

SUMMARIES OF DECISIONS, IOWA COURT OF APPEALS
February 21, 2018

Pursuant to Iowa Rule of Appellate Procedure 6.904(2)(6), an unpublished opinion of the Iowa Court of Appeals may be cited in a brief; however, unpublished opinions shall not constitute controlling legal authority.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. 14-1629

BROWN v. IOWA DISTRICT COURT

WRIT ANNULLED.

Appeal from the Iowa District Court for Polk County, Rebecca Goodgame Ebinger, Judge. Considered by Danilson, C.J., and Vaitheswaran and Bower, JJ. Opinion by Danilson, C.J. (6 pages)

Herbert Brown challenges the legality of his sentence after being convicted of possession of a controlled substance with intent to deliver (heroin) as an habitual offender and as a second or subsequent offender. He contends the sentencing enhancement for a second or subsequent offense pursuant to Iowa Code section 124.411(1) (2011) does not apply because of the subsection three exception. Brown also contends his sentence constitutes cruel and unusual punishment, he was improperly denied a jury trial on the issue of whether this was his second or subsequent offense, and trial counsel was ineffective. **OPINION HOLDS:** The exception in section 124.411(3) applies if the current offense is a violation of section 124.401(5). Brown's current offense is not a violation of section 124.401(5) but for possession with intent to distribute heroin, in violation of section 124.401(1)(c)(1). Consequently, the subsection three exception is not applicable. Brown has a prior felony conviction under a Minnesota statute relating to marijuana. He is thus subject to the sentencing enhancement. Brown's sentence, while lengthy, is not the "rare" circumstance where the sentence was so grossly disproportionate to the crime to warrant further review. As for Brown's claims about various procedural deficiencies occurring before sentencing, these claims do not amount to an attack on an illegal sentence and are not subject to our review.

No. 16-1989

STATE v. SHIVERS

AFFIRMED.

Appeal from the Iowa District Court for Webster County, Kurt L. Wilke, Judge. Considered by Vogel, P.J., and Potterfield and Mullins, JJ. Opinion by Potterfield, J. (8 pages)

Leon Shivers appeals from his conviction for vehicular homicide by operating while intoxicated. He maintains the trial court erred when it denied his request to instruct the jury on spoliation. He also claims trial counsel provided ineffective assistance; he argues he was prejudiced by each of counsel's alleged errors individually and cumulatively **OPINION HOLDS:** We find no error in the district court's denial of Shivers's request for an instruction of spoliation, and we preserve each of Shivers's claims of ineffective assistance for possible later proceedings. We affirm.

No. 16-2110

STATE v. MILLER

**JUDGMENT AFFIRMED,
SENTENCE VACATED,
AND REMANDED FOR
FURTHER
PROCEEDINGS AND
RESENTENCING.**

Appeal from the Iowa District Court for Benton County, Ian K. Thornhill, Judge. Considered by Doyle, P.J., and Tabor and McDonald, JJ. Opinion by Tabor, J. (19 pages)

David Miller appeals his convictions and prison sentences for voluntary manslaughter and two counts of second-degree theft. Miller argues he received constitutionally deficient representation when counsel did not move for judgment of acquittal on his homicide charge and did not motion for a new trial with regard to

the voluntary manslaughter verdict. He also argues there was insufficient evidence showing he intended to permanently deprive two truck owners of their vehicles when he took them. Finally, he argues the district court engaged in improper enhancement procedures and committed sentencing errors as a result. **OPINION HOLDS:** Miller's ineffective-assistance claim is preserved for possible postconviction-relief proceedings so an adequate record may be established. There was sufficient evidence supporting the theft convictions because based on the evidence presented, a jury could infer Miller did not intend to return the trucks in operable condition. The district court erred when considering Miller's prior convictions because it did not establish Miller was represented by counsel for the prior convictions. The district court must make this determination and resentence Miller accordingly.

No. 16-2155

STATE v. HOUSTON

AFFIRMED.

Appeal from the Iowa District Court for Polk County, Jeanie K. Vaudt, Judge. Considered by Vogel, P.J., and Potterfield and Mullins, JJ. Opinion by Mullins, J. (12 pages)

Michael Houston appeals his convictions of second-degree robbery as a habitual offender and interference with official acts. **OPINION HOLDS:** We affirm Houston's convictions of second-degree robbery and interference with official acts. We preserve for postconviction-relief proceedings Houston's ineffective-assistance-of-counsel claim relating to prosecutorial error.

No. 16-2233

STATE v. GILLETTE

AFFIRMED.

Appeal from the Iowa District Court for Johnson County, Patrick R. Grady, Judge. Considered by Danilson, C.J., and Vaitheswaran and Bower, JJ. Opinion by Bower, J. (9 pages)

Joshua Gillette appeals his conviction for robbery in the second degree. **OPINION HOLDS:** We find Gillette has not shown he received ineffective assistance due to defense counsel's failure to object to two jury instructions. We affirm Gillette's conviction for second-degree robbery.

No. 17-0017

BIGGS v. STATE

**AFFIRMED IN PART,
VACATED IN PART,
AND REMANDED.**

Appeal from the Iowa District Court for Pottawattamie County, James M. Richardson, Judge. Considered by Vogel, P.J., and Potterfield and Mullins, JJ. Opinion by Potterfield, J. (7 pages)

Stephen Biggs appeals the denial of his application for postconviction relief following his guilty plea to theft in the second degree and ongoing criminal conduct. Biggs argues his trial counsel was ineffective for allowing him to plead guilty without a factual basis. **OPINION HOLDS:** We find Biggs's plea to theft in the second degree is supported by a factual basis, and his counsel was not ineffective for allowing him to plead guilty. Biggs's plea to ongoing criminal conduct is not supported by a factual basis, and we vacate his plea on that charge and remand for further proceedings. The district court's denial of Biggs's application for postconviction relief is affirmed in part, vacated in part, and remanded.

No. 17-0027

STATE v. NIERLING

AFFIRMED.

Appeal from the Iowa District Court for Clayton County, Stephanie C. Rattenborg, District Associate Judge. Considered by Vaitheswaran, P.J., and Potterfield and McDonald, JJ. Opinion by Vaitheswaran, P.J. (5 pages)

Travis Nierling appeals his conviction for operating a motor vehicle while

intoxicated. His primary contention is that the officer who stopped him lacked reasonable suspicion to make the stop. **OPINION HOLDS:** We conclude the officer had reasonable suspicion that criminal activity was afoot. We affirm the district court's denial of Nierling's suppression motion, and we affirm his conviction for operating while intoxicated.

No. 17-0090

FAIRBANK v. FAYETTE COUNTY SANITATION & ZONING

AFFIRMED.

Appeal from the Iowa District Court for Fayette County, John Bauercamper, Judge. Heard by Danilson, C.J., and Vaitheswaran and Bower, JJ. Opinion by Vaitheswaran, J. (10 pages)

Defendants appeal the district court's reversal of the decision of the Fayette County Zoning Board of Adjustment to uphold the issuance of permits for the construction of three wind turbines. **OPINION HOLDS:** In the absence of a more comprehensive record on the nature of the three wind turbines, and accepting the ordinary meaning of the terms "transmit" and "regulate," we conclude the district court did not err in excluding wind turbines from "electrical transmission and regulating facilities." We affirm the sustention of the writ of certiorari.

No. 17-0091

STATE v. JARRETT

AFFIRMED.

Appeal from the Iowa District Court for Buchanan County, Bradley J. Harris, Judge. Considered by Potterfield, P.J., McDonald, J., and Blane, S.J. Opinion by Blane, S.J. (18 pages)

Joshua Jarrett appeals his convictions and sentences for sexual abuse in the second degree and sexual abuse in the third degree, following a jury trial and guilty verdicts. He asserts the trial court erred (1) in denying admission of the video-recorded interview of the complaining witness; (2) in failing to grant his motion for judgment of acquittal based upon insufficient evidence and lack of corroboration of the victim's sexual assault testimony; (3) in incorrect evidentiary rulings, which denied him the opportunity to present his theory of defense; and (4) in failing to grant his objections during closing arguments that the prosecutor engaged in a *Graves* violation by placing the burden on Jarrett to prove the complaining witness had lied. **OPINION HOLDS:** Having addressed all of Jarrett's claims and finding them without merit, the verdicts and judgments are appropriately affirmed.

No. 17-0095

RICHARDSON v. LUNDBERG

AFFIRMED.

Appeal from the Iowa District Court for Webster County, Thomas J. Bice, Judge. Considered by Vogel, P.J., and Potterfield and Mullins, JJ. Opinion by Vogel, P.J. (2 pages)

The district court dismissed Scott Richardson's petition for failing to serve Michael Lundberg within the time prescribed by Iowa Rule of Civil Procedure 1.302(5). Richardson asserts Lundberg's actual notice of the lawsuit provides good cause to justify an extension of the ninety-day deadline for service. **OPINION HOLDS:** Because the record shows Richardson took no affirmative action to effectuate service upon Lundberg within the prescribed time, we affirm the district court's dismissal pursuant to Iowa Court Rule 21.26(1)(a), (c), (d), and (e).

No. 17-0116

STATE v. BROWNLEE

AFFIRMED.

Appeal from the Iowa District Court for Lee (North) County, Mark E. Kruse, Judge. Considered by Doyle, P.J., and Tabor and McDonald, JJ. Opinion by Tabor, J. (16 pages)

Timothy Brownlee challenges his convictions for assault with intent to commit serious injury, first-degree arson, and possession of incendiary material. On appeal, he argues trial counsel was constitutionally deficient for failing to challenge the sufficiency of the evidence corroborating accomplice testimony on the possession charge and failing to request an instruction informing the jury that accomplice testimony must be corroborated. He also argues evidence of his prior bad acts requires reversal and counsel was remiss for failing to object on relevancy grounds. **OPINION HOLDS:** Counsel was not ineffective. Evidence of prior bad acts was minimal and demonstrated Brownlee's motive.

No. 17-0195

MAHEDY v. GIBSON

AFFIRMED.

Appeal from the Iowa District Court for Warren County, Richard B. Clogg, Judge. Considered by Doyle, P.J., and Tabor and McDonald, JJ. Opinion by Tabor, J. (6 pages)

A father appeals a decree granting physical care of his two children to their mother. He argues the mother's failure to abide by a temporary visitation schedule prevents her from providing superior care. He argues he is better able to provide for the children. **OPINION HOLDS:** Because the mother has been the primary caregiver and the father demonstrated limited insight to everyday parenting issues she is better suited to continue as primary caregiver. The children are also able to live with their half-siblings while in the mother's care, and the father does not provide compelling reasoning for separating the children.

No. 17-0200

STATE v. WILLIAMS

AFFIRMED.

Appeal from the Iowa District Court for Jasper County, Steven J. Holwerda, District Associate Judge. Considered by Danilson, C.J., and Vaitheswaran and Bower, JJ. Opinion by Bower, J. (9 pages)

Brian Williams appeals his conviction for tampering with a witness. **OPINION HOLDS:** We find the district court did not err in ruling Williams could be found guilty of tampering with his own witness and his wife's testimony was not barred by marital privilege. We find there is sufficient evidence to support Williams's conviction. Williams has not shown he received ineffective assistance of counsel. We affirm Williams's conviction for tampering with a witness.

No. 17-0212

STATE v. WILTSE

**CONVICTION
AFFIRMED, SENTENCE
VACATED, AND CASE
REMANDED FOR
RESENTENCING.**

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

Ashely Nicole Wiltse appeals her conviction and sentence for wanton neglect of a resident of a health care facility. **OPINION HOLDS:** We find trial counsel was not ineffective for failing to challenge the sufficiency of the evidence and error was not preserved concerning the admission of a recorded interview. We do find the district court abused its discretion in establishing conditions of Wiltse's probation.

No. 17-0213

BABE v. IOWA BOARD OF EDUCATIONAL EXAMINERS

**REVERSED AND
REMANDED WITH
DIRECTIONS.**

Appeal from the Iowa District Court for Polk County, Scott D. Rosenberg, Judge. Heard by Danilson, C.J., and Vaitheswaran and Bower, JJ. Opinion by Danilson, C.J. (25 pages)

The Iowa Board of Educational Examiners determined Anita Babe committed an act of physical abuse of a student. Babe filed a petition for judicial

review, and the district court affirmed the ruling. Babe asserts there is not substantial, credible evidence to support the Board's findings. She also asserts the sanction imposed was "unreasonable, arbitrary, capricious or an abuse of discretion," or "so grossly disproportionate to the benefits accruing to the public interest from that action that it must necessarily be deemed to lack any foundation in rational agency policy." Finally, Babe argues the decision was inconsistent with the Board's precedent and prior decisions. **OPINION HOLDS:** Because there is not substantial evidence to support a finding Babe committed an act of physical abuse, and thus, no basis for the disciplinary sanction imposed, we reverse and remand to the district court with directions that the matter be remanded to the Board for dismissal.

No. 17-0223

LUMAN v. LUMAN

APPEAL DISMISSED.

Appeal from the Iowa District Court for Polk County, Robert A. Hutchison, Judge. Considered by Danilson, C.J., Doyle, J., and Mahan, S.J. Opinion by Danilson, C.J. (3 pages)

James Carrell Luman II appeals from the district court's entry of a protective order pursuant to Iowa Code 236.5 (2017) prohibiting James from having contact with his wife, Heather Luman. **OPINION HOLDS:** Because the protective order is no longer in effect, the appeal is dismissed as moot.

No. 17-0235

STATE v. SHEPPARD

AFFIRMED.

Appeal from the Iowa District Court for Polk County, Gregory D. Brandt, District Associate Judge. Considered by Doyle, P.J., McDonald, J., and Carr, S.J. Opinion by Doyle, P.J. (6 pages)

James Sheppard appeals the sentence of incarceration imposed following his guilty plea to operating while intoxicated, third offense. He asserts the sentencing court abused its discretion in declining to grant him a suspended sentence. **OPINION HOLDS:** The core of the Sheppard's argument is that he simply disagrees with the district court's exercise of discretion. This is not a ground for relief. Finding no abuse of discretion, we affirm the Sheppard's sentence.

No. 17-0288

STATE v. JACKSON

AFFIRMED.

Appeal from the Iowa District Court for Black Hawk County, Andrea J. Dryer, Judge. Considered by Doyle, P.J., Tabor, J., and Goodhue, S.J. Opinion by Goodhue, S.J. (5 pages)

Antavieon Chyrome Jackson was convicted by a jury trial of sexual abuse in the third degree on December 16, 2016. Jackson moved for a new trial but his motion was denied. Jackson appeals. **OPINION HOLDS:** The greater weight of the evidence supports the verdict, and the motion for a new trial was correctly denied. We affirm.

No. 17-0313

ALLEN v. TYSON FRESH MEATS, INC.

AFFIRMED.

Appeal from the Iowa District Court for Polk County, Scott D. Rosenberg, Judge. Considered by Vaitheswaran, P.J., and Potterfield and McDonald, JJ. Opinion by Potterfield, J. (7 pages)

Clifford Allen appeals from the district court ruling affirming the worker's compensation commissioner's award of ten percent industrial disability and the denial of penalty benefits. Allen maintains the district court applied the incorrect standards when reviewing the commissioner's interpretation of Iowa Administrative Code rule 876-4.2(86) and the commissioner's award of ten percent industrial

disability. **OPINION HOLDS:** Because the commissioner's interpretation of rule 876-4.2(86) is neither an error at law nor irrational, illogical, or wholly unjustifiable and because we cannot say the commissioner's decision to award a ten percent industrial disability—lower than Allen's functional impairment—was irrational or illogical under these facts, we agree with the district court that the award should be affirmed.

No. 17-0413

STATE v. LEE

AFFIRMED.

Appeal from the Iowa District Court for Dubuque County, Monica L. Ackley, Judge. Considered by Vogel, P.J., Mullins, J., and Scott, S.J. Opinion by Scott, S.J. (12 pages)

Kohlvidas Lee appeals his convictions for domestic abuse assault causing bodily injury, willful injury causing bodily injury, and child endangerment. On appeal, he asserts there is insufficient evidence to prove he was a household member as is necessary to establish both domestic abuse assault and child endangerment. He also claims the evidence was insufficient to prove he knowingly created a substantial risk to the minor's physical, mental, or emotional health, which is necessary for the child-endangerment conviction. Finally, he claims he should be granted a new trial because counsel made himself an unsworn necessary witness when he conducted a phone conversation with the complainant in this case. **OPINION HOLDS:** Because we conclude the evidence was sufficient and Lee did not prove counsel's conflict of interest adversely affected counsel's performance, we affirm.

No. 17-0451

STATE v. TEJEDA

**AFFIRMED AND
REMANDED.**

Appeal from the Iowa District Court for Polk County, David May, Judge. Considered by Doyle, P.J., McDonald, J., and Scott, S.J. Opinion by Scott, S.J. (6 pages)

Hector Tejeda Jr. appeals following his conviction for possession of a controlled substance—methamphetamine—with the intent to deliver. He asserts his counsel provided ineffective assistance by permitting him to plead guilty to the offense when the record lacks a factual basis. He also claims counsel was ineffective in pressuring or coercing him to plead guilty and in failing to subpoena a witness for trial. Finally, he asserts the court erred in assessing him restitution and court costs connected to the dismissed drug-tax-stamp count. **OPINION HOLDS:** We affirm Tejeda's conviction as we find a factual basis to support his guilty plea, but we remand this case for the entry of a nunc pro tunc order correcting the sentencing order. Tejeda's remaining ineffective-assistance claims are preserved for postconviction-relief proceedings.

No. 17-0466

IN RE DETENTION OF GUTHRIE

AFFIRMED.

Appeal from the Iowa District Court for Madison County, Gregory A. Hulse, Judge. Considered by Potterfield, P.J., Mullins, J., and Carr, S.J. Opinion by Carr, S.J. (5 pages)

Raymond Guthrie appeals from an order of civil commitment entered pursuant to Iowa Code chapter 229A (2015). **OPINION HOLDS:** Viewing the entire record in the light most favorable to the State while giving the appropriate weight to the district court's credibility findings, substantial evidence supports the district court's finding that Guthrie is more likely than not to reoffend if not confined. Because there is sufficient evidence that Guthrie is a sexually violent predator, we affirm the civil commitment order.

No. 17-0507

STATE v. LAJEUNESSE

AFFIRMED.

Appeal from the Iowa District Court for Polk County, Robert J. Blink, Judge. Considered by Doyle, P.J., and Tabor and McDonald, JJ. Opinion by McDonald, J. (12 pages)

Michael LaJeunesse appeals from his convictions for attempted murder and willful injury. He challenges the sufficiency of the evidence supporting his convictions claiming his intoxication precluded him from forming the specific intent to kill or injure. He also claims there is insufficient evidence to show he strangled the victim. He raises multiple ineffective assistance of counsel claims. **OPINION HOLDS:** We decline to disturb the jury's verdict on the sufficiency challenges. We preserve his ineffective assistance claims for postconviction relief.

No. 17-0548

STATE v. RANDOLPH

AFFIRMED.

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

Jamal Randolph appeals his conviction following a bench trial for first-degree burglary. Randolph contends there was insufficient evidence in the record to prove he had the specific intent to commit an assault when he entered the residence. **OPINION HOLDS:** Upon our review, we find the district court's verdict was based on substantial evidence that Randolph intended to commit an assault as he forced his entrance into the residence or, in the alternative, he formed the intent to commit an assault during the time he remained in the residence despite having his privileges to be there revoked.

No. 17-0566

STATE v. BEALS

AFFIRMED.

Appeal from the Iowa District Court for Dallas County, Paul R. Huscher, Judge. Considered by Danilson, C.J., Vaitheswaran, J., and Carr, S.J. Opinion by Carr, S.J. (5 pages)

Christopher Beals appeals the sentence imposed following his plea of guilty to possession of a controlled substance, fentanyl, third offense, as an habitual offender. **OPINION HOLDS:** Nothing in the record indicates that the court abused its discretion in sentencing Beals by relying on an improper factor. Because Beals has failed affirmatively to show the district court relied on an improper factor in sentencing him, we affirm the sentence imposed.

No. 17-0574

STATE v. IGOU

AFFIRMED.

Appeal from the Iowa District Court for Clay County, Charles K. Borth, District Associate Judge. Considered by Vaitheswaran, P.J., and Potterfield and McDonald, JJ. Opinion by Vaitheswaran, P.J. (5 pages)

Tylor Igou appeals his conviction for domestic abuse assault causing bodily injury following a jury trial. He contends the district court abused its discretion in denying his motion for a new trial in light of the prosecutor's clear violation of Iowa Rule of Criminal Procedure 2.14(1). **OPINION HOLDS:** We conclude the district court did not abuse its discretion in denying Igou's new trial motion because he was not prejudiced. We affirm his conviction for domestic abuse assault causing bodily injury.

No. 17-0651

IN RE E.B.

AFFIRMED.

Appeal from the Iowa District Court for Plymouth County, Robert J. Dull, District Associate Judge. Considered by Vogel, P.J., Mullins, J., and Blane, S.J. Opinion by Mullins, J. (5 pages)

A child, E.B., appeals a juvenile court order adjudicating him delinquent for intimidation with a dangerous weapon. He argues the evidence was insufficient to support a finding beyond a reasonable doubt that he committed the delinquent act because the State failed to present evidence to establish the necessary showing that his actions placed someone in reasonable apprehension of serious injury. **OPINION HOLDS:** We conclude E.B.'s delinquency adjudication was supported by sufficient evidence and affirm the same.

No. 17-0697

STATE v. SUSIN

AFFIRMED.

Appeal from the Iowa District Court for Appanoose County, Lucy J. Gamon, Judge. Considered by Doyle, P.J., and Tabor and McDonald, JJ. Opinion by McDonald, J. (2 pages)

Joshua Susin appeals arguing his plea counsel was ineffective in failing to seek habeas corpus relief, in not resisting the State's notice of seeking a habitual offender enhancement, and in failing to investigate the case. **OPINION HOLDS:** Susin failed to establish prejudice. We affirm his convictions and sentences.

No. 17-0715

SCHMITT v. GRIMM

AFFIRMED.

Appeal from the Iowa District Court for Wapello County, Joel D. Yates, Judge. Considered by Vogel, P.J., Potterfield, J., and Scott, S.J. Opinion by Vogel, P.J. (3 pages)

Chantell Grimm appeals the district court's decision placing the parties' child, born in 2011, in Gerald Schmitt's physical care. Chantell asserts she can provide the child a more stable life and would provide a more nurturing, healthy, and wholesome environment. Gerald defends the district court's decision to place the child in his physical care. **OPINION HOLDS:** Upon our de novo review of the record, we affirm the district court's decision pursuant to Iowa Court Rule 21.26(1)(a), (d), and (e).

No. 17-0737

STATE v. OLOFSON

**SENTENCE AFFIRMED
AND APPEAL
DISMISSED IN PART.**

Appeal from the Iowa District Court for Polk County, Cynthia M. Moisan (stay of execution), District Associate Judge, and Donna L. Paulsen (sentencing and appeal bond), Judge. Considered by Danilson, C.J., and Vaitheswaran and Bower, JJ. Opinion by Bower, J. (5 pages)

Thomas Patrick Olofson appeals the district court's sentence, the amount set of his appeal bond, and the district court's denial of his motion for stay of execution. **OPINION HOLDS:** We find the district court did not err in assessing court costs and the amount of the appeal bond was appropriate. We also find Olofson did not properly preserve the issue regarding his motion for stay of execution.

No. 17-0791

KUNDE v. ESTATE OF BOWMAN

**REVERSED AND
REMANDED.**

Appeal from the Iowa District Court for Jackson County, Nancy S. Tabor, Judge. Considered by Vaitheswaran, P.J., and Potterfield and McDonald, JJ. Tabor, J., takes no part. Opinion by McDonald, J. Dissent by Vaitheswaran, P.J. (11 pages)

Ronald Kunde appeals from the grant of a motion for summary judgment. He argues that the district court erred in concluding written lease agreements preclude his quantum meruit, unjust enrichment, and promissory estoppel claims for the purchase of farmland. He also challenges the finding that the law of the case bars his promissory estoppel argument. **OPINION HOLDS:** We conclude the

written lease agreements do preclude the quantum meruit and unjust enrichment claims. However, we find the district court erred by determining that the lack of a clear and definite agreement barred recovery on the promissory estoppel claim. Under controlling Iowa case law, we look for a clear and definite promise, a distinct standard from that of a written contract. Applying that standard, we conclude there is an open question of fact and that the grant of summary judgment was in error. **DISSENT ASSERTS:** Based on the elements of promissory estoppel as set forth in *McKee*, the district court correctly granted Bowman summary judgment on the promissory estoppel claim.

No. 17-0837

STATE v. SMITH

AFFIRMED.

Appeal from the Iowa District Court for Story County, Timothy J. Finn, Judge. Considered by Vogel, P.J., and Potterfield and Mullins, JJ. Opinion by Vogel, P.J. (4 pages)

Following a bench trial on the minutes, Charles Smith appeals his conviction for accessory after the fact for his role in a drive-by shooting. He asserts the evidence was insufficient to prove he “harbor[ed], aid[ed], or conceal[ed] the person who committed the offense, with the intent to prevent the apprehension of the person who committed the offense.” See Iowa Code § 703.3 (2017). **OPINION HOLDS:** When viewed in the light most favorable to the State, we conclude there was sufficient evidence to prove Smith aided the persons who committed the offense with the intent to prevent their apprehension. Smith assisted the shooters into a hospital located an hour away from where the shooting occurred, then hid the vehicle in a hotel parking lot, concealed himself and the vehicle driver in a dormitory room that did not belong to him, and finally, lied to the police regarding the events of that night upon his arrest. Because substantial evidence supports the guilty verdict, we affirm Smith’s conviction and sentence.

No. 17-0868

STATE v. MURILLO

AFFIRMED.

Appeal from the Iowa District Court for Des Moines County, Emily S. Dean, District Associate Judge. Considered by Doyle, P.J., and Tabor and McDonald, JJ. Opinion by Doyle, P.J. (6 pages)

Jose Murillo challenges the legality of the sentence imposed after he pled guilty to absence from custody. **OPINION HOLDS:** Because there is no evidence that Murillo was in the custody of the Iowa Department of Corrections at the time of his sentencing, the provision of Iowa Code section 901.8 (2016), requiring that a sentence for escape under section 719.4 be served at the facility in which the person is already confined, does not apply. Murillo’s sentence is not illegal, and we affirm the district court.

No. 17-0887

STATE v. VALDEZ

AFFIRMED.

Appeal from the Iowa District Court for Polk County, Mary Pat Gunderson and David May, Judges. Considered by Vogel, P.J., and Potterfield and Mullins, JJ. Opinion by Potterfield, J. (4 pages)

Oscar Valdez appeals his conviction and sentence for possession of a controlled substance with intent to deliver. Valdez argues his counsel was ineffective for allowing him to plead guilty to charges for which there was no factual basis and failing to file a motion in arrest of judgment to present his claim the district court did not comply with Iowa Rule of Criminal Procedure 2.8(2)(b) when it accepted his guilty plea without ensuring that it was supported by a factual basis. **OPINION HOLDS:** We find Valdez’s guilty plea was supported by a factual basis, and his counsel was not ineffective for allowing him to plead guilty.

No. 17-0892

STATE v. MONTES

AFFIRMED.

Appeal from the Iowa District Court for Delaware County, Stephanie C. Rattenborg, District Associate Judge. Considered by Vogel, P.J., and Potterfield and Mullins, JJ. Opinion by Potterfield, J. (4 pages)

Charles Montes appeals following a guilty plea to third-degree burglary. Montes argues his counsel was ineffective for allowing him to plead guilty without a factual basis and argues the court improperly applied the habitual offender enhancement to his sentence. **OPINION HOLDS:** We find Montes's counsel was not ineffective because his plea was supported by a factual basis. Montes's habitual offender argument is not preserved for appeal.

No. 17-0896

LINCOLN v. LINCOLN

**REVERSED AND
REMANDED.**

Appeal from the Iowa District Court for Delaware County, Monica L. Ackley, Judge. Considered by Vaitheswaran, P.J., and Potterfield and McDonald, JJ. Opinion by Potterfield, J. (7 pages)

John and Larry Lincoln appeal the district court's settlement enforcement order, claiming the court improperly awarded Gerald and Maxine Lincoln 100 acres of a 160-acre parcel of land. **OPINION HOLDS:** Because the district court's award of 100 acres to Gerald and Maxine is not supported by substantial evidence, we reverse the district court's order granting the motion to enforce and remand for further proceedings in the underlying civil action.

No. 17-0972

IN RE J.S.

APPEAL DISMISSED.

Appeal from the Iowa District Court for Polk County, Beth A. Tigges, Magistrate. Considered by Doyle, P.J., and Tabor and McDonald, JJ. Opinion by Tabor, J. (3 pages)

J.S. appeals a magistrate's denial of his application to restore his firearms privileges. **OPINION HOLDS:** Because the magistrate lacked jurisdiction to consider applications for restoration of firearms privileges, the magistrate's order is void and cannot be considered on appeal. The appeal is dismissed.

No. 17-0993

STATE v. SINER

AFFIRMED.

Appeal from the Iowa District Court for Story County, Timothy J. Finn, Judge. Considered by Vogel, P.J., and Potterfield and Mullins, JJ. Opinion by Mullins, J. (7 pages)

Desmon Siner appeals the convictions entered following his *Alford* pleas to the charges of intimidation with a dangerous weapon and willful injury causing serious injury. He contends (1) the district court erred in accepting his pleas because they were not supported by strong evidence of actual guilt and (2) the court erred in denying his request to withdraw his pleas on the ground that they were entered involuntarily. **OPINION HOLDS:** Finding no abuse of discretion in either of the district court's rulings, we affirm.

No. 17-1014

STATE v. SHADE

AFFIRMED.

Appeal from the Iowa District Court for Polk County, Robert J. Blink, Judge. Considered by Danilson, C.J., and Vaitheswaran and Bower, JJ. Opinion by Bower, J. (3 pages)

Jerome Timothy Shade appeals his sentences following his convictions for burglary in the second degree, in violation of Iowa Code sections 713.1 and 713.5 (2016), and intimidation with a dangerous weapon, in violation of Iowa Code

section 708.6. **OPINION HOLDS:** We find the district court did not abuse its discretion by sentencing Shade to consecutive terms of imprisonment.

No. 17-1045

STATE v. KORPAK

AFFIRMED.

Appeal from the Iowa District Court for Scott County, Stuart P. Werling and Mark R. Lawson, Judges. Considered by Vogel, P.J., and Potterfield and Mullins, JJ. Opinion by Vogel, P.J. (6 pages)

Kraig Korpak challenges the sufficiency of the evidence supporting his convictions for interference with official acts while displaying a dangerous weapon and domestic abuse assault causing bodily injury. **OPINION HOLDS:** After considering the trial record, we conclude there is sufficient evidence to support the guilty verdicts. We affirm.

No. 17-1139

STATE v. SHADOW

**SENTENCE VACATED
AND CASE REMANDED
FOR RESENTENCING.**

Appeal from the Iowa District Court for Bremer County, Peter B. Newell, District Associate Judge. Considered by Doyle, P.J., and Tabor and McDonald, JJ. Opinion by Doyle, P.J. (4 pages)

Andrew Shadow appeals from the sentence imposed following his conviction for operating while intoxicated, second offense. He contends the district court relied on impermissible sentencing factors. **OPINION HOLDS:** Although the sentencing court attempted to disclaim the reference to the unproven pending charges, we cannot speculate about the weight the sentencing court gave to them. Since we cannot evaluate their influence, we must strike down the sentence. *State v. Lovell*, 857 N.W.2d 241, 243 (Iowa 2014).

No. 17-1315

IN RE M.K.

AFFIRMED.

Appeal from the Iowa District Court for Polk County, Scott D. Rosenberg, Judge. Considered by Danilson, C.J., and Vaitheswaran and Bower, JJ. Opinion by Vaitheswaran, J. (6 pages)

A father appeals the termination of his parental rights to his child. He contends the record lacks clear and convincing evidence to support the grounds for termination cited by the district court. **OPINION HOLDS:** We conclude the mother proved the father abandoned the child within the meaning of section 600A.8(3) (2017) and termination was in the child's best interests. Therefore, we affirm the termination of the father's parental rights to his child.

No. 17-1370

STATE v. NEUBAUER

AFFIRMED.

Appeal from the Iowa District Court for Cerro Gordo County, Karen Kaufman Salic, District Associate Judge. Considered by Doyle, P.J., and Tabor and McDonald, JJ. Opinion by McDonald, J. (3 pages)

Monte Neubauer challenges his conviction and sentence for driving while barred and possession of a controlled substance. He argues the district court abused its discretion in imposing sentence by not acceding to the prosecutor's recommended sentence and claims his guilty pleas were not knowing and voluntary because he had an expectation the district court would follow the prosecutor's recommendation. **OPINION HOLDS:** Finding these arguments without merit, we affirm.

No. 17-1890

IN RE D.H.

AFFIRMED.

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

A mother appeals the juvenile court order terminating her parental rights. **OPINION HOLDS:** We find the mother has waived her claim the State did not engage in reasonable efforts to reunite her with her children. There is sufficient evidence in the record to support the termination of the mother's parental rights and termination is in the children's best interests. We affirm the decision of the juvenile court.

No. 17-1937

IN RE J.W.

AFFIRMED.

Appeal from the Iowa District Court for Montgomery County, Amy L. Zacharias, District Associate Judge. Considered by Doyle, P.J., and Tabor and McDonald, JJ. Opinion by McDonald, J. (6 pages)

A mother appeals from an order terminating her parental rights in her three children. She challenges the sufficiency of the evidence supporting the statutory grounds authorizing the termination of her parental rights, contends the termination of her parental rights is not in the best interest of the children, and contends the department of human services failed to make reasonable efforts to facilitate reunification of the family. **OPINION HOLDS:** Upon our de novo review, we conclude termination was appropriate and affirm the juvenile court in all respects.

No. 17-2013

IN RE K.M.

AFFIRMED.

Appeal from the Iowa District Court for Scott County, Christine Dalton Ploof, District Associate Judge. Considered by Danilson, C.J., and Vaitheswaran and Bower, JJ. Opinion by Danilson, C.J. (4 pages)

A mother appeals from the termination of her parental rights to her child, K.M., pursuant to Iowa Code section 232.116(1)(d), (h), and (l) (2017). The mother does not contest the grounds for termination, but contends termination is not in the child's best interests. The mother also seeks additional time for reunification with K.M. **OPINION HOLDS:** Due to the mother's inability to maintain sobriety and to parent K.M. consistently, we conclude it is in K.M.'s best interests to terminate the mother's parental rights. On our de novo review, see *In re A.M.*, 843 N.W.2d 100, 110 (Iowa 2014), we affirm.

No. 17-2054

IN RE A.G.

AFFIRMED.

Appeal from the Iowa District Court for Story County, Stephen A. Owen, District Associate Judge. Considered by Doyle, P.J., and Tabor and McDonald, JJ. Opinion by Tabor, J. (7 pages)

A mother appeals the termination of her parental rights in three of her children. On appeal she argues the children could have been returned to her care at the time of the termination hearing, the State did not make reasonable efforts to support reunification, and her strong bond with the children should preclude termination. **OPINION HOLDS:** Because the mother continued to struggle with housing, her mental health, and substance abuse the children could not be returned to her care at the time of termination. The mother's challenge to reasonable efforts was not preserved for review and would not alter the outcome if it was. The parent-child bond is not so strong with any of the three children to preclude termination.