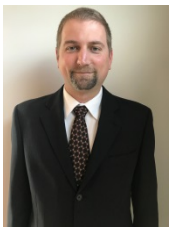
HIGHWAY SAFETY LAW UPDATE

July 26, 2018 Office of the Prosecuting Attorneys Training Coordinator Feb/Mar/April/May/June, 2018

PATC News – New Traffic Safety Resource Prosecutor

Hello, my name is Jeremy Peterson. I am replacing Christine Shockey as the Traffic Safety Resource Prosecutor in the Prosecuting Attorneys Coordinator Division at the Iowa Attorney General's Office. Before Ms. Shockey, the position was held by Peter Grady for more than 20 years. I look forward to following in their footsteps and providing excellent service to law enforcement officers and prosecutors.



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I graduated from Iowa State University in 2001 with a Bachelor of Science degree in management information systems and from the University of Iowa College of Law in 2005. I started my legal career as an assistant county attorney in the Woodbury County Attorney's office in 2005. In 2007, I accepted a position as an assistant county attorney in Page County. I was at the Page County Attorney's office for approximately seven and a half years, the last five and a half years as the Page County Attorney. During my time in Page County, I also taught Criminal Justice, Criminal Law, and Ethical Dilemmas & Decisions in Criminal Justice as an adjunct professor at Iowa Western Community College (Clarinda Campus). For roughly the last three years I have worked as an Administrative Law Judge (ALJ) in the Appeals Bureau at Iowa Workforce Development. As an ALJ, I was responsible for conducting contested administrative appeal hearings.

I have lived in Iowa my entire life. I grew up in Corning, a small town in southwest Iowa, and currently live in the Des Moines Area. I am married with two little girls, ages 6 and 4. My daughters enjoy dancing and I am slowly learning how to be a dance Dad.

I am looking forward to meeting everyone throughout the next year. Please contact me with any questions or training requests.

INSIDE THIS ISSUE

Recent Legislative Actions

This past legislative session resulted in changes to multiple statutes affecting traffic offenses and driver license revocations. The statutory changes were discussed at the Iowa County Attorney's Spring Conference and the two Iowa Acts of Interest in June.

Removal Driver's License Revocation for Certain Drug Convictions – Iowa Code sections 124.412 and 901.5(10) have required that once a defendant is convicted of certain drug offenses (Iowa Code sections 124.401, 124.401A, 124.402, or 124.03) their driver's license was revoked. On June 1, 2018, the governor signed House File 2502, which removed the driver's license revocation requirement upon conviction of certain drug offenses. Although House File 2502 was signed by the governor on June 1, 2018, it did not go into effect until the governor submitted a written certification to the United States Secretary of Transportation.[1] The written certification has been signed and was delivered to the United States Secretary of Transportation. Therefore, effective July 1, 2018, defendants convicted of certain drug offenses (sections 124.401, 124.401A, 124.402, or 124.03) will no longer be subject to having their driver's licenses revoked.

New Texting Statute Specifically for Commercial Motor Vehicles – Iowa Code section 321.276 currently prohibits texting while driving.[2] House File 2196 created a new statute (Iowa Code section 321.449B) that prohibits texting while driving a commercial motor vehicle. 321.449B specifically prohibits commercial motor vehicle operators from texting or using a hand-held mobile telephone unless it is an emergency or otherwise permitted under 49 C.F.R. §392.80 or 49 C.F.R. §392.82.[3] Although there are now two separate statutes prohibiting texting while driving, Iowa Code section 321.449B explicitly states that a driver may only be convicted under 321.449B or 321.276 if the facts supporting a conviction are the same. If a commercial motor vehicle driver violates 321.449B, they are subject to a scheduled fine of $50.00.

Construction vehicles now included as "certain stationary vehicles" – House File 2304 expanded the list of protected "stationary vehicles" in Iowa Code section 321.323A when it added "stationary construction vehicles" to the list.[4] Motorists are now required to take certain precautions when approaching a stationary construction vehicle displaying flashing lights.[5] Previously, the statute only included "stationary towing or recovery vehicle, a stationary utility maintenance vehicle, a stationary municipal maintenance vehicle, a stationary highway maintenance vehicle, or a stationary solid waste or recycling collection service vehicle" and "stationary authorized emergency vehicles".[6] Violators are subject to a $100.00 scheduled fine.

Save the Date – Iowa Acts of Interest 2019 Dates Announced

The Iowa Acts of Interest for Law Enforcement will be held on June 19, 2019 in Coralville, Iowa and June 20, 2019 in Altoona, Iowa. In 2018, over 180 people attended the Iowa Acts of Interest. Notices will be sent out via e-mail in 2019 for participants to register for either date, but if you did not receive notice for the 2018 Iowa Acts of Interest or if your contact information has changed, please contact Cindy Glick (Cindy.Glick@ag.iowa.gov) to update your contact information.

[1] House File 2502. https://www.legis.iowa.gov/legislation/BillBook?ga=87&ba=hf2502
[2] Iowa Code section 321.276(2) specifically provides: "A person shall not use a hand-held electronic communication device to write, send, or view an electronic message while driving a motor vehicle unless the motor vehicle is at a complete stop off the traveled portion of the roadway."
[3] House File 2196. https://www.legis.iowa.gov/legislation/BillBook?ga=87&ba=HF%202196
[4] House File 2304. https://www.legis.iowa.gov/legislation/BillBook?ga=87&ba=HF%202304
[5] House File 2304. https://www.legis.iowa.gov/legislation/BillBook?ga=87&ba=HF%202304
[6] Iowa Code section 321.323A.

For Prosecutors Only: Lethal Weapon – Vehicular Homicide Investigation & Prosecution

Prosecutors are invited to attend: Lethal Weapon – Vehicular Homicide Investigation & Prosecution to be held on August 28 and 29, 2018 at the Des Moines Embassy Club in West Des Moines, Iowa.

Vehicular homicide can be one of the most challenging crimes to investigate and prove in court. In April 2018, the National Highway Traffic Safety Administration's National Center for Statistics and Analysis released a Rural/Urban Comparison of Traffic Fatalities using data from 2016.[7] In Iowa, there were 404 traffic fatalities of which 306 (76%) occurred in "rural" areas.[8] Join us for a fast-track, dynamic workshop that promises to prepare you for a vehicular homicide and give you the best tools and practices to win your case! The workshop will begin with the anatomy of a vehicular homicide case, and progress through investigation, evidence collection, pretrial matters, and successful trial techniques including expert witness testimony. Top notch instructors from around the country will present on accident reconstruction, the infamous "black box," toxicology, retrograde extrapolation, hospitals and HIPAA, distracted driving, and drug recognition. The workshop will conclude with a panel discussion covering causation issues, warrant and suppression issues, common defenses and best practices. Reserve your spot today as registration is limited and scholarships are available!

The Time to Reorder Criminal Law Handbook is Coming Up

The newest edition of the Criminal Law Handbook, which contains the most recent versions of the OWI and Traffic Offenses in Iowa manual and the Iowa Charging Manual, will be released in September, 2018. The manual uses software that makes outdated editions inaccessible, and therefore readers must re-order a new copy of the Criminal Law Handbook every six months. If you already have a CD containing only the OWI and Traffic Offenses in Iowa manual, this will remain valid until September 30, 2018, but will not contain the latest updates between March, 2018 and the present.

Order forms for the Criminal Law Handbook will be sent to all county attorneys soon.

Opinions of the United State Supreme Court

Byrd v. United States, 584 U.S. ___ (May 14, 2018) No. 16-1371. **A person in lawful possession of a rental car has a reasonable expectation of privacy, even if the person is not on the rental agreement.** The defendant was stopped by a state trooper in a rental car that had been rented by a third party. The third party was not present during the stop and the defendant was not listed as an authorized driver on the rental agreement. After another trooper arrived, they informed defendant that they did not need his consent to search the vehicle. When the troopers searched the trunk, they found 49 bricks of heroin and body armor. Defendant filed a motion to suppress arguing the search was unlawful. Defendant's motion to suppress was denied by the District Court and Court of Appeals for the Third Circuit because defendant did not have a reasonable expectation of privacy since he was not on the rental agreement. Defendant appealed to the United States Supreme Court. Held, "as a general rule, someone in otherwise lawful possession and

[7] https://crashstats.nhtsa.dot.gov/Api/Public/ViewPublication/812521
[8] https://crashstats.nhtsa.dot.gov/Api/Public/ViewPublication/812521

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control of a rental car has a reasonable expectation of privacy in it even if the rental agreement does not list him or her as an authorized driver." The defendant had the right to an expectation of privacy and also the right to exclude third parties from the vehicle. The Supreme Court remanded to determine if probable cause existed to justify the search of the vehicle. The Supreme Court also remanded for a determination on whether defendant was in lawful possession of the vehicle. "No matter the degree of possession and control, the car thief would not have a reasonable expectation of privacy in a stolen car."

Collins v. Virginia, 584 U.S. ___ (May 29, 2018) No. 16-1027. **The automobile exception does not allow a warrantless search of a vehicle located in the curtilage of a home.** While standing on the street, an officer observed a motorcycle parked at the top of a driveway, under a tarp, that appeared to be similar to one that had been used to commit traffic violations and was likely stolen. The officer walked onto the residential property and up to the covered motorcycle. The officer then removed the tarp, observed the motorcycle was similar to the one he was looking for, and determined it was stolen by running the license plate and VIN. The defendant filed a motion to suppress arguing Officer Rhodes warrantless search was a violation of the Fourth Amendment. Held, "the automobile exception does not permit an officer without a warrant to enter a home or its curtilage in order to search a vehicle therein." An officer must have a lawful right to access a motor vehicle in order to perform a warrantless search under the automobile exception. The plain view doctrine would not allow for the warrantless search because the officer was not lawfully entitled to be where the motorcycle (contraband) was located. The area where the motorcycle was located is considered curtilage. The United States Supreme Court did not address whether the officer's warrantless search would be valid under the exigent circumstances exception.

Opinions of the Iowa Supreme Court

Linn County State v. Clark Andrew Brewster, 907 N.W.2d 489, (Iowa 2/9/18) No. 16-0372. **Insufficient colloquy on prior OWI offense renders stipulation involuntary.** Defendant pled guilty to OWI 2nd offense and stipulated to his prior offense. The court's colloquy only asked whether the defendant was the person previously convicted. Held, the court must inform the offender of the nature of the habitual offender charge, inform the offender that the prior conviction is only valid if obtained when the offender was represented by counsel or knowingly and voluntarily waived the right to counsel, and must make sure a factual basis exists to support the admission to the prior conviction. The court must also inform the offender of: the maximum and any mandatory minimum possible punishment, the offender's trial rights, that no trial will take place and the state is not required to prove the prior convictions were entered with counsel unless the offender first raises the claim, and that challenges to an admission based on defects in the habitual offender proceedings must be raised in a motion in arrest of judgment and that failure to do so precludes the right to assert them on appeal. Because the court did not engage in this detailed colloquy, the habitual offender enhancement was vacated and case remanded for further proceedings on the enhancement.

Woodbury County State v. John William Ness, 907 N.W.2d 484, (Iowa 2/9/18) No. 17-0476. **Admission of PBT results at trial results in reversal of conviction.** Defendant drove himself to the office of his probation officer, who administered a PBT after detecting the odor of alcohol on his breath. Defendant was subsequently charged with OWI 3rd, and the results of the PBT were admitted at trial over defendant's objection. On appeal, the State argued that error was either not preserved or was harmless. Held that error

Continued on page 5

was preserved because the State filed a motion in limine for a pretrial determination of admissibility before trial and the defendant resisted the motion. The Iowa Supreme Court also found the error was not harmless because while the other evidence of intoxication was strong, it was not so strong as to overcome the presumption of prejudice and emphasis placed on the importance of the PBT result by the prosecutor to the jury.

Black Hawk County State v. Michael Scheffert, 910 N.W.2d 577, (Iowa 4/6/18) No. 16-0267. **After rehearing, there was probable cause to stop defendant's vehicle for being in a county park after 10:30 p.m.** Defendant was stopped for being in a county park after hours, and consent to search was obtained, yielding paraphernalia and marijuana. The park hours were not posted. The Iowa Supreme Court initially held that Iowa Code §350.5 mandates posting the hours near each gate or principle entrance, and there was no testimony that the hours were posted; therefore the Iowa Supreme Court initially found no probable cause existed for the stop on that basis. The State then petitioned the Iowa Supreme Court for rehearing, which was granted. On rehearing, the State argued that Iowa Code section 350.10 applies when the county conservation board fails to properly post the park's closing time pursuant to Iowa Code section 350.5. Held, pursuant to Iowa Code section 350.10, when the county conservation board fails to comply with Iowa Code section 350.5 by properly posting the county ordinance closing time, then Iowa Code section 461A.46 applies and the park closing time is 10:30 p.m. Therefore, the officer had probable cause to stop defendant's vehicle. The Iowa Supreme Court reiterated that an ordinance establishing a closing time for a county park must be posted pursuant to Iowa Code section 350.5 to be enforced.

Boone County State v. Deshaun Marvin Lamar Williams, 910 N.W.2d 586, (Iowa April 6, 2018) No. 16-0894. **The State is not required to prove the Iowa Department of Transpiration mailed defendant notice his license was barred.** The defendant was convicted of OWI 3rd offense as a habitual offender and driving while barred. The defendant challenged sufficiency of the evidence that he was the driver and was intoxicated. The defendant also challenged sufficiency of the evidence that he was mailed notice of his driving status. The Iowa Court of Appeals upheld the convictions and defendant requested further review. The Iowa Supreme Court granted further review only on whether the State is required to prove the Iowa DOT mailed notice of the bar to him as an element of driving while barred. The defendant argued he cannot be convicted of driving while barred without the state proving he was mailed notice of the revocation. The State presented evidence the defendant was operating a motor vehicle, he admitted he should not be driving, and he was barred at the time. The State also presented the defendant's certified abstract of driving record. The Iowa Supreme Court held "proof of mailing is not an essential element" in a charge of driving while barred. The Iowa DOT administrative rules requires notice of barment be mailed to the defendant, but the Iowa Code does not. All the State must prove is the defendant was "operating a vehicle during the period of time the defendant was barred from driving as a habitual offender." The State does not need to prove defendant was mailed notice his license was barred. A dissenting opinion would find that evidence of mailing is necessary in a driving while barred case.

Story County State v. Terry Lee Coffman, ____ N.W.2d ____ (Iowa 6/22/18) No. 16-1720. **The "community caretaking" exception to the warrant requirement justified an officer's actions under both the Iowa Constitution (article I, section 8) and the Fourth Amendment.** At 1:08 a.m. a sheriff's deputy observed a vehicle pulled over on the side of a county road with its brake lights on. The deputy activated his red and blue lights and stopped behind the vehicle. The deputy testified he stopped to check

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on the occupants of the vehicle to make sure they did not need any assistance and he activated his lights to put other vehicles on notice that he was stopped on the side of the road for his safety and their safety. The deputy also explained the lights were to alert the occupants of the vehicle that it was law enforcement that had stopped behind them, not a stranger. The deputy did not run the vehicle's license plate number, but as he approached the driver he noticed the license plate bracket covered up the registration sticker and he could not tell if the registration was valid. When the deputy reached the driver's side window, he observed the driver had red and water eyes and also a strong odor of alcoholic beverage. Despite these observations, the deputy's immediate questions related to whether the occupants needed any assistance. After determining the occupants did not need any assistance, the deputy then requested defendant's driver's license, registration, and asked how much defendant had drank that night. Defendant filed a motion to suppress and argued the stop violated his rights under the Fourth Amendment and/or the Iowa Constitution (article I, section 8). Defendant's motion to suppress was denied and he was convicted of OWI 1st. Held, the deputy's actions were justified under the "community caretaking" exception to the warrant requirement under the Fourth Amendment. The Iowa Supreme Court stated: "the officer does not need specific facts indicating that assistance is needed, only it may be needed." The Iowa Supreme Court found a significant public interest existed of having law enforcement check on the wellbeing of motorists that are stopped on the side of the road at night. The Iowa Supreme Court opined that it might have been "a dereliction of duty" if the deputy did not stop to see what was going on. The Iowa Supreme Court distinguished this case from State v. Coleman, 890 N.W.2d 284 (Iowa 2017).

Polk County State v. Bion Blake Ingram, ___ N.W.2d ___ (Iowa 6/29/18) No. 16-0736. **Law enforcement may not open containers during an inventory search.** After a traffic stop, a law enforcement officer issued the defendant citations and decided to impound the vehicle because of the traffic violations. Before towing the vehicle, another officer conducted a warrantless inventory search of the vehicle and discovered a cloth bag on the driver side floor. The officer opened the bag and discovered a methamphetamine. Held, under article I, section 8 of the Iowa Constitution, closed containers cannot be opened during a warrantless inventory search unless there is a "knowing and voluntary consent" given by the defendant. The Court also indicated that law enforcement should look for other arrangements for the vehicle before resorting to impoundment.

Published Iowa Court of Appeals Decision

Polk County State v. Hunter Nathanial Frescoln, 911 N.W.2d 450 (Iowa Ct. App. 2017). **Implied consent statute not the exclusive means by which a chemical sample may be obtained.** Defendant was arrested for OWI following a traffic stop and performance of SFSTs indicating impairment. Implied consent was never invoked, and a warrant for a sample of defendant's blood was obtained showing a result over the legal limit. Held that implied consent statutes fall under the exceptions to the warrant requirement based upon consent, and are not a prerequisite to chemical testing. As long as a defendant is never presented with the opportunity to consent by invoking implied consent, nothing is refused and a general warrant is permitted pursuant to Iowa Code §321J.18 and State v. Oakley, 469 N.W.2d 681, 682 (Iowa 1991). The court also held that while a warrant to seize the sample, when construed in a commonsense manner, is valid to also test that sample, the best practice is to state in the warrant that the purpose for requesting the sample is for chemical testing. Further, a person loses a privacy expectation in blood after its lawful removal from the body, and therefore testing does not violate constitutional protections.

RECENT **UNPUBLISHED DECISIONS** INVOLVING ALCOHOL AND TRAFFIC SAFETY

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(Recent Unpublished Decisions Arranged by County)

Black Hawk County State v. Yolanda Draine, No. 17-0332 (Iowa Court of Appeals, filed April 18, 2018). **There was sufficient evidence that defendant was driving the vehicle that struck her husband.** The State presented evidence from two witnesses that: the defendant was angry with her husband, the defendant told a witness that she was going to shot her husband and get away with it, the defendant left in the same direction the husband left on a bike, a witness observed the husband lying in the street and only the defendant's vehicle leaving the scene, the husband made statements that the defendant hit him, and the defendant told a witness that she hit her husband. Held, there was sufficient evidence that the defendant was driving the vehicle that struck her husband.

Black Hawk County State v. Yolanda Draine, No. 17-0332 (Iowa Court of Appeals, filed April 18, 2018). **Sentencing court failed to state a reason for imposing consecutive sentences.** Defendant was convicted of willful injury causing bodily injury (five year suspended sentence), domestic abuse assault with intent to cause serious injury while using a dangerous weapon (two year probation consecutive to the willful injury sentence), and leaving the scene of an accident causing injury (one year with all but thirty days suspended). Held, the court failed to state a reason for imposing the sentences consecutively. Defendant's sentences were vacated and remanded for resentencing.

Black Hawk County State v. Lydell Jerome Stewart, No. 17-0705 (Iowa Court of Appeals, filed May 2, 2018). **Deputy's detection of marijuana coming from the vehicle was sufficient to establish probable cause to search the vehicle.** When the deputy approached the driver, he smelled a strong odor of marijuana. Upon questioning, the defendant admitted he had smoked marijuana, but not in the vehicle. Another deputy arrived and also smelled a faint odor of marijuana coming from the passenger window. The deputy then conducted a search of the vehicle and found marijuana. Held, the deputy had probable cause to search defendant's vehicle and the warrantless search was valid under the automobile exception. The Court of Appeals found the deputy's detection of an odor of marijuana coming from defendant's vehicle was enough by itself to establish probable cause to search the vehicle. The Court of Appeals also noted that the deputy had observed defendant had bloodshot and watery eyes and admitted to smoking marijuana earlier.

Black Hawk County State v. Corion Jamal Pursley, No. 17-0870 (Iowa Court of Appeals, filed June 6, 2018). **A passenger that does not own the vehicle does not have standing to challenge a warrantless search of the vehicle.** After a string of burglaries, officers stopped a vehicle that matched the description provided by witnesses. Defendant was a passenger in the car and advised the officers that his girlfriend, who was not present, owned the car. The driver of the vehicle gave officers permission to search the vehicle and evidence from one of the burglaries was found. The Court of Appeals affirmed the trial court ruling that defendant, who was neither the owner nor the driver of the vehicle, did not have a reasonable expectation of privacy in the vehicle and did not have standing to challenge the search.

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Boone County State v. Grabiel Garcia, No. 17-1181 (Iowa Court of Appeals, filed May 2, 2018). **Defendant did not preserve error because he failed to file a motion in arrest of judgment despite being advised of the requirement.** Defendant pled guilty OWI 2nd and eluding. Defendant appealed arguing his plea was not valid because he was not advised by the court of his right against self-incrimination. When defendant pled guilty, the court advised him he had to file a motion in arrest of judgment to challenge his guilty plea. Held, the defendant failed to preserve error by not filing a motion in arrest of judgment.

Bremer County State v. Andrew Robert Shadow, No. 17-1139 (Iowa Court of Appeals, filed February 21, 2018). **Judge cannot use pending charges to influence sentencing.** Defendant pled guilty to OWI 2nd. During the sentencing, the judge stated: "I would also say that I am influenced in this decision by the ongoing criminal activity that you seem to be involved in; you've got a number of pending charges." The sentencing judge tried to correct his statement by stating it was "not really a factor for the court to consider, um, but I would take into consideration this driving while barred that you committed after this matter was pending." Held, the sentencing judge's follow-up statement was not "sufficient to remove the taint of referencing unproven charges." The sentence was vacated and remanded for resentencing.

Bremer County State v. Thomas Nathaniel Keith, No. 17-1044 (Iowa Court of Appeals, filed April 4, 2018). **There was reasonable suspicion for traffic stop.** After the bars had just closed, an officer observed a vehicle's "right tires" touch the yellow center line and the "left tires" touch the fog line. Defendant was subsequently convicted of OWI 3rd. Held, based on the "totality of the circumstances", the officer had reasonable suspicion defendant may have been operating a motor vehicle while under the influence.

Buchanan County State v. Larry Shannon, No. 17-0717 (Iowa Court of Appeals, filed March 7, 2018). **Sufficient evidence of driving while impaired.** Defendant was convicted of OWI 2nd, DWB, and DWR. After a deputy initiated a traffic stop, the defendant: took a long time to pull over, refused to comply with the deputy's commands, continued to drink Gatorade, constantly fidgeted, had a high body temperature, twitched involuntarily, had a dry mouth despite drinking the Gatorade, wrists were tense, and was grinding his teeth and jaw. Defendant's performance on the modified Rhomberg test also indicated impairment. The deputy was not a certified drug recognition expert, but did have Impaired Driving and Advanced Roadside Impairment training. Held, the State presented sufficient evidence of driving while under the influence of a drug.

Cass County State v. Joseph Ray Brooks, No. 17-1234 (Iowa Court of Appeals, filed March 7, 2018). **No evidence the search was illegal.** When the defendant was issued a traffic citation for a gross-weight violation, he did not sign the citation, but acknowledged that he received the citation. The defendant did not enter a plea and was convicted after he did not appear in court on the date and time listed on the citation. The defendant appealed and argued the officer conducted an illegal search of his vehicle. Held, the defendant failed to provide a sufficient record regarding the traffic stop to support his argument that the search was illegal.

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Cass County State v. Joseph Ray Brooks, No. 17-1234 (Iowa Court of Appeals, filed March 7, 2018). **No due process violation when defendant was administratively convicted on a traffic citation after he failed to appear even though he did not sign the citation.** When the defendant was issued a traffic citation for a gross-weight violation, he did not sign the citation, but acknowledged that he received the citation. The defendant did not enter a plea and was convicted after he did not appear in court on the date and time listed on the citation. The defendant appealed and argued his lack of signature on the citation requires the citation to be dismissed under Iowa Code section 321.485(2). Held, the defendant was provided due process because he acknowledged he received the citation, he did not indicate he was not aware of the citation or the court date, and he was aware of the court date.

Cass County State v. Tanor D. Jimmison, No. 17-1262 (Iowa Court of Appeals, filed June 6, 2018). **A caller's personal observation of defendant's irregular driving was sufficiently reliable to allow an investigatory stop.** A citizen informant that personally observed and described impaired driving behavior and also provided specific information about the vehicle (including an accurate description of the vehicle and its license plate number) was sufficient to support officer's stop of the vehicle. The Court of Appeals upheld defendant's convictions for OWI and driving while barred.

Cerro Gordo County State v. Monte Dean Neubauer, No. 17-1370 (Iowa Court of Appeals, filed February 21, 2018). **Plea is knowing and voluntary despite sentence in excess of prosecutor recommendation.** Defendant pled guilty to driving while barred (DWB) and was sentenced to a term that exceeded what the prosecutor recommended. Held, when there is not a binding plea agreement and the defendant is informed that the court could impose any penalty up to the maximum, including running the sentences consecutively, the plea is knowing and voluntary.

Clayton County State v. Travis C. Nierling, No. 17-0027 (Iowa Court of Appeals, filed February 21, 2018). **A named informant's description about a possible intoxicated driver was reliable.** An informant called 911 and reported a drunk driver. The informant provided the make, color, and license plate number of the vehicle. The informant also provided her name, address, and phone number. A uniformed deputy then found the vehicle and the defendant was subsequently charged with OWI. Held, the informant's informant was reliable and provided reasonable suspicion of criminal activity; the informant was not anonymous, gave a detailed description of the vehicle, and observed defendant driving.

Des Moines County State v. Max Lee Arthur Baxter, No. 17-1320 (Iowa Court of Appeals, filed May 2, 2018). **Defendant was informed of the elements of eluding and that the state must prove each element beyond a reasonable doubt.** The defendant entered a written guilty plea to eluding, an aggravated misdemeanor. Held, the defendant's written guilty plea informed him regarding the elements of the offense and that the state must prove him guilty beyond a reasonable doubt. Conviction was affirmed.

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Floyd County State v. Anthony Schmitz, No. 17-1183 (Iowa Court of Appeals, filed March 7, 2018). **A non-victim should not have been allowed to provide a victim impact statement at sentencing, but the defendant failed to show prejudice occurred.** Defendant pled guilty to two charges: serious injury by vehicle (Count III) and child endangerment resulting in serious injury (Count I). During the sentence hearing, the District Court allowed the husband/significant other of the injured driver in Count III to present a victim impact statement. Defendant argued his counsel was ineffective for failing to object to the husband/significant other providing a victim impact statement, because he was not eligible under Iowa Code section 915.10(3). Held, the defendant's attorney failed to perform an essential duty by not objecting to the husband/significant other's victim impact statement; however, defendant failed to show prejudice had occurred. There was no indication the sentencing court relied on the husband/significant other's victim impact statement in deciding the sentence.

Johnson County State v. Tracy Klinkkammer, No. 17-0852 (Iowa Court of Appeals, filed May 2, 2018). **Defendant's generic statement he was trying to make a call to medical personnel does not invoke 804.20.** An officer started reading the defendant the implied-consent advisory at the hospital, but stopped after a monitor indicated defendant's oxygen level was low. As medical staff was attending to the defendant, they asked if he wanted to call anyone. The defendant responded "[T]hat's why I'm trying to get my phone." The medical staff offered to call the number if the defendant knew it and the officer then proceeded to read the implied-consent advisory. The defendant then provided a blood sample. Defendant argued his 804.20 rights were violated because the officer did not help him contact an attorney or family member after his conversation with the medical staff. Held, the defendant's statement to the medical staff was not a request to invoke his 804.20 rights.

Linn County State v. Nathaniel Scott Akers, No. 17-0577 (Iowa Court of Appeals, filed March 7, 2018). **Probable cause to stop a vehicle has to be observed prior to initiating a traffic stop.** The defendant was seized when the officer activated the flashing lights and the defendant pulled over. After the defendant pulled over, he put his vehicle in reverse to finishing parking and the officer observed that one of the six rear lamps was not functioning. Held, probable cause to stop a vehicle for a nonworking rear lamp (Iowa Code section 321.387) has to be observed prior to initiating the traffic stop. The denial of the motion to suppress was reversed and the case was remanded.

Marshall County State v. Marc Christopher Plettenberg, No. 17-0624 (Iowa Court of Appeals, filed May 2, 2018). **The minutes of evidence and defendant's written guilty plea established a factual basis that defendant intended to cause damage.** The defendant pled guilty by four separate written guilty pleas to: escape, eluding, criminal mischief in the 3rd degree, and driving while barred. The minutes of evidence detailed that the defendant drove over grass and landscaping. The defendant admitted he intentionally caused the damage in his written guilty plea. Held, there was a factual basis for the defendant's guilty plea to criminal mischief 3rd degree and his counsel was not ineffective for allowing the plea of guilty.

RECENT **UNPUBLISHED DECISIONS** INVOLVING ALCOHOL AND TRAFFIC SAFETY

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Marshall County State v. Marc Christopher Plettenberg, No. 17-0624 (Iowa Court of Appeals, filed May 2, 2018). **Restitution for damage to deputy's vehicle was not punishment.** The defendant pled guilty by four separate written guilty pleas to: escape, eluding, criminal mischief in the 3rd degree, and driving while barred. The defendant only mentioned restitution in his written guilty plea to the charge of escape. At the sentencing hearing, the State requested restitution, if applicable, only on the criminal mischief conviction. The defendant did not object to the State's request for restitution on the criminal mischief conviction. The sentencing court ordered defendant to pay any restitution on the criminal mischief conviction. The State then filed a statement of pecuniary loss for the damage to the deputy's vehicle and the court ordered the defendant to pay for damages to the vehicle. Held, restitution for damage to the deputy's vehicle was not punishment and therefore any failure to directly notify the defendant he would have to pay this type of restitution is not a violation of any plea agreement or make his plea defective.

Marshall County State v. Marc Christopher Plettenberg, No. 17-0624 (Iowa Court of Appeals, filed May 2, 2018). **Damage to deputy's vehicle was reasonably related to defendant's criminal activity (eluding or criminal mischief).** After chasing the defendant, a deputy was able to stop him by using the deputy's vehicle to pin the defendant's vehicle. When the deputy pinned the defendant's vehicle, it caused damage to the deputy's vehicle. The defendant pled guilty by four separate written guilty pleas to: escape, eluding, criminal mischief in the 3rd degree, and driving while barred. The criminal mischief conviction was based off the defendant driving over grass and landscaping. The defendant was ordered to pay restitution for the damage to the deputy's vehicle. The defendant appealed and argued the damage to the deputy's vehicle was not a result the defendant's actions, but a result of the deputy's decision to pin the defendant's vehicle. Held, there was no error in ordering the defendant to pay for damages to the deputy's vehicle. The Court of appeals found the County can qualify as a victim under Iowa Code Chapter 910 and the damages to the deputy's vehicle was reasonably related to the defendant's criminal actions (eluding or criminal mischief).

Marshall County State v. Marc Christopher Plettenberg, No. 17-0624 (Iowa Court of Appeals, filed May 2, 2018). **Sentencing court did not abuse its discretion by imposing consecutive sentences.** The defendant pled guilty, by four separate written guilty pleas, to: escape, eluding, criminal mischief in the 3rd degree, and driving while barred. The court detailed the defendant's criminal history, the specific facts of the four new offenses, and that he was already on probation when he was charged with the four new offenses, and sentenced him to consecutive sentences. Held, the sentencing court did not abuse its discretion and considered appropriate factors.

Muscatine County State v. Robert Arthur Davis, No. 17-0637 (Iowa Court of Appeals, filed May 2, 2018). **Defendant's 804.20 rights were not triggered until he completed the SFSTs, even though he was transported from the accident scene to the jail's sally port in order to complete the SFSTs due to inclement weather.** A deputy responded to a motor vehicle accident and due to the weather conditions only had the defendant perform the horizontal-gaze-nystagmus test. The deputy informed the defendant he needed to transport him to the jail to perform the remaining SFSTs in a controlled environment because of

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the weather conditions. Prior to leaving the area, defendant advised his wife to contact his attorney. Once inside the deputy's vehicle, the deputy read defendant his Miranda rights, but the deputy did not put him in handcuffs. The defendant asked to consult with his wife, but was denied at that time. The deputy obtained defendant's cellphone from his wife and informed defendant that he would give it to him once they were at the jail. Defendant did not ask during the trip to the jail to call his wife or attorney from his cellphone. Once the arrived at the jail, the deputy had defendant perform two more SFSTs. The deputy then placed defendant under arrest for OWI, walked him to the intake room, and read him his 804.20 rights. Defendant filed a motion to suppress arguing his 804.20 rights were violated prior to the SFSTs being administered. Held, defendant's 804.20 rights were not triggered until he finished the SFSTs because that is when the investigatory phase of the traffic stop ended. The Court of Appeals distinguished this case from State v. Moorehead, 699 N.W.2d 667 (Iowa 2005).

Polk County State v. James Matthew Sheppard III, No. 17-0235 (Iowa Court of Appeals, filed February 21, 2018). **Defendant's sentence of five years in prison was not an abuse of discretion.** Defendant pled guilty to OWI 3rd and requested a suspended sentence. Held, the sentencing court did not abuse its discretion by considering the defendant's criminal history, including being arrested for possession of crack cocaine and driving while license denied or revoked while awaiting sentencing.

Polk County State v. David Joseph Johnson, No. 16-0836 (Iowa Court of Appeals, filed March 21, 2018). **Sufficient evidence the defendant was driving while barred.** Defendant pled guilty to driving while barred as a habitual offender. Defendant appealed his conviction and argued the record did not establish a factual basis for the offenses that resulted in his habitual offender status. Held, there was sufficient evidence defendant was operating a motor vehicle and his driving privileges were barred.

Polk County State v. David Joseph Johnson, No. 16-0836 (Iowa Court of Appeals, filed March 21, 2018). **Improper collateral attack on prior DOT decisions during his criminal proceeding for driving while barred as a habitual offender.** Defendant pled guilty to driving while barred as a habitual offender. Defendant appealed his conviction and argued his attorney was ineffective for failing to challenge his guilty plea because the record did not establish he was represented by counsel or waived counsel for his prior convictions that resulted in his habitual offender status. Held, the proper time for defendant to challenge a lack of representation on his prior convictions was during the administrative proceedings with the DOT. Any attack on the convictions during his criminal proceedings would have been an improper collateral attack on the DOT's decisions.

Polk County State v. David Patrick Brewer, No. 16-1117 (Iowa Court of Appeals, filed April 18, 2018). **Sentencing judge may not rely on an unproven or uncharged offense during sentencing.** Defendant was operating a motor vehicle when he struck another vehicle causing serious injuries to the other driver. Defendant was convicted of OWI 1st and during sentencing the judge stated the incident could have resulted in a vehicular homicide, but the victim did not die. Defendant argued that this statement shows the judge relied on unproven or uncharged offenses when considering his sentence. Held, the judge inappropriately considered an unproven or uncharged offense when sentencing defendant. Remanded for resentencing.

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Polk County State v. David Patrick Brewer, No. 16-1117 (Iowa Court of Appeals, filed April 18, 2018). **Sufficient evidence of intoxication to justify invoking implied consent.** Defendant was operating a motor vehicle when he struck a concrete barrier, drove across multiple lanes of traffic, jumped across an on-ramp, drove through a ditch and struck another vehicle causing serious injuries to the other driver. After the defendant was taken to the hospital, an Iowa State Trooper observed defendant had dilated pupils, an elevated heart rate, bloodshot and watery eyes, admitted to using marijuana approximately four days before, admitted to drinking alcohol the night before, and was able to answer questions, except about the accident. Defendant argued that the trooper did not observe an odor of alcohol or marijuana and therefore there was not sufficient evidence to invoke implied consent. Held, "the extreme nature of the accident, admission of drug use, and physical indications of impairment taken together create reasonable grounds to suspect the influence of drugs or alcohol."

Polk County State v. David Patrick Brewer, No. 16-1117 (Iowa Court of Appeals, filed April 18, 2018). **Sufficient evidence to uphold the conviction for OWI.** Defendant was operating a motor vehicle when he struck a concrete barrier, drove across multiple lanes of traffic, jumped across an on-ramp, drove through a ditch and struck another vehicle causing serious injuries to the other driver. After the defendant was taken to the hospital, an Iowa State Trooper observed defendant had dilated pupils, an elevated heart rate, bloodshot and watery eyes, admitted to using marijuana approximately four days before, admitted to drinking alcohol the night before, and was able to answer questions, except about the accident. Defendant's urine sample was positive for marijuana metabolites. Held, there was sufficient evidence to convict defendant under Iowa Code section 321J.2(1)(a) (under the influence of a controlled substance) or 321J.2(1)(c) ("while any amount of controlled substance is present").

Polk County State v. Gilberto Morales Chavez, No. 17-0799 (Iowa Court of Appeals, filed April 18, 2018). **When a defendant stipulates to a trial on the minutes of evidence, the sentencing court does not need to comply with the habitual-offender colloquies.** Defendant was convicted of OWI 3rd offense after stipulating to a trial on the minutes of evidence. Held, the minutes of evidence contained substantial evidence of defendant's prior OWI convictions. When a defendant stipulates to a trial on the minutes of evidence, although the court must ensure the minutes support the prior convictions, the court does not have to comply with the habitual-offender colloquies.

Polk County State v. Seth Anthony Hankins, No. 17-1436 (Iowa Court of Appeals, filed May 2, 2018). **No factual basis for eluding when it was not established the officer was in uniform.** Defendant pled guilty to eluding (321.279(2)) and other charges. Defendant argued that his trial counsel was ineffective because there was no factual basis for his plea of guilty to eluding. The minutes of evidence and defendant's written plea of guilty state the officer was in a marked vehicle; however, they did not state the officer was in uniform at the time. Held, trial counsel was ineffective by allowing defendant to plead guilty to eluding without a factual basis. Under Iowa Code section 321.279(2) the State has to prove the officer was in uniform. The Court of Appeals vacated the eluding sentence and remanded to allow the State the opportunity to establish a factual basis.

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Polk County State v. Joseph Anthony Spencer, No. 17-0360 (Iowa Court of Appeals, filed May 16, 2018). **Probable cause to stop a vehicle if the license plate is not sufficiently illuminated.** Defendant was stopped after law enforcement verified that his license plate was only visible from approximately fifteen feet. Defendant argued that although the "left" rear license plate light was not working, the "right" rear license plate light sufficiently illuminated his license plate pursuant to Iowa Code section 321.388. Held, if one rear license plate light is not working and the registration plate is not clearly illuminated from fifty feet, then there is probable cause to stop a vehicle, even if the other rear license plate light is working.

Polk County State v. Hernandis Cortez Burks, No. 17-0540 (Iowa Court of Appeals, filed June 6, 2018). **A passenger in a vehicle does "not have a legitimate expectation of privacy to challenge the search of the vehicle."** Defendant was a passenger of a vehicle that was stopped by law enforcement. Defendant was not the owner of the vehicle. After a search of the vehicle, defendant was charged and convicted of possession of a controlled substance. Held, passenger and non-owner of vehicle may challenge stop of a vehicle, but the passenger does not have standing to challenge a search of the vehicle. *See* State v. Halliburton, 539 N.W.2d 339 (Iowa 1995).

Polk County State v. Michael Richard Brown, Jr., No. 17-1763 (Iowa Court of Appeals, filed June 20, 2018). **The sentencing court's deviation from the plea agreement was not a violation of equal protection and not an abuse of discretion.** The defendant entered into a plea agreement with the State. After the court advised the defendant it did not have to follow the plea agreement, the defendant pled guilty to two counts of driving while barred. The sentencing court cited the defendant's criminal history, the nature of the crime, and protecting the public in making its decision to not follow the plea agreement. Held, the sentence was not a violation of equal protection and was not an abuse of discretion.

Polk County State v. Warren Anthony English, No. 17-0836 (Iowa Court of Appeals, filed June 20, 2018). **Defendant's consent to search the vehicle was voluntary.** During a traffic stop, an officer obtained the defendant's consent to search his vehicle. The defendant was subjected to a pat-down search, not advised he had the right to refuse his consent (it was noted that the defendant was aware that he could refuse to consent to the search), had substantial experience with the criminal justice system, was not seated in the police vehicle when the officer requested his consent to search the vehicle, had not been informed that the reason for stop had ended (the initial reason for the stop may have ended, but the officer was now investigating whether the defendant and the passenger where involved in prostitution), no evidence that he was under the influence of drugs or alcohol when he gave his consent, and the officer acted in a calm and professional manner. Held, the defendant's consent to search his vehicle was voluntary after analyzing the facts in accordance with the principals from State v. Pals, 805 N.W.2d 767, 771 (Iowa 2011).

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Polk County State v. Warren Anthony English, No. 17-0836 (Iowa Court of Appeals, filed June 20, 2018). **Trial counsel was not ineffective for failing to contest the duration of the traffic stop.** After stopping the vehicle the defendant was driving, the officer questioned the defendant about the lack of a rear license plate and requested his license, registration, and insurance. The passenger informed the officer the defendant had picked her up while she was walking and he was taking her home. The officer discovered the passenger had previously been convicted for prostitution, observed a condom and pocket knife in one of the passenger side door holders, and the traffic stop occurred in an area of higher levels of prostitution. The defendant told the officer he had just left a party, had picked the passenger up to give her a ride home, and knew her first name, but could not exactly remember her last name. The officer asked the defendant if he could search the vehicle and the defendant responded it was ok. Held, the officer did not unjustifiably expand the duration of the stop. The officer had reasonable suspicion the defendant and the passenger may be involved in prostitution, which justified the extension of the stop.

Polk County State v. Michael Joe Kilpatrick, No. 17-0817 (Iowa Court of Appeals, filed June 20, 2018). **Officers did not unreasonably extend the traffic stop.** Officers stopped a vehicle because the registered owner had an outstanding arrest warrant. As the vehicle was coming to a stop, the officer observed the defendant reach toward the center console and the passenger area of the vehicle. The officer was concerned the defendant was trying to hide something (e.g., illegal substances) or retrieve something (e.g., a weapon). An officer requested the driver (the defendant) to exit the vehicle. The officer then checked the defendant's license and discovered he was not the registered owner. The defendant informed the officer the backseat passenger was not the registered owner. The officer then performed a pat down of the defendant and discovered heroin. Held, the officers' actions did not unjustifiably extend the stop to resolve any confusion about the identity of the vehicle's occupants. The Court of Appeals stated that State v. Coleman, 890 N.W.2d 284, 288 (Iowa 2017) "only applies if outward attributes make it obvious that the gender, race, or age of the driver or other occupants of the stopped vehicle do not match the identity of the registered owner, who is the focus of the investigation." The officers had indicated individuals are not always honest regarding their identities.

Polk County State v. Michael Joe Kilpatrick, No. 17-0817 (Iowa Court of Appeals, filed June 20, 2018). **The "plain-feel" doctrine justified the warrantless search of the defendant after a pat-down.** During a traffic stop, an officer frisked the defendant for weapons, felt a "crackle" and removed heroin from his pocket. The officer testified it was consistent with drug packaging. Held, the officer's seizure of the heroin was valid under the "plain-feel" exception to the warrant requirement.

Polk County State v. Michael Joe Kilpatrick, No. 17-0817 (Iowa Court of Appeals, filed June 20, 2018). **Presence of drugs and drug paraphernalia on the driver and a passenger provided sufficient probable cause to search the vehicle under the automobile exception.** During an investigatory stop, the officer frisked the defendant, felt a "crackle", and removed heroin from his pocket. Another officer discovered the backseat passenger possessed drug paraphernalia. The officers then searched the vehicle's glove box and discovered methamphetamine and cocaine. Held, the search of the locked glove box was valid under the automobile exception to the warrant requirement.

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Ringgold County State v. Timothy Alvin Newton, No. 16-1525 (Iowa Court of Appeals, filed February 7, 2018). **OWI based on "any amount of a controlled substance" is not unconstitutionally vague and does not lead to arbitrary enforcement.** Defendant was convicted of OWI 2nd offense and child endangerment based upon "any amount" alternative in 321J.2(1)(c), and raised due process violation for vagueness. Defendant argued that a person is not on notice when they are in violation of the law because metabolites of drugs can appear in urine long after impairment is no longer present. Held, as long as a person is aware of the described conduct (consuming controlled substances) that places a person in jeopardy of violating the statute, due process is satisfied, and the statute does not lead to arbitrary enforcement because a law enforcement officer needs reasonable grounds to believe that a person is impaired in order to invoke implied consent.

Scott County State v. Lawrence Levell Harmon, No. 17-0353 (Iowa Court of Appeals, filed February 7, 2018). **Factual basis for driving while barred; collateral attack of offenses underlying a determination by the DOT that a license is barred is not permitted.** Defendant pled guilty to driving while barred as habitual offender and contested the factual basis due to a lack of evidence that he was represented by counsel or validly waived counsel for each of his prior convictions leading to his barred status. Held, the reason why the DOT issued a bar of the defendant's license is not an element of the offense of driving while barred, therefore any attack on the validity of the prior offenses is collateral and can only be raised in an administrative proceeding challenging the bar of his license; factual basis for driving while barred upheld.

Scott County State v. Steven W. Chaney, No. 17-0300 (Iowa Court of Appeals, filed March 21, 2018). **The defendant was not prejudiced when the State presented irrelevant evidence about alcohol during trial.** Defendant was charged with driving while barred, driving while suspended, interference with official acts, and assault on a peace officers, but not OWI. During the trial, the State presented evidence that: a concerned citizen called the police because the defendant may have been intoxicated, the concerned citizen did not want an intoxicated person driving, a beer can was found at the scene, and why the officer did not proceed with an OWI investigation. Held, the admission of the testimony regarding alcohol was not relevant and should have been excluded; however, there was overwhelming evidence to support defendant's convictions and he was not prejudiced by the evidence regarding alcohol and possible intoxication.

Scott County State v. Gregory Francis Tennant, No. 17-0648 (Iowa Court of Appeals, filed May 2, 2018). **Probable cause existed to arrest defendant, thus the search incident to arrest was valid.** After receiving a complaint about motorcyclists, an officer observed defendant at a gas station putting fuel in his motorcycle. The motorcycle did not have a registration plate. Defendant refused to provide any information regarding the vehicle, including the vehicle's registration. Defendant was arrested for harassment of a public official and operation without registration (Iowa Code section 321.98). After defendant was transported to the police station, the officer conducted a search incident to arrest and found a baggie of marijuana. Held, the officer had probable cause to believe defendant violated Iowa Code section 321.98 and therefore the search incident to arrest was valid.

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Sioux County State v. Robert Christopher Carroll, No. 17-0639 (Iowa Court of Appeals, filed June 6, 2018). **Failure to give an eyewitness identification jury instruction was not prejudicial.** Defendant was charged and convicted of OWI. Failure to instruct jury on eyewitness identification was not prejudicial where witnesses testified regarding descriptions of the motorcycle and the rider, but did not identify the defendant in court as the motorcyclist. The Court of Appeals preserved defendant's claim of ineffective assistance of counsel for: failing to object to prior bad acts evidence and failing to file a motion to suppress.

Sioux County State v. Robert Christopher Carroll, No. 17-0639 (Iowa Court of Appeals, filed June 6, 2018). **Sufficient evidence of defendant's identity to support guilty verdict.** Defendant was charged and convicted of OWI. Although witnesses to the OWI did not identify the defendant in court, their descriptions of the defendant, his motorcycle, the damage to the motorcycle that occurred in their presence, and the evidence left at the scene, combined with the officer's observation of the damage to the motorcycle, the evidence collected at the scene, and the defendant's admissions to drinking were sufficient to support a guilty verdict.

Story County State v. Jennelle Cathryn Harrison, No. 17-0508 (Iowa Court of Appeals, filed February 7, 2018). **No abuse of discretion in OWI sentence where sentencing factors stated on the record.** Defendant pled guilty to OWI and requested but was denied a deferred judgment. Defendant appealed for abuse of discretion citing failure to take into account mitigating factors and relying solely on her criminal history. Held, where sentencing court noted that her prior offenses were recent, considered the seriousness of the offense, her age, and her criminal history, the court made a reasoned choice and no abuse of discretion found.

Webster County State v. Leon Kurtis Shivers, No. 16-1989 (Iowa Court of Appeals, filed February 21, 2018). **The release of the car involved in an investigation to a third party prior to the defendant being charged with vehicular homicide was not an intentional destruction of evidence and did not merit a spoliation instruction.** Defendant was involved in a collision that resulted in the death of the other driver. The vehicle that the defendant was driving was owned by a third party. Approximately a month after the collision and after the State had returned the vehicle to a third party, the defendant was charged with vehicular homicide. Held, there was no evidence that the State intentionally released the car to a third party to prohibit the defendant from examining the car.

Woodbury County State v. Nicolas Hodges, No. 17-0712 (Iowa Court of Appeals, filed March 21, 2018). **Plymouth County deputy had authority to stop a vehicle and arrest the defendant in Woodbury County.** A Plymouth County deputy ran a vehicle's license plate while the vehicle was in Plymouth County; however, the vehicle was in Woodbury County when the deputy was informed the owner of the vehicle had a suspended license. The deputy then initiated a traffic stop in Woodbury County because he believed the registered owner may be the person driving the vehicle. During the traffic stop, the Plymouth County deputy discovered marijuana. The defendant was charged in Plymouth County with possession of a controlled substance with the intent to deliver and failure to affix a drug tax stamp. The defendant

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successfully filed a motion in change of venue to Woodbury County. The defendant then filed a motion to suppress arguing that the Plymouth County deputy did not have the authority to arrest him in Woodbury County and it was an unlawful extraterritorial arrest. Held, the Plymouth County deputy had the authority to stop the vehicle if there was reasonable belief the driver was suspended. The Court of Appeals applied State v. Snider, 22 N.W.2d 815 (Iowa 1994) and found the Plymouth County deputy also had authority to arrest the defendant for the drug offenses, even though the deputy did not have a reasonable belief defendant possessed the drugs until after the traffic stop occurred and the deputy was outside of his jurisdiction. The Court of Appeals also stated that the Plymouth County deputy would have been authorized to make a citizen's arrest of the defendant for the drug offenses under Iowa Code section 804.9(1) because the offense occurred in the deputy's presence.

Woodbury County State v. Austin Michael Schable, No. 17-0688 (Iowa Court of Appeals, filed June 6, 2018). **Passenger was seized when ordered out of a parked vehicle.** Officers responded to a call about a vehicle that had struck two vehicles in a parking lot. When the officers arrived, they did not activate their lights or sirens. The officers then approached the parked car the defendant was a passenger in. While one officer dealt with the driver, the second officer had the passenger (the defendant) step out of the car and patted him down. The officer discovered marijuana on the defendant. Defendant's motion to suppress was denied and he was convicted of possession of marijuana. The Court of Appeals reversed the possession conviction on the basis that the State could point to no exception to the warrant requirement that empowered the officer to direct the passenger (defendant) to get out of the vehicle. Held, once the officer directed defendant exit the vehicle, he was seized and the State failed to establish an exception to the warrant requirement.

Prepared by the

Prosecuting Attorneys Training Coordinator (PATC)

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Agenda

August 28, 2018
Des Moines Embassy Club-West

Lethal Weapon - Vehicular Homicide Investigation & Prosecution Workshop

12:30pm-1:00pm	**Registration**	
1:00pm-1:15pm	**Welcome** **Opening Remarks**	
1:15pm-2:15pm	**State v. William Phipps** **An overview of how investigation, evidence collection, and trial techniques and strategies successfully came together in a vehicular homicide case**	**Brendan Greiner** Assistant Polk County Attorney **Sgt. Chris Starrett** Iowa State Patrol **Det. Mike Williams** Ankeny Police Department
2:15pm-3:15pm	**Assessing the Scene – Evidence Collection & the Role of the Prosecutor**	**Brendan Greiner** Assistant Polk County Attorney **Sgt. Chris Starrett** Iowa State Patrol **Det. Mike Williams** Ankeny Police Department
3:15pm–3:30pm	**Break**	
3:30pm-4:30pm	**Warrants**	**Maurice Curry** Assistant Polk County Attorney
4:30pm	**Adjournment**	

Agenda

August 29, 2018
Des Moines Embassy Club-West

Lethal Weapon - Vehicular Homicide Investigation & Prosecution Workshop

7:30am-8:00am	**Continental Breakfast**	
8:00am-9:00am	**Toxicology and Retrograde Extrapolation**	**Justin Grodnitzky** DCI Crime Lab
9:00am-10:30am	**Collision Reconstruction and Airbag Control Modules**	**Rick Ruth, ACM Consultant**
10:30am-10:45am	**Break**	
10:45am-11:15am	**Working with Hospitals and HIPPA**	**Bill Miller** Dorsey & Whitney, LLP
11:15am-noon	**Distracted Driving**	**Dr. Daniel McGehee** University of Iowa
12:00–1:00pm	**Lunch**	
1:00pm-2:00pm	**Drugged Driving and the DRE**	**Todd Olmstead** DRE State Coordinator **Sgt. Paul Batcheller** Iowa City Police Department

2:00pm-3:00pm	**Anticipating Defense Attacks**	**Scott Brown** Assistant Attorney General Area Prosecution Division **Andy Prosser** Assistant Attorney General Area Prosecution Division **Jude Pannell** Assistant Johnson County Attorney **Jeremy Peterson** Assistant Attorney General PATC **Christine Shockey** Assistant Pottawattamie County Attorney
3:00pm–3:15pm	**Break**	
3:15pm-4:15pm	**Attacking the Defense**	**Scott Brown** Assistant Attorney General Area Prosecution Division **Andy Prosser** Assistant Attorney General Area Prosecution Division **Jude Pannell** Assistant Johnson County Attorney **Jeremy Peterson** Assistant Attorney General PATC **Christine Shockey** Assistant Pottawattamie County Attorney
4:15pm-4:30pm	**Questions and Adjournment**	**CLEs** **9.75 State - Activity #302736**

For Prosecutors Only

Lethal Weapon:

Vehicular Homicide Investigation and Prosecution

REGISTRATION FORM

August 28 and 29, 2018

Des Moines Embassy Club West · 520 Market St · West Des Moines, Iowa

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Sponsored by the:
Iowa County Attorneys Association
Office of the Prosecuting Attorneys Training Coordinator

First Name: _____

Last Name: _____

Position: _____

County: _____

Address: _____

City: _____

Zip:_____

Attendee E-mail: _____

Request consideration for a scholarship ☐

Questions:
Please contact Cindy Glick
Iowa County Attorneys Association
Hoover Bldg., 2nd Fl.
Des Moines, IA 50319
515.281.5428 (p)
515.281.6771 (f)
Cindy.Glick@ag.iowa.gov

Registration fee: $135.00
This includes all instruction, handouts, and breaks. A continental breakfast and lunch are included on August 29, 2018.

Scholarships Available:
Scholarships are available to cover mileage and lodging to the first 20 attorneys to register if they are traveling over 120 miles one way and in an office of two or less prosecutors.

Hotels Available:
There are a block of 20 rooms available ($120.00 plus taxes) at the Hyatt Place, 295 S 64th Street, West Des Moines, Iowa. Reservations need to be made by August 12, 2018 for this rate by calling 1-888-492-8847 or online at Hyatt.com and entering reservation using code: G-AGIA.

Submit Registration form:
No later than August 14, 2018

Please make checks payable to the Iowa County Attorneys Association. Unless the fee is enclosed with your registration, your office will be invoiced.

9.75 hrs. State CLEs WILL BE APPLIED FOR

A confirmation email will be sent to the email address listed a week prior to the workshop.

Cancellation Policy: Registration cancelled on or before August 22, 2018 will receive a full refund. After that date there are no refunds and you will be billed the full registration fee. All cancelations shall be in writing and e-mailed to Cindy Glick.
