IN THE SUPREME COURT OF IOWA

No. 24-0289

THERON M. CHRISTENSEN,
Plaintiff-Appellant,

vs.

IOWA DISTRICT COURT FOR STORY COUNTY,
Defendant-Appellee

APPEAL FROM DISTRICT COURT FOR STORY COUNTY
THE HONORABLE STEPHEN A. OWEN
CASE No. OWCR062790

APPELLANT'S BRIEF

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ROUTING STATEMENT

This case should be retained by the Iowa Supreme Court because it involves lawyer discipline, presents fundamental and urgent issues of public importance requiring ultimate determination by the Iowa Supreme Court, and presents substantial questions of enunciating legal principles. *See* Iowa R. App. P. 6.1101(2)(c), (e), & (f).

STATEMENT OF THE CASE

This case involves a writ of certiorari challenging the imposition of sanctions under Iowa Rule of Civil Procedure 1.413 against Theron Christensen, an Assistant County Attorney for Story County, in connection with his conduct prosecuting an Operating-While-Intoxicated, First Offense, Serious Misdemeanor. The district court concluded Christensen engaged in sanctionable conduct by filing a single motion in limine, moving to dismiss the case, and engaging in sanctionable conduct in two cases not before the district court. *See generally*, D0061, Order Sustaining Deft's M. for Sanctions, (11/29/2023). Christensen filed a Motion to Reconsider and Motion to Reopen the Record, which the court denied. *See* D0069, Motion to Reconsider (12/14/2023); D0068, Motion to Reopen Record (12/14/2023); D0074, Order Denying Motions to Reopen the Record & to Reconsider (1/15/2024). While not conceding sanctions were appropriate, Christensen submitted a brief arguing for the imposition of a $250 sanction. D0078, Christensen's Brief on Nature & Scope of

Sanctions, p. 4 (1/26/2024). The district court imposed a sanction of $2072.00. D0083, Order for Specific Sanctions, p. 18 (2/15/2024).

Christensen appeals the district court's Order Sustaining Defendant's Motion for Sanctions, D0061; Order Denying Motions to Reopen the Record & to Reconsider, D0074; and Order for Specific Sanctions, D0083.

STATEMENT OF FACTS

This matter began on June 30, 2023, when a criminal complaint was filed alleging Ashton Clemons was operating a motor vehicle while intoxicated (OWI). *See* D0001, Criminal Complaint (6/30/2023). Clemons was initially stopped for speeding. *See* D0054, Deft's Ex. C, Officer Shreffler Deposition, 18:13-15. The arresting officer, Hieu Shreffler, invoked implied consent and performed two evidentiary breath tests on a DataMaster—the first 12:54 a.m. *Id.*, 9:6-24. The first result demonstrated a blood alcohol content (BAC) of .091. *Id.*, 28:16-18. Due to uncertainty about the adequacy of the breath test, and out of an abundance of caution, Shreffler conducted another test. *Id.*, 29:13-19. The second test, conducted about fifteen minutes later, produced a result of .08. *Id.*, 38:6-18.

Christensen was assigned as the Story County prosecutor for the case. *See* D0004, Appearance (6/30/2023). Christensen is a young attorney with roughly four years of experience at the time of the events in question. D0078, p. 1. The State filed a Trial Information alleging Clemons unlawfully operated a motor vehicle while (1)

under the influence of an alcoholic beverage and/or (2) having an alcohol concentration of .08 or more. D0009, Trial Information (7/19/2023). The State subsequently amended the Trial Information on August 10 to allege only that Clemons had an alcohol concentration of .08 or more. D0017, Motion to Amend Trial Information, (8/10/2023). Thus, the State sought only a "per se" theory of prosecution, *see* Iowa Code section 321J.2(1)(b), and dropped the "under the influence theory," *see* Iowa Code section 321J.2(1)(a).

Two of the State's listed witnesses were deposed by Christensen and counsel for Clemons, Matthew Lindholm, on August 28. *See* D0052, Deft's Ex. A, Dr. Ryan Lappe Deposition; D0054. The first was Shreffler. Shreffler testified that he only offered the second test to Clemons because he was giving him "the benefit of the doubt." D0054, 29:13-19. He also testified he believed the radar unit he used to determine Clemons' speed would self-calibrate. *Id.*, 18:16-19:12. After Lindholm concluded his questioning, Christensen asked a series of questions clarifying Shreffler's view on the issue. *Id.*, 40:7-42:4. Ultimately, upon questioning by Christensen, Shreffler explained that he had only used tuning forks—an instrument used to calibrate the radar system—several times in the preceding five months. *Id.*

Dr. Ryan Lappe's deposition focused on the validity of the DataMaster results and which of the two results ought to be used. Notably, Lappe was clear that both results were valid. D0052, 10:16-11:14; 16:19-23. He also explained that he had

never seen multiple valid test results for the same individual taken close in time. *Id.* Lappe went on to opine on his belief that when a suspect's first test demonstrates a concentration of .1 or below, officers should conduct a second test. *Id.*, 13:3-19. He also expressed his belief that when one result is above the statutory threshold and one is not, the officer should rely on the lower of the two values. *Id.*, 17:4-19. Significantly, Lappe explained that his belief was not currently supported by Iowa law. *Id.*, 14:2-5.

Christensen filed a Motion in Limine on the afternoon of August 28. D0021, State's M. in Limine (8/28/2023). The motion primarily raises three contentions. First, Christensen sought to exclude the .08 test result from trial. *Id.* p. 1-2. Christensen argued that Chapter 321J prohibits the use of test results within the margin of error as evidence in OWI cases. *Id.* He also explained that Chapter 321J provides a rebuttable presumption that results obtained within two hours of operating a vehicle demonstrate the alcohol concentration at the time of operating. *Id.* p. 2. Moreover, section 321J.2(1)(b) only required evidence of an alcohol concentration above .08—which undisputedly occurred here because of the valid .091 test result. *Id.* Because there were two valid test results, and both are presumed to be Clemons' concentration while driving, the jury could easily be confused on an issue that was ultimately irrelevant to the case—the .091 result triggered criminal liability regardless of subsequent test results. *Id.* p. 2-3.

Second, Christensen sought to exclude evidence related to Clemons' demeanor during the traffic stop. *Id.* p. 3. Christensen argued that because the State was only seeking a conviction under 321J.2(1)(b), which relies just on test results to demonstrate alcohol concentration, demeanor evidence would be irrelevant. *Id.* He went on to identify cases supporting the proposition that some individuals may not appear intoxicated even when their alcohol concentration exceeds .08, showing why demeanor evidence is not correlated to actual alcohol concentration. *Id.* Christensen also asserted it would be unfair to allow Clemons to refuse all field sobriety testing only to later argue he did not appear intoxicated when the field testing is the means by which officers determine a suspect's demeanor. *Id.*

Third, Christensen sought to exclude Lappe's opinions that Iowa law should require officers to request multiple samples if the first result was under .1. *Id.* p. 3-4. Christensen asserted that Iowa law only requires a single test, and that a result under .1 remained a valid test result under existing Iowa law. *Id.* He also expressed concern that the testimony would result in an attempt at jury nullification. *Id.*

On August 30, Clemons, through counsel Lindholm, filed a Resistance to the State's Motion in Limine and Request for Sanctions. D0023, Res. to the State's M. in Limine and Request for Sanctions (8/30/2023). Clemons asserted the .08 test result was relevant evidence under Iowa Code sections 321J.2(12)(a) and 321J.18. *Id.* p. 4. Clemons also asserted demeanor evidence was relevant. *Id.* p. 6-7. In doing

so, the only case Clemons cites pertinent to the relevancy of demeanor evidence in an OWI prosecution was *State v. Price*, 692 N.W.2d 1 (Iowa 2005). Clemons also asserted Lappe's testimony was valid. *Id.* p. 7-8. Notably, Clemons cited no law to support this assertion. *Id.* Clemons also conceded that Iowa law does not require two tests. *Id.* p. 8.

Clemons went on to accuse Christensen of "attempting to pursue this charge as [sic] all costs without regard to their ethical obligations and has taken a position with their motion in limine that is not only contrary to the law but contrary to established obligations and standards." *Id.* p. 11. As a result, Clemons sought sanctions against Christensen pursuant to Iowa Rule of Civil Procedure 1.413(1) and Iowa Code section 619.19. In doing so, Clemons identified two prior cases, *State v. Rowen*, Story County Case OWCR062539, and *State v. Grabau*, Story County Case OWCR060724, as evidence of a pattern or practice of misconduct. *Id.* p. 14. Clemons also filed a Motion to Dismiss and Motion to Suppress on August 30. *See* D0024, Deft. M. to Suppress (8/30/2024); D0025, Deft. M. to Dismiss (8/30/2024).

On August 31, the court set a combined hearing for September 14 on the Motion in Limine, Motion to Suppress, Motion to Dismiss, and Request for Sanctions. D0021, Order Setting Hearing (8/31/2023). On September 7, the State filed Additional Minutes of Testimony. *See* D0027, Add. Minutes of Testimony (9/7/2023). As relevant here, the minutes opine that Lappe would testify to a

retrograde extrapolation estimating Clemons' alcohol content at the time of the traffic stop. *Id.* On September 11, Christensen sent an email to Lappe inquiring on the status of the retrograde extrapolation. *See* D0053, Deft's Ex. B, Emails, p. 5. It was only at 11:31 p.m. that evening that Lappe explained he could not provide a retrograde extrapolation in this case. *Id.* Lappe expressly noted the probable source of the "**misunderstanding**" between himself and Christensen—Lappe believed Christensen had asked for a different calculation. *Id.* (emphasis added).

As a result, Christensen filed Additional Minutes of Testimony on September 12—less than twelve hours after receiving notice from Lappe—noting Lappe was unable to testify to a retrograde extrapolation. *See* D0028, Add. Minutes of Testimony p. 1 (9/12/2023). The additional minutes also included the State's intent to offer testimony by Officer Alex Hoffman. *Id.* p. 2. The minutes noted that Hoffman had recorded Clemons traveling 44 MPH in a 35 MPH zone shortly before Shreffler executed the traffic stop at issue. *Id.*

On September 12—less than an hour after filing the Additional Minutes of Testimony—Christensen withdrew the August 28 Motion in Limine. *See* D0029 State's M. to Withdraw M. in Limine (9/12/2023). The next day, Christensen filed a Resistance to Defendant's Motion to Suppress. *See* D0033, Rest. to M. to Suppress (9/13/2023). In part, Christensen identified *State v. Shimon*, 243 N.W.2d 571 (Iowa 1976), as supporting the conclusion that an uncalibrated radar unit can still support

probable cause if corroborated by other evidence. *Id.* p. 3. The motion goes on to identify admissions by Clemons related to his speeding as well as testimony by Hoffman confirming Clemons' speeding. *Id.* p. 3-4. The motion also identifies a litany of cases supporting the proposition that even when a defendant is not technically violating a statute, probable cause may still exist if the officer reasonably believes the defendant had violated a statute. *Id.* p. 4. Moreover, probable cause existed to execute the stop due to Clemons driving with dealer license plates. *Id.* p. 5. The motion contains several other reasons to allow admission of evidence related to Clemons intoxication. *Id.* at 6-8.

Christensen also filed a Response to Defendant's Request for Sanctions. In it, Christensen explained the good-faith basis in existing law and policy supporting the arguments contained in the State's Motion in Limine. D0035, Response to Request for Sanctions p. 1-3 (9/13/2023). As to his request in the motion in limine to exclude the demeanor evidence, Christensen highlighted relevant case law from other jurisdictions suggesting demeanor evidence was not relevant to whether a test result was inaccurate. *Id.* p. 1-2. The Resistance also identified relevant Iowa Court of Appeals cases in which experts opined that a persons' demeanor does not reliably correlate with their alcohol concentration. *Id.* p. 2. The motion further sets forth Christensen's good faith basis for attempting to exclude the results of the .08 test. *Id.* p. 3. In particular, Christensen highlighted section 321J.2(14), which provides a

presumption that a test result taken within two hours of driving a vehicle demonstrates an individual's alcohol concentration while driving. *Id.* Christensen also asserted subsequent tests have no relevance in the accuracy of a prior test. *Id.* p. 4.

On September 13, at approximately 4:58 p.m., Christensen contacted Lindholm by email to inform him of his intention to dismiss the case. D0053, p. 2-3. Christensen expressly noted that he would file the motion shortly thereafter. *Id.* Around 8:30 a.m., Lindholm contacted Christensen to inquire on the status of the motion. *Id.* p. 2. Christensen explained that it had been filed the night before, so the clerk had likely not had an opportunity to address the motion. *Id.* Christensen also noted that regardless of the motion to dismiss, Lindholm would need to attend the hearing to address his request for sanctions. *Id.* Lindholm informed Christensen at 8:36 a.m. that the district court clerk had not received the motion to dismiss. *Id.* Within five minutes—at 8:41 a.m.— Christensen filed the motion to dismiss. D0036, State's M.T.D. (9/14/2023). On September 14, Judge Steven P. Van Marel granted the State's Motion to Dismiss. D0038, Order of Dismissal (9/14/2023).

Lindholm filed a Request for Hearing on Sanctions on September 20. The motion asserted Christensen made a conscious effort to avoid disclosure of exculpatory evidence to other criminal defendants by dismissing the case. *See* D0039, Request for Hearing on Sanctions, p. 2 (9/20/2023). In particular, Lindholm

claimed Christensen represented to him and another attorney, Sydney Ross, that the dismissal was done in an attempt to avoid a record on Shreffler's omissions. *Id.* On October 18, Christensen filed an Additional Resistance to Defendant's Request for Sanctions. The motion details the evidence Christensen intended to offer at trial. D0045, Add. Resist. to Deft's Request for Sanctions, p. 1 (10/18/2023). The motion goes on to explain how the arguments contained in the Motion in Limine were made in good faith on issues of first impression. *Id.* p. 3-6. Moreover, the motion detailed why the sanctions Clemons' requested would not be appropriate in this particular case. *Id.* p. 6-12.

The Court held a hearing on the Request for Sanctions on October 18. D0051, Ct. Rep. Memo. & Cert. (10/18/2023). Clemons offered Ex. A-I. *See* D0052-60, Defendant's Ex. A-I. Christensen, appearing without counsel, did not submit any exhibits.

On November 29, the Court entered its order finding Christensen engaged in sanctionable conduct pursuant to Iowa Code section 619.19 and Iowa Rule of Civil Procedure 1.413. D0061.In it, the district court identified three areas of sanctionable conduct: (1) the Motion in Limine was not justified in law or fact, (2) the case was dismissed for an improper purpose, and (3) Christensen engaged in sanctionable conduct in two prior cases. *Id.* p. 28-29. The court concluded Christensen engaged

in sanctionable conduct but deferred on the issue of the amount of sanctions to impose until a hearing on the matter could be held.[1] *Id*. p. 29.

On December 14, Christensen, through counsel, submitted a timely Motion to Reconsider and Motion to Reopen the Record. D0067-69 (12/14/2023). The court denied both motions. D0074. The court's order largely takes issue with Christensen's legal conclusions, determining the arguments raised by Christensen were wrong on their merits rather than frivolous. *See, e.g.*, *id.* p. 4 (concluding Christensen's interpretation of a statute could render other provisions moot). Additionally, the court asserted that it had not, in fact, considered prior cases in determining whether Christensen engaged in sanctionable conduct, but in any event any such consideration would have been proper. *Id.* p. 6.

The district court held a hearing on the amount of sanctions to impose on January 29, 2024. *See* D0082, Ct. Rep. Memo & Cert. (1/29/2024). Christensen filed a brief requesting a sanction of $250. *See* D0078, p. 4. In part, Christensen made that request due to his minimal savings. *Id.* p. 1-2. Clemons, through counsel, submitted

[1] The district court also noted that Clemons appeared to have filed the incorrect document as Ex. I. *Id.* at p. 10 ("[I]n reviewing exhibit I and comparing it to the defendant's motion for sanctions, it appears defendant filed the wrong document from the Rowen case in support of the motion for sanctions."). The court then indicated it went on its own factfinding mission through the *Rowen* docket to find and consider the document Clemons was likely referencing. *Id.* ("It appears the relevant filing from the Rowen case is a motion for preliminary determination of admissibility filed on June 21, 2023.").

an attorney fee affidavit indicating Clemons incurred $2072 in attorneys' fees. *See* D0079, Attorney Fee Affidavit, p. 2 (1/29/2024). At the hearing on the amount of sanctions, Clemons requested a sanction of $1250. D0082, Tr. Hearing on Amount of Sanctions, 8:11-20.

The district court ultimately imposed a sanction of $2072. D0083, p. 18. In doing so, the court routinely oscillated between believing Christensen's case was fatally weakened to the point of being frivolous and asserting the State retained a "reasonable and viable prosecution." *Compare id.* p. 4 ("Christensen knew or should have known his prosecution was in peril on August 28 following Dr. Lappe's deposition testimony.") *with id.* p. 5 ("Defendant's reasonable and valid defense did not deprive Mr. Christensen of a reasonable and valid prosecution which he still had with the .091 test result."). The Court also asserted that the motion in limine was an attempt to deprive Clemons of his constitutional rights. *Id.* p. 3.

Christensen filed a Petition for Writ of Certiorari, which the Iowa Supreme Court granted on March 25, 2024.

ARGUMENT

III. THE DISTRICT COURT ABUSED ITS DISCRETION IN FINDING CHRISTENSEN ENGAGED IN SANCTIONABLE CONDUCT.

a. Error Preservation

Christensen preserved error on the arguments contained in this section through his Response to Defendant's Request for Sanctions, D0035 p. 1-4; Additional

Resistance to Defendant's Request for Sanctions, D0045 p. 3-12; and Motion to Reconsider, D0069 p. 10-36; and securing rulings on the same in the district court's Order Sustaining Defendant's Motion for Sanctions, D0061 p. 10-31; and Order Denying Motions to Reopen the Record & to Reconsider, D0074 p. 1-9. *See Meier v. Senecaut*, 641 N.W.2d 532, 537 (Iowa 2002).

b. Standard of Review

Appellate courts review a district court's decision on whether to impose sanctions for an abuse of discretion. *Barnhill v. Iowa Dist. Ct.*, 765 N.W.2d 267, 272 (Iowa 2009). "We find such an abuse when the district court exercises its discretion on grounds or for reasons clearly untenable or to an extent clearly unreasonable." *Schettler v. Iowa Dist. Ct.*, 509 N.W.2d 459, 464 (Iowa 1993). "Although our review is for an abuse of discretion, we will correct erroneous application of the law." *Id.* at 272; *Rowedder v. Anderson*, 814 N.W.2d 585, 589 (Iowa 2012) ("An erroneous application of the law is clearly untenable.").

c. Sanctions Standard

Clemons sought sanctions pursuant to Iowa Rule of Civil Procedure 1.413 and Iowa Code Section 619.19. Those provisions are materially identical.[2] *See Barnhill*, 765 N.W.2d at 272. The rule imposes three independent duties, known as the

[2] As such, and for the purpose of brevity, this brief refers only to rule 1.413. However, all arguments relating to rule 1.413 apply equally to sanctions under section 619.19. *See Carr v. Hovick*, 451 N.W.2d 815, 817 (Iowa 1990).

"reading, inquiry, and purpose elements." *Barnhill*, 765 N.W.2d at 272 (quoting *Weigel v. Weigel*, 467 N.W.2d 277, 280 (Iowa 1991)). Compliance with rule 1.413 is measured objectively at the time the document was filed. *Id.*; *see also Schettler*, 509 N.W.2d at 468 ("The perfect acuity of hindsight has no place in a Rule 80(a) motion for sanctions."). The objective inquiry examines the "'reasonableness under the circumstances,' and the standard to be used is that of a reasonably competent attorney admitted to practice before the district court." *Id.* "The rule is intended to discourage parties and counsel from filing frivolous suits and otherwise deter misuse of pleadings, motions, or other papers." *Barnhill*, 756 N.W.2d. at 273 (quoting *Hearity v. Iowa Dist. Ct.*, 440 N.W.2d 860, 864 (Iowa 1989)). "Litigation sanctions may be awarded under Iowa Rule of Civil Procedure 1.413 when the violation of that rule is established by a preponderance of the evidence." *Iowa Sup. Ct. Atty. Disc. Bd. v. Rhinehart*, 953 N.W.2d 156, 165 (Iowa 2021).

Importantly, sanctions are not intended to deter attorneys from making colorable claims. The Iowa Supreme Court has been clear: "[W]e note rule 1.413 is not meant to stifle the creativity of attorneys or deter attorneys from challenging or attempting to expand existing precedent." *Barnhill*, 765 N.W.2d at 279. In fact, rule 1.413 does not prevent attorneys from making arguments "[e]ven if the attorney had reason to believe that the . . . claim was **weak**." *Brooks Web Servs. v. Criterion 508 Solutions, Inc.*, No. 9-899, 2010 Iowa App. LEXIS 85, at *17 (Iowa Ct. App. Feb.

10, 2010) (emphasis added). This is particularly true on matters of first impression. For instance, the Iowa Supreme Court recently explained that sanctions are not appropriate when "a party presented questions of first impression that lacked merit, [if] the arguments weren't frivolous within the meaning of rule 1.413(1)." *Exile Brewing Co., LLC v. Est. of Bisignano*, 991 N.W.2d 135, 142 (Iowa 2023) (citing *In re Guardianship of Radda*, 955 N.W.2d 203, 215 (Iowa 2021)). Even when a district court finds a case lacks sufficient evidence to present to a jury, "[that] failure of evidence does not mean that the [party's] pursuit of the . . . theory was frivolous and, therefore, sanctionable." *Dutton v. Iowa Dist. Ct. for Black Hawk Cty.*, No. 21-1390, 2022 Iowa App. LEXIS 507, at *20 (Iowa Ct. App. June 29, 2022).

The district court's order appears premised on the inquiry and purpose elements of rule 1.413. The inquiry element imposes an obligation on the signer to:

> [C]ertify that to the best of his knowledge, information, and belief, formed after a reasonable inquiry, the pleading, motion, or other paper is (1) well grounded on the facts and (2) warranted either by existing law or by a good faith argument for the extension, modification, or reversal of existing law.

Weigel, 467 N.W.2d at 280. Iowa case law is clear that good faith arguments based on existing case law, and arguments to extend, modify, or reverse existing law, are not sanctionable. *Id.* "The 'improper purpose' clause seeks to eliminate tactics that divert attention from the relevant issues, waste time, and serve to trivialize the adjudicatory process." *Id.* (quoting *Hearity*, 440 N.W.2d at 866). That said, bad faith

is not required to violate the element. *Id.* Rather, the rule "was designed to prevent *abuse* caused not only by *bad faith* but by *negligence* and, to some extent, *professional incompetence*." *Id.* (emphasis added).

Here, the district court incorrectly (1) determined the motion in limine was frivolous when it was filed; (2) determined the motion to dismiss was filed with an improper purpose, and (3) considered Christensen's conduct in cases wholly separate and irrelevant to the instant proceedings.

d. Christensen's Motion in Limine was Supported by Existing Precedent or was a Good Faith Effort to Extend the Law.

The district court abused its discretion and committed legal error when it concluded Christensen's August 28 Motion in Limine was frivolous for at least five separate reasons: (1) the district court misapplied statutory and case law regarding the type of evidence relevant to a "per se" OWI prosecution; (2) the district court wrongly concluded Lappe's personal opinions, which diverge from state law, were relevant to Clemons' defense; (3) the court erroneously found Christensen's attempt to exclude the second Datamaster test result was not colorable; (4) the district court misapplied existing precedent when it determined the depositions rendered the motion in limine frivolous, and (5) the district court erred in concluding Christensen's withdrawal of the motion in limine demonstrates it was frivolous at the time it was filed.

i. Christensen Correctly Asserted Demeanor Evidence was Inadmissible.

First, the district court committed legal error when it concluded evidence of Clemons' demeanor during the traffic stop was relevant to his defense. Iowa Code section 321J.2(1)(a)-(c) provide for three different theories upon which an individual may be found guilty of operating while intoxicated. *See State v. Warren*, 955 N.W.2d 848, 856 (Iowa 2021); *see also State v. Hutton*, 796 N.W.2d 898, 904 (Iowa 2011) (emphasis added) ("Iowa law has consistently and clearly *distinguished between* driving with a blood alcohol content that exceeds the statutory threshold *and* driving while under the influence of alcohol or drugs."). Section 321J.2(1)(a) provides a person may commit an OWI when operating a vehicle "while under the influence of an alcoholic beverage." In contrast, section 321J.2(1)(b) and (c) provide that an individual commits an OWI "while having an alcohol concentration of .08 or more," or having any amount of a controlled substance in their blood or urine. *See* Iowa Code § 321.2(1)(b)-(c), respectively.

The Iowa Supreme Court has consistently explained that "[e]ach prong [under section 321J.2(1)] uses a different theory and primarily relies on different evidence." *State v. Myers*, 924 N.W.2d 823, 828 (Iowa 2019). Section 321J.2(1)(a), sometimes referred to as the "under the influence" theory, "primarily utilizes evidence of a person's conduct and demeanor." *Warren*, 955 N.W.2d at 856. In contrast, section

321J.2(1)(b), sometimes referred to as the "per se" theory, "require[s] evidence derived from a test, not conduct." *Id.*

The State only sought to prosecute Clemons under section 321J.2(1)(b), the per se theory. *See* D0017. Pursuant to binding precedent, particularly *Myers* and *Warren*, and the plain language of section 321J.2(1)(b), which provides for criminal liability purely upon having "an alcohol concentration of .08 or more," Christensen asserted evidence related to Clemons' demeanor should be excluded as irrelevant. Simply put, the plain text of section 321J.2(1)(b) does not provide for an affirmative defense related to the defendant's actual conduct. Rather, the statutory text is clear that a test result indicating "an alcohol concentration of .08 or more" triggers the finding that the defendant was operating while intoxicated. Iowa Code § 321J.2(1)(b). As such, Clemons' demeanor was irrelevant to the legal issue in the case—whether Clemons' had an alcohol concentration of .08 or more—because his demeanor does not make the result of the .091 test, which was undisputedly a valid result, any more or less probable. *See* Iowa R. Evid. 5.401 (explaining the test for relevant evidence); *see also* D0035, p. 2 (collecting cases that found demeanor evidence was not relevant to per se OWI prosecutions).

In its Order Sustaining Sanctions, the district court cited *State v. Hutton*, 796 N.W.2d 898 (Iowa 2011) and *State v. Price*, 692 N.W.2d 1 (Iowa 2005) for the proposition that demeanor evidence is relevant to a per se theory. *See* D0061, p. 12,

21. The district court misinterpreted both cases. In *Hutton*, the court explained: "Section 321J.2 provides different alternatives to establish a conviction for operating while intoxicated, including *either* operating a motor vehicle 'while under the influence of an alcoholic beverage' *or* while 'having an alcohol concentration of .08 or more.'" 796 N.W.2d at 904 (emphasis in original). True, the court did note that demeanor evidence can be relevant in an OWI case. *Id.* But in doing so, the *Hutton* court was addressing the "under the influence" theory, *not* the per se theory of prosecution. *Id.* ("We have long recognized that the determination of whether a person is *under the influence* of an alcoholic beverage is focused on the conduct and demeanor of the person, not a numerical test result."). Additionally, reading *Hutton* to require demeanor evidence in a prosecution under the per se theory would directly contradict *Warren* and *Myers*. *See, e.g.*, *Warren*, 955 N.W.2d at 856.

Similarly, in *Price*, the court expounded on its holding in a prior case, *Benavides v. J.C. Penney Life Ins. Co.*, 539 N.W.2d 352 (Iowa 1995). The court in *Benavides* held that a test result did not necessarily trigger an exclusion in an insurance policy. *Id.* (citing *Benavides*, 539 N.W.2d at 355). The *Price* court explained the rationale in *Benavides*, noting, "the determination of intoxication must focus on such factors as reasoning and mental abilities, judgment, emotions, and physical control." *Id.* But, the court was clear its interpretation of "intoxication" was premised on analysis of section 321J.2(1)(a)—the "under the influence" theory, not

the "per se" theory. *Id.* (quoting *Benavides*, 539 N.W.2d at 355) ("Our general reliance on the general definition of 'intoxication' *developed under the first alternative of section 321J.2(1) . . .*").

Clemons' attempts to suggest his demeanor would demonstrate to the jury that the .091 test was invalid. But Lappe was unequivocal: both test results were valid. *See* D0052, 11:5-14. And Christensen highlighted ample case law from other jurisdictions as well as Iowa Court of Appeals decisions demonstrating that a sober demeanor does not undermine the validity of the test result. *See* D0035, p. 1-3. Pursuant to *Warren*, *Myers*, and the plain text of Iowa Code section 321J.2(1)(b), Christensen asserted a strong legal argument—one that was likely to be successful. The court committed legal error in interpreting Section 321J.2(1) and further abused its discretion in finding Christensen's arguments were frivolous.

ii. Lappe's Testimony Was Not Admissible.

Christensen's request to exclude Lappe's opinions regarding whether Iowa law should require officers provide two breath tests in certain situations was well supported by existing precedent and likely to succeed. This is evident in two ways: (1) existing Iowa law demonstrates Lappe's opinions would improperly comment on legal standards governing blood-alcohol test, and (2) Lappe himself conceded his

opinions were not representative of the state of the law in Iowa, thereby rendering any opinion unhelpful to the jury and unduly prejudicial to the State.

As a preliminary matter, it is important to clarify the scope of Christensen's request in the Motion in Limine. The motion merely sought to exclude evidence "regarding any DCI criminalist's personal opinion that Iowa law should require officers to request two breath samples if the first result is less than .10 or the reasons for that opinion." *See* D0021, p. 3-4. The motion did not seek to wholly exclude Lappe's views on the .08 test—it only sought to prevent testimony on whether Iowa law should require multiple tests in particular circumstances. *Id.* Thus, Christensen was not seeking to prevent Clemons from raising a defense or seeking exculpatory testimony relating to variability in DataMaster results in general or the two tests administered in this case in particular. He was only seeking to exclude a limited portion of Lappe's testimony that, as described below, would violate Iowa's Rules of Evidence.

First, Dr. Lappe's opinions would impermissibly comment on legal standards involved in this case. In general, expert witnesses "may testify in the form of an opinion or otherwise if the expert's scientific, technical, or other specialized knowledge will help the trier of fact to understand the evidence or to determine a fact in issue." Iowa R. Evid. 5.702. However, expert testimony faces several constraints. Most notably, "an expert witness may not give opinion testimony on

matters of domestic law or mixed questions of facts and law." *Smith v. Wright*, 13-0752, 2014 Iowa App. LEXIS 560, at *16 (Iowa Ct. App. May 29, 2014) (citing *Grismore v. Consol. Prods. Co.*, 5 N.W.2d 646, 663 (Iowa 1942)). Put another way, "'an expert witness is not permitted to state a legal conclusion' and when 'the legal conclusion is a rule of decision to be applied by the . . . jury in deciding the case; it is not a proper subject for expert testimony.'" *Id.* (quoting *Terrell v. Reinecker*, 482 N.W.2d 428, 430 (Iowa 1992)).

Here, Lappe's opinions on whether Iowa law should require police officers to provide two breath-tests impermissibly comments on domestic legal standards. An opinion on the matter would directly implicate questions of domestic law. *See Wright*, 2014 Iowa App. LEXIS 560, at *16. Resolving whether Iowa law requires multiple breath tests is purely a question of law best left to the court to resolve, not a fact question in which the jury would be assisted by Lappe's testimony at trial. *See State v. Leedom*, 938 N.W.2d 177, 192 (Iowa 2020) (explaining expert testimony must assist the jury "to understand evidence or to determine a fact in issue").

Second, Lappe's opinion is not relevant to this case and presents the risk of confusing the issues, misleading the jury, and wasting time. Evidence must be relevant to be admissible. Iowa R. Evid. 5.402. Evidence is relevant if it (1) "has any tendency to make a fact more or less probable," and (2) "the fact is of consequence in determining the action." Iowa R. Evid. 5.401. Even then, relevant evidence can

be excluded "if its probative value is substantially outweighed by a danger of . . . unfair prejudice, confusing the issues, misleading the jury, undue delay, wasting time, or needlessly presenting cumulative evidence." Iowa R. Evid. 5.403.

Lappe repeatedly conceded that his belief that officers should provide multiple tests was not reflective of existing law and was merely his personal opinion. For instance:

> Q. And I think there is some national standards out there that actually suggests always giving a subject two breath test results because ultimately they can vary significantly. Is that also your opinion?
> **A. Yes, yes, we would—we would like to move to that also.**
> Q. Iowa would like to move to a two-breath test state?
> **A. I would like to move to that for our program. I'll say that.**

D0052, 14:20-15:5. Thus, to the extent an expert can comment on legal standards, Lappe explained his belief is not reflective of the legal standards in Iowa. Indeed, it is difficult to determine what relevance an expert's personal opinion on the state of the law would have in a case like this—the jury resolves question of fact, not whether state law should comply with other standards. *See Mulhern v. Catholic Health Initiatives*, 799 N.W.2d 104, 111-12 (Iowa 2011). As such, the probative value of his testimony would be minimal and risk confusing or misleading the jury by focusing on issues extraneous to the proceedings. Moreover, given the lack of relevance to the case, Lappe's testimony would waste the court's and jury's time. The risk of unfair prejudice, confusing the jury, and wasting time substantially outweighs the

probative value of Lappe's personal views on the state of Iowa's laws. Thus, Christensen had a firm basis in existing law to advocate for the exclusion of portions of Lappe's testimony.

One might believe Christensen took the argument too far by attempting to exclude Lappe's testimony as a wholesale attempt at jury nullification. But the test for sanctions in not whether an attorney was somewhat inartful in their argument, or whether an attorney presented an argument in a distasteful manner to the court. Christensen's argument, which as described above is amply supported by existing law, was clearly rooted in the irrelevant and improper nature Lappe's testimony would have when commenting that Iowa law was incorrect. As such, the conduct was not sanctionable.

iii. Christensen Presented a Colorable Argument to Exclude The .08 Test Result

Christensen's effort to exclude the second breath test, which demonstrated a BAC of .08, was done with a good-faith basis for extending the law on an issue of first impression. It is undisputed the facts in this case are unique. Lappe testified that he has never seen an officer perform repeated tests when the first one was already valid. *See* D0052, 11:5-14. And, as explained at length below, chapter 321J provides

multiple competing presumptions, prohibitions, and requirements that require complex statutory interpretation.

In its Order Sustaining Sanctions, the district court highlighted the plain language of Iowa Code section 321J.15 provides that evidence of the defendant's alcohol concentration shown by chemical analysis is admissible. *See* D0061, p. 19-20. And that is certainly true—as a general matter, the DataMaster test would be admissible. But, in light of Iowa Code section 321J.2(12)(a), this case presents an issue of first impression. That section provides, "The alcohol concentration established by the results of an analysis of a specimen of the defendant's blood, breath or urine withdrawn within two hours after the defendant was driving . . . is presumed to be the alcohol concentration at the time of driving." Iowa Code § 321J.2(12)(a). However, Iowa Code section 321J.2(14) prohibits the use of an alcohol test to prove a per se theory if the results are within the machine's margin of error. Here, the police officer obtained two valid test results within two hours of Clemons' driving—one above the legal limit, at .091, and one within the margin of error of the legal limit, at .08. As a result, there are two competing presumptions at play: Clemons—by statute—is presumed to be both guilty and innocent of operating while intoxicated. It is believed no Iowa court has addressed what to do in this situation.

Christensen attempted to resolve those competing presumptions via the doctrine of *in pari materia*. That doctrine directs the court to resolve ambiguities in a statute by reading it together with other relevant provisions. *See State v. Nail*, 743 N.W.2d 535, 540-41 (Iowa 2007) (explaining the application of *in pari materia* is "especially appropriate in the area of criminal law, where our legislature has established a number of code chapters with highly detailed, interconnecting provisions."). In particular, Christensen highlighted Iowa Code section 321J.2(14).[3] That section provides:

> In any prosecution under this section, the results of a chemical test shall not be used to prove a [per se theory of OWI] if the alcohol, controlled substance, or other drug concentration indicated by the chemical test minus the established margin of error inherent in the device or method used to conduct the chemical test does not equal or exceed the level prohibited by subsection 1, paragraph "b" or "c".

[3] The motion in limine mistakenly cites to Iowa Code section 321J.14. *See* D0021. In its Order Sustaining Sanctions, the district court found Christensen "intentionally misstates the law when he says this Code section 321J.14" proscribes the use of all test results. *See* D0061, at p. 19-20; *see also id.* (finding Mr. Christensen intentionally cited another irrelevant statute, section 321J.12, rather than the relevant 321J.2(12)). The district court attributed to malice what can more properly be explained by a simple typo. As Clemons noted in his Request for Sanctions, "[T]he State likely intended to cite Iowa Code Section 321J.2(14)." D0023, at p. 2 n.1-2. The same is true for Mr. Christensen's accidental citation to 321J.12, rather than his intended citation to 321J.(2)(12). *See id.* The district court abused its discretion in determining Christensen intentionally misled the court, rather than mistyped a citation. As Judge Owen noted in his order, "[s]uch a baseless smear of [another's] character is sufficient evidence of [a] lack of objectivity . . ." D0061, at p. 21.

Iowa Code section 321J.2(14). Christensen, relying on the statute's language providing the test result cannot be used to prove an OWI, asserted the provision "flatly proscribes" the use of test results within the margin of error by either party. *See* D0021, p. 2. As such, the .08 result would need to be excluded. Thus, Christensen attempted to craft a creative argument relying upon statutory language to resolve a disputed point of law—conduct that goes to the core of zealously advocating for a client, not sanctionable conduct. *See* Iowa R. Prof. Conduct, Preamble (directing attorneys to be zealous advocates).

In contrast, Clemons asserts that section 321J.2(14) only prevents the use of certain evidence "to prove a violation" of the code section, necessarily suggesting by omission that evidence can be used to defend against allegations of a violation. *See* D0023, p. 2-3. And that may be one fair reading of the statute. *But see* Karl N. Llewellyn, *Remarks on the Theory of Appellate Decision and the Rules or Canons of About How Statutes are to be Construed,* 3 VAND. L. REV. 395 (1950) (providing twenty-eight pairs of statutory canons and their opposites to highlight the contradictions and difficulties inherent to statutory interpretation). However, the fact that Christensen's argument is contrary to how another party or the court interprets a statute does not mean the conduct amounts sanctionable conduct, particularly in a unique and complex matter such as this. *See Est. of Bisignano*, 991 N.W.2d at 142.

In sum, Christensen presented a novel argument in an attempt to resolve a complex issue of first impression. The Court can reasonably disagree with the argument Christensen presented, but that does not mean Christensen's conduct rises to the level of sanctionable conduct. *See Barnhill*, 765 N.W.2d at 279.

iv. The Motion in Limine Was Not Frivolous in Light of the August 28 Depositions.

The district court found Christensen knew the Motion in Limine was frivolous when he filed it because of comments made during Lappe and Shreffler's depositions. *See* D0061, p. 23. In particular, the court emphasized comments Lappe made concerning his personal preference to utilize the lower of two test values and Shreffler's admissions related to his failure to calibrate his radar. However, the Iowa Court of Appeals has been clear that damaging deposition testimony does not render a motion frivolous. In *Dutton*, the Iowa Court of Appeals found imposition of sanctions on a party was improper despite the pursuit of a negligence claim after obtaining deposition testimony significantly damaging their position. 2022 Iowa App. LEXIS 507, *19-20. In doing so, the court highlighted that the testimony would only result in sanctionable conduct if it "was so damaging as to leave no reasonable possibility" of successfully pursuing the party's theory. *Id.*

Here, Lappe's testimony is not fatal to the State's case—as explained, his position is not supported by Iowa law and had no relevance to the case. Similarly, Shreffler's testimony was not fatal—Hoffman had obtained a valid radar result

indicating Clemons had been speeding shortly before Shreffler effectuated the stop. *See* D0028, p. 2. As such, there was still probable cause to effectuate the stop. *See* D0033, p. 3. Moreover, there is no guarantee a jury would believe either Lappe or Shreffler. *See State v. Farnum*, 554 N.W.2d 716, 718 (Iowa Ct. App. 1996) ("A jury is free to accept all, part, or none of a witness's testimony."). Lappe's and Shreffler's depositions may have damaged the State's case, but their testimony does not rise to the level as to leave "no reasonable possibility" the State's claim would succeed. *Dutton*, 2022 Iowa App. LEXIS 507, at *20; *see also State v. Musser*, 721 N.W.2d 758, 761 (Iowa 2006) (noting factual disputes, including the "plausibility of explanations" are for the jury to resolve).

Finally, it is worth noting that neither Clemons nor the district court ever identified relevant authority suggesting a failure to use tuning forks is fatal to a probable cause finding. *See* D0024, p. 4. Instead, Lindholm expressly offered his own opinion as to the adequacy of calibrating the radar unit. *Id.* ("The undersigned believes . . ."). Christensen does not dispute that Shreffler's conduct could, in some circumstances, invalidate the probable cause to stop a vehicle. But the district court never cited any authority suggesting the failure to calibrate invalidated the probable cause *in this case*—indeed, the court explained in subsequent orders that the State retained a valid prosecution following the depositions. *See* D0083, p. 5. Thus, the

district court abused its discretion in concluding deposition testimony was so damaging to the State's case as to render Christensen's motion in limine frivolous.

v. Withdrawing the Motion in Limine is Irrelevant to the Issue of Sanctions.

The district court erroneously concluded Christensen withdrew the motion in limine on September 12 because he knew it was not supported by law or fact at the time he filed it on August 28. *See* D0061, p. 29. As explained in the preceding sections, Christensen had a good faith basis in law and fact for asserting each position contained in the Motion in Limine. The withdrawal was simply due to an evolving evaluation as to the strength of the case—Christensen only learned Lappe would be unable to perform a retrograde extrapolation the night before withdrawing the motion. *See* D0053, p. 5. Christensen's withdrawal of the motion does nothing to suggest Christensen knowingly filed frivolous arguments *at the time the motion in limine was filed. See Weigel*, 467 N.W.2d at 280 (explaining the proper inquiry under rule 1.413 is the attorney's knowledge and intent at the time the motion was filed). Moreover, to the extent subsequent withdrawals of a motion constitute any sort of admission as to the strength of the motion, an attorney can ethically file a motion despite having some concerns as to its strength. *Brooks*, 2010 Iowa App. LEXIS 85, at *17 (explaining that rule 1.413 does not prevent attorneys from making arguments "[e]ven if the attorney had reason to believe that the . . . claim was

weak."). As such, the withdrawal of the motion in limine should not be construed as to impute bad faith at the time the motion in limine was filed.

vi. The District Court Abused its Discretion by Equating Exclusion of Inadmissible Evidence with Withholding Exculpatory Evidence.

Finally, the district court abused its discretion by repeatedly making the erroneous assertion that utilizing proper procedural methods to exclude inadmissible evidence violated Clemons constitutional rights. *See, e.g.*, D0061, p. 19; D0083, p. 3. Indeed, the court expressly asserted that seeking to exclude evidence is the same as failing to disclose the evidence in the first place:

> Attempting to deprive a defendant of potentially relevant evidence material to his defense has the functional equivalency in its hoped-for result of withholding exculpatory evidence known to a prosecutor. Here, the prosecutor did not actually withhold the evidence, but utilized legal process in a spurious gambit to get the court to do so. Whether ACA Christensen actually withheld exculpatory evidence or utilized judicial proceed in the attempt is irrelevant as both would demonstrate an intent to deprive defendant of a fair trial by knowingly and purposefully attempting to withhold exculpatory evidence of value in the presentation of a reasonable defense to a jury.

D0061, p. 19.

Of course, the distinction between excluding inadmissible evidence and withholding exculpatory material is a significant one—the Iowa Rules of Evidence apply to criminal prosecutions and allow the exclusion of inadmissible evidence.[4]

[4] Unfortunately, the district court has a history of finding constitutional violations in relation to Chapter 321J where none exist. *See, e.g.*, *State v. Laub*, 2 N.W.3d 821,

Iowa R. Evid. 5.101 & 5.1101 (defining the scope and applicability of the Rules of Evidence). Moreover, the United States Constitution requires *disclosure* but not *admission* of exculpatory evidence. *See Brady v. Maryland*, 373 U.S. 83, 87 (1963). The court's reasoning would make it impossible for the prosecution to ever utilize the Iowa Rules of Evidence if the evidence they sought to exclude was exculpatory, regardless of how blatantly inadmissible the evidence was. The court's misguided belief that excluding inadmissible evidence amounts to a constitutional violation was an abuse of its discretion.

e. Christensen Did Not File the Motion to Dismiss With An Improper Purpose.

The district court erroneously found Christensen's decision to dismiss the case against Clemons was sanctionable for two reasons. First, the court noted the timing of the dismissal shortly before the September 14 hearing on several motions, including the Motion in Limine, Motion to Suppress, and Motion for Sanctions, required Clemons' attorney to expend unnecessary resources. *See* D0061, p. 29. Second, the court concluding Christensen dismissed the case as a means to "cover-up" Shreffler's failure to properly calibrate his radar unit and deprive other criminal defendants with potentially exculpatory evidence. *Id.*

834 (Iowa 2024) ("The district court concluded there was an equal protection violation here, but its rationale was underdeveloped and unclear."); *State v. McMickle*, 3 N.W.3d 518, 521 (Iowa 2024).

The timing of the motion to dismiss does not evince bad faith or an improper purpose. First, the court concluded the timing of the motion showed that Christensen intentionally lied to Lindholm regarding the filing of the motion to dismiss. However, the timing of filings and emails between Lindholm and Christensen demonstrates the late filing was merely a mistake that was quickly rectified. Christensen believed the motion had been filed shortly after 5 p.m. on September 13, which would cause a delay in the motion appearing on the electronic filing system until the next morning. *See* D0053, p. 2-3. Once Lindholm informed Christensen that the motion had in fact not been filed—which occurred at 8:36 a.m. on September 14—Christensen quickly moved to rectify the error. *Id.* p. 2. In fact, the Motion to Dismiss was filed merely five minutes after Christensen learned of the error. *See* D0036 (including the filing timestamp of 8:41 a.m.).

Second, the defense was not prejudiced—nor could he be—by the timing of the motion to dismiss. As Christensen explained to Lindholm via email on the morning of September 14, Lindholm needed to appear at the hearing to address the pending Motion for Sanctions. *See* D0053, p. 2. Moreover, there was no guarantee the district court would grant the Motion to Dismiss, necessitating the defense's presence for the rest of the motions scheduled for hearing that day. *See State v. Taeger*, 781 N.W.2d 560, 564 (Iowa 2010) (noting a court need not accept a motion to dismiss). As such, it cannot be said that Christensen sought to impose unnecessary

expenses on Defendant because Lindholm's presence was necessary regardless of when he filed the Motion to Dismiss.

The court also erred in concluding Christensen only moved to dismiss the case in an attempt to effectuate a cover-up of Shreffler's failure to properly calibrate his radar unit. Here, the case docket demonstrates that Christensen moved to dismiss once it became clear the State could no longer prosecute the action. Christensen filed the State's Motion in Limine on August 28. As already explained, that Motion was supported by existing facts and law, or was requesting a reasonable extension or modification of existing law on issues of first impression. That motion was withdrawn on September 12. Without the motion in limine, as well as Christensen's recent discovery on the evening of September 11 that Lappe could not perform a retrograde extrapolation, the State's case became significantly harder to prove. D0053, p. 5 (wherein Lappe informs Christensen that he cannot perform the retrograde extrapolation on September 11). As such, Christensen moved to dismiss the case the next day. *See id.* (demonstrating Christensen attempted to file the motion to dismiss on September 13). Thus, the court's docket reveals the motion to dismiss was premised not on an attempted cover-up, but on the practical difficulties of proving the case.

The record in this case does not demonstrate an effort to effectuate a cover-up related to Shreffler's conduct. The information related to calibrating the radar unit

was obtained by Christensen himself during Shreffler's deposition. *See* D0054, p. 40-42. Shreffler's admission were thus made on the record due to Christensen's efforts and questioning. It would be anomalous to believe Christensen sought to extract the information from Shreffler only to make significant efforts to hide the very information he obtained. And it requires a significant stretch of the imagination to believe Christensen was attempting to prevent knowledge of Shreffler's conduct from spreading when the admission was made in a deposition not subject to a protective order and directly in front of Lindholm—there is no risk of suppressing evidence when the defense already has the evidence available to them. *See DeSimone v. State*, 803 N.W.2d 97, 103 (Iowa 2011) ("Nonetheless, 'if the defendant either knew or should have known of the essential facts permitting him to take advantage of the evidence,' the evidence is not considered 'suppressed.'"). Further, similarly situated criminal defendants need not have a final adjudication on the issue of Clemons' guilt or innocence to effectuate their own defenses in relation to the validity of traffic stops conducted by Shreffler. Indeed, those defendants are free to depose Shreffler or seek a copy of the deposition. The motion to dismiss does nothing to cover up Shreffler's errors.

Significantly, there is no record evidence suggesting Shreffler's failure to use tuning forks to calibrate the radar system before each shift even affected its reliability. The sole basis for this conclusion is Lindholm's unsupported belief that

proper procedure requires such calibration. *See* D0024, p. 4 ("The undersigned believes that the Huxley Police Department and/or the manufacturer of the radar device used in this matter requires that the accuracy of the radar be checked prior to the start and conclusion of each shift to ensure accuracy of the radar."). Again, Christensen does not dispute that the failure to calibrate the radar could, in some circumstances, invalidate probable cause. However, there is no evidence that the radar unit malfunctioned in this case, and the district court abused its discretion in believing Christensen sought to cover up facts that had not altered the case in a meaningful way.

Moreover, the affidavit by Sydney Ross, an attorney at Lindholm's firm, does not demonstrate Christensen's intent was improper. Ross averred that Christensen sought to dismiss the case "to avoid the creation of any record which would highlight the fact that Officer Hieu [Shreffler] of the Huxley Police Department was routinely failing to check the accuracy of his radar device by using his training forks." D0055, Deft. Ex. D, Ross Affidavit, p. 1. But avoiding the creation of a further record on Shreffler's mistakes does not amount to an improper purpose. Indeed, a record had already been made—directly in front of Lindholm—of Shreffler's alleged errors. All Christensen was referencing was the fact that Shreffler was already receiving supplemental training to address proper calibration of radar units—additional record

of the mistake was unnecessary because it was already being addressed.[5] *See* D0051, Tr. Hearing on Motion for Sanctions, at 10:7-16.

Additionally, existing law is clear that prosecutors should be hesitant to dismiss a case. The Iowa Supreme Court has explained:

> The unusual facts of these cases suggest that dismissal will not be an appropriate remedy in the overwhelming majority of cases. As we aptly observed in *Brumage*, the court's power to dismiss a case in the furtherance of justice "should be 'exercised sparingly' and only in that 'rare' and 'unusual' case where it 'cries out for fundamental justice beyond the confines of conventional consideration. [*State v. Brumage*, 435 N.W.2d 337, 340 (Iowa 1989)].

State v. Piper, 663 N.W.2d 894, 903 (Iowa 2003) (overruled on other grounds by *State v. Hanes*, 790 N.W.2d 545, 552(Iowa 2010)). Christensen needed to weigh the disfavored outcome of a motion to dismiss with the need to further justice—an inquiry so complicated as to require analyzing and applying a non-exhaustive list of twelve factors. *See State v. Smith*, 957 N.W.2d 669, 681 (Iowa 2021). Given the circumstances of the case and the demanding inquiry necessary to determine whether a dismissal was appropriate, the speed at which Christensen moved to dismiss the case was appropriate.

Notably, Judge Van Marel granted the motion to dismiss. *See* D0038. A district court cannot grant a motion to dismiss that was filed for improper purposes. *See*

[5] Christensen sought to reopen the record to clarify this very issue. *See* D0068, p. 2. The district court's denial of Christensen's motion to reopen the record is another abuse of its discretion. *State v. Long*, 814 N.W.2d 572, 576 (Iowa 2012).

Taeger, 781 N.W.2d at 566. Judge Van Marel's order demonstrates his view that the motion to dismiss complied with Iowa Rule of Criminal Procedure 2.33(1) and was not made for an improper purpose. This court should give significant consideration to Judge Van Marel's view because he had overseen the proceedings up through the motion to dismiss. *See In re Marriage of Gensley*, 777 N.W.2d 705, 716 (Iowa Ct. App. 2009) (explaining appellate courts defer to district court credibility determinations because they have the benefit of directly observing the parties). Thus, the district court abused its discretion in finding the Motion to Dismiss was filed with an improper purpose.

f. The District Court Abused its Discretion in Considering Two Prior Cases Prosecuted by Christensen.

The district court abused its discretion by considering Christensen's conduct in two separate cases: *State v. Grabau* and *State v. Rowen*. As an initial matter, the district court attempted to obfuscate the extent of its consideration of those cases, claiming it imposed sanctions independently of its consideration of the past cases. *See, e.g.*, D0074, p. 6. However, the district court's original order is clear: "The court notes that these exhibits [from *Rowen* and *Grabau*] may bear both on the merits of whether sanctions should be imposed but also what degree of sanction should be imposed, if any." D0061, p. 9. The court clearly considered the cases when deciding whether Christensen engaged in sanctionable conduct. Doing so was an abuse of discretion.

As explained above, Iowa precedent has consistently applied the same considerations when determining whether an attorney engaged in sanctionable conduct. *See, e.g.*, *Barnhill*, 756 N.W.2d. at 272-73; *Weigel*, 467 N.W.2d at 280. Those considerations do not include past misconduct, which is instead a factor for determining the amount of sanctions to impose once it is established that the attorney had engaged in misconduct. *See Rowedder*, 814 N.W.2d at 590. The court's consideration of Christensen's conduct in separate cases while weighing whether Christensen engaged in sanctionable conduct is directly contrary to long-standing precedent and amounts to an abuse of discretion. *See State v. Grandberry*, 619 N.W.2d 399, 401 (Iowa 2000) (finding that when a court considers improper factors in sentencing, even as a "secondary consideration," the court abuses its discretion).

Additionally, considering prior cases when determining whether to impose sanctions is an abuse of discretion because (1) the court lacks jurisdiction to impose sanctions for conduct in separate cases, (2) the imposition of sanctions was untimely, (3) Rule 1.413 does not allow for "pattern and practice" sanctions, (4) and *Rowen* and *Grabau* do not demonstrate sanctionable conduct.

First, the district court lacked jurisdiction to impose sanctions for conduct that occurred in entirely distinct cases. In *Darrah v. Des Moines Gen. Hosp.*, 436 N.W.2d 53 (Iowa 1989), the Iowa Supreme Court was tasked with deciding whether a voluntary dismissal divested a district court of jurisdiction to impose sanctions for

conduct that occurred prior to dismissal. The court ultimately concluded that a district court had jurisdiction to "adjudicate the collateral problem created by prior wrongful conduct." *Darrah*, 436 N.W.2d at 55. Notably, however, the court explained that the rule applies only to allow a court to "retain jurisdiction." *Id.* Implicit and fundamental to the Court's determination was the notion that it was the court before whom the allegedly sanctionable motion was filed that has jurisdiction to impose sanctions. *See* Merriam-Webster Dictionary, *Retain*, https://www.merriam-webster.com/dictionary/retain (defining "retain" to mean "to keep in possession"). To rule otherwise would be to render the Court's discussion about "retaining" jurisdiction entirely superfluous.

That conclusion is also amply supported by policy considerations. The court before whom the allegedly sanctionable motion was filed is best situated to weigh the relative merits of the motion and determine the credibility and intent of the party filing it. *See Gensley*, 777 N.W.2d at 716 (explaining appellate courts defer to district court credibility determinations because they have the benefit of directly observing the parties). Our supreme court has been clear that such effective determination of issues related to sanctions is an important goal of rule 1.413. *See Darrah*, 436 N.W.2d at 55 (noting motions for sanctions should be made promptly to encourage "effective determination of the issues"). And consider the alternative—if any court can impose sanctions for conduct that occurred in any matter, motions could be

subject to endless disputes years after the motion had been filed by parties and courts that had nothing to do with the original action, lacking critical context on the circumstances surrounding the motion or pleading.[6]

Second, imposing sanctions for these two cases would be untimely. Rule 1.413 does not expressly include a temporal limit to the imposition of sanctions. That said, case law demonstrates that motions for sanctions "must be filed expeditiously without undue delay." *Hearity v. Bd. of Supervisors*, 437 N.W.2d 907, 909 (Iowa 1989). Again, *Darrah* is instructive. That case instructed counsel and trial courts to "request sanctions at the earliest time [rule 1.413] violations occur to facilitate judicial economy and effective determination of the issues." *Darrah*, 436 N.W.2d at 55. The *Darrah* Court noted a district court was limited to ruling on motions made shortly after the dismissal, which in that case occurred only nine days later. 436 N.W.2d at 53. Here, the alleged sanctionable conduct occurred over two years ago, in the *Grabau* case, and roughly six weeks before the court's order for *Rowen*. *See* D0059, Deft. Ex. H, *Rowen* Motion in Limine (10/18/2023) (filed July 7, 2023); D0056, Deft. Ex. E, *Grabau* Motion in Limine (10/18/2023) (filed October 4, 2021). The court's consideration of conduct that occurred long before the motions at issue was an abuse of discretion.

[6] Indeed, a litigant does not have standing to pursue sanctions for conduct in entirely unrelated cases. *See Citizens for Responsible Choices v. City of Shenandoah*, 686 N.W.2d 470, 475 (Iowa 2004) (defining standing).

Third, the district court cannot impose "pattern and practice" sanctions. *See* D0074, p. 28 ("The instant case (Clemons), the Rowan case and the Grabau cases establish a pattern and practice of willfully sanctionable conduct by ACA Christensen."). The Iowa Supreme Court has already firmly concluded that the unit of sanctionable conduct under rule 1.413 is the act of signing and filing an individual motion or pleading, not a pattern of misconduct:

> Although the rule and statute *focus upon the event of signing*, we recognize that in most cases there will be a series of filings. They may *indicate* a pattern of conduct. The provisions of our rule and statute would *apply to each paper signed* and would require that each filing reflect a reasonable inquiry.

Mathias v. Glandon, 448 N.W.2d 443, 447 (Iowa 1989) (emphasis added). Under *Mathias*' holding, sanctions attach to the signing and filing of each motion, not the pattern of filing unjustified motions. As such, even if this Court concludes Christensen's conduct in *Rowen* and *Grabau* amounted to sanctionable conduct within the court's jurisdiction to sanction, the district court abused its discretion in applying sanctions for a "pattern and practice" of misconduct.

Fourth, and finally, Christensen did not engage in sanctionable conduct in *Rowen* or *Grabau.* Regarding *Rowen*, the district court faulted Christensen for attempting to utilize a PBT used in the county jail's release procedure to demonstrate the defendant's alcohol concentration. D0061, p. 27. But the inquiry for whether sanctions are appropriate must be on whether Christensen had a good faith basis for

asserting the PBT was admissible at trial. *See Barnhill*, 765 N.W.2d 279. Indeed, the Motion for Ruling on Admissibility of Evidence lays out a logical analysis for the admissibility of a PBT. First, Christensen engaged in a detailed statutory interpretation Iowa Code Section 321J.5's prohibition of preliminary breath tests to demonstrate why it did not prohibit the use of a PBT obtained while the defendant was incarcerated after the arrest. *See* D0080, Deft. Ex. I-1, Motion For Ruling on Admissibility, p. 2.[7] Next, Christensen identified other pertinent statutes, including section 321J.18, which allows for any competent evidence bearing on whether a person was under the influence to be introduced. *See id.*; Iowa Code § 321J.18. In the absence of conflicting statutes, section 321J.18 controlled. Christensen then went on to assert another case, *State v. Deshaw*, 404 N.W.2d 156 (1987), which explained the policy rationale of excluding PBT results due to their unreliability, was no longer factually supported. *Id.* p. 2-3. As such, Christensen was articulating a good faith basis to reverse existing law. *See* Iowa R. Civ. P. 1.413 (expressly permitting good faith arguments to reverse existing law). The Court can reasonably disagree with Christensen's analysis and reasoning, but that does not render the conduct

[7] The district court noted Clemons had likely filed the wrong exhibit in relation to the original Ex. I. *See* D0061, at p. 10. As a result, the district court undertook its own factual investigation to identify exhibits outside of the record. *Id.* Doing so constitutes an abuse of discretion. *See Piper*, 663 N.W.2d at 914 (explaining the court should not "assume a partisan role and undertake the defendant's research and advocacy"). The proper filing, Ex. I-1, was admitted at the hearing regarding the amount of sanctions to impose. *See* D0080.

sanctionable. *See Barnhill*, 765 N.W.2d at 279.

Similarly, Christensen's conduct in *Grabau* was not sanctionable. In that case, Christensen sought to exclude the defendant's medical records until proper foundation was laid by the treating healthcare provider who created them, that provider authenticated the records, and the provider was made available to give needed context to the information contained within the records. *See* D0057, Deft. Ex. F, Grabau Motion in Limine, p. 1. The district court concluded Christensen sought to improperly exclude exculpatory medical records. Specifically, the district court found Christensen's views were directly contradicted by a recent case, *State v. Buelow*, 951 N.W.2d 879, 884 (Iowa 2020). *See* D0061, p. 27.

The district court's interpretation reads too much into Christensen's motion and the scope of *Buelow*. That case found that medical records pertaining to a decedent's history of suicide attempts were admissible in a murder case where the defendant asserted the decedent committed suicide. *Buelow*, 951 N.W.2d at 884-88. As relevant here, the court found the medical records did not constitute hearsay, the evidence was relevant, and the evidence did not amount to character evidence. *Id.*

True, Christensen raised concerns as to all three of those issues in his motion. *See* D0057. But unlike *Buelow*, Christensen was not attempting to entirely exclude the evidence. Rather, Mr. Christensen merely requested such evidence not be admitted until proper foundation and authentication took place, as well as having the

authoring physician be present to explain the content of the records to avoid confusing the jury. *See id. Buelow* simply does not address those matters *at all*. Indeed, a party seeking to admit evidence must lay foundation and authenticate records under our rules of evidence. *See State v. Burgdorf*, 861 N.W.2d 273, 276 (Iowa Ct. App. 2014) (noting, "Iowa Rule of Evidence 5.901 requires authentication or identification of documents as a condition precedent to admissibility"); *Johnson v. State Farm Auto Ins. Co.*, 504 N.W.2d 135, 139 (Iowa Ct. App. 1993) (remanding for a new trial due to the admission of medical records without proper foundation). Thus, Christensen's claims were not obviously foreclosed by existing case law, and he had a good faith basis to make the assertions contained in the motion. *Barnhill*, 765 N.W.2d at 279.

IV. THE DISTRICT COURT ABUSED ITS DISCRETION IN IMPOSING A $2072 SANCTION.

a. Error Preservation

Christensen preserved error on the arguments presented in this section through his Brief on Nature and Scope of Sanctions, D0078 p. 1-7; arguments presented at the Hearing on the Nature and Scope of Sanctions, D0082 at 9:16-12:7; and the district court's rulings on the same in its Order for Specific Sanctions, D0083 p. 1-22. *See Meier*, 641 N.W.2d at 537.

b. Standard of Review

An appellate court reviews a district court's order on the amount of sanctions imposed under Rule 1.413 for an abuse of discretion. *Rowedder*, 814 N.W.2d at 589. "An abuse of discretion occurs when the district court exercises its discretion on grounds or for reasons clearly untenable or to an extent clearly unreasonable." *Id.* (citation omitted).

c. The District Court Abused Its Discretion in Determining the Amount of Sanctions to Impose.

The district court abused its discretion in imposing a sanction of $2072 because it is inconsistent with existing precedent, the court based its sanction on facts not in the record, and the court unilaterally ignored the only evidence before it in determining the amount of attorney's fees Clemons incurred.

The Iowa Supreme Court has identified four main factors to weigh when determining the appropriate amount of sanctions under Rule 1.413: "(1) the reasonableness of the opposing party's attorney's fees; (2) the minimum to deter; (3) the ability to pay; and (4) factors related to the severity of the . . . violation." *Rowedder*, 814 N.W.2d at 590 (quoting *Barnhill*, 765 N.W.2d at 277). The Court may also consider sixteen factors identified by the ABA. *Rowedder*, 814 N.W.2d at 590 n. 2. Once the Court finds a party has committed sanctionable conduct, some amount of sanctions are mandatory. *See Carr*, 451 N.W.2d at 818.

The Supreme Court has been clear on several points. First, the court should impose a sanction that is "the minimum amount needed to deter." *First Am. Bank & C.J. Land, LLC v. Fobian Farms, Inc.*, 906 N.W.2d 736, 747 (Iowa 2018) (emphasis in original). Second, "deterrence—not compensation—is the primary goal of sanctions under rule 1.413." *Id.* at 748. As a result, the sanction "need not reflect actual expenditures." *Id.* at 745. Thus, the Court routinely finds sanctions should fall far below the amount of attorney's fees incurred by the party seeking sanctions. Many cases produce a sanction that is about one-sixth of the amount of attorneys fees incurred by the moving party. *See, e.g., id.* at 751-53 (awarding $30,000 despite over $145,000 in attorneys' fees); *Barnhill*, 765 N.W.2d at 277 (awarding $25,000 in a case with nearly $150,000 in attorneys' fees). Others impose sanctions that are greatly below the amount of attorney's fees requested. *See, e.g., Rowedder*, 814 N.W.2d 593 (Waterman, J., concurring in part and dissenting in part) (imposing a $1000 sanction despite roughly $64,000 in attorneys fees); *Teresa Kasparbauer Revocable Living Trust v. Iowa Dist. Ct. for Carroll Cnty.*, No. 19-1813, 2020 Iowa App. LEXIS 792, at *19-21 (Iowa Ct. App. Aug. 5, 2020) (awarding $5000 in case with $95,000 in attorney fees).

Further, many factors weigh against significant sanctions. For instance, the court in *Rowedder* noted that the stigma attached to sanctions is itself a factor to consider which may mitigate the need for additional monetary sanctions. 814

N.W.2d at 594. Other cases have suggested the amount needed to deter may be higher in situations where the offending party has a large profit motive to continue the misconduct. *See, e.g., Barnhill*, 765 N.W.2d at 278 (noting sanction was appropriate because, in part, the case had a "potential for a hefty settlement").

Third, to the extent the Court seeks to compensate the moving party, the attorneys' fees the party can recover are limited to those which would have been avoided "but for" the improper filing. *Fobian Farms*, 906 N.W.2d at 751; *see also Everly v. Knoxville Cmty. Sch. Dist.*, 774 N.W.2d 488, 495 (Iowa 2009). Thus, fees incurred in the course of litigation that would have occurred regardless of the sanctioned filing are not recoverable.

The district court misapplied the four factors identified in *Rowedder*. First, the district court fundamentally ignored precedent that clearly establishes a sanction should be the *minimum* needed to deter. *See, e.g.*, *Fobian Farms*, 906 N.W.2d at 747. For instance, in *Rowedder*, the Iowa Supreme Court concluded $1000 was sufficient to deter further misconduct despite the misconduct resulting in "several years of defending the fraud and conspiracy claims found so meritless as to be sanctionable" and forcing the victim to incur roughly $64,000 in attorneys fees. 814 N.W.2d at 593 (Waterman, J., concurring in part and dissenting in part). Even the dissent observed that a ratio of roughly one-to-six—that is one dollar of sanctions for every six dollars

in attorney's fees—was appropriate for misconduct that extended litigation for years. *Id.* at 595 (citing *Barnhill*, 756 N.W.2d at 277).

Further, a significant monetary sanction was simply unnecessary given the context of the case. Unlike most sanctions cases that are brought against private attorneys who have a strong profit motive to pursue frivolous actions, Christensen serves as an Assistant County Attorney. *Id.* (noting that a significant profit motive may warrant higher sanctions). A monetary sanction thus does not need to be set so high as to offset the financial gains a private attorney might obtain in pursing the frivolous action.

Second, the district court abused its discretion in determining the reasonableness of Clemons' attorney's fees. The district court unilaterally determined Clemons' attorney fee affidavit did not set forth the actual damages incurred by Clemons. *See* D0083, p. 12. Despite a sworn affidavit asserting Mr. Lindholm spent roughly two-and-a-half hours drafting both a motion to dismiss and resistance to the State's motion in limine, the district court concluded, without any record evidence, that Mr. Lindholm spent "at least four hours of time, and probably more, to research and draft" a resistance to the motion in limine. *Id.* p. 12; D0081, Affidavit of Counsel Regarding Attorney's Fees, p. 3 (1/29/2024). The record is devoid of any evidence supporting that conclusion. Oddly, the court appears to bend over backwards to demonstrate the fees incurred by Clemons were higher than he

suggested, only to impose a sanction for the exact amount of fees included in the attorney fee. Providing the exact amount of attorneys' fees requested by Clemons demonstrates the court was not seeking to impose a minimum needed to deter—it was granting Clemons' request for full compensation. Further, the court's conduct produces the perverse outcome of requiring the sanctioned party to demonstrate an inability to pay, while allowing the party seeking sanctions to offer absolutely no evidence to support their requests, so long as the court is willing to make a guess on their behalf. *Compare Rowedder*, 814 N.W.2d at 591.

Further, the district court abused its discretion in finding Lindholm incurred costs associated with attending the September 14 hearing that was originally scheduled regarding Clemons' Motion to Suppress, Motion to Dismiss, Request for Sanctions, and the State's Motion in Limine.[8] *See* D0026, Order Setting Hearing (8/31/2023). The district court concluded Lindholm's attendance at that hearing cost his client $800. *See* D0083, p. 13. Again, there is no evidence supporting that conclusion—the district court appears to have pulled the number out of thin air. Additionally, the district court's order imposes sanctions that are not proximately tied to the sanctionable conduct. *Fobian Farms*, 906 N.W.2d at 751. As the district court noted in its December 14 Order, district courts need not accept the State's

[8] Lindholm's attorney fee affidavit appears to request damages for the costs incurred in drafting the Motion to Dismiss and Motion to Suppress. *See* D0081 at p. 3. Neither of those motions are proximately related to the State's Motion in Limine.

voluntary dismissal of a case. *See* D0061, p. 12-13 (citing *Taeger*, 781 N.W.2d at 564). Lindholm was required to attend the hearing regardless of when the Motion to Dismiss was filed because the court could have denied the motion, thereby necessitating a hearing on the pending Motions to Suppress, Defendant's Motion to Dismiss, and Request for Sanctions. *See* D0083, p. 5 ("Although the deposition of Dr. Lappe wounded the State's case, on August 28, 2023, Mr. Christensen still had a valid prosecution to pursue"). Costs incurred due to attending that hearing are not proximately caused by Christensen's conduct.

Similarly to the court's conduct in taking it upon itself to calculate fees incurred by Clemons, the district court abused its discretion in unilaterally ignoring the only record evidence before it regarding Christensen's ability to pay. The district court simply dismissed out-of-hand Christensen's evidence demonstrating the state of his savings accounts. *See* D0078, Christensen's Bank Account. In doing so, the court, at least in part, based its conclusion that, "he has sufficient assets at his disposal to hire private counsel to represent him in these sanctions proceedings." D0083, p. 14. The record is absolutely devoid of any evidence demonstrating whether, or to what extent, or at what rate, the undersigned charged Christensen for their services. The court, once again, reached conclusions that are completely unsupported by the record. Moreover, increasing the amount of sanctions for attorneys that obtain legal representation in sanctions proceedings produces an

irresponsible chilling effect, encouraging attorneys to choose between representing themselves in a matter of great professional importance and risking higher amounts of sanctions due to professional representation.

Additionally, for the reasons explained above, Christensen's conduct was not severe in this case. At worst, Christensen submitted a colorable but weak motion in limine and used a poor choice of words in dismissing the case after a key expert backtracked on the testimony he could provide. The entire process, starting when Christensen took the depositions and filed the Motion in Limine on August 28 and ending when the case was dismissed on September 14, took seventeen days. Indeed, the district court even concluded that Christensen retained a valid prosecution despite the August 28 depositions. *See* D0083, p. 5. This is a far cry from the existing precedent imposing sanctions, wherein attorney misconduct involved pursuing frivolous actions *for years*. *See Rowedder*, 814 N.W.2d at 594 ($1000 fine in case where the sanctionable conduct resulted in several years of litigation); *Barnhill*, 965 N.W.2d at 277-78 ($25,000 fine in case where the frivolous filings resulted in over 400 entries into the record for a case that lasted four years, including "six sanctionable counts asserted against [the sanctioned party], five petitions, more than a dozen individually-named plaintiffs, eight motions for summary judgment against nine individually-named plaintiffs, a class certification appeal, limited remand procedures, and a summary judgment appeal"); *Kasparbauer*, 2020 Iowa App.

LEXIS 792, at *10-14 ($5000 fine for multiple sanctionable filings over the course of roughly two years).

The district court's order imposing sanctions fails to take into account binding precedent, ignores the only evidence before the court only to guess at the fees incurred by Clemons, exceeds the minimum needed to deter, and punishes an attorney for seeking counsel to represent him in a sanctions hearing. That, collectively and individually, is an abuse of discretion. This Court should reverse the district court's order.

CONCLUSION

Theron Christensen respectfully requests this Court enter a ruling that finds the district court abused its discretion in (1) finding Christensen engaged in sanctionable conduct, and/or (2) imposing a $2072 sanction.

REQUEST FOR ORAL ARGUMENT

The undersigned respectfully requests to be heard in oral argument on this matter.

CERTIFICATE OF COMPLIANCE

This Brief complies with the type-volume limitation of Iowa R. App. P. 6.903(1)(i)(1) because this brief contains 12,969 words, excluding the parts of the Brief exempted by Iowa R. App. P. 6.903(1)(i)(1).

This Brief complies with the typeface requirements of Iowa R. App. P. 6.903(1)(g) and the type-style requirements of Iowa R. App. P. 6.903(1)(h) because this Brief has been prepared in a proportionally spaced typeface using Microsoft Word in 14 point, Times New Roman.

By: /s/ Jason C. Palmer

CERTIFICATE OF FILING AND SERVICE

The undersigned certifies a copy of Plaintiffs-Appellant's Brief was filed with the Clerk of the Iowa Supreme Court via EDMS and served upon the following persons by EDMS on the 13th day of June, 2024:

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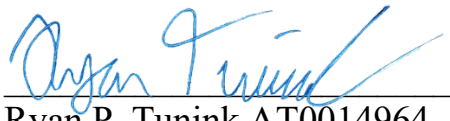

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