



# DUI NEWS

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## WELCOME DIRECTOR DONOHO

### VICTOR DONOHO NAMED DIRECTOR OF TENNESSEE HIGHWAY SAFETY OFFICE

In October 2016, the Tennessee Department of Safety and Homeland Security Commissioner David W. Purkey announced Victor Donoho as the director of the Tennessee Highway Safety Office (THSO). Donoho was recommended for the position following a national search.



Donoho is a native of Macon County, Tennessee, with more than 31 years of experience in state and local public safety services. He has served in the Tennessee Highway Patrol since 1989, starting as a road trooper and going on to earn several promotions, including serving as the Assistant Director of the Research, Planning, and Development Division, and his recent position as Director (Captain) of the Inspectional Services Bureau. Donoho began his career in public service as an emergency medical technician with the Macon County Ambulance Service, and joined with three community-based organizations, providing ambulance, fire, and rescue services.

Donoho is the only department employee to have been chosen to attend a one-year appointment to the National Highway Traffic Safety Administration's (NHTSA) traffic safety leadership program in Washington, D.C., where he gained specialized training in traffic safety, highway grant funded programming, and knowledge of highway safety federal funding requirements.

"Vic understands his mission as the new THSO director," Purkey said. "His more than 31 years of public safety experience has prepared him for this role. Vic has a long line of public servants in his family, and because of that community perspective, Vic fully understands the importance of cultivating strong relationships with local police chiefs, sheriffs, and traffic safety partners."

"It's my lifetime privilege to have been considered to lead the THSO," Donoho said. "I'm prepared to continue to develop, execute, and evaluate traffic safety and law enforcement programs, working hand in hand with our police chiefs, sheriffs, and traffic safety partners to help make Tennessee's roads safer." Donoho plans to strengthen grant funded priorities to reduce traffic fatalities on Tennessee roadways. "The THSO has a particularly strong group of staff members who have done an excellent job in providing grant funding to traffic safety partners, and have demonstrated their ability to distribute funding while monitoring program initiatives properly," Donoho said. "We will continue to ensure these programs meet federal standards, and provide data supporting the success of traffic safety initiatives."

Donoho graduated with a Bachelor of Science in Organizational Leadership from Union University. He is also a graduate of the Tennessee Government Executive Institute, LEAD Tennessee and Northwestern University School of Police Staff and Command.



## RECENT DECISIONS

**State v Brown**, 2016 WL 4973078 (September 2016) SENTENCING 4TH OFFENDER

This defendant was convicted in the Sumner County Criminal Court of DUI 4th offense and Driving on a Revoked License. He was sentenced to serve four years with an additional six consecutive months. He appealed arguing the sentence was too harsh. His appeal failed.

**State v Christopher**, 2016 WL 5874330 (October 2016) OBSTRUCTING A ROADWAY

This defendant pled guilty to DUI 1st offense, but preserved for appeal the question of whether the police should have had any contact with her. The Court found the police contact justifies as the driver was obstructing a roadway. Specifically, Chattanooga officer, Hunter Morgan, was on patrol in an area known for gang and drug traffic. He saw a vehicle stopped in the middle of the road with both doors open and the lights on. Since the road was blocked he stopped and walked up to ask the driver to move on, but found an impaired driver and took action. The case was distinguished from State v Williams, 187 SW3d 311, due to the facts. The Court noted as well that the case might have fallen under State v Kenneth McCormick, 494 S.W.3d 673, but the issue preserved for appeal was preserved prior to the McCormick decision and a McCormick analysis was not necessary, since the police contact was reasonable.

**State v Conkin**, 2016 WL 4708356 (September 2016) COMMUNITY CARETAKING

The Defendant was asleep or passed out in her car with the engine running and the brake and back up lights illuminated in a hotel parking lot. A hotel employee called to alert the police. Kingsport Officer Ryan Dunworth responded to check out the situation. He was surprised on a cold January night to discover the driver side window partially down and two persons asleep in the vehicle. He reached in to shake the driver's shoulder to wake her. When she responded the officer decided he needed to check for impairment. The Court determined that the officer was acting as a community caretaker per State v Kenneth McCormick, 494 S.W.3d 673, and that the driver was seized when he reached through the window to shake her shoulder to awaken her. The officer possessed specific and articulable facts which reasonably warranted a conclusion that he needed to check on her, seize her and further investigate after she awoke.

**State v Rollins**, 2016 WL 4255003 (August 2016) CITY ORDINANCE PROBABLE CAUSE

Defendant Rollins failed to signal his intention to turn and was stopped by Murfreesboro officers for violating the Murfreesboro City Ordinance 32-721 (A). The effort to suppress the stop that led to the discovery of the intoxicated condition of the driver failed.

**State v Irwin**, 2016 WL 6596110 (November 2016) ENCOUNTER AT THE SONIC

This defendant was observed by off duty Trooper Boles, who called a trooper on duty (Clark). Boles had stopped at the Sonic at 6 a.m. and saw a car that was irregularly parked. He saw the driver look to the right and the left and then fall back in the seat. He suspected intoxication. Trooper Clark arrived to the Sonic and parked his vehicle as not block the car. He began to walk toward the car when the driver opened the door. He asked, "Howdy, How Are You? How much did you drink last night?" The response led to an investigation. The driver pled guilty, but preserved on appeal the question of whether the officer should have had contact with her. The Court found that the first words exchanged after she opened the door were part of a consensual encounter. Citing State v Daniel, 12 SW3d at 426, the Court reminds us that "the Fourth Amendment is not implicated and no seizure occurs when police approach an individual, in a public place, or in a parked car, ask questions, and request to search, so long as police do not convey a message that compliance is required."

**RECENT DECISIONS****State v Ochab**, 2016 WL 6247429 (October 2016)

SUPPRESSION REVERSED

A WILLIAMSON County Trial Judge ruled in this matter that a trooper did not have probable cause to arrest. That determination was reversed in a decision by Court of Criminal Appeals Judge Witt. The trooper had observed the driver cross the fog line at least twice and touch it two more times. The Court found reasonable suspicion based on the lousy driving on I-65 North. Then things went wrong. The driver smelled of alcohol, even after getting out of her car. She had an extremely drunken passenger, who was still in the car. The trooper noticed she had blood shot watery eyes and slurred speech. She stammered on occasion and was less than articulate when speaking. She was arrested after refusing to perform field sobriety tests. A search warrant was obtained for a chemical test of her blood. The Trial Judge watched the video and appeared to look for the smallest of inconsistencies. Background and highway noises made the Judge watching the video less able to listen to the voice of the driver than the ears of the trooper speaking to the driver. The Court decided based on his viewing of the video that the driver did not have slurred speech, despite not being able to hear the voice well. The Court also decided to suppress all evidence, even the evidence from the search warrant. Judge Witt in his opinion gives great information concerning the independent source doctrine and the attenuation doctrine. (This is a good lesson for Prosecutors!) Judge Witt indicates the results of the search warrant and the results of the traffic stop would have been admissible, even if the arrest was suppressed. However, he found there was sufficient probable cause for an arrest and reversed the Court on that basis.

**State v Floyd**, 2016 WL 4547370

In a case that sounds a lot like last quarters **State v Felicia Jones** case from Sullivan County, the Court of Criminal Appeals has again ruled that the method for initiating cases in Sullivan County was flawed. In this one the Court found that the affidavit of arrest was void and process did not commence within the statute of limitations. Like the Felicia Jones case, the process of having a notary public sign the affidavit of complaint rather than a judicial officer backfired. The defendant in this case was twice convicted in bench trials for DUI third offense, but do to an error in the local system, his conviction was reversed and dismissed.

**State v Szabo**, 2016 WL 5851923

SUPPRESSION OF SEARCH WARRANT REVERSED

In this Rule 9 appeal from Henry County, the State prevailed and the decision of the trial judge was reversed. After an implied consent refusal for a second offense DUI, the officer sought a search warrant. In five places he listed the name, driver's license number and date of birth of the defendant. In one place he left the name of the person he had previously arrested on a different occasion. The clerical error resulted in the trial judge suppressing the search warrant, but the court ruled the one inconsistent name in the affidavit when there were five other correct references did not void the search warrant.

**RESOURCE AVAILABLE**

Do you have a CDL Quick Reference Guide on your desk or in your courtroom? If not get one. You can be an expert on masking, on ramifications for felonies committed with commercial vehicles and Distracted Driving by Truckers. The guide is free and available at:

[http://www.ndaa.org/ntlc\\_commercial\\_vehicles.html](http://www.ndaa.org/ntlc_commercial_vehicles.html)

While on the site, grab a copy of the new: **Commercial Drivers' License Monograph**

# I MISS YOU ALREADY –Mr. Kimball Goes to Washington

by Tom Kimball

I can barely believe it myself, but this is the last issue of the DUI NEWS that I will write and publish. As many of you know from the last issue of the NEWS, I lost my daughter, Mary, on September 10th. Mary was not only a daughter, but my best friend and inspiration. You see she lived the way we are all called to live. She lived life abundantly in the service of humankind. A priest, doctor friend of mine, told me she simply spent everything she had in service to others. The autopsy indicated that a defective mitral valve caused her death. I don't know if it was that or if she was simply called Home.

In any case life without my 22 year old bestie has been challenging. I admit I was moping around, feeling sorry for myself, causing my wife to be concerned that I might snap in half. The annual conference in October was hell. It felt a lot like a second wake. I did not like the fact that I have spent the last 17 years trying to save others and could not save my darling daughter.

Then something happened. The stars aligned. A new opportunity presented itself. I believe it is an opportunity I could not pass up. I have been given a chance to work with prosecutors across the nation to try to make our highways and byways safer places. I have accepted the position. I am leaving the Tennessee District Attorneys General Conference and going to D.C.

I know you all have visions now of Mr. Smith goes to Washington. However, I never had the Ronald Reagan looks, charm or wit. I am not Mr. Smith and I am not going where he went. I have been named.....

## DIRECTOR of the NATIONAL TRAFFIC LAW CENTER

Quit laughing! It is true. Your humble servant is going national. The National Traffic Law Center (NTLC) has been a great resource for prosecutors since the 1980's. Some times it has been better than others. At one point they were part of the American Prosecutors Research Institute, which morphed into the National District Attorneys Association. Remember the monographs. They came from my new office!

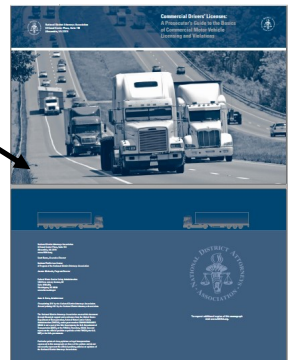
Recently the NTLC published the latest monograph concerning commercial vehicles:

All of these monographs are available on your website, <http://dui.tndagc.org> under the heading RESOURCES.

coming soon.  
your sugges-



More of these will be  
will see to it myself. I can use  
tions!



second

Oddly enough, I am the  
NTLC director from Tennessee. In fact, I am the second

who served as a DUI Prosecutor in Chattanooga. A previous director was our good friend, John Bobo. You know the name. He is Assistant General Counsel and Substance Abuse Program Director for NASCAR and the author of *The Best Story Wins*.

I don't have aspirations to become John Bobo. I would have to lose too much weight and height, but like him I have aspirations to become the best Director of the National Traffic Law Center I can possibly be. Soon enough I will be in communication with you from an address that ends with [ndaajustice.org](http://ndaajustice.org). It is a fitting address, since we have worked so long together to seek justice in our courtrooms, classrooms and meeting rooms.

I am deeply indebted to Wally Kirby for hiring me to be your TSRP in 2002. Wally did not know me. He only knew of me. I would never have been a TSRP, if Bill Cox, Chattanooga D.A., had not taken a chance and hired a former assistant public defender from Athens. Bill Cox hired me in part, because the local DA, Jerry Estes, our TNDAGC Executive Director recommended me to Bill. Jerry may have been trying to get me out of his District! If you come visit me in Virginia, I promise to tell you the rest of the story over a meal and a beverage. Please, let me know when you are in the District. You have a friend at the National Traffic Law Center. So, farewell. I'll be back to see you often. Thank you all for being great public servants and great friends.

Tearfully signing off, Tom



## DUI TRACKER REPORT

During the quarter between July 1, 2016 and September 30, 2016, there were 3,107 DUI case dispositions entered into the DUI Tracker. 2088 cases (67.20%) ended in dispositions recorded as guilty as charged. 649 cases were reduced, which may be from a DUI 3rd offense to a DUI second offense or a DUI to a reckless driving or some other reduction.

The goal of the District Attorney in all cases is to seek justice. The demand is to try to get every case right. Prosecutors never want those who are not guilty to be convicted. On the other hand, those that are guilty must be convicted to receive the combination of punishment for the crime and incentive to change behavior that comes with a conviction. Prosecutors in this State led the way to add more treatment and monitoring options to all convictions to promote healing and change as well as safety for the driving public.

In this quarterly report the 20th Judicial District entered the most disposition, 669. The 16th Judicial District had the highest percentage of cases resolved as guilty as charged (94%). The next highest in percentage were the 26th District (89%) and the 31st District (88%). Districts with less than 50 dispositions were not included in my analysis.

The Districts with the largest number of convictions as charged were:

- |                |                |
|----------------|----------------|
| 1.) 20th - 302 | 6.) 15th - 106 |
| 2.) 16th - 174 | 7.) 1st - 95   |
| 3.) 26th - 146 | 8.) 30th - 95  |
| 4.) 10th - 131 | 9.) 9th - 83   |
| 5.) 21st - 129 | 10.) 19th - 80 |

**About the Tracker**

Some districts record all dispositions like the 20th while some only track Criminal Court dispositions like the 30th. A disparity results in the numbers. These cases are a percentage of cases that account for about 50% of statewide dispositions. It should be noted that some judicial districts are not involved in the DUI tracker at all.

We at the DA's Conference encourage the use of the Tracker to try and keep up with what is happening in our cases, because of incomplete case reporting in the State. The Administrative Office of the Courts collects dispositions from the Criminal Court clerks, but other dispositions are sadly lacking.

## VEHICULAR HOMICIDE BY INTOXICATION IS NO LONGER PROBATION ELIGIBLE

Due to the efforts of Senator Doug Overbey, of the 2nd Senatorial District in Blount and Sevier County and Representative Dale Carr, of the 12th Representative District in Sevier County, drivers who commit Vehicular Homicide due to intoxication are no longer eligible for probation. The bill to repeal probation eligibility was filed January 14, 2015 and went on a long road before passing unanimously in both Houses. Offenders will still be eligible for community corrections depending on the length of sentence and will be eligible for parole.

The effective date of this law was January 1, 2017.



## DON'T FORGET YOUR DRE IN NON DUI CASES

by Lt. Mark Mara

The concept of Drug Recognition Experts (DRE) was first introduced in the late 1970's by the Los Angeles Police Department and was found most useful in determining if an individual was under the influence of drugs other than alcohol. The highly trained officers in the DRE program could determine if an individual was under the influence of one or more drug categories. The program was created to assess individuals under arrest for impaired driving that were having medical problems such as high or low blood sugar, stroke or head trauma and to determine if someone was under the influence of alcohol or drugs. Lastly, specific divided attention tests were administered to determine if the person was capable of operating a motor vehicle safely.

Within the last ten years, law enforcement agencies across the United States acknowledged the value of DREs, as it is another tool aiding in the enforcement of impaired driving laws, which leads to safer roads. In the United States, all 50 states and the District of Columbia utilize the DRE Program according to the International Association of Chiefs of Police.

Today, Drug Recognition Experts are being utilized in the enforcement of other crimes as the following examples illustrate:

- ◆ Law Enforcement response to a crime scene involving the death of an infant and the parents appear to be under the influence of drugs. In this situation, would a blood or urine test for drugs in the parent's system solely justify their being under the influence or would it make a stronger more convincing case of child abuse or neglect to have a DRE conduct an evaluation on the parents to determine if they are under the influence of drug categories and whether or not the parents could take proper care of the child?
- ◆ An argument breaks out at an apartment complex between three people and one person displays a knife and another pulls out a gun. The individual with the knife dies of a gunshot wound. Numerous witnesses gave statements to illustrate the person with the knife was chasing the individual with the gun in a threatening manner, when that individual shot the knife wielding individual. In the course of the investigation, blood was not collected because it appeared that this was simply a self-defense situation. Would it make a stronger and more convincing case to have a DRE conduct an evaluation on the person that used the gun? Could the evaluation determine if the individual's decision making skills were polluted by being under the influence of drugs? Why limit the opinions of DREs to only impaired driving cases?

The McMinnville Police Department along with the District Attorney's Office for the 31<sup>st</sup> Judicial District is exploring other situations in which the opinion of a Drug Recognition Expert could be utilized. Patrol officers, investigators, upper management and attorneys have discussed scenarios that an opinion derived from a DRE evaluation would or would not be feasible. Factors such as overtime, assuring adequate personnel for the patrol shift and the time involved in completing the evaluation and subsequent paperwork have to be considered. Cases such as child abuse/neglect, robbery, homicide, aggravated assault, traffic crash involving fatalities or serious life threatening injuries and other possible scenarios involving felonies were discussed. The McMinnville Police Department evaluates each ongoing case to determine if the services of a DRE should be utilized.

The McMinnville Police Department has utilized the DRE in several types of cases in the past year. The following are two examples of situations in which a DRE opinion was rendered:

- ◆ The driver of a vehicle at a grocery store parking lot began backing and struck several cars, two pedestrians and a row of shopping carts. The investigating officer was only able to conduct one standard field sobriety test (horizontal gaze nystagmus) and had observed no clues. No other field tests were conducted due to the driver being transported to a local hospital; however a blood sample was collected. The DRE was called in to conduct an evaluation and upon completion rendered an opinion that the driver was not under the influence of drugs and had limited vision because of a prior medical surgery. The investigating officer submitted a request to the Department of Safety driver services for driver license re-testing. A few months later the drug screen was returned indicating negative for drugs.
- ◆ Patrol officers were dispatched to a house regarding a dispute over child custody. When the officers arrived, the mother and grandmother of the child appeared to be under the influence of drugs. The DRE was called to the scene and was able to determine they were both under the influence of Cannabis. The DRE was able to collect a statement in which both women admitted to using marijuana the night before and the same morning the child was in the home. The grandmother willingly consented to a search of the home and informed the officers where the marijuana and drug paraphernalia had been stored. The parent and grandparent were arrested and the child was placed in a safe home by the Department of Children's Services.

Drug Recognition Experts can be useful with eliminating doubts, and offering an independent and professional opinion to determine the outcome of a case. Agencies should consider factors such as overtime, adequate personnel for shifts and the time involved to complete an evaluation when utilizing a DRE. Police agencies investigating serious crimes need to use every resource available and should always remember one great resource, the DRE.

## TRAINING OPPORTUNITIES

### UPCOMING COURSES OF THE TNDAGC DUI TRAINING SECTION INCLUDE:

**PROTECTING LIVES; SAVING FUTURES** - February 28-March 1, 2017 - This regional class will be held in Jackson, Tennessee at the Madison County EMA Building, 239 Grady Montgomery Drive. This joint prosecutor-law enforcement officer training program is being funded by the Tennessee Highway Safety Office. One requirement for attending this course is you will need to bring 1-3 law enforcement officer(s) with you.

**20/20 - UNDERSTANDING EYE MOVEMENTS AND IMPAIRMENT** - April 25-26, 2017

This course is offered at the Southern College of Optometry and is taught primarily by the professors of optometry. An announcement will be forthcoming to all District Attorneys General offices.

#### **THSO TRAINING CLASSES**

Prosecutors are welcome to attend part or all of the following law enforcement training courses offered in the next several months by the Tennessee Highway Safety Office:

ADVANCED TRAFFIC CRASH INVESTIGATION  
 ADVANCED ROADSIDE IMPAIRED DRIVING ENFORCEMENT (ARIDE)  
 AT SCENE TRAFFIC CRASH INVESTIGATION  
 STRATEGIES AND TACTICES OF PATROL STOPS  
 DUI DETECTION AND STANDARDIZED FILED SOBRIETY TESTING

Find the dates and locations for these courses and register to attend at: <http://tntrafficsafety.org/training-courses>

### *Tennessee Prosecutors Team with Kentucky Prosecutors and Law Enforcement Personnel to Protect Lives and Save Futures*

The Training Division of the Tennessee Attorneys General Conference is proud to have taken part in another training program with our friends in the Commonwealth of Kentucky during December of 2016. As has been the custom in the past, our friends to the North hosted the *Protecting Lives, Saving Futures* Program that has helped prosecutors on both sides of our borders get impaired drivers off the roads. This training program gives prosecutors the opportunity to work and learn together in an environment that included the input of various law enforcement officers who are on the front lines of efforts to save lives on our roadways.

While prosecutors learn what officers do, the officers learn how the prosecutor functions. Both groups are also taught by toxicologists and optometrists concerning those aspects of their cases. This program offered a great opportunity to understand how our system works, when the system includes listening to everyone involved.

Congratulations to ADA's Rob Mitchell, Greg Eshbaugh and Tessa Lunceford. Thank you to the Kentucky Attorney General for permitting our prosecutors to attend.

### JOB ANNOUNCEMENT

The National Traffic Law Center is looking for a Senior Attorney at their Alexandria, Virginia office. The attorney will perform a variety of advanced level, professional duties including planning, developing and presenting training relating to enforcement, prosecution, and reporting of commercial motor vehicle and commercial driver's license violations. The NTLC is looking for someone with at least eight years experience as a prosecutor. For more information, call Tom Kimball, 615-253-6734.

This position was formerly held by former Nashville A.D.A. Kristen Shea, who has moved to the NTSB.

**IMPLIED CONSENT SIMPLIFIED**

Are you willing to consent to provide a breath and/or blood sample for chemical testing?

I will provide a sample for testing

I will not provide a sample for testing

SUBJECT'S SIGNATURE

TIME:

\_\_\_\_\_

\_\_\_\_\_

**TO BE READ IF SUBJECT REFUSES TEST:**

If you refuse to supply a sample for breath or blood testing, no test will be conducted unless authorized by a search warrant or exigent circumstances. If you do not consent, the law permits me to apply for a search warrant for a blood and/or breath sample for chemical testing.

If you do refuse to provide a sample for testing, and the Court finds that you refused, TCA 55-10-407 requires that your license be suspended for at least one year and up to five years, depending on your driving history. If you refuse you may be ordered to install and keep an ignition interlock on your vehicle for a year or more.

After being informed that there is probable cause that you have committed a crime which requires you to submit a sample of your breath and/or blood for testing, and also having the consequence of refusing to submit to such tests explained to me, I state that:

I will provide a sample for testing

I will not provide a sample for testing

SUBJECT'S SIGNATURE

TIME:

\_\_\_\_\_

\_\_\_\_\_

**REVISED IMPLIED CONSENT FORMS ARE AVAILABLE**

All law enforcement agencies should use the new revised implied consent forms immediately. The forms are available on Titan. To order paper forms, contact TRICOR. The order numbers are BLER 33-E (English) and Bler 33-S (Spanish). Each book of 25 costs \$33.90.

The revision to the form was necessary to comply with North Dakota v Birchfield and removes any reference to a Class A misdemeanor penalty for refusal to test. In addition the form does not include a reference to the statutes that require blood testing. That information is in the instruction for officers, but is not on the form that is read to and signed by drivers. In that way the argument that the driver was coerced to consent is removed. If the driver refuses the test, the officer knows to apply for a search warrant to comply with the law, but the driver does not know the officer will do so, until after the driver has decided to consent or refuse.



## *The Night of Remembrance Embraces All Victims of Drunk Driving*



The Mothers Against Drunk Driving (MADD) held their annual *Night of Remembrance December 8th* for all of the victims throughout the State of Tennessee who were affected by drunk and drugged drivers. The *Night of Remembrance* marked a particularly poignant moment in the fight against impaired drivers on Tennessee's roads and highways by taking the time to remember those victims with a candle light vigil.

The *Night* also marked a high point for law enforcement personnel as they received the praise and acknowledgement of not only their peers and the general public, but also the acknowledgement of a job well-done by MADD. These officers were honored with several awards for arrests and convictions of impaired drivers, all in an effort to remove drunk drivers and protect lives on the highways of Tennessee.

Amongst those also honored was Assistant District Attorney **Melissa Denny** of the 7<sup>th</sup> Judicial District in Anderson County and District Attorney General **Ray Whitley** of the 18th Judicial District in Sumner County who won MADD's Award for Excellence for prosecutors. They have demonstrated a consistent record of excellence in working with victims and victims' rights issues. We are all very proud of General's Whitley and Denny.

This evening marked a night to remember all of the victims who have suffered from the reckless and dangerous behavior of drunk and drugged drivers. Without the efforts of organizations like MADD, who have dedicated themselves to the protection and advocacy of Tennessee's victims and survivors of impaired drivers on our roads and highways, there would be even more victims to be remembered. One victim is one victim too many.

## VICTIM ISSUES IN DUI CASES

Before the Night Of Remembrance. The DUI Training Section offered a training concerning victim issues. The training was attended by forty-one persons including prosecutors, prosecuting coordinators and victim advocates. Presentations included:

**TRAUMA AND EFFECTS OF THE VICTIM  
MEETING WITH VICTIM'S FAMILIES:  
Combining Compassion with Realism  
WORKING WITH HIGH PROFILE CASE  
THE ROLE OF MADD  
ROLE OF THE DUI COORDINATOR  
ROLE OF THE VICTIM WITNESS COORDINATOR**

It only seemed to make sense to combine education with remembrance and we are grateful to all who attended and all who will be better able to communicate with victims of these and other crimes because of their attendance. For those of you who are worried about whether Kimball survived this training, worry not. He skipped this one. It is still a little too soon for me.

Let's all make a commitment to see fewer losses in 2017. It will take a lot of effort to effect change, but if anyone can do it, it is those who read this far into the newsletter!

## VEHICULAR HOMICIDE MURDERERS ROW

Before any cases are reviewed, here is the disturbing news concerning drug and alcohol trends from the TITAN (Tennessee Integrated Titan Analysis Network). Since the first of the year until December 21st, there were 170 fatal crashes that included the presence of alcohol. There were 169 that involved the presence of drugs. In 77 of those cases, both alcohol and drugs were involved.

The math works out to add up to a total of 262 fatal crashes with either and or both alcohol and drugs resulting in the death of 286 persons. That should be extremely painful to even think about. That's 286 funerals for persons who died on roadways, when very few would have died but for someone in the crash consuming alcohol or drugs.

**WE CAN AND MUST DO BETTER!**

Of the 89 persons in which both alcohol and drugs were present 40 were under the age of 30.

Death of person's under 30 if:

Alcohol and Drugs are both present: 56/89 (62%)

Alcohol with no drug presence: 125/184 (68%)

Drugs with no alcohol: 124/191 (65%)

**YOUNG PEOPLE CONTINUE TO  
DOMINATE ALCOHOL AND DRUG  
RELATED FATALITIES!**

Colin Kelly Carson 41, Of Parrottsville, pled guilty to two counts of vehicular homicide by intoxication in Greene

### CASES FROM THE 4TH ESTATE

County Criminal Court. He received a nine year sentence. Carson was driving a car on June 10, 2015 when he crashed into a minivan and killed Mattie B Salley and her husband, passenger, Leon Salley. The Assistant District Attorney was Cecil Mills Jr. Carson had Alprazolam and an antihistamine in his system according to toxicology tests.

Source: Greeneville Sun.

Joseph Perry Wall, 34, of Vonore, pled guilty to vehicular homicide by intoxication in a fatal water crash for the May 2015 death of Evelyn Katrina Spurling of Englewood. The crash involved jet skis.

Source: Sweetwater Advocate and Democrat

Curtis Scott Harper received a 13 year sentence with probation for ten years. He received credit for the three years he had served in custody for the crash that killed three in 2012. Harper was the beneficiary of an Appellate Court reversal of his previous trial conviction. The Court of Appeals reversed his conviction due to the gruesome nature of photos, according to the opinion, of the deceased unborn child. Harper had previously received a sentence of 30 years in the case.

**State v Claffey**, 2016 WL 7239018

**DENIAL OF JUDIAL DIVERSION REVERSED**

### JUDICIAL DIVERSION FROM THE CCA

In a reckless vehicular homicide case, a trial court denied the driver judicial diversion. The Court of Criminal Appeals reversed the denial. The basis for the reversal was that the trial court considered the death of the driver as a factor, when it is an element of the crime and considered the driver's use of prescription medicines. However, the driver was not charged with or proven to be under the influence during the crash. The Court of Criminal Appeals found consideration of the medicines improper in this type of case.

Due to those errors, the Court conducted a de novo review, reversed the Trial Court and ordered the driver be granted judicial diversion.

## VEHICULAR HOMICIDE MURDERERS ROW

### TWENTY-FOUR YEAR SENTENCE FOR IMPAIRED DRIVER (25th Judicial District Press Release)

On July 18, 2016, Fayette County Circuit Court Judge Weber McCraw sentenced twenty-seven year old Randel Lee Burnett, II to an effective sentence of 24 years in prison for killing one child and injuring three others in an impaired driving crash on April 12, 2014. Burnett's eleven year old passenger died and three other children suffered severe injuries after Burnett lost control and flipped his 2006 Mini Cooper convertible in Fayette County.

Burnett later admitted to police he drank three or four 25 ounce beers during the course of the day before driving to Rossville for more beer just before midnight. He decided to allow eleven year old Brandon Anderson and three other children to join him because they wanted to buy candy. None were in seatbelts. Burnett reached speeds in excess of 100 miles per hour before losing control, causing his convertible to flip repeatedly through a ditch along Highway 194. All four children were ejected and suffered incapacitating injuries. Eleven year old Brandon Anderson later died at Le Bonheur Children's Hospital.

In March 2015, a Fayette County Grand Jury returned an indictment against Burnett for Felony Murder, Vehicular Homicide by Intoxication, Vehicular Homicide by Recklessness, Aggravated Neglect of a Child under 8, three counts of Aggravated Neglect of a Child over 8, three counts of Vehicular Assault, and three counts of Reckless Aggravated Assault. This is believed to be the first time anyone in West Tennessee has been indicted for Felony Murder due to driving under the influence.

On June 23, 2016, Burnett pled guilty to the offenses of Vehicular Homicide by Intoxication, one count of Aggravated Neglect of a Child over 8, and three counts of Vehicular Assault. Burnett pled guilty without an agreement regarding the sentence to be imposed for those offenses.

On July 18, 2016, Circuit Judge Weber McCraw, presiding over the sentencing hearing, listened to testimony from officers and from the victims' families. Assistant District Attorney Matt Hooper presented evidence of Burnett's several prior misdemeanor crimes and of prior drug abuse. Burnett declined to testify at the hearing. Burnett's attorney, William Massey, argued that Burnett needed help with his addiction, and that the case was simply an unfortunate accident. General Hooper argued that by driving 100 miles per hour while impaired with unrestrained children, Burnett had shown a depraved indifference to human life.

At the conclusion of the hearing, Judge McCraw ruled that Burnett was a dangerous offender with a prior history of criminal behavior, and imposed a total effective sentence of 24 years in the custody of the Tennessee Department of Corrections, and also imposed fines totaling \$5000.

The District Attorney's Office would like to thank investigators from the Fayette County Sheriff's Office and the Tennessee Highway Patrol for their excellent police work in investigating and arresting the Defendant in this case, and would further like to recognize Assistant District Attorney General **Matt Hooper**, who did an outstanding job in preparing and presenting this disturbing case to the Court. "This case demonstrates the continuing commitment of the District Attorney's Office in aggressively prosecuting and holding accountable any person who engages in impaired driving that causes death or bodily injury to any victim in this district, especially child victims, and I am glad that we were able to achieve justice for the minor victims and the Fayette County community in this case", said District Attorney General Mike Dunavant.

## VEHICULAR HOMICIDE APPELLATE DECISIONS

**State v Evans**, 2016 WL 3992524

SENTENCE REVERSED AND REMANDED

Patrick Wayne Evans pled guilty and accepted an eight year sentence for killing Ralph Calendine. Evans turned into the lane of travel directly in front of the Calendine vehicle causing the fatal crash. Evans had a .20 blood alcohol level. Evans pled guilty to an eight year sentence. He appealed the fact that he was ordered to serve the sentence in confinement. The Appellate Court found numerous errors by the Trial Court in the sentencing hearing. The Court stated, "Given the circumstances of this case, we cannot be certain that the trial court would have sentenced the Defendant to serve his eight-year sentence, if it had not improperly applied enhancement factors, failed to apply appropriate mitigating factors, and properly considered alternative sentencing factors. As such, because the trial court is in the best position to determine an appropriate sentence for the Defendant, we remand this case for re-sentencing."

**State v Stewart**, 2016 WL 6087654

A SHORTCUT LEADS TO DEATH

This defendant was convicted of criminally negligent homicide and two counts of reckless endangerment. It is included here as it shows a good example of how a bad idea can escalate into a tragedy, even though no alcohol or drugs were involved. The defendant caused the death of Mrs. Thelma Hughes. The driver told Sgt. Scott Alley of the Hawkins County Sheriff's Office that he was test-driving the vehicle and attempting to return it to R&R Auto Sales, which was located just off of Highway 11W. The defendant told Sgt. Alley "that he was trying to cross over to go down the shoulder of the roadway to get to R&R Auto Sales, which put him traveling west in the eastbound lanes of 11W." In driving the wrong way on the roadway he caused the collision that would end the life of Mrs. Hughes after she suffered unbearably for weeks in a hospital. Stewart appealed the decision that he had to serve his two year sentence. The trial court was affirmed. The Court noted, "The trial court found that it would send 'a terrible message' to grant the defendant complete probation. The court noted that the cause of the wreck was the defendant's desire to take a shortcut that brought him into oncoming traffic and that others needed to be deterred from such behavior."

**State v Clark**, 2016 WL 4350222

THE WORST RIDE TO A FUNERAL EVER

In this tragic case, several people were passengers in a car on the way to a funeral. When they entered the car the driver was the spouse of the defendant. The defendant got upset that his wife was driving too slowly and forced her to switch places with him. He then drove like he was trying to out run a posse, crashed on a hillside and caused one teenager and four other persons to suffer injuries. This driver had diazepam, nordiazepam, alprazolam and tramadol in his bloodstream. Tramadol is a pain reliever, the others are anti-anxiety medications & commonly prescribed muscle relaxants. Dr. Gregory Davis, a forensic pathologist testified as to the impairment caused by the medications. He opined that the driver was under the influence of a combination of three different central nervous system depressants. Clark received a ten year sentence to serve. The prosecutor in the case was **James Cannon** in Obion County.

**State v Brazzell**, 2016 WL 6803894

ATTEMPT TO WITHDRAW PLEA FAILS

The defendant in this case received a twenty year sentence to after entering a guilty plea. He attempted to withdraw his guilty plea. The Court found there were not grounds to do so. The Court upheld the trial courts finding that the plea was made voluntarily with knowledge of the potential penalty.

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