



DUI NEWS

PUBLISHER:

Tom Kimball, A.D.A.

LAYOUT AND DESIGN:

Sherri Harper

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TN DISTRICT ATTORNEYS
GENERAL CONFERENCE,
James W. Kirby, Exec. Director
226 Capitol Blvd. Bldg, Ste 800
Nashville, TN 37243
DUI Training Division
DUI Office: (615)253-6734
DUI Fax: (615) 253-6735
e-mail: tekimball@tndagc.org
web: www.tndagc.org

Governor’s Highway Safety Office

James K. Polk Office Bldg
505 Deaderick Street, Ste 1800
Nashville, Tn. 37243
Office: 615-741-2589
web-site: www.tdot.state.tn.us/

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WHERE ARE THE MOTHERS AGAINST DRUGGED DRIVING?

In 1980 Candy Lightner founded MADD after her daughter was killed by a repeat drunk driver. The influence of MADD since 1980 has been incredible. Without the forceful advocacy of this organization this nation would not have seen substantial reductions in deaths and injuries caused by impaired driving.

The mission of MADD is a gallant one. It is to “stop drunk driving, support the victims of this violent crime and prevent underage drinking”. MADD has its hands full and is currently on a campaign to eliminate drunk driving largely through the use of technology like ignition interlock devices. MADD cannot be blamed for limiting its focus to alcohol. MADD can’t be expected to do everything!

“The Times; They are a Changin” wrote Bob Dylan in the 1970’s. They were and they continue to change. More and more impaired drivers are driving under the influence of drugs other than or in addition to alcohol. In July 2009 NHTSA released the National Roadside Survey Results from 2007. The Survey conducted in 60 locations indicated radical changes in driving behaviors. Between 1973 and 2007 the number of nighttime drivers with a .08 BAC declined from 7.5% of all drivers to 2.2%. During the same time the number of drivers testing positive for drugs was a staggering 16.3%! That doesn’t mean all the drug positive drivers were impaired, but it would not be a stretch to believe that many were.

Drug Prevalence by Time of Day and Test

Time of Day	Oral Fluid Test % Drug Positive	Blood Test % Drug Positive	Both Oral Fluid and/or Blood Test % Drug Positive
Daytime	11.0%	NA ²	NA
Nighttime	14.4%	13.8%	16.3%

The most commonly detected drugs were Marijuana (THC) at 8.6%, Cocaine at 3.9%, and Methamphetamine at 1.3% of nighttime drivers.

Caution should be exercised in assuming that drug presence implies driver impairment. Drug tests do not necessarily indicate current impairment. Drug presence can be measured for a period of days or weeks after ingestion in many cases. This latency of drug presence may partially explain the consistency between daytime and nighttime drug findings.

Prescription, over the counter and legend drugs have also gained in popularity. Drug Recognition officers have an amazing skill at detecting drug impaired drivers. They continue in this nation and in Canada to detect the drug or drugs causing impairment correctly 95% of the time. Who has heard of a DRE? People in the legal system know about DRE’s. People in the legal system know about drug impaired driving? How will the tragic consequences of drugged driving be known by the public without an advocacy group like the Mothers Against Drugged Driving?



RECENT DECISIONS

STATE MISSES VIOLATION. COURT SUPPRESSES STOP

State v Cook, 2009 Tenn Crim App Lexis 655

Sick of Binette suppressions? Learn the law! In yet another disheartening decision a traffic stop by an officer of a guilty DUI offender has been suppressed and the case has been dismissed. The Court cited and analyzed the case using the Binnette decision in which Justice Barker first delivered the phrase, “minor imperfection in the driving ability” to describe weaving within a lane and touches of the center line.

In Cook, the officer admitted that there were no violations of Tennessee law. However, the officer and the Court described the fact that ***“the Defendant’s truck drifted left such that its left tires moved entirely over the right-hand portion of the double yellow center line, making the intervening strip of asphalt visible to the right of those tires.”*** That behavior violates TCA 55-8-115. Officers need to be told about this statute and encouraged to charge it when it is observed. The officer in Cook would have had probable cause to stop the Defendant even though he may not have had reasonable suspicion that a DUI was occurring! Don’t succumb to a crazy Binnette analysis in which Courts look at videos to see if the bad driving was dangerous enough to justify a stop for DUI, when a specific statutory violation is available!

55-8-115. Driving on right side of roadway -- Exceptions.

(a) Upon all roadways of sufficient width, a vehicle shall be driven upon the right half of the roadway, except as follows:

- (1) When overtaking and passing another vehicle proceeding in the same direction under the rules governing such movement;
- (2) When the right half of a roadway is closed to traffic while under construction or repair;
- (3) Upon a roadway divided into three (3) marked lanes for traffic under the applicable rules thereon; or
- (4) Upon a roadway designated and signposted for one-way traffic.

State v Baker, 2009 Tenn Crim App 399 **7TH OFFENDER GETS ENHANCED PUNISHMENT**

Marilyn Baker committed a DUI 7th offense, made bond and committed another two weeks later. Baker took a blood test in the first incident in which she had blocked an intersection with her car. She was positive for four drugs: Carisoprodol, Meprobamate, Diazepam, and Nordiazepam. At the scene she could not follow directions, backed into a curb, started to pull out into traffic, could not perform a finger dexterity test and had to lean on the car to walk. Weeks later she was in a two vehicle crash when she crossed the center line (See Cook case above) and ran into another car. She refused blood testing and was too disoriented to perform field tests.

On appeal she complained about her two year consecutive sentences. The Court upheld the use on enhancement factors 1, 8 and 10 even after the Attorney General conceded that the Court should not have used factor 10, which applies to crimes which include no hesitation to commit crimes where the risk to human life is high. The Court cited **State v. Crook, 2006 Tenn. Crim.**

App. LEXIS 957 for the proposition that enhancement factor 10:

“may be applied in driving under the influence cases if the proof establishes, by a preponderance of the evidence, that other persons or motorists were either in the vicinity or placed at risk by a defendant's conduct.”



Marilyn Baker

State v Bodhaine, 2009 Tenn Crim App 485 **TESTIMONY OF NASHVILLE OFFICER ROWNEY**

Kudos to Nashville Officer Joel Rowney and ADA Mathew Pietsch for an excellent example of testimony in Court. Rowney gave the defendant field sobriety tests and the Court summarized his testimony: , “During the walk and turn test she lost her balance off the line, missed her heel-to-toe in both directions, and raised her arms.” During the one leg stand, she swayed, raised her arms, and placed her foot down, all signs of impairment.” This combined with speeding 80 in a 55, odor, an open beer and test refusal led to a jury conviction. Cross examination was based on a lighting issue and preliminary hearing testimony.

RECENT DECISIONS



State v Farris, 2009 Tenn Crim App Lexis 602 REOFFENDS WHILE ON BOND

Carl Farris won't stop driving impaired, committing drug crimes or violating probation and parole. He now has a seven year sentence to motivate him. Farris was stopped in April, 2007. He cut in front of an officer and another car nearly causing a crash. He smelled like he had been drinking and eventually admitted to six beers. He gave another person's name and date of birth and could have been charged with criminal impersonation or identity theft. He could not perform field tests and refused blood testing.

Farris was stopped again four months later. He lied about his identity again giving the same name and date of birth. He smelled again, was very animated with his arms, could not perform field tests and refused blood tests again.

Farris was sentenced to 3 1/2 years for each felony DUI and they ran consecutively. He was a multiple offender due to four prior drug felonies. He also had 5 prior driving on revoked convictions, a parole violation and two pending violations of probation.

State v Brown, 2009 Tenn Crim App Lexis 631

OUTSTANDING ROOKIE TESTIMONY

I have never had an officer tell me that the reason he/she became an officer was so he/she could go to Court and get grilled by defense counsel. Testifying is a necessary evil in the lives of most and the reputation of an officer is often established in Court. In the Brown case rookie Nashville Officer Laura Thomas appears to be an officer who could teach her peers a thing or two. Officer Thomas was a recent academy graduate riding with her field training officer when she observed Brown cross the center line twice and cross and enter the right lane once. Brown pulled into a parking lot. Officer Thomas pulled in and discovered that Brown had been drinking. She performed SFST's and arrested him. Officer Thomas at trial recognized and admitted that she had made errors in her reports. She admitted she could not estimate a blood alcohol level based on odor. She admitted the tests are not 100% accurate. She testified to the six clues of impairment observed in the walk and turn and gave Brown credit for the two he did not exhibit. Her testimony about the traffic stop, personal contact and field sobriety tests was clear and concise. The lesson from Officer Thomas is a simple one. No one is perfect. Truth is always more important than anything else. Admit mistakes. Be prepared for trial and never let ego get in the way of the delivery of the truth to a Judge or Jury.

State v Jones, 2009 Tenn Crim App Lexis 731

ANONYMOUS TIP AS BASIS FOR SEIZURE

Dickson Officer Josh Eldridge was dispatched to a scene. A caller had described the suspect in a drunken disturbance as a white male with medium-length hair who was driving a 1980s gray Oldsmobile. The driver was located and stopped at a market within five minutes. The defendant moved to suppress the seizure of the defendant. The Court in an opinion by Judge Norma McGee Ogle determined that the defendant was seized when the officer blocked the car from leaving the parking lot and that the officer had reasonable suspicion based on the tip.

State v Hodges, 2009 Tenn Crim App Lexis 772

SFST FOUNDATION CHALLENGED

Attorney Robert MacPherson in Lebanon did not like prior law that permitted officers to testify about field sobriety tests without laying a foundation as would be expected from an expert witness in a Daubert/Fry type hearing. So he asked the Court for a "Sea Change" in current Tennessee jurisprudence rejecting decades of precedent. The Court rejected his request ruling that officers can continue to discuss their observations because a driver's objective manifestations of intoxication are always relevant in a driving under the influence prosecution.

State v Dempsey, 2009 Tenn Crim App 2009 Lexis 737

CHAIN OF CUSTODY CHALLENGED

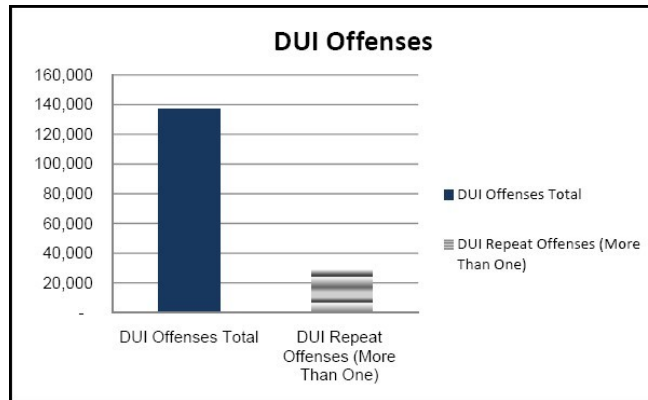
Concerning the chain of custody in a blood sample the Court reiterates that the test for admission is: "Reasonable assurance, rather than absolute assurance, is the prerequisite for admission." Kilpatrick, 52 S.W.3d at 87.

TBI STUDY SHEDS LIGHT ON RECIDIVISM

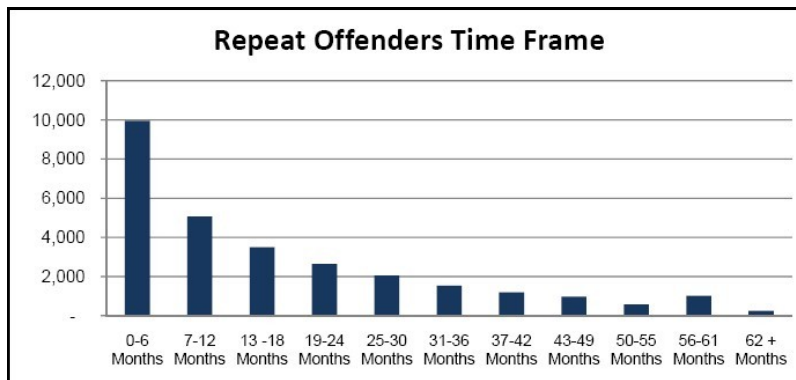
The Tennessee Bureau of Investigation examined cases entered into the TBIRS data bank over the last several years and found some troubling statistics about recidivism. The following statements and graphs are in the study, which can be examined on the TBI website under the Statistics tab. During the study period (2002-2007) 137,183 offenses of DUI resulted in an arrest in the State of Tennessee.

Re-arrested Offenders

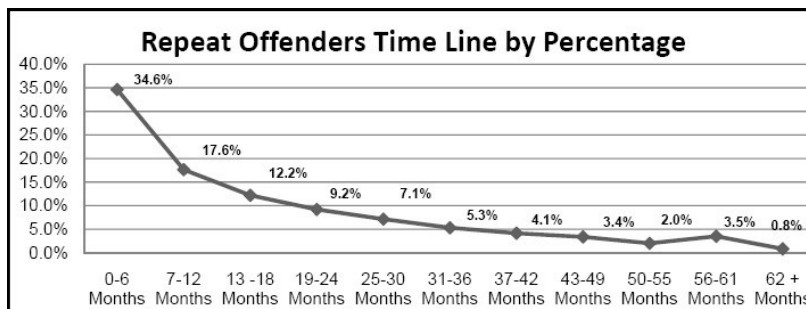
During the study period a total of 108,442 (79%) offenders were not re-arrested for the offense of DUI. A total of 21% (28,741) were re-arrested for violating the DUI law between 2002 -2007at least **two** times.



The data shows that 34.6% of the repeat offenses occurred within 0 – 6 months of the original arrest date. Over time the rates steadily declined as highlighted below. The greatest time span for re-arrest during the study is 72.3 months from the original DUI arrest date to the next arrest with the vast majority (34.6%) occurring within 0 – 6 months of their first DUI offense.



The second most frequent time frame for re-arrest was 7 – 12 months representing 17.6% of total re-arrests. Over 50.0% of all re-arrests occurred within the 0 – 12 month time range. The least most frequent time range was 50 – 55 months representing 2.0%.



TENNESSEE SUPREME COURT CLARIFIES STATUTE OF LIMITATIONS ARGUMENT

State v Lawson, 2009 Tenn Lexis 514

“The defendant was originally indicted for driving under the influence, second offense. More than one year after the arrest, the grand jury returned a second indictment, charging the defendant with driving under the influence, fourth offense, a Class E felony. The State filed a nolle prosequi as to the first indictment and, upon motion by the defendant, the trial court granted an order to expunge these records. At trial, the defendant was convicted of driving under the influence, third offense, a misdemeanor. The Court of Criminal Appeals affirmed. This Court granted review in order to determine whether the one-year statute of limitations applicable to misdemeanors barred the prosecution. Because the trial court properly took judicial notice of the pendency of the first indictment at the time of the second, the statute of limitations, regardless of the efficacy of the order of expunction, was tolled and the prosecution was timely.”

The opinion described above is quite different than the opinion in **State v Ferrante**, 269 SW3d 908. The difference appears to revolve around the charging instrument. In Ferrante an affidavit of complaint was dismissed after the assistant clerk of the Court admitted she had no knowledge to make a probable cause determination. The crafty lawyer for the defense waited until more than a year passed to raise the issue and have the complaint dismissed as void ab initio.

In Lawson the misdemeanor indictment was more than a year old when it was increased to a felony by Grand Jury action. After trial it was reduced to a misdemeanor again after a prior was kicked out.. Since a proper charging instrument had previously existed the one year limitation did not apply.

DEFENSE EXPERT TESTIFIES BY LETTER?

State v Johnson, 2009 Tenn Crim App _____

The Johnson case was a typical case in which an officer stopped a speeding car and found an impaired driver. The driver testified that he could not perform SFST’s because of vertigo! The driver worked as a foreman of a construction company renovating the Market Street Bridge. Imagine walking the bridge every day with vertigo. Imagine driving a car with vertigo! The driver called his bartender from Bud’s. An astounding piece of evidence discussed in the opinion was that the defense offered as evidence in the bench trial a letter from Dr. David Stafford concerning what his BAC would be if he had only one beer and that his SFST behavior was consistent with such a BAC. What happened to the State’s 6th Amendment right to cross examine a witness?

The conviction was affirmed as the Court had great confidence in Officer David Allen and noted the refusal of testing as a factor and apparently defense expert Stafford can be disregarded with or without testimony.

Percentage of Known BAC Test Results for Drivers, Pedestrians, and Bicyclists Involved in Tennessee Traffic Crashes 2003-Present

BAC Test Result	2003	2004	2005	2006	2007	2008	2009	Total
Total Negative - .07	547	283	494	459	413	304	66	2,566
Total Positive .08-.14	332	331	411	327	286	287	88	2,062
Total Positive .15 or Greater	635	639	813	634	560	519	173	3,973
Total Known Test Results	1,514	1,253	1,718	1,420	1,259	1,110	327	8,601
% Negative - .07	36.1%	22.6%	28.8%	32.3%	32.8%	27.4%	20.2%	29.8%
% Positive .08-.14	21.9%	26.4%	23.9%	23.0%	22.7%	25.9%	26.9%	24.0%
% Positive .15 or Greater	41.9%	51.0%	47.3%	44.6%	44.5%	46.8%	52.9%	46.2%

Source: TN Dept. of Safety, Office of Research, Statistics, and Analysis, 9/3/2009.

*2008-2009 are YTD preliminary. Data still outstanding.

**Results from all test types.

***Includes only drivers, pedestrians, or bicyclists.

TRAINING NEWS

SFST INSTRUCTORS RECEIVE UPDATE

Seventy-six officers received an update in a course conducted by Jerry Tucker, SFST Training Coordinator, July 9th in Nashville. The update course permits the instructors to continue teaching for the Governors Highway Safety Office. Traffic Safety Resource Prosecutor Jim Camp spent 90 minutes with the class to inform them of changes in traffic related laws and recent decisions concerning search and seizure, chain of custody, confrontation of witnesses at trial. He also discussed the amendment to 55-10-406 mandating the collection of blood samples in certain cases, the new texting while driving prohibition and changes to the law concerning lane violations, serving minors and escape from an officer. Instructors receiving the training were:

Fletcher,	Keith	Alcoa PD	Mara	Mark	McMinnville PD
Bradley	Kenny	Anderson County	Bell	Charles	Memphis PD
Faircloth	Charles	Anderson County	Kohl	William	Memphis PD
Twiford	David	Brentwood PD	Brown	Andrew	Memphis PD
Turner	Mitchell	Brownsville PD	Barbarotto	Anthony	Memphis PD
Allen	David	Chattanooga PD	Boyette	Sean	Memphis PD
Nickens	David	Cheatham County	Mannon	John	Memphis PD
Koski	Darren	Clarksville PD	Loy	Jessie	Metro-Nashville PD
Lifsey	Rodney	Clarksville PD	Shearon	Kevin	Metro-Nashville PD
Van Beber III	Billy	Clarksville PD	Brown	Jimmy	Montgomery County
Jackman	Donald	Clarksville PD	Derico	James	Montgomery County
Caver	Michael	Clarksville PD	Stucky	Broede	MTSU Public Safety
Derico	Jeffrey	Clarksville PD	Dodge	Scottie	Munford PD
Barnes	William	Clarksville PD	Harding	Scott	Nashville Airport DPS
Wirey	Jon	Crossville PD	Day	Paul	Oak Ridge PD
Howard	Tom	Cumberland County	Roberson Sr.	Gregg	Rhea County
Wildes	Jerry	Decherd PD	Fox Jr.	Donald	Shelby County SO
Sutton	Mark	Fairview PD	Siano	Patrick	Shelby County SO
Rose	Robert	Franklin PD	Pope	Michael	Shelby County SO
Nims	Wayne	Ft. Campbell PD	Miller	James	Smyrna PD
Wilson	Alison	Ft. Campbell PD	Lucas	Jeffrey	Smyrna PD
Dill	Billy	Ft. Campbell PD	Brite	Donald	Spring Hill PD
Hubert	Pete	Ft. Campbell PD	Barber	Tommy	Spring Hill PD
Wilson	David	Ft. Campbell PD	Pickard	Aaron	Sumner County SO
Coulter	Eric	Ft. Campbell PD	Cripps	Eddie	Sumner County SO
King Jr.	Scottie	Gallatin PD	Johnson III	Jimmie	THP
Powell	David	Henry County	Brown	Joshua	THP
Story	Steven	Jackson PD	Turocy	Vincent	THP
Cobb	Edward	Jackson PD	Bigem	Robert	THP
Manaseri	Douglas	Jackson PD	Sakarapanee	Steven	THP
Adams	Ron	Jackson PD	Smith	Kevin	Tullahoma PD
Farmer	Robert	Kingsport PD	Duncan	Jeffrey	Tullahoma PD
Evans	James	Knoxville PD	Blasingame	George	Tullahoma PD
Huskey	Donny	Knoxville PD	Collins	Andy	TWRA
Dishner	Jeremy	Lenoir City PD	Hicks	James	Vanderbilt PD
Harrison	Samuel	Loudon PD	Cleveland	Kevin	Vanderbilt PD
West	Larry	Macon County	Dozier	Ronnie	Vanderbilt PD
Looper	Matthew	Macon County	Poss	George	Williamson County
			Piper	Benjamin	Williamson County

**PROTECTING LIVES; SAVING FUTURES
JOINT TRAINING HELPS OFFICERS AND PROSECUTORS**



Brad Bulla

Fourteen Assistant District Attorneys and twenty-one law enforcement officers came together to learn about methods, the law and the need for effective enforcement and prosecution of impaired drivers in Memphis the second week of August. The tone for the conference was set by Brad Bulla. Tragically, Brad lost his gentle and loving son, Jed, in an impaired driving crash about three years ago. Jed was a national fiddle champion, a friend to everyone he met and a good kid getting ready for college. Brad does all he can do to let people know how foolish impaired driving is and how tragic are it's consequences.

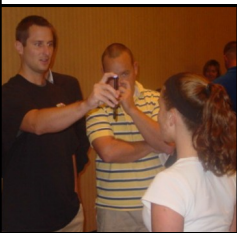
After Brad inspired a determined group of participants dove into the materials, questioned instructors and worked hard to improve their skills. The conference was designed to allow law enforcement instructors to teach police procedures, prosecutors to teach courtroom procedures and experts in the field to teach in their areas of expertise.



Dr. Karl Citek

Mike Lyttle, Toxicology Supervisor at the TBI Lab and Dr. Carl Citek, preeminent expert in HGN, and Mark Neil of the National Traffic Law Center were part of an amazing faculty. Participants learned about the various SFST validation tests, procedures for standardized field sobriety tests, drugs that impair driving, challenges and defenses, pre trial preparation and cross examination in addition to other topics. Prosecutors and officers used the SFST's in a wet lab setting with volunteers who had consumed alcohol under supervision. The drinkers entered the room with BAC levels from .042 up to .148. Small groups had to determine whether or not the drinker was too impaired to drive. The groups also estimated BAC levels, but determined whether to arrest based on impairment, not BAC. The prosecutors were stunned to discover how much alcohol was involved in certain BAC's.

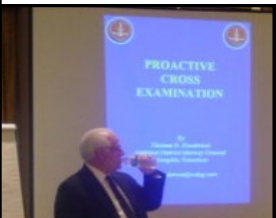
For instance a drinker with a .078 who weighed 250 lbs consumed 13.5 ounces of vodka between 12:03 pm and 3:19 pm. He was obviously feeling no pain and had no business driving, but was below .08. Prosecutors who previously used a .08 standard to decide guilt in their courtrooms learned what the officers saw on the side of the road and vowed to listen more closely to the officer's description of impairment.



HGN Testing

The officers were stunned by another drinker. She was a small, young woman that all groups decided to release due to her outstanding performance of the walk and turn and one leg stand. Few officers noticed any clues of HGN. She had consumed 6.5 ounces of alcohol and had a BAC of .10 when she was tested. Expert officers with DRE training had seen all six clues of HGN, but admitted it had been more difficult to observe the clues with her than any other drinker. More training and expertise was needed, than is usually received by patrol officers. This was a drinker, who would likely have been released on the side of the road. If she had crashed after being released, the officer who made the release decision could have been in a world of pain after the lawsuit was filed. A prosecutor would have a difficult time convicting, unless clues from the driving and personal contact phases were substantial.

Tom Henderson, an outstanding prosecutor in Memphis, taught about preparation for and delivery of cross examination in trial. Henderson is a nationally renowned expert in the field. His emphasis on preparation for cross examination was followed by a 90 minute block in which officers and prosecutors worked together using approach point cross examination worksheets to prepare for cross in a trial in which a particular defense witness is called to testify. The small groups were given several transcripts and the curriculum vitae of the witness and given time to peruse his prior testimony from various States. This exercise helped prosecutors learn the value of consulting with officers when preparing to cross examine a former officer and taught the officers about what a prosecutor has to do to get a case ready for trial.



The Professor of Cross

TSRP Jim Camp did an outstanding job directing the training. Hopefully the results will save a life or two as the guilty are convicted, learn from their error and drive safely for a lifetime.



Traffic Injury Research Foundation

TIRF launches the Alcohol Interlock Curriculum for Practitioners Website

The Traffic Injury Research Foundation is pleased to announce the launch of the Alcohol Interlock Curriculum for Practitioners (AICP) website, an educational resource for diverse audiences. Information relating to the following topics can be found at this site:

- international research;
- alcohol interlock technology;
- information about the implementation of alcohol interlocks as part of a program to control and monitor impaired driving offenders;
- legal concerns about the use of alcohol interlocks; and, information about contracting with vendors and service providers.

The curriculum is structured in two parts. The first part contains general information about alcohol interlocks and is available to the public. The second part is targeted towards registered users who wish to deliver education and training about alcohol interlocks to staff, organizations, or the membership of an association.

Each module is structured in a question/answer format to enable instructors to select relevant content from each module and develop handouts and presentations that are tailored to the needs and interests of a specific audience. The instructor materials section of the website enables registered instructors to access:

- more comprehensive information about a broader range of topics;
- Tailored presentations and handouts for students;
- instructional aids including a 19 minute video, pictures of devices, examples of reports, and other visual aids;
- checklists to guide implementation efforts
- checklists to guide working with vendors and service providers;
- sample forms, templates, protocols and policies;
- glossaries and references; and, links to a wide variety of other resources.

Electronic access to the special instructor materials for this curriculum is available by registering to obtain a username and password.

This curriculum was developed with input from researchers and experienced practitioners, representatives of several national criminal justice organizations, treatment professionals, and licensing agencies including Traffic Safety Resource Prosecutor, Tom Kimball.

The Alcohol Interlock Curriculum was created by the Traffic Injury Research Foundation under funding from the National Highway Traffic Safety Administration (NHTSA), Alcohol Countermeasure Systems Corp. (ACS), Smart Start Inc., and Dräger Safety.

To learn more about the AICP, visit www.aic.tirf.ca.

Sara Oglestone
Manager, Marketing & Communications
Traffic Injury Research Foundation (TIRF)
(613) 238-5235 ext. 304 (office)

Prosecutors Trained in Protecting Lives Classes in 2009:

Name	District
Adam Moore	2
Alycia Peoples	30
Amanda Hunter	13
Amy Hinkle	6
Brandon Heron	2
Brooklyn Martin	10
Chris Dotson,	19
Darren Gibson	11
Ed Sadler	15
Edie Sellars,	30
Felicia Walkup	14
Frankie Stanfill	24
Greg Eshbaugh	4
Jason Criddle,	18
Josh Marcum	21
Josh Parsons	2
Kate Lavery	17
Kyle Hixson	6
Marla Holloway,	14
Mellissa Denny	7
Pamela Huddleston,	4
Robin Ray	1
Sarah Winningham	6
Susan Taylor	30
Suzanne Lockhart	23
Tammy Harrington	5

MORE RECENT DECISIONS OF THE COURT OF CRIMINAL APPEALS

State v Anglin, 2009 Tenn Crim App _____

FAILURE TO OBEY LAWFUL ORDER OF OFFICER

How many DUI offenders drive into a parking lot filled with law enforcement officers to get arrested for DUI?

In Nashville officers had set up a stationary laser speed detection devise on 21st Avenue South. When a speeder was detected, an officer would flag him down and send him into a parking lot in which several officers were ready to write tickets or if necessary perform field tests.

Defendant Anglin was not speeding and was not directed into the parking lot. He drove into the parking lot anyway and would not stop when an officer yelled and shone a flashlight at him. The Defendant drove to the back of a building as if to turn around, but did not come back into the parking lot for over a minute. Officer Samuel Johnson finally walked to the defendant’s vehicle to check and see what the defendant was doing.

Defendant Anglin rolled down his window to speak to the officer and you can guess what happened next. Anglin smelled like he had been drinking and when asked responded with the always popular 2 beer lie. He was arrested after attempting field sobriety tests.

The Court held that the defendant had driven into the parking lot and had refused to obey a lawful order to stop pursuant to TCA 55-8-104 (a) 2007. The refusal to stop gave the officer reasonable suspicion to approach the defendant and investigate.

State v Cornwell, 2009 Tenn Crim App Lexis 756

THE SMOKER’S LUNG DEFENSE FAILS

Cigarettes are bad for you. They cause cancer and other nasty diseases. Defendant Cornwell thought that fifteen years of smoking might help him escape a DUI conviction. On three occasions after his arrest he blew insufficient air into the ECIR 2 breath test instrument. Morristown Officer Devin Cribley testified that instead of taking a deep breath and blowing constantly, the defendant appeared to be “barely blowing”. The Defendant took the stand and swore that he tried, but 15 years of smoking and a history of lung issues were the cause of his problem. The test refusal combined with other evidence persuaded the Court otherwise.

State v Walker, 2009 Tenn Crim App Lexis _____

ADMITS WASHING DOWN HIS OXYCODONE WITH A 24 OUNCE BEER

The Defendant denied having anything to drink during the twelve hours that passed between his breakfast and his traffic stop. He admitted to taking Oxycodone and a 24 ounce beer at breakfast. He indicated he took his oxy with beer because he was planning to work on the fuel system of a car that day and would be crawling around, lifting, shoving, pushing and pulling.

After he buzzed past an officer while unbelted and in a minivan without a license tag, he drove on and ran two stop signs before being pulled over. As an officer approached he noticed the defendant was reaching behind the driver’s seat. When the vehicle was searched an open bottle of gin and an open beer were discovered. The defendant claimed his bad performance during SFST’s was due to physical trouble and that an attorney had advised him to never take a breath test. The defendant was driving on a revoked license for DUI.

A 6 month sentence for 2nd DUI and a consecutive 6 months for refusal resulted. If an attorney really advised refusal, he may want to check with his malpractice carrier!

BEST PRESENTATION POINT HEARD IN 2009:

Do you know the difference between training and education?

I think you do. Answer this:

Would you rather have your child receive sex education or sex training?

Steve Talpins at Drug Recognition Evaluation Conference.

VEHICULAR HOMICIDE MURDERERS ROW



Molly Dye

Xanax, Cocaine, Methadone Druggie Kills

Molly Dye pled guilty in Trousdale County and received a sentence of 12 years to serve as a range 1 offender. On September 1, 2007, Dye was traveling westbound on Highway 25 in a 1999 GMC Yukon. Just before 9 a.m., she crossed the center line and struck a Dodge Van carrying Lillie Mae Douglas, her sister, Lucy Elliott and their friend, Paul Brinkley. Lillie Mae, the driver, died shortly after the collision and Paul and Lucy suffered severe injuries that will haunt them for the rest of their lives. All passengers were wearing their seatbelts.

Numerous witnesses at the scene stated the victims were traveling in their own lane at the posted speed limit on a straight, dry roadway. In the months preceding this collision, Lillie Mae lost over 100 pounds and her family said she felt like a new woman and assumed her new healthy lifestyle would add years to her life.

The defendant was seen a short time before the collision at a local gas station and witnesses stated she appeared intoxicated at that time. The defendant's blood test showed the presence of Methadone, Alprazolam (Xanax) and Benzoylcegonine (Cocaine Metabolite). Experts from the TBI opined that the levels and synergistic effect of these drugs would have impaired the defendant's ability to operate a motor vehicle. The defendant lost a portion of one leg in the collision and is now bound to a wheelchair. She attempted to gain a sentence of probation because of her injuries but failed.



Bobby England

48 years in prison for multiple convict

Bobby Dwaine England, on March 14, 2008, had been drinking almost all of the day. He and his 2 victims, Tony D. Lewis and Mary R. Elmore, went to Harriman to buy more liquor. After returning to Cumberland County they once again set out in their car with Bobby England as the driver. He failed to negotiate a turn and wrecked hitting a stump. A witness at the scene described seeing beer cans everywhere and talking to an obviously drunk Mr. England. EMS arrived on scene and took Mr. England to the hospital. His blood was drawn and was a .23. Mr. England was charged with 2 counts of Aggravated Vehicular Homicide because of the .23 BAC and having a prior DUI conviction. Mr. England pled guilty to the 2 counts of Aggravated Vehicular Homicide on April 14, 2009. A sentencing hearing was scheduled for June 12, 2009. At the sentencing hearing it was learned that Mr. England had a lengthy criminal history, including 4 prior DUIs, a robbery and a burglary conviction. Judge David Patterson sentenced Mr. England to 24 years on each count and ran those sentences consecutively for a total of 48 years to serve. This case was prosecuted by Gary McKenzie. General McKenzie is now in Iraq on active duty for the Army National Guard where he is assigned as a JAG officer.

State v Stricklin, 2009 Tenn Crim App Lexis _____

In Wayne County Melissa Stricklin drove her SUV directly in front of a motorcycle. The driver of the bike, Brian Dickey and his passenger, Nicole Maynard, did not stand a chance. Mr. Dickey's body actually collided with the SUV. Ms. Maynard was thrown about twenty feet. The bike had been travelling approximately 55 mph prior to impact. Stricklin had an odor of alcohol. She told the first trooper on the scene, Eddie Nutt, that she had only sipped a little vodka. When tested she had no BAC reading, but had .1 microgram per millimeter of methamphetamine. TBI forensic scientist, Jennifer Hall testified that .1 micrograms per milliliter of methamphetamine was at the upper end of the test results she had seen in her work at the TBI. State Medical Examiner, Bruce Levy, testified that any person with a blood level of .1 micrograms per milliliter of methamphetamine would necessarily be under the drug's influence, but only in the medical sense that such a level would affect a person in some detectable physical way. Dr. Murray Smith was called by the defense to dispute Dr. Levy and Agent Hall. The conviction and eight year sentence were affirmed.

VEHICULAR HOMICIDE MURDERERS ROW



**John Brown-12
years to serve**

Drunk Druggie Kills in Front Yard

On a rural road in the Rose Hill section of Giles County a driver pulled his truck to the wrong side of the road to speak with a friend, who was in his yard near his mailbox. A moment or two later John Brown was driving his car, while on a revoked license for DUI. Brown was impaired by alcohol and drugs. Brown drove into the yard and ran over the victim and the mailbox. Several eyewitnesses saw the homicide including the victim’s wife. Brown did not stop. He drove on until he got caught by two friends of the victim, who followed him and let out their anger. A deputy arrived and pulled them off of Brown and then discovered what had happened.

Trooper Mike McAllister was called and put his expertise as a crash reconstructionist to work. He was able to determine the point of impact and the path taken by the impaired driver before and after the homicide. He reported his findings to ADA’s Larry Nickle and Beverly Jo White, who prepared for trial. Brown pled guilty before trial to vehicular homicide by intoxication and leaving the scene of an accident involving death. He agreed to a 12 year sentence as a range one offender.

April Fools Day Tragedy Kills Friend

On April Fools Day, 2006, Amy Head visited friends. Her friends included Michael Kevin Allen, who would later be her killer. Her friends included Michael’s son and girlfriend. Amy was a hair stylist and gave Michael and his son a haircut that day. Michael was drinking. When it was time to leave the home of Michael’s girlfriend, she begged him to let her drive. As Michael and Amy went down the road they stopped for gas. As they left the station two attendants saw Michael driving. Prior to the crash another citizen was almost struck by Michael’s car. The driver was a bearded male. When the car crashed it flipped several times. Amy was thrown from the car and killed. Michael left the scene.

About thirty minutes after the first officer arrived at the crash site in Johnson County, Tennessee, Michael returned as a passenger in his girlfriend’s car. He was not wearing a shirt and had cuts on his body. He went to the THP trooper, Bill Fox, and told him he was not driving. The Trooper noticed an odor of alcohol and other indicators of impairment and asked Mr. Allen if he would go to the hospital and give a blood sample. Allen agreed and was transported to the hospital by a deputy.

At the scene there was a single drop of blood that had dropped onto Amy’s body from above her. There were drops of blood at the driver’s side door. There were more drops of blood on vegetation near the road. At the road another witness stopped to see if he could help Allen. The witness noticed he was injured and offered to get him help. Allen refused and indicated he was going to a nearby house. Instead he walked about 1 ½ miles to his own home.

The defendant was represented by attorney Bob Jessie, who argued the blood test was not consensual. Assistant District Attorney, Kent Garland, put on proof to show that even a non-consensual blood test would be admissible pursuant to 55-10-406 (e) and established case law. The Trial Judge determined that Trooper Fox had probable cause to believe Allen was the driver prior to asking him to submit to testing. Allen’s blood test indicated a .13 blood alcohol level with methamphetamine and marijuana in his system. A jury deliberated about four hours before finding Allen guilty of vehicular homicide by intoxication. On May 29, 2009, he was sentenced to serve 11 years.

Amy Head was an only child, a high school cheerleader and a good friend. On April Fools Day, 2006 she was a victim. Defendant Allen made a series of bad decisions, tried to cover up his crime by running away and telling lies. Now all who knew Amy or the defendant have to suffer his foolishness. Congratulations to Kent Garland, Victim Witness Coordinator, Tonya Proffitt and student assistant, Ashley Bagwell at the office of District Attorney Tony Clark in Mountain City and to Trooper Bill Fox and the various law enforcement officers who assisted in solving this crime.



WHERE DID YOU GO Stacey Jo? In STATE v CARTER 245 S.W. 3d 335, a May 19, 2008 decision of the Tennessee Supreme Court, Carter was ordered to serve 10 years for the vehicular homicide of his 16 year old cousin after fleeing Kentucky officers. Stacey Jo “forgot” until Cliff Smith of the U.S. Marshall’s Service kicked in his hotel room door and yanked him out of the shower 15 months later. We don’t have to wonder where Stacey Jo is for a while.



THE CRASH PAGE

By Jim Camp

Tennessee District Attorneys General Conference

226 Capitol Blvd. Bldg.,
Suite 800
Nashville, TN 37243-0890

Tom Kimball
(615) 253-6734

Jim Camp
(615) 232-2930

Sherri Harper
(615) 253-6733

CRASH SCENE INVESTIGATIVE CHECKLIST

Checklists are a useful tool for investigating officers at a crash scene and for Prosecutors reviewing their evidence. They provide a safety net to ensure a detailed and complete investigation and review. This checklist for the vehicular homicide or assault crime scene is provided to assist in two areas, THE CRIME SCENE ON THE ROAD AND INSIDE THE VEHICLE.

THE ROAD IS A CRIME SCENE

Make sure officers know to keep cars, spectators etc off the evidence. Enlist the assistance of a trained and experienced Crash Reconstructionist. Do not assume the cause of the collision or the location of the vehicles at impact without a thorough review of all possibilities.

Debris field

- Photograph.
- Protect and maintain.
- Mark with cones or flags all significant debris.
- Photograph with cones etc.

Skid marks, yaw marks, scuff marks

- Protect and photograph
- Use a UV filter if not easily seen. Some skid marks will be invisible unless such a filter is used.
- Measure and provide precise locations

Gouge Marks

- Protect and photograph.
- May indicate point of impact, but not always.
- Match up with damage to vehicles involved. What made the gouge?
- Drag factor of roadway surface
- Check roadway surface for defects that might have caused or contributed to the crash

PROTECT THE CRIME SCENE

Fluid spills. Note, photograph and take samples if necessary to determine vehicle position.

- Traffic controls and speed limits at or near scene
- Visibility at time of crash
- Lighting at time of crash
- View of respective drivers
- Point of first possible perception (when each driver could first see the other)

PROTECT THE CRIME SCENE

Witnesses

- Conduct interview while they stand at their location during the crash
- Refreshes memory and reveals possible obstructions to vision
- EMS and first responders:
 - Position of occupants in vehicle; Odor of alcohol from suspect; Speech pattern of suspect; Appearance of eyes; Admissions made by suspect
- Residents in vicinity of crash scene
- Friends and family of occupants and suspect
- Patrons of establishments visited by suspect prior to crash

Evidence in the vehicle:

Kinematic Evidence to Determine Driver may include:

- Fabric Fusion
- Hair
- Blood
- Tissue
- DNA
- Fingerprints

It may be located on the windshield, the dash, door handles, the rear view mirror, under the steering column, the door, the seats, the floorboard etc.

Check:

- Seat position
- Broken glass
- Glass tattooing
- Seat belt damage
- Gas or brake pedal
- For vomit
- Bar or market receipts

And

Never, ever release a vehicle until the case is over! Would you release a gun that was used to kill?