

**PUBLISHER:**

Tom Kimball, TSRP; ADA

LAYOUT AND DESIGN:

Sherri Harper

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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
Newsletters online at:
Www.tndagc.org/dui/htm

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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GENERAL ASSEMBLY RESPONDS TO DUI ISSUES

The Tennessee General Assembly has passed several bills effecting traffic safety in the latest session. Each of these new laws is intended to improve our opportunity to protect the public from DUI offenders, by assuring that evidence is available to show whether a driver is guilty of the crime. The first of these laws were sponsored by the Tennessee Hospital Association. The others were proposed and promoted by the District Attorneys.

1) The Phlebotomy law is Public Chapter 666 which went into effect immediately. This law amends TCA 55-10-406 (a)(2) and 55-10-410 to clarify who can draw blood in a DUI case and that those who draw blood at the written request of law enforcement are immune from criminal or civil liability. Those permitted to draw blood are now defined as:

- (i) Any physician;
- (ii) Registered nurse;
- (iii) Licensed practical nurse;
- (iv) Clinical laboratory technician;
- (v) Licensed paramedic;
- (vi) Licensed emergency medical technician approved to establish intravenous catheters;
- (vii) Technologist; or
- (viii) A trained phlebotomist who is either operating under a hospital protocol, has completed phlebotomy training through an educational entity providing such training, or has been properly trained by a current or former employer to draw blood.

2) Child Endangerment HB 2751; SB 2607: This bill amends TCA 55-10-403 (a)(1)(B) (i) to ensure that the penalty for child endangerment during a DUI run consecutively in all cases. This fixes the problem of the law being ineffective for multiple offenders due to a poor word choice in the prior law.

3) The Search Warrant: HB 2752; SB 2914: This law eliminates the prohibition of search warrants in DUI cases that originated with a 1998 Attorney General opinion.

4) The Not a Lawful Defense : HB 2750; SB 2915: This law amends TCA 55-10-402 to update the language of the statute to match the language of the DUI law at TCA 55-10-401. It has not been a lawful defense to DUI that a person has a prescription for a narcotic or barbitual drug since 1953. This would amend to include other drugs that impair the central nervous system and other substances that impair like dust-off, synthetic drugs and others.

5) Implied Consent Ignition Interlock: HB 2749; SB 2913: Still pending in the Senate as of this writing is a bill that would permit a Judge to order the installation of an ignition interlock for drivers who violate the implied consent law.



RECENT DECISIONS

State v Austin, 2012 Tenn Crim App Lexis 954 Excuses Discredited

Austin was convicted of DUI 2nd offense and lost his appeal. The Court stated, "it was the prerogative of the jury to discredit defendant's explanation for the lack of ability to balance and motor skills he displayed the morning of the incident and accredit the testimony of the witnesses who testified that defendant's functioning was different than normal."

State v Elliott, 2012 Tenn Crim App Lexis 90 Flexeril and Beer will mess you up

Defendant Elliot had taken his Flexeril and wand washed it down with beer. When 2010-2011 Trooper of the Year, Dewayne Stanford found him, he was passed out in his vehicle on the side of the road. Another vehicle had to swerve suddenly to miss his car. The Defendant put his girlfriend and a buddy on the stand to testify that he was okay when they saw him, but the jury was not convinced.

State v Rawlings, 2012 Tenn Crim App Lexis 93 A Beale Street Miracle

Sgt. Sharon Birk of the Memphis Police Department stopped Rawlings around 3:30 a.m. after he visited Beale Street. He smelled like beer and had numerous indicators of intoxication. Sgt. Birk noticed a red plastic cup in the console that smelled and looked like beer and had a foam head. When the Defendant testified he indicated that the cup belonged to his buddy, who was drinking Sprite. Either someone was not telling the truth or a miracle occurred and that red cup of Beale Street Sprite turned into beer. The jury apparently did not believe in Beale Street miracles and did not believe the defendant.

State v Rawlings, 2012 Tenn Crim App Lexis 87 Suppression Reversed

A Warren County Judge suppressed a the traffic stop of Rawlings. The State appealed. The suppression decision was reversed. Rawlings was stopped by an officer, who had learned from another officer that his license to drive was revoked due to a DUI conviction. The arresting officer first saw unusual, but not illegal driving and planned to check on the welfare of the driver. When the officer followed the vehicle, he received information that the car belonged to the defendant, who had a revoked license. The defendant parked and got out. The officer then turned on his blue lights, seizing the walking defendant. The officer confirmed his identity and license status. The Appellate Court ruled that the officer could rely on the information he had received from another officer about the defendant's license to seize the defendant with reasonable and articulable suspicion.

State v Wakefield, 2012 Tenn Crim App Lexis 45 DUI 9th Offense Affirmed



9th offender Wakefield lost control of his vehicle on a curve on Highway 52 in Fentress County. Citizens came to assist him and he got belligerent with them asking one if he was a lawyer. When a deputy arrived and told Wakefield an ambulance was on the way, the 9th offender commented, "You son of a bitches, leave me alone. I don't want to be bothered with youuns' no more." When the deputy read him the implied consent form, Wakefield told the deputy to go to hell. In our Tennessee system of justice jurors are not permitted to know a DUI offender had prior DUI convictions. Every offender is tried as if he or she is a first offender. I wonder if the jury was able to guess that Wakefield was not new to the system.

RECENT DECISIONS

State v. Wright, 2012 Tenn Crim App Lexis 968

Following Too Closely

Defendant Wright was stopped for following an 18 wheeler too closely. During a suppression hearing the Drug Task Force Agent testified: “ The Cadillac was heading eastbound towards Nashville, and it topped a hill. There is a truck, and it topped a hill about the same time, and then as soon as the Cadillac saw me, he immediately pulled in behind a semi tractor-trailer and was just glued to his bumper. Even as he passed me, I noticed the Cadillac was still just right on the tractor-trailer’s bumper. I pulled up behind the Cadillac and conducted a traffic stop. Agent Tharpe testified that, before conducting the stop, he did not know the race of the occupants of the Cadillac. Agent Tharpe explained that he was focused on the traffic violation. Agent Tharpe said, "The Cadillac was following too closely. There is no way, if the truck had to brake for any reason, there is no way the Cadillac could have stopped in time." Agent Tharpe recalled that the Cadillac was less than one car length in distance from the tractor-trailer.” Neither the driver or passenger had a driver’s license or identification. The subsequent investigation and search to determine whether the car was stolen and to determine identities led to the discovery of stolen checks. The investigation and the stop, which took about two hours was upheld.

State v Tully, 2012 Tenn Crim App Lexis 210

Traffic Stop Upheld

The defendant pled guilty a reserved the issue of her traffic stop for appeal. Testimony by the officer who stopped her was that she was speeding going 38 mph in a 30 mph zone on Broadway in Nashville. Her complaint on appeal is that the officer relied on his report to refresh his memory. The officer testified he was not 100% sure he confirmed her speed with radar, but that he was certain he confirmed her speed either by radar or by pacing her car. The court did not buy the argument that refreshing memory prior to testimony was somehow erroneous.

NEW LAW ALERT

TCA 40-24-105 (b) has been amended and begins with offenses that occur after July 2, 2012! It will result in drivers license revocations for failure to pay fines, costs and litigation taxes within one year of judgment. The law includes a provision for a 180 day hardship extension and honors Count monitored payment plans. Nevertheless, expect to see an increase in Driving on Revoked License cases.

Rest in Peace Joe Crumley



Joe Crumley served as District Attorney for the 1st Judicial District from 1998 to 2006. Joe also served as a faculty member for our DUI Trial Advocacy course in 2007. Joe was lead counsel in many high profile cases in East Tennessee including the 1st degree murder case involving Howard Hawk Willis. Joe was also one of the first DA’s in Tennessee to apply for and receive a grant for a DUI Prosecutor to emphasize prosecutions for the crime. Rest in Peace Joe. Thank you for your service to the people of Tennessee.

STOP THE TEXTS.
STOP THE WRECKS.



THERAPEUTIC LEVELS CAN BE DEADLY! USE CARE WHEN INTERPRETING DRUG LEVELS

Toxicology results in DUI drugged driving cases can be confusing. Drug levels detected in blood samples are different from what is seen when a solid drug is weighed and measured in a drug case. In drug cases we have cut off levels that indicate whether the amount qualifies the defendant for a simple possession penalty or a possession for resale penalty. This level makes it very clear and concise.

In DUI cases, the drugs or their metabolites are found in a blood sample. That means the drugs or metabolites were still attached to the blood as opposed to drugs in urine samples or hair samples. Drugs found in urine and hair samples are commonly in the body for a much longer period than drugs in a blood sample. Blood samples capture a result from the moment the sample was taken. Urine and hair samples detect that drugs have been consumed at some point. The difference is pretty astounding. For instance, oxycodone may appear in urine or hair samples for several weeks, but in a blood sample is usually gone within a few hours of consumption. Its' half life in blood samples is 3 1/2 to 4 1/2 hours. A half life is the amount of time that it generally takes the body to metabolize or remove half the drug load from the blood. In every DUI drug case the prosecutor must call the toxicologist to talk to him or her about the result.

INTERVIEWING THE TOXICOLOGIST

To be fair to a toxicologist the prosecutor must be prepared to discuss with the toxicologist the observations of impairment reported by the arresting officer. The toxicology result in and of itself will not mean much without reference to these observations. The ultimate question for the toxicologist is whether the tox result is consistent with those observations. The tox result is not a stand alone piece of evidence that will determine guilt or innocence. It is one part of a three legged stool. That stool consists of the observations of driving, observations of the driver and the tox result. When a leg is missing, problems occur. Sometimes the leg is chopped off by the choice of the defendant. For instance a breath or blood test refusal results in a missing piece, but when the piece is missing due to the choice of the defendant, that should be explained to a judge or jury. The defendant should never benefit from withholding evidence.

THE WINEK CHART

Toxicologists may talk about whether a drug level is therapeutic, toxic or lethal. These levels, found on a chart prepared by Pittsburg toxicologist, Charlie Winek, relate to the volume of the drug in the blood. If someone is using a therapeutic level of the drug, that does not mean the person is ok to drive! It means that the drug is probably being taken at a prescribed level. Taking prescription medications and driving can be deadly.

When a person takes a prescribed dose of oxycodone for the first time, the person might not be able to walk from the recliner to the bathroom without help. That person could not drive a car safely. Tolerance happens. The same person takes the same prescribed dose every day for six months, builds tolerance and no one can even tell the person is taking it. The pain that necessitated the prescription then outruns the prescribed dose and the dose has to be increased. The increased dose is still therapeutic, but the person can't walk to the bathroom again without help. Prescribed oxycodone brings with it a warning.

The warning label tells people: **“you should know that this medication may make you drowsy. Do not drive a car, operate heavy machinery, or participate in any other possibly dangerous activities until you know how this medication affects you.”** The warning takes into account the tolerance that develops in time. The warning label also states: **“ask your doctor about the safe use of alcoholic beverages while you are taking Oxycodone. When alcohol is taken with this medication, dangerous side effects can occur.”**

If the toxicologist is not informed of the observations of driving and observations of the person, the toxicologist would have no way to tell whether or not the driver with a therapeutic level was or was not impaired. The toxicologist is probably not going to know how long the driver had been taking the drug, when or if the dosage had been increased and other relevant factors concerning tolerance to the drug.

Continued next page

THERAPEUTIC LEVELS CAN BE DEADLY

Continued from page 4

However, if the toxicologist knows what the officer observed, that scientist has gained knowledge about what the drug might have done. A prosecutor who omits those facts from his/her discussion with the toxicologist has committed a grave error and placed the toxicologist in a very bad position.

Some therapeutic drug levels are nearly always consistent with guilt. For instance, a therapeutic level of ambien will cause a person to sleep. Sleeping and driving at the same time is always dangerous! The person impaired by ambien should never benefit from a claim that the drug was taken at a prescribed, therapeutic level. Some antidepressants when combined with alcohol cause drowsiness. They may be taken at a therapeutic level, but when combined with a glass of wine will cause a person to go to sleep behind the wheel.

The bottom line is **therapeutic does not mean safe to drive**. Prosecutors must understand that there are no simple answers in these cases and particular attention must be paid to the observations of impairment.

HOW DOES AN IGNITION INTERLOCK WORK?

1. Once the key has been put into the vehicle's ignition, and turned on to provide power to the vehicle, the device will be activated.
2. The device will prompt the driver to provide a breath sample.
3. The driver will attempt to provide a valid breath sample, by blowing into the device as previously instructed.
4. If the resultant breath alcohol concentration (BAC) analyzed in the breath sample is below the pre-set fail level, which is typically .020 but varies by State, the engine can be started. If the BAC is at or above the pre-set fail level, the violation will cause the ignition to be disabled and the vehicle will not start. The IID will "Lockout" for a short period of time. Once the "Lockout" period has expired, another breath sample can be provided.

At random times during vehicle operation, the IID will prompt the driver to provide another breath sample (also referred to as a "Retest"). The purpose of the Retest is to deter someone other than driver, or some other form of altered air, from providing the breath sample. If the breath sample for the retest is failed or missed, the IID will log the event, warn the driver and in some cases start up an alarm (e.g. lights flashing, horn honking, etc.) until the ignition is turned off, or a valid breath sample is provided.



LEGISLATIVE SPONSORS



Overbey



Shipley



Senator Mae Beavers was the Senate sponsor of the revised child endangerment law.



Kelsey



Maggert

Senator Overbey, of Maryville sponsored three bills for the DAs Conference including listed a 3-5 on page one of this issue. The House sponsor of the same bills was Tony Shipley, of Kingsport. He also sponsored number 2.

Senator Kelsey, of Memphis, and Representative Maggert, Hendersonville, sponsored the phlebotomy law.

DRIVING AND MEDICATIONS

Driving when you are taking medications.

For most people, driving represents freedom, control and independence. Driving enables most people to get to the places they want or need to go. For many people, driving is important economically – some drive as part of their job or to get to and from work.

Driving is a complex skill. Our ability to drive safely can be affected by changes in our physical, emotional and mental condition. The goal of this brochure is to help you and your health care professional talk about how your medications may affect your ability to drive safely.

How can medications affect my driving?

People take medications for a variety of reasons. Those can include:

- ◆ allergies
- ◆ anxiety
- ◆ cold
- ◆ depression
- ◆ diabetes
- ◆ heart and cholesterol conditions
- ◆ high blood pressure
- ◆ muscle spasms
- ◆ pain
- ◆ Parkinson's disease
- ◆ schizophrenia

Medicines include medications that your doctor prescribes and over-the-counter medications that you buy without a doctor's prescription. Many individuals also take herbal supplements. Some of these medications and supplements may cause a variety of reactions that may make it more difficult for you to drive a car safely. These reactions may include:

- ◆ sleepiness
- ◆ blurred vision
- ◆ dizziness
- ◆ slowed movement
- ◆ fainting
- ◆ inability to focus or pay attention
- ◆ nausea

Often people take more than one medication at a time. The combination of different medications can cause problems for some people. This is especially true for older adults because they take more medications than any other age group. Due to changes in the body as people age, older adults are more prone to medication related problems. The more medications you take, the greater your risk that your medicines will affect your ability to drive safely. To help avoid problems, it is important that at least once a year you talk to your doctor or pharmacist about all the medications – both prescription and over-the-counter – you are taking. Also let your professional know what herbal supplements, if any, you are taking. Do this even if your medications and supplements are not currently causing you a problem.

Can I still drive safely if I am taking medications?

Yes, most people can drive safely if they are taking medications. It depends on the effect those medications – both prescription and over-the-counter – have on your driving. In some cases you may not be aware of the effects. But, in many instances, your doctor can help to minimize the negative impact of your medications on your driving in several ways. Your doctor may be able to:

- ◆ Adjust the dose;
- ◆ Adjust the timing of doses or when you take the medication;
- ◆ Add an exercise or nutrition program to lessen the need for medication; and
- ◆ Change medication to one that causes less drowsiness.

What can I do if I am taking medications?

Talk to your doctor honestly.

When your doctor prescribes a medicine for you, ask about side effects. How should you expect the medicine to affect your ability to drive? Remind your doctor of other medications – both prescription and over-the-counter – and herbal supplements you are taking, especially if you see more than one doctor. Talking honestly with your doctor also means telling the doctor if you are not taking all or any of the prescribed medication. Do not stop taking your medication unless your doctor tells you to.

Ask your doctor if you should drive — especially when you first take a medication.

Taking a new medication can cause you to react in a number of ways. It is recommended that you do not drive when you first start taking a new medication until you know how that drug affects you. You also need to be aware that some over-the-counter medicines and herbal supplements can make it difficult for you to drive safely.

Talk to your pharmacist.

Get to know your pharmacist. Ask the pharmacist to go over your medications with you and to remind you of effects they may have on your ability to drive safely. Be sure to request printed information about the side effects of any new medication. Remind your pharmacist of other medicines and herbal supplements you are taking. Pharmacists are available to answer questions wherever you get your medications. Many people buy medicines by mail. Mail-order pharmacies have a toll-free number you can call and a pharmacist available to answer your questions about medications.

Monitor yourself.

Learn to know how your body reacts to the medications and supplements. Keep track of how you feel after you take the medication. For example, do you feel sleepy? Is your vision blurry? Do you feel weak and slow? When do these things happen?

Let your doctor and pharmacist know what is happening.

No matter what your reaction is to taking a medicine – good or bad – tell your doctor and pharmacist. Both prescription and over-the-counter medications are powerful—that's why they work. Each person is unique. Two people may respond differently to the same medicine. If you are experiencing side effects, the doctor needs to know that in order to adjust your medication. Your doctor can help you find medications that work best for you.

About this article:

This material was reprinted from the NHTSA materials website. Reprint materials are now available from NHTSA at: <http://mcs.nhtsa.gov>

Thank you NHTSA!



A BETRAYAL OF TRUST

During the first quarter of 2012 there have been several stories in the news about law enforcement officers and even a Germantown City prosecutor being arrested for DUI. Those arrested, like everyone else, are presumed innocent unless proven guilty. If guilty, these people have betrayed our trust.

One former officer, Eric Dates, has had his jury trial and has been convicted. Dates was convicted in Memphis on February 10th. He had been terminated from the Memphis Police Department for a previous DUI when he was arrested for this one on March 7, 2009. Officers testified that he was extremely intoxicated and unable to stand. No field sobriety tests were conducted due to his level of intoxication. One half empty bottle of gin was found in his car. Two hours after his arrest the specialized DUI squad officer arrived at the scene. Gates refused to perform field tests or take a breath test. He sat in the squad car cursing and yelling. He shouted to officers that he was going to hurt them all. During the trial the defense attorney tried to use recent Memphis police officer DUI arrests to his advantage by attacking the credibility of all officers.

Two Nashville officers, Greg Blackburn and Wesley Terry resigned from the force after recent DUI arrests. Germantown City Prosecutor, Joe Wyatt has resigned after his DUI arrest. Chattanooga Officer Jeremy Williams is awaiting a trial date for his recent DUI arrest; so is Memphis Officer Roger Williams. Even a police chief, Pat Ryan, of Grand Junction, has been arrested. Ryan was allegedly driving his city vehicle in Tunica, Mississippi, when he was arrested for DUI.

When an officer or prosecutor commits the crime of DUI, he or she violates their oath of office. That solemn oath includes the promise to serve faithfully and honestly and to obey the laws of the State and Nation. He/she makes the life of other officers miserable. They suffer the consequences of the bad cop actions as citizens lose faith in the trustworthiness of officers. If the arrested officer had DUI cases pending in Court, those cases will probably have to be dismissed. People charged with DUI who are not convicted have a propensity for offending again. The next time they drive intoxicated they may kill. If the person had been convicted, there is a very good possibility they would not have re-offended or killed.

There are thousands of officers and hundreds of prosecutors in Tennessee. Those arrested for DUI are few and far between. Most officers and prosecutors have seen the devastating effects of driving under the influence and are very careful to avoid committing this crime. The people in this story do not reflect the values and beliefs of the typical officer or prosecutor.

The only good that comes from all these ridiculous crimes is that people realize and understand that officers and prosecutors are not above the law. They will be prosecuted and if proven guilty, they will be convicted and incarcerated just like anyone else. Their reputations will be tarnished. They will never be able to testify in a case as an officer again. They will most likely be fired. They will most likely never find another position in a police department or DA's office again. Let's just hope that there is never another three month barrage of DUI crime by trusted officials like this one again. It is ridiculous and very sad. Those with a duty to enforce and uphold the law must remember that laws apply to all, even the person in the mirror!

Rest in Peace Edwin Arnold

A former Assistant District Attorney and former member of the Tennessee House of Representatives passed away in March after being struck by a vehicle on I-40. The Knoxville News Sentinel reported that Edwin Arnold, 77, was struck while attempting to help his grandson, who had been involved in a wreck. Mr. Arnold was a co-sponsor of Public Chapter 121 in 1965, which set the salary of the Chief Justice of the Tennessee Supreme Court at \$25,000.

“What constitutes the bulwark of our own liberty and independence? It is not the guns of our war steamers, or the strength of our gallant and disciplined army...Our reliance is in the love of liberty which God has planted in our bosoms.” Abraham Lincoln September 11, 1858

VEHICLE-PEDISTRIAN-BICYCLE CRASH INVESTIGATION

Congratulations to 22 law enforcement officers for completing their specialized class to enable them to better investigate pedestrian and bicycle crashes in which motor vehicles are involved. The class occurred in Memphis, March 5-9, 2012, and was taught by Sgt. Dale Framer, ACTAR 1182 and funded by the GHSO. The students received training on how to identify evidence, locate the area of impact, conduct time and distance analysis, correlate pedestrian damage



to vehicle damage, calculate the speed transfer from the vehicle into the pedestrian and bicycle, identify the various vehicle fronts and how they relate to injuries and pedestrian throw distances, use various formulas to calculate the speed transfer, ground impact speed loss, airborne speed, slide to stop speed, and various pedestrian formulas. As a class project, the students were sent to various locations to observe people walking at

their normal strides. The students collected data on the various age groups both male and female, elderly walkers, distracted walkers, couples walking, texting while walking, walkers pushing strollers and more. Also the students conducted a reaction time study at several intersections. The study was performed by taking the time it took for a driver to start moving the vehicle once the traffic signal changed from red to green. Over 600 vehicles were observed.

Participants were: Ruth Horne, Jimmy Rinehart, Rodney Askew, Kenneth Calhoun, Delbert Polk, Frank Sousoulas, L.G. Curry, John Burnette and Reginald Copeland of the Memphis Police Department; Jason Bivens and Shepard Taylor of Collierville; Barry Mosier, Karen Pomeroy, Richard King and Keylon Mayo of the Madison County Sheriff's Department; Tony Valdez of Jackson, Gerald Holmes, Ken Elliott, Lee Douglass and Jonathon Williams of Bartlett and Chris Stokes of Millington.

LESS MATH

(continued from page 12)

rotate and roll, and strike the building), then I added the speeds together to find how much speed the car had to have to be able to do all the things. And when I did that I determined the speed of the defendant's vehicle had to be at least 74 mph at the start of this crash.

The testimony took less than half an hour, and jurors were smiling and nodding in agreement, obviously understanding the nature, but not the detail, of the method. During my direct examination I noticed another sign of success - the defense attorney turned over several pages of his yellow pad that had questions his expert had anticipated about the specific numbers used. Since the cross examination is often a reactive process, there simply wasn't much to which he could react. The direct was like a nice little story that confirmed what the jurors had already gathered in their observations of the damage photographs, the scene diagram presented by police, and the other evidence. The jury didn't want a treatise on how to reconstruct the speed of the car, they just wanted to understand how it was done, and to have confidence in my ability to do it. The defense did not call their own reconstruction expert, who had opined prior to trial that the State's speed estimate was incorrect and flawed.

Remember this very simple fact - jurors believe the witness they like. If I had shown them poster boards of math I'm not sure they would have found me to be as credible as they did.

About the Author

John Kwasnoski, Professor Emeritus of Forensic Physics at Western New England College is a nationally recognized expert and instructor on collision reconstruction. He has reconstructed over 750 crashes and served as an expert witness in such landmark cases as *South Carolina v Susan Smith*, *United States v Makharadze* and *Ulm v Ford Motor Company*. A certified police trainer in more than 20 states, Professor Kwasnoski is the author of the book, *From Crash To Courtroom*. Additionally he has co-written three other crash reconstruction books and is the founder of *Crash!*, *The Science of Collision*, an educational program devoted to reducing teen fatalities through applicability of math and science instruction.

TRAINING UPDATE

Our DUI Training Unit conducted a two day Protecting Lives; Saving Futures class March 6-7 at Martin Methodist College in Pulaski. Twenty law enforcement officers and 6 Assistant District Attorneys attended. The goal of the class was not only to provide information about the detection and prosecution of DUI cases, but also to enable officers and prosecutors to better understand the role of one another. The first day of the class included information used in officer training in the DUI Detection and Standardized Field Sobriety Training class. Reviewing the training information permitted officers to update their knowledge and permitted prosecutors to understand what the officer is talking about on the witness stand when the officer discusses his specialized training. Deputy Joel Willoughby of the Maury County Sheriff's Office, Deputy Terry Ebenstein of the Giles County Sheriff's Office and GHSO LEL and State SFST Training Director, Steve Dillard did an excellent job in their role as SFST instructors.



Deputy Joel Willoughby

Willoughby, Ebenstein, LEL Tony Burnett, Kimball and Dillard

Every prosecutor in the class had the opportunity to perform Standardized Field Sobriety Tests as if they were an officer. Every officer had the opportunity to review cases and make recommendations. To teach about the challenges and defenses of cases every student was asked to examine seven randomly selected DUI complaints and rate them from 1-7. Students were told they had 55 cases on their General Sessions docket including the seven DUI cases. Court was to begin in 15 minutes. Students were placed in the position of prosecutors and had to make recommendations about the cases based on the first impression they received from the written reports. Unlike the line prosecutor, students were organized into small groups, so they could discuss the cases and as a group decide on their recommendations. Line prosecutors do the same every day, but they don't have the luxury of discussing the cases with a group. Every group evaluated the cases differently. No group had the same case identified as the best. No group had the same case rated as the worst. Interpretation of the strength and weakness of a case is commonly effected by the eye of the beholder. A common thread was that more detailed reports were appreciated and left the best first impressions.



Thank you Martin Methodist College and Professor, Dr. Jim White in Pulaski for providing free comfortable meeting space and southern hospitality on your beautiful campus.

VEHICULAR HOMICIDE MURDERERS ROW

GO CART HOMICIDE

It finally happened. A go cart driver has been convicted of vehicular homicide. Jeffrey Page, 49, of Henry County had one of those stupid moments inspired by alcohol and drugs in which it seemed to be a good idea to race a go cart with a five year old child on his lap. The child did not survive his crash. Assistant District Attorney **Beth Hall** called it a Recipe for Disaster in her opening statement. Page also injured his son and was convicted of aggravated assault for those injuries. Page will be sentenced in April.

10 YEAR SENTENCE IN MEMPHIS



Cordell Johnson killed a 19 year old woman, Ariel Williams, on a Saturday night last February. Johnson, driving a SUV hit Miss Williams and her friend after he veered into the turn lane while travelling north on Millbranch at the intersection of Victoria. He left the scene and left his victims to suffer and left Miss Williams to die. Johnson has received a sentence of 10 years for his crimes.

KILLS WHILE ON BOND 13 YEARS

Darrian Eldridge drove his Chevy Tahoe into another vehicle and caused a five car pile up in Memphis. The first vehicle he hit flipped and a four year old child was thrown out and died at the scene. Eldridge fled the scene on foot, but was located nearby with the help of a concerned citizen. Eldridge was on bond for two Schedule 4 drug indictments at the time. He received an 8 year sentence for vehicular homicide, one year for leaving the scene and two each for his drug crimes.

State v Lands, 2012 Tenn Crim App Lexis 203

MANDATORY BLOOD TESTING UPHELD

“Defendant has failed to cite controlling authority, and we have found none, to support his assertion that “proof of actual attempts by law enforcement officers to obtain a lawful warrant must be placed on the record before the court may find that exigent circumstances exist.” The Defendant attempted to suppress his .18 BAC blood test result after he killed Steve Lawson in a 2009 DUI fueled crash by claiming that the exigent circumstances exception to a search warrant established in *Schmerber v. California*, 384 U.S. 757, 770, 86 S. Ct. 1826 (1966) required an attempt by the officer to obtain a search warrant before blood was withdrawn for testing. The Court made clear there is no such requirement.

Tennessee District Attorneys General Conference

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

Website: <http://dui.tndagc.org>

Blog: <http://tnduiguy.blogspot.com>

Tom Kimball (615) 253-6734

Jim Camp (615) 945-2040

Sherri Harper (615) 253-6733

DUI WALL OF SHAME

9TH OFFENDER



Lester Steinberg was stopped speeding on I-75 in Bradley County. He was clocked doing 88 miles per hour. Steinberg blew a .19. As a range 2 offender with prior criminal convictions he received a sentence of 4 years.

8TH OFFENDER CONVICTED



Isaiah Lawler thought he finally had it all figured out. Lawler was driving in Nashville without any working tail lights. An officer tried to pull him over, but he did not respond for about half a mile. He stopped in a gas station and the officer approached. He asked for Lawler's drivers license and Lawler fumbled with his wallet for four minutes as timed by the officer's watch. Finally the officer, who described him as staring blankly and fumbling with the wallet, called off his search. Lawler refused to perform field sobriety tests and refused a requested breath test. This occurred before the mandatory testing for multiple offenders law went into effect. Lawler was convicted by a jury in December, 2011. The prosecutor was Allan Grant.

REPEAT WALL OF SHAMER 11th OFFENSE



Charles Deason was on the Wall of Shame for his 10th DUI in our 5th issue in December, 2003. Here he is again. He got sent away for another felony DUI in 2011 after nearly running into an officer and other vehicles while driving impaired. He refused all field tests and the breath and blood test. He had xanax and soma in his pocket, had been drinking and was disoriented. He blamed his prescription meds for his problems.

REPEAT WALL OF SHAMER 10TH OFFENSE



James A Warren spent time on our wall in 2003 and he is back again. His 2003 conviction in Charlotte, TN was his 9th offense. He was sentenced for another felony DUI in Nashville in December, 2011.

20 YEARS FOR DUI 3RD AND 5 VEHICULAR ASSAULTS



Danny Ray Dunn, 56, did not plan to hurt anyone when driving with a BAC of .16 on I-24 in Hamilton County. He did not plan to slam into a car with two adults in the front seat and three children in the back. He did not expect that the car would get shoved under an 18 wheeler. He did know better than to drive impaired again. He was on probation for two other DUI convictions when he seriously injured five people. Each vehicular assault got him four years and they will be served consecutively. Now he has a 20 year sentence to think about it all.



THE CRASH PAGE

By Jim Camp

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LESS MATH IS THE BEST MATH:

A multiple event collision has resulted in a fatality to the passenger; after skidding across the paved road surface, the car slid through the grass and struck a tree. The reconstructionist uses the conservation of energy principle to determine an equivalent speed for each event by using the speed from skid marks equation for the paved and grass surfaces, and then a crush analysis for the impact with the tree. A speed of 86 mph, well in excess of the posted speed is determined, and months later the case is in trial. All the prosecutor needs from the reconstruction witness is the speed testimony; the jury has seen the extensive damage to the vehicle, and knows how far the car was out of control prior to striking the tree. The jury sees the picture, but now the prosecutor makes a mistake that is not uncommon - he presents the speed testimony with poster boards full of mathematics, lengthy testimony about the calculations, and an extensive direct examination about the calculations that inject a techno-babble into the jury's information gathering process. To some of the jurors MATH SOUNDS THE SAME AS A FOREIGN LANGUAGE. You'd never ask your witness to speak French if you knew most of the jurors couldn't understand French, would you?

Not to mention the hours of cross examination by defense that is intended to confuse the jury, and to erase any image of what happened the jury may have had. The defense then puts on their own expert who further tries to cloud the water by focusing on several of the details of the case that are nothing more than distractions. The result is four days of deliberation.

The moral of this story is really quite simple - LESS MATH IS THE BEST MATH. The jury consists of people whose everyday lives do not intersect the world of mathematics at any deeper level than balancing a checkbook - which many find challenging. So why would the prosecution employ mathematical equations, and algebraic manipulations to convince the jury that the speed estimate is credible? The answer is simple - because that's the way the witness talks, and many prosecutors buy into the rather impressive, although often mysterious, jargon and vocabulary of collision reconstruction. But convincing the jury, and being a credible witness should be the goals of the expert, not demonstrating the ability to calculate and spew circuitous definitions and theories of physics. Remember, the main reason a jury finds a witness credible is that they simply like the witness. The word nerd is not a term of endearment, so why not develop a strategy of making your expert likeable instead of simply competent.

In a recent case in Salt Lake City I testified about pre-impact tire mark evidence, crush damage that actually tore a vehicle in half, and post-impact motion that ended when the defendant's vehicle jumped the curb and struck a house. The energy method of reconstructing the crash was to isolate each event, determine an equivalent speed to cause each event, and then to add the speeds together with the combined speeds equation. The mathematics involved several sub-calculations, and pages of mathematical details, but my testimony never mentioned a single number other than the final opinion of the speed of the defendant's vehicle at the beginning of the events.

In summary, the testimony of the opinion of speed consisted of an analogy:

The defendant's vehicle had what we call kinetic energy - meaning energy because it was moving. And the amount of energy it had is directly related to its speed. So on the night of the crash the police documented evidence that the car's energy had been lost during the collision. It was like knowing that I'd walked around and dropped coins on the ground - a nickel here, a dime there, and a quarter over there - and then someone asked the question, "how much change did John have before we got there?" The investigator walks around the scene of my "coin tossing" and finds evidence of my activity, then adds together the observed coins, and opines, "John had at least 40 cents."

That's the way I described the energy analysis I did in this case - I converted the observations the police made into speeds that it took to do various things during the collision (skid, crash,

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