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PUBLISHER:
Tom Kimball, A.D.A.
LAYOUT AND DESIGN:
Sherri Harper

INSIDE THIS ISSUE:

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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DRIVING WHILE DROWSY

It is summer and time for that vacation to the beach. Parents pack their children, luggage and pets in the car and head south for the Gulf Coast of Florida, Alabama, Mississippi, or Louisiana or the coast of the Atlantic Ocean in Georgia, the Carolina's or Virginia. Most Tennesseans can drive to a watery vacation spot in ten or twelve hours.

It is summer and teens don't have to get up early to go to school. The days are longer and the cool of the evening invites young people to stay out later.

It is summer and shift work at Tennessee factories must continue. Products must still be built and shipped out to world wide markets.

It is summer and more people are on the roads than at any other time of the year. More people are on the roads at night. More people decide whether to stop to rest or to push further down the road.

Too often during the summer season tragic crashes occur when people make the wrong decision. The National Foundation for Traffic Safety estimates that nationally 100,000 reported crashes are the direct result of driver fatigue each year, resulting in an estimated 1,500 deaths and 71,000 injuries. The AAA Foundation for Traffic Safety says drowsy driving is as dangerous as drunken driving. The inability of a sleeping driver to try to avoid crashing makes this type of wreck especially severe.

This issue of the DUI News is intended to raise awareness concerning the dangers of drowsy driving. For more information concerning this subject check out the information at: http://www.aaafoundation.org/home/

The problem of drowsy driving received attention in the Tennessee Legislature this year. A bill sponsored by Representative David Shephard and Senator Doug Jackson would have permitted the Trier of fact to infer that if a driver of a motor vehicle fell asleep while driving or drove after no sleep for more than 24 hours, the driver was reckless for purposes of offenses of reckless driving and reckless homicide.

The bill was deferred in the 2007 session, but may be considered for attention in 2008. For now District Attorneys must deliberate and decide whether the act of falling asleep at the wheel is criminally negligent or reckless conduct. Risks for falling asleep at the wheel are increased by: Sleep Loss, Driving Patterns, The Use of Sedating Medications, Untreated Sleep Disorders: Sleep Apnea Syndrome and Narcolepsy and Consumption of Alcohol. A determination of criminal intent must be made on a case by case basis. A determination of whether the crash occurred due to the use of sedatives , cocaine or alcohol should be investigated in cases in which a person falls asleep at the wheel. Those cases should still be prosecuted as impaired driving cases.

If the investigation reveals a driver fell asleep without the aid of alcohol or drugs, the investigation into the cause of the crash should continue until a determination of the cause of driver drowsiness is determined. In certain cases a driver may be criminally liable if he was aware of and disregarded a known risk, which placed another person in imminent danger.

RECENT DECISIONS

State v Frazier, 2007 Tenn Crim App 417

CONSECUTIVE SENTENCING

Frazier, a ninth DUI offender and habitual traffic offender, ran a red light and crashed into an elderly gentleman. He denied driving, but the only blood in the car was on him and the driver's side. He had a rash from an airbag which deployed on the driver's side. There was also an eyewitness who testified there was only the driver in the car. Frazier complained about his consecutive sentences for eight years for reckless aggravated assault and four years for the felony DUI and four years for the violation of the habitual motor vehicle offender law. He also complained after being denied alternative sentencing.

State v Russell, 2007 Tenn Crim App 420

STALE INFORMATION DOES NOT CREATE REASONABLE SUSPICION

Information that is stale failed to give the officer reasonable suspicion to stop the defendant vehicle. In this case Russell looked drunk while harassing his adult niece at 10:30 a.m. A BOLO was issued. The officer stopped the defendant at 6:30 pm. There was apparently a second call, but the record did not contain any information concerning the later call. The Court ruled the information from the 10:30 a.m. event was too stale to be relied upon.

State v Warlick, 2007 Tenn Crim App Lexis 394

MEDICAL RECORDS ADMISSIBLE

The defendant fought to keep out an excited utterance and medical records in this case. This was a bench trial in the Court of Judge John Wooten. The medical records from Vanderbilt indicated a serum blood alcohol level of .183. Apparently according to the last lines of the last paragraph on page 10, Judge Wooten calculated the whole blood level using his own knowledge of the metric system.

Those that have been to one of our trainings with toxicologists know the conversion rate is 1.15. A .092 serum level from the hospital equates to a .08 BAC of whole blood. This defendant had a .183 serum level.

The opinion includes three important holdings:

1) The excited utterance of the defendant's child to ambulance personnel indicating his mother had been drinking was admissible as a hearsay exception and did not violate Crawford.
2) An admission by the defendant to an emergency room doctor that she had been drinking was recorded in the medical record. The record was admissible without a witness as a business record and did not violate Crawford.
3) The hospital serum alcohol test was part of the medical record and was also admissible without a witness and did not violate Crawford.

This may be the first appellate decision since the passage of the "Hospital Records as Evidence Act of 2006". That act when combined with the "Medical Records Act of 1974" is the functional equivalent of the business records exception to the hearsay rule.

NO MORE DIVERSION FOR VEHICULAR HOMICIDE

Due to oversight or poor proofreading we had an odd quirk in our law. No diversion was permitted for DUI offenders or for vehicular assault, but it was possible for vehicular homicide. Through the efforts of Senator Tim Burchett of Knox County and Representative Kent Coleman of Rutherford County that is no longer the case. Public Chapter 471 was passed unanimously. It added vehicular homicide to the list of crimes for which diversion is not an option.

COUNTY TRAFFIC FATALITY SCORECARD

The following counties had the fewest traffic fatalities per capita in Tennessee in 2002-2005. Congratulations and keep up the good work.

Officials listed may or may not have been in office during the three year period.

1) Moore (Lynchburg)
County Mayor: Peggy Gattis
District Attorney: Chuck Crawford

2) Williamson: (Franklin)
County Mayor: Rogers Anderson
District Attorney: Ron Davis

3) Weakley: (Dresden)
County Mayor: Houston W Patrick
District Attorney: Tommy Thomas

4) Hamilton (Chattanooga)
County Mayor: Claude Ramsey
District Attorney: Bill Cox

5) Lake (Tiptonville)
County Mayor: Macie Roberson
District Attorney: Phil Bivens

6) Shelby (Memphis)
County Mayor: A.C. Wharton Jr.
District Attorney: Bill Gibbons

7) Bradley (Cleveland)
County Mayor: D. Gary Davis
District Attorney: Steve Bebb

8) Rutherford (Murfreesboro)
County Mayor: Ernest Burgess
District Atty: William Whitesell

9) Franklin (Winchester)
County Mayor: Richard Stewart
District Attorney: Mike Taylor

10) Sumner (Gallatin)
County Mayor: R.J. Thompson
District Attorney: Ray Whitley

MOST DANGEROUS COUNTIES

If you live in the following counties, you might want to get some extra airbags and seatbelts installed in your vehicle. The counties in which there is the greatest likelihood to die in a traffic crash are: Perry, Decatur, Hancock, Pickett, Hardeman, Henderson, Smith, Marion, Fentress and Houston.

The danger level was calculated by the Department of Safety taking into consideration the number of fatalities and the number of licensed drivers per county. Perry County had 14 fatalities or 4.7 per year with 5, 892 licensed drivers. The rate was 0.79 fatalities per licensed driver. On the other end of the scale the safest county was Moore which suffered one fatal crash in three years with 4,404 licensed drivers for an average rate of 0.08.

OTHER DANGERS

Most Dangerous for:	
Senior Citizens:	Davidson (Nashville)
Youth ages 16-21:	Davidson (Nashville)
Speed Related:	Marion (Jasper)
Unrestrained toddlers ages 0-4:	Clay (Celina)
Alcohol related fatals:	Sequatchie (Dunlap)
Alcohol related crashes:	Trousdale (Hartsville)

INTRODUCING THE QUERY THE MIND OF THE LAWYER CONTEST

Readers, in law school we were taught to think like lawyers. I want to permit you to exhibit your capacity to think like a lawyer with a new challenge. Beginning with this edition a legal brain teaser will be included in this space. E-mail your answers to me at *tekimball@tndagc.org*. Analysis must include Tennessee law. The best response (if any) will be included in the next issue. The author of the response will receive a certificate naming him or her a DUI NEWS "**QUERY OF THE LEGAL MIND SCHOLAR**" and an inexpensive prize from the District Attorneys General Conference. Any reader may participate. Here's the first query:

A person is speeding. An officer activates his blue lights to try to stop him. The person does not stop but increases his speed to extremely dangerous levels. The officer stops attempting to pursue. He turns off his blue lights, pulls into a store parking lot and calls the dispatcher to inform his superiors. Two miles down the road the person crashes. The crash occurs approximately ninety seconds after the officer pulled into the parking lot. Was the driver seized at the time of the crash?

Recidivist Wall of Shame

Robbie D List pled guilty to his 10th DUI in Athens, Tennessee on July 2, 2007. Even though List had nine prior DUI's, he had never been convicted as a felon. He had numerous convictions for third offenses entered in various Sessions Courts. List also had nine convictions for driving on a revoked license and had been declared an habitual offender. He was sentenced to three years in prison. At his sentencing hearing List admitted to long term alcohol abuse and stated that he could wake up with a .08 BAC many mornings. His license was revoked for 10 years.
Do you wonder how long it will be until he drives impaired again? Thanks to ADA Paul Rush for getting this convict off the streets for a while.

Therrus Scruggs is another habitual offender who would not stop driving. Scruggs was convicted recently in Rutherford County as an habitual motor vehicle offender. As a career felon he received a sentence of six years, which runs consecutive to a three year Knox County sentence. Scruggs has been convicted as an habitual offender for the ninth time. He also had eight prior DUI convictions, but was not arrested for DUI this time. Scruggs was prosecuted by ADA Jennings Jones.

Billy Joe McGee, 44, of Carter County might wish he had never met his bondsman. He committed DUI's on January 14, April 9, May 19, and May 20, 2006. He pled guilty to all four on May 17th, 2007. He had three priors in 1989, 1992 and 1999, so each of these was a felony. He will now have to serve eight years worth of sentences. McGee had a blood alcohol level on .19 for his January crime, but refused testing in the next three. This case is a great example of why an offender should have his bond revoked due to dangerousness if he commits a DUI while on bond for another. The citizens of Carter County are extremely fortunate that this criminal did not hurt of kill anyone. This case is also a great example of why DUI felons should not be permitted to refuse breath or blood tests. Is there any other area of the law in which the defendant is permitted to limit the evidence to be used against him?

SPEEDING AND RECKLESSNESS

On July 17, 2005 Gerald Stinson and Eugene Hosey were riding in the back seat of an SUV. At the wheel was a designated driver. The group had done the right thing. The designated driver was sober and responsible.

Brent Hollister crashed into the back of the SUV. Witnesses indicated he was driving about 100 miles per hour and weaving in and out of traffic before the crash. Gerald and Eugene were ejected and killed instantly. The driver was able to free herself from the vehicle. Good Samaritans were able to free the front seat passenger before the SUV exploded into a fireball.

Hollister was transported from the scene in extremely critical condition. No blood test was administered. No hospital record indicated that a blood test was ever conducted to determine whether alcohol or drugs were in the defendant's system.

Hollister pled guilty to two counts of reckless vehicular homicide and two counts of reckless aggravated assault and asked for alternative sentencing. The Court noted that he had recently failed to comply with probation and had seven prior speeding tickets. Hollister was sentenced to serve eight years.

Over fifty family members and friends of Gerald Stinson and Eugene Hosey attended the sentencing hearing. They hope that the sentence sends a message. Reckless driving is a choice. It demonstrates a lack of civic and personal responsibility. The reckless driver has no regard for the rights of others. The deaths of Gerald and Eugene on that July night were senseless and avoidable. Reckless driving is a serious crime and it should be prosecuted to try to stop a driver from causing injury or death to anyone by driving recklessly again.

THE CRASH PAGE

By Jim Camp
Traffic Safety Resource Prosecutor

In the last issue we discussed two qualities found in good crash reconstructionists. In this issue we continue with that discussion.

Third: Does the expert have the ability to reduce his/her opinion to a format that is easy for the average juror to understand? An expert that gives you the sense of being overwhelmed by technical jargon and calculations will make the jury feel the same way. Many individuals have the ability to evaluate a crash scene and render accurate opinions about the cause of the crash. Few however possess the innate ability to communicate that information clearly and succinctly to a non-engineer audience. We've all been there, watching the jury's collective eyes glaze over as tedious fact after fact is followed by incomprehensible equation after equation as the "expert" pontificates in a style befitting most of us on our worst self-righteous day in the courtroom. We hear "blah blah formula blah blah coefficient blah". The jury hears even less as the ones with math anxiety are looking for the nearest window to jump our of. It is right about at that time that the lights go out and the jury is lost forever. If we think it is hard to understand it probably is and it needs to be simplified. A good crash reconstructionist will approach trial preparation in the simplest form possible, providing you with a common sense, plain language explanation followed by a suggested question string that avoids any reference to formulas or math. Less experienced, less capable experts have a much more difficult time accomplishing this.

Fourth: Does the expert take the time to listen to your questions and answer them honestly? Most prosecutors are not terribly adept at math, physics or engineering (I know you may be the exception but there was a reason most of us ended up in Law School instead of Engineering or Med. School. At least for me the reason starts with "calc" and ends with "ulus"). Therefore the majority of us are at the mercy of crash reconstruction experts when it comes to truly understanding the results of their investigation. I for one, needed to be spoon fed repeatedly. Luckily, I have had the pleasure of working with talented and articulate reconstructionists who would listen to my stupid questions and answer them repeatedly until I got it right. Many in the field lack the ability or patience to do this. Really good experts in the field take the extra time and don't try to make a silk purse out of a sow's ear. If the facts are bad for us the facts are bad. None of us want a "yes man" or woman sugar coating the truth. To do this well the expert must ask the hard questions and use more than one method to arrive at his/her conclusion.

Does the expert validate his/her work and check for vulnerabilities in his/her opinion? In other words, does she tell you the truth or does she tell you only what she thinks you want to hear? Do they pay attention to potential problem areas and help you formulate your plan to overcome those problems? Good experts do not ignore the problem, they evaluate it and determine if it invalidates their initial opinion. Good experts are not afraid of the truth, bad or unreliable ones dress it up to look like something else. A really good crash expert performs what is referred to in most circles as a "sensitivity study". Such a study consists of evaluating the experts results using other techniques, methods and facts to see if the original findings are in anyway flawed or suspect. This ensures the accuracy of the result. The expert must also look to other possible causative factors for the crash and eliminate them.

Finding a good crash reconstruction expert can be difficult. Here in Tennessee; however, the Department of Safety has made finding such an expert a lot less difficult. The Highway Patrol's Critical Incident Response Team consists of highly skilled, experienced experts in the field of reconstruction. They are ready , willing and able to serve you at any time in any part of the state. In future issues we will examine this valuable resource.

The Art of Perfecting an Interlocutory Appeal by Permission

Mark A. Fulks
Assistant Attorney General

Consider the following scenario: The defendant was charged with DUI. Prior to trial, he moved to suppress all evidence concerning the traffic stop and the BAC test results. The motion was granted in part. The trial court threw out the BAC but left the rest of the case intact. As a result, the evidence at trial will be limited to the arresting officer's testimony about the defendant's erratic driving, failed field sobriety tests, blood-shot eyes, slurred speech, and strong odor of alcohol. Although this evidence is sufficient, the case would be more persuasive with the BAC results. In a case such a this, there are two options for review of the trial court's order: an interlocutory appeal by permission pursuant to Rule 9 or an extraordinary appeal by permission pursuant to Rule 10. This article will discuss the considerations and procedures for pursuing an interlocutory appeal by permission pursuant to Rule 9 of the Rules of Appellate Procedure.

An interlocutory appeal is an exception to the general rule that requires a final judgment before a party may appeal as of right. Accordingly, in evaluating a case for an interlocutory appeal, it must be remembered that interlocutory appeals are generally disfavored, especially in criminal cases, because they can lead to piecemeal litigation and cause the type of delay that "is fatal to the vindications of the criminal law." *United States v. MacDonald*, 435 U.S. 850, 853-54 (1978); *State v. McKim,* 215 S.W.3d 781, 789-791 (Tenn. 2007). As a general rule, an interlocutory appeal can be expected to delay a trial for anywhere from six months to two years. The delay may be longer but will rarely be shorter. If the application is granted, the appellate record must be filed within 30 days. Tenn. R. App. P. 9(e). Thereafter, the appellant's brief is due for filing within 30 days and is followed by the appellee's in another 30 days. Tenn. R. App. P. 29(a). Additional time may be added to the briefing schedule. Tenn. R. App. P. 21. Thus, it generally takes about 90 days before the case is submitted to the court. After the case is submitted, it may take from three to six months for the court to render a decision. Thereafter, the parties have time to seek review in the state supreme court and the United States Supreme Court. Meanwhile, the defendant's trial is going nowhere. Accordingly, the time constraints of the appellate process should be a paramount concern in deciding whether to pursue an interlocutory appeal.

An interlocutory appeal pursuant to Rule 9 requires the permission of both the trial court and the intermediate appellate court. *See* Tenn. R. App. P. 9. Initially, the decision to grant an interlocutory appeal pursuant to Rule 9 is a matter entrusted to the discretion of the trial court and the appellate court. Tenn. R. App. P. 9(a). The trial court's permission is a prerequisite to requesting permission from the appellate court. In determining whether to grant an interlocutory appeal, the trial court should consider:

(1) the need to prevent irreparable injury, giving consideration to the severity of the potential injury, the probability of its occurrence, and the probability that review upon entry of final judgment will be ineffective;
(2) the need to prevent needless, expensive, and protracted litigation, giving consideration to whether the challenged order would be a basis for reversal upon entry of a final judgment, the probability of reversal, and whether an interlocutory appeal will result in a net reduction in the duration and expense of the litigation if the challenged order is reversed; and
(3) the need to develop a uniform body of law, giving consideration to the existence of inconsistent orders of other courts and whether the question presented by the challenged order will not otherwise be reviewable upon entry of the final judgment.

Applying this rule, the state supreme court has noted that an interlocutory appeal should not be granted where: the underlying issue is a matter entrusted to the discretion of the trial court; the trial court's ruling is dependent upon the evidence introduced at trial; or a ruling by the appellate court would be advisory. *State v. Gilley*, 173 S.W.3d 1, 4-6 (Tenn. 2005). Additionally, the supreme court has held that the suppression of the state's evidence alone is not justification for an interlocutory appeal. *Id.*

Once the decision to pursue an interlocutory appeal has been made, the Criminal Justice Division of the State Attorney General's Office should be contacted. The attorneys in the Criminal Justice Division will need to be informed of the facts of the case, the legal question at issue, the ruling of the trial court, and the reasons an appeal is warranted.

(continued next page)

Interlocutory Appeal Cont'd

If the Criminal Justice Division agrees with your assessment of the case, it is very likely that the appeal will be taken. Because of the deadlines for pursuing an interlocutory appeal, all of the relevant pleadings, orders, and transcripts should be forwarded to the Criminal Justice Division as soon as possible. These things must be attached to the application for permission to appeal that will be filed in the appellate court later. *See* Tenn. R. App. P. 9(d).
The next step is to seek permission to appeal in the trial court. The motion for permission to appeal must be filed with the trial court clerk "within 30 days after the date of entry of the order appealed from." Tenn. R. App. P. 9(b). It is important to note that the time for requesting an interlocutory appeal runs from the day the order at issue is filed, not the day the trial court announces it's ruling from the bench. This can result in additional time for preparation of the application and consultation with the Criminal Justice Division, especially when the order is being prepared by one of the attorneys involved. However, if the trial court prepares its own orders, the entry of the order can come as a surprise and result in a shortening of the applicable time limits. Although these deadlines can be extended by the courts, because a criminal prosecution is being delayed, it is important to move as quickly as possible.

If the trial court denies permission to appeal, the case proceeds in trial court subject only to the possibility of an extraordinary appeal pursuant to Rule 10. *See* Tenn. R. App. P. 10. If the trial court grants permission to appeal, the trial court "shall state in writing" the reasons for granting the appeal. Tenn. R. App. P. 9(b). The trial court's statement of reasons "shall specify" the legal criteria making an interlocutory appeal appropriate, the factors supporting the trial court's decision, and any other factors that support the trial court's exercise of discretion in favor of the appeal. *Id.* The trial court's decision is not binding on the appellate court, so some explication is needed. If the trial court does not sufficiently explain its decision, the appellate court may be disinclined to grant an appeal.

After the trial court enters its order granting the appeal, the Criminal Justice Division will have 10 days to file an application in the appellate court. Although this deadline may be extended for good cause, it is advisable to make all necessary information available as soon as possible. The application must contain the following: a statement of the issue, a statement of the facts necessary to demonstrate the propriety of the appeal, and a statement of the reasons supporting an immediate appeal. Tenn. R. App. P. 9(d). The application must also include a copy of the order being appealed, a copy of the order granting the appeal, and any other information that will inform the appellate court's decision on the application. *Id.* To satisfy the requirements of Rule 9 and put the appeal in the best posture, it is imperative that the Criminal Justice Division be provided with as much information as possible.

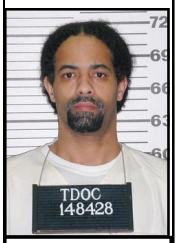
In particular, the appellate court will deny any application that does not contain the orders of the trial court. More generally, as with any appeal, success often depends upon how well the record has been developed in the trial court. If the application is granted by the appellate court, the appeal will proceed through filing of the record, briefing, argument, and submission to the appellate court for decision. Tenn. R. App. P. 9(e); Tenn. R. App. P. §§ F—I.

One final note, the granting of the interlocutory appeal by permission does not automatically stay proceedings in the trial court. The trial court retains jurisdiction over the case and may continue to rule on other matters in preparation of the trial. The trial court may also begin the trial while a decision is pending in the appellate courts. An order staying the proceedings may be entered by either the trial court or the appellate court. Tenn. R. App. P. 9(f).). If the trial court does not enter a stay, it is important to keep the Criminal Justice Division informed of the status of the case so that a stay may be pursued in the appellate court.

Hopefully this article will provide some guidance for the successful pursuit of interlocutory appeals by permission in appropriate cases. However, this process is not an exact science. In one case, the appellate courts may accept the trial court findings without any real explanation for their sufficiency, despite a specific challenge to the propriety of the appeal. *See State v. Williams*, 193 S.W.3d 502, 505‑506 (Tenn. 2006). In another case, the supreme court may reject the positions of the parties, the findings of the trial court, and the conclusion of the intermediate appellate court. *See State v. Gilley*, 173 S.W.3d 1, 4‑6 (Tenn. 2005). This is what makes the process of perfecting an interlocutory appeal a true art-form: the propriety of the appeal is in the eye of the beholder.

Mark A. Fulks is an Assistant Attorney General in the Criminal Justice Division of the Tennessee Attorney General's office, currently serving as an appellate team leader. In addition to practicing in the state and federal appellate courts, he trains and supervises attorneys in appellate practice and procedure. He has authored a number of articles on a variety of legal subjects and has lectured on search and seizure, extradition, criminal law, and criminal procedure. The opinions expressed in this article are not necessarily those of the office of the Attorney General & Reporter

VEHICULAR HOMICIDE
MURDERERS ROW



Robert Payne

In July of 1995, Robert Payne was a crime spree. In four days he went on two high speed chases through residential neighborhoods. During the first the police gave up, because Payne was too dangerous to pursue. During the second the police had lost sight of Payne and found him only because he crashed into a family while running through a traffic light. Payne struck Hattie Gray's car on the driver's side. One of Ms. Gray's children, five-year-old Ashley Gray, died from a skull fracture. The second child, seven-month-old Jasmine Dartis, sustained a head injury, a broken leg, and abrasions. Ten-year-old James Gray sustained head and leg injuries. Ms. Gray sustained broken ribs, a broken pelvis, crushed ankles, a collapsed lung, and a head injury. She remained in a coma for seven days following the collision. Payne received a total sentence of 48 years.

Payne filed a post conviction petition and lost in 2002. Dissatisfied with his sentence, he filed for relief using a "habeus corpus" petition asking the court to reconsider his sentence. He alleged that he was treated too kindly in his past. He claims he was allowed to plead to an illegal sentence. One felony was concurrent to another felony for which he was on bond. He claimed this was an invalid sentence and should not have been counted against him to set his sentence in the vehicular homicide cases. The Court ruled against him.

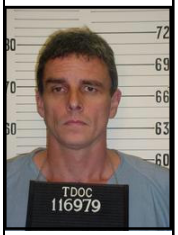
The Metropolitan Government of Nashville in Resolution 297 in the year 2000 voted to give Ms. Gray and the children $110,000 to settle claims against the City. Payne had a criminal history of robbery and theft before choosing to drive like a madman in July of 1995.

Picture by: Andres McMurtrie with The Jackson Sun

Rachelle Mills, left, pled guilty to vehicular homicide in Gibson County Circuit Court in Humboldt. Mills was sentenced to eight years, and will be eligible for parole after serving thirty percent of the sentence.

Mills was driving with a .12 blood alcohol level when she crashed and killed her 14 year old passenger, Ramzi Morris. Ramzi left behind a twin sister, who has made great strides in her personal recovery with the help of friends and the people of Temple Baptist Church in Milan, according to her parents.
See the May 29th edition of The Jackson Sun for the complete story. District Attorney Garry Brown represented the State in this tragic case.

Marlon Mitchell, 28, killed Richard Thurston in Gallatin, Sumner County. Thurston was on his motorcycle at about 8:30 am when he was struck by Mitchell's car. An hour later Mitchell had a blood alcohol level of .11. Mitchell claimed he had not been drinking since he had passed out at 2:30 am. He was sentenced to serve eight years, but his release eligibility date is August 1, 2009.



Ricky Chastain, 39, killed Stephanie Sharp and her unborn child on April 30, 2006. He pled guilty and received two concurrent sentences of thirty years on June 11, 2007. Chastain was driving with a blood alcohol level of .25 when he drifted into and across the oncoming lane of traffic. He swerved to keep from going off the road and drove head on into Stephanie killing her instantly. Chastain had a long criminal history including a 2002 drug conviction, two 2001 theft convictions, a 1995 felony escape, a 1992 theft, a 1991 aggravated burglary, 1991 felony escape and two burglaries and a larceny in 1987. He was on parole for a six year drug conviction when he committed the vehicular homicides.

TRAINING

Prosecuting vehicular homicide cases is always challenging. For months and sometimes years the tragic, senseless and preventable crash that took a life is on the mind of the prosecutor and victim witness coordinator in the District Attorneys office. Sometimes the prosecutor attended the scene of the tragedy. In all cases the visual reality depicted in pictures is present. The case is more than a case. It is a reminder that the senseless loss of life on our streets has occurred and will occur again. Prosecutors and victim witness coordinators must spend time with a grieving family to prepare the family for an outcome in Court that is rarely satisfactory. As long as alternative sentencing and 30% parole eligibility are the law families of victims will be disgusted. Many times the prosecutor is the bearer of bad news with the duty to explain to a family the sentencing laws. Many times the prosecutors bear the brunt of the families anger.

During three days in May, fifty-five prosecutors and victim witness coordinators from twenty-two judicial districts attended training to enhance their abilities in these challenging cases. The faculty included prosecutors, law enforcement officers, victim witness coordinators, grief counselors and the claims administrator for victim compensation. Each shared information and techniques to improve services.

THP C.I.R.T. team members directed by Lt. John Albertson gave instruction about equipment used at crash.

General Lisa Zavogiannis receives her certificate.

Meeting the family role play

General Greeley Wells and VW Coordinator Valerie McDilda conducted a mock meeting with a grieving family. The role play resulted in a candid discussion concerning our interviewing techniques and methodologies. This meeting is part of our job. It is also the most important event happening to a family that has already suffered more than any family should.

Pictured from top left clockwise:
Wesley King, 20th District; Latasha Wassam, 8th; Terry Wood, 21st; James Goodwin, 2nd and Mark Gore, 13th.

Joycelyn Gardiner

WHY WE TRAIN

Joycelyn R. Gardiner, 22, a member of Tennessee State University's Tigerbelle track team was to have received her criminal justice degree in August. She planned to attend law school. She was killed June 16th in Nashville by a native of Mexico allegedly under the influence and in this country illegally. The offender was on probation at the time of the crash. We have been deprived of all that Joycelyn would have accomplished in her life and of all the joy she would have shared with family, friends and co-workers.

The prosecutor in a vehicular homicide case must be dedicated and well prepared. The goal of vehicular homicide training is to guarantee that the prosecutor will have the knowledge and the passion to successfully represent the State and give great effort to honor the memory of the victim. Victims deserve no less.

DRIVING, EPILEPSY AND SIEZURES

A common and difficult disease that affects hundreds of thousands of persons in the United States is epilepsy. Epilepsy can be terribly debilitating. This disease is often misunderstood. People with the disease are often discriminated against in a variety of ways. As a child I watched the abuse my big sister received from classmates and others due to her illness. Most of my childhood fistfights, which I never won, occurred due to things kids would say about my sister.

The information that follows is not intended to abuse or pick on people who suffer from epilepsy or other seizure disorders. The disease is demanding. People with the disease suffer a great deal. Medical miracles have occurred since my sister first struggled with this disease in the 1960's.

One of the difficult things about the disease is that people who have seizures can not drive safely. If a person has a major seizure and a convulsion, the person has no control of a vehicle. If the person has a minor seizure and simply blanks out for a moment, the person has no control of a vehicle.

Since driving with epilepsy is dangerous, every state has regulations concerning the issuance or suspension of a driver's license due to seizures. In Tennessee a person shall have a driver's license suspended or denied for a period of one year if the person suffers from seizures. The person may have driving privileges restored after a medical doctor verifies that the person is seizure free for six straight months. The regulation concerning driving is intended to protect both the driving public and the person with the disorder. Some people, like my sister will never receive or be eligible for a driver's license. The level of control of the disease is different for everyone. Many person's who have suffered seizures will have proper control and be eligible and safe to drive.

SIEZURES AND CRASHES

Occasionally a crash will occur and the person who causes the crash will claim to have suffered a seizure. Sometimes the person is telling the truth and other times the person is deceptive and looking for a way out of a DUI. Truthfulness has to be determined on a case by case basis. The timing of the claim may be one indication of veracity. If the first time such a claim is made is at trial, the prosecutor should be skeptical.

Most persons who have major seizures will exhibit signs at the crash sight. The person may only be interested in sleep. The person may have a horrible headache. The person may need medical attention. The person with a history of seizures will usually tell an EMT, police officer or emergency room nurse or doctor about the likelihood of a seizure causing the crash. Be aware that there are many types of seizures with a varying degree of severity. A petit mal seizure is a lapse of awareness, sometimes with blank staring, that can last only a few seconds. They begin and end abruptly. There is no warning and no after effect. These minor seizures can be deadly if the person is behind the wheel of a car.

REPORTING THE SIEZURE TO THE DEPARTMENT OF SAFETY

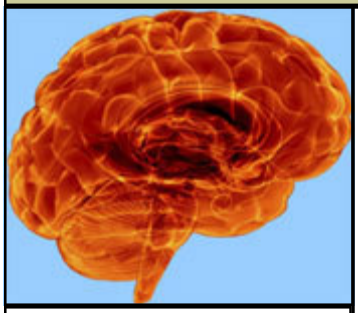
If a driver claims that a crash was caused by a seizure, or if the driver claims that he was not impaired by alcohol, but had a seizure, the claim must be reported to the Department of Safety. The department will investigate and make a determination of whether the driver's license should be suspended for medical reasons pursuant to regulations. The Regulation is found at Dept. of Safety Rule 1340-1-4.06. The regulation includes:

"(i) The Department shall not issue a driver license or certificate for driving to anyone who suffers from uncontrolled epilepsy (also known as a seizure disorder), momentary lapses of consciousness or control due to epilepsy, cardiac syncope, diabetes, or other conditions until the driver has remained seizure-free or lapse free for a period of one (1) year, and then only upon receipt of a favorable medical statement from the driver's physician."

Reports Concerning Seizures

Send reports to:
John Brownlee
Tennessee Department of Safety
1150 Foster Avenue
Nashville, Tennessee

UNDERSTANDING EPILEPSY



Learn more at:
www.epilepsyfoundation.org

Epilepsy is a medical condition that produces seizures affecting a variety of mental and physical functions. It's also called a *seizure disorder*. A seizure is caused by a brief, strong surge of electrical activity involving part or all of the brain. When a person has two or more seizures without a clear cause (e.g., alcohol withdrawal), it's considered to be epilepsy.

Seizures can last a few seconds to a few minutes. They can have many symptoms, from convulsions and loss of consciousness to some that are not always recognized as seizures by the person experiencing them *or* by health care professionals: blank staring, lip smacking, or jerking movements of arms and legs.

WHO REPORTS

If the driver claims to have been effected by a seizure, such a claim should be included in the officer's narrative and forwarded to Safety. The administrative procedure is not intended to be punitive and should not be subject to double jeopardy claims, if the person is later convicted of a DUI. The Department of Safety will take immediate action concerning the license if a report is received from a variety of sources.

In the following cases, the drivers license may be immediately suspended until the driver submits the medical statement required by subparagraph (j) and the medical statement is reviewed in accordance with this rule:

1. The driver admits to a history of seizures or other conditions that affects driving ability; or
2. A person practicing in the medical profession submits information that a driver has a condition that affects driving ability;
3. A person who has witnessed the driver's inability to drive because of a seizure or other condition submits information;
4. Friends or relatives who know the driver's condition submit information that a driver has a condition that affects driving ability; or
5. Courts or persons who have access to reliable information submit information that a driver may have a condition that affects driving ability.

SIEZURE MEDICATIONS AND ALCOHOL

Medications for seizures including Phenobarbital, Tegretol, a.k.a Carbamazepine, Carbatrol, Epitol, Tegretol-XR do not mix with alcohol. The medications are sedatives. There can be a synergistic effect caused by combining the medications and alcohol. The effect of the medications and the effect of the alcohol could be tripled by mixing. Serious patients with a seizure disorder would not combine medications for seizures with alcohol and the task of driving. A person who combines seizure medications and alcohol is particularly dangerous and incredibly ignorant.

ALCOHOL ABUSE AND SIEZURES

The prosecutor with a case in which the driver claimed to have suffered a seizure should be aware that some seizures are caused by alcohol abuse. The Epilepsy Foundation website states: "Large amounts of alcohol are thought to raise the risk of seizures and may even cause them. When you drink alcohol, it temporarily reduces seizures for a few hours, but then increases the chances of having seizures as the alcohol leaves your body. Thus, people who drink heavily, even though they may not have epilepsy, may experience seizures after periods of binge drinking."

Alcohol can be dangerous when mixed with sedative drugs, such as phenobarbital, and can cause coma, or even death. ***Epilepsy Foundation***

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
Jim Camp
(615) 232-2930

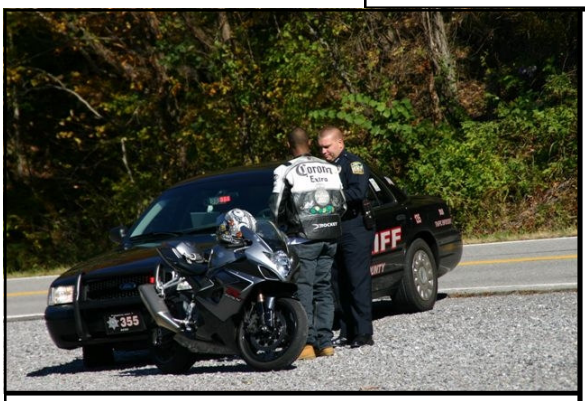
(615) 253-6735 Fax

BLOUNT COUNTY'S DRAGON

An Update on Motorcycle Safety

Andrew D. Watts
Assistant District Attorney General
Fifth Judicial District

THE TAIL OF THE DRAGON. No, we are not talking about a fire-breathing monster; we are talking about one of the largest tourism attractions of mountainous Blount County, Tennessee. Within Blount County lies part of the heavily-visited Great Smoky Mountains National Park. Around the southwest perimeter of the Park twists U.S. Highway 129, commonly known to motorcycle enthusiasts as "The Tail of the Dragon" or simply "The Dragon" because of its hairpin turns. Bikers from all around the world flock to Blount County to experience this eleven mile portion of the highway that features 318 curves. In addition to the Dragon, other frequented routes inside Blount County include the Foothills Parkway and the various roadways that traverse the National Park, including the Cades Cove Loop.



Saturation Enforcement on the Dragon

Blount County is fortunate to be blessed with the natural beauty that attracts tourists. On the flip side of this blessing; however, is the ever-present and growing safety concern for bikers and other motorists on these heavily populated roads. The Blount County Sheriff's Office and the Tennessee Highway Patrol heavily patrol the Dragon to keep accidents and reckless behavior to a minimum. Unfortunately, though, injuries and deaths occur on this stretch of road at an unfortunate rate. Five died on the dragon in 2006. Many of these crashes could have been avoided if operators and other motorists sharing the road exercised basic safety rules. According to the Blount County Sheriff's Office, an average of three to five accidents are reported in this area every day during the summer months. Many of these crashes are caused by motorcycles and sports cars engaging in reckless behavior.

According to Blount County Sheriff's Deputy Ronnie Reagan, who serves in the Sheriff's Office Motorcycle Unit, one of the most significant problems in crashes is one that is not only STILL the law, but is one of common sense: not wearing a helmet. Reagan says that many riders want to be able to choose whether or not to wear a helmet. Reagan is opinionated himself on the matter; he would rather live to see another day than experience the "freedom" of not wearing a helmet.

Other problems commonly seen in Blount County are failure to maintain lane control and passing in a no-passing zone. A motorcyclist was recently killed on the Dragon when he attempted to pass another motorcycle in a no-passing zone in a curve unfortunately known as "Dead Man's Curve." He met an oncoming car head-on in the curve and subsequently died shortly after the impact.

Because of the high number of motor vehicle crashes on this stretch of roadway, the Blount County Sheriff's Office, Tennessee Highway Patrol, Maryville Police Department, and Alcoa Police Department have teamed up with the Governor's Highway Safety Office to start an aggressive enforcement campaign along this stretch of highway to attempt to abate the number of crashes and otherwise reckless behavior. This campaign will allow for increased personnel to patrol the area during peak times.

When riding on the Dragon or anywhere else, know your limits on a motorcycle. Many of the accidents and crashes involving motorcycles could have been avoided if common sense had been used. Wear a helmet. Stay in your lane and pass only when it is safe to do so.

For those motorcycle enthusiasts who have not yet experienced the Dragon or have not yet visited Blount County, we certainly urge you to do so and would welcome your visit.