IN THE SUPREME COURT OF IOWA

STATE OF IOWA Plaintiff-Appellee, v. REUBEN SCHOOLEY, Defendant-Appellant	Emmet County FECR012703 Supreme Court 23-1117

APPEAL FROM THE IOWA DISTRICT COURT
FOR EMMET COUNTY
HONORABLE CHARLES K. BORTH, JUDGE

APPELLANT'S REPLY BRIEF

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

STATEMENT OF THE ISSUES PRESENTED FOR REVIEW

I. The evidence was insufficient to prove that Reuben Schooley used unreasonable force, torture or cruelty when he yanked his daughter's shirt, slapped her on the head and spanked her on June 12, 2022.

II. The district court improperly considered the guardian ad litem's sentencing statement because it was not authorized and because it contained allegations of unproven conduct.

ARGUMENT

I. The evidence was insufficient to prove that Reuben Schooley used unreasonable force, torture or cruelty when he yanked his daughter's shirt, slapped her on the head and spanked her on June 12, 2022.

The State prosecuted Reuben Schooley for child endangerment under Iowa Code section 726.6(1)(b) alleging that when he disciplined his daughter on June 12, 2022, he "intentionally committed an act or series of acts which used unreasonable force, torture, or cruelty that resulted in bodily injury to A.S." D0046, Jury Instr. No. 14 (5/10/23). Accordingly, it was not enough to show merely that Reuben did an act or series of acts that caused a bodily injury to A.S., instead the State had to prove that the act or acts constituted "unreasonable force, torture, or cruelty." Iowa Code § 726.6(1)(b) (2022). D0046, Jury Instr. No. 14 (05/10/23). A slap on the head and an open-handed spanking on the bottom, causing no more than momentary pain, however distasteful, do not rise to the level of "unreasonable force, torture, or cruelty." The same for the forcible removal of the extra shirt which inadvertently resulted in mild red marks.

While, generally, the State "is not required to prove the precise time and place of a crime," State v. Yeo, 659 N.W.2d 544, 550 (Iowa 2003), the State chose to charge Reuben with a single count of child endangerment "on or about the 12th day of June, 2022." D0012, Trial Information (6/22/22). See also D0046 Jury Instr. No. 14 (5/10/23). If the State wanted to rely on other spankings administered by Reuben in the past, the State could have charged multiple offenses or included the timing of the prior spankings in the date range of the offense.

Even if the previous spankings by Reuben are properly considered, they were open-handed spankings on A.S.'s buttocks over her clothing. No one believed that any of Reuben's spankings could have caused the bruising found on A.S.'s buttocks. The most likely source of the bruising was from Tessica's use of the paddle earlier in the week. Both Reuben and Tessica testified that Reuben did not use the paddle, and A.S. wasn't sure: she thought that "maybe" once Reuben had used it. D0075 Trial Day 1 at 119:20-

120:3; 122:9-25; 123:9-11; D0073, Trial Day 2 at 28:6-15; 37:21-38:15, 56:15-23; 62:9-16; 65:6-8.

Iowa courts "recognize the rule that a parent may only inflict such punishment as is reasonable under the facts and circumstances." State v. Arnold, 543 N.W.2d 600, 604 (Iowa 1996). In this case, the entire family had been involved in counseling and were utilizing disciplinary methods according to the advice of the therapist to address chronic problems of lying and stealing by A.S. The issues with her "stealing" at home ranged from getting into art supplies without permission to destroying a necklace Reuben had gotten from his mother when he was a child to get a bead out of it. It also involved more serious behavior such as stealing from the school and the hardware store, an incident serious enough to warrant police involvement. D0073, Trial Tr. Day 2 at 20:1-10; 35:14-36:10; 46:19-49:20. Tessica, clearly nervous on the stand, had trouble articulating precisely why she was upset with A.S. on June 12, but the testimony indicated A.S. was supposed to be grounded to her room that day, but instead she was "getting into something." Tessica also mentioned

the buildup of all the lying and stealing behavior. Tessica yelled at her, and when Reuben came out he asked what she had done, then punished her. A.S. testified that she knew she was in trouble for stealing from her siblings.[1] D0075 Trial Day 1 at 117:2-18; D0073 Trial Day 2 at 17:9-18:22; 31:24-32:20. Under these facts and circumstances, Reuben's disciplinary actions were reasonable.

II. The district court improperly considered the guardian ad litem's sentencing statement because it was not authorized and because it contained allegations of unproven conduct.

The guardian ad litem styled her sentencing recommendation as a "report to the court." D0056, PSI Addendum (7/13/23). She made no specific representations in her report or during the sentencing hearing that she was speaking on behalf of A.S. or that A.S. had authorized her to present her victim impact statement. In fact, the GAL explicitly stated that her sentencing recommendation is her own and that she seeks a prison term "in the best interest of the child." D0056, PSI Addendum at ¶ 17 ("*the undersigned* is requesting that the Defendant be sentenced to a term of

[1] Although Reuben testified, he was not asked why he punished A.S. that day by either defense counsel or the prosecution.

incarceration…") (emphasis added). The descriptions of A.S.'s feelings come from A.S.'s trial testimony not because they have been specifically relayed to her by A.S. Instead, the GAL advocates for a "result" in the criminal case, which is prohibited, even if the GAL believes the result is in the child's best interest. See State v. Skahill, 966 N.W.2d 18 (Iowa 2021). Instead, the guardian ad litem's role in the criminal case is limited "to support[ing] the child and advocat[ing] for the protection of the child." See Iowa Code § 915.37(1). See also Skahill, 966 N.W.2d at 18. Accordingly, because the GAL's report to the court exceeded her statutorily authorized role and because the report was not a proper victim impact statement, the court should not have considered it when imposing sentence.

CONCLUSION

For the reasons argued above and in the appellant's brief, the evidence was insufficient to support Reuben's conviction, his conviction should be vacated and his case remanded for dismissal. In the alternative, his sentence should be vacated and his case

remanded for resentencing because the court improperly relied on the GAL's sentencing recommendation when imposing sentence.

CERTIFICATE OF COMPLIANCE WITH TYPEFACE REQUIREMENTS AND TYPE-VOLUME LIMITATION FOR BRIEFS

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/s/ Melinda J. Nye Dated: 5/30/24

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