



# HIGHWAY SAFETY

LAW UPDATE



June 22, 2021 Office of the Prosecuting Attorneys Training Coordinator January/February/March 2021

## County Spotlight – Buchanan County

The tenth county spotlight is on Buchanan County. Independence is the largest town in Buchanan County, which sits on Highway 20. According to the 2010 census, Buchanan County has a population of 20,958.<sup>1</sup>

Shawn Harden is the Buchanan County Attorney. Mr. Harden is a full-time county attorney and he has two assistant county attorneys, Daniel Clouse and Jenalee Zaputil in the office. Mr. Harden has been the Buchanan County Attorney for approximately 10 years. Mr. Harden graduated from Mount Mercy College (now Mount Mercy University) with a degree in Criminal Justice with minors in Religion, Philosophy, and Sociology and then attended Drake Law School. After graduating from Drake Law School, Mr. Harden moved to Independence, Iowa and worked in private practice from 2003 to 2010. From 2005 to 2009, Mr. Harden also served as a magistrate. In 2010, Mr. Harden was elected Buchanan County Attorney, a position he continues to hold.

Buchanan County has 6 local law enforcement agencies: Fairbank, Independence, and Jesup Police Departments, the Iowa DOT, and Post 10 (based in Fayette County) and the Buchanan County Sheriff’s Office. In 2019, there were 4,979 traffic convictions<sup>2</sup> and 97 OWI convictions in Buchanan County according to Division of Criminal & Juvenile Justice Planning<sup>3</sup>.

<sup>1</sup> <https://www.census.gov/quickfacts/fact/table/buchanancountyiowa,IA/PST045219>

<sup>2</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.”

<sup>3</sup> <https://disposedcharges.iowa.gov/asp/glossary.asp>

<sup>3</sup> <https://disposedcharges.iowa.gov/>

## Traffic Fatality Reduction Task Force

Since 1925, Iowa’s roadway fatalities have not been under 300.<sup>4</sup> “Iowa’s multi-discipline Traffic Fatality Reduction Task Force was created in 2021 to implement educational, enforcement and legislative initiatives to help Iowa achieve the target of less than 300 traffic fatalities annually, with the ultimate goal of zero fatalities.”<sup>5</sup> The task force includes members from the Iowa Governor’s Traffic Safety Bureau, Iowa State Patrol, Iowa Department of Transportation, and more. The Task Force’s campaign has identified for key risk areas to focus on to help reduce roadway fatalities:

1. No speeding
2. Impaired Driving
3. Eliminate distractions
4. Everyone wear seatbelts, including all passengers

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<sup>4</sup> [https://zerofatalitiesiowa.com/taskforce/iowa\\_fatality\\_reduction\\_taskforce\\_SM\\_Playbook.pdf](https://zerofatalitiesiowa.com/taskforce/iowa_fatality_reduction_taskforce_SM_Playbook.pdf)

<sup>5</sup> <https://zerofatalitiesiowa.com/taskforce.aspx>

## Traffic Fatality Reduction Task Force cont.

As part of the Task Force's mission, they are focusing on four statewide special traffic enforcement dates.<sup>6</sup> The first date was on St. Patrick's Day and focused on impaired driving and seatbelts.<sup>7</sup> According to the Iowa Governor's Traffic Safety Bureau, the St. Patrick's Day special enforcement resulted in 54 citations/arrests for OWI, 142 citations for failure to wear a seatbelt, 22 child restraint citations, 806 speeding citations, and 865 other traffic violations.

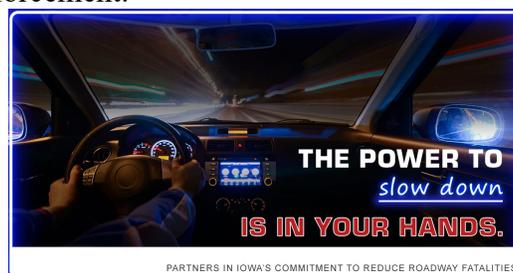
The next date special traffic enforcement date will be June 9 – 12, which will again focus on impaired driving.<sup>8</sup> On September 16, the law enforcement will be focusing on excessive speeding.<sup>9</sup> "According to the National Highway Safety Administration speeding has consistently been a factor in approximately one-third of all roadway fatalities for nearly 20 years."<sup>10</sup> The last special enforcement date will be October 2 -4 with an emphasis on distracted driving.<sup>11</sup>

For more information regarding the Task Force, visit: <https://zerofatalitiesiowa.com/taskforce.aspx>



## Iowa Acts of Interest for Law Enforcement

Unfortunately, the 2020 Iowa Acts of Interest for Law Enforcement was canceled due to the COVID-19 Pandemic. However, this year's Iowa Acts of Interest for Law Enforcement will be held on June 23, 2021 in Coralville, Iowa and June 24, 2021 in Des Moines, Iowa (the location has changed). There is a great program this year, including presentations on New Legislation, Officer Involved Shootings, Interview and Interrogation, and more. Notices have been sent out for participants to register for either date, but if you did not receive notice for the 2021 Iowa Acts of Interest or if your contact information has changed, please contact Cindy Glick ([Cindy.Glick@ag.iowa.gov](mailto:Cindy.Glick@ag.iowa.gov)) to update your contact information and get registered. The PATC Division at the Iowa Attorney General's Office looks forward to seeing you in-person at this year's Iowa Acts of Interest for Law Enforcement.



<sup>6</sup> <https://zerofatalitiesiowa.com/taskforce.aspx>

<sup>7</sup> <https://zerofatalitiesiowa.com/taskforce.aspx>

<sup>8</sup> <https://zerofatalitiesiowa.com/taskforce.aspx>

<sup>9</sup> <https://zerofatalitiesiowa.com/taskforce.aspx>

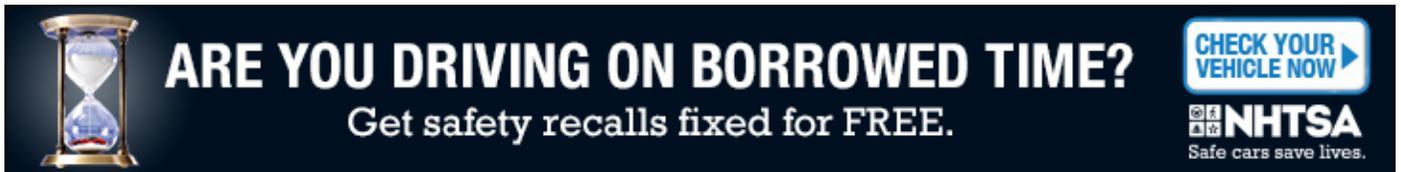
<sup>10</sup> [https://zerofatalitiesiowa.com/taskforce/iowa\\_fatality\\_reduction\\_taskforce\\_SM\\_Playbook.pdf](https://zerofatalitiesiowa.com/taskforce/iowa_fatality_reduction_taskforce_SM_Playbook.pdf)

<sup>11</sup> <https://zerofatalitiesiowa.com/taskforce.aspx>

## The Time to Reorder the Criminal Law Handbook is **HERE**

The newest edition of the Criminal Law Handbook was released in April. 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. 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.

Please note, if you already have a CD containing only the OWI and Traffic Offenses in Iowa manual, this will remain valid until September 2021; however, it will not contain the updated cases since September 2020.



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Safe cars save lives.

## Opinions of the United States Supreme Court

[Torres v. Madrid et al.](#), 141 S. Ct. 989 (03/25/2021). **“The application of physical force to the body of a person with intent to restrain is a seizure even if the person does not submit and is not subdued.”** Early in the morning, officers, wearing tactical vests displaying police, attempted to talk to Torres in an apartment complex parking lot. As they approached, Torres got into her vehicle and did not notice the officers until they attempted to open the car door. Torres did not realize they were police officers, but did see their guns and drove off thinking it was a carjacking. Both officers fired their weapons at the fleeing vehicle, striking Torres twice. Torres was eventually apprehended the next day at a hospital. Torres was charged and eventually pled no contest to multiple charges. Torres later sued the officers, “claim[ing] that the officers applied excessive force, making the shooting an unreasonable seizure under the Fourth Amendment.” After summary judgment was granted in favor of the officers, Torres appealed. Held, “the application of physical force to the body of a person with intent to restrain is a seizure even if the person does not submit and is not subdued.” The Court stated “[a] seizure requires the use of force *with intent to restrain.*” (*emphasis in original*). Courts are to look at whether the officer objectively intended to restrain the individual; the subjective motivation of the officer is not the appropriate inquiry. Although an officer merely touching an individual may be enough to amount to a seizure, “the amount of force remains pertinent in assessing the objective intent to restrain.” The Court used the example of an officer tapping an individual on their shoulder to get their attention likely will not amount to an intent to restrain. A seizure by force only lasts as long as the touching (e.g., the moment the bullet strikes the individual). Furthermore, if, as in this case, the individual evades capture after a seizure by force, it does not mean the individual has been arrested while they remain a fugitive. The “Court [did] not address the reasonableness of the seizure, the damages caused by the seizure, or the officers’ entitlement to qualified immunity.”

## Opinions of the Iowa Supreme Court

***Clinton County State v. Steven Edward Struve***, 956 N.W.2d 90 (Iowa 2021). **Reasonable suspicion to initiate a traffic stop to determine if the driver was violating Iowa Code section 321.276 after observing the driver operate a phone for approximately ten seconds.** Officers initiated a traffic stop to investigate a violation of texting while driving (Iowa Code section 321.276) after observing the defendant using his finger to manipulate the screen on the phone he was looking at “for approximately ten seconds[.]” When the officers spoke with the defendant, he indicated he was using his phone to show photos to his passenger. During the conversation, an officer observed drug paraphernalia in the backseat of the car. The officers then searched the vehicle and found drugs. The defendant appealed the denial of his motion to suppress arguing there was no reasonable suspicion to support the stop. Held, “observations of a driver holding a phone in front of his face and actively manipulating the screen for at least ten seconds as involved in this case justified stopping the driver to resolve any ambiguity about whether the driver was violating section 321.276.” The Court noted that law enforcement does not have to rule out any innocent behavior (e.g., using GPS) before initiating a traffic stop. *State v. Kreps*, 650 N.W.2d 636, 641-42 (Iowa 2002). However, if other facts exist to dismiss the reasonable suspicion, then law enforcement should end the stop. *Kansas v. Glover*, 589 U.S. \_\_\_, 140 S. Ct. 1183 (2020). “First, an officer is expected to rely on their common sense and understanding of human behavior in determining whether observed activity raises their suspicions above a “mere hunch” of criminal activity.” “Second, the officer’s suspicion need not be infallible or even rise to a fifty-fifty chance the individual is engaged in criminal activity to be reasonable.” “Third, an officer is not required to engage in additional investigation to confirm their suspicions as long as the initial suspicions are in fact reasonable.” In Footnote 2, the majority declined to determine whether a driver using an app (e.g., the Amazon app) as opposed to accessing the website (www.amazon.com) through a web browser, would violate 321.276.

***Polk County State v. Jasmine R. Warren***, 955 N.W.2d 848 (Iowa 03/05/2021) No. 19-0267. **Substantial evidence of impairment even though the defendant refused SFSTs, PBT, and a chemical test.** During an investigation for a parking violation, an officer observed: an odor of marijuana coming from the defendant’s vehicle, droopy eyelids, watery and bloodshot eyes, a weak odor of alcohol from the defendant, and an odor of marijuana on the defendant. The defendant also admitted to using marijuana and drinking that day, which was caught on the officer’s body camera. The defendant refused the SFSTs, PBT, and chemical testing. The State charged her with OWI 2<sup>nd</sup>, under two alternate theories, 321J.2(1)(a) (impaired by drugs, or alcohol, or a combination of both) and 321J.2(1)(c) (any amount in her system as measured by a chemical test). After a bench trial, the defendant was found guilty of OWI 2<sup>nd</sup>, but the district court did not indicate under which theory. Held, substantial evidence of impairment even though the defendant refused SFSTs, PBT, and a chemical test.

***Polk County State v. Jasmine R. Warren***, 955 N.W.2d 848 (Iowa 03/05/2021) No. 19-0267. **Officer had probable cause to seize the defendant after observing her park her car illegally.** An officer observed the defendant illegally park a vehicle in violation of Iowa Code section 321.358 and made contact with her 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 revoked. The officer then observed an odor of marijuana coming from the vehicle through the open car door and began an OWI investigation. The defendant appealed, arguing she was illegally seized. Held, counsel was not ineffective; the officer had probable cause to seize the defendant after observing her park her car illegally. The Court noted that although the officer had the option to just leave a citation on the windshield of the defendant’s vehicle, this does not invalidate stopping the defendant. It is not “unconstitutional for an officer to enforce a parking violation after he observes a driver illegally park her vehicle, leaving the vehicle sticking out of the driveway and into the road[.]” The Court declined at this time to find a bright line rule

“of whether there is a constitutional distinction between parking violations that pose a safety threat and nonthreatening parking violations.”

**Polk County** [State v. Jasmine R. Warren](#), 955 N.W.2d 848 (Iowa 03/05/2021) No. 19-0267. **An officer can request a person’s driver’s license to enforce a parking violation and extend the stop if it is discovered the person’s license was revoked.** An officer observed the defendant illegally park a vehicle in violation of Iowa Code section 321.358 and made contact with her near the vehicle. After discussing the parking violation, the officer requested the defendant's license, registration, and insurance. The defendant provided only an ID card stating her license had been suspended. The officer also observed an odor of marijuana coming from the vehicle. The officer then discovered that the defendant’s license was actually revoked. Held, an officer can request a person’s driver’s license to enforce a parking violation and extend the stop if it is discovered the person’s license was revoked.

**Polk County** [State v. Jasmine R. Warren](#), 955 N.W.2d 848 (Iowa 03/05/2021) No. 19-0267. **Reasonable suspicion to extend the stop.** An officer observed the defendant illegally park a vehicle in violation of Iowa Code section 321.358 and made contact with her near the vehicle. After discussing the parking violation, the officer requested the defendant's license, registration, and insurance. The defendant provided only an ID card stating her license had been suspended. The officer also observed an odor of marijuana coming from the vehicle. The officer then discovered that the defendant’s license was actually revoked. Held, the officer “had reasonable suspicion of other criminal activity to justify expanding his investigation based on Warren’s suspended license, the smell of marijuana, Warren’s signs of intoxication, and Warren’s admissions.”

#### 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. Michael Wilson White](#), No. 19-1636 (Iowa Court of Appeals, filed February 17, 2021). **Hearsay statements admissible under the present sense impression exception.** An off-duty officer observed the defendant driving erratically, called the non-emergency recorded number, and described the defendant’s driving behavior he was witnessing as he followed the vehicle. At trial, the off-duty officer was unavailable to testify and the State offered into evidence the recorded phone call. The defendant objected to the recording as impermissible hearsay. Held, the recording was properly admitted under the present sense impression exception to the hearsay rule.

**Black Hawk County** [State v. Michael Wilson White](#), No. 19-1636 (Iowa Court of Appeals, filed February 17, 2021). **Off-duty officer’s statements on a recorded phone call were nontestimonial.** An off-duty officer observed the defendant driving erratically, called the non-emergency recorded number, and described the defendant’s driving behavior he was witnessing as he followed the vehicle. At trial, the off-duty officer was unavailable to testify and the State offered into evidence the recorded phone call. The defendant objected to the recording as violating the confrontation clause. Held, an off-duty officer’s statements on a recorded phone call were nontestimonial and the playing of the recording without the officer testifying did not violate the confrontation clause.

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**Black Hawk County State v. Michael Wilson White**, No. 19-1636 (Iowa Court of Appeals, filed February 17, 2021). **Sufficient evidence of operation:** a properly admitted phone recording describing the defendant's driving behavior; body camera footage of the defendant by his car with the keys inside and headlights on; the only people present were the defendant and officers; and the defendant's vehicle was blocked in by the off duty officer.

**Buchanan County State v. Ronald Dean Share**, No. 19-1324 (Iowa Court of Appeals, filed February 3, 2021). **Sufficient evidence the defendant intended to kill the victim when he drove into a bridge support:** the victim told 911 that the defendant was going to kill her by driving into a structure at a fast speed; and the officer's dash cam showed the defendant drive directly into a bridge support.

**Buena Vista County State v. Dion Caldwell**, No. 19-0894 (Iowa Court of Appeals, filed January 21, 2021). **Sufficient evidence of intoxication:** defendant admitted to consuming alcoholic drinks; odor of alcohol coming from defendant; bloodshot and watery eyes; defendant's mood swings (hostile, crying, joking); refusal to sign that he was refusing testing; and the officer's training and experience.

**Buena Vista County State v. Dion Caldwell**, No. 19-0894 (Iowa Court of Appeals, filed January 21, 2021). **An approximately six-minute delay between an 804.20 phone call request and the opportunity to make phone calls is not unnecessary, even if the officer requested the defendant perform two more SFSTs after the phone call request.** An officer observed the defendant's vehicle traveling down the road with its horn honking and lights flashing. When the officer attempted to stop the vehicle to determine if everything was alright, the defendant's vehicle speed off. After the defendant stopped his vehicle, he exited and attempted to walk away. The officer asked the defendant to stop walking, but he refused. The officer then attempted to place the defendant in handcuffs, but he resisted. The officer arrested the defendant for interference with official acts. The officer observed an odor of alcohol coming from the defendant. Due to the defendant's behavior, the officer transported him to the jail to administer the SFSTs. The officer took the defendant into a hallway "within the jail facility", where the defendant refused the HGN test. When the officer asked the defendant to perform the walk and turn test, the defendant requested to call his mother. The officer denied the request at this time. The defendant then refused the walk and turn and one-leg stand tests. After the SFST refusals, the officer invoked implied consent and gave the defendant an opportunity to make phone calls, which was approximately six minutes after his request. After making phone calls, the defendant refused to provide a breath sample for the Datamaster. The defendant filed a motion to suppress his refusal of the last two SFSTs and the Datamaster as a violation of his 804.20 rights. Held, although the defendant was at the place of detention and properly invoked his right to an 804.20 phone call after refusing the HGN test, the officer did not violate his 804.20 rights by requesting the remaining two SFSTs before giving him the opportunity to make phone calls because it resulted in only an approximately six minute delay. The Court of Appeals found the delay was extremely short, not due to officer misconduct or laziness, and the defendant had the opportunity to make calls before deciding whether to take the chemical test.

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**Buena Vista County** [State v. Dion Caldwell](#), No. 19-0894 (Iowa Court of Appeals, filed January 21, 2021). **To properly invoke implied consent under 321J.6(1)(a), an officer must tell a person they are under arrest for OWI before invoking implied consent.** In attempting to complete a traffic stop, an officer informed the defendant he was under arrest for interference with official acts. The officer then transported the defendant to the jail to conduct an OWI investigation. At the jail, the defendant's handcuffs were removed and he refused the three SFSTs. The officer then placed the defendant back in handcuffs and took him to the Datamaster room, where implied consent was invoked. The officer did not verbally tell the defendant he was under arrest for OWI before implied consent was invoked. Held, to properly invoke implied consent under 321J.6(1)(a), an officer must tell a person they are under arrest for OWI before invoking implied consent. 321J.6(1)(a); 804.14.

**Clinton County** [State v. Austin Michael Bruckner](#), No. 20-0166 (Iowa Court of Appeals, filed February 3, 2021). **Sufficient evidence the defendant willfully failed to stop for law enforcement.** A deputy observed the defendant driving approximately 20 mph over the speed limit. The deputy attempted to initiate a traffic stop, but the defendant accelerated to over 40 mph over the speed limit. During the chase, the defendant turned onto a gravel road and continued to elude the deputy until he crashed into a tree. At the scene the defendant admitted he ran from the deputy to avoid a speeding ticket. After a jury trial, the defendant was convicted of eluding. The defendant appealed and argued the state failed to show he knew the deputy was trying to stop him and he willfully failed to stop for law enforcement. Held, there was sufficient evidence the defendant willfully failed to stop for law enforcement: the defendant sped away from the deputy; the route (turning on the gravel road) was not a part of his route for where he was going; and his admission to wanting to avoid a speeding ticket.

**Clinton County** [State v. Jeffrey Kenneth Stockman](#), No. 19-1580 (Iowa Court of Appeals, filed February 3, 2021). **Sufficient evidence the defendant was impaired:** odor of alcohol; smell of feces and urine; pants falling down; unable to perform SFSTs; and unsteadiness.

**Marion County** [State v. Alexander Vonriedel Burgdorf](#), No. 19-1496 (Iowa Court of Appeals, filed January 21, 2021). **Sufficient evidence of impairment:** defendant's vehicle drifted into oncoming traffic; excited movements inside the vehicle; eyes indicated drug use; perspiration; dry mouth; obstinate in providing identification and registration; and a bag that appeared to be methamphetamine found in the defendant's pocket.

**Marion County** [State v. Alexander Vonriedel Burgdorf](#), No. 19-1496 (Iowa Court of Appeals, -filed January 21, 2021). **Sufficient evidence to prove the defendant knew the bag found in his pocket contained methamphetamine:** the defendant's driving behavior (drifted into oncoming traffic); excited movements inside the vehicle; eyes indicated drug use; perspiration; dry mouth; obstinate in providing identification and registration; refusal to give a chemical test sample; and the bag of what appeared to contain methamphetamine found in defendant's pocket.

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**Marion County [State v. Alexander Vonriedel Burgdorf](#)**, No. 20-0059 (Iowa Court of Appeals, filed February 17, 2021). **Sufficient evidence the defendant operated the vehicle while his license was revoked:** officer observed the defendant’s vehicle moving on the road; officer did not see the occupants switch seats; and the officer found the defendant “in the driver’s seat.”

**Marion County [State v. Alexander Vonriedel Burgdorf](#)**, No. 20-0059 (Iowa Court of Appeals, filed February 17, 2021). Although the defendant initially requested to proceed pro se, when the court was going through the Faretta colloquy, the defendant abandoned his request through his statement and the court does not need to conduct another Faretta colloquy absent an unequivocally reassertion of his request to proceed pro se. The defendant’s statements he might want to proceed pro se on the other two cases is not an unequivocal assertion to proceed pro se.

**Marion County [State v. Alexander Vonriedel Burgdorf](#)**, No. 20-0059 (Iowa Court of Appeals, filed February 17, 2021). Due to the defendant’s non-responsive answers (contesting the court’s authority and rambling declarations) to the court’s questions, he “did not clearly and unequivocally assert his right to self-representation and knowingly and intelligibly waive his right to counsel.”

**Marion County [State v. Alexander Vonriedel Burgdorf](#)**, No. 20-0059 (Iowa Court of Appeals, filed February 17, 2021). Due to the court’s two prior discussions with the defendant about proceeding pro se and the defendant’s similar arguments, the court was not required to conduct another in-depth questioning of the defendant about proceeding pro se moments before the start of trial.

**Polk County [State v. Oleaf Teoh](#)**, No. 19-0924 (Iowa Court of Appeals, filed January 21, 2021). **No abuse in discretion in admitting photos of the victim’s injuries in a vehicular homicide case.** The photos were relevant regarding the reckless driving theory of vehicular homicide. The photos “were also relevant to help the jury visualize the medical examiner’s testimony.”

**Polk County [State v. Oleaf Teoh](#)**, No. 19-0924 (Iowa Court of Appeals, filed January 21, 2021). **Sufficient evidence the defendant was intoxicated when she operated the motor vehicle despite the defendant being allowed to leave the scene and later located in an apartment before an OWI investigation was started.** The defendant was stop by law enforcement regarding a hit and run and the officer noticed an odor of alcohol on her breath, but she was allowed to leave because the vehicle did not match the initial description. After further investigation, it was determined the vehicle the defendant was driving was involved and law enforcement tracked her down to an apartment. Law enforcement found blood and tissue on the vehicle and took the defendant into custody. The defendant then failed SFSTs and gave a chemical test of .195. The apartment’s owner testified the defendant did not drink after she arrived at the apartment. Held, there was sufficient evidence the defendant was intoxicated when she was operating the motor vehicle.

**Polk County [State v. Oleaf Teoh](#)**, No. 19-0924 (Iowa Court of Appeals, filed January 21, 2021). **Sufficient evidence the defendant was driving recklessly.** The defendant was found guilty of vehicular homicide under the OWI and reckless driving alternatives. Forensic evidence established that the defendant was traveling at least 60 mph, which was over twice the posted speed limit. The defendant appealed arguing “that violating a traffic law is insufficient evidence of recklessness.” See State v. Klatt, 544 N.W.2d 461, 463

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(Iowa Ct. App. 1995). However, the Court found: “Teoh did not commit a mere technical violation of the law; she was driving the vehicle at twice the speed limit, an act that shows a reckless disregard for the safety of others.” See State v. Atwood, 602 N.W.2d 775 (Iowa 1999); State v. Abbas, 561 N.W.2d 72 (Iowa 1997).

**Polk County State v. Oleaf Teoh**, No. 19-0924 (Iowa Court of Appeals, filed January 21, 2021). **Sufficient evidence the defendant’s actions were the proximate cause of the victim’s death to support the vehicular homicide conviction under both theories (OWI and reckless driving):** the defendant’s vehicle was accelerating prior to hitting the victim (failed to react or not aware the victim was there); the defendant was intoxicated; and an officer’s testimony regarding the combination of speeding and intoxication has on a person’s ability to stop, react, or perceive things.

**Polk County State v. Oleaf Teoh**, No. 19-0924 (Iowa Court of Appeals, filed January 21, 2021). **“Substantial evidence supports [the defendant’s] conviction for leaving the scene of an accident resulting in death[:]”** the defendant admitted to observing the victim in the grass; lied about her name to the police; and lied about how the damage occurred to her vehicle.

**Polk County State v. Oleaf Teoh**, No. 19-0924 (Iowa Court of Appeals, filed January 21, 2021). Insufficient evidence to show even though the defendant continually gave law enforcement a false name until she was fingerprinted that it was an attempt to get the falsely named person prosecuted; conviction for malicious prosecution dismissed.

**Polk County Wendell Harrington v. State**, No. 19-1102 (Iowa Court of Appeals, filed January 21, 2021). Allison v. State, 914 N.W.2d 866 (Iowa 2018) applies only when it is a “second PCR petition”, not a third or subsequent petition.

**Polk County William Lamont Taylor v. State**, No. 19-1133 (Iowa Court of Appeals, filed January 21, 2021). **Counsel was not ineffective for failing to have the vehicle the defendant drove into the officer’s vehicle examined.** There was sufficient evidence of assault on a police officer with a dangerous weapon: dash cam video and officers’ testimony, the defendant revved his vehicles’ engine and then drove straight into the officer’s vehicle.

**Polk County William Lamont Taylor v. State**, No. 19-1133 (Iowa Court of Appeals, filed January 21, 2021). Counsel was not ineffective for failing to request a spoliation instruction after the State sold the vehicle the defendant used to crash into a law enforcement vehicle due to the substantial evidence of his guilt (dash cam video and officers’ testimony that he defendant revved his engine and then drove straight into the officer’s vehicle).

**Polk County William Lamont Taylor v. State**, No. 19-1133 (Iowa Court of Appeals, filed January 21, 2021). Counsel was not ineffective for failing to file a motion in limine to keep out his prior theft convictions because the parties agreed not to discuss the convictions and the agreement was kept by both parties until the defendant testified.

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**Polk County** [William Lamont Taylor v. State](#), No. 19-1133 (Iowa Court of Appeals, filed January 21, 2021). Counsel was not ineffective for failing to call an expert on PTSD as a reasonable tactical decision. [Fryer v. State](#), 325 N.W.2d 400, 413 (Iowa 1982).

**Polk County** [State v. Kyle Joseph Reasoner](#), No. 19-0058 (Iowa Court of Appeals, filed March 17, 2021). **The carrying weapons exception under section 724.4(4)(f) is an affirmative defense and the State does not have to prove the affirmative defense did not apply in a guilty plea.** The defendant pled guilty to carrying weapons under Iowa Code section 724.4(1), for carrying/transporting a pistol in a tied plastic bag in the passenger compartment and a loaded pistol magazine. The defendant then appealed arguing there was no factual basis under 724.4(4)(f). Held, the carrying weapons exception under section 724.4(4)(f) is an affirmative defense and the State does not have to prove the affirmative defense did not apply to support the guilty plea.

**Scott County** [State v. Juan E. Rosales](#), No. 19-1363 (Iowa Court of Appeals, filed February 17, 2021). The defendant's generic motion for judgment of acquittal at trial failed to state any specific element or ground the State did not prove; conviction affirmed.

**Scott County** [State v. Derek Tracy Clark](#), No. 19-1830 (Iowa Court of Appeals, filed February 17, 2021). **Sufficient evidence to show the defendant knew the vehicle was stolen:** the defendant gave dishonest statements to the officer to distance himself from the vehicle; and the vehicle was stolen only four days prior.

**Scott County** [State v. Derek Tracy Clark](#), No. 19-1830 (Iowa Court of Appeals, filed February 17, 2021). The victim's testimony regarding the value of the stolen vehicle was sufficient to establish the value as more than \$10,000.00.

**Woodbury County** [State v. Clinton Joel Conkey](#), No. 19-2081 (Iowa Court of Appeals, filed January 21, 2021). **The defendant was not seized:** the officer was in plain clothes; officer only displayed his badge to confirm his identity; the defendant rode over to the officer before the officer asked for identification; officer did not threaten the defendant; no show of force; and no weapons displayed. "A reasonable person in [the defendant's] shoes would have felt free to go on their way."

**Woodbury County** [State v. Clinton Joel Conkey](#), No. 19-2081 (Iowa Court of Appeals, filed January 21, 2021). **The defendant voluntarily consented, by non-verbal actions, to the search of his backpack when he handed it to the officer "following the officer's request to search it."** The officers did not show any sign of authority to search, lawfully patted down the defendant after he stated he possessed a knife, and "did not use any coercive or deceptive tactics."

**Woodbury County** [State v. Clinton Joel Conkey](#), No. 19-2081 (Iowa Court of Appeals, filed January 21, 2021). **Sufficient probable cause to search the defendant's person during a traffic stop.** After stopping the vehicle the defendant was a passenger in, the officer's noticed: the defendant "exhibited common signs of methamphetamine use" (cotton mouth, dilation of his eyes, body tremors); drug dog alerted in the area the defendant had been sitting, but no drugs were found; and recent incident involving the defendant and

## RECENT UNPUBLISHED DECISIONS INVOLVING ALCOHOL AND TRAFFIC SAFETY

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methamphetamine. Held, under the totality of the circumstances, “it was reasonable for the officers to believe—based on their training and experience—that [the defendant] was under the influence and possessed drugs during this interaction.”

*Woodbury County State v. Clinton Joel Conkey*, No. 19-2081 (Iowa Court of Appeals, filed January 21, 2021). **No reasonable suspicion.** The officer’s belief that this type of container is known to store drugs and the defendant’s “act of moving the container to a different pocket while being questioned” does not create reasonable suspicion the defendant committing a drug crime.

*Woodbury County State v. Thomas Winston Hales*, No. 19-2098 (Iowa Court of Appeals, filed January 21, 2021). Officer’s observation of the defendant’s vehicle “drifting left and traveling over the dividing line of the lanes” early in the morning was reasonable suspicion the defendant “was operating his vehicle while intoxicated.”

*Woodbury County Brianna Blomberg v. Iowa Dept. of Transp.*, No. 19-1801 (Iowa Court of Appeals, filed February 3, 2021). **The “mere passage of time” does not establish prejudice and require a reversal of the defendant’s barrment.** Despite Iowa Code section 321.491(2)(a), the Iowa DOT did not bar the defendant’s driver’s license for approximately three years due to a mistake. The defendant appealed her barrment arguing she was prejudiced by the delay. Held, “absent a showing by Blomberg that the delay of years caused actual prejudice to her, we cannot hold that mere passage of time by itself violates Blomberg’s substantial rights and requires a reversal of the final agency decision.”

*Woodbury County Brianna Blomberg v. Iowa Dept. of Transp.*, No. 19-1801 (Iowa Court of Appeals, filed February 3, 2021). **The defendant’s medical suspension “did not relate to a sanction for her poor driving record and the State’s purpose of keeping her off the road.”** Despite Iowa Code section 321.491(2)(a), the Iowa DOT did not bar the defendant’s driver’s license for approximately three years due to a mistake. During a portion of the three years, the defendant was unable to drive due medical condition. The defendant appealed her barrment arguing “the doctrine of laches to avoid or lessen the revocation.” Held, the Iowa DOT is not prohibited by the laches doctrine from barring the defendant’s license. The defendant’s medical suspension “did not relate to a sanction for her poor driving record and the State’s purpose of keeping her off the road.”



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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.

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