



HIGHWAY SAFETY

LAW UPDATE



September 29, 2023 Office of the Prosecuting Attorneys Training Coordinator July/August/September 2023

County Spotlight – Clay County

The nineteenth county spotlight is on Clay County. Clay County was “named after Lieutenant Colonel Henry Clay Jr.”¹ The first county seat accepted by the residents was located in Peterson in 1860, not the current location of Spencer, because “Spencer was unimproved and no settler lived within a 10-mile radius[.]”² Spencer did not become the county seat until 1871.³ Clay County also claims to host “the Worlds’ Greatest County Fair!”⁴

Spencer is the county seat of Clay County⁵ and it sits at the intersection of Highways 18 and 71.⁶ According to the 2020 census, Clay County has a population of 16,384.⁷

Travis Johnson is the Clay County Attorney. Mr. Johnson is a full-time county attorney. There is also one full-time assistant county attorney, Kristi Busse, and one part-time assistant county attorney, Barry Sackett, in the office. Mr. Johnson graduated from Iowa State University with a major in Political Science and then attended Drake Law School. Mr. Johnson has been the Clay County Attorney for approximately 3 years. Prior to becoming the Clay County Attorney, Mr. Johnson was an assistant county attorney in the Clay County Attorney’s office for approximately 2 years. Before coming to Clay, Mr. Johnson was an Assistant Dickinson County Attorney for

approximately 5 years, an Assistant Attorney General for approximately 1 year and an Assistant Story County Attorney for approximately 7 years.



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¹ <https://claycounty.iowa.gov/history-and-resources/>
² <https://claycounty.iowa.gov/history-and-resources/>
³ <https://claycounty.iowa.gov/history-and-resources/>
⁴ <https://claycounty.iowa.gov/history-and-resources/>
⁵ <https://claycounty.iowa.gov/history-and-resources/>
⁶ <https://www.google.com/maps/place/Clay+County,+IA/@43.0615085,-95.3201278,10.52z/data=!4m6!3m5!1s0x878cd618c591c0c5:0x5a81fd0787548d70!8m2!3d43.1368038!4d-95.1432068!16zL20vMGZ2ajc?entry=ttu>
⁷ <https://www.census.gov/quickfacts/fact/table/claycountyiowa,IA/PST045222>

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

LEARN THE 6 RULES FOR THE ROAD



County Spotlight – Clay County cont.

Clay County has 5 local law enforcement agencies: Spencer Police Department, Iowa Department of Natural Resources, Iowa DOT, Iowa State Patrol, and the Clay County Sheriff's Office. In 2022, there were 2,250 traffic convictions⁸ and 74 OWI convictions in Clay County according to Division of Criminal & Juvenile Justice Planning.⁹



“National Teen Driver Safety Week”¹⁰

October 15 – 21, 2023 is “National Teen Driver Safety Week”.¹¹ “Motor vehicle crashes are a leading cause of death for teens (15-18 years old) in the United States.”¹² Alcohol plays a significant role in crashes involving teen drivers. 19% of the fatal crashes in 2021 involved a teen driver with “alcohol in their system.”¹³ It is important to educate teen drivers, not only during “National Teen Driver Safety Week”, but also throughout the rest of the year, regarding the dangers of driving while impaired.¹⁴ It does not matter whether it is a prescription drug or an illegal substance (e.g. methamphetamine), if it impairs, then it can affect a driver’s ability to react quickly, perform complex tasks, and drive safely.¹⁵

⁸ “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>)

⁹ <https://disposedcharges.iowa.gov/>

¹⁰ <https://www.trafficsafetymarketing.gov/get-materials/teen-safety/national-teen-driver-safety-week/rules-road>

¹¹ <https://www.trafficsafetymarketing.gov/get-materials/teen-safety/national-teen-driver-safety-week/rules-road>

¹² <https://www.trafficsafetymarketing.gov/get-materials/teen-safety/national-teen-driver-safety-week/rules-road>

¹³ <https://www.trafficsafetymarketing.gov/get-materials/teen-safety/national-teen-driver-safety-week/rules-road> (“Fact Sheet (parental guidance)”)

¹⁴ <https://www.trafficsafetymarketing.gov/get-materials/teen-safety/national-teen-driver-safety-week/rules-road> (“Fact Sheet (parental guidance)”)

¹⁵ <https://www.trafficsafetymarketing.gov/get-materials/teen-safety/national-teen-driver-safety-week/rules-road> (“Fact Sheet (parental guidance)”)

NO KEYS UNTIL YOU KNOW THE RULES

NO CELL PHONES WHILE DRIVING

NO SPEEDING

NO DROWSY DRIVING

NO PASSENGERS

NO ALCOHOL

ALWAYS BUCKLE UP

LEARN THE 6 RULES FOR THE ROAD



Impaired driving is not the only danger for teen drivers, distracted driving was reported in 7% of the fatal crashes involving teen drivers.¹⁶ Although Iowa does not currently have a “Hands Free” law when it comes to drivers with a “full license”¹⁷, [Iowa Code section 321.276](#) does preclude from manually texting while driving.¹⁸ Furthermore, there are multiple statutes that further restrict the use of “electronic communication devices” for drivers without a “full license”.¹⁹ “Iowa has a graduated driver’s license (GDL) system for drivers under age 18” (e.g., instruction permit and school permit (optional), intermediate license, and full license).²⁰

Just like adult drivers, speeding is also a factor in a large percentage (32% in 2021) of fatalities involving teen drivers. Furthermore, “[i]n 2021, 51% of the teen passenger vehicle drivers who died in crashes were unbuckled.”²¹

How can we help teen drivers recognize the potential dangers that come with the responsibility of driving? We have to constantly educate them regarding the dangers of impaired driving, remind them to use their seatbelts, focus on driving and avoid distractions (e.g., cellphones, other passengers, eating, etc.), and following the speed limit. Hopefully this will

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



Midwest Impaired Driving Conference

The Midwest Impaired Driving Conference is currently scheduled from November 2-3, 2023, in Itasca, Illinois.²² The Conference is put on by the Midwest Center For Traffic Safety.²³ “The Midwest Center for Traffic Safety’s mission is to be a resource and education clearinghouse to reduce

¹⁶ <https://www.trafficsafetymarketing.gov/get-materials/teen-safety/national-teen-driver-safety-week/rules-road> (“Fact Sheet (parental guidance)”)

¹⁷ <https://iowadot.gov/mvd/driverslicense/under-18>

¹⁸ <https://www.legis.iowa.gov/docs/code/321.276.pdf>

¹⁹ See Iowa Code sections [321.178\(2\)\(a\)\(2\)\(a\)](#); [321.180B\(6\)](#); and [321.194\(2\)\(b\)\(2\)](#)

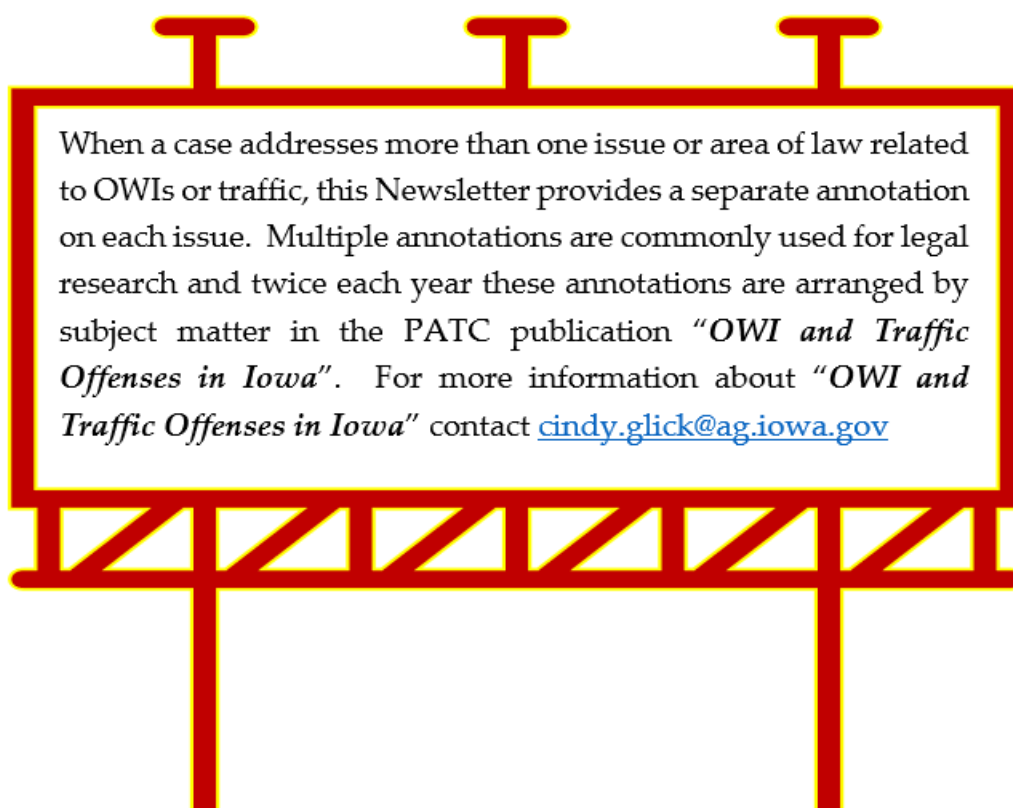
²⁰ <https://iowadot.gov/mvd/driverslicense/under-18>

²¹ <https://www.trafficsafetymarketing.gov/get-materials/teen-safety/national-teen-driver-safety-week/rules-road> (“Fact Sheet (parental guidance)”)

²² <https://www.midwesttrafficsafety.org/midc>

²³ <https://www.midwesttrafficsafety.org/>

traffic crash fatalities and promote and encourage uniform enforcement of traffic laws throughout the Midwest.”²⁴ There are a wide range of topics that will be covered at the conference, including, but not limited to: *Prosecutor Workshop; Improving the Connection – The Value and Validity of Tests for Determining Drug Impairment; Overview of the 2023 Impaired Driving Curricula updates (SFST, ARIDE, and DRE); Current Drug Trends; Seeing Green: Clearing the Smoke on Cannabis Impairment; Traffic and Technology; A Brief Overview of Standardized Sobriety Tests; Cross Examining Defense Experts: The Art of Making Their Witness Your Own; and Abstracts and Sworn Reports.*²⁵ The Conference will also feature a “Green Lab”.²⁶ The Conference features multiple exciting speakers, including but not limited to: Dr. Karl Citek; Illinois TSRP Jennifer Cifaldi; Kansas TSRP Corey Kenney; Ohio TSRP Holly Reese; Oregon TSRP Deena Ryerson; and National Traffic Law Center Staff Attorney Erin Inman.²⁷ For more information or to register, please go the [Conference’s website](#).²⁸



²⁴ <https://www.midwesttrafficsafety.org/>

²⁵ <https://www.midwesttrafficsafety.org/speakers-schedule>

²⁶ <https://www.midwesttrafficsafety.org/speakers-schedule>

²⁷ <https://www.midwesttrafficsafety.org/speakers-schedule>

²⁸ <https://www.midwesttrafficsafety.org/midc>

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/>).

Recent Unpublished Decisions Arranged by County

Appanoose County [State v. Shannah Rae Bankson](#), No. 22-0629 (Iowa Court of Appeals, filed July 13, 2023). **The defendant gave officers voluntary consent to search the vehicle, including its contents, without restricting where they could search.** A person giving voluntary consent may limit, restrict, or qualify where law enforcement can search. [State v. McConnelee](#), 690 N.W.2d 27, 30 (Iowa 2004).

Black Hawk County [State v. Dashaun Avery Redmond](#), No. 22-1505 (Iowa Court of Appeals, filed August 30, 2023). **The officer had reasonable belief the defendant could be armed and dangerous to justify a Terry pat-down of the defendant:** defendant and his vehicle matched the descriptions in two prior shooting reports; defendant had ties to local gangs involving weapons and drugs; high crime location; and defendant appeared nervous.

Black Hawk County [State v. Aaron Brown](#), No. 22-1956 (Iowa Court of Appeals, filed August 30, 2023). **Sufficient evidence of operation without owner's consent:** the vehicle's owner testified he did not give the defendant consent to use his vehicle; the victim and the defendant were supposed to drive somewhere to family celebrations; and defendant never tried to contact the victim after taking the vehicle.

Chickasaw County [State v. John Anthony Rapenske](#), No. 22-0066 (Iowa Court of Appeals, filed August 30, 2023). **Officer had reasonable suspicion to stop the defendant's vehicle based on information provided by a second-hand report.** A driver observed the defendant driving erratically and told her husband over the phone what she was observing. The driver's husband then called 911 and reported what his wife observed, including: color, model, license plate number, and make of the vehicle; the direction the vehicle was traveling and the current location; no evidence the husband and wife had ulterior motives for reporting the defendant; and although the officer was not able to corroborate the erratic driving, the officer was able to find the matching vehicle in the area it was reported in.

Des Moines County [State v. Kelvin Devell Willform](#), No. 22-0915 (Iowa Court of Appeals, filed September 13, 2023). Pursuant to Iowa Code section 814.7, ineffective assistance of counsel claims cannot be raised on direct appeal and must be filed through a postconviction relief action.

Des Moines County [State v. Kelvin Devell Willform](#), No. 22-0915 (Iowa Court of Appeals, filed September 13, 2023). **The Court did not abuse its discretion in denying the defendant's request for new counsel, which was made during defense counsel's opening statement.** “[T]he court needs to balance the defendant's rights to counsel and the public's interest in the prompt and efficient administration of justice, and ‘[t]he court should not permit a defendant to manipulate the right to counsel to delay or disrupt the trial.’” quoting [State v. Lopez](#), 633 N.W.2d 774, 779 (Iowa 2001).

Floyd County [State v. Arthur Lee McDole](#), No. 22-1663 (Iowa Court of Appeals, filed August 30, 2023). **Reasonable suspicion to initiate a traffic stop:** officer testified to observing the defendant go over the center line two times; defendant's vehicle weaved between the center line and fog line for approximately two miles, including driving on the fog line; and it was early in the morning when impaired drivers are out.

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Floyd County [State v. Arthur Lee McDole](#), No. 22-1663 (Iowa Court of Appeals, filed August 30, 2023). **Sufficient evidence of constructive possession of marijuana in the vehicle:** marijuana shake visible in the vehicle; strong odor of marijuana; defendant was the only occupant of the vehicle; defendant told the officers the approximate amount of marijuana in the vehicle; and a large amount of cash in the defendant's pocket. *See* [State v. Thomas](#), 847 N.W.2d 438 (Iowa 2014) (listing four non-exclusive factors in determining constructive possession when there are more than one person in the area); [State v. Kemp](#), 688 N.W.2d 785, 789 (Iowa 2004) (listing five additional factors when the area is a motor vehicle). Furthermore, “[t]he quantity of marijuana, packaging, and the cash in McDole’s possession is not consistent with personal use.”

Louisa County [State v. Derrick Cook Maynard](#), No. 22-1772 (Iowa Court of Appeals, filed August 30, 2023). **Sufficient evidence the defendant intentionally committed the act of crashing into the victim’s car and that act then caused the death of the victim:** the passenger could see the victim’s vehicle and it is likely the defendant would have seen the victim’s vehicle; incriminating statement by defendant; and the victim had to take evasive action to avoid an early collision by the defendant. *See* [State v. Ceretti](#), 871 N.W.2d 88, 93 (Iowa 2015).

Louisa County [State v. Derrick Cook Maynard](#), No. 22-1772 (Iowa Court of Appeals, filed August 30, 2023). **Voluntary Manslaughter conviction; “Sufficient evidence in the record that Maynard was motivated by a sudden, violent, and irresistible passion that resulted from a serious provocation when he crashed the U-Haul into Reid’s vehicle[::]”** the defendant was on the phone yelling at the victim until the crash; and the passenger in the defendant’s vehicle testified the defendant was freaking out, mad, and yelling regarding the victim and her passenger.

Louisa County [State v. Derrick Cook Maynard](#), No. 22-1772 (Iowa Court of Appeals, filed August 30, 2023). Even if the State failed to show the required provocation for voluntary manslaughter, reversal is not required if all the evidence supports a conviction for “second-degree murder in absence of provocation[.]”

Polk County [State v. James Joseph Petefish Sr.](#), No. 22-1904 (Iowa Court of Appeals, filed July 26, 2023). Defendant failed to establish “good cause” to file a direct appeal of his guilty pleas.

Polk County [State v. James Joseph Petefish Sr.](#), No. 22-1904 (Iowa Court of Appeals, filed July 26, 2023). Defendant failed to establish appropriate “grounds for discretionary review” of his guilty plea.

Polk County [State v. David Dwight Jackson](#), No. 21-1319 (Iowa Court of Appeals, filed August 30, 2023). **Sufficient probable cause to support a blood draw search warrant after the incorrect information regarding the SFSTs were removed.** A law enforcement officer applied for a search warrant for a blood draw during an OWI/Vehicular Homicide investigation; however, the officer modified a prior search warrant and did not remove the information regarding the SFSTs (Jackson was not offered and did not perform any SFSTs).

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Polk County [State v. David Dwight Jackson](#), No. 21-1319 (Iowa Court of Appeals, filed August 30, 2023). **Officer’s mistake in a search warrant by not removing information about SFSTs that came from a prior search warrant “did not meet the Franks test requirements”.** *see* [Franks v. Delaware](#), 438 U.S. 154 (1978); [State v. Groff](#), 323 N.W.2d 204, 206–08 (Iowa 1982) (adopting Franks). A law enforcement officer applied for a search warrant for a blood draw during an OWI/Vehicular Homicide investigation; however, the officer modified a prior search warrant and did not remove the information regarding the SFSTs (Jackson was not offered and did not perform any SFSTs). Although the district court determined under the Franks challenge the officer’s conduct amounted to a significant scrivener’s error, the Iowa Court of Appeals found the officer did not commit an “intentional act”, but was just negligent in filling out the search warrant.

Polk County [State v. David Dwight Jackson](#), No. 21-1319 (Iowa Court of Appeals, filed August 30, 2023). Although the defendant did not specifically cite Iowa Code section 622.10 and instead just referred to HIPAA, the Court found the issue of section 622.10 was properly raised and error preserved.

Polk County [State v. David Dwight Jackson](#), No. 21-1319 (Iowa Court of Appeals, filed August 30, 2023). **Defendant waived his medical records privilege under Iowa Code section 622.10 by testifying on direct examination about his medical condition.** *see* [State v. Hardin](#), 569 N.W.2d 517, 520 (Iowa Ct. App. 1997); *compare to* [State v. Leedom](#), 938 N.W.2d 177, 189–90 (Iowa 2020) (disclosure on cross examination does not waive 622.10 privilege). State’s witness’s “testimony concerning the medical records that summarized the condition of Jackson was not barred by section 622.10.” NOTE: Iowa Code section 622.10 is “more protective than HIPAA.” *see* [In re A.M.](#), 856 N.W.2d 365, 379 (Iowa 2014).

Polk County [State v. David Dwight Jackson](#), No. 21-1319 (Iowa Court of Appeals, filed August 30, 2023). Polk County Jail health services administrator’s testimony about the defendants’ hospital medical records was properly admitted, after foundation was laid, under the business records exception to hearsay. Iowa Rules of Evidence 5.803(6).

Polk County [Christopher Dee Nall v. State](#), No. 22-1690 (Iowa Court of Appeals, filed August 30, 2023). **Defendant failed to show that his plea was not knowing and voluntary.** Defendant knew he was being sentenced to seven years in prison and his written plea of guilty detailed how concurrent and consecutive sentences are different.

Pottawattamie County [State v. Dmitriy Alexandrovi Zenchenko](#), No. 22-1637 (Iowa Court of Appeals, filed July 13, 2023). **Sufficient evidence of operation:** the defendant was the only person in the locked vehicle; law enforcement arrived 12 minutes after it went into the ditch; and the keys were in the vehicle.

Pottawattamie County [State v. Dmitriy Alexandrovi Zenchenko](#), No. 22-1637 (Iowa Court of Appeals, filed July 13, 2023). **Sufficient evidence of impairment:** the defendant admitted to drinking prior to driving into the ditch and “that he was drunk”; could not unlock the vehicle; and empty liquor bottle in the vehicle. *Compare to* [State v. Creighton](#), 201 N.W.2d 471 (Iowa 1972) (insufficient evidence of impairment when the defendant was operating the vehicle).

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Scott County [State v. Marquis Alonzo Moore](#), No. 22-1128 (Iowa Court of Appeals, filed July 13, 2023). No abuse in discretion in rejecting the defendant's request for a deferred judgment after a plea of guilty to driving while barred (DWB).

Scott County [State v. Christopher Ryan Brekke](#), No. 22-1407 (Iowa Court of Appeals, filed July 13, 2023). By not filing a motion in arrest of judgment, the defendant failed to preserve error to challenge his guilty plea.

Scott County [State v. Christopher Ryan Brekke](#), No. 22-1407 (Iowa Court of Appeals, filed July 13, 2023). The State's recommendation of more than minimum 30 days in jail for an OWI 3rd conviction, did not violate the plea agreement.

Scott County [State v. Marquis Alonzo Moore](#), No. 22-1129 (Iowa Court of Appeals, filed July 26, 2023). **Although the defendant's written waiver "unambiguously waived his right to allocution[.]" a written "allocution waiver is effective only when the defendant is not present before the sentencing court."** Because the defendant was present for his sentencing hearing, the Court must afford him opportunity for the right of allocution. Case remanded for resentencing.

Sioux County [State v. Jack Harold Smith Jr.](#), No. 22-0396 (Iowa Court of Appeals, filed August 30, 2023). **Probable cause to initiate a traffic stop for a violation of Iowa Code section 321.327 when the defendant failed to stop and yield for pedestrians crossing a highway in a marked cross walk.** The defendant "had a duty to surrender 'the privilege of the immediate use of the highway' to the three 'pedestrian[s] crossing the roadway within any marked crosswalk.'" *quoting* Iowa Codes sections 321.1(64) and 321.327.

Warren County [State v. Kemp Patrick Reynolds](#), No. 22-2092 (Iowa Court of Appeals, filed September 27, 2023). **Sufficient evidence the defendant was driving while barred on two separate occasions.** The State does not need to prove the defendant was provided notice he was barred. [State v. Williams](#), 910 N.W.2d 586, 594 (Iowa 2018).

Woodbury County [Elvin Marquette Farris v. State](#), No. 21-1880 (Iowa Court of Appeals, filed August 30, 2023). **Defendant failed to show prejudice and summary judgment properly granted.** Defendant failed to appear for his driving while suspended simple misdemeanor trial and the Court found him guilty on his signature bond. Defendant was aware when trial scheduled and "no continuance had been granted."

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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