



# HIGHWAY SAFETY

LAW UPDATE



March 2, 2023 Office of the Prosecuting Attorneys Training Coordinator October/November/December 2022

## County Spotlight – Cherokee County

The seventeenth county spotlight is on Cherokee County. Cherokee County was first inhabited over “thousands of years ago.”<sup>1</sup> “Archaeologist have established the existence of the Mill Creek Indian culture north of Cherokee in 1200 A.D.”<sup>2</sup>

Cherokee is the county seat of Cherokee County<sup>3</sup> and highway 59 runs through it.<sup>4</sup> According to the 2020 census, Cherokee County has a population of 11,658.<sup>5</sup>

Ryan Kolpin is the Cherokee County Attorney. Mr. Kolpin is a full-time county attorney and there is one part-time assistant county attorney Meghan Whitmer (Ms. Whitmer is also the Ida County Attorney) in the office. Mr. Kolpin graduated from Coe College with a double major in Math and Computer Science and then attended Creighton Law School. Mr. Kolpin has been the Cherokee County Attorney for approximately 16 years. Prior to coming to the Cherokee County Attorney’s office, Mr. Kolpin worked for in private practice and also worked as a Magistrate Judge in Cherokee County.

Cherokee County has three local law enforcement agencies: Aurelia, Cherokee, and Marcus Police Departments, Iowa Department of Natural

Resources, Iowa DOT, Iowa State Patrol (Post 5<sup>6</sup>), and the Cherokee County Sheriff’s Office. In 2021, there were 838 traffic convictions<sup>7</sup> and 40 OWI convictions in Cherokee County according to Division of Criminal & Juvenile Justice Planning.<sup>8</sup>



### INSIDE THIS ISSUE

1	<a href="#">County Spotlight – Cherokee County</a>
2	<a href="#">ARIDE Training Opportunities</a> <a href="#">New Employees in the DCI Breath Alcohol Section*</a>
3	<a href="#">Iowa’s Impaired Driving Program Assessment (update)</a> <a href="#">Criminal Law Handbook Published</a>
4	<a href="#">GTSB Now Accepting Funding Applications FFY2024</a>
5	<a href="#">Opinions of the Iowa Supreme Court</a>
7	<a href="#">Opinions of the Iowa Court of Appeals (published)</a> <a href="#">Recent Unpublished Decisions Arranged by County</a>

<sup>1</sup> [https://www.cherokeeconomy.iowa.gov/about\\_us/cherokee\\_county\\_history.php](https://www.cherokeeconomy.iowa.gov/about_us/cherokee_county_history.php)

<sup>2</sup> [https://www.cherokeeconomy.iowa.gov/about\\_us/cherokee\\_county\\_history.php](https://www.cherokeeconomy.iowa.gov/about_us/cherokee_county_history.php)

<sup>3</sup> [https://en.wikipedia.org/wiki/Cherokee\\_County,\\_Iowa](https://en.wikipedia.org/wiki/Cherokee_County,_Iowa)

<sup>4</sup> <https://www.google.com/maps/place/Cherokee,+IA+51012/@42.7483638,-95.582668,13z/data=!4m6!3m5!1s0x878d129f3ef1e44b:0x8daabfe5e80b2721!8m2!3d42.7496413!4d-95.5515431!16zL20vMHNzeXk?hl=en>

<sup>5</sup> <https://www.census.gov/quickfacts/fact/table/cherokeeconomyiowa,IA/PST045221>

<sup>6</sup> <https://dps.iowa.gov/divisions/iowa-state-patrol/district-offices>

<sup>7</sup> “Convictions include all charges resulting in a conviction, including deferred judgments. Cases involving multiple charges may also involve multiple convictions, and each of those individual convictions are included in the results. Local ordinances are not included.” (<https://disposedcharges.iowa.gov/asp/glossary.asp>)

<sup>8</sup> <https://disposedcharges.iowa.gov/>

## ARIDE Training

Advanced Roadside Impaired Driving Enforcement (ARIDE) “is an intermediate level course designed to offer more than a basic understanding of the impairing effects of drugs (illicit and licit), alcohol, and/or the combination of both.”<sup>9</sup> ARIDE Training is a great way to better recognize drivers impaired by non-alcoholic substances. ARIDE Training will also give officers more confidence in investigating all OWIs. ARIDE training is also a great stepping stone for officers interested in becoming an DRE (Drug Recognition Expert). [State DRE Coordinator Todd Olmstead](#) organizes multiple ARIDE classes throughout the year.

During the last federal fiscal year (October 2021 through September 2022), there were approximately 384 officers that were ARIDE trained. This federal fiscal year (October 2022 through September 2023), there have been approximately 197 officers that have received ARIDE training. So far this fiscal year the ARIDE classes were held all across the state, including Creston, DeWitt, Sergeant Bluff, and Council Bluffs. More ARIDE classes are being added throughout the year.

If you are interested in attending an ARIDE training, please go to <https://dps.iowa.gov/divisions/commissioners-office/governors-traffic-safety/drug-evaluation> for a list of available classes. Attendance is limited to 30 participants. Prosecutors are welcome (and encouraged) to attend).

## New Employees in the DCI Breath Alcohol Section\*



The Division of Criminal Investigation Breath Alcohol section is pleased to introduce Dr. Ryan Lappe into the section. Ryan has his PhD in Biochemistry from Iowa State University and was working as a Post-doc researcher at ISU prior to his employment with the lab.

Ryan is currently being trained in the day to day operations of the breath alcohol program and will be the point of contact for DataMaster most related questions. Ryan will be replacing Jim Bleskacek as the program manager, who now supervises the breath alcohol, toxicology and evidence room sections of the lab.

Ryan can be reached at [lappe@dps.state.ia.us](mailto:lappe@dps.state.ia.us) or 515-238-8269.



The Breath Alcohol section is pleased to welcome Joe Morrett as well. Joe is currently employed by the lab in the toxicology section, but has been cross training in the breath alcohol section. Joe is a graduate of Central College in Pella with a B.A. degree in Biochemistry. Joe’s primary duties will be in toxicology, but will serve as a backup to Ryan certifying DataMasters and training officers on its use.

County Attorneys should update their minutes of testimony in June 23 to include Dr. Ryan Lappe and Joe Morrett. Dr. Jonna Berry, Dr. Justin Grodnitzky and Jim Bleskacek should also be listed as potential witnesses in Breath Alcohol test cases.

\*article provided by Criminalist Supervisor James A. Bleskacek.

<sup>9</sup> <https://dps.iowa.gov/divisions/commissioners-office/governors-traffic-safety/drug-evaluation>



## Iowa's Impaired Driving Program Assessment (update)

In December 2022, an Iowa Impaired Driving Task Force meeting conduct NHTSA was held in partnership with the Traffic Injury Research Foundation to discuss Iowa's Impaired Driving Program Assessment that occurred in April 2022. During the meeting, the attendees discussed: impaired driving trends in Iowa; information provided during driver's education regarding impaired driving; ignition interlock compliance based removals; treatment screening tools; and how impaired driving data is collected. After the meeting, an action plan was developed. Stay tuned for more updates.

## 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 and the Iowa Charging Manual, was published and distributed in December 2022. 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](mailto:Cindy.Glick@ag.iowa.gov) and request an order form to keep your copy up to date and working.



## GTSB Now Accepting Funding Applications FFY2024

The Iowa Governor's Traffic Safety Bureau administers federal highway safety funds for the State of Iowa and is offering agencies an opportunity to apply for traffic safety grant funding. The GTSB will be awarding up to \$9M for approved traffic safety grant funded projects.

If you have an identifiable traffic safety problem in your community or are a traffic safety stakeholder looking to partner with the GTSB, please submit your application. Contracts will be awarded based on a variety of decision points.

Application instructions at the links below contain Iowa Grants login information for current users and registration instructions for new users. If you need additional assistance, please contact the Governor's Traffic Safety Bureau at 515-725-6126.

**Application deadline for law enforcement is March 22, 2023.**

[Law Enforcement Grants - Funding Opportunity 499225](#)

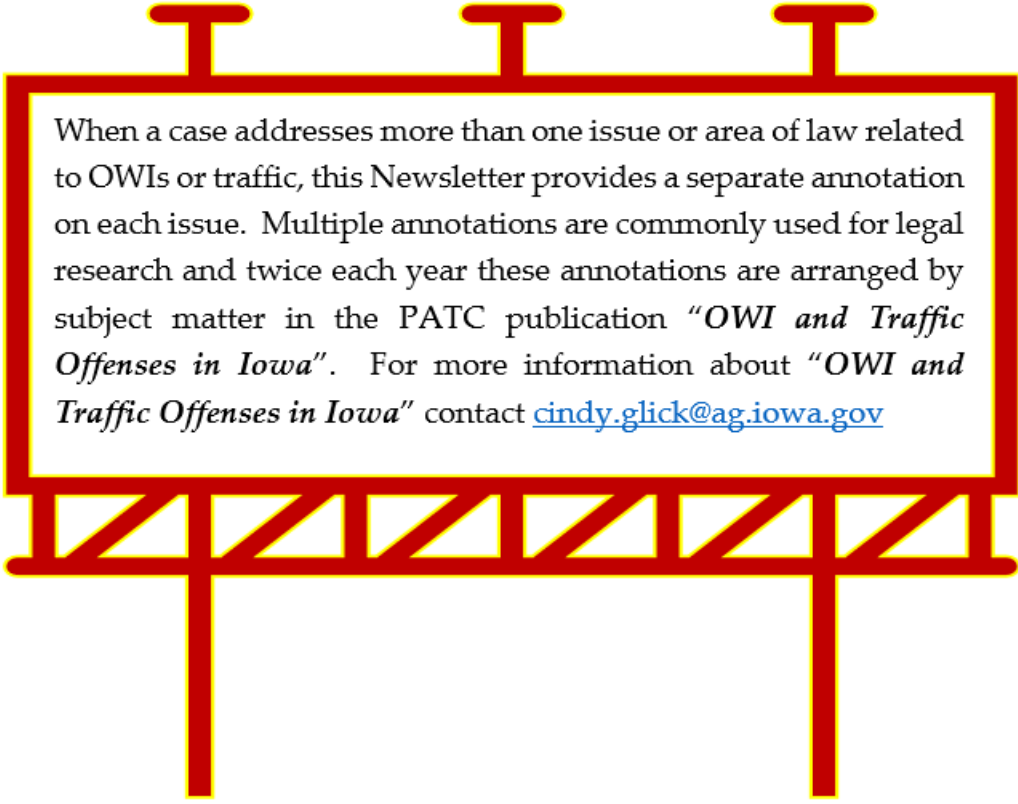
**Application deadline for state/community agencies is March 29, 2023.**

[Organizations with Indirect Cost Rates - Funding Opportunity 501798](#)

[State Agency Applicants - Funding Opportunity 501799](#)

[All Other Applicants - Funding Opportunity 501800](#)





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](mailto:cindy.glick@ag.iowa.gov)

## Opinions of the Iowa Supreme Court

***Black Hawk County State v. Maurice Edward Sallis***, 981 N.W.2d 336 (Iowa 2022). **Reasonable suspicion to initiate a traffic stop based off information that “two to six months” prior to the traffic stop the defendant’s driver’s license was barred; the information was not stale.** An officer initiated a traffic stop on the defendant believing he was driving while barred based on information from a prior investigation that occurred “two to six months” before. Prior to initiating the stop, the officer did not recheck the status of the defendant’s driver’s license. Based on the traffic stop, the defendant was charged with multiple crimes, including DWB and OWI. The defendant appealed and argued the information that his license was barred was too stale (i.e., he could have gotten his license back or gotten a temporary restricted license). Held, there was reasonable suspicion to initiate a traffic stop on the defendant based on information from “two to six months” before the stop that the defendant was barred. The Court did not find the information stale and noted pursuant to Iowa Code section 321.560(1), a person’s driver’s license is normally barred between “two to six years.” The Court found the length of the barrment/suspension/revocation “relevant in determining how up-to-date the officer’s information must be.” It also did not matter that the officer could have checked the defendant’s current driver’s license status prior to initiating the traffic stop.

***Black Hawk County State v. Maurice Edward Sallis***, 981 N.W.2d 336 (Iowa 2022). **No error when the court denied a motion for mistrial when the officer said he opened the defendant’s door because he thought he may be a flight risk.** The Court noted a “somewhat generic testimony about police methods was unlikely to have been of much consequence in the case.” The officer had testified about “his general experience” with people that want to flee and was not specific to the defendant.

**Wapello County [State v. Joseph Allen Bloom](#)**, 983 N.W.2d 44 (Iowa 2022). **Vehicular homicide conviction can be used to require the sentencing enhancement under section 902.11 and require the defendant serve a minimum of one-half his prison term before he is eligible for work release or parole.** “[A] defendant’s prior conviction for vehicular homicide by reckless driving under Iowa Code section 707.6A(2) is a ‘crime of a similar gravity’ to a forcible felony for purposes of applying the Iowa Code section 902.11 sentencing enhancement.” *quoting* Iowa Code section 902.11. The Court looked at the “severity of the harm inherent in vehicular homicide”.

**Woodbury County [State v. Fethe Feshaye Baraki](#)**, 981 N.W.2d 693 (Iowa 2022). **Law enforcement is not required to read implied consent in a motorist’s native language; however, they “must make reasonable efforts to have the implied consent advisory interpreted into a language in which the motorist is fluent.”** After stopping the defendant’s vehicle, law enforcement noticed signs of impairment. The defendant’s first language was Tigrinya, but he understood limited English. Throughout the OWI investigation, the defendant: understood the command to exit the vehicle; completed the HGN test; answered questions regarding any drug or alcohol consumption; told the officer his age, place of employment, he was in Sioux City, and where he was at prior to driving; agreed to take the PBT and DataMaster tests; in the DataMaster room told the officer a friend was coming; and made two phone calls. The officer did note that the defendant: was unable to explain how his leg was injured; unable to explain what State he was currently in; and did not understand all of the implied consent advisory, which was read in English. The officer attempted to use a phone translation service, but they did not have anyone available to translate Tigrinya. The officer also attempted to use an online translation tool (e.g., Google Translate), but was unable to find Tigrinya as an option. Therefore, the implied consent advisory was only read in English, which the officer testified that he “did not believe that Baraki understood the entire advisory, but he believed that Baraki consented to take the test.” The defendant argued that he did not voluntarily consent to the chemical test because the implied consent advisory was only read in English. Held, the officer “complied with Iowa Code section 321J.8 by making reasonable efforts and using reasonable methods under the circumstances to convey to Baraki the implied consent advisory[;]” “when a motorist has demonstrated limited English proficiency, law enforcement must make reasonable efforts to have the implied consent advisory interpreted into a language in which the motorist is fluent.”

The [April, May, June 2022 Edition of this Newsletter](#) contained multiple *unpublished* Iowa Court of Appeals case snippets regarding [State v. Prince G. Paye](#), No. 19-1760 (Iowa Court of Appeals, filed April 27, 2022). [Paye](#) involved traffic stop due to a ball hitch obscuring the view of one of the letters on the rear license plate. The district court denied the defendant’s motion to suppress, but the Iowa Court of Appeals reversed the district court. The Iowa Supreme Court granted further review and on November 10, 2022, the Iowa Supreme Court was evenly split and affirmed the district court’s decision (denial of the motion to suppress) by operation of law.

**Polk County [State v. Prince G. Paye](#)**, 2022 WL 16841997 (Iowa 2022) No. 19-1760 (*unpublished*). Iowa Court of Appeals decision vacated, “district court’s denial of Paye’s motion to suppress stands.” (Iowa Supreme Court was equally divided and the case “affirmed by operation of law.” *See* Iowa Code § 602.4107 (2022).

## Opinions of the Iowa Court of Appeals (**published**)

*Story County State v. Carson Bruce Sinclair*, \_\_\_ N.W.2d \_\_\_ (Iowa Ct. App. 2022) (filed November 17, 2022; No. 21-1228). **“Operating” is not an element of the crime of “operating a motor vehicle without the owner’s consent”**; the Court did not err in denying the defendant’s request for a jury instruction defining “operating.” Just because a term is in the heading of an offense, does not make it an element of the offense. Iowa Code section 3.3(1).

### (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. Trevell Demon Bruce*, No. 21-1670 (Iowa Court of Appeals, filed October 5, 2022). **In order for there to be a seizure, there must be two things: (1) “a show of authority”; and (2) the person must submit to law enforcement’s authority.** Law enforcement responded to a report of an assault or harassment and found the defendant sitting in a parked car. Law enforcement parked behind the defendant’s vehicle, did not activate its blue and red lights, but did turn on the take-down lights. The defendant’s vehicle began to drive away, and the officer then turned on the top lights to initiate a stop. The defendant’s vehicle initially stopped, and the officer directed him to turn of the vehicle, but he then took off at a high rate of speed and attempted to elude the officer. Eventually the defendant crashed, was apprehended, and charged with eluding. The defendant appealed arguing he was illegally seized. Held, although law enforcement lacked reasonable suspicion to conduct a traffic stop based off the initial report, the defendant was not seized until he crashed and was apprehended. In order for there to be a seizure, there must be two things: (1) “a show of authority”; and (2) the person must submit to law enforcement’s authority. *State v. Ivankovic*, No. 15-0622, 2016 WL 3269627, at \*3 (Iowa Ct. App. June 15, 2016); *California v. Hodari D.*, 499 U.S. 621, 627–29 (1991). Therefore, the defendant was not seized until he crashed and was apprehended. The Court noted it did not matter the officer lacked reasonable suspicion when initially turned on his take-down lights, because “[u]nlawful orders will not be deterred . . . by sanctioning through the exclusionary rule those of them that are not obeyed.” quoting *California v. Hodari D.*, 499 U.S. 621, 627 (1991).

*Black Hawk County State v. Michael Paul Eaton*, No. 21-1405 (Iowa Court of Appeals, filed January 13, 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 13, 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.

## 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/>).*

**Clarke County** [State v. Darryl Anthony Hurtt](#), No. 22-0091 (Iowa Court of Appeals, filed January 13, 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 (9<sup>th</sup> Cir. 2009).

**Clay County** [State v. Stella Louise Gore](#), No. 21-1692 (Iowa Court of Appeals, filed January 13, 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 13, 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 13, 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 13, 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)).



## 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/>).*

*Clay County* [State v. Stella Louise Gore](#), No. 21-1692 (Iowa Court of Appeals, filed January 13, 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.

*Clay County* [State v. Stella Louise Gore](#), No. 21-1692 (Iowa Court of Appeals, filed January 13, 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.

*Dickinson County* [State v. Neil Mark Wenzel](#), No. 21-0925 (Iowa Court of Appeals, filed December 7, 2022). **There was “probable cause to do a blood draw and it was reasonable to test the blood for alcohol, controlled substances, and drugs.”** Based off the defendant’s driving behavior, refusal of the SFSTs, refusal of the PBT, bloodshot and watery eyes, odor of alcohol, and an admission of drinking, a law enforcement officer obtained an 808 search warrant for a blood draw to test for alcohol and drugs. The officer did not provide any narrative on search warrant form in under the section: “Reasonable grounds to believe the Suspect is under the influence of a controlled substance or drug based on the following observations”. The sample was initially tested only for alcohol and had a result below .04. A second test was done a month later that came back positive for methamphetamine and amphetamine. The defendant argued that there was only probable cause in the search warrant to support testing for alcohol. Held, there was sufficient probable cause to issue a search warrant and test the blood sample for alcohol and drugs. The court will look at the entire search warrant application to determine if there is probable cause. “With impairment established by objective signs, it is reasonable to allow for blood testing to determine the source without having to know the specific source from the get-go.” “While objective observations, such as slurred speech, can be indicia of intoxication by alcohol or by drugs, the more difficult task of identifying the specific level of drug use to show impairment should not serve as an impediment to enforcement.” “The lack of additional information in the controlled substances section of Attachment A-2 does not undermine the full application’s goal of seeking intoxicants to determine the cause of impairment.” In order to establish probable cause, the officer does not have to establish proof beyond a reasonable doubt. Furthermore, “[p]robable cause may exist even if the officer’s perception of the traffic violation was inaccurate.” *quoting State v. Tyler*, 830 N.W.2d 288, 293 (Iowa 2013). Law enforcement still must have a lawful traffic stop and reasonable grounds of impairment before requesting a chemical sample.

*Dickinson County* [State v. Neil Mark Wenzel](#), No. 21-0925 (Iowa Court of Appeals, filed December 7, 2022). **Testing the blood sample for 15 different drugs did not make the search warrant overbroad.** The different panels were an attempt to determine the cause of the impairment that was observed, not a fishing expedition for other crimes.

*Dickinson County* [State v. Neil Mark Wenzel](#), No. 21-0925 (Iowa Court of Appeals, filed December 7, 2022). 808 search warrants for blood do not violate the Iowa Constitutional.

## 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/>).*

*Emmet County* [State v. Alishia Sue Dawn Dewbre](#), No. 21-1150 (Iowa Court of Appeals, filed October 19, 2022). **“Obtaining and testing a sample of Dewbre’s blood via a search warrant did not violate her right against self-incrimination.”** The protection against self-incrimination under the Iowa and Federal Constitutions only pertains to testimonial evidence, not non-testimonial evidence (e.g., blood draws) and it does not matter if the non-testimonial evidence was provided voluntarily or involuntarily (e.g., search warrant for blood draw). *State v. Sefcheck*, 157 N.W.2d 128, 135 (Iowa 1968); *see State v. Johnson*, 135 N.W.2d 518 (Iowa 1965). The Court further found that the defendant’s “due process rights protecting her against self-incrimination were [not] violated by providing her with more process and more judicial oversight than Iowa Code chapter 321J requires.”

*Emmet County* [State v. Allix James Inez Betsinger](#), No. 21-1734 (Iowa Court of Appeals, filed November 17, 2022). **“The deputy leaning a hand and arm against the window while legitimately investigating a traffic violation was not an unlawful invasion, was not unreasonable under the circumstances, and did not violate” the Iowa Constitution or 4th Amendment.** The defendant was a passenger in a vehicle that was stopped for driving over the center line. During the stop, the deputy approached the passenger side window, leaned on the front passenger window, and spoke with the defendant and the driver. During the interaction, the deputy observed an odor of marijuana and both occupants appeared to be nervous. The defendant argued that the deputy “trespass[ed] into protected property by leaning into the open window of the vehicle and exceeding the scope of the traffic stop” Held, “The deputy leaning a hand and arm against the window while legitimately investigating a traffic violation was not an unlawful invasion, was not unreasonable under the circumstances, and did not violate” the Iowa Constitution or 4<sup>th</sup> Amendment.

*Emmet County* [State v. Allix James Inez Betsinger](#), No. 21-1734 (Iowa Court of Appeals, filed November 17, 2022). During a traffic stop, officers do not have ignore what they smell, hear, or see as long as the observation occurs where they are allowed to be, even if the observations are not related to reason for the stop.

*Emmet County* [State v. Allix James Inez Betsinger](#), No. 21-1734 (Iowa Court of Appeals, filed November 17, 2022). **A passenger of a vehicle does not have a “legitimate expectation of privacy” or property interest in the driver’s pants pocket;** therefore, the passenger had no standing to challenge the pat down of the driver.

*Greene County* [State v. Dale Lee Spaulding](#), No. 21-1952 (Iowa Court of Appeals, filed November 17, 2022). **Substantial evidence of impairment based off:** SFSTs; ARIDE testing; officer observation; DCI Criminalists testimony; and urine sample.

*Greene County* [State v. Dale Lee Spaulding](#), No. 21-1952 (Iowa Court of Appeals, filed November 17, 2022). **Chain of custody sufficiently established for urine sample even though the defendant did not sign that it was his sample.** The DCI Lab Criminalist testified defendant’s do not normally sign their own chemical test sample. Held, the defendant did not show a reasonable probability of substitution or tampering because he did not sign his urine sample.

## 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/>).*

**Greene County [State v. Dale Lee Spaulding](#)**, No. 21-1952 (Iowa Court of Appeals, filed November 17, 2022). One vial of urine is sufficient for drug testing, although two files are preferred.

**Greene County [State v. Dale Lee Spaulding](#)**, No. 21-1952 (Iowa Court of Appeals, filed November 17, 2022). Storing a urine sample in an unrefrigerated location before delivering it to the DCI lab was not improper; if it had any “effect, it would have reduced the amount of drugs that could be detected in the specimen.”

**Henry County [State v. Renee Alice Kimbrough](#)**, No. 22-0424 (Iowa Court of Appeals, filed December 21, 2022). The State did not breach the plea agreement because the parties had agreed to open sentencing.

**Henry County [State v. Renee Alice Kimbrough](#)**, No. 22-0424 (Iowa Court of Appeals, filed December 21, 2022). **No abuse in discretion in sentencing the defendant to prison for OWI 2<sup>nd</sup>**. The sentencing court is not required to follow the PSI recommendation.

**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.

## 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/>).*

**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.

**Linn County** [State v. Rayshaun Deon Friend](#), No. 22-0557 (Iowa Court of Appeals, filed October 19, 2022). An “officers’ mistake of law [can] not support the traffic stop under the Iowa Constitution.” See [State v. Coleman](#), 890 N.W.2d 284, 298 n.2 (Iowa 2017).

**Linn County** [State v. Rayshaun Deon Friend](#), No. 22-0557 (Iowa Court of Appeals, filed October 19, 2022). **Although the initial reason for the stop was due to a mistake of law and could not be used to justify the stop, the defendant’s failure to stop once law enforcement activated their lights violated Iowa Code section 321.324(2) and “furnished an independent basis to stop the vehicle”.** Law enforcement initiated a traffic stop on the defendant by activating the emergency lights because the officer mistakenly believed the temporary registration contained a bad expiration date; however, due to the COVID-19 pandemic, the expiration of temporary registrations had been extended. The defendant failed to immediately stop for the officer, even after the officer activated the siren with the lights. The defendant argued because the stop was for a mistake of law, all evidence from the stop should be suppressed. Held, although the initial reason for the stop was due to a mistake of law and could not be used to justify the stop, the defendant’s failure to stop once law enforcement activated their lights violated Iowa Code section 321.324(2) and “furnished an independent basis to stop the vehicle”.

**Marshall County** [State v. Steven James Hayden](#), No. 22-0644 (Iowa Court of Appeals, filed November 17, 2022). A defendant cannot challenge a guilty plea to a non-A felony on direct appeal if they have been advised of the requirement to file a motion in arrest of judgement and fail to file a motion.

**Marshall County** [State v. Steven James Hayden](#), No. 22-0644 (Iowa Court of Appeals, filed November 17, 2022). **No abuse in discretion for sentencing the defendant to prison;** the reasons were “not clearly untenable or unreasonable.”

**Muscatine County** [State v. Ricky Dwayne Nebinger, Jr.](#), No. 21-1730 (Iowa Court of Appeals, filed November 2, 2022). The defendant failed to file a motion in arrest of judgment (Iowa Rule of Criminal Procedure 2.24(3)(a)) after pleading guilty and therefore, did not establish good cause to challenge his guilty plea on direct appeal pursuant to Iowa Code section 814.6.

**Polk County** [State v. Marshall Louis Field](#), No. 21-1186 (Iowa Court of Appeals, filed November 2, 2022). Defendant’s direct appeal of his guilty plea dismissed; pursuant to Iowa Code section 814.6, defendant failed to show good cause to appeal his guilty pleas to multiple charges, including eluding and OWI 2<sup>nd</sup>.

**Polk County** [Jonathan Rodriguez Leyva v. State](#), No. 21-0663 (Iowa Court of Appeals, filed November 17, 2022). Counsel was not ineffective for advising the defendant against reading his prepared allocution statement, but the defendant insisted on reading it and now believes it negatively impacted his sentence.

## 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/>).*

**Polk County** [Jonathan Rodriguez Leyva v. State](#), No. 21-0663 (Iowa Court of Appeals, filed November 17, 2022). The defendant failed to show any expert that would have contradicted the State’s expert retrograde extrapolation opinion; counsel not ineffective.

**Polk County** [State v. Maurice Sylvester Green](#), No. 21-1320 (Iowa Court of Appeals, filed December 7, 2022). **Officer’s conduct justified by the community caretaking exception:** officer checked on the defendant’s vehicle that had been parked, lights on, and engine running for approximately 2 hours; knocked on the window, but defendant was unresponsive; defendant had wallet and cellphone on lap; and the officer then opened the door, smelled odor of alcohol, and had to use extreme actions to wake up the defendant.

**Polk County** [State v. Maurice Sylvester Green](#), No. 21-1320 (Iowa Court of Appeals, filed December 7, 2022). No abuse in discretion in consolidating two OWI cases that occurred on the same morning and were from one occasion of intoxication.

**Polk County** [State v. Jaheim Romaine Cyrus](#), No. 21-0828 (Iowa Court of Appeals, filed January 13, 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 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 13, 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.

**Pottawattamie County** [Scott Charles Marinovic v. State](#), No. 21-0957 (Iowa Court of Appeals, filed November 17, 2022). **The distance the defendant drove and the length of time he possessed the vehicle are sufficient to establish he intended to permanently deprive the owner.** Counsel not ineffective for failing to challenge the factual basis of the guilty plea for theft 2<sup>nd</sup>.

## RECENT UNPUBLISHED DECISIONS INVOLVING ALCOHOL AND TRAFFIC SAFETY

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

**Pottawattamie County** [Scott Charles Marinovic v. State](#), No. 21-0957 (Iowa Court of Appeals, filed November 17, 2022). **A conviction for theft of the vehicle in Nebraska did not bar Iowa from charging and convicting the defendant for the same theft of the vehicle based off the events that occurred in Iowa.** Counsel not ineffective for not raising a double jeopardy issue.

**Pottawattamie County** [State v. Guy Lynn Wilson](#), No. 21-1287 (Iowa Court of Appeals, filed December 7, 2022). **Sufficient evidence of constructive possession of methamphetamine by the defendant:** backpack with methamphetamine found on passenger seat; defendant was the only occupant; and defendant's mail in the backpack. *See* [State v. Reed](#), 875 N.W.2d 693, 706 (Iowa 2016) (listing four non-exclusive factors in determining constructive possession when there are more than one person in the area); [State v. Maxwell](#), 743 N.W.2d 185, 194 (Iowa 2008) (listing five additional factors when the area is a motor vehicle).

**Pottawattamie County** [State v. Guy Lynn Wilson](#), No. 21-1287 (Iowa Court of Appeals, filed December 7, 2022). **Sufficient evidence of actual possession of methamphetamine by the defendant:** defendant drove by a known drug hotspot and reasonable for jury to believe he just obtained drugs; defendant showed signs of using methamphetamine; and drugs found in hidden in the air vent nearest to the defendant.

**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 3<sup>rd</sup> conviction.

**Warren County** [State v. Joshua Dean Green](#), No. 22-0344 (Iowa Court of Appeals, filed November 17, 2022). No abuse in discretion for sentencing the defendant to prison, instead of probation, for multiple offenses (including driving while barred and operating without owner's consent).

**Washington County** [State v. Cory Jarrett Brackin](#), No. 21-1520 (Iowa Court of Appeals, filed November 2, 2022). **Sufficient evidence the defendant exceeded the speed limit by 25 mph or more in attempting to elude the officer:** officer testified he did not know the exact speed the defendant was going, but it was at least 60 mph in a 25 mph zone via pacing; and defendant's statement that he thought law enforcement would not chase him if he exceeded the speed limit by 35 mph. The Court also noted that for pacing, it does not matter if speedometer was calibrated. [State v. Sorenson](#), 2016 WL 718984, at \*1, \*2 (Iowa Ct. App. Feb. 24, 2016).

**Woodbury County** [State v. Abdirizak Mursal Arab](#), No. 21-0944 (Iowa Court of Appeals, filed October 5, 2022). **Sufficient evidence the defendant possessed stolen property (vehicle) under 714.1(4), as opposed to stole the vehicle under 714.1(1):** the defendant entered another person's vehicle at a store and drove away; he was later found near the parked vehicle; he was in possession of items from the vehicle (including the keys and radio's face plate); and was deceptive regarding the person that took the vehicle. The Court noted: "A person could exercise control over stolen property without intending to permanently deprive the person of that property." *quoting* [State v. Brown](#), No. 16-0359, 2017 WL 4049311, at \*1-2 (Iowa Ct. App. Sep. 13, 2017).

## 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/>).*

**Worth County [State v. Stephen Andrew Arrieta](#)**, No. 21-1133 (Iowa Court of Appeals, filed January 13, 2023). **A canine sniff around a commercial motor vehicle did not unlawfully extend the stop:** the motor 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.

**Worth County [State v. Stephen Andrew Arrieta](#)**, No. 21-1133 (Iowa Court of Appeals, filed January 13, 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.

**Worth County [State v. Stephen Andrew Arrieta](#)**, No. 21-1133 (Iowa Court of Appeals, filed January 13, 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 (8<sup>th</sup> Cir. 2007).

### 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.

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

**All hyperlinks were last visited on February 24, 2023.**