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)

APPLICANT'S APPLICATION FOR FURTHER REVIEW OF THE DECISION OF THE IOWA COURT OF APPEALS FILED DECEMBER 4, 2024

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QUESTIONS PRESENTED FOR REVIEW[1]

I. As to Counts 2-3, the evidence was insufficient to establish Hawkins held a specific intention to engage in one of the very specific forms of contact outlined in the statutory definition of "sex act."

II. Under Counts 1-3, the evidence was insufficient to establish that Hawkins was capable of forming specific intent at the time of the offense.

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

[1] Hawkins does not seek further review on the Court of Appeals's grant of resentencing on the consecutive sentencing issue.

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STATEMENT IN SUPPORT OF FURTHER REVIEW

1. The defendant's act of briefly touching the (Count 2-3) victims on the buttocks failed to establish any specific intent to commit a sex act upon those individuals. Those touchings amounted to simple assaults, but not assaults with the intent to commit sexual abuse. The Court of Appeals erred in concluding otherwise.

The Court of Appeals's decision erroneously focuses on whether there was evidence of an intention to engage in "sexual activity", as distinct from the specific intent to engage in contact amounting to a statutorily defined "sex act". See e.g. (Court of Appeals Opinion p.12, p.14). That is, conduct or contact with a sex-oriented purpose (as may be evidenced by proof of arousal or an erection) is not enough – what is required is proof of a specific intention to actually engage in one of the particular forms of contact defined as a "sex act", namely: (1) contact of (a) one person's genitalia, mouth, finger, hand, or artificial or substitute sexual organ, with (b) the other person's genitalia or anus; or (2) ejaculation onto the other person. Iowa Code § 702.17 (2021). In

wrongly focusing on the general intention to engage in "sexual activity", the Court of Appeals's decision is in direct conflict with 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" which does not satisfy the contact required for a sex act).

The brief touching of the buttocks under Counts 2-3, in circumstances wholly different than those involved in Count 1, evidences no specific *intention to progress to the actual commission of a sex act* at the time of those Count 2-3 touchings. Unlike the touching of the bottom involved in Count 1, at the time of the touching of the bottom in Counts 2-3 there was no proof of any present intention to progress beyond the brief touching of the bottom itself. What is missing at the time of the Count 2-3 touchings is proof of any present intention to progress beyond what

actually occurred – the brief touching of the buttocks. In Counts 2-3, Defendant did not try to grab ahold of the victim to keep her in his vicinity or under his control. He did not hump the victim, nor initiate any further physical contact. Rather, he extended his hand to touch her buttocks and then retracted it to end the contact. He did not try for any further contact – rather the contact ended of Hawkins's own accord. It was not that the victim broke away from his grasp, or that someone new arrived on the scene – no external factor intervened to break the contact. Rather the defendant ended it of his own volition, with no intervention or change in any external factor, preventing any possible inference that he specifically intended to progress to the actual commission a sex act. This is quite different from the contact with the buttocks involved in the first incident – when Defendant did grasp and keep ahold of the victim to keep her within his physical control, where he did progress to humping or attempts to further touch the victim, and where the continuation of physical contact stopped only due to the intervention of an external factor (the arrival of someone else on the scene). Unlike Count 1, the evidence was insufficient to establish

that Hawkins specifically intended to progress to the actual commission of a sex act at the time of the Count 2-3 touchings.

2. The Court of Appeals also erred in rejecting Hawkins's claims of diminished capacity and a Miranda violation.

WHEREFORE, Defendant-Appellant Frederick Hawkins III respectfully requests that this court grant further review, reverse the Court of Appeals's decision in part, and order dismissal of the Count 1-3 convictions pursuant to his diminished capacity claim; remand for entry of amended judgments of simple assault on Counts 2-3 pursuant to his challenge to the intent to commit sexual abuse element; and/or alternatively grant a new trial on Counts 1-3 pursuant to his Miranda challenge.

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 further review, 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; and (3) the district court erred in denying his motion to suppress on the basis of a Miranda violation.

ARGUMENT

I. As to Counts 2-3, the evidence was insufficient to establish Hawkins held a specific intention to engage in one of the very specific forms of contact outlined in the statutory definition of "sex act."

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 charged offenses (Assault with Intent to Commit Sexual Abuse) all 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, Hawkins 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 intention 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 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 therefore 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 force 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 forced 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).

Nor can the specific intent to commit a sex act upon Carol Cornelious and Lisa Magner be found when viewed in context with the earlier incident involving Millie Bleeker. 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 already discussed, 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.

In contrast with Count 1, what is missing at the time of the Count 2-3 touchings is proof of any present intention to progress beyond what actually occurred – the brief touching of the buttocks. During Counts 2-3, Hawkins did not try to grab ahold of the victim to keep her in his vicinity. He did not hump the victim, nor initiate any further physical contact. Rather, he extended his hand to touch the buttocks and then retracted it to end the contact. He did not try for any further contact – rather the contact ended of Hawkins's own accord. It was not that the victim broke away from his grasp. It was not that someone else arrived on the scene. No

external factor intervened to break the contact or prevent further contact – rather the defendant ended it of his own volition, with no change in any external factor. This is quite different from the contact with the buttocks involved in the first incident, when Hawkins did grasp and keep ahold of the victim, where he did progress to humping or further attempted touching of the victim, and where the continuation of actual or attempted physical contact stopped only due to the intervention of an external factor (the arrival of someone else on the scene). Under the circumstances, the evidence was insufficient to establish any specific intent to actually commit a sex act at the time of the Count 2-3 touchings/assaults.

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's Count 2-3 convictions, and remand for entry of an amended judgment of conviction of simple assault on those counts. Hawkins should then be resentenced according to law. State v. Morris, 677 N.W.2d 787, 789 (Iowa 2004).

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.

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 Hawkins's 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's 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).

Hawkins 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, Hawkins 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 unlike him. 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's 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 in the small space between an 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's 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.

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

The district court erred in denying Hawkins's motion to suppress. Hawkins's statements resulted from an unwarned custodial interrogation, in violation of both the Fifth and Fourteenth Amendments to the United States Constitution and Article I Section 9 of the Iowa Constitution. See Miranda v. Arizona, 384 U.S. 436, 473 (1966); State v. Iowa Dist. Ct., 801 N.W.2d 513, 518 n. 2 (Iowa 2011); State v. Bogan, 774 N.W.2d 676, 682 (Iowa 2009).

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 Hawkins'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.

Not Harmless:

Hawkins was subjected to custodial interrogation without the benefit of Miranda warnings, requiring suppression of his statements to police. The challenged error, moreover, 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's 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. The error thus cannot be deemed harmless, and Hawkins must now be afforded a new trial with suppression of the challenged evidence. Bogan, 774 N.W.2d at 682.

CONCLUSION

For the reasons stated in Division I (challenging the specific intent to commit a sex act), 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 (the diminished capacity challenge), 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 (the Miranda challenge),

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

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

This application complies with the typeface and type-volume requirements of Iowa Rs. App. P. 6.1103(5) because:

> [X] this application has been prepared in a proportionally spaced typeface Bookman Old Style, font 14 point and contains 4,924 words, excluding the parts of the application exempted by Iowa R. App. P. 6.1103(5)(a).

/s/ Vidhya K. Reddy Dated: *12/23/24*

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