



# DUI NEWS

## VERBAL JUDO

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Dr. George Thompson PhD, is the founder of the Verbal Judo Institute in Auburn, New York. Thompson reminded me of George C. Scott in his role as General George Patton. On August 28th he was the keynote speaker at the Tennessee Lifesavers Conference. Doc Thompson teaches cops how to be successful on the side of the road. He uses a code of C.P.R. for Courtesy, Professionalism and Respect. He tells us that when people are upset they are likely to use "natural language", which hurts communication and an upset officer can kill his career in a single sentence. The goal of the officer on the side of the road is voluntary compliance. That can be gained by using tactical communication. He encourages officers to extend the olive branch of peace and to consider themselves "Peace Warriors."



He believes we have gone to far in diversity training, but thinks we should study universality. In other words what does every culture value. For instance, persons from every culture want: Respect; to be asked not told; an explanation; options not threats; and a second chance.

Thompson says the biggest challenge to officers is video. It is no longer enough to be good. People watching videos want perfection. Videos affect the officer on the street, in court, with the media and at home. He reminds us that the children of law enforcement are the group with the highest suicide rate in America. Thompson tells us that people that are upset rarely say what they mean. He tells officers that they should consider all the rants, raves, cusswords and threats as a plea for help.

"Service is to think for others as they might think for themselves in better conditions."

Thompson spoke about the great professions: Medicine, Law, Business, Education, Clergy and police work. The most difficult is police work and that profession gets the least training. Thompson says the test of law enforcement success is to ask :

"When you arrive are people safer because of your presence?"

Thompson teaches that when people are upset they give the officer everything the officer needs. As an example he played a video of a Vermont driver who was stopped for speeding. The guy ran his mouth and found every way in the world to be offensive. Twelve seconds into the video the guy explained that he was going to get medicine for his dog. Thompson pointed out that the explanation was is an invitation to ask the guy what kind of dog he owned. Ask what the problem is. Ask what medicine he needs. By that time the conversation will be about the dog. The angry driver could be controlled by moving the conversation to address his concern. The officer would then be able to explain his duty and that he is going to write the ticket as quickly as possible, so the driver could take care of Fido.

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## RECENT DECISIONS

**STATE v DAY**, 2008 Tenn. LEXIS 615

SUPREME COURT U TURN

"We granted the State's application for permission to appeal to consider the question of whether the community caretaking rationale for traffic stops justified the stop in this case." The Court then decided it could not consider the question. The Court of Criminal Appeals had reversed a denial to suppress the traffic stop by the Trial Judge. The stop occurred when a driver alerted an officer by flashing her lights, frantically waving and pointing to the car in front of her on the roadway. The officer pulled in front of the driver and pulled over the car she had pointed to. It was driven by the drunken defendant. On appeal the defense asked for review of whether the officer had reasonable suspicion to pull over the offender. The Court ruled against the State and the State sought and received permission to appeal. In a 4-1 decision written by Justice Clark the Court decided it should not have permitted the appeal as the issue was not preserved at the appellate level. The Court then affirmed the decision and suppressed the stop.

**STATE v HANNAH**, 2008 Tenn. Lexis 417

SUPREME COURT CLARIFIES IMPEDING TRAFFIC

In a possession of controlled substances case where defendants were arrested following a traffic stop for violating the impeding traffic statute, Tenn. Code Ann. § 55-8-154(a), the trial court erred in suppressing the evidence as the statute did not require approaching vehicles to have to stop in order for traffic to be "impeded." The defendant was driving at an unusually slow speed. Other vehicles had to brake quickly and change lanes in order to pass. The Court also erred by cutting off testimony and refusing to permit the officer to explain his motivation to stop the pokey vehicle to check for medical problems.

**STATE v PABLO**, 2008 Tenn Crim App Lexis 583

ILLEGAL IMMIGRANT PROBATION

Mr. Pablo agreed to plead guilty to a DUI first offense. The Court rejected the plea agreement after the defendant informed the Court he had a driver's license from Mexico. Pablo had not reported his presence in the United States to federal authorities. The defendant declined the opportunity to withdraw his plea. The Court did not believe it could order Pablo to remain in the county and find full time employment. Those requirements would cause Pablo to remain in the country illegally. The Court of Criminal Appeals reversed the Trial Judge, who had sentenced the defendant to serve the mandatory 11 month 29 day sentence without probation. The Court found there was insufficient proof that the defendant was in the country illegally and insufficient proof that the defendant was not amenable to conditions of probation.

**STATE v BINNEY**, 2008 Tenn Crim App 520

CONSECUTIVE SENTENCE



Mr. Binney pled guilty to DUI 4th offense and violation of the habitual motor vehicle offender law. He then disappeared for six months. The Court reviewed his plethora of priors including 6 DUIs, theft over \$1,000, a weapon offense and drug convictions and found him to be dangerous. Binney was ordered to serve consecutive two year sentences due to the risk to the public and the severity of his offenses.

**STATE v RAMSEY**, 2008 Tenn Crim App Lexis 697

WORK RELEASE

Trial court erred by permitting defendant to be released to attend an educational institution because a DUI second offender could only be granted work release from confinement for employment purposes, and TCA § 41-2-128(c) did not authorize DUI second offenders to be released for the purpose of attending an educational institution.

### DID YOU KNOW?

All drivers can dial \*THP - or \*847 - to call for assistance or if they suspect another driver is under the influence or driving aggressively. Drivers can still dial 911 if they are in an emergency situation.

## RECENT DECISIONS

**STATE v CASE**, 2008 Tenn Crim App 720

NO FORCED BLOOD WITHOUT P.C.

The defendant was involved in a wreck that killed. When an officer spoke to him, he did not observe any sign that he was impaired. The officer told him that a blood test was required due to the severity of the wreck. The defendant was not read the implied consent form, nor was he given an option to refuse. The State conceded that Schmerber did not apply. Schmerber and TCA 55-10-406(d) require probable cause to believe the defendant was impaired. The Court suppressed the blood test concluding that it was not voluntarily.

**STATE v DAVIDSON**, 2008 Tenn Crim App 737

SUPPRESSION REVERSED

The Trial Court suppressed the evidence gathered after a traffic stop of DUI 10th offender Davidson. The Court of Criminal Appeals reversed. The facts accepted by both Courts:

Lieutenant Tony Davis, a DUI instructor for the Crossville Police Department, received a call from dispatch that a person had fallen in a bar parking lot and then drove away in a red car and was in the drive thru of a tobacco store. The Lieutenant was working an accident nearby and saw the red car in the drive thru. Davis got behind the suspect and followed him. He saw him change lanes without signaling and he saw the left tires of the suspect vehicle cross the center line in a no passing zone. The Court notes that the officer observed a violation of TCA 55-8-103 and 55-8-123. Such violations justified the traffic stop.

**STATE v NEVELS**, No. M2007-00902-CCA-R3-CD - Filed September 3, 2008

SOBRIETY CHECKPOINT AFFIRMED

The Clarksville Police Department set up a sobriety checkpoint and caught Nevels. The defendant challenged the checkpoint after his motion to suppress was defeated. The Court of Criminal Appeals affirmed the decision. The checkpoint was authorized by the deputy chief using the departmental order established in 1992. The defense challenged the authority of the deputy chief. They basically claimed that he rubber stamped the request of the site supervisor. The defense also argued that the State did not establish that impaired driving was of grave concern in the city and that the checkpoint did not effectively address the concern. The department followed the mandates of State v Downey and all arguments were thoroughly rejected.

**STATE V CORLEW**, 2008 Tenn Crim App Lexis 457

REASONABLE SUSPICION TO STOP

The officer observed defendant's vehicle not come to a complete stop at a stop sign, and proceeded to follow defendant for approximately a quarter mile. During that time, the officer observed defendant traveling about ten miles under the speed limit and cross the center line several times. The defendant argued that the officer saw minor imperfections in the driving ability. The Court disagreed. The defendant was seized due to the officer's objective observations and rational inferences and deductions that the trained officer may draw from the facts and circumstances known to him.

**STATE V SHAW**, 2008 Tenn Crim App Lexis 686

REVOKED DRIVER HAMMERED

Some people don't get it. The defendant pled guilty to his fourth driving on a revoked license conviction and picked up a new charge while on bond. His extensive criminal history including offenses committed while on probation led the Court of Criminal Appeals to uphold the imposition of a sentence of eleven months, twenty-nine days in jail for his conviction for driving on a revoked license. He was not entitled to an alternative sentence.

**DRE – Drug Recognition Experts in Tennessee**  
by DRE Coordinator Richard Holt

Drug Recognition Experts or Drug Recognition Evaluators (DRE) are highly trained police officers or other approved Public Safety personnel in the detection of impaired drivers on substances other than alcohol or substances in combination of other drugs and alcohol. The DRE program is coordinated by the International Association of Chiefs of Police (IACP) and supported by the National Highway Traffic Safety Administration (NHTSA).

**NECESSITY AND INGENUITY GIVE BIRTH TO THE DRE PROGRAM**

The inception of the program began in the 1970’s in Los Angeles California. LAPD officers working DUI cases noticed that subjects were showing impairment that was inconsistent with low BAC readings. Those officers suspected drugs were the cause, but they lacked the knowledge and skills to support their suspicions. They began working with medical, psychological and other professional personnel to devise a simple systematic criteria to detect the signs and symptoms of drug impairment. From this collaboration developed a step by step protocol for the DRE program.

**DO WE HAVE A PROBLEM?**

The International Association of Chiefs of Police (IACP) asked this question prior to beginning a DRE Pilot Program in Tennessee. To answer this question we asked the Tennessee Bureau of Investigation Toxicology Section to supply the results of the next 100 blood sample cases submitted to the lab for those suspected of Impaired Driving with a B.A.C. below .10. Within a week we had the results of 200 samples, the results were conclusive. 200 cases with a BAC below .10 were delivered. TBI found that 88% had substances other than alcohol in the blood, the top category of drugs was Cannabis followed by depressants, Methamphetamine and Cocaine. Yes, we have a problem and one bigger than we first thought. Thus, IACP authorized a DRE Pilot Program in Tennessee.

Based upon the above statement management and supervisory personnel may deduce to get blood on all those suspected of driving impaired forget about breath testing. This would be a grave mistake. There are several reason we need to use breath tests. First, blood testing of all suspected impaired drivers unnecessarily backlogs the toxicology lab with subjects impaired on alcohol. The ECIR2 instruments are economical to maintain and calibrate and are scientifically valid. We should use them whenever possible and prosecute those cases vigorously based on all the facts of the case. Second, a breath test supplies a quick answer to the question of whether alcohol is part of the impairment observed. A low reading combined with signs of impairment that don’t equal the low result gives the officer information that leads to calling in the DRE for further evaluation. If a DRE completes an evaluation on this subject with a .04 BAC and he concludes that certain drugs are acting in combination with alcohol to cause impairment, which is later supported by a blood test result, a guilty impaired driver will be convicted instead of being set free to offend again. Our numbers of Certified DRE’s are increasing and their impact on impaired driving cases has yet to be noticed. Fortunately, things are changing in Tennessee.

**HOW ARE DRE’S SELECTED?**

**APPLICANTS FOR DRE TRAINING MUST BE ENDORSED BY THEIR DISTRICT ATTORNEY !**

First and foremost the DRE’s are selected from an application process and not appointed; the DRE Class is one they should want to attend as the curriculum is quit comprehensive. They must have at least 4 years of law enforcement experience, be proficient in Standardized Field Sobriety Testing (SFST) and have completed the “Advanced SFST Course”(ARIDE) offered by the Governor’s Highway Safety Office.

Officers are trained in three phases to become certified as Drug Recognition Experts:

- Drug Recognition Expert Pre-School (16 hours)
- Drug Recognition Expert DRE School (56 hours)
- Drug Recognition Expert Field Certifications ( Approximately 40 – 60 hours)

The Drug Evaluation and Classification (DEC) Program relies heavily on the SFST's which are the foundation for the program. Once certified DRE's become highly effective officers skilled in the detection and identification of persons impaired by alcohol and/or drugs. DRE's are trained to conduct a systematic and standardized 12-step evaluation consisting of physical, mental and medical components. Because of the complexity and technical aspects of the DRE training, not all police officers may be suited for the training. Experience has shown that training a well-defined group of officers proficient in impaired driving enforcement works well and can be very effective. The DRE classroom training includes goals and learning objectives.

**TRAINING GOALS**

Determine if an individual is under the influence of a drug or drugs other than alcohol, or the combined influence of alcohol and other drugs, or suffering from some injury or illness that produces similar signs to alcohol drug impairment; Identify the broad category or categories of drugs inducing the observable signs and symptoms of impairment; and Progress to the Field Certification Phase of the training.

**TRAINING OBJECTIVES**

- Be able to describe the involvement of drugs in impaired driving incidents;
- Name the seven drug categories and recognize their effects;
- Describe and properly administer the psychophysical and physiological evaluations used in the drug evaluation and classification procedures;
- Prepare a narrative drug influence evaluation report;
- Discuss appropriate procedures for testifying in typical drug evaluation and classification cases, and;
- Maintain up-to-date DRE curriculum vitae

**THE FIELD CERTIFICATION PROCESS**

This is the final portion of the DRE training process and is done in the field. This presents some unique problems. Unlike alcohol where we can dose volunteers in an Alcohol Workshop, we can not do that with drugs. In turn we have to visit jail intakes and get volunteers to cooperate. Getting cooperation is sometimes a challenge, but there are adequate numbers of prisoners willing at every location we have conducted Field Certifications. Just from our observations almost 80% of the subjects that we have contacted at jail intakes are under the influence of drugs at the time of their arrest, this tell us something we already know – drugs are a problem in our communities and they are on our highways and roads under the influence of drugs and alcohol. The DRE candidates have to complete 12 Field Evaluations under the direction of an instructor, they work in teams of 3, one being the evaluator or the one conducting the 12 steps, one officer is the scribe or note taker for the evaluator and the third officer is observing. Six of the twelve evaluations for each officer must be the evaluator and they must observe a subject or subjects under the influence at least three different categories of drugs. Approximately 2/3 of the way through the Field Certification Process the candidate DRE will successfully complete a comprehensive Final Knowledge Exam.

**HOW TO USE YOUR DRE**

A law enforcement officer meets a driver suspected of DUI and performs field sobriety tests. The tests indicate that the subject is impaired. The officer suspects the impairment is caused by a substance other than or in addition to alcohol. The subject is arrested and submits a breathalyzer. The result is below .08. The officer suspects there is more there than the breath test result indicated. This is a situation where a DRE can help. The DRE should be called in and a blood test should be completed as soon as possible.

The DRE will perform a detailed diagnostic evaluation on the subject and will render an expert opinion on the following:

- Is the person in question impaired?
- Is the subject capable of operating a motor vehicle safely?
- What category or categories of drugs is effecting the suspect?
- Is the impairment due to illness or injury?

The DRE conducts the evaluation in a controlled environment, such as a hospital, trooper headquarters, or a police department. The DRE assists in the investigation because of their skill and expertise in identifying the drug impaired individual. A marginal case for prosecution becomes much stronger. A DRE should be called to assist in every vehicular homicide or assault case in which impairment is suspected, if at all possible.

**THE DRE 12 STEP PROCESS**

1. **The Breath Alcohol Test**
2. **Interview of Arresting Officer**
3. **The Preliminary Examination**
4. **Examination of the Eyes**
5. **Divided Attention Tests**
6. **Examination of Vital Signs**
7. **Dark Room Examination**
8. **Examination Muscle Tone**
9. **Exam Injection Sites**
10. **Statements & Observations**
11. **Opinion**
12. **Toxicology**

**TENNESSEE'S DRE'S**

Tennessee presently has conducted 4 DRE classes and has 45 active DRE's at the moment. The ultimate goal is to have 350 active DRE's within the state. If you have a law enforcement officer in your district or department whom is proficient in Standardized Field Sobriety Testing and interested in Impaired Driving Enforcement you can find more information about the Drug Recognition Expert program at the following:

<http://www.tntrafficsafety.org/DRE/dreschool.asp>

Should you need more information you may contact:

Richard M. Holt, DRE Instructor

DRE State Coordinator

615-207-0009

[Rm\\_holt@frontiernet.net](mailto:Rm_holt@frontiernet.net)

**INFORMED PROSECUTORS**

In April, 2008, thirty-four Tennessee prosecutors attended the "Prosecuting the Drugged Driver" course. It was conducted in conjunction with the DRE pre-school, permitting the prosecutors to become informed of the training officers receive to become DRE's and to prepare them to work closely with their local DRE.

**DRE'S, THE HGN AND STATE V MURPHY**

ADA Neal Oldham in the 24th Judicial District successfully qualified DRE Trooper Michael Arguello as an expert in a vehicular homicide trial. Relying on his training and experience the trooper was permitted to testify about signs of impairment including signs from a variety of examinations of the eyes. These included the results of horizontal and vertical gaze nystagmus tests, dilation examinations and the ability of the eyes to cross. All of the exams were conducted as part of the 12 step process to determine if impairment was the result of drugs, alcohol or medical conditions.



**RHOMBERG TESTING IN THE DRE PRE-SCHOOL AND PROSECUTOR COMBINED CLASS**

OUR	DRE'S
Latara	Allen
Sharon	Birk
April	Bolton
William	Butler
Eric	Coulter
Ray	Faircloth
Don	Godby
John	Grinder
Brian	Hickman
Leonard	Pinner
Travis	Raines
Clint	Shrum
Kenneth	Walburn
Shannon	Smith
Kevin	Shearon
David	Nickens
David	Twiford
Darren	Koski
Dexter	Mines
Jerry	Tucker
Brent	Rose
Ron	Lucarini
Joseph	Jakes
Charles	Achinger
Michael	Dudley
Steven	Lowery
Jessie	Loy
Vincent	Turocy
Charles	Sledge
Dan	Blake
David	Allen
Elliott	Mahaffey
Jeremy	Morrison
Michael	Ortel
Scott	Lewis
Dale	Farmer
Andrew	Collins
Bradley	Lowe
Donnie	Mashburn
Charles	Morgan
Daniel	Ruskey
Michael	Arguello
Charles	Bell
Ian	Barton
Baron	Cooper
Billy	Pierce
Gregory	Young
Jon	Wirey
Chad	Withrow
Richard	Holt

**THE ARIDE PROGRAM**

The National Highway Traffic Safety Administration with the International Association of Chiefs of Police have developed a new training called ARIDE.\* ARIDE is a course intended to bridge the gap between the Standardized Field Sobriety Test training course and the Drug Recognition Evaluation course. ARIDE is intended to provide officers with general knowledge related to drug impairment and promote the use of DREs in states that have the Drug Enforcement Classification Program. One of the more significant aspects of ARIDE is required student demonstration of the SFST proficiency requirements as a prerequisite to completion. The ARIDE program also stresses the importance of securing the most appropriate biological sample in order to identify substances likely causing impairment. ARIDE is a 16-hour training course and may be taught by DREs, DRE instructors or SFST instructors who are also DREs. The training will be conducted under the control and approval of the DEC Program state coordinator. NHTSA and IACP highly recommend that principal instructors for this course be state-qualified and IACP-credentialed DRE instructors; that is, they (1) hold currently valid certificates as DREs; (2) have completed the NHTSA/IACP DRE Instructor Training Course; and (3) have completed the required delivery of both classroom and certification training, under the supervision of credentialed DRE instructors. At minimum, a qualified DRE with instructor credentials in other fields of occupational competency (not necessarily a DRE instructor) can be utilized to present ARIDE materials if instructor resources are limited and can not be resolved at the state coordinator's level without undue hardship.

**ARIDE PLUS UNDERWAY IN TENNESSEE**

Tennessee has been calling an extremely similar course "Advanced Standardized Field Sobriety Testing" for two years. On August 4-7 the first of the Advanced SFST courses to use the ARIDE format was completed at the Bradley County Sheriff's Department. The course was a 32 hour course, which included an eight hour block of the "Cops in Court" program. Below are pictures from the Cops in Court segment. On the left are students contemplating better answers after watching videos of cross examinations. DUI Coordinator, Shanna Stokes, of Chattanooga joined ADA Jay Woods and Cameron Williams to assist as faculty facilitators. On the right TSRP Jim Camp and Cameron both look over notes during the mock trial. Former Nashville ADA and GHSO grant monitor, Kristen Shea, also assisted.



Camp and Williams review during direct examination response. Officers watch and learn.

### VERBAL JUDO

Thompson encourages officers to listen to what the upset person gives as an opening and run with it. He says you can't change attitude, but you can focus on behavior and turn a difficult scene toward a peaceful resolution. You can't always reason with an impaired person, but you can persuade him.

Thompson encourages five steps:

- 1) Ask
- 2) Set content (declaratively). Tell him why.
- 3) Give options (Sir, you have some good options here)
- 4) Confirm non-compliance  
(Is there anything I can say to get you to cooperate?)
- 5) ACT i.e. either disengage or escalate.

He says there are 5 times words fail. The acronym is SAFER.

S A F E R	Security of others is threatened; Attack on self; Flight; Excessive repetition; Revised priorities.
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Thompson conducts a forty hour course to teach officers how to teach verbal judo. Several of our LEL's are now instructors. This course is extremely consistent with the Tennessee District Attorney General's Cops in Court class. Concerning the law enforcement officer on the witness stand, Dr. Thompson pointed out that being on the witness stand is another time in which a determination occurs as to whether the officer will be in control of himself. Essential to that control is constructive listening. The Governor's Highway Safety Office will sponsor several "Verbal Judo" classes in the fiscal year. Watch the website at <http://www.tntrafficsafety.org/> for more information.

### Oxycodone More Addictive for Adolescents than Adults, Researchers Say

Scientists at Rockefeller University say that adolescents are more likely to become dependent on the opiate painkiller medication oxycodone than adults, Reuters reported Sept. 17.

Researchers observed self-administration of the drug in four-week-old and 10-week-old mice and concluded that adolescent mice self-administer less oxycodone than adult mice, which suggests increased sensitivity to the drug among adolescents.

The findings also show that mice exposed to oxycodone during adolescence were more sensitive to the drug after later re-exposure as adults -- an indication that the drug triggered lasting functional changes in the developing adolescent brain.

"Together, these results suggest that adolescents who abuse prescription pain killers may be tuning their brain to a lifelong battle with opiate addiction if they re-exposed themselves to the drug as adults," said researcher Mary Jeanne Kreek in a press release on the study. "The neurobiological changes seem to sensitize the brain to the drug's powerfully rewarding properties."

### TENNESSEE LAWYER ASSISTANCE PROGRAM

In the past couple of months three Assistant District Attorneys have been arrested for DUI. These were the first arrests of Tennessee prosecutors for driving under the influence in the six years this newsletter has existed. One of our prosecutors posted a message to our prosecutor user group with some sad statistics about our profession. He indicated that lawyers are about 50% more likely than the general population to suffer from alcoholism. Such a number would mean that about 20% of all lawyers suffer.

The Tennessee Lawyers Assistance Program helps with addictions as well as depression for lawyers, their families and their support staff. If there may be an issue that is affecting someone's life and practice, do not ignore it. If you care about a lawyer with a problem or if you are a lawyer with a problem, call TLAP and discuss any situation of possible substance abuse or mental health and potential solutions. It is confidential & effective. Information shared with TLAP is not provided to the Board of Professional Responsibility.

Call TLAP toll free at (877) 424-8527.

### DISTRACTED DRIVING

The American Automobile Association says between 4,000 and 8,000 crashes related to distracted driving occur daily in the United States. And the National Highway Traffic Safety Administration reports that 119 people die every day on the nation's roads, with 80 percent of those crashes due to distracted driving.

## VEHICULAR HOMICIDE CONFERENCE

Twenty-seven prosecutors and ten crash reconstruction officers gathered August 19-21 in Gatlinburg for training concerning Vehicular Homicide cases. The lead instructor was John Kwasnoski, author of *FROM CRASH TO COURTROOM*, Tower Publishing, and author of several other books on the subject. John, a former physics instructor, is one of the leading authorities concerning car crashes in the world.

The faculty also included the Director of the National Traffic Law Center, Joanne Michaels; Tennessee TSRP's Tom Kimball and Jim Camp; Idaho TSRP, Jared Olson; 4th Circuit Criminal Judges Rex Henry Ogle and Judge Duane Sloan.

Assistance at mock crash scenes was provided by ten of the finest crash reconstruction officers in the State. The Tennessee Highway Patrol CIRT team was well represented and Trooper Bill Fox went beyond the call of duty in arranging for crashed cars, tents for shade and plenty of water to make the hot summer scenes a little more bearable for prosecutors who usually work indoors.

The prosecutors who attended the course received 19.5 hours of CLE credit and a great understanding of the challenges of building the vehicular homicide case from initial contact to jury verdict.



A mock pedestrian collision left tangible evidence for study.



The drag factor of the road was measured using a drag sled and accelerometer.



Prosecutors studied the skid marks and other evidence from the roadway.



The evidence from the scene and investigative methods became the focus of the classroom presentations by the KWAS.



Accelerometer

### CRASH SCENE 101

A one day course for law enforcement officers, Crash Scene 101, was also conducted. The course used the same scene, but included a focus on testimony. The course was hosted by the Sevierville Police Department and funded by the Tennessee District Attorney Generals Conference and the Governors Highway Safety Office. It was attended by 34 officers.

## MOURN THE BIKERS

The month of July beckons many to get on the motorcycle and ride. The following items are intended to remind readers to be careful of motorcycles and to remind motorcyclists to be defensive drivers.

### Motorcycles in the News: July, 2008

- July 4:** John C. Breeze, 50, wrecked on the "Dragon", U.S. 129 when his black Harley-Davidson Electra Glide came around a curve and went wide, and possibly his foot rest hit the pavement, which threw him into a 3- to 4-foot ditch on the opposite side of the road. He was revived at the scene, but died later after severe cardiac arrest. *Source: Maryville Daily Times*
- July 6:** Damon Patterson, 18, of Mt. Juliet died when he slammed into a car that was pulling out of a Captain D's. Patterson was clocked going over 100 mph. *Source: The Tennessean*
- July 7:** Aric Jennings, 43, of Greenville was racing with another biker on his 2008 Harley Davidson crossing double yellow lines while passing cars on Highway 321. Jennings went into a curve too fast and laid the bike down on the asphalt. He slid into an approaching station wagon. *Source: Knoxville News Sentinel*
- July 7:** Mary Ellen Stokes, 48, of Clarksville lost control and ran into a tractor-trailer on Highway 48 around 2:00 pm on Sunday July 6th. Mrs. Stokes was in the right lane following her husband, who was on another bike. Mrs. Stokes was beside the truck going in the same direction when she swerved to the right then back to the left. The bike slid under the truck. *Source: Clarksville Leaf Chronicle*
- July 11:** Vanderbilt trauma surgeons said they're seeing more older motorcycle crash victims than young and that the numbers are through the roof. Doctors said that they are seeing almost a 100 percent jump in motorcycle crashes over last summer. Vanderbilt Hospital doctors said they are seeing more people surviving orthopedic injuries because the drivers are wearing helmets. *Source: The Tennessean*
- July 13:** James Franklin Odell, 52, of Williamson Road, Chuckey was riding a 2004 Kawasaki motorcycle east on Jones Bridge Road when he lost control of the cycle in a curve. The motorcycle then went off the right side of the road and overturned. He was seriously injured. *Source: Greenville Sun*
- July 16:** Anthony R. Lefelhoc, 21, Vernie Lee Road, Friendsville lost his arm in a two vehicle wreck. Reports indicated that a 2005 Honda Accord driven by Angela M. Foreman, 26, Floyd Lee Road, Friendsville crossed the center line in a curve and struck Anthony's bike head on. *Source: Maryville Daily Times*
- July 17:** Andrew Stricklen, 29, of Janice Drive, Sparta was arrested for reckless driving after Cookeville Police Officer Cary Matheny observed him ride a wheelie for approximately 400 yards. Stricklen reported he makes U-Tube videos of his performances. There was steady traffic on the roadway during his wheelie. *Source: Cookeville Herald Citizen*
- July 19:** Crystal May, 22 died and her husband, an Anderson County Deputy was injured when a van pulled out in front of the 2007 Kawasaki sport motorcycle they had purchased the day before. *Source: The Oak Ridger*
- July 21:** Allen T. Laws, 35, was riding a 2004 Honda motorcycle south on Tunnel Hill Road not far from its intersection with Buren Road in southeastern Hawkins County when the motorcycle failed to negotiate a curve and went off the right side of the road, causing his death. *Source: Greenville Sun*
- July 21:** Miranda Beets, 24, died when the motorcycle she was a passenger on blew a tire and went out of control in Jefferson County. *Source: Knoxville News Sentinel*
- July 21:** Anthony "Tony" Johns, 20, of Ethridge, TN died when his 2006 Harley Davidson met a 1987 Ford pick up truck head on in a curve at 4:50 pm. *Source: Florence, Al Times-Daily.com*
- July 24:** Harold Smith, 67, of Sherwood, Ark lost control on a curve on the Dragon, over corrected and died when he went down a steep embankment. *Source: WAAY TV*

More than 90% of riders involved in crashes had no formal training and about one-fourth of motorcycle fatalities are not properly licensed. *Source: Network of Employers for Traffic Safety*

Motorcycle Training in Tennessee is available statewide. Contact **John Milliken** at (615) 232-2901 for details. Mandatory training as a condition of a sentence for first time motorcycle violations involving speed or recklessness may be a mechanism to save a life. In times of danger people rely on their training.

## VEHICULAR HOMICIDE MURDERERS ROW



Tamela Scott, 46, will serve one year in prison followed by eight years on probation after her probationary sentence was sliced in half by the Court of Criminal Appeals. See **State v Scott**, 2008 Tenn Crim App Lexis 733. In addition to her sentence she challenged the use of retrograde extrapolation as evidence presented by an expert witness, Dr. Kenneth Ferslew. Scott had driven across the line and slammed into a family. Twelve year old Benjamin Leavy was killed and other family members severely injured. After the defendant was transferred to the Vanderbilt hospital emergency room, a nurse smelled a faint odor of alcohol. A hospital blood test indicated a serum alcohol level of .076 (.065 whole blood) with cocaine and ephedrine. The doctor examined various factors and was able to estimate a BAC of .102 at the time of the crash, which when combined with the effects of the cocaine and amphetamine in the defendant's system satisfied the jury and the Court that the cause of the death was the misoperation of the car while impaired.



Rossano Nicks, 37, of Antioch pled guilty and received an eight year sentence in April, 2008 for the death David Brown, 59, of Nashville. Nicks was a Katrina transplant. He slammed into the rear of a car stopped at a stop sign on Lebanon Pike in Nashville. He was driving over 70 mph. His blood alcohol level was .29. David Brown cared for a mentally handicapped adult child. Nicks has DUI warrants pending in New Orleans, but had not been convicted prior to killing in Tennessee.



William Soller, 37, was sentenced to five years in prison for reckless aggravated assault, 4th offense DUI, and leaving the scene for a 2007 crash that seriously injured off duty Pigeon Forge Officer Steve Helton. Soller drove his Cadillac Escalade through a red light and slammed into Helton on his motorcycle. Soller had been sentenced to 6 years in 2003 for aggravated assault and aggravated burglary and was on Community Corrections when he injured the officer, who spent four months in a coma. The officer is miraculously back on duty. ADA Steve Hawkins represented the State.



Tommie Lee Carroll, 48, was sentenced to eight years in prison in Blount County for vehicular homicide due to impairment caused by drugs. Carroll was taking Vicodan and Soma when he ran into Jeffrey Roth, a husband and father of three young children. Roth was riding his bicycle on the grassy edge of the west-bound emergency lane on US Highway 321. Roth was well off the road. After killing Roth, who was on a 60 mile bike ride, Carroll swerved into the east bound lanes of the divided highway and struck a car. He then travelled three miles going in the wrong direction until an unknown hero blocked him from going farther with his truck. Carroll had a history of seizures dating back to a previous car crash in which he suffered brain injuries. He tried to claim innocence due to seizure. In Tennessee it is illegal to drive a vehicle after a seizure, if the condition is reported, unless a doctor verifies that his patient will not have future seizures.

### **STATE v CRUTCHER**, 2008 Tenn Crim App Lexis 662

Ricky Crutcher, 52, crossed the center line and killed an eight year old child and seriously injured four other family members. Crutcher had a .19 BAC. His 10 year prison sentence for vehicular homicide and three year concurrent sentences for vehicular assault were affirmed in August 2008.

### **WHERE DID YOU GO STACY JO?**

In the last issue of the DUI NEWS we focused on the sentencing decision concerning the vehicular homicide of Stacy Jo Carter. Carter fled from the Guthrie, Kentucky police and drove into the Red River and left his cousin to drown. Today Stacy Jo should be serving the 10 year sentence imposed by the Supreme Court. Instead, Stacy Jo has run away again.



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## THE CRASH PAGE

By Jim Camp

### “Knowledge is Good”

#### Faber College motto, *Animal House* (1978)

A more eloquent expression of truth has never been more simply expressed than on the pedestal of the statue of the founder of Faber College. In an attempt to gain said knowledge (sans the togas) twenty-seven prosecutors gathered in Gatlinburg August 19-21. They had the pleasure of learning about crash reconstruction from Professor John Kwasnoski, one of the world’s most talented and capable experts in crash reconstruction. In addition to this they had the opportunity to apply their newly acquired knowledge in an environment not normally familiar to prosecutor’s: The crime scene. Working with some of Tennessee’s best law-enforcement crash reconstruction experts they investigated and reconstructed a mock vehicular homicide. They actually measured skid marks, used Total Station scene mapping equipment and determined the actual drag factor of the roadway surface in question. They did all this and more to better understand the practical application of crash reconstruction methodologies. This understanding and knowledge will also lead to more effective courtroom presentation of direct evidence and more

effective cross-examination of defense expert witnesses in these cases.

Knowledge of crash reconstruction methodologies, speed estimation, scene mapping, and all the rest is in fact very, very good but it is better when we can pass the knowledge that we have acquired in these cases on to others who will be responding to these scenes, investigating, interviewing witnesses and preserving the evidence. Prosecutors must learn from experts in crash reconstruction. First responding officers and others who may be investigating and overseeing the crash scene must learn from the Prosecutor. Prosecutors must learn of the difficulties, concerns and challenges faced by those first responding and investigating officers and Prosecutors must let those officers know what is expected from them. It is about dialogue. It is about taking the time to sit down with those members of the “TEAM” who will be responding to these crime scenes and working on the foreseeable challenges and problems ahead of time. BEFORE the wreck occurs and the clock starts ticking.

Law-enforcement officers should be encouraged to ask questions and seek direction from their Prosecutors. Prosecutors must remember that in their fast-paced, demanding world of excessive case loads and twelve hour work days time must be taken for those partners in prosecution that can make or break the State’s case. We are in this together folks and we need to make it clear to our law-enforcement partners that we are in fact a TEAM. We are interested in what they have to say and are concerned that they receive the proper training and guidance to do their job well, thereby avoiding embarrassment on the stand and within their department. In my training of law-enforcement officers I encourage them to seek out their Prosecutors with these questions and concerns. I encourage their insistence on adequate preparation for trial and I encourage them to find out AHEAD OF TIME how their Prosecutor wants them to handle troublesome issues. I encourage them to offer any assistance they can. In return, I encourage our Prosecutors to remember not to forget to recognize and address those concerns. “How do we handle Hospital XYZ who refuses to do blood draws in vehicular homicide cases?” “What do we tell the Emergency Room doctor when he says he is not going to draw blood because he will get sued?” “What can I do to get the Fire Chief of my city to stop moving and destroying evidence before the investigation is complete?” It’s funny how so many of the problems that raise their head on the second day of trial prep can be solved ahead of time in a fifteen minute chat with an officer over a cup of coffee.

Training is also good. Joint training. Interdisciplinary training. Law-enforcement and prosecutors learning together. Recognizing problems and challenges and solving them together. Those of us that have experience and specialized knowledge in crash cases must reach out to other prosecutors and law-enforcement officers to share that experience and knowledge. Take the time to schedule in-service trainings for your officers. Encourage them to approach you in advance with problems and concerns typically encountered in crash cases. Or have them submit these questions in writing ahead of time. You don’t have to take a day or two or three. Start with an hour working with each individual shift over the course of several weeks. Follow that up with an hour next month building on what was presented the month before. Bring donuts and have them bring the coffee. Just remember the motto “Knowledge is Good”, but leave the toga at home.