IN THE SUPREME COURT OF IOWA
Supreme Court No. 23–1468
Story County No. AGCR061580

STATE OF IOWA,
Plaintiff–Appellee,

vs.

FREDERICK LEE HAWKINS, III,
Defendant–Appellant.

APPEAL FROM THE IOWA DISTRICT COURT
FOR STORY COUNTY
THE HONORABLE STEVEN P. VAN MAREL, JUDGE

BRIEF FOR APPELLEE

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II. **Because the defendant did not experience custodial interrogation, the district court properly refused to suppress any statement he made to officers.**

III. **The district court failed to adequately explain its decision to run the defendant's sentences consecutively.**

ROUTING STATEMENT

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

NATURE OF THE CASE

At a bench trial, the district court convicted the defendant, Frederick Lee Hawkins, III, of three counts of assault with intent to commit sexual abuse. It imposed a prison sentence on each count and ran the three sentences consecutively. The defendant appealed.

STATEMENT OF THE FACTS

The defendant went to Food at First to eat a free meal in a church's basement. D0140, Tr. Trial (8/31/2023) at 27:9–28:23. Millie Bleeker picked up food from the church to take away. *Id.* at 22:13–24. Bleeker offered to let the defendant go up the stairs first when the two approached the stairs about the same time to leave. *Id.* at 11:2–14. He declined. *Id.*

As Bleeker walked up the stairs, the defendant said she had chocolate on her pants and "started brushing [her] rear end." *Id.* at 11:19–12:14. Then he grabbed her from behind, slid his hand in her underpants to her pubic hair, and began humping her. *Id.* at 11:19–12:14, 15:1–23. She could feel that "he had a hard on." *Id.* at 15:24–16:9.

Bleeker screamed. *Id.* at 16:10–13. A young person came out and saw the defendant "thrusting against [Bleeker]." *Id.* at 16:14–22, 31:23–25.

After that, Carol Cornelious—a volunteer—escorted Bleeker to her car. *Id.* at 44:18–25, 47:1–25. As Cornelious walked past the defendant, "he slapped [Cornelious] on [her] butt." *Id.* at 34:10–17, 48:15–18.

Meanwhile, Elizabeth Magner had been taking out the trash. *Id.* at 56:20–24. She returned with the trash can and got on the elevator. *Id.* at 56:25–57:7. So did the defendant. *Id.* Program director Patricia Yoder was determined not to let the defendant be alone with Magner, so she boarded the elevator. *Id.* at 69:6–23. Inside, Yoder saw the defendant run his hand "from the bottom of [Magner's] bottom to the top" while "touching his pants" in the "crotch." *Id.* at 70:2–16. Magner confirmed that the defendant touched her buttocks. *Id.* at 57:1–7. He said, "[h]elp me." *Id.* at 57:8–11.

Yoder called police. *Id.* at 70:23–71:8. A volunteer led an officer upstairs, where the volunteer found the defendant hiding behind a door in the hallway at the top of the stairs. D0113, Ex.8 (Officer body camera, 8/31/2023) at 00:00–00:18. The officer said to "sit down, sir." *Id.* at 00:22. The defendant sat on a bench. *Id.* at 00:23. The officer told the defendant that some women reported inappropriate touching. *Id.* at 00:57–01:02. The officer asked if the defendant touched anyone inappropriately; the defendant denied it. *Id.* at 01:03–02:18.

After the officer talked to Yoder, Magner, and Cornelious, the officer arrested the defendant. D0047, Ex.1 (Suppression Officer Body Camera, 8/25/2022) at 03:54–12:07.[1] The defendant asked why he was being arrested. D0113 at 02:35–03:00. He also denied wrongdoing. *Id.*

The State charged the defendant with three counts of assault with intent to commit sexual abuse. D0014, Trial Info. (5/19/2022). Before trial, the defendant moved to suppress his statements to the officer arguing a *Miranda*[2] violation. D0032, Mot. Suppress (8/1/2022). The district court denied the motion. D0042. Order Denying Mot. Suppress (8/25/2022).

The defendant elected a bench trial. D0140 at 5:23–6:1. At trial, he presented evidence that he suffered disorganized thinking caused by psychosis. *E.g. id.* at 99:4–18, 120:4–122:4. Both sides offered expert testimony on whether the defendant could form specific intent when he touched the three women. *Id.* at 122:21–124:9, 175:16–177:10. The defendant did not deny touching them. *Id.* at 206:3–210:12.

The district court convicted the defendant as charged. *Id.* at 212:18–214:23. It sentenced him to prison and ran the sentences consecutively.

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[1] This video is found on Exhibit 1, in the folder named: DilokPhanchantraurai 202205131853….

[2] *Miranda v. Arizona*, 384 U.S. 436 (1966).

D0122, J. & Sentence (9/6/2023). The defendant timely appealed. D0125, Notice Appeal (9/8/2023).

ARGUMENT

I. The State offered sufficient evidence to convict the defendant of three counts of assault with intent to commit sexual abuse.

Preservation of Error

The defendant preserved error by proceeding to trial. *State v. Crawford*, 972 N.W.2d 189, 198 (Iowa 2022).

Standard of Review

This Court "review[s] the sufficiency of the evidence for correction of errors at law." *State v. Kelso-Christy*, 911 N.W.2d 663, 666 (Iowa 2018). It considers all evidence and views it in the light most favorable to the State, "including legitimate inferences and presumptions that may fairly and reasonably be deduced from the record evidence." *State v. Tipton*, 897 N.W.2d 653, 692 (Iowa 2017).

Merits

The defendant challenges the sufficiency of the evidence of specific intent in two ways. He says that the State failed to prove: (1) that he had the "intent to commit sexual abuse … under Counts 2–3," or (2) "that [he] was capable of forming specific intent" on all counts. Def. Br. at 36, 42

(bold removed). The State offered sufficient evidence of specific intent to commit sexual abuse on all counts. It takes his arguments in reverse order.

A. The State offered sufficient evidence that the defendant could form the specific intent to commit sexual abuse: he did not have diminished responsibility.

The defendant argues that the State failed to prove specific intent on any count because the "overwhelming evidence demonstrates that [his] mental health issues left him unable to form specific intent at the time of the offense[s]." Def. Br. at 50. In other words, he says that the State did not prove specific intent over his diminished responsibility claim. *Id.* at 42–43.

His argument fails because the State offered expert testimony that the defendant could form specific intent and the district court credited that testimony, a finding that Iowa appellate courts readily defer to. At trial, the diminished responsibility issue became a battle of experts. D0140 at 122:21–124:9, 175:16–177:11. The district court credited the State's expert when it rejected the diminished responsibility claim and convicted the defendant as charged. *Id.* at 212:18–214:23. When, as here, "a case evolves into a battle of experts" Iowa's appellate courts "readily defer to the district court's judgment as it is in a better position to weigh the credibility of the witnesses." *State v. Jacobs*, 607 N.W.2d 679, 685 (Iowa 2000). Such "conflicting psychiatric testimony … is clearly for the fact finder to decide."

Id.; *see also State v. Stowe*, No. 21–0080, 2022 WL 2826025, at *3 (Iowa Ct. App. July 20, 2022); *State v. Langel*, No. 99–1930, 2001 WL 355821, at *3 (Iowa Ct. App. Apr. 11, 2001). This Court should defer to that finding.

Moreover, in addition to its expert testimony, the State offered strong evidence that the defendant could form the specific intent to commit sexual abuse when he committed the three assaults. The defendant refused to go up the steps before Bleeker so that he was positioned to grab her from behind. D0140 at 11:2–12:14. He used a ruse as cover for touching her buttocks. *Id.* at 11:19–12:14. He shoved his hand down her pants to her pubic hair and humped her; she could feel his "hard on." *Id.* at 11:19–12:14, 15:1–16:4. After that, he grabbed or slapped Cornelious's buttocks. *Id.* at 34:10–17, 48:15–18. And he rubbed Magner's buttocks while grabbing his crotch. *Id.* at 70:2–18.

That conduct showed that the defendant assaulted the women specifically intending to commit a sex act on each. He touched the women sexually while he had an erection. 11:19–12:14, 15:1–16:4; *see id.* at 34:10–17, 48:15–18, 70:2–18. He used a ruse to touch Bleeker's buttocks. *Id.* at 11:19–12:14. He rubbed Magner's buttocks while touching his groin. *Id.* at 70:2–18. After committing his criminal acts, the defendant hid, showing that he knew what he had done. D0113 at 00:00–00:18. He answered

police appropriately. *See generally id.* The evidence showed that he could, and did, form specific intent. It supported the State expert's conclusion that he did not suffer from delusions or disorganized thinking that prevented him from understanding his conduct. D0140 at 175:16–177:10.

The district court resolved this battle of the experts against the defendant. Given the evidence, that is not surprising. This Court should credit that finding and affirm.

B. The State offered sufficient evidence that the defendant had the specific intent to commit sexual abuse against Cornelious and Magner.

To convict the defendant of assault with intent to commit sexual abuse, the State had to prove that he committed assault and "that assault was done with the [specific] intent to commit sex abuse." D0140 at 211:25–212:17. Sex abuse is a sex act performed with another person "by force or against the[ir] will." *Id.*; Iowa Code § 709.1(1). Sex acts include penetration by "the penis into the vagina or anus," contact between one person's genitalia and another person's genitalia or anus, touching another's genitalia or anus with the hand, and ejaculating on another. Iowa Code § 702.17.

The defendant argues that the State failed to prove that he had the intent to commit a sex act, as required for sexual abuse, when he assaulted

Cornelious or Magner. Def. Br. at 37–42. He describes the assaults as "brief contact with the buttocks of the victims," which he says does not show an intent to "to engage in any of the very specific forms of contact outlined in the statutory definition of a sex act." *Id.* at 40, 41.

The defendant's characterization focuses on his contact with the victims while ignoring the context of his actions. Just before grabbing Cornelious's buttocks, the defendant had used a ruse to touch Bleeker's buttocks, shoved his had in her pants, and humped her with a "hard on." D0140 at 11:19–12:14, 15:1–16:9. Soon after grabbing Cornelious's buttocks, he boarded an elevator after Magner, then rubbed her buttocks while grabbing his groin. *Id.* at 70:2–18.

The full context of the defendant's assaults allowed the district court to find that he had the specific intent to commit a sex act when he assaulted Cornelious and Magner. The district court could infer that the defendant had an erection as he groped both women's buttocks because he had an erection moments before. He fondled himself as he touched Magner's buttocks. The district court could infer that only the presence of bystanders prevented the defendant from forcing sex acts on Cornelious and Magner. Indeed, the defendant's erection and touching himself showed that he

wanted to satisfy himself sexually and intended to do so by committing a sex act on his victims.

The defendant's post-assault conduct further showed his guilt. He denied inappropriate contact, or even interacting with, any women. D0113 at 01:03–02:18. That lie was substantive evidence of his guilt. *State v. Ernst*, 954 N.W.2d 50, 56 (Iowa 2021) ("A false story told by a defendant to explain or deny a material fact against him is by itself an indication of guilt and … is relevant to show that the defendant fabricated evidence to aid his defense."). He also hid behind a door, allowing the district court to infer he was trying—albeit poorly—to avoid detection, further showing his guilty conscience.

Considering all the defendant's actions, the State offered sufficient evidence that he had the specific intent to sexually abuse Cornelious and Magner. This Court should affirm his convictions.

II. Because the defendant did not experience custodial interrogation, the district court properly refused to suppress any statement he made to officers.

Preservation of Error

The defendant preserved error by moving to suppress his statements to police. D0032; *State v. Lovig*, 675 N.W.2d 557, 562 (Iowa 2004).

Standard of Review

Review is de novo. *State v. Park*, 985 N.W.2d 154, 168 (Iowa 2023).

Merits

The defendant denied wrongdoing to officers without receiving a *Miranda* warning. "Law enforcement officers are required to give *Miranda* warnings to individuals who are both in custody and subject to interrogation." *Id.* The defendant argues that "[t]he district court erred in denying [his] motion to suppress his statements" because they "resulted from an unwarned custodial interrogation." Def. Br. at 51 (bold removed). His claim fails for three reasons: (1) when the defendant responded to police questions, he was not in custody; (2) when the defendant was in custody, police did not interrogate him; and (3) even if his statements should have been suppressed, error was harmless.

A. The defendant was not in custody when police asked him if he inappropriately touched women because his freedom of movement had not been restrained to a degree associated with formal arrest.

Under *Miranda*, custody means "formal arrest or restraint on freedom of movement of the degree associate with a formal arrest." *Park*, 985 N.W.2d at 168. Some seizures, like traffic stops and *Terry*[3] encounters, are per se noncustodial for *Miranda*. *State v. Scott*, 518 N.W.2d 347, 350 (Iowa 1994) (traffic stops); *Maryland v. Shatzer*, 559 U.S. 98, 113 (2010)

[3] *Terry v. Ohio*, 392 U.S. 1 (1968).

(both); *State v. Decanini-Hernandez*, No. 19–2120, 2021 WL 610103, at *6 (Iowa Ct. App. Feb. 17, 2021).

Here, the district court correctly found no custody because the defendant's detention did not rise to the "degree associate[d] with a formal arrest." *Park*, 985 N.W.2d at 168. As the district court put it:

> The only question is whether or not this was custodial interrogation performed without the benefit of *Miranda*. And I find while the Defendant was detained, I don't think this rises to the level of custodial interrogation. I don't think the Defendant was taken into custody. I think this is more akin to an OWI case where a driver is stopped, they're obviously not free to leave, they're questioned about their use of alcohol, and confronted with the smell of alcohol on their breath, and that's essentially what we have here. It was brief, the Defendant was not handcuffed, it didn't take place at the police station, and the officer was still in the early phases of the investigation….

D0133, Tr. Suppression Hr'g (8/25/2022) at 20:17–21:7.

The facts supported the district court's analysis. The officer had reasonable suspicion that the defendant had just committed a crime from the reports that he inappropriately touched women. D0047 at 01:10–28. The officer briefly detained the defendant and asked him what happened. *Id.* at 01:52–03:54. That is a *Terry* stop where questioning is allowed without *Miranda* warnings. *Terry*, 392 U.S. at 30; *Scott*, 518 N.W.2d at 350. The district court correctly found no custody.

The defendant does not claim that the district court erred by finding this seizure a traffic stop analogue or noncustodial *Terry* stop. His failure to address the district court's reasoning means he did not show error, defeating his claim. Def. Br. at 53–55; D0133 at 20:17–21:7; *see* Iowa R. App. P. 6.903(2)(8)(3). Instead, he points to a four-factored test used to determine custody in non-traffic, non-*Terry* interactions. Def. Br. at 53–55. Those factors are: "(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." *Park*, 985 N.W.2d at 168 (quoting *State v. Countryman*, 572 N.W.2d 553, 558 (Iowa 1997)). Even using that factored test, the defendant was not in custody.

One. Police did not summon the defendant; instead, a volunteer found him hiding behind a door near where the defendant committed the assaults. D0113 at 00:00–00:18; *see State v. Chambers*, No. 20–1511, 2021 WL 3893906, at *4 (Iowa Ct. App. Sept. 1, 2021) (noting that factor one supported finding no custody when police found the defendant "at the scene" and "[n]o one summoned" the defendant); *Decanini-Hernandez*, 2021 WL 610103, at *7. That volunteer asked the defendant to come out. D0113 at 00:15–18. Factor one supports finding no custody.

Two. The questioning occurred in public. *Id.*; *State v. Mullen*, No. 23–0148, 2024 WL 3292434, at *5 (Iowa Ct. App. July 3, 2024) (encounters in public reduce likelihood of finding custody). It was brief. *Compare* D0113, *with Mullen*, 2024 WL 3292434, at *6 (stating that 22-minute stop by police was not custodial). The officer was polite to the defendant, informing him of the complaint—inappropriate touching—and asking the defendant for an explanation. D0113 at 00:57–02:19; *Chambers*, 2021 WL 3893906, at *4; *Decanini-Hernandez*, 2021 WL 610103, at *7. When the defendant denied such touching, the officer accepted his answer without pressing him and continued the investigation. D0047 at 02:02–12:07. Factor two supports finding no custody.

Three. The defendant was not confronted with evidence of his guilt. Rather, the officer told the defendant about complaints that the defendant inappropriately touched women. D0113 at 00:57–02:19. The defendant denied it. *Id.* The officer then said he would talk to the women, thought there was a camera, and offered the defendant another chance to say what happened. *Id.* at 01:13–01:25, 02:00–05. The officer did not confront the defendant with anything but the allegation. Factor three supports finding no custody.

Four. The defendant was not free to leave but was otherwise not physically restrained before arrest. While the defendant was not free to leave, that alone does not make custody. *Scott*, 518 N.W.2d at 350 (holding that an officer asking defendant questions during a *Terry* stop did not render it custodial because "the right to interrogate during a 'stop' is the essence of *Terry* and its progeny" (quoting *United States v. Oates*, 560 F.2d 45, 63 (2d Cir. 1977))); *Decanini-Hernandez*, 2021 WL 610103, at *8 (quoting *Shatzer*, 559 U.S. at 112). If it did, every *Terry* or traffic stop would be custodial. While the defendant could not leave, no other physical restraint was placed on him before arrest. D0113 at 00:00–02:23. Officers stood away from him. *Id.* Factor four is neutral.

The district court properly refused to suppress the defendant's pre-arrest statements because there was no custody. Those statements were made during a non-custodial *Terry* encounter. The four-factor test also supported finding no custody. Such statements were not suppressible.

B. Police did not interrogate the defendant after arresting him.

Once police arrested the defendant, he was in custody. *State v. Schlitter*, 881 N.W.2d 380, 395 (Iowa 2016) *abrogated on other grounds by Crawford*, 972 N.W.2d 189. Thus, any post-arrest statements made in response to interrogation should have been suppressed. *Id.* Interrogation is

"express questioning and words and actions beyond those normally part of arrest and custody that the police should know are reasonably likely to elicit an incriminating response from the suspect." *Id.*

After police arrested the defendant, they did not interrogate him. One officer told the defendant he was under arrest. D0113 at 02:33. The defendant repeatedly asked why, objected to the arrest, and proclaimed his innocence. *Id.* at 02:35–03:00. Telling a defendant that he is under arrest is part of the arrest process, it is not an action police should know would elicit any incriminating statement. *See Schlitter*, 881 N.W.2d at 395. Police did ask the defendant two questions after arresting him: "how do you think we got here" and "do you have anything illegal." D0113 at 04:05–10, 04:20. But the first was a rhetorical question responding to the defendant saying no one called the police. *Id.* at 04:05–10. The second was part of the arrest process to ensure that the defendant did not try to bring illegal contraband in the jail. *Id.* at 4:20.

Because there was no post-arrest interrogation, the district court rightly refused to suppress anything that the defendant said after his arrest. This Court should affirm the denial of the motion to suppress.

C. Any error was harmless because the district court did not rely on the defendant's statements in convicting him.

The defendant does not say which of his statements he thinks that the district court should have suppressed. Def. Br. at 51–58. But even if the district court should have suppressed everything he said to police, its failure to do so was harmless beyond a reasonable doubt. *State v. Gibbs*, 941 N.W.2d 888, 900 (Iowa 2020). The question is whether "the guilty verdict actually rendered … was surely unattributable to the error." *State v. Peterson*, 663 N.W.2d 417, 431 (Iowa 2003).

Here, the guilty verdict was surely unattributable to the defendant's statements. In rendering its guilty verdicts, the district court did not cite the defendant's statements as evidence of guilt supporting the verdict. D0140 at 211:25–214:23. That makes sense: the defendant's statements to police were mostly denials. *See generally* D0113. The verdicts are not attributable to the defendant's statements; any error was harmless.

III. The district court failed to adequately explain its decision to run the defendant's sentences consecutively.

Preservation of Error

A defendant may challenge sentencing errors for the first time on appeal. *See State v. Shearon*, 660 N.W.2d 52, 57 (Iowa 2003).

Standard of Review

This Court reviews sentencing decisions for correction of errors at law. *State v. Letscher*, 888 N.W.2d 880, 883 (Iowa 2016). It "will not reverse the decision of the district court absent an abuse of discretion or some defect in the sentencing procedure." *Id.*

Merits

The defendant argues that "[r]esentencing is required because the district court failed to provide a statement of reasons for its decision to impose consecutive sentencing." Def. Br. at 58 (bold removed). The State agrees that the district court offered a single explanation for its decision to impose prison sentences and run them consecutively, which requires resentencing. Def. Br. at 58–65; *State v. Hill*, 878 N.W.2d 269, 273–74 (Iowa 2016); D0138, Tr. Sentencing Hr'g (9/6/2022) at 11:4–13:19. The State further agrees that resentencing should be limited to the question of consecutive or concurrent sentences because the district court adequately explained its decision impose a prison sentence. Def. Br. at 65 (citing *State v. Jason*, 779 N.W.2d 66, 77 (Iowa Ct. App. 2009)).

CONCLUSION

For the foregoing reasons, the State requests that this Court affirm the defendant's convictions and remand for resentencing on whether his prison sentences should be consecutive or concurrent.

REQUEST FOR NONORAL SUBMISSION

This case is appropriate for nonoral submission.

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)(g) and 6.903(1)(i)(1) or (2) because:

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Dated: July 23, 2024

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