

ICYMI: UPDATES FROM THE SUPREME COURT OF IOWA

Justice Christopher McDonald

September 16, 2022

COURT MEMBERSHIP



Welcome to the newest member of
the Iowa Supreme Court:

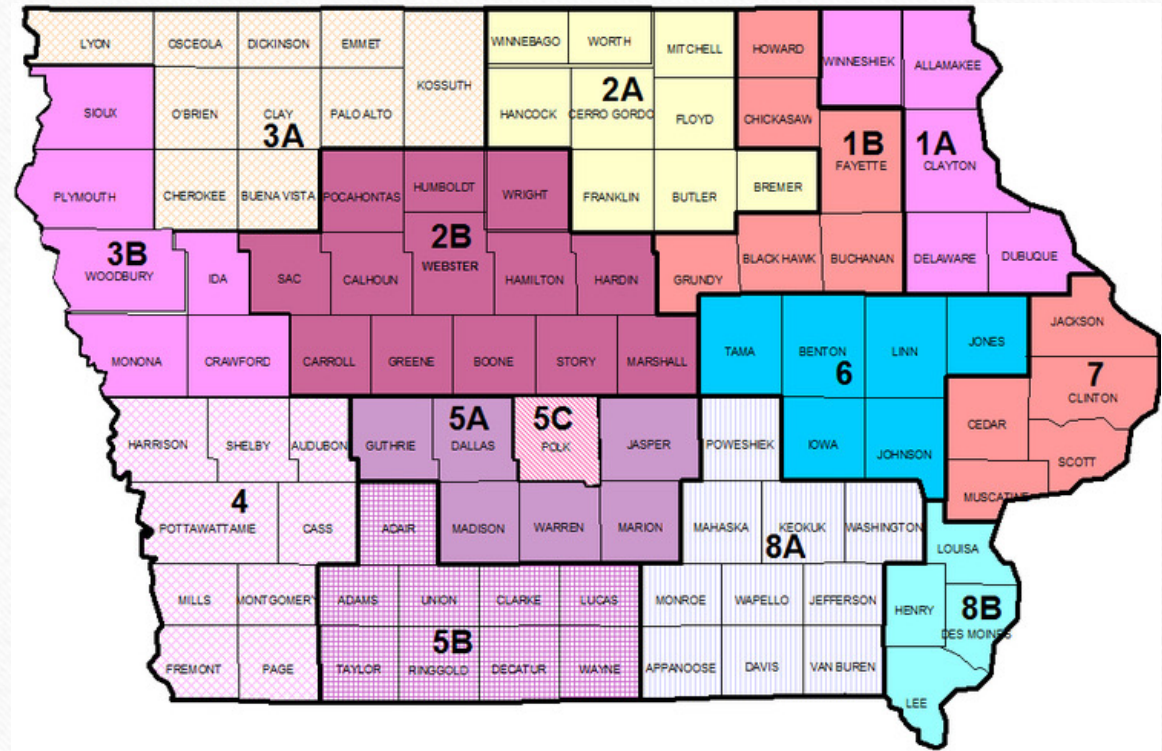
Justice David May

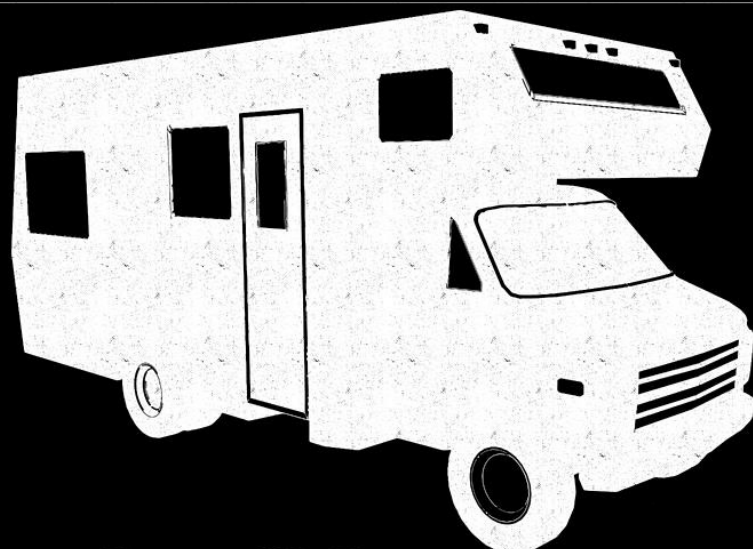
- Appointed July 2022
- Iowa Court of Appeals 2019 to 2022
- District 5C 2016 to 2019
- Drake University Law School (JD)
- University of Oklahoma Health Sciences Center (MPH)
- University of Missouri – Columbia (BA)



Liaison Justice

1. J. McDonald
2. J. McDermott
3. J. May
4. C.J. Christensen
5. J. Mansfield
6. J. Oxley
7. J. Waterman
8. J. McDermott





On The Road
AGAIN

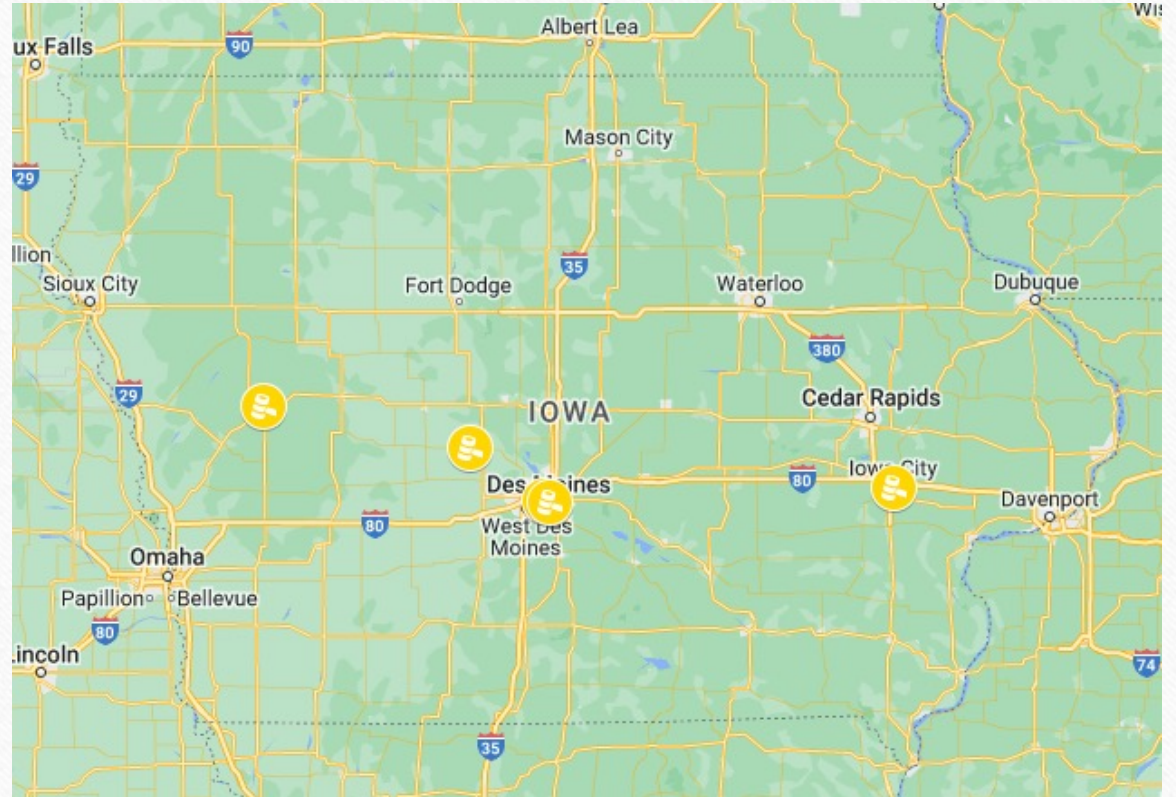
Court on the Road is Back

September 30, 2022 | University of Iowa College of Law

October 25, 2022 | Donna Reed Theatre in Denison

March 30, 2023 | Drake Law School

April 4, 2023 | Perry High School



Remote Hearings



Remote Hearings

- Parties should continue to explore the use of remote technology.
- Judicial discretion applies.

Order, December 6, 2021

- Civil court proceedings remote
- Civil trials with parties' consent
- 232 cases as ordered by court with opportunity to be heard
 - Except delinquency cases
- Family law cases with consent or good cause shown
- Appellate arguments

Search Warrants



Photo: Anne Kitzman / Shutterstock

Now Expanded to All Iowa Counties: Electronic Search Warrant Pilot Project

Project goals:

- (1) Reduce the time required to obtain search warrants
- (2) Reduce travel time for law enforcement officers
- (3) More effectively utilize judicial officers' time

4 counties in 2020:

Fremont, Mills, Montgomery, Page

10 counties added in 2021:

Audubon, Boone, Cass, Fayette, Greene,
Harrison, Iowa, Pottawattamie, Shelby, Tama

Expanded to all counties in 2022

Appellate Procedure Rules



Chapter 6 - Rules of Appellate Procedure

Substantive Review Task Force

Justice Dana Oxley, *Co-Chair*
Iowa Supreme Court, Swisher

Justice David May, *Co-Chair*
Iowa Supreme Court, Polk City

Formed in 2020

Judge Paul Ahlers, Iowa Court of Appeals, Fort Dodge

Kodi Brotherson, attorney, Sac City

Timothy Eckley, staff attorney, Iowa Supreme Court, Carlisle

Donna Humpal, Clerk of the Iowa Supreme Court, Des Moines

Ryan Koopmans, attorney, Des Moines

Martha Lucey, State Appellate Defender, Des Moines

Christine Mayberry, Deputy Clerk of the Iowa Supreme Court, Des Moines

Benjamin Parrott, attorney, Urbandale

Nancy Penner, attorney, Cedar Rapids

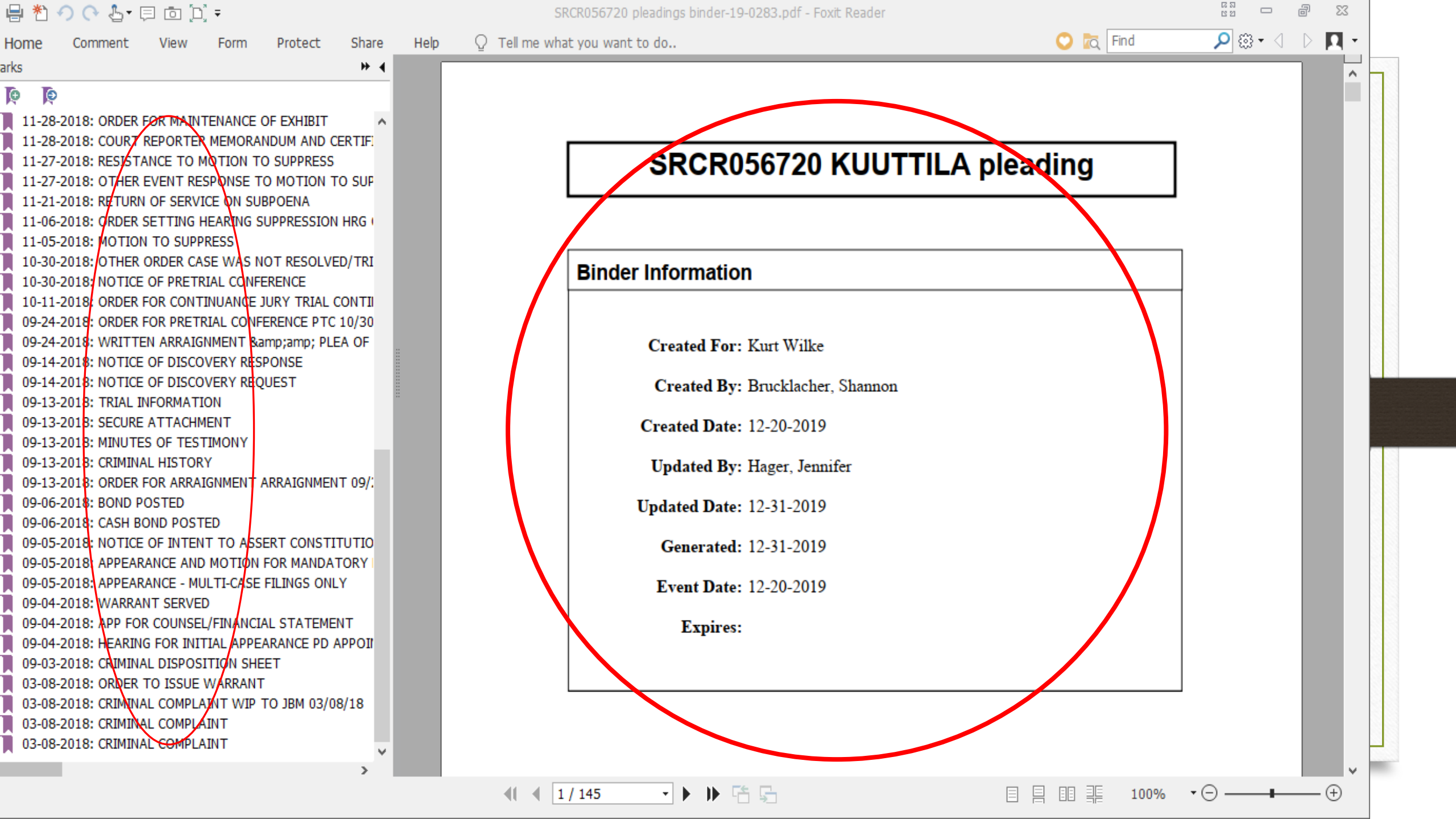
Alesha Sigmeth Roberts, attorney, Clarion

Mikkie Schiltz, attorney, Davenport

Leon Spies, attorney, Iowa City

Jeffrey Thompson, Iowa Solicitor General, Des Moines

Scott Wadding, attorney, Des Moines



- 11-28-2018: ORDER FOR MAINTENANCE OF EXHIBIT
- 11-28-2018: COURT REPORTER MEMORANDUM AND CERTIF
- 11-27-2018: RESISTANCE TO MOTION TO SUPPRESS
- 11-27-2018: OTHER EVENT RESPONSE TO MOTION TO SUP
- 11-21-2018: RETURN OF SERVICE ON SUBPOENA
- 11-06-2018: ORDER SETTING HEARING SUPPRESSION HRG
- 11-05-2018: MOTION TO SUPPRESS
- 10-30-2018: OTHER ORDER CASE WAS NOT RESOLVED/TRI
- 10-30-2018: NOTICE OF PRETRIAL CONFERENCE
- 10-11-2018: ORDER FOR CONTINUANCE JURY TRIAL CONTI
- 09-24-2018: ORDER FOR PRETRIAL CONFERENCE PTC 10/30
- 09-24-2018: WRITTEN ARRAIGNMENT & PLEA OF
- 09-14-2018: NOTICE OF DISCOVERY RESPONSE
- 09-14-2018: NOTICE OF DISCOVERY REQUEST
- 09-13-2018: TRIAL INFORMATION
- 09-13-2018: SECURE ATTACHMENT
- 09-13-2018: MINUTES OF TESTIMONY
- 09-13-2018: CRIMINAL HISTORY
- 09-13-2018: ORDER FOR ARRAIGNMENT ARRAIGNMENT 09/
- 09-06-2018: BOND POSTED
- 09-06-2018: CASH BOND POSTED
- 09-05-2018: NOTICE OF INTENT TO ASSERT CONSTITUTIO
- 09-05-2018: APPEARANCE AND MOTION FOR MANDATORY
- 09-05-2018: APPEARANCE - MULTI-CASE FILINGS ONLY
- 09-04-2018: WARRANT SERVED
- 09-04-2018: APP FOR COUNSEL/FINANCIAL STATEMENT
- 09-04-2018: HEARING FOR INITIAL APPEARANCE PD APPOI
- 09-03-2018: CRIMINAL DISPOSITION SHEET
- 03-08-2018: ORDER TO ISSUE WARRANT
- 03-08-2018: CRIMINAL COMPLAINT WIP TO JBM 03/08/18
- 03-08-2018: CRIMINAL COMPLAINT
- 03-08-2018: CRIMINAL COMPLAINT

SRCR056720 KUUTTILA pleading

Binder Information

Created For: Kurt Wilke

Created By: Brucklacher, Shannon

Created Date: 12-20-2019

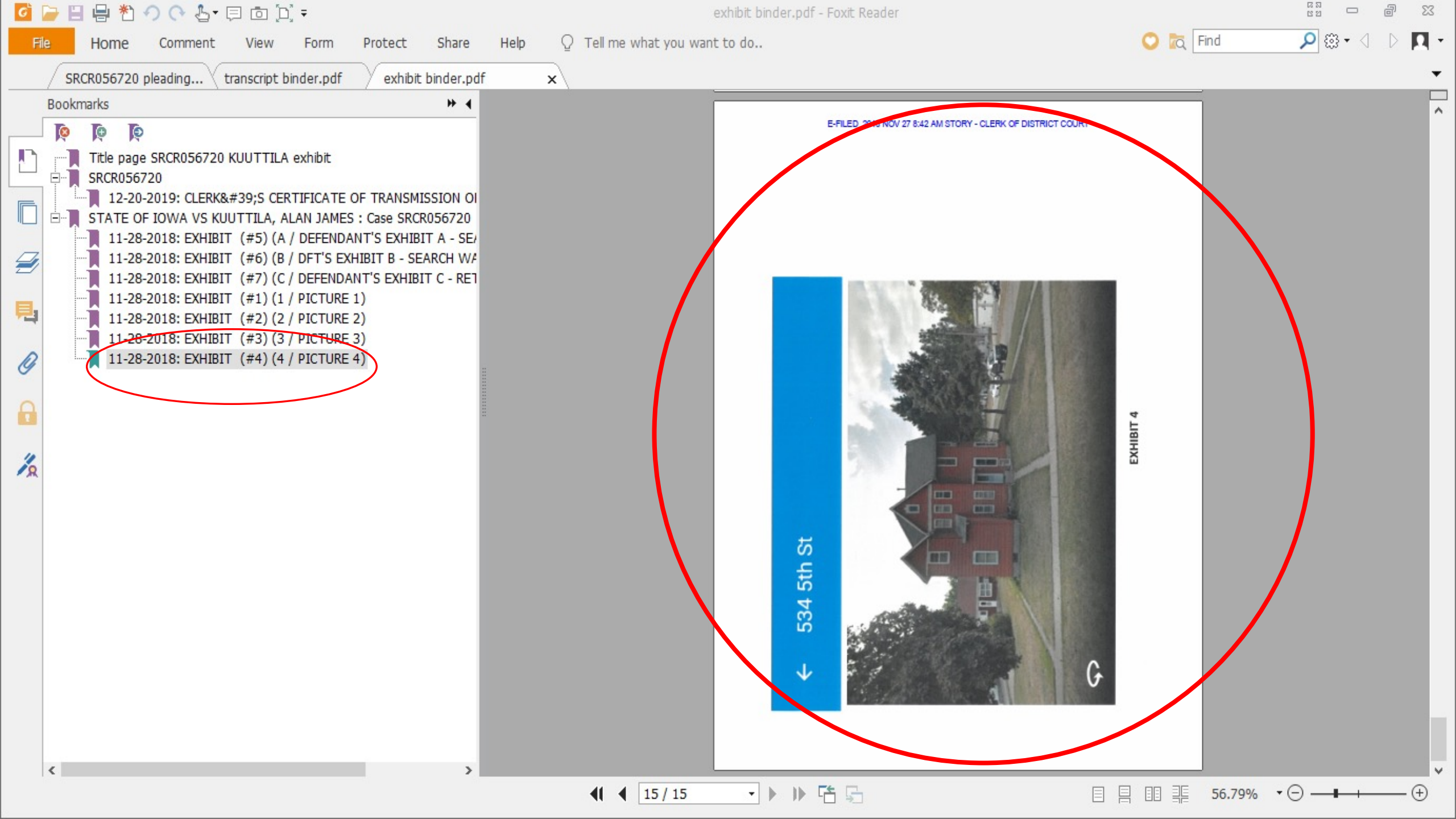
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Updated Date: 12-31-2019

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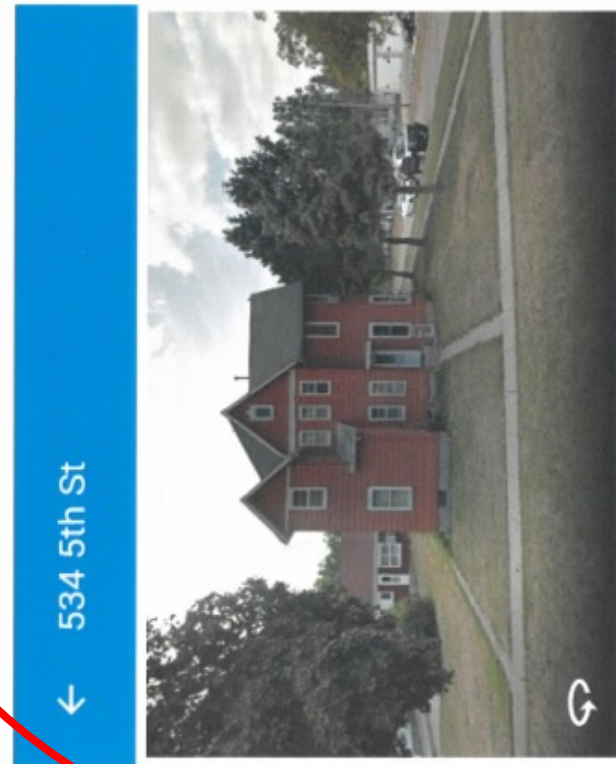
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Bookmarks

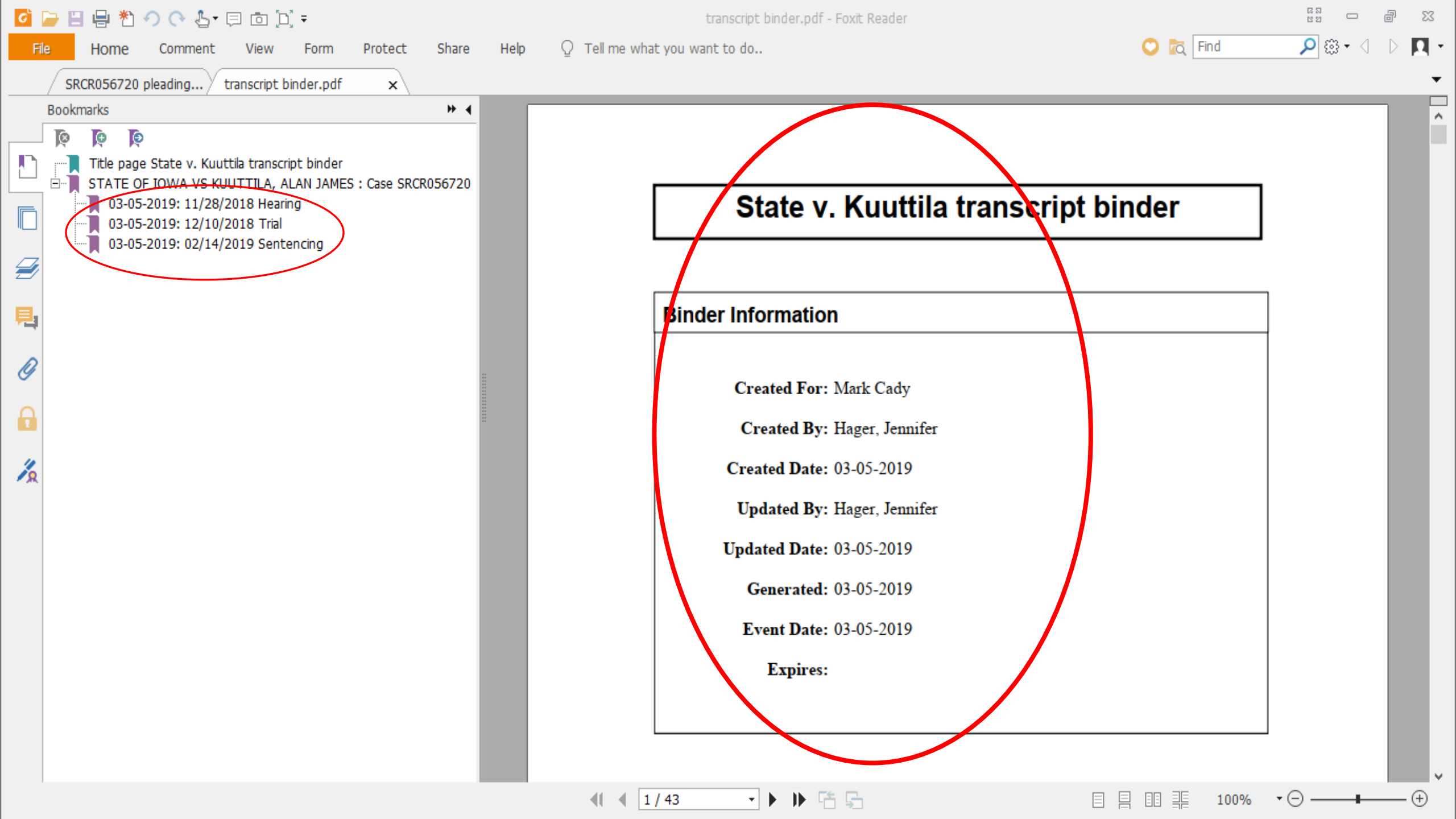
- Title page SRCR056720 KUUTTILA exhibit
- SRCR056720
 - 12-20-2019: CLERK'S CERTIFICATE OF TRANSMISSION OF
 - STATE OF IOWA VS KUUTTILA, ALAN JAMES : Case SRCR056720
 - 11-28-2018: EXHIBIT (#5) (A / DEFENDANT'S EXHIBIT A - SEARCH WARRANT)
 - 11-28-2018: EXHIBIT (#6) (B / DEFENDANT'S EXHIBIT B - SEARCH WARRANT)
 - 11-28-2018: EXHIBIT (#7) (C / DEFENDANT'S EXHIBIT C - RETURN OF SEARCH WARRANT)
 - 11-28-2018: EXHIBIT (#1) (1 / PICTURE 1)
 - 11-28-2018: EXHIBIT (#2) (2 / PICTURE 2)
 - 11-28-2018: EXHIBIT (#3) (3 / PICTURE 3)
 - 11-28-2018: EXHIBIT (#4) (4 / PICTURE 4)

E-FILED 2019 NOV 27 8:42 AM STORY - CLERK OF DISTRICT COURT



← 534 5th St

EXHIBIT 4



Bookmarks

- Title page State v. Kuuttila transcript binder
- STATE OF IOWA VS KUUTTLA, ALAN JAMES : Case SRCR056720
 - 03-05-2019: 11/28/2018 Hearing
 - 03-05-2019: 12/10/2018 Trial
 - 03-05-2019: 02/14/2019 Sentencing

State v. Kuuttila transcript binder

Binder Information

Created For: Mark Cady
Created By: Hager, Jennifer
Created Date: 03-05-2019
Updated By: Hager, Jennifer
Updated Date: 03-05-2019
Generated: 03-05-2019
Event Date: 03-05-2019
Expires:

Presenting Relevant Record on Appeal

Addendum

- Rule added to require an addendum to brief
- Order(s) or ruling(s) at issue

Appendices

- Parties create own appendix
- Limited to 100 pages with allowance to exceed page limit

Presenting Argument on Appeal

**Proof Brief
Eliminated**

Appellate Practice Pointers



Appellate Practice Pointers

- **Footnotes**

II. Unlawful Public Contracts Must Be Struck and Their Illegality Can Be Raised Any Time

A governmental entity cannot lawfully contract in a way that violates the law or exceeds its powers. *Erickson v. City of Cedar Rapids*, 185 N.W. 46, 50 (Iowa 1921).³ This is so fundamental that “[t]he illegality of a municipal contract may be raised at any time....” *Denver & S.L. Ry. Co. v. Moffat Tunnel Imp. Dist.*, 35 F.2d 365, 374 (D. Colo. 1929), *modified*, 45 F.2d 715 (10th Cir. 1930); *Erickson*, 185 N.W. at 50–51 (“courts are always empowered to investigate and determine” whether public contracts are legal and to restrain illegal acts). Contract illegality even may be raised for the first time on appeal. *Trees v. Kersey*, 56 P.3d 765, 768 (Idaho 2002). Indeed, a court has an independent duty to root out illegality in a contract *sua sponte* at any litigation stage. *Id.*⁴ This is because a court must never “lend its assistance in any way toward carrying out the terms of an illegal contract.” *McMullen v. Hoffman*, 174 U.S. 639, 654 (1899).

715 (10th Cir. 1930); *Erickson*, 185 N.W. at 50–51 (“courts are always empowered to investigate and determine” whether public contracts are legal and to restrain illegal acts). Contract illegality even may be raised for the first time on appeal. *Trees v. Kersey*, 56 P.3d 765, 768 (Idaho 2002). Indeed, a court has an independent duty to root out illegality in a contract *sua sponte* at any litigation stage. *Id.*⁴ This is because a court must not “lend its assistance in any way toward carrying out the terms of an illegal contract.” *McMullen v. Hoffman*, 174 U.S. 639, 654 (1899).

³ See *City of Humboldt v. Knight*, 120 N.W.2d 457, 460 (Iowa 1963) (holding trial court erred in not declaring contract void and unenforceable as *ultra vires*); *Kane v. City of Marion*, 104 N.W.2d 626, 631 (1960) (declaring, in taxpayer and citizen suit, contract between municipalities was *ultra vires*).

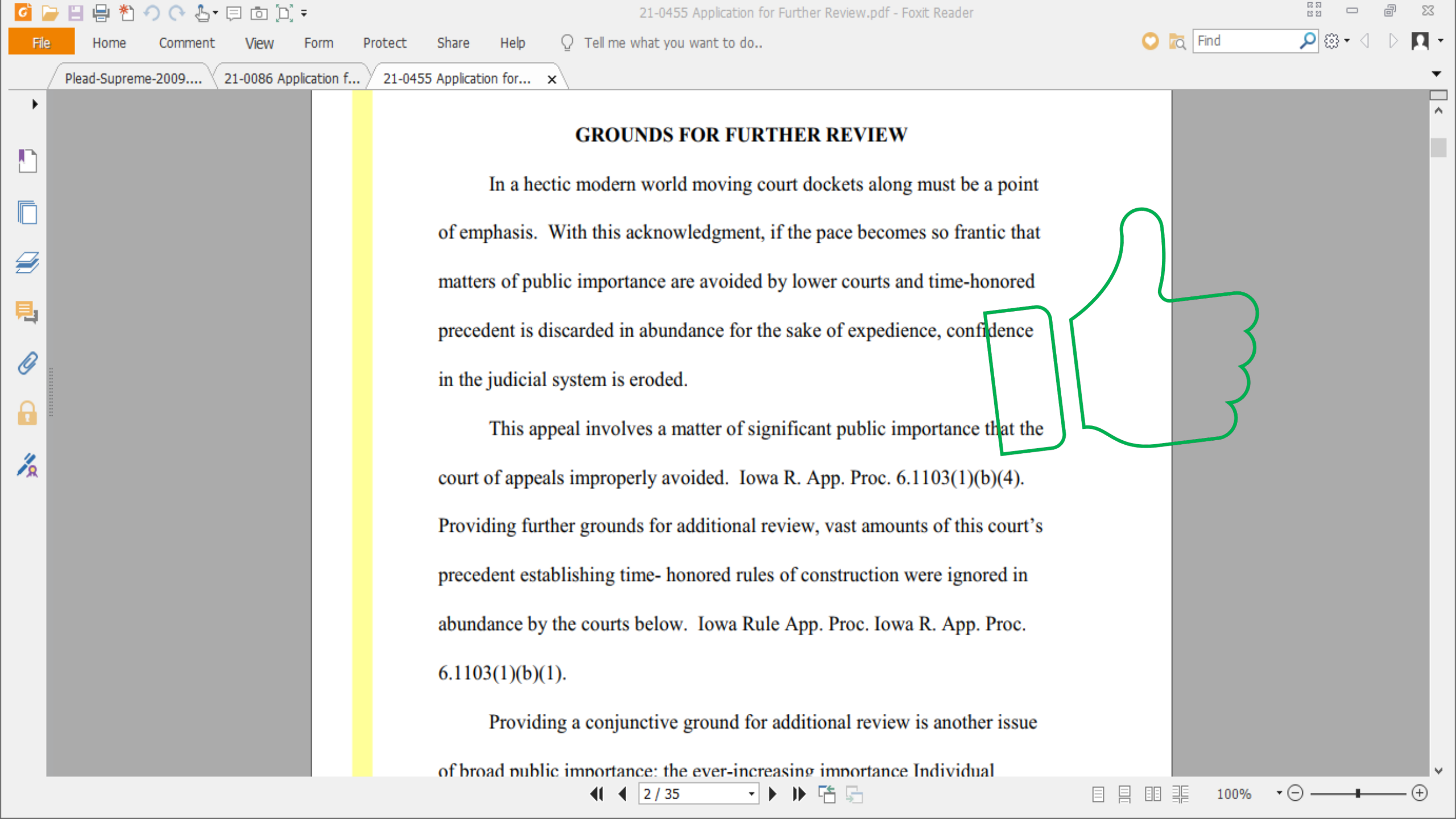
⁴ E.g., *California Pac. Bank v. Small Bus. Admin.*, 557 F.2d 218, 223 (9th Cir. 1977); *I.U.B.A.C. Local Union No. 31 v. Anastasi Bros. Corp.*, 600 F. Supp. 92, 95 (S.D. Fla. 1984); *Murphy v. Rochford*, 371 N.E.2d 260, 265 (Ill. Ct. App. 1977); *Laos v. Soble*, 503 P.2d 978, 978 (Ariz. Ct. App. 1972).

Appellate Practice Pointers

- **Footnotes**
- **State constitutional law**
 - *Doss v. State*, 961 N.W.2d 701, 737 (Iowa 2021) (McDonald, J., concurring) (“I would hold Doss forfeited his state constitutional claims by failing to brief the claims with citations to relevant Iowa authority.”)
- **Further review - Rule 6.1103**
 - (1) The court of appeals has entered a decision in conflict with a decision of this court or the court of appeals on an important matter;
 - (2) The court of appeals has decided a substantial question of constitutional law or an important question of law that has not been, but should be, settled by the supreme court;
 - (3) The court of appeals has decided a case where there is an important question of changing legal principles;
 - (4) The case presents an issue of broad public importance that the supreme court should ultimately determine.

STATEMENT IN SUPPORT OF FURTHER REVIEW

The district court abused its discretion in determining a prison sentence was warranted because of Cox's criminal history and "lack of structure at the time of the offenses". (Plea & Sent. Tr. p. 28 L.6-11). The district court failed to consider all the circumstances of this particular case. The punishment ordered by the district court did not fit the particular person and the circumstances under consideration.



GROUNDS FOR FURTHER REVIEW

In a hectic modern world moving court dockets along must be a point of emphasis. With this acknowledgment, if the pace becomes so frantic that matters of public importance are avoided by lower courts and time-honored precedent is discarded in abundance for the sake of expedience, confidence in the judicial system is eroded.

This appeal involves a matter of significant public importance that the court of appeals improperly avoided. Iowa R. App. Proc. 6.1103(1)(b)(4). Providing further grounds for additional review, vast amounts of this court's precedent establishing time- honored rules of construction were ignored in abundance by the courts below. Iowa Rule App. Proc. Iowa R. App. Proc. 6.1103(1)(b)(1).

Providing a conjunctive ground for additional review is another issue of broad public importance: the ever-increasing importance Individual

Appellate Practice Pointers

- Footnotes
- State constitutional law
- Further review - Rule 6.1103
- Oral Argument

Rules of Evidence

Chapter 5 – Rules of Evidence

Substantive Review Task Force

Justice Thomas Waterman, *Chair*
Iowa Supreme Court, Pleasant Valley

Judge Sharon Greer, *Vice-Chair*
Iowa Court of Appeals, Marshalltown

Laurie Doré, *Reporter*
Professor, Drake University Law School, Des Moines

Formed August 2021

Honorable Mark Bennett, Retired Federal Judge, Institute for Justice Reform & Innovation at Drake University Law School, Des Moines

Honorable Linda Fangman, Judge, Iowa District Court, Waterloo

Honorable Shawn Showers, Judge, Iowa District Court, Washington

Derek Muller, Professor, University of Iowa College of Law, Iowa City

Brian Galligan, attorney, Des Moines

Michael Giudicessi, attorney, Des Moines

Aaron Hawbaker, attorney, Waterloo

Martha Lucey, State Appellate Defender, Des Moines

Jeffrey Noble, Assistant County Attorney, Des Moines

Michael Reilly, attorney, Council Bluffs

Amanda Richards, attorney, Davenport

Patrick Sealey, attorney, Sioux City

Sheryl Soich, Assistant Attorney General, Des Moines

Steven Wandro, attorney, Des Moines

Timothy Eckley, attorney, Iowa Supreme Court, Allen Township, *Ex Officio*

Chapter 5 – Rules of Evidence

**Changes go into effect
January 1, 2023**

Rule 5.404

Character Evidence

Iowa R. Evid. 5.404(a)(2) is amended to provide that if the defendant offers evidence of the alleged victim's pertinent trait and that evidence is admitted, the prosecutor can rebut such evidence not only with victim character evidence, but also with "evidence of the defendant's same trait." The amended rule allows the prosecutor to show both that (a) the victim is peaceful and (b) that defendant similarly has an aggressive character.

Iowa R. Evid. 5.404(a)(2)(B) regarding exception for civil cases is removed. This amendment does not affect civil cases where character is an essential element of a claim or defense.

Slide 1 of 2

Rule 5.404 Character evidence; crimes or other acts.

a. Character evidence.

(1) *Prohibited ~~acts~~uses.* Evidence of a person's character or character trait is not admissible to prove that on a particular occasion the person acted in accordance with the character or trait.

(2) *Exceptions for a defendant or victim in a criminal case. The following exceptions apply in a criminal case:*

(A) ~~In criminal cases.~~

~~(i)~~ A defendant may offer evidence of the defendant's pertinent trait, and if the evidence is admitted, the prosecutor may offer evidence to rebut it.

~~(ii)(B)~~ Subject to the limitations in rule 5.412, a defendant may offer evidence of the victim's pertinent trait, and if the evidence is admitted, the prosecutor may: ~~offer evidence to rebut it.~~

(i) Offer evidence to rebut it.

(ii) Offer evidence of the defendant's same trait.

~~(iii)(C)~~ When the victim is unavailable to testify due to death or physical or mental incapacity, the prosecutor may offer evidence of the victim's trait of peacefulness to rebut evidence that the victim was the first aggressor.

~~(B) In civil cases.~~

~~(i) Evidence of an alleged victim's character for violence may be offered on the issue of self defense by a party accused of assaultive conduct against the victim.~~

~~(ii) If evidence of a victim's character for violence is admitted, any party may offer evidence of the victim's peaceful character to rebut it.~~

Rule 5.404

Character Evidence

Iowa R. Evid. 5.404(b)(3) is added, which requires a prosecutor to provide reasonable pretrial notice of intent to use such evidence.

- (3) Notice in a Criminal Case. In a criminal case, the prosecutor must:
- (A) Provide reasonable notice of any such evidence that the prosecutor intends to offer at trial, so that the defendant has a fair opportunity to meet it.
 - (B) Articulate in the notice the permitted purpose for which the prosecutor intends to offer the evidence and the reasoning that supports the purpose.
 - (C) Do so in writing before trial—or in any form during trial if the court, for good cause, excuses lack of pretrial notice.

Rule 5.412

Sex Abuse Cases; Victim's Past Sexual Behavior

The rape shield rule is expanded to include sexual misconduct not defined as sexual abuse under Iowa Code section 709.

The rape shield rule is expanded to civil cases.

Slide 1 of 2

Rule 5.412 ~~Sexual abuse~~Sex-offense cases; the victim's ~~past~~sexual behavior or predisposition.

a. Prohibited uses. The following evidence is not admissible in a civil or criminal proceeding involving alleged sexual ~~abuse~~misconduct:

(1) ~~Reputation or opinion evidence~~Evidence offered to prove that a victim engaged in other sexual behavior.

(2) Evidence ~~offered to prove~~ a victim's ~~other~~sexual ~~behavior other than reputation or opinion evidence~~predisposition.

b. Exceptions.

(1) *Criminal cases.* The court may admit the following evidence in a criminal case:

(A) Evidence of specific instances of a victim's sexual behavior, if offered to prove that someone other than the defendant was the source of semen, injury, or other physical evidence.

(B) Evidence of specific instances of a victim's sexual behavior with respect to the person accused of sexual ~~abuse~~misconduct, if offered by the defendant ~~offers it~~ to prove consent or if offered by the prosecutor.

(C) Evidence whose exclusion would violate the defendant's constitutional rights.

Rule 5.412

Sex Abuse Cases; Victim's Past Sexual Behavior

Slide 2 of 2

(2) *Civil cases.* ~~Rule 5.412(b) does not apply in civil cases.~~ In a civil case, the court may admit evidence offered to prove a victim's sexual behavior or sexual predisposition if its probative value substantially outweighs the danger of harm to any victim and of unfair prejudice to any party. The court may admit evidence of a victim's reputation only if the victim has placed it in controversy.

c. Procedure to determine admissibility.

(1) *Motion.* ~~If the defendant in a criminal sexual abuse case~~ a party intends to offer evidence under rule 5.412(b), the ~~defendant party~~ must:

(A) ~~File a motion to offer that specifically describes the evidence at least 14 days before trial unless the court determines that the evidence is newly discovered and could not have been obtained earlier through the exercise of due diligence, or that the evidence relates to an issue that has newly arisen in the case, and the court sets a different time~~ and states the purpose for which it is to be offered.

(B) ~~Serve the motion on all parties and on the victim, or when appropriate, the victim's guardian or representative~~ Do so at least 14 days before trial unless the court, for good cause, sets a different time.

(C) ~~File with~~ Serve the motion ~~an offer of proof that specifically describes the evidence and states the purpose for which the evidence is to be offered~~ on all parties.

(D) Notify the victim or, when appropriate, the victim's guardian or representative.

Rule 5.609

Impeachment by Evidence of a Criminal Conviction

The court rejected the proposed change and keeps the prior rule.

Rule 5.609 Impeachment by evidence of a criminal conviction.

a. In general. The following rules apply to attacking a witness's character for truthfulness by evidence of a criminal conviction:

(1) For a crime that in the convicting jurisdiction was punishable by death or by imprisonment for more than one year, the evidence:

(A) Must be admitted, subject to rule 5.403, in a civil case or in a criminal case in which the witness is not a defendant.

(B) Must be admitted in a criminal case in which the witness is a defendant, if the probative value of the evidence outweighs its prejudicial effect to that defendant.

(2) For any crime regardless of the punishment, the evidence must be admitted if the crime involved dishonesty—court can readily determine that establishing the elements of the crime required proving—or the witness's admitting—a dishonest act or false statement.

....

Rule 5.702

Testimony by Expert Witness

The court rejected the rule change and kept the prior rule.

Rule 5.702 Testimony by expert witnesses. A witness who is qualified as an expert by knowledge, skill, experience, training, or education may testify in the form of an opinion or otherwise if:

a. ~~the~~The expert's scientific, technical, or other specialized knowledge will help the trier of fact to understand the evidence or to determine a fact in issue.

b. The testimony is based on sufficient facts or data.

c. The testimony is the product of reliable principles and methods.

d. The expert has reliably applied the principles and methods to the facts of the case.

Rule 5.703

Bases of an Expert's Opinion Testimony

Rule is amended to require litigants to obtain trial court approval before disclosing otherwise inadmissible evidence in order to assist the jury in evaluating the opinion of an expert who has relied upon that inadmissible evidence in forming their opinion.

Rule 5.703 Bases of an expert's opinion testimony. An expert may base an opinion on facts or data in the case that the expert has been made aware of or personally observed. If experts in the particular field would reasonably rely on those kinds of facts or data in forming an opinion on the subject, they need not be admissible for the opinion to be admitted. But if the facts or data would otherwise be inadmissible, the proponent of the opinion may disclose them to the jury only if their probative value in helping the jury evaluate the opinion substantially outweighs their prejudicial effect.

Rule 5.706

Court-appointed Expert Witnesses

Rule is amended to explicitly state the court may, on a party's motion *or on its own*, order the parties to show cause as to why expert witnesses should not be appointed. This amendment solidifies the generally accepted practice of trial courts initiating the expert witness appointment process.

Rule 5.706 Court-appointed expert witnesses.

a. Appointment process. On a party's motion or on its own, the court may order the parties to show cause why expert witnesses should not be appointed and may ask the parties to submit nominations. The court may appoint any expert that the parties agree on and any of its own choosing. But the court may only appoint someone who consents to act.

Rule 5.801(d)(1)(B)

Prior Consistent Statements

This rule is amended to allow additional use of a prior consistent statement made by a testifying witness whose credibility has been attacked on grounds other than recent fabrication or improper motive. The amendment allows Iowa courts to admit such statements for the truth of the matter asserted, rather than, under current practice, only for the limited non-hearsay purpose of rehabilitating the witness.

Rule 5.801 Definitions that apply to this Article; exclusions from hearsay.

....

d. Statements that are not hearsay. A statement that meets the following conditions is not hearsay:

(1) *A declarant-witness's prior statement.* The declarant testifies and is subject to cross-examination about a prior statement, and the statement:

(A) Is inconsistent with the declarant's testimony and was given under penalty of perjury at a trial, hearing, or other proceeding or in a deposition;

(B) Is consistent with the declarant's testimony and is offered:

(i) to rebut an express or implied charge that the declarant recently fabricated it or acted from a recent improper influence or motive in so testifying; or

(ii) to rehabilitate the declarant's credibility as a witness when attacked on another ground; or

Ancient Document Hearsay Exception & Authentication under Rules 5.803(16) and 5.901(b)(8)

In today's age of electronically stored information, documents likely exist in multiple digital formats that outlive their authors and can be accessed in virtual perpetuity.

The digital longevity and increasing prevalence of electronic records convinced this Task Force to recommend an amendment similar to the Fed. R. Evid. 803(16).

For documents prepared after January 1, 1998, litigants will need to rely upon one of the other hearsay exceptions or exclusions (which are often based upon reliability and necessity rationales) to admit a record for the truth of the matter asserted. Eliminating the exception prevents litigants from evading hearsay scrutiny of a document based solely on the record's age.

Rule 5.803 Exceptions to the rule against hearsay—regardless of whether the declarant is available as a witness. The following are not excluded by the rule against hearsay, regardless of whether the declarant is available as a witness:

• • • •

(16) *Statements in ancient documents.* A statement in a document that ~~is at least 30 years old~~ was prepared before January 1, 1998, and whose authenticity is established.

(2) *An opposing party's statement.* The statement is offered against an opposing party and:

(A) Was made by the party in an individual or representative capacity;

(B) Is one the party manifested that it adopted or believed to be true;

(C) Was made by a person whom the party authorized to make a statement on the subject;

(D) Was made by the party's agent or employee on a matter within the scope of that relationship and while it existed; or

(E) Was made by the party's coconspirator during and in furtherance of the conspiracy. ~~Prior to admission of hearsay evidence under rule 5.801(d)(2)(E), the trial court must make a preliminary finding, by a preponderance of evidence, that there was a conspiracy, that both the declarant and the party against whom the statement is offered were members of the conspiracy, and that the statements were made in the course and in furtherance of the conspiracy.~~

The statement must be considered but does not by itself establish the declarant's authority under (C); the existence or scope of the relationship under (D); or the existence of the conspiracy or participation in it under (E).

Rule 5.807

Residual Hearsay Exception

Rule 5.807 Residual exception.

a. In general. Under the following ~~circumstances~~conditions, a hearsay statement is not excluded by the rule against hearsay even if the statement is not ~~specifically covered by~~ admissible under a hearsay exception in rule 5.803 or 5.804:

(1) The statement ~~has equivalent circumstantial guarantees of trustworthiness;~~ is supported by sufficient guarantees of trustworthiness—after considering the totality of circumstances under which it was made and evidence, if any, corroborating the statement.

~~(2) It is offered as evidence of a material fact;~~

~~(3)~~(2) It is more probative on the point for which it is offered than any other evidence that the proponent can obtain through reasonable efforts; ~~and~~

~~(4) Admitting it will best serve the purposes of these rules and the interests of justice.~~

b. Notice. The statement is admissible only if, ~~before the trial or hearing,~~ the proponent gives an adverse party reasonable notice of the intent to offer the statement ~~and its particulars, including the declarant's name and address,~~ including its substance and the declarant's name—so that the party has a fair opportunity to meet it. The notice must be provided in writing before the trial or hearing—or in any form during the trial or hearing if the court, for good cause, excuses a lack of earlier notice.

Threshold Requirements: The 2019 federal amendment reduces the threshold requirements of the catch-all exception from four to only two: trustworthiness and necessity. The 2019 amendment deleted both the materiality and the “interests of justice” requirements because they are redundant of existing rules. Here we adopt a similar streamlining of the foundation requirements for Iowa’s residual hearsay exception

Trustworthiness: Borrowing from the federal rules, the streamlined residual exception now focus on whether the hearsay statement is supported by “sufficient guarantees of trustworthiness,” considering the circumstances under which the statement was made and the existence, strength, and quality of corroborating evidence. The amendment adopts a “uniform approach [that] recognizes that the existence or absence of corroboration is relevant to, but not dispositive of, whether a statement should be admitted under this [residual] exception.” *See* Fed. R. Evid. 807 advisory committee note to 2019 amendment.

Necessity: To be admissible under both residual hearsay exceptions, the proponent must demonstrate that the evidence is “more probative on the point for which it is offered than any other evidence that the proponent can obtain through reasonable efforts.” (borrowing from Fed. R. Evid. 807(a)(2)).

Near Misses: Amended such that the residual exception can be used “even if the statement is not admissible under a hearsay exception in rule 5.803 or 5.804.” (borrowing from Fed. R. Evid. 807(a) (2019 amendment)).

Notice: This amendment requires that the proponent disclose “in writing” a sufficiently specific description of the “substance” of the hearsay statement to be offered under rule 807. This written (including electronic) notice must be given before the trial or hearing unless the court for good cause excuses the lack of advanced notice.

Rule 5.902

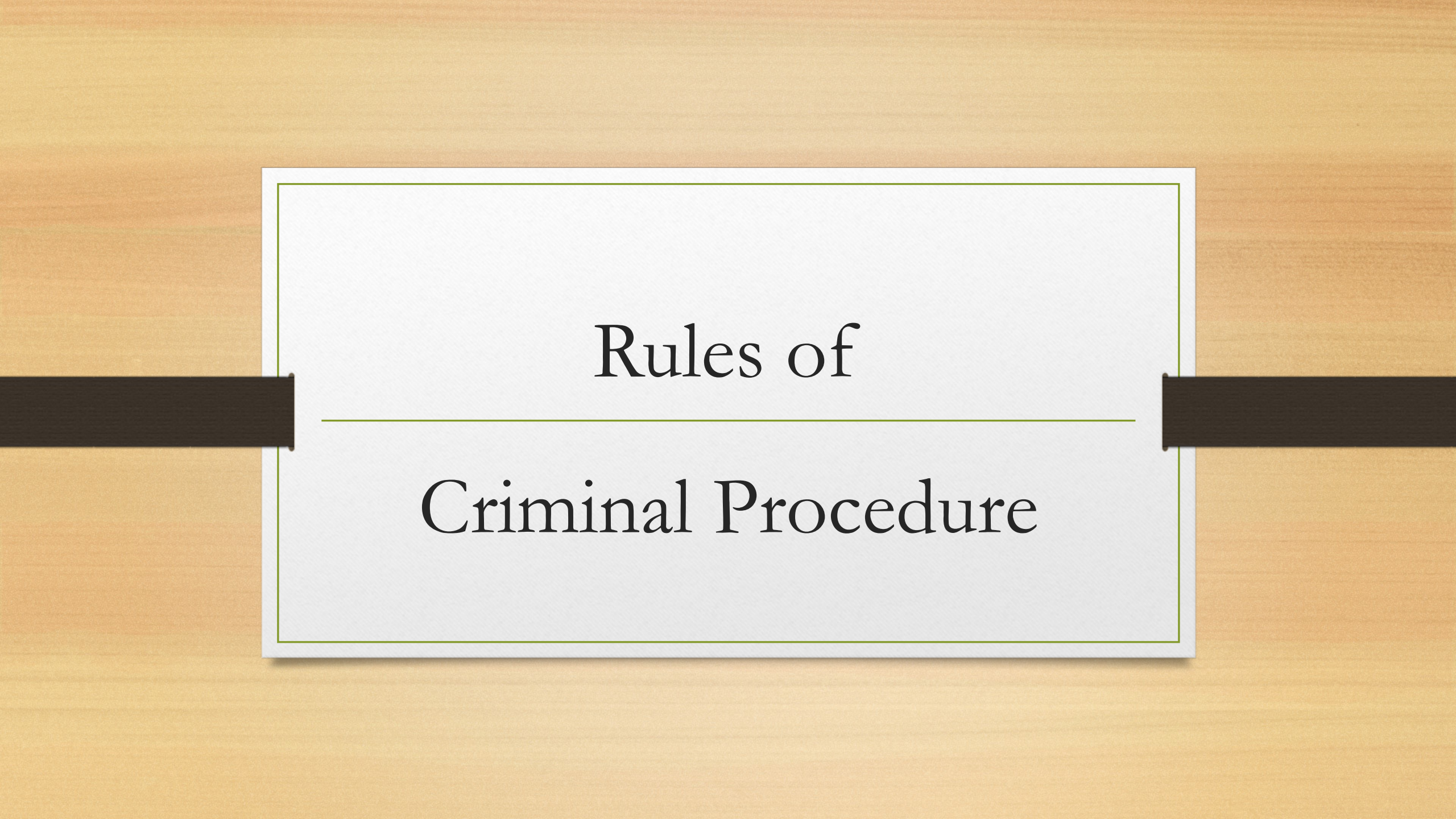
Evidence that is Self-Authenticating

This amendment adopts provisions to eliminate the need to provide extrinsic evidence of authenticity for certified records generated by an electronic process or system, as well as certified data copied from an electronic device, storage medium, or file. A party must give advance notice of its intent to self authenticate digital evidence. A “qualified person” can then provide a certification containing information that would be sufficient to establish authenticity of the electronically-generated.

Rule 5.902 Evidence that is self-authenticating. The following items of evidence are self-authenticating; they require no extrinsic evidence of authenticity to be admitted:

(13) Certified records generated by an electronic process or system. A record generated by an electronic process or system that produces an accurate result, as shown by a certification of a qualified person that complies with the certification requirements of rule 5.902(11) or (12). The proponent must also meet the notice requirements of rule 5.902(11).

(14) Certified data copied from an electronic device, storage medium, or file. Data copied from an electronic device, storage medium, or file, if authenticated by a process of digital identification, as shown by a certification of a qualified person that complies with the certification requirements of rule 5.902(11) or (12). The proponent also must meet the notice requirements of rule 5.902(11).



Rules of Criminal Procedure

Chapter 2 – Rules of Criminal Procedure

Substantive Review Task Force Members

Honorable Justice Edward Mansfield, Iowa Supreme Court, Des Moines, *Chair*

Honorable Thomas Bitter, District Court Judge, Dubuque

Angela Campbell, Criminal Defense Attorney, Des Moines

Mary Conroy, Assistant Appellate Defender, Ames

Honorable Meghan Corbin, Criminal Defense Attorney &
Magistrate, Davenport

David Denison, Staff Attorney, Iowa Supreme Court

Honorable Linda Fangman, District Court Judge, Waterloo

Gerald Feuerhelm, Criminal Defense Attorney, Des Moines

Honorable Myron Gookin, District Court Judge, Fairfield

Aaron Hawbaker, State Public Defender's Office, Waterloo

Professor Emily Hughes, University of Iowa College of Law, Iowa City

Jaki Livingston, Assistant Polk County Attorney, Des Moines

Professor David McCord, Drake University Law School, Des Moines

Alan Ostergren, then Muscatine County Attorney, Muscatine,
now Attorney, Des Moines

Honorable David Porter, District Court Judge, Des Moines

Darin Raymond, Plymouth County Attorney, LeMars

Aaron Rogers, Assistant Attorney General, Des Moines

Honorable DeDra Schroeder, District Court Judge, Osage

Alfred Willett, Criminal Defense Attorney, Cedar Rapids

Formed April 2018

Process – Recommended Rules for Chapter 2, Criminal Procedure

Process

March to July 2020

Initial public comment period for proposed rule revisions – 24 comments received

July 2021

Revised proposed rules incorporating initial public comments submitted to the Iowa Supreme Court for review

January 2022

Iowa Supreme Court approved revised rules and submitted them to the Iowa Legislative Counsel

February to July 2022

Additional public comment period to hear input on proposed rule changes made in response to initial public comment period – 24 additional comments received

August 5, 2022

Open public comment session for those submitting public comments during additional public comment period

October 2022

Iowa Supreme Court to review final version of proposed rules



The End

See you in court!