



# DUI NEWS

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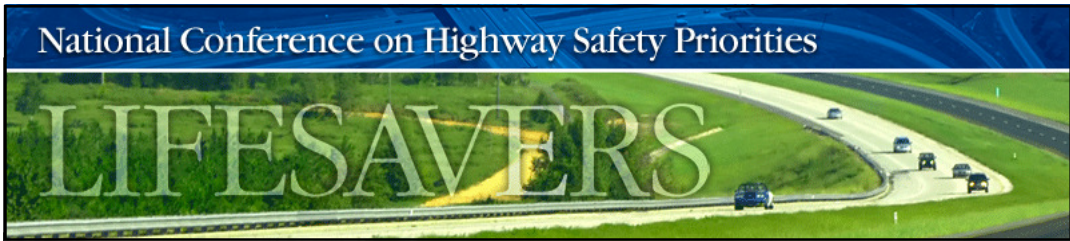
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The National Lifesavers Conference was conducted in Nashville, March 29-31, at the Gaylord Opryland Hotel. Hosting a national conference with two thousand participants was a great honor for our State. Governor Phil Bredesen's Highway Safety Office did an outstanding job, which is typical of their work. Lifesavers is the largest gathering of traffic safety advocates in the country. Workshops are broken into areas of interest including: Adult Occupant Protections, Occupant Protection for Children, Criminal Justice, Data and Research, Impaired Driving and Other Highway Safety Priorities.



An outstanding plenary speaker at the Conference was one of our own. Dr. Wayne J Riley, MD, MBA, is the President and Chief Executive Officer of Meharry Medical College. He stated, “More can be accomplished in partnership with others than any one person or organization can achieve alone. Explore ways your partnerships can produce the leverage to impact policy makers to pass important, life-saving legislation. Put together a public policy stimulus plan; a plan that will stimulate them to do what’s necessary to save lives and prevent injuries.”

The National Highway Traffic Safety Administration presented their annual awards honoring 15 individuals and groups for their exemplary achievements in promoting highway safety. Included was an award for: Colonel Mike Walker, Tennessee Highway Patrol, Nashville, TN. “In recognition of your command leadership in the critical area of statewide traffic records improvement and the implementation of an electronic crash reporting system for Tennessee.”

Another recipient with a Tennessee connection was: Joseph A. McCormack, Chief, Vehicular Crime Prosecution, Office of the Bronx County District Attorney, Bronx, NY. “In recognition of your diligence in investigating and prosecuting vehicular crimes and for training others to do the same, and for fighting on behalf of the victims of DWI crashes.” Joe is a friend of Tennessee Prosecutors having taught at the Southeast Law Enforcement Training Seminar in Lawrenceburg.

## RECENT DECISIONS



### United States Supreme Court

#### PAT DOWN SEARCH

Arizona v. Johnson, 129 S.Ct. 781, 172 L.Ed.2d 694(1/26/09) Justice Ginsburg.

Three officers initiated a valid traffic stop. One officer noted that a back seat passenger, Johnson, wore clothing the officer associated with gang activity, and had a police scanner in his jacket pocket. Johnson told the officer that he had served time in prison for burglary and that he was from a community known (to the officer) to be home to a gang. Based on this information and observations, the officer suspected that Johnson had a weapon on him, and also wanted to speak with Johnson in the hope of gathering intelligence on gang activity. The officer asked Johnson to get out of the car and he complied. The officer patted Johnson down and found a weapon on him. Johnson was charged with possession of the weapon and filed a motion to suppress. The trial court denied the motion, finding that the stop was lawful and that the officer had reasonable articulable suspicion to be concerned for safety and therefore, the pat down was lawful. Johnson was convicted and appealed, and the Arizona appeals court reversed, holding that because there was no ground to believe that Johnson was involved in criminal activity, the officer “had no right to pat him down for weapons, even if she had reason to suspect he was armed and dangerous.” The State of Arizona sought review.

The United States Supreme Court reversed the ruling and reinstated the conviction. As a passenger of a stopped car, Johnson was “seized” for purposes of the Fourth Amendment. *Brendlin v. California*, 551 U.S. 249 (2007). The driver and Johnson (and other passengers) could be ordered out of the car. See *Pennsylvania v. Mimms*, 434 U.S. 106 (1977) (police authority to order driver out of the car during a lawful stop) and *Maryland v. Wilson*, 519 U.S. 408 (1997) (police authority to order passengers out of the car during a lawful stop.) The officer had reasonable articulable suspicion to have a concern for her safety and therefore, the ability to conduct a weapons pat down. (*Terry v. Ohio*, 392 U.S. 1 (1968).) The gun was lawfully seized.

### TENNESSEE COURT OF CRIMINAL APPEALS REASONABLE PAT DOWN

State v Brotherton, 2009 Tenn Crim App Lexis 199



On New Year’s Eve, 2006, the defendant drove in Marion County without a working side brake light. He was stopped at 7:19 pm. Chris Webb, of the Kimball Police Department, approached the driver’s window where officer Webb smelled the wacky weed. The officer asked Brotherton to get out of his car, but he had an uneasy feeling about the situation and walked back to his patrol car to request back up. When he returned to Brotherton, he asked consent to do a pat down search for drugs. During the pat down he felt a bulge, which turned out to be five baggies of marijuana, which were bundled together. The Court upheld the consensual search and was affirmed.

### SENTENCING

State v Fulcher 2009 Tenn Crim App Lexis 45



Lisa Fulcher turned left immediately in front of a car. The driver had to leave the road to avoid a collision. Behind the dodging car, Trooper Josh Brown had to react to keep from running into the car in front of him. When he saw what happened he turned on his blue lights and began following the defendant. One to two miles later, she pulled over. During that drive, several more cars had to get out of her way or be struck. Fulcher stank of alcohol and had a wet lap. There were open containers in the car with her. She later pled guilty to a DUI fifth offense and left the sentencing to the Judge. After she received a four year sentence as a range two offender, with a requirement that the first 150 days be served day to day, she was less than pleased. Fulcher had been convicted for 11 assaults, 9 public intoxications, 6 DUI’s, including a felony, a violation of Habitual Traffic Offender status, possession of marijuana and drug paraphernalia. She had never held a full time job. She was 36 years old, divorced and when she worked was paid in cash. Her sentence was affirmed.

## RECENT DECISIONS

### PHYSICAL CONTROL

State v McKinney 2008 Tenn Crim App Lexis 998

A Morristown officer received a call from his dispatcher to be on the lookout for an impaired driver in a small black SUV. A 9-1-1 call was received that the driver was drunk. The officer spotted a small black SUV with two passengers and a driver and followed it into a convenience store parking lot. The passengers remained in the SUV with seat belts on. The driver stumbled toward the door of the store. The driver reeked of alcohol and admitted to drinking and smoking pot. He attempted to complete a field sobriety test but could not. He refused further testing. A search found a pipe with residue. On the way to the jail the officer found out that McKinney had a revoked license and was on his third DUI and fourth DRL. After a jury trial McKinney was sentenced to 11 months and 35 days for his various convictions for DUI, DRL, implied consent and drug paraphernalia. The sentence including the 5 day consecutive implied consent misdemeanor was affirmed.

### MIRANDA

State v Stidham 2008 Tenn Crim App Lexis 1011

Angela Pedigo was driving a pickup truck in Cookeville. A white Grand Prix pulled in behind her and was weaving and too close. When the car hit a telephone pole and lost a rear view mirror, Angela called 9-1-1. The car pulled into a parking lot. When Officer Robert Cantwell arrived, he spoke to Ms. Pedigo, looked at the damage to the car and approached the defendant. Stidham claimed she had fallen asleep at the wheel. The officer noticed she stammered badly and her eyes were glazed, red and watery. She did not appear to be alert.

Officer Cantwell asked the defendant to recite the alphabet starting at C and ending at X. She did not stop at X. He asked her to perform the one leg stand. She put her foot down twice and used her arms for balance. During the walk and turn she went 10 steps each way despite instructions that she take 9. Cantwell asked her if she was taking any medication. She admitted she had taken a hydrocodone and xanax and smoked pot.

The defendant was found guilty by a jury, but complained on appeal that her admissions should have been suppressed as no Miranda warning was given. The Court affirmed the conviction and denial of suppression. The Court reminds us again of the finding in *Berkemer v McCarty*, 468 U.S. 420, 442, 104 S. Ct. 3138, 3151-52 (1984); and *State v Snapp*, 696 S.W.2d 370 Tenn Crim App 1985. Asking a modest number of questions and requesting the performance of field sobriety tests at a location visible to passing motorists do not, by themselves, constitute treatment that can fairly be characterized as the functional equivalent of a formal arrest. The subjective intent of the officer is meaningless, unless the intent has been conveyed to the defendant.

### PARKING VIOLATION AS PROBABLE CAUSE

State v Zelek, No. M2007-01776-CCA-R3-CD

Lebanon Officer David Willmore saw Zelek parked in the street in front of a house in which many drug and gun crimes had occurred. Zelek parked more than 18 inches from the curb in violation of T.C.A. § 55-8-160(a)(3). Zelek got out of the car and went into the house. He looked back at the officer. As the officer walked up to the car, a passenger got back into it. The officer spoke to the passenger, informed the passenger the car was parked illegally. The passenger gave conflicting information about the purpose of the visit. The officer noticed an alcohol odor on the passenger and did not ask him to move the car, but went to the house to speak to the driver. The Court noted that the officer had probable cause due to the illegal parking of the car. When the driver came to the door of the house, the officer noticed an odor of alcohol. His speech, recorded on the videotape was extremely slurred. He indicated he did not drink after parking the car. At this point the Court noted that the officer had reasonable suspicion to believe he had observed a DUI. Zelek admitted to a couple drinks earlier and could not perform field sobriety tests successfully. The third offender refused the implied consent test. Zelek was convicted by a jury, sentenced to 11 months/ 29 days with 300 days in jail. The first 120 days were ordered to run consecutively. The Appellate Court remanded to increase the period of his license revocation to two years.



# THE LAB RECEIVES BLOOD

To eliminate confusion about what happens when blood is received at the TBI lab, I went to the lab with my trusty camera and watched what happened. Since a picture is worth a thousand words, I thought it might be nice to have a pictorial explanation.

Every month about 600 boxes containing two vials of blood per box are received at the TBI lab in Nashville. An evidence technician is assigned the job of opening, cataloging and placing the bar code on each vial. This duty is one of many duties

for the technician. The vials are inside a sealed box. On the outside of the box is a biohazard sticker and identifying information like the initials of the person who sealed the box, whether that is a lab person, the officer or a nurse.



The box is opened individually and separately. The Alcohol Toxicology Request form is removed. The information on the request including the name of the defendant, name of the requesting officer, name of the person who drew the blood, time, date, agency identification and driver's license number of the defendant are recorded. A bar code number for the case is added to the log in sheet and the information from the request form is assigned to the bar code.



The open box reveals two vials of blood. The are inside bubble wrap, which is inside a zip lock bag. The tubes have a grey top to indicate the type of anticoagulant and preservative in the vials. When the vials were empty, a pink powder was visible. That's the anticoagulant and preservative.



The blood vials are removed. They are inside bubble wrap, which is inside a zip lock bag. The bag is opened to get to the bubble wrap. The vials are then removed from the bubble wrap. The bar code is placed on the vials.



A vial is removed. The information on the vial is recorded. The bar code is attached. The blood is placed in a refrigerator where it will wait for the forensic scientist to pick it up to be tested.

**REMEMBER**

Just about every day we lose someone in an unexpected and tragic death on our roadways. We lost the following people during January, 2009. Some were drivers; some were Passengers and some were pedestrians or cyclist. All left behind friends and family. As citizens of this State, we have all lost too many. The listed county is the scene of the crash.

- OMAR BONILLA, 33, Maury
- JOHN R. JENKINS, Giles
- SHAWN C. ROWE, 36, Claiborne
- ELIZABETH WHITE, Coffee
- THOMAS E. MORRIS Jr., 44, Rutherford
- TRINITY RHODES STEGALL, 22, Maury
- ERIC PARTIN, 23, Claiborne
- NATASHA MARTIN, 25, Coffee
- JULIANA MARTIN, 3, Coffee
- FELIX MARTIN, 11 mos., Coffee
- CAROLYN WILSON, 67, Sevier
- KEVIN WARREN, 42, Sevier
- WILLIE YOCUM, 50, Putnam
- BRUCE FRYE, 32, Sevier
- RICKY GARMON, 46, Clay
- ISAIAS MORALES, 40, Shelby
- RANEE L. MILLER, 32, Shelby
- TERRY L. WARD, 47, Madison
- CORNELIUS L. FOSTER, 33, Madison
- RICHARD S. SURGENER, 29, Madison
- HELEN E. HUBBARD, 68, Knox
- VERNON E. THOMAS, 80, Knox
- CHARLES R. NUNLEY, 63 Coffee
- SYBIL A. LARGE, 27, Jefferson
- DAVID EDMONSON, 45, McMinn
- AGNES C. REED, 71, Dickson
- WILLIAM BOLIN, 57, Crockett
- CARLA LOGAN, 48, Dickson
- CLAIRE B. MARX, 90, Maury,
- WILBERT DELASKO, 64, Wayne
- RICHARD K. MUNGOVAN, 45, Rutherford
- COREY S. OSBORN, 23, Shelby
- BRETT R. KORTRIGHT, 26, Canon
- CODY HILKER, 16, Cumberland
- JOHN R. CANNON, 30, Dyer
- VERNON E. THOMAS, 79, Knox
- JON H. PRESSNELL JR, 30, Maury

**CHAIN OF CUSTODY**

In thousands of cases since the TBI crime lab was first opened, blood has been delivered for testing. For the last decade or more, the blood has arrived from departments across the state in a box supplied to entities that conduct blood draws.

In *State v Anderson* a March 31st decision from Humphreys County the Court was disturbed that no one testified about who sealed the box and whether any writings were placed on the outside of the box to define the blood sample. The driver with a .21 BAC had his conviction reversed for a new trial. In order to eliminate the possibility of that occurring again, here are a few suggested questions:

- Officer, who conducted the blood draw?
- What was the position of the person?
- Did you see blood go into the vials?
- Were the vials placed in the bubble wrap and then a zip lock baggie?
- Was the baggie with the vials placed in a standard TBI box with the TBI address imprinted on the label?
- Was the Alcohol Test Request form completed?
- Did you sign it as the requesting officer?
- Was it placed in the box?
- Was the box sealed?
- Did anyone write on the outside of the box?
- What was written?
- Who wrote it?
- Were you given the box?
- What did you do with it?
- Did you ever see it again?
- Did you receive a blood alcohol test report from the TBI lab at a later date?
- Who signed the report as the authorized representative of the TBI?
- What was the result?
- What was the presumptive limit in Tennessee on the date of the arrest?

**NO JOB IS FINISHED  
UNTIL THE PAPERWORK IS DONE!**

**TRAINING OPPORTUNITY**

The DUI Training Division will conduct a joint training for prosecutors and law enforcement officers in Memphis in August. Space is available for 15 prosecutors, who will be permitted to bring two law enforcement officers from their jurisdiction. The training is:

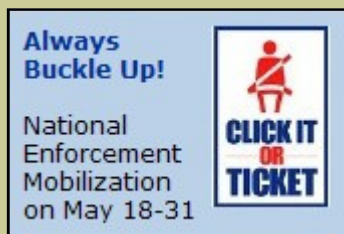
***PROTECTING LIVES  
SAVING FUTURES***

This Course will be conducted August 5-7 at the Hilton Memphis 939 Ridge Lake Boulevard and was designed by the American Prosecutors Research Institute to create a team building approach between prosecutors and police officers to aid in the detection, apprehension and prosecution of impaired drivers. Prosecutors and police officers will participate in interactive training classes taught by a multi-disciplinary faculty.

**Sessions include:**

- VEHICLE IN MOTION
- REPORT WRITING
- PERSONAL CONTACT
- UNDERSTANDING SFSTS
- HGN
- PRE-ARREST SCREENING
- COMMERCIAL VEHICLE ENFORCEMENT
- UNDERAGE IMPAIRMENT ISSUES
- CHEMICAL TESTING
- DRUG RECOGNITION
- PRETRIAL PREPARATION
- MEETING DEFENSES
- MOCK TRIAL

To register contact Sherri Harper at sjharper@tndagc.org. Expenses for attendance are paid by the training division of the Tennessee District Attorneys General with grant funding provided by the Governor’s Highway Safety Office and the National Highway Traffic Safety Administration.



**DID YOU KNOW  
NHTSA 2007 DATA IS AVAILABLE?**

The greatest likelihood for a speeding fatality in Tennessee occurs in a 45 mph speed zone.

In Tennessee there are 1.7 traffic fatalities for every 100 million vehicle miles travelled. Tennessee ranks 44th in the nation. The average in the country is 1.36 fatalities. The worst state is Montana with 2.45 fatalities per 1000 million miles. The best is Massachusetts with 0.76 fatalities.

In 2007, Tennessee reduced traffic fatalities by 6% with 74 fewer deaths than the year before. The percentage of deaths per 100 million miles was the lowest since the data was first collected in 1975, when the percentage per 100 million miles was 3.42. The rate has steadily decreased since 1975.

Sixty two percent of the deceased in 2007 were Drivers; 18% were passengers and 12% were motorcyclists. Almost 6% were pedestrians. Alcohol was involved in 37% of the fatalities. Thirty two percent of the time a driver in a fatal crash was over .08 BAC. Only 22% of the time was a deceased driver tested and only 19% of surviving drivers were tested.

Tennessee ranked 18th in reduction percentage in 2007. Seventy four fewer people died than the year before. The greatest percentage reduction was 24%, which represented 45 fewer deaths in South Dakota and 11 fewer deaths in Vermont. The worst State was Alaska with a 19% increase in deaths (10), but if the District of Columbia was a State it would be the worst with a 19% increase in deaths (7).

There was a 4% reduction in the nation; 1,649 fewer people died than the year before. There were 41,059 total fatalities. In Tennessee 1,210 died, which is nearly 3% of the nation’s fatalities.

NHTSA preliminary estimated that 37,313 people were killed in motor vehicle traffic crashes in 2008, the lowest number since 1961 (36,285). The nation also saw the lowest fatality rate ever recorded -- 1.28 fatalities per 100 million vehicle miles traveled, down from 1.36 in 2007.

### DISTRACTED DRIVING

Keli Braitman, of the Insurance Institute for Highway Safety, spoke at the 2009 Lifesavers Conference about distracted driving. She gave some historical perspective. Distracted driving first became an issue around 1930, when the auto makers began installing radios in cars. Radios rank as the number one distraction for teen drivers. Distraction is a factor in 25% of all highway crashes. Cell phone subscriptions are sky rocketing. The percentage of teen drivers who text message while driving is greater than 35%. Legislators in some States have followed the lead of the European Union, Australia, Canada and Japan, who have all banned the use of hand held phones while driving. In Tennessee teenage and school bus drivers are prohibited from driving and using a cell phone.

The law banning any cell phone use in New York has been ineffective. The law resulted in a decrease in use of phones for a few months. Within 16 months the use was about the same as it was before the ban. Initial media attention probably caused the decrease, but enforcement and media have been lacking ever since. A ban on cell phone use in Washington DC has been quite effective. Cell phone citations were issued at twice the percentage of New York citations. The unintended consequence of the DC law has been increased use in Maryland and Virginia. Apparently those rush hour calls occur most often after the commuter leaves the district limits.

Laws focused on teenage drivers don't do much either. An officer in a patrol car can't determine a drivers age until some other driving infraction has occurred and he looks at the license. Tennessee Courts would crush an officer if he tried to justify a traffic stop based on upon an estimated age of a driver. Reasonable suspicion to stop the cell phone user would not be satisfied unless the officer had actual knowledge of the age of the driver. That would be rare.

Tennessee is one of twelve states that ban video screens that can be viewed by a driver. For some reason our Legislature does not want drivers watching *Fast and Furious* while driving down the road. This is another law that can be difficult for law enforcement. GPS screens are permitted for the driver. Can an officer in his patrol car see the screen well enough to know if it is a movie screen or a GPS? This may be another law that gets enforced only if another violation occurs.

### LAWS SET MORAL TONE

If these laws are less than perfect, do they serve any purpose at all? Ms. Braitman and others would argue that a law with enforcement problems is better than no law at all. The law reflects the will of the people. Frustration with bad driving practices runs rampant. Which of us has not seen idiotic driving only to discover that the driver was on a cell phone, texting, reading a paper or applying makeup at 70 mph? Too many crash, injure and kill while driving distracted. The law may not result in new arrests and convictions, but at the very least it makes a statement that distracted driving behaviors are wrong and need to stop. The laws may not be substitutes for common sense, but they bring attention to the problems they address. For responsible drivers, that should be enough. Since, there are many who don't get it, drive defensively. That weaving car in front of you may be driven by an impaired driver, a texting driver, a twitting driver, a driver checking his face-book, a driver arguing with an ex-spouse on the phone or a driver watching the latest episode of CSI. Give them room. You can't give them common sense.

### One more reason to give up METH- Pee Lab Busted!

The Anderson County Sheriff's Department has busted another "PEE LAB". One hundred forty four gallons of urine were discovered at the home of Rickie Jack Harber, 47, who was charged with promotion of meth manufacturing and placed on a \$20,000 bond. Meth cooks apparently try to recover meth from urine. This meth is even more dangerous due to impurities in the kidneys of the meth user, who contributed the urine. While, it is politically correct to recycle, this is going way to far! Harber is, of course, presumed innocent unless and until he is proven

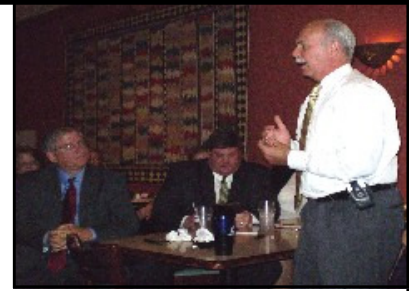




## MAXIMS OF DISTRICT ATTORNEY BILL COX

Delivered during the New Prosecutors Training Academy February, 2009

District Attorney General Bill Cox has toiled as a prosecutor for thirty years in Hamilton County, Tennessee. Bill is an outstanding trial lawyer, a great leader and a superb teacher. He spent an hour with the participants of the New Prosecutor Training Academy in February teaching about the magic of technology in the courtroom. He was placed in that enviable slot to teach immediately after lunch, but no one in the room had any problem staying awake. General Cox shared great information about technology and mixed into his presentation 11 maxims for the practice of law. These aren't his exact words. They represent notes I took as a learner in the back of the room. I thought you might like to incorporate these no matter how long you have been doing the work of a prosecutor.



- 1) Never Drink the Water. That pitcher of water in front of you is a trap. Drinking the water is a sign of nervousness. It is distracting. The jury does not have water and a juror may be thirsty. What will he/she think as you wet your whistle? One last thing; do you know how long that water sits there sometimes?
- 2) Don't take yourself too seriously. Just as you pick the jurors you like, the jurors pick the lawyer they like. If you are haughty, snobby or too full of yourself and your degree, they won't like you.
- 3) Don't fraternize with the enemy in front of the jury. You can talk about the ball game after the jury goes out to deliberate. Don't let the enemy make it look like you aren't serious about the case by exchanging jokes and guffaws.
- 4) Never show fear. A jury can smell fear, hear fear and see fear. If you aren't courageous enough to represent the people of this great State, find another job.
- 5) Have passion. A juror can tell if you care. This case is important. You have the opportunity to protect your community. If you have a sense of humanity, you will have no problem with this one.
- 6) Don't object just because you can. Jurors think that objections are meant to hide stuff from them. If there is a bench conference and you have co-counsel, one of you needs to stay at the table. The jurors might not think there is a grand conspiracy to limit information.
- 7) Use plain talk. Jurors need to know what you mean. Don't confuse them with legal jargon.
- 8) Don't hide your cards. If you have a great hand, let the defense know it. They may fold. If you have a hand that is not the best, let the defense know it. You believe the defendant is guilty and that you can prove him/her to be guilty, so why not let them know you have enough of a hand to do so.
- 9) Summarize the witness testimony. It isn't leading after the witness has said it. So, for example, ask a question like, you said you followed the blue car for 1/2 mile and saw it cross the center line three times, did it also cross the fog line?
- 10) Be yourself (unless you are a jerk). Of course, if you are a jerk, you probably won't last long as a trial attorney. See number 4 above. If you are always faking it, you won't have success.

### An Angel killed.

A rookie pitcher for the California Angers, Nick Adenhardt, was killed by a hit and run driver, who ran a red light while impaired. Nick made his major league debut and was killed the same night. His father was in attendance at the game in which Nick pitched six shut out innings. Two friends were also killed by the impaired driver in a T-bone intersection crash. The loss of Nick Adenhardt hurt baseball fans everywhere. In one night his family and friends experienced the great joy and elation that comes from a success and then experienced the greatest pain possible. We pray that Nick and friends have joined another company of Angels.





## Chronic Stress Can Cause More than a Headache

**Experts at Northwestern Memorial Physician's Group caution patients about the health effects of excessive stress and offer tips on stress management**

CHICAGO – With a great deal of dispiriting economic news affecting the country, it's no surprise that more than half of Americans report being plagued by stress over financial concerns. But doctors caution that prolonged stress and negative emotions can take a toll on the body.

"Stress can affect the body in many ways," says Kimbra Bell, internist at Northwestern Memorial Physician's Group. "From aches and pains, to poor sleep and an increased risk of disease, stress can cause serious health consequences over time."

In short-term situations, such as public speaking or working to meet a deadline, stress is a normal physical response of increased adrenaline that can actually help sharpen your mental alertness and memory. Stress also acts as an innate "flight or fight" response to situations in which you sense danger, causing your energy level to rise to a point that allows you to react quickly. However, prolonged stress places a great amount of pressure on the body, and can quickly have a negative impact on overall health.

"The longer your stress responses are activated, the harder it is to shut them off," says Bell, "Chronic stress causes significant disruptions to the normal functioning of the body and mind, and we simply aren't built to sustain these effects."

Bell notes that stress can manifest in many ways, so it's important to be aware of warning signs and stay on top of your health. Some of the most common effects of stress include:

- Negative emotional changes – Lingered stress can result in anxiety, irritation and even depression, all of which can affect relationships and work performance, as well as lead to unhealthy behaviors such as drinking and smoking.
- Sleep loss – Recent surveys show that one-third of Americans report losing sleep due to the economy and other stress factors. As stress keeps the body energized and alert, the nervous system remains in overdrive, thus making it difficult to fall and stay asleep.
- Aches and pains – As the most commonly reported trigger of headaches, stress creates chemical imbalances in the brain that can lead to migraine-level pain. Jaw tension, teeth grinding and back and neck pain are also common byproducts of stress.
- Weakened immunity – Stress hormones can suppress the body's immune system and make you more vulnerable to colds, flu and other infections.
- Weight changes – During times of stress, many people are more inclined to grab high-sugar, high-fat "comfort" foods, which can lead to unwanted pounds and lead to an increased risk of heart disease and diabetes. On the flip side, others shy away from food during tough times, which deprives your body of vital nutrients and can also contribute to poor health and illness.

"Since it's impossible to live a stress-free life, it is important to identify stressors and take steps to address them so your anxiety level does not continue to build over time," says Bell, who offers the following tips for handling stress and maintaining a sense of balance during challenging times.

- Find Inner Peace – Practicing meditation, yoga or other relaxation techniques can help clear your mind and help you regain focus.
- Exercise – Regular exercise can reduce stress, help you relax and alleviate muscle tension.
- Get Plenty of Sleep – Prolonged sleep loss can negatively affect the body's ability to function. To help you get an adequate amount of sleep, experts recommend you create a comfortable, distraction-free environment and maintain a regular schedule and bedtime routine.
- Eat Healthy – Eating regular, well-balanced meals to get the essential nutrients your body needs for optimal functioning throughout the day.
- Talk through it – Things are often not as bad as they may seem. Talking with a friend, loved-one or health professional can offer support, help you process the situation, collect your thoughts and devise a plan of action to turn things around.

Equally important in averting the long-term effects of stress is a proactive approach to personal health. Annual physicals and screening tests play an important role in preventing illness and detecting conditions such as cardiovascular disease and high blood pressure, both of which have been associated with chronic stress.

"Talk with your doctor about changes in your health that may be due to stress," says Bell. "From diet and exercise to talk therapy and integrative

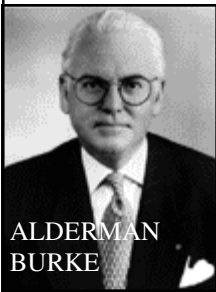
WILL RED LIGHT CAMERAS BE USED TO DETECT THE UNINSURED ?

Tom Kimball, Traffic Safety Resource Prosecutor

A FOX NEWS article written by Joshua Rhett Miller caught my attention. His article, "Proposal to Track Uninsured With Red-Light Cameras Has Cities Seeing Big Money" focused on the idea that those who ran red lights could be ticketed for driving without insurance, if they committed both crimes. The proposal to ticket the uninsured was the brainstorm of Alderman Edward Burke in Chicago. The Alderman proposed a city ordinance that would fine those driving without insurance \$300 three hundred dollars. An entity called InsureNet, a Michigan based company, would provide instant insurance verification at a cost of 30% of the fines collected. In Chicago the estimated revenue was in the millions.



As might be expected the spokesperson for the ACLU was outraged and warned against the slippery slope of technology and government surveillance. A representative from the American Automobile Association questioned the feasibility of collecting fines from people who can't afford insurance. Burke, argued that the procedure should be perceived as a public safety measure. According to the Insurance Research Council, 14% of motorists nationwide drive without insurance.



ALDERMAN BURKE

A red light camera identifies a car. The car is by law supposed to be insured. The Chicago proposal would result in an automatic check to see if the vehicle was insured. The owner has a responsibility to insure the vehicle. Is there any harm in checking on the insurance status of the vehicle?

Perhaps the fear expressed by opponents is a fear that the government might check on other information about the owner of the vehicle. For instance, what if the next proposal is that the government check to see if the owner has a valid license? Someone might want to check to see if there are outstanding warrants pending for the owner of the vehicle? What if the registered owner was in the country illegally?

Perhaps the concern is not about the government checking the status of the owner, but the status of the vehicle. That might not be a concern for the ACLU, since vehicles don't have guaranteed civil liberties. Think though what the government might examine due to a red light video. What if the vehicle had been used in an armed robbery? What if the vehicle had been stolen? What if the vehicle registration was expired? What if the vehicle had been used to smuggle drugs or guns across the border?

All sorts of information might be discovered due to the video recording of the vehicle running a red light. In Tennessee at least two vehicular homicide cases have been caught on tape. In each a driver ran a light and slammed into an innocent victim. Evidence captured on tape was used to convict the two drivers.

The question to be answered might go beyond the Chicago uninsured motorist proposal. Perhaps the question is whether we have reason to fear the government obtaining information from the video. Law abiding citizens might appreciate cameras being used to capture those who commit crimes. Cars are visible to the naked eye. There are not enough police officers in the country to watch all the busy intersections. The fear of big brother seems to motivate some, while officials in cities like Chicago look for methods to eliminate the fear of intersection fatalities.

The Sixth Circuit Court of Appeals rejected a constitutional challenge to Knoxville's red light camera program in 2008. The Seventh Circuit rejected a challenge to an Illinois program. The Seventh Circuit called the plaintiff's argument a "dud". The Court stated that "no one has a fundamental right to run a red light or avoid being seen on a public street. A system that simultaneously raises money and improves compliance with traffic laws has much to recommend it and cannot be called unconstitutionally whimsical."

Red light cameras do more than record traffic violations. They also provide fodder for debate. I suspect that the uninsured motorist proposal will add fuel to the fire. We will see if the proposal spreads like the famous fire begun by Mrs. O'Leary's cow in 1871 or if it fizzles out like a campfire in the rain.

**Good people do not need laws to tell them to act responsibly, while bad people will find a way around the laws.** Plato

## VEHICULAR HOMICIDE MURDERERS ROW

Stephen Tyler Frizzell, 22, pled guilty to Vehicular Homicide by Intoxication for killing Robert Frizzell, 72 of Hixson in Hamilton County. The men were not related. Stephen Tyler Frizzell was the driver of a Ford Taurus that went out of control on Memorial Day 2007 on Old Hixson Pike. The vehicle was traveling north when he went around a curve on the wrong side of the road hitting the Dodge Durango driven by Robert Frizzell head on. Robert Frizzell was killed. His wife Joann and family friend, Ruby Arnold, were seriously injured. The offender was arrested while on bond after purchasing alcohol in violation of the conditions of bond. He agreed to a sentence of eight years. Frizzell had previously been charged on 11 different occasions with offenses involving either driving or alcohol. His blood alcohol level was .06 about ninety minutes after the crash.

### THE RIGHT TO GOOD CONDUCT CREDITS



Benjamin Monroe, 22, pled guilty in Wilson County for his actions on June 29, 2006. At the time Monroe was on a two week leave from the U.S. Army prior to deployment to Iraq. He was dismissed from the Army after he decided to drive with three passengers in a fatal way. Monroe was drinking, crashed and left the scene. One of his friends was killed. Another suffered terrible injuries, which included brain damage. The victim had to learn to speak and walk during months and years of rehabilitation. Monroe returned to the scene several hours after the crash. His BAC was .05 five hours later. A plea agreement permitted him to plead to a reckless vehicular homicide, vehicular assault and felony leaving the scene. The Trial Judge after a hearing imposed a three, two and one year concurrent sentence. He placed Monroe on probation 10 years and ordered him to serve eight months “day for day”. On appeal the Court cited the precedent of State v. Clark, 67 S.W.3d 73, 78 (Tenn. Crim. App. 2001) and TCA 41-2-111(b) and ruled that day for day sentencing is not permitted for a jail sentence of 12 months or less. The Court states that the Trial Judge could not deprive the defendant of a statutory right to good time credits. The Court affirmed the period of probation and remanded with orders to delete the day for day requirement.



Willie Ottman, 29, pled guilty to two counts of vehicular homicide by intoxication and three other charges in McMinn County. He received a sixteen year sentence. Ottman had a BAC of .18 when he crossed into oncoming traffic and killed John Daugherty, 16, of Englewood, and Rachael Slade, 17, of Etowah. Shane Standridge, 18, suffered a shattered hip and other injuries, but survived. Ottman had a history of substance abuse including an underage consumption of alcohol conviction. Ottman apologized. ADA Paul Rush represented the State.



In State v Bowman, 2009 Tenn Crim App Lexis 35, the Court of Criminal Appeals affirmed the conviction of Gregory Bowman in Claiborne County. Bowman had a blood alcohol of .30% BAC. He challenged the blood draw, which was involuntary. The blood was drawn at the scene by a local doctor, who had stopped at the crash to help. The doctor turned the blood over to the trooper, who had it transported to the lab. The probable cause element was satisfied as the officer and doctor smelled the odor coming from the defendant, who had driven and caused the crash. Relying on State v Jordan, 7 S.W.3d 92, blood was drawn without a warrant or consent. In an additional issue Bowman argued that the former (preliminary hearing) testimony of a witness who died prior to trial should have been excluded. The Court rejected the argument.



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**Evidence of Operation**

Below is a partial list of items of evidence to determine the driver:

- \*Pattern injury on chest;
- \*Left side of head contact with A-pillar;
- \*Fingerprints: on steering wheel, on key, on control levers, on light switch, on rear view mirror.
- \*Blood spatter on driver's side;
- \*Seat position;
- \*Damage to brake pedal consistent with leg injury;
- \*Pedal impression on shoe bottom;
- \*Shoe transfer onto console in a left to right ejection;
- \*Inability of passenger to operate manual transmission;
- \*Forensics on airbag;
- \*Knee injury from contact with dash, keys or shifter
- \*Seat belt marks;
- \*Shoulder belt abrasions;
- \*Windshield damage consistent to head strike;
- \*Dicing from side glass implosion.

**The Importance of Keeping Evidence in a Vehicular Homicide case**  
By Brooklynn Martin, Assistant District Attorney, 10th Judicial District

I recently tried a vehicular homicide case with my boss, Steve Bebb. The jury found the defendant not guilty. The central issue of the case was the identity of the driver. Two underage drunk teenagers (Julian Judd, age 18 and Cody Smith, age 19) were headed home in Cody's Ford Explorer from a party when they lost control on a curve, slid off the road, hit an embankment, rolled, went air born, and came to rest in some trees. Sometime after the Explorer hit the embankment, Cody was ejected from the vehicle. His body was found under the passenger side of the Explorer with trees and branches in between his body and the Explorer, which probably meant that he was ejected during the roll over of the Explorer and probably while it was air born. Julian was found outside the driver's side trying to crawl around towards the passenger side. One witness at the scene gave a statement that Julian admitted to her that he was the driver. However, when the Tennessee Highway Patrol went to interview Julian at the hospital a day later, he denied being the driver. About 30 days after the wreck, our office erroneously gave permission to the THP for the Ford Explorer to be destroyed because at the time the THP had not communicated to us that Julian was now denying being the driver. Of course, since the Explorer was destroyed, it meant that it was not available for the defense expert to examine when he re-created the crash and gave his opinion on the identity of the driver. In addition, the destruction of the evidence meant that the defense attorney could argue in his closing (and it was IN the jury instructions!) that the destruction of the evidence was enough to create reasonable doubt.



The moral of the story? DO NOT under any circumstances release any car involved in a vehicular homicide case unless you are absolutely sure who the driver is, at least until the defendant has either pled guilty or there has been a jury verdict. Also, make sure that your officers gather all possible exculpatory/inculpatory evidence such as both full airbags and fingerprint evidence and promptly sends them to TBI (adding insult to injury, our officer carried a piece of the airbag around in his SUV for 6 months before he sent it to TBI for testing. Of course, TBI was unable to get a DNA profile due to insufficient or degraded DNA and the fact it was only a piece of the airbag and not all of it). Circumstantial evidence is extremely important too. For example, in this case, one of the eyewitnesses gave a statement that he saw a pair of flip flops by the driver's side door. The defendant, Julian, was barefoot at the scene. However, the officers that investigated the wreck failed to get the flip flops as evidence, another mistake that the defense could argue in their closing arguments. Another is seat positions – if there is a huge difference in body size of the passenger and driver (and there was in this case), the position of the seat can help determine the identity of the driver.

Hopefully, this information will be helpful to those of you that prosecute vehicular homicide cases. As a good friend of mine used to say, you learn a lot more when you lose than when you win.

**BIO:** Brooklynn D. Martin has been the DUI prosecutor in Cleveland, TN (10<sup>th</sup> Judicial District) since Sept 2007. The Julian Judd case was her first vehicular homicide trial.

About the list in the left column: The lack of indicators should not be taken as evidence of non-operation. There are many more factors like ownership, gas purchase receipts, witnesses etc. The Traffic Safety Resource Prosecutors are always happy to provide resource materials and discuss this topic.