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IN THE SUPREME COURT OF IOWA

STATE OF IOWA, Plaintiff-Appellee, v. BENJAMIN GREEN, Defendant-Appellant.	Franklin County No. FECR506960 SUPREME COURT 25-1465

APPEAL FROM THE IOWA DISTRICT COURT
FOR FRANKLIN COUNTY
HONORABLE GREGG ROSENBLADT, JUDGE

APPELLANT'S BRIEF AND ARGUMENT AND REQUEST FOR ORAL ARGUMENT

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STATEMENT OF THE ISSUE PRESENTED FOR REVIEW

I. What is the definition of "disclosure" for purposes of Iowa Code § 622.31B?

II. Was HK's statement to his mother on September 13, 2019, an initial disclosure?

ROUTING STATEMENT

This case should be retained by the Iowa Supreme Court because the issue raised involves a substantial issue of first impression in Iowa. Iowa R. App. P. 6.903(2)(a)(4) and 6.1101(3). Iowa Code § 622.31B created a hearsay exception for children or individuals with developmental disabilities or cognitive impairments who make an initial disclosure of physical or sexual abuse. What constitutes a disclosure is an issue of first impression for Iowa Courts.

This Court should hold "disclosure" for purposes of Iowa Code § 622.31B means "a statement which provides a discernable description of physical or sexual abuse." What constitutes a discernable description must take into account the age and development of the child or individual with developmental or cognitive disabilities. Therefore, the Supreme Court should retain this case.

NATURE OF THE CASE

Appellant, Benjamin Green, appeals following his jury trial, judgment and sentence, for three counts of sexual abuse in the second degree in violation of Iowa Code §§ 709.1, 709.3(1)(b), 903B.1 (2017-2018). (D0186, Order of Verdict, 7/8/25). For each count, Mr. Green was sentenced to an indeterminate term of incarceration not to exceed 25 years. (D0229, Order of Disposition at 1-2, 9/4/25). The District Court ordered Count I to be served consecutively to Count II and the District Court ordered Count III to be served concurrently with Count II. (D0229, Disposition at 1-2). (D0230, Order Nunc Pro Tunc, 9/8/25). On appeal, Mr. Green challenges the District Court's ruling allowing SK to testify regarding a statement her son, HK, made under Iowa Code § 622.31B.

STATEMENT OF THE FACTS

The Hampton Community Christian Daycare in Hampton, Iowa, provided daycare services for children who were 6 weeks old to 12-years-old. (D0254, Jury Trial Vol. 3, 109:16-18, 7/2/25). The

daycare had a gym/cafeteria, two playgrounds, and 6 classrooms with various names corresponding to the ages of the children within the classrooms. There was the infant room (for 6 weeks to 1-year-olds), Cuddly Kittens room (for 1-year-olds), Little Lambs room (for 2-year-olds), Busy Bees room (for 3-year-olds), Friendship Garden room (for 4-year-olds), and Kids Planet room (for 5 to 12-year-olds). (D0254, Vol. 3, 106:18-107:4).

The daycare had two playgrounds, one on the east side of the building for children who were infants to 2-years-old. (D0254, Vol. 3, 122:7-16; 123:1-3). (D0159, Exhibit 7 – Photo of Daycare Exterior East, 7/8/25). (D0160, Exhibit 8 – Photo of Toddler Playground, 7/8/25). (D0161, Exhibit 9 – Photo of Toddler Playground Under Awning, 7/8/25). (D0162, Exhibit 10 – Photo of Toddler Playground and Fence, 7/8/25). The other playground was in the back of the daycare which was designed for children 3 and up. (D0254, Vol. 3, 124:14-20) (D0163, Exhibit 11 – Photo of School-Age and Preschool Playground, 7/8/25). The daycare installed cameras in March or April of 2019 in various locations

around the facility. (D0254, Vol. 3, 123:14-25). An additional camera was added to the parking lot sometime after. (D0254, Vol. 3, 149:12-20).

Each classroom had two bathrooms inside them with "Dutch doors," where the top half could remain open and the bottom half was closed. (D0254, Vol. 3, 130:23-131:10). (D0174, Exhibit 22 – Photo of Busy Bee Classroom Bathroom Doors, 7/8/25). The top half of the doors were always kept open in the classrooms with kids three and under. (D0253, Vol. 4, 126:7-21; 131:17-132:13; 140:4-18; 151:2-152:2; 193:8-194:25). (D0249, Jury Trial Vol. 5, 16:18-17:7, 7/7/25-7/8/25). Depending on what stage of potty training a child was at, staff would accompany a child into a bathroom to help them, or wait outside the door and let the child use the bathroom themselves but stay near to see if they needed help, and eventually staff would let them go by themselves. (D0253, Vol. 4, 131:17-132:13; 134:19-135:8; 151:2-152:2; 188:11-23; 194:12-25). (D0249, Vol. 5, 17:8-18).

There were two bathrooms, which had regular full doors, one in the hallway and one in the gym, and these were mostly utilized by staff. (D0253, Jury Trial Vol. 4, 132:14-133:9; 152:3-153:10, 7/3/25). (D0166, Exhibit 14 – Photo of Gym Bathroom, 7/8/25) (D0168, Exhibit 16 – Photo of Hallway Bathroom, 7/8/25). Occasionally children three and under would need to use the gym or hallway bathrooms, but they mostly used the bathrooms with the Dutch doors in the classrooms. (D0253, Vol. 4, 132:14-133:9).

Mr. Green was employed as a daycare worker at the Hampton Community Christian Daycare from 2013 to September of 2019. (D0254, Vol. 3, 115:17-23). Mr. Green began working at the daycare while he was in high school and became a full-time employee when he graduated. (D0254, Vol. 3, 116:9-12; 112:19-113:10). Under the daycare and the Department of Health and Human Safety's policies, Mr. Green was not permitted to be alone with a child until he turned 18-years-old, which was in June of 2015. (D0254, Vol. 3, 117:21-118:11). (D0249, Vol. 5, 46:1-4). Mr. Green left the daycare

to work at a hospital for a few months in 2017, but came back to work at the daycare. (D0254, Vol. 3, 115:17-116:8).

In 2017, Mr. Green was a "floater" at the daycare, which meant someone who was not assigned to a particular classroom and would assist other teachers throughout the day. (D0254, Vol. 3, 140:10-20). (D0253, Vol. 4, 123:13-16). In 2018, Mr. Green was assigned to Little Lambs, the 2-year-old classroom, full-time with Breanna Martin. (D0254, Vol. 3, 116:13-22; 118:12-20). In late 2018 until September of 2019, Mr. Green was assigned to Cuddly Kittens, the 1-year-old classroom, full time with Ashlyn Guerrero. (D0254, Vol. 3, 118:21-119:11). (D0253, Vol. 4, 190:15-20).

In 2017, CK and MJ were both 4-years-old and regularly attended the daycare. (D0255, Jury Trial Vol. 2, 176:5-9; 177:2-4; 178:4-7, 7/1/25). (D0254, Vol. 3, 35:11-17; 36:11-14). At the time of trial, both girls were 11-years-old. (D0255, Vol. 2, 194:11-22). (D0254, Vol. 3, 58:13-19). Both of the girls testified they knew Mr. Green as "Benny" or "Ben." (D0254, Vol. 3, 64:9-22; 66:2-9). (D0255, Vol. 2, 202:24-203:13). At trial, CK testified Mr. Green

touched both her and MJ's vaginas outside at recess when she was 3 to 4-years-old. (D0255, Vol. 2, 205:10-208:20). CK could not remember if Mr. Green touched her over or under her clothes. (D0255, Vol. 2, 207:10-12). CK said it happened on multiple occasions, but she could not remember how many times. (D0255, Vol. 2, 207:19-23). At trial, MJ testified Mr. Green rubbed both her and CK's vaginas outside their clothes in a hallway at the end of the school near the playground when she was 3 to 5-years-old. (D0254, Vol. 3, 66:17-70:1). CK and MJ's mothers' testified Mr. Green occasionally worked in the same classroom as their children as a floater in 2017. (D0255, Vol. 2, 180:12-181:10). (D0254, Vol. 3, 39:17-40:12; 56:15-23).

In 2018, HK was 2-years-old and attended the daycare a little over 30 times that year and attended the daycare three times in 2019 when he was 3-years-old. (D0255, Vol. 2, 126:17-20). (D0253, Vol. 4, 80:7-25). At the time of trial, HK was 9-years-old. (D0254, Vol. 3, 12:15-18). HK testified he knew Mr. Green as "Benny" or "Prince Wednesday," which is also the name of a character in a

children's TV show called "Daniel Tiger." (D0254, Vol. 3, 10:3-13; 19:25-20:9; 21:2-14). (D0206, Exhibit A – Clip from Daniel Tiger, 7/18/25). No one at the daycare had ever heard anyone refer to Mr. Green as "Prince Wednesday" and Mr. Green testified he did not go by that name. (D0253, Vol. 4, 167:23-168:6; 175:24-176:3; 195:6-16; 216:2-12). (D0249, Vol. 5, 14:16-15:5; 21:2-13; 102:16-19).

HK went to the daycare from 12 PM to 5 PM on September 13, 2019. (D0255, Vol. 2, 144:9-146:7). SK, HK's mother, picked HK up from daycare and asked how his day was as they drove home. (D0255, Vol. 2, 146:8-19). HK told SK:

> he petted Prince Wednesday's wiener and that it got big and that then he ate it.
>
> And Prince Wednesday -- I should say after that I said, "Oh, what do you mean by that?" And he said, "Prince Wednesday is big like Daddy, and his wiener got big like Daddy, and he put it in my mouth a bunch of times, and then icky green stuff came out of it."

(D0255, Vol. 2, 148:24-149:9). HK explained it happened in "Prince Wednesday's bathroom" and he had to brush his teeth after. (D0255, Vol. 2, 149:20-24; 150:19-24). SK only knew of one male employee at the daycare, Mr. Green. (D0255, Vol. 2, 161:3-12). SK

found a picture of Mr. Green on Facebook, asked HK if he was "Prince Wednesday," and HK said yes. (D0255, Vol. 2, 155:16-156:17). After reviewing camera footage from September 13, 2019, officers found HK and Mr. Green did not have any contact that day. (D0253, Vol. 4, 19:3-15; 52:3-14; 68:9-69:18; 75:6-9). Officers believed the incident HK described occurred in 2018. (D0253, Vol. 4, 19:3-15; 52:3-14; 68:9-69:18; 75:6-9).

At trial, HK testified Mr. Green would take him to the bathroom at the daycare, touch him in "weird spots," and then make him brush his teeth. (D0254, Vol. 3, 21:21-25). HK testified the "weird spots" were his "private parts" which he referred to as his "butt and [his] wiener." (D0254, Vol. 3, 22:1-6; 28:6-8). HK could not remember if his clothes were on or off or what bathroom he was in when this happened. (D0254, Vol. 3, 23:15-18; 29:3-12). HK said he did not remember Mr. Green ever putting anything into his mouth during his testimony at trial. (D0254, Vol. 3, 23:9-14).

Both SK and HK testified HK told his mother about the sexual abuse on earlier occasions. SK testified she did not realize these

were disclosures at the time and realized they were disclosures in hindsight. (D0255, Vol. 2, 163:19-164:4). HK testified he would tell his mom about what happened with him and Mr. Green on the days Mr. Green touched him, but could not remember what he said. (D0255, Vol. 2, 22:9-23:8; 25:9-15). Mr. Green testified he did not have any sexual contact with any of the children. (D0249, Vol. 5, 79:23-80:24).

ARGUMENT

The District Court erred by admitting SK's testimony into evidence. HK's statement on September 13, 2019, was not an initial disclosure for purposes of Iowa Code § 622.31B.

Preservation of Error

On May 7, 2025, and June 17, 2025, the State filed a notice of intent to admit HK statements to his mother on September 13, 2019, as an initial disclosure of sexual abuse under Iowa Rule § 622.31B(4) and (2). (D0105, Notice Pursuant to Section 622.31 at 1-2, 5/7/25). (D0108, Amended and Substituted Notice Pursuant to Section 622.31B(2) at 1-2, 6/17/25). A hearing was held on the matter over Zoom. (D0243, Pretrial Hearing, 2:7-3:13, 6/27/25).

The State cited to State v. Sievers, 20 N.W.3d 203, 208 (Iowa 2025) to support its position. (D0243, Pretrial, 6:18-7:1; 7:17-23).

The State explained the circumstances surrounding HK's statements on September 13, 2019. (D0243, Pretrial, 8:4-16). The State sought to admit HK's statements about performing oral sex on "Prince Wednesday" through SK. (D0243, Pretrial, 8:24-9:11). The State explained HK's parents were married, they were not drug users, there were no custody issues, no issues with the daycare, and no reason to suspect fabrication. (D0243, Pretrial, 9:12-20). The State acknowledged HK made other prior statements to his mother but argued the statement on September 13, 2019, constituted the initial disclosure under Sievers. (D0243, Pretrial, 7:24-8:3).

Due to technical issues during the pretrial hearing, the District Court continued the matter. (D0243, Pretrial, 9:21-11:21). The District Court also wanted additional time to review Sievers and SK's deposition before the parties reconvened on the issue. (D0243, Pretrial, 9:21-11:21). The parties discussed the issue again on the

morning of the second day of jury selection. (D0255, Vol. 2, 3:18-4:2).

The State incorporated its earlier statements from the prior hearing and reiterated its previous arguments. (D0255, Vol. 2, 4:3-6:6; 9:9-10:21). The State explained HK would be testifying at trial, but he did not remember making the statement to SK on September 13, 2019. (D0255, Vol. 2, 11:18-12:8). The State asked the District Court to find SK could testify about HK's statements in her vehicle on September 13, 2019, under Iowa Code § 622.31B. (D0255, Vol. 2, 11:16-18; 12:6-12).

Mr. Green objected to the inclusion of the testimony because this was not the first disclosure HK made to SK. (D0255, Vol. 2, 12:14-21). Mr. Green read a portion of SK's deposition transcript into evidence where she acknowledged HK made prior disclosures. (D0255, Vol. 2, 12:22-15:2). SK recalled two different occasions where she believed HK "was being silly" but now recognized what he was saying as disclosures. (D0189, Exhibit 33, 7:8-15).

SK believed the first instance was when she, HK, and HK's older brother were driving home from daycare. (D0189, Exhibit 33, 8:8-15). SK testified HK said, "Mom, my teacher pooped in my mouth today" unprompted. (D0189, Exhibit 33, 8:8-15). SK and her older son did not know what to make of the statement. (D0189, Exhibit 33, 8:8-15). SK noted HK was not "talking super well" and explained with children "you just don't always know what they're saying, even though they are talking." (D0189, Exhibit 33, 8:16-9:3).

After HK's statements in the car on September 13, 2019, HK would "randomly" make statements to SK "unprompted." (D0189, Exhibit 33, 15:1-13). HK made statements on a couple of occasions where he "referred to Benny as pooping in his mouth out of his wiener, and icky green stuff came out." (D0189, Exhibit 33, 16:4-10).

The other instance, SK recalled was when she was walking with HK through the parking lot of the daycare and said "[HK], you know, I've noticed you seem to be having a lot of accidents at

daycare." (D0189, Exhibit 33, 7:16-19). SK said HK was doing well with potty training at home and thought it was "odd" he was having accidents. (D0189, Exhibit 33, 7:19-20). HK responded by saying, "I didn't pee my pants. My teacher peed my pants." (D0189, Exhibit 33, 7:21). SK believed HK did not want to "fess up" to having accidents and told him he was "so silly" and did not ask any follow up questions. (D0189, Exhibit 33, 7:22-24).

SK explained she now understood this to mean HK was ejaculated on by Mr. Green. (D0189, Exhibit 33, 7:25-8:3). SK noted HK's clothing never came back with urine or fecal matter on it because the staff had "always rinsed it out and then put it in a baggie." (D0189, Exhibit 33, 8:3-5). At the time, SK thought this was "nice and helpful," but now understood this to be a "cover up [of] what was actually happening." (D0189, Exhibit 33, 8-7).

Mr. Green argued these statements were the initial disclosures, even if they were not recognized as disclosures at the time and only recognized as disclosures in hindsight. (D0255, Vol. 2, 15:11-22). Mr. Green also argued HK told the child forensic

interviewer he told his mom about what happened, "over and over and over and over again." (D0255, Vol. 2, 20:6-12). The State acknowledged these statements occurred prior to the graphic statement on September 13, 2019, but further argued they were too vague to be disclosures. (D0255, Vol. 2, 19:15-22).

The District Court reviewed Sievers and a copy of SK's deposition. (D0255, Vol. 2, 21:1-13). The District Court noted this was a narrow issue of whether HK's statement on September 13, 2019, constituted an initial disclosure under Sievers and Iowa Code § 622.31B. (D0255, Vol. 2, 21:14-22:8). The District Court found this was a sex offense charge, a child victim was involved, and there appeared to be no "ulterior" or "background" motivations involved. (D0255, Vol. 2, 23:2-17). The District Court found the statement was not coached and was in response to a "typical" conversation between a parent and child during a pickup. (D0255, Vol. 2, 22:14-21).

The District Court noted Sievers held "that initial means initial," as in the first disclosure." (D0255, Vol. 2, 24:8-11). The

District Court noted the narrower question in this case was what is the definition of disclosure. (D0255, Vol. 2, 24:12-16). The District Court stated the Oxford Dictionary defined "disclosure" as "the action of making new or secret information known." (D0255, Vol. 2, 24:12-16). The District Court found a disclosure requires the individual to make a "clear enough and detailed enough [statement] that somebody else knows that you're making a disclosure and knows what you're talking about." (D0255, Vol. 2, 24:17-20).

The District Court found the statement on September 13, 2019, constituted a disclosure because SK understood "something specific happened." (D0255, Vol. 2, 24:20-22). The District Court said this statement was not a presence sense impression, but was a detailed statement about a sex act which was essentially "blurt[ed]-out." (D0255, Vol. 2, 25:12-24).

The District Court acknowledged there were prior statements which were "different or interesting or odd" and SK recognized those to be disclosures in hindsight. (D0255, Vol. 2, 23:18-24:2; 24:23-25:5). However, the District Court found those statements were not

"clear enough or detailed enough to be a disclosure or making the information known." (D0255, Vol. 2, 25:6-11; 26:4-12). The District Court further explained its impression of SK's deposition was she thought HK was trying to deflect responsibility for wetting his pants and was "puzzled" by the other statement of someone "poop[ing] in his mouth." (D0255, Vol. 2, 26:24-27:15).

The District Court held HK's statement to SK on September 13, 2019, constituted an initial disclosure under Sievers and Iowa Code § 622.31B. (D0255, Vol. 2, 26:13-18). The parties confirmed SK would be allowed to testify SK asked HK how his day was and HK told her "he petted Prince Wednesday's wiener," then it got "big like Daddy," the "icky stuff coming out," and having to brush his teeth after. (D0255, Vol. 2, 28:20-29:14). SK testified to these facts at trial. (D0255, Vol. 2, 149:1-149:25).

Because Mr. Green objected to the September 13, 2019, statement as an initial disclosure under Iowa Code § 622.31B, the District Court overruled the objection, and the testimony was

admitted into evidence, this issue is preserved for appellate review. State v. Dessinger, 958 N.W.2d 590, 598 (Iowa 2021).

Standard of Review

Rulings regarding questions of statutory interpretation and hearsay are reviewed under a correction of errors at law standard. State v. Sievers, 20 N.W.3d 203, 208 (Iowa 2025). The State bears the burden to prove the exception to hearsay applies. Id. When hearsay evidence was improperly admitted, prejudice is presumed. Id. at 211.

Merits

Iowa Code § 622.31B(2)(b) provides:

> 2. In a prosecution for physical abuse or a sexual offense including but not limited to a sexual offense in violation of section 709.2, 709.3, 709.4, 709.11, 709.12, 709.14, 709.15, 709.16, or 709.23, upon or against a child, a person with an intellectual disability, person with a cognitive impairment, or person with a developmental disability, the following evidence shall be admitted as an exception to the hearsay rule if all of the requirements in subsection 3 apply:
>
> b. Testimony by another concerning an out-of-court statement, whether consistent or inconsistent, made by the victim that is an initial disclosure of an offense charged for physical abuse or a sexual offense against the victim.

Iowa Code § 622.31B(2)(b) (2025) (emphasis added). Subsection 3 provides:

> 3. The testimony described in subsection 2 shall be admitted into evidence at trial as an exception to the hearsay rule if all of the following apply:
>
> a. The party intending to offer the statement does all of the following:
>
> (1) Notifies the adverse party of the intent to offer the statement.
>
> (2) Provides the adverse party with the name of the witness through whom the statement will be offered.
>
> (3) Provides the adverse party with a written summary of the statement to be offered.
>
> b. The court finds, in a hearing conducted outside the presence of the jury, that the timing of the statement, the content of the statement, and the circumstances surrounding the making of the statement provide sufficient safeguards of reliability.
>
> c. The child, person with an intellectual disability, person with a cognitive impairment, or a person with a developmental disability testifies at the trial.

Iowa Code § 622.31B(3)(a-c) (2025).

On appeal, Mr. Green asks this Court to hold disclosure for purposes of Iowa Code § 622.31B means "a statement which

provides a discernible description of physical or sexual abuse." What constitutes a discernable description must take the development of the individual child or the individual with cognitive impairments or developmental disabilities into account. Mr. Green disputes that HK's statements to his mother on September 13, 2019, do not constitute an initial disclosure and argues HK's previous statement to his mother in 2018 constituted the initial disclosure for purposes of Iowa Code § 622.31B. Mr. Green also disputes the statement was sufficiently reliable and Mr. Green was prejudiced by its inclusion.

i. This Court should hold disclosure for purposes of Iowa Code § 622.31B means "a statement which provides a discernible description of physical or sexual abuse."

The definition of the word "disclosure" for purposes of Iowa Code § 622.31B, otherwise known as the outcry witness statute, is an issue of first impression for Iowa Courts. Sievers, 20 N.W.3d at 206. Statutory review begins with the language of the statute at issue and courts seek to determine the ordinary and fair meaning of the language. State v. Flynn, 13 N.W.3d 843, 846-847 (Iowa 2024).

If the "text of a statute is plain and its meaning clear, we will not search for a meaning beyond the express terms of the statute or resort to rules of construction." Voss v. State (In re Est. of Voss), 553 N.W.2d 878, 880 (Iowa 1996).

"However, 'if reasonable minds could differ or be uncertain as to the meaning of the statute' based on the context of the statute, the statute is ambiguous and requires us to rely on principles of statutory construction to resolve the ambiguity." Est. of Butterfield v. Chautauqua Guest Home, Inc., 987 N.W.2d 834, 838 (Iowa 2023) (quoting State v. Coleman, 907 N.W.2d 124, 135 (Iowa 2018)). Statutes can also be ambiguous based upon the specific language used in a statute or when considered within the context of related statutes. Murillo v. State, 13 N.W.3d 800, 808 (Iowa 2024).

Appellate courts resolve ambiguous criminal statutes in favor of the accused, also known as the rule of lenity. State v. Hagen, 840 N.W.2d 140, 146 (Iowa 2013). Although appellate courts resolve ambiguities in favor of the accused, criminal statutes nevertheless "must be construed reasonably and in such a way as to not defeat

their plain purpose." State v. Peck, 539 N.W.2d 170, 173 (Iowa 1995). "In determining the ordinary and fair meaning of the statutory language at issue, [appellate courts] take into consideration the language's relationship to other provisions of the same statute and other provisions of related statutes." Doe v. State, 943 N.W.2d 608, 610 (Iowa 2020); see also Iowa Code § 4.1(38) ("Words and phrases shall be construed according to the context and the approved usage of the language ....").

"Finally, 'the legislature may define the terms it uses, and when it does, those definitions are the foundation of our analysis.'" Zimmer v. Vander Waal, 780 N.W.2d 730, 733 (Iowa 2010) (quoting State v. Kamber, 737 N.W.2d 297, 299 (Iowa 2007)). "Moreover, if the statute does not define a word or use it with an established meaning, [appellate courts] give the words their 'ordinary and common meaning by considering the context within which they are used.'" State v. Ross, 941 N.W.2d 341, 346-347 (Iowa 2020) (quoting Auen v. Alcoholic Beverages Div., 679 N.W.2d 586, 590

(Iowa 2004)). The legislature did not define the term "disclosure" for purposes of this statute and the term is ambiguous.

Section 622.31B creates a hearsay exception for initial disclosures of physical or sexual abuse for children, individuals with cognitive impairments, or individuals with a developmental disability. Iowa Code § 622.31B(2) (2025). The dictionary definition of disclosure is "the act of making something known or the fact that is made known." Cambridge Dictionary, Definition of Disclosure, https://dictionary.cambridge.org/us/dictionary/english/disclosure (last visited 3/17/26). Synonyms for disclose include words like "'report,' 'complaint,' or 'allegation'" and the term disclosure does not express whether a statement was true or false. State v. Carmelo, 558 P.3d 439, 441-442 (Or. App. 2024). While the Iowa Supreme Court recently determined "initial" for purposes of section 622.31B meant the first disclosure, the Iowa Supreme Court did not define the term disclosure for purposes of the statute. Sievers, 20 N.W.3d at 209. This Court should hold "disclosure" for purposes of Iowa Code § 622.31B means "a statement which provides a

discernible description of physical or sexual abuse." What constitutes a discernable description must take into account the speaker's age and development.

The Iowa Code routinely mentions the term "disclosure" in a wide variety of contexts. These include when personal information can be disclosed, if personal information can be disclosed, and the circumstances surrounding the disclosure. See Iowa Code § 321N.10(1) (2026)) (noting a transportation network company shall not disclose a company rider's personal information unless the driver consents to the disclosure, the law requires the disclosure, the disclosure is necessary to defend the company's services, or investigate a violation of terms of use); IA R. 32:1.6; Iowa R. 1.500; Iowa Code § 68A.402 (2026) (detailing disclosure report due dates for organizations engaging in political activity). Iowa Code Chapter 659A addresses the unauthorized disclosure of intimate images and defined "disclosure" as "transfer, publication, or distribution to another person." Iowa Code § 659A.2(3) (2026).

Although the term disclosure is used throughout Iowa law, there is not an analogous code section which describes the type, manner, and content which would provide guidance of a definition for disclosure for purposes of Iowa Code § 622.31B. Furthermore, this is complicated by the limited intellectual and verbal capacities of those making the disclosures under this hearsay exception.

Texas caselaw, while not completely analogous, is relevant to this analysis. Texas also has an "outcry" hearsay exception statute which provides hearsay statements by children younger than the age of 18 or a person with a disability are admissible into evidence when the statement was "made to the first person, 18 years of age or older, other than the defendant, to whom the child or person with a disability made a statement about the offense or extraneous crime, wrong, or act." Tex. Code Crim. Proc. Ann. Art. 38.072(2)(a)(3) (2026). Texas courts have defined "statement about the offense" to mean "a statement that in some discernible manner describes the alleged offense" and "must be more than words which give a general allusion that something in the area of child abuse

was going on." Garcia v. State, 792 S.W.2d 88, 91 (Tex. Crim. App. 1990) (en banc).[1]

In other words, the disclosure or statement must state the "how, when, and where" a sexual offense occurred. Reed v. State, 974 S.W.2d 838, 841-842 (Tex. App. – San Antonio 1998) (noting the victims explained the defendant touched them in between their legs, under their swimsuits, while riding on a lawn mower). So long as the child sufficiently communicated where a touching occurred, regardless of the "unsophisticated" language used, this constitutes a disclosure. Clark v. State, 558 S.W.2d 887, 888-889 (Tex. Crim. App. 1977) (noting a child referred to her vagina as her "front butt" and explained it was in between her legs where she urinated).

In Bradshaw v. State, a Texas Court of Appeals was tasked with deciding whether a gesture constituted an initial disclosure. Bradshaw v. State, 675 S.W.3d 78, 80 (Tex. App. – Waco 2023). There, a mother came home from work and saw her 5-year-old daughter naked in the same room as her 18-year-old son, the

[1] Texas determines these issues under an abuse of discretion standard. Id. at 92.

defendant. Id. at 81. The defendant was sleeping, the mother tried to wake him up, but was unsuccessful. Id. The mother got the child dressed, took her out of the house, and asked her if the defendant "did anything to her." Id. The five-year-old pointed to her mouth but did not make any statements. Id. The mother called the police, her daughter was interviewed, and her daughter disclosed her older brother made her engage in oral sex with her. Id. The Texas Court of Appeals found the child's gesture to her mouth did not constitute a statement about the offense and was a general insinuation a sexual offense had occurred. Id. There, the proper outcry witness was the forensic interviewer. Id.

In cases where multiple disclosures were made and the disclosures varied in detail, Texas courts held the "proper outcry witness is not to be determined by comparing the statements the child gave to different individuals and then deciding which person received the most detailed statement about the offense." Thomas v. State, 1 S.W.3d 138, 141 (Tex. App. – Texarkana 1999). In Thomas, the victim first disclosed the abuse to the defendant's mother by

stating the defendant "touched her in bad places and on her private parts and told her not to tell." Id. at 140. The victim gave more detailed statements to her mother later the same day. Id. There, the State called the victim's mother to testify. Id. On appeal, the Court found the victim's statement to the defendant's mother was more than a general allusion to sexual abuse and she should have been the properly designated outcry witness. Id. at 141. See also James v. State, No. A–11377, 2015 WL 9257032, at *10-12 (Alaska App. Dec. 16, 2015) (holding under the "first complaint" or "first report doctrine" the more detailed subsequent statement was admitted in error).

In instances where the child recalls making a disclosure to an adult, but the adult did not recall a disclosure being made, Texas courts have held the first witness who remembers the disclosure is the proper outcry witness. In Dority v. State, the victim was 4-years-old and testified she told her grandparents about the sexual abuse first and told her mother after. Dority v. State, 631 S.W.3d 779, 791 (Tex. App. – Eastland 2021). However, her grandparents

did not recall her making any statements about sexual abuse. Id. The 4-year old's mother recalled her daughter saying the defendant "touched his no-no area to her no-no area." Id. The Texas Court of Appeals found the mother was the proper outcry witness because she was "the first person who can remember and relate at trial the child's statement that in some discernable manner describes the alleged offense." Id. at 792. See Foreman v. State, 995 S.W.2d 854, 859 (Tex. App. – Austin 1999).

This Court should hold "disclosure" for purposes of Iowa Code § 622.31B means "a statement which provides a discernible description of physical or sexual abuse." However, what constitutes a discernible description should be based upon the individual's age, development, and ability to communicate. Although Texas has developed a substantial amount of law on this issue, it does not appear there has been a disclosure of sexual abuse by a 2 or 3-year-old child, like HK.

There are significant developmental differences in how children disclose sexual abuse. Kamala London et al., Disclosure of

Child Sexual Abuse: What Does the Research Tell Us About the Ways That Children Tell?, 11 Psychol. Pub. Pol'y & L. 194, 207-208 (Mar. 2005). Delayed disclosure occurs roughly in two thirds of cases but it appears "older children were more likely to disclose than younger children and that children generally became more likely to disclose abuse after age 4." Id. at 199; 207. Even though it is unclear why exactly this is the case, researchers believe developmental differences in "linguistic, cognitive, and social-emotional factors" could play a role. Id. at 208.

For example, many young children "may not understand the 'meaning' of abusive acts and thus fail to make explicit disclosures" and they often make accidental, rather than purposeful, disclosures. Id. These accidental disclosures tend to be "spontaneous statements about abuse that are not consistent with the topic of conversation or of the ongoing activity (e.g., stating, while watching TV, 'Uncle Bob hurt my bottom')." Id.

Additionally, young children, ages 2-3, might not have the linguistic skills or capabilities to disclose their abuse. Id. The

linguistic capabilities of a 2-year-old are limited, but grow rapidly. Most children by the age of 2 can use 2-word simple phrases, ask one to 2-word questions, speak 50 to 100 words, and can be understood by adults who do not know the child approximately half the time. Mayo Clinic, Should I be concerned that my 2-year-old doesn't say many words and is hard to understand?, https://www.mayoclinic.org/healthy-lifestyle/infant-and-toddler-health/expert-answers/toddler-speech-development/faq-20057847, March 4, 2023 (last visited March 26, 2026). By the time a child turns 3, they can speak in 2 to 3-word sentences, use 200 words, and ask questions using "who, what, where, or why." Id. By the age of 4, children can use sentences with 4 more words, answer simple questions, and speak in a way where most people can understand them. American Speech-Language Hearing Association, Communication Milestones: 3 to 4 Years, https://www.asha.org/public/developmental-milestones/communication-milestones-3-to-4-years/ (last visited March 26, 2026). Ensuring the discernible description is tailored to

the child's age accounts for the developmental differences that influence how and when disclosures are made by children.

This research corresponds with Dancia Haas' testimony at trial. Haas was a forensic child interviewer in Waterloo, Iowa, and she interviewed HK. (D0254, Vol. 3, 163:1-164:7; 170:1-13). Haas testified children disclose when they are ready to disclose, but most children do not "just come right out and tell what happened to them." (D0254, Vol. 3, 171:13-16; 182:6-10). Haas explained children fundamentally do not disclose abuse in the way an adult discloses. (D0254, Vol. 3, 172:15-173:8). Children's ability to recall events is typically triggered by something external in their lives. (D0254, Vol. 3, 172:15-173:8).

Children will also disclose their abuse "out of order." (D0254, Vol. 3, 172:15-173:8). Haas explained children typically disclose in a "breadcrumb" manner where they will not make a full disclosure initially and will instead make one statement, evaluate how the statement was received, and decide whether to continue their disclosure or stop. (D0254, Vol. 3, 180:20-181:7). Sometimes

children will discuss the disclosure with the same person after some time has passed or may choose to make a disclosure to someone else at an entirely different time. (D0254, Vol. 3, 181:8-11). Children often delay reporting or disclosing abuse for a number of reasons including the child was too young to understand what happened to them, they did not have a safe adult to tell, the child tried to explain but was unable to, or threats from the perpetrator make the child too scared to disclose. (D0254, Vol. 3, 170:14-171:12).

There are significant developmental factors which influence when, how, and why children disclose abuse and these factors should be accounted for when determining which statement constitutes an initial disclosure. Therefore, this Court should hold "disclosure" for purposes of Iowa Code § 622.31B means "a statement which provides a discernible description of physical or sexual abuse," which should take into account the child's age and development.

ii. The September 13, 2019, statement did not constitute an initial disclosure under Iowa Code § 622.31B and did not have significant indications of reliability.

Both SK and HK testified HK made disclosures of sexual abuse to SK prior to September 13, 2019.[2] SK testified there were a "couple of times before September 13 that [HK] told me things that I didn't realize what he was telling me that were probably about the situation." (D0255, Vol. 2, 163:19-164:4). HK testified he told his mom about what happened between him and Mr. Green, but he could not remember what he said to his mom. (D0254, Vol. 3, 22:9-25). Whenever Mr. Green touched HK, HK testified he would tell his mom "the day that it would happen," but could not remember the exact dates. (D0254, Vol. 3, 22:9-23:8; 25:9-15).

HK recalled his mother asking him how his day was, and if it was bad he would tell her about what happened with him and Mr.

[2] During SK's deposition, she mentioned HK told another child at daycare what happened with him and Mr. Green. (D0189, Exhibit 33, 17:1-18). SK could not remember the child's name, HK did not say why he told the other child, and SK did not ask any additional questions about what he said. (D0189, Exhibit 33, 17:1-18). Because there was no description of the statement, this will not be addressed within the analysis.

Green. (D0254, Vol. 3, 27:10-21; 22:9-23:8; 25:9-15). HK recalled saying he would tell his mom where Mr. Green touched him and would follow up by saying "[Mr. Green] told me to keep this a secret, but I still told you." (D0254, Vol. 3, 27:16-28:5). HK acknowledged he told the child advocacy center interviewers he talked to his mother about what happened "a lot" and he discussed it with her "over and over and over again." (D0254, Vol. 3, 26:2-20).

HK's prior statement to his mother about his teacher "poop[ing] in his mouth" should be considered the initial disclosure. The first time SK recalled HK disclosing the sexual abuse was when she, HK, and HK's older brother were driving home from daycare. (D0189, Exhibit 33, 8:8-15). At the deposition, SK explained HK, unprompted, said "Mom, my teacher pooped in my mouth today." (D0189, Exhibit 33, 8:8-15). SK and her older son did not know what to make of the statement. (D0189, Exhibit 33, 8:8-15). SK noted HK was not "talking super well" and explained with children "you just don't always know what they're saying, even though they are talking." (D0189, Exhibit 33, 8:16-9:3).

SK later learned HK was using the term "poop[ing] in his mouth" to describe ejaculation. After HK's statements in the car on September 13, 2019, HK would "randomly" make statements to SK "unprompted." (D0189, Exhibit 33, 15:1-13). HK made statements on a couple of occasions where he "referred to Benny as pooping in his mouth out of his wiener, and icky green stuff came out." (D0189, Exhibit 33, 16:4-10). SK then understood HK's prior statement in the car.

HK's statements to his mother appear to be developmentally consistent with how a 2-year-old child would disclose sexual abuse. Haas testified children disclose in "breadcrumbs" and delayed disclosure can be caused by limited linguistic abilities. (D0254, Vol. 3, 180:20-181:7). London et al., Disclosure of Child Sexual Abuse, at 208. This is indicative of both. HK was using the language he had available, "pooping," to describe an act, ejaculation, he would have no other language to describe. Therefore, this statement constitutes a discernible description of sexual abuse.

The Iowa Code does not require someone to immediately recognize a statement by a protected party as an initial disclosure for the statement to constitute an initial disclosure. Iowa Code § 622.31B. There has been a push in recent years to teach children the proper names for their genitalia, but many parents still use nicknames when discussing body parts, including the word "cookie" to describe a vagina. Enough Abuse, Why we should teach children the proper names for private body parts, https://enoughabuse.org/why-we-should-teach-children-proper-names-for-private-body-parts/, February 22, 2024 (last visited March 26, 2026). If a child were to use a nickname in an initial disclosure, such as "XXX touched my cookie," to a non-family member, like a teacher, who is unaware of the nickname, this does not negate or invalidate the child's initial disclosure. The statement to the teacher would still constitute the initial disclosure even though additional testimony would be needed to confirm the nickname for the specific body part.

SK acknowledged she did not understand what HK was saying initially, but she later understood what he was communicating to her once his linguistic capabilities increased and she asked follow up questions. Both SK and HK had an objective understanding he was communicating a disclosure of sexual abuse. Because this statement was developmentally consistent and HK and SK acknowledged HK made prior disclosures, this statement should constitute the initial disclosure.

If the Court finds the first statement was not specific enough to constitute an initial disclosure, HK's other statement about his teacher peeing on him should be considered the initial disclosure. For that disclosure, SK recalled she was walking with HK through the parking lot of the daycare and said "[HK], you know, I've noticed you seem to be having a lot of accidents at daycare." (D0189, Exhibit 33, 7:16-19). SK said HK was doing well with potty training at home and thought it was "odd" he was having accidents. (D0189, Exhibit 33, 7:19-20). HK responded by saying, "I didn't pee my pants. My teacher peed my pants." (D0189, Exhibit 33, 7:21). SK

believed HK did not want to "fess up" to having accidents and told him he was "so silly" and did not ask any follow up questions. (D0189, Exhibit 33, 7:22-24).

SK explained she later understood this to mean HK was ejaculated on by Mr. Green. (D0189, Exhibit 33, 7:25-8:3). SK noted HK's clothing never came back with pee or poop on it because the staff had "always rinsed it out and then put it in a baggie." (D0189, Exhibit 33, 8:3-5). At the time, SK thought this was "nice and helpful" but understood this to be a "cover up [of] what was actually happening." (D0189, Exhibit 33, 8-7).

This statement fully constitutes an initial disclosure under Iowa Code § 622.31B. Even if it is unclear if HK was being ejaculated on, HK told his mother he saw his teacher's genitalia. There would be no logical reason for a child to see their teacher's genitalia. This would indicate the child was the victim of indecent exposure, which is a sexual abuse crime. Iowa Code § 709.9. This statement is also developmentally consistent with how children disclose sexual abuse. Again, HK was using a word he knew, "peed,"

to describe an act he did not know, ejaculation. Therefore, this statement provides a discernible description of sexual abuse.

Furthermore, Iowa Code § 622.31B does not require someone to believe a disclosure is true at the time a disclosure is made for the statement to constitute an initial disclosure. Within the context of the code section, the term disclose does not convey an opinion on the credibility of the disclosure, but rather connotes a statement was made about a particular topic. See Carmelo, 558 P.3d at 441-442. The Iowa Code simply requires a protected party to make a discernable description of sexual or physical abuse, which can be repeated by the listener as an exception to hearsay.

The statement which ultimately results in a report or investigation does not automatically constitute the "initial disclosure" for purposes of Iowa Code § 622.31B. While initial disclosures can prompt an investigation, the statute does not require an initial disclosure to prompt an investigation. The relevant time to determine what statement constitutes an initial disclosure is at trial when the evidence would be submitted. Selecting the

September 13, 2019, statement as the initial disclosure would be selecting the most detailed statement rather than the initial statement. All the parties at trial and witnesses agreed there were prior disclosures of sexual abuse to September 13, 2019. Because there was an acknowledgement and understanding there were prior disclosures of sexual abuse, the September 13, 2019, statement cannot constitute an initial disclosure. Sievers, 20 N.W.3d at 209-210.

Additionally, there were not sufficient safeguards of reliability for the September 13, 2019, statement. Iowa Code § 622.31B(3)(b) (2025). Prior to the trial beginning, the State acknowledged HK would not repeat SK's testimony and previously indicated he did not remember either what happened or making the statement to his mother. (D0255, Vol. 2, 11: 16-12:12). At trial, HK testified Mr. Green never put anything in his mouth. (D0254, Vol. 3, 23:9-14).

HK's statement on September 13, 2019, indicated the sexual contact happened that day. (D0255, Vol. 2, 146:8-19; 148:24-149:9; 149:20-24; 150:19-24). However, officers reviewed the video

footage from the daycare and noted HK and Mr. Green had no contact on September 13, 2019. (D0253, Vol. 4, 19:3-15; 52:3-14; 68:9-69:18; 75:6-9). Once it was shown they did not have contact that date, officers presumed HK was referencing an incident from 2018. (D0253, Vol. 4, 19:3-15; 52:3-14; 68:9-69:18; 75:6-9).

HK was taken to the child protection center (CPC) in September of 2019, but HK did not make any disclosures. (D0189, Exhibit 33, 22:11-22). HK was taken to the CPC two more times before he made any disclosures. (D0189, Exhibit 33, 22:23-23:8). Children appear to typically disclose sexual abuse within the first or second interview. London et al., Disclosure of Child Sexual Abuse, at 217. Repeated interviews are not inherently suggestive, but repeated suggestive interviews can create errors in children's reporting, particularly with younger children. David L Rooy et. all, Do We Need to Rethink Guidance on Repeated Interviews?, 16 Psychol. Pub. Pol'y & L 373, 376-77 (located at https://larooy.net/LKML2010.pdf) (last visited March 26, 2026) (2010). However, young children are highly susceptible to seemingly

innocuous mistakes by adult interviewers, such as repeated questions during the same interview. Thomas D. Lyon, Applying Suggestibility Research to the Real World: The Case of Repeated Questions, 65-WTR Law & Contemp. Probs. 97, 104-106 (Winter 2002) (noting repeating questions within the same interview constitutes a "highly suggestive" technique, which can occur on accident). The specifics of these interviews were not admitted at trial, but these factors are important in the overall reliability analysis.

There were also concerns about the reliability of HK's identification of Mr. Green. HK said someone named "Prince Wednesday" touched him, but no one had ever referred to Mr. Green as "Prince Wednesday" and Mr. Green testified he did not go by that nickname. (D0254, Vol. 3, 10:3-13; 19:25-20:9; 21:2-14). (D0253, Vol. 4, 167:23-168:6; 175:24-176:3; 195:6-16; 216:2-12). (D0249, Vol. 5, 14:16-15:5; 21:2-13; 102:16-19). Additionally, SK's mother showed HK a picture of Mr. Green, asked him if this was Prince Wednesday, and HK said yes. (D0255, Vol. 2, 155:16-

156:17). Haas testified this is a known suggestive interviewing technique, which decreases the reliability of HK's statements. (D0254, Vol. 3, 184:21-25). When these factors are taken together, this demonstrates HK's statement on September 13, 2019, was not reliable and should not have been admitted into evidence.

The admission the September 13, 2019, statement prejudiced Mr. Green. "When hearsay is improperly admitted the error is presumed to be prejudicial unless the State shows the contrary." State v. Huser, 894 N.W.2d 472, 495 (Iowa 2017). The contrary is affirmatively established if the record shows the hearsay evidence did not affect the jury's finding of guilt. State v. Elliott, 806 N.W.2d 660, 669 (Iowa 2011). The State can overcome this burden by presenting evidence the testimony was cumulative. State v. Wilson, 878 N.W.2d 203, 219 (Iowa 2016).

SK's testimony was not cumulative and was not corroborated by other testimony. The State acknowledged SK's statements were "the strongest evidence that we have in this case with regard to what occurred, or what we're alleging occurred, between the

defendant and [HK].” (D0255, Vol. 2, 9:1-8). The only instance someone testified about a sexual act, other than touching, was SK. (D0255, Vol. 2, 148:24-149:9). HK testified Mr. Green did not make him put anything in his mouth and testified Mr. Green touched his butt and penis. (D0254, Vol. 3, 21:21-22:6; 23:9-14; 28:6-8). Furthermore, the statement from September 13, 2019, was graphic, as the State repeatedly emphasized during closing arguments. (D0249, Vol. 5, 137:24-138:10; 152:13-25; 173:10-19). This was a stark contrast to HK’s testimony at trial where he gave simple, non-graphic statements about Mr. Green touching him.

“[C]losing arguments often help [appellate courts] decided whether evidence was prejudicial.” S.K. v. Obstetric & Gynecologic Associates of Iowa City & Coralville, P.C., 13 N.W.3d 546, 564 (Iowa 2024). The State exclusively focused on SK’s statements during closing arguments and did not reference HK’s testimony at trial. (D0249, Vol. 5, 129:18-133:22; 137:24-138:10; 143:6-13; 148:5-8; 152:13-25; 173:10-19; 176:11-22; 183:10-15). The State argued HK

"was made to perform oral sex" on Mr. Green as the basis for the charge. (D0249, Vol. 5, 173:10-14). The State also argued:

> So [HK's] statement to his mom, so is what he says, the graphic nature of this case and what happened to him: "Prince Wednesday's wiener," his penis, was in his mouth -- that's what an almost-four-year- old said -- that his wiener got big. He is describing an erection. That's what he's describing, a little kid.
>
> "It's big like Daddy's." That's how he compares it. "Icky stuff came out." He said that it was green. He is describing ejaculation. And he has to brush his teeth after at the direction of Benjamin Green.
>
> […]
>
> [HK] was able to describe Prince Wednesday, Benjamin Green, as the person who did that to him. Prince Wednesday equals Benjamin Green. [HK's] description equals oral sex, a sex act, performed on a child.

(D0249, Vol. 5, 132:25-133:22). Because these statements were featured prominently in the State's closing arguments and the State's repeated emphasis on the allegations of oral sex, this establishes the admission of this testimony was not harmless and prejudiced Mr. Green. State v. Skahill, 966 N.W.2d 1, 17 (Iowa 2021).

CONCLUSION

This Court should hold "disclosure" for purposes of Iowa Code § 622.31B means "a statement which provides a discernable description of physical or sexual abuse." What constitutes a discernable description must take into account the age and development of the child or individual with developmental or cognitive disabilities. This Court should also find the September 13, 2019, statement was not the initial disclosure, it was not sufficiently reliable, and its inclusion prejudiced Mr. Green. For the reasons stated above, Mr. Green respectfully requests this court to remand his case to the lower court for a new trial. Sievers, 20 N.W.3d at 212.

REQUEST FOR ORAL ARGUMENT

Counsel requests to be heard in oral argument.

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/s/ Ella M. Newell Dated: *3/31/26*

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