HIGHWAY SAFETY LAW UPDATE

March 10, 2017 Office of the Prosecuting Attorneys Training Coordinator January/February/March, 2017

Reducing OWI by Predicting and Monitoring Alcohol and Substance Abuse

In Iowa, as well as nationwide, alcohol and drugs continue to play a significant role in motor vehicle accidents and deaths. This is especially true when one considers that a small percentage of drivers (3-5%) account for 80% of the estimated 121 million annual substance-impaired driving episodes.[1]

In an article originally published by Avertest, a company providing testing equipment to substance use treatment and monitoring programs, effective monitoring provides therapeutic benefits that are recognized by the American Society of Addiction Medicine, and can significantly impact repeat impaired driving offenses by providing objective feedback, motivation, progress monitoring, and overcoming denial about the severity of an addicts' problems. Based upon scientific studies and the practice of other states, the Iowa legislature has introduced legislation which, if passed, would require persons arrested or convicted of alcohol and drug-use related offenses to submit to alcohol and substance use monitoring twice per day, seven days per week. This model is designed to encourage positive behavior by offering an immediate incentive to abstain from substances, and allows drivers to continue employment and fulfill other life needs. The program outlined involves testing of breath, transdermal monitoring, and other methods as approved by the DPS. As proposed, participation in the sobriety monitoring program would be voluntary at the discretion of the county or other governmental entity, and therefore would not immediately be available in all areas in Iowa. Persons could be ordered to participate in the program if their offense occurred in a participating jurisdiction, and would also require eligibility for a temporary restricted license and installation of an ignition interlock device on any vehicles owned or operated by the person. There are exemptions and modifications for persons who can show documented hardship or geographic impracticality. The proposed legislation requires data collection and provides for a possible phase out date of 2021 depending on the effectiveness of the program. Other states implementing such monitoring have seen reductions in repeat offenses for the period of time that monitoring occurred. For more information about the various proposals, see SSB1101, HF 519, and HF 362 at https://www.legis.iowa.gov/publications/search?facet.pivot=l1%2Cl2&fq=-status%3AReserved&tc=true%2F&fq=l0%3A%22leg%22&fq=it%3A%22LegislationCurrent%22&q=sobriety

[1] Jewett A, Shults RA, Banerjee T, Bergen G Alcohol-impaired driving among adults-United States, 2012. MMWR Mortal Wkly Rep. 2015;64(30):814-17.

INSIDE THIS ISSUE

Affidavit of Mailing Procedures Implemented by DOT

The last edition of the Highway Safety Law Update informed readers that the Iowa DOT had proposed changes to the administrative rules regarding Service of Notice pursuant to 761-615.37 (321) that would allow for an outside vendor to create affidavits of mailing in accordance with the "oath or affirmation" provisions of Iowa Code §622.1. This was in part a response to State v. Kennedy, 846 N.W.2d 517 (Iowa 2014), which continued to require prosecutors to call witnesses from the DOT to lay foundation for the affidavit of mailing, which was held to be testimonial.

The IDOT has officially adopted the new affidavit procedures, which are now sworn to, "under penalty of perjury." General Counsel for the IDOT has advised that the new notices are created at or near the time of mailing, are not created for the purposes of litigation, and do not require the presence of another, so they should be deemed nontestimonial under State v. Carter, 618 N.W.2d 374 (Iowa 2000). Prosecutors who are trying a case involving a license sanction for which notice is required should review the affidavit for the language "under penalty of perjury" and which were issued in September, 2016 or later, to determine whether it is compliant with the new procedure. Please be aware that some of the criminal offenses will rely upon notices sent before that time so the previous testimonial requirement will still apply, but this should occur less and less often as time goes by. It is also prudent to file a Motion for a pretrial ruling on the subject of admissibility of the record without a foundational witness, citing the Carter case and the new administrative rule, so as not to be surprised by an adverse ruling during trial. The OWI and Traffic Offenses in Iowa manual also contains a sample Motion in Limine in Chapter 15, Proof of Suspension-Admissibility of Records regarding the redaction necessary for the entry of the driving record itself.

Lab Can Now Screen Blood Samples for Drugs, but Confirmation Still Limited

The DCI Lab has now completed their blood screen validation, and will be able to screen all blood samples for opiates (including oxycodone), DXM, Soma, Methamphetamine (MDMA, amphetamines, etc.), barbiturates, benzodiazepines, methadone, PCP, cocaine, Zolpidem, TCA, THC, Tramadol, Fentanyl, and buprenorphine.

Currently, the Lab can only confirm and quantitate amphetamines and THC (and two metabolites). Their goal is to have a method of validating the assay for most of these drugs by April, 2017, after which time they will be able to confirm and quantitate many common drugs of abuse in blood.

At the present time, if screens are positive for drugs that cannot currently be confirmed by the Lab, the submitting agency should make arrangements with a private lab of their choosing and request the DCI Lab to forward the sample for further testing. All costs of this independent testing will be borne by the requesting agency. Be aware that requests for further testing should be made in a timely manner, in accordance with the Lab's policy of destroying samples for which preservation requests are not made within 90 days.

Each year, the Lab's accreditation requires them to update their measurement uncertainty, so no permanent margin of error can be stated for drugs as it can for alcohol. Each toxicology report received will reflect the current toxicology cut off, threshold levels, sensitivity, and %CV (aka margin of error) for the test done on the instruments as calibrated at the time of the test.

If a submitting officer desires full testing (not merely a screen) for drugs other than marijuana or amphetamines, it is still necessary to submit urine samples. In addition, if an officer requests testing a urine sample for both drugs and alcohol (or for alcohol only) the Lab still requires that urine samples be submitted in a gray stoppered tube which contains 100 mg of sodium fluoride, and 20 mg of potassium oxalate or other equivalent preservative.

Information about blood toxicology is posted and updated on the Lab's website http://www.dps.state.ia.us/DCI/lab/toxicology/alcohol.shtml. Questions may be sent to the DCI Laboratory Administrator Bruce Reeve at reeve@dps.state.ia.us or by calling 515-725-1500.

Back to page 1 ▲

DataMaster DMT Recertification Can Now be Accomplished Online

The Division of Criminal Investigation is pleased to announce an online eLearning recertification for the DataMaster DMT evidential breath testing instrument. This online recertification is required for all previously certified officers on the DataMaster DMT and should be completed by May 1st, 2017.
The eLearning program is approximately 15-20 minutes and consists of instruction, quizzes and a final exam. Officers are required to score 80% or greater of the final exam to pass. Once an officer passes, please submit both **Name** and **Agency** in the popup box (ex. Jonna Berry – DCI LAB), print out the results, and then send the test score to the DCI according to the instructions in the video.
The eLearning can be found on the main landing page on the website: https://breathalcohol.iowa.gov

Lifetime Handicapped Parking Permits a Thing of the Past

Lifetime handicapped parking permits will soon be a thing of the past, according to a new state law aimed at cracking down on abuse of the permits.

Starting January 1, 2017, the bright blue placards for the permanently disabled issued pursuant to Iowa Code §321L.2 will be good for only five years, after which time they will need to be renewed. The legislation amending this code section did not change the eligibility requirements or change the practice of issuing different placards to persons with temporary versus permanent disabilities, but lifelong (permanent) disability placards issued after January 1, 2017, will now be referred to as "standard" placards and are valid for five years. The standard placards can be renewed within 30 days before or after expiration by submitting a statement from the medical provider of the applicant. Acting Department of Transportation Director Mark Lowe says there are approximately 530,000 lifetime permits in circulation. He says that includes some abuse. The legislature made this change in an effort to curb abuse of non-expiring placards by theft, misappropriation, and other misuse. *This change does not affect currently issued non-expiring placards*, which will remain valid unless replacement is requested, at which time a standard placard will be issued. Registrations can be renewed electronically or through the mail, so a personal visit by a permanently handicapped individual to their local DMV branch is not necessary.

A database is currently in place that is searchable by law enforcement, assisting in enforcement efforts by providing demographic information on the person for whom the permit is issued. A violation constitutes a primary offense.

Further information that may be helpful to the customer and the application for PWD placards is available at: http://www.iowadot.gov/mvd/vehicleregistration/disabled.htm

Time to Reorder Criminal Law Handbook

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, will be released during the final week of March, 2017. 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 already have a CD containing only the OWI and Traffic Offenses in Iowa manual, this will remain valid until September, 2017, but will not contain the latest updates between September, 2016 and the present.

This new edition includes an entirely updated section covering toxicology at the Department of Criminal Investigation, including new screening and confirmation levels for each substance.

Order forms for the Criminal Law Handbook and all other manuals are available by contacting PATC at Peg.Bowman@iowa.gov or by calling 515-281-5428.

2017 Iowa Acts of Interest to Law Enforcement

The following two dates are scheduled for the annual Iowa Acts of Interest to Law Enforcement Workshops:

June 20-Coralville- Radisson Hotel & Conf. Ctr.
June 21- Altoona – Prairie Meadows Hotel

REGISTRATION FORM IS INCLUDED AT THE END OF THIS NEWSLETTER.

Back to page 1 ▲

Opinions of the Iowa Supreme Court

Restitution for felony causing death mandatory in all cases

Linn County State v. Richardson, ____ N.W.2d ____ (No. 14-1174) (Iowa Supreme Court, filed February 17, 2017). **Restitution for death of victim during commission of felony not unconstitutional as applied to juveniles.** Defendant pled guilty to second-degree murder when she was fifteen years old, and ordered to pay $150,000.00 in restitution to victim's estate pursuant to Iowa Code § 910.3B. Held that Iowa law authorizing the sentencing court to consider the age and related circumstances of juveniles before applying mandatory minimum sentences for homicide offenses does not apply to mandatory restitution, the term "sentence" as used in Iowa Code § 901.5(14) does not include restitution, and the court has no discretion when imposing mandatory restitution under Iowa Code § 910.3B(1).

Restitution for emergency response not authorized in routine OWI cases

Scott County State v. Iowa District Court for Scott County, 889 N.W.2d 467, (No. 15-1255) (Iowa Supreme Court, filed January 20, 2017). **Restitution for emergency response not authorized in the case of routine traffic stops for OWI.** Officer observed driver drift between lanes of traffic, run a red light, and nearly collide with another vehicle. Officer conducted traffic stop and ultimately the driver was convicted of OWI. State sought restitution under Iowa Code § 321J.2(13)(b), emergency response resulting from violation of OWI statute. Held that officer was not responding to an emergency, but rather investigating a crime, and that while an accident is not always necessary, the impaired driving and the emergency must be distinct events in order to authorize restitution.

Requesting driver documentation requires reasonable suspicion

Scott County State v. Coleman, ____ N.W.2d ____ (No. 15-0752) (Iowa Supreme Court, filed February 10, 2017). **Traffic stop based upon mistake of fact impermissibly expanded by requesting documentation.** A patrol officer ran the license plate of a passing car and discovered that the registered owner, a female, was suspended. Based upon reasonable suspicion that the registered owner was the driver, the officer initiated a traffic stop. Upon approaching the driver's window, the officer observed that a male, not a female, was driving the vehicle. The officer did not terminate the detention, but rather requested license, insurance and registration, thereby discovering that the driver was barred. Held that pursuant to Rodriguez v. U.S., 135 S.Ct. 1609 (2015), and State v. Pals, 805 N.W.2d 767 (Iowa 2011), a traffic stop may not be extended to request documentation once reasonable suspicion has been resolved, overruling State v. Jackson, 315 N.W.2d 766 (Iowa 1982). The officer may, however, approach the driver and advise briefly of the reason for the stop, thereafter terminating the detention if no separate reasonable suspicion or probable cause is immediately apparent.

Off-duty officer can conduct search without implicating Fourth Amendment

Scott County State v. Brown, ____ N.W.2d ____ (No. 15-1576) (Iowa Supreme Court, filed February 10, 2017). **Off-duty police officer searches do not implicate Fourth Amendment prohibitions against unreasonable search and seizure.** Defendant was on probation for a drug-related offense when he was suspected of taking a gun from his cousin's bedroom. Defendant's stepfather, who is a police officer, was told of the situation by his wife, the defendant's mother. Defendant's stepfather, while off-duty and not in uniform, confronted defendant, and stepfather searched him, finding gun in his waistband. Police were called and further investigation was turned over to them. A short time later, defendant's mother suspected him of selling drugs and checked his cell phone. After finding incriminating text messages, she told him to leave the residence. While he was packing, stepfather searched defendant's car, again while off duty and not in uniform, and found marijuana and another gun. Police were called and further investigation was turned over to them. Court discussed two tests in analyzing the searches: (1) whether the government knew of and acquiesced to the intrusive conduct and whether the private party's purpose in conducting the search was to assist law enforcement or further its own ends; and (2) analyzing solely the actions of off-duty police officers and whether the officer's actions fell outside the sphere of legitimate private action. In deciding that the second test was more applicable to the specific facts of this case, the Court held that both searches by the defendant's stepfather were conducted while he was acting as a concerned parent, not an agent of the government, and were motivated by a legitimate private interest and not a governmental purpose, therefore neither the Fourth Amendment nor the Iowa Constitution applied to either search.

Back to page 1 ▲

Published Opinion of the Iowa Court of Appeals

No Probable Cause to Stop Based on Breach of Cooperation Agreement

Black Hawk County State v. Connor William Clar Steffens, 889 N.W.2d 691 (No. 15-1980) (Iowa Court of Appeals, filed December 21, 2016). **Existence of cooperation agreement negates original probable cause, no basis to stop vehicle for breach of agreement.** Officers executed a search warrant where defendant was present and located a small marijuana grow operation and drug paraphernalia. Officers did not arrest defendant, as defendant agreed to cooperate with law enforcement, but failed to do so. Eight months later, officer involved in initial search warrant stopped defendant's vehicle because he knew his department had been looking for him in connection with the failed cooperation agreement. No arrest warrant existed, and no other basis existed for the stop. Odor of marijuana in the vehicle led to search and marijuana was found. Held that existence of cooperation agreement, even if breached, removed original probable cause and stop was not justified.

(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 http://www.iowacourts.gov/).

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Adair County State v. Jordan Campbell, No. 15-1772 (Iowa Court of Appeals, filed February 22, 2017). **Permissible duration of a traffic stop exceeded for questioning about travel plans and matters unrelated to reason for stop.** Defendant was stopped for speeding and asked questions about travel plans, hometown, background, ownership of vehicle and items inside it, whether he had any roommates, and circumstances of his purchase of the vehicle. During this time, dispatch radioed the trooper regarding valid license status three times, but trooper did not hear the dispatches. Trooper also exchanged eight emails concerning the stop with another trooper. After learning that defendant may be giving untruthful answers, a dog sniff was conducted, which yielded illegal drugs. The trooper admitted that he did not develop particularized suspicion of criminal activity until after the dog sniff. Citing In re Pardee, 872 N.W.2d 384 (Iowa 2015), held that without reasonable suspicion, the traffic stop was impermissibly expanded by the questioning unrelated to the speed violation, and reasonable suspicion obtained by dog sniff after an impermissible expansion cannot justify probable cause to search.

Black Hawk County State v. Christopher Ryan Allen, No. 15-0708 (Iowa Court of Appeals, filed December 21, 2016). **Probable cause based upon mistake of fact.** Officer stopped vehicle because he believed taillight was not functioning, when it was actually painted over in red, making it virtually impossible to see during the day, and constituted an obstruction of the visibility of the light. Traffic stop upheld on basis of reasonable mistake and obstruction of the light in violation of Iowa Code §§ 321.387, 321.404, and 321.404A(1).

Black Hawk County State v. Christopher Ryan Allen, No. 15-0708 (Iowa Court of Appeals, filed December 21, 2016). **Probable cause despite pretextual stop.** Where defendant was the subject of a drug investigation and informant had already performed a controlled buy, traffic stop was still justified on the basis of obstructed taillight, because probable cause determines whether stop is valid, regardless of subjective motivation of officer.

Black Hawk County State v. Christopher Ryan Allen, No. 15-0708 (Iowa Court of Appeals, filed December 21, 2016). **Expansion of scope of traffic stop justified.** Where defendant was not the owner or the driver of the automobile, consent to search voluntarily obtained is valid, as defendant had no reasonable expectation of privacy in the vehicle, and even though the original reason for the stop had been resolved, reasonable suspicion existed to detain the passenger after the traffic stop had concluded on the basis of previous drug convictions, a recent controlled buy by a confidential informant, and corroboration of travel from Chicago to Waterloo without luggage.

Back to page 1 ▲

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Black Hawk County State v. Christopher Ryan Allen, No. 15-0708 (Iowa Court of Appeals, filed December 21, 2016). **Transport to police station and strip search supported by probable cause and exigent circumstances and/or search incident to arrest.** Probable cause plus exigent circumstances, and/or search incident to arrest, existed to justify removal of the defendant from the original place of detention to the police station to conduct strip search on basis of previous drug convictions, a recent controlled buy by a confidential informant, corroboration of travel from Chicago to Waterloo without luggage, alert by drug dog on seat where he had been sitting in vehicle, and refusal to spread legs during consensual search of his person. Search was contemporaneous to arrest, even if it did not occur after arrest.

Black Hawk County State v. Lamont Coleman, No. 15-1439 (Iowa Court of Appeals, filed January 11, 2017). **Knowledge of one is knowledge of all for purposes of establishing probable cause for traffic stop.** Defendant was observed by one officer who estimated his speed in excess of speed limit, and radioed that information to other officers. Another officer located the vehicle and used radar to confirm excessive speed, and radioed that information to other officers. A third officer located the vehicle and initiated the traffic stop. Court relied on State v. Schubert, 346 N.W.2d 30 (Iowa 1984) in finding that, "Where law enforcement authorities are cooperating in an investigation,…knowledge of one is presumed shared by all."

Black Hawk County State v. Lamont Coleman, No. 15-1439 (Iowa Court of Appeals, filed January 11, 2017). **Sufficient evidence of constructive possession of contraband despite other passengers in vehicle.** Defendant was the driver and owner of a vehicle containing two other passengers. Marijuana was located in a location where all three occupants could reach it and it was not in plain view. Evidence that vehicle was filled with smoke, odor of marijuana was present, and defendant displayed signs of intoxication, as well as other officers' supervision of passengers who remained in the vehicle and ability to see if either passenger attempted to hide the marijuana was sufficient to support a reasonable inference that defendant knew of the contraband and had control and dominion over it.

Black Hawk County State v. Ezekial Cortez Phillips, Jr., No. 16-0319 (Iowa Court of Appeals, filed December 21, 2016). **Automobile exception to warrant requirement on basis of open container is not applicable when there is no driver, no one in physical control, and no motion of the vehicle.** Officers approached parked car on a public highway for violation of noise ordinance. Defendant was outside the vehicle, no one was in the driver seat. Officer ordered passenger, still seated in the vehicle, to provide identification. Passenger appeared to attempt to hide something, and officer ordered him out of the vehicle, only then observing alcoholic beverage container in center console. Vehicle searched on basis of ongoing violation of open container law, and loaded gun found. Search held unreasonable because open container law requires a driver, a person in actual physical control of the vehicle, or a passenger in motion.

Boone County State v. Jerry Wayne Cunningham, Jr., No. 15-1583 (Iowa Court of Appeals, filed December 21, 2016). **Good cause for speedy trial delay exists when defendant fails to appear for arraignment.** Defendant failed to appear for arraignment and it was rescheduled. He failed to appear for second date and a bench warrant was issued. Warrant was executed in time to hold trial within the speedy trial period, but was impractical and delay was attributable to defendant, state not required to play, "hide and seek" with him.

Back to page 1 ▲

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Boone County State v. Jerry Wayne Cunningham, Jr., No. 15-1583 (Iowa Court of Appeals, filed December 21, 2016). **While nurse/patient privilege does exist, no violation where nurse found drugs while changing defendant's clothing in preparation for physician's exam.** Defendant was transported to hospital in a highly intoxicated state, and nurse undressed him in preparation for physician exam and discovered drugs in his pocket. Court ruled that while the nurse's discovery of the drugs was a "communication" within the meaning of the privilege, that communication was not necessary for treatment, and therefore not protected by the privilege.

Bremer County State v. Tasha Nicole Comstock, No. 15-1992 (Iowa Court of Appeals, filed January 11, 2017). **Submission to court's authority pursuant to summons constitutes constructive arrest for purposes of speedy indictment.** Defendant was summoned to appear before a magistrate pursuant to a complaint filed for theft. She appeared as ordered, but a trial information was not filed for nine months. Held that the "reasonable person standard," articulated in State v. Wing, 791 N.W.2d 243 (Iowa 2010) applies and the taking of a person into custody for purposes of arrest may be accomplished by either restraint or the person's submission to custody, which occurred in this case when defendant appeared before the magistrate and was only "released" on her own recognizance after agreeing to certain terms.

Buchanan County State v. Elmer Paul Scheckel, No. 15-1680 (Iowa Court of Appeals, filed February 22, 2017). **No deprivation of right to counsel where standby counsel is elevated to lead counsel prior to entry of judgment.** Defendant was arrested for simple misdemeanor driving offenses and convicted after a jury trial. After trial, the arresting officer and presiding magistrate each received threatening letters, and defendant was charged with interference with judicial acts and tampering with a witness. Defendant waived counsel and was convicted by a jury, but prior to sentencing he requested standby counsel. Counsel obtained a new trial based upon inadequate waiver. Standby counsel was then elevated to lead counsel, and defendant stipulated to the minutes and was again found guilty. Held that where standby counsel is elevated to lead counsel prior to entry of judgment, no deprivation of right to counsel occurs, regardless of any prior deficient colloquy.

Buchanan County State v. Elmer Paul Scheckel, No. 15-1680 (Iowa Court of Appeals, filed February 22, 2017). **Sufficient evidence of intent to harass where letter threatened to place nonjudicial liens on private property.** Defendant was arrested for driving offenses and was convicted by a jury. Following conviction, defendant sent letters containing the home addresses of the presiding magistrate and arresting officer, accusing them of violating his rights, demanding monetary remuneration, and threatening to place nonjudicial liens on their private property. The magistrate and officer both testified that they felt threatened and were alarmed by the letters, especially since they contained their home addresses. Held that letters were sent with no legitimate purpose and judicial and police officers are not required to hold a higher standard of tolerance for upset litigants.

Buchanan County State v. Elmer Paul Scheckel, No. 15-1680 (Iowa Court of Appeals, filed February 22, 2017). **Good cause for extending one year speedy trial date for unavailability of witness and motion for change of venue.** Defendant was pro se when he was convicted of interference with judicial acts and tampering with a witness. Prior to sentencing, standby counsel was appointed, who obtained a new trial based upon deficient colloquy in waiver of counsel proceedings. State requested two continuances for unavailability of a witness, and defendant made a pro se motion for change of venue. Standby counsel was then made lead counsel, and defendant stipulated to the minutes and was found guilty. Citing State v. Rodriguez, 511 N.W.2d 382 (Iowa 1994), held that unavailability of witness constituted good cause and delay to address motion for change of venue was attributable to the defendant.

Back to page 1 ▲

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Cerro Gordo County State v. Michael Robert Handt, No. 16-0400 (Iowa Court of Appeals, filed December 21, 2016). **Sentence for public intoxication third offense vacated where court referred to combining alcohol with prescription medication despite no evidence of this fact.** In imposing consecutive sentences, district court referred to defendant's combining alcohol with psychotropic medications, despite no evidence in the record to indicate that had occurred. Case remanded to resentencing due to district court's consideration of unprosecuted or unproven conduct.

Crawford County Michelle Gordon v. Mitchell Enterprises, LLC d/b/a "Cheers", No. 16-0316 (Iowa Court of Appeals, filed December 21, 2016). **Intoxicated person must be "sold" alcohol in order for dram shop liability to attach.** Before dram shop liability may be imposed upon a permittee or a licensee, a plaintiff must prove that an intoxicated person was both "sold" and "served" intoxicating liquor. Intoxicated person in this case was the bar owner, and he never paid for alcohol or food at any time during the operation of the business. The Court declined to consider other definitions that did not strictly meet the test of establishing a tangible benefit to the bar for the sale and serving of alcohol.

Dallas County State v. Douglas Lee Cunningham, No. 16-0586 (Iowa Court of Appeals, filed January 11, 2017). **Mistake of fact will justify vehicle stop based upon anonymous tip if the mistake was reasonable.** Officer received dispatch that hit-and-run collision had just occurred five blocks away from him, and that the run vehicle was a silver Cadillac with a white male driver headed towards a specific street. Officer stopped the one light-colored vehicle he located in the area, and then realized it was a gold Buick, not a silver Cadillac. The driver was arrested for OWI. Court held that reasonable suspicion existed to justify the stop because there was a specific crime, the perpetration of the crime was very close in time to the location of the stop, the vehicle stopped was reasonably consistent with the description of the involved vehicle, and there were no other vehicles in the area that met that description.

Dallas County State v. Judith Jaimes, No. 15-2181 (Iowa Court of Appeals, filed December 21, 2016). **Written waiver without colloquy record insufficient to review claim of involuntary waiver of right to counsel.** Defendant appeared pro se and waived right to counsel in writing, but no evidence of in-court colloquy was presented. Defendant later asserted that she did not knowingly waive counsel due to issues with anxiety and depression. Held that record was insufficient to decide the issue of defendant's voluntariness, and in any event, she did not ultimately proceed pro se, as standby counsel was appointed trial counsel on day of trial.

Dallas County State v. Judith Jaimes, No. 15-2181 (Iowa Court of Appeals, filed December 21, 2016). **No abuse of discretion where trial court failed to grant continuance or new trial to standby counsel who was appointed trial counsel on the day of trial.** Standby counsel was appointed for pro se defendant three weeks before trial, but did not meet with defendant or prepare witnesses. Counsel was then appointed trial counsel on the day of trial, due to defendant's statement that she did not feel prepared and suffered from mental health issues. Counsel requested continuance and offered waiver of speedy trial, which was denied. No witnesses were called on behalf of the defendant other than herself, and defendant was convicted of OWI. Motion for new trial for lack of preparation was denied. Held that failure to prepare for trial was attributable to defendant, who knew of her mental health issues for years, and to trial counsel, who did not meet with or prepare for trial despite appointment three weeks prior to trial. Ineffective assistance claim preserved for post-conviction relief proceedings.

Back to page 1 ▲

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Dallas County State v. William Edward Hunt, No. 16-0068 (Iowa Court of Appeals, filed February 8, 2017). **No prejudice by jury's consideration of computer-generated printout of incomplete breath test result.** Defendant was arrested for OWI and gave an insufficient breath sample on the DataMaster, and did not inform the officer of any breathing condition that prevented him from providing an adequate sample. A copy of a printout indicating a test refusal, along with DCI expert testimony that alcohol was detected in the incomplete sample but without a specific BAC, was admitted as evidence, and defendant was convicted. Held that upon proper foundation laid by expert witness regarding the operation and capabilities of the DataMaster and meaning of lines on the printout was sufficient to establish probative value of the printout, and the prosecutor's statement that it was not providing the jury with a BAC number clarified any confusion or unfair prejudice.

Dallas County State v. William Edward Hunt, No. 16-0068 (Iowa Court of Appeals, filed February 8, 2017). **Prosecutor arguments relating back to specific evidence in the record and legitimate inferences are not improper in closing argument.** Defendant was arrested for OWI after denying drinking, and providing insufficient breath sample on the DataMaster. At trial, defendant testified that he consumed a health drink that may have contained alcohol. In closing argument, prosecutor commented on defendant's inconsistent statements about drinking, lack of containers in the vehicle, and "messing with the breath test." Held that references to DataMaster test showing alcohol in breath despite incomplete sample and defendant's admissions regarding "health drink" were legitimate and delivered in a professional manner, and prosecutor is allowed to strike "hard blows" as long as they are not "foul ones."

Dallas County State v. William Edward Hunt, No. 16-0068 (Iowa Court of Appeals, filed February 8, 2017). **Prosecutor's statements attacking defendant's credibility were not impermissible, and prosecutor did not vouch for credibility of officer.** During closing arguments in OWI trial where defendant testified, prosecutor argued that if the jury believed the officer was credible and that video and jury instructions were consistent with his testimony, the jury need not search for further explanations in the case. The prosecutor also stated that the defendant was not credible, and explained the reasons. Held that neither argument was improper, as the prosecutor left the determination about credibility up to the jurors with guidance from the jury instructions, did not distort the burden of proof, and did not use any inflammatory words such as "liar" to diminish the defendant before the jurors, but rather merely pointed out inconsistent testimony.

Delaware County State v. Amber Rae Rutherford, No. 16-0232 (Iowa Court of Appeals, filed December 21, 2016). **Sentencing court must provide explanation for a sentence on the record, and cannot rely on unproven allegations or parole practices of the department of corrections.** Sentencing court imposed consecutive sentences for vehicular homicide and child endangerment without stating reasons in written order or on the record. Sentencing court was aware of an unproven allegation regarding use of methamphetamine by the defendant and the general parole practices of the department of corrections, but absent a showing that the court relied on these statements, sentence will not be vacated. Remanded for resentencing on limited issue of whether defendant's sentences should run consecutively or concurrently.

Dubuque County State v. Dominick R. Marcott, No. 16-0869 (Iowa Court of Appeals, filed December 21, 2016). **Written guilty plea informing defendant of right to file motion in arrest of judgment precludes later challenge to guilty plea for misdemeanor offenses.** In-court colloquy is not necessary where written guilty plea sets forth rights in conformity with Iowa R. Crim. P. 2.8(2)(d), and defendant voluntarily signs the written plea.

Back to page 1 ▲

RECENT **UNPUBLISHED DECISIONS** INVOLVING ALCOHOL AND TRAFFIC SAFETY

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Dubuque County State v. Dominick R. Marcott, No. 16-0869 (Iowa Court of Appeals, filed December 21, 2016). **Error preserved for post-conviction relief proceedings where written plea did not notify of maximum and minimum penalties for offense.** Written guilty plea offered to serious misdemeanor offense had unchecked box before paragraph describing penalties, and surcharge was not disclosed in the written plea, but due to lack of a record, issue left for post-conviction relief proceedings.

Dubuque County State v. Dominick R. Marcott, No. 16-0869 (Iowa Court of Appeals, filed December 21, 2016). **Boilerplate language is not adequate for reasons a sentence was imposed.** Where sentencing order simply states, "The following sentence is based on all of the available sentencing considerations set out in Iowa Code § 907.5" – and "the plea agreement" was the most significant factor, there is insufficient information to determine what motivated the court to enter a particular sentence. Sentence vacated and case remanded for resentencing.

Hamilton County State v. Victor Wayne Jamison, No. 16-1181 (Iowa Court of Appeals, filed January 11, 2017). **No abuse of discretion where sentencing court considered dismissed speeding ticket as part of the nature of the offense and attending circumstances.** Defendant pled guilty to OWI and as part of a plea agreement, the State agreed to dismiss a speeding ticket and recommend four days in jail. Court sentenced defendant to ninety days in jail after inquiring about defendant's speed and blood alcohol level, as well as prior out-of-state convictions. Held that where all other relevant factors are also considered, sentencing court could consider the speed and blood alcohol level as relating to the nature of the offense and attending circumstances, and the court can always consider the defendant's criminal history at the time of sentencing, quoting State v. Schlachter, 884 N.W.2d 782 (Iowa Ct.App.2016).

Hardin County State v. John Joseph Hauersperger, No. 15-1602 (Iowa Court of Appeals, filed January 11, 2017). **Prosecutor did not act contrary to plea agreement by reciting defendant's criminal history.** Defendant pled guilty to driving while barred and prosecutor recited plea agreement exactly as written in the guilty plea, and then advised the court of the defendant's criminal history. Defendant was allowed to request lesser sentence under the agreement and did so. Court imposed maximum sentence allowed by law. Held that while prosecutor cannot act contrary to a plea agreement or violate the "spirit" of a plea agreement, it is inappropriate and unacceptable that any plea agreement prohibit the court from being advised of the defendant's criminal record at the time of sentencing, therefore state did not breach plea agreement.

Hardin County State v. John Joseph Hauersperger, No. 15-1602 (Iowa Court of Appeals, filed January 11, 2017). **No abuse of discretion where court considered repeat nature of offense and all relevant factors in imposing maximum sentence.** Defendant sentenced to maximum prison term for driving while barred. Court recited that it considered his age, employment, family circumstances and obligations, the nature of the offense, the recommendations of the parties, and the fact that this was an eighth offense and the defendant had already been sentenced to prison once before for the offense of driving while barred.

Jackson County State v. Robert A. Howard, No. 16-0137 (Iowa Court of Appeals, filed January 11, 2017). **Neither probable cause nor reasonable suspicion justify traffic stop where officer heard but did not see careless driving.** Officer heard squealing tires from inside the police station. When he looked outside, defendant's vehicle was the only car traveling in the vicinity, and appeared to be speeding. Officer stopped the vehicle and arrested defendant for OWI. Held that where officer had no information about possible other cars in the area, and did not testify that he has specific training in speed estimation, stop was arbitrary and based only on a hunch.

Back to page 1 ▲

RECENT **UNPUBLISHED DECISIONS** INVOLVING ALCOHOL AND TRAFFIC SAFETY

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Jasper County State v. Tiffany Lynn Vandekrol, No. 16-0688 (Iowa Court of Appeals, filed March 8, 2017). **When reasonable suspicion for traffic stop is resolved, detention must cease.** Police stopped defendant's vehicle because the male registered owner was suspended. Upon approach, officer realized the driver was female. No separate reasonable articulable suspicion existed for the driver, but the officer requested documentation and conducted an investigation which eventually led to felony drug charges. Held that pursuant to State v. Coleman, ___ N.W.2d ___, 2017 WL 541063 (Iowa 2017), evidence obtained after the resolution of the reason for the stop constituted impermissible expansion and must be suppressed.

Madison County State v. Kevin Leroy Baudler, No. 15-1050 (Iowa Court of Appeals, filed January 25, 2017). **Motion to enlarge, amend, and reconsider may toll the time for appeal.** Defendant timely filed a motion to suppress, but filed an amended motion to suppress outside the time provided in Rule 2.11. District court denied motion to suppress, and in a later hearing, denied the amended motion to suppress and motion to extend time, "based upon the record made and adopting the resistance of the State." Defendant filed motion to enlarge, amend, and reconsider, which was also denied. Held that a motion to enlarge, amend, and reconsider will toll the time for appeal, "when used to obtain a ruling on an issue that the court may have overlooked, or to request the district court enlarge or amend its findings when it fails to comply with Iowa R.Civ.Pro. 1.904(1)." Held that where district court ruling failed to make findings of fact, separately set forth conclusions of law, and direct an appropriate judgment, the motion to reconsider was properly filed and tolled the time for appeal.

Madison County State v. Kevin Leroy Baudler, No. 15-1050 (Iowa Court of Appeals, filed January 25, 2017). **No probable cause to search truck driven by defendant arriving on location of officers executing a search warrant for stolen property.** Officers executed a search warrant where confidential informant advised defendant kept stolen UTV and skid loader. Defendant arrived in a truck during the execution of the warrant, and officers also searched the truck. Testimony conflicted between officers concerning the reason for the search, either for a key to the stolen items specified in the search warrant, or for stolen tools, which were not specified in the search warrant, or due to suspicious behavior by defendant's son in wanting to remove the vehicle. Held that absent information in the warrant about stolen tools, and conflicting testimony about the other reasons for the search, the threshold of probable cause was unmet.

Madison County State v. Kevin Leroy Baudler, No. 15-1050 (Iowa Court of Appeals, filed January 25, 2017). **Vague inventory policy granted officers unlimited discretion to conduct arbitrary searches.** Officers executed a search warrant on property where confidential informant advised defendant kept stolen property. Defendant arrived in a truck during the execution of the warrant, and officers also searched the truck before impoundment. Held that absent written inventory policy, and given officer testimony that inventory policy is to secure the vehicle so evidence can be preserved, combined with other testimony that policy is to impound vehicles of all arrested persons, but that this was not always followed, the inventory policy is vague and subject to arbitrary enforcement, search of vehicle suppressed. (Footnote advised that state did not argue inevitable discovery, so that exception was not addressed).

Madison County State v. Kevin Leroy Baudler, No. 15-1050 (Iowa Court of Appeals, filed January 25, 2017). **Abuse of discretion for denial of motion to extend time for filing pretrial motions.** Defendant filed amended motion to suppress beyond the time provided in Iowa R.Crim.Pro. 2.11, along with a motion to extend time for filing. Court denied the motion to extend time. Held that where discovery was not complete and identity of confidential informant was, "suspected but not known," until the day of the motion to suppress, delay in filing was not substantial, state did not establish that any prejudice resulted, and court gave no reasons for denying the extension, trial court abused its discretion.

Back to page 1 ▲

RECENT **UNPUBLISHED DECISIONS** INVOLVING ALCOHOL AND TRAFFIC SAFETY

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Madison County State v. Kevin Leroy Baudler, No. 15-1050 (Iowa Court of Appeals, filed January 25, 2017). **Search warrant containing misrepresentations about credibility of confidential informant not fatal when removed and other information supports probable cause.** Search warrant contained assertions that confidential informant was a concerned citizen, a mature individual who was regularly employed, was a well-respected family or business person, had a reputation for truthfulness, had no motivation to falsify information, had no criminal record, and otherwise demonstrated truthfulness. On cross-examination during motion to suppress, officers testified that confidential informant was under arrest for a criminal offense at the time he gave his information, was trying to make a deal on his own criminal charges in exchange for information, had several "dealings" with law enforcement involving criminal activity, was characterized as, "a thief," was not regularly employed, was not well-respected, and was known to lie. Held that statements about credibility of the informant were made with reckless disregard for the truth, but that warrant was still supported by probable cause because of specificity of the information given by informant, which was corroborated by law enforcement and also included in the affidavit in support of the warrant.

Marshall County State v. Bryan A. Daniel, No. 16-0891 (Iowa Court of Appeals, filed February 22, 2017). **Defendant who refuses breath test has no right to independent test.** Defendant requested blood test while refusing to consent to breath test offered by officer after arrest for OWI. Citing State v. Wootten, 577 N.W.2d 654 (Iowa 1998), held that despite defendant's statements that he wanted a blood test, his right to an independent test was not invoked due to refusal of breath test, and officer was not required to advise the defendant of his right to an independent test unless he not only makes a statement reasonably construed as a request for an independent test, but also consents to the officer's request for a test.

Page County In the Interest of G.D. and A.D., No. 16-1895 (Iowa Court of Appeals, filed February 8, 2017). **DRE and officer familiar with individuals under influence of methamphetamine can provide sufficient testimony to sustain CINA petition.** Officers were called to a hotel for a report of an assault and discovered mother and father with two small children. Officers testified that father, "appeared to be under the influence of a stimulant, likely methamphetamine," and both the mother and father had fresh track marks on their arms. Held that based primarily on the testimony of the DRE and other officer with experience in dealing with impaired individuals, in addition to history of the family, CINA was proven by clear and convincing evidence despite assertions by mother denying current use of methamphetamine.

Plymouth County State v. Bounmy Bounmy, No. 15-2225 (Iowa Court of Appeals, filed February 8, 2017). **Probable cause sufficient for traffic stop when officer observes speeding, even when driver is slowing down.** Officers were requested by another law enforcement agency to watch for a car traveling through their jurisdiction that had just left a known drug house. Officers located the vehicle and stopped it for speeding. The area in which the stop occurred was a highway leading into a city, and the speed gradually decreased from 55 to 35 miles per hour, and the driver was reducing his speed, but not sufficiently to strictly comply with the speed limits. Held that a violation of traffic laws, however minor, provides probable cause for a traffic stop, quoting State v. Predka, 555 N.W.2d 202 (Iowa 1996).

Plymouth County State v. Bounmy Bounmy, No. 15-2225 (Iowa Court of Appeals, filed February 8, 2017). **Traffic stop based upon probable cause is not impermissible because of pretextual subjective reason.** Officers were requested by another law enforcement agency to watch for a car traveling through their jurisdiction that had just left a known drug house. Officers located the vehicle and stopped it for speeding. Held that pretextual stops are permissible pursuant to Whren v. United States, 517 U.S. 806 (1996), and State v. Kreps, 650 N.W.2d 636 (Iowa 2002), as long as an objectively reasonable basis exists for the stop.

Back to page 1 ▲

RECENT **UNPUBLISHED DECISIONS** INVOLVING ALCOHOL AND TRAFFIC SAFETY

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Plymouth County State v. Bounmy Bounmy, No. 15-2225 (Iowa Court of Appeals, filed February 8, 2017). **Impermissible expansion of traffic stop for speeding where officers asked questions about travel which led to inconsistent answers and subsequent removal of occupants from the vehicle.** Officers were requested by another law enforcement agency to watch for a car traveling through their jurisdiction that had just left a known drug house. Officers located the vehicle and stopped it for speeding. Officers then asked questions about travel and itinerary, and received inconsistent answers from the occupants, and observed nervousness. Officers removed all occupants of the vehicle to conduct a dog sniff, and defendant threw a baggie of methamphetamine on the ground when escorted from the car. Held that information from other law enforcement agency was insufficient to justify questioning beyond that necessary to issue the speed warning, citing In Re Pardee, 872 N.W.2d 384 (Iowa 2015), and tasks tied to speeding violation included ordinary inquiries such as checking license and registration, but comparison of occupants statements regarding travel plans was linked to drug interdiction and unsupported by reasonable suspicion.

Plymouth County State v. Bounmy Bounmy, No. 15-2225 (Iowa Court of Appeals, filed February 8, 2017). **Consent involuntary where driver told he was free to leave only after impermissible questioning unrelated to reason for traffic stop.** Officers were requested by another law enforcement agency to watch for a car traveling through their jurisdiction that had just left a known drug house. Officers located the vehicle and stopped it for speeding. Officers then asked questions about travel and itinerary, and received inconsistent answers from the occupants, and observed nervousness. Officers then told the driver he was free to leave, and then asked if he minded staying for a few more questions and a dog sniff, to which driver agreed. Defendant, who was a passenger of the vehicle, threw a baggie of methamphetamine when she was escorted from the vehicle to facilitate the search. Held that driver's consent to answer additional questions was involuntary due to exploitation of the illegal detention immediately preceding the request, by asking questions unrelated to the speeding violation, quoting State v. Lane, 726 N.W.2d 371 (Iowa 2007). In a footnote, Court noted that State did not argue that passenger lacked standing to challenge the validity of the driver's consent.

Pocahontas County State v. Michael Neel Gleason, No. 13-1678 (Iowa Court of Appeals, filed January 11, 2017). **Questions of fact and credibility determinations are the sole province of the fact finder.** Defendant failed to stop for an officer in uniform in a marked patrol car with lights flashing, alleging that he did not hear any sirens. Video showed that siren indicator light was not on, but officer testified that indicator only detects when sirens are automatically activated, and he manually activated the sirens. Sirens could be heard on video, but defendant alleged that video was altered and siren sounds added later. Held that fact questions and credibility are solely within province of jury, and sufficient evidence existed to convict defendant of eluding.

Polk County State v. Curtis Jack Alford, No. 16-0476 (Iowa Court of Appeals, filed January 11, 2017). **Abuse of discretion found where court considered unproven allegations of alcohol consumption contained in the minutes of testimony as part of sentencing considerations.** Defendant entered Alford plea to Leaving the Scene of an Injury Accident, and agreed to allow the court to rely on minutes of testimony, which contained reference to a BAC of .065%. Court stated that, "because alcohol was involved," the defendant should receive a jail sentence. Sentence vacated because alcohol consumption not an element of crime of Leaving the Scene, allegation was unproven and not admitted, even though court also considered other factors.

Back to page 1 ▲

RECENT **UNPUBLISHED DECISIONS** INVOLVING ALCOHOL AND TRAFFIC SAFETY

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Polk County State v. Bradley Davisson, No. 15-1893 (Iowa Court of Appeals, filed December 21, 2016). **Speedy indictment not violated where state dismissed original complaint "in interests of justice."** Defendant was originally charged with theft 1st degree for stealing a truck, which was then dismissed by prosecutor for lack of evidence before trial information was filed. A month later, the state charged the defendant by trial information with operation without owner's consent. Court ruled that charges are properly dismissed in furtherance of justice for reasons such as, "facilitating the State in gathering evidence, procuring witnesses, and plea bargaining," (quoting State v. Fisher, 351 N.W.2d 798, 801 (Iowa 1984)).

Polk County State v. Bradley Davisson, No. 15-1893 (Iowa Court of Appeals, filed December 21, 2016). **Prosecutor did not improperly shift burden of proof in commenting on defense failure to produce exculpatory witness.** Defendant told police at the time of arrest for stealing a truck that someone named, "Nate," had loaned it to him. He failed to produce "Nate" as a witness at trial, and prosecutor commented on this fact. Court held that a prosecutor may properly comment upon the defendant's failure to present exculpatory evidence, so long as it is not phrased to call attention to the defendant's own failure to testify, quoting State v. Bishop, 387 N.W.2d 554, 562 (Iowa 1986). A prosecutor may generally reference an absence of evidence supporting the defense theory of the case.

Polk County State v. Samuel Juarez-Martinez, No. 15-1950 (Iowa Court of Appeals, filed January 25, 2017). **Violation of statutory impoundment procedures results in suppression.** Officer stopped defendant for blocking a sidewalk with his parked car, and requested license and proof of insurance. Officer conducted inventory search of vehicle when defendant failed to produce proof of valid insurance, discovering a loaded handgun hidden inside a sack in the passenger compartment. Held that inventory pursuant to Iowa Code § 321.20B is premised on validity of impoundment and scope of inventory, quoting State v. Huisman, 544 N.W.2d 433 (Iowa 1996), and that if impoundment for failure to produce insurance is the option chosen by the officer, the Code requires a citation, and the removal of the license plates and registration receipt. Failure to do so indicates an impermissible "investigatory purpose," making the impoundment unlawful, and the inventory search invalid.

Polk County State v. Ronald Richard Pagliai, No. 16-0211 (Iowa Court of Appeals, filed February 8, 2017). **Defendant must file motion in arrest of judgment within forty-five days of the initial acceptance of a guilty plea.** Defendant pled guilty to two aggravated misdemeanors and the court scheduled sentencing for a later date. The court continued the sentencing hearing due to lack of a PSI, and reaffirmed defendant's guilty pleas. Defendant then sentenced to prison term and appealed on basis that attorney should have filed a motion in arrest of judgment. Time for filing such a motion had expired, but defendant argued that court's "reacceptance" of his guilty pleas should reset the forty-five day clock. Held that there is no authority to support the claim that "reacceptance" of guilty plea resets the forty-five day clock for filing motion in arrest of judgment, judgment affirmed.

Polk County State v. Ronald Richard Pagliai, No. 16-0211 (Iowa Court of Appeals, filed February 8, 2017). **Knowing waiver of counsel where defendant signed detailed written waiver before plea hearing and sufficient colloquy.** Defendant signed detailed written waiver of counsel months before plea hearing, and at the hearing, the court asked defendant whether he had reviewed the form carefully before signing and whether he understood the ramifications of the waiver, which were listed on the form, and gave him additional time in court to review the form and ensure he understood it before proceeding. Held that no improper pressure occurred at any point during the proceeding and defendant demonstrated adequate understanding of waiver.

Back to page 1 ▲

RECENT **UNPUBLISHED DECISIONS** INVOLVING ALCOHOL AND TRAFFIC SAFETY

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Polk County State v. Ronald Richard Pagliai, No. 16-0211 (Iowa Court of Appeals, filed February 8, 2017). **Adequate reasons stated for imposition of consecutive sentences.** Defendant pled guilty to two aggravated misdemeanors and was sentenced to two consecutive two year terms. Sentencing court stated reasons as the defendant's age, character, and criminal history, as well as the specific facts of the case. Held that although pithy, sentencing court's reasoning was adequate and not an abuse of discretion.

Polk County State v. Curtis Michael Smith, No. 16-0749 (Iowa Court of Appeals, filed February 8, 2017). **Sufficient basis to justify eleven minute delay between arrival at police station and 804.20 phone calls.** Defendant was arrested for OWI after two officers watched him drive into a police barricade. Because of field conditions, sobriety tests were conducted at the jail. Defendant requested a phone call, but instead was pat searched and spent five minutes in a holding cell while another officer was briefed on the investigation. Defendant was then informed he was not under arrest, after which he refused all field sobriety tests except the PBT, which showed a BAC of .222%. Defendant was arrested, read implied consent, advised of his § 804.20 phone call rights, and allowed to make calls. Eleven minutes had passed since arrival at the jail. After being unsuccessful at making phone contact with an attorney, defendant submitted to chemical testing and was ultimately convicted of OWI-2nd offense. Held that defendant was being detained for further investigation when he arrived at the police station and was not yet under arrest, and without deciding whether time of arrest is the defining line, it is unrealistic to expect law enforcement to hand an accused a phone the minute he or she steps foot in the place of detention, delay not unnecessary.

Polk County State v. William Lamont Taylor, No. 15-2128 (Iowa Court of Appeals, filed March 8, 2017). **Specific intent to commit assault can be inferred by driving behavior while eluding.** Defendant led police on a pursuit which ended in his own front yard, where he proceeded to make a u-turn, rev his engine, and ram an occupied squad car head-on. Defendant was charged with assault on an officer with a dangerous weapon, and eluding. Defendant argued he had no intent to hurt the officer, but was only attempting to flee the scene, and at most the State could only prove he acted recklessly. Held that pursuant to the presumption that a person intends the natural consequences of his acts, a jury could infer from defendant's aggressive driving that the defendant intended to cause pain or injury or place the officer in fear of offensive contact. In a footnote, the court also found that a car is a dangerous weapon as used in this case.

Polk County State v. William Lamont Taylor, No. 15-2128 (Iowa Court of Appeals, filed March 8, 2017). **Counsel not ineffective for failure to cross-examine on inconsistencies where prior testimony is materially consistent.** Defendant was convicted by a jury of eluding and assault on a peace officer. Defendant claimed that his trial counsel was ineffective for failing to cross-examine the officers with inconsistencies in their trial and deposition testimony. Held that where deposition and trial testimony, when viewed in context, are materially consistent, trial counsel did not breach an essential duty by failing to pose specific cross-examination questions the defendant would prefer him to ask.

Scott County State v. Robert Michael Aguirre, No. 16-0022 (Iowa Court of Appeals, filed December 21, 2016). **Sufficient evidence of causation in vehicular homicide case.** Evidence that defendant had bloodshot eyes, slow and slurred speech, confused thinking, and failed the field sobriety tests was sufficient to show that his BAC of .238% was the cause of the collision in this case.

Back to page 1 ▲

RECENT **UNPUBLISHED DECISIONS** INVOLVING ALCOHOL AND TRAFFIC SAFETY

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Scott County State v. Debra M. Serrine, No. 15-1496 (Iowa Court of Appeals, filed January 11, 2017). **Performance of SFSTs is nontestimonial and does not implicate Fourth Amendment.** Officer initiated traffic stop of vehicle driving wrong way on roadway. District court suppressed statements made while defendant performed field sobriety tests because she was removed from her car and ordered to sit in the patrol car before performing the tests, but not the tests themselves. Held that while statements made prior to Miranda warning were inadmissible because defendant was in custody, the tests themselves, including observations of slurred and mumbled speech, were admissible as nontestimonial evidence, quoting State v. Rauhauser, 272 N.W.2d 432 (Iowa 1978) and State v. Garrity, 765 N.W.2d 592 (Iowa 2009).

Scott County State v. Debra M. Serrine, No. 15-1496 (Iowa Court of Appeals, filed January 11, 2017). **Right to 804.20 phone calls implicated prior to formal arrest, but satisfied by allowing phone calls once defendant arrived at place of detention and prior to decision to submit to DataMaster test.** Defendant requested several times at the scene of the traffic stop to speak to an attorney, and was denied this request until arrival at place of detention. Held that defendant was entitled to a call or consult only at her final place of detention, which in this case was the jail, not the scene during testing, and no right to private consultation with attorney exists at the scene. Defendant never requested private consultation, so officer not obligated to explain right to privacy during consultation, citing State v. Hellstern, 856 N.W.2d 355 (Iowa 2014).

Scott County State v. Iowa District Court for Scott County, No. 15-2150 (Iowa Supreme Court, filed January 20, 2017). **Restitution for emergency response not authorized in the case of routine traffic stop for OWI.** Officer observed vehicle with no license plate light make a left turn, cutting across several lanes of traffic. Officer conducted traffic stop and ultimately the driver was convicted of OWI. State sought restitution under Iowa Code §321J.2(13)(b), emergency response resulting from violation of OWI statute. Held that where there is no accident, no actual or potential injuries, and no 911 call, there was no emergency within the meaning of the restitution statute. *(Unpublished Opinion)*

Scott County State v. Iowa District Court for Scott County, No. 15-2151 (Iowa Supreme Court, filed January 20, 2017). **Restitution for emergency response not authorized in the case of routine traffic stop for OWI.** Officer observed vehicle cross the center line of traffic and nearly strike an oncoming vehicle, requiring that vehicle to take evasive action. Officer conducted traffic stop and ultimately the driver was convicted of OWI. State sought restitution under Iowa Code §321J.2(13)(b), emergency response resulting from violation of OWI statute. Held that where there is no accident and no 911 call, there was no emergency within the meaning of the restitution statute. *(Unpublished Opinion)*

Scott County State v. Phillip Gerald Hoxsey, No. 16-1043 (Iowa Court of Appeals, filed February 8, 2017). **Failure to notify of surcharge not prejudicial where fine was suspended.** Where sentencing court did not notify defendant of surcharge on suspended fine other than to generally refer to, "fines and surcharges," the plea colloquy did not substantially comply with Iowa Rule 2.8(2)(b)(2), quoting State v. Fisher, 877 N.W.2d 676 (Iowa 2016). However, where fine was suspended, no prejudice resulted.

Back to page 1 ▲

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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 http://www.iowacourts.gov/).

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Scott County In the Interest of S.B., No. 16-0659 (Iowa Court of Appeals, filed February 22, 2017). **Insufficient evidence of serious injury by reckless driving based upon collision alone.** Juvenile driver crashed his parent's car into a tree, causing serious injury to one of his two passengers. Officer investigating the collision detected odor of marijuana coming from the driver, along with slow speech, red eyes, and droopy eyelids. Driver admitted ingesting marijuana to medical personnel at the scene. A bag of marijuana was located in the middle of backseat of the vehicle. Driver refused to provide any body specimens for testing. Trial court adjudicated driver delinquent for serious injury by reckless driving and possession of marijuana, but not OWI. Held that in the absence of proof beyond a reasonable doubt that he was impaired, or expert testimony that he was exceeding the speed limit in addition to failing to maintain control of the vehicle, a mere violation of a rule of the road is not per se reckless and evidence was insufficient to sustain adjudication for serious injury by motor vehicle.

Scott County State v. Phillip Gerald Hoxsey, No. 16-1082 (Iowa Court of Appeals, filed February 22, 2017). **Sentencing forms containing boilerplate language are sufficient and further explanation of court's reasoning is not necessary.** Defendant was sentenced for DWB and waived reporting of the hearing. The sentencing order stated only that the reasons for the sentence were the nature and circumstances of the crime, the protection of the public from further offenses, and the defendant's criminal history or lack thereof. Held that no additional, individualized statements were necessary to explain the court's reasoning in this particular case, and there was no abuse of discretion.

Scott County State v. Darsheem T. Shears, No. 16-0532 (Iowa Court of Appeals, filed February 22, 2017). **Sufficient evidence to sustain verdict for eluding and DWB convictions based upon credibility determination made by jury on issue of identity.** Police pursued a vehicle, and were able to observe the driver before losing sight of it. Vehicle was stopped an hour later, with a different driver. Officer identified defendant as the driver in original pursuit after being shown a photo, and testified at trial that the second driver was a passenger during the original pursuit. Dash-cam video also appeared to show a taller person, not the defendant, in the passenger seat during the pursuit. Defendant and a defense witness testified that second driver was the guilty party. Held that credibility determinations are made by the jury, their credibility determination was not unreasonable, and there was no abuse of discretion in denying motion for new trial.

Scott County State v. Darsheem T. Shears, No. 16-0532 (Iowa Court of Appeals, filed February 22, 2017). **Test for unavailability of declarant of out-of-court statement not met.** Defendant was charged with eluding and DWB after successfully evading police pursuit. Vehicle was stopped an hour later, with a different driver. Defendant offered out-of-court written and video statement from different driver that he was also the driver involved in the pursuit, based upon declarant unavailable exception to hearsay rule. Trial court excluded the statement, finding that although different driver was unavailable under I.R.Evid. 5.804(a)(5), the statement lacked indications of trustworthiness. Held that where statement is not under oath, is made by a friend of the defendant and to him alone, is not corroborated, and lacks context or specificity, it does not meet the standard of trustworthiness and no abuse of discretion found in exclusion.

Story County State v. Stuart Lee Corson, No. 16-0546 (Iowa Court of Appeals, filed February 8, 2017). **No abuse of discretion for sentence of residential treatment for second offense OWI.** Where sentencing court specifically articulated rehabilitation goals for the defendant and protection of society, and considered criminal record and work history in granting him work release at a residential facility rather than supervised probation, court's failure to acknowledge all of the existing circumstances does not mean they were not considered and sentence was not an abuse of discretion.

Back to page 1 ▲

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Washington County State v. Jason Michael Wagamon, No. 16-0374 (Iowa Court of Appeals, filed January 11, 2017). **Automobile exception to warrant requirement justified search of vehicle following traffic stop.** Defendant was arrested for drug possession after traffic stop and vehicle was searched pursuant to automobile exception to warrant requirement. Held that while State v. Gaskins, 866 N.W.2d 1 (Iowa 2015), signaled that the automobile exception has outlived it efficacy in light of technology and means of securing a warrant in a short period of time, Court of Appeals was not at liberty to overturn precedent and declined to reexamine automobile exception without direction from the Iowa Supreme Court.

Webster County State v. Michael Anthony Webster White, No. 16-1179 (Iowa Court of Appeals, filed March 8, 2017). **No abuse of discretion where court relied on more than the nature of the offense.** Defendant sentenced for intimidation with a dangerous weapon and eluding. Sentencing court stated that it relied on the PSI, the rehabilitative opportunities available in prison, defendant's allocution and criminal history, but also stated that it was "most troubled" by the nature of the crime. Held that where sentencing court cited several factors in addition to the nature of the offense, there is no abuse of discretion.

Webster County State v. Michael Anthony Webster White, No. 16-1179 (Iowa Court of Appeals, filed March 8, 2017). **Defendant must make an affirmative showing that sentencing court relied on an unproven offense.** Defendant sentenced for intimidation with a dangerous weapon and eluding. Defendant challenged statement in the PSI that he had a prior probation revocation, and sentencing court noted his objection. Held that absent an affirmative showing that sentencing court relied on an unproven offense, sentencing court's statement that defendant was, "no stranger to the criminal justice system," and had previously been on probation will not suffice to disturb the sentence.

Woodbury County State v. Gregory A. Taylor, No. 16-0921 (Iowa Court of Appeals, filed March 8, 2017). **Admission in written guilty plea sufficient to support factual basis for plea.** Defendant admitted in his written guilty plea that he was operating a motor vehicle while his license was barred and not in compliance with the terms of his temporary restricted license. Held that written admission is sufficient to support factual basis and that driving outside the restrictions constitutes a violation of the statute.

Woodbury County State v. Gregory A. Taylor, No. 16-0921 (Iowa Court of Appeals, filed March 8, 2017). **Traffic stop for equipment violation supported by probable cause.** Counsel was not ineffective for failure to file motion to suppress stop of defendant for equipment violation, as such a violation, no matter how minor, constitutes probable cause, quoting State v. Tyler, 830 N.W.2d 288 (Iowa 2013).

Unpublished Decisions on Automated Traffic Cameras

Linn County Behm, et. al., v. City of Cedar Rapids and Gatso USA, Inc., No. 16-1031 (Iowa Court of Appeals, filed February 22, 2017). **Automated speed cameras are not unconstitutional.** Six motor vehicle owners filed suit against the City of Cedar Rapids and Gatso USA, Inc., challenging constitutionality of automated speed cameras on the highway and the subsequent issuance of municipal infractions. Court evaluated the municipal ordinance for due process, preemption, equal protection, privileges and immunities, unlawful delegation of police powers, and unjust enrichment violations, and found no violation nor a private cause of action, granting summary judgment in favor of the City and Gatso, USA.

Back to page 1 ▲

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Linn County Cedar Rapids v. Marla Marie Leaf, No. 16-0435 (Iowa Court of Appeals, filed February 22, 2017). **Automated traffic cameras are not unconstitutional, are not preempted by law or regulation, and do not constitute an unlawful delegation of police power.** Defendant was mailed a Notice of Violation alleging a speeding violation by an automated traffic enforcement (ATE) camera. Defendant challenged the sufficiency of the evidence, and also raised equal protection, privileges and immunities, and due process violations, as well as preemption and unlawful delegation of police powers. Referencing the two methods by which an alleged violation may be challenged, and detailing the process by which officers review allegations of a violation before they are issued, held that automated traffic cameras do not violate the Iowa Constitution, are not an unlawful delegation of police powers, and ATE citations are not preempted by regulation even if the IDOT had ordered the particular camera to be removed, because any removal order does not invalidate the underlying ordinance.

First Amendment: An ordained Pagan priest in the US has finally received the okay to sport goat horns in his Maine driver's license photo, saying they are religious attire.

Prepared by the

Prosecuting Attorneys Training Coordinator (PATC)

Under a project approved by the Governor's Traffic Safety Bureau (GTSB), in cooperation with the National Highway Traffic Safety Administration (NHTSA). The opinions, findings, and conclusions expressed in this publication are those of the author and not necessarily those of the PATC, GTSB, NHTSA, or the Iowa Department of Justice.

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Back to page 1 ▲

2017 Iowa Acts of Interest to Law Enforcement

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The ***Tuesday, June 20th*** workshop will be at the **Radisson Hotel & Conference Center** in Coralville located north of I-80 at Exit 242.

The ***Wednesday, June 21st*** workshop (**NEW LOCATION**) will be at the ***Prairie Meadows Hotel** in Altoona. The Prairie Meadows Hotel is located at 1 Prairie Meadows Drive in Altoona.

The workshops will provide an overview of 2017 legislation, as well as new issues in Criminal Law.

Registration begins at 8:30 a.m. and the Workshop starts at **9:30 a.m.** Refreshments and lunch will be provided.

Registration Fee: $65.00 Payable to	**Iowa County Attorneys Association (ICAA)**
Mail/Fax to: Peg Bowman	Phone: 515-281-5428
Prosecuting Attorneys Training Coordinator	Fax: 515-281-6771 ATTN: PATC
Hoover Building, 2nd Fl., Des Moines, IA 50319	E-Mail: peg.bowman@iowa.gov

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***Prairie Meadows is a new location**

Workshop Location

____June 20 Coralville **____ June 21 Altoona**

There will be a $**25.00** fee applied to cancellations received after **June 15, 2017** and for any registrants who fail to attend without cancellation prior to June 15th.

The workshops are expected to qualify for CLE credits.