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IN THE SUPREME COURT OF IOWA

STATE OF IOWA, PLAINTIFF, WILLARD CHAIDEN MILLER, DEFENDANT.	SUPREME COURT NO.: _____ JEFFERSON COUNTY NO.: FECR005143

APPLICATION FOR DISCRETIONARY REVIEW AND INTERLOCUTORY APPEAL OF:
MARCH 11, 2022 ORDER DENYING REQUEST TO HOLD SUPPRESSION HEARING PRIOR TO REVERSE WAIVER HEARING,
AND
MARCH 22, 2022 ORDER DENYING MOTION TO RECONSIDER, AND MARCH 22, 2022 ORDER DENYING REQUEST TO CLOSE HEARING

HONORABLE SHAWN SHOWERS

REQUEST TO STAY DISTRICT COURT PROCEEDINGS

Next Hearing March 24, 2022, 9:00AM

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STATEMENT OF THE CASE

When the State is permitted to rely on "evidence unlawfully seized, [it only] serves to encourage disobedience to the Federal Constitution which it is bound to uphold." *Mapp v. Ohio*, 367 U.S. 643, 657 (1961). Iowa Rule of Criminal Procedure 2.12(1)(e) and Iowa Supreme Court precedent provide evidence gathered in violation of the United States Constitution or in violation of the Iowa Constitution may not be admitted by the State in any hearing, "from initial appearance to final judgment." *Kain v. State*, 378 N.W.2d 900, 903 (Iowa 1985) (interpreting language in the prior Iowa Rule of Criminal Procedure 11(1), which mirrors language in current Rule 2.12(1)).

Miller filed a motion to suppress and a request for a *Franks* hearing. However, despite clear constitutional concerns with evidence gathered in this case, the State indicated intent to use challenged evidence against Miller in the reverse waiver hearing scheduled March 24, 2022. The district court denied Miller's request to address suppression issues prior to reverse waiver hearing, creating significant concerns regarding protection of constitutional rights, application of controlling precedent, statutory interpretation, and judicial economy.

Pursuant to Iowa Rules of Appellate Procedure 6.104 and 6.106, Applicant-Appellant Willard Miller requests discretionary review and interlocutory appeal from the ruling denying his request to suppression prior to the waiver hearing.

The following issues are presented:

1. Whether the district court may ignore controlling precedent and clear language of the Iowa Rules of Criminal Procedure by forcing a defendant to litigate reverse waiver when the State intends to rely on evidence gathered in violation of constitutional rights.
2. Whether a defendant's right to a fair trial is prejudiced when the State is permitted, in a pretrial hearing, to publish and rely on confidential and privileged information, as well as on evidence gathered in violation of the United States Constitution and Iowa Constitution, in a widely publicized case.

I. PERTINENT FACTUAL AND PROCEDURAL BACKGROUND

On November 3, 2021, Nohema Graber was reported missing. On November 4, 2021, her body was found. Following interviews with certain individuals, police took Willard Miller and Jeremy Goodale into custody to conduct interrogation regarding the homicide of Ms. Graber. Willard Miller was interviewed while in police custody. This interview was conducted and recorded without proper consent and without proper knowledge of the allegations.

On November 12, 2021, The State filed a trial information charging Miller and Goodale with Murder First Degree under Iowa Code Section 707.1 and 707.2, and Conspiracy to Commit a Forcible Felony by Planning or Commission under Iowa Code Section 706.1(b) and 706.3(1). On December 7, 2021, Miller moved for reverse waiver.

On March 1, 2022, Miller filed a motion to suppress physical evidence seized by law enforcement and statements made during an in-custody interrogation. On March 3, 2022, Miller filed a request to exclude the public and close the reverse waiver hearing to protect his right to a fair trial. Also on March 3, 2022, the court ordered suppression would be addressed after the reverse waiver ruling. On March 11, 2022, Counsel for Miller filed a motion to address suppression first, or in the alternative a motion to exclude evidence from the reverse waiver hearing. (Attachment 2.) On March 15, 2022, Miller filed an amended and supplemental

motion to suppress requesting the court invalidate each of the four search warrants that were utilized to seize a cell phone, a SnapChat account, and a U.S. Cellular account. (Attachment 1.) Parties presented arguments at the March 21, 2022 hearing, and filed a memorandum of authorities. (Attachment 3.) On March 22, 2022, the district court denied Miller's request and provided notice reverse waiver hearing will occur March 24, 2022. (Attachment 4.) Also on March 22, 2022, the district court denied Miller's request to close the reverse waiver hearing. (Attachment 5.)

On March 22, 2022, Miller filed this motion for interlocutory appeal.

II. ARGUMENT

1. Timeliness of Interlocutory Appeal

Interlocutory appeal is timely filed within thirty days following district court orders on March 11, 2022 and March 22, 2022. *See* Iowa R. App. P. 6.104(1)(b)(2); Iowa R. App. P. 6.106(1)(b).

2. Law

Evidence gathered in violation of a defendant's constitutional rights is not admissible in any hearing or trial pertaining to an indictable offense. *See* Iowa R. Crim. P. 2.12(1)(e) (". . . If the motion [to suppress] is granted the [seized] property . . . shall not be admissible in evidence at any hearing or trial.").

This is known as the "Exclusionary Rule", and it has long been Iowa law that any evidence suppressed pursuant to Rule 2.12(1) may not be admitted by the State in any hearing, "from initial appearance to final judgment." *Kain v. State*, 378 N.W.2d 900, 903 (Iowa 1985) (interpreting language in the prior Iowa Rule of Criminal Procedure 11(1), which mirrors the language in the current Rule 2.12(1)).

Further,

> The exclusionary rule requires the suppression of evidence discovered as a result of illegal government activity. The exclusionary rule also prohibits the introduction of derivative evidence, both tangible and testimonial, that is the product of the primary evidence, or that is otherwise acquired as an indirect result of the unlawful search . . .

State v. McGrane, 733 N.W.2d 671, 680 (Iowa 2007) (internal citations, quotations and brackets omitted).

The Iowa Supreme Court has

> not hesitated to apply the exclusionary rule where fundamental constitutional rights have been violated. [It has] embraced the exclusionary rule to ensure that fundamental constitutional rights do not become dead letter, to deter future police misconduct, and to prevent the integrity of the courts from being undermined through the admission of unlawfully obtained evidence. . . .
>
> More recently, . . . [The Iowa Supreme Court has] expanded the type of statutory violations that may trigger application of the exclusionary rule. For example, where statutory mandates involve fundamental rights, usually with constitutional overtones, [The Court has] held that the exclusionary rule should apply even though not expressly required by the legislature.

State v. Dentler, 742 N.W.2d 84, 87–88 (Iowa 2007) (internal citations and quotations omitted).

In a reverse waiver hearing held in adult criminal court, just as in a waiver hearing held in juvenile court, the court must consider "the nature of the alleged delinquent act and the circumstances under which it was committed." Iowa Code § 232.45(8)(a); *see also* Iowa Code § 803.6(3) (applying in a reverse waiver hearing those considerations enumerated in Iowa Code sections 232.45(6)(c) and 232.45(8)).

Rule 2.12(1)(e) limits evidence available to the State in all hearings, by its clear language and by case law interpreting it. This is because statutes are presumed constitutional, and courts must avoid interpreting statutes to be unconstitutional. *See State v. Tucker*, 959 N.W.2d 140, 147 (Iowa 2021). "It is a fundamental rule of statutory construction that where a statute is fairly open to two constructions, one of

which will render it constitutional and the other unconstitutional or of doubtful constitutionality, the construction by which it may be upheld will be adopted." *Kruck v. Needles*, 259 Iowa 470, 478, 144 N.W.2d 296, 301–02 (1966).

Therefore, even though even though Iowa Code section 232.45(5), as applicable in a reverse waiver hearing in adult court through Iowa Code section 803.6, provides "all relevant and material evidence shall be admitted" in the reverse waiver hearing, Rule 2.12(1)(e) limits the application of Iowa Code section 232.45(5) to only that evidence which is constitutionally gathered.

Additionally, regarding closing hearings to the public, including waiver and reverse waiver hearings, Iowa Code § 232.39 allows the Court to "exclude the public from hearings if the Court determines that the possibility of damage or harm to the child outweighs the public's interest in having an open hearing." Further, Iowa Code § 803.6, allows for reverse waiver and refers the Court to factors delineated in the juvenile code. See Iowa Code § 232.45(6)(c) and § 232.45(8).

Iowa Court Rule 25.2(2) indicates expanded media coverage is not required if the district court decides "coverage would materially interfere with the rights of the parties to a fair trial." Iowa Court Rule 25.2(5) states:

> expanded news media coverage is prohibited for any court proceeding which, under Iowa law, is required to be held in private. Coverage is

> prohibited in any juvenile, dissolution, adoption, child custody, or trade secret cases unless consent on the record is obtained from all parties, including a parent or guardian of a minor child.

Iowa Ct. R. 25.2(5).

The Iowa Supreme Court created a three-prong test as a guideline to be used in determining whether a Defendant can overcome the presumption of open pretrial proceedings. To close a proceeding, a Defendant must show:

a) Irreparable damage to the Defendant's fair trial right will result from open hearing;

b) Alternatives to closure will not adequately protect the right to a fair trial; and

c) Closure will be effective in preventing prejudicial publicity that could deny the defendant's right to a fair trial.

Iowa Freedom of Info. Council v. Wifvat, 328 N.W.2d 920, 925 (Iowa 1983).

Similar guidelines are utilized in determining whether a preliminary hearing may be closed to the public. *See Des Moines Register & Tribune Co. v. Iowa Dist. Ct. for Story County*, 426 N.W.2d 142 (Iowa 1988). Iowa R. Crim. Procedure 2.2(4)(d) adopted these guidelines into the rule pertaining to whether a defendant's request for a closed preliminary hearing should be granted.

3. Analysis

The district court erred in both denying Miller's request to address suppression issues prior to reverse waiver hearing, and in denying Miller's request to close the reverse waiver hearing. Granting either request would limit the prejudice Miller would suffer from the State's use of constitutionally-challenged information at the reverse waiver hearing. The denial of both motions is contrary to the law and violates Miller's rights to a fair trial as the public will be provided confidential and protected information that may later be suppressed and unavailable for the State to use at Miller's trial. Given the wide publicity of this case, there is no venue in Iowa that is safe from the taint of publicity of such evidence.

a. Determination of Constitutional Challenges to Evidence Must Precede a Hearing Where Evidence Will Be Presented Against a Defendant

Iowa Rule of Criminal Procedure 2.12(1)(e) and Iowa Supreme Court precedent require the district court address constitutional challenges to evidence prior to use of that evidence against a defendant.

First, Rule 2.12(1)(e) is clear: "If the motion [to suppress] is granted the [seized] property . . . shall not be admissible in evidence at any hearing or trial."

The Iowa Supreme Court states the exclusionary rules applies to suppressed evidence in all hearings, and evidence suppressed pursuant to Rule 2.12(1) may not be admitted by the State in any hearing, "from initial appearance to final judgment." *Kain v. State*, 378 N.W.2d 900, 903 (Iowa 1985) (interpreting language in the prior Iowa Rule of Criminal Procedure 11(1), which mirrors the language in the current Rule 2.12(1)).

In this case, Miller challenged all evidence gathered through four separate search warrants issued. The entirety of the evidence gathered through these warrants is challenged. Much of the evidence available to the State for the reverse waiver hearing is also subject to the suppression motions.

In the reverse waiver hearing, the district court must consider "the nature of the alleged delinquent act and the circumstances under which it was committed." Iowa Code § 232.45(8)(a); *see also* Iowa Code § 803.6(3). This requires the court to consider the actual allegations against Miller, as supported by the evidence the State has against him. As this case stands, the vast majority of evidence the State has pertaining to the "alleged delinquent act" and "the circumstances under which it was committed" are the subject of Miller's suppression motion.

Miller challenged four search warrants issued in their entirety based on multiple failures by both the warrant Affiant, and the issuing magistrate.

(Attachment 1.) As this case stands, the State's case relies on much of this challenged information, and has constitutionally-challenged information in:

- The Minutes of Testimony
- The Confidential Reverse Waiver Report drafted by the juvenile court officer
- Expected testimony from State witnesses and State evidence at the hearing, addressing the nature of the alleged delinquent act and the circumstances under which it was committed.

All this evidence is currently available to the State to use to argue Miller should remain in adult court and must be considered by the district court during the reverse waiver hearing, but only because the district court has not addressed Miller's suppression motion first. Allowing the State to rely on constitutionally-challenged evidence is in violation of Rule 2.12, contrary to the controlling precedent in *Kain*, and in violation of Miller's constitutional right against unreasonable searches and seizures, and in violation of Miller's right to due process; both of which are protected by the United States Constitution and Iowa Constitution.

Holding the reverse waiver hearing prior to the suppression hearing prejudices Miller. There is no procedure for Miller to request a second reverse waiver hearing after the suppression hearing. The determination of the evidence available to be used against a defendant must be made prior to the use of that evidence against a

defendant. Miller requests a stay of the district court proceedings, and that this application be granted to correct the district court rulings and prevent further prejudice to Miller's rights.

b. Right to Fair Trial Requires that Only Evidence Constitutionally Gathered by State may be Used Against Defendant in Public Hearing

On March 22, 2022, the district court ruled that the reverse waiver hearing in this case would be open to the public. This ruling opened the door for the State to taint the jury pool state-wide in this case.

Iowa rules and case law make clear that:

1. Suppressed evidence may not be used against a defendant at trial. *See* Iowa R. Crim P. 2.12(1)(e), *Kain*, 378 N.W.2d at 903;
2. Pervasive pretrial publicity about a case that was inflammatory or contained prejudicial material denies a defendant's due process right to a fair trial. *See State v. Shipley*, 429 N.W.2d 567, 571 (Iowa 1988);
3. A district court must consider this right to a fair trial when considering whether to exclude the public from a hearing. Iowa Ct. R. 25.2(2).

This case presents multiple fair trial concerns based on the district court's denial of the motion to close the hearing. First, Miller (and his similarly situated co-defendant) specified to the district court the protected and confidential information that was at issue, including protected medical/psychological records, evidence that is part of the minutes of testimony and DCI investigation file collected in violation of constitutional rights, and potential statements of the defendants (not admissible in other proceedings). The district court, in denying the motion to close the hearing without limitation, provided the State authority to cast any evidence to the public. The case against Miller and his co-defendant has been covered state-wide and nationally, with each new piece of information publicized. To have the details from the DCI file, from the Minutes of Testimony, from psychological reports provided without restriction, raises significant fair trial concerns. This concern is heightened because a pending motion to suppress may limit the state's proposed evidence. Disclosure of later-to-be-suppressed information would taint any future jury pool and would violate the fair trial and due process rights of Miller.

Avoidance of this issue is simple; address the suppression motion before the reverse waiver hearing and limit the public from portions of the reverse waiver hearing where confidential and protected information is provided.

III. REQUEST FOR STAY

Miller requests the district court proceedings be stayed pending resolution of this interlocutory appeal. Without stay, the Reverse Waiver hearing will result in:

- Prejudice by consideration of evidence collected in violation of Miller's constitutional rights;
- Public dissemination of confidential and protected evidence. Even if that evidence is later suppressed, the public will still have access to that information which will taint any jury pool, regardless of venue;

A stay is necessary to provide clear guidance regarding pretrial procedures when a motion to suppress is filed and when confidential and protected information should be disclosed or protected.

IV. CONCLUSION

There is no un-ringing of this bell. Either the State may air confidential, protected, and privileged information to the public and taint the state-wide jury pool, or the constitutional rights of Miller (as well as others similarly situated) are protected and the State is limited to only evidence collected through constitutional and legal processes. Once the evidence is let out of the proverbial box, it is clear through reporting on this case to-date that evidence will be ever-repeated during the life of this case.

Miller and others have a constitutional right to a fair trial, with a jury pool untainted by reports of evidence collected through an unconstitutional process. Miller has a statutory and constitutional right to a suppression hearing prior to the use of challenged evidence against him. Miller requests interlocutory review of the decisions of the district court, and requests stay of the district court proceedings.

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

Pursuant to Iowa Rule of App. Procedure 9.1401

This Application for Discretionary Review and Interlocutory Appeal complies with the type-volume limitation of Iowa R. App. P. 6.903(1)(g)(1) or (2) because:

[XX] this Application for Discretionary Review and Interlocutory Appeal contains 2,547 words, excluding the parts of the brief exempted by Iowa R. App. P. 6.903(1)(g)(1).

This Application for Discretionary Review and Interlocutory Appeal complies with the typeface requirements of Iowa. R. App. P. 6.903(1)(e) and the type-style requirements of Iowa R. App. P. 6.903(1)(f) because:

[XX] this Application for Discretionary Review and Interlocutory Appeal has been prepared in a proportionally spaced typeface using Microsoft Word in Times New Roman font size 14.

Signature	Date
/s/ Christine Branstad	March 22, 2022

CERTIFICATE OF FILING:

I certify I filed this Application for Discretionary Review and Interlocutory Appeal with the Clerk of the Supreme Court via EDMS on March 22, 2022.

/s/ Christine Branstad
Christine E. Branstad

CERTIFICATE OF SERVICE:

I certify on March 22, 2022, I served this document by email to the following:

- Attorney General, Criminal Appeals Division: Kevin.Cmelik@iowa.gov,
- Sheryl Currier, Court Reporter: Sheryl.Currier@iowacourts.gov

I certify on March 22, 2022, I served this document by EDMS on all other parties, and by filing with the Jefferson County Clerk of Court.

/s/ Christine Branstad
Christine E. Branstad