



HIGHWAY SAFETY

LAW UPDATE



June 6, 2023 Office of the Prosecuting Attorneys Training Coordinator January/February/March 2023

County Spotlight – Chickasaw County

The seventeenth county spotlight is on Chickasaw County. “Chickasaw County was established in 1851, named after the Chickasaw tribe, which then lived in the southern United States.”¹ The current Chickasaw County Courthouse was opened in 1930 and was built at a cost of \$134,000.²

New Hampton is the county seat of Chickasaw County³ and it sits on the intersection of Highways 63 and 18.⁴ According to the 2020 census, Chickasaw County has a population of 12,012.⁵

David Laudner is the Chickasaw County Attorney. Mr. Laudner is a full-time county attorney and they also have a 28E with the Winneshiek County Attorney’s Office for a part-time assistant county attorney to provide assistance when needed. Mr. Laudner graduated from Buena Vista University with a major in Economics and then attended Iowa Law School. Mr. Laudner has been the Chickasaw County Attorney for approximately 1.5 years. Prior to coming to the Chickasaw County Attorney’s office, Mr. Laudner worked as an Assistant Palo Alto County Attorney for approximately 2.5 years and in private practice for approximately 6 years.

Chickasaw County has 5 local law enforcement agencies: New Hampton Police Department, Iowa

Department of Natural Resources, Iowa DOT, Iowa State Patrol, and the Chickasaw County Sheriff’s Office. In 2022, there were 838 traffic convictions⁶ and 54 OWI convictions in Chickasaw County according to Division of Criminal & Juvenile Justice Planning.⁷



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¹ <https://chickasawcounty.iowa.gov/>

² <https://chickasawcounty.iowa.gov/about/>

³ https://en.wikipedia.org/wiki/Chickasaw_County,_Iowa

⁴ <https://www.google.com/maps/place/Chickasaw+County,+IA/@43.0601341,-92.4578032,11z/data=!3m1!4m6!3m5!1s0x87fa8f5b2bb6ca7d:0xc5e10ea709131b6a!8m2!3d43.0724667!4d-92.3813621!16zL20vMG5zZHQ?hl=en>

⁵ <https://www.census.gov/quickfacts/fact/table/chickasawcountyiowa./PST045221>

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.”

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

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Iowa Acts of Interest for Law Enforcement

This year's Iowa Acts of Interest for Law Enforcement will be held on June 21, 2023 in Coralville (Radisson Hotel) and June 22, 2023 in West Des Moines (Embassy Club West). There is a great program this year, including presentations on *New Legislation; New Criminal Rules; Open Record Requests; OWI/Traffic Law Update; and A DRE's Perspective*. Notices have been sent out for participants to register for either date, but if you did not receive notice for the 2023 Iowa Acts of Interest or if your contact information has changed, please contact Cindy Glick (Cindy.Glick@ag.iowa.gov) to update your contact information and get registered. The PATC Division at the Iowa Attorney General's Office looks forward to seeing you in-person at this year's Iowa Acts of Interest for Law Enforcement.



Criminal Law Handbook Published

The newest edition of the Criminal Law Handbook, which contains the most recent versions of the OWI and Traffic Offenses in Iowa Manual, was recently published and distributed. The manual uses software that makes outdated editions inaccessible, and therefore readers must re-order a new copy of the Criminal Law Handbook every six months. If you have not received an order form, please contact Cindy Glick at Cindy.Glick@ag.iowa.gov and request an order form to keep your copy up to date and working.



2023 DRE School

The 2023 DRE School has finished. This year, the DRE School went back to Jacksonville, Florida to finish their evaluations. The 2023 Class had fourteen officers are complete the program.

Congratulations to Iowa's newest DRE Officers: Franklin County Deputy Benjamin Baskerville, Muscatine County Deputy Adam Bell, Trooper Bryce Bilharz, Dallas County Deputy Brandon Bjoin, Scott County Deputy Eric George, Dubuque Police Officer Ethan Lembke, Council Bluffs Police Officer Michael Limberg, Johnston Police Officer Andrey Naidenoff, Marion County Deputy Sam Pitt, Adams County Deputy Matthew Staiert, Sioux County Deputy Chad Van Ravenswaay, Knoxville Police Officer Joseph Wepler, Waukee Police Officer Johnathan Young, and Ankeny Police Officer Steven Young.



This year's Instructor Cadre consisted of State DRE Coordinator Todd Olmstead, Iowa City Police Sergeant Paul Batcheller (Course Manager), Iowa DNR Captain Matt Bruner (Lead Instructor), Des Moines Police Officer Michael Dixon, Ames Police Sergeant Ryan Hauge, Winterset Police Officer Christian Dekker, Iowa State University Police Officer Doug Hicks, Waterloo Police Officer Brad Walter, Marshalltown Deputy Andy Cole, and Trooper Cody Reicks.



Thank you to everyone for your commitment to traffic safety and impaired driving.



When a case addresses more than one issue or area of law related to OWIs or traffic, this Newsletter provides a separate annotation on each issue. Multiple annotations are commonly used for legal research and twice each year these annotations are arranged by subject matter in the PATC publication *“OWI and Traffic Offenses in Iowa”*. For more information about *“OWI and Traffic Offenses in Iowa”* contact cindy.glick@ag.iowa.gov

Opinions of the Iowa Supreme Court

Polk County [Martinez v. State](#), 986 N.W.2d 121 (Iowa 02/17/2023) No. 21-0980. Summary judgment properly granted; a reasonable jury would not find the officer’s actions during and ending a pursuit was reckless. Trooper’s decision to end a vehicle pursuit after the suspect drove down the left lane showed an awareness of the risk the suspect created as opposed to disregarding the risk. Recklessness is “the legal standard of care for claims under section 321.231[.]” “To prove recklessness under the statute, a plaintiff must show that the officer ‘has intentionally done an act of an unreasonable character in disregard of a risk known to [the officer] or so obvious that [the officer] must be taken to have been aware of it.’” *Quoting State*

v. Morris, 534 N.W.2d 388, 391 (Iowa 1995). “And even then, the officer can be liable only if the dangerous act was ‘so great as to make it highly probable that harm would follow.’” *Quoting State v. Morris*, 534 N.W.2d 388, 391 (Iowa 1995).

Recent Unpublished Decisions Arranged by County

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/>).

Black Hawk County [State v. Michael Paul Eaton](#), No. 21-1405 (Iowa Court of Appeals, filed January 11, 2023). “[T]he arrest [jury] instruction conveyed a clear understanding of the arrest issue[;]” “specifically calling the jury to consider whether Eaton was handcuffed or booked into jail would confuse the issues because neither is necessary and no facts were presented to make those factors relevant here.”

Black Hawk County [State v. Michael Paul Eaton](#), No. 21-1405 (Iowa Court of Appeals, filed January 11, 2023). **Law enforcement does not need to formally tell the defendant he is under arrest, an arrest can be shown through conduct or words.** “What the officer tells the defendant contributes to determining whether an arrest has occurred.” Conviction for escape upheld.

Bremer County [State v. Jeffrey Leroy Larson](#), No. 21-1850 (Iowa Court of Appeals, filed March 8, 2023). **Defendant’s consent to search a vehicle was voluntary (analyzed under the totality of the circumstances):** trooper did not pat down the defendant; defendant going to trooper’s vehicle was a normal part of the speeding investigation; traffic stop was not unnecessarily long; defendant made small talk with the trooper; and trooper was calm. *See State v. Hauge*, 973 N.W.2d 453, 461 (Iowa 2022); *compare to State v. Pals*, 805 N.W.2d 767 (Iowa 2011).

Cerro Gordo County [State v. Dana Lee Despenas](#), No. 21-1775 (Iowa Court of Appeals, filed March 8, 2023). “Any mistake of fact” as to whether the defendant “drove north in the southbound lanes” was “objective reasonable given the conditions that night” (nighttime and blizzard conditions); traffic stop upheld.

Clarke County [State v. Darryl Anthony Hurtt](#), No. 22-0091 (Iowa Court of Appeals, filed January 11, 2023). **Iowa’s controlled substance regulations do not directly harm the defendant’s ability to travel in or out of the state.** Despite the legalization of marijuana by some states, “there is no fundamental right to possess marijuana.” *State v. Middlekauff*, 974 N.W.2d 781, 803 (Iowa 2022). “[N]ot everything that deters travel burdens the fundamental right to travel.” *quoting Matsuo v United States*, 586 F.3d 1180, 1183 (9th Cir. 2009).

Clarke County [State v. Bo Christopher Robert Garland](#), No. 22-0285 (Iowa Court of Appeals, filed February 22, 2023). **State failed to prove the defendant did not have permission from the registered owner to operate the motor vehicle.** Although the stepfather told law enforcement the defendant, his wife’s son, did not have permission to drive his wife’s vehicle, no evidence was presented that the wife told the defendant he could not drive the vehicle. Silence as to whether the registered owner gave the defendant permission to operate the vehicle does “not equate to proof beyond a reasonable doubt that he drove the car without his mother’s consent.” The term “owner” under 714.7 (operating without owner’s consent) refers to the whoever has the legal title of the motor vehicle. *See Iowa Code section 321.1(49)*. However, “an

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owner's testimony is not the only way to prove lack of consent." Not having the owner's consent may be proven by circumstantial evidence or admissions by the defendant.

Clay County [State v. Stella Louise Gore](#), No. 21-1692 (Iowa Court of Appeals, filed January 11, 2023). **Sufficient evidence of constructive possession of marijuana by the defendant, even though the most recent driver of the vehicle was someone else:** the defendant was the owner of the vehicle; marijuana found in the defendant's purse; she had recently been in the vehicle; she admitted ownership of the purse; letter sent to her inside purse; and admission of prior marijuana use. *See* [State v. Kemp](#), 688 N.W.2d 785, 789 (Iowa 2004) (listing four non-exclusive factors in determining constructive possession when there are more than one person in the area and five additional factors when the area is a motor vehicle); [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).

Clay County [State v. Stella Louise Gore](#), No. 21-1692 (Iowa Court of Appeals, filed January 11, 2023). **The Court is not bound by the "four corners of the [search] warrant application" during a [Franks](#) hearing ([Franks v. Delaware](#), 438 U.S. 154 (1978)).** NOTE: for a [Franks](#) hearing, a defendant must first "make a preliminary showing of falsehood to obtain an evidentiary hearing." *See* [State v. Groff](#), 323 N.W.2d 204, 209 (Iowa 1982). The defendant cannot just rely on a wish to cross-examine the officer and the showing must be more than just conclusory. *See* [State v. Groff](#), 323 N.W.2d 204, 209 (Iowa 1982).

Clay County [State v. Stella Louise Gore](#), No. 21-1692 (Iowa Court of Appeals, filed January 11, 2023). **Defendant did not satisfy his burden at the [Franks](#) hearing ([Franks v. Delaware](#), 438 U.S. 154 (1978)) to establish the officer gave a misleading or intentionally false statement in the search warrant that the officer smelled alcohol:** it took approximately three hours from when the officer interacted with the defendant to obtaining a blood draw; alcohol is known to dissipates over time; and the smell could have come from the medical supplies in the ambulance where the defendant was. NOTE: for a [Franks](#) hearing, a defendant must first "make a preliminary showing of falsehood to obtain an evidentiary hearing." *See* [State v. Groff](#), 323 N.W.2d 204, 209 (Iowa 1982). The defendant cannot just rely on a wish to cross-examine the officer and the showing must be more than just conclusory. *See* [State v. Groff](#), 323 N.W.2d 204, 209 (Iowa 1982).

Clay County [State v. Stella Louise Gore](#), No. 21-1692 (Iowa Court of Appeals, filed January 11, 2023). A difference of opinion between why the defendant had bloodshot watery eyes (due to the accident vs. alcohol) does not arise to a reckless or false statement in the search warrant under [Franks](#) ([Franks v. Delaware](#), 438 U.S. 154 (1978)).

Clay County [State v. Stella Louise Gore](#), No. 21-1692 (Iowa Court of Appeals, filed January 11, 2023). **An officer's statement on a search warrant application that the defendant refused HGN and PBT testing was misleading or intentionally false ([Franks](#) violation) when the video evidence showed the officer did not offer either to the defendant.** Court must then review the search warrant without those statements and make a new determination if there was probable cause.

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Clay County [State v. Stella Louise Gore](#), No. 21-1692 (Iowa Court of Appeals, filed January 11, 2023). **Sufficient evidence “to support probable cause for the warrant” for a blood draw:** one car crash; odor of alcohol; slurred speech; and bloodshot and watery eyes.

Johnson County [State v. Stephen Deloi LuCore](#), No. 21-1803 (Iowa Court of Appeals, filed January 25, 2023). **Sufficient evidence the defendant specially intended harm the people in the other vehicle despite the defendant’s claims he was only trying to commit suicide; willful injury convictions affirmed.** The defendant was “convicted of homicide by vehicle, serious injury by vehicle, second-degree murder, willful injury causing serious injury, and three counts of willful injury causing bodily injury”. The defendant argued he only intended to harm himself, not anyone else when he intentionally drove head on into another vehicle. “[T]he intent requirement of the willful-injury statute requires that ‘the defendant intended to cause serious injury to the victim (specific intent), not just do the act that resulted in serious injury (general intent).’” *Quoting [State v. Hickman](#)*, 623 N.W.2d 847, 852 (Iowa 2001). However, “defendants will ordinarily be viewed as intending the natural and probable consequences that ordinarily follow from their voluntary acts.” *Quoting [State v. Bedard](#)*, 668 N.W.2d 598, 601 (Iowa 2003) (other citations omitted).

Johnson County [State v. Stephen Deloi LuCore](#), No. 21-1803 (Iowa Court of Appeals, filed January 25, 2023). **Despite the defendant’s intent to commit suicide, there was sufficient evidence “to support the malice aforethought element of murder in the second degree.”** “The establishment of malice aforethought does not require proof of specific intent to kill or motive, and it may be inferred from the acts and conduct of the defendant on either an express or implied basis.” *State v. Smith*, 242 N.W.2d 320, 326 (Iowa 1976). “An ‘inference of malice arises simply “from the intentional use of a deadly weapon in a deadly manner,” regardless of whether there was an opportunity to deliberate.” *Quoting [State v. Reeves](#)*, 636 N.W.2d 22, 25 (Iowa 2001) (citation omitted). “That the primary purpose of the defendant’s action was to take his own life does not preclude a finding of malice where he chose a method resulting in the taking of the life of another and failing to take his own.” *Quoting [Anderson v. State](#)*, 330 S.E.2d 592, 594 (Ga. 1985).

Johnson County [State v. Stephen Deloi LuCore](#), No. 21-1803 (Iowa Court of Appeals, filed January 25, 2023). A conviction for vehicular homicide merges with a conviction for murder in the second degree “under the one-homicide rule” when they involve the same victim.

Johnson County [State v. Stephen Deloi LuCore](#), No. 21-1803 (Iowa Court of Appeals, filed January 25, 2023). A conviction for serious injury by vehicle merges with a conviction for willful injury causing serious injury “under double jeopardy multiple punishment principles” when they involve the same victim.

Polk County [State v. Jaheim Romaine Cyrus](#), No. 21-0828 (Iowa Court of Appeals, filed January 11, 2023). **Although the officer’s conduct may have put pressure on the defendant to cooperate, the officer’s actions did not rise above the socially acceptable interaction between law enforcement and citizens, thus there was not an illegal seizure under the totality of the circumstances.** While investigating a report from a concerned citizen, an officer approached the defendant’s vehicle and activated his spotlight. The officer eventually stopped behind the defendant’s vehicle in the middle of the road and turned on the rear facing lights. The officer then exited and interacted with the defendant. The defendant argued he was illegally seized, and the Court should look at the officer and defendant’s subjective intents. Held, under the

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totality of the circumstances, the defendant was not illegally seized. “Iowa courts have long recognized ‘[t]he use of sirens, flashing lights or other signals . . . might . . . constitute a show of authority that is a seizure.’” *quoting State v. Harlan*, 301 N.W.2d 717, 720 (Iowa 1981). “Activation of the rear-facing lights, particularly if not seen by the driver, is insufficient on its own to establish a seizure.” *see State v. Prusha*, 874 N.W.2d 627, 628, 630 (Iowa 2016). The Court also noted that the officer may have only activated the yellow lights, instead of the blue and red emergency lights. Although the officer’s use of the patrol car’s spotlight on the defendant’s vehicle is a factor, it is not necessarily as coercive as using the emergency overhead lights (spotlight somewhat similar to headlights). Another factor is how the officer’s vehicle is parked (i.e., was it completely blocking the defendant’s vehicle from leaving or the egress only slightly limited; was patrol vehicle parked in the middle of the road).

Polk County [State v. Jaheim Romaine Cyrus](#), No. 21-0828 (Iowa Court of Appeals, filed January 11, 2023). **Whether a seizure occurred is analyzed on an “objective basis evaluation of a reasonable person[;]”** a defendant’s and officer’s subjective intent is not relevant when analyzing the totality of the circumstances of whether a seizure occurred.

Polk County [State v. Bita Amisi](#), No. 22-0624 (Iowa Court of Appeals, filed February 8, 2023). **“Evidence that a defendant agreed to take a PBT is admissible when there is no reference to the results of the test.”** *Gavlock v. Coleman*, 493 N.W.2d 94, 96 (Iowa Ct. App. 1992); *see also State v. Smidl*, No. 12-2182, 2014 WL 69751, at *2 (Iowa Ct. App. Jan. 9, 2014); *State v. Orr*, No. 05-1864, 2006 WL 2419198, at *2 (Iowa Ct. App. Aug. 23, 2006). The State entered into evidence a video recording from the OWI investigation that showed the defendant being offered the PBT, “agreeing to the PBT,” and then after the PBT was completed, he was arrested. The recording “did not refer to the results of the” PBT.

Polk County [State v. Bita Amisi](#), No. 22-0624 (Iowa Court of Appeals, filed February 8, 2023). **Admitting a video showing the defendant being offered and consenting to a PBT and then arrested after the PBT was not prejudicial.** “The probative value of the exhibit is not based upon Amisi’s consent to the PBT but rather his speech and physical manifestations of intoxication during the process of obtaining his consent.”

Polk County [State v. Bita Amisi](#), No. 22-0624 (Iowa Court of Appeals, filed February 8, 2023). **Sufficient evidence the defendant was operating a motor vehicle “while under the influence of alcohol”:** the defendant’s erratic driving (driving into oncoming traffic); watery and bloodshot eyes; odor of alcohol on breath; slurred speech; unsteady balance; SFSTs (walk and turn; one leg stand); and an open container in vehicle. In footnote 2, the Court noted: “even without the evidence of the failed field sobriety tests, there is sufficient evidence to show Amisi was impaired.”

Polk County [State v. Bita Amisi](#), No. 22-0624 (Iowa Court of Appeals, filed February 8, 2023). **Sufficient evidence of eluding:** defendant drove past several parking lots and streets; officer had activated lights and siren; officer in marked patrol vehicle; and once stopped, the defendant attempted to back up again until the officer ordered him to stop.

Polk County [State v. Ashley Nicole Hennings](#), No. 22-0337 (Iowa Court of Appeals, filed March 8, 2023). No error in not giving the defendant’s requested jury instruction on causation in a vehicular homicide case.

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Polk County [State v. Ashley Nicole Hennings](#), No. 22-0337 (Iowa Court of Appeals, filed March 8, 2023). **No abuse in discretion in rejecting the defendant’s motion for new trial.** “[T]he State [is] not required to prove Hennings was ‘under the influence of a controlled substance’ when she was operating the van.” “ ‘Iowa’s homicide-by-intoxicated-operation statute makes it a crime to unintentionally cause someone’s death ‘by operating a motor vehicle while intoxicated, as prohibited by section 321J.2.’ ” ’ ” *quoting State v. Johnson*, 950 N.W.2d 232, 236 (Iowa 2020). All the State had to prove was a causal connection between the criminal offense (OWI with any amount of controlled substance present in her system) and the victim's death. “[T]he State was not required to prove that the methamphetamine in [the defendant’s system] system ‘in any way influenced’ her driving.”

Polk County [State v. Ashley Nicole Hennings](#), No. 22-0337 (Iowa Court of Appeals, filed March 8, 2023). **All the State had to prove was a causal connection between the criminal offense (OWI with any amount of controlled substance present in her system) and the victim's death.** “[T]he State was not required to prove that the methamphetamine in [the defendant’s system] system ‘in any way influenced’ her driving.” “[T]he State [is] not required to prove Hennings was ‘under the influence of a controlled substance’ when she was operating the van.” “ ‘Iowa’s homicide-by-intoxicated-operation statute makes it a crime to unintentionally cause someone’s death “by operating a motor vehicle while intoxicated, as prohibited by section 321J.2.” ’ ” *quoting State v. Johnson*, 950 N.W.2d 232, 236 (Iowa 2020).

Polk County [State v. Ashley Nicole Hennings](#), No. 22-0337 (Iowa Court of Appeals, filed March 8, 2023). **Sufficient evidence the defendant was impaired by methamphetamine while she was driving; no abuse in discretion in rejecting motion for new trial** (“if the State needed to prove that Hennings was under the influence of methamphetamine, the district court did not abuse its discretion in finding credible evidence to support that she was.”). State presented evidence that level of drugs in the defendant’s systems far exceed the therapeutic level and could have a negative impact on her driving ability. In addition, the State presented evidence regarding the defendant’s driving behavior.

Polk County [State v. Ashley Nicole Hennings](#), No. 22-0337 (Iowa Court of Appeals, filed March 8, 2023). **No abuse in discretion; sufficient evidence the defendant failed to remain at the scene:** defendant was observed running from the crash; she was located nearby; and she could have stayed at the scene and provided the required information under Iowa Code section 321.261(4).

Polk County [State v. Ashley Nicole Hennings](#), No. 22-0337 (Iowa Court of Appeals, filed March 8, 2023). “[T]he district court violated the one-homicide rule by entering judgment on both homicide by intoxicated operation and homicide by reckless driving.”

Polk County [State v. Roberto Luis Rosado Davila](#), No. 21-1032 (Iowa Court of Appeals, filed March 29, 2023). **Reasonable suspicion to conduct a traffic stop after a registration check “showed the vehicle’s registered owner did not have a valid Iowa driver’s license and had received citations for such in Mahaska County ‘a couple months prior.’”** Furthermore, the information regarding prior citation for driving without a valid license two months prior was not to stale to support reasonable suspicion for the traffic stop. *See State v. Sallis*, 981 N.W.2d 336, 338 (Iowa 2022).

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Polk County [State v. Roberto Luis Rosado Davila](#), No. 21-1032 (Iowa Court of Appeals, filed March 29, 2023). Information regarding prior citation for driving without a valid license two months prior was not to stale to support reasonable suspicion for the traffic stop. *See* [State v. Sallis](#), 981 N.W.2d 336, 338 (Iowa 2022).

Polk County [State v. Roberto Luis Rosado Davila](#), No. 21-1032 (Iowa Court of Appeals, filed March 29, 2023). A Court does not have the authority to suspend part of the \$1250 fine for an OWI 1st when the defendant's BAC results exceed .15. Iowa Code section 907.3(3)(c)(1).

Polk County [State v. Dylan Anthony McCombs](#), No. 21-1964 (Iowa Court of Appeals, filed March 29, 2023). Although the Court was aware of impermissible sentencing information, absent evidence that the Court relied on this impermissible information when sentencing the defendant, the sentence will not be reversed.

Scott County [State v. Brandi Kaye Smithson](#), No. 22-0833 (Iowa Court of Appeals, filed January 25, 2023). No abuse in discretion in sentencing the defendant to prison for an OWI 3rd conviction.

Scott County [State v. Darrien Darvin Irving](#), No. 21-1839 (Iowa Court of Appeals, filed February 8, 2023). **Sufficient evidence of at least constructive possession, if not actual possession, of the crack cocaine:** the defendant had previously used the vehicle; he ran from the vehicle after it crashed; and he was the sole occupant of the vehicle. *See* [State v. Kemp](#), 688 N.W.2d 785, 789 (Iowa 2004) (listing five additional factors when the area is a motor vehicle).

Woodbury County [State v. Franklin Alfredo Benites Garcia](#), No. 22-0972 (Iowa Court of Appeals, filed March 8, 2023). Under Iowa Rule of Criminal Procedure 2.8(2)(d), the sentencing court only needs to substantially comply in notifying the defendant regarding the requirement to file a motion in arrest of judgment to be able to challenge their plea of guilty and the consequences if they fail to file the motion.

Woodbury County [State v. Franklin Alfredo Benites Garcia](#), No. 22-0972 (Iowa Court of Appeals, filed March 8, 2023). **No abuse in discretion in sentencing the defendant to the maximum sentence.** "When it is clear based on the district court's statements what prompted and motivated a sentence, a terse and succinct statement is sufficient." [State v. Thacker](#), 862 N.W.2d 402, 408 (Iowa 2015).

Woodbury County [State v. Franklin Alfredo Benites Garcia](#), No. 22-0972 (Iowa Court of Appeals, filed March 8, 2023). Although the same reasons used to impose a sentence length may also be used to impose the sentences to run consecutive, the sentencing court must still make it clear the reasons for consecutive sentences.

Woodbury County [State v. Tesslla Dezeræ Burnett](#), No. 22-0433 (Iowa Court of Appeals, filed March 29, 2023). No abuse in discretion in denying the defendant's motion for new trial after the defendant's newly discovered witness failed to appear for a supplemental hearing.

Worth County [State v. Stephen Andrew Arrieta](#), No. 21-1133 (Iowa Court of Appeals, filed January 11, 2023). **A canine sniff around a commercial motor vehicle did not unlawfully extend the stop:** the motor

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vehicle officer was still conducting a level III inspection; there were concerns with the defendant's logbook; and a lot of time was devoted to finding out if the vehicle had been stolen. **Please note, the Iowa Supreme Court has granted further review of this case.**

Worth County [State v. Stephen Andrew Arrieta](#), No. 21-1133 (Iowa Court of Appeals, filed January 11, 2023). **A canine's alert on a commercial motor vehicle provided probable cause to search:** canine had narcotics detection certification; canine had continuous training; and canine showed signs of being in the odor of narcotics during walk around the vehicle. **Please note, the Iowa Supreme Court has granted further review of this case.**

Worth County [State v. Stephen Andrew Arrieta](#), No. 21-1133 (Iowa Court of Appeals, filed January 11, 2023). Canine jumping up on side of the commercial motor vehicle was incidental and minimal contact with the vehicle and did not become a tactile inspection of the vehicle. *See* [United States v. Olivera-Mendez](#), 484 F.3d 505, 511-512 (8th Cir. 2007). **Please note, the Iowa Supreme Court has granted further review of this case.**

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. 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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