



HIGHWAY SAFETY

LAW UPDATE



February 16, 2024 Office of the Prosecuting Attorneys Training Coordinator October/November/December 2023

Changes at PATC

After approximately 17 years, PATC is saying goodbye to a fixture, Michael Bennett. On January 31, 2024, Mr. Bennett is retiring from the Iowa Attorney General’s Office. For approximately 17 years, Mr. Bennett provided crucial advice to county and state offices, focusing primarily on civil issues. Prior to working at the Iowa Attorney General’s Office, Mr. Bennett worked for the City of West Des Moines, Burlington County Attorney’s Office, the Woodbury County Attorney’s Office, and as an Assistant City Attorney in Sioux City. The PATC staff wishes Mr. Bennett the best in his retirement.

In December 2023, Assistant Attorney General Ethan Anderson started with PATC to take over for Mr. Bennett. Mr. Anderson comes to PATC from the Special Litigation Division. Prior to working at the Iowa Attorney General’s Office, Mr. Anderson worked as an Assistant Story County Attorney for approximately 10 years. Before that he maintained a general law practice in Warren County.

County Spotlight – Clayton County

The twentieth county spotlight is on Clayton County. Clayton County was named after former Delaware Senator John M. Clayton.¹ “Clayton County is part of the Driftless Area, a region that completely missed being ice-covered during the last ice age.”² According to the 2020 census, Clayton County has a population of 17,043.³

¹ https://en.wikipedia.org/wiki/Clayton_County,_Iowa

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

³ <https://www.census.gov/quickfacts/fact/table/claytoncountyiowa,IA/PST045222>

Elkader is the county seat of Clayton County; however, according to the 2020 census, Elkader is not the largest city in Clayton County.⁴ Elkader is located off Highways 56 and 13.⁵ Turkey River runs through the middle of Elkader.⁶

Zach Herrmann is the Clayton County Attorney. Mr. Herrmann is a part-time county attorney with a small private practice. There is also one part-time assistant county attorney, Anne Kruse, in the office. Mr. Herrmann graduated from University of North Carolina at Asheville with a major in Multimedia Arts and Sciences and then attended University of North Carolina Law School. Mr. Herrmann has been the Clayton County Attorney for approximately 5 years. Prior to becoming the Clayton County Attorney, Mr. Herrmann was an assistant county attorney in the Clayton County Attorney’s office for approximately 3 years.

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⁴ https://en.wikipedia.org/wiki/Clayton_County,_Iowa

⁵ <https://www.google.com/maps/place/Elkader,+IA+52043/@42.8582158,-91.4239753,14.13z/data=!4m6!3m5!1s0x87fb682a8efd63b7:0xca90a3ef449ee568!8m2!3d42.8538739!4d-91.4054159!16zL20vMHN0OTA?entry=ttu>

⁶ <https://www.google.com/maps/place/Elkader,+IA+52043/@42.8582158,-91.4239753,14.13z/data=!4m6!3m5!1s0x87fb682a8efd63b7:0xca90a3ef449ee568!8m2!3d42.8538739!4d-91.4054159!16zL20vMHN0OTA?entry=ttu>

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

LEARN THE
6 RULES
FOR THE ROAD

NHTSA



County Spotlight – Clayton County cont.

Clayton County has 10 local law enforcement agencies: Elkader, Garnavillo, Guttenberg, Mar-Mac, Monona, and Strawberry Point Police Departments, Iowa Department of Natural Resources, Iowa State Patrol, DCI on a riverboat casino, and the Clayton County Sheriff's Office. In 2022, there were 1,660 traffic convictions⁷ and 65 OWI convictions in Clayton County according to Division of Criminal & Juvenile Justice Planning.⁸



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, were published and distributed in December 2023. 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 updated version, please contact Cindy Glick at Cindy.Glick@ag.iowa.gov and request updated price list to keep your copy up to date and working.



⁷ "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>

⁸ <https://disposedcharges.iowa.gov/>

Search Warrants In Non-Death OWI Investigations

From 2017 through 2021, “an average of EIGHT PEOPLE died or were seriously injured EACH WEEK in Iowa in a crash involving an impaired driver.”⁹ In 2017, the Iowa Court of Appeals found that implied consent was not the only means to obtain a chemical sample, but law enforcement may use a search warrant if implied consent is *completely* avoided.¹⁰ After Frescoln, in non-death OWI investigations, law enforcement have two paths they could follow to obtain a chemical sample. They could invoke implied consent under Chapter 321J or they obtain a search warrant for a chemical test (if implied consent is *completely* avoided). Because implied consent must be completely avoided if a search warrant is used, once law enforcement picks a path, they should stay on that path.

Since Frescoln, the use of search warrants to obtain chemical samples has been challenged throughout the State. On Friday, February 9, 2024, the Iowa Supreme Court issued two decisions, State v. Laub, ___ N.W.2d ___ (Iowa 2024), No. 22-1530 and State v. McMickle, ___ N.W.2d ___ (Iowa 2024), No. 22-1531. Laub and McMickle looked at whether Chapter 321J was the only way to obtain a chemical test and whether using a search warrant, instead of implied consent, was constitutional. Both Laub and McMickle found that implied consent was not the only means to obtain a chemical test in an OWI investigation.¹¹ The Iowa Supreme Court in McMickle stated:

In State v. Laub, filed today, we held that chapter 321J is not the exclusive means by which an officer can investigate suspected OWI offenses. ___ N.W.3d ___, ___ (Iowa 2023). We also held that chapter 808 of the Iowa Code authorizes law enforcement officers to apply for, obtain, and execute search warrants for bodily specimens and nothing in chapter 321J precludes an officer from using the search warrant authority granted in chapter 808 to investigate suspected OWI offenses. Id. at ___. We further held that a law enforcement officer’s decision to obtain and execute a search warrant to investigate suspected OWI offenses does not violate a suspect’s federal or state constitutional rights to equal protection of the laws or due process of law. Id. at ___. Those holdings apply to this case.¹²

There will be more on Laub and McMickle in my next newsletter, but for now, these two cases clarify that law enforcement still has the two paths to obtain a chemical sample (implied consent or search warrant) and search warrants used during OWI investigations are constitutional.

**NO KEYS UNTIL
YOU KNOW
THE
RULES**

**NO CELL PHONES
WHILE DRIVING**

NO SPEEDING

NO DROWSY DRIVING

NO PASSENGERS

NO ALCOHOL

ALWAYS BUCKLE UP

**LEARN THE
6 RULES
FOR THE ROAD**

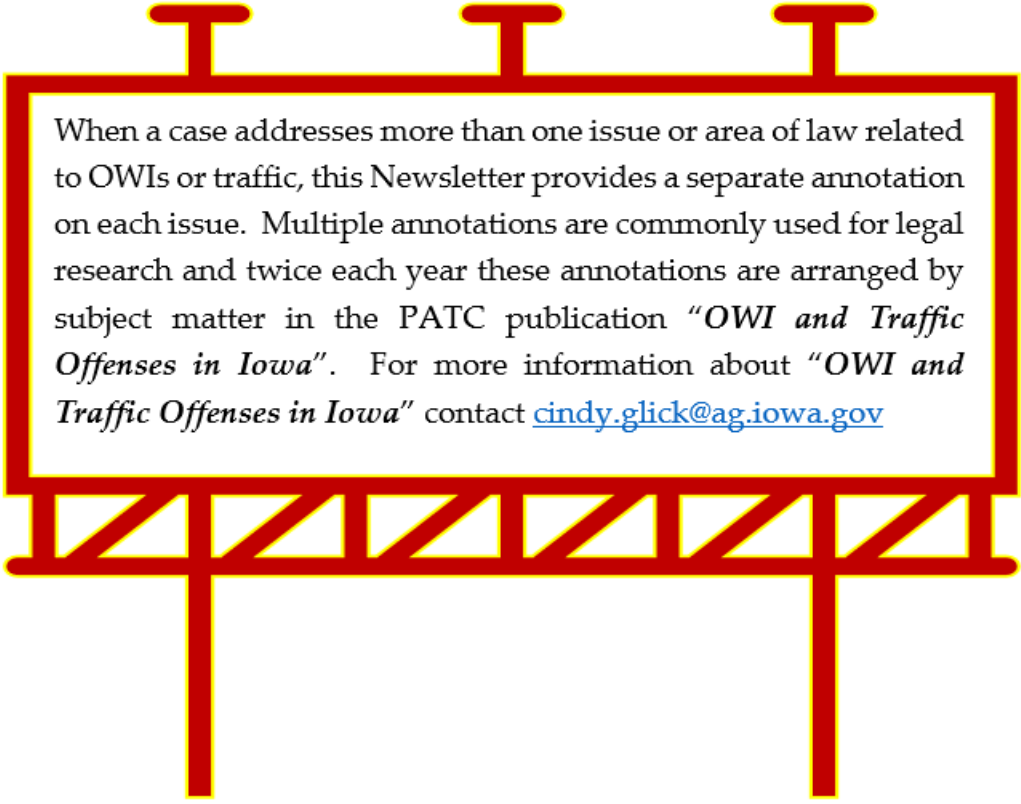


⁹ <https://iowadot.gov/traffic/pdfs/IowaSHSP.pdf> (page number 20)

¹⁰ State v. Frescoln, 911 N.W.2d 450 (Iowa App. 2017).

¹¹ State v. Laub, ___ N.W.2d ___ (Iowa 2024), No. 22-1530 and State v. McMickle, ___ N.W.2d ___ (Iowa 2024), No. 22-1531.

¹² State v. McMickle, ___ N.W.2d ___, ___ (Iowa 2024), No. 22-1531.



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

Opinions of the Iowa Supreme Court

Polk County State v. Bitá Amisi, 997 N.W.2d 683 (Iowa 11/17/2023) No. 22-0624. **Evidence the defendant consented to taking the PBT, which was then followed by his arrest, was unfairly prejudicial under Iowa Rules of Evidence 5.403 and should have been excluded from trial despite the PBT results never being entered into evidence.** The State provided evidence at trial of the officer offering the defendant the PBT, the defendant agreeing to take the PBT, and then defendant being arrested. The PBT results were never entered into evidence, but the Court determined this evidence “left the jury with the impression that Amisi had failed the PBT because the last thing the jury saw was Amisi consenting to the PBT[.]”

Polk County State v. Bitá Amisi, 997 N.W.2d 683 (Iowa 11/17/2023) No. 22-0624. “[W]hile evidence of the defendant’s consent to taking the PBT followed by his arrest amounted to a rule 5.403 violation, the violation was harmless.” There was sufficient other evidence of intoxication: defendant’s driving behavior; open alcohol container; admission to drinking; odor of alcohol; performance on the SFSTs; and defendant’s demeanor.

Polk County State v. Bitá Amisi, 997 N.W.2d 683 (Iowa 11/17/2023) No. 22-0624. **Sufficient evidence of intoxication:** defendant’s driving behavior; open alcohol container; admission to drinking; odor of alcohol; performance on the SFSTs; and defendant’s demeanor.

Polk County State v. Bitá Amisi, 997 N.W.2d 683 (Iowa 11/17/2023) No. 22-0624. **Sufficient evidence of eluding:** video and the officer’s testimony; defendant increased his speed after the sirens were activated; and defendant drove on the wrong side of the road.

Polk County State v. Jaheim Romaine Cyrus, 997 N.W.2d 671 (Iowa 11/17/2023) No. 21-0828. **Under the “objective totality-of-the circumstances test” the defendant was not seized, even though the officer used his spotlight to shine into the defendant’s vehicle:** only one officer was present; officer did not show a weapon; defendant’s parked vehicle was not blocked in by the officer’s vehicle; officer did not order the defendant to remain in the car; and the officer “did not activate his siren or front-facing emergency lights[.]” The Court found “the use of the spotlight was insufficient to escalate their initial encounter into a seizure” The Court further stated: “We follow the great weight of authority and decline to modify our objective ‘reasonable person’ test to factor in the defendant’s race in evaluating the officer’s actions.”

Polk County State v. Jaheim Romaine Cyrus, 997 N.W.2d 671 (Iowa 11/17/2023) No. 21-0828. A law enforcement officer “merely activating rear-facing lights, without using the front-facing emergency lights or siren, is insufficient to constitute a seizure.”

Polk County State v. Jaheim Romaine Cyrus, 997 N.W.2d 671 (Iowa 11/17/2023) No. 21-0828. A law enforcement officer stopping in the middle of a street and not blocking the defendant’s vehicle in, does not constitute a seizure. *See State v. Fogg*, 936 N.W.2d 664, 670 (Iowa 2019).

Polk County State v. Jaheim Romaine Cyrus, 997 N.W.2d 671 (Iowa 11/17/2023) No. 21-0828. Although law enforcement shining a spotlight into a vehicle may be a factor in determining whether a seizure occurred, the use of a spotlight alone is not a per se seizure. *See State v. Donald Melvin Wittenberg*, 997 N.W.2d 665 (Iowa 11/17/2023) No. 22-0037.

Polk County State v. Jaheim Romaine Cyrus, 997 N.W.2d 671 (Iowa 11/17/2023) No. 21-0828. **The objective reasonable test is applied when determining whether a seizure occurred.** The Court declined “to consider the characteristics of the driver[.]” such as age or race, in determining whether a seizure occurred.

Polk County State v. Donald Melvin Wittenberg, 997 N.W.2d 665 (Iowa 11/17/2023) No. 22-0037. **Officer’s use of a spotlight did not transform the officer’s nighttime interaction with the defendant “into a seizure”:** defendant’s car was already parked; officers did not use their emergency lights or siren; defendant’s car was not blocked in (he could have backed up to drive away); only two officers present; and initial contact did not include any commands, but was conversational. *State v. Jaheim Romaine Cyrus*, 997 N.W.2d 671 (Iowa 11/17/2023) No. 21-0828.

Polk County State v. Donald Melvin Wittenberg, 997 N.W.2d 665 (Iowa 11/17/2023) No. 22-0037. **Law enforcement did not box in the defendant’s vehicle when it parked behind the defendant; “the position of the patrol car did not effectuate a seizure.”** The defendant “had room to back up, swing around, and leave the parking lot.” *See State v. Fogg*, 936 N.W.2d 664, 670 (Iowa 2019).

Polk County State v. Donald Melvin Wittenberg, 997 N.W.2d 665 (Iowa 11/17/2023) No. 22-0037. A law enforcement officer walking behind a vehicle does not transform the encounter into a seizure.

Polk County State v. Donald Melvin Wittenberg, 997 N.W.2d 665 (Iowa 11/17/2023) No. 22-0037. Two law enforcement officers shining flashlights into a vehicle does not constitute a seizure. *State v. Harlan*, 301 N.W.2d 717, 720 (Iowa 1981).

Warren County State v. Chase Robert Griffin, 997 N.W.2d 416 (Iowa 11/09/2023) No. 22-1234. **Sufficient probable cause to stop the defendant because his tinted license plate cover “prevented full view of the plate’s numerals and letters” on the rear license plate, in violation of Iowa Code section 321.37.** The tinted license plate cover provided law enforcement with only a minimal view of the letters and numbers on

the license plate and prevented law enforcement from sufficiently reading the letters and numerals when they were traveling a short distance behind the defendant's vehicle. Please note, that not every tinted license plate cover will obscure a plates letters and numerals to violate section 321.37. The Court declined to address whether the defendant's tinted license plate cover violated Iowa Code section 321.38.

Worth County [State v. Stephen Andrew Arrieta](#), 998 N.W.2d 617 (Iowa 12/08/2023) No. 21-1133. **Traffic stop of commercial motor vehicle unlawfully extended.** The officer had completed the level 3 inspection and only need to talk with the defendant regarding the inspection when the officer received confirmation that the vehicle was not stolen; however, the officer waited an additional 25 minutes for the drug dog to arrive before talking with the defendant regarding the inspection. Held, traffic stop was unlawfully extended. The Court noted that there is not a maximum time limit for a traffic stop, but instead the time of a traffic stop is very fact specific. It does not matter if an investigation unrelated to the traffic stop happens after or before an officer gives the driver a ticket, the key is whether the "unrelated investigation adds time to the stop." [Rodriguez v. United States](#), 575 U.S. 348, 357 (2015). An officer does not receive any "extra time" for investigations unrelated to the traffic stop if they complete the traffic stop matters quickly; if they finish the traffic stop matters quickly, then they need to let the driver leave, unless they developed reasonable suspicion of other wrongdoing.

Worth County [State v. Stephen Andrew Arrieta](#), 998 N.W.2d 617 (Iowa 12/08/2023) No. 21-1133. **No reasonable suspicion to extend the stop for a canine to arrive.** Although there were inconsistencies with the driver's logbook, suspicions regarding only hauling insulation from Minnesota to Texas, driving on a known drug smuggling route, and an initial report of the vehicle's VIN number showing up as stolen, the Court found there was no reasonable suspicion to extend the stop to allow for a canine to arrive. The stolen vehicle report was resolved 25 minutes prior to the canine arriving and after the inspection had already been completed, with only talking with the driver regarding the inspection remaining.

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. Rickie Matrese Perkins](#), No. 22-1224 (Iowa Court of Appeals, filed October 11, 2023). **Officer had reasonable suspicion and probable cause to initiate a traffic stop for speeding.** Held, "visual speed estimation in combination with [officer's] experience and observations following Perkins's vehicle support a rational inference Perkins was exceeding the speed limit." "An officer's experience and observations may be sufficient to determine whether a vehicle is speeding." *See State v. Bedwell*, 417 N.W.2d 66, 70 (Iowa 1987).

Boone County [State v. Clayton Curtis Brown](#), No. 23-0055 (Iowa Court of Appeals, filed October 25, 2023). **No abuse in discretion for denying the defendant's motion for mistrial after the officer stated the defendant had prior convictions.** The Court had already read into the record the stipulation that the defendant had a prior felony and his driver's license was barred.

Boone County [State v. Clayton Curtis Brown](#), No. 23-0055 (Iowa Court of Appeals, filed October 25, 2023). **Sufficient evidence the defendant was driving the vehicle:** the vehicle was owned by the defendant's girlfriend; defendant's personal items found in the vehicle (belt and debit card) shortly after the chase;

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officer recognized the defendant was the driver after looking at the defendant's driver's license photo; and the officer identified the defendant as the driver during the officer's testimony.

Buchanan County [State v. Darius Lejuan Wade](#), No. 22-1650 (Iowa Court of Appeals, filed November 8, 2023). **Sufficient evidence of “constructive possession of a firearm as a felon”:** defendant's ID and wallet were in the same backpack as the firearm; defendant initially claimed ownership of the backpack the firearm was found in; defendant's incriminating statements when asked about the firearm; defendant was the sole occupant of the vehicle; and the backpack containing the gun was located in the front of the vehicle. *See State v. Maxwell*, 743 N.W.2d 185 (Iowa 2008) (listing four non-exclusive factors in determining constructive possession when there are more than one person in the area and listing five additional factors when the contraband is found in a motor vehicle).

Buchanan County [State v. Darius Lejuan Wade](#), No. 22-1650 (Iowa Court of Appeals, filed November 8, 2023). No error in sentencing the defendant to probation for a period of “two to five years” after being convicted of an OWI 2nd (aggravated misdemeanor) and “possession of a firearm or offensive weapon by a felon as a habitual offender” (“D” felony).

Clay County [State v. Allyson Marie Niichel](#), No. 22-1909 (Iowa Court of Appeals, filed October 11, 2023). **“Based on the totality of the circumstances,” the officer had reasonable suspicion to extend the duration of the traffic stop:** dilated pupils; answers were slow and indirect; defendant's vehicle had recently been observed at known drug houses on two different occasions; and failed to make eye contact.

Clinton County [State v. Jeremy Allen Adams](#), No. 23-0651 (Iowa Court of Appeals, filed October 25, 2023). A “district court is not required to ‘announce the credit to which the defendant is entitled for time served’ at sentencing or as part of a written judgment entry.” *quoting State v. Hawk*, 616 N.W.2d 527, 530 (Iowa 2000).

Clinton County [State v. Jeremy Allen Adams](#), No. 23-0651 (Iowa Court of Appeals, filed October 25, 2023). “Our supreme court has held ‘the requirement to announce the potential for sentence reduction under section 901.5(9) . . . serves no function in imparting information to the defendant that is necessary for a valid plea and sentencing.’” *State v. Johnson*, 513 N.W.2d 717, 720 (Iowa 1994).

Clinton County [State v. Jeremy Allen Adams](#), No. 23-0651 (Iowa Court of Appeals, filed October 25, 2023). No abuse in discretion in sentencing the defendant to prison instead of probation for the crime of eluding.

Clinton County [State v. Bryan Richard Carr](#), No. 22-1582 (Iowa Court of Appeals, filed November 21, 2023). Trial court is not required to engage in a colloquy with a defendant regarding a decision to testify during trial when a defendant is represented by counsel, absence certain conditions.

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Greene County [State v. Jamie Gumm](#), No. 22-1932 (Iowa Court of Appeals, filed November 8, 2023). No abuse in discretion in sentencing the defendant to prison for driving while barred (DWB) and possession of methamphetamine with intent to deliver.

Greene County [State v. Jamie Gumm](#), No. 22-1932 (Iowa Court of Appeals, filed November 8, 2023). Defendant's sentence to prison for driving while barred (DWB) and possession of methamphetamine with intent to deliver was "not grossly disproportionate".

Guthrie County [State v. Joshua Lorren Johnson](#), No. 22-1866 (Iowa Court of Appeals, filed October 25, 2023). **Traffic stop was not unlawfully extended when the officer walked his canine around the vehicle while waiting for a response from dispatch on whether the VIN for the defendant's truck was reported stolen (the license plates were fraudulent).** The officer was also still investigating whether the defendant was operating while impaired.

Harrison County [State v. Kristofer Allan Erlbacher](#), No. 22-0299 (Iowa Court of Appeals, filed December 6, 2023). **The justification defense was barred because the defendant had "opportunity to safely leave the scene" at multiple times.** Furthermore, after the defendant fled the crime scene, he taunted the victim's brother about killing the victim and the defendant also lied when questioned by the police. Finally, the defendant's use of force, running the victim over more than once with his truck, was unreasonable. *See* [State v. Hall](#), No. 11-1524, 2012 WL 4900426, at *8 (Iowa Ct. App. Oct. 17, 2012).

Harrison County [State v. Kristofer Allan Erlbacher](#), No. 22-0299 (Iowa Court of Appeals, filed December 6, 2023). **Intoxication defense properly rejected.** Although the defendant was intoxicated, he was not too impaired and there was sufficient "evidence of malice aforethought, deliberation, premeditation, and specific intent to kill."

Henry County [State v. Stephen Prentice Potter](#), No. 23-0807 (Iowa Court of Appeals, filed December 6, 2023). No abuse in discretion in sentencing the defendant to terms different from the plea agreement because the court was "not bound by the plea agreement". *See* Iowa R. Crim. P. 2.8(2)(b)(8).

Johnson County [State v. David James Roe](#), No. 22-1764 (Iowa Court of Appeals, filed November 8, 2023). Drug paraphernalia discovered on a passenger of a vehicle, "standing alone, does not establish a substantial basis to find probable cause that Roe was impaired while driving."

Johnson County [State v. David James Roe](#), No. 22-1764 (Iowa Court of Appeals, filed November 8, 2023). An eyewitness to a crash is considered a citizen information and her description of how the crash occurred was properly considered reliable, and it was properly included in the determination of probable cause for a blood draw search warrant. *See* [State v. Niehaus](#), 452 N.W.2d 184 (Iowa 1990); and [State v. Baker](#), No. 01-1263, 2002 WL 986495 (Iowa Ct. App. May 15, 2022).

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Johnson County [State v. David James Roe](#), No. 22-1764 (Iowa Court of Appeals, filed November 8, 2023). EMTs and firefighters at the scene of a crash are not confidential informants on the search warrant, but professionals, which gave their observations “a presumption of credibility” and can be properly considered when issuing a search warrant.

Johnson County [State v. David James Roe](#), No. 22-1764 (Iowa Court of Appeals, filed November 8, 2023). A judge can consider a prior conviction for OWI “in determining probable cause based on alleged impaired driving to issue the search warrant for a [chemical] sample”.

Johnson County [State v. David James Roe](#), No. 22-1764 (Iowa Court of Appeals, filed November 8, 2023). “[T]he issuing magistrate properly relied on the dynamics of the serious motorcycle crash—potentially caused by impaired judgment, the statements by a citizen informant and EMTs and firefighters describing Roe’s admission to drinking and watery eyes, and Roe’s past OWI conviction, there was a substantial basis to conclude that probable cause supported the issuance of the search warrant for a sample of Roe’s blood.”

O’Brien County [State v. Brandon Lee Nelson](#), No. 22-1850 (Iowa Court of Appeals, filed December 6, 2023). **Insufficient evidence the defendant “had the specific intent to permanently deprive [the victim] of his vehicle” to support the theft conviction.** “[T]o prove theft, the State had to show that Nelson intended to withhold the property ‘for an extended period of time, or under such circumstances, that its benefit or value is lost; or, the property is disposed of in such a manner or under such circumstances, as to render it unlikely that the owner will recover the property.’” [State v. Berger](#), 438 N.W.2d 29, 31 (Iowa Ct. App. 1989). To “permanently deprive” “requires ‘more than a temporary dispossessing of another’s property.’” [State v. Berger](#), 438 N.W.2d 29, 31 (Iowa Ct. App. 1989).

Polk County [State v. Seth Anthony Hankins](#), No. 23-0484 (Iowa Court of Appeals, filed October 25, 2023). The sentencing court did not “consider an inappropriate sentencing factor” when it referenced the defendant’s “excessive fines”, because the sentencing court is allowed to consider the defendant’s prior criminal history and convictions, which includes fines.

Polk County [State v. Quntonio Herron Jr.](#), No. 22-1925 (Iowa Court of Appeals, filed November 21, 2023). No abuse in discretion in sentencing the defendant to consecutive prison sentences; the judge did not consider improper factors provided in the victim impact statements and expressly stated he would not consider the improper factors.

Polk County [State v. Mason Daniel Hampton](#), No. 23-0375 (Iowa Court of Appeals, filed December 6, 2023). An officer does not need “reasonable suspicion of safety concerns before ordering a defendant out of a motor vehicle.” See [Pennsylvania v. Mimms](#), 434 U.S. 106, 111 n.6 (1977); [State v. Hanrahan](#), No. 12-0012, 2013 WL 4009675, at *2 (Iowa Ct. App. Aug. 7, 2013).

Polk County [State v. Mason Daniel Hampton](#), No. 23-0375 (Iowa Court of Appeals, filed December 6, 2023). The defendant voluntarily consented to going to the trooper’s vehicle after being asked.

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Polk County [State v. Tyre Dewayne Brown](#), No. 22-0023 (Iowa Court of Appeals, filed December 20, 2023). **Traffic stop not unlawfully extended**; the officer observed the odor of marijuana emitting from the vehicle before the stop had been concluded.

Story County [State v. Keatyn Charles Palmateer](#), No. 23-0004 (Iowa Court of Appeals, filed October 25, 2023). No abuse in discretion in not granting the defendant's request for a deferred judgment for felony eluding.

Story County [State v. Jissel Magali Gomez-Torres](#), No. 23-0521 (Iowa Court of Appeals, filed November 21, 2023). **Officer had reasonable suspicion of impaired driving to initiate a traffic stop**: "Gomez-Torres driving down the middle of two lanes over the dashed line dividing the lanes, weaving in her lane and touching the dashed center line and solid edge line in the process, varying her speed to twenty miles below the speed limit, almost missing her exit and activating her turn signal only after doing so, and driving over the gore area next to the exit while crossing the solid white line separating the exit from the highway lanes." Please note: the Court discussed that [State v. Tague](#), 676 N.W.2d 197, 205-206 (Iowa 2004) "established the bright-line rule that a single incident of briefly crossing the edge line of a divided highway, absent more, is not enough to raise reasonable suspicion of criminal activity." "However, in interpreting [Tague](#), we have repeatedly found that a vehicle that does more than cross the edge line once for a couple of seconds may raise reasonable suspicion that the driver is intoxicated." Even more, our supreme court has clarified the [Tague](#) standard to add that "[w]eaving within one's own lane and changing speeds without exceeding the speed limit do not violate any statute, but they do provide evidence of impairment." *quoting* [State v. Struve](#), 956 N.W.2d 90, 104 (Iowa 2021).

Story County [State v. Calvin Marcel Crawford](#), No. 22-1509 (Iowa Court of Appeals, filed December 20, 2023). **Sufficient evidence of impairment**: defendant attempted to only lower his window a little bit initially (likely to keep the odor of alcohol from coming out); odor of alcohol coming from the car after the window was lowered; defendant's performance on the HGN and walk and turn tests; watery, bloodshot eyes; defendant refused chemical testing (Datamaster); and defendant visibly excited.

Warren County [State v. Johnathan Dale Laue](#), No. 23-0208 (Iowa Court of Appeals, filed December 6, 2023). No abuse in discretion in sentencing the defendant to prison after his conviction for Driving While Barred (DWB); however, the judge orally announced the fine would be suspended, but the written order did not suspend the fine, so the Court of Appeals remanded to fix the clerical error.

Woodbury County [State v. Brandon Pezhin Lamere](#), No. 23-0026 (Iowa Court of Appeals, filed October 11, 2023). **No abuse in discretion in denying motion for new trial on theft 1st (exercising control of stolen vehicle)**: defendant's fingerprints were on the driver's side doors and incorrect license plates; defendant's mail was in the vehicle; defendant was observed putting gas in the stolen vehicle; defendant was observed driving stolen vehicle during a police chase; and items belonging to the defendant were discovered in the stolen vehicle.

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This newsletter is intended to provide the reader with an update on new developments, including case law and statutory changes, relating to traffic safety. Nothing expressed in this newsletter should be considered legal advice. Please discuss with your supervisor, legal counsel, and county attorney before changing your policies or practices in reliance on anything, including cases, discussed in this newsletter.

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

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