



DUI Newsletter

Publishers:

Terry E. Wood, TSRP
Jack T. Arnold, TSRP

Issue Preview:

2026 Legislative Update...	1 - 4
Recent Decisions	5 - 6
Upcoming Training.....	7
DUI Tracker Report	8
Vehicular Homicides	9 - 10
Exclude Red Herrings....	11 - 12

TN District Attorneys General Conference

Stephen D. Crump, Executive Director
226 Anne Dallas Dudley,
Suite 800
Nashville, TN 37243

DUI Training Division
DUI Office: 615-253-6734
Email: tewood@tndagc.org
jtarnold@tndagc.org
Online Newsletters:
dui.tndagc.org/newsletters

Tennessee Highway Safety Office

312 Rosa L. Parks Ave.
William R. Snodgrass TN Tower
25th Floor
Nashville, TN 37243
Office: 615-741-2589
web-site: www.tntrafficsafety.org



2026 LEGISLATIVE UPDATE

Public Chapter #581 (Personal Delivery Devices)

Personal Delivery Devices to be operated on sidewalks, crosswalks, bicycle lanes or paths, shoulders, right-hand edge or curb of roadways, parking lots or similar areas. TCA § 55-8-101 & 209. Effective July 1, 2026. (Riding a personal delivery device is not DUI eligible)

Public Chapter #584 (Personal Watercraft)

Raises age limit from 12 to 14. Unlawful for anyone 12 or under to operate a personal watercraft without adult supervision. Age 12 & 13 can operate it Monday-Friday, except legal holidays, or under adult supervision. Age 14 and over can operate it. TCA § 69-9-505. Effective January 1, 2027.

Public Chapter #601 (Commercial Driver License)

Removes the CDL restriction regarding a medical diagnosis for diabetes mellitus. The CDL holder must still be certified as medically qualified to operate a commercial vehicle. TCA § 55-50-411(2). Effective March 18, 2026.

Public Chapter #604 (Bail)

Presumed no release on own recognizance if charged with a felony and a firearm was used or displayed, or victim incurred serious bodily injury, or victim incurred death. Findings must be recorded to rebut the presumption. TCA § 40-11-115. Effective July 1, 2026.

Public Chapter #648 (Amends 2021 Precious Cargo Act)

Adds stuttering and other communication disorders to the "2021 Precious Cargo Act" which allows a designation in the Tennessee Vehicle and Title Registration System (VTRS) database indicating to first responders that the vehicle operator needs assistance with communications during a traffic stop. TCA § 55-21-303(a)(2). Effective July 1, 2026.

Public Chapter #651 (E-Bike Restrictions)

Allows state and local governments to restrict class 1 or class 2 electric bicycles on any part of a street or highway. Class 3 electric bicycles are restricted from using paths or trails that bicycles are allowed to use, unless the path or trail is adjacent to a street or highway, or if the local government permits it by resolution or ordinance. Also, it is a delinquent act (class C Misdemeanor) for anyone under 16 yrs of age to operate a class 3 electric bicycle. TCA § 55-8-306 & 307. Effective July 1, 2026.

(Continued on page #2)

2026 LEGISLATIVE UPDATE (Continued)

Public Chapter #663 (UTVs used for Agricultural Purposes)

The less than 45 mph road restriction does not apply to utility terrain vehicles being operated for agricultural purposes. TCA § 55-8-185(c)(1). Effective April 1, 2026.

Public Chapter #688 (Driver License Renewal after Incarceration)

The department of safety shall work with the department of correction on the renewal of a driver license, upon release of a person from incarceration, if the person is otherwise eligible for a driver license and meets all documentation requirements for issuance. TCA § 55-50-357. Effective April 14, 2026.

Public Chapter #698 (Hemp Product Restrictions)

Hemp-derived cannabinoid products are restricted and regulated. Requires a warning label regarding possible impairment and to keep the product out of the reach of children. Also, a QR code is required that will track the product's batch number, testing information and potency information. Beverages must utilize a traditional pull-tab, screw-top or cork-style cap, as used for containers of wine or other alcoholic beverages. THCa & THCP products are illegal to possess, sell, or deliver (Now defined as Marijuana). TCA § 57-7-110. Effective July 1, 2026.

Public Chapter #702 (Nitrous Oxide Illegal for Retail Sale)

This is the "Nitrous Oxide Abuse Prevention and Retail Sale Prohibition Act." It is unlawful for a retail seller to sell Nitrous Oxide to the ultimate consumer. It is a \$2,500 fine and confiscation of the Nitrous Oxide; for a second violation, a \$5,000 fine and a loss of their retail sales license. It is a Class E Felony for anyone to give, sell or provide Nitrous Oxide to anyone, with reasonable cause to suspect that they will use it to get intoxicated, or use it to dull the brain or the central nervous system. It can only be sold for medical or commercial beverage uses. TCA § 39-17-2003. Effective July 1, 2026.

Public Chapter #715 (Vehicular Homicide-Increased Sentence)

TCA § 39-13-213(a)(2) (Vehicular Homicide by Intoxication) is amended to increase punishment if the offender, as a result of the same conduct, is also convicted of a violation of TCA § 55-10-101 (Leaving the Scene of a Crash involving Death or Personal Injury), then the offender shall be sentenced as a Range II offender, or if appropriate, a Range III Offender. Effective July 1, 2026.

Public Chapter #726 (Traffic Tickets for ADS Vehicles)

State or local Law Enforcement Agencies may establish policies and methods to enforce traffic offences committed by Automated Driving System vehicles. A notice of violation or a citation must be mailed to the registered owner within 20 days and allow for payment within 30 days of the mailed notice. TCA § 55-8-202. Effective April 13, 2026.

Public Chapter #735 (Driver Education Courses)

Local Education Agencies and Charter Schools may provide Driver Education and training Courses. TCA § 49-1-204. Effective July 1, 2026.

Public Chapter #764 (School Bus Cameras)

If outside cameras are attached to school buses, then the school shall, at a minimum, enter into a MOU with local law enforcement allowing them to review the recorded footage to determine if any traffic violations have occurred. School Safety Personnel may also review the evidence. Citations can then be issued. TCA § 55-8-151. Effective April 13, 2026.

Public Chapter #789 (Federal Rescheduling of Marijuana Does Not Affect Tennessee Law)

If Marijuana is rescheduled or decriminalized by the Federal Government, it shall not be rescheduled or decriminalized under TCA 53-11-parts 3 & 4 unless the General Assembly has established a regulatory framework for marijuana to be rescheduled or deleted as a controlled substance. TCA § 39-17-403. Effective April 23, 2026.

(Continued on page #3)



2026 LEGISLATIVE UPDATE (Continued)

Public Chapter #793 (Statute of Limitations for Vehicular Homicide is 10 Years)

Any prosecution for vehicular homicide, as prohibited by § 39-13-213, that is committed on or after July 1, 2026, shall commence within ten (10) years from the date the offense occurs. TCA § 40-2-101(t). Effective July 1, 2026.

Public Chapter #827 (Temporary Driver License Disability Placards Available)

Drivers that are temporarily disabled due to surgery, fractures or similar conditions; or women certified to have a high-risk pregnancy may, obtain temporary disability placards for the duration of their condition, but not in excess of 6 months. TCA § 55-21-103. Effective January 1, 2027.

Public Chapter #853 (Juvenile Driver License Suspended)

Any juvenile adjudicated to being unruly may have their driver's license suspended or their ability to obtain a driver's license suspended for up to one year. TCA § 49-6-3009. Effective January 1, 2027.

Public Chapter #875 (Serious Bodily Injury definition amended for Vehicular Assault)

Amends Vehicular Assault to include a definition of "serious bodily injury" to include bodily injury that involves: (1) A substantial risk of death; (2) Protracted unconsciousness; (3) Extreme physical pain; (4) Protracted or obvious disfigurement; (5) Protracted loss or substantial impairment of a function of a bodily member, organ, or mental faculty; or (6) A broken bone. (No longer limits broken bones to under 12 years old). TCA § 39-13-106 Effective July 1, 2026.

Public Chapter #896 (Bail)

If a person on their own recognizance or on bail, violates a condition of release; commits a new offense; or obstructs the judicial process; then the court may upon written notice, revoke their bond. TCA § 40-11-141. Effective July 1, 2026.

Public Chapter #930 (Burglary of vehicles)

Burglary of a motor vehicle, boat or airplane is now a Class D Felony (all burglaries are now a Class D Felony) Amends TCA § 39-13-1002. Effective: July 1, 2026.

Public Chapter #945 (Consecutive Sentences If Multiple Victims)

If the defendant is convicted of two (2) or more offenses, irrespective of whether the multiple offenses were part of a single criminal episode, involving more than one (1) victim that is a minor, then the court shall order the sentences to run consecutively unless the court finds by a preponderance of the evidence that the facts of the case do not warrant the imposition of consecutive sentences and the imposition of consecutive sentences would not be in the best interest of justice. TCA § 40-35-115. Effective July 1, 2026.

Public Chapter #950 (Kratom is Illegal to Possess, Manufacture, Sell or Deliver)

This is known as "Matthew Davenport's Law" It is an offense to knowingly possess Kratom. It is an offense to knowingly manufacture, deliver, or sell Kratom. It is an offense to knowingly possess Kratom with intent to manufacture, deliver, or sell Kratom. As used in this section, "Kratom" means any part of the mitragyna speciosa plant containing the alkaloid mitragynine or metabolite 7-hydroxymitragynine. A violation of possessing Kratom is a Class A misdemeanor. A violation of manufacture, deliver or sell Kratom is a Class C felony. It is a Class B felony if the violation involved the delivery or sale of Kratom to a minor from an adult who is at least two (2) years the minor's senior, and who knows that the person is a minor. TCA § 39-17-457. Effective July 1, 2026.

(Continued on page #4)



2026 LEGISLATIVE UPDATE (Continued)

Public Chapter #954 (Driver License Non-renewable If Cannot Speak English)

If a person applying for a driver's license cannot speak or read English, then they may be administered a written examination in a language other than English. If a license is issued, then it must be non-renewable and only valid for thirty-six (36) months. Upon reapplication, the driver's written examination must be in English. Also, license plates will only be issued to U.S. Citizens or lawful residents of the U.S. TCA § 55-50-322(k). Effective January 1, 2027.

Public Chapter #993 (Driver License Points Removal)

Allows for up to (5) points to be removed from a driving record after paying fines and costs for conviction for a speeding ticket, if the driver completes a department approved driver education course within (90) days. TCA § 55-10-207(g)(2). Effective: July 1, 2026.

Public Chapter #1046 (Implied Consent Refusal Suspension Now 1.5 Years)

If a driver violates § 55-10-406(d) (Refuses an Implied Consent request), the court shall revoke the license of the driver for One (1) year and six (6) months, if the person does not have a prior conviction. TCA § 55-10-407(a)(1). Effective: January 1, 2027.

Public Chapter #1070 (Illegal Aliens Are Not Allowed to Drive a Commercial Vehicle)

It is an offense to employ or to allow an illegal alien to operate a commercial vehicle, and it is also an offense for an illegal alien to operate a commercial vehicle. It is a Class A misdemeanor. The employer is strictly liable for all damages caused as a result of a crash. TCA § 55-50-403(b). Effective: July 1, 2026.

Public Chapter #1072 (Illegal to Leave a Crash That Resulted in Death)

It is a Class E Felony for a person to leave a crash that resulted in a death (If the person knew or should have known). Punishment is by confinement for not less than one (1) year, of which is to be served at 100 percent and a fine of no less than \$5,000 and no more than \$10,000. TCA § 55-10-101(b)(2)(A). Effective July 1, 2026.

Public Chapter #1087 (Commercial Driver Out-Of-Service if They Cannot Speak English)

If during a safety inspection, a LEO determines that a commercial vehicle driver cannot read and speak English sufficiently to converse with the general public, the officer must issue an out-of-service order to the driver. TCA § 55-50-405 & § 65-15-11. Effective: When it can be Federally verified to not jeopardize Federal funds.

Public Chapter #1104 (Higher Sentence for Assaulting a First responder)

Assaulting a Law Enforcement Officer or a First Responder is a Class E Felony, mandatory fine of \$10,000 and mandatory minimum jail of 60 days. Assaulting a Nurse is a Class A Misdemeanor, \$5,000 fine and 30 days minimum jail sentence. TCA § 39-13-116(c)(1). Effective: July 1, 2026.

Public Chapter #1131 (Illegal to Adulterate Food, Drinks or Medicine)

Adulterating a food, liquid product or medication, with the intent to cause involuntary intoxication, bodily injury, serious bodily injury or death, is prohibited. It is a Class D Felony to cause intoxication. If bodily injury occurs, a Class C Felony. If serious bodily injury or death occur, a Class B Felony. TCA § 39-17-107. Effective: July 1, 2026.



Recent Decisions

State v. Crystal Lee Martin, 2026 WL 989918 **(Failure to Comply with the Post-Conviction Act)**

Ms. Martin entered an Alford or “best interest” plea to DUI on March 17, 2025. Although Ms. Martin had four previous defense attorneys represent her on the DUI case, she was Pro Se at the time of the plea. Ms. Martin also had a separate violation of probation case pending (for the neglect of a child under eighteen years old), in which her probation was violated due to the DUI conviction, and she was sentenced to serve her sentence of six years in confinement.

Ms. Martin later filed a Pro Se Petition for Post-Conviction Relief in the DUI case. However, the Petition was not signed under oath, subject to penalty for perjury. The trial court requested that the Petitioner amend the Petition with one that should be signed under oath, subject to penalty for perjury. Ms. Martin refused to file an amended Petition, claiming that the Petition included a signed verification statement explicitly sworn under penalty of perjury. The Petition did have a “notarized verification page” and Ms. Martin signed the Petition. However, there was no notary stamp and no notary signature. Ms. Martin also filed many more motions and Petitions regarding her neglect of a child conviction. The trial court denied all motions and Petitions.

The CCA stated that Post-conviction relief in Tennessee is “entirely a creature of statute.” T.C.A. § 40-30-104(e) requires a petition and any amended petition for post-conviction relief to be verified under oath. Additionally, the oath must be sworn in the presence of a notary public. *See Griffin v. State*, 2002 WL 236697 (Tenn. Crim. App. 2002). The trial court did not err when it dismissed the petitioner’s petition for lack of a sworn oath. The judgments of the trial court were affirmed.

State v. Rhonda Carole Sterbenz, 2026 WL 1030854 **(Insufficient evidence claim on a DUI, fifth offense, conviction)**

On February 3, 2022, Ms. Sterbenz was observed standing outside of her inoperable vehicle, after a 911 caller reported a vehicle hit a signpost off the roadway and the driver smelled of alcohol. Ms. Sterbenz displayed many signs of impairment and the deputy found a half-empty bottle of Jim Beam, between the front seats. Ms. Sterbenz admitted to drinking alcohol before driving and that she drove her vehicle off of the roadway due to vehicle “issues”. A blood draw indicated a BAC of .221%. A jury convicted Ms. Sterbenz of DUI, fifth offense; DUI per se, fifth offense; open container; and failure to exercise due care. She appealed the DUI convictions, based upon insufficient evidence to prove that she was in physical control of an operable motor vehicle.

“A crime may be established by direct evidence, circumstantial evidence, or a combination of the two.” *State v. Hall*, 976 S.W.2d 121, 140 (Tenn. 1998); *see State v. Sutton*, 166 S.W.3d 686, 691 (Tenn. 2005). Considering the totality of the circumstances, a rational trier of fact could have determined beyond a reasonable doubt that Ms. Sterbenz was under the influence of alcohol while driving or being in physical control of her motor vehicle, based upon her statements, the deputy’s observations, the circumstances of the vehicle’s crash and the BAC of .221%, one hour after her arrest. The judgments of the trial court were affirmed.

(Continued on page #6)



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Recent Decisions (Continued)

State v. Jannsen L. Smith, 2026 WL 1046735

(Lack of reasonable suspicion to arrest due to delayed detention)

In the early hours of December 3, 2022, a deputy with the Sequatchie County Sheriff's Office was informed by a hospital volunteer that, while on a break in the parking lot, he heard "a male screaming and hitting his vehicle." The deputy called for back-up and then proceeded to the parking lot, where he contacted Mr. Smith. The interaction was described as "semi okay," after which, Mr. Smith left the parking lot. There was a female passenger in the vehicle, but she did not express that she was afraid and she did not request any help.

A few minutes later, Mr. Smith was pulled over by another deputy, based upon the prior BOLO. A DUI investigation was started, because Mr. Smith was acting lethargic and admitted to having taken pain medication earlier. The deputy stated that Mr. Smith showed signs of impairment during the HGN test, but no other SFSTs were administered. A blood sample was obtained and indicated the presence of hydrocodone (11 ng/ml), methamphetamine (0.19 ug/ml), and cyclobenzaprine (0.06 ug/ml). Mr. Smith was convicted after a jury trial and he appealed the denial of his motion to suppress the traffic stop.

The CCA stated, "[I]n determining whether the seizure and search were 'unreasonable,' our inquiry is a dual one -- (1) whether the officer's action was justified at its inception, and (2) whether it was reasonably related in scope to the circumstances which justified the interference in the first place." See *State v. Montgomery*, 462 S.W.3d 482, 487 (Tenn. 2015) (citing *Terry*, 392 U.S. at 20, 88 S.Ct. at 1879). The CCA agreed that the initial contact by the first deputy was reasonable. However, the Court indicated that the reasonable suspicion had been dispelled during the first stop and there was no other independent reasonable suspicion to justify the second stop. Also, community care-taking did not justify the second stop. The judgment of the trial court was reversed, the conviction was vacated and the DUI charge was dismissed.

State v. Cliesha D. Tedunjaye, 2026 WL 1091800

(Sufficient evidence to prove intoxication)

On February 19, 2023, Ms. Tedunjaye was stopped for failure to maintain her lane of travel (her vehicle crossed over the fog line, into the emergency lane and back). Ms. Tedunjaye had an open container of whiskey in her purse, admitted to having consumed "a cup of alcohol," and showed signs of impairment during SFSTs. On a scale of 0 to 10, she rated her intoxication as "1.5." A search of the vehicle revealed marijuana, a handgun and the half empty bottle of whiskey. A blood sample indicated a BAC of 0.108%. A jury convicted Ms. Tedunjaye of DUI, DUI per se, and possession of a handgun while under the influence.

When the sufficiency of the evidence is challenged on appeal, the relevant question of the reviewing court is "whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *Jackson v. Virginia*, 443 U.S. 307, 319 (1979); see also Tenn. R. App. P. 13(e) ("Findings of guilt in criminal actions whether by the trial court or jury shall be set aside if the evidence is insufficient to support the findings by the trier of fact of guilt beyond a reasonable doubt."); *State v. Evans*, 838 S.W.2d 185, 190-91 (Tenn. 1992). Based upon the evidence at trial, there was sufficient evidence to support the convictions. The jury chose to credit the testimony of the State's witnesses and resolved any conflicts in favor of the State (including the fact that the police video went missing and the jury was given a *Ferguson* instruction.) The judgments of the trial court were affirmed.



Cops in Court - July 28, 2026, Putnam County, Livingston, TN

This course teaches law enforcement officers the challenges and difficulties associated with impaired driving cases. 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.

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

The Tennessee Highway Safety Office is presenting the TN Lifesavers Conference at the Sheraton Nashville Airport in Nashville. There will be many classes on Impaired Driving, including Pre-Conference DRE in-service classes.

Cops in Court - September 23, 2026, Murfreesboro, TN

This course teaches law enforcement officers the challenges and difficulties associated with impaired driving cases. 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.

Annual Conference: DUI Breakout - October 12, 2026, Gatlinburg, TN (Before the Conference Starts) Our DUI breakout session at this year's conference will provide approximately three hours of education and training, covering the current legal updates and issues in prosecuting an impaired driving case.

TENNESSEE HIGHWAY SAFETY OFFICE TRAINING CLASSES:

DUI Detection and Standardized Field Sobriety Testing

August 17-19, 2026, LaFollette, TN

October 5-9, 2026, Murfreesboro, TN (Instructor class)

November 18-20, 2026, Bristol, TN

Advanced Roadside Impaired Driving Enforcement (ARIDE)

October 26-27, 2026, Bristol, TN

Drug Recognition Expert School (DRE)

July 27-August 6, 2026, Murfreesboro, TN

September 16, 2026, (TN Lifesavers Auxiliary Training)



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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 April 1, 2026, through June 30, 2026, and reflect the DUI Tracker conviction report for all judicial districts in 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 April 1, 2026, through June 30, 2026, since the last quarter were 2,454. This number is up significantly from the previous quarter by 888 cases. (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 April 1, 2026, through June 30, 2026. During this period there were a total of 236 fatalities, involving 220 crashes, which is higher than the previous quarter. Out of the total of 236 fatalities, 36 fatalities involved the presence of alcohol, signifying that 15.25% of all fatalities this quarter had some involvement with alcohol. Further, there were a total of 34 fatalities involving the presence of drugs, signifying that 14.41% of all fatalities this quarter involved some form of drugs. Therefore, over 29% of all fatalities this quarter involved some form of alcohol and/or drug involvement.

The year-to-date total number of fatalities on Tennessee roads and highways is 447. This is down by 36 from the 483 fatalities incurred last year at this same time. This decrease in alcohol and drug related fatalities is a welcome change to the increases we have been experiencing in prior years. We must stop the pointless death and injuries caused by the preventable crime of impaired driving. Please do not let others drive impaired.

Lethal Weapon/Vehicular Homicide

The TSRPs from Tennessee and Kentucky presented a Lethal Weapon/Vehicular Homicide seminar in Somerset, KY, on June 8-11, 2026. Over 50 law enforcement officers and prosecutors from Tennessee and Kentucky participated in a mock crash and in many classes presented by Professor John Kwasnoski. Next year's seminar will be in Tennessee.



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Vehicular Homicide – Murderer's Row

State v. Timothy Kiefner 2026 **(Dickson County vehicular homicide)**



On May 1, 2025, at around 10:40 pm, Timothy Kiefner was driving his 2017 Toyota Rav4, 72 mph in a 40 mph zone, when his vehicle crossed over into oncoming traffic and hit a 2004 Chrysler SRT, head-on, killing 34 year old, Caitlyn Conquest. Mr. Kiefner had slurred speech and he admitted to drinking 4 to 5 beers earlier. A blood sample indicated a BAC of 0.20% and 3 ng/ml of active THC, approximately one hour after the crash. He had prior DUI convictions from Indiana from July 2003, September 2007 and May 2009.

On June 17, 2026, Mr. Kiefner plead guilty to one count of Aggravated Vehicular Homicide and he was sentenced to serve 19 years in TDOC custody, day-for-day at 100%. Caitlyn Conquest was remembered as a very loving and caring person that would often purchase food and diapers for others, even when she was short on funds.

State v. Jonathan Andrew Berretta, 2026 WL 1876247 **(Search warrant for hospital blood, drawn for medical purposes)**

At approximately 2 a.m. on August 7, 2021, Mr. Berretta drove his vehicle into the oncoming lanes of travel on Highway 55, outside of Tullahoma. He struck a vehicle being driven by 22-year-old Katie Leigh Bauer, head-on. Katie died as a result of her injuries. A Tullahoma police officer, Sgt. Brandon, arrived on the scene and attended to Katie Bauer. The officer did not observe Mr. Berretta. EMS arrived shortly, as did a THP Trooper. Both the Trooper and the EMT told Sgt. Brandon that they smelled alcohol coming from Mr. Berretta.

Mr. Berretta was being loaded into a helicopter, to be transported to the Vanderbilt University Medical Center (VUMC). Sgt. Brandon determined that he did not have sufficient time to obtain a search warrant. Therefore, he directed an EMT to conduct a warrantless blood draw, before the helicopter took off. Two days later, Officer Brandon applied for a search warrant to obtain samples of Mr. Berretta's blood that was drawn by VUMC (Three blood samples were drawn at 3:00, 4:28 and 7:18 a.m.). (an EMT drew the first sample and VUMC staff drew the pther two) The samples were sent to TBI for testing and indicated BACs of 0.283, 0.296 and 0.214, respectively.

A search of Mr. Berretta's vehicle found broken liquor bottles and empty beer cans. An analysis of the airbag module indicated the brakes were never applied. In a later interview with Mr. Berretta, he admitted drinking between eleven and twelve beers during the day. Mr. Berretta was on bond for a prior DUI out of Nashville. Mr. Berretta was convicted by a jury trial, for one count of Vehicular Homicide by Intoxication and one count of Vehicular Homicide per se. He was sentenced to twelve years imprisonment at TDOC, consecutive to the DUI sentence out of Davidson County. Mr. Berretta appealed. Most of the issues in the appeal involved the blood samples that were drawn by VUMC.

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Vehicular Homicide – Murderer's Row (Cont.)

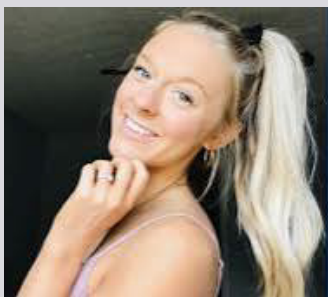
Mr. Berretta argued that the probable cause statement from the VUMC search warrant included false information from the EMTs. As our supreme court has explained,

[T]here are two circumstances that authorize the impeachment of an affidavit sufficient on its face, (1) a false statement made with intent to deceive the Court, whether material or immaterial to the issue of probable cause, and (2) a false statement, essential to the establishment of probable cause, recklessly made. Recklessness may be established by showing that a statement was false when made and that [the] affiant did not have reasonable grounds for believing it, at that time.

State v. Little, 560 S.W.2d 403, 407 (Tenn. 1978); *see also State v. Willis*, 496 S.W.3d 653, 721 (Tenn. 2016); *State v. Dellinger*, 79 S.W.3d 458, 470 (Tenn. 2002) (same). The CCA determined that the statements regarding the EMTs were not false. Even assuming the statements were false, nothing indicated evidence of deliberate falsity. (Even with the statements excluded, the CCA found there was sufficient probable cause in the warrant. The nature of the head-on crash and the officer's training and experience were sufficient. *See State v. Kroese*, 2024 WL 2034366, at *14.).

Mr. Berretta next alleged that VUMC drew his blood at the direction of law enforcement or as a result of cooperation with law enforcement and others. When hospital personnel draw and test blood for purposes of medical treatment, and not at the request or direction of law enforcement, the blood draw does not constitute "state action" for Fourth Amendment purposes. *See State v. Ridge*, 667 S.W.2d 502, 505 (Tenn. Crim. App. 1982); *State v. McCoy*, No. 9, 1991 WL 35749, at *2 (Tenn. Crim. App. Mar. 20, 1991). The blood draws herein were drawn by medical personnel for medical purposes.

Mr. Berretta also argued that the State failed to establish a proper chain-of-custody because the VUMC phlebotomist who drew the blood samples was not called to testify. Tennessee courts have recognized that the first link in the chain may look different when medical personnel collect a biological specimen for treatment purposes. *See State v. Braden*, 867 S.W.2d 750, 758-59 (Tenn. Crim. App. 1993); *Davis v. Shelby County Sheriff's Dep't.*, 278 S.W.3d at 267-68. In that setting, the State may establish the first link through the surrounding circumstances of collection, rather than through the testimony of the person who drew the specimen. This court has recognized that testimony about an institution's ordinary procedures may supply a satisfactory chain-of-custody link, particularly when routine identification and storage procedures were followed and the record shows no evidence of tampering, substitution, or irregularity. *State v. Daniels*, 656 S.W.3d 378, 390-91 (Tenn. Crim. App. 2022); *see also Kroese*, 2024 WL 2034366, at *18-19. Also, the Confrontation Clause also does not bar the admission of hospital records and specimen-identification information created for purposes of medical diagnosis and treatment rather than for use at trial. *State v. Cannon*, 254 S.W.3d 287, 301-303.



Katie Leigh Bauer

In summary, the search warrant did not include false statements, the probable cause statement was sufficient, the blood draw by VUMC did not involve a state action, and the chain of custody regarding the blood draw was sufficiently proven. Therefore, Mr. Berretta was not entitled to relief and the judgments of the trial court were affirmed.



Exclude the Red Herring

Red Herring-Jury Nullification in Vehicular Homicide and Vehicular Assault Cases: Filing (more) motions in limine to exclude, especially for irrelevant information.

Any prosecutor who has handled vehicular homicides by intoxication (from here on, I'll just call them "vehicular homicides" or "VHs"), especially VHs that proceed to trial, has dealt with negative, potentially distracting (and irrelevant) details that become the focus of a defendant's "defense," in cases where the defense really amounts to confusion to the point of jury nullification. I want to discuss an approach that can be employed, in some instances, to eliminate these distractions from the jury's consideration. It is an approach somewhat anathema to prosecutors, because it involves pre-trial motions in-limine to suppress information. I'm not going to say "evidence," because the information I'm talking about is NOT evidence: the State should never be in the evidence suppression business, and as a result of that, we often find ourselves thinking and acting as if all the information that we have (that isn't suppressed by the defendant) has to end up in front of the jury.

That way of thinking, of course, is not correct. The information that has to make it to the jury is all of the information relevant to any of the elements of any of the offenses charged. Whether that information is exculpatory or inculpatory. But jury-nullification information is often completely irrelevant to the offenses charged. Its only possible use is to confuse, confound or upset the jurors in some way that will prevent them from applying relevant evidence to the law (the instructions of the court) and reach a verdict. When the case is a vehicular homicide the elements are:

- a. The defendant recklessly killed another person
- b. by the operation of an automobile, ...or other motor vehicle; and
- c. that killing was the proximate result of the defendant's intoxication, as set forth in Tenn. Code Ann. § 55-10-401. For the purposes of this section, "intoxication" includes alcohol intoxication as defined by § 55-10-411(a), drug intoxication, or both.

So, if any fact does not make the existence or non-existence of one of the facts described in a, b, or c above, more or less likely, it is irrelevant according to the Tennessee Rules of Evidence (401), and does not meet the minimum threshold for inclusion in the trial. Let's talk about some examples.

Let's say a vehicular homicide involves a single-vehicle wreck in which a passenger is killed. The driver and the passenger are both intoxicated, but the medical examiner states that the passenger's death was not caused by his or her intoxication. Strictly speaking then, the deceased passenger's intoxication is irrelevant to any of the elements of VH and should be excluded from the trial on the State's motion! Consider a case where an intoxicated driver leaves the roadway and drives up onto a city sidewalk, killing a pedestrian. Surely, in that case, too, the pedestrian's intoxication is irrelevant to the subsequent collision: the car driving on the sidewalk caused the death (and cars aren't supposed to be on sidewalks).

(Continued on page #12)



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Exclude the Red Herring (Continued)

Too often, in vehicular homicide cases, I've had the defense make much out of a dead passenger's intoxication, in the proof, and in opening and closing argument, but the only possible reason to provide that information is to get the jury to hold that fact against the victim and to find a defendant not guilty in spite of the evidence presented on the elements. This information bears no relationship to the elements that must be proven.

If there is a fact (e.g., a victim's failure to wear her seatbelt in a collision, in which the defendant is driving on the wrong side of a divided highway, creating a collision with the victim's vehicle with an absurd combined speed) that your crash reconstructionist and or your medical examiner can testify truthfully did not impact any of the elements of the offense, but that fact might be used to get the jury to find a defendant not guilty of the top charge, then you should consider filing a motion in-limine to exclude information about that fact from the trial, and put on the proof from the examiner or the crash reconstructionist about its irrelevance. A ruling from the trial court, suppressing the information, might just be a key ruling in prosecuting the case to a jury.

On appeal, the standard of review on the trial court judge's decision about such a matter is the highly deferential abuse of discretion standard. As long as proof or testimony demonstrates the irrelevance of the inflammatory fact, there is no reasonable likelihood that your judge's decision to exclude the information will overturn a conviction obtained at trial.



TENNESSEE DISTRICT ATTORNEYS GENERAL CONFERENCE

Terry E. Wood, TSRP, (615)-253-6734

Jack T. Arnold, TSRP, (615)-234-0580

Office Address: 226 Anne Dallas Dudley Blvd, Suite 800
Nashville, TN 37219
Website: <http://dui.tndagc.org>



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