

**IOWA SUPREME COURT 2016–17 TERM:
NOTEWORTHY DECISIONS AND UNANSWERED QUESTIONS**

By the Honorable Thomas D. Waterman

1. *State v. Pettijohn*, 899 N.W.2d 1 (Iowa June 30, 2017) (3–1–3; holding search warrant required for Breathalyzer test of drunken boater). Will drunk drivers meet a different fate? What does the DNR do if it is not practical to get a timely warrant?
2. *State v. Storm*, 898 N.W.2d 140 (Iowa June 30, 2017) (3–1–3; retaining automobile exception to search warrant requirement). Will roadside electronic warrant applications spell doom for this categorical exception?
3. *Godfrey v. State*, 898 N.W.2d 844 (Iowa June 30, 2017) (3–1–3; recognizing implied right under Iowa Constitution to sue government defendants for money damages for constitutional violations outside the scope of the Iowa Civil Rights Act). What are the contours of this new constitutional tort? When may punitive damages be awarded? Do plaintiffs bringing such constitutional claims have to go through the Tort Claims Act process? Are any immunities available?
4. *State v. Williams*, 895 N.W.2d 856 (Iowa 2017) (4–3; overruling *State v. Wing* and holding speedy indictment time clock starts with formal arrest/booking instead of whenever a hypothetical reasonable person would believe he/she has been taken into custody). The decision includes a debate among members of the court over *stare decisis*. How will this debate continue and play out in the future?
5. *Haskenhoff v. Homeland Energy Solutions, LLC*, 897 N.W.2d 553 (Iowa June 23, 2017) (3–1–3; reversing \$2.4 million judgment for hostile work environment/constructive discharge claims based on instructional errors). Be careful what you ask for—you might get it. Can an employer avoid liability under Iowa law by taking prompt action to address a valid sexual harassment complaint, or is Iowa heading toward strict respondeat superior liability for acts of sexual harassment by employees against fellow employees?
6. *Ludman v. Davenport Assumption High Sch.*, 895 N.W.2d 902 (Iowa 2017) (unanimous; reversing due to evidentiary and instructional errors \$1.2 million judgment for baseball player hit by foul ball). Again, be careful what you ask for—you might get it. Will the contact sports exception last?

7. *Plowman v. Ft. Madison Cmty. Hosp.*, 896 N.W.2d 393 (Iowa 2017) (6–1; recognizing new cause of action for wrongful birth). What damages are recoverable under this theory? Will *Plowman* be legislatively overruled?
8. *Thornton v. American Interstate Ins. Co.*, 897 N.W.2d 445 (Iowa May 19, 2017) (unanimous; reversing \$25 million punitive damage award in bad-faith action against workers' compensation insurer). Pick your battles and control your client. What ratio of punitive to actual damages will survive appellate due process review in an insurance bad-faith action?
9. *Des Moines Water Works v. Sac Cty. Bd. of Supervisors*, 890 N.W.2d 50 (Iowa 2017) (3–1–1; applying century of precedent to preclude state law claims against drainage districts by municipal water works for nitrate removal costs). Note the interplay between this decision and *Williams*, since dissenters in *DMWW* wanted to overrule long-standing drainage district precedent that had been reaffirmed many times, including in 2012. Under what circumstances will the court overrule its precedent?
10. *State v. Coleman*, 890 N.W.2d 284 (Iowa 2017) (4–3; holding officer can't ask to see driver's license after lawful traffic stop of vehicle owned by person with suspended license who is not the one behind the wheel). What does defense counsel need to do in district court to preserve error on a claim for broader restrictions on police under the Iowa Constitution?
11. *State v. Roby*, 897 N.W.2d 127 (Iowa June 16, 2017) (4–3; reversing mandatory minimum prison sentence of juvenile felon based on new standard that such sentences are to be rare). Will any mandatory minimum sentence of a juvenile survive appellate review? How are district courts to apply the *Lyle* factors? Is expert testimony required at sentencing hearings to impose a minimum term of incarceration?
12. *Stender v. Blessum*, 897 N.W.2d 491 (Iowa June 16, 2017) (4–3; affirming directed verdict/JNOV dismissing legal malpractice claims against lawyer who assaulted client/lover). When will violations of attorney disciplinary rules result in civil liability?
13. *Freeman v. Grain Processing Corp.*, 895 N.W.2d 105 (Iowa 2017) (unanimous; affirming order certifying class action of 4000 neighbors suing corn milling facility for air pollution under nuisance, negligence, and trespass theories). When can tort claims be tried as a group? What impact should expedited civil actions have on class certification?
14. *Diaz v. State*, 896 N.W.2d 723 (Iowa June 9, 2017) (7–0 but 3 concurred only in part; vacating guilty plea based on failure to advise client he

would definitely be deported if he pled guilty; the majority added language requiring explanation by defense counsel of immigration consequences beyond deportation, but 3 justices did not join that language). How much immigration law do criminal defense attorneys need to master?

15. *State v. Martinez*, 896 N.W.2d 737 (Iowa June 9, 2017) (4–3; dismissing identity theft convictions of noncitizen dreamer based on federal preemption). What is left for state prosecution of undocumented aliens who falsify identification to gain employment? Will the State seek U.S. Supreme Court review?
16. *Estate of Gottschalk v. Pomeroy Dev. Corp.*, 893 N.W.2d 579 (Iowa 2017) (5–2; affirming summary judgment dismissing tort claims against State arising from sexual assault in nursing home by William Cubbage after his unconditional release from the Cherokee lockdown treatment facility for sexually violent predators). Bad facts sometimes make bad law. When should the State be held civilly liable for crimes committed after an inmate’s release from prison?
17. *Willard v. State*, 893 N.W.2d 52 (Iowa 2017) (unanimous; holding that PSN (patient safety net) materials are not discoverable or admissible in malpractice action arising from hospital care). When should access to evidence trump privacy that protects other goals?
18. *State v. Russell*, 897 N.W.2d 717 (Iowa June 23, 2017)(unanimous; holding criminal defendants have no right to subpoena records from third parties). Is the door open to such discovery on an ex parte showing under special circumstances?
19. *Estate of Cox v. Dunakey & Klatt, P.C.*, 893 N.W.2d 295 (Iowa 2017) (unanimous; holding parties failed to reach a binding settlement of legal malpractice claims given lack of contemporaneous meeting of the minds on terms of confidentiality provision). Offer and acceptance required notwithstanding agreement on all other terms. Be careful—as long as you say the settlement is subject to your client’s review and approval the other side can also back out.
20. *State v. Plain*, 898 N.W.2d 801 (Iowa June 30, 2017) (unanimous on abandonment of actual disparity test for challenging racial makeup of jury pool; 4–3 in declining to require implicit-bias jury instruction; 5–2 in holding it was improper for a prosecutor to refer the complaining witness in closing argument as a “victim”). How can we improve racial diversity of the jury pool? When is it reversible error for the prosecutor to refer to the complaining witness as the “victim”?