

DUI Newsletter

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DUI PRIORS HAVE A PRESUMPTION OF REGULARITY

When an attack is made on the use of a prior DUI judgment being offered to enhance punishment in a DUI, Vehicular Assault, or Vehicular Homicide case, and the judgment is not void upon its face, then it is entitled to the presumption of regularity, and it cannot be collaterally attacked in the present case. State v. Wenzler, 2013 WL 865333 (Tenn. Crim. App. Mar. 6, 2013). An important distinction to make is whether the prior judgment is void upon the face of the judgment, or if the judgment is merely voidable (meaning additional information from outside the judgment form is needed to determine its invalidity.)

In the Wenzler case, a prior DUI conviction from Desoto County, Mississippi was used to enhance Mr. Wenzler's DUI conviction and sentence. Mr. Wenzler argued that the Mississippi judgment was facially invalid because it did not indicate that Mr. Wenzler was represented by counsel and it was silent as to whether Mr. Wenzler waived his right to counsel. The Court of Criminal Appeals stated that silence does not make a prior judgment void, only voidable at best. Voidable judgments must be attacked by post-conviction in the original court, not the present court and jurisdiction. Id. at *6-7 (Quoting Hickman v. State, 153 S.W.3d 16, 25 (Tenn. 2004); and overruling State v. O'Brien, 666 S.W.2d 484 (Tenn. Crim. App. 1984), and State v. Whaley, 982 S.W.2d 346 (Tenn. Crim. App. 1997) and their progeny). Also, the CCA stated that the burden of proof that the judgment is void is on the defense and not the State. Id.

The Hickman court ruled that a prior judgment is facially valid if the judgment indicates that the convicting court had proper jurisdiction. Hickman, 153 S.W.3d at 24. In Hickman, the judgment contained a blank line where defense counsel is ordinarily listed, and the pre-printed "waiver of attorney" was not signed by the defendant. The judgment was merely silent as to whether or not the defendant was denied his right to counsel. Therefore, additional information was needed outside of the judgment to establish that Mr. Hickman in fact was not represented by counsel. As previously stated, where additional proof is needed, the judgment is at most voidable, rather than void, and a post-conviction petition is the proper method for attacking a voidable judgment. Id. at 27.

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Recent Decisions

State v. Joshua Morris 2026 WL 243358 **(Collateral estoppel/implied consent dismissal)**

On January 14, 2022, Mr. Morris was found asleep in his Ford Mustang, while parked in front of a convenience store located in Knox County. Knoxville Police responded to a call regarding the parked vehicle. The engine was off and the keys to the vehicle were observed on the passenger seat. After many attempts to awaken Mr. Morris were unsuccessful, EMTs and Fire personnel responded to the scene. One of the emergency responders was able to open a door and eventually determined that he was "fine."

Mr. Morris was staggering, sometimes unintelligible and was unable to provide proper identification. He admitted to having four beers, two of which were "tall boys." Mr. Morris refused SFSTs and implied consent for a blood sample. At a preliminary hearing, the General Sessions Court found sufficient probable cause and bound the case over for grand jury. Also, Mr. Morris was found in violation of the implied consent law.

Mr. Morris appealed the **implied consent** finding to the Circuit Court, which granted a motion for summary judgment and dismissed the implied consent violation, finding no probable cause that Mr. Morris was driving a vehicle under the influence. While this motion was still pending, a grand jury indicted Mr. Morris on one count of DUI. On September 11, 2024, Mr. Morris filed a motion to dismiss the DUI charge arguing "collateral estoppel" prevents the State from relitigating the issue of probable cause that was previously litigated by the Circuit Court. On December 11, 2014, the Criminal Court granted the defendant's motion to dismiss, based upon "collateral estoppel" and dismissed the DUI charge. The State appealed to the Court of Criminal Appeals.

Since this issue applies to a question of law, the standard of review on appeal is de novo, with no presumption of correctness. Emergency Med. Care Facilities, P.C. v. Bluecross Blueshield of Tenn., Inc., 715 S.W.3d 273, 282 (Tenn. 2025) (citing Mullins v. State, 294 S.W.3d 529, 535 (Tenn. 2009); In re Bridgestone/Firestone, 495 S.W.3d 257, 266 (Tenn. Ct. App. 2015)). The CCA gave a very in-depth history of the collateral estoppel doctrine and its application in the criminal and civil courts. The unique issue in this case is that implied consent is a civil matter and not a criminal offense. See State v. Collins, 166 S.W.3d 721, 727 (Tenn. 2005); see also Tenn. Code Ann. § 55-10-407(a) (2019). The CCA determined that Mr. Morris failed to establish that the collateral estoppel doctrine applies to the DUI criminal prosecution because the Circuit Court's ruling was limited on the face of its order to defendant's "implied consent" violation. Also, the disparity of proof and procedures employed in the different proceedings concluded that the collateral estoppel doctrine did not apply to a subsequent criminal proceeding based upon a decision reached in a prior civil or administrative proceeding. As such, the State did not have a full and fair opportunity to litigate in the Circuit Court the constitutional validity of the officer's warrantless arrest of defendant and whether any evidence should be suppressed as a result of any illegal arrest. See Mullins, 294 S.W.3d at 535 (providing that a party invoking collateral estoppel must demonstrate that "the party against whom the collateral estoppel is asserted had a full and fair opportunity in the earlier proceeding to contest the issue now sought to be precluded.") State v. Hameed, 2010 WL 3582485, at *11 (Tenn. Crim. App. Sept. 15, 2010). The CCA reversed the Criminal Court's dismissal of the indictment, reinstated the indictment, and remanded to the Criminal Court for further proceedings consistent with this opinion. Therefore an implied consent dismissal cannot be used as collateral estoppel to dismiss a DUI indictment or charge that has been brought in the Circuit or Criminal Court.



Recent Decisions

State v. Ashley Dawn Boyce 2026 WL 3222358 **(Certified question of law denied)**

On January 26, 2023, Ms. Boyce struck a parked car while attempting to back out of a parking space. The Columbia Police Department was called and upon arrival observed many signs of intoxication. Ms. Boyce consented to a blood sample and the BAC was above .20%. Ms. Boyce filed a motion to suppress, based upon her not being able to leave the scene, before the police arrived. However, the trial court ruled that she had a continuing obligation to provide information, “as required” and because information was not provided before the police arrived, Ms. Boyce was not “seized.” Therefore, the motion to suppress was denied. Ms. Boyce pleaded guilty and reserved a certified question of law pursuant to Tennessee Rule of Criminal Procedure 37(b)(2)(A).

Unfortunately for Ms. Boyce, the appellate record did not include a final judgment of conviction entered by the trial court. Also, Ms. Boyce did not file a reply brief addressing the State’s arguments. Tennessee courts have established strict requirements for appealing certified questions of law following a guilty plea. Without a judgement of conviction in the record, the CCA lacks an appropriate final judgment to review, which is a prerequisite to appellate consideration of a certified question. See State v. Irwin, 962 S.W.2d 477, 478 Tenn. Crim. App. 1998); State v. Dailey, 235 S.W.3d 131, 134 (Tenn. 2007). Therefore, The CCA determined that they were without authority to review the appeal. The appeal was dismissed for lack of jurisdiction.

Johnny B. Brooks v. State 2026 WL 323870 **(Denial of Post Conviction relief)**

Mr. Brooks was stopped after repeatedly weaving across the center line of traffic. The officer noticed a strong odor of alcohol, incoherent speech, and many obvious signs of impairment, in addition to two open containers of beer. His driver’s license had been revoked due to a prior DUI conviction. Mr. Brooks refused SFSTs and he refused to give a breath or blood sample. Mr. Brooks later agreed to plead guilty to DUI, eighth offense, driving on a revoked driver’s license, and a violation of the open container law. The State agreed to sentence him as a range II offender, even though he qualified as a range III offender. Mr. Brooks was later sentenced to eight years at thirty-five percent to be served in TDOC custody.

Mr. Brooks filed a pro se petition for post-conviction relief, claiming that he was denied effective assistance of counsel. After a hearing, the post-conviction court denied the petition and Mr. Brooks appealed. On appeal, the petitioner has the burden of proving the factual allegations by clear and convincing evidence, which occurs when there is no serious or substantial doubt about the accuracy of the conclusions drawn from it. Lane v. State, 316 S.W.3d 555, 562 (Tenn. 2010); Grindstaff v. State, 297 S.W.3d 208, 216 (Tenn. 2009); Hicks v. State, 983, S.W.2d 240, 245 (Tenn. Crim. App. 1998). In order to prevail on an ineffective assistance of counsel claim, the petitioner must establish that (1) his lawyer’s performance was deficient and (2) the deficient performance prejudiced the defense. Whitehead v. State, 402 S.W.3d 615, 621 (Tenn. 2013) (citing Strickland v. Washington, 466 U.S. 668, 697 (1984)).

The CCA found that the petitioner failed to establish deficient performance or prejudice arising therefrom. Therefore, Mr. Brooks was not entitled to relief. The judgment of the post-conviction court was affirmed.



Proving Cases Below .08 BAC

This past quarter, General Terry Wood and I, Jack Arnold, had the opportunity to try a vehicular homicide in front of a jury. We were able to secure a conviction on the top count of the indictment, Vehicular Homicide by Intoxication, Tenn. Code Ann. § 39-13-213(a)(2). In a different count of the indictment, we had also charged the defendant with driving under the influence (Per Se), Tenn. Code Ann. § 55-10-401(2). The jury found the defendant not guilty of the Per Se count. After the trial, the clerk approached me and wanted to know how those two verdicts could possibly make sense, taken together.

Now, in the case that we tried, the defendant's blood alcohol content (BAC) was .072 gm% approximately four and a half hours after the fatal collision. The TBI toxicologist was allowed to testify regarding retrograde extrapolation, that his BAC would have been between .108 gm% and .176 gm% four hours prior to the sample being drawn. (Indeed, knowing what the testimony on retrograde extrapolation would look like was the reason the grand jury included a Per Se DUI count in the indictment.) That said, the proof also showed that there was still active delta 9 THC and metabolites from marijuana in the defendant's blood at the time of the blood draw. So, understanding about the retrograde extrapolation math, defense arguments against retrograde extrapolation, combined with the presence of an additional intoxicant, taken together, is more than enough to explain the jury's verdict.

But the clerk's question brings me around to a more interesting point: one that goes to the heart of a potential misunderstanding of Tennessee's Driving Under the Influence law, even where cases involving only alcohol intoxication are concerned. A lot of people on the street, and even prosecutors, think and act as if, in order to be DUI on alcohol alone, a defendant must have a BAC of .08 gm% or higher. We should all be glad that DUI Per Se exists as a legal alternative (in an alcohol only case, all that is needed to prove is that a BAC is over .08%, and that's thanks to the Per Se law). But we need to recognize that Tenn. Code Ann. § 55-10-401(1), driving under the influence, does not require a showing that the alcohol content of a defendant's blood or breath is over .08 gm% or greater, in order to show that the defendant is driving under the influence. It is very much possible to be driving under the influence of alcohol in Tennessee at BAC levels below .08 gm%. Let's look at the language used by the Court of Criminal Appeals in discussing a case that we summarized in the last DUI newsletter, State v. Whaley, 2025 WL 3541414 at *15:

Furthermore, unlike the offense of DUI per se, the State need not establish Defendant's BAC at the time of the crash to support the convictions for Vehicular Homicide by Intoxication and DUI. See Hinds, 2023 WL 5164634, at *15; Dye, 2019 WL 5172275, at *7. Instead, the State need only establish that Defendant "was under the influence of an intoxicant which **impaired his ability to safely operate a motor vehicle by depriving him of the clearness of mind and control of himself that he would otherwise possess.**" Dye, 2019 WL 5172275, at *7 (citations omitted); see Tenn. Code Ann. § 55-10-401(1). (Emphasis added)

For most people, i.e., people who don't drink alcohol every single day, .08 gm% could be a little drunk or quite tipsy. For a 200 pound adult male, a person would have to consume 4 standard drinks in an hour to reach a BAC of .08 gm%. Medically, it is defined as intoxicated, but a person does not have to be all the way drunk to be guilty of DUI in Tennessee.

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Proving Cases Below .08 BAC

Look at the Tennessee Pattern Instruction Criminal 38.01, the one standardly given in a DUI trial. It describes what the State actually has to prove about intoxication:

“...the defendant was under the influence of an intoxicant, marijuana, a controlled substance, a controlled substance analogue, a drug, a substance affecting the central nervous system, or any combination thereof;... The expression “under the influence of an intoxicant, marijuana, a controlled substance, a controlled substance analogue, a drug, a substance affecting the central nervous system, or any combination thereof” covers not only all the well known and easily recognized conditions and degrees of intoxication, but also any mental or physical condition which is the result of taking an intoxicant, marijuana, a controlled substance, a controlled substance analogue, a drug, a substance affecting the central nervous system, or any combination thereof in any form and which deprives the driver of that clearness of mind and control of oneself which the driver would otherwise possess. In this situation, it would not be necessary that the person be in such a condition as would make [the person guilty] of public drunkenness. The law merely requires that the person be under the influence of an intoxicant, marijuana, a controlled substance, a controlled substance analogue, a drug, a substance affecting the central nervous system, or any combination thereof. The degree of intoxication must be such that it impairs the driver's ability to safely operate a motor vehicle by depriving the driver of the clearness of mind and control of [the driver's self] which [the driver] would otherwise possess.”

Given that that impairment to the level the driver is not safe to drive is what has to be proven by the State beyond a reasonable doubt, it becomes clear why the Court in Whaley (or Dye, or Hinds) would point out that a BAC of .08 gm% is not necessary for a driver to be guilty of a DUI, even a DUI in which alcohol is the only intoxicant alleged.

In fact, a lot of extensive and persuasive science studied in the years since the .08 gm% level became a national BAC per se standard, indicates that the vast majority of drivers are too impaired to operate a vehicle safely at BACs well below .08 gm%. By 2013, the National Highway Transportation and Safety Administration's own research suggested that a BAC of .05 gm/% would be a more appropriate per se level. As a result, the National Transportation Safety Board changed its recommended per se limit to .05 gm%. Political resistance has kept NHTSA's recommendation where it currently is (the reader might recall a serious push to change the recommendation that was defeated in 2019). Among other States, only Utah has followed this guidance, but the vast majority of other countries in the world adopted a .05 or lower standard, and the number of lives saved as reflected in Utah driving fatalities since 2019, is significant since the crash and medical studies support it, it is not uncommon for well informed experts to testify that BACs below .08 gm% come with scientifically recognized impaired driving implications.

In the case General Wood and I tried, there was a moment when the defense attorney attempted to encourage our TBI toxicologist Special Agent Corbin Hughes into granting the defense attorney's point that lots of drivers are perfectly safe at BAC levels of .08 gm% or even higher. However what he got instead was a response from Mr. Hughes that, actually, the best science we have today suggests that all drivers, even professional race car drivers, suffer under loss of driving functions by the time they reach a BAC level of .05 gm%.

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Proving Cases Below .08 BAC

In State v. Whaley, the defendant's expert, Jimmie Valentine, uttered a similar admission during the State's cross examination, viz., "He stated that "epidemiology studies would suggest that you start to get a little bit of an inflection in a dose response curve when you get to .05. So .05 and above, you get to get a little bit inflection, and it gets greater at .08." Whaley at *9. Of course, in that case, in a jury-out, the State's expert, Dr. Kenneth Ferslew, identified the same data-inflection point of a .05 gm% BAC.

It's worth asking where these responses and this uniformity of experts comes from. To properly understand this, one need to go all the way back to the seminal review of studies produced by the National Highway Transportation Administration back in July 1988. "Effects of Low Doses of Alcohol on Driving-related Skills: A Review of the Evidence," Moskowitz, H. and Robinson, C.D. Moskowitz and his team of researchers asked the question, at what BAC does driving impairment begin? To answer this question, they examined 177 performance studies that met their stringent inclusion criteria that had been conducted on drinking subjects and published between 1950 and 1984. At this time in the literature, they faced several challenges. First, the vast majority of studies during these times concentrated only on a single BAC and weren't really designed to answer the researchers' questions. Second, the "driving simulator" studies attempted in this time period were so basic, that some of them were barely sensitive to the effects of alcohol, in the way real-world driving simulators today are (think, "pong."). In spite of that, the conclusions were robust:

"There is sufficient evidence, however, to demonstrate that BACs of 0.05% and more produce impairment of the major components of driver performance: reaction time, tracking, divided attention performance, information processing, oculomotor functions, perception, and other aspects of psychomotor performance." (Ibid., p. 67)

All of this was concluded at a time when the Per Se BAC in some states was 0.15 gm% to 0.12 gm% and was only 0.10 gm% in the strictest of the U.S. States. (It would be more than a decade, before NHTSA would set the national standard at .08 gm%.) This prior data has been more and more firmly backed up and supported as scientific methods and driving simulators have improved. (See also from NHTSA, "A Review of the Literature on the Effects of Low Doses of Alcohol on Driving-Related Skills," H. Moskowitz, D. Fiorentino, April, 200, and "Driver Characteristics and Impairment at Various BACs," H. Moskowitz, et. al., August 2000.)

Now, after describing the science of alcohol intoxication, and the law of what has to be proven in a case of Driving Under the Influence (Tenn. Code Ann. § 55-10-401(1)), in Tennessee, and after conducting many jury trials regarding DUIs, vehicular assaults and vehicular homicides, it is often difficult getting a conviction in a DUI case (especially one not involving injury or death) at a BAC below .08 gm%. That number serves as a cognitive anchor in most potential jurors' minds before they walk into a courthouse. But as a prosecutor who spent over a decade of handling DUI-related cases, I definitely had a handful of cases involving drivers below .08 gm% BAC on alcohol (alone) whose performance on the body and dash camera footage was so terrible that they pled or were found guilty. I think it is useful to remember that, while § 55-10-401(2) is a powerful tool, the standard set forth in section (1) of that same statute does not require a BAC of .08 gm%. Where appropriate, we shouldn't hesitate to present DUI cases below that line. Also where appropriate, DUIs that involve other impairing substances legal or illegal whether alcohol is involved or not should be considered under TCA § 55-10-401 (1) (DUI by impairment). DUI is a preventable crime that injures and kills victims every year.



Upcoming Training

TENNESSEE DISTRICT ATTORNEYS GENERAL CONFERENCE

Cops in Court – April 24, 2026, Johnson City, TN

This course teaches law enforcement officers the challenges and difficulties associated with impaired driving cases and how to communicate this to the jury. It also includes a mock trial presentation in which each officer experiences a direct and cross examination. Prosecutors are encouraged to participate in the mock trial presentation from 1 p.m. to 4 p.m. This exercise will feature a marijuana impaired DUI case.

ADAPT Seminar – May 11 – 13, 2026, MTSU Murfreesboro, TN

This seminar was created by TBI and features classes regarding the investigation and prosecution of drug impaired driving cases. Members of the MTSU staff will also make presentations regarding how drugs affect the human body.

Lethal Weapon/Vehicular Homicide Seminar - June 8 - 11, 2026, Somerset, KY

This course will be a joint effort with prosecutors and law enforcement officers from Kentucky. It features all aspects of the investigation and prosecution of vehicular homicide cases.

Prosecuting the Drugged Driver- July 21 - 23, 2026, Franklin, TN

This course will provide Prosecutors with specific information on how to effectively conduct impaired driving jury trials. All aspects of preparing and conducting a jury trial will be discussed. This seminar will also discuss charging decisions, ethics, case law updates and current motions.

Tennessee Lifesavers Conference – September 16 - 18, 2026, Nashville, TN

This conference provides instruction and opportunities for law enforcement officers, prosecutors and traffic safety partners to learn and collaborate on many traffic safety issues. The TSRPs will provide a 2026 legal update.

TENNESSEE HIGHWAY SAFETY OFFICE TRAINING CLASSES:

DUI Detection & Standardized Field Sobriety Testing

April 6-10, 2026, Lebanon, TN (Instructor Class)

April 13-15, 2026, Livingston, TN

April 14, 2026, Crossville, TN (SFST Refresher)

April 20-22, 2026, Sevierville, TN

May 4-8, 2026, Memphis, TN

May 12, 2026, South Pittsburg, TN (SFST Refresher)

June 22-26, 2026, Bluff City, TN

Advanced Roadside Impaired Driving Enforcement (ARIDE)

April 6-7, 2026, Waynesboro, TN

April 13-14, 2026, Sparta, TN

April 16-17, 2026, Newport, TN

May 14-15, 2026, Clarksville, TN

May 21-22, 2026, Clinton, TN

Drug Recognition Expert (DRE)

April 14, 2026, Jackson, TN (In-Service)

July 27-August 6, 2026, Murfreesboro, TN



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DUI Tracker



DUI Tracker this last quarter

The results below were taken from the Tennessee Integrated Traffic Analysis Network (TITAN) from January 1, 2026, through March 31, 2026, and reflect the DUI Tracker conviction report for all judicial districts within the State of Tennessee. These numbers include the Circuit Courts, Criminal Courts, General Sessions Courts and Municipal Courts. The total number of dispositions for the period from January 1, 2026, through March 31, 2026, since the last quarter was 1,566. This number is down from the previous quarter. (These numbers only reflect the cases that were entered into the DUI Tracker software. Not all DUI cases are entered into the DUI Tracker.)

Fatal Crashes this last 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 interstates, highways and roadways, from January 1, 2026, through March 31, 2026. During this period, there were a total of 193 fatalities, involving 179 crashes, which is a significant decrease from the previous quarter. Out of the total of 193 fatalities, 33 fatalities involved the presence of alcohol, and 31 fatalities involved the presence of drugs, signifying that 33% of all fatalities this quarter involved some form of alcohol and/or drugs.

The year-to-date total number of fatalities on Tennessee roads and highways is 193. This is less than the 235 fatalities incurred last year at this same time. Although this year has started with less fatalities than last year, we need to stay vigilant in our prosecution of impaired drivers. It is only with diligent efforts that we will be able to save lives, prevent devastating injuries and permanently lower the number of fatalities that occur on our roadways. Driving impaired is preventable if we all do our part.

Please support our community agencies as they work towards stopping impaired driving.

20/20 Eye Movements Course:

On March 10–12, 2026, The DUI Training Department, in partnership with the faculty of the Southern College of Optometry, presented our 20/20 Understanding the Physiology of Eye Movements and Impairment Seminar. The participants are informed regarding the science that produces involuntary eye movements due to drug and alcohol impairment and how to distinguish these movements from nystagmus caused by medical conditions or environmental conditions. This seminar is offered every spring.



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Vehicular Homicide – Murderer's Row

State v. James Lee Dennis 2026 WL 3222358 (Child maintenance restitution)



On August 25, 2023, Mr. Dennis drove around 5:00 a.m. from Blytheville, AR to his home in Dyer, TN, after a night of drinking with friends. He entered the northbound lane of Interstate 155 heading in the wrong direction. He traveled in the wrong lane for over six miles, until he reached the Mississippi River Bridge in Dyer County. Shawn Stewart was traveling northbound in the correct lane of travel when he was struck head-on by Mr. Dennis' vehicle. Another vehicle that had been traveling behind the victim's vehicle struck the victim's vehicle a second time. Mr. Stewart died at the scene. A blood sample taken from Mr. Dennis revealed a BAC of 0.281%. Mr. Dennis pleaded guilty to vehicular homicide by intoxication and the trial court set a sentencing hearing date.

During the sentencing hearing, the victim's wife and mother of his two minor children submitted an affidavit, which contained relevant financial information regarding child maintenance, pursuant to the new child maintenance restitution statute. See Tennessee Code Annotated § 39-13-219 (Which provides for restitution in the form of child maintenance to the minor children of a victim of vehicular homicide by intoxication).

The State also presented testimony from an Assistant District Attorney from the State's Child Support Division, who testified that many of the factors included in the child maintenance statute are congruent with the child support guidelines, although they are "not exactly the same." The trial court found that consideration of expert testimony concerning the application of the child support guidelines in this case "may well be helpful" in determining the appropriate amount of restitution under the child maintenance statute. The trial court allowed the State's witness (the Assistant District Attorney) to testify as an expert in child support calculations, over the defendant's objections, and he testified that the monthly obligations under the child support guidelines would be \$1,768.00.

The State argued three enhancement factors under Tennessee Code Annotated § 40-35-144 applied: (3) the offense involved more than one victim, (6) the personal injuries or amount of damage were particularly great, and (10) the defendant had no hesitation about committing a crime when the risk to human life was high. The State also requested restitution for child maintenance in accordance with the child support guidelines.

The trial court held that enhancement factor (1) applied because the Defendant had a prior assault, but the trial court gave it "very, very little weight." The trial court also found that enhancement factor (6) was applicable because the injuries inflicted upon the victim and damage to property were particularly great. Finally, the trial court applied enhancement factor (10), finding that the Defendant had no hesitation about committing a crime when the risk to human life was high. The trial court sentenced the Defendant to serve ten years in the Tennessee Department of Correction. The trial court ordered the Defendant to pay \$500 per month in child maintenance restitution for the oldest child for 105 months and \$400 per month for the youngest child for 153 months. The total child maintenance restitution ordered was \$113,700. Mr. Dennis appealed, claiming that the child maintenance order was in error, since the trial court did not follow the requirements of TCA § 39-13-219 and did not consider the defendant's financial resources. Mr. Dennis also argued that the trial court misapplied an enhancement factor, making his sentence above the minimum in error.

The Court of Criminal Appeals first determined the standard of review for the child maintenance issue as a matter of first impression. Since there is no difference between restitution as a condition of probation and child maintenance restitution in determining the standard of review, the appropriate standard of review is abuse of discretion with a presumption of reasonableness.

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Vehicular Homicide – Murderer's Row (Cont.)

See *State v. Bonds*, 502 S.W.3d 118, 166 (Tenn. Crim. App. 2016). The CCA then determined that the trial court applied the correct legal standard by following the child maintenance restitution statute. The trial court cited the statute seven times in its well-reasoned, two-and-a-half-page order and examined the factors set forth therein. The order outlined the standard of living to which the children were accustomed by examining the family income for the last eighteen months of the victim's life. The trial court's order also addressed the financial needs and resources of the children by examining funds received through a life insurance policy, social security payments for each child, the amount of lost income due to the victim's death, and "ongoing resources available to the children." The trial court offset the amount of child maintenance restitution by considering funds received by the surviving parent through a wrongful death settlement in accordance with subsection (e)(1). The trial court also determined that "[t]he older child ha[d] somewhat greater needs than the younger and had the benefit of her father's financial assistance for a longer time." The CCA stated that the trial court correctly rejected the child support guidelines in setting the restitution amount as the child support guidelines are not authorized by T.C.A. § 39-13-219. Also, the CCA ruled that the child maintenance restitution statute has no provision that the trial court shall consider a defendant's ability to pay. If the General Assembly intended for the trial court to consider a defendant's ability to pay, it could have considered such a provision. Therefore, the trial court did not abuse its discretion in setting the amount of child maintenance restitution.

Regarding the sentence length, the CCA did rule that the trial court misapplied enhancement factor number (6) because the trial court found that the injuries to the victim were particularly great. However, the victim's injuries are included as an element of the offense of vehicular homicide by intoxication and therefore cannot be considered as an enhancement. See *State v. Rollins*, 2023 WL 4078700, at *5 (Tenn. Crim. App. June 20, 2023). The CCA did point out that if the State had argued that the victim's property damage was great, because the victim's vehicle was destroyed by fire, then enhancement factor (6) would have been properly applied. Since, Mr. Dennis did not challenge on appeal the application of enhancement factors (1) or (10), nor did he claim that the trial court failed to properly consider the purposes and principles of the Sentencing Act. The sentence imposed by the trial court fell within the statutory range for the Class B felony for which Mr. Dennis was convicted. The record establishes that the trial court did, in fact, properly consider the purposes and principles of the Sentencing Act. Therefore, the sentence is presumed reasonable. The CCA stated, "a trial court's misapplication of an enhancement or mitigating factor does not remove the presumption of reasonableness from its sentencing decision." *State v. Bise*, 380 S.W.3d 682, 707 (Tenn. 2012). Therefore, the trial court did not abuse its discretion in sentencing Mr. Dennis to a ten-year period of incarceration. The judgments of the trial court were affirmed.

State v. Jennifer Leigh Sexton 2026 WL 881015 (Child maintenance restitution)



On June 15, 2021, Ms. Sexton was westbound on Interstate 40 in Knox County when her Volkswagen sedan ran into the back of a motorcycle being driven by Gary Rosen. Mr. Rosen was thrown from his motorcycle onto the I-40 lanes of traffic and he was then struck by several vehicles, including two semi-trucks. Mr. Rosen died from the initial impact and dismemberment from the later impacts. The force of the initial impact lodged the motorcycle in the upright position, but under the Volkswagen's front bumper. The damage to the front of the Volkswagen jammed the driver's door shut.

Initially, Ms. Sexton claimed that her boyfriend, Corey Huffaker was driving and then fled the scene. Officers attempted to locate the boyfriend, but they could not find any information on a person matching the information that Ms. Sexton provided. Also, Ms. Sexton stated that her boyfriend ran from the driver's side door, which was jammed shut.

The vehicle was registered to Ms. Sexton. The investigation later indicated that Ms. Sexton was driving alone and Corey Huffaker did not exist. Unfortunately, the officers did not perform SFSTs or collect a blood sample from Ms. Sexton because they did not initially have sufficient information or probable cause to believe that she was the driver.

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Vehicular Homicide – Murderer's Row Cont.

Ms. Sexton was transported to a hospital from the scene while the investigation was being completed.

The State retained an expert crash reconstructionist to testify at trial regarding the crash. His testimony was that the Volkswagen struck the motorcycle from behind twice, lodging the bike under the vehicle on the second strike, and the Volkswagen was travelling at approximately eighty-seven miles per hour during the first strike. The State's expert used a traditional drag sled to determine friction and he used the police report's skid mark measurements. A defense expert testified that the defendant's vehicle speed was much less, approximately sixty-three to seventy-five miles per hour. The defense expert used a different friction method and he used a different braking percentage, which resulted in a lower estimated speed.

The jury convicted Ms. Sexton of Vehicular Homicide by Recklessness, a Class C felony, Initiating a False Report, a Class D felony, Driving on a Suspended License, a Class B misdemeanor, and Following too Closely, a Class C misdemeanor. She was sentenced to ten years in confinement. Ms. Sexton appealed, claiming that the State's expert should not have been allowed to testify since his method of data collection was unreliable.

On appeal, the Court of Criminal Appeals stated, "The trial court has broad discretion in determining the qualifications, admissibility, relevancy, and competency of expert testimony. See State v. Stevens, 78 S.W.3d 817, 832 (Tenn. 2002). This court will not overturn the trial court's ruling on the admissibility of expert testimony absent an abuse of that discretion. See State v. Ballard, 855 S.W.2d 557, 562 (Tenn. 1993)". Ms. Sexton argued that the trial court erred in admitting the State's expert's testimony because the trial court relied on the experts qualifications rather than considering the factors in McDaniel v. CXS Transport Inc., 955 S.W.2d 257, (Tenn.1997) for determining the reliability of his scientific evidence. The CCA disagreed and stated, "Although the trial court did not make sufficient findings under McDaniel, the trial court did not abuse its discretion in admitting Mr. Farmer's testimony." The CCA pointed out where all of the McDaniel factors were discussed during the pre-trial motion to exclude the expert's testimony, which was denied by the trial court. The CCA concluded that the trial court did not abuse its discretion in admitting the State's expert testimony.

Ms. Sexton also appealed the trial court's denial of her request for special jury instructions concerning the definition of "recklessly" for the offense of vehicular homicide and the definition of "report" for the offense of initiating a false report. However, the CCA pointed out that, "The purpose of a special instruction is to supply an omission or correct a mistake made in the general charge, to present a material question not treated in the general charge, or to limit, extend, eliminate, or more accurately define a proposition already submitted to the jury. State v. Dorantes, 331 S.W.3d 370, 390 (Tenn. 2011) (quoting State v. Cozart, 54 S.W.3d 242, 245 (Tenn. 2001), A trial court's refusal to grant a special instruction is error only when the general charge does not fully and fairly state the applicable law. State v. Hawkins, 406 S.W.3d 121, 129 (Tenn. 2013)." The CCA ruled that the pattern jury instructions accurately provided the elements of the offenses charged and correctly defined "recklessly." Also, the trial court correctly used the pattern jury instructions to define "report." Therefore, the judgments of the trial court were affirmed.



DUI PRIORS HAVE A PRESUMPTION OF REGULARITY

The Wenzler case determined that the ruling in Hickman applies to all DUI cases and not just habeas corpus proceedings Id. at *7. The Tennessee Supreme Court stated, “[C]onsequently, the rule is that unless invalid on its face, a prior judgment of conviction in a court with personal and subject matter jurisdiction cannot be collaterally attacked in a subsequent proceeding in which the challenged conviction is used to enhance punishment. The authorized route for attacking a facially valid, final judgment of conviction is by the Post-Conviction Procedure Act. An evidentiary hearing can be afforded in that forum and not at the proceeding in which such prior conviction is used.” State v. McClintock, 732 S.W.2d 268 (Tenn. 1987).

This also applies if the prior conviction is silent as to whether or not the foreign state DUI statute matches the Tennessee DUI statute. In the case of State v. Davis, 2002 WL 1760210 (Tenn. Crim. App. July 31, 2002) the CCA stated exactly what we just discussed above. A collateral attack on the wording of Georgia’s DUI statute only makes the prior voidable and it is not a proper attack, as voidable attacks must be made through the other state’s appeal process. If the constitutional issues of jurisdiction were proven, then the prior is not void and it can be used, even though the Georgia DUI statute is elementally different from the Tennessee statute (They merely need to be convicted for that state’s driving under the influence statute). Id. at *3. According to T.C.A. § 55-10-405, any foreign conviction that constitutes the listed offenses qualifies. Also, unlisted offenses, if they share the same elements of the offenses listed in § 55-10-405(b). Id.

Additionally, a DUI prior cannot be collaterally attacked if it is silent as to whether or not the defendant was advised of enhanced penalties for subsequent convictions. In State v. Posey, 99 S.W.3d 141, 145 (Tenn. Crim. App. 2002), the defendant was first convicted of driving under the influence in Rhea County, Tennessee, in 1990. The defendant alleges that this conviction is invalid on its face merely because it fails to contain written advice of an enhanced penalty for a subsequent conviction or a warning that a conviction in another state may be used to enhance the punishment for a DUI committed in Tennessee. The defendant states that these omissions render the 1990 conviction void so that it may be collaterally attacked and should not have been used to enhance the punishment for his present DUI conviction. We disagree. Id. The same applies to foreign state priors. In State v. Rea, 865 S.W.2d 923 (Tenn. Crim. App. 1992), the CCA stated, that as to appellant’s argument that “the State failed to prove the defendant had been informed in writing by the Alabama trial judge of the enhancing penalties for subsequent D.W.I. convictions,” we find such a contention absurd. If appellant wishes to launch an attack on the constitutionality of the Alabama conviction, she should do so in that jurisdiction. Id.

Moreover, the lack of an advisement of enhancements is of no consequence to later offenses as the statute (T.C.A. § 55-10-411(b)(1) does not provide that failure to warn bars enhanced sentencing for subsequent DUI’s. See State v. Bowen, 67 S.W.3d 826, 828 (Tenn. Crim. App. 2011); See also State v. George S. Mercier, 1994 WL 568345, (Tenn. Crim. App. Oct. 19, 1994). Too many DUI priors are not given the presumption of regularity that they deserve. They are most voidable, not void.

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