



# DUI NEWS

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## THE NEXT BIG THING ORAL FLUID TESTING FOR DRUG IMPAIRMENT

Tom Kimball

Several years ago, Jim Camp and Tom Kimball saw oral fluid drug testing devices on display at a national Lifesavers Traffic Safety Conference. The lady who displayed the devices was a very enthusiastic scientist from Great Britain. Jim and this author collected information and we asked a lot of questions. As we walked away we complained about how long it takes for new technology to become part of the solution to impaired driving in the good old U.S. of A. We wondered how and why the British and Australians could use life saving technology that was not available here. We walked away wistfully thinking that the time would come when this new tool would be available in America. We vowed that we would do what we could to make sure that Tennessee would not be one of the last States to use technology to detect drug impairment.

This summer at a meeting of the Governor's Highway Safety Association, we learned oral drug testing was being used in Los Angeles, CA, to fight drug impaired driving. Two prosecutors, Janette Flintoft and Michelle DeCasas and DRE Instructor, Kamaron Sardar spoke to a group of Traffic Safety Resource Prosecutors about how and why the Los Angeles Police Department and City Attorney were using oral fluid testing at sobriety checkpoints. The benefits of the program are explained in an article by Ms. Flintoft and TSRP Phillip Reddick on page eight of this issue.

This summer, Jim Camp and I were able to spend a day with the L.A. City Attorneys office, the L.A.P.D. toxicology lab, the Los Angeles County Coroners' office and we spent an evening at a L.A.P.D. sobriety checkpoint.



We watched as a driver, reasonably suspected of driving under the influence of drugs, was given a DRE evaluation. We watched as the driver gave an oral fluid sample. It was tested on the device. We saw the result on the device, which was positive for marijuana. We spoke to the DRE, who had come to the conclusion that marijuana was effecting the driver, at the conclusion of his DRE exam, but before the oral fluid was collected and tested.

Result	034
Cocaine	Negative
Opiates	Negative
Benzodiazepines	Negative
Cannabis-5	Positive
Amphetamine	Negative
Methamphetamine	Negative
Methadone	Negative

Oral fluid drug testing does not test for everything. It does give information about the presence in the saliva of cocaine, opiates, benzodiazepines, cannabis, amphetamine, methamphetamine and methadone. Presence in the saliva eliminates the old excuses of second hand smoke or past consumption. It adds a new tool to deal with the scourge of

drugged driving. It is being studied in many locations and will be in Tennessee before long. Get ready.

More on pages 8 and 9



## RECENT DECISIONS

### State v Franklin Moore, 2013 WL 4677454

### TOO DRUNK TO PERFORM

In a case from Madison County, Franklin Moore was convicted by a jury for fourth offenses DUI and received a two year sentence from the Court. Moore wrecked on his motorcycle. When asked to perform SFST's he told the deputy that he was too drunk to perform. At trial, he blamed the events on being tired. He had participated in a motorcycle fund raiser that included driving to and drinking at six bars on the day of his crash.

### State v George, 2013 WL 4647626

### TOO DRUNK TO INTEND



Bobby George was also convicted of DUI 4th offense. This one in Davidson County involved the defendant attempting to entice young boys into his car. Charged with attempted aggravated kidnapping, George opted to argue that he was too drunk to form the intent necessary for the charge. George had been drinking tequila all day when he decided to drive to Hooters, where he approached the boys in the parking lot. They escaped and reported him.

### State v Gadke, 2013 WL 4539003

### OFFICER CREDIBILITY

Kurt Gadke pled guilty to a DUI after driving with a .14 blood alcohol level. Though guilty, he appealed to challenge the traffic stop. The credible testimony of Williamson County Deputy Raechel Haber was enough for the court to uphold the conviction. In an interesting attempt to escape detection, a vehicle tailgated the Gadke car to try to block the deputy's view. Gadke told the deputy that the driver of the second vehicle called him to tell him he was following closely, because the officer was following. The driver of that second vehicle apparently wanted to protect Gadke from detection. It did not work. While the video camera was blocked, the deputy was able to watch closely enough to see that Gadke crossed three lines.

### State v Seaman, 2013 WL 3936506

### I AM MY SISTER

In a case that depicts the life of an addict, Jody Seaman was found guilty of DUI, Identity Theft and Driving on a Revoked License for the umpteenth time. Seaman was under the influence of a few drugs and alcohol. When asked for identifying information, she claimed to be her sister and gave a matching date of birth and drover's license number for her sister. At her sentencing hearing, she was impaired by drugs. The hearing was continued. Seaman admitted that her use of xanax would harm her unborn child. The record proved that the defendant had over twenty-five previous convictions, involving DUI, theft, criminal impersonation, driving on a suspended, cancelled, or revoked license, failure to appear, possession of drug paraphernalia, forgery, and failure to stop at the scene of an accident. The instant offense occurred on July 7, 2011, while the defendant was on probation in two counties. Likewise, while released on bond in the present case, the defendant was arrested for DUI in Humboldt County and for theft and criminal impersonation in Trenton. The defendant asked for mercy due to her pregnancy. She was sentenced to four years in prison. That may be the best thing that could have happened to that baby, who will benefit from her mother's forced sobriety.

### State v Graves, 2013 WL 3875263

### DAYS INN PARKING LOT IS A PLACE FREQUENTED

Defendant Graves argued that he was not driving and that the Days Inn parking lot, in which he was found behind the wheel passed out, was not a place frequented by the public. The defendant was guilty for being in physical control and in a place frequented by the public. It was his second DUI conviction.

## RECENT DECISIONS

**State v Forrest Moore**, 2013 WL 3874934

SORRY NEIGHBOR

This 2nd offender later apologized and paid compensation to his neighbor for running over his mailbox while drinking and driving. He challenged his conviction claiming the State could not prove he was drinking and driving.....Maybe the State would call the neighbor as a witness? This offender may have been sorry in more ways than one.

**State v Lowe**, 2013 WL 3423965

CONSENSUAL ENCOUNTER: NOT MOATY

A neighbor noticed a car parked poorly in a gravel area between her house and the neighbor's house with the engine running. She tried to open the door to turn off the engine and much to her surprise a body fell toward her. She did not know whether the person was dead or alive. She called 9-1-1 and an officer responded. The person was slumped over the steering wheel and the engine was off, when he arrived. He knocked on the window and got no response. He opened the door and shook the driver. He was hit with the strong odor of consumed alcohol. His response to a call then turned into a DUI investigation. The defense, citing Moats, claimed the officer was wrong to respond. Citing Moats, the defense claimed the officer was not permitted to check and see if the driver was alive or dead. Citing Moats, the defense claimed the driver had been illegally detained and seized. Sewanee officer, Steven Cardwell, has been well trained. He did not turn on his blue lights. (After all, we don't want to wake the poor guy with flashing lights). He did not sound a siren. He did not get out a gun. Instead, he approached the vehicle to check out the passed-out, slumped-over driver gingerly. When the driver did not respond to knocks on the window, he opened the door and was able to wake the driver. He asked the driver where he was and the driver responded, "London". The Court found that this was a consensual encounter and the officer exercised his function of community caretaking correctly.

**State v Addleburg**, 2013 WL 4806962

THE SOME OTHER DUDE DID IT DEFENSE



Defendant Addleburg was convicted of several crimes meriting a 4 year sentence, but escaped an 8th offender DUI charge. Addleburg had a .15 blood alcohol level. The issue was not whether he was impaired. The issue for the jury was whether he had driven. At trial, a buddy testified that he, not Addleburg, was the driver. Officers had been called to a gas station after the defendant was seen trying to pick up his motorcycle to push it to a gas pump. The attendant called 9-1-1 after speaking to the defendant. No one saw the defendant driving and the jury was not convinced that Addleburg had driven, until the motorcycle stalled. The jury acquitted.

The simple lesson of Addleburg is that the personal contact phase of the investigation is extremely important in such cases, since no driving was observed. The defendant did not mention another driver the night of the arrest, but he was probably not asked if he drove, prior to the bike stalling. It may be easy to assume the only person around was the driver, but it is never safe to trust that a jury will accept that assumption as proof beyond a reasonable doubt.

## DUI DISPOSITIONS IN SEPTEMBER

Kudos to the 1st Judicial District. According to data entered in the DUI Tracker, the 1st had more dispositions of DUI cases than any other District with 50 cases completed. The 22nd District was next with 40 dispositions followed by the 24th and 26th with 38. Are your dispositions getting recorded in the DUI Tracker? Important decisions are made based on Tracker data.

## DISTRACTED DRIVING

### **Lifesavers Conference 2013-----DISTRACTED DRIVING**

Every year about two thousand traffic safety professionals gather for an annual conference; hear from the National Highway Traffic Safety Administrator and attend sessions about cutting edge issues. Every year something that I hear at the conference surprises me. This year two break out sessions gave me some new information that I hope may be helpful to you.

One session was titled “*What You Need To Know About Distracted Driving.*” It began with David Teeter of the National Safety Council sharing data. The cost to society from distracted driving crashes is about \$100 billion dollars per year. Human error accounts for 70-93% of all traffic crashes. Vehicle maintenance may be a cause of a crash in up to 13% of crashes. Many crashes have multiple causes. A person may drive impaired, speed and have underinflated tires.

Driving distractions are divided into three categories. They are: visual, mechanical and cognitive.

- Visual: Did the driver have his/her eyes on the road?
- Mechanical: Did the driver have hands on the wheel.
- Cognitive: Did the driver have his mind on driving?

Cognitive distractions are part of everyday life. Imagine watching an episode of Hawaii 5-0. While watching, your spouse tells you she is going shopping. The show ends and you wonder where your spouse has gone. Watching the show and having a conversation at the same time are nearly impossible. Either the show or the conversation will be dominant.



Cognitive distraction also leads to visual distraction, inattention blindness and tunnel vision. When a person is driving and talking on the phone, the person will have a decrease in his/her scan area. One 1994 study concluded that a person was four times more likely to be in a crash, if the person was using a phone. The study was conducted by obtaining phone records of persons injured in car crashes, who were treated in emergency

rooms. It does not matter if the person was using a hands free device. Cognitive distraction is not about the distraction of having a hand off the wheel.

Distractions that cause an increased likelihood of a crash include telephones, but many more. For instance, reading increases the likelihood 3.4 times. Reaching for a moving object- 8.8 times; turning around in the seat- 8.8 times; and texting- 8-23 times. Twenty-five percent of all traffic crashes involve talking on a phone (21%) or texting (4%).

Observational studies at intersections in 2011 teach us that 1.5% of all drivers going through an intersection are using a telephone or texting. A poll conducted by Quinnipiac University indicates that 63% of Americans approve the ban of cell phone use in vehicles.



Dr. Atchley

Dr. Paul Atchley, Professor and Associate Chair of Undergraduate Studies Director, Cognitive Psychology Program from the University of Kansas spoke about the Science of Distraction. He taught that teens are twice as likely to communicate by text messaging than face to face. Many have been using texting as a primary source of communication for eight or more years by the time they are SIXTEEN. The removal of texting causes the teen to feel excluded from networks and lowers self esteem.

Dr. Atchley noted that researchers have also found that drivers can’t turn-off or ignore conversation coming to them through a cell phone. Language processing begins automatically and can’t be interrupted to deal with difficult driving conditions. Cell phone callers are different than passengers in a car. The passenger can see other traffic and alter their conversation if danger is near. The person on the other end of the cell phone just keeps talking no matter the situation.

(continued next page)

## CONSEQUENCES

Dr. Atchley spoke about how our brains are wired for self disclosure. When we confess, we receive a little rush of dopamine. Our brain's best ability is self deception. This self deception often protects us from harm. Self deception can also cause harm. We are largely blind to what is going on around us. We overestimate our abilities. There is a huge disconnect from what we know and what we do.

Everyone knows driving and texting is dangerous, but the brain permits people to deceive themselves into believing they can get away with it and not get hurt. The same is true of other harmful driving behaviors like drinking, speeding, eating, reading and applying make-up. The driver convinces him or herself into believing the text or the call is more important than the potential danger. Crashes happen to other people.

In an interesting classroom experiment, Dr. Atchley gave students two scenarios. Each one had the exact same wreck described. The driver left the lane, ran off the road and killed a passenger. One wreck was caused by an intoxicated driver. The other was caused by a driver on the phone.

Students concluded that each driver was ever bit as much at fault as the other. They blamed the distracted driver the same as the intoxicated. When it came time to assess a penalty, the students hammered the drinker, but slapped the wrist of the distracted driver.

Dr. Atchley was able to point out the disconnection between how the students felt about causation and penalty. That should make us all think about how we drive and the consequences of our decisions. Dead is dead. Injured is injured. Any of us could be the person to drive into another car or a wall, if we don't permit our brain to concentrate on the task of driving.

## TENNESSEE MADD RECOGNIZES MATT HOOPER; EXCELLENCE IN PROSECUTION



Assistant District Attorney General Matt Hooper

Each year, one prosecutor is selected for the MADD Tennessee Excellence Award. This year's award was presented to Assistant District Attorney General Matt Hooper from the 25th Judicial District of Tennessee. General Hooper has distinguished himself as a formidable prosecutor who has been effective in difficult, noteworthy, and high profile DUI, Vehicular Assault, and Vehicular Homicide cases. General Hooper has also used innovative methods to increase DUI conviction rates; reduce the amount of time between arrest and conviction; diminish DUI recidivism and alcohol related deaths and injuries within the 25th Judicial District; and improve law enforcement training and best practices in DUI investigations.

## Speeding Still a Factor in a Third of Fatal Teen Driving Crashes

### *New Report Discusses Solutions for Both States and Parents*

WASHINGTON, D.C.—Speeding is a primary culprit in a third of fatal crashes involving teen drivers, according to a new report from the Governors Highway Safety Association (GHSA). "[Speeding-Related Fatal Crashes Among Teen Drivers and Opportunities for Reducing the Risks](#)," authored by Dr. Susan Ferguson, states that speeding as a contributor in fatal teen driver crashes has inched up over the past decade from 30 percent in 2000 to 33 percent in 2011 while total teen fatalities have gone down dramatically during that same period. From 2000 to 2011, 19,447 fatal crashes of teen drivers were speeding-related. The report was funded through a grant from State Farm®.



Dr. Ferguson, former senior vice president of research for the Insurance Institute for Highway Safety, stressed, "Curbing teen speeding is vital since no other age group has a higher crash risk. Speeding is a common factor in the fatal crashes of teen male and female drivers." Dr. Ferguson continued, "Speeding is more prevalent among teen males, at night, and in the presence of other teen passengers. When three or more teen passengers are in a vehicle driven by a 16-year-old male, almost half of their fatal crashes are speeding-related."

Despite its significant role, speeding is not getting the attention it deserves and must be addressed if further progress is to be made in the area of teen driving safety. Increases in speed limits in many states coupled with a general belief that speeding is acceptable also exacerbate the problem. Dr. Ferguson notes, "Unless speeding is recognized as a dangerous behavior, much the same as drunk driving, addressing it will be difficult."

In addition to discussing the problem of teens and speeding, the report also focuses on potential solutions. [Graduated driver licensing](#) (GDL), which has sparked record gains in teen driver safety since first enacted in the U.S. in the mid-nineties, has the potential to address speeding.

"This report draws attention to the importance of strong GDL laws that place nighttime and passenger restrictions on newly-licensed drivers," stressed Kellie Clapper, Assistant Vice President, Public Affairs at State Farm. "These laws help keep young drivers safe by limiting their exposure to conditions when speeding is likely to occur."

In addition to an emphasis on enforcement, the report advises states and local jurisdictions to consider installing automated speed cameras – an effective antidote to speeding for drivers of all ages.

Parents are influential in shaping the driving behavior of their teenagers, and many programs are available to help parents manage their beginning teenagers' driving in a way that will encourage safe driving behavior. The report offers the following tips to parents.

#### Top 5 Tips for Parents:

1. Have serious discussions about the importance of observing all traffic laws, demonstrate by example, and establish family rules and consequences for breaking laws.
2. Avoid allowing teens to have primary access to a vehicle for at least the first year of independent driving.
3. Make safety the primary consideration when selecting a car.
4. Consider the many options for in-vehicle speed monitoring devices both in the after-market and increasingly as original vehicle equipment.
5. Consider participation in incentive-based insurance programs that monitor usage, braking/acceleration, and/or speed.

Researchers noted that despite public resistance toward some of these tools, all show promise for addressing teen-related speeding. The full report is available online at [www.ghsa.org](http://www.ghsa.org).

## TRAINING UPDATE

Kudos to General Rob Carter and ADA Andrew Wright in the 17th Judicial District. They put together a 2 hour training for officers in the district to focus on search warrants in DUI cases. In attendance were sixty officers including about two dozen area Troopers and several Magistrates. Lt. Trey Clanton, Training Officer for the Shelbyville Police Department provided the accommodations and Sheree Ostermann, DUI Grant Coordinator, did a great job informing officers of the opportunity.



Pictured is Andrew Wright instructing the group.

### Tennessee Law Enforcement Training Academy

Congratulations to the 84 graduates in class 1678 at T.L.E.T.A. It was a pleasure teaching about the legal issues in DUI enforcement to the new officers September 30th. These 84 officers completed the ten week, 425 hour training course to enable them to begin serving 45 agencies after graduation on October 11th. We wish them the best.

### Nashville Metropolitan Academy



Twenty-eight new Metro police officers graduated from 5 ½ months of rigorous physical and classroom training on Thursday evening, September 26th, during a ceremony at Hermitage Hills Baptist Church. Mayor Karl Dean administered the oath of service to the new officers before joining Chief Steve Anderson in presenting each with their badge. The 28 graduates will spend the next 5 to 6 months rotating among the seven precincts with Field Training Officers before patrolling Nashville's neighborhoods on their own. It was a pleasure instructing the officers at the Academy for four hours on September 12th about legal issues, report writing and testimony in DUI cases. We wish them the best.

### CRASH RECONSTRUCTION CLASS

Eleven more officers have completed the challenging two week crash reconstruction course in June. Some of the topics covered were: time and distance, conservation of linear momentum, lamp examinations, speed from crush, vector diagramming, acceleration/deceleration rates and factors, multiple large reconstruction projects, court testimony, resume preparation and problem areas in conservation of linear momentum. One day of the two week course was dedicated to crashing and studying crashed vehicles. The students had to establish information for scale diagrams, determine vehicle speeds and speed transfers. Students documented their scenes and then studied acceleration with 2 sport motorcycles, 3 personal vehicles and 3 police cars. Each student was able to document their acceleration tests and add them to their resumes. The officers were photographed before they crawled around to look under vehicles and road marks.



Chris	Bayless	Oak Ridge Police Department
Andrew	Goolsby	Tennessee Highway Patrol
Grant	Gouldie	Oak Ridge Police Department
Garrett	Grady	Martin Police Department
Todd	Hammond	Rutherford County Sheriff's Office
Larry	Hatcher	Sumner County Sheriff Department
Mark	Mack	Rutherford County Sheriff's Department
John	Miller	Martin Police Department
Ryan	Moore	Cookeville Police Department
Marty	Philpot	Tennessee Highway Patrol
Michael	Robertson	Tennessee Highway Patrol

## Oral Fluid Evidence in Drugged Driving Cases

Phil Renick, California Traffic Safety Resource Prosecutor &  
Janette Flintoft, Deputy Los Angeles City Attorney

The detection and prosecution of drugged drivers continues to present challenges for criminal justice practitioners across the United States as the incidence of drug impaired driving escalates. Unlike alcohol, the effect of drugs on the human body is not as predictable. Different drugs target different parts of the brain, the effects of which can vary significantly among users depending on dosage amounts. Adding to these challenges are new synthetic drugs appearing daily that thwart efforts to render them illegal and are typically not detectable in most criminal labs. The issue is further complicated by the varying approaches nationally to drugged driving enforcement protocols and impaired driving laws - rendering it difficult to establish uniform best practices.

As jurisdictions across the country struggle with how to address the rising number of drugged drivers on the road and associated challenges, new evidentiary tools involving oral fluid collection have the potential to assist law enforcement and prosecutors in their public safety missions. In California, where the Drug Recognition Expert (DRE) program originated, the City of Los Angeles began in November 2012 to utilize oral fluid for driving under the influence (DUI) cases. The results are measurable: cases filed with oral fluid evidence are pleading out sooner with this additional evidence, which is available at the time of filing, contrasted with cases awaiting blood test results from the lab. While no matter has yet to proceed to an actual trial, Los Angeles city prosecutors intend to seek to admit oral fluid into evidence and are ready to overcome anticipated challenges on this front.

Other jurisdictions are taking note of oral fluid as evidentiary tool. Representatives from Tennessee, Idaho, and Louisiana have participated in recent site visits to Los Angeles to observe oral fluid collection by law enforcement officers. Through the assistance of the California Office of Traffic Safety, oral fluid collection will soon expand to three additional California cities: Fullerton, Bakersfield, and Sacramento. In addition to Los Angeles, these regions will participate in a study assessing oral fluid technology and its utility for criminal justice practitioners. Two sites will utilize the Dräger DT5000 device and two sites will utilize the Alere™ DDS®2 device. Research goals will include evaluating the oral fluid collection devices, associated costs and benefits with oral fluid technology, potential barriers to application, and how affiliated labs provide confirmation testing of samples. This aligns with other research efforts underway. Through federal grant funding, the Pacific Institute of Research and Evaluation (PIRE) has been analyzing advancements associated with saliva/oral fluid collection.

### *How Oral Fluid is Being Implemented in the City of Los Angeles*

The Los Angeles Police Department (LAPD) currently utilizes the Dräger DT5000 at sobriety checkpoints. The collection protocol entails the DRE officers' first performing a DRE evaluation and forming an opinion regarding the driver's impairment. Thereafter, a blood sample is requested and either obtained or refused. The officer next requests a voluntary oral fluid sample. The collection method entails the subject inserting a hand held cartridge containing a cotton tip into his or her mouth. Once sufficient oral fluid is collected (between one to four minutes), the DRE officer places the cartridge into a portable screening device that detects the presence of active drugs in a matter of minutes. The machine then provides printout that identifies seven of the most commonly abused drugs, including **THC, amphetamines, methamphetamines, cocaine, benzodiazepines, opiates, and methadone**. While the machine is analyzing the sample, a second sample is taken for overnight shipping to NMS Labs, who conducts confirmation tests that will subsequently be introduced into court. The prosecutor secures these test results online and, if necessary, obtains a litigation packet prepared by NMS Labs in anticipation of trial.



Of the samples collected thus far, the most common drug detected is THC. The cut-off level for the Dräger DT5000 to detect the active Delta 9 THC metabolite is .05 nanograms.



## ORAL FLUID DRUG TESTING IN L.A.

### *Additional Criminal Justice Benefits Involving Oral Fluid*

In addition to DUID enforcement, oral fluid technology has significant benefits for criminal practitioners. Since oral fluid can be collected in the field, law enforcement officers can obtain critical evidence close in time to the initial contact when the objective signs of impairment are present. For example, when marijuana is smoked, THC is rapidly absorbed into the brain and the effects are immediate. As time passes, the body metabolizes the drug to an inactive form before it is eliminated from the body. When two or three hours pass from the time of use, to the time of the driving, and finally to the time of subsequent blood collection, the results of the blood test may show very little of the active THC. On the other hand, the oral fluid test can be administered in the field within minutes of the driving and the arrest.

Another benefit of oral fluid technology is that it provides an effective training tool for law enforcement. For example, during DRE training a urine sample is collected for later analysis—but the DRE does not get the results back for several weeks or months, rendering it difficult to correlate the details of the exam and the test results. With the oral swab device, the officer gets immediate feedback on his or her roadside evaluation, which serves to strengthen their capabilities later in the field. From a cost standpoint, oral fluid test can be administered by officers instead of a certified phlebotomist. In addition, obtaining an oral fluid sample is less intrusive than drawing a blood sample and the confirmed oral fluid results are generally available much sooner than the confirmed blood test results.

### *Use of Oral Fluid Outside of the United States*

Since 2004, oral swab devices have been utilized in Australia and the United Kingdom to collect and analyze oral fluid in drugged drivers. This evidence has proven to be reliable and accurate for DUID enforcement purposes. In 2008, Canada passed legislation giving officers the authority to demand oral fluid from suspected drugged drivers following the DRE evaluation.

Although the United States has made progress during the last 30 years lowering the deaths on our highways related to alcohol impaired driving, on the issue of drug impaired driving, we still have challenges ahead. Even one death is too many. As the vetting of this oral swab technology moves forward throughout the country, lives will be saved as more drugged impaired drivers are removed from our roadways.



LA Assistant City Attorney Michelle DeCasas is pictured on the left with the oral drug testing device on her left and the E.C.I.R. 2 breath testing device on her right. At the LAPD checkpoint, this trailer served as an interview room and testing station. A phlebotomist was also present to take blood samples. Twelve persons were arrested for DUI in about three hours. About 1,000 cars were stopped. Drivers were briefly detained to determine the presence of drugs or alcohol. Most were sent on their way in about 30 seconds. Most were greatly appreciative of the work of the officers in attempting to weed out impaired drivers from the streets of Los Angeles. Driving in L.A. is tough enough without impaired drivers. The volume of vehicles is incredible. Even though about 1,000 cars were stopped in one lane headed west, cars in five other lanes continued past. Six cars at a time were directed into the checkpoint lane.



Tom and Jim and Idaho TSRP, Jared Olson learned there is nothing quite like a Los Angeles City Police sobriety checkpoint. If these busy officers can successfully conduct checkpoints with DRE officers and an oral drug testing unit, I can't imagine why we can't do the same. We are grateful to the folks in Los Angeles for their generous donation of time and effort.

## TRAINING UPDATE: ARIDE FOR PROSECUTORS (cont'd from Page 12)

Assistant United States Attorney and former Chattanooga A.D.A.G. Jay Woods discussed the legal requirements of Search Warrants in the State of Tennessee particularly in light of the recent McNeely case referencing the Tennessee Rules of Criminal Procedure Rule 41 and T.C.A. Sec. 40-6-101-108. Jay noted that when a warrant is used as authority for a search the burden shifts to the defense to prove the probable cause was insufficient, therefore strengthening the State's case and increasing the likelihood of a conviction. He explained that the affiant officer should establish probable cause by telling the story using simple sentences referring to the five senses with support for any conclusions drawn and identification for all sources of information. Those sources of information may include the Affiant, another law enforcement officer, named witnesses, or unnamed witnesses. Jay further noted that any Magistrate who agrees there is probable cause but fails to sign the warrant is violating Sec. 41(c) that provides that the warrant SHALL be issued when sufficient probable cause exists. From a procedural standpoint the paperwork should be unsigned when it is presented to the judge with the oath being made and the document being signed in front of him/her. The officer should watch for the judge sign both the affidavit and the warrant and confirm that the judge entered the date and time.

Todd Draper, Judicial Commissioner from Sumner County discussed his county's successful system for obtaining DUI search warrants after the McNeely case.

Tom Kimball explained the reality of chemical testing in Tennessee before the McNeely case and how we should be responding in light of the Supreme Court's decision, looking first to consent followed by a warrant when time and circumstances allow. When a warrant cannot be obtained, then the fourth amendment exception of exigent circumstances applies. Tom then discussed the ignition interlock law and data collection.

Doug Cooley of the Office of the Inspector General discussed drugged drivers committing TennCare fraud by obtaining impairing drugs through TennCare at the taxpayer's expense only to sell them to recreational users and his office's job investigating these cases. He emphasized the need for reporting by patrol officers and prosecutors, when such crimes are suspected.

Ken Stecker, Michigan TSRP, described his state's nightmare scenario of drugged driving based on the legalization of medical marijuana. He discussed the strength of the extremely well funded pro-medical marijuana lobby and the misleading advertising that can lead to legalization along with the resultant highway hazard it carries with it. He also noted that 60 medical studies found that behavioral and cognitive skills are impaired by marijuana use.

Court of Criminal Appeals Judge Thomas Woodall provided an insightful review of the new case law relative to impaired driving. Samera Zavaro, Special Agent and forensic Scientist, T.B.I., discussed the new developments in the breath testing program.

Darrell Julian ADAG, from the 31<sup>st</sup> District, reviewed the common challenges in prosecuting drugged driving cases noting that the new focus on drug-impaired driving will require prosecutors to become more knowledgeable about the process of obtaining blood evidence, interpretation of lab analysis, and effects that different types of drugs can have on the human body. Highlighting the drug impaired driving problem Darrell also referred to a recent study of seriously injured drivers at the Maryland Shock Trauma Center that showed 51% of the samples tested positive for illegal drugs, compared to 34% who tested positive for alcohol. Further studies have shown that drugs were present more than 7 times as frequently as alcohol among weekend nighttime drivers in the U.S. Darrell pointed out the importance of issuing a search warrant or subpoena within 24 hours for any blood samples obtained by hospitals treating a suspect. Those blood samples should then be submitted to TBI for testing.

Jim Camp closed with a brief discussion of the privilege of prosecution and the importance of the attendee's avocation and dedication to duty in keeping the citizens of Tennessee safe.

Participants in the training were asked if they received energy for change. Specifically they were asked, "How confident are you that you will be able to apply what you have learned in the courtroom?" On a scale of 1-9 with nine being the highest, the answer from 23 persons who responded was 7.91. Comments from critiques included: "I seldom prosecute DUI's, because my district has a DUI prosecutor. However, I will look for opportunities to apply what I learned to other cases, because so many offenders are on drugs or trying to sell drugs. I feel I now have a much better understanding of drug impairment." Another participant wrote: "I think the amount of misinformation about HGN and the lack of training in this area will continue to hinder the introduction of the test in the courtroom. Tennessee needs legislation concerning HGN admissibility. The knowledge and quality of the speakers was phenomenal." Finally, a third participant noted that the greatest barrier to use the knowledge gained were close minded judges, who would not even permit hearings on the expertise of officers in areas of drug recognition and various observations of the eyes, including such basic things as whether the eyes are dilated or constricted.

## VEHICULAR HOMICIDE MURDERERS ROW

### NINE YEAR HOMICIDE SENTENCE



Johnny Hickey, 52, of Liberty, was traveling west on Highway 70 in Smith County in a 2004 F350 full size flat bed truck. He crossed the turning lane and into the path of an eastbound 2002 Nissan Altima, driven by Cleva Elaine Gammons. Chris Gammons was a front seat passenger and Troy Bruno was a back seat passenger of the Altima. Chris Gammons was killed and Mr. Bruno suffered severe injuries. Hickey, who had a .18 blood alcohol content recieved a 9 year sentence to serve.

### EIGHT YEARS WITH 6 MONTHS IN JAIL

Justin Alexander Phillips, 20, received an eight-year sentence Monroe County, but will serve six months in confinement. His fatal crash occurred on Dec. 10, 2011, when he ran off Sweetwater/Vonore Road and struck a tree, killing his passenger, Andrew Hayes. Alexander had a blood alcohol level of .08. In addition to serving six months and being on parole for eight years, Phillips will also lose his license for three years.

### HABITUAL TRAFFIC OFFENDER



John Betts, age 52, of Memphis, pled guilty to DUI and driving while habitual motor vehicle offender. Betts attracted the attention of Memphis police officers while operating an ATV. A blood specimen was obtained from Mr. Betts pursuant to the mandatory blood provisions of the Implied Consent Statute. It was submitted to the TBI Lab with the results showing 0.11% ethyl alcohol in his blood. Betts had previously been convicted of DUI ten times, but none within the last 10 years so by statute he was a first offender. John Betts was declared an Habitual Motor Vehicle Offender in the Criminal Court of Shelby County, Tennessee on January 11, 1989, and was subsequently convicted of Driving While Habitual Motor Vehicle Offender on 12 occasions. Upon his guilty plea in the present case he was sentenced on Driving While Habitual Motor Vehicle Offender to a fine of \$1,500.00 and 6 years as a career offender with 60% release eligibility, and on DUI, 1st offense, a class A misdemeanor, a fine of \$1,000.00 and 11 months and 29 days concurrent to a 6 years sentence.

### THREE YEARS FOR VEHICULAR ASSAULT



Paula Crowder, 46, pled guilty to vehicular assault in Hickman County. Four hours after she crossed the center line and ran head-on into her victim, she had a .07 blood alcohol level and methamphetamine in her blood sample. The victim in the case, Mrs. Carroll, was on her way to work as a private duty nurse. She ended up in the hospital for three weeks and a nursing home for another three weeks. She lost her ability to stand. She lost her job. She has permanent impairment to her ankles, an elbow and her back. Crowder appealed the Court's decision that she serve her sentence. Apparently serving some time in jail seemed to be a major issue for her, despite the fact that her victim will suffer from her actions the rest of her life.

### TWENTY YEARS FOR 5 VEHICULAR ASSAULTS



Danny Ray Dunn, 58, of Chattanooga, pled guilty to five counts concerning vehicular assaults. He was unhappy with the trial court's decision that he serve four years for each conviction consecutively for a total of twenty years. In May of 2011, Dunn crashed into a vehicle with two adults and three children on Interstate 24 near the Germantown exit in a construction zone. Traffic was stopped, but the impaired Dunn continued to drive at a high rate of speed changing the lives of his five victims in horrendous ways. Dunn was on probation for DUI at the time and had been convicted of DUI twice before this crash. Dunn blamed his addiction on the death of his wife a few months before the crash. The Court reviewed the testimony from the sentencing hearing and affirmed the sentence. The case is reported at: 2013 WL 1225788.



## ARIDE FOR PROSECUTORS CONFERENCE A SMASHING SUCCESS

By Jim Camp

The Institute for Behavior and Health, Inc. estimates show that 20% of crashes in the U.S are caused by drugged driving. In one study of reckless driving, over half who were not intoxicated by alcohol were found to be impaired by cocaine and/or marijuana. It is therefore not surprising that drug impaired driving cases are increasing here at an alarming rate. From September 17 to September 20, prosecutors attended a conference focused on drugged driving called: Advanced Roadside Impaired Driving Enforcement (ARIDE) Training for prosecutors. The purpose of the training was to expose prosecutors to the skills and techniques of ARIDE trained officers, to help them better understand the problem of drug impaired driving and to equip them with the skills to more easily and efficiently prosecute drug impaired driving offenders.

Dr. Karl Citek, a Doctor of Optometry and PhD from Pacific University, Portland Oregon, explained the finer points of the use of horizontal gaze nystagmus (HGN) to recognize drug impaired driving. Dr. Citek, the country's foremost expert on HGN, explained that in typical situations, including driving, about 85% of sensory input is visual which makes a driver's performance visually guided. If one's vision is impaired, so is a driver's ability to operate a motor vehicle. When an individual is impaired many experience tunnel vision. That phenomenon eliminates a drivers peripheral vision and leaves only the central vision. This central vision consists of only 20% of the visual space thereby eliminating sight of all objects except those directly in front of the driver.

Attendees also discovered the important role Drug Recognition Expert (DRE) officers play in drug impaired driving cases. Prosecutors learned that a DRE can perform an evaluation on an impaired driver and determine if they are impaired by drugs and if so which classification of drugs or combination of classifications are responsible.

DRE Instructor Clint Shrum discussed drugs in the human body noting among other things that a drug can have the opposite effect on an individual than that originally intended. This is called a "Negative Effect". For instance, a depressant might have the effect of a stimulant and vice versa. While homeostasis is the maintenance of the internal condition of living organism despite any change in external conditions where the body tries to regulate its temperature and the amount of oxygen despite the addition of drugs to the system. The result of this attempt by the body to regulate itself (homeostasis) is the appearance of bodily systems slowing down, speeding up or the individual appearing confused.

DRE Instructor and Deputy A.J. Ross, Murfreesboro Police Department, provided an overview of eye tests relevant to drug impairment, explaining how horizontal gaze nystagmus is usually present when an individual ingest the "DID" drugs (Depressants, Inhalants, Dissociative Anesthetics). He then described the "lack of convergence" test where the eyes fail to cross when a stimulus is brought close to the subjects nose, explaining that there is a lack of convergence with the DID-C drugs (Depressants, Inhalants, Dissociative Anesthetics and Cannabis). The prosecutors also learned the importance of noting the size and behavior of a subjects pupils where CSH drugs (Cannabis, Stimulants, Hallucinogens) dilate the pupils and the DID drugs do not. Detecting drug combinations was also discussed including the phenomenon of the antagonistic effect when two drugs affect some indicator in exactly the opposite way, their combination will result in an unknown manner.

DRE Instructor and Collegedale Police Chief Hickman discussed the seven major drug categories, their purpose, effect on the human body including impairment, the major indicators of their use, the duration of their effects and the usual methods of administration. Those drug categories are: CNS Depressants, CNS Stimulants, Hallucinogens, Dissociative Anesthetics, Narcotic Analgesics, Inhalants and Cannabis.

Richard Holt, DRE State Coordinator, reviewed drug field sobriety tests and standardized field sobriety tests for depressants like alcohol. Special Agent and TBI Toxicology Supervisor, Jeff Crews, explained what the scientists know from the results of blood testing for drugs including the fact that Tennessee is the number three nationally in prescription pain medication per capita.

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### *Tennessee District Attorneys General Conference*

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