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DUI NEWS

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SUPREME COURT SEIZURE RULINGS BEFUDDLE LAW ENFORCEMENT

The Tennessee Supreme Court in an opinion by Justice Barker, **State v Williams,** 185 S.W.3d 311 has left law enforcement officers throughout the State scratching their heads wondering how to comply with the decision and maintain safe practices.

A Chattanooga officer observed a car that was stopped with the engine running, blocking one lane of a two lane road. The officer pulled in behind the stopped car and activated his blue lights. He then walked up to the car to investigate. Kirk Williams was behind the wheel. He smelled of alcohol. The officer proceeded with his investigation and arrested Williams, who was charged with DUI and obstructing the roadway.

Williams filed a motion to suppress the stop. Judge Stern in Chattanooga ruled for the defendant. She found no reasonable suspicion that a crime had occurred or was occurring. Thus, the seizure of Williams was wrong. She also ruled that the law prohibiting driver's from obstructing the roadway did not apply because there was no other traffic on the road that night. The Court of Criminal Appeals reversed citing the community caretaking and public safety functions of an officer. The Supreme Court then reversed the C.C.A. and suppressed the "stop" effectively dismissing the case.

The Supreme Court cites eleven cases from other jurisdictions as if to indicate this ruling is nothing new. None of the cases cited include a vehicle stopped in a lane of traffic. In each of the cases cited by the court the driver was stopped in a fairly typical place such as the shoulder of a roadway, in a parking lot, a public park or lake, an apartment complex, a driveway or a lawful pull-off area. With the exception of People v Lake in which the driver was parked on the shoulder of the road, there is no dispute that the drivers were legally parked prior to the activation of blue lights and emergency equipment.

The effect of the Supreme Court decision is a direct contradiction of the policies of police departments. Officers activate their lights when stopped in a lane of traffic to alert other drivers of their presence. On a dark two lane road without much traffic an oncoming car would not expect to find cars parked in a lane. Tragic consequences and tremendous civil liability could result from compliance with the Court ruling. Apparently the Court would require the officer to a) do nothing and pass on by; b) stop, but not activate blue lights; c) park around the corner and walk back to the car or d) unreasonably seize the driver and have the evidence suppressed. The first three options could cause the driver of an oncoming vehicle and/or the driver in the stopped car and the officer to suffer injury or die. The last option could open the officer to a lawsuit for an improper arrest. Well intentioned officers are befuddled and upset by the latest rendition of the Blue Light Special.

RECENT DECISIONS

STATE v DICKEY, 2005 Tenn. Crim. App. LEXIS 1297

BLOOD TEST TIME LIMIT ARGUMENT FAILS

On appeal, the defendant contends: (1) the trial court erred in admitting the blood alcohol test because the test was administered almost three hours after the event of driving thereby rendering the test results unreliable; (2) this court should establish a bright line rule regarding what is a reasonable time between the event of driving and subsequent withdrawal of blood from the accused.

The Court ruled that extrapolation evidence to prove what the blood alcohol level was at the time of the crash was not necessary or required. The Court noted that the defendant had been transported to the hospital. The trooper went to the hospital and made contact with the defendant. The blood test occurred thirty minutes after the trooper made contact. In a footnote, the court notes that the blood test would have been admissible even with the 2005 law requiring testing within two hours. The two hour lapse is not measured from the time of the crash, but instead from the time of the initial arrest or detention to the time of the blood draw.

STATE v RIGSBY, 2006 Tenn. Crim. App. LEXIS 103

VEHICULAR HOMICIDE CONSECUTIVE TO PROBATION VIOLATION

Rigsby was on probation for aggravated burglary and sale of cocaine when he drove with a .09 blood alcohol level and crashed. His passenger Billy Brewer was ejected and killed. Rigsby received a sentence of six years to be served consecutively to the probation violation. The defendant argued the Court was wrong, because the violation had not been heard at the time of his sentencing. The Court of Criminal Appeals affirmed the trial court stating, : "We do not have any record before us as to the disposition, if any, of the probation violation warrant. However, even if the defendant's probationary sentence remains in effect it does not begin to run until the six year term of incarceration in this case has expired."

STATE v MAYES, 2006 Tenn. Crim. App. LEXIS 138

HABITUAL OFFENDER GETS 6 YEARS

Some folks won't learn. Mayes was first convicted in 1987. According to the appellate opinion there has been virtually no break in his criminal activity except for when he was incarcerated. When stopped for driving 52 mph in a 30 mph zone, he had no license. He had been declared an habitual offender. With six prior felonies he was sentenced to six years as a career offender. He argued in vain that he should have received an alternative sentence.

STATE v RUSSELL, 2006 Tenn. Crim. App. LEXIS 69

SOME OTHER DUDE DID NOT DRIVE

The defendant was a pickled .21 BAC and in the ditch when an officer who had known him for 40 years appeared. The defendant told Deputy Samuel Johnson, a 28 year veteran officer, that he had driven his Subaru into the ditch. By trial time the defendant's nephew was the driver. The nephew testified he left the keys and his uncle in the car and walked two and a half hours to get some help. By the time he returned the Subaru had disappeared. The nephew admitted on cross examination that he told no person, except the defendant's lawyer his tale until the trial. The jury rejected the tale and Russell was convicted of DUI third offense.

STATE v BERRIOS, 2006 Tenn. Crim. App. LEXIS 193

FRISK AND SIT SUPPRESSED

Defendant Berrios was stopped for speeding on I-40 near Memphis in a car licensed in Texas. The drug interdiction officer asked Barrios to wait in the back of his patrol car while he ran computer checks concerning the car and his identity. The officer frisked the defendant for safety reasons before he entered the squad car. After preliminary questions concerning identity and travel the officer noticed the defendant seemed nervous and would not make eye contact. The defendant gave consent to search his car and cocaine was found in the defendants car in a secret compartment. The evidence was suppressed. The Court held that the frisk of the defendant and the request that he sit in the patrol car was a seizure without reasonable suspicion. The subsequent consent to search and discovery of the cocaine was a result of the unreasonable detention.

A Hale Unit.

THE JOHN HENRY HALE HOUSING PROJECTS

The Nicholson case occurred in a forlorn crime laden area. In 2004 Senator Lamar Alexander announced that Nashville had received 20 million dollars to revitalize the John Henry Hale Homes neighborhood. The original development was constructed in 1951 and consisted during the Nicholson saga of 498 public housing units on thirty two acres. The original homes have been demolished as various entities have contributed a total of $39 million for renovation of the area.

Officer Shot

In July, 2005 Nashville police officer Dan Alford was shot while patrolling the Hale projects. Officer Alford and other officers had approached a group of individuals who ran away. Marshawn L. Lytle ran into an abandoned unit. The police were yelling to him to stop. He came out of a closet and started shooting. Officer Alford was shot several times, including shots to the stomach, the chest, and in the back of his upper left arm. He is back on duty serving the citizens of Nashville.

RUN, RUN AS FAST AS YOU CAN YOU CAN'T STOP ME I'M ALREADY SIEZED

Once upon a time a little old man and a little old woman lived in a neat little house in the woods. Every day the little old woman would bake cookies and cakes and pies for the little old man. One day she decided to bake him something very special. She baked a Gingerbread Man. When it was done, she took the Gingerbread Man from the oven and placed him on a rack to cool. She then went outside to tend her flower garden.

The Gingerbread Man climbed down from the rack, ran out the door and down the pathway. The little old woman cried, "Stop, Stop".

You know the rest of the story. The Gingerbread Man ran away. He did not stop for the little old woman, the little old man tending his vegetables or the bear, who thought he'd be a tasty treat to go along with his honey. The Gingerbread Man reached a river he could not cross and met the Sly Red Fox, who offered him a ride across the river. The desperate Gingerbread Man accepted the offer and ended up consumed as a tasty treat for the Sly Red Fox.

If the little old lady or man were Tennessee Law Enforcement officers, they would have the satisfaction of knowing that the Gingerbread Man was *"seized"* even though he kept running.

The Tennessee Supreme Court in State v Nicholson, 2006 Lexis 306 has continued to use a standard to determine whether a person is seized based upon what a "reasonable" person would think. Thus, if a reasonable person would stop when an officer tells him to stop, then the criminal, who is often times less than reasonable benefits.

The Court, interpreting the Tennessee Constitution, has established it's own rule. Thus the fleeing suspect is seized even as he flees, because the officer yelled, "Stop, police", while the defendant ran. The Court indicates that an earlier instruction to "Hold Up" was not a seizure.

The Tennessee Supreme Court rejected the holding of California v Hodari D, 499 U.S. 621 (1991) in which the United States Supreme Court concluded that a person is seized for Fourth Amendment purposes only when an officer uses physical force to detain a person or when the person submits or yields to a show of authority by the officer.

Now we have the ludicrous situation in which criminals run and fail to submit to the authority of the officer and benefit by having their cases dismissed.

James Nicholson was observed in the John Henry Hale Housing Projects in Nashville. The Nashville Gang Unit watched a large crowd of people in the projects loitering and trespassing. They observed various hand to hand transactions. Officers closed in and the crowd dispersed running in various directions. One officer gave chase to an individual who eluded him. He turned and saw another person walking from the location where the crowd had gathered. When he made eye contact with Nicholson and told him to stop, Nicholson ran. Eventually he was caught with 6.1 grams of crack cocaine and $1,600 sixteen hundred dollars in his pocket.

THE WALL OF SHAME GAME: CAN YOU NAME THE OFFENSE?

Here's a defendant's DUI conviction history:

New offense pending occurred 8/27/05. Assume the defendant is convicted on December 10, 2006.

Prior convictions:

1) March 25, 2004
2) July 25, 1995
3) October 22, 1993
4) February 9, 1993
5) January 28, 1993
6) December 6, 1991
7) April 17, 1989
8) December 10, 1987
9) October 3, 1987
10) June 12, 1986
11) September 10, 1985

Assume that all the convictions are valid. Assume the defendant is not responsible for extraordinary delay in the pending case. What is his offense?

A) 12th offense
B) 10th offense
C) 7th offense
D) 4th offense
E) 3rd offense

COUNTING PRIORS CASE LAW

"We construe the statute to measure the relevant time periods from conviction to conviction without reference to the date of commission of the offenses."
State v Conway, 77 S.W.3d 213 Tenn Crim App 2001

"Unless invalid on its face, a prior judgment of conviction in a court with personal and subject matter jurisdiction cannot be collaterally attacked in a subsequent proceeding in which the challenged conviction is used to enhance punishment. The authorized route for attacking a facially valid, final judgment of conviction is by the Post-Conviction Procedure Act."
State v Davis 2002 Tenn. Crim. App. LEXIS 624

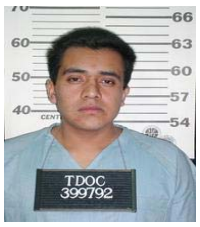
"Defendant X's instant conviction occurred April 1, 2001. The defendant has four prior DUI convictions, all occurring six years apart; April 1, 1995; April 1, 1987; April 1, 1981; April 1, 1975. ***First question***. Does the defendant have a prior DUI conviction occurring within ten years of the instant offense? The answer is yes, April 1, 1995. ***Second question***. Does the defendant have a ten-year DUI conviction free period between any preceding prior conviction? The answer is no, all convictions are six years apart. ***Third question***. Does the defendant have any prior convictions more than twenty years from the instant conviction? The answer is yes, April 1, 1975. Therefore, the defendant may be charged with fourth offense driving under the influence."
State v Gober, 2001 Tenn. Crim. App. LEXIS 750

ANSWER:
The March 25, 2004 conviction makes the defendant a multiple offender. The State may now count any conviction within 20 years of the current conviction unless there is a 10 year period without an offense. All convictions back to December 1, 1986 are included. This will be defendant's 10th offense. He should be convicted of felony DUI as a 10th offender.

THE ENHANCEMENT NOTICE DEFENSE

The lack of an enhancement notice to the defendant does not cause prior convictions to become invalid. Such arguments ignore many decisions of the Courts. The Court of Criminal Appeals succinctly stated:
"The fact that a defendant does not have the benefit of being warned pursuant to Tenn. Code Ann. § 55-10-403(g)(1) of enhanced punishment for future driving under the influence (DUI) offenses before he is charged a second time for DUI is of no consequence. The statute does not provide that failure to warn bars enhanced sentencing for subsequent DUI offenses." **State v Posey**, 99 S.W.3d 141 Tenn Crim App 2002

VEHICULAR HOMICIDE MURDERERS ROW



Javier Santiago arrived at the West Tennessee State Penitentiary in January . Santiago killed Gary Wayne Phillips while driving intoxicated by alcohol in Cocke County on May 16, 2005. Santiago is serving an eight year sentence. He has a release eligibility date in May, 2008.

Dwight Brown, 35, of Memphis also arrived at West Tennessee State Penitentiary in January. Brown killed Donald Stanton Jr. while driving intoxicated by alcohol in Shelby County on January 17, 2005. A witness indicated Brown was traveling in excess of 100 mph on I-240 when his Lexus slammed into the back of the victim's Geo Metro. Brown is serving an eight year sentence and has a release eligibility date in June, 2008.

Antonio Hernandez, 20, has been sentenced to nine years after pleading guilty in Nashville. Hernandez killed Megan McCrary. Hernandez was under the legal drinking age when he ran a stop sign while intoxicated and slammed into a car with four young people. Miss McCrary was in the front passenger seat and was killed instantly. Miss McCrary was a star softball player in high school and helped win a state championship. She was remembered by 300 community members gathered at a park in Goodlettsville on the anniversary of her death.

Joshua Sides, 31, of Hamilton County, is serving a 10 year sentence at the Charles Bass Correctional Center. Sides killed college student Nicole Greco, 19, while driving under the influence. Sides was due to report to jail to begin service for a DUI conviction within days of killing Ms. Greco. Sides is known for the appellate decision of State v Sides in which a prior conviction was reversed because he had left the scene of a wreck and returned. The officer had not seen him drive. The legislature passed a law after Nicole's death that permits officers to arrest a driver who leaves the scene within four hours of the wreck without a warrant. After Sides struck Nicole, he left the scene as he had in the past.

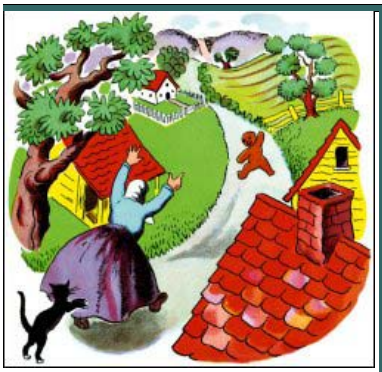
PROSECUTING THE VEHICULAR HOMICIDE CASE

The prosecution of vehicular homicide cases is complex. Prosecutors must understand terminology most commonly seen in advanced physics courses at the university. Combined with physics are issues concerning toxicology. Law school does not include courses in chemistry, biology or physics. These subjects tend to make any lawyers head spin.

The prosecution of vehicular homicide also includes emotion. There is always the tragic ending in which a family suffered a sudden, unexpected loss. It is unfair and final. There was no chance to appeal.

The prosecution of vehicular homicide also includes jury sympathy. Unlike a homicide involving a gun, some jurors have probably committed the offense of drinking too much and driving a car. Thus, some jurors may have sympathy for the defendant, who did not intend to kill.

The prosecutors in the cases in which Santiago, Brown and Hernandez and Sides were sentenced were: Amy Weirick in Shelby County. Amy has 11 years experience as a prosecutor. Jay Woods, director of the Hamilton County DUI and Meth unit, has 4 years experience. Jimmy Dunn of Cocke County who has been prosecuting cases since 1990. Michel Claire Bottoms in Davidson County has one and a half years experience. She is a full time DUI prosecutor funded through a grant provided the District Attorneys office by the Governor's Highway Safety Office.



The Gingerbread Man was a favorite story in the Kimball House when our five children were toddlers. As the Children grew the story evolved into many other tales. We often had the Gingerbread Man escape the Sly Red Fox. On other occasions we focused on the life of the characters who did not capture the cookie. I never imagined writing about the Gingerbread Man in these pages, but couldn't resist the analogy. Nicholson would not have been eaten if he had stopped. He would have been prosecuted for the crimes he committed. Instead he learns from his story to keep on running. There will be no jail time, no treatment court and no change in behavior for him. Let's hope he doesn't have a car. His flight in an automobile may be deadly for him, for us or for the law Enforcement officer charged with stopping him.

REFUSAL CASES

73% of the defendants who had cases reduced or dismissed in 2005 refused breath or blood tests.
65% of those convicted also refused.
Data from 2,500 cases from 15 Judicial Districts.

RUN, RUN AS FAST AS YOU CAN

Continued from page 3

The Trial Judge ruled that the detective had a reasonable basis to approach the defendant and question him about why he was on the Public Housing property. The Trial Judge then ruled that the facts and circumstances of the case and the fact that the defendant fled provided the Detective with a basis to pursue and apprehend the Defendant.

The Supreme Court decided the facts preponderated against the Trial Judge. Justice Clark chastised all Trial Courts to get their facts right. She opinioned that the observed hand to hand transactions were not proven to be drug transactions. Perhaps Valentines were being exchanged. The facts according to Justice Clark did not warrant a seizure. Clark lists three factors that could be considered: Nicholson's proximity to an area of gang activity; the defendant's refusal to stop when told to do so and his flight. She ignores other factors like the time of night, loitering and trespassing on public housing property and concludes that the Trial Judge was wrong and dismisses the case.

Justice Holder filed a dissenting opinion citing State v Randolph which requires an examination of the totality of the circumstances. Holder takes into account the no trespassing signs, the high propensity for crime in the projects, the late hour and the hand to hand Valentine exchange and agree that none of them taken individually creates reasonable suspicion, but taken together results in a good decision to seize. She also encourages the Court to consider the facts, not conjecture, concerning possible innocent reasons to flee.
The Court has previously held that the activation of blue lights in an attempt to stop a car effectively seizes the driver. Like Nicholson, many criminal driver's ignore the lights and keep going. Justice Clark quoting from another Tennessee case states that the Court does not wish to encourage flight from officers. The Nicholson decision seems to indicate otherwise.
The rule in the projects for trespassers, gang members and valentine dealers is Run Run As Fast As You Can. Our Court will free you if you can't outrun law enforcement.

GOVERNOR APPOINTS DUI COMMISSION

Governor Phil Bredeson wants system wide improvements to fix the problem of driving under the influence in Tennessee.
On March 6, 2006 the Governor appointed a Commission to pave the way. The Governor indicated dissatisfaction with traffic fatalities and staggering personal and financial costs to the people of the state due to the crime of DUI. He noted that 21,000 people were convicted of DUI last year.
He wants our laws to be "*strong, clear, straightforward and less confusing.*"
The review of our DUI statutes and relevant judicial opinions with recommendations for change has been left in the hands of the following individuals:
Rep. Joe Fowlkes, Colonel Mike Walker, Judge Steve Dozier, Judge Klyne Lauderback,, General Paul Summers, General John Carney, Public Defender Gary Antrican, Sheriff Norman Lewis, Asst Memphis Chief Janice Pilot, Attorney Steve Oberman, a MADD representative and a Senator not yet appointed.

VEHICULAR HOMICIDE AND ASSAULT CASES

STATE v BOONE, 2005 Tenn Crim App Lexis 1296

Aggressive driving hurts. Boone, 22, was squealing tires and revving the motor of his dad's six gear, manual shift Dodge Viper. He was switching lanes and moving in and out of traffic. He passed cars while in the emergency lanes and finally met some gravel. Sir Isaac Newton's first law of motion took the wheel. The vehicle was out of control and spinning. It crossed four lanes of travel, clipped a road sign and slammed into a Ford Bronco. The Bronco "crunched like an accordion" according to the driver. Boone smelled of alcohol and admitted to one beer. He refused a blood test. He was convicted to serve four years and his license was suspended for one year for violation of the implied consent law. The driver of the Bronco, an off duty police officer suffered injuries to his face and neck requiring 57 stitches and cosmetic surgery. The defendant was on probation for a drug conviction when he committed this crime.

STATE v SMITH, 2006 Tenn Crim App Lexis 145

Aggressive driving kills. Smith was driving a pickup truck at 7:00 a.m. on his way home from Tunica after a weekend of celebrating and taking illegal drugs. In Putnam County he got behind some traffic. He came up on an SUV very fast. The driver thought he was going to ram her. He tried to pass on the shoulder, but pulled back into the single lane. He started to pass despite a double yellow line. Finally he went for it attempting to pass the SUV and a truck. He crossed into the opposing lane and smashed into a red convertible killing the driver, who was returning home after taking her son to school. Smith's blood test was negative for drugs or alcohol. He attempted to excuse himself by claiming he was changing the radio station. The defendant had four prior speeding tickets and received two more after this tragedy. The Court upheld a sentence of four years and a $10,000 fine.

STATE v HOLLADAY, 2006 Tenn Crim App Lexis 152

Air Bag Modules. The court dismissed an appeal by the state pursuant to Rule 10 and did not answer the question as to whether a search warrant is required for law enforcement to remove and read the air bag module. The trial court had suppressed the evidence. The safest practice in cases involving the air bag module is to obtain a search warrant. The module like a steering wheel or a tire is part of the car. The car is evidence in the control of law enforcement. There is no expectation of privacy in an impounded wrecked car. A search warrant is not usually required to perform examinations, take measurements, photograph of remove the steering wheel or tire. Since, it is better to be safe than sorry, a search warrant should be obtained for air bag modules.

To learn more about air bag modules visit the Vetronix Corporation on the web at: www.vetronix.com/diagnostics/cdr/index.html

STATE v RICHARDS, 2005 Tenn Crim App Lexis 1329

Alternative sentencing denied. The impaired (.24 BAC) driver ran a stop sign at the end of an exit ramp in Kingsport, crossed the road and struck two ladies hanging up a yard sale sign. The defendant requested alternative sentencing after receiving a four year sentence for reckless aggravated assault with a concurrent DUI. She also received a two year consecutive sentence for failure to appear. The denial was affirmed. The defendant had previous convictions for marijuana possession, public intoxication, driving under the influence, possession of controlled substances, reckless endangerment and leaving the scene of an accident. She also had a history of alcohol and drug abuse.

RECENT DECISIONS

STATE v LIRA, 2006 Tenn. Crim. App. LEXIS 195

Traffic stop supported by training.

The testimony of Memphis officer Courtney Cunningham included a description of his training and the driving he observed. He stated, " We were told some signs that you can look for in someone who is driving while impaired, or intoxicated. They may have their lights off, brake lights off, headlights. They may have a turn signal on when they shouldn't, or the wrong way. They could have unusual speeds. They could have unusual driving habits, such as sudden acceleration, sudden breaking [sic], stopping in the middle of the road. They could weave in and out of lanes, or in the same lane they could make wide turns, we were told to look for. There's a lot of different signs to look for."

The officer then described the defendant's driving including wide turns and unexplained stops in the lane of traffic. The court accredited the testimony of the officer and found sufficient cause for the stop.

STATE v ARTERBURN, 2006 Tenn Crim App Lexis 113

Small town witness control can be a challenge.

This case should make prosecutors nervous. Some witnesses went to lunch together, others shared their dismay at perceived abuse by defense counsel. The Court affirms the conviction of the defendant. He had crashed and was found behind the wheel with his feet tangled in the pedals. His truck had landed on the driver's side door. His buddy was on top of him also behind the wheel. After the defendant claimed he was not the driver, he admitted that he had made statements that he did not remember anything about the crash. A witness who lived near the crash site testified that the defendant told her he had been driving. After a vigorous cross examination the witness joined other witnesses and indicated that the defense attorney had made her angry by repeatedly berating her as to why she had not included the defendant's statement in her witness statement. Judge Tipton found that the witness had violated TRE 615, but found no prejudice that would harm the defendant.

STATE v SLAUGHTER, 2006 Tenn Crim App Lexis 60

Field sobriety tests

The defendant ran over a curb and grassy median in a parking lot. He smelled of alcohol and had slightly slurred speech. He was asked to recite the alphabet and responded with "ABCD1234". He swayed during the Rhomberg test and stumbled during the walk and turn and turned in the wrong direction. He admitted to drinking four beers.

Former Memphis Officer Dean Bartel was permitted to testify as an expert in field sobriety testing. He pointed out errors in the arresting officer's administration of the walk and turn. However, he indicated there were nine clues in the test. There are only eight. He correctly stated that the three tests that have been validated by NHTSA are the horizontal gaze nystagmus, nine step walk and turn and one leg stand. He acknowledged that the alphabet is not a "validated test" due to a lack of research. He admitted that the test is listed in the NHTSA manual. *(Author's Note: a test does not have to be validated by studies to be valid, that is it produces the desired result. It indicates whether someone is so impaired that he can't recite the most elemental kindergarten lesson).* The defendant was convicted. His conviction like all convictions was not based on any particular test. Instead it was based on the totality of the circumstances. He exhibited an impaired ability to drive; an odor or alcohol; slurred speech; an inability to remember and recite the alphabet; and inability to walk with out stumbling; an inability to remember and follow instructions and he admitted to consuming alcohol.

STATE v DENNIS, 2006 Tenn Crim App Lexis 245

DUI Per Se

The defendant was acquitted of DUI by impairment and convicted for driving with a .08 BAC or above. He argued his conviction violated double jeopardy. His argument was misplaced. Judge Hayes in this opinion reviews the legislative determination to criminalize behavior that places other members of the public at risk. A finding of guilt for violation of the per se statute does not require a determination that the defendant was impaired.

FOUR TENNESSEE PROSECUTORS NOMINATED FOR FIRST TRAFFIC SAFTEY PROSECUTOR

The National Association of Prosecuting Coordinators will soon award it's first National Prosecutor of the Year award for traffic safety prosecutors.

The criteria for the award was:

- New or significant issue regarding impaired driving or other traffic safety issues. This may involve a novel legal issue.
- Year long demonstration of "extraordinary dedication to traffic safety."
- High profile case or complicated traffic safety issue. This criterion would demonstrate the prosecutor having gone "above and beyond" the normal bounds of duty.
- Dedication to training of prosecutors, law enforcement, and/or the public, on issues of traffic safety.
- Impact on victim services and advocacy of victim's needs. This criterion would demonstrate how the prosecutor directly provided services to a victim that demonstrates effort "above and beyond" the normal bounds of duty.

Nominees from Tennessee include (pictured below):
11th Judicial District Prosecutor Jay Woods
20th Judicial District Prosecutor, Kristen Shea
21st Judicial District Prosecutor Georgia Felner
30th Judicial District Prosecutor Kirby May

There are a total of forty one nominees in the nation.

TOP TEN FACTORS TO DISCOURAGE IMPAIRED DRIVING

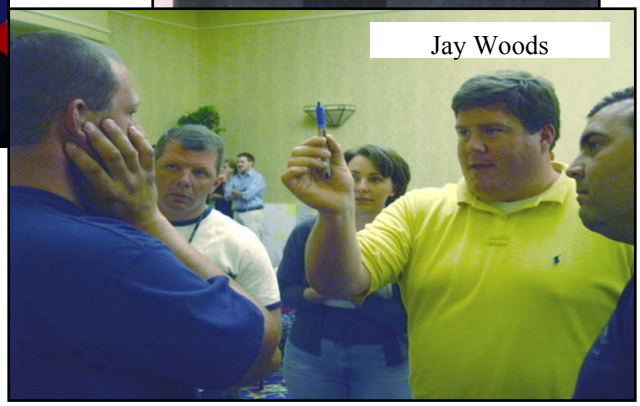
1. **Realizing they could kill or injure others…..96%**
2. **Realizing they could kill or injure themselves...91%**
3. **Jail sentence...91%**
4. **Possible loss of license...89%**
5. **Paying substantial fines...85%**
6. **Having car impounded...85%**
7. **Ignition interlock….81%**
8. **Fear of losing job...80%**
9. **Sobriety Checkpoints...80%**
10. **Increased insurance rates..80%**

Courtesy of MADD


Kristen Shea


Kirby May


Georgia Felner


Jay Woods

The Century Council has launched a new initiative to help parents remind their kids to have a safe prom by sending them a text message reminder not to drink on prom night. By visiting a special website, www.centurycouncil.org/promtext parents can sign up to have a prom text message sent free on prom night to the cell phone number they choose.

SCIENCE HILL HIGH SCHOOL ACTS TO DETER PROM DRINKING

A DIGITIAL DISPLAY BREATH ALCOHOL TESTER THAT WILL BE USED TO DETER DRINKING AT THE PROM.
Picture by Ron Campbell, Johnson

Article by Sam Watson
Johnson City Press Education Writer

Going to Science Hill High School's prom? Get the tux. Buy the corsage. Rent the limo. But forget the flask. You could face a breathalyzer test.
Increasing measures to deter students from ruining the annual tradition with alcohol, Science Hill administrators have purchased devices to test those suspected of drinking before or during Saturday's bash at East Tennessee State University's D.P. Culp University Center.
"I think it's a good idea," Science Hill Student Government Association President Emily Aiken said. "The ones who are kind of on the edge — 'Do I want to do this or do I not want to do this' — if they know that it's going to be there and know they might be subject to that, they're probably not going to do it.
"For seniors especially, graduating is going to be a lot more important than having irresponsible fun at prom."

Principal David Chupa said the school ordered the breathalyzers after three inebriated seniors — all honor students no less — were expelled from the prom and disciplined for consuming alcohol. The students were suspended and completed the academic year in an alternative program.
"It could have been a lot worse," Chupa said, "but you hate for them to spend the last of what should have been the most enjoyable time in their school in an alternative setting."
By purchasing breathalyzers, administrators hoped to deter students from drinking and possibly hurting themselves or others by getting dangerously intoxicated or driving impaired.
"No. 1 is the protection of students," Chupa said. "It's a big time in their high school careers. It's probably one of the first times they are dressed up in formal attire, and they're in the back of limousines.
"They've probably watched too much MTV and have seen the partying type of life, and they think that's how they should spend their prom night."
Chupa said the possibility of tests could be the impetus for students to "say no" on prom night.
"I want them to be able to say, 'I don't want to participate in alcohol because it may cost me my high school career or it may endanger my scholarships,' " he said. "We just feel like having the availability of breathalyzers is another of those means by which they can say no."
Chupa also hoped the measures would help belay unfounded rumors about the prom, since most Science Hill students attend the event and follow the rules.
"I've heard over the years a lot of discussions about how wild the Science Hill proms are and that alcohol and drugs and things of that nature go on," he said. "I'm at every prom, and that doesn't exist. I want to do everything in our power to be able to say to the community that there's no way that can happen.
"I'm very proud of our student body. I think they are a very respectful group of students. I think they are a very responsible group of students. So, I don't want those things to be said about them when I know it's not true."
The school has added two off-duty policemen to the security patrol for the event, allowing greater control at entrances and in rest rooms to prevent the use of alcohol. For legal reasons, police, not school staff members, will administer the breathalyzer tests.

(continued next page)

TRAINING EVENTS

The DUI Training Division conducted a Vehicular Homicide for Prosecutors class, March 21-24, 2006. Twenty-one prosecutors attended and received instruction from various experts. Areas of instruction included crash reconstruction, toxicology, trial preparation, adult education and strategic planning.
The faculty included: Alan Brenneis and Michael McCallister, Tennessee Highway Patrol; Dale Farmer, Kingsport Police Department; Mark Kimsey, Hamilton County Sheriff's Dept; Mike Lyttle, T.B.I.; Dr. Kenneth Ferslew, E.T.S.U. Dept of Pharmacology; Dayle Savage, Vanderbilt University Dept. of Leadership, Policy & Organizations Director; District Attorney William Whitesell; Retired Minnesota Prosecutor, John Tierney; Michigan Traffic Safety Resource Prosecutor David Wallace and Assistant DA's Kristen Shea, James Woods, Roger Moore and Tom Kimball.

Officer Dale Farmer teaching kinematics

DUI TRIAL ADVOCACY JUNE 13-16

Coming soon is a seminar in trial advocacy for prosecutors. Speakers will include **Ron Clark** of Seattle Washington concerning concession based cross examination and a return visit from John Tierney.
If you anticipate a DUI jury trial in your future, take advantage of this outstanding opportunity. Prosecutors will be expected to stand and deliver various aspects of the jury trial and will receive video critiques from experienced prosecutors. To sign up contact Tom Kimball at 615-253- 6734 or e-mail tekimball@tndagc.org.

(Continued from page 10)

SCIENCE HILL PROM SAFETY EFFORT

"If we have any indication that a student is under the influence either from our recognition or the police officers' recognition, then we will call upon the officers to administer a breathalyzer or whatever they would normally do out on the street to identify whether a student is under the influence of alcohol," Chupa said.
Security personnel will not allow students and their dates to come and go from the Culp Center — another measure that could deter the flow of alcohol.
"Once they're in, they're in," Chupa said. "We'll have administrators and chaperones who will be at all locations to make sure there is no exit from the prom. If they exit the prom, they leave for the evening."
Aiken said teachers did not announce the school's purchase of breathalyzers, but a buzz went through Science Hill once written notices appeared on prom tickets.
"Just this past week, a lot of students have come up to me and said, 'Emily, are they really doing this?' " she said. "With it on the tickets, a lot of students have been talking about it."
Aiken attended her first prom last year as a junior. She said she could tell that some students had been drinking. She also thought the administration handled the three disciplinary incidents well.
"I think this year with the breathalyzers it will hopefully help things, at least before and during prom," Aiken said, acknowledging that some students also attend post-prom parties at other locations.
But why would some students feel the need to drink at the prom and risk discipline?
"I have no idea, honestly," Aiken said. "To me, it seems unfortunate that they can't have fun without doing that."

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AGGRESSIVE DRIVING

We've all seen them. They drive like Wiley Coyote in a car. We sometimes wish the boulder would fall off the mountain and crush them. They are the aggressive drivers who ride the bumper of the car in front of them. In a passing lane they are not satisfied with the 85 mph flow of traffic, they want to go 90. They will switch from lane to lane; flash their headlights and honk the horn. After they pass they sometimes slow down or hit the brakes to punish the driver they passed. When they cause a wreck, they speed away. The Nashville Metropolitan Police Department with the support of the Governor's Highway Safety office has an **Aggressive Diving Unit** to try to deter this behavior. It was established on December 1, 2004. The following information is provided to the public on the police department web site.

Definition

According to the National Highway Traffic Safety Administration, the definition of aggressive driving is as follows:

> *"The commission of two or more moving violations that is likely to endanger other persons or property, or any single intentional violation that requires a defensive reaction of another driver."*

Goals and Objectives

The goals and objectives of the Aggressive Driving Unit are to make our roadways safer by reducing the number of traffic crashes leading to injuries, deaths and property damage through aggressively targeting drivers who drive in an aggressive manner. The officers are deployed in areas that statistical data shows aggressive driving is most likely to occur and have the highest traffic crash rates resulting from aggressive driving behaviors. The officers assigned to the Aggressive Driving Unit utilize unmarked, non-traditional police vehicles, equipped with state-of-the-art equipment to assist them in their duties. The vehicles and equipment were funded through a grant from the Governor's Highway Safety Office.

Examples of Aggressive Driving

The following are examples of violations that the Metropolitan Police Department considers to be aggressive in nature; however, the list is not all inclusive:

- Speeding
- Following too close
- Violating traffic lane restrictions
- Weaving in and out of traffic
- Speeding up to beat a signal light
- Using the horn excessively
- Flashing headlights excessively at oncoming traffic
- Braking to get others to back off of your bumper

SAFETY TIPS

Allow plenty of time for your trip. Expect delays to occur along your route and leave earlier than you normally would in anticipation of delays. Be polite and courteous to other drivers, even if they are not. All instances of conflict should be avoided.
If confronted by an aggressive driver, take a deep breath and avoid any other contact with the driver, if possible.
Do not become upset with another driver. Control your emotions and think with a clear mind.
Do not make prolonged eye contact, obscene or aggressive hand gestures at other drivers.
When entering traffic from an entrance ramp, remember to yield the right of way to other drivers already established on the roadway.
When changing lanes, make sure you have a clear path to change lanes and signal your intentions.
Do not follow the vehicle in front you too closely. Allow 1 second following distance for every 10 miles per hour you are traveling.
Do not drive in the left lane, except for passing. Once you complete a pass, change lanes to your right.
Place yourself in the other driver's position. They may be driving that way because of an actual emergency.
Notify police of an aggressive driver.