IN THE SUPREME COURT OF IOWA
Supreme Court No. 23-1117
Emmet County No. FECR012703

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STATE OF IOWA,
Plaintiff–Appellee,

vs.

REUBEN DANIEL SCHOOLEY,
Defendant–Appellant.

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

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# BRIEF FOR APPELLEE

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II. **Whether the District Court Abused Its Discretion When Sentencing Schooley.**

## ROUTING STATEMENT

The State agrees with Schooley that retention is likely appropriate here, although for slightly different reasons. *See* Def.'s Br. at 6. On the sufficiency of the evidence issue, Iowa's courts regularly evaluate sufficiency claims for child endangerment causing bodily injury cases related to a parent's unlawful use of "unreasonable force" against their child. *See, e.g.*, *State v. Benson*, 919 N.W.2d 237 (Iowa 2018). So this issue does not in itself merit retention.

But part of the second issue presented here does pose a question of essentially first impression: Is a guardian ad litem (GAL) who is appointed to represent a child "prosecuting witness" under section 915.37(1)(a) authorized to provide a victim-impact statement for the child as their statutory "designated representative?" Almost a decade ago, the Court touched on this issue in *State v. Lopez*. 873 N.W.2d 159, 176–77 (Iowa 2015). But it did not answer the question outright, as the trial court had not appointed the GAL in the Lopez's criminal case. *Id.* That is not true here: the district court appointed Ms. Elsten under section 915.37(1), so whether a GAL is a child-victim's "designated representative" and able to give an impact statement on the child's behalf is ripe for review now. Iowa R. App. P. 6.1101(2)(c). Retention is therefore appropriate for this case.

## NATURE OF THE CASE

Schooley appeals after a jury found him guilty of one count of child endangerment resulting in bodily injury, a class "D" felony under Iowa Code section 726.6(1)(b). D0057, Sent. Order (7/14/23); D0047, Guilty Verdict Form (5/10/23); D0012, Trial Info. (6/22/22). The court sentenced him to an indeterminate five-year prison term, less any statutory earned time, and imposed the minimum fine and surcharge. D0057, Sent. Order at 1–2 (7/14/23); D0069, Sent. Tr. at 13:11–18:23 (7/14/23).

Schooley raises two issues on appeal. First, he attacks the sufficiency of the evidence, contending that the evidence is not enough to convict him in light of his parental justification defense that he presented at trial. Def.'s Br. at 15–26. Second, he attacks the victim impact statement filed by A.S.'s guardian ad litem. Def.'s Br. at 27–37; *see* D0056, PSI Addendum (7/13/23); D055, PSI (7/7/23). On the latter issue, Schooley contends that the GAL's statement was improper because she was not authorized as A.S.'s "designated representative" and, therefore, unable to give an impact statement for her. And he argues that even if the GAL could file such a statement, the district court erred by considering it because it supposedly references "unproven conduct." Def.'s Br. at 27–37.

The Honorable Charles K. Borth presided.

## STATEMENT OF THE FACTS

A.S., age nine, is Schooley's only daughter. D0073 (filed 8/28/23), Trial Tr. Day 2 (5/10/23) at 40:3–6. She lives with Schooley, Schooley's girlfriend, Tessica McNease, and Tessica's three children. D0073, Trial Tr. Day 2 at 41:24–42:17.

A.S.'s young life has been challenging. Born with a cleft pallet, she has often wrestled with being understood by others. D0073, Trial Tr. Day 2 at 51:11–18. She wears "thick glasses" because she can only "see colors and not shapes" without them. D0073, Trial Tr. Day 2 at 48:16–49:20. A.S. has also struggled with "identifying people's emotions," but she actively works to overcome this with the help of a behavioral therapist. D0073, Trial Tr. Day 2 at 48:16–49:20. Even so, she is creative and loves history, art, and reading about Greek mythology; yet she is also "very quiet," "shy," and struggles with "high anxiety." D0075 (filed 8/28/23), Trial Tr. Day 1 (5/9/23) at 112:8–14; D0073, Trial Tr. Day 2 at 8:16–24, 26:10–27:1. Because of these challenges, however, A.S. has faced bullying at school. D0073, Trial Tr. Day 2 at 53:10–15. Worse yet, her ill-treatment did not end after the bell rang.

For nearly two years, Schooley has grounded A.S., treating her like an inmate: "[A]ll prisoners get is a bed and three meals a day, three hots and a cot," Schooley said. D0075, Trial Tr. Day 1 at 114:12–17; D0073, Trial Tr. Day 2 at 7:21–8:4, 9:6–10, 31:13–23, 36:11–37:15. For instance, he restricted her use of basic furniture in her bedroom, including a dresser, desk, or even a chair. D0075, Trial Tr. Day 1 at 113:7–114:1; D0073, Trial Tr. Day 2 at 6:15–7:4. And for reasons unknown, Schooley only let A.S. use her bed if she asked when he allowed it. D0075, Trial Tr. Day 1 at 113:15–114:1; D0073, Trial Tr. Day 2 at 6:15–24, 59:15–60:23. Otherwise, her bed was pushed "up against the wall." D0075, Trial Tr. Day 1 at 5:23–6:6; D0073, Trial Tr. Day 2 at 6:15–24, 60:12–23.

During her grounding, Schooley deprived A.S. of any toys, books, and art supplies. D0075, Trial Tr. Day 1 at 113:15–114:1; D0073, Trial Tr. Day 2 at 5:23–6:6, 35:20–36:10, 37:10–15, 61:13–62:3. He instead forced her to sit alone in her empty room with nothing to do. D0075, Trial Tr. Day 1 at 113:7–114:1, 117:12–15; D0073, Trial Tr. Day 2 at 37:10–15.

Schooley and Tessica also required A.S. to wear a shirt emblazoned with the words "don't trust me" at home, a practice Tessica later acknowledged was "extremely degrading." D0073, Trial Tr. Day 2 at 5:2–22, 34:16–35:6. Still, A.S. had to wear it

> because the [other] kids kept giving her things. They kept inviting her into their room, and it just created—we have a rule in the house [that] no kids are allowed in each other's rooms. We have a boy/girl type thing, and she has her own room, so it just—it doesn't make good interactions. And so she would get in their room and take their stuff and things like that. So []it was a reminder for [the other kids] not to, you know, invite her into situations that would cause trouble.

D0073, Trial Tr. Day 2 at 55:23–56:7 (cleaned up). Schooley and Tessica limited A.S. to only two outfits—including the "don't trust me" shirt—although Schooley insisted it not be worn outside. D0073, Trial Tr. Day 2 at 5:10–22, 34:16–35:3, 55:16–19, 58:10–25. As a result, A.S. wore "the same clothing for weeks." D0073, Trial Tr. Day 2 at 5:2–22.

But the harshness of A.S.'s grounding went beyond furniture and clothing restrictions. For example, Schooley and Tessica also required A.S. to wear a bell while in the house. D0073, Trial Tr. Day 2 at 5:2–22, 35:14–36:10. They also banned A.S. from eating meals with the family, instead requiring her to eat alone in her room where food was brought to her. D0075, Trial Tr. Day 1 at 120:4–11; D0073, Trial Tr. Day 2 at 7:15–20.

As another example, Schooley spanked A.S. around every other day, using a paddle to do so at least once. D0075, Trial Tr. Day 1 at 119:20–120:3, 122:9–22, 123:9–11, 125:6–8; D0073, Trial Tr. Day 2 at 30:20–31:12, 62:4–8. He allowed Tessica to spank A.S. regularly with her hand

and a paddle, too. D0075, Trial Tr. Day 1 at 119:15–120:3, 122:9–22, 123:9–11; D0073, Trial Tr. Day 2 at 28:1–12, 54:19–56:17, 63:8–65:5.

So on a summer evening in June 2022, A.S. sat on the floor of her nearly-empty bedroom "thinking." D0075, Trial Tr. Day 1 at 117:12–15. As A.S. remembers it, she was not being yelled at then, although Schooley and Tessica remember things differently. *See* D0075, Trial Tr. Day 1 at 124:3–5; D0073, Trial Tr. Day 2 at 18:6–22, 42:22–43:13.

Tessica remembers seeing A.S. come downstairs wearing two shirts, with her required "don't trust me" shirt visible on top. *See* D0075, Trial Tr. Day 1 at 123:19–24; D0073, Trial Tr. Day 2 at 5:2–22, 17:20–18:5, 34:16–35:3, 42:22–43:13, 55:16–19. "Frustrated" and "upset" by her presence—and supposedly for other reasons that neither she nor Schooley can recall—Tessica began yelling at A.S. D0073, Trial Tr. Day 2 at 18:6–14. This prompted Schooley to storm out of his room and intervene, directing his anger at A.S. D0073, Trial Tr. Day 2 at 42:22–43:4. Schooley rushed over to A.S., removed her from her chair, and took her to her bedroom. D0073, Trial Tr. Day 2 at 43:4–7.

Once there, he forcefully yanked off A.S.'s "don't trust me" shirt, causing scratches and red marks on her neck, collarbone, and chest in the process. D0075, Trial Tr. Day 1 at 115:16–116:4, 123:12–124:2; D0073,

Trial Tr. Day 2 at 42:22–43:13. He justified removing the shirt because "it's for the kids" to see, not the public. D0073, Trial Tr. Day 2 at 58:10–16. He then struck A.S. on her head, causing her to say "ow" and feel immediate pain. D0075, Trial Tr. Day 1 at 115:2–17; D0073, Trial Tr. Day 2 at 29:4–30:5. And he spanked her on both buttocks: "I don't like spanking the same butt cheek, so I switch." D0073, Trial Tr. Day 2 at 64:2–6.

Schooley also called A.S. "stupid." D0075, Trial Tr. Day 1 at 117:8–118:4, 128:25–129:14, 135:5–11; D0073, Trial Tr. Day 2 at 32:14–33:16, 42:22–43:13, 58:5–59:11. Despite her father's treatment, A.S. "didn't really see what [she] did wrong," and Schooley never said what she did to warrant his wrath. D0075, Trial Tr. Day 1 at 117:2–7, 118:2–4. Indeed, perplexed by her father's actions and verbal berating, A.S. asked Schooley, "Why did you do that?" D0073, Trial Tr. Day 2 at 33:17–34:1.

In any case, after Schooley finished hitting and spanking her, he told A.S. to "get out of" "his house" because she was "an animal" or was "acting like an animal" and "shouldn't be there." D0075, Trial Tr. Day 1 at 118:8–17; D0073, Trial Tr. Day 2 at 32:14–33:16, 58:5–9. He also likened her to a dog, pointing out it was "the only pet that's allowed in the house." D0073, Trial Tr. Day 2 at 58:17–25 (cleaned up).

Crying and scared, A.S. fled the house barefoot. D0075, Trial Tr. Day 1 at 117:24–118:24, 121:7–8. Once outside, A.S. saw Tessica's daughter mowing the yard and went over to talk. D0073, Trial Tr. Day 2 at 21:21–25, 34:7–15, 43:16–25. Seeing this, Schooley grew agitated, stormed outside, and yelled at A.S. to leave the girl alone, again reiterating his command for A.S. to "get out." D0073, Trial Tr. Day 2 at 34:7–15, 43:16–25. Like before, A.S. followed orders: with nowhere to go—having just been exiled from her house and yard—A.S. started walking barefoot down the street. D0073, Trial Tr. Day 2 at 43:16–25; D0075, Trial Tr. Day 1 at 118:18–119:3.

After a block or two, A.S. spotted Olivia Hammond with her family and friends in their yard. D0075, Trial Tr. Day 1 at 118:25–119:14, 127:13–128:2. Olivia saw that A.S. was crying and looked "very afraid." D0075, Trial Tr. Day 1 at 128:3–19. So she called to A.S., sat with her on the porch, and comforted her to ensure she was okay. D0075, Trial Tr. Day 1 at 128:3–19. Seeing A.S. so afraid frightened Olivia: "It destroyed me seeing her in that position as a mom, as a person, just everything. I have never seen a child so scared in my life," she said. "The only thing that popped into my head was, what if that was my kid? I just knew that I needed to get her help." D0075, Trial Tr. Day 1 at 128:20–22, 131:11–17.

Olivia also noticed A.S. was barefoot, so she gave her shoes while she asked what had happened.

> She had a bruise on her right—like collar area[.] And that's when I actually—I looked over, and I very gently kind of reached over and pulled it down and []asked her what happened. [A.S.] told me that [Schooley] had grabbed her by the collar of her shirt and slammed her head into the wall, called her a dirty animal, and kicked her out of the house.

D0075, Trial Tr. Day 1 at 129:2–8 (cleaned up), 129:11–21.

A short while later, Schooley arrived at the Hammond house. D0075, Trial Tr. Day 1 at 132:3–7. Upon seeing her father, A.S. seemed afraid and repeatedly told Olivia she did not want to go with him: "She was scared. She kept telling me, 'I don't want to go. I don't want to go. Please don't make me go.'" D0075, Trial Tr. Day 1 at 133:1–4. Despite A.S.'s pleas and feeling as though had no other option, Olivia allowed A.S. to leave with Schooley. D0075, Trial Tr. Day 1 at 133:6–7. But right after they drove off, she called 911. D0075, Trial Tr. Day 1 at 133:6–8.

Responding to that 911 call, Emmet County Sheriff's Deputy Thomas Schultes spoke with Olivia and then went to Schooley's house to further investigate. D0075, Trial Tr. Day 1 at 138:15–139:7. Once there, A.S. told Deputy Schultes that Schooley "was very angry with her when she left, and she was scared." D0075, Trial Tr. Day 1 at 152:2–6. While talking with her,

Deputy Schultes saw "fresh" "[r]ed marks near the middle" and "right portion" of A.S.'s neck" that looked "like some scratching from[] a fingernail" or "some sort of abrasion." D0075, Trial Tr. Day 1 at 142:20–143:6, 144:17–145:13. A.S. then confirmed that Schooley caused her injuries. D0075, Trial Tr. Day 1 at 145:6–10.

After speaking with A.S., Deputy Schultes went to follow-up with Schooley. When he asked Schooley about A.S.'s injuries, Schooley admitted to yanking her by the shirt—likely causing the injuries around her neck as a result—and doing so "out of anger." D0075, Trial Tr. Day 1 (5/9/23) at 146:18–23. Schooley also acknowledged that "leaving marks on a child is wrong." D0075, Trial Tr. Day 1 at 150:11–13.

Ultimately, Deputy Schultes arrested Schooley for child endangerment causing bodily injury. But before driving Schooley to jail, he had Tessica check A.S.'s bottom for injuries. D0075, Trial Tr. Day 1 at 146:24–147:15. When Tessica did so, they saw bruising with "some different discoloration" on A.S.'s buttocks. D0075, Trial Tr. Day 1 at 148:23–25. Seeing the bruises, Tessica's response was immediate: "Uh-oh." D0075, Trial Tr. Day 1 at 149:13–19.

## ARGUMENT

### I. Schooley Forcefully Removed A.S.'s Shirt, Scratched Her, Hit Her Head, and Spanked Her on Her Bruised Buttocks in a Fit of Anger. Ample Evidence Supports Convicting Him of Child Endangerment Resulting in Bodily Injury.

#### Error Preservation

The State does not contest error preservation. *State v. Crawford*, 972 N.W.2d 189, 201 (Iowa 2022).

#### Standard of Review

The Court reviews sufficiency claims for correction of errors at law. *State v. Brown*, 996 N.W.2d 691, 695–96 (Iowa 2023) (citation omitted). When doing so, the Court is "highly deferential to the jury's verdict. The jury's verdict binds th[e] court if the verdict is supported by substantial evidence." *State v. Mong*, 988 N.W.2d 305, 312 (Iowa 2023) (quoting *State v. Jones*, 967 N.W.2d 336, 339 (Iowa 2021). "Substantial evidence is evidence sufficient to convince a rational trier of fact the defendant is guilty beyond a reasonable doubt." *State v. Erdman*, 996 N.W.2d 544, 548 (Iowa 2023) (quoting *Mong*, 988 N.W.2d at 312). "Evidence is not insubstantial merely because we may draw different conclusions from it; the ultimate question is whether it supports the finding actually made, not whether the evidence would support a different finding." *Jones*, 967 N.W.2d at 339 (citation omitted).

On review, the Court considers "all evidence, not just the evidence supporting the conviction." *State v. Ernst*, 954 N.W.2d 50, 54 (Iowa 2021) (quoting *State v. Tipton*, 897 N.W.2d 653, 692 (Iowa 2017)). And it "view[s] the evidence in the light most favorable to the State, including all legitimate inferences and presumptions that may fairly and reasonably be deduced from the record evidence." *State v. Booker*, 989 N.W.2d 621, 626 (Iowa 2023) (citations and quotations omitted).

**Merits**

Schooley argues his parental right to discipline A.S. permitted his actions. Def.'s Br. at 17, 22–24. But the record contains ample evidence that his conduct went beyond what the law allows.

To convict Schooley at trial, the State had to prove that

1. On or about the [June 12], 2022, [Schooley] was the parent of A.S.
2. A.S. was under the age of fourteen years.
3. [Schooley] intentionally committed an act or series of acts which used unreasonable force, torture, or cruelty that resulted in bodily injury to A.S.

D0046 at 5–6, Jury Instr. 14 (5/10/23); Iowa Code § 726.6(1)(b). At trial, Schooley admitted the first two elements. D0043, Stipulation (5/10/23). He now challenges only the third element—whether his use of force was unreasonable. *Id.*; Def.'s Br. at 16–26.

For that element, the court defined "bodily injury" for the jury as "physical pain, illness, or any impairment of physical condition." D0046 at 6, Jury Instr. 16. It also instructed the jury on the limitations of a parent's right to physically discipline their child:

> A parent of a child under the age of 14 may use reasonable and timely physical punishment to discipline the child.
>
> In determining the reasonableness of the force used, you may consider the age, physical condition, and other characteristics of the child; the gravity of the misconduct; the amount and means of the force used; and whether the punishment was corrective rather than to satisfy the anger of the person inflicting it.

D0046 at 6, Jury Instr. 15; *see State v. Arnold*, 543 N.W.2d 600, 603 (Iowa 1996) ("[P]arents have a right to inflict corporal punishment on their child, but that right is restricted by moderation and reasonableness.").

While a father can discipline their child with corporal punishment, he cannot do so with "undue severity or cruelty, or only because he is angered with the child and thereby gra[t]ifies his own aroused passions." *State v. Fischer*, 245 Iowa 170, 177, 60 N.W.2d 105, 109 (1953). Such use of force must solely aim for correction. *Id.* at 178, 110. In other words, the crucial test is whether, given the circumstances, "the amount of force used" or "means employed" by the parent made the punishment "abusive rather than corrective." *Arnold*, 543 N.W.2d at 603.

Here, the State's evidence sufficiently proved Schooley guilty. Schooley used force against A.S. by spanking her, "smacking her" on the head, and "forcibly removing her extra shirt." Def.'s Br. at 22. A.S. testified that Schooley's actions, including spanking and hitting her, caused pain. D0075, Trial Tr. Day 1 at 115:16–17, 116:17–22; D0073, Trial Tr. Day 2 at 29:4–30:5. Further, when Schooley forcibly removed A.S.'s shirt, he left red marks on her neck and chest from his fingernails. D0075, Trial Tr. Day 1 at 144:13–145:13; D0049, Ex. 1 (Photo of Neck) (5/12/23); D0050, Ex. 2 (Photo of Chest) (5/12/23). From this evidence, the jury rightly concluded that Schooley caused A.S. "physical pain" and "impaired" her "physical condition." D0046 at 6, Jury Instr. 16.

As for the bruises on A.S.'s buttocks, a reasonable jury could infer that they were either caused or worsened by Schooley's actions. Although A.S. said that she believed her bruises stemmed from Tessica using the paddle a few days prior, Schooley also spanked her "every other day." D0075, Trial Tr. Day 1 at 119:20–120:3, 122:9–22, 123:9–11, 125:6–8. And while Tessica had bought the paddle just days before the incident, Schooley had used that paddle to spank A.S. before. D0075, Trial Tr. Day 1 at 119:24–120; D0073, Trial Tr. Day 2 at 27:17–25, 38:2–4. A.S.'s bruises were also noted to be "in different stages of healing," indicating they had been inflicted over time.

*See* D0075, Trial Tr. Day 1 at 148:14–25; D0073, Trial Tr. Day 2 at 81:18–20. From this, a jury could reasonably infer that Schooley's frequent spankings were a "series of acts" that helped bring about A.S.'s bruises. *See* D0046 at 5–6, Jury Instr. 14; Iowa Code § 726.6(1)(b). Finding as much tracks with precedent, as the State did not need to prove the exact timing of each act to prevail. *State v. Yeo*, 659 N.W.2d 544, 550 (Iowa 2003) ("[T]he State is not required to prove the precise time and place of a crime.").

In short, Schooley caused bodily harm to A.S. during the incident, and he likely caused or contributed to her bruised bottom even earlier. The only unresolved issue then is whether his actions qualified as "legal corporal punishment." *See State v. Benson*, 919 N.W.2d 237, 242 (Iowa 2018). On that issue, plenty of evidence supports finding his conduct was "abusive rather than corrective." *Id.* at 242–43 (quoting *Arnold*, 543 N.W.2d at 603). This is true for at least a few reasons.

First, Schooley and Tessica never gave a clear reason for punishing A.S. D0073, Trial Tr. Day 2 at 18:6–14. Although it emerged at trial that A.S. thought she was being punished for "taking [her] sibling's things," no one else in the Schooley household claimed that she took anything from

them.[1] Tessica did not testify that she yelled at A.S. because she took something that was not hers just before the incident. D0073, Trial Tr. Day 2 at 17:20–18:5. Nor did any of her children mention that A.S. took their things or acted in a way that merited punishment. D0075, Trial Tr. Day 1 at 149:20–25, 151:8–17, 153:21–165:5; D0073, Trial Tr. Day 2 at 2:18–10:5. Instead, Schooley's involvement was reactive: His studying had been disrupted by the yelling, not because he witnessed A.S. misbehaving. D0073, Trial Tr. Day 2 at 42:18–43:13. To be sure, Schooley and Tessica never said what A.S. did to justify "correction" by physical punishment.

Thus, a reasonable jury could deduce that the gravity of A.S.'s supposed misbehavior was minuscule. From there, it could be found that actions like spanking A.S., striking her head, and snatching her shirt off her body "out of anger" "exceeded the bounds of reasonable correction and instead veered into the realm of abuse." D0075, Trial Tr. Day 1 at 146:18–

[1] Describing A.S.'s actions as "stealing" may be a bit misleading at times. When asked what A.S. stole, Tessica noted times when A.S. used art supplies when she "had no reason to be getting into" them while grounded. D0073, Trial Tr. Day 2 at 35:20–36:1, 61:13–20 ("[S]he was always[] stealing the prettiest things and[] taking pipe cleaners and tying them up in knots."). She said A.S.'s "stealing" also included going "through boxes" and taking a "bead" from a necklace. *Id.* at 36:2–10. And while Tessica said A.S. might have been allowed the necklace if she asked, that contradicts the ban on A.S. having "pretty things" of her own. *Id.* at 36:2–10, 61:13–62:3.

23 (first quote); *State v. Rollins*, No. 12-0548, 2013 WL 988853, at *6 (Iowa Ct. App. Mar. 13, 2013) (second quote).

Second, Schooley's statements also show that hitting A.S. on the head was not a legitimate form of punishment: "The head thing is not a disciplinary thing," Schooley said, "[i]t wasn't appropriate for discipline." D0073, Trial Tr. Day 2 at 63:16–19; *see* Ex. 5 (Schultes Body Cam.–Clip 2) at MM 03:35–03:39 (20:49:11–20:49:15). Schooley admitted to hitting A.S. on the head "when [he's] angry," describing it as "not a good choice" and acknowledging that "it's not just a punishment." Ex. 5 at MM 02:20–02:42 (20:47:56–20:48:18); D0075, Trial Tr. Day 2 at 63:8–25. He even conceded that while he intended "to spank her," he hit her head because "it's just, you know, I'm upset." Ex. 5 at MM 03:18–03:23 (20:48:55–20:48:59). These admissions lead to the reasonable inference that hitting A.S.'s head was more abusive than corrective. *State v. Everett*, No. 12-0717, 2013 WL 1457046, at *6 (Iowa Ct. App. Apr. 10, 2013).

Schooley also agreed that "leaving marks on a child is wrong," reflecting his awareness of the inappropriateness of his actions. D0073, Trial Tr. Day 2 at 150:11–13; Ex. 5 (Clip 4) at MM 03:03–03:15. Despite this admission, Schooley was responsible for or contributed to A.S.'s visible injuries. *State v. Benson*, 919 N.W.2d 237, 242–43 (Iowa 2018); *Arnold*,

543 N.W.2d at 603 (affirming child endangerment causing bodily injury conviction when bruises were "visible three days after the incident.").

And last, nine-year-old A.S.—with her thick glasses, soft voice, and ongoing isolation from her family over two years of her young life—was vulnerable, and she never fought against her frequent "punishment." As child protective worker Patti Laverty put it, even Schooley's non-physical disciplinary practices for A.S. were unacceptable: "[E]ven prisoners get contact with family, visitation, phone calls, snacks, commissary," Lavery said. "So this was an extreme situation" that was "detrimental to [A.S.]'s mental health." D0075, Trial Tr. Day 2 at 7:5–14, 8:5–15. That is, Laverty highlighted that the way Schooley treated A.S. went far beyond acceptable parenting norms. *Id.* Given A.S.'s "age, physical condition, and other characteristics," a jury could reasonably conclude that Schooley's actions were excessive and unreasonable. D0046 at 6, Jury Instr. 15.

At bottom, ample evidence exists to prove Schooley committed child endangerment resulting in bodily injury. And because his actions surpassed the limits of lawful parental discipline, this Court should affirm.

## II. The District Court did not Abuse Its Discretion When Sentencing Schooley.

### Error Preservation

The State does not contest error preservation. *State v. Gross*, 935 N.W.2d 695, 698 (Iowa 2019).

### Standard of Review

When a sentence falls within the statutory limits, the Court reviews for an abuse of discretion. *State v. Roby*, 897 N.W.2d 127, 137 (Iowa 2017). The district court abuses its discretion when its decision "rested on grounds or reasoning that were clearly untenable or clearly unreasonable." *State v. Plain*, 898 N.W.2d 801, 811 (Iowa 2017). "Grounds or reasons are untenable if they are 'based on an erroneous application of the law or not supported by substantial evidence.'" *Id.* (citation omitted). Because the district court's sentencing decisions "are cloaked with a strong presumption in their favor[,]" Schooley must overcome the presumption of regularity when challenging his sentence. *State v. Wilbourn*, 974 N.W.2d 58, 67 (Iowa 2022) (omission in original) (citation and quotations omitted) (first quote); *State v. Pappas*, 337 N.W.2d 490, 494 (Iowa 1983) (second quote).

**Merits**

Next, Schooley lobs two attacks at the victim impact statement submitted by A.S.'s guardian ad litem (GAL). First, he claims the court erred by considering the GAL's statement because she lacked the authority to make such a statement. *See* Def.'s Br. at 27–35. Second, he argues that the court erred by considering the GAL's statement because it alleged unproven conduct. *Id.* at 35–37. The State addresses each in-turn.

### A. Iowa law permitted the GAL to submit a victim impact statement on A.S.'s behalf before sentencing.

Generally, courts designate GALs to protect a child's interests in "any judicial proceeding to which the child is a party." Iowa Code §§ 232.2(22)(a); *see State v. Lopez*, 873 N.W.2d 159, 176 (Iowa 2015) (citations omitted). When appointed, a GAL represents the child's best interests by "conducting interviews, making home visits, attending hearings, and conducting fact-finding." *Lopez*, 873 N.W.2d at 176 (citing Iowa Code § 232.2(22)(b)). And in criminal child endangerment cases like this one, a child "prosecuting witness" is legally entitled to have a GAL:

> A prosecuting witness who is a child in a case involving a violation of . . . 726.6[] is entitled to have the witness's interests represented by a [GAL] at all stages of the proceedings arising from such violation. The [GAL] shall be a practicing attorney and shall be designated by the court after due consideration is given to the desires and needs of the child and the

> compatibility of the child and the child's interests with the prospective [GAL]. If a [GAL] has previously been appointed for the child in a proceeding under chapter 232 . . . , the court shall appoint the same [GAL] under this section. The [GAL] shall receive notice of and may attend all depositions, hearings, and trial proceedings to support the child and advocate for the protection of the child but shall not be allowed to separately introduce evidence or to directly examine or cross-examine witnesses. However, the [GAL] shall file reports to the court as required by the court.

Iowa Code § 915.37(1)(a). The intended aim of this law is to minimize the trauma child-victim's experience during the legal actions brought against their abuser. *State v. Skahill*, 966 N.W.2d 1, 18 (Iowa 2021). And the legislature meant for the appointment of a GAL to "address that concern" by allowing the GAL to support the child "at all stages of the proceedings in the criminal action, including the sentencing hearing." *Id.* (first quote); *Lopez*, 873 N.W.2d at 177 (second quote).

Here, Ms. Elsten was rightly appointed as A.S.'s GAL because she was already A.S.'s GAL in the chapter 232 case related to Schooley's abuse. *See id.*; *see also* Def.'s Br. at 29. The parties also agree that A.S. is a "victim" for purposes of Iowa's Victim's Rights Act and that she was a "prosecuting witness" for purposes of section 915.37(1). *See* Iowa Code § 915.10(3); *Lopez*, 873 N.W.2d at 177 (citation omitted). To be sure, A.S. testified at trial to the abuses inflicted on her by Schooley. *See* D0075, Trial Tr. Day 1

at 111:2–125:14. So A.S. had the statutory right to make a victim impact statement at sentencing. *Id.* § 915.21(1); *State v. Nuno*, No. 17-1963, 2019 WL 1486399, at *7 (Iowa Ct. App. Apr. 3, 2019) (citing *State v. Matheson*, 684 N.W.2d 243, 244 (Iowa 2004). But the crucial question here is whether Ms. Elsten was A.S.'s "designated representative" and therefore authorized to give or "execute" the impact statement considered by the court. *Id.* § 915.21(1); *State v. Bonnell*, No. 22-1296, 2023 WL 4755560, at *1 (Iowa Ct. App. July 26, 2023).

A "victim impact statement" is a "written or oral presentation to the court by the victim *or the victim's representative* that indicates the physical, emotional, financial, or other effects of the offense upon the victim." Iowa Code § 915.10(4) (emphasis added). At first blush, this definition allowed Ms. Elsten, as the appointed GAL and legal representative, to submit a written impact statement on A.S.'s behalf. *Id.* That is, Ms. Elsten fell within the scope of the general definition of who may make an impact statement as A.S.'s appointed GAL. *Id.* § 915.10(4).

Section 915.21 outlines the methods for a victim to present an impact statement:

> A victim may present a victim impact statement to the court using one or more of the following methods:
>
> . . .

> (e) If the victim is unable to make an oral or written statement because of the victim's age, or mental, emotional, or physical incapacity, the victim's attorney or a designated representative shall have the opportunity to make a statement on behalf of the victim.

Iowa Code § 915.21(1)(e). This law ensures that the court considers a victim's views when sentencing a defendant. *Id.* § 915.21(2) (noting impact statements can include "any information related to the impact of the offense upon the victim"). But it does not define "designated representative." *Lopez*, 873 N.W.2d at 176. Even so, our supreme court has helped explain who qualifies as a designated representative before.

In *State v. Lopez*, the Court clarified that a GAL who "represents the child's interests in the CINA proceeding" but not in the criminal case is not "specifically authorize[d]" to "give the victim-impact statement on" for the child. *Id.* at 177 (citation omitted). Yet in reaching that conclusion, the Court implicitly held that the inverse is true, too: A GAL appointed under section 915.37 would be "specifically authorized" to make an impact statement on behalf of the child they represent. *Id.* That happened here: Ms. Elsten was permitted to execute an impact statement because the district court had designated her as A.S.'s GAL under section 915.37(1)(a).

This conclusion makes sense, given the unique role GALs play in criminal cases. GALs must be attorneys, and they can "make legal arguments" in litigation proceedings to advocate for the child's protection. *Skahill*, 966 N.W.2d at 19. They can also oppose motions that would harm the child they represent. *Id.* Indeed, a GAL's advocacy against some specific action that would inflict harm on the child in a criminal case is considered permissible, "helpful involvement" in the case. *Id.*

And Iowa law does not explicitly bar GALs from presenting impact statements at sentencing. Unlike other expressly prohibited actions (like examining witnesses and introducing evidence), there is no similar statutory ban on GALs presenting impact statements at sentencing. *See* Iowa Code § 915.37(1). A "victim impact statement is not an adversarial proceeding," it's not made under oath, and it's not subject "to cross-examination at the sentencing hearing." *Id.* § 915.21(3); *State v. Carter*, No. 22-1016, 2023 WL 2673226, at *3 (Iowa Ct. App. Mar. 29, 2023) (quoting *State v. Ahrenholz*, No. 21-1263, 2022 WL 17829367, at *6 (Iowa Ct. App. Dec. 21, 2022) (first quote)). So since the law does not expressly prevent GALs from presenting impact statements or speaking at sentencing on behalf of the child they represent, the Court should reject Schooley's suggestion to create such a "distinction that is not made in the text" now.

*Skahill*, 966 N.W.2d at 20; *see Story Cnty. Wind, L.L.C. v. Story Cnty. Bd. of Rev.*, 990 N.W.2d 282, 287 (Iowa 2023) (citation omitted).

Further, neither the Iowa Supreme Court nor the statute itself has specified "a process by which designation occurs." *State v. Hampton*, No. 18-1522, 2020 WL 2968342, at *4–6 (Iowa Ct. App. June 3, 2020) (discussing *Lopez*, 873 N.W.2d at 176; Iowa Code § 915.21(1)(e)). "[W]hile the statute gives permission to the 'victim or the victim's attorney or designated representative' to present victim-impact statements, it does not impose a limitation on who can present the statements such that" the prosecutor or GAL "was prohibited from doing so" when the victim could not. *State v. Davis*, 971 N.W.2d 546, 560 (Iowa 2022) (Christensen, C.J., concurring in part, dissenting in part) (discussing Iowa Code § 915.21(1)(a)). Instead, section 915.21(1)(e)'s use of "shall" reflects that a victim's attorney or representative—like a GAL—*must* have the chance to make a statement on the victim's behalf. *Id.* (citation omitted). By requiring courts to give victims or the representatives the chance to make a victim-impact statement at sentencing without specifying any procedure, the legislature showed that it favored substance—the details explaining the effect of the crime on the victim—over form. *State v. Sailer*, 587 N.W.2d 756, 761 (Iowa 1998) (refusing to "further victimize the victim by forcing

[their] impact statement to conform to a rigid legal standard instead of allowing an unabridged expression of the impact of the offense.").

So the lack of any defined procedure in the statute is not fatal to a GAL's ability to provide a victim-impact statement. Instead, the statute's breadth reflects the preference for sentencing courts to receive and consider "any" and "all" pertinent information" that "is relevant to the question of sentencing." *State v. Dennis*, No. 20-1200, 2021 WL 3378684, at *4 (Iowa Ct. App. Aug. 4, 2021) (citations omitted); *State v. Kleppe*, No. 13-0345, 2014 WL 69612, at *3 (Iowa Ct. App. Jan. 9, 2014) (quoting Iowa Code § 901.2); *State v. Calvin*, Nos. 0-255/99-1095, 2000 WL 703251, at *2–3 (Iowa Ct. App. May 31, 2000).

Applying these principles here, Ms. Elsten properly provided her impact statement to the sentencing court for consideration. When the district court appointed her as A.S.'s GAL, it authorized Ms. Elsten to act and advocate for A.S.'s best interests as her "designated representative;" this included the right to file an impact statement. *See* Iowa Code §§ 915.21, 915.37(1)(a). There is nothing in the record showing A.S. was emotionally capable of providing an impact statement herself, given the trauma she suffered. *See* D0056, PSI Add. (7/13/23) at 4–5, ¶¶ 10–12 (noting since the trial, A.S. had been removed from Schooley's custody and,

because of the abuses suffered, planned "to end her life."). Indeed, Ms. Elsten filed her statement because "[a]fter the verdict, [A.S.] was made to feel like this was all her fault, and she []became very conflicted about her own victim impact statement . . . . So Ms. Elsten wrote a report to speak for A.S., and her statements in there are very true as to what—how this has affected A.S." D0069, Sent. Tr. (7/14/23) at 6:11–18. So the record shows A.S. was emotionally unable to give her own statement. Iowa Code § 915.21(1)(e). Ms. Elsten was, therefore, statutorily empowered to provide a victim impact statement on A.S.'s behalf. *See id.*

GALs, like all lawyers, owe a duty of candor to the court and all involved in a case. *See* Iowa R. Prof'l Conduct 32:3.3, 32:8.4; *Lopez*, 873 N.W.2d at 176 (citations omitted). With this in mind, nothing in the record suggests Ms. Elsten was not rightly "speak[ing] for A.S." when she filed her statement, nor is there any reason to doubt that A.S. authorized her to file the statement. It is improper for Schooley to suggest otherwise, as it wrongly impugns Ms. Elsten's integrity as an officer of the court.

But even if Schooley were right and Ms. Elsten could not provide a victim impact statement as A.S.'s GAL by law, his claim still fails because he cannot prove he was prejudiced by the sentencing court's general consideration of that statement. *See State v. Sumpter*, 438 N.W.2d 6, 8–9

(Iowa 1989); *see also State v. Nuno*, No. 17-1963, 2019 WL 1486399, at *7 (Iowa Ct. App. Apr. 3, 2019) (citing *Sumpter* for same) ("Even if a party has no standing under section 915.10 to provide a victim impact statement, it does not require vacation of the sentence unless prejudice results."). Schooley never objected to the court's consideration of the PSI and addendum. *See* D0069, Sent. Tr. (7/14/23) at 2:14–4:11. Nor did any of the corrections to the PSI requested by Schooley reference the PSI addendum that included Ms. Elsten's statement. *Id.* at 3:3–16. Without an objection from Schooley at the hearing, the court was free to consider the impact statement that the GAL filed. *State v. Grandberry*, 619 N.W.2d 399, 402 (Iowa 2000) ("In determining a defendant's sentence, a district court is free to consider portions of the presentence investigation report that are not challenged by the defendant."). Because he cannot prove that the court abused its discretion simply by considering that unchallenged statement attached to the PSI addendum, Schooley's claim should fail.

In short, it is logical to conclude that the representative referenced in section 915.21(1)(e) can be "designated" by the victim, the State, or the court. Here, Ms. Elsten was properly designated by all three to provide a victim impact statement on A.S.'s behalf. The district court designated Ms. Elsten by appointing her as A.S.'s GAL. The State designated her statement

by ensuring it was included in the PSI as an addendum. And A.S. authorized Ms. Elsten to provide the statement based on the statements made by the prosecutor and Ms. Elsten before and at sentencing. Consequently, the Court should reject Schooley's claim and affirm.

### B. The Trial Court did not Consider Any Improper Factors when Sentencing Schooley.

For his last claim, Schooley contends that even if A.S.'s GAL could file an impact statement, the court erred by considering it. Specifically, he claims that the court abused its discretion because Ms. Elsten's statement recommends prison and mentions changes in Schooley's family dynamics after the trial. *See* Def.'s Br. at 35–37. But victim impact statements regularly include requests for the maximum punishment, and considering those statements is not an abuse of discretion. And by statute, courts are supposed to evaluate a defendant's family dynamics before imposing their sentence. So Schooley's claims lack merit.

When sentencing a defendant, the court considers "all pertinent information, including the presentence investigation report and victim impact statements, if any." Iowa Code § 901.5. It weighs "the nature of the offense, attending circumstances, defendant's age, character, and propensities[,] and chances of his reform." *State v. Headley*, 926 N.W.2d 545, 549 (Iowa 2019). It determines which of the options "is authorized by

law for the offense," and "which of them or which combination of them," in its discretion, "will provide maximum opportunity for the rehabilitation of the defendant, and for the protection of the community from further offenses by the defendant and others." Iowa Code § 901.5.

When suspending a sentence, courts must consider a defendant's age, criminal history, employment and family circumstances, mental health and substance abuse history, the nature of the offense, and "[s]uch other factors as are appropriate." *Id.* § 907.5(1). It must decide what sentence provides the "maximum opportunity for the rehabilitation of the defendant, and for the protection of the community from further offenses by the defendant and others." *See id.* § 901.5.

But courts cannot consider a defendant's other unproven conduct when imposing their sentence. "It is a well-established rule that a sentencing court may not rely upon additional, unproven, and unprosecuted charges unless the defendant admits to the charges or there are facts presented to show the defendant committed the offenses." *State v. Formaro*, 638 N.W.2d 720, 725 (Iowa 2002) (citing *State v. Black*, 324 N.W.2d 313, 315–16 (Iowa 1982)). Again, on review, "a district court's sentencing decision enjoy a strong presumption in its favor." *State v. Jose*, 636 N.W.2d 38, 41 (Iowa 2001). So, "[t]o overcome this presumption, a

defendant must affirmatively show that the district court relied on improper evidence such as unproven offenses." *Id.* "If a district court improperly considers unprosecuted and unproven additional charges, we will remand the case for resentencing." *Id.*

Even so, "[v]ictims have the statutory right to convey their experiences and recommendations to the sentencing court," which often include recommendations for the maximum punishment. *Davis*, 971 N.W.2d at 562; Iowa Code § 915.21(2). Impact statements can include any "information related to the impact of the offense upon the victim." *State v. Rodriguez*, No. 16-1159, 2017 WL 3524774, at *3 (Iowa Ct. App. Aug. 16, 2017) (discussing Iowa Code §§ 915.10(4), 915.21(2)). Indeed, "our supreme court has previously allowed victim impact statements in which the victims request that the court sentence the defendant to the maximum term of incarceration permitted under the statute to be admitted." *Id.* (referencing *State v. Tesch*, 704 N.W.2d 440, 450 (Iowa 2005)). Iowa law broadly "enable[s] the victim to fully detail the impact of the offense." *Sailer*, 587 N.W.2d at 761.

Here, Ms. Elsten's statement did not reflect improper factors or refer to unproven offenses. True, she recommended incarceration in that statement, but victim impact statements regularly ask for prison and speak

to punishment. *See* Def.'s Br. at 35–36.*Rodriguez*, 2017 WL 3524774, at *3 (citations omitted); *Tesch*, 704 N.W.2d at 450. So his complaint about the recommendation for incarceration holds no water now.

Second, Schooley contends that the impact statement's reference that he had not "taken responsibility for his actions" constituted error. The State disagrees: "Courtroom demeanor and lack of remorse are valid factors for the court to consider if those have a factual basis in the record." *Feller v. State*, No. 23-0005, at *13, 2024 WL ------, at *___ (Iowa Ct. App. May 8, 2024) (slip op) (citing *Fortune v. State*, 957 N.W.2d 696, 709 (Iowa 2021); *State v. Seidell*, No. 21-0493, 2022 WL 951002, at *2 (Iowa Ct. App. Mar. 30, 2022)). In this case, Schooley's statement of allocution spoke almost entirely to A.S. being taken from his custody and his complaints about the associated chapter 232 proceeding. *See* D0069, Sent. Tr. at 8:10–12:8. During his allocution statement, School admitted that A.S. was taken from his custody after trial by an emergency action involving Iowa's Health and Human Services Department. *See id.* at 9:7–15. And despite a unanimous jury convicting him of child endangerment causing bodily injury, Schooley blamed most of the abuse A.S. suffered on his now-ex-girlfriend Tessica, asserting that, "if anything, [his] biggest failure as a parent is simply not being aware of what was happening and to the extent

that it was happening." *Id.* at 12:2–4. This does not show Schooley was sorry for his own abusive conduct toward A.S. *See State v. West Vangen*, 975 N.W.2d 344, 355–56 (Iowa 2022) (noting courts can consider allocutions statements when sentencing defendants); *State v. Fetner*, 959 N.W.2d 129, 135 (Iowa 2021) ("This amounted to an admission by acquiescence to the facts Fetner now contests, and the district court was within its authority to rely on those facts in crafting Fetner's sentence."). The court therefore did not err in noting Schooley's "own words seem to confirm" that "probation would not be an adequate deterrent" for him, given "[m]ost of his allocution seemed to be concerned about the process by which [A.S.] was removed from his care." D0069, Sent. Tr. at 14:3–8.

Schooley's "family circumstances"—including A.S.'s removal from his care and custody after trial—are also a proper sentencing consideration. Iowa Code § 901.5(1)(d). Just as his role as A.S.'s parent was relevant to the circumstances of his crime arising from his abuse of his daughter. *Id.* Thus, the court's consideration of the impact statement's references to Schooley's family and familial circumstances do not qualify as unproven conduct that would otherwise warrant resentencing now.

In the end, the sentencing court did not abuse its discretion by reviewing the victim-impact statement and its recommendation for prison in this case. The court properly considered that statement when crafting Schooley's sentence, and impact statements regularly request incarceration without resulting in prejudice. In fact, courts *must* consider victim impact statements when deciding what sentence to impose. *See* Iowa Code § 915.21; *State v. Phillips*, 561 N.W.2d 355, 359 (Iowa 1997). Consequently, Schooley cannot prove by "clear evidence" that the court considered improper factors or unproven conduct when imposing his sentence.

## CONCLUSION

The Court should affirm Schooley's conviction and sentence.

## REQUEST FOR NONORAL SUBMISSION

Oral argument is unnecessary for this case. But if Schooley is granted argument, the State requests to also be heard.

Respectfully submitted,

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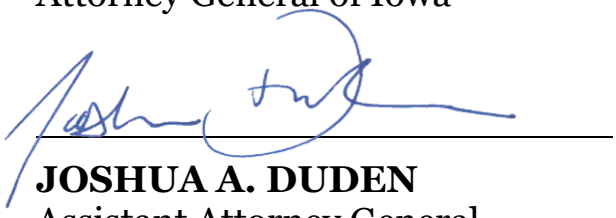

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Dated: May 10, 2024

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