No. 21-1651
Polk County No. CVCV060323

IN THE
SUPREME COURT OF IOWA

MICHELLE VACCARO,
Plaintiff - Appellee,

v.

POLK COUNTY, IOWA AND
POLK COUNTY SHERIFF KEVIN SCHNEIDER,
Defendants - Appellants.

ON APPEAL FROM THE IOWA DISTRICT COURT
FOR POLK COUNTY
HON. LAWRENCE MCLELLAN, DISTRICT COURT JUDGE

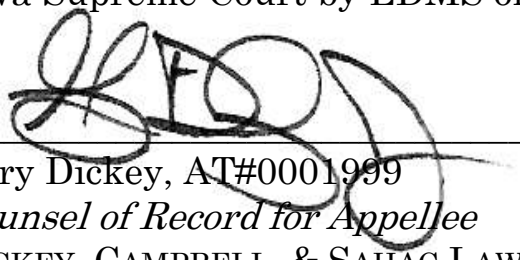
BRIEF FOR APPELLEE

Gary Dickey
DICKEY, CAMPBELL, & SAHAG LAW FIRM, PLC
301 East Walnut St., Ste. 1
Des Moines, Iowa 50309
PHONE: (515) 288-5008 FAX: (515) 288-5010
EMAIL: gary@iowajustice.com

PROOF OF SERVICE & CERTIFICATE OF FILING

On June 13, 2022, I served this brief on all other parties by EDMS to their respective counsel, and I emailed a copy of this brief to the appellee.

I further certify that I did file this brief with the Clerk of the Iowa Supreme Court by EDMS on June 13, 2022.



Gary Dickey, AT#0001999
Counsel of Record for Appellee
DICKEY, CAMPBELL, & SAHAG LAW FIRM, PLC
301 East Walnut St., Ste. 1
Des Moines, Iowa 50309
PHONE: (515) 288-5008 FAX: (515) 288-5010
EMAIL: gary@iowajustice.com

TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES

OTHER AUTHORITIES:

STATEMENT OF ISSUES

WHETHER THE DISTRICT COURT CORRECTLY RULED THAT POLK COUNTY AND SHERIFF SCHNEIDER MUST PRODUCE RECORDS IN RESPONSE TO VACCARO'S MOTION TO COMPEL

CASES

Ackelson v. Manley Toy Direct, L.L.C.,
832 N.W.2d 678 (Iowa 2013)
City of Riverdale v. Diercks, 806 N.W.2d 643 (Iowa 2011)
Clymer v. City of Cedar Rapids, 601 N.W.2d 42 (Iowa 1999)
Gerace v. 3-D Mfg. Co., Inc., 522 N.W.2d 312
(Iowa Ct. App. 1994)
Hawk Eye v. Jackson, 521 N.W.2d 750 (Iowa 1994)
Mediacom Iowa, LLC v. City of Spencer,
682 N.W.2d 62 (Iowa 2004)
Mitchell v. City of Cedar Rapids,
926 N.W.2d 222 (Iowa 2019) *passim*
Neer v. State, 2011 Iowa Appl. LEXIS 154
(Iowa Ct. App. Feb. 23, 2011)
Rathmann v. Bd. of Dirs., 580 N.W.2d 773 (Iowa 1998)
State ex. rel. Shanahan v. Iowa District Court,
356 N.W.2d 523 (Iowa 1984)
State v. Neiderbach, 837 N.W.2d 180 (Iowa 2013)
Wells Dairy, Inc. v. Am. Indus. Refrigeration, Inc.,
690 N.W.2d 38 (Iowa 2004)
Whitley v. C.R. Pharmacy Serv., Inc.,
816 N.W.2d 378 (Iowa 2012)

OTHER AUTHORITIES

Iowa Code § 22.1
Iowa Code § 22.2
Iowa Code § 22.7

Iowa R. Civ. P. 1.503
Iowa R. Civ. P. 1.517

ROUTING STATEMENT

Because the relief sought by Polk County and Sheriff Schneider is foreclosed by clearly existing precedent, transfer to the court of appeals is appropriate. Iowa R. App. P. 6.1101(3)(a).

STATEMENT OF THE CASE

This case concerns Michelle Vaccaro's attempt to obtain public records concerning facts about a motorcycle crash that claimed the life of her teenage daughter—Jordan Leon. (App. at 5). Vaccaro has substantial concerns about the way in which the Polk County Sheriff's Department conducted the investigation into the cause and manner of the crash. (App. at 6). To that end, Vaccaro made multiple requests for access to all documents produced as part of the Polk County Sheriff Department's investigation into the cause of the crash. (App. at 6). The County and the Sheriff, however, refused to grant Vaccaro access to all the records in its custody related to the fatal crash. (App. at 6). Accordingly, Vaccaro filed a petition against Polk County and Sheriff Schneider for violating the Iowa Open Records Act. (App. at 6-10).

Vaccaro served requests for discovery on the County and Sheriff seeking production of the documents that she contends were unlawfully withheld. (App. at 52, 58, 62). When they refused to produce the documents, Vaccaro filed a motion to

compel. (App. at 46-49). The district court ordered the County and Sheriff to produce the records for *in camera* inspection. (App. at 71-74). Following the review, the court found that "the documents should be produced based upon the requirements set forth in *Mitchell v. City of Cedar Rapids*, 926 N.W.2d 222 (Iowa 2019). (App. at 76-77). This appeal followed.

STATEMENT OF THE FACTS

On October 6, 2019, Michelle Vaccaro's daughter, Jordan Leon, died as the result of a single-motorcycle crash in which she was the passenger. (App. at 72). In the course of its criminal investigation into the driver's conduct, the Polk County Sheriff's Office generated several documents related to the events of the crash. (App. at 72). When Polk County and Sheriff Schneider refused to produce all the records in response to her open records request, Vaccaro filed a lawsuit pursuant to chapter 22 of the Iowa code. (App. at 5). Vaccaro sought the records because she questioned the adequacy of the criminal investigation. (App. at 72).

On December 2, 2020, Michelle Vaccaro's counsel served Polk County and Sheriff Kevin Schneider with discovery requests, including Request for Production No. 4, which provided:

> **REQUEST NO. 4:** All records identified in paragraph 26 of Plaintiff's Petition. *See Mediacom, L.L.C. v. Incorporated City of Spencer*, 682 N.W.2d 62, 69 (Iowa 2004) (observing that a government party engaged in litigation cannot refuse to produce a document requested in discovery on the basis that the document would be exempt from production pursuant to an open records request).

(App. at 52). The specific documents Vaccaro sought included the following:

- Photographs of the motorcycle;
- Vehicle Damage Report that includes six (6) photographs of motorcycle;
- Measurement log;
- Diagrams, drawings of accident location (2);
- Incident/Investigative Summary Report (PSCO Cass Bollman);
- Incident/Investigation Supplemental Report (PCSO Cass Bollman);
- Incident Report (PCSO Nicholas Smith);
- Incident Supplemental Report (PCSO Haleigh Rees);
- Iowa Incident Report Supplemental (Iowa DOT Officer Justin Mack);
- Two (Witness Statements);
- In-car camera audio/video (Nicholas Smith);
- In-car camera audio/video (Haleigh Rees);
- Victim Resource Incident Report;
- Vehicle Towing and Impound Report dated 10.6.19;
- Inventory Report printed 10.28.19;

- Vehicle Towing and Impound Release Report printed 10.28.19;
- Vehicle Towing and Impound Report printed 10.28.19; and
- Polk County Sheriff's Office Property Report (Case Photos).

(App. at 8-9). Polk County and Sheriff Schneider acknowledged that they possessed the requested documents. (App. at 13). They also agreed that the corresponding criminal prosecution was complete as of February 2020, and no additional charges would be filed. (App. at 72). On February 19, 2021, Defendants responded with their production of documents, and provided the following response to Plaintiff's Request No. 4:

> RESPONSE: Defendants object to this Request as it exceeds the scope of allowable discovery in a Chapter 22 action. Without waiving said objection, the Defendants have provided all required immediate facts and circumstances related to this incident. Defendants have refused to produce law enforcement investigative materials expressly protected from disclosure under state and federal law including, but not limited to, Iowa Code section 22.7(5). To require production of the very documents in question prior to a ruling by the Court of its confidential status under Iowa Code would frustrate the purposes of this judicial action. Further, the Iowa Court of Appeals has expressly noted requiring production of such documents contained within law enforcement investigative materials would be contrary to Chapter 22. *See Neer v. State,* 2011 WL

> 662725 at 4 (Iowa Ct. App. Feb. 23, 2011); *see also* IPIB decision in Burlington PD/DPS DCI matter.

(App. at 58). On March 2, 2021, Vaccaro's counsel sent Defendants correspondence identifying deficiencies in their discovery responses, including their response to Request No. 4. (App. at 62). On Friday, March 12, 2021, the parties conferred by telephone in a good faith attempt to resolve the dispute without the necessity of the court's intervention. (App. at 47). Vaccaro's counsel offered to stipulate to a protective order to limit review of the requested documents to the parties to the litigation. (App. at 47). Defendants refused. (App. at 47).

Following a contested motion to produce, the district court ordered *in camera* inspection of the Defendants' documents responsive to Vaccaro's discovery request. (App. at 73-74). After *in camera* review, the court found that the documents should be produced:

> The court is ordering production of these records to plaintiff's counsel under the protection set forth in this order so plaintiff can prosecute her case. The court does not believe a plaintiff who brings a chapter 22 enforcement action is precluded from reviewing the documents at issue prior to trial. If that is the law a

> plaintiff would be severely handicapped in their ability to prosecute their case.

(App. at 76-77). Polk County and Sheriff Schneider sought and obtained interlocutory review from this Court.

ARGUMENT

THE DISTRICT COURT DID NOT ABUSE ITS DISCRETION IN REQUIRING THE POLK COUNTY DEFENDANTS TO PRODUCE POLICE RECORDS IN RESPONSE TO VACCARO'S DISCOVERY REQUEST IN HER CIVIL ACTION TO ENFORCE THE IOWA OPEN RECORDS ACT

Error Preservation

Appellants preserved error by obtaining a ruling in which the court necessarily decided the issues addressed in this appeal. (App. at 73-74)

Standard of Review

On review of a district court's ruling on a discovery matter, the district court is afforded "wide latitude." *Wells Dairy, Inc. v. Am. Indus. Refrigeration, Inc.*, 690 N.W.2d 38, 43 (Iowa 2004). Iowa appellate courts will reverse a ruling on a discovery matter only for an abuse of discretion. *Id.* "A reversal of a discovery ruling is warranted when the grounds underlying a district court order are clearly unreasonable or untenable." *Id.*

Analysis

A. Applicable Legal Principles

The discovery process in a civil case is not a game of hide-and-seek. Litigation culminating in a trial should be a search for the truth, and the rules of discovery are an avenue to achieving that goal. *Whitley v. C.R. Pharmacy Serv., Inc.*, 816 N.W.2d 378, 386 (Iowa 2012). Indeed, the purpose of the broad discovery rule "is to avoid surprise and to permit the issues to become both defined and refined before trial." *Gerace v. 3-D Mfg. Co., Inc.*, 522 N.W.2d 312, 320 (Iowa Ct. App. 1994). To these ends, a party may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of any other party. Iowa R. Civ. P. 1.503(1). It is not grounds for objection that the information sought will be inadmissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence. *Id.; Mediacom Iowa, LLC v. City of Spencer*, 682 N.W.2d 62, 67 (Iowa 2004). Courts traditionally

have supported the liberal construction of the discovery rules in support of the "fundamental principle that ordinarily a private litigant is entitled to discovery and use every person's evidence." *State ex. rel. Shanahan v. Iowa District Court*, 356 N.W.2d 523, 531 (Iowa 1984). If a party fails to respond to requests for production of documents, the seeking party may file a motion to compel. Iowa R. Civ. P. 1.517(1)(b).

B. The Iowa Supreme Court repeatedly has held that the Iowa Open Records Act does not restrict a litigant's access to discovery in a civil case

There is no meaningful dispute that the records Vaccaro seeks are reasonably calculated to lead to the discovery of admissible evidence. Instead, Polk County and Sheriff Schneider object to production of the records on the basis that they are exempt from disclosure under the Iowa Open Records Act. They argue, in essence, that because they do not have to produce the documents to the public, they cannot be required to produce them in response to a discovery request in a civil case. But, the Iowa Supreme Court squarely rejected this argument in the *Mediacom Iowa, L.L.C.* decision. In that case, Mediacom served the Board of

Trustees of Spencer Municipal Utilities ("Board") with a request for production of documents. *Mediacom Iowa, LLC.*, 682 N.W.2d at 65. The Board refused to produce documents in response to eleven of Mediacom's requests "on the grounds of trade secret under Iowa Code section 22.7(3)." *Id.* This Court made clear that the Iowa Open Records Act does not apply to the rules of discovery in a civil case:

> Even assuming the Board had established its trade secret claim, section 22.7 would not automatically dictate absolute protection of the information sought through discovery. *Iowa Code chapter 22 pertains to parties seeking access to government documents and ordinarily has no application to discovery of such information in litigation.* Mediacom is not seeking access to government documents as a member of the general public; it is seeking access to such records as a plaintiff in litigation with a governmental entity. As a litigant, the Board is subject to our discovery rules, which do not absolutely protect trade secrets from discovery. *We agree with Mediacom that there is nothing in section 22.7 that suggests the legislature intended to limit the discovery rights of litigants in cases involving governmental entities.* To the contrary, *section 22.7* indicates the opposite because it allows disclosure upon a court order. We conclude, contrary to the district court, that section 22.7 does not trump our discovery rules.

Id. at 69 (emphasis added).

The Iowa Supreme Court reaffirmed the legal principles set forth in *Mediacom Iowa, L.L.C.*, just three terms ago in *Mitchell v. City of Cedar Rapids*, 926 N.W.2d 222 (Iowa 2019). In that case, the plaintiffs sought discovery of police investigative reports. *Id.* at 224. The district court, noting the police investigation had been completed and involved no confidential informants, denied the City's request for a protective order but limited production to reports prepared within ninety-six hours of the incident. *Id.* at 224-25. The Iowa Supreme Court affirmed and used the case to clarify the interplay between Iowa's Open Records Act and the rules of discovery:

> The philosophy underlying our discovery rules is that litigants are entitled to every person's evidence, and the law favors full access to relevant information. For that reason, the district court should liberally construe our discovery rules. Upon motion by a party and for good cause shown, however, a court may enter a protective order to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense.
>
> The Mitchells sought the police investigative reports under the discovery rules as litigants suing Officer Jones and his employer, the City of Cedar Rapids. We have previously addressed the tension between our discovery rules and the confidentiality provisions in Iowa Code section 22.7. In *Mediacom*, we

> observed, Iowa Code chapter 22 pertains to parties seeking access to government documents and ordinarily has no application to discovery of such information in litigation. *Iowa Code section 22.7 does not create a true privilege against discovery of confidential information.* There is nothing in section 22.7 suggests the legislature intended to limit the discovery rights of litigants in cases involving governmental entities. To the contrary, section 22.7 indicates the opposite because it allows disclosure upon a court order. *Section 22.7 does not trump our discovery rules.* Nevertheless, the confidentiality the legislature prescribed for certain government records can be safeguarded through a protective order allowing the litigants use of the records in the lawsuit while preventing disclosure to the public.

Id. at 228-29 (citations and quotations omitted)(emphasis added).

Despite the clear line of separation between the rules of discovery and the requirements set forth in the case law, Polk County and Sheriff Schneider claim they are entitled to preferential treatment because this is an open records lawsuit. Tellingly, they offer no analysis of the text of either chapter 22 or Rule 1.503. Instead, they reach their unjustified position by misreading the court of appeals' unpublished decision in *Neer v. State*, 2011 Iowa Appl. LEXIS 154 (Iowa Ct. App. Feb. 23, 2011). There, the plaintiff sued the Iowa Department of Public Safety for records related to his arrest for operating while intoxicated and

eluding. *Id.* Polk County and Sheriff Schneider's reliance on *Neer* is puzzling because the case did not involve a discovery dispute. To the contrary, the public agency "*voluntarily turned the records over to Neer*." *Id.* at *4 (emphasis added). Thus, to the extent *Neer* has any relevance, it is for the proposition that police investigation reports are properly the subject of discovery in an open records violation case. Accordingly, the district court did not abuse its discretion in requiring Polk County and Sheriff Schneider to produce the requested documents in discovery.

C. Polk County and Sheriff Schneider misunderstand their obligations under chapter 22

As the starting point of its analysis, Polk County and Sheriff Schneider claim that Vaccaro does not allege that "Polk County failed to provide immediate facts and circumstances as required under Iowa Code section 22.7(5)." (Appellant Br. at 15). It is true that Vaccaro has received *information* concerning the crash that killed her daughter. But, Vaccaro seeks access to the *records* themselves for an unfiltered look into what transpired. Chapter 22 "gives members of the public the right to examine and copy *public records*." *Rathmann v. Bd. of Dirs.*, 580 N.W.2d 773, 777

(Iowa 1998)(emphasis added). The definition of public records includes those that Vaccaro requested. Iowa Code § 22.1(3). Polk County and Sheriff Schneider simply misunderstand chapter 22 if they believe that they may substitute *access to information* for their duty to provide Vaccaro with *access to records*.

Vaccaro is entitled to "examine and copy a public record and to publish or otherwise disseminate a public record or the information contained in a public record" unless it is otherwise exempt. *See* Iowa Code § 22.2; *Clymer v. City of Cedar Rapids*, 601 N.W.2d 42, 45 (Iowa 1999) ("Disclosure is the rule, and one seeking the protection of one of the statute's exemptions bears the burden of demonstrating the exemption's applicability"). Here, Polk County and Sheriff Schneider claim that the requested documents are exempt under section 22.7(5), which provides:

> 5. Peace officers' investigative reports, privileged records or information specified in section 80G.2, and specific portions of electronic mail and telephone billing records of law enforcement agencies if that information is part of an ongoing investigation, except where disclosure is authorized elsewhere in this Code. However, the date, time, specific location, and immediate facts and circumstances surrounding a crime or incident shall not be kept confidential under this section, except in those unusual circumstances

> where disclosure would plainly and seriously jeopardize an investigation or pose a clear and present danger to the safety of an individual. Specific portions of electronic mail and telephone billing records may only be kept confidential under this subsection if the length of time prescribed for commencement of prosecution or the finding of an indictment or information under the statute of limitations applicable to the crime that is under investigation has not expired.

Iowa Code § 22.7(5). Unlike other exemptions in section 22.7, the peace officers' investigatory exemption is not absolute. "[S]ection 22.7(5) includes an exemption from confidentiality for basic facts about the incident, subject to a legislatively prescribed balancing test." *Mitchell*, 926 N.W.2d at 225. For example, the portion of a public record that includes "the date, time, specific location, and immediate facts and circumstances surrounding or incident" are not exempt. Iowa Code § 22.7(5).

Vaccaro's records request falls squarely within this carve-out. The photographs, videos, drawings, measurement log, incident reports, and witness statements undoubtedly contain information about the "date, time, specific location, and immediate facts and circumstances surrounding" the crash that killed Jordan. *See id.* Neither Polk County, nor Sheriff Schneider, has

explained how the production of the requested records would be detrimental — let alone outweigh the public's interest in disclosure. *See Hawk Eye v. Jackson*, 521 N.W.2d 750, 753 (Iowa 1994)(adopting a three-party balancing test); *Mitchell*, 926 N.W.2d at 234 ("We hold that *Hawk Eye* remains the controlling precedent for disputes over access to police investigative reports"). They conceded that the criminal investigation was complete. And, it did not involve any unidentified suspects or the use of any confidential informants. The best Polk County and Sheriff Schneider can muster is to claim an interest in the "relative secrecy" of the information. (Appellant's Br. at 23). In any event, they have not identified any harm that would flow from the disclosure of the purportedly secret information contained in the records. On the other side of the ledger, the public has a strong interest in making sure Jordan's death investigation was handled properly and responsible parties were held accountable.

Polk County and Sheriff Schneider follow with a *non-sequitur*—suggesting that Vaccaro is not entitled to the requested records if she already knows the immediate facts of the crash or is

able to obtain the information from another source. (Appellant's Br. at 16). This suggestion further illustrates their confusion about the requirements of chapter 22. While often referred to as a "freedom of information" act, that is somewhat of a misnomer. *See City of Riverdale v. Diercks*, 806 N.W.2d 643, 652 (Iowa 2011) ("Iowa Code chapter 22 is our state's freedom of information statute"). The statutory mandate of section 22.2(1) requires the government body to make "public records" available for inspection, copy, and dissemination. Iowa Code § 22.2(1). The governmental body does not satisfy its obligation to the requesting party merely by providing *information* without the accompanying *record*. The Iowa Supreme Court said as much in *Mitchell*:

> The defendants contend they have already provided the 'date, time, specific location and immediate facts and circumstances surrounding' the incident. In our view, the district court acted within its discretion under *Hawk Eye*, consistent with the second sentence of Iowa Code section 22.7(5), by limiting the order compelling disclosure to 'investigative reports or electronic communications generated or filed within 96 hours of the incident.' The court directed the parties to handle remaining confidentiality issues as to specific records by redaction or further proceedings.

Mitchell, 926 N.W.2d at 234-35. As was true in *Mitchell* is also true in this case. The fact that Vaccaro may already possess some of the immediate facts surrounding her daughter's crash does not diminish her right to the records under chapter 22 or Rule 1.503.

Faced with this reality, Polk County and Sheriff Schneider are reduced to arguing a parade of horribles:

> Requiring disclosure of the very confidential records to the requesting party prior to a finding by the Court on whether the entity complied with chapter 22 destroys the confidentiality provisions in section 22.7. The district court's ruling, if allowed to stand, would completely eviscerate the confidentiality provisions set forth in Iowa Code section 22.7 with the simple filing of an enforcement action. The grounds relied upon by the district court are clearly unreasonable, untenable, and based on an erroneous interpretation of law.

(Appellant's Br. at 19-20). This argument, however, overlooks that the district court's order maintains the confidentiality of the records by limiting review to the "plaintiff and plaintiff's counsel only" and prohibiting disclosure "to any other party without further order of the court." (App. at 77). As the Iowa Supreme Court explained in *Mitchell*, "the confidentiality the legislature prescribed for certain government records can be safeguarded through a protective order allowing litigants use of records in the

lawsuit while *preventing disclosure to the public*." *Mitchell*, 926 N.W.2d at 228-29 (emphasis added). For this reason, Polk County and Sheriff Schneider's reports of the death of section 22.7(5) are greatly exaggerated.

In the final accounting, this Court need not decide whether the records that Vaccaro seeks are exempt from disclosure under section 22.7(5) as a matter of law. Instead, the question presented in this appeal is whether the court below abused its discretion in compelling Polk County and Sheriff Schneider to produce the documents in discovery.[1] It did not. The district court correctly applied the *Mediacom* and *Mitchell* decisions and concluded that

[1] Although not necessary to resolve the question presented in this appeal, the Court should rid district courts of the business of *in camera* inspection of discovery requests involving records covered by chapter 22.7. *See State v. Neiderbach*, 837 N.W.2d 180, 230-36 (Iowa 2013) (Appel, J., concurring specially) (identifying the challenges of *in camera* review of confidential records). Such records are entitled to no greater protection than education, employment, tax, and medical records that are routinely exchanged in the civil discovery process. A government body refusing production of public records in response to a conventional discovery request should bear the burden of demonstrating a compelling reason why confidentiality cannot be maintained with a run-of-the-mill protective order before invoking the district court's resources for an *in camera* review.

Vaccaro is entitled to the records in the discovery phase of the litigation.[2] Consequently, the court's ruling should be affirmed.

D. The County and Sheriff Schneider's interpretation of discovery rules would thwart Vaccaro's ability to prove the violation of the Iowa Open Records Act

Not only are Polk County and Sheriff Schneider's arguments contrary to clearly established precedent, they also are nonsensical. It bears repeating that the determination of whether the "investigative reports" exemption applies requires the district court to engage in a three-part balancing test that evaluates whether "the public interest would suffer by disclosure." *See Hawk Eye*, 521 N.W.2d at 753. In other words, Polk County and Sheriff Schneider will have to prove at trial that the investigative reports contain information that would be detrimental to the public's interest if disclosed. That argument necessarily will require Vaccaro to have access to the reports themselves if she is going to have any hope to defeat it. "To use an algebra analogy,

---

[2] Notably, Polk County and Sheriff Schneider do not ask this Court to overrule *Mitchell*. Nor have they offered a compelling reason to do so. *See Ackelson v. Manley Toy Direct, L.L.C.*, 832 N.W.2d 678, 688 (Iowa 2013) ("We are slow to depart from *stare decisis* and only do so under the most cogent circumstances").

one cannot state that X equals Y without knowing something about both X and Y." *Neiderbach*, 837 N.W.2d at 229 (Appel, J., concurring specially). Not surprisingly, the district court rejected Polk County and Sheriff Schneider's argument, explaining that "[i]f that is the law a plaintiff would be severely handicapped in their ability to prosecute their case." (App. at 77). The court's observation illustrates the absurdity of Polk County and Sheriff Schneider's position.

CONCLUSION

For the reasons set forth above, the district court's order to compel production must be affirmed.

REQUEST FOR ORAL ARGUMENT

Appellee requests to be heard in oral argument.

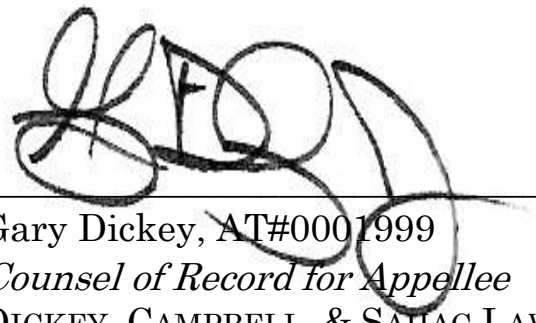
COST CERTIFICATE

I hereby certify that the costs of printing the Appellee's brief was $11.25, and that that amount has been paid in full by me.

CERTIFICATE OF COMPLIANCE

This brief complies with the typeface requirements and the type-volume limitation of Iowa R. App. P. 6.903(1)(*d*) and 6.903(1)(*g*)(1) or (2) because:

[x] this brief has been prepared in a proportionally spaced typeface using Century in 14 point and contains 3,958 words, excluding the parts of the brief exempted by Iowa R. App. P. 6.903(1)(*g*)(1).



Gary Dickey, AT#0001999
Counsel of Record for Appellee
DICKEY, CAMPBELL, & SAHAG LAW FIRM, PLC
301 East Walnut St., Ste. 1
Des Moines, Iowa 50309
PHONE: (515) 288-5008 FAX: (515) 288-5010
EMAIL: gary@iowajustice.com