IOWA DISTRICT COURT FOR STORY COUNTY

STATE OF IOWA, Plaintiff, v. ASHTON CLEMONS, Defendant, UPON DEFENDANT'S MOTION TO SANCTION THE PROSECUTING ATTORNEY, THERON CHRISTENSEN.	Case No. OWCR062790 ORDER FOR SPECIFIC SANCTIONS

On January 29, 2024, a hearing was held to determine specific sanctions to be imposed following an order filed November 29, 2023, finding Mr. Christensen engaged in sanctionable conduct. Mr. Christensen was present with his attorney Mr. Jason Palmer. Mr. Clemons was present with his attorney Mr. Matthew Lindholm.

The matter was presented to the court via exhibits, a brief on behalf of Mr. Christensen and arguments of counsel. Mr. Clemons offered exhibits marked I-1 and J, both of which were admitted without objection. Exhibit I-1 was offered to correct an intended exhibit I offered on October 18, 2023. Exhibit J is a statement of court reporter fees and expenses incurred by Mr. Clemons on August 28, 2023, in the taking of depositions of Officer Shreffler and Dr. Ryan Lappe, a DCI Criminalist. Mr. Lindholm also filed an affidavit of attorney's fees and Mr. Christensen filed a brief. The court has considered the statements and arguments of counsel, the brief, the affidavit, and exhibits.

Mr. Clemons asserts that he incurred unnecessary fees and expenses because of Mr. Christensen's sanctioned conduct. Those fees included attorney fees in the amount of $2,072 and court reporter fees in the amount of $610.27. Mr. Lindholm's affidavit reports hourly fees billed at the rate of $400/hour and that his fees resulting from Mr. Christensen's sanctioned conduct have been calculated below what was actually incurred. Mr. Lindholm also argued that a range of other sanctions could be considered, and that any pecuniary deterrent ordered may fall within a range of possibilities. The court views Mr. Lindholm's arguments in a light favorable to

encouragement of the exercise of the full range of the court's discretion and a recognition on his part that resolution of the issues includes not only the exercise of the court's discretion as directed by existing case law, but the exploration of reasonable recommendations made by both parties.

Mr. Christensen filed a brief asserting a pecuniary deterrent in the amount of $250 would be appropriate. During arguments he too indicated that reason may include an order for as much as $340. His brief included an attachment purporting to show his limited financial standing. Mr. Christensen concedes a sanction would be appropriate but that a pecuniary deterrent is limited to the nature of the sanctioned conduct, the need to deter such conduct and his ability to pay.

The court's November 29, 2023, order concluded Mr. Christensen engaged in sanctionable conduct by filing a frivolous motion in limine (MIL) on August 28, 2023, and that he later moved to dismiss (dismiss or dismissal) the criminal charge to cover up for the investigating officer's failure to utilize his radar unit as he had been trained. The court considers its order of November 29, to have found merit to the allegations that Mr. Christensen engaged in sanctionable conduct. The hearing on January 29, was intended to address the disposition of the sanctioned conduct.

In addressing disposition, the court first considers the dispositional factors relevant to the MIL followed by finding dispositional factors relevant to the dismissal. The court will also make dispositional findings gleaned from the record made on January 29, 2024. In doing so, the court also incorporates by reference its findings and conclusions from the orders filed November 29, 2023, and January 15, 2024, as if fully set forth herein.

Mr. Christensen filed a MIL seeking to exclude exculpatory evidence from trial. His effort was not a matter of first impression, nor was it a good faith argument for the extension, modification, or reversal of existing law. Instead, his MIL sought selective interpretation of only certain sections of Chapter 321J that rendered other sections moot. Additionally, he sought to expand the limitations against use of certain chemical testing by the prosecution to further limit its use by the defendant thus depriving the defendant of the use of exculpatory evidence at trial. As the court has previously found,

the MIL was without factual or legal grounds. Mr. Christensen made no rational or reasonable arguments in his MIL expounding a reasonable argument for the extension or modification of existing law. The MIL was frivolous on its face and frivolous in its purpose and intent.

The sole purpose of Mr. Christensen's MIL was to exclude exculpatory evidence from use by the defendant at trial. The State's own expert DCI Criminalist, Dr. Ryan Lappe, found the exculpatory evidence to be valid. As a result, even the jury would have been deprived of its duty to consider all relevant and material evidence. Consequently, the MIL had the purpose and intent of denying Mr. Clemons a fair trial guaranteed to him by the constitutions of Iowa and United States. In the face of such frivolous action designed to deny his client guarantees of his constitutional rights, Mr. Lindholm was unnecessarily and unjustifiably forced to respond to protect his client's rights. In short, private counsel was forced to stop action taken by Mr. Christensen, in the name and by the authority of the State, to deprive Mr. Clemons of rights affirmatively guaranteed to him by the very State whose agent (Mr. Christensen) was seeking to deprive him of those rights.[1]

Trial of the matter was set for September 19, 2023. The court set Mr. Christensen's MIL for the morning of trial. There were 21 calendar days, but only 14 business days between the date the MIL was filed and the date of trial. Mr. Lindholm took quick action and filed a detailed eleven-page, forty-six paragraph resistance to the MIL. Unlike the MIL, defendant's resistance provided relevant and pointed citations to statutory law, the rules of evidence, and case law. The necessity to quickly draft a fulsome resistance likely required a significant amount of time on the part of defense counsel. However, Mr. Lindholm's appropriate efforts were ultimately in vain as Mr. Christensen moved to withdraw his frivolous MIL just four business days prior to the September 19 trial date.

In his motion to withdraw the MIL, Mr. Christiansen cited not the law, but "…further consideration of the evidence…" In doing so he once again refused to

[1] At the outset of the October 18, 2023 sanctions hearing, Mr. Lindholm clarified that his client was seeking sanctions specifically against Mr. Christensen, not the State or the Attorney's Office. Nevertheless, Mr. Christensen continued to refer to the responding party, i.e., himself, as "the State".

acknowledge the legal and factual weakness of his MIL and the greater strength of existing statutory and case law. Furthermore, his basis for withdrawing the MIL is an admission that he did not adequately consider the facts of the case as applied to existing law at the time he filed the MIL. The court has previously found and again reiterates that the relevant facts rendering the MIL frivolous were at Mr. Christensen's disposal when he filed the MIL. His grounds for withdrawing the MIL were simply an attempt to minimize and deflect his failure to competently apply plain facts to established, unambiguous, uncontradictory statutory law.

Two days after moving to withdraw the MIL, Mr. Christensen moved to dismiss the prosecution of the case in its entirety. His motion to dismiss was grounded only upon, "further consideration". Again, the facts and law for such "further consideration" were available not later than August 28. [See defendant's August 30 motion to dismiss.] In fact, Mr. Lindholm had specifically reached out to Mr. Christensen on July 26 more than a month before the filing of the MIL, to suggest that Mr. Christensen speak to Dr. Lappe. It was Dr. Lappe's deposition nearly a month later on August 28 that revealed the strength of the exculpatory second .08 test result. That revelation did not prompt the later motion to dismiss, but an attempt to deprive Mr. Clemons of exculpatory evidence. When considering the record as a whole, Mr. Christensen knew or should have known his prosecution was in peril on August 28 following Dr. Lappe's deposition testimony. He knew this because he immediately attacked the obviously exculpatory evidence (the .08 test) with an attempt to excise it from trial. That attempt was frivolous and contrary to his duty as a prosecutor to seek justice.

Mr. Christensen's actions beginning on August 28 and ending on September 14, came perilously close to the prohibition against malicious prosecution proscribed by Iowa Code section 720.6. The court finds his zeal for a conviction overcame his duty to do justice on August 28, 2023. That did not necessarily require that he dismiss the case at that point, it simply required that he refrain from attempting to use legal process to unjustly and unreasonably deprive Mr. Clemons of a valid, reasonable and legal defense. Dr. Lappe plainly stated the .08 test was a valid test and was, in his expert opinion, the more accurate test of the two. After the deposition testimony on the

morning of August 28, the circumstances simply required that Mr. Christensen accept the fact Mr. Clemons had a valid defense. There was no reasonable basis to attempt to deny defendant a valid defense and a fair trial.

Defendant's reasonable and valid defense did not deprive Mr. Christensen of a reasonable and viable prosecution which he still had with the .091 test result. Although the deposition of Dr. Lappe wounded the State's case, on August 28, 2023, Mr. Christensen still had a valid prosecution to pursue. He had earlier amended the trial information from a per se theory to an intoxication theory. He could have amended the trial information again to conform to a per se theory with the .091 test. However, he did not do so likely because of Dr. Lappe's preference for the .08 test. So, his choice not to amend the trial information back to the per se theory of prosecution was an indication of his acknowledgement of the strength of the .08 test, and his determination to eliminate it from the evidence. In short, on August 28, 2023, Mr. Clemons had a valid defense to pursue with the .08 test. The State still had a valid .091 test to pursue its prosecution. The validity of the prosecution became suspect not because of the facts, but because of the prosecutor's attempt to deprive the defendant of a fair trial for no justifiable reason.

Mr. Christensen has consistently asserted his MIL that he simply sought to avoid confusing the jury. At no point did he ever acknowledge that a defendant may obtain their own independent test under Chapter 321J and present that test to a jury. His self-appointment as guardian of the jury rings hollow in light of Dr. Lappe's expert testimony and the plain procedure available to defendants to obtain and present independent testing to a jury. That independent testing is available under Chapter 321J.11(2) and that 321J would permit a defendant to use independent test results further undermines his assertion that this case presents as one of first impression because two tests (.08 and .091) exist.

Just two days after moving to withdraw his MIL, Mr. Christensen moved to dismiss the prosecution. The court finds from the record that no other relevant and material facts were developed between the filing of the MIL on August 28 and September 14 when Mr. Christiansen moved to dismiss the prosecution. However, he did not dismiss in the interests of justice, he dismissed to cover for Officer Shreffler.

On September 12 when he moved to withdraw his MIL and again on September 14 when he moved to dismiss, Mr. Christensen had a valid prosecution. He had a blood alcohol test of .091 at his disposal. That the defendant had at his disposal a second .08 test that was within the margin of error and provided a valid legal defense was a unique fact of this case.

However, despite having a wounded, yet viable prosecution, Mr. Christensen dismissed to cover for Officer Shreffler's routine failure to calibrate is radar unit has he had been trained. This fact was made relevant because the investigation of Mr. Clemons for OWI began when he was stopped for speeding based on the radar indicated speed of his vehicle. In fact, Mr. Christensen admitted to Mr. Lindholm and Ms. Ross as shown in Exhibit D admitted on October 18, 2023, that the dismissal was based on the fact that he did not want a record of the failure of Officer Shreffler to calibrate his radar unit as the officer had been trained. Compounding the affair revolving around the dismissal, Mr. Christensen falsely told Mr. Lindholm in an email that he filed the motion to dismiss when he knew he had not done so causing Mr. Lindholm to travel from his office in West Des Moines to the courthouse in Nevada for a scheduled hearing pretrial motions. In short, Mr. Christensen lied to Mr. Lindholm about the filing of the motion.

Pretrial motions were set for the morning of September 14. In an email exchange with Mr. Lindholm on the morning of September 14, Mr. Christensen claimed to have filed the motion to dismiss on the evening of September 13. The purported late evening filing means Mr. Christensen did not delegate the filing to staff who would not been available. In fact, no such motion was filed on September 13, and the motion to dismiss was in fact filed on September 14 at 8:41 a.m., ten minutes after Mr. Christensen claimed to Mr. Lindholm in an email that he had filed the motion to dismiss the day before. [See Exhibit B and State's Motion to Dismiss.] Mr. Lindholm correctly responded that the clerk of court had no such filing, and he was on his way to appear for the scheduled pretrial motions hearings.

Mr. Lindholm was once again right to rely on the best evidence from the Clerk that no motion to dismiss had been filed. He correctly determined he should appear for

the scheduled hearings. When he arrived, Mr. Christensen followed his lie about the filing of the motion to dismiss with the stunning admission that he was dismissing to cover for Officer Shreffler by ensuring no permanent public record was made of Officer Shreffler's failure to calibrate his radar unit as he had been trained.

Mr. Christensen had a valid and viable prosecution when he moved to dismiss. In recognition of this, he stated in defense of himself at the initial sanction hearing on October 18, that he had an obligation to prosecute under any theory of OWI when he believed the law had been broken. Yet, he never explained what justified abandoning a viable prosecution. Based on a defense motion to dismiss filed August 30, all relevant facts were developed by the end of August. The court finds as a material matter of fact to the entry of a final sanctions order that Mr. Christensen's motion to dismiss included a lie and was based on a cover-up. Neither lies nor cover-ups by prosecutors are in the interests of justice.

The court finds no fact or circumstance on this record either prompted or excuses Mr. Christensen's lie or his intended cover-up. He made no effort to correct the lie at any time he had communication with Mr. Lindholm on the morning of September 14, leading the court to conclude Mr. Christensen knew he was lying. The lie itself was not overly egregious but was made so by the effect it had on unnecessarily impugning Iowa's justice system, as well as wasting Mr. Lindholm's time and Mr. Clemons' money. To this day, Mr. Christensen has made no showing of remorse, nor has he taken any responsibility for his lie. Similarly, he has made no reasonable effort to take accountability for his intended cover-up. He continues to stand by his statements to the court that he has done nothing improper.[2]

While it may have been of ultimate benefit to Mr. Clemons that the case was dismissed, he had expended considerable unnecessary expenses by the time Mr. Christensen filed the motion to dismiss. In fact, the dismissal as filed on September 14, appears on its face to cite a reason for dismissal that existed on the afternoon of August

[2] On October 18, 2023 Mr. Christensen made a number of statements to the court in his pro se defense. Among the more salient of them were the following: "I don't think I've done anything wrong in this case or in any of the cases previously cited by [Mr. Lindholm]…I've an obligation to prosecute…and do what I can to maintain the integrity of the law." [Transcript page 9]

28. Instead, Mr. Christensen chose the filing of his frivolous MIL on the afternoon of August 28. That his motion to dismiss came weeks later for reasons that had nothing to do with known facts or justice for Mr. Clemons, leads the court to conclude its ultimate beneficial effects to Mr. Clemons were substantially minimized. Any residual benefit to Mr. Clemons was substantially outweighed by the lie and cover-up Mr. Christensen employed in filing of the dismissal motion weeks after Mr. Lindholm was forced to protect his client with a resistance to a frivolous MIL, a defense motion to dismiss and a motion to suppress. Mr. Lindholm's wholly unnecessary trip to Nevada on September 14 at the cost of $400/hr. to his client was the direct result of Mr. Christensen's failure to honestly and earnestly discharge even the simplest of his duties and responsibilities as a lawyer and prosecutor to speak honestly and view the facts and law objectively with an eye toward the ends of justice. Given Mr. Christensen's repeated statements of his "belief" about the law and his actions on October 18, the only justice that matters to him is a conviction.

In light of the foregoing, the court turns now to the specific sanctions to be imposed. Notably, neither party argues monetary sanctions should not be imposed. Case law offers the court some guidance on the subject.

The sanctions to be fashioned must not stray into the untenable or unreasonable but within the sound discretion of the court. Rowedder v. Anderson, 814 N.W.2d 585, 589 (Iowa 2012). Mr. Clemons' motion for sanctions was grounded on Rule of Civil Procedure 1.413(1). [Iowa Code section 619.9(4) is similar if not indistinguishable.] The Rule imposes upon the court a duty to impose a sanction on the offending party which may include an order to pay expenses related to the offending motion. The Rule appears not to limit sanctions simply to a judgment for related expenses. However, the primary purpose of sanctions is deterrence, not compensation. Id. [citing *Barnhill v. Iowa Dist. Ct.,* 765 N.W.2d 267, 276 (Iowa 2009)] Expenses incurred prior to the sanctionable conduct may not be considered. Id.

The court in Rowedder offered guidance adopted from *Everly v. Knoxville Cmty. Sch. Dist.,* 774 N.W.2d 488, 495 (Iowa 2009), as to the amount of sanction thusly: " '(1) the reasonableness of the opposing party's attorney's fees; (2) the minimum to deter;

(3) the ability to pay; and (4) factors related to the severity of the ... violation.' " *Barnhill,* 765 N.W.2d at 277 (quoting *In re Kunstler,* 914 F.2d 505, 523 (4th Cir.1990)); *accord Everly,* 774 N.W.2d at 495. In addition to these four factors, we have encouraged district courts to consider factors set forth by the American Bar Association.[2] *See Barnhill,* 765 N.W.2d at 277." Id., at 590

The Barnhill court set forth ABA standards that a court may consider as follows:

a. the good faith or bad faith of the offender;
b. the degree of willfulness, vindictiveness, negligence or frivolousness involved in the offense;
c. the knowledge, experience and expertise of the offender;
d. any prior history of sanctionable conduct on the part of the offender;
e. the reasonableness and necessity of the out-of-pocket expenses incurred by the offended person as a result of the misconduct;
f. the nature and extent of prejudice, apart from out-of-pocket expenses, suffered by the offended person as a result of the misconduct;
g. the relative culpability of client and counsel, and the impact on their privileged relationship of an inquiry into that area;
h. the risk of chilling the specific type of litigation involved;
i. the impact of the sanction on the offender, including the offender's ability to pay a monetary sanction;
j. the impact of the sanction on the offended party, including the offended person's need for compensation;
k. the relative magnitude of sanction necessary to achieve the goal or goals of the sanction;
l. burdens on the court system attributable to the misconduct, including consumption of judicial time and incurrence of juror fees and other court costs;
m. the degree to which the offended person attempted to mitigate any prejudice suffered by him or her;
n. the degree to which the offended person's own behavior caused the expenses for which recovery is sought;
o. the extent to which the offender persisted in advancing a position while on notice that the position was not well grounded in fact or warranted by existing law or a good faith argument for the extension, modification or reversal of existing law; and

> p. the time of, and circumstances surrounding, any voluntary withdrawal of a pleading, motion or other paper. Barnhill v. Iowa Dist. Ct. for Polk Cnty., 765 N.W.2d 267, 276–77 (Iowa 2009), as corrected (May 14, 2009)

The Barnhill court also found factors from the Fourth Circuit instructive, and encouraged district courts to consider the foregoing ABA factors as they relate to the following four-part test, "The Fourth Circuit articulated the following four factors when determining a monetary sanction: "(1) the reasonableness of the opposing party's attorney's fees; (2) the minimum to deter; (3) the ability to pay; and (4) factors related to the severity of the ... violation." *Kunstler,* 914 F.2d at 523; *see also White v. Gen. Motors Corp.,* 908 F.2d 675, 684–85 (10th Cir.1990). Barnhill v. Iowa Dist. Ct. for Polk Cnty., 765 N.W.2d 267, 277 (Iowa 2009), as corrected (May 14, 2009) This four-factor test was later adopted in Rowedder. Further, the factors set out above are instructive, even directive, but not mandatory. The court believes other factors that may be unique to a particular case should not be ignored in the exercise of appropriate discretion to deter future sanctionable conduct.

On October 18, 2023, at the initial hearing on the motion to sanction Mr. Christensen, he stated he had been handling mostly OWI cases for the Story County Attorney for three years. [Transcript page 9] He asserted his expertise in the matter of OWI prosecution for the State on behalf of the Story County Attorney. Therefore, Mr. Christensen has sufficient experience that the court finds he knew or should have known the state of the law. That he asserted to the court on October 18, that his arguments were at a minimum merely "colorable" without more, simply indicates his willingness to disregard established law on the subject of OWI prosecution. Mr. Christensen has sufficient knowledge and experience in the prosecution of alleged OWI offenses that he knew or should have known the state of the law and the need to avoid depriving a defendant of exculpatory evidence and a fair trial.[3] His zeal should be delt with via sanctions to ensure the behavior is not repeated.

[3] Mr. Christensen's MIL shows he is willing to disregard established norms of fairness to enhance his chances of obtaining a conviction. On the whole of the record it is not plausible that he did not understand that the exculpatory import of the .08 test, especially given the deposition of Dr. Lappe. That he would be brazen enough to employ legal process to deprive a defendant of exculpatory evidence when defense counsel and the court are looking, raises a

Mr. Christensen's arguments were not made in good faith. He disregarded plain statutory language regarding the prohibition of certain evidence by the prosecution, not by arguing its extension beyond the prosecution, but by attempting to contort the plain language beyond any real sense of reason. His arguments rendered certain sections of the Chapter moot without explanation. The lack of any reason behind his arguments belies his professed expertise in OWI prosecution. His arguments about jury confusion were merely conclusory and groundless. He demonstrated no appreciation of the right of the defendant to present a valid defense, instead couching the two test results as inherently confusing. That Dr. Lappe dispelled the confusion in his deposition testimony speaks to Mr. Christensen's willingness and intent to disregard facts and law when they are inconvenient to his theory of prosecution. Sanctions are warranted to ensure Mr. Christensen is deterred from engaging in anything less than good faith practice before this or any other court in the future.

Mr. Christensen displayed a high degree of willfulness and frivolousness in filing his MIL and dismissing the prosecution. He made no argument he was directed by the County Attorney or any of his superiors to take the action he did. His MIL, his motion to withdraw the MIL and his motion to dismiss the prosecution were all signed in his name only and not in any representative capacity. As the court has found, the MIL was frivolous. It attempted to contort established statutory and case law to the end of depriving defendant of his constitutional rights to a fair trial. Mr. Christensen abandoned the MIL after being confronted by the defendant's resistance that thoroughly and accurately set forth the law. He abandoned his MIL before being forced to defend it on the record before the court. Yet a month later on October 18, he still defended it to the court. The MIL was unreasonable and frivolous on its face contrary to Mr. Christensen's belief otherwise. Willful disregard of a criminal defendant's constitutional rights by one sworn to uphold them is a serious matter. The behavior here impugns the integrity of Iowa's justice system. The violation of a constitutional right can have devastating effects on a citizen's liberty interests. Sanctions are warranted to deter sanctionable conduct

serious question about his willingness to voluntarily disclose exculpatory evidence either through formal discovery or voluntarily as is his duty a prosecutor.

that implicates a violation of a citizen's constitutional right, especially by an agent of the State.

Mr. Christensen has a prior history of similar conduct. The court's prior orders have found he engaged in similar conduct in the Rowen and Grabau cases in Story County. Like the present case, those prior instances displayed a serious disregard for the law and the ends of justice. In this and the other cases, the court finds the conduct was not the result of innocent omission, inadvertent mistake or conduct that could be reasonably explained away. Mr. Christensen shows a flagrant disregard for the law and as such the rights of the accused. His motives can best be explained as a prosecutor willing to eschew the law and justice in a quest for convictions. His "history" of similar conduct in the past suggests not only a willingness and zeal to engage in such conduct, but a lack of internal checks and balances. That history coupled with the lack of remorse and the assertions that no wrong was done, evidence a strong willingness and intent to continue to engage in sanctionable behavior. Such a prior history calls upon the need for firm deterrence of such ongoing behavior.

Mr. Lindholm seeks $2072.00 in attorney fees. He bills clients at the rate of $400/hour. Has twenty years of experience defending criminal defendants and he has significant expertise in the defense of OWI cases. His hourly fee is reasonable. Mr. Lindholm advised Mr. Christensen in late July that he would be trying the case, and that Mr. Christensen should speak to Dr. Lappe. Yet discovery depositions were necessary on August 28 followed immediately by Mr. Christensen's MIL on August 28. The depositions occurred immediately prior to the sanctionable conduct. Therefore, the court will not include the deposition costs in the sanctions to be imposed.

However, in the interest of appropriately defending his client against a frivolous MIL, Mr. Lindholm filed a thorough and lengthy resistance. The court estimates this likely consumed at least four hours of time, and probably more, to research and draft at the rate of $400 per hour.[4] The resistance would not have been necessary but for the filing of the MIL which the court has concluded was frivolous.

[4] Depositions of Officer Shreffler and Dr. Lappe ended at 10:45 a.m. on August 28. Mr. Christensen filed his MIL at 2:26 a.m. on the same day. The court assumes he began work on it immediately after the depositions and that he spent approximately three hours to prepare a frivolous three page motion. Mr. Lindholm filed an eleven page

On September 14, Mr. Lindholm inquired about an anticipated motion to dismiss. Mr. Christensen lied about the filing of the motion requiring Mr. Lindholm to travel from his office in West Des Moines to Nevada for pretrial motions only to learn the dismissal had been filed after he left his office and that its purpose was to cover-up for the arresting officer. The court estimates this unnecessary trip took two hours at $400 per hour.

In late July Mr. Lindholm told Mr. Christensen to speak to Dr. Lappe. He told Mr. Christensen he would be trying the case. These were unmistakable signals about the weaknesses in the facts for the prosecution. Mr. Lindholm's discovery depositions set those weaknesses into the record unmistakably. The four hours to prepare a fulsome resistance to a frivolous MIL coupled with the circumstances of the waste of time and effort on September 14 lead the court to conclude that Mr. Lindholm spent a minimum of six hours of unnecessary time as a direct and proximate result of Mr. Christensen's sanctionable conduct. This would result in $2400.00 at the rate of $400/hour. As he indicated on the record on January 29, Mr. Lindholm's estimate of $2072.00 was less than the actual amount of time he has spent. The court will not include the court reporter fees of $610.27 as those fees were incurred prior to the sanctionable conduct and were incurred in preparation for trial. Nevertheless, the court finds the claim of $2072.00 to be a reasonable and necessary claim for the fees incurred to defend Mr. Clemons from Mr. Christensen's sanctionable conduct. The court further finds Mr. Lindholm has conservatively calculated his reasonable fees at a rate commensurate with his experience to the benefit of Mr. Christensen. In other words, the court is convinced Mr. Lindholm has incurred more fees to defend Mr. Clemons in the criminal case and continued to incur fees to seek appropriate sanctions.

The court finds no reason to conclude that either Mr. Lindholm or Mr. Clemons were in any way contributors to Mr. Christensen's frivolous MIL, his lie or his attempted cover-up. Within weeks of the filing of the trial information, Mr. Lindholm communicated that he would be trying the case, and that Mr. Christensen should speak to Dr. Lappe.

---

resistance replete with citations to appropriate case law and the rules of procedure. Such a motion could reasonably consume four hours of time.

There was no effort to “hide the ball” by the defense who paid for the discovery depositions that should have benefitted a reasonable prosecutor’s understanding of the case. Mr. Lindholm’s actions were reasonable and necessary in the exercise of his professional duties to his client and opposing counsel. No culpability for the sanctionable conduct engaged in by Mr. Christensen is assignable to Mr. Lindholm or Mr. Clemons. Nevertheless, Mr. Christensen persisted in advancing a position while on notice that the position was not well grounded in fact or warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law. Only Mr. Christensen is culpable for his sanctionable conduct.

Mr. Christensen pursued a frivolous motion without regard to the unwarranted and unjust impairment of Mr. Clemon’s constitutional rights to a fair trial. He did so without any regard for Mr. Clemons’ liberty interests or property rights (i.e., potential fines, fees, court costs and attorney fees). Mr. Christensen dismissed a valid, viable prosecution with a lie and a cover-up. He dismissed the prosecution without regard to the ends of justice. His zeal for conviction was tempered not by justice but by his own bias toward protecting himself and a police officer. The relative magnitude of sanction necessary to achieve the goal of deterring the magnitude of such conduct is within the range of the reasonable attorney fees sought by Mr. Clemons. More would not be unjust; however, the court also considers the impact of a monetary sanction on the offender, including the offender's ability to pay a monetary sanction.

Mr. Christensen submitted evidence that is limited in scope. He submitted a bank statement showing a balance on a certain date and argued he is not able to pay a monetary sanction of more than a few hundred dollars. However, Mr. Christensen did not show a statement of his annual earnings. He did not show what his liquid assets were. The court has no idea if he holds any other liquid accounts or financial instruments or what the balance of the account, he did show has been over time. The court has no information about what if any credit has been extended to him, including through loans, letters of credit or credit cards. However, he has sufficient assets at his disposal to hire private counsel to represent him in these sanction proceedings. As such, it is reasonable to conclude that he, like Mr. Clemons who also paid for private

counsel, are in similar financial circumstances with an ability to pay legal fees and expenses, including sanctions.

Mr. Christensen is not credible. The court has found he has lied. As this case has shown, he has a habit of choosing only finite facts and law that inure most prominently to his benefit only. If anything, the only minimally credible evidence he presented with regard to monetary sanctions stands for the proposition he could pay a sanction of $2072.00 on January 29, 2024, the date of the last hearing. Court reporter fees in the amount of $610.27 were incurred prior to the sanctionable conduct and were taken in preparation for trial. Therefore, the court reporter fees of $610.27 are not made part of the monetary sanction ordered herein.

The sanctionable conduct at issue occurred within a criminal case. Much of the case law in Iowa concerning attorney sanctions arose over considerable periods of time in protracted civil litigation. In those cases, sanctions claimed and awarded involved many thousands of dollars over fairly long periods of time. Here the sanctioned conduct arose in a criminal case over just a few weeks' time.

Compared to protracted civil litigation, the deadlines for pretrial discovery and procedure in criminal matters moves quickly under the rules of criminal procedure. The pretrial process leaves little time for haste by defense lawyers who must address their client's rights and interests without delay lest they be lost by defense counsel's unjustified lack of diligence in protecting them. This speed by which criminal matters proceed required quick action by Mr. Lindholm, but also limited ongoing effects of sanctionable conduct given the quick schedule for resolving criminal matters. [For example, see not only Chapter 2, but Chapter 23 of the Iowa Rules of Court.] In short, the needless expenses incurred by Mr. Lindholm but for the need to defend his client from sanctionable conduct were muted by the quick pace of the criminal matter driven by the short timeframes provided by the criminal rules. This is not to say the fees presented by Mr. Lindholm are excessive. To the contrary, the quick pace of the criminal matter likely also shortened the time frame Mr. Christensen had to engage in sanctionable conduct. On this point, the $2072.00 figure would likely have been greater if not for the limiting factor of the deadlines to meet as set by the rules of court and the

court itself in its scheduling orders. Thus, the rules of procedure were insufficient to prevent the sanctionable conduct, but were sufficient to prevent it from lingering over time and causing much more unnecessary expense to Mr. Clemons.

As a criminal case, this case also bears other unique features that separate the consideration of sanctions from civil cases. Unlike a civil case, one of the attorneys took an additional oath as a prosecutor. That oath carried special duties. That oath gave that attorney the power of the State to employ the police powers of the State against a citizen. That power had the potential of depriving the citizen of his liberties, property, and privileges. Misuse of the power in this case carried the very real possibility of depriving the citizen of rights guaranteed to him. Misuse of the power of the State did not give that attorney the right or authority to lie or to cover up for another state agent. The sanctionable conduct at issue here goes to the very integrity of the justice system. It goes to the very core of the state and federal constitutional protections of accused citizens. It is practically impossible and quite unsatisfactory to reduce rights, duties and integrity to the value of money. However, it is possible to deter sanctionable conduct with monetary sanctions. On this record, given the serious nature of the sanctionable conduct, the harm it posed to rights and interests of Mr. Clemons, $2072.00 is a minimal amount to deter the kind of conduct at issue here.

The court has found Mr. Christensen should be sanctioned in its order filed November 29, 2023. In order to deter his conduct a monetary sanction of $2072.00 is ordered. The monetary sanction is due upon filing of this order. This amount does not include all of the monetary sanction sought and the court finds it is likely less than what was expended to defend against the sanctionable conduct. This amount is the minimum amount to deter a history of serious sanctionable conduct by an Iowa prosecutor. Mr. Christensen has the ability to pay this sanction.

Mr. Christensen has engaged in a pattern and practice of dubious conduct in OWI prosecutions in Story County that has continued to this case. He is without remorse and repeatedly attempts to shamelessly justify his sanctionable conduct. He is likely to repeat it unless an appropriate sanction impresses on him the need to alter his thinking and behavior. In this case he has engaged in frivolous motion practice, he has

lied and he attempted a cover-up. His frivolous practice, lie and cover-up are inexcusable, have discredited Iowa's justice system and have seriously jeopardized Mr. Clemons constitutional rights, liberty, and property interests. Even as a general proposition, false misrepresentation to opposing counsel and attempted cover-ups in any form, even when isolated in nature, have no place in professional legal practice in Iowa nor in the administration of Iowa law that justice demands.[5] Mr. Christensen should not only be deterred by any sanction imposed here, the record discloses that he is very much in need of deterrence. Mr. Clemon's deserves a measure of compensation for the unjust and unwarranted treatment he has been forced to endure by Mr. Christensen's sanctionable behavior. Others are likely to suffer unless Mr. Christensen is deterred.

In addition to a monetary sanction, Mr. Lindholm has requested that the sanction imposed herein address concerns for other defendants who may have been negatively impacted by Officer Shreffler's failure to employ his training in the use of his radar unit. Mr. Lindholm suggests some sort of disclosure such as a "Brady List". His request and argument on this point appear to implicate the burden of the sanctionable conduct on the court. (See paragraph l of the Barnhill considerations above.) As case law would appear to point out, such impacts focus on judicial time and expense that may have been wasted because of or as necessary to address the sanctionable conduct itself. Sanctions tend to be limited to address past behavior but deter it in the future.

Certainly, discovery of an issue of potential import in one criminal case that may affect other criminal cases should not be overlooked. The question is whether an order to sanction a prosecutor in one case is the correct forum to address a concern that may affect other criminal cases.

This court has tasked court personnel to search cases from April to August 2023 involving Officer Shreffler as a citing/complaining officer. Search results were narrowed to cases in which he had contact with a citizen based on a stop or citation for speeding. The results of the search are listed in Appendix A attached hereto.

---

[5] Iowa Supreme Ct. Bd. of Pro. Ethics & Conduct v. Stein, 586 N.W.2d 523, 526 (Iowa 1998)

There is some indication in the record of these proceedings on October 18, 2023 that Officer Shreffler has received re-training on the use of radar. However, Appendix A shows a number of cases and individuals who may have been negatively impacted by his failure to employ his training in the use of radar from April to August 2023. This appears to be the time frame before which Officer Shreffler received the purported retraining. However, the record remains unclear about when his retraining occurred, which may have been sometime between August 28 and October 18, 2023.

Following the deposition of the officer on August 28, 2023, information that Officer Shreffler was not using his radar as he had been trained became known to Mr. Christensen. He then took it upon himself to cover for Officer Shreffler.

The cases listed in Appendix A do not appear to bear any notice or other record from the prosecution regarding the issues surrounding Officer Shreffler's failure to employ his training in the use of radar during the relevant time. The court concedes the record on this point may be lacking. But a lack of such a record is not dispositive of Mr. Lindholm's request for a non-monetary sanction. The purpose of this sanction order is primarily deterrence. Iowa's sanctioning regime presumes a competent lawyer will be sufficiently deterred through a finding they engaged in sanctionable conduct and imposition of a specific, minimum sanction.

The court has discovered frivolity, dishonesty and cover-up that are matters of public record in the above captioned case. The public trust has been jeopardized should be restored. This case and the cases listed in Appendix A were brought before the courts by representatives of the people of the State, of which Mr. Christensen is one. The court refers Appendix A to Mr. Christensen for his evaluation of his professional duties and responsibilities.

IT IS THEREFORE ORDERED that the prosecuting attorney, Mr. Theron Milo Christensen, shall immediately pay a monetary sanction in the amount of $2072.00 to the law office of attorney Matthew Lindholm. Court costs beginning on October 18, 2023, to the present are taxed to Mr. Christensen.

Clerk of Court to furnish copies to:
Jason Palmer
Matthew Lindholm

APPENDIX A

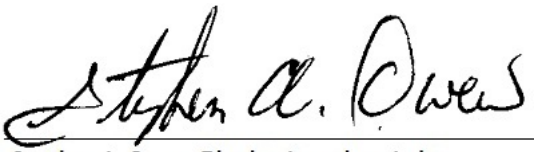
Case Number	Defendant	Attorney	Nature of Stop
OWCR063133	ASHTON HERMANN	SEAN SPELLMAN	SPEEDING
SRCR062724	SKYLER BOGGS	NICK LOMBARDI	SPEEDING
OWCR062736	MACKENZIE STEWART	ANDREW MEYER	SPEEDING
OWCR063051	DEVON SICK	KATELYN SIMON	?
STA0158714	CHARLES LOHOFF	N/A	SPEEDING
STA0158727	JESSICA CHAVEZ-OSORIO	N/A	SPEEDING
STA0158728	HELENE STOLER	N/A	SPEEDING
STA0158774	CHAD RUMBAUGH	N/A	SPEEDING
STA0159029	KAMAL AMER	N/A	SPEEDING
STA0159205	STEPHEN JERRETT	N/A	SPEEDING
STA0159656	JADEN OTOOL	N/A	SPEEDING
STA0159724	MEGAN KRUEGER	N/A	SPEEDING
STA0159865	AMANDA RUND	N/A	SPEEDING
STA0160088	JARED ROCKWOOD	N/A	SPEEDING
STA0160089	FRANCIS BANEGAS	N/A	SPEEDING
STA0160153	RILEY MARVIN	N/A	SPEEDING
STA0160300	THOMAS THORPE	N/A	SPEEDING
STA0160536	WILBURT MCDONALD	N/A	SPEEDING
STA0160614	CHRISTOPHER JUST	N/A	SPEEDING
STA0160884	ALAYNA VAN KOOTEN	N/A	SPEEDING
STA0160893	PRAVEEN KUMAR	N/A	SPEEDING
STA0160894	RUBEN SANTOS DISLA	N/A	SPEEDING
STA0161485	CADEN CHESNUT	N/A	SPEEDING

STA0161503	TRENTON WELDON QUENTIN	N/A	SPEEDING
STA0161507	ALEXANDER	N/A	SPEEDING
STA0161524	ANDREW KORDICK	N/A	SPEEDING
STA0161783	AARON VAN VOORST	NA	SPEEDING
STA0162278	NICHOLAS LUCIA	N/A	SPEEDING
STA0162415	ERNEST LIPSCOMB	N/A	SPEEDING
STA0162442	WILLIAM KROCK	N/A	SPEEDING
STA0162555	LANCE GUTHRIE	N/A	SPEEDING
STA0162686	DOUGLAS BARGFIELD	N/A	SPEEDING
STA0162776	MARCELO BRUGGER	N/A	SPEEDING

State of Iowa Courts

Case Number	**Case Title**
OWCR062790	STATE OF IOWA VS CLEMONS, ASHTON JOSEPH
Type:	OTHER ORDER

So Ordered



Stephen A. Owen, District Associate Judge,
Second Judicial District of Iowa

Electronically signed on 2024-02-15 15:26:33