
IN THE
SUPREME COURT OF IOWA

Supreme Court No. 24-0289
Story County No. OWCR062790

THERON M. CHRISTENSEN,
Plaintiff-Appellant,

vs.

IOWA DISTRICT COURT FOR STORY COUNTY,
Defendant-Appellee.

Appeal from the Iowa District Court for Story County
The Honorable Stephen A. Owen, Judge

**AMICUS CURIAE BRIEF FOR
THE IOWA COUNTY ATTORNEYS' ASSOCIATION**

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PROOF OF SERVICE AND CERTIFICATE OF FILING

I certify that on June 18, 2024, I served this document on all other parties to this appeal electronically through the Iowa Supreme Court’s EDMS system.

I further certify that on June 18, 2024, I filed this document electronically with the Clerk of the Supreme Court, Iowa Judicial Branch Building, 1st Floor, 1111 East Court Avenue, Des Moines, Iowa 50319, by EDMS.

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IDENTITY OF AMICUS CURIAE AND INTEREST IN THE CASE

The Iowa County Attorneys' Association ("ICAA") is a nonpartisan association of Iowa's county attorneys and their assistants. The county attorney is the chief law enforcement officer for his or her county. In addition, the county attorney is the principal legal advisor to other county elected officials and the county as a corporate entity. In this role the county attorney regularly gives legal advice regarding the employment relationship including the hiring, discipline, compensation, and discharge of county employees. The primary purposes of the association are to encourage and maintain close coordination among county attorneys and to promote the uniform and efficient administration of the criminal and juvenile justice systems of Iowa.

ICAA has substantial interest in this litigation and submits this brief to the Iowa Supreme Court as amicus curiae, because this case presents important issues regarding sanctioning prosecutor conduct. The review of this issue is of substantial interest to ICAA and its members.

SUMMARY OF THE ARGUMENT

The Court should reverse the district court's imposition of a monetary sanction against Assistant Story County Attorney Theron Christensen (hereinafter "ACA Christensen") in this matter. First, in order for a sanction to be appropriate, there needs to be sanctionable conduct, which does not exist in this case. The district court's asserted reasons for imposing a sanction on ACA Christensen are not supported by the record or law. Imposing a sanction for filing a motion in limine requesting an advance ruling on the admissibility of evidence in a case does not deprive a defendant of the evidence and is not sanctionable conduct. Second, it is illogical for the district court to support its sanction decision by assuming ACA Christensen's dismissal of the charge in this case was an attempt to cover up the failure of an officer to calibrate his radar when this information was disclosed on the record in front of the defense attorney.

Prosecutors have wide ranging discretion to handle criminal matters on behalf of the state, which allows prosecutors to properly balance their duty as an advocate and a minister of justice. Prosecutors in Iowa take these precepts seriously. The district court's order imposing a monetary sanction on ACA Christensen in this case, if allowed to stand, will have a chilling effect on all prosecutors in Iowa and will cause prosecutors in Iowa to be subject to sanctions sooner or later. The district court should be reversed.

ARGUMENT

I. THIS COURT SHOULD REVERSE THE IMPOSITION OF A MONETARY SANCTION AGAINST ACA CHRISTENSEN BECAUSE FILING A MOTION IN LIMINE AND THEN DISMISSING THE CASE WAS NOT SANCTIONABLE CONDUCT.

ACA Christensen was sanctioned after dismissing a charge of Operating-While-Intoxicated, First Offense, a serious misdemeanor, against Defendant Ashton Clemons (hereinafter “Defendant Clemons”) alleging Defendant Clemons was operating a motor vehicle with a blood alcohol concentration of .08 or more. D0061, Order Sustaining Defendant’s Motion for Sanctions Against Theron M. Christensen, (11/29/2023); D0083, Order for Specific Sanction, (2/15/2024). Of concern to ICAA, the district court sanctioned ACA Christensen for (1) filing a motion in limine that attempted to exclude one of the two Datamaster test results given in this matter along with collateral matters stemming from the Datamaster test, and (2) filing a motion to dismiss the charge with an improper purpose.

The role of the prosecutor within the criminal justice system is fundamental, serving as the representative of the state in criminal proceedings. The concept of prosecuting individuals for crimes dates to the beginning of organized society, where designated individuals were tasked with representing the interests of the state or community in matters of law enforcement. *See* John H. Langbein, *The*

Origins of Public Prosecution at Common Law, 17 *The American Journal of Legal History* 313, 313-16 (1973). This process continues today.

An inherent aspect of the prosecutor's role throughout history is the vast latitude extended to prosecutors to exercise independent professional judgment and discretion. *See generally* Megan S. Wright et al., *Inside the Black Box of Prosecutor Discretion*, 55 *U.C. Davis L. Rev.* 2133 (2022) (exploring prosecutor discretion); *see also* Iowa County Attorneys Association Prosecutorial Standards 1.1(D) available at <https://iowa-icaa.com/ICAA%20Standards%202010.pdf> (“Of the greatest importance to the functioning of the prosecutor is the ability to exercise independent professional judgment. The prosecutor shall be afforded the discretion necessary to exercise independent professional judgment and this judgment shall be tempered by adherence to the Iowa Rules of Professional Conduct.”). This discretion is essential for prosecutors to effectively administer justice, as it allows them to tailor their approach to individual cases based on factors such as the severity of the offense, the defendant's criminal history, and the interests of the community.

While prosecutors have wide-ranging discretion in dealing with matters regarding the administration of justice, as noted above, a prosecutor's discretion is not completely unlimited. The Iowa Rules of Professional Conduct temper a prosecutor's discretion and foists on a prosecutor “the responsibility of a minister

of justice and not simply that of an advocate.” Iowa R. of Prof’l Conduct 32:3.8 cmt. 1. This idea was noted in *State v. Graves*, 668 N.W.2d 860, 870-71 (Iowa 2003), when the Court stated:

A prosecutor “is not an advocate in the ordinary meaning of the term.” 63C Am. Jur. 2d *Prosecuting Attorneys* § 1, at 114 (1997)). That is because a prosecutor owes a duty to the defendant as well as to the public. *See State v. Iowa Dist. Ct.*, 568 N.W.2d 505, 508 (Iowa 1997) (stating “a county attorney owes a duty to do justice, not only for the accusers, but also for the accused”); [*State v.*] *Webb*, 244 N.W.2d [332,] 333 [(Iowa 1976)] (stating “prosecutors have a dual function”); *State v. Tolson*, 248 Iowa 733, 734-35, 82 N.W.2d 105, 106 (1957) (noting prosecutor owes a duty to the public and to the accused).

The prosecutor’s duty to the accused is to “assure the defendant a fair trial” by complying with “the requirements of due process throughout the trial.” *DeVoss [v. State]*, 648 N.W.2d [56,] 64 [(Iowa 2002)]; *accord Tolson*, 248 Iowa at 734, 82 N.W.2d at 106. Thus, while a prosecutor is properly an advocate for the State within the bounds of the law, the prosecutor’s primary interest should be to see that justice is done, not to obtain a conviction. *Berger v. United States*, 295 U.S. 78, 88, 55 S. Ct. 629, 653, 79 L. Ed. 1314, 1321 (1935); *State v. Levy*, 160 N.W.2d 460, 467 (Iowa 1968); 63C Am. Jur. 2d *Prosecuting Attorneys* § 23, at 135-36 (“It is as much the prosecutor’s duty to see that a person on trial is not deprived of any of his or her statutory or constitutional rights as it is to prosecute the defendant.”); ABA Standards for Criminal Justice 3-1.2(b), (c) (3d ed. 1993) (stating the prosecutor is an advocate, but “the duty of the prosecutor is to seek justice, not merely to convict”).

See also Iowa R. of Prof’l Conduct 32:3.8 cmt. 1 (“A prosecutor has the responsibility of a minister of justice and not simply that of an advocate. This responsibility carries with it specific obligations to see that the defendant is accorded procedural justice, that guilt is decided upon the basis of sufficient

evidence, and that special precautions are taken to prevent and to rectify the conviction of innocent persons.”).

Iowa courts have previously imposed sanctions against parties and attorneys alike on rare occasions. *See First Am. Bank & C.J. Land, LLC v. Fobian Farms, Inc.*, 906 N.W.2d 736, 751-53 (Iowa 2018) (imposing \$30,000 sanction against parties in the case); *Barnhill v. Iowa Dist. Ct.*, 765 N.W.2d 267, 277 (Iowa 2009) (imposing \$25,000 sanction against attorney). There does not appear to be any instances of monetary sanctions being imposed against a prosecutor in Iowa, but there are prior instances of prosecutor misconduct. For example, in the context of improper closing arguments by a prosecutor, the Iowa Court of Appeals noted:

A successful claim of prosecutorial misconduct requires proof of misconduct and “proof the misconduct resulted in prejudice to such an extent that the defendant was denied a fair trial.” *State v. Graves*, 668 N.W.2d 860, 869 (Iowa 2003). Prosecutorial misconduct involves more than a mere error. *State v. Schlitter*, 881 N.W.2d 380, 394 (Iowa 2016).

Prosecutorial misconduct includes those statements “where a prosecutor intentionally violates a clear and unambiguous obligation or standard imposed by law, applicable rule or professional conduct,” as well as “those situations where a prosecutor recklessly disregards a duty to comply with an obligation or standard.” Prosecutorial error occurs “where the prosecutor exercises poor judgment” and “where the attorney has made a mistake” based on “excusable human error, despite the attorney’s use of reasonable care.”

Id. (quoting Shawn E. Minihan, *Measuring Prosecutorial Actions: An Analysis of Misconduct Versus Error*, Prosecutor, Dec. 2014, at 24-25).

State v. Toney, No. 17-1072, 2018 Iowa App. LEXIS 536, *9 (Court of Appeals June 6, 2018). However, “misconduct does not reside in the fact that the prosecution attempts to tarnish the defendant’s credibility or boost that of the State’s witnesses; such tactics are not only proper, but part of the prosecutor’s duty.” *State v. Phillips*, No. 20-0369, 2021 Iowa App. LEXIS 956, *24 (Iowa Ct. App. Nov. 3, 2021) (quoting *State v. Carey*, 709 N.W.2d 547, 556 (Iowa 2006)).

ACA Christensen was sanctioned in this case for dismissing a charge of Operating-While-Intoxicated, First Offense, a serious misdemeanor, against Defendant Clemons. The district court’s sanction orders pointed to what it believed to be several instances of sanctionable conduct under Iowa Rule of Civil Procedure 1.413(1) and Iowa Code § 619.19. ACA Christensen’s brief refutes each of the district court’s claimed violations of these rules and all of the claimed violations will not be revisited here. There are a few instances of prosecutor conduct mentioned in the district court’s sanction orders that are of particular concern to ICAA though. The first relates to the imposition of sanctions against ACA Christensen for filing a motion in limine that attempted to exclude one of the two Datamaster test results given in this matter along with collateral matters stemming from the Datamaster test, and the second relates to the imposition of sanctions

against ACA Christensen for filing a motion to dismiss the charge with an improper purpose. Each will be addressed in turn.

The district court in this case asserted the arguments advanced in the motion in limine filed by ACA Christensen on behalf of the State of Iowa were “thinly veiled attempts to deprive defendant of a valid defense and a fair trial.” D0061, Order Sustaining Defendant’s Motion for Sanctions Against Theron M. Christensen at 12 (11/29/2023). In addition, the district court said, “ACA Christensen’s attempt to deprive defendant of valid evidence relevant to his defense was an attempt to deprive defendant of a fair trial in violation of defendant’s state and federal constitutional right to a fair trial.” *Id.* Neither of these allegations are based in the reality of the record or law.

While prosecutors have a duty to disclose evidence, they do not give up their ability to argue the admissibility of evidence. The district court in this case conflates the two and gets off track. There are no allegations in this case that the prosecutor failed to disclose evidence, and the district court recognizes as much. *Id.* at 19 (noting the prosecutor did not actually withhold the evidence). Instead, the district court believes the filing of a motion in limine requesting advance ruling on the admissibility of evidence by ACA Christensen “utilized legal process in a spurious gambit to get the court to do so.” *Id.* Motions in limine are a useful tool in a prosecutors’ tool bag to avoid reversible error. *State v. Garrett*, 183 N.W.2d 652,

654 (Iowa 1971) (citation omitted). A prosecutors' use of a motion in limine in a case does not withhold evidence from a defendant in a criminal proceeding, it simply seeks a pretrial ruling on the admissibility of evidence. A prosecutor in a criminal proceeding still has the duty to advocate for the state's interests. *See Graves*, 668 N.W.2d at 870-71. This includes the ability to argue the admissibility of evidence. The district court's ruling in this case can only be seen as one having a chilling effect on prosecutors in the State of Iowa.

Another conundrum caused by the district court's order in this case relates to the dismissal of the case by ACA Christensen—supposedly, in the district court's view, to cover up an officer's failure to check the calibration of his radar unit. D0061, Order Sustaining Defendant's Motion for Sanctions Against Theron M. Christensen at 29 (11/29/2023). This illogical conclusion by the district court makes scant sense. The officer's failure to check the calibration of his radar unit on the day in question was already known by Defendant Clemons because his counsel learned of this issue during the officer's deposition. D0054, Defendant's Exh. C, Deposition Transcript of Hieu Shreffler at 40-42. There is no explanation from the district court how ACA Christensen could cover up something that was stated on the record in the case. Prosecutors have discretion to dismiss a case in the furtherance of justice. Iowa R. Crim. P. 2.33(1).

The actions of ACA Christensen should not have resulted in sanctions in this matter. ACA Christensen was well within his right to file a motion in limine to seek advance ruling on the admissibility of evidence—an action that is routinely done by prosecutors. ACA Christensen was also well within his right to file a motion to dismiss the case. None of the actions taken by ACA Christensen in the case in any way violated Defendant Clemons’ constitutional rights, nor was any evidence withheld from Defendant Clemons. ACA Christensen reasonably exercised his professional judgment in this matter, and after conducting discovery, determined as a minister of justice the case should be dismissed. *See Iowa R. of Prof’l Conduct 32:3.8 cmt. 1.* Allowing the sanction imposed by the district court to stand in this case would have far-reaching consequences on all prosecutors in the State of Iowa and ignores a prosecutor’s duty to the public. *Graves*, 668 N.W.2d at 870.

CONCLUSION

For the reasons stated herein, ICAA requests that this Court reverse the district court's imposition of a sanction in this matter.

Respectfully submitted,

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

This brief complies with the typeface requirements and type-volume limitation of Rs. App. P. 6.903(1)(i)(1) and 6.903(1)(g)(1) because this brief has been prepared in a proportionally spaced typeface using Times New Roman in 14-point font and contains 2,403 words, excluding the parts of the brief exempted by Iowa R. App. P. 6.903(1)(i)(1).

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CERTIFICATE OF COMPLIANCE AUTHORSHIP

Pursuant to Iowa Rule of Appellate Procedure 6.906(4)(d), counsel herein authored this brief in whole in combination with members of the ICAA. No party's counsel contributed money to fund the preparation or submission of this brief. No other person contributed money to fund the preparation or submission of this brief.

/s/ Aaron W. Ahrendsen June 18, 2024
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