consideration of inappropriate matters." *State v. Formaro*, 638 N.W.2d 720, 724 (Iowa 2002) (citation omitted).

The presumption that a sentence is proper may only be rebutted by an affirmative showing of an abuse of discretion. *State v. Sumpter*, 438 N.W.2d 6 (Iowa 1989). The burden to show an abuse of discretion is on the defendant. *Stanley*, 344 N.W.2d at 568. That burden is a heavy one. *Id.*; *Zaruba*, 306 N.W.2d at 774. An abuse of

discretion is found only if the trial court's discretion “was exercised only on grounds or for reasons clearly untenable or to an extent clearly unreasonable.” *Zaruba*, 306 N.W.2d at 774. A district court's “ground or reason is untenable when it is not supported by substantial evidence or when it is based on an erroneous application of the law.” *State v. Hill*, 878 N.W.2d 269, 272 (Iowa 2016) (quotation omitted). In the case at bar, the defendant cannot demonstrate an abuse of discretion.

At Luke’s probation revocation and sentencing hearing, the prosecutor asked the district court to revoke Luke’s probation and impose the suspended jail and prison time imposed at Luke’s original sentencing hearing. On Luke’s new offense, the prosecutor recommended a two-year prison sentence, the minimum fine and surcharge, and completion of the Iowa Domestic Abuse Program (IDAP). In support of the State’s recommendation, the prosecutor pointed to Luke’s history of violence, including multiple prior domestic abuse convictions, and Luke’s poor performance while on probation. Tr. p. 9, line 23 – p. 10, line 11.

Allyssa Luke gave a victim impact statement. She testified that she would be scared for her life and for the life of her children if Luke

got out of jail. She testified that she had severe PTSD and feels that Luke is dangerous. She asked that Luke be given the full five-year sentence, without credit for time served, as she does not want to feel threatened or afraid to leave her home and does not want to feel like she has watch over her shoulder for the chance that Luke is stalking her or watching her. She told the court that Luke is very dangerous and not safe for the public. Tr. p. 14, line 5 – p. 15, line 4.

Luke asked the district court to find him in contempt of court on his probation violations, rather than revoke his probation. On his new offense, Luke requested as that he be sentenced to time served. In the alternative, he asked the court to suspend his sentence and place him on probation. The defense noted that Luke was taking his medication for his bi-polar condition, which was helping him manage his anger issues. Defense counsel argued that, other than the new offense, Luke had been doing well on probation. He had been working and paying his fines, he was actively participating in the Iowa Domestic Abuse Program (IDAP) and was not using illegal substances. Counsel also noted that, while Luke and his victim had been married at the time of his offense, they were in the process of divorcing, and they had not violated the no-contact order in place.

Counsel also advised the court that there was an open CINA case for the couple's children and argued that, as a result, the Department of Human Services would monitor Luke, which would help with management of his medication and anger issues. Counsel also argued that the victim's reported post-traumatic stress should not be attributed solely to Luke's actions because the death of their infant child, which occurred when Luke was not in the home, also would have contributed to her condition. Tr. p. 10, line 20 – p. 12, line 22. The defense asked the district court to run Luke's probation revocation and his new sentence concurrently, arguing that this would allow Luke to continue to take his medication, complete the domestic abuse class, and work with the Department of Human Services in trying to resume a relationship with his children. Tr. p. 12, lines 16-22.

The district court rejected Luke's request for another suspended sentence. Instead, the court imposed an indeterminate two-year prison term. The court also revoked Luke's probation in case number FECR030393 and ran Luke's sentence on his new offense consecutively to his sentence in the probation revocation proceeding.

Luke contends that the district court abused its discretion in imposing a prison term. He has not met his heavy burden to show an abuse of discretion. The district explained its reasons for imposing a prison sentence and that explanation shows that the district court properly exercised its discretion.

In explaining its sentencing decision, the district court first pointed to its observation of Luke while the victim gave her impact statement. The court noted that,

obviously during the reading of the Victim Impact Statement, you had difficulty even listening to that and kind of restraining yourself. I totally get that you don't agree with some of the things that she said. I'm unable to attribute any sort of cause for PTSD on your victim's part or any of those sorts of things so, I mean, there's limited things in that that I can consider, but I certainly can consider your almost inability to contain yourself despite your attorney's efforts. You've committed at this point at least with these two cases I have here two assaults against this woman and you appear to have no remorse for that.

Tr. p. 15, lines 6-18.

The Court further explained its sentencing decision as follows.

At some point you have to interact with people differently than you do. That may be impacted if you aren't taking your medications or whatever is going on, I don't have any clue on those things, but, you know, that's something that's within your control whether you take your medications as prescribed or not. You obviously need them, they're beneficial when you take them, and I don't know if that factored into the situation or not. You obviously have a lot of things going on in your family dynamic. The department is involved; you've lost a child, which is

heartbreaking for any parent. You're obviously without the coping mechanisms to deal with that in a healthy, law-abiding way. Those circumstances have been in place for a long time with the department. I think it's even something that I was told when we had your sentencing on your other case, which was I think a year ago tomorrow, and things are not improving. The idea of continuing to try to handle this where you do something illegal, you get arrested, you sit in jail for a while, you get out, it's just going to keep repeating itself until you make some significant changes, and I recognize ... that you had some positive things going for a while. You know, you had a job, you apparently were otherwise compliant with your probation, ... and all those other things that [defense counsel] listed, doing the IDAP, but ... none of that was sufficient to keep us from getting back in here and having the same thing all over again, and ... there's a point at which the scale kind of tips on whether we believe we can address your issues in the community or whether you need to be in prison, and ... Mr. Luke, we're at that point.

So on the sentencing matter for FECR031249, I'm going to impose the indeterminate prison term not to exceed two years. That is not suspended for the factors I've stated previously.

Tr. p. 16, line 1 - p. 17, line 11.

The district court properly exercised its sentencing discretion. *State v. McIver*, No. 20-0225, 2021 WL 609076 (Iowa Ct. App. Feb. 17, 2021) (The district court did not abuse its discretion in imposing a prison sentence on McIver's convictions for domestic abuse assault and going armed with intent; the prison sentence was reasonable given McIver's attitude and history and the district court articulated sound reasons for its decision, including McIver's lack of remorse and his criminal record); *State v. Atkins*, No. 20-0488, 2021 WL 3895198,

at *7 (Iowa Ct. App. Sept. 1, 2021) (A sentencing court may consider a defendant's lack of remorse as it is “highly pertinent to evaluating his need for rehabilitation and his likelihood of reoffending.” (quotation omitted)). Luke has not shown that that decision was an abuse of discretion; he simply disagrees with the court’s decision.

Luke also contends that the district court failed to give adequate reasons for running the sentence in this case consecutively to the sentence imposed following revocation of his suspended sentence in case number FECR031249. When a sentencing judge is faced with a revocation of probation, the judge is to proceed as if the revocation hearing were the original sentencing and may provide that the sentence imposed be served concurrently or consecutively to other existing sentences. *State v. Hogge*, 420 N.W.2d 458, 460 (Iowa 1988). However, the Court must comply with the requirements for imposing consecutive sentences. Iowa Rule of Criminal Procedure 2.23(3)(d) requires the district court to “state on the record its reason for selecting the particular sentence.” *See* Iowa R. Crim. P. 2.23(3)(d). The requirement to state reasons for a particular sentence on the record permits the reviewing court to assess whether there has been an abuse of discretion in sentencing. *See State v. Thompson*, 856

N.W.2d 915, 919 (Iowa 2014); *State v. Uthe*, 542 N.W.2d 810, 816 (Iowa 1996). “Without such a record the Court ‘could [not] discern [whether there had been] any abuse of sentencing discretion.’” *State v. Thacker*, 862 N.W.2d 402, 407–08 (Iowa 2015) (quoting *State v. Luedtke*, 279 N.W.2d 7, 8 (Iowa 1979)). The requirement is also important to preserve the appellant's right to challenge the exercise of discretion by the sentencing judge. *Thacker*, 862 N.W.2d at 407–08 (citing *Luedtke*, 279 N.W.2d at 8). “The Court has also recognized the value of particularized statements in ensuring criminal defendants are aware of the consequences of their criminal actions.” *Thacker*, 862 N.W.2d at 407–08 (citing *Thompson*, 856 N.W.2d at 919 and *State v. Lumadue*, 622 N.W.2d 302, 305 (Iowa 2001)).

Where a consecutive sentence is imposed, the sentencing judge must give a reason for doing so. *State v. Evans*, 672 N.W.2d 328, 331–32 (Iowa 2003); *Hill*, 878 N.W.2d at 273. “Although the reasons do not need to be detailed, they must be sufficient to allow appellate review of the discretionary action.” *State v. Evans*, 671 N.W.2d 720, 727 (Iowa 2003). A “‘terse and succinct’ statement may be sufficient, ‘so long as the brevity of the court’s statement does not prevent review of the exercise of the trial court's sentencing discretion.’”

Thacker, 862 N.W.2d at 407–08 (quoting *State v. Johnson*, 445 N.W.2d 337, 343 (Iowa 1989) (overruled on other grounds by *Hill*, 878 N.W.2d at 275)). Further, the court need not give specific reasons for rejecting alternative sentences. *Stanley*, 344 N.W.2d at 569. When the reasons for a particular sentence have not been stated on the record, however, the Court will vacate the sentence and remand the case to the district court for resentencing. *Thacker*, 862 N.W.2d at 408 (Iowa 2015).

The district court only briefly addressed the sentence it imposed on Luke’s probation revocation, stating,

With respect to the probation revocation matter, the defendant's probation on each count is revoked. Those were previously ordered to be served consecutively and the Court finds they shall continue to be served consecutively to each other and also to FECR031249.

Tr. p. 18, lines 10-15. The State agrees that this explanation, standing alone, would not be sufficient to permit this Court to review the district court’s exercise of its discretion with respect to its decision to run Luke’s sentences consecutively. *See e.g., State v. Jacobs*, 607 N.W.2d 679, 690 (Iowa 2000). However, that explanation does not stand alone.

The district court can satisfy the requirement that it give reasons for the sentence it imposed by orally stating the reasons on the record or by placing the reasons in the written sentencing order. *State v. Thompson*, 856 N.W.2d 915, 919 (Iowa 2014). The district court's sentencing order further explained its reasons for imposing consecutive sentences, as follows.

IT IS THEREFORE ORDERED that taking into account Defendant's age, attitude, criminal history, and employment, financial and family circumstances, as well as the nature of the offense, including whether a weapon or force was used in the commission of the offense, the recommendations of the parties, and other matters reflected in the Court file and record, for the protection of society and rehabilitation of Defendant:

.... Pursuant to Iowa Code Sections 901.5, 902.3 and 902.9, Defendant is committed to the custody of the director of the Iowa Department of Corrections for an indeterminate term, not to exceed **two years**. The Sheriff shall transport Defendant to the reception center designated by DOC. Defendant shall be given credit for time previously served in connection with this offense. **For the reasons set forth above and/or stated on the record, the sentence shall be served CONSECUTIVELY to the sentence(s) imposed in FECR030393.**

Judgment & Sentence (bolding in original); App. 30-32. The district court's written sentencing order adequately explained its decision to impose consecutive sentences. *State v. Smaniotto*, No. 17-0901, 2018 WL 2084830, *1 (Iowa Ct. App. May 2, 2018) (finding the district

court's written sentencing order satisfied the requirement to give reasons for the sentence imposed).

Luke has not shown that the district court abused its discretion in imposing a prison sentence on his conviction for domestic abuse assault, second offense. Neither has he shown that the district court failed to adequately explain its decision to run Luke's sentence consecutively with the sentence imposed following revocation of his probation in Cerro Gordo County case number FECR030393. Consequently, the Court should reject Luke's challenge to his sentence.

CONCLUSION

This Court should affirm Scott Randolph Luke's conviction and sentence for domestic abuse assault, second offense.

REQUEST FOR NONORAL SUBMISSION

Oral argument is unlikely to assist the Court in deciding the issue raised on appeal. Therefore, the State waives oral argument. However, if appellant is granted oral argument, counsel for appellee desires to be heard in oral argument, as well.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

This brief complies with the typeface requirements and type-volume limitation of Iowa Rs. App. P. 6.903(1)(d) and 6.903(1)(g)(1) or (2) because:

- This brief has been prepared in a proportionally spaced typeface using Georgia in size 14 and contains **3,638** words, excluding the parts of the brief exempted by Iowa R. App. P. 6.903(1)(g)(1).

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