



# HIGHWAY SAFETY

LAW UPDATE



July 31, 2024 Office of the Prosecuting Attorneys Training Coordinator January/February/March 2024

## County Spotlight – Clinton County

The twenty-first county spotlight is on Clinton County. Clinton County was named after former New York Governor DeWitt Clinton.<sup>1</sup> “The Lyons Female College was the state's first educational institution for young ladies[,]” which opened in Clinton County in 1858.<sup>2</sup> According to the 2020 census, Clinton County has a population of 46,460.<sup>3</sup>

Clinton is the county seat of Clinton County; however, Clinton County has had a total of three different county seats, including “Camanche, DeWitt (then Vandenburg) and Clinton.”<sup>4</sup> Clinton is located off Highways 30 and 67.<sup>5</sup> Clinton County is bordered to the east by the Mississippi River.<sup>6</sup>

Mike Wolf is the Clinton County Attorney. Mr. Wolf is a full-time county attorney. There are 5 full-time assistant county attorneys in the office.



Mr. Wolf graduated from University Heidelberg, Germany, with a teaching degree, from University of Iowa with a major in education and German, and then attended University of Iowa Law School. Mr. Wolf has

been the Clinton County Attorney for approximately 25 years. Prior to becoming the Clinton County Attorney, Mr. Wolf was an assistant county attorney in the Clinton County Attorney’s office for approximately 2 years and 8 years of private practice in Detroit, Michigan. Mr. Wolf and his wife (a urologist) started their professional careers in Detroit, but returned to Iowa after approximately 8 years and have enjoyed their return to Iowa.

Clinton County has 7 local law enforcement agencies: DeWitt, Camanche, and Clinton Police Departments, Iowa Department of Natural Resources, Iowa State Patrol, DCI at a casino, and the Clinton County Sheriff’s Office. In 2023, there were 2,973 traffic convictions<sup>7</sup> and 155 OWI convictions in Clinton County according to Division of Criminal & Juvenile Justice Planning.<sup>8</sup>



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<sup>1</sup> <https://www.clintoncounty-ia.gov/about/history/>

<sup>2</sup> <https://www.clintoncounty-ia.gov/about/>

<sup>3</sup> <https://www.census.gov/quickfacts/fact/table/clintoncountyiowa,IA/PST045223>

<sup>4</sup> <https://www.clintoncounty-ia.gov/about/>

<sup>5</sup> <https://www.google.com/maps/place/Clinton,+IA/@41.8567131,-90.3167585,12.25z/data=!4m6!3m5!1s0x87e2602ef1656235:0xa3934030a932aafe!8m2!3d41.8444735!4d-90.1887379!16zL20vMHN0ajc?entry=ttu>

<sup>6</sup> <https://www.google.com/maps/place/Clinton+County,+IA/@41.8806836,-90.8491514,10z/data=!3m1!4b1!4m6!3m5!1s0x87e2ff4e35736583:0xb37e5be3a1d12376!8m2!3d41.878563!4d-90.563609!16zL20vMGZyY3A?entry=ttu>

<sup>7</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>)

<sup>8</sup> <https://disposedcharges.iowa.gov/>

**1 OUT OF 5 TEEN DRIVERS  
INVOLVED IN FATAL CRASHES HAD BEEN  
DRINKING ALCOHOL**

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## Criminal Law Handbook Published

The newest edition of the Criminal Law Handbook, which contains the most recent versions of the OWI and Traffic Offenses in Iowa Manual, was recently published and distributed in May 2024. 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. If you have not received a notice for reorder or did not download the newest version before your link expired, please contact Cindy Glick at [Cindy.Glick@ag.iowa.gov](mailto:Cindy.Glick@ag.iowa.gov).



## New Software in the DMT

By Criminalist Supervisor James A. Bleskacek

Law Enforcement Officers and County Attorneys:

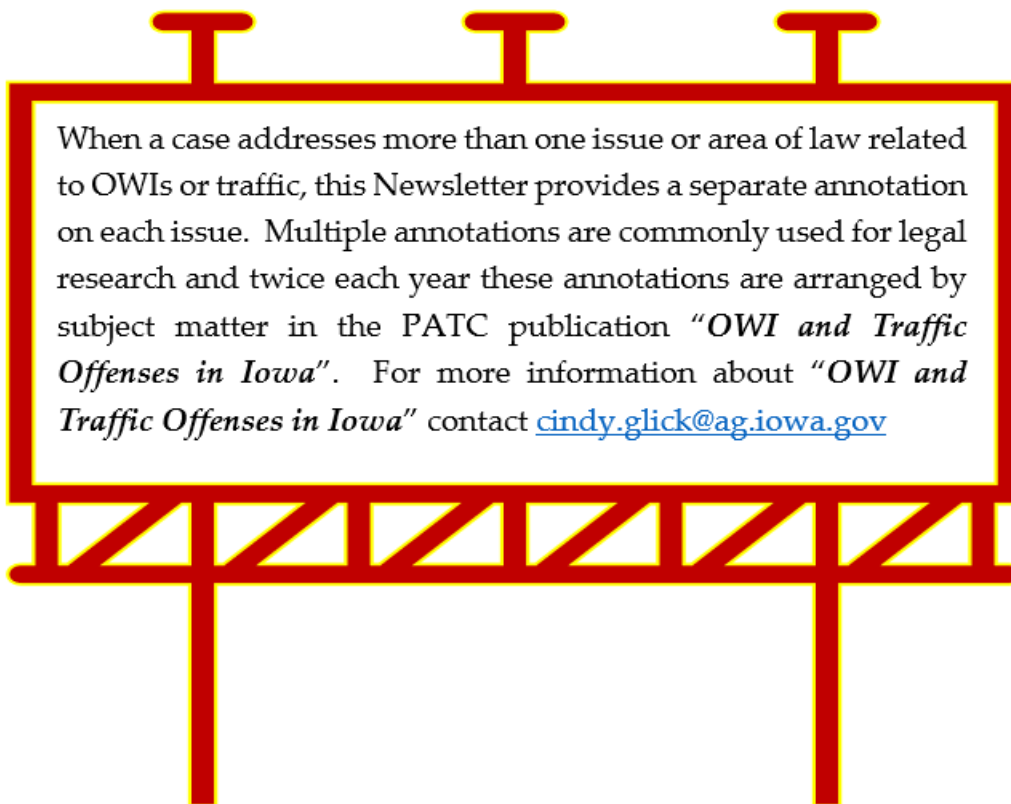
The Division of Criminal Investigation Breath Alcohol Section will be updating software within the DataMasters, the evidential breath testing instrument, as the units come to the lab for its annual 2024 service/calibration. The updated software will allow the laboratory to comply with new accreditation guidelines in reference to reporting of breath alcohol results. The reporting will be as follows:

1. In cases in which the breath result is between 0.000 – 0.009 g/210L, the printout will indicate “The ethyl alcohol result for this breath test is 0.000 g/210L”
2. In cases in which the breath result is between 0.010 - 0.019 g/210L, the printout will indicate “The ethyl alcohol result for this breath test is <0.020 g/210L”

3. In cases in which the breath result is between 0.020 – 0.484 g/210L, the printout will indicate the lower of the 2 tested results preceded by “The ethyl alcohol result for this breath test is....”
4. In cases in which the breath result is 0.485 g/210L or higher, the printout will indicate “The ethyl alcohol result for this breath test is >0.485 g/210L”

The Division of Criminal Investigation is working with the Iowa DOT TraCS team to coordinate the software upgrade. TraCS will need to update their MOWI software as well in order for the proper reporting on the MOWI form. This change should only impact cases in which the subject’s alcohol level is less than 0.020 or greater than 0.485 g/210L.

Should you have any questions, please contact the Breath Alcohol Section at [breathalcohol@dps.state.ia.us](mailto:breathalcohol@dps.state.ia.us) or call the lab at 515-725-1500.



## Opinions of the Iowa Supreme Court

***Boone County*** [State v. Laub](#), 2 N.W.3d 821 (Iowa 2024). **An officer may obtain a chemical sample, which includes a bodily sample, via an 808-search warrant or implied consent.** [State v. McMickle](#), 3 N.W.3d 518 (Iowa 2024); *see* [State v. Frescoln](#), 911 N.W.2d 450 (Iowa Ct. App. 2017). “ ‘[T]he implied consent statute is not the exclusive means by which law enforcement may obtain chemical testing.’ ” *quoting* [State v. Frescoln](#), 911 N.W.2d 450, 454 (Iowa Ct. App. 2017). “The statutory implied consent procedure set forth in chapter 321J does ‘not limit the State’s authority to obtain a search warrant under the general search warrant provisions of Iowa Code chapter 808.’ ” *quoting* [State v. Oakley](#), 469 N.W.2d 681, 682–83 (Iowa 1991).

**Boone County [State v. Laub](#), 2 N.W.3d 821 (Iowa 2024).** **The State may obtain a search warrant under Chapter 808 “for the collection of bodily specimens[.]” including during an OWI investigation.** “The Code’s authorization to issue search warrants commanding the search of persons and the collection of personal property and evidence material to criminal prosecutions implies the authority to seize anything of evidentiary value from the person searched, including bodily specimens.”

**Boone County [State v. Laub](#), 2 N.W.3d 821 (Iowa 2024).** Implied consent, under Chapter 321J, does not violate the Equal Protection Clause of the State or Federal Constitutions.

**Boone County [State v. Laub](#), 2 N.W.3d 821 (Iowa 2024).** **A law enforcement officer’s discretion on whether to proceed under the implied consent, obtain an 808-search warrant, or some other way to obtain a chemical sample, does not violate the Equal Protection Clause.** “In deciding whether to invoke the statutory implied consent procedure, obtain a search warrant, or proceed without consent or a search warrant, a peace officer must balance an array of individualized considerations in choosing how to investigate each case, including the location of the traffic stop, the time of day, the availability of a magistrate, the condition of the driver, the probability of obtaining consent, etc.”

**Boone County [State v. Laub](#), 2 N.W.3d 821 (Iowa 2024).** **Obtaining chemical test by search warrant, instead of by implied consent procedures, does not violate due process.** “[Collecting] and testing of a breath specimen pursuant to a search warrant [did not violate the defendant’s] due process rights.”

**Boone County [State v. Laub](#), 2 N.W.3d 821 (Iowa 2024).** “[T]he use of a search warrant to obtain a bodily specimen to investigate a suspected OWI offense is a constitutional means for a peace officer to overcome” a person’s “interest in his ‘bodily integrity.’ ”

**Boone County [State v. Laub](#), 2 N.W.3d 821 (Iowa 2024).** A defendant’s statutory right to refuse chemical testing only applies if implied consent is invoked, not if a search warrant is obtained.

**Boone County [State v. Laub](#), 2 N.W.3d 821 (Iowa 2024).** A driver does not have a constitutional right “to refuse consent to provide a bodily specimen for chemical testing on penalty of having one’s license revoke or having one’s refusal be admitted in a criminal trial.”

**Boone County [State v. Laub](#), 2 N.W.3d 821 (Iowa 2024).** **No violation of substantive due process when law enforcement exercised their discretion on whether to proceed with a search warrant or invoke implied consent to obtain a chemical sample.** “A peace officer obtaining a search warrant in compliance with federal and state constitutional requirements to investigate suspected criminal activity in no way shocks the conscience or offends human dignity.” Courts prefer the use of search warrants over exceptions to the search warrant requirement. *See State v. Ingram*, 914 N.W.2d 794, 816 (Iowa 2018); *Missouri v. McNeely*, 569 U.S. 141, 148 (2013).

**Boone County [State v. Laub](#), 2 N.W.3d 821 (Iowa 2024).** **No violation of procedural due process when law enforcement exercised their discretion on whether to proceed with a search warrant or invoke implied consent to obtain a chemical sample.** Law enforcement is not required to use implied consent in every OWI investigation.

**Boone County [State v. McMickle](#), 3 N.W.3d 518 (Iowa 2024).** “[C]hapter 321J is not the exclusive means by which an officer can investigate suspected OWI offenses.” *State v. Laub*, 2 N.W.3d 821, 832 (Iowa 2024).

**Boone County** [State v. McMickle](#), 3 N.W.3d 518 (Iowa 2024). “[C]hapter 808 of the Iowa Code authorizes law enforcement officers to apply for, obtain, and execute search warrants for bodily specimens and nothing in chapter 321J precludes an officer from using the search warrant authority granted in chapter 808 to investigate suspected OWI offenses.” [State v. Laub](#), 2 N.W.3d 821, 834 (Iowa 2024).

**Boone County** [State v. McMickle](#), 3 N.W.3d 518 (Iowa 2024). “[A] law enforcement officer's decision to obtain and execute a search warrant to investigate suspected OWI offenses does not violate a suspect's federal or state constitutional rights to equal protection of the laws or due process of law.” [State v. Laub](#), 2 N.W.3d 821, 835 (Iowa 2024).

**Boone County** [State v. McMickle](#), 3 N.W.3d 518 (Iowa 2024). **804.20 applies during an OWI investigation even when an officer avoids implied consent and instead obtains a search warrant for a chemical test.** See also [State v. Starr](#), 4 N.W.3d 686 (Iowa 2024) (“Iowa Code section 804.20 applies to all persons who have been arrested, not just persons arrested on suspicion of drunk driving”). During an OWI investigation and prior to obtaining a search warrant for a blood sample, the defendant requested to contact her attorney on multiple occasions before a search warrant for a blood sample was executed. The officer denied the defendant’s requests to contact an attorney and obtained and executed the search warrant. Held, 804.20 applies when law enforcement obtains chemical samples via a search warrant and the officer violated the McMickle’s 804.20 rights; however, the application for the search warrant did not contain any information after her 804.20 rights were violated, thus, the blood sample was obtained independently of the 804.20 violation and the exclusionary rule does not apply.

**Delaware County** [State v. Jesse Jon Harbach](#), 3 N.W.3d 209 (Iowa 2024). **Under Franks, a district court must first determine whether a challenged statement was made intentionally or recklessly before removing a challenged statement.** “Affidavits included in search warrant applications are presumed to be true.” “To overcome that presumption, a defendant challenging the veracity of a warrant application must make a ‘substantial preliminary showing that a false statement knowingly and intentionally, or with reckless disregard for the truth, was included by the affiant in the warrant affidavit.’” quoting [Franks v. Delaware](#), 438 U.S. 154, 155–156 (1978). If the defendant meets this showing, then the Court will conduct a [Franks](#) hearing about “whether the statements are knowing or recklessly false.” See [Franks v. Delaware](#), 438 U.S. 154, 155–156 (1978). “A defendant may also challenge the warrant application as intentionally omitting material facts that, if included, would cast doubt on the existence of probable cause.” See [State v. Green](#), 540 N.W.2d 649, 656 (Iowa 1995). “If the court finds that any misstatements or material omissions were made either intentionally or with reckless disregard for the truth, the false statements are excised, the omitted statements are added, and the affidavit’s remaining content is examined to determine whether it establishes probable cause to support issuing the search warrant.” See [State v. Green](#), 540 N.W.2d 649, 656 (Iowa 1995).

**Delaware County** [State v. Jesse Jon Harbach](#), 3 N.W.3d 209 (Iowa 2024). **The defendant failed to show the officer’s “statement that he smelled alcohol was false, let alone that it was intentionally false, and it should not have been excised from the warrant application.”** A “statement must be both (1) false within the meaning of [Franks \[v. Delaware\]](#), 438 U.S. 154 (1978)] and (2) made with intent or reckless disregard for the truth” before it will be removed from the search warrant. Other reasons that could exist to explain away an officer’s observations are inadequate to prove the contested statement is untrue. In the present case, the officer was in close proximity to the defendant, was experienced in investigating impaired drivers, and the first medical center report showed the defendant had “an ethanol level of 42[.]” which the Court took “judicial notice that ethanol level computes to a .042 blood alcohol content.” (*footnote omitted*). There was also no evidence that to odor could have been attributed to any medical supplies.

*Delaware County State v. Jesse Jon Harbach*, 3 N.W.3d 209 (Iowa 2024). **Information outside the warrant (results from the blood draw obtained from the search warrant and from the medical center) can be used to determine if the officer’s statement regarding the odor of alcohol in the search warrant was false.** Although a Court is confined to the contents of the search warrant to determine if there is probable cause to issue the warrant, a Court may look at matters outside the search warrant to determine “the truthfulness of statements in a warrant application.”

*Delaware County State v. Jesse Jon Harbach*, 3 N.W.3d 209 (Iowa 2024). **Under a Franks challenge, the officer does not have the “burden to corroborate his affidavit”, instead the defendant must show “the affidavit contains intentionally false statements.”** “The bodycam video does not support the district court’s conclusion that Knipper was lying when he stated that Harbach had bloodshot, watery eyes and that his speech was slurred and mumbled.” “Whether there was another explanation for muttered speech is a different issue from whether the video shows that Knipper had to have been lying when he said Harbach’s speech was slurred or mumbling.” “Even though bodycam footage can be useful, courts should be careful in relying on the footage when determining specific facts that are not easily observable from the video.” “This is especially true in the context of Franks challenges, where the statement need not only be false but must also be made with intentional or reckless disregard for the truth.”

*Delaware County State v. Jesse Jon Harbach*, 3 N.W.3d 209 (Iowa 2024). **The omission from a search warrant of critical facts, just like the inclusion of intentionally false information, can lead to a successful Franks challenge.** A successful Franks challenge for the omission of critical facts requires the defendant to prove: “ ‘(1) that facts were omitted with the intent to make, or in reckless disregard of whether they make, the affidavit misleading; and (2) that the affidavit, if supplemented by the omitted information, could not support a finding of probable cause.’ ” *quoting United States v. Johnson*, 75 F.4th 833, 841 (8<sup>th</sup> Cir. 2023) (*quoting United States v. Conant*, 799 F.3d 1195, 1200 (8<sup>th</sup> Cir. 2015)). A search warrant does not have to “include all exculpatory information or facts that could provide an alternate explanation for the stated observations[,] . . . [a] judge only needs to receive the information necessary to determine whether probable cause exists under the totality of the circumstances.” *see State v. Ripperger*, 514 N.W.2d 740 (Iowa Ct. App. 1994); *State v. Green*, 540 N.W.2d 649 (Iowa 1995).

*Delaware County State v. Jesse Jon Harbach*, 3 N.W.3d 209 (Iowa 2024). **Sufficient probable cause of impairment to support the search warrant even after the information regarding the refusal of the HGN and PBT were removed:** crash occurred in the daytime; it was sunny out; watery and bloodshot eyes; and an odor of alcohol.

*Polk County State v. David Dwight Jackson*, 4 N.W.3d 298 (Iowa 2024). **Polk County Jail health services administrator’s testimony about the defendants’ hospital medical records was hearsay and did not qualify under the “medical diagnosis and treatment” exception to hearsay.** Iowa Rule of Evidence 5.803(4); *see State v. Smith*, 876 N.W.2d 180 (Iowa 2016). The health services administrator’s testimony “did not involve Jackson’s statements made for the purposes of medical diagnosis or treatment.” The “testimony involved the statements of unknown providers who observed Jackson at Broadlawns.” Held: “The [‘medical diagnosis and treatment’] exception is inapplicable here.”

*Polk County State v. David Dwight Jackson*, 4 N.W.3d 298 (Iowa 2024). **Polk County Jail health services administrator’s testimony about the defendants’ hospital medical records was hearsay and did not qualify under the “business records exception” to hearsay.** Iowa Rule of Evidence 5.803(6). “In short, the rules of evidence create a ‘business records exception’ to the rule against hearsay and not a ‘testimony about business records exception’ to the rule against hearsay.” Held: “[t]he business records exception to the rule against hearsay allows for the admission of business records and not testimony in lieu of the business records.”

*Woodbury County State v. Faron Alan Starr*, 4 N.W.3d 686 (Iowa 03/29/2024) No. 23-0858. “Iowa Code section 804.20 applies to all persons who have been arrested, not just persons arrested on suspicion of drunk driving.”

*Woodbury County State v. Faron Alan Starr*, 4 N.W.3d 686 (Iowa 2024). **A defendant must be given an opportunity to consult with a family member or an attorney “without unnecessary delay.”** Any “delay in honoring a detainee’s invocation of section 804.20 must be necessary; that is, it must be targeted narrowly to the prompt resolution of an immediate public safety threat.” The Court looked to *Miranda* cases as a “guidepost” when interpreting any delay due to “the public safety exception” under 804.20. The Court did note: “‘without unnecessary delay’ means there must exist some circumstances when delay would be *necessary*.” (emphasis in original); see *State v. Dion Caldwell*, No. 19-0894 2021 WL 592747 (Iowa Ct. App. Jan. 21, 2021) (Although the defendant was at the place of detention and properly invoked his right to an 804.20 phone call after the first SFST, 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 this resulted in only an approximately six minute delay).



## Recent Unpublished Decisions Arranged by County

### RECENT UNPUBLISHED DECISIONS INVOLVING ALCOHOL AND TRAFFIC SAFETY

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**Adair County** [State v. Elijah Daniel Davis](#), No. 22-1994 (Iowa Court of Appeals, filed February 7, 2024). **Substantial evidence the defendant’s “impairment caused the crash and subsequently the victim’s death”**: the defendant’s blood and urine tests were confirmed positive for methamphetamine, amphetamine, and marijuana; the defendant was impaired enough that he had an increased pain threshold that allowed him to move around despite a compound fracture of his leg; witnesses observed defendant’s unpredictable and odd behavior; defendant left his six-year-old child with strangers; defendant left the scene; defendant was animated and upset; defendant was worried about getting his backpack to his father’s residence; testimony by medical experts explaining the cause of death; testimony by crash analyst explaining the wreckage; and photographs of the scene.

**Adair County** [State v. Elijah Daniel Davis](#), No. 22-1994 (Iowa Court of Appeals, filed February 7, 2024). **Vehicular homicide “ ‘doesn’t require that the intoxicated operation alone cause the harm; the State need only prove it was one of potentially many causes of the death.’ ”** quoting [State v. Johnson](#), 950 N.W.2d 232, 238 (Iowa 2020). The defendant had argued it was distracted driving, not the impairment, that was the likely reason for the crash.

**Black Hawk County** [State v. Ryan Richter, Jr.](#), No. 22-1298 (Iowa Court of Appeals, filed March 6, 2024). A seizure occurred when the officer entered the defendant’s unlawfully parked vehicle to move it to a lawful parking spot.

**Black Hawk County** [State v. Ryan Richter, Jr.](#), No. 22-1298 (Iowa Court of Appeals, filed March 6, 2024). **A vehicle unlawfully parked across a sidewalk (municipal infraction) does not rise to the level requiring aid under the objective standard of the community care taking exception, therefore the officer needed a warrant to enter the vehicle.** “While the way Richter parked his vehicle amounted to a municipal infraction and there was potential the vehicle could be ticketed or towed, a reasonable person would not agree that Officer Schuster’s aid was required, at least to enter and move the vehicle from across the sidewalk under the circumstances here.”

**Black Hawk County** [State v. Ryan Richter, Jr.](#), No. 22-1298 (Iowa Court of Appeals, filed March 6, 2024). The public need of a vehicle unlawfully parked across a sidewalk (municipal infraction) is not greater than law enforcement’s intrusion under the community caretaking analysis, therefore the officer needed a warrant to enter the vehicle.

**Dallas County** [State v. Bridgett Denise Kuebler](#), No. 23-0100 (Iowa Court of Appeals, filed February 7, 2024). **Sufficient evidence of impairment even though the defendant’s chemical breath sample was .059**: a witness observed defendant’s bad driving; odor of alcohol; admission of drinking; observations by officers of defendant’s behavior and demeanor (*see* [State v. Walter](#), No. 21-0446, 2022 WL 610571, at \*3 (Iowa Ct. App. Mar. 2, 2022)); slurred speech; watery, droopy, and bloodshot eyes; response time was slow; an illegal “U-turn on the interstate; poor performance on the SFSTs (*see* [State v. Van Cleave](#), No. 12-0041, 2013 WL 3458192, at \*3 (Iowa Ct. App. July 10, 2013)); and conclusion by two officers that the defendant was impaired (*see* [State v. Shannon](#), No. 17-0717, 2018 WL 1182561, at \*2 (Iowa Ct. App. Mar. 7, 2018); [State v. Blake](#), No. 15-1771, 2016 WL 4384253, at \*2 (Iowa Ct. App. Aug. 17, 2016)).



## RECENT UNPUBLISHED DECISIONS INVOLVING ALCOHOL AND TRAFFIC SAFETY

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**Dallas County** [State v. Bridgett Denise Kuebler](#), No. 23-0100 (Iowa Court of Appeals, filed February 7, 2024). **Sufficient evidence the defendant “knowingly act[ed] in a way that created a substantial risk of harm”**: admission of drinking after she initially denied drinking; two officers observed indications of impairment; had to make multiple attempts on the PBT; the six-year-old “child’s safety belt was not properly adjusted”; and unpredictable driving behavior.

**Decatur County** [State v. Gerry Harland Greenland](#), No. 21-1425 (Iowa Court of Appeals, filed January 24, 2024). **Sufficient evidence “[the defendant] knew Sheriff Boswell was a peace officer when he” drove a tractor into the sheriff’s unmarked vehicle**: just prior to the sheriff arriving a marked sheriff deputy’s vehicle arrived with lights activated; the sheriff’s unmarked vehicle had its lights activated; sheriff’s unmarked vehicle had a sheriff star on its license plate; defendant had previously been in a fight before law enforcement arrived; and defendant turned into the sheriff’s vehicle.

**Decatur County** [State v. Gerry Harland Greenland](#), No. 21-1425 (Iowa Court of Appeals, filed January 24, 2024). “The decisions to raise the spears [on the tractor] and to turn directly into a stopped vehicle support an inference [the defendant] intended to cause serious injury or death upon impact.”

**Decatur County** [State v. Gerry Harland Greenland](#), No. 21-1425 (Iowa Court of Appeals, filed January 24, 2024). “[D]riving his tractor with the raised bale tines directly into an occupied stopped vehicle meets the statutory definition of using a dangerous weapon.”

**Decatur County** [State v. Gerry Harland Greenland](#), No. 21-1425 (Iowa Court of Appeals, filed January 24, 2024). **The “convictions for assault on a peace officer with intent to cause a serious injury and attempt to commit murder of a peace officer do not merge” under these facts because there were “two distinct offenses.”** See [State v. Love](#), 858 N.W.2d 724-725 (Iowa 2015); compare to [State v. Braggs](#), 784 N.W.2d 31, 36–37 (Iowa 2010). The assault involved “the act of driving at Sheriff Boswell’s vehicle, placing him in fear of painful or offensive contact” and “the attempt to commit murder offense is the physical ramming of Sheriff Boswell’s vehicle with the raised bale spears directed at the driver seat of the vehicle.” Furthermore, “[t]he act of switching gears in order to push the vehicle is sufficient to separate the actions into two distinct offenses.”

**Hancock County** [State v. Glenn Dale Thompson](#), No. 22-2015 (Iowa Court of Appeals, filed March 27, 2024). Odor of methamphetamine provided “the reasonable suspicion necessary to extend the stop beyond its original purpose.

**Hancock County** [State v. Glenn Dale Thompson](#), No. 22-2015 (Iowa Court of Appeals, filed March 27, 2024). Even if the pat-down of the defendant was unlawful, because the defendant would have been arrested for lawfully discovered marijuana in the vehicle, the methamphetamine on the defendant’s person was lawfully discovered under inevitable discovery due to a subsequent search incident to arrest.

## RECENT UNPUBLISHED DECISIONS INVOLVING ALCOHOL AND TRAFFIC SAFETY

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*Linn County* [State v. Rayshawn Demetrius Cribbs](#), No. 22-1389 (Iowa Court of Appeals, filed January 10, 2024). **Although the officer initially followed the defendant because of a failure to use a turn signal, the warrant for the defendant “was inextricably intertwined with the OWI because it precipitated the police interaction where Officer Dellimore observed signs of Cribbs’s intoxication.”** Furthermore, the defendant’s multiple questions regarding the warrant despite the officer explaining the warrant to him was a sign of impairment. “Severing the evidence would have left the narrative ‘unintelligible, incomprehensible, confusing, or misleading.’”

*Linn County* [State v. Rayshawn Demetrius Cribbs](#), No. 22-1389 (Iowa Court of Appeals, filed January 10, 2024). Probative value of the evidence that the defendant had an active warrant for his arrest “was not substantially outweighed by unfair prejudice under Iowa Rule of Evidence 5.403[;]” especially since the Court gave a cautionary jury instruction.

*Linn County* [State v. Rayshawn Demetrius Cribbs](#), No. 22-1389 (Iowa Court of Appeals, filed January 10, 2024). **Sufficient evidence the defendant was intoxicated:** odor of alcohol; defendant’s contradicting statements; defendant’s behavior; refusal of the SFSTs; and refusal of to provide a chemical test.

*Muscatine County* [State v. Danah Renee Kleppe](#), No. 23-0634 (Iowa Court of Appeals, filed March 6, 2024). **Reasonable suspicion to stop the defendant’s vehicle for a possible impaired driver and for a violation of Iowa Code section 321.314.** Around 1:00 a.m., an officer was outside a bar and heard screaming, people stated the defendant was not ok to be driving, and the officer observed the defendant’s driving behavior leaving the bar. *See State v. Wuol*, No. 21-0951, 2022 WL 2348185, at \*4 (Iowa Ct. App. Jun. 29, 2022) (reasonable suspicion to initiate a traffic stop under the totality of the circumstances when including the defendant’s erratic or unusual driving behavior).

*Muscatine County* [State v. Danah Renee Kleppe](#), No. 23-0634 (Iowa Court of Appeals, filed March 6, 2024). **Reasonable suspicion to stop the defendant’s vehicle for failing to use a turn signal in violation of Iowa Code section 321.314.** The defendant did not use her turn signal when she turned left in front of a stopped black vehicle, possibly preventing the black vehicle from turning at the intersection or continuing straight. The Court found: “due to its proximity and location, the black pickup may have been affected by Kleppe’s left turn and therefore, under section 321.314, she was required to use a turn signal.” *Compare to State v. Malloy*, 453 N.W.2d 243 (Iowa Ct. App. 1990) (no probable cause to stop vehicle based upon failure to use turn signal).

*Muscatine County* [State v. Danah Renee Kleppe](#), No. 23-0634 (Iowa Court of Appeals, filed March 6, 2024). **Probable cause to stop the defendant’s vehicle for failing to use a turn signal in violation of Iowa Code section 321.314.** The defendant made two separate turns with an officer only “about one-half block away” from her vehicle. The Court found: “Kleppe violated section 321.314 based on the closeness of the officer when she turned without using a turn signal.” *See State v. Ronald Dean Schlichting*, No. 16-0579, 2017 WL 2461490 (Iowa Ct. App. June 7, 2017); *State v. James Brian Chamberlain*, No. 01-1621, 2002 WL 1973931 (Iowa Ct. App. August 28, 2002); *compare to State v. Malloy*, 453 N.W.2d 243 (Iowa Ct. App. 1990) (no probable cause to stop vehicle based upon failure to use turn signal).

## RECENT UNPUBLISHED DECISIONS INVOLVING ALCOHOL AND TRAFFIC SAFETY

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**Muscatine County** [State v. Jeremy Allen Bartenhagen](#), No. 22-1489 (Iowa Court of Appeals, filed March 27, 2024). The State is not required to prove the defendant received noticed his license was barred. [State v. Williams](#), 910 N.W.2d 586, 591 (Iowa 2018).

**Muscatine County** [State v. Jeremy Allen Bartenhagen](#), No. 22-1489 (Iowa Court of Appeals, filed March 27, 2024). No abuse in discretion for admitting a video exhibit because the defendant failed to show how he lacked timely notice of the exhibit.

**Muscatine County** [State v. Jeremy Allen Bartenhagen](#), No. 22-1489 (Iowa Court of Appeals, filed March 27, 2024). Iowa Rule of Evidence 5.106 (“rule of completeness”) does not provide for the exclusion of evidence, it provides for the inclusion of the entire video for “out-of-context clips”.

**Muscatine County** [State v. Jeremy Allen Bartenhagen](#), No. 22-1489 (Iowa Court of Appeals, filed March 27, 2024). **No abuse in discretion for denying a “motion for mistrial” just because the defendant may have been observed by potential jurors outside the courtroom walking with two deputies:** the time was very brief, the defendant was not in any kind of restraints, the defendant did not have any jail clothing on, and the defendant was dress as he appeared in court.

**O’Brien County** [State v. Carlos Darinel Martin Sebastian](#), No. 22-1080 (Iowa Court of Appeals, filed February 21, 2024). **Under the totality of the circumstances the officer used reasonable efforts to explain the consequences of implied consent:** officer has two hours to invoke implied consent; at the time the law enforcement agency did not have easy access to telephone interpreter services; officer used a jail inmate that spoke Spanish and English to help translate SFSTs and inmate stayed throughout the entire process; officer demonstrated the SFSTs to the defendant; defendant had a Spanish implied consent form to read while officer read the form in English; defendant did not request any help when the officer read the implied consent form; and no evidence the defendant did not understand the implied consent form. *See* [State v. Garcia](#), 756 N.W.2d 216 (Iowa 2008).

**O’Brien County** [State v. Carlos Darinel Martin Sebastian](#), No. 22-1080 (Iowa Court of Appeals, filed February 21, 2024). Any issue regarding with the SFSTs “not properly administered in light of the language barrier . . . go to the weight, not the admissibility, of the results.” *See* [State v. Quintero-Labrada](#), No. 19-0544, 2020 WL 6482726, at \*2 (Iowa Ct. App. Nov. 4, 2020).

**Polk County** [State v. Jabri Malik Guy](#), No. 23-0493 (Iowa Court of Appeals, filed January 10, 2024). No abuse in discretion in sentencing the defendant to two years in prison for an OWI 2<sup>nd</sup>, even though the substance abuse report recommended no treatment and the Court considered that this was the defendant’s third conviction for OWI in short time period.

**Polk County** [Dominick Ronald Marcott v. State](#), No. 22-1099 (Iowa Court of Appeals, filed January 24, 2024). **The defendant’s attorney adequately explained “the nature of the charge” to the defendant:** attorney discussed each line of the guilty plea with the defendant; defendant did not assert he had purchased the vehicle; and defendant was familiar with the court system and criminal proceedings.

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**Polk County** [Dominick Ronald Marcott v. State](#), No. 22-1099 (Iowa Court of Appeals, filed January 24, 2024). **Sufficient factual basis to plead guilty to operating without owner’s consent:** defendant provided “inconsistent stories about how he came to possess [the vehicle;]” defendant was found in the vehicle approximately two months after it was reported missing; and the legitimacy of the bill of sale was questionable.

**Polk County** [State v. Nicholas Alexander Sinclair](#), No. 23-0331 (Iowa Court of Appeals, filed January 24, 2024). **Based on the totality of the circumstances, there was reasonable suspicion to initiate a traffic stop:** defendant’s SUV was the only one leaving the gated community; it was nighttime and defendant’s dark gray SUV reasonably could have looked black; two separate 911 callers reported a black SUV driving near a woman asking for help (could suggest she was being assaulted); callers reported the black SUV drove by the woman multiple times (could suggest possible kidnapping or harassment); and the defendant’s vehicle was stopped shortly after the first call to 911.

**Polk County** [State v. Thomas Michael Yarges](#), No. 23-0474 (Iowa Court of Appeals, filed March 27, 2024). Counsel not ineffective; defendant “failed to establish that his guilty plea was not knowing and voluntary and, given the significant advantage to him, there was not a reasonable probability that he would have rejected the plea agreement and gone to trial.”

**Polk County** [State v. Thomas Michael Yarges](#), No. 23-0474 (Iowa Court of Appeals, filed March 27, 2024). The defendant “failed to meet the high standard of clear and convincing evidence for proving actual innocence” for the crimes of driving while barred (DWB) and criminal mischief.

**Polk County** [State v. Brandon C. Williams](#), No. 23-1099 (Iowa Court of Appeals, filed March 27, 2024). The judge considered improper factors (a lab report showing cocaine metabolites and .069% BAC) that the defendant had not admitted to in his guilty plea when sentencing the defendant on for OWI 2<sup>nd</sup>; remanded for resentencing.

**Scott County** [State v. James William Thiel Sr.](#), No. 22-1293 (Iowa Court of Appeals, filed January 10, 2024). **Defendant failed to satisfy the materiality prong of a Brady claim:** the two draft diagrams not provided during discovery were just “incremental”; the two draft diagrams would not have changed the trial dynamic; and the two draft diagrams “[did] not does not shake our confidence in the verdict so as to warrant a new trial.” See [State v. Romeo](#), 524 N.W.2d 543 (Iowa 1996).

**Scott County** [State v. James William Thiel Sr.](#), No. 22-1293 (Iowa Court of Appeals, filed January 10, 2024). **Sufficient evidence to support the two aggravated misdemeanor convictions for involuntary manslaughter (“conduct likely to cause death”):** multiple witnesses testified the boats were racing and driving too fast for the conditions; GPS information supported the testimony that the boat was going extremely fast; and the jurors were free to find the officer’s testimony credible.

**Scott County** [State v. James William Thiel Sr.](#), No. 22-1293 (Iowa Court of Appeals, filed January 10, 2024). Jury verdicts finding the defendant guilty of “involuntary manslaughter by conduct likely to cause death” under Iowa Code section 707.5(1)(b) and not guilty of “involuntary manslaughter by public offense” under section 707.5(1)(a) “were not legally inconsistent.”

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**Scott County** [State v. James William Thiel Sr.](#), No. 22-1293 (Iowa Court of Appeals, filed January 10, 2024). **The Court did not abuse its discretion in denying the motion for new trial:** weight of the evidence (several disinterested witnesses; GPS data; and damage to the boats) supports the jury verdict.

**Story County** [State v. Hannah Jean Hennick](#), No. 23-0707 (Iowa Court of Appeals, filed March 27, 2024). When the Court imposes an agreed upon sentence pursuant to a plea agreement, a defendant does not have good cause to appeal. *See* [State v. Estabrook](#), No. 22-1118, 2023 WL 2671954, at \*1 (Iowa Ct. App. Mar. 29, 2023).

**Story County** [State v. Hannah Jean Hennick](#), No. 23-0707 (Iowa Court of Appeals, filed March 27, 2024). The Court cannot decide the defendant's ineffective assistance claims on direct appeal. *See* Iowa Code section 814.7.

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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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