IN THE SUPREME COURT OF IOWA
Supreme Court No. 22-0380
Black Hawk County No. FECR234717

STATE OF IOWA,
Plaintiff-Appellee,

vs.

CHAD ALLEN STATON,
Defendant-Appellant.

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

APPELLEE'S BRIEF

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ROUTING STATEMENT

This case does not meet any of the criteria for Iowa Supreme Court retention under Iowa Rule of Appellate Procedure 6.1101(2)(a)-(f). As the defendant suggests, transfer to the Court of Appeals is appropriate. Iowa R. App. P. 6.1101(3)(a).

STATEMENT OF THE CASE

Nature of the Case.

A Black Hawk County jury convicted Chad Allen Staton of one count of second-degree sexual abuse, a class B felony in violation of Iowa Code section 709.3; one count of third-degree sexual abuse, a class C felony in violation of Iowa Code section 709.4; and one count of incest, a class D felony in violation of Iowa Code section 726.2. The charges stemmed from allegations that Staton twice raped his young daughter.

Course of Proceedings.

The State agrees with Staton's rendition of the case's procedural history. *See* Iowa R. App. P. 6.903(3).

Facts.

When L.S. was nine years old, she lived with her mother Heather Staton, her father Chad Staton, and her three younger

siblings in a house in New Hartford, Iowa. Trial Tr. Vol. II p. 41, line 9 – p. 46, line 25. On Heather Staton's birthday in 2012, she left the house to celebrate with a friend, leaving L.S. and her brothers and sister home alone with Staton. Trial Tr. Vol. II p. 48, line 24 – p. 49, line 20. This was unusual, as L.S.'s mother rarely left their house. Trial Tr. Vol. II p. 49, lines 4-13. Staton began drinking alcohol as soon as his wife departed. Trial Tr. Vol. II p. 50, lines 5-12. L.S.'s sister G.S. – four or five years old at the time – always wanted to sleep with L.S.; this night, Staton told G.S. that she could not stay in her older sister's room. Trial Tr. Vol. II p. 50, lines 19-23.

Before L.S. fell asleep, Staton entered her bedroom. Trial Tr. Vol. II p. 52, line 22 – p. 53, line 22. She could smell alcohol on her father's breath as he climbed into her bed. Trial Tr. Vol. II p. 54, line 76 – p. 5, line 6. He lay behind her and "spooned" her. Trial Tr. Vol. II p. 55, lines 2-6. After a few minutes, Staton crawled on top of L.S., rolling her onto her back. Trial Tr. Vol. II p. 56, lines 1-24. Staton put his fingers underneath L.S.'s tie-dyed "boyshort" underwear and slid them down to her ankles; he had already pulled down his own sweatpants. Trial Tr. Vol. II p. 57, line 10 – p. 58, line 14. Staton

penetrated his nine-year-old daughter's vagina with his penis.[1] Trial Tr. Vol. II p. 58, lines 15-24.

L.S. felt "like [she] was being ripped in half." Trial Tr. Vol. II p. 58, line 25 – p. 59, line 5. The pain continued as Staton "pushed his way into [L.S.] a few times." Trial Tr. Vol. II p. 59, line 14 – p. 60, line 12. He grabbed her face and put two of his fingers in her mouth, pressing down on her tongue. Trial Tr. Vol. II p. 60, lines 17-21. Although she was terrified, she estimated the rape did not last very long – probably a few minutes. Trial Tr. Vol. II p. 60, lines 10-16.

L.S. realized that she was bleeding, and she subsequently threw away her underwear. Trial Tr. Vol. II p. 59, lines 4-13. She also realized later that her father had ejaculated, although she was unfamiliar with that concept at the time. Trial Tr. Vol. II p. 60, line 25 – p. 61, line 17.

The next morning, Staton tried to speak to L.S. Although she was unsure of exactly what he said, he gave her $3.00 to keep what happened a secret from her mother. Trial Tr. Vol. II p. 62, line 20 –

[1] These facts comprise the uncharged "Butler County incident" that is the subject of the defendant's second complaint on appeal.

p. 63, line 4. L.S. kept the secret because she was afraid of Staton. Trial Tr. Vol. II p. 63, lines 8-15.

A few months later, L.S.'s parents separated. Trial Tr. Vol. II p. 63, lines 20-25. L.S. remained with her mother. Trial Tr. Vol. II p. 64, lines 1-20. Staton moved in with two friends in Waterloo, Ben and Cassidy, and eventually L.S. and her siblings began to visit their father on weekends. Trial Tr. Vol. II p. 65, line 12 – p. 68, line 25. Although Staton generally slept in the living room, L.S. recalled him once going into Ben's bedroom and calling her into the room while Ben was away. Trial Tr. Vol. II p. 70, line 20 – p. 72, line 5. Staton had been drinking alcohol, despite an agreement he had with L.S.'s mother not to drink around the children. Trial Tr. Vol. II p. 70, lines 12-17.

In Ben's bedroom, Staton gave L.S. a hug that lasted an uncomfortably long time before picking her up by her underarms and placing her on the bed. Trial Tr. Vol. II p. 74, lines 2-6. He ordered his daughter to take off her pants, crawled on top of her, and inserted his penis into her vagina. Trial Tr. Vol. II p. 76, lines 6-19. This occurred less than a year after the sexual abuse in New Hartford; it hurt, but was less painful than the first time Staton raped her. Trial

Tr. Vol. II p. 77, lines 10-18. As L.S. would later recall, "I didn't know what was happening - - I knew what happened to me was happening again and that it wasn't okay, but I didn't know exactly what was going on." Trial Tr. Vol. II p. 77, lines 21-25.

Staton grabbed L.S.'s face, held it, and instructed her to look at him. Trial Tr. Vol. II p. 78, lines 11-18. Staton was "being quiet" and L.S. could hear her siblings laughing and watching television in a different room. Trial Tr. Vol. II p. 78, line 25 – p. 79, line 7. Although she was not certain, L.S. believed that she saw light reflecting off of a piercing on her father's penis during the rape. Trial Tr. Vol. III p. 54, line 13 – p. 57, line 17. Afterward, L.S. pulled up her pants and went into the bathroom, where she cried for "quite awhile." Trial Tr. Vol. II p. 79, line 19 – p. 80, line 4. Later that night, the children ate chicken nuggets, which L.S. testified she stopped liking after that day. Trial Tr. Vol. II p. 80, lines 9-17. Again, she did not tell anyone what her father had done to her. Trial Tr. Vol. II p. 80, lines 18 – p. 81, line 1.

At some point, Staton moved from his friends' home and remarried. Trial Tr. Vol. II p. 81, line 14 – p. 82, line 10. On New Year's Eve, 2015, L.S. was staying with her father and his new wife, Tana. Trial Tr. Vol. II p. 81, line 17 – p. 85, line 14. She had turned

twelve a few months earlier. Trial Tr. Vol. II p. 86, lines 7-13. Staton was drinking alcohol and got into an argument with Tana, and she left the house. Trial Tr. Vol. II p. 86, line 21 – p. 89, line 2. When L.S. and her sister were in their bedroom, Staton came to the doorway and asked L.S. if G.S. was asleep. Trial Tr. Vol. II p. 91, lines 6-24. The defendant was angry, drunk, and "wobbly." Trial Tr. Vol. II p. 93, line 16 – p. 94, line 3. He walked in, closed the door "to a crack," pulled off L.S.'s comforter, and told her to remove her pants, which she described as Justice brand teal and lime green capri leggings with rhinestones and stars. Trial Tr. Vol. II p. 94, line 4 – p. 95, line 10.

Staton pulled down his pants and again raped his daughter. Trial Tr. Vol. II p. 95, line 15 – p. 96, line 12. As tears rolled down her face, he ordered her "to look at him again and told [her that she] shouldn't be crying" because it showed weakness. Trial Tr. Vol. II p. 96, line 21 – p. 98, line 11. When Tana returned the next day, L.S. tried to tell her that Staton sexually abused her but was unable to talk to her. Trial Tr. Vol. II p. 104, lines 19-21. Staton and Tana eventually broke up and he married a woman named Steph. Trial Tr. Vol. II p. 105, line 11 – p. 106, line 4.

L.S. began to have dreams involving her father. Trial Tr. Vol. II p. 106, line 15 – p. 107, line 6. She would awake in a panic. Trial Tr. Vol. II p. 107, lines 5-7. Her grades were slipping, her mental health was suffering, and she "couldn't convince [herself] that it hadn't happened anymore." Trial Tr. Vol. II p. 108, lines 3-8. L.S. finally told her mother what Staton had done to her. Trial Tr. Vol. II p. 108, lines 3-13. In her recurring dreams, Staton sexually assaulted her, and she realized that the dreams were actually memories she had been trying to ignore. Trial Tr. Vol. II p. 108, lines 5-13.

At trial, Staton's former wife and L.S.'s mother Heather testified. She confirmed that she went out with a friend to celebrate her birthday when they lived in New Hartford in Butler County and that she rarely left the house without her husband. Trial Tr. Vol. III p. 126, line 2 – p. 127, line 20. On the morning after her birthday, L.S. asked her mother to launder her sheets, and Heather noticed a bloodstain on them. Trial Tr. Vol. III p. 128, lines 13-25. She asked her then-nine-year-old daughter about the blood and did not recall her response, but Heather assumed it was from a nosebleed. Trial Tr. Vol. III p. 131, line 16 – p. 132, line 23.

Almost eight years later, L.S. would tell her mother that Staton raped her. Trial Tr. Vol. IV p. 134, line 5 – p. 136, line 11. L.S. – now sixteen years old – first told her in a grocery store that she dreamt her father sexually abused her. Trial Tr. Vol. III p. 136, lines 9-15. When they were back at home, Heather asked her daughter if "something had really happened." Trial Tr. Vol. IV p. 137, line 20 – p. 138, line 2. L.S. tearfully replied, "… [I]t wasn't a dream … it was real." Trial Tr. Vol. III p. 138, lines 3-9. Heather called the sheriff. Trial Tr. Vol. III p.138, lines 22-24.

Heather also testified that when she was married to the defendant, "There were a few times where he would shove his fingers in [her] mouth" during intercourse. Trial Tr. Vol. III p. 137, lines 5-15. Staton would typically put his fingers in Heather's mouth when he had been drinking. Trial Tr. Vol. III p. 137, lines 16-19. She testified that Staton had a penis piercing that he had removed on her 30th birthday in 2011 when he had to have emergency surgery on his spleen. Trial Tr. Vol. III p. 142, line 3 – p. 144, line 5.

Forensic interviewer Miranda Kracke also testified at trial. She explained the various reasons children may delay disclosure of sexual abuse, including "shame, embarrassment, [or] fear that everybody in

their community is going to know about what's occurred." Trial Tr. Vol. IV p. 24, lines 11-18. A child sexual abuse victim may not be completely aware that the sexual abuse is wrong or may be afraid that "bad things will happen" and that someone in his or her life may be hurt physically or emotionally. Trial Tr. Vol. IV p. 24, line 16 – p. 25, line 10. If the perpetrator is a beloved member of the family, she testified, the dynamics are further complicated. Trial Tr. Vol. IV p. 25, lines 11-25.

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Staton's current wife Stephanie testified in his defense at trial. She said he had not had a penis piercing since 2013 when they began dating, and he had never put his fingers in her mouth or grabbed her face during sex. Trial Tr. Vol. IV p. 82, line 9 – p. 85, line 19; p. 90, lines 15-25.

Staton testified in his own defense. He denied sexually abusing his daughter. Trial Tr. Vol. IV p. 126, lines 4-23.

Staton also presented the testimony of Dr. Kimberly Maclin, a psychology professor. She testified on the subject of dreams and memories, opining that dreams can contaminate memories. Trial Tr. Vol. V p. 18, line 23 – p. 39, line 13. She also expressed the view that

memories are generally subject to contamination by outside information such as conversations with others; she concluded that while a memory may seem true to the person recalling it, it is very difficult to "suss out" an untainted recollection. Trial Tr. Vol. V p. 43, lines 10-25.

As indicated, the jury convicted Staton of one count of second-degree sexual abuse, one count of third-degree sexual abuse, and one count of incest.

ARGUMENT

I. Substantial evidence supports Staton's convictions for second-degree sexual abuse, third-degree sexual abuse, and incest.

Standard of Review.

Sufficiency of the evidence claims are reviewed for the correction of errors at law. *State v. Hennings*, 791 N.W.2d 828, 832 (Iowa 2010). The 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).

Preservation of Error.

The State does not challenge error preservation. Although defense counsel moved for a judgment of acquittal here (Trial Tr. Vol. IV p. 73, line 21 – p. 79, line 17; Vol. V p. 77, lines 1-15), the Iowa Supreme Court held last year that a defendant need not make the motion to preserve a sufficiency of the evidence complaint on appeal. *State v. Crawford*, 972 N.W.2d 198, 195-202 (Iowa 2022).

Merits.

Staton first challenges the sufficiency of the evidence against him. He argues that the victim's memories originated from dreams and contends that her version of events was implausible. Defendant's Brief pp. 20-23. This court should find that the evidence establishing Staton's guilt was substantial.

As noted, when reviewing a challenge to the sufficiency of the evidence, the court views the evidence in the light most favorable to the State. *State v. Edouard*, 854 N.W.2d 421, 437 (Iowa 2014). The appellate court does not resolve conflicts in the evidence, assess the credibility of the witnesses, or weigh evidence. *State v. Nitcher*, 720 N.W.2d 547, 559 (Iowa 2006). The court makes any legitimate inferences and presumptions that may fairly and reasonably be

deduced from the evidence in the record. *State v. Hall*, 371 N.W.2d 187, 188 (Iowa Ct. App. 1985); *State v. Wheeler*, 403 N.W.2d 58, 60 (Iowa Ct. App. 1987). The test for whether the evidence is sufficient to withstand appellate scrutiny involves an inquiry whether the evidence is "substantial." *State v. Musser*, 721 N.W.2d 758, 760 (Iowa 2006).

The findings of the factfinder are to be broadly and liberally construed, rather than narrowly, and in cases of ambiguity, they will be construed to uphold the verdict. *State v. Price*, 365 N.W.2d 632, 633 (Iowa Ct. App. 1985). Evidence meets the threshold criteria of substantiality if it could convince a rational factfinder that the defendant is guilty beyond a reasonable doubt. *State v. Williams,* 695 N.W.2d 23, 27 (Iowa 2005). Substantial evidence to support the conviction may exist even if evidence to the contrary also exists. *State v. Frake*, 450 N.W.2d 817, 818-19 (Iowa 1990). "Inherent in our standard of review of jury verdicts in criminal cases is the recognition that the jury [is] free to reject certain evidence, and credit other evidence." *State v. Sanford,* 814 N.W.2d 611, 615 (Iowa 2012) (quoting *Nitcher*, 720 N.W.2d at 556).

In this case, L.S. – seventeen years old by the time of trial – testified in great detail about the sexual abuse she suffered at the hands of her father years earlier. Given the lapse of time, her recall was extraordinary and included specific dates and descriptions of clothing worn and statements made, among other details. *See* Trial Tr. Vol. II p. 50, line 5 – p. 104, line 21. Her testimony alone is substantial evidence of Staton's guilt. *See State v. Trane*, 934 N.W.2d 447, 455 (Iowa 2019) ("Here, the jury heard K.S. testify that Trane repeatedly and forcibly inserted his finger in her vagina and repeatedly grabbed her hand and put it on his groin area. K.S.'s testimony, standing alone, is sufficient to support Trane's conviction on this count."); *State v. Hildreth*, 582 N.W.2d 167, 170 (Iowa 1998) ("Even if the only evidence of a sex act is the alleged victim's testimony, it is sufficient to sustain a finding of guilt.").

Staton argues that the evidence presented at trial was insufficient because his daughter's memories of sex acts stemmed from dreams. Defendant's Brief pp. 20-22. It is true that L.S. was plagued with nightmares of the sexual abuse after it happened and the dreams helped her to remember what occurred. Trial Tr. Vol. II p. 105, line 2 – p. 108, line 22. She had actual recollections of each

event, however, despite trying to block out those traumatic memories. Trial Tr. Vol. II p. 108, lines 5-13. After L.S. described the incidents of sexual abuse in detail at trial, she was relentlessly cross-examined about her dreams versus her memories, as well as her previous statements. Trial Tr. Vol. II p. 114, line 8 – p. 152, line 8; p. 154, line 24 – p. 183, line 19; Vol. III p. 3, line 20 – p. 23, line 1; p. 30, line 7 – p. 58, line 16; p. 79, line 10 – p. 85, line 23. This victim endured a cross-examination that spanned 125 pages. *See* Trial Tr. Vol. II p. 114, line 8 – p. 152, line 8; p. 154, line 24 – p. 183, line 19; Vol. III p. 3, line 20 – p. 23, line 1; p. 30, line 7 – p. 58, line 16; p. 79, line 10 – p. 85, line 23. She maintained that on some level she always knew her father had abused her, even though she tried to convince herself that "nothing had happened." Trial Tr. Vol. III p. 82, line 19 – p. 84, line 19. L.S. explained that certain dreams triggered specific memories, such as looking at her purple alarm clock during the abuse. Trial Tr. Vol. III p. 84, line 14 – p. 85, line 21. As noted, the defense called a psychologist to testify about the connection between dreams and memories and her opinion that dreams – in addition to ordinary conversations – can contaminate memories. Trial Tr. Vol. V p. 18, line 23 – p. 43, line 25.

This record demonstrates that the jurors received a plethora of information regarding L.S.'s memories, her dreams, the circumstances corroborating her accounts of sexual abuse, and expert testimony on the subjects of dreams and memories. They could evaluate all of the testimony and weigh the competing theories of the case. The jury sorts out the evidence and decides who is most credible. *State v. Lopez*, 633 N.W.2d 774, 786 (Iowa 2001) (the factfinder is at liberty to believe "all, some, or none" of a witness's testimony). And even expert testimony is not sacrosanct; the trier of fact is not required to accept an expert opinion as conclusive. *Wheeler*, 403 N.W.2d at 61. The contaminated memory/dream theory was thoroughly presented and Staton's jury rejected it. This court should decline to disturb the guilty verdicts.

Staton also contends that the victim's account of the sexual abuse was implausible. Defendant's Brief pp. 20-22. He points to alleged inconsistencies, such as how his daughter could have noticed his penis piercing when he had removed it the year before she reported the sexual abuse, the fact that she said he lifted her up onto a bed when he contends there was only a mattress on the floor, and how others could be nearby in the house when any abuse occurred.

Again, these were all arguments about the credibility of L.S.'s version of events, which the jurors resolved to their satisfaction.

For instance, L.S. could have been mistaken about the penis piercing or the defendant could have reinserted it despite his claim to the contrary. The jury is never required to believe the defendant's version of events. *See State v. Arne*, 579 N.W2d 318, 326 (Iowa 1998). A mattress on the floor and a bed may seem the same to a young child. And finally, sexual abuse can occur surreptitiously while others are present in the home. *See State v. Lusk*, No. 15-1294, 2016 WL 4384672, at *2-3 (Iowa Ct. App. Aug. 17, 2016) (observing it was "not implausible" that the defendant touched the victim's genitals even when other people were in the room, given the chaotic nature of the atmosphere at the time).

In the end, none of Staton's factual challenges negates the evidence against him. On appeal, this court does not

> resolve conflicts in the evidence, [] pass upon the credibility of witnesses, [] determine the plausibility of explanations, or [] weigh the evidence; such matters are for the jury.

Musser, 721 N.W.2d at 761 (quoting *State v. Williams*, 721 N.W.2d 23, 28 (Iowa 2005)); *see also Wheeler*, 403 N.W.2d at 61 ("We… do not determine anew the weight to be given trial testimony… The

credibility of witnesses and the weight to be given their testimony is a function of the trier of fact."). This court should decline the defendant's invitation to reweigh the evidence here. Viewing the evidence in a light most favorable to the State, ample evidence supports Staton's convictions for second-degree sexual abuse, third-degree sexual abuse, and incest. Those convictions should be affirmed.

II. The trial court properly admitted evidence of Staton's prior sexual abuse of the victim.

Standard of Review.

"Generally, questions involving the admissibility of evidence are reviewed for an abuse of discretion." *State v. Jordan*, 663 N.W.2d 877, 879 (Iowa 2003). "However, to the extent a challenge to a trial court ruling on the admissibility of evidence implicates the interpretation of a rule of evidence, our review is for errors at law." *Id.*

Preservation of Error.

The defendant preserved error by seeking a pretrial determination on the issue of whether evidence of the Butler County allegation would be admissible and receiving a definitive ruling. *See*

Mar. 23, 2021 Motion for Admissibility; App. 11–12; Pretrial Motions Tr. p. 7, line 13 – p. 12, line 1.

Merits.

Staton next contends that the trial court improperly admitted evidence that he had abused L.S. once before when they lived in New Hartford in Butler County. Because evidence of the uncharged sexual abuse was admissible under Iowa Code section 701.11 and the caselaw, Staton cannot demonstrate any error or abuse of discretion.

Rule 5.404(b) provides that evidence of a person's other acts is admissible under certain circumstances:

> Evidence of a crime, wrong, or other act is not admissible to prove a person's character in order to show that on a particular occasion the person acted in accordance with the character... This evidence may be admissible for another purpose such as proving motive, opportunity, intent, preparation, plan, knowledge, identity, absence of mistake or accident.

Iowa R. Evid. 5.404(b).

In determining whether evidence of other crimes, wrongs, or acts is admissible, the court uses a three-step analysis. *State v. Putman*, 848 N.W.2d 1, 8-9 (Iowa 2014). The court must first determine whether the evidence is relevant to establish a legitimate,

non-character issue in the case. *Putman*, 848 N.W.2d at 9. Relevant evidence has "any tendency to make the existence of any fact that is of consequence… more probable or less probable than it would be without the evidence." Iowa R. Evid. 5.401. Second, there must be clear proof the defendant committed the prior bad act.[2] *Putman*, 848 N.W.2d at 9.

Third, if the evidence is relevant for a non-character purpose, the court should determine whether its probative value is substantially outweighed by the danger of unfair prejudice. *Putman*, *id.*; Iowa R. Evid. 5.403 ("Although relevant, evidence may be excluded it its probative value is substantially outweighed by the danger of unfair prejudice…"). Rule 5.403 does not render all prejudicial evidence inadmissible. *State v. Howell*, 557 N.W.2d 908, 912 (Iowa Ct. App. 1996). Instead, it only prohibits unfairly prejudicial evidence. *Id.* Unfairly prejudicial evidence is evidence that "appeals to the jury's sympathies, arouses its sense of horror,

[2] The clear proof requirement is also part of the probative value/danger of unfair prejudice analysis that the court performs. *See Putman*, 848 N.W.2d at 14 ("For purposes of clarity and consistency, whether clear proof exists should remain as part of the balancing process in addition to being analyzed as an independent analytical step.").

provokes its instinct to punish, or triggers other mainsprings of human action [that] may cause a jury to base its decision on something other than the established propositions in the case." *State v. Plaster*, 424 N.W.2d 226, 229 (Iowa 1988).

In sexual abuse cases, a specific statutory provision governs prior bad acts evidence:

> In a criminal prosecution in which a defendant has been charged with sexual abuse, evidence of the defendant's commission of another sexual abuse is admissible and may be considered for its bearing on any matter for which the evidence is relevant.

Iowa Code § 701.11. Section 701.11 allows the State to present evidence of prior acts of sexual abuse "without limiting such evidence to the specific categories in Iowa Rule of Evidence 5.404(b): 'motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident.'" *State v. Cox*, 781 N.W.2d 757, 761 (Iowa 2010).

Although the Iowa Supreme Court has limited the scope of Iowa Code section 701.11 in the context of sexual abuse involving other victims, it remains viable when the evidence pertains to the victim in the charged offense. *See Cox*, 781 N.W.2d at 762 ("Today, we address the issue purposefully left unanswered in *Reyes*: whether admitting a

defendant's acts of sexual abuse with a different victim violates due process."); *State v. Reyes*, 744 N.W.2d 95, 100-03 (Iowa 2008) (finding evidence of the defendant's prior sexual abuse of the same victim admissible under section 701.11 and rejecting the defendant's due process challenge).

In *Reyes*, the court discussed a long-standing prior bad acts exception that emerged from the caselaw predating section 701.11; that exception allowed evidence establishing a "passion or propensity for illicit sexual relations" with a particular victim. *See Reyes*, 744 N.W.2d at 102-03 (noting the relevance of "the nature of the defendant's relationship and feelings toward a specific individual"); *State v. Elston*, 735 N.W.2d 196, 199-200 (Iowa 2007) (concluding evidence that the defendant took nude photographs of the child he molested was admissible); *State v. Roby*, No. 05-0630, 2006 WL 2706124 (Iowa Ct. App. 2006) (*citing State v. Spaulding*, 313 N.W.2d 878, 880 (Iowa 1981) and discussing "our conclusion that the *Spaulding* exception to Rule 5.404(b) enjoys continued viability…"); *State v. Turner*, No. 03-0992, 2004 WL 1396179 (Iowa Ct. App. 2004); *State v. Coleman*, No. 02-0423, 2003 WL 21919175, *2 (Iowa Ct. App. 2003); *State v. Query*, 594 N.W.2d 438, 443-44 (Iowa Ct.

App. 1999); *State v. Schaffer*, 524 N.W.2d 453, 456 (Iowa Ct. App. 1996); *State v. Seevansha*, 495 N.W.2d 354 (Iowa Ct. App. 1992); *State v. Tharp*, 372 N.W.2d 280, 281-82 (Iowa 1985) ("Iowa has determined that sex abuse cases warrant a special rule."); *State v. Maestas*, 224 N.W.2d 248, 250 (Iowa 1974); *State v. Kinkade*, 43 N.W.2d 736, 738 (Iowa 1950).

A. Relevance.

The trial court in this case properly admitted evidence of the Butler County sexual abuse. The testimony marked the first time Staton sexually abused his daughter and was relevant to show the nature of their relationship: "The existence of prior sexual abuse involving the same alleged perpetrator and victim… has relevance on the underlying criminal charge because it shows the nature of the relationship between the alleged perpetrator and the victim." *Reyes*, 744 N.W.2d at 102; *Cox*, 781 N.W.2d at 768 (observing that evidence of prior crimes against the same victim supplies the context of the crime or may be necessary for a full presentation of the case). Staton contends here, however, that evidence of prior sexual abuse against L.S. was not relevant because there was no legitimate dispute as to the sexual nature of any alleged contact; he points out that his

defense was a complete denial of the allegation of sexual intercourse with his daughter, rather than a claim of accidental or non-sexual touching. Defendant's Brief pp. 32-33.

The defendant's narrow construct of admissibility in this case is inconsistent with Iowa Code section 701.11, the common-law "same victim" exception, and *Reyes* and its progeny. First, section 701.11 is broader than Rule 5.404(b). Evidence of another sexual abuse admitted under section 701.11 "is admissible and may be considered for its bearing on *any matter* for which the evidence is relevant." Iowa Code § 701.11 (emphasis added). The Iowa appellate courts have already specifically determined in *Reyes* and in cases before and after *Reyes* that the nature of the relationship between the defendant and a particular sexual abuse victim is relevant. *See Reyes*, 744 N.W.2d at 102-03 (after noting that the defendant's prior abuse of the victim has "relevance," the court notes: "The Iowa caselaw demonstrates that the rule announced in Iowa Code section 701.11, to the extent it applies to prior sexual abuse of the same victim, conforms to historical practice [under Rule 5.404(b)]... We hold that a defendant's fundamental right to a fair trial is not jeopardized by the admission of such evidence."); *see also* Laurie Kratky Doré, *Iowa Practice Series:*

Evidence § 5.404:6(4), at 348 (2022-23 ed.) (in suggesting that section 701.11 may be redundant after *State v. Cox*, Professor Doré observes that because other instances of sexual abuse "demonstrate[] the legitimate non-propensity purpose of showing the nature of the relationship between the perpetrator and the victim, it is already admissible under Rule 404(b)").

Second, the cases applying *Reyes* and section 701.11 do not hinge admissibility on a dispute as to the sexual nature of the contact. *See, e.g.*, *State v. Moss*, No. 21-1301, 2023 WL 152480, at *1, 6 (Iowa Ct. App. Jan. 11, 2023) (applying *Reyes* and section 701.11 to affirm defendant's second-degree sexual abuse convictions when evidence of previous, uncharged sexual abuse of victim was admitted; allegations involved hand-to-genital contact and penis-to-buttocks contact over clothing with no suggestion of non-sexual or accidental touching); *State v. Atkins*, No. 20-0488, 2023 WL 3895198, at *4-5 (Iowa Ct. App. Sept. 1, 2021) (affirming trial court's admission of evidence that defendant previously directed his two child sex victims to perform sex acts on each other; court cites *Reyes* and section 701.11 in finding evidence admissible in case involving at least one allegation of sexual intercourse and no indication of a claim of non-sexual touching);

State v. Blaufuss, No. 15-2174, 2016 WL 6396345, at *1-4 (Iowa Ct. App. Oct. 26, 2016) (in sexual abuse case involving allegations of intercourse with a child, counsel was not ineffective in failing to object to evidence of prior sexual abuse of victim; court notes the evidence "was crucial to the prosecution's case because Blaufuss denied any sexual contact with her"); *State v. Wright*, No. 12-2138, 2014 WL 956064, at *3-4 (Iowa Ct. App. Mar. 12, 2014) ("In the present case, there was a legitimate issue as to whether the [sexual] abuse of M.W. actually occurred. Wright testified on his own behalf and denied the allegations… [T]he physical evidence of sexual abuse was inconclusive. Therefore, testimony of another incident of sexual abuse corroborated by a contemporaneous report of the same was relevant to whether the charged conduct actually occurred.").

As in each of the cases cited above, Staton denied any sexual contact with his daughter. Evidence illuminating his illicit sexual passion for her in particular was therefore relevant to demonstrate the relationship between the two and to establish that the charged conduct actually occurred. The evidence did not establish his general propensity to commit bad acts. It was a textbook example of relevant

evidence under *State v. Reyes*, section 701.11, and the long-standing "illicit passion for a particular victim" exception.

B. Probative Value v. Prejudicial Effect.

The trial court also rightly concluded that the probative value of the Butler County sexual abuse evidence was not substantially outweighed by the danger of unfair prejudice. The uncharged conduct was identical to the charged conduct – forced intercourse while the defendant was drunk. Staton argues that this similarity increased the prejudicial effect. To the contrary, that fact that the behavior was no more egregious than the offenses for which Staton was being tried lessened the potential for unfair prejudice. *See State v. Larsen*, 512 N.W.2d 803, 808 (Iowa Ct. App. 1993) (in making the unfair prejudice inquiry, the court compares the charged offense to the uncharged conduct and notes it was not "more sensational or disturbing"); *Wright*, *id.* (noting the similarity between the charged and uncharged behavior, the court finds it was unlikely to inflame the passions of the jury); *Blaufuss*, *id.* (same). Although Staton argues that allegations he paid his daughter $3.00 to keep quiet and that he caused her to bleed and experience pain were particularly inflammatory, that testimony pales in comparison to the substantive

allegations for which he was tried – that he raped his young daughter twice, forcing her to look at him during the sex act and mocking her for crying. The Butler County evidence was not unfairly prejudicial.

Moreover, the trial court instructed the jury on the proper use of the uncharged sexual abuse:

> You have heard evidence that the defendant allegedly committed other acts with [L.S.] before March of 2013. If you decide the defendant committed these other acts, you may consider those acts only to determine whether the defendant has a sexual passion or desire for [L.S.]. You may not consider them as proving that the defendant actually committed the act charged in this case.

Jury Instr. No. 14; App. 13.

The jury is presumed to follow the trial court's instructions. *State v. Proctor*, 585 N.W.2d 841, 845 (Iowa 1998). There is no reason to believe this jury did not. Staton's unfair prejudice argument should be rejected.

C. Harmless Error.

Alternatively, if this court disagrees and finds that the trial court should not have admitted evidence of the Butler County sexual abuse, it should still deny Staton relief. A trial court's erroneous admission of evidence does not require reversal unless "a substantial

right of a party is affected." *State v. Parker*, 747 N.W.2d 196, 209 (Iowa 2008) (quoting Iowa R. Evid. 5.103(a)). An error in an evidentiary ruling that is harmless may not be a basis for relief on appeal. *Parker*, 747 N.W.2d at 209. For nonconstitutional errors, the court asks whether the defendant has been "injuriously affected or suffered a miscarriage of justice." *Id.* (citation omitted). The court considers a variety of circumstances, including overwhelming evidence of guilt. *Id.* at 210.

Here, as discussed above, L.S.'s testimony describing the two charged offenses was unusually detailed and credible. If the court concludes the Butler County sexual abuse should not have been admitted, it should also conclude that Staton's rights were not affected and the verdict was not attributable to that testimony. Because Staton would have been convicted with or without the Butler County evidence, any error should be deemed harmless. Staton's convictions for second-degree sexual abuse, third-degree sexual abuse, and incest should be affirmed.

III. The trial court did not infringe on the defendant's right to allocution by interrupting defense counsel.

Standard of Review.

"Our review of sentencing procedures is for an abuse of the court's discretion." *State v. Craig*, 562 N.W.2d 633, 634 (Iowa 1997).

Preservation of Error.

A defendant is not required to preserve error in the context of a sentencing proceeding. *State v. Thomas*, 520 N.W.2d 311, 312 (Iowa 1994).

Merits.

Staton's third complaint is that the trial court failed to honor his right to allocution. Because the record reflects that the court complied with the allocution requirement, this court should deny Staton relief.

A defendant's right to allocution at the time of sentencing is two-fold:

> A sentencing court is required under Iowa Rule of Criminal Procedure 22(3)(a) to ask the defendant "whether he or she has any legal cause to show why judgment should not be pronounced against him or her." The rule continues on in subsection (d) to further require that prior to the court's rendition of judgment "counsel for defendant, and the defendant personally, shall be allowed to address the court where either wishes to make

> a statement in mitigation of punishment." Together these requirements are referred to as a defendant's right to "allocution."

State v. Birch, No. 99-1833, 2000 WL 1520258, *1 (Iowa Ct. App. Oct. 13, 2000); *see also Craig*, 562 N.W.2d at 634-37.

The sentencing court need not use any particular language to satisfy the allocution requirement. *Birch,* 2000 WL 1520258, at *1; *Craig,* 562 N.W.2d at 635. The critical inquiry is "whether the defendant is given an opportunity to volunteer any information helpful to the defendant's case." *Craig, id.* at 634-35; *see also Birch, id.* ("Therefore, as long as the district court provides the defendant with an opportunity to speak regarding his punishment, the court is in compliance with the rule."); *State v. Christensen*, 201 N.W.2d 457, 460 (Iowa 1972) (finding the question "Is there anything you would like to say to the court before I pronounce sentence?" complied with the allocution requirement); *State v. Patterson*, 161 N.W.2d 736, 738 (Iowa 1968) ("Certainly defendant cannot now assert he was not given the opportunity to make a statement simply because that opportunity was not couched in the precise words of the statute").

The right to speak in mitigation of punishment is personal to the defendant, and an opportunity for counsel to speak to the court is

insufficient to constitute substantial compliance. Iowa R. Crim. P. 2.23(3)(d); *Craig*, 562 N.W.2d at 637; *see also Patterson*, 161 N.W.2d at 738 ("The trial court was careful to give both defendant and his counsel the right to be heard.").

In this case, Staton does not dispute that he personally was given the opportunity to speak to the court. Rather, he faults the trial court for interrupting defense counsel:

> THE COURT: Okay. All right, [defense counsel] Mr. Junaid, then your recommendation for sentence.
>
> MR. JUNAID: Thank you, Your Honor. At the outset I would ask the Court to order the sentences imposed concurrently rather than consecutively, and the reasons for that are multitude. But when you consider the fact that Count I has a 17-and-a-half-year mandatory minimum, we're talking about approaching the rest of Mr. Staton's life in prison.
>
> And running these concurrent or running them consecutive, that 17 and a half years is going to be served one way or another. And as the State said, this is one of the stiffest penalties we have followed by lifetime parole and lifetime registry if Mr. Staton does exit prison.
>
> You combine those together, and it is one of the stiffest penalties we have. And running them consecutively -- running them concurrently, I should say, is plenty of punishment in this case. And I would hope the

Court would run them concurrently for that reason.

I don't think that it would serve the interest of the public, to protect the public to run them consecutively any further. There are no other allegations that Mr. Staton victimized anyone in the public. I believe the legislature has sent a message that 17 and a half years as a mandatory minimum is deterrent enough, and that would deter any future potential offense or offenders.

And as far as punishment goes, as I said, we're probably talking about the rest of Mr. Staton's life in prison. I would point out to the Court that as this case progressed over the time with COVID and things were shut down, we had a long time; and there were numerous plea offers made. And Mr. Staton –

[THE PROSECUTOR] MR. WILLIAMS: I'm going to object at this point, Your Honor, to any reference to plea agreements during this stage.

THE COURT: Yeah. The Court's not going to entertain or be interested in plea offers, so let's skip over that and pick back up.

MR. JUNAID: I tell my defendants when we have a sentencing that if they're going to speak that what they speak about should reflect an acceptance of responsibility and remorse. And this is a strange case. Maybe it's not strange, but it's a unique case because Mr. Staton can't do that.

And that's not because he is petulant. It's because Mr. Staton has all along insisted -- and he still does as he sits here, regardless of what

> the jury verdict was -- that he can't take any kind of responsibility for something that he insists that he did not do.
>
> I'm going to let Mr. Staton speak for himself, also. But I just want the Court -- again, I hope the Court will consider running these sentences concurrently as that's plenty of punishment for someone in Mr. Staton's position. Thank you.
>
> THE COURT: Thank you, Mr. Junaid.

Sent Tr. p. 11, line 15 – p. 13, line 24.

The court then told Staton that he had the right to "say anything you'd like to about your case or your sentence" and invited him to speak. Sent. Tr. p. 13, line 25 – p. 14, line 4. Staton spoke about his daughter lying and the damaging effects of lies, adding that he forgave his daughter for lying. Sent. Tr. p. 14, lines 10-23.

On appeal, Staton cites *State v. Stacy* in support of his claim. In *Stacy*, No. 05-0475, 2006 WL 469022, at *1 (Iowa Ct. App. Mar. 1, 2006), the trial court prevented defense counsel from arguing in mitigation of his client's sentence:

> [DEFENSE COUNSEL]: My client is currently a student, 24[,] goes to college –
>
> THE COURT: Okay, Mr. Stacy, is there anything else would want to say before I impose your sentence?
>
> A: (defendant indicates negatively)

Stacy, *id*. The *Stacy* court found that the trial court did not substantially comply with Rule 2.23(3)(d) because defense counsel "was not allowed to complete his thought about mitigation of Stacy's sentence." *Id.*

Here, while the court did interrupt defense counsel, the similarity to *Stacy* ends there. The court told defense counsel that it was not interested in hearing about pretrial plea negotiations and asked counsel to "skip over that and pick back up." Sent. Tr. p. 13, lines 4-6. The defense lawyer was not completely precluded from speaking any further, as in *Stacy*. Counsel was, in fact, invited to continue speaking. Sent. Tr. p. 13, lines 4-6. The court was merely limiting his remarks to relevant considerations. And counsel did "pick back up" and make the same point he was almost certainly going to make before the court stepped in. When read in context, defense counsel's abridged statement about "numerous plea negotiations" was likely a reference to Staton maintaining his innocence, despite offers to resolve the case before trial. *See* Sent. Tr. p. 13, lines 1-23. Counsel immediately began speaking about his client's lack of remorse, observing that "he can't take responsibility from something that he insists that he did not do." Sent. Tr. p. 13,

lines 13-28. He went on to say that he was "going to let Staton speak for himself" before again asking for concurrent sentences in conclusion and thanking the court. Sent. Tr. p. 13, lines 19-23. If defense counsel believed that he had been prevented from fully arguing on the defendant's behalf, he did not bring that fact to the court's attention. *See State v. Millsap*, 547 N.W.2d 8, 10, n. 1 (Iowa Ct. App. 1996) (urging defense counsel to bring errors in allocution procedure to trial court's attention "to avoid the time and expense of an appeal"). Because counsel was permitted to speak on his client's behalf – notwithstanding a brief interpretation and limitation on the presentation of irrelevant information – Staton's right to allocution was honored. *Stacy* is distinguishable and does not aid Staton.

In sum, defense counsel was not denied the ability to argue in mitigation. The judge gave Staton and defense counsel the opportunity to speak on the subject of punishment, and both did. That is all Rule 2.22(3)(d) requires. Staton's contention to the contrary should be rejected. His convictions and sentence should be affirmed.

CONCLUSION

For the reasons discussed above, the State respectfully requests that the court affirm Chad Staton's convictions for second-degree sexual abuse, third-degree sexual abuse, and incest.

REQUEST FOR NONORAL SUBMISSION

Staton has requested nonoral submission. The State also believes the issues raised do not require further elaboration. If the defendant is granted oral argument, however, the State asks to be heard.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

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Dated: June 9, 2023

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