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ANONYMOUS TIP JUSTIFIES TRAFFIC STOP

The Tennessee Supreme Court has verified that a traffic stop can be based on an anonymous call from a citizen.

In State v Hanning, an October 20th decision, the Court affirmed the conviction of a trucker, who had been spotted driving "recklessly" by a citizen. The citizen called in a complaint and told the dispatcher the black Smith Brothers semi was pulling off I-75 at the Highway 72 exit ramp.

Sergeant Kent Russell of the Loudon Police Department was in a parking lot at McDonald's about 150 yards from the top of the ramp. He got the call from dispatch and immediately drove to the exit ramp, saw a black truck tractor and trailer with its parking lights on parked in the emergency lane, facing the top of the ramp. Sergeant Russell turned on his blue lights and drove down the ramp against the flow of traffic and parked very close to the front of the truck. When he approached he saw the words "Smith" and "Transport" on the door.

The traditional manner to verify an anonymous report is to meet a two prong test and show 1) the basis of the informant's knowledge of the conveyed information and 2) the informant's credibility. This is obviously troublesome as many citizens going down the road don't hang around after making the call. Many times the caller will be unknown.

However, the Court ruled years ago in State v Wilhoit, 962 S.W.2d at 487 that an investigating officer's independent corroboration on the anonymously provided information can cure deficiencies in proving reliability. The verification of information in this case was:

- The report of the driving incident was at or near the time of the encounter and a Court can assume the report is first hand and hence reliable. Citing State v Pulley 863 SW2d at 32.
- The officer's verification of the caller's observations i.e. color and type of truck, location and direction of travel was sufficient to demonstrate the caller's basis of knowledge.
- The officer's corroboration of those factors satisfied the credibility prong of the reliability inquiry.

The Court also stated, "we believe that a report of a truck and trailer being driven recklessly on the interstate poses a sufficiently high degree of threat of imminent hazard to warrant prompt investigation."

The Court also warns that this type of tip will probably not be sufficient without a high risk of imminent injury or death. The Court notes recent (2007) NHTSA statistics that show approximately 13,000 were killed by drunk drivers nationally. The Court states that the danger presented by drunk driving and the public's interest in eliminating this problem are obvious and indisputable.

Continued next page

Anonymous Tip

U.S. SUPREME COURT DENIES CERTIORARI FOR SAME ISSUE

Hours after our Supreme Court decided the Hanning case, the U.S. Supreme Court announced that it refused to hear a Virginia case that had a much different ruling. Two Justices, Chief Justice Roberts and Justice Scalia wrote a scathing dissent to denial of certiorari in Virginia v Harris, 2009 U.S. Lexis 7645. The Chief Justice wrote:

"Every year, close to 13,000 people die in alcohol-related car crashes -- roughly one death every 40 minutes. See Department of Transportation, National Highway Traffic Safety Administration, Traffic Safety Facts, 2007 Traffic Safety Annual Assessment -- Alcohol-Impaired Driving Fatalities 1 (No. 81106, Aug. 2008). Ordinary citizens are well aware of the dangers posed by drunk driving, and they frequently report such conduct to the police. A number of States have adopted programs specifically designed to encourage such tips -- programs such as the "Drunkbusters Hotline" in New Mexico and the REDDI program (Report Every Drunk Driver Immediately) in force in several States. See Department of Transportation, National Highway Traffic Safety Administration, Programs Across the United States That Aid Motorists in the Reporting of Impaired Drivers to Law Enforcement (2007).

By a 4-to-3 vote, the Virginia Supreme Court below adopted a rule that will undermine such efforts to get drunk drivers off the road. The decision below commands that police officers following a driver reported to be drunk *do nothing* until they see the driver actually do something unsafe on the road -- by which time it may be too late."

The Chief Justice noted that there was a difference of opinion between States and U.S. Circuits concerning the issue of anonymous tips on the roadways. He articulated his lack of agreement with seven Justices, who chose not to resolve the issue.

DENIAL OF CERT HAS NO EFFECT ON HANNING

Two days after these decisions were announced on October 22nd this writer had the opportunity to speak to **Richard Wintory**, Deputy County Attorney in Pima Count, Tucson, Arizona about these decisions. Wintory had just completed an outstanding three hour Supreme Court update for the Tennessee District Attorneys General Conference and is noted for his expertise concerning the Court. Wintory described the denial of cert as the equivalent of a hung jury. It has no precedential value in Tennessee. Be aware that defense attorneys will claim that the denial somehow overturns the Hanning decision. It does not. Tennessee law is not written by the Virginia Supreme Court. The denial of cert only effects Virginia by leaving the current state of Virginia law alone. It also makes clear that there is a split in jurisdictions, the type of split that may lead the Supreme Court to hear the issue at some later time.

The Tennessee Supreme Court:

Pictured are (seated) Chief Justice Janice M Holder and (standing left to right) Justice Cornelia A Clark, Justice William C. Koch Jr., Justice Gary R. Wade and Justice Sharon G. Lee

TN SUPREME COURT AFFIRMS MAGISTRATE TESTIMONY

State v Nash 2009 Tenn Lexis 652

The Tennessee Supreme Court in an opinion by Justice Lee affirmed the DUI conviction of the defendant that was based in part on testimony from Judicial Commissioner Harold Sutton. The Court urges that **restraint and caution** be used before judicial testimony is requested. The Trial Court did not abuse its discretion in permitting the testimony and it did not violate the Rules of Evidence or Code of Judicial Conduct.

THE TESTIMONY

In February, 2004, a Dickson firefighter spotted the defendant's car weaving from guardrail to guardrail on Interstate 40. She called her dispatcher and Dickson officer Orval "Bubba" Sesler responded. Once the driver was stopped, he could barely stand and had to be caught once to stop a fall. The incident and the empty pint bottle of Jim Beam in the front seat was videotaped.

COMMISSIONER USUALLY CONDUCTS SFSTS

The Commissioner observed the defendant passed out in the back of the patrol car. Although he usually administers sobriety tests, he testified he could not under these conditions. After viewing the videotape he instructed the officer to transport the defendant to the hospital emergency room due to his level of intoxication. At the hospital Nash admitted to drinking a pint and his BAC was .249%.

ADDITIONAL ISSUES

A nurse in response to a question from Trial Judge Robert Birch responded that the reason the defendant received certain treatment was because she had been told he had DUI arrests in the past. This response resulted in a jury out hearing. The Judge offered a curative instruction, but denied a mistrial. The curative instruction offer was rejected. The Court applied the three prong test set out in State v Smith, 893 SW 2d 908 (Tenn. 1994).

1) whether the State elicited the testimony, or whether it was unsolicited and unresponsive;
2) whether the trial court offered and gave a curative jury instruction; and
3) the relative strength or weakness of the State's proof.

The State did not solicit the testimony. The Court offered a curative instruction and the proof was overwhelming.

BIFURCATION PHASE

Everyone in the case seemed to forget that a second phase was required to determine how many priors the defendant had committed. The jury was released and reassembled days later. The Supreme Court did not approve. The conviction of the defendant was affirmed, but the case remanded to select a new jury solely to determine whether the defendant is a first, second, third or fourth offender and to set his fine.

DID YOU KNOW?

There have been six United States Supreme Court Justices from Tennessee.

John Catron was appointed by President Jackson and served from 1837 to1865.
Howell Edmunds Jackson was appointed by President Harrison and served 1893 to 1895.
Horace Harmon Lurton was appointed by President Taft and served 1910 to 1914.
James Clark McReynolds was appointed by President Wilson and served 1914 to 1941.
Edward Terry Sanford was appointed by President Harding and served 1923 to 1930.
Abe Fortas was appointed by President Johnson and served 1965 to 1969.

Justice Fortas

RECENT DECISIONS

State v Baker, 2009 Tenn Crim App 897 **Upholding SFST's**

An issue that seems to be coming up in a lot of cases was raised in the Baker case. All across the State defense attorneys are trying to have field sobriety tests excluded as if the testimony was scientific in nature requiring testimony from an expert. The Court rejected this defense citing **State v Murphy**, 953 SW 2d 200, Tenn 1997, in which our Supreme Court explained how field tests contrasted with the HGN,

"if a police officer testifies that the defendant was unable to walk a straight line or stand on one foot or count backwards, a jury needs no further explanation of why such testimony is relevant to or probative on the issue of the defendant's condition. A juror can rely upon his or her personal experience or otherwise obtained knowledge of the effects of alcohol upon one's motor and mental skills to evaluate and weigh the officer's testimony.

Counting Priors

In Baker the Court affirmed the use of challenged priors. The Court reiterated it's holding in **State v Gober**, 2001 Tenn Crim App Lexis 750. If a defendant has a prior conviction in the last ten years, it counts and opens the twenty year window. Any convictions within the last twenty years shall count. The Court states, "In addition to requiring prior convictions to occur within ten years of the immediately preceding conviction, the statute requires that all convictions considered in determining multiple DUI offender status be within twenty years of the date of the current conviction."
Baker's Convictions: Current: March 28, 2008
Prior: January 9, 2001 (within 10)
Prior: May 17, 1988 (within 20 of current conviction) Note: There is no requirement that this prior be within 10 years of the first prior, only within 20 of the current conviction.

State v Lowe, 2009 Tenn Crim App 891 Lexis 403 **Another SFST Attack**

Under the topic of sufficiency of the evidence, Appellant argues the jury should have rejected testimony regarding his performance of the field sobriety test based on Okert's testimony that the walk and turn test is only 68% accurate and the one-legged stand test is only 65% accurate. However, with regard to field sobriety tests, our Supreme Court determined that an officer could testify as to the results of those tests in *State v. Murphy*, 953 S.W.2d 200 (Tenn. 1997).

Note: Subsequent studies have indicated a much higher percentage of accuracy using the field sobriety tests. See the comparison between the original 1981 study and that conducted in 1998:

- 1981
- Battery of Tests: 81%
- HGN: 77%
- W&T: 68%
- 1 Leg: 65%

- 1998
- Battery of Tests: 91%
- HGN: 88%
- W&T: 79%
- 1 Leg: 83%

All SFST Studies are available at the new website at: www.duitndagc.org

SUPREME COURT CONSENT SEARCH

State v Brown, 294 SW 3d 553 Tenn 2009

On June 18, 2001, Trooper Kevin Hoppe stopped the defendant, Maron Donta Brown, for speeding. In a subsequent search of the vehicle, Trooper Hoppe found a package containing cocaine. Mr. Brown was indicted for possession with intent to sell or deliver more than 300 grams of cocaine. He filed a motion to suppress, alleging that he was unlawfully stopped and detained, that he did not validly consent to a search of the vehicle, or, if valid consent existed, that the search exceeded the scope of his consent. Since the time, manner, and scope of Trooper Hoppe's investigation did not exceed the proper parameters of a traffic stop, the Supreme Court affirmed the conviction.

Time: The time involved in the request to search was the time during which the Trooper waited for a response to his request for information concerning the driver's license, registration and license plate.

Manner: During the search the driver was allowed to stand outside the car on the Interstate shoulder or sit on the guardrail.

Scope: The Trooper inspected a parcel on the passenger side floorboard, lifted the tape on the corner of the parcel and smelled cocaine. The trooper informed the driver he was looking for "large amounts of marijuana, cocaine, methamphetamines and heroin" and asked the driver if he had such items in the vehicle.

The Court noted that the facts of this case were different than those in **State v Berrios**, 235 S.W.3d 99, Tenn 2007. In Brown, the Defendant stood outside his car or sat on the guardrail. This was termed a *de minimus* intrusion or a mere inconvenience as contrasted with Berrios, who was placed in the patrol car during a routine traffic stop.

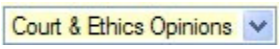
The Court affirmed the Trial Court in finding that the consent to search was voluntary. The Court noted, "Although the Trial Court was concerned that Trooper Hoppe did not inform Mr. Brown of his right to refuse consent to search, this Court has declined to impose such a requirement. **State v Cox**, 171 S.W.3d at 184.Tenn 2005.

Concerning the container, which the Trooper opened and searched, the Court applied a common sense standard in affirming the Trooper's actions: "Applying a common-sense interpretation to the entire verbal exchange, a reasonable person would have understood that the consent to search included consent to conduct a quick search of the interior of the vehicle and to handle any containers that might hold illegal drugs."

The Court concluded: "In answering the third certified question, we conclude that the scope of Mr. Brown's consent extended to the inside of the vehicle and to handling the containers therein in a minimally invasive manner and that the scope of consent had not been exceeded when probable cause justified opening the package."

Recommendation: All officers who make traffic stops need to read and understand this case. It can be found in it's entirety on the Supreme Court website in the Tennessee Supreme Court 4th quarter decisions. On the left side of the AOC site:

click on the drop down box



Then hit the drop down box for the Supreme Court 4th quarter decisions. A list of cases will appear. Find State v Brown near the bottom of the list.

State of Tennessee v. Maron Donta Brown - E2006-01038-SC-R11-CD Hit the view button.

This and all cases in this issue will also be available at: http://dui.tndagc.org in the Newsletter folder.

TSRP's ANNOUNCE NEW WEB SITE AND BLOG

The development of technology and the assistance of an outstanding I.T. department have permitted us to extend our resources in new and exciting ways. First, Tom Kimball, began a blog site in December at http://tnduiguy.blogspot.com

- On the blog, Tom posts messages including a synopsis of weekly affirmed jury trial decisions with a link to the particular cases on the AOC web site, videos of defense expert witnesses in Trials, videos of instruction and whatever inspires him on a particular day. Check it out. Law enforcement officers should view the **State v Hanning video memo.** Departments may use the video as a roll call item for law enforcement officers. The blog also includes interesting stories concerning traffic safety. Recent posts have included a story of a woman who shot her husband and crashed her car en route to the hospital. Surprisingly, she was impaired.
- **The new website will be found at:** http://dui.tndagc.org

This website will be available to the public in January 2010. In the near future a members only section will be added for the Tennessee District Attorneys General and others involved in the prosecution of traffic safety crimes.

The website will include resources such as SFST Validation studies, scientific information, current news and other materials. We hope that it will allow Legislators, Judges, the press and the public to have access to information that will allow informed decision making. Check it and the blog regularly.

NSDUH: WHAT DID 143,000 CHILDREN DO LAST YEAR ?

That's the number of 12 year olds who intentionally inhaled ("huffed") a legal chemical household or office product to get high according the latest (2008) National Survey on Drug Use & Health (NSDUH) https://nsduhweb.rti.org, US Substance Abuse & Mental Health Services Administration (SAMHSA). This was a statistically significant increase from the 2007. In fact more children used inhalants than used Marijuana (44,000), Cocaine (1,000) and Hallucinogens (21,000) *combined!* Imagine the physiological, psychological and developmental tolls these chemicals are having on developing bodies, personalities, nervous systems and brains of these young children. Although overall use inhalants seems to have leveled off or declined slightly in past two years, the statistically significant increase among 12 year-old youngsters is a concern that must be addressed. More than likely the increase was among young females because girl inhalant use exceeded male use in past year and lifetime use data among 12–17 year olds. In fact lifetime and past year, female inhalant use increased in 2008 while male use declined. Also, since 2002, female inhalant use has exceeded male use.

Harvey Weiss, Director
National Inhalant Prevention Coalition (NIPC)
800/269 - 4237 and 423/265 - 4662
nipc@io.com

TENNESSEE DISTRICT ATTORNEYS GENERAL'S RESPOND TO HUFFING

The Legislative Committee of the Tennessee District Attorneys General Conference has written a proposal for the Legislature to include impairment by substances in the DUI law. The Conference has endorsed the following to replace the current language in **TCA 55-10-401: DRIVING UNDER THE INFLUENCE**

(a) It is unlawful for any person to drive or to be in physical control of any automobile or other motor driven vehicle on any of the public roads and highways of the State or any other location which is generally frequented by the public at large, while:

(1) Under the influence of any intoxicant, drug, substance or combination thereof producing effects on the central nervous system;

(2) The alcohol concentration in such person's blood or breath is eight-hundredths of one percent (.08 %)

ATTORNEY GENERAL OPINION ISSUED CONCERNING DRVING ON REVOKED IN AN OFF-ROAD VEHICLE

Opinion No. 09-164

Requirement for a Driver's License While Driving an Off-Highway Vehicle on the Highway

QUESTIONS

1. Whether state law requires a valid driver's license when a driver illegally operates an off-highway vehicle on the highway.
2. Whether a person unlawfully driving an off-highway vehicle on a public roadway may be charged with driving on a revoked driver's license when a driver's license is not otherwise required for lawful, off-road use.

OPINIONS

1. Yes. A valid driver's license is required for anyone operating a motor vehicle on the highway, and an off-highway vehicle qualifies as a motor vehicle.
2. Yes. A person driving an off-highway vehicle on the highway may be charged with driving on a revoked driver's license.

ANALYSIS

1. Any person driving "any motor vehicle" on a highway in Tennessee must have a valid driver's license. See Tenn. Code Ann. § 55-50-301(a)(1). A reading of our statutes reveals that an off-highway vehicle qualifies as a motor vehicle. State law requires every person driving "any motor vehicle upon a highway in this state" to have a valid driver's license for the type or class of vehicle being driven. Tenn. Code Ann. § 55-50-301(a)(1). "Motor vehicle" is defined as a "vehicle, low speed vehicle or medium speed vehicle as defined in this section . . . ." Tenn. Code Ann. § 55-50-102(34). "Vehicle" is defined as "every device, in, upon, or by which any person . . . is or may be transported . . . upon a public highway, excepting devices moved by human power or used exclusively upon stationary rails or tracks . . . ." Tenn. Code Ann. § 55-50-102(53). A Class D license is required for the operation of any vehicle weighing less than twenty-six thousand one pounds. See Tenn. Code Ann. § 55-50-102(19)(D). Because "motor vehicle" and "vehicle" are broadly defined in the statute, an off-highway vehicle such as a four-wheeler is a "motor vehicle" under Tenn. Code Ann. § 55-50-301(a)(1). For this reason, any person operating an off-highway vehicle upon a highway in Tennessee is required to have a valid driver's license.
2. Based on the analysis above, the State may charge a person with driving on a revoked driver's license when that person operated an off-highway vehicle on the highway. As stated above, when a driver operates an off-highway vehicle upon the highway, state law requires a valid driver's license. Following from that analysis, when a person drives an off-highway vehicle on the highway while his or her license is suspended or revoked, the State may charge that person with driving on a revoked license. It is a Class B misdemeanor for any person to drive "a motor vehicle within the entire width between the boundary lines of every way publicly maintained that is open to the use of the public for purposes of vehicular travel . . . when the person's privilege to do so is cancelled, suspended, or revoked . . . ." Tenn. Code Ann. § 55-50-504(a)(1). Because an off-highway vehicle such as a four-wheeler is a motor vehicle, when a driver operates a four-wheeler upon the highway, and that person's license is revoked or suspended, the State may charge the driver with driving on a revoked or suspended license.

Quarry the granite rock with razors, or moor the vessel with silken thread; then may you hope with such keen and delicate instruments as human knowledge and human reason to contend against those giants, the passion and the pride of man. (John Henry Newman).

Attorney General Robert E. Cooper has served in his post since November, 2006. He was appointed by the Supreme Court to serve an eight year term. He served as legal counsel to Governor Bredeson from 2003– 2006.

RECENT DECISIONS

State v Wright, 2009 Tenn Crim App Lexis 971 **.03 Alcohol and myriad of drugs**

Defendant Wright crossed the center line three times and ran a stop sign in Sullivan County, Tennessee. Deputy Melissa Marlowe pulled him over. Wright was real slow in getting out his driver's license and fumbled it. There was an odor of alcohol. As he got out of his truck, he had to hang on. He botched the one leg stand, walk and turn, alphabet and finger count tests. He gave a blood and urine sample. His alcohol level was .03. He also had inactive marijuana metabolite in his blood sample, and dihydrocodeine, citalopram, dihydrocodeinone, and an inactive marijuana metabolite in his urine sample.
Dr. Kenneth Ferslew was qualified as an expert in the field of forensic toxicology. Ferslew explained that he looked at all factors in determining impairment using a three pronged approach. The three prongs included utilizing the arresting officer's observation of driving infractions, the performance on field sobriety tests, and the chemical analysis of blood and urine. Ferslew on direct and then cross examination explained that the combination of alcohol and drugs could cause the impairment observed in the driving and conduct of the defendant and supported the officer's opinion that the driver was impaired. The conviction was affirmed.

Note: Kudos to Prosecutor **Bandon Heron** for letting a jury decide this case and to District Attorney Greeley Wells for supporting the decision. Drivers impaired by drugs other than or in addition to alcohol are every bit as dangerous as those who drink and drive without adding drugs to the equation!

State v Meador, 2009 Tenn Crim App Lexis 1013 **The Big Oops**

The Judge suppressed the blood test in a pre trial hearing. The blood was not drawn within two hours of the time of arrest and the law in effect at the time required suppression. That law has since been repealed.
During the Trial the Prosecutor asked to admit the Alcohol Influence Form. There was no objection and it was admitted. After the jury went out to deliberate, the foreperson sent out a question about whether the jury could consider the blood test result of .10, which was included in the Alcohol Influence Form. No one caught the error before the form was admitted. The Court answered the jury question with an admonishment to ignore the result. The Court of Criminal Appeals reversed the decision and the result of the error will be a new trial.

Note: Nobody is perfect. Let this serve as a lesson to review all documents before and during Trial before the document is introduced. Trying a case a second time is never much fun!

State v Geselbracht, 2009 Tenn Crim App Lexis 802 **Pandora's Box opened?**

The Defendant took a breath test and had a .16 Blood alcohol content. He then requested a separate blood test. Tennessee Code Annotated section 55-10-410(e) provides that a person tested for BAC "shall be entitled to have an **additional** sample of blood or urine procured and the resulting test performed by any medical laboratory of that person's own choosing and at that person's own expense." T.C.A. § 55-10-410(e) (2004). The officer reasoned that the defendant did not give a blood or urine sample and denied the request. For the first time the Court of Criminal Appeals has ruled that the statute applies even when no blood or urine sample has been given. The Court affirmed the Trial Judge, who dismissed the case due to the failure on the part of the State to permit the defendant to get a separate test. The Court stated: "The defendant testified that, upon his mistrust of the breathalizer, he requested a separate blood test. Sergeant Miller responded that another test was not necessary and that "we've got what we want, and you're going to jail." We cannot fathom what other "reasonable effort" the defendant could have taken towards obtaining a separate blood test under these
circumstances."

Note: The State may request a blood sample in addition to a breath sample. If a defendant requests an independent blood sample, which will mysteriously never see the light of day after the result is favorable to the State, the officer may want to get a blood sample for lab analysis as well.

The Nexus Doctrine Re-examined

Mark A. Fulks

Does a law enforcement officer have to know that illicit drugs are inside a suspect's residence in order to establish a nexus between the suspect's drug activity and the residence? This is the question that our state supreme court recently addressed in State v. Cedric Ruron Saine, No. M2007-01277-SC-R11-CD (Tenn. Nov. 4, 2009).

The facts at issue in *Saine* were straightforward. During an undercover investigation, law enforcement officers had a confidential informant arrange to buy cocaine from Saine. At the appointed time, they followed Saine from his home to the rendezvous point, watched him sell cocaine to the informant, and then followed him directly back to his home. Four days later, based upon those facts, the officers procured a search warrant for Saine's home and then had the informant set up another deal. At the appointed time, the officers followed Saine as he drove from his home toward the rendezvous point. Along the way, they initiated a traffic stop, searched Saine's car, and discovered cocaine and marijuana. Then they executed the search warrant at his home and found more cocaine, three handguns, digital scales, drug paraphernalia, and other contraband.

The trial court suppressed all of the evidence, concluding that the search warrant did not establish a nexus to Saine's home and that the search of his car was tainted by the illegal search warrant. The Court of Criminal Appeals affirmed with respect to the search of Saine's home, but reversed with respect to the search of his car.

The Tennessee Supreme Court took a different view of the nexus doctrine. "In determining whether a nexus has been sufficiently established, we consider whether the criminal activity under investigation was an isolated event or a protracted pattern of conduct, the nature of the property sought the normal inferences as to where a criminal would hide the evidence, and the perpetrator's opportunity to dispose of incriminating evidence." Slip op. at 6. Turning to the question at hand, the court concluded that a reasonable inference is not dependent upon "definite proof that the seller keeps his supply at his residence," and can be established through proof that "the seller or buyer went to the seller's home" before or after the sale. *Id.* (quoting 2 Wayne R. LaFave, *Search and Seizure: A Treatise on the Fourth Amendment* § 3.7(d) (4th ed. 2004 & Supp. 2008-09). In other words, law enforcement officers need not *know* that drugs are kept at a suspect's residence, they need only have information that leads them to *reasonably believe* drugs or evidence will be found there.

As for the search of Saine's car, the Supreme Court affirmed the search and provided a bit of clarification, contrary to what some opinions in Tennessee have indicated, "The automobile exception does not require a separate finding of exigency in addition to the finding of probable cause." Slip op. at 8. The automobile itself is the only exigency needed to search an automobile when there is probable cause to believe the vehicle contains contraband.

About the author:

Mark A. Fulks is Senior Counsel and an Appellate Team Leader in the Criminal Justice Division of the Attorney General's Office. He has previously published a number of articles on legal subjects, some of which have appeared in DUI News. He is also a frequent lecturer and has conducted seminars for, among others, the District Attorneys General Conference, the National District Attorneys Association, and the Tennessee Bar Association. Any opinions expressed in this article are his own and not necessarily those of his employer.

Kudos to the 15th Judicial District

Kudos to District Attorney Tommy Thompson and congratulations to the Lebanon Police Department. The checkpoint described in the affirmed decision in **State v Muncie** 2009 Tenn Crim App Lexis 811, indicates that a lot of thought and hard work was involved in planning and implementing the sobriety checkpoint. Lieutenant Willett as planning coordinator, Sergeant Bay as implementation coordinator and all the officers working the line made their community a safer place.

VEHICULAR HOMICIDE MURDERERS ROW

Steven A Davis, 29, of Murfreesboro pled to vehicular homicide by intoxication and received a 12 year sentence to serve. Davis, sans seatbelt, was southbound on Versailles road in his 2002 Ford F-150 when he had a head on collision with Mr. Thomas Morris, Jr., wearing a seatbelt in his 1998 Crown Victoria. The Defendant failed to maintain his lane through a turn, while doing at least 50 mph in a 40 mph zone. As evidenced by the lack of any skid marks in the road and by the black box from his truck, the defendant made no attempt to either slow down or avoid Mr. Morris. Mr. Morris had seen the defendant coming and had locked his brakes approximately 26 feet before impact, and steered for the ditch. The Rutherford County Sheriff's Department arrived first on the scene and the defendant's first request of the deputy was that he "please don't call the cops." When EMS arrived, it was confirmed that Mr. Morris had died at the scene. A trooper interviewed the defendant at the hospital and he admitted to having drunk several beers with some buddies at Hooters before going to dinner, where he had several more beers, before returning to Hooters for more beers. When his blood was taken, it came back with a BAC of .21

According to District Attorney General Jimmy Dunn's office, Roy Wayne Killion, 32 pleaded guilty to aggravated vehicular homicide and driving on a revoked license on Monday. It was part of a plea deal which comes with a 20 year prison sentence. The incident happened on November 9th, 2007. Killion driving down Old Dandridge Pike when he crossed the center line and slammed into Joan Marie Arrington's car head-on. Arrington, who was on her way to work at a post office in Knoxville, died on the scene. Killion's license had been suspended for three years at the time of the crash. He had at least four felony D.U.I. charges on his record dating back the previous 11 years. His blood alcohol level was recorded at .17, which is more than double the legal limit. Arrington, 40 left behind two children, a girl who is now 15 and a boy who is now 10.

John R. Turner,37, pled guilty to aggravated vehicular homicide and felonious reckless endangerment and was sentenced in Fentress County Criminal Court on 21 September 2009 to serve the maximum sentence of 25 years. On September 19, 2008, Turner driving north on the Highway 127 Bypass crossed into the southbound lane and struck a vehicle driven by Ervin Taubert. Turner narrowly missed another vehicle with four occupants before the crash. Taubert, a long-time employee of the Fentress County Farmers Co-op, was killed on his way to pick up tractor parts. Turner, who was on probation for forgery, had significant levels of morphine, oxycodone, alprazolam, hydrocodone, meprobamate, and carisoprodol in his system. The case was prosecuted by Deputy District Attorney John Galloway and Assistant District Attorney Latasha Wassom.

DID YOU KNOW?

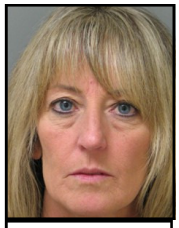
In some Tennessee General Sessions Courts the Sessions Judge would have denied that probable cause existed in the Turner case above. Certain Judges will not recognize that a driver can be impaired by drugs, unless a toxicologist testifies at the preliminary hearing, which is impossible due to the workload at the lab. Toxicologists testify at the Trial Court level. Their primary function is to test the blood and urine samples sent to the lab. There are about 120 Courts in Tennessee with Sessions Court Jurisdiction in addition to the Courts in 31 Judicial Districts with Trial Court Jurisdiction.

A driver can be stopped for horrendous lack of control of his car, fall over getting out, fail all tests and have his case dismissed in these Sessions Courts, because a Judge doesn't have lab testimony!

VEHICULAR HOMICIDE MURDERERS ROW

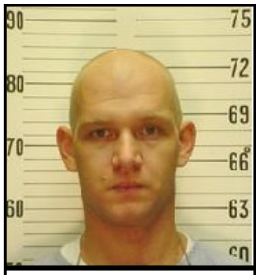
Nations

Nicholas Nations is serving an eight year sentence with the Department of Corrections after being convicted of vehicular homicide by intoxication in Anderson County. Nations, 23, was home after completing boot camp with the Marine Corps. After celebrating with friends he drove across the centerline and crashed into an off duty police officer and his wife. The officer, Dustin Henderson and wife, Krista, have recovered from serious injuries. The passenger in Nations car was Cassi Floyd, 17, a friend. She survived about a week before succumbing to injuries. Nations, the son of a respected law enforcement officer, was given a bond he could make. He returned to the Marines, but had a difficult time. Eventually he ended up in more trouble, returned for Court and pled guilty. Impaired driving can be tragic in so many ways.



Cox

Dolly Cox, 45, of Cordova, TN, took Zoloft and drank at Huey's restaurant in Southaven, Mississippi. She drove her mustang east on I 240 to return to Memphis. Janeal Williams and Eddie Rone were parked in the emergency lane of I-240 with a broken down motorcycle. Cox left her lane and plowed into the victims. Mr. Williams died at the scene. Mr. Rone was severely injured and has had multiple surgeries to try and repair the physical damages caused by Cox. Cox had a BAC of .17 and tested positive for Sertaline (Zoloft). She received a sentence of 7.2 years as a mitigated offender.



Colyer

Darryl Colyer, 29,of Greenville, TN, pled guilty as charged to vehicular homicide by intoxication and received an eight year sentence. On February 15, 2008, Colyer and his wife had returned to the parking lot of a small trucking company for which defendant worked. Coyler was in a semi truck when his wife got out and walked to their personal vehicle. Coyler backed up the semi and ran over his wife killing her. A Tennessee Highway Patrol trooper responded and noticed that the defendant had a strong odor alcohol, slurred speech and was unsteady on his feet. The trooper saw beer cans in cab of truck. Colyer had a blood alcohol content of .16.

McGuire

Daniel McGuire, 27, of Kingsport blew through a Drivers License checkpoint being conducted by the THP on 7/11/08 almost hitting several THP officers. Sgt. Ken Wright, supervisor on scene gave pursuit and captured everything on video although he was some distance back from the defendant. McGuire continued on for some time and travelled across a bridge under construction (w/ workers on site and in close proximity). Ultimately, he ran a stop sign on Memorial Blvd. in Kingsport, TN. Traveling at the same time was 17 yr old Joshua Darnell (an only child) who was driving a motorcycle in the outside lane. McGuire ,instead of traveling in the inside lane of travel, got into Mr. Darnell's lane and ran over him without braking. Mr. Darnell died immediately from his injuries. McGuire only stopped because the motorcycle was so embedded in the truck that it was impeding his travel. He ditched the truck and took off on foot. He was later found and taken to the hospital for a blood draw. McGuire was sentenced to 12 years.

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The Scene

"It is only through labor and painful effort, by grim energy and resolute courage, that we move on to better things."

Theodore Roosevelt

THE CRASH PAGE

By Jim Camp

Not long ago I took a trip out of state to train law-enforcement officers how to better investigate and process vehicular homicide cases. Most of these officers were not local to the jurisdiction of the training site. They travelled from other parts of the state to attend. The training itself was a great success. The officers in attendance were smart, attentive, engaged and participatory. We discussed extensively the critical role of the officers who first respond to a crash scene. We talked about the evidence that exists on the roadway following a crash and the clues that evidence provides. And finally we spoke at length about the necessity of treating the scene of the crash like the potential crime scene it is, protecting the roadway from traffic, passersby, well meaning fire departments and clean-up crews.

On the second day of the conference I along with other faculty members and approximately 30 law-enforcement officers were travelling on a school bus to a facility away from the main conference site. As I looked towards the front of the bus I saw a pick up truck stop abruptly on our side of the road near the shoulder facing in the wrong direction. Before my mind could sort out the facts I saw smoke rising from the ditch and heard the bus driver shout "There's a car on fire!" The bus stopped and emptied quickly. The officers immediately leapt into action. Several went to the car that had started on fire and set about freeing the unconscious driver. Others attended to the occupants of the pickup truck and the rest immediately stopped traffic in both directions even though the road was not blocked by the wreckage. They were protecting the potential crime scene.

When the unconscious driver was pulled from his burning vehicle it was obvious that he had expired. His injuries were mainly on his left side and it was obvious from the damage to both vehicles that the truck struck the deceased driver's vehicle at the driver's door. It appeared at that point that the driver of the pickup was at fault.

Because local authorities had not yet arrived, I moved on to the occupants of the pickup and questioned them gently about the crash. I also questioned a driver who had been following the pickup truck as well as a farmer who had stopped his tractor at the stop sign that controlled the road where the deceased driver appeared to be travelling prior to the crash. I was told that the deceased driver pulled out from a stop sign and pulled directly in front of the pickup. The physical evidence (yaw marks, skid marks, debris field and crush damage) appeared to corroborate these statements.

When the local authorities arrived they walked to where the deceased was resting asked a few questions about his condition when he was pulled from the car that had by now exploded and was fully engulfed in flames. They then made contact with the occupants of the pickup obtaining their name and contact information. I watched as they never so much as looked at the yaw marks or debris field. They never took one photograph of any portion of the roadway that held the evidence of the cause of the crash. They never interviewed one witness. A fatal crash that "appeared" (albeit incorrectly) at first glance from the vehicular damage to be caused by someone other than the deceased. They moved immediately to the officers from our group who had stopped traffic, thanked them, and proceeded to move traffic along DIRECTLY THROUGH THE DEBRIS FIELD, disturbing and destroying all of the potential evidence.

Needless to say, the discussion when we returned to the bus was an interesting one. But it provided a meaningful teaching moment for the officers from our conference who did it the right way. In the end that is the point. There is a right way and a wrong way. The right way sometimes takes more work, inconveniences some and requires more ingenuity. But the right way also leads to justice and saved lives. We do it the right way because it is what the public expects. Because it is not just our job. It is our duty.