



HIGHWAY SAFETY

LAW UPDATE



August 29, 2024 Office of the Prosecuting Attorneys Training Coordinator April/May/June 2024

Changes at PATC

On August 2, 2024, the PATC Division welcomed a new coordinator, Ian McConeghey. Mr. McConeghey comes to PATC Division of the Iowa Attorney General’s Office from the Civil Litigation Division in the Iowa Attorney General’s Office. Mr. McConeghey was elected to three terms as the Monona County Attorney. Mr. McConeghey started in the Monona County Attorney’s office in 2012 as an Assistant County Attorney before being elected to his first term as County Attorney in 2014. Prior to the Monona County Attorney’s Office, Mr. McConeghey worked in private practice in Sioux City, Iowa for approximately two years. Mr. McConeghey graduated from the University of Iowa Law School. Mr. McConeghey also attended undergrad at the University of Iowa, majoring in Philosophy.



Mr. McConeghey is replacing Jessica Reynolds, who started as the PATC Coordinator in February 2020, right before the COVID Pandemic. Ms. Reynolds served as the PATC Coordinator until she started her new position as the Drug and Gang Bureau Chief with the Polk County Attorneys office on July 8, 2024. Prior to working at the Iowa Attorney General’s Office, Ms. Reynolds worked for the Story, Kossuth, and Warren County Attorney’s Offices. The PATC staff wishes Ms. Reynolds all the best in her new position.

County Spotlight – Crawford County

The twenty-second county spotlight is on Crawford County. Fun fact about Crawford County, “[t]he 42nd parallel of N. Lat. runs nearly

through the center of the county.”¹ Crawford County was named after former the “U.S. senator from Georgia and United States Secretary of the Treasury” William Harris Crawford.² According to the 2020 census, Crawford County has a population of 16,525.³

Denison is the county seat of Crawford County.⁴ Denison is located off Highways 30 and 59.⁵

[cont. on page 2](#)



INSIDE THIS ISSUE

- 1 [Changes at PATC](#)
[County Spotlight – Crawford County](#)
- 2 [Certified Driver’s License Abstract](#)
- 3 [Opinions of the Iowa Supreme Court](#)
- 5 [Recent Unpublished Decisions Arranged by County](#)

¹ <https://www.crawfordcounty.iowa.gov/about/>

² https://en.wikipedia.org/wiki/Crawford_County,_Iowa

³

<https://www.census.gov/quickfacts/fact/table/crawfordcountyiowa,IA/PST045223>

⁴ <https://www.crawfordcounty.iowa.gov/about/>

⁵

<https://www.google.com/maps/place/Denison,+IA+51442/@42.0088724,-95.393314,13z/data=!3m1!4m6!3m5!1s0x8792c2372bc76dc1:0xc7d83f1faa4f1852!8m2!3d42.02498814d-95.3588867!16zL20vMHN0cGQ?entry=ttu>

**1 OUT OF 5 TEEN DRIVERS
INVOLVED IN FATAL CRASHES HAD BEEN
DRINKING ALCOHOL**

LEARN THE
6 RULES
FOR THE ROAD

NHTSA



County Spotlight – Crawford County cont.

Colin Johnson is the Crawford County Attorney. Mr. Johnson is a full-time county attorney. Martha Sibbel is the only full-time assistant county attorney in the office. Mr. Johnson graduated from University of Iowa with a major in Political Science, and then attended Drake Law School. Mr. Johnson has been the Crawford County Attorney for approximately 4 years. Prior to becoming the Crawford County Attorney, Mr. Johnson was an assistant county attorney in the Crawford County Attorney’s office for approximately 7 years. Prior to joining the Crawford County Attorney’s office, Mr. Johnson spent approximately a year in private practice.

Crawford County has 5 local law enforcement agencies: Denison and Manilla Police Departments, Iowa Department of Natural Resources, Iowa State Patrol Post 4, and the Crawford County Sheriff’s Office. In 2023, there were 1,495 traffic convictions⁶ and 66 OWI convictions in Crawford County according to Division of Criminal & Juvenile Justice Planning.⁷



Certified Driver’s License Abstract⁸

Have you ever looked at a certified driver's license abstract and wondered what the field “Number of Unserved Sanctions” means? In [State v. Jon Michael Martinac Jr.](#), No. 23-0811 (Iowa Court of Appeals, filed April 10, 2024), the defendant attempted to argue the State failed to prove he was license was barred “because a certified abstract of his driving record listed ‘0’ under a category titled ‘Number of Unserved Sanctions.’”⁹ The Iowa Court of Appeals found there was enough evidence presented to support the guilty

⁶ “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>

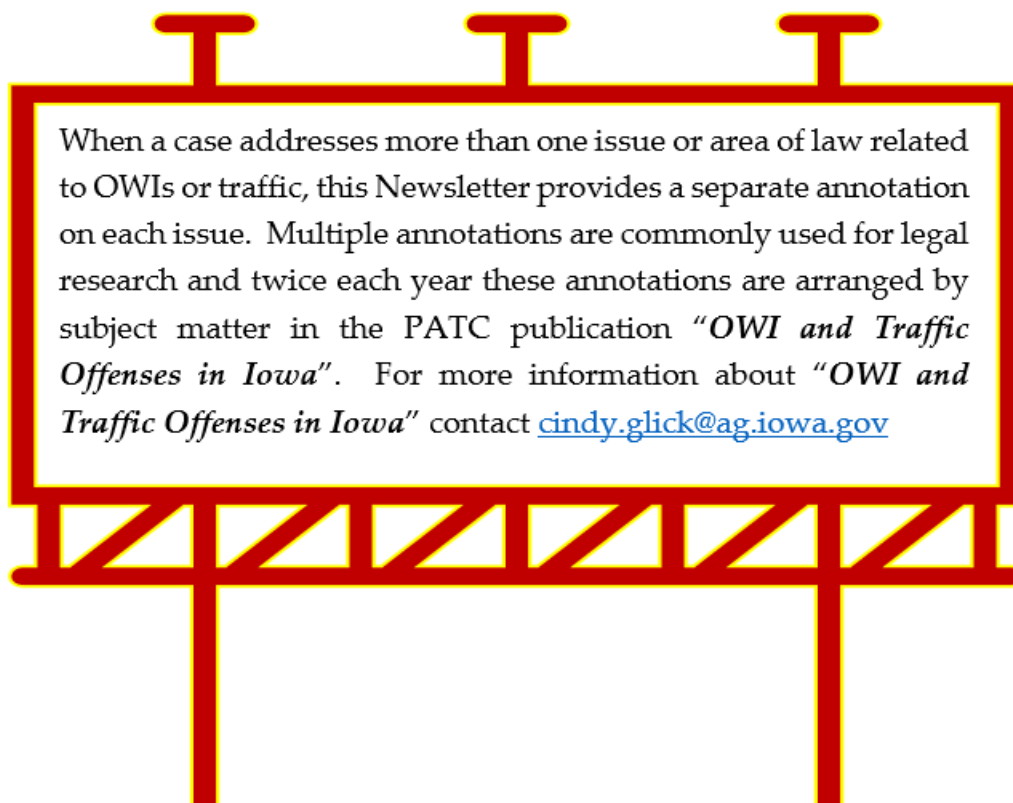
⁷ <https://disposedcharges.iowa.gov/>

⁸ Special thanks to the Iowa Department of Transportation for consulting with me on this issue.

⁹ [State v. Jon Michael Martinac Jr.](#), No. 23-0811 (Iowa Court of Appeals, filed April 10, 2024) (page 2)

<https://www.iowacourts.gov/courtcases/20385/embed/CourtAppealsOpinion>

verdict (e.g., the driver's license status was barred), but it left me wondering, what does that "0" mean. After consulting with the Iowa Department of Transportation regarding what a "0" means in the "Number of Unserved Sanctions" field, I discovered that this field only lists the number of Sanctions (e.g., suspended; barrment; etc.) that have not been "served" (i.e., sent to) on a person. So, in the Martinac Jr. case, because the field listed "0", Mr. Martinac Jr. had been "served" notice of all his sanctions, in this case, he had been served notice he was barred. Furthermore, because the Iowa DOT is allowed to provide notice of driver's license sanctions by regular mail as opposed to the old way of certified mail, this field ("Number of Unserved Sanctions") will rarely be anything other than "0". So if the defense tries to argue the "0" in the "Number of Unserved Sanctions" field means there are no sanctions, you can now inform them what it means.



Opinions of the Iowa Supreme Court

Boone County [State v. Clayton Curtis Brown](#), 5 N.W.3d 611 (Iowa 2024). **No abuse in discretion in denying the motion for mistrial when the officer testified the defendant had prior convictions, but the parties only stipulated to two prior convictions.** Prior to trial, the defendant stipulated to essentially two prior convictions (his driving privileges were barred and he had a felony conviction). During trial, an officer testified the defendant had prior convictions and the defendant immediately objected. The District Court sustained the objection and offered to give the jury a curative instruction, but the defendant refused. The District Court then denied the defendant's motion for mistrial. Held, no abuse in discretion in denying the motion for mistrial. The Court noted that the judge acted quickly in sustaining the defendant's objection and offered to give a curative instruction.

Boone County [State v. Clayton Curtis Brown](#), 5 N.W.3d 611 (Iowa 2024). **Sufficient evidence that the defendant was the driver of the vehicle that eluded the officer:** officer observed the driver in daylight; officer observed the driver after he turned in front of him; officer could observe the driver’s face in the vehicle’s side and rear mirrors; officer found items belonging to the defendant in the vehicle approximately forty minutes after the defendant eluded the officer; and the owner of the vehicle was the defendant’s girlfriend.

Boone County [State v. Clayton Curtis Brown](#), 5 N.W.3d 611 (Iowa 2024). **Sufficient evidence that the defendant constructively possessed the firearm found in the vehicle:** defendant eluded law enforcement when they tried to stop his vehicle; “the jury could . . . infer that Brown was the most recent driver of the car—and the sole person in the car—throughout the pursuit and in the brief period between the pursuit and police seizure”; the firearm was found directly under the driver’s seat (evidence of dominion and control and knowledge of the firearm); the defendant’s items were located in the car and near the ammunition; and the defendant’s girlfriend owned 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. Carter](#), 696 N.W.2d 31, 39 (Iowa 2005) (listing five additional factors when the area is a motor vehicle).

Buchanan County [State v. Darius LeJuan Wade](#), 7 N.W.3d 511 (Iowa 05/31/2024) No. 22-1650. **A range of probation (e.g., “two to five years”) is not a fixed term of probation and was an illegal sentence.** The defendant was sentenced to probation for a period of “two to five years” after being convicted of an OWI 2nd (aggravated misdemeanor) and “possession of a firearm by a felon as a habitual offender” (“D” felony). Held, “[b]ecause the statute imposed an obligation on the district court to set a definite length of probation—a number, not a range of numbers—when it sentenced Wade, the district court imposed an illegal sentence.” “Applying its ordinary meaning, we find that to ‘fix’ [t]he length of . . . a period’ means to establish a specific length for the term of probation.” *quoting* Iowa Code section 907.7(1). A range of probation (e.g., “two to five years”), is not a fixed term of probation. Case remanded for resentencing.

Plymouth County [State v. Kyra Rose Bauler](#), 8 N.W.3d 892 (Iowa 2024) (*plurality opinion*). **Probable cause to stop the defendant for violations of Iowa Code sections 321.285(1) (violation “to drive at a speed ‘less than is reasonable and proper, having due regard to the traffic’”) and 321.294 (“[a] person shall not drive a motor vehicle at such a slow speed as to impede or block the normal and reasonable movement of traffic.”):** defendant’s driving “slow driving was impeding the normal flow of traffic”; other traffic had to fight and constantly change lanes to try and pass the defendant’s slow traveling vehicle; officer testified defendant’s slow driving was “messy” and a “hazard.” The Court further stated that Iowa Code sections 321.285(1) and 321.294 only require “a certain effect on traffic and safety;” they do not “require[] a violation to be triggered by a motorist driving below the posted speed limit.” Officer’s decision to delay stopping the defendant’s vehicle (approximately 11 miles), did not contradict the officer’s observation of the defendant’s abnormally slow speed. The officer further testified she waited to try to stop the defendant once she exited the highway for safety concerns caused by the other traffic.

Plymouth County [State v. Kyra Rose Bauler](#), 8 N.W.3d 892 (Iowa 2024) (*plurality opinion*). **A canine and officer’s “brief touching of the exterior of a vehicle” does not constitute a search under the 4th Amendment.** See *Illinois v. Caballes*, 543 U.S. 405 (2005); *United States v. Place*, 462 U.S. 696 (1983); see also *City of Indianapolis v. Edmond*, 531 U.S. 32 (2000). The Iowa Supreme Court distinguished *United States v. Jones*, 565 U.S. 400 (2012), because “the search in this case could not reveal any legal activity.” “The dog sniff of Bauler’s vehicle did not involve an extended physical occupation or physical intrusion akin to that in *Jones*.” The slight touching was only with “the exterior of a vehicle.” The Court also distinguished *Florida v. Jardines*, 569 U.S. 1 (2013), because “this case does not involve a physical trespass onto real property.”

Plymouth County [State v. Kyra Rose Bauler](#), 8 N.W.3d 892 (Iowa 2024) (*plurality opinion*). A canine’s “brief touching of the exterior of a vehicle” does not constitute a search under the “article I, section 8” of the Iowa Constitution even though a *technical* common law trespass occurred by the officer and canine. Under the “Restatement of Torts”, an intentional touching of an object is “intermeddling” and “intermeddling” equals a trespass; therefore, if a canine “handler guides the dog so that the dog is highly likely to make even brief contact with the vehicle, intermeddling has occurred.” It is a nonevent when a dog handler and/or a dog briefly touches the exterior of a motor vehicle during “an otherwise lawful exterior dog sniff[.]” “The existing Fourth Amendment precedent is sound and should apply under article I, section 8.” “[D]og sniffs are ‘sui generis’ because they only detect contraband.” The Court distinguished [State v. Wright](#), 961 N.W.3d 396 (Iowa 2021), because “unlike in [Wright](#), where a local ordinance prohibited scavenging from garbage cans, there is no statute or ordinance that prohibits touching a car.” The Court also distinguished the Idaho Supreme Court case [State v. Dorff](#), 526 P.3d 988 (Idaho 2023).

RECENT UNPUBLISHED DECISIONS INVOLVING ALCOHOL AND TRAFFIC SAFETY

Citation of unpublished cases is governed by I.R.App.Pro. 6.904(2)(c), which provides that unpublished opinions do not constitute binding authority and requires that when citing an unpublished opinion, a party include an electronic citation where the opinion can be readily accessed on-line. (Note: all opinions may be accessed online in the Archives section of Opinions of the Iowa Court of Appeals or Supreme Court, at <https://www.iowacourts.gov/>).

Recent Unpublished Decisions Arranged by County

Linn County [State v. Joseph Vernon Kremer](#), No. 21-1491 (Iowa Court of Appeals, filed May 22, 2024). The defendant did not have “good cause to appeal” his guilty plea even though his written guilty plea was not timestamped until after the judge entered the sentence, because the judge had the written guilty plea and the defendant received the bargained for sentence.

Lucas County [State v. Justin Raymond Mann](#), No. 23-0856 (Iowa Court of Appeals, filed May 8, 2024). **Probable cause and reasonable suspicion to stop the defendant’s vehicle after the deputy heard its loud muffler under Iowa Code section 321.436.** “While such perception is ‘subjective and difficult to standardize,’ officers are ‘allowed to rely on their sensory perception in performing their jobs.’” *quoting* [State v. Kinkead](#), 570 N.W.2d 97, 100-101 (Iowa 1997).

Plymouth County [State v. Jon Michael Martinac Jr.](#), No. 23-0811 (Iowa Court of Appeals, filed April 10, 2024). **Sufficient evidence the defendant’s driver’s license was barred even though the “certified abstract of [the defendant’s] driving record from the Iowa Department of Transportation (IDOT)” showed he had a 0 for “Number of Unserved Sanctions”:** certified abstract show the defendant’s license was barred during the time he was operating the vehicle; the law enforcement officer testified when he ran the defendant’s license it came back barred; and the certified abstract showed the defendant could not get his license back until after the date he was caught driving. “A certified abstract of a driving record encompasses the information contained in the IDOT records.” *quoting* [State v. Kennedy](#), 846 N.W.2d 517, 524 (Iowa 2014). “Such a record is “considered to be true and accurate unless shown otherwise by an objecting party.” *quoting* Iowa Code section 321.10(1).

RECENT UNPUBLISHED DECISIONS INVOLVING ALCOHOL AND TRAFFIC SAFETY

Citation of unpublished cases is governed by I.R.App.Pro. 6.904(2)(c), which provides that unpublished opinions do not constitute binding authority and requires that when citing an unpublished opinion, a party include an electronic citation where the opinion can be readily accessed on-line. (Note: all opinions may be accessed online in the Archives section of Opinions of the Iowa Court of Appeals or Supreme Court, at <https://www.iowacourts.gov/>).

Plymouth County [State v. Donnell E. Thomas](#), No. 23-0530 (Iowa Court of Appeals, filed June 5, 2024). **Sufficient evidence the defendant constructively possessed the firearm in the vehicle:** at the scene, the defendant admitted the firearm was his and he had other firearms; and the defendant “had direct access to [the firearm] at all times”. See [State v. Kern](#), 831 N.W.2d 149, 161 (Iowa 2013) (listing four non-exclusive factors in determining constructive possession when there is more than one person in the area); [State v. Kemp](#), 688 N.W.2d 785, 789 (Iowa 2004) (listing five additional factors when the area is a motor vehicle).

Plymouth County [State v. Donnell E. Thomas](#), No. 23-0530 (Iowa Court of Appeals, filed June 5, 2024). **Sufficient evidence the defendant constructively possessed the marijuana in the vehicle:** the marijuana was next to the defendant in the center console; the defendant admitted he knew the “marijuana was in the car”; and the defendant “had direct access to [the marijuana] at all times”. See [State v. Kern](#), 831 N.W.2d 149, 161 (Iowa 2013) (listing four non-exclusive factors in determining constructive possession when there is more than one person in the area); [State v. Kemp](#), 688 N.W.2d 785, 789 (Iowa 2004) (listing five additional factors when the area is a motor vehicle).

Plymouth County [State v. Donnell E. Thomas](#), No. 23-0530 (Iowa Court of Appeals, filed June 5, 2024). The judge considered an improper factor, “credit for time served for parole eligibility[,] when” sentencing the defendant.

Polk County [State v. Chase Brian Mead](#), No. 22-1736 (Iowa Court of Appeals, filed May 22, 2024). **Sufficient evidence of constructive possession of contraband (drugs and firearm) in the vehicle:** defendant told law enforcement there was no contraband in the vehicle; passenger only possessed a suitcase and purse; contraband in vehicle was found with items belonging to the defendant; contraband was located close to the defendant; it was the defendant’s vehicle; and the defendant’s demeanor. See [State v. Reed](#), 875 N.W.2d 705, 706 (Iowa 2016) (listing four non-exclusive factors in determining constructive possession when there are more than one person in the area); [State v. Brown](#), 5 N.W.3d 611, 617 (Iowa 2024) (listing five additional factors when the area is a motor vehicle). Held, “Considering the evidence as a whole, we determine there is substantial evidence in the record to support the jury’s finding that Mead had knowledge of the methamphetamine, marijuana, and firearm, and had the authority and right to maintain control over these items.”

Polk County [State v. Chase Brian Mead](#), No. 22-1736 (Iowa Court of Appeals, filed May 22, 2024). No abuse in discretion in sentencing the defendant to more time that requested by either party.

Pottawattamie County [State v. Eric Anela Perry](#), No. 23-1062 (Iowa Court of Appeals, filed June 5, 2024). **Sufficient evidence the defendant was impaired even though he refused all testing (SFSTs, PBT, and DataMaster), could ask coherent questions, follow directions, and answer law enforcement’s questions:** odor of alcohol; unsteady; swaying; watery eyes; glossy eyes; deliberate and slow movement; cashier observed belligerent behavior by the defendant; cashier believed the defendant was impaired; and the defendant was untruthful with law enforcement about being the operator of the vehicle.

RECENT UNPUBLISHED DECISIONS INVOLVING ALCOHOL AND TRAFFIC SAFETY

Citation of unpublished cases is governed by I.R.App.Pro. 6.904(2)(c), which provides that unpublished opinions do not constitute binding authority and requires that when citing an unpublished opinion, a party include an electronic citation where the opinion can be readily accessed on-line. (Note: all opinions may be accessed online in the Archives section of Opinions of the Iowa Court of Appeals or Supreme Court, at <https://www.iowacourts.gov/>).

Pottawattamie County [State v. Eric Anela Perry](#), No. 23-1062 (Iowa Court of Appeals, filed June 5, 2024). No error in denying the defendant's request for a hearing on possible juror bias based off a Facebook message that did not depict any bias and only said a juror was married to an officer.

Scott County [Logan Jeffrey Shoemaker v. State](#), No. 22-2107 (Iowa Court of Appeals, filed May 22, 2024). **The "trial counsel did not breach an essential duty by not moving for a change of venue":** news coverage was factual and nine months before the start of trial; jurors that had a possible bias were released from duty; and other jurors that had knowledge of the case stated they would decide the case on the evidence.

Scott County [Logan Jeffrey Shoemaker v. State](#), No. 22-2107 (Iowa Court of Appeals, filed May 22, 2024). Trial counsel not ineffective for failing to exclude crimes that defendant had already plead guilty to because they were "likely admissible under the inextricably-linked doctrine". See [State v. Nelson](#), 791 N.W.2d 414 (Iowa 2010).

Scott County [Logan Jeffrey Shoemaker v. State](#), No. 22-2107 (Iowa Court of Appeals, filed May 22, 2024). **Trial counsel not ineffective for not arguing the defendant did not intend to steal the garbage truck in "a motion for judgment of acquittal on the robbery charge".** "The reckless operation of a get-away vehicle can satisfy the intent element of theft." See [State v. Miller](#), No. 16-2110, 2018 WL 1099580 (Iowa Ct. App. Feb. 21, 2018) (finding sufficient evidence of intent for theft of the motor vehicle as opposed to operation without owner's consent).

Scott County [Logan Jeffrey Shoemaker v. State](#), No. 22-2107 (Iowa Court of Appeals, filed May 22, 2024). **Trial counsel not ineffective for having the defendant admit to a lesser included offense:** "admitting to elements of lesser charges to limit the likelihood that the jury would find a defendant guilty of the original charges and to build credibility with the jury is a legitimate trial strategy."

Scott County [Logan Jeffrey Shoemaker v. State](#), No. 22-2107 (Iowa Court of Appeals, filed May 22, 2024). Trial counsel not ineffective for failing to request jury instructions for theft and operation without owner's consent because they are not lesser included offenses for robbery.

Scott County [Logan Jeffrey Shoemaker v. State](#), No. 22-2107 (Iowa Court of Appeals, filed May 22, 2024). Trial counsel not ineffective for not asserting an intoxication or diminished responsibility defense because the facts of the case clearly showed the defendant making the specific intent do many things.

Story County [State v. Sylvester Lavelle Trotter](#), No. 23-0859 (Iowa Court of Appeals, filed April 24, 2024). **No abuse in discretion when the judge denied the defendant's "motion in arrest of judgment" based on the defendant's claim of actual innocence.** There was sufficient direct and circumstantial evidence that the defendant was the driver of the vehicle and impaired.

Warren County [State v. Alexander Isaiah Knight](#), No. 23-1106 (Iowa Court of Appeals, filed May 22, 2024). **The sentencing court cannot consider as a sentencing factor (even if it is not a primary consideration) that the defendant insisted on going trial and making the State prove its case.** The sentencing court can use a defendant's lack of remorse as a sentencing factor. Remanded for resentencing.

RECENT UNPUBLISHED DECISIONS INVOLVING ALCOHOL AND TRAFFIC SAFETY

Citation of unpublished cases is governed by I.R.App.Pro. 6.904(2)(c), which provides that unpublished opinions do not constitute binding authority and requires that when citing an unpublished opinion, a party include an electronic citation where the opinion can be readily accessed on-line. (Note: all opinions may be accessed online in the Archives section of Opinions of the Iowa Court of Appeals or Supreme Court, at <https://www.iowacourts.gov/>).

Warren County [State v. Lonnie James Pryor](#), No. 23-0981 (Iowa Court of Appeals, filed June 5, 2024). Probable cause and reasonable suspicion to detain the defendant when a towed vehicle’s rear lamps are not lit at night, in violation of Iowa Code section 321.387.

Warren County [State v. Lonnie James Pryor](#), No. 23-0981 (Iowa Court of Appeals, filed June 5, 2024). **Sufficient circumstantial evidence the defendant was driving while barred (DWB) even though the officer found the defendant outside the vehicle:** defendant admitted at the scene to driving; deputy’s “body-camera footage”; defendant admitted to being barred; and “the certified abstract of driving record”.

Warren County [State v. Lonnie James Pryor](#), No. 23-0981 (Iowa Court of Appeals, filed June 5, 2024). No abuse in discretion in sentencing the defendant to prison on a driving while barred (DWB) conviction.

Woodbury County [State v. Victoria Jo Dawdy](#), No. 23-0161 (Iowa Court of Appeals, filed April 24, 2024). **Under the totality of the circumstances, there was “a substantial basis to conclude probable cause existed” for a blood draw search warrant:** in a clearly marked construction zone the defendant drove over construction cones, into “a road-closed sign”, and crashed “into a parked vehicle” at a high speed causing both vehicles to possibly be totaled; defendant fled from the crash scene; the defendant was brought back to the crash scene by witnesses; officers observed signs of impairment, even without SFSTs; and the defendant tried to run from the scene while officers were talking with her.

PREPARED BY THE
PROSECUTING ATTORNEYS TRAINING COORDINATOR (PATC)

Under a project approved by the Governor's Traffic Safety Bureau (GTSB), in cooperation with the National Highway Traffic Safety Administration (NHTSA). The opinions, findings, and conclusions expressed in this publication are those of the author and not necessarily those of the PATC, GTSB, NHTSA, or the Iowa Department of Justice.

This newsletter is intended to provide the reader with an update on new developments, including case law and statutory changes, relating to traffic safety. Nothing expressed in this newsletter should be considered legal advice. 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.

Submissions and/or comments may be sent to:
Jeremy Peterson
Iowa Department of Justice
2nd Floor, Hoover State Office Building
Des Moines, IA 50319
Phone: 515-281-5428
E-mail: jeremy.peterson@ag.iowa.gov

All hyperlinks were last visited on August 28, 2024.

