IN THE SUPREME COURT OF IOWA
Supreme Court No. 22-0326

STATE OF IOWA,
Plaintiff-Appellant,

vs.

IOWA JUVENILE COURT FOR PLYMOUTH COUNTY,
Defendant-Appellee.

APPEAL FROM THE IOWA DISTRICT COURT
FOR PLYMOUTH COUNTY
THE HONORABLE DANIEL P. VAKULSKAS, JUDGE

APPELLANT'S BRIEF

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STATEMENT OF THE ISSUES PRESENTED FOR REVIEW

I. After the Juvenile Court Waived Its Jurisdiction Over I.S., It No Longer Retained Any Authority to Modify or Vacate the Waiver Order.

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II. The Juvenile Court Abused Its Discretion When It Found I.S. Presented Newly Discovered Evidence and Vacated the Waiver Order.

Authorities

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ROUTING STATEMENT

As far as the State is aware, this is an issue of first impression that could merit retention by the Iowa Supreme Court. Iowa R. App. P. 6.1101(2)(c). But the issue of whether, after it has waived its jurisdiction over a child, a juvenile court retains any authority to review or vacate this waiver order, could be resolved by the application of existing legal principles, so it would also be appropriate to transfer the case to the Court of Appeals. Iowa R. App. P. 6.1101(3).

STATEMENT OF THE CASE

Nature of the Case

The State filed a delinquency petition against I.S., then sought waiver of the juvenile court's jurisdiction so I.S. could be tried as an adult in district court. Initially, the juvenile court granted this request and waived I.S. to district court. Months later, the juvenile court determined it retained jurisdiction to review its waiver order, and after an evidentiary hearing, vacated the order and reasserted its jurisdiction over I.S. The State appealed.

Course of Proceedings

On February 4, 2021, the State filed a delinquency petition against I.S., charging him with one count of sexual exploitation of a minor, in violation of Iowa Code section 728.12(1), a class C felony;

and four counts of purchasing or possessing a depiction of a minor in a sex act, in violation of Iowa Code section 728.12(3), an aggravated misdemeanor. 02-04-2021 Delinquency Petition; App. 7–9. On February 16, 2021, the State filed a motion to waive jurisdiction pursuant to Iowa Code section 232.45. 02-16-2021 Motion to Waive Jurisdiction; App. 13–14.

On May 3, 2021, the juvenile court entered an order and waived its jurisdiction under Iowa Code section 232.45(6). 05-03-2021 Order for Waiver of Jurisdiction; App. 50–55. I.S. filed a motion to amend this order, which the juvenile court denied. 05-18-2021 Motion to Amend, 05-20-2021 Order Denying Motion to Amend; App. 56–68. The case was then transferred to district court where a trial information was filed, and a trial date was set. 10-06-2021 Brief Resisting Motion to Modify; App. 78–81.

In the district court, I.S. filed a motion for reverse waiver under Iowa Code section 803.6, and the district court held a hearing to determine whether it had the authority to order a reverse waiver in this case. 10-08-2021 Brief in Support of Motion to Modify Order, Attachment (07-26-2021 Transcript of Motion Hearing); App. 85–

110. The district court determined it lacked the authority to grant a reverse waiver. *Id.* at 8:3–13:17; App. 92–97.

Nearly two months after the district court determined it did not have authority to reverse the waiver, I.S. filed a motion to modify the order waiving jurisdiction in the original juvenile court docket. 09-20-2021 Motion to Modify; App. 69–71. The State resisted and asserted the juvenile court no longer had jurisdiction over the case. 09-21-2021 Resistance; App. 76–77. On October 18, 2021, the juvenile court determined it had "jurisdiction to review its own [r]uling[,]" and set the matter for an evidentiary hearing. 10-18-2021 Other Order; App. 111–12.[1] This hearing was held on January 28, 2022. *See* 01-28-2022 Modification Hearing Transcript. On February 7, 2022, the juvenile court "vacated and modified" its waiver of jurisdiction to the district court and set the matter for adjudication in juvenile court. 02-07-2022 Ruling on Modification; App. 125–30. On February 18, 2022, the State timely filed a petition for a writ of certiorari, which was granted.

[1] After the juvenile court entered this order, the State submitted a petition for writ of certiorari, which was determined to be untimely. 11-18-2021 Petition for Writ of Certriorari, 01-07-2022 Supreme Court Order; App. 114–24.

Facts

The State filed a delinquency petition against I.S. when an investigation discovered he had "approximately 500 images along with videos depicting child pornography[.]" 02-03-2021 App. for Detention at 2; App. 6. I.S. also admitted "bait[ing]…the other minors [i.e., pretended to be someone he wasn't] utilizing the photograph of a female." *Id.*; App. 6. Because I.S. was 17-years-old when the petition was filed, the State asked the juvenile court to waive its jurisdiction because of "[t]he nature and severity of the offenses and the extended period of time [I.S.] has been trading child pornography links with others and the approximate ages of the children involved, as young as seven years old," would require lengthy supervision and treatment for I.S. 02-16-2021 Motion to Waive Jurisdiction; App. 13–14.

At the time the waiver report was filed, I.S. was 17 years and two months old. 03-08-2021 Waiver Report at 3; App. 17. The waiver report determined that because of his age and the severity of the offenses, there was not enough time remaining in the juvenile court's jurisdiction for I.S. to receive proper treatment and oversight, so "it would be more appropriate to examine the same in an adequate treatment process [] with enough time to address the current and

underlying behaviors." *Id.* at 3–4; App. 17–18. It recommended that that the juvenile court waive its jurisdiction so that I.S. could be prosecuted in district court where he might receive a deferred sentence with lengthier treatment and supervision. *Id.* at 4; App. 18.

Dr. Angela Stokes performed a psychosexual evaluation on I.S. and concluded he was at low risk of reoffending and recommended "he should be given the opportunity for treatment as an eligible juvenile[.]" Ex. 202 (04-23-2021 Stokes Evaluation) at 12; App. 49.[2] Dr. Stokes also said that the outpatient treatment I.S. required could be completed in 12 months if he made "good" progress, but the "average" time of completion is 18 months and can "be longer if the individual is not making forward progress in his [] treatment." *Id.* at 11; App. 48.

After a hearing on the matter, the juvenile court waived its jurisdiction. 05-03-2021 Order for Waiver of Jurisdiction; App. 50–55. In its ruling, the juvenile court noted that a team of juvenile court officers ("JCO"), including a clinician who works with juvenile sexual offenders recommended that I.S. be waived to district court. *Id.* at 2;

[2] The evaluation was conducted on March 13, 2021. 05-03-2021 Order for Waiver of Jurisdiction at 2; App. 51.

App. 51. While the juvenile court "respect[ed] Dr. Stokes'[s] optimism about [I.S.]'s outlook, [] it [did] not convince the court that [I.S.] has a reasonable prospect of rehabilitating himself in the short time he has left in juvenile court. [I.S.] appears to have some deep-seated issues that need to be addressed…[and the JCO] testified credibly that he has never seen a child complete outpatient treatment in the time [I.S.] has left." *Id.* at 4; App. 53. The juvenile court concluded "the State has established that, because of the time left, there are no reasonable prospects of rehabilitation for him in juvenile court [because] [I.S.] may need in-depth treatment that takes time," and it was in both I.S.'s and the community's best interest for I.S. to be waived to district court "so he can address his issues in the time frame needed to be successful." *Id.*; App. 53.

Two weeks after this decision, I.S. filed a lengthy motion to amend in the juvenile court docket. 05-18-2021 Motion to Amend; App. 56–66. In this motion, I.S. took issue with a number of the juvenile court's decisions and additionally argued why it was not in I.S.'s or the community's best interest to place I.S. on the sex offender registry, which would happen if he was waived to district court. *Id.* at

4–6; App. 59–61. The juvenile court denied this motion. 05-20-2021 Other Order; App. 67.

On June 7, 2021, the State filed a trial information in district court against I.S., and he was arraigned on June 28, 2021.[3] On July 8, 2021, I.S. filed a motion for a reverse waiver in district court. On July 26, 2021, the district court held a hearing on this motion. 10-08-2021 Brief in Support of Motion to Modify Order, Attachment (07-26-2021 Transcript of Motion Hearing); App. 85–110. At the hearing, I.S. argued that the district court could reverse waive his case back to juvenile court under Iowa Code section 803.6. *Id.* at 3:16–6:23; App. 87–90. The district court determined it did not have the authority to reverse waive the case under section 803.6 because the statute only authorized reverse waiver for "juveniles who are alleged to have committed criminal offenses listed in [Iowa Code] section 232.8(1)(c)," which did not apply to I.S. *Id.* at 8:3–13:17; App. 92–97.

The district court was also concerned with res judicata because to interpret section 803.6 to allow a reverse waiver after the juvenile court has waived a case to district court would mean the district court

[3] Docket for FECR019022 (Plymouth) found on Iowa Courts Online.

would "conduct the exact same evidentiary hearing, giving consideration to the exact same factors in making a determination as to whether criminal charges should be in district court or juvenile court that a juvenile court has already heard and already determined." *Id.* at 9:16–10:6; App. 93–94. The district court "believed" that "absent some sort of timing issue[,]" "the juvenile court would still have jurisdiction [] to reconsider its own order." *Id.* at 23:3–24:3; App. 107–08.

On September 20, 2021, I.S. filed a motion in the original juvenile court docket to modify the order waiving jurisdiction. 09-20-2021 Motion to Modify Jurisdiction; App. 69–71. I.S. claimed that under Iowa Rule of Civil Procedure 1.1012(6), the juvenile court "is free to review the issue of waiver to the district court" because he had newly discovered evidence in support of his resistance to the waiver. *Id.* at ¶¶ 4–6; App. 69–70. The State resisted and asserted the juvenile court no longer had jurisdiction to modify its waiver because "[n]othing in Chapter 232 or Iowa caselaw provides that the juvenile court retains jurisdiction[,]" especially since I.S. had already been "charged by Trial Information, arraigned, and a jury trial date has been set." 10-06-2021 Brief Resisting Motion to Modify ; App. 80–81.

The Stated argued that "the proper remedy is for [I.S.] to seek interlocutory appeal." *Id.* at 4; App. 81.

On October 18, 2021, the juvenile court entered a preliminary order that found it had jurisdiction to consider I.S.'s motion to modify and set a time for an evidentiary hearing. 10-18-2021 Other Order; App. 111–12. In making this determination, the juvenile court cited no authority, nor did it provide any explanation for why it believed it retained jurisdiction to modify I.S.'s waiver. *Id.*; App. 111.

On January 28, 2022, the juvenile court held an evidentiary hearing on I.S.'s motion to modify the order waiving jurisdiction. Dr. Stokes testified that at the time of the original waiver hearing, she "had started researching facilities" where I.S. could go for treatment and "continued to research them for the next [] two weeks to a month." Hearing Tr. at 4:8–5:9. Dr. Stokes then testified that there were a few facilities that might be able to treat I.S. in the time left in the juvenile court jurisdiction—although many of the facilities were out of state and some primarily treated substance use disorders, which I.S. did not have. Hearing Tr. at 5:10–7:24, Ex. 202 (04-23-2021 Stokes Evaluation) at 4; App. 41. Dr. Stokes did not know which of these facilities were licensed to keep individuals after the age of 18.

Hearing Tr. at 26:23–27:16, 28:3–10. There was no testimony or argument about how long it would take for I.S. to be admitted to one of these programs, whether the juvenile court had the authority to order treatment in an out-of-state program, or whether, if the juvenile court had this authority, DHS would pay for treatment in an out-of-state program without first exhausting all in-state options.

As one option, Dr. Stokes mentioned Andrew Gerodias at Rosecrance Jackson in Sioux City—someone she had known for five years. Hearing Tr. at 7:13–24, 10:17–11:11. Dr. Stokes specifically recommended outpatient treatment at Rosecrance Jackson with Gerodias because she had worked with "Gerodias many times with other clients that I have had who have had similar difficulties, either adolescent or adult, with pornography, but as an inpatient, Oxbow [in Utah] probably is the most highly recommended program, maybe in the country." Hearing Tr. at 9:6–23, 22:5–15.

Dr. Stokes testified it was not feasible to gather this information prior to the last hearing because she did not have adequate time, partially because, according to her, it is not typical to recommend specific facilities in a psychological evaluation. Hearing Tr. at 11:17–12:9, 30:14–24. She stated it took her about five to six hours to find

these additional facilities, but overall it took more time because "part of it [] is reaching out and making a lot of phone calls and waiting for people to call back[.]" Hearing Tr. at 12:10–13:3. Dr. Stokes also testified about contact versus no-contact offenses, and the affects of the sexual offender register on juvenile offenders. Hearing Tr. at 7:25–8:16, 14:13–19:18.

JCO Pablo Ajpacaja also testified at the hearing. He stated that the recommendation from the sex offender registry team had not changed. Hearing Tr. at 39:17–41:9.

On February 7, 2022, the juvenile court "vacated and modified" its original waiver order and determined waiver was not appropriate. 02-07-2022 Ruling on Modification; App. 125–30. The juvenile court found that under Iowa Code Chapter 232's statement that it should "be 'liberally construed'" to serve the best interest of the child and under Iowa Rule of Civil Procedure 1.1012(6), it had jurisdiction to modify its original order. *Id.* at 2; App. 126. The juvenile court further found that Dr. Stokes's research into facilities that may be able to treat I.S. counted as newly discovered evidence because she "could not have reasonably obtained that information in the three days between the time of the completion of the evaluation and the

hearing." *Id.* at 4; App. 128. The juvenile court determined that based on this newly discovered evidence and the fact that "[I.S.] appears committed to his current therapy," the State was "unable to show there are not reasonable prospects to rehabilitate [I.S.] in the time left in juvenile court[,]" so "[i]t would be in his best interest, and the community's, for him to remain in juvenile court." *Id.* at 5; App. 129.

ARGUMENT

I. After the Juvenile Court Waived Its Jurisdiction Over I.S., It No Longer Retained Any Authority to Modify or Vacate the Waiver Order.

Preservation of Error

The State resisted I.S.'s motion to modify the order waiving jurisdiction and asserted the juvenile court lacked the authority to modify the order. *See* 09-21-2021 Resistance, 10-06-2021 Brief, Hearing Tr. at 67:11–18. The juvenile court ruled on this issue and found it "maintains jurisdiction to hear this motion[.]" 02-07-2022 Ruling on Modification at 2; App. 76–81, 125–30. Error is preserved.

Standard of Review

Iowa appellate courts "review questions of statutory interpretation for correction of errors at law." *State v. Tarbox*, 739 N.W.2d 850, 852 (Iowa 2007).

Merits

Here, while the answer may not be straightforward, the question is: when a juvenile court waives its jurisdiction under Iowa Code section 232.45, does it retain any authority to modify or vacate this order?[4] The State asserts it does not.

The juvenile court's jurisdiction is limited and conferred by statute. Iowa Code chapter 232, subchapter II outlines the general provisions for juvenile delinquency proceedings, including the jurisdiction of the juvenile court in these matters. "The juvenile court has exclusive original jurisdiction in proceedings concerning a child who is alleged to have committed a delinquent act unless otherwise provided by law[.]" Iowa Code § 232.8(1)(a). A "juvenile court, after a hearing and in accordance with the provisions of section 232.45, may waive jurisdiction of a child alleged to have committed a public offense so that the child may be prosecuted as an adult or youthful offender for such offense in another court." Iowa Code § 232.8(3)(a). This is colloquially referred to as "waiver."

[4] The procedures for youthful offender status under Iowa Code section 907.3A do not apply to I.S. and are not implicated in this case.

Under sections 232.8(1)(c) and 803.6 certain crimes "are excluded from the jurisdiction of the juvenile court and shall be prosecuted as otherwise provided by law unless the district court transfers jurisdiction of the child to the juvenile court upon motion and for good cause[.]" Iowa Code §§ 232.8(1)(c), 232.45(6) & (8), 803.6. This is colloquially referred to as "reverse waiver."

Section 232.45 provides a mechanism by which a juvenile court may waive its exclusive jurisdiction. *See* Iowa Code § 232.45. If, after a motion and hearing, the juvenile court determines that the "child is fourteen years of age or older;" "that there is probable cause to believe the child has committed a delinquent act which would constitute the public offense;" and "there are not reasonable prospects for rehabilitating the child if the juvenile court retains jurisdiction over the child…[so that] waiver of the court's jurisdiction over the child…would be in the best interest of the child and the community," the juvenile "court may waive its jurisdiction over the child for the alleged commission of the public offense for the purpose of prosecution of the child as an adult[.]" Iowa Code § 232.45(6). After a juvenile court waives its jurisdiction, chapter 232, subsection II, carves out only one circumstance where the juvenile court retains

jurisdiction: if the juvenile court determines "that a child may be prosecuted as a youthful offender," then "the court shall retain jurisdiction over the child for the purpose of determining whether the child should be released from detention under section 232.23." Iowa Code § 232.45(7)(b).

Section 232.45 is unambiguous, and if there is no ambiguity in a statute's meaning, then the plain meaning of the statute controls. *State v. Doe*, 903 N.W.2d 347, 351 (Iowa 2017). Here, using the procedure outlined in sections 232.45(6) and (8), the juvenile court "waived" its jurisdiction over I.S. so he could be prosecuted "as an adult[.]" Iowa Code § 232.45(6). Black's Law Dictionary defines "waive" as "to [knowingly] abandon, renounce, or surrender (a claim, privilege, right, etc); to give up (a right or claim) voluntarily." Black's Law Dictionary, 11th ed. (2019). Thus, when the juvenile court waived its jurisdiction, all authority to try I.S. was vested in the district court, and the juvenile court retained no authority or jurisdiction to review, modify, or vacate its waiver.

This plain meaning is especially evident considering that in section 232.45(7), when discussing waiver of jurisdiction for youthful offenders, the legislature specifically carved out an area over which

the juvenile court retains jurisdiction after waiver: to determine whether a youthful offender should be released from custody under section 232.23. Iowa Code § 232.45(7)(b). Because the statute is otherwise silent regarding a juvenile court's retention of any jurisdiction after waiver, we can presume the legislature meant to confer none. *See Kucera v. Baldazo*, 745 N.W.2d 481, 487 (Iowa 2008) ("When interpreting laws, we are guided by the rule of 'expressio unius est exclusio alterious.' This rule recognizes that legislative intent is expressed by omission as well as inclusion, and the express mention of one thing implies the exclusion of others not so mentioned." (internal quotation marks and citation omitted)); *see also State v. Romer*, 832 N.W.2d 169, 177–78 (Iowa 2013) (finding that if legislature intended to include the "emotionally dependent" requirement into statute, its use of the requirement in other statutes was proof that its exclusion in contested statute was purposeful).

And even if section 232.45 were ambiguous, the rules of statutory construction dictate it be read in a way that does not render any words or phrases superfluous. *See In re Estate of Melby*, 841 N.W.2d 867, 879 (Iowa 2014) ("…we avoid constructions rendering parts of a statute redundant, irrelevant, or absurd."); *see also*

Thompson v. Kaczinski, 774 N.W.2d 829, 833 (Iowa 2009) ("We…presume that no part of an act is intended to be superfluous." (internal quotation marks and citation omitted)). Here, the words "as an adult" in section 232.45(6) would be rendered superfluous if the juvenile court retained jurisdiction over the child after waiver. If a child is "waived" to be tried "as an adult," it makes no sense for a juvenile court to retain any jurisdiction over the proceedings or to retain any authority to alter the jurisdiction of the district court during adult proceedings.

This meaning is also consistent with prior decisions of the Iowa Supreme Court. While *Bergman v. Nelson* did not contemplate the specific issue we have here, the Supreme Court found that waiver "is not simply a disclaimer of juvenile court jurisdiction…it binds the juvenile to the jurisdiction of the district court for criminal prosecution." 241 N.W.2d 14, 16 (Iowa 1976), *overruled on other grounds by State v. Williams*, 895 N.W.2d 856 (Iowa 2017); *see also State v. Davis*, 269 N.W.2d 434, 437 (Iowa 1978). And in *Stuart v. State ex. rel. Jannings*, the Supreme Court stated that when the juvenile court has original jurisdiction over an individual, this jurisdiction "continues until the delinquency charge or charges have

been properly heard and disposition thereof made, *or the alleged violation is referred to the appropriate prosecuting authority for action under the criminal law*, all as statutorily provided." 253 N.W.2d 910, 914 (Iowa 1977) (emphasis added).

The Maryland Court of Appeals and Wisconsin Supreme Court agree. In *In re Franklin P.*, a juvenile court "entered an order waiving juvenile jurisdiction," then a month later "issued an order vacating the previous waiver of juvenile jurisdiction…and ordered petitioner returned to juvenile court jurisdiction." 783 A.2d 673, 677 (Md. Ct. App. 2001). The Maryland Court of Appeals stated "[t]he juvenile court, in those cases where it has exclusive initial jurisdiction, essentially determines which court will have authority over a juvenile for the purposes of adjudicating any charges against the juvenile[.]" *Id.* at 687.

Like Iowa, the Maryland "waiver statute contains no provision permitting the Juvenile Court to rescind its waiver order once authority is vested in the criminal court." *Id.* at 689. The Maryland Court of Appeals determined that "[w]hen a juvenile court has the power to transfer a case to the circuit court and exercises that authority, the power to try the case is transferred. A juvenile court

does not have the power to then divest the other court of its authority." *Id.* at 690.

In *In re Vairin M.*, the Wisconsin Supreme Court found that a juvenile court only retained jurisdiction to reconsider its own waiver order until the criminal complaint is filed in district court. 647 N.W.2d 208, 216 (Wis. 2002). The court determined it was "untenable" for a juvenile court to retain jurisdiction "after proceedings have been commenced in criminal court," because this "would result in the juvenile court retaining jurisdiction after a second court, with equal jurisdiction, has assumed jurisdiction. This is impermissible." *Id.* at 215.[5]

In trying to find the authority to modify the waiver order, both I.S. and the juvenile court relied on Iowa Rule of Civil Procedure 1.1012(6). 09-20-2021 Motion to Modify at 2, 02-07-2022 Ruling on Modification at 2; App. 70, 126. Rule 1.1012(6) allows a court to "correct, vacate or modify a final judgment or order" if a party

[5] The State found one other case, *State v. D.R.S.*, 344 So.2d 317 (Fl. Ct. App. 1977) that discussed reconsideration of a waiver order. In it, a district court remanded a case to a juvenile court for reconsideration of its order. But the decision is short and lacks any meaningful discussion of the issue, so the State did not find it helpful here.

discovers "[m]aterial evidence, newly discovered, which could not with reasonable diligence have been discovered and produced at the trial[.]" Iowa R. Civ. P. 1.1012(6). Rule 1.1013(1) allows a party to move for this correction, vacation, or modification within one year of its entry. Iowa R. Civ. P. 1.1013(1). The State asserts the juvenile court's reliance on rule 1.1012(6) was misplaced.

First, a waiver order is neither a "final judgment or order[.]" The Iowa Supreme Court has held that a waiver order is "not a final judgment from which appeal could be had as a matter of right." *In re Clay*, 246 N.W.2d 263, 264 (Iowa 1976). Instead, if a party wishes to challenge a waiver decision, it must seek permission to file an interlocutory appeal. *In re C.W.R.*, 518 N.W.2d 780, 782 (Iowa 1994). Or, a juvenile defendant may file a direct appeal after final judgment is entered in the district court. *See State v. Tesch*, 704 N.W.2d 440, 447–50 (Iowa 2005). Thus, a waiver order is not a *final* judgment or order, so rule 1.1012(6) provides no authority to the juvenile court to review it.

Second, if rules 1.1012 and 1.1013 applied to waiver orders, and the juvenile court could modify or vacate its waiver order for up to one year, as is provided in rule 1.1013(1), it could and would cause

serious disruption to the proceedings in district court and lead to conflicting outcomes. With no other restrictions other than a one-year deadline, a juvenile court could revoke its order and divest a district court of its jurisdiction after a guilty plea, in the middle of a trial, after a conviction, or even after a juvenile defendant is sentenced in district court. Would such a revocation then nullify a guilty plea? A jury verdict? A sentencing order? It seems clear that rules 1.1012 and 1.1013 were not meant to operate in this indiscriminate manner.

The Maryland Court of Appeals in *Franklin P.* rejected a similar argument under a Maryland procedural rule that provides for modification or vacation of an order. *See* Maryland Rule 11-218 (formerly Rule 11-116). The court found the rule for "Modification or Vacation of Order does not apply where authority has been transferred; it applies only to the modification or vacation of orders during the period while the juvenile court retains power. When the authority of the juvenile court is waived, there generally is not an order remaining that can be modified in the juvenile court, because there is no power or authority remaining that can be exercised by that juvenile court." *In re Franklin P.*, 783 A.2d at 690.

"It is not just a motion for the juvenile court to reconsider its action; it is a request for the juvenile court to pass an order divesting a criminal court of its power and authority to try the case. That, the juvenile court has no power to do." *Id.* The court was also concerned that if a juvenile court had authority to reconsider a waiver, "every juvenile subjected to waived jurisdiction to the adult court, where criminal charges exist, would have the right to seek reconsideration of the waiver decision by a juvenile court, presumably at any stage of the criminal proceedings in the circuit court, perhaps even as late as sentencing in the criminal court." *Id.* at 688.

And while our courts recognize "a district court's power to correct its own perceived errors," this common law doctrine only applies "as long as the court has jurisdiction of the case and the parties involved." *Iowa Elec. Light and Power Co. v. Lagle*, 430 N.W.2d 393, 396 (Iowa 1988). Similar to when a notice of direct appeal is filed, once the juvenile court waived its jurisdiction to the district court to try I.S., it no longer retained any jurisdiction or authority to review its orders.

In *Vairin M.*, the Wisconsin Supreme Court quoted a former justice: "'The impropriety, I might say the utter absurdity, of applying

to one court to restrain, modify or correct the orders or decrees of another court of co-ordinate jurisdiction, is also apparent. I think it is wholly inadmissible to do so.'" *In re Vairin M.*, 647 N.W.2d at 217 (quoting *Platto v. Deuster*, 22 Wis. 482, 484–85 (1868)). The State agrees. Once the juvenile court waived its jurisdiction over I.S. so he could be tried as an adult, it was divested of any jurisdiction or authority to reconsider, modify, or vacate that order. This is especially so considering a trial information had been filed against I.S. in district court, he had been arraigned, and a trial date was set. 10-06-2021 Brief Resisting Motion to Modify at 3–4; App. 80–81. To find otherwise would permit a juvenile court to interfere in district court proceedings and would allow it to divest the district court of its proper jurisdiction. If I.S. wanted to challenge the juvenile court's waiver order, he was not without remedy. He could have either filed a writ of certiorari to seek permission for an immediate appeal, or he could have brought a direct appeal after conviction in district court.

Finally, the State notes that while the Wisconsin Supreme Court found the juvenile court was without jurisdiction to modify or vacate its waiver order after a criminal complaint was filed against the juvenile, it went on to craft a procedure by which a juvenile could

challenge the waiver decision. *In re Vairin M.*, 647 N.W.2d at 219. The court acknowledged the juvenile could file an interlocutory or direct appeal to challenge the waiver order, but it found those remedies insufficient under a narrow set a circumstances. *Id.* It found that when "a juvenile has compelling new grounds bearing on waiver, he or she may file a motion with the criminal court asking the court to relinquish its jurisdiction by transferring the matter to juvenile court." *Id.* If the criminal court found "good cause, it may relinquish its jurisdiction" and transfer the case to juvenile court. *Id.* "The juvenile may then file a motion for reconsideration of the waiver order with the juvenile court, which will have regained exclusive jurisdiction to entertain the motion." *Id.* The court said the procedure "should be regarded as extraordinary" and "should be limited to compelling new factors." *Id.*

While the State respects the Wisconsin Supreme Court's decision, it believes the concurrence has the better view. The State agrees that "the current remedies are adequate in this case. Furthermore, if another remedy is desired, it is most appropriately provided by the legislature or by following this court's rule-making procedures to amend the Criminal Procedure Code and/or the

Juvenile Justice Code." *Id.* at 220 (N. Patrick Crooks, J. (concurring)). The State asks that this Court find the juvenile court lacked the jurisdiction or authority to modify and revoke its waiver order, reverse the order modifying the waiver, and allow the State to continue its proceedings against I.S. in district court.

II. The Juvenile Court Abused Its Discretion When It Found I.S. Presented Newly Discovered Evidence and Vacated the Waiver Order.

Preservation of Error

The State resisted I.S.'s motion to modify the waiver order. *See*, *generally*, Hearing Tr. At the evidentiary hearing on I.S.'s motion to modify the waiver order, the State asserted the evidence presented by I.S. was not new and was available during the first waiver hearing. Hearing Tr. at 67:19–68:14. The juvenile court ruled on these issues. 02-07-2022 Ruling on Modification; App. 125–30. Error is preserved.

Standard of Review

Review is for an abuse of discretion. *Carter v. Carter*, 957 N.W.2d 623, 631 (Iowa 2021); *see also Tesch*, 704 N.W.2d at 447.

Merits

If this Court finds the juvenile court had the authority to modify and vacate the waiver order, then the State asks it to find the juvenile court abused its discretion when it: 1) determined that I.S. presented

"newly discovered evidence;" and 2) when it vacated the order waiving jurisdiction because the decision was not supported by the evidence presented at the hearing.

"The term 'newly discovered evidence' refers to facts existing at trial time of which the aggrieved party was then excusably ignorant." *Carter*, 957 N.W.2d at 637 (internal quotation marks and citation omitted). In order for evidence to be considered "newly discovered," I.S. must show: "(1) that the evidence was discovered after the verdict; (2) that it could not have been discovered earlier in the exercise of due diligence; (3) that the evidence is material to the issues in the case and not merely cumulative or impeaching, and (4) that the evidence probably would have changed the result of the trial." *Jones v. State*, 479 N.W.2d 265, 274 (Iowa 1991) (citing *State v. Allen*, 348 N.W.2d 243, 246 (Iowa 1984)). This evidence must be "important and material" and "'could not with reasonable diligence have [been] discovered and produced at trial.'" *State v. Carter*, No. 02-0261, 2003 WL 289425, at *2 (Iowa Ct. App. Feb. 12, 2003) (quoting Iowa R. Crim. P. 2.24(2)(b)(8)).

I.S. based his motion to modify the waiver order on two pieces of "newly" discovered evidence: 1. Dr. Stokes "found a program

capable of treating [I.S.] within the amount of time that the juvenile court would have left;" and 2. I.S. "has been consistently attending treatment with 100% attendance since April 2, 2021[.]" 09-20-2021 Motion to Modify at ¶¶ 4, 5; App. 69–70. Neither qualify as newly discovered evidence.

First, Dr. Stokes testified that, prior to the first waiver hearing, she started researching facilities that might be able to treat I.S. in the time remaining in the juvenile court's jurisdiction. Hearing Tr. at 4:10–5:9. She further testified she did not start researching additional facilities until after she completed her report on I.S. on April 20, and the waiver hearing was on April 23, so she did not have sufficient time to complete her research. Hearing Tr. at 4:8–19, 30:14–24. While her original report indicated at least one facility that may treat I.S., she stated she needed additional time to find other facilities. Hearing Tr. at 4:20–5:3, 30:14–24.

But there is no indication in the record that, even though the research into other treatment facilities was underway at the time of the original waiver hearing, I.S. alerted the juvenile court that Dr. Stokes required additional time to finish this research. I.S. did not file a motion to continue the hearing. And on April 26, 2021, the juvenile

court took the waiver motion under consideration because it was "advised by counsel for the child that he does not intend to present further evidence." 04-26-2021 Other Order; App. ---. After the juvenile court granted the waiver, I.S. filed a lengthy motion to amend, which also failed to assert that research into additional facilities was ongoing. 05-18-2021 Motion to Amend; App. 56–66. At the second waiver hearing, I.S.'s counsel stated that "*we* continued to investigate after the fact." Hearing Tr. at 62:8 (emphasis added). Thus, the record indicates that I.S. knew Dr. Stokes was conducting additional research into treatment facilities at the time of the original waiver hearing, did not alert the juvenile court to that fact, and did not ask for additional time to complete this research prior to the juvenile court's initial waiver order. *See State v. Compiano*, 154 N.W.2d 845, 851–52 (Iowa 1967) (affirming denial of new trial motion when potential new evidence was discovered during trial, but defendant failed to seek a continuance to investigate this evidence.).

Under Iowa's newly discovered evidence caselaw, evidence of possible additional treatment facilities seems akin to exculpatory evidence, and "[e]xculpatory evidence that is unavailable, but known, at the time of trial is not newly discovered evidence." *Carter*, 957

N.W.2d at 639 (citing *Jones v. Scurr*, 316 N.W.2d 905, 910 (Iowa 1982)). Here, these additional facilities existed, and Dr. Stokes was actively researching them at the time of the original waiver hearing, which may have rendered the information unavailable, but it was not unknown.

Second, in her addendum and at the hearing, Dr. Stokes highly recommended I.S. undergo outpatient treatment with Andrew Gerodias at Rosecrance Jackson Recovery Center in Sioux City. Hearing Tr. at 5:25–6:6, 9:6–11:11, Ex. 205 (9-20-2021 Stokes Addendum) at 3; App. 74. Dr. Stokes testified that she had known Gerodias for "five years" and knew he had the background and ability to treat I.S. Hearing Tr. at 11:3–11. Thus, by her own testimony, Dr. Stokes was aware that Gerodias was a possible treatment option for I.S. prior to the original waiver hearing, and no explanation was given for why this recommendation was not made at that time. It should go without saying that this prior knowledge certainly does not qualify as "newly discovered" information.

Third, I.S. argued at the modification hearing that his compliance with treatment after the original waiver hearing was the most compelling newly discovered evidence because it showed he was

amenable to treatment. Hearing Tr. at 63:18–64:21. But for evidence to be "newly discovered," it must have existed at the time of the original hearing or trial. *See Carter*, 957 N.W.2d at 637. A hearing under Rule 1.1012(6) does not allow for the presentation of new evidence, only newly *discovered* evidence, i.e., evidence that was in existence, but excusably unknown by the party, at the time of the original hearing. If conduct after a waiver order could provide the grounds for a revocation of the district court's jurisdiction, it would swallow the general rule. There could be no end to motions to modify based on this ground alone.

Finally, it appears that most of the treatment facilities about which Dr. Stokes testified are out of state and/or primarily treat substance use disorders. Hearing Tr. at 5:10–7:24. I.S. did not suffer from a substance use disorder, and no evidence was presented that these out-of-state facilities were viable options for I.S. Ex. 202 (04-23-2021 Stokes Evaluation); at 4; App. 41. There was no evidence regarding whether I.S. would be accepted at these facilities, whether the juvenile court had authority to order I.S. to treatment out-of-state, who would pay the costs of I.S.'s treatment in an out-of-state facility, or whether these facilities treated individuals over the age of

18. Hearing Tr. at 26:23–27:16, 28:3–10. And in her addendum, Dr. Stokes recommended Woodward Academy for possible in-patient treatment, but she had already recommended Woodward in her first evaluation. *Compare* Ex. 202 (04-23-2021 Stokes Evaluation) at 11 *with* Ex. 205 (09-20-2021 Stokes Addendum) at 3; Conf. App. 48, 74. The JCO reported that the program at Woodward Academy recommended by Dr. Stokes does not exist because it had been eliminated "many years ago." 11-16-2021 Other Report; App. 113.

In its order, the juvenile court found Dr. Stokes's testimony about possible alternative treatment facilities to be material and could not have been discovered prior to the original waiver hearing. 02-07-2022 Ruling on Modification at 4; App. 128. In making this finding, the juvenile court cited to no caselaw, nor did it outline the legal framework for newly discovered evidence. The State disputes both conclusions and disputes the evidence supported the juvenile court's revocation of its original waiver order.

Evidence that is cumulative is not material. *See State v. Uranga*, 950 N.W.2d 239, 243 (Iowa 2020). Dr. Stokes's recommendation in her addendum of Woodward Academy as a possibility for treatment mirrored this same recommendation in her

original evaluation. And in its ruling, the juvenile court stated that "Dr. Stokes'[s] opinion is that, on average, treatment could last twelve to eighteen months." 02-07-2022 Ruling on Modification at 5; App. 129. The juvenile court made this same finding in its original waiver order. 05-03-2021 Order for Waiver of Jurisdiction at 4; App. 53. This evidence was cumulative of the evidence presented at the first waiver hearing, so it cannot be material.

And the evidence regarding the possible out-of-state treatment facilities would not "probably change the result" because there was no additional evidence that any of these facilities were actual, viable options for treatment. *See Carter*, 957 N.W.2d at 638. Dr. Stokes's testimony was merely that they existed; not that I.S. could actually obtain treatment at any of them. It is an abuse of discretion to rely on Dr. Stokes's testimony regarding the treatment facility options without additional evidence of their viability.

The evidence also does not qualify as newly discovered simply because Dr. Stokes had not finished her research at the time of the original waiver hearing. In its original waiver order, the juvenile court noted that Dr. Stokes conducted her evaluation of I.S. on March 13, 2021, well in advance of the April 23 hearing. 05-03-2021 Order for

Waiver of Jurisdiction at 2; App. 51. While her report may not have been completed until April 20, she still had more than three days to conduct research into treatment facilities. 02-07-2022 Ruling on Modification at 4; App. 128. Whether or not researching placement options at treatment facilities is part of her normal evaluation process, Dr. Stokes testified that here, she conducted this research and started doing so prior to the original waiver hearing. The record indicates I.S.'s awareness of this ongoing research, but no explanation was provided for why the juvenile court was not alerted to it prior to the original waiver hearing. And Dr. Stokes's statement and the juvenile court's finding that this type of research is not typical for her seems to be undercut by her original evaluation of I.S. wherein she pointed to "Sexual Addicts Anonymous" and "Woodward Academy" as treatment options and stated that "there are other programs like Woodward available." Ex. 202 (04-23-2021 Stokes Evaluation) at 11; Conf. App. 48.

The district court abused its discretion when it found that the evidence I.S. presented at the modification hearing was "newly discovered" and when it relied on this evidence to vacate the waiver order. The State asks this Court to reverse the juvenile court's order

that vacated its waiver order and allow the State to continue its proceedings against I.S. in district court.

CONCLUSION

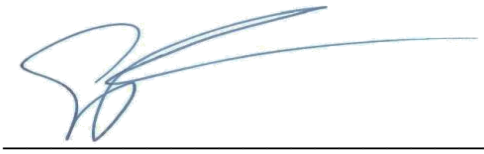
The State asks this Court to find that once the juvenile court waived its jurisdiction over I.S., it no longer had jurisdiction or authority to modify or vacate this order. In the alternative, if the juvenile court retained any authority to review this order, the State asks this Court to find the juvenile court abused its discretion when it revoked its original waiver.

REQUEST FOR ORAL SUBMISSION

The State requests oral argument.

Respectfully submitted,

BRENNA BIRD
Attorney General of Iowa



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CERTIFICATE OF COMPLIANCE

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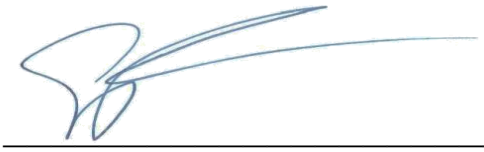

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