



DUI NEWS

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NO REFUSAL State’s First No Refusal Weekend

This year the 4th of July and the following weekend became the first high fatality weekend in which the State of Tennessee employed a No Refusal strategy to combat alcohol and drug related traffic fatalities and crashes. The “No Refusal” strategy was made possible by the passage of Public Chapter 892 passed by the 107th General Assembly. It permitted the State to seek and use search warrants in DUI cases for the first time since an Attorney General’s opinion in 1998 had given unfettered power to offenders to refuse testing. The A.G. in 1998 and again in 2010 had interpreted the Implied Consent law as a law that prohibited the use of search warrants. When this law was brought to the attention of the General Assembly, many were surprised that it was the only law that stopped a Judge from exercising his authority to approve and grant a search warrant.

For the 4th of July the Tennessee Highway Patrol and other agencies put to use the new authority to seek search warrants. Five counties were selected for participation in a No Refusal strategy. In those counties if the THP or a participating agency arrested a driver for DUI, the agency offered the driver the option to take a breath or blood test. If the driver refused, the agency then sought a search warrant and with the approval of a Judge, who found there was probable cause for a test. If a search warrant was issued, the driver was transported to a hospital or other facility for a blood draw without his consent.

The goal of the No Refusal strategy was primarily prevention. In order to publicize the fact that drivers would be subject to a blood draw press conferences were held in the various counties to alert residents that DUI arrests would result in testing. The message of the conferences were that people who wanted to go out and drink could have all the fun they wanted, but they had to get home without driving impaired. Pictured is District Attorney Torrey Johnson of Nashville speaking to the press about the strategy.



NO REFUSAL Labor Day

Officials with the Highway Patrol have indicated that an expanded No Refusal weekend is expected for the Labor Day weekend. A nationwide No Refusal event is planned for New Years Eve.



RECENT DECISIONS

State v Graham, 2012 Tenn. Crim. App. LEXIS 305

PASSED OUT IN DRIVE THRU

The defendant was convicted of DUI 3rd offense and challenged the evidence that he was passed out in a McDonald's drive thru and that he was intoxicated as shown through his inability to divide his attention and adequately perform tasks during filed sobriety tests. The case occurred in Oakland, TN. The arresting officer and witness for the State was Sgt. Kenneth Long. The prosecutor was Matt Hooper.

State v Frye, 2012 Tenn. Crim. App. LEXIS 310

NO HEADLIGHTS

In this DUI 3rd offense case the defendant challenged the stop and the sufficiency of the evidence. The stop occurred after Sergeant Phillip Henderson of Tullahoma saw the defendant had no headlights on at 1:00 a.m. He turned his police car around and followed and watched the car swerve out of his lane twice for a few seconds each. The stop was affirmed. Officer Kevin Smith performed the field tests with the defendant and observed indicators of intoxication. The defendant called a jail officer to testify that the jail intake form did not indicate intoxication. The jury convicted and that decision was affirmed. The prosecutor in the case was Marla Holloway.

State v Padgett, 2012 Tenn. Crim. App. LEXIS 291

WHERE'S MY BLOOD TEST?

This one was a DUI 4th conviction in Knoxville. The defendant wanted the video recording of her arrest suppressed for lack of probable cause to arrest. She had been in a two vehicle crash she apparently caused and the cars had been moved to a fire station. She was cantankerous and in an ill humor. She refused to perform field sobriety tests. During the discussions in which she was "very belligerent" the officer's video camera recorded the audio of the conversation. Even though the driver refused to cooperate, the officer developed P.C. and placed her under arrest. In an interesting twist the defendant argued that her blood should have been drawn and that the case should be dismissed for failure to preserve her blood evidence. Blood was not drawn due to her conduct, so the court disagreed. The prosecutor in the case was Kyle Hixson.

State v Minchew, 2012 Tenn. Crim. App. LEXIS 279

TCA 55-8-115 TRUMPS BINNETTE

This DUI 1st offender had a BAC of .10, but battled to suppress the traffic stop. The stop by Trooper Charles Achinger was based in part due to a B.O.L.O. call by a citizen and the trooper's observations of the vehicle crossing and straddling lane lines. The defendant argued his driving was of the "garden variety of minor imperfections" condoned by Justice Barker in the Binette decision. In his testimony the Trooper pointed out that failing to maintain a lane is now a violation of the law (see TCA 55-8-115), which was not true when Binette was decided. In addition, the Court found several driving errors that went beyond the "garden variety". The prosecutor in the case was Kelly Lawrence.

State v Demcovitz, 2012 Tenn. Crim. App. LEXIS 239

FOLLOWING TOO CLOSELY

This drug conviction involved a traffic stop by a Drug Task Force for following a car too closely. Memphis officer, Kevin Perry, did a very good job of describing the violation and referred to the Rules of the Road, which the Court cited. The Rules indicate that a driver must leave a 2 second gap between his vehicle and the one in front to permit the following vehicle to brake to a stop safely. The prosecutor in the case was Chris Scruggs.

State v Higgins, 2012 Tenn. Crim. App. LEXIS 266

SPEEDING

This DUI conviction began with a speeding stop by Deputy Jason Brown, who was assisted by Deputy Danny Brown in the case. Higgins was stopped for speeding and according to the officers showed many of the classic signs of intoxication. The prosecutor in the case was Edie Sellers.

State v. Edmonds, 2012 Tenn. Crim. App. LEXIS 241

RUNNING STOP SIGN

This driver blew through a stop sign. An officer was watching the intersection and the violation was videotaped. After the driver was stopped, he turned out to have other problems. The prosecutor in the case was Kyle Hixson.

RECENT DECISIONS

State v Hatmaker, 2012 Tenn Crim App Lexis 561 ROAD RAGE RECKLESS ENDANGERMENT

In Campbell County, a pick up driver with his passenger son saw another pick up truck slowly swerve into their lane. They saw the driver was on his cell phone. After changing lanes, they pulled along side and told the driver to "Hang up and Drive". This advice was not well received. Bert Hatmaker went off. He pulled up and asked, "What did you say?" heard the answer and come out with those brilliant words that often result in jail time or injury, "Watch This". He then rammed the passenger side of the truck, where the 17-year-old son was quietly sitting, twice. The driver called 9-1-1. The trucks came to a stop blocking both lanes of traffic. The driver while on the 9-1-1 call told the dispatcher he was going to pull off onto the shoulder of the highway. This apparently offended Hatmaker, who slammed into the back of the truck and then took off. By this time the police were following. Hatmaker refused to respond to blue lights until he reached his father's business. He burst through officers to swing at the driver of the truck who had yelled, "Hang up and drive". He missed him and hit his 17 year old son busting his eye. Hatmaker went to trial and was found guilty of reckless endangerment, assault and leaving the scene. He will serve 60 days in jail.

State v Gooding, 2012 Tenn Crim App Lexis 555 CIRCUMSTANTIAL EVIDENCE

Gooding was passed out with his foot on the brake and his engine running. He had a .228 B.A.C. He made the issue in his case his location. He was in a driveway to a church, which had a locked gate. He argued that he was not in a place frequented by the public. His problem was that there was plenty of circumstantial evidence that he had driven on the road. There was no way to get to his location without driving on a road. Many similar cases in the past decades had the same result, but in this case the Court referenced the Tennessee Supreme Court decision of State v. Dorantes, 331 S.W.3d 370 (Tenn. 2011), which adopted the federal standard for determination of circumstantial evidence found in Holland v. United States, 348 U.S. 121, 139-40 (1954): "Circumstantial evidence . . . is intrinsically no different from testimonial evidence. Admittedly, circumstantial evidence may in some cases point to a wholly incorrect result. Yet this is equally true of testimonial evidence. In both instances, a jury is asked to weigh the chances that the evidence correctly points to guilt against the possibility of inaccuracy or ambiguous inference. In both, the jury must use its experience with people and events in weighing the probabilities. If the jury is convinced beyond a reasonable doubt, we can require no more."

State v Foster, 2012 Tenn Crim App 323 PARKED IN ROADWAY

Foster was convicted by a jury of driving on a revoked or suspended license and driving on a revoked or suspended license, second offense. The appellate court held that the trial court properly denied the motion to suppress, as the officer had reasonable suspicion to believe that defendant, who had stopped his van in the middle of a road, had violated a city ordinance prohibiting parking in the middle of a roadway.

CONGRATULATIONS CRASH RECONSTRUCTION CLASS GRADUATES

Officers listed below recently completed their 80 hour traffic crash reconstruction course in Nashville. This 80 hour course included Time and Distance, Conservation of Linear Momentum, Vector Diagramming, Court Testimony, Resume Preparation, Preparing Case Files, Speed from engine RPM, Acceleration and Deceleration factors and rates, Lamp Examination, and worked on numerous scale diagramming projects. The officers are:

William Goodman, Dickson Police Department;

David Cutshaw, Smyrna Police Department;

Chris Augustin, Harold Burke III, Kevin Coleman, Ryan Hartley, Thomas J O'Brien, Erika Bowden and Mark Woodfin of the Nashville Metro Police Department;

Joe Agee and Michael Cummins of the Tennessee Highway Patrol;

Scottie King and Tony Wrinkle of the Gallatin P.D.;

Joel Brisson, White House Police Department,

Lee Strzelbcki, Charles Beaird, Glenn Simmerly and Timothy Belcher of the Knox County Sheriff's Office;

Troy Clark of the Winchester P.D. and

James Yates of the Cross Plains Police.

TREATMENT COURTS

The National Drug Court Institute publishes the Drug Court Review. I had the opportunity to study Volume VIII Issue 1. In an article titled *What Works? The Ten Key Components of Drug Court: Research-Based Best Practices* by Carey, Mackin and Finigan, I read a lot about data analysis. I'll save you a lot of pain by jumping to the conclusions. The authors found over fifty practices with significant correlations with recidivism, costs or both. The top ten practices show large reductions in recidivism and increases in cost savings for Courts that engage in the practice as opposed to Drug Courts that do not. For example, courts where a law enforcement officer is a member of the Drug Court team had 88% greater reductions in recidivism than courts that did not have a law enforcement officer on board. The figure 88% is the effect size. Although Drug Courts that do not include law enforcement on the team still reduced recidivism, the Drug Courts that do include law enforcement reduced recidivism 88% more!

TOP TEN PRACTICES

- 1) Drug Courts with a program caseload of less than 125 had more than five times greater reductions in recidivism.
- 2) Drug Courts in which participants were required to have 90 days clean (negative drug tests) before graduation had 164% greater reductions in recidivism.
- 3) Drug Courts where the Judge spent an average of three minutes or greater per participant during court hearings had 153% greater reductions in recidivism.
- 4) Drug Courts where treatment providers communicated with the Court or team via e-mail had 119% greater reductions in recidivism.
- 5) Drug Courts where a representative from treatment attended Drug Court team meetings (staffing) had 105% greater reductions.
- 6) Drug Courts where internal review of data and program statistics led to modifications in the program had 105% greater reductions.
- 7) Drug Courts where a treatment representative attended court hearings had 100% greater reductions.
- 8) Drug Courts that allowed non-drug charges (theft, forgery etc) had 95% greater reductions.
- 9) Drug Courts that had a law enforcement officer on the Drug Court team had 88% greater reductions.
- 10) Drug Courts that had evaluations conducted by independent evaluators and used them to make modifications in operations had an 85% greater reduction in recidivism.

The data concerning treatment courts is very clear. These Courts can stop the revolving door of recidivism. I hope everyone who reads this knows that Treatment Courts are not easy. They are not going soft on crime and they can help improve the safety of our communities.



Some notes about Marijuana

Marijuana contains 61 cannabinoids that are psychoactive. We know the most about THC. Growers using hydroponics can produce plants that have 24% THC. Eighty percent of 12th grade students surveyed responded that marijuana is easy to get. Forty percent of 8th graders said the same. The effects of inhaled marijuana begin in 2-3 minutes and last 2-3 hours. Effects include: short term memory loss; dopamine release increase, reduced anxiety, eliminated boredom and over-concentration. There is a small analgesic effect. It doesn't really relieve pain. It causes a person to not care about pain. Long term effects include impaired lung function and it is an immune-depressant, making it a horrible thing for AIDS patients, since their immune system is already depressed. Breast-feeding babies get 60 times the THC of the mother! Marijuana increases miscarriages, lower birth rates and lower APGAR scores. Withdrawal causes irritability, a loss of focus, restlessness, decreased appetite and lower hormone levels. An average driver sees 12 objects a minute, a marijuana driver sees 1 or 2. They usually focus on going straight. As they hyper-focus, they miss seeing road signs, lights, objects and pedestrians. The same hyper-focus effect that permits a user to stare at a lava lamp for hours with fascination negatively effects driving.

TRAINING UPDATE

In mid July, thirty prosecutors gathered at Fall Creek Falls State Park to attend a DUI Detection and Standardized Field Sobriety Test class for Prosecutors. The class did not follow the exact parameters of the class used to train law enforcement officers. There were additional topics. However, every prosecutor got to learn what the officers learn and go through and participate in exercises usually reserved for officers. Prosecutors got to learn first hand how hard it is to conduct field tests with impaired subjects, while observing the situation for danger. One prosecutor later wrote, "I learned how difficult a police officer's job is regarding SFST's. Practicing SFST's in the wet lab was most beneficial."

A wet lab was conducted. A local officer brought several volunteers to drink and be tested. The volunteer drinkers are monitored and consumption is controlled. Drinkers are stopped after reaching a particular B.A.C. level. The prosecutors, trained to perform SFST's earlier in the day, then attempt to gather information from the performance of the tests. They try to use the tests to make decisions about whether a volunteer is over or under a .08 BAC. They also decide whether the volunteer should be permitted to drive. They estimate the BAC level of each volunteer.

Watching an officer perform tests on a video is nothing like conducting the test and seeing, smelling and hearing the drinker. Most of the prosecutors calculated the BAC level too low. Most mistakes made would have resulted in letting a driver go, when he or she was in no condition to drive. Prosecutors like new officers, who undergo the training, did not trust the tests until the results were displayed. The best and most reliable test was the Horizontal Gaze Nystagmus. When six clues are present the driver is almost always over .08. However, physical dexterity and tolerance to alcohol can help an impaired driver fool the observer in the Walk and Turn and One Leg Stand. On several occasions prosecutors saw six HGN clues and one or two clues on the other tests. Until the results were revealed, many had a hard time believing in the accuracy of the HGN.



Dr. Kenneth Ferslew, ETSU, taught at the seminar concerning the toxicology of alcohol, drugs and synthetic drugs. Ten forensic scientists from the TBI Toxicology labs then met with prosecutors in small groups to review cases and help the prosecutors put the lab results into the context of the Ferslew lectures. Many cases involve a drug stew. These cases can be confusing and challenging, but become much easier when prosecutors understand how drugs interact with each other and with alcohol.

Dr. Karl Citek of Pacific University in Portland, Oregon, did his usual phenomenal job of teaching about eye movements and the validity of the HGN test. As part of his effort, he placed an eye camera on a student and depicted how an eye focused on a stimulus remains steady no matter the background. He also showed what rotational eye movements looked like and showed videos of other types of movements, completely different from HGN movements.

Judge Kent Lawrence, NHTSA Liaison for the Southeastern Region, D.R.E. Coordinator Richard Holt, DUI Detection and Standardized Field Sobriety Test Coordinator, Steve Dillard, A.D.A. Linda Walls of the 15th District, ADA Darrell Julian, of the 31st District, and TSRP's Kimball and Jim Camp also taught sessions.

Participants were:

Jack Bare, 15th; Kyle Bayer, TBI; Charles (Bo) Bell, 30th; Melissa Denny, 7th; Ryan Desmond, 5th; Chris Dotson, 19th; Holly Eubanks, 17th; Ann Filer, 17th; Fredrico Flores, 6th; Bill Hall, 11th; Carlin Hess, 21st; Heather Higgenbotham, 10th; Colin Johnson, 27th; Margarette Kellough, 30th; Kate Lavery, 11th; Courtney Lynch, 12th; Joe McMurray, 2nd; Billy Miller, 23rd; Wes Mink, 2nd; Brooke Orgain, 23rd; Regina Porobenski, TBI; Rich Scott, 24th; Benjamin Rowe, 2nd; Margaret Sagi, 23rd; Marty Savage, 13th; Joanne Sheldon, 4th; Frankie Stanfill, 24th; Emily VanDegrift, TBI; Virginia Walsh, 7th; Barry Williams, 4th; Sarah Wojnarowski, 23rd; Melanie Carlisle, TBI; Julian Conyers, TBI; Jeff Crews, TBI; April Hagar, TBI; John Harrison, TBI; Margaret Massengill, TBI; Samera Zavaro, TBI.

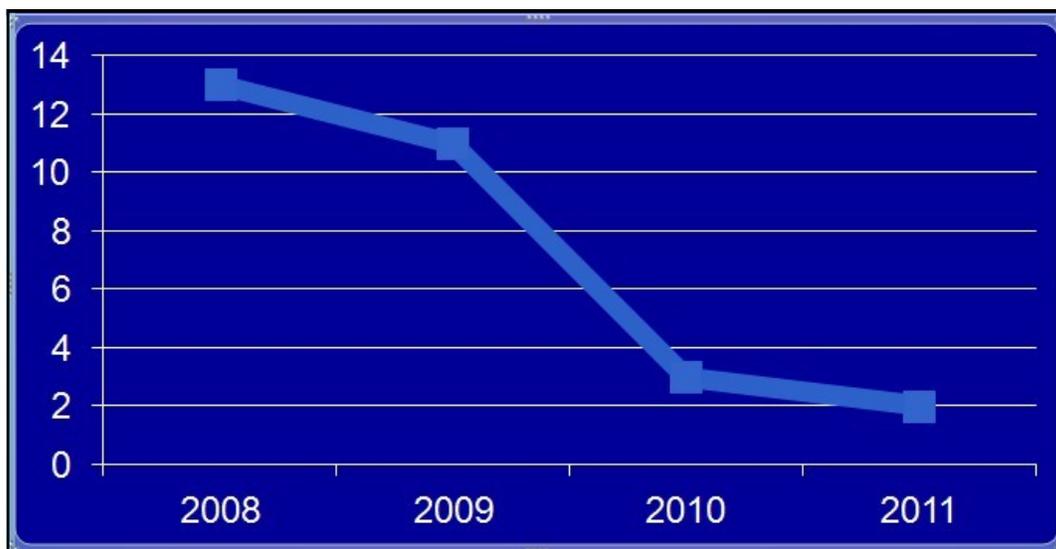
NO REFUSAL WEEKENDS



In the near future readers will begin to see publicity about No Refusal Weekends in Tennessee. The No Refusal program is an enforcement strategy that allows jurisdictions to obtain search warrants for blood samples from suspected impaired drivers who violate the implied consent law by refusing breath or blood tests. This enables law enforcement to legally acquire a proper blood sample from drivers who refuse to give a sample. During these specified enforcement efforts, prosecutors and judges make themselves available to streamline the warrant acquisition process and help build solid cases that can lead to impaired driving convictions, if a driver is guilty of the crime. The No Refusal program will be highly publicized to let the public know that their chances of being caught, arrested, and convicted increase during these efforts. The publicity is intended to stop some people who would drink and drive from committing the crime. The No Refusal Weekends are especially effective on holiday weekends known for high alcohol consumption. Tennessee can now participate in the program due to the passage of Public Chapter 892, which permits the use of search warrants in DUI cases.

Many DUI offenders refuse to submit to the breath test to avoid or reduce criminal sanctions upon conviction for DUI; instead, they hope to receive no more than a one year license suspension for their criminal and dangerous behavior, rather than sanctions appropriate with a criminal DUI conviction. In a 2008 report to Congress, *Refusal of Intoxication Testing: A Report to Congress*, State refusal rates ranged from 2.4 percent to 81 percent, with an average refusal rate of 22.4 percent. Statistics gathered in Nashville indicated a refusal rate in the Capitol City over 40%. The “No Refusal” program is designed to address the problem.

The No Refusal Program began in Texas. In Texas the results were incredible. Montgomery County, Texas fully embraced the program scheduling No Refusal Weekends on a regular basis. Between 2008 and 2011 the county DUI related fatalities dropped from 13 per year to 2 per year. That’s an 86% reduction in fatalities. No one knows which persons were saved by the enforcement plan, but if the county had continued to see 13 deaths per year, 23 more people would have died in the county as is depicted on the chart below. The No Refusal Program began in 2009.



KNOW THY STATISTICS

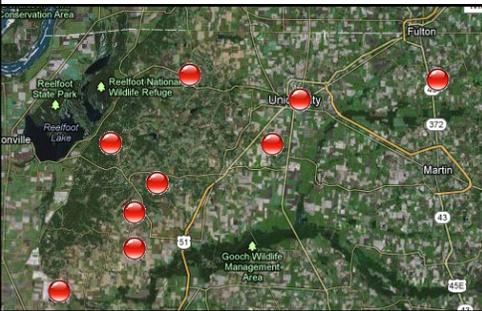
Every Year the Administrative Office of the Courts prints a statistical report indicating how many cases come through the Circuit and Criminal courts. This article examines the DUI statistics from the 2011 report. On the right is a table showing Trial Convictions and Acquittals. Most of these trials would have involved a jury. The most trials (30) were conducted in Knoxville in the 6th District. There were a total of 254 trials and the State convicted 72% of the time. District 6 (Knox County) and District 25 (Fayetteville and surrounding counties) had the most trial convictions (17). District 11 (Hamilton), District 20 (Davidson), District 21 (Williamson), District 23 (Dickson), District 25 (Fayette) and District 30 (Shelby) had double digit trial convictions.

There were 9,348 new DUI cases filed in the Circuit and Criminal Courts. That accounts for about 6.5% of all new cases filed in the Courts. There were 9,966 dispositions in court. Many cases carry over from one year to another. It appears that the district in which a defendant was most likely to plead guilty as charged was the 10th District including Bradley, McMinn, Polk and Monroe Counties. Sixty-seven percent of defendants pled guilty to their DUI charge. The best of the big cities for the guilty as charged statistic was Chattanooga, followed by Memphis, Nashville and Knoxville.

Daily Fatality Rates are available on the Department of Safety website in the Statistics and Research area. Fatalities through late July, 2012 as compared to the same day in 2011 indicate 27 more deaths, but improvement in July. Ten of the additional victims were motorcyclists.

	Jan	Feb	Mar	Apr	May	Jun	Jul	YTD Total
2011	51	55	80	87	98	91	66	528
2012	68	72	104	65	99	92	55	555

The County with the greatest increase is Obion, which went from 1 in 2011 to 11 fatal crashes already in 2012. This county, which includes Reelfoot Lake has been devastated by death. Each red dot marks a crash site. Those we have lost include:



David 51, Frances 82, and Jack Bell 82, killed by a drugged driver; Mark Osteen 51, and Mark Tibbs 46, James Farrell 73, Charles Povolish 61, Jennifer Jones 39, Daryl Calhoun, 51, Terry Lofton, 26 and Harold Butler, 34. Three crashes involved drugs. Two involved alcohol.

2011 A.O.C. Statistics		
District	Trial Convictions	Acquittals
1	0	1
2	4	0
3	3	1
4	12	3
5	2	0
6	17	13
7	0	0
8	3	0
9	4	1
10	1	2
11	15	1
12	5	5
13	3	6
14	7	2
15	0	0
16	1	0
17	3	0
18	3	0
19	3	1
20	12	6
21	10	4
22	6	6
23	13	6
24	1	0
25	17	3
26	6	0
27	2	0
28	0	0
29	4	0
30	16	5
31	6	4
Totals	184	70

DO YOU KNOW PERCEPTION/REACTION TIME?

For about 90% of the population the high range benchmark perception reaction time is 1.5 seconds. That means 1.5 seconds passes from the time a person perceives a need to react and begins reacting. If a person is not looking down the road, but looking at a device like a phone or even an animated map on the dash, the time will not begin until the person sees what he/she needs to react to. Road design engineers use 2.5 seconds to include a margin of safety above the benchmark.

LEGISLATIVE UPDATE

The General Assembly in 2012 passed several laws affecting traffic safety. Some of the laws originated with the District Attorney's General Conference. D.A. proposals are noted below with a "*". The effective date, unless specified, is July 1, 2012

Public Chapter 892 *

This law authorizes blood draws without consent pursuant to 55-10-406 (f) (mandatory testing), search warrants or court orders. Search warrants had been prohibited according to two Attorney General opinions. The sponsors were Senator Doug Overbey and Representative Tony Shipley. This was immediately effective on May 9th.

Public Chapter 919 *

This requires than a 30 day enhance, consecutive sentence and \$1,000 fine apply to all DUI cases in which a child is a passenger in the car. This corrected a problem in which only 1st offenders faced mandatory consecutive sentencing.

Public Chapter 893 * Not a Lawful Defense

This bill changed the language of TCA 55-10-402 to clarify that the lawful use of drugs or substances is not a defense to a DUI charge.

Public Chapter 737 Mandatory arrest for No Driver's License/Insurance

This law requires an officer arrest a driver involved in a crash with serious bodily injury or death, if the driver does not have a valid driver's license or proof of insurance. The driver does not have to be the at-fault party in the crash.

Public Chapter 899 Minors in a Package Store

This law creates an offense if a person under the age of 21 or an intoxicated person is asked to leave a package store and does not.

Public Chapter 977 Fee for Garbage Supervision

This law permits a county to set a reasonable fee for supervising DUI offenders, who are ordered to pick up garbage as part of their sentence.

Public Chapter 994 Bail Bonds

If a person has previously failed to appear on bond, the person may only make a new bond with cash or property. This was immediately effective on May 10th.

Public Chapter 848

Treats synthetic drugs as analogues. Creates a class A misdemeanor for simple possession and class C and D felonies for possession for resale.

Public Chapter 843

Makes possession for resale of synthetic drugs (imitation controlled substances) or ingestion either a Class E felony or Class A misdemeanor.

IVAN PAVLOV HAD A DOG....(Cont'd from Page 12)

It is at this moment Pavlov's Bell rings.

The prosecutor is concerned about the docket backlog and pressure from the Court. Or they may be too lazy or afraid to go to trial. Some are afraid that losing would look bad. So s/he capitulates, reduces the charge, justifies it by demanding two days in jail. The next time the defense lawyer appears the same thing happens. The word spreads among the rest of the bar and before s/he knows it, the Prosecutor has been "conditioned" by the defense bar to do the same thing, each and every time. The negotiation ceiling has been set and an unjust and inappropriate DUI "policy" has been established.

This is just the opposite of the conditioning that should take place in these cases. You see in most cases the Prosecutor is really in the driver's seat. It is the Prosecutor who should "condition" the defense bar. Generally defense lawyers make more money settling cases than they do going to trial. Most of them WANT to AVOID trial. The Prosecutor needs to be firm when it is just and consistently so. They need to have courage. They need to try the case when the defense refuses to enter a plea as charged. In short, the Prosecutor needs to be a PROSECUTOR. Sure s/he will be busy trying cases for several months while the defense bar test his/her resolve but that is only for the short run. During this time the word spreads among the legal community that this Prosecutor is serious. They are focused. They are committed. They are not afraid of trial and relish the opportunity to take the case to the jury. In short the Prosecutor becomes the CONDITIONER and the defense bar the CONDITIONED.

The only downside is a few months of hard work. As a result the Prosecutor becomes a skilled, ferocious, trial lawyer that will be respected and most probably feared by the defense. Because of this fewer cases will go to trial. More pleas will be entered, AS CHARGED and a cleaner docket will result.

Who will be Pavlov and who will be the dog? It is up to you.

WALL OF SHAME

What were you thinking Horace Adkins and Danny Dunn?



Horace Adkins plead guilty to DUI 5th Offense in July. He actually has 8 priors. He also pled guilty to his 13th Driving on a Revoked License charge! He received 4 years to serve and will be eligible for parole after serving 35% consecutive to his Davidson County probation violation for his last DUI 4th Offense which was a 3 year sentence to serve. He was also served with a Habitual Traffic Offender petition.



Danny Dunn, 57, was on probation for DUI and on bond for another DUI offense when he drove impaired and injured five people. When Dunn drove down the interstate the day of the crash, he hauled a record stretching back to 1987 with two dozen criminal charges ranging from patronizing prostitution to assault and theft. He received five sentences of four years each to run consecutively for a total of 20 years. The General Assembly passed a tough bond law in 2010 to keep people like Dunn from driving impaired in this type of situation. He managed. Fortunately, his victims lived.

VEHICULAR HOMICIDE MURDERERS ROW



Jeffrey Knight, 42, is now serving a 10 year sentence for killing two people, 21 year old Brittany Thomas and her 10 month old child, Aiden Thomas. Knight had been downing shots of alcohol before driving to work. His blood alcohol content was .20. At 5:22 p.m. he was driving a 2001 Prizm northbound on Alcoa Highway between Hunt Road and Hall Road. Knight, who was traveling at an estimated 60 miles per hour, lost control of his vehicle, went into the median, then went airborne and landed on top of a 1995 Pontiac Sunfire driven by Brittany. Knight requested, but was refused split confinement.



Cordell Johnson, 31, is serving 10 years for vehicular homicide by intoxication, aggravated assault and Leaving the Scene of a death. In February, 2011, he killed Arielle Williams and injured Derrick Keefer, while they were trying to cross the street at the intersection of Milbranch and South Winchester in Memphis. The intoxicated defendant was found a short distance away. He was driving with a suspended license and without insurance.



Mariano Lopez-Miguel, 27, is now serving 9 years for killing Justin Burgess, 21, on Highway 27 at the Wal-Mart intersection. The intoxicated Lopez-Miguel ran the light and driving a 1997 Pontiac pulled into the path of a Ford F 150 pick-up driven by Mr. Burgess. Timothy Burgess, the father of the victim spoke at the sentencing hearing. He stated, "My son was a wonderful young man. He never smoked. He never drank alcohol. Alcohol killed my son. I forgive you. Christ loves you. I don't have room in my heart for hate for you. My heart is filled with love for my family." Through an interpreter, Miguel stated, "Who am I to take someone's life, someone who was loved so much." Miguel, who suffered brain injuries in the crash was found competent to stand trial about 19 months after the crash.

VEHICULAR HOMICIDE DECISION

State v Dowdy, 2012 Tenn Crim App Lexis 334

The defendant, Leroy Dowdy, pled guilty to vehicular homicide by recklessness, leaving the scene of an accident resulting in death, and driving on a revoked license. After a sentencing hearing, the trial court sentenced the defendant to five years and six months for the vehicular homicide conviction, two years for the leaving the scene of an accident resulting in death conviction, and six months for the driving on a revoked license conviction. The trial court ordered the sentences to run consecutively, for an effective sentence of eight years. Dowdy appealed. The defendant pled guilty to two felony charges of sale of cocaine in March 2008 and was placed on supervised probation. Three months later, with cocaine in his system as well as with the knowledge that he was on probation, and without a valid driver's license, the defendant borrowed a car and drove to a local market. He pulled out in front of a motorcycle and killed the driver of the bike, who had no chance.

State v Gates, 2012 Tenn Crim App Lexis 503

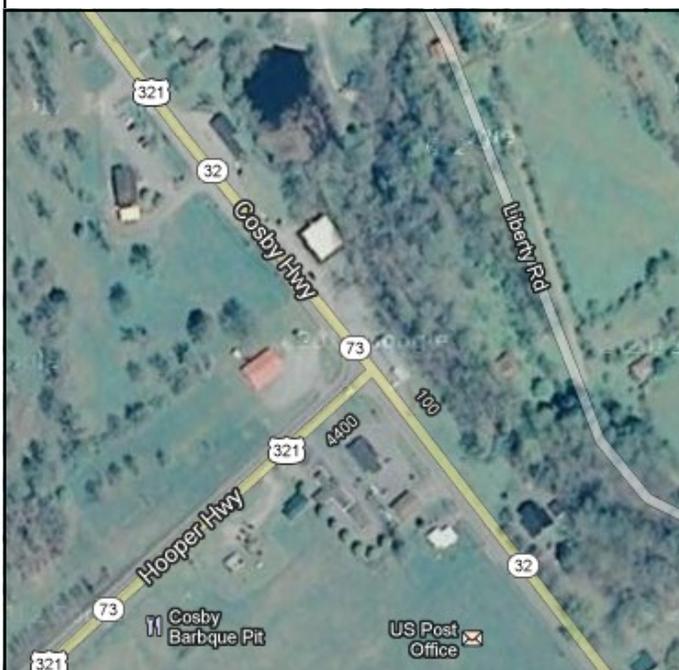
Janice Gates appealed after she pled guilty to vehicular homicide by recklessness and received a 6 year sentence suspended after 18 months. She killed two brothers, who were stopped in a traffic back up in Memphis. Gates plowed into them doing 86 mph in a 55 mph zone. She had a .07 BAC and Benadryl in her system. The Court noted she had a previous DUI reduced to reckless driving and other offenses and upheld the sentence.

VEHICULAR HOMICIDE MURDERERS ROW

ANATOMY OF A DRUG INDUCED MURDER

Brittany Baxter, 24, chose to drive in Cocke County on September 21, 2010. In her system were three drugs none of which were alcohol. She had 5.7 nanograms per millimeter of Alprazolam. Alprazolam is used to treat anxiety disorders and panic disorder (sudden, unexpected attacks of extreme fear and worry about these attacks).

- Alprazolam, also known as xanax, is in a class of medications called benzodiazepines. It works by decreasing abnormal excitement in the brain. Side effects of alprazolam include: drowsiness, light-headedness, headache, tiredness, dizziness, irritability, talkativeness, difficulty concentrating and dry mouth.
- Baxter also had Oxycodone. Oxycodone is used to relieve moderate to severe pain. Oxycodone is in a class of medications called opiate (narcotic) analgesics. It works by changing the way the brain and nervous system respond to pain. Oxy has side effects as well. They include lightheadedness and drowsiness.
- Baxter also had methamphetamine. Physical effects can include anorexia, hyperactivity, dilated pupils, flushing, restlessness, dry mouth, headache, tachycardia, bradycardia, tachypnea, hypertension, hypotension, hyperthermia, diaphoresis, diarrhea, constipation, blurred vision, dizziness, twitching, insomnia, numbness, palpitations, arrhythmias, tremors, dry and/or itchy skin, acne, pallor, and with chronic and/or high doses, convulsions, heart attack, stroke, and death.



At about 1:00 p.m. at an intersection in which Highway 32 and Highway 321 meet two drivers were legally stopped headed south on 321. The first vehicle was a 2003 Nissan Altima driven by Mr. Jordan Ottinger, an 18 year old. He waited for traffic with his turn signal on to attempt to turn left. The second vehicle was a 2003 Kawasaki Ninja motorcycle driven by John Burnett, age 46. He stopped behind the car. Baxter driving a 1989 Ford Tempo never slowed down at the intersection. She slammed into the motorcycle pushing it forward into the path of the other car she also hit. The Ottinger car burst into flame. The driver and passenger survived. John Burnett died that afternoon. He became one of the growing number of motorcycle fatalities on our roadways. He did nothing wrong.

Brittany Baxter, the woman who drove under the influence of drugs pled guilty and will serve a ten year sentence for vehicular homicide. She was driving with a license that had been previously revoked. If she had followed the law, she would not have driven at all. If she had followed the law, she would not have driven with a drug cocktail affecting her

judgment, her reaction time and her awareness. Young Jordan Ottinger and his passenger, Melissa, may never be the same. They have now been traumatized, surrounded one afternoon by the sights and sounds of an unnecessary tragedy. At some time in their lives they will be called to jury duty. A lawyer will ask if they have ever been affected by a DUI offender. They will remember the sights and sounds and face the decision of whether they can serve as a juror. Meanwhile, the Burnett family will have to find a way to honor the memory of their lost loved one. Unfortunately, this story is repeated every 10 days in Tennessee.



THE CRASH PAGE

By Jim Camp

IVAN PAVLOV HAD A DOG....

Most of us have heard of Ivan Petrovich Pavlov. He was a Russian physiologist and Nobel Prize winner. He also had a dog. He used this dog in physiological experiments. He discovered that if a bell was rung just prior to presenting food the dog would come to associate the bell with being fed and would salivate at the ringing of the bell even if no food was presented. This behavior is now commonly known as “conditioned response”.

I had something happen just the other day that made me think of our old friend Ivan. I received a call from a Law Enforcement Officer that I know fairly well. He has attended our trainings and I have been present and have witnessed his skill in the field. He is intelligent, conscientious, respectful and very good at this very difficult and thankless job. He works hard because he believes he can make a difference. He is also realistic about the strength and weaknesses of his cases. He called to discuss an Assistant District Attorney that he is working with. I was told this ADA won't prosecute any case involving an alcohol concentration under .11. From what he says this ADA feels that they are un-provable because the jury won't convict unless they see a stumbling “drunk”. This ADA believes that the defense bar will force him to try every case if he doesn't amend them down. In fact it appears as if most of this ADA's cases under .11 are reduced to Reckless Driving with two days in jail and dismissal of any accompanying Implied Consent violations. The Officer wanted advice. What could he do to convince the ADA that these cases can be successfully prosecuted?

That is a good question.

A good question because “fixing” this problem involves a philosophical and behavioral change on the part of this ADA. He obviously does not get it.

Look, we all understand busy dockets as well as judges who exert pressure to clear them and move cases along. But we should also understand something. When we concede our cases in this fashion we give away our most significant weapon. The JURY TRIAL.

Don't get me wrong. I am not saying that there is never a case for an amendment or compromise when the interests of justice demand it. There is, just not as a rule in EVERY case with a particular alcohol content or one with a refusal and no alcohol test. There are many reasons for this relative to impairment and highway safety, (issues we will deal with in other articles to come). But for purposes of this discussion a Prosecutor who regularly compromises this way creates a “policy”. They walk into the office every morning negotiating from this position of weakness, as opposed to one of strength.

How does this happen? In one word: CONDITIONING. It is not unlike the conditioned response of Pavlov's Dog. First, the defense lawyer tells the Prosecutor how weak the State's case is. How the video doesn't look that bad. How his client is a good guy, a working, contributing member of the community with no non-dui offenses on his/her record. How there is no risk to society because he was near the bottom of the dui legal limit and this is JUST a DUI. Oh yeah, I almost forgot. The defense lawyer is popular, maybe infamous. Perhaps they have even written a book. The Prosecutor is a bit intimidated. The lawyer says he will have to try the case if the charge is not reduced.

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