

Appellate Law

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- Trends in state appellate practice
 - State Constitutional Claims
 - Preservation of Issues
 - Recent Cases

Recent State Constitutionalism

- “Bill of Rights” a condition of admission
- Important, but missing a few things
 - right to bear arms, against self-incrimination, double-jeopardy following conviction.

- Early cases recognize state constitutional rights, but perhaps not as we would see them today.
- *State v. Height*, 117 Iowa 650 (1902) — right against self-incrimination, but ok to argue defendant's silence is incriminating
- *State v. Tonn*, 195 Iowa 94 (1923)—different standard than U.S. Supreme Court...but may still be admissible at trial.

- The Warren Incorporation Era
- *State v. Johnson*, 257 Iowa 1052 (1965)
- *State v. Rye*, 260 Iowa 146 (1967)
 - recognizing *Miranda*, but not retroactively

- Fall of 2009—
 - *Cline, RACI II, and Varnum*

- Post-2009
 - *Cox, due process & evidence of prior sex abuse*
 - *Bruegger, cruel and unusual punishment*
 - *Pals, Schneckloth “with teeth”*
 - *Tague, the fog line*
 - *King, school funding & equal protection*

- Post-2009
 - *Graves*, prosecutorial misconduct
 - *Bierkamp*, automobiles
 - *Baldon*, parole search by officers
 - *Kern*, parole search by officers

- Post-2009
 - *Ragland, Null, Pearson*
 - *Lyle*
 - *Louisell, Seats*

- Post-2009
 - *Short*, probationer
 - *King*, parolee search by parole officer
 - *Young*, recidivist sentencing

Preservation of Claims

- Making or Defending Your State Constitutional Claim:
 - cite and argue both federal & state provisions...all at issue
 - cite either federal OR state provision and only that one will be at issue
 - Cite a state provision but argue from federal cases and the state claim will be at issue, but the Court may apply the standards differently
 - Argue a theory alone and nothing will be preserved unless it is clear the district court and parties know what provision is at issue..

- Motions to Amend or Enlarge.
- Iowa R. App. P. 1.904(2)

Recent Appellate Cases

Pretrial Matters

- Discovery, disclosure
- *Sioux Pharm, Inc. v. Eagle Laboratories, Inc.*, 865 N.W.2d 528 (Iowa 2015)
 - district court's redesignation of plaintiff's SOP from "attorneys' eyes only" to confidential insufficient.

I. Pretrial Matters

- Facial challenges to local ordinances based on Fourth Amendment.
- *City of Los Angeles v. Patel*, U.S. S.Ct. 13-1175 (June 22, 2015)
- Lack of opportunity for pre compliance review.

Pretrial Matters

- Summary Judgment and municipal immunity
- *Sanon v. City of Pella*, 865 N.W.2d 506 (Iowa 2015)
 - violation of department rules or voluntary manslaughter are exceptions to immunity.

II. Suppression

- Search incident to arrest and vehicles
- *State v. Gaskins*, 866 N.W.2d 1 (Iowa 2015)
- Art. I, sec. 8 does not permit search incident to arrest when motorist has been removed from car.

Suppression

- Parolee Searches
- *State v. King*, 867 N.W.2d 106 (Iowa 2015)
- “Special needs” doctrine did not violate Art. I, sec. 8 where implemented by parole officer

III. Guilty Pleas

- Ineffective assistance of counsel during juvenile proceedings
- *In re M.L.*, 868 N.W.2d 456 (Iowa Ct. App. 2015)
- Juveniles entitled by Due Process Clause to effective assistance and counsel should not have allowed plea to delinquency during pendency of consent decree.

Guilty Pleas

- Arguing for illegal sentence following a plea to that sentence
- *State v. Ceretti*, ___ N.W.2d ___ (Iowa 2015)
- Remanding to return parties to original position where defendant successfully argued sentences for attempted murder and voluntary manslaughter were illegal.

Trial

- Juror misconduct or bias
- *State v. Webster*, 865 N.W.2d 223 (Iowa 2015)
- upholding district court where juror was accused of hiding relationship with victim's family, clicked "Like" on Facebook page, and making statements about guilt.

Trial

- Effective assistance of counsel and technology
- *Maryland v. Kulbicki*, U.S. Ct. No. 14-848
- Counsel not expected to challenge expert's finding based on scientific article not yet accepted.

Trial

- Confrontation and child victim's statements to teachers
- *Ohio v. Clark*, U.S. S.Ct. No. 13-1352 (June 18, 2015)
- Statements by very young child not made for primary purpose of substitute testimony

Substantive Crimes

- Public Intoxication
- *State v. Paye*, 865 N.W.2d 1 (Iowa 2015)
- Front porch of single-family home is not “public”

Substantive Crimes

- “True threats” and federal law
- *Elonis v. United States*, U.S. Ct. No. 13-983 (June 1, 2015)
- government must prove defendant knew his Facebook posts would be perceived as a threat.

VI. Post-Submission

- Merger and Attempt to Commit Murder
- *Termaat v. State*, 867 N.W.2d 853 (Iowa Ct. App. 2015)
- Attempted murder is not a “homicide” offense for purposes of one-homicide rule.