

IN THE SUPREME COURT OF IOWA

SUPREME COURT No. 24-0289
Story County No. OWCR062790

THERON M. CHRISTENSEN,
Plaintiff/Appellant

v.

IOWA DISTRICT COURT FOR STORY COUNTY,
Defendant/Appellee

APPEAL FROM THE DISTRICT COURT FOR STORY COUNTY
THE HONORABLE STEPHEN A. OWEN

**AMICUS CURIAE BRIEF OF THE STATE PUBLIC DEFENDER IN
SUPPORT OF THE APPELLEE**

/s/ William Bushell
Assistant Public Defender
6200 Park Avenue
Des Moines, Iowa 50321
Tele: (515)218-2606
bbushell@spd.state.ia.us

**ATTORNEY FOR AMICUS CURIAE
STATE PUBLIC DEFENDER'S OFFICE**

CERTIFICATE OF SERVICE

The undersigned certifies a copy of this Amicus Curiae Brief was filed with the Clerk of the Supreme Court and served on all registered parties VIA EDMS on August 19, 2024:

/s/ William Bushell
Assistant Public Defender
6200 Park Avenue
Des Moines, Iowa 50321
Tele: (515)218-2606
bbushell@spd.state.ia.us

**ATTORNEY FOR AMICUS CURIAE
STATE PUBLIC DEFENDER'S OFFICE**

TABLE OF CONTENTS

CERTIFICATE OF SERVICE 2

TABLE OF CONTENTS..... 3

TABLE OF AUTHORITY 4

STATEMENT OF IDENTITY OF AMICUS CURIAE AND INTEREST IN THE CASE 5

STATEMENT OF AUTHORSHIP AND FUNDING 7

ARGUMENT 7

 The Court Should Disregard the Arguments Made by the Attorney General 11

 The Court has Authority Under Rule 1.413(1) to Sanction a Party in a Criminal Proceeding..... 11

 Sanction Under Rule 1.413(1) Was the Best Option for the Court 12

 The Court Should Affirm the Trial Court’s Order for Sanctions15

CONCLUSION.....15

REQUEST FOR ORAL ARGUMENT 16

CERTIFICATE OF COMPLIANCE WITH TYPEFACE REQUIREMENTS AND TYPE-VOLUME LIMITATION FOR BRIEFS17

TABLE OF AUTHORITY

Cases

<u>Gideon v. Wainwright</u> , 372 U.S. 335 (1963)	5
<u>Hall v. Washington</u> , 2 Greene 473 (Iowa 1850).....	5
<u>SPD v. Amaya</u> , 977 N.W.2d 22 (Iowa 2022).....	6
<u>State ex rel. Missouri Pub. Def. Comm'n v. Waters</u> , 370 S.W.3d 592, 598 (Mo. 2012).....	6

Statutes

321J.2(14)(2023)	9, 10
Iowa Code § 13B.4(a)(1)(2023).....	5
Iowa Code § 665 (2023)	13
Iowa Code § 815.6 (2003).....	8
Iowa Code Ann. § 665.2 (2023)	14

Rules

Iowa R. Civ. P. 1.101.....	12
Iowa R. Civ. P. 1.413(1)	11, 13
Iowa R. Civ. P. 1.508(5)	12

Federal Constitutional Provisions

U.S. Const. Amend. XIV	6
------------------------------	---

State Constitutional Provisions

Iowa Const. Art. I § 9	6
------------------------------	---

Publications: News Articles

Trish Mehaffy, <u>Lack of Iowa Contract Lawyers ‘a Crisis,’ Leading to ‘Grueling’ Caseloads</u> , The Gazette, March 13, 2023	5
---	---

STATEMENT OF IDENTITY OF AMICUS CURIAE AND INTEREST IN THE CASE

The Iowa State Public Defender (hereinafter SPD) is a state agency established pursuant to Iowa Code § 13B and is tasked with coordinating the provision of legal representation to all indigents under arrest or charged with a crime. Iowa Code § 13B.4(a)(1)(2023).

Iowa has a long history of protecting the rights of the accused. Long before the landmark case Gideon v. Wainwright, and before and the establishment of public defenders' offices, the Iowa Supreme Court held in Hall v. Washington that Citizens have the right to counsel and the right to a defense, guaranteed by the U.S. Constitution and the Sixth Amendment. Gideon, 372 U.S. 335 (1963), Hall, 2 Greene 473 (Iowa 1850).

The SPD is the largest criminal defense firm in the State of Iowa. About 90 percent of criminal defendants in the State of Iowa are indigent and represented by court appointed counsel. Trish Mehaffy, Lack of Iowa Contract Lawyers 'a Crisis,' Leading to 'Grueling' Caseloads, The Gazette, March 13, 2023. The SPD has an interest in the outcome of this litigation because as the Court knows it is getting

increasingly difficult to maintain an adequate number of attorneys willing to represent indigent clients. See SPD v. Amaya, 977 N.W.2d 22, 25-26 (Iowa 2022). One of the stated reasons attorneys limit or quit representing indigent clients is complaints about difficult or unreasonable prosecutors. It is critical that the trial courts have authority to manage their dockets. Judges need tools in their kit to maintain the integrity of the criminal justice system. As found by the Missouri Supreme Court, “...trial judges have inherent authority, and an inherent responsibility, to manage their dockets in a way that respects the rights of the defendant, the public and the state...” State ex rel. Missouri Pub. Def. Comm'n v. Waters, 370 S.W.3d 592, 598 (Mo. 2012).

The 14th Amendment of the United States Constitution provides, no State shall “deprive any person of life, liberty, or property, without due process of law.” U.S. Const. Amend. XIV. The Iowa Constitution is relatively similar, stating, “The right of trial by jury shall remain inviolate ...but no person shall be deprived of life, liberty, or property, without due process of law.” Iowa Const. Art. I § 9. The right to a fair

trial is a cornerstone of liberty in a free society. When that right is threatened, everyone's freedom is threatened.

STATEMENT OF AUTHORSHIP AND FUNDING

No party's counsel authored any part of this brief. No party or party's counsel funded the drafting of this brief; however, the SPD is publicly funded by tax revenues.

ARGUMENT

Defense attorneys face a myriad of landmines when representing criminal defendants. The clients are often difficult and facing difficult times in their lives. It's a thankless job, the pay is low, and you're expected to lose. Add to that the complaints to the attorney discipline board, findings of ineffective assistance of counsel, and the possibility of malpractice suites. What happens when a prosecutor breaks the rules or steps over the line? The Code grants immunity to prosecutors from civil actions in the performance of their duties. Court appointed attorneys enjoy some insulation from liability unless or until a court has found they've rendered ineffective

assistance of counsel. See Iowa Code § 815.6 (2003) (An attorney appointed under this section is not liable to a person represented by the attorney for damages as a result of a conviction in a criminal case unless the court determines in a postconviction proceeding or on direct appeal that the person's conviction resulted from ineffective assistance of counsel, and the ineffective assistance of counsel is the proximate cause of the damage). If found to be ineffective, the contract attorney can be subject to civil suit for malpractice.

From a public policy standpoint, the court must have some mechanism to deter sanctionable behavior by a prosecutor. The Appellant nor supporting amicus briefs argue that defense attorneys cannot be sanctioned. If not already available; this Court should establish a rule that parties and/or their attorneys, defense or prosecution, can be sanctioned under Rule 1.413(1).

The facts and law of the case are well argued by counsel and as amicus curiae I won't take too much of the Court's time repeating everything in this brief. However, it's important to emphasize a few details. I'll use one example.

Appellant engaged in sanctionable behavior. Contrary to the arguments made by the Appellant and Amicus for the County Attorneys Association, Appellant didn't simply file a Motion in Limine or a Motion to Dismiss.

I'll use the Motion in Limine as an example. It's the content of the Motion that Counts. In the MIL, Appellant misstates that law in several respects. Also, he's not asking for a change or different interpretation of a statute, or making a colorable claim. The trial court adequately finds:

At subparagraph 3(a)(ii), ACA Christensen intentionally misstates the law when he says this Code section 321J.14 [sic,15] "...flatly proscribes the use of all test results within the margin of error in the prosecution of a per se violation."

Judge Owen continues:

ACA Christensen knew or should have known the state of the law. Yet he misrepresented the state of the law to the defendant and the court. Thus, he put aside his duty of candor to the court and created unnecessary expense as defendant, represented by counsel, was compelled to respond to the misstatement.

D0061, Order for Sanctions at pp.19 & 20 (11/29/2023).

That's not what Iowa Code section 321J.2(14) provides. That

codes section clearly and unambiguously prohibits the state or prosecutor from using the chemical test, within the margin of error. Appellant didn't make a mistake and it wasn't a good faith argument for the extension, modification, or reversal of existing law.

If it were a good faith argument to change existing law the argument could have looked something like this:

Iowa Code section 321J.2(14) provides that a chemical test, within the margin of error, cannot be used by the prosecution in an OWI case. However, this is not fair to the state. Counsel is asking the court to extend the prohibition in the code to the defense as well. The proponent of the change or extension goes on to explain the reasoning behind the requested change. This is not how the arguments were framed. It is not excusable neglect or inartful drafting. As the court found, Appellant knows 321J, well. The arguments were made to mislead the Appellee and the court. This is sanctionable behavior.

The Court Should Disregard the Arguments Made by the Attorney General

The Attorney General argues for the State of Iowa that sanctions under the Rules of Civil Procedure are not applicable to criminal case and therefore Appellant cannot be sanctioned for his errant filings. AG's Brief p. 12-13. No one makes this argument at the district court this argument cannot be raised for the first time by way of amicus brief. See Appellee brief p. 14 (internal citations omitted).

The Court has Authority Under Rule 1.413(1) to Sanction a Party in a Criminal Proceeding

Appellant was sanctioned pursuant to Iowa Rule of Civil Procedure 1.413(1), the so-called Frivolous Filing Rule. D0061, Order for Sanctions. (11/29/2023). Rule 1.101 provides that "[T]he rules in this chapter shall govern the practice and procedure in all courts of the state, except where they expressly provide otherwise or statutes not affected hereby provide different procedure in particular courts

or cases.” Iowa R. Civ. P. 1.101. The Rules of Criminal Procedure are specific rules for criminal cases. However, when the Rules of Criminal Procedure are silent, the Rules of Civil Procedure govern. Unless the Rules of Criminal Procedure provide a different rule, the Rules of Civil Procedure control. For example, the payment of expert fees in deposition or discovery. See Iowa R. Civ. P. 1.508(5) (the party seeking to depose another party’s expert shall pay “...reasonably and necessarily [fee] spent in connection with such deposition, including time spent in travel to and from the deposition, but excluding time spent in preparation”).

The Rules of Civil Procedure apply to all courts, except where other rules or statutes expressly control. Since the rules of Criminal Procedure are silent on the issue of sanctions for frivolous motions or filings, the Rules of Civil Procedure control.

Sanction Under Rule 1.413(1) Was the Best Option for the Court

Judge Owen likely had three options to address the sanctionable behavior by Appellant. First, the court could have used

its contempt powers under Iowa Code § 665; second, the court could sanction the Appellant for a filing not based in fact or law pursuant to Iowa R. Civ. P. 1.413(1); lastly, the court could have filed a complaint with the attorney disciplinary board, pursuant to our Rules of Prof. Conduct chapter 35.

Contempt under Iowa Code § 665 doesn't fit well. The code enumerates acts or omissions that can constitute a contempt action:

The following acts or omissions are contempts, and are punishable as such by any of the courts of this state, or by any judicial officer, including judicial magistrates, acting in the discharge of an official duty, as hereinafter provided:

1. Contemptuous or insolent behavior toward such court while engaged in the discharge of a judicial duty which may tend to impair the respect due to its authority.
2. Any willful disturbance calculated to interrupt the due course of its official proceedings.
3. Illegal resistance to any order or process made or issued by it.
4. Disobedience to any subpoena issued by it and duly served, or refusing to be sworn or to answer as a witness.
5. Unlawfully detaining a witness or party to an action or proceeding pending before such court, while going to or remaining at the place where the action or proceeding is thus pending, after being summoned, or knowingly assisting, aiding or abetting any person in evading service of the process of such court.

6. Any other act or omission specially declared a contempt by law.

Iowa Code Ann. § 665.2 (2023). Appellant's sanctioned behavior does not fit any of the listed offenses. Also, contempt has many procedural requirements that would have delayed the proceedings. Lastly, contempt is not a good fit because no one wanted Appellant to be subject to a potential jail sentence.

The court could have (and may have) sent a complaint to the attorney disciplinary board. While Appellant's sanctioned behavior is likely an ethical violation the client, Mr. Clemons would not be made whole if Appellant is subject to discipline.

Sanctions under pursuant to Iowa R. Civ. P 1.413, is the best fit. It compensates the client for the extra money he had to spend, but for, the sanctionable behavior. The court chose the least restrictive penalty for the egregious behavior. The court's choice to sanction is quicker than the other two options, and the deterrent effect of the sanction is real and palpable.

The Court Should Affirm the Trial Court's Order for Sanctions

Public Policy demands that there be a remedy for a prosecutor that engages in sanctionable behavior. Lord Acton's observation and warning fits; "power tends to corrupt, and absolute power corrupts absolutely". It would be unacceptable that there is no remedy available to the trial court, short of incarceration under a contempt charge or an ethics complaint. Our public defenders can relate story after story of sanctionable behavior by prosecutors and that is the reason defense costs are so high. Also, this type of sanctionable behavior is one of the reasons it is becoming increasingly difficult to find attorneys to practice criminal defense. This court should affirm the trial court's order, giving the court a remedy to help in the management of their dockets.

CONCLUSION

For public policy reasons and as amicus curiae the State Public Defender request that the court affirm the trial court as Appellant engaged in sanctionable behavior. The sanction imposed

was reasonable and the measured to be the least restrictive penalty to cover the additional fees incurred by the defendant, and to deter future sanctionable behavior. Also, questionable practices by prosecutors drive up the cost of indigent defense. Iowa has found it increasingly difficult to find attorneys to represent indigent clients and one of the stated reasons for this tragedy is having to deal with dirty tricks from unreasonable prosecutors.

REQUEST FOR ORAL ARGUMENT

The SPD does not request oral argument time in this matter, however Counsel is available for Oral Arguments at the pleasure of the Court.

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

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

[X] this brief has been prepared in a proportionally spaced typeface Bookman Old Style, font 14 point and contains 2,547 words, excluding the parts of the brief exempted by Iowa R. App. P. 6.903 (1)(g)(1).

Dated: August 19, 2024

/s/ William Bushell
Assistant Public Defender
6200 Park Avenue
Des Moines, Iowa 50321
Tele: (515)218-2606
bbushell@spd.state.ia.us