



# DUI NEWS

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**INSIDE THIS ISSUE:**

<i>TINA &amp; 10 YEARS</i>	1
<i>RECENT DECISIONS</i>	2-3
<i>OH OBION</i>	4-5
<i>SHARE THE ROAD</i>	6-7
<i>OBION TIMELINE</i>	8
<i>CLASSES SCHEDULED</i>	9
<i>PROSECUTOR OF THE YEAR</i>	10
<i>DO YOU HAVE THE ENERGY?</i>	11
	12

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## FOR THE LOVE OF TINA

Tina never knew what hit her. We will never know her last thoughts. She never heard her killer, Bernard Brooks, as he moaned, "I'm drunk. I'm drunk".

Tina Ford was the wife of a dedicated firefighter in Soddy Daisy. When the planes flew into the Towers on 9/11/2001, she was watching television. For the next five days, she was glued to the news coverage. Her family worried about her. She did not eat. She did not sleep. She wept.

The spouses of firefighters are courageous people. They support their spouse knowing the dangers of the job. The spouse knows they could get that horrible knock on the door with fatal news any day or any night.

Tina's family talked her into leaving the house for a while. She got in her car and drove north to Dayton. She visited the Wal-Mart buying rolls and rolls of Christmas wrapping paper. She decided to focus on Christmas, her family and friends. As she got into her car to return home, it was dark. She turned on her headlights, drove onto U.S. Highway 27, a four lane, divided highway and drove South.

On September, 26th, 2001, out of darkness arrived tragedy. Out of darkness came drunken Bernard Brooks in his pickup truck. Out of darkness came drunken Bernard Brooks without headlights.

Tina was killed immediately by the head-on crash. Brooks was pulled from his truck by a Good Samaritan, Jeremy Norfolk. Jeremy smelled gas and believed the truck was in danger of exploding. He and his girlfriend, Lisa, ran into that dangerous situation to save Bernard Brooks and his passenger from imminent death.

A year and two weeks later, Brooks received his constitutional right to a trial by a jury of his peers. He was convicted of Vehicular Homicide by Intoxication and Vehicular Assault. He received a 12 year sentence. Because he was on bond for another DUI when he killed Tina, he was sent to prison to serve his sentence. He was released on November 13, 2011. He served many years more than most offenders. He never received parole.

As a reader you may be wondering why this 10 year old case is featured on the front page of the NEWS.

Bernard Brooks was arrested again in August, 2012 for another DUI. He is now considered a first offender. Ten years have passed since his arrest in 2001. Since those ten years have passed, he benefits. He was arrested only eight months after his release. With our current law a ten year window without a DUI arrest means prior convictions do not count. For Bernard Brooks, his time in prison erased his prior convictions for multiple offender purposes. For the love of Tina, that must change.



## RECENT DECISIONS

### **State v McGee, 2012 WL 4017776      MOTION TO SUPPRESS DENIED AND AFFIRMED**

A motion to suppress a traffic stop was denied and affirmed by the Court of Criminal Appeals. A citizen alerted law enforcement that a white Lexus was being driven erratically headed north from Gatlinburg. Pigeon Forge Officer Adam Malone spotted the car, followed it and watched it cross a lane line twice before pulling it over and finding the impaired defendant. The motion to suppress was denied as Officer Malone had probable cause to stop the vehicle for violating TCA 55-8-115 and 55-8-143(a), which require a driver to maintain a lane of travel. The defendant argued the driving was not bad enough to satisfy Binnette. Laws requiring a driver maintain a lane were passed after Binnette.

### **State v Barber, 2012 WL 2866251      CONVICTION AFFIRMED**

In Bartlett, officers saw a vehicle in the middle of an intersection with the headlights on and the engine running. After approaching the car the arresting officer found a woman so impaired she could not get out of the car without holding onto the car. She nearly fell over during the finger to nose test and other tests were cancelled for her safety. She refused to get into the police car and was sprayed with pepper spray. The defendant tried to blame all her problems on the pepper spray, failing to take into account she was observed before and after the pepper spray had to be used. The conviction and ten day sentence to serve was affirmed.

### **State v White, 2012 WL 3792097      LAND SURVEYOR AS TIME/DISTANCE EXPERT**

In Lexington, Officer Brad Wilson was sent to find a car following another. The second car had seen the driver of the first driving dangerously and called it in. The officer got behind the defendant and after a stop sign the car sped away. The officer followed and when he was driving 42 mph in a 30 mph zone, the defendant continued to pull away going even faster. He was stopped and turned out to be a DUI offender. The defendant called a land surveyor as a witness to testify that his average speed was no more than 30mph. The surveyor did not claim that the officer was not telling the truth. If the surveyor took into account the speed when the driver was stopped and the speed when he slowed down to stop, an average of 30 mph could easily include a top speed over 42. The motion to suppress was denied and the conviction affirmed.

### **State v Hembrook, 2012 WL 3115208      IMPLIED CONSENT VIOLATION AFFIRMED**

Hembrook appealed the finding that he refused a test in violation of the implied consent law. He argued that the officer read to him parts of the implied consent form that had to do with people who are involved in a crash causing injury or death, so he was not properly informed of the consequences of his refusal. The problem with his argument was that he was also informed that failure to take the test would result in his license being revoked for a year. That was correct. He was advised. His license was revoked.

### **State v Webb, 2012 WL 4377230      CONSECUTIVE FELONY SENTENCE**

In Lincoln County, Myron Webb, 50, committed his 6<sup>th</sup> DUI offenses while on bond for his 5<sup>th</sup> DUI offense. After he pled guilty, a sentencing hearing resulted in consecutive four-year sentences. During the sentencing hearing he asked to be sent to treatment so that he could become a law-abiding citizen. During cross-examination by ADA Holly Eubanks, he admitted absconding from a halfway house and admitted he had made the promise to follow the law in a prior sentencing hearing. Since the defendant committed a felony while on bond for another felony, consecutive sentences were mandatory. The sentence was affirmed.

### Correction Issue 39

On page 8 of Issue 39 of the DUI NEWS I mistakenly reported that Public Chapter 994 concerning Bail Bonds indicated that if a person failed to appear the person could only make a new bond with cash or property. That was wrong. The General Assembly for some reason amended that proposal when it passed the law to include making a new bond using sureties pursuant to 40-11-118 or 40-11-122. Sorry for any inconvenience and thanks to everyone who called to let me know of my mistake.

## RECENT DECISIONS

### **State v Joyner, 2012 WL 4470517      STATUTE OF LIMITATIONS AND PRELIMINARY HEARING**

In a September decision, the Court of Criminal Appeals removed a trick we have been dealing with for a couple years across the State. Many prosecutors have dealt with this situation. A driver is arrested. The case lingers for a while in Sessions Court. The defendant waives his right to a preliminary and sends his case to the Grand Jury. It takes a while for the case to come out of the Grand Jury. An Indictment is issued and more that a year has passed since the arrest. Defense attorneys then file a motion to dismiss the case, because the prosecution has not commenced within the one year statute of limitations. Most Judges deny those motions, recognizing that the case was commenced in Sessions Court by the issuance of the warrant. In State v Joyner, the CCA reverses the decision of a Trial Court, which had dismissed the case. Judge Wedemeyer for the Court wrote:

"The trial court dismissed the charges finding that the State had not commenced prosecution before the expiration of the statute of limitations. After a thorough review of the record and relevant authorities, we conclude that the trial court improperly dismissed the charges because the Defendant waived his preliminary hearing and agreed to allow the case to be bound over to the grand jury before the expiration of the statute of limitations."

### **State v Asbury, 2012 WL 4459819      WITNESS ORDER**

A Knox County Criminal Court Jury convicted the appellant, Clois Dean Asbury, of driving under the influence (DUI), seventh (7th) offense; leaving the scene of an accident involving injury; and leaving the scene of an accident involving property damage greater than \$400. In addition, the trial court found that he violated the implied consent law. After a sentencing hearing, the appellant received an effective sentence of two years, eleven months, and twenty-nine days to be served in confinement for the convictions. As a result of his violating the implied consent law, his driver's license was suspended for one year. Asbury sought relief complaining that the prosecuting law enforcement officer was permitted to remain in the courtroom while the first three witnesses testified. The Court found the error harmless as there was nothing about the testimony of the first three witnesses that would have effected the testimony of the officer.

### **State v Barlow, 2012 WL 4358730      TRAFFIC STOP**

The defendant pled guilty, but reserved the question of his traffic stop for appeal. The defendant made an very abrupt stop at a traffic light that had been red for a while. Morristown officer was stopped at the light and was in place to observe the abrupt stop. Defendant drove into the nearby parking lot of a Pilot gas station and stopped his vehicle at a place away from the store. Defendant's vehicle remained there approximately a minute and then re-entered West Andrew Johnson Highway "at a very high rate of speed" westbound on West Andrew Johnson Highway, and drove that road until he turned down South Sugar Hollow Road, still at a very high rate of speed. Defendant finally stopped, shortly after 2:00 A.M., by pulling into the driveway of a closed concrete plant, the entrance to which was gated and locked. The Court affirmed the denial of the motion to suppress.

### **State v Pollock, 2012 WL 4057265      EXPERT TESTIMONY**

This was a conviction for two counts of vehicular assault stemming from a crash on November 4, 2009 in Obion County. Dr. Tonya Horton, a forensic scientist and special agent with the Tennessee Bureau of Investigation, was declared an expert in the field of pharmaceutical science. When Dr. Horton tested the blood sample taken from Pollock, she determined that it contained the following controlled substances: Meprobamate, Carisoprodol, Methadone, Diazepam, Nordiazepam, and Alprazolam. Dr. Horton testified about the known effects of the various drugs. During her testimony she referred to a study by Dr. Barry Logan about how Carisoprodol and Meprobamate impair an individual's ability to drive. She also testified about the effect of the other four drugs. The defense complained that she could not testify about a study. While affirming the conviction the Court stated, "Following the hearing, the court concluded that Dr. Horton was well qualified and testified as to the basis of her opinion, which was consistent with Rule 703."

## OH OBION TRAFFIC FATALIES EXPLODE IN 2012 IN ONE RURAL COUNTY IN TENNESSEE

Obion County is a small west Tennessee County with a population under 32,000. It includes 544 square miles. The median income for residents of the county according to the 2010 census is about \$39,000 with 14.9% of the population being below the poverty level as compared to 16.5% for the State. The Caucasian population is 87.6%.

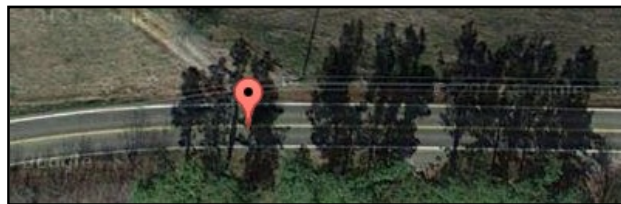
In 2011 there was one traffic fatality in the county. In 2012 there have been 11 by the end of June in nine crashes. Why did this county have a 1,000% increase in traffic fatalities?

With the help of the TITAN program, which was built to enable real time reporting of traffic crashes at the Department of Safety, we can examine the nine crashes to see what happened. We can also put names and stories to the numbers. Sometimes statistics hide the tragic losses, because they are just numbers. Every life lost on the roadways is a tragic loss. Some of these drivers could have prevented their deaths by remaining sober and wearing seat belts. We grieve for them and their families as well as those who were killed while doing everything right. Here is what we know:

Nine drivers were in crashes. Eight left the roadway and crashed into something, flipped or went down an embankment causing the death of the driver. The ninth driver crossed into oncoming traffic and killed three people and is facing vehicular homicide by intoxication charges. Blood tests or observations indicated that five of the drivers had drugs or alcohol in their systems. In another the presence of alcohol was indicated, but no tests were conducted. Two had alcohol without other drugs. Four of the deceased were not wearing seat belts. Eight of the nine drivers were driving pickup trucks. Four were Chevy's. Three were Ford's. One was a Dodge. The car was a Pontiac. The average age of the seven people was forty-nine. The average age of the vehicles was 16.5 years, which made the average vehicle a 1996 model.

### 55% HAD DRUGS OR ALCOHOL IN THEIR BLOODSTREAM

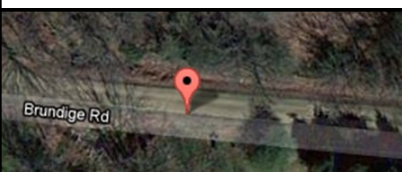
The tragic year of fatal crashes began on Saturday, January 7<sup>th</sup> at about 4:00 PM. A 53 year old white male driver in a 2003 Chevy pick-up, crossed into an oncoming lane causing a three-vehicle crash in which two other vehicles were driving in the opposite direction. It killed three people in the other cars. Due to pending criminal charges, the name of the driver is not included. The driver of the killing truck had five different drugs in his system according to a lab report. They were Phentermine, Lidocaine, Diazepam, Nordiazepam and Midazolam. The fatal crash occurred on State Highway 21, a two lane paved, marked road.



[The location of the crash on Highway 21]



Mark Osteen, 51, a white male, perished on Sunday morning around 4:00 A.M. on January 22<sup>nd</sup>. He had a .03 blood alcohol level and 25.4 nanograms per milligram of Xanax in his bloodstream. He was driving a 1998 Chevy compact pickup truck north on U.S. Highway 51, Allie Campbell Road, when he went into a yaw for 260 feet, hit a guardrail and road sign, flipped and was ejected. He was not wearing a seat belt. The highway is a four lane divided road.

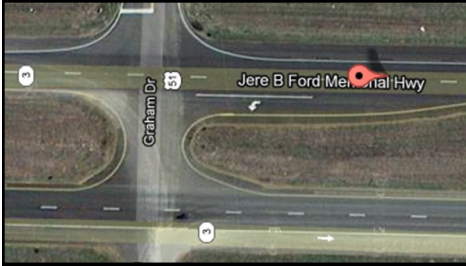


Mark Tibbs, 46, a white male, died in a one-truck crash on Saturday, January 28<sup>th</sup> at about 7:40 PM. His 1996 Black Dodge pickup truck left the Brundidge Road, a two lane county highway. It came back up on the road and then went off again and slammed into a culvert. He had drugs in his bloodstream including marijuana, cocaine and benzoylgonine.

## OH OBION



Jerome Farrell, 73, a white male, died Saturday February 4<sup>th</sup> just after midnight Wednesday in a one-car crash. He drove his 1991 blue Pontiac 600 off of South Bluff Road when he missed a curve and ran into a fence and tree. The road was another two lane county road with a speed limit of 55 mph. Farrell had a blood alcohol level of .19.



Charles Povolish, 61, a white male and Army Veteran, died Wednesday, February 29<sup>th</sup> at 1:00 PM when his blue 2003 Ford compact pickup truck left the U.S. Highway 51, Everett Blvd in Union City, and skidded in gravel until it crashed into a tree. Mr. Povolish was airlifted to Paducah, Kentucky, where he was pronounced dead. No alcohol or drugs were known to be involved. He was not wearing a seat belt.



Jennifer Jones, 39, a white female, died on a Friday night at about 10:30 PM on March 23<sup>rd</sup>. She was driving a 1995 red Ford compact pickup truck on Old Samburg Road in Hornbeak. She lost control and went into a clockwise whirl until her truck slammed into a telephone pole. Blood test results were not posted to the crash report. Ms. Jones was driving with a suspended license.



Darrell Calhoun, 51, a white male, died around midnight on Saturday, March 31<sup>st</sup>. Mr. Calhoun was sober and drug free. He was driving in foggy conditions on North Newman Glover Road, a two lane undivided road, when he went off the side of the road, overturned and died from his injuries. He was driving a 2002 Chevy, a large utility vehicle, at the time. He was employed as an over the road truck driver, who left behind a wife and daughter and two stepsons, one of who was stationed in Afghanistan at the time of his passing.



Terry Lofton, 26, a white male, was ejected through a side window from his 1986 Chevy S-10 pickup truck. Mr. Lofton had been drinking and was driving with a suspended license on Saturday, April 28<sup>th</sup> around midnight on Allie Campbell Road. He went into a yaw and slid into a dirt embankment, causing his truck to roll over. Lofton was not wearing a seat belt.



Harold Butler, 34, a white male, died when he was hauling a boat with his 1997 Ford pick-up truck on Elbridge Obion Road on Wednesday June 6<sup>th</sup> at about 6:00 AM. He apparently hit his brakes and struck another truck, went into a skid and went down a steep embankment flipping several times. No alcohol or drugs were involved. Butler was ejected. He was not wearing a seat belt, but it would not have mattered, according to the investigating officer. He was a commercial fisherman, who left behind a wife, son and three daughters.

**(Continued Page 8)**

**SHARE THE ROAD****Dave Huneryager**

Approximately 3.1 million professional truck drivers hit the roads every day to deliver everything from medical equipment to food to footballs for your local community. As these professional drivers and their trucks roll down the road, they are acutely aware of all they are able to see ahead and in their mirrors, but the real danger lurks in large blind spots in which they are unable to see. During any moment of their day at work, a car may unsafely pull in front of them, SUV's full of kids and families may pull up alongside of them and beg the driver to honk their horn, other four wheelers may quickly pass them in total fear or may ride directly alongside of the truck where the truck driver cannot see them. Quite possibly in the worst danger of all, is the car driver who is tailgating the truck in the hopes of saving fuel. Don't drivers know it isn't safe to be in a blind spot of, cut off or tailgate a large truck?

According to a study by the AAA Foundation for Traffic Safety, 75% of all truck-related car fatalities are initiated by the car driver. In the trucking industry, we think 75% of all truck-related car fatalities are UNINTENTIONALLY initiated by the car driver because they haven't been educated about sharing the road with large trucks.

Unlike passenger vehicles, trucks do not have rearview mirrors. Truck drivers don't have the luxury of manually checking their blind spots and these blind spots are real. From the driver's perspective, entire cars and motorcycles can disappear from view. Thirty-five percent of all car-initiated fatal accidents occur because the car was traveling in one of the truck's four blind spots.

Educating every motorist or passenger on the highway about sharing the road with large trucks is critical. Education can prevent injuries and save lives.

Did you know, if a professional truck driver has to make a sudden maneuver on the road, such as a quick lane change to avoid debris, crashes can occur if the truck driver doesn't know you are there? Below are some life-saving safety tips.

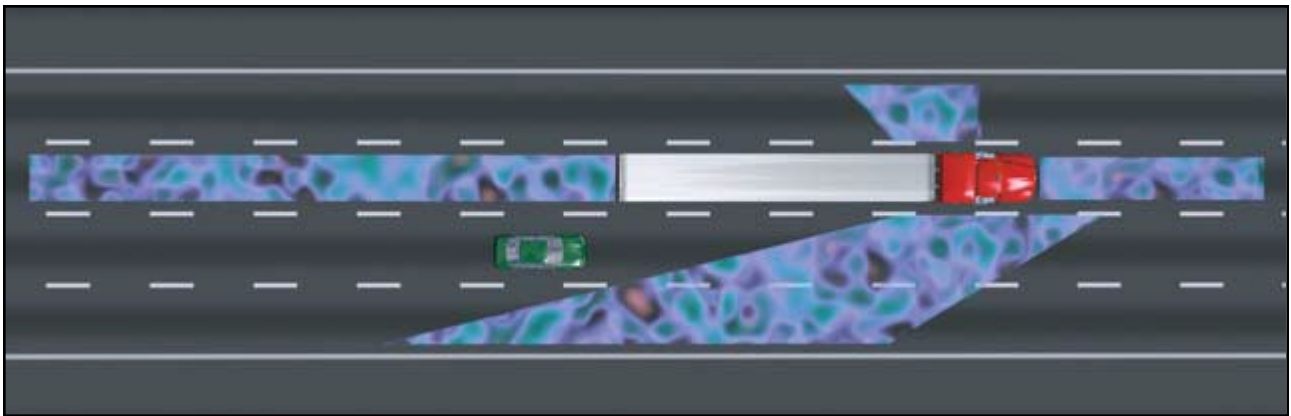
- If you find yourself alongside a truck, move past the truck or back off so that the driver can see you. Many trucks traveling the highways have a decal on the back of the truck that says, "If you can't see me, I can't see you." In applying this life-saving principle, look for the driver's face in the truck's side mirror. If you can see their face, they can see you.
- The best way to pass a truck is on the left side where the blind spot is smallest. The right blind spot of a truck runs the length of the truck and extends out 3 highway lanes.
- When traveling behind a truck, stay back far enough to ensure the driver knows you're there. Large trucks can often straddle debris in the road, such as lumber or a ladder. Even if the truck hits road debris, they may not be impacted. If that debris was suddenly in front of you because the truck drove over it and you were following too closely to see it coming, it could have a devastating impact.
- On congested roadways, traffic often slows down suddenly. If you are traveling too closely behind a truck, you will not see the slow down coming. At highway speeds, everything happens very quickly and accidents ahead or right in front of a truck require fast reactions. Leaving enough following distance between your vehicle and the truck will allow for that response.
- When passing a truck and merging in front of it, make sure you can see the truck's headlights in your rearview mirror before you cut back in. This allows the truck enough space to slow down or stop if something happens up ahead.

## SHARE THE ROAD (CONT'D)

- A fully loaded tractor trailer can weigh up to 80,000 pounds and take the length of a football field and both end zones to stop. Most passenger cars weigh around 3,000 pounds and have a much shorter stopping distance. Just because you are able to stop in time to avoid collisions does not mean that the truck behind would be able to if you have cut in too closely in front of it. Even if the driver makes a monumental effort to stop, they may not be able to do so if you haven't left them enough room.
- You may wonder why trucks leave extra space in front of them in heavy traffic. Doing so, enables the truck to have enough stopping distance for a safe stop. Don't fill in that space and take up the safety buffer that the driver is trying to maintain.
- Allow trucks adequate space to maneuver; they make wide turns at intersections and require additional space.

Motorists today are always in a hurry. With more congestion and distractions on our highways each and every day, it is important to be patient, keep your eyes on the road and slow down. Americans around the country depend on the trucking industry to deliver life's essentials safely and efficiently. The nation's 3.1 million professional truck drivers are extremely dedicated to keeping our highways safe. More than 80 percent of U.S. communities depend solely on trucking for the delivery of goods. Thus, sharing the road with large trucks is critical to getting to your destinations safely.

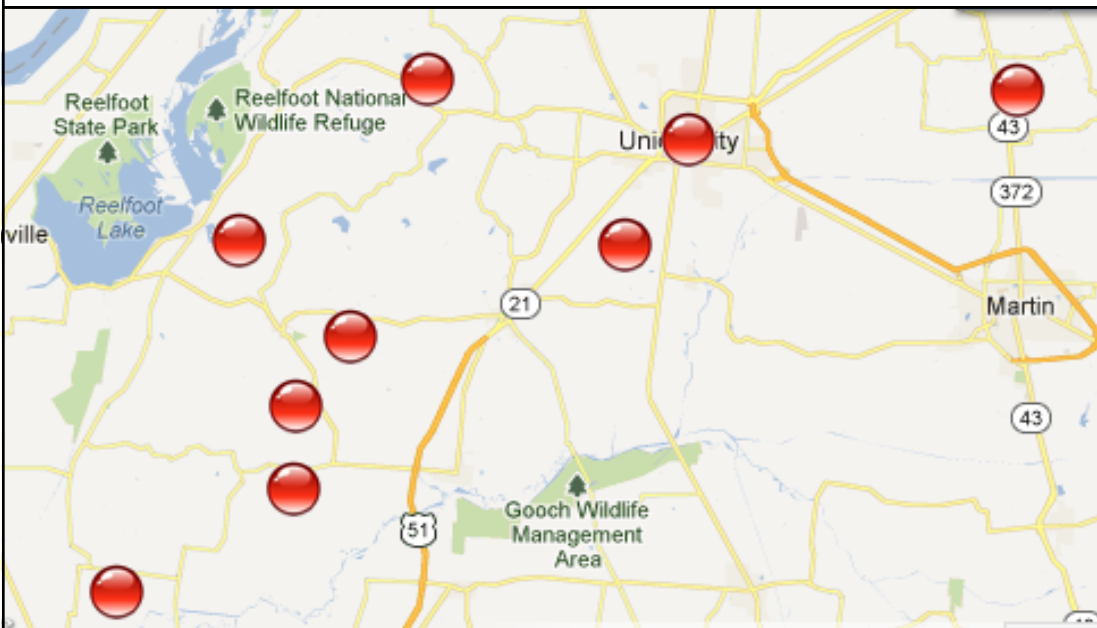
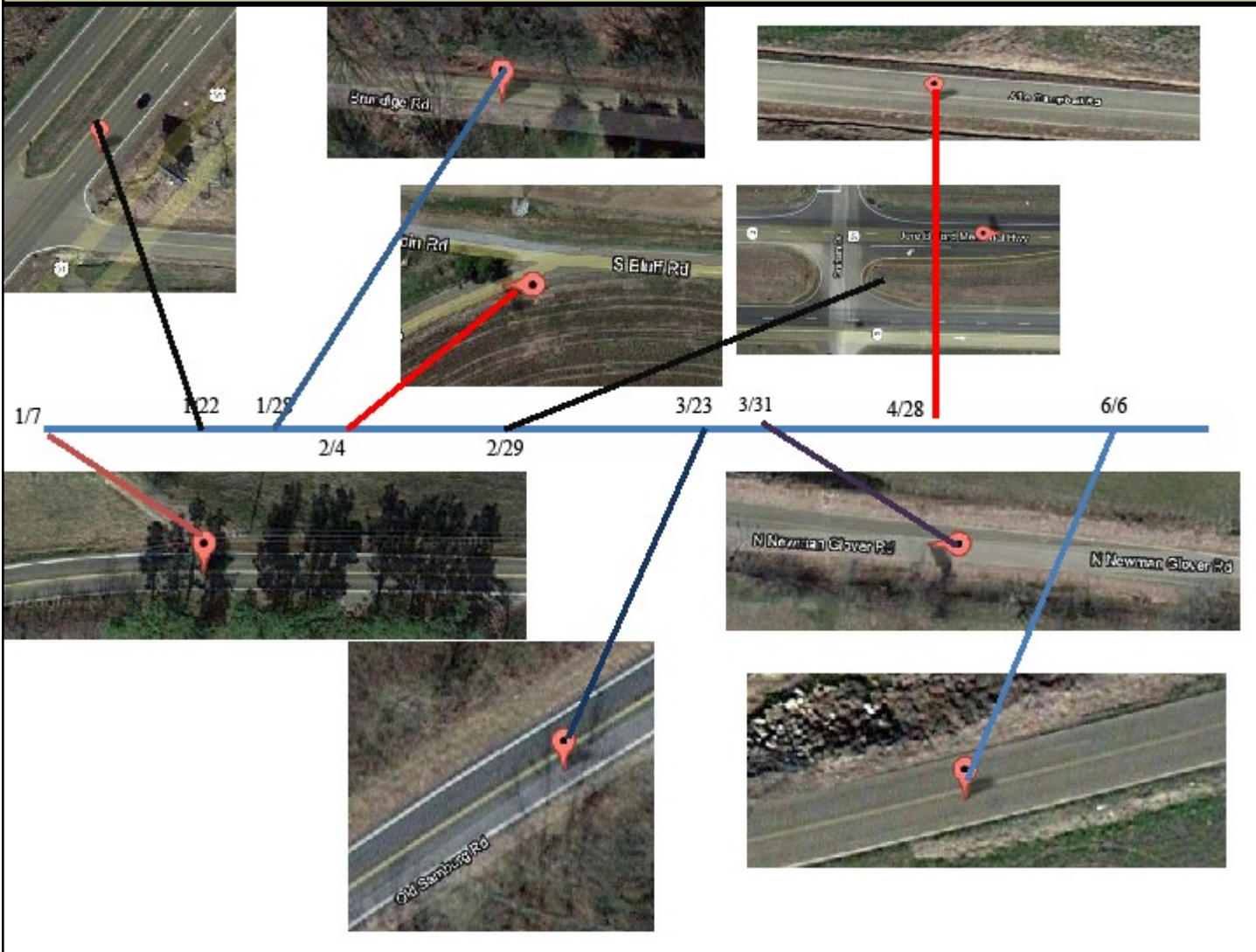
### Stay out of NO-ZONES



### ABOUT THE AUTHOR

Dave Huneryager is the President & CEO of the Tennessee Trucking Association, an association representing nearly 500 trucking and allied support companies based in and outside the State of Tennessee. Dave assumed his duties in July of 2004. Mr. Huneryager has been actively involved as a member of the Tennessee Trucking Association for the last 20 years. He served on the TTA Board of Directors, the Executive Committee and served as Chairman of the Board in 1999. Prior to coming to the Association, he spent 28 years with Roadway Express, the last 15 years of his career he served as District Manager in Nashville, Tennessee responsible for 25 facilities and 1700 employees in an eight state area. Mr. Huneryager is a member of the American Society of Association Executives and the Tennessee Society of Association Executives. He also serves on the Board of Directors of HELP, Inc. in Phoenix, AZ. Mr. Huneryager also serves as the Executive Vice President of the Tennessee Trucking Foundation.

# The Obion Timeline of Fatal Crashes



**44% of drivers NO seat belts.**

**88% were driving pick-up Trucks.**

**The average age of the trucks was 16 years.**

**22% had suspended licenses.**



## WHAT CAN BE DONE?

Answers to local problems are best solved at the local level. People in Nashville and Washington D.C. examine State and National issues and look for State and National solutions. Many things have been attempted that have significantly reduced fatalities across the nation and in our State in recent years. How can a small county, like Obion, tackle traffic fatalities?

One small county in New Mexico, McKinley County, has a potential solution. The county received a grant to increase saturation patrols, checkpoints and prosecution to reduce traffic fatalities. The unique aspect about the grant is that it included a DUI prosecutor, a law enforcement coordinator, the McKinley County Sheriff's Office, the Gallup Police Department and the Navajo Nation. The grant was only made possible when all the entities were willing to authorize officers from other jurisdictions and the prosecutor and law enforcement coordinator to cross jurisdictional lines. That may be the first time a prosecutor has jurisdiction in the city courts, county courts, State Courts and Navaho nation courts.

Funds from the grant are used to pay the full time law enforcement coordinator and prosecutor. The grant also pays overtime to officers who work checkpoints and saturation patrols in neighboring jurisdictions. It also funds traffic safety equipment, officer equipment and other necessary items.

Small counties are often left out of State and National efforts, because the entities involved look at data. Money spent making a small county safer is money that is not available for other efforts. The McKinley County, Gallup and Navaho nation concept simply increases the number of persons protected by the money. The regional solution makes the small county part of a larger effort. It took the cooperation of many leaders to make the McKinley County Regional Task Force program a reality. Turf issues had to be set aside. A prosecutor had to be found, who was licensed in both the State of New Mexico and the Navaho Nation. Perhaps some smaller counties in Tennessee could replicate the New Mexico/Navaho concept and find a new way to save lives on rural Tennessee roads.

## DUI DETECTION AND STANDARDIZED FIELD SOBRIETY TESTING CLASSES

Every prosecutor who is responsible for DUI cases should attend the basic DUI Detection and SFST class for officers. By attending the class as a student, the prosecutor learns what his officers have been taught. That makes the Court room examinations in DUI cases much more clear.

The 24 hour classes in 2013 are available as follows:

- January 7-9 Lawrenceburg
- Jan 14-16 Dyersburg
- Jan 22-24 Manchester
- February 5-7 Washington County
- Feb 11-15 Franklin
- Feb 18-20 Cookeville
- March 4-6 Rhea County
- March 18-20 Crossville
- July 22-24 Humboldt
- July 30-Aug 1 Washington Co
- August 26-28 Fayette County

Sign up for any of these classes at  
[www.tntrafficsafety.com/training](http://www.tntrafficsafety.com/training)

Other classes are available in the big four cities. Check with local Training Officer for availability.

## PROSECUTOR OF THE YEAR



MADD Executive Director Flint Clouse presented the award to ADA Sarah Keith

Sarah has been involved in several DUI cases that have been affirmed by the Court of Criminal Appeals. They are:

State v Asbury;  
 State v Hewit;  
 State v Gaddis;  
 State v McCloud.

Sarah has a burning desire to make sure the system works as well as it can, so that the guilty are convicted.

One out of every three persons in the USA will be involved in an alcohol or drug related crash in their lifetimes.

Sarah recognizes that those who are convicted are more likely to receive a wake up call, treatment and enough of a scare to stop endangering the people of Knox County.

Sarah Keith was honored at the Tennessee Lifesavers Conference as the Prosecutor of the Year by the Mothers Against Drunk Driving. MADD chose to honor Sarah because of her efforts representing the State as a DUI and Vehicular Homicide prosecutor in Knoxville. In the last year Sarah convicted Corrine Dobson in a Vehicular Homicide by Intoxication case. Dobson crashed into three pedestrians killing one and injuring another.

Sarah assisted law enforcement in obtaining search warrants for the defendant's smart phone and for DNA testing by the TBI. Throughout the investigation, Sarah assisted investigators in compiling the investigatory file and advising officers from patrol, forensics, and reconstruction about issues as they arose. Eventually Dobson pled guilty and received a ten year sentence for vehicular homicide by intoxication.

A week after the Dobson plea, Sarah was back in Court fighting for the people of Tennessee in a case in which Stephen Richard killed his passenger. The defendant was driving at excessive speed and lost control and flipped his vehicle, which traveled about 750 feet off the road. Both the driver and passenger were ejected. The defendant's passenger, who was a close friend of his, was killed. The defendant's Blood alcohol level was .16.

The defense was that the two were drinking together all day and that the victim's BAC was twice as high as the defendant's. Also, he asserted that because he had killed his friend, he should get some sympathy because he felt terrible about it. Additionally, the defendant had no prior felony or DUI history.

In addition to securing convictions on these two vehicular homicide cases this year, Sarah has also worked with our local law enforcement in Knox County to improve the investigation and prosecution of crash fatalities and has assisted in many more investigations of cases that are currently pending. When Sarah realized that some vehicular homicide cases weren't being reported to the DA's office until weeks after the death had occurred, she became concerned about the loss of potential evidence and lack of communication with victims' families. In addition, she saw that the investigation of vehicular homicide cases in general were sometimes missing information that the DA's office needed to help law enforcement (like the search warrant for the phone evidence in the Dobson case). She met with crash reconstruction officers from different offices to discuss how to improve the quality of the cases and to learn how the DA's office could better assist officers in their investigations. Sarah created and serves as the Chairperson of the 6<sup>th</sup> District Vehicular Fatality Investigation Review Board.

This multi-agency Board is comprised of members of the DA's Office, Knox County Sheriff's Office, Knoxville Police Department, and the Tennessee Highway Patrol. They meet quarterly to review all traffic fatalities from the past quarter. Their goal is to create a more standardized operating procedure for the law enforcement officers investigating the cases and the ADA's who handle these cases in Court. The Board designated two ADA's to be notified of all traffic fatalities, Sarah being one of those. These two attorneys deal with these cases and present them to the Grand Jury on a more frequent basis and are often better equipped to answer officers' questions and to make charging decisions than attorneys who deal less frequently with traffic and DUI issues.

Sarah looked beyond daily caseloads and found a new way to solve problems in crash cases. For this and all her efforts, MADD selected her to receive the honor of being named "Prosecutor of the Year".

## DO YOU HAVE THE ENERGY? (cont'd from Page 12)

**Frictional Energy** is the most basic and fundamental form of energy. It is the source of deriving the basic slide to a stop formula. The simplest way I have heard this explained is a vehicle is transferring energy into the roadway (Or other surface) through the mechanism of friction, as it slows.

**Damage Energy** comes from “Crush”, in a collision the vehicles transfer energy into each other. They are crushing and causing damage to each other which is expelling energy. In low speed collisions it is entirely possible for a vehicle to expel all of its energy during this part of the crash and you will find it sitting right there still in contact with the opposing item. In high speed crashes (or high energy crashes) it is customary to find some form of post impact travel, which could be nothing more than rebounding from the impact, as with a pole or tree.

Obviously the most accurate energy analysis would consist of a combination of both sources of energy. Post impact energy and damage energy combined to calculate the total amount of energy acting on the object, and then properly attributed to the source of that energy. This is not always possible, and often all you can do is Frictional Energy from the post impact travel of the vehicle. The result would be a minimum speed and can be presented as:

*Lawyer: “Officer were you able to calculate a speed for this vehicle at impact?”*

*Officer: “Sir, I was unable to account for all of the energy expelled in this crash because of prior damage to the victim’s vehicle, but the minimum speed of the vehicle at impact was calculated using Energy Analysis at 47 miles per hour.”*

*Lawyer: “Minimum Speed? Do you mean the slowest he could have been going?”*

*Officer: “Yes sir, that is the absolute slowest he could have been travelling when he impacted the victim’s vehicle”*

Energy is the basic building blocks of reconstruction and the investigator must have a good working relationship with the principles of energy in order to properly understand, gather evidence, conduct a reconstruction, and present it in court. It is not necessary to become a physicist to work with energy, it is not required to be an accomplished mathematician to work with the large numbers presented in energy formulas, all you need to do is be able to explain to a jury the elements we discussed earlier:

- It is based on scientific principles
- You have been trained on how and when to use it
- You applied it properly
- The results were...

When done properly, it will be nearly impossible for anyone to argue with your principles and results in any valid manner. While it is not necessary to train our jury in the mathematics of energy analysis, it is necessary for them to understand that you know why you did it, and what it is based on. The theories they will hear when you talk about “Newton’s Laws of Motion” are the basics of their childhood and even if they slept thru class that day, they will remember seeing and hearing it. If you get the jury to relate to your theories you have set the base platform to build your relationship and develop trust. Energy is a valuable tool in your tool box, get it out and work with it from time to time and don’t let it rust in the bottom of the box.

### ABOUT THE AUTHOR

Sergeant **Allan Brenneis** entered Law Enforcement in 1981 on the Picayune Police Department in Mississippi, and graduated from the Mississippi Law Enforcement Officers Training Academy. In 1982 He enlisted in the United States Army and served as a Military Policeman, Military Police Investigator, and Military Police Sergeant. In 1989, Brenneis joined the Tennessee Department of Safety. He currently serves on the Critical Incident Response Team, where he has been since its inception in February 2001. On March 27, 2011 Brenneis was promoted to Sergeant over the Critical Incident Response Team 3 which serves both the Nashville and Lawrenceburg Districts, a total of 23 counties. Sergeant Brenneis is a DUI Instructor, Radar Instructor, and is certified by the Police Officers Standards and Training Commission (P.O.S.T.) as an instructor in the field of Traffic Crash Investigation. He has been certified as an expert in the field of Traffic Crash Reconstruction and has given testimony as such in numerous Tennessee counties.



## THE CRASH PAGE

### DO YOU HAVE THE ENERGY?

THP SGT. Allan Brenneis

Recently, my team was requested to assist a department with a speed estimate on a repeat offender drunk driver that crashed her truck into a line of stopped traffic. The crash involved 4 vehicles and killed two people, a child and his grandfather out for the day together, and injured one other. Three of the cars, which were stopped before the collision, travelled to an uncontrolled stop and left excellent evidence of locked brakes on all vehicles. Our striking vehicle travelled through the crash to an uncontrolled final rest well off the roadway. With these vehicles all bouncing off one another like pool balls in a well-orchestrated corner shot, momentum was not an option for us. Since all of the energy in this crash came from one vehicle, it was only natural to me to gather the Energy on each vehicle and add it all back to our striking vehicle. The resulting minimum speed was right in line with our crash results, evidence, and eye witness accounts of the crash. Our subject pleads guilty and will not be back on the roads for a long time.

A vehicle weighing 3400 lbs traveling at 50 MPH generates 286,960 ft lbs of Kinetic energy, which is to say that  $KE = 286,960$ . (K.E.=  $0.03376 \cdot W \cdot S^2$ )

These numbers can often be a bit intimidating, and even more, it is a bit hard to explain to a jury full of lay people how something can generate a 6, 7, or even 8 digit number of units of energy that has no real unit of measure other than “Slugs” or “Energy” or “Ft. Lbs”, or some other term that is not used when buying milk, bread, or gasoline at the convenience store. With this realization, I have found a large number of Reconstructionist that will shy away from the use of energy, and quite a few that haven’t done an analysis based on energy since they completed reconstruction school. If you find yourself in this group, you have lost the use of a powerful tool that can make all the difference in getting a solid and resounding answer that you can have confidence in, and give you a great night sleep when determining guilt or innocence of an involved party. We all get that same warm fuzzy feeling when we clear someone of wrong doing as when we successfully prosecute the wrong doer. Finding the truth; this is the primary function of any good Reconstructionist.

The simple explanation of Energy is that it is derived from Sir Isaac Newton’s laws of motion. Particularly Newton’s Second Law, which states:

The acceleration produced by a particular force acting on a body is directly proportional to the magnitude of the force and inversely proportional to the mass of the body.

\*- Newton's Second Law of Motion, translated from the Principia's Latin

Every school child has heard of these laws, now you can explain to them why they are important, and you have the jury’s attention. Even if they don’t understand energy or even fully comprehend the 2<sup>nd</sup> law, you are talking to them in a language they have heard before, and they can relate to it. When describing the relationship of energy to a crash, I always try and make the comment “Energy in must equal energy out” the last thing the jury hears from me. I have enjoyed much success with this simple explanation and usually leave the Jury nodding their heads in a nice affirmative motion.

I subscribe to the John Kwasnoski school of thought that “less is more”. It is not necessary to train a jury how to work Kinetic Energy Equations or how to convert energy into speed. It is sufficient to let them know that your calculations are based on scientific principles, that you have been properly trained in using and completing these calculations, that you performed them in the manner you were trained, and the results of those calculations.

In a crash, Energy can be derived from two primary sources:

- Frictional Energy
- Damage Energy

(Continued Page 11)