

CRIMINAL LAW

RECENT DEVELOPMENTS

LOCAL ISSUES

TOPICS OF INTEREST

CRIMINAL LAW

- 2017 GUN LEGISLATION
- POLK COUNTY: BENCH-PREFERRED PRACTICES
- JOINT CRIMINAL CONDUCT – CASELAW UPDATE
- JURY SELECTION – CASELAW UPDATE

GUN LEGISLATION

- State Preemption
- Stand Your Ground

GUN LEGISLATION: State Preemption

- A political subdivision shall not enact an ordinance regulating the possession of firearms when the possession is otherwise lawful under the laws of this state. [old]
- A person adversely affected may file suit for declaratory or injunctive relief. [new]

GUN LEGISLATION: State Preemption

- A political subdivision shall not enact an ordinance regulating the *possession* of firearms when the *possession* is otherwise lawful under the laws of this state. -724.28
- A person who *carries or possesses* a dangerous weapon... - 724.4C

GUN LEGISLATION: Stand Your Ground

- No Duty to Retreat
- Right to “Brandish”

GUN LEGISLATION: Duty to Retreat

- **400.10 Alternative Course of Action – Exceptions.** (I)f a defendant is confronted with the use of unlawful use of force, he is required to avoid the confrontation by seeking an alternative course of action before he is justified in repelling the force used against him.
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GUN LEGISLATION: Brandishing firearms

- “Deadly force” does not include production, display or brandishing of a deadly weapon if limited to creating an expectation of readiness to use deadly force to defend oneself.
- Bran’dish *v. t.* to wave, as a weapon; to shake or flourish: often with the meaning of threatening; as to *brandish* a sword belligerently. -WEBSTER’S 2nd ED.

POLK COUNTY: BENCH-PREFERRED PRACTICES

- Electronic Pre-filing of Exhibits
- Joint Proposed Instructions
- Late Settlements and Continuances

CASELAW UPDATE: JOINT CRIMINAL CONDUCT

State v. Russell and *State v. Shorter* (4/14/17)

- Requires two crimes:
 - Act in concert on Crime One
 - Commit Crime Two in furtherance of Crime One
 - (unplanned, but foreseeable)
- Example:
 - Robbery while armed with firearm
 - Shooting of store clerk (murder) in furtherance of Robbery
 - (unplanned, but foreseeable)

CASELAW UPDATE: JOINT CRIMINAL CONDUCT

General Verdicts

- Reversal if one cannot rule out a verdict based on a flawed theory

CASELAW UPDATE: VOIR DIRE

- “The trend for many years has been to restrict, if not eliminate, attorney participation (in voir dire)... The heyday of attorney-conducted jury selection now seems past.”
LUBET, MODERN TRIAL ADVOCACY, 407 (3rd rev. ed. 2013)

CASELAW UPDATE: VOIR DIRE

State v. Martin, 877 N.W. 2d 859 (Iowa 2016)

- “The purpose of voir dire is to give counsel an opportunity to discover information that may be useful in exercising strikes and challenging jurors for cause....” at 867
- Voir dire “is not designed for educating jurors on the law or for persuading them on the merits of the case.” Id.

CASELAW UPDATE: VOIR DIRE

State v. Martin (cont'd) - Challenges for Cause

- STATUTORY INELIGIBILITY: Iowa Rule 2.18(5)(a, b, c)
- IMPLIED BIAS: Iowa Rule 2.18(5)(d, e, f, g, h, i, j, l, m, n, o, p)
- ACTUAL BIAS: Iowa Rule 2.18(5)(k): “A challenge for cause may be made... for having formed or expressed such an opinion as to the guilt or innocence of the defendant as would prevent the juror from rendering a true verdict upon the evidence submitted on the trial.”

CASELAW UPDATE: VOIR DIRE

State v. Martin (cont'd) - Strikes

- The purpose of voir dire is not only to establish challenges for cause, but also to enable an intelligent exercise of strikes.
- Voir dire thus may explore “any peculiarity of conduct, association, character, or opinion, or any predilection, of the person under examination.” *Id.*

CASELAW UPDATE: VOIR DIRE

State v. Martin (cont'd)

Intelligent exercise of strikes

- “any peculiarity of conduct, association, character, or opinion, or any predilection, of the person under examination”