IN THE SUPREME COURT OF IOWA

SUPREME COURT NO. 24-0769
Polk County No. FECR371596

STATE OF IOWA,
Appellee/Cross-Appellant,

v.

LYNN MELVIN LINDAMAN,
Appellant/Cross-Appellee.

APPEAL FROM
THE DISTRICT COURT OF POLK COUNTY
THE HONORABLE
DISTRICT COURT JUDGE DAVID NELMARK
AND CROSS-APPEAL FROM
THE HONORABLE
DISTRICT COURT JUDGE CHARLES C. SINNARD

BRIEF FOR CROSS-APPELLE AND REPLY

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CERTIFICATE OF SERVICE

On the 3rd day of March, 2025, the undersigned certifies that a true copy of the foregoing instrument was served upon Appellant/Cross-Appellee, Lynn Melvin Lindaman, by placing one copy thereof in the U.S. Mail, proper postage attached, addressed to said Appellant/Cross-Appellee at:

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"During the investigation leading up to the charges, Special Agent Myers and Detective Anderson, along with other law enforcement, obtained search warrants for Lindaman and some of this property. As part of executing the warrants on June 28, 2023, Myers and Anderson wanted to speak with Lindaman about the allegations. Lindaman was approached while he was at Midas, having his vehicle serviced. Lindaman's phone was seized pursuant to a warrant, and the officers asked him to step outside. After being informed about the reason for the contact with him, Myers and Anderson asked Lindaman if he would like to talk.

During this interaction, Anderson wore a video camera attached to her uniform. Video from this camera was admitted as State's Exhibits 1 and 21. The first statement you can hear on the video from Exhibit 1 is Lindaman stating, I'd probably like to have my lawyer present.' (Exhibit 1 at 12:42:15). Myers then informs Lindaman that he is being placed under arrest, and handcuffs are placed on Lindaman.

As officers arrest Lindaman, they inform him that if at any time he changes his mind and wants to speak with them, they are willing to talk to him. (Exhibit 1 at 12:43:47). Lindaman then asks, 'You mean talk to you right now instead of…. what are the options?' (Exhibit 1 at 12:44:00). After officers explain that he is already under arrest and they are executing a search warrant at his home, they ask

if he has any questions. Lindaman responded by saying, ‘If I talk to you now, does that mean I don’t have to go to the police station?’ (Exhibit 1 at 12:45:06). Myers then informs Lindaman that he will still be under arrest regardless, but she would like to talk to him, but he asked for an attorney. Lindaman then says, ‘I can talk to you right now, I guess.’ (Exhibit 1 at 12:45:25)

Lindaman later transported to the Ankeny Police Department. He is placed in what is referred to by law enforcement as a ‘soft’ interview room. This The room has a loveseat, two end tables, a phone, phonebook, and chairs. Initially, he is in cuffs, but they are soon removed, and he takes a seat on the loveseat. The layout of the room and the conversation among Lindaman and the officers are captured on Exhibits 2 and 4.

After Lindaman is seated, both officers move to leave the room, and one officer asks if Lindaman needs anything. Lindaman responds that he would ‘like his phone to call his wife and cancel his appointment.’ (Exhibits 2 and 4 at 1:04:28). Myers responds that you ‘probably can’t have your phone, but can definitely make a phone call, okay.’ (Exhibits 2 and 4 at 1:04:35). While this exchange takes place, Myers is standing in the doorway, and Anderson has moved toward Myers exiting through the door. There is approximately seven (7) seconds of silence while Lindaman sits on the loveseat looking at Myers, and Myers stands

in the doorway. Myers then comes back in the room and advises Lindaman that there are some things she was going to explain to him. Myers then advised Lindaman of his Miranda rights, and once he waived those rights, the officers proceeded with questioning. The request to call or use of the phone is not discussed again.

During her testimony, Agent Myers stated that when she advised Lindaman that he could 'definitely make a phone call,' she made a gesture toward the phone that was on the end table by the loveseat. Exhibit 4 only captures the lower half of Myers standing in the doorway during this exchange so that no gesture can be seen. Exhibit 2 shows more of Myers during this exchange as Anderson moves to exit the room. On Anderson's body cam, you can see Myers's hands. Myers does make a gesture when saying he can't have his phone, but it is more of a flipping the palm of her hand up rather than a specific gesture toward the phone in the room. (Exhibit 2 at 13:04:32). Myers's hands are out of view of the camera before she finishes her statement about making a call, but even if she made further gestures, it is still questionable whether or not Lindaman would have even seen the gesture.

The view from Exhibit 2 raises a question of whether Lindaman could have seen the gesture because it appears that Anderson exiting the room could have blocked Lindaman's view of one or both of Myers's hands during this critical exchange. Perhaps corroborating this impression is Lindaman's reaction. During

this entire exchange, Lindaman's gaze remains fixed on Myers. His head and eyes do not appear to track any gesture toward the phone in the room." D0 R. on MTS (12/17/2023).

During cross-examination, both law enforcement conceded that they did not invite nor direct Lindaman to make a phone call. Detective Betsy Anderson testified to the following:

> Q. When that request was made [to place a call to Anne Lindaman] did you offer Dr. Lindaman to go through his cell phone to find the contact information for his wife?
> A. I did not.
> Q. Did you ever direct Dr. Lindaman to the phone that was in that room that he was being interrogated in?
> A. I did not.
> Q. Did you ever offer Dr. Lindaman the chance to go through the phone book to make a phone call?
> A. I didn't not let him go through the phone book or make a phone call.
> Q. In other words you never invited him to make a phone call; is that right?
> A. Correct.

D0293; MTS Trans. 30:01-30:16 (02/13/2024). Agent Myers also conceded for inviting or directing Lindaman to make a phone call.

> Q. And so when he, when you interpreted his phrasing of the words as him just wanting to cancel a haircut, you didn't redirect him to the proper purpose of Section 804.20?
> A. I did not.
> Q. After he makes the request to use his cell phone, did you offer to get into his phone without him using it to provide Dr. Lindaman the

contact information for his wife?
A. No. He did not ask for that.
Q. But you did not make that offer?
A. No.

D0293; MTS Trans. 47:01-47:18 (02/13/2024).

A. Did I offer him a phone call before the *Miranda*?
Q. Correct.
A. No, I did not.

D0293; MTS Trans. 48:24-49:05 (02/13/2024).

Any additional relevant facts will be discussed below.

ARGUMENT AS TO CROSS-APPEAL

I. THE STATE MISSED ITS DEADLINE TO FILE APPLICATION FOR DISCRETIONARY REVIEW AND THE COURTCOUR DOES NOT HAVE JURISDICTION NOR THE AUTHORITY TO HEAR THE STATE'S CROSS-APPEAL

Motion to Dismiss:

The State of Iowa failed to invoke this court's jurisdiction or authority as it did not timely file Application for Discretion Review within 30 days of challenged order. Iowa Code § 814.5. They are attempting to significantly modify the current rules and procedures regarding the ability to appeal after a guilty verdict to circumvent the missed deadline. Allowing the state to appeal in this way would overrule the precedent that a prevailing party cannot appeal. Further, it would render the plain language of Iowa Code § 814.5 meaningless.

What remedy does the state seek, given that it has already obtained the maximum legal sentence, and a conviction as charged? "A party may not appeal from a finding or conclusion of law not prejudicial, no matter how erroneous, unless the judgment itself is adverse." *Fankell v. Schober*, 350 N.W.2d 219, 221 (Iowa Ct. App. 1984) (citing Wassom v. Sac County Fair Association, 313 N.W.2d 548, 550 (Iowa 1981).) "[A] successful party may not appeal from errors which do not result in prejudice. If there was error in these rulings a matter, we do not pass on it was non-prejudicial and affords plaintiff no ground for reversal." *White v. Citizens Nat'l Bank of Boone*, 262 N.W.2d 812, 814–15 (Iowa 1978). N.W.2d 14 (Iowa Ct. App. 2020). This rule also applies to cross-appeals. *Fankell*, 350 N.W.2d at 221.

The state proceeded to trial on one count of Sexual Abuse in the Second Degree, with a sentencing enhancement under Iowa Code § 901A.2. D0328; Order of Disp (04/26/2023). Following several days of trial, Lindaman was convicted as charged. D0300; Crim. Verdict (02/26/2024). The court sentenced Lindaman to the only sentence available by law. D0328; Order of Disp. (04/26/2023). The state is appealing a case in which it obtained just what it aimed to achieve.

There was an opportunity for the state to pursue an appeal of the suppression ruling, but either neglected to do so or passed on it. The state can appeal in the following cases:

1. Right of appeal is granted by the state from:

    a. An order dismissing an indictment, information, or any count thereof.
    b. A judgment for the defendant on a motion to the indictment or the information.
    c. An order arresting judgment or granting a new trial.

2. Discretionary review may be available in the following cases:

    a. An order dismissing an arrest or search warrant.
    b. An order suppressing or admitting evidence.
    c. An order granting or denying a motion for a change of venue.
    d. A final judgment or order raising a question of law important to the judiciary and the profession.

Iowa Code § 814.5.

The question of when and how the state can appeal in a criminal case is as straightforward as examining the 101 words in Section 814.5.

The proper course was for an application for discretionary review; however, the application ". . .must be filed within 30 days after entry of the challenged ruling, order, or judgment of the district court." Iowa R. App. P. 6.106. That deadline can be extended one of two ways: First, if a motion is timely filed under Iowa R.Civ.P.1.904(2), the deadline becomes 30 days within the ruling on said motion. However, no motions to reconsider, enlarge, or amend were filed. Second, an extension of 60 days from the challenged ruling can be filed. Iowa R. App. P. 6.106. The suppression ruling was filed on December 17th, 2023. The deadline to

file an application was January 16th, 2024 and the extension deadline was February 15th, 2024. No Application or Motion for Extension was filed.

The state then invokes Iowa Code § 814.5(2)(d) as an alternative strategy. This code section was codification of the common law principle of when a state could appeal. *State v. Warren*, 216 N.W.2d 326, 327 (Iowa 1974). "[The] long-standing case law in this jurisdiction an appeal by the state is permitted only if it "involves questions of law, either substantive or procedural, whose determination will be beneficial to the bench and bar as a guide in the future." State v. Whitehead, 277 N.W.2d 887, 888 (Iowa 1979); See § 814.5(2)(d) (1979) (making discretionary review available to the state from "(a) final judgment or order raising a question of law important to the judiciary and the profession"). "While there may be no distinction between our prior rule and the new statute, we assume the former applies. *Whitehead*, 277 N.W.2d at 888.

Nonetheless, the state's reliance on this section is incorrect, as it serves as a catch-all mechanism that permits the state to appeal cases it would otherwise be unable to. Every instance of an appellate court accepting a state's appeal under Iowa Code § 814.5(2)(d) arises in a context where the state lacks alternative avenues for appealing a case. *See State v. Bullock*, 638 N.W.2d 728 (Iowa 2002) (The court granted discretionary review under Iowa Code § 814.5(2)(d) because it determined that the state lacked a right to appeal regarding the merger of a sexual

abuse conviction into a burglary conviction, although the issue held legal significance.); *State v. Stanton*, 933 N.W.2d 244, 248 (Iowa 2019) (Court found the state's appeal constituted "[a] final judgment or order raising a question of law significant to the judiciary and the profession" under Iowa Code § 814.5(2)(d), as there were no alternative avenues for contesting the magistrate's ruling regarding the lack of subject-matter jurisdiction in a simple misdemeanor case.); *In re Det. of Lehman*, 746 N.W.2d 607 (Iowa 2008) (The court accepted a state appeal under Iowa Code § 814.5(2)(d) contesting a court's ruling that a jury trial demand by the state, under Section 229 A. 7(4), infringes upon a defendant's right to equal protection under both federal and state constitutions by denying the option to waive a jury trial in favor of a bench trial.) *State v. Webb*, 313 N.W.2d 550, 551 (Iowa 1981); (The court granted discretionary review under Iowa Code 814.5(2)(d) to resolve the district court's ambiguity regarding whether involuntary manslaughter constituted a felonious assault necessitating a mandatory minimum sentence.) No case supports the position that Iowa Code 814.5(2)(d) serves as another route of the state of appealing a suppression ruling.

The state continues to conflate cases and interpretations to circumvent the explicit provisions of Iowa Code § 814.5. The state contends that Lindaman's invocation of jurisdiction through the filing of a timely appeal allows the state to "hitch a ride" and have its claims heard as well. In support, the state cites *State v.*

Rutherford, 997 N.W.2d 142, 146 (Iowa 2023). There, the court found that a defendant, who pled guilty, had established good cause under § 814.6(1)(a)(3) to challenge the sentence, but also invoked the court's jurisdiction to address a separate issue of the factual basis to the guilty plea. *Rutherford*, 997 N.W.2d 142, at 146. Rutherford follows a precedent set by *State v. Wilbourn*, which held that "once a defendant crosses the good cause threshold as to one ground for appeal, the court has jurisdiction over the appeal." 974 N.W.2d 58, 66 (Iowa 2022). The court draws a distinction between whether it has the jurisdiction or the authority to hear an appeal. *Rutherford*, 997 N.W.2d at 146. That interplay is specifically limited to the context of a defendant's appeal following a guilty plea. *Id.* Even if it's not, *Rutherford* would stand for the position that the appellate court does not have the authority to hear the state's cross-appeal. *See Id.* at 148 (holding that those the defendant established good cause for an appeal, thus invoking the court's jurisdiction to hear his claim of inadequate factual basis for a guilty plea but the court did not have the authority to hear the appeal as the defendant failed to file a Motion in Arrest of Judgement.)

The idea that a defendant's appeal permits the state to appeal lacks support or merit. Crossing the threshold of invoking jurisdiction to hear an appeal should only apply to one party. It does mean that one party can invoke jurisdiction on

behalf of another party. App. P. 6.108. No support in case law can be found on this topic.

The argument made by the state can be examined in a similar context of discretionary review for motions in arrest of judgment and good cause analysis for guilty pleas. Iowa Code § 814.6 limits the appellate court's jurisdiction in hearing appeals from guilty pleas. A defendant can only appeal following a guilty plea for "good cause." Iowa Code § 814.6(1)(a)(3). But the same statutory amendment that created "good cause" also created discretionary review for "[a]n order denying a motion in arrest of judgment on grounds other than an ineffective assistance of counsel claim." Iowa Code § 814.6(2)(f).

The appellate courts have had to wrestle with attempts to sneak in un-appealed motion in arrest of judgment through the good cause section of Iowa Code § 814.6. The court of appeals has recognized, "That express mention of orders denying motions in arrest of judgment in the discretionary review list in paragraph (2) suggests the legislature did not intend for courts to analyze those denials under the 'good cause' criteria for direct appeal in paragraph (1)." *State v. Scott*, No. 20-1453, 2022 WL 610570, at *4 (Iowa Ct. App. Mar. 22, 2022); *see also State v. Tutson*, No. 21-0990, 2022 WL 1236763, at *1–2 (Iowa Ct. App. Apr. 27, 2022) ("We conclude an application for discretionary review is the appropriate vehicle to challenge a ruling on a motion in arrest of judgment."); *State v. Nguyen*,

No, 22-0474, 2022 WL 5069582, at *1 (Iowa Ct. App. Oct. 5, 2022) ("[T]he proper vehicle for Nguyen's challenge lies under Iowa Code § 814.6(2)(f), which permits discretionary review from an order denying a motion in arrest of judgment . . ."). Like defendants in the cited cases, the state did not timely seek discretionary review of the suppression ruling. They should not be able to back-door a challenge through a defendant's direct appeal.

Nevertheless, those cases pertain to appeals that were submitted in a timely manner. In contrast to those instances, the state failed to meet its deadline. While it's true that the court may decide a case that is erroneously brought as an appeal. *See Bullock*, 638 N.W.2d at 713 (court may treat an erroneously filed appeal as though the proper form of review had been sought.) The state missed its deadline for discretionary review, and the same rule the state cites to as path for this court to retain its appeal precludes it: "Nothing in this rule shall operate to extend the time for initiating a case." Iowa R. of App. P. 6.108.

Applying the law and rules above, it's clear the appeal should be dismissed. "We cannot find resolution of the issue would be generally beneficial, or vital to the profession." *Whitehead*, 277 N.W.2d at 888 (internal citations omitted). This appeal is no different than the countless other cases that the state is allowed to appeal through the proper mechanisms. It is not like the appellate courts don't have an opportunity to rule on issues involving Section 804.20. *See State v. Starr*,

4 N.W.3d 686, 693 (Iowa 2024)(most recent opinion on Section 804.20 brought by the state through discretionary review)

The circumstances of this appeal are so "bizarre" that "extensive research" "turned up no other similar instance." *Whitehead*, 277 N.W.2d at 888. To allow this appeal to continue would require years of precedence to be overturned and rewriting of the rules of appellate procedure.

II. THE TRIAL COURT CORRECTLY APPLIED THE LAW TO THE FACTS TO FIND THAT LINDAMAN'S REQUEST TO CALL HIS WIFE WAS DENIED IN VIOLATION OF IOWA CODE SECTION 804.20

Standard of Review and Preservation of Error:

"In making a correction-of-errors-at-law review, such as the district court did in this case, the reviewing court's function is to determine whether substantial evidence supports the findings made by the lower court, not whether the evidence might support different findings. *State v. Bower*, 725 N.W.2d 435, 448 (Iowa 2006). "If substantial evidence exists to support the lower court's decision, the reviewing court must affirm the lower court decision." *Id.*

Merits:

The state's brief posits a dramatic rereading of *State v. Hicks*, 791 N.W.2d 89, 97 (Iowa 2010) which ignores its unequivocal conclusion that law enforcement must take affirmative steps to ensure compliance with Iowa Code § 804.20. In the state's view, *Hicks* stands for the proposition that courts must decide a defendant's level of sophistication, how sober they are, and determine each point depending on the nature of the case or in their analysis. However, each point the state makes is refuted directly by cases following *Hicks*. The state, without directly stating so, seeks to overturn Hicks and its progeny.

Iowa provides a statutory right to call a family member or an attorney following an arrest. Iowa Code § 804.20. A suspect's invocation of their right to communicate with a family member or attorney should be construed "liberally." *State v. Davis*, 922 N.W.2d 326, 330–31 (Iowa 2019) Once a detainee asks to make a phone call to any person, the officer has an obligation to advise the detainee of the persons to whom calls can be made under the statute. *State v. Garrity*, 765 N.W.2d 592, 595 (Iowa 2009). However, Section 804.20 is also applied pragmatically, "balancing the rights of the arrestee and the goals of the chemical-testing statutes." *Davis*, 922 N.W.2d at 331 (quoting *State v. Tubbs*, 690 N.W.2d 911, 914 (Iowa 2005)). The courts have insisted that "law enforcement officers not play games when faced with a request from a person in custody to communicate

with the outside world after being arrested." *State v. Lyon*, 862 N.W.2d 391, 400–01 (Iowa 2015).

The most relevant case in this matter is *State v. Hicks*. In *Hicks*, the court advanced a clear bright-line rule as it relates to Iowa Code § 804.20: "Once Section 804.20 is invoked, the detaining officer must **direct** the detainee to the phone and **invite** the detainee to place his call or obtain the phone number from the detainee and place the phone call himself." *Hicks*, 791 N.W.2d at 97 (emphasis added). The court found this is necessary because of "the disparity in power between detaining officers and detained suspects during the detention process, no lesser standard is adequate." *Id.*

The district court in this case properly applied *Hicks* to Lindaman's Motion to Suppress, reaching the following findings:

> The State contends that this case is distinguishable from Hicks because Agent Myers told Lindaman that he "could definitely make a phone call" while gesturing toward the phone. This court disagrees. From the video, it is questionable whether a clear gesture toward the phone was made by Myers. Even if a gesture was made, indicating toward a phone, coupled with the statement, "you can definitely make a call," this is not a sufficient affirmative action to convey an immediate invitation to place a phone call.
>
> Given the power disparity recognized by 804.20 case law, the mere statement that a detainee can place a call is not a sufficient invitation, especially in light of the statute's requirement that the call be given "without delay." Iowa Code Section 804.20 (2023). In this case, a

> mere seven seconds pass between the statement and Agent Myers proceeding with Miranda warnings and interrogation of Lindaman. This can hardly be characterized as a reasonable opportunity to make a phone call and is a violation of Lindaman's rights under 804.20.

D0108 R. on Def. MTS. At 3.

The court's ruling makes it clear that law enforcement never *directed* nor *invited* Lindaman to make a phone call. However, the state faults the court for failing to scrutinize *Hicks* and identifying distinctions that previously did not exist.

The state argues that a distinction should be made between 804.20 in the context of Operating While Intoxicated and all other cases. The argument posits that Hicks is tailored only to inebriated arrestees and that there should not be a "one size fits all" analysis. *See* A. Brief of Appellee and C. Appellant at pg. 60. However, Iowa Supreme Court has rejected such a notion. "Iowa Code § 804.20 applies to all persons who have been arrested, not just persons arrested on suspicion of drunk driving." *Starr*, 4 N.W.3d at 693. "On its face, Iowa Code § 804.20 is a statute of general application. There is no indication in the statute that it is only concerned with the implied consent doctrine or the administration of breath tests." *State v. Moorehead*, 699 N.W.2d 667, 674 (Iowa 2005). The first case applying Section 804.20 was a murder case. *Starr*, 4 N.W.3d at 693 (referencing *State v. Shephard*, 124 N.W.2d 712, 714, 718 (Iowa 1963))

The state further goes on to ask inebriated arrestees be afforded more protections because of their intoxicated state. However, no deference is given to a defendant because they voluntarily consume alcohol or controlled substances. *See State v. Countryman*, 572 N.W.2d 553, 558 (Iowa 1997)(holding that "mental infirmities" from intoxication might preclude rational thinking but it does not preclude someone from waiving a right) The state's argument should not be given any credence. Even if it does, the court should consider that Lindaman was suspected of using alcohol at the time. D0293; MTS Trans. 29:05-29:08. (02/12/2023)

Further, the state argues that a defendant of Lindaman's sophistication should be expected to know how to exercise their rights. The state relies on *State v. Park* for its position. 985 N.W.2d 154 (Iowa 2023). Nevertheless, the court was merely disputing defendant Park's assertion that her Korean culture and language constraints rendered it impossible for her to knowingly and voluntarily waive her Miranda rights. *Id.* at 172. This was far from an endorsement that an individual's educational background necessitates a greater burden of proof to demonstrate that their rights were violated.

The underlying theme of the state's arguments is to require the courts to analyze subjective characteristics of an arrestee, and not follow objective standards. Such analysis is disfavored by the courts. *See State v. Brown*, 930

N.W.2d 840, 848 (Iowa 2019) (holding police to subjective standard of reason for stop is unworkable due to no uniformity in practice among law enforcement) *see also State v. McGrane*, 733 N.W.2d 671, 678 (Iowa 2007) (The reasonableness of the officers' search is based on an objective—as opposed to subjective—standard.) The state would ask for a standard that requires arrestees to not only assert their right to a phone call, access phones without explicit permission from law enforcement, but also verbally justify the reason for calling.

The reasoning in *State v. Hicks* that Section 804.20 must be "liberally construed" to protect the right it provides was sound, and it does not need to be revisited. In *Hicks*, a detainee arrested for Operating While Intoxicated was brought into the police station and had the following exchange with law enforcement at the processing center:

> "HICKS: Can I call somebody to get me out?
> [Officer] SPARKS: Yeah. I can let you make a call. Who would you like to call?"

791 N.W.2d 89, 92 (Iowa 2010). The officer indicated that the detainee could make a phone call, just as Agent Myers did in this instance. However, the court ruled that this was insufficient to comply with Section 804.20 because it frustrates the request to make the call:

> "During Hicks's processing, [Officer] Sparks never directed Hicks to the phone, asked Hicks for the name and number of his mother, or attempted to place the phone call for Hicks. Instead, [Officer] Sparks elected to continue to delay Hicks's

> requests by continuing with the booking process or engaging Hicks in Hicks's often meandering conversation."

Hicks, at 92. "Requiring a suspect with restrained liberty to affirmatively pick up a police department's telephone and contact family or counsel without invitation from the detaining officer transforms Section 804.20 into an illusory statutory right." *Id.* Even though State v. Hicks was decided over a decade ago, law enforcement continues to use the same tactics infringing on Lindaman's Iowa Code § 804.20 rights.

During cross-examination, Agent Meyers testified to the following:

> Q. When that request was made [to place a call to Anne Lindaman] did you offer Dr. Lindaman to go through his cell phone to find the contact information for his wife?
> A. I did not.
> Q. Did you ever direct Dr. Lindaman to the phone that was in that room that he was being interrogated in?
> A. I did not.
> Q. Did you ever offer Dr. Lindaman the chance to go through the phone book to make a phone call?
> A. I didn't not let him go through the phone book or make a phone call.
> Q. In other words, you never invited him to make a phone call; is that right?
> A. Correct.

D0293; MTS Trans. 30:01-30:16 (02/13/2024).

Iowa Code § 804.20 merely requires Agent Myers to say aloud in some form or another: "If you want to call your wife, use the phone next to you; if you need your wife's number, I will retrieve it from your cell phone." What is not

acceptable: hand gestures or especially the proximity of phones/phonebooks. Nothing in the exhibits or the record suggests Lindaman knew of the phone's existence or that it was intended for his use. The record contains no indication that Lindaman could have obtained his wife's cell phone number from the Yellow Pages. The bottom line is that Agent Myer had an obligation under Iowa Code § 804.20 to direct Lindaman to the phone and invite him to use, and she failed to do so.

III. EXCLUSIONARY RULE IS FIRMLY ROOTED IN IOWA'S HISTORY AND REMAINS NECESSARY TO PROTECT STATUTORY RIGHTS.

Disregarding the law and individual rights should not benefit the state. Furthermore, they should not be allowed to decide whether exercising a right is worthwhile. The State urges the court to disregard precedent and determine that the exclusionary rule is not applicable in the current case. Such a decision would nullify Iowa's longstanding and historic case law regarding the exclusionary rule, which arguably originated in the state.

Exclusionary rule is firmly rooted in Iowa's history: "Iowa was one of the first states to embrace the exclusionary rule as an integral part of its state constitution's protection against unreasonable searches and seizures, and, in fact, did so several years before the United States Supreme Court's decision in *Weeks*." *State v. Cline*, 617 N.W.2d 277, 285–86 (Iowa 2000), abrogated on other grounds

by *State v. Turner*, 630 N.W.2d 601 (Iowa 2001). However, the exclusionary rule did not begin as a tool to protect constitutional rights. Instead, it began with a simple premise: you cannot benefit from something obtained illegally. *Reifsnyder v. Lee*, 44 Iowa 101, 102 (1876). As early as 1876, the Iowa Supreme Court found that "A party to a suit can gain nothing by fraud or violence under the pretense of process, nor will the fraudulent or unlawful use of process be sanctioned by the courts. In such cases, parties will be restored to the rights and position they possessed and occupied before they were deprived thereof. *Id.* The plaintiff attempted to garnish property that a police officer had seized during an arrest. However, the court did not apply the rule to the property, as it was seized legally. *Id.*

The first time the exclusionary rule was applied in a criminal context came in 1902 in *State v. Height*, 117 Iowa at 652, 91 N.W. 935, 935 (1902).
The Iowa Supreme Court ruled that the defendant's physical examination violated the due process clause of the Iowa Constitution and Article 1, Section 8's prohibition of unreasonable searches. *State v. Height*. 117 Iowa at 652, 91 N.W. 935, 938 (1902). The court maintained that "all evidence with reference to information secured [by the unlawful examination] should have been excluded on defendant's objection." Citing the principles outlined in *Reifsnyder*. *Id*.

Next came *State v. Sheridan*, where an ice dealer was investigated for the destruction of a competing business's ice by applying salt to it. *State v. Sheridan*, 121 Iowa 164, 96 N.W. 730, 730 (1903). Evidence was seized pursuant to a warrant issued by a justice of the peace. *Id.* However, that warrant was only for "the purpose of obtaining testimony" *Id.* at 731. In the ruling in favor of exclusion, the court found:

> It is said, however, that the court will not inquire how the offered evidence has been procured, and, even if obtained by a search warrant in violation of the defendant's constitutional or legal rights, it will still be admitted, if otherwise competent; and that defendant's only redress is an action for damages against the officer or person committing the trespass. It is true there are cases giving seeming support to this doctrine, but most of them, when examined, will be found to be instances in which the incriminating evidence has been discovered by persons acting without color of authority, or by officers as the incidental result of the service of a warrant of arrest or other writ or process legally issued. None can be found, we think, where the state has been permitted to obtain a search warrant in confessed violation of law, and thereby take papers or property from the home of the man suspected of the crime, and use the matter thus procured in securing his conviction. To so hold is to emasculate the constitutional guaranty, and deprive it of all beneficial force or effect in preventing unreasonable searches and seizures. We think the evidence should have been excluded.

Id. *State v. Sheridan* examined the current state of jurisprudence concerning the safeguarding of constitutional rights, concluding that evidence must be excluded to

uphold these rights. This decision came a decade before *U.S. v. Weeks*, 232 U.S. 383 (1914)

The exclusionary rule was abandoned in *State v. Tonn*, 195 Iowa 94, 191 N.W. 530 (1923) due to an observation that the "overwhelming weight of authority" in other jurisdictions did not use the rule; that law enforcement would be "seriously handicapped"; and that a remedy existed in that an officer is liable for illegal activity. *Cline*, 617 N.W.2d at 285–86. Though this abandonment was not without dissent:

> [i]t seems little less than solemn mockery for us to protest our devotion to the "sacred constitutional right," or our virtuous purpose to rigidly enforce it, and in the same breath declare our approval of the admission of "evidence without any inquiry as to how that evidence was obtained."

State v. Tonn, 195 Iowa 94, 191 N.W. 530 (1923) at 119, 191 N.W. at 540 (Weaver, J., dissenting).

Iowa has continued to maintain rights through the exclusionary rule. This includes enforcing statutory rights. *State v. Dentler*, 742 N.W.2d 84, 88 (Iowa 2007). The exclusionary rule is applied to violations of statutes that involve fundamental rights, usually with "constitutional overtones." *State v. Dentler*, 742 N.W.2d 84, 88 (Iowa 2007). *See also State v. Moorehead*, 699 N.W.2d 667, 673–75 (Iowa 2005) (holding that the exclusionary rule applies to violations of the statutory right to contact family upon arrest); *State v. Buenaventura*, 660 N.W.2d

38, 45–46 (Iowa 2003) (holding that violation of the Vienna convention's notification requirements did not warrant exclusion because the defendant's fundamental rights were not implicated). The exclusionary rule is applied to cases involving police misconduct.

In addition, even where statutory rights might not be considered fundamental, the exclusionary rule to statutory applied to violations involving police misconduct or miscarriage of justice. See *State v. Kjos*, 524 N.W.2d 195, 197 (Iowa 1994) (Holding that a breath test administered more than two hours after arrest in violation of the same statute was subject to the exclusionary rule because the police made the false threat of license revocation); *State v. McAteer*, 290 N.W.2d 924, 925 (Iowa 1980) (finding that finding the legislature gave both the right to speak to family and counsel "equal dignity" thus requiring suppression for a violation).

The state collaterally attacks the exclusionary rule on the grounds that have already been litigated and ruled upon. When a violation of Iowa Code § 804.20 is established, evidence obtained after the violation, including statements made by the defendant, must be suppressed. *State v. Moorehead*, 699 N.W.2d 667, 674 (Iowa 2005)

The state implies that Lindman's request to use his phone may have been made for an inappropriate reason, thus making exclusion is unwarranted.

However, this is not what Lindaman said. The state asserts, as Detective Myer did at the hearing, that Lindaman sought a phone call to cancel his haircut, only utilizing his wife as an intermediary. This argument is unsupported and inconsistent with the record. Lindaman states, "I just like my phone to call my wife, and to cancel my appointment." D0100; Exhibits 2 and 4 at 1:04:28. (11/09/2023). The district court also found that he "like his phone to call his wife and cancel his appointment." D0108 R. on MTS at 2 (12/17/2023).

Regardless of whatever reason Lindaman wanted to make a call, the idea that there is an "inappropriate reason" has been refuted by the courts. "As long as the purpose of the phone call is a good faith purpose (*e.g.*, not for ordering a pizza), the arrestee may choose to contact family or a legal representative for advice, or to have them inform his employer that he is not likely to be at work, pick up children from school, or arrange to have the dog let out." *Garrity*, 765 N.W.2d at 596. Even if a request is made outside the scope of Section 804.20, "the officer must advise the defendant of the purpose of the phone call under the statute in a circumstance where the arrestee requests a phone call." *Id.*

The state argues that the court adopt an approach that requires Lindaman show prejudice. In *State v. Walker*, the court found that the exclusionary rule as a remedy "mandated by more than a generation of our precedent," relied on stare decisis and found "no reason to retreat from our precedent in this case today."

State v. Walker, 804 N.W.2d at 296. "Therefore, we rejected an approach taken by the court of appeals that would have required the defendant to show prejudice from the denial of Section 804.20 rights." "*State v. Walker*, 804 N.W.2d 284, 296 (Iowa 2011). As the court put it, "Prejudice is presumed upon a violation of Section 804.20." *Id.* Like the generation of precedent before the court, there is no reason to retreat from the protections provided under Section 804.20.

IV. THE DISTRICT SHOULD AFFIRM THE SUPPRESSION RULING ON THE ALTERNATIVE GROUND THAT LINDAMAN WAS DENIED HIS RIGHT TO COUNSEL.

Standard of Review and Preservation of Error:

Lindaman did not raise the issue of the denied portion of the motion to suppress, as he ultimately prevailed on the motion. Since the state is attempting a cross-appeal, Lindaman asserts that the court considers this as an alternative ground for affirming the district court's decision. "The rule, however, is that a party may seek affirmance on appeal by relying without a cross-appeal on grounds rejected by the trial court as well as grounds that were accepted." *Anthony v. State*, 374 N.W.2d 662, 664 (Iowa 1985). The failure to cross-appeal merely precludes the party from obtaining a more favorable judgment. See *Prestype*, Inc. v. Carr, 248 N.W.2d 111, 121 (Iowa 1976).

"We review constitutional claims de novo." *State v. Naujoks*, 637 N.W.2d 101, 106 (Iowa 2001).

Merits:

Once an unambiguous invocation of rights occurs, law enforcement must fully honor it. This requires that law enforcement immediately cease all 'interrogation,' whether by questioning or conduct. *Miranda v. Arizona*, 384 U.S. 436, 448 (1966), *Michigan v. Mosley*, 423 U.S. 96, 103–04 (1975). The act of responding to ongoing questioning in a manner that violates one's rights does not establish an implicit relinquishment of the right. *Miranda v. Arizona*, 384 U.S. 436, 475 (1966) Nor can the suspect's act of answering such further questions be cited to inject ambiguity or "cast retrospective doubt on the clarity of the initial request itself." *Smith v. Illinois*, 469 U.S. 91, 100 (1984).

Rather, "interrogation by law enforcement is improper after the defendant makes an unambiguous invocation of the right to remain silent. This includes explicit questioning after invocation and less explicit, direct, or surreptitious attempts to cajole, bait, persuade, or pressure the defendant to give up his rights." *Rhode Island v. Innis*, 446 U.S. 291, 301 (1980); *See also State v. Polk*, 812 N.W.2d 670, 671 & 675-76 (Iowa 2012) (reversing on other grounds without reaching claim that invocation of the right to remain silent was violated, but

referencing post-invocation statements made by the officer to "bait" defendant to continue speaking).

"The critical safeguard" conferred by the Fifth Amendment's right of silence "is a person's 'right to cut off questioning'" and that it is "[t]he requirement that law enforcement authorities must respect [and scrupulously honor] a person's exercise of that option" that "counteracts the coercive pressures of the custodial setting." *Mosley*, 423 U.S. at 103 (quoting *Miranda*, 384 U.S. at 474). *Mosley* thus held "the admissibility of statements obtained after a person in custody has decided to remain silent depends under *Miranda* on whether his 'right to cut off questioning' was 'scrupulously honored.'" *Id.* at 104.

In *Edwards v. Arizona*, the U.S. Supreme Court again addressed the question of whether or when an earlier invocation would preclude and require suppression of a later interrogation—but this time, in the context of the invocation of the Fifth Amendment counsel right. There, after the defendant invoked his right to counsel, law enforcement immediately halted the interrogation and resumed it the next day with new warnings and a waiver. *Edwards v. Arizona*, 451 U.S. 477, 479 (1981). Though law enforcement had apparently scrupulously honored the invocation during the first interrogation (by immediately ceasing that interrogation), the *Edwards* court nevertheless held "that an accused, … having expressed his desire to deal with the police only through counsel, is not subject to further interrogation

by the authorities until counsel has been made available to him, unless the accused himself initiates further communication, exchanges or conversations with the police." *Edwards v. Arizona*, 451 U.S. 477, 484-85 (1981). The result, in effect, is that the *Edwards* per se rule against subsequent police-initiated interrogation controls where the right to counsel was invoked. *Edwards*, 451 U.S. at 484-85.

> As to this issue, the district court made the following finding: "After the detectives clarify that he would still be under arrest, but they would like to speak with him but can't because he has requested his attorney, Lindaman says "I can talk to you right now, I guess." Lindaman later reaffirms this position by signing a waiver of his Miranda rights prior to any questioning by the detectives.

D0108 R. on MTS at page 5 (12/17/2023).

The district court ruling fails to account that this reengagement was due to the cajoling of law enforcement. There is no dispute that Lindaman was not provided with an attorney. Even though law enforcement acknowledged his request, the district court agreed. D0108; R. on MTS at page 5 (12/17/2023). Although it is true that Dr. Lindaman maintains ongoing communication with law enforcement, the ensuing dialogue still violates the *Edwards* bright-line rule. Agent Myers immediately followed the invocation of counsel by asserting that, due to Lindaman's decision to remain silent and seek legal counsel, he would be subjected to arrest. However, Agent Myers also insinuated the possibility of reconsidering this decision if he changed his mind. D0100; Exhibits 2 and 4 at

1:56 Lindaman was provoked to inquire about the alternatives if he were to participate in "talking." D0100; Exhibits 2 and 4 at 1:56. Agent Myers promptly responded by expressing their willingness to engage in further dialogue and provide additional information. Throughout, Lindaman expressed perplexity regarding how to obtain legal representation. D0100; Exhibits 2 and 4 at 3:05

The right to remain silent hinges upon the extent to which law enforcement "scrupulously honored" the request like in *Mosley*. 423 U.S. at 103. If a person desires legal representation, assistance from others, including law enforcement, is often required. The decision to exercise this right, as opposed to remain silent, must be facilitated by parties other than the accused; otherwise, it is meaningless. This illustrates why the *Edward*s/right to counsel framework differs from the right to remain silent by requiring a bright-line rule to determine whether counsel was provided. *Id.* at 484. If the accused is willing to speak, but only desires legal representation, it may not be immediately apparent how this can be arranged. Lindaman expressed a desire to consult with an attorney but lacked clarity regarding the most suitable channels and individuals to approach. Due to the swiftness of the events, specifically Lindaman's immediate arrest and later discussions, it was law enforcement's responsibility to respect his decision by allowing him to consult with counsel. Thus, the reading of *Miranda*, in this case,

is insufficient to demonstrate waiver. *Edwards* requires that Lindaman was afforded the opportunity to retain legal counsel before resuming the interrogation.

V. CONCLUSION.

For the state to prevail in this argument in its cross-appeal, the court would have to find that:

1. The prevailing party can appeal against an adverse ruling that did not affect the overall outcome of the case, thus overturning *Wassom v. Sac County Fair Association*, 313 N.W.2d 548, 550 (Iowa 1981).
2. Law enforcement to affirmatively direct and invite an arrestee to make a phone call overturning *State v. Hicks*, 791 N.W.2d 89, (2010)
3. Law enforcement does not have an obligation to redirect an arrestee if they make a request for a phone call outside the scope of Section 804.20 overturning *State v. Garrity,* 765 N.W.2d 592, 595 (Iowa 2009)
4. That exclusionary rule does not apply for statements made after violation overturning, *State v. Moorehead*, 699 N.W.2d 667, 674 (Iowa 2005)

The appellant, Lindaman, would respectfully request the court never overturn decades of precedents.

ARGUMENT AS TO APPEAL

VI. STATE'S PROPOSAL TO REMAND CASE TO HAVE DISTRICT COURT DECIDE ISSUES FOR THE FIRST TIME IS UNWORKABLE AND WOULD BE EASIER TO SIMPLY ORDER A NEW TRIAL.

Merits:

The state argues that this case is different from State v. White as there was potential evidence ***not*** admitted into the record and ***not*** shown to a jury. However, the admission of this evidence is purely speculative. Further, allowing a remand for a district court to speculate as to whether a jury could have decided in a certain way is pointless.

Remand, in this case, is contrary to the symmetry of the appellate process. "As a general rule, we do not address issues presented on appeal for the first time, and we do not remand cases to the district court for evidence on issues not raised and decided by the district court." *Goode v. State*, 920 N.W.2d 520, 526 (Iowa 2018). *See also Plowman v. Fort Madison Cmty. Hosp.,* 896 N.W.2d 393, 413 (Iowa 2017) ("A supreme court is 'a court of review, not of first view." (quoting *Cutter v. Wilkinson*, 544 U.S. 709, 718 n.7, 125 S.Ct. 2113, 2120 n.7, 161 L.Ed.2d 1020 (2005)); *see also Felderman v. City of Maquoketa*, 731 N.W.2d 676, 679 (Iowa 2007) ("Ordinarily we do not decide an issue on appeal that was not raised by a party or decided by the district court.").

The state acts like the admission of the forensic interview would be a mere formality but for the mere mistake by the parties of forgetting to have offer into evidence. Yet the admission of the forensic interview was resisted by the defense by filing a Motion Limine and brief in support. D0197; D. Third MIL and Brief, (02/05/2023). As the defense properly pointed out, the case law involved the admission of forensic interviews at trial. The court never ruled on the defendant's motion in limine because the state conceded that it would not offer this evidence in the trial. This is not due to an oversight, but a concession that evidence would not have been admitted.

The state focuses on the fact that notice of a forensic interview was provided, but that is only one of the five elements necessary to be shown prior to admission. *State v. Rojas*, 524 N.W.2d 659, 662-63 (Iowa 1994). The other elements are 1) trustworthiness; (2) materiality; (3) necessity; and (4) service of the interests of justice. *Id.* (Iowa 1994). A court should make explicit findings on each of the five requirements. *State v. Brown*, 341 N.W.2d 10, 14 (Iowa 1983). "[T]he residual exception to the hearsay rule may be used to admit statements made by a child sex abuse victim when the requirements of the exception are met." *Rojas*, 524 N.W.2d at 663.

For example, the appellate courts have found that recorded statements are necessary when a child witness does not remember anything. *Neitzel*, 801 N.W.2d

at 617 & 623. Similarly, the courts have found recordings necessary when a declarant has recanted their testimony, making that recording "the only means by which the State could introduce information. *State v. Spates*, No. 05-0926, 2007 WL1201718 at *3 (Iowa Ct. App. Apr. 25, 2007). Since this evidence was never offered, no record has been made of whether it would have been admitted.

A remand would be confusing and problematic. The district court would have to consider the defense's motion in limine before admitting this evidence. If the district court admits such a video over defense objection, will that be a new issue to be addressed in this appeal? Is the state allowed to offer additional testimony in support of admission? What is the scope of additional evidence? Will the defense be allowed to cross-examine H.K. in reference to the video? Instead of a web of complexities generated by a remand, the court should just grant a new trial instead.

CONCLUSION

For the above-mentioned reasons, Lynn Lindaman respectfully requests the appellate court to reverse the District Court Decree in accordance with the brief and reply brief.

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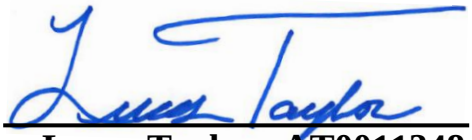
By: 

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This brief complies with the type-volume limitation of Iowa R. App. P. 6.903(1)(g)(1) because the brief contains 9093 words, excluding the parts of the brief exempted by Iowa R. App. P. 6.903(1)(g)(1).

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/s/ Lucas Taylor 03/07/2025

Lucas Taylor Date