

SUMMARIES OF DECISIONS, IOWA COURT OF APPEALS
December 6, 2017

Pursuant to Iowa Rule of Appellate Procedure 6.904(2)(6), an unpublished opinion of the Iowa Court of Appeals may be cited in a brief; however, unpublished opinions shall not constitute controlling legal authority.

No. 15-1571

TOPE v. GREINER

**AFFIRMED AS
MODIFIED IN PART,
REVERSED IN PART,
AND REMANDED.**

Appeal from the Iowa District Court for Polk County, Scott D. Rosenberg, Judge. Heard by Vogel, P.J., and Tabor and Bower, JJ. Opinion by Bower, J. (18 pages)

Defendants appeal the district court decision awarding damages, punitive damages, and equitable relief to plaintiff in a shareholder derivative action. **OPINION HOLDS:** We find the nominal plaintiff does not have clean hands, and the corporations are not entitled to relief for the time period from October 1, 2010, to April 1, 2011, and reverse the district court's grant of damages on this ground. We determine Kris Greiner is liable to the corporations for damages arising during the time period from April 1, 2011, until August 9, 2012. We conclude Greiner's decision to accept the settlement of a lawsuit is protected by the business judgment rule and reverse the district court's award of damages on this ground as well. We determine the case must be remanded to the district court for a calculation of compensatory damages for the time period of April 1, 2011, until August 9, 2012, for each corporation. Because we are remanding on the matter of compensatory damages, we are also remanding on the issue of punitive damages. We affirm the award of equitable relief, as modified in this opinion. The district court decision is affirmed as modified in part, reversed in part, and remanded.

No. 16-0533

STATE v. SMITH

AFFIRMED.

Appeal from the Iowa District Court for Black Hawk County, George L. Stigler, Judge. Heard by Danilson, C.J., Mullins, J., and Carr, S.J. Opinion by Carr, S.J. (18 pages)

A defendant challenges his convictions and sentences. On appeal, he contends (1) he received ineffective assistance of counsel when his counsel failed to move for dismissal as a result of a speedy-indictment violation, (2) he received ineffective assistance of counsel when counsel failed to object to prosecutorial misconduct, (3) the trial court abused its discretion in admitting certain evidence, and (4) the trial court abused its discretion in denying counsel access to a police officer's disciplinary records. He also raises three pro se claims: that an instruction was improper, that he received ineffective assistance when counsel abandoned two potential defenses, and that his due process rights were violated by the cumulative effect of certain alleged errors. **OPINION HOLDS:** We find the defendant did not receive ineffective assistance of counsel as alleged by the first two claims, but we preserve his pro se claims concerning the defenses of intoxication and justification for possible postconviction relief. We find the district court did not abuse its discretion. We also find the allegedly improper instruction was not improper, and the defendant's due process rights were not violated as he alleges.

No. 16-0964

STATE v. KOZAK

AFFIRMED.

Appeal from the Iowa District Court for Johnson County, Christopher L. Bruns, Judge. Heard by Vaitheswaran, P.J., and Potterfield and McDonald, JJ. Opinion by Vaitheswaran, P.J. (15 pages)

Alexander Matthew Kozak appeals his conviction for first-degree murder following a jury trial. He contends: (1) the State engaged in prosecutorial misconduct in cross-examining his expert about Kozak's mental state; (2) the district court abused its discretion in allowing evidence of certain admissions he made to law enforcement officers; (3) the State improperly referenced his decision not to testify; and (4) cumulative error. **OPINION HOLDS:** (1) Kozak suffered no prejudice by virtue of the prosecutor's error in questioning his expert about deliberation and premeditation; (2) the district court reasonably weighed the probative value of Kozak's admissions versus their prejudicial effect and reasonably concluded they were admissible; (3) the State did not improperly reference Kozak's silence; and (4) there was no cumulative error. We affirm Kozak's conviction for first-degree murder.

No. 16-1252

STATE v. CRISP

AFFIRMED.

Appeal from the Iowa District Court for Calhoun County, Kurt J. Stoebe, Judge. Heard by Vaitheswaran, P.J., and Potterfield and McDonald, JJ. Opinion by Vaitheswaran, P.J. (11 pages)

Freddy Crisp appeals his conviction for first-degree murder, challenging (1) the sufficiency of the evidence supporting the jury's finding of guilt, (2) his trial attorney's failure to object to an inference-of-malice jury instruction, and (3) the district court's denial of his motions for new trial. Crisp also raises several pro se claims. **OPINION HOLDS:** We affirm Crisp's judgment and sentence for first-degree murder. We preserve the specified ineffective-assistance claims for postconviction relief.

No. 16-1269

IN RE MARRIAGE OF KASS

AFFIRMED.

Appeal from the Iowa District Court for Jones County, Paul D. Miller, Judge. Considered by Vogel, P.J., and Doyle and McDonald, JJ. Opinion by McDonald, J. (5 pages)

A wife appeals from an order allocating proceeds from the sale of real property and dismissing her application for rule to show cause against her former husband, in a dissolution of marriage proceeding. **OPINION HOLDS:** The wife did not timely appeal the property division, she did not preserve error on her argument she lacked notice on the substance of the contempt hearing, and she fails to show the district court abused its discretion in failing to hold her former husband in contempt. We therefore affirm.

No. 16-1366

STATE v. BRIDGES

**JUDGMENT AFFIRMED
IN PART, REVERSED IN
PART, AND REMANDED
FOR NEW TRIAL AND
RESENTENCING.**

Appeal from the Iowa District Court for Jasper County, Terry R. Rickers, Judge. Heard by Vogel, P.J., and Tabor and Bower, JJ. Opinion by Tabor, J. (28 pages)

Matthew Bridges challenges his conviction for robbery in the first degree, as well as his convictions for two counts of using a juvenile to commit robbery. **OPINION HOLDS:** We find the district court properly denied the motion for judgment of acquittal on all three counts. We conclude Bridges received ineffective assistance of counsel when his attorney failed to object to the conspiracy instructions impacting the first-degree robbery conviction and therefore reverse and remand for a new trial on the robbery count of the trial information. As for the other appellate claims, we conclude any error was harmless and Bridges cannot show prejudice as a result.

No. 16-1453

STATE v. GORDON

Appeal from the Iowa District Court for Johnson County, Lars G. Anderson

AFFIRMED.

and Patrick R. Grady, Judges. Considered by Danilson, C.J., Tabor, J., and Goodhue, S.J. Opinion by Goodhue, S.J. (7 pages)

Jonathan David Gordon appeals from his conviction and sentence for third-degree sexual abuse as an habitual offender. **OPINION HOLDS:** The district court did not abuse its discretion in admitting prior-bad-act evidence that was relevant to the question of why the complaining witness did not physically resist Gordon. Gordon's defense relied on the lack of physical resistance, the evidence did not concern Gordon's actions on the day in question, and the court instructed the jury it could only consider the evidence to determine whether the act was by force or against the will of the complaining witness.

No. 16-1464

DAVIS v. STATE

AFFIRMED.

Appeal from the Iowa District Court for Mahaska County, Lucy J. Gamon, Judge. Considered by Danilson, C.J., and Bower and McDonald, JJ. Opinion by Danilson, C.J. (3 pages)

Robert Davis appeals from the dismissal of his second application for postconviction relief as time barred. **OPINION HOLDS:** We find no error in the summary dismissal of Davis's application.

No. 16-1484

IN RE MARRIAGE OF LANGE

AFFIRMED.

Appeal from the Iowa District Court for Clarke County, Patrick W. Greenwood, Judge. Heard by Vaitheswaran, P.J., and Potterfield and McDonald, JJ. Opinion by McDonald, J. (10 pages)

Jessica Lange appeals the custody and spousal support provisions of the decree dissolving her marriage to Kyle Lange. She contends shared physical care is not in the best interest of the children and that she should be awarded physical care. She also seeks an increase in spousal support, a greater award of trial attorney fees, and appellate attorney fees. **OPINION HOLDS:** On our de novo review, we find that shared care is in the best interest of the children. We find the spousal support award to be equitable given the duration of the marriage and Jessica's limited absence from the workforce. We decline to disturb the district court's ruling on attorney fees and decline to award Jessica appellate attorney fees.

No. 16-1544

JEFFERSON v. IOWA DISTRICT COURT

WRIT DENIED.

Certiorari to the Iowa District Court for Scott County, Marlita A. Greve, Judge. Considered by Vogel, P.J., Potterfield, J., and Goodhue, S.J. Opinion by Goodhue, S.J. (6 pages)

Michael Jefferson filed a petition for writ of certiorari, claiming he received an illegal sentence. **OPINION HOLDS:** Jefferson does not have a constitutional or statutory right to counsel in this proceeding to challenge his sentence. We cannot say that there is an inference of gross disproportionality between the severity of the crime committed and the sentence imposed. The request for writ of certiorari is denied.

No. 16-1583

IN RE MARRIAGE OF KOSTER

AFFIRMED.

Appeal from the Iowa District Court for Scott County, Stuart P. Werling, Judge. Heard by Danilson, C.J., and Doyle and Mullins, JJ. Opinion by Mullins, J. (17 pages)

Lisa Koster appeals the custody, visitation, property-distribution, and spousal-support provisions of the decree dissolving her marriage to Ryan Koster.

OPINION HOLDS: We affirm the decree dissolving the marriage between Ryan and Lisa in its entirety. We decline to award appellate attorney fees to Lisa. Costs on appeal are assessed equally between the parties.

No. 16-1612

STATE v. EASTER

AFFIRMED.

Appeal from the Iowa District Court for Polk County, David N. May, Judge. Considered by Danilson, C.J., and Doyle and Mullins, JJ. Opinion by Danilson, C.J. (5 pages)

Ryan Easter appeals following conviction for operating while under the influence (OWI), second offense, contending there is insufficient evidence to support the conviction, the verdict is contrary to the weight of the evidence, and the prosecutor engaged in misconduct by shifting the burden of proof to the defendant. **OPINION HOLDS:** Here, both officers who encountered Easter recognized signs of intoxication. Giving the jury's inferred credibility finding the deference it is due, we cannot say the trial court abused its discretion in denying Easter's motion for new trial. We need not address Easter's claim of error as to the closing argument because the record does not specify the basis or ground of the objection, leaving us no way to review the trial court's ruling. We affirm.

No. 16-1615

STATE v. KING

AFFIRMED.

Appeal from the Iowa District Court for Des Moines County, John M. Wright and John G. Linn, Judges. Considered by Danilson, C.J., and Tabor and McDonald, JJ. Opinion by McDonald, J. (20 pages)

Christopher King appeals his convictions for two counts of sex abuse in the third degree, assault with intent to commit sexual abuse, and penetration of genitalia with an object. He challenges the district court's denial of his motion to adjudicate law points, the effectiveness of his trial counsel, and the sufficiency of the evidence for two of his charges. **OPINION HOLDS:** The district court did not err in denying King's motion to adjudicate law points. Counsel was not ineffective for failing to raise challenges to general testimony about victims of sex abuse. We find the evidence is sufficient to support the challenged convictions. We preserve the ineffective assistance claim regarding testimony about the false reporting of sexual abuse for postconviction-relief proceedings.

No. 16-1665

STATE v. SHEARS

AFFIRMED.

Appeal from the Iowa District Court for Scott County, Mary E. Howes, Judge. Considered by Tabor, P.J., McDonald, J., and Scott, S.J. Opinion by Scott, S.J. Dissent by Tabor, P.J. (9 pages)

In this appeal of a restitution order, we are asked to resolve whether it is foreseeable that police officers would end a high-speed chase of the van driven by Darryl Shears by hitting his van with their police vehicles. **OPINION HOLDS:** Because we find such actions foreseeable, we affirm the restitution order. **DISSENT ASSERTS:** The police department is not a victim under Iowa Code section 910.1(5) (2015), and thus not eligible to receive restitution. The police did not suffer damages as a result of Shears's eluding. Instead, the police suffered damages as a result of their own decision to execute a PIT (precision intervention technique) maneuver and run their vehicles into Shears's car. The police department's decision to execute the PIT maneuver was beyond the scope of liability of Shears's conduct. The police may not recover restitution for their intentional police strategies; to do so would essentially compensate police for performing their basic functions.

No. 16-1674

MITCHELL v. STATE

AFFIRMED.

Appeal from the Iowa District Court for Linn County, Kevin McKeever, Judge. Considered by Vogel, P.J., and Tabor and Bower, JJ. Opinion by Vogel, P.J. (10 pages)

Joshua Mitchell appeals the district court's denial of his application for postconviction relief (PCR). He asserts his trial counsel was ineffective for (1) allowing him to plead guilty when he claims his plea was not made voluntarily and intelligently, (2) failing to perform an adequate investigation, and (3) failing to move to suppress his confessions. He also asserts the PCR court erred when it excluded exhibits he sought to introduce. **OPINION HOLDS:** Because trial counsel did not breach an essential duty in investigating Mitchell's case, in failing to pursue a suppression of his confessions, or by allowing Mitchell to plead guilty, and because Mitchell was not prejudiced by PCR counsel's failure to assert the "market record" exception to the hearsay rule, Mitchell's ineffective-assistance claims fail, and we affirm.

No. 16-1728

RUIZ v. REVSTONE CASTING INDUSTRIES, L.L.C.

**AFFIRMED ON
BOTH APPEALS.**

Appeal from the Iowa District Court for Polk County, David N. May, Judge. Heard by Danilson, C.J., and Doyle and Mullins, JJ. Opinion by Mullins, J. (20 pages)

Francisco Mancilla Ruiz appeals from the Workers' Compensation decisions that he (1) did not give proper notice to his employer about a cumulative injury alleged to have arose out of and in the course of employment and (2) did not meet his burden to prove a hearing loss injury arose out of and in the course of his employment. The former employer, Revstone Casting Industries, L.L.C., and its insurer (collectively, Revstone) cross-appeal, alleging the district court erred in remanding to the commissioner claimant's back injury claim. **OPINION HOLDS:** Although the commissioner failed to state the date of injury for Ruiz's carpal tunnel, its use of the last date of employment is compliant with the cumulative injury rule and is supported by substantial evidence. Substantial evidence also supports the commissioner's findings that the discovery rule had been satisfied and Ruiz did not give notice to Revstone within the statutory period. Also, because the expert testimony Ruiz submitted to support his occupational hearing loss claim did not evaluate the noise levels of the work environment, substantial evidence supports the commissioner's finding that causation was not sufficiently established. Lastly, the commissioner's discussion of Ruiz's back injury includes weighing the expert testimony of two doctors but fails to discuss the third expert, thus leaving a question as to whether that expert's testimony was considered. Accordingly, we affirm the district court's remand of the back-injury claim to the commissioner for further causation findings.

No. 16-1806

IN RE MARRIAGE OF SEDARS

AFFIRMED.

Appeal from the Iowa District Court for Dallas County, Richard B. Clogg, Judge. Heard by Danilson, C.J., and Doyle and Mullins, JJ. Opinion by Mullins, J. (14 pages)

Brian Sedars appeals the physical care and visitation provisions of the decree dissolving his marriage to Kathryn (Katie) Sedars. He primarily argues the district court erred in failing to award him physical care of the parties' minor children. He requests a reversal of that portion of the decree and a corresponding amendment to the parties' child-support obligations. In the alternative, he argues he should be awarded significantly more visitation with the children. Both parties request an award of appellate attorney fees. **OPINION HOLDS:** We affirm the physical care and visitation provisions of the decree dissolving Brian and Katie's

marriage. We award Katie appellate attorney fees in the amount of \$5000.00 and assess the costs of this appeal to Brian.

No. 16-1815

STATE v. WILLIAMS

AFFIRMED.

Appeal from the Iowa District Court for Scott County, John D. Telleen, Judge. Considered by Doyle, P.J., Mullins, J., and Scott, S.J. Opinion by Scott, S.J. (5 pages)

Following a bench trial, Jason Williams appeals his conviction, asserting the district court violated his Confrontation Clause rights by admitting the entire recording of the 911 phone call the victim made on the morning of the incident. **OPINION HOLDS:** Because we conclude the statements the victim made on the 911 recording were not testimonial, the admission of the recording did not violate the Confrontation Clause, and we affirm Williams's conviction.

No. 16-1837

STATE v. BEEK

AFFIRMED.

Appeal from the Iowa District Court for Floyd County, Colleen D. Weiland, Judge. Considered by Danilson, C.J., and Doyle and Mullins, JJ. Opinion by Mullins, J. (7 pages)

Brittany Beek appeals the conviction and sentence entered upon a jury verdict finding her guilty of third-degree sexual abuse. She argues (1) the jury's guilty verdict is not supported by the weight of evidence and (2) the district court erred in failing to exercise its discretion in sentencing. **OPINION HOLDS:** Finding no abuse of discretion in relation to the district court's denial of Beek's motion for a new trial and in arrest of judgment or in sentencing, we affirm Beek's conviction and sentence.

No. 16-1904

EBLING v. HASKEN

**REVERSED AND
REMANDED.**

Appeal from the Iowa District Court for Dubuque County, Thomas A. Bitter, Judge. Heard by Vaitheswaran, P.J., and Potterfield and McDonald, JJ. Opinion by Potterfield, J. (12 pages)

Sarah Hasken appeals from the district court's decisions, removing her as trust advisor and denying her the right to appoint her successor advisor. Hasken maintains both of the district court's decisions were in error. Specifically, Hasken claims her decision not to vote in one meeting and to "withhold" her vote at a second meeting did not constitute breaches of her fiduciary duty as a trust advisor, so the district court was wrong to remove her. In the alternative, she argues that if the court's decision to remove her stands, then she has the "inability" to serve and should be allowed to appoint her successor—as provided for in the trust instrument. **OPINION HOLDS:** Because there are genuine issues of material fact and we cannot say as a matter of law that Hasken's choice to take no action with the shares was against the interests of the beneficiaries, we reverse the district court's grant of summary judgment removing Hasken as trust advisor. We remand for further proceedings.

No. 16-2043

STATE v. FRESCOLN

AFFIRMED.

Appeal from the Iowa District Court for Polk County, Cynthia M. Moisan, District Associate Judge. Heard by Danilson, C.J., and Doyle and Mullins, JJ. Opinion by Doyle, J. (11 pages)

Hunter Frescoln appeals the judgment and sentence entered following his conviction for operating while intoxicated (OWI), second offense. **OPINION HOLDS: I.** The State is not limited to the provisions of Iowa Code chapter 321J (2016) in obtaining chemical testing so long as the procedure utilized conforms to

constitutional requirements. Because the State obtained a valid warrant for chemical testing, the results of Frescoln's chemical testing are admissible. **II.** Although the warrant does not explicitly state that the blood sample would be subject to chemical testing, the stated reason for obtaining the blood sample relates to its relevance to an OWI investigation, and a commonsense reading of the warrant implies the blood sample would be subjected to chemical testing.

No. 16-2140

DESHAW v. FARMERS SAVINGS BANK

AFFIRMED.

Appeal from the Iowa District Court for Clayton County, John J. Bauercamper, Judge. Considered by Vaitheswaran, P.J., and Tabor and Mullins, JJ. Opinion by Tabor, J. (37 pages)

Farmers Savings Bank and its president, Mark White, appeal a jury verdict in favor of borrower Marty DeShaw in his action for fraudulent misrepresentation and nondisclosure. The jury decided White was complicit with bank customer Jeff Rohner in deceiving DeShaw into mortgaging his home as security for a promissory note to cover Rohner's debt to the bank on his farmland. The bank asserted a claim against DeShaw on the balance due on the note, seeking to foreclose the mortgage. DeShaw denied the claim and successfully asserted the bank's fraud as a defense. On appeal, White and the bank pose three questions: (1) Did DeShaw prove Rohner's fraudulent intent? (2) Did DeShaw prove White knew of Rohner's fraudulent intent? and (3) Did DeShaw prove White fraudulently failed to disclose material information to induce DeShaw to enter the loan transaction in September 2011? **OPINION HOLDS:** Despite conflicting testimony about the circumstances of this transaction, it was within the jury's prerogative to credit DeShaw's version of events. We find substantial evidence supports the jury's verdict and affirm.

No. 16-2180

IN RE MARRIAGE OF GEORGE

**AFFIRMED AS
MODIFIED.**

Appeal from the Iowa District Court for Polk County, David M. Porter, Judge. Considered by Vogel, P.J., and Potterfield and Mullins, JJ. Opinion by Mullins, J. (13 pages)

Jennifer George appeals a district court ruling on her modification petition. Jennifer argues the visitation schedule should be further modified for purposes of consistency and the child-support modification resulted in substantial injustice. Adam George argues the modification petition was correctly denied and the child support award was correctly modified. **OPINION HOLDS:** There have been material changes since entry of the original decree to warrant the district court's removal of veto power and schedule of holidays. Adam's unpredictable schedule was contemplated at the time the original decree was entered, and that schedule is still unpredictable. We do not find that a structured visitation schedule would better serve the best interests of the children. We also find the district court correctly calculated the child support award. There is no evidence that use of Jennifer's earning capacity would result in injustice or fail to do equity. We modify the Christmas holiday start and stop time, and modify the start date of modified child support.

No. 17-0039

MARCINOWICZ v. FLICK

AFFIRMED.

Appeal from the Iowa District Court for Polk County, Donna L. Paulsen, Judge. Considered by Danilson, C.J., and Tabor and McDonald, JJ. Opinion by Tabor, J. (7 pages)

Ramon Flick appeals a domestic-abuse protective order prohibiting contact between Ramon and his ex-wife. On appeal, Ramon argues past domestic-abuse incidents are too remote in time to warrant a protective order.

Previously, there was a criminal no-contact order between the parties preventing contact. **OPINION HOLDS:** The district court's granting of a protective order was proper because (1) there is no specific requirement for when in time a protective order petition must be filed, (2) there is a long history of domestic abuse between the parties, and (3) Ramon's ex-wife promptly filed her petition after the criminal no-contact order was dismissed.

No. 17-0040

STRUEBING v. ADDISON INSURANCE CO.

AFFIRMED.

Appeal from the Iowa District Court for Marshall County, John J. Haney, Judge. Considered by Vogel, P.J., and Potterfield and Mullins, JJ. Opinion by Mullins, J. (6 pages)

Joann Struebing, J & E Enterprises, and El-Wayne, Inc. appeal a district court ruling declaring property damage by fire and subsequent property damage by rain constitute a single covered cause of loss under an insurance policy and defining the policy term "Actual Cash Value" to mean market value. **OPINION HOLDS:** Finding no legal error, we affirm the district court's declaratory ruling in its entirety.

No. 17-0171

STATE v. MALLOY

AFFIRMED.

Appeal from the Iowa District Court for Woodbury County, John D. Ackerman, Judge. Considered by Danilson, C.J., and Tabor and McDonald, JJ. Opinion by Tabor, J. (7 pages)

Kelly Malloy appeals his convictions for eluding in the first degree and operating a motor vehicle while intoxicated. On appeal he argues there was insufficient evidence showing he was under the influence of methamphetamine and he received ineffective assistance of counsel. He takes issue with counsel's failure to object to testimony about a sobriety field test from a witness not certified as a drug-recognition expert. **OPINION HOLDS:** There is sufficient evidence showing Malloy was under the influence of methamphetamine. Malloy's erratic driving, possession of a methamphetamine-covered spoon, refusal to submit to chemical testing, and flight from officers all support Malloy's convictions. He cannot prevail under an ineffective-assistance-of-counsel claim because the supposed breach in duty would not change the outcome given the strong evidence supporting conviction.

No. 17-0172

STATE v. JOHNSON

AFFIRMED.

Appeal from the Iowa District Court for Linn County, Robert E. Sosalla, Christopher L. Bruns, and Kevin McKeever, Judges. Considered by Danilson, C.J., and Doyle and Mullins, JJ. Opinion by Danilson, C.J. (4 pages)

Jeremy Johnson, in two cases, entered a written plea of guilt of aggravated misdemeanor assault with intent to commit sexual abuse. On appeal, he contends he was not adequately advised regarding the maximum punishment prior to entering his pleas, rendering them unknowing and involuntary. **OPINION HOLDS:** The record shows Johnson was aware of the special parole and the duration. Because there was substantial compliance with Iowa Rule Criminal Procedure 2.8(2)(b)(2), we affirm.

No. 17-0301

STATE v. SALLIS

AFFIRMED.

Appeal from the Iowa District Court for Black Hawk County, Linda M. Fangman, Judge. Considered by Vaitheswaran, P.J., and Potterfield and McDonald, JJ. Opinion by McDonald, J. (12 pages)

A defendant appeals his convictions for domestic abuse assault with intent

to cause serious injury and domestic abuse assault causing bodily injury, contending the district court committed evidentiary error and there is insufficient evidence to support the convictions. He also raises a claim of ineffective assistance of counsel. **OPINION HOLDS:** We find no evidentiary error and conclude there was sufficient evidence to support the convictions. We preserve the claim of ineffective assistance for possible postconviction relief.

No. 17-0316

STATE v. LOVE

AFFIRMED.

Appeal from the Iowa District Court for Webster County, Angela A. Doyle, District Associate Judge. Considered by Danilson, C.J., and Tabor and McDonald, JJ. Opinion by Danilson, C.J. (5 pages)

Jemerial Love appeals from her conviction by written guilty plea for theft in the third degree, in violation of Iowa Code sections 714.1 and .2(3) (2016). Love contends because the plea did not provide a factual basis for the offense, it was not made intelligently or voluntarily, and defense counsel rendered ineffective assistance by failing to file a motion in arrest of judgment to contest the plea. **OPINION HOLDS:** Because we find defense counsel did not provide ineffective assistance, we affirm.

No. 17-0445

DITTMAR v. STATE

AFFIRMED.

Appeal from the Iowa District Court for Dubuque County, Michael J. Shubatt, Judge. Considered by Vaiteswaran, P.J., and Potterfield and McDonald, JJ. Opinion by McDonald, J. (2 pages)

Cody Dittmar appeals from the denial of postconviction relief. He claims his conviction and sentences for unauthorized possession of an offensive weapon and possession of an offensive weapon by a felon violates the Double Jeopardy clause of the Iowa and United States Constitutions. **OPINION HOLDS:** Controlling case law dictates that Dittmar's claims must fail. The supreme court has found that separate convictions and punishment for unauthorized possession of an offensive weapon and possession of an offensive weapon by a felon does not violate Double Jeopardy.

No. 17-0446

STATE v. TODD

**SENTENCES AFFIRMED
IN PART AND VACATED
IN PART, CASE
REMANDED FOR
ENTRY OF A
CORRECTED
SENTENCING ORDER.**

Appeal from the Iowa District Court for Black Hawk County, Bradley J. Harris, Judge. Considered by Danilson, C.J., and Tabor and McDonald, JJ. Opinion by Tabor, J. (5 pages)

Kemonte Todd appeals his sentence and the imposition of a law enforcement surcharge. Todd agreed to a plea bargain encompassing six different crimes. The district court sentenced Todd in accordance with the recommendations within the plea bargain while also noting Todd's age and the severity of several of the crimes. On appeal, Todd argues the district court did not properly consider necessary sentencing factors, specifically his age. He also argues the law enforcement surcharge was not authorized by statute. **OPINION HOLDS:** The district court properly considered the recommended sentence in the plea bargain and gave specific consideration to Todd's age and other sentencing factors. The imposition of the law enforcement surcharge was not authorized by statute and must be vacated.

No. 17-0490

STATE v. MYERS

AFFIRMED.

Appeal from the Iowa District Court for Scott County, Mark J. Smith, Judge. Considered by Vogel, P.J., and Tabor and Bower, JJ. Opinion by Vogel, P.J. (6 pages)

Christopher Myers appeals following his guilty pleas to two counts of second-degree sexual abuse. He asserts on appeal his trial counsel was ineffective in failing to inform the trial court that the plea colloquy was insufficient. Specifically, he claims the court failed to advise him of the mandatory surcharge applicable to the charges. In a pro se brief, Myers also alleges there is not a factual basis to support his guilty plea because the description of the abuse by the child victims did not match his description of the abuse during his guilty pleas. **OPINION HOLDS:** We preserve Myers's ineffective-assistance claim regarding the failure of counsel to advise him regarding the applicable surcharges for postconviction relief as the record on appeal is not adequate to address the claim. However, we reject Myers's factual-basis claim as the record contains the necessary support for Myers's guilty pleas. We therefore affirm Myers's convictions.

No. 17-0551

STATE v. CHURCH

AFFIRMED.

Appeal from the Iowa District Court for Marion County, Martha L. Mertz, Judge. Considered by Vogel, P.J., and Tabor and Bower, JJ. Opinion by Vogel, P.J. (3 pages)

Robert Church appeals asserting his counsel provided ineffective assistance by permitting him to plead guilty when he had not been informed regarding various consequences of his guilty plea. **OPINION HOLDS:** We note several concerning inconsistencies, discrepancies, and omissions in the guilty plea form Church signed that is part of our record on appeal. However, the record on appeal is inadequate to address the claims made as there was an unreported guilty plea hearing. We therefore preserve Church's ineffective-assistance claims for a postconviction proceeding.

No. 17-0679

STATE v. MCDOWELL

AFFIRMED.

Appeal from the Iowa District Court for Dallas County, Gregory A. Hulse, Judge. Considered by Vaitheswaran, P.J., and Potterfield and McDonald, JJ. Opinion by McDonald, J. (3 pages)

A defendant challenges his conviction and sentence. He argues he received ineffective assistance of counsel when his trial counsel failed to object to the prosecutor's alleged breach of the parties' plea agreement. He further argues the district court abused its sentencing discretion. **OPINION HOLDS:** The prosecutor did not breach the plea agreement--the prosecutor merely mentioned the defendant's criminal history in passing to provide context for the prosecutor's argument for a lenient sentence. The court did not abuse its sentencing discretion in imposing a sentence within the statutory limits and considering only the relevant statutory factors in reaching that conclusion.

No. 17-0846

STATE v. CAMPBELL

AFFIRMED.

Appeal from the Iowa District Court for Woodbury County, Patrick H. Tott, Judge. Considered by Vogel, P.J., and Tabor and Bower, JJ. Opinion by Vogel, P.J. (3 pages)

Adam Campbell appeals claiming the district court abused its discretion in failing to grant him a deferred judgment. **OPINION HOLDS:** Because the district court's sentencing considerations were not clearly untenable or unreasonable, we affirm.

No. 17-1329

IN RE M.J.H.T.

AFFIRMED.

Appeal from the Iowa District Court for Pottawattamie County, Craig M. Dreismeier, District Associate Judge. Considered by Danilson, C.J., and Doyle

and Mullins, JJ. Opinion by Doyle, J. (12 pages)

A mother appeals the juvenile court order terminating her parental rights. **OPINION HOLDS:** We find the grounds for termination under Iowa Code section 232.116(1)(h) have been established by clear and convincing evidence. The termination is in the best interests of the children. We decline to apply any exception under section 232.116(3). Accordingly, we affirm.

No. 17-1384

IN RE S.S.

AFFIRMED.

Appeal from the Iowa District Court for Polk County, Susan Cox, District Associate Judge. Considered by Vogel, P.J., and Tabor and Bower, JJ. Opinion by Vogel, P.J. (4 pages)

The father claims the State failed to prove the grounds for adjudication by clear and convincing evidence. He claims the court erred in finding he had sexually abused S.S. and erred in finding S.S. was credible. **OPINION HOLDS:** Because we agree with the juvenile court's conclusion the State proved the statutory grounds for adjudicating S.S. a child in need of assistance, we affirm.

No. 17-1389

IN RE J.T.

AFFIRMED.

Appeal from the Iowa District Court for Polk County, Romonda D. Belcher, District Associate Judge. Considered by Vaitheswaran, P.J., and Potterfield and McDonald, JJ. Opinion by Vaitheswaran, P.J. (3 pages)

A mother appeals the termination of her parental rights to her child, born in late 2015. She does not contest the grounds for termination. She argues termination was not in the child's best interest and the district court should have granted her additional time to work towards reunification. **OPINION HOLDS:** We affirm the termination of the mother's parental rights to this child.

No. 17-1390

IN RE D.S.

AFFIRMED ON ALL APPEALS.

Appeal from the Iowa District Court for Polk County, Louise M. Jacobs, District Associate Judge. Considered by Vaitheswaran, P.J., and Potterfield and McDonald, JJ. Opinion by Potterfield, J. (14 pages)

Three children—D.S., born in 2002; K.W., born in 2004; and J.W., born in 2006—are the subject of the juvenile court's termination of the parental rights of the mother and the two separate fathers. K.H. is the biological father of D.S.; he has not appealed. The three children, their mother, and the biological father of K.W. and J.W. (who is also the stepfather to D.S.) have appealed the juvenile court's ruling. **OPINION HOLDS:** Having carefully considered the record and each party's position, we reach the same conclusion as the juvenile court—termination of the mother's and the father's parental rights is in the best interests of these children. We affirm.

No. 17-1393

IN RE S.D.

AFFIRMED.

Appeal from the Iowa District Court for Webster County, Angela L. Doyle, District Associate Judge. Considered by Danilson, C.J., and Doyle and Mullins, JJ. Opinion by Danilson, C.J. (7 pages)

A mother appeals the order adjudicating her child as a child in need of assistance (CINA) pursuant to Iowa Code section 232.2(6)(c)(2) and 232.2(6)(g) (2017). She objects to the admission of hearsay in the juvenile court, contends there is not clear and convincing evidence to support the CINA adjudication under either statutory provision relied upon, and maintains adjudication is not in the child's best interests. **OPINION HOLDS:** I. A report made by the DHS is

admissible in a CINA proceeding “provided its probative value substantially outweighs the danger of unfair prejudice to the child’s parent.” Iowa Code § 232.96(6). We conclude there was no danger of unfair prejudice. II. There is clear and convincing evidence the child was in need of assistance. III. The mother has not fully followed instructions of medical personnel in the past, and the DHS recommended placement with the father because of the concern the mother would again not follow their instructions and would “fall back into some of the same patterns.” Although a close decision, we affirm.

No. 17-1407

IN RE R.C.

AFFIRMED.

Appeal from the Iowa District Court for Polk County, Romonda D. Belcher, District Associate Judge. Considered by Vogel, P.J., and Tabor and Bower, JJ. Opinion by Bower, J. (5 pages)

A father appeals the juvenile court order terminating his parental rights. **OPINION HOLDS:** We find there is clear and convincing evidence in the record to support termination of the father’s rights. We also find termination is in the child’s best interests. We affirm the decision of the juvenile court.

No. 17-1431

IN RE E.C.

AFFIRMED.

Appeal from the Iowa District Court for Woodbury County, Stephanie F. Parry, District Associate Judge. Considered by Danilson, C.J., and Doyle and Mullins, JJ. Opinion by Mullins, J. (5 pages)

A mother appeals a juvenile court dispositional-review order in a child-in-need-of-assistance proceeding modifying the custody of her child, E.C., born in 2013. She contends the custody modification (1) hinders future reunification efforts and (2) is not in the best interests of the child. **OPINION HOLDS:** We affirm the juvenile court’s order transferring the care, custody, and control of the child to her father.

No. 17-1461

IN RE J.E.

AFFIRMED.

Appeal from the Iowa District Court for Boone County, James B. Malloy, District Associate Judge. Considered by Vogel, P.J., and Tabor and Bower, JJ. Opinion by Tabor, J. (5 pages)

A father, Caleb, appeals the termination of his parental rights in his one-year-old daughter, J.E. On appeal, Caleb challenges the statutory grounds for termination, arguing J.E. was never removed from his care because he was incarcerated for her whole life. **OPINION HOLDS:** After independently reviewing the record, we reach the same conclusion as the juvenile court regarding termination of Caleb’s parental rights. The State satisfied the removal element of the statute.

No. 17-1497

IN RE E.T.

AFFIRMED.

Appeal from the Iowa District Court for Scott County, Christine Dalton, District Associate Judge. Considered by Vaitheswaran, P.J., and Potterfield and McDonald, JJ. Opinion by Vaitheswaran, P.J. (3 pages)

A father appeals the termination of his parental rights to his child, born in 2008. He contends (1) the department of human services failed to make reasonable efforts toward reunification and (2) termination was not in the child’s best interests. **OPINION HOLDS:** The department afforded reunification services tailored to the circumstances of this case. Termination was in the child’s best interests. We affirm the termination of the father’s parental rights to this child.

No. 17-1536

AFFIRMED.

IN RE J.S.

Appeal from the Iowa District Court for Bremer County, Peter B. Newell, District Associate Judge. Considered by Danilson, C.J., and Doyle and Mullins, JJ. Opinion by Danilson, C.J. (10 pages)

The mother appeals the termination of her parental rights to her children, C.K. and T.K., and the permanency order placing her child, J.S., in the sole custody of his father. The mother asserts the district court erred in giving weight to the mother's hair-stat test results in reaching its determinations. The mother also contends it is in C.K. and T.K.'s best interests to be returned to her care, or in the alternative, to be placed in a guardianship. **OPINION HOLDS:** Because we conclude there are grounds for termination of the mother's parental rights to C.K. and T.K. and for the placement of J.S. in the sole custody of his father, and the court's determinations are in the children's best interests, we affirm.

No. 17-1554

AFFIRMED.

IN RE C.L.

Appeal from the Iowa District Court for Polk County, Louise M. Jacobs, District Associate Judge. Considered by Danilson, C.J., and Doyle and Mullins, JJ. Opinion by Danilson, C.J. (3 pages)

A mother appeals from the order terminating parental rights to her child. She acknowledges that grounds for termination exist but argues the court need not terminate her parental rights pursuant to Iowa Code section 232.116(3)(a) (2017). **OPINION HOLDS:** Placement and a change of custody to the grandfather were not in the child's best interests, and section 232.116(3)(a) is not applicable because the child is in the legal custody of the department of human services. We affirm.