TNDAGC

DUI NEWS

ISSUE 45

January 2014

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:
dui.tndagc.org/newsletters

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.

WHAT IS YOUR DEWEYOSOPHY TEN YEARS LATER?

Ten years ago, we faced challenges in Tennessee that seemed overwhelming. In our major metropolitan areas only about a third of drivers arrested for DUI 1st offense were being convicted for DUI 1st offense. We were suffering from 5,564 alcohol related crashes a year. We lost 1193 people on our highways. Of those killed 31 % were killed in alcohol related crashes.

Ten years ago the DUI News asked prosecutors the question, "What is your Deweyosophy?" The question was how much did a DUI matter to you in the course of your huge caseloads? The concluding paragraph of the article was: "With the dawning of the .08 BAC standard and the elimination of the adult DWI, what Deweyosophy will you proclaim? Shall we enable the drunk to keep on endangering our citizens, voters, taxpayers? Or shall we proclaim that no one will be permitted to continue driving drunk in our State. Will you claim **victory**! The real victory includes convicting those who are guilty. The lasting victory is that which stops the offender and protects our citizens."

So much has happened in the last ten years. Progress has been made. This year fatalities on our roads will total about 1,000. That's 193 less funerals for Tennessee. Alcohol related fatalities now account for 21% of our crash fatalities. There were 3058 alcohol related crashes by mid December, 2013. That's about 35% fewer than in 2003.

There are about 3,000 more DUI 1st offense convictions now per year than ten years ago and the number of 2nd, 3rd and 4th DUI convictions have dropped. Those convicted of 1st offense DUI usually don't get arrested or convicted of a 2nd offense. It now appears that only about 16% of those convicted of 1st get convicted of DUI 2nd offense. However, those convicted of 2nd have about a 23% likelihood of being convicted of a 3rd and 3rd offenders have about a 36% likelihood of a 4th offense conviction.

From the numbers it appears that our DUI 1st offense interventions work. The combination of jail, fines, evaluations, community service, license suspensions, ignition interlock provisions and all seem to serve us well. The key is whether or not the guilty person gets convicted. If not, no interventions occur. Nothing helps the 1st DUI offender and reduces the alcohol related crash prospect more than conviction.

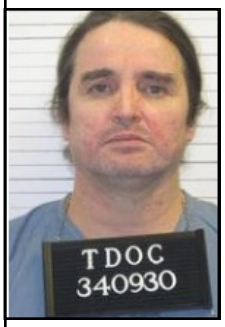
There remains much to be done about multiple DUI offenders. This year the Haslem administration has proposed a bill to reduce recidivism by combining punishment with treatment and monitoring in a new way. For a brief description of the bill see page 9 of this issue. The bill can be viewed at the General Assembly's website at: http://www.capitol.tn.gov/Bills/108/Bill/HB1429.pdf. We hope that the bill does what it is intended to do, save more lives on our roadways by addressing what needs to be don't to stop 2nd offenders from becoming 4th offenders and 3rd offenders from ever committing a 4th offense!

RECENT DECISIONS

State v Kinsler, 2013 WL 5873075 PHYSICAL CONTROL 4TH OFFENDER

The driver and two buddies were parked in the middle of the road when Morristown Police Officer David Campbell arrived. Officer Campbell noticed the front passenger door was open and the vehicle extended over the crack in the middle of the road by about two feet. The defense focused on whether the vehicle was operable. There was much discussion about a kill switch in the vehicle. The jury rejected the inoperability claim and the Court affirmed. Kinsler, a fourth offender with many additional convictions, was sentenced to two years.

State v Hicks, 2013 WL 5677351 EIGHTEEN YEARS WORTH OF OFFENSES



The defendant, William Richard Hicks, alias Billy Richard Hicks, appeals from his convictions for various alcohol-and driving-related offenses, the most serious of which were DUI, tenth offense, and violation of the habitual motor vehicle offender ("HMVO") statute. He was sentenced as a Range III, for an effective sentence of eighteen years. Judge Glenn in his opinion stated, " It is without question that the defendant has a horrendous record of arrests, convictions, and failures at attempts for rehabilitation. Likewise, the court explained in detail that his horrendous record of DUI convictions and his continuing to drive while intoxicated mandated his being confined as long as possible to protect the public. In short, if there were ever a case in which the trial court was justified in sentencing the defendant to the maximum terms and ordering that the sentences be served consecutively, this would appear to be it."

State v Frier, 2013 WL 5657679 COLLATTERAL ATTACK ON PRIOR CONVICTION REVERSED

Citing a 1986 case that is no longer valid law in Tennessee, an attorney convinced a trial court to set aside a prior DUI conviction because the conviction did not show a fine, DUI school and probationary period on it's face. The CCA granted an extraordinary Rule 10 Appeal to consider the matter and reversed the Trial Court. The bottom line from the unanimous Court and an opinion penned by Judge Smith was: "In the case herein, Appellee chose to collaterally attack the validity of his 2008 sentence in a motion in limine. Moreover, although the sentencing provisions of TCA 55–10–403 are missing from the judgment, it is plain that Appellant in fact has a prior DUI conviction. Appellee cannot collaterally attack the validity of his prior DUI conviction via a motion in limine.

State v Wessells, 2013 WL 5310584 ODOR OF ALCOHOL SUPPORTS FURTHER INVESTIGATION

In Williamson County, the driver ran a flashing red light and was stopped. The officer spoke with the driver and noticed an odor of alcohol. She collected the license, registration and insurance information and returned to the police vehicle to contact her dispatcher. Thirteen minutes later she returned to the driver and asker her to step out of her SUV. After further investigation and testing the driver was arrested for DUI, pled guilty and reserved an issue for appeal as to whether the 13 minute period of detention was too long and whether the odor of alcohol was enough to continue the investigation. The appeal failed and the conviction was affirmed.

State v Pitts, 2013 WL 5310476 CROSSING LANE LINES

This driver crossed three lane lines, lost a bench trial and appealed claiming the Court should have suppressed his stop. The defense attempted to rely on Binette, but the Court noted that, " the defendant's vehicle did not just drift within the lane, but that the vehicle left its designated lane of traffic and that the driver's side tires entered into the adjacent lane on three different occasions."

RECENT DECISIONS

Cullum v McCool, 2013 WL 6665074 Tenn 2013

It is rare that a civil case is included in this newsletter, but this December decision of our Supreme Court may have a significant impact on the issue of impaired driving. It imposes a duty on businesses to protect patrons from intoxicated drivers.

The issue presented in this premises liability case is whether a store owes a duty to protect its customer from a visibly intoxicated customer who was ordered to leave the store by store employees. A store patron sued a store for negligence after she was struck and injured in the store's parking lot by a vehicle driven by another store patron. Store employees had refused to fill the other patron's medical prescriptions because they believed she was intoxicated; she became belligerent, and store employees ordered her to leave the store knowing that she was alone and would be driving her vehicle. In response to the lawsuit, the store filed a motion to dismiss contending that it did not have a legal duty to control the intoxicated patron after she left the store. The trial judge granted the store's motion to dismiss. The Court of Appeals reversed, finding that the store owed the injured patron a duty of care to protect her from the intoxicated patron. Taking the plaintiffs' allegations as true and drawing all reasonable inferences in her favor, we hold that the foresee ability of harm and the gravity of harm to the injured patron outweighed the burden placed on the store to protect the patron against that harm. Therefore, the store patron's complaint contains sufficient allegations which, taken as true, establish that the store owed a duty of care to the injured patron. The trial court erred by granting the motion to dismiss.

State v Murrell, 2013 WL 6706123 An Appeal or a Delay in Sentencing?

Murrell appealed his stop after an arrest with a .168 B.A.C. The basis of the stop was that the vehicle crossed the fog line three to four times. When the vehicle crossed the line, it would "jerk" back into the lane. The Court noted that the driver failed to maintain his lane in violation of TCA 55-8-123" and that his erratic driving supported reasonable suspicion for DUI. The Court cited numerous cases in support of the conclusion. It might make a person wonder if the defendant was appealing or trying to put off the inevitable.

State v Banks, 2013 WL 6706140 Broken Tail Light

The driver was stopped due to having a cracked taillight, that let white light shine through. The driver pled guilty to DUI, but reserved the question of the stop. The Court ruled that the case was controlled by State v Brotherton, 323 SW3d 866 (Tenn 2010) and affirmed.

THE SPEEDING PROBLEM

WASHINGTON – The U.S. Department of Transportation's National Highway Traffic Safety Administration (NHTSA) has released a new *National Survey of Speeding Attitudes and Behavior* in which nearly half of drivers surveyed say speeding is a problem on our nation's roads, and one in five drivers surveyed admitted, "I try to get where I am going as fast as I can." Speeding-related deaths nationwide account for nearly a third of all traffic fatalities each year, taking close to 10,000 lives. "We all have places we need to go, but it's never the right decision to put ourselves, our families and others in harm's way to get there faster," said U.S. Transportation Secretary Anthony Foxx.

You can read the *National Survey of Speeding Attitudes and Behavior at www.NHTSA.gov*

A New High in the Colorado Rockies

by Chris Halsor, T.S.R.P.

Come January 1, 2014, a person can walk into a Denver retail marijuana store, produce a Colorado driver's license or ID card showing that he or she is over 21, and walk out with an ounce of marijuana. Out-of-state ID? An individual will be limited to a ¼ of an ounce (in a single visit). Welcome to ground zero in the marijuana revolution. In November of 2012, Colorado and Washington

State voters overwhelmingly voted in support of legalizing marijuana and creating the first retail and wholesale marijuana industries in the United States. All the while it remains a federal crime—one which the federal government may choose to investigate and prosecute at will. There are a multitude of issues that policymakers within these states are grappling with, and a concern high on everyone's list is traffic safety, and what most assume will be an detectable increase in the number of marijuana impaired-drivers and concomitant fatalities that will follow. Yet these challenges don't stop at the Washington and Colorado boarders.

The premise is simple enough—with greater acceptance and greater access the number of marijuana consumers is about to jump and there will be greater circulation of marijuana around the country than ever before. However, this grand experiment has some history founded in medical marijuana and to examine the issues facing law enforcement, prosecutors, public safety officials and policymakers, it's essential to start with medical-marijuana to fully understand. Stymied by repeated attempts to secure in-roads to legalizing marijuana—advocates for that community repackaged the argument beginning in the mid-1990s with a new pitch—it's medicine. Advertised as assisting those with life-ending diseases such as cancer, AIDS, and cachexia, and other afflictions such as seizure disorders and glaucoma—where there has been some research to indicate that "marijuana" may have some medicinal properties—advocates canvassed and gained signatures to get initiatives placed on state-wide ballots. In 2000, in Colorado, two measures concerning marijuana went to statewide vote that fall—a measure to legalize marijuana (which failed) and one to help those with the most dire of diseases and outcomes. Amendment 20 passed (because Colorado's marijuana advocates are smart to put things in the state constitution where they are meant to stay unblemished and above reproach—save for another statewide vote). The law lingered for nine years with little fanfare until the United States Department of Justice issue the Ogden Memo in October of 2009 which while stressing that marijuana is illegal, nevertheless asserted that because resources are precious and finite, that the feds would be focusing on trafficking, marijuana-associated criminal enterprises and cases where guns and marijuana met, and that where states had passed medical marijuana laws, well, the feds were going to let that happen within reason. And then the explosion took place.

With repeated success getting a foot into the door of legitimacy under the premise of medical marijuana, the formula is largely the same. An individual has some form of a "debilitating medical condition," where such high-profile diseases as cancer, AIDs, cachexia, etc. are enumerated. Tucked into that list is additional afflictions such as chronic pain, muscle spasms and nausea—conditions that are intentionally vague and equally subjective. The doctor is part of the next step, but it's the conflict with federal law that actually creates one of the fantastically wide loopholes. It is illegal under federal law for a physician to prescribe a Schedule I substance (which by definition is consider to be highly addictive and possess no medicinal value). Marijuana is a Schedule I substance. As such, there is no such thing as a prescription for marijuana – instead it is simply a referral with the suggestion that marijuana might be beneficial. Further, the requirements of prescriptions that detail, doses, delivery method and explicit instructions for use, as well as limitations on refills are conspicuously absent.

As such, the individual, armed with a referral, is left to go find their medicine on their own. Oh, it's also a federal crime for a pharmacy to dispense a Schedule I substance. As a consequence, most medical marijuana enabling legislation provides a provision for care-givers – those who will grow the marijuana for the patient. It is this entity of "caregiver" that morphed into "dispensary," – the commercial retail distributor of medical marijuana. There's more. Contained within the enabling laws for medical marijuana are provisions that allow users to possess certain amounts of marijuana, or to have a caregiver/dispensary grow that person's marijuana for them. A common, and completely arbitrary number is six plants. How much marijuana comes from six plants? It depends, but beginning in 2009 when the feds looked the other way, it opened the door to grows, large scale commercial hydroponic grows, where time, money and green thumb expertise began to produce higher yields to where it is possible to pull a pound of useable marijuana from each plant in a 60-90 day cycle.

(continued Page 5)

COLORADO HIGH

As a consequence, the availability of marijuana—high quality marijuana—has become more widely available across the country. In addition, the business environment of medical marijuana fueled a race to the top to try and outdo competitors in achieving ever higher potency levels of marijuana.

Then there's the marijuana. For people who tried marijuana ten, twenty, thirty years ago, in all likelihood, that individual tried marijuana that had a THC content of less than 10%, and probably closer to 2-4%. Within a short period of time, however, marijuana growers have been able to develop and push strains to THC levels in marijuana to the mid-twenties. But that's not the end, that's just the beginning. Taking the definition of marijuana from federal statutes—which were created to be intentionally broad to cover effective prohibitions and enable successful prosecutions, and these definitions were simply inserted into legalizing measures and cover traditional marijuana therefore now allowing for marijuana and all of its potential analogs and permutations. Install that in the legal world, and it enables legal marijuana to extend well beyond the green leafy bud that gets rolled into a joint or smoked in bong. It allows for legalized hash, and other marijuana derivatives such as kief, budder, shatter and various different waxes, concentrates and oils, each with distinct colors and consistencies that look nothing like the image people have of marijuana. It allows for edibles and infused products. Further, it allows for higher highs as these derivatives allow for higher potency levels, with Hash able to hold THC levels of 40-70%, and with waxes and oils allowing for 90% plus THC levels.

Now, in a short few weeks, an individual armed with only an ID card can jump feet first into this new found freedom as well as jump into a car .

While the collateral consequences of recreational marijuana will take time to materialize, the presence of medical marijuana, now available in 20 states, provides a window into the challenges associated with marijuana impaired driving.

Does marijuana impair?

For those in the public safety business, the question is likely a resounding yes. However, it is a question that is hotly debated in legislatures around the country and the political landscape of marijuana has as much to do with the question as science and statistics. Securing legitimacy in suburban America has been a critical strategy to gaining acceptance of marijuana. Therefore, in the context of medical marijuana, the talking points have been drafted to steer policy makers to only the positive attributes of marijuana, while at the same time excoriating anyone who raises concerns about the drug, with ad hominen attacks and cries of "reefer madness" – a pejorative meant to connote a parochial narrow-mindedness, tinged with a sprinkling of racism and classism to boot. As such, marijuana is portrayed in many ways as a cure-all miracle drug for just about any condition, with no side-effects, no known cases of death by overdoes, and one in need of little or no regulation. Further, in the context of driving, the arguments put forth are that driver's under the influence of marijuana are safer drivers because there are some studies that show that they drive slower, ergo they must be safer. Users—chronic users—will barrage a legislature with ample statements as to the extent of the individuals daily consumption and how they remain immune from any impairing effects. When tied to medical marijuana, the premise is simple—it's not that I want marijuana, it is that I need marijuana, and no one but the user should dictate how much is consumed, when it is consumed and how often it is consumed. In addition to assertions that prohibitionist-minded law enforcement and prosecutors will profile and target marijuana users, the cry will be repeated often that medical marijuana users will be unjustifiably arrested, jailed and punished for use that in no way impacts their ability to drive, but this is merely retribution and a desire to maintain an oppressive status quo. Although, compared to alcohol, marijuana driving research is still in its infancy, there is still a fair amount of research on the subject that has taken place over the last 15-20 years that sheds light on whether marijuana actually impairs. The majority of the studies—mostly from Europe—have evaluated both crash data as well as conducted laboratory studies on human subjects, including driving exercises both live and simulated. From these studies there is strong support that marijuana does impair driving and that it affects critical tracking and divided attention tasks, including highly automated behaviors (lane deviation and failure to stop are derivative behaviors of one of marijuana's key attributes, the diminishment of short term & working memory).

Mortality studies have shown that marijuana impairment has increases crash risk between 2 and 7 times. Further studies have shown that chronic users while able to compensate for some impairing affects cannot compensate for all of the effects. The peer-reviewed science supports the findings that marijuana impairs driving, increases fatal crash risk and the risks continue to affect daily users.

(continued Page 6)

COLORADO HIGH

Fatalities.

To make a persuasive argument that marijuana in fact poses a traffic safety concern it my reasonably be argued that one only need look at the fatalities to make that conclusion. After all, since 1975, when the National Highway Traffic Safety Administration (NHTSA) created the Fatality Analysis Reporting System (FARS), states have been documenting and collecting data, including drug results, to better ascertain the proximate cause of traffic fatalities. However, a closer inspection reveals some of the systemic limitations of the data, which may have the potential for both under-reporting and over-reporting. The collection of FARS data is conditioned upon law enforcement agencies reporting the data to the local FARS collection unit. Underreporting of data at the law enforcement level is one instance of how data can be missed. In many states blood may be collected from an at-fault driver if that driver is dead or where there is probable cause that the driver has committed a crime, and it's often not just any crime, but rather a serious offense such as vehicular assault or vehicular homicide. In Colorado, only about 40% of at-fault drivers of fatal crashes have their blood taken. When autopsies of fatal drivers and victims are conducted it's common that there are no standardized rules for how fluids are collected, tested and reported. As such, it is not unusual to have urine collected and tested to determine if there was the presence of marijuana. This fact alone can skew facts towards over-reporting. Urine is waste product, and is not a good medium for determining what a driver was actually being influence by at or around the time of driving. As such, FARS technicians, who are trained only look for a drug result, not to interpret it, may be reporting fatalities caused by marijuana, when that may not have actually been a proximate cause. Despite the limitations in data, in Colorado, there appears to be an upward trend in the number of drivers responsible for fatal crashes that have both drugs, and more specifically marijuana, in their systems.

Enforcement challenges.

While it has been shown that high-visibility enforcement is one of the best tactics in combating alcohol-impaired driving, applying that same tactic to marijuana impaired driving cases will present big challenges. While law enforcement, particularly the Drug Recognition Expert (DRE) program, has recognized the challenge of drug-impaired driving, the ability of this small group to effectively combat the growing number of people driving under the influence of drugs, including illegal, legal recreational and prescription is quickly exceeding what their numbers will allow. Numbers alone will dictate that the average patrol officer needs to be better equipped to handle and recognize the drug impaired driver. The continued development and expansion of the ARIDE training program are steps toward better awareness and enforcement, but it's only part of the puzzle.

Per se legislation.

One response to the increased visibility of marijuana impaired driving is the legislation of a 5 nanogram per se law. This type of law, adopted by Washington State as part of I-502, the initiative that created legal marijuana; passed by the legislature in Montana, and is likely to become the standard response around the country. While 5 ng. is supported in science, the number itself is nevertheless somewhat arbitrary. The scientific studies show that marijuana impairment begins at 1-2 nanongrams, with one study showing that 75% of the impairing attributes of marijuana manifest at 5 nanograms. There is some evidence that the 5 nanogram number surfaced as a result of a political compromise in a piece for a 2010 Colorado legislation for a per se level that was meant to balance the desire for a per se level while offsetting the concern that medical marijuana users would be unjustly investigated and prosecuted due to residual levels—this legislation failed multiple times in Colorado and resulted in a watered down permissible inference in 2012. While 5 nanogram is a starting point, it is by no means a silver bullet.

Further, it is important to understand how marijuana is processed through the body and how this affects investigations and subsequent prosecutions. Delta 9 THC is the active impairing component of marijuana and remains present in the body for only 2-4 hours on average. Delta 9 THC can only be detected in blood. Contrast this to THC-COOH which is the inactive, non-impairing metabolite that can remain present in an individual for up to 30 days. THC-COOH can be detected in both blood and urine.

When marijuana is smoked an individual can go from having zero to well over a hundred nanograms of marijuana in his/her system within minutes and then it drops precipitously to where it can be back down to less than 20 ng. within an hour. Because law enforcement investigations can take time, it is imperative to stress that if an officer has

(continued Page 7)

COLORADO HIGH

probable cause to arrest someone for suspicion of driving under the influence of drugs that getting a blood test. Blood is preferred method for testing. For many years, in many states, urine testing is the preferred method, mostly because of cost. Blood however is the better evidence as it has the potential to show whether the individual was under the influence of Delta 9 THC. Law enforcement and prosecutors shouldn't entirely discount urine testing, but understand it is indicative of historical use and doesn't show that a suspect was under the influence of the active impairing component of marijuana at or around the time of driving. It can be used, however, to confirm that an individual had that drug in his/her system, and may help corroborate other evidence.

Proving marijuana impaired-driving.

The challenges in actually proving a marijuana-impaired driving case is as much about perception as it is about truth and science. Despite the increased access and use of marijuana, the number of marijuana who have tried marijuana is estimated to be about 20% of the population, and frequent users constitute a much smaller portion of that number. When faced with a question as to whether a driver was impaired by marijuana, most jurors don't have a point of reference to the drug. What is "high"? Describe it. What does a person who is "high" look and act like? What are the physical manifestations of marijuana impairment? Does the average juror have a realistic sense of what high is? Contrast that to alcohol. If you ask a person what a drunk person looks and acts like, most any adult can rattle off a litany of details. If the evidence to a jury included that the driver admitted to drinking ten beers or had a BAC of .150, the absolute majority of jurors have an instance understanding of the significance of those numbers. If, however, a jury heard evidence that the driver admitted to taking three "hits" and had a toxicology result of 10 ng. of Delta 9 THC, the jury, without additional explanation for what that means, likely doesn't arrive at any quick conclusions. Instead, the jury will look deeper into the case to ask themselves whether this person was really too impaired to drive a car. Based on observation and anecdotes, Colorado juries struggle to convict people of marijuana impaired driving, and if they do convict find the lesser offense of driving while ability impaired. In part, it would seem that juries and judges have an expectation of impairment that mirrors that of alcohol and when they don't see that type of impairment, they conclude the person was safe to drive. The reality is that people under the influence of marijuana don't look or act drunk, rather the impairment they suffer doesn't manifest itself physically, but rather it diminishes mental faculties. It is demonstrating mental impairment, a much higher bar that becomes one of the biggest challenges for law enforcement and prosecutors in successfully pursuing these cases.

Time and experience will aid in developing appropriate responses and effective tactics in coping with marijuana impaired driving and public education will be a critical piece. This is not something that is going to go away or will contract – the genie is out of the bottle. States, even without legal marijuana, need to prepare by developing effective law enforcement and prosecution training and tactics, the collection of accurate data, a better understanding of marijuana the drug, and public education based on current and future science.

About the Author

Chris Halsor is the Traffic Safety Resource Prosecutor for Colorado with the Colorado District Attorneys' Council, a position he has held since 2008. He previously spent eight years in a large suburban Denver area District Attorney's Office as a line prosecutor where he tried cases of all types ranging from Dog off Leash to First Degree Murder. He provides education, research and technical assistance to law enforcement and prosecutors throughout Colorado concerning all things traffic with an emphasis in impaired driving. He knows more about marijuana than he ever expected or wanted .

(continued Page 8)

COLORADO HIGH FOOTNOTES

1. Dose related risk of motor vehicle crashes after cannabis use: an update, Drugs, Driving and Traffic Safety, J. Verster, S. Pandi-Perumal, J. Ramaekers and J. de Gier Editors, 2009; Psychomotor Function in Chronic Daily Cannabis Smokers during Sustained Abstinence, W. Bosker, et al., *PLOS one* 8(1): e53127, 2013; Reversible and regionally selective downregulation of brain cannabinoid CB 1 receptors in chronic daily cannabis smokers, J. Hirvonen, et al., *Molecular Psychiatry,* 17, 642-649,2013; Impact of Prolonged Cannabinoid Excretion in Chronic Daily Cannabis Smokers' Blood on Per Se Drugged Driving Laws, M. Bergamaschi, et al., *Clinical Chemistry,* 59:3 519-526,201; Acute cannabis consumption and motor vehicle collision risk: systematic review of observational studies and meta-analysis, M. Asbridge, et al., *BMJ,* 344 e536 1-9, 2012

2. Dose related risk of motor vehicle crashes after cannabis use: an update, Drugs, Driving and Traffic Safety, J. Verster, S. Pandi-Perumal, J. Ramaekers and J. de Gier Editors, 2009; Driving under the influence of cannabis: a 10-year study of age and gender differences in the concentrations of tetrahydro cannabinol in blood, A. Jones, et al., *Addiction,* 103, 452-461, 2008; Acute cannabis consumption and motor vehicle collision risk: systematic review of observational studies and meta-analysis, M. Asbridge, et al., *BMJ,* 344 e536 1-9, 2012

3. Psychomotor Function in Chronic Daily Cannabis Smokers during Sustained Abstinence, W. Bosker, Et al., *PLOS one* 8(1): e53127, 2013; Reversible and regionally selective downregulation of brain cannabinoid CB 1 receptors in chronic daily cannabis smokers, J. Hirvonen, et al., *Molecular Psychiatry,* 17, 642-649,2013; Impact of Prolonged Cannabinoid Excretion in Chronic Daily Cannabis Smokers' Blood on Per Se Drugged Driving Laws, M. Bergamaschi, et al., *Clinical Chemistry,* 59:3 519-526,201; Acute cannabis consumption and motor vehicle collision risk: systematic review of observational studies and meta-analysis, M. Asbridge, et al., *BMJ,* 344 e536 1-9, 2012

Per Se Marijuana Law in the News January 9, 2014

VANCOUVER, Wash. (KPTV) — A man who police say admitted to smoking "a little bowl" of marijuana before his car struck and killed a pedestrian has pleaded not guilty to vehicular homicide.

Scotty Rowles was first arrested in December 2012, but prosecutors did not have enough evidence to move forward with their case so they dismissed the charges.

Now that investigators say they have the toxicology results and a case against him, prosecutors charged Rowles in a Vancouver courtroom Tuesday.

Court documents said the toxicology report showed the THC in Rowles' blood measured a 7.2 nanograms per milliliter. That's above the legal limit set in November 2012 in Washington, of 5 ng/ML.

Read more: http://q13fox.com/2014/01/09/driver-who-police-say-admitted-smoking-bowl-of-marijuana-charged-with-vehicular-homicide/#ixzz2qJKSMOM1

Note from Tom: The driver is presumed innocent unless proven guilty beyond a reasonable doubt. It will be interesting to see, if this case goes to trial, whether a panel of jurors will accept the recently established marijuana per se law in the State of Washington.

ADMINISTRATION BILL ADDRESSES TREATMENT OPTIONS FOR 2ND AND 3RD OFFENDERS

For the first time since the passage of the Comprehensive Alcohol and Drug Treatment Act of 1973, the General Assembly will examine the use of treatment, jail and monitoring to address recidivism by multiple DUI offenders. The bill, HB 1429 and SB 1633 would permit the Department of Mental Health to use the A.D.A.T. fund to meet the treatment needs of the 2nd and 3rd DUI offenders to protect society from future impaired driving risks. Currently the law permits a 2nd DUI offender to receive jail credit for up to 28 days of in-patient treatment. The problem being addressed by the administration is that a 28 day in-patient model that was popular in the 1970s and 1980s is rarely seen as the best tool to treat alcohol or drug abusers. If the proposed legislation passes, offenders would be sentenced to the same jail sentence but the Court would be able to design the sentence based on the required alcohol/drug assessment and recommendations of the treatment professionals. The 2nd offender could be released from jail after 15 days and the 3rd offender after 60 days, if the offender then begins a treatment plan ordered by the Court based on the treatment plan. For each day of in-patient treatment the offender would receive credit for a day in jail. For each 9 hours of out-patient credit, the offender would receive credit for a day in jail. Nine hours of out-patient treatment is given in 3 hour blocks three days a week.

Offenders who are not indigent would also be able to pursue treatment sentencing in the same way, but would be responsible for the costs of treatment, which is substantial. The proposed legislation would permit pre-trial service credit for time spent in treatment prior to judgment and sentencing, if the Alcohol/Drug Assessment recommended treatment. In other words, if an offender gets an alcohol/drug assessment after his/her arrest but before trial and follows the recommendation of the treatment plan, the Court would be permitted to give credit for pre-trial efforts to address the problem. However, if an offender checked in to a treatment facility as a patient without an alcohol/drug assessment and the post judgment assessment did not include a treatment recommendation, no credit would be available.

Prior to the filing of this bill, various parties interested in the bill were consulted at meetings set up by the Department of Mental Health. Those parties gave the department input to attempt to make the legislation work for everyone. The District Attorneys, Sheriffs Association, Police Chiefs, Public Defenders, the Tennessee Association of Criminal Defense Attorneys, Mothers Against Drunk Driving, and treatment professionals were consulted with the hope that the bill could result in safer streets by addressing the age old problem of repeat drunk driving.

Traffic Fatality FACTS 2013

Best of 2013

These counties had at least 6 fewer traffic fatalities in 2013 than in 2012:

	2013	2012	Reduction
BRADLEY	23	7	16
LAWRENCE	17	4	13
SEVIER	23	15	8
CAMPBELL	16	9	7
MCMINN	14	7	7
LAUDERDALE	12	5	7
SUMNER	20	14	6
HENDERSON	15	9	6
OBION	12	6	6
GRAINGER	9	3	6

Worst of 2013

These counties had an increase of 6 or more fatalities:

	2013	2012	Increase
SHELBY	89	101	12
MAURY	8	17	9
BEDFORD	8	15	7
CARROLL	2	9	7
KNOX	51	57	6
WILLIAMSON	10	16	6
TIPTON	7	13	6
GRUNDY	4	10	6

Supreme Court Rules Commission Endorses Electronic Search Warrants

Some days when I arrive at the office, I open my e-mail with a sense of impending doom. What new crisis is being faced by one of our prosecutors? Where will today's e-mails take me? What new project is being born? What new Appellate decision needs to be sent out in the form of an alert to our prosecutors?

On December 9th, I opened my e-mail and found a note from Lee Ramsey, Reporter for the Advisory Commission on the Rules of Practice & Procedure, that made my day:

"Tom, I'm writing to let you know the Advisory Commission -- at its meeting on Friday, December 6 -- adopted a proposed amendment to Tenn. R. Crim. P. 41(c) to authorize the application for and issuance of search warrants by electronic means. Since you were the person who initially suggested that the Commission consider such an amendment, I wanted to inform you of the Commission's action. (A copy of the Commission's proposed amendment is attached.) This proposed amendment will be part of the Advisory Commission's package of amendments that will be submitted to the Supreme Court in August 2014. Assuming the amendment is adopted by the Supreme Court and then approved by the General Assembly, the amendment would take effect on July 1, 2015.

Thank you again for bringing this important topic to the Commission's attention. Lee Ramsey"

Here is the proposed rule and comment:

TENNESSEE RULES OF CRIMINAL PROCEDURE
RULE 41
SEARCH AND SEIZURE
(c) ISSUANCE AND CONTENT OF WARRANT. —

(1) ISSUANCE. — * * * *
(2) REQUESTING A WARRANT BY TELEPHONIC OR OTHER RELIABLE ELECTRONIC MEANS. — A magistrate may issue a warrant based on information communicated by telephone or other reliable electronic means. The proposed warrant, the signed affidavit, and accompanying documents may be transmitted by electronic facsimile transmission (fax) or by electronic transfer with electronic signatures to the magistrate, who may act upon the transmitted documents as if they were originals. A warrant affidavit may be sworn to or affirmed by administration of the oath over the telephone or by other audio or audio-visual means by the magistrate. The affidavit with electronic signature received by the magistrate and the warrant approved by the magistrate, signed with electronic signature, shall be deemed originals. The magistrate shall facilitate the filing of the original warrant with the clerk of the court and shall take reasonable steps to prevent tampering with the warrant. The issuing magistrate shall retain a copy of the warrant as part of his or her official records. The issuing magistrate shall forward a copy of the warrant, with electronic signatures, to the affiant.

2015 Advisory Commission Comment

Subsection (c) was amended by adding a new paragraph (2) (and renumbering what are now paragraphs (3) and (4)). New subsection (c)(2) allows a search warrant to be obtained without requiring the affiant and the issuing magistrate to be in each other's physical presence during the application/issuance process. The amendment to the rule does not alter the requirement that the affidavit be submitted to the magistrate in writing regardless of the means of transmission. Rule 41(c)(2) is intended to be construed liberally as to the method of telephonic and/or electronic transmissions as advancements in technology occur.

The Tennessee General Assembly is also addressing the electronic search warrant. SB 1685 by Senator Green and HB 1485 by Representative Lamberth adopt the language of the proposed rule and would place it in the code at a new TCA 4-06-109. The combination of the code section and rule would eliminate any conflicts of law.

VEHICULAR HOMICIDE MURDERERS ROW

State v Dobson, 2013 WL 6175187 12 year sentence

Travis Lee Dobson lost control in a curve and killed Robert Eddie Ward. Dobson had a problem. In his system, the T.B.I. found marijuana, methamphetamine, and amphetamine as a metabolite of the methamphetamine; lortab; valium; and xanax. This was not Dobson's first time in the courtroom. His record included: concealing stolen property, malicious secretion of property, drug possession, assault, a prohibited weapons offense, and public intoxication. He also had convictions for multiple driving offenses—DUI, second offense, driving while intoxicated, three driving on a revoked license offenses, and reckless driving. On the night of the crash his license to drive was suspended. Dobson was sentenced to twelve years. The prosecutor in the case was Trevor Lynch in the 16th Judicial District (Murfreesboro).

10 year sentence

Margaret Riddle was sentence to serve 10 years for killing John Younce of Maryville on June 14, 2007. Mr. Younce was stopped legally at a traffic light on his motorcycle, when he was rear ended by the intoxicated defendant. Riddle had a blood alcohol level of .15. She did not hit her brakes prior to plowing into the motorcycle. Riddle had three prior forgery convictions. Riddle is serving her sentence in the Johnson County jail.

DUI TRACKER UPDATE

During the final quarter of 2013, one thousand two hundred seventy two (1,272) DUI dispositions were recorded in the DUI tracker from 23 judicial districts. The district with the largest number was the 21st. One hundred forty six cases (146) were concluded. The district includes Williamson, Hickman, Lewis and Perry Counties.

The second highest number, 123, came from the 22nd District consisting of Giles, Lawrence Maury and Wayne Counties. Congratulations to Generals Kim Helper and Mike Bottoms and their fine staffs for all their hard work.

Thanks to the DUI Coordinators for supporting the Tracker effort.

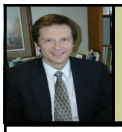
NEWS FROM THE TENNESSEE HIGHWAY PATROL

The Tennessee Highway Patrol greatly increased its seat belt enforcement and DUI enforcement efforts. As of mid-December, troopers issued nearly 50 percent more seat belt citations in 2013 compared to 2012 and 124 percent more citations compared to 2010. By mid-December, the number of DUI arrests increased 8.9 percent in 2013 compared to 2012, and 90.8 percent compared to 2010.

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



THP Utilizes Higher Tech Crash Tool

by Jim camp

Most of you are familiar with the Total Station which has been in use by crash reconstruction units for some time. The Total Station, a computerized surveying tool utilizing laser technology, revolutionized crash scene measurement techniques and provided state of the art crash scene diagrams. What you may not be familiar with is a state of the art development in the Total Station style technology.

The Leica C10 3D Scan Station is the latest and greatest version of crime scene mapping instruments soon to be utilized in major crash scene investigations and the Tennessee Highway Patrol Critical Incident Response Team (CIRT) has added this new crime fighting tool to its impressive arsenal.

The Scan Station is a pulse laser scanner that contains data storage as well as a camera originally created for high definition topographic surveying. As such, it provides survey grade long range and interior scanning of its environment. This scan can encompass a 360 degree, line of sight view of it's environment. It provides the user with both optical (photo) and laser measurements scans.

Essentially the instrument makes laser measurements and then follows those up with a second scan with its integrated camera. This camera can take 270 photos during a 360 degree scan. The instrument builds models of each type of scan and then overlays the measurement scan on the photo plane that has been developed.

The Scan Station can be moved around its environment to enable it to scan behind objects that block other views from the original scan thereby allowing the creating of a complete virtual 3D environment of all that is measured for the investigating Trooper.

Lieutenant Andy Shelton, who commands THP CIRT, describes the usefulness of this new technology: "The Scan Station will allow the creation of a virtual environment of the crime scene and will allow a jury to see the crime scene in 3D as our eyes see it during our investigation."

The original Total Station creates a two dimensional diagram. The Scan Station takes advantage of three dimensions and adds actual photo images upgrading from a mere diagram of the crime scene. Lieutenant Shelton relates that during the first minute of the demonstration THP received of the Scan Station the instrument made more individual measurements than all of the measurements made in the entire history of the Highway Patrol. (cont'd Page 7)

The basic usefulness of this new technology for trial exhibit purposes is obvious. But its usefulness does not end there. As experienced prosecutors we all know that certain issues develop after the original investigation is completed. As a result certain measurements that may not have appeared important at the time become important as new issues are raised. Since every object in the Scan Station's line of sight has been measured and saved in this virtual three dimensional environment the distance between any objects in that environment can be precisely measured even AFTER the investigation has been completed. The Scan Station will be housed at the Nashville CIRT headquarters and will be available for Major crash investigations, tactical scene preparation and other crime scenes.