IN THE IOWA DISTRICT COURT IN AND FOR SCOTT COUNTY
(MAGISTRATE DIVISION)

STATE OF IOWA Plaintiff, vs. KYLE MATTHEW WILLIAMS Defendant.	CASE NO. 121LHS5 **FINDINGS OF FACT, CONCLUSION OF LAW AND VERDICT**

This lawsuit came on for hearing on the merits before the undersigned magistrate on the 17th day of July 2009 at 9:30 a.m. Plaintiff appeared by Scott County Attorney's Office intern, William Barenten, and the defendant appeared personally and with his attorney Mr. James Tappa. The defendant is charged that on or about the 11th day of November 2008 at not quite 1:00 p.m. in the afternoon he did fail to yield one-half of the roadway when meeting a vehicle in violation of section 321.298, the Code of Iowa. To this charge the defendant has entered into a plea of not guilty. This plea puts in issue all material elements required to be proved and proved beyond a reasonable doubt by the evidence offered by the state.

Before the taking of evidence, counsel for the defendant moves for dismissal on the grounds of chapter 321.298 does not apply to the facts in issue in this trial and that the statute is limited in application to vehicles which are meeting horses or horse drawn conveyances upon a two way highway.

However, chapter 321.298 specifically references section 321.297(3).

Subparagraph 3 provides:

"a vehicle shall not be driven upon any roadway having four or more lanes for moving traffic and providing for two way moving of traffic to the left of the center line of the roadway except when authorized by official traffic control devices designating certain lanes to the left side of the center of the roadway for use by traffic not otherwise permitted to use such lanes...."

The balance of the statute deals with making left hand turns.

The evidence presented by the State consists of the testimony of two primary witnesses; Ms. Michelle Longnecker, a fellow motorist, and Iowa State Patrol Trooper, Byron Nudd, badge number 34. After evidence from these two states witnesses is supplemented by photo evidence in the form of photographs taken by the Iowa State Trooper as well as a diagram drawn by the Iowa State Trooper from measurements taken and investigation made at the scene. This investigation included observing debris and resting places of the motor vehicles involved, marking out a known start place for measurements and the documentation of tire marks attributed to the dodge pick-up truck alleged to have been driven by Mr. Williams.

The evidence from both the State and the defendant may be summarized as follows: Mr. Kyle Williams is a man in his young twenties who is employed at an Enterprise located on Wapello Avenue near the Iowa side of the Mississippi River. On the date in question he had gone to the home of Miranda Stierwalt in Blue Grass, Iowa. While there, he had parked his 2004 Dodge pick-up truck and visited with Ms. Stierwalt's mother. Shortly after visiting with Ms. Stierwalt's

mother he and Miranda got into his 2004 Dodge Ram pick-up truck and the truck proceeded South on Y40 County Highway toward Highway 22, which essentially parallels the Mississippi River. At the intersection of Highway 22 and Y40, Kyle Williams made a left turn on to Highway 22, which would essentially have him traveling East on that highway. Highway 22 is generally concrete paved and consists of 4 lanes. Down the center of the 4 lanes is a double yellow line indicating the center point of those 4 lanes. Then, each of the individual lanes for directional travel is also marked out by white lines with the usual interval between them. The speed limit on this highway once Buffalo is cleared is actually 50 MPH although the Court also heard testimony that the speed limit may be 55 MPH. Because excessive speed in the literal sense is not a element or under consideration in this case to the extent that there is evidence of extraordinary speed, the difference in testimony about the speed limit is not particularly important nor relevant. As will be seen, later, relative speed is at least to some extent a factor in this tragic accident. The evidence before the Court from the testimony of Mr. Williams as well as from Ms. Stierwalt is that Mr. Williams was familiar with this stretch of highway. The area of concern in connection with this ruling is the section of Highway 22 that goes through a sand, gravel, and limestone quarry operation usually referred to as Linwood. There is evidence in the record that this stretch of Highway 22 has been of some concern and has received some special attention from the Iowa Department of Transportation. Although it was not covered in detailed testimony, the defendant

offered evidence and established through cross examination, evidence as to why the Iowa Department of Transportation might focus closely upon the roadway condition in the areas splitting the quarry. It is a matter of common sense but also a matter of genuine observation that the highway in this area does receive an accumulation of dust from the operation of the quarries as well as operations of trucks and other motorized implements associated with the quarry. The evidence does establish that previous to this accident of November 11, the Iowa Department of Transportation had grooved portions of the concrete roadway surface in the areas where the roadway essentially "splits" the quarry. From the experience of this magistrate, the best description of a process applied to this portion of the highway would be the department using a machine with a very hard carbide saw blade which cuts longitudinal, diagonal, and/or horizontal lines in the pavement. Testimony in general established that these groves may be anywhere from 1/8 to as much as 3/8 in inch in depth. The reasonable inference to be drawn, whether expert testimony is offered or not, is that these grooves are intended to in some way improve traction upon this highway under certain circumstances and the inference is further reasonable that these grooves are in this location in connection with dust laid down upon the highway from the quarry operation. November 11th was, according to the testimony of all, a dreary day with a misting of rain separated by very small periods of time without precipitation. The evidence does establish that at the official NOAA weather at the Moline Quad City Airport, the temperature was above freezing.

Ms. Longnecker was traveling on Highway 22 heading west bound at around 1:00 in the afternoon. Just ahead of her was another motor vehicle. Because of the mist and rain she was traveling somewhere between 35 to 40 miles an hour and she first was alerted to her location on the road in relationship to overhead conveyer bridge for the quarry. She acknowledged that she was driving more slowly because the road was possibly slick. Ahead of her she saw an "explosion like thing" occur. It turns out what she saw and sensed was a head on collision between a white pick-up truck, the Dodge truck driven by Mr. Williams and a Ford Focus automobile. It is she who also described this as a 4 land highway with the dividing lines marked in yellow down the middle. She had not seen the white truck before the impact but after impact she watched the truck continue totally across the west bound lanes and come to rest up against a barrier in the grass of the far north area of this lane (note that the river continues to run more or less east and west in this location thus north would be the side of the highway farthest from the river's edge). Ms. Longnecker stopped her vehicle and immediately went to the Ford Focus. Upon looking in it, however, she could immediately tell that both occupants were dead. She then went to the truck and attempted to render assistance and protection to Mr. Williams and to young Ms. Stierwalt. She observed that the defendant, whom she identified in the courtroom as the driver of the truck, had bleeding from his head at the time. He was however, conscious. She continued to observe and attempt aid during a very short delay while police responded from a 911 call placed by another

motorist. She had a very short conversation with Mr. Williams during the time when she was trying to talk to him to keep him focused as she feared he might go unconscious and slide into very serious shock. During that time Mr. Williams said to her "I must have hydroplaned and lost control" or words significantly close to that-definitely indicating a sense of loss of control and effect on the truck by the condition of the roadway. On cross examination Ms. Longnecker acknowledged that she was aware that the road tends to be slick in this particular area and that the rain was misty and perhaps to her sensibilities icy. She reaffirmed that she was not aware of the speed of the truck nor had she actually noted the truck before collision. On redirect examination Ms. Longnecker affirmed that the blue car (what turned out to be the Focus) that was traveling in front of her and was involved in the accident did not at any time leave its lane.

Mr. Byron Nudd of the Iowa State Patrol testified. This was his fifth year working for the patrol as a trooper. He was not on duty at the time of the collision but was called to do a technical investigation on this fatality accident. He was urged to arrive as soon as possible and at times on similar roadways he traveled in excess of 90 MPH to get to the scene. Mr. Nudd is trained in accident investigation in a manner often referred to as "a technical investigation". Generally speaking this is a phrase used to describe an investigation of an accident that takes into account physical evidence, physics and other laws of nature in an attempt to determine causation and ultimate result. By the time he arrived on the scene the authorities from the Scott County Sheriff's Department,

other Iowa Troopers, Buffalo Police as well as Buffalo fire and rescue were on the scene. As part of his investigation trooper Nudd took photographs which are in evidence as States 1, 2, 4, & 5. He also prepared the diagram, States Number 3. Upon his arrival upon the scene he interviewed persons and took measurements and did a close examination of the vehicles. Among other things he did inspect the white Ram pick-up truck that had been operated by Mr. Williams for evidence of pre-collision failure of a critical component and did not see anything that caught his attention. He made similar examination of the Ford Focus. Further, he was able to identify and measure tire marks that were a path of the Dodge pick-up truck as it drove into the oncoming west bound lane toward the point of impact of the collision. These tire marks extended after collision into the north ditch area of the west bound lanes. Having examined the scene and the vehicles, having interviewed witnesses and having applied technical investigation technique including physics and mathematics and examining point of impact, in the opinion of trooper Nudd, the Dodge Ram operated by Mr. Williams crossed the center line from the east bound lanes into the west bound lanes and collided head-on in the northern most west bound lane hitting the Focus and then glancing off of it into its resting place. The Focus itself was essentially stopped by impact and did not travel far from the point of impact. This trooper also testified that the windshield damage to the Dodge truck was consistent with persons being unbelted or harnessed at the time of an impact. The photographs do document that the airbags for the Dodge were deployed yet

marks that are reasonably consistent with a blow to the head of front seat occupants was present. However, this Court specifically finds that there was no evidence that if Mr. Williams was not seatbelt secured, that would have been a cause of the collision. Seatbelt usage in this case does not appear to be a relevant factor. Further, this Court is not so convinced that airbags and harnesses can necessarily prevent contact between a windshield and a front seat occupants head in a head on collision such as this. This was obviously a brutally hard impact and the facts of life of physics and material is that seatbelts and harnesses can stretch a considerable amount and even with airbags may allow contact between a front seat occupants head and the windshield. Further, the Court notes that neither Ms. Stierwalt nor Mr. Williams had severe closed head injuries. Had they been as unrestrained as the trooper concludes, this court believes they would have suffered severe trauma. The Court does reject the speculation, however, that some other head sized and shaped object must have flown from the part of the cab of the truck into the windshield in two separate places. On cross examination trooper Nudd acknowledged that he was familiar with the fact that the DOT had done grooved pavement in this area. He was familiar with the possibility of accumulation of dust on this part of the roadway. He did indicate however, that he responded to this scene at very high speed and that even when operating his vehicle on this highway to get to the scene at very high speeds he none the less did not feel any special slickness nor did he sense any in the actual collision area. He does acknowledge, however,

that there was a light and aggravating misting rain but is adamant that the rain had not been a freezing rain at least in the areas where he experienced it. The trooper did ask Mr. Williams whether or not there had been any mechanical defects in the Dodge Ram truck before this accident and the defendant did respond, "None." He also asked Mr. Williams whether he had taken evasive action and at that time the defendant also responded indicating none had been taken. This Court is mindful that these questions were asked while Mr. Williams was at a hospital and being examined and treated for a head injury. Nonetheless, his answers to these questions are actually collaborated by the physical evidence discovered on scene and through the testimony of the noninvolved motorist, Ms. Longnecker. On further cross examination the trooper indicated that he received the call regarding accident at approximately 1:34 p.m. and it took approximately 45 minutes for him to travel to the scene even operating his vehicle at high speed during some of the trip.

Both Ms. Stierwalt and Mr. Williams testified. Mr. Williams described the visit to Ms. Stierwalt's home as indicated earlier and then the route that was taken to the point of impact. Ms. Stierwalt and Mr. Williams, to a certain degree fortunately, do not really have a detailed memory of anything except up to a few moments before this awful collision. Ms. Stierwalt did recall that she was in the passenger seat and was fussing around with a digital camera that was demanding her interest. Mr. Williams did not testify to being distracted in any manner.

Generally speaking, motor vehicle violations in Iowa are statutes that require no proof of even general intent. In fact, for the most part the only defense that may be offered in a situation such as this is sudden emergency/act of God. Under Iowa law these phrases mean a sudden and totally unexpected circumstance that intervenes or prevents a motor vehicle operator from complying with the law including maintaining lane position and avoiding collision. Critical to the disposition of this case is the fact that such an emergency must be totally outside the realm of reasonable expectations for motorists trying to cope with weather or traffic conditions. The mere fact that a road may be difficult to negotiate under some circumstances is not a sudden emergency nor an intervention of an act of God. See City of Des Moines v. Davis 214 NW 2nd 199 at 201 (Iowa 1974). As this court has noted, the evidence, circumstantial and otherwise, establishes that Mr. Williams had operated a motor vehicle on this section of road a sufficient number of times in the past such that the Court may draw the inference that he was aware of its varying operational circumstances. In order to make clear this Courts analysis, the Court offers this analogy: a motorist is driving upon a road with which he or she is reasonably familiar. In fact, he or she is familiar that when there is a heavy rain there are a couple of low spots where water accumulates as much as an inch or two deep and in a pool perhaps six feet long. On the date in question this motorist, having due care, approaches the puddle he or she sees as a result of the very heavy rain and proceeds to drive through the puddle at a moderate controlled speed with the

circumstances under consideration. What the motorist does not know is that on this occasion the pool actually covers an area of the roadway thickness that has been literally washed away. Even at the slowed speed, upon the front tire of the motor vehicle going into what looked like the usual puddle, the wheel drops into the hole violently and then bounces across the road into oncoming traffic. This is an example of how a motorist can be faced with an emergency, not of his or her making, on a road wherein that motorist is familiar with its unique hazards. This Court has received absolutely no evidence to support an affirmative defense of sudden emergency or act of God that demonstrates that this roadway was in any extraordinarily unusual condition because of limestone dust accumulation or moisture on the roadway or both. The burden is upon the defendant to carry, by competent evidence, the defense of sudden emergency and excuse. Finally the Court notes that the trooper observed the tire marks in the east bound lane from which the Dodge Ram swerved and traveled into the west bound lanes to the ultimate collision. While the trooper did not do tests for coefficient of friction or drag on this section of highway, nonetheless, he did observe tire marks. Assuming the truthful testimony of everyone called to the stand in this case, that there was a misty rain on and off; there is only one explanation for visible tire marks from defendant's vehicle. That explanation is that the tire marks are in fact the result of the defendant braking in his own lane in an effort to keep from swerving into the oncoming lane. The presence of the tire marks from the standpoint of physics actually eliminates the potential of a totally uncontrolled

and unexpected hydroplane incident.

From the humane perspective of an ordinary person, the emotions of the undersigned magistrate cry out for a ruling that does not find a man in his young twenties guilty of violating a rule of road and as a result of it causing the death of two other people. However, the oath that a judge takes disallows that humane path of empathy, sympathy, or the thought of compounding the emotional agony of the loved ones of all involved in this tragedy. However, the evidence is convincing beyond a reasonable doubt that Kyle Williams for some reason relinquished observation and associated control of the Dodge pick-up truck for that tragic moment on November 11, 2008. Perhaps as Miranda attempted to work with her digital camera, he glanced over to see how she was coming along. That is as likely a reason for the inattention as any. Inattention, however, is not an element of the offense. It is merely a possible, but non-defensible claim, for why a young healthy alert man might lose control over a truck and become involved in this tragic accident.

Based upon all of the evidence, given due and weighty analysis by this Court, a verdict of guilty of the offense of failure to yield one half of the roadway is entered against Kyle Matthew Williams. The verdict is not guilty on the seatbelt charge.

Another magistrate shall establish a sentencing day upon this verdict. This magistrate has always applied the 15 day rule between verdict and sentencing or plea and sentencing even in misdemeanor cases, if requested.

The Court presumes Mr. Tappa will wish to have the 15 day delay. The undersigned will no longer have jurisdiction or authority to either order the date for sentencing nor to impose it. The complaint and affidavit was filed as a non-scheduled offense as is contemplated under the law when serious injury or a fatality relates to a violation. Therefore, this verdict and the sentence to follow is subject to the limits of any misdemeanor offense sentence authorized under the law and Constitution of the State of Iowa.

Dated Davenport, Iowa this 30th day of July, 2009.

J. E. TOBEY III
Magistrate, Seventh Judicial District
of Iowa

The clerk shall mail and or fax copies of this verdict to counsel for defendant, James Tappa, and to the Scott County Attorney's Office forthwith. Further, this court will consult with the Honorable Mary E. Howes, District Judge and Supervisor of Magistrates for the setting of a sentencing date and assignment to another magistrate for imposition of sentence.

J. E. TOBEY III
Magistrate, Seventh Judicial District
of Iowa