

FOR THE ROAD

Idaho Prosecuting Attorneys Association



NATIONAL PROSECUTOR CONFERENCES COMING TO IDAHO

Annual NAPC & NDAA Summer Conferences in Sun Valley - Register Now!

This summer prosecutors across America will convene for their annual conferences in Sun Valley, Idaho. The Idaho Prosecuting Attorneys Association will join forces with the National Association of Prosecutor Coordinators (NAPC) and the National District Attorneys Association (NDAA) for two weeks of meetings and instruction. The dates are as follows:

- July 13th -- NAPC Board Meeting
- July 14th-15th -- NAPC Conference
- July 16th - NAPC-NHTSA Committee
- July 15th-17th --- NDAA Committee & Board Meetings
- July 17th-21st -- NDAA Conference
- July 20th - IPAA Civil Track

Register Early! Early reservations are strongly recommended as a limited number

of rooms have been reserved for a reduced rate. IPAA members and associate members are being offered a reduced rate of \$100 per registration to attend the NDAA Summer Conference.

To register for the training or to learn more about the conferences, visit:

www.ndaa.org

Topics to include:

- Brady and the "Prosecution Team";
- Ethics: The Movie
- Marijuana in America: Current Status
- Prosecution Strategies vs. Cartels
- Synthetic Drugs; and
- Supreme Court Update

REGISTER TODAY!!

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NDAА ANNUAL SUMMER CONFERENCE

July 17-20, 2011  Sun Valley, Idaho

CONFERENCE REGISTRATION FORM

NDAА Summer Committees / Board Meeting

July 15–17, 2011

Sun Valley Resort

Room rate: \$155.00

Reservations: 800.786.8259 *ask for the National District Attorneys Association group rate*

Cut-off: June 13, 2011

Early reservations are strongly recommended as a limited number of rooms have been reserved at the reduced rate. \$155 rate is for the Sun Valley Lodge and Inn. Upgraded accommodations for apartments and condominiums are available for our group. Contact reservations for those rates.

Participants will receive:

- Conference materials
- Productive training sessions
- Reception on Sunday
- Luncheon on Monday

Registered Spouse/Guest and children will receive:

- Reception on Sunday

One-day registrants will receive:

- Productive Training Sessions on Monday
- Reception on Sunday
- Luncheon on Monday

Registration Fee:

_____ NDAА Member.....	\$375.00
_____ Non-Member	\$475.00
_____ Additional person from same office	\$325.00
_____ One-day registration	\$175.00
_____ Spouse/Guest over 21 years of age.....	\$ 50.00
_____ Children (6-20 years of age)	\$ 20.00

Name: _____

Title: _____

Jurisdiction: _____

Business Address: _____

City: _____ State: _____ Zip: _____

Phone: _____ E-mail: _____

Name of Spouse/Guest: _____

Name of child/age: _____

Name of child/age: _____

Name of child/age: _____

You may fax the completed form to 703.836.3195. You may also register on the NDAА Web site, www.ndaa.org.

check enclosed (payable to NDAА) charge my Visa Master Card

Card # _____ Exp. Date: _____

Idaho Traffic Law Update

Cunningham v. State, (Ct.App.2011):

Cunningham appeals from the suspension of his driver's license for refusing to submit to a breath test. The Court of Appeals concluded the officer repeatedly conveyed incorrect information to Cunningham prior to his refusal to submit to evidentiary testing, rendering the written and recorded advisory incomplete, and accordingly reversed Cunningham's driver's license suspension.

The Court reasoned: (1) The officer incorrectly asserted Cunningham would immediately ("automatically") lose his license should he refuse to submit to testing; (2) Cunningham could obtain additional evidentiary testing after bonding out of jail; (3) Cunningham must prove his innocence to the judge at the show cause hearing; (4) Before answering any of Cunningham's questions, the officer stated he would explain what the Idaho Code required and what Idaho courts have said about the consequences of refusal; and (5) The officer was adamant the information he conveyed to Cunningham was the law, even if such information contradicted the written and recorded advisory.

The Court of Appeals made it clear its holding was based on the specific facts of this case. The Court's focus was on "the officer's continuous, repetitive recitation of incorrect information regarding the consequences of refusal" and held the

initial written and recorded advisory incomplete. The officer had stated he "specialized" in DUI testing and was an instructor of the standardized field sobriety tests (SFSTs). The Court clearly found this declaration by the officer as an aggravating factor. The Court felt the officer's conduct in this case so contradicted the initial advisory that it went beyond "mild misstatements or passing inaccuracies."

Therefore, this case serves as another reminder for officers to watch their language when explaining the I.C. § 18-8002(3) advisory. A review of the case will reveal the words that were troublesome to the court, especially when continuously reiterated by an officer. It is worth the reader's time to review the case.

State v. Hanson, (Ct.App.2011):

Hanson appeals from the district court's order revoking his probation and executing his previously suspended sentence. Hanson had pled guilty to Felony DUI and was sentenced to a unified term of ten years, with a minimum period of confinement of four years. However, the district court retained jurisdiction for 180 days (rider program). Hanson successfully completed his rider program and was placed on probation. Within two months a probation violation was filed when Hanson failed a blood alcohol concentration test. He admitted the violation, and was allowed to remain on probation, if he agreed to obtain a prescription for Antabuse. Hanson failed to obtain this prescription, but said it was due to financial difficulty caused by his drinking, and because of the suspension of his driver's license. The district court determined Hanson was depressed and could not be supervised within the community.

Hanson argues on appeal the district court erred when it failed to sua sponte order a mental health examination under I.C. § 19-2524 prior to disposition of his probation violation. Hanson conceded he did not object to the district court's failure to order such an examination prior to disposition of his probation violation. The Court of Appeals declined to consider Han-

son's argument, raised for the first time on appeal because it was not properly preserved by an objection in the district court.

Hanson had attempted to argue the same analysis to sua sponte order a psychological examination under I.C. § 19-2522 should be applied to mental health examinations. The Court rejected this argument holding: (1) I.C. § 19-2524 specifically provides the court discretion whether to order a mental health examination by using the word "may"; and (2) Idaho Criminal Rule (ICR) 32, which governs presentence investigation reports (PSI), is not required prior to probation violation proceedings. Therefore, the absence of a court's decision whether to order a mental health examination prior to proceedings on a probation violation does not implicate Rule 32.

State v. Corbus, (Ct.App.2011):

Corbus was arrested for Felony Eluding a Police Officer and Misdemeanor Reckless Driving. At arraignment, Corbus entered a guilty plea to the reckless driving, and subsequently filed a motion to dismiss the charge of eluding a police officer. Corbus argued reckless driving was a lesser included offense of eluding a police officer, therefore continuing his prosecution for eluding a police officer would violate the Double Jeopardy Clause of the Fifth Amendment to the United States Constitution and Article I, Section 13 of the Idaho Constitution.

Corbus first argues he was subjected to multiple prosecutions for the same offense. However, the State is not prohibited by the Double Jeopardy Clause from charging a defendant with greater and lesser included offenses and prosecuting those offenses in a single prosecution. Acceptance of Corbus' guilty plea to reckless driving did not preclude the state from continuing its prosecution on the greater offense of eluding.

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**Teton County
Courthouse**

Disclaimer: This newsletter is a publication of the Idaho Prosecuting Attorneys Association, Inc. Readers are encouraged to share varying viewpoints on current topics of interest. The views expressed in this publication are those of the authors and not necessarily of the State of Idaho, IPAA, or the Idaho Department of Transportation. Please send comments, suggestions or articles to jared.olson@post.idaho.gov.

WEB SITES

Idaho TSRP

www.TSRP-Idaho.org

Idaho Prosecuting Attorneys
Association

www.IPAA-prosecutors.org

ITD Office of Highway Safety

<http://itd.idaho.gov/ohs/>

Idaho POST Academy

www.idaho-post.org

National Highway Traffic
Safety Administration

www.nhtsa.gov

National Association of
Prosecutor Coordinators

www.napcsite.org

NDAA National Traffic
Law Center

www.ndaa.org

Idaho State Police Forensics

www.isp.idaho.gov/forensic/

Alcohol Beverage Control

www.isp.idaho.gov/abc/



Traffic Law Update -- Continued From Page 4

Corbus next argues he was subjected to multiple convictions and punishments for the same offense in violation of the Double Jeopardy Clause. Corbus did not raise this issue below, only a claim of multiple prosecutions. Therefore, the Court of Appeals could only consider this claim if it rose to a level of fundamental error. Ultimately, the Court held Corbus failed to show his unobjected-to error rose to the level of fundamental error.

The Court of Appeals explained under the U.S. Constitution the question is whether each statutory provision requires proof of an additional fact which the other does not. Reckless driving requires the state to prove a person drove, "upon a highway, or upon public or private property open to public use." Felony eluding does not require this element. Felony eluding requires a person "willfully flees or attempt to elude a pursuing police vehicle when give a visual or audible signal to bring the vehicle to a stop." Reckless driving does not contain this element. Therefore, Corbus failed to show double jeopardy under the U.S. Constitution.

Double jeopardy has been analyzed differently under the Idaho Constitution. The Idaho Supreme Court has not been entirely consistent in its application of either the *Blockburger* test or the pleading theory in double jeopardy cases. The Court of Appeals explains the application of each of these theories would result in contradictory conclusions. Therefore, Corbus failed to show fundamental error with regard to his claim.

Click on case titles to read the cases

Legislative Watch -- Keep In- formed on Traffic Related Bills

The Idaho Legislature has been working on various bills, including many related to traffic enforcement. *For The Road* has been keeping track of these bills and offers the following information. This article is not an exhaustive list of all bills. For a complete list visit:

www.legislature.idaho.gov

Here are direct links to a few of the current legislative bills passed:

[\(Click on text for full bill information\)](#)

- **HB 119 - Controlled Substances -- "Bath Salts"** -- Classifies a class of cathinones (bath salts) as Schedule I controlled substances.
- **HB 139 - Controlled Substances - "Spice"** -- Classifies Tetrahydrocannabinols & synthetic drugs as Schedule I controlled substances.
- **HB 61 - DUI Test Refusal, delete license seizure** -- Removes the requirement for officers to seize any license and issue a temporary permit as part of the ALS process.
- **SB 1011 - Passing emergency vehicles, duty to change lanes** -- Amends the statute to make it clear that drivers must change lanes out of the lane adjacent to the stopped emergency vehicle in a reasonable and prudent manner.
- **SB 1116 - Driving Without Privileges** -- Amends statute to give court more discretion in sentencing. Changes all the "shall (s)" in the statute to "may(s)."

Training & Conferences Notice

(Click on Course Names for More Information)

Idaho's Highway Safety Summit — April 21, Red Lion Hotel, Pocatello, Idaho

IPAA's Toxicology Training for Prosecutors — May 5-6, POST Academy, Meridian, Idaho

Idaho Conference on Alcohol & Drug Dependence — May 16-18, Boise State University, ID

Law Enforcement Phlebotomy School — June 20-July 1, College of Western Idaho, Boise

Law Enforcement Phlebotomy Refresher — June 30, College of Western Idaho, Boise

