IN THE SUPREME COURT OF IOWA

STATE OF IOWA, Plaintiff-Appellee, v. CHAD STATON, Defendant-Appellant.	SUPREME COURT NO. 22-0380

APPEAL FROM THE IOWA DISTRICT COURT
FOR BLACK HAWK COUNTY
HONORABLE LINDA M. FANGMAN, JUDGE

APPLICANT'S APPLICATION FOR FURTHER REVIEW OF THE DECISION OF THE IOWA COURT OF APPEALS FILED NOVEMBER 21, 2023

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CERTIFICATE OF SERVICE

On the 7th day of December, 2023, 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 Chad Staton, No. 6058760, Clarinda Correctional Facility, 2000 N. 16th Street, Clarinda, IA 51632.

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QUESTIONS PRESENTED FOR REVIEW

1. Did the court of appeals err in concluding the evidence of a prior allegation of sex abuse with the same victim was admissible under Iowa Code section 711.1 even though the evidence was not relevant to a legitimate issue at trial given that Staton's defense was a complete denial of the charges?

2. Does the district court violate a defendant's right to allocution when it forbids his attorney from discussing the fact that the defendant rejected multiple plea offers?

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STATEMENT IN SUPPORT OF FURTHER REVIEW

Because the court of appeals has decided important issues of law that should be decided by the Iowa Supreme Court, Chad Staton requests this court grant his application for further review of the Court of Appeals' November 21, 2023, decision affirming his convictions and sentence. Iowa R. App. P. 6.1103(b)(2).

In this case, the State sought the admission of an earlier allegation of sexual abuse on L.S. The State asserted the evidence was "relevant to creating an inference of the defendant's passion or propensity for illicit sexual relations with this specific victim." However, given that the charged abuse involved vaginal intercourse and given that Staton's defense was a total denial of the charges, the issue of Staton's passion for illicit sexual relations with L.S. was not a *legitimate* issue at trial. The court of appeals agreed with the district court that the evidence was relevant and not unduly prejudicial. (Opinion, p. 6). Specifically, the court of appeals concluded

Staton's claims of factual innocence were not relevant to the admissibility of the allegations under section 701.11 and instead only presented an issue for the factfinder to resolve. (Opinion p. 6). This court should accept further review to clarify the State's alleged need to prove the defendant's "passion or propensity for illicit sexual relations with this specific victim" should be scrutinized carefully to avoid the admission of highly prejudicial evidence. See Paul S. Milich, The Degrading Character Rule in American Criminal Trials, 47 Ga. L. Rev. 775, 792-94 (2013) (describing how juries are swayed by evidence of prior bad acts and arguing the admission of such evidence effectively lowers the burden of proof).

As well, the court of appeals concluded Staton was not denied his right to allocution when the district court prohibited his attorney from discussing the fact that Staton rejected plea offers. Staton's attorney was attempting to address a critical concern for the court in sentencing him—whether he accepted responsibility and showed remorse for his actions. By limiting

his attorney's ability to make that argument, the court abused its discretion and denied Staton his right of allocution. When this right is denied, a defendant is entitled to a new sentencing hearing, and the court of appeals erred in concluding that "substantial compliance" with the rule was sufficient in these circumstances. (Opinion, p. 8).

Wherefore, Chad Staton respectfully requests this court grant further review of the Court of Appeals' November 21, 2023 decision.

STATEMENT OF THE CASE

Nature of the Case: Chad Staton seeks further review of the court of appeals' opinion affirming his convictions, judgment and sentences for sex abuse in the second degree, sex abuse in the third degree, and incest, following a jury trial in the Black Hawk County District Court.

Course of Proceedings: After a jury trial, Chad Staton was convicted of second degree sex abuse, third degree sex abuse, and incest. (App. pp. 17-19). The court sentenced

Staton to consecutive sentences totaling forty years with a mandatory minimum of 17.5 years. (App. pp. 20-24).

Staton appealed, and the court of appeals affirmed his convictions and sentences. (Opinion).

Facts: L.S. testified that her father, Chad Staton, sexually assaulted her on three occasions. She testified that the first incident was in 2012 when she was nine years old. (Day 2 Trial Tr. 45:9-25; 50:2 – 60:24). She testified the second incident occurred after her parents had divorced and she was visiting Staton in the spring of 2013. (Day 2 Trial Tr. 63:20 – 67:19; 68:10 – 80:4). She testified that on this occasion she noticed that Staton had his penis pierced when she saw something reflecting in the light. She was confident that she saw the piercing and did not recall that anyone had ever told her that Staton had a penis piercing. (Day 3 Trial Tr. 54:13 – 57:17).

She testified the third occasion was in December 2015 when she was twelve. (Day 2 Trial Tr. 80:17 – 83:3; 85:7 –

98:11). L.S. testified that in the following years, she had sexual dreams which ultimately made her remember the abuse. She eventually reported the abuse to her mother when she was sixteen years old. (Day 2 Trial Tr. 106:15 – 108:22; Day 3 Trial Tr. 135:23 – 136:23).

Chad Staton testified on his own behalf and denied that any of the sexual abuse described by L.S. happened. (Day 4 Trial Tr. 126:4-23). He clarified that his penis was not pierced at the time L.S. alleged he abused her. (Day 4 Trial Tr. 113:13 – 115:16).

Stephanie Staton testified that she had dated Staton off and on since 2013, after his first marriage broke up. Her testimony about the layout of the house confirmed Chad Staton's testimony. (Day 4 Trial Tr. 85:20 – 90:14; 118:9 – 119:23; 120:21 – 122:7; 87:22 – 88:14; 119:24 – 120:20).

Staton provided testimony from Dr. Kimberly MacLin, a psychology professor at the University of Northern Iowa, who specializes in psychology and the law with a focus on how

memory is used in the legal system. (Day 5 Trial Tr. 5:7 - 6:16). She explained how the human brain forms memories and how easily memories can be contaminated by outside information. While the memory may seem true to the person who recalls it, the events recalled or details recalled may not be factually accurate. Particularly, the more one talks about a remembered event, the more prone to contamination the memory is—by responses or questions from other people or media. She also testified that dreams can be a source of contamination. (Day 5 Trial Tr. 18:23 – 31:13; 34:18 – 39:13; 40:21 – 43:19). She explained that once a memory has been contaminated, there is no way to sanitize the memory or remove the contamination. (Day 5 Trial Tr. 43:10-25).

ARGUMENT

I. The evidence of the Butler County incident was not admissible pursuant to Iowa Code § 711.1 because it was not relevant and it was highly prejudicial.

A. <u>Error Preservation</u>. In this case Staton sought to exclude evidence of the "Butler County incident," an allegation of sex abuse by L.S. that predated the charges for which Staton

was on trial. (App. pp. 11-12). After a pretrial hearing on the motion, the court denied Staton's request. The court concluded that because the prior allegation involved the same victim and same defendant, because it happened close in time to the charges in this case, and after considering "the caselaw and the code section, that information would be admissible." The court "overrule[d] that and allow[ed] that testimony to come in." (PTC Tr. 11:3 – 12:1). Because the court's ruling in limine left no doubt that the evidence was admissible, error has been preserved. See State v. Leedom, 938 N.W.2d 177, 191 (Iowa 2020).

B. Standard of Review. The appellate court will review a district court's evidentiary rulings regarding the admission of prior bad acts for abuse of discretion. State v. Cox, 781 N.W.2d 757, 760 (Iowa 2010).

C. Discussion. Normally, "[e]vidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show that the person acted in conformity

therewith." Iowa R. Evid. 5.404(b); State v. Cox, 781 N.W.2d 757, 760 (Iowa 2010). The justification for the rule "'is founded not on a belief that the evidence is irrelevant, but rather on a fear that juries will tend to give it excessive weight, and on a fundamental sense that no one should be convicted of a crime based on his or her previous misdeeds.'" Id. (quoting State v. Sullivan, 679 N.W.2d 19, 24 (Iowa 2004)). See also Paul S. Milich, The Degrading Character Rule in American Criminal Trials, 47 Ga. L. Rev. 775, 792-94 (2013) (describing how juries are swayed by evidence of prior bad acts and the admission of such evidence effectively lowers the burden of proof) (hereinafter "Milich").

Empirical studies support both the notion that the evidence is highly influential to a jury and also that evidence of prior misdeeds is not reliable for determining guilt of current offenses. See Sullivan, 679 N.W.2d at 24. "Situational factors are often more determinant of human behavior," and "[t]he upshot is that the jurors may give character far more weight

than it deserves." Edward J. Imwinkelried, The Use of Evidence of an Accused's Uncharged Misconduct to Prove Mens Rea: The Doctrines Which Threaten to Engulf the Character Evidence Prohibition, 51 Ohio St. L.J. 575, 582 (1990).

However, under section 701.11, evidence of prior sexual abuse involving the same victim may be considered for any purpose for which it is relevant, but it is still subject to a balancing test before it is admitted. Iowa Code § 701.11(1).

This provision has been upheld when the evidence is "not offered to show a *general propensity* to be attracted to young girls, but instead to demonstrate the nature of the defendant's relationship and feelings toward a *specific* individual." State v. Reyes, 744 N.W.2d 95, 103 (Iowa 2008). After engaging in the balancing required by 701.11, the court concluded the probative value of the evidence was not substantially outweighed by the risk of unfair prejudice or confusion of the issues: "The evidence of prior sexual abuse was offered in a direct, concise, and noninflammatory fashion and was similar

to the underlying charge against Reyes." Reyes, 744 N.W.2d at 103.

In this case, the State contended the evidence of the Butler County incident was "relevant to creating an inference of the defendant's passion or propensity for illicit sexual relations with this specific victim," relying on State v. Spaulding, 313 N.W.2d 878 (Iowa 1981) and State v. Munz, 355 N.W.2d 576 (Iowa 1984). (PTC Tr. 7:20 - 8:6). However, given the nature of the State's case against Staton for the charged offenses, the issue of Staton's passion for illicit sexual relations with L.S. was not a *legitimate* issue at trial.

The charged offenses involved allegations that Staton had vaginal intercourse with L.S. on two occasions, and Staton's defense was a complete denial that the sexual acts occurred. Given the factual allegations in this case, Staton's passion for sexual relations with L.S. was not relevant to any legitimate issue—the details of the charged abuse resolve any concern regarding a passion or propensity for sexual relations with L.S.

The court of appeals, however, erroneously concluded that Staton's claims of actual innocence "present a question for the factfinder to resolve" "rather than negating admissibility under section 701.11." (Opinion, p. 6). Section 701.11 requires the evidence to be "relevant," so Staton's claims of innocence do affect the analysis of the admissibility of the prior allegations.

The evidence should have also been excluded because its probative value was substantially outweighed by the risk of unfair prejudice, confusion of the issues, and misleading the jury. The court of appeals concluded the evidence was not unfairly prejudicial. However, the court's characterization of the evidence as "direct" and "non-inflammatory" is not accurate. (Opinion, p. 6-7). The Butler County incident was not a side issue in the State's case. It was one of the first events described by the State in its opening argument. (Day 2 Trial Tr. Day 30:22 – 31:22). L.S.'s direct testimony about the Butler County incident spanned 19 pages. (Day 2 Trial Tr. 44:19 – 63:19). She testified about the incident in great detail,

including a description of the layout of the house and the room where it occurred and the admission of a sketch of the house by L.S. as an exhibit. (Day 2 Trial Tr. 46:3 – 48:9, 50:13 - 52:1). It included a description of the clothing she was wearing and the blankets on the bed. (Day 2 Trial Tr. 52:16 - 53:12). She described how he crawled into her bed and snuggled her initially. She described how he pulled her pants down and how he rolled on top of her. (Day 2 Trial Tr. 52:22 – 58:18). L.S. described how it felt when she was penetrated; "I felt like I was being ripped in half." (Day 2 Trial Tr. 58:25 – 59:1). She explained how he "pushed into" in her several times before he finally stopped, got up and left the room. (Day 2 Trial Tr. 59:14 – 60:16). She explained how "it felt like [it lasted] a lifetime because it was terrifying." (Day 2 Trial Tr. 60:13-16). She described how she could smell blood, and how she threw her underwear away after discovering a bloodstain on them. (Day 2 Trial Tr. 59:4-13). She described finding ejaculate on her sheets the next day. (Day 2 Trial Tr. 61:6-20). And she

described how Staton bribed her the next morning with $3 to not tell anyone about it. (Day 2 Trial Tr. 62:20 – 63:4). The level of detail and time dedicated to this incident was at least the same, if not greater, than was dedicated to the charged incidents. (Compare Day 2 Trial Tr. 65:6 – 81:13 with Day 2 Trial Tr. 83:1 – 98:18 and 102:6 – 103:11).

The amount of time spent on the Butler County incident and the level of detail was "of a nature that would have incited overmastering hostility." See Reyes, 744 N.W.2d at 100 (concluding evidence of a prior sexual assault was "concise, direct, and noninflammatory" so that its probative value was not substantially outweighed by the risk of unfair prejudice, confusion of issues, or misleading the jury).

The court must seriously consider and exclude the evidence if its probative value is outweighed by the risk of prejudice. It is this "safety valve" that ensures a defendant's due process rights are protected. See State v. Reyes, 744 N.W.2d 95, 102–03 (Iowa 2008) (citing United States v. Enjady,

134 F.3d 1427, 1433 (10th Cir. 1998) and Kerr v. Caspari, 956 F.2d 788, 790 (8th Cir.1992)).

The court of appeals also concluded the evidence of the Butler County incident was similar in nature to the charged conduct. (Opinion, p. 6). However, the similarities do not lessen the prejudicial impact of the evidence but instead enhance it.

> Stated another way, that which makes the evidence more probative—the similarity of the prior act to the charged act—also makes it more prejudicial. As we explained in *Reynolds,* where a prior bad act is "similar to the incident in question, 'it would be extremely difficult for jurors to put out of their minds knowledge that the defendant had assaulted the victim in the past and not allow this information to consciously or subconsciously influence their decision.' "

State v. Cox, 781 N.W.2d 757, 769 (Iowa 2010) (quoting State v. Reynolds, 765 N.W.2d 283, 292 (Iowa 2009).

When a nonconstitutional error occurs in the admission of irrelevant evidence, prejudice is presumed unless the record affirmatively establishes a lack of prejudice. State v. Sullivan,

679 N.W.2d 19, 29-30 (Iowa 2004) (citing Iowa R. Evid. 5.103(a)).

The record in this case does not affirmatively demonstrate a lack of prejudice. The evidence against Staton was not overwhelming, and the case came down to a credibility battle between L.S. and Staton. L.S. did not report the abuse until years later and then only because she had dreams involving sex. Her testimony about the acts of abuse contained details that are implausible or directly contradicted by other evidence in the record. As well, Staton provided testimony from an expert about how easily memories can be contaminated by discussion and other outside sources. Given the length of time from the alleged abuse until it was reported, and given how many times L.S. discussed the events, there were extensive opportunities for her memory to become irrecoverably contaminated.

D. Conclusion. Because the court of appeals erred in affirming the district court's ruling admitting the evidence, this court should accept further review, vacate Staton's convictions

and remand his case for a new trial. Sullivan, 679 N.W.2d at 31.

II. Staton's attorney should have been allowed to discuss Staton's rejection of plea offers during allocution.

A. Error Preservation. Generally, a defendant is not required to raise an alleged sentencing defect in the trial court in order to preserve a right of appeal on that ground. State v. Wilson, 294 N.W.2d 824, 826 (Iowa 1980).

B. Standard of Review. Appellate review of a sentence is for correction of errors at law. State v. Damme, 944 N.W.2d 98, 103 (Iowa 2020). The court will not reverse a sentence unless the sentencing court has abused its discretion or there is a defect in the sentencing procedure. Id.

C. Discussion. Before the district court may enter judgment, "counsel for the defendant, and the defendant personally, shall be allowed to address the court where either wishes to make a statement in mitigation of punishment." Iowa R. Crim. P. 2.23(3)(d). The rule is mandatory. State v. Millsap, 547 N.W.2d 8, 10 (Iowa Ct. App. 1996). Where the

allocution requirement is not substantially complied with, a remand for resentencing is required. State v. Lumadue, 622 N.W.2d 302, 304 (Iowa 2001).

The court of appeals recognized that the district court cut off Staton's attorney's allocution, but concluded that "substantial compliance" with the rule was sufficient, relying on State v. Glenn, 431 N.W.2d 193, 195 (Iowa Ct. App. 1998). (Opinion, p. 8). However, State v. Glenn doesn't address a situation like this: it only holds that the court doesn't have to utter a particular phrase when inviting the defendant to speak in mitigation of punishment to comply with the rule. Glenn, 431 N.W.2d at 194-95.

In this case, Staton and his attorney were offered the opportunity to speak. The issue is that the court, after the State objected, cut off Staton's attorney's when he began to discuss the plea offers Staton had rejected. (Sentencing Tr. 12:22-25 – 13:6). Staton's attorney continued, trying to make

his argument while abiding by the court's admonition. (Sentencing 13:7-18).

The district court, by limiting Staton's attorney's argument, effectively curbed his right to allocution. See State v. Stacy, No. 05-0475, 2006 WL 469022, at *1 (Iowa Ct. App. March 1, 2006) (holding that when the court cut off defense counsel's argument in mitigation, it violated the defendant's right to allocution).

There was no reason defense counsel or defendant should not have been allowed to discuss Staton's rejection of plea offers during the pendency of the case because he asserted his innocence. Although plea negotiations cannot be used against a defendant in later proceedings, in this instance, the evidence of the plea negotiations was not being used against Staton. See Iowa R. Crim. P. 2.10(5). Rather he wanted to use the evidence to support his argument for leniency. Further, the rules of evidence do not apply to sentencing proceedings. Iowa R. Civ. P. 5.1101(c)(4).

Given that there was no legal prohibition on Staton's attorney's discussion of Staton's rejection of plea offers, he should have been allowed to present his mitigation of sentence unrestricted. Although Staton does not have to establish prejudice when denied his right to allocution, Lumadue, 622 N.W.2d at 304, the limitation on counsel's line of discussion was particularly damaging in this case. Staton's perceived lack of remorse and nonacceptance of responsibility for the crimes is a permissible and important sentencing factor. See State v. Knight, 701 N.W.2d 83, 88 (Iowa 2005) ("We conclude that a defendant's lack of remorse is highly pertinent to evaluating his need for rehabilitation and his likelihood of reoffending."). As well, the court specifically noted that he had not accepted responsibility and felt no remorse for his actions when it decided to impose consecutive sentences. (Sentencing Tr. 22:16-22).

D. Conclusion. Because the court of appeals erred in concluding Staton's right to have his counsel make a statement

in mitigation of punishment was not violated, Staton's case should be remanded for resentencing. Lumadue, 622 N.W.2d at 304.

ATTORNEY'S COST CERTIFICATE

The undersigned, hereby certifies that the true cost of producing the necessary copies of the foregoing Application for Further Review was $1.63, 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 FURTHER REVIEWS

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

> [X] this application has been prepared in a proportionally spaced typeface using Bookman Old Style, font 14 point and contains 3,336 words, excluding the parts of the application exempted by Iowa R. App. P. 6.1103(4)(a).

Dated: *12/7/23*

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