TNDAGC

DUI NEWS

ISSUE 42

April 2013

PUBLISHER:
Tom Kimball, TSRP; ADA
LAYOUT AND DESIGN:
Sherri Harper

INSIDE THIS ISSUE:

TN DISTRICT ATTORNEYS GENERAL CONFERENCE,
James W. Kirby, Exec. Director
226 Capitol Blvd. Bldg, Ste 800
Nashville, TN 37243
DUI Training Division
DUI Office: (615)253-6734
DUI Fax: (615) 253-6735
e-mail: tekimball@tndagc.org
Newsletters online at:
Www.tndagc.org/dui/htm

Governor's Highway Safety Office
James K. Polk Office Bldg
505 Deaderick Street, Ste 1800
Nashville, Tn. 37243
Office: 615-741-2589
web-site: www.tdot.state.tn.us/

This material was developed through a project funded by the Tennessee Department of Transportation, Governor's Highway Safety Office and the National Highway Traffic Safety Administration.

GOT GRAVY?

Imagine ordering a country fried steak. The order is delivered and there is no gravy. The waiter apologizes. He can not provide any gravy today. You eat the food with disappointment and perhaps butter on your mashed potatoes, but still receive the sustenance of the food.

Prosecuting a DUI case without a slam dunk toxicology report can feel like eating a country fried steak without gravy. Often there is no toxicology report, because an offender refuses a test or the lab is not equipped to test for a substance. We prove the offender was driving while his ability to drive was impaired and we convict the guilty offender. We may never know what the substance was that caused the impairment. We still eat our steak without gravy. When the cause of impairment is a drug and we get a blood test, we get a lab report. We call the forensic scientist to ask if the toxicology result means the driver was impaired. The scientist tells us she can't say if the driver was impaired at the time he was driving based on the amount of drug found in the bloodstream. She does not know how long the drug has been there. The prosecutor now has to think. What does that answer mean for this case? It means we don't have as much gravy for our steak as we would like. We prove impairment based on bad driving, contact with the driver at the car window, performance of field sobriety tests, admissions and other observations. The forensic scientist adds that there was a drug or drugs in the system. That information supports the fact of impairment. It is gravy for our steak.

WHAT DO YOU FEED YOUR JUDGE?

Prosecutors who fear the testimony of the forensic scientist condition their Judge to do the same. If the prosecutor does not trust the observations of the officer, why should his/her Judge? It is easy to proceed when the toxicologist walks into court and states than all human beings would be impaired, if they had the amount of drugs in their system as in this case. We rarely, if ever, hear such words. We should not expect them. When we do hear them, the driver usually concedes guilt. That's a country fried steak covered in gravy with an extra bowl of gravy on the side.

The prosecution of an impaired driver requires the prosecutor to analyze his or her case by looking at all of the evidence. The prosecutor must understand that drugged driving cases are not dependent on a number from a scientist. The law requires we prove **impairment**. The number in a drug case is not as important as proof of the drug being present in the system to support the observations of impairment and to eliminate other ingenious explanations or excuses. If we fear the case that lacks a slam dunk result, we are not able to see we have been served enough gravy for our steak.

RECENT DECISIONS

State v Wenzler, 2013 WL 865333 Tenn Crim App March 2013 **PRIOR CONVICITONS**

A Mississippi prior conviction was used to enhance a DUI conviction to a third offense. The prior was silent as to whether the defendant had counsel or waived counsel. Judge Woodall in a unanimous decision said that it didn't really matter. In Tennessee we follow the precedent set by *Hickman v. State*, 153 S.W.3d 16 (Tenn. 2004). Hickman tells us that a valid conviction is a valid conviction and prior case law that is in conflict is no longer good law. In Hickman the Court stated that: "The judgment's *silence* as to whether the petitioner was represented by counsel or waived the right to counsel does not defeat the presumption of regularity and render the judgment void. Judge Woodall concludes that State v Whaley and it's progeny are no longer valid as they conflict with Hickman. The Court States in the Wenzler decision:
"In summary, we reject the State's argument that since the Mississippi judgment did not require actual incarceration, rather than just a suspended jail sentence and probation, that the rule in *McClintock* would not apply. However, under the definition of a "facially invalid" or "facially void" judgment set forth in *Hickman*, we conclude that *O'Brien, Whaley*, and their progeny no longer offer relief to Defendant. Furthermore, the applicable case law does not require the State to affirmatively prove that Defendant had counsel or waived counsel in defendant's case. Accordingly, defendant is not entitled to relief in this appeal."

State v Christopher, 2013 WL 1088341 Tenn Crim App March 2013 **SENTENCING DUI & CHILDREN**

In Hancock County, Deputy Rocky White saw a yellow Camero cross the center line and then the fog line. He pulled the car over to find a driver with a strong odor of alcohol on her breath and four young children in the car with nary a car seat at all. Deputy White testified about the futile performance of field sobriety tests and correctly identified the one leg stand by it's correct name. The defendant testified as did the parents of the four children and attempted to contradict or excuse everything the officer reported. The defendant seemed to think she was fine despite her prescription drugs and alcohol. The jury found her guilty and the Court affirmed a sentence of 120 days for the DUI first offense and 30 days for driving under the influence with children in the car.

State v Bledsoe, 2013 WL 936296 Tenn Crim App March 2013 **PRIOR CONVICTIONS HMVO**

Bledsoe challenged the use of prior convictions in the determination that he is a habitual motor vehicle offender. He claimed that two of the convictions were void, because he had not signed on the line to indicate he waived counsel. The Court affirmed the Trial Judge, who ruled against him. The Court ruled that his reliance on State v Ridley, 791 SW 2d 32 (Tenn Crim App 1990) was misplaced. Waiver of counsel or the representation of counsel is necessary to a voluntary and knowing guilty plea, *Boykin v. Alabama*, 395 U.S. 238, 243–44 (1969), but their written waiver is not necessary to facially validate a judgment, *see State v Tansil*, 72 S.W.3d at 667 *(Tenn Crim App 2001)* Moreover, it is well established that a guilty plea entered unknowingly and involuntarily renders a judgment voidable rather than void. *See, e.g.*, *Archer v. State*, 851 S.W.2d 157, 163 (Tenn.1993); *Johnson v. State*, 834 S.W.2d 922, 925 (Tenn.1992). The Court reiterated that the only method for attacking prior convictions is through the Post Conviction Procedure Act.

RECENT DECISIONS

State v McLain, 2013 WL 709616 Tenn Crim App Feb 2013 **MEDICAL RECORDS SUPPRESSED**

The State obtained the medical record of the driver after a clerk, not a Judge, signed a subpoena for the records and failed to comply with TCA 40-17-123. The statute requires at (d)(1) Upon preparing the affidavit, the law enforcement officer shall submit it to either a judge of a court of record or a general sessions judge who serves the officer's county of jurisdiction. The judge shall examine the affidavit and may examine the affiants under oath. The defendant pled guilty. A DUI conviction can be supported by evidence independent of inadmissible blood or breath test results, then the admissibility of such test results are not dispositive of the case. State v. Gregory W. Gurley, 2002 WL 1841754, at *3 (Tenn.Crim.App. at Jackson, Aug. 6, 2002). However, the State dismissed the indictment charging the appellant with DUI and proceeded with an indictment charging the appellant with DUI per se. McLain reserved the question of whether the blood test result contained in his medical records was admissible. The Court ruled that it was not and remanded the case for dismissal.

State v Glavin, 2013 WL 593406 Tenn Crim App Feb 2013 **CIVIL IMPLIED CONSENT**

Glavin was convicted of felony evading arrest and a civil implied consent violation by a jury. He had previously pled guilty to DUI from the same incident. The conviction for evading arrest was affirmed. The conviction for violation of implied consent was reversed. The Court found that:

1) The trial court, rather than a jury, has the authority to determine whether a violation of the noncriminal implied consent law occurred and
2) This determination should have been made by the general sessions court rather than the criminal court, unless the State filed a motion requesting that the criminal court make the determination at the same time that it disposed of the offenses for which the driver was arrested.
3) There was no such motion in writing.

Tenn. Code Ann. 55-10-406(a)(4)(A) gives the general sessions court exclusive subject-matter jurisdiction to make the determination of whether a person has violated the implied consent law and gives a circuit court jurisdiction only "upon motion of the state." Where a court's jurisdiction is limited or conditional, the jurisdictional basis must be demonstrated in the record. *See generally Brewer v. Briggs*, 10 Tenn. App. 378 (1929) (holding that where court's jurisdiction is special or limited, its jurisdiction must always appear from the record before a presumption of regularity attaches to it).

THIS CASE DEMANDS THAT DISTRICT ATTORNEYS WHO WAIVE AN IMPLIED CONSENT CASE TO THE CRIMINAL COURT DO SO IN WRITING!

State v Vader, 2013 WL 1279196 **JURY ARGUMENT**

Neil Vader was convicted by a jury of DUI 4th offense, driving in violation of the habitual motor vehicle offender law and violation of implied consent. This case is instructional in that the Court of Criminal Appeals addressed both the prosecutor and the defense attorney about expressing personal opinions in closing argument. Any errors did not effect the outcome. The conviction was affirmed, but the court made a point of directing us to review Rule 3.4 of the Code of Professional Responsibility concerning the expression of personal opinions about guilt or innocence.

SUPREMELY DISAPPOINTING
The Supreme Court Continues the BLUE LIGHT SPECIAL

In March, 2006, the Tennessee Supreme Court issued it's decision, written by Chief Justice Barker, in State v Williams, 185 SW3d 311. The case was released on March 13th. I was teaching officers that day at a DUI Detection and Standardized Field Sobriety Test class at the Tennessee Bureau of Investigation in Nashville. Kristen Shea, an Assistant District Attorney was speaking as my e-mail began to explode. I glanced at the case and could not believe what I was reading. I left the room and read the case in it's entirety. I counted to ten and returned to the room. I taught a group of officers about the Williams decision that day. I have been teaching officers about the Williams decision now for seven years.

Every officer wanted to invite Chief Justice Barker to spend one night on the road in a patrol car. Every officer was convinced that was all it would take to convince the Chief Justice that he was putting many lives at jeopardy with his ruling, which they believed would change his mind.

In the Williams case, a car was stopped in a lane of traffic on a two lane road blocking a lane. No other vehicles were present when the officer pulled in behind the stopped vehicle and turned on his blue lights to illuminate the scene. Every officer in every class for the last seven years indicated to fail to illuminate the scene could be deadly. Another vehicle approaching the stopped cars at night could easily crash into the cars injuring or killing themselves, the officer and anyone in the stopped vehicle. In addition to physical harm the city or county would be liable for any injury or death.

Every officer in the last seven years also recognized that he/she had to stop and see what was going on in the Williams car. For all he/she knew, someone could be dying in the vehicle and need emergency assistance. Failure to respond would be foreign to officers who protect and serve.

In the Court of Criminal Appeals, Williams had been decided differently. Judge Gary Wade wrote the opinion and was joined in the opinion by Judges Witt and Ogle. He concluded:

"In our view, the trial court erred by reaching the conclusion that the officer was required to have had a reasonable suspicion in order to approach the idling vehicle. From the limited findings made by the trial judge, this court cannot conclude that this was a seizure of the defendant requiring reasonable suspicion. Instead, the proof suggests that the officer's approach of the defendant was more likely a part of his community caretaking and public safety function to investigate a car stopped or appearing to be stopped in a lane on a city street."

After Chief Justice Barker left the Supreme Court and Judge Wade joined the Court and became Chief Justice Wade, there was hope that the Williams decision might be reversed.

Jump forward now to March, 2013. The Court had accepted the case of State v Moats, for it's review. Mr. Moats was sitting in a pick up truck in an empty grocery store parking lot at 2:00 a.m.. The truck had it's lights on, but was the only vehicle around. An officer saw it and took note. She knew the parking lot was a location for drug transactions. She drove on, but after five minutes came back and saw the truck had not moved. It's lights were still on, but the engine was not running. The officer did not have any idea what was going on in the truck, but felt that she should check it out. She parked behind the truck and turned on her blue lights. She did not have reasonable suspicion that a crime was being committed or had been committed. She was not stopping a vehicle. She was checking on the vehicle.

When she walked up to the truck, the driver's side window was down. A man sat in the driver's seat. She asked him if he was okay. He replied he was fine. The officer noticed a beer in the cup holder on the dash and noticed the keys in the ignition. I t did not take long to determine that Mr. Moats was under the influence.

The Trial Judge ruled that under the circumstances a police officer, in the role of community caretaker, was permitted to approach the parked vehicle to check it out. The Court of Criminal Appeals disagreed. In an opinion in November, 2011, Judge Jerry Smith was joined by Judges Witt and McLin in overturning the Trial Court, suppressing the evidence and dismissing the case. Remember Judge Witt was involved in the Williams appeal written by Judge Wade in 2005. The Court believed that the Williams decision bound them to reverse the Trial Judge. This led to the decision of the Supreme Court to consider taking the case or leaving it alone. When the Court decided to accept the case, there was some conjecture that this was the opportunity for the Court to correct the error of the predecessor Court. In stead it doubled down.

STATE V. MOATS

Chief Justice Wade wrote the majority opinion ruling that poor Mr. Moats had been mistreated. Moats, an 8th offender, was wrongfully seized. The officer who pulled behind his truck had seized him without reasonable suspicion and she was not taking care of her community, when she went up to the window to see what was going on in the truck. Chief Justice Wade wrote, *" Our primary concern in this instance is whether the actions of Officer Bige qualified as a valid exercise of the community caretaking function, which is defined within the third tier of police-citizen encounters."*

There was no objective indication that Officer Bige needed to activate the blue lights to protect either the defendant or other motorists from possible harm. Without any likelihood of an accident or peril, the activation of Officer Bige's blue lights was directed solely at the defendant. Because no other cars were in the parking lot and the officer parked directly behind the defendant, the blue lights could hardly be interpreted as for any purpose other than a notice to the defendant. Under the totality of these circumstances, a reasonable person would not have felt free to leave. See Williams, 185 S.W.3d at 318. In consequence, the use of blue lights qualified as a seizure of the defendant.

Our extensive research suggests that community caretaking can generally be classified into several categories, all of which are separate and distinct from traditional criminal investigation or detection. The primary form of community caretaking, which is illustrated by Hawkins, Jensen, and Vandergriff, is also known as the public safety function and is the type of community caretaking originally identified by the United States Supreme Court. See Naumann, 26 Am. J. Crim. L. at 338 (citing Dombrowski, 413 U.S. at 441). In Dombrowski,

The Court observed that because of the extensive regulation of motor vehicles and traffic, and also because of the frequency with which a vehicle can become disabled or involved in an accident on public highways, the extent of police-citizen contact involving automobiles will be substantially greater than police-citizen contact in a home or office.

We are aware that the doctrine of community caretaking, as interpreted and applied in our state—i.e., as a type of third-tier consensual police-citizen encounter—represents a minority rule among other jurisdictions. Indeed, as the dissent points out, the vast majority of courts have applied the community caretaking doctrine as "an exception" to the warrant requirement of the Fourth Amendment to the United States Constitution. As noted in this opinion, however, this Court has for decades interpreted article I, section 7 of the Tennessee Constitution as imposing stronger protections than those of the Federal Constitution, which, under stare decisis, we are not prepared to dismissively brush aside.

Justice Clark, joined by Justice Koch, wrote a dissent in this case and was clearly unhappy with the majority opinion. She pointed out that Tennessee is one of only four States that limits the community caretaking function of law enforcement to the public safety function. She states, "Only four states, Illinois, New Mexico, North Dakota, and Tennessee, have ever confined the community caretaking doctrine to consensual police–citizen encounters. See People v. Luedemann, 857 N.E.2d 187, 197 n.4 (Ill. 2006). The supreme courts of two of these states, Illinois and New Mexico, have explicitly abandoned this view and abrogated prior decisions to the contrary. See Luedemann, 857 N.E.2d at 198-99 ("[The 'community caretaking' doctrine is analytically distinct from consensual encounters and is invoked to validate a search or seizure as reasonable under the fourth amendment. It is not relevant to determining whether police conduct amounted to a seizure in the first place."); State v. Ryon, 2005-NMSC-005, ¶ 20, 108 P.3d 1032, 1041 (2005) (acknowledging that "our description of community caretaking encounters was wrong" and cautioning that certain prior decisions should "not be viewed as limiting the community caretaker exception to voluntary or consensual police-citizen encounters").

REORGANIZED DUI LAW EFFECTIVE JULY 1ST!

It has finally happened! After seven years and more than seven drafts, the DUI law has been rewritten. The law was passed unanimously in both houses of the General Assembly. The purpose of the rewritten law was to reorganize the existing law in a way to make it more user friendly. The new law is available on our website at http:dui.tndagc.org in the RESOURCES folder.

The law is organized to allow courtroom practitioners to find the aspects of the law that most effect them in the first twelve sections. Those who supervise probationers, collect fees, install ignition interlock devices and the like will find those parts of the law in the remaining eight sections.

The reorganized law will look something like the following, but section definitions will be written by the Codes Commission at a later date.

55-10-401: Definition of the Crime
55-10-402 Penalties: Incarceration; Litter Removal; Probation
55-10-403: Penalties: Fines-Payment-Restitution
55-10-404: Effect on Driving Privilege
55-10-405: Prior Convictions
55-10-406: Tests for Alcohol or Drug Content of Blood
55-10-407: Implied Consent Violations
55-10-408: Tests for Alcohol or Drug Content of Blood: Procurement and Processing of Samples; Results; Additional Tests
55-10-409: Restricted License Eligibility; Locations and Times; Ignition Interlock
55-10-410: Probation; Treatment; Assessment; DUI School
55-10-411: General Provisions; Guilty Plea Advisement; Law Use Not a Defense; Presumptions
55-10-412: Disposition of Fines:
55-10-413: Fees and Funds; Brain Injury Fund; Ignition Interlock; TBI Lab Fund
55-10-414: Seizure of Vehicles
55-10-415: Underage Driving While Impaired
55-10-416: Open Container;
55-10-417: Additional Penalties; Tampering with Ignition Interlock
55-10-418: Ignition Interlock Providers-Duty To Report
55-10-419: Interlock Indigency Fund and Disbursement
55-10-420: Litter Removal Procedures
55-10-421: Effect of Repeal of Adult Driving While Impaired

WHAT'S NEXT FOR THE DUI LAW?

The law passed by the Senate and House to reorganize the law could itself be amended this legislative session by a proposed expansion of the Ignition Interlock law. The proposal HB 353 by Representative Shipley and SB 670 by Senator Beavers is pending at this time. Each has passed through their respective Judiciary Committees and they are awaiting the vote of the Finance Committees at this time. The proposals are written to amend the new, reorganized law listed above. More will be written about the proposal in the next issue of this newsletter, depending on new developments.

WHAT'S NEXT——PART TWO

Most entities involved in reviewing the reorganized DUI law have been put on notice that 2014 could be the year for expansion of treatment for DUI offenders and hopefully for DUI Treatment Courts. Enthusiasm for more treatment and more Treatment Courts is greater than at any previous time.

WHAT IF MOATS WAS YORK OR DAHMER?

A month before our Court released State v Moats, 2013 WL 1181967, the Supreme Court in Iowa released Iowa v York, 2013 WL 530956. York was discovered to have a huge marijuana growing operation and moved to suppress the discovery of the operation successfully at the trial level. The suppression was reversed by the Iowa Supreme Court.

The officers found the growing operation, because they were looking for an intoxicated suicidal teenager. The teen had fled his home and parents had called the police. The mother of the teen told the police where a friend of the boy lived. Officers confirmed a car in the driveway belonged to the friend. They looked around the outside of the house, but did not find the teen. They saw and heard that a television was on inside the house. The officers went to the door and rang the doorbell. No one responded. They knocked on the door and the door swung open. A door handle had been broken off and was laying on the ground. The officers asked their dispatcher to call the home. They heard the phone ring, but no one answered. The officers indicated they were concerned about the welfare of the people in the home. The officers entered while announcing themselves. They conducted a sweep of the main floor and saw a door was ajar leading to the garage. They saw feet sticking out from behind a wall. They commanded the person behind the wall to come out. There was no response. They drew their guns and demanded the person come out again. He did. He was handcuffed. The officers continued to sweep the residence.

In the basement they found the defendant and his father asleep on a couch. Officers noticed a marijuana pipe and roaches and could smell the raw smell of marijuana. Upstairs they found the defendant's elderly mother, Judy York, asleep with the television on and the volume turned up.

They identified the person in handcuffs as the missing juvenile. The officers discovered that Judy York had not given him permission to be in the house, but she did not want to press charges. The juvenile was released to his parents.

Officers then spoke to the defendant about the marijuana and the raw smell of marijuana coming from the basement. He consented to a search leading to the discovery of the growing operation and his prosecution. In hearings, the State argued the warrantless entry into the home was legitimate under the community caretaking exception to the warrant requirement. Citing Cady v Dombrowski, the Court analyzed whether a reasonable person in the shoes of the officers would have believed that an emergency existed. The Court examined the reasonableness by balancing the public need and interest furthered by the police conduct against the degree and nature of the intrusion upon the privacy of the citizen. Note that the Iowa case involved a home and the Tennessee case involved a vehicle parked in a public parking lot at 2 in the morning. Note also that Iowa looked at reasonableness from the eyes of the officer. Tennessee looked at reasonableness through the eyes of a citizen.

The Iowa Court found that a privacy interest must yield to the protection and preservation of life in certain circumstances. The need to check on the health of an intoxicated and suicidal juvenile runaway in a home with signs of forced entry and unresponsive residents outweighed privacy concerns. The Iowa Court indicated that requiring inaction by the police was to require more than either the Iowa Constitution or Fourth Amendment.

In my opinion, if the Tennessee Supreme Court analyzed the facts of the Iowa case consistently with the Moats decision, there would be an opposite result. The Court would be more concerned with the intrusion into the home than they would be a vehicle stopped with lights on in a public parking lot in the middle of the night. The Court would examine reasonableness from the view of the citizen, not the reasonable actions of the officer. The reader might agree with the Moats decision. The reader might like to see the evidence suppressed in the Iowa case. The reader might not be so thrilled if the same analysis is applied in the Jeffrey Dahmer case, in which an officer used the community caretaking function to leave a consensual encounter conversation with Dahmer to look in the kitchen and found severed heads and body parts. Would that evidence be suppressed in Tennessee? Would Dahmer be free?

Pedestrian/Bicycle Crash Investigation Check List

In each pedestrian bicycle crash investigation certain things must be done. To aid the investigator, a checklist was prepared by SGT Dale Farmer, the lead instructor, for each participant. Please make sure this list gets into the toolkit of your investigators soon.

- Secure the scene, enlist additional personnel if needed
- Provide aid to the injured pedestrian/bicyclist
- Contact your District Attorney General's Office
- Locate and identify evidence
- Photograph and collect the evidence per departmental policy
- Locate witnesses
- Interview the witnesses, take written statements, obtain all identification and contact information
- Interview the pedestrian/bicyclist and vehicle operator as soon as possible
- Inspect and photograph the involved vehicles
- Photograph the approach of the pedestrian, bicyclist, motorist and witness views
- Prepare a field sketch showing a general overview of the scene
- Gather measurements for a scale diagram
- Document all injuries on the pedestrian/bicyclist
- Consult with the attending medical staff regarding the injuries, treatment, etc.
- Interview the Fire/Rescue/ EMS personnel that were on scene
- Request Legal Blood Alcohol test is applicable
- Request and review all 911 calls and radio traffic logs related to the incident
- Prepare the report, scale diagrams, photographs, statements, vehicle inspection, vehicle recall reports, lab reports, and all information regarding the case and present it to the District Attorney General's Office.

PEDESTRIAN/BYCLIST CRASH RECONSTRUCTION CLASS

During the week of February 11th, thirteen officers attended the advanced crash reconstruction course focused on pedestrian and bicycle fatalities. These officers were already trained in all kinds of vehicle crashes. The officers included Troopers Nathan Hall, Rod Parton, Brian Keith Lawson and Vincent Meaker; Sumner County Sheriff Deputies Joseph Hutcherson, Tim Parris, Dustin Hood, Eddie Cripps Jr., Marshall Thompson II; Gallatin Officer Danny Strope; Metro Nashville Officer Mark Woodfin; Ashland City Officer Adam Simpkins and Fort Campbell Military Police Officer Kristaleigh Prevatt.

TRAINING UPDATE

Prosecutors may sign up now for the Vehicular Homicide Trial Preparation Workshop. It is scheduled for June 4th-7th. The registration deadline is May 1st. There are limited seats available.

This seminar workshop will permit the prosecutor to learn from experts about the science of crashes, while preparing a pending case for trial. Every prosecutor should be ready to pick the jury and go to trial in his/her pending case by the time the seminar is completed. If you have a pending vehicular homicide case, don't miss this opportunity. You will prepare your case with crash reconstruction and toxicology experts and fellow prosecutors in a unique learning and preparation environment. Contact Sherri Harper at 615-253-6733 for more registration details or email her at sjharper@tndagc.org.

Sign up for THE CRASH

Our DUI Training Unit has begun a newsletter for officers who investigate deadly crashes and prosecutors who represent the State in those cases. If you work crashes or prosecute vehicular homicides, please contact us to get on the mailing list. E-mail Tom Kimball at tekimball@tndagc.org

ALCOHOL RELATED CRASHES

During the first quarter of 2013, there have been 419 crashes with alcohol involved. Of the crashes, 398 involved injuries with a total of 613 injuries. Twenty-one crashes resulted in 22 deaths. Alcohol was present in 12% of the total number of crashes (3,499) in the State and in 13.5% of the fatalities.

DRUG RELATED CRASHES

During the first quarter of 2013, there have been 212 crashes with 337 total injuries and 15 fatalities in crashes in which drugs had been consumed.

HIT AND RUN CRASHES

In the first quarter, there have been 196 hit and run crashes in which the driver left the scene. These crashes resulted in 238 injuries and 7 deaths. A person who would leave another on the side of the road to die is a disgusting example of humanity at it's worst.

PASSENGERS

2,903 PASSENGERS HAVE BEEN INJURED IN 1,359 CRASHES. Sixty-nine passengers have perished in crashes. Five of those passengers were killed in alcohol related crashes.

Tennessee District Attorneys General Conference

226 Capitol Blvd. Bldg., Suite 800 Nashville, TN 37243-0890
Website: http://dui.tndagc.org
Blog: http://tnduiguy.blogspot.com

Tom Kimball (615) 253-6734
Jim Camp (615) 232-2930
Sherri Harper 615) 253-6733

IN PERPETUAL MEMORY

Every Friday the Tennessee Department of Transportation uses their Highway Message Boards to tell us how many people in our State have died on our highways. As we see the numbers, some shake their heads in disbelief. Others say a quick prayer for those we have lost. Some get angry preferring ignorant bliss. In order to make it real, we have begun this column in which we will list the names and ages of the deceased. This column is not intended to state that these people were victims or were at fault. It is simply intended to let you know the names of the real people we have lost. They are gone, but let's not forget them. In January, 84 people died on our roads. Of them, 83were listed in crash reports in the Tennessee Traffic Analysis Network, or TITAN, which is my source for information. In each issue the people we have lost will be listed by the month of their fatal crash. Please keep them in your thoughts and prayers.

JANUARY LOSSES

1) James Morgan, 90
2) Chad Scism, 34
3) Joshua Ward 24
4) Gregory Cunningham, 44
5) Glenn Moore, 56
6) Andre Lynch, 27
7) Herschell Quintero, 23
8) Kory Dickey,25
9) Bruce Scott, 72
10) Betty Johnson, 73
11) Brandon Hadden, 21
12) Michael Kirkpatric, 29
13) Grace Farrar, 88
14) Wilson Faye, 70
15) Laura Rivas, 47
16) Martha Reed, 66
17) Amanda Young, 25
18) Shea Hooper, 1
19) Donna Bledsoe, 55
20) Lori Lovvon, 42
21) Bertha Moore, 75
22) Alenna Williams, 36
23) Elizabeth Elsevier, 42
24) Denetrica Horton, 21
25) Joseph Parker, 24
26) Jaclyn Phillips, 20
27) Shelly Harvey, 47
28) Peggy Harvey, 70
29) Richard Deslauriers, 63
30) Jesse Bowman, 21
31) Donnie Lewis, 65
32) Brian Castelow, 31
33) Aric Doanes, 45
34) Jerry Isbell, 46
35) Marty Speck, 47
36) Jenny Monday, 36
37) Derrick Malone, 28
38) Gary Leggett, 33
39) Raynell Box, 62
40) James Smiley, 21
41) Mathew Warwick, 29
42) Emily Franklin, 20
43) Jewell Davis, 76
44) Barbara Carmichael, 70
45) Micheal Killion, 36
46) Benjamin Williams, 30
47) Lindsay Hargis, 18
48) Annetta Palmer, 45
49) Jessie Williams, 45
50) Advin Palacious, 28
51) William Inabinet, 21
52) Johnny Dickerson, 48
53)Damon Turner, 45
54)Nathan Pugh, 29
55) Benjamin Ray, 28
56) Betty Ramey, 51
58) Johnny Dickerson, 48
59)Damon Turner, 45
60)Nathan Pugh, 29
61) Benjamin Ray, 28
62) Jeffrey McClure, 44
63) Martha Woods, 47
64) Mandricus Darden, 27
65) Janice Carlton, 60
66) Wyncie Bouge, 3
67) Cameron Sharp, 17
68) Jeanne Mannes, 76
69) Ruby Dixon, 46
70) Jerry Rice, 70
71) Dickie Donoho, 59
72) James Howard, 72
73) Eddie West, 23
74)Martavius Robinson, 23
75) Jarves Gause, 24
76) Claude Lewis, 70
77) Michael Killion, 36
78) Benjamin Williams, 30
79)Lindsay Harris, 18
80) Annetta Palmer, 45
81) Jessie Williams, 45
82) George Harris, 74
83) Unidentified

January Most Fatal Day:
Friday: 18 Deaths
Alcohol: 10%
Drugs: 10%

FEBRUARY

1) John Gillen, 42
2) Jerry Rice, 70,
3) Brian Delk, 41,
4) Gregory Collette, 39
5) Dorris Gentry, 50,
6) Ryan Marcum, 17,
7) Timothy Martin, 20,
8) Adam Bailey, 41,
9) Jackie White, 16,
10) Zachary Reagan, 20,
11) Elmer Parton,
12) Eugene Brock, 41,
13) Janice Kelley, 45,
14) William Pitts, 38,
15) Megan Bowers, 26,
16) Megan Carter, 26,
17) Mickey McCarter, 23,
18) Vivian Bishop, 39,
19) Dallas Law, 37,
20) Jackie Pritchett, 75,
21) Raymond Perlacki, 27,
22) Xavier Bingham, 24,
23) Lon Mayo, 69,
24) Lesley Tharpe, 36,
25) Tyler McChurch, 27,
26) Steven Nichols, 48,
27) Steven Rushing, 16,
28) Caleb Harrod, 17,
29) Edward Stilner, 39,
30) James Larkens, 73,
31) Wanda Currier, 67,
32) Ervin Chacon, 26,
33) John Abraham, 61,

VEHICULAR HOMICIDE MURDERERS ROW

State v Holden, 2013 WL 967668 Tenn Crim App March 2013 **30 YEARS; 12 ISSUES ON APPEAL**

Holden was under the influence of alcohol, marijuana, and pain killers. He drove at an excessive speed. Other motorists testified that they altered their driving because they noticed how fast Holden was driving. He then ran a red light, according to multiple eye-witnesses, and ran into the side of the victims' car pushing the car out of the intersection and into a nearby ditch. Both victims died as a result of the violent and intense nature of the accident.

Holden killed two people and committed thirty crimes. He was indicted for four counts of vehicular homicide; five counts of reckless endangerment; two counts of driving under the influence, fourth offense; driving while license cancelled, suspended or revoked, third offense; evading arrest; resisting stop, frisk, halt, arrest, or search; leaving the scene of an accident involving death or personal injury; simple possession or casual exchange; five counts of violation of the duty to give information and render aid; failure to obey any required traffic-control device; violation of the financial responsibility law; and eight counts of aggravated vehicular homicide.

Appellant pled guilty before trial to driving while license cancelled, suspended, or revoked, third offense; evading arrest; resisting arrest; simple possession; and five counts of violation of the duty to give information and render aid. At the conclusion of a jury trial, the jury found appellant guilty of two counts of vehicular homicide; two counts of reckless homicide; five counts of reckless endangerment; two counts of driving under the influence, third offense; leaving the scene of an accident involving death or personal injury; failure to obey any required traffic-control device; violation of the financial responsibility law; and six counts of aggravated vehicular homicide. The trial court merged all five convictions for reckless endangerment into one count. The trial court also merged the convictions of vehicular homicide, reckless homicide, and DUI, third offense, and all but one of the convictions of aggravated homicide into one conviction of aggravated vehicular homicide for each victim. For sentencing purposes, the trial court sentenced Holden for two convictions of aggravated vehicular homicide and one conviction for reckless endangerment, as well as his other convictions. Appellant's effective sentence was thirty years and eight months.

In his appeal, Holden challenged everything from the chain of custody of his blood to the expertise of Trooper Johnny Farley. He complained of Legislative Act that created the crime of Aggravated Vehicular Homicide. He complained of his arrest after he left the scene. He complained about jury selection and a lack of jury sequestration. He complained of his sentence. He failed in all of his complaints.

State v Christy, 2013 WL 784394 Tenn Crim App March 2013 **18 YEARS VEHICULAR HOMICIDE WITH CHILD NEGLECT**

On November 1, 2007, the defendant–appellant was driving his car with his eleven-year old son, J.C., in the front-seat. While driving, the defendant–appellant attempted to stop the truck driven by his wife, Elizabeth Christy, and chased her for eleven miles. During the chase, the defendant–appellant struck his wife's truck several times, causing the truck to crash. Ms. Christy was killed and David Gibson, a passenger in her truck, was seriously injured. The defendant–appellant was later indicted for vehicular homicide and first degree murder of his wife, Elizabeth Christy; aggravated assault against David Gibson, by use of the car as a deadly weapon; aggravated child neglect against his eleven-year-old son by the use of his car as a deadly weapon; and reckless conduct with a deadly weapon placing others in imminent danger of death or serious bodily injury. Christy appealed the child neglect conviction. The record demonstrates a sufficient nexus between his actions and an adverse effect on the mental or emotional health and welfare of his son. In this case, the defendant–appellant drove his car at speeds exceeding one-hundred miles per hour with his eleven-year-old son in the car. Despite his son's pleas to stop the chase, the defendant–appellant continued this conduct for approximately eleven miles, even enlisting his son to yell out of the window at his mother. His son testified that he was "scared" because his father was driving "real fast" and that he knew "something was going to happen." The defendant–appellant struck his wife's truck not once, but twice, resulting in her being ejected from her truck and suffering major trauma throughout the upper part of her body, with blood coming out of her ears, nose, mouth. J.C. witnessed the high-speed chase, the impending crash, and the traumatic death of his mother.

THE PROSECUTOR IS ON THE SCENE

Captain William (Buck) Campbell
Cleveland Police Special Operations

Prosecutors need to respond to the scene of vehicular crashes with a fatality. They may or will be working on the case for months or years. Once a prosecutor is at the scene, meet with them briefly explaining the simple facts of the crash. Tell them how many vehicles were involved, the number of persons involved, persons killed or injured and if alcohol or drugs were involved. Let the prosecutor know if speed appears to be a factor, and anything else that immediately stands out. Just remember; never let the prosecutor touch, gather or measure any evidence. **They need to prosecute, not testify.**

Once briefed, walk them through the scene. Show them the skid marks, yaw marks, impacts points, gouge marks, vehicles at final rest, etc. You want the prosecutor to see what you see, smell what you smell and be able to visualize the scene later when discussing the case. You may have the prosecutor return to the scene several times walking them through to explain again the evidence and how it was gathered. If speeds were determined, discuss how the speed evidence was documented and calculated.

Attending the scene helps the prosecutor and officer communicate better later when the case is discussed, or when testimony is given. Attorneys can be intimidated by crash reconstruction as Professor John Kwasnoski explains in chapter one, of his book, From Crash To Courtroom… (p.1).

"When an attorney reviews a collision reconstruction report it may seem perplexing or just downright intimidating".

It has been my experience that this is true. All the math and concepts of physics can be overwhelming. Responding to the scene can help alleviate uneasiness that the prosecutor may feel. It takes years for most officers to be trained, learn or have on the job experience necessary to investigate a crash. We must remember when we are explaining or giving testimony, that we are using math and concepts of reconstruction that it took us a long time to obtain. We must relate our testimony in a way that those without advanced crash training knowledge can understand. Basically, we are trying to pass on our training and experience at trial, in less than an hour in most instances. This is not easy, but must be done in a way that prosecutors, judges and jurors understand without getting lost in our technical jargon.

Review the evidence more than once. The prosecutor attends the scene after the injured or deceased have been transported and the evidence has been collected. The scene becomes our classroom. At the scene, show the prosecutor the gouge marks, yaws and skid marks. Show the prosecutor how the vehicles collided. Show the prosecutor car parts that have fallen onto the pavement or flown into a yard. This is the first evidence review. It is very important that the prosecutor and officer be very familiar with the evidence collected and the methodology of collecting it. Methodology of collecting or measuring crash evidence is very important. ***Example:*** *There are differences in how you measure skid marks versus a critical speed yaw mark. Both are measured to calculate speed, but measured in different ways. If either is measured incorrectly, it can have a devastating impact.*

When the prosecutor is at the scene, you have the opportunity to show the prosecutor how the evidence was collected and measured. We will review it later in the office, but it will be a refresher course instead of new information. A prosecutor does not necessarily need to know crash reconstruction like an officer, but they do need to understand some basic concepts. The more the prosecutor learns, the more comfortable they become. It is the officer's job not only to know crash reconstruction, but also how to teach it. Our students sit on a jury, behind the bench and at the prosecutors table. We as officers must put the prosecutors at ease by inviting them to learn about the case early and often. By doing so, we gain their trust and confidence and they gain ours. Officers must feel comfortable with the prosecutor's knowledge and competence. The prosecutor must feel the same way about the officer. Having the prosecutor respond to the scene is the first step in trial preparation.

ABOUT THE AUTHOR

Captain W. G. (Buck) Campbell, has over 21 years of service with the Bradley County Sheriff's Office. He currently serves as Captain of Special Operations. He is an active ACTAR certified crash reconstructionist, Police Instructor and serves as an Adjunct Instructor for Cleveland State Community College for the Basic Police Academy. He has taught At-Scene, Advanced and Crash Reconstruction to numerous officers across the State of Tennessee. Besides teaching over 1200 students in crash investigation, he has investigated numerous fatal crashes and testified as an expert in court.