IN THE SUPREME COURT OF IOWA
No. 15-1375

DONNA JEAN HOLMAN

Appellant

vs.

STATE OF IOWA

Appellee

Johnson County No. SMSM067310
Appeal from the ruling of Judge Stephen C. Gerard, II

APPELLANT'S REPLY BRIEF

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RESPONSE TO "STATE" BRIEF

"State" says my issues are not important to the bench and bar ("State", p. 15-16)

> Holman has not stated with any particularity why her claims raise questions of law important to the bench and bar. ...issues raised in Holman's brief are not, in fact, important to the bench and bar. ("State", p. 15)

"The State" backs up this judgment with a representation of issues which would not interest me either, if I saw no more significance in them than his characterization captures. Or if they were even my issues.

> First, whether the district court erred by, at Holman's counsel's request, deciding her motion without an in person hearing is unique to her case and not an issue likely to recur. ("State", p. 16)

I appeal an illegal[1] ex parte hearing, not denial of "an in person hearing".

The hope that what he did is "not an issue likely to recur" seems desperate, in view of the fact that Gerard's response to my complaint was to justify it as his modus operandi, so long as the

1 My attorney at the time told me he described it as an "illegal order" because when the sheriff failed to serve me, the judge should have at least published something before proceeding with the ex parte hearing. Of course, with the first service attempt only 3 days before trial, (Appendix 100), there wasn't time for publication.

law named in the charge says nothing explicitly about a right of defendants to attend their trial, and as long as no one finds a *precedent* acknowledging that right regarding that particular law.

> Second, the substantive issue of whether Holman remains a threat to the protected parties is a fact-intensive inquiry unlikely to provide useful legal precedent for future judges and lawyers. ("State", p. 16)

"The state" identifies no dispute about the facts. My brief does not build my case on any dispute about their accuracy.

My question for the court is about the sufficiency of the law to criminalize speech which hearers subjectively chose to feel "threatened", "intimidated", or "alarmed" by, even though there is no allegation in the record that anything I said was not true, or whose verity relied on my words or deeds or even my existence.

Obviously, if I really can get you arrested and successfully prosecuted by telling police your public political or religious statements made me feel spiritually – not physically – "threatened", "intimidated", or "alarmed", and it is no defense for you to show that your statements are true independently of your own existence, little political or religious speech is "free" within the

reach of that interpretation of law.

What contempt for America's most basic freedoms has poisoned the office of the Attorney General of Iowa, that one of its representatives could attack such fundamental rights in court and insist no judge ought to care?

> Third, whether the district court overlooked some of her arguments, and whether the alleged oversight violates the Code of Judicial Conduct, are similarly unlikely to produce useful precedent. ("State", p. 16)

(I invoke not the *Code* but the *Canons of Judicial Ethics*.)

Nonresponsiveness was correctly identified as a problem by Canon #19. It is a tragic squandering of judicial resources, when litigants research and assemble their arguments, often at the cost of home-destroying legal fees, only to have them completely ignored by judges.

Litigants are likely to believe their claims until someone *does* squarely address and honestly refute them. Others who share their beliefs are likely to read their rulings, and continue the very behavior the court wants to end, until they are given reason to think it wrong.

As for me, when my reasoning is replaced with a "straw man" substitute that is much easier to ridicule, that only supports my suspicion that the only reason it wasn't addressed is because if it were, Life would win, and many addictive social habits founded on the premise that Life doesn't matter would tumble.

Canon #19 is a formula for healing America. It says issues dividing America must be addressed, not just avoided.

> Finally, the question of whether a victim must have "clean hands" to be protected by a no-contact order from further harassment (i.e., have "standing to sue" in Holman's parlance) is so lacking in legal justification that it is seldom likely to be presented to Iowa's courts. ("State", p. 16)

My pro se brief (Appendix p. 26) acknowledges my confusion over whether a review of a no contact order "on the merits" is in criminal or civil court. I had assumed the latter since an NCO is like an injunction which is in civil court, where "clean hands" operates. "State" calls me a "civil litigant" on his page 30, and on p. 14: "the no-contact order is actually a civil order".

But my former lawyer tells me it's in criminal court.

Because of my uncertainty my pro se brief argues either way:

if in civil court, the legal recognizability of abortion as murder disqualifies abortionists from suing to stop exposure of their murders. If in criminal court, Iowa 704.10 removes legal penalties for offenses which save unborn babies now legally recognizable as humans/persons.

Planned Parenthood has no logical, legal, or reasonable standing to complain *in either court* about interference with its killings by statements whose truthfulness has never been challenged.

Did I wait too long to appeal? ("State", p. 18)

> ...she waited three years before filing a motion to vacate the no-contact order. As such, any challenge to the procedure underlying the 2011 order is untimely.

As my brief explains, (footnote 7, page 13), I rely partly on Chapter 822, Postconviction Procedure, which allows 3 years. (I filed at 2 years and 9 months, not 3 years.) One of the grounds of 822 is "Conviction or sentence violates Iowa or United States Constitution." I had assumed that not allowing a defendant to be present at her own trial to defend herself would qualify.

In addition, I rely on *State v. Olney* 2014 WL 2884869 (IA Ct. App. June 25, 2014), which gives a right to appeal, with no time limit, when a final order is made without opportunity for the target of the order to defend herself.

> Iowa Rule of Civil Procedure 1.1509 provides that "[a] party against whom a temporary injunction is issued without notice may, at any time, move the court where the action is pending to dissolve, vacate or modify it."[3] We conclude an extension of a no-contact order under chapter 664A is similarly subject to a motion to dissolve, vacate, or modify. (p. 7, *Olney*)

Is my ex parte complaint moot because I got the hearing later? ("State", p. 21, 22)

> To the extent Holman enjoyed a right to be heard regarding the extension of the no-contact order, she received it (and waived it) in 2014. ... By granting that hearing, the district court granted the relief Holman now seeks.

It was surely Judge Gerard's goal to make the issue of his "illegal order" moot, as "state" would have it, when he shifted the issue from our "Motion to vacate illegal order" (Appendix p. 17) to a review of the NCO on the merits.

I believe he succeeded, as far as rescuing that error from being reversible. Therefore my reliance on this point is limited to

proposing it for cumulative error analysis, and the only relief I have asked is declaratory: as necessary to prevent more ex parte hearings from Judge Gerard.

In support of "cumulative error", the effects of the ex parte error were not completely corrected. Lies were told in the 2011 affidavits which I had no opportunity to counter – I was alleged to be on their property when I wasn't, I was accused of refusing requests to leave which were never made, it was said police ordered me to leave when they didn't – and it did not occur to me to counter them in 2015 because Judge Gerard implied they were moot when he said our hearing would be "on the merits as to whether the Defendant continues to pose a threat to the safety of the Protected Party". That indicated his order would be based on new evidence only – certainly not solely on old claims! And of course in this appeal, I am not allowed to correct those factual errors because they were not "preserved" in the record.

Does citing 2007 facts mean I appeal the 2007 trial – too late?

> Holman argues she poses no safety threat to the protected parties sufficient to justify the no-contact order. She does

> this, in part, by attacking the evidence supporting her 2007 convictions. Here again, it is too late for Holman to challenge her 2007 convictions, and any argument directed at the original harassment and disorderly conduct convictions should be disregarded. ("State", p. 23)

("State" later concedes that I realize I'm not appealing my 2007 convictions, but the 2015 order. "State", p. 24)

And "state" cites 2007 evidence against me. And Judge Gerard made the 2007 facts relevant (actually 2006 facts) by making them the cornerstone of his 2015 ruling:

> "Taken together, the affidavits *and the defendant's criminal history* proves that the Defendant continues to present a threat to the safety...."

He alleges that the 2015 affidavits indicate no facts have changed since 2006. Since the affidavits contain no quotes of me specific enough to identify 3rd degree harassment elements, it is upon the 2006 facts that Gerard *solely* relies.

I "attack the evidence"? What does that mean? I *rely* on the evidence. I take it as fact, and cite it to attack the judge's *misrepresentation* of it. Misrepresentation of evidence sufficient to justify a decision for which there is no support in the *actual*

evidence is an “abuse of discretion”.

> Where a no-contact order was challenged as unreasonable, the Iowa Court of Appeals reviewed for abuse of discretion. State v. Hall, 740 N.W.2d 200, 202 (Iowa Ct. App. 2007). There is an abuse of discretion when “there is no support for the decision in the . . . evidence.” State v. Valin, 724 N.W.2d 440, 445 (Iowa 2006). To the extent the challenge is constitutional, review is de novo.

“Support for the [judge’s] decision in the evidence” requires unconstitutionally stretching the meaning of “harassment” until it encompasses uncontested political and religious public statements.

“State” similarly proposes a conclusion with no support in the evidence, by insisting...

> The District Court Did Not Abuse Its Discretion By Holding that Holman Poses A Threat to the Safety of the Protected Parties. (“State”, p. 23)

...in a section which argues that I don’t have to actually be a threat to anyone’s safety to be a “safety threat” – so long as someone subjectively feels “insulted” or “offended” by the content of my speech – elements of a different crime than I was convicted of.

Did anyone really think I was a “safety threat”?

> Holman did not make an affirmative showing that she no longer poses a safety threat to the protected parties.

("State", p. 24-25)

No testimony, evidence, or affidavits made an affirmative showing that I *ever did* pose a *safety* threat to anyone – unless an unsupported claim counts as a "showing" – without an unconstitutional expansion of the concept of "harassment".

> In 2014, the State filed an additional affidavit demonstrating that Holman continued to frequent events where Planned Parenthood staff was present and to demonstrate hostility towards Planned Parenthood. Affidavit (Penelope Dickey); App.__. All three affiants feared for their safety and the safety of staff and patients.

All Iowans should fear for their safety, knowing their Attorney General hires lawyers who either don't know, or don't respect, the distinction the First Amendment makes between alarm stirred by political or spiritual messages, and reasonable fear of a physical messenger. Nothing in the affidavits cites any reason for anyone to be afraid of anyone, yet at least one lawyer representing the State of Iowa respects no difference. If there is one such lawyer, there may be more than one. That is truly frightening.

Because I am frightened, "state" must be arrested and prosecuted.

"State" confusion about what I was convicted of ("State", p. 26) I was convicted of violating Iowa 708.*7(1)*(b), whose elements are "personal contact with another person, with the intent to *threaten, intimidate, or alarm*".

"State" argues as if I were convicted of 708.*1(2)*(b) – "Assault", whose elements include "*insulting or offensive* ". Besides overlooking my actual charge, "state" overlooks the additional elements of "assault": "Any *act* [not mere words] which is intended to place another in fear of immediate physical contact which will be painful, injurious, insulting, or offensive...." No testimony in the record accuses me of instilling any "fear of immediate physical contact".

"State" also thinks I was convicted of 708.7(1)*(a),* a different section of "harassment", whose elements are "*intimidate, annoy, or alarm*". But I was never charged for unsolicited phone calls, simulated explosives, ordering products in another's name, or falsely accusing someone of a crime.

Therefore “state’s” arguments that my conviction should stand because others said they were insulted, offended, or annoyed by my statements are mistaken, irrelevant to this case, and should be disregarded.

> In arguing she is not a threat to the protected parties in this case, Holman employs a narrow interpretation of the word threat. ....Forcing pamphlets upon someone while calling them a murderer in a loud voice is reasonably likely to place that person in *fear of insulting or offensive physical contact*. Similarly, the natural and probable result of such conduct is “to *intimidate, annoy, or alarm* another person.” Iowa Code § 708.7. Holman’s argument that she does not intend such a result is belied by common sense and human experience. Her own experience should have taught her this, as the victims of her harassment were visibly upset. (“State”, p. 26)

How does one “force pamphlets upon someone”? Unless offering is “forcing”? Did anyone allege I coated pamphlets with superglue and pried their hands open to force the pamphlets in? “State” has adopted the hyperbole of Judge Gerard, whose 2015 hyperbole exceeded that of the 2007 testimony.

Yes, I saw people who were “visibly upset”. If making statements that make other people “visibly upset” is a crime, all the justices of the U.S. Supreme Court should be in jail. Fortunately

making people "visibly upset" is not an element of any of these crimes. If it were, it should have to be considered whether a "reasonable person" would be upset, whether what upsets them is the messenger or the message, and whether the message is in fact true independently of the messenger's existence.

> Instead, "a threat to the safety of the victim" supporting a no-contact order contemplates any type of assault, harassment, or crime involving a victim. The crime of *assault* does not require physical contact. A person commits assault by "[a]ny act which is intended to place another in fear of *immediate physical contact* which will be *painful, injurious, insulting, or offensive.*" Iowa Code § 708.1(2)(b). ("State", P. 26)

Except that I was never charged with Assault.

Was my pro se motion properly ignored because I had counsel? ("State", p. 29)

> Holman argues the district court overlooked or ignored arguments in pro se documents filed October 21, 2014. The district court had no duty to address Holman's pro se arguments because she was represented by able counsel. Even in a criminal case, there is no right to hybrid representation, and a district court does not err by refusing to consider pro se motions when a criminal defendant is represented by counsel. See, e.g., United States v. D'Amario, 256 Fed. Appx. 569, 570-71 (3d Cir. 2007) (citing McKaskle v. Wiggins, 465 U.S. 168, 183 (1984)).

It is interesting that "State" cites a 3rd Circuit decision with no authority here, indicating he was unable to find controlling authority for his proposition. More interesting is that the SCOTUS case which the 3rd Circuit case relies on, supports the opposite!

In that case, *McKaskle*, SCOTUS defended a defense hybrid enough to make my own head spin – as hybrid as what must have been common when the 6th Amendment was drafted, when there was no college requirement to be an attorney and juries judged laws as well as facts.

The 3rd Circuit reached the opposite impression by latching on to the most ambiguous statement in *McKaskle*:

> "A defendant does not have a constitutional right to choreograph special appearances by counsel." *McKaskle v. Wiggins,* 465 U.S. 168, 183 (1984)

There actually is an Iowa case that relied on this same phrase: *State v. Clarke,* 821 N.W.2d 779 (Iowa Ct. App. 2012).

> Clarke explained that he wanted standby counsel to essentially play the role of co-counsel, in which he and a defense attorney would share in conducting the trial. The district court properly rejected this hybrid use of counsel....see also McKaskle v. Wiggins, 465 U.S. 168, 183 (1984) (holding that "hybrid representation" has been

> specifically disallowed because "[a] defendant does not have a constitutional right to choreograph special appearances by counsel.").

Clarke doesn't detail what it means by "in which he and a defense attorney would share in conducting the trial", which is unfortunate since the clause makes a reasonable description of precisely what *McKaskle did* permit. But this clause could also imply an *equal* share in the defense, neither defendant nor attorney having the final authority, which would go beyond *McKaskle* and would indeed be chaotic.

To discern what *McKaskle* means by "special appearances by counsel", we should look at the explanatory sentence that follows. There we find a description of what is allowed, and it is huge.

The context is that Wiggins' didn't want the "standby counsel" that the judge ordered over his objection. Wiggins was allowed to speak freely throughout the trial, but so was the "assistant counsel", who even cursed a couple of times when Wiggins disagreed with him. But sometimes Wiggins agreed with him, which the judge took as Wiggins' consent for the "assistant

counsel" to continue speaking freely.

McKaskle ruled that the defendant and "standby counsel" can *both* speak freely with defendant's consent, *or* the defendant can silence his "standby counsel", but if the latter, SCOTUS only asks that said silencing be done "expressly and unambiguously" so the "trial judge...[can differentiate] the claims presented by a pro se defendant from those presented by standby counsel" [Id. at 179]:

> A defendant does not have a constitutional right to choreograph special appearances by counsel. Once a pro se defendant invites or agrees to any substantial participation by counsel, subsequent appearances by counsel must be presumed to be with the defendant's acquiescence, at least until the defendant expressly and unambiguously renews his request that standby counsel be silenced.

The dissent, and the overruled Court of Appeals, wanted a more restrained "hybrid defense", which was still huge:

> The [majority] holds that the seen-but-not-heard standard used by the Court of Appeals in determining whether standby counsel improperly encroached on Wiggins' right of self-representation is too rigid and too restrictive on the conduct of standby counsel. As indicated above, however, the Court of Appeals would not hold that every instance of volunteered assistance or even every series of such instances would violate a defendant's rights.

The case details the dozens of written and oral motions of

Wiggins alongside those of counsel, describes their joint communication from voir dire to cross examination to closing arguments, and the judge's deference to Wiggins' motions when the two disagreed.

If the 6th Amendment *permits* me a *McKaskle*-grade hybrid defense according to the majority, and *requires* I be allowed at least the milder hybrid defense with full control by myself according to the minority authorities, were I fully, formally pro se, then the 6th Amendment certainly requires that I be granted the far more modest "hybrid" defense of a single pro se motion. It can't be said that the Iowa case would disagree, given the uncertainty about what degree of "hybrid" defense it rejected.

Especially since, as I wrote in the motion, I was filing it in cooperation with my attorney, and nothing in the record indicates otherwise.

"State" could have found a case that quoted *McKaskle* more favorably to my case, as long as he was looking in other jurisdictions. Like

> Holding an accused has a constitutional right under the Sixth Amendment "to conduct his own defense," and the "primary focus" in determining whether this right was violated "must be on whether the defendant had a fair chance to present his case in his own way" (citing Faretta v. California, 422 U.S. 806, 95 S.Ct. 2525, 45 L.Ed.2d 562 (1975)) *Earhart v. Konteh,* 589 F.3d 337 (6th Cir. 2009)

Articulating my own defense in my own way would have been impossible through my attorney exclusively. I value his service; what he did was great – he managed issues I could barely follow and which I could not have adequately researched; but who could ask him to know about, or to research the 59 pages of evidence and argument that I have researched for years? On the small stipend he received from the court system, who could even ask him to verify my work enough to put his own name on it?

Is proper conduct of judges no relief for litigants? ("State", p. 30)

> Holman's only legal authority for the district court's obligation to expressly address her pro se arguments are the Canons of Judicial Ethics. Yet, those canons exist to govern the conduct of judicial officers, not to displace the rules of procedure or to provide remedies to civil litigants.

Rule 1-904 contains an additional mandate for judges to address trial issues.

Does "State" think it improper for any litigant to draw attention to a judge's violations of canons? Who else would be that concerned about them? Does he thus think the canons should carry no force, no consequences? Does he not see how adherence to the canons benefits all litigants? Who else does he think they are designed to benefit?

Did I Fail to Preserve Error regarding my pro se brief?

If "state" is correct, I can't raise any of the arguments of my 59-page pro-se motion filed October 22, 2014, because Judge Gerard didn't rule on it, and I failed to file a second motion for him to rule on my first motion.

> Holman did not file a Rule 1.904 motion subsequent to the district court's July 14, 2015 ruling denying her motion to vacate the no-contact order. To preserve error on this issue she was required to file such a motion.... *Lamasters*, 821 N.W.2d at 864; *Hedlund*, 875 N.W.2d at 726 (explaining Rule 1.904 motion also proper to preserve error). ("State", p. 29, 37.)

But I did file the required motion, the judge did rule on it, Rule 1.904 says nothing further was needed, cases which seem to say otherwise need a closer look, and a few factors ought to be

considered before turning any ambiguity into a justice-denying technicality.

I did file the required motion. My October 8, 2014 pro-se brief did not merely lay out evidence. It was a motion. What I asked was clear. Had it been ruled on favorably, the NCO would have been terminated.

Judge Gerard did rule on my motion. My motion says Planned Parenthood can no longer qualify as a "protected party". Gerard's final ruling named "the Protected Party in this case, the Planned Parenthood Clinic in Iowa City, Iowa." His statement is an implicit ruling on that matter. "State" received their copy of my motion almost a year before Gerard's ruling, alerting them to the disputed issue and giving them plenty of time to respond.

> "If the court's ruling indicates that the court considered the issue and necessarily ruled on it, even if the court's reasoning is 'incomplete or sparse,' the issue has been preserved." Lamasters v. State, 821 N.W.2d 856, 864 (Iowa 2012) (citation omitted).

Rule 1.904 says nothing further was needed. This rule invites litigants to move to "enlarge", "amend", or "modify" rulings, but

the phrases I have put in Italics specifically make this rule optional for them. They specifically limit its mandates to judges and exempt all litigants from them. Judges must "find facts" and "conclusions" without being asked a second time.

> **Rule 1.904 Findings by court.** 1.904(1) The court trying an issue of fact without a jury, whether by equitable or ordinary proceedings, shall find the facts in writing, separately stating its conclusions of law, and direct an appropriate judgment. *No request for findings is necessary for purposes of review....*
>
> 1.904(2) On motion joined with or filed within the time allowed for a motion for new trial, the findings and conclusions may be enlarged or amended and the judgment or decree modified accordingly or a different judgment or decree substituted. *But a party, on appeal, may challenge the sufficiency of the evidence to sustain any finding without having objected to it by such motion or otherwise....*

Cases which seem to contradict 1.904 need a closer look.

"State" cites two cases for its theory that after the judge's final ruling did not explicitly address or acknowledge my lengthy motion, I should have filed a second motion for him to rule on my first motion.

Hedlund gives an example of where I-904 was used as a device to preserve error, but with the sense that the device was only

permitted, not required, and not even necessarily preferred:

> ...rule 1.904(2) is a tool for correction of factual error or preservation of legal error, not a device for rearguing the law....we found the motion proper because it was filed "to preserve error." Id. at 642. (*Hedlund*, 875 N.W.2d at 726, page 10-11 of the online version.)

Lamasters, however, appears to take "State's" side against Rule 1-904.

> "While Lamasters submitted...claims..., the district court failed to rule on the claims presented, other than a general denial of his application. A motion for enlargement is necessary to preserve error 'when the district court fails to resolve an issue, claim, or . . . legal theory properly submitted for adjudication.' See State v. Iowa Dist. Court for Webster County , 801 N.W.2d 513, 543 (Iowa 2011)...."

But *Lamasters* takes this quote from a *dissent* in *Webster*. And even the dissent, as a whole, does not seem to contradict 1-904 as much as this quote. The *majority* in *Webster* relies on a *different* quote that is more favorable to 1-904: *State v. Mitchell,* which acknowledges that "enlarging a ruling" is only one way to preserve error. "Any other manner" of having a judge "address the issue" should achieve the same purpose. Certainly presenting a motion to a judge, as I did, is a common way to get a judge to address an

issue.

> Neither party sought to enlarge that ruling by raising the Iowa Constitution. *See* Iowa R. Civ. P. 1.904(2); *State v. Mitchell*, 757 N.W.2d 431, 435 (Iowa 2008) (holding that when a defendant argues a constitutional violation, but the district court fails to address it, it is incumbent upon the defendant to "file a motion to enlarge the trial court's findings *or in any other manner* have the district court address th[e] issue").

In the *Webster County* case the issue was not even mentioned by the defendant at trial, so both the majority and the dissent seemed to be saying that the only other way to preserve an issue that you didn't raise below, is if the judge mentioned it and ruled on it anyway without being asked. If the judge didn't address it either then it is not preserved.

But the dissent's citation compels our attention. It was to *Meier v. Senecaut,* 641 N.W.2d 532, 539 (Iowa 2002), which also sides with "State" against 1-904, and which in turn cites to *Yee v. City of Escondido,* 503 U.S. 519 (1990), which in turn articulates the reason for avoiding issues not fully vetted below:

> Prudence also dictates awaiting a case in which the issue was fully litigated below, so that we will have the benefit of

> developed arguments on both sides and lower court opinions squarely addressing the question. See Lytle v. Household Mfg., Inc., 494 U.S. 545, 552, n. 3 (1990) ("Applying our analysis . . . to the facts of a particular case without the benefit of a full record or lower court determinations is not a sensible exercise of this Court's discretion").

In that case the plaintiffs were suing for protection from a law which they were afraid would harm them in the future, though there had been no harm yet. In other words the case was not yet "ripe". So these words were not applied by *Yee* to failure of a judge to respond to motions. Common sense may be invoked to so apply *Yee's* logic, but it is also plain common sense that such a principle should not, indeed cannot be applied absolutely.

A few factors ought to be considered before turning any ambiguity into a justice-denying technicality.

Hedlund, p. 13, said: "...this court is aware that rule 1.904(2) has been subject to criticism. We have initiated an effort to explore its possible amendment." I will propose considerations as you pursue its revision:

1. Can precedent have authority which contradicts the statute

upon which it claims its authority? Surely precedents and rules should be clarified to eliminate any appearance of contradiction.

2. Requiring submission of a second motion for the judge to stop ignoring the first motion, before the first motion's argument can be preserved, would appear to remove any judicial responsibility for addressing any argument raised, before a 1-904 motion is filed. Mandatory redundancy is not judicial economy.

3. Shall the pro se litigant be held to a higher standard of legal responsibility (to ask the judge to be responsible) than the judge (to be responsible without being asked)? 1-904 makes the judge responsible to address motions. The "State's" theory that I forfeit a major portion of my appeal because I did not make a motion for the judge to do what the rule requires him to do punishes me with severe consequences while leaving the judge no consequences. The pro se litigant should not be punished for failing a responsibility the rule says he doesn't even *have*, while the judge faces zero consequences for failing a responsibility the rule says he *certainly* has.

4. Normal, logical, rules of procedure that are necessary to justice do not and usually should not step aside for pro se litigants. But there should be at some point some sort of obscurity test, against precedents whose likelihood of filtering out relief for pro se litigants outweighs the likelihood of serving important judicial needs. An appellate court has the power to make exceptions to precedents as reason demands.

5. When a judge rules generally on a set of intertwined issues, how clearly can it be determined whether his ruling addresses one of its parts?

6. Should pro se litigants face *higher* technical legal hurdles than litigants with attorneys? A defendant with an attorney can later argue "ineffectiveness of counsel" when he thinks of some mistake the attorney made. If he prevails his sentence can be reduced or eliminated. But there is no similar mercy for pro se litigants who learn they made some technical mistake.

7. In *State v Webster County* the issue was so inconsequential that I can't see any difference. It was that the

defendant had only asked for, and received, consideration of his right not to incriminate himself under the federal constitution, and later he decided he wanted it under the parallel state constitution even though there, it did not even exist except by implication. On so technical a matter I myself, were I the judge, would be tempted to dismiss it on an equally obscure technicality. In fact such precedents may be considered weak because relatively little of substance was at stake, that might have motivated the courts to think more carefully about the principles.

But conversely, shouldn't the magnitude of an issue weigh against its dismissal through relatively insignificant technicalities? Should relief for thousands of unborn souls be denied because I did not file a second motion for a judge to obey the rule requiring him to address my first motion?

How could a 59 page motion have escaped the attention of the judge? How can it be imagined that he needed help noticing it? Shouldn’t that motion have satisfied the error preservation requirement, as 1-904 says it does, without a followup motion for

the judge to read the first motion?

Is precedent immune to legal challenge via new evidence?

> Further, abortion is legal under Iowa law; it is not murder. Iowa Code § 707.7 (2015); Planned Parenthood of the Heartland, Inc., v. Iowa Bd. of Medicine, 865 N.W.2d 252, 263 (Iowa 2015). Consequently, the doctrines of necessity, compulsion, or defense of others do not apply. See Iowa Code §§ 704.3, 704.10. ("State", p. 32)

"State" reasons as if the failure of new evidence to support an old conclusion is enough to dismiss the new evidence. As if all it takes to dispose of new evidence is to state the old precedent that it challenges. Viz. "Don't annoy me with facts. My mind is already made up."

I present new evidence that abortion can't remain legal because fact finders have unanimously "established" what *Roe* said must be "established" for abortion's legality to "of course... collapse".

"State's" proof that I am wrong? "Abortion is legal." It matters not that the cases he cites did not review the new evidence.

A change in facts that calls for a change in law does not automatically bring about a change in law; there has to be a court

case in which judges squarely address those changed facts. My argument is that the facts or lack thereof upon which *Roe v. Wade,* 410 U.S. 113 (1973) and *Planned Parenthood v. Casey,* 505 U.S. 833 (1992) were founded have changed so much that it is impossible for any court which squarely addresses the new facts to allow abortion to remain legal.

"State" says I have no *right* to an appeal ("State", p. 11-12, 14) "State" says my case merits no appeal "of right", nor "discretionary" review because that isn't what I specifically applied for and it is too late to correct my application. These are technical questions about which I have little certainty because I could find little guidance in precedent, rule, or law. All I can do here is explain what little I found, as the reason for how I applied.

> "Nothing in Iowa Code chapter 664A expressly or impliedly grants a right to appeal from the denial of a motion to vacate a no-contact order." ("State", p. 11-12.) "No law governing civil cases grants Holman a right to appeal." ("State", p. 14.)

Is this argument from silence like that of Judge Gerard, who thought if a statute doesn't explicitly say I have a right to attend a

hearing involving that statute, then I don't? I found no *limits* on civil appeals detailed either, and "state" cites none.

Iowa Code § 814.6(1)(a) says the review is "of right" when the order is "final" and not a simple misdemeanor. So far as I could determine, the 2015 district court judgment against me was final, and it was not a misdemeanor conviction. The relevant precedents I found only said simple misdemeanor convictions merit only discretionary review, leaving the implication that all other reviews are "of right". I found no clarification in the court rules. I found nothing about a different treatment for civil cases.

If "final judgment of sentence" means other than the plain words indicate, I couldn't find it, so I trusted Rule 6.108 which indicates the willingness of the Court to categorize my case correctly if I couldn't.

"State" says, p. 12-13, that I can't bring up my ex parte hearing issue because Judge Gerard's final order about that was in September 2014, while I am appealing his July 2015 order. But Gerard repeated his September ruling in his July ruling, as if he

didn't consider his September ruling quite "final" enough. Shouldn't the last time an order is repeated be considered the "final" order?

"State" says, p. 12-13, that I can't appeal because the July 2015 ruling is a "collateral order, not a final judgment or sentence." But *Iowa v. Sanchez*, 13-1989, August 19, 2015, which acknowledges that an NCO extension *may* be appealed, separately from the final judgment: "those matters that follow the entry of final judgment are collateral and must be separately appealed." (p. 10)

"State" says, p. 13, that the order I appeal is "interlocutory", but *Olney* says "this is not the case with chapter 664A no-contact orders."

Does "the state" argue that *no* NCO can *ever* be appealed?

> [NCO's can't be appealed because] No-contact orders are not intended to be punishment. Instead, "the safety of others was the paramount concern of the legislature in providing for a no-contact order." ("State", p. 14)

"The state" even acknowledges, indirectly but definitely, that the "safety" of anyone was never a legally serious complaint.

"State" makes this concession indirectly by relying on the elements "insult" and "offend" from the Assault law. ("State", p. 26. Actually I was never charged with Assault, and these are not elements of what I *was* charged with.)

Is no "unauthorized contact" allowed on a public sidewalk?

"State" cited a case where someone made "unauthorized contact" with his victim. "State" thinks that is somehow relevant to my case. ("State", p. 27)

Does one need authorization in America to present political and religious views on a public sidewalk? Is the First Amendment no longer sufficient authorization?

Do labels supported by fact-finders make my appeal suspect?

> The evidence before the district court proved Holman has no intent to change her ways. Indeed, she proclaimed: "My main interest in life at this point is trying to save unborn babies from being aborted." Affidavit (Holman); App.__. And in her appellate brief she continues to label the protected parties "murderers." Appellant's br. p. 30. ("State", p. 28)

My labels are based on unanimous findings of facts. Planned Parenthood's labels depict an alternate reality.

Planned Parenthood calls itself, in its affidavits, the "victim"!

The victims are the preborn babies being killed in the Planned Parenthood Killing Centers.

Planned Parenthood's very name is a lie. Planned Parenthood does not "plan" parenthood any more than ISIS "plans" human rights. Planned Parenthood is not a "clinic". A clinic is a place where people go to get healed. Their facility is a death camp.

My argument on appeal, made in detail in my pro se brief (Appendix page 26), is that abortion is definitely now legally recognizable as murder, as established by all categories of court-recognized fact finders. In fact, *every* legal authority in America which has taken a position on "when life [and human rights] begins" has agreed it begins at conception/fertilization. Therefore, abortion kills a human/person, making legally accurate its designation by half America's political forces as "murder".

Even legislatures which have exempted abortionists and consenting mothers from their homicide penalties from fear of *Roe* have *never* suggested *Roe* is correct, or that penalties enacted later

would be inappropriate or without authority, or that their exemptions imply abortion does *not* kill innocent human beings, or is *not* murder.

Therefore this claim in *Roe v. Wade,* upon which the perpetuation of abortion's fragile legality is founded, is certainly *no longer* true, if it ever was:

> We need not resolve the difficult question of when life begins. When those trained in the respective disciplines of medicine, philosophy, and theology are unable to arrive at any consensus, the judiciary, at this point in the development of man's knowledge, is not in a position to speculate as to the answer. *Roe v. Wade,* 410 U.S. 113, 159 (1973)

If the unanimous consensus of all four categories of court-recognized fact finders is not enough to "establish" a fact, then it is impossible for courts to establish *any* fact.

Thus if courts "cannot tell" (Matthew 21:27 allusion) that aborticide is murder, it is impossible for courts to know *anything*.

Since courts obviously know many things with far less consensus among fact finders, we must infer that courts *can* tell "when life begins" now; and because my case turns on that fact,

this court must address the evidence to rule rationally.

If my argument is correct, isn't my terminology? If it isn't, I beg this court to articulate where it isn't, after honestly acknowledging my actual argument instead of some ridiculous "straw man" substitute as "state" has done.

How did speech content become "conduct"? Can Freedom of Speech remain safe under an Attorney General which prosecutes the content of speech after renaming it "conduct"? It is amazing that "state" even cites precedent that says I never should have been NCO'd for my speech, yet flips that into an argument *against* me by labeling as "conduct" what obviously is the *content* of my religious and political speech.

> Further, the First Amendment does not avail Holman. The State is not regulating the content of her speech, merely her conduct. See State v. Doyle, 787 N.W.2d 254, 259 (Neb. Ct. App. 2010) (stating the focus of a protective order is not the speech but the conduct... ("State", p. 28-29)

So now we call speech "conduct" and just prosecute said "conduct" to keep speech "free"? The order against me names no conduct; only speech, which, to repeat myself, no one has alleged to

be other than the simple truth about matters dealt with in religion and politics.

The testimony in the record clearly connects the strong emotional reaction people said they had to me, to the *content* of my speech, not to my mere presence on the sidewalk, or to the mere fact that I talked to people, or offered literature.

In *Planned Parenthood of the Heartland, Inc., v. Iowa Bd. of Medicine*, 865 N.W.2d 252, 263 (Iowa 2015), Planned Parenthood wanted "strict scrutiny" of any restriction on killing remotely. I ask strict scrutiny of any construction of law that would permit prosecution of my political/religious statements never alleged to be untrue.

Truth is the harder to hear, the farther one runs from it. But I said nothing beyond what my hearers already knew or should have known.

Donna Holman

_____

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A copy of this brief was transmitted to the Iowa Attorney General by efiling it with the Iowa Supreme Court, pursuant to 16.317(1)(a)(2), on May 16, 2016.

Donna Holman

_____ ___May 16, 2016_____

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