



DUI NEWS

THE STACY JO CARTER SAGA SUPREME COURT DEFINES SENTENCING POST BLAKELY AND 2005 ACT

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Stacy Carter is one of the bad guys. On October 23, 2004 he was on parole from the Big Blue Commonwealth to our north and on probation in Robertson County, Tennessee. Despite probation and parole, he tried to buy drugs in Guthrie, Kentucky. Carter had his 16 year old, drunken (.24 BAC) nephew with him. After a family ran him off for trying to buy drugs, a narcotics officer saw his car parked with a black male and known drug dealer at the window. The officer approached in his patrol car. Carter sped off in reverse. He went about 100 feet in reverse, ran stop signs and then took off on US Hwy. 41 going South. The officer followed activating his blue lights. Carter did not stop. He sped away and in 100-200 yards was in Tennessee weaving all over the road, going into oncoming lanes and doubling back.

A second officer arrived and got in front of Carter to try and slow him down and stop him. Carter took a sudden turn onto Mint Springs Road, which includes a set of double "S" curves. He sped down the road at about 70 mph. The officer slowed down, because he was not familiar with the road. Carter went straight in a curve, over an embankment and into the Red River. Carter escaped the submerged car on the driver side. An officer plunged into the river to and tried to save the passenger. He asked Carter to help. Carter responded with profanity and took off wading in the water. The passenger drowned. Carter was charged with reckless vehicular homicide.

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He was a range 3 persistent offender facing 10-15 years in prison. Trial Judge John Gasaway Jr. decided that the police were "equally culpable" as the defendant for the death of the passenger. He gave great weight to his view in his sentencing decision. Despite Carter's parole status, probation status and range 3 persistent offender status, he granted a sentence of 10 years on probation.

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COURT OF CRIMINAL APPEALS REVERSED THE GASAWAY SENTENCE

The Court of Criminal Appeals reversed the Gasaway sentence. The Court believed it could conduct a de novo review with a presumption of correctness. The Court stated, **“The capstone of the trial court's sentencing determination is its finding that the officers were culpable in the death of the victim. However, the facts and circumstances do not support the trial court's finding. The Kentucky officers pursued the defendant only a few miles into our state before the fatal accident occurred. Furthermore, the pursuit occurred as a direct result of the officers' observation of a suspected drug transaction and the defendant fleeing from the scene and evading arrest in a wholly reckless manner. In this court's view, this erroneous finding cannot properly be the sole basis of the sentencing determination.”**

The Court imposed a 15 year sentence to be served in prison. The Supreme Court granted permission to appeal.

STACEY JO CATCHES A BREAK (cont'd)

After Blakely v Washington, 542 U.S. 296 (2004) the use of enhancement factors that were not proven to the jury beyond a reasonable doubt were abolished. Prior to Blakely sentencing determinations began with a presumption in favor of the minimum sentence, but could be adjusted to a greater sentence if enhancement factors existed. For a short time after Blakely every criminal in Tennessee received the minimum sentence.

The Legislature then rewrote the sentencing law. The Supreme Court in this opinion defines the rewritten law of 2005. A few hard principles are stated:

- 1) **There is no longer a presumptive sentence.**
- 2) **The Trial Court is free to select any sentence within the range that is consistent with the purposes and principles of the Sentencing Act.**
- 3) **Trial Court discretion is expanded.**
- 4) **Disagreement by an Appellate Court with the Trial Court's weighing of enhancement or mitigating factors is no longer grounds for reversal.**

The last of the principles is completely new. Using the new standard the Supreme Court reversed the increased sentence imposed by the Court of Criminal Appeals and reinstated the 10 year sentence imposed by Judge Gasaway.

The Court maintains the principle of de novo appellate review. It simply removes the weighing of the enhancement/mitigating factors from the review.

Justice Clark includes in the opinion a confusing statement. She states, “While we are uncomfortable with the trial court's decision to impose the minimum sentence on the defendant, we do not think the trial court departed so far from the sentencing act as to rebut the presumption of correctness.”

Can there ever exist a sentence that would stray further from a presumption of correctness? In the opinion of the Court of Appeals, Stacy Jo Carter's prior history was discussed:

“The pre-sentence report details convictions beginning in 1989 and spanning over seventeen years occurring in both Kentucky and Tennessee. The history includes convictions for three second degree burglaries, two thefts, two passing worthless check offenses, an aggravated assault and a felon in possession of a weapon offense. Long before the present offenses were committed while on parole and probation, the defendant committed other offenses while on parole from his first convictions in Kentucky. After receiving an effective sentence of six years suspended to full probation in Robertson County for the worthless checks and aggravated assault convictions, the defendant failed to report to probation and returned to Kentucky. Finally in 2001, he was convicted in Kentucky of his most recent second degree burglaries, theft and weapon possession offenses and received an effective sentence of fifteen years. He was paroled in 2004 and committed the present offenses soon thereafter. At the time of sentencing, the defendant was facing a parole revocation in Kentucky. Despite the fact that victim impact letters urged the trial court to grant the defendant probation so that he could care for his minor children, the pre-sentence report also reflects "holds" on the defendant for non-payment of child support. Additionally, the defendant admitted to a history of illegal drug use and alcohol abuse, although he claimed to be rehabilitated at the time of the pre-sentence report.”

STACEY JO GOES BACK TO PRISON

Justice Clark conducted a de novo review of the manner in which Carter is to serve his sentence. She concluded that Judge Gassaway ignored the previous unsuccessful attempts to rehabilitate the defendant. She concluded that the defendant did not carry the burden of proving his suitability for probation. He did not establish that the suspension of his sentence served the ends of justice or the best interest of the public. She then spent some time blasting the defendant for his actions.

She states: “For no legitimate reason, the Defendant refused to yield to a patrol car and instead initiated a high-speed chase. With the Defendant was his severely intoxicated fifteen-year-old nephew. The Defendant lost control of his car and landed upside down in a river while trying to avoid apprehension. The Defendant managed to escape the car and, rather than assist his nephew to do likewise, continued trying to outrun the officers. Unable to escape the car, the Defendant’s nephew drowned. The Defendant’s profound disregard for the safety of others while attempting to avoid apprehension is deeply disturbing to this Court.”

The defendant was sentenced in the end to 10 years to serve in prison for his conduct.



This car was a death trap for the fifteen year old nephew of Carter, who chose to evade the police.

DID YOU KNOW?

A driver involved in a fatal crash who had a BAC of .08 or higher is 8 times more likely to have a prior conviction for driving impaired than a driver involved in fatal crash who had consumed no alcohol.

SUPREME COURT REVERSES SUPPRESSION OF SLOW SPEED

Chief Justice Barker reversed the suppression of evidence in a case due to a hasty decision to suppress a traffic stop based on slow speed. The decision in State v Hannah, was issued June 23, 2008.

In the suppression hearing Judge Rebecca Stern in Hamilton County shut down the hearing after Officer Joseph Shaw of the Chattanooga Police Department testified that the suspect car was traveling 20 mph in a 35 mph zone on a four lane divided city street in the passing lane. Other vehicles would “come up behind us they would have to brake fairly quickly and change lanes in order to pass.”

Judge Stern interrupted the testimony and rendered an opinion that the traffic stop was faulty, effectively dismissing the case. She believed the stop was based on 55-8-154(a), the impeding traffic law. She believed that law required that traffic would have to be stopped in order for the statute to apply.

COURT OF CRIMINAL APPEALS AFFIRMS TESTIMONY BY JUDICIAL COMMISSIONER

For a second time in ten years the Court of Criminal Appeals has affirmed a DUI conviction in which a Judicial Commissioner testified for the State. Dickson County Commissioner, Harold Sutton, testified that as part of his role he conducts Field Sobriety Tests. In the case of State v Nash, 2008 Tenn. Crim. App. LEXIS 287, he could not because the defendant had passed out. Instead he instructed officer Orval Sesler to transport him to the emergency room due to his level of intoxication. The Court noted there was nothing in the Canons of Judicial Conduct to prohibit the testimony and noted the issue had previously been decided in State v. Kevin Pendergrass, in 1988.

RECENT DECISIONS

State v. Jackson, 2008 Tenn. Crim. App. LEXIS 231 **SUPPRESSION OF EVIDENCE REVERSED**

Jackson ran a red light and had no driver's license. After his arrest, his vehicle was searched and cocaine was found. Jackson complained that he should have been given a citation and been released, because both offenses were class C misdemeanors. If he had not been arrested, no search would have occurred. Judge Rebecca Stern in Hamilton County agreed and suppressed the evidence. In reversing the decision Judge Kelly Thomas wrote:

"Specifically, § 40-7-118(c)(2) and (3) provide that "no citation shall be issued under the provisions of § 40-7-118(b)(1) if: . . . (2) there is a reasonable likelihood that the offense would continue or resume and (3) the person arrested cannot or will not offer satisfactory evidence of identification."

In this case, if the defendant had received a citation, he would have continued to commit the offense of driving without a license. Furthermore, when asked for identification, the defendant advised the arresting officer that he did not have proper identification. Therefore, we conclude that the trial court erroneously found that the arresting officer in this case was required to issue a citation in lieu of arrest. We further conclude that the custodial arrest and ensuing search of the defendant's vehicle incident to that arrest were legal."

State v Brooks, No. M2006-02449-CCA-R3-CD **DUI PATTERN JURY INSTRUCTION**

Brooks was stopped because his right head light was out. In East Tennessee we referred to such cars as Cyclops. Brooks was giggling and way to impaired to fool the officer during his attempts at the standardized tests. His breath test result was .27. He went to trial and challenged the 20 minute wait and the pattern jury instruction unsuccessfully. His challenge was that the phrase "impairs to any extent" was misleading. The Court upheld the instruction as did previous Courts in 2004, 2000, 1999, 1994 and 1992. The defendant was sentenced to serve 90 days and to wear a **S.C.R.A.M.** (alcohol monitor ankle bracelet) devise on probation.

State v Hanning, 2008 Tenn Crim App Lexis 319 **BLUE LIGHTS FLASHING COMMUNITY CARETAKING OR SEIZURE**

An anonymous caller alerted the police to a reckless driver on the interstate getting off on an exit ramp. He was driving a black truck. The officer was 150 yards away at a McDonald's at the top of the exit ramp. He proceeded to go down the ramp in the wrong direction with his blue lights flashing. He saw the black truck parked on the side on the emergency lane of the ramp. He stopped WITH THE BLUE LIGHTS STILL ACTIVATED, approached the driver and found a drunk. The defense argued that Hanning was seized. Judge Tipton distinguished this situation from State v Williams, 185 SW3d 311 Tenn 2006. "Sergeant Russell's use of blue lights when driving down the exit ramp in the wrong direction was a proper exercise of his community caretaking function and was not directed, at least initially, at any particular individual. A reasonable person would believe the officer had activated his blue lights to alert oncoming traffic of his presence in the opposing flow of traffic and maintain his safety and that of the public in the situation."

State v Short, 2008 Tenn Crim App Lexis 307 **DOG DRUNK**

A 9-1-1 call response by Union County Deputy Todd Beeler resulted in a sixty day jail sentence for this first offender. By the time the deputy found the defendant he had already wrecked. Short stumbled, staggered, held himself up on the car hood and finally fell. Paramedic, Linda Johnson, reached the scene. The driver, who had minor injuries to his elbow would not let her near and cursed the officer in her presence. She described the defendant as "dog drunk". The defendant's brother testified that he was with the defendant that night and they watched movies, played the guitar and watched two tapes. He said the defendant did not drink that night or in the last six years. The defendant testified and admitted that he was ashamed for his rudeness. He testified that he did not remember being drunk, the implied consent form or refusing sobriety tests. He stated that he does not "normally drink". The Court affirmed the conviction and sentence.

**TRAGIC ACCIDENT KILLS
DEDICATED PROSECUTOR & GREAT MAN**

"A fearless and earnest prosecuting attorney, within the limits of his powers and prerogatives, is a bulwark to the peace, safety and happiness of the people". 42 AmJur, "Prosecuting Attorneys", sec. 20, p. 255.



Steve Jackson did things the right way. He worked hard as an Assistant District Attorney, loved to play golf and was dedicated to serving his church in TV and radio ministry. He was primarily responsible for prosecuting crime in Huntington in Carroll County. On April 25th, about a month before he died, Steve had a great day. He helped conduct direct and cross examinations of officers who had gathered for a "Cops in Court" class in his county.

Steve excelled in critiquing or counseling the officers. They all knew him and he knew them. He was able to build up the officers confidence on the witness stand and joke with them at the same time. I only knew Steve from conversations we had had to set up the class and from that day in Huntington. I was looking forward to recruiting Steve to help teach at some other classes. He was a person we all could learn from.

The Camden Chronicle included the following information in the news report about Steve:

Steve Jackson had been an assistant district attorney for the 24th Judicial District under District Attorney General Hansel McCadams for two years, and under Attorney General Gus Radford from 2003 to 2006.

According to Highway Patrol Trooper Mark Jackson's report, Steve Jackson was traveling eastbound on Hwy. 70 in his 1995 Toyota Corolla, on his way to court in Huntingdon, when a 1999 Jeep Cherokee, driven by Beal, traveling westbound, went off the right edge of the pavement at 8:23 a.m. In an attempt to bring the vehicle back onto the highway, Beal sharply overcorrected and went into a skid, crossed the centerline and struck Jackson's vehicle on the driver's left front wheel and fender. Both vehicles veered off the east side of the road and overturned.

"He was a hard worker and was dedicated and committed to helping victims," said District Attorney General Hansel McCadams. "He's going to be missed by law enforcement officers who he worked closely with. Everyone here at this office will miss him."

Steve left a wife, Val; a son, Jay; and daughter, Stacy behind. The family requested contributions be sent to the Music and Sound Ministry at West Jackson Baptist Church, 580 Oil Well Rd., Jackson, TN 38305.

An Appellate decision in a case that Steve tried to a jury:

State v Hanebutt, 2006 Tn Crim App Lexis 761

Defendant was convicted in the Circuit Court for Carroll County (Tennessee) of first degree premeditated murder and attempted first degree premeditated murder. Defendant appealed but conviction was affirmed.

The qualities of a good prosecutor are as elusive and impossible to define as those which mark a gentleman. And those who need to be told would not understand it anyway. A sensitiveness to fair play and sportsmanship is perhaps the best protection against the abuse of power, and the citizen's safety lies in the prosecutor who tempers zeal with human kindness, who seeks truth and not victims, who serves the law and not factional purposes, and who approaches his task with humility". Robert H. Jackson, April, 1940.

Crime

Crash

1 murder every **31** minutes

1 violent crime every **22** seconds

1 aggravated assault every **37** seconds

1 robbery every **1** minute

1 traffic fatality every **12** minutes

1 traffic injury every **12** seconds

11 law enforcement reported crashes every **1** minute

1 fatal DUI crash; at least one driver has BAC = .08+ every **39** minutes



Figures are rounded and represent the average per unit of time.

Data sources:

Crime - from U.S. Department of Justice - Federal Bureau of Investigation (DOJ/FBI) 2006 Crime Clock, *Crime in the United States 2006*, September 2007

Crashes - from U.S. DOT's NHTSA, *Traffic Safety Facts 2006 Data, Overview, and 2006 Fatality Analysis Reporting System, General Estimates System 2006 Data Summary*

Estimated Arrests - from DOJ/FBI, *Crime in the United States 2006*, September 2007 (rounded)

Estimated Arrests

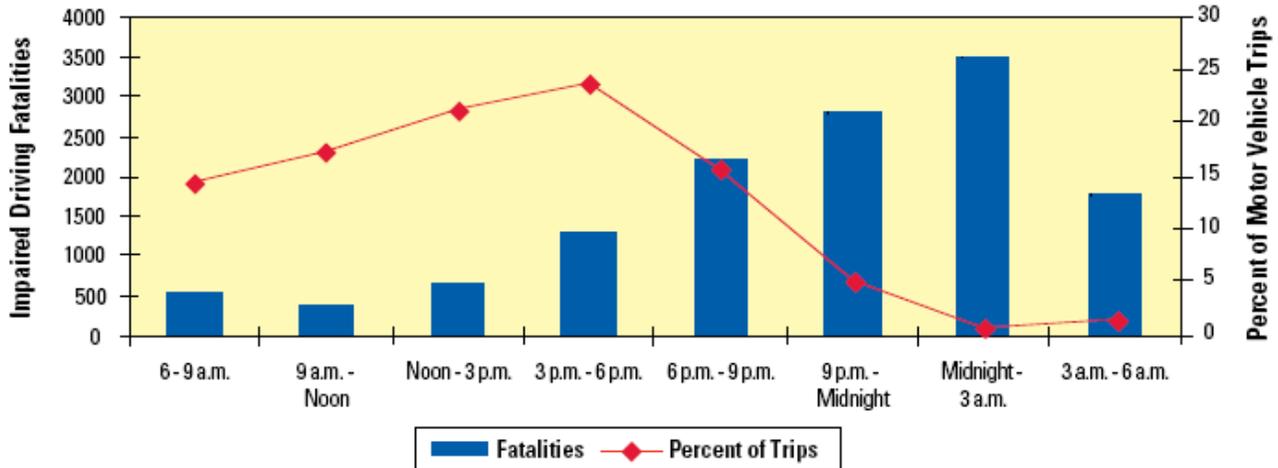
- 167 DUI arrests
 - 51 aggravated assault arrests
 - 70 violent crimes arrests
 - 14 robbery arrests
 - 2 murder arrest
- every **1** hour



www.StopImpairedDriving.org



Motor Vehicle Fatalities Involving a Driver or Motorcycle Rider With a Blood Alcohol Concentration of .08+ and Motor Vehicle Trips by Time of Day



SOURCE: 2006 FARS and the 2001 National Household Travel Survey, daily trip file, U.S. DOT

NOTES: More accurately the categories are Midnight to 00:59 a.m., 1 a.m. to 1:59 a.m., etc. A trip is defined as going from one address to another, other than changing the mode of transportation. Trips include all transportation modes including walking trips, transit trips, etc. The majority, 87% of trips are with personal vehicle.

DID YOU KNOW?

Women who receive treatment for alcohol/drug issues are nine (9) times more likely to recover than women who do not.

Source: Maya Hennessey (Applying Gender Competent Programs and Strategies Presentation to the Traffic Injury Research Foundation)

RESEARCH, PROGRAM AND SYSTEM NEEDS

Identified by The Traffic Injury Research Foundation

Recently, I attended a Working Group meeting of the Traffic Injury Research Foundation (TIRF). This group included Judges, prosecutors, probation officers, researchers, treatment specialists and others, who gathered to discuss the strengths and weaknesses of various programs dealing with Traffic Safety in the USA and Canada. Various program, research and system needs were identified.

System Needs included: Raising the level of priority given DUI in the Judicial and Law Enforcement systems, better outcome measures, model initiatives and a primary definition of recidivism. System improvements also demand funding, collaborative training, partnerships, communication improvements and increased screening and intervention for substance abusers.

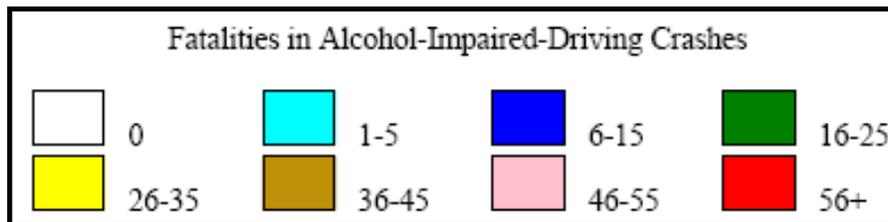
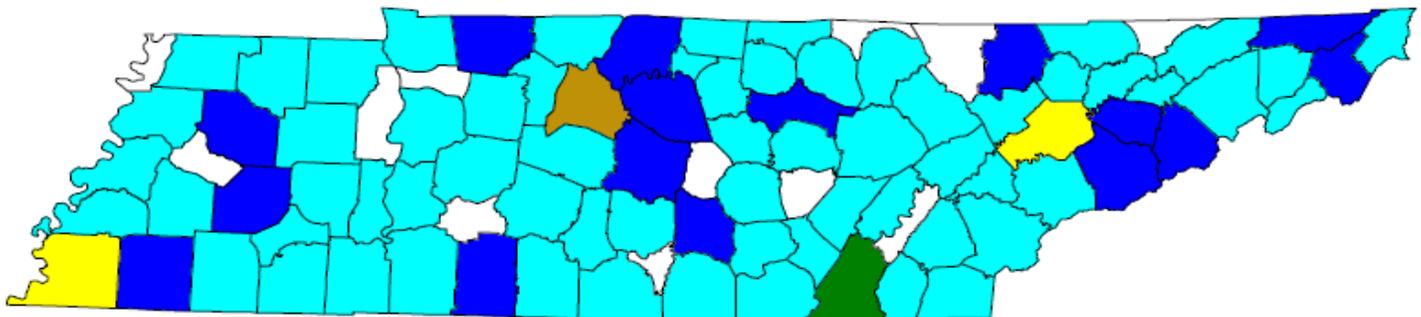
Program Needs included: Expanded use of DWI Prosecutors, multi-agency task forces and additional Traffic Safety Resource Prosecutors. Expanded use of treatment approaches including quality assessments, use of medications to reduce the craving and buzz from alcohol, cognitive behavioral approaches, motivational interviewing and use of SCRAM and ignition interlock data.

Training and Education needs included: Sobriety checkpoints, B.A.T. mobiles, Standardized DUI Training and certification for all officers, Prosecutor and Judicial education, Technology, Treatment Court Training and Treatment screening with motivational interviewing.

To learn more about the work of TIRF, visit the website at: www.trafficinjuryresearch.com Tom Kimball

2006 Tennessee Traffic Fatalities in Alcohol-Impaired-Driving Crashes, by County

Total Fatalities in Alcohol-Impaired-Driving Crashes = 408



Impaired driving and age— In 2006, 6,471 passenger vehicle drivers 21 to 34 years old were killed in motor vehicle crashes. Of those, a total of 3,158 (49%) had illegal BACs of .08 or higher.

The highest percentage of drivers in fatal crashes who had BACs of .08 or above was for drivers 21 to 24 years old (33%), followed by drivers 25 to 34 (29%) and 35 to 44 (25%).

Impaired drivers and vehicles — The percentage of drivers with BACs of .08 or above involved in fatal crashes was highest for motorcycle riders (27%), compared with drivers of light trucks (24%) and passenger cars (23%).

High-risk periods — Alcohol impairment among drivers involved in fatal crashes was four times higher at night than during the day (36% versus 9%); and 31 percent of drivers involved in fatal crashes on weekends were alcohol-impaired, compared to 15 percent during the week.

**UP ON THE HILL
LEGISLATIVE REVIEW**



It was a frustrating legislative season for all interested in improving our DUI system, but there were some significant laws that passed. Unfortunately, many important bills were delayed. Included were the Administrative License Revocation bill, a meaningful and useful ignition interlock bill, a bill to lower the high BAC level to .15, a bill to create a class D felony for 5th offenders and a bill that would require those who commit vehicular homicide by impairment to serve more of their prison sentence. Most failed due to economic issues. Our legislature puts a price on every expense anticipated from a new law, but fails to consider the costs involved in lost lives. Some of the bills the passed:

Public Chapter 957	2 Hour Limit Rescinded	Deletes 2 hour limit for blood alcohol or drug test. Effective January 1, 2009
Public Chapter 1018	Restores 48 hour sentence for DUI first offense.	Requires all DUI offenders to serve 48 hours confinement; revises litter removal provisions.
Public Chapter 1167	Leaving the Scene	Makes penalty for leaving the scene consecutive in cases of Vehicular Assault, Vehicular Homicide and Aggravated
Public Chapter 1177	DUI Child Death	Removes lesser penalty for deaths of children previously contained in Child Endangerment section of DUI law, so that those who kill children are penalized in the same manner as those who kill adults.
Public Chapter 1189	Higher Education Notification	Requires public colleges to notify a students parent(s) if the student commits a disciplinary violation or violates a law concerning the use or possession of alcohol or drugs.
Public Chapter 978	Victim Impact Panel	Authorizes court to order DUI offender to attend a victims impact panel program; requires attendee to pay fee of between \$25.00 and \$50.00; clarifies provisions governing payment for drug and alcohol assessment and treatment ordered by court.
Public Chapter 28	Driver License Fraud	Broadens criminal provisions involving unlawful use of driver licenses to include use of certificates for driving and all other government-issued photo identification documents.
Public Chapter 869	Move Over Recidivists	Increases punishment for second and third or subsequent violation of "move over" law and clarifies that "move over" violation that results in threat of injury or death can be punished as criminally negligent homicide, reckless homicide, or vehicular homicide. - Amends TCA Title 39 and Title 55.
Public Chapter 7	Driving while watching videos	Revises criminal offenses relating to driving while viewing video broadcasts or installing such video equipment in motor vehicles.
Public Chapter 962	Red Light Camera tickets	Creates a procedure for issuing citations based on evidence from a traffic light signal monitoring system.
Public Chapter 813	Revises provisions governing the disposition by counties of funds generated	Revises provisions governing the disposition by counties of funds generated by the increase in DUI fines that was enacted in 1994 to allow appropriations to mental health treatment facilities, in addition to drug and alcohol treatment facilities, and to allow appropriations to specialized court programs and specialized court dockets that supervise offenders with drug, alcohol, and/or mental health issues.

MOTORCYCLE EDUCATION

John Milliken
State Coordinator
Tennessee Motorcycle Rider Education Program

The Tennessee Motorcycle Rider Education Program was started in the mid 1980s as a response to rising motorcycle accidents / fatalities. Groups such as CMT/ABATE were pushing for rider education in Tennessee and were very influential in the founding of the program. Over the years the program has grown from it's start at one site in Nashville to over 31 sites spread across the state. All the sites are administered by private company Site Coordinators and are regulated by the State Coordinators office in Nashville. Three quality assurance visits are made at each site each year to ensure that all program mandates are being followed. These visits are made by one of the five Rider Coach Trainers active in the state.

The program was established by act of the legislature and dedicated funding was established for the operating budget. On successful completion the student is granted a licensing waiver that exempts the written and practical portion of licensing. A reduction of up to 10% in insurance is also mandated. In 2006 the program trained 8116 students and 8088 in 2007. The demand for training is anticipated to grow due to citizens seeking alternative travel methods due to higher gas prices. The program is committed to the idea that the better trained the rider is the safer the rider.



The program teaches both the Basic Rider Course and the Experienced Rider Course.

The Tennessee MREP has also made grants to motorcycle groups in order to promote motorcycle awareness. A film made in Tennessee by and about Tennessee riders was made using NHTSA grant funds and is used in high schools across the state to promote awareness and safe operation. The classes are taught by volunteers with the program assisting with equipment.

The Tennessee MREP expects to continue to expand and to explore new methods to address motorcycle safety and awareness in the years to come. Information about training locations can be found at <http://www.state.tn.us/safety/mrep.htm>



WANT TO VOLUNTEER?

Prosecutors, Judges and Law Enforcement Officers who love their bikes can get involved in teaching motorcycle safety in local high schools. The Motorcycle Rider Education Program will supply materials. Contact John Milliken at (615) 232-2901 for more information.

DID YOU KNOW?

Motorcycle fatalities represented 11% of all traffic fatalities in 2006, but only 5% of registered vehicles!

LIFESAVERS 2008

The National Conference on Highway Safety Priorities known as Lifesavers was conducted in Portland, Oregon, April 13-15, 2008. The conference in 2009 will be located in Nashville at the Gaylord Opryland Hotel, March 30th to April 1st. The conference focuses on programs and strategies that save lives. It is multi faceted including a variety of traffic safety professionals. Law Enforcement, Judges and Prosecutors are provided a training track in criminal justice. Other tracks include adult occupant protection, occupant protection for children, impaired driving, teen traffic safety, data and research and other highway safety.

TSRP's Tom Kimball and Jim Camp, and SFST Coordinator, Jerry Tucker spoke on a panel with Idaho TSRP Jared Olsen. They focused on programs and strategies that enhance cooperation between prosecutors and law enforcement. The delivery method used a newscast setting with reporter Kimball interviewing Tucker about his John Wayne approach to training, weatherman Kimball reporting on the Tennessee prosecutor training program. Roving reporter Jim Camp was the reporter 10 feet away. He interviewed various audience members and gave beef jerky to former TSRP David Wallace to celebrate his 100th birthday.

Audience participation included comments about various programs that help create cooperation around the country. Included were prosecutor ride-alongs, police attendance at trial closing arguments and voir dire, academy mock courts, prosecutor attendance at DRE certification nights and joint training. The presentations included information about the Tennessee Cops in Court training program, Drugged Driver training, SFST training, and law enforcement academy training.

Across the nation law enforcement and prosecutors have learned that cooperation and teamwork result in fewer lost lives and injuries on our roadways. We must continue to encourage all who work in the criminal justice field to continue to learn the best methods to gain the best results.

COPS IN COURT/MOCK TRIAL IN-SERVICE CLASSES

Traffic Safety Resource Prosecutors, Jim Camp and Tom Kimball spend much of their time teaching in police departments around the State. If a police department wants to conduct a Cops in Court class, Jim and Tom want to make it happen. This course is conducted at each of the Advanced Field Sobriety Test classes and in many in-service classes. The focus of the course is integrity and professionalism on the witness stand. The role of the officer is to carry the truth into the courtroom and deliver the truth to the jury or Judge. Truth can be obscured if the officer is not prepared and ready for testimony.

This course includes presentations titled, Integrity and Knowledge on the Witness Stand and Secrets of Cross Examination. The highlight for most officers is the Mock Court experience in which the officer testifies from a video scenario and is cross examined. If a department wants to schedule a one day, eight hour, free, P.O.S.T. approved class, contact Sherri Harper at (615) 253-6733 or sjharper@tndagc.org



During the lunch hour at Cops in Court in Camden, Jim Williams learned that he had passed the bar exam. It was a no-brainer that he should conduct the first direct examination after lunch. On two Fridays in April, 47 officers from Camden, Palmer, and Huntingdon attended a Cops class. ADA's Jennifer Hedge, Frankie Stanfill and Steve Jackson joined Jim and Tom to assist.



Huntingdon officer, Brad Allen, testifies at the in service class held at the National Guard Armory. Thanks to the 278th for the hospitality.

VEHICULAR HOMICIDE MURDERERS ROW



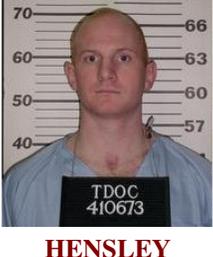
Johnathon Lee Partin, 25, of Middlesboro, Kentucky was camping on Norris Lake when he and his friend decided that they needed more marijuana and beer. As Partin was driving his friend's Ford F-150 with a .10 and marijuana just before 9:00 p.m., he crossed the center line into opposing traffic, striking the victim, 32-year-old Steven Ray Surber's vehicle head-on, and killing him. Partin's friend was seriously injured. Partin then attempted to flee the scene, but was discovered by paramedics lying passed out on the ground next to the passenger side of the Ford. Partin insisted from the time paramedics arrived that he had not been driving, but that he had been in the back seat, and that the true "phantom" driver had fled the scene. Trooper Bobby Smith was able to locate a witness who was at the scene immediately after the crash and heard the defendant exclaim to his female passenger right before passing out, "DUI, Baby - DUI!" Trooper Chris Moore went the extra mile and submitted the driver's side seatbelt for analysis to the TBI Crime Lab. Although initial reports revealed "no presence of blood," subsequent analysis revealed the presence of the defendant's DNA in other genetic material on the driver's side seatbelt. Partin received a 16 year sentence. He had 3 prior DUI's.



William Yarbrough struck and killed a 14 year old bicycle rider, Dillon Cole, in Tipton County. Yarbrough left the scene and was later arrested in North Carolina. He pled guilty to leaving the scene of an accident that resulted in death, destruction of evidence and driving with a suspended



Michael L Sloan of McMinn County was convicted of DUI Fourth offense on September 11, 2006. His sentence was two years, the maximum for the offense. On December 16, 2007, Sloan drove drunk again with a .20 blood alcohol level. Kenneth Rogers, 62 years old, saw him cross the center line. Mr. Rogers swerved to try to avoid the collision. The drunken Sloan plowed into him. Mr. Rogers died. Sloan received a 17 year sentence, but will be eligible for parole in March, 2012.



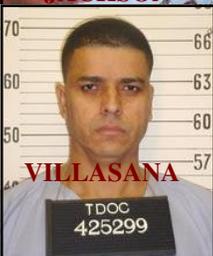
State v Hensley, 2008 Tenn. Crim. App. LEXIS 452 **NO ALTERNATIVE**

Gerry Hensley had a .10 BAC when he slammed into and killed Donald Woods and Davis Shaw. After crossing the median on a divided four lane highway Hensley slammed into the Woods vehicle. His eight year prison sentence was affirmed after requests for consideration as a mitigated offender and for an alternative sentence were rejected.



State v Jackson, 2008 Tenn. Crim. App Lexis 380 **FAILURE TO REPORT**

Pierre Jackson killed two motorcyclists while committing his fourth DUI offense. The Court sentenced him to 52 years and six months using two enhancement factors. The Court remanded for resentencing due to a Blakely error. The court found that Jackson had been given numerous chances for alternative sentencing in the past at the workhouse, but never appeared. Since the Court came to a conclusion about this without proof from witnesses, the enhancement factor can't be used. The Court affirmed the need for consecutive sentencing.



State v Villasana, No. M2007-01923-CCA-R3-CD **25 YEARS**

Julio Villasana drove the wrong way on the divided Briley Parkway, when he slammed into and killed Charlie Darrington, an executive with Gibson Guitars. Julio had been deported or left the country prior to deportation 15 times. He was driving with a .23 BAC and left the scene.



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THE CRASH PAGE

By Jim Camp

THE THREE A.M. PHONE CALL

The dreaded “three A.M. phone call”. The bane of every prosecutor’s existence. When I was an elected District Attorney I hated the things. I am a very sound sleeper. I was always afraid I would speak with the officer with a very cloudy head, not remember the call and come in to the office the next morning only to discover that I had given terrible advice fatal to my case.

But then I noticed a pattern. Mine was a rural jurisdiction. Most of the “late night” phone calls had something to do with DUI. Some of the DUI’s involved death and/or great bodily injury. The majority of the conversations went something like this... when I was awake enough to remember them of course: OFFICER: “They left the road and struck an oak tree. The passenger in the truck is dead and the driver smells of intoxicants.... ME: “Take forced blood”. OFFICER: “...has blood shot eyes and is slurring his speech. ME: “Take forced blood” After which I would hang up the phone and go back to sleep. Problem solved.

Now don’t get me wrong. This doesn’t mean I stayed home. On the contrary, I usually got my lazy butt out of bed and personally went to the scene. But the problem is still the same. The solution, when it involves vehicular assault or vehicular homicide is simple. When the case involves Vehicular Assault and/or Vehicular Homicide the legislature has provided for a method of obtaining blood other than implied consent. Tenn. Code Ann. Sec. 55-10-406(e) provides for an exception that allows the State to obtain the suspect’s blood by any means lawful. These types of cases are exempted from the inadmissibility provision of the failure to obtain consent. *State v. Dowdy*, 2001 WL 91732, *6 (Tenn.Crim.App.,2001). This applies even when the defendant did not consent to having his blood withdrawn. *State v. Copeland*, 2001 WL 359235 (Tenn.Crim.App.) and see *State v. Huskins*, 989 S.W.2d 735, 738 (Tenn.Crim.App.1998)

Four prerequisites must be satisfied before the results of a compelled blood alcohol test are admissible:

1. Probable cause to believe that the accused committed the offense of vehicular assault or vehicular homicide while under the influences of an intoxicant or drug, and there is a clear indication that evidence of the accused’s intoxication will be found if the blood is taken from the accused’s body and tested.
2. Exigent circumstances exist to forego the warrant requirement;
3. The test selected by the officer is reasonable and competent for determining blood-alcohol content; and
4. The test is performed in a reasonable manner. *State v. Jordan*, 7 S.W.3d 92, 98-99 (Tenn.Crim.App.1999)

Since my office is located at the Highway Patrol Training Academy I hear from many front line troopers. One of the issues they bring up most frequently is the instruction they receive from supervisors and from prosecutors to always follow the implied consent procedure in vehicular assault and vehicular homicide cases. The above referenced statute and case law makes it clear that implied consent is not appropriate in vehicular assault and vehicular homicide cases. In fact, it sets the stage for a prosecution without evidence of a specific alcohol content or presence of drugs in the perpetrator’s body. There should be no reason NOT to take advantage of the favorable treatment given law enforcement by the legislature and courts in Tennessee regarding this issue.

Now you must prepare those health care providers in your community as well. Make them aware of the law. The time to do that is not at the Emergency Department on the night of a tragedy . The time to do that is now, with those in authority at the hospital having an opportunity to review the applicable law. (Do not forget to remind them that the Attorney General in Opinion No. 04-025 opines that if the actions of medical personnel did not violate clearly established constitutional or statutory rights even when taking blood by force or from an unconscious suspect they would enjoy qualified immunity when performing compelled blood tests.)

Avoid the dreaded “three A.M. phone call” and educate your health care providers and law-enforcement officers. We have the tools to prevent murderers from going free, to do justice and save other lives. We have the ability to obtain blood when the defendant would otherwise have the ability to refuse. We have the ability to better protect our friends, neighbors and constituents. Its all about doing the right thing, and the right thing in vehicular assault and vehicular homicide cases is not implied consent.

The right thing is “forced blood”.