

State v. Clarke: One year later

Practitioner Comment

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The *Clarke* decision was one that, from the prosecution perspective, left many questions when it first came out. I was a deputy city attorney when the decision came down from the Idaho Supreme Court. Further, I was the first in my office to have a *Clarke*-related motion to suppress filed in one of my cases. The case involved a driving under the influence (“DUI”) arrest where the officers had not observed the defendant driving the vehicle, nor had the officers observed the defendant in actual physical control of the vehicle.

I remember reviewing the motion to suppress and just brainstorming ways to approach this issue. I asked questions like:

- What was the legislative intent of the DUI statute?
- How does this affect implied consent under *Griffiths*?
- Were DUIs even contemplated in the *Clarke* decision?
- What is “in the presence” and does that change with DUIs?

As you can probably guess, I got a little creative with my initial response. Ultimately, I won the battle but lost the war. In other words, the motion to suppress was denied initially, but then that finding was overturned on appeal.

From the prosecution perspective, the *Clarke* decision left many unknowns, including many questions regarding its application to DUIs. There were many prosecution agencies across the State scrambling to figure out how to save some of their cases that, before *Clarke*, would have been otherwise legal.

Further, prosecution agencies were scrambling to advise their respective police agencies on what *Clarke* meant and how it would apply henceforth. This obviously was a somewhat complicated task as they were trying to advise on something that had yet to be fleshed out. For prosecution agencies advising their police agencies, it was like trying to stare into a crystal ball on what issues may arise from *Clarke* based on what little information we had from our own and other jurisdictions.

Also, as prosecution agencies were getting creative in their arguments addressing *Clarke*, defense attorneys were getting just as creative, if not more creative, in finding ways that *Clarke* applied. Additionally, months after the decision, there was a lack of consistency between magistrate courts on how *Clarke* applied.

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Overall, the *Clarke* decision had an immediate impact on prosecution agencies and left many questions followed by creative solutions. Although many questions have now been answered, the first year of *Clarke* was a moment of uncertainty for many prosecution agencies and local law enforcement as courts worked to flesh out the holding.