



# DUI NEWS

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**BUILD YOUR ARK**

by Jim Camp, TSRP

Impaired driving cases carry with them many challenges. One of the most perplexing and frustrating of these challenges can arise from the need for health care participation in obtaining blood from suspects. This can become particularly problematic when suspects are being treated at a health care facility for injuries suffered in an impaired driving related crash.

In discussing this issue with our cohorts around the country, the difficulties are, for the most part, the same. Sometimes breath tests just won't cut it. This includes situations where there is a suspicion of poly-drug use or when a suspect refuses a test and the law provides for forced blood. With a cooperative hospital staff blood is drawn and the investigation carries on. The plot thickens however when the health care providers involved refuse to draw that blood. This scenario usually leads to the dreaded 2:00 am phone call which is the bane of every prosecutor's existence. This is not the best time to try to fix the problem as the clock is ticking, your spouse is complaining and alcohol is dissipating from the suspect's blood.

Hollywood provides surprising direction. In the motion picture *Spygame*, a retiring CIA operative played by Robert Redford was making plans to protect himself from being set up by superiors. When accused by his secretary of being paranoid for doing so, he asks the rhetorical question: "When did Noah build the ark?" His rhetorical answer: "BEFORE it rained". Great advice! The time to prepare for potential problems with health care providers is BEFORE they occur.

We as prosecutors need to take the laboring oar to prepare those in the health care community for these situations. We need to make sure they are aware of the requests that will be made of them and the consequences of their assistance. Brace yourselves now for what comes next To do this we have to get out of our office and actually GO TO the hospital and SPEAK to them. I can hear some of you beginning to complain all the way down here in Nashville. I know you are slammed. Everyone has insane case loads. It is inconvenient to take time out of your busy day to schedule a trip to the hospital to meet with doctors, nurses, hospital administrators and \*gasp\* maybe even a hospital attorney. But a few hours spent now will save days and weeks of trying to fix something AFTER the fact that might not be able to be fixed at all. I also know the truth; for some of you it doesn't have anything to do with taking the time. It has everything to do with breaking out of your comfort zone. Many lawyers ..specifically prosecutors...find it scary to talk to health care providers. Why? Because we don't speak the same language! That is one of the most important reasons to open the lines of communication and engage in a meaningful, non-threatening dialogue.

(Continued p. 12)



## RECENT DECISIONS

**State v Ferrell**, 2010 Tenn Crim App Lexis 14

**NO MENS REA REQUIRED FOR DRL**

Richard Ferrell was in a non injury car crash. At the scene he admitted driving and a computer search indicated he had a cancelled, suspended or revoked license. He exercised his right to a jury trial and argued that he did not know he could not drive with a revoked license. The Court in his previous case had taken his license and given him a receipt for it. He argued the receipt was his ticket to drive. He lost. The Court referred to previous decisions to reaffirm that there is no required mens rea for this offense.

**State v Orr**, 2010 Tenn Crim App Lexis

**DUI 4TH OFFENSE AFFIRMED**



Deborah Jo Orr, 40, pictured on left, was stopped after officer Scott Lyle of the Dickson Police Department found a car that had been identified by a citizen with a warning that the driver may have been drunk. Once he got behind the car to observe, Ms. Orr parked at K-mart. The officer approached and saw, smelled and heard indications of impairment. Officer Timothy Hedge responded to the scene and conducted field tests. Ms. Orr could not touch her nose, walk heel to toe or count and touch fingers. Orr had an open beer in her car and admitted to some drinking. After her arrest a crack pipe was discovered in her purse. Orr was convicted of her fourth DUI, driving on a revoked license, violation of implied consent and possession of drug paraphernalia.

**State v Collins**, 2010 Tenn Crim App Lexis 56

**YOGA GIRL CANT' DO WALK AND TURN**

Angela Ann Collins was driving on February 9, 2008. She was observed by Dickson County Deputy Mark Eggiman as she crossed over the fog line three times. After being pulled over, the deputy smelled alcohol on defendant and he administered both the walk-and-turn and the one-leg stand test. Defendant was unable to perform either test although she stated she took yoga. Collins refused a breath test and was sentenced to serve seven days.

**State v Chisholm**, 2010 Tenn Crim App Lexis 76

**8TH OFFENDER OUT ON BOND INJURES TWO**

George Chisholm, 60, pled guilty to his 8th DUI, which occurred March 3rd, 2008 and he pled guilty to two counts of vehicular assault for a crash he caused while drunk 25 days after he was released on bond! He was on probation for other charges prior to the DUI and on bond for DUI when he severely injured two people. Chisholm expressed no remorse and was only worried about getting probation during his pre-sentencing interview.

**State v Cooper**, 2010 Tenn Crim App Lexis 56

**NURSE ON ILLINOIS DUI BOND GETS SIGNIFICANT SENTENCE**

Registered nurse Alecia Cooper, pled to a first offense DUI after a .22 BAC and was sentenced to serve 11 months 29 days at 100%. She was permitted to request a furlough to attend an in patient rehab after 90 days. If she completed the rehab, the balance of her sentence would be spent on probation with rehab after care. She appealed the decision despite having been arrested for a DUI in Illinois sixteen days prior to her offense here.

## RECENT DECISIONS



**State v Scott**, 2010 Tenn Crim App Lexis 118

### LUCKY HIS VICTIM LIVED

The driver, Justin Scott, is fortunate that his victim did not succumb to the massive injuries he caused when he crossed the center line while impaired and crashed head on causing major damage to the victim that will have a life long impact. He received a sentence of 3 years for vehicular assault suspended after six months in jail. The sentence was affirmed.

**State v Rogers**, 2010 Tenn Crim App Lexis 112

### SUBDIVISION ATV DRIVING

Gerald Rogers, a seventh DUI offender, thought he was entitled to drive his ATV after consuming a 12 pack of beer on a subdivision road. He argued that the road was not public, because of three no trespassing signs posted in the subdivision. During cross examination the defendant's wife admitted that service trucks, visitors and the mail carrier travelled on the road. In addition, the Sheriff's Department had been asked to patrol in the subdivision. Rogers argument failed as the road was subject to the use of the public.



**State v McConaughy**, 2010 Tenn Crim App Lexis 182 **SEARCH ME**

Defendant was driving 42 mph in a 30 mph zone. When McConaughy was asked if he had any weapons or drugs in the car he invited the officer to "stick your head in there if you like". After the driver failed to produce proof of insurance the officer asked again and was told the same thing. After tickets were written the defendant admitted to having a switchblade in his pocket. He was arrested and placed in custody. An inventory search of the car revealed meth, a scale and a pipe in the trunk. The Court reviewed the scope of detention and the necessity for a pat down search and affirmed the convictions.

**State v Brooks**, 2010 Tenn Crim App 114

### MIRANDA

Michael Hugo Brooks was convicted of DUI 3rd offense after he crashed and left his car on it's side in the middle of the road. When Savannah Police Officer Scotty Love arrived at the scene the neighbors directed him to the Brooks house nearby. Brooks was the registered owner of the car and had left after his wreck. At the house Brooks admitted he was the driver, was found to be under the influence after admitting to drinking and performing field sobriety tests. Brooks wanted the evidence thrown out due to a lack of Miranda warnings. The Court rejected his dream citing Berkermer v McCarty 428 U.S. 420 and various Tennessee cases all of which have held that "asking a modest number of questions and requesting the performance of 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."

**State v Lockhart**, 2010 Tenn Crim App 253

### DRUNK BEFORE DRIVING

In Loudon County an officer went to a home because a family member was concerned that the defendant was going to kill himself. The officer saw a badly drunken man. A few minutes after he left, the family called that the Defendant had left and was driving nearby. Another officer stopped him and arrested him for DUI. The stop based on the knowledge of the first officer and the call was upheld.

**I don't know! I don't know why I did it, I don't know why I enjoyed it,  
and I don't know why I'll do it again!" Bart Simpson**

### Sevier County man arrested for 13th DUI

Bart Reagan might be kin to Bart Simpson. They appear to enjoy more than a common first name. Bart Reagan was arrested recently in Sevier County for his 13th DUI. I would not be surprised if he used the Bart Simpson quote above to explain his behavior.

Reagan has been to prison several times for felony DUI's and for drug convictions. He was convicted of DUI 4th or greater offense October 13, 1999, February 26, 1999, April 11, 2000 and July 26, 2002. He also went to the big house for bribing a public servant, schedule IV drugs in 2005 and schedule II drugs, cocaine, in 2005. His longest sentence was 10 years, but almost every sentence he got was for an offense committed on probation or parole. Things are not going well with Simpson and he is doing a good job of teaching us that the Judicial system is poorly equipped to handle a person like him.



2000 D.O.C. mug

09/14/2005	SCHEDULE II DRUGS: COCAINE < 1/2 GRAM	11/07/2005	JEFFERSON	8434	4 YRS 0 MTHS 0 DAYS	ACTIVE
09/14/2005	SCHEDULE IV DRUGS: MAX. \$50,000 FINE	11/07/2005	JEFFERSON	8434	4 YRS 0 MTHS 0 DAYS	INACTIVE
07/26/2002	DUI, 4TH OFFENSE & SUBSEQUENT	12/02/2004	SEVIER	10160II	3 YRS 0 MTHS 0 DAYS	INACTIVE
01/06/2001	BRIBERY OF PUBLIC SERVANT	04/02/2001	JEFFERSON	7105	6 YRS 0 MTHS 0 DAYS	ACTIVE
04/11/2000	DUI, 4TH OFFENSE & SUBSEQUENT	08/21/2000	JEFFERSON	6951	2 YRS 0 MTHS 0 DAYS	INACTIVE
02/26/1999	DUI, 4TH OFFENSE & SUBSEQUENT	08/10/2000	KNOX	70628	1 YRS 0 MTHS 0 DAYS	INACTIVE
10/23/1999	DUI, 4TH OFFENSE & SUBSEQUENT	07/17/2000	SEVIER	8034	1 YRS 6 MTHS 0 DAYS	INACTIVE



Bart in March 2010

#### DID YOU KNOW?

Night time seat belt violators are twice as likely to have prior alcohol violations and are between 25 and 40% more likely to have felony and violent crime history. In Washington they compared 3000 drivers who got seat belt tickets at night to 3000 drivers who did not, but were randomly selected from driver's license lists. The ticketed were over 500% more likely to have felony history. Source: Lowell M. Porter, Director Washington Traffic Safety

#### DUI AND THE CITY LIMIT

##### **State v Burkhart**, 2010 Tenn Crim App Lexis 222

In a case from Sevierville, the Court of Criminal Appeals has confirmed a DUI conviction in which the city officer continued observing a car and pulled it over 6 tenths of a mile beyond the city limit. This is different from a fresh pursuit case, which has its own jurisdictional case law. In this one Officer Stone had seen some lane violations and some speeding in the city, but did not pull it over until it crossed the fog line outside the city. The Court found that a city officer has a mile boundary area that is within his jurisdiction in a violation of general law. By statute this does not apply to speeding. Congratulations to prosecutor George Ioannides.

Visit our blog at: <http://tnduiguy.blogspot.com>

## ASK THE TSRP

Tom and Jim,

A law enforcement officer brought an International Driver's License to my office to find out if it is legitimate. How can you tell? A Curious ADA

Dear Curious:

If a driver has an International Driver's License, understand he has nothing. There is no such thing.

There are International Driver's Permits which are in booklet form. They are available from the American Automobile Association (AAA) and the American Automobile Touring Alliance (AATA) and they are not laminated like a license. They are made available to people who are traveling and have a legitimate license in their native country. They expire in 1 year. They must be accompanied by the legitimate license from the native country.

### **To see if a permit is legitimate:**

- 1) Make sure the ID is not expired;
- 2) Check for the state logo or seal;
- 3) Font styles should be consistent;
- 4) Compare the photo, height and weight on the ID to the person;
- 5) Evidence of tampering includes glue lines, bumpy surfaces, ripped edges and pin holes;
- 6) The back of the document should not be blurred or out of alignment. Many scammers are careless about the back of the document;
- 7) Many staple holes in the document indicate the original cover has been removed and replaced.

### **Scammers will sell fake international driver's licenses to three types of people:**

- 1) Non-native speakers who believe consumer advertising;
- 2) Citizens who have had legitimate licenses revoked;
- 3) People trying to hide their identity including wanted criminals, terrorists and other people who don't qualify for a license.

### **Scammers make big money from fake licenses.**

The document should cost \$10-15 from AAA or AATA. On the internet, many sellers charge \$35 to \$210 for fake licenses. An International Driver's License from a document mill can cost as much as \$800. These fake documents are supposed to be good for ten (10) years. People selling these documents are preying on people. Many don't know they are being scammed.

An excellent resource and source for this information is a publication of the Regional Organized Crime Information Center (ROCIC) titled: *THE INTERNATIONAL DRIVER'S PERMIT*. This publication is available from ROCIC or in the Resources section of our website..



## How is your County Doing?

Our friends at NHTSA have published a State by State and County by County breakdown of all crash data collected in 2008. Data for 2009 will be published soon. The maps below act as an outline to define all fatal crashes in your county and all fatalities per 100,000 population. To see your county specific numbers go to our website at: <http://dui.tndagc.org> and look in the "Current News" folder.

The Counties with the most fatal crashes in 2008 were:	Fatalities with a Driver over .08 BAC :	Most fatalities per capita 100,000 population:	Most fatalities with .08 Driver per capita:
<b>Shelby</b> <b>108</b>	<b>Shelby</b> <b>32</b>	<b>Grundy</b> <b>70.32</b>	<b>DeKalb</b> <b>26.75</b>
<b>Davidson</b> <b>74</b>	<b>Davidson</b> <b>27</b>	<b>DeKalb</b> <b>53.49</b>	<b>Union</b> <b>26.30</b>
<b>Hamilton</b> <b>42</b>	<b>Hamilton</b> <b>15</b>	<b>Henderson</b> <b>48.30</b>	<b>Sequatchie</b> <b>22.09</b>
<b>Rutherford</b> <b>30</b>	<b>Knox</b> <b>15</b>	<b>Scott</b> <b>47.37</b>	<b>Benton</b> <b>18.53</b>
<b>Robertson</b> <b>22</b>	<b>Hawkins</b> <b>10</b>	<b>Humphries:</b> <b>44.08</b>	<b>Chester</b> <b>18.39</b>
		<b>Union</b> <b>43.09</b>	<b>Van Buren</b> <b>18.24</b>
		<b>Meigs</b> <b>42.41</b>	<b>Wayne</b> <b>18.06</b>

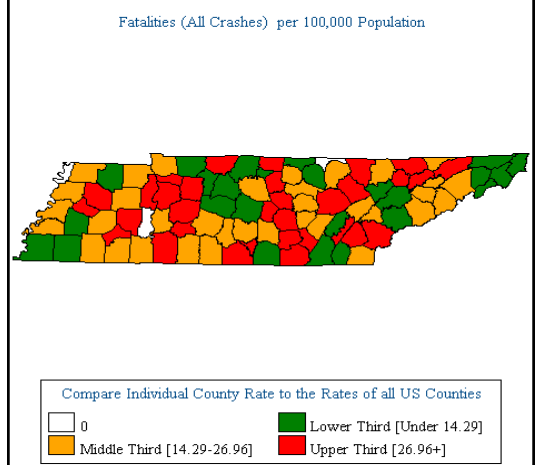
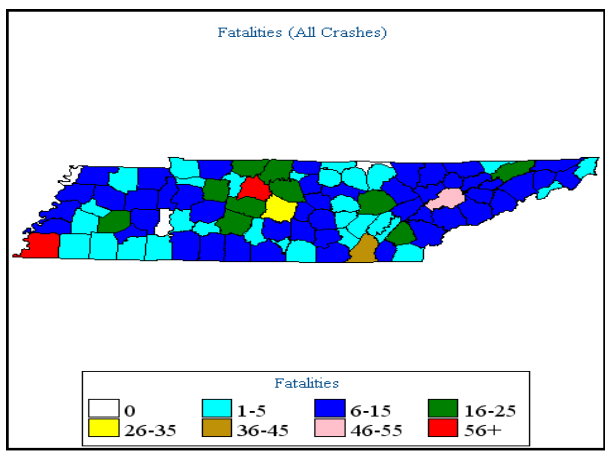
## Calendar Year 2009 Traffic Fatalities Continue Record Downward Trend

The U.S. Department of Transportation announced that the number of overall traffic fatalities reported at the end of 2009 reached the lowest level since 1954, declining for the 15th consecutive quarter. According to early projections, the fatality rate, which takes into account the number of miles traveled, reached the lowest level ever recorded. "This is exciting news, but there are still far too many people dying in traffic accidents," said U.S. Transportation Secretary Ray LaHood. "Drivers need to keep their hands on the steering wheel and their focus on the road in order to stay safe."

The projected fatality data for 2009 places the highway death count at 33,963, a drop of 8.9 percent as compared to the 37,261 deaths reported in 2008. The fatality rate for 2009 declined to the lowest on record, to 1.16 fatalities per 100 million Vehicle Miles Traveled (VMT) down from 1.25 fatalities per 100 million VMT in 2008.

"This continuing decline in highway deaths is encouraging, but our work is far from over," said National Highway Traffic Safety Administrator David Strickland. "We want to see those numbers drop further. We will not stop as long as there are still lives lost on our nation's highways. We must continue our efforts to ensure seat belts are always used and stay focused on reducing distracted and impaired driving."

The National Highway Traffic Safety Administration attributes the decline in 2009 to a combination of factors that include, high visibility campaigns like *Click It or Ticket* to increase seat belt use, and *Drunk Driving, Over the Limit Under Arrest* which helps with the enforcement of state laws to prevent drunk driving and distracted driving. In addition, the decline is also the result of safer roads, safer vehicles and motorists driving less.



Visit our blog at: <http://tnduiguy.blogspot.com>

## In the Tennessee General Assembly

**HB 3282:SB 3121:** Mandates that implied consent violations be determined by Sessions Court Judge rather than Judge, who determines guilt in DUI case:

Passed in House Judiciary Committee. On House calendar for April 7, 2010. Action pending in Senate.

**HB 3281: SB 3446:** Permits stricter bond conditions for multiple DUI offenders and mandates greater bond conditions for DUI offender released on bond who commits another DUI.

Passed in House by a vote of 98-0. Senate Judiciary April 6 or 7, 2010

**HB 3280: SB 2970** Broadens definition of impairing substances to include drugs, alcohol, other substances that impair or a combination thereof.

Passed House 95-0. On Senate Judiciary calendar April 6 or 7, 2010

**HB 0919: SB 0844** Tolls prior convictions on date of arrest for new DUI offense.

Passed House 95-0. On Senate Judiciary Committee April 6, 2010.

**HB 2768: SB 2965:** Requires ignition interlock on vehicle if DUI driver was over .15, has a child passenger or violates implied consent and has a listed prior and requests a restricted driver's license.

In House budget of Finance, Ways and Means Committee April 14, 2010.

**HB 2917: SB 2897:** Requires ignition interlock on vehicle of all DUI offenders.

In House budget of Finance, Ways and Means Committee April 14, 2010.

**HB 2769: SB 2860:** Requires that an officer operating speed detecting or breath testing instrument be trained.

Has been signed by Governor. Effective date of new law is July 1, 2010.

**HB 2544: SB 2523:** Establishes a \$200 fine for super speeders, who travel 85 mph on a four lane highway or 75 mph on a two lane road.

In House Transportation Committee April 6, 2010.

**HB 719:SB 0965:** Directs Dept of Safety to establish a "Repeat DUI offender registry"

House Judiciary Committee April 6, 2010

## CHECKPOINTS in 2008

There were a total of 766 checkpoints conducted by the Tennessee Highway Patrol in 2008. Five hundred and thirty four (534) were driver license checkpoints. Two hundred thirty two (232) were sobriety checkpoints. The checkpoints resulted in over 8,000 citations.

DL Checkpoint Citations Issued by Violation Type

Violation Type	Number of Citations Issued
Other Violation	1,456
Safety Belt Law	495
Other Driver License Law	1,824
Revoked/Suspended Driver License Law	424
Registration Law	1,238
Open Container Law	61
Light Law	77
Juvenile Offender Act Violation	10
Equipment Law (Non-commercial)	141
Misdemeanor Drug Violation	57
Felony Drug Violations	6
Driving While Impaired	1
Driving Under the Influence	50
Commercial Vehicle Violations	22
Child Restraint Device Law	245
<b>Total</b>	<b>6,105</b>

Sobriety Checkpoint Citations Issued by Violation Type

Violation Type	Number of Citations Issued
Other Violation	454
Safety Belt Law	241
Other Driver License Law	239
Revoked/Suspended Driver License Law	75
Registration Law	428
Open Container Law	47
Light Law	109
Juvenile Offender Act Violation	1
Equipment Law (Non-commercial)	69
Misdemeanor Drug Violation	22
Felony Drug Violations	3
Driving While Impaired	0
Driving Under the Influence	68
Commercial Vehicle Violations	5
Child Restraint Device Law	155
<b>Total</b>	<b>1,919</b>



## WEBSITE AND BLOG UPDATE

Last issue we promised a website and blog would be up and running soon. We were half right. The blog, <http://tnduiguy.blogspot.com>, was published in for the first time in November, 2009. A hit counter was added January 8th, 2010. As of April 5, 2010 there have been over 3,415 views of the site. It will continue to be the route for quick legislative updates, video instruction and items of interest. We are proud to have found our video cameras and computer programs like Movie Maker that permit us to shoot and publish some video clips. In the January folder we included videos from Dr. Karl Citek and Dr. Greg Davis. We also have clips of some defense expert witnesses as they testified in cases. If you have videos of witnesses you would like to share, let us know.

Phase one of the website went on-line April 5, 2010. The first phase contains information and materials that anyone in the world can view. Phase two will be available in April and will include password protected materials for prosecutors.

The screenshot shows the Tennessee TSRP website header with navigation links: TRAINING, NEWSLETTER, RESOURCES, NEWS, CONTACT. Below the header is a 'WELCOME TO THE TENNESSEE TSRP WEBSITE' section with a paragraph about traffic fatalities in 2008 and a photo of a Tennessee State Trooper. To the right is a 'CURRENT NEWS' section listing legislative proposals and docket items. Below that is a 'CATEGORIES' section with links for TRAINING, FROM THE COURTROOM, and FROM THE LEGISLATURE.

Overlaid on the right is a blog post from 'TENNESSEE DUI GUY' dated Thursday, March 25, 2010. The post title is 'New Supreme Court decision' and discusses the case *State v. Swift*. It mentions that the defendant was convicted of Aggravated Robbery and that the Court reduced the charge to aggravated assault and theft. A link to the opinion is provided: <http://www.tsc.state.tn.us/OPINIONS/TSC/PDF/101/SC%20State%20v%20Kevin%20Swift%20opn.pdf>. The post is attributed to Thomas E Kimball at 10:30 PM.

Below the main article is another blog post titled 'New Market man arrested on 13th DUI charge' with a photo of Hobart Reagan. The text states that Reagan was driving on a revoked license and had 12 prior DUI convictions. He was arrested in Sevier County, had been drinking and took Xanax, refused a blood test, and had a 10-year sentence. A link to the story is provided: <http://www.wate.com/Global/story.asp?S=12206226>. The post is attributed to Thomas E Kimball at 10:17 PM.

On the far right of the screenshot is a poll titled 'Are you for or against legislation to permit wine sales in grocery stores?'. The poll results are: For (19, 70%), Against (8, 29%), and Can't Decide (0, 0%). Below the poll is a 'Subscribe To' section with dropdown menus for Posts and All Comments, and a 'Search This Blog' field.

## WEBSITE CONTENTS

The website has drop down folders with materials available to anyone. The materials include training notices for law enforcement and prosecutors, this and all prior newsletters, resource materials including the Standardized Field Sobriety Tests validation studies, the National Traffic Law Center monographs, a study concerning driver characteristics at various BAC levels, the Tennessee Code relevant to DUI cases, the TBI recidivism report and other materials. In the news folder a reader will find the NHTSA study recently released about characteristics of nighttime drivers, statistics and data, an Attorney General opinion concerning forced blood and other relevant items. The folder items will be updated when necessary.

There will also be a link to our blog. The blog serves a purpose of keeping things real and relevant. There are truckloads of disinformation made available on the web by defense attorneys and defense experts in the DUI defense industry. The blog is our meek attempt to display some of what actually happens affecting traffic safety. It is updated several times a week with Court and Legislative news as well as stories from across Tennessee and the nation. We hope it is informative and entertaining.

Visit our website at: <http://dui.tndagc.org>

**VEHICULAR HOMICIDE  
MURDERERS ROW**



**Eight Year Sentence**

Derrick Parrott, 24, of Crossville, is serving eight years in prison after pleading guilty to vehicular homicide by intoxication in Cumberland County.



**State v Delarosa, 2010 Tenn Crim App Lexis 109**

**Illegal immigration supports enhancement factor for prior criminal behavior**

Justin Heath Smith, was traveling northbound on I-140, the Pellissippi Parkway, at about 4:47 p.m. on Saturday, October 13, 2007. Appellant was also driving northbound on I-140 at the time, as were six witnesses listed by the State. Those six witnesses would testify at trial that Gabriel Delarosa was driving erratically at speeds between 90 and 100 miles per hour, weaving in and out of traffic from guardrail to guardrail, and nearly striking other vehicles. Delarosa pushed some vehicles off the road. Delarosa struck the rear of Justin Smith’s car, forcing him off the road and causing his vehicle to tumble end over end. Justin was ejected from the car and ultimately died from his injuries. Rather than stop and attempt to aid his victim, Delarosa did not even slow down. He continued to speed down I-140. About a mile down the road, his car became disabled and ran into a guardrail. Delarosa was tested and had a .22 BAC. When arrested he violently beat his head in the cruiser until he had to be taken to the hospital for bleeding. Delarosa’s sentence of 11 years to serve was affirmed. The Court noted that: “the admission of illegally entering the country is still a valid basis for finding a history of “criminal behavior” under enhancement factor (1).

**SEVIERVILLE HOMICIDE 15 YEAR SENTENCE**

In **State v Gibson**, Sevierville officer Preston Parrish, along with other officers from the police department and Trooper Charles Massengill, investigated. Forensic blood testing revealed that Gibson was under the influence of pharmaceuticals at the time of the crash, in which Carolyn Wilson of Anderson, S.C., was killed. Circuit Court Judge Richard R. Vance sentenced Gibson to 15 years in prison on the vehicular homicide charge and eight years each on the assault charges for injuries to the victim’s son and other family members.

**SOBRIETY CHECKPOINT AFFIRMED**

**State v Aloyo, 2010 Tenn Crim App 160**

A sobriety checkpoint in Williamson County resulted in the arrest and conviction for DUI 3rd offense for Elliot Aloyo. The defendant challenged the checkpoint. Judge Ogle for the Court of Criminal Appeals wrote a thorough opinion, which included consideration of prior decisions. The conviction was affirmed. Judge Ogle noted that no drug dogs were at the checkpoint as evidence that the sobriety checkpoint was not a general or multi- purpose checkpoint.

## ADVANCED DUI TRAINING FOR PROSECUTORS

Before we know it the prosecutor training on June 22-24, 2010 will be upon us. The excitement is building. Travel plans are being made. All across Tennessee prosecutors are checking calendars to see if there are any great concerts in Nashville or a great ballgame at Greer Stadium featuring the Nashville Sounds, so they can relax and refresh after a day of learning. Jim Camp is trying to talk me out of wearing my white, southern gentleman suit. I am trying to talk him into being healthy for all three days of the training. Our super faculty including our Chief Justice, toxicologists, prosecutors, an industrial psychologist and others are practicing their talks in front of bathroom mirrors every day to be prepared to fascinate and impress. Make your reservations to attend very soon. Go to our website and open the training folder.

On the agenda:

**Why DUI – The Impact of DUI on the Lives of Tennesseans**

**Pre Trial Preparation**

**New Legislation**

**Picking a Jury: What we know about attitudes concerning DUI**

**Introduction of Evidence of Breath & Blood Tests**

**Defense Attacks on Testing Instruments**

**The Breath Test Operator**

**Toxic Effects of Alcohol on the Brain and Body**

**The Impairing Effects of Illicit Drugs on the Brain and the Body**

**The Impairing Effects of Prescription Drugs on the Brain & the Body**

**SFST Demonstration**

**How SFST & other tests provide information about Impairment of alcohol on the brain and body**

**The Drug Recognition Expert Program in Tennessee**

**Commercial Vehicle Issues**

**DUI Treatment Courts**

**Monitoring the offender**

**An Ounce of Prevention**

**Rule 11 Appeals**

**How you make a difference: The Secret to Effective DUI Prosecution**

**Understanding the Supreme Court**



Tom Kimball at Lifesavers, Portland, Oregon in 2008. Spreading southern civility in his Colonel Sanders suit.

The Advanced DUI Training will be held at the Tennessee Bureau of Investigation and lodging will be at the Holiday Inn Airport. Contact Sherri Harper for further details; sjharper@tndagc.org or 615-253-6733.

### DID YOU KNOW SEATBELT LEGISLATION MATTERS ?

Tennessee passed a mandatory seat belt law for drivers and front seat passengers in July 2004. Seat belt use has risen from 68.5% in 2003 to an impressive 81.5% in 2008. During that time traffic fatalities decreased from 1,339 deaths per year to 1,035. This is an example of what a Legislature can do to save lives in Tennessee. If we had kept the fatality rate of 2004 each year, we would have lost another 1,216 lives. Even with this legislation 51% of those killed on Tennessee roadways in 2009 were not wearing seat belts. Perhaps it is time to think about a law that would include back seat passengers and a fine greater than \$10.

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## THE CRASH PAGE

**BUILD YOUR ARK cont.**

**By Jim Camp**

Who do we talk to? It is a good idea to include everyone that would otherwise complain if they are left out. Particularly the Director of the Emergency Department, the hospital attorney, the hospital administrator or their designee, the Director of Nursing, the Chief of Security as well as the heads of the law-enforcement agencies that will be serviced by this hospital. It is a good idea, however, to meet ahead of time with your law-enforcement representatives to discuss the potential problem areas. It is also a good idea to let them know that they should allow you to be the spokesperson and they should, whenever possible follow your lead.

But how and where do you begin? First we have to understand one of the things many health care providers fear most. Rightly or wrongly, that is getting sued. Remember, just about the only time most health care providers have contact with an attorney is when it has something to do with them getting sued or with them learning about how not to get sued. Also along this same line they are afraid they will get sued just for being part of the blood draw process. They usually have no knowledge of any immunity statute that applies and for that matter neither do the hospital attorneys. Furthermore they do not want to be involved in restraining any individual much less a patient who is having blood drawn against that patient's will.

Second, health care providers are also afraid of going to court. Usually that fear originates from a lack of experience in court and a lack of understanding about their role in the criminal justice system. Myths concerning the system run rampant among many health care professionals. They are afraid they will be receiving daily subpoenas to court. They are afraid that their trip to court will end up taking a full day away from work. They are afraid they will be sued or charged with a crime. As a result, health care providers avoid court like the plague.

Third, we must understand the reality of hospitals in general. They are most certainly in the business of saving lives and helping people. But when it comes to some hospital administrators and for that matter hospital attorneys, they are in the business of making money (or at least not losing money) so they can continue to save lives and help people.

Knowing the way our friends in the health care profession think allows us to prepare for a true meeting of the minds. That includes approaching our hospital hosts in a conciliatory fashion. In other words, telling them they "had better draw or else", or coming in like a Panzer Tank doing 60 mph leaving nothing but scorched earth in our wake probably isn't going to be our best plan of attack. We need to use our new found knowledge to structure our discussion in a non-threatening way. We need to let them know we are not adversaries. Build bridges. Talk with them. Bust the myths. Ask them what concerns them about their involvement in the blood draw. Listen and address those concerns and educate. That is, after all, one of the things we do best.

Be prepared to discuss what the health care provider's role really is in the blood draw procedure. Make it clear that they will not be involved in restraining the suspect. Discuss the availability of a restraint chair or bed along with a room away from other emergency patients for use with a combative suspect. Perhaps even a separate entrance can be used for legal blood draws. Discuss the procedure to be used if the suspect is admitted as a patient and is already out of the emergency department and in residence in a patient room. Explore the use of hospital security personnel or University/Campus to enhance the reputation of your office and our profession in general. You will avoid sleepless nights and most importantly you will help ensure that justice is done and future lives are saved. Build your Ark BEFORE it starts to rain.

***Tennessee District Attorneys General Conference***

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