



# HIGHWAY SAFETY

LAW UPDATE



April 6, 2015

Office of the Prosecuting Attorneys Training Coordinator

March, April, 2015

## The Gas Tax and Maybe Some Safety

On Friday, April 3, the Iowa General Assembly reached another “funnel” date: a date which automatically reduces the number of bills eligible for debate during the rest of the session. As of April 6, only one transportation-related bill had been signed into law—the gasoline tax increase.

The tax increase, *Senate File 257*, passed both houses of the legislature on February 24. Governor Branstad signed the bill into law the next day, and collection of the tax began soon thereafter. The increased tax is designed to provide additional funding for highway maintenance and construction.

Bills which survived the April 3 “funnel” (by passing at least one house of the legislature) remain eligible for debate and the possibility of becoming law this year. Some traffic safety bills did survive, and debate can be expected on the following bills in the next few weeks:

*Senate File 391*—makes texting violations primary offenses (has passed the Senate and is awaiting action in the House)

*Senate File 218*—allows snowmobiles to cross interstates and freeway bridges and underpasses if the snowmobiles are brought to a stop and check traffic before proceeding (passed the Senate and is awaiting action in the House)

*House File 567*—regulates synthetic controlled substances, repeals Chapter 124A and places “imitation controlled substances” in Chapter 124, and provides that a Board of Pharmacy designation of a new controlled substance is effective for two years without formal action of the legislature confirming the designation (passed the House and is awaiting action in the Senate)

*Senate File 416*—creates a serious misdemeanor for unauthorized placement of a GPS device, with the intent to alarm or annoy or intimidate, without a legitimate purpose (passed the Senate and is awaiting action in the House)

*Senate File 424*—requires front and rear lamps on bicycles traveling at night or at other times when visibility is low (passed the Senate and is awaiting action in the House)

## Traffic Tuesdays: The National TSRP Webinar Series

The next in the “Traffic Tuesday” webinar series is scheduled for April 14, from 2:00 – 3:00 p.m.

The April webinar will focus on State to State Enforcement issues in impaired driving and will discuss when a law enforcement officer can pursue a suspect across state lines, arrest the suspect, and the proper procedure following such an arrest. The webinar will also discuss procedures for gathering evidence where a suspect has been injured and transported across state lines for medical treatment. Posted written material for the webinar will include most state “Fresh Pursuit” statutes as well as search warrant statutes from around the county.

The webinar is free to law enforcement officers and prosecutors, and the registration link is <https://attendee.gotowebinar.com/register/20000000028625322>

*This webinar series is conducted on the national Traffic Safety Resource Prosecutor Program webinar account, funded through the NAPC/NHTSA Cooperative Agreement, Project Number DTNH22-10-H-00289, and is produced and coordinated by Susan Glass, Missouri TSRP. For a complete list of webinar topics please refer to the January/February 2015 issue of The Highway Safety Law Update.*

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## Case of Interest from the United States Supreme Court

### GPS monitoring

Grady v. North Carolina, 575 U.S. \_\_\_\_ (3/30/15)

Placement of a GPS monitoring device on a person is a “search” within the meaning of the 4th Amendment; such placements must be analyzed using normal 4<sup>th</sup> Amendment principles of reasonableness

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## Cases of Interest from the Iowa Supreme Court

### Attorney-client consultation

State v. Robinson, 859 N.W.2d 464 (Iowa, 2/6/15)

Iowa Code section 804.20, which provides for confidential consultation with an attorney for arrestees, does not provide a basis for on-going barrier free attorney-client consultation during a post-arrest incarceration; Court declines invitation to extend requirements of State v. Hellstern, 856 N.W.2d 355 (Iowa, 11/21/14) to post-arrest incarceration.

### Automated traffic enforcement

Sioux City v. Jacobsma, \_\_\_\_ N.W.2d \_\_\_\_ (Iowa, 2/20/15)

City’s automated traffic enforcement system does not offend substantive or procedural due process, the use of “speed cameras” is not an unreasonable exercise of police power, is within the city’s Home Rule powers, and has not been impliedly pre-empted by portions of Chapter 321.

### Magistrate/conflict of interest

In re Krull, \_\_\_\_ N.W.2d \_\_\_\_ (Iowa, 2/20/15)

Lawyer-magistrate publicly reprimanded for issuing a search warrant authorizing the search of a client’s home for evidence of criminal behavior by the client’s children; the circumstances made it reasonable that the magistrate’s impartiality might be questioned and by signing the warrant, he created an appearance of impropriety which “called into question the impartiality of the Iowa judiciary”; see also State v. Fremont, 749 N.W.2d 234 (Iowa, 5/2/08) (evidence seized pursuant to a warrant supported by probable cause must be suppressed where issuing magistrate had, as a private attorney, represented interests adverse to those of the person named on the search warrant and thereby deprived the person of a neutral and detached magistrate.)

### Right to *continued* representation by preferred counsel

State v. McKinley, \_\_\_\_ N.W.2d \_\_\_\_ (Iowa, 3/13/15)

Criminal defendants have a right to *continued* representation by a given attorney (whether retained or appointed) and that attorney should not be removed in the absence of “a factual and legal basis”; circumstances of two public defenders representing this defendant, while three of the State’s witnesses had previously been represented by other members of the same public defender office, did not “rise to the level of an actual conflict” and did not suggest a serious potential conflict which would compromise zealous representation for this defendant; trial court order replacing counsel reversed and case remanded for reinstatement of counsel.

### Propriety of intoxication defense

State v. Cordero, \_\_\_\_ N.W.2d \_\_\_\_ (Iowa, 3/20/15)

Trial court in a murder trial did not abuse its discretion by refusing to instruct the jury on the intoxication defense (which the defense requested as a means to defeat the specific intent necessary to commit the crime); evidence at trial showed that the defendant had been drinking beer, “but nearly all the witnesses testified he was not intoxicated. Only one witness testified he was probably intoxicated, but this tenuous and conclusory observation was not accompanied by additional evidence. . .to indicate the degree of intoxication. . .The evidence in this case only supported, at best, a finding of mere intoxication. . .Under our standard, more evidence of intoxication is required.”

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## Enhancing pending charges based upon prior convictions

State v. Young, \_\_\_ N.W.2d \_\_\_ (Iowa, 4/3/15).

To use a prior conviction to enhance a pending charge, the defendant must have either been represented in the prior proceeding or must have validly waived counsel in the proceeding.

### 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 <http://www.iowacourts.gov/>).*

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## Recent Unpublished Decisions of the Iowa Court of Appeals Arranged by County

**Black Hawk County** State v. Brittany Marie McBride, No. 14-0378 (Iowa Court of Appeals, filed March 11, 2015.) **OWI 1<sup>st</sup> sentence not based upon unproven prior offenses.** Where the State argued (and the defense acknowledged) that the defendant had a prior public intoxication and a prior possession of alcohol under the legal age the trial court did not consider “unproven prior offenses” in crafting its sentencing decision.

**Boone County** State v. Victoria Lynn Sellers, No. 14-0521 (Iowa Court of Appeals, filed March 11, 2015.) **No grounds to detain car.** Officer did not have grounds to stop/detain a car parked off the right of way; officer was parked behind the car, and, as the car began to pull out onto the roadway, the officer turned on his lights and thereby detained the car; the officer’s articulated reason for being behind the car (he had observed the car stopped and thought it was in the travelled portion of the roadway; the officer turned around and found that the car had stopped again, further down the road but on the shoulder; circumstances which “raised my suspicions that something was going on”) did not rise to the level of reasonable articulable suspicion to justify the detention.

**Boone County** State v. Victoria Lynn Sellers, No. 14-0521 (Iowa Court of Appeals, filed March 11, 2015.) **Stop/detention could not be justified on community caretaking grounds.** Court of Appeals discounted officer’s statement that he pulled up behind a stopped vehicle because he wanted “to make sure whoever was in the vehicle was okay, didn’t need medical attention”; Court noted that “after he pulled in behind (the car) he did not check on (the defendant’s) medical condition but instead called dispatch to run her plates”; Court examined the detention according to the three-part community caretaking analysis: 1) a Fourth Amendment seizure, and 2) police engaged in “bona fide community caretaking activity”, 3) public need and interest outweigh the intrusion on privacy.

**Buena Vista County** State v. Carlos Danilo Ocampo Medrano, No. 13-1941 (Iowa Court of Appeals, filed February 11, 2015.) **No probable cause or reasonable suspicion to support stop.** Where, two days after a named citizen reported a stop sign violation and dangerous driving by a dusty, silver Grand Prix with out of town license plates, the officer lacked not only probable cause, but did not even have reasonable suspicion to stop a similar car because after two days, “the information. . . regarding the area the car was in, the number of passengers. . . and the amount of dust. . . were no longer reliable identifying factors as each could have easily changed. . .”; to permit this stop under these circumstances would be to say that the officer had grounds to stop “any dusty silver Grand Prix.”

**Buena Vista County** State v. Carlos Danilo Ocampo Medrano, No. 13-1941 (Iowa Court of Appeals, filed February 11, 2015.) **Officers in Iowa probably cannot stop vehicle for ‘completed (simple) misdemeanor’ not committed in the officer’s presence.** Although the Iowa Supreme Court has not directly addressed the issue, the Court of Appeals did “not believe our supreme court will find that reasonable suspicion of a completed simple misdemeanor not observed by the officer is sufficient to effect a traffic stop amounting to a seizure.” (Citizen’s report of a vehicle’s driving through a stop sign—a ‘completed’ simple misdemeanor—is not sufficient, standing alone, to stop a similar vehicle.)

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**Buena Vista County State v. Antonio Trevino III**, No. 14-1310 (Iowa Court of Appeals, filed March 25, 2015). **OWI 3<sup>rd</sup> sentence affirmed.** Trial court did not abuse its discretion in rejecting defendant's request for a suspended sentence.

**Cerro Gordo County State v. Marlin Lee Jensen**, No. 14-0842 (Iowa Court of Appeals, filed February 11, 2015.) **Guilty pleas and sentences affirmed.** Court of Appeals rejected defendant's argument that prosecutor violated the plea agreement; two D felony theft convictions and an eluding conviction affirmed.

**Cerro Gordo County State v. Brandon Blake Slater**, No. 14-1079 (Iowa Court of Appeals, filed February 11, 2015.) **Reasons provided for consecutive suspended two year sentences for public intoxication.** Court provided adequate reasons for imposing three two year sentences, suspended, for three guilty pleas to public intoxication, third or subsequent offense and including as a term of probation placement at a residential treatment facility.

**Clinton County State v. Danielle Bunce**, No. 14-0645 (Iowa Court of Appeals, filed February 25, 2015.) **Costs for dismissed counts not payable by the defendant unless that is part of the plea agreement.** Trial court may not order a defendant to pay court costs on counts and cases dismissed unless payment of those costs is part of the plea agreement.

**Johnson County State v. Franco Alexander Arellano**, No. 14-0051 (Iowa Court of Appeals, filed March 11, 2015.) **Standing to challenge impound and inventory.** Passengers normally lack standing to challenge an impound and inventory search; as a consequence, the Court analyzed the record to determine whether the evidence supported a finding that the defendant was the owner of the car and therefore in a position to challenge the search.

**Johnson County State v. Franco Alexander Arellano**, No. 14-0051 (Iowa Court of Appeals, filed March 11, 2015.) **Inventory searches are justified by police acting as caretakers rather than criminal investigators.** Inventory searches identify and record private property to protect the owner's interest in the property; the State must produce evidence of an impound and inventory policy, and the impoundment itself and the scope of the inventory must be reasonable; if both criteria are met, evidence found will be admissible in a subsequent prosecution.

**Johnson County State v. Franco Alexander Arellano**, No. 14-0051 (Iowa Court of Appeals, filed March 11, 2015.) **Impound and inventory of uninsured car proceeded according to reasonable policy, although written policy was not in evidence.** Where driver could produce no proof of insurance for a vehicle and department policy provided for impoundment in such cases and the occupants were told it would be towed and that they could retrieve anything they wanted before the towing, the State "presented sufficient evidence establishing a reasonable standardized impoundment procedure and sufficient evidence that the procedure was followed."

**Madison County Gary Wayne Pettit v. State**, No. 14-0448 (Iowa Court of Appeals, filed February 11, 2015.) **"Good cause" for delay in speedy trial.** If a defendant is indicted in Iowa and then "leaves the state and is subsequently held in another state on pending criminal charges" the State has met its burden to show "good cause" for an exception to the speedy trial rule.

**Marion County State v. Thad Duane Anderson**, No. 14-0126 (Iowa Court of Appeals, filed March 11, 2015.) **OWI 2<sup>nd</sup> conviction affirmed.** Conviction affirmed; "multiple" claims of ineffective assistance of counsel preserved for possible post conviction relief.

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**Marion County State v. Joshua Lane Hayes**, No. 14-0697 (Iowa Court of Appeals, filed March 11, 2015.) **Costs of dismissed charges.** Where plea bargain is silent as to payment of costs of dismissed charges the court may not order those costs be paid by the defendant. See State v. Petrie, 478 N.W.2d 620 (Iowa 1991).

**Marshall County State v. Jerome McDowell**, No. 13-1259 (Iowa Court of Appeals, filed March 11, 2015.) **Vehicle stop supported by reasonable articulable suspicion; OWI 3<sup>rd</sup> as habitual offender and driving while revoked convictions affirmed.** Officers had reasonable grounds to stop car where a 911 call alerted them to a “disturbance” caused by a “Troy McDowell” at a specific address; officers did not know of a “Troy McDowell” but did know the defendant, “Jerome McDowell” and knew that the defendant drove a green Cadillac, and on the way to the address, officers observed the defendant driving toward them from the scene of the disturbance; this information was sufficient to justify a stop of the defendant.

**Marshall County State v. Stephen Scott Prusha**, No. 14-0656 (Iowa Court of Appeals, filed March 11, 2015.) **Search was consensual; conviction affirmed.** Defendant consented to a search of his person and then immediately placed his hand in his pocket; officer pulled the defendant’s hand out, and asked what was in the pocket; the defendant said he would show the officer, and pulled out a glass pipe with apparent methamphetamine residue; trial court’s “well reasoned decision” referenced the appropriate factors to determine that the consent was voluntary and was not revoked; possession of methamphetamine conviction affirmed.

**Muscatine County State v. Sun Eschell Lensgraf**, No. 14-1028 (Iowa Court of Appeals, filed February 25, 2015.) **Headlight stop upheld.** Vehicles must have at least two functioning headlights (see Iowa Code section 321.385); whether the defendant’s headlight was burned out or not, it was not emitting sufficient light “to reveal persons and vehicles at a distance of at least one hundred feet ahead” (Iowa Code section 321.409(1)(b)); officers had probable cause to stop the defendant; driving while barred conviction affirmed.

**Polk County State v. John B. Devore Jr.**, No. 13-1967 (Iowa Court of Appeals, filed February 11, 2015.) **OWI affirmed; issues on the DataMaster preserved for possible post conviction relief.** Defendant’s claim that trial counsel was ineffective because the DataMaster was not timely certified (the certification in the record was more than one year old at the time of the offense) was preserved for possible post conviction relief; on the record before it, the Court could not determine if there existed a later, valid DataMaster certification, if anyone was aware of the outdated certificate and whether anyone discussed the issue, whether despite the issue the defendant discussed “under the influence” as a basis for a guilty plea and other issues—all matters which could be examined in a post conviction relief proceeding.

**Polk County State v. Rustin C. Harvey**, No. 13-2032 (Iowa Court of Appeals, filed February 25, 2015.) **Facts support “knowing” possession of marijuana.** Record contained sufficient facts to conclude the defendant knowingly possessed marijuana; defendant was observed “lying on a concrete landscape wall with his eyes closed, speaking to himself”; he had a pipe, a baggie containing “Good Times” rolling paper and a cigarette blunt containing a green, leafy substance with a strong odor of marijuana; on his written guilty plea, the defendant wrote “I possessed marijuana.”; see State v. Reeves, 209 N.W.2d 18 (Iowa, 1973) (“stating knowledge of the narcotic character of a drug may be shown by the defendant’s conduct, behavior, and declarations.”)

**Polk County State v. Joshua Michael Steward**, No. 14-0319 (Iowa Court of Appeals, filed March 11, 2015.) **Motion in arrest of judgment in eluding plea properly denied.** Defendant’s argument that his guilty plea was involuntary because he felt “threatened” denied after evidentiary hearing properly denied; district court ruling

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(which noted that the defendant “did not like the message that he was being given by his attorneys. . . . (the message). . . wasn’t all inaccurate; it is just a message he didn’t want to hear”) was not an abuse of discretion; conviction and sentence affirmed.

**Polk County** Douglas Moad by Sharon Moad v. Gary Jensen Trucking, Inc. and Dakota Truck Underwriters, No. 14-0164 (Iowa Court of Appeals, filed March 11, 2015.)

**Workers compensation denial of benefits affirmed.** Douglas Moad, a truck driver, was severely injured at work when he was hit head on by the driver of an SUV; before the crash, Moad had health problems but no known heart disease; 83 days later he died of heart problems; his wife was denied death benefits under workers compensation because she did not prove that the crash had caused the heart disease and substantial evidence supported that finding; this ruling was affirmed at the district court and in the Court of Appeals. The Court of Appeals noted: “This is a tough case all around, given that the accident was neither Douglas’s nor his employer’s fault.”

**Poweshiek County** In the Matter of Property Seized from Robert Pardee, No. 14-0029 (Iowa Court of Appeals, filed February 25, 2015.) **Interstate right to travel.** Traffic stop for violation of Iowa’s traffic laws did not violate the constitutional right of interstate travel; “. . . the privilege of driving a car may be restricted by traffic laws because such laws promote public safety while still operating within the confines of the constitution.”

**Poweshiek County** In the Matter of Property Seized from Robert Pardee, No. 14-0029 (Iowa Court of Appeals, filed February 25, 2015.) **Reasonable suspicion for stop; motivation of stopping officer is irrelevant.** “When a peace officer observes a traffic offense, however minor, the officer has probable cause to stop the driver of the vehicle. A traffic violation therefore also establishes reasonable suspicion. The motivation of the officer stopping the vehicle is not controlling in determining whether reasonable suspicion existed. The officer is therefore not bound by his real reasons for the stop.”

**Poweshiek County** In the Matter of Property Seized from Robert Pardee, No. 14-0029 (Iowa Court of Appeals, filed February 25, 2015.) **Detention for dog sniff supported by reasonable articulable suspicion.** Questioning of driver occurred while completing citations and did not measurably extend the duration of the stop; further, the driver asked to “hang out a minute” and stretch his legs, so his action, and not the action of the officer, extended the duration of the passenger’s detention; also, even if “the driver’s actions in extending the stop are not taken into account” the totality of the circumstances supported the officer’s decision to detain the car pending the arrival of a drug dog: “the driver had obscured his face when passing the trooper’s patrol car, the presence of an air freshener known for masking the smell of marijuana in the vehicle along with the odor of the masking agent at the time of the stop, the nervousness of both (the passenger) and the driver, the discrepancies in their travel plans, the lack of the ‘[c]lost effectiveness of [their] trip,’ the ‘lived-in look in the vehicle,’ and their prior criminal histories for drug-related offenses.”

**Poweshiek County** In the Matter of Property Seized from Robert Pardee, No. 14-0029 (Iowa Court of Appeals, filed February 25, 2015.) **Dog properly trained and reliable.** The record contained sufficient evidence that the drug dog used in the stop was reliable, that the trainer was qualified to train dog-and-handler teams, and that the dog was properly trained and qualified to detect marijuana; trial court finding that the drug dog was reliable affirmed.

**Shelby County** State v. Aaron James Nelson, No. 14-1234 (Iowa Court of Appeals, filed February 25, 2015.) **No lights or sirens; defendant stopped himself in his own driveway.** Officer had a tip the defendant was operating while intoxicated and saw the defendant pull into his driveway; the officer parked in the driveway in such a way as to permit the defendant to back out; no lights or sirens, no blocking, so no Fourth Amendment analysis; OWI 3<sup>rd</sup> offense conviction affirmed.

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**Story County** State v. Dale Lee Cram, No. 14-0366 (Iowa Court of Appeals, filed February 25, 2015.) **Requesting identification does not trigger the Fourth Amendment.** An officer may ask for identification without triggering the Fourth Amendment and need not justify the request; here, officer observed the defendant drive and learned the defendant's license was barred by simply asking the defendant for identification; driving while barred conviction affirmed.

**Tama County** Michael Young v. State, No. 13-1656 (Iowa Court of Appeals, filed February 11, 2015.) **Driving without a license is probably a "criminal/prohibitory" law and not a "civil/regulatory" law.** Member of Sac and Fox tribe challenge to Iowa charge of driving without a license argued that the offense is "civil/regulatory" and therefore he was not subject to jurisdiction of the Iowa courts; the State argued that the offense is "criminal/prohibitory" and therefore, under State jurisdiction; the State's argument characterized as a "better" argument; however, argument is moot because tribal member did not prove the offense occurred on Sac and Fox land and therefore, Iowa trial court was not divested of jurisdiction.

**Tama County** Michael Young v. Iowa DOT, No. 14-0744 (Iowa Court of Appeals, filed February 11, 2015.) **"Early" license suspension not prejudicial.** Licensee's complaint that the DOT planned to suspend his license 23 days earlier than they should have been able to was acknowledged and cured by subsequent DOT decision granting him 23 additional days to pay the unpaid fine that had triggered the suspension; licensee had never, in fact, been suspended and had been granted stays during the pendency of the case; therefore, licensee suffered no prejudice from the "early" suspension; district court decision affirming DOT suspension affirmed.

**Woodbury County** Jason E. Johnson v. State, No. 14-0228 (Iowa Court of Appeals, filed February 11, 2015.) **'Cracked windshield' supported stop; fleeing the scene supported search of defendant.** Trial counsel was not ineffective for withdrawing a motion to suppress where the officer had been told by another officer that the defendant's vehicle had a cracked windshield impeding the driver's vision (see Iowa Code section 321.438(1)) and the defendant was searched after he fled the scene and was secured by officers; counsel "competently advised (the defendant) regarding the merits of the motion to suppress and likelihood that the court would not grant it."

**Wright County** State v. Corey Vinton Putney, No. 14-0433 (Iowa Court of Appeals, filed March 25, 2015). **Eluding across county lines is a single offense.** A single act of eluding which crosses county lines is a single crime; the defendant committed a single act with no break in the action all the way to completion (see discussion in State v. Ross, 845 NW.2d 692 (Iowa, 3/21/14)).

**Wright County** State v. Corey Vinton Putney, No. 14-0433 (Iowa Court of Appeals, filed March 25, 2015). **Discussing facts of the case is not relying upon 'unproven offenses'.** Trial court's discussion of the course of the defendant's eluding over three different counties did not inject 'unproven offenses' into the court's sentencing decision as defendant was incorrect in assertion that eluding in all three counties constituted different, distinct offenses.

**Wright County** State v. Corey Vinton Putney, No. 14-0433 (Iowa Court of Appeals, filed March 25, 2015). **Eluding in three counties could have been charged in any of the counties, but could not be charged separately in all three.** A person who engages in a single act of eluding over several counties may be charged in *any* of the counties, but may not be charged in *all* of the counties; charging such a defendant in more than one county would violate the constitutional protection against multiple prosecutions for a single offense, and be a violation of the Double Jeopardy clause.

## Citations from previous issue of the Highway Safety Law Update

Heien v. North Carolina, 574 U.S. \_\_\_, 135 S.Ct. 530, 190 L.Ed.2d 475 (12/15/14)

State v. Mclver, 858 N.W.2d 690 (Iowa, 1/9/15)

State v. Thompson, 858 N.W.2d 915 (Iowa, 12/12/14)

State v. Rouse, 858 N.W.2d 23 (Iowa App., 7/16/14)

### 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. **Why do you people even read this? I'm wrong about everything! I even picked UNI to be in the Championship game!**

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