



# HIGHWAY SAFETY

LAW UPDATE



May 1, 2020 Office of the Prosecuting Attorneys Training Coordinator Jan/Feb/March 2020

## County Spotlight – Benton County

The sixth county spotlight is on Benton County. Vinton is the largest town in Benton County and sits off Highway 218. According to the 2010 census, Benton County has a population of 26,076.<sup>1</sup>

David C. Thompson is the Benton County Attorney. Mr. Thompson is a full-time county attorney with two full-time assistant county attorneys in the office. Mr. Thompson has been the Benton County Attorney for approximately twenty-one years. Prior to becoming the Benton County Attorney, Mr. Thompson was in private practice for eight years. Mr. Thompson graduated from the University of Iowa with degrees in History and Religion. Mr. Thompson then attended the Drake Law School.

Benton County has five local law enforcement agencies: the Benton County Sheriff’s Office, the Vinton Police Department, the Belle Plaine Police Department, the Urbana Police Department, and the Benton County Conservation Department. In 2019, there were 2,767 traffic convictions<sup>2</sup> and 50 OWI convictions in Benton County according to Division of Criminal & Juvenile Justice Planning.<sup>3</sup>

## COVID-19 and Law Enforcement

The COVID-19 pandemic has affected everyone in the world, including law enforcement. Despite COVID-19 and social distancing, law enforcement officers still patrol the streets and enforce the law.

<sup>1</sup> <https://www.census.gov/quickfacts/fact/table/bentoncountyiowa,IA/PST045219>

<sup>2</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.”

<sup>3</sup> <https://disposedcharges.iowa.gov/asp/glossary.asp>  
<https://disposedcharges.iowa.gov/>

While enforcing the law, it is inevitable that officers will come into close contact with the public. The Iowa Department of Public Health (IDPH) has a [webpage](#) dedicated to helping Essential Services Personnel, including law enforcement officers, during the pandemic: “[Novel Coronavirus \(COVID-19\) - Essential Services Personnel](#)”.<sup>4</sup> The IDPH’s webpage has a [FAQ for law enforcement officers](#) and a “[COVID-19 Exposure and Risk Mitigation Best Practices for Law Enforcement](#)”.<sup>5</sup> The CDC (Centers for Disease Control and Prevention) also has a dedicated [webpage](#) for law enforcement officers: “[What Law Enforcement Personnel Need to Know about Coronavirus Disease 2019 \(COVID-19\)](#)”.<sup>6</sup>

Some of the laws law enforcement continues to enforce include traffic violations, like speeding. Although there has been a 50% drop in traffic on the roads during the COVID-19 pandemic, the Iowa State Patrol has seen a 62% increase in

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<sup>4</sup> <https://idph.iowa.gov/Emerging-Health-Issues/Novel-Coronavirus/Essential-Services-Personnel>

<sup>5</sup> <https://idph.iowa.gov/Emerging-Health-Issues/Novel-Coronavirus/Essential-Services-Personnel>

<sup>6</sup> <https://www.cdc.gov/coronavirus/2019-ncov/community/guidance-law-enforcement.html>

## COVID-19 and Law Enforcement cont.

speeding citations for people driving over 100 mph.<sup>7</sup> High speeds are not just limited to Iowa. The Star Tribune reported that although Minnesota, like Iowa, has had a similar reduction in traffic levels in March and April during the COVID-19 pandemic, there has been a disturbing rise in traffic fatalities.<sup>8</sup> From March 16, 2020 through April 7, 2020, Minnesota has had 24 fatal crashes, which is up from 13 last year; an approximately 84.6% increase.<sup>9</sup> Therefore, it is import to remember, that less traffic does not mean more speed.

## COVID-19 and the Iowa DOT

The COVID-19 pandemic has also affected the Iowa Department of Transportation (DOT). Although the “Iowa DOT rest areas, garages, weigh scales, and administrative offices remain open[,]”<sup>10</sup> as of March 24, 2020, the driver’s license centers are open only for essential services<sup>11</sup> and the person must make an appointment.<sup>12</sup>

On April 2, 2020, the Governor signed a [proclamation](#) due to the COVID-19 pandemic regarding driver’s licenses and motor vehicle registration.<sup>13</sup> This proclamation temporarily suspended some requirements that apply to expired driver’s licenses, expired motor vehicle registrations, and new motor vehicle registrations.<sup>14</sup> If there are any questions as to what provisions have been temporarily suspended or for how long, parties should refer to the Governor’s proclamation(s), [DOT COVID-19 website](#), or call their local driver’s license or motor vehicle registration offices.

## COVID-19 and “Traffic Court”

The Iowa Judicial System has also affected by COVID-19 pandemic. Currently, there are no trials<sup>15</sup>, bench or jury, taking place, which includes trials involving traffic citations. The Court ordered all bench trials that were previously set to be continued “to a date no earlier than June 1.”<sup>16</sup> Any new bench trials will also be set on or after June 1. If a defendant has requested a jury trial, the earliest it can be set is July 13.<sup>17</sup> Despite the suspension of trials, the courts are still conducting initial appearances and law enforcement officers are encouraged to communicate with their County Attorney’s Office to coordinate when to set appearance dates for simple misdemeanor traffic citations.

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<sup>7</sup> <https://whotv.com/news/iowa-state-patrol-sees-an-increase-in-speeding-while-traffic-has-dramatically-decreased/>

<sup>8</sup> <https://www.startribune.com/fatal-crashes-surge-despite-sharp-drop-in-traffic-across-minnesota/569473872/>

<sup>9</sup> <https://www.startribune.com/fatal-crashes-surge-despite-sharp-drop-in-traffic-across-minnesota/569473872/>

<sup>10</sup> <https://iowadot.gov/covid-19/Public-Response>

<sup>11</sup> <https://iowadot.gov/covid-19/Public-Response>

<sup>12</sup> <https://iowadot.gov/covid-19/Public-Response>

<sup>13</sup> <https://governor.iowa.gov/sites/default/files/documents/Public%20Health%20Disaster%20Proclamation%20-%202020.04.02.pdf>

<sup>14</sup> <https://governor.iowa.gov/sites/default/files/documents/Public%20Health%20Disaster%20Proclamation%20-%202020.04.02.pdf>

<sup>15</sup> Unless the trial was already in progress prior to the Iowa Supreme Court’s order suspending trials.

<sup>16</sup> [https://www.iowacourts.gov/static/media/cms/04022020\\_order\\_4CB0361DDD678.pdf](https://www.iowacourts.gov/static/media/cms/04022020_order_4CB0361DDD678.pdf)

<sup>16</sup> [https://www.iowacourts.gov/static/media/cms/04022020\\_order\\_4CB0361DDD678.pdf](https://www.iowacourts.gov/static/media/cms/04022020_order_4CB0361DDD678.pdf)

<sup>17</sup> [https://www.iowacourts.gov/static/media/cms/04022020\\_order\\_4CB0361DDD678.pdf](https://www.iowacourts.gov/static/media/cms/04022020_order_4CB0361DDD678.pdf)

## ON DEMAND WEBINAR: Prosecuting DUI Cases

Prosecuting OWI cases can be tricky, especially if it is your first one. Luckily, the National District Attorneys Association has put together a free [Online Webinar about OWI prosecutions](#).

*This FREE training course is designed to equip prosecutors with the knowledge, information, and confidence necessary to effectively prosecute DUI cases. The course walks the learner through a first-person simulation of preparing for the prosecution of a fictional DUI case. The training uses a compelling storyline, interactive exercises, document mock-ups, and avatar voiceovers to bring the course content to life.*

*Completion of all slides of the content module along with successfully passing a knowledge assessment quiz earns the learner a certificate of completion. This training is self-paced, allowing the learner to move at their own pace to complete the content module in one sitting or via multiple sessions. Estimated time for course completion: approx. 1.5 – 2 hours.<sup>18</sup>*

The program has been approved in Iowa for 2.0 CLE credit hours.<sup>19</sup> One of the benefits of this training is that you can complete this training all at once or start and stop the training over multiple days.<sup>20</sup> I completed this program over multiple days and found it to be a nice refresher. To access the webinar go to:

<https://ndaa.org/training/prosecuting-dui-cases/>

### The Criminal Law Handbook is **HERE**

The newest edition of the [Criminal Law Handbook](#) is ready for release. 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 already done so, please contact Cindy Glick at [Cindy.Glick@ag.iowa.gov](mailto:Cindy.Glick@ag.iowa.gov) and request an order form to keep your copy up to date and working.

Please note, if you already have a CD containing only the [OWI and Traffic Offenses in Iowa](#) manual, this will remain valid until September 2020.

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<sup>18</sup> <https://ndaa.org/training/prosecuting-dui-cases/>

<sup>19</sup> <https://ndaa.org/prosecuting-dui-cases-approved-cle-states/>

<sup>20</sup> <https://ndaa.org/training/prosecuting-dui-cases/>

## Opinions of the Iowa Supreme Court

**Wapello County** [Mark Leonard Milligan v. Ottumwa Police Department and City of Ottumwa, Iowa](#), \_\_\_ N.W.2d \_\_\_ (Iowa 01/03/2020) No. 17-1961. **It is a violation of state and federal law for the City to disclose the vehicle owner’s names when nothing (e.g., a citation) is filed with the court.** After receiving a speeding citation from the City’s automated traffic enforcement (ATE) cameras, Mr. Milligan filed an open record request pursuant to Iowa Code Chapter 22 requesting the names of everyone that were caught speeding by the City’s ATE cameras regardless of whether they were issued a citation. The City denied the request citing the federal Driver’s Privacy Protection Act (DPPA) and Iowa Code section 321.11. The district court subsequently ordered the City to provide the names pursuant to 321.11(2) and the DPPA that allows “disclosure of ‘driving violations.’” The city then appealed. Held, it is a violation of state and federal law for the City to disclose the vehicle owner’s names when nothing (e.g., a citation) is filed with the court. Since the “personal identifying information” requested by Mr. Milligan is obtained from “a vehicle registration and driver’s license database,” disclosure to the public is precluded under state (321.11) and federal (DPPA) law, unless an exception applies. The Iowa Supreme Court also found that Mr. Milligan’s reasons did not meet any of the listed exceptions. Finally, the Iowa Supreme Court noted ATE citations are not considered driving violations.

**Polk County** [Jeremy Hollingshead v. DC Misfits, LLC](#), \_\_\_ N.W.2d \_\_\_ (Iowa 01/17/2020) No. 18-1225. **The plaintiff substantially complied with the notice requirement of intent to bring a dramshop claim.** The plaintiff informed the Founders Insurance of his intent to bring a dramshop claim against Leonard LLC DBA Misfits. Founders Insurance replied to the plaintiff that Leonard LLC had canceled its policy prior to the incident related to the dramshop claim. The plaintiff did not amend the notice to include DC Misfits, LLC. After the plaintiff filed his dramshop petition against DC Misfits, the district court granted DC Misfits motion for summary judgment. Held, motion for summary judgment was not properly granted; the plaintiff substantially complied with the notice requirement of intent to bring a dramshop claim. Although the plaintiff’s notice failed to correctly state the holder of the liquor license, the notice did provide the insurance carrier notification regarding the place, time, circumstances, and it involved a bar “known as Misfits[.]”

**Guthrie County** [State v. Jeffrey Alan Meyers](#), \_\_\_ N.W.2d \_\_\_ (Iowa 01/31/2020) No. 18-2222. **Officers had probable cause to stop the boat because Lake Panorama is not a private lake.** DNR officers stopped a boat on Lake Panorama for displaying blue lights in violation of Iowa Code section 462A.12(4). During the investigation, the officers determined the defendant was intoxicated. The defendant filed a motion to suppress, arguing the officers did not have probable cause to initiate the stop because Lake Panorama was a private lake, and thus section 462A.12(4) was not enforceable. *See* §462A.2; and §462A.12(4). The defendant argued that the Lake Panorama Association (LPA) has installed a barrier “to catch debris” in the area where the river “flows into the lake[.]” Held, officers had probable cause to stop the boat because Lake Panorama is not a private lake. The Court noted that a river flows into and out of the lake. The Court found that the use of a barrier to keep the public from accessing the lake from the river, potentially violating §657.2, does not convert a public lake to a private lake. “The statutory test is whether the lake is *open* to public use or not.” (emphasis in original).

## 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)

**Black Hawk County** [State v. Darieo Equanne Tillman](#), No. 18-1956 (Iowa Court of Appeals, filed January 23, 2020). **It was objectively reasonable for the officer to stop the vehicle to investigate if “the vehicle had a valid license plate.”** After observing a vehicle with no front or rear license plates, a police officer initiated a traffic stop. Once the vehicle stopped, the defendant attempted to exit the passenger side on two occasions, eventually running from the officer. The officer apprehended the defendant and found contraband the defendant had thrown during the chase. After returning to the vehicle, the officer testified he then noticed a temporary license in the rear window. Held, it was objectively reasonable for the officer to stop the vehicle to investigate if “the vehicle had a valid license plate.” See [State v. Lloyd](#), 701 N.W.2d 678 (Iowa 2005).

**Black Hawk County** [State v. Darieo Equanne Tillman](#), No. 18-1956 (Iowa Court of Appeals, filed January 23, 2020). **The officer did not unnecessarily extend the traffic stop.** After observing a vehicle with no front or rear license plates, a police officer initiated a traffic stop. Once the vehicle stopped, the defendant attempted to exit the passenger side on two occasions, eventually running from the officer. The officer apprehended the defendant and found contraband the defendant had thrown during the chase. After returning to the vehicle, the officer testified he then noticed a temporary license in the rear window. Held, the officer did not unnecessarily extend the traffic stop; based on the defendant’s actions, “it was objectively reasonable for the officer’s attention to be directed to [the defendant], rather than an investigation of whether the vehicle had a temporary license.”

**Black Hawk County** [State v. Irvin Johnson Jr.](#), No. 19-0109 (Iowa Court of Appeals, filed March 18, 2020). A conviction for possession of marijuana (124.401(5)) merges with a conviction for “felony eluding while possessing marijuana, in violation of Iowa Code section 321.279(3)(b)[.]”

**Bremer County** [State v. Matthew Joseph Pooock](#), No. 19-0750 (Iowa Court of Appeals, filed February 5, 2020). **Officer had a reasonable suspicion to stop the defendant to investigate a possible impaired driver based off a named citizen’s report.** An identified citizen called 911 and reported: two individuals acting like “idiots”, driving a white Chevy Traverse, had personalized Hawkeye license plates, thought the individuals had been drinking, driving erratically, hit a tree, the occupants appeared to think about running away, and which direction they drove away. The citizen also accurately described the clothing the two individuals were wearing. Although the officer was able to find a white Traverse with Hawkeye plates and corroborate the color of shirts the individuals were wearing, she did not observe any traffic violations before the Traverse parked and the defendant exited the vehicle. The officer then called out to the defendant (driver) and exited her patrol vehicle to speak to him about the citizen’s report. Held, based off the totality of the circumstances, the officer had a reasonable suspicion to stop the defendant to investigate a possible impaired driver based off a named citizen’s report. The court noted that “[a] minor discrepancy involving the license plate number did not defeat the officer’s reasonable suspicion.”

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***Buchanan County State v. Jennifer Brandt***, No. 18-2159 (Iowa Court of Appeals, filed March 18, 2020). **The search of the passenger's purse left in the vehicle was lawful under the automobile exception.** A deputy observed the driver attempt to hide his face when passing a deputy. The deputy later observed driver and the defendant outside the parked vehicle. The deputy approached and asked if the driver had a license. The driver replied no, and the deputy made the decision to give him a citation. When the deputy came near the driver to give him the citation, he observed an odor of alcohol coming from the driver. The driver admitted to drinking and that there were open containers in the back of the vehicle. The deputy searched the vehicle, including the defendant's purse she had left on the passenger side floorboard. Inside the purse, the deputy discovered drug paraphernalia and marijuana. The defendant appealed arguing the search of her purse was unlawful. Held, the search of the purse was lawful under the automobile exception; there was probable cause (odor of alcohol, admission to drinking; admission to open containers in the vehicle) and the vehicle provided the exigent circumstances. "When there is probable cause to search a vehicle, law enforcement may also search any belongings of a passenger in the vehicle that can conceal the object of the search."

***Calhoun County State v. James Allen Wehr***, No. 19-0611 (Iowa Court of Appeals, filed January 23, 2020). Proof the DOT mailed the defendant notice his license was barred is not an element of DWB (driving while barred). *See State v. Williams*, 910 N.W.2d 586 (Iowa 2018).

***Calhoun County State v. James Allen Wehr***, No. 19-0611 (Iowa Court of Appeals, filed January 23, 2020). It is an improper collateral attack to challenge the validity of the DOT's initial barrment during a criminal trial for DWB (driving while barred).

***Calhoun County State v. James Allen Wehr***, No. 19-0611 (Iowa Court of Appeals, filed January 23, 2020). Counsel was not ineffective for failing to collaterally attack the DOT's initial barrment during the defendant's criminal trial for DWB (driving while barred).

***Cedar County State v. Ernest Toby Gaston***, No. 18-1293 (Iowa Court of Appeals, filed March 18, 2020). **The defendant failed to establish he was not competent when he entered his guilty plea.** The defendant pled guilty to eluding and possession of marijuana. The PSI report indicated that the defendant had a learning disability, was unable attain a GED, and cannot manage his finances. After the defendant was sentenced, he appealed arguing that the court failed to determine if he was mentally competent when he pled guilty. Held, the defendant failed to establish he was not competent when he entered his guilty plea; the defendant provided a factual basis for the plea and was not under the influence of drugs or alcohol. The Court of Appeals noted that because the PSI was done after the plea colloquy, it would not consider the information in the PSI; however, even if it did consider the PSI, the defendant still failed to establish he was not competent.

***Carroll County State v. Charles Henry Eberle***, No. 19-0604 (Iowa Court of Appeals, filed February 19, 2020). **The court provided sufficient reasons for the sentence.** Pursuant to a plea agreement, the defendant was sentenced to an indeterminate term of five years in prison for multiple charges, including OWI. As part of the plea agreement, the defendant: waived his right to be present for sentencing, acknowledged the court was not bound by the agreement, and waived his right for the court to state the

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reasons behind the sentence on the record. The defendant appealed, arguing the court failed to state sufficient reasons for the sentence it imposed. Held, the district court provided sufficient reasons for the sentence and did not improperly use “boilerplate language”. Furthermore, “a statement of reasons for the sentence was not required because” the court followed the parties’ plea agreement. *See State v. Snyder*, 336 N.W.2d 728 (Iowa 1983).

**Clay County [State v. Charles Thomas Stoppelmoor](#)**, No. 18-1886 (Iowa Court of Appeals, filed February 5, 2020). **Based off the totality of the circumstances, the officer had reasonable suspicion to investigate.** In the early morning hours, an officer observed the defendant driving under the speed limit and weave in its lane (almost touching the center line then the curb, but the defendant did not commit a traffic violation. The officer followed the defendant to a house that was not the same address as the registered owner of the vehicle. The officer then observed the defendant walk up the porch to the front door, but the defendant did not ring the doorbell or knock. The officer then pulled in behind the defendant’s vehicle, did not block it in, and did not activate the patrol vehicle’s emergency lights. The officer approached the defendant questioning if he was lost and why he did not ring the doorbell. During the questioning, the officer noticed slurred speech, bloodshot eyes, and bad balance. The officer asked the defendant to step down from the porch and talk to him. The officer then started an OWI investigation. The defendant filed a motion to suppress, arguing he was seized without reasonable suspicion when he was ordered down to talk to the officer. Held, the defendant was seized when the officer ordered him to walk down from the porch and talk, but based off the totality of the circumstances, the officer had reasonable suspicion to investigate.

**Clinton County [State v. Robert Mohr](#)**, No. 19-0070 (Iowa Court of Appeals, filed February 5, 2020). **Credible evidence that the defendant crossed the center line, despite the dash cam video not clearly corroborating the officer’s testimony.** An officer testified that he observed the defendant’s vehicle cross the center line in violation of Iowa Code section 321.297(3). The court found the officer’s dash cam video did not clearly show the defendant’s vehicle cross the center line, but the video also did not contradict what the officer testified too. Held, because the dash cam video does not contradict nor corroborates the officer’s testimony, the appellate court does not have “to overturn the facts as found by the district court.” The credible evidence shows the officer had probable cause to initiate a traffic stop for crossing the center line.

**Des Moines County [State v. Joshua I Vansant](#)**, No. 19-0897 (Iowa Court of Appeals, filed March 18, 2020). No abuse in discretion when the sentencing court did not follow the recommendations of the PSI, but stated the reasons why, after the defendant pled guilty to eluding.

**Jasper County [State v. Tiffani Marie Finch](#)**, No. 18-2139 (Iowa Court of Appeals, filed February 19, 2020). **Because the ward did not have authority regarding his property, the ward could not give the defendant consent to use his vehicle.** A probate court ordered a vehicle’s owner, the ward, a guardian and conservator. The probate court did not provide that the ward could make decisions about his property. The vehicle remained titled in the ward’s name. The guardian did not give the defendant permission to use the ward’s vehicle and a law enforcement officer told the defendant she could not use the vehicle without the guardian’s permission. The defendant continued to use the vehicle and was charged with operating without owner’s consent. After the defendant was convicted, she appealed arguing the vehicle’s owner, the ward, gave her permission to use the vehicle. Held, because the vehicle owner was the ward of a guardianship and

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the court had not given the ward “any limited ability to make decisions regarding his property[.]” the ward “did not have the legal ability to consent to [the defendant’s] use of the truck.”

**Jasper County [State v. Jesse Lee Waterland](#)**, No. 19-0076 (Iowa Court of Appeals, filed February 19, 2020). **Under Iowa Rule of Criminal Procedure 2.24(4)(a), the court may allow a motion in arrest of judgment that was filed late.** When the defendant plead guilty to OWI 3<sup>rd</sup> and felony eluding, the court advised him regarding filing a motion in arrest of judgment to attack his guilty plea, including the deadline to file it. The defendant filed a motion in arrest of judgment over six months after he pled guilty. Held, under Iowa Rule of Criminal Procedure 2.24(4)(a), the court may allow a motion in arrest of judgment that was filed late.

**Jasper County [State v. Jesse Lee Waterland](#)**, No. 19-0076 (Iowa Court of Appeals, filed February 19, 2020). **The defendant failed to preserve error by not making the arguments in his motion in arrest of judgment.** The defendant plead guilty to OWI 3<sup>rd</sup> and felony eluding. Prior to sentencing, the defendant filed a motion in arrest of judgment, which was denied. On appeal, the defendant makes multiple arguments that were not in his motion in arrest of judgment. Held, the defendant failed to preserve error by not making the arguments in his motion in arrest of judgment.

**Jasper County [State v. Jesse Lee Waterland](#)**, No. 19-0076 (Iowa Court of Appeals, filed February 19, 2020). **The court did not abuse its discretion when it denied the defendant’s motion in arrest of judgment.** The defendant filed a motion in arrest of judgment after pleading guilty to OWI 3<sup>rd</sup> and felony eluding. The court denied the defendant’s motion and he appealed. Held, the court did not abuse its discretion when it denied the defendant’s motion in arrest of judgment; the defendant failed to argue to the district court that there was not a factual basis as to whether the officer’s vehicle was a “marked” vehicle.

**Linn County [Brandon Lynn Schaul v. State](#)**, No. 18-0799 (Iowa Court of Appeals, filed March 4, 2020). **Trial counsel not ineffective for failing to correct expert’s math error prior to testifying.** The defendant was found guilty by a jury “of homicide by vehicle and serious injury by vehicle while under the influence of alcohol or drugs.” The defendant argued his counsel was ineffective for failing to correct his expert’s math errors prior to the expert testifying. Held, trial counsel was not ineffective, there was overwhelming evidence of the defendant’s impairment.

**Linn County [Brandon Lynn Schaul v. State](#)**, No. 18-0799 (Iowa Court of Appeals, filed March 4, 2020). **Trial counsel not ineffective for failing to exclude medical records as hearsay.** The defendant was found guilty by a jury “of homicide by vehicle and serious injury by vehicle while under the influence of alcohol or drugs.” Prior to trial the defense provided the State the defendant’s medical records. During the trial, the court admitted the medical records over the defendant’s objections. The defendant argued on postconviction that his attorneys were ineffective because the medical records should have been excluded as hearsay. Held, counsel was not ineffective for failing to exclude medical records as hearsay. The defendant failed to establish Strickland prejudice; the court found there was overwhelming evidence of the defendant’s impairment.

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**Linn County [Brandon Lynn Schaul v. State](#)**, No. 18-0799 (Iowa Court of Appeals, filed March 4, 2020). **Trial counsel not ineffective for failing to impugn the other driver.** The defendant was found guilty by a jury “of homicide by vehicle and serious injury by vehicle while under the influence of alcohol or drugs.” The defendant argued on postconviction that his attorneys were ineffective for failing to impugn the other driver during the trial. Held, defense counsel was not ineffective for failing to impugn the other driver; “there is no reasonable probability any impairment of the driver who died would have changed the outcome.”

**Linn County [Brandon Lynn Schaul v. State](#)**, No. 18-0799 (Iowa Court of Appeals, filed March 4, 2020). **Counsel was not ineffective for not objecting to jury instructions referencing “drugs” as a violation of “the Double Jeopardy Clause.”** A jury found the defendant guilty “of homicide by vehicle and serious injury by vehicle while under the influence of alcohol or drugs.” Although the court granted the defendant’s motion for judgment of acquittal with regards to the “‘any amount of a controlled substance’ alternative[,]” the court allowed the jury to consider whether the defendant was impaired by alcohol and drugs. Held, counsel was not ineffective for not objecting to jury instructions referencing “drugs” as a violation of “the Double Jeopardy Clause.”

**Linn County [Brandon Lynn Schaul v. State](#)**, No. 18-0799 (Iowa Court of Appeals, filed March 4, 2020). Trial counsel was not ineffective for failing to argue the State must give an advisory before obtaining a person’s waiver of their 4<sup>th</sup> Amendment rights.

**Linn County [Brandon Lynn Schaul v. State](#)**, No. 18-0799 (Iowa Court of Appeals, filed March 4, 2020). **The defendant was not in custody at the hospital when questioned by law enforcement and his 5<sup>th</sup> Amendment rights were not implicated.** After a crash, the defendant was transported to the hospital due to his injuries. While in the emergency room, the defendant was unable to provide a sufficient sample for the PBT. A deputy then asked the defendant if he had been drinking, which he admitted too. The defendant argued his Fifth Amendment rights were violated. The court looked at the four factors articulated in State v. Countryman, 572 N.W.2d 553, 558 (Iowa 1997) to determine if the defendant was in custody. Held, the defendant’s counsel was not ineffective; the defendant was not in custody and his 5<sup>th</sup> Amendment rights were not implicated.

**Linn County [Brandon Lynn Schaul v. State](#)**, No. 18-0799 (Iowa Court of Appeals, filed March 4, 2020). After a crash, the defendant was transported to the hospital due to his injuries. While in the emergency room and the defendant was unable to provide a sufficient sample for the PBT. A deputy asked the defendant if he had been drinking and he admitted he had been drinking. Held, the defendant’s “Sixth Amendment right to counsel had not attached when he was questioned at the hospital.”

**Osceola County [State v. Amber Marie Grady](#)**, No. 19-0865 (Iowa Court of Appeals, filed March 4, 2020). **The deputy had reasonable suspicion to stop the vehicle because the registered owner was suspended and the deputy was unable to observe the driver prior to the stop.** A deputy stopped a vehicle after discovering through a license plate check that the registered owner’s driver’s license was suspended. When the deputy stopped the vehicle, he was unaware of who was operating the vehicle. During the traffic stop, the defendant informed the deputy she had gotten her license back, but during the conversation, the deputy

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observed signs of impairment. Held, the deputy had reasonable suspicion to stop the vehicle because the registered owner was suspended and the deputy was unable to observe the driver prior to the stop. See State v. Vance, 790 N.W.2d 775 (Iowa 2010); State v. Haas, 930 N.W.2d 699 (Iowa 2019).

*Polk County* State v. James R. Montgomery, No. 18-0945 (Iowa Court of Appeals, filed January 9, 2020). The entire record, including the criminal complaint, provides a factual basis for the defendant's guilty plea to eluding.

*Polk County* State v. Daniel Wayne Ockenfels, No. 18-1721 (Iowa Court of Appeals, filed January 9, 2020). **Even if the initial reason to initiate the traffic stop was unlawful, the defendant's act of committing a new crime, eluding, provided a new reason to arrest him.** After being convicted of multiple crimes, including eluding and DWB (driving while barred), the defendant appealed arguing his counsel was ineffective for failing to file a motion to suppress for an unlawful traffic stop. Held, counsel was not ineffective for failing to challenge the reason the officer attempted to initiate a traffic stop; even if the initial reason to initiate the traffic stop was unlawful, the defendant's act of committing a new crime, eluding, provided a new reason to arrest him.

*Polk County* State v. Justin Lee Erdman, No. 19-0290 (Iowa Court of Appeals, filed January 23, 2020). **Based on the totality of the circumstances, there was probable cause to search the vehicle.** After stopping the defendant's vehicle for a non-function license plate light, officers observed: the passenger door open then close quickly, what appeared to be a rifle in the in the back, pistol magazines, and marijuana on the ground by the passenger door. Law enforcement then searched the defendant's vehicle. Held, based on the totality of the circumstances, there was probable cause to search the vehicle.

*Polk County* State v. Mawea Rial Koat, No. 18-1984 (Iowa Court of Appeals, filed January 23, 2020). **No abuse in discretion in denying motion for new trial.** At trial, an officer testified after he initiated the traffic stop, the defendant: exited the vehicle, walked towards the apartment complex, ignored the officer's orders to stop, refused to answer questions, had an odor of alcohol, refused SFSTs and chemical testing, had slurred speech, and had watery and bloodshot eyes. Held, no abuse in discretion in denying the defendant's motion for new trial; "the verdict was not contrary to the weight of the evidence."

*Polk County* State v. Mawea Rial Koat, No. 18-1984 (Iowa Court of Appeals, filed January 23, 2020). The court correctly used the weight-of-the-evidence standard in denying the defendant's motion for new trial.

*Polk County* State v. Thomas Eugene Calhoun, No. 19-0066 (Iowa Court of Appeals, filed February 5, 2020). "[C]ounsel was not ineffective for failing to move for judgment of acquittal on the basis of insufficient evidence" after the defendant's conviction for OWI 3<sup>rd</sup> and other offenses. The officers' testimony, the defendant's mother's testimony, the HGN test, and video footage provide sufficient evidence to support the defendant's conviction.

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**Polk County [State v. Mohamed Said Diriye](#)**, No. 19-0393 (Iowa Court of Appeals, filed February 5, 2020). **The defendant’s appeal was dismissed due to his failure to return, resulting in a bench warrant being issued.** The defendant appealed his convictions for homicide by vehicle (“reckless driving”), serious injury by vehicle, and OWI 2<sup>nd</sup>. After having been released from custody by posting an appeal bond, the defendant was subsequently ordered to turn himself in. The defendant failed to turn himself in and a warrant was issued while the appeal was still pending. Held, the defendant’s appeal was dismissed due to his failure to return, resulting in a bench warrant being issued. *See* [State v. Dyer](#), 551 N.W.2d 320 (Iowa 1996).

**Polk County [State v. Melanie Anne Holman](#)**, No. 18-0958 (Iowa Court of Appeals, filed March 4, 2020). **“Miranda rights do not apply to a request to submit to chemical testing under implied consent procedures.”** After stopping the defendant for a brake light being out and noticing signs of impairment, the officer conducted an OWI investigation. As a result of the investigation, the defendant was arrested and transported to the jail for chemical testing. On the way to the jail, the defendant requested to have her attorney present. At the jail, the officer read the defendant implied consent and gave her an opportunity to make phone calls prior to making a decision about whether or not to provide a breath sample. After talking to her daughter, the defendant consented and had a BAC of .107. The defendant appealed her conviction, arguing her counsel was ineffective for failing to suppress the breath results because her Miranda rights were violated after she requested to have an attorney present during her ride to the jail. Held, counsel was not ineffective for failing argue the breath sample was obtained in violation of the defendant’s Miranda rights; **“Miranda rights do not apply to a request to submit to chemical testing under implied consent procedures.”**

**Polk County [State v. Melanie Anne Holman](#)**, No. 18-0958 (Iowa Court of Appeals, filed March 4, 2020). The holding in [State v. Pettijohn](#), 899 N.W.2d 1 (Iowa 2017) does not invalidate “the statutory scheme governing implied consent” testing for motor vehicles.

**Poweshiek County [State v. Jenna Lea DeBrower](#)**, No. 19-0071 (Iowa Court of Appeals, filed March 4, 2020). **The officer’s search of the vehicle was not an improper inventory, but a valid warrantless search under the automobile exception.** Law enforcement responded to a gas station because a customer called 911 concerned that the defendant was impaired. The defendant appeared confused, lethargic, groggy, and unclear in her responses to law enforcement. The officers asked the defendant if she would disclose what was in her Crown Royal bag. The defendant then held it upside down, but attempted to conceal some items. After a towel with marks that indicated “drug use fell out of the bag, the officers suspected the bag contained contraband.” The defendant then admitted she had drug paraphernalia and the officers searched the bag and found methamphetamine. The officers also searched the defendant’s vehicle and found alprazolam and hydromorphone pills. Held, the officer’s search of the vehicle was not an improper inventory, but a valid warrantless search under the automobile exception. *See* [State v. Storm](#), 898 N.W.2d 140, 145 (Iowa 2017).

**Poweshiek County [State v. Jenna Lea DeBrower](#)**, No. 19-0071 (Iowa Court of Appeals, filed March 4, 2020). **The defendant was not in custody when she admitted she had drug paraphernalia.** Law enforcement responded to a gas station because a customer called 911 concerned that the defendant was impaired. The defendant appeared confused, lethargic, groggy, and unclear in her responses to law enforcement. The officers asked the defendant if she would disclose what was in her Crown Royal bag. The

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defendant then held it upside down, but attempted to conceal some items. After a towel with marks that indicated “drug use fell out of the bag, the officers suspected the bag contained contraband.” The defendant then admitted she had drug paraphernalia and the officers searched the bag and found methamphetamine. The officers searched the defendant’s vehicle and found alprazolam and hydromorphone pills. Held, after considering the four factors stated in State v. Countryman, 572 N.W.2d 553, 558 (Iowa 1997), the defendant was not in custody when she admitted she had drug paraphernalia.

*Scott County* State v. Randall Brocksieck, No. 17-1718 (Iowa Court of Appeals, filed January 23, 2020). It was not improper for the PSI report to include a recommendation on sentencing.

*Scott County* State v. Randall Brocksieck, No. 17-1718 (Iowa Court of Appeals, filed January 23, 2020). The court did not abuse its discretion in considering the defendant’s living arrangements, criminal history, and employment status when issuing its sentence.

*Scott County* State v. Randall Brocksieck, No. 17-1718 (Iowa Court of Appeals, filed January 23, 2020). As a part of the defendant’s sentence for leaving the scene of an accident resulting in death, the court ordered him to pay court-appointed attorney fees. Held, the court failed to enter a final restitution order; “remand[ed] for a final determination of the amount of restitution and [the defendant’s] reasonable ability to pay.”

*Scott County* State v. Paul A. Garrity, No. 18-1645 (Iowa Court of Appeals, filed March 18, 2020). **Counsel not ineffective; the written guilty plea waived the defendant’s personal appearance and oral plea colloquy.** The defendant entered a written plea of guilty to OWI 2<sup>nd</sup>. After sentencing, the defendant appealed alleging his counsel was ineffective for allowing him to plead guilty without appearing in person and orally establishing a factual basis. Held, counsel not ineffective; the written guilty plea waived the defendant’s personal appearance and the requirement for an oral plea colloquy.

*Scott County* State v. Paul A. Garrity, No. 18-1645 (Iowa Court of Appeals, filed March 18, 2020). **No abuse in discretion for denying an untimely motion in arrest of judgment.** The defendant entered a written plea of guilty to OWI 2<sup>nd</sup>. The defendant filed a motion in arrest of judgment on the day scheduled for sentencing. The trial court denied the defendant’s motion as untimely and he appealed arguing the trial court abused its discretion. Held, the trial did not abuse its discretion in denying the defendant’s untimely motion in arrest of judgment.

*Scott County* State v. Paul A. Garrity, No. 18-1645 (Iowa Court of Appeals, filed March 18, 2020). **The trial court did not violate the defendant’s due process rights.** The defendant entered a written plea of guilty to OWI 2<sup>nd</sup> and “waived his right to an in-court colloquy[.]” After sentencing, the defendant appealed arguing he did not knowingly, intelligently, and voluntarily plead guilty, violating his due process rights. Held, Rule 2.8(2)(b) was complied with and the trial court did not violate the defendant’s due process rights.

*Scott County* State v. Paul A. Garrity, No. 18-1645 (Iowa Court of Appeals, filed March 18, 2020). **The penalty for delinquent payments is a collateral consequence.** The defendant entered a written plea of guilty to OWI 2<sup>nd</sup>. The sentencing order was the first time the defendant was notified that if he was

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delinquent on payments there was a 25% penalty. The defendant appealed arguing the failure to notify him violated due process and Rule 2.8(2). Held, because the penalty for delinquent payments is a collateral consequence, there was no violation of Rule 2.8(2) or due process.

**Sioux County** [State v. Michael Wayne Van Essen Jr.](#), No. 18-2237 (Iowa Court of Appeals, filed January 9, 2020). **Iowa Rule of Criminal Procedure 2.23(3)(d) does not apply when a defendant's probation is revoked; the court just needs provide a factual basis to support the revocation.** After the court revoked the defendant's deferred judgment for eluding and sentenced him, he appealed. Held, the court's order established a factual basis to revoke the defendant's probation and it provided sufficient reasons to support the subsequent sentence. Iowa Rule of Criminal Procedure 2.23(3)(d) does not apply when a defendant's probation is revoked; the court just needs provide a factual basis to support the revocation. However, Rule 2.23(3)(d) does apply to the sentence issued after the revocation.

**Sioux County** [State v. Michael Wayne Van Essen Jr.](#), No. 18-2237 (Iowa Court of Appeals, filed January 9, 2020). **Iowa Rule of Criminal Procedure 2.23(3)(d) does apply to the sentence issued after the revocation.** After the court revoked the defendant's deferred judgment for eluding and sentenced him, he appealed. Held, the court's order established a factual basis to revoke the defendant's probation and it provided sufficient reasons to support the subsequent sentence. Iowa Rule of Criminal Procedure 2.23(3)(d) does not apply when a defendant's probation is revoked; the court just needs provide a factual basis to support the revocation. However, Rule 2.23(3)(d) does apply to the sentence issued after the revocation.

**Union County** [State v. Donovan Michael Lee Helms Houghmaster](#), No. 17-1847 (Iowa Court of Appeals, filed March 4, 2020). **The defendant failed to preserve error regarding the risk assessment tools in the PSI.** The defendant pled guilty to multiple charges, including theft of a motor vehicle. The defendant later appealed arguing the court's use of the risk assessment tools in the PSI was improper. Held, the defendant failed to preserve error regarding the risk assessment tools in the PSI and the Court of Appeals declined to address the issue. Furthermore, "the tools were statutorily authorized as 'pertinent information' to sentencing under Iowa Code section 901.5[.]" See [State v. Headley](#), 926 N.W.2d 545 (Iowa 2019).

**Story County** [State v. Grason Trever Lansman](#), No. 19-0537 (Iowa Court of Appeals, filed March 4, 2020). **The officer's mistake of fact as to when the defendant's vehicle was manufactured was objectively reasonable in light of the conditions of the traffic stop.** In the early morning hours, an officer stopped the defendant's vehicle for not having a working center brake light in violation of Iowa Code section 321.387. The officer thought the defendant's vehicle was modern enough to require a center brake light; however, the officer did not know at the time of the stop that the vehicle was manufactured before 1994 and not required to have a center brake light. During the traffic stop, the officer discovered the defendant's license was barred. The defendant appealed, arguing the officer unlawfully seized him because there was no probable cause or reasonable suspicion to initiate the traffic stop. Held, the officer's mistake of fact as to when the defendant's vehicle was manufactured was objectively reasonable in light of the conditions of the traffic stop (dark and similarly looking vehicle models).

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**Union County** [State v. Donovan Michael Lee Helms Houghmaster](#), No. 17-1847 (Iowa Court of Appeals, filed March 4, 2020). No abuse in discretion with the sentencing court took into account the PSI's sentencing recommendation. *See* [State v. Headley](#), 926 N.W.2d 545 (Iowa 2019).

**Warren County** [State v. Joseph Jackson Howard](#), No. 18-2171 (Iowa Court of Appeals, filed January 23, 2020). **A malfunctioning headlight gives law enforcement probable cause to initiate a traffic stop.** A law enforcement officer observed a headlight that was either not working or not functioning properly (dimmer than what it was designed to be) and initiated a traffic stop. Held, a malfunctioning headlight gives law enforcement probable cause to initiate a traffic stop.

**Warren County** [State v. Jamie Enrique Lopez Gonzalez](#), No. 19-0081 (Iowa Court of Appeals, filed March 4, 2020). **The defendant's question ("My wife, she gonna come?") just prior to entering the jail required the trooper to advise him regarding his 804.20 rights.** After a traffic stop and subsequent OWI investigation, the defendant was transported to the jail, which was inside the courthouse, for a chemical test. As they walked towards the elevator, the defendant asked the trooper "My wife, she gonna come?" The trooper responded to the effect that he may want to call her later. Inside the jail, the defendant did not make any other requests to contact anyone and the trooper did not advise him about his 804.20 rights. The defendant then tested .122. Held, the defendant's question "should have been reasonably construed as a request to communicate with his wife or see his wife" and he should have been advised about his 804.20 rights. The Court of Appeals reversed remanded the case for a new trial with the suppression of the chemical test results.

**Winneshiek County** [State v. Gregory Doorene Winter](#), No. 18-2033 (Iowa Court of Appeals, filed March 4, 2020). **Counsel was not ineffective for allowing the defendant to plead guilty; minutes of testimony established the factual basis.** The defendant pled guilty to driving while revoked. The defendant later appealed arguing there was not a factual basis to support his conviction. Held, the minutes of testimony established a factual basis to support the defendant's plea of guilty; counsel was not ineffective.

**Woodbury County** [State v. Jesus Delgado-Jimenez](#), No. 19-0746 (Iowa Court of Appeals, filed January 9, 2020). **A drug dog's alert on the vehicle establishes probable cause and the inherent mobility of the vehicle satisfies the exigent circumstances requirement of the automobile exception.** An officer ran his drug dog around a vehicle parked in convenience store parking lot. The drug dog alert on the vehicle and a subsequent search revealed drugs. The defendant was subsequently charged with DWS (driving while license suspended) and possession of a controlled substance 3<sup>rd</sup> offense. The defendant's motion to suppress the vehicle search was granted and the state appealed arguing the automobile exception applied. The automobile exception has two prongs: (1) probable cause, and (2) exigent circumstances. [State v. Storm](#), 898 N.W.2d 140, 145 (Iowa 2017). Held, a drug dog's alert on the vehicle establishes probable cause and the inherent mobility of the vehicle satisfies the exigent circumstances requirement. *See* [State v. Bergmann](#), 633 N.W.2d 328, 338 (Iowa 2001); *See also* [State v. Storm](#), 898 N.W.2d 140 (Iowa 2017).

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### 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.

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