

IN THE IOWA DISTRICT COURT IN AND FOR DELAWARE COUNTY

DIANE SANDS,

Plaintiff/Counter-Claim Defendant,

v.

KROGMANN CONSTRUCTION, INC.  
and AL KROGMANN,

Defendants/Counter-Claim Plaintiffs.

Case No: EQCV009164

**Motion for New Trial**  
**EVIDENTIARY HEARING REQUESTED**

COMES NOW, Plaintiff, Diane Sands, and hereby moves to have the Court grant her a new trial pursuant to Iowa Rule of Civ. Pro. 1.1004.

1. Iowa Rule of Civ. Pro. 1.1004(2) allows a trial court to grant a new trial when there has been misconduct of a juror and that misconduct was prejudicial to the moving party. *Berg v. Des Moines Gen. Hosp. Co.*, 456 N.W.2d 173, 178 (Iowa 1990).
2. The decision as to whether juror misconduct was prejudicial rests with the trial court. *Mays v. Mac Chambers Co.*, 490 N.W.2d 800, 803 (Iowa 1992).
3. Plaintiff asserts herein that she is entitled to a new trial due to the misconduct of juror Lori Carty, who failed to let the parties know in *voir dire* that she was friends with the Defendant and/or his family, even after being directly asked whether she knew the Defendant or his family.
4. After the trial, Plaintiff was approached by Ms. Kennedy Ott who was a prospective juror in this case but was ultimately not one of jurors impaneled. Ms. Ott was dismissed from the panel after she let the parties know in *voir dire* that she knew the Plaintiff's daughter.
5. Ms. Ott has provided an affidavit, attached as **Exhibit 1**, explaining that during *voir dire*, she sat next to Juror Carty, who informed Ms. Kennedy that she knew the Defendant. Ms. Ott in the affidavit goes on to explain she was then surprised by the fact Ms. Carty did not raise her hand when asked during *voir dire* if she knew either of the parties.
6. Plaintiff Sands, upon learning this information from Ms. Ott, checked the publicly available Facebook profile of Juror Carty. In a review of Juror Carty's

Facebook friends, Plaintiff Sands noticed that Juror Carty was friends with multiple members of the Krogmann family, including Mr. Krogmann's spouse. (See Affidavit of Plaintiff Diane Sands, attached as **Exhibit 2** to this Motion. See *also* **Exhibit 3**, Facebook information of Juror Carty).

7. Plaintiff also wishes to assert that she observed multiple jurors sleeping during the trial and when combined with the actions of Juror Carty, in totality, she was not given a fair trial.
8. The juror in question's decision to remain silent when asked if she knew one of the parties in the case, can only be seen as a deliberate and calculated attempt to influence the result of the case. As such, the reasonable probability test is met and the granting of a new trial is appropriate. *Riessen v. Neville*, 425 N.W.2d 665, 669. (Iowa Ct.App.1998) ("Holding a new trial is justified when the misconduct was calculated to and with reasonable probability did, influence the verdict.").
9. Although only applicable to criminal cases, the Sixth Amendment to the United States Constitution provides protections that trial by jury should be conducted by an impartial jury, free from bias and prejudice that could influence a jury's decision making. The hallmark of this Constitutional guarantee cannot be ignored simply because the jury in question was impaneled to judge a monetary dispute.

WHEREFORE, Plaintiff hereby requests the Court, pursuant to Rule 1.1004(2), grant the Plaintiff a new trial. Plaintiff requests an evidentiary hearing on the matter.

**WHITFIELD & EDDY, PLC**

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E-filed. -- Copy via EDMS to all Counsel of record.

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AFFIDAVIT OF KENNEDY OTT

**COMES NOW**, Kennedy Ott, being first duly sworn upon oath, hereby attests under penalty of perjury to the following material information:

1. I was a member of the prospective jury pool in the above-entitled case.
2. I was assigned "juror number ten" for the jury selection process.
3. During the jury selection process, I was seated next to another prospective juror who I believe to be Lori Carty.
4. I spoke with Lori Carty during the jury selection process and she told me that she knew the Defendant, Mr. Al Krogmann.
5. During the jury selection process, we were asked if we knew either Diane Sands or Al Krogmann.
6. I observed that Ms. Carty did not raise her hand to acknowledge knowing Mr. Korgmann.

Kennedy Ott

Kennedy Ott – Affiant

STATE OF Iowa )  
COUNTY OF Delaware ) ss.

Subscribed and sworn to before me on this 2nd day of July, 2025.

EXHIBIT

1



IN THE IOWA DISTRICT COURT IN AND FOR DELAWARE COUNTY

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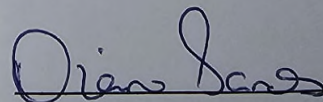
Defendants/Counter-Claim Plaintiffs.

Case No: EQCV009164

**AFFIDAVIT OF DIANE SANDS**

**COMES NOW**, Plaintiff, Diane Sands being first duly sworn upon oath, hereby attests under penalty of perjury to the following material information:

1. I am the Plaintiff in the above-entitled case.
2. I was present for all of the trial in this matter, including the jury selection process.
3. During the trial, I observed multiple members of the jury sleeping at various times while evidence was being presented.
4. After the trial, I was contacted by Kennedy Ott who was in the jury pool for voir dire but was not ultimately one of the jurors selected to be seated in the jury who heard the case.
5. I have reviewed an affidavit of Ms. Ott concerning her interactions with juror Lori Carty.
6. In follow-up to the information shared by Ms. Ott, I reviewed the publicly available Facebook page of Ms. Carty.
7. I observed that Ms. Carty was Facebook 'friends' with Jean Krogmann, Karen Krogmann Olejniczak and Ellen Krogmann.
8. To the best of my knowledge, Ellen Krogmann is the spouse of Defendant Al Krogmann and is seen pictured next to Al Krogmann on her Facebook profile picture.



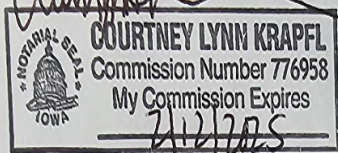
Diane Sands – Affiant

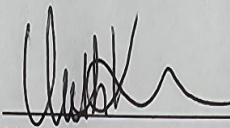
EXHIBIT

2

STATE OF Iowa )  
COUNTY OF Delaware ) ss.

Subscribed and sworn to before me on this 2nd day of July, 2025.



  
Notary Public in and for the State of Iowa



8:14



64%



**Lori Carty**

674 friends • 8 mutual



Add friend



Message



Posts

Photos

Videos

## Details



Lives in **Ryan, Iowa**



From **Manchester, Iowa**



See Lori's About Info

*jury member  
(Lori)*

## Friends

471 (0 mutual)



EXHIBIT 3

8:14



65%

< Lori



Suggestions

Mutual

All

Q krogmann



Jean Krogmann

7 mutual friends

Add friend



Karen Krogmann

Olejniczak

1 mutual friend

Add friend

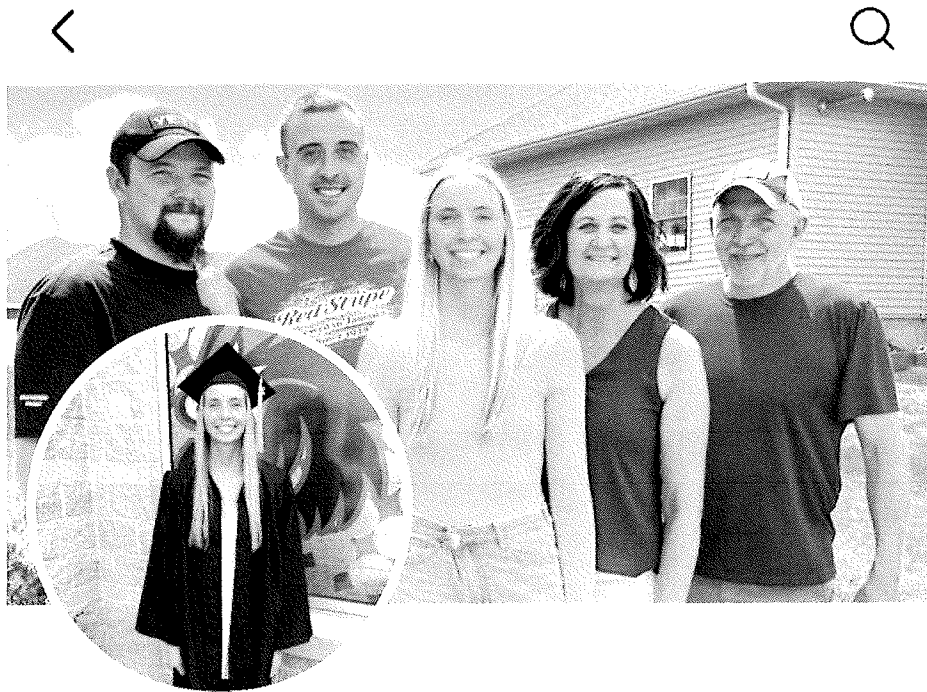


Ellen Krogmann

8 mutual friends

Add friend

Lori Cartty's  
friends list of  
Krogmann's on  
facebook  
(also wife Ellen)



## Ellen Krogmann

1.4K friends • 8 mutual

To the world you may be one person, but to one person you may be the world. ❤️ my family

Add friend

Message

...

Posts

Photos

Videos

### Details

... See Ellen's About Info



Al Krogmann's  
wife (Ellen)  
Pictured beside "Al  
in Burgundy shirt"