



HIGHWAY SAFETY

LAW UPDATE



January 29, 2021 Office of the Prosecuting Attorneys Training Coordinator October/November/December 2020

County Spotlight – Bremer County

The ninth county spotlight is on Bremer County. Waverly is the largest town in Bremer County, with Highway 3 running right through the middle of it. The Avenue of the Saints also runs through Bremer County. According to the 2010 census, Bremer County has a population of 24,276.¹ Bremer County was named after Frederika Bremer, a Swedish female author.² The first courthouse in Bremer County was built for \$147.50 in Waverly.³

Kasey Wadding is the Bremer County Attorney. Mr. Wadding is a full-time county attorney and he has one deputy county attorney, Jill Dashner in the office. Mr. Wadding has been the Bremer County Attorney for 22 years. Prior to becoming the Bremer County Attorney, Mr. Wadding was an Assistant Black Hawk County Attorney for approximately 8 years. Mr. Wadding graduated from Winona State University with a degree in Paralegal and then worked in the insurance industry before he attended Drake Law School.

Ms. Dashner has been an Assistant Bremer County Attorney for approximately 14 ½ years. Prior to coming to Bremer County, Ms. Dashner was also an Assistant Black Hawk County Attorney for approximately 5 years. Ms. Dashner graduated from St. Olaf College with a degree in English and then worked in the airline industry before she attended Drake Law School.

Bremer County has six local law enforcement agencies: Janesville, Readlyn, Sumner, Tripoli, and Waverly Police Departments, and the Bremer County Sheriff’s Office. In 2019, there were

4,118 traffic convictions⁴ and 74 OWI convictions in Bremer County according to Division of Criminal & Juvenile Justice Planning⁵.

Recall Safety Week⁶

March 8 – 12, 2021 is recall safety week.⁷ “If a safety defect is discovered, the manufacturer must notify NHTSA, as well as vehicle or equipment owners, dealers, and distributors. The manufacturer is then required to remedy the problem at no charge to the owner.”⁸

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¹ <https://www.census.gov/quickfacts/fact/table/bremercountyiowa,IA/PST045219>

² <https://www.bremercounty.iowa.gov/government/history.php>

³ <https://www.bremercounty.iowa.gov/government/history.php>

⁴ “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.”

⁵ <https://disposedcharges.iowa.gov/asp/glossary.asp>

⁶ <https://disposedcharges.iowa.gov/>

⁷ <https://www.trafficsafetymarketing.gov/get-materials/vehicle-safety/recalls-safety-campaign>

⁸ https://www.nhtsa.gov/sites/nhtsa.dot.gov/files/documents/14218-mvsdefectsandrecalls_041619-v2-tag.pdf

Recall Safety Week cont.

Why is it important to know if your vehicle has a recall? Because failing to fix an issue can lead to serious injury or even death. For example, there is currently a massive recall (approximately 76 million air bags) of Takata air bags.⁹ “Long-term exposure to high heat and humidity can cause these air bags to explode when deployed.”¹⁰ “Such explosions have caused injuries and deaths.”¹¹ To find out more about the Takata air bag recall go to: <https://www.nhtsa.gov/equipment/takata-recall-spotlight>



**50 MILLION
POTENTIALLY
DEADLY
AIR BAGS ARE
UNDER RECALL.**

CHECK FOR RECALLS NOW

REPAIRS ARE FREE.

 **NHTSA**
Safe cars save lives.



**DON'T WAIT
UNTIL IT'S TOO LATE.**

Get safety recalls fixed for **FREE.**

  **NHTSA**
Safe cars save lives.

Recalls are not just issued for air bags; they are issued for any “safety-related defect”.¹² Anyone can check to see if there is any recalls for their vehicle(s). By going to NHTSA’s (National Highway Traffic Safety Administration) website and using your vehicle’s vin number you can look to see if there are any recalls.¹³ You can also register to receive [recall notices](https://www.nhtsa.gov/recalls) through NHTSA’s website (<https://www.nhtsa.gov/recalls>). Please help keep vehicles safe by encouraging your family and friends to regularly check for recalls on their vehicles.



ARE YOU DRIVING ON BORROWED TIME?

Get safety recalls fixed for **FREE.**

  **NHTSA**
Safe cars save lives.

Online CDL Training¹⁴

The National District Attorneys Association is offering a two **FREE** online courses about Commercial Driver’s License (CDL) issues. The first training is *Mastering Masking*:

This online training course, developed by national experts in cooperation with the Federal Motor Carrier Safety Administration, the National District

⁹ <https://www.nhtsa.gov/equipment/takata-recall-spotlight>

¹⁰ <https://www.nhtsa.gov/equipment/takata-recall-spotlight>

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¹³ <https://www.nhtsa.gov/recalls>

¹⁴ <https://ndaa.org/programs/ntlc/commercial-drivers-license/training/>

Attorneys Association’s National Traffic Law Center, and the National Center for State Courts, is for new and practicing prosecutors, as well as other traffic safety professionals who desire to learn more about the legal and ethical consequences of plea negotiations involving commercial driver’s license (CDL) cases. This FREE training course is designed to equip prosecutors with the knowledge, information, and confidence necessary to effectively prosecute CDL and/or large commercial motor vehicle (CMV) cases. The course walks the learner through a first-person simulation of prosecuting the fictional traffic case of a CDL holder. The training uses a case file, interactive exercises, document mock-ups, and avatar voiceovers to bring the course content to life.¹⁵

After you complete the Mastering Masking course, you will qualify for 2.00 CLE credits, including 0.5 ethics hours.¹⁶

The other training offered by the NDAA is *Human Trafficking and the Impact on Commercial Driver’s Licenses*:

The National Traffic Law Center (NTLC) has created an education tool for prosecutors, law enforcement and other traffic safety professionals titled: “Human Trafficking and the Impact on Commercial Driver’s Licenses.” This training module is designed to educate about the Federal “No Human Trafficking on Our Roads Act” (NHTRA) which was signed into law on January 1, 2018 by President Donald J. Trump. As a result of NHTRA, the Federal Motor Carrier Safety Administration (FMCSA) announced a final rule that imposes a lifetime ban on drivers who are convicted of a severe form of human trafficking in a commercial motor vehicle (CMV) from operating a CMV. This rule was signed into law on July 23, 2019. Under this rule, states have until September 23, 2022 to comply with this mandate. FMCSA allowed a three-year period to permit states sufficient time to seek legislation, update their regulations, and make the appropriate information technology changes to apply the lifetime ban.¹⁷

The *Human Trafficking and the Impact on Commercial Driver’s Licenses* course has not yet been approved for CLE credit in Iowa.¹⁸

The Time to Reorder the Criminal Law Handbook is **NEAR**

The newest edition of the Criminal Law Handbook is almost ready for release. The manual uses software that makes outdated editions inaccessible, and therefore readers must re-order a new copy of the Criminal Law Handbook every six months. Please contact Cindy Glick at Cindy.Glick@ag.iowa.gov and request an order form to keep your copy up to date and working.

¹⁵ <https://ndaa.org/training/mastering-masking-2/>

¹⁶ <https://ndaa.org/on-demand-learning-mastering-masking-digital-course-approved-cle-states/>

¹⁷ <https://ndaa.org/training/human-trafficking-and-the-impact-on-commercial-drivers-licenses/>

¹⁸ <https://ndaa.org/training/human-trafficking-and-the-impact-on-commercial-drivers-licenses/>

Please note, if you already have a CD containing only the OWI and Traffic Offenses in Iowa manual, this will remain valid until September 2021; however, it will not contain the updated cases since September 2020.

Opinions of the Iowa Supreme Court

Black Hawk [State v. Irvin Johnson Jr.](#), ___ N.W.2d ___ (Iowa 10/16/2020) No. 19-0109. A conviction for possession of marijuana (124.501(5)) does not merge with a conviction for “felony eluding while possessing marijuana” (321.279(3)(b)).

Black Hawk [State v. Derrick Earl Johnson](#), ___ N.W.2d ___ (Iowa 10/23/2020) No. 19-0892. Homicide by reckless driving is not a lesser included offense of the crime homicide by operating a motor vehicle while intoxicated. *See also* [State v. Massick](#), 511 N.W.2d 384 (Iowa 1994) (reckless driving is not a lesser included offense of OWI).

Black Hawk [State v. Derrick Earl Johnson](#), ___ N.W.2d ___ (Iowa 10/23/2020) No. 19-0892. **No abuse in discretion in precluding the defendant from presenting evidence that the child was not secured by a child restraint system during the defendant’s trial for homicide by OWI.** A defendant cannot argue as a defense that a victim’s negligence (e.g., not using a safety registrant system) contributed to the harm that resulted.

Black Hawk County [State v. Christopher Roby](#), ___ N.W.2d ___ (Iowa 11/20/2020) No. 19-0551. **Defendant cannot use double jeopardy as a sword to dismiss an eluding charge by pleading guilty to speeding out of the same incident when he is on notice of the eluding charge.** As a seventeen-year-old, the defendant was charged with speeding and eluding. “[T]he defendant pled guilty to speeding, a scheduled violation, without a prosecutor present or any agreement to dismiss or foreclose the eluding charge.” The defendant had also been put on notice of the eluding charge. Later, the defendant pled guilty to eluding. The defendant appealed arguing that double jeopardy precluded his conviction for eluding, since speeding is a lesser included offense of eluding while speeding. Held, counsel was not ineffective for failing to argue a conviction for eluding violated double jeopardy after the defendant already pled guilty to speeding out of the same incident. The Court “determine[d] that speeding is a lesser included offense that at trial would merge into a conviction for eluding while speeding.” The Court stated: “Double jeopardy principles generally prohibit a second punishment for the same offense.” However, the Court held: “Under these circumstances . . . the defendant cannot use double jeopardy principles as a sword to defeat the more serious eluding charge.”

Black Hawk County [State v. Christopher Roby](#), ___ N.W.2d ___ (Iowa 11/20/2020) No. 19-0551. Held, “speeding is a lesser included offense of eluding while speeding.” A conviction for speeding merges with the conviction of eluding while speeding out of the same incident.

Cerro Gordo County [State v. Thomas Christophor Casper](#), ___ N.W.2d ___ (Iowa 11/20/2020) No. 19-0849. **Defendant’s right to independent testing was not violated when the trooper offered the defendant the second test the defendant requested and then the defendant declined, even though the trooper did not advise the defendant of the defendant’s right to an independent test after the request.** After a traffic stop and OWI investigation, the defendant was arrested for OWI and other violations. At the jail, the trooper invoked implied consent, the defendant declined the offer to make phone calls, and provided a breath sample that resulted in a .113 BAC. The defendant was then interviewed and booked into jail. Later, the defendant bonded out and as he was exiting the jail, he asked the trooper if he could test again on

the Datamaster. The trooper responded “Sure” but requested his license again to enter the information into the Datamaster. The defendant then decided not to take another test and left the jail. The trooper never advised the defendant regarding independent testing. The defendant filed a motion to suppress arguing the trooper denied his right to independent testing when the trooper failed to advise him about independent testing after he requested a second test. Held, under these facts, the defendant’s rights to independent testing (321J.11(2)) were not violated. Iowa Code section 321J.11 provides the detainee an opportunity for an independent test, “but generally does not require the officer to inform the detainee of that right.” “A defendant who asks for something law enforcement refuses should be informed of similar alternatives that would be available.” However, if law enforcement grants the defendant’s request, they do not need to advise the defendant of other alternatives; “the guiding principle is one of fairness, not disclosure.” “Therefore, in our view, the officer must inform the detainee of the right to an independent test only in circumstances when the detainee has reasonably asked about that right or a failure to disclose that right could be misleading.”

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)

Black Hawk County [State v. Jason Daniel Burt](#), No. 19-1626 (Iowa Court of Appeals, filed October 21, 2020). Probable cause to stop a vehicle when there is a crack in the rear taillight and white light is seeping out in violation of Iowa Code sections 321.387 and 321.422.

Black Hawk County [State v. Felix Quintero-Labrada](#), No. 19-0544 (Iowa Court of Appeals, filed November 4, 2020). **No suppression of SFST results even though the defendant’s first language was Spanish.** Although the defendant’s native language was not English, the officer thought he understood the directions for the SFSTs. The defendant argued the SFSTs should have been suppressed under [State v. Garcia](#), 756 N.W.2d 216 (Iowa 2008). Held, that if there are any irregularities when advising a suspect about the SFSTs, it goes towards the weight not the admissibility of the results. [State v. Sitzmann](#), 2005 WL 2477991, at *3 (Iowa Ct. App. Dec. 21, 2005); [State v. Murphy](#), 451 N.W.2d 154, 157 (Iowa 1990). The Court also noted that the defendant did not cite “any cases where the rule in [Garcia](#) was applied to field sobriety tests.”

Black Hawk County [State v. Felix Quintero-Labrada](#), No. 19-0544 (Iowa Court of Appeals, filed November 4, 2020). When a defendant is asked to perform the SFSTs, they are not in custody. The SFSTs also do not involve an integration, therefore an officer does not have to read a defendant the *Miranda* warnings.

Black Hawk County [State v. Felix Quintero-Labrada](#), No. 19-0544 (Iowa Court of Appeals, filed November 4, 2020). Counsel was not ineffective for failing to object to the PBT and Datamaster results in the minutes of evidence when the same judge that had suppressed the PBT and Datamaster results convicted the defendant based off the minutes of evidence and did not mention either result.

Black Hawk County [State v. Felix Quintero-Labrada](#), No. 19-0544 (Iowa Court of Appeals, filed November 4, 2020). **Sufficient evidence the defendant was guilty of OWI:** vehicle crossed over yellow

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line; defendant stopped even though the light was green; bloodshot and watery eyes; slurred speech; unsteady balance; odor of alcohol; and admission to drinking.

Black Hawk County [State v. Felix Quintero-Labrada](#), No. 19-0544 (Iowa Court of Appeals, filed November 4, 2020). **Sufficient evidence of possession of a fictitious id card: under 321.216A(3):** the card's Illinois license number could not be found in Illinois; and the birthdate listed on the card was incorrect.

Cerro Gordo County [State v. William Frank Fetner](#), No. 19-1561 (Iowa Court of Appeals, filed September 23, 2020). After the defendant pled guilty to DWB (driving while barred) and possession of a controlled substance, the court did not consider an impermissible sentencing factor (working at a daycare) when the defendant's attorney also cited his employment as a mitigating factor. ***Please note, the Iowa Supreme Court has granted further review of this case.**

Floyd County [State v. Jeremy John Round](#), No. 19-1174 (Iowa Court of Appeals, filed September 23, 2020). **Sufficient evidence of constructive possession of methamphetamine:** the defendant had been operating the vehicle for over a week; the defendant initially told the officer it was his vehicle; digital scales were found with the defendant's personal items; and the hidden location (under the hood) of some of the methamphetamine. *See [State v. Maxwell](#)*, 743 N.W.2d 185 (Iowa 2008) (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 contraband is found in a motor vehicle).

Hardin County [State v. James Albert Castorena](#), No. 19-1652 (Iowa Court of Appeals, filed October 21, 2020). The Court did not abuse its discretion when it sentenced the defendant to prison after he "pled guilty to failure to stop at the scene of an accident resulting in serious injury."

Iowa County [State v. Curtis Edward Hawkins](#), No. 19-1718 (Iowa Court of Appeals, filed October 21, 2020). During plea proceedings, even if the defendant is unrepresented, the trial court must only inform "the defendant of the nature of the charges against that person, of their right to be counseled regarding their plea and about the range of allowable punishments" to satisfy the Iowa and United States Constitutions.

Johnson County [State v. Scott Alan Johnson](#), No. 19-0579 (Iowa Court of Appeals, filed September 23, 2020). **No abuse of discretion for denying a motion for mistrial after the PBT results were inadvertently discussed.** During a test refusal OWI jury trial, the State played a portion of the video recordings that inadvertently stated the defendant's PBT results. The defense objected immediately and the judge admonished the jury to "disregard any reference to numbers." The judge later gave a curative instruction to the jury that anything struck from the record was not evidence. The defendant appealed the denial of his motion for mistrial. Held, there was no abuse of discretion for denying the defendant's motion for mistrial after the PBT results were inadvertently discussed. The Court noted: the PBT results were only mentioned once; the jury was told not to consider "any reference to numbers"; there was a curative jury instruction given; and the State's other evidence was strong (defendant performed poorly on the SFSTs; slow speech; balance issues; odor of alcohol; and admission to drinking).

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Linn County State v. Floyd Davon Taylor Jr., No. 19-1308 (Iowa Court of Appeals, filed September 23, 2020). No abuse in discretion when the court revoked the defendant's deferred judgment for felony eluding and sentenced him to two years of probation.

Palo Alto County State v. Robert James Cook, No. 19-1101 (Iowa Court of Appeals, filed October 21, 2020). **The defendant was not seized until after the officer smelled an odor of alcohol coming from him.** A caller reported a vehicle that was unable to maintain speed or stay in its lane. The caller provided the vehicle's license plate number, description, and that it was pulling into Casey's. An officer then entered the parking lot, parked next to the defendant's vehicle, the defendant got out of his vehicle, and the officer honked and motioned him over to the patrol vehicle. The defendant walked over to the officer's open passenger window and then the officer smelled alcohol. The defendant argued this was an illegal seizure. Held, based on the totality of the circumstances (the officer: did not activated his emergency lights; did not get out of his vehicle and chase down the defendant; was not aggressive with the defendant; and only honked and waved for the defendant to come over), the defendant was not seized until after the officer smelled an odor of alcohol coming from the defendant.

Palo Alto County State v. Robert James Cook, No. 19-1101 (Iowa Court of Appeals, filed October 21, 2020). A defendant's wife cannot invoke his 804.20 rights.

Palo Alto County State v. Robert James Cook, No. 19-1101 (Iowa Court of Appeals, filed October 21, 2020). The defendant is not required to sign the written request under the implied consent procedures in Iowa Code section 321J.6(1).

Palo Alto County State v. Robert James Cook, No. 19-1101 (Iowa Court of Appeals, filed October 21, 2020). Counsel was not ineffective when it waived speedy trial; the waiver of speedy trial was "within the scope of [counsel's] authority".

Polk County State v. Bizimana Sonas Ciza, No. 19-1591 (Iowa Court of Appeals, filed October 21, 2020). Officer seized the defendant even though the officer did not activate his emergency lights when the officer pulled behind the defendant's vehicle in a parking lot preventing the defendant's vehicle from moving. *Compare to State v. Fogg*, 936 N.W.2d 664, 669-670 (Iowa 2019).

Polk County State v. Bizimana Sonas Ciza, No. 19-1591 (Iowa Court of Appeals, filed October 21, 2020). **Community caretaking exception justified the warrantless seizure of the defendant.** Law enforcement received a call from a liquor store employee about an individual possibly asleep in a vehicle for approximately 20 minutes with the engine running. An officer arrived to check the welfare of the person and he observed the brake lights on and the vehicle running. The officer boxed in the defendant's vehicle to protect the public and his safety in case the defendant took his foot off the brake. The officer did not turn on his emergency lights and exited his vehicle. The defendant then shut off the vehicle and exited as the officer approached. Held, the community caretaking exception justified the warrantless seizure of the defendant. The Court analyzed this case under the three factors stated in *State v. Coffman*, 914 N.W.2d 240 (2018).

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Polk County State v. Mitchell Ohland, No. 19-1557 (Iowa Court of Appeals, filed November 30, 2020). **License plate “not fully visible” from fifty feet was probable cause to stop the vehicle.** The light bulb on the left side of the defendant’s license plate was not working making the license plate “not fully visible” from fifty (50) feet providing probable cause to stop the defendant’s vehicle for violation of Iowa Code section 321.388.

Polk County State v. Deng G. Majouk, No. 19-1850 (Iowa Court of Appeals, filed December 16, 2020). An OWI test refusal prohibits the “suspension of the fine set forth in section 907.3.”

Polk County State v. Deng G. Majouk, No. 19-1850 (Iowa Court of Appeals, filed December 16, 2020). **The defendant was not in custody during the traffic stop and therefore did not require *Miranda* warnings prior to the officer asking him if he smoked marijuana that day.** Prior to searching the defendant’s vehicle, the officer: asked the defendant to sit in the back of the patrol car; was not commanding, confrontational, or aggressive; left the door open; and did not handcuff the defendant. The officer then asked the defendant if he had smoked marijuana earlier. Held, the defendant was not in custody when questioned about smoking marijuana.

Polk County State v. Deng G. Majouk, No. 19-1850 (Iowa Court of Appeals, filed December 16, 2020). Two failed SFSTs and admission to smoking marijuana earlier was sufficient evidence of impairment.

Polk County State v. Khalen Richard Price Williams, No. 19-1857 (Iowa Court of Appeals, filed December 16, 2020). **The officer had reasonable suspicion to conduct a pat down search of the defendant for officer safety.** A law enforcement officer stopped a vehicle the defendant was a passenger in for multiple traffic violations. During the traffic stop, the officer requested and obtained the defendant’s “name, date of birth, and the last four digits of his social security number.” Another officer arrived at the traffic stop and recognized the defendant from an incident approximately fourteen months ago involving a firearm. The officer engaged the defendant in conversation while the defendant was still seated in the vehicle. When the officer asked the defendant if he had a firearm, the defendant’s demeanor changed. The officer then asked the defendant to exit the vehicle for a pat down search. During the pat down search the defendant admitted he had a firearm in his jacket and the officers located the firearm in his jacket. Held, the officer had reasonable suspicion to conduct a pat down search of the defendant for officer safety based on: the defendant’s change in demeanor; the officer’s prior experience with the defendant having a firearm; the knowledge the defendant has attempted to elude officers on foot in the past; and the defendant making motions that he may be reaching for something on his person. “We evaluate reasonable suspicion case by case and no one factor is dispositive, but nervousness, evasiveness, lying, and past experience with a suspect are all factors to consider.” See State v. Bergmann, 633 N.W.2d 328, 332 (Iowa 2001).

Scott County State v. Scott D. Sweatt, No. 19-1220 (Iowa Court of Appeals, filed December 16, 2020). There was sufficient evidence the vehicle the defendant stole was worth more than \$10,000.00. The State provided evidence of how much the vehicle was purchased for, how many miles, and that the victim would not sell it for \$10,000.00 just three years after it was purchased.

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.

Submissions and/or comments may be sent to:
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