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IN THE SUPREME COURT OF IOWA
Supreme Court No. 25-0726
Page County No. FECR107364

STATE OF IOWA,
Plaintiff–Appellee,

vs.

INEZ N. LUNA,
Defendant–Appellant.

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

BRIEF FOR APPELLEE

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STATEMENT OF THE ISSUES PRESENTED FOR REVIEW

I. **Whether sufficient evidence supported Luna's conviction for attempted enticement when he told a fourteen-year old she had a "gorgeous body" and asked her to go for a secret drive with him.**

II. **Whether the district court abused its discretion when it imposed a carceral sentence.**

III. **Whether the district court entered an illegal sentence when it suspended Luna's fine, consistent with thirty-years of Iowa precedent permitting the practice.**

ROUTING STATEMENT

This case can be decided based on existing legal principles. Inez Luna suggests that this case presents a vehicle to address changing legal principles, but the Iowa Supreme Court has long held sentencing courts may exercise their discretion to suspend fines even when committing a defendant to a carceral sentence. *Compare* Appellant's Br. 7 *with State v. Ayers*, 590 N.W.2d 25, 29 (Iowa 1999); *State v. Lee*, 561 N.W.2d 353, 354 (Iowa 1997). It has reavowed that principle within the last year. *See State v. Duffield*, 16 N.W.3d 298, 304 (Iowa 2025) ("The district court had the discretion to suspend the sentence. The district court had the discretion to determine the amount of the fine. The district court had the discretion to suspend the fine." (citations omitted)). And if these precedents were wrong, the legislature has not acted on them in over thirty years. Luna's interest in relitigating the matter does not require reopening these long resolved questions. *See State v. Cullum*, No. 23-0911, 2025 WL 2057904, at *3–8 (Iowa Ct. App. July 23, 2025); *Duffield*, 16 N.W.3d at 304. The remaining issues in this brief are routine. *See State v. Quinn*, 691 N.W.2d 403, 408 (Iowa 2005). Transfer to the Iowa Court of Appeals is appropriate. Iowa R. App. P. 6.1101(3).

NATURE OF THE CASE

After his bench trial and convictions for attempted enticement and two counts of simple assault, Luna appeals his conviction for attempted enticement and his sentence. *See* Iowa Code §§ 710.10(2), 708.2(7). The district court ordered him to serve a five-year indeterminate term on his attempted enticement conviction. D0059, Judgment at 1 (4/21/2025). It ordered each sentence to be served concurrently, and suspended all associated fines.

STATEMENT OF THE FACTS

Sixty-year old Luna began messaging his daughter's friend, T., shortly after her fourteenth birthday through Snapchat. D0045, Exh.1, Snapchat Exchange at 1–10. While they were always flattering, the tenor of the messages became increasingly flirtatious:

- "Hey buttercup jus curious why did you and Paul breakup"
- "Wow crazy kid"
- "He's a boy still lol"
- "Don't know what it is to be with a girl lol
  Nobody see or chat"
- "Love your lips and make sure to erase your messages"
- "You sleepn . . . Oh I would like to see you"
- "Send me a picture"

- "What kind of swim suit you gonna wear"
- "2 piece would be nice"
- "Shows off your gorgeous body
  Your perfect the way you are"
- "Beautiful . . . and them lips wowza"
- "And your not only beautiful your gorgeous
  This is our secret friendship right"

D0045 at 1–2, 4–9; D0077, Bench Trial Tr. at 12:1–13:6; 13:21–15:18; 17:2–22:1 (1/28/2025). He also asked her to go for a drive "late Saturday" conditioned on secrecy: "Can't tell nobody." D0045 at 3.

While that drive never happened, T. did go to Luna's house for a weekend sleepover with his daughter. D0077 at 15:25–16:22; 22:10–16. During that weekend, at one point when Luna's daughter was out of the room, he pulled T. closer and asked if he could kiss her. D0077 at 22:17–23:25. She declined his advances. *Id.* When his daughter returned, Luna left the room. *Id.* The next day, he slapped T. with an open hand on the "butt and said, 'move.'" D0077 at 24:4–25:9. T. told Luna's daughter, her own mother, and law enforcement about Luna's conduct the next day. D0077 at 25:7–26:14. This prosecution followed.

ARGUMENT

I. Sixty-year-old Luna engaged in typical grooming behaviors asked fourteen-year-old T.A. to go for a ride with him that she could not tell anyone about. The district court could reasonably infer his invitation was based on the intent to commit an unlawful sex act or sexual exploitation on her.

Preservation of Error

The defendant can challenge the evidence's sufficiency following his bench trial. *See State v. Crawford*, 972 N.W2.d 189, 197 (Iowa 2022) ("With respect to bench trials, our cases provide that a defendant need not file a motion for judgment of acquittal to challenge the sufficiency of the evidence on direct appeal.").

Standard of Review

This Court "review[s] the sufficiency of the evidence for correction of errors at law." *State v. Kelso-Christy*, 911 N.W.2d 663, 666 (Iowa 2018).

Merits

Substantial-evidence review is the same following a bench trial as it is following a jury trial. *State v. Wilde*, 987 N.W.2d 486, 494 (Iowa Ct. App. 2022). This Court views the evidence in the light most favorable to the State and grants all "legitimate inferences and presumptions that may fairly and reasonably be deduced from the record evidence." *State v. Brown*, 5 N.W.3d 611, 615–16 (Iowa 2024) (cleaned up). It will affirm the factfinder's verdict if supported by substantial evidence. *State v. LuCore*, 989 N.W.2d

209, 215 (Iowa Ct. App. 2023). ”Evidence is substantial if, when viewed in the light most favorable to the State, it can convince a rational [factfinder] that the defendant is guilty beyond a reasonable doubt.” *Id.* (alteration in original) (citation and internal quotation marks omitted). “Evidence is not rendered insubstantial merely because it might support a different conclusion; the only question is whether the evidence supports the finding actually made.” *Id.* And it is for the original factfinder to weigh the evidence, resolve conflicts in the evidence, and assess the credibility of witnesses and plausibility of explanations. *See State v. Slaughter*, 3 N.W.3d 540, 550 (Iowa 2024).

At issue in this appeal, the district court convicted Luna of attempting to entice T.A. in violation of Iowa Code section 710.10(2). As the court framed the elements, the State was required to prove:

> 1. On occasions between May 2, 2024 and on or about May 31, 2024, the defendant enticed or attempted to entice T.A.
>
> 2. The defendant did so with the specific intent to commit sexual abuse or sexual exploitation upon T.A.
>
> 3. The defendant committed an overt act evidencing his purpose to entice T.A.
>
> 4. At the time T.A. was enticed or defendant attempted to entice T.A., either:
>
> a. T.A. was a minor under the age of sixteen; or

> b. the defendant reasonably believed T.A. was under sixteen years of age.

D0047, Verdict at 3 (2/10/2025) (citing Iowa Model Crim. Jury Instr. 1000.12). In addition to these elements, it clarified that

> The state needs to show Luna had the specific intent to commit a sexual abuse or sexual exploitation of T.A. Specific intent means not only being aware of doing an act and doing it voluntarily, but in addition, doing it with a specific purpose in mind. Because determining the defendant's specific intent requires a fact finder to decide what he was thinking when an act was done, it is seldom capable of direct proof. Therefore, a finder of fact should consider the facts and circumstances surrounding the act to determine the defendant's specific intent. The fact finder, may, but is not required to conclude a person intends the natural results of his acts.

D0047 at 6. It also supplementally defined "entice" as meaning "to wrongfully invite, tempt, solicit, lure, coax, seduce or persuade a person to do a thing." D0047 at 3–4 (citing Iowa Model Crim. Jury Instr. 1000.13). Finally, it defined the "overt act" requirement as requiring proof of an

> act indicating the person's intent to accomplish the enticement. The overt act itself does not have to be a criminal act. The defendant cannot be guilty of enticing, or attempting to entice unless [the court] find[s] that he committed an overt act that showed it was the defendant's purpose to entice T.A.

D0047 at 4 (citing Iowa Model Crim. Jury Instr. 1000.14).

Luna alleges that State's evidence only failed to satisfy the second element: "The evidence is insufficient to prove that Mr. Luna had the

requisite specific intent at the time of the overt act." Appellant's Br. 15, 17. He is mistaken.

As the factfinder, the district court could examine the totality of the evidence to discern Luna's intent. "Specific intent is seldom capable of direct proof." *State v. Ernst*, 954 N.W.2d 50, 55 (Iowa 2021). "It is the rare case in which a criminal defendant openly proclaims his further intent while committing his crime." *State v. Hawkins*, 27 N.W.3d 562, 567–69 (Iowa 2025). This is why the fact finder may convict if the record supports reasonable inferences as to what the defendant's intent was. *See Ernst*, 954 N.W.2d at 53. Iowa courts do not artificially restrict this inquiry by only looking backwards in time from the charged act; they consider all circumstances surrounding the assault. *See Hawkins*, 27 N.W.3d at 569–72 (finding defendant's earlier and subsequent act supported inference he acted with intent to commit sex abuse: "the totality of the evidence supported an inference that Hawkins acted under the same impulse and with the same specific intent when he assaulted C.C. as when he assaulted M.B. moments before and E.M. only a few minutes later"); *accord State v. Munz*, 355 N.W.2d 576, 581–83 (Iowa 1984) (quoting II J. Wigmore, *Evidence in Trials at Common Law* §§ 387–402, at 328–69 (1940)).

Luna is wrong when he suggests examining his texts and acts after the May 9 offer to go driving without telling anyone would only be "conjecture" as to his intent earlier. *Compare* Appellant's Br. 16 *with* D0045 at 3, 4–5, 8–9 *with Quinn*, 691 N.W.2d at 408. His subsequent acts illuminated his intent and showed his attempted enticement was based on his sexual attraction to T. He repeatedly flattered her and complemented her attractiveness. D0045 at 2–3, 5, 7–9. He sought photos of her. D0045 at 5. When they were alone, he acted on his attraction when he grabbed her hand, pulled her closer, and attempted to kiss her outside the presence of others. D0077 at 22:10–23:19.

Throughout, he knew his behavior was unlawful—or at the very least, unconscionable. D0045 at 8 ("I'm not scaring you am I you would tell me if I was wouldn't you"). That is why he requested her to maintain secrecy and delete their conversations, lest others (including his own daughter) discover them. D0045 at 3, 4 ("Love your lips and make sure to erase your messages"), 7–9 ("Your not around [B.] are you . . . You don't let [B.] see your snaps do you"). He also deleted some of them and unfriended T. on Snapchat. D0077 at 26:18–27:27, D0045 at 8–9. Although she did not have the words for it, T. understood his intent:

> Q: So when he was sending you these snap chats where he talked about what sort of swimsuit you

> should wear and that he loved your lips and then he wanted you to make sure your messages were erased and you hadn't told anybody, he wanted to go for a ride with you, over a period of time when you were getting these kind of snap chats what did you think about what he was sending you?
>
> A: That he was trying to do something with me.
>
> Q: Sorry. What was that?
>
> A. That he was trying to do something with me.
>
> Q: When you say, "do something," what do you mean?
>
> . . .
>
> A: Like try touching me or something.

D0077 at 27:6–28:3.

The district court understood as well. It found Luna's statements and acts provided context and insight into his unlawful intent at the time he requested the girl go for a secret drive with him:

> Luna's messages throughout Exhibit 1 are designed to seduce and lure T.A. into being with him. He starts off with comments related to B.L.'s break up with her boyfriend by noting her boyfriend was a "crazy kid" for losing interest in her and noting "he's still a boy lol". He makes comments and flatters her about her body and/or physical features. For instance, he tells her she should wear a bikini swimsuit to show off her gorgeous body. He states how he loves her lips. He tells her she is gorgeous and beautiful. He called her "buttercup" on one occasion. Luna is trying to make T.A. feel special. He's trying to befriend her by paying her these complements. His messages are designed

> to seduce her and lure her into being with him. T.A. testified she felt scared by some of his comments or that some of his questions felt weird or unusual. Luna tells T.A. that their conversations are their secret and that she should be deleting these messages. He even asks her if he is scaring her by sending her these messages.
>
> During one of his messages, Luna asks T.A. to send him a picture. She denied doing such. He asks if she would go for a ride with him in his car but that she can't share that with anyone. She initially says yes but ultimately, it does not happen. He comments on another occasion how he is driving in his car and wishes he could see her. She testified she was concerned about the purpose of his messages thinking he was perhaps wanting to touch her. Her concerns become reality starting on May 17th when they are together in B.L.'s bedroom after B.L. leaves for just a short period of time. During that short period of time, Luna acts out toward T.A. physically. He grabs her hand, pulls her close to him, puts his other hand under her chin and asks for a kiss. Two days later, she is on the steps inside Luna's home and he slaps her in the buttocks telling her to move. During his Snapchats, he tells her to delete her messages. He is concerned his daughter is looking on T.A.'s phone. He's concerned his actions are scaring her. *These actions by Luna are not designed to get T.A. to engage in a non-sexual activity. Rather, his words and actions have a specific purpose of coaxing, persuading and/or luring T.A. to him. All of these actions support the premise that Luna acted with the specific intent to either commit sexual abuse or sexually exploit T.A.*

D0047 at 6–7 (emphasis added).

Luna suggests his acts were insufficient, pointing to a case in which a defendant stalked a child through a store or another where the defendant bluntly asked the victim if "fucking is good or possible." Appellant's Br. 14–18 (discussing *State v. Brown*, No. 24-0409, 2025 WL 1824288 (Iowa Ct. App. July 2, 2025) and *Itani v. State*, No. 23-0479, 2024 WL 110332, at *3 (Iowa Ct. App. Jan. 10, 2024)). They win him little. As the panel in *Itani* explained, "this level of obviousness is not the standard we use . . . ." *Itani* 2024 WL 110332, at *2.

Rather, the Iowa Supreme Court and Iowa Court Appeals recognize that those who perpetrate abuse on children are rarely so direct. They have affirmed enticing convictions against sufficiency challenges where a stranger asks a child to get in their vehicle. *See Quinn*, 691 N.W.2d at 408; *Brown*, 2025 WL 1824288, at *2–3; *State v. Grady*, No. 08-1915, 2010 WL 2602169, at *1 (Iowa Ct. App. June 30, 2010) ("Grady and his companion attempted to get the boy to get inside their van by offering to drive him anywhere he wanted to go and by offering him twenty dollars. They persisted in asking him to get inside the vehicle, even though he repeatedly said no and asked them to stop speaking to him. Although there is no direct evidence of an intent to commit an illegal act, there is sufficient evidence by which the jury could infer Grady was attempting to entice the boy away for

the purpose of performing an illegal act upon him."). The unlawful reason the defendant asks the victim to get into their car can be inferred from the surrounding circumstances. *Quinn*, 691 N.W.2d at 408; *Brown*, 2025 WL 1824288, at *2–3 ("'[T]he requirement of proof beyond a reasonable doubt is satisfied if it is more likely than not that the inference of intent is true.'" (quoting *Ernst*, 954 N.W.2d at 57); *Grady*, 2010 WL 2602169, at *1. This case is similar, Luna just preyed upon a more familiar victim.

In summary, Luna's emblematic grooming behavior and his attempts to act on them provided the basis for the court's straightforward inference his request for fourteen-year-old T.A. to go with him on a secret drive with him at 8:12 p.m. at night was made with the intent to commit an unlawful sexual act or sexual exploitation upon with her. A substantial basis supports the court's verdict. This Court should affirm it.

II. Luna's crime was significant. The district court did not abuse its discretion in imposing sentence for it.

Preservation of Error

The State does not contest error preservation. *See State v. Schooley*, 13 N.W.3d 608, 617–18 (Iowa 2024) ("We do not require a defendant to interrupt the sentencing judge as he gives the reasons for a sentence to suggest he is abusing his discretion.").

Standard of Review

While the Supreme Court's review of sentence is for corrections of errors at law, Iowa courts review a district court's specific sentencing decision for abuse of discretion. *State v. Laffey*, 600 N.W.2d 57, 62 (Iowa 1999). A sentence that is statutorily valid is cloaked with a strong presumption in its favor. *State v. Lloyd*, 530 N.W.2d 708, 713 (Iowa 1995). An abuse of discretion will be found only where the court exercises its discretion "on grounds or for reasons clearly untenable or to an extent clearly unreasonable." *State v. Neary*, 470 N.W.2d 27, 29 (Iowa 1991).

Merits

A sentencing court must "weigh and consider all pertinent matters in determining a proper sentence." *State v. Cooley*, 587 N.W.2d 752, 754–55 (Iowa 1998) (quoting *State v. Hildebrand*, 280 N.W.2d 393, 396 (Iowa 1979)). Among these factors is "the nature of the offense; the circumstances of the crime; the defendant's age, character and potential for reform." *Id.*; *see also* Iowa Code § 901.5 (requiring the sentencing court to determine an authorized sentence that "will provide maximum opportunity for the rehabilitation of the defendant, and for the protection of the community from further offenses by the defendant and others."). Other factors a sentencing court should consider include the defendant's family

circumstances and any prior criminal record. *State v. Kelley*, 357 N.W.2d 638, 639 (Iowa Ct. App. 1984). No one factor is determinative of the sentencing analysis. *State v. Johnson*, 513 N.W.2d 717, 719 (Iowa 1994). When sentencing the defendant an Iowa court need not specifically address each ground of mitigation or give its reasons for rejecting particular sentencing options. *State v. Thomas*, 547 N.W.2d 223, 225 (Iowa 1996); *State v. Russian*, 441 N.W.2d 374, 375 (Iowa 1989). A court's failure to specifically acknowledge a mitigating circumstance "does not necessarily mean it was not considered." *State v. Boltz*, 542 N.W.2d 9, 11 (Iowa Ct. App. 1995).

Luna complains that the district court "considered multiple factors that did not support incarceration but imposed incarceration solely on the nature of the offense." Appellant's Br. 25. The record does not support that claim, nor would it have been error even if it did.

At sentencing, the court explained it had reviewed Luna's own prepared psychosexual evaluation, the PSI, a victim impact statement filed by T.A., the parties' arguments for and against incarceration, and Luna's allocution. D0080, Sent. Tr. at 13:16–22 (4/21/2025). On top of these considerations, the sentencing court was the same that had decided Luna's guilt in his bench trial. It cannot seriously be contested that the court

considered both the aggravating and mitigating material in the record and then lengthily explained why it selected its sentence. It did not base its sentence solely on the nature of Luna's offense:

> As to sentencing options, I have considered everything that the Code will allow me to consider, which does include the Psychosexual Evaluation from Dr. Newring, the Presentence Investigation Report, victim impact statements and obviously everything that's been contained in those documents. I certainly take note of what was in each of these reports. I certainly understand the criminal history and recognize that most, with the exception of the most recent incident in Boone County, Iowa, that most of this has been a number of years ago. And I also understand and appreciate the fact that none of these prior offenses have any sort of a sexual element, if you will, which would be at all similar to what Count 1 is in this situation. So I recognize that.
>
> I recognize the fact that you're employed and have a job and have a job that you can go back to. So I appreciate that as well. It seems as though that's difficult sometimes to get individuals to do.
>
> And I appreciate the fact that the Psychosexual Evaluation seems to conclude that there is a low risk for you to reoffend. But I'll be remiss if I—I'd be remiss if, ultimately speaking, sir, I didn't tell you what I was most concerned about and what I'm concerned about in regards to the idea of probation.
>
> I have considered a suspended sentence for you. I've actually thought long and hard about this ever since my ruling was issued, prior to seeing anything as to what should happen. Understanding the impact that this has on this minor child, and that seems to be very apparent in regards to her victim impact statement. And I appreciate your remorse that you shared with

the Court this morning. That isn't for naught. The circumstances of this case really are what trouble me more than anything with what's going on. As you know, this was a trial to the Court. And I had, as in any case, first-hand experience of hearing everything that was presented and what was going through this child's mind, seeing the evidence and text messages and the actions that occurred.

There's certainly some things that stand out. And I guess, to that extent, I would agree with what the State argues as to what needs to happen. I was concerned to begin with, but I do also take note of some of the information that was in Dr. Newring's report. Perhaps 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. You know, the report references that she has had a history of psychiatric care, that you knew this, that you knew this in advance, that you knew she had a history of calling herself names out loud and putting herself down. She has indicated you treated her like your own daughter, like a family member. I honestly think that you probably had good intentions in regards to that. She's a friend of your daughter, and that was important.

But it seems to violate and take advantage of a fourteen-year-old's trust and everyone, yourself included. The 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, and I just can't brush that under the rug. You clearly seem to be involved in a pattern of behavior to gain her trust or to gain her confidence, to bolster her self-esteem, to make her feel appreciated, and at some point it obviously went way too far. The comments that were made in regards to having beautiful lips and she has a gorgeous body and you wish she wore

> a two-piece swimsuit, that's part of—you know, the attempt to kiss, that her idea of being scared, your deliberateness in making sure that she deletes her messages and doesn't share that information with others, "don't tell anybody; don't let my daughter see your phone," all of those things are incredibly concerning to me. In the end that's really what is driving me more than anything else in this situation.
>
> . . .
>
> This Court will run these sentences concurrent with one another. In running these sentences concurrent with one another, I've considered your need for rehabilitation, the need to protect society, to prevent further offenses like this from occurring, also based upon the information contained within the Presentence Investigation Report and the recommendations therein. As to these sentences, other than the fines, this Court declines to suspend those sentences. This Court will order your incarceration accordingly.

D0080 at 13:8–16:20.

As it explained, the lower court considered the mitigating factors (Luna's employment, alleged low risk of re-offense, his contrition) and aggravating factors (the nature and circumstances of his offense, his past criminal history, the PSI recommendation of incarceration, his attempt to prevent detection of his offense), the need to rehabilitate Luna and disincentivize others from acting similarly; it weighed their balance and ultimately concluded these factors warranted incarceration. *Compare* D0055, PSI at 4, 8–9 (3/11/2025) *with* D0051, Def. Psychosexual

Evaluation Report at 2–4, 7–10 (3/10/2025) ("He indicated that his interactions with her were an intent to bolster and improve her self-esteem."), 13, 15, 19–21 (4/9/2025) *with* D0057, Victim Impact Statement at 1 (4/21/2025) ("It scares me if I just see him . . . I also struggle to trust any of my other friends dads ever since. I am seeing a psychiatrist and a therapist ever since the incident."). This discretionary balancing of competing interests is inherent in the court's sentencing function. *See, e.g.*, *State v. Formaro*, 638 N.W.2d 720, 725 (Iowa 2002). And it is not subject to second-guessing by this Court. *See, e.g.*, *State v. Damme*, 944 N.W.2d 98, 105–06 (Iowa 2020). The district court considered the relevant criteria, did not consider any improper factors, imposed a sentence within the limits the legislature authorized, and it explained why it imposed the sentence it did. That is exactly what this Court asks of its lower sentencing courts, and it should affirm. *See State v. Pirie*, 18 N.W.3d 238, 250 (Iowa 2025).

A few of Luna's arguments warrant addressing. First, Luna alleges "Multiple factors opposed a sentence of incarceration." Appellant's Br. 22. That circumstance does not entitle him to resentencing. In any given case there may be much about a defendant that mitigates in favor of more lenient punishment. Even so, the sentencing court may consider the entire circumstances of the defendant and his crime and reasonably conclude that

the legislature's provided term of punishment is appropriate. *See generally State v. Foster*, No. 23-0221, 2024 WL 707210, at *2–3 (Iowa Ct. App. Feb. 21, 2024) (affirming carceral sentence for enticing a minor where facts mitigated both for and against punishment). And germane to Luna, the district court's discussion of its sentencing calculus prove it considered and balanced his mitigating circumstances; it just found the nature of his offense warranted stronger punishment. *See* D0080 at 13:16–16:20; 17:7–17.

Luna next suggests that the district court's explanation of sentence was deficient because it failed to identify the portions of the PSI it relied on. Appellant's Br. 24. In his view, Rule of Criminal Procedure 2.23(2)(f) requires courts to specifically identify what portions of a PSI found persuasive. Not so. The rule provides:

> f. *Basis for sentence imposed*. The court shall ensure that the basis for the sentence imposed appears in the record. *The court shall consider all of the following:*
>
> (1) The recommendation of the prosecuting attorney, subject to the terms of the plea agreement, if any.
>
> (2) The recommendation of the defendant's attorney, subject to the terms of the plea agreement, if any, and any statement of the defendant.
>
> (3) The statement of the victim or victims of the offense, if any, as provided by law.

> *(4) The content and recommendation of the presentence investigation report.*
>
> (5) All other factors required by law to be considered.

Iowa R. Crim. P. 2.23(2)(f) (emphasis added). All rule 2.23(2)(f)(5) requires is that the court consider the PSI and later explain the basis for the sentence it imposes. It is not a requirement that the court identify any portion of the PSI.

When explaining its sentence, the court could of course identify any of the factors listed in 2.23(2) as the basis for the sentence—but it is not a necessity. Said differently, where the court provides an adequate explanation for its sentence, there is no reversible error for failing to cite a particular portion of the PSI. On the other hand, if there is no adequate explanation as 2.23(2) requires, the court failed to fulfill its duty and gestures to the PSI in its entirety cannot save it. Luna's offered authority *State v. Fuhlman*, No. 22-1042, 2023 WL 6291565, at *2–3 (Iowa Ct. App. Sept. 27, 2023) illustrates this distinction in the State's favor, not his.

In *Fuhlman*, the court of appeals panel described the district court's explanation of its sentence in its entirety as "thin," "sparse," and "too vague":

> Mr. Fuhlman, it's my duty under the law to review what is available to me in terms of community

> resources and an appropriate rehabilitative plan for you, but also take into consideration the nature of your crimes and the affect that they have had upon the community, and what I have available to me to assist you in the rehabilitative process. I first look at the least restrictive means of rehabilitation, and then, proceed to the more restrictive means. I've reviewed the information contained in the presentence investigation report and have taken all of that information into consideration. However, I have not taken into consideration any entries in the criminal history section that do not contain an admission or an adjudication of guilt.

Fuhlman, 2023 WL 6291565, at *2. The district court's explanation of its sentence comprised of generic sentencing concepts and failed to meet its duty to explain its specific sentence under the rule. *Id.*; *see also State v. Cooper*, 403 N.W.2d 800, 802 (Iowa Ct. App. 1987) ("The present record, far from articulating the rationale behind the court's choice of sentence, states only generalized, vague considerations which we may assume advise every court in making every sentencing decision: the circumstances of the offense and the defendant's background."). While the *Fuhlman* court referenced the PSI and took "all of that information into consideration," that statement in and of itself provided no basis for its selected sentence.

The same cannot be said here. Luna's sentencing court addressed multiple, specific aspects of him and his crime. D0080 at 13:8–16:20. The court's references to his work and criminal history make clear it reviewed

those portions of the PSI. *See* D0055, PSI at 4, 8–9. This was not boilerplate, it was sufficient to permit judicial review. *See State v. Merrival*, No. 23-1869, 2024 WL 3518293, at *1–2 (Iowa Ct. App. July 24, 2024) (rejecting claim sentencing court used "boilerplate language and only considered the nature of his arrest"). He is mistaken in suggesting that the rules of criminal procedure and *Fulhman* require Iowa's courts to always identify "which aspects of the PSI drove the court's decision." Appellant's Br. 24.

Finally, Luna suggests that the district court "sentenced him to the maximum length of incarceration for a class D felony." Appellant's Br. 22, 25. True. But again, this is unremarkable. In Iowa, *unless* the legislature has provided the district court the discretion to impose a determinate portion of a sentence or has removed the discretion from the court altogether, *all* carceral felony sentences are for the "maximum" of the term with the discretion for early release left to the department of corrections or board of parole. *See* Iowa Code §§ 902.3, 902.9(1)(b)–(e). Said differently, the district court had the binary discretion to impose or suspend a five-year sentence. That it selected the former is not surprising on these facts, and it is not an abuse of discretion. Luna omits that the district court did not

impose the *harshest* sentence possible—it ran each of his simple assault convictions concurrent to his enticement conviction. Sent.Tr. 17:7–14.

In sum, the record is sufficient to permit appellate review and uphold the district court's lawful sentence. Luna may believe the record supported a more lenient sentence, but "it is equally clear under our standard of review that the district court was justified in imposing incarceration." *Formaro*, 638 N.W.2d at 725; *State v. McDowell*, No. 17-0679, 2017 WL 6034123, at *1 (Iowa Ct. App. Dec. 6, 2017) (mere disagreement with sentencing decision is not a ground for relief). No error occurred and Luna is not entitled to resentencing.

III. The district court had the ability to suspend Luna's fine. If that sentence was illegal, this will not win Luna a plenary resentencing. It will win him a sentencing hearing where the court *must* impose a fine.

Preservation of Error

The State does not contest error preservation. Luna argues that the district court's sentence is illegal. "An illegal sentence is one that is not permitted by statute." *State v. Woody*, 613 N.W.2d 215, 217 (Iowa 2000). It "is void and 'not subject to the usual concepts of waiver, whether from a failure to seek review or other omissions of error preservation.' Because an illegal sentence is void, it can be corrected at any time." *Id.* (quoting *State v. Ohnmacht*, 342 N.W.2d 838, 843 (Iowa 1983)).

Standard of Review

This Court reviews a sentence's legality for correction of errors at law. *Damme,* 944 N.W.2d at 103.

Merits

Relying on dissents in *Laue* and *Cullum*, Luna urges that Iowa's district courts lack the statutory ability to impose a period of incarceration and suspend the attendant fine. Appellant's Br. 27, 28, 30, 33. He reads Iowa Code section 902.9(1)(e) to require a court to impose both a carceral sentence and a fine. Appellant's Br. 29–30. Based on this, he reasons the district court's decision to impose prison and suspend his fine makes the *prison* portion of his sentence illegal, so "this Court should vacate the sentence and remand for the trial court to grant probation." Appellant's Br. 33. He is wrong on all points.

As the Iowa Court of Appeals recently addressed in *Cullum*, this issue relitigates questions the Iowa Supreme Court resolved over thirty years ago. Before diving into these cases, it is worth returning to the relevant sentencing statutes.

Most relevant is Iowa Code section 901.5 which authorizes sentencing courts to "pronounce judgment and impose *a* fine *or* sentence the defendant to confinement, *or* both, and suspend the execution of the

sentence *or* any part of it as provided in chapter 907." Iowa Code § 901.5(3) (emphasis added). The emphasized portions demonstrate the legislature wanted the sentencing court to have the discretion to select an appropriate punishment. *Accord* Iowa Code § 901.5(4) ("The court may pronounce judgment and impose a fine or sentence the defendant to confinement, or both."); *see In re Marshall*, 805 N.W.2d 145, 158 (Iowa 2011) ("We should give the language of the statute its fair meaning, but should not extend its reach beyond its express terms."); Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* 33 (2012) [hereinafter Scalia & Garner, Reading Law] (defining "fair reading method" as "determining the application of a governing text to given facts on the basis of how a reasonable reader, fully competent in the language, would have understood the text at the time it was issued"). The next relevant statute is section 907.3, which provides:

> By record entry at the time of or after sentencing, the court may suspend the sentence and place the defendant on probation upon such terms and conditions as it may require . . .

Iowa Code § 907.3(3). Section 907.3 does not mandate that a district court suspending a fine must also place a defendant on probation. Rather, the court "*may* suspend the sentence and place the defendant on probation." Iowa Code § 907.3(3) (emphasis added). The legislature's use of "may" only

"confers a power" that is discretionary. Iowa Code § 4.1(30)(a), (c); *State v. Iowa Dist. Ct. Woodbury Cnty.*, 989 N.W.2d 652, 656 (Iowa 2023). Read together, the text of the statutes provide district courts with the discretion craft a sentence "that makes sense"— that includes ordering incarceration while simultaneously suspending the associated fine. *See Cullum*, 2025 WL 2057904, at *7.

This has long been the Iowa Supreme Court's construction of our sentencing statutes. Over thirty years ago, the Iowa Supreme Court repeatedly held in a series of cases that these provisions grant Iowa's district courts the ability to impose a sentence of incarceration while simultaneously suspending the fine.[1] *See State v. Grey*, 514 N.W.2d 78, 79 (Iowa 1994); *see also Ayers*, 590 N.W.2d at 29–32; *State v. Klein*, 574 N.W.2d 347, 348–49 (Iowa 1998); *Lee*, 561 N.W.2d at 354–55; *State v. Chana*, 476 N.W.2d 38, 39–40 (Iowa 1991). The Iowa Supreme Court acknowledged that Iowa's sentencing statutes setting out punishments all

[1] It seems history repeats itself. Many of the court's 1990's cases were resolved based on the court's earlier analysis in *State v. Robbins*, 257 N.W.2d 63 (Iowa 1977) and *Hildebrand*, 280 N.W.2d at 397. In each, the Iowa Supreme Court concluded that the district court abused its discretion when it found imposing sentence was mandatory and declined to consider probation as a viable disposition. *See Robbins*, 257 N.W.2d at 69–70; *Hildebrand*, 280 N.W.2d at 397. Then and now, a sentencing court retains the "discretionary authority to apply the various section 901.5 sentencing alternatives." *Hildebrand*, 280 N.W.2d at 397.

used the term "shall"—*see* Iowa Code §§ 902.9; 903.1—seemingly requiring the district court to impose incarceration and fine or to suspend both as Luna reads them. *See, e.g.*, *Grey*, 514 N.W.2d at 79; Appellant's Br. 29–30. But it also observed that "most statutes do not eliminate the authority given trial courts by Iowa Code chapter 907 to defer judgment, defer sentence, or suspend sentence." *Grey*, 514 N.W.2d at 79; *see also Chana*, 476 N.W.2d at 39–40. It recalled our legislature "is capable of using restrictive language when it wants to," and remove sentencing options from the district court's general discretion. *Grey*, 514 N.W.2d at 79; *see, e.g.*, Iowa Code § 903.1(1) (for simple, serious, or aggravated misdemeanors, "the court shall determine the sentence, and shall fix the period of confinement or the amount of fine, *which fine shall not be suspended by the court*" (emphasis added)).

So the Court harmonized the statutes by reading them in pari materia and advanced the legislature's intent for courts to reach sentences that fit the defendant and their crime; it adopted a construction that unless the legislature used express limiting language to foreclose a sentencing option, section 901.5 authorizes suspending *any* part of the sentence.[2] *Id.*; *see*

[2] In fact, courts repeatedly found it was reversible error for the sentencing court not to exercise that available discretion. *See Chana*, 476 N.W.2d at 40 ("Iowa Code section 901.5(3), which authorizes a court to

Cullum, 2025 WL 2057904, at *4–5; *see also* Iowa Code §§ 4.1(38), 4.4, 4.6. Then and now, our supreme court and court of appeals have considered and rejected Luna's interpretation. *Compare Grey*, 514 N.W.2d at 79; *Duffield*, 16 N.W.3d at 304; *Cullum*, 2025 WL 2057904, at *5–6, *8–10 *with* Appellant's Br. 28–31. *Cf. State v. Phillips*, No. 22-0659, 2023 WL 2672058, at *3 (Iowa Ct. App. Mar. 29, 2023) (analyzing precedent alongside Iowa code section 903.1(1)(b) to conclude that fines *cannot be* suspended for serious misdemeanors).

This precedent led to our present moment where it is "widespread and common practice for district courts to . . . suspend[] the fine of a defendant sent to prison without placing the defendant on probation." *State v. Laue*, No. 23-0208, 2023 WL 8448475, at *3 (Iowa Ct. App. Dec. 6, 2023) (Ahlers, J. concurring in part). While not an official publication, the Iowa Judicial Branch distributes a sentencing guide to aid its district courts. MICHAEL R. MULLINS & DRAKE U. L. SCH., IOWA CRIMINAL STATUTES SUMMARY CHART—2024 at 1 (2024) *available at*

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impose a fine, term of confinement, or both, specifically permits the sentencing court to suspend the execution of the sentence 'or any part of it.' Thus we conclude the legislature's failure to expressly limit sentencing options for first-offense OWI applies to *all* components of the sentence, including the fine."); *accord Ayers*, 590 N.W.2d at 31–32; *Klein*, 574 N.W.2d at 348–49; *Cullum*, 2025 WL 2057904, at *8.

https://www.iowacourts.gov/iowa-courts/district-court/criminal-statutes-summary-chart/. While it disclaims being an "authority in support of any interpretation of Iowa law," it too suggests sentencing courts can suspend fines like the one for Luna's felony conviction. *See id.* at 1, 284 (stating fines associated with convictions for Iowa Code section 710.10(2) may be suspended, citing *Ayers*, 590 N.W.2d at 31).

Luna attempts to undo these precedents. He suggests they are inconsistent with the statutes' text. Appellants' Br. 28–32. In doing so, he relies on the very arguments this Court rejected, as well as Judge Ahlers's separate opinions in *Laue* and *Cullum*. This Court should hold fast to its precedent for three reasons.

Following thirty years of consistent judicial interpretation and no compelling explanation why that precedent should be disturbed, stare decisis strongly supports rejecting Luna's claim.

First, stare decisis weighs strongly against Luna. See *Book v. Doublestar Dongfeng Tyre Co.*, 860 N.W.2d 576, 594 (Iowa 2015) ("Stare decisis alone dictates continued adherence to our precedent absent a compelling reason to change the law."). The doctrine's force is at its apex "where the construction placed on a statute by previous decisions has been long acquiesced in by the legislature, by its continued use or failure to change the language of the statute so construed . . . ." *State v. Iowa Dist. Ct.*

for Jones Cnty., 902 N.W.2d 811, 818 (Iowa 2017) (quoting *In re Estate of Vajgrt*, 801 N.W.2d 570, 574 (Iowa 2011). "When many years pass following such a case without a legislative response, we assume the legislature has acquiesced in our interpretation." *Ackleson v. Manley Toy Direct, L.L.C.*, 832 N.W.2d 678, 688 (Iowa 2013). In the ensuing decades, both our legislature and the appellate courts continue adhering to the view courts may suspend fines when incarceration is ordered. *See Duffield*, 16 N.W.3d at 304 ("The district court had the discretion to suspend the fine.").

And in addition to Luna's burden to prove that the Iowa Supreme Court past decisions against him were "manifestly erroneous" in their interpretation of Iowa Code section 901.5, he must also have a "compelling" "cogent," "most pressing," or "great and imperious" reason for the Court to disturb them. *See Vaudt v. Wells Fargo Bank, N.A.*, 4 N.W.3d 45, 57–58 (Iowa 2024) (McDonald, J., concurring). He has not provided any. A trend in interpretive preference for textualism does not meet it. *See generally* Austin Peters, *Are They All Textualists Now?*, 118 Nw. U. L. Rev. 1201, 1206–07, 1233–41 (2024) ("In state supreme courts, textualism has increased significantly since 1980, which has manifested in the increasing use of all three textualist methodologies."). That is especially so where the prior iteration of our Supreme Court was aware of his textualist argument

and rejected it. *See Cullum*, 2025 WL 2057904, at *9 (Langholz, J., concurring) (noting the Iowa Supreme Court rejected the textualist argument in *Lee*, 561 N.W.2d at 354).

What is more, even if this Court were to assume it had previously misinterpreted our sentencing statutes, it has been to defendants' benefit. It has spared individuals like Luna the difficulty of repaying hefty fines during and after long periods of incarceration. Removing that benefit from sentencing courts' sentencing options is more curious than compelling—if Luna succeeds, he will likely have lost his liberty *and* be liable for at least $1,025 (and possibly more). *See* D0080 at 13:22–16:15 (summarizing Luna's actions as "incredibly concerning"). With no compelling reason to strip sentencing courts of the discretion precedent provides them, Luna's claim should fail.

The practical costs of abandoning stare decisis are too costly on defendants and victims.

Second, the nature of Luna's claim should serve as warning and reason to reject his attack on this Court's precedent. Luna fashions this as an illegal sentence claim, arguing that the sentence he received was statutorily unauthorized and void. *Compare* Appellant's Br. 26–27, 33. Granting him relief will cast open the doors to myriad similar motions to correct illegal sentences. *See Cullum*, 2025 WL 2057904, at *8 (Buller, J.,

concurring) ("It seems to me the practical approach in this state for decades has been that most prosecutors, defense attorneys, and district courts treat fines as suspendable and functionally waived for most lengthy prison sentences."). This will include challenges to long-finalized sentences where defendants with long prison sentences and suspended fines seek "relief," simply hoping for another chance at a lesser sentence years later. *See Jefferson v. Iowa Dist. Ct. for Scott Cnty.*, 926 N.W.2d 519, 525 (Iowa 2019) ("We are aware that the motion to correct an illegal sentence has the potential to be abused. . . . Furthermore, a motion to correct an illegal sentence may be frivolous."). It will require district courts to appoint a dwindling number of attorneys to assist them in their efforts. *Id.* at 524. And it will reach beyond our courtrooms to reopen wounds for victims and their communities. *See State v. Lyle*, 854 N.W.2d 378, 406, 419–20 (Iowa 2014) (Waterman, J., dissenting) ("Today's decision will have dramatic real-world consequences. Justice Zager has identified the burdens imposed on the judicial system by the scores of resentencing hearings and has noted the trauma to victims who must testify and relive what the defendant did to them. These hearings will reopen the wounds of the victims and their families.").

These costs are unreasonable when there is strong reason to believe the existing interpretation has already accomplished the legislature's intent. Under it, sentencing courts have the discretion to reach a sentence that best fits a defendant and his or her underlying crime: "On the practical side, the defendant has less chance of paying a fine from a prison cell than if they are operating under a probationary sentence." *Cullum*, 2025 WL 2057904, at *4; *accord. Laue*, 2023 WL 8448475, at *3 (Ahlers, J. concurring in part) ("I also recognize that the practice makes practical sense. There seems to be little purpose served by imposing an unsuspended financial obligation on an incarcerated defendant, as the fine would be unlikely to provide any further penological purpose and frequently only serve to pile some unpayable debt on an incarcerated defendant."). Independent from these practical concerns, real world consequences, and stare decisis, our legislature has not corrected the alleged interpretive error for more than thirty years—meaning the related doctrine of legislative acquiescence further favors leaving precedent intact. *See Vaudt*, 4 N.W.3d. at 59–60.

If he prevails, Luna's remedy is to have his sentence amended to impose a fine—not release from incarceration.

And last, Luna asks for an incorrect and eyebrow-raising remedy. *See* Appellants' Br. 33 ("Because Mr. Luna's prison sentence is illegal, this Court should vacate the sentence and remand for the trial court to grant

probation."). The State doubts plenary resentencing is inappropriate—the district court did not consider an improper sentencing factor nor was the sentencing procedure otherwise tainted. *See Duffield*, 16 N.W.3d at 303–04. The court's oral pronouncement of statement made clear that its decision to incarcerate drove its sentencing calculus. D0080 at 13:16–17:3. If this Court abandons its precedent to find Luna's sentence illegal, it need only vacate the suspended portion Luna challenges and remand for the lower court to impose the fine.[3] *See State v. Draper*, 457 N.W.2d 600, 605–06 (Iowa 1990) ("We have stated many times that an illegal sentence is a nullity subject to correction, even though correction may result in an increase in the sentence on remand" and collecting cases).

All of which is to say, if this Court agrees with Luna his sentence is illegal, then it should remand with directions to impose all associated fines rather than reversing the district court's reasoned determination incarceration was appropriate. *See State v. Smith*, 17 N.W.3d 355, 361

[3] If there is an illegal sentence here, it was the lower court's decision to suspend his simple misdemeanor assault fines. *Compare* Iowa Code § 903.1; D0059, Judgment at 1 (4/21/2025); D0080 at 16:20–17:1. Even under this Court's precedent, sentencing courts could not suspend these fines. *See* Iowa Code § 903.1 (noting fines "shall not be suspended by the court"); *Ayers*, 590 N.W.2d at 31 (construing section 903.1(1) to prohibit suspension of simple and serious misdemeanor fines).

(Iowa 2025) (only vacating the fine portion of Smith's sentence and citing *Ayers*, 590 N.W.2d at 33).

CONCLUSION

Substantial evidence supports Luna's conviction, the district court did not abuse its discretion in sentencing him to serve his sentence in the State's custody, and it did not impose an illegal sentence by suspending the fine associated with his felony conviction.

REQUEST FOR NONORAL SUBMISSION

The State believes this case can be resolved without oral argument on existing precedent. If argument is ordered, the State would be heard.

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CERTIFICATE OF COMPLIANCE

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