



HIGHWAY SAFETY

LAW UPDATE



August 28, 2023 Office of the Prosecuting Attorneys Training Coordinator April/May/June 2023

County Spotlight – Clarke County

The eighteenth county spotlight is on Clarke County. Clarke County “was named for James Clarke, a Governor of the Iowa Territory.”¹ The current Clarke County Courthouse was completed in 1956 and was placed on “the National Register of Historic Places in 2018”.²

Osceola is the county seat of Clarke County³ and it sits on the intersection of Interstate 35 and Highway 34 (it also sits on the intersection of Highways 69 and 34).⁴ According to the 2020 census, Clarke County has a population of 9,748.⁵

Adam Ramsey is the Clark County Attorney. Mr. Ramsey is a full-time county attorney and there is one full-time assistant county attorney, Kevin Reisetter, in the office. Mr. Ramsey graduated from University of Iowa with a major in English and then attended Drake Law School. Mr. Ramsey has been the Clarke County Attorney for approximately 5 years. Prior to coming to the Clarke County Attorney’s office, Mr. Ramsey worked as a Federal Executive in Washington D.C. for approximately 19 years.

Clarke County has 5 local law enforcement agencies: Osceola Police Department, Iowa Department of Natural Resources, Iowa DOT, Iowa State Patrol, and the Clarke County Sheriff’s Office. In 2022, there were 2,590 traffic

convictions⁶ and 59 OWI convictions in Clarke County according to Division of Criminal & Juvenile Justice Planning.⁷



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¹ https://en.wikipedia.org/wiki/Clarke_County,_Iowa
² https://en.wikipedia.org/wiki/Clarke_County,_Iowa
³ https://en.wikipedia.org/wiki/Clarke_County,_Iowa
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<https://www.google.com/maps/place/Osceola,+IA+50213/@41.0410393,-93.8201774,13z/data=!3m1!4b1!4m6!3m5!1s0x87ebe2dc2a393c39:0x513fe3906133419f!8m2!3d41.0342618!4d-93.766759!16zL20vMHN0NDY?entry=ttu>

⁵ <https://www.census.gov/quickfacts/fact/table/clarkecountyiowa,IA/PS/T045222>

⁶ “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>)
⁷ <https://disposedcharges.iowa.gov/>



Iowa Acts of Interest for Law Enforcement

The 2023 Iowa Acts of Interest for Law Enforcement was held on June 21, 2023 in Coralville and June 22, 2023 in West Des Moines. This year's program was a success and included presentations on *New Legislation; New Criminal Rules; Open Record Requests; OWI/Traffic Law Update; and A DRE's Perspective*.

In prior years, Iowa Acts of Interest for Law Enforcement typically includes presentations on: *New Legislation*; and an *OWI/Traffic Law Update*. Previous trainings also have included, but not limited to: *Criminal Law Update; Human Trafficking; Weapons/FAQ; Automobile Stops and Searches; DNA Report Changes: From Random Match Probability to Likelihood Ratios; DCI Toxicology Update; Medical Cannabidiol & Hemp; Opioids and Investigations; Implied Consent After Pettijohn & Frescoln; Fortitude After The Firefight; Masking – Strategies and Resources to Improve Safety and Increase CDL Compliance; Officer Involved Shootings (OIS); and Interview & Interrogation*.

If you would like to receive notice regarding future Iowa Acts of Interest for Law Enforcement, please [click here](#) to register your information and be added to our e-mail distribution list. The PATC Division at the Iowa Attorney General's Office looks forward to seeing you at future Iowa Acts of Interest for Law Enforcement.



National Impaired Driving Prevention Campaign⁸

You may have already seen the national campaign, “Drive Sober or Get Pulled Over”, which is running from August 16, 2023 through September 4, 2023.⁹ In 2021, there were 531 traffic fatalities nationwide over the “Labor Day holiday period”.¹⁰ Over 40% of the drivers involved in these fatalities were drunk and over 25% had a BAC of .15 or more.¹¹

Iowa and 48 other states make it illegal for a driver to operate a motor vehicle with a BAC of .08 or greater (Utah's BAC limit is .05). Although a BAC of .08 or greater is a per se violation in Iowa, a person's ability

⁸ <https://www.trafficsafetymarketing.gov/>

⁹ <https://www.trafficsafetymarketing.gov/get-materials/drunken-driving/peak-enforcement-kit/national-mobilization>

¹⁰ <https://www.trafficsafetymarketing.gov/get-materials/drunken-driving/peak-enforcement-kit/national-mobilization> (see Fact Sheet)

¹¹ <https://www.trafficsafetymarketing.gov/get-materials/drunken-driving/peak-enforcement-kit/national-mobilization> (see Fact Sheet)

to safely operate a motor vehicle can be affected by an even lower BAC. See the below regarding how alcohol effects a driver:¹²

The Effects of Blood Alcohol Concentration

BLOOD ALCOHOL CONCENTRATION (BAC) IN G/DL	TYPICAL EFFECTS	PREDICTABLE EFFECTS ON DRIVING
.02	Some loss of judgment; relaxation, slight body warmth, altered mood	Decline in visual functions (rapid tracking of a moving target), decline in ability to perform two tasks at the same time (divided attention)
.05	Exaggerated behavior, may have loss of small-muscle control (e.g., focusing your eyes), impaired judgment, usually good feeling, lowered alertness, release of inhibition	Reduced coordination, reduced ability to track moving objects, difficulty steering, reduced response to emergency driving situations
.08	Muscle coordination becomes poor (e.g., balance, speech, vision, reaction time, and hearing), harder to detect danger; judgment, self-control, reasoning, and memory are impaired	Concentration, short-term memory loss, speed control, reduced information processing capability (e.g., signal detection, visual search), impaired perception
.10	Clear deterioration of reaction time and control, slurred speech, poor coordination, and slowed thinking	Reduced ability to maintain lane position and brake appropriately
.15	Far less muscle control than normal, vomiting may occur (unless this level is reached slowly or a person has developed a tolerance for alcohol), major loss of balance	Substantial impairment in vehicle control, attention to driving task, and in necessary visual and auditory information processing

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Iowa’s ARIDE (Advanced Roadside Impaired Driving Enforcement) has been very successful in combatting impaired driving. ARIDE “is an intermediate level course designed to offer more than a basic understanding of the impairing effects of drugs (illicit and licit), alcohol, and/or the combination of both.”¹⁴ “The student who successfully completes this training will be able to recognize that an individual may be under the influence of a drug or drugs other than alcohol, or under the combined influence of alcohol and other drugs, or suffering from some injury or illness that produces signs similar to alcohol/drug impairment.”¹⁵ In this edition of the newsletter, there were two cases where ARIDE trained officers successfully testified and secured convictions.

In [State v. Mary Zarwie](#), No. 22-0770 (Iowa Court of Appeals, filed May 10, 2023) the Court found there was sufficient evidence of impairment, even without a chemical test. Johnston Police Officer Johnston, who had been ARIDE trained, observed: bloodshot and watery eyes, unsteady on feet; odor of marijuana (burnt); droopy eyelids; performance on lack of convergence, finger-to-nose, and Modified Romberg tests; and eye, leg, and hand tremors. Based on Officer Johnston’s training and experience, he “determined [the defendant]

¹² <https://www.nhtsa.gov/risky-driving/drunk-driving>

¹³ <https://www.nhtsa.gov/risky-driving/drunk-driving>

¹⁴ <https://dps.iowa.gov/divisions/commissioners-office/governors-traffic-safety/drug-evaluation>

¹⁵ <https://dps.iowa.gov/divisions/commissioners-office/governors-traffic-safety/drug-evaluation>

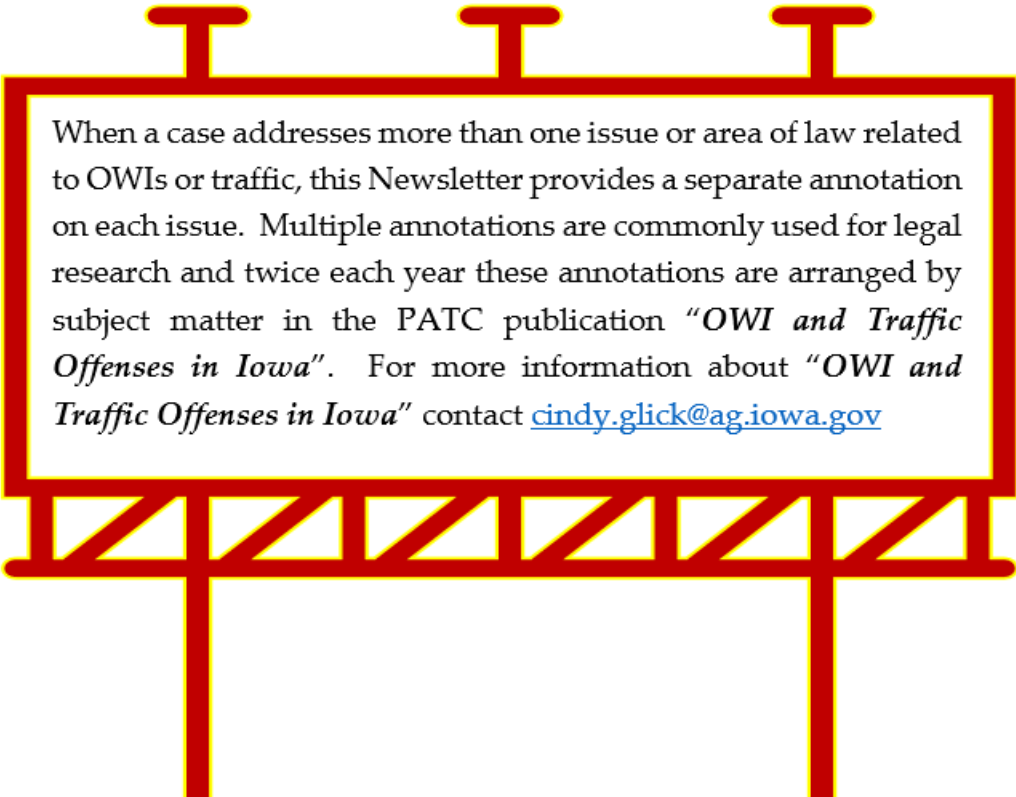
was intoxicated by both alcohol and marijuana” based on their experience, training, and personal observation of the defendant.

The second case was [State v. Austin James Hill](#), No. 22-0904 (Iowa Court of Appeals, filed May 24, 2023). In [Hill](#), the Court again found sufficient evidence of impairment, despite the defendant’s claim he was just tired, Adams County Sheriff Deputy Paul Hogan was not a DRE, and there was no chemical test. Deputy Hogan testified at trial that the defendant did not show lack of convergence (could not cross his eyes) which indicated an inhalant or marijuana use, and marijuana that is eaten, as opposed to smoked, would not have an odor. Deputy Hogan also observed: slow speech; the defendant provided an ID card when the deputy asked for registration; and the defendant had only one sock and no shoes.

[State v. Zarwie](#) and [State v. Hill](#) illustrate how an effective investigation and testimony by an ARIDE officer can aid in the successful prosecution of a no test OWI. If you are interested in attending an ARIDE training, please go to <https://dps.iowa.gov/divisions/commissioners-office/governors-traffic-safety/drug-evaluation> for a list of available classes. Attendance is limited to 30 participants. Prosecutors are welcome (and encouraged) to attend).

Thank you to everyone for your commitment to traffic safety and impaired driving.





When a case addresses more than one issue or area of law related to OWIs or traffic, this Newsletter provides a separate annotation on each issue. Multiple annotations are commonly used for legal research and twice each year these annotations are arranged by subject matter in the PATC publication "*OWI and Traffic Offenses in Iowa*". For more information about "*OWI and Traffic Offenses in Iowa*" contact cindy.glick@ag.iowa.gov

Opinions of the Iowa Supreme Court

Warren County State v. Santos Rene Torres, 989 N.W.2d 121 (Iowa 2023). **The defendant was not seized when he drove to his house and law enforcement instructed him on where to park on the street to avoid disrupting traffic.** The Court distinguished *United States v. Beauchamp*, 659 F.3d 560 (6th Cir. 2011) and further stated: "We have no doubt that fans attending a basketball game at Hilton Coliseum do not think they are being seized by traffic control officers directing them where to park."

Warren County State v. Santos Rene Torres, 989 N.W.2d 121 (Iowa 2023). **The defendant was not seized when an officer placed a hand on the defendant's shoulder three times and told him it was time to leave while he was talking to his wife that had been arrested and was sitting in the police vehicle.** The Court distinguished *California v. Hodari D.*, 499 U.S. 621 (1991); Torres was not trying to flee law enforcement, the officer only put his hand on Torres (did not tackle Torres), and Torres was free to move around. An officer placing their hand on a person to get their attention does not arise to the level of a seizure. Although officers followed the defendant around the property after he arrived, they did not impede his movement and reasonable person would have felt free to leave, until he exited the bathroom and was subject to a pat-down.

Warren County State v. Santos Rene Torres, 989 N.W.2d 121 (Iowa 2023). The defendant was not seized until he entered his house, exited the bathroom, and law enforcement patted him down.

Warren County [State v. Santos Rene Torres](#), 989 N.W.2d 121 (Iowa 2023). **Based on the totality of the circumstances there was “reasonable suspicion to pat [the defendant] down when he exited the bathroom”**: the defendant was in his home; he could have hidden a weapon in the bathroom; the defendant was angry when he left the bathroom; and law enforcement could not observe the defendant when he was in the bathroom.

Warren County [State v. Santos Rene Torres](#), 989 N.W.2d 121 (Iowa 2023). “[T]he officers’ warrantless entry in the home [after an agitated and impaired defendant entered the home while a child protection worker was conducting an investigation] did not violate Torres’s rights under the Fourth Amendment or article I, section 8 of the Iowa Constitution.”

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/>).

Adams County [State v. Austin James Hill](#), No. 22-0904 (Iowa Court of Appeals, filed May 24, 2023). **Sufficient evidence of impairment, despite the defendant’s claim he was just tired, the deputy was not a DRE, and there was no chemical test**: defendant swerved multiple times over the fog and center lines; did not show lack of convergence (could not cross his eyes); deputy testified the defendant’s performance on lack of convergence indicated an inhalant or marijuana use (“a lay witness may express an opinion about another person’s sobriety, provided the witness has had a chance to observe the other person.” *quoting State v. Murphy*, 451 N.W.2d 154, 155 (Iowa 1990)); slow speech; deputy testified that marijuana that is eaten, as opposed to smoked, would not have an odor; defendant provided an ID card when the deputy asked for registration; and defendant was operating the vehicle with only one sock and no shoes. **Please Note**: although note mentioned in the in the opinion, the deputy was ARIDE trained.

Black Hawk County [State v. Kristle Cay Curtis](#), No. 22-1069 (Iowa Court of Appeals, filed June 21, 2023). **The Court’s phrasing of “at this time” in its motion in limine ruling that allowed the admissibility of a video, was not unequivocal (meaning the Court could have reconsidered it during trial) and the opposing party therefore had to object when it was offered at trial to preserve error. Best practice**: either object during trial or ask the Court to clarify its whether its motion in limine ruling was unequivocal and final.

Black Hawk County [State v. Kristle Cay Curtis](#), No. 22-1069 (Iowa Court of Appeals, filed June 21, 2023). **No abuse in discretion in admitting police video of the defendant “direct[ing] racial slurs and other insults towards the arresting officers” to show she was impaired.** “While Curtis regrets what she said and argues the jury would be inflamed by her language, her demeanor and lack of judgment provides evidence indicative of intoxication, just as slurred speech, vomiting, and her general belligerence might support that element of proof.”

Keokuk County [State v. Jason Michael Sines](#), No. 22-0042 (Iowa Court of Appeals, filed April 26, 2023). “[A] defendant does not have good cause to appeal when the defendant seeks to challenge a mandatory sentence or a sentence agreed to in a plea agreement.” “Because Sines received the sentence he bargained for in the written plea agreement, he cannot establish good cause to appeal and his appeal must be dismissed.”

RECENT UNPUBLISHED DECISIONS INVOLVING ALCOHOL AND TRAFFIC SAFETY

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Plymouth County [State v. Leslie James Clark](#), No. 22-0477 (Iowa Court of Appeals, filed June 21, 2023). No abuse in discretion in revoking the defendant's deferred judgment for driving while barred and sentencing him to jail.

Polk County [State v. Rusty Lee Throckmorton](#), No. 22-1007 (Iowa Court of Appeals, filed April 26, 2023). **No abuse in discretion in sentencing the defendant to prison for eluding.** Although "sentencing court may not base its decision on any single factor[.]" the court may place more importance on one factor over others.

Polk County [State v. Donald Melvin Wittenberg](#), No. 22-0037 (Iowa Court of Appeals, filed April 26, 2023). **Under the totality of the circumstances, the defendant was not seized "when officers parked near him, shined a spotlight into his car, and approached him on foot with flashlights[.]"** An officer's use of a spotlight is similar to normal headlights, not a law enforcement vehicle's emergency lights. [State v. Cyrus](#), No. 21-0828, 2023 WL 152521, at *4 (Iowa Ct. App. Jan. 11, 2023). **Please note, the Iowa Supreme Court has granted further review of this case.**

Polk County [State v. Mary Zarwie](#), No. 22-0770 (Iowa Court of Appeals, filed May 10, 2023). **Sufficient evidence of impairment.** One officer observed: defendant drive in the wrong lane; odor of alcohol; odor of marijuana; admission to smoking and drinking; bloodshot and watery eyes; and performance on one leg stand and walk and turn SFSTs. ARIDE officer observed: bloodshot and watery eyes, unsteady on feet; odor of marijuana (burnt); droopy eyelids; performance on lack of convergence, finger-to-nose, and Modified Romberg tests; and eye, leg, and hand tremors. Both officers "determined [the defendant] was intoxicated by both alcohol and marijuana" based on their experience, training, and personal observation of the defendant. The defendant also refused chemical testing.

Poweshiek County [State v. Brandon Scott Stevens](#), No. 22-1114 (Iowa Court of Appeals, filed June 7, 2023). **Insufficient evidence the defendant intended to permanently deprive the owner of the van to support a conviction of Theft 2nd; remanded for a conviction of operating without owners consent.** The defendant: did not admit to an "intent to permanently deprive the company of its van"; abandoned the vehicle a couple of miles in the country at a residence; the van was discovered by the resident's owner within a couple of days; and no evidence the defendant tried to sell or wreck the vehicle.

Scott County [State v. Bobby Fitzgerald Hunt Jr.](#), No. 22-0843 (Iowa Court of Appeals, filed April 12, 2023). **Substantial evidence the defendant's intoxication caused the victim's death:** excessive speeding; ran a red light "at least six seconds after it changed to red"; defendant's behavior was erratic when talking with law enforcement; defendant fled when told a warrant was being obtained; and defendant's blood tested positive for drugs and alcohol.

Scott County [State v. Bobby Fitzgerald Hunt Jr.](#), No. 22-0843 (Iowa Court of Appeals, filed April 12, 2023). "[S]entences imposed on his convictions for homicide by vehicle by operating under the influence and homicide by vehicle by reckless driving violate the one-homicide rule." See [State v. Ceretti](#), 871 N.W.2d 88, 96 (Iowa 2015). The Court "vacate[d] the judgment and sentence entered on Hunt's conviction of homicide by vehicle by reckless driving".

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Scott County [In the Interest of D.L.](#), No. 22-0174 (Iowa Court of Appeals, filed June 7, 2023). **Sufficient evidence D.L. knew the vehicle was stolen:** text messages between the driver of the vehicle and D.L.; vehicle had a bunch of trash; holes in the vehicle’s roof; vehicle had a broken mirror; and D.L. was a passenger when the vehicle was driven fast.

Tama County [State v. Jose Julian Sanchez](#), No. 22-0763 (Iowa Court of Appeals, filed April 12, 2023). **Sufficient probable cause to arrest the defendant for OWI based on the totality of the circumstances:** the vehicle the defendant was driving matched the description of the vehicle driving without headlights, on the wrong side of the road, and “involved in a hit-and-run”; damage to defendant’s vehicle was consistent to being involved in the hit-and-run; “strong odor of alcohol” observed by deputy that interacted with the defendant longer than the officer that did not observe any odor; red, bloodshot eyes; admission of drinking multiple beers, despite not knowing the time frame of the consumption; and defendant’s performance on the HGN, despite using the defendant’s wife to translate the instructions.

Tama County [State v. Jose Julian Sanchez](#), No. 22-0763 (Iowa Court of Appeals, filed April 12, 2023). Asking the defendant to perform SFSTs, which are non-testimonial, is not an interrogation and does not implicate Miranda. See State v. Marks, 644 N.W.2d 35, 37 (Iowa Ct. App. 2002).

Wapello County [State v. Jesse Lee McElroy](#), No. 22-0540 (Iowa Court of Appeals, filed May 24, 2023). The Court did not abuse its discretion and sufficiently explained its reasons for sentencing the defendant to prison as a habitual offender for an OWI 3rd.

Webster County [In the Interest of M.A.](#), No. 22-1873 (Iowa Court of Appeals, filed May 10, 2023). No abuse in discretion in ordering placement at a “qualified residential treatment program” and denying the child’s request to be returned home after being adjudicated delinquent for operating without owner’s consent.

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.

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