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

- **State your full name.**

  Derek Justin Johnson

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

  District Associate Judge of Iowa District 2B

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

  January 15, 1974

- **State your current city and county of residence.**

  Fort Dodge, Webster County, Iowa

PROFESSIONAL AND EDUCATIONAL HISTORY

- **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.**

College and/or Law School	Dates Attended	Degree
Drake University Law School	August 1996 to May 1999	Juris Doctor
Buena Vista University	August 1994 to May 1996	Bachelor of Arts (Business)
Iowa Central Community College	August 1992 to May 1994	Associate of Arts

- **Describe in reverse chronological order all of your work experience since graduating from college, including:**
  - **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.**
  - **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.**

Position or Title and Name of Employer	Employment Dates	Address	Supervisor or Knowledgeable Colleague
District Associate Judge for District 2B	February 2020 to present	Hamilton County Courthouse 2300 Superior Street, Webster City, Iowa	The Honorable James Drew and The Honorable Kurt Stoebe
Owner and Attorney of Derek Johnson Law Office, PLC	January 2019 to February 2020	809 Central Avenue Suite 350 Fort Dodge, Iowa	I was a sole practitioner.
Partner and Attorney of Johnson, Bonzer and Barnaby, PLC	July 2017 to December 2018	809 Central Avenue Suite 400 Fort Dodge, Iowa	Jennifer Bonzer
Partner and Attorney of Johnson and Bonzer, PLC	April 2012 to July 2017	809 Central Avenue Suite 350 (and 400) Fort Dodge, Iowa	Jennifer Bonzer
Owner and Attorney of Derek Johnson Law Office	May 2005 to 2012	809 Central Avenue Suite 350 Fort Dodge, Iowa	Jonathan Beaty
County Attorney for Humboldt County	April 2004 to May 2005	203 Main Street Dakota City, Iowa	Humboldt County Board of Supervisors

			(I was the only attorney in the office)
Associate Attorney at Blake Parker Law Office	September 1999 to April 2004	809 Central Avenue Suite 350 Fort Dodge, Iowa	Blake Parker

- **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.**

I was admitted into the Iowa State Bar on September 13, 1999. There has never been any lapse or termination of my membership.

- **Describe the general character of your legal experience, dividing it into periods with dates if its character has changed over the years, including:**
  - **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.**
  - **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.**
  - **The approximate percentage of your practice that involved litigation in court or other tribunals.**
  - **The approximate percentage of your litigation that was: Administrative, Civil, and Criminal.**
  - **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.**
  - **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.**

Blake Parker Law Office (1999 - 2004)

This period of time in my legal career exposed me to the widest range of different areas of law. The table below describes the approximate percentage of time I spent in each area of practice:

Area of Law	Percentage of Time
Criminal Law	23%
Juvenile Law	20%
Family Law	10%
Social Security Disability	10%
Committals (Mental Health and Substance Abuse)	8%
Personal Injury	7%
Civil Rights Litigation	5%
Employment Law	4%
Education Law	3%
Property Law	3%
Business Law (Business Formation)	2%
Probate Law	2%

I estimate that 20% of my practice was devoted to areas of law or legal projects that did not involve my appearance before a court or tribunal, including research and writing projects that were assigned to me by Mr. Parker. During that time, I wrote all of the law firm's appeal briefs for Social Security Disability appeals in Federal District Court. I was frequently assigned to prepare and complete discovery requests in family law cases for Mr. Parker. I was also required to investigate cases for Mr. Parker that included locating witnesses, interviewing them and preparing affidavits for their signatures. I met with families to discuss their child's education needs and became involved with the review and development of Individualized Education Plans (IEP). Mr. Parker would occasionally assign personal injury claims to me, which involved requesting and organizing medical records for review by a particular insurance company. Through negotiations, these claims were often resolved without the need of filing a petition with the courts.

The remaining 80% of my practice was litigation in front of a court or tribunal. In September 1999, I immediately began handling court-appointed criminal and juvenile cases. I was also active in Family Law and represented individuals in dissolution and child custody cases. My clients were often lower income.

Humboldt County Attorney (2004 - 2005)

As Humboldt County Attorney I was the prosecutor for all the criminal cases filed in Humboldt County, Iowa. My client was the State of Iowa and the citizens of Humboldt County. Sixty percent of my practice was spent handling criminal cases and thirty percent of my time was spent on juvenile cases. Both areas of law involved appearing before a court or tribunal. The remaining ten percent of my time was spent providing advice to the Humboldt County Board of Supervisors and to the Humboldt County Sheriff's Office and local police departments.

Derek Johnson Law Office (and partnerships) (2005 to 2020)

Starting my own practice was the first time in my career that I truly appreciated my Bachelor's Degree in Business. The knowledge I had obtained in business formation, management, accounting, human resources, and marketing, provided assistance and insight in the formation of my business.

The table below describes the approximate percentage of time I spent in each area of practice:

Area of Law	Percentage of Time
Criminal Law	30%
Juvenile Law	25%
Social Security Disability	20%
Family Law	15%
Committals (Mental Health and Substance Abuse)	5%
Personal Injury	5%

My practice was almost entirely devoted to cases that required an appearance in front of a court or tribunal. There were times that a matter was resolved without the need to file a petition or a complaint, but I would estimate those instances to be less than 1%. The clients of my firm were typically lower to middle income.

Webster County Drug Treatment Court (2019 to 2020)

I was the attorney for Webster County Drug Treatment Court during my final year of private practice. Drug Treatment Court is a substance abuse diversion program designed to assist non-violent offenders with obtaining and maintaining sobriety. Individuals entered the program after they had been sentenced to probation and ordered into the program as a condition of probation. My role was to serve as attorney for the individuals in the program. If a person ended up in jail for violating the rules of Drug Treatment Court then I would assist them by visiting them in the jail to discuss their circumstances with them. I would then present their case to the presiding judge and do my best to advocate for continued placement in the program. During my time with the program, I was able to secure the services of a counselor from Berryhill Mental Health Center to be added to the Webster County Drug Treatment Court Team.

District Associate Judge (2020 to present)

On January 23, 2020, I was appointed by the District Court Judges of District 2B to serve as District Associate Judge. In criminal cases, I preside over all serious misdemeanor, aggravated misdemeanor, and Class D Felony filings in Hamilton, Hardin and Wright County. I preside over all juvenile cases in Hamilton and Wright County. I also decide small claim and simple misdemeanor appeals in all three counties. I have jurisdiction over civil petitions that request damages up to $10,000.

The table below describes the approximate percentage of time I spent in each area of law:

Area of Law	Percentage of Time
Criminal Law	65%
Juvenile Law	25%
Civil Cases (including small claim appeals)	10%

Percentage of litigation in my career that was: Administrative, Civil, and Criminal

Area of Law	Percentage of Time
Administrative	10%
Civil (includes non-delinquency juvenile cases)	45%
Criminal (includes delinquency juvenile cases)	45%

The approximate number of cases or contested matters I tried (rather than settled) in the last 10 years:

Type of Trial	Number of Trials	Number as sole Counsel	Number as Chief Counsel	Number as Associate Counsel
Jury	12	6	5	1
Judge	25	24	1	0

As a District Associate Judge, I have presided over four jury trials.

The approximate number of appeals in which I participated within the last 10 years:

Appellate Court	Number of Appeals	As Sole Counsel	As Chief Counsel	As Associate Counsel
Iowa Supreme Court	1	0	0	1
Iowa Court of Appeals	15	14	0	1

- **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.**

During the last ten years of my law practice, I handled approximately 15 pro bono cases with an average of one to two cases per year. All of my pro bono cases were the result of a court-appointed juvenile case. I assisted parents from juvenile court with obtaining a temporary restricted license, defended them in criminal proceedings, assisted in child

abuse investigations or appeals, and provided assistance to individuals with obtaining child custody and child support orders.

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

  - **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.**

    Title: District Associate Judge of District 2B

    Method of Selection: I was one of three finalists that was selected by the Magistrate Appointing Commissions of Boone, Hamilton, and Hardin County. I was then interviewed by the eleven sitting District Court Judges and was selected to serve as District Associate Judge.

    Periods of Service: I was appointed on January 23, 2020. Every six years I will be on the ballot of every county in District 2B. I must receive more than 50% of the vote in favor of my retention in order to continue to serve. Retirement is mandatory when I attain the age of 72.

    Jurisdiction: In criminal cases, I have jurisdiction over simple misdemeanors, serious misdemeanors, aggravated misdemeanors, and Class D Felonies. In civil cases I have jurisdiction over civil petitions that request damages up to $10,000. I have jurisdiction on all juvenile cases filed under Iowa Chapter 232, which include child in need of assistance and delinquency petitions. I have appellate jurisdiction over small claim and simple misdemeanor cases that were decided in magistrate court.

  - **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.**

    Not applicable.

  - **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.**

    As previously stated, 65% of my time is currently allocated to hearing and deciding criminal cases. Many of those cases present constitutional issues typically involving the 4th, 5th, 6th or 14th Amendment of the United States Constitution.

- **If you have been subject to the reporting requirements of Court Rule 22.10:**

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

      Not applicable.

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

        - **120 days.**

        Not applicable.

        - **180 days.**

        Not applicable.

        - **240 days.**

        Not applicable.

        - **One year.**

        Not applicable.

- **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.

    <u>Significant Legal Matter No. 1:</u>

    a. Tammy Smith v. State of Iowa, Iowa District Court for Humboldt County, Iowa Court of Appeals, and Iowa Supreme Court.

b. Tammy Smith spent approximately four years in prison after a jury convicted her of felony child endangerment. Ms. Smith's child suffered a broken arm while under Ms. Smith's care. At the time of trial, the child was not competent to testify due to developmental delays. While Ms. Smith was in prison, the child's communication skills developed significantly and the child was able to inform a service provider that a drying machine was responsible for the child's broken arm. Ms. Smith had a dryer that was not working properly, if the machine was running and the door was opened, it would not stop spinning. The child stated that he had placed his arm in the machine while it was spinning and the machine caused the injury. As a result of this new evidence, Ms. Smith's conviction was reversed and remanded, she was released from prison and the charges were ultimately dismissed. I was contacted by Dani Eisentrager to serve as co-counsel in a civil action to recover damages for the wrongful conviction of Ms. Smith. This action was filed pursuant to Iowa Chapter 663A. At the trial level, Judge Gary McMinimee held that Ms. Smith did not meet her burden of proof that she was innocent of the offense by clear and convincing evidence. Ms. Smith appealed the decision and I was able to argue Ms. Smith's claim in front of the Iowa Court of Appeals. The Court of Appeals affirmed the lower court's decision however, Judge Vaitheswaran wrote a strong dissent that explained how Ms. Smith had proven she was innocent by clear and convincing evidence. Ms. Smith petitioned for further review by the Iowa Supreme Court and the request was granted and the matter was scheduled for oral arguments. The Supreme Court did not rule in Ms. Smith's favor and Judge McMinimee was affirmed on appeal.
c. The significance of this case is that the Iowa Supreme Court's decision provided the statutory analysis that is used when analyzing whether an individual is a wrongfully convicted person pursuant to Iowa Code Section 663A.1(2).
d. I represented the plaintiff, Tammy Smith.
e. The nature of my participation was conducing the oral arguments before the Iowa Court of Appeals and Iowa Supreme Court.
f. I was involved from approximately October 1, 2011, to April 4, 2014.
g. The petition was unsuccessful and the case was dismissed. The Courts held that Ms. Smith did not prove by clear and convincing evidence that she was a wrongfully convicted person.
h. My co-counsel was Dani Eisentraeger of Eagle Grove, Iowa.
i. The State was represented by Assistant Attorney General William Hill.
j. Judge Gary McMinimee was the presiding District Court Judge at trial. Judge Vogel, Judge Bower, and Judge Vaitheswaran presided over the appeal in the Iowa Court of Appeals. The entire Iowa Supreme Court presided on the final appeal hearing. Justice Wiggins wrote the Supreme Court's decision.

Significant Legal Matter No. 2:

a. In the Interest of A.M. and D.M., Juvenile Division of the Iowa District Court for Webster County, Iowa
b. I was appointed by the Court to serve as guardian ad litem to the two children, A.M. and D.M. At the time of my appointment, both children were residing with their maternal grandmother. The children were thriving and doing well in school. They

were happy and safe. During an appointment at my office, A.M. explained to me that she wanted to continue to reside with her grandmother and she was concerned that they would not be safe if they were returned to the custody of their parents. The mother had recently been released from prison and had a history of substance abuse problems. The father was violent and had issues with substance abuse dependency. A.M. provided me with specific details of incidents where she had to protect her little brother from violence. She explained that it was not unusual for her to grab her younger brother and flee the residence and escape to her grandmother's home. The Department of Human Services was recommending that the parents be given an additional six months to work towards reunification. I agreed with my client's position and explained to A.M. that we would go to court and argue for a permanency order that would place their permanent custody with their grandmother. At the hearing, A.M. testified in front of her parents and detailed to the court the incidents of past violence and drug use within the family home. The Court agreed with our position and entered an order establishing permanency with the grandmother.

c. This case carries a personal significance with me today. I am proud of the work and advocacy I put forward on this case. A.M. is now a mother and is doing well and enjoying life. Her grandmother has informed me that A.M. is an excellent parent. I have talked to A.M. in the last few years and she believes the outcome of this contested permanency hearing set the direction and tone for her adult life.
d. I represented the children, A.M. and D.M.
e. I served as guardian ad litem for the children.
f. I was involved from January 25, 2006, to October 12, 2009.
g. The outcome was a permanency order granting the maternal grandmother custody of both children.
h. I did not have co-counsel.
i. Opposing Counsel was the Webster County Attorney's Office.
j. The presiding judge was the Honorable James McGlynn.

Significant Legal Matter No. 3:

a. State of Iowa v. Bryce Gully, Iowa District Court for Webster County, Iowa
b. Mr. Gully was charged with Robbery in the First Degree and Murder in the First Degree. Mr. Gully was alleged to have displayed a firearm in a threatening manner while involved in an illegal drug transaction. Mr. Gully was accused of demanding money from the other individual. After a brief struggle over the firearm, the weapon discharged and the other person was killed.
c. This case was significant because at the time of the alleged crime, Mr. Gully was fifteen (15) years old. This case started in juvenile court however, the matter was waived to adult court. Knowledge of the two different courts and procedure was important in this case. In juvenile court the rules of procedure provide for a more open policy for discovery. It was important that I secured a discovery order in juvenile court prior to the case being transferred to adult court. The defense consisted mainly of attacking the credibility and accuracy of eye witness testimony. My co-counsel and I were required to review hours of audio and video in order to prepare an effective cross-examination. This case involved issues that were and are continuing

to develop into changes in our law. For example, the Iowa Supreme Court has now ruled that life sentences without parole no longer apply to crimes that were committed by juveniles.

d. I represented the Defendant, Bryce Gully.
e. I was lead counsel.
f. I was involved from September 2008 to May 2009.
g. Mr. Gully was found not guilty of both offenses.
h. My co-counsel was Dani Eisentraeger of Eagle Grove, Iowa.
i. The prosecutors were Ricki Osborne and Jennifer Bonzer.
j. The presiding Judge was the Honorable Allen Goode.

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

The non-litigation work I was performing for Blake Parker Law Office consisted mostly of legal research and writing. During these early years in my career, I was able to advance my abilities in research and writing. These skills have assisted me throughout my career and in my current position.

During the years of 2000 to 2002, I taught several classes for Buena Vista University at the satellite center at Iowa Central Community College located in Fort Dodge, Iowa. I taught Juvenile Justice, Constitutional Law, Criminal Investigations, and Criminal Procedure. As instructor, I had to engage a large group of people in discussions concerning legal cases and issues. As a trial lawyer, I tried over thirty cases and I have always credited my teaching experience with providing me with confidence to speak to jurors and prospective jurors about law and legal issues. In my current position, I call upon these experiences at the beginning of every jury trial when I speak to the prospective juries about jury selection and trial procedure.

- **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.**

I was the Humboldt County Attorney (located at 203 Main Street, Dakota City, Iowa) from April 2004 to May 2005.

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

Not applicable.

- **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.**

  Webster County Bar Association
  Humboldt County Bar Association

- **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.**

  Organization: Freedom Pointe
  Dates: October 1, 2016, to January 23, 2020.
  Purpose: The purpose of Freedom Pointe was to provide a center for individuals who suffer from mental health disabilities the opportunity to participate in various social activities and to engage in a peer-to-peer support system.
  Office held: I served as President of the Board of Directors.

- **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.**

  1. **State of Iowa v. Zebediah Omega Katschke (Hardin County case number OWCR312015) – Ruling on Defendant's Motion to Suppress.** I selected this opinion because the subject matter deals with Iowa Constitutional Law issues. Specifically, the analysis required under State v. Pals, 805 N.W.2d 767 (Iowa 2017), in determining whether consent to search was voluntarily or involuntarily given. When I first started writing this decision it was my intention to deny the motion. I re-examined my thoughts by further research and watching (multiple times) the video of the police encounter with the Defendant. Both sides were well represented and both presented compelling arguments.

  2. **Crutcher v. Ingraham, Carstens, and Marx (Hamilton County case number SCSC019186) – Order on Small Claims Appeal.** I selected this case because it presented jurisdiction issues and property law issues, including the theory of acquiescence and the right to possess and protect property as guaranteed by Article 1, Section 1 of the Iowa Constitution. In my current position, most of the cases before

me are criminal or juvenile. This case presented issues I do not typically see and I enjoyed researching the issues presented.

3. **City of Clarion v. Theodore Smith, Jr. (Wright County case number CLCICI1012726) – Decision on Appeal.** I selected this case because I felt it was a good example of applying facts to the relevant law and issuing a decision. In addition, it is the only decision that has required me to review and cite the Iowa Rules of Professional Conduct.

- **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.**

Not applicable.

OTHER INFORMATION

- **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.**

Not applicable.

- **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.**

Not applicable.

- **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.**

Not applicable.

- **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.**

I was a member of the Iowa State Public Defender's Juvenile Training Program in 2010 to 2011. The program consisted of three days of training in the form of presentations and mock trial training. The program's purpose was to provide effective juvenile law training to newly admitted members of the Iowa State Bar. I presented on

Juvenile Delinquency procedure, cross examination, and opening statements. I presented on four separate occasions with the last program taking place on October 19 - 21, 2011.

- **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 – Derek Johnson
  Snapchat - Derekjayjohnson

- **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.**

  Not applicable.

- **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.**

Name of Reference	Telephone Number	Nature of Relationship
The Honorable Adria Kester, District Court Judge of District 2B	(515) 290-6657	Judge Kester is a colleague that has been supportive of my applications for positions within the judiciary.
The Honorable Paul Ahlers, Judge of the Iowa Court of Appeals	(515) 348-4934	Judge Ahlers held my current position before he was appointed to the Iowa Court of Appeals in November 2019. He has been helpful and insightful as I transitioned into my current position.
The Honorable Amy Moore, District Court Judge of District 2B	(515) 817-3450	Judge Moore is a colleague that has been supportive as well.
The Honorable John Flynn, District Court Judge of District 2B	(515) 230-8944	Judge Flynn was appointed to the bench approximately six months after I was. He was assigned to the Hardin and Hamilton County rotation for the first seven months of his judicial career. During that time,

		Judge Flynn and I became acquainted and communicated often about our cases.
Dani Eisentraeger, Judicial Magistrate of Wright County	(515) 851-2720	Magistrate Eisentraeger and I have been colleagues for the last thirteen years and we have appeared as co-counsel in many cases.

- **Explain why you are seeking this judicial position.**

Prior to becoming a district associate judge, my law practice consisted mostly of criminal, juvenile, and social security cases. When I became a judge, I thought the transition went smoothly considering I was learning to be a judge while presiding over areas of law that I had the most experience in. I honestly thought I obtained my career goal and that I would likely retire in this position because I could remain within my "comfort zone" so to speak. This did not turn out to be the case.

In January 2020, just prior to my appointment, the Iowa Legislature passed Iowa Chapter 232D, the "Iowa Minor Guardianship Proceeding Act", which gave exclusive jurisdiction of guardianships of minors to the district associate court. In my nearly twenty (20) years of law practice, I had never filed a petition for guardianship and knew very little about this area of law. I was now in a position where I had to preside over an area of law that I was not familiar with, coupled with the fact that there was a new law governing these types of proceedings.

I approached this situation by first reading Iowa Chapter 232D and familiarizing myself with the statutory requirements of forming a guardianship and the requirements to maintain a guardianship. I reached out to colleagues and we discussed the new law and educated each other as to different aspects and examples we had each encountered. I developed my own set of forms that I now use when dealing with 232D guardianships. When the time came that I had to preside over a contested trial on a 232D guardianship I was well prepared to apply the applicable law to the evidence presented at trial. The experience of learning a new area of law and then applying that knowledge in a trial was exciting and rewarding. I compare this experience to my first jury trial. It was a lot of work to get there, but when it was done, I felt excited, satisfied, and ready to do it again.

I check my docket daily and hope to see a filing that requires me to explore an area of law that takes me down the "rabbit hole" of legal research that I do not encounter on a day-to-day basis. I am not afraid of work. I enjoy going into the courtroom to hear evidence, research the applicable law, and decide a case. The jurisdiction of the District Court will provide me with ample opportunity to research and write on a wide range of legal cases and issues.

- **Explain how your appointment would enhance the court.**

I am currently a full-time judge that maintains a large docket of cases spread over three different counties. I have been able to maintain the scheduling of all my cases and issue rulings within a timely manner. I have shown that I can competently perform the duties of a judge.

In addition, I am courteous and respectful to the people I work with, including court personnel, the attorneys, and the individuals that appear in my court as a party or witness. I am not a judge who yells at attorneys or court personnel for a poor performance of duties. Instead, I am a judge who acknowledges work well-done and when appropriate, I will state so on the record. As an attorney, who was probably spread too thin at times by having to be at multiple courthouses at one time, I know that the practice of law is one of the most stressful ways to make a living. As a judge, I do my best to not add to that stress. It is always my goal to create an environment where attorneys do not feel that they will be scorned due to presenting their issues and arguments or by demanding that their client's case proceeds to hearing or trial. At the same time, I possess the firmness to inform attorneys of my expectations in the courtroom. I believe the attorneys who practice in front of me enjoy the temperament I display as a judge and as a result, the attorneys are able to present the case they desire without fear of repercussion.

In my opinion, temperament and legal ability are the two most important attributes a judge can possess. Those are traits and abilities I will continue to possess as I transition from District Associate Court to District Court.

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

I was born and raised in Peoria, Illinois. I lived with my father and spent my holiday breaks and summers with my mother in Iowa. At the age of 17, my father's employer, Caterpillar Tractor Company, transferred him to Geneva, Switzerland. As a result, I moved to Clarion, Iowa, with my mother to finish my last year of high school. It was always my intention to return to Illinois, but I fell in love with Iowa and my plans changed. I chose to obtain all of my higher education in Iowa. I raised my son in Iowa. I started and maintained a successful law practice in Iowa. I am now a public servant of Iowans and I would be honored to continue my service to Iowans as a District Court Judge.

Signature: _____

Date: September 20, 2021

IN THE IOWA DISTRICT COURT FOR HARDIN COUNTY

STATE OF IOWA, Plaintiff, v. ZEBEDIAH OMEGA KATSCHKE, Defendant.	OWCR312015 **RULING ON DEFENDANT'S MOTION TO SUPPRESS**

On June 23, 2020, the Court held a video conference hearing on the Defendant's Motion to Suppress. The Defendant and his attorney, David Johnson, appeared and the State appeared through Hardin County Attorney, Darrell Meyer. The parties waived the right to an in-person hearing and consented to the Court conducting the proceedings through video conference. The Court only heard testimony from Iowa Falls Police Officer, Blake Munro. Prior to the hearing, the Court received and reviewed a copy of the video evidence.

After reviewing the video evidence and hearing the testimony and arguments of counsel the Court is prepared to rule.

On October 16, 2019, Defendant was traveling west on Washington Avenue in Iowa Falls, Iowa. Officer Blake Munro observed Defendant's vehicle and noticed that the passenger side taillight was cracked. After turning on the emergency overhead lights, Officer Munro pursued Defendant's vehicle. Shortly thereafter, Defendant turned right, traveled into an alley and parked behind a house located at 1220 Washington Avenue. Officer Munro pulled in behind Defendant.

Defendant exited his vehicle and stared in the direction of Officer Munro. Abruptly turning around, Defendant re-entered his vehicle. Officer Munro testified that he believed that he had ordered Defendant to get back into his vehicle.[1] Officer Munro turned on a spotlight and pointed it at the driver's side back window. While Officer Munro was approaching Defendant's vehicle, Defendant asked if he had done something wrong. Officer Munro told Defendant he had not, but that he had a cracked taillight and that was why

[1] The video shows this interaction, however there is no audio. The audio begins at approximately 1:30 of the video.

Defendant was stopped. Defendant explained that the cracked taillight was a result of his vehicle being struck from behind and that he had been driving with a cracked taillight "forever." Officer Munro replied, "Well, that is why I stopped you." Officer Munro asked Defendant if he lived at the residence that he had parked at. Defendant indicated it was the home of one of his passengers. Officer Munro acknowledged the passenger and said "hello" and called him by his first name, "Taivin." A few jokes were exchanged between Officer Munro and the occupants of the vehicle. Officer Munro said to Taivin, "Well, I was just… I just stopped you that other night, a few weeks ago, wasn't too long ago." Taivin informed the officer that he had court the next day as a result of the previous encounter. Defendant joined the conversation by stating that he had court the next day as well. When asked why he had court the next day, Defendant stated that he was a "dumbass last time." Officer Munro quickly replied, "Oh you were the one that ran." Defendant acknowledged he was and provided an explanation that he was scared and did not realize he had ran from law enforcement.

Directing his attention back to Taivin, Officer Munro confirmed with Taivin that he did in fact live at the residence on Washington Avenue. Officer Munro asked for the address, Taivin provided it. As he began talking into his radio, Officer Munro walked to the rear of the vehicle and looked in the back rear window and into the bed of the truck with his flashlight. He returned to the front of Defendant's vehicle and provided the address to police dispatch. Officer Munro requested Defendant's license, insurance and registration. While Defendant searched for the requested documents, Officer Munro put his head into the open window of the vehicle and looked into the interior of Defendant's vehicle. The documents were provided and Officer Munro stated, "You want to step out and talk to me for a second." Defendant said, "Yeah" and exited the vehicle. Addressing the passengers, Officer Munro said, "Sit tight for me guys, alright." Taivin confirmed that they would stay put.

Defendant followed Officer Munro to the rear of his vehicle. Officer Munro asked Defendant when he last used marijuana. Defendant answered that he had not smoked that day and that he did not have money to buy marijuana. Officer Munro replied, "Only reason I ask is that your eyes look a little red and bloodshot." Working long hours and getting up

early was the explanation provided by Defendant. Officer Munro replied, "Okay. Alright, that's cool, man, that's cool." Officer Munro then asked if there was anything illegal in Defendant's vehicle. Defendant said there was not. As the documents were being handed back to Defendant, Officer Munro told him he was "good to go." Immediately after the last document was handed to Defendant, Officer Munro asked, "Do you mind, if I check quick?" In response, Defendant said, "Yeah, go for it."

Officer Munro informed Defendant that he had to pat him down for weapons. Defendant was patted-down. Defendant was told to stay at the rear of his vehicle. Taivin was then told to exit first and the other passenger, Rachel, was told to remain in the vehicle. Like the Defendant, Taivin was subject to a pat-down search. Rachel was next to exit the vehicle. Officer Munro asked permission to check her pockets for weapons. Rachel said, "Go ahead." After the searching of her pockets, Officer Munro noticed that she possessed a bag. The options given to her were to either place the bag back in the vehicle or the bag would be searched prior to the search of the vehicle. At that time, Taivin's mother approached and informed the officer that Taivin was her son and the residence was her home. Officer Munro requested that she stand at the back of a different vehicle that was parked in the drive way and told her that she could remain and observe.

The search of Defendant's vehicle began approximately seven minutes after Defendant stated "yeah, go for it." A marijuana pipe was found in Defendant's vehicle. Defendant was arrested and taken to the police station where Officer Munro invoked implied consent and requested a urine sample from Defendant. The sample was tested and Defendant was charged with Operating While Intoxicated, First Offense.

Defendant argues that the consent provided to Officer Munro to allow the search of his vehicle was not voluntary under State v. Pals, 805 N.W.2d 767 (Iowa 2011). The State contends the search conducted by Officer Munro was the result of a valid consent given by Defendant.

The Fourth Amendment of the U. S. Constitution safeguards "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures." Atwater v. City of Lago Vista, 532 U.S. 318, 326 (2001). The protections afforded by the Fourth Amendment are enforceable against the states under the Fourteenth Amendment.

Mapp v. Ohio, 367 U.S. 643, 655 (1961). The language, purpose, and scope of Section 8, Article I of the Iowa Constitution are nearly identical to that of the Fourth Amendment.

Article I, section 8 of the Iowa Constitution provides,

> The right of the people to be secure in their persons, houses, papers and effects, against unreasonable seizures and searches shall not be violated; and no warrant shall issue but on probable cause, supported by oath or affirmation, particularly describing the place to be searched, and the persons and things to be seized.

Iowa Const. art. I, § 8. "Evidence obtained in violation of this provision is inadmissible." State v. Carter, 696 N.W.2d 31, 37 (Iowa 2005) (quoting State v. Reinders, 690 N.W.2d 78, 81 (Iowa 2004)). *See* State v. Pals, 805 N.W.2d 767 (Iowa 2011) (analyzing voluntariness of consent to search under Section 8, Article I of Iowa Constitution rather than less stringent standard used by federal courts).

Article I, section 8 of the Iowa Constitution is an independent source of legal rights and governing principles. Our courts jealously guard their duty to independently interpret the protections it affords, notwithstanding its similarity to the Fourth Amendment to the United States Constitution. State v. Brooks, 888 N.W.2d 406, 410–11 (Iowa 2016); State v. Olsen, 293 N.W.2d 216, 219–20 (Iowa 1980); State ex rel. Kuble, 238 Iowa at 1066, 28 N.W.2d at 508. State v. Storm, 898 N.W.2d 140, 159 (Iowa 2017).

Warrantless searches and seizures are per se unreasonable unless one of several carefully drawn exceptions to the warrant requirement applies. State v. Lewis, 675 N.W.2d 516, 522 (Iowa 2004); State v. Kinkead, 570 N.W.2d 97, 100 (Iowa 1997). To establish the constitutionality of a warrantless search or seizure, the State must prove by a preponderance of the evidence that a recognized exception to the warrant requirement applies. State v. Simmons, 714 N.W.2d 264, 272 (Iowa 2006); State v. Pettijohn, 899 N.W.2d 1, 14 (Iowa 2017).

A search conducted by consent is one such exception. State v. McConnelee, 690 N.W.2d 27, 30 (Iowa 2004). A warrantless search and seizure is proper when performed pursuant to a voluntary consent. State v. Myer, 441 N.W.2d 762 (Iowa 1989). "Evidence obtained as a result of free and voluntary consent to an otherwise illegal search is admissible in evidence." State v. King, 191 N.W.2d 650 (Iowa 1971).

Consent may be express or implied. State v. Reinier, 628 N.W.2d 460, 465 (Iowa 2001). Consent can be found in gestures or other nonverbal conduct. *Id*. at 467. The scope of the consent is determined by what a "typical reasonable person [would] have understood by the

exchange between the officer and the suspect." McConnelee, 690 N.W.2d at 30-31 *quoting* Florida v. Jimeno, 500 U.S. 248, 251 (1991). For consent to be valid, it must be given by the accused voluntarily. Pals, 805 N.W.2d at 782-783 (Iowa 2011). In evaluating whether a person has given consent voluntarily, a court is to consider the totality of the circumstances. Id.

Consent search review under Article I, Section 8 of the Iowa Constitution, requires an enhanced *Schneckloth* "with teeth" totality of the circumstances analysis to determine if consent to search is given voluntarily. State v. Pals, 805 N.W.2d 767 (Iowa 10/28/11) (holding that a consent to search after vehicle stop was involuntary when officer gave subject a pat-down search, was detained in police car, was not informed by officer he was free to leave and to refuse consent without retaliation, and not informed that officer had concluded business that prompted the stop).

Voluntariness is a question of fact to be determined from all the circumstances of the situation. Schneckloth v. Bustamonte, 412 U.S. 218, 93 S.Ct. 2041, 36 L.Ed.2d 854 (1973). "The question of voluntariness requires the consideration of many factors, although no factor itself may be determinative." State v. Lane, 726 N.W.2d 371, 378 (Iowa 2007). In assessing whether a defendant's consent to a warrantless search was voluntary, factors to be considered include, but are not limited to,

> personal characteristics of the defendant, such as age, education, intelligence, sobriety, and experience with the law; and features of the context in which the consent was given, such as the length of detention or questioning, the substance of any discussion between the defendant and police preceding the consent, whether the defendant was free to leave or was subject to restraint, and whether the defendant's contemporaneous reaction to the search was consistent with consent.

United States v. Jones, 254 F.3d 692, 696 (8th Cir. 2001); *see* Pals, 805 N.W.2d at 786; Lane, 726 N.W.2d at 378. "This test balances the competing interests of legitimate and effective police practices against our society's deep fundamental belief that the criminal law cannot be used unfairly." State v. Lowe, 812 N.W.2d 554, 572 (Iowa 2012); State v. Reinier, 628 N.W.2d 460, 465 (Iowa 2001); State v. Pettijohn, 899 N.W.2d 1, 32 (Iowa 2017).

In analyzing the totality of circumstances to determine whether Defendant's consent was voluntary and uncoerced, a number of facts and factors must be considered. United States v. Jones, 254 F.3d 692, 696 (8th Cir. 2001); *see* Pals, 805 N.W.2d at 786; Lane, 726 N.W.2d at 378; State v. Pettijohn, 899 N.W.2d 1, 32 (Iowa 2017).

One issue in the analysis that must be examined is whether Defendant was free to leave. During the entire encounter, Officer Munro's overhead emergency lights were on. The activation and use of emergency lights invokes police authority and implies a police command to stop and remain. State v. Wilkes, 756 N.W.2d 838, 844 (Iowa 2008). At the hearing, Officer Munro was questioned about the events that occurred shortly after Defendant provided consent:

Q: And you told him that you had to pat him down for weapons?
A: Yes.
Q: And the emergency lights are still shining on everything that's happening at this point?
A: Yes.
Q: And then you asked Zebediah if he just wanted to hang tight near the bumper; correct?
A: Yes.
Q: That was in the form of a question, but it really wasn't a question, was it? It was kind of a directive, wasn't it?
A: It could have been, yes.
Q: If he had not hung tight near his bumper that would have been something you would have taken action on?
A: What do you mean by action?
Q: If he had walked away, you would have stopped him, wouldn't you have?
A: If he was walking away from the traffic stop, yes, I would have.

The answers provided by Officer Munro clearly indicate that after Officer Munro stated, "you are good to go," that Defendant was still subject to the traffic stop and was still expected to stay near the bumper of Defendant's vehicle. At the hearing Officer Munro was asked what he meant by "you are good to go." He answered:

> [I] think I meant good to go, as in here is your license. Here is your insurance. I did not mean he was free to leave. It just kind of rolled off my tongue. Here is your license, here is your insurance back, so you can have these back.

Although seizure of an individual when he or she consents to a warrantless search is not necessarily determinative under the totality-of-the-circumstances test, the potential for coercion exists even in seemingly innocuous circumstances involving seizures. *See* Baldon, 829 N.W.2d at 797–98; Pals, 805 N.W.2d at 782–83. "In other words, coercion can easily find its way into human interaction when detention is involved." Baldon, 829 N.W.2d at 798. For this reason, our

case law acknowledges that brief seizures such as traffic stops constitute an "inherently coercive" setting. Pals, 805 N.W.2d at 783; *see also* Baldon, 829 N.W.2d at 798; Lowe, 812 N.W.2d at 575 n.11. Such a setting is inherently coercive because it is one in which "police plainly have the upper hand and are exerting authority in a fashion that makes it likely that a citizen would not feel free to decline to give consent for a search." Pals, 805 N.W.2d at 783; State v. Pettijohn, 899 N.W.2d 1, 32–33 (Iowa 2017). The Court finds this factor, Defendant not being free to leave, was readily apparent during this encounter and weighs against finding Defendant's consent was voluntary.

Whether Defendant was informed of his right to refuse Officer Munro's request to search must also be considered. Although the subject's knowledge of a right to refuse is a factor to be taken into account, the prosecution is not required to demonstrate such knowledge as a prerequisite to establishing a voluntary consent. Schneckloth v. Bustamonte, 412 U.S. 218, 93 S.Ct. 2041, 36 L.Ed.2d 854 (1973) (knowledge of right to refuse to permit consent search not indispensable to valid consent); State v. Lamp, 322 N.W.2d 48 (Iowa 1982); State v. Ege, 274 N.W.2d 350 (Iowa 1979). State v. Prusha, 874 N.W.2d 627 (Iowa 2016) (no duty to advise of right to refuse search under Fourth Amendment). Nonetheless, under Article I, Sec. 8 of the Iowa Constitution, whether an officer has informed a subject of the right to refuse consent is relevant on the question of voluntariness of consent under the totality of the circumstances analysis. State v. Pals, 805 N.W.2d 767 (Iowa 2017). Defendant was not informed of his right to refuse the requested search and there is nothing to suggest that Defendant had knowledge of his right to refuse the requested search. This factor weighs against finding Defendant's consent was voluntary.

The personal characteristics of the Defendant must also be examined. Defendant was 20 years old at the time of the stop, he has completed high school and can read and understand the English language.[2] The testimony and evidence made reference to a previous incident when Defendant ran from police officers. There was nothing to suggest that this previous encounter with law enforcement provided Defendant with any knowledge that he had a right to refuse a request to search by law enforcement. When Defendant was informed that he was going to jail, as a result of the marijuana pipe being discovered, he responded by crying and stating he was

[2] Defendant's written arraignment, that was filed on January 13, 2020, provided Defendant's age, level education and a statement that Defendant can read and understand the English language.

going to kill himself. The Court believes that a person familiar with the criminal justice would not respond in such a way when being charged with a simple misdemeanor that, if convicted, typically results in a small fine. Of course, such a statement may be the product of emotional or mental health problems or simple immaturity. Either way, the Court believes that the personal characteristics of Defendant weigh against finding his consent was voluntary.

Additional factors for consideration include the context in which the consent was given, such as the length of detention or questioning, the substance of any discussion between the defendant and police preceding the consent (i.e., the timing of the consent). The consent to search Defendant's vehicle occurred approximately four minutes from the time Officer Munro activated his emergency lights. Officer Munro fully explained the basis of the stop within the first twenty-five seconds of his interaction with Defendant. After the basis for the stop was explained, Officer Munro spoke with Defendant and the passengers about random topics, such as attending court the next day and the address of Taivin's home. Officer Munro paused the conversation for a brief period in order to call in Taivin's address to dispatch and to do a quick outside search of Defendant's vehicle. After a minute and forty-five seconds of discussion, Officer Munro requested Defendant to produce his license, insurance, and registration. Officer Munro used his flashlight and looked at the documents for approximately two seconds and then inquired about Defendant's marijuana use. A seizure arising from a traffic violation sanctions the police to investigate only "that violation." *See* Rodriguez v. United States, 135 S. Ct. 1609, 1614 (2015). Such a seizure is more akin to a Terry stop than a formal arrest. *See* Knowles v. Iowa, 525 U.S. 113, 117 (1998) (*citing* Berkemer v. McCarty, 468 U.S. 420, 439 (1984) (*citing* Terry v. Ohio, 392 U.S. 1 (1968))). An officer "may conduct certain unrelated [license and warrant] checks during an otherwise lawful traffic stop" but "may not do so in a way that prolongs the stop" without the reasonable suspicion required to detain an individual. In re Pardee, 872 N.W.2d 384, 393 (Iowa 2015) (*quoting* Rodriguez, 135 S.Ct. at 1615). As mentioned previously, the basis for the stop was fully explained to Defendant within the first twenty-five seconds of the conversation between Officer Munro and Defendant. The issue of Defendant's cracked tail light was never brought up again, instead the stop and length of detention was prolonged without reasonable suspicion to do so.[3] These factors weigh against a finding Defendant's consent was voluntary.

[3] Reasonable suspicion and the required analysis is discussed at greater length starting on page 11 of this ruling.

The Court observed that Defendant's contemporaneous reaction to the requested search appeared more along the lines of cooperation and acquiescence to authority as opposed to voluntary consent. This finding is consistent with the record herein showing that Defendant was cooperative and compliant throughout the entire encounter. Officer Munro testified that he asked questions and gave direct commands to Defendant during their encounter. When Defendant first exited his vehicle, Officer Munro instructed him to get back in the vehicle and Defendant complied. Defendant was instructed to produce insurance, license and registration, and Defendant complied. Defendant was asked to exit the vehicle and stand at the rear of the vehicle, and Defendant complied. Defendant was asked if Officer Munro could search Defendant's vehicle and Defendant complied. In viewing the video, the Court noted that Defendant's response was instant and without pause or delay. Defendant did not give any thought in his decision to waive his Constitutional right to refuse a requested search by law enforcement. The Defendant's contemporaneous reaction weighs against a finding that Defendant's consent was voluntary.

The Iowa Supreme Court in Pals noted four specific factors that were present when finding that the consent provided in Pals was not voluntary.

First, Pals was subject to a pat-down search prior to being detained in a police cruiser, despite the fact that the officer had no reason to believe Pals was armed and dangerous. In this case, Defendant was subject to a pat-down search as well, however the pat-down occurred after Defendant provided consent, but prior to the search of Defendant's vehicle. Officer Munro told Defendant he was "good to go" and then immediately requested consent. After Defendant said, "yeah go for it", Defendant began walking towards his vehicle. Officer Munro quickly stated, "You want to step back here for me", and directed Defendant to stand near the back of Defendant's vehicle. Defendant immediately changed course, turned around and went to the location as directed. Upon reaching the location, Defendant was informed that Officer Munro would have to pat him down for weapons. There was nothing to suggest that Defendant presented any type of danger to Officer Munro.[4] Though the pat down occurred after consent

[4] In Terry v. Ohio, 392 U.S. 1, 88 S.Ct. 1868, 20 L.Ed.2d 889 (1968), the Supreme Court held that an officer may make a protective, warrantless search of a person when the officer, pointing to specific and articulable facts, reasonably believes under all the circumstances that the suspicious person presents a danger to the officer or to others.

was given, the non-consensual encounter provides additional proof that Defendant was not a willing participant in a voluntary encounter with law enforcement, instead Defendant was simply cooperating and acquiescing to police authority.

The second factor discussed in Pals was that Pals was detained in a police vehicle as opposed to a voluntary encounter in a public area or an encounter on the threshold of one's home. Instead, Pals was in a police car parked on a public highway. In this case, Defendant was not in a police car, however he was standing exactly where Officer Munro directed him to stand. He was not free to walk around. After he was told he was "good to go", he tried to walk away, but was quickly redirected. When the encounter began, Defendant was sitting in his vehicle with his passengers. Once he was ordered out of the vehicle and separated from his passengers, he was then requested to give consent to search. Defendant was not the subject of a voluntary encounter with law enforcement in a public area or at the threshold of his own home. In this setting, Officer Munro plainly had the upper hand and was exerting authority in a fashion that a citizen would not feel free to decline consent for a search even though the search is unrelated to the rationale of the original stop, a cracked taillight.

The third factor in Pals was that Pals was never advised he was free to leave or that he could voluntarily refuse consent without retaliation. Like Pals, Defendant was never told he was free to leave. Officer Munro made it clear in his testimony that "good to go", did not mean he could leave. Defendant was never informed he could refuse to give consent to search. The lack of any statement that Defendant was free to leave or could decline consent to search is a strong factor against finding that the consent to search was voluntary. Pals at 783.

The fourth factor in Pals was that Pals was never told that the police officer had concluded the business related to the stop at the time he was asked for consent. In this case, Officer Munro finished discussing the taillight within the first twenty-five seconds of speaking with Defendant. Officer Munro never told Defendant that the stop was over. Officer Munro's emergency lights were never turned off and Defendant was never told whether he was going to receive a ticket or a warning for the cracked taillight. "The lack of closure of the original purpose of the stop makes the request for consent more threatening." Pals at 783, *citing* Brown v, State, 182 P.2d 624, 631 (Alaska Ct.App.2008) (noting motorists have a "strong interest in catering to the officer's wishes until the officer announces [his or her] decision whether to issue a citation or only a warning").

Based upon the Court's examination of the totality of the circumstances and the four factors discussed in Pals, the Court finds that Defendant's consent to search his vehicle was not voluntary. This exception to the warrant requirement cannot serve as a basis for the lawful seizure of evidence in this case.

The State argues, with or without the search, Officer Munro had reasonable grounds to invoke implied consent. Having found that Defendant's consent was obtained in violation of Article I, Section 8, of the Iowa Constitution, the Court must determine whether there were reasonable grounds to invoke implied consent without the search.

The search that occurred resulted in the discovery of a marijuana pipe which then led to Defendant's arrest. Without the search, there would not have been an arrest of Defendant, therefore, the Court must determine whether grounds existed to seize the Defendant for further investigation for the offense of operating while intoxicated.

The State argues that Officer Munro made observations that provided reasonable suspicion that Defendant was operating while under the influence. To prove reasonable suspicion as a basis to search or seize, the State must prove by a preponderance of the evidence that the officer had specific and articulable facts, which taken together with rational inferences from those facts, to reasonably believe criminal activity has occurred. State v. Tague, 676 N.W.2d 197, 204 (Iowa 2004). "Mere suspicion, curiosity, or hunch of criminal activity is not enough." Id. (*citing* State v. Kreps, 650 N.W.2d 636, 641 (Iowa 2002). In its resistance, the State cites Officer Munro's observations of the Defendant turning into an alley and stopping in an erratic manner as reasonable suspicion that Defendant was operating while intoxicated. At the hearing, Officer Munro was questioned about the manner in which Defendant operated his vehicle:

Q: There was nothing about the manner in which that vehicle was being driven in and of itself to give you reason to believe the operator was intoxicated. Isn't that true?

A: Not solely on the way the vehicle was driven and parked, no.

Q: The only reason you stopped that vehicle was there was white light coming out of a red taillight lens; isn't that right?

A: A cracked taillight lens, yes.

Q: That was the only reason for the stop, yes?

A: Initially, yes.

Q: What do you mean initially?

A: That was the initial reason for the stop.

Q: And the only reason for the stop?
A: Yes.

Officer Munro's above observations do not provide any rational inference that the vehicle was being operated by an individual under the influence of alcohol or other drug.

The State alleges that Officer Munro had reasonable grounds to believe Defendant was under the influence of a controlled substances because Defendant and the passengers were known to be users of controlled substances by Officer Munro. At the hearing, Officer Munro was questioned on this issue:

Q: Can you give me each and every reason why you believe that he [Defendant] is suspected of using drugs in the past?
A: I can't say specifically.
Q: Can you say in general?
A: In general there is – I guess I can't really say exactly how that knowledge is – perhaps other law enforcement officers have given me that knowledge. I guess I'm not really quite sure.
Q: Well, I believe you testified on direct that you had reason to believe that he was involved in drug usage. Was that your testimony?
A: Yes.
Q: Okay. So give me each and every reason that you had to believe that he had been involved in drug offenses in the past?
A: I can't give you any specifically.
Q: So you don't have any?
A: Correct.

There are no specific and articulable facts contained in the above testimony that provide any evidence of Defendant's alleged past drug usage.

The State also cites Officer Munro's observations of the Defendant. Those observations include nervousness and excessive talking, red and bloodshot eyes, and Defendant's statement that he has not used marijuana that day. At the hearing, Officer Munro was questioned about the Defendant's appearance:

Q: Did you observe anything about the appearance of the Defendant that would support an investigation for OWI?
A: Yes.
Q: What was that?

A: I noticed the Defendant's eyes appeared to be red and bloodshot.
Q: And is that indicative of alcohol or controlled substance or could be either?
A: Yes, could be either.
Q: Anything else you observed about the Defendant's behavior?
A: The Defendant appeared to be a little nervous and somewhat quite talkative.
Q: And based on your training and experience, what does that indicate to you?
A: Indicates possible impairment.

The Defendant's nervousness and excessive talking is conduct that is typical of any motorist who is pulled over and approached by law enforcement. "Many motorists slow down, decline to make eye contact, and get nervous when a state trooper draws near." In re Pardee, 872 N.W.2d 384, 394 (Iowa 2015) *referring to* United States v. Guerrero, 374 F.3d 584, 590 (8th Cir.2004) (noting that nervousness during a traffic stop is of "limited significance").

Officer Munro asked Defendant when he last used marijuana. Defendant answered that he had not used marijuana that day. The Court understands that such an answer could be construed as an admission that the Defendant may be a person who uses marijuana, however, such a statement cannot be construed as an admission that Defendant, on that evening, was operating a vehicle while under the influence of marijuana. Officer Munro told Defendant the only reason he asked about his last marijuana use was because Defendant's eyes appeared to be a "little red and bloodshot." Officer Munro testified and agreed that red eyes can be caused by working long hours or getting up early and staying up late.

As noted above, Officer's Munro testified, that based on his training and experience, his observations, as a whole, allowed him to reach the conclusion that defendant was possibly impaired. The conclusion reached is nothing more than mere suspicion and does not provide a reasonable basis or belief that Defendant was operating while under the influence of alcohol or another drug. If the search would not have occurred, Officer Munro would not have had reasonable suspicion to seize the Defendant for further investigation.

IT IS, THEREFORE, ORDERED that Defendant's motion seeking to suppress evidence is granted. All evidence obtained after Defendant provided consent to search to Officer Munro is suppressed as having been obtained in violation of Defendant's rights to be free from unreasonable searches and seizures as secured by Article I, Section 8, of the Iowa

Constitution. The evidence that is suppressed includes any items discovered in Defendant's vehicle as a result of Officer Munro's search, all evidence obtained after Defendant was arrested for Drug Paraphernalia and the results of and requests for all chemical tests, field sobriety tests or other tests obtained via the implied consent procedure invoked by law enforcement.

IT IS FURTHER ORDERED that A Pretrial Conference shall be held on **September 15, 2020, at 9:00 a.m.,** in the courtroom of the Hardin County Courthouse, Eldora, Iowa. The Defendant shall appear at the Pretrial Conference unless a Report of Pretrial Conference was filed prior to the scheduled date and time of Pretrial Conference.

IT IS FURTHER ORDERED that a Jury trial shall be held on **October 1, 2020, starting at 8:30 a.m.** in the courtroom of the Hardin County Courthouse, Eldora, Iowa. Defendant and counsel for the parties shall personally appear for trial.

Clerk Shall Furnish Copies To:
County Attorney
Defense Counsel: David Johnson

IN THE IOWA DISTRICT COURT FOR HAMILTON COUNTY

JENNIFER R. CRUTCHER, Plaintiff, v. DALE INGRAHAM, DAWN CARSTENS and JONUS MARX Defendants.	SCSC019186 **ORDER ON SMALL CLAIMS APPEAL**

PROCEDURAL AND FACTUAL BACKGROUND

On July 26, 2019, Plaintiff filed a small claims Petition for Money Judgment against Defendants Dale Ingraham, Dawn Carstens and Jonus Marx. The Plaintiff was seeking $6,500 in damages against the Defendants for removal and damage to Plaintiff's property, selling or giving away Plaintiff's property, and trespass and harassment. On August 19, 2019, Stephen Terrill, Attorney for the Defendants, filed an answer denying Plaintiff's claim and filed a counterclaim seeking damages from the Plaintiff in the amount of $6,500 for damages to the Carsten's property, trespass and harassment, and loss of enjoyment of life to Carstens, Ingraham and Marx.

The trial was held before Magistrate William Thatcher on December 4, 2019. The evidence established that Plaintiff owns the home located at 825 Crestview Drive, Webster City, Iowa. Defendant Dawn Carstens is the Plaintiff's next-door neighbor and resides at 823 Crestview Drive, Webster City, Iowa. The previous homeowner of 825 Crestview Drive, Todd Staely, testified at trial that he erected the fence between the two properties in 2002 or 2003. When the fence was built a portion of it was unintentionally placed on the property belonging to Defendant Carstens. The encroachment was not done for the purpose of adversely taking possession of the land belonging to Defendant Carstens.

On June 25, 2018, Defendant Carstens provided notice to Plaintiff that the fence was on Defendant Carsten's property and requested the fence be removed. Pursuant to Iowa Code Section 614.17A, Defendant Carstens filed an Affidavit of Possession for Lot 38 (the Carstens' property), with the County Recorder on September 13, 2018. The filed diagram was prepared by Schlotfeldt Engineering Inc. and showed that the Plaintiff's fence was slightly encroaching on Defendant Carstens' property. (*See* Defendant's Exhibit A).

The fence was removed by Defendant Ingraham on April 19, 2019. At trial, Plaintiff provided an estimate from SCL Landscaping that the cost to replace the fence was $2,998.14.

On June 9, 2020, Magistrate Thatcher issued a decision in favor of Plaintiff and entered judgment against Defendant Ingraham for $2998.14, the cost to replace the fence. Magistrate Thatcher dismissed all remaining claims by Plaintiff and counterclaims by Defendant.

In his decision, Magistrate Thatcher relied upon and quoted the ruling in Tewes v. Pine Lane Farms, Inc., 522 N.W.2d 801 (Iowa 1994), which states:

> [A]ccording to the theory of acquiescence set forth in the Iowa Code, a boundary line may be established by a showing that the two adjoining landowners or their predecessors in title have recognized and acquiesced in a boundary line for a period of ten years. Iowa Code §§ 650.6 and 650.14; *see* Hansen, 224 N.W.2d at 6. Each of the adjoining landowners or their grantors must have knowledge of and consented to the asserted property line as the boundary line. Sille v. Shaffer, 297 N.W.2d 379, 381 (Iowa 1980). "When [such] acquiescence persists for ten years the line becomes the true boundary even though a survey may show otherwise and even though neither party intended to claim more than called for by his deed." Id.; Hansen, 224 N.W.2d at 6.
>
> Acquiescence need not be specifically proven; it may be inferred by the silence or inaction of one party who knows of the boundary line claimed by the other and fails to take steps to dispute it for a ten-year period. Dart v. Thompson, 261 Iowa 237, 241, 154 N.W.2d 82, 84-85 (1967). However, the party seeking to establish a boundary line in accordance with a survey must prove acquiescence by clear evidence. Brown v. McDaniel, 261 Iowa 730, 733, 156 N.W.2d 349, 351 (1968).

Defendant filed a timely notice of appeal on June 26, 2020. On August 26, 2020, a hearing on Defendant's appeal was held. Defendant appeared through attorney Stephen Terill, Plaintiff did not appear.

ISSUES ON APPEAL AND ANALYSIS

ISSUE I: WHETHER MAGISTRATE THATCHER HAD SUBJECT MATTER JURISDICTION TO FIND THAT THE FENCE BECAME THE NEW DIVIDING PROPERTY LINE BY ACQUIESCENCE.

Magistrate Thatcher found that the fence established the new property line by acquiescence and as a result, Defendant was not entitled to take down the fence that was on his property as shown by Defendant's Exhibit A. The effect of the ruling was that the property that was owned by Defendant, as indicated in Exhibit A, is now owned by Plaintiff as a result of possession by acquiescence pursuant to Iowa Code Section 650.6. As noted in the Tewes decision cited above, an action for establishing a boundary line by acquiescence is provided for in Iowa Chapter 650 – Disputed Corners and Boundaries. Iowa Code Section 650.1 states that one or more landowners may bring an action in district court if there is a dispute over the boundary line of the properties. "Either the plaintiff or defendant may, by proper plea, put in issue the fact that certain alleged boundaries or corners are the true one, or that such have been recognized and acquiesced in by the parties or their grantor for a period of ten consecutive years, which issue may be tried before commission is appointed, in the discretion of the court." Iowa Code Section 650.6.

The Defendant argues Magistrate Thatcher lacked jurisdiction under Chapter 650 based upon its reference to "district court." The fact that Iowa Code Section 650.1 states that an action may be brought in "district court" does not alone establish the lower court jurisdiction for this type of proceeding. Iowa Code Section 602.1102 sets forth only three courts that make up the

Iowa judicial branch, they are the Supreme Court, the Court of Appeals, and the District Court. In Wilson v. Iowa Dist. Court, 297 N.W.2d 223, 225 (Iowa 1980), the Court wrote:

> [I]n this case again the parties use the terms 'magistrate court,' 'district associate judge court,' and 'district court.' We again call attention to our unified trial court structure under chapter 602. Aside from the appellate courts, we have only one court in this state, the district court. S 602.1. Within this jurisdiction, a part-time magistrate is the district court, a full-time magistrate is the district court, a district associate judge is the district court, and a district judge, of course, who possesses the court's entire jurisdiction, is the district court."

However, Iowa Code Section 602.6405 does set forth the specific types of cases a magistrate may hear, which include simple misdemeanors, preliminary hearings in criminal cases, county and municipal infractions, and small claims actions. This action was filed as a small claim, therefore the jurisdiction of a small claims action must be examined.

The types of actions that constitute a small claim are provided for in Iowa Code Section 631.1, they include and are limited to:

(1) A civil action for a money judgment of $6,500 or less;
(2) A forcible entry and detainer and detainer action based upon the grounds listed in Iowa Code Section 648.1(1), (2), or (3);
(3) An action of replevin if the value of the property is $6,500 or less;
(4) Motions and orders relating to executions against personal property, including garnishments, where the value of the property or garnished money involved is $6,500 or less;
(5) An action for abandonment of a manufactured or mobile home or personal property pursuant to Iowa Code Section 555B.3, if the money judgment being sought is $6,500 or less;
(6) An action challenging a mechanic's lien that was issued pursuant to Iowa Code Sections 572.24 and 572.32 (May be commenced in small claims court if the amount of the lien is within jurisdictional requirements. Iowa Code Section 572.24);
(7) An action for the collection of taxes brought by a county treasurer pursuant to Iowa Code Sections 445.3 and 445.4, in which the amount in controversy is less than $6,500;

(8) Motions and orders relating to releases of judgment in whole or in part including motions and orders under section 624.23(2)(c) and 624.37, where the amount of the judgment is $6,500 or less.
(9) An action to determine ownership of goods held by pawnbrokers under Iowa Code Section 714.28, regardless of the value of the goods.

Iowa Code Sections 602.6405 and 631.1, do not grant magistrates the jurisdiction to decide whether a disputed property line has been acquiesced to by adjoining landowners pursuant to Iowa Code Section 650.1 and 650.6. Issues under Chapter 650 must be decided by a District Judge.

The finding of Magistrate Thatcher that Plaintiff had established, by clear evidence, that the fence became the new property line by acquiescence, must be deemed void because Magistrate Thatcher lacked subject matter jurisdiction to make such a finding. *See* Matter of J.S., 913N.W.2d 275 (Table); 2018 WL 1099573 (*Unpublished Decision* Iowa Ct.App. February 21, 2018) ("Because the magistrate lacked jurisdiction, the magistrate's order is void." *See* Wilson v. Iowa Dist Ct., 297 N.W.2d 223, 226 (Iowa 1980)).

Without a finding that the fence became the new property line, the evidence established that a portion of the fence was located on the property of the Defendant.

ISSUE II: WHETHER DEFENDANT OWES PLAINTIFF DAMAGES FOR TAKING DOWN A PORTION OF PLAINTIFF'S FENCE THAT WAS LOCATED ON DEFENDANT'S PROPERTY.

Article I, Section I of the Iowa Constitution provides that "all men and women are, by nature, free and equal, and have certain inalienable rights – among which are those of enjoying and defending life and liberty, acquiring, possessing and protecting property, and pursing and obtaining safety and happiness." Property consists not only of the physical land, but also "the rights of use and enjoyment." Liddick v. City of Council Bluffs, 5 N.W.2d 361, 374 (1942).

The evidence showed that Defendant Carstens had the land surveyed and discovered that the fence owned by the Plaintiff was encroaching on Defendant's property. After Defendant provided notice of the encroachment, Plaintiff responded by having an attorney send a letter instructing Defendant to not remove the fence or to enter Plaintiff's property. Plaintiff did not file an action under Iowa Chapter 650 seeking an order declaring that the fence did become the new property line pursuant to possession by acquiescence. Seven month passed since Defendant first provided notice of the encroachment and on April 19, 2019, Defendant Ingraham removed the fence that was on Defendant Carstens' property.

In Krogh v. Clark, 213 N.W.2d 503, 506 (Iowa 1973), the Iowa Supreme Court ruled that a person having the right to use an easement has the right to remove obstructions unlawfully placed thereon, as well as natural obstructions interfering with the use of the easement. In its ruling the Court states, "When plaintiff refused to remove the obstructions, defendants could do so, assuming it could be done peacefully. Id.

In this case, Defendant Carstens had the right to use the property Defendant Carstens owned as described in Defendant's Exhibit A. The Plaintiff's fence was an obstruction on Defendant's property. After Plaintiff received notice of the obstruction, Plaintiff refused to remove the obstruction. Defendants had the right to remove the fence.

IT IS, THEREFORE, ORDERED as follows:

1. The finding in Magistrate Thatcher's June 9, 2020 Order, that the fence in question created the new boundary line between the property of the Plaintiff and Defendant Carstens is hereby deemed void and shall have no legal effect.

2. Defendant Ingraham had the right to remove the fence (obstruction) that was located on Defendant Carstens' property and as such the damage award of $2,998.14 is hereby vacated.
3. Judgment for the Plaintiff is reversed.

IT IS SO ORDERED.

Clerk to send copies to:
Jennifer R. Crutcher
Stephen Terrill

IN THE IOWA DISTRICT COURT FOR WRIGHT COUNTY

CITY OF CLARION, Plaintiff, v. THEODORE SMITH, JR., Defendant.	CLCICI012726 **DECISION ON APPEAL**

This court action was initiated on August 4, 2020, when Officer Theodore Knutson filed a civil infraction against the Defendant. The Defendant was accused of owning a mobile home that constituted an unsafe building as defined by City of Clarion Ordinances 145.03(2) and (3). Defendant was also cited for not having skirting on his trailer as required by Ordinance 146.11. On September 24, 2020, after a non-jury trial, Defendant was found to have violated all three ordinances.

Defendant makes multiple claims as to why each violation should be reversed and dismissed. Defendant first claims that a conflict of interest prohibits the City Attorney, Zachary Chizek, from prosecuting Defendant. The conflict is based upon Mr. Chizek's past representation of Defendant, which was limited to the preparation of a quitclaim deed in 2017. Iowa Rule of Professional Conduct 32:1.9 addresses duties owed by attorneys to former clients. The rule states that a lawyer cannot represent a subsequent client "in the same or a substantially related matter in which that person's interests are materially adverse to the interests of the former client." *Iowa R. Prof'l Conduct 32:1.9(a).* Defendant has not shown that the quitclaim deed in 2017 is in any way related to the alleged city infractions relating to the condition of Defendant's mobile home. Furthermore, Defendant has failed to show that Mr. Chizek gained any confidential information from the representation in 2017 that assisted the City of Clarion in this action. The quitclaim deed of 2017 is unrelated to this matter and a conflict of interest, as alleged by Defendant, does not exist.

In Defendant's brief, Defendant alleges that this matter should be dismissed because the citations were improperly issued by City of Clarion Police Officer Ted Knutson. Defendant's claim is based upon City Ordinance 146.07 which states that the Zoning Officer shall be responsible for the enforcement of violations under chapter 146, as they relate to mobile home

parks. The City correctly states that this issue was not raised at trial. In addition, Clarion Municipal Code Section 4.04 provides that any authorized officer may issue a citation to a person alleged to have committed a municipal infraction. The evidence at trial established that Theodore Knutson was a City of Clarion Police Officer at the time the citation was issued. Defendant's argument was not preserved for appeal, furthermore, the argument lacks merit because Officer Knutson was authorized to issue the citation in this matter.

Defendant's remaining arguments consist of claims that the magistrate's ruling was not supported by substantial evidence. The Court will interpret Defendant's claims as a challenge to the sufficiency of the evidence supporting the finding. The standard of review with regard to challenges to the sufficiency of the evidence supporting a conviction is for correction of errors at law. State v. Bower, 725 N.W.2d 435, 440-41 (Iowa 2006). Findings of fact made by the magistrate are binding on appeal if they are supported by substantial evidence. I.R.CR.P. 2.73(3). A finding of guilt will not be disturbed on appeal if there is substantial evidence to support the finding. State v. Robinson, 859 N.W.2d 464, 467 (Iowa 2015). The reviewing court considers all the evidence in the record and not just the evidence supporting the finding of guilt. Id. The record is viewed in the light most favorable to the State/City. Id. In reviewing challenges to the sufficiency of evidence supporting a guilty verdict, courts consider all of the record evidence viewed in the light most favorable to the State, including all reasonable inferences that may be fairly drawn from the evidence, and the verdict will be upheld if substantial record evidence supports it. State v. Romer, 832 N.W.2d 169, 174 (Iowa 2013).

Defendant was found to have violated Ordinance 145.03(2), which reads: *Manifestly Unsafe. Whenever, for any reason, the building or any portion thereof, is manifestly unsafe for the purpose for which it is being used.* Officer Knutson testified at trial that Defendant's trailer was an unsafe dangerous building "because it was not stable and it was not on anything to keep it stable, it was just laid on the ground." When Officer Knutson was asked how he reached his opinion, he stated that the trailer did not appear to be stable. Webster's Dictionary defines the term "unsafe" as able or likely to cause harm, damage, or loss. An opinion that a trailer appears to not be stable is not substantial evidence that the trailer is unsafe. Officer Knutson further testified that that the trailer had been in that condition of "laying on the ground" for close to five years, however did not cite to any instances or examples in which this "unstable" trailer caused, or was likely to cause, any harm, damage, or loss to any person or property. A finding that

Defendant violated City of Clarion Ordinance is 145.03(2) is not supported by substantial evidence and the finding is reversed.

Defendant was found to have violated Ordinance 145.03(3), which reads: *Inadequate Maintenance. Whenever a building or structure, used or intended to be used for dwelling purposes, because of inadequate maintenance and/or being vacant, any of which depreciates the enjoyment and use of the property in the immediate vicinity to such an extent that it is harmful to the community to which such property is situated or such condition exists. Enforcement action based upon this subsection shall be initiated upon the signed complaint of a landowner owning property within 750 feet of the subject property.* In order to prove a violation of this ordinance the City must prove that Defendant's neighbors are somehow harmed by the condition of Defendant's trailer. Officer Knutson was the only witness called by the City; no one living in the immediate vicinity of Defendant was called to testify. Furthermore, the section requires that an action brought under this ordinance be initiated by a landowner living 750 feet of the Defendant, which did not happen in this case. At trial, Officer Knutson was asked by Defendant if neighbors had complained. Officer Knutson testified that an individual referred to as Mr. Abbott had complained, however it is unclear, based upon the record, as to what Mr. Abbott complained about. Officer Knutson also testified that another person had complained about Defendant's trailer being too close to the property line. There was no evidence presented at trial that anyone's enjoyment of the land in the immediate vicinity of Defendant's trailer was in anyway depreciated or diminished. A finding that Defendant violated City of Clarion Ordinance 145.03(3) is not supported by substantial evidence and the finding is reversed.

Defendant was found to have violated Ordinance 146.11, which provides: *A permanent type material of construction compatible with the design and color of the mobile home shall be installed to enclose the open space between the bottom of the mobile home side and the grade level of the mobile home stand and shall be so installed to provide substantial resistance to heavy winds. Skirting shall be maintained in an attractive manner consistent with the exterior of the mobile home to preserve the appearance of the mobile home and the mobile home park. Sufficient screened ventilating area shall be installed in the skirting to supply the combustion requirements of heating units and ventilating of the mobile home. Provisions shall be made for easy removal of a section large enough to permit access for inspection of the enclosed area under the mobile home and for repair of sewer, water and utility connections.* City's Exhibit 2

consists of photographs that were taken by Officer Knutson on September 17, 2020, the morning of trial. Exhibit 2 clearly shows that Defendant's trailer did not have a skirt as required by City Ordinance 146.11. City's Exhibit 3 is a notice that was provided to Defendant on December 20, 2019. The notice informed Defendant that he was in violation of Ordinance 146.11 and a skirt needed to be installed. The evidence at trial established that Defendant did not request a hearing in front of the City Council to discuss the alleged violation. At trial, Defendant urged that it was unreasonable to require Defendant to install a skirt in December because the ground would be frozen. Defendant relied upon City Ordinance 146.13, which provides that the mobile home park manager "shall notify each occupant that required skirting shall be installed after the ground thaws." The notice was provided to Defendant in December 2019, however the citation was not filed until August 4, 2020, at a time when the ground would have been thawed for several months. Defendant had ample time to either correct the violation or request a meeting with the city as allowed for in the original December 20, 2019, notice. The City of Clarion clearly established that Defendant was in violation of City of Clarion Ordinance 146.11 and the finding is affirmed.

Neither party has challenged the civil penalty that was imposed by Magistrate Eisentrager, therefore, the imposed penalty will not be reviewed.

IT IS ORDERED as follows:

1. That the finding that Defendant violated City of Clarion Ordinances 145.02(2) is hereby REVERSED.
2. That the finding that Defendant violated City of Clarion Ordinances 145.02(3) is hereby REVERSED.
3. That the finding that Defendant violated City of Clarion Ordinance 146.11 is hereby AFFIRMED.
4. Judgment against the Defendant in the amount of $250.00 is hereby AFFIRMED.
5. The City's request that Defendant reimburse the City of Clarion for the legal fees incurred as a result of this appeal is DENIED.
6. The court costs associated with this appeal are assessed to Defendant.

Clerk to send copies to:
City Attorney – Zachary Chizek
Defendant