IN THE SUPREME COURT OF IOWA
Supreme Court No. 18-0733

STATE OF IOWA,
Plaintiff-Appellee,

vs.

FONTAE COLE BUELOW,
Defendant-Appellant.

APPEAL FROM THE IOWA DISTRICT COURT
FOR DUBUQUE COUNTY
THE HONORABLE MONICA L. ZRINYI WITTIG, JUDGE

APPLICATION FOR FURTHER REVIEW

(Iowa Court of Appeals Decision: December 18, 2019)

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QUESTIONS PRESENTED FOR FURTHER REVIEW

The Iowa Court of Appeals reversed and remanded for a new trial because it found the district court abused its discretion when it excluded the victim's mental health records as evidence at trial. Defendant claims the victim committed suicide. He asserted her mental health records contained evidence of her suicidal disposition and previous suicide attempts, and he should have been permitted to introduce this evidence as part of his defense at trial. As an issue of first impression, the Court of Appeals determined that a victim's mental health records are categorically not character evidence. It also determined that the temporal proximity of a victim's previous suicide attempts plays no role in determining their admissibility and the exclusion of the mental health records was not harmless error.

(1) Did the Court of Appeals err when it applied a per se rule that, under Iowa law, evidence of a victim's mental health should not be considered character evidence?

(2) Did the Court of Appeals err when it determined that the temporal proximity of a victim's previous suicide attempt plays no role in determining the admissibility of this evidence?

(3) Did the Court of Appeals err when it determined that any error in excluding the victim's records was not harmless?

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STATEMENT SUPPORTING FURTHER REVIEW

On December 18, 2019, the Iowa Court of Appeals reversed Defendant's conviction for second-degree murder. *State v. Buelow*, No. 18-0733, 2019 WL 6893775 (Iowa Ct. App. Dec. 18, 2019). As part of the decision, a panel of the Court of Appeals determined that evidence of a victim's "mental-health history should not be considered character evidence." *Id.* at *5. This was an issue of first impression. *Id.* at *4 ("It appears no Iowa court has squarely addressed this issue."). The panel also decided that the temporal proximity of a previous suicide attempt should not be a factor in its admissibility. This conflicts with Iowa precedent: *State v. Meyer*, 163 N.W. 244, 246 (Iowa 1917) and *State v. Engeman*, 217 N.W.2d 638, 639 (Iowa 1974).

A jury found Defendant guilty of second-degree murder. At trial, Defendant argued that the victim committed suicide by stabbing herself three times in the chest. On appeal, Defendant challenged the district court's decision to exclude the victim's mental health records as evidence at trial. Defendant asserted that these records would aid in his suicide defense. The district court found that the records were

not relevant, were improper character evidence, and were also inadmissible under Rule 5.403.[1]

The panel reversed and held that the records were relevant, would not create an impermissible mini-trial on the victim's mental health, were categorically not character evidence, and could not be excluded based on the remoteness of the prior suicide attempts. *See Buelow*, 2019 WL 6893775. In coming to these conclusions, the Court of Appeals wholesale adopted the reasoning of the New Mexico Supreme Court in *State v. Stanley*, 37 P.3d 85 (N.M. 2001), and did not address contrary authority from other states, including Iowa.

While this Court has had opportunities to determine when a victim's mental health records are discoverable by a criminal defendant, *see State v. Thompson*, 836 N.W.2d 470 (Iowa 2013), *State v. Neiderbach*, 837 N.W.2d 180 (Iowa 2013), it has not yet had the chance to determine whether and to what extent these records should be admissible at a criminal trial.

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[1] The Court of Appeals disagreed that the district court ruled on the records' admissibility under Rule 5.403. *Buelow*, 2019 WL 6893775, at *3. The State believes the record shows that the district court made a ruling under Rule 5.403 and found the records should be excluded because it would create an impermissible mini-trial on the victim's mental health. *See* 01-05-2018 Motion Tr. 43:22–46:22.

The State asks this Court to grant review because the panel decided an important question of first impression that should be settled by the Supreme Court and because the panel entered a decision that is in conflict with decisions of this Court. Iowa R. App. P. 6.1103(1)(b)(1) & (2).

STATEMENT OF THE CASE

Nature of the Case

The Court of Appeals held (1) the mental health records of a victim are categorically not character evidence; (2) there is no temporal proximity requirement that serves as a gatekeeper to this evidence; and (3) exclusion of the evidence at trial was not harmless error. The first holding concerns an issue of first impression that should be decided by this Court. The second holding conflicts with Iowa precedent. The State seeks further review.

Course of Proceedings

On April 6, 2017, the State charged Defendant with one count of Murder in the First Degree, in violation of Iowa Code section 707.2(1)(a), and one count of Possession of a Controlled Substance, Cocaine, in violation of Iowa Code section 124.401(5). 04-06-2017 Trial Inform. On January 25, 2018, a jury found Defendant guilty of one count of Murder in the Second Degree, in violation of Iowa Code

section 707.3, and one count of Possession of a Controlled Substance, Cocaine. 01-25-2018 Criminal Verdict. Defendant appealed. 04-26-2018 Notice of Appeal; App. Vol. IV 43–44.

Statement of Facts

Throughout the evening of March 30, 2017, and early morning hours of March 31, 2017, Defendant and his girlfriend, Samantha Link, argued. Link, who was young and insecure, pestered Defendant about his former sexual partners. The argument escalated throughout the evening. Ultimately, Defendant ordered Link to leave their basement room and the home itself. Instead of leaving, Link struck Defendant, sparking a physical fight. State's Ex. 12. Defendant forced Link up the stairs, which led to the kitchen of the house. State's Ex. 11; Conf. App. Vol. I 115–28.

The now-physical fight continued to escalate in the kitchen and became so intense that Link's boots were kicked off, her hair was pulled out of a ponytail, and a dent was left in the dishwasher. After he pushed Link into the corner of the kitchen, Defendant—who is left-handed—furiously reached for a knife in the nearby butcher block, causing the block to fall over and spill out other knives. State's Exs. 46, 65, 74, 108; Conf. App. Vol. I 162, 164; Vol. II 9, 12. Defendant

then stabbed Link three times, twice with such force that he plunged the knife five-and-a-half inches into her heart and into her right lung. Both wounds were immediately and independently fatal.

"Frantic" and "erratic," Defendant called 911 and claimed Link stabbed herself. 1-9-2018 Tr. 143:11–144:7, 169:1–17, 1-10-2018 Tr. 9:21–10:8, Trial Ex. 1-A(1); Conf. App. Vol. I 108–11. When officers arrived on the scene, they found Defendant standing in the doorway of the house. 1-9-2018 Tr. 142:20–24, State's Ex. 26, Track 1. Defendant was detained and placed in the back of a squad car. 1-11-2018 43:15–44:17. While Defendant was being detained, officers repeatedly told him to relax. Defendant responded, "Stab your fucking spouse in the face and you relax[.]" 1-18-2018 Tr. 91:13–15, State's Ex. 1-A(2); Conf. App. Vol. I 112–14.

When officers entered the home, they discovered Link lying unresponsive on the kitchen floor. 1-9-2018 Tr. 144:15–146:4. Officers administered CPR, and used a portable device to administer electric shocks, but Link had no pulse and was pronounced dead not long after. 1-9-2018 Tr. 146:5–147:24, 170:13–171:6, 1-11-2018 Tr. 12:21–13:11, 28:22–24. On the countertop near where Link fell to the floor, a knife block was overturned, with one knife missing from the

block. 1-9-2018 Tr. 148:25–149:9, State's Ex. 108, Conf. App. Vol. II 12. The missing knife was used to stab Link and was found in the living room, approximately ten feet from Link's body. 1-9-2018 Tr. 149:10–25, 171:7–19, 1-10-2018 Tr. 11:15–12:16, 184:13–24, State's Exs. 39, 83; Conf. App. Vol. I 160, Vol. II 10.

State Medical Examiner Dr. Dennis Klein ruled Link's death a homicide. 1-16-2018 Tr. 84:22–85:4. Link's autopsy revealed three stab wounds to her chest and "two sharp-force incised wounds on [her] right ring and right little fingers." 1-16-2018 Tr. 85:12–18, State's Ex. 14, App. Vol. I 153. Two of the three stab wounds were "independently fatal." 1-16-2018 Tr. 86:7–10. These wounds were "deep stab wounds that penetrated through the chest wall…one actually went so far into the chest that it [] went into the heart. And then the second one went in deep enough that it actually went into…the right lung, on the opposite side." 1-16-2018 Tr. 86:11–87:8. The third wound did not "penetrate through the wall of the chest." *Id.* The wounds on Link's right hand were a "sharp-force injury" that Dr. Klein classified as a "classic…defensive-type wound[.]" 1-16-2018 Tr. 93:9–95:17.

In addition to the three stab wounds to her chest and the two cuts to her right hand, Link sustained numerous other injuries, including large bruises "on the forehead, on the nose, and then two discreet areas inside the mouth…just below the lower lip, and on the left side of the lower [] inside oral area," inside her scalp, and on the back of her right hand, as well as scratch marks on her stomach, abrasions on her left chest, and small contusions on her lower extremities. 1-16-2018 Tr. 95:18–96:19, 106:9–24, 111:11–112:12, State's Exs. 107, 123–26, 145–49, 156–58; Conf. App. Vol. II 11, 13–24. The forehead had a large hemorrhage, which indicated "a significant impact site[.]" 1-16-2018 Tr. 108:14–109:21. Dr. Klein stated these injuries were not consistent with injuries sustained when people fall and instead are seen "when people are struck." 1-16-2018 Tr. 96:20–97:11.

The Course of Proceedings Regarding the Admissibility of Link's Medical Records at Trial.

Early in the case, Defendant moved under Iowa Code section 622.10(4) for access to Link's medical records. 05-17-2017 622.10 Motion; Conf. App. Vol. I 9–13. The district court granted the request and reviewed Link's records in camera. 06-28-2017 Order; Conf. App. Vol. I 14–16. After reviewing the records, the district court turned the

records over to both parties. 09-13-2017 Order, Conf. App. Vol. I 17–18. Prior to trial, the district court allowed expert witnesses to review medical records that were within one year of Link's death, and stated it "will permit the Defendant the ability to present relevant testimony as to the named victim's demeanor and mental health status that is close in time to the date of this occurrence and not too remote as to be irrelevant and less able to prove any specific state of mind on the date in question." 12-18-2018 Order; Conf. App. Vol. I 36–42.

The district court did not allow specific instances of Link's mental health to be admitted at trial because it found that those instances were not relevant, were more prejudicial than probative, and were improper character evidence and hearsay. 01-05-2018 Tr., 12-18-2018 Order, 01-04-2018 Order; Conf. App. Vol. I 36–42, 76–77.

ARGUMENT

I. The Admission of a Person's Mental Health History as Evidence at Trial Should Be Governed by the Rules on Character Evidence.

As an issue of first impression, the panel concluded that "mental-health history should not be considered character evidence." *Buelow*, 2019 WL 6893775, at *5. It did so because it found that "[s]uicidal dispositions typically stem from mental illness, not from a person's 'bad character' or trait of character." *Id.* at *4–5 (internal ciation omitted). This issue is far more complex than the opinion acknowledges. This is partially because the evidence in question here is both evidence of a person's character or trait, i.e., "suicidal disposition," as well as evidence of a specific other act, i.e., an actual suicide attempt. *See* Iowa R. Evid. 5.404(a) & (b).

The issue is made more complicated because, while the State agrees that a suicidal disposition does not stem from a person's bad character, the symptoms of a mental disorder often manifest themselves as character traits. Thus, the line between what is, traditionally, a "trait of character" and what is a symptom of a mental illness can be very thin. And considering that character traits and

symptoms of a mental disorder are often co-extensive, it may not be possible to distinguish between the two.

This is why the State has noted that mental health illnesses do not fit neatly within the traditional framework of character evidence and suggested that the question should not be whether a person's mental health history is character evidence, but rather, whether the character evidence rules should apply to this mental health history. The State believes they should because, as is stated in Defendant's brief, he "sought to prove [] Link's *propensity* for self-harm and erratic behavior as a result of her" mental illness. App. Br. at 42 (emphasis added). Regardless of whether a person's character trait or prior act is caused by an inherent attribute, caused by a mental illness, or caused by something else, Rule 5.404 should exclude evidence whose only use is to establish propensity.

The issues here require more nuance because of the competing constitutional rights of a victim and a defendant. A victim has a constitutionally-protected privacy right in the confidentiality of his or her medical records. *McMaster v. Iowa Bd. of Psychology Exam'rs*, 509 N.W.2d 754, 758–59 (Iowa 1993). This right survives death. *Thompson*, 836 N.W.2d at 490–91. This is because "the societal

interest in the privacy of mental health records continues unabated regardless of the death of any individual victim." *Id.* at 490. "[T]he public policy embedded in the battle against domestic abuse should heighten the need to protect the confidentiality of medical and counseling records of victims in domestic-abuse cases." *State v. Cashen*, 789 N.W.2d 400, 416 (Iowa 2010) (Cady, J., dissenting).

On the other hand, "a criminal defendant has no due process right to pretrial discovery." *State v. Clark*, 814 N.W.2d 551, 561 (Iowa 2012). And while a defendant has a constitutional right to present a defense, "[a] defendant's due process right to present evidence in a criminal action does not prevent the court from following evidentiary rules that are designed to assure both fairness and reliability in the ascertainment of guilt and innocence." *State v. Countryman*, 573 N.W.2d 265, 266 (Iowa 1998) (internal quotation marks and citation omitted).

In its opinion, the panel found that a victim's mental health records are—categorically—not character evidence. While it appears this Court has never squarely addressed this issue, the idea that mental health records may be treated as character evidence is not a novel concept. *See State v. Heemstra*, 721 N.W.2d 549, 559 (Iowa

2006) (noting that the defendant sought the victim's mental health records because they would show the victim "had character traits of 'unmanageable anger, aggression and violence and that he sought and received medical treatment for those problems within months of his death.'"); *Cashen*, 789 N.W.2d at 414 (Cady, J., dissenting) ("Normally, mental health information of a victim is not admissible as character evidence in a criminal proceeding."); *see also* Laurie Kratky Doré, *Iowa Practice Guide Series: Evidence*, § 5.404:3(A) n.4 (2012–2013 ed.) (organizing evidence of a victim's suicidal disposition under character evidence).

As this Court has recognized, there is good reason why courts have long excluded other acts evidence to show that a person has acted a particular way on a particular occasion. *State v. Sullivan*, 679 N.W.2d 19, 23 (Iowa 2004). It is not founded "on a belief that the evidence is irrelevant, but rather on a fear that juries will tend to give it excessive weight, and on a fundamental sense that no one should be convicted of a crime based on his or her previous misdeeds." *Id.* at 24 (internal quotation marks and citation omitted). The policy reasons for excluding this type of evidence are equally applicable to acts done by someone who is violent, turbulent, etc., for unknown reasons, as it

is to acts done by someone who is violent, turbulent, etc., because of a mental disorder. In determining whether this evidence should be subject to the character evidence rules, the cause of a particular trait or act should not be the deciding factor of whether it is admissible.

The panel's ruling may also have the unintended consequence of expanding what is discoverable by a defendant under Iowa Code section 622.10(4). Section 622.10(4) is a rule of exclusion. A defendant is only permitted to discover the mental health records of a victim if he or she first demonstates "in good faith a reasonable probability that the information sought is likely to contain exculpatory information that is not available from any other source and for which there is a compelling need," and second, the district court, after an in-camera review, determines that "the priviledged information sought is exculpatory and that there is a compelling need for such information that outweighs the privacy interests of the privilege holder[.]" Iowa Code § 622.10(4)(a)(2)(d).[2] This threshold is very high.

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[2] The State notes that this threshold may not have been met here. The district court stated that it turned over Link's records because it "found them to be somewhat leading toward an exculpatory set of records[,]" and "was relevant to the purpose of analysis and development of the theory of defense." 01-05-2018 Hearing Tr.

The panel's reliance on *Stanley*, 37 P.3d 85, and its determinations that mental health records are not character evidence and that their admissibility does not turn on their timeliness, arguably expands the term "exculpatory information" beyond its statutory intent. A suicide attempt twenty or thiry years in a victim's past may open up their entire mental health history to discovery. The panel's decision is too broad and should not be permitted to stand.

This is especially so because, in a criminal case, even if a defendant makes the threshold showing under section 622.10(4) for discovery of a victim's medical records, the confidentiality of the records remains. *See* Iowa Code § 622.10(4)(a)(2)(d) (requiring the district court to "prohibit any further dissemination of the information to any person, other than the defendant, the defendant's attorney, and the prosecutor, unless otherwise authorized by the court."). There is no mechanism in section 622.10(4) for the admissibility of these confidential records at trial, and nothing in the statute tilts the balancing analysis towards admission of this

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43:22–45:6. Development of a theory of defense is not a reason section 622.10(4) permits discovery of privileged records. The district court also turned over all of Link's medical records—including records from when she was an infant and child—which was likely overbroad under Iowa Code section 622.10(4).

prejudicial evidence, which a deceased victim is powerless to explain or refute.

While the State does not believe that Rule 5.404 is an absolute ban on the use of a victim's mental health history, the panel's approach goes too far. In finding that a victim's mental health history cannot be excluded by the rules of character evidence, it essentially found that if the records are relevant, they are admissible. Considering the highly confidential nature of these records and a victim's constutional right to their continued confidentiality, this evidentiary threshold is far too low and not supported by section 622.10(4).

Finally, if the panel is correct that a person's mental health records or diagnoses are not subject to the rules of character evidence, it stands to reason that the State would be permitted to introduce this same evidence against a defendant to show that he or she acted in conformity with that diagnosis, i.e., that an alleged thief had previously been diagnosed with kleptomania, that an alleged abuser had previously been diagnosed with intermittent explosive disorder, that a driver charged with OWI had been diagnosed with a substance use disorder. Because many defendants are repeat

offenders, the State is often in possession of a defendant's medical and mental health records from prior assessments and incarcerations. The panel's opinion places no limit on the State in using these records to prove that a defendant acted in conformity with a diagnosed mental health condition. Neither a defendant nor the State should be permitted to introduce such records soley for the purpose of establishing propensity.

"No arm of government should be entitled to invade private, sensitive communications between citizens made by them under the belief that the communications would remain private, absent the most compelling reasons…courts should be quick to protect and preserve the legitimate privacy of individuals from intrusion, not open the door." *Heemstra*, 721 N.W.2d at 569 (Cady, J., dissenting). The victims of violent crimes are often our most vulnerable citizens. Linda A. Teplin, Gary M. McClelland, Karen M. Abram, and Dana A. Weiner, *Crime Victimization in Adults with Severe Mental Illness*, Arch. Gen. Psychiatry, 911–21 (2005).[3] By deciding a victim's mental health is categorically not character evidence, the panel's decision

[3] May be found at: https://www.ncbi.nlm.nih.gov/pmc/articles/PMC1389236/

allows a defendant to weaponize mental health records against a victim without any proof that these records establish something other than improper propensity evidence. Because the panel's decision is far too broad, this Court should overturn it.

II. The Panel's Decision Conflicts with Iowa Precedent Because It Found that Temporal Proximity was Not Required for the Admissibility of This Evidence.

Not only did the panel determine "that evidence of Link's mental-health history should not be considered character evidence," it also found "that 'evidence of suicidal tendencies of a deceased should not be considered character evidence[,]'" and "timing [should] not enter the court's analysis." *Buelow*, 2019 WL 6893775, at *4–5. (quoting *Stanley*, 37 P.3d at 92). This holding conflicts with Iowa's long-standing commitment to the idea that the temporal proximity of evidence is an essential component to whether it is relevant. *See State v. Engeman*, 217 N.W.2d 638, 639 (Iowa 1974) ("While remoteness in point of time does not necessarily render evidence irrelevant, it may do so where the elapsed time is so great as to negative all rational or logical connection between the fact sought to be proved and the remote evidence offered in proof thereof." (internal quotation marks and citation omitted)); *see also State v. Pittman*, No. 02-1318, 2004

WL 355886, at *3 (Iowa Ct. App. Feb. 27, 2004) (finding that "evidence regarding the victim's demeanor one week, and one month, before her death" was not too remote in time as to be irrelevant of whether she was suicidal at the time of her death).

This idea is reflected in *State v. Meyer*, an early Iowa Supreme Court decision regarding the use of a victim's "predisposition toward self-destruction" as a defense in a murder trial. 163 N.W. 244, 246 (Iowa 1917). The Supreme Court found that "[s]uch predisposition may be shown by acts or declarations of the deceased *within such reasonable time before the killing* as that there may have been some tendency to establish such a condition of mind when this happened." *Id.* (emphasis added).

Meyer relies on *Commonwealth v. Trefethen*, 31 N.E. 961, (Mass. 1892), which is one of the first cases to decide whether evidence of a victim's suicidal disposition is admissible during a murder trial and on which the holdings of many subsequent cases, in a variety of jurisdictions, are based.[4] In *Trefethen*, the victim sought the advice of a "trance medium" on the day before she died and told

[4] *State v. Beeson*, 136 N.W. 317 (Iowa 1912), also relies on *Trefethen*.

the medium that she was unmarried, pregnant, and was going to drown herself. 31 N.E. at 962. The victim was later discovered dead by drowning. *Id*. The district court excluded the victim's statement to the medium, and the Massachusetts Supreme Court decided this was error. In doing so, it stated that:

> If the declaration…had been made by the deceased two or three years before her death, when she was not pregnant with child, and did not know defendant, it might well have been held by the presiding judges to have been of no significance in this case.
>
> In the case at bar the evidence offered was that the declaration of the deceased was made the day before her death, and was made in a conversation concerning her pregnancy, which continued until her death. The declaration, therefore, was not made at a time remote from the time of her death, and there had been no change of circumstances which made it inapplicable to the condition of the deceased at the time of her death.

Id. at 962–63.

It appears most jurisdictions follow this approach. *See* 40A Am. Jur. 2d Homicide § 273 ("Generally speaking, declarations of an intent to commit suicide can undoubtedly be made at such a remote time as to be inadmissible, and also may be inadmissible in the face of abundant evidence that the victim's suicidal past had ceased, the

victim was making plans for the future, and the victim recently expressly rejected suicide."); *see also* 83 A.L.R. 434 ("In prosecutions for homicide where suicide of the deceased is relied on as a defense, his declarations or threats indicating a suicidal disposition, but not relating to actual attempts, have generally been held admissible for the purpose of showing his state of mind and as tending to support the theory of suicide, at least if the circumstances are as suggestive of suicide as of homicide, and the declarations were uttered within a reasonable time before his death, they being regarded as not within the hearsay rule."); 41 C.J.S. Homicide § 332 ("According to other authority, the decedent's statements of intention to commit suicide…are admissible when made reasonably close to the time of death, the trial judge having a wide although not absolute discretion to refuse to admit declarations of intended suicide if he or she considers them too remote.").

In *State v. Seacat*, the Kansas Supreme Court followed this approach and stated that "in prosecutions for homicide a deceased's declarations or threats indicating a suicidal disposition, *if made within a reasonable time before his or her death*, are not precluded by the hearsay rule and would be relevant "unless the facts preclude

the possibility of suicide." 366 P.3d 208, 221 (Kan. 2016) (internal quotation marks and citations omitted) (emphasis in original). In *Seacat*, the victim repeatedly asserted her desire to commit suicide in statements three and four years before her death. *Id.* at 220–21. The Kansas Supreme Court found these "incidents [] too remote in time and the evidence [] too tenuous to support the conclusion that [the victim] was disposed to commit suicide" at the time of her death. *Id.*

In its decision, not only did the panel fail to discuss these contrary authorities, it did not even acknowledge contrary authority exists. In doing so, the panel adopted a standard that ignores Iowa's commitment to excluding evidence that has become so remote it is no longer relevant.

Individuals with a mental health disorder are not ticking timebombs of self-destruction. Without a showing that a victim is currently suffering from suicidal thoughts or had recently attempted suicide, evidence of their mental health should be excluded. It should also be excluded if recent information establishes that the victim's "suicidal past has ceased."[5]

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[5] Link's most recent medical records revealed that she was doing well, her depression and anxiety were low, and she did not suffer from any suicidal ideations or plans. Medical Associates Clinic 2016–

III. Any Error in Excluding Link's Records at Trial Was Harmless.

Even if the panel was correct that the victim's records should have been admitted at trial, Defendant should only be granted a new trial if such error was not harmless. While the panel found the State's case against Defendant was "formidable," it declined to find harmless error. *Buelow*, 2019 WL 6893775, at *6.

Both the physical and testimonial evidence at trial overwhelmingly established that Defendant murdered Link. To find otherwise would require one to ignore the multitude of bruises and contusions on Link's face and body that showed she was violently beaten right before she died. 1-16-2018 Tr. 95:18–97:11, 106:9–24, 108:14–109:21, 111:11–112:12, State's Exs. 107, 123–26, 145–49, 156–58; Conf. App. Vol. II 11, 13–24. To find otherwise would require one to believe that Link suffered two independently fatal stab wounds, but before she collapsed backwards, she tossed the knife into another room, ten feet away from her body. 1-9-2018 Tr. 149:10–25, 171:7–19,

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2017 Notes of Kassas; Conf. App. Vol. III 66–86. The day before she died, Link visited her psychiatrist where it was noted that her depression was low, she was doing well, and she was not experiencing suicidal thoughts or tendencies. Medical Associates Clinic 03-29-2017 Note of Kassas; Conf. App. Vol. III at 66–72.

1-10-2018 Tr. 11:15–12:16, 184:13–24, State's Exs. 39, 83; Conf. App. Vol. I 160, Vol. II 10. To find otherwise would require one to believe Defendant was standing in the doorway to the basement when Link stabbed herself—an assertion made impossible by the blood spatter that appeared on both the front and back of Defendant's clothing but did not appear on any of the doorway's surroundings. 1-10-2018 Tr. 68:2–69:4.

Not only does the evidence clearly establish that any error in excluding Link's mental health records at trial was harmless, it also supports the exclusion of the evidence. Many authorities find that evidence of a victim's previous suicide attempts are only admissible at a trial where "the circumstances are as suggestive of suicide as of homicide[.]" 83 A.L.R. 434. The panel failed to consider this factor in its analysis. Here, the circumstances were not equally suggestive of suicide or homicide, and as such, exclusion of this evidence was proper.

CONCLUSION

The State respectfully requests this Court to vacate the panel's decision and affirm Defendant's conviction for second-degree murder.

REQUEST FOR ORAL ARGUMENT

The State requests that this case be submitted with oral argument.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

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

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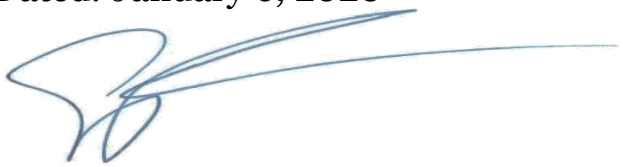
Dated: January 6, 2020



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