

IN THE SUPREME COURT OF IOWA  
Supreme Court No. 20-0914

---

STATE OF IOWA,  
Applicant-Appellee,

vs.

ALEXANDER SHANTEE THOMAS ROSS,  
Respondent-Appellee.

---

APPEAL FROM THE IOWA DISTRICT COURT  
FOR MADISON COUNTY  
THE HONORABLE MARTHA L. MERTZ, JUDGE

---

**APPLICATION FOR FURTHER REVIEW**  
(Iowa Court of Appeals Decision: August 17, 2022)

---

THOMAS J. MILLER  
Attorney General of Iowa

**THOMAS J. OGDEN**  
Assistant Attorney General  
Hoover State Office Building, 2nd Floor  
Des Moines, Iowa 50319  
(515) 281-5976  
(515) 281-8894 (fax)  
[thomas.ogden@ag.iowa.gov](mailto:thomas.ogden@ag.iowa.gov)

MATTHEW SCHULTZ  
Madison County Attorney

ATTORNEYS FOR APPLICANT-APPELLEE

## **QUESTIONS PRESENTED FOR REVIEW**

**(1) Did the district court err when it gave a noncorroboration instruction that also informed the jury that it should evaluate the victim’s testimony “the same way you evaluate the testimony of any other witness”?**

**TABLE OF CONTENTS**

QUESTIONS PRESENTED FOR REVIEW ..... 2

STATEMENT SUPPORTING FURTHER REVIEW ..... 4

STATEMENT OF THE CASE..... 6

ARGUMENT ..... 6

**I. The District Court Did Not Err When It Gave the Non-Corroboration Instruction from *State v. Altmayer*. ..... 6**

**II. The District Court Did Not Rely on an Improper Sentencing Factor. .... 12**

CONCLUSION .....12

REQUEST FOR ORAL SUBMISSION .....13

CERTIFICATE OF COMPLIANCE .....14

## STATEMENT SUPPORTING FURTHER REVIEW

On August 17, 2022, the court of appeals held that giving a non-corroboration instruction that also informed the jury that they should treat the testimony of a sex abuse victim “the same way you evaluate the testimony of any other witness.” The court described the question presented in this appeal as “an issue that has been decided by our supreme court since the parties submitted their briefs,” citing *State v. Kraai*, 969 N.W.2d 487 (Iowa 2022), and *State v. Mathis*, 971 N.W.2d 514 (Iowa 2022). *State v. Ross*, No. 20-0914, 2022 WL 3440701, at \*3 (Iowa Ct. App. Aug. 17, 2022). But *Kraai* and *Mathis* are not exactly on point because those cases dealt with a different instruction. In fact, the instruction given in this case has been on a parallel path in the courts to the instruction given in *Kraai* and *Mathis* and it has been cited by both the court of appeals and this Court (arguably) as an example of a proper noncorroboration instruction.

Further review is appropriate because, while this Court appeared to implicitly approve the instruction that was given in this case, the majority of the court of appeals panel concluded the opposite. This Court should grant further review to make its views

clear on a noncorroboration instruction that informs the jury that they should treat the testimony of a sex abuse victim the same way they treat the testimony of any other witness is allowed.

## STATEMENT OF THE CASE

### Nature of the Case

The State seeks further review of the Iowa Court of Appeals decision reversing Alexander Shantee Thomas Ross's convictions on two counts of second degree sex abuse. It held that it was error to give a noncorroboration instruction and that the error prejudiced Ross.

### Course of Proceedings & Facts

At the time of trial in March of 2020, L.C. was ten years old and her sister, K.C., was nine. Both children testified in detail about being molested and raped by Ross, including that it was painful and that he prevented them from crying out for help with a hand on their mouths. At trial, Ross objected to the district court's giving a non-corroboration instruction to the jury. Ross was found guilty on both counts and appealed his convictions. The Iowa Court of Appeals reversed, holding that it was error to give the noncorroboration instruction.

## ARGUMENT

### I. **The District Court Did Not Err When It Gave the Non-Corroboration Instruction from *State v. Altmayer*.**

Testimony from victims of sex crimes does not have to be corroborated to be believed by a jury. This Court quoted extensively

from the court of appeals to describe the history of the law relating to corroboration of testimony from victims of sex abuse in *Kraai*, 969 N.W.2d at 490-91. It held that instructing the jury that a complaining witness's testimony need not be corroborated is a "correct statement of the law." *Id.* at 491. It also held, however, that the specific instruction given in *Kraai* was improper because it "unduly emphasized the complainant witness's testimony." *Id.* at 492. *Kraai* settled the matter for the instruction at issue in that case, but that instruction was not given in this case.

In *Kraai*, as well as in *Mathis* and *State v. Barnhardt*, No. 17-0496, 2018 WL 2230938, at \*4 (Iowa Ct. App. May 16, 2018), the noncorroboration instruction stated simply, "[t]here is no requirement that the testimony of a complainant of sexual offenses be corroborated." *Kraai*, 969 N.W.2d at 490. But a different instruction made an appearance in Iowa's appellate courts around the same time. In *State v. Altmayer*, the court of appeals approved of an instruction that stated:

You should evaluate the testimony of [the victim] the same way you evaluate the testimony of any other witness. The law does not require that the testimony of [the victim] be corroborated in order to prove that she was sexually abused. You may find the Defendant

guilty of Sexual Abuse if [the victim]’s testimony convinces you of guilt beyond a reasonable doubt.

No. 18-0314, 2019 WL 476488, at \*5 (Iowa Ct. App. Feb. 6, 2019).

The instruction that was given in this case is materially identical to the instruction that was given in *Altmayer*. The *Altmayer* instruction has been cited as a counter-example to the instruction in *Kraai* by both the court of appeals and this Court. *Kraai*, 969 N.W.2d at 495; *State v. Kraai*, No. 19-1878, 2021 WL 1400366, at \*7 n.10 (Iowa Ct. App. April 14, 2021).

The *Altmayer* instruction relieves concerns about emphasizing victim testimony while also mitigating the history of discrimination against victims of sex crimes in jury trials and the persistent attitudes among potential jurors that sex crimes cannot be proved based on a victim’s testimony alone. See Tyler J. Buller, *Fighting Rape Culture with Noncorroboration Instructions*, 53 *Tulsa L. Rev.* 1, 18, 23-24 (Autumn 2017). The record from voir dire in this case shows that those attitudes were present among the prospective jurors. Consider the following examples:

### **Example #1**

[STATE]: ... Do you believe that someone can be found guilty solely through witness testimony and no physical evidence?

PROSPECTIVE JUROR 1: It would be hard for me to find someone guilty based on testimony alone.

...

[STATE]: ... why do you think it would be difficult?

PROSPECTIVE JUROR 1: I would feel that if I were going solely off the testimony of one or more people without physical evidence, that it is possible that there could be a bias towards somebody that those witnesses were – demonstrated. I think it should take more than that, than the word. I don't care if you bring in one hundred people up here to say the same thing. It should take more than that.

Trial Tr. Vol. II P.79 Ls.2-6, Ls.13-23.

### **Example #2**

[STATE]: ... Can somebody be convicted of a sexual crime by just having the alleged victim testify? Is that good enough?

...

PROSPECTIVE JUROR 2: Just one. Just taking word against word. By not knowing either of them, I don't know if I could just trust one person by looking at them and saying they're correct, unless I had more evidence.

Trial Tr. Vol. II P.93 Ls.21-23, P.94 Ls.5-9.

**Example #3**

[STATE]: ... If a person testifies that – and accuses somebody of sexually assaulting them. Okay? And they testify to that. Without physical evidence or physical corroboration, you could not convict the person they accused. How many of you would raise your hand?

...

PROSPECTIVE JUROR 3: Because I want to make darn sure ... I want to make sure the guy is guilty or whatever. It's going to take a lot to convince me one way or the other.

[STATE]: So how would you define reasonable doubt, then?

PROSPECTIVE JUROR 3: Well, if you had the evidence, that would be – define it that way.

[STATE]: So testimony is not enough?

PROSPECTIVE JUROR 3: I don't think so.

Trial Tr. Vol. II P.95 L.9 – P.96 L.1.

In *Kraai*, this Court acknowledged the State's argument that prospective jurors often harbor biases about the testimony of sex crime victims but explained that it "is not the function of the courts to assist the government in the prosecution of criminal cases by emphasizing the complainant's testimony over all other testimony." *Kraai*, 969 N.W.2d at 495. True enough, but it is the function of the

courts to instruct the jurors on the law and to “mitigate the danger of unfair prejudice” through cautionary instructions. *State v. Plain*, 898 N.W.2d 801, 817 (Iowa 2017). This Court has “strongly encourage[d] district courts to be proactive about addressing implicit bias” among jurors. *Id.* The record in this case supported the need to instruct jurors that the testimony of the victim need not be corroborated. Because the instruction made clear that the noncorroboration rule means that they should treat the victim’s testimony the same as they would any other witness, it did not unduly emphasize that testimony.

The majority opinion in the court of appeals treated this Court’s citation of *Altmayer* as an approval of only “that part of the instruction that is ‘a nonparticularized instruction applicable to all witness testimony.’” *State v. Ross*, No. 20-0914, 2022 WL 3440701, at \*3 (Iowa Ct. App. Aug. 17, 2022). But if that were all that this Court approved, the instruction would not do the job it is supposed to do. The *Altmayer* instruction’s first sentence states that the jury should treat the complaining witness’s testimony the same as any other witness. Its second sentence explains that there is no legal requirement for corroboration. What this Court said in *Kraai* was that “[a]n instruction that stated no witness’s testimony *needs to be*

*corroborated* ... would correctly state the law and help dispel any misconceptions regarding uncorroborated witness testimony.” *Kraai*, 969 N.W.2d at 495 (emphasis added). That is exactly what the *Altmayer* instruction does, but it needs both sentences to do it. Telling the jury only to treat the complaining witness’s testimony the same as any other witness does not tell them anything about whether the law requires corroboration.

**II. The District Court Did Not Rely on an Improper Sentencing Factor.**

If this Court does grant this application and holds that it was not error to give the noncorroboration instruction, it will then have to address Ross’s contention that the district court relied on an improper sentencing factor, as that question was not decided by the court of appeals. The State is content to stand on its principal briefing on that issue.

**CONCLUSION**

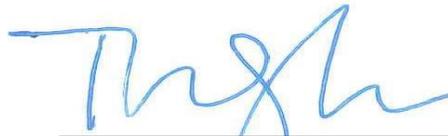
For the foregoing reasons, this Court should grant the application, vacate the decision of the court of appeals, and affirm Ross’s convictions for second degree sex abuse.

## REQUEST FOR ORAL SUBMISSION

The State requests to be heard in oral argument on this application.

Respectfully submitted,

THOMAS J. MILLER  
Attorney General of Iowa



---

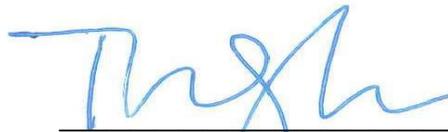
**THOMAS J. OGDEN**  
Assistant Attorney General  
Hoover State Office Bldg., 2nd Fl.  
Des Moines, Iowa 50319  
(515) 281-5976  
[thomas.ogden@ag.iowa.gov](mailto:thomas.ogden@ag.iowa.gov)

## CERTIFICATE OF COMPLIANCE

This application complies with the typeface requirements and type-volume limitation of Iowa R. App. P. 6.1103(4) because:

- This brief has been prepared in a proportionally spaced typeface using Georgia in size 14 and contains **1,630** words, excluding the parts of the brief exempted by Iowa R. App. P. 6.903(1)(g)(1).

Dated: August 30, 2022



---

**THOMAS J. OGDEN**

Assistant Attorney General  
Hoover State Office Bldg., 2nd Fl.  
Des Moines, Iowa 50319  
(515) 281-5976  
[thomas.ogden@ag.iowa.gov](mailto:thomas.ogden@ag.iowa.gov)