ELECTRONICALLY FILED SEP 28, 2022 CLERK OF SUPREME COURT

IN THE SUPREME COURT OF IOWA
Supreme Court No. 21-1594

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STATE OF IOWA,
Plaintiff-Appellee,

vs.

DAGGER LE ERDMAN,
Defendant-Appellant.

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APPEAL FROM THE IOWA DISTRICT COURT
FOR WASHINGTON COUNTY
THE HONORABLE DANIEL KITCHEN AND THE HONORABLE
MYRON GOOKIN, JUDGES

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# APPELLEE'S BRIEF

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## STATEMENT OF THE ISSUES PRESENTED FOR REVIEW

**I. The juvenile court did not abuse its discretion when it waived its jurisdiction over Defendant so he could be tried in district court.**

Authorities

*State v. Pec-Son*, No 07-1374, 2008 WL 3367609 (Iowa Ct. App. Aug. 13, 2008)
*State v. Tesch*, 704 N.W.2d 440 (Iowa 2005)
Iowa Code § 232.45(8)

**II. The State presented sufficient evidence that Defendant sexually abused Z.E.**

Authorities

*State v. Biddle*, 652 N.W.2d 191 (Iowa 2002)
*State v. Crawford*, 972 N.W.2d 189 (Iowa 2022)
*State v. Hansen*, 750 N.W.2d 111 (Iowa 2008)
*State v. Musser*, 721 N.W.2d 758 (Iowa 2006)
*State v. Thomas*, 847 N.W.2d 438 (Iowa 2014)
*State v. Trane*, 934 N.W.2d 447 (Iowa 2019)
Iowa R. App. P. 6.904(3)(p)

## ROUTING STATEMENT

Because this case does not meet the criteria of Iowa Rule of Appellate Procedure 6.1101(2) for retention by the Supreme Court, transfer to the Court of Appeals is appropriate. Iowa R. App. P. 6.1101(2).

## STATEMENT OF THE CASE

### Nature of the Case

Defendant Dagger Le Erdman ("Defendant") appeals his conviction following a jury trial in which he was found guilty of one count of Sexual Abuse in the Second Degree, in violation of Iowa Code sections 709.1(3), 709.3(1)(b), 709.3(2), and 903B.1, a class B felony. On appeal, Defendant asserts the juvenile court abused its discretion by granting the State's motion to waive jurisdiction to the district court, and the evidence was not sufficient to support his conviction.

### Course of Proceedings

The State accepts Defendant's course of proceedings as adequate and essentially correct. Iowa R. App. P. 6.903(3).

### Facts

One afternoon, while nine-year-old Z.E. was visiting Defendant's house, Defendant put his hand down her shorts and fondled her vagina. Z.E. and her family were longtime friends with

the Erdman family, and she was often over at their house to visit their chickens and play with Defendant's younger brother. Trial Tr. Vol. II at 17:4–18:2, 28:14–29:7, 43:7–44:5. On May 31, 2019, Z.E. was "bored at home" so went to the Erdman house "to hang out." Trial Tr. Vol. II at 18:11–24. She visited the chickens then went inside the house and hung out in the living room for a while. Trial Tr. Vol. II at 18:18–19:4, 29:17–19. On a previous occasion, Z.E. had left gummy worms at the house, and on May 31, Defendant called Z.E. upstairs to his bedroom, ostensibly to return the gummy worms. Trial Tr. Vol. II at 19:2–20:4, 29:17–21.

While alone upstairs, Defendant and Z.E. played a game of tag. Trial Tr. Vol. II at 20:3–10, 29:22–30:10. After, they sat on the floor and watched television. Trial Tr. Vol. II at 20:17–21:12. Defendant gave Z.E. a blanket, and a few minutes later, Defendant got under the blanket with Z.E. Trial Tr. Vol. II at 21:10–22:21, 31:5–9. Defendant then put his hand down Z.E.'s shorts and fondled her vagina, directly touching the skin. Trial Tr. Vol. II at 23:14–25:7. When Defendant was done, he put his hand down the front of his own pants. Trial Tr. Vol. II at 25:8–18.

Z.E. made up an excuse to leave. Trial Tr. Vol. II at 25:19–25. Defendant asked Z.E. if she "was going to tell anyone" he had touched her, and she "said no" because she was "afraid." Trial Tr. Vol. II at 26:1–8. But immediately after she left the Erdmans' house, she went to find a friend and told her what happened. Trial Tr. Vol. II at 26:9–21. Z.E. and her friend then went to Z.E.'s house, and Z.E. told her mom that Defendant had touched her vagina. Trial Tr. Vol. II at 26:22–27:10, 44:2–14. Z.E.'s mother reported the incident to police. Trial Tr. Vol. II at 44:12–45:19.

Defendant's trial testimony was almost identical to Z.E.'s, except he denied touching her vagina while they watched television in his room. Trial Tr. Vol. II at 74:6–77:14, 87:15–88:14. But Defendant claimed it was possible that he accidentally put his hands down Z.E.'s shorts while they were playing tag because "when you're in the air, you don't have control, so really you don't know if you did something or not." Trial Tr. Vol. II at 81:8–83:18. Z.E. denied that Defendant touched her inappropriately while they played tag. Trial Tr. Vol. II at 20:11–16.

During the investigation, Defendant gave two recorded interviews to Investigator Chad Ellis. Trial Tr. Vol. II at 55:11–56:12, 59:21–61:4. In the first interview, Defendant initially denied touching Z.E., even by accident while they were playing tag. State's Ex. 2 (06-03-19 Interview) at 10:35. As the interview progressed, Defendant said it was possible, then a few minutes later admitted, he accidentally touched her while they played tag, but he denied it was inside her shorts. *Id.* at 12:40, 14:48, 18:55.

During the second interview, Defendant admitted he put his hand down Z.E.'s shorts, drew an outline of his hand on a piece of paper, and used it to indicate how far his hand went down her shorts. Trial Tr. Vol. II at 61:9–62:22, 67:25–68:2; State's Ex. 4 (Drawing of Hand); App. 9. Defendant again asserted that he might have touched her by accident. State's Ex. 3 (06-20-2019 Interview) at 8:50. Defendant then admitted that he touched her—by accident—inside her shorts while playing tag and explained how it might have happened. *Id.* at 9:50.

Referring to the outline of Defendant's hand and the mark he made to indicate how far his hand went inside Z.E.'s shorts, Investigator Ellis asked Defendant, "is this accurate?" and Defendant

responded, “That’s as far as I’d let it go.” *Id.* at 13:22. Defendant stated that when his hand was in Z.E.’s shorts, he touched her skin, and when he realized what he had done, he immediately pulled his hand back out. *Id.* at 13:40. Later in the interview, Defendant admitted he touched Z.E. while they were watching television. *Id.* at 22:18. He stated he started on the outside of her shorts, then put his hand inside her underwear. *Id.* at 23:00. When he was done, Defendant said he thought about apologizing to Z.E., but she did not say anything to him. *Id.* at 22:18. At the end of the interview, Defendant told Investigator Ellis that in situations like this, the parents should discuss the incident and not involve the police. *Id.* at 25:20.

## ARGUMENT

### I. The juvenile court did not abuse its discretion when it waived its jurisdiction over Defendant so he could be tried in district court.

#### Preservation of Error

Error was preserved when the State filed a motion to waive jurisdiction to the district court, and the juvenile court entered an order and waived its jurisdiction. JVJV151558 09-13-2019 Motion to Waive, 10-22-2019 Order for Waiver; Conf. App. 7–8, App. 4–6.

**Standard of Review**

"…[R]eview is for an abuse of discretion." *State v. Tesch*, 704 N.W.2d 440, 447 (Iowa 2005) (internal citation omitted) ("The waiver statute, section 232.45, vests discretion in the juvenile court to decide whether a waiver of juvenile court jurisdiction is warranted.").

**Merits**

On September 13, 2019, a delinquency petition was filed against Defendant in juvenile court, and on the same day the State filed a motion to waive Defendant from juvenile court to district court for prosecution as an adult. JVJV151558 09-13-2019 Petition, 09-13-2019 Motion to Waive Jurisdiction; Conf. App. 5–8. On October 22, 2019, the juvenile court held a hearing on the State's waiver motion. Waiver Hearing Tr.

At this hearing, Investigator Ellis testified to the nature and extent of the sexual abuse alleged by Z.E. Waiver Hearing Tr. at 5:3–14:5. Juvenile Court Officer ("JCO") Karen Dennler also testified. JCO Dennler stated that after she interviewed Defendant, she determined he should be waived to district court "[d]ue to the seriousness of the offense, [and] the rehabilitative efforts that the Juvenile Court Office has available to them would not be sufficient in the time frame that

we have available to us." Waiver Hearing Tr. at 18:5–21. The primary concern was that Defendant was already well-past his 17th birthday, and the office "only have placement facilities available to us until a child turns 18. So in [Defendant's] case there's an evaluation that needs to be done, treatment that needs to be done, and all of that cannot be accomplished in the time frame that's left if he was admitting to the charge at this time, which when he met me for intake, he did not." Waiver Hearing Tr. at 18:22–19:10.[1]

JCO Dennler stated that "[i]n a sex abuse case, normally a child is evaluated and then recommend for treatment. The treatment is an intense treatment that lasts at least six months; and at this point without an adjudication or a conviction, we don't have six months in order to provide that treatment if the evaluation was even done." Waiver Hearing Tr. at 20:3–16. Defendant asserted that Iowa Code section 232.53(4) would permit Defendant to complete treatment at the State Training School after his 18th birthday. Waiver Hearing Tr. at 20:17–21:25. But JCO Dennler testified that the State Training School is "not usually recommended as the first placement for

[1] At the time of the waiver hearing, Defendant was about six months away from turning 18. *See* JVJV151558 09-18-2019 Waiver Report; Conf. App. 9.

anyone[,]” and stated that no other available program would allow Defendant to remain after the age of 18. Waiver Hearing Tr. at 22:22–23:9.

During the argument portion of the hearing, the juvenile court—relying on Iowa Code section 232.52(2)(e)—pointed out that Defendant would not qualify for placement at the State Training School because he had not “previously [been] found to have committed a delinquent act” nor had he “previously been placed in a treatment facility outside the child’s home[.]” Waiver Hearing Tr. at 25:16–27:2. Based on those criteria, Defendant admitted he did not qualify for placement at the State Training School but argued “there may be adult therapy programs that he could take advantage of.” Waiver Hearing Tr. at 27:3–28:2.

On October 22, 2019, the juvenile court entered an order waiving its jurisdiction so Defendant could be prosecuted as an adult in district court. 10-22-2019 Order for Waiver; App. 4–6. In it, the juvenile court determined that Defendant was over the age of 14, there was probable cause to believe he committed sexual abuse, and that the State established there were no reasonable prospects for

rehabilitating Defendant if he remained in juvenile court. *Id.* at 1; App. 4. On this final factor, the juvenile court elaborated:

> The child argued that he could receive treatment for 1.5 years after his eighteenth at the State Training School if he was sent there prior to his eighteenth birthday, or, in the alternative, he could be placed in programs for adult sex offenders under the order of the Juvenile Court after his eighteenth birthday. The evidence reflects, however, that should the child be adjudicated and disposition was entered, the State Training School is not an option. Further, there is insufficient time to have reasonable prospects of rehabilitating the child between this date and April 2020. Even if the child should be adjudicated to have committed Sex Abuse in the 2nd degree, evaluated for programming, and eventually admitted into a program, there is no reasonable prospect of rehabilitation prior to the court losing jurisdiction and the ability to enforce treatment.

*Id.* at 2; App. 5.

Defendant now claims the juvenile court's decision was an abuse of discretion because it did not consider all relevant factors. App. Br. at 9–13. Iowa Code section 232.45(8) "contains a nonexhaustive list of factors that the court must consider in making the determination required by section 232.45(6)(c). Those factors include:"

> a. The nature of the alleged delinquent act and the circumstances under which it was committed.
>
> b. The nature and extent of the child's prior contacts with juvenile authorities, including past efforts of such authorities to treat and rehabilitate the child and the response to such efforts.
>
> c. The programs, facilities and personnel available to the juvenile court for rehabilitation and treatment of the child, and the programs, facilities and personnel which would be available to the court that would have jurisdiction in the event the juvenile court waives its jurisdiction so that the child can be prosecuted as an adult.

*Tesch*, 704 N.W.2d at 448 (citing Iowa Code § 232.45(8)).

A review of the hearing transcript and the juvenile court's waiver order shows it considered these mandatory factors when it made its determination. Testimony at the hearing detailed the offense and the fact that this was Defendant's first contact with juvenile authorities, and the juvenile court indicated it relied on that information when it made its determination. Waiver Hearing Tr. at 5:3–14:5, 22:1–6, JVJV 151558 Waiver Order at 1–2; App. 4–5.

Defendant asserts the juvenile court erred by focusing "solely on the State Training School option[.]" App. Br. at 12. But Defendant's argument at the waiver hearing focused mainly on that option, so the

juvenile court's discussion of it was not misplaced. Waiver Hearing Tr. at 21:4–25, 24:12–25:15. While Defendant believed there may be adult programs that could be utilized, he did not present any evidence of their existence or whether Defendant qualified for them at the hearing. Waiver Hearing Tr. at 27:3–28:4. JCO Dennler testified that the non-State Training School options that were available to the juvenile authorities could not be completed before Defendant turned 18. Waiver Hearing Tr. at 18:11–19:10. Here, the juvenile court considered all mandatory factors, and its "decision was supported by the evidence[.]" *Tesch*, 704 N.W.2d at 450; *see also State v. Pec-Son*, No 07-1374, 2008 WL 3367609, at *2 (Iowa Ct. App. Aug. 13, 2008) (finding no abuse of discretion when "the juvenile court undertook the necessary evaluations required by the Iowa Code[.]").

## II. The State presented sufficient evidence that Defendant sexually abused Z.E.

### Preservation of Error

The State cannot contest error preservation. *State v. Crawford*, 972 N.W.2d 189, 195–202 (Iowa 2022).

### Standard of Review

"Challenges to the sufficiency of the evidence are reviewed for correction of errors at law." *State v. Hansen*, 750 N.W.2d 111, 112

(Iowa 2008). "The district court's findings of guilt are binding on appeal if supported by substantial evidence. Evidence is substantial if it would convince a rational trier of fact that the defendant is guilty beyond a reasonable doubt." *Id*. The evidence is viewed in the light more favorable to the State, including legitimate inferences and presumptions that can fairly and reasonably be deduced from the record. *State v. Biddle*, 652 N.W.2d 191, 197 (Iowa 2002). Evidence is not insubstantial merely because the evidence could support contrary inferences or because the verdict rests on weighing the credibility of conflicting witness testimony. *Id. "*Direct and circumstantial evidence are equally probative." Iowa R. App. P. 6.904(3)(p); *see also State v. Thomas*, 847 N.W.2d 438, 447 (Iowa 2014).

**Merits**

Defendant claims the evidence was not sufficient to show he committed a sex act because his testimony was more credible than Z.E.'s. App. Br. at 15. But when considering a sufficiency claim, "[i]t is not the province of the court…to resolve conflicts in the evidence, to pass upon the credibility of witnesses, to determine the plausibility of explanations, or to weigh the evidence; such matters are for the jury."

*State v. Musser*, 721 N.W.2d 758, 761 (Iowa 2006) (internal quotation marks and citations omitted).

Defendant agrees corroboration of Z.E's testimony is not required, and here, she testified clearly and consistently that Defendant called her upstairs to his room, covered them both with a blanket, then put his hand down her shorts and fondled her vagina. Trial Tr. Vol. II at 21:10–22:21, 23:14–25:7, 31:5–9. Z.E. reported this incident to a friend, her mother, and police. Trial Tr. Vol. II at 26:9–21, 26:22–27:10, 44:2–45:19. Z.E.'s testimony was undoubtedly sufficient to create a jury question. *See State v. Trane*, 934 N.W.2d 447, 455 (Iowa 2019) (stating that the victim's "testimony, standing alone, is sufficient to support" the defendant's conviction).

And Defendant admitted to Investigator Ellis that he put his hand down Z.E.'s shorts and touched her. State's Ex. 2 (06-03-19 Interview). At trial, Defendant tried to back-track from his admissions and claimed he was just speaking hypothetically. Trial Tr. Vol. II at 81:8–25, 83:7–84:5, 88:20–89:14. Such an explanation is contrary to the evidence presented at trial. Defendant's sufficiency claim fails.

## CONCLUSION

For all the reasons stated above, the State respectfully requests that this Court affirm Defendant's conviction and sentence.

## REQUEST FOR NONORAL SUBMISSION

The State requests that this case be submitted without oral argument.

Respectfully submitted,

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## CERTIFICATE OF COMPLIANCE

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) or (2) because:

- This brief has been prepared in a proportionally spaced typeface using Georgia in size 14 and contains **2,673** words, excluding the parts of the brief exempted by Iowa R. App. P. 6.903(1)(g)(1).

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