



# DUI NEWS

## The New Laws of Interest for DUI and Drugged Driving Enforcement for 2017

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Public Chapter 16 permits the Tennessee Bureau of Investigation (TBI) to assess a \$250.00 fee whenever they process and test either a blood alcohol and/or drug test administered for law enforcement on a reckless driving offense or a simple possession or casual exchange case. The effective date was March 24, 2017.

Public Chapter 120 now sets out the definition of marijuana to specifically exclude any cannabidiol product that has been approved by the Federal Food and Drug Administration. The effective date for this legislation was April 12, 2017.

Public Chapter 124 now clarifies that state laws explicitly preempt any local government or municipal enactments with respect to any regulation of conduct involving appropriate sanctions on drugs and other similar substances. This law took effect on April 12, 2017 and will regulate local governments on the appropriate sanctions for state drug crimes.

Public Chapter 447 permits District Attorneys, Assistant District Attorneys, and similar persons to carry a firearm subject to specific training and certification requirements.

**Public Chapter 304: The New Implied Consent Law**

This law will take effect on July 1, 2017, and now requires officers who have probable cause to believe that a motor vehicle operator is driving while under the influence of an intoxicant may request that the operator submit to a breath or blood test. One of the significant additions to this implied consent statute is to administer a required breath test if the operator has been involved in a case that results in the injury (vehicular assault), or death (vehicular homicide), or having a passenger in the vehicle of 16 years of age or younger, or has a prior conviction for DUI, vehicular assault, or vehicular homicide, et cetera. An officer may still administer a blood test in certain situations. Without expressed consent, the statute requires a search warrant or the officer must have written consent prior to a blood test being performed to determine alcoholic or drug content of a driver's blood. See page 2 for the Department of Safety's Implied Consent Form.

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# New Implied Consent Form



**TENNESSEE BLOOD AND/OR BREATH CONSENT ADVISEMENT**  
**Pursuant to TCA §55-10-406**

AGENCY TRACKING NUMBER			AGENCY ORI		AGENCY NAME					
OFFICER INFORMATION										
OFFICER NAME (Last, First, Middle)				BADGE NO.		RANK		DISTRICT/ZONE		CAR#
MONTH	DAY	YEAR		DAY OF WEEK			TIME			
SUBJECT INFORMATION										
FIRST NAME			MID INITIAL	LAST NAME			SUFFIX	DATE OF BIRTH		AGE
ADDRESS LINE 1				ADDRESS LINE 2			CITY		STATE	ZIP CODE
PHONE 1	PHONE 2	PHONE 3	RACE	ETHNICITY	GENDER	SS#	DL#	DL STATE		

Are you willing to consent to provide a  blood  breath sample for chemical testing? If you refuse to supply a sample for blood or breath testing, no test will be conducted unless required by law or authorized by a search warrant or exigent circumstances. If you do not consent, the law permits me to apply for a search warrant for a blood and/or breath sample for chemical testing. If you refuse to provide a sample for testing, and the Court finds that you refused, TCA §55-10-407 requires that your license will be suspended for at least one (1) year and up to five (5) years, depending on your driving history. If you refuse, you may be ordered to install and keep an ignition interlock device on your vehicle for one (1) year or more.

After being informed that there is probable cause that you have committed a crime which requires me to submit a sample of your  blood  breath for testing, and also having the consequences to such test explained to you, you:

CONSENT TO PROVIDE A SAMPLE

REFUSE TO PROVIDE A SAMPLE

\_\_\_\_\_  
 Subject's Signature, Date, and Time of Signature

\_\_\_\_\_  
 Subject's Signature, Date, and Time of Signature

- I have obtained a search warrant for a  blood  breath sample for chemical testing.
- There are recognized exigent circumstances which allow me to obtain a  blood  breath sample from you.
- The law requires me to obtain a breath sample from you because there is probable cause to believe you have committed a DUI, Vehicular Assault, Aggravated Vehicular Assault, Vehicular Homicide, or Aggravated Vehicular Homicide and you have:
  - Been involved in a crash resulting in the injury or death of another.
  - A child under the age of sixteen (16) years in your vehicle.
  - A prior conviction for DUI, Vehicular Assault, Aggravated Vehicular Assault, Vehicular Homicide, or Aggravated Vehicular Homicide.

You are required by law to provide a  blood  breath sample for chemical testing because of the facts checked above. In this situation, if you intentionally refuse, prevent, or obstruct a blood or breath test and the Court finds you so refused, you are guilty of a class (A) misdemeanor. In addition, if the Court also finds that your license was also suspended or revoked for DUI, Vehicular Assault, Aggravated Vehicular Assault, Vehicular Homicide, or Aggravated Vehicular Homicide at the time of the alleged offense, the Court may fine you one thousand dollars (\$1,000.00) and sentence you to a minimum, mandatory jail or workhouse sentence of five (5) days, day for day, to be served consecutively. The minimum, mandatory sentence cannot be suspended.

**Breath Test Only:** You did not have any foreign matter in your mouth, did not smoke, regurgitate or drink any alcoholic beverage during the twenty minutes you were observed prior to the breath test.

\_\_\_\_\_  
 Subject's Signature and Date of Signature

\_\_\_\_\_  
 Observing Officer's Signature and Date of Signature

TESTING INFORMATION			
WITNESS (If Any)			LOCATION OF TEST
TEST OR TESTS OTHER THAN BREATH WERE REQUESTED?			
RESULTS	BLOOD	BREATH	TIME ADVISED OF RESULTS

## RECENT DECISIONS

**STATE v. ARVILLE LEE PITTMAN**, General Session Court for Unicoi County, Case number: 79247 -

### Driving Any Vehicle on Tennessee's Roads While Under the Influence Means Jail

Although this is a General Sessions case, lends support to the notion that one can still be found guilty of driving under the influence in Tennessee, even if one is driving a bulldozer! On April 24, 2017, Unicoi Sheriff's Deputies responded to a call from Arville Pittman, Sr., claiming that his bulldozer had been stolen by his son, Arville Lee Pittman, Jr. Unicoi Sheriff's Deputies found the defendant, who was still operating the bulldozer, in the middle of the road (a public road in Tennessee). Arville Lee Pittman, Jr., did not have permission to take the bulldozer, and was combative and uncooperative with the Sheriff's Deputies. Later, Mr. Pittman also stated that he would not have let his son borrow the bulldozer, because his son was intoxicated.

The defendant drove through a backyard, down a long driveway, and ended up on Unaka Springs Rd., causing major damage to the yard, and minor damage to Unaka Spring Road. Officers arrested the defendant, who was belligerent, uncooperative, and intoxicated, having great difficulty speaking coherently and incapable of performing any standard field sobriety tests. Arville Pittman, Jr. pleaded guilty to multiple offense DUI (3<sup>rd</sup>), vandalism over \$1,000, and resisting arrest. Thanks to ADA Todd Hull for this departure from the routine DUI case!

**STATE v. SCARLET I. MARTIN**, Court of Criminal Appeals of Tennessee, M-2016-00615-CCA-R3-CD, May 11, 2017

### Exigent Circumstances Upheld

In this appeal to the Criminal Court of Appeals of Tennessee, the defendant, Scarlet I. Martin, argues among several other theories, that her motion to suppress her warrantless blood draw was improperly denied, because the Tennessee Highway Patrol Trooper used exigent circumstances to justify the blood draw. This case is an excellent case for the lack of time to gain a search warrant.

Trooper Campbell responded to a single car crash outside of Dickson, Tennessee on I-40 going west. Scarlet Martin and a companion were driving back from Nashville when she veered off the interstate and crashed. Once she was taken to the hospital, Trooper Campbell, who was following THP policy, remained on the scene until the vehicle was properly secured and towed away. Once this task was completed, Trooper Campbell then proceeded to the hospital where he learned that the defendant was being prepared for medical examination. Not having enough time to obtain a search warrant, the Trooper asked the medical staff to perform a blood draw, citing exigent circumstances. The medical staff performed the warrantless draw, and the results came back a few weeks later as a BAC of .17%, nearly two hours and 15 minutes after the crash.

## Drugs in the Human Body by Jessie Loy

When we think of somebody who is driving while under the influence, we think of them as being impaired by alcohol alone. Unfortunately, there are far too many times that impaired drivers are operating motor vehicles while under the effects of illicit drugs. What is also not well understood is that legally prescribed medication can also be just as dangerous as illicit drugs and can still impair someone's ability to safely operate a motor vehicle.

In the society of today, we are beginning to see overwhelmingly large numbers of individuals who are on prescription medication. People fail to understand that these prescription medications can impair someone just as much, if not worse, than alcohol. "Physicians have long recognized that different types of drugs affect people differently. Drugs may be categorized or classified according to certain shared symptomatology or effects. The Drug Recognition Expert (DRE) categorization process is premised on these longstanding, medically accepted facts... Drugs from each of these categories can affect a person's central nervous system and impair a person's normal faculties, including a person's ability to safely operate a motor vehicle" (Borgman, Christopher. 20/20: Understanding the Physiology of Eye Movements and Impairment, April 28-29, 2015; source: <http://www.decp.org/experts/7categories.htm>).

Although a licensed professional, commonly a doctor, prescribes the drug, the drug can still impair an individual's ability to operate a vehicle safely. Most drugs are prescribed to work within a certain level, which is commonly referred to as a therapeutic range. Many fail to understand is that even a drug acting within its therapeutic range, the therapeutic range can still impair the ability of an individual to safely operate a vehicle. Utilizing a standardized systematic process, Drug Recognition Experts (DREs) have specialized, expert training that has become instrumental in detecting these individuals, because it is a difficult process and is not easily detected, especially in drugged driving only cases. Such experts have the necessary training and experience to help detect these individuals and make the highways and roads of Tennessee safer.

Doctors prescribe drugs to work within a certain range. This range is generally obtained by the administration of the therapeutic dose of that drug. "Therapeutic doses of legitimate prescription and over the counter drugs are designed to produce mild and carefully controlled simulations of the natural action of neurotransmitters and hormones" (Drug evaluation and classification training, instructor's manual, 2013, p. 6-28). Therefore, the best result is obtained within this range. For example, a doctor prescribes Ambien (sleep aid). Ambien is a central nervous system depressant. It is a drug used to treat insomnia. When taken properly, the amount of Ambien in your system is within a therapeutic range. The therapeutic range of this drug will assist an individual with falling asleep. Therefore, if an individual is operating a vehicle with this drug in his/her system and it is within the therapeutic range, the individual will likely be operating the vehicle while impaired, because the therapeutic effect of Ambien suppresses the central nervous system.

Many different sources will have their own definition of a drug. Manuals published by the National Highway Traffic Safety Administration (NHTSA) define a drug as "any substance that, when taken into the human body, can impair the ability of the person to operate a vehicle safely" (Drug evaluation and classification training, instructor's manual, 2013, p. 2-4). There are two words making this definition unique. Those two words are "any substance". Throughout this paper, when the term drug is used, this is the context in which it is referring.

Drugs cause the body to release certain neurotransmitters (chemical messengers) and hormones. There are two main neurotransmitters discussed. Those two neurotransmitters are dopamine and serotonin. "Dopamine and serotonin are technically the only two things you enjoy" (Borgman, Christopher. 20/20: Understanding the Physiology of Eye Movements and Impairment, April 28-29, 2015, lecture notes, page 3.)

## Drugs in the Human Body by Jessie Loy (continued)

“Dopamine plays a role in mood control. Serotonin is a vasoconstrictor, thought to be involved in sleep, wakefulness, and sensory perception” (Drug evaluation and classification training, instructor's manual, 2013, p. 6-26). With drugs affecting these two neurotransmitters, the effects on the human body can be readily observed.

Most antibiotics do not have impairment ability. In the Drug Evaluation and Classification program, there are seven categories referenced. Those seven drug categories are central nervous system depressants, central nervous system stimulants, hallucinogens, dissociative anesthetics, narcotic analgesics, inhalants, and cannabis. The signs and/or symptoms that a specific drug causes will determine in which drug category a drug is placed. During the evaluation process, a trained officer will pick up on these signs and symptoms and will be able to indicate which category(s) of drugs the individual may or may not be under the influence.

Certified Drug Recognition Expert officers are trained to look for clinical as well as general indicators of a person's impairment. Through the systematic standardized process, this can be achieved. Central nervous system depressants do exactly what they are saying; they depress or suppress the central nervous system. On the other hand, the central nervous system stimulants do exactly what they are saying; they stimulate or excite the central nervous system. “Hallucinogens can cause the user to perceive things differently than they actually are” (Borgman, Christopher. 20/20: Understanding the Physiology of Eye Movements and Impairment, April 28-29, 2015, lecture notes, page 8). Dissociative anesthetics cause a disruption in the pain receptors and cause them to disassociate from the brain. Narcotic analgesics relieve the body of pain. Inhalants are inhaled “substances that produce mind-altering results and effects”. (Borgman, Christopher. 20/20: Understanding the Physiology of Eye Movements and Impairment, April 28-29, 2015, lecture notes, pages 10-11.) Cannabis has an “active ingredient of delta-9 tetrahydrocannabinol (THC)” (Borgman, Christopher. 20/20: Understanding the Physiology of Eye Movements and Impairment, April 28-29, 2015, lecture notes, page 12.)

Central nervous system depressants cause nystagmus. Nystagmus is defined as the involuntary jerking of the eyes. Depressants also cause a lack of convergence. A lack of convergence is the inability of the eyes to cross. With some exceptions, a general rule for depressants is they do not affect the pupil size. Depressants cause a slowed reaction to light. Depressants will also lower pulse rate and blood pressure. Depressants do not generally affect body temperature. They will cause a flaccid muscle tone. Some of the general indicators for depressants are slurred speech, drunk-like behavior, uncoordinated, and gait ataxia (inability to walk).

Central nervous system stimulants neither cause nystagmus nor a lack of convergence. Stimulants will dilate the pupils and cause a slowed reaction to light. They elevate the pulse, blood pressure, and body temperature. Stimulants cause a rigid muscle tone. Some of the general indicators associated with central nervous system stimulants are restlessness, exaggerated reflexes, insomnia, bruxism (grinding of the teeth), and anxiety. Hallucinogens neither cause nystagmus nor a lack of convergence. Hallucinogens will dilate the pupils. Generally speaking, the reaction to light with hallucinogens is normal. They elevate the pulse, blood pressure, and body temperature. Hallucinogens cause a rigid muscle tone. Some of the general indicators associated with hallucinogens are hallucinations, paranoia, uncoordinated, poor perception of time and distance, flashbacks, and synesthesia (transposing of the senses).

Dissociative anesthetics will cause nystagmus and a lack of convergence. They will neither dilate the pupils nor cause a slowed reaction to light. Dissociative anesthetics elevate the pulse, blood pressure, and body temperature.

(continued Page 6)

## Drugs in the Human Body by Jessie Loy (continued)

They also cause a rigid muscle tone. Some of the general indicators associated with dissociative anesthetics are a blank stare, warm to the touch, incomplete verbal responses, cyclic behavior and moon walking. Moon walking is described as, "taking abnormally high and slow steps, as though he or she were trying to step over obstacles in his or her path" (Drug evaluation and classification training, instructor's manual, 2013, p. 16-27). Narcotic analgesics neither cause nystagmus nor a lack of convergence. Narcotic analgesics will constrict the pupils and cause a slowed reaction or no reaction to light. Narcotic analgesic is the only drug category constricting pupils. They lower the pulse, blood pressure, and body temperature. Narcotic analgesics also cause a flaccid muscle tone. Some of the general indicators associated with narcotic analgesics are ptosis (droopy eyelids), on the nod, depressed reflexes, facial itching, and euphoria.

Inhalants will cause nystagmus and a lack of convergence. Inhalants as a general rule will not dilate the pupils but will cause a slowed reaction to light. They elevate the pulse. The blood pressure could either be elevated or down. The body temperature could either be elevated, down, or normal. Inhalants cause a flaccid or normal muscle tone. Some of the general indicators associated with inhalants are residue of substance around the nose or mouth, nausea, bloodshot and watery eyes, flushed face, and non-communicative.

Cannabis will not cause nystagmus but will cause a lack of convergence. Cannabis will dilate the pupils but the reaction to light will be normal. It elevates the pulse and blood pressure. However, cannabis will not affect the body temperature. Cannabis also does not affect the muscle tone. Some of the general indicators associated with cannabis are odor of marijuana, impaired perception of time and distance, possible paranoia, relaxed inhibitions, and increase of appetite.

Drugs, including alcohol, are a problem in the United States. They are highly abused. Different drugs or drug categories will produce different effects on the human body. All drugs, as defined in this paper, have the ability to impair an individual. Highly skilled and trained officers can pick up on these clues and indicators presented to them by impaired individuals. Impaired individuals, who operate a motor vehicle, kill people. Officers need to be on top of their game to be able to remove these killers from the streets and make the roads a safer place for everyone.

### References

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*AUTHOR: Jessie Loy has been employed with the Metro Nashville Police Department since 1996. He a Drug Recognition Expert as well as an ACTAR accredited reconstructionist.*

## RECENT CASES (continued)

The Criminal Court of Appeals for Tennessee upheld the warrantless blood draw, citing as part of the analysis that the officer did not contribute to the delay because he was following proper policy as defined by the Tennessee Highway Patrol. The Court did comment, that had the Trooper not been the only officer to oversee the scene, then the result might have been quite different. One trooper could obtain a search warrant, while the other handled the scene and secured the vehicle.

**STATE v. STEPHEN W. JACO**, Criminal Court of Appeals of Tennessee  
M2016-00634-CCA-R3-CD June 20, 2017

On March 28, 2012, at approximately 10:23 p.m., Investigator Downing, from the New Johnsonville Police Department, was dispatched to investigate a potential domestic assault, which had occurred between Stephen W. Jaco and his wife. Upon arrival at the scene, Investigator Downing found that the suspect in the case had already left the scene. Investigator Downing then gave a description of the defendant for other law enforcement personnel, because the defendant had driven away earlier that evening. A description of the defendant's vehicle was also given.

Deputy R. Jay Phelps, who worked for the Humphreys County Sheriff's Office, saw a vehicle that matched the description given by the investigator in the domestic violence case. The vehicle was being driven by the defendant, Stephen W. Jaco. The deputy suspected intoxication, and after giving the defendant standardized field sobriety tasks, and arrested the defendant on the charge of DUI and being in unlawful possession of a firearm while being under the influence of an intoxicant or alcohol. In April of 2013, the defendant was indicted by the Humphreys County Grand Jury of driving under the influence and for possession of a firearm while under the influence of an intoxicant/alcohol. Although the defendant was also later indicted on domestic violence charges, those charges were dismissed and the defendant's record was expunged of those charges on June 4, 2013.

On July 30, 2013, the defendant filed a motion to dismiss the DUI and unlawful possession charges for mandatory joinder pursuant to Tennessee Rule of Criminal Procedure 8(a), which, as the defendant argues, required the state to join all charges stemming from the March 28, 2012 incident. Essentially, when the Humphreys County Grand Jury indicted the defendant on the possession of a firearm while under the influence and driving under the influence, but not on the domestic assault case. The state violated the defendant's right to mandatory joinder, because the events happened within the same episode. The defendant argued that since the officers were aware of the two separate charges, then the state should have joined all of them together, since it was all from the same night and event. The trial court denied the motion stating that there was no causal nexus between the domestic assault and Sgt. R. Jay Phelps's charges of driving under the influence and possession of a firearm while under the influence.

On August 19, 2014, the defendant had a trial that ended in a mistrial. A second trial was then conducted on June 16, 2015, where the defendant was convicted of DUI and possession of a firearm while under the influence. The defendant appealed based on the aforementioned issues as well as a new argument for double jeopardy, since the jury had been sworn and empaneled in his first trial. The Court of Criminal Appeals for Tennessee did not accept this argument and remanded the case, because they found that the motion to dismiss, although lacking a transcript of the hearing, was properly imposed by the trial court based on the two events not having a nexus. In essence, because one event happened earlier in the same day there was a break in the episode and the separate event of the DUI and the unlawful possession was not connected.

As to the double jeopardy issue, the Court of Criminal Appeals for Tennessee found that since there was no transcript of the proceedings there was no record for the court to review and, therefore, must assume that the trial court acted properly by denying the defendant's motion to dismiss. The case was affirmed but remanded to the jury to consider the DUI fine.

## The June Vehicular Homicide Course in The Great Smoky Mountains

The mountains of East Tennessee have been host to many spectacular and memorable events over the past few decades, but one of the events that has brought an excellent educational opportunity for law enforcement officers and prosecutors has been the Vehicular Homicide Conference this past June. The Tennessee District Attorneys General Conference and their joint partners in the Commonwealth of Kentucky sponsored the June 2017 Vehicular Homicide Conference. It hosted a pedestrian crash and a staged crash event for prosecutors and crash reconstructionist to give hands-on and practical training for prosecutors and law enforcement in both states.

Several law enforcement agencies were involved in the process of producing this valuable training, including the Commonwealth of Kentucky's State Troopers, the Tennessee Highway Patrols' Critical Incident Response Teams (CIRT), and the Tennessee District Attorneys General Conference, special appreciation for Lt. Sam Hinson of the Sevierville Police Department, who had provided the car that was used in the crashes and to Ms. Jamie Potts of General James B. Dunn's 4<sup>th</sup> Judicial District Attorney General's Office for her invaluable help.

This conference was both fun and informative, providing prosecutors from both states the unique opportunity to work together with expert crash reconstructionist, all of whom have dealt with some of the most painful and difficult vehicular homicides from both states. Among the experts that attended and taught was Professor John Kwasnoski, who literally wrote the book on modern reconstruction techniques. Professor Kwasnoski was able to break the complex formulas and mathematical insights used by reconstruction experts into easy to understand and fulfilling examples to help arm prosecutors and law enforcement personnel to better handle these complex and difficult cases. Jared Olsen, who is the Traffic Safety Resource Prosecutor for Idaho, was also in attendance and taught the essence of meaningful cross-examination as well as offering best practices for offering expert witness testimony. Special thanks to Bob Stokes, the TSRP of Kentucky, for his valuable experience and his teaching techniques.





## DUI TRACKER

### DUI TRACKER REPORT

The results below were taken from the Tennessee Integrated Traffic Analysis Network (TITAN) from April 1, 2017 through June 30, 2017 and reflect the DUI Tracker Conviction Report for all districts in the State of Tennessee. These numbers include only Circuit Courts, Criminal Courts, General Sessions Courts, and Municipal Courts.

The total number of arrests for the period from April 1, 2017, to June 29, 2017, since the last quarter were 1,994. This is up from the previous quarter by 544. From looking at these numbers, it is easy to see that the trend in DUI related arrests is going up slightly in Tennessee.

The total number of guilty dispositions during this last period is 1,312. The total number of dismissed cases is 120. This means that across the state, 65.79% of all arrests for DUI made are convicted as charged. This is slightly higher than the last period ending on March 31, 2017. Only 6.02% of cases are being dismissed. During this same time frame, 480 of the total cases were reduced down to another charge, meaning that 24.07% of the total cases disposed of were to another charge.

### Fatal Crashes in the Quarter

The following information was compiled from the Tennessee Integrated Traffic Analysis Network (TITAN) using an *ad hoc* search of the number of crashes involving fatalities that occurred on Tennessee's roadways from April 1, 2017 through June 29, 2017.

There were a total 235 fatalities in 220 crashes from the first of April to the end of June, which is an increase from the previous quarter. This is far too many people dying on the roadways, highways and streets of Tennessee.

Out of the total of 235 fatalities, 32 fatalities involved the presence of alcohol, meaning that 13.6% of all fatalities had some involvement with alcohol. This is down from the previous period. Further, there were a total of 16 fatalities involving the presence of drugs, which means that 6.8% of all fatalities involved drugs.

There were 10 fatalities that directly involved a hit and run where the driver drove off leaving the scene. This means that 4.25% of the fatalities involved a hit and run. Two fatalities resulted in a hit and run where the driver left the scene and the vehicle remained.

There were 115 fatalities resulting from 105 crashes where the primary cause of death was distracted driving. This is a broad category that includes cell phones and many other reasons for the distracted driving. It does show that drivers not paying attention, for whatever reason, is becoming a serious problem for Tennessee's highways and roadways. This means that 48.93% of all fatalities resulted in a failure of the drivers to pay attention to their driving.

At this point, the net result is not what we would expect, which would be that alcohol and drugs would be increasing, which they are not. The fatalities for drugs and alcohol seem to be dropping slightly, while the number of deaths on Tennessee's highways and roadways are going up as a result of distracted driving.

## VEHICULAR HOMICIDE MURDERERS ROW

### **State v. Benjamin Franklin, Houston County Circuit Court Case No. 2016-CR-44, 23rd Judicial District**

On October 12, 2015, at about 17:30 Central time, the Defendant Benjamin Franklin crossed the center line of Tennessee Highway 13 in his truck and struck the vehicle being driven by William Griggs, age 20. In Mr. Griggs's vehicle was his girlfriend Kassidy Leonard, age 19, and their infant daughter Kimberlynn Griggs, age 12 days. The damage caused by the Defendant's truck, which over-rode the smaller vehicle being driven by Mr. Griggs, killed William, Kassidy and Kimberlynn, even though they were properly restrained. The Defendant's urine, collected from the combative man at the hospital a couple of hours after the wreck, was positive for Methamphetamine, Amphetamine and Oxycodone, but a test of blood taken six hours later, pursuant to a search warrant, and after multiple blood transfusions, tested negative for those substances.

On March 6 and March 7 of 2017, the case was tried by Assistant District Attorney Talmage Woodall with the assistance of District Attorney Ray Crouch and Assistant District Attorney Jack Arnold. After a lengthy deliberation, the jury found the Defendant guilty of three counts of Vehicular Homicide by Impairment and three Counts of Vehicular Homicide by Recklessness. On May 3, 2017, Judge Suzanne M. Lockert-Mash sentenced the Defendant, who was a Range I offender, to 12 years at Range I on each count (with the Vehicular Homicide by Recklessness Count for each victim merging into the Vehicular Homicide by Impairment Count for that victim) and ran the three sentences consecutive to one another for a total effective sentence of 36 years in the Tennessee Department of Corrections at Range I.

### **State v. Johnny M. Dye, Dickson County Circuit Court Case No. 2015-CR-71, 23rd Judicial District**

On July 7, 2014, in the evening, just before dark, the Defendant Johnny M. Dye was traveling on Tennessee Highway 49 at a high rate of speed. He had already passed two cars, in spite of a double-yellow line, when he inexplicably drifted back over the center line as he crested one of the road's many blind hills. As he did, he struck the vehicle being driven by Jacob Akers in a front-end offset type of collision, driving young Jacob's vehicle back from the point of impact while his vehicle continued in its original direction of travel, diverted slightly to its right, nearly striking a woman and two girls standing in their front yard.

At the time of the fatal wreck, the Defendant had needles and syringes concealed in a work bag that he kept in the truck, and several hours after intensive medical treatment, the Defendant's blood still contained detectable quantities of Hydrocodone and Amphetamine.

On April 17 through April 19, 2017, the case was tried by Assistant District Attorney Jack Arnold with the assistance of District Attorney Ray Crouch. The jury found the Defendant guilty of Vehicular Homicide by Impairment and of Vehicular Homicide by Recklessness. On June 5, 2017, Judge Larry Wallace sentenced the Defendant, who was a Range I offender, to 12 years in the Tennessee Department of Corrections at Range I (the Vehicular Homicide by Recklessness Count merged into the Vehicular Homicide by Impairment Count).

## VEHICULAR HOMICIDE MURDERERS ROW

### State v. Micah Alexander Cates, 2015 WL 5679825, No. E2014-01322-CCA-R3-CD, May 19, 2015

On August 14, 2012, the Defendant, Micah Alexander Cates, who is the Appellant in this appeal, was in a single car crash that injured himself and killed his passenger on Milligan Highway near Elizabethton, Tennessee. Captain Workman of the Elizabethton Police Department arrived on the scene and found the defendant's white BMW intertwined around a metal pole at the Milligan Highway Market. The officer observed the defendant lying on the ground just outside his vehicle on the driver's side. Although the officer did not spend a great deal of time observing the defendant, he smelled an odor of alcoholic beverage and suspected that alcohol was involved.

Due to the defendant's injuries, he was taken to Johnson City Medical Center by ambulance. Once there the officer, based on the totality of the circumstances, believed that he had exigent circumstances to take the blood of the defendant. Another officer was directed to follow the ambulance to gain the blood of the defendant.

The defendant was indicted by a Carter County Grand Jury for vehicular homicide by intoxication, the charge of vehicular homicide by conduct for creating a substantial risk of death, and for driving under the influence with a blood alcohol content of higher than .08% at the time of the crash. Before the trial, the defendant filed a motion to suppress the warrantless blood draw. The trial court denied the motion and the state was permitted to put into evidence the results of the blood draw. The defendant was subsequently convicted by a jury and the defendant appealed.

The Court of Criminal Appeals for Tennessee examined the hearing and the record. They came to the Conclusion, that under the circumstances, including that there were several officers at the scene, as well as EMT and other emergency responders present that the state failed to show that the exigency was so pressing as to sufficiently undermine the necessity of the search enough to justify a warrantless blood draw in this case. The court remanded and vacated the conviction.

### *Tennessee LifeSavers Conference August 23-25, 2017 Embassy Suites, Murfreesboro*

### *30<sup>th</sup> Annual Lifesavers Conference & 13<sup>th</sup> Annual Law Enforcement Challenge*

Registration deadline is August 16, 2017  
For further details please visit: <http://tnlifesaverschallenge.com>

## The Tennessee Highway Patrol's Cadet Class 617 Graduation

### Tennessee Highway Patrol Welcomes 46 New Troopers

Friday, June 30, 2017, marked another chapter for the Tennessee Highway Patrol and the training staff at the Tennessee Highway Patrol's Training Center. Forty six new cadets walked across the stage, becoming troopers of the Tennessee Highway Patrol. These new troopers have stepped into the frontlines of the never-ending struggle to keep the roads and highways of Tennessee safe.

Lieutenant Steven Lowery began the ceremony by introducing the commander of the Tennessee Highway Patrol, Colonel Tracy Trott. He gave his address to the new cadets, reminding them as well as all the other troopers of the patrol that their duty is to the citizens of this state and they were servants, not lords. This is a well-known quote the troopers and the words written on the front wall of the training academy.

The keynote speaker was the Commissioner of Safety and Homeland Security, David W. Purkey, who echoed the sentiments of Colonel Trott and also added his own insights and wisdom to the new troopers. The Commissioner's additions were directed at the overall character and reliability of the trooper's code. There was also a stern warning that it took a lifetime to achieve a good reputation and only a moment to ruin it. Words of wisdom for all. Director Vic Donoho of the Tennessee Highway Safety Office was also present along with Captain Robert Bigham. Captain Bigham will be retiring later this year and was honored with the lifetime achievement award from the International Association of Chiefs of Police. The entire Tennessee Highway Patrol was honored for Captain Bigham's lifetime of protecting the citizens of Tennessee and serving the public interest.

Congratulations to the new troopers and a job well-done to the training staff, who have earned some well-deserved time off!

### WELCOME Terry Wood and Pat Mitchell Additions to the TNDAGC DUI Training Staff

**Terry Wood** will join the DUI Training Staff on August 1, 2017 as a Traffic Safety Resource Prosecutor filling the position previously held by Tom Kimball. Terry comes to us with 23 years prosecutorial experience and a wealth of knowledge in the DUI field. We are excited to have him on the team.

**Pat Mitchell** replaced Sherri Harper as the Administrative Assistant as of July 1, 2017. Pat has 4 1/2 years service with the Conference and will be an asset to the DUI Training Staff. Sherri Harper will remain active in the DUI training until Pat is fully trained.

Their contact information is:

**Terry Wood**, [tewood@tndagc.org](mailto:tewood@tndagc.org), 615-253-6734  
**Pat Mitchell**, [pamitchell@tnagc.org](mailto:pamitchell@tnagc.org), 615-253-5684

### *Tennessee District Attorneys General Conference*

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