

January 7, 2005

Mt. Pleasant Correctional Facility
1200 E. Washington Street
Mt. Pleasant, IA 52641

To: Patricia Reynolds, Assistant Appellate Defender

Dear Ms. Reynolds,

Here are some of my thoughts on my appeal at this time:

The State cites the trial court's findings throughout their brief as though their authority is interchangeable with the transcripts. I understand that on appeal the decided facts are not to be retried. However, the trial court's findings are not interchangeable with the transcripts, but subject to several errors as pointed out on direct appeal. Therefore, I would like the State's method of bypassing the transcripts to support their claims with the Findings to be criticized, and brought to light as misleading and unjust.

I want to object to the crude and ugly details offered by the State regarding the Vander Esch case for their irrelevance and potential to create strong bias against my case. (State's brief, p. 11) It's obvious he was a very sick man. What his crime involved is gagging and details of what he plead guilty to before his appeal are maddening. The extent to which the State records the details of Mr. Vander Esch's crime is completely unnecessary except that they're provoking of a reaction that could very well create a strong bias in the ruling on my appeal.

I understand it is common for appellate judges to review other cases in making their ruling and that it is their duty to apply only what is legally relevant from one case to the next. However, I have no reason to believe judges are capable of thinking only as they should. The Findings of Fact in my case, which is littered with mistakes, is an excellent example of the court's fallability. Therefore, I absolutely do not want to sit back and rest upon some naive good faith in the court, and expect them to avoid the numerous snares and traps the State has set. Instead, I would like every last angle the State has taken to be refuted and posted clearly as wrong and leading to injustice.

Mr. Pedersen assumed a lot of the court in presenting my defense, and although I believe many of his assumptions were reasonable, it ultimately proved to be a tragic mistake that I cannot afford to have repeated. I'm sure you can appreciate where I'm coming from on this point. I don't want any misleading statements by the State to be left alone.

Although it sounds reasonable to believe the court will review the transcripts and require all statements and arguments presented in appeal to be supported by the transcripts, the State's heavy reliance upon the judge's mistaken interpretation of many significant aspects of my trial, and not the transcripts themselves, is evidence the State does not share a similar expectation of such a thorough review of the transcripts. Instead, they confidently instruct the court on how to think with a summary interpretation of the transcripts that is often inaccurate, misleading, or contradictory to what is actually found in the transcripts. Therefore, I would like the State's method of misrepresenting the transcripts and regularly citing the trial court's findings to be criticized and noted as leading to injustice. I would also like a thorough review of the transcripts to be emphasized to the appellate court by request.

In my appeal both sides argue ambiguity is to their favor. To support their claims the State

cites a case where ambiguity is found in the findings of the factfinder, and the appellant refers to a case where ambiguity is in the relevant legislation. (Appellee's brief, p. 8; Appellant's brief, p. 28) The circumstance of my case that it was tried before a bench provides an uniquely thorough report of the decided facts. The factfinder provided 15 pages of explanation and description of the facts as he determined them to be. This exhaustive report wouldn't even be available in a majority of cases and should legally eliminate ambiguity from the Findings, not increase or give way to ambiguity. Ambiguity diminishes with detail, and detail has certainly been provided by the factfinder in this case. Therefore, the State's argument for ambiguity to serve in their favor should be noted as something to dismiss in this case. However, how ambiguity is to be interpreted when it is found in the relevant legislation is important in this case and should be emphasized. Ambiguity of this sort is of overriding significance to ambiguity in the Findings, not only in this case but every case, because the findings of fact, conclusions of law and verdict are to be determined by legislation.

I think the latter half of the statement, "A sleeping person is incapable of protest and consent to one does not include consent to others," could be further argued against to show it's not always true and in conflict with legislation, given the decided facts in this case. (Findings, p. 13) The factfinder's distinct and thorough report of the facts includes, "testimony and cross examination indicated that [Lindsay Dodds] did not resist the sex act because she believed Joseph Bradley was performing it." (Findings, p. 3) Also, "[Lindsay Dodds] further testified that she was responding to the act because she believed it was her boyfriend." (Findings, p. 13) These statements indicate the court found Ms. Dodds "did not resist" and acted under a false impression. In other words, the factfinder determined consent was given, though to an impersonator Ms. Dodds believed to be Mr. Bradley. The court then ruled, "consent to one does not include consent to others." (Findings, p. 13) However, it failed to recognize that if consent to one is obtained by impersonation, or fraud in the inducement, then consent to one does unknowingly give consent to another. Such consent when given unknowingly, or obtained fraudulently, is still considered legal consent by fraud in the inducement. The Findings of Fact demonstrate that legal consent was given. (Assuming only for the sake of argument that the alleged act occurred!) Further they show the court did not rightly apply the proper legislation in deciding the issue of consent. Therefore, "the court erred in concluding that Ms. Dodds did not consent to the alleged act that she described." (Appellant brief, p. 28)

"As several people entered the bedroom in response to Lindsay's scream, Holm ran out of the room. Tr. 15-17" (State's brief, p. 4) This is an inaccurate and misleading account of the events that occurred that morning. It implies there were several eyewitnesses to my having been in the room. Although I don't dispute that I was in the room, I do dispute that I ran out of it. I also dispute that anyone entered the room before I left it. The transcripts reveal only Jessica Hopkins said she entered the bedroom and not until I was downstairs. (Tr. p. 168-169) The cited pages from the transcript in the State's brief are from Lindsay's testimony. The claim of "several" people is more than the two Lindsay specified to have entered the room. Still, her testimony was not that they entered before or while I left.

"Holm responded by acting as if he had no idea who she was, exclaiming that he had never seen her before. Tr. 18" (State's brief, p. 5) This is a horrendous characterization of my response. Only Lindsay's testimony purports I said I had never seen her before. On the other hand, Joe, Dan, Justin, and Jessica all give a different account of the same conversation. Their testimonies reveal that I explained both where and why I was in the room. And not that I had never seen her before, but that "nothing happened." This was an appropriate response that I chose and it is explained in my testimony. (Tr. p. 252-253) I also addressed this subject again at my sentencing hearing because of how horrible I think it is the trial court believes I should have offered

a "detailed explanation of what had taken place." (Findings, p. 14) This expectation of the court conflicts strongly with how people know me to be, which is something the State agrees was not presented as evidence during trial. (State's brief, p. 35) Therefore, as I stated at my sentencing hearing, the court's expectation of how I should have reacted is not reasonable and unfounded, because it is based on an assumption of character.

The trial court decided this case "boils down to the application of the credibility instruction" and found me not credible based on an assumption of character. (Findings, p. 13) It is very important my response to people that morning be characterized accurately. The State's account is not true. By characterized accurately I mean for their characterization to be directly refuted with the explanation of my response that is provided in the transcripts. (Tr. p. 252-253; Sentencing Hearing, Tr. p. 17-19) I would also like to emphasize that the court's conclusions from my response couldn't have rightly been determined, because they are based on an assumption of character, and no character evidence was presented at trial. (State's brief, p. 35) This is relevant to the significance the State attaches to my decision to not provide as thorough an explanation as I did at trial to Jon Garvin or other partygoers. (State's brief, p. 27-30) My response was appropriate and consistent with what people who know me would expect.

"Barricaded" is a word introduced by the prosecuting attorney that is never repeated by any witness, yet it is used in the State's brief on page five. (Tr. p. 85; State's brief, p. 5) I contend it is an inaccurate description.

Why is a summary made of what I said rather than quoting the transcripts directly except that it changes my explanation to benefit prosecution? I think this practice should be criticized and flagged as an inadequate account of the record. (State's brief, p. 6)

"Lindsay Dodds testified that she fell asleep after having intercourse with her longtime boyfriend, Joe Bradley, and remained asleep until she was awakened by the defendant." (State's brief, p. 9) This is not an accurate account of Lindsay's testimony. She never said she had intercourse. The record is never more specific than "sexual relations," a widely defined term that was introduced by the prosecuting attorney. Yet the factfinder also wrote, "She freely testified to having sexual intercourse with Joseph Bradley," when the word "intercourse" is not in the transcripts of her testimony. (Findings, p. 2) Furthermore, Lindsay said she was first awakened by Joe's brother Tony after falling asleep, not the defendant. (Tr. p. 13)

[She also said she thought she was awakened by Joe's brother a second time. (Tr. p. 15) This recollection makes me wonder if she wasn't dreaming of something similar to what she said happened; including Joe, his brother, or whomever, just before waking up to see me at the end of the bed. My being there may have led her to believe her dream, and that she wasn't acting alone, but that someone else was involved. In other words, my presence could have mistakenly put in her mind that her dream was her reality. I know when she reached for me and put her hands through my hair she was acting as if she knew who I was, as I testified. However, when I said "hey" and pulled back she was startled, because as we both testified (I rightly assumed), she didn't know who I was. It's possible then that what she had determined was reality at that time, that she was not acting alone, became frightening, because she didn't know who I was. This was at the very least, confusing. And in trying to sort between her dream and her reality she saw me with no shirt on, my shoes on the floor, and she knew she had just had her hands in my hair. These few things couldn't be dismissed and led her to believe her dream was something that did occur, but with this stranger who was at the foot of the bed. Her testimony is clear she was confused; and my hair, my shoes, and my shirtless presence seem to be used as points of reference to verify to herself that she knows what happened. Of course, I cannot be sure of her thinking, but I am perplexed by her story and actions. This explanation is a possibility that seems to somewhat explain things to me.]

The overlap that exists in the third degree sexual abuse provisions isn't to suggest they be interpreted to mean more than they individually include. Instead, that there is overlap demonstrates how thorough and prepared they are for strict interpretation. Legislators apparently design some provisions to contain overlapping terms to ensure each provision is just when it is exclusively considered and strictly interpreted, as required by law. One provision isn't to pick up or assist where another left off, as the State seems to suggest. (State's brief, p. 19) This is a fundamental understanding of the intend of provisions that plays a large role in their design.

My testimony that Joe said he and Lindsay had sex "an hour ago" doesn't mean they had sex, and I don't understand how it challenges my credibility as a witness to say the evidence shows that they didn't. I simply said, Joe said they had sex. I didn't say I saw them having sex. Understandably, no one did. The physical facts of this case and the report of an experienced s.a. nurse examiner, are very clear to show that Joe and Lindsay did not have sex that morning. Also, a supplemental brief written by Dr. Benjamin refutes their claim.

In my opinion, an expert's analysis of the DNA evidence in this case isn't even necessary to conclude they didn't have sex, or more importantly, that nothing criminal occurred. No DNA of any kind in the genital area means no sex. It's simple. Especially given there was a miniscule amount of my DNA found on Lindsay's thigh, a location far less likely to retain DNA. (Tr. p. 348) This result of the thigh swab should not negate the results of other areas tested, but increase their probative value. As Dr. Benjamin emphasized, the more samples that are collected, the more conclusive the findings should be. (Tr. p. 298-299)

The expert in DNA and forensic analysis also discussed at length the importance of viewing the "whole picture" when interpreting forensic evidence. He explained how advancements in today's technology can be a "double-edged sword," because scientists today "can detect almost nothing." (Tr. p. 298-299) Therefore, criminal implications do not always apply. Examples were given of being able to collect a DNA profile from someone who has written "a very short note," turned a doorknob, licked a stamp, shook hands, or had their DNA transferred to somewhere they had not been via someone else they had been in contact with. The miniscule amount of my DNA collected from the thigh swab in this case is comparable to the quantity expected to be found in such noncriminal activities. This played a large part, in addition to the results of the vaginal swab, in Dr. Benjamin's finding the results of the thigh swab to be "consistent with a very casual contact," or potentially, "secondary transfer;" not oral sex. (Tr. p. 294-308, 310-313, 319-323, 332-333)

Although my brief includes Dr. Benjamin's final analysis of the evidence, I'm concerned ^{that} the explanations he gave to support his findings aren't included. Much of what Dr. Benjamin said to validate his findings was overlooked by the trial court, so I think it's dangerous to assume the court of appeals will care to draw from the transcripts what isn't spelled out for them.

Because Joe and Lindsay said they had sex does not mean they had sex. If I had a DNA test to resort to every time I heard someone say they had sex on the night of a college party, I am very sure I would find some of them to have lied. As to the condition of Joe and Lindsay that morning, it does happen - in fact on several occasions according to some of my roommates in college - where someone accompanies someone to bed with every intention of having sex with them, and yet, does not have sex. This can happen for any number of reasons, and in my experience of hearing them, some of my friends have retold their evenings that had before included sex. It could have been as simple as Joe telling Lindsay he said they had sex, and her going along with it for credibility sake.

The simplicity of the physical facts in this case have been danced around and explained away in effort to find me guilty. They are not complicated. They should be considered the most "undisputed" evidence presented at trial, not someone's testimony of having had sex that directly contradicts the physical evidence. When testimony directly contradicts the physical facts, that testimony should be considered disputed evidence, and the physical facts should remain undisputed, not the other way around.

The burden of proof beyond a reasonable doubt was for the State. It was their duty to establish for the record that the physical evidence undoubtedly supports the specific accusation that oral sex occurred without Ms. Dodds' consent. The court indeed found that it did occur, but supports its findings, specifically regarding the physical evidence, with conclusions on issues pertaining to the evidence that were not addressed at trial. Had Dr. Benjamin been asked in the course of trial to respond to Joe and Lindsay's claim that they engaged in sexual relations that morning, he would have refuted their claim in light of the physical evidence. (Dr. Benjamin received the DCI laboratory protocols and results and the s.a. nurse examiner's report before trial, and they give no indication of a need to address such an issue; considering by chance he would have felt led to do so on his own.) However, no witness was ever asked to answer to the presence or absence of Joe Bradley's DNA. For the sake of argument, the State was right to say "Counsel had no duty to explore this topic," in reference to my defense and the nature of Mr. Bradley's alleged sexual encounter with Lindsay. (State's brief, p.33) Understandably, the only interest of the defense was the DNA of the defendant. Whereas the burden of the State was to give a thorough account of the evidence that left no doubt the accusation was true: Instead, where the state failed in their burden to address a pertinent issue for the record, the court compensated and supported its' findings with conclusions on the very issue that was not addressed at trial. The court concluded the absence of Joe Bradley's DNA in the genital area is significant to show the absence of my DNA in the same region is not significant. Whereas Dr. Benjamin called the absence of my DNA in the genital area a "red flag" that is "inconsistent with oral sex." (Tr. p. 307) He was also asked to address the miniscule amount of DNA found on Lindsay Dodds' thigh and noted, "it is consistent with a very casual contact." (Tr. p. 307) Therefore, the trial court's findings on the evidence contrast those of an undisputed expert; and the court's support for its' conclusions demonstrate the burden of proof was improperly shifted. If Defense "had no duty to explore" a topic, it should not be used against them.

Strictly speaking, as a scientist, Dr. Benjamin would not "absolutely rule out" the possibility of oral sex because the DNA that was not found to exist in the genital area could have been "removed via some mechanism." (Tr. p. 306-307) However, he later said, "I have not been presented with any information that makes me confident to say well, that would explain why there's nothing in the vaginal area." (Tr. p. 349, 350) The state did not present any evidence of a mechanism of removal that could explain the absence of DNA in the genital area. Therefore, the trial court, in holding the State to a proper standard of proof, should have found "it was never there" as its' only explanation; and "first choice" and "simplest explanation;" as did the expert. (Tr. p. 306, 333, 345-346)

Furthermore, considering for the sake of argument Lindsay had "thoroughly washed;" or removed DNA from her body, it was stated, "the thigh area being a flat, smooth area of skin would be much less likely to retain [DNA] than the genital area." (Tr. p. 348) Therefore, the miniscule amount of DNA found on the thigh further proves that my DNA was never present in the genital area. The physical evidence is all together "inconsistent with oral sex." (Tr. p. 306-307, 331-332, 345-346, 349, 352, 355)

The judge bent over backwards to ignore the DNA expert. He showed a lack of understanding of Dr. Benjamin's analysis to focus on the expert's scientific approach to not "absolutely rule

it out" that oral sex occurred. His emphasis and final analysis of the results were that they were "inconsistent with oral sex." Yet the judge clung to the near impossibility, that was not supported by any evidence presented at trial, that oral sex did occur and no DNA was found. I liken his thinking to that of Jim Carrey's in the movie "Dumb and Dumber," when he's told his chances are "one in a million," and he responds in jubilation, "so you're saying there's a chance!" This line of thinking is not what is meant by evidence sufficient to eliminate reasonable doubt, but quite the opposite.

In the court's explanation of its' findings it does not even refer to the DNA test results of the vaginal swab. (State's brief, p. 23; Findings, p. 14) The entire explanation that is given is based upon the results of the thigh swab. Dr. Benjamin was clear the results of the test from the vaginal swab is of higher probative value than the thigh swab, and the physical evidence is to be viewed as a whole, not sparingly. Also, the more tests there are to consider, the more conclusive the findings can be. (Tr. p. 295-297, 300-306, 349) The State, on the other hand, applauds the court's disregard of critical evidence and follows suit in mentioning only the thigh swab. The state then claims, "the trial court's conclusions were well-founded." (State's brief, p. 23) This is ludicrous! When further pressed through post-trial motions to give explanation to its' findings, the court responded by claiming it was Dr. Benjamin who ignored the results of the vaginal swab. He did not ignore them. He found them to be "inconsistent with oral sex," and to what end the court declared itself right to make its' own conclusions, Dr. Benjamin was not addressed.

"Further, the nature of the earlier sex act...had no bearing on the critical issue at trial — whether a sex act occurred between Lindsay Dodds and Holm." (State's brief, p. 33) This is not true. The judge determined the absence of Joe Bradley's DNA to be of great significance in his ruling of whether a sex act occurred between Ms. Dodds and I. Although the court mis- understood and improperly considered the evidence, it did have a bearing on the outcome of the trial.

"Again, in light of Holm's DNA on Lindsay Dodds' thigh, the absence of Joe Bradley's semen in her vagina was insignificant." (State's brief, p. 35) The presence of a miniscule amount of my DNA on Ms. Dodds' thigh does not constitute evidence of a sex act. The state would like the appellate court to believe that it does, and I would like to make it very clear in reply that it does not. It should be viewed in context with **ALL** of the physical evidence. The result of the vaginal swab was not just that Joe's semen was absent, but that no DNA of his was present at all.

"No character witness, no matter how favorable could negate the physical evidence in this case... the fact is that his DNA was found on Lindsay Dodds' inner thigh." (State's brief, p. 35) This is an outrageous statement that does exactly what Dr. Benjamin warned against; "making a mountain out of a mole hill." (Tr. p. 313-313) The state wants the court to believe the result of the thigh swab (by itself) means something criminal occurred. It doesn't, and I want to make that very clear in reply. I want statements like these to be directly addressed. This statement ignores so much of what the expert at trial said about interpreting forensic evidence; that the size, location, location, location, other test results, and other evidence **ALL** play a role in determining the probative value and likely explanation for a single piece of evidence. Furthermore, the court determined that ~~was~~ deciding the significance of the physical evidence in this case is a matter of credibility. And credibility is a direct reflection of character. (Findings, p. 13) Therefore, given the court's logic, character witnesses would have played a pivotal role in interpreting the evidence. Nevermind that Dr. Benjamin's credibility, in addition to mine, was severally undermined as well by the trial court's ruling on the evidence.

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The middle paragraph on page 35 of the State's brief is inferiating! The evidence against me is not "strong." I did not lie about my involvement. (Again, an improper characterization of my response.) So what if my DNA was found on her thigh? I never attempted to leave. Of course testimony of my character wouldn't change the physical evidence. I wouldn't want it to. The fact remains that evidence of my character would have played a significant role in affirming my credibility, which is what the court determined the evidence in this case "boils down to." (Findings, p. 13)

I understand there are limits to what can be said and done at this time. I appreciate very much what has been prepared on my behalf already. My hope is for everything that can or should be presented, to be presented, and I respect your discretion.

Thank you very much for all of your efforts!

Sincerely,

A handwritten signature in black ink, appearing to be 'JH' or similar initials, written in a cursive style.

Jordan Holm