

THE SUPREME COURT OF IOWA

Supreme Court No. 23-0214

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IN THE INTEREST OF K.C.,  
A Child-Appellant,

vs.

THE IOWA DISTRICT COURT FOR POLK COUNTY JUVENILE  
DIVISION,  
Appellee.

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ON WRIT OF CERTIORARI FROM THE IOWA DISTRICT COURT  
FOR POLK COUNTY  
THE HONORABLE RACHAEL E. SEYMOUR

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**AMICUS BRIEF FOR THE OFFICE OF THE STATE PUBLIC  
DEFENDER**

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## QUESTION PRESENTED FOR REVIEW

Should the juvenile court have denied the motion by an indigent juvenile for additional expert fees in this case?

### Cases

*Ake v. Oklahoma*, 470 U.S. 68 (1985).

*English v. Missildine*, 311 N.W.2d 292 (Iowa 1981).

*State v. Amaya*, 977 N.W.2d 22 (Iowa 2022).

### Statutes

Iowa Code Ann. § 815.5.

## INTEREST AND FUNDING OF AMICUS

The purpose of the State Public Defender (SPD), an appointed position within the Iowa Department of Inspections and Appeals, is to coordinate indigent defense services. Iowa Code § 13B.2 (2022). To accomplish this task, the SPD oversees a central administrative office in Des Moines and multiple local offices across the state. Iowa Code § 13B.8 (2022). The reimbursement of claims for payment of indigent ancillary services are coordinated by the SPD. *See id.* The juvenile court in its denial of the Motion for Additional Expert Fees puts a judicial limit upon this reimbursement in juvenile cases. The provision of funding ancillary services for juvenile indigent defendant funding falls within the purview of the SPD. *See Iowa*

Code Ann. § 815.5 (West). The amount of experienced experts willing to testify in juvenile indigent defense cases directly impacts the work of the agency's local public defender offices. The agency seeks to offer its support of the position of counsel for K.C. in encouraging the Court to reverse and remand the denial of K.C.'s Motion for Additional Expert Fees, with instruction to adopt the factors of reasonableness established in *Pierce*.

No party's counsel authored this brief in whole or in part. No other person contributed money to fund the preparation or submission of the brief. *See Iowa R. App. P. 6.906(4)(d)*.

### **FACTUAL AND PROCEDURAL BACKGROUND**

On August 15, 2022, the State filed a Delinquency Petition alleging that K.C. had committed a public offense. (2/5/2023 Petition at 2). K.C. was 17 years old at the time of this filing. (*Id.*). Upon a judicial determination of indigency, the Drake Legal Clinic was appointed by the juvenile court to appoint K.C. at State expense. (*Id.*). Pursuant to Iowa Code section 232.45, the State moved to waive K.C. to the Adult court. (*Id.*).

This motion set forth the foundation for K.C. seeking expert services. On September 8, 2022, K.C. filed a motion for Expert Assistance at the State's expense. (2/5/2023 Petition at 3). K.C. sought an order authorizing for payment Dr. Tracy Thomas, Ph.D., ABPP by the State. (*Id.*). On November

7, 2022, the juvenile court found the requested expert compensation amount of up to \$7,900.00 was unreasonable and set a cap of compensation at \$4,590.00. (2/5/2023 Petition at 4). The juvenile court provided no calculations of figures in its order but identified four expenses as unreasonable: the driving time for Dr. Thomas, the driving time of Dr. Thomas to interview K.C. in Des Moines at the Legal Clinic, and insufficient information to support the complete time reported on records reviewed by Dr. Thomas. (*Id.* at 4-5).

On November 20, 2022 K.C. filed a Motion for Additional Expert Fees responding to the concerns of juvenile court on Dr. Thomas's fee amount. (2/5/2023 Petition at 5). On November 28, 2022, K.C. filed the Psychological Waiver Evaluation from Dr. Thomas. (*Id.*) K.C.'s waiver hearing began on December 5, 2022. (*Id.* at 6). Dr. Thomas gave extensive testimony addressing the fee concerns of the juvenile court. (*Id.*). After the hearing concluded, K.C. filed an Amended Motion for Additional Expert Fees to reflect in the amount of \$7,791.20. (*Id.*). This motion was denied on December 9, 2022. (2/5/2023 Petition at 6). This denial was addressed by defense counsel through the Motion to Reconsider, Enlarge, or Amend filed by defense counsel. (*Id.*). On January 6, 2023, an order was issued by the juvenile court denying this motion. (*Id.* at 7).



## **ARGUMENTS**

### **I. The amount requested in expert fees by K.C. was reasonable as is consistent with similar fee claims handled by the SPD.**

As the paying agency the office of the state public defender has authority under Iowa Code § 13B to pay expert witness fee claims in juvenile cases. While not common, the state public defender has received claims in similar juvenile matters. From the claims database the following data was retrieved. The following amounts are aggregated by client:

\$29,621.27 (P.L., Polk Co., JVJV248060, 2 claims);  
\$7,548.15 (C.D., Jackson Co., JVJV002963, 2 claims);  
\$6,192.81 (N.C., Polk Co., JVJV250501, 1 claim); and  
\$10,918.85 (H.Z., Woodbury Co., JVJV025754, 3 claims).

The average for this data set is \$13,570.27. In this case K.C. requested \$7,900.00, however the court capped the fees at \$4,590.00. The amount requested by K.C. is not unreasonable in light of prior amounts authorized by courts in similar cases.

**II. Arbitrary valuation of indigent defendants' requests for ancillary services stymies the goals of the SPD.**

- a. Equitable payment of expert services from the indigent defense fund per section 815.5 of the Iowa Code for contract attorneys is prevented.

There is an absence of discussion about the amount of state compensation for ancillary services within the Iowa Juvenile Code. The Code is clear about who is to pay those fees if the juvenile defendant or their family cannot.

Juvenile court expenses incurred by an attorney appointed by the court to serve as counsel to any party or to serve as guardian ad litem for any child, including fees and expenses for foreign language interpreters, costs of depositions and transcripts, *fees and mileage of witnesses*, and the expenses of officers serving notices and subpoenas.

Iowa Code Ann. § 232.141 (West) (emphasis added). There is an obligation placed upon the State in Chapter 232 to pay fees for expert witnesses in juvenile court proceedings. *See id.* What is less clear from the language of this chapter is *how much* has to be paid by the State for the fees incurred in employing expert witnesses. Chapter 815 governing compensation for indigent defense services provides a benchmark.

The rules of criminal procedure in Iowa do not provide a monetary standard for reasonableness of expert service fees payable by the State.

Specially, Iowa Rules of Criminal Procedure 19(4) establishes the right to expert services for indigent criminal defendants:

Upon finding, after appropriate inquiry, that the services are necessary and that the defendant is financially unable to provide compensation, the court shall authorize counsel to obtain such witnesses on behalf of the defendant. *The court shall determine reasonable compensation for the services and direct payment to the person who rendered them pursuant to chapter 815.*

Iowa R. Civ. P. 2.20; *See also English v. Missildine*, 311 N.W.2d 292, 293 (Iowa 1981) (emphasis added). The procedural rules reinforce the reasonableness standard, leaving discretion to the court the amount of payment under the statutory language of Chapter 815.

There is a notable similarity in the statutory language addressing compensatory fees for attorneys and experts in indigent defense cases. The language addressing expert witnesses is: “[n]otwithstanding the provisions of section 622.72, *reasonable compensation* as determined by the court shall be awarded expert witnesses, expert witnesses for an indigent person referred to in section 815.4, or expert witnesses called by the state in criminal cases.” Iowa Code Ann. § 815.5 (emphasis added). This language is one that mirrors the language addressing fees for attorneys: “[a]n attorney who has not entered into a contract authorized under section 13B.4 and who is appointed by the court to represent any person pursuant to section 814.11 or 815.10 shall be entitled to *reasonable compensation* and expenses.” Iowa Code Ann. § 815.7

(West) (emphasis added). The effect of this broad language was the passing of the baton on determining reasonableness under section 815.5 to Iowa Courts.

The significant differences between sections 815.5 and 815.7 shed light onto defining reasonableness in the context of expert fees. The Legislature prescribed hourly fee rates for attorneys and not experts. §§ 815.5, 815.7. The legislature has put expert witnesses on a different plane than other actors within the criminal trial process; this is a recognition of their vital and important role. *See* Fred Warren Bennett, *Toward Eliminating Bargain Basement Justice: Providing Indigent Defendants with Expert Services and an Adequate Defense*, 58 L. & Contemp. Probs. 95, 137 (Winter 1995) (“Experts, both psychiatric and nonpsychiatric, are an integral part of today’s complex trials at both the federal and state level”). In the same way that the law of tort recognizes the professional as possessing a heightened duty of care in negligence actions, experts are treated differently by Iowa law in determining the amount of compensation by the State. The legislature has left space for the reality that what is reasonable to pay an expert witness as opposed to an investigator or a lay witness should be interpreted liberally.

It is within a liberal statutory framework that the SPD assesses the reasonableness of expert fee claims. Thus, if this standard is misapplied or

misinterpreted by a Court it can lead to the inequitable provision of funds amongst indigent defendants. Provisions that are then not centered upon need but rather who is representing the defendant—a public defender or a contract attorney. Section 815.5 in allocating money from the indigent defense fund makes no distinction between those indigent defendants represented by public defenders and contract attorneys. *See* § 815.5. When a Court provides a valuation of expert fees different from the SPD, it can lead to the absurd result of identical fee requests by clients of contract attorneys and public defenders experiencing different payment outcomes. *See English v. Missildine*, 311 N.W.2d 292 at 294. An outcome that was not intended by Section 815.5.

- b. Retention and recruitment of contract defense attorneys is undermined by inequitable compensation of experts.

Attorneys cannot be expected pursuant to the Sixth Amendment of the United States Constitution to learn within the narrow timeframe of the trial process what takes experts multiple years of specialized coursework and training. *See* U.S. Const. amend. VI; John M. West, *Expert Services and the Indigent Criminal Defendant: The Constitutional Mandate of Ake v. Oklahoma*, 84 Mich. Law Rev. 1326, 1354 (May 1986). The expert often not only informs the fact-finder but the defense attorney as well. *Id.* The accessibility of funding for defendants for experts is crucial to the preparation of a constitutionally

adequate defense. *See* ABA Criminal Justice Mental Health Standard 7-1.1, 4-6 (2d ed. 1989) (“[T]he quality of representation at trial . . . may be excellent and yet valueless to the defendant if his defense requires the assistance of a psychiatrist or handwriting expert and no such services are available.”).

Zealous and effective advocacy guaranteed to indigent defendants by the Sixth Amendment and reaffirmed within the Professional Rules of Conduct, is undermined when contract attorneys are provided inadequate funding—funding that is necessary—to hire a “partisan” expert. *See* Ann. Mod. Rules Prof. Cond., Preamble and Scope (West 2023); A. Michelle Willis, *Nonpsychiatric Expert Assistance and the Requisite Showing of Need: A Catch-22 in the Post-Ake Criminal Justice System*, 37 *Emory L.J.* 995, 1018-21 (1988); *Simmons v. Public Defender*, 791 N.W.2d 69, 75 (Iowa 2010) (“While criminal defendants are not entitled to perfect counsel, they are entitled to a real, zealous advocate who will fiercely seek to protect their interests within the bounds of the law.”) Expert supported advocacy is vital to upholding the integrity of the adversarial process. West, 4 *Mich. Law Rev.* 6, 1326, at 1354.

*State v. Schoonmaker*, 176 P.3d 1105, 1116 (N.M. 2008), *overruled by State v. Consaul*, 332 P.3d 850 (N.M. 2014), *abrogated by State v. Montoya*, 345 P.3d 1056 (N.M. 2015), is an exemplar of a situation that contract defense

attorneys in Iowa would prefer to avoid. The privately retained defense counsel in *Schoonmaker* sought an expert witness to support the theory that the injuries sustained by the child—which formed the basis of the charges—did not result from shaken baby syndrome but rather a fall from the couch. *Id.* at 1111. The motion by defense counsel for the expert to be paid through State funds was denied by the court. *Id.* at 1109. There was no issue in the case over determinations of indigency—the defendant was deemed indigent. *Id.* at 1114. It was not a matter for the court of necessity but rather of reasonableness of the expert fees. *Id.*

In light of the court ruling on the motion for state payment of expert fees, defense counsel requested to withdraw from the case; a motion which was denied by the court. *Schoonmaker*, 176 P.3d at 1105. This denial of withdrawal upon appellate review was deemed an abuse of judicial discretion. *Id.* at 1116. The foundation of this holding the Sixth Amendment; “[T]he Sixth Amendment precludes the one choice that was apparently made. Counsel could not be compelled to continue to represent his client when faced with serious felony charges and no ability to provide an effective defense.” *Id.* An effective defense is not a luxury but a constitutionally mandated necessity in any criminal trial. *See Ake v. Oklahoma*, 470 U.S. 68, 76 (1985).

The reasonable compensation of experts protects equity amongst indigent and nonindigent attorney-client relationships.

[W]hether it be the public defender or a volunteer private attorney, the parties enter into an attorney-client relationship which is no less inviolable than if counsel had been retained. To hold otherwise would be to subject that relationship to an unwarranted and invidious discrimination arising merely from the poverty of the accused.

*See Taylor v. Superior Court*, 215 Cal.Rptr. 73, 75 (Cal. App. 1st Dist. 1985) (citing to *Maxwell v. Superior Court*, 180 Cal.Rptr. 177). The termination of this relationship should be the result of a mutual decision amongst the two parties, not a consequence of a court order. *Schoonmaker*, 176 P.3d at 1116.

Contracted defense counsel, when confronted with an arbitrary devaluation by a court of an expert fee request, can be placed into a position where it may be better for themselves and the client if they step away from the case; losing any trust developed or work product completed up to that point. The defense attorney for K.C. could have conceivably simply walked away from this case. This is a position that would likely not be faced by a public defender, as the SPD would seek to work with the expert directly to resolve any fee concerns. The SPD seeks to retain and recruit contract attorneys, not place them in situations where they have to withdraw from cases. *See Report on Iowa's Indigent Defense System*, December 20, 2020, <https://www.legis.iowa.gov/docs/publications/DF/1208001.pdf>.



Any shrinking by the court in its obligation to authorize the payment of reasonable expert fees directly impacts the SPD. Without equitable compensation, contract defense attorneys are going to have a hard time convincing an already limited number of experts to take indigent cases. *See In re T.W.*, 932 N.E.2d 125, 131 (Ill. App. 1st Dist. 2010) (“these [expert] witnesses are not expected to donate their services but must usually be offered a substantial fee.”) (citing *People v. Kinion*, 97 Ill.2d 322, 334, 73 Ill.Dec. 528, 454 N.E.2d 625 (1983)). (internal citations omitted). Without qualified experts, the contract attorneys are then weary of the risk to both their client and their professional credentials in taking the case. *See* Fred Warren Bennett, *Toward Eliminating Bargain Basement Justice: Providing Indigent Defendants with Expert Services and an Adequate Defense*, 58 L. & Contemp. Probs. 95, 117-119 (WINTER 1995); *Contrast with In re T.W.*, 932 N.E.2d 125 at 137 (holding that it was not a violation of the Sixth Amendment for the attorney to proceed with the case without an expert). If the contract attorney declines to take a case due to a lack of expert funds, that defeats the entire purpose of the contract. The case does not go away but must be shouldered by public defenders or privately retained attorneys; instead of expanding indigent defendant access to representation the court in making improper reasonableness determinations of expert fee compensation limits it.

- c. The federal and state constitutional right to ancillary services of indigent defendants represented by contract attorneys is subverted by inequitable compensation of experts.

The fundamental question at the crux of provisions for State ancillary service funding is: why should the State have to pay anything at all? The Supreme Court in *Ake* answers this question: “[the] guarantee of fundamental fairness derives from the belief that justice cannot be equal where simply as a result of his poverty, a defendant is denied the opportunity to participate meaningfully in a judicial proceeding in which his liberty is at stake.” 470 U.S. 68 at 76. This fundamental fairness precept is both at the heart of the Fourteenth Amendment’s protection of both equal protection and substantive due process. *See* U.S. Const. amend. XIV; *Griffin v. Illinois*, 351 U.S. 12, 19 (1956) (“Both equal protection and due process emphasize the central aim of our entire justice system—all people stand on an equality before the bar of justice in every American Court”) (internal quotations omitted). *Ake* was a prominent step in defining the contours of a right to ancillary services from which state legislatures and courts have subsequently filled in the details. *See* Jules M. Epstein, *The "Unclear" Right to Expert Assistance*, 38 *Crim. Just.* 47, 48 (Spring 2023).

The right to ancillary services articulated in *Ake* did not form in isolation. It reflected the Court recognizing one implication of the equalizing principles embodied within the language and intent of the Fourteenth Amendment. See Lauren Sudeall Lucas, *Reclaiming Equality to Reframe Indigent Defense Reform*, 97 Minn. L. Rev. 1197, 1120-1127 (2013). A country ravaged by civil war left in its aftermath a Congress confronting the reality of the “systematic [racially discriminatory] denial of civil rights” by southern states. See Gregory E. Maggs, *A Critical Guide to Using the Legislative History of the Fourteenth Amendment to Determine the Amendment's Original Meaning*, 49 Conn. L. Rev. 1069, 1084 (2017). The drafters of the amendment sought through it the granting of Congressional power to quash the erosion of these rights. See *id.* (quoting Congressman John Bingham, “is the bill of rights to stand in our Constitution hereafter, as in the past five years within eleven States [i.e. the states making up the Confederacy], a mere dead letter? It is absolutely essential to the safety of the people that it should be enforced.”) The expansive nature of the authority granted provided the impetus for recognizing broad protection of the individual rights of criminal defendants. See Lucas, 97 Minn. L. Rev. 1197 at 1120-1127. The Fourteenth Amendment since its inception has been argued to act as a countervailing to corrosive state power; one of the multitude of

manifestations of this power is the provision of state funds to ancillary services for indigent defendants. *See id.*

The Iowa Constitution recognizes due process and equal protection protections of the right to ancillary services for indigent defendants. Iowa Const. art. I, § 9. “Federal and state due process and equal protection clauses are generally interpreted to be identical in scope, import, and purpose.” *State v. Cronkhite*, 613 N.W.2d 664 (Iowa 2000). While less prominently challenged under these grounds, these challenges to denial of payment for ancillary services by the State have been made successfully. *In the Interest of Orcutt* addressed these arguments in the context of a challenge to a denial of funding for investigative services. 173 N.W.2d 66, 70-71 (Iowa 1969).

State courts have largely been left to their own devices to determine when it is a reasonable obligation upon the state to pay ancillary services expenses for indigent defendants. *See Moore v. State*, 889 A.2d 325 (Md. 2005); *People v. Cardenas*, 62 P.3d 621 (Colo. 2002); *State ex. rel. Rojas v. Wilkes*, 455 S.E.2d 575, 578 (W. Va. 1995). *Tran* and *Amaya* highlight two differing determinations of reasonableness of requests by a privately retained attorney for ancillary services on behalf of indigent defendants. *See Tran v. Superior Court*, 112 Cal. Rptr. 2d 506 (Cal. App. 4th Dist. 2001) (holding that the State

was required to pay for ancillary services); *Amaya v. State Public Defender*, 977 N.W.2d 22 (Iowa 2022), *as amended* (June 30, 2022) (holding that the State was not obligated to pay for ancillary services). The outcomes of *Amaya* and *Tran* were divergent; however, the constitutional lesson is the same. The court's power to curtail funding of ancillary services is not unchecked; it is subjected to the mandate that all defendants be provided an equal opportunity to have their defense heard. *Griffin*, 351 U.S. at 12 (“[T]here can be no equal justice where the kind of trial a man gets depends on the amount of money he has.”).

What is unconstitutional is making an indigent defendant's right to ancillary services merely symbolic or transient. *See id.* The right to ancillary services cannot be tethered solely to the interest of the legislative fiscal budget. *See Ake*, 470 U.S. at 79 (“[I]t is difficult to identify any interest of the State, other than that in its economy, that weighs against recognition of this right”). However, the government coffers are not infinite. *See State v. Tirado*, 2016 WL 698629, \*9 (N.J. Super. App. Div. Feb. 23, 2016). Thus, where the anchor of reasonableness comes in; the cap on compensated expert fees is unreasonable when it comes at the expense of an indigent defendant's rights. *See Arnold v. Kemp*, 813 S.W. 2d 770, 777 (Ark. 1991) (holding states expense and fee caps on expert witness violates the United States

Constitution, both on equal protection and due process grounds). States have sought to define reasonableness as the ground between the broad equitable principle of *Griffin* with the more narrowed right of *Ake*. See David A. Harris, *The Constitution and the Truth Seeking: A New Theory on Expert Services for Indigent Defendants*, 83 J. Crim. L. & Criminology 469, 484-487 (1992).

Arbitrarily rationing ancillary services for any criminal defendant, juvenile or not, is a denial of equal protection under the United States Constitution. See *In re TW*, 932 N.E.2d 125 at 131 (“It is well established that denial of funds to an indigent or the securing of an expert witness in defense of criminal charges may violate constitutional protections.”). Denial of funds can present an undue burden upon indigent defendants in exercising their right to these services because of their impecuniosity. See *Britt v. North Carolina*, 404 U.S. 226, 227 (1971) (“*Griffin v. Illinois* and its progeny establish the principle that the State must, as a matter of equal protection, provide indigent prisoners with the basic tools of an adequate defense or appeal, when those tools are available for a price to other prisoners”). Inequity in funds for expert services not only creates an inequitable foundation between indigent and nonindigent defendants but additionally with experts presented by the prosecution. Paul C. Giannelli, *Ake v. Oklahoma: The Right to Expert Assistance in A Post-Daubert, Post-DNA World*, 89 Cornell L. Rev. 1305, 1353 (2004) (“[I]ndigent

defendants must have access to minimal defense aids to offset the advantage presented by the vast prosecutorial and investigative resources available to the Government.”)

Equity of opportunity as opposed to outcomes has been identified by courts as the defining marker for due process in the payment of ancillary services through the State. *See Ross v. Moffitt*, 417 U.S. 600, 601 (1974) (“[The constitutional requirement is] only to assure the indigent defendant, as was done here, an adequate opportunity to present his claims fairly.”). This distinction is reiterated in *People v. Faxel*, 154 Cal. Rptr. 132, 134 (Cal. App 2d Dist. 1979), “[t]he test is not whether the indigent defendant is entitled to waste money in unnecessary expenditures as might an affluent and profligate defendant, but whether the defendant is placed in a general level of equity with nonindigent defendants.”

Without this parity, the door becomes open to a dangerous and unconstitutional chilling effect upon indigent defendants. *People v. Watson* describes the chilling effect a lack of State funds has upon indigent defendants seeking the services of experts:

[I]n certain instances involving indigents, the lack of funds with which to pay for the witness will often preclude him from calling that witness and occasionally prevent him from offering a defense. Thus, although the defendant is afforded the shadow of the right to call witnesses, he is deprived of the substance.

221 N.E.2d 645, 648 (Ill. 1966). This deprivation is not equity. When this equity is discarded, the constitutional rights of indigent defendants are as well.

The SPD holds an obligation to ensure that the procedural due process and equal protection right to ancillary services of all of Iowa's indigent defendants are upheld. An indigent defendant's ability to access expert services should not be determined by their source of representation. Inconsistency on determination in the reasonableness of claims between SPD and the judiciary presented undue burdens to indigent defendants represented by contract attorneys. Public defenders go directly through the SPD for payment of expert fee claims, indigent defendants represented by contract attorneys have to also go through the judiciary. *See* Iowa Admin. Code r. 493-13.2(815). The foundation of these protections is to protect those most socially vulnerable, indigent defendants fit within this category. If the SPD is to ensure the protection of the right to ancillary services to all of its clients, equal opportunity to access expert services must be provided to those represented both by public defenders and contract attorneys.



**III. The juvenile court should have applied the reasonableness factors articulated in *Pierce v. Nelson* to assess expert fee requests.**

*Pierce v. Nelson* centered upon a dispute over the reasonableness of expert's fees during the discovery process. 509 N.W.2d 471, 474 (Iowa 1993). The specific factors affirmed by the court in *Pierce* used to determine reasonability of expert fees, initially adopted in *Jochims v. Isuzu Motors, Ltd.*, 141 F.R.D. 493 (S.D. Iowa 1992), were:

The witness's area of expertise; The education and training required to provide the expert insight which is sought; The prevailing rates of other comparably respected available experts; The nature, quality, and complexity of the discovery responses provided; The fee actually being charged to the party who retained the expert; Fees traditionally charged by the expert on related matters; and any other factor likely to be of assistance to the court in balancing the interests implicated by rule 26.

*Pierce*, 509 N.W.2d 471 at 474. As K.C.'s defense counsel pointed out none of these factors, despite the additional evidence presented, were addressed by the juvenile court in its determination of expert fees compensable by the State in the case of K.C. (2/5/2023 Petition at Attach. J).

While *Hulse v. Wiaft*, 306 N.W.2d 707 (Iowa 1981), addresses reasonableness within the context of attorney fees—attorneys are not experts.

The Court citing to *Parrish v. Denato* identified the relevant factors of reasonable attorney fees as:

the time necessarily spent, the nature and extent of the service, the amount involved (or, as here, the possible punishment involved), the difficulty of handling and importance of issues, responsibility assumed and the results obtained, as well as the standing and experience of the attorney in the profession should be considered.

262 N.W.2d 281, 285 (Iowa 1978) (citing *Gabel v. Gabel*, 254 Iowa 248, 251, 117 N.W.2d 501, 503) (internal quotations omitted). While the Court in *Hulse* cautioned against set fees, that is exactly what the legislature has since instituted for contract attorneys [as previously examined in this brief]. See *Amaya v. State Public Defender*, 977 N.W.2d 22, 24 (Iowa 2022); Legislative Services Agency, *Indigent Defense—Overview and Funding History*, Issue Review (November 6, 2019). It is prudent given the distinctions between attorneys and experts to critically examine the juvenile court’s reliance upon its authority in the case of K.C. What *Pierce* has that *Hulse* lacks the ability to account for the uniqueness inherent in the work of experts as well as the experience of juveniles within the criminal justice system.

The paramount interests of note implicitly referenced to in *Pierce* are those of ‘fair adversarial play’ with a finite capacity of counsel to hire expert witnesses. See *State v. Wang*, 92 A.3d 220, 250-51 (Conn. 2014). These

interests do not become any less salient when the case moves from discovery to the judicial record. *See Ake v. Oklahoma*, 470 U.S. 68 at 78-79. The adversarial playing field also looks different for indigent juveniles as opposed to adults in a courtroom. *See State v. Lyle*, 854 N.W.2d 378, 388-89 (Iowa 2014), *as amended* (Sept. 30, 2014). In the context of juvenile delinquency where the imbalance of resources between the two parties and the consequences of a conviction are quite stark, the interest of fair play is particularly weighty. *See Hannah Jacobs Wiseman, Pro Bono Publico: The Growing Need for Expert Aid*, 60 S.C. L. Rev. 493, 494-495 (2008). The factors in *Pierce* advances the additional systemic goal of lessening its most dramatic consequence—the incidence of wrongful convictions. *See Bennett*, 58 L. & Contemp. Probs. 95 at 126 (WINTER 1995) (“Whenever the lack of money prevents a defendant from securing an experienced lawyer, trained investigator or technical expert, an unjust conviction may follow”).

Holding judges to the guidance provided by *Pierce* provides protection to juveniles like K.C. against potentially abusive, unfettered judicial discretion. *Pierce* provides guidance on reasonableness that other courts have lacked; many courts limit their decisions to the necessity of experts based on the specific factual circumstances within a case. *See People v. Mattson*, 789 P.2d 983, 997-98 (Cal 1990) (holding jury selection expert unnecessary and

thus not compensable under state funding); *Corenevsky v. Superior Court*, 682 P.2d 360, 368 (Cal 1984) (same holding as *Mattson*); *Sanchez v. Hedgpeth*, 706 F. Supp. 2d. 963, 989 (C.D. Cal. 2010) (holding forensic expert unnecessary as there were no fingerprints on the gun). Necessity of experts is a widely litigated issue; the argument is clearer for the appellant when they can point to an actual denial of expert services as opposed to a constructive denial, one caused by a lack of funds. *See Crawford v. State* 404 P.3d 204, 208 (Alaska 2017) (citing *Caldwell v. Mississippi*, 472 U.S. 320, 323-24, n.1 (1985), necessity requires more than “[u]ndeveloped assertions that the requested assistance would be beneficial [to the defendant].”). K.C. met the bar of necessity, yet he was still constructively denied expert services that would have been provided under *Pierce*.

## **CONCLUSION**

The SPD asks the Court to reverse the district court’s limiting of the fees in this case and allow the vendor to receive full payment for the services provided in K.C.'s defense.

## **CERTIFICATE OF COMPLIANCE WITH TYPEFACE REQUIREMENTS AND TYPE-VOLUME LIMITATION**

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

[X] this brief has been prepared in a proportionally spaced typeface Times New Roman, font 14 point and contains 5,115 words, excluding the parts of the brief exempted by Iowa R. App. P. 6.903(1)(g)(1).

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## **CERTIFICATE OF SERVICE**

The undersigned certifies a copy of this Proof Brief was filed with the Clerk of the Supreme Court VIA EDMS on August 14, 2023, and on the following others in the manner indicated:

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