

JUL 23 2021

FIFTH DISTRICT
COURT ADMINISTRATION

**DISTRICT JUDICIAL NOMINATION COMMISSION
AND OFFICE OF THE GOVERNOR
JOINT JUDICIAL APPLICATION**

Please complete this application by placing your responses in normal type, immediately beneath each request for information. Requested documents should be attached at the end of the application or in separate PDF files, clearly identifying the numbered request to which each document is responsive. Completed applications are public records. If you cannot fully respond to a question without disclosing information that is confidential under state or federal law, please submit that portion of your answer separately, along with your legal basis for considering the information confidential. Do not submit opinions or other writing samples containing confidential information unless you are able to appropriately redact the document to avoid disclosing the identity of the parties or other confidential information.

PERSONAL INFORMATION

1. State your full name.

Stacy Lee Ritchie

2. State your current occupation or title. (Lawyers: identify name of firm, organization, or government agency; judicial officers: identify title and judicial election district.)

Assistant Dallas County Attorney

3. State your date of birth (to determine statutory eligibility).

06/10/1970

4. State your current city and county of residence.

Adel, Dallas County, Iowa

PROFESSIONAL AND EDUCATIONAL HISTORY

5. List in reverse chronological order each college and law school you attended including the dates of attendance, the degree awarded, and your reason for leaving each school if no degree from that institution was awarded.

Drake University Law School, Des Moines, Iowa
Attended 08/1996
Graduated with Honors 12/1998

Bethel College, St. Paul, MN
Attended 08/1988
Graduated 05/1992

6. **Describe in reverse chronological order all of your work experience since graduating from college, including:**
- a. **Your position, dates (beginning and end) of your employment, addresses of law firms or offices, companies, or governmental agencies with which you have been connected, and the name of your supervisor or a knowledgeable colleague if possible.**
 - b. **Your periods of military service, if any, including active duty, reserves or other status. Give the date, branch of service, your rank or rating, and present status or discharge status.**

Dallas County Attorney's Offices 2/2001 to Present
207 N. 9th Street
Adel, Iowa 50003
Assistant County Attorney
Supervisor: Wayne Reisetter 2001 – 2018
Supervisor: Chuck Sinnard 2018 - present

State of Iowa – Court of Appeals 1/2000 to 2/2001
Iowa State Capital
Des Moines, Iowa
Law Clerk
Supervisor: Judge Gayle Nelson Vogel

Principal Financial Group – Pension Compliance Department 8/1999 to 12/1999
711 High Street
Des Moines, Iowa 50392
Contract Specialist

Department of Human Services 10/1997 to 6/1998
Division of Criminal and Juvenile Justice Planning
Lucas Building
321 E. 12th Street
Des Moines, Iowa 50319
Internship

C.R. Squared, Inc. 6/1994 to 10/1997
6913 Vista Drive
West Des Moines, Iowa 50266
Public Relations Manager

Norwest Mortgage, Inc.
(now known as Wells-Fargo Mortgage, Inc.)
Des Moines, Iowa
Account Specialist

1/1994 to 6/1994

Fringe Benefits Design, Inc.
Des Moines, Iowa
Marketing Assistant

7/1992 to 12/1993

7. **List the dates you were admitted to the bar of any state and any lapses or terminations of membership. Please explain the reason for any lapse or termination of membership.**

Iowa 9/1999 – no lapses or terminations

8. **Describe the general character of your legal experience, dividing it into periods with dates if its character has changed over the years, including:**

- a. **A description of your typical clients and the areas of the law in which you have focused, including the approximate percentage of time spent in each area of practice.**

Principal, Contract Specialist – contract work – 100%

Court of Appeals Clerk – civil 50%, juvenile 20%, criminal 30%

Dallas County Attorney's Office – criminal 95%, civil (forfeitures) 5%

- b. **The approximate percentage of your practice that has been in areas other than appearance before courts or other tribunals and a description of the nature of that practice.**

Principal, Contract Specialist – contract work – no court appearances

Court of Appeals Clerk – no court appearances

Dallas County Attorney's Office – 55% of work outside of court – investigating, preparing indictments, reviewing history of case and Defendant, communicating with defense attorneys, working with victims and witnesses, researching and writing motions/responses, on call for law enforcement, and preparing for court hearings

- c. **The approximate percentage of your practice that involved litigation in court or other tribunals.**

Dallas County Attorney's Office – 45% in court hearings – initial appearances, no contact order modification hearings, restitution hearings, suppression motion hearings, pre-trial motions hearings, trials, and probation violation hearings

- d. **The approximate percentage of your litigation that was: Administrative, Civil, and Criminal.**

Civil = 5%
Criminal = 95%

- e. **The approximate number of cases or contested matters you tried (rather than settled) in the last 10 years, indicating whether you were sole counsel, chief counsel, or associate counsel, and whether the matter was tried to a jury or directly to the court or other tribunal. If desired, you may also provide separate data for experience beyond the last 10 years.**

I tried approximately 50 cases in last ten years, 40 to a jury, 10 to the Court
I was sole counsel in 45 of the 50 cases

- f. **The approximate number of appeals in which you participated within the last 10 years, indicating whether you were sole counsel, chief counsel, or associate counsel. If desired, you may also provide separate data for experience beyond the last 10 years.**

Several appeals from Magistrate Court to the District Court in which I was chief counsel with an intern training with me

9. **Describe your pro bono work over at least the past 10 years, including:**
- a. **Approximate number of pro bono cases you've handled.**
 - b. **Average number of hours of pro bono service per year.**
 - c. **Types of pro bono cases.**

No opportunity for pro bono work as a prosecutor.

10. **If you have ever held judicial office or served in a quasi-judicial position:**

- a. **Describe the details, including the title of the position, the courts or other tribunals involved, the method of selection, the periods of service, and a description of the jurisdiction of each of court or tribunal.**

N/A

- b. **List any cases in which your decision was reversed by a court or other reviewing entity. For each case, include a citation for your reversed opinion and the reviewing entity's or court's opinion and attach a copy of each opinion.**

N/A

- c. **List any case in which you wrote a significant opinion on federal or state constitutional issues. For each case, include a citation for your opinion and any reviewing entity's or court's opinion and attach a copy of each opinion.**

N/A

11. If you have been subject to the reporting requirements of Court Rule 22.10:

- a. **State the number of times you have failed to file timely rule 22.10 reports.**

N/A

- b. **State the number of matters, along with an explanation of the delay, that you have taken under advisement for longer than:**

- i. **120 days.**

- ii. **180 days.**

- iii. **240 days.**

- iv. **One year.**

12. Describe at least three of the most significant legal matters in which you have participated as an attorney or presided over as a judge or other impartial decision maker. If they were litigated matters, give the citation if available. For each matter please state the following:

- a. **Title of the case and venue,**
- b. **A brief summary of the substance of each matter,**
- c. **A succinct statement of what you believe to be the significance of it,**
- d. **The name of the party you represented, if applicable,**
- e. **The nature of your participation in the case,**
- f. **Dates of your involvement,**
- g. **The outcome of the case,**
- h. **Name(s) and address(es) [city, state] of co-counsel (if any),**
- i. **Name(s) of counsel for opposing parties in the case, and**
- j. **Name of the judge before whom you tried the case, if applicable.**

Matter #1:

- A. State of Iowa v. Marc Ray, Misty Ray, Carla Bousman, Josie Bousman, and Justin Ray
Dallas County, Iowa
- B. In this case, the above charged family members were involved in the serious child abuse of four adopted children in the family, causing the death of one child and severe injuries to the three surviving children.
- C. These cases were significant based on the number of family members charged, the extensive abuse of the children, the number of defense attorneys, the amount of evidence involved, and the complex legal issues that were addressed.
- D. State of Iowa
- E. Co-counsel
- F. May 12, 2017 – January 18, 2019
- G. All defendants agreed to plead guilty and were convicted.
- H. Jeannine Ritchie – Co-counsel
Dallas County Attorney's Office
207 N. 9th Street
Adel, IA 50003
- I. Jake Feuerhelm, Roger Owens, Sean Spellman, Jesse Macro, John Jordan, John Flynn, James Nelsen, Todd Miler
- J. Judge Terry Rickers

Matter #2:

- A. State of Iowa v. Daniel Hicks, Dallas County, Iowa
- B. In this case, the child victim alleged she was touched inappropriately by her father.
- C. This case was significant because of the family relationships, the age of the child victim, and the pretrial issues that were raised.
- D. State of Iowa
- E. Lead Counsel
- F. August 25, 2012 – November 27, 2013
- G. The Defendant was convicted at trial.
- H. Chuck Sinnard – 2nd Chair
Dallas County Attorney's Office
207 N. 9th Street
Adel, IA 50003
- I. Brent Rosenberg
- J. Judge Gregory Hulse

Matter #3:

- A. State of Iowa v. Gary Miller, Dallas County, Iowa
- B. This case was a vehicular homicide by drunk driving resulting in death of a victim.
- C. The significance of this matter was the fact that two lives were lost – the victim and the Defendant as a conviction carried a 25 year prison term for a death that the Defendant did not intentionally cause.
- D. State of Iowa
- E. Lead Counsel

- F. April 10, 2004 – March 17, 2005
- G. The Defendant was convicted at trial.
- H. Jeannine Ritchie – 2nd Chair
Dallas County Attorney’s Office
207 N. 9th Street
Adel, IA 50003
- I. Eric Parish
- J. Judge Gregory Hulse

13. Describe how your non-litigation legal experience, if any, would enhance your ability to serve as a judge.

I believe working with contracts and clerking for the Court of Appeals gave me very broad exposure of the legal system. My position with Principal gave me an understanding of legal issues within a business environment while my clerk position provided an expansive overview of District and District Associate cases including juvenile, civil, divorce, contract, and criminal cases. I honed my research skills while preparing draft opinions for Judge Nelson-Vogel and learned how to effectively communicate my legal analysis in writing.

14. If you have ever held public office or have you ever been a candidate for public office, describe the public office held or sought, the location of the public office, and the dates of service.

N/A

15. If you are currently an officer, director, partner, sole proprietor, or otherwise engaged in the management of any business enterprise or nonprofit organization other than a law practice, provide the following information about your position(s) and title(s): N/A

- a. Name of business / organization.
- b. Your title.
- c. Your duties.
- d. Dates of involvement.

16. List all bar associations and legal- or judicial-related committees or groups of which you are or have been a member and give the titles and dates of any offices that you held in those groups.

American Bar Association (previously)
Iowa Bar Association (previously)
Dallas County Bar Association (currently)
Iowa County Attorney Association (currently)

17. **List all other professional, business, fraternal, scholarly, civic, charitable, or other organizations, other than those listed above, to which you have participated, since graduation from law school. Provide dates of membership or participation and indicate any office you held. "Participation" means consistent or repeated involvement in a given organization, membership, or regular attendance at events or meetings.**

Valley Church – regular attender, volunteer, Sunday school teacher
New Hope Church – regular attender

18. **If you have held judicial office, list at least three opinions that best reflect your approach to writing and deciding cases. For each case, include a brief explanation as to why you selected the opinion and a citation for your opinion and any reviewing entity's or court's opinion. If either opinion is not publicly available (i.e., available on Westlaw or a public website other than the court's electronic filing system), please attach a copy of the opinion.**

N/A

19. **If you have not held judicial office or served in a quasi-judicial position, provide at least three writing samples (brief, article, book, etc.) that reflect your work.**

OTHER INFORMATION

20. **If any member of the District Judicial Nominating Commission is your spouse, son, daughter, brother, sister, uncle, aunt, first cousin, nephew, niece, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, father, mother, stepfather, stepmother, stepson, stepdaughter, stepbrother, stepsister, half brother, or half sister, state the Commissioner's name and his or her familial relationship with you.**

N/A

21. **If any member of the District Judicial Nominating Commission is a current law partner or business partner, state the Commissioner's name and describe his or her professional relationship with you.**

N/A

22. **List the titles, publishers, and dates of books, articles, blog posts, letters to the editor, editorial pieces, or other published material you have written or edited.**

N/A

23. List all speeches, talks, or other public presentations that you have delivered for at least the last ten years, including the title of the presentation or a brief summary of the subject matter of the presentation, the group to whom the presentation was delivered, and the date of the presentation.

1. Vicarious Trauma – Ray Case Presentation, West Des Moines, IA, Court Reporter CLE, summer 2020
2. Vicarious Trauma – Ray Case Presentation, Adel, IA, monthly Chief of Police meeting, fall 2020
3. Law Enforcement Update/Training – Perry, IA, Adel, IA, and Waukee, IA, Dallas County Law Enforcement, annually for 20 years
4. Reserve Officer Training – Waukee, IA, Clive, IA, and Adel, IA, Dallas County Reserve Officers, Certification through Iowa Law Enforcement Academy
5. Waukee Citizen’s Academy – Waukee, IA, citizens of Waukee sponsored by the Waukee Police Department
6. Responsibilities of a Prosecutor – Perry, IA, DMACC class, annually for last 6 years

24. List all the social media applications (e.g., Facebook, Twitter, Snapchat, Instagram, LinkedIn) that you have used in the past five years and your account name or other identifying information (excluding passwords) for each account.

Facebook

Account name: Stacy Ritchie

Instagram

Account name: ritchie_stacy

25. List any honors, prizes, awards or other forms of recognition which you have received (including any indication of academic distinction in college or law school) other than those mentioned in answers to the foregoing questions.

Drake University Law School – Graduated with Honors

Selected to NDAA Prosecutor’s Training for two courses

Jury Selection

Prosecuting the Impaired Driver

Awarded certificate for 20 years of service to Dallas County

26. Provide the names and telephone numbers of at least five people who would be able to comment on your qualifications to serve in judicial office. Briefly state the nature of your relationship with each person.

Greg Hulse
Former 5A District Court Judge
(515) 681-8324
I practiced in front of Judge Hulse for approximately 16 years

Chuck Sinnard
Dallas County Attorney's Office
(515) 993-5060
Chuck is my boss

Jeannine Ritchie
Dallas County Attorney's Office
(515) 993-5060
Jeannine is my supervisor

Raya Dimitrova
Carr Law Firm, PLC
(515) 875-4868
Raya is a defense attorney I have worked with on numerous cases for several years

Tim McCarthy
McCarthy & Hamrock, PC
(515) 279-9700
Tim is a defense attorney I have worked with on numerous cases for over 20 years

Yvonne Naanep, Attorney
(515) 243-2487
Yvonne is an attorney who has worked as a Guardian Ad Litem for child victims/witnesses in several of my cases for approximately 10 years

27. Explain why you are seeking this judicial position.

I have spent my legal career working for the citizens of Dallas County. I live here and raised my children here. While growing up, my family moved around frequently, preventing me from experiencing a sense of community. When I would meet people who had been raised in their family home for their entire lives, I was in awe. I longed for that in my life and for my children. Dallas County and Iowa have become my home and provided me with that sense of community. In serving this community, my hope is to leave a better future for my children. I am looking forward to serving a wider number of Iowa citizens as a judicial officer. I am excited to challenge myself with broader areas of the law.

28. Explain how your appointment would enhance the court.

I believe I would be an asset to the Court with my ability to communicate with many different personalities on a professional level. During my service as a prosecutor, I have worked with many pro se Defendants. That is always a concern because when a Defendant does not have an attorney to advocate for them, my job expands to protect the rights of the Defendant as well as prosecute my case. On many occasions, I have had a pro se Defendant tell me that they wanted to plead guilty to the charge with no knowledge of the judge's sentencing options. My role at that point is not to ask for the maximum punishment because they don't have a knowledge of the law but to seek justice as I would in any other case. I then inform them of the judge's options and let them know what I will recommend to the Court, including a deferred judgment as I would for a similarly situated Defendant that did have an attorney. Further, whether they decide to plead guilty or seek a trial, I explain the legal intricacies to them in a manner they can understand. Several weeks ago, I had a Defendant thank me for explaining the legal process in a way that she could understand. The respect I show to everyone in a professional setting, whether they are a defendant, a witness, a victim, a defense attorney, a probation officer, an advocate, or the Court, would uphold the dignity of the members of the Court.

I believe my calm demeanor and patience during court hearings would also be a benefit. As an example, during my closing argument in an assault trial, the victim stood up and called me a liar to the jury. My response was to keep a calm demeanor and simply wait until the judge calmed the situation. After that situation resolved, I resumed my closing argument where I had left off without addressing the Defendant's opinion of me.

My knowledge base and ability to research legal issues would be a benefit to the Court. I have attempted to select writing samples that will demonstrate my abilities in this area.

My personal life experiences, including growing up with parents who made a life of serving others, having a brother with mental health issues, and adopting my daughter from another country, lend me a broader base of common-sense and perspective to bring to the Court. All of my life experiences have shaped me and helped form my ability to approach each situation with reason and common-sense.

29. Provide any additional information that you believe the Commission or the Governor should know in considering your application.

I have had successes and failures in my legal career. I have learned a lesson from each one. The biggest lesson is that success in life is not measured by a victory in the courtroom but, rather, what you learn from each experience. I have been fortunate to have three bosses and mentors, namely Wayne Reisetter, Chuck Sinnard, and Jeannine Ritchie, who strongly believe that our job as prosecutors is not to win a case but to do justice in every matter that crosses our desk. I have learned something from each judge that I have worked in front of about how to better myself as a lawyer. I have internalized all of these lessons and I strive to better my skills every day.

Stacy Ritchie 7/21/2021

IN THE IOWA DISTRICT COURT FOR DALLAS COUNTY

STATE OF IOWA : CRIMINAL NO. [REDACTED]
Plaintiff, :
v. : BRIEF REGARDING COURT'S
[REDACTED], : DETERMINATION OF DEFENDANT'S
Defendant. : COMPETENCY TO STAND TRIAL
:

NOW the State comes before the Court, through Assistant Dallas County Attorney Stacy Ritchie, and in support of the Motion states:

1. On July 27, 2015, the Defendant was arrested with two co-Defendants for one count of Willful Injury Causing Bodily Injury, a class D felony, in violation of Iowa Code section 703.1, 703.2, and 708.4(2).
2. This matter was tried to a jury of the Defendant's peers and she was convicted of the offense as charged on April 25, 2016.
3. Defendant was sentenced to serve a term not to exceed five years in the custody of the Iowa Department of Corrections on June 3, 2016.
4. Defendant posted an appeal bond and appealed the conviction to the Iowa Supreme Court.
5. The Iowa Supreme Court determined that during the trial when Defendant raised questions regarding her competency, the trial court should have ordered a competency evaluation for the Defendant. The jury verdict was reversed and the matter was remanded for retrial on August 14, 2018.
6. Subsequently, this Court ordered [REDACTED] to be evaluated to determine whether she is competent to stand trial in this matter.

7. On March 1, 2019, this Court determined that the Defendant was not competent and efforts have been made since that date to restore her competency.
8. Review Hearing was held in this matter on July 15, 2020.

Review Hearing

9. Dr. Bruce Dawson, Clinical Psychologist, has been working with [REDACTED] in the restoration of her competency under the care of Dr. Donner Dewdney, Psychiatrist at Eyerly Ball Mental Health.
10. [REDACTED] has several mental health diagnoses as reported to Community Release Supervisor Sarah Heiden including: Unspecified Schizophrenia Spectrum and Other Psychotic Disorder.
11. [REDACTED] has been prescribed medications for these diagnoses to specifically address anxiety, psychosis, depression, and sleep.
12. At the hearing, Dr. Dawson advised this Court that [REDACTED]'s issues are fluid and depend on situational factors. He indicated that he is not aware that she is having any delusions or hallucinations. She does have some disorganized speech when she is agitated. He described that she has a proper response to the world around her and is appropriate and pleasant to others in the waiting room.
13. Dr. Dawson testified that [REDACTED] understands the charge against her and she understands the court proceedings. The remaining issue he had concerns with is her ability to assist with her defense.
14. When asked if [REDACTED] can help with her defense, Dr. Dawson stated that it depends on her mood. He explained that if she is not agitated, she demonstrates appropriate

behaviors. However, if she is agitated, her behaviors include a raised voice, profanity, and tangential thinking.

15. When asked if [REDACTED] has been able to discuss a defense to the charge with him, he stated that she has indicated to him that she was acting in self-defense.
16. Dr. Dawson indicated that he had seen [REDACTED] approximately two weeks before the hearing and at that time, she was able to assist with her defense in that she was not agitated, she behaved appropriately, and she was able to effectively communicate with him.

Competency Standard

17. Iowa Code section 812.3(2) outlines the standard of competency the Court must use as follows: “[w]hether the defendant is suffering a mental disorder which prevents the defendant from appreciating the charge, understanding the proceedings, or assisting effectively in the defense.”
18. “Our supreme court has recognized ‘[a] defendant is initially presumed to be competent, and the burden to establish the contrary should be on him; if the evidence is in equipoise the presumption should prevail.’” State v. Rhode, 503 N.W.2d 27, 34 (Ct. App. 1993) (citations omitted). The Defendant must reach this burden by a preponderance of the evidence. Id.
19. “Under this standard, ‘there are two distinct matters to be determined: (1) whether the defendant is sufficiently coherent to provide his counsel with information necessary or relevant to constructing a defense; and (2) whether he is able to comprehend the significance of the trial and his relation to it.’” Id. at 35.

20. The evidence is clear that [REDACTED] is able to comprehend the significance of the trial and her relation to it. The issue this Court must determine is “whether the defendant is sufficiently coherent to provide [her] counsel with information necessary or relevant to constructing a defense.”
21. [REDACTED] has, throughout this extended prosecution process, been very vocal with this Court, the prosecution, and each attorney that she has had that she claims self-defense and/or defense of others. She is more than capable of communicating the details of her defense to her attorney. At times, in a voice loud enough for the prosecution and the Court to hear her.
22. In her first trial, [REDACTED]’s attorney presented that claim on her behalf and had received enough information from her to conduct offers of proof and call multiple witnesses to testify in her defense.
23. The Court was also able to witness the Defendant, during the first trial, passing multiple notes to her defense attorney and whispering to him during trial to communicate her disagreement with the testimony of the State’s witnesses.
24. The State asserts that the issue throughout this long process is not in her ability to communicate with her attorney but rather in the manner in which she chooses to communicate. This is a behavioral issue, not one of understanding or being able to communicate.
25. The State concedes that the Defendant’s behavior is often erratic and agitated. However, during the first trial, after being admonished by the Court, her outbursts were, for the most part, reserved for the Court when the jury was not present. She is able to control her behavior at the Court’s directive to do so.

26. Likewise, during the process of restoring her competency, [REDACTED] has displayed bouts of misbehavior but when the Court was considering whether inpatient treatment was necessary, she immediately controlled herself and ceased her tantrum-like behavior.
27. Dr. Dawson indicated that when [REDACTED] experiences anxiety, she becomes agitated in her behaviors, exhibiting a raised voice, the use of profanity, and tangential thinking. This Court has observed all of those behaviors while dealing with this Defendant. However, when the Court has communicated clear directives to her with the consequences for her failure to comply, she has complied.
28. Further, the State asserts that [REDACTED]'s bad behavior is much like a toddler trying to control the situation. It is not an inability to communicate effectively but an expression of dissatisfaction that she cannot have what she wants. Behavior is a separate issue from whether the Defendant is "sufficiently coherent to provide [her] counsel with information necessary or relevant to constructing a defense."
29. Much like the State's expert in State v. Johnson, 2009 Iowa App., Lexis 429 at 11, Dr. Dawson testified that [REDACTED] is not delusional or experiencing hallucinations. She is appropriate and pleasant to those around her in his observations of her. Rather, she is capable of assisting her attorneys effectively. Whether she chooses to do so is up to her. She chooses her behaviors when she feels they will benefit her.

Court's Authority

30. The State understands, from Defendant's argument at the July 15, 2020 review hearing and the videoconference with the Court following that hearing, that the Defendant argues the Court does not have the authority to set this matter for a competency determination

hearing unless directed to do so by the treating psychiatrist or psychologist, pursuant to Iowa Code section 812.8.

31. Iowa Code section 812.8(1), 812.8(2), and 812.8(3) advise the treating psychiatrist and/or psychologist to advise the Court in varying circumstances including if the Defendant is restored to competency, if the Defendant can be restored to competency with treatment, and if the Defendant cannot be restored to competency. Iowa Code section 812.8(4) then requires the Court to take action, stating "Upon receiving a notification under this section, the court shall schedule a hearing to be held within fourteen days."
32. However, Iowa Code section 812.8 does not, in any language, restrict the Court from setting a hearing to make such a determination outside of receiving such a notification. In fact, the general reading of Iowa Code chapter 812 as a whole makes it very clear that it is not the duty of the medical professionals to make a finding of competency, but rather it is the obligation of the Court to make such a determination.

WHEREFORE, the Plaintiff prays that this Court finds the Defendant competent to stand trial in this matter.

Respectfully submitted,

/s/ Stacy Ritchie

Stacy Ritchie – AT0006594
Assistant Dallas County Attorney
Charles C. Sinnard
Dallas County Attorney
207 N. 9th St.
Adel, Iowa 50003-1492
Telephone: (515) 993-5060
Facsimile: (515) 993-5069
E-mail: stacy.ritchie@dallascountyiowa.gov
Office E-mail: dcattorney@dallascountyiowa.gov

IN THE IOWA DISTRICT COURT FOR DALLAS COUNTY

STATE OF IOWA : CRIMINAL NO. FECR035453
Plaintiff, :
Vs. : BRIEF IN SUPPORT OF STATE'S
APPLICATION FOR CHILD'S TESTIMONY
DANIEL LOUIS HICKS, : OUTSIDE THE DEFENDANT'S PRESENCE
PURSUANT TO IOWA CODE §915.38
Defendant. :

ISSUE PRESENTED

Whether a child victim should be permitted to testify outside the defendant's presence at trial via closed circuit television, pursuant to Iowa Code section 915.38.

ARGUMENT

Iowa Code section 915.38 provides that the court may order the testimony of a minor victim or minor witness (as defined by Iowa Code section 599.1) be taken outside the physical presence of the defendant via closed circuit television upon a finding that such an order is necessary to protect the minor from the trauma of testifying in the physical presence of the defendant and that the physical presence of the defendant would impair the minor's ability to communicate. Iowa Code section 915.38 specifies that "the testimony of the minor be taken in a room other than the courtroom and be televised by closed-circuit equipment for viewing in the courtroom." Additionally, it dictates that "[o]nly the judge, prosecuting attorney, defendant's attorney, persons necessary to operate the equipment, and any person whose presence, in the opinion of the court, would contribute to the welfare and well-being of the minor may be present in the room with the minor during the minor's testimony. . . . During the minor's testimony the

defendant shall remain in the courtroom and shall be allowed to communicate with the defendant's counsel in the room where the minor is testifying by an appropriate electronic method." Id.

In Maryland v. Craig, the United States Supreme Court addressed the use of closed circuit television as a means of protecting child witnesses or victims from the trauma of testifying in the physical presence of a defendant. 497 U.S. 836 (1990). The Court held that the State's interest in protecting child witnesses from the trauma of testifying justifies allowing the child to testify without face-to-face confrontation if the State makes an adequate showing of necessity. Id. at 855. The Court found three factual findings must be made by the trial court on a case specific basis in order to support the child witness testifying outside a defendant's presence. Id. First, the use of the closed circuit television must be necessary to protect the welfare of the child witness. Id. Second, the court must find the child witness would be traumatized by the presence of the defendant, not by the courtroom in general. Id. at 856. Finally, the court must find that the emotional distress suffered by the child must be more than nervousness, excitement, or general reluctance to testify. Id.

In an unpublished opinion, the Iowa Court of Appeals held that section 915.38 satisfies the requirements outlined in Maryland v. Craig because the trial court is required to make a specific finding that such measures are necessary to protect the particular child witness. State v. Paulson, 730 N.W.2d 210 (Table), 2007 WL 461323 at *5 (Iowa Ct. App. Feb. 14, 2007). The court found that all three requirements set forth in Craig were incorporated into the Iowa statute. Id. The court also addressed the defendant's claim that the victim's testimony by closed circuit

television violated his Sixth Amendment right to confrontation. The court held that the Confrontation Clause and Crawford v. Washington do not prohibit the testimony permitted under section 915.38. Paulson, 2007 WL 461323 at *5.

Significant public policy interests are served by permitting the minor child victim to testify via closed circuit television at trial. The State has a compelling interest in protecting child crime victims from suffering further victimization and trauma caused by testifying in the defendant's presence. The U.S. Supreme Court has found that the State's interest in "safeguarding the physical and psychological well-being of a minor is a compelling one." Globe Newspaper Co. v. Superior Court of Norfolk County, 457 U.S. 596, 607 (1982). In addition, if a child victim's ability to communicate is impaired, there will be a chilling effect on the State's ability to prosecute crimes committed against children. The United States Supreme Court has noted that "[c]hild abuse is one of the most difficult crimes to detect and prosecute, in large part because there often are no witnesses except the victim." Pennsylvania v. Ritchie, 480 U.S. 39, 60 (1987). When testifying in a defendant's physical presence impairs a child victim's ability to communicate, there may not be sufficient additional evidence for the State to prosecute. The State certainly has an important interest in prosecuting crimes against children, particularly child sex offenses. Prosecution of child sex offenses protects potential future victims of such offenses.

Promoting those important State interests does not violate the Confrontation Clause. The Confrontation Clause guarantees the following rights: (1) "personal examination" of witnesses; (2) witnesses providing statements under oath; (3) subjecting witnesses to cross-examination; and

(4) permitting the jury to observe the witnesses' demeanor. Maryland v. Craig, 497 U.S. 836, 845-46 (1990). However, the Confrontation Clause does not guarantee defendants "the *absolute* right to a face-to-face meeting with witnesses against them at trial." Id. at 844. The Confrontation Clause is designed to guarantee the reliability of evidence presented against a defendant "by subjecting it to rigorous testing in the context of an adversary proceeding before the trier of fact." Id. at 845. "[W]here face-to-face confrontation causes significant emotional distress in a child witness, there is evidence that such confrontation would in fact *disserve* the Confrontation Clause's truth-seeking goal." Id. at 857. Therefore, permitting the minor child victim to testify via closed circuit television in this case will actually further the goals contained within the Confrontation Clause. Furthermore, the child will still provide her statement under oath, be subjected to cross-examination, and be observed by the jury during her testimony.

CONCLUSION

The Court should permit the child victim to testify via closed circuit television outside the Defendant's presence because testifying in his presence would cause her trauma and impair her ability to communicate. Significant public policy interests justify the child testifying outside the Defendant's physical presence. Adopting such measures would not violate the Defendant's Confrontation Clause rights. The State will present testimony in support of its position at the Hearing on State's Application for Minor's Testimony Outside Defendant's Presence.

WHEREFORE, the State of Iowa respectfully requests that the Court order the deposition and trial testimony of John Doe be taken outside the Defendant's physical presence by use of closed circuit television.

Respectfully submitted,

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IN THE IOWA DISTRICT COURT FOR DALLAS COUNTY

STATE OF IOWA	: CRIMINAL NO. [REDACTED]
Plaintiff,	:
v.	: STATE'S BRIEF IN RESISTANCE TO
[REDACTED],	: DEFENDANT'S MOTION TO SUPPRESS
Defendant.	:
	:

COMES NOW the Plaintiff by Assistant Dallas County Attorney, Stacy Ritchie, and in response to Defendant's Motion to Suppress, respectfully states as follows:

1. The Defendant knowingly, intelligently, and voluntarily waived his rights in conformance with the requirements of the Miranda rule before speaking with the officer in this matter. Therefore, the evidence should not be suppressed.

2. The allegations in this matter were brought to light on or about February 19, 2015 when the child victim reported to her grandmother and aunt that the Defendant, her step-father, had showed her pornography and touched her inappropriately. Her grandmother and aunt told her mother who confronted the Defendant with the allegations. The next day, the child victim was taken for medical treatment and the Department of Human Services and the police were notified. On approximately March 6, 2015, the Defendant waived his Miranda rights and spoke with Detective Jerome Hill from the Perry Police Department about these allegations. The Defendant correctly advises the Court that at the time of the interview with Detective Hill, he was under a mental health commitment.

3. On December 15, 2014, the Defendant was found to be seriously mentally impaired and in need of mental health commitment. He remains under this commitment to this date.
4. For several periods since his commitment on December 15, 2014, the Defendant has received inpatient treatment in a hospital setting but has been receiving treatment on an outpatient basis for the majority of this commitment period.
5. On March 6, 2015, the Court found that the Defendant “does not require full-time hospitalization.” Order March 6, 2015, Dallas County Case No. [REDACTED]. That same order determined Defendant would “continue with: outpatient treatment with Genesis MHS for med management and Carlos Canales for therapy.” Order March 6, 2015.
6. The record in [REDACTED] indicates that from the commitment in December, 2014, the Defendant was determined to require medication to help manage his mental impairment. It appears that the Defendant was resistant to taking oral medications at several points in the commitment process but was amenable to having the drugs administered by long-lasting injections to be administered every two weeks. The Court record shows that the Defendant was seen on January 12, 2015 by Dr. Sunita Kantamneni at Wheaton Franciscan Healthcare in Waterloo, Iowa. Physician’s Report of Examination Pursuant to Iowa Code section 229.10(2) January 12, 2015. At that time, the doctor indicated that the Defendant had received his medication through injection and recommended the drug Risperidone be administered by injection every two weeks with the last injection given on January 11, 2015. *Id.* On February 9, 2015, the Defendant was seen by Sharon Scandrett-Hibdon at Genesis Mental Health

Services in Perry, Iowa who recommended the Defendant “[c]ontinue with Risperidal consta injection every 2 weeks.” Chief Medical Officer’s Report of Psychiatric Evaluation Pursuant to section 229.15, the Code February 10, 2015. On March 6, 2015, the Defendant was seen by Dr. S. Pirzada Sattar at Methodist Jennie Edmundson in Council Bluffs, Iowa. The report from that doctor recommends “Outpatient therapy Carlos Canales – Des Moines and Med Management Genesis M.H. Perry, IA 3/16/15 4:00 p.m., Long Acting Injections.” Physician’s Report of Examination Pursuant to section 229.10(2), the Iowa Code March 6, 2015. According to the Court records in the Mental Health Commitment, the Defendant had been receiving his medications by long-lasting injections since January and his next scheduled appointment to receive one was March 16, 2015.

7. On March 6, 2015, the date that the Defendant chose to speak with Detective Hill, he was under medication and was able to receive treatment on an out-patient basis.
8. The Defendant seems to argue that because he was under a mental health commitment, he was unable to knowingly, intelligently and voluntarily waive his rights under Miranda and speak with the officer. He does not, however, provide any authority in his Motion to Suppress to support this theory.
9. The law governing mental health commitments under Iowa Code section 229.1(10) clearly states, “‘Mental illness’ means every type of mental disease or mental disorder, except that it *does not refer* to an intellectual disability as defined in section 4.1, or *to insanity, diminished responsibility, or mental incompetency as the terms are defined and used in the Iowa criminal code or in the rules of criminal procedure,*

Iowa court rules.” Clearly, mental illness does not equate to incompetence as pertains to criminal cases.

10. In fact, the Defendant remains under the mental health commitment at this time. Yet, he has never notified this court that he is incapable of understanding the charges brought against him, the court proceedings in this case, or assisting in his own defense. If the Defendant is competent to stand trial in this matter, he is also able to waive his rights under Miranda in a knowing, intelligent and voluntary manner.
11. When determining whether Miranda rights have been properly waived, the Court looks to the behavior of the police, not to the position of the Defendant. “The relinquishment of the right must be voluntary, that is it was not given as a result of intimidation, coercion, or deception. . . Thus a Miranda waiver is involuntary only when it is shown to be the product of police misconduct or overreaching. The waiver must also have been ‘made with a full awareness both of the nature of the right being abandoned and the consequences of the decision to abandon it.’” State v. Countryman, 572 N.W.2d 553, 559 (Iowa 1997) (citations excluded). “The determination of voluntariness turns on the crucial question of whether the defendant’s will was overborne.” State v. Edman, 452 N.W.2d 169, 171 (Iowa 1990). The State must prove the statement was voluntary, knowing and intelligently given by a preponderance of the evidence. Id.
12. State v. Goodrich, Lexis 514, 515 (Iowa Ct. App. 2002), states “A Miranda waiver is involuntary only when it is the product of police misconduct or overreaching.” That Court further determined that the voluntary, knowing, and intelligent nature of the waiver must be determined by the totality of the circumstances. Id. In Edman and Countryman, the Defendants asserted that they were impaired by alcohol or drugs

when they were interrogated and were, thus, unable to waive their rights. In determining that they decided to speak to the officer voluntarily, knowingly, and intelligently, the Court looked to such factors as their ability to be understood, their responsiveness to questions from the officer, whether they could appreciate the nature and consequences of their statements, whether they were in control of their person, and whether they knew what was going on.

13. In the matter currently before the Court, the Defendant was questioned by Detective Jerome Hill at the Dallas County Sheriff's Office. This interview was audiotaped by the detective. The Defendant was provided his Miranda rights in a document containing his rights in both an English and Spanish version. This statement of rights was read to the Defendant aloud by Detective Hill. The Defendant was asked whether he wished to waive his rights and speak with the officer. He indicated that he understood his rights saying, "I understand very well" and signed the Miranda waiver, indicating that he wished to speak to the officer.
14. Detective Hill then asked the Defendant to answer general questions including his name, address, date of birth, social security number, and phone number. The Defendant provided appropriate answers to all of these questions without hesitation. The entire interview with the Defendant lasted approximately half of an hour. The detective asked him if he was taking his medications and he answered yes. The Defendant answered the questions with detail including telling the officer with specificity what type of computer he had, what website he viewed pornography on, and what type of pornography he had shown to the child victim. He did not ramble incoherently, talk to himself, seem to be having any visual or auditory delusions, or in

any other way indicate to the officer or this court that he was not in full control of his faculties. At one point, the officer did not understand correctly an answer the Defendant had given and the Defendant corrected him, demonstrating that he was able to make himself understood by the officer. The Defendant showed he understood the nature and consequences of his actions by asking the detective if he was “going to jail today.” He explained that the incidents with the child victim had occurred when he was unemployed from his job, further elaborating that he was unemployed in September of 2014. Throughout the short duration of his interview, he answered the questions appropriately and specifically. At the end of the interview, the Defendant even indicated that he has spoken to the officer by himself because he is trying to be a better person. This statement indicates that he knew he could refuse to answer the questions or have a lawyer present when speaking with the officer but chose to speak with the officer by himself.

15. The detective’s behavior throughout the interview is above reproach. He is not threatening or harsh with the Defendant. He speaks with the Defendant in a calm tone and does not badger, coerce or intimidate the Defendant in any way. He took measures to make himself understood and to make sure he correctly understood the Defendant. It is clear in this interview that there is no police misconduct or overreaching. The will of the Defendant was not overborne.
16. Finally, the Defendant states that he “does not speak English and requires an interpreter to communicate with the undersigned . . .” Motion to Suppress November 17, 2015. This assertion is supported by the appointment of an interpreter to assist him in this matter and his mental health commitment. The record in the mental health

commitment shows that the Defendant was committed on December 15, 2014 and had three court hearings including the hearing on March 6, 2015 before an interpreter was appointed for him on March 13, 2015. The appointment of an interpreter in the mental health commitment also occurred after his interview with the officer in this matter.

17. It is clear from the audiotaped interview in this matter that the Defendant does, in fact, speak English. Although his English is heavily accented, it is clear that he understood what the officer was asking and was able to make himself understood to the officer. He appropriately responded to the detective's questions, providing his name, address, date of birth, social security number and phone number when asked. When he gave the officer his social security number, Detective Hill misunderstood his answer and the Defendant corrected the officer to provide the correct information. The Defendant was asked if he understood his Miranda rights as read to him in English and he responded, "I understand very well." Although an interpreter may be necessary to assist the Defendant to understand legal terms throughout the Court process, it is clear from the recording that the Defendant was able to understand the questions asked and speak English to the detective in response to the questions asked.
18. A review of this matter shows by a preponderance of the evidence that the Defendant knowingly, intelligently and voluntarily waived his Miranda rights in this matter and the evidence, therefore, should not be suppressed.

WHEREFORE, the Plaintiff prays that this Court deny the Defendant's Motion in full.

Respectfully submitted,

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