Section F

Case Law Update

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IOWA CASE LAW UPDATE

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(Covering volumes 929 to 945 of the Northwestern Reporter, Second Series)

TABLE OF CONTENTS

* Reid Shepard, court of appeals law clerk for Judge Ahlers, provided a great deal of assistance in creation of this outline with regard to cases in volumes 930 to 935 of the Northwestern Reporter, 2d, by summarizing many of the cases in those volumes to enable completion of this outline for the seminar. Any mistakes contained herein are attributable to Judge Ahlers and not Mr. Shepard.

ADMINISTRATIVE LAW

Discipline by Confidential Letter of Warning

Irland v. Iowa Board of Medicine, 939 N.W.2d 85 (Iowa 2020)
The board lacks authority to impose discipline through a "confidential letter of warning" without finding probable cause of a violation and without giving the physician an opportunity to challenge the alleged violation. Since the warning letter effectively imposed discipline by requiring the physician to get a competency evaluation before returning to the practice of medicine, the board circumvented the due process safeguards and public reporting requirements set forth in the governing statute. Likewise, because the letter effectively imposed discipline, Iowa Code section 272C.3(1)(d) – which precludes judicial review when the board determines an investigation is not warranted or an investigation should close – did not apply to preclude judicial review.

Service by Fax

Logan v. Bon Ton Stores, Inc., 943 N.W.2d 7 (Iowa 2020)
In a 4-2 decision, timely faxing a petition for judicial review of a workers' compensation decision to the opposing party's counsel, where the petition is actually received and no prejudice results, constitutes substantial compliance with Iowa Code section 17A.19(2).

Standing to Challenge Donation Information

Dickey v. Iowa Ethics & Campaign Disclosure Bd., 943 N.W.2d 34 (Iowa 2020)
A private citizen filed a complaint with the ethics and campaign disclosure board claiming the Governor's campaign committee underreported a campaign contribution. He appealed the dismissal of his complaint. In a 5-1 decision, the court held a private citizen is not an "aggrieved or adversely affected" party within the meaning of section 17A.19. While parties who allege they are missing information that the campaign laws require to be disclosed may have standing, the complaining party in this case does not allege he is lacking any relevant information. He merely voiced a disagreement over the reporting method used by the candidate committee. Therefore, he did not have standing.

Recoupment of DHS Payment Pending Appeal

Endress v. Iowa Dept. of Human Services, 944 N.W.2d 71 (Iowa 2020)
Pfaltzgraff v. Iowa Dept. of Human Services, 944 N.W.2d 112 (Iowa 2020)
The DHS sought to recoup payments made for child-care services rendered by the childcare provider during agency review of the providers' canceled provider agreements. In 6-1 portions of the decisions, the DHS notice of potential recoupment met procedural due process requirements and the DHS was not liable for the childcare

providers' attorney fees because the DHS's role was "primarily adjudicative." In a 4-3 portion of the rulings, the DHS erred in refusing to consider the childcare providers' unjust-enrichment defense to the recoupment proceeding.

APPELLATE PROCEDURE

Filing Notice of Appeal Waives Post-Trial Motions

Freer v. DAC, Inc., 929 N.W.2d 685 (Iowa 2019)
While the jury was deliberating in this case, the parties entered into a high-low settlement agreement. The jury returned a defense verdict and the trial court entered judgment accordingly. Plaintiff filed a timely posttrial motion for new trial and change of venue. Defendant resisted and filed a motion to enforce the high-low settlement agreement and to strike Plaintiff's post-trial motions. At a hearing on the motions, the trial court verbally stated that it granted Defendant's motion to enforcement the settlement agreement and deemed Plaintiff's posttrial motions moot. Before the verbal ruling was reduced to writing, Plaintiff filed notice of appeal. In a 4-3 ruling, the Court found that Plaintiff abandoned its posttrial motions and divested the trial court of jurisdiction by filing notice of appeal. Therefore, the judgment entry for a defense verdict was affirmed, leaving Plaintiff with nothing rather than the low number from the high-low agreement. Dissenters would have enforced the high-low settlement agreement.

State Authority to Directly Appeal Magistrate Ruling

State v. Stanton, 933 N.W.2d 244 (Iowa 2019)
State was not required to appeal magistrate's *sua sponte* dismissal of complaints to district court pursuant to Iowa Rule of Criminal Procedure 2.73 before seeking discretionary review. Since the dismissal was a final judgment and was not based on a finding that a statute or ordinance was invalid, the State had authority to seek discretionary review directly with the supreme court.

ATTORNEY DISCIPLINE

Lack of Diligence and Communication

Supreme Ct. Atty. Disciplinary Bd. v. Noel, 933 N.W.2d 190 (Iowa 2019)
Public reprimand for multiple violations. Violations included: (1) failing to abide by client decisions by neglecting to file suit as agreed; (2) failing to handle the client's matters in a reasonably timely manner by not filing suit as agreed, not making required initial disclosures, not filing proposed jury instructions as ordered, and not producing timely discovery responses; (3) failing to keep the client reasonably

informed by not responding to client request for information, not informing the client of the necessity of providing timely discovery responses, and not explaining the ramifications of a motion for sanctions filed by the opposing party; (4) failing to make reasonably diligent effort to comply with proper discovery requests; and (5) engaging in conduct prejudicial to the administration of justice by neglectful and untimely handling of discovery matters resulting in additional court proceedings and delays. Prior discipline was not an aggravating factor because the discipline had not been imposed at the time the violations occurred in this case. Since the other discipline resulted in a one-year suspension, no additional suspension was warranted and a public reprimand was issued.

Misappropriation of Client Funds

Supreme Ct. Atty. Disciplinary Bd. v. Earley, 933 N.W.2d 206 (Iowa 2019)
Revocation for misappropriating client funds with no colorable future claim to the funds by taking money from trust account for personal purposes. Additional violations included neglecting the client matters that had generated the trust account funds the attorney misappropriated, violating trust account practices by withdrawing unearned fees, and not notifying clients of the withdrawals. Mitigating factors do not come into play in a conversion case such as this.

OWI, Domestic Abuse Assault, & NCO Violations

Supreme Ct. Atty. Disciplinary Bd. v. Sears, 933 N.W.2d 214 (Iowa 2019)
Two-year suspension for conduct resulting in conviction for operating while intoxicated, conviction for domestic abuse assault causing bodily injury, and several violations of a no-contact order even though the attorney was not charged with the no-contact order violations. Aggravating factors included multiple no-contact order violations, violation of terms of probation, commission of a crime and violation of the no-contact order while on probation, false testimony to the commission, and a demonstrated lack of remorse. Mitigating factor was lack of prior discipline (although not weighted heavily due to violations starting five months after admission to the bar).

Theft of Fees Belonging to Law Firm

Supreme Ct. Atty. Disciplinary Bd. v. Den Beste, 933 N.W.2d 251 (Iowa 2019)
In a 6-1 decision, four-month suspension for theft of firm's funds by keeping cash payments from client rather than depositing them with the firm for distribution pursuant to the agreement between the attorney and the firm and engaging in dishonesty to cover up the theft. Warning given that future cases involving theft from a law firm without a colorable claim may incur stiffer sanctions. Dissenter argued for revocation.

Depositing Expense Retainer in Personal Bank Account

Supreme Ct. Atty. Disciplinary Bd. v. Muhammad, 935 N.W.2d 24 (Iowa 2019)
Although the attorney disputed the facts, the court found a client paid the attorney a $7500 retainer for expenses for a personal injury/civil rights case the parties agreed would be handled on a contingency fee basis. The attorney deposited the funds in her personal bank account. The contingency case never proceeded due to a breakdown in the relationship. The attorney did not return the money and was unable to account for it, even though no expenses had been incurred on the case. Since the attorney had no colorable present or future claim offsetting her misappropriation of the funds, her license was revoked.

Multiple Trust Account Violations

Supreme Ct. Atty. Disciplinary Bd. v. Noyes, 936 N.W.2d 440 (Iowa 2019)
Thirty-day suspension for multiples violations related to client trust account. Violations included providing financial assistance to a client by loaning money to the client while waiting for settlement funds to arrive. It was not a defense that the litigation had concluded, as resolution of a client's lawsuit includes administration of settlement funds. Other violations included comingling trust and business account funds by advancing money to a client from the trust account and the business account and then transferring money between the accounts to reconcile them. Depositing earned fees into the trust account or allowing earned fees to remain in the trust account both constituted violations. Another violation was failure to keep records, resulting in disbursements that resulted in several client accounts with negative balances. Such violations were not excused by blaming an employee who was not properly supervised. Aggravating factors included prior discipline in the form of four prior public reprimands, including two for similar violations, and the fact the attorney is seasoned with over thirty years of experience. Mitigating factors included cooperation, no client harm, proactive changing of the bookkeeping system, and not being motivated by personal gain.

Handling of Payment Made Pursuant to Settlement That Fell Through

Supreme Ct. Atty. Disciplinary Bd. v. Hier, 937 N.W.2d 309 (Iowa 2020)
Thirty-day suspension for mishandling of conditional and later contested receipt of funds. Parties in a family law dispute reached a verbal settlement agreement that included the father paying the mother's attorney (Hier) $750 of attorney fees. The father paid the money to Hier before the verbal agreement had been reduced to writing. The settlement fell through, which negated the obligation of the father to pay the fees (although the father was later ordered to pay $1000). When Hier failed to promptly return all of the money (she eventually returned half), the father filed an ethics complaint. The attorney's conduct was found to violate ethical rules in the following ways: (1) failing to deposit the $750 in her trust account until a written

settlement agreement was executed and approved by the court; (2) failing to deposit the money in her trust account because the funds were owned by her client; and (3) failing to keep the money in trust after a known dispute over the funds developed. As to the defense that the father had no valid claim to the money, the court noted, "Hier cannot act as 'judge and jury to resolve the dispute in [her] own favor.'" Aggravating factors included prior discipline, which included four prior public reprimands and a suspension. Mitigating factors included history of accepting court-appointed cases; pro bono work; work for low-income clients; testimony of the judge involved in the dispute that he considered Hier to be a good and truthful attorney; and lack of harm to the client.

Neglect, Sufficiency of Stipulations, and Probation Sanction

Supreme Ct. Atty. Disciplinary Bd. v. Bergmann, 938 N.W.2d 16 (Iowa 2020)
Public reprimand for a variety of violations pertaining to neglect of client matters. Violations included missing an important hearing on temporary matters in a dissolution case, failing to attend a mediation in a child custody case, failing to keep a client informed by not returning phone calls, failing to meet appellate deadlines until an order of withdrawal was in place, and requiring additional court action as a result of the neglect. Mitigating factors included the fact the case involved pure neglect (not neglect coupled with other misconduct), inexperience, personal health issues, acceptance of responsibility, cooperation with the disciplinary process, history of public service, and willingness to take proactive measures to correct the problems. Due to lack of detail in the stipulations of the parties, the court could not confirm any claimed aggravating factors. The court criticized the quality of the stipulations entered by the parties, including the lack of detail and stipulations to legal conclusions rather than facts. The case included a reminder that the rule pertaining to stipulations requires "stating supporting facts." The court also declined to adopt probation as a part of the sanction, as requested by the parties, as the rules do not clearly allow for it and the court believes any system of probation should be adopted through a formal rule amendment and a period of public comment.

Neglect & Failure to Cooperate

Supreme Ct. Atty. Disciplinary Bd. v. Goedken, 939 N.W.2d 97 (Iowa 2020)
Ninety-day suspension for neglect of multiple estate and trust matters. Violations included requiring nine delinquency notices to be sent, failing to appear for hearings scheduled because of the delinquencies, failing to inform clients of hearings, failing to inform clients of suspension of law license, continuing to practice after license was suspended, and failing to respond to inquiries from the board. Aggravating factors included history of prior discipline, length experience with the practice of law, multiple violations of the same type, unrepentant attitude toward rule violations, failure to cooperate with the board, and continued practice of law in spite of suspension.

Mitigating factors included the attorney's health problems, stresses in his personal life, lack of harm to clients, and lack of dishonest or selfish motive.

Improper Personal Distributions as Administrator of Estate

Supreme Ct. Atty. Disciplinary Bd. v. Kozlik, 943 N.W.2d 589 (Iowa 2020)
Attorney serving as administrator of his uncle's estate made unauthorized payments from the estate account to himself, depositing the funds into his personal checking account and his firm operating account. He returned some funds before the disbursements were discovered. The fact the attorney took more than three times the scheduled amount for ordinary fees and the record did not support a suggestion that he would be entitled to extraordinary fees negated the attorney's "colorable future claim" defense. In light of the misappropriation of funds acting as a fiduciary, the court declined to follow the commission recommendation for a public reprimand and revoked the attorney's license in Iowa.

Overbilling State Public Defender

Supreme Ct. Atty. Disciplinary Bd. v. Meyer, 944 N.W.2d 61 (Iowa 2020)
Overbilling the State Public Defender for services not provided and expenses not incurred resulted in the attorney entering an *Alford* plea to third-degree theft. As a result, a one-year suspension was imposed. Aggravating factors included the amount overbilled (with the court finding "Meyer's hours were high and unbelievable") and the fact the attorney entered an *Alford* plea to criminal charges. Mitigating factors included quality work, lack of harm to clients, lack of disciplinary history, pro bono work, and promptness in making partial restitution.

Sexual Harassment of Employees

Supreme Ct. Atty. Disciplinary Bd. v. Watkins, 944 N.W.2d 881 (Iowa 2020)
Six-month suspension for creating and fostering a culture of sexual harassment in the attorney's office while serving as part-time county attorney and private practitioner. Sexual harassment does not require "come-ons," as "put-downs" suffice as well. Aggravating factors included failure to accept responsibility, proclaimed ignorance that the behavior was inappropriate, the attorney's position as an elected county attorney, the power imbalance between the attorney and the employees, and the harm caused to an employee. Mitigating factors were limited to the attorney's cooperation with the disciplinary process and the steps he took to address his unprofessional behavior. The court expressly declined to consider as mitigating factors: (1) lack of prior discipline (because the attorney was new to the practice of law); and (2) lack of experience (because it does not require legal experience to treat employees with basic respect).

CIVIL PROCEDURE

Medical Malpractice – Scope of Expert Designations & Jury Review of Video

Eisenhauer ex rel. T.D. v. Henry County Health Center, 935 N.W.2d 1 (Iowa 2019)
The jury found in favor of the doctor, nurses, and facility in this medical malpractice claim surrounding a birthing injury. Trial court did not err by allowing the defendant doctor to testify about his opinion that the maneuvers he used were within the standard of care. The doctor had been disclosed as an expert who intended to testify on issues of standard of care. Plus, he was questioned about standard of care during his deposition, and his trial testimony was consistent with and within the scope of his deposition testimony. Also, it was not error to allow admission of the doctor's handwritten notes derived from a birthing video taken by the plaintiff's relative, as the notes were a summary of the doctor's observations and opinions during the plaintiff's birth and not notes reflecting opinions in anticipation of litigation. Therefore, they did not violate the disclosure requirements of rule 1.508. The birthing video was admitted into evidence and parts were repeatedly played during examination of witnesses, but it was not permitted to be taken into the jury room. When the jury asked to view it during deliberation, it was played in its entirety without the jurors having the ability to pause, stop, or rewind it. Trial court did not abuse its discretion in so limiting the playing of the video.

Retrial – Exonerated Defendant

Whitlow v. McConnaha, 935 N.W.2d 565 (Iowa 2019)
A motorcycle passenger sued a farmer who turned left in front of the motorcycle as the motorcycle tried to pass the tractor. The farmer filed a third-party contribution claim against the motorcycle driver, causing the passenger to amend her suit to also include a claim against the driver. The jury found the farmer not at fault. Due to an error in the verdict forms, the jury did not go any further to determine liability of the motorcycle driver. The trial court granted a new trial against the motorcyclist only and the supreme court affirmed, finding it appropriate to excuse an exonerated defendant from a retrial when the jury's no-liability finding is untainted by an error affecting another party.

Class Certification – Commonality

Roland v. Annett Holdings, Inc., 940 N.W.2d 752 (Iowa 2020)
Trucking company with drivers all over the country had their truck driver employees sign a memorandum of understanding (MOU) requiring injured drivers to travel to Des Moines for a light-duty work program regardless of where they resided. A class action suit was brought seeking to certify a class consisting of drivers who signed the MOU and were compelled to travel to Des Moines for the light-duty work program. In a 5-1 decision, the court found class certification to be inappropriate because the

commonality requirement was lacking, as individual issues predominated over common claims. In addition, class certification would circumvent each driver's obligation to exhaust remedies for alternate medical care under Iowa Code chapter 85. The district court lacked subject matter jurisdiction over claims of class members who had not adjudicated their claims before the workers' compensation commissioner.

Simultaneous Suits – Claim & Issue Preclusion

Lemartec Eng'g & Constr. v. Advance Conveying, 940 N.W.2d 775 (Iowa 2020)
Citing with approval Restatement (Second) of Judgments section 26, comment a, when there are simultaneous claims in different forums that arguably deal with overlapping disputes, a party intending to rely on claim preclusion must give notice and an opportunity to develop a framework for resolution of the overlapping issues. By waiting until judgment in one suit before raising the issue of claim preclusion, the waiting party waived its claim preclusion argument. In addition, issue preclusion did not apply because, even though the pleadings in the two suits were similar and both suits involved claimed breaches of the same contract, the nature of the alleged breaches was different.

Cost-Shifting – Frivolous Claims Against CAFOs

Merrill v. Valley View Swine, LLC, 941 N.W.2d 10 (Iowa 2020)
Iowa Code section 657.11(5) allows confined animal feeding operations (CAFOs) owners to recover costs and expenses against a party who brings an action against the CAFO if the suing party loses the action and the claim is determined to be frivolous. An abuse-of-discretion standard of review is applied to the district court's award of costs and expenses. The plaintiffs' second dismissal of their causes of action, which operated as an adverse adjudication against them on the merits pursuant to Iowa Rule of Civil Procedure 1.943, made them losing parties under section 657.11(5). The district court continued to have jurisdiction over the plaintiffs after dismissal in order to address motions for costs and expenses made pursuant to section 657.11(5). The plaintiffs' claim were frivolous within the meaning of section 657.11(5). One plaintiff's evidence of harm was marginal and there was no specific basis for concluding odors came from the defendants' sites. The other plaintiff lacked a legally-required connection to the property, as she did not own the house in question and the record did not show the CAFOs had any impact on her use or operation of some outbuildings she owned. The "costs and expenses" permitted under section 657.11(5) are not limited to taxable costs.

Compelling Arbitration

Ommen v. Ringlee, 941 N.W.2d 310 (Iowa 2020)
In a 5-1 decision, the court-appointed liquidators of a now-insolvent health insurer pursuing common law tort claims against a third-party contractor are bound by an arbitration provision in a pre-insolvency agreement between the health insurer and the third-party contractor. This is the case even though the liquidators were not parties to the contract containing the arbitration clause because the liquidators' claims are a derivative of the health insurer's claims and the health insurer was a party to the contract. It made no difference that the liquidators framed their causes of action in tort, as the claims could not be detached from the contract. Additionally, Iowa Code section 507C.21(k) does not give the liquidators the ability to disavow the contract containing the arbitration clause. Finally, the McCarran-Ferguson Act does not permit reverse preemption of the Federal Arbitration Act.

Application of the Contradictory Affidavit Rule

Susie v. Family Health Care of Siouxland, P.L.C., 942 N.W.2d 333 (Iowa 2020)
In a 4-1 decision involving a medical negligence action, the plaintiffs' expert's report submitted pursuant to Iowa Rule of Civil Procedure 1.508, which the expert contradicted at his deposition, was insufficient to generate a genuine issue of fact due to the "contradictory affidavit rule." The fact that the expert prepared the report prior to his deposition is inconsequential. Since no witness opined that the immediate administration of antibiotics would have more likely than not avoided the injury to the plaintiff, summary judgment was appropriate. Likewise, since no witness opined what the chances of the plaintiff keeping her arm and toes were, if any, had antibiotics been administered, the plaintiffs' claim based on "lost-chance" also failed. The dissent asserted the contradictory affidavit rule is a very narrow doctrine that should be applied only in the most compelling circumstances and those circumstances did not exist here.

Sanctions for Failing to Attend Settlement Conference

Davis v. Iowa Dist. Ct., 943 N.W.2d 58 (Iowa 2020)
Plaintiff appealed the imposition of sanctions after he failed to personally attend a pretrial settlement conference in violation of pretrial orders. District courts have inherent authority to manage proceedings on their dockets and in their courtrooms. This authority includes ordering and enforcing certain pretrial conduct, such as attendance at pretrial conferences. The fact Iowa Rule of Civil Procedure 1.602(1) does not specifically mention represented parties when addressing pretrial conferences does not negate the court's inherent authority. The district court's order requiring personal attendance of "[a]ll parties with authority to settle" was not too vague to alert the plaintiff that he, as opposed to his attorney, needed to be personally present. The fact the directive to attend was contained in a routine trial-setting order

did not make the order any less enforceable. Rule 1.602(5) gave the district court authority to order the payment of attorney fees and costs as a sanction.

Affirmative Defenses – Timing

In re Estate of Franken, 944 N.W.2d 853 (Iowa 2020)
An affirmative defense can be raised in the first instance in a motion for summary judgment so long as there is no prejudice to the opposing party.

Jurisdiction to Hear Claims for Violating Municipal Civil Rights Ordinances

Petro v. Palmer Coll. of Chiropractic, 945 N.W.2d 763 (Iowa 2020)
A student at the college claimed age and disability discrimination. He lodged a complaint with the Iowa Civil Rights Commission. The complaint was screened and closed, but the student did not seek a right-to-sue letter. Instead, he filed an identically-worded complaint with the local civil rights commission. Both state and local law prohibit discrimination on disability, but only the local ordinance prohibited discrimination in education based on age. The student got a right-to-sue letter from the local commission and filed suit for violations of the local ordinance, the Iowa Civil Rights Act (ICRA), and breach of contract. In a 5-1 portion of the ruling, the court concluded home rule in Iowa generally stops at the point where a municipality attempts to bring about enforceable legal relations between two private parties. For a municipality to enact law that would be binding between those parties in state court, specific authorization from the legislature is needed. The ICRA does not contain such authorization, so the local ordinance violation claims failed. In 6-0 portions of the ruling, the ICRA claims were barred because they were the second round of claims based on the same conduct and the student had no viable breach of contract claim, as statements of nondiscrimination in the online application and the college's equal opportunity policy did not give rise to contractual liability.

COMMERCIAL LAW

(No Cases)

CONSTITUTIONAL LAW

Jury Panels – Fair Cross Section

State v. Lilly, 930 N.W.2d 293 (Iowa 2019)
In a 4-3 decision, the state constitutional right to an impartial jury includes the right to a jury pool in which any "distinctive group" is not underrepresented by more than one standard deviation from the distinctive group's percentage of the jury-eligible

population if the underrepresentation is due to systematic exclusion. Representation of the group in the eligible juror population should be assessed using the most current census data, adjusted for any reliable data that might affect eligibility, such as the number of persons under the age of 18. Aggregated data on multiple jury pools can be used, so long as the data is not selective. A defendant whose jury pool contains at least as high a percentage of the distinctive group as the eligible population has not been aggrieved under the Duren/Plain framework. Although the challenger does not need to show discriminatory intent, the burden remains on the challenger to establish that any underrepresentation is due to systematic exclusion. Jury management practices, even if commonplace, can amount to systemic exclusion if it can be established that such practices cause the underrepresentation.

Jury Panels – Fair Cross Section II

State v. Veal, 930 N.W.2d 319 (Iowa 2019)
Defendant convicted of a double homicide asserted that his right under the Sixth Amendment of the federal constitution to an impartial jury drawn from a fair cross section of the community was violated. In a 4-3 portion of the decision, the Court noted that the standard under the federal constitution is different than under the Iowa constitution. To establish a fair cross section under the federal constitution, it must be shown that the representation of a distinctive group in the jury pool falls below the representation in the eligible juror population by more than two standard deviations (in contrast to a one standard deviation standard under the Iowa constitution). Also, run-of-the-mill jury management practices cannot constitute systematic exclusion under the Sixth Amendment. The Court found that Defendant did not attempt to meet the third prong of the Duren/Plain procedure (i.e., the systematic exclusion prong) other than arguing that systematic exclusion could be inferred, which is not enough under the standard stated in Lilly. In spite of this fact, because Defendant did not have the benefit of this decision and Lilly, the Court remanded the case to give Defendant the opportunity to further develop his arguments that his Sixth Amendment right to an impartial jury was violated. Three dissenters argued that, since the jury pool had a percentage of the distinctive group at least as large as the percentage of that group in the jury-eligible population, the fair cross section claim failed as a matter of law and remand was not necessary.

CONTRACTS

Formation Versus Fulfillment of Conditions Within Existing Contract

Niday v. Roehl Transport, Inc., 934 N.W.2d 29 (Iowa Ct. App. 2019)
Trucking employment contract between Wisconsin employer and Iowa employee was formed when they struck a bargain during their telephone call, which was confirmed

by the employer's letter to the employee. The place of contracting is where the offer is accepted, or where the last act necessary to a meeting of the minds occurs. The fact the contract required the employee to pass a drug test and complete training did not make the contract a "proposed contract." Relying in part on Restatement (Second) of Contracts section 224, the court held the drug testing and job training were obligations under the contract and were conditions to enforceability of the contract, but they were not conditions to formation of the contract. Since the parties agreed to all of the terms of the contract during their phone conversation, the contract was formed at that time.

Forum-Selection Clause in Challenge Based on Fraud

Karon v. Elliott Aviation, 937 N.W.2d 334 (Iowa 2020)
In a 4-2 decision, when a party claims to have been fraudulently induced to enter a contract, the contract's forum-selection clause is still enforceable unless the fraud relates to the forum-selection clause itself. The court favorably cited Restatement (Second) of Contracts section 80. The court concluded this holding is a "logical corollary to our prior holding that the fraud necessary to set aside an agreement to arbitrate must relate to the arbitration clause itself."

Reasonableness of Contingency Fee Contract

Munger, Reinschmidt & Denne, L.L.P. v. Lienhard Plante, 940 N.W.2d 361 (Iowa 2020)
Reasonableness of a contingency fee contract is evaluated from the time of inception of the contract. The analytical approach to determining the reasonableness of fees is the same under the Iowa Rules of Professional Conduct as under the former Iowa Code of Professional Responsibility. Under that approach, noncontingency fee factors under rule 32:1:5(a) are not to be used to reexamine a contingency fee contract at the "conclusion of successful litigation." Therefore, the evaluation does not include comparing the ratio of hours worked to the results obtained.

CORPORATIONS

How an LLC Enters a Binding Contract to Buy Back Member Units

Homeland Energy Solution, L.L.C. v. Retterath, 938 N.W.2d 664 (Iowa 2020)
This case involves many issues in an action brought by a limited liability company (LLC) against its member for breach of contract for buyback of the member's interest units. Based on the nature of the suit and remedies sought, the action was in equity, so the member was not entitled to a jury trial. Trial court did not abuse its discretion in bifurcating trial between original issues and those raised by amendment of the member's pleadings later in the suit. Neither the LLC's operating agreement nor Iowa common law nor Iowa Code chapter 489 required membership approval of the

member unit purchase agreement between the LLC and the member. Board approval was sufficient. Trial court did not abuse its discretion in refusing to sanction the LLC or in refusing to grant a continuance due to the member's late discovery request. Provision in agreement setting deadline for the member to sign and return the agreement did not impose the deadline on the LLC. Specific performance was an appropriate remedy for the member's breach of the agreement. The member's arguments that the LLC was not entitled to specific performance because the LLC did not act in good faith or otherwise comply with its obligations under the agreement were without merit. Trial court did not err in rejecting the member's defenses of equitable estoppel, unilateral and mutual mistake, unclean hands, and procedural and substantive unconscionability. Trial court erred by awarding attorney fees to the LLC, as the agreement did not clearly and unambiguously show an intent to shift attorney fees in non-third-party cases resulting from the member's breach of the agreement. However, the request for attorney fees was in good faith, so the member was not entitled to sanctions.

CRIMINAL LAW

Jurisdiction Over Crimes on Tribal Land

State v. Stanton, 933 N.W.2d 244 (Iowa 2019)
Iowa state courts have jurisdiction over criminal matters arising on the Meskwaki Settlement when the defendant is non-Indian and the victim is also non-Indian (or when the crimes are victimless).

Duty to Retreat – Stand Your Ground

State v. Lorenzo Baltazar, 935 N.W.2d 862 (Iowa 2019)
The 2017 amendment known as "stand your ground" changed – but did not eliminate – the implied duty to follow an alternative course of action, as the "stand your ground" provisions of section 704.1(3) only apply to a person "who is not engaged in illegal activity." Assuming without deciding the implied duty to retreat involves only illegal activities germane to the use of force, the defendant's possession of the handgun in this case was directly related to the shooting death of the victim. Therefore, his illegal possession of the handgun was germane to the use of deadly force and he was disqualified from asserting "stand your ground" justification.

Weapons – What Constitutes "Grounds of a School"

State v. Mathias, 936 N.W.2d 222 (Iowa 2019)
"[G]rounds of a school" in Iowa Code section 724.4B can include school district-owned athletic facilities that are not part of or built on the land contiguous to the classroom building. A special concurrence (joined by two from the four-justice majority opinion)

asserted the athletic facilities were not merely on the grounds of a school but constituted part of the physical plant of the school itself. One dissenter applied the rule of lenity, coupled with law enforcement uncertainty as to whether firearms were prohibited at the athletic facilities, to conclude "grounds of a school" did not include the parking lot of a football stadium separated by over a mile from the school itself.

False Reports – Defenses to Crime Reported

State v. Bynum, 937 N.W.2d 319 (Iowa 2020)
In a 4-2 decision, with regard to a charge of false reports in violation of Iowa Code section 718.6(1), a potential defense to the underlying criminal act does not absolve the reporting party from criminal responsibility. There is sufficient evidence of guilt if the defendant falsely reports conduct that would establish the prima facie elements of a crime. In this case, the underlying crime reported was carrying weapons, which has numerous statutory exceptions. The exceptions are not elements of the crime, so the State is not required to prove the absence of an exception. If the defendant's theory of defense on the underlying falsely-reported crime is the existence of a valid permit, he must produce substantial evidence of the valid-permit exception before he is entitled to a jury instruction related to that issue. Since he did not do so in this case, the trial court did not err in refusing to give the requested instruction.

Self-Defense & Stand-Your-Ground Non-Retroactivity

State v. Fordyce, 940 N.W.2d 419 (Iowa 2020)
In a bench trial, substantial evidence supported district court's finding the defendant continued the incident that resulted in the defendant shooting and killing the victim. Due to the finding the defendant continued the incident, the court did not need to address whether the State proved the defendant had an alternative course of action available. Nevertheless, the court addressed the defendant's "stand-your-ground" claim and determined the 2017 amendment to Iowa Code section 704.1(3) did not apply to conduct occurring before July 1, 2017, the effective date of the statute. Since this incident occurred in 2015, the defendant was not entitled to rely on the stand-your-ground defense.

No Reduction of Minimum Sentence with Firearm Enhancement

Lozano Campuzano v. Iowa District Court, 940 N.W.2d 431 (Iowa 2020)
The defendant pled guilty to possession of methamphetamine with intent to deliver while in possession of a firearm in violation of Iowa Code section 124.401(1)(b)(7) and 124.401(1)(e). A few months after being sentenced, the legislature amended Iowa Code section 124.413 and created section 901.12, which applied retroactively to reduce the minimum term of incarceration for certain offenses. Finding the statute ambiguous, in a 4-2 decision, the court concluded sections 124.413 and 901.12 serve to reduce the minimum period of confinement for specific criminal drug offenses, but

a person serving a sentence pursuant to a firearm-enhanced conviction is not eligible for the one-half reduction.

Drug Usage as Child Endangerment

State v. Folkers, 941 N.W.2d 337 (Iowa 2020)
Sufficient evidence supported a conviction for child endangerment. A "substantial risk" in the context of child endangerment is "[t]he very real possibility of danger to a child's physical health or safety." "The risk does not have to be likely, probable, or statistically significant. It just needs to be real or identifiable as opposed to speculative or conjectural." That standard was met here where the evidence showed (1) the parents knowingly possessed hash oil, marijuana, and paraphernalia in the home and smoked the drugs in the home, (2) the parents used an oversized butane torch to smoke illegal drugs and cigarettes in the home, (3) the torch was used in the middle of the night or early morning hours, (4) a fire started when the oversized torch was used to light hash oil, (5) the fire originated in the front room only feet from the sleeping two-year-old's bedroom, (6) the child needed medical attention after being discovered covered in soot and smelling "extremely smoky," and (7) the child was too young to self-protect. Even though the defendant mother did not cause the fire, she still committed child endangerment by (1) knowingly possessing illegal hash oil, marijuana, and paraphernalia, (2) smoking drugs in the home with the father, (3) being aware the father smoked drugs in the house, sometimes using the large butane torch, and (4) failing to remove the child from this dangerous situation.

Definition of Theft-Detection Device

State v. Ross, 941 N.W.2d 341 (Iowa 2020)
Finding the statute ambiguous, the court concludes that "theft detection device" under Iowa Code section 714.7B is a device that detects theft instead of simply trying to prevent theft. Therefore, a padlock–steel cable combination wrapped around a lawn mower outside a retail store to prevent theft was not a "theft detection device."

Theft by Check – Unauthorized Signer

State v. Schiebout, 944 N.W.2d 666 (Iowa 2020)
The defendant wrote checks without authorization from a bank account that was not hers. The State charged her with theft in violation of Iowa Code section 714.1(6), which forbids knowingly presenting a check that will not be paid when presented. In a 5-2 ruling, evidence that the defendant presented checks without authorization is, without more, insufficient to establish this particular crime. The State did not present sufficient evidence that the defendant knew the checks would not be paid when presented. The dissenters argued the jury instructions, which were not objected to, established the law of the case and the law of the case negated the majority's interpretation.

"Carrying" a Weapon While Intoxicated

State v. Shorter, 945 N.W.2d 1 (Iowa 2020)
The term "carries" in section 724.4C(1)(a) and (b), prohibiting carrying a weapon while intoxicated, is narrower than, and does not extend to, mere possession. Thus, jury instructions that allowed the jury to convict the defendant if he either carried or possessed a dangerous weapon misstated the law. Once instructional error is established, prejudice is presumed, and the State must prove a lack of prejudice. Here, the fact the instructions erroneously allowed the jury to convict the defendant based on constructive possession and the State exploited the erroneous instructions during closing argument established prejudice.

CRIMINAL PROCEDURE

Individualized Voir Dire on Race Issues & Implicit Bias Instruction

State v. Williams, 929 N.W.2d 621 (Iowa 2019)
In a 4-3 portion of the opinion, Defendant convicted of Murder in the Second Degree was entitled to remand to more fully develop Defendant's 6th Amendment "fair-cross-section" claim regarding the racial make-up of the jury. Defendants trying to show that a policy or practice relating to excusing jurors might amount to systematic exclusion of racial minorities are not to be foreclosed from doing so by a rigid rule that calculates the pool based on who was summoned rather than who actually appeared. In another 4-3 portion of the ruling, trial court did not abuse its discretion in refusing to require individualized voir dire regarding race issues. Defendant and the decedent were of the same race and there was no suggestion that race played a role in the alleged crime or its investigation. Also, the trial court properly balanced the request against concerns that, if jury selection was not finished that day, a larger number of jurors would be exposed to potential improper influence (i.e., all jurors going home as opposed to the 14 selected, with a more meaningful admonition). In another 4-3 portion of the ruling, trial court did not abuse its discretion in refusing to give a requested implicit bias instruction, as Defendant and the victim were of the same race and the trial court used an updated Instruction 100.8 that addressed generalizations, gut feelings, prejudices, sympathies, stereotypes, or biases. However, the Court also noted that its ruling did not mean that it would have been an abuse of discretion to give the requested instruction. In a 7-0 part of the ruling, the "stand your ground" law took effect July 1, 2017, so it did not apply to this crime that happened late in the day on June 30, 2017.

Curing Prosecutor Misconduct & Improper Jury Influence

State v. Christensen, 929 N.W.2d 646 (Iowa 2019)
Prosecutor eliciting testimony from DCI agent that physical evidence was available for testing by others was improper, as it suggested the defendant had the burden of proof. However, mistrial was not required, as the prosecutorial misconduct was isolated and the trial court quickly struck the improper testimony and gave a curative instruction. Also, the stricken testimony was not startling or flamboyant. Testimony from another State witness was shown to be misleading, if not false, but a mistrial was not required because there was no showing that the prosecutor was aware of a plan to present false testimony and the problem was cured by the trial court directing the witness back to the stand to clarify the prior misleading testimony. A new trial was not required based on claims that jurors became aware of threatened riots if a guilty verdict was not returned. The Court declined to set the standard of review because the Court agreed with the trial court's findings. Without foreclosing an irrebuttable presumption standard in an appropriate circumstance, the Court declined to impose such a presumption on these facts and also declined to impose a rebuttable presumption. Instead, the Court applied a reasonable-probability of prejudice test. Applying that test, objective facts only are allowed – who said what to whom and when and what specifically was injected into the jury discussion – but juror assessments about the impact of the improper extraneous influence are off limits. Here, Defendant failed to show a reasonable probability that the verdict of the jury would have been different if the extraneous influence (characterized as a vague speculative hearsay report on Facebook about a possible riot that was only briefly discussed by the jury) did not reach the jury. Likewise, the threat of a riot did not support a finding of implied jury bias, as the ostensible threat to the jury attested by one juror was hearsay upon hearsay.

PCR – Expert on Battered Women's Syndrome

Linn v. State, 929 N.W.2d 717 (Iowa 2019)
On postconviction relief following conviction for First Degree Murder, trial court abused its discretion in not appointing an expert on battered women's syndrome ("BWS"). After a lengthy discussion of BWS, the Court finds that Section 822.5 authorizes appointment of an expert at state expense in PCR proceedings. Based on the evidence of verbal, psychological, and physical abuse by the decedent, the applicant demonstrated a reasonable need for an expert in order to evaluate trial counsel's claimed ineffectiveness and understand BWS's relevancy to the applicant's justification defense. The length of the relationship cannot be used as a yardstick to measure the need for a BWS expert. The factual matters in the record and the applicant's asserted need reasonably demonstrated that a BWS expert was necessary to guide the applicant, the applicant's PCR counsel, and the courts in evaluating the applicant's claim.

Speedy Trial, Batson, and Other Trial Issues

State v. Veal, 930 N.W.2d 319 (Iowa 2019)

In assessing a speedy trial claim, in determining whether delay is attributed to "the State," the judicial branch and the county attorney's office are not collectively "the State." Here, where the delay was one day, was precipitated by Defendant's request for more time to investigate and present evidence on a fair cross section claim, and cited no prejudice, there was no violation of speedy trial rights. In a 5-2 portion of the decision, there is no heightened standard to overcome a Batson challenge when the last African-American juror is subject to a peremptory challenge. Dissenters required a higher standard when striking the last minority juror and found the standard was not met. One concurring justice argued for beginning a discussion of getting rid of peremptory challenges. When a prosecutor compares two crimes in jury selection, it is arguably a comment on potential punishment. Here, however, the point of the question was to make sure jurors would apply the "beyond a reasonable doubt" standard the same in a murder case as in a case involving a lesser charge, so it was not improper. Using a demonstration weapon that differed from the murder weapon was not error because the difference was highlighted and the demonstrative handgun was not admitted into evidence. Trial court properly excluded evidence of pending charges and misdemeanor drug convictions of one of the State's witnesses. Even though Defendant asserted the eyewitness killed the victim, trial court properly excluded evidence of drug issues surrounding eyewitness and murder victim. Evidence was admitted that showed that there was a "rift" between the eyewitness and the murder victim, which was enough to establish a motive for the eyewitness to kill the victim such that exclusion of the evidence of the basis for the rift was not an abuse of discretion.

Parole Issues for Juveniles Sentenced to Life

Bonilla v. Iowa Bd. of Parole, 930 N.W.2d 751 (Iowa 2019)

Juvenile sentenced to life with possibility of parole. Inmate made facial challenges to statutes and rules. Statutes and rules governing the parole process can be applied in a constitutional manner. Inmate has a liberty interest in the proper application of Graham-Miller principles under the due process clauses of both constitutions. At a minimum, due process requires the basic procedural right of access to the file and a right to provide information to the board. Due process does not require an in-person hearing or removal of "unverified" information in the file. Although repeated use of boilerplate generalities will not suffice, due process does not require a comprehensive written decision of the board. The department of corrections cannot unreasonably withhold programming necessary for the inmate's release. If the department of corrections fails to act reasonably in light of communication from the parole board, the inmate may file a claim for postconviction relief (Iowa Code Chapter 822). Inmate

is not entitled to have counsel provided at every annual review hearing, although there might be a right to counsel under other circumstances with a different factual showing. There is no categorical right to an appointed expert at every annual review hearing, although there might be a right to appointment of an expert under other facts and circumstances.

Appeals of Guilty Pleas & Ineffective Assistance Claims on Direct Appeal

State v. Macke, 933 N.W.2d 226 (Iowa 2019)
In a 6-1 portion of the ruling, amendments to Iowa Code sections 814.6 and 814.7 limiting appeals from guilty pleas and precluding raising ineffective-assistance-of-counsel claims on direct appeal are not retroactive, so they do not apply to judgments and sentences entered before July 1, 2019. Statutes restricting a right to appeal apply prospectively only unless the statute expressly makes it retroactive, which this one does not. On the merits, in a 5-2 ruling, trial counsel was ineffective for failing to object to the State's breach of the plea agreement by failing to recommend a deferred judgment. Although the State never expressly agreed to the terms of the agreement, the State's acceptance of the agreement was inferred from the State's silence when the plea agreement was recited on the record during the plea hearing. The dissent argued the appeal can proceed, but the ineffective-assistance claim was barred by the statute. This is because the event of legal consequence is the appellate court's exercise of judicial power to decide a claim of ineffective assistance of counsel on direct appeal. Since that event was only happening after the effective date of the statute, the statute was only being applied prospectively.

Witness Claim of Privilege Against Self-Incrimination

State v. Heard, 934 N.W.2d 433 (Iowa 2019)
A witness is entitled to assert a blanket Fifth Amendment privilege to refuse to answer questions. It is not required to allow the witness to assert such privilege in the presence of the jury, because the jury is not entitled to draw any inferences from the decision of a witness to exercise the constitutional privilege whether those inferences are favorable to the prosecution or the defense. The witness was entitled to assert the privilege in the defendant's second trial, even though the witness testified in the first trial, as waiver of the privilege in the first trial did not preclude asserting the privilege in the second. Waiver of the privilege is limited to the particular proceeding. Finally, the defendant's challenge to his life-without-parole sentence on the basis there was no finding he was an adult when the crime was committed is not a challenge to an illegal sentence. Instead, it is a challenge to the procedural jury instruction requirements, and, therefore, must be raised as a challenge during trial to preserve error.

Last Minute Motions & Ineffective Assistance Claims on Post-Trial Motions

State v. Trane, 934 N.W.2d 447 (Iowa 2019)
When a defendant raises an important motion at the eleventh hour, having demonstrated the motion could not have been raised earlier, and granting the motion could push the trial past a speedy trial deadline that the defendant refuses to waive, the preferred procedure is to make it clear to the defendant that granting the motion will push the trial past the speedy trial deadline and, if the defendant insists on pursuing the motion, find good cause under Iowa Rule of Criminal Procedure 2.33(2)(b) for extending the speedy trial deadline. This balances the two rights, rather than forcing the defendant to choose one. Trial court abused its discretion by denying the defendant's rule 5.412 motion rather than holding an in camera hearing on the defendant's eleventh hour motion (which could not have been filed earlier) and, if necessary, delaying briefly the trial. Also, trial courts are not to hear ineffective-assistance-of-counsel claims as part of post-trial motions. By statute, such claims are only to be heard on direct appeal or by postconviction-relief proceedings, not by post-trial motion.

Immigration Status in Sentencing & Mootness Due to Parole

State v. Avalos Valdez, 934 N.W.2d 585 (Iowa 2019)
When a defendant appeals a sentence due to failure to grant probation, the appeal may become moot when the defendant is released on parole. However, in this case, the court applied the public-importance exception to the mootness doctrine to decide the case on the merits. On the merits, a defendant's immigration status per se is not an appropriate sentencing consideration, but immigration status may be taken into account to the extent it affects an otherwise relevant sentencing factor. In this case, the district court determined probation would not be appropriate because the defendant's immigration status (i.e., an unauthorized alien with an ICE hold pending deportation) meant he would not be available to undergo probation. Since this determination was a consideration of immigration status as it related to a relevant sentencing factor, there were no federal or state due process or equal protection violations.

Jail Room and Board Fees – Civil Judgment Versus Restitution

State v. Gross, 935 N.W.2d 695 (Iowa 2019)
A sheriff seeking reimbursement for jail room and board fees under Section 356.7 has the option of getting a civil judgment for the amount claimed or having the amount assessed as restitution. If the sheriff pursues the civil judgment option, the judgment is not subject to the defendant's reasonable ability to pay like it would be if the restitution option is used. The Court left for another case issues of whether assessment of jail room and board fees as a civil judgment without a separate lawsuit denies due process, whether a lack of reasonable ability to pay determination in the

civil judgment context denies due process, how the judgment is to be recorded, who gets the proceeds of the judgment when collected, etc.

Presumed-Prejudice Standard – Jury Instruction Error

State v. Lorenzo Baltazar, 935 N.W.2d 862 (Iowa 2019)
Errors in jury instructions are presumed prejudicial unless the record affirmatively establishes there was no prejudice. However, this "presumed-prejudice" standard applies to preserved errors in jury instructions. It does not apply to ineffective-assistance-of-counsel claims based on failure to preserve jury instruction error. Under the ineffective-assistance-of-counsel framework, the defendant still has to demonstrate breach of duty and prejudice with regard to failure to preserve jury instruction error.

Limits on Appeal of Guilty Pleas – No Retroactivity

State v. Draine, 936 N.W.2d 205 (Iowa 2019)
Consistent with its ruling in *State v. Macke*, the 2019 amendments to Iowa Code section 814.6(1) denying a defendant the right of appeal from a guilty plea, except for a guilty plea to a class "A" felony or where a defendant establishes good cause, are not retroactive. So, the statutes controlling appeals are those that were in effect at the time the judgment or order appealed from was rendered. (Only five justices participated in the ruling. One dissenter addressed the merits of the defendant's competency challenge and urged reversal. Three of the other four justices found no error in the way the district court handled the competency issue. The remaining justice limited the decision to the jurisdictional issue only.)

Discretion on Mandatory Minimum for Firearm Forcible Felony

State v. Moore, 936 N.W.2d 436 (Iowa 2019)
Iowa Code section 902.7 imposes a five-year minimum sentence for a person participating in a forcible felony when a dangerous weapon is used, displayed, etc. However, Iowa Code section 901.10(1) gives the sentencing judge discretion to reduce section 902.7's five-year minimum when it is the defendant's first forcible felony and the record shows mitigating circumstances. Here, the court's agreement with defense counsel's statement that "we don't have much wiggle room" coupled with the failure to mention, verbally or in the written sentencing order, anything about the option of reducing the minimum sentence caused the supreme court to conclude the sentencing judge was unaware of that option. Since no discretion was exercised when the five-year minimum was imposed, resentencing was necessary.

Claim of Illegal Sentence – Juvenile Offender

Goodwin v. Iowa Dist. Ct., 936 N.W.2d 634 (Iowa 2019)
Juvenile offender convicted of second degree murder was sentenced to fifty years in prison with a twenty-year minimum. Offender later filed a "motion to correct an illegal sentence" challenging whether the sentencing judge properly weighed the *Miller/Lyle/Roby* factors and expert testimony during his sentencing hearing. In a 4-2 decision, the court found this to be a challenge to a defective sentencing procedure, not a challenge to an illegal sentence, making it an improper collateral attack on the sentence. Since the motion was not a proper motion to correct an illegal sentence, offender was not entitled to a statutory right to counsel under *Jefferson v. Iowa Dist. Ct.*, 926 N.W.2d 519 (Iowa 2019). Two justices from the majority specially concurred, arguing *Lyle* and *Roby* were wrongly decided. Two dissenters argued the motion was prematurely denied and should be remanded with appointment of counsel.

Referencing Defenses in Marshalling Instruction

State v. Kuhse, 937 N.W.2d 622 (Iowa 2020)
The court reiterates that justification is an affirmative defense rather than an element of the crime of assault. Once substantial evidence is introduced by the defense supporting a justification defense, the burden shifts to the State to prove lack of justification beyond a reasonable doubt. Responding to a claim of ineffective-assistance-of-counsel based on defense counsel's failure to object to a marshalling instruction that did not reference the justification defense, the court finds the defendant failed to satisfy the prejudice prong because self-defense was the focal point of the trial, eight of the twenty-seven jury instructions addressed justification, and there was strong evidence the defendant did not act with justification.

No Retroactivity to "Fair Cross-Section" Claims

Thongvanh v. State, 938 N.W.2d 2 (Iowa 2020)
(This case's holding was also applied to resolve another case decided on the same date: *Jones v. State*, 938 N.W.2d 1 (Iowa 2020)). Applicant convicted of first degree murder in 1984 sought postconviction relief (PCR) claiming violation of his constitutional right to an impartial jury drawn from a fair cross section of the community under the standards set forth in *State v. Plain*, 898 N.W.2d 801 (Iowa 2017). Because the applicant could not have successfully argued this claim based on the state of the law when the three-year statute of limitations for PCR claims expired, his claim was not time-barred by Iowa Code section 822.3. *Plain*'s holding on the second prong of the *Duren* test constitutes a new rule under the *Teague* framework. However, because it is not a watershed rule of criminal procedure, it does not apply retroactively to cases on collateral review. The *Teague* framework does not permit this applicant to make a *Plain* claim on PCR. Also, neither the *Teague* framework nor the Iowa Constitution's due process or equal protection guarantees require *Plain* to

apply retroactively to convictions that were already final at the time *Plain* was decided.

"Hesitate" in Jury Instructions, Prosecutor as Witness, & Excusing Jurors

State v. Leedom, 938 N.W.2d 177 (Iowa 2020)
Prosecutor's comparison and contrast of the word "hesitate" in the reasonable doubt jury instruction ("evidence of such a convincing character that a reasonable person would not hesitate to act") and the same word in the deliberation instruction ("During your deliberations, do not hesitate to re-examine your view") could be viewed as an attempt to water down the meaning of the word in the reasonable doubt instruction and was an improper argument. However, the district court's curative instruction to the jury supported the district court's finding there was no prosecutorial misconduct. Defendant's right to compulsory process was not violated by the district court's refusal to allow the defendant to call the prosecutor as a witness during a hearing on the defendant's motion for new trial to testify about alleged prosecutorial misconduct. "Like the trial court, we examine the record of [the prosecutor's] conduct itself to determine if lines were crossed, regardless of what [the prosecutor] was thinking at the time." What the prosecutor was thinking during trial is off-limits. Also, while "strongly encourag[ing] trial judges to question prospective jurors on their claimed hardships before excusing them," and noting the trial judge did not do so in this case, a new trial was not required because the trial judge determined each of the excused jurors had a work-related hardship, which is a valid basis for dismissing a juror under Iowa Code section 607A.6.

State's Subpoena of Defense Expert for Grand Jury Testimony

In re 2018 Grand Jury of Dallas County, 939 N.W.2d 50 (Iowa 2020)
In a 5-1 portion of the ruling (the remaining issues were decided 6-0), the State cannot subpoena an expert retained by the defense to testify before the grand jury regarding her opinions on the criminal matter being investigated. Work-product protection and attorney-client privilege apply to grand jury proceedings. While the prosecutor's ex parte call to the expert was improper, it was not a basis to disqualify the prosecutor. Defendant was entitled to quash the subpoena, but not the entire grand jury process. Filing a motion seeking a continuance to gather information to support a potential fair-cross-section *Plain* claim related to the grand jury is sufficient compliance with rule 2.3(2)(a)'s requirement that challenges be raised prior to the grand jury being sworn. The rule does not require such challenges to be *decided* before the grand jury is sworn.

Date of Offense Not an Element

State v. Juste, 939 N.W.2d 664 (Iowa Ct. App. 2019)
In child sexual abuse trial, the exact timing of the alleged criminal conduct is not a material element of the crime. Here, the victim testified to a window of approximately

five months within which the abuse occurred. Therefore, the district court did not err in giving a jury instruction informing the jury that the date alleged by the State was just a date to place the defendant on notice of the date the crime is alleged to have occurred, but it was not legally significant if the jury found the crime occurred.

PCR Statute of Limitations After Resentencing

Sahinovic v. State, 940 N.W.2d 357 (Iowa 2020)
An applicant who seeks to challenge an underlying conviction does not get a new three-year postconviction relief (PCR) deadline when the applicant is resentenced. The applicant was convicted in 2011. The applicant successfully sought and obtained resentencing in 2015 based on the fact he was a juvenile when the offense was committed. He later brought this PCR action seeking to challenge his guilty plea. The action was untimely because the deadline to bring such a claim expired three years after his conviction in 2011. The result would be different if the applicant had obtained resentencing on direct appeal, because, in that situation, the conviction and the sentence would not become final until resentencing was completed.

Resentencing of Juvenile Offender

State v. Majors, 940 N.W.2d 372 (Iowa 2020)
The defendant was fifteen days away from his eighteenth birthday when he committed a home invasion that resulted in him pleading guilty to attempted murder. This case involves his second resentencing due to evolution of juvenile sentencing standards. In a 4-2 decision, including a special concurrence by two justices in the majority, the court found the district court did not abuse its discretion by imposing the mandatory minimum sentence after considering the youth sentencing factors under *Roby*. The sentence was supported by testimony from the State's expert. The defendant personally chose not to retain a defense expert. Counsel was not constitutionally-ineffective for relying on cross-examination of the State's expert without retaining a defense expert that the defendant chose to forgo.

Delay in Bench Trial Ruling

State v. Fordyce, 940 N.W.2d 419 (Iowa 2020)
Following a bench trial, the district court took eleven months to issue a ruling. Although expressing concern about the delay, the court found the defendant did not show how the delay translated into a violation of his due process rights. The detail in the ruling belied any claim the delay diminished the district court's ability to recall the evidence. The delay also did not violate the defendant's speedy trial rights.

Sufficiency of Evidence of Possession

State v. McMullen, 940 N.W.2d 456 (Iowa Ct. App. 2019)
There was sufficient evidence to support the guilty verdict against a vehicle passenger for possession of drugs found in the vehicle. The passenger was the owner of the vehicle. All contraband was within his reach. Although he claimed he did not know the contraband was in the vehicle and blamed it on his drug-dealing friend, the open and exposed cup containing marijuana rebutted this claim. Also, his claim he had loaned the vehicle to a friend earlier in the day conflicted with the driver's version of events. Finally, the passenger's furtive movements, his possession of a large amount of cash on his person, and the presence of "marijuana shake" on the belly portion of his shirt all supported the guilty verdict.

Actual Innocence Claims – Lesser Included Offenses

Dewberry v. State, 941 N.W.2d 1 (Iowa 2019)
A postconviction relief applicant can establish a claim of actual innocence only upon clear and convincing evidence the applicant is factually innocent of the offense of conviction, including any lesser included offenses thereof.

Stand-Your-Ground Procedures & Fair Cross-Section Issues

State v. Wilson, 941 N.W.2d 579 (Iowa 2020)
A defendant asserting a "stand your ground" defense is not entitled to a pretrial hearing on the issue to seek dismissal. Unlike legislation in some other states, Iowa Code section 704.13 provides immunity from "liability," not immunity from "prosecution." Additionally, holding a pretrial hearing would be impractical because it would essentially require the same evidence as would be introduced at trial. Also, the defendant's *Plain/Duren* challenge to the racial makeup of the jury was properly denied, as the defendant did not make a record as to the racial makeup of jurors in the entire jury pool called to the courthouse that day; he only made a record about the racial makeup of the jurors in the subset of the pool assigned to his trial. The *Plain/Duren* right applies to the entire jury pool, not a subset of the pool.

Stand-Your-Ground Notification Requirement

State v. Gibbs, 941 N.W.2d 888 (Iowa 2020)
As part of the "stand-your-ground" enactment in 2017, Iowa Code section 704.2B(1) was adopted, requiring a person using deadly force to notify law enforcement within a reasonable period of time. In a 5-1 portion of the decision, the court declined to address whether section 704.2B(1) violated the Fifth Amendment "merely by being on the books." Also in a 5-1 ruling, the defendant's Fifth Amendment rights were violated when, over his objection, the trial court gave a jury instruction paraphrasing the notification requirement of section 704.2B(1). However, the error in giving the

instruction was harmless beyond a reasonable doubt because "evidence of guilt was so strong and that of justification so weak."

First-Time, In-Court Identification

State v. Doolin, 942 N.W.2d 500 (Iowa 2020)
This case addresses an eyewitness's in-court identification of the defendant as the perpetrator of the crime. In a 4-1 decision, the court interprets the Iowa due process clause using the federal standard and rejects due process challenges to first-time, in-court identifications. Where an in-court identification is not preceded by an impermissibly suggestive pretrial identification procedure arranged by law enforcement, and where nothing beyond the inherent suggestiveness of the ordinary courtroom setting makes the in-court identification itself constitutionally suspect, due process does not require the trial court to assess the identification for reliability under the five-factor *Biggers* analysis.

Eyewitness Identification Procedures

State v. Booth-Harris, 942 N.W.2d 562 (Iowa 2020)
In a 5-1 decision, the court declines to defer to evolving social science as grounds for establishing fixed principles of constitutional law regarding admissibility of eyewitness identification. So, under both constitutions, Iowa continues to follow a two-step analysis in assessing challenges to out-of-court identifications: (1) whether the procedure used was impermissibly suggestive; and (2) whether under the totality of the circumstances the suggestive procedure gave rise to a very substantial likelihood of irreparable misidentification. Regarding the second step, the critical question is reliability, which involves a five-factor test: (1) the witness's opportunity to view the perpetrator at the time of the crime; (2) the witness's degree of attention; (3) accuracy of the witness's prior description of the perpetrator; (4) the level of certainty demonstrated by the witness at the confrontation; and (5) length of time between the crime and the confrontation. Since most "best practices" were followed here, the showing of a single photo was not impermissibly suggestive because the defendant was not a suspect when the single photo was shown and there was not a substantial likelihood of irreparable misidentification. Counsel did not render ineffective assistance of counsel by failing to object to ISBA stock jury instruction 200.45 on eyewitness identification or request a different instruction, as the instruction does not misstate the law.

Challenge to Plea Bargain Containing Illegal Term

State v. Gordon, 943 N.W.2d 1 (Iowa 2020)
Pursuant to a plea agreement upon which the defendant insisted, the defendant pled guilty to a forcible felony on the condition that he be given a 48-hour furlough prior to beginning his sentence. The court went along with the agreement in spite of the

fact release from custody after a plea to a forcible felony is not permitted. After being released, the defendant absconded and filed an appeal, claiming counsel was ineffective and the prosecutor engaged in misconduct by letting him enter a plea agreement that contained an unlawful term. Because he was returned to custody while the appeal was pending, the appeal was not required to be dismissed. On the merits, the court held that, on the unique facts of this case, the defendant could not show prejudice in the ineffective-assistance-of-counsel analysis because it was his action in absconding, not counsel's procuring of an illegal condition that benefited the defendant, that resulted in the defendant's predicament.

Breach of Plea Agreement – Specific Performance

State v. Beres, 943 N.W.2d 575 (Iowa 2020)
Plea agreements are governed by contract principles. The defendant agreed to plead guilty to arson in the second degree and to be interviewed about other suspicious fires. In return, the State agreed not to charge the defendant with starting the other fires. After the defendant pled, but before sentencing, the State determined it had enough evidence to prosecute the defendant for the other fires without the need to interview the defendant. Prior to sentencing, the prosecutor informed defense counsel that an interview was not needed and the State intended to charge the defendant with starting the other fires. The State also expressed willingness to agree with the defendant withdrawing his original plea. The sentencing hearing went forward with no record made of the problem with the other charges. When the State filed charges on the other fires, the defendant moved to dismiss, claiming breach of the plea agreement. On interlocutory appeal, the State was determined to have breached the agreement and the defendant was entitled to specific performance of dismissal. Since the State declined to interview the defendant, even after the defendant reminded them of his willingness to be interviewed, the State could not use the lack of interview as a basis for backing out of the agreement. Any new evidence the State had received did not frustrate the purpose of the agreement such that the State was relieved of its obligation not to charge the defendant with starting the other fires. The defendant did not ratify the State's proposed modification by refusing the State's offer to rescind and going forward with sentencing on the original charge.

Restitution – Proof of Causation

State v. DeLong, 943 N.W.2d 600 (Iowa 2020)
Restitution is not discretionary. However, the State must show a causal connection between the crime and the amount claimed. Ordinarily, an expense verification form from a medical provider that reasonably identifies the service provided, identifies the cost borne by the victim, and verifies that the costs were incurred as a direct result of crime is sufficient to constitute substantial evidence of causation. A mere statement

by the Crime Victim Compensation Program (CVCP) coordinator that an expense is directly related to the crime is not substantial evidence supporting the restitution claim, especially when that statement is backed up only by miscellaneous incomplete documents.

Expungement After Dismissal

Doe v. State, 943 N.W.2d 608 (Iowa 2020)
The requirement in Iowa Code section 901C.2(1)(a)(2) that a defendant satisfy "all court costs, fees, and other financial obligations ordered by the court or assessed by the clerk" as a condition to expungement after dismissal refers to the court costs, fees, and other financial obligations in that particular case only. It does not include a requirement to satisfy all costs, fees, and other financial obligations in all cases.

"Good Cause" to Appeal Following Guilty Plea

State v. Damme, 944 N.W.2d 98 (Iowa 2020)
This is the first case interpreting newly-amended Iowa Code section 814.6(1)(a)(3), which prohibits an appeal following a guilty plea unless the charge is a class "A" felony or the defendant establishes good cause. The defendant has the burden to show "good cause." The court holds that good cause exists to appeal from a conviction following a guilty plea when the defendant challenges the sentence rather than the guilty plea and the sentence is neither mandatory nor agreed to as part of the plea bargain. Newly-amended section 814.7 prohibited the defendant from pursuing her ineffective assistance of counsel claim on direct appeal. On the merits, in a 5-2 portion of the decision, the majority "strongly disapprove[d]" of the sentencing court's "poor choice of words" in stating "your family stock is not good." However, the majority found this was not consideration of an improper sentencing factor due to explanatory comments that followed showing the comment was made in the context of considering the proper factor of the defendant's family circumstances.

Interim Orders of Restitution

State v. Davis, 944 N.W.2d 641 (Iowa 2020)
In a 6-1 decision, clarifying *Albright*, interim orders of restitution that do not make a reasonable-ability-to-pay determination should state the defendant is not obligated to pay the sum until entry of the final order and the reasonable-ability-to-pay determination is made. To the extent such interim orders purport to allow enforcement, our appellate courts must vacate the order or remand for clarification that the interim order is not enforceable. Overruling two 1999 cases, the defendant is not required to exhaust remedies under Iowa Code section 910.7 as a prerequisite for appellate review of a restitution order in a direct appeal.

"Sexually Motivated" Finding following Alford Plea

State v. Chapman, 944 N.W.2d 864 (Iowa 2020)
When a defendant enters an *Alford* plea to a charge that does not have sexual motivation as an element, the district court cannot consider facts only identified in the minutes of evidence in determining whether the defendant's criminal conduct was sexually motivated as set forth in Iowa Code section 692A.126 – a determination that would be required before sex offender registration could be ordered. Without deciding whether the victim's mother's victim impact statement could be considered as evidence to make the "sexually motivated" finding, the statement in this case did not present sufficient evidence of sexual motivation. The sentencing order requiring sex offender registration was vacated. However, the remedy was to remand to permit the State, if it is able, to introduce competent evidence to support its request that the defendant be required to register as a sex offender. In a 5-1 portion of the otherwise unanimous ruling, remand did not violate double jeopardy because sex offender registration requirements are not "punishment" with respect to an adult offender.

DEBTOR / CREDITOR

Priority of Mortgage With Future-Advances Clause

Blue Grass Savings Bank v. Community Bank & Trust Co., 941 N.W.2d 20 (Iowa 2020)
Priority of a mortgage with a future-advances clause that satisfies the notice requirement of Iowa Code section 654.12A is limited to the principal amount stated in the notice (plus interest, costs, etc.) regardless of whether advances are made before or after a subsequent mortgage is recorded. As a result, when the first mortgage had a dragnet clause for all indebtedness owed, which included funds loaned prior to the recording of the second mortgage in an amount greatly exceeding the amount stated in the future-advances notice, the mortgage covered all indebtedness, but only had priority over the second mortgage holder up to the amount stated in the notice. Also, since a default rate of interest was not stated in the promissory notes, the first mortgage holder was not permitted to retroactively increase the default interest rate to 18% two-and-a-half hours before the summary judgment hearing and was limited to interest at the rate stated in the notes.

Bank Security Interest Versus Grain Elevator Drying and Storage Fees

MidWestOne Bank v. Heartland Co-op, 941 N.W.2d 876 (Iowa 2020)
In a dispute between a secured lender and grain elevator over priority to crop sale proceeds, the two-year statute of limitations of Iowa Code section 614.1(10) applies rather than the five-year period of section 614.1(4). The discovery rule does not apply to toll the two-year limitation period because: (1) the fundamental policies underlying the UCC favor a strict application of the limitation period; and (2) the

discovery rule does not apply when the statute of limitation expressly states the triggering event (in this case, section 614.1(10) expressly starts the two-year clock on "the date of sale of the farm products"). While leaving the door open to the possibility of a different outcome under different facts, the court denied the elevator's claim of unjust enrichment, choosing to adhere to "the UCC's priority system to provide clarity, uniformity, and consistency in commercial transactions."

Obtaining Adverse Party's Legal Malpractice Claim by Execution

Gray v. Oliver, 943 N.W.2d 617 (Iowa 2020)
In a case of first impression, a judgment creditor cannot prosecute a claim for legal malpractice as successors in interest to their former litigation adversary where the claim for legal malpractice arose out of the suit in which the parties were adverse. The district court had the constitutional and statutory power to determine the merits of the issue even though it involved public policy questions and was a case of first impression. Also, the ruling does not infringe on the judgment creditor's constitutional property rights, as the holding does not deprive the judgment creditor of property rights; it merely delineates the extent of the property right.

DIVORCE / FAMILY LAW

Support Under Chapter 236

Fishel v. Redenbaugh, 939 N.W.2d 660 (Iowa Ct. App. 2019)
A successful plaintiff in a proceeding seeking relief from domestic abuse under Iowa Code chapter 236 may be awarded "a sum of money for the separate support and maintenance of the plaintiff and children under eighteen" even if the plaintiff is not otherwise eligible for such support. Section 236.5(1)(b)(6) creates an independent remedy of support even if the plaintiff would not otherwise be allowed to receive support (e.g., an unmarried couple). Such remedy is discretionary and is not required to be awarded, but the district court erred when it concluded it did not have the discretion to award support.

Alimony Factors

In re Marriage of Mann, 943 N.W.2d 15 (Iowa 2020)
Spousal abuse is not relevant on the question of alimony. Courts should consider the tax treatment of alimony in making awards and consider recently-enacted federal tax law that makes alimony payments non-deductible to the payor and non-income to the recipient. Prior case law allocating percentages of income needs to be considered with these tax law changes in mind. Factors favoring an alimony award to husband included the sixteen-year marriage, marked disparity in income, the husband's lack of a college degree, and the wife's ability to afford alimony in some amount.

Countervailing factors were the husband's lack of contributions enhancing the wife's earning ability, the fact the wife had obtained her college degree before the marriage, the lack of sacrifices by the husband to manage the household or provide domestic services, the husband's failure to expand the economic prospects of his business or his domestic contributions, the higher property settlement the husband received due to the wife's higher income, and the reduced amount of child support the husband had to pay due to the wife's higher income. Based on the competing factors, the court declined to award the husband alimony.

EMPLOYMENT

Adoption of the "Same-Decision" Affirmative Defense

Hawkins v. Grinnell Regional Medical Center, 929 N.W.2d 261 (Iowa 2019)
Due to the fact that Iowa has adopted the "motivating-factor" standard for causation rather than the "determining-factor" standard under the Iowa Civil Rights Act, an employer is entitled to the "same-decision" affirmative defense that goes with the "motivating-factor" standard. The same-decision affirmative defense is an affirmative defense, so it must be pled and proved. Iowa courts should no longer use the McDonnell Douglas burden-shifting analysis and determining-factor standard when instructing the jury.

Whistleblower and Age Discrimination Issues

Hedlund v. State, 930 N.W.2dd 707 (Iowa 2019)
In a 7-0 portion of the decision, Iowa Code Section 70A.28(5) (the "whistleblower statute") expressly creates an independent cause of action in the alternative to administrative remedies under Iowa Code Chapter 17A. The affirmative relief permitted under Section 70A.28(5)(a) is equitable relief, so no jury trial is available. In a 4-3 portion of the decision, the Court declined to decide the issue of whether the McDonnell Douglas burden-shifting framework should be abandoned for summary judgment purposes because, either way, the employee failed to raise a genuine issue of material fact on his age discrimination claim. Isolated remarks such as "twilight of his career" made five months prior to termination are not sufficient on their own to show age discrimination. In another 7-0 portion of the decision, although a jury could find certain aspects of the defendants' actions as petty, wrong, or even malicious, they were not outrageous so as to support an intentional infliction of emotional distress claim.

Pre-Emption by Drug-Testing Statute & Attorney Fees

Ferguson v. Exide Technologies, Inc., 936 N.W.2d 429 (Iowa 2019)
When a civil cause of action is provided by the legislature in the same statute that

creates the public policy to be enforced, the civil cause of action is the exclusive remedy for violation of that statute. Applying that standard, in a case of first impression, the civil cause of action provided by Iowa Code section 730.5 (addressing workplace drug-testing) is the exclusive remedy for a violation of section 730.5, so the common law wrongful discharge in violation of public policy cause of action must be dismissed. District court did not abuse its discretion by not going through entry-by-entry in determining the amount of attorney fees attributable to the statutory cause of action, as the district court is considered an expert on what constitutes a reasonable attorney fee and attorney fee claims should not result in a "second major litigation."

Unemployment – Temporary Employment Agency

Sladek v. Employment Appeal Bd., 939 N.W.2d 632 (Iowa 2020)
Employee worked for a temporary employment agency. When told by her supervisor from the temp agency that her assignment at the place she had been working was ending due to poor job performance, the employee hung up. The employee did not call back for five weeks, and then only after finding out the employer had contested her claim for unemployment benefits. The issue came down to whether the employee voluntarily quit. Interpreting Iowa Code section 96.5(1)(j)(1), the court characterized the statute as containing (1) a rule, (2) an exception to the rule, and (3) an exception to the exception to the rule. The board's finding that the employee voluntarily quit was supported by substantial evidence due to the employee hanging up on her boss and not calling back for five weeks. The safe harbor of section 96.5(1)(j)(1) did not apply because the employee did not seek reassignment within a reasonable time. The exception to the exception did not apply because the employee was already disqualified for benefits due to her voluntary quit without a request for reassignment.

EVIDENCE

Hearsay – Cards and Notes of Support

Hawkins v. Grinnell Regional Medical Center, 929 N.W.2d 261 (Iowa 2019)
In this employment discrimination suit where the reason for termination of employment was the key issue, cards and notes of support from friends and former co-workers to the fired employee constituted hearsay and admission of that hearsay necessitated a new trial. The hearsay was prejudicial because the evidence of the reason for termination of employment was not overwhelming, the hearsay was not cumulative, and the hearsay went to the primary issue of the case.

Self-Defense – Character of the Alleged Victim

State v. Williams, 929 N.W.2d 621 (Iowa 2019)
Defendant accused of murder who claimed self-defense sought to introduce evidence of the victim's criminal history or proof of specific prior acts of violence not known to Defendant. Clarifying some past inconsistent rulings, in a unanimous part of the ruling, the Court declared that the plain text of Rule 5.405 should be followed. The rule allows specific-acts evidence to be used to prove character only when character is an "essential element" of a charge, claim, or defense (Rule 5.405(b)). Character is not an essential element of justification. Therefore, a defendant asserting self-defense or justification may not prove the victim's aggressive or violent character by specific conduct of the victim unless the conduct was previously known to the defendant.

Rape Shield Law – Claims of False Reports

State v. Trane, 934 N.W.2d 447 (Iowa 2019)
False allegations of sexual activity is not sexual behavior, so such statements fall outside both the letter and the spirit of the rape-shield law (Iowa Rule of Evidence 5.412). However, evidence of the allegedly false allegations of other sexual behavior may be admitted only through the rule 5.412 exceptions framework, which involves pretrial notice, a written offer of proof, and an in camera hearing. At that hearing, the district court will determine if the threshold of proof by a preponderance of the evidence that the other allegations were in fact false has been met. If that threshold is met, the district court must then determine whether the false allegations evidence is relevant and its probative value outweighs the danger of unfair prejudice.

Medical Malpractice – CME Records

Eisenhauer ex rel. T.D. v. Henry County Health Center, 935 N.W.2d 1 (Iowa 2019)
The jury found in favor of the doctor, nurses, and facility in this medical malpractice claim surrounding a birthing injury. Plaintiff had sought to introduce doctor's continuing medical education (CME) records to show a lower percentage of CME was devoted to obstetrics than the percentage of the doctor's work devoted to obstetrics. Trial court did not abuse its discretion in excluding the records, as they were not relevant on the issue at hand, which was whether the doctor violated his duty of care. However, plaintiff should have been permitted to use the CME records to impeach the doctor, who testified as an expert, to undermine his credibility by showing the doctor committed relatively few hours of CME to obstetrics. Nevertheless, the error was found to be harmless because other evidence was introduced concerning training and lack of experience.

Victim's Propensity for Violence – Rule 5.405

State v. Lorenzo Baltazar, 935 N.W.2d 862 (Iowa 2019)
A defendant asserting self-defense or justification may not use rule 5.405(b) to prove the victim's aggressive or violent character by specific conduct of the victim unless the conduct was previously known to the defendant. Therefore, the trial court did not abuse its discretion in refusing admission of two videos showing the victim acting violently toward others near in time to the victim's shooting death, because the defendant produced no evidence that he knew about the specific conduct shown on either video.

Child Sex Abuse Issues

State v. Walker, 935 N.W.2d 874 (Iowa 2019)
In trial for child sex abuse, since the defendant did not introduce any evidence establishing a sexual encounter between the victim and her young brother, evidence that mother had concerns that brother had been molested and may have been a danger to the victim was properly excluded. The evidence was marginally relevant at best (to argue victim had sexual knowledge from an encounter with someone other than the defendant), and was properly excluded under rule 5.403. If evidence of an encounter with the brother had been introduced, the evidence would be excluded under rule 5.412 because the defendant failed to file a timely notice for an exception and made no argument for an exemption from the filing deadline. There is no categorical hearsay exception for statements made by a child sex abuse victim to doctors. To introduce such statements, the State must lay foundation for the medical diagnosis and treatment exception under rule 5.803(4) by showing the child's motive in making the statement was consistent with the purpose of promoting treatment and was of a type reasonably relied on by a physician in treatment or diagnosis. In child sex abuse cases, ascertaining the identity of the abuser is important for medical purposes because the child's age prevents implementing self-care and parents are often ill-equipped to elicit the abuser's identity. The State established this foundation in spite of the fact there was an 18-day delay between the assault and the doctor appointment given the likelihood sexual abuse requires treatment for emotional and psychological injuries as well as physical injuries. The defendant could not establish ineffective assistance of counsel for failing to object to emergency room nurse's testimony about statements made by the victim and her mother regarding identity of the abuser. The defendant could not show prejudice because the evidence was cumulative to other evidence properly admitted and evidence of guilt was overwhelming.

In Camera Inspection of Records, Waiver of Privilege, & Vouching

State v. Leedom, 938 N.W.2d 177 (Iowa 2020)
District court properly denied defendant's request for an ex parte hearing on a motion

seeking in camera review of alleged victim's mental health records, refusing to extend *State v. Dahl*, which allowed an ex parte hearing regarding hiring investigator at state expense in order to avoid disclosing defense strategy. District court improperly refused to conduct an in camera review of the records after defendant met the statutory requirements for such review set forth in Iowa Code section 622.10(4). In a case such as this, where there is an allegation of sexual abuse with no physical evidence, the case hinges on the victim's credibility. In such cases, evidence that impeaches the victim is "exculpatory" within the meaning of the statute. Here, the absence of any reported abuse in a mandatory reporter's notes would be exculpatory, as would descriptions in the notes showing material inconsistencies in the victim's description of events. The proper remedy for failure to conduct an in camera review is to conditionally affirm with remand for such review. If no exculpatory evidence is found, the case remains affirmed. If exculpatory evidence is found and meets the balancing test for admissibility, a new trial should be ordered. The court "encourage[d] district court judges in close cases to examine the records in camera" because this is the third time the court had reversed rulings denying in camera inspections with remand for such review. Also, a minor victim does not waive patient-therapist privilege by answering questions about abuse during a deposition or on cross-examination. As a minor, the witness lacks legal capacity to waive the privilege. Plus, the court has "long recognized that a privilege is not waived by answering questions on cross-examination" and a deposition taken by the accused's attorney is effectively a cross-examination. Finally, State's expert in this child sex abuse case did not improperly vouch for the child's credibility. Expert's testimony was general in nature describing why children delay disclosure, the grooming process, why children have an inability to recall specific dates, and the possibility that others can be in the room when abuse occurs. Since such testimony was not connected to the child in this case, there was no vouching and the testimony was permissible under our precedent.

Residual Hearsay Exception (Rule 5.807)

State v. Veverka, 938 N.W.2d 197 (Iowa 2020)

In this child sex abuse case, the State sought discretionary review of a preliminary ruling excluding a video of a forensic interview of the child. The State sought to admit the video under the residual hearsay exception in 5.807 (a rule combining former rules 5.803(24) and 5.804(b)(5)). Before evidence can be admitted under the rule, the district court must make five findings: (1) trustworthiness; (2) materiality; (3) necessity; (4) notice; and (5) service of the interests of justice. The district court has no discretion regarding admissibility of evidence on the basis of hearsay. The district court has no discretion to deny the admission of a statement on the grounds of hearsay if the statement falls within an exception and has no discretion to admit hearsay in the absence of a provision providing for it. This is why review of rulings on hearsay is for correction of legal error, in contrast to review for abuse of discretion

with other evidentiary rulings. In making findings of trustworthiness, the district court should consider the indicia of trustworthiness as identified in relevant precedents and omit consideration of extraneous factors. Whether the interview was conducted for the purpose of creating testimony is not a relevant consideration with regard to the "service of the interests of justice" factor. Evidence does not meet the "necessity" factor merely because the State claims to need the evidence to prosecute certain categories of defenses. The residual exception "should be used sparingly" and "[t]here is no rule that allows for the automatic admission of certain categories or types of evidence under the residual exception," including forensic interviews in child sex abuse cases.

Vouching & Hearsay

State v. Juste, 939 N.W.2d 664 (Iowa Ct. App. 2019)
In child sexual abuse trial, nurse practitioner's testimony that ninety-five percent or more of the time a child or adult is examined for sexual abuse, an exam of the person's genitals is normal is not improper vouching testimony. The testimony was general and merely explained that sexual abuse does not always lead to physical trauma of a person's genitalia, so it was not vouching. Victim's prior consistent statements to a school counselor, to a nurse, and on a school survey were made after the motive to fabricate the allegations arose, so did not fit the definition of non-hearsay as a prior consistent statement pursuant to rule 5.801(d)(1)(B). However, admission of the evidence was not prejudicial. Regarding admission of employment records of a witness for impeachment, Iowa has not yet adopted the rule that the "hearsay upon hearsay problem" may be excused by the business-records exception adopted by the Eighth Circuit. Because there was no foundation for the identity of the declarant of statements provided in the employment application, the statements did not fulfill the requirements for the business-records exception and were inadmissible hearsay. However, the hearsay was duplicative of other evidence already admitted, so there was no prejudice.

Jury Instruction on Opposing Party's Statements

State v. Shorter, 945 N.W.2d 1 (Iowa 2020)
An out-of-court statement by an opposing party is admissible as substantive evidence under Iowa Rule of Evidence 5.801(d)(2). However, the fact that such statements are admissible as substantive evidence at trial does not necessarily mean they can be equated with sworn trial testimony. Therefore, the outdated version of the Iowa State Bar Association Uniform Criminal Jury Instruction 200.44, which instructs such statements may be used "just as if they had been made at trial," should not be used.

INSURANCE

Residential Contractor Acting as Unlicensed Public Adjuster

33 Carpenters Constr., Inc. v. State Farm Life & Cas. Co., 939 N.W.2d 69 (Iowa 2020)
33 Carpenters Constr., Inc. v. Cincinnati Ins. Co., 939 N.W.2d 82 (Iowa 2020)
33 Carpenters Constr., Inc. v. IMT Ins. Co., 939 N.W.2d 95 (Iowa 2020)
Residential construction contractor was acting as an unlicensed public adjuster by advertising to advocate on behalf of homeowners regarding hail damage to their houses, attempting to aid homeowners in negotiations with insurance companies, demanding to be present for the insurance company's investigation of the houses, and conducting its own investigation. An assignment contract entered into by a residential contractor acting as an unlicensed public adjuster is void under Iowa Code section 103A.71(5). The court rejected the contractor's argument that the Iowa Insurance Commissioner has sole authority to enforce the licensing requirements for public adjusters.

CGL Coverage for Gross Negligence Claims Against Co-Employee

T.H.E. Ins. Co. v. Glen, 944 N.W.2d 655 (Iowa 2020)
An employee at Adventureland was killed when a co-employee started a ride prematurely, causing the employee to be trapped in the ride mechanism. The deceased employee's estate and family filed suit based on gross negligence against the co-employee. Adventureland's insurance company filed this declaratory judgment action asserting no coverage under its CGL policy based on the argument that gross negligence is not an "occurrence" under the policy because it is not an accident. After reviewing the standards for various terms in the policy related to expected injury, intent, etc., the court held "[i]t is possible for a plaintiff to thread the needle by convincing a factfinder that acts or omissions of a coemployee gave rise to an expectation that an injury was more likely than not to occur, and thus amount to gross negligence, but was not 'highly likely' and therefore outside of coverage for accidents. . . . At this early stage of the proceeding, based on the broad nature of the pleadings, we cannot say there is no possibility that [the deceased employee] may not be able to convince a factfinder that he has a claim that amounts to gross negligence but is within the scope of the coverage of the CGL policy." Therefore, the insurance company was not entitled to summary judgment.

JUVENILE

Permissive Factors in TPR – Children's Objection

In re A.R., 932 N.W.2d 588 (Iowa App. 2019)
Noting a lack of case law analyzing the child-objection factor of Iowa Code Section 232.116(3)(b), the Court looks to custody disputes in divorce cases as helpful analogies. Therefore, when weighing a child's preference under Section 232.116(3) in a termination case, the Court considers: (1) the child's age and education level; (2) strength of the child's preference; (3) the child's intellectual and emotional make-up; (4) the child's relationship with family members; (5) the reason for the child's decision; (6) the advisability of honoring the child's desire; and (7) recognition that the court is not aware of all the factors influencing the child's view. After analyzing those factors, the Court found no error in terminating the mother's parental rights in spite of the fact the children (aged 14 and 15) objected to termination due to the circumstances of the case.

Private TPR – Extended Incarceration With Drug History

In re B.H.A., 938 N.W.2d 227 (Iowa 2020)
Father's parental rights were terminated on the basis of abandonment in this private termination of parental rights (TPR) case. Father had a long drug history, had extensive criminal history, had not financially supported the child before incarceration, had not seen the child for nearly three years at the time of the TPR hearing, and was in federal prison for drug charges with an expected release date approximately six to eight years in the future. It was undisputed the father did not challenge the statutory grounds, but he challenged TPR on the best interests prong. In a 4-2 decision, the majority distinguishes *In re Q.G.*, 911 N.W.2d 761 (Iowa 2018), by noting its "exceptional circumstances," which included a stipulation regarding custody filed in a marriage dissolution proceeding four days before the mother filed the TPR proceeding. After distinguishing *Q.G.*, the court found TPR to be in the child's best interest.

MISCELLANEOUS

Restrictions on Gifts to Private College

Matter of Coe College, 935 N.W.2d 581 (Iowa 2019)
The college received several Grant Wood paintings as gifts from a charitable trust that had subsequently dissolved. The gift letter included language that the paintings were given to the college "and that this would be their permanent home, hanging on the walls of [the college library]." The college sought declaratory relief that the gifts were unrestricted because treating them as restricted adversely affected the value of the college's endowment fund due to a sharp rise in the value of the paintings. The court

concluded the language in the gift letter restricted the gift. In the first case interpreting Iowa's Uniform Prudent Management of Institutional Funds Act (UPMIFA)(Iowa Code chapter 540A), the court held the UPMIFA does not apply because the paintings are not "funds" but are instead "program-related assets." Because the gift letter imposed restrictions on ownership rights, the letter may be deemed to establish a charitable trust even though it contained "no magic trust language." Applying provisions of Iowa's trust code (chapter 633A) and the common law *cy pres* doctrine, the court found it premature to consider the application of *cy pres* because there was no showing the gift restrictions could not be carried out at present, as the record did not demonstrate the college no longer wanted the paintings (or would prefer cash) or the paintings needed to be relocated because of other circumstances.

Official County Newspaper Designation

Marcus News, Inc. v. O'Brien County Bd. of Supervisors, 935 N.W.2d 707 (Iowa 2019)
In counties with less than 15,000 people, the board of supervisors is required to select two newspapers for official publications. The board must select the two newspapers with the largest number of bona fide yearly subscribers. Newspapers under common ownership and published in the same city are permitted to be combined for purposes of determining circulation when the newspapers have "approximately the same subscriber list" or when "offered for sale in or delivered to the same geographic area." The court rejected the argument of Marcus News, Inc. that the relevant "geographic area" was the entire county. Based on the subscriber lists, the two newspapers owned by Marcus News served different geographic areas. Therefore, the circulations of the two newspapers could not be combined to calculate Marcus News's circulation. For the same reason, the two newspapers owned by a competing company should not be combined in calculating circulation of those two newspapers (both of which ended up being the two newspapers with the largest circulations).

MOTOR VEHICLES / OWI

Constitutionality of "Any Amount" of Controlled Substance

State v. Newton, 929 N.W.2d 250 (Iowa 2019)
In a case such as this, where the driver exhibited signs of impairment before invocation of implied consent procedures, the clause of the OWI statute that makes it unlawful for a person to operate a vehicle with "any amount of a controlled substance" in the driver's body does not violate the Due Process Clause of either constitution. The Court reserves for another day the issue of the constitutionality of the statute when the reasonable grounds to invoke implied consent do not involve contemporaneous objective signs of impairment.

No Suppression in DOT Proceeding With No Corresponding Criminal Case

Westra v. Iowa Dept. of Transportation, 929 N.W.2d 754 (Iowa 2019)
A DOT officer's stop of a vehicle was invalid due to lack of statutory authority to make the stop. However, driver could not challenge a subsequent OWI test refusal revocation. Iowa Code Section 321J.13(6) requires the DOT to honor suppression rulings made in a corresponding OWI criminal case, but, since there was no such criminal case for this driver, there was no suppression ruling that bound the DOT. By the terms of the statute, the driver could not raise a constitutional issue in the DOT proceeding. In a 4-2 decision, the Court held that allowing revocation does not violate Article I, Section 8 of the Iowa Constitution because the driver could not dispute that he violated the traffic laws. Even though the stop by the DOT officer exceeded the officer's statutory authority, it was still based upon reasonable suspicion and probable cause, so it did not amount to a constitutional violation. A constitutional violation does not occur every time a peace officer simply fails to adhere to a statute.

Open Records Request for "Speed Camera" Violator Information

Milligan v. Ottumwa Police Dept., 937 N.W.2d 97 (Iowa 2020)
A police officer was issued a citation by a speed camera while in the city's patrol vehicle. In his private citizen capacity, he made an open records request under Iowa Code chapter 22 requesting the names of violators issued citations and names of violators not issued citations for the purpose of making sure the city "was enforcing their automated speed car enforcement fairly cross the board between all citizens." Reversing a district court ruling requiring disclosure, the court, in a 4-2 decision, noted chapter 22 does not trump specific statutes that make certain records confidential. The federal Driver's Privacy Protection Act (DPPA) regulates disclosure of personal information contained in records of state motor vehicle departments. Iowa Code section 321.11 essentially incorporates the strictures of the DPPA into the Iowa Code. None of the exceptions of the DPPA applied to this request, as the request was not made by a government agency, there was insufficient proof the names were needed for use in another proceeding, and the requested records were not related to safety, as speed camera citations are not "driving violations" within the meaning of the DPPA or section 321.11(2).

MUNICIPAL CORPORATIONS

Definition of "Facility" in Wind Energy Statute

Mathis v. Iowa Utilities Board, 934 N.W.2d 423 (Iowa 2019)
The Iowa Utilities Board (IUB) interprets "single site" within the definition of "facility" in Iowa Code section 476A.1(5) to mean all wind turbines connected to a common

gathering line. As a result, the subset of turbines connected to a common gathering line that do not exceed twenty-five megawatts do not constitute a "facility" for which a certificate of public convenience, use, and necessity was required. After challenge to this interpretation by landowners, the court concludes the legislature has not vested the IUB with the authority to interpret section 476A.1(5), but nonetheless affirms IUB's common-gathering-line interpretation due to the longstanding nature of this interpretation, the legislature's apparent acquiescence to the IUB's interpretation, and the legislature's endorsement of a similar standard in a different wind-energy statute.

School District – No Obligation to Put Demolition of School on Ballot

Young v. Iowa City Community School Dist., 934 N.W.2d 595 (Iowa 2019)
School district planned to demolish an elementary school and use the land for additional space related to the high school. Citizens sought to place the issue of demolition of the school on the ballot, claiming it was a "disposition" of the school building. Finding demolition of a school building is not a "disposition" under Iowa Code section 278.1(1)(b), the court holds the school district properly determined the ballot measure was not "authorized by law," so it was under no legal obligation to require the county auditor to place the matter on the ballot.

PROBATE / GUARDIANSHIP / CONSERVATORSHIP / ELDER

Elder Abuse – Iowa Code Chapter 235F

Struve v. Struve, 930 N.W.2d 368 (Iowa 2019)
As substitute petitioners, three children of a man in his mid-80s filed a lawsuit under Iowa Code Chapter 235F seeking relief from elder abuse at the hands of their brother and his son, claiming the brother and his son unduly influenced the father to gift the brother and son farmland and lease them land at below-market rates. To prove that someone is a "vulnerable elder" requires proof that the person is 60 years old or older and unable to protect himself or herself due to age, mental condition, or physical condition. Age, standing alone, is insufficient. Substitute petitioners failed to make such a showing. Also, Chapter 235F is a summary proceeding intended to provide limited but expedited relief, not a regular civil suit. As a result, joinder of additional claims or counterclaims is not allowed. Based on the statutory definition of "person" in Iowa Code Section 4.1(20), which includes limited liability companies, the trial court erred in concluding that an LLC owned by the brother could not be a defendant in a suit brought under Chapter 235F. However, such error did not require remand because the substitute petitioners failed to prove that the father was a vulnerable elder. Refusal to allow substitute petitioners to access the files of the father's attorneys was not error when the attorneys themselves were permitted to testify and

there was no showing that access to the attorneys' files would have changed the outcome.

Assisted Living Facility Fees

Albaugh v. The Reserve, 930 N.W.2d 676 (Iowa 2019)
Daughter of a resident at an assisted living facility sued the facility after it would not return the resident's entrance or supplemental fees after the resident moved out. In a 5-2 portion of the decision, the fees permitted by Iowa Code Chapter 523D (dealing with retirement facilities) are not subject to the rental deposit provisions of Chapter 562A (the uniform residential landlord and tenant act). Actions of the facility in prioritizing the sale of the units the facility held for a low entrance fee and later leasing units to residents without an entrance fee did not constitute consumer fraud because there was no evidence that the facility knew in 2007 – when the resident entered her contract – that it would have to lower the price on entrance fees in 2015. The facility did not have a fiduciary relationship to the resident because the two engaged in an arms-length transaction. Resident failed to establish a breach of the implied covenant of good faith and fair dealing because all allegations of bad faith lacked a contract term to which it could be attached. The contract was not unconscionable because no evidence was presented that it was unconscionable when entered, there were no elements of unfair surprise, and Iowa Code Chapter 523D expressly allowed the entrance and supplemental fees.

No Separate Suit for Wrongfully Inducing to Execute Will

Youngblut v. Youngblut, 945 N.W.2d 25 (Iowa 2020)
In a 5-2 decision, the court overturns precedent and holds a disappointed heir cannot decline to pursue a will contest and instead bring a later, separate lawsuit against one or more favored heirs for wrongfully inducing the testator to execute the will. A claim alleging the decedent's will resulted from tortious interference by a beneficiary must be joined with a timely will contest under Iowa Code section 633.308. Otherwise, it is barred. The decision does not foreclose a plaintiff from pursuing additional *remedies* via a tortious-interference claim.

REAL PROPERTY / LANDLORD – TENANT

Mechanic's Lien Foreclosure – Attorney Fees & Homestead

Standard Water Control Systems, Inc. v. Jones, 938 N.W.2d 651 (Iowa 2020)
Homestead rights generally prevail over a mechanic's lien for attorney fees. Since neither the homestead law nor the mechanic's lien statute contain specific language to the contrary, the homestead law prevails. However, the homeowners were required to raise their homestead exemption before the district court entered a

foreclosure decree recognizing the contractor had a mechanic's lien for both the unpaid principal amount of the contractor's bill and attorney fees "senior and superior to any right, title or interest owned or claimed by" the homeowners – not later when the decree was being executed.

Breach of Right of First Refusal

In re Estate of Franken, 944 N.W.2d 853 (Iowa 2020)
Holders of a right of first refusal filed suit for damages against the estate of the party that granted the right of first refusal after the estate sold the land without offering it to the holders. The merger doctrine did not bar the holders' claim, as the holders did not seek to enforce any collateral agreement not incorporated into the deed. The statute of frauds did not apply to the holders' claim. Holders' claim for damages was not an action seeking to enforce a possessory interest in the land, so Iowa Code section 614.17A did not bar their claim. Also, nothing in section 614.17A extinguished the holders' right of first refusal or otherwise barred them from establishing such a right existed. Given that the holders' right of first refusal was contained in the deed, the holders had established their right of first refusal.

Emotional Support Animals in Pet-Free Apartments

Cohen v. Clark, 945 N.W.2d 792 (Iowa 2020)
Apartment tenant with pet allergies sued landlord and neighboring tenant alleging breach of her lease's "no pets" provision and interference with quiet enjoyment of her apartment when the landlord allowed neighboring tenant to have an emotional support animal. In what the majority in this 4-3 decision called a "highly fact-specific inquiry that balances the parties' needs," the landlord's accommodation of the neighboring tenant's emotional support dog was not reasonable because the plaintiff, who had pet allergies, had priority in time and the dog's presence posed a direct threat to the plaintiff's health. The priority in time is not dispositive, but is a factor to consider and it was the deciding factor in this case. The plaintiff was entitled to recover on her claims of breach of contract and breach of the covenant of quiet enjoyment. The majority noted the holding is specific to the facts of this case that does not set a "one-size-fits-all test" that will lead to the same result under different circumstances, such as when the animal is a service animal for a visually-disabled person.

SEARCH AND SEIZURE

Pretextual Stops – Owner Assumed to be Driver

State v. Haas, 930 N.W.2d 699 (Iowa 2019)
In a 5-2 companion case to Brown (summarized below), the subjective motivations of

an individual officer in making a traffic stop are irrelevant under the Iowa constitution as long as the officer has objectively reasonable cause to believe the motorist violated a traffic law. Following the holding in Vance, the stop was valid because the officer knew the owner of the vehicle did not have a valid driver's license and the officer was allowed to assume that the owner of the vehicle was driving the vehicle. Trial counsel was not ineffective for failing to challenge the stop on the basis that the license plate lamp was not working. Evidence supported the conclusion that the lamp was not working and, even if it was working, there was no prejudice because the stop was valid on the basis that the driver/owner did not have a driver's license.

Subjective Intent of Officer in Initiating Traffic Stop

State v. Brown, 930 N.W.2d 840 (Iowa 2019)
In a 4-3 decision, under the Iowa constitution, the subjective motivations of an individual officer for making a traffic stop are irrelevant as long as the officer has objectively reasonable cause to believe the motorist violated a traffic law. Article I, section 8 of the Iowa constitution is interpreted coextensively with the Fourth Amendment in this context.

Unreasonably Prolonging Traffic Stop

State v. Salcedo, 935 N.W.2d 572 (Iowa 2019)
Assuming without deciding the traffic stop was legal, the court reiterates it is permissible to inquire about details related to the mission of addressing the traffic infraction "and attend to related safety concerns." Declining to decide the case under the Iowa constitution, the court finds, under the Fourth Amendment, the officer failed to obtain individualized suspicion of other criminal activity before unreasonably prolonging the traffic stop. The officer made no "effort to address Salcedo's specific traffic infraction," as he did not ask questions about the traffic infraction, repeatedly thumbed through a rental car agreement in an apparent effort to stall until a drug dog arrived (which it did not), did not run an identity or criminal history check, and did not enter any information into a traffic citation.

Whether Blocking One-Lane Alley Is a Seizure

State v. Fogg, 936 N.W.2d 664 (Iowa 2019)
The defendant has the burden of proof as to whether a seizure occurred. Whether a seizure occurred is determined by the totality of the circumstances. In a 4-2 decision, under both constitutions, a seizure did not occur when an officer – who was watching a vehicle because it was driving very slowly at night and then parked in an alley – never activated emergency lights on the vehicle, parked at least twenty feet away from the suspect's vehicle, approached on foot, did not shine a light into or knock on the suspect's vehicle, and, when the suspect voluntarily exited her vehicle, engaged in conversation to ask if everything was okay. The fact the officer parked his vehicle

facing the defendant's vehicle, thus blocking the defendant's forward path in the single-lane (but not one-way) alley, did not transform the encounter into a seizure. The alley was a public alley not posted for single-direction traffic, so the officer had as much right to pull into the alley going one direction and park as the defendant had to pull into the alley from the opposite direction and park. Commenting on the natural tendency for people to feel pressure to cooperate with law enforcement, a seizure only occurs when an officer adds to the inherent pressures by engaging in conduct significantly beyond that accepted in social intercourse, even if making inquiries a private citizen would not.

Lake Panorama Not a Private Lake

State v. Meyers, 938 N.W.2d 205 (Iowa 2020)
A boat driver convicted of boating-while-intoxicated on Lake Panorama challenged the stop of the boat for a violation of Iowa Code 462A.12(4) (prohibiting blue lights on boats), claiming the statute did not apply to Lake Panorama because it is a private lake. In a 4-2 decision, flowing surface water in Iowa is legally open and available for public use regardless of who owns the land below it. The water in the Middle Raccoon River belonged to the public when the river was dammed to form Lake Panorama and the river above and below the lake remains water of the state today. When the dam was erected, it remained possible for a vessel to travel down the river into the lake. Since the river remains open to the public and a boat can legally get from the river to the lake, then the lake is also open to the public. The fact members of the Lake Panorama Association, who own the land surrounding and under the lake, claim the lake is private or attempted to use self-help in violation of a statute to block public access from the river to the lake does not change the outcome.

Smell of Marijuana as Basis for Search

State v. McMullen, 940 N.W.2d 456 (Iowa Ct. App. 2019)
The officer was qualified to detect the distinctive odor of marijuana. Such detection of the odor established probable cause for search of the vehicle from which the odor emanated. The officer's description that "marijuana smells like marijuana" did not undermine the officer's qualifications to detect the odor, as smells are inherently difficult to describe.

TAXATION

Capital Gain Exclusion From Income Upon Sale of Farmland

Christensen v. Iowa Dept. of Revenue, 944 N.W.2d 895 (Iowa 2020)
The department properly determined that capital gains the taxpayer earned from the sale of farmland she inherited from her father and leased on a cash-rent basis did not

qualify for the exclusion from Iowa income tax allowed under Iowa Code section 422.7(21)(a). The taxpayer and her husband did not "materially participate" in the business of farming by cash renting the property. Administrative rules' distinction between leases of farmland and other types of real property is valid and the taxpayer could not avoid the farm-specific rules.

TORTS

Constitutional Torts – Qualified Immunity, Punitives, & Attorney Fees

Baldwin v. City of Estherville, 929 N.W.2d 691 (Iowa 2019)
Citizen arrested for violating an ordinance that did not exist sued the city for actions of its police officers. In response to certified questions from federal court, the Court answers multiple questions. First, a Godfrey action such as this suit is the state counterpart to a Bivens action. The Federal Tort Claims Act ("FTCA") does not preempt a Bivens action even though the underlying facts of the Bivens action support a claim under the FTCA. The same is not true under the Iowa Municipal Tort Claims Act ("IMTCA"). Since the IMTCA expressly covers this type of suit, the IMTCA controls. Since the IMTCA controls and expressly dictates immunities for defendant municipalities, if the officers exercised due care such that the officers had qualified immunity under the IMTCA, the city would also have such immunity. Second, since the IMTCA expressly exempts municipalities from punitive damage liability, punitive damages are not available against the city that employed the alleged constitutional tortfeasors. Third, in a Godfrey claim, like in a Bivens claim, there is no express statutory authority for attorney fees. Therefore, the only way attorney fees could be recovered against the city would be if the plaintiff could establish the common law standard for award of attorney fees (i.e., the losing party acted in bad faith, vexatiously, wantonly, or for oppressive reasons). Finally, it is appropriate to retroactively apply the conclusion that the plaintiff can recover attorney fees in a Godfrey action if the plaintiff can establish the common law standard for attorney fees because Iowa has allowed common law attorney fees under this standard for over 100 years.

Judicial Process Immunity

Venckus v. City of Iowa City, 930 N.W.2d 792 (Iowa 2019)
Man acquitted of sexual abuse brought suit against police investigator, prosecutors, and municipalities. Judicial process immunity applies to government officials for conduct "intimately associated with the judicial phase of the criminal process." Answering a question left unanswered in Baldwin v. City of Estherville, 915 N.W.2d 259 (Iowa 2018), judicial process immunity applies to state constitutional torts. A government official is immune from suit and damages with respect to any claim arising

out of the performance of any function intimately related to the judicial phase of the criminal process whether the claim arises at common law or under the state constitution. Prosecutors had judicial process immunity for all actions other than one prosecutor's action in filing an ethics complaint against plaintiff's criminal defense lawyer in the underlying criminal case for conduct in a different case. Although police investigator and the city that employed him are entitled to judicial process immunity, the vagueness of the claims against those defendants made it unclear whether such immunity applied, so motion to dismiss against such defendants was properly denied. Limitation periods set forth in the Iowa Municipal Tort Claims Act (IMTCA), rather than limitations period set forth in Chapter 614, applied to the claims against the police officer and the city. Some claims were time barred, but other claims were not to be dismissed on a motion to dismiss due to insufficient record regarding timeliness. The state constitutional tort claims against the police officer and city are not barred due to the fact the IMTCA allows for adequate remedies. The IMTCA does not expand any existing cause of action or create any new cause of action. It merely allows claims that would have otherwise been barred by sovereign immunity.

Medical Malpractice – Jury Instructions

Eisenhauer ex rel. T.D. v. Henry County Health Center, 935 N.W.2d 1 (Iowa 2019)
The jury found in favor of the doctor, nurses, and facility in this medical malpractice claim surrounding a birthing injury. Regarding challenges to jury instructions, the trial court is entitled to choose its own language in submitting an issue and need not adopt the form requested by a party. Here, the jury was adequately instructed concerning the plaintiff's specifications of negligence, as the instructions covered each alleged act or omission supported by the evidence.

Required Notice Prior to Dramshop Action

Hollingshead v. DC Misfits, LLC, 937 N.W.2d 616 (Iowa 2020)
Person injured at a bar sent notice of intent to file a dramshop action pursuant to Iowa Code section 123.93. Section 123.93 requires notice to the liquor license holder or its insurance carrier. The notice was sent to the insurance company for the entity that held the liquor license prior to the date of injury rather than the entity that held the liquor license on the date of injury. The two entities had no apparent connection, but the insurance company for the prior entity was also the insurance company for the correct entity. In a 5-1 decision, the court holds the notice substantially complied with section 123.93. Despite misidentifying the liquor license holder, the notice gave the correct insurance company ample notification that the claim was against the bar known as Misfits, no matter who owned it.

Bad Faith, Remittitur, and Punitive Damages

Thornton v. American Interstate Ins. Co., 940 N.W.2d 1 (Iowa 2020)
In this bad faith claim alleging delay in paying worker's compensation benefits, the injured worker failed to offer substantial evidence supporting the jury's award of damages for alleged delay in providing a replacement wheelchair, so that award was taken away. Regarding the claim for delay in paying permanent total disability benefits, the evidence only supported damages of a reduced amount from that awarded by the jury. After a thorough review of the history and legal standards pertaining to punitive damages and due process challenges to them, on de novo review, the court found reprehensible conduct but reduced the jury's punitive damage award from $6.75 million to $500,000 to comply with due process standards. Based on the narrow circumstances here, which involved some damages that were able to be calculated with certainty and others that were not challenged, a conditional remittitur in lieu of a new trial was not required. Instead, the case was remanded for entry of judgment in a specified amount ($58,452.42 of compensatory damages and $500,000.00 of punitive damages).

Continuing Storm Doctrine Still Good Law

Gries v. Ames Ecumenical Housing, 944 N.W.2d 626 (Iowa 2020)
The continuing storm doctrine is consistent with the Restatement (Third) of Torts and remains good law now that sections 7 and 51 of the Restatement (Third) have been adopted in Iowa. When the doctrine applies, a land possessor has no duty to remove natural accumulations of snow or ice during an ongoing storm or for a reasonable time after the storm ceases. However, mere precipitation is not enough to constitute a storm sufficient to relieve the land possessor of the duty to remove or ameliorate the accumulations. There must be meaningful, ongoing accumulation. Since there was a factual dispute over whether there was a continuing storm, summary judgment should not have been granted. At trial, the jury should be instructed on the doctrine and the jury will determine whether there was a sufficient storm. One concurring justice argued for abandoning the continuing storm doctrine.

Public-Duty Doctrine & State-of-the-Art Defense

Breese v. City of Burlington, 945 N.W.2d 12 (Iowa 2020)
A bicyclist was injured when she struck a tree branch while riding on a sewer box connected to a public pathway and fell approximately ten feet from the sewer box to the ground. The court noted the public-duty doctrine is more likely to be applied to bar a claim when a government employee negligently fails to act and allows harm to occur (nonfeasance) than when the employee negligently acts and causes harm (malfeasance), although the court noted the distinction is a "gray area." Noting this case does not fall into either category, the court declined to apply the doctrine, so summary judgment for the city based on the doctrine was error. Disavowing any

language to the contrary in prior cases, the state-of-the-art defense in Iowa Code section 670.4(1)(h) is an affirmative defense and the burden of proving the defense is on the party invoking it. Since there were factual disputes as to whether the changes to the trail system occurring between 1980 and 1992 were state of the art, summary judgment based on the defense was not appropriate.

WORKER'S COMPENSATION

Jurisdiction – Contract of Hire Location

Niday v. Roehl Transport, Inc., 934 N.W.2d 29 (Iowa Ct. App. 2019)
Trucking employment contract between Wisconsin employer and Iowa employee was formed when they struck a bargain during their telephone call, which was confirmed by the employer's letter to the employee. Since the employee was in Iowa when the phone call took place and the confirmation letter was sent to the employee's residence in Iowa, the "contract of hire" was made in Iowa even though there were conditions to continued obligations to perform the contract (e.g., attending training, passing drug test, etc.). Because the contract of hire was made in Iowa and the employee regularly worked in Iowa, the requirements of Iowa Code section 85.71(1)(b) were satisfied such that the employer was responsible for Iowa workers compensation benefits owed to the employee for an injury occurring in Kentucky.

Class Certification – Exhaustion of Work Comp Remedies

Roland v. Annett Holdings, Inc., 940 N.W.2d 752 (Iowa 2020)
Trucking company with drivers all over the country had their truck driver employees sign a memorandum of understanding (MOU) requiring injured drivers to travel to Des Moines for a light-duty work program regardless of where they resided. A class action suit was brought seeking to certify a class consisting of drivers who signed the MOU and were compelled to travel to Des Moines for the light-duty work program. In a 5-1 decision, the court found class certification to be inappropriate because the commonality requirement was lacking, as individual issues predominated over common claims. In addition, class certification would circumvent each driver's obligation to exhaust remedies for alternate medical care under Iowa Code chapter 85. The district court lacked subject matter jurisdiction over claims of class members who had not adjudicated their claims before the workers' compensation commissioner.

Cumulative Injury – New Injury Versus Aggravation of Old

Gumm v. Easter Seal Society of Iowa, 943 N.W.2d 23 (Iowa 2020)
Where a claimant has received disability benefits for a prior compensable injury, the claimant is limited to the review-reopening remedy for additional disability benefits,

including its three-year statute of limitations, unless the claimant can prove the claimant has suffered another injury. If the subsequent injury is a cumulative injury, it must be a distinct and discrete injury, not merely the aggravation of the prior injury due to regular work activities.