



HIGHWAY SAFETY

LAW UPDATE



September 30, 2024 Office of the Prosecuting Attorneys Training Coordinator July/August/September 2024

County Spotlight – Dallas County

The twenty-third county spotlight is on Dallas County. In 1847, Dallas County was named after Vice President George Mifflin Dallas, who served under the 11th President James Polk.¹ Dallas County is currently the fastest growing county in Iowa and in the top ten fastest growing counties in the United States.² According to the 2020 census, Dallas County has a population of 99,678, which was an approximately 51% increase from the 2010 census.³ During the same time span, the State of Iowa only experienced an approximately 5% increase in population.⁴

Adel is the county seat of Dallas County, but Adel “was originally called Penoch or Panouch, an Indian word meaning ‘far away’”.⁵ “Among Dallas County's better known residents are Bob Feller, famous baseball pitcher; Nile Kinnick, University of Iowa football player, after whom the stadium in Iowa City is named; George W. Clarke, Governor of Iowa, 1913-1917; Edwin H. Conger, Treasurer of State, 1881-1885, appointed by President Benjamin Harrison as Minister to Brazil where he served four years, appointed again Minister to Brazil by President McKinley in 1897, later serving in China during and after the Boxer uprising; Robert K. Goodwin, member of Congress in 1940.”⁶

Jeannine Ritchie is the Dallas County Attorney. Ms. Ritchie is a full-time county attorney. Currently, there are eight full-time assistant county attorneys in the office. Ms. Ritche

graduated from Creighton University with a major in accounting and finance, and then attended Creighton Law School. Ms. Ritche has been the Dallas County Attorney for approximately 2 years. Prior to becoming the Dallas County Attorney, Ms. Ritche was an assistant county attorney in the Dallas County Attorney’s office for approximately 34 years. Ms. Ritche is intending to retire at the end of this term as the Dallas County Attorney and we wish her well in her new adventure.

Dallas County has 13 local law enforcement agencies: Adel, Clive, De Soto, Granger, Perry, Urbandale, Van Meter, Waukee, Woodward, and West Des Moines Police Departments, Iowa Department of Natural Resources, Iowa State Patrol, and the Dallas County Sheriff’s Office. In 2023, there were 8,003 traffic convictions⁷ and 269 OWI convictions in Dallas County according to Division of Criminal & Juvenile Justice Planning.⁸



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¹ <https://www.dallascountyiowa.gov/387/History-of-Dallas-County>

² https://en.wikipedia.org/wiki/Dallas_County,_Iowa

³ <https://www.census.gov/quickfacts/fact/table/dallascountyiowa,IA/PS/T045223>

⁴ <https://www.census.gov/quickfacts/fact/table/dallascountyiowa,IA/PS/T045223>

⁵ <https://www.dallascountyiowa.gov/387/History-of-Dallas-County>

⁶ <https://www.dallascountyiowa.gov/387/History-of-Dallas-County>

⁷ “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>)

⁸ <https://disposedcharges.iowa.gov/>

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

**LEARN THE
6 RULES
FOR THE ROAD**

NHTSA



Halloween Impaired Driving Campaign⁹

“The goal of the Halloween Impaired Driving campaign is to encourage positive behaviors like designating a sober driver, calling a ride share and ultimately not driving under the influence while celebrating.”¹⁰ [Iowa Code section 321J.2](#) prohibits drivers from operating a motor vehicle while impaired, even if the substance is otherwise legal (e.g., huffing paint).¹¹ During a 2013-2014 roadside survey conducted by NHTSA, it was discovered that 20% of the drivers that participated “tested positive for potentially impairing drugs.”¹² “Impaired drivers can’t accurately assess their own impairment – which is why no one should drive after using any impairing substances.”¹³ Using marijuana impairs cognitive function, motor skills, and lane tracking.¹⁴ A 2015 study also found that a driver that uses marijuana can harm their multitasking ability.¹⁵ So let’s have a safe and happy Halloween. Please be responsible and don’t drive impaired.



⁹ <https://www.trafficsafetymarketing.gov/safety-topics/drug-impaired-driving/if-you-feel-different-you-drive-different/halloween>

¹⁰ <https://www.trafficsafetymarketing.gov/sites/tsm.gov/files/2024-08/drunken-drug-social-norm-halloween-social-playbook-en-es-2024-tag.pdf>

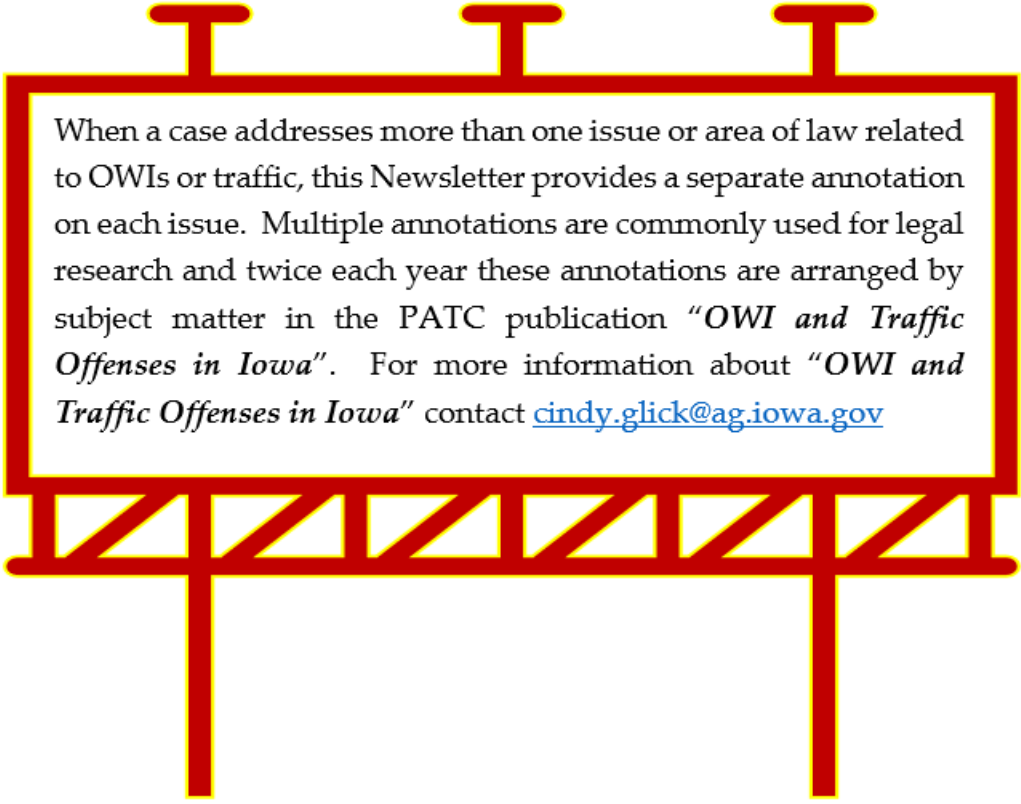
¹¹ <https://www.nhtsa.gov/risky-driving/drug-impaired-driving>; *State v. Bond*, 493 N.W.2d 826 (Iowa 1992).

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

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

¹⁴ <https://www.nhtsa.gov/risky-driving/drug-impaired-driving>

¹⁵ <https://www.nhtsa.gov/risky-driving/drug-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

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

Boone County [State v. Adam Mullen](#), No. 23-0148 (Iowa Court of Appeals, filed July 3, 2024). An officer may obtain a chemical sample, including a blood draw, via an 808-search warrant or implied consent. [State v. Laub](#), 2 N.W.3d 821 (Iowa 2024); [State v. McMickle](#), 3 N.W.3d 518 (Iowa 2024); [State v. Frescoln](#), 911 N.W.2d 450 (Iowa Ct. App. 2017).

Boone County [State v. Adam Mullen](#), No. 23-0148 (Iowa Court of Appeals, filed July 3, 2024). A search warrant under Chapter 808 allows for the “collection of bodily specimens” (e.g., a blood draw). [State v. Laub](#), 2 N.W.3d 821 (Iowa 2024); [State v. McMickle](#), 3 N.W.3d 518 (Iowa 2024); [State v. Frescoln](#), 911 N.W.2d 450 (Iowa Ct. App. 2017).

Boone County [State v. Adam Mullen](#), No. 23-0148 (Iowa Court of Appeals, filed July 3, 2024). Using a search warrant instead of implied consent to obtain a chemical test (e.g., a blood draw) during an OWI investigation does not violate a defendant’s procedural due process, substantive due process, or equal protection rights. [State v. Laub](#), 2 N.W.3d 821 (Iowa 2024); [State v. McMickle](#), 3 N.W.3d 518 (Iowa 2024).

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Boone County [State v. Adam Mullen](#), No. 23-0148 (Iowa Court of Appeals, filed July 3, 2024). **Miranda warnings not required on traffic stop prior to questioning the defendant on whether he had been drinking because the defendant “was not in custody” at the time.** See [Berkemer v. McCarty](#), 468 U.S. 420 (1984); [State v. Scott](#), 518 N.W.2d 347 (Iowa 1994); [Pennsylvania v. Bruder](#), 488 U.S. 9 (1988); [In re S.C.S.](#), 454 N.W.2d 810 (Iowa 1990). “In making this determination, the court considers four guiding factors: ‘(1) the language used to summon the individual; (2) the purpose, place, and manner of interrogation; (3) the extent to which the defendant is confronted with evidence of her guilt; and (4) whether the defendant is free to leave the place of questioning.’” quoting [State v. Park](#), 985 N.W.2d 154, 168 (Iowa 2023) (citation omitted). In the present case: the traffic stop was short (approximately 22 minutes); officer only spoke to the defendant for approximately 7 of those 22 minutes; the interaction was non-threatening; and the defendant was not in handcuffs or otherwise restrained.

Bremer County [State v. Jerod Michael Cox](#), No. 23-1811 (Iowa Court of Appeals, filed August 21, 2024). **Officer developed reasonable suspicion to seize and investigate the defendant for driving while impaired “immediately after making contact with [the defendant:]”** defendant had glassy and bloodshot eyes; defendant’s responses to the officer’s questions were delayed; and officer had a baseline of the defendant’s normal behavior from prior interactions. “When bloodshot and watery eyes are combined with other facts indicating the person may be intoxicated, we have found the officer has reasonable suspicion.” See [State v. Ewalt](#), No. 17-1189, 2018 WL 5292090, at *4 (Iowa Ct. App. Oct. 24, 2018).

Des Moines County [State v. Hope Jennifer Clark](#), No. 23-0964 (Iowa Court of Appeals, filed September 18, 2024). **Sufficient evidence the defendant was impaired, despite the defendant’s argument of “a significant hearing impairment that impacts her speech and ability to understand verbal instructions”:** defendant’s vehicle left her lane of travel on multiple occasions; speeding; defendant drove “into a curb”; after stopping her vehicle for law enforcement, defendant started driving away as one officer started walking up to the vehicle; defendant admitted to consuming alcohol; odor of alcohol; defendant had to be reminded to put her vehicle in park; defendant was unsteady on her feet; and defendant’s performance on the HGN test.

Des Moines County [State v. Hope Jennifer Clark](#), No. 23-0964 (Iowa Court of Appeals, filed September 18, 2024). A defendant does not have a right to an 804.20 phone call or consultation “while still on the side of the road during [a] traffic stop.” See [State v. Davis](#), 922 N.W.2d 326, 334-335 (Iowa 2019).

Des Moines County [State v. Hope Jennifer Clark](#), No. 23-0964 (Iowa Court of Appeals, filed September 18, 2024). A “ten-second to five-minute delay” in providing an opportunity for an 804.20 phone call was not unnecessary, “given that the delay was due to the time it took to hand Clark her phone, read her Miranda rights, read the implied consent advisory, and read section 804.20 itself, all of which addressed details about Clark’s request to call her attorney.” See [State v. Smith](#), No. 16-0749, 2017 WL 510957, at *2 (Iowa Ct. App. Feb. 8, 2017) (delay of eleven minutes was not unnecessary). Defendant’s request to call her attorney during the traffic stop while roadside was denied. Once the defendant arrived at the jail, she was “processed into the jail”; given her phone in approximately ten seconds and told “she could call an attorney”; defendant did not inform officers she wanted to call her attorney right then; *Miranda*, implied consent, and 804.20 were then read to the defendant in approximately five minutes; the defendant then requested to call an attorney again and was informed she could; another officer told the defendant she

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could make phone calls; and then the defendant did not make any phone calls and refused chemical testing. Furthermore: “Administrative tasks associated with jailing the detainee are expected and do not constitute unnecessary delay.”

Des Moines County State v. Hope Jennifer Clark, No. 23-0964 (Iowa Court of Appeals, filed September 18, 2024). **Law enforcement “officers’ testimony about the call they received from their dispatcher was not hearsay because it was offered to explain responsive conduct and not to prove the truth of the dispatcher’s statement—namely, that the suspect car was being driven recklessly.”** The Court did note that “when evidence is admitted to explain responsive conduct, it must be limited in scope to achieve only that purpose.”

Dubuque County State v. Paul John Joseph Kramer, No. 23-1185 (Iowa Court of Appeals, filed July 24, 2024). **The judge did not error in not requiring a competency evaluation of the defendant sua sponte just because the defendant “espoused sovereign-citizen beliefs to the district court”.** The defendant was able to present a defense and understood the proceedings and charge.

Dubuque County State v. Paul John Joseph Kramer, No. 23-1185 (Iowa Court of Appeals, filed July 24, 2024). There is not a bright line rule “that a defendant’s decision to pursue a defense based on sovereign-citizen theories precludes them from exercising their constitutional right to represent themselves.”

Dubuque County State v. Michael Jon Radtke Jr., No. 23-2103 (Iowa Court of Appeals, filed August 21, 2024). No abuse in discretion for sentencing the defendant to prison after pleading guilty to OWI 2nd (fifth actual OWI).

Johnson County State v. Jennifer Catano Ward, No. 23-0470 (Iowa Court of Appeals, filed July 3, 2024). **Reasonable suspicion to initiate a traffic stop to investigate if the driver was impaired based off the totality of the circumstances:** late at night (after 11:00 p.m.); defendant “swerved in her lane at least two times”; “nearly crossed the center line dividing north and southbound traffic more than once”; and “ventured into the right-hand turning lane.” *Distinguished State v. Tague*, 676 N.W.2d 197 (Iowa 2004).

Linn County State v. David Darold Blauer, No. 23-0966 (Iowa Court of Appeals, filed July 3, 2024). No abuse in discretion in sentencing the defendant to prison for OWI 1st, eluding, and driving while barred (DWB).

Polk County State v. Damen Jermaine Walton, No. 22-1428 (Iowa Court of Appeals, filed July 24, 2024). **The officer had probable cause to initiate a traffic stop because:** the defendant either drove through a red light in violation of Iowa Code sections 321.256 and 321.257, or the officer “made a reasonable mistake of fact in concluding the light was red’ as opposed to yellow when the defendant’s vehicle started through the intersection. *See State v. Tyler*, 830 N.W.2d 288 (Iowa 2013).

Polk County State v. Damen Jermaine Walton, No. 22-1428 (Iowa Court of Appeals, filed July 24, 2024). “[T]he district court did not abuse its discretion in denying the motion for new trial[:]” defendant admitted to drinking earlier; the defendant’s performance on the SFSTs; refusal to submit to chemical testing; slurred speech; watery, bloodshot eyes; odor of alcohol; muscle rigidity; and dilated pupils.

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Polk County [State v. Spencer Thornton Smith](#), No. 23-0585 (Iowa Court of Appeals, filed July 24, 2024). Vehicular homicide by OWI and serious injury by OWI are “two separately defined crimes” and because there were two victims, “the consecutive sentences imposed by the trial court do not violate the Double Jeopardy Clause.”

Polk County [State v. Spencer Thornton Smith](#), No. 23-0585 (Iowa Court of Appeals, filed July 24, 2024). The judge did not abuse its discretion in issuing consecutive sentences for vehicular homicide by OWI and serious injury by OWI.

Polk County [State v. Antonio David Gomez-Evans](#), No. 23-2048 (Iowa Court of Appeals, filed September 4, 2024). No abuse in discretion in sentencing the defendant to prison for eluding, possession of a firearm by a prohibited person, and felony possession of heroin.

Scott County [State v. Matthew Louis Sampson](#), No. 23-1348 (Iowa Court of Appeals, filed August 7, 2024). **Local city ordinances precluding the operation of UTVs in the city from sunset to sunrise and requiring “a safety flag” were not “expressly preempted” by Iowa Chapter 321I.** (*compare to* Iowa Code sections 321I.10(4)(allowing cities to regulate UTVs), 321I.13 (requirements for operating at night), 321I.14(1)(d) (requirements for operating at night), and 321I.30(1) (“this chapter does not prevent the adoption of an ordinance or local law relating to the operation or equipment of all-terrain vehicles. The ordinances or local laws are operative only so long as they are not inconsistent with this chapter or the rules adopted by the commission.”)). “There is no broad express preemption when the chapter explicitly allows for municipal regulation.”

Scott County [State v. Matthew Louis Sampson](#), No. 23-1348 (Iowa Court of Appeals, filed August 7, 2024). **No “conflict preemption”; any conflict between Chapter 321I and local city ordinances precluding the operation of UTVs at night and requiring “a safety flag” were “not obvious and unavoidable, and there is a harmonious interpretation.”** (*compare to* Iowa Code sections 321I.10(4)(allowing cities to regulate UTVs), 321I.13 (requirements for operating at night), 321I.14(1)(d) (requirements for operating at night), and 321I.30(1) (“this chapter does not prevent the adoption of an ordinance or local law relating to the operation or equipment of all-terrain vehicles. The ordinances or local laws are operative only so long as they are not inconsistent with this chapter or the rules adopted by the commission.”)). “The state statutes set out minimum requirements if a UTV is driven at night, but it does not require that driving at night be permitted.” “The statutes do not prevent a city from imposing more stringent requirements or even barring nighttime driving.”

Scott County [State v. Matthew Louis Sampson](#), No. 23-1348 (Iowa Court of Appeals, filed August 7, 2024). **No “field preemption”; Iowa Code “section 321I.10 specifically allowing city regulation of UTVs” precludes the finding of any field preemption when a local city ordinance precludes the operation of UTVs in the city from sunset to sunrise and requiring “a safety flag”.** (*compare to* Iowa Code sections 321I.10(4)(allowing cities to regulate UTVs), 321I.13 (requirements for operating at night), 321I.14(1)(d) (requirements for operating at night), and 321I.30(1) (“this chapter does not prevent the adoption of an ordinance or local law relating to the operation or equipment of all-terrain vehicles. The ordinances or local laws are operative only so long as they are not inconsistent with this chapter or the rules adopted by the commission.”)).

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Woodbury County [Warren Eugene Hardy v. State](#), No. 23-0873 (Iowa Court of Appeals, filed July 3, 2024). Using the habitual offender enhancement on an OWI 3rd offense pursuant to Iowa Code section 321J.2(5)(e) is not an “ex post facto violation”, even if the prior felony convictions used were before the 2019 amendment that codified the habitual offender enhancement could be applied on an OWI 3rd offense.

Woodbury County [State v. Tre Evans Worden](#), No. 23-0839 (Iowa Court of Appeals, filed July 24, 2024). **Officer had probable cause to initiate a traffic stop for excessive window tint, in violation of Iowa Code section 321.438.** Officer observed could not see into the vehicle as it passed by due to dark window tint.

Woodbury County [State v. Tre Evans Worden](#), No. 23-0839 (Iowa Court of Appeals, filed July 24, 2024). **After stopping a vehicle for excessive window tint, the officer had the authority to order the passengers of a vehicle that had already exited to stop and remain at the scene.** The officer was not sure if one of the people that had exited was the driver. “When [the officer] turned on his flashing lights to investigate the window tint, the vehicle was seized and the passengers walking away were subject to the officer’s control[.]” See [State v. Finch](#), No. 02-1148, 2003 WL 22828750 (Iowa Ct. App. Nov. 26, 2003). “Police officers may stop the driver of a vehicle for a traffic violation even after the driver has parked and exited the vehicle.” [State v. Warren](#), 955 N.W.2d 848, 859-861 (Iowa 2021).

Woodbury County [State v. Tre Evans Worden](#), No. 23-0839 (Iowa Court of Appeals, filed July 24, 2024). “[The defendant] committed interference by refusing to remove his hands from his pockets when directed to by [the officer].”

**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. Nothing expressed in this newsletter should be considered legal advice. 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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