



HIGHWAY SAFETY

LAW UPDATE



July 29, 2020 Office of the Prosecuting Attorneys Training Coordinator April/May/June 2020

County Spotlight – Black Hawk County

The seventh county spotlight is on Black Hawk County. Waterloo is the biggest city in Black Hawk County and sits off the intersection of Highways 20 and 218. According to the 2010 census, Black Hawk County had a population of 131,090.¹ The University of Northern Iowa Panthers also reside in Black Hawk County.

Brian Williams is the Black Hawk County Attorney. Mr. Williams is a full-time county attorney and has 15 full-time assistant county attorneys, 4 staff handling fine collections, and a victim witness services coordinator in the office. Mr. Williams has been the Black Hawk County Attorney for almost 5 years. Prior to becoming the Black Hawk County Attorney, Mr. Williams was an assistant Black Hawk County Attorney for approximately 9 years. Mr. Williams graduated from the University of Northern Iowa (“UNI”) with a degree in Political Science and a minor in Politics and Law. After graduating from UNI, Mr. Williams received his juris doctorate from Creighton Law School.

In 2018, Black Hawk County had the second most jury trials in the State, even though it is the fifth largest county² by population estimates. There are nine local law enforcement agencies that work in Black Hawk County. In 2019, there were 8,683 traffic convictions³ and 506 OWI convictions in Black Hawk County according to Division of Criminal & Juvenile Justice Planning.⁴

¹ <https://www.census.gov/quickfacts/fact/table/blackhawkcountyiowa.IA/PST045219>

² <https://www.census.gov/data/datasets/time-series/demo/popest/2010s-counties-total.html>

³ “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.”

⁴ <https://disposedcharges.iowa.gov/asp/glossary.asp>

⁵ <https://disposedcharges.iowa.gov/>

2020 New Legislation and Changes

The end of the 2020 Legislative Session saw a lot of changes to Iowa Code, including Chapter 321. Before you write a traffic ticket, make sure you check the updated compendium. A lot of changes occurred in Senate File 457,⁵ including changing the fine amounts in Iowa Code sections 805.8A,⁶ 805.8B,⁷ and 805.8C.⁸ Senate File 457 also changed multiple misdemeanors from unscheduled violations to scheduled violations (e.g., §321.24 – Issuance of registration and certificate of title; §321.260 – Unlawful possession of traffic control device; §321.264 – Striking unattended vehicle; etc.).⁹ Senate File 457 reduced court costs for *all* scheduled

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⁵ <https://www.legis.iowa.gov/legislation/BillBook?ga=88&ba=SF%20457>

⁶ <https://www.legis.iowa.gov/docs/code/805.8a.pdf>

⁷ <https://www.legis.iowa.gov/docs/code/805.8b.pdf>

⁸ <https://www.legis.iowa.gov/docs/code/805.8c.pdf>

⁹ <https://www.legis.iowa.gov/legislation/BillBook?ga=88&ba=SF%20457>

2020 New Legislation and Changes cont.

violations, to \$55.00.¹⁰ Please note, for all unscheduled simple misdemeanors, including Reckless Driving violations under Iowa Code section 321.277,¹¹ court costs remain at \$60.00. Senate File 457 also changed the fine range for all unscheduled simple misdemeanors to \$105.00 – \$855.00.¹² Senate File 457 renamed the “Criminal Penalty Surcharge” to the “Crime Services Surcharge” and lowered this surcharge from 35% to 15%.¹³ If you are working for a Sheriff’s Office you can no longer assess the \$5.00 “County Enforcement Surcharge” as Senate File 457 eliminated Iowa Code section 911.4.¹⁴ The DARE surcharge under Iowa Code §911.2 for OWI convictions was also eliminated by Senate File 457; however, the DARE program is funded out of the “Crime Services Surcharge” and is established in §80E.4.¹⁵

Passing Stopped School Bus Legislation

Prior to Senate File 457, if a person was convicted of unlawfully passing a stopped school bus, their driver’s license was automatically suspended. Senate File 457 amended Iowa Code §321.372(5)(b)(1) and now allows the Iowa Department of Transportation to authorize a defendant convicted of a first offense of unlawfully passing a stopped school bus to attend “a driver improvement program” instead of having their license suspended.¹⁶

Eluding Enhancements Legislation

Senate File 2275 amended Iowa Code §321.279 to allow the State to enhance eluding charges if the defendant has prior eluding convictions.¹⁷ However, in order to enhance an eluding charge, it depends on what the current charge would be without the enhancement and the level of charge for the prior eluding conviction.¹⁸ For example, if the defendant was being charged with aggravated eluding (§321.279(2)) and has a prior conviction for aggravated or felony eluding, then the current charge may be enhanced to a class “D” felony (§321.279(2)(a)(b)).¹⁹ If the defendant was being charged with aggravated eluding (§321.279(2)) and has a prior conviction for serious eluding, then the current charge may not be enhanced.²⁰ Another important note regarding Senate File 2275 is that unlike OWIs,²¹ there is no restrictive look back period to enhance an eluding charge.²²

¹⁰ <https://www.legis.iowa.gov/legislation/BillBook?qa=88&ba=SF%20457>

¹¹ <https://www.legis.iowa.gov/docs/code/321.277.pdf>

¹² <https://www.legis.iowa.gov/legislation/BillBook?qa=88&ba=SF%20457>

¹³ <https://www.legis.iowa.gov/legislation/BillBook?qa=88&ba=SF%20457>

¹⁴ <https://www.legis.iowa.gov/legislation/BillBook?qa=88&ba=SF%20457>

¹⁵ <https://www.legis.iowa.gov/legislation/BillBook?qa=88&ba=SF%20457>

¹⁶ <https://www.legis.iowa.gov/legislation/BillBook?qa=88&ba=SF%20457>

¹⁷ <https://www.legis.iowa.gov/legislation/BillBook?qa=88&ba=SF%202275>

¹⁸ <https://www.legis.iowa.gov/legislation/BillBook?qa=88&ba=SF%202275>

¹⁹ <https://www.legis.iowa.gov/legislation/BillBook?qa=88&ba=SF%202275>

²⁰ <https://www.legis.iowa.gov/legislation/BillBook?qa=88&ba=SF%202275>

²¹ See Iowa Code §321.12 (<https://www.legis.iowa.gov/docs/code/321.12.pdf>)

²² <https://www.legis.iowa.gov/legislation/BillBook?qa=88&ba=SF%202275>

The Updated 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 2020. 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, 2020, please contact Cindy Glick at Cindy.Glick@ag.iowa.gov and request an order form to keep your copy up to date and working.

Opinions of the United States Supreme Court

Kansas v. Glover, 589 U.S. ____ (04/06/2020). **Reasonable suspicion to stop a vehicle when the registered owner's license is revoked.** A deputy on routine patrol performed a license plate check on the defendant's vehicle and discovered that the registered owner's license was revoked. The deputy did not try to identify who was driving the vehicle and assumed the driver was the registered owner. The deputy then initiated a traffic stop without observing any other traffic violations. Held, there is reasonable suspicion to stop a vehicle when the registered owner's license is revoked under the 4th Amendment. *See also* State v. Haas, 930 N.W.2d 699 (Iowa 2019). The Court noted that "the deputy's commonsense inference that the owner of a vehicle was likely the vehicle's driver provided more than reasonable suspicion to initiate the stop. That inference is not made unreasonable merely because a vehicle's driver is not always its registered owner or because Glover had a revoked license." The Court kept its holding narrow because additional facts (e.g., the registered owner was a man and the deputy observed the driver was female) *may* dispel the reasonable suspicion for the stop.

Opinions of the Iowa Supreme Court

Polk County Doe v. State, ____ N.W.2d ____ (Iowa 05/22/2020) No. 19-1402. **Expungement.** Under Iowa Code section 901C.2(1)(a)(2) the defendant is only required to show that they have "satisfied all financial obligations" that were ordered in the criminal case that they have sought expungement for (i.e., defendants do not have to satisfy financial obligations in unrelated cases). *See also* Doe v. State, UNPUBLISHED No. 19-1413 (Iowa 05/22/2020).

Polk County State v. Montreal Shorter, ____ N.W.2d ____ (Iowa 06/12/2020) No. 18-1142. Iowa Code § 724.4C, carrying a dangerous weapon while intoxicated, "prohibits only carrying, which requires more than mere possession[.]"

Polk County State v. Montreal Shorter, ____ N.W.2d ____ (Iowa 06/12/2020) No. 18-1142. **Faulty jury instructions that misstated the law and allowed the defendant to be convicted of constructively possessing or carrying a dangerous weapon, "was material and likely misled the jury."** The defendant was convicted under Iowa Code section 724.4C of carrying or possessing a dangerous weapon while intoxicated. During closing arguments, the State referred to defendant constructively possessing the firearm and the jury was instructed that the defendant could be convicted of carrying or possessing a dangerous

weapon while intoxicated. The defendant appealed because § 724.4C only prohibits carrying, not possessing. Held, “[b]ecause we cannot be certain that the jury convicted Shorter based on carrying the firearm, banned by Iowa Code section 724.4C, and not based on constructively possessing it, not banned, we find the misstatement of the law in the instructions was material and likely misled the jury.” The conviction was reversed and remanded for retrial.

Polk County [State v. Montreal Shorter](#), ___ N.W.2d ___ (Iowa 06/12/2020) No. 18-1142. **Cannot instruct a jury that the defendant’s out-of-court statements are “treated ‘just as made at trial’”**. Jury instruction regarding the defendant’s prior statements: “If you find any of the statements were made, then you may consider them as part of the evidence, *just as if they had been made at this trial*[.]” misstates the law. Model jury instruction (200.44) was updated in 2019 to remove the language “*just as if they had been made at this trial*” and “[o]pposing party out-of-court statements should not be treated ‘*just as if made at trial*[.]’”

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/>).

(Recent Unpublished Decisions Arranged by County)

Black Hawk County [State v. Christopher Lee Roby Jr.](#), No. 19-0551 (Iowa Court of Appeals, filed April 1, 2020). **Pleading guilty to speeding and then on a later date to eluding does not violate double jeopardy.** In October 2017, the defendant was charged with multiple charges, including speeding and eluding, as a seventeen-year-old. In November 2017, the defendant pled guilty to speeding and the State did not prosecute the eluding charge. In May 2018, the State charged the defendant with eluding from the October 2017 incident. On March 28, 2019, the defendant pled guilty to multiple charges, including eluding. The defendant later appealed arguing his counsel was ineffective for failing to argue the eluding charge violated double jeopardy. Held, counsel was not ineffective for failing to argue a conviction for eluding violated double jeopardy because “speeding is not a lesser-included offense of eluding.”

Black Hawk County [State v. Tashieyana Loretta Oneal](#), No. 19-1193 (Iowa Court of Appeals, filed April 15, 2020). No abuse in discretion when the court followed the parties’ plea agreement in sentencing the defendant after she pled guilty to DWB (driving while barred) and eluding.

Black Hawk County [State v. Tavion Robinson](#), No. 19-1300 (Iowa Court of Appeals, filed April 15, 2020). **There was “sufficient evidence to corroborate the accomplice’s testimony[.]”** The defendant was convicted of multiple burglaries for breaking into a motor vehicle and a home. During the trial, and accomplice testified he and the defendant were looking for unlocked cars to steal from, they found an open garage with cars, and later the defendant used a credit card the accomplice believed the defendant did not have permission to use. The accomplice’s testimony was corroborated by: the defendant’s possession of the stolen credit cards; the defendant’s use of the cards, including photos from the store; evidence confirming the items on the receipts that were purchased were the same from the stolen credit card’s statement; and the defendant’s . Held, there was “sufficient evidence to corroborate the accomplice’s testimony[.]” burglary convictions affirmed.

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Black Hawk County [State v. Tavion Robinson](#), No. 19-1300 (Iowa Court of Appeals, filed April 15, 2020). **Sentencing boiler plate language sufficiently “supplemented with an individualized statement of reasons.”** The defendant was convicted and sentenced for multiple burglaries for breaking into a motor vehicle and a home. Held, the court’s boiler plate language in the written sentence was sufficiently “supplemented with an individualized statement of reasons.”

Black Hawk County [State v. Willie Guyton, Jr.](#), No. 19-0913 (Iowa Court of Appeals, filed May 13, 2020). No abuse in discretion when the Court’s sentence followed the plea agreement.

Black Hawk County [State v. Willie Guyton, Jr.](#), No. 19-0913 (Iowa Court of Appeals, filed May 13, 2020). No abuse in discretion in denying the defendant’s motion in arrest of judgment when the Court’s sentence followed the plea agreement and that was the basis for the motion.

Black Hawk County [State v. Oscar Villafana-Ray](#), No. 19-1379 (Iowa Court of Appeals, filed June 17, 2020). **Law enforcement can detain a driver to resolve any ambiguity in the driver’s identity; traffic stop lawfully extended.** After running the license plates of a parked vehicle, the officer discovered the registered owner’s license was suspended. The officer then obtained a copy of the owner’s picture off his license. The officer observed the defendant, who that looked like the owner, get in the vehicle and drive away. The defendant then stopped and exited the vehicle before the officer could perform a traffic stop. The officer was able to stop the defendant outside of the vehicle. The defendant denied being the registered owner and stated it was his brother. The defendant was unable to provide any identification, so the officer detained the defendant to determine his identity. The officer ultimately determined that the defendant was not the registered owner, but defendant’s license was also suspended. The defendant appealed and argued that under [State v. Coleman](#), 890 N.W.2d 284 (Iowa 2017), the traffic stop should have ended when he denied being the registered owner. Held, law enforcement can detain a driver to resolve any ambiguity in the driver’s identity. See [State v. Kilpatrick](#), No. 17-0817, 2018 WL 3060259 (Iowa Ct. App. June 20, 2018).

Black Hawk County [State v. Oscar Villafana-Ray](#), No. 19-1379 (Iowa Court of Appeals, filed June 17, 2020). **Reasonable suspicion to believe the driver did not have a license when the driver was unable to produce any identification; traffic stop lawfully extended.** After running the license plates of a parked vehicle, the officer discovered the registered owner’s license was suspended. The officer then obtained a copy of the owner’s picture off his license. The officer observed the defendant, who that looked like the owner, get in the vehicle and drive away. The then defendant stopped and exited the vehicle before the officer could perform a traffic stop. The officer was able to stop the defendant outside of the vehicle. The defendant denied being the registered owner and stated it was his brother. The defendant was unable to provide any identification, so the officer detained the defendant to determine his identity. The officer ultimately determined that the defendant was not the registered owner, but defendant’s license was also suspended. The defendant appealed and argued that under [State v. Coleman](#), 890 N.W.2d 284 (Iowa 2017), the traffic stop should have ended when he denied being the registered owner. Held, when the driver is unable to produce any identification, the officer had reasonable suspicion to believe the driver did not have a license.

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Black Hawk County State v. Oscar Villafana-Ray, No. 19-1379 (Iowa Court of Appeals, filed June 17, 2020). **Probable cause to believe the driver did not have a license in his possession in violation of Iowa Code § 321.174(3) when the driver was unable to produce any identification; traffic stop lawfully extended.** After running the license plates of a parked vehicle, the officer discovered the registered owner's license was suspended. The officer then obtained a copy of the owner's picture off his license. The officer observed the defendant, who that looked like the owner, get in the vehicle and drive away. The defendant stopped and exited the vehicle before the officer could perform a traffic stop. The officer was able to stop the defendant outside of the vehicle. The defendant denied being the registered owner and stated it was his brother. The defendant was unable to provide any identification, so the officer detained the defendant to determine his identity. The officer ultimately determined that the defendant was not the registered owner, but defendant's license was also suspended. The defendant appealed and argued that under State v. Coleman, 890 N.W.2d 284 (Iowa 2017), the traffic stop should have ended when he denied being the registered owner. Held, when the driver is unable to produce any identification, the officer had probable cause to believe the driver did not have his license in his possession.

Cerro Gordo County State v. Thomas C. Casper, No. 19-0849 (Iowa Court of Appeals, filed May 13, 2020). **Harmless error.** Based on the other substantial evidence of intoxication (HGN, odor, blood shot and watery eyes, unsteadiness, slurred speech, and admission of drinking), even if there was a violation of 321J.11, the admission of the DataMaster results was harmless error. NOTE: the Court did not decide whether there was a violation of 321J.11 when the defendant asked for another test on the DataMaster and the trooper told him "Sure", but then the defendant declined the opportunity and the trooper never advised him about 321J.11. *See also* State v. Markley, 884 N.W.2d 218 (Iowa Ct. App. 2016) (under Iowa Code section 804.20 there is no "duty" to tell someone of the persons who can be called or the purposes of such calls *unless* a call is denied; "the officer here did not misstate the law and did not undermine, but honored, (the defendant's) right to make phone calls").

Dallas County State v. Jason Dale Charlet, No. 19-1086 (Iowa Court of Appeals, filed June 3, 2020). **Defendant's "guilty plea was knowing, voluntary, and intelligent.** The court explained the elements of eluding and OWI 3rd and had the defendant provided a factual basis.

Dallas County State v. Jason Dale Charlet, No. 19-1086 (Iowa Court of Appeals, filed June 3, 2020). Defendant and his attorney adequately discussed any defenses and the consequences of pleading guilty to eluding and OWI 3rd.

Dubuque County State v. Joshua Leon Begle, No. 19-1119 (Iowa Court of Appeals, filed June 3, 2020). No error during sentencing when the court explicitly stated it would not consider how the sentence for operating without owner's consent would affect the defendant's parole eligibility.

Dubuque County State v. Joshua Leon Begle, No. 19-1119 (Iowa Court of Appeals, filed June 3, 2020). No abuse in discretion for the court to consider a prior conviction that the defendant was currently on parole for when he acknowledged the parole during his sentencing for operating without owner's consent.

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Dubuque County [State v. Joshua Leon Begle](#), No. 19-1119 (Iowa Court of Appeals, filed June 3, 2020). The court's oral statement of the reasons for the sentence and the sentencing order were sufficient to justify the consecutive sentence.

Lee (North) County [State v. Noelle Diane Cosby](#), No. 19-1056 (Iowa Court of Appeals, filed June 3, 2020). **No abuse in discretion in sentencing the defendant to prison as a general and specific deterrence.** The defendant pled guilty to involuntary manslaughter and OWI 2nd and requested a deferred judgment. The State joined the PSI's recommendation of probation. The court did not follow the recommendations and instead sentenced her to prison. The defendant appealed her sentence. Held, no abuse in discretion in sentencing the defendant to prison as a general and specific deterrence. *See* [State v. Villa](#), 2012 WL 1247115 (Iowa Ct. App. Apr. 11, 2012).

Muscatine County [State v. Rodney Eugene Wadden](#), No. 19-0321 (Iowa Court of Appeals, filed April 15, 2020). **No reasonable suspicion to stop.** An officer assisting on another traffic stop saw the defendant's "vehicle drift onto the fog line[.]" The officer then pursued the defendant "at a high rate of speed" and observed the defendant: brake multiple times, "drift onto or over the fog line[.]" turn on his left turn signal, brake, briefly turn on his left turn signal, let the officer's vehicle pass, and then turn left. After these observations, the officer initiated a traffic stop. The defendant appealed arguing there was not reasonable suspicion to support a traffic stop. Held, no reasonable suspicion to stop; "[w]e cannot say the preponderance of the evidence shows [the defendant] braking, briefly activating his turn signal and then turning it off to allow the approaching vehicle to pass, and then making a lane change and turn constituted suspicious behavior." The Court noted: "The two incidents in this case, being separated by considerable time and distance, coupled with the second incident occurring in conjunction with the rapidly-approaching vehicle, are distinguishable from the driving irregularities occurring in other cases where reasonable suspicion for a traffic stop has been found."

Plymouth County [State v. Bryan Jeffrey Stone](#), No. 19-1429 (Iowa Court of Appeals, filed June 3, 2020). **The defendant was not seized while he was in his own vehicle and the deputy was in his own vehicle.** Based on the totality of the circumstances (the defendant was in a parking lot, the deputy pulled up beside him, the deputy did not block the him in, the deputy did not use lights or siren, and the deputy talked to him through open windows) the defendant was not seized by the deputy. The deputy "did not make a show of authority, use intimidation, or physical force." *See* [State v. Reinders](#), 690 N.W.2d 78 (Iowa 2004); [State v. Brown](#), 2015 WL 5577971 (Iowa Ct. App. Sept. 23, 2015).

Plymouth County [State v. Bryan Jeffrey Stone](#), No. 19-1429 (Iowa Court of Appeals, filed June 3, 2020). **The defendant was not seized when the deputy parked his car, approached the defendant's parked car, and continued their conversation.** After a brief conversation from their respective vehicles early in the morning, the deputy exited his vehicle and walked over to the parked vehicle the defendant was in to ask more questions. The deputy did not display his service weapon, did not block the defendant in, and was the only officer in the area. *See* [United States v. Dockter](#), 58 F.3d 1284 (8th Cir. 1995). Once at the defendant's vehicle, the deputy immediately noticed potential burglary tools (a bent screwdriver with a sharpened tip and a possible pry bar (tire iron)) inside. The deputy then ordered the defendant out of the vehicle. Held, the

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defendant was not seized prior to being ordered out of the vehicle. “Police questioning alone does not constitute a seizure.” Florida v. Bostick, 501 U.S. 429 (1991).

Plymouth County State v. Bryan Jeffrey Stone, No. 19-1429 (Iowa Court of Appeals, filed June 3, 2020). **There was reasonable suspicion to seize/detain the defendant based on the totality of the circumstances:** there had been burglaries in the area before; it was early in the morning; the defendant was parked outside a closed business; the defendant was “*extremely*” nervous during his conversation with the deputy; the deputy observed potential burglary tools in the vehicle with the defendant; and the defendant’s reason for being in the area was suspect.

Plymouth County State v. Bryan Jeffrey Stone, No. 19-1429 (Iowa Court of Appeals, filed June 3, 2020). **The warrantless search of the defendant’s vehicle in a business parking lot was justified under the automobile exception.** After talking with the defendant, observing potential burglary tools, being notified about a nearby break-in, and witnesses placing the defendant at the scene of the break-in, officers searched the defendant’s automobile that was parked in a public place of a business’s parking lot. Held, the warrantless search was justified under the automobile exception; “residential exception to the automobile exception does not preclude searching a vehicle in a ‘public place’ like the parking lot of a business.” The court noted that “police cannot rely on the automobile exception if the vehicle is parked in a private residential parking space or driveway[;]” however, the automobile exception does apply to warrantless searches that were not done at the roadside (e.g., police station, lawfully parked vehicle).

Plymouth County State v. Bryan Jeffrey Stone, No. 19-1429 (Iowa Court of Appeals, filed June 3, 2020). **Probable cause to search the vehicle.** Witnesses description of the defendant’s vehicle and plate number, along with the deputy’s observation of potential burglary tools in the defendant’s vehicle was sufficient to establish probable cause to search the vehicle.

Polk County In the Interest of T.L., No. 19-0770 (Iowa Court of Appeals, filed April 15, 2020). **A victim may only recover “the lost market value” of the vehicle as restitution.** After totaling the victim’s vehicle, a juvenile pled guilty to eluding and operating without owner’s consent. The victim still owed \$8900 for the vehicle, but due to high mileage, the vehicle was likely worth less. The insurance company paid \$7500 for the value of the vehicle and the victim was responsible for the remaining \$1400 of the loan. The juvenile was ordered to pay restitution, including: \$500 for the insurance deductible and \$1400 in debt still owed by the victim for the vehicle. Held, there was not substantial evidence to support the \$1400 restitution amount; a victim may only recover “the lost market value” of the vehicle as restitution. “There was no direct evidence as to the actual market value of the vehicle.” The victim’s loan and the high mileage on the vehicle pre-existed the juvenile’s actions (totaling the vehicle). Furthermore, the loan is not the current value of the vehicle; the loan includes a payment schedule and interest. The Court found the \$500 for the insurance deductible was appropriate; \$1400 of the restitution amount was reversed.

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Polk County [In the Interest of T.L.](#), No. 19-0770 (Iowa Court of Appeals, filed April 15, 2020). **No reasonable basis for the valuation of restitution for using a relative’s vehicle for three weeks.** After totaling the victim’s vehicle, a juvenile pled guilty to eluding and operating without owner’s consent. The victim used a relative’s vehicle for three weeks before obtaining a new vehicle. The victim did not pay the relative for the use of the vehicle. The court ordered the juvenile to pay \$600 in restitution for the three weeks. Held, there was no reasonable basis for the valuation of restitution for using a relative’s vehicle for three weeks; \$600 amount of restitution reversed.

Polk County [State v. Adam Benjamin Burkhead](#), No. 18-2026 (Iowa Court of Appeals, filed April 15, 2020). “[R]easonable efforts to convey the implied consent warnings[.]” Although the defendant appeared confused, gave incoherent responses, and exhibited symptoms of having medical issues throughout the OWI investigation, including implied consent, the officer made “reasonable efforts to convey the implied consent warnings to [the defendant] and to accommodate his explicit consent to submit to testing.”

Polk County [State v. Thomas Russell Domenig](#), No. 18-2236 (Iowa Court of Appeals, filed April 15, 2020). **Automobile exception to the warrant requirement justified the warrantless search of the motor vehicle.** The defendant’s motor vehicle was searched after the officer observed: a glass pipe that is typically used to smoke methamphetamines; the defendant was by himself at night in an area known for drugs; and the defendant’s explanation for being in the location was suspicious. Held, the automobile exception to the warrant requirement justified the warrantless search of the motor vehicle. “Under these facts, it was reasonable for the officer to conclude that criminal activity was afoot, providing probable cause to search [the defendant]’s vehicle.” The mobility of the automobile is all that was needed to provide the exigency, even if the defendant had already been taken into custody.

Polk County [State v. Christina Bennett](#), No. 19-0226 (Iowa Court of Appeals, filed April 29, 2020). **Defendant’s counsel was ineffective for failing to object to the States breach of the plea agreement.** Pursuant to a plea agreement that the State recommend probation, the defendant pled guilty to multiple charges, including operating without owner’s consent. At sentencing the State recommended the defendant be sentenced to prison based on her criminal history. Held, defendant’s counsel was ineffective for failing to object to the States breach of the plea agreement. Conviction upheld, but the case was remanded for resentencing with a different judge.

Polk County [State v. Michael Sandblom](#), No. 19-0518 (Iowa Court of Appeals, filed April 29, 2020). **Sufficient evidence the defendant possessed the heroin.** After stopping the vehicle the defendant was driving, officers found heroin in plain view, within reach of the driver, in the front console. Held, there was sufficient evidence (incriminating statements and actions, the passenger hid other drug evidence, heroin in easy reach of the defendant) the defendant possessed the heroin.

Polk County [State v. Frederic Douglass Ware III](#), No. 19-0977 (Iowa Court of Appeals, filed April 29, 2020). **Automatic license revocation for eluding convictions is a collateral consequence.** The defendant pled guilty to eluding or attempting to elude under Iowa Code section 321.279 and his license was revoked pursuant to Iowa Code section 321.209(7). The defendant appealed arguing his plea was not valid because

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he was never informed his license would be revoked. Held, because the license revocation for an eluding conviction is designed to protect public safety, it is a collateral consequence and the court does not have to inform the defendant regarding all collateral or indirect consequences of pleading guilty. *See State v. Carney*, 584 N.W.2d 907 (Iowa 1998) (license revocation for OWI convictions are collateral consequences); *compare to State v. Fisher*, 877 N.W.2d 676, 684 (Iowa 2016) (license revocation for drug-possession convictions is punitive and a direct consequence, and the defendant must be advised of the revocation).

Polk County [David Michael Johnston v. Iowa Department of Transportation](#), No. 19-0048 (Iowa Court of Appeals, filed May 13, 2020). **A deferred judgment for eluding will be treated as a “conviction” for purposes of revoking a license under Iowa Code section 321.555(1) 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).

Polk County [David Michael Johnston v. Iowa Department of Transportation](#), No. 19-0048 (Iowa Court of Appeals, filed May 13, 2020). The Iowa DOT (Department of Transportation) uses date of the offenses, not convictions, when determining whether a person is a habitual offender under Iowa Code section 321.555(1). *See State v. Phelps*, 417 N.W.2d 460 (Iowa 1988).

Polk County [State v. Jasmine R. Warren](#), No. 19-0267 (Iowa Court of Appeals, filed May 13, 2020). Iowa Code section 814.28, which allows for general verdicts as long as at least one theory is supported by substantial evidence, even if another theory is not supported, only applies prospectively, in this case, as of July 1, 2019. *See State v. Macke*, 933 N.W.2d 226 (Iowa 2019). The Court noted the statute lacked language that clearly indicated it was to be applied retroactively.

Polk County [State v. Jasmine R. Warren](#), No. 19-0267 (Iowa Court of Appeals, filed May 13, 2020). **Counsel not ineffective; officer had authority to request driver’s license, registration, and proof of insurance from a driver that illegal parked and was in the vicinity of the vehicle.** An officer observed the defendant illegally park a vehicle in violation of Iowa Code section 321.358. The officer made contact with the defendant near the vehicle. After discussing the parking violation, the officer requested the defendant’s license, registration, and insurance. The defendant provided only an ID because her license was suspended. The officer then observed an odor of marijuana coming from the vehicle through the open car door and began an OWI investigation. Held, the officer had authority to request driver’s license, registration, and proof of insurance from a driver that illegal parked and was in the vicinity of the vehicle. The Court did note that not “every police encounter flowing from a parking violation will meet the constitutional requirement of reasonableness.”

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Polk County [State v. Sean Curtis Sinclair](#), No. 19-0592 (Iowa Court of Appeals, filed May 13, 2020). **The oral pronouncement of sentence controls when it differs from the written sentencing order.** During a sentencing hearing for operating without owners consent and theft 2nd the Court also conducted a probation revocation for other charges. The Court stated during the hearings that the defendant committed new crimes (possession of drug paraphernalia and malicious prosecution) while on probation. On the written sentencing order for operating without owners consent, the Court checked the box that the offense was committed while on probation, although the defendant was not yet on probation when he committed this crime. Held, it was clear from the oral pronouncement at sentencing that the court was not referring to the crimes of operating without owners consent or theft 2nd when stating the defendant committed new crimes were committed while on probation.

Polk County [State v. Sean Curtis Sinclair](#), No. 19-0592 (Iowa Court of Appeals, filed May 13, 2020). No abuse in discretion in sentencing the defendant to prison instead of probation.

Polk County [State v. Khamfay Lovan](#), No. 17-0729 (Iowa Court of Appeals, filed June 3, 2020). **Pretexual stops are lawful if there is probable cause for the stop.** Speeding (5 mph over the speed limit), passenger not wearing a seatbelt, and stopping over a crosswalk provided probable cause to initiate a traffic stop regardless of the subjective motivations of law enforcement.

Polk County [State v. Charles L. Cain Jr.](#), No. 19-0699 (Iowa Court of Appeals, filed June 3, 2020). **Sufficient evidence of constructive possession of methamphetamine in the front seat:** the defendant was sitting on methamphetamine; a syringe with methamphetamine was on his seat; paraphernalia was in plain view all over the vehicle; unpackaged methamphetamine was everywhere in the vehicle; methamphetamine was under his seat near one cell phone that was his; drug paraphernalia was thrown out of his window after law enforcement initiated a traffic stop; and evidence of trying to destroy the methamphetamine was present. PLEASE NOTE this unpublished decision replaced a previous unpublished decision that was issued on May 13, 2020 (“We filed our opinion in this appeal on May 13, 2020, but subsequently granted the plaintiff-appellant State of Iowa’s petition for rehearing. Our May 13, 2020 decision is hereby vacated, and this opinion replaces it.”).

Polk County [State v. Randy Paul Hofer](#), No. 19-0823 (Iowa Court of Appeals, filed June 17, 2020). **The term “owner” in operating a motor vehicle without owner’s consent includes both, title holders and “persons with dominion and control.”** The defendant took a cement truck being stored at Housby Mack and drove around causing damage to property, a vehicle, and another driver. The title holder of the cement truck, Ready Mix USA, “had transferred physical possession of the truck to Housby Mack.” No one from Ready Mix USA testified that the defendant did not have permission to operate the cement truck. A jury convicted the defendant of multiple charges, including operating a vehicle without owner’s consent, reckless driving causing serious injury, and leaving the scene of an accident. The defendant appealed and argued the State failed to show he did not have consent from Ready Mix USA to operate the cement truck. Held, there was substantial evidence the defendant did not have consent to operate the cement truck; the term owner in operating a motor vehicle without owner’s consent includes both, title holders and “persons with dominion and control.”

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Polk County [State v. Randy Paul Hofer](#), No. 19-0823 (Iowa Court of Appeals, filed June 17, 2020). **Sufficient evidence the defendant had the specific intent “to cause damage to property.”** The defendant took a cement truck without permission and drove around causing damage to property, a vehicle, and another driver. The defendant: drove a significant distance; the truck was large; went through two red lights in high traffic areas; drove off the roadway and did not appear to use the brakes; and was excited after driving into a house. Conviction for criminal mischief first affirmed.

Polk County [State v. Randy Paul Hofer](#), No. 19-0823 (Iowa Court of Appeals, filed June 17, 2020). A jury convicted the defendant of multiple charges, including operating a vehicle without owner’s consent. Held, no error in the denial of the defendant’s requested jury instruction under Iowa Code § 321.493 regarding the civil liability of a vehicle’s owner that consents to the driver operating the vehicle that results in damages.

Polk County [State v. Randy Paul Hofer](#), No. 19-0823 (Iowa Court of Appeals, filed June 17, 2020). **A contractor’s invoice was sufficient to justify the claim of restitution to the City.** A jury convicted the defendant of multiple charges, including operating a vehicle without owner’s consent, reckless driving causing serious injury, and leaving the scene of an accident. After a restitution hearing, the court ordered the defendant to pay the City of Des Moines \$8,702.68 for damage to a city owned fence based off an invoice from the contractor. Held, a contractor’s invoice was sufficient to justify the claim of restitution to the City.

Polk County [State v. Dustin D. Gilliam](#), No. 19-0940 (Iowa Court of Appeals, filed June 17, 2020). No ineffective assistance of counsel for failing to object to a guilty plea due to a lack of a factual basis regarding venue; “[v]enue is not an essential element of a crime.” See State v. Allen, 293 N.W.2d 16, 20 (Iowa 1980).

Scott County [State v. Jamison Albert Fisher](#), No. 19-0337 (Iowa Court of Appeals, filed April 1, 2020). **Sufficient evidence to prove the defendant was guilty of theft of the truck and trailer under “theft by taking” alternative.** After a truck and trailer was reported stolen, law enforcement found the defendant and a female with the truck. Law enforcement was unable to locate the trailer. Later, the defendant sent the victim a message from the female’s Facebook account (defendant stated the message was from him) detailing where the trailer was located. At trial, the female testified that on the day the truck was reported stolen, the defendant picked her up in it. Held, there was sufficient evidence to prove the defendant was guilty of theft of the truck and trailer under “theft by taking” alternative.

Scott County [State v. Devario D. Talley](#), No. 18-2003 (Iowa Court of Appeals, filed May 13, 2020). **Insufficient evidence to support the theory of aiding and abetting.** A jury returned a general verdict of guilty (did not specify whether the defendant was the principal or aided and abetted) for eluding and three counts of child endangerment. Held, there was insufficient evidence to support the theory of aiding and abetting; case remanded for retrial.

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Scott County [State v. Larry Lavell Wiggins](#), No. 19-0573 (Iowa Court of Appeals, filed May 13, 2020). **Sufficient evidence of constructive possession of the controlled substances:** the defendant acted suspiciously (jumped out of the moving vehicle, ran from the police); drugs were found along the path he ran; drugs were in plain view inside the vehicle; drugs and drug paraphernalia were found underneath the defendant's seat. *See* [State v. Webb](#), 648 N.W.2d 72, 79 (Iowa 2002) (listing four non-exclusive factors in determining constructive possession when there is more than one person in the area); [State v. Dewitt](#), 811 N.W.2d 460, 475 (Iowa 2012) (listing five additional factors when the area is a motor vehicle).

Scott County [State v. Quintin Demilo Clemons](#), No. 19-0642 (Iowa Court of Appeals, filed May 13, 2020). **Sufficient evidence of constructive possession of methamphetamine:** the marijuana was within the defendant's reach; plastic baggies were in the door next to the defendant; due to how the defendant's seat was reclined, he had better access than the driver to the scale; the defendant admitted ownership of the scale; and the defendant had multiple bundles of cash consistent with drug dealing. *See* [State v. Thomas](#), 847 N.W.2d 438 (Iowa 2014) (listing four non-exclusive factors in determining constructive possession when there are 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).

Story County [State v. Matthew Douglas Harbour](#), No. 18-1965 (Iowa Court of Appeals, filed April 1, 2020). **The defendant's failure to file a motion in arrest of judgment waived his right to appeal the denial of "his motion to sever the theft charge."** When the defendant was caught shoplifting, he ran from the store and was later pulled over by law enforcement. After an investigation, the defendant was charged with OWI 3rd with the habitual offender enhancement, DWB (driving while barred), DWR (driving while revoked), and theft 4th. The defendant filed a motion to sever the charge of theft 4th from the driving offenses, which the district court denied. The defendant ultimately pled guilty to OWI 3rd, DWB, and DWR and the state dismissed the habitual offender enhancement and theft charge. The defendant did not file a motion in arrest of judgment to challenge his guilty plea prior to sentencing. After sentencing, the defendant appealed arguing the court abused its discretion in denying his motion to sever the theft charge. Held, the defendant's failure to file a motion in arrest of judgment waived his right to appeal the denial of "his motion to sever the theft charge." The Court noted: "[the defendant] does not argue the severance issue was intrinsic to his guilty plea or that counsel was ineffective in raising the issue."

Story County [State v. Karl Jermaine Flagg](#), No. 19-1127 (Iowa Court of Appeals, filed May 13, 2020). **No due process violation when the dash cam video was destroyed pursuant to department policy.** An officer initiated a traffic stop after the defendant failed to stop behind the marked stop line. During the officer's interaction with the defendant, the officer discovered controlled substances. The defendant agreed to work with the Task Force, so no charges were initially filed. The officer sent the controlled substances to the lab for testing and downloaded the dash camera video into the agencies system. The system purges videos automatically after ninety days. Over ninety days after the traffic stop, the officer filed charges for possession of drugs against the defendant because he failed to cooperate with the Task Force. Held, there was no due process violation for the dash camera video being destroyed pursuant to the department's policy. *See* [State v. Dulaney](#), 493 N.W.2d 787 (Iowa 1992).

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Warren County [State v. Melissa Kay West](#), No. 19-0937 (Iowa Court of Appeals, filed May 13, 2020). No abuse in discretion in revoking the defendant's deferred judgment for OWI and sentencing her to jail.

Warren County [State v. Vadim Igorevich Shultsev](#), No. 19-0569 (Iowa Court of Appeals, filed June 3, 2020). The court listed sufficient reasons and did not abuse its discretion in sentencing the defendant to jail; however, the case was remanded to resolve any discrepancies in the defendant's financial information to better determine his reasonable ability to pay.

Woodbury County [State v. Shawnette Carmale Courts](#), No. 19-0074 (Iowa Court of Appeals, filed April 1, 2020). **No abuse in discretion for denying the defendant's untimely motion to suppress.** The defendant's first attorney filed a motion to extend deadlines and a motion to suppress approximately 75 days after the deadline to file a motion to suppress. The district court denied the defendant's motions and did not find good cause for her untimely motion to suppress. The defendant's first attorney was later removed from the case and a second attorney was appointed. The second attorney failed to file a new motion to extend deadlines until four months after this attorney's appointment. The court denied this new request and she was subsequently convicted of OWI 2nd offense. Held, there was no abuse in discretion for denying the defendant's untimely motion to suppress. "Neither [the defendant's] initial failure to take an interest in her own defense nor defense counsel's failure to investigate the case constitute 'good cause' for missing the filing deadline by approximately seventy-five days."

Woodbury County [State v. Christopher Anthony Holton](#), No. 19-0324 (Iowa Court of Appeals, filed June 3, 2020). Because the court rejected the plea agreement that was conditioned on the court's acceptance, the court should have advised and given the defendant the opportunity to withdraw his plea of guilty. Iowa Rules of Criminal Procedure 2.10(4). The conviction was reversed and remanded for a new plea hearing.

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