

IN THE IOWA DISTRICT COURT
IN AND FOR PAGE COUNTY

BRUCE WAYNE, Applicant,)
vs.) PCR No. **PCCV 07-2112**
STATE OF IOWA, Respondent.)

RESPONDENT'S MOTION FOR SUMMARY DISMISSAL

Respondent moves for summary dismissal of this postconviction action pursuant to Iowa Code sections 822.2, 822.3, 822.6, and 822.8, and in support thereof states:

1. Postconviction Applicant Bruce Wayne was convicted of the first degree murder of four-year-old Lindsey Tarantino. *State v. Wayne*, 2001 WL 21122001 (Iowa Ct. App. May 2, 2001).
2. Procedendo from Applicant's direct appeal issued more than three years ago. Iowa Code § 822.3 (3-year statute of limitations).
3. The *Heemstra* case relied upon by Applicant as the basis for his claims in this action has no applicability to this postconviction action. *State v. Heemstra*, 721 N.W.2d 549 (Iowa 2006) ("The rule of law announced in this case regarding the use of willful injury as a predicate felony for felony-murder purposes shall be applicable only to the present case and those cases not finally resolved on direct appeal in which the issue has been raised in the district court.").
4. Even if the holding in *Heemstra* was applicable to Applicant's case -- and it is not -- the holding would not apply to the facts of this case as multiple distinct injuries inflicted upon the child were a proximate cause of her death. *Heemstra*, 721 N.W.2d at 557 (additional willful injury acts may serve felony-murder predicate).