IN THE SUPREME COURT OF IOWA

SUPREME COURT NO. 24-0769
Polk County No. FECR371596

STATE OF IOWA,
Appellee/Cross-Appellant,

v.

LYNN MELVIN LINDAMAN,
Appellant-Cross-Appellee.

APPEAL FROM
THE DISTRICT COURT OF POLK COUNTY
THE HONORABLE
DISTRICT COURT JUDGE DAVID NELMARK
AND CROSS APPEAL FROM
THE HONORABLE
DISTRICT COURT JUDGE CHARLES C. SINNARD

BRIEF FOR APPELLANT/CROSS APPELLEE

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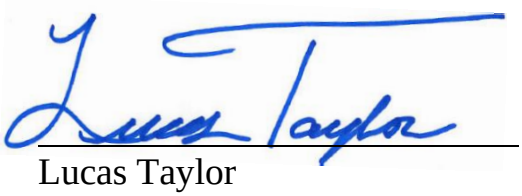
CERTIFICATE OF SERVICE

On the 10th day of October, 2024, the undersigned certifies that a true copy of the foregoing instrument was served upon Appellant/Cross-Appellee, Lynn Melvin Lindaman, by placing one copy thereof in the United States mail, proper postage attached, addressed to said Appellant/Cross-Appellee at:

Lynn Melvin Lindaman, #6752581
Iowa Medical & Classification Center
2700 Coral Ridge Ave.
Coralville, IA 52241



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ROUTING STATEMENT

Pursuant to Iowa Rule of Appellate Procedure 6.1101(3), it is

appropriate for this case to be transferred to the Court of Appeals.

NATURE OF THE CASE, THE PROCEEDINGS AND DISPOSITION OF THE CASE IN DISTRICT COURT

This is a direct appeal by Appellant/Cross-Appellee, Lynn Melvin Lindaman, from his conviction, judgment, and sentence following a jury trial in Polk County Case Number FECR371596. On June 29, 2023, criminal complaints were filed charging Lindaman with two counts of Sexual Abuse in the Second Degree in violation of Iowa Code Section 709.3(1)(b). D0001 & D0002; Crim. Complaints (06/29/2023). On August 9, 2023, a Trial Information was filed charging Lindaman with the same, but also added to Count I the enhancement of a "second or subsequent" offense under Iowa Code Section 902.14. D0023; T.I. (08/09/2023).

The defense moved to dismiss the enhancement on the grounds that Section 902.14 did not cover Lindaman's prior conviction. D0035; M. to Dismiss (09/13/2023). This matter was later resolved between the parties. D0036; Order RE Dismissal (09/15/2023). The result was an Amended Trial Information that applied a different enhancement to both counts pursuant to Iowa Code Section 901A.2(3). D0092; Amended T.I. (11/06/2023). Thus, Lindaman went to trial on the one of the Class B Felony charges.

Before trial, the defense filed a Motion for Change of Venue. D0162; M. RE Venue (09/18/2023). The District Court ordered questionnaires for two jury pools and later denied this motion on the basis, among other considerations, that less than 20% showed knowledge of the case. D0161; Ruling RE Venue (01/22/2024). The defense later filed a Motion to Suppress Evidence and a Brief in Support alleging a violation of Lindaman's Miranda rights as well as a violation of his rights under Section 804.20. D0042 & D0043; M.T.S. & Brief (09/18/2023).

Following a hearing on the matter, the Court granted the motion in part, specifically with regard to the Section 804.20 violation. D0108; Ruling on M.T.S. (12/17/20023). This ruling is the focus of the state's attempt to Cross Appeal. The Defense filed a Second Motion to Suppress, but this was ultimately denied. D0121; 2nd M.T.S. (01/05/2024); and D0186; Ruling on 2nd M.T.S. (02/05/2024). The second motion to suppress became irrelevant as information sought to be excluded was done so by the motion in limine. Otherwise the case proceeded to trial in an ordinary fashion.

Trial began on February 12, 2024. Before trial began, the State made an oral motion to dismiss Count II, and the case proceeded on Count I alone. D0310; Order Dismissing Ct. II (02/16/2024). Trial continued for five days

and February 16, 2024, the jury returned a verdict of guilty for the charge of Sexual Abuse in the Second Degree. D0300; Criminal Verdict (02/16/2024). A separate trial regarding the prior offense enhancement was scheduled, but Lindaman ultimately stipulated to this finding. D0306; Order Setting Trial; (02/17/2024); and D0321; Plea Order (04/12/2024).

On April 1, 2024, the defense filed a Motion for New Trial raising the issues examined in the instant appeal. D0319; M.N.T. (04/01/2024). The matter was heard at the scheduled sentencing hearing on April 26, 2024, where the District Court denied Lindaman's claims. D0351; Sent. Tr. at 14:11-20 (04/26/2024).

That day, the Court sentenced Lindaman to a period of incarceration not to exceed 50 years. Pursuant to the Section 901A.2 enhancement, this sentence was barred from being reduced under Chapter 903A or otherwise being reduced by more than fifteen percent. Furthermore the enhancement included an additional term of parole or work release not to exceed 2 years following his release. D0328; Order of Disposition (04/26/2024). The court's judgment also included a special sentence under Iowa Code Section 903B.1. Following his incarceration, Lindaman would be required to register as a sex offender, undergo the Sex Offender Treatment Program, and be

subject to electronic tracking and monitoring. D0328; Order of Disposition (04/26/2024).

Lindaman filed a timely notice of appeal on May 8, 2024. D0337; N.O.A. (05/08/2024). The State of Iowa filed a Notice of Cross Appeal on May 17, 2024. D0343; N. of Cross Appeal (05/17/2024).

STATEMENT OF THE FACTS

On June 29, 2023, criminal complaints were filed charging Lindaman with two counts of Sexual Abuse in the Second Degree in violation of Iowa Code Section 709.3(1)(b). D0001 & D0002; Crim. Complaints (06/29/2023). These allegations were first made on June 27, 2023, during a dinner gathering at Lindaman's residence attended by Ann, Aaron, and Lauren King. D0120; Brief in Support (01/05/2024).

Aaron King testified that H.K. accused the defendant during the course of dinner apropos of any prior or related conversation. D0349; TT Vol. 3 at 63:14-17 (02/14/2024). Lauren and Aaron then departed the residence with H.K. D0176; Deft.'s 1st M.I.L. at 1 (02/01/2024). Anne then questioned Lindaman regarding the allegations which were later related to law enforcement and examined in depositions. D0176; Deft.'s 1st M.I.L. at 1

(02/01/2024). Aaron then notified police of the incident resulting in the instant charges. D0349; TT Vol. 3 at 67:2-3 (02/14/2024).

H.K. was deposed before trial and was questioned on the substance of the allegations themselves. During her examination, H.K. testified that the body part "he was rubbing on you" was her "heinie." D0304; Exh. A at 69:16-22 (01/25/2024). H.K. equivocated in her description of what part of her body this constituted. D0304; Exh. A at 69-70:23-23 (01/25/2024). Relevant to the arguments below, when asked if she had heard the word "vagina," H.K. testified that she had "not really." D0304; Exh. A at 70 :14-15 (01/25/2024).

At trial, H.K. was called to testify once again. However, her testimony was conspicuously more detailed. Specifically, H.K. used the word "vagina" without hesitation. D0350; TT Vol. IV at 105:10-12 (02/15/2024). On cross-examination, defense counsel questioned H.K. about this, and she admitted that the prosecutor, Meggan Guns, had "helped [her] learn that word." D0350; TT Vol. IV at 132:8-25 (02/15/2024). H.K. went on to relate that her father had told her "it's not hiney, it's actually vagina." D0350; TT Vol. IV at 133:1-2 (02/15/2024).

H.K.'s testimony further raised the issue of prior bad acts when she testified that that her mom "said that he was a bad man…" D0350; TT Vol. IV at 112:5, & 7-8 (02/15/2024). Counsel addressed this concern directly with the court and brought the issue of the State's failure to disclose H.K.'s conversations about any alleged prior acts to the court's attention in the same colloquy. D0350; TT Vol. IV at 121-122 (02/15/2024). This was orally denied at that time. D0350; TT Vol. IV at 128: 6-7 (02/15/2024). H.K. also made the claim that her mother, Lauren King, would hit her "sometimes when she's mad." D0350; TT Vol. IV at 140:19-25 (02/15/2024). When Lauren herself was asked about this, she summarily denied ever "slapping" H.K. or any corporal punishment beyond spanking. D0350; TT Vol. IV at 158:5-12 (02/15/2024).

The court likewise denied defense counsel's multiple attempts to exclude the testimony of Anne Lindaman involving private conversations between her and the defendant. D0350; TT Vol. IV at 83:22-25; and 85:10 (02/15/2024). Her testimony involved statements by Lindaman that could be construed weird and problematic. Defense counsel first raised these claims in the first motion in limine. D0176; Deft.'s 1st M.I.L. (02/01/2024).

Each of these issues was first raised by the defense in pretrial filings, during trial, and further argued in the Motion for New Trial. Any additional relevant facts will be discussed below.

ARGUMENT

I. H.K.'S TESTIMONY THROUGH CLOSED-CIRCUIT TELEVISION INFRINGED UPON LINDAMAN'S RIGHT TO CONFRONTATION AND CANNOT BE REMEDIED BY TWO-WAY TELEVISION.

Preservation of Error:

In response to the State's notice, Lindaman first raised the issue by filing a formal resistance. D0128; Resistance (01/09/2024). This was further resisted in oral proceedings at a pretrial hearing on the matter. D0353; Tr. Tr. M. Hearing at 45:5-11 (01/19/2024). Error was thus preserved through the pleadings, arguments, and the court's ruling thereupon. *See State v. Rupe*, 534 N.W.2d 442, 443-44 (Iowa 1995).

Standard of Review:

This issue examines section 10 of Article I of the Iowa Constitution, and as a constitutional claim, is therefore reviewed de novo. *State v. Rogerson*, 855 N.W.2d 495, 498 (Iowa 2014).

Merits:

In *State v. White*, the Iowa Supreme Court charted its own path with the Confrontation Clause by mandating that witnesses provide their testimony while viewing the accused. 9 N.W.3d 1, 15 (Iowa 2024). The Iowa Constitution requires that defendants meet accusers face to face: "In all criminal prosecutions, . . . the accused shall have a right . . . to be confronted with the witnesses against him." Iowa Const. art I, § 10. The court concluded that the Iowa Constitution necessitated face-to-face confrontation and rejected the notion that it merely expressed a mere "preference" for it. *Id*. at 11. The court unequivocally ruled that the use of closed-circuit television for witness testimony, where the witness cannot see the accused, violates the right to confront witnesses. *Id*.

Face-to-face confrontation requires witnesses to be both visible to the accused and able to see the accused. *Id*. at 8. H.K., the complaining witness, was allowed to testify at trial outside the presence of the jury and Lindaman. D0165; Order RE Child Test. (01/23/2024). A closed-circuit television system allowed Lindaman to see the witnesses indirectly, but it was not a "two-way" system. D0165; Order RE Child Test. at 2 (01/23/2024). The court used a "one-way" system, not allowing the witnesses to see Lindaman while they testified against him. This violated Lindaman's right of

confrontation under article I, section 10 of the Iowa Constitution. *White* requires a reversal in this matter for that reason alone.

Additionally, a two-way system infringes upon the Confrontation Clause, undermining the objectives of confrontation and obstructing the right to a fair trial. A two-way system would maintain the separation between the witness and the defendant, while simultaneously enabling both parties to observe one another via video. The court in *White* declined to find Iowa Code §915.38(1)(a) (2020) wholly invalid, as they lacked the record on how a two-way system would operate. *Id*. at 14. Nevertheless, the court in *White* has already articulated the reasons why Section 915.38(1)(a) should be declared unconstitutional, irrespective of the quality of video or the configuration of cameras and monitors.

Section 915.38(1)(a) requires the court to make a specific finding that "that such measures are necessary to protect the minor from trauma." This language is intended to mirror that of the holdings of *Maryland v. Craig*. 497 U.S. 836, 838 (1990)(holding that the requisite necessity finding must be specific and find that the child would be traumatized by the defendant's presence) The *White* court found that "*Craig*'s view cannot be reconciled with our understanding of the Iowa Constitution" *White*, 9 N.W.2d at 11.

The *Craig* decision includes a robust dissent by Justice Scalia, who characterizes the majority ruling as a "subordination of explicit constitutional text to currently favored public policy." 497 U.S. at 861 (Scalia, J., dissenting). Justice Scalia's dissent is undoubtedly significant, as the *White* decision mirrors his arguments. See 9 N.W.3d 1. The public policy articulated by *Craig* aimed to shield a minor from trauma by preventing their testimony in the presence of the assailant, justified by the assertion that the procedures ensured the evidence was "reliable." *Id*. at 838. However, in Justice Scalia's view, the Confrontation Clause "does not guarantee reliable evidence; it guarantees specific trial procedures that were thought to assure reliable evidence, undeniably among which was 'face-to-face' confrontation." *Id*. at 862. He further argued that "the 'special' reasons that exists for suspending one of the usual guarantees of reliability in the case of children's testimony are perhaps matched by "special" reasons for being particularly insistent upon it in the case of children's testimony." *Id*. at 836. Justice Scalia went on to discuss the early research (at the time) of the suggestibility of child memory and the issues with altered memory. *Id*. Justice Scalia's concern articulated in his dissent would undoubtedly remain unassuaged by the emergence of Zoom, Meetings, and other Silicon Valley

enterprises. The term "face-to-face" is unambiguous, and there are no constitutionally permissible alternatives, even with the existence of high-definition video and audio.

The *White* decision highlight's the importance of a witnesses' ability to see the accused, so the jury can "draw its own conclusions" as to credibility. *White*, 9 N.W.3d at 10. However, Section 915.38(1)(a) subverts this purpose by mandating the district court to render a pretrial determination of the witnesses' credibility, and to treat said witness differently. While Section 915.38(1)(a) does not specifically mention credibility, the court assess whether "trauma" could occur by testifying. Trauma can only manifest if the observer was, in fact, a victim of the offense. Hence, a determination that testifying in person is traumatic requires a determination that testimony is credible.

This notion is apparent during the hearing pertaining to closed-circuit television in this case. As required by Section 915.38(1)(a), the state called Amanda Rennolet, H.K.'s therapist. Rennolet testified that, in her assessment, H.K. exhibited post-traumatic stress disorder and recommended against H.K. testifying in person. D0357 Tr. M. Hearing at 28:01-30:15 (01/19/2024). Rennold came to the conclusion that H.K. was sexually

abused. D0357 at 34:13-34:16. However, Rennold was not a forensic psychologist and was, therefore, unable to contest the veracity of H.K.'s assertions. D0357 at 33:03-33:15 Yet her testimony, which bolsters the credibility of H.K., is the deciding factor in this hearing. D0165; Order RE Child Test. at 2 (01/23/2024). Credibility vouching is prohibited, except when applied to undermine a constitutional right according to Section 915.38(1)(a). *See State v. Dudley*, 856 N.W.2d 668, 677 (Iowa 2014) (holding that credibility vouching for witnesses violates the jury's role as fact finder)

While the hearing assessing trauma is held outside the presence of the jury, its implications are certainly not. Special treatment of witnesses violates a right to a fair trial. The influence of the trial judge on the jury "is necessarily and properly of great weight" and "his lightest word or intimation is received with deference and may prove controlling." *Quercia v. United States*, 289 U.S. 466, 470, (1933). Treatment of witness in a special manner can show favoritism; "[a] judge's slightest indication that he favors the government's case can have an immeasurable effect upon a jury." *United States v. Singer,* 710 F.2d 431, 437 (8th Cir. 1983).

The judge's decision to protect the child witness from trauma strengthens the credibility of their testimony by signalling to the jury that the child requires protection. A jury observing a child via video, isolated from the defendant, in a manner distinct from all other witnesses, influences their perception. If the court treats evidence of a specific class distinctly and uniquely, jurors will inevitably do the same.

This concern regarding the potential to influence a jury is well-established. The courts have determined that jury instructions must not unduly highlight a complainant's testimony with regard to other witnesses. *State v. Kraai,* 969 N.W.2d 487, 492 (Iowa 2022) "[I]t is not the function of the courts to assist the government in the prosecution of criminal cases by emphasizing the complainant's testimony over all other testimony…" *Id*. at 495 (Iowa 2022) The courts take great lengths to shield a defendant from being seen by a jury in jail attire in order to ensure that a defendant does not appear menacing. *See State v. Johnson*, 534 N.W.2d 118, 126 (Iowa Ct.App.1995) (noting that requiring defendant to appear before the jury in prison clothing creates an unacceptable risk the jury may consciously or subconsciously be influenced in its deliberations) (citing *Estelle v. Williams*, 425 U.S., 501, 512, (1976)); *see also State v. Wilson*, 406 N.W.2d 442, 449

(Iowa 1987) (stating that a defendant is usually not restrained in the courtroom in front of the jury in order to prevent the creation of prejudice in the minds of the jurors). It is logical to conclude that isolating a child from the defendant would be more harmful in the jury's mind.

The U.S. Supreme Court "never doubted" that the confrontation right "guarantees the defendant a face-to-face meeting with witnesses appearing before the trier of fact. 9 N.W.3d at 8; quoting *Coy v. Iowa*, 487 U.S. 1012, 1016, (1988). In contrast to the uncertainty voiced by other states regarding this right, Iowa has restored its belief in the fundamental principle that video cannot supplant the integrity of in-person testimony.

Remedy:

Error was not harmless. The admission of evidence in violation of the confrontation clause does not mandate reversal if the State can establish the error was harmless beyond a reasonable doubt. *State v. Brown,* 656 N.W.2d 355, 361 (Iowa 2003). In assessing whether error was harmless, a reviewing court considers, "[T]he importance of the witness' testimony in the prosecution's case, whether the testimony was cumulative, the presence or absence of evidence corroborating or contradicting the testimony of the witness on material points, the extent of cross examination otherwise

permitted, and, of course, the overall strength of the prosecution's case." *Id*. at 361–62 (citation omitted).

H.K. was the only witness to this event. Without H.K.'s testimony, there was no other direct evidence to prove this matter. The evidence against Lindaman is non-existent without this testimony. The district court ruling must be reversed and a new trial granted. While the state offered Lindaman's statements through Anne Lindaman, those statements were hardly a detailed confession. D0350; TT Vol. IV at 151:12-23 (02/15/2024). Comparatively, the defense presented a case in which H.K. made presumably false allegations against her mother, Lauren King, and made inconsistent statements to other members of family. D0350; TT Vol. IV at 140:19-25; and at 158:3-19 (02/15/2024). Given the contamination of H.K.'s testimony stemming from a constitutional violation, coupled with the absence of any other direct evidence establishing guilt, a reversal is necessary.

II. THE DISTRICT COURT ABUSED ITS DISCRETION WHEN DENYING LINDAMAN'S FIRST MOTION IN LIMINE

Preservation of Error:

"In addition to a motion in limine itself, a resisting party must also make an objection to ruled-upon testimony or evidence at the time it is

offered at trial in order to preserve error." *State v. Thoren*, 970 N.W.2d 611, 621 (Iowa 2022), quoting *Twyford v. Weber*, 220 N.W.2d 919, 923 (Iowa 1974). In the instant case, counsel objected to the relevant portion of Anne Lindaman's testimony at the time of trial and specifically referenced marital privilege as raised in the pretrial motion. (D0350; TT Vol. IV at 83; ln. 22-23; 02/15/2024). Thus, error was duly preserved.

Standard of Review:

As a matter of evidentiary ruling, the court reviews for an abuse of discretion. *Id.* "A district court abuses its discretion when it bases its decisions on ground or reasons clearly untenable or to an extent that is clearly unreasonable…[or] if it bases it's conclusions on an erroneous application of the law." *Id.* quoting *Stender v. Blessum*, 897 N.W.2d 491, 501 (Iowa 2017).

Merits:

The defense's first motion in limine revolved around the extent of marital privilege as protected under Iowa Code Section 622.9. In relevant part, Section 622.9 holds that:

> "Neither husband nor wife can be examined in any case as to any communication made by the one to the other while married, nor shall they, after the marriage relation ceases,

> be permitted to reveal in testimony any such communication made while the marriage subsisted."

Marital privilege is based on public policy and serves to foster confidential relationships and facilitate open communication between the individuals involved in such relationships. 7 James A. Adams & Joseph P. Weeg, *Iowa Practice* § 501.1, at 273 (2d ed. 1998). The existence of this privilege can be attributed to the recognition that the societal interest safeguarded by such privileges outweighs the evidentiary value that the testimony would provide to the overall functioning of the legal system. *Id.*

Statutes creating privileges are to be liberally construed. *State v. Bedel*, 193 N.W.2d 121, 124 (Iowa 1971). Likewise, "the marital privilege statute, section 622.9, is very broad, prohibiting disclosure of any communication without express exceptions." *State v. Klindt*, 389 N.W.2d 670, 675 (Iowa 1986). All communication between a husband and wife during their married life are privileged. *Rodskier v. Nw. Mut. Life Ins. Co. of Milwaukee*, Wis., 216 Iowa 121, 248 N.W. 295, 298 (1933). This concept remains intact even if the parties later divorce. *Shepherd v. Pac. Mut. Life Ins. Co.*, 230 Iowa 1304, 300 N.W. 556, 560 (1941). Similarly, the privilege

extends throughout the criminal process including trials and grand jury proceedings. *State v. Farber*, 314 N.W.2d 365, 366 (Iowa 1982).

In a criminal case, it is the defendant, not the spouse testifying, who holds the privilege. *State v. Hastings*, 466 N.W.2d 697, 699 (Iowa Ct. App. 1990). Once the privilege is raised by a defendant, it is not incumbent upon the spouse to assert it during testimony. *Id.* Regardless of a spouse's intentions, they may not waive or violate the privilege. *State v. McPhillips*, 580 N.W.2d 748, 754 (Iowa 1998).

The privilege, however, is not absolute. Courts have adopted a common law exception involving crimes committed by one spouse against the other. *See State v. Klindt*, 389 N.W.2d 670, 675 (Iowa 1986). More relevant to these proceedings is the exception involving child abuse. Iowa courts have held that evidence of injuries to children in civil or criminal proceeding that resulted in a report of suspected child abuse may be subject to an exception. *State v. Anderson*, 636 N.W.2d 26, 31 (Iowa 2001). Iowa Code §232.74 crafts the "child abuse" exception and provides as follows:

> "Sections 622.9 and 622.10 and any other statute or rule of evidence which excludes or makes privileged the testimony of a husband or wife against the other or the testimony of a health practitioner or mental health professional as to confidential communications, do not apply to evidence regarding a child's injuries or the cause of the injuries in any judicial proceeding,

> civil or criminal, resulting from a report pursuant to this chapter or relating to the subject matter of such a report."

The statute establishes three central components to the exception to the marital privilege: (1) the statutory exception applies to a child's injuries or the cause of a child's injuries; (2) the evidence must be presented in a "judicial proceeding;" and (3) the proceeding must be "resulting from a report pursuant to this chapter or relating to the subject matter of such a report." Iowa Code § 232.74; *see also State v. Anderson*, 636 N.W.2d 26, 32 (Iowa 2001).

The language of the third requirement is highly controlling as it limits the exception to the "reporting and investigation of abused and neglected children." *Anderson*, 636 N.W.2d at 33. As such, the exception is limited by the legislature's definitions of "child abuse" which Section 232.68 defines as "acts or omissions of a person responsible for the care of the child." *Id.* However, the Iowa Supreme Court has held "if the sexual abuse is committed as a result of the acts of a non-care provider, it is outside the definition of "child abuse" or "abuse for purposes of the reporting," the marital privilege remains intact. *Id.* The court declined the opportunity to broaden this exception on the grounds that doing so would have led to an excessively expansive definition, encompassing all reports of child abuse,

which would have been contrary to a reasonable understanding of the intent of the legislature. *Id.*

These definitions became the focus of the defense's first motion in limine. In particular, the discussion revolved around Iowa Code Section 232.68 which defines "a person responsible for the care of the child" as follows:

a. A parent, guardian, or foster parent.
b. A relative or any other person with whom the child resides and who assumes care or supervision of the child, without reference to the length of time or continuity of such residence.
c. An employee or agent of any public or private facility providing care for a child, including an institution, hospital, health care facility, group home, mental health center, residential treatment center, shelter care facility, detention center, or child care facility.
d. Any person providing care for a child, but with whom the child does not reside, without reference to the duration of the care.

The defense argued that H.K.'s brief time at Lindaman's residence did not fall under any of these definitions. The most applicable was section (d) which employed the use of "providing care" as the descriptive factor. The Court agreed with the defense's position that only subsection "d" applied. D0221 Order Denying MIL at 3 (02/10/2024) The defense argued that "supervision" is distinct from " care."

The defense pointed to the plain language of the statute of itself. When comparing subsection (b) and (d) of 232.68 the language explicitly distinguishes "care" from "supervision." The statue holds that care of the child includes providing elements such as "adequate food, shelter, clothing, medical or mental health treatment, ***supervision***…" Iowa Code §232.68(2)(a)(4) See also *In re J.E.*, 723 N.W.2d 793, 795 (Iowa 2006)(holding that care was denied due to a failure to properly supervise). Thus, supervision is merely a component part of actually "providing care." The fact that section (b) specifically provides for supervision, but section (d) does not clearly illustrate a threshold of control and participation required. A principle of statutory interpretation is that "[w]e presume statutes or rules do not contain superfluous words." *State v. McKinley*, 860 N.W.2d 874, 882 (Iowa 2015); *see also* Iowa Code §4.4(2) (setting forth the presumption that "[t]he entire statute is intended to be effective").

The District Court rejected the defense's comparison to the statutes and instead proffered its own *ad hoc* interpretation. In particular, the Court pointed to subsection (c) covering childcare facilities. The Court contended that, because childcare facilities generally do not provide things like clothing or shelter and are still covered under Section 232.68, the descriptions under

Section 232.68(2)(a)(4) are not controlling here. D0221; Denial of 1st M.I.L. at 4 (02/10/2024). Thus, Lindaman did not need to provide anything of the sort in order to have been providing care.

However, this does not track. The types of facilities contemplated by Section (c) are all places where children could and would stay for long durations: "hospital, health care facility, group home, mental health center, residential treatment center, shelter care facility, detention center, or childcare facility." Iowa Code Section 232.68(c). Each of these examples obviously implies long-term care and residence by the inclusion of words such as "home" "shelter," or "residential." *Id.* Thus, the District Court's characterization of section (c) as "a babysitter" does not align with the actual statutes. D0221; Denial of 1st M.I.L. at 4 (02/10/2024). When interpreting a statute, a court does not "search for meaning beyond the language of a statute when that language is plain and the meaning is clear." *State v. McCollaugh*, 5 N.W.3d 620, 623 (Iowa 2024). However, this is exactly what the court has done. The defense deferred to the code itself and the Court speculated its own interpretation adding in the idea of a "babysitter" not contemplated by the statute itself.

Furthermore, the Court presumed that H.K.'s parents "would not have allowed her to venture to an unoccupied residence without someone present to provide supervision." D0221; Denial of 1st M.I.L. at 4 (02/10/2024). However, Aaron King testified that the children were "allowed to go over there by themselves." D0352; TT Vol. II at 60:6-7 (02/13/2024). H.K.'s brother apparently left Lindaman's house, completely on his own, for a short time. D0352; TT Vol. II at 60: 20-24 (02/13/2024). So clearly the dynamic is much less formal than the court's admitted speculation. Thus, the District Court's ruling is contrary both to the explicit statutory definitions and to the facts of the case as well. As such, the denial of the defense's motion was in error.

Remedy

Such a claim is still subject to harmless-error analysis on appeal. *See Anderson,* 636 N.W.2d at 31. However, the salience of the testimony in question is obvious. Anne Lindaman's testimony about the defendant's statements at the very least are weird, and prejudicial. D0350; TT Vol. IV at 85:12-23 (02/15/2024). Like *Anderson,* there was no physical evidence offered in the instant case, therefore any testimony that would speak to

H.K's credibility is both relevant and consequential. As such, the error was not harmless, and pursuant to *Anderson*, demands reversal. *Id.*

III. THE DISTRICT COURT ERRED IN DENYING LINDAMAN'S MOTION FOR NEW TRIAL DUE TO PROSECUTORIAL MISCONDUCT

Preservation of Error:

"It is a fundamental doctrine of appellate review that issues must ordinarily be both raised and decided by the district court before we will decide them on appeal." *Meier v. Senecaut*, 641 N.W.2d 532, 537 (Iowa 2002). This extends to a constitutional claim such as the *Brady* violation alleged here. *State v. Mulvaney*, 600 N.W.2d 291, 293 (Iowa 1999). Counsel initially raised the issue of H.K.'s testimony as a matter of prosecutorial misconduct. Counsel moved for a mistrial before the case was submitted in order to allow the defense adequate opportunity to examine the issue of influence on the child's testimony. D0354; TT Vol. V at 5: 18-22 (02/16/2024).

Following denial of this remedy, counsel pursued the issue through the Motion for New Trial. D0319; M.N.T. (04/01/2024). Here, the defense couched the issue as a *Brady* violation pursuant to *U.S. v. Agurs*, where "previously undisclosed evidence revealed that the prosecution introduced

trial testimony that it knew or should have known was perjured. 427 U.S. 97, 96 S.Ct. 2392, 49 L.Ed.2d 342 (1976). The defense argued the motion in court and was duly denied by the District Court. D0351; TT Sent. Hearing at 14:19-20 (04/26/2024).

Thus, the defense preserved error on this matter at all available opportunities in district court. *See State v. Rupe*, 534 N.W.2d 442, 443-44 (Iowa 1995).

Standard of Review:

A denial of a motion for new trial is reviewed on appeal for an abuse of discretion. *See State v. Ary*, 877 N.W.2d 686, 705-06 (Iowa 2016). "A district court abuses its discretion when it bases its decisions on ground or reasons clearly untenable or to an extent that is clearly unreasonable…[or] if it bases it's conclusions on an erroneous application of the law." *Id.* quoting *Stender v. Blessum*, 897 N.W.2d 491, 501 (Iowa 2017).

However, regarding a *Brady* violation of a constitutional nature, the court will consider the matter a de novo review. *DeSimone v. State*, 803 N.W.2d 97, 102 (Iowa 2011).

Merits:

A. Prosecutorial Misconduct

Witness coaching has been described as the "dark"-some have even called it "dirty secret of the U.S. adversary system." It is a practice, some claim, that more than anything else has given trial lawyers a reputation as purveyors of falsehood. Bennett L. Gershman, Witness Coaching by Prosecutors, 23 Cardozo L. Rev. 829 (2002), http://digitalcommons.pace.edu/lawfaculty/126/. However, there is a distinct boundary between preparing witnesses for trial and coaching them in a manner that distorts their testimony. As the Supreme Court proclaimed more than 40 years ago, "[a]n attorney must respect the important ethical distinction between discussing testimony and seeking improperly to influence it." *Geders v. United States*, 425 U.S. 80, 90 n.3 (1976) This ethical boundary is crucial in maintaining the integrity of the legal system and ensuring that justice is served. It is imperative for attorneys to uphold this distinction in order to preserve the fairness and accuracy of witness testimony in court proceedings.

Woven into consideration this case is the question of a child witness's susceptibility to influence through coercive, suggestive, or even benign questioning. There is a constantly broadening body of scholarly authority existing on the question of children's memory and interrogation. *See State v.*

Michaels, 136 N.J. 299, 309, 642 A.2d 1372, 1377 (1994) ("We note that a fairly wide consensus exists among experts, scholars, and practitioners concerning improper interrogation techniques. They argue that among the factors that can undermine the neutrality of an interview and create undue suggestiveness are a lack of investigatory independence, the pursuit by the interviewer of a preconceived notion of what has happened to the child, the use of leading questions, and a lack of control for outside influences on the child's statements, such as previous conversations with parents or peers.")

The U.S. Supreme Court has offered national recognition to this principle. In the case of *Idaho v. Wright*, the court determined that an interrogator who had a preconceived notion of what the child ought to reveal used suggestive and leading questioning to substantiate a child's allegation of sexual abuse. 497 U.S. 805, 826, (1990). “We think the Supreme Court of Idaho properly focused on the presumptive unreliability of the out-of-court statements and on the suggestive manner in which Dr. Jambura conducted the interview." *Id.* at 826. The ruling of the Supreme Court underscores the criticality of employing judicious and impartial questioning methods when addressing delicate issues, such as allegations of child abuse.

However, the existing legal framework in Iowa provides limited safeguards against improper influence of child testimony. Iowa law prohibits a prosecutor from knowingly illicit false testimony. *See Hamann v. State*, 324 N.W.2d 906, 909 (Iowa 1982) ("[I]t is uniformly held that mere perjured testimony, without proof that the prosecution knew it was false, is insufficient basis for a new trial."). However, regarding the testimony of a minor child, Iowa courts have somewhat protected when a prosecutor preps a minor child to testify. *See generally Owens v. State*, No. 22-1359, 2024 WL 960455, at *3 (Iowa Ct. App. Mar. 6, 2024). However, this fails to consider the large body of literature and case law throughout the country that recognizes the pitfalls of this preparation.

Therefore, the thrust of this appeal is not just to rectify an error at law, but moreover to raise the important legal question for Iowa Courts of when a prosecution's preparation of a child witness' testimony goes so far as to constitute witness coaching. The Appellant is cognizant of Iowa court's current position on the issue, which is to say that there effectively is none.

The record in the instant case evidence that H.K.'s testimony was influenced in multiple ways. However, the current law leaves the extent and impropriety of that influence unable to be appropriately examined. This

starkly contrasts well-accepted scientific research, safeguards employed by other jurisdictions, and the very principles of due process in criminal prosecution.

The State's argument, later adopted by the court, was that H.K.'s testimony was substantively consistent, but simply evolved in verbiage. D0351; TT Sent. Hearing at 11:12-14 (04/26/2024). However, this seemingly focuses on the main instance raised in the defense's motion and oversimplifies the issue. The argument as whole concerns not just the verbiage, but the stark elevation of the specificity and clarity with which H.K. testified at trial.

At depositions, H.K. was unclear on the exact body part Lindaman allegedly touched. When counsel tried to specify, H.K. was unsure whether the body part in question was where she urinates or defecates. D0304; Exh. A at 70:8-11 (01/25/2024). She testified initially that Lindaman's fingers went inside her, but when asked again said his fingers only were "rubbing up and down." D0304; Exh. A at 71:9-11; and at 72: 1-2 (01/25/2024). Whereas her testimony at trial was succinct, and far more specific. She specified her vagina without being asked and was sure of her bathroom anatomy when asked. D0350; TT Vol. IV at 105:10-21 (02/15/2024). Thus this is more than

just the verbiage, but a change from uncertainty to specificity which is a substantive change and not just phrasing.

Moreover, this goes beyond just this one instance. When H.K. first described her hesitation she did so in naturally juvenile language: "I'm like, excuse me. In my head, I'm like, oh, why do I need to do this." D0304; Exh. A at 29:22-23 (01/25/2024). However, at trial she used very adult and formal wording: "[t]his is my first warning to pause." D0350; TT Vol. IV at 103:25-104:1 (02/15/2024). While less salient, this still shows that influence on H.K.'s testimony is far greater than the State's characterization in both scope and extent.

The central issue argued here is that the question of scope or extent was summarily ignored by the district court. The court held that "helping an eight-year-old learn a particular word is not the same as insisting that she use that word…" D0351; Tr. Sent. Hearing at 14:16-17 (04/26/2024). This is just speculation though. The Court denied the defense's request for a record on what exactly was discussed between H.K. and the prosecution before trial. D0351; Tr. Sent. at 10:9-13 (04/26/2024). Therefore the court had no information on which to base that inference. It was simply assumed without any basis and this is the abuse of discretion asserted.

Iowa law has little infrastructure to examine potential influence of child testimony. Under a claim of prosecutorial misconduct, a court may find error when "undisclosed evidence demonstrates that the prosecution's case includes perjured testimony." *Agurs*, 427 U.S. 97, 96 S.Ct. 2392, 49 L.E.2d 342 (1976). However, Iowa's adoption of *Agurs* reflects the requirement in *Agurs* that the prosecution must know that the testimony was false. *See Hamann*, 324 N.W.2d at 909.

However, it is widely accepted that child testimony can be heavily influenced, to the point of outright perjury, without any intent of the prosecution. *See People v. Meeboer*, 439 Mich. 310, 324325 (1992), *State v. Huss*, 506 N.W. 2d 290 (Min. 1993), *Felix v. State*, 109 Nev. 151 (1993). The general idea is that children, as a class, are more susceptible to suggestion. *Michaels*, 136 N.J. at 299 (1994) ("We note that a fairly wide consensus exists among experts, scholars, and practitioners concerning improper interrogation techniques. They argue that among the factors that can undermine the neutrality of an interview and create undue suggestiveness are a lack of investigatory independence, the pursuit by the interviewer of a preconceived notion of what has happened to the child, the

use of leading questions, and a lack of control for outside influences on the child's statements, such as previous conversations with parents or peers.").

These cases build off the consensus of the scientific community that investigatory interviews can be highly suggestive to a child witness' recollection. For example, see: Goodman & Helgeson, Child Sexual Assault: Children's Memory and the Law, 40 U. Miami L. Rev. (1985); Myers, *The Child Witness: Techniques for Direct Examination, CrossExamination, and Impeachment*, 18 Pac, L.J., 801 889 (1987); Younts, *Evaluating and Admitting Expert Opinion Testimony in Child Sexual Abuse Prosecutions*, 41 Duke L.J. 691 (1991). Many interview practices are sufficiently suggestive or coercive to alter irremediably the perceptions of child witnesses. *See* Ceci, Toglia & Ross (Eds), *Children's Eyewitness Memory*, (New York: Springer-Verlag, 1987); Ceci, Ross & Toglia (Eds),*Perspectives on Children's Testimony*, (New York: Springer-Verlag, 1989); John Doris (Ed), *The Suggestibility of Children's Recollections*, (Washington, D.C.: American Psychological Association Press, 1991); Ceci & Bruck, *Jeopardy in the Courtroom - A Scientific Analysis of Children's Testimony*, (Washington, D.C.: American Psychological Association Press, 1996); and *Campbell, T.*

Smoke and Mirrors: The Devastating Effect of False Sexual Abuse Claims. New York, Insight Books (1998).

Thus, it is evident that a situation such as the instant matter could arise. However, Iowa law fails to provide any structure to mitigate these risks or remedy any such error after the fact. This is an important question of law that begs for a mechanism to address the credibility of child testimony. And there is precedent in other jurisdictions. In New Jersey, the courts have provided a "taint hearing" to determine whether "a child's recollection of events has been molded by an interrogation," and when "that influence undermines the reliability of the child's responses." *State v. Michaels*, 642 A.2d 1372, 1377; (N.J. 1994). In Nevada, courts allow for the consideration of unintentional coaching when examining a child's competency to testify. *See Felix v. State*, 109 Nev. 151, 175, 849 P.2d 220, 235 (1993)(superseded by statute). In Minnesota, the court ruled on the basis that a "highly suggestive" book influenced a child's testimony to the point that there was insufficient evidence to support the conviction. *State v. Huss*, 506 N.W.2d 290 293 (Minn. 1993).

This is not a unique issue. Iowa courts have tackled this before in *Owens v. State*, however again the court was bound by the record. No. 22-1359,

2024 WL 960455, (Iowa Ct. App. Mar. 6, 2024). In *Owens*, the prosecutor's conversation with the child witness was much more thoroughly examined at trial, however there is still the same problem. The court held that "nothing suggests that the prosecutor did anything more than educate." *Id.* However, beyond a few lines of inquiry this is speculation, just as it is in the instant case.

To put it bluntly, Iowa law is behind the times and the instant issue underscores this disparity. Under Iowa Code Section 602.4201(1), the Iowa judiciary has the authority to "prescribe all rules of pleading, practice, evidence and procedure…" *See also State v. Thompson*, 954 N.W.2d 402, 411 (Iowa 2021). "Moreover, the judicial department *possesses residual common law* authority to meet its 'independent constitutional and statutory responsibilities.' " *Id.*, quoting *Iowa C.L. Union v. Critelli*, 244 N.W.2d 564, 569 (Iowa 1976). Accordingly, this important question of law begs the court to recognize the overwhelming tide of precedent, research, and procedures to allow for appropriate procedures that may remedy of this issue.

B. *Brady* Violation

Regardless of the issue of misconduct, the issue at hand is still an error at law even under the current model. When the defense sought to examine this

issue following trial, the District Court dismissed any adequate consideration. The court's logic was that the State couldn't have known that H.K.'s testimony was going to change, therefore they didn't have anything to disclose. D0351; Tr. Sent. Hearing at 10:9-13 (04/26/2024). However this does not track logically. The prosecution knew what was discussed with H.K. before trial and this conversation was requested by the defense in the Motion for New Trial. D0319; M.N.T. at 10 (04/18/2024). The fact that the issue was only revealed at the time of trial does not mean that an error did not occur before trial.

If the court had ordered the prosecution to detail their conversations with H.K., and improper influence was revealed, there would have been a valid *Brady* violation. Any information that could have impeached H.K.'s testimony would both be favorable to the accused, and as the State's chief witness, would obviously be material to the issue of guilt per the holdings of *Cornell v. State*. 430 N.W.2d 384 (Iowa 1988); *see also U.S. v. Bagley*, 473 U.S. 676, 683-84, 105 S.Ct. 3375, 3380 L.Ed.2d 481, 490 (1985)(rejecting distinction between impeachment and exculpatory evidence within a *Brady* context).

Therefore the District Court's reliance on the timeline of the error does not align with the facts and it was an abuse of discretion to deny the motion on that basis alone. The district court recognized that there were changes in H.K.'s testimony. D0351; Tr. Sent. Hearing at 10:9-10 (04/26/2024). So it hardly seems reasonable, in light of the great body of legal and scientific work referenced above to not investigate this issue and blindly assume that such influence was inconsequential or benign.

Had the State been properly examined on their potential influence of H.K.'s testimony, and there was an adequate body of information on the subject, the district court's denial could conceivably be justified. Based on the extant record though, the evidence of the existence of *Brady* materials is compelling. The court's reasoning for denial of further investigation is simply inadequate and based on false inference. The District Court's actions go against the facts, legal precedents, widely accepted scientific research, and ultimately the very principle of transparency in the judicial process. Accordingly, this issue demands to be remanded for an adequate examination.

IV. THE DISTRICT COURT ERRED IN DENYING LINDAMAN'S MOTION FOR CHANGE OF VENUE

***Preservation of Error**:*

Pursuant to the principles of error preservation, the issue of a change of venue must first be raised in district court. Moreover, the contention must be made in both a timely manner, and with specificity to the issues and authorities considered on appeal. *See State v. Paulsen*, 293 N.W.2d 244, 247 (Iowa 1980). In the instant matter, Lindaman first raised the issue in his motion. D0162; M.C.V. (09/18/2023). Furthermore, counsel renewed this specific motion at the start of trial. D0352 TT Vol. II at 4:1-25 (02/13/2024). Both were ruled on and denied by the District Court preserving error.

***Standard of Review**:*

Our review of a denial of a motion for a change of venue is de novo." *State v. Evans*, 671 N.W.2d 720, 726 (Iowa 2003). Such a ruling will only be reversed upon a showing that the district court abused its discretion in denying the motion. *State v. Siemer*, 454 N.W.2d 857, 860 (Iowa 1990).

Merits:

A fair trial by an impartial tribune is an essential requirement of due process. *Irvin v. Dowd*, 366 U.S. 717, 722 (1961). A defendant is entitled to a change of venue based on the Sixth and Fourteenth Amendments to the United States Constitution and Article I, sections Nine and Ten of the Iowa

Constitution, when evidence reveals an inability to obtain a fair trial in the county charging the defendant. *Harnack v. District Court*, 179 N.W.2d 356, 360 (Iowa 1970). The court shall order a change of venue under these circumstances. Iowa R. Crim. P. 2.11(11). The rule itself states:

> "If a motion for change of venue is filed and the court finds there is a substantial likelihood a fair and impartial trial cannot be preserved with a jury selected from the county where trial is to be held, the court shall order that the action be transferred to another county in which that condition does not exist."

Iowa R. Crim. P. 211(11)(2023).

Accordingly, a change of venue must be granted when the defendant demonstrates a substantial likelihood that a fair and impartial jury could not otherwise be selected. *State v. Walters*, 426 N.W.2d 136, 138 (1988). The movant must demonstrate actual prejudice or that the publicity attending the trial is so pervasive and inflammatory that prejudice must be presumed. *State v. Wedebrand*, 602 N.W.2d 186, 188 (Iowa 1999); *State v. Spargo*, 364 N.W.2d 203, 207 (Iowa 1985). In *Walters*, the Iowa Supreme Court summarized the factors a court should consider in determining whether publicity precludes the defendant from receiving a fair trial. 426 N.W.2d at 139. A court should consider whether:

1) The publicity indicates that the defendant is guilty; (citing *Spargo*, 364 N.W.2d at 207).

2) The media accounts are factual and informative in tone or inflammatory in tone; (citing *Id.* at 208; *State v. Cuevas*, 288 N.W.2d 525, 527-28 (Iowa 1980)).

3) If there were any editorial denunciations of the defendant or emotional stories regarding the defendant or victim; (citing *State v. Johnson*, 318 N.W.2d 417, 422 (Iowa 1982), cert denied, 459 U.S. 848 (1983); see also *Wedebrand*, 602 N.W.2d at 188).

4) The length of time between publicity and trial has allowed any prejudicial effect to dissipate; (citing *Spargo*, 364 N.W.2d at 207).

Id. at 139.

In considering these individual factors, the overarching concern is fairness. The crucial determination is whether, because of pretrial publicity or for other reasons, 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. *State v. Harris*, 436 N.W.2d 364, 367 (Iowa 1989).

To this end, the district court ordered questionnaires for two different jury pools in order to gauge the amount of pretrial publicity. The results revealed that less than 20% of respondents had been exposed to news coverage of the instant case. The District Court cited this in denying the motion and further held that moving the case to a less populated county may

conversely result in increased news coverage. D0161; Order Denying M.C.V.; 01/24/2024).

However, this side steps the main contention in the defense's claims. At the hearing on this matter, the defense duly noted that the results of the questionnaires were not overwhelming; however, that did not imply that there was no danger at all. D0355; Tr. M.C.V. Hearing at 4:23-24 (01/19/2024). The issue is that much of the media coverage did not focus on the instant matter, but instead, on a prior criminal matter involving Lindaman. D0044; Brief for M.C.V. at 3 (09/18/2023). This is problematic as it speaks more to a perception of guilt or the propensity of a guilty character than the mere mention of pending charges.

This was not mere "routine reporting of a sensational crime" but rather "sensational reporting of a routine crime." *Walters*, 426 N.W.2d at 139. The reports and accounts extended well beyond the presentation of the fundamental aspects of the crime, instead providing substantial attention and a platform for the lobbying efforts of Sheri Mollers. D0072-D0076; Exh MCV A-G; D0060-D0070; Exh MCV I-M; D0060; Exh MCV O; and D0073; Exh MCV S (09/26/2023). The coverage revolved around Lindaman's relinquishment of his medical license and a prior deferred

judgment he received for an unrelated case. D0044; Brief for M.C.V. at 3 (09/18/2023); and D0062; Exh MCV B (09/26/2023). However, many of the articles drew an explicit correlation between these past events and the instant matter. Sheri Moller was reported saying that "[n]ow all of the sudden, my conviction is playing a very big part in what is happening," and that "[t]his child would have been safe." D0070; Exh MCV M (09/26/2023). Moller was quoted saying "I told you" as a way of saying that her allegations were somehow a foretelling of the instant allegations. D0056; Exh MCV L (09/26/2023). In all interviews, Moller frequently referred to the pending charges in the past tense, as if the allegations were confirmed: D0063; Exh MCV F (09/26/2023).

This is highly prejudicial as it introduced prior bad acts to the jury pool before the court could even intervene. And the prejudice went beyond just comparisons. The reporting was not merely drawing a factual comparison between the issues, but fashioned an emotional and inflammatory narrative around Moller. Multiple articles referred to Lindaman in the title as an "attacker." D0062; Exh MCV B (09/26/2023); and D0057; Exh MCV K (09/26/2023). Moller described being scared of Lindaman to this day and feared his release from custody. D0066; Exh MCV

N (09/26/2023). Thus, even if only a few jurors were tainted, that influence would be highly prejudicial.

Even at the time of these proceedings, it was evident that the coverage was going to continue. The examples presented by the defense were only from articles published in or before September of 2023, roughly three months after Lindaman was charged. The coverage includes articles from all throughout these three months. In particular, KCCI's coverage continued to report on even minor proceedings like the arraignment or bond hearing. D0066; Exh MCV N; 09/26/2023; and D0069; Exh MCV Q; 09/26/2023. Moreover, Moller specifically stated that she would continue to fight for this issue to be heard by any means possible. D0076; Exh MCV A at 4; (09/26/2024).

Therefore, as the defense argued in district court, all of the *Walters* factors were clearly met. The district court's reliance on mere statistical data was an abuse of discretion as it failed to consider the problematic content of the news itself. Iowa court's recognize that, even without a demonstration of actual prejudice on the record, "extensive and inflammatory publicity…can give rise to the presumption of prejudice." *State v. Gavin*, 360 N.W.2d 817, 819 (Iowa 1985). The pervasive coverage above does not reflect the five

months of continual coverage that followed this hearing. The fact is, attention on this did not dissipate following this hearing, but simply gave more of a chance for prospective jurors to be exposed.

And it should be duly important to note that 20% is not an insignificant number. Given the tone of the news coverage, the connection to prior bad acts, and the direct implication of guilt, prejudice should have reasonably been presumed regardless of the statistical findings. The issue is far more complex than a single metric, and reliance on such a component part of the greater discussion was in error. The district court abused its discretion in denying the motion and as such, reversal is required.

V. THE COURT ERRED WHEN IT DENIED LINDAMAN A MISTRIAL ON THE BASIS OF PRIOR BAD ACTS PRESENTED THROUGH TESTIMONY

Standard of Review and Preservation of Error:

"We review constitutional issues de novo." *State v. Plain*, 898 N.W.2d 801, 810 (Iowa 2017).

"We review denials of a mistrial and the giving of a cautionary instruction for an abuse of discretion." *Plain*, 898 N.W.2d at 810. Error was preserved in this matter when counsel moved for a mistrial. D0354; TT Vol. IV at 125: 14-15 (02/15/2024).

Merits:

"Trial courts have considerable discretion in ruling upon motions for mistrial, since they are present throughout the trial and are in a better position than the reviewing court to gauge the effect of the matter in question on the jury. *State v. Cage*, 218 N.W.2d 582, 586 (Iowa 1974). The trial court's ruling on such a motion will not be set aside except upon a clear showing of abuse of discretion. *State v. Staker*, 220 N.W.2d 613, 617 (Iowa 1974). Ordinarily, abuse of discretion is found upon the denial of a mistrial only where there is no support in the record for the trial court's determination. *State v. Lewis*, 391 N.W.2d 726, 730 (Iowa App.1986) (citing *State v. Brewer*, 247 N.W.2d 205, 211 (Iowa 1976))." *State v. Jirak*, 491 N.W.2d 794, 796 (Iowa Ct. App. 1992).

To establish reversible error, Lindaman "must show the violation of the limine order resulted in prejudice that deprived [him] of a fair trial." *State v. Frei*, 831 N.W.2d 70, 80 (Iowa 2013), *overruled on other grounds by Alcala v. Marriott Int'l, Inc.*, 880 N.W.2d 699, 708 n.3 (Iowa 2016). A defendant is denied a fair trial when "the matter forbidden by the ruling was so prejudicial that its effect upon the jury could not be erased...." *State v.*

Jackson, 587 N.W.2d 764, 766 (Iowa 1998)." *State v. Ayodele*, 908 N.W.2d 540 (Iowa Ct. App. 2017).

Lindaman filed a Motion in Limine in this case requesting that the State be prohibited from admitting other bad acts. D0198; Deft.'s 4th MIL at 2; 02/05/2024. This paragraph was orally granted by the court. D0356; Tr. M. Hearing at 26:20-22 (02/06/2024). However, the State's witness in chief, H.K., testified the following at trial:

> "Q. Okay. What did you do when you got to Grandma and Grandpa's house?
> A. I went inside, they opened the door. Then my parents walked in, and then I saw the kitties. I played with them for a little bit. And then the parents were just talking with each other. I was -- I think I went into my grandma's room, and then they said, "H*******, Elliot, let's go eat outside together." I'm like, "Okay."
> So we got there and I asked my grandpa, I'm like, "Do we have to keep this secret?" And he was like, "Yes." And I'm like, "Geesh." Then we went outside. My mind said, like, I can't hold it anymore. We have to say it out loud because he's a bad man.
> Q. Why do you say that?
> A. Because my mom said that he was a bad man when she was little and it was not for my ears.
> Q. We're not going to talk about any of that stuff, okay?"

D0354; TT Vol. IV at 111-112:17-10 (02/15/2024).

The crux here is that there was no possible way to remedy the error without compounding the prejudice. In *State v. Belieu*, the court outlined three considerations for determining whether a cautionary instruction can

adequately mitigate the prejudicial impact of inadmissible evidence. 288 N.W.2d 895, 901 (Iowa 1980). One is the promptness with which it was addressed. *Id.* at 901-02. The other consideration is whether "the defendant [can] combat the evidence without compounding the prejudice." *Id.* And finally, *Belieu* outlined a harmless-error analysis depending on the State's case: "the stronger the State's evidence of Plain's guilt is, the less prejudicial the effect of the challenged testimony." *Id. at 900-01*.

Regarding the first consideration, it is duly noted that the prosecutor promptly attempted to deflect the examination away from the problematic testimony. However, the resulting prejudice and the importance of H.K.'s testimony are far more impactful considerations than the extent of the error. H.K.'s statements constitute the exact type of bad acts that courts prohibit: "(a) defendant must be convicted only if it is proved he committed the offense charged and not because he is a bad man." *State v. Wright*, 203 N.W.2d 247, 250 (Iowa 1972). Moreover the vague nature of the statement would leave the jury free to imagine any number of extremely prejudicial interpretations of what makes a child call an adult a "bad man." It essentially speaks to his "bad character" as a whole and not to the allegations at hand which makes prejudice that much more presumable.

And this was not the only instance of Lindaman's prior bad acts creeping into the proceedings. Lauren King would later make reference to the fact that H.K. was having "nightmares of her grandpa taking her away." D0354; TT Vol. IV at 156:18-19 (02/15/2024). This furthers the idea in the jury's mind that Lindaman was a threat to H.K. in general. Moreover, the prevalent pretrial publicity heavily focused on Lindaman's prior legal history. Thus any undue influence would have surely been corroborated in the jury's mind by these in-trial statements. Thus when considering prejudice, there is ample evidence that the jury would have considered some form of prior bad acts or character evidence regardless of the Court's mitigation.

Furthermore, any remedy only serves to compound the error here. The immediate objection and following recess only drew more of the jury's attention to the statement in question. While this is what the law requires for error preservation, it nonetheless exacerbated the focus on H.K.'s statement. The fact that the Court intervened would only indicate to the jury that what H.K. said was of some legal significance lending credibility to her view of Lindaman as "bad." As in *Belieu*, "no way existed for defendant to combat the evidence without compounding the prejudice." 288 N.W.2d at 901.

And per *Belieu*, all of this is couched on the strength of the State's case. For this examination, it is vital to recognize that the entire case hinged on H.K.'s testimony as there was no physical evidence. Iowa courts have recognized how the narrow scope of such cases make even minor errors far more impactful. In *State v. Conner*, "the jury was not required to believe the testimony of Dye or Asher," and thus unadmitted evidence was considered "highly probative," 314 N.W.2d 427, 429 (Iowa 1982). Likewise in the instant case, the jury was not required to believe H.K., therefore anything inflammatory or erroneous in her testimony would likewise be highly impactful. Put another way, the jury's perception of Lindaman was "central to the defenses" and H.K.'s inflammatory testimony spoke exactly to that. *Belieu* at 901.

Thus all of the considerations in *Belieu* are met. Regardless of the prosecutor or the Court's attempt to mitigate prejudice, there was simply no rehabilitation from this. Cautionary steps are not enough to unring the proverbial bell, and it was an abuse of discretion for the Court to deny a mistrial on this issue.

VI. THE EVIDENCE IN THIS CASE WAS INSUFFICIENT TO SUPPORT A CONVICTION OF ASSAULT WITH INTENT TO INFLICT SERIOUS INJURY

Standard of Review and Preservation of Error:

"We review challenges to the sufficiency of the evidence for correction of errors at law. *See State v. Leckington*, 713 N.W.2d 208, 212-13 (Iowa 2006). The jury's verdict is binding if supported by substantial evidence. *See id.* at 213. Evidence is substantial if it could convince a rational trier of fact that the defendant is guilty beyond a reasonable doubt. *See id.* We view the evidence in the light most favorable to the State. *See id." State v. Scott*, 919 N.W.2d 766 (Iowa Ct. App. 2018).

"A motion for judgment of acquittal is a means of challenging the sufficiency of the evidence, and we review such claims for correction of errors at law." *State v. Sappingfield*, 873 N.W.2d 551 (Iowa Ct. App. 2015).

Counsel first raised this issue by making an oral motion contending a "deficiency of the evidence." D0350; TT Vol. IV at 161;19-25 (02/15/2024). The Court duly ruled on the defense's motion preserving error for appellate review. D0350; TT Vol. IV at 162;11-14 (02/15/2024).

Merits:

"We allow a verdict to stand if substantial evidence supports it." *State v. Biddle*, 652 N.W.2d 191, 197 (Iowa 2002). "Evidence is substantial if it

would convince a rational fact finder that the defendant is guilty beyond a reasonable doubt." *Id.* "We review the evidence in the light most favorable to the State, including legitimate inferences and presumptions that may fairly and reasonably be deduced from the record evidence." *Id.* "We consider all the record evidence, not just the evidence that supports the verdict." *Id.* " '[E]vidence which merely raises suspicion, speculation, or conjecture is insufficient.' "*State v. Hearn*, 797 N.W.2d 577, 580 (Iowa 2011) (quoting *State v. Casady*, 491 N.W.2d 782, 787 (Iowa 1992)). *State v. Pierce*, 868 N.W.2d 201 (Iowa Ct. App. 2015).

"The district court's findings of guilt are binding on appeal if supported by substantial evidence." *State v. Taylor*, 689 N.W.2d 116, 131 (Iowa 2004). To support the verdict, " '[t]he evidence must be such that, when considered as a whole, a reasonable person could find guilt beyond a reasonable doubt.' " *State v. Doss*, 355 N.W.2d 874, 877 (Iowa 1984) (quoting *State v. Mulder*, 313 N.W.2d 885, 888 (Iowa 1981)).

We draw all legitimate inferences in support of the verdict. *Taylor*, 689 N.W.2d at 131. However, "[e]vidence which merely raises suspicion, speculation, or conjecture is insufficient." *State v. Casady*, 491 N.W.2d 782, 787 (Iowa 1992)." *State v. Hearn*, 797 N.W.2d

577, 579–80 (Iowa 2011).“Evidence is substantial when the quantum and quality of evidence is sufficient to “convince a rational fact finder that the defendant is guilty beyond a reasonable doubt.” *Id*. at 76.

In conducting substantial-evidence review, this court considers the evidence in the light most favorable to the State, including all reasonable inferences that may be fairly drawn from the evidence. *See id*. (citing *State v. Heard*, 636 N.W.2d 227, 229 (Iowa 2001)).” *State v. Banes*, 910 N.W.2d 634, 637 (Iowa Ct. App. 2018). In order to sustain a conviction, the State must produce legally sufficient evidence. *See The People v. Brewster*, 473 N.Y.S.2d 984, 987 (1984). For evidence to be sufficient, the State must present either direct or circumstantial evidence, or both, on each and every essential element in order to obtain and keep a conviction. *State v. Brown*, 172 N.W.2d 152, 156 (Iowa 1969)(citing *State v. Manly*, 233 N.W. 110 (Iowa 1930) and *State v. Heinz*, 275 N.W. 10 (Iowa 1937)). The proof, whether by circumstantial or direct evidence, must generate something more than suspicion, or speculation, or conjecture. *Id.*, citing *State v. Daves*, 144 N.W.2d 879 (Iowa 1966). See also *State v. Barnes*, 204 N.W.2d 827, 828 (Iowa 1972).

For this purpose, circumstantial evidence may be equal in value to and sometimes more reliable than direct evidence. However, where circumstantial evidence alone is relied on as to any one or more essential elements, the circumstance or circumstances must be entirely consistent with defendant's guilt and wholly inconsistent with any rational hypothesis of defendant's innocence and so convincing as to exclude a reasonable doubt that defendant was guilty of the offense charged. *State v. Brown*, 172 N.W.2d 152, 156 (Iowa 1969).

And this is highly determinative. It should be noted that an appellant need not demonstrate a complete counterfactual to the State's argument. An appellant need only demonstrate that the case against the defendant could "convince a rational fact finder that the defendant is guilty beyond a reasonable doubt." *Hearn*, 797 N.W.2d at 76. In the instant case, there is certainly reasonable doubt.

First and foremost, there was no physical evidence of abuse despite the alleged victim undergoing medical examination and Lindaman's DNA being ran. D0349; TT Vol. III at 198:5-11 (02/14/2023). It should be noted that these tests were run promptly following the allegations on the morning of the 28th so there is little doubt as to their efficacy. D0349; TT Vol. III at

150:13-14 (02/14/2023). There were no other witnesses to the actual incident alleged. Moreover the circumstantial facts of the times, movements, and nature of the situation are uncontested by either party. Essentially, there are no inconsistencies in the defense's narrative. The children were at Lindaman's house for a legitimate and legal purpose.

Without any other evidence at all to support the conviction, H.K.'s testimony is the only determining factor. It is duly recognized that the Court of Appeals cannot pass judgment on witness credibility, but it is still a relevant consideration within this examination. H.K.'s testimony was highly inconsistent from her initial allegations up through trial. The specificity at trial is problematic for the influence discussed above, but regardless of the outcome of those claims, the inconsistency is still extant, nonetheless.

Not only is there compelling evidence of prosecutorial influence on her testimony, it was also revealed that other party's may have improperly influenced her testimony. When questioned at trial about her testimony, H.K. answered that her father had helped her learn the word "vagina." D0350; TT Vol. IV at 133:6-10 (02/15/2024). Moreover Laruen King's testimony that H.K. experiences nightmares about her father raises further

doubt that her testimony is solely from experience and not from exterior influence.

And this was not the first time that H.K. had made allegations against a family member. During the course of her examination, H.K. claimed that her mother, Lauren King, had hit her "sometimes when she's mad" which were summarily denied by Lauren herself. D0350; TT Vol. IV at 140:19-25; and at 158:3-19 (02/15/2024).

Again, while the Court cannot pass determination on H.K.'s credibility, it clearly demonstrates the dearth of evidence in the State's case. While testimony alone can be sufficient to uphold a conviction, the testimony is only sufficient "if believed beyond a reasonable doubt." *State v. Donahue*, 957 N.W.2d 1, 9 (Iowa 2021). However, there is no way to believe H.K.'s testimony without such reasonable doubt.

It is not here argued that reversal is demanded by H.K.'s testimony alone, but instead by the interaction between her problematic testimony and the lack of any other supporting evidence. This issue is compounded by the claims argued above as her testimony was clearly influenced, both by her father and the prosecutor. The jury's perception of that testimony would likewise have been influenced by her remote appearance. On top of all that,

the jury was very likely exposed to Lindaman's prior bad acts through the extensive and continuing media coverage.

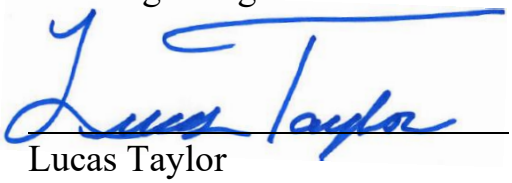
Therefore, on all angles there are problematic errors. But on the other hand, there is only a single, inconsistent narrative to support a such grave and consequential conviction. Accordingly, there is sufficient reasonable doubt to reverse the conviction.

CONCLUSION

For the above-mentioned reasons, Appellant/Cross-Appellee, Lynn Melvin Lindaman, respectfully requests the appellate court find Defendant's criminal conviction was in error and that the judgment in this matter should be vacated.

REQUEST FOR ORAL SUBMISSION

Appellant/Cross-Appellee, Lynn Melvin Lindaman, does request that his counsel be heard orally by the court regarding all matters addressed herein.



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CERTIFICATE OF COMPLIANCE

This brief complies with the type-volume limitation of Iowa R. App. P. 6.903(1)(g)(1) because the brief contains 11,169 words, excluding the parts of the brief exempted by Iowa R. App. P. 6.903(1)(g)(1).

This brief complies with the typeface requirements of Iowa R. App. P. 6.903(1)(e) and the type-style requirements of Iowa R. App. P. 6.903(1)(f) because this brief has been prepared in a proportionately spaced typeface using Microsoft Word in Times New Roman 14 pt. font.

/s/ Lucas Taylor — 10/10/2024
Lucas Taylor — Date