
LEGAL UPDATE

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IOWA SUPREME COURT DECISION — STATE CONFRONTATION CLAUSE

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State of Iowa v. White

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Factual and Procedural Background. Derek White lived with Donna Reisdorfer and several children. The children relevant to this case are Mr. White's two sons, M.W. and J.W., and Ms. Reisdorfer's son, D.C. In May 2020, Mr. White and Ms. Reisdorfer were jointly charged with neglect or abuse of a child and child endangerment involving bodily injury after a social worker found extensive bruising on D.C.'s face, ear, neck, shoulders, back, thighs, and ankles and linear marks on D.C.'s face consistent with being hit with a belt. Prior to the trial, the State dropped Ms. Reisdorfer as a defendant and made a motion under Iowa Code §915.38 (2020) to allow M.W. and J.W. to appear as witnesses via closed-circuit television. The televised testimony was to be one-way so Mr. White could see the children but the children could not see Mr. White. Mr. White objected to the use of one-way closed-circuit televised testimony as it would violate his confrontation rights under the sixth amendment of the United States Constitution and article I, section 10, of the Iowa Constitution. Alternatively, Mr. White proposed the use of a two-way televised testimony. After a hearing where expert witnesses testified that having M.W. and J.W. testify in Mr. White's presence would be traumatic for M.W. and J.W. and could prevent them from reasonably communicating, the district court rejected Mr. White's objections. At trial, M.W. and J.W. gave testimony via one-way closed-circuit television in the judge's chambers while Mr. White watched from the courtroom. M.W. and J.W. were the only witnesses to provide testimony that Mr. White performed all the spankings, that Mr. White was the one who spanked D.C., and that Ms. Reisdorfer did not administer spankings. The jury found Mr. White guilty as charged. Mr. White appealed. The appellate court upheld Mr. White's conviction. Mr. White then sought further review.

Issue. Does one-way televised testimony of witnesses violate the confrontation clause of the Iowa Constitution?

Holding. In a 4-3 decision, the Iowa Supreme Court (Court) found that article I, section 10, of the Iowa Constitution requires a witness and the accused to be visible to each other. As one-way televised testimony prevents witnesses from seeing the accused, one-way televised testimony violates the Iowa Constitution.

Analysis. The Court first noted that interpreting the Iowa Constitution requires the interpreter to use the meanings of words as they were commonly understood at the time the words were adopted into the Iowa Constitution. The Court noted that article I, section 10, guarantees an accused to be "confronted with

the witnesses against him.” “Confrontation,” as defined in 1857 when article I, section 10, was adopted, was understood to involve a face-to-face encounter. *Dictionary of the English Language* 85 (abr. rev. ed. 1856). The Court concluded that because of the widely understood meaning of confrontation in 1857, the Iowa Constitution requires a face-to-face encounter between an accused and a witness in court to afford a minimum degree of protection for the accused. When applied to Mr. White’s case, the Court determined that preventing M.W. and J.W. from seeing Mr. White during testimony prevented a face-to-face confrontation, and therefore Mr. White’s confrontation rights under the Iowa Constitution were violated.

The Court addressed counterarguments raised by the State and dissenting justices including the purpose of the confrontation right. In prior caselaw, the Court stated that the purposes of the confrontation right did not include “the idle purpose of gazing upon the witness, or of being gazed upon by him.” *State v. Stable*, 313 N.W.2d 497, 500 (Iowa 1981). However, the Court disavowed the notion that a witness being able to see an accused is an idle purpose and adopted the position that a witness being able to see an accused serves a truth-telling function. The Court stated, “[m]ost adults and many children understand that ‘[i]t is always more difficult to tell a lie about a person ‘to his face’ than ‘behind his back,’” (quoting *Coy v. Iowa*, 487 U.S. 1012, 1016-1017), and the manner in which a witness provides testimony will assist the jury in rendering a decision about the witness’s credibility.

The Court addressed the fact that *Maryland v. Craig*, 497 U.S. 836, 860 (1990), set the precedent that the federal Constitution does not prohibit the use of a one-way closed circuit television for testimony by a child witness in a child abuse case. In *Craig*, the United States Supreme Court (Supreme Court) determined that the federal Constitution’s confrontation clause reflects a preference for face-to-face confrontation at trial, and that the preference for a face-to-face confrontation may be outweighed by public policy concerns reflected in statutory law. *Id.* at 849, 852. When interpreting a state constitution, the Supreme Court has acknowledged that it “must accept whatever construction of a state constitution is placed upon it by the highest court of the [s]tate.” *North Carolina v. Butler*, 441 U.S. 369, 376 n.7 (1979). In situations where the Supreme Court has set precedent, the Court will afford respectful consideration to that precedent, but the Court is not bound to apply the Supreme Court’s interpretations of the federal Constitution to interpretations of the Iowa Constitution “even when parallel state and federal provisions ‘contain nearly identical language and have the same general scope, import, and purpose.’” (quoting *State v. Brooks*, 888 N.W.2d 840, 411 (Iowa 2016)). For the reasons previously stated, the Court determined that confrontation rights guaranteed by the Iowa Constitution differ from those guaranteed by the federal Constitution and require an alternative test when determining a person’s rights. As *Craig* relied on interpretations of the federal Constitution, it is binding precedent for matters which require the interpretation of the federal Constitution. However, Mr. White’s case relies on an interpretation of the state Constitution, and therefore the Court declined to apply the precedent set in *Craig*.

The Court considered the precedent set in *In re J.D.S.*, 436 N.W.2d 342 (Iowa 1989), which permits a child witness to testify without being able to see the accused. In that case, the defendant objected to a child testifying through a one-way mirror on the grounds that the testimony would violate the defendant’s state and federal confrontation rights. After being found guilty of sexually abusing a child, the defendant appealed. However, the defendant only renewed his argument that his federal confrontation rights were violated and did not argue for an independent interpretation of his state confrontation rights. *See id.* at 347. The *J.D.S.* Court ultimately found that the one-way mirror testimony did not violate the defendant’s confrontation rights “under the federal or Iowa constitutions.” *Id.* To support its conclusion, the *J.D.S.* Court relied on federal caselaw. The *J.D.S.* Court did not consider Iowa cases interpreting the Iowa Constitution or an independent approach under the Iowa Constitution. In contrast, Mr. White exclusively relied on an independent interpretation of the Iowa Constitution for his appeal and proposed a specific test that the Iowa Constitution must be interpreted to provide a “minimum degree of protection” to an accused that it “afforded when adopted.” (quoting *State v. Wright*, 961 N.W.2d 396, 402 (Iowa 2021)). The Court concluded that the *J.D.S.* Court had erroneously determined that procedures that do not allow a witness to see an accused are permissible under the Iowa Constitution and overruled *In re J.D.S.*

The Court then addressed the argument that child victims and child witnesses are a modern phenomena that the framers of Iowa’s Constitution did not anticipate. The Court noted that the 1851 and 1860 Iowa Code specifically mentioned “infants” as material witnesses, and that several cases dating back at least as far as 1894 had child witnesses appear in court in front of the accused. *State v. Desmond*, 80 N.W. 214 (Iowa 1899) (thirteen-year-old girls gave testimony in a sexual abuse case involving an eleven-year-old victim); *State v. Blair*, 223 N.W. 554, 556 (Iowa 1929) (eleven-year-old sexual assault victim and the victim’s seven-year-old sister and ten-year-old brother gave testimony in court); *State v. Sherman*, 77 N.W. 461, 462-63 (Iowa 1898) (discussing the testimony of the victim who was under thirteen years of age when the

crime occurred); *State v. Enright*, 58 N.W. 901, 901-02 (1894) (noting that the fourteen-year-old victim was examined as a witness). As such, the Court rejected the argument that the confrontation clause of the Iowa Constitution should not apply to child witnesses.

The Court addressed Mr. White's request to determine Iowa Code section 915.38(1)(a) (2020) unconstitutional. The Court stated that declaring a statute wholly invalid would require a finding that no application of the statute could be constitutional. Since a two-way system was not used in Mr. White's trial, and the Court's policy is to decline to decide the constitutionality of hypothetical systems that may or may not be used in the future, the Court declined to rule on the constitutionality of Iowa Code section 915.38(1)(a) (2020) as a whole.

Finally, the Court looked to see if the violation of Mr. White's state confrontation rights amounted to harmless error. A violation of a constitutional right requires reversal unless the State "establishes that the error was harmless beyond a reasonable doubt." *State v. Newell*, 710 N.W.2d 6, 25 (Iowa 2006). In order to make that determination, the Court needed to determine if the jury undoubtedly would have made the same decision absent the violation. To do this, the Court evaluated all evidence other than M.W. and J.W.'s testimony to see if that evidence was so overwhelming that the Court was convinced that the jury would have found Mr. White guilty absent M.W. and J.W.'s testimony. However, M.W. and J.W. were the only witnesses to testify from actual experience that Mr. White spanked the children and sometimes used a belt, and no other evidence or testimony could eliminate Ms. Reisdorfer as an alternative suspect. Due to the lack of alternative evidence that established Mr. White's culpability, the Court was not convinced that the jury would have found Mr. White guilty absent M.W. and J.W.'s testimony, and therefore the violation of Mr. White's state confrontation rights was not a harmless error. The Court reversed Mr. White's convictions, remanded the case for a new trial, and clarified that the State is not precluded from using M.W. and J.W. as witnesses, but if M.W. and J.W. do testify, their testimony must be in a manner that does not violate Mr. White's rights under the Iowa Constitution.

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