HIGHWAY SAFETY LAW UPDATE

August 19, 2021 Office of the Prosecuting Attorneys Training Coordinator April/May/June 2021

County Spotlight – Buena Vista County

The eleventh county spotlight is on Buena Vista County. Buena Vista "was named in memory of the Battle of Buena Vista in the Mexican-American War ending in 1848[,]" which was won by General Zachary Taylor.[1] Storm Lake is the largest town in Buena Vista County, which sits off of Highway 71 and is home to Buena Vista University. According to the 2010 census, Buena Vista County has a population of 20,260.[2]

Paul Allen is the Buena Vista County Attorney. Mr. Allen is a full-time county attorney and currently has one assistant county attorney, Ashely Herrig, in the office, although the office is authorized to have four attorneys. Mr. Allen is currently seeking applicants to fill those positions.[3]

Mr. Allen has been the Buena Vista County Attorney for over 2 years. Mr. Allen graduated from the University of Nebraska at Omaha with degrees in Political Science and Philosophy and then attended Creighton Law School. While at Creighton, Mr. Allen also obtained a master's degree in International Relations. Mr. Allen started at the Buena Vista County Attorney's Office as an Assistant County Attorney in September 2013. In 2019, Mr. Allen was elected Buena Vista County Attorney, a position he continues to hold. In addition to being the county attorney, he also teaches pre-law and international relations classes at Buena Vista University.

Buena Vista County has 7 local law enforcement agencies: Newell, Sioux Rapids, Storm Lake Police Departments, the Iowa DOT, Iowa DNR, and Iowa State Patrol (based out of Cherokee), and the Buena Vista County Sheriff's Office. In 2019, there were 2,006 traffic convictions[4] and 132 OWI convictions in Buena Vista County according to Division of Criminal & Juvenile Justice Planning.[5]

New Legislation

This past legislative session, there were multiple bills that passed, including some that directly impacted traffic safety. Three of those pieces of legislation are discussed below. Readers are encouraged to follow the link for each bill to ensure you have the exact reading of how the statute will look.

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[1] https://en.wikipedia.org/wiki/Buena_Vista_County,_Iowa

[2] https://www.census.gov/quickfacts/fact/table/buenavistacountyiowa,IA/PST045219

[3] https://iowa-icaa.com/jobs/

[4] "Convictions include all charges resulting in a conviction, including deferred judgments. Cases involving multiple charges may also involve multiple convictions, and each of those individual convictions are included in the results. Local ordinances are not included." (https://disposedcharges.iowa.gov/asp/glossary.asp)

[5] https://disposedcharges.iowa.gov/

New Legislation cont.

Hit and Run

House File 524 was signed by the governor on June 16, 2021 and became effective on July 1, 2021.[6] House File 524, also known as Emmalee's Law, amended Iowa Code section 321.261, which details the duties a driver of a motor vehicle has to follow when involved in a crash "resulting in injury to or death of any person[.]"[7]

> The law is named after Iowa State University student Emmalee Jacobs, who was hit and killed by a CyRide bus driver in 2015. The driver claimed he never saw Jacobs. He was arrested more than a month later and sentenced to 30 days in jail.[8]

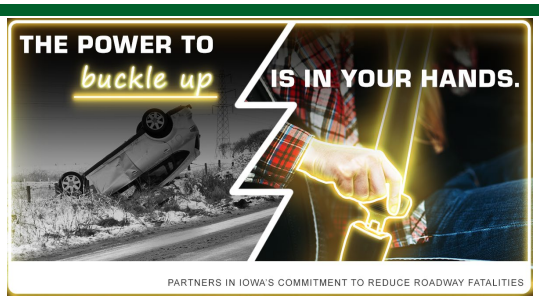
Iowa Code section 321.261 now requires a driver to also "contact emergency services or" call 911 if at some point after a crash "resulting in injury to or death of any person" they become aware they were involved in the crash. The new subsection states:

> If the driver of a vehicle leaves the scene of an accident resulting in injury to or death of a person without knowledge or reason to believe that the driver's vehicle was involved in the accident, and later discovers that the driver's vehicle may have been involved in an accident that resulted in injury to or death of a person, the driver shall, as soon as reasonably possible, make a good-faith effort to immediately contact emergency services or make a 911 call and provide the dispatcher with any requested information described in section 321.263 and the location and possible time of the accident.[9]

Eluding

Senate File 342 amended Iowa Code section 321.279 (Eluding).[10] Senate File 342 now makes it a crime for a person to elude law enforcement even if they are in an "unmarked" vehicle. Before the amendment, law enforcement was required to be in a "marked official law enforcement vehicle[,]" now a defendant may be convicted if the officer is in a "marked official law enforcement vehicle" or an unmarked vehicle.[11] The statute also removed the requirement that the officer be in an uniform.[12]

[6] https://www.legis.iowa.gov/legislation/BillBook?ga=89&ba=HF%20524
[7] https://www.legis.iowa.gov/legislation/BillBook?ga=89&ba=HF%20524
[8] https://www.kcrg.com/2021/05/25/gov-reynolds-signs-emmalees-law-to-change-the-way-hit-and-run-crimes-are-prosecuted/
[9] https://www.legis.iowa.gov/legislation/BillBook?ga=89&ba=HF%20524
[10] https://www.legis.iowa.gov/legislation/BillBook?ga=89&ba=SF%20342
[11] https://www.legis.iowa.gov/legislation/BillBook?ga=89&ba=SF%20342
[12] https://www.legis.iowa.gov/legislation/BillBook?ga=89&ba=SF%20342



Vehicular Homicide

Finally, Iowa Code section 707.6A (Homicide or serious injury by vehicle) was amended by House File 753. Under 707.6A, it was already a "C" felony when a "person unintentionally causes the death of another by[:]" reckless driving, texting while driving, or eluding.[13] Effective July 1, 2021, House File 753 added that a "person unintentionally causes the death of another" when driving 25 mph or more over the speed limit and "is the proximate cause of the death of the other person."[14] Please note, it is now a "D" felony if "the person unintentionally causes a serious injury" when driving 25 mph or more over the speed limit.[15]

For more information regarding these and other legislative changes, please visit the General Assembly's 89 Session Enrolled Bills: https://www.legis.iowa.gov/law/statutory/acts/enrolledBills

The Time to Reorder the Criminal Law Handbook is NEAR

The newest edition of the Criminal Law Handbook, which contains the most recent versions of the OWI and Traffic Offenses in Iowa manual and the Iowa Charging Manual, will be released around September 2021. The manual uses software that makes outdated editions inaccessible, and therefore readers must re-order a new copy of the Criminal Law Handbook every six months.

Order forms for the Criminal Law Handbook will be sent to all county attorneys soon. If you do not receive an order form by August 25, 2021, please contact Cindy Glick at Cindy.Glick@ag.iowa.gov and request an order form to keep your copy up to date and working.

[13] https://www.legis.iowa.gov/docs/code/707.6a.pdf
[14] https://www.legis.iowa.gov/legislation/BillBook?ga=89&ba=HF%20753
[15] https://www.legis.iowa.gov/docs/code/707.6a.pdf

Opinions of the United States Supreme Court

United State v. Cooley, 141 S.Ct. 1234 (06/01/2021). **"A tribal police officer has authority to detain temporarily and to search non-Indian persons traveling on public rights-of-way running through a reservation for potential violations of state or federal law."** A tribal police officer stopped to see if a vehicle parked on the side of the road, which was a public right-of-way on tribal land, needed assistance. While speaking with the driver, the tribal police officer noticed signs of impairment and that the driver looked non-native. The tribal officer then notice contraband in the vehicle and conducted a pat down of the driver. The contraband was then seized. The defendant argued that a tribal officer did not have authority to investigate a non-Indian on the public right-of-way. Held, "[a] tribal police officer has authority to detain temporarily and to search non-Indian persons traveling on public rights-of-way running through a reservation for potential violations of state or federal law." "A tribe retains inherent authority over the conduct of non-Indians on the reservation 'when that conduct threatens or has some direct effect on . . . the health or welfare of the tribe.'" *quoting* Montana v. United States, 450 U.S. 544, 565 (1981). "To deny a tribal police officer authority to search and detain for a reasonable time any person he or she believes may commit or has committed a crime [(e.g., OWI)] would make it difficult for tribes to protect themselves against ongoing threats." "Similarly, the Court has held that when the 'jurisdiction to try and punish an offender rests outside the tribe, tribal officers may exercise their power to detain the offender and transport him to the proper authorities.'" *quoting* Duro v. Reina, 495 U.S. 676, 697 (1990).

Lange v. California, 141 S.Ct. 2011 (06/23/2021). **The 4th Amendment of the U.S. Constitution does not always permit law enforcement to enter a suspect's home, including the garage, to apprehend a suspect that is fleeing a misdemeanor offense.** A defendant drove past a law enforcement officer honking and playing loud music. The officer attempted to initiate a traffic stop, but the defendant refused to pull over (committing a misdemeanor offense) and instead continued to drive a short distance (approximately 4 seconds) to his driveway. The defendant then entered his attached garage and the officer followed him into the attached garage. While the officer questioned the defendant, he observed signs of intoxication and began an OWI investigation. The defendant appealed his denial of his motion to suppress the warrantless intrusion into his garage. Held, the 4th Amendment of the U.S. Constitution does not always permit law enforcement to enter a suspect's home, including the garage, to apprehend a suspect that is fleeing a misdemeanor offense. The U.S. Supreme Court prefers "a case-by-case assessment of exigency when deciding whether a suspected misdemeanant's flight justifies a warrantless home entry." Law enforcement normally must obtain a search "warrant before entering a home without permission." If exigent circumstances exist, there may "a compelling need for official action and no time to secure a [search]warrant" before entering a house while pursuing a misdemeanor offender. *Quoting* Kentucky v. King, 563 U. S. 452, 460 (2011); Missouri v. McNeely, 569 U. S. 141, 149 (2013) (the natural dissipation of alcohol from the human body, standing alone, is not a sufficient exigency to permit an officer to proceed without a warrant regarding chemical testing). "When the totality of circumstances shows an emergency—a need to act before it is possible to get a warrant—the police may act without waiting." The suspect's flight itself may be one of those circumstances. "But pursuit of a misdemeanant does not trigger a categorical rule allowing a warrantless home entry." "The Court has found that such exigencies may exist when an officer must act to prevent imminent injury, the destruction of evidence, or a suspect's escape."

Opinions of the Iowa Supreme Court

Dubuque State v. Michael Hillery, 956 N.W.2d 492 (Iowa 2021). **No improper promise of leniency after a Terry stop.** A law enforcement officer observed what he thought was the defendant making a drug buy. The officer followed the defendant as he left the area and when he was out of sight from where the potential drug transaction occurred, the officer initiated a Terry stop to investigate. During the investigation, the officer promised not to arrest the defendant that day, if the defendant cooperated with their ongoing drug investigation, but left open that he may be charged on a later date. During this interaction, the defendant gave the officer the drugs he purchased. The defendant agreed to cooperate; however, the cooperation did not last and the defendant was subsequently charged for drug possession. The defendant then appealed and argued the officer's promise not to arrest him was promissory leniency that made him provide the drugs. Held, "after a proper Terry stop," law enforcement did not improperly promise leniency when he informed the defendant he may be charged on a later date, but they would not "take him to jail that day" and they were looking for his cooperation. The Court noted that although the defendant had a difficult choice, go to jail or cooperate, the criminal justice system is full of difficult choices. South Dakota v. Neville, 459 U.S. 553, 564, 103 S. Ct. 916, 923 (1983).

Polk County David Michael Johnston v. Iowa Department of Transportation, ___ N.W.2d ___ (Iowa 04/16/2021) No. 19-0048. **A deferred judgment for eluding will be treated as a "conviction" for purpose of "administrative license revocations under Iowa Code sections 321.555 and 321.560" if the probation has not yet been completed.** *See* Schilling v. Iowa Department of Transportation, 646 N.W.2d 69 (Iowa 2002). The DOT did not error in using the defendant's deferred judgment for eluding to revoke his license under section 321.555 (habitual offender statute) since the decision to revoke occurred before he successfully completed his probation. *See* State v. Tong, 805 N.W.2d 599, 603 (Iowa 2011).

Cerro Gordo State v. William Frank Fetner, 959 N.W.2d 129 (Iowa 2021). **The Court considered an impermissible sentencing factor when it speculated the defendant was impaired while at work.** The defendant pled guilty to driving while barred (DWB) and possession of a controlled substance. During sentencing, the defendant's attorney stated he worked at a day care and used marijuana to self-medicate. The defendant did not correct his attorney's statements. The District Court relied on the attorney's statements when sentencing the defendant. Held, although the Court can rely on the attorney's statements (defendant used marijuana to self-medicate and he worked at a day care) when sentencing him, it was improper for the Court to speculate and consider that the defendant was impaired "while he was working at the day care" based off his attorney's statements. Remanded for resentencing.

Polk County State v. Brian De Arrie McGee, 959 N.W.2d 432 (Iowa 2021). **"Iowa Code section 321J.7 does not usually require recertification when the blood draw occurs within eleven minutes of the initial certification[,]" even if the suspect regains consciousness for a brief period during that time.** After a crash, but before the defendant was transported to the hospital, law enforcement observed an odor of marijuana coming from the defendant. Once law enforcement arrived at the hospital, the defendant was unconscious. Pursuant to Iowa Code section 321J.7, a nurse practitioner certified the defendant was unconscious. Approximately five minutes later, the defendant made "irregular movements", stated "pee", and urinated. The defendant then "appeared to fall back asleep" and a warrantless blood draw was taken approximately eleven minutes after the nurse practitioner's certification. The nurse practitioner never recertified the defendant was unconscious after he urinated. The defendant appealed and argued the nurse practitioner was required to recertify he was unconscious after he woke up and urinated. Held, "Iowa Code section 321J.7 does not usually require recertification when the blood draw occurs within eleven minutes of

the initial certification." "Certifications do not expire in eleven minutes, at least without clearer evidence that the driver has become capable of refusing or consenting in the meantime." **Despite the ruling in McGee and Mitchell, the best practice is to *always* try to obtain a search warrant if possible.**

Polk County State v. Brian De Arrie McGee, 959 N.W.2d 432 (Iowa 2021). **When a driver is unconscious and there is probable cause to suspect impairment by drugs, the exigent circumstances rule under Mitchell v. Wisconsin is "almost always" going to allow for a warrantless blood draw.** "[A]rticle I, section 8 does not provide greater protection from warrantless blood draws than the Mitchell standard." The State must satisfy the Mitchell test: "(1) BAC evidence is dissipating and (2) some other factor creates pressing health, safety, or law enforcement needs that would take priority over a warrant application." Mitchell v. Wisconsin, 139 S. Ct. 2525, 2539 (2019). Thus, law enforcement has to determine whether they have time to obtain a warrant. The Court stated "[e]xigent circumstances, in other words, is defined generously, and is based on law-enforcement workload." (*footnote omitted*). The Court discussed that although the marijuana "nonimpairing metabolites" still violate 321J.2, there are reasons the State may want to show the driver had the active ingredient in their system, as opposed to the "nonimpairing metabolite". The Court cited multiple examples: the "criminalization of marijuana use has become increasingly controversial" and the active ingredient may help avoid jury nullification; in vehicular homicide cases, where the State must establish a causal connection in the defendant's impairment and the death of the victim; and in awarding restitution. NOTE: under Iowa Code section 321J.7, an officer must still get "a licensed physician, physician assistant, or advanced registered nurse practitioner [to certify] in advance of the test that the person is unconscious or otherwise in a condition rendering that person incapable of consent or refusal." **Despite the ruling in McGee and Mitchell, the best practice is to *always* try to obtain a search warrant if possible.**

Polk County State v. Brian De Arrie McGee, 959 N.W.2d 432 (Iowa 2021). **Iowa Code "section 321J.7 does not violate" equal protection under the Iowa Constitution (article I, section 6) or the U.S. Constitution (Fourteenth Amendment)."** Although 321J.7 treats conscious drivers (they can choose not to consent or consent to chemical testing) differently than unconscious drivers (no choice), there is no equal protection violation under either Constitution. **Despite the ruling in McGee and Mitchell, the best practice is to *always* try to obtain a search warrant if possible.**

Polk County Rickie Rilea v. State, 959 N.W.2d 392 (Iowa 2021). **The defendant's conviction was never vacated and his claim of unjust enrichment was properly dismissed "as an unlawful collateral attack on his criminal conviction."** In 2016, Rilea pled guilty and was convicted of speeding on a ticket that was issued by an Iowa DOT officer that at that time lacked authority to issue the ticket. *See* Rilea v. Iowa Department of Transportation, 919 N.W.2d 380 (Iowa 2018). Although the Iowa Supreme Court found the DOT officer lacked the authority to issue the ticket, Rilea never had his conviction vacated. Rilea also sued to have the fine returned to him because the State was unjustly enriched. Held, the defendant's claim of unjust enrichment was properly dismissed "as an unlawful collateral attack on his criminal conviction."

Dickinson County State v. Matthew Robert Sewell, 960 N.W.2d 640 (Iowa 2021). **804.20 does not provide a defendant the opportunity to have a private/confidential phone call with an attorney.** After an OWI investigation, including SFSTs and a PBT refusal, law enforcement transported the defendant to the jail. At the jail, the deputy read implied consent, requested a breath sample, and provided the defendant an opportunity to make 804.20 phone calls. The deputy allowed the defendant to access his cellphone to obtain phone numbers, but required him to use the recorded jail phone to make phone calls. An attorney from central Iowa spoke with the defendant on the recorded jail line. The deputy denied the defendant's and the attorney's request for a phone call on a non-recorded line, like the defendant's cellphone (i.e., a private/confidential phone call). The deputy advised the defendant he could have a private/confidential

conversation if the attorney came to the jail. The attorney decided not to advise the defendant because: the attorney was denied a private phone call with the defendant and could not properly advise the defendant over the phone; and could not come to the jail because he was over two hours away. The defendant then provided a chemical test sample and was charged with OWI 1st. The defendant filed a motion to suppress for not receiving a private, non-recorded phone call with his attorney, which was denied. Held, a defendant does not have a right to a private/confidential phone call under Iowa law because Iowa Code section 804.20 states calls to counsel "'shall be made in the presence of the person having custody of the one arrested or restrained.'" (*quoting* §804.20). ***CAUTION***: the Court made special mention but did not decide whether 804.20 allows law enforcement to record *and* then listen to the recorded phone calls involving an attorney.

Dickinson County State v. Matthew Robert Sewell, 960 N.W.2d 640 (Iowa 2021). **Article I, section 10 of the Iowa Constitution does not give a defendant a right to counsel prior to deciding whether to provide a chemical sample under the implied consent procedures because a "prosecution or case" has not been commenced.** After an OWI investigation, including SFSTs and a PBT refusal, law enforcement transported the defendant to the jail. At the jail, the deputy read implied consent, requested a breath sample, and provided the defendant an opportunity to make 804.20 phone calls. The deputy allowed the defendant to access his cellphone to obtain phone numbers, but required him to use the recorded jail phone to make phone calls. An attorney from central Iowa spoke with the defendant on the recorded jail line. The deputy denied the defendant's and the attorney's request for a phone call on a non-recorded line, like the defendant's cellphone (i.e., a private/confidential phone call). The deputy advised the defendant he could have a private/confidential conversation if the attorney came to the jail. The attorney decided not to advise the defendant because: the attorney was denied a private phone call with the defendant and could not properly advise the defendant over the phone; and could not come to the jail because he was over two hours away. The defendant then provided a chemical test sample and was charged with OWI 1st. The defendant then filed a motion to suppress for not receiving a private, non-recorded phone call with his attorney, which was denied. Held, "the right to counsel under article I, section 10 arises in 'criminal prosecutions' and 'cases involving the life, or liberty of an individual,' not in procedures that occur before such a prosecution or case is commenced." ***CAUTION***: the Court made special mention but did not decide whether 804.20 allows law enforcement to record *and* then listen to the recorded phone calls involving an attorney.

Dickinson County State v. Matthew Robert Sewell, 960 N.W.2d 640 (Iowa 2021). **No due process violation under "article I, section 9 of the Iowa Constitution" when the defendant was denied a private/confidential phone call during the implied consent procedures.** After an OWI investigation, including SFSTs and a PBT refusal, law enforcement transported the defendant to the jail. At the jail, the deputy read implied consent, requested a breath sample, and provided the defendant an opportunity to make 804.20 phone calls. The deputy allowed the defendant to access his cellphone to obtain phone numbers, but required him to use the recorded jail phone to make phone calls. An attorney from central Iowa spoke with the defendant on the recorded jail line. The deputy denied the defendant's and the attorney's request for a phone call on a non-recorded line, like the defendant's cellphone (i.e., a private/confidential phone call). The deputy advised the defendant he could have a private/confidential conversation if the attorney came to the jail. The attorney decided not to advise the defendant because: the attorney was denied a private phone call with the defendant and could not properly advise the defendant over the phone; and could not come to the jail because he was over two hours away. The defendant then provided a chemical test sample and was charged with OWI 1st. The defendant then filed a motion to suppress for not receiving a private, non-recorded phone call with his attorney, which was denied. Held, "neither the Iowa Code nor the Iowa Constitution afforded Sewell the right to a private consultation with counsel." Therefore, law enforcement interfering with the defendant having a private/confidential phone call with an attorney during implied consent procedures only amounted to "refusing something that [the defendant] had no entitlement to

anyway." ***CAUTION***: the Court made special mention but did not decide whether 804.20 allows law enforcement to record *and* then listen to the recorded phone calls involving an attorney.

Polk County State v. Hannah Marie Kilby, 961 N.W.2d 374 (Iowa 2021). **Iowa Code section 321J.16 is not unconstitutional and "search warrants are not required for [chemical breath] tests of either boaters or drivers when law enforcement has probable cause to believe that intoxicated boating or driving occurred[;]" State v. Pettijohn is hereby overruled.** After law enforcement responded to a hit and run call, they started an OWI investigation. The defendant had: watery and bloodshot eyes; slurred speech; odor of alcohol; confused; unsteady; crying; admission of drinking; four clues on HGN; refused walk and turn and one leg stand; would not answer if she was sober; and refused to provide chemical breath test. The defendant was subsequently convicted with the State using her chemical test refusal as evidence pursuant to Iowa Code section 321J.16. The defendant appealed arguing that 321J.16 was unconstitutional, relying on State v. Pettijohn, 899 N.W.2d 1 (Iowa 2017). Held, Iowa Code section 321J.16 is not unconstitutional and "search warrants are not required for [chemical breath] tests of either boaters or drivers when law enforcement has probable cause to believe that intoxicated boating or driving occurred[;]" State v. Pettijohn is hereby overruled. "Defendants have a statutory right to refuse chemical testing, but that choice carries a statutory evidentiary consequence under Iowa Code section 321J.16: the test refusal is admissible in the criminal trial." The Court found that "Pettijohn is manifestly erroneous". The Court distinguished a right to refuse a chemical breath test under implied consent procedures from the rule of evidence that precludes the State from using a defendant's refusal to cosnet to a warrantless search of their home. *Compare* State v. Thomas, 766. N.W.2d 263 (Iowa Ct. App. 2009).

(Recent Unpublished Decisions Arranged by County)

RECENT **UNPUBLISHED DECISIONS** INVOLVING ALCOHOL AND TRAFFIC SAFETY

Citation of unpublished cases is governed by I.R.App.Pro. 6.904(2)(c), which provides that unpublished opinions do not constitute binding authority and requires that when citing an unpublished opinion, a party include an electronic citation where the opinion can be readily accessed on-line. (Note: all opinions may be accessed online in the Archives section of Opinions of the Iowa Court of Appeals or Supreme Court, at https://www.iowacourts.gov/).

Black Hawk County State v. Zachary Alan Becker, No. 19-1583 (Iowa Court of Appeals, filed June 30, 2021). The Court sufficiently explained its reasons for running the prison sentences for OWI 3rd and DWB (driving while barred) consecutively. Because the sentence pronounced orally (consecutive) differed from the written sentencing order (concurrent), and the orally sentence controls, the case was remanded for an order of consecutive sentences. *See* State v. Hess, 533 N.W.2d 525 (Iowa 1995).

Boone County State v. Benjamin Lloyd Freking, No. 19-1362 (Iowa Court of Appeals, filed May 12, 2021). **Probable cause to stop a vehicle for driving in the left lane of a gravel road in violation of Iowa Code section 321.297.** An officer observed the defendant's vehicle parked facing north, but on the southbound side of a gravel road and part of the vehicle was in the roadway. After the officer pulled in behind the defendant's vehicle, it proceed to briefly move north in the southbound lane (left lane) before moving over to the northbound lane (right lane). The officer then initiated a traffic stop. Held, there was probable cause to stop a vehicle for driving in the left lane of a gravel road in violation of Iowa Code section 321.297.

Boone County State v. Benjamin Lloyd Freking, No. 19-1362 (Iowa Court of Appeals, filed May 12, 2021). **Reasonable suspicion to initiate a traffic stop to determine if there was any criminal activity afoot.** An officer observed the defendant's vehicle parked facing north, but on the southbound side of a gravel road and part of the vehicle was in the roadway. The officer was aware this area was frequently used for trespassing,

drug use, and underage drinking. After the officer pulled in behind the defendant's vehicle, it proceed to briefly move north in the southbound lane (left lane) before moving over to the northbound lane (right lane). The officer then initiated a traffic stop. Held, reasonable suspicion to initiate a traffic stop to determine if there was any criminal activity afoot.

Boone County State v. Benjamin Lloyd Freking, No. 19-1362 (Iowa Court of Appeals, filed May 12, 2021). The Court cannot impose the DARE surcharge if the defendant's sentence is suspended.

Bremer County In the Interest of C.B., No. 20-1499 (Iowa Court of Appeals, filed May 26, 2021). **Substantial evidence C.B. knew the vehicle was stolen even though he did not make any statements to law enforcement and there were two others in the vehicle:** numerous personal effects in the car that were not the owner's; C.B. and the juveniles abandoned the vehicle after observed by law enforcement; C.B. and the juveniles attempted to hide from law enforcement; and the vehicle was stolen weeks before.

Des Moines County State v. Andrew John Jaquez, No. 19-2128 (Iowa Court of Appeals, filed April 14, 2021). **Insufficient evidence of constructive possession of methamphetamine despite the defendant's attempt to run from the vehicle.** The defendant made no incriminating statements, he was not the owner of the vehicle, the drugs were located on the floor behind his seat, no evidence he could see the drugs in the back, and he did not have any personal belongings around the drugs.

Dickinson County State v. Charles Andrew Tewes, No. 20-0253 (Iowa Court of Appeals, filed May 12, 2021). **No abuse in discretion for denying the defendant' motion for new trial because the State discussed his prior bad acts.** Although the State should not have discussed the defendant's prior bad acts in violation of a motion in limine, there was no prejudice because of the defendant's insistence of using the entire police video recording (including him discussing his prior bad acts).

Guthrie County State v. Dennis Carroll Glenn, No. 20-0389 (Iowa Court of Appeals, filed June 30, 2021). **Sufficient evidence of constructive possession of the controlled substances:** the defendant stated it was his backpack contain his stuff; requested officers not search the backpack; he searched the backpack for a personal letter; requested a deputy retrieve his glasses that were in the backpack; requested a deputy mail his letter that was in the backpack; and his medicine was found in the backpack. *See* State v. Maxwell, 743 N.W.2d 185, 194 (Iowa 2008) (listing four non-exclusive factors in determining constructive possession when there is more than one person in the area); State v. Kemp, 688 N.W.2d 785, 789 (Iowa 2004) (listing five additional factors when the area is a motor vehicle).

Polk County State v. Salvador Solis Ortega, No. 19-1948 (Iowa Court of Appeals, filed May 12, 2021). Any errors in administering the SFSTs go to the weight of the evidence, not the admissibility.

Polk County State v. Salvador Solis Ortega, No. 19-1948 (Iowa Court of Appeals, filed May 12, 2021). **Substantial evidence of impairment even without considering the defendant's performance on the SFSTs:** defendant drove into the back end of a parked law enforcement vehicle while its overhead lights were on; admission of drinking; slurred speech; bloodshot watery eyes; and an odor of alcohol.

RECENT **UNPUBLISHED DECISIONS** INVOLVING ALCOHOL AND TRAFFIC SAFETY

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Polk County State v. Salvador Solis Ortega, No. 19-1948 (Iowa Court of Appeals, filed May 12, 2021). The defendant did not preserve his appeal rights to challenge a due process violation for the State not obtaining an interpreter because he failed to file a motion to suppress or object to the admission of the SFSTs and chemical test during the trial.

Polk County State v. Salvador Solis Ortega, No. 19-1948 (Iowa Court of Appeals, filed May 12, 2021). The defendant did not preserve his appeal rights to challenge a violation of his Miranda rights because he failed to file a motion to suppress or object during the trial.

Polk County Troy Lee Mure, Jr. v. State, No. 20-0550 (Iowa Court of Appeals, filed May 26, 2021). The defendant was precluded from relitigating his "proximate cause challenge" on his conviction for vehicular homicide as an ineffective assistance claim because the issue was conclusively determined on direct appeal.

Polk County Troy Lee Mure, Jr. v. State, No. 20-0550 (Iowa Court of Appeals, filed May 26, 2021). Counsel was not ineffective for failing to hire an accident reconstruction expert because it was a reasonable tactical decision.

Polk County Troy Lee Mure, Jr. v. State, No. 20-0550 (Iowa Court of Appeals, filed May 26, 2021). Counsel not ineffective for failing to obtain prior threatening messages on social media because the threats were not in dispute.

Polk County Troy Lee Mure, Jr. v. State, No. 20-0550 (Iowa Court of Appeals, filed May 26, 2021). Counsel not ineffective for not following up with the owner of the other car; counsel had listed the owner as a witness and resisted motions to bar the owner's testimony.

Polk County State v. Zachary Jay Ouverson, No. 19-1993 (Iowa Court of Appeals, filed May 26, 2021). **Probable cause to initiate a traffic stop for a violation of 321.311(a)(1)**: the defendant turned right into the left (outside) lane of a four-lane road, instead of turning into the right lane (next to the curb). It did not matter that the defendant later turned left onto a side road.

Polk County State v. Zachary Jay Ouverson, No. 19-1993 (Iowa Court of Appeals, filed May 26, 2021). **Officer developed reasonable suspicion to extend the traffic stop for further investigation:** faint order of marijuana; bloodshot and watery eyes; and lighting a cigarette, which based off the officer's experience may be used to mask the smell coming from the vehicle.

Polk County State v. Jeremy James Greening, No. 19-1822 (Iowa Court of Appeals, filed June 30, 2021). **Substantial evidence the defendant stole the skid loader and trailer and/or knew the skid loader and trailer was stolen:** the defendant was observed with the property shortly after it was stolen; the defendant drove the same color of vehicle that was observed with the stolen property; and statements about needing a new truck only to return with the same truck.

Polk County State v. Jeremy James Greening, No. 19-1822 (Iowa Court of Appeals, filed June 30, 2021). Under Iowa Code section 814.28, a general verdict will be upheld "if one or more of the theories presented

and described in the complaint, information, indictment, or jury instruction is sufficient to sustain the verdict on at least one count."

Ringgold County State v. Timothy Alvin Newton, No. 20-0517 (Iowa Court of Appeals, filed June 16, 2021). The defendant's failure to complete a court ordered "substance-abuse evaluation prior to sentencing" and the Court then waiving the completion of the evaluation at sentencing does not require resentencing. *See* State v. Breese, 581 N.W.2d 631 (Iowa 1998) (public interest supports not allowing the defendant to delay sentencing by not complying with the court's order to obtain a substance abuse evaluation).

Ringgold County State v. Timothy Alvin Newton, No. 20-0517 (Iowa Court of Appeals, filed June 16, 2021). No abuse in discretion when the Court did not order an updated PSI report after a delay in sentencing when the defendant did not object to the contents of the PSI report nor suggest any corrections or additions.

Scott County State v. Janya Hill, No. 19-1725 (Iowa Court of Appeals, filed April 14, 2021). Defendant failed to show "good cause" to appeal her guilty plea as required under Iowa Code section 814.6. *See* State v. Damme, 944 N.W.2d 98, 105 (2020).

Scott County State v. Janya Hill, No. 19-1725 (Iowa Court of Appeals, filed April 14, 2021). By pleading guilty, the defendant waived her right to challenge any defect in the juvenile court transferring/waiving her case to adult court under Iowa Code section 232.45. State v. Yodprasit, 564 N.W.2d 383 (Iowa 1997).

Wayne County State v. Jonathan Levi Hart, No. 19-0425 (Iowa Court of Appeals, filed May 12, 2021). Counsel was ineffective for failing to object to the State calling the defendant as a rebuttal witness, even after the defendant had previously testified in his own defense. *See* Iowa Rules of Criminal Procedure 2.20(1). Eluding and criminal mischief convictions vacated and remanded for retrial.

Woodbury County State v. Jeffery Lynn Britcher, No. 20-1142 (Iowa Court of Appeals, filed June 16, 2021). **Traffic stop not unlawfully extended by looking at criminal history and requesting a drug dog.** During a traffic stop, the defendant was unable to provide the vehicle's registration and due to computer delays, it took longer than normal to retrieve the information to complete the written warnings. While waiting for the registration information, the officer reviewed the defendant's criminal history and called a drug dog to the traffic stop. The drug dog arrived at the traffic stop and had a positive alert prior to the completion of the written warnings. The defendant argued the traffic stop was unlawfully extended. Held, requesting a drug dog and looking at the driver's criminal history "did not prolong the stop." Furthermore, the drug dog was able to walk around the vehicle and had a positive alert prior to the completion of the traffic stop. The delay in completing the written warnings was due to the defendant's failure to provide the vehicle's registration and the officer's computer issues in retrieving the registration information and printing the warnings.

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This newsletter is intended to provide the reader with an update on new developments, including case law and statutory changes, relating to traffic safety. Please discuss with your supervisor, legal counsel, and county attorney before changing your policies or practices in reliance on anything, including cases, discussed in this newsletter.

Submissions and/or comments may be sent to:
Jeremy Peterson
Iowa Department of Justice
2nd Floor, Hoover State Office Building
Des Moines, IA 50319
Phone: 515-281-5428
E-mail: jeremy.peterson@ag.iowa.gov

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