



DUI NEWS

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CAN THE USE OF ALCOHOL IGNITION INTERLOCK DEVICES REDUCE IMPAIRED DRIVING RECIDIVISM?

TOM KIMBALL
TRAFFIC SAFETY RESOURCE PROSECUTOR

On August 22nd, the National Highway Traffic Safety Administration conducted a thorough, thoughtful meeting with judges, prosecutors, probation officers, safety equipment manufacturers and national safety advocates to discuss the increased use of ignition interlocks as a mechanism to reduce highway fatalities.

I was in the audience anxious to hear from all viewpoints. NHTSA put together panels of speakers to express their feelings about interlocks. What follows are my notes and my thoughts concerning interlocks and Tennessee practices.

In Tennessee there are two major methods in which a driver can be ordered to have an interlock installed. One is adjudicatory. The other is administrative. Under current law, a second offender has his license suspended two years. He can drive during the second year with a restricted license, if he has an ignition interlock installed and monitored during that year. Those provisions are set out at TCA 55-10-403 (d)(4). Last year in Tennessee there were at least 3,250 persons convicted of DUI second offense. Few of them requested interlocks. In addition to that method, a Judge may in his discretion order the use of an interlock as an additional penalty. See TCA 55-10-412.

The second method for acquiring an interlock is administrative. Before a second offender can have a drivers license restored, he must have an ignition interlock installed and complete a six month period of compliance. The alternative for the recidivist driver is to continue to drive unlicensed. More than 27,000 Tennessee drivers were convicted of driving with a suspended license in the last fiscal year.

There are about 1.5 million people arrested for DUI in America every year. About one million are convicted. There are 100,000 ignition interlocks in service on any given day. Research has continuously proven that offenders do not commit DUI's while an ignition interlock is installed in the car. The question which resulted in the NHTSA meeting is simple; are we using this technology enough? Could we save more lives on the nations highways by promoting more use of interlocks?

New Mexico, Arizona and Illinois have passed laws requiring the use of interlocks for all DUI offenders. New Mexico was first and saw an immediate traffic fatality reduction of 28%. This has caused quite a stir. Most states have seen minimal fatality reductions or increases during the last decade. Would the same thing happen here? Would we save over 300 lives by passing similar legislation? Some speakers believed that New Mexico has created the best method for use of interlocks. Others believed that interlocks should be reserved for those who are most likely to commit another DUI.

That position takes into account the fact that less than 1/2 of one percent of all drivers cause 40% of the traffic fatalities. If we could put interlocks on the cars of those bad drivers, we could save a lot of lives without requiring an interlock be paid for in every case. Most DUI offenders do not get arrested for another DUI within three years. Should they be required to use the interlock?

Continued page 4



RECENT DECISIONS

State v Goss, 2007 Tenn. Crim. App. LEXIS 610

David Goss nearly ran into a detective in Wilson County, Tennessee. That's always a bad idea. Officer Brian Harbaugh turned around and followed Goss. He watched him cross the center line several times and the fog line once before pulling him over. The officer recorded the questions, responses and field sobriety tests on an audio tape. Goss argued on appeal after his DUI trial conviction that the officer violated his *Miranda* rights by asking him several times if he had been drinking. The defendant admitted to having twelve to fourteen beers. The Court found that a reasonable person would not conclude that he had been deprived of his freedom to the same extent as a formal arrest and followed long established precedent concluding that motorists at an ordinary traffic stop are not "in custody" for *Miranda* purposes.

State v Tipton, 2007 Tenn. Crim. App. LEXIS 636

Russell Tipton drove his pontoon boat out into the lake to watch the 4th of July fireworks show. His boat had no lights on which was a violation of the motor vessel light law. A ski boat with four young men aboard ran into the boat. A passenger, James Eric Jones, was thrown from the boat and ultimately drowned. Tipton was charged with reckless operation of a motor vessel and the light law violation.

Tipton, a retired police officer, requested pre-trial diversion and was denied in part due to the loss of life. The denial was upheld by the Circuit Court, but reversed by the Court of Criminal Appeals and remanded for further consideration. The request was denied again, upheld by the trial court and reversed by the Court of Criminal Appeals again. This time the CCA ordered the prosecutor to grant pre-trial diversion. In the opinion, the Court states among several reasons that, "We are cognizant of the tragic events underlying the case at bar; however, to deny the appellant diversion because his crime involved death would be insert into our pretrial diversion statute a prerequisite which the legislature chose to omit."

State v Cope, 2007 Tenn. Crim. App. LEXIS 744

Prosecutors in Sessions Court need to consider the lesson of this case. Cope was tried and convicted in Sessions Court. He appealed. In this situation there is no Grand Jury activity before the case goes to Criminal Court. The defendant was convicted again in Criminal Court and then complained that the charging instrument was insufficient. The conviction was affirmed in this case, because the Court was satisfied that the defendant drove his car on a public road and that the affidavit of complaint, which indicated that he "drove up" and that the defendant was walking across the road satisfied the statute.

If a prosecutor agrees to waive a jury trial in Sessions, a defendant may appeal and may try to benefit from the lack of grand jury action when he does so. The prosecutor must look at the affidavit and see if any amendments are needed prior to the Sessions trial.

State v Burnette Jr., 2007 Tenn Crim App Lexis 770

Burnette received a fourteen year sentence for aggravated assault, vandalism over \$1,000 and evading arrest and appealed claiming a lack of reasonable suspicion for the attempt to stop him before he decided to evade and ram the police car. Middleton police Sergeant Arness Bowden attempted to pull over the semi, which was not pulling a trailer. He testified that the only reason he attempted to pull over the truck was because the taillights of the truck were not working and he was concerned for public safety. The stop and the conviction were affirmed.

We must reject the idea that every time a law's broken, society is guilty rather than the lawbreaker. It is time to restore the American precept that each individual is accountable for his actions. Ronald Reagan 1911-2004



Recidivist Wall of Shame

Richard T Bobbitt, 53, is currently serving a two year prison sentence. Bobbitt was convicted in Rutherford County for a felony DUI in July after being arrested for his 9th offense in 2006.

Richard Gleaves, 45, was also convicted in July in Rutherford County for his 8th DUI.

Randall Bates, 45, topped them both with his 11th DUI on top of numerous violations of the habitual traffic offender



Bates

WELCOME TO THE EXCITING WORLD OF DUI PROSECUTION

The Governor's Highway Safety Office has approved three new grants for DUI prosecutors in the 7th, 24th and 31st Districts. Darrell Julian has been hired as the prosecutor in the 31st (McMinnville). Darrell decided to go to law school after many years working in real estate. He has been in civil practice the last two years. Kelly Jackson 23rd, Brooklyn Martin (10th) and Marla Holloway (17th) have all recently been appointed to DUI prosecutor positions. Edith Sellars (30th) has been a prosecutor for 17 years in Memphis and has recently joined the DUI prosecution team. Prosecuting DUI offenders has a net result of saving lives on our roadways. Each of these prosecutors has a great opportunity to make a difference. Good luck and welcome aboard!



JAY WOODS HONORED

In recognition of his unwavering dedication and outstanding commitment to highway safety in the great state of Tennessee, our own Assistant District Attorney Jay Woods, 11th Judicial District, was honored at the Tennessee Lifesavers Conference by Kendall Poole of the GHSO. Jay received his award at a regional law enforcement network meeting held in Jasper Sept. 17th. Pictured with Jay: District Attorney Bill Cox, Rebecca Woods, his wife, and Tom Kimball.

HIT AND RUN CRASHES INCREASING

The number of hit-and-run crashes investigated by the state increased by about 19 percent between 2003 and 2006, according to the most recent Tennessee Department of Safety statistics. Safety Department officials investigated 11,769 hit-and-run crashes in 2003 compared with 13,987 hit-and-run crashes in 2006.

Leaving the scene is particularly irresponsible behavior. People who could benefit from prompt medical attention are often left alone to suffer or die. Most impaired drivers or people trying to hide their license status don't care about the carnage they leave behind. They only want to escape or hide their condition to minimize their penalty.

In a recent article in the Jackson Sun, Trooper Kevin Brown estimated that a driver who flees the scene is caught in about 50 percent of the cases. A lot of times, it's an eyewitness who takes down the tag number or gives authorities a detailed description of the vehicle.

Anywhere in the state, people can call *THP (*847) and report information on a wreck, Brown said.

ALCOHOL IGNITION INTERLOCK cont.

Paul Marques of P.I.R.E. pointed out that interlock results are great predictors of future behavior. An interlock user gives about 3,000 breath samples per year. This is a rich data set.

If an offender is continuously trying to start an interlocked car while impaired, the offender needs more than an interlock. The data set could also be used to prove that a convicted offender is not trying to start an interlocked car impaired. That offender should benefit. Unless the interlock is installed, there is no data set to study.

Judge Kent Lawrence of Georgia has run an active DUI/Drug Treatment Court since 2001. The average stay for an offender is nineteen months. Interlocks are one of several valuable tools he uses. However, the Judge pointed out that only 22% of offenders ordered to have an interlock installed actually have it installed.

West Huddleston the CEO of the National Association of Drug Court Professionals argued that interlocks should be used for high risk/high need individuals. The interlock should be used with people who need it in order to conform their behavior to follow the law. An effective interlock program will include:

- 1) A certainty of getting caught with consequence i.e. the car won't start
- 2) An immediate response from the Court and
- 3) The response is significant in the eye of the offender.

Problems with the interlock devices were discussed.

These problems are relatively minor. Providers at the meeting pointed out that the current interlocks are in a fifth or sixth generation. There remain problems concerning real time data transfer. There are problems with proof that the offender was also the one who gave the breath sample.

The greater deterrent to the use of interlocks is within the Judicial system itself. Ian Marples, General Counsel for Alcohol Countermeasure Systems, Inc., pointed to four issues within the system. These were data, cost, resources and education. Real time data transfer would make the product extremely expensive.

Currently data is downloaded once per month, but he pointed out that a non-compliant driver can be called in more often if need requires.

Cost for interlocks are pretty minimal when compared to the cost of incarceration. Most interlocks are installed for about \$80 and maintained for less than \$75 per month. That's less than either a six pack or a pack of cigarettes a day.

By scarce resources Marples is referring to probation officers, prosecutors, public defenders and Judges. He points out that the interlock providers can and do help. A Court sets the compliance parameter and the provider can alert the Court when an offender is out of compliance.

The greatest challenge facing the Judicial system is education. It is time to get rid of the myths and legends and figure out how the ignition interlock can best be used in a system intended to mete out justice for all, including the thousands of future victims that may be spared if we stop impaired drivers

from starting an engine while impaired.

There is also a problem concerning people who don't care if they have a valid license or are not qualified to get a valid license including illegal immigrants. If the reward for using the device is to get a valid license, why should the ineligible care?

NHTSA Urges Increased Use of Ignition Interlocks for Repeat Drunk Driving Offenders Wednesday, August 22, 2007

The nation's top highway safety official, National Highway Traffic Safety Administrator Nicole Nason, called on judges and prosecutors to consider increasing the use of ignition interlocks as part of a penalty enforced against repeat drunk driving offenders.

Administrator Nason made the recommendation during a meeting today in Washington, D.C., with judges, court professionals, safety equipment manufacturers and national safety advocates to discuss the role of alcohol ignition interlocks for repeat offenders to reduce drunk driving fatalities.

"We need to expand the use of interlock technology in order to prohibit drunk drivers from getting behind the wheel again and again," NHTSA Administrator Nason said. "It is vital that judges and prosecutors employ all the tools at their disposal to ensure that repeat offenders don't have the opportunity to cause harm."

Administrator Nason said judges and prosecutors can significantly boost traffic safety by increasing the use of the ignition interlock technology as a penalty for drunk driving offenders. She noted that interlocks are currently used in approximately 100,000 driving while intoxicated (DWI) cases each year, only about 20 percent of the cases for which they could be used.

The Administrator added that such measures are necessary since drunk driving fatalities have stagnated. In 2006, 13,470 fatalities occurred in crashes involving at least one driver or motorcycle operator who had a .08 or above Blood Alcohol Concentration (BAC) compared with 13,582 in 2005.

"It is unacceptable for us to allow known drunk driving offenders back on the road without some protection for the responsible drivers," Nason said.



THE CRASH PAGE

By Jim Camp
Traffic Safety Resource Prosecutor

On September 17 and 18, law enforcement officers and prosecutors from around Tennessee gathered at the historic Crockett Theatre in Lawrenceburg to attend the Southeastern Law Enforcement Training Seminars (SELETS) Vehicular Homicide-Assault Investigation School. This conference is the brainchild of District Attorney General Mike Bottoms of the Twenty Second Judicial District. The faculty included several out of state Crash Reconstructionists and yours truly lectured on taking the case from crash to courtroom, providing suggestions to build credibility and technical expertise in crash cases. Special guest presenters were Joe McCormack, Deputy District Attorney for the Bronx, New York and Maureen McCormick, Deputy District Attorney for Nassau County, New York.



J McCormack, T Kimball, M McCormick, Gen. Bottoms, J Camp

Joe McCormack is also the Traffic Safety Resource Prosecutor for the State of New York. He discussed litigation team building for successful prosecution. Joe, is a recognized leader nationally in vehicular homicide and assault cases. He stressed the importance of joint police and prosecutor training in the area of vehicular crimes pointing to yearly police-prosecutor trainings in his jurisdiction in New York where the participants observe staged automobile crashes and undergo field training in the reconstruction of those crashes. Deputy Chief McCormack also stressed the importance of prosecutors and law enforcement building crash response teams who's duties and responsibilities are defined in advance of their response to the scene. These teams include members of the Sheriff's Department, the Highway Patrol, the District Attorney General's Office and the local fire departments thereby insuring the cooperation of all involved. When this type of team is formed every member is working towards the same goal. They are treating the crash scene as a crime scene and are protecting and preserving the evidence present.

DDA Maureen McCormick discussed her successful prosecution of then 25 year old Martin Heidgen who on July 2nd of 2005 was driving the wrong way on a parkway in Nassau County when he collided head on with a limousine carrying a family home from a wedding. Katie Flynn, the seven year old sister of the bride was decapitated. Stanley Rabinowitz, the limo driver was also killed. The investigation revealed that Heidgen's blood alcohol concentration was .28. Witnesses testified that Heidgen drove for miles down the wrong side of the road at a speed of seventy miles per hour prior to the crash. The other drivers who encountered him tried to warn him by blowing their horns and flashing their lights.

McCormick overcame numerous hurdles during the trial. To begin with an officer who prepared the crash reconstruction analysis was pressured by his supervisors into rendering an opinion using a complicated and very sensitive procedure (angular momentum) that required detailed information that was not fully developed at the time. The officer eventually testified that he was not comfortable in its use and application. As a result his opinion grossly underestimated the speed of Heidgen's truck. McCormick then turned to a civilian expert who relied on only a portion of the evidence available thereby arriving at an even lower speed varying greatly from the officer's estimate. Finally a third and accurate analysis was completed indicating that the defendant was traveling at least seventy miles per hour when the collision occurred. The defense then challenged the blood test results. A State Trooper who took possession of and packaged and sealed the blood samples was unaware of the defendant's name. As a result several labels on the packaging provided no name at all and the form required by protocol was left incomplete. In addition the Trooper did not initially seal the kit as required. Finally, the Trooper got confused on the stand and testified incorrectly concerning the use of a hospital supplied needle to draw the blood. The court suppressed the blood based on a lack of sufficient identification. Maureen petitioned the court for a DNA analysis in the interest of justice. It was granted. However, when the saliva on the bucal swabs taken from Heidgen were analyzed the results indicated the presence of DNA from TWO male donors. This led the court to order a blood sample from Heidgen. This analysis confirmed that the blood that was submitted by the State as Heidgen's was his and that blood had an alcohol content of .28.

After five days the jury returned a guilty verdict. The court sentenced the defendant to 18 years to life. Despite the difficulties faced by the State in this case, DDA McCormick's persistence and skill lead to justice being done. Maureen was named National Prosecutor of the Year by the National Association of Prosecutor Coordinators.

DRUG CULTURE: A PILL FOR EVERY ILL

Article reprinted with permission from the Tennessee Association of Drug Diversion Investigators (NADDI)

Northeast Tennessee's most dire drug problem isn't crack, methamphetamine or marijuana. Because of common medical practices and the growing philosophy of a pill for every ill, Sullivan County District Attorney Greeley Wells says prescription medications have become the drug of choice for many.

"In numbers, what we're talking about in this area, the biggest problem we see is with prescription drugs," Wells said. In 2005, the 2nd Judicial District saw 93 people indicted for prescription drug fraud. This year there have already been 48 separate counts of prescription fraud, with 32 defendants indicted. Based on his caseload, Wells said folks in the middle to upper classes appear most prone to abuse and becoming hooked on pills.

"My own personal feeling is there's a lot more prescriptions being written for addictive painkilling medications than have been written in the past," he said.

"I think the medical profession really should look at what they are doing more closely in dispensing these drugs."

And, according to a recently released survey from the American Prosecutors Research Institute, the Southeast is abusing prescription medication at a rate higher than elsewhere in the country. Based on the responses of 560 district attorneys, including Wells, the most prevalent drugs in caseloads nationwide are marijuana, followed by methamphetamine and cocaine.

Prescription drugs ranked fourth, and the survey noted that "prosecutors in the Southern region had significantly more cases of prescribed drugs when compared to other regions."

In 2002, according to health research company Novartis, Tennessee led the country with an average of almost 18 prescriptions per person per year. The Volunteer State's prescription-use rate has risen 28 percent since 1999 and is more than twice that of California.

"There is no question prescriptions are being written for pain medication that are much stronger than needed to alleviate the pain of the sufferer," Wells said.

"Pain is a relative matter, and it is a very subjective thing. I can go to the doctor and tell them I'm in a great deal of pain, and the doctor doesn't know if I am or not. If my objective is to get one of these pain medications, I can fool the doctor by saying I'm in a great deal of pain."

Wells and some members of the medical community believe medicine in America has become compromised by special interests.

"I'm aware of cases where folks in the medical community have been taken along on free vacation trips for the number of sales they've (prescribed to patients)," Wells said.

Wells believes pain-management clinics - where morphine and methadone are often prescribed for pain - are also a factor in people becoming addicts.

"The police that investigate those cases are certainly aware who those physicians are," Wells said of pinpointing the source of prescription abuse.



District Attorney General Greeley Wells

Though it doesn't possess methamphetamine's immediate, explosive risks to a child's health, Wells sees a nation of pill-popping children on the horizon.

"From talking with folks in juvenile court, and talking to school children, prescription drugs are the biggest problems for our children," Wells said.

"It's trickling down. The drug cases that come into juvenile court are mostly kids that have gotten into the medicine cabinets of their parents or a friend's parents."

According to Novartis, U.S. consumers spent \$115 billion on prescription medication in 1999 -- about ten prescriptions per person per year.

Wells sees the trend as creating an uphill battle for prosecutors, law enforcement and families trying to battle prescription abuse.

"I'm concerned it's habituating a number of children into the excessive and nonessential use of drugs," Wells said.

"Unless something occurs to break the trend I'm seeing right now, the outlook is bleak. There are an increasing number of people becoming addicted to prescription painkillers. As those numbers increase, dangers to the public increase."

Sunday, 09/09/07 Tennessean

Grownups have obligation to educate teens about driving drunk

By THOMAS E. BERNARD



The author, Tommy Bernard, is the President of the Tennessee Wine and Spirits Association.

One of the most exciting times in a teenager's life is turning 16 and receiving a driver's license. Having that card means much more than a right to drive a car; it is a symbol of freedom and independence. It also gives young people a false sense of adulthood and, unfortunately, can spell extreme danger for those lacking the maturity and experience to take on such responsibility.

The Centers for Disease Control and Prevention recently reported motor-vehicle accidents account for 36 percent of all teenage fatalities, the leading cause of death for this age group. And the National Highway Transportation Safety Administration ranks Tennessee among the worst states for teen traffic fatalities, 44th out of 50. Many factors contribute to the high fatality rate of teens on roadways. Young drivers lack experience and have a more difficult time recognizing hazardous driving conditions. They have a tendency to take more risks. They like to speed and neglect wearing seat belts. Having friends as passengers is also a dangerous distraction.

But when alcohol enters the picture, all these conditions become perilously worse. According to NHTSA, during 2003, alcohol played a role in 33 percent of all Tennessee teen traffic fatalities. Alcohol can impair judgment, perspective and vision. When a teen who has been drinking gets behind a wheel, an already dangerous situation becomes far more serious.

Tightening teen driving laws could help improve fatality rates, but changing laws can be a long process. We can immediately begin to save lives by keeping alcohol away from teens.

Statistics show teenagers most often get their alcohol at home. But parents are not alone in the fight to keep alcohol out of the hands of teens. As a society, we all have an obligation to shield our kids from alcohol and ensure they understand the dangers associated with its misuse.

Those of us who work in the alcohol industry play a particularly important role in this fight. We are at the front lines of distributing alcohol. We look into the face of every person who purchases our product. And we shudder to think what can happen when it gets into young hands. The very last thing our industry wants is to contribute to teenage fatalities in any way.

Next week, The Wine and Spirits Wholesalers Association will join the Federal Trade Commission, The Century Council and others in launching a national campaign called "We Don't Serve Teens" to raise awareness of the dangers of teenage drinking. Throughout Tennessee, we will be posting signs in retail establishments and restaurants notifying teens they will not be sold or served alcohol. We also hope to help our adult customers better understand the severe dangers of sharing alcohol with their children.

We can't physically strap our teenagers into their seats. We can't ease their feet off the pedal. But we can do a lot to keep alcohol out of their hands. As a society, we must resolve to do so.

BUZZED DRIVING *IS* **DRUNK DRIVING**
nhtsa

NISSAN MOVES FORWARD IN THE RACE FOR DUI TECHNOLOGY

Tom Kimball

Mass produced gasoline engine automobiles have a history in America that is less than one hundred years old. Henry Ford’s assembly lines of 1913-14 began the automobile industrial revolution that has resulted in millions of vehicles on our American roadways. When automobiles were first produced they did not go very fast, very far or very smoothly. There was not much of a discussion about safety.

The safety discussion is extremely prevalent today. As cars go faster on better roads for longer distances more people die on highways every year in America that we should ever tolerate. The development of safety technology has moved at a turtles pace. In the last two decades we have seen the development of seat belts, child safety seats and air bags. Each of these has saved thousands of American lives. What about DUI preventative technology? Wouldn’t it be nice if one day it was impossible for anyone to commit the crime of driving under the influence?

DUI preventative technology is on the horizon. In August, 2007 Nissan Japan began testing a new system intended to prevent DUI. The technology is being tested with government authorities across Japan. The technology prevents drivers from starting their cars if they have been drinking. It can disable the vehicle’s ignition after analyzing a driver’s level of intoxication using an on board breathalyzer. The vehicle features multiple preventative features including alcohol odor sensors built into the locking shift knob, seat mounted sensors that can activate a voice and navigation screen warning and a facial monitoring system that determines the state of driver consciousness through the eyes.

The vehicles are being test driven by government workers throughout Japan. The workers are provided the vehicles and their input will be considered as the company works to perfect the system. I wonder what kind of discount insurance companies will provide for vehicles that can’t be driven under the influence? My sister developed polio a month before the Salk vaccine was available. Let’s hope preventative DUI technology can prevent many families from suffering the incredible pain caused by impaired driving crashes in the near future. Let’s hope it doesn’t arrive too late to save someone you love.

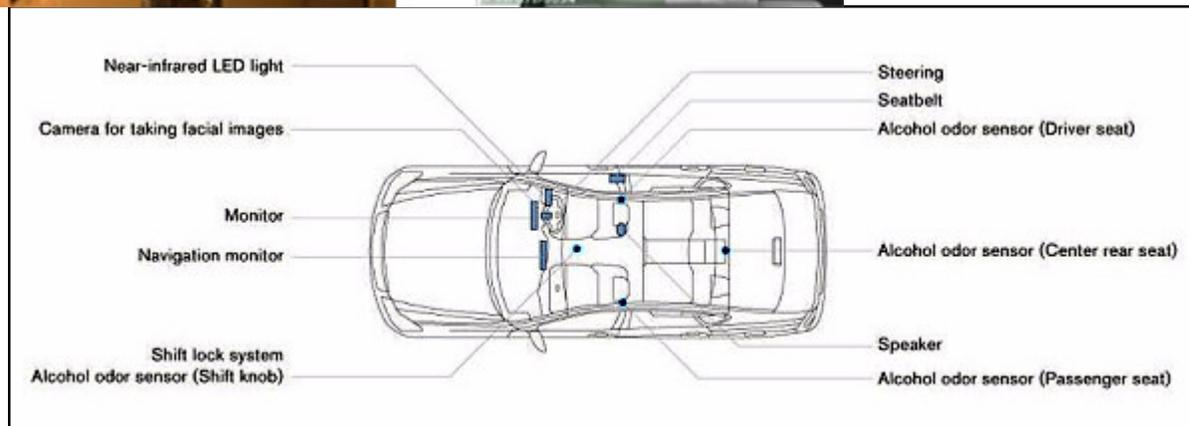
SHIFT KNOB SENSOR



FACIAL IMAGE



FACIAL MONITORING SYSTEM



TRAINING

COPS IN COURT 2007

Do you ever watch a police officer testify and feel his pain? Do you ever have a sinking feeling that your case is headed down the drain, because he just can't explain? Do you ever wonder if the officer is testifying about the same case you watched on his video?

Testifying is hard work. Imagine having every phone conversation you have during a day in the office critiqued. Imagine the heat of cross examination about your decisions concerning time management. Imagine having to testify about decisions you make in the heat of a trial. For an officer on the street intensive critiques of their work are common. No profession receives such scrutiny with the possible exception of head football coaches after a loss or doctors after a death occurs during surgery.

Testifying well requires adherence to two standard principles: Professionalism and Credibility. For five days this summer 31 prosecutors worked with 216 officers to help officers learn the lessons of professionalism and credibility. Each officer attended a one day eight hour course designed by the District Attorneys General Conference. The course included three lectures in the morning. They were: Professionalism and Credibility, Secrets of Cross Examination and Report Writing. During the afternoon hours each officer testified from a video scenario on direct and cross examination. The officers were then critiqued concerning substance by the prosecutors in the courtroom and critiqued concerning physical presence while watching his videotape with another prosecutor. In addition, officers received an hour long update concerning Standardized Field Sobriety Tests and alternative tests from the State SFST Coordinator.

Many officers asked that this course be repeated and extended. Most rated the courtroom experience as most beneficial. Here are a few comments from participants:

"As for me as a new officer this was very useful. I have a much better idea of how lawyers will use my report during cross examination." "This course should be mandatory for all officers. The experience of being cross examined and then watching a video to see how my posture changed when I was under attack was the highlight. I'll be a better witness from now on." "The grilling by the defense attorney was an education for me. I'll never lose my temper on the stand again." "These types of instruction benefit everyone involved. I found all of the speakers and faculty to be knowledgeable and very helpful."

To me the best part of this training is the effort put forth by prosecutors and officers. It was great to watch our prosecutors in the mock courts and at the video stations connect with officers who wanted to hear what the prosecutors had to say. It was also fun to watch the prosecutors improve their examination skills throughout the week. The poor officers who arrived for the class on Friday were in for an intensive cross examination by prosecutors who had a week of practice. Thanks to all the officers and prosecutors who attended.



Tim Beacham, ADA, Memphis cross examines.



The camera captures an officer's testimony.



THP filmed a video scenario for the fact pattern.



Marty Savage, Cookeville listens to a response.



Robin Ray, ADA, Johnson City



Matthew Rogers, ADA, Chattanooga thinks it over.



John Tierney advises



Michelle Kimbrell-Parks, ADA, Memphis.

VEHICULAR HOMICIDE MURDERERS ROW

Brent Hollister, 29, was sentenced to eight years for vehicular homicide and assault in Shelby County July 10th. He will be eligible for parole October 25, 2009

Jeffrey Kenneth Seifert, 35, was sentenced to eight years for vehicular homicide by intoxication on August, 25, 2007 in Putnam county. He will be eligible for parole on Christmas Day in 2008.

Sean Anderson, 19, of Cookeville pled guilty to two counts of vehicular homicide in September. Anderson had a blood alcohol content of 0.29 when he crashed and killed his cousins, 18 year olds Lauren Knieling and Rebecca Anderson. The defendant originally made bond, but went back to jail when he was arrested for public intoxication and illegal consumption. Sentencing for Anderson is pending. He faces an eight to twelve year sentence.

Denial of Alternative Sentence Affirmed

State v Dupree

2007 Tenn Crim App Lexis 752

The defendant drove under the influence of prescription drugs, namely Advant, Vicodin, and Paxil, and killed Stanley Masek, who was in a motorized wheelchair. These drugs were prescribed because the defendant was suffering from depression. They made him "very sleepy, mush-mouthed, and inattentive."

The defendant was charged and pled guilty to **vehicular homicide**, a Class C felony. As part of the plea agreement, the defendant agreed to be sentenced as a Range I, standard offender to a term of three years, with the manner of service to be determined by the trial court. After he was ordered to serve his sentence in the county workhouse he appealed and lost. The Court noted that he continued to drive under the influence after he killed Mr. Masek.

QUERY THE MIND OF THE LAWYER CONTEST

Last issue the following query was proposed:

A person is speeding. An officer activates his blue lights to try to stop him. The person does not stop but increases his speed to extremely dangerous levels. The officer stops attempting to pursue. He turns off his blue lights, pulls into a store parking lot and calls the dispatcher to inform his superiors. Two miles down the road the person crashes. The crash occurs approximately ninety seconds after the officer pulled into the parking lot. Was the driver seized at the time of the crash?

No one wanted to submit his or her answer in writing. I spoke to several prosecutors about the question and they all answered in the same way. There is no way to know the answer. Here's why.

Seizure in Tennessee is determined based on a reasonable person standard. If a reasonable person is driving down the road and a police officer activates his blue lights to pull the person over, a reasonable person pulls over. It is the right thing to do. In the query the offender is clearly not a reasonable person. He not only refused to pull over, but also sped off and drove at extremely dangerous speeds. When does the seizure end? How would our Courts evaluate that determination with a clearly unreasonable person? Who's interpretation would matter? Would the Court look at the intent of the police officer, who called off the pursuit? Would they try to understand and determine the issue based on the irrational thinking of the offender using something other than the reasonable person standard? Or, would they try to use a reasonable person standard as if reasonable people act in the manner of the dangerous suspect in this example. Since, no one could predict how the Court would make it's determination, there was no answer to the query.

IGNITION INTERLOCK PROGRAM IN NEW MEXICO

Effectiveness, Cost-effectiveness, and Fairness

Richard Roth Paul Marques, and Robert Voas

Between 1999 and 2005, New Mexico passed laws that increased the utilization of ignition interlocks by *arrested* drunk drivers from 0 to 38%. The present NM DWI statute mandates interlocks as a judicial sanction for all *convicted* DWI offenders. In addition, all of those whose licenses had been revoked for DWI may now drive anywhere, anytime, in an interlock-equipped vehicle if they install an interlock and get an Ignition Interlock License. Regulations for interlock providers insure statewide availability, uniform operational standards, and uniform reporting. The regulations also insure that the necessary installation and removal data is available for research on all interlocks installed in New Mexico. So far over 15,000 interlocks have been installed and the installation rate is still increasing. Studies of the relative recidivism of those with and without interlocks are ongoing. The re-arrest rate of interlocked offenders is typically 25% to 40% of that of non-interlocked offenders. As a result of the interlock program and other anti-DWI initiatives in New Mexico, overall DWI re-arrest rates, DWI crash rates, DWI injury rates, and DWI fatality rates have decline significantly in the last 5 years. The major cost of the interlock program is borne by non-indigent DWI offenders who not only pay the costs of their own interlock but are assessed a fee to provide funding for indigent offenders. For every \$1 spent by offenders on interlocks, there is a \$3 benefit in the reduction in the economic impact of drunk driving in New Mexico. Finally in anonymous surveys of over 5,000 convicted DWI offenders, substantial majorities agreed that interlocks are effective and fair sanctions and that all drunk drivers should be mandated to install them.

THANK YOU

Throughout the year the DUI Training Division has conducted numerous training sessions for law enforcement officers. Most of the training sessions were intended to help officers improve communication skills in the court room and understand the relationship between their work on the street, report writing and testimony. These classes would not have been successful without the assistance of many prosecutors who took time from their schedules to help conduct mock courts and critiques. Thanks to all who assisted.

THP Dispatcher Training, September 17th, **Laura Bush**, 15th District

THP Cops in Court Training for new cadets, Sept 13th, **Laticia Alexander, Jan Norman, John Zimmerman**, 20th District, **Terry Wood**, 21st District, former ADA **Kristen Shea**

Advanced SFST Training, Memphis August 23rd:, **Brooks Yelverton, Chris West, Tim Beachum, Brooks Irvine, Doug Carriker**, 30th District, D.A. **Mike Dunnivant, Neal Oldham and Tyler Burchyett** from the 25th District.

Cops in Court; July 30-Aug 3, Montgomery Bell State Park, **Tim Beachum, Brooks Irvine, Dennis and Stephanie Johnson, Michelle Parks, Brooks Yelverton, Charles Bell, Doug Carriker**, 30th District, **Thomas Dean and William Lamberth**, 18th District; **Wesley King**, 20th district. **Billy Miller, Craig Monsue, Ray Crouch Jr. and Kelly Jackson**, 23rd District, **Robin Ray, Melanie Widner, Judge Stan Widener**, 1st District, **Jay Woods, Mathew Rogers**, 11th District, **Sarah Winningham**, 10th District, **Chris Dotson**, 19th District, **Marty Savage**, 13th District

Advanced SFST Training, Smryna, May 14th: **Alan Hale, Jennings Jones**, 16th District

THP New Cadet Training, Feb 22-3, Nashville: **Scott McMurtry, Amber Gallina, Michel Clair Bayer, Matt Stephens**, 20th District; **Craig Monsue**, 23rd District; **Tracy Jenkins**, 8th District; **Michelle McFayden**, 10th District; **Chris Dotson**, 19th District; **William Lamberth**, 18th District



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**DUI Task Force
Recommendations**

Legislation has passed to:

- 1) Eliminate limitations on videotaping minors in DUI investigations.
- 2) Eliminate Diversion for Vehicular Homicides.

Watch for new proposals in 2008 concerning:

- 1) Administrative License Revocations
- 2) Changing mechanism for counting prior convictions
- 3) Increased treatment and monitoring for second and third offenders
- 4) Eliminating refusal option for DUI felons and some others
- 5) Changing the High Blood Alcohol Level from .20 to .15
- 6) Permitting the use of search warrants in refusal cases.
- 7) Modifying the two hour test limit
- 8) Mandating consecutive sentences for child endangerment. & others

VICTIM CONTACT AND SATISFACTION

In all cases concerning fatal or serious injury crashes prosecutors will be communicating with family members who are emotionally, mentally and or physically broken by the tragic event. It is essential to the family that they know how dedicated you the prosecutor are to their case. The family looks upon the case as their case. They don't see or hear or care that we represent the State of Tennessee. The family will always think of the case as their case.

The best time for you to contact your victim is when you first open the file. Don't rely on the victim witness coordinator to make this first call. Don't write, fax or e-mail. Pick up the phone and call the family as soon as you have finished reading the case file.

Here are some issues to discuss in the first phone call:

If any one in the family was injured, ask how that person is doing. Are they out of the hospital? Do they have more doctor visits planned? Do they know when and if they can go back to work? Exactly what injuries did they suffer?

If a family member was killed, express your sympathy and ask the family member to tell you about the person who died. What were their interests and hobbies? Where did they work? Where did they go to school? Who were their best friends? If the funeral has occurred, where was it conducted? Who spoke about the deceased during the services?

After listening and learning about the person who was injured or killed start asking about the case. How would the family like the case resolved? Explain the minimum and maximum penalties and feel free to express disgust about them. Explain what your experiences have been with the Judge in similar cases. Be candid about any weaknesses in the case (for example, we may have trouble proving that the defendant was the driver or that he caused the crash or the jury might not have a lot of sympathy for an adult who made the mistake of riding in the car with someone who was obviously drunk).

Ask if the family wants the offender to go to prison. Sometimes the answer is not what you would expect. Ask if the family wants the offender to receive alcohol or drug treatment or mental health counseling. Ask if the family wants to have contact with the defendant at some point in time.

Let the family know about scheduled dates in Court and that they are welcome to attend any and all hearings. Schedule a face to face appointment near the date of the first hearing in which the evidence will be discussed.

Ask if there is any family member who is at risk physically if they hear upsetting testimony. Discuss with the family who may be a spokesperson for the family or your main contact. Remember the person who gave the eulogy? That may be your best public speaker for the sentencing hearing.

Ask if the family plans to move in the near future or change phone numbers. Make sure you can stay in contact with them.

Does this sound like a lot of work? Most of these phone calls last no more than thirty minutes. In return you will be appreciated by the family. They will believe that you care. Their rights will be protected. You'll know your case much better and the likelihood that the family will be satisfied with your dedicated work will be much greater.