

**IN THE SUPREME COURT OF IOWA**

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No. 23-0413  
Pottawattamie County No. FECR163543

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**STATE OF IOWA,**

Plaintiff-Appellee,

vs.

**ALLAN ROBERT SIEVERS,**

Defendant-Appellant.

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**APPEAL FROM THE IOWA DISTRICT COURT FOR  
POTTAWATTAMIE COUNTY  
HONORABLE KATHLEEN A. KILNOSKI**

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**APPELLANT'S BRIEF AND  
REQUEST FOR ORAL ARGUMENT**

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

**I. The trial court erred in admitting otherwise impermissible hearsay evidence by K.K. resulting in undue prejudice.**

**a. The trial court erred in holding Iowa Code § 622.31B was retrospectively applicable to pending cases.**

**b. The trial court erred in its statutory interpretation that the third person to whom a disclosure was made qualifies as an initial disclosure.**

**II. The trial court erred in permitting the State to introduce the photograph of R.D. and other explicit images located on Allan's computer, resulting in undue prejudice.**

**III. The trial court erred in ordering Trent Suhr to testify while shackled and in jail attire when the State elicited testimony from Trent that he was Allan's best friend.**

**IV. The trial court erred in permitting the State to cross-examine Allan beyond the scope of his testimony on direct examination, which was limited to E.O.'s accusations.**

**V. The trial court erred in denying Allan's motion for judgment of acquittal after the State rested its case because the evidence was insufficient to support the jury's verdict of guilty beyond a reasonable doubt.**

## **ROUTING STATEMENT**

The Iowa Supreme Court should retain this case pursuant to Iowa R. App. P. 6.1101(2)(c) because it presents substantial issues of first impression.



## **NATURE OF THE CASE**

Defendant-Appellant Allan Robert Sievers (hereinafter “Allan”) appeals his conviction, sentence, and judgment following a jury trial resulting in a guilty verdict of two counts of Sexual Abuse in the Second Degree, class B felonies in violation of Iowa Code §§ 709.1, 709.3(1)(b), 709.3(2), and 903B.1.

### **Course of Proceeding**

On October 22, 2020, Allan was charged in Pottawattamie County District Court case number FECR163543 with Count I: Sexual Abuse in the Second Degree, a class B felony; and Count II: Lascivious Acts with Child, a class C felony. D0014, Trial Information at 1 (10/23/2020). On October 23, 2020, Allan entered a plea of not guilty to the charges. D0017, Written Arraignment and Plea of Not Guilty at 1-2 (10/23/2020).

On February 10, 2021, the State filed a Motion for Joinder and Consolidation to consolidate the charges in FECR163543 with Pottawattamie County District Court case number FECR164628. D0027, Motion for Joinder and Consolidation at 1-3 (2/10/2021). On February 16, 2021, Allan filed a Resistance to joinder and

consolidation. D0029, Defendant's Resistance at 1-3 (2/16/2021)

On February 17, 2021, Allan was charged in FECR164628 with Count I: Sexual Abuse in the Second Degree, a class B felony; Count II: Sexual Abuse in the Second Degree, a class B felony; County III: Sexual Abuse in the Second Degree, a class B felony; and Count IV: Sexual Exploitation of a Minor, a class C felony. D0013 (FECR164628), Trial Information at 1 (2/17/2021). On February 25, 2021, Allan entered a plea of not guilty to the charges in FECR164628. D0020 (FECR164628), Written Arraignment at 1-2 (2/25/2021).

On March 1, 2021, the District Court issued an order consolidating FECR163543 and FECR164628 into a single case. D0035, Order at 1-3 (3/1/2021).

On December 7, 2022, Allan filed a Consolidated Motion to Sever and Supporting Brief, which was sustained at a hearing on December 8, 2022. D0090, Consolidated Motion to Sever and Supporting Brief at 1 (12/7/2022).

On December 11, 2022, the State filed an amended Trial Information in FECR163543 charging Allan with four counts of

Sexual Abuse in the Second Degree, all class B felonies, and one count of Lascivious Acts with Child, a class C felony. D0099, Trial Information at 1 (12/11/2022). The State also filed an amended Trial Information in FECR164628 charging Allan with one count of Sexual Exploitation of a Minor, a class C felony. D0025 (FECR164628), Amended Trial Information at 1 (12/11/2022).

Allan's trial in FECR163543 began on December 13, 2022. D0221, Order at 1 (12/19/2022).

On December 14, 2022, the District Court granted the State's oral motion to dismiss Counts III and IV of the Trial Information and to renumber former Count V as Count III. *Id.* The State filed an Amended Trial Information on December 16, 2022. D0212, Amended Trial Information at 1 (12/16/2022).

On December 19, 2022, the jury returned a verdict of guilty as to Count I: Sexual Abuse in the Second Degree; guilty as to Count II: Sexual Abuse in the Second Degree; and could not reach a verdict as to Count III: Lascivious Acts with Child. D0225, Verdict Form at 1 (12/19/2022). The District Court ordered a mistrial as to Count III. D0221, Order at 2 (12/19/2022).

Allan filed a Motion in Arrest of Judgment and for New Trial on February 2, 2023. D0241, Motion in Arrest of Judgment and for New Trial at 1-3 (2/2/2023). The District Court denied Allan's motions on February 9, 2023. D0254, Order at 1 (2/9/2023). As to Counts I and II, the District Court sentenced Allan to the Custody of the Iowa Department of Corrections for a term not to exceed 25 years, with a mandatory minimum of 70%, and each count to run concurrently with one another. D0258, Sentencing Order at 1-3 (2/9/2023).

On March 8, the State moved to dismiss FECR164628 and Count III in FECR163543. D0032 (FECR164628), Motion to Dismiss at 1 (3/8/2023); D0266, Motion to Dismiss at 1 (3/8/2023).

Allan timely filed a notice of appeal on March 9, 2023. D0268, Notice of Appeal at 1 (3/9/2023).

### **STATEMENT OF THE FACTS**

Allan Robert Sievers ("Allan"), began an intimate relationship with Leslie Ebrecht (hereinafter "Leslie") in June 2010. D0280, Trial Tr. p.304, L17-18 (12/13-19/2022); p.305, L9-12 (12/13-19/2022). Leslie has a son, E.O., who was born October 15, 2004.

D0280, Trial Tr. p.304, L9-10 (12/13-19/2022). Leslie and E.O.'s father, Dean, separated when E.O. was ten months old. D0280, Trial Tr. p.321, L7-8 (12/13-19/2022); D0280, Trial Tr. p.317, L21-25 (12/13-19/2022); D0280, Trial Tr. p.318, L1-2 (12/13-19/2022). During their custody dispute, Leslie alleged that Dean had sent her a picture of E.O.'s bare bottom with marker written on it. D0280, Trial Tr. p.321, L13-19 (12/13-19/2022).

Leslie testified that after she and Dean separated, no one other than her had lived with E.O. prior to her relationship with Allan. D0280, Trial Tr. p.317, L21-23 (12/13-19/2022); D0280, Trial Tr. p.318, L3-10 (12/13-19/2022). Leslie later testified that she and E.O. had lived with a man named Chad Helby<sup>1</sup> [*sic*], whom she had married during the intervening years. D0280, Trial Tr. p.320, L10-17 (12/13-19/2022). During their marriage, Chad was subject to a court-order prohibiting him from having unsupervised contact with his own children. D0280, Trial Tr. p.320, L3-9 (12/13-19/2022). Leslie did not recall when she and Chad divorced, but she would not

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<sup>1</sup> Leslie and Chad *Helvie's* decree for dissolution of marriage is of public record and filed in Cass County District Court cause number CDDM002675.

have been surprised to learn they had divorced in 2009. D0280, Trial Tr. p. 319, L23-25 (12/13-19/2022); D0280, Trial Tr. p. 320, L1-2 (12/13-19/2022).

Allan lived in Walnut, Iowa for the entire time Leslie has known him. D0280, Trial Tr. p.322, L18-23 (12/13-19/2022). When Allan and Leslie's relationship began in 2010, Leslie and E.O. lived in an apartment in Atlantic, Iowa. D0280, Trial Tr. p.313, L15-16 (12/13-19/2022). At that time, Leslie was doing her prerequisites for nursing school D0280, Trial Tr. p.305, L16-19 (12/13-19/2022).

In 2011, Leslie moved to Bedford while she attended nursing school in Clarinda. D0280, Trial Tr. p. 306, L5-8 (12/13-19/2022); D0280, Trial Tr. p. 313, L17-20 (12/13-19/2022); D0280, Trial Tr. p.314, L3-9 (12/13-19/2022). Leslie graduated from nursing school in the summer of 2013. D0280, Trial Tr. p.306, L10-13 (12/13-19/2022). Shortly thereafter, Leslie and E.O. moved into Allan's home in Walnut. D0280, Trial Tr. p.306, L10-13 (12/13-19/2022). After nursing school, Leslie began working as a floor nurse at a hospital in Red Oak, Iowa. D0280, Trial Tr. p.315, L16-23 (12/13-19/2022). Leslie worked the night shift from 7:00 p.m. to 7:00 a.m.,

returning home around 8:00 each morning. D0280, Trial Tr. p.316, L1-2 (12/13-19/2022); D0280, Trial Tr. p.328, L18-24 (12/13-19/2022).

Allan has four daughters, three of whom lived with Allan while he was in a relationship with Leslie. D0280, Trial Tr. p.327, L3-25 (12/13-19/2022). Allan's youngest two daughters stayed with him every other week under a joint-custody arrangement, but Allan's second-oldest daughter lived with him "full-time". D0280, Trial Tr. p.327, L21-25 (12/13-19/2022). Leslie and E.O. moved back to Bedford in December 2013, after having lived with Allan for only "a few months". D0280, Trial Tr. p.306, L25 (12/13-19/2022); D0280, Trial Tr. p.307, L2-3 (12/13-19/2022). Allan and Leslie's relationship ended in the very beginning of 2014. D0280, Trial Tr. p.305, L2-5 (12/13-19/2022).

During the fall of 2014, Allan began an intimate relationship with Jamie Doran (hereinafter "Jamie"). D0280, Trial Tr. p.536, L2-10 (12/13-19/2022). Jamie and her son, R.D., born in 2009, eventually moved in with Allan at his home in Walnut. D0280, Trial Tr. p.530, L12-22 (12/13-19/2022); D0005 (FEER164628), No

Contact Order at 1 (2/10/2021)).

In November 2014, Leslie began working as a travel nurse. D0280, Trial Tr. p.316, L9 (12/13-19/2022). During 2015, Leslie was in a relationship with a man named John Millhone. D0280, Trial Tr. p.326, L1-20 (12/13-19/2022). During their relationship, John stayed overnight with Leslie while E.O. was present. D0280, Trial Tr. p.326, L21-25 (12/13-19/2022).

On or about September 10, 2017, Allan took a photograph of R.D., which Allan described as a goofy little kid mooning him. D0280, Trial Tr. p.515, L20-22 (12/13-19/2022); D0280, Trial Tr. p.692, L19-21 (12/13-19/2022). The photograph was taken outside, during the day, on a wooden deck or patio. D0280, Trial Tr. p.507, L14-23 (12/13-19/2022).

On or about November 4, 2019, Leslie was summoned to the principal's office at E.O.'s school because he had gotten into trouble. D0280, Trial Tr. p.284, L6-7; D0280, Trial Tr. p.309, L24-25 (12/13-19/2022); D0280, Trial Tr. p.310, L1-8 (12/13-19/2022). After she arrived at the principal's office, Leslie became angry with E.O., verbally berated him, and punished E.O. by taking away his phone.



D0280, Trial Tr. p.351, L2-25 (12/13-19/2022); D0280, Trial Tr. p.352, L1-9 (12/13-19/2022). E.O. then told Leslie that Allan had raped him. D0280, Trial Tr. p.352, L20-25 (12/13-19/2022).

Leslie contacted the Pottawattamie County Sheriff's Office to file a report and took E.O. to Project Harmony for a forensic interview. D0280, Trial Tr. p.312, L1-12 (12/13-19/2022). Corporal Tony Leick from the Pottawattamie County Sheriff's Office observed E.O.'s forensic interview in November 2019. D0280, Trial Tr. p.448, L4-11 (12/13-19/2022).

On April 15, 2020, Corporal Leick interviewed Allan about the report at Allan's home in Walnut. D0280, Trial Tr. p.450, L22-25 (12/13-19/2022); D0280, Trial Tr. p.451, L1-3 (12/13-19/2022). Corporal Leick never interviewed Chad Helvie or John Millhone during the investigation. D0280, Trial Tr. p.468, L22-24 (12/13-19/2022); D0280, Trial Tr. p.470, L5-7 (12/13-19/2022). Corporal Leick had not been aware of either Chad or John until he was questioned about them at trial on cross-examination. D0280, Trial Tr. p. 468, L25 (12/13-19/2022); D0280, Trial Tr. p.469, L1-25 (12/13-19/2022); D0280, Trial Tr. p.470, L1-4 (12/13-19/2022).

On April 21, 2020, the Pottawattamie County Sheriff's Office executed a search warrant on Allan's residence. D0280, Trial Tr. p.454, L19-20 (12/13-19/2022). During the search, law enforcement officers seized Allan's computers. D0280, Trial Tr. p.501, L16-17 (12/13-19/2022).

As part of the investigation, Pottawattamie County Sheriff Deputy Anthony Kava searched the hard drive from one of Allan's computers and discovered a "collection of explicit images and videos, pornography." D0280, Trial Tr. p.503, L16-18 (12/13-19/2022); D0280, Trial Tr. p.504, L10-12 (12/13-19/2022). Deputy Kava described the collection as containing 249 still photos and 16 videos. D0280, Trial Tr. p.506, L24-25 (12/13-19/2022). Of the 249 photos, 245 were created or modified after January 1, 2015. D0280, Trial Tr. p.520, L12-25 (12/13-19/2022); D0280, Trial Tr. p.521, L1-5 (12/13-19/2022). One of the 249 still photos was the picture Allan had taken of R.D. in September 2017. D0280, Trial Tr. p.515, L19-22 (12/13-19/2022). Other persons identified in the explicit photographs and videos were adults including Allan, Jamie Doran, Trent Suhr, Trent's girlfriend, and Anthony Blotzer. D0280, Trial

Tr. p.524, L9-22 (12/13-19/2022); D0280, Trial Tr. p.525, L14-25 (12/13-19/2022); D0280, Trial Tr. p.526, L1-2 (12/13-19/2022); D0280, Trial Tr. p.690, L5-13 (12/13-19/2022); D0280, Trial Tr. p.713, L10-14 (12/13-19/2022). Deputy Kava created a document wherein thumbnail images of all the explicit items he discovered on Allan's computer were displayed on a single page, which he referred to as a "contact sheet". D0280, Trial Tr. p.508, L18-25 (12/13-19/2022); D0215, Exhibit 1 (referred to as Exhibit 57 at trial) (12/19/2022)).

Allan was eventually charged with four counts of sexual abuse against E.O., one count of lascivious conduct against E.O., and one count of sexual exploitation of a minor for the photograph of R.D. D0090, Consolidated Motion to Sever and Supporting Brief at 2 (12/7/2022).

On December 7, 2022, Allan filed a Consolidated Motion to Sever and Supporting Brief, requesting the five offenses against E.O. be severed from the one offense against R.D. D0090, Consolidated Motion to Sever and Supporting Brief at 1-2 (12/7/2022). In his brief, Allan argued a severance was necessary

because Allan intended to testify in his own defense as to the five charges pertaining to E.O. but not the charge pertaining to R.D. D0090, Consolidated Motion to Sever and Supporting Brief at 5-8 (12/7/2022). Allan further argued the District Court erroneously consolidated the charges by relying on inaccurate representations of the State's evidence at the prior hearing on consolidation. D0090, Consolidated Motion to Sever and Supporting Brief at 9-13 (12/7/2022).

The district court sustained Allan's motion to sever, stating in part:

“ . . . [the Defendant's] desire to testify in Counts I through V, but not in regards to count VI [is] compelling. The Defendant here believes he needs to testify to refute the allegations in Counts I through V where he and the alleged victim are the only people who are direct witnesses to the events that transpired. The Defendant does not believe it's necessary to testify regarding Count VI and does not wish to subject himself to cross-examination in that case. And I agree that the Defendant cannot be compelled to testify regarding Count VI and this Court will not allow that to happen.

. . .

[U]ltimately, the acts and even the charges that are alleged are separate and distinct acts. In one case, the Defendant's alleged to have committed sexual abuse by having physical sexual contact with a child. In the other case, he's charged with sexual exploitation based on a photograph taken of a different child.

. . .

[the Court's] concern here is whether the evidence related to one victim will prejudice the jury so much that they find the Defendant guilty of a separate and distinct act involving another victim. Each case here must stand on its own merits and it should not gain strength by being bundled with another case.”

D0276, Motion to Sever Tr. pp.26-28 (12/8/2022).

On December 11, 2022, Allan filed a Motion in Limine to exclude any and all testimony or evidence pertaining to Defendant's severed charge in FECR164628, including testimony by Jamie Doran, Deputy Kava, R.D., and Trent Suhr. D0098, Defendant's Motion in Limine at 1-2 (12/11/2022).

The district court overruled, in part, Allan's motion regarding evidence in FECR164628, excluding testimony by Jamie Doran and R.D., permitting testimony by Deputy Kava and reserving ruling on testimony by Trent Suhr. The district court's order states in part:

“[T]he court concludes that any testimony or evidence regarding the photograph of R.D. as being contained within the defendant's collection of explicit photographs is highly prejudicial and only minimally relevant to proving any disputed issue regarding E.O. The attorneys, parties, and witnesses shall not refer to R.D., to any photograph of R.D., or to any behaviors of the defendant regarding R.D.”

D0103, Order on Motions in Limine at 2 (12/12/2022).

Siever's jury trial began December 13, 2023. D0221, Order at

1 (12/19/2022). Prior to commencing jury selection, the parties addressed the District Court's order in limine outside the presence of the jury pool. D0280, Trial Tr. p.6, L5-15 (12/13-19/2022). Defense counsel sought clarification as to the district court's order pertaining to Deputy Kava's testimony. D0280, Trial Tr. p.16, L17-25 (12/13-19/2022); D0280, Trial Tr. p.17, L1-2 (12/13-19/2022). The district court stated that it would be too prejudicial to talk about or show the single photo of R.D., and it affirmed that Deputy Kava would be permitted to testify that he found pornography on Allan's computer. D0280, Trial Tr. p.18, L16-25 (12/13-19/2022); D0280, Trial Tr. p.19, L1-24 (12/13-19/2022). Following argument by the State about the single photograph of R.D., the district court amended its ruling to permit the State to elicit testimony from Deputy Kava that he found child pornography on Allan's computer. D0280, Trial Tr. p.20, L17-20 (12/13-19/2022).

Defense counsel opposed the district court's ruling, indicating the introduction of the photograph of R.D. would be preferable to testimony by Deputy Kava that he found child pornography. D0280, Trial Tr. p.21, L2-15 (12/13-19/2022). The district court

subsequently indicated the parties would not be permitted to identify R.D. or that Jamie Doran was his mother when addressing the existence of the photo. D0280, Trial Tr. p.23, L5-10 (12/13-19/2022). Defense further opposed the restrictions because introducing or describing the photo without the context of when it may have been taken would be misleading to the jury. D0280, Trial Tr. p.24, L25 (12/13-19/2022); D0280, Trial Tr. p.25, L1-25 (12/13-19/2022). The district court ultimately ruled that Deputy Kava could testify about the photograph of R.D. being found among the adult photos, but he could not say ‘child pornography’. D0280, Trial Tr. p.26, 6-14 (12/13-19/2022). The contact sheet containing thumbnails of the 249 explicit still images and 16 videos was later admitted into evidence as Exhibit 57 during Deputy Kava’s testimony, over Allan’s objections of relevance and undue prejudice. D0280, Trial Tr. p.509, L1-19 (12/13-19/2022).

According to E.O., he had lived with Allan when Leslie was working as a travel nurse. D0280, Trial Tr., p.338, L13-17 (12/13-19/2022); D0280, Trial Tr., p.339, L4-5 (12/13-19/2022). E.O. believed Leslie would leave for multiple consecutive days at a time,

being away both overnight and during the day. D0280, Trial Tr. p. 338, L25 (12/13-19/2022); D0280, Trial Tr. p. 339, L1-2 (12/13-19/2022); D0280, Trial Tr. p. 379, L15-22 (12/13-19/2022). As a result, E.O. testified that he was alone with Allan for four or five days per week, every other week, while Leslie was working as a travel nurse. D0280, Trial Tr. p. 339, L9-11 (12/13-19/2022); D0280, Trial Tr. p. 380, L7-10 (12/13-19/2022). E.O. further testified that he lived with Allan for more than two years after Leslie began working as a nurse. D0280, Trial Tr. p.401, L16-25 (12/13-19/2022); D0280, Trial Tr. p.402, L1-4 (12/13-19/2022).

E.O.'s testimony was that he was sexually assaulted by Allan between the ages of six and ten, despite previously testifying the first incident occurred when he was eleven. D0280, Trial Tr. p.333, L1-3 (12/13-19/2022); D0280, Trial Tr. p.400, L11-13 (12/13-19/2022). E.O. testified that Leslie and Allan separated when he was about ten years old, after having previously testified that Leslie and Allan separated when he was around the age of thirteen. D0280, Trial Tr. p.400, L14-20 (12/13-19/2022). While on cross-examination, E.O. had difficulty remembering an answer he gave



on direct examination from earlier that day. D0280, Trial Tr. p.397, L12-18 (12/13-19/2022). E.O. described himself as having “a very bad memory.” D0280, Trial Tr. p.384, L19 (12/13-19/2022).

The State called K.K. at trial to provide testimony as a designated outcry witness.<sup>2</sup>

On December 16, 2022, Allan testified in his own defense. Allan’s direct testimony in its entirety was as follows:

DEFENSE COUNSEL: “Could you please state your name for the record?”

A: “My name is Allan Robert Sievers.”

DEFENSE COUNSEL: “How do you feel about testifying today?”

A: “Pretty nervous.”

DEFENSE COUNSEL: “Were you present in court over the past couple of days and did you hear all the allegations against you by [E.O.]?”

A: “Yes, I did.”

DEFENSE COUNSEL: “Are any of the allegations that you sexually abused E.O. true?”

A: “No, they are not.”

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<sup>2</sup> The relevant facts pertaining to the outcry witness are stated in the argument section below.

DEFENSE COUNSEL: “Are you ready and willing to answer any questions the State might have concerning your testimony today?”

A: “Yes, I am.”

DEFENSE COUNSEL: No further questions.

D0280, Trial Tr. p.679, L13-25 (12/13-19/2022); D0280, Trial Tr. p.680, L1-5 (12/13-19/2022).

The State requested a sidebar, whereat the district court stated that defense counsel’s questions had opened the door on cross-examination to any inquiry from the State. D0280, Trial Tr. p.680, L7-11 (12/13-19/2022); D0280, Trial Tr. p.793, L20-25 (12/13-19/2022); D0280, Trial Tr. p.794, L1-12 (12/13-19/2022); D0282, Sentencing Tr. p.24, L22-25 (2/9/2023); D0282, Sentencing Tr. p.25, L1-11 (2/9/2023). Defense objected to the district court’s ruling, which was overruled. D0280, Trial Tr. p.795, L6-25 (12/13-19/2022); D0280, Trial Tr. p.796, L1-3 (12/13-19/2022); D0282, Sentencing Tr. p.25, L1-11 (2/9/2023). The district court stated the door was “very wide open.” D0280, Trial Tr. p.682, L6-7 (12/13-19/2022).

The State’s thirteenth question on cross-examination of Allan was, “Well, do you hang out naked with other men?” D0280, Trial Tr. p.685, L4 (12/13-19/2022). Defense counsel objected as outside

the scope, which was overruled. D0280, Trial Tr., p.685, L16-18 (12/13-19/2022). On cross-examination, the State inquired about Allan spending time naked with other men, explicit pictures Jamie Doran, explicit pictures of Trent Suhr, whether Trent Suhr was Allan's best friend, wild parties in Allan's man cave, explicit pictures of Anthony Blotzer, the September 2017 photograph of R.D., R.D.'s testicles, Allan's purchase of a house for Jamie Doran, and the circumstances of meeting Trent Suhr over twenty-years earlier. D0280, Trial Tr. pp. 685-705 (12/13-19/2022).

Following Allan's testimony, a record was made regarding whether the State would be calling Trent Suhr as a rebuttal witness. D0280, Trial Tr. p.707, L13-18 (12/13-19/2022). Trent was known by the parties to be serving time in custody for driving while barred. D0280, Trial Tr. p.709, L21-22 (12/13-19/2022). Allan's counsel stated in part:

**DEFENSE COUNSEL:** "I think this is an attempt by the State to put someone who is going to be on the stand in a suit and handcuffs and say 'Allan is my best friend'. I move for Mr. Suhr to appear in civilian clothing as well as unshackled in the presence of the jury. . . . [Allan] is willing to, if necessary, go to Wal-Mart and get some clothing for Mr. Suhr to wear so he has something to change into if there's nothing else available."

D0280, Trial Tr. p.707, L18-25 (12/13-19/2022); D0280, Trial Tr. p.708, L1-3 (12/13-19/2022).

The State opposed any delay for the defense to obtain civilian clothing for Trent and expressed security concerns regarding handcuffs. D0280, Trial Tr. p.708, L5-22 (12/13-19/2022). The District Court did not grant any additional time for defense to obtain clothing for Trent and ordered the parties to be back at 1:00 p.m. D0280, Trial Tr. p.709, L4-11 (12/13-19/2022). The District Court dismissed the parties for a lunch recess at 12:07 p.m. D0280, Trial Tr. p.711, L4-7 (12/13-19/2022).

The State called Trent Suhr as a witness to testify in front of the jury while he was shackled and in prison attire. D0280, Trial Tr. p.717, L18-19 (12/13-19/2022); D0280, Trial Tr. p.716, L8-11 (12/13-19/2022); D0282, Sentencing Tr. p.17, L10-24 (2/9/2023). The district court cited court security protocols as justification for Trent remaining shackled while testifying. D0280, Trial Tr. p.716, L7-8 (12/13-19/2022). On direct examination, the State inquired as to how Trent knew Allan. D0280, Trial Tr. p.718, L16 (12/13-19/2022). Trent testified that Allan is a friend and that he worked for Allan.

D0280, Trial Tr. p.718, L17 (12/13-19/2022). The State further elicited testimony that Trent and Allan were pretty good friends, even best friends, and that they spent a lot of time together. D0280, Trial Tr. p.719, L4-9 (12/13-19/2022).

Any additional relevant facts will be discussed below.

## ARGUMENT

### **I. The trial court erred in admitting otherwise impermissible hearsay evidence by K.K. resulting in undue prejudice.**

#### **Relevant Facts**

During the 2022 legislative session, codified an outcry witness statute pertaining to evidence in certain physical and sexual abuse cases. *See*: Iowa Code § 622.31B.

On November 2, 2022, the State filed a Notice of Designated Outcry Witness, identifying K.K. as the outcry witness. D0082, Notice of Designated Outcry Witness at 1 (11/2/2022).

On December 11, 2022, Allan filed a Motion in Limine to exclude testimony by K.K. because Iowa Code § 622.31B affected substantive rights of the parties and it was not expressly made retrospective. D0098, Defendant's Motion in Limine at 1 (12/11/2022). The District Court overruled Allan's motion pertaining to Iowa Code § 622.31B, finding the statute to be procedural law and may be applied to cases pending before its effective date. D0103, Order on Motions in Limine at 2 (12/12/2022).

At trial, E.O. testified that the first person he had told about

the incidents was C.M. D0280, Trial Tr. p.398, L15-23 (12/13-19/2022). At a pretrial deposition, E.O. testified that the first person whom he had told about the incidents was his mother. D0280, Trial Tr. p.399, L14-20 (12/13-19/2022). The district court permitted the State to call K.K. to testify as to E.O.'s statements to her as an initial disclosure. D0280, Trial Tr. p.430, L24-25 (12/13-19/2022); D0280, Trial Tr. p.431, L1-4 (12/13-19/2022); D0280, Trial Tr. p.438, L15-20 (12/13-19/2022).

**a. The trial court erred in holding Iowa Code § 622.31B was retrospectively applicable to pending cases.**

**Preservation of Error:** Allan preserved error in this matter by moving to exclude K.K.'s testimony as impermissible hearsay evidence in his Motion in Limine filed December 11, 2022. D0098, Defendant's Motion in Limine at 1 (12/11/2022). Generally, a ruling on a motion in limine does not preserve error for appellate review unless the ruling leaves no question about its finality. State v. Thoren, 970 N.W.2d 611, 621 (Iowa 2022) (*internal citations omitted*).

**Standard of Review:** Preliminary questions of admissibility

are reviewed for corrections of errors at law. State v. Cahill, 972 N.W.2d 19, 27 (Iowa 2022) (*citing* State v. Veverka, 938 N.W.2d 197, 202 (Iowa 2020)). “Error in admission of evidence must be prejudicial to an accused to constitute cause for reversal.” State v. Liggins, 524 N.W.2d 181, 188 (Iowa 1994). Inadmissible hearsay is presumed to be prejudicial unless the record affirmatively establishes otherwise. State v. Newell, 710 N.W.2d 6, 19 (Iowa 2006) (*quoting* State v. Sullivan, 679 N.W.2d 19, 29 (Iowa 2004)).

**Discussion:** Newly enacted statutes are presumed to apply prospectively unless expressly made retrospective. Iowa Code § 4.5; Iowa Beta Chapter of Phi Delta Theta Fraternity v. State, Univ. of Iowa, 763 N.W.2d 250, 266 (Iowa 2009), *holding modified by* Hedlund v. State, 991 N.W.2d 752 (Iowa 2023). In the absence of express intent by the legislature, procedural law may be retrospectively applied, but substantive law is only applied prospectively. Id. “A substantive statute ‘creates, defines and regulates rights’ whereas a procedural law ‘is the practice, method, procedure, or legal machinery by which the substantive law is enforced or made effective.’” Id.



In this case, the trial court held that Iowa Code § 622.31B could be retrospectively applied on the basis that it was a procedural law, not substantive. D0103, Order on Motions in Limine at 2 (12/12/2022). Iowa Code § 622.31B provides in part,

“ . . .

2. In a prosecution for . . . sexual abuse . . . against a child . . . the following evidence shall be admitted as an exception to the hearsay rule . . .

a. Testimony by another concerning an out of court statement, whether consistent or inconsistent, made by the victim that is an initial disclosure of . . . a sexual offense against the victim.”

In support of its ruling, the trial court quoted Bascom v. Dist. Ct. of Cerro Gordo Cnty., wherein this Court stated “retrospective application will ordinarily be given to . . . rules of evidence[.]” 231 Iowa 360, 364, 1 N.W.2d 220, 222 (1941); D0103, Order on Motions in Limine at 2 (12/12/2022). In Bascom, this Court upheld the retrospective applicability of a statute which expanded the scope of counties where venue to file a lawsuit would be proper. Bascom, 1 N.W.2d at 220-22.

The situation in Bascom provides an ideal contrast to this case as to why Iowa Code § 622.31B should not be retrospectively applicable. In Bascom, the issue was whether the petitioner’s

substantive rights were affected by permitting a lawsuit to be filed against him in more than one county. Id. at 221. Under those circumstances, being sued in a county other than the one in which the petitioner resided did not affect his substantive rights because the statutory change would have no bearing on the merits of the case. Regardless of the county in which the lawsuit was brought, a plaintiff would be subject to the same burden of proof, rules of evidence, etc.

In this case, Allan's rights are substantively affected by retrospective applicability because it permitted the State to introduce otherwise impermissible hearsay evidence to bolster E.O.'s testimony. Simply put, the State was permitted to call a witness and introduce testimony which would not have been admissible before the statute was enacted. This Court should reverse the trial court's determination as to retrospective application of Iowa Code § 622.31B and hold that it is only prospective in application.

This Court should further hold that Allan was prejudiced by the error of permitting the State to introduce K.K.'s otherwise

impermissible hearsay testimony into evidence because it unfairly bolstered E.O.'s credibility in two ways. First, it shielded E.O. from any argument that he had made false allegations. The context surrounding how and when a statement was made are reasonable considerations in assessing credibility. Through the use of hearsay statements purported to have been made prior to Leslie being called to E.O.'s principal's office, defense counsel was prevented from arguing that E.O. may have made false allegations to deflect from being in trouble at school. K.K.'s testimony proactively rendered any such argument as meritless when it would have otherwise been a reasonable consideration for the finder of fact in assessing E.O.'s credibility.

Second, K.K.'s testimony served to corroborate E.O.'s story that he had been the victim of sexual abuse by one of his mother's former boyfriends. The introduction of hearsay evidence may be so prejudicial as to warrant a new trial when a witness's credibility is central to the case and the only purpose of admitting hearsay evidence is to bolster that witness's credibility. State v. Elliott, 806 N.W.2d 660, 670 (Iowa 2011) (*internal citations omitted*). E.O.'s

testimony was inconsistent with his own prior testimony, and he testified to having a very bad memory. Those are important facts because E.O.'s credibility was central to the State's case against Allan when there was no physical evidence or other witnesses to corroborate E.O.'s accusations. K.K.'s hearsay testimony unfairly tipped the scales in favor of the State by corroborating E.O.'s story that he was sexually abused at the hands of his mother's former romantic partner. Thus, this Court should hold the prejudicial effect of K.K.'s testimony warrants reversal of Allan's convictions and order the case remanded for a new trial.

**b. The trial court erred in its statutory interpretation that the third person to whom a disclosure was made qualifies as an initial disclosure.**

**Preservation of Error:** Allan objected to the State calling K.K. as a witness at trial, and specifically objected to the Court's statutory interpretation of "an initial disclosure". D0280, Trial Tr. p.429, L2-25 (12/13-19/2022); D0280, Trial Tr. p.430, L20-23 (12/13-19/2022).

**Standard of Review:** Questions of statutory interpretation are reviewed for corrections of errors at law. State v. Coleman, 907

N.W.2d 124, 134 (Iowa 2018).

**Discussion:** The trial court erred in permitting the State to introduce K.K.'s testimony as an initial disclosure because E.O. testified at trial that the first person he had told was C.M. after previously testifying at a pretrial deposition that the first person whom he had told was his mother, Leslie. D0280, Trial Tr. p.398, L15-23 (12/13-19/2022). During an offer of proof at trial, the State argued that K.K. could testify under the outcry witness statute because it refers to 'an' initial disclosure of the offense, not 'the' initial disclosure of the offense. D0280, Trial Tr. p.427, L7-9 (12/13-19/2022). The trial court agreed with the State's argument that 'an' initial disclosure does not mean the first disclosure. D0280, Trial Tr. p.430, L24-25 (12/13-19/2022); D0280, Trial Tr. p.431, L1-2 (12/13-19/2022).

When interpreting a statute, words are given their ordinary and common meaning in the context within which they are used. Auen v. Alcoholic Beverages Div., 679 N.W.2d 586, 590 (Iowa 2004). Criminal statutes are strictly construed with doubts resolved in the accused's favor. State v. Gonzalez, 718 N.W.2d 304, 308 (Iowa

2006). A dictionary may be consulted to determine the ordinary meanings of words used by the legislature. Gonzalez, 718 N.W.2d at 308.

The trial court’s interpretation of “an initial disclosure” as applicable beyond the first disclosure violates the principles of statutory interpretation of strictly construing statutes and giving words their common meaning. The dictionary defines “initial” as “of or relating to the beginning : incipient” or “placed at the beginning : first”. *Initial*, Merriam-Webster (accessed August 28, 2023), available at [<https://www.merriam-webster.com/dictionary/initial>]. At various locations in the Iowa Code, the word “initial” is used interchangeably with “first”. *See*: Iowa Code §§ 8C.2(9), 203D.1(5), and 598B.102(8). The words “initial” and “first” have also been used interchangeably by this Court. *See*: Howsare v. Iowa Dist. Ct. for Polk Cnty., 986 N.W.2d 114, 117-18 (Iowa 2023)(‘initial appearance’ and ‘first appearance’ used in consecutive sentences).

By applying the principles of statutory interpretation, the legislative intent which can be inferred by the word “initial” is that the statute is directed at a single, first disclosure. The word ‘an’

instead of ‘the’ does not change the ordinary meaning of ‘initial’ as referring to a singular event. Even if such an ambiguity did exist, the applicability of the statute in the context of a criminal case means the dispute should be resolved in Allan’s favor.

The trial court’s error in this matter resulted in the same admission of otherwise inadmissible hearsay testimony as stated above in section a. Allan incorporates the same arguments as to the prejudicial effect of K.K.’s testimony and requests the Court reverse his convictions and remand this matter for a new trial.

**II. The trial court erred in permitting the State to introduce the photograph of R.D. and other explicit images located on Allan’s computer, resulting in undue prejudice.**

**Preservation of Error:** Allan preserved error by filing a motion in limine to exclude the photograph of R.D. D0098, Defendant’s Motion in Limine at 2-3 (12/11/2022). Allan also objected to the admission of Exhibit 57 at trial as not relevant and unduly prejudicial. D0280, Trial Tr. p.509, L1-19 (12/13-19/2022).

**Standard of Review:** Evidentiary rulings are reviewed for abuse of discretion. State v. Huston, 825 N.W.2d 531, 536 (Iowa 2013). If the trial court is found to have abused its discretion in admitting

unduly prejudicial evidence over a 403 objection, prejudice is presumed. Id. The State may overcome the presumption of prejudice by establishing that there was overwhelming evidence of the defendant's guilt. State v. Howard, 825 N.W.2d 32, 41–42 (Iowa 2012)

**Discussion:** This Court should hold the trial court abused its discretion by admitting Exhibit 57 into evidence because the probative value of the exhibit, if any, was far outweighed by the danger of unfair prejudice.

Evidence is relevant if it has any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence. Iowa R. Evid. 5.401. Relevant evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice. Iowa R. Evid. 5.403. A two-part balancing test is used to determine whether evidence should be excluded under 403. State v. Huston, 825 N.W.2d 531, 537 (Iowa 2013) (*internal citations omitted*). The first consideration is the probative value of the evidence, then the probative value is



balanced against the danger of unfair prejudice. Id. Evidence is unfairly prejudicial if it “appeals to the jury's sympathies, arouses its sense of horror, provokes its instinct to punish, or triggers other mainsprings of human action may cause a jury to base its decision on something other than the established propositions in the case.” State v. Plaster, 424 N.W.2d 226, 231 (Iowa 1988).

Exhibit 57 is the ‘contact sheet’ displaying 249 explicit still images and 16 explicit still images from videos. D0280, Trial Tr. p.508, L18-25 (12/13-19/2022). Items depicted on Exhibit 57 include the September 2017 photograph of R.D., explicit photographs and videos of Trent Suhr, explicit photographs of Anthony Blotzer, explicit photographs of Allan, and explicit photographs of Jamie Duran. D0280, Trial Tr. p.524, L9-22 (12/13-19/2022); D0280, Trial Tr. p.525, L14-25 (12/13-19/2022); D0280, Trial Tr. p.526, L1-2 (12/13-19/2022); D0280, Trial Tr. p.690, L5-13 (12/13-19/2022); D0280, Trial Tr. p.713, L10-14 (12/13-19/2022). The district court determined that the evidence of explicit photographs found on Allan’s computer was relevant to demonstrate grooming of E.O or as ‘instrumentality of a crime’. D0103, Order on Motions in Limine

at 2 (12/12/2022). The district court further determined that the explicit photographs were relevant in corroborating E.O.'s statements that Allan had a collection of pornography. D0103, Order on Motions in Limine at 2 (12/12/2022).

E.O.'s testimony calls into question the relevance of Exhibit 57 for the purposes indicated by the trial court. E.O. testified that Allan only had pictures of naked women, no pictures of naked men, and no videos. D0280, Trial Tr. p.382 L18-22 (12/13-19/2022); D0280, Trial Tr. p.394, L19-25 (12/13-19/2022); D0280, Trial Tr. p.395, L1 (12/13-19/2022). Its relevance is also undermined by the fact that 245 of the 249 photos may have been taken after January 1, 2015. D0280, Trial Tr. p.520, L12-25 (12/13-19/2022); D0280, Trial Tr. p.521, L1-5 (12/13-19/2022). The State did not present any evidence or even suggest that any of the explicit photos located on Allan's computer were shown to E.O. While there is the potential to consider the existence of explicit photographs on Allan's computer as a corroboration E.O.'s claim that Allan possessed photographs of naked women, any explicit photographs or videos of naked men, as well as the photograph of R.D., would not be relevant evidence for

that purpose. Additionally, any explicit photographs of Jamie Doran would not be relevant because she did not meet Allan until after his relationship with Leslie had ended. As the aforementioned exclusions constitute the bulk of Exhibit 57, it should have been inadmissible as not relevant under Rule 401.

Even if the few remaining photographs of naked women on Exhibit 57 were relevant for corroboration, the trial court abused its discretion in admitting Exhibit 57 because of the danger of undue prejudice. In State v. Putman, this Court considered the use of child pornography evidence in the trial of a man convicted of first-degree sexual abuse against a two-year-old girl. 848 N.W.2d 1, 3 (Iowa 2014). The underlying investigation of Putman's hard drives had revealed thousands of photographs and hundreds of videos of child pornography in his possession. Id at 12.

At trial in Putman, the State did not offer any of the child pornography into evidence, but the investigator testified that he had found child pornography on Putman's computer and told the jury the names and content of two videos which were undeniably similar to the act for which Putman was on trial. Id. The district

court also gave a limiting instruction informing the jury of the limited purpose for which the evidence could be used. Id. at 15. In affirming Putman's conviction, this Court approved of the district court's narrowly tailored approach to highly prejudicial evidence. Id. at 15-16. This Court explained that child pornography has a strong tendency to produce intense disgust, and even highly probative evidence may be excluded if the danger of unfair prejudice is too great. Id. at 14-15.

In this case, E.O. did not accuse Allan of taking any improper photographs of him, he did not accuse Allan of possessing photographs of children, and he did not testify that Allan had photographs of naked boys or men. E.O. merely testified that Allan had photographs of naked women. If the State had intended to offer the presence of explicit images on Allan's computer to corroborate E.O.'s testimony, it could have done so by eliciting testimony from Deputy Kava that he found photographs of naked adult women on Allan's computer. Instead, the State sought to instill the jury with feelings of disgust towards Allan by implying that he was in possession of child pornography. The State's opening statement

exemplifies its intent to have Exhibit 57 introduced for an improper purpose, wherein the prosecutor went out of their way to describe the photograph of R.D. in detail, stating:

“[Allan’s computer] contained an explicit picture of a child, a male child turned around with his buttocks exposed, cheeks slightly spread, his testicle exposed. And that the only things in those folders were explicit images. Not family photos from Yellowstone, not his kids, explicit images. And this photo.”

D0280, Trial Tr. p.290, L15-21 (12/13-19/2022).

Here, the probative value of the evidence is of zero or minimal evidentiary value, but the danger of undue prejudice was undeniably substantial. Therefore, this Court should hold the district court abused its discretion in admitting Exhibit 57 into evidence and remand this case for a new trial.

**III. The trial court erred in ordering Trent Suhr to testify while shackled and in jail attire when the State elicited testimony from Trent that he was Allan’s best friend.**

**Preservation of Error:** At trial, Allan made an oral motion for Trent Suhr to appear in civilian clothing and unshackled in the presence of the jury at the first opportunity when it was determined that the State intended to call Trent as a rebuttal witness. D0280,

Trial Tr. p.707, L13-22 (12/13-19/2022). Allan also preserved error on this issue in his Motion in Arrest of Judgment and for New Trial. D0241, Motion in Arrest of Judgment and for New Trial at 3 (2/2/2023).

**Standard of Review:** The decision to impose physical restraints is within the trial court's discretion and will not be reversed absent a clear showing of abuse of discretion. State v. Wilson, 406 N.W.2d 442, 449 (Iowa 1987).

**Discussion:** This Court should hold the trial court abused its discretion when it permitted the State to elicit testimony from Trent Suhr that he was Allan's best friend while Trent was shackled and in jail attire because it created a substantial risk of prejudice by presenting Allan as a person who associates with criminals, and the risk of prejudice was not justified by an essential state interest..

The defendant in a criminal case is not usually restrained in front of a jury because it creates prejudice in the minds of jurors that the defendant is a bad and dangerous person. Id. The practice is inherently prejudicial and may consciously or subconsciously

influence jury deliberations. Id (*citing* Holbrook v. Flynn, 475 U.S. 560, -572, 106 S.Ct. 1340, 1347, 89 L.Ed.2d 525, 535-36 (1986)). The right of a criminal defendant to appear unshackled in the presence of the jury is grounded in the presumption of innocence. Kennedy v. Cardwell, 487 F.2d 101, 104–05 (6th Cir. 1973).

“The overwhelming majority of jurisdictions hold that an incarcerated witness should not be compelled to testify in prison clothing.” Hightower v. State, 123 Nev. 55, 58, 154 P.3d 639, 641 (2007). A witness appearing in prison clothing who is associated with the accused may prompt jurors to view the defendant as guilty by association. Id. Requiring a witness to testify in shackles also encourages the jury to perceive the defendant as one who must turn to the testimony of a putatively “guilty” individual to help salvage his case. State v. Artwell, 177 N.J. 526, 537, 832 A.2d 295, 301 (2003). Even when a witness is called by the State, the negative influence caused by shackles and jail attire may prejudice a defendant in so far as the witness is perceived to be associated with him. Carney v. State, 158 So. 3d 706, 708 (Fla. Dist. Ct. App. 2015) (*citing* Commonwealth v. Brown, 364 Mass. 471, 305 N.E.2d 830,

834 (1973)). In Carney, the court held the defendant had been prejudiced when the State had called a defendant's mother to testify as a witness, and she testified wearing shackles and jail garb. Carney, 158 So. 3d at 709. *See also*: State v. Coursolle, 255 Minn. 384, 389, 97 N.W.2d 472, 476–77 (1959) (Defendant's conviction remanded for new trial when defendant's witnesses were required to testify on his behalf while shackled).

The State has the burden of proving physical restraints are necessary. Wilson, 406 N.W.2d at 449. A trial court likely abuses its discretion by permitting a witness to be brought before a jury in jail clothing without an articulated justification for the necessity of jail clothing, and the court does not give an admonition to the jury not to consider the person's incarceration. State v. Ward, 292 Kan. 541, 576, 256 P.3d 801, 824 (2011). The decision to require a witness to appear in handcuffs creates a risk of unfair prejudice to a defendant because it undermines the witness's credibility, and it presents the defendant as someone who associates with persons of questionable character. State v. Artwell, 177 N.J. 526, 538, 832 A.2d 295, 302 (2003). When such a risk is present, the defendant's



right to a fair trial must be justified by an essential state interest.  
Id (*citing Holbrook*, 475 U.S. at 568-69).

In this case, the record establishes that the State attempted to amplify any prejudicial effect of Trent's appearance by eliciting testimony in four separate questions that Allan and Trent were friends, pretty good friends, best friends, and that they spent a lot of time together. D0280, Trial Tr. p.718, L16-17 (12/13-19/2022); D0280, Trial Tr. p.19, L4-9 (12/13-19/2022). In denying Allan's motion for Trent to be unshackled and in civilian clothing during his testimony, the trial court did not provide any explanation as to why Trent would not be permitted to be unshackled other than 'protocols for the court security folks.' D0280, Trial Tr. p.716, L7-8 (12/13-19/2022). Trent was in custody for driving while barred, and he was not known to have any convictions for violent offenses. D0280, Trial Tr. p.709, L21-22 (12/13-19/2022). In the absence of any essential state interests being furthered to justify Trent's shackling and jail attire, prejudice against Allan should be presumed and the burden to prove he was not unfairly prejudiced should be on the State.

Accordingly, Allan respectfully requests the Court reverse his conviction and remand this matter for a new trial.

**IV. The trial court erred in permitting the State to cross-examine Allan beyond the scope of his testimony on direct examination, which was limited to E.O.'s accusations**

**Preservation of Error:** Allan objected to the trial court's ruling that defense counsel's questions on direct examination had opened the door to any inquiry from the State. D0280, Trial Tr. p.680, L7-11 (12/13-19/2022); D0280, Trial Tr. p.793, L20-25 (12/13-19/2022); D0280, Trial Tr. p.794, L1-12 (12/13-19/2022); D0282, Sentencing Tr. p.24, L22-25 (2/9/2023); D0282, Sentencing Tr. p.25, L1-11 (2/9/2023). Allan's counsel further objected to the first question by the State which was outside the scope of direct. D0280, Trial Tr., p.685, L16-18 (12/13-19/2022). Finally, Allan argued the cross-examination outside the scope of direct was grounds for a new trial in his Motion in Arrest of Judgment and for New Trial. D0241, Motion in Arrest of Judgment and for New Trial at 2 (2/2/2023).

**Standard of Review:** The scope of cross-examination is within the discretion of the trial court. State v. Holmes, 325 N.W.2d 114, 117 (Iowa 1982). Appellate review of cross-examination is reviewed for

abuse of discretion. Id. Reversal is only appropriate where the trial court abuses its discretion, and the abuse of discretion resulted in prejudice to the defendant. Id. “A district court abuses its discretion when it bases its decisions on grounds or reasons clearly untenable or to an extent that is clearly unreasonable” Thoren, 970 N.W.2d at 620.

**Discussion:** The trial court abused its discretion resulting in prejudice to Allan when it permitted the State to exceed to scope of Allan’s testimony on direct during cross-examination because it resulted in Allan being compelled to testify as to matters which the district court had previously recognized as minimally relevant and likely to cause undue prejudice.

When the defendant is the witness, the prosecutor is strictly confined to matters testified to in the examination in chief. Holmes, 325 N.W.2d at 117; *and* Iowa R. Crim. P. 2.20(1) (effective to June 30, 2023). Questions by the prosecution insinuating misconduct for which a defendant is not on trial have long been held to be improper. *See: State v. Archibald*, 221 N.W. 814, 815 (Iowa 1928) (“While ebullitions of enthusiasm and zeal in the heat of a trial may

be expected, care should nevertheless be taken to avoid even the appearance of placing a defendant on trial for an offense other than that with which he is charged. That the defendant is a rascal does not deprive him of his right to a fair trial.”)

On direct examination, Allan’s testimony directly addressed E.O.’s accusations by issuing a general denial. The final question by defense counsel, ‘Are you ready and willing to answer any questions the State might have concerning your testimony today’ was an invitation to any and all questions from the prosecution pertaining to E.O.’s accusations. The trial court’s ruling that the final question on direct examination opened the door to any inquiry by the State, limited only by pretrial rulings, was an abuse of discretion because such a broad scope of inquiry is clearly unreasonable considering the prosecutor’s restriction on questioning a defendant in the Iowa Rules of Criminal Procedure.

Moreover, the district court’s earlier rulings recognized that it would be highly prejudicial to compel Allan to testify about the matters for which the State ultimately questioned him. At the hearing on Allan’s Motion to Sever, the district court ordered the

charge pertaining to R.D. to be severed from the charges pertaining to E.O. precisely so that Allan could testify as to E.O.'s allegations without being compelled to testify as to the case involving R.D. Motion to Sever Tr. pp.26-28 (12/8/2022). The district court expressed concern that the evidence related to one victim would prejudice the jury so much that they would find Allan guilty of a separate and distinct act involving another victim. Motion to Sever Tr. pp.26-28 (12/8/2022). The district court echoed the same sentiment in its order on motions in limine wherein it stated the photograph of R.D. within Allan's collection of explicit photographs is highly prejudicial and only minimally relevant to proving any disputed issue regarding E.O. D0103, Order on Motions in Limine at 2 (12/12/2022).

The State's cross-examination spent little time on E.O.'s accusations, focusing instead on Allan spending time naked with other men, explicit pictures Jamie Doran, explicit pictures of Trent Suhr, whether Trent Suhr was Allan's best friend, wild parties in Allan's man cave, explicit pictures of Anthony Blotzer, the September 2017 photograph of R.D., R.D.'s testicles, Allan's

purchase of a house for Jamie Doran, and the circumstances of meeting Trent Suhr over twenty-years earlier. D0280, Trial Tr. pp. 685-705 (12/13-19/2022). The majority of the State's line of inquiry had little relevance to the case at hand. The jury was tasked with deciding whether there was sufficient evidence to find Allan guilty of the offenses against E.O. The State's cross-examination of Allan invited the jury to base its decision on something other than the evidence of the offenses for which Allan had been charged.

Accordingly, the trial court erred in permitting the State to exceed the scope of direct during its cross-examination of Allan, resulting in prejudice.

**V. The trial court erred in denying Allan's motion for judgment of acquittal after the State rested its case because the evidence was insufficient to support the jury's verdict of guilty beyond a reasonable doubt.**

**Preservation of Error:** Allan preserved error when he made a motion for judgment of acquittal at the close of the State's case. D0280, Trial Tr. p.665, L5-7 (12/13-19/2022). Allan also preserved error on this issue in his Motion in Arrest of Judgment. D0241, Motion in Arrest of Judgment and for New Trial at 3 (2/2/2023).

**Standard of Review:** A jury verdict is binding on an appellate court unless the record lacks substantial evidence to support the charge. Liggins, 524 N.W.2d at 186. When reviewing the sufficiency of the evidence to support a guilty verdict, the appellate court views the evidence in the light most favorable to the State, including all inferences and presumptions which may be fairly and reasonably deduced from the evidence in the record. Id.

**Discussion:** There is insufficient evidence to support a jury's verdict because there is no timeframe during which Allan could have committed the offenses for which he was found guilty.

According to E.O.'s testimony, he was abused while Leslie was away for multiple days at a time when she was working as a travel nurse. D0280, Trial Tr. p.339, L3-5 (12/13-19/2022); D0280, Trial Tr. p.379, L9-25 (12/13-19/2022); D0280, Trial Tr. p.380, L1-25 (12/13-19/2022). E.O. believed he resided with his abuser for more than two years while Leslie worked as a nurse. D0280, Trial Tr. p.401 L16-25 (12/13-19/2022); D0280, Trial Tr. p.402 L1-4 (12/13-19/2022); D0280, Trial Tr. p. 422, L6-9 (12/13-19/2022). E.O. testified that he was abused between ages six and ten, after

previously testifying the first abuse occurred at age eleven. D0280, Trial Tr. p.333, L1-3 (12/13-19/2022); D0280, Trial Tr. p.400, L8-13 (12/13-19/2022). E.O. also testified that Leslie and Allan had separated when he was ten years old after previously testifying that they had separated when he was around the age of thirteen. D0280, Trial Tr. p.400, L14-20 (12/13-19/2022). E.O. described himself as having “a very bad memory”, and he had difficulty remembering testimony he had provided earlier in the day. D0280, Trial Tr. p.384, L19 (12/13-19/2022); D0280, Trial Tr. p.397, L12-18 (12/13-19/2022).

According to Leslie’s testimony, she and E.O. moved in with Allan during the summer of 2013, when E.O. would have been eight-years-old. D0280, Trial Tr. p.304, L9-10 (12/13-19/2022); D0280, Trial Tr. p.306, L10-11 (12/13-19/2022). When Leslie and Allan lived together, Allan’s second oldest daughter lived with him full time. D0280, Trial Tr. p.327, L21-25 (12/13-19/2022). Leslie and E.O. moved out of Allan’s home “a few months” later, in December 2013, shortly after E.O.’s ninth birthday. D0280, Trial Tr. p.306, L25 (12/13-19/2022); D0280, Trial Tr. p.307, L2-3 (12/13-19/2022).



Leslie began working as a travel nurse in November 2014, a position she held for approximately four or five years. D0280, Trial Tr. p.316, L9-11 (12/13-19/2022).

Leslie's narrative directly contradicts E.O.'s testimony in several ways. First, Leslie did not begin working as a travel nurse until after they moved out of Allan's home. Second, Leslie and E.O only lived with Allan for a few months. Third, E.O did not have significant time alone with Allan because Allan's second-oldest daughter lived with them full-time. There are two possible ways to reconcile Leslie and E.O.'s contradictory testimony.

One way to reconcile the testimony is to disregard Leslie's narrative entirely and accept E.O.'s timeframe as accurate. While viewing the evidence must be viewed in a light most favorable to the State, any inferences and presumptions must be *fairly and reasonably* deduced. Leslie was an adult who recalled the date she moved in with Allan as it related to her graduation from nursing school in 2013, when they moved out in relation to Allan's youngest daughter's birthday, and the month and year she began work as a travel nurse. D0280, Trial Tr. p.306, L10-12, 25 (12/13-19/2022);

D0280, Trial Tr. p.307, L1-9 (12/13-19/2022); D0280, Trial Tr. p316, L9 (12/13-19/2022). In contrast, E.O. was a child, did not know when Leslie began working as a travel nurse, and described himself as having a bad memory. D0280, Trial Tr. p.380, L3-6 (12/13-19/2022); D0280, Trial Tr. p.384, L19 (12/13-19/2022). Disregarding Leslie's timeframe in favor of E.O.'s timeframe is plainly not reasonable.

The second way to reconcile their testimony is to accept E.O.'s timeframe which best matches up with Leslie's testimony. Under that analysis, E.O.'s testimony that he was abused between ages six and ten should be disregarded in favor of his testimony that he was first abused at age eleven. E.O.'s eleventh birthday would have been October 15, 2015, which falls squarely within Leslie's timeframe of her employment as a travel nurse. E.O.'s testimony that he was abused when Leslie was away for multiple days at a time would also be explained by this reconciliation because she may have actually been away for multiple days at a time when he was eleven while Leslie worked as a travel nurse. This reconciliation further corroborates E.O.'s own testimony that he believed Leslie

and his abuser had separated when he was thirteen. Reconciling Leslie and E.O.'s testimony creates a clear, consistent narrative about when E.O. was sexually abused, but it also removes Allan from consideration as the suspected abuser.

The jury was repeatedly subjected to unduly prejudicial information which resulted in a tainted verdict that is wholly unsupportable by the record. When viewing the record in this matter in a light most favorable to the State, the record is insufficient to support a finding that Allan could have committed the offenses for which he was found guilty. Wherefore, this Court should reverse the trial court's denial of the motion for judgment of acquittal with instructions for the district court to enter an order of dismissal, with prejudice.

### **CONCLUSION**

For the reasons set forth above, Defendant-Appellant Allan Sievers requests the Court vacate his conviction and order this matter be dismissed because the verdict was contrary to the evidence. In the alternative, Defendant-Appellant requests this Court vacate his conviction, sentence, and judgment, and remand

the case for a new trial.

**REQUEST FOR ORAL ARGUMENT**

Defendant-Appellant Allan Sievers hereby requests oral argument in this matter.

RESPECTFULLY SUBMITTED,

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This brief complies with the typeface requirements and type-volume limitation of Iowa R. App. P. 6.903(1)D) and 6.903(1)(g)(1) because this brief has been prepared in a proportionally spaced typeface using Century Schoolbook in 14-point font and contains 9,474 words, excluding the parts of the brief exempted by Iowa R. App. P. 6.903(1)(g)(1).

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