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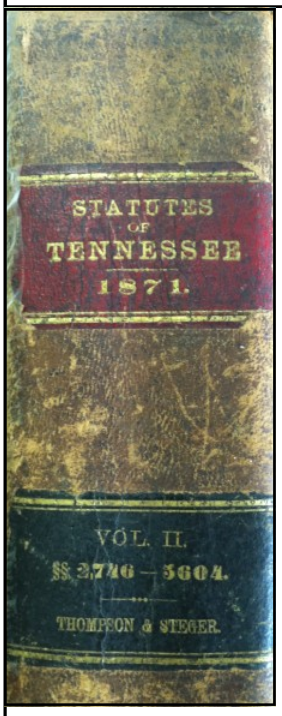
MISSOURI V MCNEELY
WHAT IT MEANS TO TENNESSEE
Justice Sotamayor challenges our antiquated system.



The method for obtaining a search warrant in Tennessee remains the same today as is recorded in the 1871 Statutes of Tennessee. In 1871 our law required "The magistrate shall, before issuing the warrant, examine on oath the complainant, and any witness he may produce, and take their affidavits in writing, and cause them to be subscribed by the person making them."

In 2013, our law at TCA 40-6-104 states: "The magistrate, before issuing the warrant, shall examine on oath the complainant and any witness the complainant may produce, and take their affidavits in writing, and cause them to be subscribed by the persons making the affidavits. The affidavits must set forth facts tending to establish the grounds of the application, or probable cause for believing the grounds exist."

Every search warrant issued is only issued after an officer personally appears before the magistrate to be examined. There are no new technological advances like the telephone or fax machine or e-mail or Skype involved.

Justice Sotamayor, the author of the Missouri v McNeely opinion would be shocked. In her opinion most States are now using the technology we use in every day life to apply for and obtain search warrants. In her vision we are modern like Utah,which uses a system of e-warrants. An officer in his car in Utah can fill in the blanks of a search warrant application, send it by email to a magistrate and get it back signed and authorized in a matter of minutes. Getting a search warrant adds little time to the investigation of a DUI or a vehicular homicide. In Justice Sotamayor's world, search warrants can be obtained by a helpful fellow officer and executed by that officer, while the arresting officer is on the way to the hospital to obtain a blood sample from the offending driver. Our reality is that many officers in Tennessee operate on lonely rural roads where the nearest back up officer is 20 miles away. We don't have helpful officers who can take on the task of obtaining the search warrant, during the investigation of the case. We don't have the use of technology to reduce the time needed to get a search warrant. What do we have? We have our 1871 tradition and system. What then does McNeely mean in Tennessee?

Continued on page 4.

RECENT DECISIONS

State v Elkins, 2013 WL 2149725 Tenn Crim App 2013 **Traffic Stop Based on Incorrect Information**
Park officers in Nashville were patrolling Shelby Bottoms due to a wave of burglaries. Officer Darrell Howse noticed a Buick Regal pulling out of a very isolated parking lot. He followed the car and called in the license plate number. The dispatcher told him the tag belonged to a red pickup truck. The officer stopped the car and discovered it was being used to transport a large amount of pot. Later the dispatcher called back and told the officer the tag was in fact registered to a Buick Regal. It had been transferred from a red pickup that belonged to the defendant. The Court affirmed the convictions after refusing to suppress the stop. The Court found that the officer had reasonable suspicion to initiate the traffic stop based on the ultimately erroneous information that the defendant's license plate was registered to another vehicle.

State v Epps, 2013 WL 1315960 Tenn Crim App 2013 **Faulty Camera Results in Challenges**
The defendant pled guilty, but reserved an issue regarding her traffic stop and probable cause to arrest. The Trial Court accredited the testimony of Murfreesboro Officer Kenneth White and denied the motions. The defendant complained that the video recording did not show all of the suspicious driving in the same manner as described by the officer. The recording abruptly shut down during the field sobriety tests. Nothing in the record contradicted the findings of the trial court.

State v Henson, 2013 WL 1187941 Tenn Crim App 2013 **10 Year Vehicular Homicide Sentence Affirmed**
On March 16, 2011, Henson struck and killed the victim, Ronnie Garden, with her car on Hoecake Road in Lake County, Tennessee, before fleeing the scene of the accident. A few hours later Henson was arrested. At the time of her arrest, Henson's eyes were "bloodshot[,]" "her speech was slurred[,]" and she was "very unsteady on her feet." Henson later admitted to a Tennessee Bureau of Investigation (TBI) agent that she had used cocaine the night of the offense and had consumed a large amount of rum. The toxicology results from Henson's blood sample, which was taken after her arrest, showed that she had a blood alcohol content of .17 percent and that she had diazepam, nordiazepam, and alprazolam in her system. Henson did not have a long criminal history, but did have an extensive history of abusing illegal drugs. Based on that history the Court found her sentence should be served. The sentence was affirmed.

State v Kerr, 2013 WL 1803574 Tenn Crim App 2013 **Challenge to Implied Consent Jury Instruction Denied**
Trooper Brandon McCauley was sent to the scene where the driver had apparently run into a guard rail. An off duty deputy was at the scene with the defendant. The trooper interviewed the deputy and began his investigation. Mr. Kerr exhibited signs of impairment. Field sobriety tests combined with other evidence led the trooper to conclude the driver was impaired. In Columbia, a jury agreed and convicted. Kerr argued that he was not in physical control. His argument failed. He was present at the scene. He admitted driving from a bar. Kerr argued he was not reckless. The Court agreed and reversed his reckless driving conviction as the State failed to prove he had exhibited a willful or wanton disregard for the safety of other persons or property. Kerr challenged his failure to maintain a lane of travel conviction, but did not do so well, since his truck was partially on the shoulder and partially on the roadway. Finally, Kerr argued that the judge could not give the jury the pattern jury instruction for implied consent showing a consciousness of guilt. He argued the Court would be making a comment on the evidence, if the Court determined a violation prior to the jury instruction. That was not the case and the Court refused to address a hypothetical situation for the " novel argument".

State v Lawler, 2013 WL 1558022 Tenn Crim App 2013 **Eighth Offender Refuses Everything: Is Convicted**
Isaiah Lawler has an interesting life filled with DUI convictions. At 2:00 A.M. February 10, 2010, he probably would have gotten away with another, except for his taillights not working. That infraction let Nashville Officer, Jeffery Cason, to try to stop the car. Lawler went on his merry way and finally stopped at a gas pump. The officer approached and asked for his driver's license. Lawler spent about four minutes looking for it, but it did not exist. With his odor of alcohol, slurred speech and other clues of impairment, the officer requested Lawler perform field sobriety tests and he refused. Officer Cason continued to investigate and a jury convicted. *See State v. Morgan*, 692 S.W.2d 428, 430 (Tenn.Crim.App.1985) (stating that "evidence of a refusal to submit to a sobriety test is admissible as being probative on the issue of guilt").

RECENT DECISIONS

State v MacKinnon, 2013 WL 2326885 Tenn Crim App 2013 **Implied Consent**

The defendant went to trial for DUI and a violation of implied consent. A jury found him guilty of the implied consent violation. The determination was appealed and resulted in the case being remanded for the Judge to make the determination of the civil violation. See State v. Andrew Reginald MacKinnon, No. E2009–00093–CCA–R3–CD, 2011 WL 1460167. After the remand the trial judge heard the case and found that MacKinnon had violated the implied consent law. The defendant appealed again and the finding was affirmed. On appeal the defendant argued that the trial judge could not hear the case for a variety of reasons. The court did not address the question of whether the exclusionary rule could be applied to this civil violation, as it was moot due to the finding that the officer had probable cause.

State v McConnell, 2013 WL 1912584 Tenn Crim App 2013 **Moated**

Sometimes an officer will act based on what he believes the law to be and then the Courts issue a decision that changes what he believed to be the law. This happened to a Franklin officer in this case. He saw a car stopped at a flashing yellow light in the wee hours of the morning. There was no traffic around and no reasonable explanation for the delay at the light. He looked at the driver and saw him sitting motionless. His hands were not in sight. The officer believed there was something called community caretaking in this State, so he turned on his lights to see what was going on inside the car. This happened prior to the State v Moats decision of our Supreme Court. By the time this was heard, the Attorney General conceded error and the case was reversed and dismissed. The well-meaning officer has been Moated.

State v Willis, 2013 WL 1645740 Tenn Crim App 2013 **Trial Court Suppression Reversed**

In Maury County, the trial judge decided the State did not have probable cause to arrest after a valid traffic stop. The court concluded that the defendant "did well" on the "9–step heel to toe" test, that the officer stated that defendant "did well" on the one leg stand test, "only touching the ground one time while counting to twenty," and that the video of the tests "did not show any particularly damaging evidence that the defendant was impaired." The Court of Appeals applied the proper totality of circumstances test and looked at all the indicators of intoxication including the driving, the personal contact while the driver was still in his vehicle, admissions to drinking, and his performance during the walk and turn test, the one leg stand test and the finger to nose test. The Court reversed the trial judge and remanded the case for trial. The descriptions of the tests and the driving by Trooper Brandon McCauley were vivid in detail and the evidence preponderated against the conclusions of the trial judge.

State v Wagster, No. W2012-02231-CCA-R3-CD **Wrong Way Driver**

In a curious case from Fayette County, a Trial Judge suppressed a traffic stop. It is curious because part of the bad driving included Mr. Wagster going the wrong way on a one-way street. The Court found driving the wrong way reasonable, because he was driving the wrong way on the emergency shoulder. It seems even driving the right way on the emergency shoulder would be a violation, but not in this case. The Court of Appeals reversed the trial judge finding the officer had reasonable suspicion to believe the driver had violated TCA 55-8-125.

Other cases:

State v Smith, 2013 WL 2244347: HMVO and 6 year sentence affirmed;

State v Tipton, 2013 WL 1619430: Attempt to withdraw guilty plea 6 weeks later denied;

State v Walsh, 2013 WL 1636661: DUI 2nd with 150 day sentence to serve affirmed

MISSOURI V MCNEELY HITS TENNESSEE

Law enforcement officers in every case in which they have probable cause to believe a driver was driving in violation of our DUI law must begin the process of obtaining a breath or blood sample by asking the driver to consent to a test or tests. Consensual tests are in no way effected by McNeely. Blood tests taken for medical purposes by medical practitioners are in no way effected by McNeely and blood samples taken for medical purposes at hospitals may be obtained by the use of a search warrant as is common practice now.

Only non-consensual blood tests are effected by McNeely. The practice of obtaining non-consensual blood tests as authorized by our Tennessee statutes for Vehicular Homicide, Vehicular Assault, DUI multiple offenders and DUI offenders with child passengers are now controlled by McNeely! McNeely requires an officer to begin by attempting to obtain a search warrant. In most large cities it is now common to have a Magistrate available 24 hours a day and 7 days a week. In cities it is much more likely that an officer will be able to obtain a search warrant. Even in cities obtaining a warrant in a timely manner may be improbable.

TCA 55-10-406 (f) requires an officer to obtain a breath or blood sample in cases of death, injury, multiple offenders and offenders with child passengers. That has not changed! What has changed is the method used.

In rural areas the likelihood of getting a search warrant at two o'clock in the morning is not good. Many Judges have made it clear to officers that they are not available to sign a search warrant for a DUI case in the middle of the night. If that is the case, the law enforcement officer must write in his report that it was not possible to get a search warrant in a timely manner in the particular case. There are many reasons an officer may not be able to obtain a search warrant. One is the unavailability of a judge. These reasons make up the **EXIGENCY** exception to the search warrant requirement. These reasons may apply to any particular case in any given location. They will be examined closely in every case as defense attorneys challenge the officer's exigency decision.

What did the majority rule in McNeely?

1) The natural dissipation of alcohol in the blood may support a finding of exigency in a specific case. It does not do so categorically.
2) Exigency must be determined on a case by case basis based on the totality of the circumstances.
3) Exigency depends heavily on additional (special) facts, such as whether the officer was delayed by the need to investigate an accident or transport of the injured.
4) Significant delay in testing will negatively affect the probative value of the results.
5) In those drunk driving cases where an officer can reasonably obtain a warrant before a blood sample can be drawn without significantly undermining the efficacy of the search, the 4th Amendment mandates they do so.
6) The Court does not doubt that some circumstances will make obtaining a warrant impractical such that the dissipation of alcohol from the bloodstream will support an exigency exception justifying a warrantless test.
7) Technological developments that enable officers to secure warrants more quickly are relevant to the assessment of exigency (telephonic warrants, e-warrants, etc)

How much time is too much time?

The U.S. Supreme Court did not establish a time frame in the McNeely decision. This lack of direction was a point of contention between Justices. It gave no clear direction for officers. In Tennessee, we had a law for several years that made any test inadmissible if the blood sample was not obtained within 2 hours. The 2 hour limit was repealed in 2009. With that terrible law and appellate cases like State v Meador, 2009 WL 4738755, there had been a determination that tests had no probative value if the sample was obtained after two hours.

(continued next page)

TENNESSEE PRACTICE AFTER MCNEELY

If two hours meant a blood sample had zero probative value, then obtaining a search warrant that delayed obtaining a blood sample for more than two hours after the traffic stop would make the blood test questionable. The two hour suppression limit is gone, but if a blood sample is obtained more than two hours from the time of driving, the probative value of the sample will be substantially reduced. As the Supreme Court noted, the average alcohol elimination rate is about 0.015 per hour. A test two hours after driving is likely to be .03 less than at the time of driving. Given our history in Tennessee, law enforcement officers should try to get a search warrant in every case but rely on exigency and proceed without a warrant if obtaining a warrant will extend a delay of a blood sample by two hours from the time of driving.
Other factors that may lead to an officer obtaining a warrantless sample are:

-How much time was spent investigating the case?
-Is another officer available to apply for and obtain the search warrant?
-Was delay caused by the flight or evasion of the suspect?
-How much time will it take to get to the hospital or medical professional to obtain a blood sample?
-Is there a standard form warrant application available?
-Are there any remote warrant application procedures in place? (beyond the 1871 method)
-Are there other time consuming factors involved? (driving to the office to draft the warrant, make duplicates and print the documents)
-Is the officer familiar with and aware of the search warrant process?
-Is a prosecuting attorney available to prepare and or review the search warrant?
-Is a Judge or Magistrate available to review and approve the warrant application?
-What is the average time to obtain a search warrant based on prior experience?
-How much time does it take the officer to write a search warrant application?
-How much time does it take to drive to a Judge or Magistrate?
-How much time does it usually take to get to the front of the line, if the Magistrate has duties in addition to signing search warrants?
-How much time can the suspect be kept in the back of a patrol car during the process?
-Does the suspect need medical attention?
-Will the suspect be given medications that will destroy the probative value of the blood sample for testing?
-What did the suspect consume to cause impairment? Did he consume a drug that has a short half-life for toxicological testing? (Two hours is a good time frame for alcohol, but not cocaine or inhalants.)
Are there other factors that delay the investigation? For example, does the officer have help keeping the road secure? Does he have help transporting child passengers? Does he have anyone else who can wait for the tow truck? Can another officer process other offenders at the scene? Does the officer need to stay at the scene until an ambulance or helicopter arrives to transport injured persons?
How much has any delay caused the evidence to lose probative value?

Missouri v McNeely means officers must try, if feasible, to obtain a search warrant. If it is not possible to get a warrant in a timely manner, the officer should continue to get a non-consensual blood sample, but be prepared to explain why in each and every instance. McNeely does not mean it is time to give up; see our conviction rates plummet; see our treatment courts empty and see our fatality rates increase. McNeely without doubt makes securing a non-consensual blood sample more difficult. It does not give us an excuse to quit trying to save lives.

TENNESSEE DOES NOT COMPARE!

Justice Sotamayor wrote about the search warrant process and mentioned many things that are rare in our State. For instance, on page 10 of the opinion she wrote, " Consider, for example, a situation in which the warrant process will not significantly increase the delay before the blood test is conducted because an officer can take steps to secure a warrant while the suspect is being transported to a medical facility by another officer."

This doubles the number of officers involved in most DUI cases. In many of our 95 counties our police and sheriff's departments are managing with a minimum number of officers. There are none to spare to assist. Many troopers patrol rural areas where there is no other officer nearby. We have suffered the loss of life of troopers who stopped vehicles without backup and were shot and killed. Where do the extra officers come from? Maybe this can happen in Memphis or Nashville, maybe in Franklin or Knoxville, but even there, it won't happen in every case. I once prosecuted a case in which an officer working in dangerous housing projects had no choice but to arrest a DUI driver. He had nearly crashed into the patrol car. The officer felt horrible about leaving the other officer who patrolled the projects alone, while he dealt with the drunk. The officer told me that the criminals in the projects knew when one of them was gone. They listened on scanners. They knew part of the area was not being patrolled. They knew where they could burglarize, rape and even kill without being detected. This officer hated DUI offenses, because they took him away from protecting the people in the projects, who relied on him. I believe he had an average of one DUI arrest every three years.

Justice Sotamayor wrote about technology. She noted that the Federal Rules of Criminal Procedure were amended in 1977 to permit federal magistrate judges to issue a warrant based on sworn testimony communicated by telephone. As amended, she noted, the law now allows a magistrate judge to consider, "..information communicated by telephone or other reliable electronic means." Fed Rule Crim Proc. 4.1.

It is nice to know that a federal prosecution of a DUI case can begin with a search warrant more easily obtained, but Tennessee has not modernized and remains hooked to the procedures of 1871.

Justice Sotamayor recommended the practices of States that have recognized inventions like the telephone. "States have also innovated. Well over a majority of States allow police officers or prosecutors to apply for search warrants remotely through various means including telephonic or radio communication, electronic communication such as e-mail or video conferencing. Her footnote includes references to Alabama, Alaska, Arizona, Arkansas, California, Colorado, Georgia, Hawaii, Idaho, Indiana, Iowa, Kansas, Louisiana, Michigan, Minnesota, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, South Dakota, Utah, Vermont and Virginia. Noticeably missing is Tennessee. Maybe all those other States don't appreciate tradition like we do!

Chief Justice Roberts, in a concurring and dissenting opinion noted that the McNeely blood sample was drawn approximately twenty five minutes after the traffic stop. The speed in which the blood was obtained makes it clear McNeely was not driving in Tennessee! Rarely and maybe never, does an officer obtain a blood test in that fast a time, even with consent. The Chief Justice indicated in his opinion that in Utah judges have been known to issue warrants in as little as five minutes. He noted that in one Kansas county, officers can e-mail warrants to the judge's iPad and judges sign them and return them in 15 minutes. Obviously, they are not in Tennessee. Utah has an e-warrant system where an officer enters information into a system, the system notifies a prosecutor, and upon approval forwards the information to a magistrate, who electronically returns a warrant to an officer. Compare our 1871 practice to theirs. We are not only antique, but obsolete!

What will the future be in Tennessee? Will officers have to drive to the judge's house with an intoxicated driver in the back seat to get a search warrant or will the officer key in a warrant application on his computer or iPad? It will all depend on whether the Tennessee Court system, and in particular those who write the rules, want to continue with the tradition of 1871 or enter into this century. There is good news. The Rules Commission is attempting to develop a solution and hopes to have a proposal at its August meeting.

TRAINING UPDATE

A Vehicular Homicide Trial Preparation Workshop was conducted June 4th-7th. It included prosecutors from Tennessee and Kentucky. The workshop featured one day of trial advocacy information, two days of crash reconstruction and one half day of toxicology. Various prosecutors, crash reconstruction experts and toxicologists helped prosecutors learn about a variety of issues as they prepared cases for trial. Professor John Kwasnoski taught half of one day on the topics of: Understanding Crashes, Single Vehicle crashes, In-line Crashes and Intersection Crashes. Amy Miles, Advanced Chemist, Wisconsin State Laboratory, Forensic Toxicology Section, taught about the effects of alcohol and drugs. Prosecutors teaching trial advocacy skills included Joanne Thomka, Director of the National Traffic Law Center; Traffic Safety Resource Prosecutors Joe McCormack, New York; Jared Olson, Idaho; Bob Stokes, Kentucky and Jim Camp and myself from Tennessee. In addition to class room style education, each prosecutor worked in small groups with crash reconstruction experts from THP: Lt. Mike McAllister, Sgt. Allan Brenneis, Justin Boyd, Bill Fox, Charles Massengill and Shane Moore. They were joined by Sgt. Jessie Loy, Nashville; Russell Duvall, Shelby County and Mellissa Spielhagen, Clarksville. Toxicologists came in to assist on Friday, including: Forensic Scientist Supervisor, Jeff Crews and Scientists Adam Gray, April Hagar, Margaret Massengill and Melinda Quinn.

Professor Kwas

We were hoping to run some crash tests with the Bat-mobile(pictured on right) , but the Gatlinburg Car Museum proprietors weren't willing to donate the car.

ARIDE FOR PROSECUTORS

September 17-20 Fall Creek Falls State Park

Registration is now open for a class focused on the problem of drugged driving. Prosecutors will receive information about how various drugs affect the human body and vision. They will learn how officers are being trained to detect drugged offenders and how to establish good systems to deal with search warrants after McNeely. They will review field sobriety testing , including tests developed specifically to determine if a suspect is under the influence of various categories of drugs and ramifications of medical marijuana laws. Prosecutors will also be given instruction on how to respond to the most popular defense challenges. Instructors include, Dr. Karl Citek, Professor of Optometry; Judge Thomas Woodall, Assistant U.S. Attorney Jay Woods; Drug Recognition Expert Instructors Richard Holt, Clint Shrum, Chief Brian Hickman & A.J. Ross; ADA Darrell Julian, TBI Toxicology Supervisor, Jeff Cruz and Agent Samera Zavarro; Magistrates Todd Draper and Billy Gilbreath and Michigan TSRP Ken Stecker.

COPS IN COURT

The DUI Training Unit conducts several Cops in Court classes across the State every year. The goal of the class is always the same. We help law enforcement officers train to testify with the purpose of delivering the truth to the Court. There are many ways an officer can lose credibility without telling lies. We feel it is better for the officer to learn about the tricks of cross examination in a classroom instead of a courtroom. Friday, June 14th, we were privileged to offer this training to 56 Highway Patrol cadets. To make the experience the best possible, twelve prosecutors and a Legislator came to help. We are deeply grateful.

Back row from left: David West, Tom Kimball, Rebecca Valliquette, Elizabeth Foy, Jack Bare, Ryan Desmond, Jim Camp, Jason Criddle.
Front row from left: Kyle Anderson, Representative William Lamberth, Daniel Stephenson, Byrna Grant, Laura Wood, Meg Sagi and Carlin Hess.

LEGISLATIVE UPDATE

REORGANIZED DUI LAW EFFECTIVE JULY 1

The seven year effort to reorganize the DUI law came to fruition in the 108th General Assembly due to the dedication to the cause by the Governor, Commissioner of Safety and key leaders in the Senate and House. The bill became Public Chapter 154. It was signed by Governor Haslem on April 16th after it passed unanimously.

The effort to streamline and reorganize the law began in a Task Force named by Governor Bredesen in 2006. The Task Force recommendation for reorganization became the model for the current law. The law that passed was written, rewritten and rewritten several more times to clarify language. Lizbeth Hale, an attorney at the Department of Safety deserves mention for her tireless work on the effort. I wrote the initial proposal, but due to her dedication, it is in much better condition than when it was first proposed. Many others participated in the writing of the law and Commissioner Gibbons did an outstanding job of collecting input from various groups and listening to concerns. The goal in the rewrite was to reorganize the law, not to change it substantially. In any reorganization, changes are made. For instance, there were three sections in the old law that dealt with the disposition of DUI fines. Those were condensed into a one page section now at TCA 55-10-412.

The new law kept the main criminal provisions in place. The DUI violation remains at TCA 55-10-401. The Implied Consent law remains at TCA 55-10-406. However, the penalties for violation of the Implied Consent law are now in TCA 55-10-407.

The Sections of the new law are:

TCA 55-10-401 Driving Under The Influence
TCA 55-10-402 Penalties, Incarceration, Litter Removal, Child Passenger, Probation
TCA 55-10-403 Fines-Payment– Restitution
TCA 55-10-404 Driving Privileges-Revocation-Suspension
TCA 55-10-405 Repeat Offenders-Prior Convictions Defined
TCA 55-10-406 Tests for Alcohol or Dug Content of the Blood-Implied Consent
TCA 55-10-407 Violations of Implied Consent
TCA 55-10-408 Tests for Alcohol or Drug Content of the Blood-Procurement and Processing of Samples
TCA 55-10-409 Restricted Licenses-Eligibility-Locations-Times-Ignition Interlock
TCA 55-10-410 Conditions of Probation-Treatment-Assessment-DUI School
TCA 55-10-411 General Provisions-Presumptions-Diversion--Advisement-Lawful Use-Definitions
TCA 55-10-412 Disposition of Fines
TCA 55-10-413 Fees-Funds-Disbursement
TCA 55-10-414 Seizure of Vehicles
TCA 55-10-415 Underage Driving While Impaired
TCA 55-10-416 Open Container Law
TCA 55-10-417 Additional Penalties-Ignition Interlock-Tampering-Destruction-Solicitation
TCA 55-10-418 Ignition Interlock Providers
TCA 55-10-419 Ignition Interlock Indigency Fund
TCA 55-10-420 Litter Removal Procedures
TCA 55-10-421 Repeal of Adult Driving While Impaired

LEGISLATIVE UPDATE Ignition Interlock Law

Beginning July 1, the new ignition interlock law goes into effect. This law will drastically change how drivers are monitored after conviction. It will also open the roadways to DUI offenders with a long history of DUI violations for the first time in decades. Multiple offenders will now be able to drive legally, if they have an ignition interlock in proper working order in the vehicle they are driving. The hope of the General Assembly is that these drivers will apply for and get a restricted license to drive with the ignition interlock requirement. They don't have to do so. If they apply for the ignition interlock restricted license, they will do so only because they choose to drive with a license that permits them to do so. Traditionally, many of these offenders would drive with revoked or suspended licenses. They would claim they had to in order to go to work. That will no longer be a very good excuse, if they do not apply for and obtain an interlock.

Beginning July 1, all drivers who are convicted of DUI with a .08 blood alcohol level or a combination of alcohol and drugs will become ineligible for a restricted license to drive, unless they have an interlock installed and only drive a vehicle with an interlock in proper working order. Any of these drivers who apply for a restricted license to drive will learn that the restriction has changed to an interlock restriction. They will not get a traditional restricted license to drive to work, the doctor and the probation office. Instead, they will be ordered to have an interlock installed and drive only a vehicle with a working interlock.

QUESTIONS AND ANSWERS ABOUT THE NEW LAW

Question: Who has to have an interlock?
Answer: If a person has been convicted of a DUI with at least a .08 blood alcohol level or a combination of alcohol and drugs and wants to drive with a Restricted License, the person will be required to have an Interlock Device installed and monitored. Some people who violate the Implied Consent law will also be required to install and maintain an interlock, if they apply for a restricted license.

Question: Can I get a Restricted License to drive to work without an interlock?
Answer: No. Not if you were convicted and had a blood alcohol level of .08 or any alcohol combined with drugs.

Question: If I am found to have violated the civil Implied Consent law, will I be able to get a restricted license without an interlock?
Answer: Yes. In most cases the interlock is not required for a civil implied consent violation. However, the court may order the driver to install an interlock. A driver may also apply for an interlock instead of being restricted to driving in certain locations at specific times. If the driver applies for an interlock to remove geographic and time restrictions, the driver is required to pay for it without the use of the indigent fund.

Question: If the Court finds a violation of implied consent in Sessions Court soon after a DUI arrest and gives the driver a restricted license, does the driver have to have an interlock installed when the driver is convicted of DUI later?
Answer: Yes. If the license suspension for implied consent and the license suspension for DUI occur at the same time, the suspensions will run at the same time. If a person is suspended for implied consent and six months later is suspended for DUI, then six months of the suspensions will run concurrently, but the driver will end up with eighteen months of license suspension. If the suspension for implied consent is over at the time of the DUI suspension, the driver will receive another year of suspension with the ignition interlock for the DUI.

Question: What's an interlock cost?
Answer: It depends on the provider, but the maximum cost is $150 (one hundred fifty dollars) to install the device and $100 (one hundred dollars) per month to monitor the device. Those prices are part of the law as the maximum prices allowed.

Question: Where can a person get an ignition interlock?
Answer: The Department of Safety keeps a list of all authorized ignition interlock providers on their website. It includes a map showing all locations. Copy and paste the address below:
http://www.tn.gov/safety/FinancialResponsibility/IIDInstall.shtml

(Continued on page 10)

Ignition Interlock Law Questions and Answers

Question: If a person does not get an interlock, but drives anyway, what happens?
Answer: If the person gets caught, the person will be prosecuted for driving on a revoked, cancelled or suspended license. This offense is a Class B misdemeanor, which carries a maximum fine of $500 (five hundred dollars) and time in jail of two days up to six months, a $1,000 (one thousand dollar) fine and the license will be suspended for another year. A second offense would be a Class A misdemeanor and would result in a fine of up to $3,000 (three thousand dollars) and a minimum time in jail of 45 days up to a year.

Question: If a person disables, disconnects or tampers with the interlock or has a sober person blow into the air tube to avoid the interlock, what happens?
Answer: That person will be prosecuted pursuant to TCA 55-10-417(j), which classifies those acts as Class A misdemeanors with a sentence of at least 48 hours and at most 11 months 29 days in jail.

Question: How does an indigent person pay for this interlock device?
Answer: There is a significant fund set aside to pay for the device, for those who qualify. If a person is indigent and required to have an interlock device, the person may get all or part of the cost paid for by the State. The funds come from DUI convictions. Everyone who is convicted of DUI is charged $40 (forty dollars) to pay for interlocks for the poor. Only DUI offenders pay the fee.

Question: May someone who is declared a Habitual Motor Vehicle Offender apply for and use an interlock device?
Answer: NO! It is still a felony for a habitual traffic offender to drive.

Question: Can a person convicted prior to July 1, 2013 go in to apply for a restricted license and get an ignition interlock after July 1st?
Answer: If the violation resulting in the person's conviction for driving under the influence occurred prior to July 1, 2013, the law in effect when the violation occurred shall govern the person's eligibility for a restricted motor vehicle operator license, unless the person petitions the court to consider the person's eligibility under the law in effect when the petition is filed. A person convicted prior to July 1, 2013 will remain under the restricted license stature, if eligible, unless he or she petitions the court to consider their eligibility under the new law. The judge could grant or deny the petition under the new law. A third offender, ineligible under the old law, could request an ignition interlock and drive legally due to this new law.

Question: Can a person who is a fourth offender apply for and get an ignition interlock based on this law?
Answer: Absolutely. In fact, if a fourth offender does not apply it is probably a sign that the person wants to continue drinking and driving. There is a well-funded indigent fund to pay for an ignition interlock, if the person qualifies.

Question: Can a person who is a fourth offender have an interlock installed per the court and wash away his 8 year license revocation by having the interlock on his car for 6 months or a year?
Answer: No, No, No! Persons with prior convictions, such as a fourth offender, receive restricted licenses pursuant to 55-10-409(d) of the DUI Reorganization bill (2013 Public Chapter PC 154). "The restriction shall be for the entire period of the restricted license and for a period of six (6) months after the license revocation period has expired if required by § 55-10-417(l)." 55-10-409(d)(2)(i). The period of the restricted license is the same period as the license revocation period, so the fourth offender would be required to have interlock for 8 years plus a potential 6 months after the revocation period ended.

Question: If a person convicted of DUI 1st offense decides not to apply for a restricted license and ignition interlock, and his time passes for his one year license revocation, can he still get his license reinstated?
Answer: Yes. There is no change from the current law.

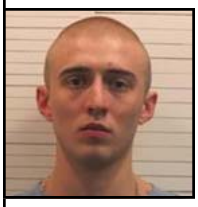
VEHICULAR HOMICIDE MURDERERS ROW

KILLER OF THREE LEFT THE SCENE

Curtis Harper, 23 was convicted of 3 counts of vehicular homicide by intoxication and many other charges April 17th by a Knoxville jury. Harper killed three people, Nelzon A. Soto, 45; Chasity Elaine Thornell, 24; and her unborn daughter. Mr. Soto had stopped to help when Ms. Thornell's friend had run out of gas. After Harper, speeding and driving under the influence, crashed into and killed, he left the scene. He took the stand in his own defense to claim that he did not realize he had hit the people. After hearing that he was guilty as charged 11 times, the jury was reconvened to determine if he had a prior conviction from North Carolina. He did. Sentencing is scheduled for late June. The prosecutor in the case was Sara Keith, with assistance from Bill Crabtree.

SOLDIER KILLED FELLOW SOLDIER

Jamel Jamerson was found guilty by a jury in Clarksville of vehicular homicide by intoxication April 13th. The victim in the case Morufu Abidemi Aremu, 32, a soldier stationed at Fort Campbell. He was pronounced dead at the scene of a horrific one vehicle crash on October 4, 2009. Jamerson, also a soldier at the time, took the stand and denied being the driver. A sentencing hearing is pending. The prosecutor was Daniel Stephenson.



TRUCK THIEF KILLED THREE. GETS 27 YEARS

James T Meeks, 20, of Signal Mountain, killed three people and injured another in a crash in Marion County in June 2011. He received three concurrent 15 year sentences for his homicides and a consecutive 12 year sentence for the injuries he caused. Annie E. Blevins, 24; and Nicholas Scott Clayton, 20; and Emily F. Clayton, 21,were killed in the crash. Meeks, a career offender, slammed into a jeep driven by James Blevins, in a stolen Ford F 250 pick up truck.

WRONG WAY DRUNK DRIVER GETS 8 YEAR SENTENCE

Latisha Stephens, 34, of Signal Mountain, Tennessee, drove the wrong way, intoxicated on Highway 153 in Chattanooga on July 31, 2011. She plowed into a minivan driven by Kevin (Sunshine) Yates, 25. He would later die after being transported to Erlanger Hospital. He was placed in intensive care, down the hall from his grandfather, who had also been in a traffic crash. Mr. Yates was a 2004 graduate of Tyner Academy. He was employed at Buffalo Wild Wings and was a member of River of Life Church. He was described as an avid gamer and bowler. He was a very creative young man playing the trumpet and creating his own comic books. Stephens received an eight year sentence.

INEBRIATED DRIVER CROSSES LINE AND KILLS

John Massey, 28, pled guilty to vehicular homicide by intoxication in Chattanooga on April 18th. His fatal crash on August 16, 2012 occurred when he crossed the center line and collided head on into a vehicle driven by Tracy O'Neil. A sentencing hearing is set in August.

Dalton Patterson, 46, is now serving a nine and a half year sentence for vehicular homicide by intoxication in the Henry County Jail. Patterson was driving a four wheeler ATV when he crashed and rolled over. His passenger, Cherri Tanner, 42, was killed in the roll over. Patterson left the scene. He was found and had a blood alcohol level of .21.

Telling the Opening Story

By Jim Camp

Tell the story. How often we have heard that mantra in and out of our formal and practical training as lawyers. "Tell the story". It seems like such a simple task. After all, we believe storytelling is merely the act of communicating facts about any given case to a particular audience. We think we simply tell that audience (the jury) what we want them to know. Unfortunately those assumptions are not quite accurate. It is that same formal training we receive as lawyers that interferes with the quality of that communication. That training mixed with technology now so common in today's world distracts us from our true task. It prevents us from telling the story.

Today's trial lawyers have many wonderful tools at their disposal. Laptops grace nearly every counsel table. Openings and Closings are mapped with Power Point and Keynote presentation software. Unfortunately in many cases those tools have become the centerpiece of Opening and Closing. In so doing, creating the Power Point presentation has become the structure and source for that portion of the trial. Lawyers present their bullet points, reading them off the screen using them as an outline for the presentation itself. Occasionally a photograph or diagram is added. This observation was reinforced by an experience at the recent TNDAGC Trial Advocacy School held in Memphis. On the morning of the Opening Statement exercise a number of students approached me. They said they had spent so much time trying to put their Power Point together they never really prepared the statement itself.

A long time ago lawyers knew nothing of this technology. Power Point and Keynote had not yet been invented. No one even knew what a laptop was. Back in "the day" a trial lawyer had to become a STORYTELLER to survive. The legal culture not only required it of its trial lawyers, it fostered it. It was a given. It was required because other than an occasional photo passed to the jury or blown up on a foam board, the scene of the crime could only be illustrated to the jury by telling the story.

Don't misunderstand. Visuals are important. We know that jurors learn and retain more information if we both tell them and show them. Use demonstrative exhibits when you can and incorporate them into a PowerPoint or Keynote presentation. Just remember that telling the story is the foundation of your opening. Visuals and presentation software add to and complement the story telling, not the other way around.

Storytelling is critical in Opening since it is the second opportunity for you to make a favorable impression with the jury. But it is the most substantial opportunity where your skills are on display and the foundation of your credibility is constructed. It is also the time to provide the jury with the facts of the case intertwined around the theme in storytelling fashion. Studies have shown Jurors many times reach the same verdict at the end of the trial as they would have reached at the end of the opening statement. Storytelling accented by purposeful and effective demonstrative exhibits ensure the effectiveness of your message. It all begins with the Attention Step. This consists of a relatively brief, punchy, statement that can be both verbal and visual that quickly grabs the attention of the jury before they drift off. It replaces wordy and pointless introductions.

How many times have you heard or presented an opening statement that began something like this: "May it please the Court, counsel, men and women of the jury. As I told you during Voir Dire, I am the District Attorney. I represent the State of Tennessee in this matter. I will be prosecuting the defendant George Possum Jones. This portion of the trial is called the opening statement. Think of it like a road map of where we are going and how we are going to get there….blah, blah, blah." What has this prosecutor just done with their "introduction"? They have wasted a perfect opportunity to take advantage of the jury's attention at a time when they are most attentive and likely to learn. Such an introduction has lulled the jurors into a semi-conscious state where the important point of our presentation will be forever lost. Such a pointless introduction must be avoided at all costs.

It is called an attention step for a reason. It should have PUNCH and impact without being argumentative. You want the jury to hear what you have to say so you have to open with something that is going to make them want to pay attention. Present them with facts or a concept you want them to remember because the attention step takes advantage of the adult learning principle of "Primacy." This means that our audience will remember best what they hear first. So don't waste the most important minutes of your opening. When called upon by the Judge, stand up, square your shoulders to the jury and begin with a bang. ".16, that was the defendant's blood alcohol concentration on the night he ran off the road and crashed his car into a tree. .16, that was the defendant's blood alcohol concentration on the night the defendant's passenger John Lennon burned to death in the front seat of the defendants car. .16, that was the defendant's blood alcohol concentration on the night he tried to run away from the scene of the crash. Let me tell you how this happened…." Now the jury is primed and ready to hear, as the great commentator Paul Harvey used to say, "the rest of the story."

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