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IN THE SUPREME COURT OF IOWA
Supreme Court No. 23–1063
Cass County No. FECR016406

STATE OF IOWA,
Plaintiff-Appellee,

vs.

ALISON DORSEY,
Defendant-Appellant.

APPEAL FROM THE IOWA DISTRICT COURT
FOR CASS COUNTY
THE HON. AMY ZACHARIAS, JUDGE

APPELLEE'S BRIEF

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STATEMENT OF THE ISSUES PRESENTED FOR REVIEW

I. Did the trial court err in granting the State's motion to change venue, based on extensive pretrial publicity in Cass County and its experience during a prior voir dire where 41 of the first 67 panelists expressed fixed views and strong opinions about the merits of the case?

Authorities

Patton v. Yount, 467 U.S. 1025 (1984)
Lamasters v. State, 821 N.W.2d 856 (Iowa 2012)
State v. Evans, 671 N.W.2d 720 (Iowa 2003)
State v. Harris, 436 N.W.2d 364 (Iowa 1989)
State v. Hickman, 337 N.W.2d 512 (Iowa 1983)
State v. Johnson, 476 N.W.2d 330 (Iowa 1991)
State v. Robinson, 389 N.W.2d 401 (Iowa 1986)
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State v. Spargo, 364 N.W.2d 203 (Iowa 1985)
State v. Williams, 929 N.W.2d 621 (Iowa 2019)
Iowa R. Crim. P. 2.11(10)(b)

II. LH was 11 weeks old. He died with massive bleeding throughout his brain and both eyes, and torn retinas. LH was in Dorsey's care; she was the only adult there. She said that LH was having trouble breathing, then suddenly went limp when LH's father arrived. Was the evidence sufficient to support Dorsey's convictions?

Authorities

State v. Cox, 500 N.W.2d 23 (Iowa 1993)
State v. Crawford, 972 N.W.2d 189 (Iowa 2022)
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State v. Jorgensen, 758 N.W.2d 830 (Iowa 2008)
State v. Sanford, 814 N.W.2d 611 (Iowa 2012)

III. Did the trial court err in overruling Dorsey's claim that the verdict was against the weight of the evidence?

Authorities

State v. Ellis, 578 N.W.2d 655 (Iowa 1998)
State v. Linderman, 958 N.W.2d 211 (Iowa Ct. App. 2021)
State v. Nitcher, 720 N.W.2d 547 (Iowa 2006)
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IV. Did the trial court err in overruling Dorsey's objection to responsive evidence about LH's brother's rib injury, after Dorsey implied that LH's parents inflicted it?

Authorities

State v. Amisi, 997 N.W.2d 683 (Iowa 2023)
State v. Russell, 893 N.W.2d 307 (Iowa 2017)
State v. Tipton, 897 N.W.2d 653 (Iowa 2017)

V. Dorsey presented testimony about her character traits from six character witnesses. The trial court excluded further testimony about the same character traits from six additional character witnesses as cumulative under Rule 5.403. Was that an abuse of discretion?

Authorities

State v. Lacey, 968 N.W.2d 792 (Iowa 2021)
State v. Putman, 848 N.W.2d 1 (Iowa 2014)
State v. Thompson, 954 N.W.2d 402 (Iowa 2021)
Iowa R. Evid. 5.403

ROUTING STATEMENT

The State concurs with Quiroz's routing statement. *See* Def's Br. at 7. The issues raised in this appeal can all be resolved by applying established legal principles, so this appeal should be transferred to the Iowa Court of Appeals. *See* Iowa R. App. P. 6.1101(3)(a).

STATEMENT OF THE CASE

Nature of the Case

This is Alison Dorsey's direct appeal from her convictions for second-degree murder, a special Class B felony, in violation of Iowa Code section 707.3 (2019); and child endangerment causing death, a special Class B felony, in violation of Iowa Code section 726.6(5). The evidence showed that 11-week-old LH was in Dorsey's exclusive care when he sustained abusive head trauma that caused his death. A jury found her guilty on those two charges. Those two convictions merged at sentencing, and Dorsey was sentenced to a 50-year term in prison with a 35-year mandatory minimum. *See* D0428, Sentence (6/28/23).

In this appeal, Dorsey argues: **(1)** the district court erred in granting the State's motion for change of venue, based on a showing of extensive pretrial publicity and its firsthand experience of voir dire in a county where many panelists expressed strong and fixed views of the merits during the previous trial (which had ended in a hung jury);

(2) the evidence was insufficient to support conviction; **(3)** the court erred in overruling her weight-of-the-evidence challenge; **(4)** the trial court erred in admitting evidence that another child in Dorsey's care had a rib fracture, on the grounds that Dorsey opened the door to that evidence by asking about the results of other children's skeletal surveys; and **(5)** the trial court erred when it excluded the proffered testimony of some of Dorsey's character witnesses as cumulative with testimony on the same character traits from her first six character witnesses.

Statement of Facts

On October 7, 2019, LH was 11 weeks old. LH's family had used Dorsey's unlicensed daycare for their other kids. On October 7, LH's father brought LH and his twin to Dorsey's daycare for the first time (along with their older brother, two-year-old KH). He dropped them off with Dorsey at her home daycare, on his way to work. *See* Trial Tr. 322:22–327:19. LH seemed fine. *Accord* Trial Tr. 694:4–695:13.

Dorsey sent a SnapChat just before 9:00 a.m. with a picture of the twins, with a caption that celebrated their first day at daycare. *See* Trial Tr. 328:7–330:23; D0340, State's Ex. 203. His color was normal.

LH's father got a phone call from Dorsey at "a little after 10:55." Dorsey asked if LH "had problems" with his breathing. She said that

LH "was breathing funny" and "wouldn't eat." *See* Trial Tr. 331:2–24. Dorsey gave no indication that there was a serious problem with LH, but LH's father was on his scheduled break anyway, so he left work to go to Dorsey's home to see if he could help. *See* Trial Tr. 331:25–333:7.

LH's father arrived at Dorsey's home at 11:00 a.m. As he arrived, he saw Dorsey "holding [LH] in her left arm." Dorsey told him that LH "just went limp." *See* Trial Tr. 334:12–335:23. LH's father immediately saw that LH did not seem to be breathing—and LH was "bluish gray." *See* Trial Tr. 335:19–336:10. Dorsey handed LH to his father.

> He was — there is no — it's just limp. There is no movement. There is no muscle holding anything where it's supposed to be. He is just completely limp.

Trial Tr. 336:11–24. LH was not breathing, with no pulse or heartbeat. Dorsey had not yet called 911. LH's father told her to, as he tried CPR. LH remained unresponsive. *See* Trial Tr. 337:3–339:5.

Police and deputies arrived. Footage from a deputy's body-cam was admitted into evidence. It included two interviews with Dorsey, from shortly after LH was taken to the hospital. *See* Trial Tr. 305:11–310:8; State's Ex. 200 (arrival); State's Ex. 201 & 202 (interviews). Dorsey never mentioned seeing any "seizure-like behavior" from LH. She said that her only concern with LH before he went limp was that

he only drank three ounces of milk from his first bottle, and that she was not able to get him to burp. *See* Trial Tr. 314:2–21; State's Ex. 202. Dorsey later confirmed that she had been the only adult at the daycare in the period before LH stopped breathing. *See* Trial Tr. 397:16–24.

LH was taken to the local hospital in Atlantic, where doctors were able to restart his heart. But there was no brain activity. LH was subsequently life-flighted to Children's Pediatric Hospital in Omaha. LH would never regain consciousness. LH was taken off life support in the evening hours of October 8. *See* Trial Tr. 340:2–342:19;

Before October 7, LH had been "doing very well" and hitting all of his "normal developmental milestones." *See* Trial Tr. 418:2–421:22; Trial Tr. 427:16–429:17. There were no abnormalities detected in his routine bloodwork. *See* Trial Tr. 421:23–422:20. He had been seen by his primary care provider at a two-month appointment, just two weeks before he died—and he had appeared to be healthy and thriving. *See* Trial Tr. 422:21–424:9.

On October 7, when LH was brought to the hospital, his CT scans showed that he had "blood over many surfaces of the brain" and "in the deep membranes separating the brain." That is a strong indicator that there was "a rapid acceleration/deceleration type of injury" where

the motion of the brain inside the skull "tear[s] at the bridging veins" at *all* locations, causing non-localized bleeding. *See* Trial Tr. 448:19–450:16; Trial Tr. 454:3–455:18; *accord* Trial Tr. 555:16–558:4. And the bleeding appeared to be fresh, so the event that caused the injury had to be very recent. *See* Trial Tr. 450:17–451:14; Trial Tr. 454:1–25.

Also, LH's brain was swelling up. This indicated that the brain itself had been impacted, and the fact that it continued to swell meant that the event causing injury happened "fairly recently." *See* Trial Tr. 452:18–453:25; Trial Tr. 456:15–457:3. And the lack of any swelling in the scalp indicated it was not a hard collision with an external object. *See* Trial Tr. 456:1–14. So did the absence of any discernible injury to any other part of the body. *See* Trial Tr. 458:8–463:6.

Dr. Sandra Alberry (a pediatric radiologist) testified that she found all of this was "highly concerning for abusive head trauma." *See* Trial Tr. 464:16–465:6. And no 11-week-old infant could cause that sort of injury to themselves. *See* Trial Tr. 476:13–477:8.

Dr. Kelly Kadlec (a pediatric ICU physician) said the same thing:

> [W]e had a child who had previously been doing well and acutely went into cardiopulmonary arrest and had a spectrum of brain injury and retinal hemorrhages and also was now unresponsive. The combination to me was highly suspicious for abusive head trauma.
>
> [. . .]

> Given the history of his clinical presentation, his examination findings, radiographic findings, CT findings, it was abusive head trauma.

Trial Tr. 494:6–495:23 and Trial Tr. 505:22–508:1. LH would have been severely affected within "minutes to hours" of the precipitating injury—and he would not have been able to eat or do "tummy time" after sustaining those traumatic injuries. *See* Trial Tr. 496:11–499:4; Trial Tr. 527:4–528:19; *accord* Trial Tr. 565:25–569:18 ("[W]e are talking minutes, very short periods of time between when the child is injured and when they are unwell, unresponsive, vomiting, seizing.").

Images taken during an examination of LH's eyes showed that he had "significant bleeding across the back of both eyes, along with retinoschisis, which is separation of the retina," along with "bleeding in multiple layers of his retina as well," *See* Trial Tr. 559:9–560:18. This was a clear sign of inflicted trauma. *See* Trial Tr. 622:16–625:6.

Neither CPR nor any other medical intervention could have caused this degree of retinal hemorrhaging. *See* Trial Tr. 502:18–503:10; Trial Tr. 522:6–17; *accord* Trial Tr. 560:19–24. It also could not have caused this retinoschisis. *See* Trial Tr. 561:4–563:9. And LH's hemorrhages could not have been caused by a coagulation disease. *See* Trial Tr. 522:22–523:4; Trial Tr. 563:10–565:6; Trial Tr. 625:7–20.

From LH's autopsy, the medical examiner concluded that LH died from trauma inflicted by a significant force without a clear area of impact—which would be consistent with abusive shaking. *See* Trial Tr. 627:14–629:11. And the "[r]etinal detachment more point[ed] away from accident," as did the lack of any report about an accidental injury. *See* Trial Tr. 637:11–640:9.

Initially, doctors thought that LH might have a skull fracture or a liver laceration. Later examination revealed that he had neither. *See* Trial Tr. 573:24–574:6; Trial Tr. 590:25–591:13; Trial Tr. 631:5–14. At one point, a paramedic misplaced a needle when trying to give LH a shot of adrenaline. But misplacement of that needle in LH's left leg "had nothing to do with cause of death." *See* Trial Tr. 610:4–19.

Dorsey presented testimony from six character witnesses who testified to her peaceful and loving character. *See* Trial Tr. 714:3–715:7; Trial Tr. 720:4–25; Trial Tr. 875:13–878:23; Trial Tr. 907:22–908:11; Trial Tr. 910:4–18; Trial Tr. 911:23–912:16.

Dorsey also presented expert testimony that LH's bleeding must have been from some earlier injury, because of particles in the blood found through "iron staining" and because there were some signs of ongoing healing. *See* Trial Tr. 745:16–760:5; Trial Tr. 937:18–942:11.

Dorsey's expert witnesses were extensively impeached. *See* Trial Tr. 780:9–787:19; Trial Tr. 944:15–956:10. On rebuttal, the State put on expert testimony on why the use of "iron staining" with infant blood "doesn't really mean anything." *See* Trial Tr. 979:18–988:15.

Dorsey testified that she fed LH, and that he drank three ounces from a bottle. *See* Trial Tr. 834:6–20. She said LH had "tummy time" normally (which matched what she had already said in her interviews). *See* Trial Tr. 835:19–836:8. Dorsey said she had a few phone calls on speakerphone that morning. *See* Trial Tr. 836:12–839:20. According to Dorsey, she tried to feed LH again at about 10:40, then put LH in a baby bouncer and went into the kitchen. *See* Trial Tr. 839:18–840:23. Dorsey said that she noticed "there was some odd breathing with [LH]" when she came back from the kitchen, after just "[a] couple minutes." She said that LH was "barky" and "gasping," but was "still breathing." *See* Trial Tr. 840:20–841:11. She said that LH was still breathing while she called LH's mother, while she called LH's father, and then as she waited "[a] couple minutes" for LH's father to arrive. But then:

> [LH's father] got up onto the deck, which is only a couple steps. And when he opened the door, I was holding [LH] in my left arm facing out, and then he went limp right then when he opened the door.

Trial Tr. 841:3–843:13.

ARGUMENT

I. The court did not err in granting the State's motion for change of venue, after extensive pretrial publicity and after most panelists expressed a strong and fixed view of the merits during the first voir dire.

Preservation of Error

Dorsey objected to change of venue. The district court overruled that objection. *See generally* Venue Tr. (4/19/22); D0251, Venue Order (4/27/22). That ruling preserved error. *See, e.g.*, *Lamasters v. State*, 821 N.W.2d 856, 864 (Iowa 2012).

Standard of Review

A ruling on a motion to change venue is generally reviewed for abuse of discretion. *State v. Evans*, 671 N.W.2d 720, 726 (Iowa 2003).

Merits

Change of venue is proper where the movant establishes that "such degree of prejudice exists in the county in which the trial is to be held that there is a substantial likelihood a fair and impartial trial cannot be preserved with a jury selected from that county." *See* Iowa R. Crim. P. 2.11(10)(b). "The crucial determination is whether . . . a substantial number of prospective jurors hold such fixed opinions on the merits of the case that they cannot impartially judge the issues to be determined at trial." *See State v. Harris*, 436 N.W.2d 364, 367

(Iowa 1989). The district court understood that standard and made it clear that it was not changing venue as a blind/uninformed precaution (as Dorsey claims). Its order granting a change of venue explained:

> This matter [previously] came before the Court for jury trial on October 26, 2021. . . . During the pretrial hearing in this matter, the parties agreed that individual voir dire should be conducted. As the parties informed the Court, this case is well-known in the community and it was necessary to question potential jurors individually so as not to taint the entire jury panel.
>
> In reviewing the transcript, the Court notes the following:
>
> • 67 individual voir dire interviews were conducted
>
> • 55 of those interviews were conducted because they knew something about or someone related to the case
>
> • Of those 55 [interviews], 41 of the individuals interview[ed] said they had an incoming bias as to how the case should turn out and essentially no amount of evidence would change that bias.
>
> . . . One juror changed his mind on the second day of jury selection and said he could not be fair and impartial and would not be able to follow the law. The evidentiary portion of the trial began on October 27, 2021. On November 4, 2021, the Court declared a mistrial because the jury was unable to come to unanimous decision.
>
> The State sets forth several reasons why it believes it would be impossible to choose a fair and impartial jury when this matter is tried a second time. The State argues that, "In the days leading up to and during the trial, members of the community waged a social media campaign on Defendant's behalf . . . ." The State also brings to the Court's attention that local churches included prayer requests for the Defendant in their bulletins and people also asked for prayers on social media. The State also points out the local newspaper, the Atlantic Telegraph,

> included coverage of the trial, as did two local radio stations, KJAN and KSOM. To illustrate its point about news coverage the State reminded the Court that despite its admonitions, a juror had to be released because he heard news coverage of the trial and it affected the juror's ability to serve. The State attached 111 pages of examples of the above for the Court's review. Many of 111 pages are social media posts that include detailed accounts of the testimony and even a post about how the jury was split in its deliberations. [*See* D0232, Attachment (11/16/21).]
>
> [. . .]
>
> The defense argues that granting a change of venue is premature. The defense contends that sending out a questionnaire several weeks before trial would allow the Court and parties to eliminate anyone who has a set opinion and who would be unable to be fair and impartial to both sides. . . .
>
> As is evident from the trial transcript, a questionnaire asking the prospective jurors about their knowledge of this case was provided when the prospective jurors checked in for jury selection. Even with this questionnaire, the Court still had to conduct individual jury selection that resulted in numerous jurors being dismissed because they had fixed opinions about how the case should be decided.
>
> [. . .]
>
> It is clear from the original jury selection that there is a substantial likelihood that a fair and impartial jury cannot be selected in Cass County. It is not premature to decide this issue and change venue.

D0251, Venue Order (4/27/22), at 1–6. The district court's remarks during the hearing on the motion for change of venue were similarly grounded in the applicable law and steeped in firsthand experience with panelists from that county during individualized voir dire:

> Obviously the Court was there during that jury selection process. And I think there were approximately 100 jurors called in, you know, to start with. And ultimately we barely had enough . . . .
>
> [. . .]
>
> . . . And even then, do you think that jurors will be honest about their strong opinions in this case? Because there were jurors that came back that seemingly had no connection to this case whatsoever until a few questions are asked and then their answer is "I absolutely don't think that I can find her guilty no matter what the law is, no matter what facts are given to me, I would never be able to find her guilty."

Venue Tr. 9:9–11:21. That accurately describes individual voir dire from the prior trial. *See* Mistrial Tr. (10/26/21), at 44:2–290:15. It got to a point where the trial court noted its concern that it might run out of panelists. *See* Mistrial Tr. (10/26/21), at 363:6–11. Dorsey does not mention that prior voir dire, nor engage with it as a basis for the ruling.

Dorsey emphasizes one line in the district court's ruling, and she argues the court granted a change of venue *solely* because it said it was "better to err on the side of caution." *See* Def's Br. at 24, 25, 28 (quoting D0251, Venue Order (4/27/22), at 6). But the court was clear that it understood the applicable standard, and it made the finding that Rule 2.11(10) required: it found "a substantial likelihood that a fair and impartial jury cannot be selected in Cass County." *See* D0251, Venue Order (4/27/22), at 6; *accord* Iowa R. Crim. P. 2.11(10)(b). It granted change of venue because it found that showing had, in fact, been made.

Dorsey picks and chooses from among the social media posts, and she argues that they mostly showed "people praying for solemnity and clarity by the next jury panel." *See* Def's Br. at 27–28. Neither the district court nor this Court are required to ignore the obvious valence of those posts, especially when they were accompanied by comments asserting Dorsey's innocence and profile pictures that were changed to images of Dorsey to show support for *her*, specifically. *See* D0232, Attachment (11/16/21). Of course, it is also true that there were some posts that asserted Dorsey was guilty and sought justice for LH. But that does not help to show that it was error to change venue—rather, it *supports* the district court's decision by illustrating that there was also strong interest in (and emotional attachment to) this case among members of the community with connections to LH, which meant that there was danger of unfair juror bias *against* Dorsey, as well.[1]

These posts are not "factual and informative" press accounts. *See State v. Spargo*, 364 N.W.2d 203, 208 (Iowa 1985). These were pleas for attention, prayer, and support. And it was apparent that panelists

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[1] The problem is greater than the sum of its parts, because the back-and-forth on comment threads would count as "engagement" and would likely be shown to social media users from Cass County who were connected with users who participated in those exchanges.

in Cass County had internalized what they were hearing about the case and formed strong opinions that had *already* made it quite difficult to select a fair and impartial jury. The district court was right that this is closely analogous to the "barrage of unmistakable warning signals that few people had an open mind on the questions of defendant's guilt" that necessitated a change of venue in *State v. Robinson*, where the Iowa Supreme Court remarked that "ten of the first sixteen [panelists] questioned had already formed an opinion" on the merits of the case. *See* D0251, Venue Order (4/27/22), at 5 (quoting *State v. Robinson*, 389 N.W.2d 401, 403 (Iowa 1986)). The numbers are close to spot on; 41 of 67 panelists were excused because of fixed beliefs about this case during the first voir dire—or 61.2%, just below the 62.5% in *Robinson*. It was an abuse of discretion to *deny* a motion for change of venue in *Robinson*. There is no way that it was an abuse of discretion to *grant* the motion for change of venue in this all-but-indistinguishable case.

Dorsey argues that nothing in the State's motion or argument could be considered because the motion was not "verified" as required by Rule 2.10(11)(a). *See* Def's Br. at 24–25. But no such argument was ever made or ruled upon below. If it had been, the State would have just corrected any technical omission and re-filed a motion that made

the same arguments and included the same facts (much like a party may lay proper foundation in response to an objection on that basis). In any event, motions for change of venue can also be made orally, on the basis of events that happen *in the courtroom* during voir dire. *See, e.g.*, *Robinson*, 389 N.W.2d at 403–04; *State v. Hickman*, 337 N.W.2d 512, 515 (Iowa 1983) (noting defendant's motion for change of venue was renewed multiple times, during trial, based on record made live).

Dorsey makes a follow-on argument that it was error to transfer venue to Pottawattamie County because of its proximity to Children's Pediatric Hospital, where some of the State's witnesses practiced. *See* Def's Br. at 25. But Dorsey did not object to Pottawattamie County on that basis—indeed, Dorsey expressed no opinion *at all* as to where the district court should transfer venue, even when it asked for her input. *See* Venue Tr. 20:18–21:12. Dorsey did not allege error in the court's selection of Pottawattamie County as the new venue until after the trial, so error is not preserved for any such challenge. *See State v. Williams*, 929 N.W.2d 621, 629 n.1 (Iowa 2019) (quoting *State v. Johnson*, 476 N.W.2d 330, 333–34 (Iowa 1991)). Even if error were preserved, the district court would have been correct in its post-trial ruling when it rejected the claim "that there was any particular prejudice in terms of

how close in proximity that hospital was to the change of venue," given that "Children's Hospital is actually located in Omaha, Nebraska, . . . so those experts or doctors actually worked and were employed across the river in another state." *See* Sent. Tr. 15:12–22.

Robinson urged courts to "look favorably upon such a motion" to transfer venue in future cases "[w]here there has been extensive pretrial publicity." *See Robinson*, 389 N.W.2d at 404. Here, the court followed that advice. It was not just speculating—it based its ruling on uncontested evidence of pretrial publicity and its firsthand experience with *the actual effects* of that widespread publicity and notoriety that surrounded this particular case in this particular county. It identified the applicable standard and made the necessary finding that there was "a substantial likelihood that a fair and impartial jury cannot be selected in Cass County." *See* D0251, Venue Order (4/27/22), at 6. That finding was well-supported by the record made at the hearing, which included the attachment to the State's motion and the prior voir dire transcript. So Dorsey cannot establish that this was an abuse of the district court's broad discretion. *See, e.g.*, *State v. Siemer*, 454 N.W.2d 857, 861 (Iowa 1990) (quoting *Patton v. Yount*, 467 U.S. 1025, 1038 (1984)) (noting its "defer[ence] to the trial court's sound judgment in such matters").

II. The evidence was sufficient to support conviction.

Preservation of Error

There is no longer any error-preservation requirement for challenges to sufficiency of the evidence on direct appeal. *See State v. Crawford*, 972 N.W.2d 189, 194–202 (Iowa 2022).

Standard of Review

"Sufficiency of evidence claims are reviewed for a correction of errors at law." *See State v. Sanford*, 814 N.W.2d 611, 615 (Iowa 2012). A verdict will withstand a sufficiency challenge if it is supported by substantial evidence. That means evidence which, if believed, would be enough to "convince a rational trier of fact the defendant is guilty beyond a reasonable doubt." *See State v. Hennings*, 791 N.W.2d 828, 823 (Iowa 2010) (quoting *State v. Jorgensen*, 758 N.W.2d 830, 834 (Iowa 2008)). A reviewing court will "view the evidence in the light most favorable to the verdict and accept as established all reasonable inferences tending to support it." *See State v. Gay*, 526 N.W.2d 294, 295 (Iowa 1995). That generally means accepting and crediting any testimony and reasonable inferences that align with the verdict. *See State v. Ernst*, 954 N.W.2d 50, 58–60 (Iowa 2021).

Merits

Dorsey argues that the evidence was insufficient to prove "that [she] inflicted the injury that caused LH's death." *See* Def's Br. at 30. But there was no other reasonable explanation for these injuries, and Dorsey's self-serving account was incompatible with other evidence.

LH was healthy and thriving. He could drink milk, and he could do "tummy time." But LH suddenly became completely unresponsive, sustained massive tears to blood vessels around his brain and severe tearing and bleeding inside his eyes. How could that have happened? Multiple experts concluded that this was trauma from shaking or an analogous acceleration/deceleration force. *See, e.g.*, Trial Tr. 464:16–465:6 ("[E]specially the blood along the deep membranes of the brain and no scalp swelling, it makes me think this is a rapid acceleration-deceleration injury."); Trial Tr. 472:18–25 (allowing that "[i]t can be acceleration-deceleration or just one big slam," and could be "both"); Trial Tr. 494:19–23 (summarizing combination of factors indicating that this was "abusive head trauma," including "a spectrum of brain injury and retinal hemorrhages" in "a child who had previously been doing well and acutely went into cardiopulmonary arrest"); Trial Tr. 555:4–567:9 (identifying key factors that ruled out other possibilities).

And given these injuries, there would have been no "lucid interval"—LH would not have drank any milk or done "tummy time" after these severe injuries were inflicted. *See* Trial Tr. 496:11–501:18 ("Given the severity of the injuries, I would expect the symptoms to be very rapid from the onset to presentation."); Trial Tr. 565:25–569:18 ("[W]e are talking minutes, very short periods of time between when the child is injured and when they are unwell, unresponsive, vomiting, seizing."); *accord* Trial Tr. 507:23–508:1; Trial Tr. 955:3–956:10 (defense expert agreeing that lucid intervals may occur with epidural hemorrhage, but are not associated with subdural hemorrhages). This had to have been inflicted while LH was in Dorsey's care, with no other adults around.

Dorsey argues that the "manner of death" was undetermined, rather than homicide. *See* Def's Br at 32. That is misleading. The actual cause of LH's death was "blunt force injuries of the head," in a way that would require "a significant force." *See* Trial Tr. 627:14–629:11. While the autopsy report labeled manner of death as "undetermined," that is only because the examiner could not rule out an accident as the source of those trauma force injuries. What was *not* in doubt was that a force applied to the head was the cause of LH's injuries and death—and that it was *not* a death by natural causes. *See* Trial Tr. 631:15–640:9.

Reasonable jurors could infer that Dorsey was lying when she described what happened to LH, based on evidence of LH's condition when his father arrived—he was already limp, colorless, and lifeless. *See* Trial Tr. 335:19–336:24. Jurors could conclude that Dorsey lied to hide the truth about when and how LH began to die. *See Ernst*, 954 N.W.2d at 56 (quoting *State v. Cox*, 500 N.W.2d 23, 25 (Iowa 1993)) ("[A] false story told by a defendant to explain or deny a material fact against him is by itself an indication of guilt."). And Dorsey's claim that LH had suddenly stopped breathing for no apparent reason was incompatible with the evidence of severe cranial/ocular injury.

This sufficiency challenge fails for reasons that are similar to those identified in *State v. Davis*:

> There is no dispute that Davis was alone with the child when she stopped breathing. Medical experts testified that the child's fatal injury resulted from a violent force applied to the brain inside the skull, such as from violent acceleration/deceleration of the head by shaking, and the catastrophic effects of the brain injury would be nearly immediate and obvious. As Davis was the only one with the child when the injuries were inflicted, a reasonable juror could conclude that Davis was responsible for inflicting the injuries.
>
> [. . .]
>
> Davis's argument overlooks the evidence presented by the State that the brain injury and the retinal bleeding the child suffered were caused by very fast alternating movement, such as by shaking the child back and forth,

> and that such motion resulted in the injuries causing the child's death. The State also presented evidence rejecting the notion that the child's medical conditions or efforts to resuscitate the child could have caused her fatal injuries. A reasonable juror could have concluded that the child died from being shaken with extreme force rather than for some other reason.

State v. Davis, No. 22–1414, 2023 WL 6291570, at *2–3 (Iowa Ct. App. Sept. 27, 2023). Here, a reasonable jury could credit evidence that established that LH's injuries were caused by traumatic force. Logically, it had to have been Dorsey who inflicted that trauma. And her subsequent actions and lack of alternative explanation indicated that Dorsey *knew* that she had inflicted traumatic injury, and that she was trying to pass it off as something else. *See* Trial Tr. 1015:4–1018:3. Even if there were some alternative explanation for LH's death, a jury could reject it as inconsistent with other circumstantial evidence from Dorsey's statements and actions (which were strongly incriminating). Dorsey cannot establish that no reasonable fact-finder could conclude that she inflicted this fatal injury, so her sufficiency challenge fails.

III. The court did not err in overruling Dorsey's claim that the conviction was against the weight of the evidence.

Preservation of Error

Error was preserved when the court ruled on Dorsey's post-trial challenge to the weight of the evidence. *See* Sent. Tr. 15:23–16:16.

Standard of Review

A ruling on a weight-of-the-evidence challenge is reviewed for abuse of discretion. *See State v. Nitcher*, 720 N.W.2d 547, 559 (Iowa 2006) (quoting *State v. Reeves*, 670 N.W.2d 199, 202 (Iowa 2003)).

"Unlike the sufficiency-of-the-evidence analysis, the weight-of-the-evidence analysis is much broader in that it involves questions of credibility and refers to a determination that more credible evidence supports one side than the other." *See Nitcher*, 720 N.W.2d at 559. Moreover, "[o]n a weight-of-the-evidence claim, appellate review is limited to a review of the exercise of discretion by the trial court, not of the underlying question of whether the verdict is against the weight of the evidence." *See Reeves*, 670 N.W.2d at 203. Overruling Dorsey's weight-of-the-evidence challenges would only be an abuse of discretion if "the evidence preponderates heavily against the verdict." *See id.* at 202 (quoting *State v. Ellis*, 578 N.W.2d 655, 659 (Iowa 1998)).

Merits

The trial court's power to invalidate a jury verdict as against the weight of the evidence should only be used in extraordinary cases; it is properly limited by respect for the jury's role as the finder of fact. An appellate court's role is limited to reviewing the trial court's ruling

for abuse of discretion—so this Court's review is doubly limited. *See, e.g.*, *State v. Linderman*, 958 N.W.2d 211, 218 (Iowa Ct. App. 2021) (quoting *Reeves*, 670 N.W.2d at 203). The trial court had the benefit of firsthand observation of witness credibility, and it found that the credible evidence did not preponderate against the verdict. *See* Sent. Tr. 15:23–16:16. Dorsey cannot show that was an abuse of discretion.

First, Dorsey reiterates arguments about the medical evidence. *See* Def's Br. at 33–34. But that evidence weighed heavily in favor of the finding that Dorsey inflicted these fatal injuries. Nothing from the defense experts meaningfully or credibly countered that evidence. *See* Trial Tr. 979:18–988:15 (explaining why iron staining is not probative); Trial Tr. 780:9–787:19 and Trial Tr. 944:15–956:10 (impeachment).

Second, Dorsey attacks the theory of "soft head trauma" as "admitted speculation." *See* Def's Br. at 34. This misses the point. It was not possible to determine whether Dorsey vigorously shook LH or vigorously slammed LH into a soft object (or both). But the point was that Dorsey applied vigorous force to LH's body that caused this fatal injury. *See* Trial Tr. 472:18–25; Trial Tr. 507:10–22 (explaining that these two "somewhat different mechanisms" were both consistent with LH's injuries and would cause the same result).

Next, Dorsey repeats his argument about the medical examiner and claims that "the prosecution had to attack the opinion of its own expert pathologist" to establish that this was a homicide. *See* Def's Br. at 34–35. Again, reading the medical examiner's testimony shows that the actual finding was that LH's death was caused by traumatic force, and the only possible "manner" of injury was accident or homicide—and nobody reported any accidents. *See* Trial Tr. 627:14–640:9.

Finally, Dorsey argues that the defense experts offered theories that were more persuasive explanations for LH's death. *See* Def's Br. at 35–36. Neither the jury nor the trial court saw it that way, nor were they required to—especially given the evidence that Dorsey's key expert had called a doctor who had examined LH's brain and asked the doctor to change the opinion he had rendered, because of Dorsey's "identity" and "[her] stature in the community." *See* Trial Tr. 983:16–988:15. In any event, Dorsey's brief misrepresents the testimony at every turn. It is not true that the State's rebuttal expert conceded that LH could not have died from injuries sustained while in Dorsey's care—indeed, that expert considered all of the points that Dorsey raised and then stated that those factors did not change his opinion. *See* Trial Tr. 992:5–12.

Dorsey's challenge does not mention her own testimony. The jury could reasonably conclude that her testimony that LH went limp at the *exact moment* that LH's father walked through the front door was not credible. *See* Trial Tr. 841:3–843:13. Certainly, the weight of the credible evidence preponderated against finding that Dorsey was telling the truth. *See* Trial Tr. 335:19–336:24 (noting LH was already "bluish gray" and "completely limp" when LH's father arrived). Dorsey cannot establish that declining to disturb the jury's assessment of her credibility was an abuse of discretion. So even if the medical evidence was in equipoise (which it is not), Dorsey's challenge would still fail.

IV. The trial court did not err in overruling Dorsey's objection to evidence about KH's rib fracture, which became relevant after Dorsey opened the door to it.

Preservation of Error

Error was preserved when the trial court admitted this evidence over Dorsey's objection at trial. *See* Trial Tr. 969:16–974:4.

Standard of Review

Review of most evidentiary rulings is for abuse of discretion. *See State v. Tipton*, 897 N.W.2d 653, 690 (Iowa 2017). This is a very deferential standard of review. An abuse of discretion only occurs if the trial court's ruling was clearly untenable or unreasonable. *See id.*

Merits

On cross-examination, Dorsey asked Dr. Haney about the results of skeletal surveys on LH's siblings, as part of an investigation into the possibility of abuse. Dr. Haney stated that LH's two-year-old brother (KH) had "a healing rib fracture." *See* Trial Tr. 579:12–25. Dorsey also elicited testimony that skeletal survey results for five other children in her care had shown no skeletal injuries. *See* Trial Tr. 580:1–16.

On redirect, the State asked Dr. Haney how long it would take for KH's rib fracture to heal. The timeline established that KH could have sustained that injury during a time when he was in Dorsey's care. Dorsey did not object to that questioning. *See* Trial Tr. 589:11–590:1.

Dorsey brought up KH's rib injury to imply that LH's parents may have been injuring their children. *See* Pretrial Tr. (10/18/21), at 32:19–36:18. Even at that juncture, the court noted that the evidence was just as susceptible to an inference that *Dorsey* injured KH:

> I will tell you my gut when I first looked at it says that it has nothing to do with what happened to [LH] except that it cuts both ways in terms of who is responsible if it's never been determined who injured that older child.

See Pretrial Tr. 36:19–39:4. As it turned out, on rebuttal, the State had evidence that showed that Dorsey had recently told LH's parents that KH fell from a certain height and sustained a bruise. That report

was within the timeframe where it would account for (or explain away) the rib injury that was found during KH's skeletal survey. *See* Trial Tr. 972:15–974:4. That evidence—and only that evidence—was the target of Dorsey's objection. The State replied that Dorsey opened the door to that evidence—it was now needed to counter Dorsey's insinuations that KH's rib fracture (and the lack of skeletal injury to other children in Dorsey's care) meant that any other injuries from abuse were likely inflicted by LH's parents. *See* Trial Tr. 969:16–972:12. Moreover, the evidence showed that *nobody* was "tagged with any sort of crime" in relation to that rib injury—including Dorsey. *See* Sent. Tr. 13:12–22; *accord* Trial Tr. 973:21–25 ("There was no way to tell.").

Dorsey argues that this was prior-bad-act evidence, admitted for a propensity purpose—to prove that she abused KH, so she must have abused LH. *See* Def's Br. at 37–38. That is false. This evidence was properly admitted to *refute* Dorsey's attempt to draw that kind of (impermissible) propensity inference about LH's parents, by showing that Dorsey had reported a fall that may have caused that rib fracture. Dorsey was warned about the danger of bringing up KH's rib fracture, and she did it anyway. *See* Pretrial Tr. 36:19–39:4. She cannot allege error in the admission of more evidence about that same injury.

Dorsey's brief says *nothing* about her role in putting on evidence about KH's rib fracture (which she also brought up in cross-examining LH's father and another witness, in addition to Dr. Haney). *See* Trial Tr. 351:3–14; Trial Tr. 402:6–17; Trial Tr. 579:16–580:16. Dorsey is wrong to claim that the State put this evidence before the jury to raise a propensity inference. In reality, it was *Dorsey* who did that, over the State's pretrial objection. So the State countered with other evidence to show why the rib fracture did not actually have the (impermissible) probative value that Dorsey sought to assign it. The challenge set out in Dorsey's brief is inapposite because it does not have anything to do with what happened during this trial or with the ruling that admitted this responsive evidence on rebuttal. The disconnect is clear from the fact that sustaining Dorsey's objection to the rebuttal evidence would not have prevented the jury from hearing the evidence that they had *already heard*, without objection, that KH's rib fracture may have been inflicted while he was in Dorsey's care. *See* Trial Tr. 579:12–25; Trial Tr. 589:11–590:1. That also means that, even if Dorsey could establish error in overruling his objection, that error would be harmless because functionally identical evidence had already come in without objection. *See, e.g.*, *State v. Russell*, 893 N.W.2d 307, 318 (Iowa 2017).

Moreover, even if Dorsey were raising a challenge that established error in admission of this rebuttal evidence, any such error would be harmless because the evidence of Dorsey's guilt was overwhelmingly strong. *See State v. Amisi*, 997 N.W.2d 683, 691–93 (Iowa 2023). Dorsey was not convicted on the basis of any inference about something that happened to KH. She was convicted because of medical evidence that foreclosed any other reasonable explanation for what must have caused LH's death. So it is readily apparent that the conviction is wholly unattributable to any alleged error in admitting this responsive evidence, and thus any error would be harmless.

V. The trial court did not err in excluding six additional character witnesses whose testimony was cumulative to the six character witnesses who already testified.

Preservation of Error

Error was preserved when the trial court excluded this evidence after Dorsey's offer of proof. *See* Trial Tr. 913:8–927:6.

Standard of Review

Review of a ruling under Rule 5.403 is for abuse of discretion. Iowa courts "give a great deal of leeway to the trial judge who must make this judgment call." *State v. Thompson*, 954 N.W.2d 402, 408 (Iowa 2021) (quoting *State v. Putman*, 848 N.W.2d 1, 10 (Iowa 2014)).

Merits

Dorsey presented testimony from six witnesses who testified to her peaceful and loving character. *See* Trial Tr. 714:3–715:7; Trial Tr. 720:4–25; Trial Tr. 875:13–878:23; Trial Tr. 907:22–908:11; Trial Tr. 910:4–18; Trial Tr. 911:23–912:16. Dorsey wanted to present similar testimony from six more character witnesses. The trial court noted that the State was not cross-examining the character witnesses and did not seem to be disputing the evidence of Dorsey's character—so additional evidence of those traits "does seem to be cumulative." *See* Trial Tr. 896:23–898:16; *accord* Trial Tr. 882:25–883:4.

Dorsey argues that it was an abuse of discretion to exclude her seventh, eighth, ninth, tenth, eleventh, and twelfth character witnesses. She does not identify anything distinctive in any offer of proof from any of those witnesses that would have been non-cumulative. *See* Def's Br. at 39–41. That is because the six character witnesses whose testimony *was* presented to the jury had already established that Dorsey had the specified character traits (and the State essentially conceded the issue). *See State v. Lacey*, 968 N.W.2d 792, 807–08 (Iowa 2021) (affirming a ruling that excluded messages that they were "merely cumulative of an uncontested point" that was "well established by other evidence").

Dorsey's brief does not establish any error in the trial court's ruling that the proffered testimony from these additional character witnesses was cumulative with the evidence already admitted, or in its ruling that the probative value of each successive character witness was diminishing to the point where it was "substantially outweighed" by the danger of "wasting time, or needlessly presenting cumulative evidence." *See* Iowa R. Evid. 5.403. This was reasonable; it was not an abuse of discretion.

If this was an error, it was harmless. The State did not contest Dorsey's proof that she was generally a peaceful or loving person—it did not need to. Dorsey was convicted on the basis of evidence that showed that she *must* have inflicted this fatal injury, no matter how unlikely that might seem to people who thought they knew her well. *Cf.* Trial Tr. 342:24–344:18 and 367:22–368:8 (LH's parents noting that they trusted Dorsey and had a close relationship with her); Trial Tr. 1063:1–11 (explaining that "character reputation" was irrelevant when "[t]here is only one person" who could have injured LH). All of the character evidence that *was* introduced did not prevent the jury from finding that Dorsey must have inflicted this injury. Presenting additional (cumulative) character witnesses could not have led to a different result in this case. Thus, Dorsey's challenge fails.

CONCLUSION

The State respectfully requests that this Court reject these challenges and affirm Dorsey's convictions.

REQUEST FOR NONORAL SUBMISSION

This case should be set for nonoral submission. In the event argument is scheduled, the State asks to be heard.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

This brief complies with the typeface requirements and type-volume limitation of Iowa Rs. App. P. 6.903(1)(d) and 6.903(1)(g)(1) or (2) because:

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