

IN THE SUPREME COURT OF IOWA

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STATE OF IOWA,

Plaintiff-Appellee,

v.

CHRISTOPHER WILLIAM  
THOMPSON,

Defendant-Appellant.

SUPREME CT. NO. 20-1689

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APPEAL FROM THE IOWA DISTRICT COURT  
FOR POLK COUNTY  
HONORABLE SARAH E. CRANE, JUDGE

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APPELLANT'S BRIEF AND ARGUMENT

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MARTHA J. LUCEY  
State Appellate Defender

THERESA R. WILSON  
Assistant Appellate Defender  
twilson@spd.state.ia.us  
[appellatedefender@spd.state.ia.us](mailto:appellatedefender@spd.state.ia.us)

STATE APPELLATE DEFENDER'S OFFICE  
Fourth Floor Lucas Building  
Des Moines, Iowa 50319  
(515) 281-8841 / (515) 281-7281 FAX

ATTORNEYS FOR DEFENDANT-APPELLANT FINAL

## **CERTIFICATE OF SERVICE**

On the 10<sup>th</sup> day of November, 2021, the undersigned certifies that a true copy of the foregoing instrument was served upon Defendant-Appellant by placing one copy thereof in the United States mail, proper postage attached, addressed to Christopher Thompson, No. 6203241, Anamosa State Penitentiary, 406 North High Street, Anamosa, IA 52205.

APPELLATE DEFENDER'S OFFICE

/s/ Theresa R. Wilson

**THERESA R. WILSON**

Assistant Appellate Defender

Appellate Defender Office

Lucas Bldg., 4<sup>th</sup> Floor

321 E. 12<sup>th</sup> Street

Des Moines, IA 50319

(515) 281-8841

[twilson@spd.state.ia.us](mailto:twilson@spd.state.ia.us)

appellatedefender@spd.state.ia.us

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## **STATEMENT OF THE ISSUE PRESENTED FOR REVIEW**

**Whether the District Court abused its discretion in allowing admission of hearsay without any relevance to legitimate issues in dispute?**

### **Authorities**

State v. Dullard, 668 N.W.2d 585, 589 (Iowa 2003)

State v. Neitzel, 801 N.W.2d 612, 621 (Iowa 2011)

Iowa R. Evid. 5.801(c) (2021)

State v. Mueller, 344 N.W.2d 262, 264 (Iowa Ct. App. 1983)

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State v. Taylor, 689 N.W.2d 116, 124-29 (Iowa 2004)

State v. Barnes, 791 N.W.2d 817, 825 (Iowa 2010)

State v. Castaneda, 621 N.W.2d 435, 440 (Iowa 2001)

## **ROUTING STATEMENT**

This case should be transferred to the Court of Appeals because the issues raised involve applying existing legal principles. Iowa R. App. P. 6.903(2)(d) and 6.1101(3)(a) (2021).

## **STATEMENT OF THE CASE**

**Nature of the Case:** This is an appeal by Defendant-Appellant Christopher Thompson from his conviction, sentence, and judgement for Murder in the First Degree, a class A felony in violation of Iowa Code sections 707.1 and 707.2 (2019), following a jury trial in Polk County District Court. The Honorable Sarah E. Crane presided over all relevant proceedings.

**Course of Proceedings:** On April 24, 2020, the State filed a trial information in Polk County District Court charging Defendant-Appellant Christopher Thompson with Murder in the First Degree, a class A felony in violation of Iowa Code sections 707.1 and 707.2 (2019) (Count I), and Animal Abuse,



an aggravated misdemeanor in violation of Iowa Code section 717B.2. (Information)(App. pp. 4-5). Thompson pleaded not guilty and demanded a speedy trial. (Written Arraignment)(App. pp. 6-7).

On August 7, 2020, the State filed a motion for a ruling on the admission of evidence pursuant to Iowa Rule of Evidence 5.104(a). (State's Motion for Rule 104(a) Ruling)(App. pp. 8-10). Thompson filed a resistance on August 19, 2020, arguing the evidence in question was hearsay not admissible under any exception. (Resistance to State's Motion for Rue [sic] 104(a) Ruling)(App. pp. 38-39). Following a hearing, the District Court permitted the state to admit evidence regarding a Facebook Live video made by the deceased, statements that she feared Thompson, and statements that she was done supporting him and he needed to move out. (8/20/20 Tr. p. 26 L.21-p. 29 L.14, p. 30 L.20-p. 33 L.16). The court's ruling left the admission of other

potential evidence open to discussion at the time of trial.

(8/20/20 Tr. p. 29 L.15-p. 31 L.1, p. 33 L.17-p. 34 L.4).

Jury trial commenced November 2, 2020. (Tr. Vol. 1 p. 1 L.1-25). Thompson entered a separate guilty plea on Count II as charged, and the jury found him guilty as charged on Count I. (Petition to Plead; Tr. Vol 4 p. 4 L.3-8)(App. pp. 40-41).

On December 14, 2020, Thompson filed a motion in arrest of judgment and motion for new trial based upon the time limits placed on jury selection as part of its COVID protocols. (Motion in Arrest)(App. pp. 48-49). The District Court denied the motion immediately prior to sentencing. (Sent. Tr. p. 14 L.2-p. 16 L.12).

The District Court held a sentencing hearing on December 18, 2020. (12/18/20 Sent. Tr. p. 1 L.1-25). The court sentenced Thompson to life without the possibility of Parole on Count I and ordered him to pay \$150,000 to the deceased's estate. (12/22/20 Sent. Tr. p. 19 L.19-p. 20 L.4;

12/18/20 Sent. Order pp. 1-2)(App. pp. 50-51). On December 22, the court sentenced Thompson to two years in prison with a suspended \$855 fine on Count II and ordered it to run consecutively to the sentence in Count I. (12/22/20 Sent. Tr. p. 16 L.7-13; 12/22/20 Sent. Order pp. 1-2)(App. pp. 54-55).

Thompson filed a timely notice of appeal on December 22, 2020. (Notice)(App. p. 58).

**Facts:** On March 17, 2020, Lorie Baker became concerned for her friend, Paula Thompson, after Thompson's boss called Baker and said Paula<sup>1</sup> had not appeared at work. (Tr. Vol. 2 p. 21 L.7-25, p. 24 L.11-25). Baker attempted to contact Paula the night before and again after receiving the call, but did not get a response. (Tr. Vol. 2 p. 24 L.21-p. 25 L.10). Baker contacted Christopher Thompson, Paula's son who lived with her at 219 Pleasant View Drive in Des Moines,

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1. This brief will refer to Paula and Christopher Thompson by their first names to avoid confusion.

and he informed her they were not getting along. (Tr. Vol. 2 p. 22 L.5-21, p. 24 L.7-p. 25 L.15).

On the morning of March 18, Baker realized she had several missed calls from Christopher within a 15-minute time frame. (Tr. Vol. 2 p. 25 L.16-p. 26 L.4, p. 32 L.2-11).

Christopher told her he and his mother had been fighting, that he couldn't lie anymore, and that he had killed her with a crowbar. (Tr. Vol. 2 p. 26 L.5-22).

Baker called police and asked them to perform a welfare check. (Tr. Vol. 2 p. 28 L.9-13). When officers arrived at the home, they found an obviously deceased Paula laying on the floor in her bedroom. (Tr. Vol. 2 p. 40 L.10-p. 41 L.18). A blood trail on the floor indicated her body was likely moved from the hallway to the bedroom. (Tr. Vol. 2 p. 48 L.4-23, p. 79 L.15-22). There were spatters of blood in several rooms of the house and in the hallway. (Tr. Vol. 2 p. 72 L.19-p. 73 L.12). A crowbar was laying in plain sight on a table in the kitchen. (Tr. Vol. 2 p. 47 L.21-p. 48 L.3, p. 60 L.21-23). It

did not appear any attempt was made to hide the body, but rugs had been placed over pools of blood in the hallway. (Tr. Vol. 2 p. 49 L.2-5, p. 79 L.19-p. 80 L.2).

Later that day, Christopher appeared at the Polk County Jail to turn himself in on a warrant. (Tr. Vol. 2 p. 90 L.18-p. 91 L.10). Jail staff ran a warrants check but did not find any. (Tr. Vol. 2 p. 91 L.11-15). Christopher told the staff that he assumed he had a warrant because he had killed his mother five days before. (Tr. Vol. 2 p. 92 L.1-8). He explained that they had arguments in the past but this one had gone too far, that he used a crowbar, and that his conscience was bothering him. (Tr. Vol. 2 p. 100 L.5-20).

Christopher was taken to the police station for an interview and waived his Miranda rights. (Tr. Vol. 3 p. 33 L.11-p. 34 L.16). A recording of the interview was admitted as Exhibit 2. (Ex. 2). In the interview, Christopher described his mother as a mean drunk, telling him he was failing at life

and just a big mistake. (Ex. 2 16:40:00-40:30).<sup>2</sup> She had gotten out of hospital treatment for drinking three weeks earlier, but was drinking around eight bottles of wine a day. (Ex. 4 16:48:10-16:49:20, 17:04:30-17:05:15).

Christopher explained that he got into an argument with his mother around 10 p.m. on Friday, March 13, after she had been drinking. (Ex. 2 16:39:25-16:40:15). He said the argument got really heated and that he tried to retreat to his room but she refused to leave him alone. (Ex. 2 16:40:00-16:40:40, 41:40-42:10). She was telling him his life was a “pathetic piece of shit” and that everything in the house was hers. (Ex. 2 16:42:25-16:43:00). Christopher explained he could not take any more, “blew up,” walked through the kitchen to get the crowbar, and hit her in the head as she stood in the hallway. (Ex. 2 16:42:00-16:42:20, 16:43:10-43:40). He estimated he hit her about seven times, stopping

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<sup>2</sup>. All times listed for Exhibit 2 are approximate.

when she was no longer moving. (Ex. 2 16:43:30-16:44:15, 17:05:20-17:05:40).

Christopher said he acted out of rage, and that he just wanted it to be over. (Ex. 2 16:43:40-16:44:00, 16:53:30-16:53:50). He also said he was intoxicated, and acknowledged he should have just left. (Ex. 2 17:05:20-17:05:30). He also admitted killing Paula's cat with a crowbar and putting its body in the trash. (Ex. 2 17:05:50-17:07:30).

Christopher told detectives he placed his mother in her room and closed the door. (Ex. 2 16:44:20-16:44:40). He washed the blood off the crowbar because it was dripping, placed a towel on her head for the blood, and placed rugs over the blood in the hallway so he would not step in it. (Ex. 2 16:44:40-16:44:50, 16:58:40-16:59:10). He stayed in the house after the incident, going to the gas station twice to buy alcohol. (Ex. 2 16:44:45-16:45:00, 17:10:30-17:11:30).

Ultimately his conscience got to him, Christopher explained. (Ex. 2 16:57:45-16:58:00). After telling Baker

what happened, he got into Paula's vehicle, drove to Walmart, had some popcorn chicken, and went to an ATM to get money to put on his books at the jail. (Ex. 2 16:50:10-16:52:30, 16:57-45-16:58:10).

An autopsy revealed the cause of Paula's death was cranial cerebral trauma. (Tr. Vol. 3 p. 126 L.25-p. 127 L.8). The manner of death was classified as a homicide. (Tr. Vol. 3 p. 127 L.9-16).

Additional facts will be discussed below as relevant.

## **ARGUMENT**

**The District Court abused its discretion in allowing admission of hearsay without any relevance to legitimate issues in dispute.**

**Preservation of Error:** Error was preserved by the District Court's ruling on the State's Rule 104(a) motion, Thompson's resistance, and Thompson's objections at trial. (State's Motion for Rule 104(A) Ruling; Resistance to State's Motion for Rue [sic] 104(a) Ruling; 8/20/20 Tr. p. 12 L.15-p.



33 L.4; Tr. Vol. 2 p. 19 L.17-23; Tr. Vol. 3 p. 7 L.2-9, p. 9 L.23-  
p. 10 L.8)(App. pp. 8-10, 38-39).

**Standard of Review:** Evidentiary rulings are normally reviewed for an abuse of discretion. State v. Dullard, 668 N.W.2d 585, 589 (Iowa 2003). An appellate court will review rulings on the admission of hearsay, however, for correction of errors at law. State v. Neitzel, 801 N.W.2d 612, 621 (Iowa 2011). The general rule is that “a district court has no discretion to deny the admission of hearsay if the statement falls within an enumerated exception, subject, of course, to the rule of relevance under rule 5.403, and has no discretion to admit hearsay in the absence of a provision providing for it.” State v. Dullard, 668 N.W.2d at 589 (Iowa 2003).

**Merits:** Defendant-Appellant Christopher Thompson respectfully contends the District Court erred when it permitted Melissa Moylan and Maggie Wood to testify regarding previous statements made by Paula Thompson, at least one of which was made three months before her death.

The statements were hearsay and were not relevant to any legitimate issues in dispute. Thompson was prejudiced by the admission of this testimony and should receive a new trial.

On August 7, 2020, the State filed a motion asking for a Rule 104(a) hearing on the admissibility of certain testimony. (State's Motion for Rule 104(A) Ruling)(App. pp. 8-10).

Melissa Moylan was a close friend of Paula's who would testify that in December 2019 Paula posted a Facebook Live video saying if anything happened to her it was Christopher who killed her. (State's Motion for Rule 104(A) Ruling ¶ 3(a))(App. p. 8). Moylan was also expected to testify regarding a heated argument Paula told her about a month before her death in which Paula told Christopher she was done supporting him financially and he needed to move out of her house. (State's Motion for Rule 104(A) Ruling ¶ 3(a))(App. p. 8).

Maggie Wood was Christopher's probation officer at the time of Paula's death. (State's Motion for Rule 104(A) Ruling ¶ 3(b))(App. pp. 8-9). She was expected to testify that on

March 13, 2021, Paula sent her an email saying she was tired of being scared, said he was a drunk, and that the police told her to contact Wood for help. (State's Motion for Rule 104(A) Ruling ¶ 3(b))(App. pp. 8-9).

The State contended the proposed testimony was admissible under Iowa Rule of Evidence 5.404(b) to show Christopher's premeditation, deliberation, specific intent and motive to kill Paula. (State's Motion for Rule 104(A) Ruling ¶¶ 4-7, 10)(App. pp. 9-10). The State also argued that prior acts of violence against a victim are probative and relevant when the accused is prosecuted for the later murder of the victim. (State's Motion for Rule 104(A) Ruling ¶¶ 8-9)(App. p. 9). Finally, the State contended the statements were not hearsay because they were not offered for the truth of the matter asserted but to show Paula's state of mind, present sense impression, or excited utterance. (State's Motion for Rule 104(A) Ruling ¶ 9)(App. p. 9).

Thompson filed a resistance on August 19, 2020. (Resistance to State's Motion for Rue [sic] 104(a) Ruling)(App. pp. 38-39). Thompson argued the statements were inadmissible hearsay that were not relevant, were not probative, and were not subject to any exception. (Resistance to State's Motion for Rue [sic] 104(a) Ruling ¶¶ 2-3)(App. p. 38). He contended the State had failed to establish the foundation for any hearsay exceptions. (Resistance to State's Motion for Rue [sic] 104(a) Ruling ¶ 4)(App. p. 38).

The District Court held a hearing on the State's motion on August 20, 2020. (8/20/20 Tr. p. 1 L.1-25). The State argued that the proposed evidence went to the nature of the Thompsons' relationship and qualified under the hearsay exception for state of mind. (8/20/20 Tr. p. 4 L.1-p. 6 L.25). The State characterized Paula's statements to Moylan and Wood as present sense impressions, showing her state of mind, and excited utterances. (8/20/20 Tr. p. 7 L.1-p. 8 L.9, p. 9 L.21-p. 10 L.5). The State argued the testimony was

necessary to prove Christopher's intent and that the statements were reliable and consistent with one another and with Christopher's statements to police. (8/20/20 Tr. p. 9 L.9-p. 11 L.15).

Thompson argued that the cases relied upon by the State involved specific instances of conduct and permitted admission of the evidence to rebut defense claims of accident or a loving relationship – defenses Christopher was not raising. (8/20/20 Tr. p. 12 L.16-p. 14 L.18). Christopher claimed the evidence was being used to show propensity. (8/20/20 Tr. p. 14 L.19-p. 15 L.1). He described the Facebook Live video as neither a present sense impression nor an excited utterance but a prediction, and said that Paula later took the video down and told Moylan she was fine. (8/20/20 Tr. p. 15 L.2-p. 17 L.9). Christopher described Paula's statements about her argument with Christopher as vague, merely an opinion of his character, and not associated with any prior bad acts. (8/20/20 Tr. p. 17 L.11-p. 19 L.15).

He complained the State was trying to enter broad character descriptions. (8/20/20 Tr. p. 20 L.7-p. 21 L.3).

As for Wood's proposed testimony regarding the email from Paula, Christopher argued the statement that Paula was scared did not qualify as a present sense impression or excited utterance because Paula had already contacted the police.

(8/20/20 Tr. p. 22 L.9-p. 23 L.19). Christopher also referred to a second email in which Paula indicated she was willing to help Christopher so that he did not get into trouble.

(8/20/20 Tr. p. 23 L.20-p. 24 L.24).

Christopher faulted the state for trying to offer vague, unreliable character evidence not tied to any specific acts.

(8/20/20 Tr. p. 24 L.25-p. 26 L.17). There were no specific acts alleged to fall under Rule 404(b), and the proffered evidence was not tied to Christopher's intent. (8/20/20 Tr. p. 24 L.15-p. 26 L.17).

The District Court disagreed with Christopher that Paula's fear had to be tied to specific acts by Christopher.

(8/20/20 Tr. p. 27 L.22-p. 28 L.7). The court found two portions of testimony admissible – Paula’s statement to Moylan that she was done supporting Christopher and her request for Moylan’s help, and her statements to both Moylan and Wood that she was afraid of her son. (8/20/20 Tr. p. 28 L.8-p. 29 L.14, p. 34 L.24-p. 36 L.3). The court also permitted the State to introduce testimony regarding Paula’s Facebook Live video, but only if evidence that she later withdrew the video and told others she was fine was also admitted. (8/20/20 Tr. p. 30 L.20-p. 33 L.2). The court considered these admissible under Iowa Rule of Evidence 5.803(3) regarding then-existing condition. (8/20/20 Tr. p. 33 L.5-16). The court reserved ruling on allegations of fighting and drinking for development at trial. (8/20/20 Tr. p. 33 L.17-p. 34 L.4, p. 36 L.17-p. 37 L.2).

At the final pretrial conference on October 23, 2020, Christopher explained he would make a general objection at trial to the witness’ testimony but the objections would be

based on the Rule 104(a) conference. (10/23/20 Tr. p. 22-23). The District Court denied Christopher's renewed objection to the ruling on the State's Rule 104(a) motion immediately prior to testimony. (Tr. Vol. 2 p. 19 L.17-23).

At trial, Moylan testified she was a very close friend of Paula and knew Christopher through Paula. (Tr. Vol. 3 p. 5 L.22-p. 6 L.11). Over Christopher's objection, she testified that in December 2019 she saw a Facebook Live video Paula had posted to her account in which she was sitting in her living room whispering he was going to kill her or hurt her, that he was going crazy, and that she was scared. (Tr. Vol. 3 p. 6 L.22-p. 7 L.21). Moylan did not hear any arguing or disturbances in the background, but called the police the next day after she was unable to reach Paula. (Tr. Vol. 3 p. 7 L.22-p. 8 L.10, p. 15 L.15-p. 16 L.15). Paula then called her to let her know the police had come to her house and that she told them she was fine. (Tr. Vol. 3 p. 8 L.13-p. 9 L.3). She also took down the video. (Tr. Vol. 3 p. 13 L.11-15).



Moylan testified that she had lunch with Paula in February 2020 and Paula told her she had gotten into an argument with Christopher after telling him she would no longer support him and he needed to work. (Tr. Vol. 3 p. 9 L.4-22). Moylan testified that Paula described taking the credit cards out of her purse and cutting them up, causing Christopher to become angry. (Tr. Vol. 3 p. 9 L.4-22).

Wood testified that she had supervised Christopher on probation for seven years. (Tr. Vol. 3 p. 18 L.18-p. 19 L.14). On March 13, 2020, Paula sent her an email saying she was afraid of Christopher, that she had contacted the police who then told her to contact Wood, and asked Wood for help. (Tr. Vol. 3 p. 19 L.15-p. 20 L.14). Wood did not get the email until March 18, 2020. (Tr. Vol. 3 p. 20 L.15-17). Wood testified that the email indicated Paula had already contacted police but Wood was unaware of any police report generated by Paula's contact. (Tr. Vol. 3 p. 21 L.5-17).

The District Court erred in allowing this testimony. The testimony consisting of Paula's hearsay statements were not relevant to any legitimate issue in dispute. Thompson was prejudiced by the erroneous admission of this evidence and should receive a new trial.

Iowa Rule of Evidence 5.801(c) defines "hearsay" as "a statement that: (1) The declarant does not make while testifying at the current trial or hearing; and (2) A party offers into evidence to prove the truth of the matter asserted in the statement." Iowa R. Evid. 5.801(c) (2021). A court looks to a statement's purpose to determine whether it is hearsay. State v. Mueller, 344 N.W.2d 262, 264 (Iowa Ct. App. 1983). A court uses an objective test to determine the real purpose of the statement, not just the purpose urged by the prosecutor. State v. Sowder, 394 N.W.2d 368, 370-71 (Iowa 1986); State v. Martin, 587 N.W.2d 606, 610 (Iowa 1998).

Hearsay is not admissible at trial unless an exception applies. Iowa R. Evid. 5.802 (2021). Subject to the condition

of relevance, a trial court has no discretion to exclude hearsay that properly falls under one of the hearsay exceptions. State v. Newell, 710 N.W.2d 6, 18 (Iowa 2006). At the same time, the court has no discretion to include hearsay that is not covered by such an exception. Id.

Paula’s statements to Moylan and Wood were out-of-court statements made while not under oath. They were offered for the truth of the matter asserted – that Paula feared her son.

The District Court admitted the statements under the hearsay exception for “then existing, mental, emotional, or physical condition:

A statement of the declarant’s then existing state of mind (such as motive, intent, or plan) or emotional, sensory, or physical condition (such as mental feeling, pain, or bodily health), but not including a statement of memory or belief to prove the fact remembered or believed unless it relates to the validity or terms of the declarant’s will.

Iowa R. Evid. 5.803(3) (2021). (8/20/20 Tr. p. 33 L.7-16). In State v. Newell, the Iowa Supreme Court found statements

made by a murder victim that she feared her boyfriend, feared for her safety, planned to leave him, but feared he would keep her baby from her qualified under this exception. State v. Newell, 710 N.W.2d 6, 18-19 (Iowa 2006). On their face, Paula's statements of fear to Moylan and Wood would appear to qualify under this exception. There is, however, a caveat.

“The admission of such evidence under this exception is dependent upon the relevancy of the declarant's then existing state of mind, emotion, sensation, or physical condition.” Id. at 19 (citing State v. Buenaventura, 660 N.W.2d 38, 51 (Iowa 2003)). Relevant evidence is any evidence that has a tendency to make any fact of consequence in determining the action more or less probable than it would be without the evidence. Iowa R. Evid. 5.401 (2021). Irrelevant evidence is inadmissible. Iowa R. Evid. 5.402 (2019).

In Newell, the statements made by the deceased were relevant because Newell claimed that he and the deceased had a loving relationship and that her death was accidental. Id. at

19, 22. In State v. Buenaventura, meanwhile, the Iowa Supreme Court said similar statements of a decedent regarding her fear of a third person were not relevant to the murder charge and were offered solely to support Buenaventura's claim that the other person killed her. State v. Buenaventura, 660 N.W.2d 38, 51 (Iowa 2003).

In this case, Paula's state of mind and emotional state were not relevant. Unlike in Newell, Christopher was not claiming that he had a loving relationship with his mother or that she died by accident. Christopher specifically disclaimed any such defense. (8/20/20 Tr. p. 14 L.10-18). His defense was not that he did not kill Paula, but that he acted impulsively out of pure rage and without the requisite specific intent, premeditation, deliberation, or malice. (Tr. Vol. 3 p. 178 L.5-p. 180 L.14, p. 181 L.19-p. 183 L.1). He did not ask the jury to find him not guilty, but guilty of either of the lesser included offenses of voluntary manslaughter or second-degree murder. (Tr. Vol. 3 p. 185 L.3-p. 189 L.4).

The Court should also consider the passage of time when assessing the relevancy of Paula's hearsay statements. The most dramatic statement was from a Facebook Live video she posted in December 2019 in which she said she was afraid Christopher would hurt or kill her. (Tr. Vol. 3 p. 6 L.22-p. 7 L.21). That was three months before her death, and it was also a statement that Paula ended up retracting when the police visited her. (Tr. Vol. 3 p. 8 L.22-p. 9 L.3, p. 13 L.11-18). Paula's statement to Moylan that Christopher became angry after she said she would no longer support him was made "approximately sometime" in February, but did not indicate he made any threats to her. (Tr. Vol. 3 p. 9 L.4-22). The hearsay statements admitted in Newell were made within a month before the death in that case. State v. Newell, 710 N.W.2d 6, 18-19 (Iowa 2006).

Paula's hearsay statements were also vague – they were not tied to any particular incident. Moylan testified Paula said Christopher was "going crazy" in the Facebook Live video,

and yet Moylan heard nothing notable in the background of the video. (Tr. Vol. 3 p. 7 L.10-21, p. 15 L.15-p. 16 L.15).

Paula, of course, later told took the video down and told officers she was fine. (Tr. Vol. 3 p. 8 L.22-p. 9 L.3, p. 13 L.11-18). Moylan herself never witnessed any arguments between Paula and Christopher, just tension at times. (Tr. Vol. 3 p. 12 L.23-p. 13 L.10). Likewise, Wood testified that Paula told her in an email that she was afraid of Christopher, but did not explain why. (Tr. Vol. 3 p. 19 L.15-p. 20 L.14). Paula's generalized statements of fear, without more, do not provide relevance for the admission of her statements. Compare with id. at 18 (declarant's statements of fear explained in context of assault by Newell, learning something about him that led to her fear, concern Newell would hurt family members); State v. Richards, 809 N.W.2d 80, 95 (Iowa 2012)(declarant's statements of fear made in conjunction with references to abuse). Paula's hearsay statements should not have been admitted.

Inadmissible hearsay is "considered to be prejudicial to the nonoffering party unless otherwise established." State v. Dullard, 668 N.W.2d 585, 589 (Iowa 2003). In such cases, a reviewing court presumes prejudice and reverses "unless the record affirmatively establishes otherwise." State v. Newell, 710 N.W.2d 6, 19 (Iowa 2006). Erroneously admitted evidence may not be considered prejudicial if essentially the same evidence is properly in the record. Id. See also Iowa R. Evid. 5.403 (2021)("The court may exclude relevant evidence if its probative value is substantially outweighed by a danger of one or more of the following: unfair prejudice, confusing the issues, misleading the jury, undue delay, wasting time, or needlessly presenting cumulative evidence.")

Paula's hearsay statements offered nothing of value to the jury aside from an awareness of her generalized fear. They did not provide any insight into Christopher's motivations or intent. Christopher's blatantly honest admissions to detectives gave the jury a first-hand account of



what transpired the night of March 13, 2020. (Ex. 2 16:39:25-16:44:15, 16:53:30-16:53:50, 17:07:20-17:05:40). It was for the jury to determine – from the properly admitted evidence – whether Christopher specifically intended to kill his mother with premeditation and deliberation, or whether he acted impulsively after his mother’s repeated provocations. (Ex. 2 16:39:25-16:44:15, 16:53:30-16:53:50, 17:07:20-17:05:40). Statements regarding Paula’s generalized fear of Christopher would likely lead the jury to suspect a history of violence or at least threats – a history that does not actually appear in the record.

A jury’s verdict should be based on evidence, not speculation. The hearsay statements of Paula were inadmissible and likely to impact the jury’s decision between Murder in the First Degree, and either Voluntary Manslaughter or Murder in the Second Degree. Christopher was prejudiced by the admission of the statements and he should receive a new trial.

While the District Court did not rule on the State's argument under Iowa Rule of Evidence 5.404(b), it is worth discussing the application of that rule as well:

b. Crimes, wrongs, or other acts.

(1) Prohibited use. Evidence of a crime, wrong, or other act is not admissible to prove a person's character in order to show that on a particular occasion the person acted in accordance with the character.

(2) Permitted uses. This evidence may be admissible for another purpose such as proving motive, opportunity, intent, preparation, plan, knowledge, identity, absence of mistake, or lack of accident.

Iowa R. Evid. 5.404(b) (2017). The rule is designed to prevent the use of prior bad acts to draw a "propensity inference."

State v. Williams, 427 N.W.2d 469 (Iowa 1998).

Before the State will be allowed to admit bad acts evidence, a prosecutor must establish a "tenable noncharacter theory of logical relevance." State v. Sullivan, 679 N.W.2d 19, 28 (Iowa 2004). The evidence must be "relevant and material to a legitimate issue in the case other than a general propensity to commit wrongful acts." Id. at 25. See Iowa R.

Evid. 5.401 (2021)(test for relevant evidence). The evidence must also be supported by clear proof that the person committed the other bad act or crime. State v. Putman, 848 N.W.2d 1, 9 (Iowa 2014).

The District Court likely chose not to consider admission of the State's proffered testimony under this rule because there was no prior "act" or "crime" to admit. The hearsay testimony discussed above indicated Paula had a fear of Christopher, but did not tie that fear to any specific acts or conduct on his part. See State v. Reynolds, 765 N.W.2d 283, 289 (Iowa 2009)(considering prior bad acts to encompass activity or conduct that reflect adversely upon a defendant's character). The statements did not refer to any prior violence, threats, or even yelling by Christopher against Paula, for example. Under these circumstances, Rule 5.404(b) has no applicability.

If the subject of the statements did qualify as prior bad acts, Christopher recognizes that the prior relationship

between the defendant and the victim can be relevant in determining intent or motive. State v. Reynolds, 765 N.W.2d 283, 290-91 (Iowa 2009); State v. Taylor, 689 N.W.2d 116, 124-29 (Iowa 2004). However, the Iowa Supreme Court has also warned that “[u]se of an accused’s uncharged misconduct to prove the accused’s mens rea is already the most widely used basis for admitting uncharged misconduct evidence” and risks “substantially undermin[ing] the character evidence prohibition.” State v. Sullivan, 679 N.W.2d at 26 (internal quotation marks omitted).

As discussed above, unlike in Newell, Christopher was not claiming that he did not kill Paula or that they had a loving relationship. (8/20/20 Tr. p. 14 L.10-18). He freely told detectives about his sometimes turbulent relationship with his mother and about what prompted his actions on March 13, 2020. (Ex. 2 16:39:25-16:44:00, 16:47:40-16:49:00, 17:04:30-17:05:30). Unlike in Taylor, Paula did not testify at trial and give inconsistent statements that would

permit the admission of prior bad acts evidence to help jurors resolve the inconsistency. State v. Taylor, 689 N.W.2d 116, 127-28 (Iowa 2004). There was no relevance to any legitimate or material issue in dispute to justify the admission of her statements.

If the evidence were relevant and material to a legitimate issue other than propensity, the court would then decide if the danger of unfair prejudice substantially outweighed the probative value of the evidence. State v. Barnes, 791 N.W.2d 817, 825 (Iowa 2010). Unfair prejudice is an “undue tendency to suggest decisions on an improper basis, commonly though not necessarily, an emotional one.” State v. Castaneda, 621 N.W.2d 435, 440 (Iowa 2001). If the probative value is outweighed by the danger of prejudice, the court must exclude the evidence. State v. Sullivan, 679 N.W.2d at 25.

Any prior bad acts evidence in Paula’s statements are unfairly prejudicial under Rule 5.404(b) for essentially the

same reasons it is prejudicial under the hearsay rules. Again, Paula's hearsay statements offered nothing of value aside from an awareness of her generalized fear – they did not provide any insight into Christopher's motivations or intent.

Christopher's blatantly honest admissions to detectives gave the jury a first-hand account of what transpired the night of March 13, 2020. (Ex. 2 16:39:25-16:44:15, 16:53:30-16:53:50, 17:07:20-17:05:40). It was for the jury to determine – from the properly admitted evidence – whether Christopher specifically intended to kill his mother with premeditation and deliberation, or whether he acted impulsively after his mother's repeated provocations. (Ex. 2 16:39:25-16:44:15, 16:53:30-16:53:50, 17:07:20-17:05:40). Statements regarding Paula's generalized fear of Christopher was likely to lead the jury to suspect a history of violence or at least threats – a history that does not actually appear in the record.

A jury's verdict should be based on evidence, not speculation. The hearsay statements of Paula were inadmissible and likely to impact the jury's decision between Murder in the First Degree, and either Voluntary Manslaughter or Murder in the Second Degree. Christopher was prejudiced by the admission of the statements and he should receive a new trial.

### **CONCLUSION**

The District Court erred and abused its discretion in admitting irrelevant and prejudicial hearsay testimony. Thompson's conviction, sentence, and judgment for Murder in the First Degree should be vacated and his case remanded to the District Court for a new trial.

### **REQUEST FOR NONORAL SUBMISSION**

Counsel requests not to be heard in oral argument.

## **ATTORNEY'S COST CERTIFICATE**

The undersigned, hereby certifies that the true cost of producing the necessary copies of the foregoing Brief and Argument was \$4.60, and that amount has been paid in full by the Office of the Appellate Defender.

### **CERTIFICATE OF COMPLIANCE WITH TYPEFACE REQUIREMENTS AND TYPE-VOLUME LIMITATION FOR BRIEFS**

This brief complies with the typeface requirements and type-volume limitation of Iowa Rs. App. P. 6.903(1)(d) and 6.903(1)(g)(1) because:

[X] this brief has been prepared in a proportionally spaced typeface Bookman Old Style, font 14 point and contains 5,270 words, excluding the parts of the brief exempted by Iowa R. App. P. 6.903(1)(g)(1).

/s/ Theresa R. Wilson

Dated: 11/10/21

**THERESA R. WILSON**

Assistant Appellate Defender  
Appellate Defender Office  
Lucas Bldg., 4<sup>th</sup> Floor  
321 E. 12<sup>th</sup> Street  
Des Moines, IA 50319  
(515) 281-8841  
twilson@spd.state.ia.us  
appellatedefender@spd.state.ia.us