



DUI NEWS

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SUPREME COURT DEFINES PROBABLE CAUSE SFST’S ARE PART OF TOTALITY

The Supreme Court, in a unanimous decision written by Justice Koch, reversed the Court of Criminal Appeals and a Sevier County Trial Judge to reinstate a DUI charge in State v Bell 2014 WL 644502. The significant reversal establishes that the probable cause/arrest determination should be evaluated with a totality of circumstances standard. The Court emphasized that all facts known to the officer should be examined to determine if the officer had probable cause to arrest. In the case the arresting officer knew that the driver had driven the wrong way on a divided highway, had consumed alcohol, had admitted to drinking “more than he should have” and had shown three clues in the Walk and Turn Test. The Court noted that even if the driver had performed all the field sobriety tests satisfactorily, his performance would not have eliminated probable cause. The Court citing the Delaware Supreme Court and the 2001 SFST Training Management System document stated that “an individual may pass field tests and still be under the influence of alcohol”. In fact, Mr. Bell had a blood test indicating a .15 blood alcohol level.

WHY WAS THE DECISION NECESSARY?

The history of the case is a lesson for all officers and prosecutors. Whenever an officer takes the stand, the ultimate DUI Detection and Standardized Field Sobriety Test proficiency exam is conducted. The test is conducted by people (defense lawyers) who want the officer to fail and is graded by Judges, who listen to arguments and make decisions in part based on the persuasiveness of the lawyers in front of them. Officers have all seen people do pretty well on the Walk and Turn Test and One Leg Stand Test, who were way too impaired to drive. It is not uncommon for experienced drinkers to show fewer clues than inexperienced drinkers. The same experienced drinker who does well on physical tests may show signs of impairment concerning judgment, decision making and fine motor skills.

HGN AND PROBABLE CAUSE

Officers know the one test a person cannot practice or fool is the horizontal gaze nystagmus test. The results of the HGN should always be admissible for the determination of probable cause. The decision in State v Murphy, 953 SW2d 200 (Tenn) 1997, concerned whether the results of the HGN could mislead a jury. Justice Birch wrote, “if a police officer testifies that the defendant exhibited nystagmus, that testimony has no significance to the average juror without an additional explanation of the scientific correlation between alcohol consumption and nystagmus. In effect, the juror must rely upon the specialized knowledge of the testifying witness and likely has no independent knowledge with which to evaluate the witness's testimony.” There are no jurors present in a suppression hearing. Part of the knowledge obtained by the officer and used to determine probable cause is the HGN result.

(continued Page 6)



RECENT DECISIONS

State v Pendergrass, 2014 WL 1232204

A FIVE YEAR SAGA

Jerry Summers, a Chattanooga defense attorney, waived a jury trial and tried to raise every possible issue in a slam dunk DUI case. The defendant drove with a .17 blood alcohol level and cut in front of another car around 2:00 a.m. causing a two vehicle crash. She displayed four of eight possible clues in the walk and turn test, four of four clues in the one leg stand and did not follow instructions in reciting letters of the alphabet and counting. She admitted drinking and had a strong odor of intoxicants on her breath. The crash happened on April 24, 2009. The case ended at the Court of Criminal Appeals with a decision on January 28, 2014.

The Summers issues were:

- 1) The jail destroyed a video recording intake. Pursuant to policy the videos are maintained 30-45 days. No request to preserve was filed.
- 2) The sheriff's department did not videotape the breath test. Reliance on State v Ferguson 2 SW3d 912(Tenn 1999) was misplaced. Ferguson does not require the creation of evidence.
- 3) Preliminary hearing tapes were destroyed and then inaudible. The defendant was given a second preliminary hearing when the first tape was lost. She did not want a third hearing after the second was partially inaudible. The cure for a missing or inaudible tape is another preliminary hearing.
- 4) The arresting officer was not declared an expert witness. Cross examination was limited, because the officer was not qualified as an expert.
- 5) The State did not bring a witness from Guth Laboratories, the entity that provides the alcohol reference solution for the breath testing instrument. Defense counsel requested certificates from Guth be introduced and then complained he could not cross examine anyone about them. The court noted that it is well settled that a litigant will not be permitted to take advantage of errors he himself created by his own misconduct or neglect. Citing State v Robinson 146 SW3d 469 (Tenn 2004)

State v Montgomery, 2014 WL 954929

INVESTIGATIVE DELAY

In a case that will cause officers concern, a driver was identified as being a possible DUI suspect, but the investigation of her DUI was delayed 10-15 minutes causing the case to be dismissed. The officer waited for his fellow officer to finish investigating a possible trespassing case that was the reason the first officer contacted the DUI driver. During the 10-15 minute interval, the officer had the suspect wait in the back of his patrol car. The suspect was not handcuffed, but was not free to leave. The officer had taken possession of her driver's license. In the majority opinion Judge McMullen concluded,

“Although the State argues that it was “objectively reasonable” for Deputy Reiman to wait for Deputy Shoap's assistance in conducting the DUI investigation, there is no testimony in the record or finding of fact to establish that Deputy Reiman required assistance. Reasonable circumstances that justify a delay in conducting similar investigations involve officers who detect the smell of alcohol, continue to direct traffic after a concert, and later request the assistance of an investigating officer, *see State v. David L. Groom*, No. M2002-00798-CCA-R3-CD, 2003 WL 1563667 (Tenn.Crim.App. Mar. 27, 2003), or where an officer detained the defendant for the purpose of a trained DUI unit/officer to arrive and administer sobriety tests. *See, e.g., State v. Harry Richard*, No. W2008-02458-CCA-R3-CD, 2010 WL 1462547 (Tenn.Crim.App. Apr. 13, 2010). No such circumstances are apparent from the facts of this case. Because Deputy Reiman did not investigate the possible DUI, despite having the training and opportunity to do so, we agree with the trial court, and conclude that the State has not met its burden in demonstrating that Montgomery's detention was reasonable.”

RECENT DECISIONS

State v Comer, 2014 WL 1259159

COCAINE FIELD TEST

The Defendant was convicted by a jury of DUI, failure to stop and possession of drug paraphernalia and by the court of violation of implied consent. He appealed the drug paraphernalia conviction and argued that the trial court had abused it's discretion when the court decided Knoxville Officer Joel Ascencio could testify as an expert concerning a cocaine field test. Ascencio had used the field test thousands of times. He described that the only skill needed to read the test result is the ability to discern the color bright blue. The conviction was affirmed.

State v Smith, 2014 WL 766845

DUI 9th OFFENDER RODEO & LEPRECHAUNS

James M. Smith, a DUI 9th offender, refused to perform field sobriety tests and told Murfreesboro Police Sergeant James Wyatt, "it wasn't his first rodeo". In fact it was DUI number nine for Smith. After slamming into a vehicle that was stopped at a red light, Smith walked up to the driver to apologize. He then walked to the nearest liquor store. When stopped by the sergeant, he told him he was "going to get another drink before the officer took him to jail". Smith had a blood alcohol level of .23. On appeal he would complain that the prosecutor had misbehaved by arguing that the person Smith now claimed was driving during the collision was no more real than "Leprechauns and Fairy God Mothers". The court concluded the argument was not improper. Smith was sentenced to 6 years imprisonment as a career offender.

State v Rogers, 2014 WL 1327649

PHYSICAL CONTROL AND XANAX

In a situation that is becoming more common a Knoxville officer responded to a call at 3:00 p.m. Two persons were laying next to a truck in a hotel parking lot. The driver admitted to taking two blue xanax pills. He had twelve more in a pill case. He had driven to the parking lot and keys were still in the ignition. Officer Edwards transported the driver to the hospital. He was able to talk to him there and the driver refused to take a blood test after the implied consent warning was read. The defendant was found to be in physical control and was convicted and sentenced to serve 60 days of his 11 month 29 day sentence.

State v Evans, 2014 WL 1354948

CONSENT FOR A BLOOD TEST

Former Tennessee State Trooper Evans was convicted of a DUI after he crashed, while off duty pulling his fishing boat in Claiborne County. The trooper was convicted and challenged whether the results of his blood test should have been used by the State. He argued he was not in a position to consent to a blood test. Due to serious injuries, his surgeon requested his mother sign the consent to perform surgery. Evans argued that he was not able to consent to a blood draw, since the doctor determined third party consent was needed for his surgery. Proof established that Evans was awake and conversant when he agreed to the blood draw. The doctor testified that consent to surgery and consent to a blood draw were not the same and one had little to do with the other. The conviction was affirmed.

DUI TRACKER UPDATE

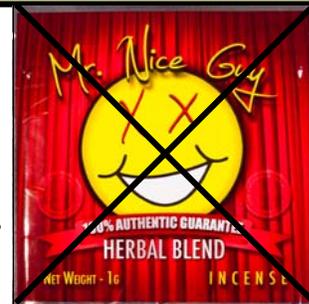
During the first quarter of 2014, the 21st Judicial District reported the highest number of DUI guilty pleas or convictions, 129, in Tennessee. The 30th District, Shelby County, reported 116 and the 26th, Madison County, had 98. One thousand three hundred sixty four (1,364) out of one thousand eight hundred ninety four (1894) resulted in convicted as charged dispositions. Several districts reported convictions as charged in more than 80% of their cases. Those districts were: 2nd, 4th, 5th, 7th, 10th, 14th, 21st, 23rd, 24th, 26th and 31st. Many factors effect whether a charge results in a conviction. The goal of each prosecutor is to convict the guilty and only the guilty.

Driving Under the Influence of POTPOURRI?

By Matt Hooper, ADA 25th Judicial District

Recently, when I read a warrant alleging DUI by potpourri, I wasn't the only one scratching my head. Our judge had a good chuckle when he read it too. I requested the trooper's complete case file to try to figure out how this could be.

In a photo of the potpourri package, I noticed that the brand name of the product was "Mr. Nice Guy Potpourri." The name sounded vaguely familiar, and then I remembered that in the movie "Half Baked" (a stoner movie starring Dave Chappell), the lead character started a drug operation and named it "Mr. Nice Guy" (I guess all that time watching movies instead of studying in law school finally paid off). A few Google searches later and I discovered that Mr. Nice Guy Potpourri isn't potpourri at all -- it's a type of "synthetic marijuana" containing a recently created synthetic cannabinoid known as 5F-PB-22.



There are dozens, if not hundreds, of chemicals classified as synthetic cannabinoids, and new ones are developed so frequently that both scientists and legislatures have trouble keeping up. A scientific report released just this year adds a bit more to our understanding of the effects of these drugs. "Pharmacology, Toxicology, and Adverse Effects of Synthetic Cannabinoid Drugs" was authored by a team of scientists, including Dr. Susan Gurney, a professor at Drexel University holding degrees in genetics, forensic science, and molecular biology, and Dr. Barry Logan, president of the American Academy of Forensic Sciences, and Director of Forensic and Toxicology Services at NMS Labs, which performs much of the out-sourced toxicology work for the T.B.I. Because of the often unpredictable dangers of synthetic cannabinoids, no controlled experiments have been conducted on humans. Therefore, the report relies on data from emergency room visits related to the drugs.

The report catalogues the various adverse symptoms experienced by hundreds of synthetic potheads. Some common symptoms include confusion, incoherent speech, paranoia, panic attacks, increased heart rate, drowsiness, delusions, hallucinations, tremor, red eyes, vomiting, and intense abdominal pain. However, generalization about the symptoms is difficult because there are so many different kinds of synthetics and each has different effects. Therefore, many or even most symptoms won't be present in a particular case. For example, one type of synthetic cannabinoid, "AM-2201," was associated with droopy eyelids, "low" speech, lethargy, red eye, and increased heart rate, while another synthetic, "XLR-11," was most frequently associated with vomiting, nausea, and abdominal pain.

Some less common side effects of synthetic cannabinoids included psychotic episodes, suicidal ideation, seizures, slurring, cardiac arrest, loss of consciousness, coma, and even death. In some cases, the drugs triggered or worsened existing or underlying physical and mental conditions. The unexpected ill effects of synthetics can be much more dangerous than the effects of "old fashioned" marijuana.

New synthetics are developed and released on the market extremely rapidly. "These drugs appear to have a life cycle of about 12-24 months before being replaced by the next wave," according to the report. Therefore, by the time scientists begin to study them, and often before legislatures can classify them, a new batch of drugs becomes the rage. Some synthetic cannabinoid brand names, like "K2" and "Spice," are now familiar to most of us in the criminal justice community. Others mentioned in the report include "Banana Cream Nuke," "Happy Tiger Incense," "K9," "Spice Gold," "Silver K2," "Black Mamba," "Scooby Snacks," "Pure," "Smoke," "Jamaican Gold," "Ninja Strong," "Bonzai," "Lava Red," "OMG," "Maya," "Sweed," "Push," "Bonzai Remix," "Phantom Wicked Dreams," "Mr. Happy," "BooM," and "Monkees Go Bananas tropical car perfume."

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Driving Under the Influence of POTPOURRI? (cont'd)

Many marijuana users try synthetics because they may be more difficult to detect in drug screens. In addition, users may incorrectly assume the effects and risks of these drugs are similar to the effects of THC (marijuana). The report emphasizes the importance of education, further studies, and rapid response by law makers. Law enforcement officers, prosecutors, judges, doctors, nurses, and toxicologists need to know what to look for, and potential users need to understand that synthetic cannabinoid use can be dramatically more dangerous than advertised. Because of the rapid evolution of these drugs, our ongoing vigilance will be necessary to successfully combat their use and appeal to young people.

JOURNAL OF SCIENCE REPORTS

EVEN CASUAL MARIJUANA USE MAY ALTER THE BRAINS OF YOUNG SMOKERS!

A new study focused on the brain effects on recreational marijuana smokers indicates bad news. Evidence indicates changes in the brain that spell trouble for pot smokers and for society. Young adults volunteered for the study. These casual smokers were not dependent on pot and did not show any marijuana related problems in their daily lives. The study author, Dr. Hans Breiter, reported to CBS News that observations indicated problems including a lack of focus and impaired judgment among the young recreational smokers. The effect on the brain was observed in two different areas associated with emotion, motivation and reward processing, the amygdale and the nucleus accumbens. Users showed higher density than non-users, as well as differences in the shape of those areas. Both differences were more pronounced in those who reported smoking more marijuana.

Another study published February 25th in the International Journal of Drug Policy found that about ten percent of high school students who would otherwise be a low risk for picking up a pot smoking habit say they would use marijuana if it were legal.

Another DRUG RECOGNITION EXPERT CLASS has been completed. Twenty four officers successfully completed the intense course conducted February 24-March 7, 2014 in Brentwood. These officers will now complete field certifications and join the growing ranks of officers specially trained to recognize when a person is under the influence of one or more categories of drugs. The graduates were:

- Jeff Benson, Brentwood PD;
- Scott Bilbrey, Sumner County;
- Christopher Burkeen, Bolivar PD;
- Tony Burnett, GHSO,
- Adam Cohen, Franklin PD;
- John Fesmire, LaVergne PD;
- Junior Fields, Smith County;
- Kasey Fitts, Donald Jennings & Jason Kirk, THP;
- Brandon Gentry, Lenoir City PD;
- Todd Hammons, Rutherford County;
- Mike Hoekstra, Rutherford County;
- Steve Holder, Brentwood PD;
- Jennifer Holmes, Springfield PD;
- Adam Hopper, Sevier County,
- Roger Johnston, Meigs County;
- Derek Jones, Manchester PD;
- Brandon Myers, Dover PD;
- Chris Roark, Belle Meade PD;
- Coy Tucker, Knoxville PD;
- Drew Vernon, Martin PD;
- Russell Ward, Metro Nashville;
- Wesley Wilson, Bartlett PD.



BELL DECISION

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POOR TESTIMONY LEADS TO YEARS OF LITIGATION

The arresting officer in the Bell case testified poorly. Due to his inability to correctly articulate what he observed and should have known, this case that began in 2009 is still going on.

At one point according the Appellate decision he indicated that he was on routine patrol when he was “handed a really bad tasting sandwich by the Sevier County Sheriff's Department.” When an officer from an agency is called to assist after a driver is stopped for driving the wrong way on a divided highway, why would an officer make such a comment?

The arresting officer did a poor job of describing the results of field tests. He was completely wrong in describing the One Leg Stand Test. He stated, “The One Leg Stand Test required Mr. Bell to raise one foot off the ground and to maintain his balance for a set time period.” According to Officer Russell, putting the raised foot back on the ground before a count of ten is an indication of intoxication.

The clue or indicator for impairment in the test is whether the driver puts his foot down within 30 seconds. There is no ten second rule or clue. How can we expect Judges to understand the test if it is described incorrectly?

During the One Leg Stand Test, the driver raised his arms and leaned to the left during the instruction phase. The unanswered question is which if any clues did he exhibit. The clues are:

1. Sways while balancing
2. Uses arms to balance
3. Hops
4. Puts foot down

The arresting officer did a poor job of testifying concerning the Walk and Turn Test. The driver showed three clues of impairment. He did not touch heel to toe on several steps. He stepped out of the starting position after being instructed to stand in a certain way and place and he did an improper turn. The clues for the Walk and Turn Test are:

1. Cannot keep balance while listening to the instructions
2. Starts too soon
3. Stops while walking
4. Does not touch heel to toe
5. Steps off the line
6. Uses arms to balance
7. Improper turn
8. Incorrect number of steps

The officer testified about the three clues, but apparently the Judge did not understand their significance. According to the original study of field sobriety testing, by Anacapa Sciences, Inc., two or more clues in the Walk and Turn Test indicates a 68% likelihood that the driver has a blood alcohol level of .10 or more. The facts in the Bell case indicated three clues in the Walk and Turn and a BAC of .15. What would testimony of a 68% likelihood of impairment of .10 been interpreted concerning probable cause? The Supreme Court defined probable cause as: “the substance of all the definitions of probable cause is a reasonable ground for belief of guilt.” Would 68% be enough to establish a reasonable grounds for belief in guilt? Yet the decisions make it appear that the driver did fine on his field sobriety tests. How did that happen?

CROSS EXAMINATION TESTIMONY

In the Bell case the officer failed to stick to what he knew about the case. He was asked questions that called for him to compare the performance of Bell to others. It may have sounded like:

Q: Officer, you have arrested many people for DUI in your career? A. Yes.

Q: Many of those people did worse on the tests than my client? A. Yes

Thank you.

BELL DECISION

(cont'd Page 6)

CROSS EXAMINATION AND STICKING TO THE FACTS

When the officer answered “yes” in my example, he does two things. He tells the truth and he surrenders the truth. The law requires the truth. Justice requires preserving the truth. What was not said during the one word response? How others have done on the tests has nothing to do with this case. Many factors effect testing. If a 21 year old college student did poorly on a walk and turn test and a 58 year old lawyer did well, does that mean the lawyer was less impaired? Maybe or maybe not. Factors effecting each are not considered. What relevance does the test of any or many other individuals have on the particular case? Does a “yes” or “no” answer serve any purpose? Officers are trained to “Answer the question you are asked”. That does not mean the officer is barred from explaining the answer. The answer to such a dopey, irrelevant question should be, “yes”, but may I explain? If the defense lawyer refuses to allow an explanation, he looks like he has something to hide and the prosecutor knows that on re-direct he has something to ask! If the defense lawyer permits the explanation, the lack of relevance to the current case can be explained. How others have done on the test has nothing to do with whether the driver in the current case is impaired.

TESTIMONY IS A NECESSARY SKILL

The officer in the Bell case is probably a fine officer. He did a great service to get a driver with a .15 blood alcohol level traveling the wrong way on a divided highway off the road before someone was killed. Thank goodness the officers involved in the Bell case were on the road in the right place the night the driver was stopped and arrested. Sometimes officers fail to recognize that testifying in court is a necessary skill. It is not easy to testify. Skilled lawyers with years of experience have many tricks up their sleeves to try and get the responses they want. When yes or no answers are demanded, the lawyer wants to prevent all pertinent and mitigating details from being considered by the trier of fact.

It is not easy to be a witness during cross examination. An officer on the stand must concentrate carefully on the facts, disregard suggestions that undermine the facts and be careful. Attorneys spend years mastering the art of cross examination. Many tricks are developed like the use of suggestive questions, reversing an answer, demanding yes or no answers when explanations are necessary, twisting words to create new meanings and suggesting facts that are not in the record.

The only way to survive the cross examination experience is to have command of the true facts of the case and to preserve the truth throughout the process. Pre-trial preparation includes consulting with the prosecutor, who most likely knows what kind of tricks will be used during the examination. The prosecutor will also be able to alert the officer and let him/her know if counsel for the defense is condescending, friendly, belligerent or likely to try to anger the officer.

Testifying in court is a skill that can be learned as long as there is a true commitment to delivering the truth to the judge and jury.

AT SCENE CRASH INVESTIGATION COURSE

Through funding provided by the Governor's Highway Safety Office, another At Scene Crash Investigation course has been completed by sixteen officers. As part of the 80 hours of training, the students received information on vehicle inspections, roadway evidence, scene inspections, interview and interrogation techniques, resume preparation, scale diagramming, vehicle speeds utilizing various speed formulas, roadway friction values, and several other topics. As part of the training, the class is taken outside where skid testing, friction testing, and tire mark identifications are performed. The students were able to validate the minimum speed formula and critical speed formulas from the testing. Additionally we performed testing using drag sleds, test skids and the Vericom Computer. The importance of accurate roadway friction values were stressed and each student utilized the drag sleds and participated in test skid measurements. Based on the data that the students gathered during the test skids, the minimum speed calculations matched the radar and speedometer speeds. The class did an outstanding job on measuring and locating the tire marks.



Instructors were: Lt. Randall Wines of the Washington County Sheriff's office and Dale Farmer.

The participants were:

Greene County Sheriff's Deputies: Brandon Baskette, Travis Hoxie, Stacey Lawing, Robert Mathes, Jake Little, Aaron Rogers, Michael Pruitt, Aaron Spears;

Washington County Sheriff's Deputies: Darrell Collins, Glen Cowan, Keeley Leonard, Mitzi Miller.

Kingsport Police Officers: Mark Smelser and Grady White.

Sullivan County Sheriff's Deputies: Abby Rhymer, and Michael Owens.

The Shelby County Sheriff's Office and Memphis Police Department recently participated in a day of training concerning trial preparation. Members of the District Attorneys Office assisted the DUI Training Unit to enhance trial court testimony skills. Assistance was also provided by LEL Steve Dillard, Lt. John Mills, Major Roderic Cunningham and ADA Billy Bond. All were instrumental in putting the class together and are greatly appreciated.



TRAINING UPDATE



Congratulations to the students and faculty of the Tennessee District Attorneys General Conference 2014 Trial Advocacy course held at the University of Memphis School of Law. Thirty-one prosecutors completed this intense course to increase their abilities to advocate for the State in jury trials. The students were assigned either a vehicular homicide by intoxication or an aggravated robbery scenario. Those working with the Vehicular Homicide scenario were:

Name	Judicial District
Ryan Curtis,	1 st
Matthew Gilbert,	20 th
Philip Hatch,	13 th
Scott Rich,	24 th
Kenya Smith,	30 th
Rolfe Straussfogel,	4 th
Matt Hooper,	25 th
Caroline Knight,	13 th
Kevin Latta,	22 nd
Ashley McDermott,	6 th
Talmage Woodall,	23 rd
Jamie Carter,	6 th
Jason Demastus,	11 th
José Leon,	30 th
Matt Stephens,	23 rd
Karen Willis,	19 th

The complexity of vehicular homicide cases demanded that these students not only work on trial skills, but master subjects that like toxicology and physics. Practitioners know that the understanding of how the crash occurred and the effects of drugs, alcohol or other substances within the bloodstream of the offender can make these cases difficult. To effectively combine knowledge of the subject matter with the skills needed to stand and deliver in the courtroom calls for extra effort and dedication. One class does not turn anyone into an outstanding trial prosecutor, but it gives a foundation from which the trial prosecutor grows.

Thanks to an outstanding faculty:
 Reggie Henderson, 30th; Lance Pope, 11th; Sarah Keith, 6th; Rachel Sobrero, 20th; Randal Gilliam, 30th; Buddy Perry, 12th; Jim Camp, TSRP; Kristen Menke, 20th; Greg Strong, 13th; Dan Alsobrooks, 23rd; John Campbell, 30th; Bill Crabtree, 6th; Rob McGuire, 20th; Dr. David Ross, UTC; and Class Director Steve Strain.

TNDAGC Training Director Mary Tom Hudgens and executive secretary, Alice Ferguson and staff attorney Burney Durham played a vital role in making the course happen and go smoothly.

The University of Memphis School of Law personnel were gracious hosts and provided great assistance.

WILLIAMSON COUNTY DUI TREATMENT COURT GRADUATES 23

The DUI Treatment Court in Williamson County now has 23 graduates. The DUI Court program is modeled after the highly effective Drug Court and offers qualified offenders who, with between two and four DUI convictions are interested in changing lives so they are no longer in the court system. A DUI Court graduate is 19 times less likely to reoffend than others convicted of a multiple offense DUI.

VEHICULAR HOMICIDE

A Vehicular Homicide class will be conducted in Bowling Green, KY, June 24-26, 2014 for prosecutors. Please contact Sherri Harper at 615-253-6733 or sjharper@tndagc.org to register or for more information. The deadline for registration is May 12, 2014. (PROSECUTORS ONLY)

VEHICULAR HOMICIDE MURDERERS ROW



Marcus Strong, 34, of Chuckey, Tennessee, has been convicted of aggravated vehicular homicide in the Greene County Criminal Court. Strong was sentenced to twenty years. The victim of the homicide was his passenger, Kiley Shelton, the mother of three young daughters. Strong was driving a 1989 Ford Mustang at a high rate of speed when he slammed into a utility pole ejecting his passenger. He had six prior DUI convictions and had been declared a habitual motor vehicle offender. For him, it was a felony to drive in any circumstances. Strong had a .09 blood alcohol level and had Lorazepam, Clonazepam and Dihydrocodeine in his blood. While in jail awaiting trial, the grandparents of this criminal attempted to sneak more pills to him. They were indicted. Three Correction's officers were fired or resigned and two others face bribery charges from that attempt. Strong received two years for his part of that conspiracy.

Quick Facts 2012

General Statistics

Fatal Crashes		Fatalities		Police-Reported Crashes		People Injured	
2012	30,800	2012	33,561	2012	5,615,000	2012	2,362,000
2011	29,867	2011	32,479	2011	5,338,000	2011	2,217,000
2010	30,296	2010	32,999	2010	5,419,000	2010	2,239,000

Source: FARS Source: FARS Source: GES Source: GES

Fatality Rate per 100 Million VMT		Fatality Rate per 100,000 Population		Injury Rate per 100 Million VMT		Injury Rate per 100,000 Population	
2012	1.14	2012	10.69	2012	80	2012	752
2011	1.10	2011	10.42	2011	75	2011	712
2010	1.11	2010	10.67	2010	75	2010	724

Source: FARS/FHWA Source: FARS/Census Source: GES/FHWA Source: GES/Census

Alcohol

Alcohol-Impaired Driving Fatal Crashes		Alcohol-Impaired Driving Fatalities and Fatality Rate per 100 Million VMT	
2012	8,364	2012	10,322 0.35
2011	8,997	2011	9,865 0.33
2010	9,248	2010	10,136 0.34

Source: FARS Source: FARS/FHWA

Percent of Drivers Involved in Fatal Crashes Who Had a BAC of .08 or Higher, by Vehicle Type				
	Passenger Cars	Light Trucks	Large Trucks	Motorcycles
2012	23%	22%	2%	27%
2011	24%	21%	1%	29%
2010	24%	22%	1%	29%

Source: FARS

Percent of Drivers Involved in Fatal Crashes Who Had a BAC of .08 or Higher, by Age									
	16-20	21-24	25-34	35-44	45-54	55-64	65-74	75+	Total
2012	18%	32%	29%	25%	21%	14%	9%	5%	21%
2011	20%	32%	30%	24%	21%	14%	8%	5%	21%
2010	18%	34%	30%	25%	21%	14%	8%	4%	22%

Source: FARS



Merrill Mazzacappa, Somerset County Assistant Prosecutor, in New Jersey, has the look of a tired, brave prosecutor who has been in trial for several days in a case of life and death. She was the prosecutor in a case in which Amy Marocelli was convicted of vehicular homicide for killing 22 year old Stephen Wall after drinking at a wedding. At the scene the defendant admitted driving. At the trial she claimed her husband was the driver. The husband did not testify. A prosecutor made a great comment to the press after the trial, **"Nobody's doing the dance in the end zone. This is a case where ... there was a life lost. We're just happy that the jury took their time ... with the evidence."**

NEWS FROM THE GENERAL ASSEMBLY

Public Chapter 578 now prohibits any state or local law enforcement officer from participating in a voluntary motor vehicle checkpoint conducted by a private company or research institute to collect a human sample from which DNA may be derived from consenting motorists stopped at the checkpoint for statistical studies or research. There was little opposition to the bill sponsored by Senator Mike Bell and Representative Jimmy Matlock.

Public Chapter 587 eliminated the exception for certain employees to the ignition interlock installation requirement; clarified provisions regarding the issuance and use of a restricted license in conjunction with an ignition interlock device. The bill was intended to correct an error that resulted in a reduction of funds from the federal government.

Public Chapter 567 clarified that a transdermal monitoring device or other alternative alcohol or drug monitoring device may be ordered as a condition of pretrial diversion, parole, probation, judicial diversion or DUI probation if it is determined that the defendant's use of alcohol was a contributing factor in the defendant's unlawful conduct.

House Bill 1488; Senate Bill 1685 permitting electronic search warrants have passed and have been transmitted to the Governor.

House Bill 1429; Senate Bill 1633 have passed and been transmitted to the Governor. These bills will permit more 2nd and 3rd DUI offenders to participate in treatment and monitoring programs. The law when signed will take effect July 1st. 2nd and 3rd offenders may opt into the program after an alcohol/drug assessment, if the Court approves participation. The assessment and decision to permit participation occur after sentencing. The participant will receive jail time credits for time spent in treatment programs, but supervised probation will be extended an extra year.

Public Chapter 554 As enacted, authorizes any city or county that has held and passed a referendum authorizing either retail package stores or sales of alcoholic beverages for consumption on the premises to hold a referendum that authorizes the sale of wine in retail food stores; creates permit to sell wine at retail food stores; revises other provisions governing the sale of alcoholic beverages.

House Bill 2072; Senate Bill 2113 transmitted to the Governor permits personnel of a drug court treatment program, including judges, to access information in the controlled substance monitoring database that relates specifically to a current participant in the drug court treatment program.

Attorney General Opinion 14-10

Magistrate's Communication to Officers Presenting Deficient Warrant Request

Yes, a magistrate may identify deficiencies in a warrant application or affidavit and inform a requesting officer what is needed to cure such deficiencies without abandoning his or her judicial role as a neutral and detached magistrate.



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THE CRASH PAGE

By Jim Camp

CRASH SCENE INVESTIGATIVE CHECKLIST

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

THE ROAD IS A CRIME SCENE

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

- Debris field
 - Photograph
 - Protect and maintain
 - Mark with cones or flags all significant debris
 - Photograph with cones etc.
- Skid marks, yaw marks, scuff marks
 - Protect and photograph
 - (Use a UV filter if not easily seen. Some skid marks will be invisible unless such a filter is used.)
- Measure and provide precise locations
- Gouge Marks
 - Protect and photograph
 - May indicate point of impact, but not always
 - Match up with damage to vehicles involved. What made the gouge?
 - Drag factor of roadway surface
 - Check roadway surface for defects that might have caused or contributed to the crash

PROTECT THE CRIME SCENE

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

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

PROTECT THE CRIME SCENE

Witnesses

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

Evidence in the vehicle:

Kinematic Evidence to Determine Driver may include:

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

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

Check:

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

And

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