

IN THE SUPREME COURT OF IOWA

STATE OF IOWA

Plaintiff-Appellee,

v.

FREDERICK L. HAWKINS III,

Defendant-Appellant

Story Court No. AGCR061580

Supreme Court 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 REPLY 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 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.

This issue is not addressed in the reply brief.

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.

This issue is not addressed in the reply brief.

NATURE OF THE CASE

COMES NOW the Defendant-Appellant, pursuant to Iowa R. App. P. 6.903(4) (2024), and hereby submits the following argument in reply to the State's brief filed on or about July 23, 2024. While the Defendant's brief adequately addresses the issue presented for review, a short reply is necessary to address certain contentions raised by the State.

ARGUMENT

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

The State argues that Hawkins' denial of any interaction with the women is substantive evidence of his guilt – namely proof of his consciousness of guilt. (State's Brief p.15). But the key question is guilt of what? The element challenged herein on appeal is the specific intent to commit sexual abuse. But even without the specific intent to commit sexual abuse, unwanted touching is still wrongful and itself a crime (assault). Thus even if viewed as evidence of his consciousness of guilt, Hawkins' denial does not provide substantive evidence of the problematic *intent* element

(specific intent to commit sexual abuse) as distinct from mere consciousness of guilt of having done a wrongful act (such as simple assault).

The State also argues that a specific intent to commit a sexual assault upon Carol Cornelious and Lisa Magner can be found when viewed in context with the earlier incident involving Millie Bleeker. (State's Brief p.14). But the latter two episodes involving Cornelious and Magner were meaningfully different from the first episode involving Bleeker. There were other people present for the second and third episodes involving Cornelious (D0140 8/31/23 Trial Tr.34:5-13, 39:22-24) and Magner (D0140 8/31/23 Trial Tr.57:1-10, 70:2-9), whereas the first episode took place in an empty stairwell when Hawkins was alone with Bleeker (D0140 8/31/23 Trial Tr.11:9-18, 31:10-22). During the first episode involving Bleeker, Hawkins actively progressed beyond mere touching of the buttocks – engaging in further contact (grabbing on to Bleeker and not letting go, humping her buttocks, attempting to put his hand inside her pants and underpants), and stopping only when

interrupted by the arrival of others. (D0140 8/31/23 Trial Tr.12:1-14, 14:15-16:22, 31:20-32:3, 33:9-15). In contrast, the mere touching of the buttocks in the Count 2-3 incidents is not enough to show that the conduct would have progressed along a similar path, particularly given others were present before and during the conduct, and Hawkins immediately stopped after the contact with the buttocks. (D0140 8/31/23 Trial Tr.34:10-22, 39:22-40:7, 47:22-49:16, 52:8-25, 69:4-5) (incident with Cornelious); (D0140 8/31/23 Trial Tr.57:1-7, 59:7-21, 61:15-23) (incident with Magnus).

As discussed in Hawkins' initial brief, a mere sex-oriented purpose differs from and falls far short of a specific intent to commit a sex act. See State v. Baldwin, 291 N.W.2d 337, 340 (Iowa 1980) (contact with "sex-oriented purpose" falls short of specific intent to commit a sex act). Even a finding that the defendant *wanted* to engage in a sex act (e.g., the State and district court's proposed inference that he was prevented from acting on his purported desire to force a sex act by the presence of the

bystanders) is not enough to establish that he *specifically intended to carry out the act*. A *subjective desire* to engage in certain conduct is not enough – what is required is proof that the defendant planned or *intended to actually carry out* that conduct (namely one of the very specific forms of contact outlined in the statutory definition of a sex act) at the time of the assaultive contact with Cornelious and Magner. Such proof is lacking here.

The proper remedy is to reverse Hawkins' Count 2-3 convictions and remand for entry of an amended judgment of conviction of simple assault on those counts, followed by resentencing according to law. See State v. Morris, 677 N.W.2d 787, 789 (Iowa 2004).

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

The challenged error was not harmless. During trial, the prosecutor argued that Hawkins's statements and denials to Officer Phanchantraurai were evidence of his guilt – both proof of Hawkins' consciousness of guilt, and proof that Hawkins had the capacity to form specific intent. (Trial 93:16-94:3, 202:21-203:8). Similar

implications were made during the State's redirect examination of the officer. (Trial.Tr.88:8-23). The specific intent element in particular (whether Hawkins exhibited it, and whether he had the capacity to exhibit it) was the central disputed issue at trial. Under these circumstances, the erroneous admission of Hawkins's statements to law enforcement over his motion to suppress those statements, cannot be deemed harmless.

CONCLUSION

Under 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.

Under Division II, Hawkins respectfully requests this court reverse his Count 1-3 convictions, and remand for entry of dismissals thereon.

Under 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.

Under 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.

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:

[X] this brief has been prepared in a proportionally spaced typeface Bookman Old Style, font 14 point and contains 872 words, excluding the parts of the brief exempted by Iowa R. App. P. 6.903(1)(i)(1).

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