



HIGHWAY SAFETY

LAW UPDATE



February 6, 2020 Office of the Prosecuting Attorneys Training Coordinator Oct/Nov/Dec 2019

Changes at PATC

Starting February 10, 2020, the PATC division welcomes a new coordinator, Jessica Reynolds. Ms. Reynolds comes to the Iowa Attorney General's Office from the Story County Attorney's Office. Ms. Reynolds started in the Story County Attorney's Office in 2008 and has been the Story County Attorney since 2016. Prior



to becoming the Story County Attorney, Ms. Reynolds was an assistant at the county attorney's offices in Story, Kossuth, and Warren. Ms. Reynolds graduated from the Drake University Law School.

Ms. Reynolds is replacing Tom Ferguson, who retired on December 30, 2019. Mr. Ferguson had been the Prosecuting Attorneys Training Coordinator since June 2015. Prior to the Iowa Attorney General's Office, Mr. Ferguson was the Black Hawk County Attorney for approximately 25 years. The PATC staff wishes Mr. Ferguson all the best in his retirement.

County Spotlight – Audubon County

The fifth county spotlight is on Audubon County. Audubon is the biggest town in Audubon County and sits on Highway 71. According to the 2010 census, Audubon County has a population of 6,119.¹

Sarah Jennings is the Audubon County Attorney. Ms. Jennings is a part-time county attorney and there are no assistant county attorneys in the office. Ms. Jennings has been the Audubon County Attorney for approximately two years. Ms. Jennings also serves as the juvenile attorney

in Cass County. Prior to becoming the Audubon County Attorney, Ms. Jennings was an assistant Pottawattamie County Attorney and she also worked in the Johnson County Attorney's Office. Ms. Jennings graduated from Arizona State University in Business and then attended the University of Iowa Law School where she also obtained a master's degree in counseling. Through Ms. Jennings' tireless work, she has obtained a grant to support a victim services coordinator and therapy dog for victims.

Todd Johnson is the Audubon County Sheriff. Sheriff Johnson has been with the Audubon County Sheriff's Office for approximately 31 years, approximately 20 years as sheriff. The Audubon County Sheriff's Office consists of 5 sheriff deputies, 4 full-time dispatchers, and 1 part-time dispatcher. Due to the size of the office, all deputies and dispatchers are crossed trained as jailers. The Audubon County Sheriff's Office recently lost its outstanding drug dog and they look forward to getting another drug dog in the near future.

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¹

<https://www.census.gov/quickfacts/fact/table/auduboncountyiowa,IA/PST045218>

County Spotlight – Audubon County cont.

The City of Audubon also has a police department led by Chief of Police Matt Starmer. Chief Starmer has been a police officer for 23 years, the last 5 years as chief. The Audubon Police Department has 4 full-time officers, including the chief, and 9 part-time officers. The Audubon Police Department has participated in the DARE program for the past 13 years. The DARE program has been successful in building a great relationship between students and the police department.

In 2018, there were 759 traffic convictions² and 18 OWI convictions in Audubon County according to Division of Criminal & Juvenile Justice Planning³.

Traffic Fatalities Down, Self-reported Impaired Driving Up

Since 1975, traffic fatalities have dropped from 670 to 330 in 2017, a 51% decrease.⁴ From 2016 to 2017, the United States saw a 2% decrease in traffic fatalities.⁵ During this same period, Iowa saw an 18% reduction in traffic fatalities (402 fatalities in 2016; 330 fatalities in 2017).⁶ Of the 330 traffic fatalities in Iowa in 2017, 70 (21%) of them were classified as speeding related.⁷

Despite this reduction in traffic fatalities, the Center for Disease Control and Prevention reported in its December 20, 2019 Morbidity and Mortality Weekly Report⁸ (MMWR) that 12 million people, 16 years or older, self-reported “driving under the influence of marijuana” during 2018.⁹ The highest reported age group to drive under the influence of marijuana was 21-25 years old and was followed by 16-20 years old.¹⁰ Finally it should be noted that 20.5 million people “reported driving under the influence of alcohol in 2018[.]”¹¹

Vehicle Safety Recalls Week

One way to keep our highways safe is to make sure your vehicle does not have any defects. Vehicle recalls are important. Vehicle recalls are issued for: vehicles, air bags, car seats, tires, and other equipment.¹² This coming March 2-6, 2020 is Vehicle Safety Recalls Week.¹³ Go to nhtsa.gov/recalls to see if there are any recall notices for your vehicle.



² “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.”

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

⁴ <https://disposedcharges.iowa.gov/>

⁵ <https://crashstats.nhtsa.dot.gov/Api/Public/ViewPublication/812806>

⁶ <https://crashstats.nhtsa.dot.gov/Api/Public/ViewPublication/812806>

⁷ <https://crashstats.nhtsa.dot.gov/Api/Public/ViewPublication/812806>

⁸ The MMWR “provide[d] the most recent national estimates of self-reported driving under the influence of marijuana and illicit drugs among persons aged ≥16 years, using 2018 public-use data from the NSDUH [(National Survey on Drug Use and Health)].”

⁹ <https://www.cdc.gov/mmwr/volumes/68/wr/pdfs/mm6850a1-H.pdf>

¹⁰ <https://www.cdc.gov/mmwr/volumes/68/wr/pdfs/mm6850a1-H.pdf>

¹¹ <https://www.cdc.gov/mmwr/volumes/68/wr/pdfs/mm6850a1-H.pdf>

¹² https://www.nhtsa.gov/recalls?_ga=2.61521449.405189236.1580501537-1047216216.1567194074

¹³ <https://www.trafficsafetymarketing.gov/get-materials/vehicle-safety/recalls-safety-campaign>

The Time to Reorder Criminal Law Handbook is **NEAR**

The newest edition of the Criminal Law Handbook is almost 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. Please contact Cindy Glick at 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.

Opinions of the Iowa Supreme Court

Johnson State v. Juan Daniel Salcedo, ___ N.W.2d ___ (Iowa 11/08/2019) No. 18-1353. **No reasonable suspicion to extend the traffic stop.** In responding to an unrelated call, a deputy came upon the defendant driving in the left lane on the interstate and traveling approximately 60 mph in a 70 mph zone. The deputy stopped the defendant after he failed to move into the right lane to allow the deputy to pass (a violation of Iowa Code section 321.297(2)). The deputy asked the defendant to accompany the deputy to the patrol vehicle because of the loud traffic and cold weather. Once inside the patrol car, the deputy asked the defendant about his travel plans. During their interaction, the deputy “put forth no effort to process the traffic infraction”. Approximately seven minutes after the traffic stop was initiated, another deputy arrived. The first deputy was disappointed when told a drug dog was not available, but stated he was going to request consent to search the vehicle. The deputy then went and spoke to the passenger of the vehicle. While talking with the passenger, the deputy noticed a lot of luggage was in the back seat and there were three cellphones visible, despite only two occupants. The deputy then returned to the patrol car and questioned the defendant more. During the questioning, the defendant stated “you can do what you got to do.” The deputy then clarified that the defendant was giving consent to search. Fourteen minutes after the traffic stop was initiated, the deputy then searched the vehicle and found 82 pounds of marijuana. The deputy never asked the defendant about the reason for the traffic stop and did not prepare a traffic citation or warning. The defendant’s motion to suppress the traffic stop was denied and he appealed. Held, the deputy unreasonably prolonged the traffic stop in violation of the 4th Amendment. In the present case, law enforcement did not develop reasonable suspicion of other criminal activity prior to extending the traffic stop. *See United States v. Beck*, 140 F.3d 1129 (8th Cir. 1998). Law enforcement may check a driver’s license, registration, and insurance. Law enforcement may also obtain the identification of any passengers, inquire about the occupants’ destination, but their goal must be to process the reason for the stop (traffic infraction) as quickly as possible, unless they develop reasonable suspicion of other wrongdoing. *United States v. Murillo-Salgado*, 854 F.3d 407, 415 (8th Cir. 2017) (*quoting United States v. Peralez*, 526 F.3d 1115, 1119 (8th Cir. 2008)); *See Rodriguez v. United States*, 575 U.S. ___, ___, 135 S.Ct. 1609, 1614 (2015).

Boone County State v. Kari Lee Fogg, ___ N.W.2d ___ (Iowa 12/20/2019) No. 18-0483. **The defendant had the ability to drive away and was not seized when approached by a law enforcement officer.** After a law enforcement officer observed the defendant driving slowly in a residential area, turn down an alley, and park in the middle of the alley, the officer entered the other end of the alley and parked approximately twenty feet in front of the defendant's vehicle. The law enforcement officer then exited the vehicle, but did not activate the patrol vehicle's emergency lights. Despite the position of the officer's vehicle, the defendant could have backed out of the alley or turned around in a driveway. When the officer approached the defendant, she opened her door and the officer asked if she was okay, but he did not retrieve his firearm, his voice was calm and casual, and did not physically touch the defendant. The officer noticed an odor of alcoholic beverage and other signs of intoxication. After an investigation, the defendant was charged and

convicted of OWI. The defendant filed a motion to suppress, arguing that she was seized by the officer when he approached her in the alley without reasonable suspicion. Held, under the totality of the circumstances (parked approximately twenty feet away, approached on foot, and no emergency lights) the defendant was not seized. *See also* State v. Wilkes, 756 N.W.2d 838 (Iowa 2008); *See also* State v. Harlan, 301 N.W.2d 717 (Iowa 1981); *C.f.* State v. Kurth, 813 N.W.2d 270 (Iowa 2012); *C.f.* State v. White, 887 N.W.2d 172 (Iowa 2016). The officer “was not doing something a private person could not have done.”

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)

Appanoose County State v. Cliff Allen Lowe, No. 18-0899 (Iowa Court of Appeals, filed December 18, 2019). Counsel was not ineffective for failing to challenge state and federal precedent regarding: (1) the legality of pretextual stops, and (2) mere passengers (no possessory or ownership interest in the vehicle) do not have standing to challenge the search of the vehicle.

Black Hawk County State v. Michael David Dawson, No. 18-0862 (Iowa Court of Appeals, filed November 6, 2019). **The defendant’s pro se motions for new trial failed to provide “sufficient information to grant a new trial.”** After a jury found the defendant guilty of multiple charges, including driving while barred (DWB) and eluding, he filed a pro se motion for new trial, which was denied. Held, the defendant’s pro se motions for new trial failed to provide “sufficient information to grant a new trial.”

Black Hawk County State v. Marlon Derell Harris, Jr., No. 18-0323 (Iowa Court of Appeals, filed November 27, 2019). There was substantial evidence that the defendant took the victim’s truck and had removed items from the truck into an apartment building; defendant’s conviction for 2nd degree theft affirmed.

Cerro Gordo County State v. Deirdre Laine Witham, No. 18-1548 (Iowa Court of Appeals, filed December 18, 2019). After the defendant plead guilty to OWI 3rd, the court found she had “the reasonable ability to pay” despite not having the final amount of restitution. Held, the court shall only decide the defendant’s ability to pay restitution once there is a final amount of restitution. State v. Albright, 925 N.W.2d 144, 159 (Iowa 2019). The order of restitution was vacated and that portion of the sentencing order was remanded.

Fremont County State v. Robert Evan Bruce, No. 18-2151 (Iowa Court of Appeals, filed November 27, 2019). **No abuse in discretion in excluding the evidence that the victim was not wearing a seatbelt.** The defendant was driving around while drinking with multiple passengers, including the victim, when his vehicle went into a ditch and caused serious injuries to the victim. The victim was not wearing a seatbelt. Prior to trial, the court granted the state’s motion in limine excluding “any evidence regarding seatbelts.” The defendant appealed arguing the victim’s failure to wear a seatbelt was the reason for her injuries. Held, no abuse in discretion when the district court excluded the evidence that the victim was not wearing a seatbelt. “[T]he law only requires the defendant’s act to cause the harm. Whether or not [the victim] would have had a ‘serious’ injury with the seatbelt on is irrelevant to [the defendant’s] conduct.” The defendant’s “conduct need only have been one factual cause of the harm[.]” “Whether [the victim] was wearing a

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seatbelt or not is irrelevant—it does not make it more or less probable that [the defendant’s] conduct was a factual cause.”

Guthrie County State v. Vickie Jo Williams, No. 18-1735 (Iowa Court of Appeals, filed November 27, 2019). **No seizure when the deputy walked up and questioned the defendant.** When the deputy stopped behind the car the defendant was in, the car was already parked, he did not turn on his lights, and he parked in a way to give the defendant a path to leave. The deputy then approached the vehicle and inquired what the defendant was doing. Held, the defendant was not seized when the deputy walked up to her car and started questioning her.

Guthrie County State v. Vickie Jo Williams, No. 18-1735 (Iowa Court of Appeals, filed November 27, 2019). **The defendant was not seized when the deputy ordered her to sit in his patrol vehicle.** A deputy observed the defendant in a car parked in a cell phone tower parking lot in a remote area. The deputy stopped behind the car the defendant was in, did not turn on his lights, and parked in a way to give the defendant a path to leave. The deputy then approached the vehicle and inquired what the defendant was doing. The deputy had the defendant exit the vehicle due to her evasive answers. The deputy then instructed the defendant to sit in the front of his patrol vehicle. Held, the defendant was not seized when the deputy ordered her to sit in his patrol vehicle. *See State v. Aderholdt*, 545 N.W.2d 559, 563-564 (Iowa 1996).

Guthrie County State v. Vickie Jo Williams, No. 18-1735 (Iowa Court of Appeals, filed November 27, 2019). **Even if the defendant was seized when the deputy ordered her to sit in his patrol vehicle, the deputy had reasonable suspicion to justify asking her more questions.** A deputy observed the defendant in a car parked in a cell phone tower parking lot in a remote area. The deputy stopped behind the car the defendant was in, did not turn on his lights, and parked in a way to give the defendant a path to leave. The deputy then approached the vehicle and inquired what the defendant was doing. The deputy had the defendant exit the vehicle due to her evasive answers. The deputy then instructed the defendant to sit in the front of his patrol vehicle. Held, even if the defendant was seized when the deputy ordered her to sit in his patrol vehicle, the deputy had reasonable suspicion to justify asking her more questions. *See State v. Smith*, 683 N.W.2d 542, 546 (Iowa 2004). The defendant was in a remote area at night, was known to use drugs, did not have a valid license, was sitting in the driver’s seat, and the only person in the vehicle.

Guthrie County State v. Vickie Jo Williams, No. 18-1735 (Iowa Court of Appeals, filed November 27, 2019). **The defendant was not in custody after the deputy ordered her to sit in his patrol vehicle and then asked her further questions.** A deputy observed the defendant in a car parked in a cell phone tower parking lot in a remote area. The deputy stopped behind the car the defendant was in, did not turn on his lights, and parked in a way to give the defendant a path to leave. The deputy then approached the vehicle and inquired what the defendant was doing. The deputy had the defendant exit the vehicle due to her evasive answers. The deputy then instructed the defendant to sit in the front of his patrol vehicle and asked her further questions. Held, the defendant was not in custody after the deputy ordered her to sit in his patrol vehicle and then asked her further questions.

Lee (South) County State v. Jeremy James Davolt, No. 18-0269 (Iowa Court of Appeals, filed October 9, 2019). No abuse in discretion when the sentencing court considered the PSI recommendation when sentencing the defendant. *State v. Headley*, 926 N.W.2d 545 (Iowa 2019).

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Lee (South) County [State v. Jeremy James Davolt](#), No. 18-0269 (Iowa Court of Appeals, filed October 9, 2019). The defendant's "counsel was not ineffective for failing to object to the court's consideration of the PSI sentencing recommendation."

Lee (South) County [State v. Jeremy James Davolt](#), No. 18-0269 (Iowa Court of Appeals, filed October 9, 2019). **The court cannot order the defendant to pay jail fees until it determines whether the defendant has a reasonable ability to pay.** The defendant pled guilty to leaving the scene of an accident and involuntary manslaughter and was sentenced. The court later ordered him to pay jail fees if he did not file an objection within thirty days. Held, the court cannot order the defendant to pay jail fees until it determines whether the defendant has a reasonable ability to pay. See [State v. Albright](#), 925 N.W.2d 144 (Iowa 2019). Remanded.

Linn County [State v. Ricky Timothy Williams](#), No. 18-1640 (Iowa Court of Appeals, filed October 9, 2019). **A defendant does not have to be advised he may be responsible for attorney fees.** The defendant pled guilty to multiple crimes, including attempting to elude. The defendant appealed after the court ordered him to pay attorney fees, arguing his guilty plea was not informed because he was not advised when he pled guilty he would have to pay attorney fees. Held, the court does not have to advise the defendant he would be responsible for attorney fees, because attorney fees are compensatory, not punishment. See [State v. Fisher](#), 877 N.W.2d 676 (Iowa 2016).

Linn County [State v. Derek Morrison](#), No. 18-1685 (Iowa Court of Appeals, filed October 23, 2019). Eluding requires "a factual basis that [the defendant] was pursued by a vehicle 'driven by a uniformed peace officer,' as required by Iowa Code section 321.279(3)." The defendant's conviction was vacated and the remanded to give the State the opportunity to show a factual basis.

Polk County [State v. Carson Bruce Sinclair, Jr.](#), No. 18-0754 (Iowa Court of Appeals, filed October 23, 2019). **There was sufficient evidence to show the defendant willfully failed to stop his motorcycle and eluded law enforcement.** The defendant ran a stop sign, looked back at the law enforcement officer, the officer activated his lights and sirens, the defendant drove between vehicles, and drove over 100 mph.

Polk County [State v. Rudy Danilo Depaz Colocho](#), No. 18-1643 (Iowa Court of Appeals, filed November 6, 2019). "[T]he officer's delayed advisory of [the defendant's] rights satisfied the purpose of section 804.20" and the test refusal was properly admitted. After stopping the defendant's vehicle to conduct an OWI investigation, the defendant indicated he needed to use the bathroom before he would consider performing any standard field sobriety tests (SFSTs). The officer handcuffed the defendant, transported him to the police station, and allowed him to use the bathroom. When the defendant finished, the officer requested the defendant perform the SFSTs in the police station, but the defendant asked to call an attorney. The officer refused the defendant's request to call an attorney. The defendant then refused to perform the SFSTs and the PBT. The officer then arrested the defendant. The officer read the defendant his 804.20 rights, provided him with his cellphone and phone book, but he did not make any phone calls. The officer then invoked implied consent and the defendant refused to provide a breath sample. The defendant filed a motion to suppress arguing that his 804.20 rights were violated from the point he initially requested to contact an attorney. The District Court found the defendant's 804.20 rights were violated when he initially requested to contact and attorney, but the State cured the violation when the officer later advised the

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defendant of his 804.20 rights and gave him the opportunity to make phone calls. The District Court suppressed everything from the initial request until the defendant was advised of his 804.20 rights and the defendant appealed. Held, “the officer’s delayed advisory of [the defendant’s] rights satisfied the purpose of section 804.20” and the test refusal was properly admitted. Furthermore, the Court found that “any violation was harmless error” due to the evidence of the defendant’s poor driving and the officer’s observations. It should be noted that the Court of Appeals did not make a finding on whether “the district court properly found an initial violation of section 804.20.”

Polk County [State v. Alexander William Bertrand](#), No. 19-0250 (Iowa Court of Appeals, filed December 18, 2019). **Time of day, slow driving, and weaving within the driver’s own lane may be considered in determining whether there was reasonable suspicion to stop a vehicle.** In the early morning, an officer observed the defendant’s vehicle: touch the center line, almost weave within in its lane for approximately seven blocks, driving almost half of the posted speed limit, and nearly swerve into a passing vehicle. Held, based on the totality of the circumstances, the officer had reasonable suspicion to initiate a traffic stop.

Polk County [State v. Lynne Ann Gillen](#), No. 18-1299 (Iowa Court of Appeals, filed December 18, 2019). The court shall only decide the defendant’s ability to pay restitution once it “has all the items of restitution before it[.]” [State v. Albright](#), 925 N.W.2d 144, 159 (Iowa 2019). The order of restitution was vacated and that portion of the sentencing order was remanded.

Polk County [State v. Jhamond McMullen](#), No. 18-2249 (Iowa Court of Appeals, filed December 18, 2019). **The officer was qualified to detect the smell of marijuana and his observation of marijuana coming from the vehicle “established probable cause for the search.”** After stopping a vehicle for not having its headlights on after dark, the officer smelled an odor of marijuana coming from the driver’s side window. The officer testified about his qualifications regarding the smell of marijuana. Held, the officer was qualified to detect the smell of marijuana and his observation of marijuana coming from the vehicle “established probable cause for the search.”

Polk County [State v. Jhamond McMullen](#), No. 18-2249 (Iowa Court of Appeals, filed December 18, 2019). **There was substantial evidence that the defendant was in constructive possession of the drugs in the vehicle.** The defendant’s vehicle was stopped for not having its headlights on after dark. The defendant was in the passenger seat. After a search of the car, officers found drugs within reach of the defendant, he had made furtive movements in the car, he had a large amount of money on him, he had what appeared to be pieces of marijuana on his shirt, and his story about the vehicle was different from the driver’s story. Held, there was substantial evidence that the defendant was in constructive possession of the drugs in the vehicle.

Polk County [State v. Donnie Ray Thurman](#), No. 18-1806 (Iowa Court of Appeals, filed December 18, 2019). The court’s selection of some, but not all sentencing factors on its form order demonstrates that the court used its discretion when sentencing the defendant for driving while barred (DWB).

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Scott County [State v. Logan Shoemaker](#), No. 18-1382 (Iowa Court of Appeals, filed October 9, 2019). **Sufficient evidence of specific intent established.** After the defendant fled the scene in a stolen garbage truck, he crashed into a parked police vehicle causing serious injury to the chief of police who was standing behind the parked vehicle. The defendant was then convicted of willful injury causing serious injury, robbery in the first degree, and attempted murder. Held, there was sufficient evidence to show the defendant had the specific intent “to cause the death and serious injury of Chief Behning when [he] crashed the garbage truck into the service vehicle.”

Scott County [State v. Untril D. Overstreet](#), No. 18-0606 (Iowa Court of Appeals, filed December 18, 2019). **No abuse in discretion in denying the motion to continue.** Less than a week before trial, the defendant agreed to waive his right to a jury trial only if his trial would not be delayed. After the court granted the waiver, defense counsel advised the court she failed to file a motion to suppress and due to the upcoming trial date did not have time to file one. The court asked the defendant if he wanted a continuance so his attorney could file a motion to suppress. The defendant did not tell the court he wanted a continuance and the trial remained set. The morning of trial, the defendant requested a continuance in order to file a motion to suppress. The continuance was denied. Held, no abuse in discretion in denying the motion to continue.

Scott County [State v. Untril D. Overstreet](#), No. 18-0606 (Iowa Court of Appeals, filed December 18, 2019). Counsel was not ineffective for failing to challenge established precedent regarding the legality of pretextual stops. See [State v. Brown](#), 930 N.W.2d 840 (Iowa 2019) (Pretextual stops are constitutional under section 1, article 8 of the Iowa Constitution).

Story County [State v. Eddy Shami Muligande](#), No. 18-0988 (Iowa Court of Appeals, filed October 9, 2019). **Sentence did not violate prohibitions against cruel and unusual punishment.** The defendant was sentenced to consecutive one-year jail sentences after pleading guilty to two counts of public intoxication 2nd offense. The defendant appealed, arguing that the sentence “violates the prohibitions of cruel and unusual punishment[.]” Held, the defendant’s sentence did not violate the prohibitions on cruel and unusual punishment; “not ‘grossly disproportionate’ to the ‘gravity’ of his crimes.” [State v. Wickes](#), 910 N.W.2d 554, 572 (Iowa 2018).

Woodbury County [State v. Ivie Thomas Popplewell III](#), No. 18-1647 (Iowa Court of Appeals, filed October 9, 2019). **No requirement under section 714.1(4) to show the defendant intended to permanently deprive the owner.** The defendant pled guilty to theft 2nd (exercising control over a stolen vehicle) under Iowa Code section 714.1(4). The defendant then appealed arguing his counsel was ineffective for letting him plead guilty without a factual basis (the defendant claimed there was no evidence he intended to permanently deprive the owner). Held, no ineffective assistance of counsel; under section 714.1(4), there is no requirement to show the defendant intended to permanently deprive the owner.

Worth County [State v. Ryan Bradley Tostenson](#), No. 19-0014 (Iowa Court of Appeals, filed October 9, 2019). **Under Iowa Code section 321.266(2), when the only damage is property damage, the defendant did not have to stay at the scene of a crash, even if it resulted in damages of \$1500 or more.** An off-duty officer observed the defendant’s vehicle strike a light pole in parking lot, leave that parking lot, and park in a different lot. The off-duty officer observed the damage to the light pole, obtained the defendant’s license plate number and then contacted dispatch. The defendant left in his vehicle prior to an on-duty

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officer arriving. The off-duty officer informed the on-duty officer which way the defendant left. The on-duty officer eventually found and initiated a traffic stop on the defendant's vehicle. The traffic stop led to the defendant being charged with OWI. The defendant's motion to suppress, arguing the officer did not have reasonable suspicion or probable cause to stop his vehicle, was denied. The defendant then appealed. Held, under Iowa Code section 321.266(2), when the only damage was property damage, the defendant did not have to stay at the scene of a crash, even if it resulted in damages of \$1500 or more; the defendant had 72 hours to report it to the Iowa DOT.

Worth County [State v. Ryan Bradley Tostenson](#), No. 19-0014 (Iowa Court of Appeals, filed October 9, 2019). **Iowa Code section 321.288(1) (failure to maintain control) requires the offense to have occurred on a public highway, and under section 321.228, a parking lot is not a public highway.** An off-duty officer observed the defendant's vehicle strike a light pole in parking lot, leave that parking lot, and park in a different lot. The off-duty officer observed the damage to the light pole, obtained the defendant's license plate number and then contacted dispatch. The defendant left in his vehicle prior to an on-duty officer arriving. The off-duty officer informed the on-duty officer which way the defendant left. The on-duty officer eventually found and initiated a traffic stop on the defendant's vehicle. The traffic stop led to the defendant being charged with OWI. The defendant's motion to suppress, arguing the officer did not have reasonable suspicion or probable cause to stop his vehicle, was denied. The defendant then appealed. Held, because the defendant did not violate Iowa Code section 321.288 (failure to maintain control), the officer did not have reasonable suspicion or probable cause to imitate a traffic stop. Section 321.288(1) requires the offense to have occurred on a public highway, and under section 321.228, a parking lot is not a public highway. *See State v. Sims*, 173 N.W.2d 127 (Iowa 1969).

Worth County [State v. Ryan Bradley Tostenson](#), No. 19-0014 (Iowa Court of Appeals, filed October 9, 2019). **Insufficient evidence to show that the defendant intended to damage the light pole.** An off-duty officer observed the defendant's vehicle strike a light pole in parking lot, leave that parking lot, and park in a different lot. The off-duty officer observed the damage to the light pole, obtained the defendant's license plate number and then contacted dispatch. The defendant left in his vehicle prior to an on-duty officer arriving. The off-duty officer informed the on-duty officer which way the defendant left. The on-duty officer eventually found and initiated a traffic stop on the defendant's vehicle. The traffic stop led to the defendant being charged with OWI. The defendant's motion to suppress, arguing the officer did not have reasonable suspicion or probable cause to stop his vehicle, was denied. The defendant then appealed. Held, there was insufficient evidence to show that the defendant intended to damage the light pole; therefore, the officer did not have reasonable suspicion to initiate the traffic stop based to investigate him for criminal mischief.

RECENT UNPUBLISHED DECISIONS INVOLVING ALCOHOL AND TRAFFIC SAFETY

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PREPARED BY THE PROSECUTING ATTORNEYS TRAINING COORDINATOR (PATC)

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