



**Tennessee District Attorneys
General Conference**

226 Capitol Blvd. Bldg.,
Suite 800
Nashville, TN 37243-0890

Tom Kimball
(615) 253-6734
Sherri Harper
(615) 253-6733

(615) 253-6735 Fax



The SAAB devise



The Tru-Touch spectroscope



Secure Continuous
Remote Alcohol
Monitoring Devise
(SCRAM)

**THE FUTURE IS NOW FOR SAAB AUTOMOBILES
In Sweden**

Every new SAAB automobile sold in Sweden in 2012 will be equipped with an ignition interlock devise. Buses and lorries will have the devices in 2010. The devise pictured here will work as follows:

1. **Unlock car with the remote key – a coded message is sent to the car using RF (433 MHz).**
2. **Press the start button on the analyser.**
3. **Blow for a few seconds into the nozzle.**
4. **1.A first result will come within 2 –10 seconds and if no alcohol is detected the analyser will automatically send a second unlock command with a second key identity to the car. The body computer is programmed to wait for the second key ID before releasing the immobiliser. The engine can now be started.**
5. **If alcohol is detected, wait 20 – 30 sec for the analyser to reach a much more precise value.**
4. **If this value is below 0.2 per mille (in Sweden), the analyser automatically sends a second unlock**
5. **1.If the value is above 0.2 per mille, no second unlock command comes from the analyser and the car engine can not be started.**

**RELIEF FOR DIABETES HOLDS PROMISE
FOR ALCOHOL DETECTION**

Diabetics living with the torment of regular needle sticks to check glucose levels inspired Tru-Touch Technologies, Inc. in developing a scanner that could detect glucose levels, the company started thinking about alcohol. Alcohol levels are easier to detect than glucose levels with a scanning devise. Using NIR spectroscopy such a devise was invented and is in the development stage. The product will be a touch based, driver specific, non intrusive interlock. The use of the devise, pictured on the left, will be simple. A driver lays his arm on the devise. It scans electronically and detects any alcohol level and the identification of the driver. Like the SAAB interlock, the vehicle will not start if alcohol is detected at a set level.

Transdermal Alcohol Testing and Insensible Perspiration

Alcohol is eliminated from the body by two mechanisms: metabolism and excretion. Metabolism accounts for greater than 90% of ingested alcohol and occurs principally in the liver. The remaining 10% of ingested alcohol is excreted, unchanged, wherever water is removed from the body—breath, urine, perspiration, and saliva. The excreted alcohol is significant because it can be measured and correlated to a person’s Blood Alcohol Concentration.

SCRAM is the first technology to utilize the science of Transdermal Alcohol Testing in order to monitor for alcohol consumption. Insensible Perspiration is the constant, unnoticeable excretion of sweat through the skin, and the average person will emit approximately one liter of Insensible Perspiration each day. SCRAM measures the ethanol in this Insensible Perspiration - a byproduct of alcohol consumption—in order to determine compliance with required sobriety.

The SCRAM devise is currently in use in several Tennessee jurisdictions. For the alcoholic seeking healing, it is a constant reminder that the next drink will be detected. The reminder is often enough to get the alcoholic past the tempting days after his release from jail and in patient treatment.

TNDAGC



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DUI NEWS

SAY GOODBYE TO DUI

**MADD International Technology Symposium
Supplies Hope for Elimination of Crime**

PUBLISHER:

Tom Kimball, A.D.A.

LAYOUT AND DESIGN:

Sherri Harper

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Imagine our country without DUI’s. There would be no more funerals after a drunk driver in the wrong lane crashes into a person innocently driving down the road. There would be no more funerals for passengers of impaired drivers crushed when the car slammed into a tree. There would be no more funerals for impaired drivers who kill themselves on the way home from the bar at three in the morning.

Sometime in our children’s lives it will be impossible to drive a car while under the influence of alcohol. I had a glance into that future when I had the opportunity to attend MADD’s International symposium concerning technology. In attendance were the various companies working on technologies that will not permit a car to start with an impaired driver. Also present were many major auto manufacturers who together pledged cooperation to make DUI impossible.

When will we be free to drive without sharing the road with impaired drivers? It depends on many variables. It sounded to like a thirty year time frame was needed to perfect devices and how they will communicate with the car’s computer system. However, the long term effort should not be confused with what can be done immediately to reduce the carnage on our roads. General Motors is starting now to place ignition interlock devices in all SAAB autos sold in Sweden. The people of that country are no longer tolerant of DUI offenses and are ready for such interventions.

When will people in the United States be ready to drive cars that won’t start if the driver is under the influence? One in three of us will be involved in an alcohol related crash in our lifetimes. Each of the victims have a network of family and friends. That makes for a large group interested in change.

The people of New Mexico examined a proposal last year calling for an ignition interlock in every car sold in the State. That proposal failed, but after serious contemplation, 83% of the population favored interlocks for all repeat offenders and 65% favored interlocks for all first time offenders. The legislature responded with a law that requires every convicted offender to have an ignition interlock placed on their vehicle. Fatality rates in New Mexico one year later had fallen by 12%. The number of DUI arrests had fallen over 40%. For every dollar spent on interlocks the economic impact of DUI was reduced by three to seven dollars.

MADD has the right idea. This symposium was the beginning of a ten year commitment to technological development. One day we can say goodbye to DUI.

TN DISTRICT ATTORNEYS
GENERAL CONFERENCE,
James W. Kirby, Exec. Director
226 Capitol Blvd. Bldg, Ste 800
Nashville, TN 37243
DUI Training Division
DUI Office: (615)253-6734
DUI Fax: (615) 253-6735
e-mail: tekimball@tndagc.org
web: www.tndagc.org

**Governor’s Highway Safety
Office**

James K. Polk Office Bldg
505 Deaderick Street, Ste 1800
Nashville, Tn. 37243
Office: 615-741-2589
web-site: www.tdot.state.tn.us/

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RECENT DECISIONS

State v Bullington, 2006 Tenn Crim App Lexis 495

TBI Lab Policy Upheld

Defendant's motion to suppress drug and alcohol tests was properly denied because evidence did not possess any exculpatory value that was apparent prior to its destruction, as test results showed a blood-alcohol concentration of .09 percent and the presence of drugs; therefore, TBI had no duty to preserve evidence beyond its established procedures. The defendant in this case requested a D.N.A. examination of the blood that was examined at the crime lab. He made his request fourteen months after his arrest. The lab policy is to dispose of the blood samples after sixty days unless a request is received to preserve the blood. The Court upheld the policy. The defendant convicted of vehicular assault was a career offender and received consecutive twelve year sentences for each assault.

State v Sanders, 2006 Tenn Crim App Lexis 506

No Collateral Attacks on Priors

Defendant was convicted of third offense DUI. He argues that a prior conviction should not have been admitted. He had waived counsel for his prior conviction. The Court found that the use of the prior was proper and that the defendant's attempt to collaterally attack the prior was prohibited.

State v Violette, 2006 Tenn Crim App Lexis 581

Shoulder of Road is Roadway

Defendant, convicted of DUI 2nd offense, tried for the old defense in which he claimed he was not on a public road or a place frequented by the public after he was discovered passed out behind the wheel. Ivydale Road is an asphalt road north of LaFollette that goes up Walnut Mountain. The defendant was parked on the gravel shoulder of the road. The Court reviewed the record and determined the jury had decided the road was public and the Court was not at liberty to substitute its inferences for that of the jury based on the 1990 Supreme Court decision, State v Pruett, 778 S.W. 2d 559.

State v Kiser, Tenn Crim App July 2006

Synergistic Effects of Multiple Drugs

The defendant drove straight for two blocks in a left turn lane in Lenoir City. A canine handler and patrol officer pulled her over. He noticed signs of impairment that were not alcohol related. The defendant's slurred speech and inability to perform the one leg stand or recite the alphabet gave him cause to believe the defendant was under the influence of drugs. A blood test confirmed his belief. The defendant, convicted of second offense DUI had Hydrocodone, Alprazolam, Diazepam, Nordiazepam, Carisprodal, Meprobamate and Phentermine in her system. TBI forensic scientist, Mike Lyttle testified that the combination of drugs would cause "synergistic effects." He defined synergistic effects as "[I]f you were to assign a value to each drug of their impairment, if the level [for] Alprazolam impairment was a one, and the level for Diazepam impairment was one, additively, if you combine them, you would get an impairment level of two. But when you have synergistic effects going on, you have the possibility of effects of three or four, or even five. Effects that seem greater than they should be for the two drugs combined, when [they are] given in combination. The defendant's conviction for second offense DUI was affirmed.

State v Walker, 2006 Tenn Crim App July 2006

Swerving More Than Imperfect Driving

Bobby Gene Walker, Jr. was traveling home from the Cellar Bar in Blount County after watching football games. He displayed the classic symptom of the impaired driver who could not maintain a lane of travel. After watching him for a half mile, officer Brett Hall, pulled him over. The defendant claimed a lack of reasonable suspicion. The defendant had swerved across lane lines and during a turn missed the road, then corrected and drove with half the car on either side of the fog line. The Court found that the defendant's driving was more than "garden variety imperfect driving" and upheld the stop and conviction.



TRAINING EVENTS

TO: All District Attorney Generals and Assistant District Attorneys

FROM: Tom Kimball, Traffic Safety Resource Prosecutor

SUBJECT: Prosecuting the Drugged Driver

The Training Division of the District Attorneys General Conference will be offering a Prosecuting the Drugged Driver course September 11-13, 2006 at the Memphis Police Department Training facility. Funding is available for twenty prosecutors including lodging, meals and travel.

This course is intended to assist prosecutors in cases involving Drug Recognition Expert law enforcement officers and in the prosecution of drug impaired drivers. This course is also intended to help prosecutors improve their effectiveness in Drug Impaired Driving prosecutions so that more violators that commit the crime of DUI by drugs will be convicted of the crime and receive appropriate sanctions and treatment.

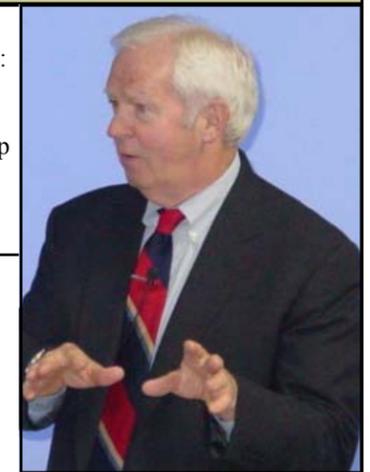
The individual prosecutor who masters the content of the course can expect to be able to describe the scope of the drug problem, the drug impaired driving problem, and the DUI problem in the United States, become aware of the DRE program in the U.S. and in Tennessee, name the seven drug categories used by DRE's, describe the three determinations made by a DRE, be familiar with the components of the DRE process, understand the components of DRE Training including the field certification process, understand the role of toxicologists, develop a better working relationship with the local laboratory staff, better prepare for a trial using a DRE as a witness, work with a DRE to prepare an effective direct examination, qualify a DRE as an expert witness, prepare for defense challenges, and build an effective opening statement and closing argument.

Contact the Training Division at 615 253 6733 if you would like to attend. The deadline is August 25th.

SCENES FROM DUI TRIAL ADVOCACY



TBI Forensic Scientists including : John Harrison and Dawn Swiney below took time to work with small groups of prosecutors to help them design effective examinations.



Ron Clark, former Washington prosecutor, teaching cross



John Tierney makes his point. Robin Ray, Sam Lee, Corliss Shaw and Thomas Swink ponder.

VEHICULAR HOMICIDE MURDERERS ROW

Anthony Cordell, age 41, is now serving a 16 year sentence in the Charles Bass Correctional Complex, 10 years of which is for vehicular homicide by killing his female passenger, Jeannie Webster, after leaving I-40 at an approximate speed of 90 mph and slamming into a tree on January 11, 2005.



Stanley Yancey, slammed into three people in a car that had slowed down for a railroad crossing. Barry Holmes was killed. Two others were injured. Paramedics watched as Yancey removed beer cans from his car and hid them behind a light- pole. Paramedics and witnesses observed that Yancey had bloodshot and watery eyes, a strong odor of alcohol and slurred speech. Yancey claimed he drank one half of a Miller Lite. Yancey was transported to the hospital. Officers obtained a search warrant. Yancey was a .16 more than five hours after the homicide. Yanceys last conviction was for driving as a habitual offender in 1998. He had DUI convictions from 1995 and 1992. He was sentenced to serve 9 years in prison on May 24th, 2006.



Christopher Pierce is serving a twelve year sentence in prison. His party in May of 2004 ended in the tragic loss of thirteen year old girl. Pierce was 25 at the time and went out with his seventeen year old buddy. He bought 40 ounce Colt 45 malt beverages for himself and the 17 year old co-defendant. Three hours after the crash he had a .15 B.A.C. The two picked up two girls including the thirteen year old who snuck away from her home. Pierce drove for a while, but then decided to let the seventeen year old drive, because his license was suspended. The seventeen year old drove at excessive speeds, lost control and crashed into a tree. The thirteen year old was flung out the rear window. She did not drink.

Pierce was convicted for being criminally responsible for the conduct of another. The seventeen year old pled guilty to the same crime. He will have plenty of time to think about all the harm he caused on that night in May. The girls parents thought their daughter was in bed sleeping. Instead she left her home at the request of a girl friend to go riding with two guys, who did not care about anyone but themselves.

ATTORNEY GENERAL'S OPINION

In Opinion 06-107 the Attorney General has issued an advisory opinion that indicates that Juvenile DUI offenders may not be videotaped or digitally recorded. The opinion is based on T.C.A. 37-1-155 (a)(1). This statute prohibits the recording of juveniles in all misdemeanor cases and sets out a limited permission to record in felony cases. Prosecutor's would do well to advise police departments in the local jurisdiction of this opinion. This will cause proof problems in DUI cases and require from law enforcement thorough reports and effective testimony. The full opinion may be viewed at: <http://www.attorneygeneral.state.tn.us/op/2006/OP/OP106.pdf>

WELCOME NEW DISTRICT ATTORNEYS

Nine new District Attorneys were elected August 3rd. They are:

- 1st District, Tony Clark
- 4th District, Jimmy Dunn
- 7th District, Dave Clark
- 10th District, Steve Bebb
- 17th District, Chuck Crawford
- 24th District, Hansel McCadams
- 25th District, Mike Dunnavant
- 31st District, Lisa Zavogiannis

The DUI division looks forward to working with and supporting your efforts to seek justice and protect your citizens. Good luck with your transition to your new offices and new duties.

Recidivist Wall of Shame



McMichael

Richard McMichael, 40, of Bethpage pled guilty to DUI seventh offense in Sumner County Criminal Court. He also pled to violation of the habitual traffic offender law and evading arrest. Previous felonies including habitual traffic offenses, felony DUI's and burglaries resulted in a penalty of 8 years for this multiple felony offender.



Powell

Charles Powell, 44, of Hamilton County had quite a night committing Aggravated assault, Evading arrest, a Habitual traffic offender violation and his 9th DUI. Powell forced an officer and then a citizen off the road. He rammed a police car that was trying to pull him over. To top it off he tried to grab an officer's gun after fleeing from the hospital. He then had quite a day in court. He was sentenced to nine years in the Department of Correction.



Turnage

Thomas Turnage, 55, is back as a repeat customer of the Department of Correction. He was convicted of felony DUI and his fifth violation of the habitual motor vehicle offender law in Memphis. He received a four year sentence.



Barry Linville, 42, was tried and convicted of 10th offense DUI on 4/11/06. His girlfriend was pushing his car into the gas station with Linville steering. Linville pushed the car into the pump. Linville went into the station to pay for gas. A citizen told him if he tried to drive, he would call the police. Linville forgot to pump any gas, but was able to start the car. The clerk at the station called the police who found an extremely drunk Linville in control of the car. Linville was sentenced to 4 years @ 35% to serve. This is his fourth trip to prison for felony DUI. Unfortunately his safety valve release date is October 21st. He will have served eight months when he is released.

James Basham, Jr. and David Graves pleaded to DUI 8th offense on 5/11/06 in Sumner County. Each received a two years sentence 2 years with parole eligibility after service of 30% of their sentence.

**"All men make mistakes. Wise men learn from their mistakes."
Winston Churchill 1874-1965**

THE PROSECUTOR'S ROLE

On July 27th Georgia Felner of the 21st Judicial District was honored with a special award by the Governor's Highway Safety Office. Georgia was one of four Tennessee prosecutors nominated for the first annual traffic safety prosecutor of the year award from the National Association of Prosecuting Coordinators. She was one of the finalist in the nation for the award.

Prosecutors can get frustrated. They see offenders like those in the Wall of Shame gain early release and then watch as they risk lives in their communities as soon as they get home.

Many habitual DUI offenders will not stop committing the crime until their livers quit working and they die or they run into a tree or family and die. Some need to be removed from society for long periods of time. Perhaps the use of methods to heal and monitor offenders before they reach the stage of felony offender will permit us to incarcerate those who choose to continue risking lives on our roads.

GOVERNOR NAMES NEW JUSTICE A LOOK AT THE RECENT DECISIONS OF JUSTICE WADE



Justice Gary Wade

Our newest Supreme Court Justice served on the Court of Criminal Appeals since 1998. During his eight year tenure, he wrote hundreds of opinions. During the last two years, he has written fourteen opinions concerning driving under the influence. Without editorial comment, the introductory paragraph from each opinion follows. Note that the opinion featured in the last newsletter, *State v Williams*, written by Justice Clark reversed the decision of Judge Wade. In *Williams*, an officer saw a car stopped in a lane of traffic at night on a two lane road. The officer pulled in behind the car and activated his emergency lights. Justice Clark decided this amounted to an unreasonable seizure and reversed the decision of then Judge Wade, who had noted that the officer had to check out the parked car as part of his public safety and community caretaking duties.

State v. Stanley, 2006 Tenn. Crim. App. LEXIS 324

Defendant argued that the evidence was insufficient to support his conviction for driving under the influence. The court disagreed, noting that the uncontroverted evidence showed that defendant smelled of alcohol, had bloodshot eyes, and was slightly wobbly on his feet. Two police officers testified that defendant's intoxication would have impaired his ability to drive. Defendant did not deny that he had been driving the vehicle. Moreover, there was proof that defendant was seated in the driver's seat and that the keys were in the ignition, circumstances from which the jury could have determined that he was in physical control of the vehicle. Defendant admitted having consumed an alcoholic beverage sometime prior to arriving at a drive-in restaurant and acknowledged that he had not slept during the night. Each of the officers testified that defendant failed two field sobriety tests. The jury accredited the testimony of the officers. Under these circumstances, it was the court's view that the evidence was sufficient.

State v. Roberts, 2005 Tenn. Crim. App. LEXIS 1312

Defendant challenged the sufficiency of the evidence to support her DUI conviction and the finding that she violated the implied consent law. Defendant claimed there was insufficient proof that she drove or was in physical control of the car and that she was not made aware of the consequences of her refusal to submit to a blood alcohol test. Defendant also argued that the implied consent law required a finding by the trial court that she had driven the car in order for the statute to be applicable. The court affirmed the trial court judgment. The court held that defendant's DUI conviction was supported by sufficient evidence that showed that she was in physical control of the car while intoxicated where she was found asleep in driver's seat of a car that was blocking part of a public road; she was admittedly impaired, and, by inference, she had access to the ignition key. The court found that a copy of the Implied Consent Report was introduced into evidence that contained defendant's signature and initials as an acknowledgment of her refusal to submit to the test and that defendant did not contest her refusal to submit to the test or the validity of the signature on the form.

State v. Powell, 2005 Tenn. Crim. App. LEXIS 1270

Defendant argued, inter alia, that the evidence was insufficient to sustain his convictions. The court of appeals disagreed. The evidence established that defendant's car drifted into the lane of travel of the victims and crashed into the trailer. The trailer fish-tailed, causing the driver to lose control of the vehicle. One victim died as a result of his injuries, and the others were severely injured. It was a trooper's opinion that defendant's vehicle was traveling at least eighty-four miles per hour at the time of the crash, some twenty-four miles over the posted speed limit. Defendant smelled of alcohol and was belligerent after the accident. A witness who had seen the defendant shortly before the accident said he appeared to be drunk. His blood alcohol concentration at the time of testing was .1066%, above the statutory threshold, and as high as .145% at the time of the accident. Therefore, the evidence was sufficient to sustain defendant's convictions.

JUDGE RICHARD CULVER, HANCOCK COUNTY, INDIANA COMMENDS THE USE OF IGNITION INTERLOCK

Following are comments from Judge Richard Culver at MADD's Symposium on Technologies delivered June 19, 2006

All across America our roads are plagued by the dangers of people who drink and drive. The dangers of drinking and driving are so predictable that the behavior is prohibited by law. Break the rule, and you get in trouble with the law. Specifically, if you get caught drinking and driving, you go to court. Unfortunately, the American criminal justice system has been rightfully criticized for not being very effective at rehabilitating offenders. Don't believe that? Just ask a police officer what every second offender has in common. Yes, you are correct. They have all been to court before. In short, we are not very good at changing peoples behavior, and here is why. Uniformly, states authorize Judges to:

1. Fine an offender for drinking and driving.
2. Incarcerate an offender for drinking and driving, and
3. Suspend an offenders license for drinking and driving.

All good ideas, right? Maybe not.

A person convicted of drinking and driving might not be able to afford the fine. They might not even be able to pay their rent or child support on time. And yet, my experience is that they can find the money for the next drink. Well then, let's just put them all in jail. Jail gives society the maximum protection. The offender can't drink and drive while they are in jail. No, but they have jobs and families, and it wouldn't be fair to keep them locked up forever. And, even if it were fair, we can't afford it. American jails are already over crowded, and to reduce the population stress on the prison system and to help manage inmate behavior, states have passed good time laws.

For instance, Indiana has a two for one rule. If I sentence an offender to thirty days in jail, with good behavior he is out in fifteen. The offender is fifteen days older but the roads are no more safe once he is out of jail. Perhaps we would all be safer if we simply kept the drunk drivers off the road. In theory, an appropriate answer. And now, I apologize to our President of MADD. I always point out that there are people at each of these conferences I attend that have lost their loved ones to a repeat offender who was drinking and driving on a suspended license. When I jotted these notes down, I was unaware that Glynn Birch's baby was brutally killed by a repeat offender whose license was still suspended at the time he struck Glynn's child. Tragically, this is not uncommon. I have personally processed case after case where the offender was charged as follows:

1. Count I, Operating While Intoxicated, and
2. Count II, Driving While Suspended

This is difficult work, and if we don't get it right, someone else's baby will be struck just like Glynn's child. You could all help me out tremendously if you would just figure out a way to install a breath test device in offender's vehicles.

They have?

And it works?

Then let's explore why a sanction that allows offenders to keep their jobs, go to work, and support their families while keeping our roads safe is used so infrequently in our criminal justice system.

Problem 1: Education

A. Ignition Interlock Devices exist. Still, there are Judges and Legislators across the Country that know very little about these devices. There is a constant need to educate those who pass and apply the law as to technological developments that can save lives. This work never ends because the nature of democracy requires incumbents to stand for re- election. There is a constant turn over in government. Those officials educated about interlocks 10 years ago may not be in their previous position.

B. Of those Judges and Legislators who have heard of the interlock, many have misconceptions about its effectiveness. Too many people disregard the interlock because they believe it is too easily by passed. The first problem with the bypass argument is an assessment of the target population. If our target population is hardened criminals who will blatantly disregard the court order, then we need to go back to our previous point and lock them all up. However, if you believe that there are "otherwise law abiding citizens" who make poor decisions with respect to alcohol, and these people should be rehabilitated, then the interlock is an appropriate sanction.

FAMILY OF MAN KILLED SAYS STORE SHOULD NOT HAVE SOLD BEER

By Bill Grubb
Staff Writer The Rogersville Review

ROGERSVILLE—Family members of a man killed in an accident last year have filed a multi-million dollar lawsuit seeking damages from the driver of the second vehicle as well as Stanley Valley Market, where the driver allegedly purchased at least 30 beers during a nine hour period the day of the accident.

Robert Ben Helton, 61, was killed in a May 30, 2005 traffic accident on Stanley Valley Road. The driver of the second vehicle, Robert A. Brotherton, 29, stands accused of crossing the center line and striking Helton's vehicle head-on. Brotherton was indicted earlier this year on a charge of vehicular homicide.

A lawsuit filed Tuesday by attorneys Mike Faulk and John S. Anderson on behalf of Helton's children, Andrew Helton and Lisa Charles, names Brotherton and Stanley Valley Market, owned by Rick and Theresa Smith, as defendants.

The family is seeking compensatory damages of "not more than \$1 million" for the wrongful death of Ben Helton, punitive damages of \$1 million, \$10,000 for the damage to Helton's 1996 Ford pickup truck the night of the accident and attorneys' fees.

The suit alleges that "prior to the crash over a period of a few hours on May 30, 2005, Brotherton was sold at least 30 alcoholic beverages." Court documents describe the beverages as both 12 ounce and 16 ounce beers. "The employees of Stanley Valley Market then and there negligently and wrongfully sold intoxicating alcoholic beverages to Robert Brotherton when he was already in a state of intoxication which was visible and obvious to the ordinarily prudent observer," the lawsuit argues.

The suit also claims employees of the store continued to sell Brotherton the alcoholic beverages even though he was "already visibly and obviously intoxicated, causing him to become further intoxicated and less able to operate a motor vehicle, which on each occasion he drove to the Stanley Valley Market in plain view of the employees of Stanley Valley Market and as plainly recorded on the video surveillance system employed on the premises."

The suit also alleges someone at the store "either intentionally or negligently allowed the video surveillance tape of the sales to and purchases by Robert Brotherton of alcoholic beverages from the Stanley Valley Market to be erased or taped over" which constitutes the destruction of evidence of the "visible and obvious intoxication" of Brotherton.

The suit claims the employees of the store were not adequately trained to identify patrons who were already intoxicated and not all the clerks selling alcoholic beverages to Brotherton were certified to do so under a state law known as the Alcohol Server Responsibility and Training Act of 1995. It also argues the store is guilty of negligence under a Tennessee law which states damages can be awarded if a jury finds an alcoholic beverage or beer was sold to an obviously intoxicated person who caused injury or death as a direct result of the consumption of the alcohol.

In addition to citing the alleged negligence of Stanley Valley Market, court documents claim Brotherton had a blood alcohol content nearly three times the statutory limit to be considered intoxicated. The suit also argues he is guilty of negligence because he failed to maintain control of his vehicle, was speeding and operated the vehicle in a careless and reckless manner.

"As a direct and proximate result of the aforementioned negligence of Stanley Valley Market and Robert Brotherton, independently and concurrently, and the intentional acts of Robert Brotherton, Robert Ben Helton sustained serious injuries which resulted in his death," the suit states.

The complaint, filed in Hawkins County Circuit Court May 30, seeks a jury trial.

State v. Whittington, 2005 Tenn. Crim. App. LEXIS 1182

The question was whether belching during the 20-minute observation period invalidated the results of the breath test. Because defendant pled guilty to count 2, which specifically required a determination of his blood alcohol level, the question of whether the trial court properly overruled the motion to suppress the results of the blood alcohol test was dispositive. Defendant claimed that he had belched three times and coughed once during the 20-minute period. No other evidence was presented during the hearing. At the conclusion of the hearing, the trial court determined that the videotape did not support defendant's claim that he had belched. It ruled that there was no requirement prohibiting suspects from either coughing or clearing their throats during the waiting period and that because the requirements of Sensing were satisfied, the motion to suppress the results of the blood alcohol test should have been overruled. The evidence in the record did not preponderate against the finding that defendant had not belched during the waiting period. The trial court specifically accredited the testimony of the observing officer based upon its independent observations of the videotape.

State v. Williams, 2005 Tenn. Crim. App. LEXIS 325

While on routine patrol, an officer observed defendant's vehicle stopped on a street blocking a lane of travel. The engine was idling, but the vehicle was not moving. The officer stopped behind the vehicle and activated his emergency lights to signal to the occupants that he was present. The officer smelled alcohol on the defendant and asked him to perform field sobriety tests. He was subsequently arrested for obstructing traffic and **driving under the influence**. The trial court erred by granting defendant's motion to suppress the stop. The circumstances warranted the encounter. The officer, as a part of his community caretaking or public safety function, was permitted to approach a citizen in a parked car.

State v. Lezotte, 2005 Tenn. Crim. App. LEXIS 152

Defendant argued that the trial court erred by denying defendant's motion to suppress. The appellate court noted that because the trial court made no findings beyond the reasonableness of the stop based upon defendant's driving after the consumption of beer, the appellate court would examine the propriety of the search on that issue. The area was known for unruly behavior. The officer had seen defendant drinking beer and observed him with coolers in the back of his truck and an unrestrained two-year-old in the front seat. An investigatory stop seemed reasonable. There was a significant public concern for driving safety and for the safety of the children who were passengers. The initial degree of intrusion was minimal. The officer had an articulable basis for suspicion. He had seen defendant consuming alcohol in an open area only minutes before seeing him driving his vehicle. When defendant opened the door, the smell of alcohol and the unsteadiness of gait gave reason for a full arrest.

State v. Warren, 2004 Tenn. Crim. App. LEXIS 1114

The State argued that the trial court erred by suppressing the results of defendant's blood alcohol test, as defendant was arrested at the scene of the accident, and, therefore, a warrant was not necessary. The court of appeals disagreed. Defendant was at his home for some time before the officer arrived at the scene and requested that a family member request that defendant return to the scene of the accident. The family member went to the home, and defendant voluntarily returned to the scene and attempted to perform field sobriety tests. He was then arrested. That arrest violated the provisions of [Tenn. Code Ann. § 40-7-103](#). The "scene of the accident," as used in the statute, did not include the situation in which defendant was required to return to the scene by law enforcement. Defendant was not at the scene when the police arrived, he presented no danger to the safety of the motoring public, and results of a blood alcohol test could not accurately reflect the level of blood alcohol that existed at the time of the accident.

MISS AMERICA IS MADD

I never met a Miss America until Jennifer Berry arrived at the Parthenon in Nashville's Centennial Park. Jennifer was in Nashville to announce her support of the STRIDES for CHANGE march which will raise funds to help the efforts of the Mother's Against Drunk Driving. The 5K non competitive walk on June 24th was attended by 300 hundred concerned citizens.

Jennifer joined Brad Paisley, Naomi Watts and Kelly Ripa in a virtual celebrity walk to raise money through donations via the internet. The Strides for Change Walk brought \$30,000 to MADD Tennessee.

Jennifer is the first Miss America to chose a platform of advocacy for traffic safety. Her platform statement follows on the next page.

I had the opportunity to speak with Jennifer and found her to be an intelligent, compassionate young lady. She began working with MADD after she suffered the loss of a good friend at the age of fifteen. She spoke of attending her first funeral and experiencing horrible sadness. Then she got mad. Her anger evolved into a motivation make a difference.

She helped the police in sting operations trying to buy alcohol as a minor. At age eighteen she was part of a victim impact panel speaking to DUI offenders about consequences.

Her selection as Miss Oklahoma and later Miss America has given her a platform to try to make certain that the loss of her friend not be pointless.

Hearing these words from Miss America reminded me that three out of every ten Americans will be involved in an alcohol related crash in their lifetimes. These crashes are completely preventable.

The organization, MADD, does it's best to support victims of impaired driving. It will be a great day when the organization is no longer needed. As long as impaired drivers maim and kill MADD will be here to speak out and save lives.

One fringe benefit of the job of Traffic Safety Resource Prosecutor is the opportunity to meet wonderful people who want safe roads for everyone. Jennifer Berry has heartfelt motivation. So many high school and college students know first hand the loss of family and friends due to car crashes.

Prosecutors get to make a difference. The guilty offender who is convicted is less likely to commit another DUI than the guilty offender who is not convicted. It's great to have the chance to save lives and save people from suffering the loss of loved ones.



Jennifer Berry and Tom Kimball

PROSECUTOR OF THE YEAR

The National Association of Prosecuting Coordinators has named it's first recipient of the national traffic safety prosecutor of the year award. He is:

Warren Diepraam, an Assistant District Attorney in Harris County (Houston) Texas. Houston in particular, is an especially dangerous place to be a motorist; Texas has one of the worst fatality rates in the nation and Houston is one of the worst in the state.

Beyond his vigorous prosecution of vehicular homicide defendants, ADA Diepraam commits much of his time to educating youth about the dangers of alcohol abuse and drinking and driving. As an example, while a member of the Houston Young Lawyers Association, Diepraam implemented a program targeting teen audiences that includes an overview of how alcohol impairs, statements from victims detailing the devastation that can result from drinking and driving, and a discussion of the legal consequences of impaired driving. This public service project received national recognition from the American Bar Association. Diepraam also participates in "Teen Court" — a program that encourages high school students to volunteer in the legal system as prosecutors and defense attorneys for cases in which their peers are brought before a judge for traffic citations.

Warren tried two extremely high profile vehicular homicide cases in the past year. In one an off duty police officer was convicted. In the other a surgeon from Houston tried to use an ambien sleep driving defense. The work of this assistant district attorney exposed the fallacy of the defense and enabled the jury to convict.

The Time to Change is Now

Building Intolerance to Drunk Driving and Underage Drinking

Platform Statement of Miss America 2006 Jennifer Berry

America has made great strides in reducing drunk driving and its horrific consequences. The accomplishments of my platform partner, Mothers Against Drunk Driving (MADD), have been Astounding. They have helped save more than 300,000 lives and countless injuries. But a staggering amount of work remains to be done. Alcohol-impaired driving is America's most frequently committed violent crime. About every 30 minutes another American dies on the highways in an alcohol-related traffic crash and dozens more are injured. One-third of traffic deaths among 15-20 year olds involve alcohol.

I have experienced firsthand the tragedy that drunk driving causes. One of my high school friends was killed when riding with an underage drunk driver who lost control of the car. My friend was only 15 years old.

To continue the important work of keeping our loved ones and roadways safe, today's leaders must do more. We are charged with a higher level of action, called to make significant changes in the way we address drunk driving and underage drinking.

These problems demand a new level of intolerance. My goal for the coming year will be to use my opportunities for awareness and education to build that intolerance. Intolerance is a strong word and it is not used lightly. But the fact remains that drunk driving is 100 percent preventable, yet it continues to be a plague of human behavior that we as a society continue to tolerate. Witness the daily reports of alcohol-related deaths and injuries. Also consider the countless young Americans that drink alcohol underage—continuing a dangerous and even lethal "rite of passage" that puts them at risk for neurological impairment, violence, traffic deaths and other life-destroying consequences.

It's time to say enough. Intolerance is the right word and the right goal. I also want to see the same kind of intolerance applied to underage alcohol use and build true intolerance through one of our most powerful weapons: education.

I will approach the underage drinking issue globally. It's a multifaceted issue that requires a concerted and comprehensive effort. Every tool is important. Stricter legislation is key. Parental supervision is paramount. Teacher involvement is critical. All of us must work together to protect young people.

Given the right education by adults, children have a better chance of living safe and healthy lives. We need to weave a commitment to decision-making education into the fabric of society. Equipping parents, teens, children, teachers, legislators and other influencers should be our clarion call.

It's our best hope of continuing the progress and saving future lives—making a real difference at home, school and in the community.



I have worked with thousands of Oklahoma students of every age. Getting through to a young audience requires a realistic approach. We must speak with respect, understanding and compassion. We must be sincerely committed to educating them in honest, open detail about the consequences of making bad and illegal decisions.

The focus is making good decisions—safe, healthy and legal choices about alcohol. Young people from kindergarten to college understand this at the most basic level. This is the message that youth universally respond to. It is a foundation on which we can build a pillar of strength. Teaching decision-making skills literally from day one is the single hope of giving our children a fighting chance when they reach the peer-pressure years.

Rallying schools, teachers, parents, youth, legislators and corporate America to help stop drunk driving and prevent underage drinking by implementing proven-effective initiatives and programs will be my mission. With MADD as my platform partner, I will capitalize on every opportunity to make a positive difference and honor the memory of my friend to help save as many lives as possible.



Did you know? During the last year the use of seat belts in Tennessee increased by 4.2% and the use in pick up trucks by 6%. Over all seat belts are used by 78.57% of drivers. We are below the 2005 national average of 82% and we still have work to do.