



# HIGHWAY SAFETY

LAW UPDATE



August 9, 2022 Office of the Prosecuting Attorneys Training Coordinator April/May/June 2022

## County Spotlight – Cedar County

The fifteenth county spotlight is on Cedar County. Cedar County “was named for the Cedar River, which runs through the county.”<sup>1</sup> “It is the only Iowa county which shares the name of a tree”<sup>2</sup> and there are only two stoplights in the county.<sup>3</sup> Highway 38 runs through the county seat of Tipton.<sup>4</sup> According to the 2020 census, Cedar County has a population of 18,505, up from 18,499 in 2010.<sup>5</sup>

President Herbert Hoover was born in Cedar County and his Presidential Library is located in West Branch.<sup>6</sup> During the Fall of 1931, the Iowa “Cow War” occurred and was located mostly in Cedar County.<sup>7</sup> The “Cow War” was in response to a 1929 law that required testing on cows for bovine tuberculosis, which some farmers opposed.<sup>8</sup> The law was upheld by the Iowa Supreme Court and eventually the “Cow War” escalated to the point that the Governor sent the “Iowa National Guard troops to Cedar County to keep the peace.”<sup>9</sup> For more information about the “Cow War” click on the following link: <https://exhibits.lib.iastate.edu/activist-agriculture/cow-war>

Adam Blank is the Cedar County Attorney. Mr. Blank is a full-time county attorney and there is one full-time assistant county attorney Derek

<sup>1</sup> <https://cedarcounty.iowa.gov/about/>

<sup>2</sup> [https://en.wikipedia.org/wiki/Cedar\\_County,\\_Iowa](https://en.wikipedia.org/wiki/Cedar_County,_Iowa)

<sup>3</sup> Cedar County Attorney Adam Blank

<sup>4</sup> <https://www.google.com/maps/place/Tipton,+IA+52772/@41.7651024,-91.1633513,12.7z/data=!4m5!3m4!1s0x87e385e6511ad44f:0x97b7e8ee701008518m2!3d41.7697434!4d-91.1279349?hl=en>

<sup>5</sup> <https://www.census.gov/quickfacts/fact/table/cedarcountyiowa,IA/PS/T045221>

<sup>6</sup> <https://cedarcounty.iowa.gov/about/>

<sup>7</sup> <https://exhibits.lib.iastate.edu/activist-agriculture/cow-war>

<sup>8</sup> <https://exhibits.lib.iastate.edu/activist-agriculture/cow-war>

<sup>9</sup> <https://exhibits.lib.iastate.edu/activist-agriculture/cow-war>

Jones in the office. Mr. Blank graduated from the University of Iowa with a degree in Marketing and then attended Drake Law School. Mr. Blank has been the Cedar County Attorney for approximately 4 months and Assistant Cedar County Attorney 8 years. Prior to coming to the Cedar County Attorney’s office, Mr. Blank was an Assistant Clinton County Attorney for 2 years. Mr. Blank also spent approximately 3 years in private practice.

Cedar County has eight local law enforcement agencies: Clarence, Durant, Tipton, and West Branch Police Departments, Iowa Department of Natural Resources, Iowa DOT, Iowa State Patrol, and the Cedar County Sheriff’s Office. In 2021, there were 2,800 traffic convictions<sup>10</sup> and 87 OWI convictions in Cedar County according to Division of Criminal & Juvenile Justice Planning.<sup>11</sup>

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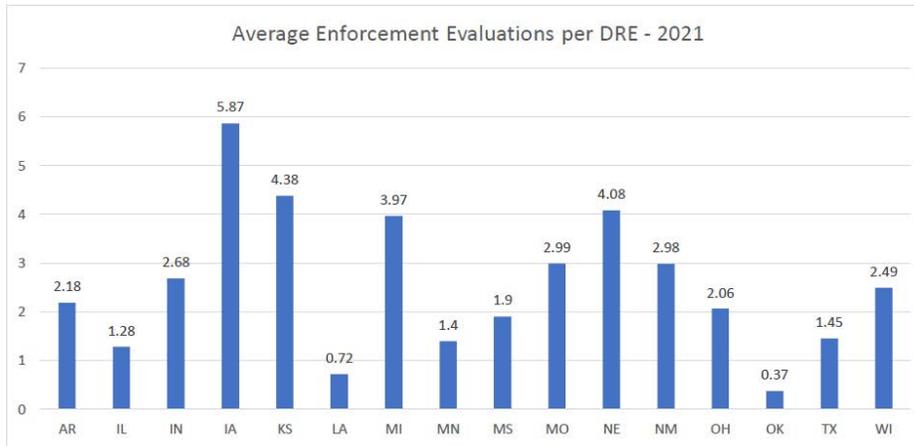
<sup>10</sup> “Convictions include all charges resulting in a conviction, including deferred judgments. Cases involving multiple charges may also involve multiple convictions, and each of those individual convictions are included in the results. Local ordinances are not included.”

(<https://disposedcharges.iowa.gov/asp/glossary.asp>)

<sup>11</sup> <https://disposedcharges.iowa.gov/>

# Iowa's DRE Program

The Iowa DRE Program continues to set the standard for combatting impaired driving, especially in the Central Region. As the chart below shows, Iowa ranked number 1 in the Central Region with 5.87 average DRE Evaluations per DRE Officer. On average, Iowa DRE Officers performed over one more evaluation than the second leading state (Kansas). A DRE officer's investigating impaired drivers starts with a strong support system, including their relationship with the county attorney's office, but also the support they receive from the State DRE Coordinator Todd Olmstead and the DRE Board. Not only is Iowa number 1 in the Central Region, but Iowa City Police Sergeant Paul Batcheller serves as the Central Region's DRE representative on the Technical Advisory Panel (TAP) and is also the current Iowa DRE Board Chair and National DRE Section Chairperson.



If you are interested in becoming a DRE Officer, please contact State DRE Coordinator Todd Olmstead at: [olmstead@dps.state.ia.us](mailto:olmstead@dps.state.ia.us).



## 2022 GTSB Conference

The Governor’s Traffic Safety Bureau’s (GTSB) Mission Statement is “To identify traffic safety issues and, through partnerships with city, county, state and local organizations, develop and implement strategies to reduce deaths and injuries on Iowa’s roadways using federally-funded grants to improve traffic safety in the State of Iowa.”<sup>12</sup> To further this mission, GTSB conducts an Annual Conference. This year’s Conference was held on June 15 and 16, 2022 and was a tremendous success. The Conference featured a number of unique general sessions, including: *Traffic Enforcement and the Nexus to Crime Prevention*, *Crash Data Analytics and Dashboards in Iowa*, *The Right Way to Tackle Wrong Way Driving*, *Resiliency Through Mental Strengthening in the Workplace*, and *Traffic Incident Management Trainings in Iowa*. The Conference also had numerous breakout sessions for attendees, including: *Speed Equipment 201*, *The Past Present and Future of Automated Driving*, *We’re in this TOGETHER – Learn how you can help mitigate local traffic safety issues!!*, *Buckle Up Buttercup!*, *Drone Applications within Incident Management*, *Distracted Driving Best Practices*, *Managing Iowa’s Roadways*, and *Leveraging Media for High-Visibility Traffic Enforcement Success*. Iowa Department of Public Safety General Counsel Catherine Lucas gave an *Electronic Search Warrant* presentation that outlined when counties can expect to have access to the electronic search warrant platform and an overview on how to use the platform.



I also had the opportunity to present a *Case Law Update* for the attendees and co-present the breakout session *The Best Defense is a Good Offense: Investigating and Prosecuting the Prescription Drug Impaired Driver* with Sergeant Paul Batcheller from the Iowa City Police Department.



<sup>12</sup> <https://dps.iowa.gov/divisions/commissioners-office/governors-traffic-safety>

The GTSB Conference concluded with the presentation of numerous traffic safety awards.



For more information on the GTSB Conference and GTSB in general, check out their webpage at: <https://dps.iowa.gov/divisions/commissioners-office/governors-traffic-safety>.

## Free Online Training – Prosecuting Drug Impaired Drivers

The NDAA (National District Attorneys Association), the NTLC (National Traffic Law Center), the NASID (National Alliance to Stop Impaired Driving), the NCSC (National Center for State Courts), and Responsibility.org (The Foundation for Advancing Alcohol Responsibility) created a free online training for prosecutors to help in the investigation and prosecution of drug impaired drivers. The NDAA’s website provides the following description:

This Course is designed to assist prosecutors in honing the skills required to properly prosecute a drug-impaired driving case. A prosecutor participating in this Drug-Impaired Driving online training will learn the following:

1. What a drug is and what kinds of drugs can cause impairment. Although the definition of “drug” may vary by State statute, participants will learn about over-the-counter drugs, prescription drugs, illicit drugs, and what polydrug-use is.
2. How to decipher a toxicology report and the kind of information about which a toxicologist may testify and about which he/she cannot.
3. How a law enforcement officer fully and properly investigates a drug-impaired driving case, what the Drug Evaluation and Classification (DEC) Program is, and how a Drug Recognition Expert (DRE) may be utilized during a drug-impaired driving investigation.
4. Some of the unique challenges and defenses posed to a drug-impaired driving prosecutor and how to best handle those challenges and defenses.
5. Suggestions on how to select jurors for a drug-impaired driving case.<sup>13</sup>

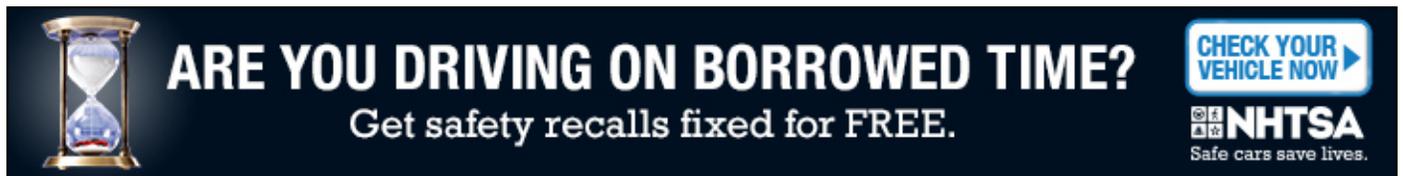
This **On-Demand: Investigation and Prosecution of Drug-Impaired Driving Cases** training has already been approved for 3.00 CLE credits for 2022.<sup>14</sup> Please see the attached flyer at the end of this newsletter for more information.

<sup>13</sup> [https://learn.ndaa.org/products/on-demand-investigation-and-prosecution-of-drug-impaired-driving-cases#tab-product\\_tab\\_overview](https://learn.ndaa.org/products/on-demand-investigation-and-prosecution-of-drug-impaired-driving-cases#tab-product_tab_overview)

<sup>14</sup> [https://learn.ndaa.org/products/on-demand-investigation-and-prosecution-of-drug-impaired-driving-cases#tab-product\\_tab\\_cle](https://learn.ndaa.org/products/on-demand-investigation-and-prosecution-of-drug-impaired-driving-cases#tab-product_tab_cle)

## Upcoming Midwest Impaired Driving Conference

The Midwest Impaired Driving Conference is currently scheduled from November 9-10, 2022, in Itasca, Illinois. “This multi-disciplinary event will focus on regional topics related to impaired driving recognition, apprehension, toxicology, and prosecution.”<sup>15</sup> “Attendees will hear from traffic safety professionals from across the country about current trends, programmatic successes, technological advances, relevant court decisions, and various other topics that are vital to removing impaired drivers from the roadway.”<sup>16</sup> There are a wide range of topics that will be covered at the conference, including, but not limited to: *Practical Uses for Seated Battery SFSTs*, *Current trends in drug use – Delta 8 & Kratom’s impairing abilities*, *Preventing CDL Masking*, *DUI Recidivism Prevention*, *Regional Oral Fluid Testing Update*, *SFST Admissibility in DRUG DUI Cases*, and many other topics.<sup>17</sup> Illinois TSRP Jennifer Cifaldi is helping organize this Conference. For more information or to register, please go the [Conference’s website](#).



**ARE YOU DRIVING ON BORROWED TIME?**  
Get safety recalls fixed for FREE.

**CHECK YOUR VEHICLE NOW**

**NHTSA**  
Safe cars save lives.

## Opinions of the Iowa Supreme Court

**Boone County [State v. Tiffany Sue McCalley](#), 972 N.W.2d 672 (Iowa 04/01/2022). No abuse in discretion in sentencing the defendant to jail for a conviction of DWB.** The defendant was sentenced to six days in jail and ordered to pay the restitution costs after pleading guilty to driving while barred (DWB). During sentencing, the Court noted the defendant’s license was suspended because of child support and nonpayment of fines. The defendant appealed arguing the Court improperly sentenced her because of her poverty. Held, the Court did not abuse its discretion in sentencing the defendant to six days in jail. “The district court must determine which legally authorized sentence for the offense ‘will provide maximum opportunity for the rehabilitation of the defendant, and for the protection of the community from further offenses by the defendant and others.’” *quoting* Iowa Code § 901.5. The defendant’s “jail sentence was the result of her conduct, not her financial status.” “It was not unreasonable for the district court to conclude that imposing probation or fines instead of jail time would not deter [the defendant] from driving illegally or rehabilitate her because she has proven as much in the past.”

**Boone County [State v. Tiffany Sue McCalley](#), 972 N.W.2d 672 (Iowa 04/01/2022). No “due process or equal protection” violation for sentencing the defendant to jail on a DWB conviction.** The defendant was sentenced to six days in jail and ordered to pay the restitution costs after pleading guilty to driving while barred (DWB). During sentencing, the Court noted the defendant’s license was suspended because of child support and nonpayment of fines. The defendant appealed arguing the Court’s sentencing her to six days in jail because of she could not pay her fines violated “equal protection and due process”. Held, sentencing the

<sup>15</sup> [https://www.illinoistruckcops.org/impaireddrivingconference?utm\\_multichannelcampaign=3afe3536-57b5-4b37-bc40-5b64a2bde922&utm\\_campaign=adec2449-0591-40e9-acfe-0a6daa52b360&utm\\_source=so&utm\\_medium=mail&cid=9475ca0b-457e-4249-9314-1063b9c62907](https://www.illinoistruckcops.org/impaireddrivingconference?utm_multichannelcampaign=3afe3536-57b5-4b37-bc40-5b64a2bde922&utm_campaign=adec2449-0591-40e9-acfe-0a6daa52b360&utm_source=so&utm_medium=mail&cid=9475ca0b-457e-4249-9314-1063b9c62907)

<sup>16</sup> [https://www.illinoistruckcops.org/impaireddrivingconference?utm\\_multichannelcampaign=3afe3536-57b5-4b37-bc40-5b64a2bde922&utm\\_campaign=adec2449-0591-40e9-acfe-0a6daa52b360&utm\\_source=so&utm\\_medium=mail&cid=9475ca0b-457e-4249-9314-1063b9c62907](https://www.illinoistruckcops.org/impaireddrivingconference?utm_multichannelcampaign=3afe3536-57b5-4b37-bc40-5b64a2bde922&utm_campaign=adec2449-0591-40e9-acfe-0a6daa52b360&utm_source=so&utm_medium=mail&cid=9475ca0b-457e-4249-9314-1063b9c62907)

<sup>17</sup> [https://www.illinoistruckcops.org/impaireddrivingconference?utm\\_multichannelcampaign=3afe3536-57b5-4b37-bc40-5b64a2bde922&utm\\_campaign=adec2449-0591-40e9-acfe-0a6daa52b360&utm\\_source=so&utm\\_medium=mail&cid=9475ca0b-457e-4249-9314-1063b9c62907](https://www.illinoistruckcops.org/impaireddrivingconference?utm_multichannelcampaign=3afe3536-57b5-4b37-bc40-5b64a2bde922&utm_campaign=adec2449-0591-40e9-acfe-0a6daa52b360&utm_source=so&utm_medium=mail&cid=9475ca0b-457e-4249-9314-1063b9c62907)

defendant to six days in jail as a goal for deterrence and rehabilitation does not violate the defendant's "due process or equal protection rights." "A sentencing court is free to imprison an individual if the sentencing court determines that alternatives to imprisonment are inadequate 'in a particular situation to meet the State's interest in punishment and deterrence.'" *quoting Bearden v. Georgia*, 461 U.S. 660, 672 (1983). "The district court must determine which legally authorized sentence for the offense 'will provide maximum opportunity for the rehabilitation of the defendant, and for the protection of the community from further offenses by the defendant and others.'" *quoting Iowa Code § 901.5.*

**Boone County [State v. Tiffany Sue McCalley](#)**, 972 N.W.2d 672 (Iowa 04/01/2022). **Pursuant to Iowa Code section 910.2A, the defendant waived her right to challenge the order of restitution by reserving "for a later date" her opportunity to challenge her reasonable ability to pay and the Court cannot address it on direct appeal.** The defendant was sentenced to six days in jail and ordered to pay the restitution costs after pleading guilty to driving while barred (DWB). At sentencing, the Court asked the defendant if she wanted to discuss now or at a later day the Category B restitution, specifically her "reasonable ability to pay." The defendant chose to address the "reasonable ability to pay" on a later day. The Court then found the defendant had "the reasonable ability to pay Category B" restitution. Held, pursuant to Iowa Code section 910.2A, the defendant waived her right to challenge the order of restitution by reserving "for a later date" her opportunity to challenge her reasonable ability to pay. Iowa Code section 910.2A(2) requires the defendant to request a hearing a hearing on their reasonable ability to pay Category B restitution. NOTE, if a defendant "is on probation, parole, or incarcerated", pursuant to 910.2A and 910.7, they may "petition[] the district court to modify the restitution plan."

**Dubuque County [State v. Earnest Jones Hunt Jr.](#)**, 974 N.W.2d 493 (Iowa 05/20/2022). **Under the plain feel doctrine, an officer does not need to be able to identify the specific type of drug that was felt to establish probable cause to arrest the defendant and seize the contraband pursuant to a search incident to arrest.** The defendant conceded to the lawfulness of a pat down for weapons. During the pat down, an experienced drug officer felt, but did not manipulate, multiple small plastic bags that were consistent with how heroin, crack cocaine, or cocaine is sold in the area. The officer then removed the plastic bags, but was still unable to determine what specific drug was in the bags after visually examining and manipulating them. The officer testified about his experience regarding how heroin, crack cocaine, or cocaine is packaged in the Dubuque area compared to methamphetamine and marijuana. Held, although the officer was not sure which drug was in the bags, under the plain-feel exception, an officer does not need to be able to identify the specific type of drug that was felt. It is not required for an officer to have absolute certainty as to what an object is in order to establish sufficient probable cause under the plain feel doctrine, the officer just needs a prudent and reasonable belief.

**Dubuque County [State v. Earnest Jones Hunt Jr.](#)**, 974 N.W.2d 493 (Iowa 05/20/2022). Under the plain feel doctrine, an officer does not need to be able to identify the specific type of drug that was felt to establish probable cause to arrest.

**Linn County [State v. Erica Lyne West Vangen](#)**, 975 N.W.2d 344 (Iowa 06/10/2022). **There was sufficient evidence the defendant was the principal actor in causing the damage.** The defendant was charged with Criminal Mischief in the 4<sup>th</sup> Degree for damaging another person's vehicle. The State tried the case under two different theories: (1) the defendant was the principal actor; or (2) the defendant aided and abetted the crime by driving the principal actors to the scene knowing they were going to damage the vehicle. The jury returned a general guilty verdict. Held, there was sufficient evidence the defendant was the principal actor in causing the damage (she admitted to driving to scene; her testimony contradicted her earlier statement to police; officer testified he saw the driver get out of the car on the video; and the officer testified it appeared the vehicle was put in park before the driver got out).

*Linn County State v. Erica Lyne West Vangen*, 975 N.W.2d 344 (Iowa 06/10/2022). **There was sufficient evidence the defendant aided and abetted causing damage to the vehicle.** The defendant was charged with Criminal Mischief in the 4<sup>th</sup> Degree for damaging another person's vehicle. The State tried the case under two different theories: (1) the defendant was the principal actor; or (2) the defendant aided and abetted the crime by driving the principal actors to the scene knowing they were going to damage the vehicle. The jury returned a general guilty verdict. Held, there was sufficient evidence the defendant aided and abetted causing damage to the vehicle (she admitted to driving to scene; she admitted she knew the people she drove to the scene had been texting a person that lived with the victim; she stopped her vehicle right next to the victim's vehicle; and she left immediately after the victim's vehicle was damaged).

*Linn County State v. Erica Lyne West Vangen*, 975 N.W.2d 344 (Iowa 06/10/2022). **Iowa Code section 814.28 (allowing for general verdicts) did not apply since "there was sufficient evidence for both theories[.]"** The defendant was charged with Criminal Mischief in the 4<sup>th</sup> Degree for damaging another person's vehicle. The State tried the case under two different theories: (1) the defendant was the principal actor; or (2) the defendant aided and abetted the crime by driving the principal actors to the scene knowing they were going to damage the vehicle. The jury returned a general guilty verdict. Held, Iowa Code section 814.28 (allowing for general verdicts) did not apply since "there was sufficient evidence for both theories[.]"

*Linn County State v. Erica Lyne West Vangen*, 975 N.W.2d 344 (Iowa 06/10/2022). **Iowa Code section 910.2A's changes to the process of whether "a defendant has the ability to repay [there] legal fees and court costs" are constitutional and do not "violate her right to counsel."** The "changes are not so onerous as to unconstitutionally chill a defendant's request for appointed counsel."

*Linn County State v. Erica Lyne West Vangen*, 975 N.W.2d 344 (Iowa 06/10/2022). The requirement that a defendant prove by a preponderance of the evidence they cannot afford category "B" restitution under Iowa Code section 910.2A does not violate due process.

*Linn County State v. Erica Lyne West Vangen*, 975 N.W.2d 344 (Iowa 06/10/2022). **No abuse in discretion in considering the defendant's "postconviction failure to take responsibility" when sentencing her.** Although a defendant requiring the State to prove their guilt beyond a reasonable doubt is an impermissible sentencing factor, the court can rely on a defendant's failure to take responsibility.

*Plymouth County State v. Brent Alan Hauge*, 973 N.W.2d 453 (Iowa 2022). **Under the Iowa Constitution, the front seat passenger in a two-door vehicle was lawfully ordered out of the vehicle in order for law enforcement to arrest the back seat passenger.** Law enforcement stopped a two-door vehicle for speeding. The defendant was in the front passenger seat and there was also a back seat passenger. During the traffic stop, the defendant initially tried to not acknowledge the law enforcement's presence. A law enforcement officer requested identification from the defendant, the driver, and the back seat passenger. A law enforcement officer then discovered there was an arrest warrant for the back seat passenger. A law enforcement officer requested the defendant exit the vehicle so they could then have the back seat passenger exit the vehicle on the passenger side next to the shoulder as opposed to the driver's side next to oncoming traffic. The defendant asked the deputy "if he was being detained" and the deputy said yes. After the defendant exited, the deputy asked him "if he had any weapons, to which [he] indicated that he did not." The deputy then asked the defendant if he was ok with the deputy checking him quickly for firearms. The defendant quickly replied "Yup", put his pop on the ground, and let the deputy conduct a pat down search. During the pat down, the deputy felt an object that based on the deputy's experience was a methamphetamine pipe. When the deputy removed the pipe, he also found a baggie of methamphetamine. The defendant was subsequently convicted of possession of methamphetamine and appealed arguing he was unlawfully ordered out of the vehicle. Held, under the Iowa Constitution, the front seat passenger in a two-door vehicle was lawfully ordered out of the vehicle in order for law enforcement to arrest the back seat

passenger. It was a reasonable request by law enforcement to ask the front seat passenger to exit a two-door vehicle so the rear seat passenger could exit towards the shoulder, instead of exiting through the driver's side into oncoming traffic. Law enforcement may order a passenger to exit a vehicle on "a routine traffic stop for any reason regardless of whether the officer has reason to suspect foul play or anything problematic about the passenger." Maryland v. Wilson, 519 U.S. 408, 414–415 (1997); see State v. Kha Len Richard Price-Williams, 973 N.W.2d 556 (Iowa 2022). However, law enforcement must still have reasonable suspicion of other wrongdoing in order to lawfully extend the stop. See State v. Kha Len Richard Price-Williams, 973 N.W.2d 556 (Iowa 2022); State v. Salcedo, 935 N.W.2d 572 (Iowa 2019).

**Plymouth County State v. Brent Alan Hauge, 973 N.W.2d 453 (Iowa 2022).** **The Iowa Constitution, like the Federal Constitution, does not require law enforcement to inform a person they have the option to refuse a search or pat down in order to find their consent voluntary.** Law enforcement stopped a two-door vehicle for speeding. The defendant was in the front passenger seat and there was also a back seat passenger. During the traffic stop, the defendant initially tried to not acknowledge the law enforcement's presence. A law enforcement officer requested identification from the defendant, the driver, and the back seat passenger. A law enforcement officer then discovered there was an arrest warrant for the back seat passenger. A law enforcement officer requested the defendant exit the vehicle so they could then have the back seat passenger exit the vehicle on the passenger side next to the shoulder as opposed to the driver's side next to oncoming traffic. The defendant asked the deputy "if he was being detained" and the deputy said yes. After the defendant exited, the deputy asked him "if he had any weapons, to which [he] indicated that he did not." The deputy then asked the defendant if he was ok with the deputy checking him quickly for firearms. The defendant quickly replied "Yup", put his pop on the ground, and let the deputy conduct a pat down search. During the pat down, the deputy felt an object that based on the deputy's experience was a methamphetamine pipe. When the deputy removed the pipe, he also found a baggie of methamphetamine. The defendant was subsequently convicted of possession of methamphetamine and appealed arguing he was unlawfully ordered out of the vehicle. Held, the Iowa Constitution, like the Federal Constitution, does not require law enforcement to inform a person they have the option to refuse a search or pat down in order to find their consent voluntary. "[T]here is no per se requirement to inform individuals that they are free to refuse consent to a search or to show that individuals knew they had the right to refuse consent." The Court noted that requiring law enforcement to advise a person they could refuse a search or pat down would be "impractical and unrealistic". The Court also noted a voluntary waiver to search is different than a waiver of trial rights (e.g., waiver of counsel). Compare to Johnson v. Zerbst, 304 U.S. 458 (1938).

**Plymouth County State v. Brent Alan Hauge, 973 N.W.2d 453 (Iowa 2022).** **Passenger's consent to a search/pat down "was voluntary based on the totality of the circumstances[:]"** defendant did not appear impaired; defendant appeared to be of sound mind; questions to deputy indicated defendant knew of his rights; traffic stop not completed; only a few minutes between the stop and request to search; deputy did not command a search, merely requested it; defendant was next to the vehicle, not in a patrol vehicle; and defendant "immediately answered 'Yup'" when the search was requested. In analyzing the totality of the circumstances, the Court should on focus an unlimited number of factors, including: the characteristics of the person consenting (e.g., age; sobriety; education; and intelligence); "context in which the consent was given" (e.g., discussion between police and person prior to any consent; was the person free to leave; how long the person was detained; how long the person was questioned; and how the person responded to the request to search).

**Polk County State v. Kha Len Richard Price-Williams, 973 N.W.2d 556 (Iowa 2022).** **There was reasonable suspicion to command a rear seat passenger (the defendant) to exit the vehicle.** The defendant was a rear seat passenger in a vehicle that was stopped for traffic violations. One of the officers remembered the defendant had previously eluded law enforcement on two occasions, one of which involved the defendant possessing a firearm. An officer asked the defendant to exit the vehicle. The defendant's

demeanor changed from friendly to nervous when his prior criminal history was brought up. The defendant then “moved his hand toward his coat pocket.” The officer told the defendant not to reach for his pocket, drew his firearm, and told the defendant to exit the vehicle. One of the officers then conducted a Terry pat down of the defendant. During the pat down, an officer asked if the defendant had any firearms and the defendant replied that he did. The pat down revealed a firearm where the defendant indicated it would be, his coat pocket. The officer then handcuffed the defendant and removed the loaded firearm. The defendant was convicted of felon in possession of a firearm. The defendant appealed arguing law enforcement unlawfully ordered him out of the vehicle. Held, there was reasonable suspicion to command a rear seat passenger (the defendant) to exit the vehicle. “An officer may expand a reasonable investigation ‘to satisfy suspicions of criminal activity unrelated to the traffic infraction’ during a traffic stop by ordering the passenger out of the vehicle if the officer identifies “specific and articulable facts which, taken together with rational inferences from those facts,” amount to reasonable suspicion that further investigation is warranted.” *quoting State v. Warren*, 955 N.W.2d 848, 866 (Iowa 2021) (*quoting State v. Salcedo*, 935 N.W.2d 572, 578 (Iowa 2019)). Note, under Maryland v. Wilson, law enforcement may order a passenger to exit a vehicle on “a routine traffic stop for any reason regardless of whether the officer has reason to suspect foul play or anything problematic about the passenger.” Maryland v. Wilson, 519 U.S. 408, 414–415 (1997); *see State v. Kha Len Richard Price-Williams*, 973 N.W.2d 556 (Iowa 2022). However, law enforcement must still have reasonable suspicion of other wrongdoing in order to lawfully extend the stop. *See State v. Kha Len Richard Price-Williams*, 973 N.W.2d 556 (Iowa 2022); State v. Salcedo, 935 N.W.2d 572 (Iowa 2019).

Polk County State v. Kha Len Richard Price-Williams, 973 N.W.2d 556 (Iowa 2022). **Reasonable suspicion to conduct a pat down of a rear passenger (the defendant).** The defendant was a rear seat passenger in a vehicle that was stopped for traffic violations. One of the officers remembered the defendant had previously eluded law enforcement on two occasions, one of which involved the defendant possessing a firearm. An officer asked the defendant to exit the vehicle. The defendant’s demeanor changed from friendly to nervous when his prior criminal history was brought up. The defendant then “moved his hand toward his coat pocket.” The officer told the defendant not to reach for his pocket, drew his firearm, and told the defendant to exit the vehicle. One of the officers then conducted a Terry pat down of the defendant. During the pat down, an officer asked if the defendant had any firearms and the defendant replied that he did. The pat down revealed a firearm where the defendant indicated it would be, his coat pocket. The officer then handcuffed the defendant and removed the loaded firearm. The defendant was convicted of felon in possession of a firearm. The defendant appealed arguing it was an unlawful warrantless search. Held, there was reasonable suspicion to conduct a pat down of a rear passenger (the defendant). Law enforcement may conduct “a protective, warrantless search of a person when the officer, pointing to specific and articulable facts, reasonably believes under all the circumstances that the suspicious person presents a danger to the officer or to others.” *quoting State v. Riley*, 501 N.W.2d 487, 489 (Iowa 1993). “To justify a pat-down of a passenger ‘during a [lawful] traffic stop, . . . the police must harbor reasonable suspicion that the person subjected to the frisk is armed and dangerous.’” *quoting Arizona v. Johnson*, 555 U.S. 323, 327 (2009). NOTE, the defendant argued recent legislative changes made it easier in Iowa to carry concealed weapons, but the Court stated “[w]e need not address whether the mere presence of a firearm on a person equates to inherent dangerousness” due to the facts of this case.

Warren County State v. Pamela Mildred Middlekauff, 974 N.W.2d 781 (Iowa 05/27/2022). “[N]either the [Arizona] registry card nor the written certification is a prescription.” During a traffic stop for speeding, the officer smelled an odor of marijuana coming from the vehicle. The defendant: admitted she had marijuana flowers, the marijuana came from an Arizona dispensary, she provided officer the marijuana, and she provided an Arizona “Patient Medical Marijuana Registry Identification Card” for the marijuana. Pursuant to Iowa Code section 124.401(5) a valid prescription creates an affirmative defense for “possession of a controlled substance.” Iowa Code section 124.308 requires all controlled substances to be distributed by

a prescription, unless they are given the user directly by a practitioner (e.g., a doctor gives it to the patient). However, marijuana is considered a schedule I controlled substance under both federal and Iowa law. Under both federal and Iowa law it is illegal to possess a schedule I controlled substance without valid prescription. Held, “neither the [Arizona] registry card nor the written certification is a prescription.” The Arizona registry card and written certification did not provide the strength, amount of marijuana, specific name, nor directions for taking the marijuana, which are all required for prescriptions under Iowa Code section 155A.27(4)(a)(1)–(5).

**Warren County [State v. Pamela Mildred Middlekauff](#), 974 N.W.2d 781 (Iowa 05/27/2022).** “[N]either the Arizona registry card nor written certification is an order”. During a traffic stop for speeding, the officer smelled an odor of marijuana coming from the vehicle. The defendant: admitted she had marijuana flowers, the marijuana came from an Arizona dispensary, she provided officer the marijuana, and she provided an Arizona “Patient Medical Marijuana Registry Identification Card” for the marijuana. Pursuant to Iowa Code section 124.401(5) a valid prescription creates an affirmative defense for “possession of a controlled substance.” Iowa Code section 124.308 requires all controlled substances to be distributed by a prescription, unless they are given the user directly by a practitioner (e.g., a doctor gives it to the patient). However, marijuana is considered a schedule I controlled substance under both federal and Iowa law. Under both federal and Iowa law it is illegal to possess a schedule I controlled substance without valid prescription. Held, “neither the Arizona registry card nor written certification is an order” and therefore, she was unable to get around the prescription requirement of section 124.308. In regard to control substances, the Court found the term “order” means “either a controlled substance being directly dispensed by a practitioner to a patient or a medication order for the administration of controlled substances in the inpatient or institutional health setting.”

**Warren County [State v. Pamela Mildred Middlekauff](#), 974 N.W.2d 781 (Iowa 05/27/2022).** “[M]arijuana cannot be validly prescribed or ordered for medical treatment under Iowa Code section 124.401(5)”. During a traffic stop for speeding, the officer smelled an odor of marijuana coming from the vehicle. The defendant: admitted she had marijuana flowers, the marijuana came from an Arizona dispensary, she provided officer the marijuana, and she provided an Arizona “Patient Medical Marijuana Registry Identification Card” for the marijuana. Pursuant to Iowa Code section 124.401(5) a valid prescription creates an affirmative defense for “possession of a controlled substance.” Iowa Code section 124.308 requires all controlled substances to be distributed by a prescription, unless they are given the user directly by a practitioner (e.g., a doctor gives it to the patient). However, marijuana is considered a schedule I controlled substance under both federal and Iowa law. Under both federal and Iowa law it is illegal to possess a schedule I controlled substance without valid prescription. Held, “marijuana cannot be validly prescribed or ordered for medical treatment under Iowa Code section 124.401(5).” “Even if we held that the registry card or written certification is a prescription or order, we are faced with the fact that marijuana, as a schedule I drug, cannot be *validly* prescribed or ordered for medical treatment.” (emphasis in original) “[N]either Iowa, Arizona, nor federal law allow prescriptions for schedule I drugs because schedule I drugs, for purposes of the CSA’s, have no legitimate medical use by statutory classification.” There is also no support that a doctor in Iowa, Arizona, or under federal law could validly order marijuana (a schedule I controlled substance) despite the fact they cannot prescribe marijuana.

**Warren County [State v. Pamela Mildred Middlekauff](#), 974 N.W.2d 781 (Iowa 05/27/2022).** The defenses under Iowa Chapter 124E do not apply because marijuana flowers are not an approved medical cannabidiol under 124E.

*Warren County State v. Pamela Mildred Middlekauff*, 974 N.W.2d 781 (Iowa 05/27/2022). “[N]either the Arizona registry card nor written certification for medical marijuana is a valid prescription or order under section 124.401(5);]” **no err in keeping the written certification or registry card out of evidence at trial.** Pursuant to Iowa Code section 124.401(5) a valid prescription creates an affirmative defense for “possession of a controlled substance.” Iowa Code section 124.308 requires all controlled substances to be distributed by a prescription, unless they are given the user directly by a practitioner (e.g., a doctor gives it to the patient). However, marijuana is considered a schedule I controlled substance under both federal and Iowa law. Under both federal and Iowa law it is illegal to possess a schedule I controlled substance without valid prescription. Held, “neither the Arizona registry card nor written certification for medical marijuana is a valid prescription or order under section 124.401(5).”

*Warren County State v. Pamela Mildred Middlekauff*, 974 N.W.2d 781 (Iowa 05/27/2022). **“The valid prescription or order defense [under Iowa Code section 124.401(5)] is not unconstitutionally vague.”** Pursuant to Iowa Code section 124.401(5) a valid prescription creates an affirmative defense for “possession of a controlled substance.” Iowa Code section 124.308 requires all controlled substances to be distributed by a prescription, unless they are given the user directly by a practitioner (e.g., a doctor gives it to the patient). However, marijuana is considered a schedule I controlled substance under both federal and Iowa law. Under both federal and Iowa law it is illegal to possess a schedule I controlled substance without valid prescription. Held, “[t]he valid prescription or order defense [under Iowa Code section 124.401(5)] is not unconstitutionally vague.” “[A] reasonably intelligent person could understand what a valid prescription or order constituted by reading Iowa and federal requirements of a prescription or order, understanding that marijuana—as a schedule I drug—could not be validly prescribed or ordered under either Iowa or federal law, and observing Iowa’s Medical Cannabidiol Act in chapter 124E as described above.”

*Warren County State v. Pamela Mildred Middlekauff*, 974 N.W.2d 781 (Iowa 05/27/2022). **There is no equal protection violation under Iowa Code section 124.401(5).** Pursuant to Iowa Code section 124.401(5) a valid prescription creates an affirmative defense for “possession of a controlled substance.” Iowa Code section 124.308 requires all controlled substances to be distributed by a prescription, unless they are given the user directly by a practitioner (e.g., a doctor gives it to the patient). However, marijuana is considered a schedule I controlled substance under both federal and Iowa law. Under both federal and Iowa law it is illegal to possess a schedule I controlled substance without valid prescription. Held, out-of-state people that are prescribed non-schedule I controlled substances are not similarly situated to out-of-state people that have been given permission to use and possess medical marijuana. Furthermore, there is a rational basis to treat out-of-state people authorized to use marijuana products different than Iowa residents only authorized to use medical cannabidiol.

*Warren County State v. Pamela Mildred Middlekauff*, 974 N.W.2d 781 (Iowa 05/27/2022). **Because the written certification and registry card are not prescriptions, they “were not relevant to the trial and their inclusion would have been prejudicial.”** No error in precluding the defendant from presenting the registry card at trial; the registry card was not relevant and would have been more prejudicial than probative.

*Warren County State v. Pamela Mildred Middlekauff*, 974 N.W.2d 781 (Iowa 05/27/2022). **No error in allowing the DCI analyst to testify even though the analyst’s name was not listed in the minutes of testimony because the substance of the analyst testimony was included in the minutes.** *See State v. Thomas*, 22 N.W.2d 488 (Iowa 1974) (en banc). Furthermore, the Court offered the defendant a continuance (a proper remedy), but she declined.

**Warren County** [State v. Pamela Mildred Middlekauff](#), 974 N.W.2d 781 (Iowa 05/27/2022). **Chain of custody sufficiently established through the trooper and analyst’s testimony, which “show[ed] a reasonable probability that evidence tampering did not occur.”** The trooper that seized the marijuana and the analyst that tested the marijuana both testified regarding the chain of custody of the marijuana. The trooper adequately explained that he assumed all of the different pouches of marijuana were the same brand when he created his report, even though it was later discovered at the lab there were multiple brands.

## (Recent Unpublished Decisions Arranged by County)

### RECENT UNPUBLISHED DECISIONS INVOLVING ALCOHOL AND TRAFFIC SAFETY

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**Adams County** [State v. William Lee Coleman](#), No. 21-1008 (Iowa Court of Appeals, filed June 29, 2022). **The deputy had reasonable suspicion to investigate a crash, even if the deputy did not have indications the defendant was impaired.** During a crash investigation, a deputy received information that the defendant had been driving at a high rate of speed and missed two posted signs, including a stop sign prior to driving into the ditch and leaving the scene. The deputy contacted the defendant and he refused to come to the crash scene. A short time later, the deputy observed a vehicle driven by the defendant’s mother and stopped it for a taillight violation. The deputy discovered the defendant was the front seat passenger and ordered him out of the vehicle. The defendant challenged the deputy’s authority to order him out of the vehicle. Held, the deputy had reasonable suspicion to investigate the crash (witnesses statements the defendant had been driving at a high rate of speed and the deputy order the defendant out of his mother’s vehicle shortly after the crash occurred), regardless of whether the deputy “possessed identifiable indicia of intoxication.” The Court noted this case was different than [State v. Hauge](#), 973 N.W.2d 453 (Iowa 2022) and [Maryland v. Wilson](#), 519 U.S. 408 (1997) that “‘held an officer may order a vehicle passenger out of the vehicle during the course of a routine traffic stop for any reason regardless of whether the officer has reason to suspect foul play or anything problematic about the passenger.’” [Coleman](#) (quoting [Hauge](#), 973 N.W.2d at 459 (citing [Wilson](#), 519 U.S. at 414-415)). In this case ([Coleman](#)), the deputy was ordering the passenger (defendant) out of the vehicle to investigate the defendant’s crash, whereas in [Hauge](#) and [Wilson](#) the officer was investigating the driver’s violation. Motion to suppress properly denied.

**Adams County** [State v. William Lee Coleman](#), No. 21-1008 (Iowa Court of Appeals, filed June 29, 2022). **The Court properly denied issuing a self-defense jury instruction:** the deputy ordered the defendant out of the vehicle multiple times; and deputy did not break the vehicle’s window until the defendant struck the deputy on the hand.

**Boone County** [State v. Chantell M. Grimm](#), No. 21-0907 (Iowa Court of Appeals, filed April 13, 2022). Evidence that the defendant had a rolled-up dollar bill and straw in her pocket and was found unconscious in her vehicle was relevant evidence that she knowingly possessed methamphetamine.

**Boone County** [State v. Chantell M. Grimm](#), No. 21-0907 (Iowa Court of Appeals, filed April 13, 2022). The probative value of the evidence that the defendant had a rolled-up dollar bill and straw in her pocket and was found unconscious in her vehicle outweighed any prejudicial value.

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**Boone County** [Clay Thomas Paulson v. State](#), No. 21-1163 (Iowa Court of Appeals, filed May 25, 2022). **Counsel not ineffective for failing to secure “a ruling on his hearsay objection” to text messages.** The text messages: were cumulative; trial counsel cross-examined the officer regarding portions of the text messages; and the court gave a jury instruction to ignore any reference in the text messages to meth.

**Boone County** [Clay Thomas Paulson v. State](#), No. 21-1163 (Iowa Court of Appeals, filed May 25, 2022). Counsel was not ineffective for failing to challenge an inventory search that occurred before [State v. Ingram](#), 914 N.W.2d 794 (Iowa 2018). Counsel is not expected to be clairvoyant.

**Cass County** [State v. Brady Murphy](#), No. 21-0938 (Iowa Court of Appeals, filed April 13, 2022). **No reasonable suspicion to initiate a traffic stop for a vehicle crossing over the right fog line once.** “[T]here was no testimony or other evidence presented as to any other factors that would support a reasonable suspicion of Murphy’s intoxication beyond that single act.” See [State v. Tague](#), 676 N.W.2d 197 (Iowa 2004). Compare to [State v. Tague](#), 676 N.W.2d 197, 205 (Iowa 2004) (in [Tague](#), the Court mentioned swerving, multiple lane changes, excessive speeding, or other erratic driving behavior to “to give rise to a reasonable belief that the driver was impaired.”); and [State v. Fielder](#), 2010 WL 4485898 (Iowa Ct. App. Nov. 10, 2010) (reasonable suspicion to initiate a traffic stop to investigate a possible impaired driver where there was three non-overwhelming driving behaviors (the vehicle unexpectedly moved onto the shoulder twice within a few seconds of each other and the “tires touched the fog line”) and it was a holiday (July 4<sup>th</sup>) that is usually associated with drinking).

**Clinton County** [State v. Joseph Irvin Newsom](#), No. 21-1304 (Iowa Court of Appeals, filed June 15, 2022). **No abuse in discretion in sentencing the defendant to prison, despite the defendant not having a long criminal history.** The court properly considered the sentencing factors, including the defendant’s “continued criminal activity while on pretrial release and his active substance abuse.”

**Dallas County** [State v. Stephen Joseph Wink](#), No. 21-1452 (Iowa Court of Appeals, filed April 27, 2022). **No error in sentencing the defendant before the PSI was finished for vehicular homicide and serious injury by vehicle when the defendant had waived the use of the PSI prior to sentencing.** A court is required to *order* a PSI pursuant to Iowa Code section 901.2(2)(b) when a defendant is convicted of a “D” or “B” felony, but the defendant may waive the *use* of the PSI at sentencing. [Campbell v. State](#), 576 N.W.2d 362 (Iowa 1998).

**Dickinson County** [State v. Shane Timothy Bakke](#), No. 21-0496 (Iowa Court of Appeals, filed June 29, 2022). **A stop without reasonable suspicion or probable cause is not transformed “into a reasonable, constitutional action” by the “authority to conduct stops in section 321I.27”.** After observing an UTV driving on “public ice” (a frozen public lake), a DNR officer stopped the UTV to check its registration. The officer did not have any probable cause or reasonable suspicion to believe any crime was being committed; however, Iowa Code section 321I.27 provides ““A peace officer may stop and inspect an all-terrain vehicle operated, parked, or stored on public streets, highways, public lands, public ice, or designated riding trails of the state to determine if the all-terrain vehicle is registered, numbered, or equipped as required by this chapter and commission rules.”” The defendant argued the lack of reasonable suspicion and probable cause rendered the stop unconstitutional. Held, a stop without reasonable suspicion or probable cause is not transformed “into a reasonable, constitutional action” by the “authority to conduct stops in section 321I.27”.

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Section 321I.27's authority to conduct stops "does not override a [person's] constitutional rights." See State v. Ochoa, 792 N.W.2d 260, 272 (Iowa 2010). "Neither Congress nor the Iowa Legislature may legalize conduct infringing on a constitutional right." Motion to suppress granted.

*Emmet County* State v. Ivan Dale Klingenberg, No. 21-0575 (Iowa Court of Appeals, filed May 11, 2022). **Sufficient evidence the defendant was intoxicated:** slurred speech; admitted to consuming alcohol; witness observed him consume alcohol; unsteady balance; impaired judgment (defendant carried a gas can toward a fire); nonsensical answers; bloodshot and watery eyes; odor of alcohol; refused chemical breath test; and two witnesses that had personal observations of the defendant thought he was impaired.

*Emmet County* State v. Ivan Dale Klingenberg, No. 21-0575 (Iowa Court of Appeals, filed May 11, 2022). **The denial of the defendant's right to allocution at sentencing was harmless error.** During sentencing, the defendant asked engaged the court on multiple occasions and was sentenced to the minimum sentence.

*Emmet County* State v. Ivan Dale Klingenberg, No. 21-0575 (Iowa Court of Appeals, filed May 11, 2022). The defendant's agreement to delay his Category "B" restitution hearing until after his direct appeal, waived any claim on appeal.

*Guthrie County* State v. Billy Dean Devilbiss, No. 21-1075 (Iowa Court of Appeals, filed June 15, 2022). **No abuse in discretion in sentencing the defendant to prison on a Driving While Barred (DWB) conviction.** The court properly considered the relevant sentencing factors, including his seven prior DWB convictions.

*Monona County* State v. William M. Goodon, No. 20-1591 (Iowa Court of Appeals, filed April 13, 2022). **Statement properly admitted under the present sense impression exception to the hearsay rule.** An officer's testimony that the driver (who was not on trial) told him during the traffic stop for crossing the center line that she was tired, was properly admitted under the present sense impression exception to the hearsay rule.

*Monona County* State v. William M. Goodon, No. 20-1591 (Iowa Court of Appeals, filed April 13, 2022). **Any error in admitting the results for the field test on the needle and syringe was harmless.** The defendant was not charged with possessing the needle or syringe or any substance located in the items and there was plenty of evidence for the crime he was charged with that he possessed the baggie of methamphetamine.

*Monona County* State v. William M. Goodon, No. 20-1591 (Iowa Court of Appeals, filed April 13, 2022). **Any error in admitting an officer's testimony about what the driver said about the defendant's arm was non-prejudicial and harmless;** the officer had already testified to his personal observation of the defendant's arm.

*Monona County* State v. William M. Goodon, No. 20-1591 (Iowa Court of Appeals, filed April 13, 2022). **Any error in admitting text messages between the defendant and the driver was harmless;** there was already other evidence that was properly admitted and contained the same information as the text messages.

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**Plymouth County** [State v. Ashlie Danielle Rosales](#), No. 21-0853 (Iowa Court of Appeals, filed April 13, 2022). **Sufficient evidence of constructive possession of methamphetamine by the passenger (defendant):** drug paraphernalia (a pipe) was discovered in a woman’s shirt underneath the defendant’s seat; the can that the methamphetamine was found in was not in the cupholder until after the driver exited to talk with an officer, but was in the cupholder when the defendant exited the vehicle; when an officer arrived the defendant had her purse on her lap and another passenger only had a cellphone in his hands; the defendant’s purse had devices used to smoke methamphetamine; and none of the other occupants had any drug paraphernalia around their seats or on their person. *See* [State v. Reed](#), 875 N.W.2d 693, 706 (Iowa 2016) (listing four non-exclusive factors in determining constructive possession when there are more than one person in the area); [State v. Maxwell](#), 743 N.W.2d 185, 194 (Iowa 2008) (listing five additional factors when the area is a motor vehicle).

**Plymouth County** [State v. Jarrod Michael Jacobsen](#), No. 21-0269 (Iowa Court of Appeals, filed June 29, 2022). **Fogged or iced over rear window was probable cause to initiate a traffic stop for a violation of Iowa Code section 321.438(1).** A deputy observed someone standing outside a vehicle parked on the side of the road. The deputy pulled behind the vehicle a noticed the rear window was fogged or iced over to the point you could not look out of it. The vehicle then started to drive away and the officer initiated a traffic stop. Held, the fogged or iced over rear window was probable cause to initiate a traffic stop for a violation of Iowa Code section 321.438(1). Iowa Code section 321.438(1) provides “A person shall not drive a motor vehicle equipped with a windshield, sidewings, or side or rear windows which do not permit clear vision.”

**Plymouth County** [State v. Jarrod Michael Jacobsen](#), No. 21-0269 (Iowa Court of Appeals, filed June 29, 2022). **Officer’s observation of a vehicle’s fogged or iced over rear window provided reasonable suspicion to initiate a traffic stop to investigate a violation of Iowa Code section 321.438(1).** A deputy observed someone standing outside a vehicle parked on the side of the road. The deputy pulled behind the vehicle a noticed the rear window was fogged or iced over to the point you could not look out of it. The vehicle then started to drive away and the officer initiated a traffic stop. Held, officer’s observation of a vehicle’s fogged or iced over rear window provided reasonable suspicion to initiate a traffic stop to investigate a violation of Iowa Code section 321.438(1). Iowa Code section 321.438(1) provides “A person shall not drive a motor vehicle equipped with a windshield, sidewings, or side or rear windows which do not permit clear vision.”

**Polk County** [State v. Prince G. Paye](#), No. 19-1760 (Iowa Court of Appeals, filed April 27, 2022). **Under Iowa Code section 321.38, “the obligation to fasten the plate ‘in a position and place to be clearly visible’ is met if the plate is horizontal and at least a foot off the ground.”** The defendant was charged with violating Iowa Code section 321.38 because vehicle had a ball hitch that obscured the view of one of the letters on the rear license plate, unless standing next to the vehicle. There are two separate requirements to comply with Iowa Code section 321.38, one regarding how the plate is fastened to the vehicle and the other is how the license plate is maintained (i.e., free of foreign material); “owners must (1) fasten their registration plate securely, horizontally, and at least a foot off the ground so that it is ‘in a place and position to be clearly visible’ and (2) maintain the plate ‘free from foreign materials and in a condition to be clearly legible.’” *quoting* Iowa Code section 321.38. “[T]he ‘clearly visible’ mandate is concerned with the durable attributes of the plate’s fastening—satisfied if the plate is secure, horizontal, and not too low.” Held, a ball

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hitch did not violate Iowa Code section 321.38. \*\*\*Please note the Iowa Supreme Court has granted further review.\*\*\*

***Polk County State v. Prince G. Paye***, No. 19-1760 (Iowa Court of Appeals, filed April 27, 2022). **Under Iowa Code section 321.38, a ball hitch is not a “foreign material” and if it obscures a letter on the rear license plate it does not violate the requirement that the plate be “clearly legible” and “free from foreign materials”.** The defendant was charged with violating Iowa Code section 321.38 because vehicle had a ball hitch that obscured the view of one of the letters on the rear license plate, unless standing next to the vehicle. There are two separate requirements to comply with Iowa Code section 321.38, one regarding how the plate is fastened to the vehicle and the other is how the license plate is maintained (i.e., free of foreign material); “owners must (1) fasten their registration plate securely, horizontally, and at least a foot off the ground so that it is ‘in a place and position to be clearly visible’ and (2) maintain the plate ‘free from foreign materials and in a condition to be clearly legible.’” *quoting* Iowa Code section 321.38. “[T]he ‘clearly visible’ mandate is concerned with the durable attributes of the plate’s fastening—satisfied if the plate is secure, horizontal, and not too low.” Whereas, “the ‘clearly legible’ requirement goes to the plate’s upkeep.” Held, “Because the ball hitch was not a ‘foreign material’ and did not implicate the plate’s physical condition, Paye did not violate the maintenance requirement.” Compare section 321.28 to Iowa Code “[s]ection 321.37(3)[, which] prohibits placing any frame around or over a plate which does not permit ‘full view’ of all numerals and letters printed on the plate.” *See State v. Harrison*, 846 N.W.2d 362 (Iowa 2014) (a license plate frame violates 321.37(3) if the frame covers up the name of the county on the license plate). \*\*\*Please note the Iowa Supreme Court has granted further review.\*\*\*

***Polk County State v. Prince G. Paye***, No. 19-1760 (Iowa Court of Appeals, filed April 27, 2022). **Mistake of law to stop a vehicle with a ball hitch that obscured one letter on a license plate; no violation of Iowa Code section 321.38.** The defendant was charged with violating Iowa Code section 321.38 because vehicle had a ball hitch that obscured the view of one of the letters on the rear license plate, unless standing next to the vehicle. There are two separate requirements to comply with Iowa Code section 321.38, one regarding how the plate is fastened to the vehicle and the other is how the license plate is maintained (i.e., free of foreign material); “owners must (1) fasten their registration plate securely, horizontally, and at least a foot off the ground so that it is ‘in a place and position to be clearly visible’ and (2) maintain the plate ‘free from foreign materials and in a condition to be clearly legible.’” *quoting* Iowa Code section 321.38. “[T]he ‘clearly visible’ mandate is concerned with the durable attributes of the plate’s fastening—satisfied if the plate is secure, horizontal, and not too low.” Whereas, “the ‘clearly legible’ requirement goes to the plate’s upkeep.” Held, no violation of Iowa Code section 321.38; it was a mistake of law to stop a vehicle with a ball hitch that obscured one letter on a license plate. A ball hitch is not a “foreign material” and if it obscures a letter on the rear license plate it does not violate the requirement that the plate be “clearly legible” and “free from foreign materials” under Iowa Code section 321.38. “Because the ball hitch was not a ‘foreign material’ and did not implicate the plate’s physical condition, Paye did not violate the maintenance requirement.” Compare section 321.28 to Iowa Code “[s]ection 321.37(3)[, which] prohibits placing any frame around or over a plate which does not permit ‘full view’ of all numerals and letters printed on the plate.” *See State v. Harrison*, 846 N.W.2d 362 (Iowa 2014) (a license plate frame violates 321.37(3) if the frame covers up the name of the county on the license plate). \*\*\*Please note the Iowa Supreme Court has granted further review.\*\*\*

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**Polk County [State v. Isaiah Steide](#)**, No. 21-0620 (Iowa Court of Appeals, filed June 29, 2022). **Sufficient evidence the defendant had construction possession of the firearm when the traffic stop was initiated even though the firearm was located on the front passenger floor board and the defendant was sitting in the backseat:** the defendant gave law enforcement a fake name; the passenger told law enforcement the defendant had the gun earlier that evening; the driver told law enforcement the defendant had told her not to stop the vehicle for law enforcement; the driver testified the defendant and another passenger created a commotion when they were being pulled over; the driver testified the blanket had been in the backseat prior to the traffic stop; and the front seat passenger told law enforcement the defendant gave her the blanket and instructed her to place it in the front of the vehicle. *See [State v. Reed](#)*, 875 N.W.2d 693, 706 (Iowa 2016) (listing four non-exclusive factors in determining constructive possession when there is more than one person in the area); *State v. Maxwell*, 743 N.W.2d 185, 194 (Iowa 2008) (listing five additional factors when the area is a motor vehicle). NOTE, the Court also found that there was sufficient evidence the defendant had actual possession of the firearm at the time of the stop.

**Polk County [State v. Isaiah Steide](#)**, No. 21-0620 (Iowa Court of Appeals, filed June 29, 2022). The defendant's actions of trying to hide a firearm during a traffic stop and being a convicted felon is not sufficient evidence that he knew the firearm was stolen; trafficking a stolen weapon conviction reversed.

**Scott County [State v. Tyrelle Richardson](#)**, No. 21-1258 (Iowa Court of Appeals, filed April 27, 2022). **No abuse in discretion in sentencing the defendant to prison for driving into a police car while attempting to avoid capture.** The Court properly considered the defendant's criminal history, age, nature of the offense, and is not bound by the recommendations of the PSI.

**Tama County [State v. Daniel Lee Dierks](#)**, No. 21-0399 (Iowa Court of Appeals, filed June 15, 2022). **Probable cause to stop a vehicle under 321.323A(1) when the defendant drove within approximately a foot of a deputy on the side of the road with the patrol vehicle lights flashing and at a speed close to the posted speed limit.** After stopping his patrol vehicle on the shoulder and activating his rear flashing lights, a deputy exited his vehicle to investigate a single car accident. While outside his patrol vehicle, the defendant drove within approximately a foot of the deputy at a speed that was close to the posted speed limit (55 mph). The deputy then stopped the defendant's vehicle and observed signs of impairment. Held, the deputy had probable cause to stop the defendant for a potential violation of Iowa Code section 321.323A(1).

**Tama County [State v. Daniel Lee Dierks](#)**, No. 21-0399 (Iowa Court of Appeals, filed June 15, 2022). **"A traffic stop may be justified despite a mistake of fact if the mistake was 'objectively reasonable.'" [State v. Tyler](#)**, 830 N.W.2d 288, 294 (Iowa 2013) (*quoting [State v. Lloyd](#)*, 701 N.W.2d 678, 681 (Iowa 2005)). After stopping his patrol vehicle on the shoulder and activating his rear flashing lights, a deputy exited his vehicle to investigate a single car accident. While outside his patrol vehicle, the defendant drove within approximately a foot of the deputy at a speed that was close to the posted speed limit (55 mph). The deputy then stopped the defendant's vehicle pursuant to Iowa Code section 321.323A(1). The defendant appealed and argued the deputy "committed a mistake of fact" because the deputy was not in a position to determine if he had the opportunity to slow down or move to the middle of the road and the deputy was angry by the close call. Held, "even if Deputy Frizzell committed a mistake of fact and Dierks did not have an opportunity to move over or slow down before passing, the deputy's mistake was objectively reasonable." *See [State v. Tyler](#)*, 830 N.W.2d 288 (Iowa 2013). Furthermore, although the deputy's agitation may be

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relevant regarding his credibility about the reason for the traffic stop (*see State v. Brown*, 930 N.W.2d 840, 849–50 (Iowa 2019)), the Court still found “any mistake of fact to be objectively reasonable.”

**Tama County [State v. Daniel Lee Dierks](#)**, No. 21-0399 (Iowa Court of Appeals, filed June 15, 2022). **Any misstatements by the deputy regarding the requirements under Iowa Code section 321.323A(1) did not negate the probable cause for the stop due to a mistake of law.** After stopping his patrol vehicle on the shoulder and activating his rear flashing lights, a deputy exited his vehicle to investigate a single car accident. While outside his patrol vehicle, the defendant drove within approximately a foot of the deputy at a speed that was close to the posted speed limit (55 mph). The deputy then stopped the defendant’s vehicle pursuant to 321.323A(1). At the suppression hearing, the deputy commented that the defendant “should have stopped rather than pass the deputy.” The defendant appealed and argued that 321.323A(1) does not require drivers to stop due to the flashing emergency lights, only drive with caution and be aware they may have to stop. Held, no mistake of law; any misstatement by the deputy of the requirements under 321.323A(1) does not negate the probable cause for the stop based off “the deputy’s full description of the situation and general knowledge of a driver’s responsibilities.”

**Wapello County [In the Interest of D.R.](#)**, No. 21-0276 (Iowa Court of Appeals, filed July 20, 2022). **The restitution amount ordered was established by sufficient evidence:** the victim provided testimony regarding the items stolen; the value of the items; and there was no evidence presented about any exiting market for the used items that were taken. “The general rule in Iowa . . . for replacement [of property] is the fair and reasonable cost of replacement . . . , but not to exceed the value of the property immediately prior to the loss . . . .” *quoting State v. Roache*, 920 N.W.2d 93, 106 (Iowa 2018) (*quoting State v. Urbanek*, 177 N.W.2d 14, 16 (Iowa 1970)).

**Wapello County [State v. Joseph Allen Bloom](#)**, No. 21-1040 (Iowa Court of Appeals, filed July 20, 2022). A prior conviction for “[v]ehicular homicide by reckless driving or by eluding necessarily involves a significant degree of victim risk[;]” thus it counts as a “crime of similar gravity to forcible felonies” as required for the sentencing enhancement under Iowa Code section 902.11.

**Warren County [State v. Dominick Marcott](#)**, No. 20-1462 (Iowa Court of Appeals, filed May 11, 2022). **No probable cause for the automobile exception.** A deputy stopped a vehicle being driven by the defendant for being in a public park after the park had closed. The defendant’s vehicle had a dealer’s tag displayed in a back window and did not have any license plates. The deputy requested the defendant’s identification approximately twenty-three times and to exit the vehicle approximately twenty times. The defendant refused both requests and refused to provide proof of title and insurance. The defendant was subsequently arrested and placed in the patrol vehicle. Law enforcement attempted to identify the defendant by the VIN and dealer tag, but were not successful. A deputy then searched the glove compartment and center console trying to find any paperwork or identification. In the center console, the deputy found a baggie of pills and a prescription pill bottle that did not belong to the defendant or the passenger. The defendant eventually told the deputy his name, birth date, and social security number. A search warrant was obtained for the vehicle based of the prescription pill bottle found in the center console and subsequent search of the vehicle revealed marijuana, methamphetamine, and paraphernalia. Held, “there was not probable cause to believe evidence of a crime was in the vehicle.” The Court stated: “No evidence of whether [the defendant] interfered with official acts or failed to give his driver’s license, proof of insurance, or vehicle registration could be found in

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the vehicle because those actions had been completed before the search.” Searching the center console was not based on any exigent circumstances. The Court also noted law enforcement could have denied or confirmed the defendant’s identity during the booking process.

**Warren County [State v. Santos Rene Torres](#)**, No. 20-1549 (Iowa Court of Appeals, filed May 25, 2022). **The defendant was not unreasonably seized.** The defendant had a few drinks and then drove home after he received a phone call that his wife was arrested for child endangerment. When the defendant arrived home, law enforcement would not let him speak to his wife and followed him inside the house. Law enforcement restricted the defendant’s “movements while they finished their child-endangerment investigation and before they acquired reasonable suspicion to investigate him for OWI.” Held, the defendant was not unreasonably seized; “the officers continued to act as community caretakers under the exigent circumstances of the child-endangerment investigation.” \*\*\*Please note the Iowa Supreme Court has granted further review.\*\*\*

**Warren County [State v. Santos Rene Torres](#)**, No. 20-1549 (Iowa Court of Appeals, filed May 25, 2022). **A DHS worker’s questioning of the defendant regarding an investigation into “the mother’s failure to supervise the children” was a non-custodial interrogation.** The defendant had a few drinks and then drove home after he received a phone call that his wife was arrested for child endangerment. When the defendant arrived home, law enforcement would not let him speak to his wife and followed him inside the house. Inside the house, the defendant spoke to a DHS worker. The DHS worker asked the defendant whether he was impaired. The defendant argued he was interrogated without having been read his Miranda rights. Held, the defendant “was not in custody to a degree associated with a formal arrest when he voluntarily entered his house to check on his children and to discuss the situation with the child protective worker.” The DHS worker was not acting as an agent for law enforcement when questioning the defendant; she was merely “investigating the mother’s failure to supervise the children[.]” \*\*\*Please note the Iowa Supreme Court has granted further review.\*\*\*

**Warren County [State v. Santos Rene Torres](#)**, No. 20-1549 (Iowa Court of Appeals, filed May 25, 2022). **Substantial evidence of intoxication.** The defendant had a few drinks and then drove home after he received a phone call that his wife was arrested for child endangerment. After the defendant arrived home, he interacted with law enforcement and a DHS worker. Law enforcement observed: watery and bloodshot eyes; an odor of alcohol coming from him; slurred speech; the defendant admitted he had consumed alcohol prior to coming home; refused SFSTs and the DataMaster; he was aggressive with law enforcement; and was asked by the DHS worker if he was impaired. Held, there was substantial evidenced of intoxication. \*\*\*Please note the Iowa Supreme Court has granted further review.\*\*\*

**Warren County [State v. Justin Wayne Steil](#)**, No. 20-1574 (Iowa Court of Appeals, filed May 25, 2022). **No abuse in discretion in sentencing the defendant to consecutive sentences.** The sentencing court properly considered: the seriousness of the offenses; criminal history; rehabilitation needs, and protection of the general public.

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**Woodbury County State v. Dukan Gatwech Wuol**, No. 21-0951 (Iowa Court of Appeals, filed June 29, 2022). **No abuse in discretion in denying a copy of a prior suppression ruling from coming into evidence as impeachment evidence.** An officer testified he initiated a traffic stop on the defendant after observing his “vehicle swerve from the middle lane to the far left lane, cross the left edge line of the divided highway, overcorrect to the far right lane, cross the right edge line, and then return back to the left lane.” There was no audio or video of the incident and the defendant denied swerving. During the suppression hearing the defendant tried to impeach the officer by offering a copy of a prior suppression ruling into evidence that found the officer testified to a traffic violation having occurred, but video of the incident showed no such violation. The judge denied the evidence as improper impeachment evidence after the officer did not recall the prior incident (officer did not say it never happened, just did not recall it). Held, no abuse in discretion in denying the actual prior suppression ruling into evidence as impeachment evidence. “Iowa Rule of Evidence 5.608(b) permits cross-examination of a witness about specific instances of a witness’s conduct in order to attack the witness’s character for truthfulness, but it expressly prohibits extrinsic evidence of such conduct.” NOTE, under Rule 5.608(b) a defendant is able to cross examine an officer regarding a prior incident for impeachment purposes, but is precluded from offering the actual order as an exhibit.

**Woodbury County State v. Dukan Gatwech Wuol**, No. 21-0951 (Iowa Court of Appeals, filed June 29, 2022). **Reasonable suspicion to initiate a traffic stop for erratic driving.** In the early morning, an officer observed the defendant’s “vehicle swerve from the middle lane to the far left lane, cross the left edge line of the divided highway, overcorrect to the far right lane, cross the right edge line, and then return back to the left lane.” *Compare to State v. Tague*, 676 N.W.2d 197 (Iowa 2004) (The act of two left wheels of a vehicle briefly crossing the left white “edge line” of a divided four lane roadway does not constitute a violation of Iowa Code section 321.297 (driving left of center) nor does that act, in the absence of other traffic, violate section 321.306 (unsafe lane change); in addition, such isolated driving behavior is not reasonable articulable suspicion of OWI or driver fatigue, as such driving behavior is consistent with checking a map or changing controls in a vehicle.).

PREPARED BY THE  
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This newsletter is intended to provide the reader with an update on new developments, including case law and statutory changes, relating to traffic safety. Please discuss with your supervisor, legal counsel, and county attorney before changing your policies or practices in reliance on anything, including cases, discussed in this newsletter.

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