



# DUI NEWS

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*This material was developed through a project funded by the Tennessee Department of Transportation, Governor's Highway Safety Office and the National Highway Traffic Safety Administration.*

## 110 REFUSALS

October 2010 was not an unusual month for traffic safety in the Nashville Metro area. It was the month in which I decided to track every DUI arrest which included an implied consent violation of the law. There were 110 examples that month. Those 110 are a tiny portion of the 3,461 DUI cases prosecuted in Nashville in the last year. Cases with refusals are different than cases with blood test results. A refusal occurs when an offender would rather give up the license to drive for a year than permit the State to have evidence of his/her blood alcohol level. More than a year has passed since the crimes occurred and most have been resolved. Data from these cases may help the reader better understand how the legal system works in one metropolitan county in the State. The data provides hints at what leads to an arrest and tells us about who is committing the crime of DUI and violating the implied consent law.

**METHOD**

To gather this data, I reviewed the daily arrest reports posted by the Nashville Davidson County Metro Police Department. The arrest list is posted on the web and removed within 14 days. The list includes all arrests for all crimes. I collected names of those who committed DUI and implied consent violations and then copied the affidavit of complaint for each of the DUI charges from the website of the Davidson County Criminal Court Clerk. That excellent website makes available to the public the local record of each offender. It notes the charged offense, the disposition, disposition date and includes the affidavit of complaint. No person was interviewed concerning this data. All data came from public records.

**DISPOSITION OUTCOMES**

Many variables determine whether a driver charged with DUI is convicted of DUI. For instance, an officer may be suspended or fired between the date of the arrest and the date of trial. Without this witness, the State cannot hope to succeed in a trial. In some cases the reason for the traffic stop, when evaluated in light of Tennessee case law, which is radically different than most other States, may result in a decision to cut losses and negotiate the best settlement possible.

**TIME AND DOCKET MANAGEMENT**

The 110 implied consent violation and DUI cases reviewed were the tip of the docket iceberg. Thousands of cases are resolved every year in the General Sessions Court; 2,852 of them were DUI cases. If every case went to trial, the Courts would need more than 24 hours every day to manage the caseload. The longer a case exists, the more likely the case will result in a reduction. DUI cases that resulted in DUI Convictions in this sample lasted 67.7 days. Reductions occurred on average on the 97th day after arrest.

(Continued on page 6)

## RECENT DECISIONS

**State v Salmon**, 2011 Tenn Crim App 756

**Sleeping Drunk: Community Caretaking**

Sevierville Officer Matt Nichol was dispatched to check on a car with a possible sleeping driver. He arrived on the scene to find a stationary vehicle in the left turn lane of traffic with the driver of the vehicle slumped over in his seat. From the videotape of the encounter, it was clear that it took the officer several minutes to rouse defendant, who appeared groggy and disoriented when he finally opened the door. The defense argued that the “stop” should have been suppressed based on State v Williams. The Court rejected the argument noting that this was a consensual encounter with a community caretaking function. The Court also rejected a Miranda claim concerning admissions.

**State v Moats**, 2011 Tenn Crim App 817

**Sleeping Drunk: Not Community Caretaking**

Etowah Police Sergeant Phyllis Bige saw a car in a parking lot with it’s lights on and a driver in the driver’s seat. The store was closed and there were no loitering signs in the lot. She left the parking lot and returned five minutes later to see the same thing. She stopped and approached the vehicle and asked the driver if he was okay. Despite the fact the officer walked up to the car and asked the person in the car if he was okay, the Court of Criminal Appeals ruled that the driver was impermissibly seized, because there was no community caretaking in this case.

**State v Rita White**, 2011 Tenn Crim App Lexis 509

**Trial Issues**

In Dickson County, Rita White ran a red light. When stopped, she smelled of alcohol. Her spouse in the passenger seat had been drinking as well. Mrs. White completed the standardized field sobriety tests showing a multitude of clues. She signed the implied consent form after refusing to take a breath or blood test. This case sounds so typical of every other DUI case that it should make the reader wonder why the case went to trial. This case should serve as a lesson to officers that any DUI case can be a case that will go to trial and be appealed! In this case the defense attorney did four things:

- 1) He subpoenaed the officer’s training materials including his NHTSA manual with three copies. There are several cases that indicate the manual cannot be used in cross examination of a non-expert witness. Nevertheless, when the officer could not find his training materials after he had moved, apparently the war was on.
- 2) The defense attorney in the case extensively cross examined the officer about the horizontal gaze nystagmus test even though he did not testify about it on direct exam. In Tennessee, only expert witnesses are permitted to testify about the HGN and the officer was not qualified by either side as an expert. The State did not object and the officer testified competently about the HGN at the defense request.
- 3) The defense attorney attempted to focus on minimizing the indicators of impairment by focusing on things that were not present. Since, the only bad driving observed was the running of the red light, he tried to make the fact that no weaving was observed into a positive factor. There was no testimony about problems with fine motor movements, so he tried to turn the fact that the driver did okay getting her license out of her wallet into an indicator of sobriety.
- 4) He argued that there was a Miranda violation, because the officer asked the deceptive driver three times whether she had consumed alcohol. This ignored long standing precedent in Tennessee and United States Case law.

**State v Robert White**, 2011 Tenn Crim App Lexis 811

**Using The Word Of A Liar To Form An Opinion**

White was stopped for speeding doing 58 mph in a 40 mph zone. He took a blood test with a result of .10. A defense expert then testified based on what the defendant told him about his alcohol consumption the night of arrest. The expert used this hearsay evidence, which was not tested by confrontation during cross examination, to form an opinion that the driver was under .08. The expert admitted on cross examination that the driver lied about his consumption at the time of his arrest. The jury found White not guilty of DUI per se, but guilty of DUI by impairment. The conviction was affirmed.

**State v Osborne**, 2011 Tenn Crim App Lexis 875

**Seat Belt Violation Leads to Meth Conviction**

Osborne was stopped for a seat belt violation. She displayed a lot of nervousness and admitted to having marijuana in the ash tray. That led to a search and discovery of meth. As a three time loser, she received a 2 year sentence with 30 days.

## RECENT DECISIONS

**State v Brewer**, 2011 Tenn Crim App Lexis 511

**Defense Effort**

ADA Kelly Lawrence in Williamson County prosecuted Brewer, who was convicted of DUI 2nd offense. His driving included crossing the double yellow line three times in fifty feet. Nashville attorney Rob McKinney, presented the defendant as a witness at a suppression hearing to claim that his Lexus had steering problems. The suppression motion failed when the Judge accredited the testimony of Franklin Officer, Herman Gomez. During the trial the officer stated his belief that the defendant was a hazard on the road. He noticed the defendant was confused, unable to follow directions, unable to perform the one leg stand test and refused a breath or blood test. On appeal McKinney argued the driving was not bad enough to merit a traffic stop, that he was deprived of special jury instructions and that the evidence was insufficient to convict. The conviction was affirmed.

**United States of America v. Bussell**, 2011 U.S. Dist Lexis 106207

**Traffic Stop In a Conspiracy Case**

Trooper Kelly Smith was alerted that a specific car was driving South on I-75 with a carload of people intending to purchase pills at the Florida pill mills. The car contained large sums of cash intended to be used in the pill purchases. The information came from a D.E.A. agent based on an authorized wiretap. The trooper waited for the car at Exit 76. When he saw the car he noticed that it was speeding. He confirmed his observation with radar. The car was going 73 mph in a 65 mph zone. Trooper Smith testified that he is able to ascertain that a vehicle is speeding by visually estimating the speed of a vehicle, which is a test that he is annually certified to perform. Trooper Smith stated that an officer must estimate a vehicle's speed within five miles an hour to receive this annual certification. The speeding stop eventually led to charges of a conspiracy to distribute controlled substances; one count of distribution of controlled substances, two firearms offenses, and money laundering with twenty defendants and lawyers. The suppression motion was heard before a U.S. Magistrate. It is included here, because of the thorough nature of the testimony by the trooper. This is recommended reading for all officers, who think that a traffic stop is less than a big deal!

**State v Stewart**, 2011 Tenn Crim App Lexis 769

**Split Confinement Oder Reversed**

In Montgomery County, a jury convicted the defendant of vehicular assault. He was a career offender. A sentencing hearing followed and Judge Gasaway sentenced him to 12 years, but permitted split confinement with only one year to serve and eleven on community corrections supervision. The State appealed and successfully pointed out that an offender is not eligible for community corrections if the offense is a crime against a person. The 2004 case has been remanded for a new sentencing hearing.

**State v Treat**, 2011 Tenn Crim App Lexis 848

**Destroyed Video**

Treat pled guilty to his DUI, but reserved a question for appeal concerning whether his case could be dismissed, because the video of his traffic stop had been destroyed before his trial date. The record reflects that the police officer who conducted the defendant's traffic stop was later involved in a vehicle accident, which totaled his police cruiser and destroyed the video camera and the video tape of the defendant's traffic stop located inside the cruiser. The Court declined to hear the issue and stated that the State would have had Officer Webb of the Sevier County Sheriff's Office testify at trial that he observed the defendant's vehicle traveling in excess of the speed limit, as well as weaving in and out of his lane of travel. At the stop, Officer Webb detected a strong odor of alcohol on the defendant's person and about his vehicle. Based upon these observations, Officer Webb conducted field sobriety tasks, on which the defendant's level of performance indicated impairment. Officer Webb also obtained consent from the defendant to draw his blood, which yielded a blood alcohol content of .19. The Court of Criminal Appeals stated: "In our view, in light of Officer Webb's testimony at trial, the destruction of the video recording of the traffic stop is not dispositive and, therefore, is not properly before this Court."

## Looking Past The Bottle

Detective Michael Donaldson  
Nashville Metro Police Department

Many times we stop drivers that are impaired, but they have no clearly visible signs of impairment. One such example from my own experience occurred as I sat near a red light in West Nashville. I was in a parking lot writing a citation. Behind me was a small queue of cars waiting on the traffic light to change. A motorcyclist revved his engine loudly, showing off his pipes. Without warning, the motorcycle popped a wheelie and struck the car in front of it. I walked over to find out what happened. It turns out that the motorcycle did not race out of control but was struck from behind by a car. The driver of the vehicle was a middle aged, black female. She exited the vehicle and stood beside me. She was lucid, and had no smell of alcoholic beverage about her person. I asked her what happened? She said she did not see the (large, purple) motorcycle in front of her. I walked over to her car, looked through the window, and observed a pill bottle near her gear shift. I asked her was she on any medication, and she said yes she had taken some of the Hydrocodone. Just because a person is not slobbering does not mean that they are not impaired.

Most officers, despite training, do not look for non-illicit drug evidence on traffic stops, even when DUI is suspected. Many pharmaceuticals are enhanced by alcoholic beverages. DUI is not always caused by one stimulant. Just because there is no obvious sign of impairment, does not mean anything. One look, one extra look at the lady yielded not only evidence, but an explanation as to why the incident may have occurred. Although, this was merely a traffic incident, the clues did not make since. With two stationary vehicles, in close proximity and with the amount of noise the motorcycle made, how could the driver not see the large, purple motorcycle 5 feet in front of her? I knew there was more to the story even if it was only carelessness. Hydrocodone is classified as being opioid, analgesic, narcotic and anti-tussive. Therefore, the effects on the user include sedation, respiratory depression, constipation, and a strong sense of euphoria. My training in pharmaceuticals, immediately leant itself to developing probable cause, that she was impaired. When I looked into the car, what also struck me as odd was that the pill bottle was the only thing visible in the passenger compartment, no water bottle, and no bag from a pharmacy. What was apparent to me was that this person was not picking up a prescription, nor was she taking it at home in the prescribed manner for safety. This person was apparently driving and *'poppin pills'* as needed.

This lady exemplifies the insidious nature of pharmaceuticals, their stealth ability. As we make traffic stops, despite the infraction, we get an opportunity to get a look into the occupant's habits. Many habits, especially drug habits, have accoutrement. Pill habits come in many forms. Some people have *'poppin'* habits, some shopping habits, shooting up habits, snorting habits, and selling habits. Any of these habits while driving give rise to a second look. When we look past the bottle we make sense of a collection of prescription bags, pill bottles with no labels, Lortab accompanied by Tums, or a collection of pharmacy coupons, or discount cards. Old copies of the Physician's Desk Reference are also great indicia of a shopping habit. Prescription blanks from several doctors or a blank prescription pad in the car, give the viewing officer insight into criminal activity on a more organized level.

Many officers feel their hands are tied by Justice Scalia's opinion, in Arizona v Gant (2008), severely limits the scope of search incident to arrest. On the contrary, the scope of searches allowed by Supreme Court ruling is, "*reasonable' only when the object of the search is evidence of the crime for which the arrest was made, or of another crime that the officer has probable cause to believe occurred,*" we are duty bound to search vehicles incident to arrest for any substance in part or combination which creates, enhances, or results in the conditions set out by TCA 55-10-401(1), "...under the influence of any intoxicant, marijuana, controlled substance, drug, substance affecting the central nervous system or combination thereof that impairs the driver's ability to safely operate a motor vehicle by depriving the drive of the clearness of mind and control of himself which he would otherwise posses...".

(Continued Page 6)

## Looking Past The Bottle

The latter part of the decision, "...or of another crime that the officer has probable cause to believe occurred," enables us to still be reasonable on a basic traffic stop when we observe 'evidence' in our encounter. From the controlled substances inventory this gives us approx 360 Controlled/Substances to look for. From the illicit drug inventory this gives us any of the components of the categories, narcotics, stimulants, depressants (sedatives), hallucinogens, and cannabis to look for. Also covered by the scope are OTC drugs like sleep aids, when combined with alcoholic beverages, and abused Legend drugs like SOMA which easily lend themselves to abuse in combination or independently. Recently synthetic cannabinoids (currently there are approx 85 products listed by TBI in this inventory) joined the inventory of target substances which include bath salts, substances with MDMA.

Things to look for:

Tennessee law is clear; regarding DUI related offenses; any substance (s) that "...deprive the driver of clearness of mind," falls in the repertoire of, "evidence of the crime for which the arrest was made." When searching a car, truck, motorcycle or boat incident to arrest for DUI related charges things to look for include;

### Personal clues

1. Blood shot eyes;
2. Eyes that do not dilate under increased lighting;
3. Bad breath and dry mouth;
4. Grinding their jaws;
5. Biting their lips;
6. Tweakers while high find it hard to control their mouths, usually they click their tongues, move mouth around;
7. Pounding heart sensation, palpitations, hot flashes, dry mouth, sweating
8. Irritability, confusion, tremors

### Evidence

1. Traditional drug paraphernalia (crack pipes and needles etc);
2. Prescription bottles, and prescription information
3. Tums and Roloids in vehicles with Hydrocodone products (to relieve stomach irritation), bath type parcels (soap foils and jars);
4. Crystalline products,
5. Cigars, cigarettes, tobacco products (in non-standard packaging or listed in TBI's synthetic list)
6. *Potpourri*' (especially with foil packages that say DO NOT BURN)

### About the Author

Detective Michael Donaldson is the primary detective responsible for drug diversion cases in Nashville. He has been a member of the Nashville Metro Police Department since 1993. He assembled a diversion task force in Nashville that includes the District Attorney, Drug Enforcement Agency, TBI, FDA, OIG, Health Related Boards and several pharmacists. He has trained over 600 law enforcement officers and over 1,000 civilians concerning drug diversion issues. He serves as treasurer for the Tennessee Chapter of the National Association of Drug Diversion Investigators.



## 110 REFUSALS (cont'd from page 1)

### THE LAW

Tennessee law mandates that every driver stopped for DUI submit to a test of his/her blood alcohol level. The law permits most drivers to commit an Implied Consent Violation by refusing to follow the law. This violation results when a person informed of the consequences of a refusal to test refuses anyway. The minimum punishment for the implied consent violation is a one year license suspension. Choosing a loss of license for one year instead of a breath or blood test may seem to the law abiding citizen to be a curious, if not idiotic, choice. The only real reason for committing this violation is to hide the blood alcohol level from the Judge or jury. Many excuses are created for court, but none have the ring of truth when compared with the informed choice to sacrifice a driver's license for a year. Despite this many defense lawyers advise people to refuse testing. Those lawyers seem to believe that the people they are advising will be better off with a license suspension than a blood alcohol test result.

### MULTIPLE OFFENDERS

Most multiple DUI offenders have had little to lose by refusing testing. Many have lost their legal ability to drive and don't care. Another license suspension or revocation does not effect their lifestyle. They ignore the law and commit repeated DUI's. This will dramatically change on January 1, 2012 when the new mandatory testing law for multiple offenders discussed on page 12 goes into effect. Refusal will no longer be an option. Of the 110 implied consent violations in October 2010, twenty-eight or 25% were committed by repeat DUI offenders. When they commit their next DUI, the officer will be required to get a blood sample with or without consent. One of the offenders in the group, Terran Coleman, was charged with his 15th DUI. He refused testing. Coleman won't be permitted to refuse again after he is released from his three year prison sentence.

### OFFICER ASSIGNMENTS

In Nashville, some officers are assigned to the DUI unit and respond to assist when another officer makes a traffic stop and concludes that the driver is impaired. These specially trained officers take over the case, perform roadside tests and offer the offender the breath or blood test, depending on whether they conclude that the offender is under the influence of alcohol or drugs. These officers make the decision to arrest the offender. Sometimes a decision to reduce a case is based on the traffic stop that occurred before the DUI officer arrived on the scene or other factors. The data in this study, for instance, indicates that Officer John Roberson was involved in ten of the one hundred ten cases. Five resulted in convictions for DUI. The other five resulted in convictions for reckless driving and the implied consent violation. The failure to convict for DUI may or may not have been the result of his efforts. This data is not intended to criticize or applaud any individual officers, the DA's office or any Judge. They should be honored for handling 3,461 DUI cases a year to the best of their ability.

### PROSECUTORS and JUDGES

In the judicial system, prosecutors and judges play an essential role making decisions every day about the cases they review. Some are better at what they do than others. Experience teaches painful lessons. A judge may uphold a stop and later learn that his decision was reversed after an appeal. On the flip side he may suppress a stop and learn later that he was one of the few judges in the State that would have done so with the particular facts. Judges evolve. Prosecutors examine dozens of cases every day. They not only look at the facts as they are recorded in the police report or video, but they sometimes decide a case based on their experience with the officer in a previous case. Was the officer able to communicate on the witness stand? Was the officer credible? What is the reputation of the officer with fellow prosecutors?

### DEFENSE LAWYERS

In my decades of experience, I never decided to settle a DUI case based on the defense lawyer. Some made me work harder than others. I suspect that young, impressionable prosecutors may be more likely to resolve a case if they fear the reputation or the style of the defense lawyer. Forty-nine private lawyers and 4 public defenders represented the 110. Most defense lawyers are honorable, hard-working and reputable. They have a tough job to do in these cases. Despite myths to the contrary, the defense lawyer has a minimal effect on the decision to reduce.

Only 4 of the 110 were represented by the Public Defender.

## 110 REFUSALS

### TRAFFIC STOPS LEADING TO CONVICTIONS DRIVERS STOP THEMSELVES

Ninety-five of the 110 cases have now been resolved. Fifty-nine (62%) resulted in DUI convictions. Of those fifty-nine, there were sixteen different reasons the drivers were stopped. Many convicted drivers stopped themselves. Nineteen drivers were involved in crashes. Law enforcement responded after the crash. Twelve of the nineteen (63%) were convicted of DUI were involved in crashes. Nine more drivers were arrested after they were found passed out in their vehicle in a lane of traffic. Seven of those drivers were convicted of DUI after they had stopped themselves. That's 77% of the passed out drivers. That is somewhat surprising given the Supreme Court decision in State v Williams, in which the Court determined an officer can not use his blue lights before approaching the vehicle to check on the status of the driver. In total 19 of the 110 (17%) stopped themselves.

### OFFICER INVOLVED STOPS

The top reason an officer stopped a vehicle, which led to a DUI conviction was a driver crossing one or more lane lines. Twelve pick-a-lane drivers were arrested. Eight (66%) were convicted. Another reason for a traffic stop was running a red light or stop sign . Seven of nine (77%) red light runners were convicted of DUI. Seven of twelve (58%) speeders were convicted of DUI. Other individual stops that led to conviction were: seat belt violation, noise violation, window tint, failure to yield, trespassing, no headlights at night and assisting a motorist with a flat tire. Traffic stops that did not result in a DUI conviction included: motorist assistance (2), headlights out at night (3), window tint (2), tags expired, parked in a closed business lot (2), fighting and driving (2), noise violation, seat belt violation and following too closely.

### LANE VIOLATIONS, RUNNING RED LIGHTS AND SPEEDING RESULTED IN 22 DUI CONVICTIONS.

### DRUGGED DRIVING

Five drivers were arrested for impaired driving, who did not have any smell of alcohol or proof of alcohol consumption, but were unable to perform field sobriety tests and were noticeably impaired. These five all admitted to consuming either street drugs or prescribed drugs. The admissions included: celexa, xanax, lortab, wellbutrin, neutron, marijuana, valium, symbalta, paxil and prozac. Each of the five were only convicted of reckless driving and the implied consent violation. One of them was examined by a paramedic after a crash. The paramedic determined her staggering and need to support herself by holding onto the vehicle, crying, slurred speech and red watery eyes were not due to the crash. She admitted after Miranda warnings to consuming four different drugs. Since all five drug admission cases received reductions, it appears that this is an area in which prosecutors appear to be uncomfortable in trying to proceed without a lab result.

### LICENSE STATUS

Twenty-three of the drivers with resolved cases were driving illegally. They either had no driver's license or the license had been revoked or suspended in previous cases. Nineteen of those twenty-three (82%) were convicted of DUI.

### OTHER CRIMES

There are examples within the data of driver's being stopped and charged with DUI and felony crimes. In those cases the DUI appears to become a throw away charge. In the case of State v Miguel Robinson, the driver and his passenger had numerous types of pills, marijuana, crack cocaine, cocaine and cash. A pint of rum consumed in the twenty minutes before the stop was also discovered. The driver had a long history of criminal offenses. When the driver pled guilty to a drug felony, the DUI, implied consent and driving on a revoked license charges were all dismissed in criminal court. Two other examples of DUI dismissals involved felony charges for other crimes, causing it to look like dangerous driving activity was forgiven when the felony was admitted.

(Continued page 8)

# 110 REFUSALS (cont'd)

## BOUND OVER CASES

In Tennessee all persons accused of a crime are entitled to a jury trial in the Criminal Court. For a case to move to the Criminal Court, the defendant has to either agree to the case being bound over or the case gets sent to the grand jury after a preliminary hearing before a Sessions Court Judge. When cases go to the Criminal Court, they first go to the grand jury for its determination of probable cause, unless a procedure called an "Information" is used. An "Information" usually includes a negotiated agreement and is used to expedite the case. Often this is done when the defendant is in custody and cannot post a bond.

Of the 110 DUI arrests with implied consent violations, twenty were bound over, indicted or proceeded with an Information. Last year in Nashville 17 drivers had jury trials. When a case is bound over or indicted there is a long delay. Five of the twenty cases have been resolved. One case lasted only 48 days, before an Information resulted in a guilty plea. The others lasted an average of 314 days. A vehicular assault case lasted 405 days. Most of the bound over cases have not been set for their first hearing in criminal court yet. Those that have court dates set will all be over 400 days old.

## BOUND OVER FACTORS

The study of the affidavits of complaint in the twenty cases that went to criminal court does not reveal why any particular case went on to the court. DUI arrests in the cases varied. The arrests began with crashes (2), speeding (2), lane violations (2), felon with a gun, sleeping at a stop sign, noise, expired tags, running a stop sign, asleep at a gas pump, and parked in a closed business lot. Those reasons for police contact were common in cases resolved in Sessions Court. Some cases are bound over by the defense to buy time.

## HISPANICS GET CONVICTED AT A HIGHER RATE

Seventeen persons with Hispanic surnames were arrested for DUI and implied consent violations. That accounted for 15% of the 110 arrests. Thirteen (76%) were found or pled guilty. One factor in this statistic may be that the average age of the Hispanic offender in Nashville is almost ten years younger than all other offenders!

## GENDER and AGE

Eighty-seven or 79% of the offenders were male. The average age of all offenders was 37.74. Females were slightly older; they averaged 39. Hispanics were an average of 30.9.

Age Range	Offenders
20-29	26
30-39	35
40-49	34
50-59	8
60-69	6

## FEMALES GET MORE REDUCTIONS

Twenty-three females were arrested. Nine were convicted. Two cases are still pending. Taking into account the pending cases, only 43 percent of those arrested for DUI were convicted of DUI.

## THOSE WITHOUT LAWYERS CATCH A BREAK

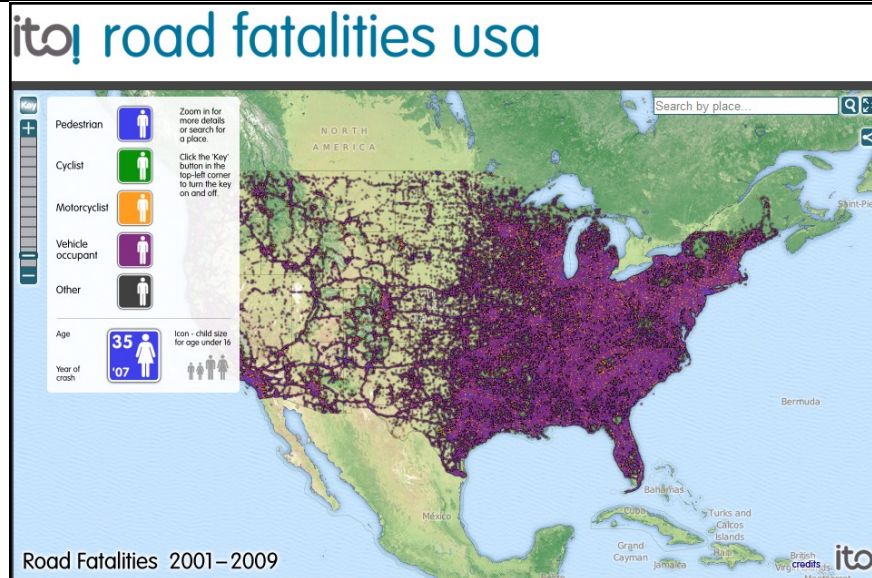
Twenty-five of the 110 took their chances without a lawyer. Two of those are still pending. Twelve of the 23 resolved cases were reduced below a DUI. Eleven (48%) were convicted of DUI. People with lawyers were convicted 68% of the time. The uncounseled offenders usually pled after spending their 48 hours in jail and usually had their licenses revoked for a year. They usually pled within a week of their arrest.

**PEOPLE WHO REPRESENTED THEMSELVES WERE 20% LESS LIKE TO BE CONVICTED THAN THOSE WITH LAWYERS.**



## INTERACTIVE TRAFFIC CRASH MAP

Want to know where the fatal crashes have occurred in your city or town? Transport data mapping expert, ITO World have taken the official data from NHTSA for fatal crashes between 2000 and 2009 and produced an interactive map using OpenStreetMap. You can zoom around the map using the controls on the left. Link to the map at: <http://map.itoworld.com/road-casualties-usa>



### TDOT “HELP”

**In the big four metro areas the Tennessee Department of Transportation provides “HELP” trucks and people to assist motorists who break down, have a flat or have some other problem on the road. Below, we have listed the contact information to call for “HELP”. Copy your local number and put it in your glove box! If you have a new driver in your house, you may want to use a permanent marker and write it on the back of the new driver’s hand!**

**The “HELP” truck driver puts his/her life on the line to assist us. Please, please, please give them plenty of room when you see their trucks stopped on the side of the highway!**

**Region I**

Mickey Campbell, HELP Coordinator  
 David Wortham, Assistant HELP Coordinator  
 7238 Region Lane  
**Knoxville, TN 37914**

**Region II**

Robert Van Horn, HELP Coordinator  
 Lacy Word, Assistant HELP Coordinator  
 4005 Cromwell Rd.  
**Chattanooga, TN 37421**

**Region III**

Robert Allen, HELP Coordinator  
 Emerson Boguskie, Asst. HELP Coordinator  
 6603 Centennial Blvd., TMC Bldg. R  
**Nashville, TN 37243**  
 Tel. # 615 3504337

**Region IV**

John Thomas, HELP Coordinator  
 Carlton Towles, Assistant HELP Coordinator  
 5336 Boswell Ave.  
**Memphis, TN 38120**  
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## VEHICULAR HOMICIDE MURDERERS ROW



Rebecca Galyean

**State v Galyean**, 2011 Tenn Crim App Lexis 771

Rebecca Galyean received an 11 year sentence, which was affirmed by the Court of Criminal Appeals in October. Galyean killed Donald Meese and injured Larry and Dorothy Shrock, when she crashed into them head on in Putnam County. Galyean told a paramedic she had consumed 5-6 beers at the HAWG BARN. On appeal Galyean complained that TBI forensic scientist John Harrison should not have testified about the level of Tramadol, a synthetic opiate. The Court rejected her claim that the amount of the drug in her system was too low to be relevant.



Knight on night of homicide

Michael Knight pled guilty to two counts of vehicular homicide in Blount County and received a ten year sentence. Knight killed Brittany Thomas, 21, and her 10 month old baby, Aiden, when he drove with a BAC of .20. He crossed into their lane of traffic and crushed them in a head on collision. During his plea he apologized and stated, "one accident can just ripple out like a rock in a pond". Mr. Knight apparently does not realize that driving drunk is no accident.



Knight in court



Sarah Lamb, 27, received a 12 year sentence for vehicular homicide by intoxication for striking and killing a couple on a motorcycle. Lamb was driving in a truck when she crossed the center line into the path of the motorcycle killing Orvil and Patricia Laymen, who were both 68 years old.



Jason Richardson, 30, was seen swerving all over I-65 North in Nashville. Another driver called 9-1-1. He got off at White's Creek Pike where he swerved into the oncoming lane and plowed head on into Darren Stafford, who died before he could be transported to the hospital. Richardson had a multitude of drugs in his system including cocaine, methamphetamine and clnazepam. On November 17th, Richardson pled guilty and was sentenced to serve eight years.



Christopher Ross Hooper, 22, of Madisonville received a 12 year sentence when he pled guilty for killing Samantha Webster, 22 of Sweetwater. Hooper admitted to drinking a 40 ounce beer and had a blood alcohol level of .05. After striking Ms. Webster with his 1991 Honda Civic around 4 a.m., he fled the scene.



Frank Cooper, 74, of Columbia, TN, has been sentenced to 12 years for vehicular homicide by intoxication. He killed Mack Odemeal, 57, of Ethridge. Cooper attempted to pass three cars in a no passing construction zone when his blood alcohol level was .19. Cooper was on bond for his second DUI offense when he committed his particular homicide.

**VEHICULAR HOMICIDE  
MURDERERS ROW**



On 10/6/10 Dustin Coker crashed into and killed Kevin McManamon and Jessica Howard. He drove a 1998 Ford F 150 pick up at a high rate of speed and t-boned a 1998 Chrysler Sebring. An odor of alcohol was present in and around the Ford driven by Coker. Witnesses stated that they observed Coker and Cherry trying to dispose of beer cans after the wreck, and that Coker indicated that he had been drinking and was coming from Sam's bar in Hendersonville. Coker had a .16 Blood Alcohol Level. Coker will face a February sentencing hearing in which he faces a sentence ranging from 10 to 16 years by plea agreement.



Crystal Snow threw herself a probation party to celebrate completing probation. The next day she ran a stop sign and crashed into the side of a tractor trailer. She was carrying precious cargo, her boyfriend and five children. Her boyfriend, Brian Harrison and four year old child, Quay Miller, were killed. The other four children were all injured. They were not properly restrained. She had a BAC of .06 and Benadryl in her system. Snow received a 10 year sentence for two vehicular homicides by recklessness and four vehicular assault convictions.



Mathew Edward Cunningham pled guilty in Chattanooga to aggravated vehicular homicide on November 16th and received a sentence of 15 years. In April, Cunningham struck and killed, Timothy Rudolph, who was riding his bicycle. The bike was crossing an intersection with a green light, when Cunningham made a sharp left turn and hit the bike in the opposite lane. Cunningham fled the scene, but was captured soon after the crash. He had a .21 B.A.C. and two prior DUI convictions.

**Traffic Safety in 2010**

The numbers have been counted and published by our friends in D.C. 32,885 people died in motor vehicle crashes in 2010, which is the lowest number of fatalities since 1949! Alcohol impaired fatalities dropped 4.9% with 10,228 killed. That's 31% of the fatalities. There were increased numbers of fatalities involving large trucks (6%), Pedestrians (4.2%) and motorcyclists (0.7%). Motorcycle crashes with grandpa and others over the age of 50 increased by 119, while crashes with riders under 50 declined by 84. Stay off the Harley grandpa!

One million five hundred and forty six thousand crashes caused injuries. There were five million four hundred nineteen thousand crashes overall. Let's hope all of our readers stay out of these statistics in the coming year.

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## GLAD ALL OVER

### MANDATORY EVIDENTIAL BLOOD TESTING 55-10-406(f) REVISED

Apologies to the Beatles but all citizens and visitors of our great state have more reason to be *Glad All Over* than ever before. As a result of the wisdom and foresight of the members of the Tennessee Legislature all people who share our Tennessee roadways will be safer for years to come. Beginning January 1st, 2012 the most serious DUI offenders among us will not be able to avoid the collection of chemical samples. They will be required to provide law enforcement with the alcohol and/or drug levels in their blood and/or breath. Now law enforcement has not only the statutory authority to collect this evidence but the mandate of the Legislature. This change has not occurred in a vacuum.

In 2009, Tennessee amended T.C.A. 55-10-406 to require that a driver provide a chemical sample if the driver has been involved in an accident resulting in the injury or death of another if law enforcement has probable cause to believe the driver has committed a minimum of one of the following: Vehicular Homicide, Aggravated Vehicular Homicide, DUI or a Per Se violation. For the most part this piece of legislation clarified and codified the law in our State that had previously been in existence.

The law that goes into effect January 1, 2012 further amends 55-10-406(f)(2) to MANDATE a chemical test of a driver when probable cause exists that the driver has committed the crime of DUI, Vehicular Homicide, Aggravated Vehicular Homicide, or a Per Se violation and the driver has a prior conviction for one of those offenses.

The statute does not include a "look back" period limiting convictions earlier than a certain date. Therefore it appears that convictions of any age can be used for this purpose. Remember however that the method of counting prior convictions for charging purposes remains unchanged.

In addition 55-10-406(f)(2) was created to MANDATE a chemical test of a driver when there is probable cause to believe that driver committed one of the crimes referred to above AND a passenger under the age of 16 was in the car at the time. No prior conviction is required under this portion of the statute.

Remember, just like with the 2009 amendment to 55-10-406, in all of the above referenced cases "the officer **SHALL** cause the driver to be tested for the purpose of determining the alcohol or drug content of the driver's blood." The statute further notes the test "shall be performed regardless of whether the driver does or does not consent to the test." The legislature could not have made it more clear. Obtaining a test is not elective. It is not optional. It is MANDATORY. It is also clear that the defendant's consent is irrelevant. What does this mean to law enforcement officers regarding their liability when obtaining such a test against a suspects will? You are immune from liability while acting under color of law as long as the prerequisites of the statute exist just as you are when you perform any other duty under and in conformance with the law.

What if the suspect threatens to resist? The case of State v. Mason, 1996 TENN. Crim. App. LEXIS held that reasonable force may be used. I strongly suggest you read this case. It may very well surprise you. It should also be mandatory reading for all attorneys advising law enforcement agencies. Think of it this way: You are executing a search warrant on the home of a murder suspect. He meets you at the door and refuses to let you enter. He threatens you with violence if you attempt to come in. He says he will resist. Do you pack up your things tell him to have a nice day and tell the evidence team to go home? Of course not and it is not any different with respect to DUI cases where a test shall be performed.

Constitutionality questioned? Problem solved! In 1966 the United States Supreme Court held that such non-consensual blood tests were constitutional. The Court in Schmerber v. California, 384 U.S. 757, (1966) held that an intoxicating substance in a person's blood diminishes quickly after consumption. Therefore the exigent circumstances exception to the warrant requirement applies. The Tennessee Court of Criminal Appeals held that "a compulsory breath or blood test, taken with or without the consent of the donor, falls within this 'exigent circumstances' exception." State v. Humphreys, 70 S.W.3d 760 Schmerber set forth a four part analysis: 1) There is a clear indication (probable cause) of evidence of intoxication; 2) Exigent circumstances exist to forego the warrant requirement; 3) The test selected is reasonable and competent; and 4) The test is performed in a reasonable manner. See also State v. Jordan, 7 S.W.3d 92.

If law enforcement has attempted to obtain a test and has been thwarted in that attempt as a result of not being able to find a statutorily qualified health care provider to draw the blood it is important to remember to document the attempts made at obtaining the blood draw. The prosecutor will need this information to deal with defense motions that are likely to be forthcoming claiming the State failed to obtain the best evidence as MANDATED by the statute. The names, locations and qualifications of the health care providers contacted as well as the number of attempts and the response received should be provided to the prosecuting attorney.

Lives will be saved in Tennessee as a result of this amendment. Use it.