



# HIGHWAY SAFETY

LAW UPDATE



January 3, 2022 Office of the Prosecuting Attorneys Training Coordinator October/November/December 2021

## County Spotlight – Calhoun County

The thirteenth county spotlight is on Calhoun County. Calhoun County sits north and west of Des Moines. Calhoun County was originally named Fox, but was later renamed after former U.S. Vice President John C. Calhoun in 1853.<sup>1</sup> The original county seat was Lake City, but around 1876 it was moved to Rockwell City.<sup>2</sup> The town of Rockwell City is located off of Highway 4.<sup>3</sup> The courthouse is located in Rockwell City and “in 1966 it was placed on the National Register of Historical Buildings.”<sup>4</sup> According to the 2020 census, Calhoun County has a population of 9,927, up from 9,670 in 2010.<sup>5</sup>

Tina Meth-Farrington is the Calhoun County Attorney. Ms. Meth-Farrington is a full-time county attorney and has one part-time assistant county attorney, Brett Schilling, in the office. Ms. Meth-Farrington has been the Calhoun County Attorney for approximately 8.5 years. In addition to her duties as the Calhoun County Attorney, Ms. Meth-Farrington is the current vice president on the ICAA Board of Directors and chair of the ICAA Juvenile Justice Committee, a position she has held for approximately 8.5 years. Prior to becoming the Calhoun County Attorney, Ms. Meth-Farrington was a child support recovery attorney for approximately 10 years and then started as an assistant county attorney in 1998.

Ms. Meth-Farrington graduated from the University of Iowa with a degree in History and a minor in Sociology and then attended Drake Law School. After graduating law school, Ms. Meth-Farrington started with child support recovery.

Calhoun County has 8 local law enforcement agencies: Rockwell City, Lake City, Manson, and Pomeroy Police Departments, the Iowa DOT, Iowa DNR, Iowa State Patrol, and the Calhoun County Sheriff’s Office, along with North Central Correctional Facility. In 2020, there were 715 traffic convictions<sup>6</sup> and 21 OWI convictions in Calhoun County according to Division of Criminal & Juvenile Justice Planning.<sup>7</sup> Please note that 2020 was the start of the COVID-19 Pandemic and trials were paused for a period of time.<sup>8</sup>

[cont. on page 2](#)

### INSIDE THIS ISSUE

<b>1</b>	<a href="#">County Spotlight – Calhoun County</a>
<b>2</b>	<a href="#">Beware, 321J.11 Applies Even When Using A Search Warrant</a>
<b>3</b>	<a href="#">Change to PBT Calibration Logs</a>
<b>4</b>	<a href="#">§ 805.6(2) – Two Copies or Two Pieces of Paper</a> <a href="#">The Time to Reorder the Criminal Law Handbook is HERE</a> <a href="#">Opinions of the Iowa Court of Appeals (published)</a>
<b>5</b>	<a href="#">Recent Unpublished Decisions Arranged by County</a>

<sup>1</sup> <https://www.calhouncounty.iowa.gov/residents/history.php>

<sup>2</sup> [https://en.wikipedia.org/wiki/Calhoun\\_County,\\_Iowa](https://en.wikipedia.org/wiki/Calhoun_County,_Iowa) and

<https://www.calhouncounty.iowa.gov/residents/history.php>

<sup>3</sup> <https://www.google.com/maps/place/Rockwell+City,+IA+50579/@42.3988232,-94.6429056,14z/data=!3m1!4m5!3m4!1s0x87ed63c2754300af:0xe49ccc4c4615f0e2!8m2!3d42.3952576!4d-94.6338671?hl=en>

<sup>4</sup> <https://www.calhouncounty.iowa.gov/residents/history.php>

<sup>5</sup> <https://www.census.gov/quickfacts/fact/table/calhouncountyiowa,IA/PST045219>

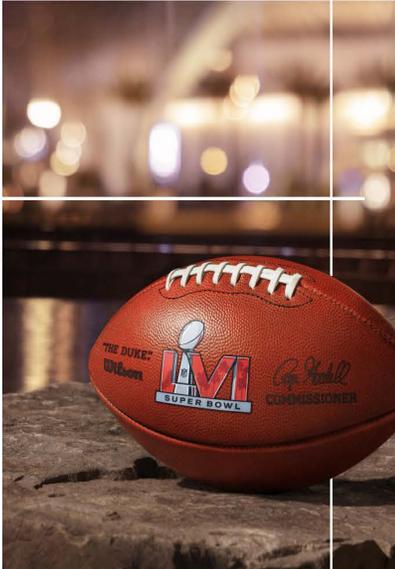
<sup>6</sup> “Convictions include all charges resulting in a conviction, including deferred judgments. Cases involving multiple charges may also involve multiple convictions, and each of those individual convictions are included in the results. Local ordinances are not included.”

<sup>7</sup> <https://disposedcharges.iowa.gov/asp/glossary.asp>

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

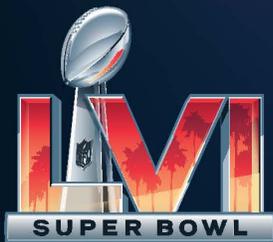
<sup>8</sup> <https://www.iowacourts.gov/iowa-courts/covid-19-information-and-updates/>

# SUPER BOWL FANS



DON'T  
LET FANS  
DRIVE  
DRUNK

DESIGNATE A  
SOBER DRIVER



NHTSA



## County Spotlight cont.

A special thank you to Calhoun County and Ms. Meth-Farrington serving as a pilot county when jury trials resumed after COVID-19 suspended all trials. As one of the first counties to have a jury trial, Calhoun County tested the new Iowa Supreme Court rules due to COVID-19.

### Beware, 321J.11 Applies Even When Using A Search Warrant

[Iowa Code section 321J.11\(2\)](#) states: an OWI suspect “may have an independent chemical test or tests administered at the person’s own expense in addition to any administered at the direction of a peace officer.” Under [State v. Bloomer](#), 618 N.W.2d 550 (Iowa 2000), an OWI suspect only has a right to an independent test under 321J.11 if they first complete the test requested by law enforcement. After [Bloomer](#), the Iowa Court of Appeals issued an unpublished decision, [State v. Daniel](#), 2017 WL 706339 (Iowa Ct. App. 2017) and found that even though the defendant requested a breath test, he was not entitled to an independent test under 321J.11 because he had refused the officers request for a chemical breath test.

In 2017, the Iowa Court of Appeals in [State v. Frescoln](#), 911 N.W.2d 450 (Iowa Ct. App. 2017) held that implied consent is not the only way the State may obtained a chemical test. The State may obtain a chemical test (e.g., blood sample) by invoking implied consent or via a search warrant during an OWI investigation as long as implied consent is not invoked. [State v. Frescoln](#), 911 N.W.2d 450 (Iowa Ct. App. 2017); *see also* 321J.18. After [Frescoln](#), many law enforcement agencies started utilizing search warrants during OWI investigations to obtain chemical samples.

After [Bloomer](#) and [Daniel](#), it was clear how Iowa Code section 321J.11 applies when implied consent is invoked and a chemical test is provided; however, a suspect’s right to independent testing under 321J.11 does not require implied consent be invoked. In [State v. Chambers](#), 2021 WL 3893906 (Iowa Ct. App. 2021), law enforcement obtained a chemical breath sample via a search warrant. After obtaining the chemical sample, the suspect stated she would provide a blood sample for drug testing, but the officer declined. The deputy declined and did not inform the suspect regarding how to obtain an independent chemical test under Iowa Code section 321J.11(2). The Court of Appeals found that the State violated the suspect’s independent testing rights even though implied consent was not invoked. Thus, Iowa Code section 321J.11 only requires that the OWI suspect provide a chemical test and then make a request for independent testing; it does not matter whether the chemical sample was obtained via implied consent or a search warrant. [State v. Chambers](#), 2021 WL 3893906 (Iowa Ct. App. 2021).

The big takeaway from State v. Chambers is Iowa Code section 321J.11 applies *anytime* an OWI suspect provides a chemical sample (blood, breath, or urine), even if the sample was provided outside of implied consent or a search warrant (e.g., by voluntary consent). \*\*\*This article was also published in *The Iowa Insider – Iowa’s Official Drug Recognition Expert Newsletter*, volume 1, issue 1.\*\*\*



## Change to PBT Calibration Logs

On March 3, 2021, changes to Iowa Administrative Code Rule 661-157.5(2) went into effect, which now requires the State to also record “The expiration date of the standard used.”<sup>9</sup> Once a month the State must calibrate every PBT it uses, regardless of whether the results will be admitted into evidence. The State must keep a log of each calibration recording the following information in order to comply with Iowa Administrative Code Rule 661-157.5(2):

- a. The identity of the officer performing the calibration.
- b. The date.
- c. The value and type of standard used.
- d. The unit type and identification number.
- e. The expiration date of the standard used.<sup>10</sup>

All agencies should make sure that they are recording all of the information required by Rule 661-157.5(2) in their PBT Logs **and contact their legal counsel if they have any questions.**



<sup>9</sup> <https://www.legis.iowa.gov/docs/iac/rule/01-27-2021.661.157.5.pdf>

<sup>10</sup> <https://www.legis.iowa.gov/docs/iac/rule/01-27-2021.661.157.5.pdf>

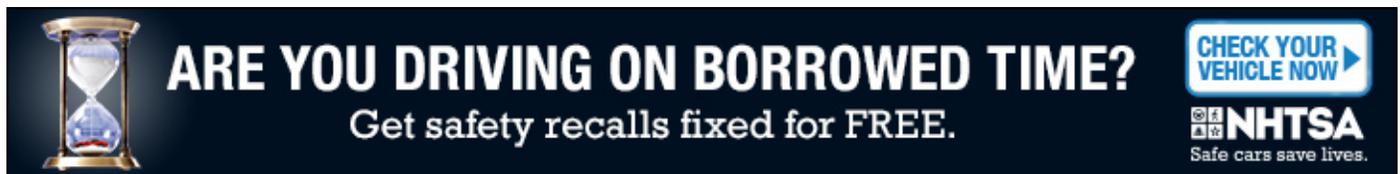
## § 805.6(2) – Two Copies or Two Pieces of Paper

The Iowa Code contains hundreds of pages and thousands of statutes. Iowa Code section 805.6 is one of those statutes and is titled “**Uniform citation and complaint.**” §805.6(2) allows an officer to issue a citation to person via the old “carbon copy” way, which results in five copies of the citation being generated, or by a computerized device.<sup>11</sup> When issuing a “carbon copy” citation, §805.6(2) requires the officer to provide two of the five copies to the defendant.<sup>12</sup> §805.6(2) also requires an “officer issuing the citation through a computerized device” to “give two copies of the citation to the person cited[.]”<sup>13</sup> Under the “carbon copy” citation method, when an officer provides “two copies”, the officer physically gives the defendant two separate pieces of paper informing the defendant of the charge.<sup>14</sup> However, when an officer issues a citation using a computerized device (TraCS), the defendant’s piece of paper contains “two copies” of the charge.<sup>15</sup> Because the defendant’s piece of paper contains the charging information in two, separate and distinct locations on the paper, the defendant is actually receiving “two copies” of the citation in compliance with §805.6(2).<sup>16</sup> Don’t forget, §805.6(2) only requires the State to provide “two copies” of the citation, it does **not** require the State provide two “pieces of paper” to the defendant.<sup>17</sup> **If an officer has any questions, they should contact their supervisor or legal counsel.**

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

The newest edition of the Criminal Law Handbook, which contains the most recent versions of the OWI and Traffic Offenses in Iowa manual and the Iowa Charging Manual, was finally released in December 2021. We appreciate your patience in the release delay. 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 an order form or the updated version, 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.



**ARE YOU DRIVING ON BORROWED TIME?**  
Get safety recalls fixed for FREE.

**CHECK YOUR VEHICLE NOW**

**NHTSA**  
Safe cars save lives.

## Opinions of the Iowa Court of Appeals (published)

*Cass County State v. Jack Lee Carson, Jr.*, \_\_\_ N.W.2d \_\_\_ No. 20-0254 (Iowa Court of Appeals, filed October 20, 2021). **A trained drug dog’s multiple alerts was sufficient probable cause to search the vehicle.** The State sufficiently presented the drug dog’s training, methods of alert, reliability, and the alerts exhibited during the traffic stop to establish sufficient probable cause to search.

<sup>11</sup> <https://www.legis.iowa.gov/docs/code/805.6.pdf>

<sup>12</sup> <https://www.legis.iowa.gov/docs/code/805.6.pdf>

<sup>13</sup> <https://www.legis.iowa.gov/docs/code/805.6.pdf>

<sup>14</sup> <https://www.legis.iowa.gov/docs/code/805.6.pdf>

<sup>15</sup> <https://www.legis.iowa.gov/docs/code/805.6.pdf>

<sup>16</sup> <https://www.legis.iowa.gov/docs/code/805.6.pdf>

<sup>17</sup> <https://www.legis.iowa.gov/docs/code/805.6.pdf>

*Cass County State v. Jack Lee Carson, Jr.*, \_\_\_ N.W.2d \_\_\_, No. 20-0254 (Iowa Court of Appeals, filed October 20, 2021). Pursuant to Iowa Code section 814.7, the defendant cannot claim ineffective assistance of counsel on direct appeal.

## (Recent Unpublished Decisions Arranged by County)

### RECENT UNPUBLISHED DECISIONS INVOLVING ALCOHOL AND TRAFFIC SAFETY

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

*Appanoose County State v. Theodore W. Buselmeier*, No. 20-0370 (Iowa Court of Appeals, filed December 15, 2021). **Reasonable suspicion to conduct an investigative stop based on a citizen informant's information that the officer independently corroborated.** A citizen informant called in a report of the defendant asking for help getting a buck that was shot, drove an out-of-state vehicle, and observed a picture of the buck. A DNR officer then found the defendant around the location the informant provided, was aware the defendant did not have a license to shoot a buck, and was able to conclude the defendant was not involved in a hunting party. The Court of Appeals *distinguished* Florida v. J.L., 529 U.S. 266 (2000).

*Appanoose County State v. Theodore W. Buselmeier*, No. 20-0370 (Iowa Court of Appeals, filed December 15, 2021). **Law enforcement did not impermissibly extend the stop to try to locate the deer:** the initial “stop was to investigate illegal deer hunting[;]” the condition of the deer showed it had been recently killed; and the officer then noticed “what appeared to be blood on Buselmeier’s boots and pants.”

*Appanoose County State v. Theodore W. Buselmeier*, No. 20-0370 (Iowa Court of Appeals, filed December 15, 2021). **Sufficient evidence the defendant possessed the marijuana:** the defendant was by himself when law enforcement found him; marijuana was found in the defendant’s vehicle; and evidence the defendant “had been hunting alone in the days before.”

*Black Hawk County State v. Joseph Robert McGraw*, No. 20-0170 (Iowa Court of Appeals, filed November 3, 2021). “[A] **misstatement by the prosecutor alone [does not] equate[] to a defect in a court’s sentencing procedure.** The defendant failed to show the sentencing court did not exercise its discretion or was unaware of its discretion in not suspending the \$1250 fine on his OWI 1<sup>st</sup> charge, even if the prosecutor had erroneously told the court the fine could not be suspended.

*Black Hawk County State v. Deshauna Monee Culpepper*, No. 19-1953 (Iowa Court of Appeals, filed November 23, 2021). The defendant did not preserve error in her motion in arrest of judgment “on the issue concerning the sufficiency of the evidence to show specific intent to commit assault of a peace officer.”

*Black Hawk County State v. Deshauna Monee Culpepper*, No. 19-1953 (Iowa Court of Appeals, filed November 23, 2021). Pursuant to Iowa Code section 814.7, the defendant cannot argue ineffective assistance of counsel on direct appeal.

*Dubuque County State v. Earnest Jones Hunt, Jr.*, No. 20-1595 (Iowa Court of Appeals, filed November 3, 2021). **Under the plain-feel exception, an officer does not need to be able to identify the specific type of drug that was felt.** During a pat down, an experienced drug investigator felt, but did not manipulate, multiple small plastic bags that were consistent with how heroin, crack cocaine, or cocaine is sold. The

## 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/>).

officer then seized the bags. Held, although the officer was not sure which drug was in the bags, under the plain-feel exception, an officer does not need to be able to identify the specific type of drug that was felt. *Distinguished State v. Ericson*, 2016 WL 719178 (Iowa Ct. App. Feb. 24, 2016).

*Lee (South) County State v. Jaymes Anthony Stark*, No. 20-1503 (Iowa Court of Appeals, filed October 6, 2021). Although the defendant was represented by counsel when he filed his notice of appeal, which was prohibited under 814.6A, it showed his intent to appeal and the Court granted his “request for a delayed appeal.”

*Lee (South) County State v. Jaymes Anthony Stark*, No. 20-1503 (Iowa Court of Appeals, filed October 6, 2021). **Under the totality of the circumstances, the defendant was in custody when questioned and should have been read his *Miranda* warnings.** The Court looked at the four factors articulated in *State v. Countryman*, 572 N.W.2d 553 (1997) to determine if the defendant was in custody. The Court determined: law enforcement parked near him with the patrol lights flashing; officer told him to stay; there were three officers present; law enforcement continually asked him about breaking into the victim’s car; law enforcement had him show the contents of his pockets; he was encouraged to admit guilt; he was confronted “with evidence of his guilty”; and he was never told he could leave.

*Linn County State v. Adam Donald Oscar Melchert*, No. 20-1301 (Iowa Court of Appeals, filed October 6, 2021). **Defendant’s refusal to submit to a chemical test was voluntary, even though law enforcement did not inform him he would be ineligible for a deferred judgment if he refused.** Law enforcement officers do not need to advise a driver that they would be ineligible for a deferred judgment if they refuse a request for a chemical test as part of the implied consent procedures. *See State v. Kentner*, 562 N.W.2d 431, 433 (Iowa 1997); *Primm v. Iowa Dep’t of Transp.*, 561 N.W.2d 80, 81 (Iowa 1997). Officers just need to inform drivers regarding the consequences detailed in Iowa Code section 321J.8.

*Linn County State v. Adam Donald Oscar Melchert*, No. 20-1301 (Iowa Court of Appeals, filed October 6, 2021). **Iowa Code section 907.3(1)(a)(6)(d), which precludes a defendant from receiving a deferred judgment if they refuse an implied consent chemical test request, does not violate equal protection.** Once a defendant refuses a chemical test request, they are no longer similarly situated to a defendant that consented to a chemical test request. *See United States v. Gallegos*, 480 F.3d 856, 859 (8<sup>th</sup> Cir. 2007).

*Linn County State v. Aubree Kay Bowers*, No. 20-1548 (Iowa Court of Appeals, filed October 20, 2021). **A driver must yield to oncoming traffic before making a left turn even if the oncoming driver is speeding.** The defendant violated Iowa Code section 321.320 when she turned left in front of a deputy traveling in the opposite direction, causing the deputy to take evasive action.

*Linn County State v. Aubree Kay Bowers*, No. 20-1548 (Iowa Court of Appeals, filed October 20, 2021). **Probable cause to stop the defendant for failing to yield to oncoming traffic before making a left turn (321.320), causing the oncoming vehicle to make evasive maneuvers, even if the oncoming vehicle was speeding.** Iowa Code section 321.320 does not have an exception if the in oncoming vehicle is speeding.

## 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/>).*

**Linn County** [State v. Aubree Kay Bowers](#), No. 20-1548 (Iowa Court of Appeals, filed October 20, 2021). **Sufficient evidence the defendant was intoxicated:** odor of alcohol; admission of drinking; signs of impairment; and a traffic violation.

**Linn County** [State v. James Obbie Hall](#), No. 19-1334 (Iowa Court of Appeals, filed December 15, 2021). **Sufficient evidence the defendant, at a minimum, “constructively possessed the gun[:]”** the gun was next to the door handle in plain view; and the defendant could not open the door without moving the gun.

**Marshall County** [State v. Jake Wallen](#), No. 21-0161 (Iowa Court of Appeals, filed October 6, 2021). No abuse in discretion in sentencing the defendant to prison even though the PSI (Presentence Investigation) report recommended a suspended sentence.

**Polk County** [State v. James Dow Flanagan](#), No. 20-0652 (Iowa Court of Appeals, filed October 6, 2021). **Unlawful extension of a traffic stop; officer exceeded his authority when he asked the driver back to patrol vehicle when the traffic stop was only for the passenger not wearing a seatbelt.** “Because the passenger’s infraction did not provide the trooper sufficient cause to move [the driver (Flanagan)] into his patrol car for questioning, the trooper exceeded his authority and improperly prolonged the stop.”

**Polk County** [State v. James Dow Flanagan](#), No. 20-0652 (Iowa Court of Appeals, filed October 6, 2021). **“Blending” questions not related to the reasons for the traffic stop while processing the citation unlawfully prolonged the stop.** The officer’s off-topic questions to the driver (e.g., medications the driver took; whether the driver used drugs; where they were coming from; and why the driver’s glasses had been broken) while processing a traffic citation for the passenger not wearing a seatbelt “prolonged the stop beyond the time reasonably required to complete its traffic-related mission.” See *In re Pardee*, 872 N.W.2d 384 (Iowa 2015).

**Polk County** [State v. James Dow Flanagan](#), No. 20-0652 (Iowa Court of Appeals, filed October 6, 2021). The officer did not have reasonable suspicion to ask the driver back to the patrol vehicle to determine if the passenger was the protected party on a no contact order just because the passenger and protected party were female.

**Polk County** [State v. James Dow Flanagan](#), No. 20-0652 (Iowa Court of Appeals, filed October 6, 2021). The defendant’s “nervousness and reddened eyes did not give the trooper reasonable suspicion to investigate impaired driving” when the defendant just left a campfire and the traffic stop was for the passenger not wearing a seatbelt.

**Polk County** [State v. Lauren Schulte](#), No. 20-1092 (Iowa Court of Appeals, filed October 20, 2021). Defendant did not preserve error to challenge her guilty plea because she failed to file a motion in arrest of judgment and she did not show good cause to appeal her guilty plea on direct appeal.

**Polk County** [State v. Lauren Schulte](#), No. 20-1092 (Iowa Court of Appeals, filed October 20, 2021). No abuse in discretion in sentencing the defendant to prison and ordering the sentences to run consecutive.

## 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/>).*

**Polk County [State v. Rhonda S. Dawson](#)**, No. 20-1585 (Iowa Court of Appeals, filed October 20, 2021). An unattached semi-truck trailer is a trailer and is not “an unoccupied motor vehicle or motor truck[;]” defendant was properly convicted of the class ‘D’ Burglary 3<sup>rd</sup> as opposed to the aggravated misdemeanor. See Iowa Code sections 321.1(41) (defining motor truck), (42)(a) (defining motor vehicle), (71) (defining semitrailer), (85) (defining trailer), (90) (defining vehicle); and 713.6A.

**Polk County [State v. Stephone Ann Kriens](#)**, No. 20-1232 (Iowa Court of Appeals, filed November 3, 2021). **Reasonable suspicion to initiate a traffic stop:** BOLO alert that included the make, model, license plate, direction vehicle was traveling, and gender of the driver; the driver tampered with the interlock device; and the officer observed the vehicle weaving.

**Polk County [State v. Stephone Ann Kriens](#)**, No. 20-1232 (Iowa Court of Appeals, filed November 3, 2021). The court stated sufficient reasons for imposing consecutive prison sentences for OWI 3<sup>rd</sup> and tampering with an ignition interlock device.

**Polk County [State v. Timothy Roy Neades](#)**, No. 20-1624 (Iowa Court of Appeals, filed November 3, 2021). **“There [was] sufficient evidence [the defendant] had constructive possession of the marijuana[,]” even though a person was left alone in the vehicle and the dash came was partially blocked for approximately three-and-a-half minutes.** The defendant admitted the container was his; drugs were found in the container; the container contained the defendant’s social security card and id card; the container was within the defendant’s reach; the defendant told the deputies he did not have any identification; the defendant was driving the vehicle; and the defendant admitted to using marijuana. See [State v. Dewitt](#), 811 N.W.2d 460, 475 (Iowa 2012) (quoting [State v. Maxwell](#), 743 N.W.2d 185, 194 (Iowa 2008)) listing the four factors when determining constructive possession and five additional factors of constructive possession in a vehicle).

**Polk County [State v. Timothy Roy Neades](#)**, No. 20-1624 (Iowa Court of Appeals, filed November 3, 2021). **Sufficient evidence the baggies contained marijuana, not hemp, despite not having the substance tested to confirm it was not hemp:** testimony about a criminalist’s training; testimony from the criminalist that “the substance was consistent with marijuana based on both macro and microscopic examinations[;]” “two other tests that indicated the substance was cannabis[;]” deputies testified the substance “was consistent with marijuana[;]” and testimony that hemp is not usually packaged that way (small baggies). See [State v. Brubaker](#), 805 N.W.2d 164, 172 (Iowa 2011) as amended on denial of reh’g (Nov. 3, 2011) (“the State is not required to test the purported drug.”).

**Polk County [Nathan Paul Valin v. State](#)**, No. 20-0362 (Iowa Court of Appeals, filed December 15, 2021). A court’s holding that “affects the conduct of the police, not defendants, it is procedural, not substantive.” [State v. Werner](#), 919 N.W.2d 375 (Iowa 2018), which found that Iowa DOT officers could not perform a citizen’s arrest “while acting in their official capacity[.]” is a procedural rule, not substantive, and therefore, is not applied retroactively.

## 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/>).*

**Wapello County** [Marcus Darrell Eugene Luthi v. Clint Nies and Wapello County, Iowa](#), No. 20-1270 (Iowa Court of Appeals, filed November 3, 2021). **Summary judgment properly granted.** “[N]either section 804.20 nor the Iowa Constitution afforded Luthi the right to a private and confidential phone conversation with his attorney before deciding whether to submit to chemical testing.”

**Wapello County** [Marcus Darrell Eugene Luthi v. Clint Nies and Wapello County, Iowa](#), No. 20-1270 (Iowa Court of Appeals, filed November 3, 2021). **No reasonable expectation of privacy under Chapter 808B when making 804.20 phone calls in the custody room, even if the person is on their own phone, the officer is out of the room, and the conversation is recorded by a handheld device.** Notice was posted that calls would be recorded and recording equipment was in plain sight.

**Warren County** [State v. Charles Lamine Cephas](#), No. 19-1230 (Iowa Court of Appeals, filed November 23, 2021). **Ineffective assistance of counsel is not good cause to challenge a guilty plea on direct appeal.** Defendant failed to file a motion in arrest of judgment and cannot now challenge his guilty plea on direct appeal without good cause pursuant to Iowa Code section 814.6(1)(a)(3).

**Warren County** [State v. Charles Lamine Cephas](#), No. 19-1230 (Iowa Court of Appeals, filed November 23, 2021). The defendant cannot argue ineffective assistance of counsel on direct appeal pursuant to Iowa Code section 814.7.

**Washington County** [State v. William Braxton McCarroll](#), No. 20-0641 (Iowa Court of Appeals, filed October 6, 2021). The defendant cannot argue ineffective assistance of counsel on direct appeal (Iowa Code section 814.7) and failed to show “good cause” to appeal his guilty plea (Iowa Code section 814.6).

**Woodbury County** [State v. Kenneth Azure](#), No. 20-1380 (Iowa Court of Appeals, filed October 6, 2021). **Sufficient evidence the defendant knew the vehicle he was in possession of was stolen:** the defendant attempted to elude law enforcement in the stolen vehicle (*see State v. Wilson*, 878 N.W.2d 203 215 (Iowa 2016)); and defendant was unable to explain his possession of the recently stolen vehicle (*see State v. Stephen*, 537 N.W.2d 792 (Iowa Ct. App. 1995)).

**Woodbury County** [State v. Kenneth Azure](#), No. 20-1380 (Iowa Court of Appeals, filed October 6, 2021). Pursuant to Iowa Code section 814.7, the defendant’s claim of ineffective assistance of counsel cannot be decided on direct appeal and the Iowa Supreme Court rejected the adoption of the plain error rule in [State v. Treptow](#), 960 N.W.2d 98, 109 (Iowa 2021).

**Woodbury County** [State v. Douglas Evander St. Cyr](#), No. 20-0628 (Iowa Court of Appeals, filed October 20, 2021). **The officer’s mistake of fact regarding the lack of rear license plate was objectively reasonable, even though it was later determined the defendant had a temporary registration paper in his rear window.** An officer initiated a traffic stop at night because the defendant’s vehicle did not have a rear license plate in violation of Iowa Code section 321.37(1). Due to the way the defendant parked and that the officer was focused on the driver as he approached the vehicle, the officer did not see the temporary registration that complied with Iowa Code section 321.25(1) in the back window on the opposite side of his approach. The officer’s initial interaction with the defendant was regarding the lack of a rear license plate

## 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/>).*

and the defendant did not inform the officer about the temporary registration in the rear window. The officer requested the defendant's driver's license and then observed illegal drugs. The defendant was eventually charged with possession of illegal drugs and driving while barred (DWB). The defendant appealed the denial of his motion to suppress, arguing it was an improper stop. Held, the officer's mistake of fact that the defendant failed to properly display a rear license plate was objectively reasonable. The Court of Appeals *distinguished* State v. Coleman, 890 N.W.2d 284 (Iowa 2017) noting if the defendant had pointed out the temporary registration prior to the officer requesting his license and then discovering the illegal drugs, the officer would have needed to terminate the traffic stop; but here the defendant failed to inform the officer about the temporary registration and the officer lawfully continued the stop.

**Woodbury County State v. Douglas Evander St. Cyr**, No. 20-0628 (Iowa Court of Appeals, filed October 20, 2021). **Sufficient evidence the defendant willfully failed to appear for his court date in violation of Iowa Code section 811.2(8):** the court and defendant's parole officer mailed him notice of the court date; defendant's attorney was provided notice of the court date; defendant was not located for four months after the warrant was issued; and the defendant attempted to avoid being caught by law enforcement (rammed into law enforcement vehicle).

**Woodbury County State v. Douglas Evander St. Cyr**, No. 20-0628 (Iowa Court of Appeals, filed October 20, 2021). **Sufficient evidence the defendant intended his actions "to be assaultive conduct[:]"** defendant's vehicle was stopped and then accelerated into the unmarked vehicle; a plainclothes officer exited the struck vehicle and the defendant backed up and drove into the vehicle again; and the officer, in fear for his safety, discharged his firearm at the defendant's vehicle.

**Woodbury County State v. Douglas Evander St. Cyr**, No. 20-0628 (Iowa Court of Appeals, filed October 20, 2021). **The defendant "failed to generate a fact question on a necessity defense."** The defendant created the situation when he rammed the unmarked vehicle twice.

**Woodbury County State v. Douglas Evander St. Cyr**, No. 20-0628 (Iowa Court of Appeals, filed October 20, 2021). **The defendant "failed to generate a fact question on the compulsion defense."** The defendant had reasonable options prior to ramming the unmarked vehicle and was not being threatened with serious injury or death.

**Woodbury County State v. Douglas Evander St. Cyr**, No. 20-0628 (Iowa Court of Appeals, filed October 20, 2021). The defendant could have returned to the scene, thus "neither the necessity nor compulsion defense applies to overcome [the defendant's] conviction for leaving the scene of a personal injury accident" under Iowa Code section 321.261.

**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.

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

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

**All hyperlinks were last visited on January 3, 2022.**