IN THE SUPREME COURT OF IOWA

STATE OF IOWA, Plaintiff-Appellee, v. FREDERICK L. HAWKINS III, Defendant-Appellant.	Story County No. AGCR061580 S.CT. NO. 23-1468

APPEAL FROM THE IOWA DISTRICT COURT
FOR STORY COUNTY
HONORABLE STEVEN P. VAN MAREL, JUDGE (SUPPRESSION HEARING, BENCH TRIAL, & SENTENCING)

APPELLANT'S BRIEF AND ARGUMENT

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STATEMENT OF THE ISSUES PRESENTED FOR REVIEW

I. The evidence was insufficient to establish an intent to commit sexual abuse as necessary to sustain convictions under Counts 2-3.

II. The evidence was insufficient to establish that Hawkins was capable of forming specific intent at the time of the offense, as required for conviction under Counts 1-3.

III. The district court erred in denying Hawkins's motion to suppress his statements on the basis of a Miranda violation.

IV. Resentencing is required because the district court failed to provide a statement of reasons for its decision to impose consecutive sentencing.

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)(a)(4) and 6.1101(3)(a) (2024).

NATURE OF THE CASE

Defendant-Appellant Frederick Hawkins III appeals following his bench trial convictions for three counts of Assault With Intent to Commit Sexual Abuse, all Aggravated Misdemeanors in violation of Iowa Code § 709.11(3) (2021). Hawkins was sentenced to consecutive two-year terms of incarceration on each count, for a total indeterminate prison term not to exceed six years. (D0137 9/6/23 Sent.Tr.12:8-14, 13:9-14:5; D0122 9/6/23 Judgment and Sentence).

On appeal, Hawkins claims: (1) the evidence was insufficient to establish any intent to commit a sex act as to Counts 2-3; (2) his mental health issues left him unable to form specific intent as required for all three counts; (3) the district court erred in denying his motion to suppress on the basis of a Miranda violation; and (4)

the district court failed to give reasons for the imposition of consecutive sentencing.

STATEMENT OF THE FACTS

a) Suppression Hearing Record: Prior to trial, Hawkins had filed a Motion to Suppress alleging a Miranda violation and seeking suppression of Hawkins's statements to law enforcement. (D0032 8/1/22 Def. Motion to Suppress). The State resisted (D0040 8/25/22 Resistance), and a suppression hearing was held on August 25, 2022. (D0133 8/25/22 Suppr.Tr.1:1-25). At the suppression hearing, the State presented testimony from Ames police officer Dilok Phanchantraurai. Additionally, the officer's body cam video of the interaction with Hawkins was placed into evidence as Suppression Hearing Exhibit 1. (D0133 8/25/22 Suppr.Tr.2:1-11, 3:17-25; D0047 08/25/22 Suppr.Exhibit 1 - CD[1]).

During the suppression hearing, Officer Phanchantraurai testified that on May 13, 2022, he was dispatched to the Food at

[1] References herein to Suppression Exhibit 1 will be to the video file contained on that disk, in the folder titled "DilokPhanchantraurai 202205131853 VXL1003491 184989193".

First program at the church across the street from the Ames Police Department. (D0133 8/25/22 Suppr.Tr.5:12-6:20). It had been reported that a male there was touching females inappropriately. (D0047 08/25/22 Suppr.Exhibit 1 at 01:10-01:19). The officer initially responded to the church alone. (D0133 8/25/22 Suppr.Tr.7:5-10). He encountered two volunteers or staff members who led him to a stair landing inside the church. The door was open, and a male (ultimately identified to be Defendant Hawkins) was standing behind the door. (D0133 8/25/22 Suppr.Tr.7:19-23; D0047 08/25/22 Suppr.Exhibit 1 at 01:30-01:55). The male volunteer summoned Hawkins to come out from behind the door. (D0133 8/25/22 Suppr.Tr.7:24-8:1; D0047 08/25/22 Suppr.Exhibit 1 at 01:48-01:55). As Hawkins stepped out from behind the door, Officer Phanchantraurai directed Hawkins to "sit down", "sit down sir" on the bench in the landing area. (D0133 8/25/22 Suppr.Tr.8:2-7, 3:1-14:6; D0047 08/25/22 Suppr.Exhibit 1 at 01:54-01:59). The officer acknowledged that Hawkins could not have walked away at that point, and that he was not free to leave. (D0133 8/25/22 Suppr.Tr.14:7-11). If Hawkins had tried to

leave at any point in their interaction, the officer would have told him he was not free to leave. (D0133 8/25/22 Suppr.Tr.15:15-17).

The officer asked Hawkins "what's going on tonight?", to which Hawkins responded "nothing". (D0047 08/25/22 Suppr.Exhibit 01:59-02:03). No Miranda advisory was given at any point. Officer Phanchantraurai then called for backup from another officer over his radio, (D0047 08/25/22 Suppr.Exhibit 1 at 02:07-02:30), and the second officer (Officer Geil) arrived shortly. See also (D0133 8/25/22 Suppr.Tr.14:12-18, 14:19-21). Officer Phanchantraurai continued asking Hawkins what he did, asking whether he touched a female inappropriately, or if he touched someone's behind. Hawkins responded by saying very quietly that he didn't. Officer Phanchantraurai asked Hawkins to be honest with him, said he wanted Hawkins to give his side, and that this was Hawkins's opportunity to tell his side of the story. However, Hawkins continued denying having done anything. (D0133 8/25/22 Suppr.Tr.8:18-9:7, 10:5-18; D0047 08/25/22 Suppr.Exhibit 1 02:30-03:55). At that point, Officer Phanchantraurai then directed Hawkins to remain there with Officer Geil, while he went

downstairs. (D0047 08/25/22 Suppr.Exhibit 1 03:51-03:57). Officer Phanchantraurai testified that he had not placed Hawkins under arrest at that point, and had not cuffed him. (D0133 8/25/22 Suppr.Tr.9:8-12, 11:5-9). He testified that at that phase he was still investigating what was reported, and still needed to speak with other witnesses. (D0133 8/25/22 Suppr.Tr.9:13-10:4).

Officer Phanchantraurai went downstairs to the church dining area to speak with some of the witnesses. (D0133 8/25/22 Suppr.Tr.7:5-10,10:19-11:4, 11:10-17). Officer Phanchantraurai acknowledged that, before ever talking to the witnesses downstairs, he had already decided he was most likely going to arrest Hawkins. (D0133 8/25/22 Suppr.Tr.15:7-14; D0047 08/25/22 Suppr. Exhibit 1 at 04:17-04:23).

After speaking with witnesses downstairs, officer Phanchantraurai returned back up to the landing area, asked Hawkins to stand, and placed him under arrest. (D0133 8/25/22 Suppr.Tr.11:18-23; D0047 08/25/22 Suppr.Exhibit 1 at 11:51-12:32). Still no Miranda advisory was given. Officer Phanchantraurai testified he did not recall asking Hawkins any

more questions at that point. He testified that Hawkins asked the Officer why he was under arrest, and that the officer responded he had probable cause to place him under arrest and that he'd have opportunity to explain his side of the story to the judge. (D0133 8/25/22 Suppr.Tr.11:24-12:2-8). Officer Phanchantraurai's body cam video indicates the officer told Hawkins there were four people who saw what happened, three people described what he did, and he'd touched people inappropriately. Hawkins continued denying having done anything. Hawkins said no one called the police, Officer Geil said "How do you think we got here?", and Hawkins said "they didn't though." The officers walked Hawkins to the police station booking room across the street. Hawkins continued denying having done anything. (D0133 8/25/22 Suppr.Tr.12:9-15; D0047 08/25/22 Suppr.Exhibit 1 at 12:35-15:36). No Miranda rights were given at any point during the interaction. (D0047 08/25/22 Suppr.Exhibit 1 at 00:00-15:36).

At the conclusion of the suppression hearing, the district court ruled from the bench, concluding that Hawkins was not in custody, and that Miranda warnings were therefore not required. (D0133

8/25/22 Suppr.Tr.20:13-21:7).

b) Jury Trial Record: This matter relates to an incident that took place at the First Christian Church in Ames, Iowa on May 13, 2022, during a Food at First dinner service. (D0140 8/31/23 Trial Tr.9:11-13, 10:20-24). Food at First is program which, in addition to providing a food pantry, also provides one hot meal service each day of the week. (D0140 8/31/23 Trial Tr.8:11-9:10). The meal service is provided in the church basement. (D0140 8/31/23 Trial Tr.10:22-11:1). From the main church entrance, the basement can be reached either by taking the elevator or the stairwell down one floor to the lower level. (D0140 8/31/23 Trial Tr. 11:2-5, 30:25-31:6). The basement dinner hall is separated from the stairwell by a door. This door automatically shuts and doesn't remain open. (D0140 8/31/23 Trial Tr.11:6-8, 32:18-22).

Seventy-nine-year-old Millie Bleeker testified she'd attended the dinner service that evening. At around 6:45 p.m., she left the dinner hall, as she had to head to work. (D0140 8/31/23 Trial Tr.7:6-7, 9:11-10:7). She pushed open a door that separated the basement dinner hall from the stairwell leading upstairs. (D0140

8/31/23 Trial Tr.11:2-8). The stairwell was empty, but as she entered it she felt the presence of someone following close behind her, also exiting the dinner hall. (D0140 8/31/23 Trial Tr.11:9-14). This individual was then-twenty-one year old Defendant-Appellant, Frederick Hawkins, whom Bleeker testified she did not then know. (D0140 8/31/23 Trial Tr.24:18-19, 193:6-8). She offered to let Hawkins go ahead of her, but he declined, so she proceeded up the stairs. (D0140 8/31/23 Trial Tr.11:9-14). As she did so, the man said "Oh, wait, you have some chocolate or something on your pants", and brushed her rear end with his hand, and then grabbed her tightly around the waist. Bleeker screamed and protested, saying "Don't. Don't. Stop. Stop." and tried to walk away from him, but Defendant just held on to her tighter and then started "humping" her. His pants remained on and in place the whole time. He kept saying "Please." Bleeker testified that he "had a hard on" which she could feel on her buttocks. She testified his hands also started going inside her pants and underwear, reaching as far as her pubic hair line. She testified the assault didn't stop until somebody else ("Nick") came running up the stairwell. Nick told

Hawkins to “Stop it”, and Hawkins “sort of hesitated,” but “then he kept right on going” until yet another person (Carol Cornelious) also arrived in the stairwell. At that point Hawkins backed off. (D0140 8/31/23 Trial Tr.11:9-12:14, 14:3-16:22, 23:3-10, 24:3-12, 24:25)

Eighteen-year-old Nicholas Vanderheyden, who goes by “Rofin”, also testified at trial. (D0140 8/31/23 Trial Tr.25:13-26:13, 67:23-68:3). He used “Food at First” services regularly, attending their dinner service nearly every day. (D0140 8/31/23 Trial Tr.27:6-27:23). Rofin had previously met Hawkins at Food at First, and had known him for a couple of weeks prior to May 13. (D0140 8/31/23 Trial Tr.28:11-12, 28:25-29:13). During that time, he’d interacted with Hawkins some 8-10 times. (D0140 8/31/23 Trial Tr.42:11-22). On May 13, 2022, Rofin and Hawkins had both been at the library, and walked together from the library to Food at First. (D0140 8/31/23 Trial Tr.28:6-12, 30:11-17, 35:24-36:12). Rofin testified that during the walk, Hawkins was behaving unusually, was quieter than normal, and seemed very absent minded. He testified that Hawkins would randomly stop for no

apparent reason, and then resume walking. (D0140 8/31/23 Trial Tr.29:14-24, 36:23-37:1, 37:15-38:21).

That night, after finishing his meal at Food at First, Rofin left the dining hall and proceeded up the stairs. As he opened the door to the stairwell, he heard a woman yelling "Help." When he got to the top of the stairs, he saw Hawkins holding the woman and thrusting against her behind. (D0140 8/31/23 Trial Tr.30:18-32:9, 33:9-23). Another Food at First staff member, Carol Cornelious, then also came up the stairs. (D0140 8/31/23 Trial Tr.32:10-25). Hawkins remained quiet throughout the interaction, not saying anything. (D0140 8/31/23 Trial Tr.33:24-34:1). Rofin testified that, after the commotion stopped, and as Cornelious proceeded up the stairs, Hawkins "kind of grabbed her [Cornelious's] butt." It was a quick and brief act. (D0140 8/31/23 Trial Tr.34:10-13, 39:22-40:7). Rofin testified the behavior he observed seemed to be out of character for Hawkins, to the point that he wondered whether it was possible Hawkins may have smoked "weed" containing "something in there that wasn't meant to be in there" (though there was no indication Hawkins had smoked anything that

day). (D0140 8/31/23 Trial Tr.36:17-22, 37:2-10, 38:10-21, 41:7-22).

Sixty-four-year-old Carol Cornelious was volunteering at the dinner service that evening. (D0140 8/31/23 Trial Tr.45:24-46:6, 50:21-23). Toward the end of the service, she heard a commotion, so opened the stairway door outside the dinner hall. She testified she saw Millie Bleeker coming down the stairs saying someone was attacking her. (D0140 8/31/23 Trial Tr.46:13-47:6). When Cornelious looked up the stairs, she saw Hawkins, who she'd seen at Food at First dinner programs before. (D0140 8/31/23 Trial Tr.47:7-15). When Bleeker said she was being attacked, Hawkins did not respond in any way. He just stood there, not saying anything. (D0140 8/31/23 Trial Tr.47:16-21, 48:12-14). Cornelious testified that she walked Bleeker up the stairs, and as she passed Hawkins "he slapped me on my butt". He didn't say anything before or after doing so. Cornelious turned around and told Hawkins to stop it, and then she continued to walk Bleeker out to her car. (D0140 8/31/23 Trial Tr.47:22-25, 48:15-49:16, 52:8-

25). She hadn't heard Hawkins say any words at any point. (D0140 8/31/23 Trial Tr.49:22-50:4, 52:5-7).

Sixty-three year old Elizabeth ("Lisa") Magner had also volunteered during that dinner service. (D0140 8/31/23 Trial Tr.54:11-55:1, 56:3-5, 56:15-19). She'd just taken the garbage out to the dumpsters in the parking lot and was coming back downstairs on the elevator with the garbage can, when Hawkins entered the elevator behind her. The program director, Patricia Yoder was also on the elevator and was telling Hawkins they needed to talk. (D0140 8/31/23 Trial Tr.56:20-57:6). Magner testified that she then felt Hawkins's "hand come up my butt." Specifically, his hand contacted her body where her bottom meets her legs and ran up to the small of her back. It was a quick and brief movement, "just up like that. (Indicated.)". He didn't say anything during the contact. (D0140 8/31/23 Trial Tr.57:6-7, 59:7-21, 61:15-23). Magner wasn't scared, but found the behavior bizarre. (D0140 8/31/23 Trial Tr.61:24-62:5). Yoder told Hawkins "You don't do that", and Magner said "Yeah, you don't do that." (D0140 8/31/23 Trial Tr.57:9-10). Magner testified that Hawkins at that point just

said “Help me. Help me. Help me.” in a very quiet voice while having a “sad or scared” look on his face. (D0140 8/31/23 Trial Tr.57:10-11, 59:22-24, 62:6-17). She testified she “kind of got the feeling, like, maybe he just couldn’t help himself. You know, like he was out of control or something.” (D0140 8/31/23 Trial Tr.62:22-24).

Food at First executive director Patricia Yoder also testified at trial. (D0140 8/31/23 Trial Tr.65:22-16). She testified that after hearing a commotion, she entered the stairwell. (D0140 8/31/23 Trial Tr. 66:9-13). By Yoder’s arrival to the stairs, Cornelious and Bleeker had already left, but Rofin and Hawkins were at the top of the stairs. They were just standing there, not really doing anything. (D0140 8/31/23 Trial Tr.67:21-22). Yoder testified she went outside to talk to Bleeker and Cornelious. Bleeker told her she’d been attacked by Hawkins, and Cornelious said he’d “slapped her very hard on the behind.” (D0140 8/31/23 Trial Tr.68:18-69:5). Yoder then returned inside and saw Lisa Magner getting on the elevator after having taken out the trash. Hawkins walked on the elevator behind Magner, so Yoder got on the elevator also. She

asked Hawkins what had happened but he said nothing. She testified then, "I'm literally looking directly at him, and he takes his hand and runs it from the bottom of [Magner's] bottom to the top". Yoder told him "Stop that. That's inappropriate. You may not do that." She testified Hawkins was touching the crotch of his pants, and said "Help me. Help me", with a "scared" expression on his face. (D0140 8/31/23 Trial Tr.69:6-70:20). After getting off the elevator, Yoder told Hawkins to leave, and Hawkins did walk up the stairs then. Yoder asked another man to watch Hawkins, while she stepped outside to call the police. (D0140 8/31/23 Trial Tr.70:21-71:13). When she returned after calling the police, the man she'd asked to watch Hawkins told her he didn't see Hawkins anymore, but thought he'd walked up a short landing to a set of church doors. She walked up there, and observed that Hawkins seemed to be hiding behind one of the open doors, in the small space between the open door and the wall. (D0140 8/31/23 Trial Tr.71:14-72:13). When law enforcement arrived, she told them where he was behind the door. (D0140 8/31/23 Trial Tr.73:14-73:1).

Ames Police Officer Dilok Phanchantrurai was dispatched to the church, which is located immediately across the street from the police station. (D0140 8/31/23 Trial Tr.75:4-5, 75:15-76:7). A portion of Officer Phanchantrurai's body cam video capturing pertinent parts of the interaction with Hawkins was placed into evidence as Trial Exhibit 8. (D0140 8/31/23 Trial Tr.81:21-25; D0113 8/31/23 Trial Exhibit 8 - CD). It was received into trial evidence subject to defense counsel's motion to suppress, which had been overruled pretrial. (D0140 8/31/23 Trial Tr.82:17-25).

Upon arriving at the church, the officer was walked to the landing by Yoder and another individual. Hawkins was standing behind an open door, in the small space between the door and the wall. (D0140 8/31/23 Trial Tr.77:23-21, 81:9-11). The officer found this behavior of hiding behind the open door to be very unusual and odd for someone who was not a child. (D0140 8/31/23 Trial Tr.81:9-13, 86:3-10, 88:5-7). He noted it was not a very good spot to hide. (D0140 8/31/23 Trial Tr.89:19-90:2). Officer Phanchantrurai recognized Hawkins from prior contacts. (D0140 8/31/23 Trial Tr.77:18-21, 85:1-86:2). The officer informed

Hawkins of the allegations. Hawkins responded that he didn't know what happened, and denied the allegations. (D0140 8/31/23 Trial Tr.77:22-78:4, 78:18-79:1, 81:6-8, 81:15-20, 84:19-22). When the Officer told Hawkins he was under arrest, Hawkins said "For what? What did I do?", several times. (D0140 8/31/23 Trial Tr.84:23-25).

Officer Phanchantrurai testified that he was aware Hawkins was homeless. His prior contacts with Hawkins were based on issues relating to him being homeless. (D0140 8/31/23 Trial Tr.85:21-25). He testified that Hawkins was known by the police department and other officers to have exhibited symptoms of mental health issues, including unusual behaviors. (D0140 8/31/23 Trial Tr.86:21-88:4).

Hawkins filed a pretrial notice of defense asserting diminished responsibility. (D0078 6/14/23 Amend. Notice of Defense). His attorney argued that his mental health issues left him unable to form specific intent at the time of the offenses. (D0140 8/31/23 Trial Tr.90:14-91:22, 199:13-19, 206:3-209:17). Three mental health professionals testified at trial. The defense presented testimony from Dr. Gary Keller who oversaw Hawkins' post-arrest

competency restoration at the IMCC (D0140 8/31/23 Trial Tr.95:13-96:10, 97:13-98:9), as well as Dr. Tracy Thomas who evaluated Hawkins subsequent to his competency restoration (D0140 8/31/23 Trial Tr.114:16-115:6, 118:8-119:9). The State presented rebuttal testimony from Dr. Rosanna Jones-Thurman, who later evaluated Hawkins on behalf of the State (D0140 8/31/23 Trial Tr.154:12-22, 157:20-22).

Dr. Gary Keller is the primary treating psychiatrist at Iowa Medical and Classification Center. (D0140 8/31/23 Trial Tr.96:6-97:12). Subsequent to Hawkins's arrest, and during the pendency of the instant prosecution, Hawkins was found not competent to stand trial and underwent competency restoration at IMCC. (D0140 8/31/23 Trial Tr.118:13-119:9). Dr. Keller interacted with Hawkins for his three-week-stay at IMCC in approximately March 2023, for purposes of competency restoration. (D0140 8/31/23 Trial Tr.97:13-19, 99:19-21).

Upon Hawkins's transport and arrival at IMCC, Hawkins exhibited agitation and stated he was scared. (D0140 8/31/23 Trial Tr.97:16-98:9). Hawkins hadn't been showering at the county

jail, and his hygiene was poor upon his arrival at IMCC. While at IMCC, he did start showering and exhibiting better hygiene. (D0140 8/31/23 Trial Tr.102:20-103:1). Dr. Keller also had concerns regarding disorganized thinking from Hawkins. (D0140 8/31/23 Trial Tr.101:16-102:15). Further, right before Hawkins left IMCC, he exhibited an episode of paranoia, whereby he assaulted another patient who looked at but did not otherwise engage with him, fearing the patient "may be looking to hurt him." (D0140 8/31/23 Trial Tr.100:9-101:15).

Hawkins had a history which was consistent with the development of mental health symptoms, which tend to first appear between the ages of 16-25. (D0140 8/31/23 Trial Tr.102:10-19). Hawkins had reported a diagnosis of some kind, possibly anxiety or depression, upon having "a bit of a breakdown" at age seventeen. Subsequently there was no further treatment. Hawkins believed he had overcome that mental illness. (D0140 8/31/23 Trial Tr.98:10-25).

Dr. Keller testified he reached a "diagnosis of psychotic -- other specified disorder". This was a differential diagnosis, which is

a tentative or preliminary diagnosis that must be further vetted to determine whether, in Hawkins's case, the psychotic symptoms were due to anxiety, bipolar, schizoaffective disorder, or schizophrenia. (D0140 8/31/23 Trial Tr.99:1-18, 109:8-23, 111:20-112:21). Dr. Keller acknowledged Hawkins' symptoms could potentially relate to a personality disorder. But he leaned more toward it being a psychotic disorder. (D0140 8/31/23 Trial Tr.107:24-109:2).

Dr. Tracy Thomas is a board certified forensic psychologist. (D0140 8/31/23 Trial Tr.115:10-117:21; D0114 8/31/23 Exhibit A). She testifies for both the State and defense, and has roughly been hired equally by both sides over the last fourteen years. (D0140 8/31/23 Trial Tr.117:22-118:7). In the present case, she evaluated Hawkins upon request of the defense, to determine his mental status at the time of the offenses. (D0140 8/31/23 Trial Tr.118:8-119:9).

Dr. Thomas was contacted by the defense during the summer of 2022. She met with Hawkins in August 2022 and attempted to interview him, but she struggled to get information and noticed

something seemed “not right” with him. She informed Hawkins’s attorney who at that point made a motion for a competency evaluation. He was then evaluated at IMCC, found incompetent, and went to IMCC for restoration. After his restoration, Dr. Thomas met with Hawkins again in May 2023 to assess his mental status at the time of the offenses. (D0140 8/31/23 Trial Tr.118:11-119:9).

Dr. Thomas testified that when she met with Hawkins in May 2023, he was very clearly exhibiting psychotic symptoms. (D0140 8/31/23 Trial Tr.120:4-8). The most significant of these were disorganized thinking, and delusions. (D0140 8/31/23 Trial Tr.121:3-122:4). At portions of the conversation his talking was fairly logical and linear, but at other times it was very disorganized, only very loosely connected, and made no sense. (D0140 8/31/23 Trial Tr.121:5-15). In particular, he exhibited a delusion regarding the sun. Hawkins repeatedly brought up the sun, heat, and related delusions, when specifically discussing the events of the day at the church. (D0140 8/31/23 Trial Tr.122:5-20).

She described the delusion as follows:

> "…his belief that the sun -- looking into the sun does something to your eyes. It provides energy that goes into your body into different organs. Your eyes sweat. It mixed with other things in your body and tells your body if you have something like a sexually transmitted disease, and then you can clear it out by being in the heat and in the sun. And I'm making it sound more organized than it was, but that -- that was the gist of it. […]"

(D0140 8/31/23 Trial Tr.121:19-122:2). She further described:

> "… he had started saying, Well, if you, you know, do this thing with the sun, and if it doesn't clear the STD and you still have some itching or burning, then you go to the clinic and get it checked…."

(D0140 8/31/23 Trial Tr.127:25-128:3). She gave as an example the following quoted language from Hawkins:

> So, for example, he says, "You know how your private parts are connected to your brain. If the private parts aren't right, like you get an STD, it's going to make you feel depressed and bad. Your body rejuvenates. Your body has a self-check. It's like your liver or your heart or your veins or your arteries and it tells your urine. It's good to go into the sun before you get checked for an STD. It gives you energy. The sun in your eyes goes like that," and he demonstrated two things coming together, "and it checks your eyes. The sun in your eyes, it's good. Sun is good for your energy, your muscle, your tissues. It makes you sweat. It makes your eyes sweat, and that's good, because if you're sweating too much in your head, it's not good. It means you've got too much cigarette smoke or weed smoke in there or if you've got too much beer. It's like you eat bread and it stays in there. The sun gets it out and attaches it to your fat. If you don't get rid

> of it it's like, you know, you get fat. I think the heat, the heat rush, it made me more confused. It made me, like, confused, and I was sleeping on the hard floor. I was homeless."

(D0140 8/31/23 Trial Tr.142:24-143:20). Both prior and subsequent to these statements detailing the delusion, Hawkins repeatedly brought up the idea of sun or heat into the conversation. He repeatedly interrupted Dr. Thomas, or stopped doing the testing, to ask about the sun or the heat, apropos of nothing. It was a recurrent theme throughout the interview and evaluation process. (D0140 8/31/23 Trial Tr.122:5-20).

Dr. Thomas ultimately opined that, to a degree of psychological certainty, due to symptoms of a psychosis, Hawkins was unable to form specific intent at the time of the offenses. (D0140 8/31/23 Trial Tr.122:21-123:6). Dr. Thomas opined that Hawkins' behavior at the time of the offense was part of his disorganized behavior (just engaging in things for no real reason or purpose), and also a product of disorganized thinking (where he wasn't forming thoughts that were logical or linear, or moving toward some meaningful or purposeful goal). (D0140 8/31/23 Trial

Tr.123:7-124:9).

Dr. Thomas testified that, when determining an individual's mental status at the time of an incident, what is key is not an ultimate diagnosis but, rather, "symptoms and symptom severity." A mental health symptom can go along with multiple disorders. What matters is whether the symptom existed and was severe enough to render the individual unable to form specific intent. (D0140 8/31/23 Trial Tr.119:10-120:3).

A diagnosis, moreover, can be at a broad level. A diagnosis of "psychotic disorder – unspecified" is applicable where the individual is exhibiting psychosis but there hasn't been enough time to observe *which* particular psychotic disorder it is (e.g., schizoaffective, schizophrenia, bipolar with psychotic symptoms, etcetera). (D0140 8/31/23 Trial Tr.130:3-133:7). Dr. Thomas's diagnosis of Hawkins was that he has an unspecified psychotic disorder. This is a formal diagnosis under the Diagnostic and Statistical Manual, and is a category that captures his symptoms but leaves it open to reaching a more particular diagnosis over time. (D0140 8/31/23 Trial Tr.130:13-131:22, 132:19-21, 149:22-

150:25). She suspected that his psychotic disorder was rooted in either schizophrenia or bipolar, but further monitoring was needed to specify. (D0140 8/31/23 Trial Tr.150:13-25).

Leading up to the incident at issue, Hawkins had been making frequent visits to both the ER at Mary Greeley in Ames, as well as the Primary Health Care Clinic in Ames, about various nonspecific things (such as headaches or just not feeling well) and getting STD tests. (D0140 8/31/23 Trial Tr.127:7-18). Indeed, on the very day before the incident at the church, he was arrested on criminal trespass for refusing to leave the emergency room. (D0140 8/31/23 Trial Tr.85:14-20, 193:25-194:2, 194:6-15). Dr. Thomas's asking about these various doctor visits was what triggered Hawkins to discuss his delusional thinking about the sun. (D0140 8/31/23 Trial Tr.127:19-128:5).

Hawkins had also exhibited bizarre conduct on the day of the incident. His conduct of walking down the street, starting and stopping, for no reason, is an example of disorganized thinking and behavior. (D0140 8/31/23 Trial Tr.123:25-124:2). He said bizarre things like "Help me, Help me" while engaging in the touching. The

touching behavior was itself unusual for him, and both the staff and his friend had stated he'd never acted out or done anything like that before. Afterward, he remained at the church rather than trying to run off, and he subsequently exhibited surprise and confusion at being charged. (D0140 8/31/23 Trial Tr.146:5-23).

Dr. Thomas opined that Hawkins would likely be early on in his mental disorder, during which time the episodes of disorganized behavior tend to be more spaced out. There can be periods of disorganized behavior, separated by periods of seemingly "normal" behavior, though the disorganized thinking or delusion may still persist in the person's head. (D0140 8/31/23 Trial Tr.124:10-125:13).

"Negative symptoms" of psychosis can include not showering, not eating, not getting out of bed, or not moving. (D0140 8/31/23 Trial Tr.120:22-121:2). Hawkins's jail records while in Story County since 2021 shows some of these odd behaviors, such as refusing to leave his cell, being very dirty, not eating, not cleaning himself, which are behaviors seen in individuals with psychotic disorders. (D0140 8/31/23 Trial Tr.128:22-129:5).

There were also several incidents of odd behavior in the jail or at IMCC which jail staff characterized as being surprising and out of character for Hawkins. (D0140 8/31/23 Trial Tr.125:18-25). When Hawkins was about to be transported to IMCC, he hit a staff member. Additionally, there was a physical altercation with another inmate at IMCC which his providers believed might be paranoid or delusional thinking. (D0140 8/31/23 Trial Tr.125:25-126:11).

Clinical psychologist Dr. Rosanna Jones-Thurman was retained by the State to evaluate Hawkins' mental status at the time of the offense. Dr. Jones-Thurman met with Hawkins on July 30, 2023. She is not board certified, and she could not recall ever finding diminished responsibility while retained by the State rather than by the defense. (D0140 8/31/23 Trial Tr.155:6-8, 157:20-24, 177:22-178:25, 179:8-11).

Dr. Jones-Thurman testified that Hawkins reported having a previous diagnosis for bipolar disorder, and having previously been on Seroquel. However, Hawkins believed he was fine mentally and had overcome any mental issues. (D0140 8/31/23 Trial Tr.188:17-

189:5). Dr. Jones-Thurman did not suspect malingering. (D0140 8/31/23 Trial Tr.169:6-17). To the contrary, Hawkins was insistent he was not mentally ill. (D0140 8/31/23 Trial Tr.197:16-18).

Dr. Jones-Thurman opined that Hawkins met the criteria for a conduct or anti-personality disorder, and that he also appeared to have a substance abuse problem. She opined he did not exhibit symptoms of a psychotic disorder, either when she met with him for the evaluation, or in May 2022 at the time of the offense. She opined he was not suffering from a diminished responsibility at the time of the offense. (D0140 8/31/23 Trial Tr.165:17-166:18, 175:16-24, 176:17-177:11, 177:18-21, 180:14-18).

Dr. Jones-Thurman acknowledged that in order to evaluate delusions or disorganized thinking, a practitioner must directly bring up the topic triggering them, as the delusions or disorganized thinking will not be apparent until the topic comes up. However, she did not ask Hawkins about the sun or STDs specifically. (D0140 8/31/23 Trial Tr.171:6-18, 172:6-15, 184:19-187:5). She did ask him generally about physical health checkups, and he "said he wanted to make sure his bloodline was good." (D0140 8/31/23

Trial Tr.184:7-18). She was not sure whether she was aware of the discussions Hawkins had concerning the sun to Dr. Thomas, until after she met with Hawkins. (D0140 8/31/23 Trial Tr.184:25-187:20). She asked and he denied having any type of delusion, hallucination, or paranoid thought at the time of the offense, but she acknowledged that an untreated delusional person would likely not recognize his own delusions or thoughts as having these characteristics. (D0140 8/31/23 Trial Tr.171:3-5, 186:21-188:23).

Dr. Jones-Thurman was aware that on May 12, 2022, the day before the incident at issue, Hawkins was charged with criminal trespass because he wouldn't leave the emergency room and was loitering. (D0140 8/31/23 Trial Tr.193:25-194:2, 194:6-15). However, she did not ask him about that incident. (D0140 8/31/23 Trial Tr.194:16-195:10). Dr. Jones-Thurman was also unaware of Hawkins exhibiting any strange behavior on the day of the incident, including on the walk to the church. (D0140 8/31/23 Trial Tr.191:1-24). She acknowledged that, though she suspected Hawkins of antisocial personality disorder, he was polite and cooperative in her interaction with him (even though he knew she

was working for the State), and was also described as generally pleasant by IMCC staff. (D0140 8/31/23 Trial Tr.162:15-24, 169:12-14, 180:19-181:25). She acknowledged that he exhibited episodes of odd or problematic behavior, separated by periods of time when he was compliant and had no issues. (D0140 8/31/23 Trial Tr.182:18-183:21). Antisocial personality disorder is ongoing on a regular basis, whereas mental illness can manifest through such episodic behavior. (D0140 8/31/23 Trial Tr.182:1-17). See also (D0140 8/31/23 Trial Tr.124:10-125:13).

Other relevant facts will be mentioned below.

ARGUMENT

I. The evidence was insufficient to establish an intent to commit sexual abuse as necessary to sustain convictions under Counts 2-3.

A. Preservation of Error: In a bench trial the court is the fact finder, and its verdict of guilt necessarily includes a finding that the record evidence sustained the verdict rendered. State v. Abbas, 561 N.W.2d 72, 74 (Iowa 1997). Moreover, when proceeding to trial, whether to the bench or to a jury, "a defendant need not file a motion for judgment of acquittal to challenge the sufficiency of the

evidence on direct appeal." State v. Crawford, No. 19-1506, 972 N.W.2d 189, 198 (Iowa 2022). "[A] defendant who proceeds to trial and has been convicted of a crime has, in fact, preserved error with respect to any claim challenging the sufficiency of the evidence." Id.

B. Standard of Review: Challenges to the sufficiency of evidence to support the verdict rendered are reviewed for correction of errors at law. State v. Petithory, 702 N.W.2d 854, 856 (Iowa 2005).

C. Merits: Hawkins was charged with three counts of Assault with Intent to Commit Sexual Abuse in violation of Iowa Code §§ 709.11 (2021). Count 1 concerned Millie Bleeker, Count 2 concerned Carol Cornelious, and Count 3 concerned Elizabeth (Lisa) Magner. (D0014 5/19/22 TI). The matter was ultimately tried to the court. (D0140 8/31/23 Trial Tr.1:1-25).

The charged offenses (Assault with Intent to Commit Sexual Abuse) required proof that the assault or unwanted touching was committed "with the intent to commit sexual abuse". Iowa Code § 709.11 (2021). Sexual Abuse, in turn, consists of a "sex act" that is committed by force or against the will. Iowa Code § 709.1(1) (2021).

Thus, at minimum, there must be proof that at the time of the physical contact, Defendant had a specific intent to commit a sex act. See State v. Beets, 528 N.W.2d 521, 523 (Iowa 1995) (outlining elements of offense).

Under Counts 2 and 3 (those relating to Carol Cornelious, and Elizabeth "Lisa" Magner), the evidence was insufficient to establish that the contact (a brief touch to the buttocks) was done with the specific intent to commit any sex act.

In addressing a "contention that the State did not present sufficient evidence of [a defendant's] intent to commit sexual abuse", the "the court must look at all the evidence presented in the light most favorable to the State to determine if any rational trier of fact could have found defendant intended to force the [victim] to [engage in a sex act] beyond a reasonable doubt." State v. Radeke, 444 N.W.2d 476, 477 (Iowa 1989).

Iowa Code section 702.17 (2021) defines "sex act" to mean one of the following specifically enumerated types of "sexual contact" between persons:

> 1. Penetration of the penis into the vagina or anus.
> 2. Contact between the mouth and genitalia or by contact between the genitalia of one person and the genitalia or anus of another person.
> 3. Contact between the finger or hand of one person and the genitalia or anus of another person....
> 4. Ejaculation onto the person of another.
> 5. By use of artificial sexual organs or substitutes therefor in contact with the genitalia or anus.

Iowa Code § 702.17 (2021). It is the "intent at the time of the assault that is controlling". Radeke, 444 N.W.2d at 478. "The standard to be applied by [the fact-finder] to determine whether a defendant had the specific intent to commit sexual abuse" is as follows:

> The overt act must reach far enough towards the accomplishment, toward the desired result, to amount to the commencement of the consummation, not merely preparatory. It need not be the last proximate act to the consummation of the offense attempted to be perpetrated, but it must approach sufficiently near it to stand either as the first or some subsequent step in a direct movement towards the commission of the offense after the preparations are made.

Id. (quoting State v. Maynard, 379 N.W.2d 382, 383 (Iowa App.1985)).

A general "sex oriented purpose" to the assault is not the equivalent of a specific intent to commit a "sex act" – as the latter

requires a specific intention to engage in one of the *very specific forms of contact* outlined in the statutory definition of a sex act. See State v. Baldwin, 291 N.W.2d 337, 340 (Iowa 1980) (while jury could deduce that conduct of putting hand down front of child's shirt in attempt to fondle her breast was for a sex-oriented purpose, evidence was insufficient to establish specific intent to achieve the particular types of contact defined to be a "sex act"; "Rather the sex-oriented purpose might very well have been limited to the fondling of the little girl's breast.").

The Count 2-3 incidents involved brief contact with the buttocks of the victims. Contact with the buttocks is not itself defined as a sex act. As to these counts, there were no statements before, during, or after the contact which would evidence an intent to commit a sex act. The contact itself was very brief, and certainly was not of a nature which would inherently suggest an intention to consummate in a sex act. The contact was committed openly in the presence of other individuals. There was no effort by Hawkins to initiate any further contact or touching. See e.g., (D0140 8/31/23 Trial Tr.34:10-13, 39:22-40:7, 48:15-49:16, 52:5-25, 57:1-11 59:7-

24, 61:15-62:17, 63:7-13, 69:4-5, 69:6-70:20). Under the circumstances, there was insufficient evidence of any intention to engage in any of the very specific forms of contact outlined in the statutory definition of a sex act, for purposes of Counts 2-3. See Iowa Code § 702.17 (2021).

Where evidence is insufficient to support a conviction, appellate courts will remand for entry of an amended judgment of conviction on the next-lesser included offense that is supported by sufficient evidence. State v. Morris, 677 N.W.2d 787, 788-89 (Iowa 2004). The defendant must then be resentenced according to law. Id. Lesser-included offenses are to be considered in the context of a bench trial as well as a jury trial. State v. Peterson, 998 N.W.2d 876, 880-82 (Iowa Ct. App. 2023).

In the present case, the evidence was insufficient to establish the requisite specific intent to commit sexual abuse, leaving only the lesser-included offense of simple assault. The proper remedy is therefore to reverse Hawkins' Count 2-3 convictions, and remand for entry of an amended judgment of conviction of simple assault on

those counts. Defendant should then be resentenced according to law. State v. Morris, 677 N.W.2d 787, 789 (Iowa 2004).

D. Conclusion: Hawkins respectfully requests this court reverse his Count 2-3 convictions, and remand for entry of amended judgments of simple assault on those counts, followed by resentencing according to law.

II. The evidence was insufficient to establish that Hawkins was capable of forming specific intent at the time of the offense, as required for conviction under Counts 1-3.

A. Preservation of Error: When a defendant proceeds to trial, "a defendant need not file a motion for judgment of acquittal to challenge the sufficiency of the evidence on direct appeal." State v. Crawford, No. 19-1506, 972 N.W.2d 189, 198 (Iowa 2022). "[A] defendant who proceeds to trial and has been convicted of a crime has, in fact, preserved error with respect to any claim challenging the sufficiency of the evidence." Id.

B. Standard of Review: Challenges to the sufficiency of evidence to support the verdict rendered are reviewed for correction of errors at law. State v. Petithory, 702 N.W.2d 854, 856 (Iowa 2005).

C. Merits: The defense of diminished responsibility "is a common law doctrine that permits proof of a defendant's mental condition on the issue of the defendant's capacity to form specific intent" when specific intent is an element of the offense. State v. Jacobs, 607 N.W.2d 679, 684 (Iowa 2000). In other words, the diminished responsibility defense permits proof that the defendant did not have the capacity to form a specific intent. State v. Dye, No. 08–0887, 2009 WL 3337617, at *4 (Iowa Ct. App. Oct. 7, 2009).

"Unlike the insanity defense, the defendant does not bear the burden of proving the defense of diminished responsibility." Dye, No. 08–0887, 2009 WL 3337617 at *4 (citing State v. Stewart, 445 N.W.2d 418, 422 (Iowa Ct.App.1989)). "Instead, the [factfinder] considers evidence of diminished responsibility in deciding whether the State met its burden of proving specific intent." Id. That is, the burden "is on the State to prove defendant was able to and did form the specific intent required." State v. Harris, No. 09–0372, 2010 WL 1875688 at *1 (Iowa Ct. App. May 12, 2010) (quoting Stewart, 445 N.W.2d at 422). See also Iowa Criminal Jury Instruction 200.13 (June 2022).

The evidence at trial established that Hawkins was suffering from a psychotic disorder which left him unable to form the requisite specific intent at the time of the offense. The State failed to meet its burden of proving, beyond a reasonable doubt, that Hawkins was capable of forming specific intent at the time of the offense.

Both Dr. Keller and Dr. Thomas recognized that Hawkins was exhibiting psychotic symptoms during their interactions with him. (D0140 8/31/23 Trial Tr.99:1-18, 111:20-112:21, 120:4-8, 121:3-122:4). Hawkins repeatedly brought up the sun and heat, and related delusions, when specifically discussing the events of the day at the church with Dr. Thomas. (D0140 8/31/23 Trial Tr.122:5-20). Dr. Thomas opined that his delusions and disorganized thinking rendered him unable to form specific intent at the time of the offense. (D0140 8/31/23 Trial Tr.122:21-123:6). Dr. Thomas testified that Hawkins' behavior at the time of the offense was part of his disorganized behavior (just engaging in things for no real reason or purpose), and also a product of disorganized thinking (where he wasn't forming thoughts that were logical or linear, or

moving toward some meaningful or purposeful goal). (D0140 8/31/23 Trial Tr.123:7-124:9).

Defendant spoke with Dr. Thomas concerning his delusion regarding the sun, which discussion was triggered after Dr. Thomas inquired about medical visits and STD testing. (D0140 8/31/23 Trial Tr.121:16-122:20, 127:7-128:5, 142:24-143:23). In the period preceding the incident, Defendant was making frequent visits to both the hospital ER and a health clinic, about various nonspecific things (such as headaches or just not feeling well). (D0140 8/31/23 Trial Tr.127:7-18). On the very day prior to the incident, he was arrested and charged with criminal trespass for refusing to leave the emergency room. (D0140 8/31/23 Trial Tr.85:14-20, 193:25-194:2, 194:6-15). He was known by law enforcement to be a person suffering from mental health issues. (D0140 8/31/23 Trial Tr.86:21-88:4).

The day of the incident, he was observed behaving oddly on the walk to the church. He would suddenly stop walking for no apparent reason before just starting up again, and he seemed more out of it than typical. (D0140 8/31/23 Trial Tr.29:14-24, 36:23-

37:1, 37:15-38:21). The behavior of inappropriate touching was not typical for him, and Rofin testified it was not like him at all. This was to the point that Rofin wondered if Hawkins had smoked weed containing something it shouldn't contain, though there was no indication he had smoked that day. (D0140 8/31/23 Trial Tr.36:17-22, 37:2-10, 38:10-21, 41:7-22). Similarly, staff and volunteers at the Food at First program were familiar with Hawkins as a person who frequently attended their meals, but they'd never had any issues with him or known him to act out. (D0140 8/31/23 Trial Tr.58:11-20, 61:6-14, 68:11-14).

Hawkins' conduct with Bleeker took place in the common stairwell during a program attended by some 40-70 people. (D0140 8/31/23 Trial Tr.10:8-19, 11:2-5, 23:11-20, 31:3-9, 46:4-10, 53:13-20). He was 21-years-old at the time, and his conduct that day targeted three women in their sixties and late seventies (D0140 8/31/23 Trial Tr.7:6-7, 47:9-10, 48:18, 50:21-51:4, 54:25-55:1, 58:25-59:1, 60:19-23), though he had no history of sex-related crimes nor of crimes targeting older persons (D0140 8/31/23 Trial Tr.193:6-195:10). His conduct with Bleeker briefly continued even

after a third person arrived on the scene. (D0140 8/31/23 Trial Tr.16:14-19, 24:3-12). In the immediate aftermath of his conduct with Bleeker, he was effectively nonresponsive, not reacting or responding in any way to any of the things people were saying to or about him in the stairwell. (D0140 8/31/23 Trial Tr.39:11-21, 47:16-21, 48:12-23, 49:9-13, 49:22-50:4, 52:1-22, 67:14-68:17).

During the latter two incidents involving Carol Cornelious, and Elizabeth "Lisa" Magner, he touched their buttocks while clearly in the presence and direct observation of other people. (D0140 8/31/23 Trial Tr.34:5-34:25, 39:22-24, 48:12-49:16, 57:1-11, 70:3-9). He remained strangely silent when slapping Cornelious on the buttocks. (D0140 8/31/23 Trial Tr.47:22-25, 48:15-49:16, 49:22-50:4, 52:5-25). Magner and Yoder testified that when he touched Magner's buttocks, he had a scared look on his face. Magner testified she "kind of got the feeling, like, maybe he just couldn't help himself. You know, like he was out of control or something." He repeatedly uttered in a quiet voice "Help me. Help me", with a sad and scared look on his face. (D0140 8/31/23 Trial Tr.57:10-11, 59:22-24, 62:6-17, 62:22-24, 69:6-70:20).

Thereafter, he hid behind an open door, in the small space between the open door and the wall. (D0140 8/31/23 Trial Tr.71:14-73:1, 77:13-21, 81:9-11; D0113 8/31/23 Trial Exhibit 8 at 00:00-00:23). The responding officer noted such behavior may be expected in a child, but was very strange when exhibited by an adult. (D0140 8/31/23 Trial Tr.81:9-13, 86:3-10, 88:5-7, 89:19-90:2). When called out from behind the doorway, he appeared bewildered and out of it. (D0113 8/31/23 Trial Exhibit 8 at 00:16-00:25). When later directed to stand up and be handcuffed, Hawkins was initially nonresponsive again appearing not to hear or register the officer's direct statements to him. (D0113 8/31/23 Trial Exhibit 8 at 02:23-02:33).

While less clear cut, he expressed confusion as to why law enforcement was there, expressed to the officer that he didn't know what was going on, and denied the allegations explained to him by the officer. When arrested he repeatedly said "Why. Why. What did I do?" expressing further apparent confusion at being in any trouble. (D0140 8/31/23 Trial Tr.77:22-78:4, 78:18-79:1, 81:6-20, 84:19-25). Certainly it is true that denials of guilt are not

uncommon from a person accused of wrongdoing. But when put together with the other strange behavior of the day, his statements and denials would appear to be genuine confusion.

During the trial itself, Hawkins interjected multiple times – first attempting to explain his mental evaluation interview statements concerning the sun to the prosecutor while defense counsel was out of the room; second expressing confusion and anger at the court's statement of an applicable legal standard when making oral findings and conclusions at the close of trial, and when scheduling sentencing. (D0140 8/31/23 Trial Tr.153:7-21, 211:13-24, 214:24-215:19). Meanwhile, even the expert retained by the State (Dr. Jones-Thurman) noted there were no concern of malingering by Hawkins. (D0140 8/31/23 Trial Tr.169:6-17). While Dr. Jones-Thurman, opined that Hawkins merely suffered from antisocial personality disorder, such conclusion couldn't account for the fact that he would have months of normal and compliant behavior, separated by periods of time with odd and noncompliant behavior. (D0140 8/31/23 Trial Tr.165:17-166:7, 175:16-24, 176:17-177:11, 177:18-21, 180:14-23, 181:13-183:21).

This is far more consistent with how mental health issues (as distinct from personality issues) manifest, particularly in a younger person like Hawkins. (D0140 8/31/23 Trial Tr.102:8-19, 124:10-125:13, 182:7-17). Dr. Jones-Thurman also was unaware of, and failed to account for, the various odd behavior exhibited by Hawkins (outlined above) on the date of the incident itself. (D0140 8/31/23 Trial Tr.191:1-24). In addition, she failed to broach the very topic of Hawkins' delusions and disorganized thinking when evaluating him. (D0140 8/31/23 Trial Tr.171:13-18, 172:9-15, 184:19-187:5).

The overwhelming evidence demonstrates that Hawkins's mental health issues left him unable to form specific intent at the time of the offense. Because the State failed to prove that Hawkins was able to form the specific intent required, the Count 1-3 convictions must now be vacated and remanded for an entry of dismissal. Crawford, 972 N.W.2d at 199.

D. Conclusion: Hawkins respectfully requests this court reverse his Count 1-3 convictions, and remand for entry of dismissals thereon.

III. The district court erred in denying Hawkins's motion to suppress his statements on the basis of a Miranda violation.

A. Preservation of Error: Error was preserved by the district court's denial of Hawkins's motion seeking suppression of his statements to law enforcement on the basis of a Miranda violation. (D0032 8/1/22 Def. Motion to Suppress; D0133 8/25/22 Suppr.Tr.20:13-21:7). See also State v. Naujoks, 637 N.W.2d 101, 106 (Iowa 2001) ("An adverse ruling on a motion to suppress will preserve error" for appellate review).

B. Standard of Review: When reviewing an alleged constitutional violation, the appellate court will "review de novo the totality of the circumstances as shown by the entire record." Naujoks, 637 N.W.2d at 106. The court is not bound by the district court's findings. Id. The appellate court will consider both the evidence presented at the suppression hearing and the evidence introduced at trial. Id.

C. Merits: The district court erred in denying Hawkins's motion to suppress. Hawkins's statements resulted from an unwarned custodial interrogation.

Both the Fifth and Fourteenth Amendments to the United States Constitution and Article I Section 9 of the Iowa Constitution protect citizens from compelled self-incrimination. Miranda v. Arizona, 384 U.S. 436, 473 (1966); State v. Iowa Dist. Ct., 801 N.W.2d 513, 518 n. 2 (Iowa 2011). The prosecution may not use statements stemming from a custodial interrogation of the defendant unless it follows procedural safeguards to secure the privilege against self-incrimination. Miranda v. Arizona, 384 U.S. at 444. Specifically, suspects subjected to "custodial interrogation" must first be warned that they have "a right to remain silent, that any statement . . . may be used as evidence against [them], and that [they] have a right to the presence of an attorney, either retained or appointed." Id.; State v. Miranda, 672 N.W.2d 753, 758-59 (Iowa 2003). If law enforcement fails to provide this advisement, evidence obtained from the custodial interrogation is inadmissible. Miranda v. Arizona, 384 U.S. 436, 478-79 (1966); State v. Bogan, 774 N.W.2d 676, 682 (Iowa 2009).

In the present case, Hawkins was in custody and was subjected to interrogation without being Mirandized.

Custody:

Custody "occurs 'upon formal arrest or under any other circumstances where the suspect is deprived of his or her freedom of action in any significant way.'" State v. Schlitter, 881 N.W.2d 380, 395 (Iowa 2016) (quoting State v. Ortiz, 766 N.W.2d 244, 251 (Iowa 2009)). Formal arrest is not necessary. State v. Countryman, 572 N.W.2d 553, 557-58 (Iowa 1997) (custody satisfied by "formal arrest" or "'restraint on freedom of movement' of the degree associated with a formal arrest"). A determination of whether a person is in custody "depends on the objective circumstances of the interrogation, not on subjective views harbored either by the officer or the person being questioned." Id. at 557. The Iowa Supreme Court has developed a four-factor test as guidance for this determination: 1) the language used to summon the individual; 2) the purpose, place, and manner of interrogation; 3) the extent to which the defendant is confronted with evidence of her guilt; and 4) whether the defendant is free to leave the place of questioning. Id. at 558.

The instant case did not involve a voluntary interaction wherein the officer asked Hawkins if he would be willing to speak to

him. Rather, the uniformed officer arrived on scene, commanded Hawkins to "sit down", and began questioning him. (D0133 8/25/22 Suppr.Tr.8:2-7, 13:1-14:6); (D0047 08/25/22 Suppr.Exhibit 1 at 01:54-02:03). State v. Miranda, 672 N.W.2d 753, 759 (Iowa 2003) ("When the confrontation between the suspect and the criminal justice system is instigated at the direction of law enforcement authorities, rather than the suspect, custody is more likely to exist, for purposes of Miranda.") (quoting Miranda v. Arizona, 384 U.S. 436, 444 (1966)). Though not immediately handcuffed, the officer testified that Hawkins was not free to leave at any point. (D0133 8/25/22 Suppr.Tr.14:7-11). Nor did the officer tell Hawkins he was *not* under arrest or that he *was* free to leave. Miranda, 672 N.W.2d at 760. To the contrary, the officer acknowledged that if Hawkins had tried to leave, he would have told him he could not do so. (D0133 8/25/22 Suppr.Tr.15:15-17). The officer immediately called for backup, and a second uniformed officer arrived shortly. (D0047 08/25/22 Suppr.Exhibit 1 at 02:07-02:30). See also (D0133 8/25/22 Suppr.Tr.14:12-21). The officer confronted Hawkins with the allegations against him, namely that

he had touched women inappropriately, and that witnesses had seen him do so. The officer also challenged Hawkins's denials and suggested there may be surveillance video evidence. (D0133 8/25/22 Suppr.Tr.8:18-9:7, 10:5-18; D0047 08/25/22 Suppr.Exhibit 1 at 02:30-03:55). A reasonable person in the Defendant's position would have felt he was in custody, from the point in time that the uniformed officer directed him to "sit down". No Miranda warning was given at this point.

Thereafter, Officer Phanchantraurai directed Hawkins to stay there with the other officer, while Officer Phanchantraurai went downstairs. (D0133 8/25/22 Suppr.Tr.7:5-10,10:19-11:4; D0047 08/25/22 Suppr.Exhibit 1 03:51-03:57). When Officer Phanchantraurai returned upstairs, he handcuffed and formally arrested Hawkins. (D0133 8/25/22 Suppr.Tr.11:18-23; D0047 08/25/22 Suppr.Exhibit 1 at 11:51-12:32). It appears undisputed that Hawkins was in custody at that point in time. No Miranda warning was given then either.

Interrogation:

Interrogation "refers not only to express questioning, but also to any words or actions on the part of the police (other than those normally attendant to arrest and custody) that the police should know are reasonably likely to elicit an incriminating response from the suspect." State v. Peterson, 663 N.W.2d 417, 424 (Iowa 2003) (quoting Rhode Island v. Innis, 446 U.S. 291, 300–01 (1980)).

In the present case, officer Phanchantraurai acknowledged he engaged in express questioning of Hawkins from the outset of the interaction. Immediately after directing Hawkins to sit down, he began asking what happened, whether he touched females inappropriately, and whether he touched anyone's buttocks. Further he expressly directed Hawkins "your turn to talk", told him to give his side of the story, and said to be honest with him. (D0133 8/25/22 Suppr.Tr.8:2-9:7, 10:5-18; D0047 08/25/22 Suppr.Exhibit 1 at 01:54-03:55). Even when not explicitly worded as questions but instead as either directives or statements of evidence against Hawkins, the officers' various statements made in the absence of any Miranda warnings were clearly words or conduct

"that the police should know are reasonably likely to elicit an incriminating response from the suspect". They thus qualify as interrogation.

Thereafter, once Hawkins was handcuffed and formally arrested, there was further conduct or statements by the officers that qualify as interrogation. The officer handcuffed Hawkins, said he was under arrest, said there were four people who saw what happened and three people described what he did, and said Hawkins had touched people inappropriately. Hawkins continued denying having done anything. Hawkins said no one called the police, and Officer Geil said "How do you think we got here?", to which Hawkins said "they didn't", and continued denying having done anything through the interaction and walk to the police station. (D0047 08/25/22 Suppr.Exhibit 1 at 11:51-15:36). Again, the officers exhibited words and conduct in the absence of any Miranda warnings "that the police should know are reasonably likely to elicit an incriminating response from the suspect". They thus also qualify as interrogation.

Hawkins was subjected to custodial interrogation without the benefit of Miranda warnings. His statements must be suppressed owing to the Miranda violation. He must now be afforded a new trial, with suppression of the challenged evidence. Bogan, 774 N.W.2d at 682.

D. Conclusion: Hawkins respectfully requests that his convictions be reversed and his case remanded for a new trial at which his un-Mirandized statements are excluded.

IV. Resentencing is required because the district court failed to provide a statement of reasons for its decision to impose consecutive sentencing.

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). A defendant is not required to preserve error on a claim that the trial court failed to articulate adequate reasons for the sentence. State v. Boltz, 542 N.W.2d 9, 10 (Iowa Ct. App. 1995).

B. Standard of Review: Claims that the district court failed to state adequate reasons for the sentence are reviewed for an abuse of discretion. State v. Oliver, 588 N .W.2d 412, 414 (Iowa 1998).

C. Merits: At sentencing in the present case, the State requested imposition of consecutive two-year terms of incarceration on each of the three counts. (D0138 9/6/23 Sent.Tr.4:15-5:19). Hawkins requested the court impose consecutive 90-day terms of incarceration on each of the three counts. (D0138 9/6/23 Sent.Tr.6:21-9:1). Thereafter, the sentencing court stated as follows when imposing its sentence:

> THE COURT: Well, Mr. Hawkins, the purpose of sentencing you is to do two things: It's meant to rehabilitate you and protect our community from further offenses from you.
>
> Mr. Hawkins, I think one thing this sentence needs to do is to make you understand that you never, ever have the right to assault another person. And when you do, there are going to be serious consequences, both to yourself and to the victims of your offense.
>
> And I can say with some certainty, Mr. Hawkins, that your actions have probably changed the lives of your three victims forever. And they are always go [sic] to look at people, especially men, differently because of what you did to them. And you had no right to do that.

So the question becomes, Mr. Hawkins, is what kind of a sentence can I impose that will serve to rehabilitate you, that will put you in a position where you can gain some insight into what you did, where you can get some treatment, some counseling, so that if you're faced with a similar situation you don't make the same decision you did the night -- or the day you committed these offenses. And that sentence, at the same time, has to protect our community from you so that you don't do this very same thing.

Obviously, the Court has options here, from giving you credit for time served and releasing you to suspending those prison sentences and putting you on probation. Or the Court could send you to prison as recommended by the State.

Mr. Hawkins, at this point in your life I don't think that you can be in the community and be safe and that -- and have our community safe. Mr. Hawkins, on all three cases I am going to impose two-year prison terms. I think that's the most appropriate sentence. And those sentences will be ordered to be served consecutively for a total of six years.

Obviously, you're not going to spend anywhere close to six years in prison. By the time you get credit for the time you served here, credit and good time for the time you get in prison, your prison term is not going to be all that long.

But hopefully it will be long enough to convince you that you need to do something to change your behavior and you'll be willing to cooperate with treatment, with counseling, with eventually being on parole, and serving the special ten-year prison term.

And I hope that, as a community, we can get you the help that you need so that this doesn't happen again. But it should also impress upon you that if you do something like this, this is what happens. You go to prison. And that will give you some additional motivation to change

> your behavior. And it will protect our community from you while you're getting -- while you are getting the help and the treatment you need so that you don't do something like this again.

(D0138 9/6/23 Sent.Tr.11:4-13:9). The Court then formally pronounced judgment, and imposed consecutive two-year prison sentences on each count, for a total indeterminate term of incarceration not to exceed six years. (D0138 9/6/23 Sent.Tr. 13:9-14:5). No further statement of reasons was contained in the written judgment entry that followed. (D0122 9/6/23 Judgment; D0124 9/8/23 Order Nunc Pro Tunc).

It is well-established that, "[w]hen a sentence is not mandatory, the district court must exercise its discretion...." State v. Hill, 878 N.W.2d 269, 272 (Iowa 2016) (citations omitted). It must also give reasons explaining its exercise of sentencing discretion. Iowa Rule of Criminal Procedure 2.23 requires a sentencing court to "state on the record its reason for selecting the particular sentence" imposed. Iowa R. Crim. P. 2.23(2)(g) (Aug. 2023); State v. Luedtke, 279 N.W.2d 7, 8 (Iowa 1979).

A court's obligation to state reasons for a discretionary sentence, moreover, includes an obligation to "give reasons for its decision to impose consecutive sentences." State v. Jacobs, 607 N.W.2d 679, 690 (Iowa 2000). See also State v. Uthe, 542 N.W.2d 810, 816 (Iowa 1996); Oliver, 588 N.W.2d at 414; State v. Jason, 779 N.W.2d 66, 76-77 (Iowa Ct. App. 2009). "Sentencing courts should explicitly state the reasons for imposing a consecutive sentence…" Hill, 878 N.W.2d at 275. See also Iowa R. Crim. P. 2.23(2)(g) (Aug. 2023) ("The court shall state on the record the basis for the sentence imposed *and shall particularly state the reason for imposition of any consecutive sentence*.") (emphasis added).

The "purpose of the reason-for-the-sentence requirement is to give appellate courts the opportunity to review the discretionary nature of sentencing." State v. Alloway, 707 N.W.2d 582, 584 (Iowa 2006) (overruled on other grounds by State v. Johnson, 784 N.W.2d 192, 198 (Iowa 2010)). Thus, "[w]hen a court is given discretion in sentencing, a statement of the reasons for the sentence is necessary to allow appellate courts to determine if the discretion in imposing one form of sentence over another form was abused." Id. To satisfy

the requirement of an on-the-record statement of reasons, the sentencing court can "orally state the reasons for sentencing at a reported sentencing hearing" or "can place the reasons in the written sentencing order." Alloway, 707 N.W.2d at 585. Although the explanation need not be detailed, the court must provide at least a brief explanation that is adequate to allow appellate review of the district court's discretionary action. State v. Johnson, 445 N.W.2d 337, 343 (Iowa 1989).

In State v. Hill, the Iowa Supreme Court overruled its previous decisions in State v. Hennings, 791 N.W.2d 828 (Iowa 2010), and State v. Johnson, 445 N.W.2d 337 (Iowa 1989), insofar as those decisions allowed appellate courts to infer the district court's stated reasons for its sentence also applied to the district court's decision to run the sentences consecutively as part of an "overall sentencing plan." Hill, 878 N.W.2d at 274–75. Rather, the Supreme Court stated: "*Sentencing courts should explicitly state the reasons for imposing a consecutive sentence*, although in doing so the court may rely on the same reasons for imposing a sentence of incarceration." Id. at 275 (emphasis added). Similarly, Iowa Rule of Criminal

Procedure 2.23(2)(g) requires that "The court shall state on the record the basis for the sentence imposed *and shall particularly state the reason for imposition of any consecutive sentence*." Iowa R. Crim. P. 2.23(2)(g) (Aug. 2023) (emphasis added).

In the present case, the district court failed to explicitly or particularly give any reasons for its decision to impose consecutive sentences. No specific reasons for consecutive sentencing are articulated in either the sentencing transcript, nor in the written judgment entry that followed. Nor did the court state that in imposing consecutive sentences it was relying on the same reasons given for imposition of a sentence of incarceration.

The court's failure to state reasons for its decision to impose consecutive sentences constitutes reversible error. See Jacobs, 607 N.W.2d at 690 (finding reversible error committed where court "provided sufficient reasons to support its decision to impose a term of incarceration rather than a suspended sentence" but "did not provide reasons for its decision to impose consecutive sentences"); State v. Uthe, 542 N.W.2d 810, 816 (Iowa 1996) (reversing for resentencing when court gave sufficient reasons for imposed

incarceration, but "failed to give even a terse explanation of why it imposed consecutive, as opposed to concurrent, sentences for the three offenses"). The proper remedy is to vacate the portion of Hawkins' sentence that imposed consecutive sentencing and remand to the district court for a limited resentencing to determine whether the sentences on each count should be run consecutively or concurrently. See State v. Jason, 779 N.W.2d 66, 77 (Iowa Ct. App. 2009) (citing State v. Ayers, 590 N.W.2d 25, 33 (Iowa 1999)).

D. Conclusion: Hawkins respectfully requests the court vacate the portion of his sentence that requires consecutive sentencing, and remand to the district court for a limited resentencing to determine whether his sentences should run concurrently or consecutively with one-another.

CONCLUSION

For the reasons stated in Division I, Hawkins respectfully requests this court reverse his Count 2-3 convictions, and remand for entry of amended judgments of simple assault on those counts, followed by resentencing according to law.

For the reasons stated in Division II, Hawkins respectfully requests this court reverse his Count 1-3 convictions, and remand for entry of dismissals thereon.

For the reasons stated in Division III, Hawkins respectfully requests that his convictions be reversed and his case remanded for a new trial at which his un-Mirandized statements are excluded.

For the reasons discussed in Division IV, Hawkins respectfully requests the court vacate the portion of his sentence that requires consecutive sentencing, and remand to the district court for a limited resentencing to determine whether his sentences should run concurrently or consecutively with one-another.

NONORAL SUBMISSION

Counsel requests not to be heard in oral argument.

CERTIFICATE OF COMPLIANCE WITH TYPEFACE REQUIREMENTS AND TYPE-VOLUME LIMITATION FOR BRIEFS

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

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