

**IN THE SUPREME COURT OF IOWA**

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Supreme Court No. 21-1594

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STATE OF IOWA,

Plaintiff-Appellee,

v.

DAGGER LE ERDMAN,

Defendant-Appellant.

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**APPLICATION FOR FURTHER REVIEW**

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IOWA COURT OF APPEALS RULING FILED FEBRUARY 8, 2023

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## QUESTIONS PRESENTED FOR REVIEW

- I. WHETHER THE LOWER COURT ERRED BY GRANTING THE STATE'S MOTION TO WAIVE JURISDICTION FROM JUVENILE COURT TO DISTRICT COURT.

*State v. Duncan*, 841 N.W.2d 604 (Iowa App. 2013)

*State v. Neitzel*, 801 N.W.2d 612 (Iowa App. 2011)

- II. WHETHER THE DISTRICT COURT ERRED BY DENYING ERDMAN'S MOTION FOR VERDICT OF ACQUITTAL BASED ON INSUFFICIENCY OF THE EVIDENCE TO SUPPORT THE CRIME CHARGED.

*State v. Brubaker*, 805 N.W.2d 164 (Iowa 2011)

*State v. Mills*, 458 N.W.2d 395 (Iowa App.1990)

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## STATEMENT IN SUPPORT OF FURTHER REVIEW

Appellant Dagger Le Erdman respectfully requests that the Supreme Court of Iowa grant further review of his case on the grounds that the Iowa Court of Appeals has entered a decision in conflict with a decision of this court or the court of appeals on an important matter. *See* Iowa Rules of Appellate Procedure 6.1103(1)(b).

The Iowa Court of Appeals made an incorrect ruling by affirming the district court's findings and orders. Mr. Erdman argues that the Court of Appeals erred by affirming on two grounds. First, Mr. Erdman argues that the lower court erred by granting the State's motion for waiver of jurisdiction from the juvenile court to the district court. Erdman was only 17 years old at the time of the incident, had no prior court involvement, and there was ample time for any rehabilitation had the juvenile court adjudicated him under the delinquency petition. Further, the district court erred by not granting Erdman's motion for a directed verdict of acquittal based on the lack of evidence to support the crime charged. The Iowa Court of Appeals erred by affirming the lower court's decisions.

For these reasons, Appellant Erdman requests that the Iowa Supreme Court grant his Application for Further Review.

## STATEMENT OF THE CASE

### Procedural History

On September 13, 2019, a Delinquency Petition was filed against Dagger Le Erdman in the Washington County Juvenile Court. Said petition accused Erdman, age 17 years at that time, of the crime of Sex Abuse in the Second Degree in violation of Iowa Code Sections 709.1, 709.3(2), 709.3(1)(b), 903B.1. (Delinquency Petition; Vol II Appx. 5). The State contemporaneously filed a Motion to Waive Jurisdiction for Prosecution as if an Adult along with the Delinquency Petition. (Motion to Waive Jurisdiction; Vol II Appx. 7). Erdman objected to the waiver to district court. The juvenile court heard arguments on the motion for waiver on October 22, 2019. (Juvenile Court Tr. p. 1). The court subsequently determined that Erdman should be waived to district court and entered an order granting the State's motion. (Waiver Order; Vol I Appx. 4).

In district court, the State filed a trial information on November 20, 2019 charging Erdman with Sexual Abuse in the Second Degree, a class B felony. (Trial Information; Vol I Appx. 7). Erdman entered a plea of not guilty and the matter proceeded to a jury trial on July 13, 2021. (Trial Tr. Vol. 1, p. 1, ln. 11).

At the close of the State's case, the Defendant submitted a motion for directed verdict of acquittal. (Trial Tr. Vol. 2, p. 69, ln. 19-24). Erdman argued that the State had not produced sufficient evidence to submit the criminal charge to the jury. (Trial

Tr. Vol. 2, p. 69, ln 21-24). The court denied the Defendant's motion for acquittal stating that "the Court finds that there is substantial evidence in the record to support a finding of the elements of the crime charged." (Trial Tr. Vol. 2, p. 70, ln. 14-17). Erdman then testified in his own defense. (Trial Tr. Vol. 2, p. 73). At the close of the Defendant's evidence, Erdman renewed his motion for directed verdict of acquittal on the record. (Trial Tr. Vol. 2, p. 94, ln. 5-6). Again, the district court denied the Defendant's motion for acquittal. (Trial Tr. Vol. 2, p. 94, ln. 15-16). The jury thereafter deliberated and returned a guilty verdict on the charge of Sexual Abuse in the Second Degree. (Criminal Verdict; Vol I Appx. 36).

The matter proceeded to sentencing on October 8, 2021. (Sent. Tr. p. 1). The State recommended a sentence of 25 years of incarceration with a 70% mandatory minimum. (Sent. Tr. p. 6, ln. 19-24). Erdman requested a deferred judgment, or a suspended sentence based on his young age, lack of criminal record, successful pretrial supervision, and family support. (Sent. Tr. p. 9, ln. 9-14). The Court considered the statutory sentencing factors and ultimately sentenced Erdman to a term of incarceration not to exceed 25 years and stating that he shall not be eligible for parole until 70% of the sentence is served. (Sent. Tr. p. 14, ln. 11-16). Pursuant to the Court's authority under Iowa Code Section 901.5(14), the court suspended Erdman's sentence pending his compliance with probation for a period of five years. (Sent. Tr. p. 14, ln. 22-25; Judgment and Sentence p. 1; Vol I Appx. 37). Erdman is

also subject to a lifetime sex offender registry requirement. (Judgment and Sentence p. 2; Vol I Appx. 38).

Erdman filed a timely Notice of Appeal on October 25, 2021, and now asks the reviewing court to find that the lower court erred in waiving the matter from juvenile court to district court and failing to grant Erdman's motion for acquittal. (Notice of Appeal; Vol I Appx. 44).

### **Facts**

On May 31, 2019, Dagger Le Erman was 17 years old and his neighbor, Z.E., was 9 years old. (Trial Tr. Vol. p. 54, ln. 21-22; p. 18, ln. 14-15). Z.E. testified that, on that date, she went to Erdman's house and while she was with Erdman in his bedroom, Erdman reached into her pants and touched her vagina. (Trial Tr. Vol. 2, p.23, ln. 21-22). Z.E. further testified that after Erdman withdrew his hand from her pants, he then put his hand down his own pants and touched himself. (Trial Tr. Vol. 2, p. 22, ln. 10-13). Conversely, Erdman testified that, while Z.E. did come to his house to visit, at no time did he touch Z.E.'s privates. (Trial Tr. Vol. 2, p. 77, ln. 7-9). Erdman stated that if any touching could have happened, such touching would have been completely unintentional while the two were playing tag. (Trial Tr. Vol. 2, p. 82, ln. 16-22).

Any additional relevant facts will be addressed as needed in the arguments below.



## ARGUMENT

### **I. THE LOWER COURT ERRED BY GRANTING THE STATE'S MOTION FOR WAIVER OF JURISDICTION FROM JUVENILE COURT TO DISTRICT COURT.**

#### **A. Error Preservation**

Erdman objected to the waiver of jurisdiction from the juvenile court to the district court on the record. (Waiver Hearing Tr. p. 24, ln. 12-19). The court heard argument on the matter and entered a written ruling granting the State's motion for waiver. (Waiver Hearing Tr.; Waiver Order p. 2; Vol I Appx. 4).

#### **B. Standard of Review**

"We review a court's decision whether to transfer a case to or from juvenile court for an abuse of discretion." *State v. Duncan*, 841 N.W.2d 604, 607 (Iowa App. 2013) (citing *State v. Neitzel*, 801 N.W.2d 612, 618 (Iowa App. 2011)). A juvenile court's decision to waive jurisdiction of a minor to the district court is reviewed "de novo to the extent of examining all the evidence to determine whether the court abused its discretion in ordering the waiver." *State v. Greiman*, 344 N.W.2d 249, 251 (Iowa 1984). Review of the juvenile court's interpretation of statutes is for correction of errors at law. *State v. Crooks*, 911 N.W.2d 153, 161 (Iowa 2018).

#### **C. Argument: The juvenile court erred by granting the State's motion to waive jurisdiction to the district court.**

The incident giving rise to the charge against Erdman occurred on or about May 31, 2019. (Trial Information p. 1; Vol I Appx. 7). Erdman's date of birth is

April 28, 2002. (Waiver Hearing Tr. p. 17, ln. 8). Therefore, Erdman had just turned age 17 one month prior to the incident. The waiver hearing took place on October 22, 2019. (Waiver Order p. 1; Vol I Appx. 4). Thus, there were six more months before Erdman would turn 18 years old when the juvenile court made the decision on the waiver of jurisdiction. Erdman argues that the juvenile court erred by finding that waiver to district court was in the best interests of Erdman and the community.

Iowa Code §232.45(8) delineates the factors that the juvenile court must consider in making the determination of waiver for juveniles aged 14 and over. These factors are:

- a. The nature of the alleged delinquent act and the circumstances under which it was committed.
- b. The nature and extent of the child's prior contacts with juvenile authorities, including past efforts of such authorities to treat and rehabilitate the child and the response to such efforts.
- c. The programs, facilities and personnel available to the juvenile court for rehabilitation and treatment of the child, and the programs, facilities and personnel which would be available to the court that would have jurisdiction in the event the juvenile court waives its jurisdiction so that the child can be prosecuted as an adult.

In the juvenile court's order of October 22, 2019, the juvenile court focuses exclusively on the factor that there was insufficient time for Erdman to attend the State Training School if he were to be adjudicated. (Waiver Order p. 2; Vol I Appx. 5). The juvenile court summarily determined that "there is no reasonable prospect of rehabilitation prior to the court losing jurisdiction and the ability to enforce treatment." *Id.* However, the juvenile court reached this conclusion without considering all the mandatory factors set out in §232.45(8)(a-c).

First, considering the nature and circumstances of the alleged delinquent act under section a, these factors in Erdman's case supported a denial of the waiver to district court. Even if Erdman was adjudicated, the incident was not violent or unduly coercive. The defendant was not in a position of authority over the child such as a teacher, parent, or other similar authority figure. The defendant was a peer of the child. While Erdman was the older child, they were both children. Z.E. had come over the Erdman's house to visit Erdman and the two played tag and watched television. Those are child-like, peer-to-peer activities. Further, the alleged "sex act" was a touching with the hand and did not include genital to genital acts, or any such egregious contact. The child was not threatened or restrained in any way. The non-violent nature of the alleged act and the fact that both parties were children are very important. The nature and circumstances of the alleged delinquent act directly supported a denial of the request to waive jurisdiction to district court.

Second, the factor under section b- the child's prior contact with juvenile authorities- is nonexistent. Erdman had zero prior record. This factor weighed heavily in Erdman's favor for a high probability for rehabilitation had he been adjudicated. In fact, his age was a beneficial factor in this analysis. There was no childhood pattern of bad acts to overcome. Rather, the incident was clearly an anomaly as supported by his record. The juvenile court disregarded this important factor despite the mandate in §232.45(8) that the court "shall" consider these factors in making the determination on waiver.

Third, the consideration under section c is the programs and facilities available to the child through the juvenile court as opposed to the district court. Here, the juvenile court focused only on the State Training School option and determined that, regardless of Erdman's eligibility to attend, there was "no reasonable prospect of rehabilitation prior to the court losing jurisdiction and the ability to enforce treatment." (Waiver Order p. 2; Vol I Appx. 5). To determine whether a waiver to district court is in the child's best interests, a review of the programs available under the waiver or no waiver outcomes should have been done. There was virtually no discussion of what programs Erdman would or could participate in should the waiver be granted. There was also no discussion on the best interests of the community in making this decision.

In summary, the juvenile court erred by not considering all the mandatory factors set forth in Iowa Code §232.45(8) in making the determination to waive jurisdiction to the district court. A careful review of all the factors shows that the best interests of Erdman and the best interests of the community would be that the juvenile court retain jurisdiction. The State's request for waiver should have been denied.

## **II. THE DISTRICT COURT ERRED BY DENYING ERDMAN'S MOTION FOR A VERDICT OF ACQUITTAL BASED ON INSUFFICIENT EVIDENCE TO SUPPORT THE CRIME CHARGED.**

### **A. Error Preservation**

Erdman made a motion for a directed verdict of acquittal on the record at the close of the State's case. (Trial Tr. Vol. 2, p. 69, ln. 19-24). Erdman further renewed his motion for acquittal after the defense rested. (Trial Tr. Vol. 2, p. 94, ln. 15-16).

### **B. Standard of Review**

The Court reviews sufficiency-of-the-evidence claims for correction of errors at law. *See State v. Brubaker*, 805 N.W.2d 164, 171 (Iowa 2011).

### **C. Argument: The District Court erred by failing to grant Erdman's motion for a directed verdict on the basis that there was insufficient evidence to support the crime charged.**

When reviewing a challenge to the sufficiency of the evidence, the court views the evidence in the light most favorable to the state, including legitimate inferences and presumptions which may fairly and reasonably be deduced from the evidence in

the record. *State v. Sanford*, 814 N.W.2d 611, 615 (Iowa 2012). Direct and circumstantial evidence are equally probative so long as the evidence raises “a fair inference of guilt and [does] more than create speculation, suspicion, or conjecture.” *State v. Mills*, 458 N.W.2d 395, 397 (Iowa App.1990) (quoting *State v. Wheeler*, 403 N.W.2d 58, 60 (Iowa App.1987)). It is necessary to consider all the evidence in the record and not just the evidence supporting the verdict to determine whether there is substantial evidence to support the charge. *Id.* Substantial evidence means evidence which would convince a rational fact finder that the defendant is guilty beyond a reasonable doubt. *Id.*

The Court will uphold a verdict if substantial evidence supports it. *See State v. Brubaker*, 805 N.W.2d 164, 171 (Iowa 2011). Evidence is substantial if it would convince a reasonable fact finder the defendant is guilty beyond a reasonable doubt. *Id.* The Court considers all evidence in the record—not just the evidence supporting guilt—when making sufficiency-of-the-evidence determinations. *Id.* The evidence is viewed in the light most favorable to the State, drawing all reasonable inferences to uphold the verdict. *State v. Williams*, 695 N.W.2d 23, 28 (Iowa 2005).

After the State rested, Erdman made a motion for directed verdict of acquittal on the specific basis that the State failed to present sufficient evidence that a sex act had been committed. (Trial Tr. Vol. 2, p. 69, ln. 21-24). Erdman renewed his motion at the end of the trial on the same grounds. (Trial Tr. Vol. 2, p. 94, ln. 5-6).

Erdman was charged with Sexual Abuse in the Second Degree which provides that a person commits sexual abuse in the second degree when the person commits sexual abuse, and the other person is a child. Iowa Code §709.3(b). The elements of sexual abuse in this instance are delineated in jury Instruction No. 15, stating that, if the defendant performed a sex act on Z.E. and she was under the age of twelve years, then he was guilty of Sexual Abuse in the Second Degree. As to the definition of “sex act,” the jury was provided the following instruction:

Concerning element number 1 of Instruction No. 15, “sex act,” as relevant to this case, means any sexual contact between the finger or hand of one person and the genitals or anus of another person. You may consider the type of contact and the circumstances surround it in deciding whether the contact was sexual in nature.

Instruction No. 16.

In Erdman’s case, there was not sufficient evidence presented to find the Defendant guilty beyond a reasonable doubt. While corroboration of the victim’s testimony is not required, the circumstances surrounding the incident and the reliability of the witness are important factors. Here, the only evidence against Erdman was the testimony of the complaining witness, Z.E. The fact that Z.E. was at the Erdman’s home on the day in question does not make Z.E.’s direct allegation of sexual abuse more accurate. Erdman himself provided credible testimony that he did not, in fact, touch Z.E. inappropriately. The State attempted to discredit Erdman by pointing out inconsistencies in his police interview versus his trial testimony.

However, upon review, these statements were not inconsistent. Rather, Erdman was very consistent in his denial of any wrongdoing. (Trial Tr. Vol. 2, p. 78, ln. 6-7; p. 86, ln. 2-4; p. 88, ln. 12-14).

Z.E.'s accusations against Erdman did not create more than speculation, suspicion, or conjecture. This is not enough to meet the heavy burden required for a finding a guilt beyond a reasonable doubt. Erdman argues that the State did not present sufficient evidence to support the jury's verdict.

### **CONCLUSION**

For the foregoing reasons, Erdman asks that the Iowa Supreme Court grant further review of these issues and find that the lower court erred in waiving this matter from the juvenile court to the district court, and further find that there was insufficient evidence to support a conviction.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I, Denise M. Gonyea, hereby certify that on February 27, 2023, I served a copy of the attached brief on the counsel of record for all other parties to this appeal via EDMS and to the Applicant via USPS.

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**CERTIFICATE OF FILING**

I, Denise M. Gonyea, hereby certify that I filed this brief with the Clerk of the Supreme Court of Iowa via EDMS on February 27, 2023.

*/s/ Denise M. Gonyea*

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## CERTIFICATE OF COMPLIANCE

1. This brief complies with the type-volume limitation of Iowa R. App. P. 6.903(1)(g)(1) or (2) because:  
[X] this brief contains 2,824 words, excluding the parts of the brief exempted by Iowa R. App. P. 6.903(1)(g)(1).
2. 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:  
[X] this brief has been prepared in a proportionally spaced typeface using Microsoft Office Word 2022 (Windows 10) in font size 14, Times New Roman type style.

*/s/ Denise M. Gonyea*

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