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IN THE SUPREME COURT OF IOWA

STATE OF IOWA, Plaintiff-Appellee, v. INEZ N. LUNA, Defendant-Appellant.	Page Co. No. FECR107364 S. Ct. No. 25-0726

APPEAL FROM THE IOWA DISTRICT COURT
FOR PAGE COUNTY
HONORABLE CRAIG DREISMEIER, JUDGE

APPELLANT'S REPLY BRIEF AND ARGUMENT

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STATEMENT OF THE ISSUES PRESENTED FOR REVIEW

I. Neither direct nor indirect evidence sufficiently proves Mr. Luna's specific intent to commit a sex act or sexual exploitation beyond a reasonable doubt.

II. The District Court abused its discretion by imposing incarceration based solely on the nature of the offense.

III. The unambiguous text of Iowa Code Sections 901.5 and 907.3(3) does not grant the District Court discretion to suspend Mr. Luna's fine without also granting him probation. This Court should vacate the entirety of Mr. Luna's sentence and remand for resentencing.

NATURE OF THE CASE

COMES NOW Defendant-Appellant Inez Luna, pursuant to Iowa R. App. P. 6.903(4), and hereby submits the following argument in reply to the State's brief filed on January 5, 2026.

While the defendant's brief adequately addresses the issues presented for review, a short reply is necessary to address certain assertions made by the State.

ROUTING STATEMENT

The State incorrectly asserts that "thirty years" of precedent forecloses Mr. Luna's argument that he received an illegal sentence based on Iowa Code Section 907.3(3) (2023). *See* State's Br. 9. In fact, the vast majority of the State's authorities do not address whether a district court that suspends a fine must also grant probation. *See* State's Br. 9. For instance, this issue was not addressed by the Court in *Ayers*, *Duffield*, and multiple other cases which the State claims are on point. *Compare* State's Br. 9 *with State v. Ayers*, 590 N.W.2d 25, 26 (Iowa 1999) ("The district court sentenced Ayers to an indeterminate ten-year prison term… In

addition, the court imposed a $500 fine for each conviction."); *State v. Duffield*, 16 N.W.3d 298, 304 (Iowa 2025) ("We… limit our discussion to the consecutive sentencing issue…").

The State's only relevant authority from the Supreme Court is a singular line of faulty textual analysis about a different statute. *See* State's Br. 9; *Compare State v. Lee*, 561 N.W.2d 353, 354 (Iowa 1997) *with State v. Cullum*, No. 23-0911, 2025 WL 2057904, at *9 (Iowa Ct. App. July 23, 2025) (Langholz, J. specially concurring) ("…if *Lee* were a published decision of our court, I would not be inclined to give it much stare decisis respect."). The singular line from *Lee* conflicts with other longstanding precedent that includes fines within the definition of a sentence; and, to defendant's knowledge, that sentence has never again been cited by this Court. *Compare State v. Lee*, 561 N.W.2d 353, 354 (Iowa 1997) *with State v. Chana*, 476 N.W.2d 38, 40 (Iowa 1991); *accord Ayers*, 590 N.W.2d at 30 (quoting *Chana*); *Cullum*, No. 23-0911, 2025 WL 2057904, at *9 (Langholz, J specially concurring).

Because this issue involves "substantial questions of enunciating or changing legal principles"—not thirty years of longstanding precedent—the Supreme Court should retain this case. Iowa R. App. P. 6.1101(2)(f) (2024); *Cullum*, No. 23-0911, 2025 WL 2057904, at *4, (en banc) ("…if any Iowa court is to decide the district court is without the authority to suspend fines while imposing incarceration, we believe it must be our supreme court.").

ARGUMENT

I. Neither direct nor indirect evidence sufficiently proves Mr. Luna's specific intent to commit a sex act or sexual exploitation beyond a reasonable doubt.

Mr. Luna's messages inviting T.A. to go for a car ride do not prove his specific intent beyond a reasonable doubt. While the State correctly points out that direct evidence of specific intent is not required, no evidence here proves that Mr. Luna intended to commit a sex act upon T.A. *See* State's Br. 19.

"[T]he relevant question is whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a

reasonable doubt." *Jackson v. Virginia*, 443 U.S. 307, 319 (1979). The State points out that Mr. Luna's overt action does not need to be obvious, but omits language from *Itani v. State*, No. 23-0479, 2024 WL 110332, at *2 (Iowa Ct. App. Jan 10, 2024) holding that the requisite intent is still required. *Itani*, No. 23-0479, 2024 WL 110332 at *2 ("...Itani claims no factual basis exists for the guilty plea because no overt act occurred... this level of obviousness is not the standard we use; instead, we only require a "slight act in furtherance of enticement *with the needed intent*.") (emphasis added).

Evidence from a week after the alleged enticement does not prove Mr. Luna's specific intent beyond a reasonable doubt. Mr. Luna invited T.A. to go for a ride in his car on May 9, 2024. D0047 at 2. The State argues that text messages sent eight days later are sufficient to prove Mr. Luna's specific intent. State's Br. 15. While subsequent indirect evidence may be relevant, these text messages do not prove Mr. Luna's intent on May 9 beyond a reasonable doubt. In contrast to the subsequent assault in *State v. Hawkins*,

27 N.W.3d 562, 569-72 (Iowa 2025), Mr. Luna's subsequent text messages did not occur "only a few minutes later"—they occurred eight days later. D0077 at p. 47 L. 16-18; D0047 at 2. Nothing about the offer of a ride itself suggests Mr. Luna intended to commit an illegal sex act on May 9.

The State cites multiple cases of enticing convictions where the defendant intended to commit an illegal act—not necessarily an illegal sex act. *See* State's Br. 19; *State v. Quinn*, 691 N.W.2d 403, 408 (Iowa 2005); *State v. Grady*, No. 08–1915, 2010 WL 2602169, at *1 (Iowa App. June 30, 2010); *State v. Brown*, No. 24-0409, 2025 WL 1824288, at *3 (Iowa Ct. App. July 3, 2025). In *Quinn*, the Court held that the defendant might have intended to falsely imprison the minor victim. *Quinn*, 691 N.W.2d at 408. The Court noted that Quinn might have intended to commit sexual exploitation because he admitted to receiving "sexual gratification" from the incident. *Id.*

Even if the evidence in *Quinn* sufficiently proved Quinn's intent to commit sexual exploitation beyond a reasonable doubt—which the Court did not expressly hold—this case is

distinguishable. Unlike in *Brown*, where the lack of a benign explanation supported the jury's inference of specific intent, Mr. Luna did not admit to sexual gratification and provided a benign explanation that even the judge agreed with. *Brown*, No. 24-0409, 2025 WL 1824288, at *3; D0080 at p. 15 L. 9-12 ("[p]erhaps the *intentions were innocent* enough in regards to trying to bolster the self-awareness or self-esteem of this minor child, *but the manner* in which this went forward was I think completely inappropriate.") (emphasis added).

Because the direct and indirect evidence does not sufficiently prove Mr. Luna's specific intent to commit a sex act or sexual exploitation at the time of the alleged enticement, this Court should reverse his conviction for enticing a minor in violation of Iowa Code Section 710.10(2) (2023).

II. The District Court abused its discretion by imposing incarceration based solely on the nature of the offense.

The State correctly points out that "[n]o one factor is determinative of the sentencing analysis." State's Br. 22; *State v. Johnson*, 513 N.W.2d 717, 719 (Iowa 1994). However, contrary to

the State's arguments, the District Court considered only one factor that supported a sentence of incarceration. Additionally, Rule of Criminal Procedure 2.23(2)(f) plainly requires the District Court to identify "the content and recommendation" of the PSI. *Compare* State's Br. 27-28 *with* Iowa R. Crim. P. 2.23(2)(f) (2025) (…[t]he court *shall consider all of the following*: … (4) The content *and* recommendation of the presentence investigation report.") (emphasis added).

A. The District Court only considered the nature of the offense in its decision to impose incarceration.

The trial court must at least consider "minimal essential factors," including "the nature of the offense; the attendant circumstances; and the defendant's age, character, propensities, and chances of reform…." *State v. Dvorsky*, 322 N.W.2d 62, 67 (Iowa 1982) (quoting *State v. Hildebrand*, 280 N.W.2d 393, 396 (Iowa 1979)). Again, no one factor is determinative. *Johnson*, 513 N.W.2d at 719.

The District Court repeatedly returned to the manner of the offense as the one factor supporting incarceration. D0080 at p. 13

L. 8 – p. 17 L. 15. The State incorrectly identified Mr. Luna's past criminal history and need for rehabilitation as aggravating factors. *See* State's Br. 25. To the contrary, the District Court noted Mr. Luna's lack of prior sexual offenses, that all of his offenses were "a number of years ago," and low risk of reoffending as factors supporting a reduced sentence. D0080 at p. 13 L. 8 – p. 17 L. 15. The District Court also failed to consider Mr. Luna's age as required by *Dvorsky*, 322 N.W.2d at 67 (citing *Hildebrand*, 280 N.W.2d 396); D0080 at p. 13 L. 8 – p. 17 L. 15.

Despite nearly every factor not supporting a sentence of incarceration, the Court repeatedly returned to the manner of the offense. D0080 at p. 13 L. 8 – p. 17 L. 15. For instance, the District Court explained "I'd be remiss if, ultimately speaking, sir, I didn't tell you what I was most concerned about… The circumstances of this case really are what trouble me more than anything with what's going on." D0080 at p. 14 L. 11-24. Shortly after, the District Court repeated "[t]he messages that were sent and obviously the actions that I saw amounting and leading up to this conviction I just think

in the end are significant[.]" D0080 at p. 15 L. 23-25. The trial court considered multiple factors that did not support incarceration, but imposed incarceration based solely on the nature of the offense.

B. The District Court failed to consider "[t]he content and recommendation of the presentence investigation report" as required by Iowa R. Crim. P. 2.23(2)(f).

The State incorrectly claims that the District Court was not required to identify the factors listed in 2.23(2)(f). *See* State's Br. 28. This claim is contrary to the plain text of that rule, which mandates that "[t]he Court *shall consider all of the following*: …" Iowa R. Crim. P. 2.23(2)(f) (2025) (emphasis added). The State's claim that the District Court is not required to identify any portion of the PSI is equally incorrect. *See* State's Br. 28. The relevant rule plainly requires the District Court to consider "[t]he content *and* recommendation of the presentence investigation report." Iowa R. Crim. P. 2.23(2)(f)(4) (2025).

Here, the District Court did not identify any portions of the "content and recommendation" of the PSI. *Id.* The District Court merely made two vague references to the PSI. D0080 at p. 13 L. 16-

19 (“I have considered… the Presentence Investigation Report”); D0080 p. 17 L. 10-14 (“I’ve considered… the information contained within the Presentence Investigation Report”). Neither of these statements contain the “content and recommendation” of the PSI as is required by Iowa R. Crim. P. 2.23(2)(f)(4). While the PSI report recommended incarceration, its content contained information supporting Mr. Luna’s low risk of future violence and victimization. D0055, Pre-Sentence Investigation Report at 9 (3/11/2025).

Because the District Court abused its discretion by solely relying on the nature of the offense and failing to consider any content from the PSI, Mr. Luna should be resentenced. *State v. Laffey*, 600 N.W.2d 57, 62 (Iowa 1999).

III. The unambiguous text of Iowa Code Sections 901.5 and 907.3(3) does not grant the District Court discretion to suspend Mr. Luna’s fine without also granting him probation. This Court should vacate the entirety of Mr. Luna’s sentence and remand for resentencing.

Relying merely on portions of the relevant statutes, the State argues that the District Court had discretion to suspend Mr. Luna’s fine without also granting probation. *See* State’s Br. 32-33. The

State attempts to bolster its faulty textual analysis with repeated references to legislative intent—not the clear text of the statute. *See* State's Br. 33, 35, 37, 41. Because the District Court imposed an illegal sentence, this Court should vacate the entirety of Mr. Luna's sentence and remand for resentencing. *State v. Duffield*, 16 N.W.3d 298, 304 (Iowa 2025) (citing *State v. Chatman*, No. 19-0856, 2020 WL 7021709, at *7-8 (Iowa Ct. App. Nov. 30, 2020) (rejecting the state's request to limit sentencing on remand)).

A. The unambiguous text of Iowa Code Section 901.5(3) and 907.3(3) does not authorize Mr. Luna's sentence.

The State emphasizes the District Court's discretion in Iowa Code Section 901.5, but conveniently ignores limiting language. *See* State's Br. 33. While Section 901.5 grants the District Court discretion to suspend part of a sentence, it only does so "as provided in chapter 907." Iowa Code § 901.5(3).

Turning to chapter 907, the State again conveniently ignores key text of the relevant statute. *See* State's Br. 33. It characterizes Section 907.3(3) as granting the District Court discretion to

suspend a fine without also granting probation, but ignores the legislature's inclusion of the word "and" in the statute. *See* State's Br. 33; Iowa Code § 907.3(3). While this Section begins with the word "may," it only authorizes the District Court to "suspend the sentence *and* place the defendant on probation. Iowa Code § 907.3(3). If the legislature had used the word "or," the State would be correct that the District Court can pick and choose. But because Section 907.3(3) conjoins the suspension of a fine and the imposition of probation with the word "and," the District Court "may" only do one when it also does the other.

The State's argument about the alleged lack of restrictive language does not change this clear textual analysis. *See* State's Br. 33, 35. First, the State's argument is based on a misstatement of the issue. Mr. Luna is arguing that the District Court's suspension of the fine carries with it the obligation to grant Mr. Luna probation. *State v. Cullum*, No. 23-0911, 2025 WL 2057904, at *10-11 (Iowa Ct. App. July 23, 2025) (Ahlers, J. concurring in part and dissenting in part). While a lack of limiting language would speak to

the District Court's authority to suspend a fine in general, it does not speak to the resulting obligation to grant probation.

Second, the legislature expressly limited the District Court to the options in Section 907.3, and expressly included the word "and" in Section 907.3(3). Iowa Code § 907.3 (2023) ("Pursuant to section 901.5, the trial court may… *exercise any of the options contained in this section*.") (emphasis added); Iowa Code § 907.3(3) (2023). While the legislature did not expressly prohibit district courts from suspending fines, it did create a resulting obligation to grant probation.

Third, the State's authority for its argument is about a different issue of statutory interpretation. *See* State's Br. 35; *State v. Grey*, 514 N.W.2d 78, 79 (Iowa 1994). In *Grey*, the Supreme Court held that the use of the word "shall" does not preclude a district court from suspending a fine based on chapter 907. *Id.* at 79. The Supreme Court did not expand a district court's discretion beyond the express options in Section 907.3. *Id.* In fact, the district

court in *Grey* exercised its discretion by "impos[ing] a sentence of up to five years imprisonment *and* a $1000 fine" in conjunction. *Id.*

Because the statutory text of Sections 901.5 and 907.3(3) is clear, this Court should hold that district courts may not suspend a defendant's fine without also granting probation. Iowa Code § 901.5(3); Iowa Code § 907.3(3).

B. No longstanding precedent grants district courts authority to suspend a fine without also granting probation.

Like the State's citation to *Grey*, the State cites multiple other cases that merely pertain to completely different legal issues. *See* State's Br. 9, 34. Only one case that the State cites, *Lee*, 561 N.W.2d at 354, is applicable due to its interpretation of a textually similar statute—but *Lee*'s textual analysis is incorrect and refuted by subsequent precedent. *See* State's Br. 9, 34; *Cullum*, No. 23-0911, 2025 WL 2057904, at *9 (Langholz, J specially concurring).

The State cites the following inapplicable cases in its attempt to illustrate "thirty years" of Iowa Supreme Court precedent

purportedly granting district courts with authority to impose sentences contrary to Section 907.3(3):

- *State v. Grey*, 514 N.W.2d 78 (Iowa 1994);
- *State v. Ayers*, 590 N.W.2d 25 (Iowa 1999);
- *State v. Klein*, 574 N.W.2d 347 (Iowa 1998);
- *State v. Chana*, 476 N.W.2d 38 (Iowa 1991);
- *State v. Duffield*, 16 N.W.3d 298 (Iowa 2025).

See State's Br. 9, 34.

Contrary to the State's claims about thirty years of repeated cases, none of these cases determine whether Section 907.3(3) creates an obligation to grant probation when a district court suspends a fine. For instance, *Grey* did not involve this issue because the district court imposed both a fine and a sentence of incarceration, *Grey,* 514 N.W.2d at 79, and the same is true for *Ayers* and *Chana*. *Ayers*, 590 N.W.2d at 26 ("The district court sentenced Ayers to an indeterminate ten-year prison term… In addition, the court imposed a $500 fine for each conviction."); *Chana*, 476 N.W.2d at 39 ("Defendant, who served eight days in jail

on this conviction, challenges only the imposition of a $500 fine…"). Each of *Grey*, *Ayers*, and *Chana* stands for the proposition that a district court may suspend a fine notwithstanding use of the word "shall"—they do not authorize district courts to suspend fines under Section 703.3(3) without also granting probation. *Grey,* 514 N.W.2d at 79; *Ayers*, 590 N.W.2d at 29-31; *Chana*, 476 N.W.2d at 39-40.

Duffield only involved a consecutive sentencing issue; and while the Supreme Court emphasized the district court's discretion—it did not decide if suspending a fine creates the obligation to grant probation. *Duffield*, 16 N.W.3d at 302, 304 ("We… limit our discussion to the consecutive sentencing issue…"). Likewise, *Klein* involved a suspended fine and a license revocation—not a carceral sentence. *Klein*, 574 N.W.2d at 348-49. Like in *Grey*, *Ayers*, *Chana*, and *Duffield*, the Court in *Klein* merely decided whether the imposed fine was mandatory—not if suspending it would carry with it the obligation to grant probation. *Id.*

The State's misapplication of these five cases is based on the same misstatement of the issue described previously. If Mr. Luna

had argued that the District Court lacked authority to suspend his fine, then these cases might be relevant. Instead, Mr. Luna argues that the unambiguous text of Section 907.3(3) creates the obligation for the District Court to grant probation whenever it suspends a fine. These five cases do not refute this argument.

The only relevant case the State cites to refute Mr. Luna's argument is *Lee*, 561 N.W.2d at 354, but *Lee* is far from "longstanding precedent." *See* State's Br. 9, 34. Within Lee, the only relevant portion is one sentence of faulty textual analysis—that is inconsistent with other longstanding precedent—about a different statute. *See Lee*, 561 N.W.2d at 354. This Court in *Lee*, interpreted Iowa Code Section 124.401(3) (1995), which provided, in part, that "[a]ll or any part of a sentence imposed pursuant to this section may be suspended *and the person placed upon probation* upon such terms and conditions as the court may impose…" *Id.* Iowa Code § 124.401(3) (1995) (emphasis modified).

The relevant line in *Lee* spliced fines from sentences of incarceration—excluding the former from the definition of

"sentence." *Lee*, 561 N.W.2d at 354 ("The reference in section 124.401(3) to probation refers only to the court's option of suspending a term of imprisonment, not to its authority to suspend a fine."); *Cullum*, No. 23-0911, 2025 WL 2057904, at *9 (Langholz, J specially concurring) ("I see no basis in the text to splice the requirement to place a defendant on probation in that manner unless "sentence" only refers is a prison sentence—not a fine."). Because the terms of the statute in *Lee* and Section 907.3(3) here are "materially identical," the Court of Appeals applied the same faulty rationale. *Id.* (Langholz, J specially concurring). Still, one faulty sentence about a different statute is far from the type of longstanding precedent that commands stare decisis respect. *Id.* (Langholz, J specially concurring) ("…if *Lee* were a published decision of our court, I would not be included to give it much stare decisis respect.").

C. Even if this Court holds that *Lee* is longstanding precedent commanding stare decisis respect, this Court should depart from *Lee*'s faulty rationale.

While this Court does not need to reach the stare decisis issue, if it chooses to do so it should still hold that Section 907.3(3) requires district courts to grant probation when they suspend a fine for two reasons.

1. Respecting the faulty rationale in *Lee* conflicts with other longstanding precedent that commands stare decisis respect.

The exclusion of fines from the definition of "sentence" in *Lee* is contrary to longstanding precedent. Mere months after deciding *Lee*, the Iowa Supreme Court rejected its prior reading of "sentence," holding that "[a] sentence is generally defined as any punishment imposed by the court; it is not limited to a term of incarceration." *Chana*, 476 N.W.2d at 40; *accord Ayers*, 590 N.W.2d at 30 (quoting *Chana*); *Cullum*, No. 23-0911, 2025 WL 2057904, at *9 (Langholz, J specially concurring). If a fine were not a part of the sentence, district courts would lack authority to suspend them under Section 901.5(3). Iowa Code § 901.5(3) ("The Court

may…suspend the execution of the sentence or any part of it as provided in section 907"); *Cullum*, No. 23-0911, 2025 WL 2057904, at *9 (Langholz, J specially concurring).

If this Court reaches the stare decisis issue, it should reverse *Lee* to the extent it conflicts with *Chana* and subsequent cases. *Lee*'s one sentence about a different statute—that to defendant's knowledge has never been cited again by this Court—does not command stare decisis respect. In contrast, this Court has continually reaffirmed *Chana* in holding that the definition of sentence included fines. *Ayers*, 590 N.W.2d at 30 (quoting *Chana*); *Cullum*, No. 23-0911, 2025 WL 2057904, at *9 (Langholz, J specially concurring). Respecting this longstanding precedent merely requires reversing one contrary sentence in *Lee*. This Court should not hesitate to do so.

2. Stare decisis and congressional acquiescence are not absolute. This Court should prioritize correcting its previous error in statutory interpretation.

First, the Iowa Supreme Court recognizes that stare decisis, even in combination with legislative acquiescence, is not absolute.

Myers v. City of Cedar Falls, 8 N.W.3d 171, 180-81 (Iowa 2024). Stare decisis does not prevent this Court from rectifying errors in statutory interpretation. *Id.* This Court recently overruled faulty precedent interpreting a statute despite "more than two decades of legislative acquiescence." *Id.* at 181 (citing *Vaudt v. Wells Fargo Bank, N.A.*, 4 N.W.3d 45, 54-55 (Iowa 2024).

Second, relying on the doctrine of legislative acquiescence to resolve this appeal would be contrary to a proper textual analysis. *State v. Lee*, 6 N.W.3d 703, 712-713 (Iowa 2024) (McDermott, J dissenting) ("One must first believe that legislators in later legislative session were even aware of the particular court ruling interpreting a statute. One must then accept that a later legislature, through *silence*—has the ability to interpret the meaning of statutory text that an earlier legislature passed into law."). "[T]he mere fact that a legislature could take action 'is no excuse for failing to overrule a statutory precedent of ours that is clearly wrong...'" *Myers*, 8 N.W.3d at 181 (quoting *State v. Montgomery*, 966 N.W.2d 641, 663 (Iowa 2021) (McDermott, J., concurring specially)).

To resolve this case with the doctrine of legislative acquiescence, this Court would need to believe that legislators were aware of the singular relevant sentence in *Lee*, that they recognized that the singular sentence also applied to Section 703.3(3), and that they—by remaining silent—passed a conclusive judgment on the meaning of Section 703.3. *Id.* Instead of making these assumptions, this Court should focus its analysis on the unambiguous text of Section 703.3(3). *Id.*

D. The State's practical concerns do not modify the clear text of Section 703.3(3).

This Court is not free to substitute its policy preferences in place of the unambiguous statutory text. *Cullum*, No. 23-0911, 2025 WL 2057904, at *12 (Iowa Ct. App. July 23, 2025) (Ahlers, J. concurring in part and dissenting in part) (quoting *Young v. O'Keefe*, 82 N.W.2d 111, 115 (Iowa 1957)). Policy decisions are up to the legislature. *State v. Hauge*, 973 N.W.2d 453, 465-66 (Iowa 2022). If the legislature shares the State's policy concerns, it has the power to change the language in Section 703.3(3). This Court, on the other hand, is "not free to choose an option the Code does

not give us…" *Cullum*, No. 23-0911, 2025 WL 2057904, at *12 (Iowa Ct. App. July 23, 2025) (Ahlers, J. concurring in part and dissenting in part).

E. On remand, the District Court should not be limited to imposing a fine—it should have the option to grant Mr. Luna probation.

While the State correctly points out that "an illegal sentence is a nullity subject to correction," *State v. Draper*, 457 N.W.2d 600, 605-06 (Iowa 1990), it incorrectly asserts that the District Court should be limited to imposing the fine—not granting probation. *See* State's Br. 41-43. The "correction" could take two forms. Mr. Luna recognizes that the correction "*may* result in an increase" in his sentence through the imposition of the fine, *id.*, but the District Court could also align the sentence with the plain text of Section 703.3(3) by granting Mr. Luna probation. Iowa Code § 703.3(3) (2023); *Cullum*, No. 23-0911, 2025 WL 2057904, at *10-12 (Ahlers, J. concurring in part and dissenting in part) ("…if the court wanted to suspend the fines, it would have been required to place [the defendant] on probation.").

This Court only severs an illegal aspect of a sentence if doing so is possible. *State v. Keutla*, 798 N.W.2d 731, 735 (Iowa 2011) ("…if it is not possible to sever the illegal portion of a sentence, we should remand for resentencing."). The State incorrectly cites *State v. Smith*, 17 N.W.3d 355, 361 (Iowa 2025) to support its limited remedy. *See* State's Br. 42-43. Unlike Mr. Luna's argument here, the defendant in *Smith* only challenged the fine portion of his sentence—not any period of incarceration. *Id.* at 357. The District Court here has two options to modify Mr. Luna's sentence consistent with Section 703.3(3)—grant probation or impose the fine. Because Section 703.3(3) conjoins these two options, this Court cannot sever Mr. Luna's sentence. This Court should vacate the entirety of Mr. Luna's sentence and remand for resentencing. *Keutla*, 798 N.W.2d at 735.

CONCLUSION

This Court should reverse Mr. Luna's sentence because sufficient evidence does not prove his specific intent beyond a reasonable doubt. Alternatively, this Court should vacate Mr.

Luna's sentence and remand for resentencing either because the District Court abused its discretion or because it imposed an illegal sentence not authorized by statute.

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