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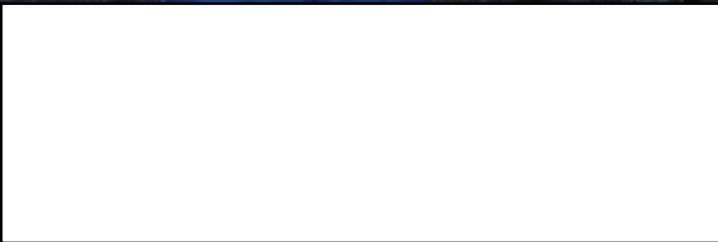


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The Official Member Publication of the Iowa Peace Officers Association (IPOA)



2024 IPOA Training Conference Speakers Imran Ali, Kim Potter and Fargo (ND) Police Chief David Zibolski





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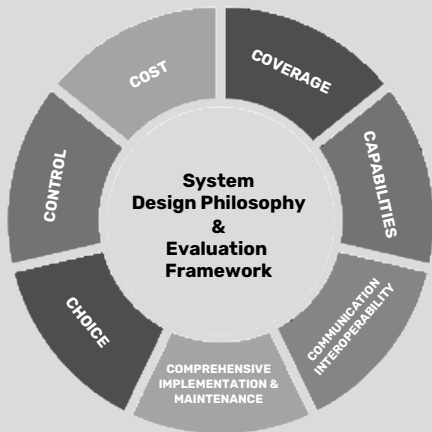
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Perry has much to be proud of in their law enforcement & public safety communities, and so do we as brother and sister officers

As I write this quarter's article, I am conflicted. I write as an officer who is at once sad and proud. I am sad that the dispatchers and officers of the Perry Police Department as well as the Dallas County Sheriff's Office and many, many other municipal, county, state and Federal law enforcement agencies had to live through one of the worst days in any public safety member's career: an active shooter school event.

Though my Department and I were not involved, we sat listening in disbelief in real time to the dispatchers and officers. We listened as the call was calmly dispatched. We listened as officers calmly arrived and entered the school. We listened as dispatchers guided officers through the building and as they found victims and the shooter. We listened as EMS and fire personnel were professionally dispatched – calmly on an otherwise chaotic day.

Then, I am proud. Proud of the dispatchers who, while being the first people on any scene, were calm and professional. I am so proud of the officers who ran coura-



Chief Marty Duffus
Osceola Police Department

geously, deliberately, immediately, and without regard for their personal safety, straight into danger. And proud of the out-of-area law enforcement who with an incredible sense of duty rushed to help their fellow officers and aid the community. And proud of the EMS and fire personnel providing critical care for victims.

Unfortunately, this is not the first school

shooting event to have occurred in Iowa. And it likely won't be the last. It is the first that much of the state listened to in real time over the radio.

I am proud of everyone – especially our law enforcement brothers and sisters. This is the time when we, as public servants, use our professionalism and training to step up and protect our loved ones and our communities as they expect us to do.

I'm proud of the way all of us, regardless of the color of our uniforms, instantly came together to help our communities and each other. They worked, and in some cases are still working, with one common purpose: everyone knowing what to do and how to do it.

Perry has much to be proud of in their law enforcement and public safety communities, and so do we as brother and sister officers.

This is why we took our oath. These are times when the public depends on us, looks to us and leans on us.

Stand proud Perry law enforcement!
Stand proud everyone.

IPOA Supporters: Please Scan the QR Code to Receive Notifications When Time-Sensitive Legislative Issues and More Come Up!

IPOA members and other officers are invited to take a minute to point their smartphones at the QR code at the right and tap the link that appears to provide four lines

of information (email address, first and last name, and agency) and then click "subscribe."

This will put you on a quick contact list of officers across Iowa

when time-sensitive and important issues to all of us come up that need to be addressed quickly. It could also be used for newsletter and important notices. Thank you!



Iowa Lt. Governor Adam Gregg with IPOA Lobbyists Kellie Paschke (left) and Kelly Meyers (right) at the IPOA Conference.



Former police officer Kim Potter received a standing ovation from IPOA Conference 2024 attendees at Prairie Meadows. See Page 8.

Conference Focused on “Use of Force,” “Impact of Line of Duty Deaths,” & the Importance of Mental Health, Faith and Friends

Greetings to All! We just concluded the 2024 Iowa Peace Officers Association (IPOA) Conference at Prairie Meadows in Altoona, and it was absolutely an excellent training opportunity for all.

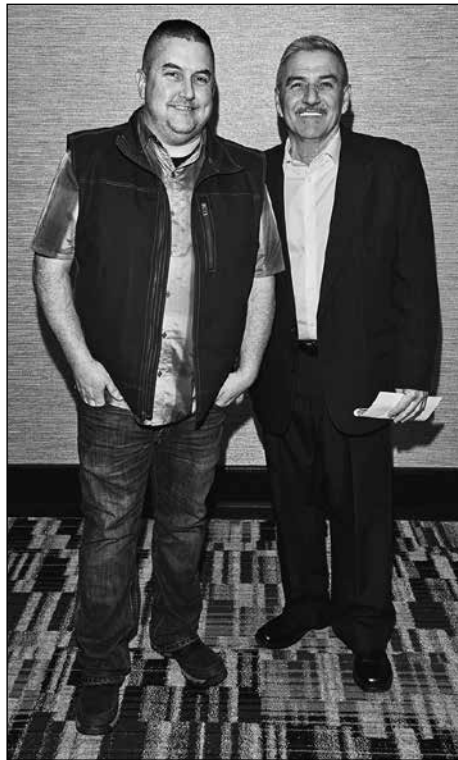
Our attendance was more than double from last year, and I give all the credit to our speakers. We were fortunate to have Imran Ali – former prosecutor and Senior Director of Training, Consulting and Investigation Services with Minnesota-based Eckberg Lammers Attorneys at Law – return this year to talk on “Use of Force.” As always, his experience was beneficial and entertaining to all. His associate Kim Potter shared her critical incident and spoke of very personal issues that all of us in the law enforcement community could encounter. Those in attendance appreciated her presentation and she gave each of us much to contemplate as we left for the day.

On Tuesday morning, Fargo Police Chief David Zibolski shared the events of July 2023 when three of his officers were ambushed, resulting in the death of Officer Jake Wallin and the injuring of two others. The fourth officer on the scene, in the line of fire, was able to bring the situation to an end.

The ambush was a horrific incident, but it could have been much worse had the shooter survived and continued his assault on the community. His car was full of ammunition, weapons and explosive devices that he was prepared to use on the community of Fargo. The focus of Chief Zibolski's presentation, “Lessons Learned,” involved how the Fargo Police Department and community responded in the hours and days that followed.

Chief Zibolski shared similar comments that Kim Potter discussed on Monday dealing with the mental health of officers involved in these situations. I am sure that all in attendance were challenged and hopefully took away new concepts and the need for improved policies within their departments. I will share, again, what I told the audience this week: We are truly fortunate and blessed to work in Iowa. The vast majority of our citizens support your efforts as you serve and protect.

All of our speakers at one point or an-



IPOA Secretary Terry Dehmlow (right) with his nephew, Ben Dehmlow, who is with the Renville County (Minnesota) Sheriff's Office, at the IPOA Training Conference on February 26 in Altoona, Iowa.

other spoke of our mental health and faith. Be proud of your faith and service; we are answering a call to serve others and for that reason: “Blessed are the Peacekeepers.” Mental Health is not a pleasant topic and we really do not like talking about it. After all, we are bigger than that. Wrong, the well-being of all depends on the acceptance and knowledge in the need for assistance when our departments and communities are responding to tragedy and violence. Having that plan in place for assistance in advance – prior to the incident – will benefit all involved. You need to make sure you are seeking support and taking care of yourself if we are to provide the best service to our communities.

It may be a traumatic situation, the day-to-day call, or something that is taking place outside of the workday. Within your department that support begins with leadership, policy, and training. The end

results will make for better decision-making and the use of proper tactics in those demanding situations. We have seen the need in Iowa and, more importantly, what don't we see?? Never, ever hesitate to ask for assistance and support when you are in need, please!

At IPOA Conference 2024, we made donations to three very worthy organizations including Iowa Concerns of Police Survivors (Iowa COPS), and we are forever glad to support them. They have served officers and families across Iowa with their care to victims, family members and responders. I would encourage all to support them financially in the future and hopefully never need their services.

City, county, and state officers attended the IPOA conference. It was fantastic to see familiar faces in the audience, and we were excited to see others for the very first time. Prairie Meadows provided excellent facilities and service during the event. The IPOA Board has chosen to return to this location in 2025 and you can mark your calendar now for February 24th & 25th, 2025.

Do you have a bunch of guys and gals who enjoy getting together and knocking some balls over the fence? Our annual Softball tournament will take place in August and we are always looking for teams to participate. It will be in Urbandale and I will have more information on the IPOA website (Iowapeaceofficers.org) and the next magazine.

I will close with a request for each of you reading this magazine to scan the QR code on Page 6 that will direct you to our sign-up page for a newsletter covering important, time-sensitive issues. It will take about a minute to complete the form and allow us quicker and easier access to reach you when we need to act together on critical issues. Please do this today.

We are always looking forward to receiving your magazine articles. The deadline for article submissions for the next issue of *Iowa Law Enforcement* magazine is May 1st.

It remains my pleasure to have served the IPOA for the past 18 years.

May God Bless each of you and keep you safe.

2024 IPOA Training Conference: Use of Force w/ Imran Ali and

Monday, February 26th, 2024

8 - 8:30 a.m. **Check in/ Registration**



The Pledge of Allegiance.

8:30 - 8:45 a.m. **Welcome/ Pledge of Allegiance**
Terry Dehmlow, IPOA Secretary/ Treasurer
Cpt. Mike McKelvey, IPOA Past-President
Special Guest: Lieutenant Governor Adam Gregg

8:45 - Noon **Use of Force** with Imran Ali and Kim Potter

10 - 10:15 a.m. **Break/ Special Olympics Iowa check presented**

Noon - 1 p.m. **Lunch/ Tyler Richard, AT&T presentation**

1 - 4:30 p.m. **Use of Force** continues with Imran Ali/ Kim Potter

2:15 - 2:30 p.m. **Break – Iowa COPS check presented**

4:30 - 6 p.m. **Welcome Reception** in Photo Finish Lounge



Imran Ali brought his “Use of Force” case experience to the IPOA Conference.

Tuesday, February 27th, 2024

8:30 - 8:45 a.m. **Welcome/ IPOA Memorial Service**

Terry Dehmlow, IPOA Secretary
Pastor John Sheahan

8:45 - 11:30 a.m. **Impact of Line of Duty Deaths**
Chief David Zibolski, Fargo Police Department

10 - 10:15 a.m. **Break/ Attorney General Brenna Bird**

11:45 a.m. - 1 p.m. **Lunch and IOPA Business Meeting**

1 - 2:00 p.m. **Pension Systems Panel/ Q&A**

Kathy Fraise, MFPRSI Senior Pension Officer
Ryan Bartlett, IPERS Senior Pension Officer

2 - 2:30 p.m. **Legislative Update**
with Kellie Paschke and Kelly Verwers-Meyers



Kim Potter shared her post-incident experience advice.

Kim Potter; Line-of-Duty Death Impacts By Fargo Chief Zibolski



The Iowa Peace Officers Association made a \$2,000 donation to Iowa COPS during the 2024 IPOA Training Conference.



A \$1,000 donation was made by IPOA to Special Olympics Iowa at the Training Conference.



Imran Ali and Kim Potter taught together.



The Iowa Peace Officers Association donated \$500 to DARE Iowa at the Conference.



Atlantic Police and Hudson Police officer table.



The Iowa Peace Officers Association 2024 Training Conference held at The Meadows Events Center in Altoona, Iowa, drew a large group of city, county, and state officers.



The IPOA Board of Directors with Iowa Lt. Governor Adam Gregg (left to right): Trooper Glenn Goode, Officer Dean Sharp, Lt. Gov. Gregg, Chief David Niedert, Capt. Mike McKelvey, Lt. Augustin Farmer, and Officer Steve Jacobs. Missing: Chief Marty Duffus.

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Windsor Heights Police Department Joins the Iowa Peace Officers Association as an Member Agency

By Officer Cody Brown

Windsor Heights Police Department

Exciting Updates from Windsor Heights Police Department!

We are thrilled to announce that the Windsor Heights Police Department is re-joining the Iowa Peace Officers Association (IPOA) after a brief absence. We are also looking ahead to the future with a new police chief and command staff leading the way.

Nestled in the heart of Des Moines' western Metropolitan Area, Windsor Heights boasts a vibrant community with unique policing challenges. With a current authorization for 14 sworn officers (13 FT and one PT) and one administrative support clerk, the Department is structured into two divisions – Patrol and Support Services – each under the command of a dedicated lieutenant. Our officers on patrol duty enjoy 10-hour shifts and revel in four-day weekends which occur every other week. Plus, we're proud to have WestCom as our emergency communications center, ensuring seamless public safety coordination with our neighboring jurisdictions on the west side of Des Moines.

In May of 2023, Pete Roth assumed the role of our police chief, succeeding Chad McCluskey, who embarked on a new journey as the Chief of Police for Waukee PD. Chief Roth brings with him a wealth of experience, previously serving as the Clear Lake Police Chief. "I am thrilled for the opportunity to serve as the Windsor Heights Police Chief," said Chief Roth. "I am grateful for the support of our city and community, as well as the opportunity to work with amazing people."

Among Chief Roth's initial tasks was coordinating a promotion selection process for two lieutenants. Chad Norris and Mike Irlbeck, both exemplary officers, were promoted in September of 2023. Lieutenant Norris now leads the Patrol Division, while Lieutenant Irlbeck oversees Support Services, which includes the detectives.

Windsor Heights presents distinctive policing dynamics. Despite its smaller land size and population compared to neighboring metro cities, our community buzzes with activity, particularly



Chief Pete Roth

around our bustling Walmart Supercenter and adjacent Sam's Club. Remarkably, the foot traffic on average in these establishments alone can surpass our city's total population on any given business day. The Department supports the Des Moines Metro Star Emergency Response Team with one officer assigned to one of the units. Additionally, like many agencies, the Department grapples with staffing shortages, which we are actively addressing.

Windsor Heights Police Department continues to plan to face the many public safety challenges that may lie ahead. For more information about the Windsor Heights Police Department, check out our Facebook page @whgtspolice or call 515-277-4453.



Lt. Chad Norris



Lt. Mike Irlbeck



Polk City Police Department Joins Iowa Peace Officers Association (IPOA) as Member Agency

By Chief Jeremy Siepker
Polk City Police Department

Thank you for welcoming the Polk City Police Department as a new member agency. I am proud to have the staff of the Polk City Police Department become members of the Iowa Peace Officers Association and look forward to continuing this new tradition for years to come.

The City of Polk City is a Des Moines metro suburb located in Northwest Polk County. The Police Department serves a growing community with an estimated population of 6,500 and is bordered by Saylorville Lake and Big Creek State Park. The Department has nine full-time and three part-time sworn personnel and one civilian support staff. Patrol Officers work 12-hour shifts with every other weekend

off. The Chain of Command is chief, lieutenant, sergeant, and officer.

I was appointed as Police Chief in 2020. Prior to that I served as the lieutenant with the Polk City Police Department and have been in law enforcement since 2007, when I began my career with the Osceola Police Department.

Lieutenant Matt Aswegan was appointed to his position in 2020 as well. He has served in law enforcement since 2006, beginning his career with the Prairie City Police Department. Officer Matt Aicher has been with the Polk City Police Department since 2010, and has been in law enforcement for 15 years. He also serves as our Canine Handler.

Officer Alex Delaney was hired in 2020 and graduated from the 292nd Basic class that same year. Officer Kevin Blaha-Pol-

son and Officer Caitlyn Whipple were both hired in 2022 and are recent graduates of the ILEA 305th Basic class.

Sergeant Nick Sherman joined the Polk City Police Department in July 2022 and is a graduate of the 262nd Basic. He was recently promoted to the rank of Sergeant and is assigned as a late-swing patrol supervisor.

Officer Spencer Stover and Officer Craig Garrison both completed their field training in November 2023. Officer Stover is also a graduate of the 262nd Basic class, which he attended with Sgt. Sherman in 2015.

In July 2023 we added the 9th full-time position, which was filled by Officer Craig Garrison. He recently graduated from Hawkeye Regional Academy in the 76th Basic Level II class.



Back row, left to right: Officer Kevin Blaha-Polson, Chief Jeremy Siepker, Officer Alex Delaney, Lieutenant Matt Aswegan. Front – Officer Caitlyn Whipple, Officer Craig Garrison, Officer Matt Aicher, Officer Spencer Stover, Sergeant Nick Sherman.

Training Matters

Living an Ethical Life When No One is Looking

I hope everyone had a great holiday season! As I write this, the first big snowstorm of the winter has hit the state, and everyone is losing their minds. It is so interesting that when the first storm does hit, people act as if it is something new or foreign.

You should know that winter follows fall and with that comes snowstorms. It is inevitable. It is something that is always going to happen.

This article is going to talk about an important aspect of our professional career – ethics. The Oxford dictionary describes ethics as “moral principles that govern a person’s behavior or the conducting of an activity.” A simple way to define what moral principles encompass can be found in the “Six Pillars of Character” from the **Character Counts!** curriculum we learned in grade school.

The six pillars of character are:

Trustworthiness: Be honest. Have integrity. Keep your promises.

Respect: Be accepting of differences. Be courteous.

Responsibility: Do what you are supposed to. Be self-disciplined. Be accountable.

Fairness: Play by the rules. Don’t take advantage of others.

Caring: Be compassionate. Express gratitude.

Good Citizenship: Stay informed. Make choices that protect the safety and rights of others.

Those seem easy to follow and adapt as a way of life. But why then do we hear so many stories about people in law enforcement getting jammed up on a myriad of different issues?

I think we all remember the law enforcement landscape several years ago and how our profession was unjustly demonized. I won’t get into a history lesson.

Departments across the country lost personnel and things hit a new low in mo-

rale. This may not sound encouraging right now, but things always come in cycles. I have read stories of officers in the 70s who talked about how low morale was and no one wanted to be in law enforcement. Then things took an upswing, and everyone wanted to be a cop. The cycle will swing upwards again. If you look at the polling numbers, cops still poll higher in trustworthiness than most all other entities.

What I am getting at is that we cannot give others a reason to question law enforcement. We absolutely must have a high ethical standard. Do you remember the oath you took when you were sworn in as a police officer? Do you stick to that oath? Have you stuck to that oath?

As a law enforcement officer, you are charged with upholding the laws and protecting those who are victims and can’t protect themselves. As a law enforcement officer, you are there to comfort those in crisis and give them hope.

As a law enforcement officer, you are there to do what is right, no matter what.

So as a law enforcement officer, you must have strong ethical beliefs based on those character pillars. This also applies to your personal life. How does it look when you are writing speeding tickets and speed yourself? This is just a single example but really take a hard look at how that appears if you don’t adhere to your oath. If you want an extreme example, research the CRASH unit and the

Rampart scandal of the Los Angeles Police Department.

We all must do everything we can to live an ethical life. It has been said, “Your character is what you do when no one is watching.” Then we can continue to keep this profession as one of honor and integrity, which in turn will build back the public’s trust.

Ethics and your character as a law enforcement officer should become like that Iowa winter snowstorm. It is inevitable and not an anomaly.

Train hard. Stay safe

About the Authors:



Sgt. Greg Erie

Greg Erie has been with the Waterloo Police Department since 1995. A former Marine, Sgt. Erie is currently assigned to Watch III Patrol. Prior to his July 2016 promotion, he served as the Training Unit Coordinator for 9-1/2 years. He is a prior member of the Tactical Unit, FTO, and a TASER and defensive tactics instructor. He is a member of ILEETA. His email is erieg@waterloopolice.com.



Officer Chris Gergen

Chris Gergen has been with the Waterloo Police Department since 1997. Officer Gergen is state and federally certified as a Control Tactics Instructor. He also teaches in several other areas. Officer Gergen is married with three kids. He can be reached at gergenc@waterloopolice.com.

If you move to a new home, please change your address with the Iowa Peace Officers Association by emailing iacop2@mchsi.com to continue receiving your copy of *Iowa Law Enforcement* magazine.

Sioux City Police Department Promotes Dane Wagner to Lieutenant, Anthony Vondrak to Sergeant, and Jamie Mattas to Sergeant

By Chief Rex Mueller
Sioux City Police Department

Lieutenant Dane Wagner was hired by the Sioux City Police Department in April of 2000. During his career he has completed assignments in uniform patrol, the DEA drug task force, and crimes against property unit before being promoted to the rank of Sergeant in October of 2012. As a supervisor, Lieutenant Wagner supervised uniformed patrol, the special investigations unit and was a Team Leader on the SWAT team. Wagner was also a member of the Sioux City Police Department's Honor Guard and served as a field training officer for ten years prior to his promotion to sergeant and has been an instructor in a variety of disciplines to include but not limited to; Firearms Instructor, Defensive Tactics Instructor, Crowd Control Instructor, Active Shooter Instructor and provided instructorship to numerous DEA Basic High Risk Warrant training classes, while assigned to the DEA drug task force.

Sergeant Anthony Vondrak started his career in 2010. He served in Patrol during several different periods of his career. He was assigned to the traffic unit for three years and



Lt. Dane Wagner



Sgt. Anthony Vondrak

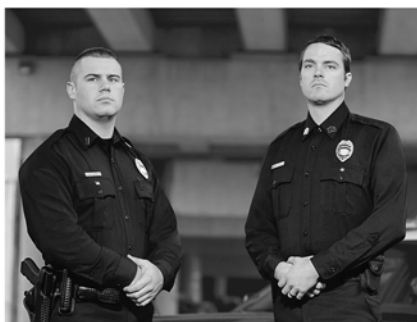


Sgt. Jamie Mattas

Special Investigations Unit for four years. Sergeant Vondrak spent six years in the United States Army Reserve where he completed his assignment as an E5 Sergeant. Through Sergeant Vondrak's tenure he spent time as a CPR, and Taser instructor. He has been an FTO for the Department since 2012. He received a traffic safety award from Iowa Governor's Traffic Safety Bureau in 2022. He has been the recipient of departmental awards including Community Team Policing and Life Saving. He will be assigned to Uniform Patrol on Watch 3.

Sergeant Jamie Mattas began his career with the SCPD in December of 2002. While serving on the Department, Sergeant Mattas worked in the ASAP Unit having processed over 600 OWI's. He also worked as a School Resource Officer and is currently a firearms, PR-24, and a TASER instructor as well as being involved with several community policing projects. He was in the Marine Corps Reserve for six years then honorably discharged as an E5 Sergeant. He has an Associate's Degree in Police Science and a Bachelor's degree in Criminal Justice.

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Recent Iowa Supreme court cases of interest to our members:

State v. Arrieta – Iowa Supreme Court – December 8, 2023

By **Kellie Paschke**

IPOA Legislative Consultant

In *State v. Arrieta*, the defendant appealed the District court (and Court of Appeals) decision denying his motion to suppress evidence.

Stephen Arrieta, a truck driver from Texas failed a “Prepass” check as he approached a weight station on I35 outside of Northwood. When Arrieta pulled into the DOT weigh station, an officer did a “level 3” commercial vehicle inspection. An hour into the investigation, the DOT officer called for a K-9 unit to conduct a free air sniff around the truck and trailer. State radio radioed the officer and said not to hold Arrieta, but the DOT officer continued holding Arrieta because he found it suspicious that Arrieta was traveling from Texas to Minnesota and there were discrepancies in his log book. Even though the officer was done with his inspection at 1:34 p.m., he held Arrieta until Titan the drug dog arrived just before 2:00 p.m. When the dog alerted to the area outside of the sleeper, Arrieta admitted he had a bowl of marijuana inside.

Arrieta made the following challenges:

- The DOT officer engaged in an unlawful seizure when he extended his Level 3 document only investigation to give the K-9 handler time to get to the weigh station.
- The K-9 handler engaged in additional unlawful search when the dog jumped up on the fuel tank to enable it to smell around the sleeper compartment, and,
- That the K-9 drug dog, Titan, is unreliable.

The Iowa Supreme Court acknowledges that law enforcement is allowed to use drug dogs to conduct “free air sniffs” around the outside of vehicles during a valid traffic stop without any suspicion that the vehicle contains drugs as the driver has no expectation of privacy in the air outside the vehicle. However, the Court ruled extending the time beyond what was necessary for the original purpose of the stop was unconstitutional.

The State failed to offer a sufficient ex-



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planation for the delay – which the Court found demonstrated the officer’s improper intent to unduly prolong the inspection to allow time for the K-9 unit to arrive on the scene.

The Iowa Supreme Court cited a United States Supreme Court decision *Rodriguez v. United States*, 575 U.S. 348 (2015) as controlling law. That case also involved a free air sniff by a drug dog during a routine traffic stop. Although the initial stop was valid, the US Supreme Court held that law enforcement unconstitutionally prolonged the stop beyond that was necessary to effectuate the legitimate purpose for the stop. In *Rodriguez*, the additional seven or eight minutes beyond the time reasonably needed to complete the mission of issuing the ticket was found to be impermissible. Absent individualized suspicion, law enforcement may not prolong a traffic stop to conduct unrelated investigation – such as a drug dog sniff – that do not serve the stop’s original purpose. Even “de minimis” extensions are unacceptable under the Fourth Amendment. The US Supreme Court has held that even five or six minutes can be too long if extended beyond the original purpose of the stop.

The critical question is...does conducting the unrelated investigation (drug dog sniff) add time to the stop? If it does, it may be unconstitutional.

The Iowa Supreme Court has applied

the federal *Rodriguez* decision as follows:

- *In re Property Seized from Pardee*, 872 N.W.2, 396 (Iowa 2015) twenty five minute traffic stop was unconstitutionally prolonged beyond what was necessary to address a traffic infraction. It is also noteworthy that the Court rejected the State’s argument that it developed reasonable suspicion of other criminal activity during the improperly extended time. “Authority for the seizure ends when the tasks tied to the traffic infraction are – or reasonably should have been – completed.” *Pardee* at 392.
- *State v. Salcedo*, 935, N.W. 2d 572 (Iowa 2019) – The Court found that the officer’s complete lack of effort to address the *Salcedo*’s specific traffic infraction was obvious from the evidence and that the officer was intentionally delaying.

How did the Court know the officer in *Salcedo* was delaying? The body camera footage was highly relied upon.

While there is no time limit on traffic stops, whether the stop/detention is a reasonable amount of time will be a fact-intensive question. Specific circumstances of the stop determine the time in each case so courts are directed to conduct a thorough factual inquiry into the record. An officer must be diligent to keep the process moving and not have any unexplainable delays. Any delay at all will be highly scrutinized. If an officer has individualized suspicion that must be documented and cannot be the fruit of the unconstitutional delay itself.



Recent Iowa Supreme court cases of interest to our members:

State v. Laub and State v. McMickle – Iowa Supreme Court – February 9, 2024

By **Kellie Paschke**

IPOA Legislative Consultant

In *State v. Laub* and *State v. McMickle*, both filed February 9, 2024, the Iowa Supreme Court held that Chapter 321J is not the exclusive means by which an officer can investigate suspected OWI offenses.

In *Laub*, the deputy observed a vehicle driving over the speed limit and swaying within a traffic lane. Suspecting the driver was operating under the influence, the deputy initiated a traffic stop. The deputy asked the driver, Colby Laub, how much he had been drinking, and Laub replied, “[A] couple beers.” The deputy asked Laub to step out of the vehicle. When Laub stepped out of the vehicle, the deputy observed an open container of beer in the panel of the driver’s side door. The deputy asked Laub whether he would participate in field sobriety testing. Laub refused. The deputy handcuffed Laub, placed him in his vehicle, and transported him to the local law enforcement center. While on the way to the law enforcement center or while at the law enforcement center, Deputy McCrea obtained a search warrant under a pilot program that authorized the application for and issuance of search warrants by electronic means.

The Court held that Chapter 808 of the Iowa Code authorizes law enforcement officers to apply for, obtain, and execute search warrants for bodily specimens and nothing in chapter 321J precludes an officer from using the search warrant authority granted in chapter 808 to investigate suspected OWI offenses. The Court further held that a law enforcement officer’s decision to obtain and execute a search warrant to investigate suspected OWI offenses does not violate a suspect’s federal or state constitutional rights to equal protection of the laws or due process of law.

The Supreme Court found there was no compelling reason to overrule or artificially limit previous decisions in *State v. Oakley*, 469 N.W. 2d 681 (Iowa 1991); *State v. Demaray*, 704 N.W. 2d 60 (Iowa 2005); and *State v. Frescoln*, 911 N.W.2d 450 (IA Ct. App. 2017) because, in their view, they were correctly decided.

However, the officer needs to select the



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path of either Implied Consent or a Search Warrant. If a driver refuses a chemical test after being offered one under the implied consent law, the officer cannot then go ‘outside the statute’ to obtain a warrant for chemical testing. *State v. Hitchens*, 294 N.W.2d 686, 687 (Iowa 1980); Iowa Code Section 321J.9

Additionally, the Court in *McMickle* addressed a Section 804.20 violation. In *McMickle*, the defendant at the scene requested several times to talk to her attorney. After it became clear that she was not going to cooperate with field sobriety testing at the scene, the deputy handcuffed her, placed her in the front seat of his vehicle, and transported her to the law enforcement center for further investigation. At the law enforcement center, *McMickle* again requested to speak to her lawyer several times and the deputy refused until “his investigation was complete”.

To complete his investigation, the deputy applied for and obtained a search warrant authorizing the collection and testing of a blood specimen. After obtaining the search warrant, Deputy Benjamin transported *McMickle* to a local hospital for a blood draw. Chemical testing of the blood specimen showed *McMickle* had blood alcohol content of .274, more than three times the legal limit.

Iowa Code section 804.20 provides, among other things, that any peace officer

having custody of an arrested person “shall permit that person, without unnecessary delay after arrival at the place of detention, to call, consult, and see a member of the person’s family or an attorney of the person’s choice, or both.” The parties at arguments did not dispute that *McMickle* was never advised of her rights under Iowa Code section 804.20 and was never afforded the opportunity to call her lawyer despite her repeated requests.

The Supreme Court in *McMickle* confirms that 804.20, like 321J.11 (*State v. Dawn Loryne Chambers*, 2021 WL 3893906 (Iowa Court of Appeals, filed September 1, 2021) (No. 20-1511)), not only applies when an officer invokes implied consent, but it also applies when an officer avoids implied consent and proceeds with an 808 Search Warrant.

Although an 804.20 violation occurred, the Court found that the exclusionary rule would not apply to the results of the search warrant because the probable cause for the search warrant was obtained prior to any 804.20 violation and the search warrant did not contain any evidence after the 804.20 violation occurred (the Court did suppress all the statements made after the 804.20 violation).

The Concurring opinion in *McMickle* reminds us all, that an 804.20 violation may result in a simple misdemeanor prosecution and “that simply because the officer validly obtains evidence against a suspect through other means does not grant the officer immunity from criminal prosecution for infringing this right”.

In conclusion, in OWI investigations that do not involve a death or injury likely to cause death, law enforcement officers have two separate paths it can take to obtain a chemical sample: (1) implied consent; or (2) obtain an 808 Search Warrant. Once an officer starts a path, they should remain on that path throughout the investigation. PLEASE NOTE that if the investigation involves “a death or personal injury reasonably likely to cause death”, there may be other options and law enforcement should contact their County Attorney’s office during the investigation.