



# LAW UPDATE HIGHWAY SAFETY



September 2019 Office of the Prosecuting Attorneys Training Coordinator Aug/Sept, 2019

## County Spotlight – Appanoose County

The fourth county spotlight is on Appanoose County. Centerville is the biggest town in Appanoose County and sits off the intersection of Highways 2 and 5. Appanoose County is also home to the second largest lake in Iowa, Lake Rathbun.<sup>1</sup> According to the 2010 census, Appanoose County has a population of 12,887.<sup>2</sup> The current Appanoose County Courthouse was dedicated in 1903.<sup>3</sup>

Susan Scieszinski is the Appanoose County Attorney. Ms. Scieszinski is a full-time county attorney and there is one part-time assistant county attorney, Alan Wilson, in the office. Mr. Wilson is and has been the Wayne County Attorney for over thirty years. Ms. Scieszinski has been the Appanoose County Attorney for approximately five years. Prior to becoming the Appanoose County Attorney, Ms. Scieszinski was with Iowa Legal Aid. Ms. Scieszinski graduated from the Drake University in Journalism and then attended the Drake Law School.

In 2018, there were 694 traffic convictions<sup>4</sup> and 38 OWI convictions in Appanoose County according to Division of Criminal & Juvenile Justice Planning<sup>5</sup>.

<sup>1</sup> [https://en.wikipedia.org/wiki/Rathbun\\_Lake](https://en.wikipedia.org/wiki/Rathbun_Lake)

<sup>2</sup> <https://www.census.gov/quickfacts/fact/table/appanoosecountyiowa.IA/PST045218>

<sup>3</sup> [https://en.wikipedia.org/wiki/Appanoose\\_County,\\_Iowa](https://en.wikipedia.org/wiki/Appanoose_County,_Iowa)

<sup>4</sup> “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>

## Failure to Obey the Traffic Light

“More than two people are killed every day on U.S. roads by impatient and reckless drivers blowing through red lights, according to data analysis performed by the AAA Foundation for Traffic Safety.”<sup>6</sup> From 2012 to 2017, there has been a 28% increase in the number of people killed by crashes where the driver ran a red light.<sup>7</sup>

Iowa Code section 321.257 (Official traffic-control signal)<sup>8</sup> governs traffic lights in Iowa. Under §321.257(2)(a), all traffic “shall stop” when there is a solid **red** light on the traffic control device. Under 805.8A(7)(a), a violation of §321.257(2)(a) results in a total fine (including costs)<sup>9</sup> of \$195.00.<sup>10</sup>

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<sup>5</sup> <https://disposedcharges.iowa.gov/>

<sup>6</sup> <https://newsroom.aaa.com/2019/08/red-light-running-deaths-hit-10-year-high/>

<sup>7</sup> <https://newsroom.aaa.com/2019/08/red-light-running-deaths-hit-10-year-high/>

<sup>8</sup> <https://www.legis.iowa.gov/docs/code/321.257.pdf>

<sup>9</sup> Note, does not include a possible county enforcement surcharge under §911.4 (<https://www.legis.iowa.gov/docs/code/911.4.pdf>).

<sup>10</sup> <https://www.legis.iowa.gov/docs/code/805.8A.pdf>

## Failure to Obey the Traffic Light cont.

“To prevent **red** light crashes, AAA recommends that drivers:

- **Prepare to Stop:** Lift your foot off the accelerator and “cover the brake” when preparing to enter any intersection by positioning your right foot just above the brake pedal, without touching it.
- **Use Good Judgment:** Monitor “stale” green lights, those that have been green a long time as you’ve approached the intersection. They are more likely to turn yellow as you arrive at the intersection.
- **Tap the Brake:** Tap your brakes a couple of times before fully applying them to slow down. This will catch the attention of drivers who may be inattentive or distracted behind you.
- **Drive Defensively:** Before you enter an intersection after the light has turned green for you, take a second after the light changes and look both ways before proceeding.”<sup>11</sup>

When it comes to **yellow** lights, the myths of: “just speed up” or the light is just a warning that the light is going to change soon but you should keep going, just aren’t true. Under §321.257(2)(b), when the light is **yellow**, a driver “shall no longer proceed into the intersection and **shall stop**” unless the vehicle cannot stop safely.<sup>12</sup>

As drivers, it is important to remember that when the light changes from green, everyone needs to respond accordingly.

## Don’t Be Left Grounded After October 1, 2020

Why is October 1, 2020 important? Starting October 1, 2020, if you are going to be flying commercially in the United States you will need a REAL ID with a gold star in the top right corner. If you do not have a REAL ID and you are flying commercially, you will need identification other than your driver’s license (e.g., passport). You can obtain a REAL ID when you renew or get your driver’s license; however, you have to obtain your REAL ID in person, not through the mail. If you want a REAL ID make sure you review the requirements on the Iowa DOT’s website first.<sup>13</sup> You will need more than your existing driver’s license to obtain a REAL ID and the Iowa DOT has setup a website explaining what document(s) you need to present.<sup>14</sup>

## The Time to Reorder Criminal Law Handbook is **NOW**

The newest editions of the Criminal Law Handbook, the OWI and Traffic Offenses in Iowa manual and the Iowa Charging Manual, are ready for release. 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 or the OWI and Traffic Offenses in Iowa manual and Iowa Charging Manual every year. If you already have a CD containing only the OWI and Traffic Offenses in Iowa manual, this will remain valid for only a few more days, but will not contain the latest updates between March 2019 and the present. Please contact Cindy Glick at [Cindy.Glick@ag.iowa.gov](mailto:Cindy.Glick@ag.iowa.gov) and request an order form to keep your copy up to date and working.

<sup>11</sup> <https://newsroom.aaa.com/2019/08/red-light-running-deaths-hit-10-year-high/>

<sup>12</sup> <https://www.legis.iowa.gov/docs/code/321.257.pdf>

<sup>13</sup> <https://iowadot.gov/mvd/realid>

<sup>14</sup> <https://iowadot.gov/mvd/realid/success.aspx>

## **CORRECTION**

### **A Deferred Judgment on an OWI for a CDL Driver . . . Not So Fast**

In the [January, February, and March 2019 Newsletter](#), the above article (“A Deferred Judgment on an OWI for a CDL Driver . . . Not So Fast”) indicated that defendants that have CDLs are not eligible for deferred judgments on OWIs due to the federal anti-masking statute. However, after conversations with the Iowa DOT, this is not entirely accurate. As stated in the upcoming release of the OWI manual:

A person holding a CDL is not eligible for a deferred judgment to the extent it is either not reported to the Iowa DOT (Department of Transportation) or the deferred judgment would not be considered a conviction. Currently, the Iowa DOT considers a deferred judgment of an OWI a “conviction” under Iowa Code section 321.1(15) and the conviction is recorded on the CDL holder’s Iowa driving record, on the individual’s CDLIS record, and any required disqualification action is taken against the CDL holder.

Although the Iowa DOT’s current practice means a CDL holder may receive a deferred judgment on an OWI if they otherwise qualify, prosecutors need to keep in mind the anti-masking statute when making plea deals. It is also important to note that a deferred prosecution or some form of safety or diversion program would likely be considered masking a conviction.

### **Opinions of the Iowa Supreme Court**

*Tama County State v. Jessica Rae Stanton*, \_\_\_ N.W.2d \_\_\_ (Iowa 09/13/2019) No. 19-0177. The State has jurisdiction to prosecute criminal offenses that occur on tribal lands by non-tribe members if the crime is either victimless or the victim is a non-tribe member.

#### **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)**

*Cerro Gordo County State v. Dale Leroy Cheney Jr.*, No. 18-2100 (Iowa Court of Appeals, filed August 21, 2019). **The trooper’s actions of issuing a citation for OWI and releasing the defendant did not “hinder” the defendant’s ability to obtain an independent test under 321J.11.** After a traffic stop and an OWI investigation, the defendant provided a chemical breath test of .137. The defendant invoked his right for an independent breath test pursuant to 321J.11 and the trooper informed him that he would receive a citation for the OWI charge and then the trooper would transport him to his residence and he would be released so someone could take him for his independent test. The defendant filed a motion to suppress arguing that the trooper’s decision to release him instead of transporting him for an independent testing hindered his ability to obtain an independent test. The defendant’s motion was denied. Held, the trooper actions of issuing a citation for OWI and releasing the defendant did not “hinder” the defendant’s ability to obtain an independent test under 321J.11. “Rather, [the trooper] took steps to facilitate [the defendant’s] desire to undergo an independent test—he released him from detainment and took him home, where he could arrange for his chemical testing.”

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The Court found the defendant “was afforded a reasonable opportunity to pursue an independent test but failed to do so.” The Court further found that when the trooper seized the defendant’s driver’s license, this did not hinder his ability to get an independent test (the Court noted the trooper seized his license and issued a temporary license as required by statute).

**Cerro Gordo County [State v. Dale Leroy Cheney Jr.](#)**, No. 18-2100 (Iowa Court of Appeals, filed August 21, 2019). **No abuse in discretion when the sentencing court noted the defendant’s lack of remorse for his actions.** After the defendant’s motion to suppress was denied, he was found guilty “[f]ollowing a bench trial on the stipulated minutes of evidence[.]” The court sentenced the defendant outside of the parties joint recommended sentence. Held, there was no abuse in discretion when the sentencing court noted the defendant’s lack of remorse for his actions.

**Polk County [Carl Julius Bennett vs. State](#)**, No. 18-1586 (Iowa Court of Appeals, filed September 11, 2019). **The defendant failed to establish by clear and convincing evidence his actual innocence.** The defendant pled guilty to operating a motor vehicle without owner’s consent, criminal mischief in the second degree, and other charges. During the plea colloquy, the defendant admitted to operating a motor vehicle without the owner’s permission and driving the motor vehicle into another vehicle causing damage. The defendant filed for postconviction relief arguing that he was innocent of all charges. Held, the defendant “failed to show by clear and convincing evidence that no factfinder could convict him of the crimes involved[.]”

**Polk County [State v. Komut Mai](#)**, No. 18-1097 (Iowa Court of Appeals, filed September 11, 2019). **The officer did not have a reasonable articulable suspicion to stop a tan Chevy because all the information regarding criminal activity pertained to a silver Audi.** Law enforcement received two calls, one regarding a silver Audi, including the license plate, that it was driving recklessly and that a passenger in the silver Audi had displayed a gun. When the officer got to the area, a female informed the officer that the cars were right behind her. The officer then found and stopped a silver Audi and a tan Chevy. The defendant was a passenger in the tan Chevy. After ordering all the occupants out of both vehicles, law enforcement found marijuana on the defendant. The defendant’s motion to suppress argued the officer did not have reasonable suspicion to stop the tan Chevy was overruled and he appealed. Held, based on the totality of the circumstances, the officer did not have reasonable articulable suspicion to stop the tan Chevy. “At the point the officer stopped the tan Chevy, no facts had been articulated alleging criminal activity by the occupants of the Chevy—the articulated facts pertained only to the silver Audi.” The case was reversed and remanded.

**Scott County [In re W.E.](#)**, No. 18-1717 (Iowa Court of Appeals, filed August 7, 2019). **No evidence that W.E. helped steal the vehicle or even knew that it was stolen.** Officers responded to a call for shots fired that involved a vehicle that had been reported stolen days earlier. After a chase, the car struck a building and stopped. The driver and front seat passenger immediately fled the area, but three of the remaining four passengers, including W.E., were apprehended when they exited the vehicle. W.E. was adjudicated delinquent for theft 2<sup>nd</sup> of the motor vehicle (aiding and abetting) and a weapons charge. Held, there was no evidence that W.E. helped steal the vehicle or even knew that it was stolen. The evidence only showed that W.E. was a passenger in the vehicle. Reversed and remanded.

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**Warren County** [State v. Joseph W. White](#), No. 18-1888 (Iowa Court of Appeals, filed September 11, 2019). **There was probable cause to initiate a traffic stop for an inoperable headlamp.** An Iowa State Trooper initiated a traffic stop after observing the defendant's vehicle traveling towards him with a headlight out. The defendant denied the headlight was out or did not sufficiently illuminate, but was subsequently convicted of OWI 2<sup>nd</sup>. Held, the trooper had probable cause to initiate a traffic stop for an inoperable headlamp. The Court of Appeals stated "of the tow lights on the passenger side, the dimmer side light is illuminated but the central headlamp is not." The Court of Appeals found the trooper's "belief that a headlamp was inoperative was objectively reasonable."

**Wayne County** [State v. Justin Dennis Hullinger Shields](#), No. 18-1948 (Iowa Court of Appeals, filed August 21, 2018). **Implied consent was properly given to a 19-year-old driver of a non-commercial motor vehicle that possessed a CDL (commercial driver's license).** A 19-year-old driver arrested for OWI while driving a non-commercial vehicle; however, he possessed a CDL. The deputy correctly read the implied consent advisory to the defendant, including the sanctions he faced regarding his driver's license and CDL if he refused the test, if he tested .08 or higher, or if he tested over .02 but less than .08 because he was under the age of 21. The defendant then restated the license sanctions to the deputy and asked if it was correct. The deputy confirmed with the defendant his age and that there were no prior OWI or .02 violations. The deputy then advised the defendant regarding the sanctions for a person under 21. The defendant then provided a breath sample with a BAC of .125. The defendant argued that the deputy's follow up statements regarding just the sanctions for a person under 21 did not comply with Iowa Code section 321J.8 because the deputy did not clearly explain that even though he is under 21, if he tested over .08 he would face a 180 day sanction as opposed to a 60 day sanction if he was between .02 and less than .08. Held, the defendant "was provided the statutorily required information to develop 'a basis for evaluation and decision-making in regard to either submitting or not submitting to the test' and the statutory purpose was therefore accomplished." *quoting Voss v. Iowa Dept. of Transportation*, 621 N.W.2d 208, 212 (Iowa 2001). The Court noted that a "complete and accurate information [had] already [been] provided to him in the standard advisory" and nothing indicated that the defendant became confused by the deputy not repeating the standard advisory.

### PREPARED BY THE

### PROSECUTING ATTORNEYS TRAINING COORDINATOR (PATC)

Under a project approved by the Governor's Traffic Safety Bureau (GTSB), in cooperation with the National Highway Traffic Safety Administration (NHTSA). The opinions, findings, and conclusions expressed in this publication are those of the author and not necessarily those of the PATC, GTSB, NHTSA, or the Iowa Department of Justice.

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