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BOND AND THE NEW ARREST

The Tennessee Supreme Court clarified that a defendant on bond who commits a new crime can have the bond revoked in an April 7th opinion, State v Burgins. In Burgins, the offender had a $5,000 bond for simple possession of marijuana. While on bond, she was arrested for attempted first degree murder, employing a firearm during the commission of a dangerous felony, attempted especially aggravated robbery, attempted carjacking, and aggravated assault.

The State moved to revoke her bond. She unsuccessfully responded by claiming the bond revocation statute was unconstitutional. A panel of the Court of Criminal Appeals ruled the statute unconstitutional. The Supreme Court reversed and remanded the case to the Trial Court to conduct a bond revocation hearing.

In the fifth issue of the DUI News, the front page story was about this topic. This decision, which came out on my birthday was a present telling us that on this topic, I was right! That is not always the case. Let's go back in time then to December, 2003……..

From Issue 5:

All too often a defendant with a pending DUI decides to keep drinking and driving. Sometimes the defendant gets caught. When this occurs do you have a system in place that permits the prosecutor with the pending case to know about the new offense? You will find few defendants placing your citizens at risk like the DUI offender who continues to drive under the influence. Failure to identify and act concerning this danger can result in horrific consequences.

BE SYSTEMATIC - Each judicial district in Tennessee is an entity to itself. Whether you are in Memphis with its 17 Courts or the 13th with its 7 counties, there are some common denominators. The most common denominator is the jail intake list. Every new offender is on a list. Some of these are computer accessible, while others are listed in a book. New arrest warrants get delivered to the Sessions Court. New offenders are arraigned. If the prosecutor with the pending case is not informed of the new arrest, a hazardous situation that sometimes results in injury or death occurs. The binge continues unabated.

Finding out about the new offense requires extra effort from someone in the office. There has to be a system in place to allow the Criminal and Sessions Court prosecutors to see who committed crimes last night. They then need the ability to compare their list of pending cases to the list of arrestees. Communicate with the Sheriff's department by computer, fax or by taking a walk, get hold of the list.

(Continued Page 8)

CAUTION: Consult Your Prosecutor Before Adopting Practices Suggested in this Article. The statutes and court decisions in this publication are reported to help you keep up with trends in the law. Discuss your practices with your commanding officers, police legal advisors, and the District Attorney before changing your practices in reliance on this information.

RECENT DECISIONS

State v McCormick 2015 WL 1543325 COMMUNITY CARETAKING ALIVE AND WELL

Just when you thought community caretaking had been completely gutted or Moated, along comes an affirmation of a community caretaking stop. The difference between the facts in this one and State v Moats, 403 S.W.3d 170 (Tenn. 2013) was that this car was partially blocking a drive leading to the public parking lot of two closed businesses. The vehicle's rear tire extended into the roadway, and the vehicle was running, with its headlights illuminated. This community caretaking also differed from State v Williams, 185 S.W.3d 311 (Tenn. 2006), proof in this case that there was some amount of traffic on the road.
On a personal note, the Court cites State v James Dewey Jenson, No. E2002-00712-CCA-R3-CD, 2002 WL 31528549, a case I had the privilege of prosecuting with outstanding sheriff's deputy, Donald Bond, who was later killed, because he wore a badge. May he rest in peace.

State v Turner, 2014 WL 7427120 INSUFFICIENT EXIGENT CIRCUMSTANCES FOR BLOOD DRAW

In Washington County on February 10, 2012, defendant Turner, a 4th DUI offender, was stopped when Trooper Jonathan Street recognized his truck from a previous DUI and verified that his license to drive was revoked. The Defendant pulled over and then ran away. The trooper caught him, struggled to get him under control as he fought and finally subdued him with pepper spray. The trooper then took him to the hospital to get his eyes washed out and while there directed that a blood sample be taken, because Turner was a multiple offender. Turner did not consent.
Despite the fact that the law permitting search warrants in DUI cases went into effect April 18, 2012, two months after this arrest, and that the McNeely decision was issued April 17, 2013, 14 months after this arrest, the Court affirmed the suppression of the blood test for a lack of exigent circumstances. The officer followed the law in effect at the time. No good faith exception was applied in this case. In a recent California decision with very similar facts, the Appellate Court applied a good faith exception. See People v Harris, 234 Call App 4th 671 (2015). That Court recognized the blood draw was conducted in good faith reliance on precedent binding at time of blood draw, which permitted warrantless blood draw upon showing of probable cause of intoxication and natural dissipation of alcohol or drugs in the bloodstream, and the officer conducting blood draw did not act deliberately, recklessly, or with gross negligence.

State v Teasley, 2015 WL 395668 LICENSE SUSPENSION LIMITATION

This driver pled guilty to two first offense DUI's, driving revoked, reckless driving, resisting attest and failure to report an accident. The penalty imposed resulted in twenty three months and twenty eight days suspended after 180 days in jail. The trial judge ordered that as a condition of probation he lose his license for five years. On Appeal, the Court ruled that the Legislature only permitted a one year loss of license for each DUI.

State v Smith, 2015 WL 412972 LANE VIOLATION AS BASIS FOR STOP

This defendant pled guilty but preserved her stop issue for appeal. The issue was whether the traffic stop based on a violation of TCA 55-8-123 was constitutional. The Court denied her request. This issue has been discussed in previous issues of this newsletter, including our June 2011 issue State v Schoenthal, and State v Minchew. However, in this case a dissenting opinion was issued by Judge Norma McGee Ogle. The stop was the result of a suspected violation of TCA 55-8-123, which requires drivers to maintain a lane as nearly as practicable. The issue was whether the Trooper (Achinger) had reasonable suspicion or probable cause to believe he had observed a violation of this Class C misdemeanor. The Trooper is not required to have proof beyond a reasonable doubt. Judge Woodall reminds us that reasonable suspicion is enough.

RECENT DECISIONS

State v Crites, 2015 WL 764558 S.O.D.D.I. DEFENSE FAILS

The defendant was in the driver's seat of a car with a flat tire in a ditch. He admitted he was trying to get the car out of the ditch, but denied driving. Fifteen minutes earlier Franklin Police Lieutenant Chris Clausi had seen the defendant driving at an intersection. At trial, a witness for the defense claimed he was the driver and had left the scene to try to find a replacement tire. He testified he never told anyone he was the driver, because no one had ever asked. The jury did not believe him or another witness. The conviction was affirmed.

State v Cooper, 2014 WL 7178010 WITNESS SEQUESTRATION AND ORDER OF TESTIMONY

Mistakes happen. This one resulted in a case in which testimony was sufficient to support a conviction being reversed for a new trial. The error involved putting on a witness in the wrong order. The State's prosecuting officer heard the testimony of his Sergeant prior to his testimony. The Court reversed after analyzing whether the error was harmless. Another lesson from the case regards testimony concerning the Rhomberg Test. Every officer who gives the test must review their training materials to make sure they know their testimony about the test is correct.

State v Mullican, 2015 WL 1000018 HEADLIGHT

A McMinnville officer stopped this driver due to a headlight being out at night in violation of TCA 55-9-406 (a). The driver turned out to be under the influence. He pled guilty, but reserved his request to suppress the stop for appeal. Two months after the stop the lawyer for the defendant met with the officer at the impound lot, where the vehicle had been stored. When the headlights were turned on, they both worked. A hearing was conducted and the Court found the officer credible. Whether the headlight was out or working on the night of the stop was not the issue. The issue was whether the officer reasonably believed the headlight was out. He did. The motion was denied and the conviction affirmed. The Court of Criminal appeals recognized the precedent of State v Brotherton, 323 SW 3d 866 (Tenn 2010).

State v Paul Williams No. W2014-00231-CCA-R3-CD SOVEREIGN CITIZEN

What can be said about a traffic stop with a guy who claims no one in America has jurisdiction over him or his car? Sympathy for Trial Judge C. Creed McGinley, ADA Adam Jowers and Trooper Mark Jackson in the 24th District are in order. The driver in this case was stopped for the lack of a valid license plate. In his vehicle were three unrestrained young children. The driver gave his name to the trooper, who ran a history and discovered the DL was revoked in 2006. The driver was charged with the tag violation, driving on a revoked license, three counts of driving with unrestrained children, failure to show registration and failure to show proof of insurance.

As is typical in a case with one of these characters, the driver represented himself at trial. The unique defense in this was that because he never signed the affidavit of complaint or consented to the charges and his driver's license, which the trooper used to identify him, was expired and invalid. With respect to the second issue, the defendant appears to rely on Tennessee Code Annotated section 55-10-312, entitled "Registration prima facie evidence of ownership and that operation was for owner's benefit" to argue that he cannot be charged with operating a motor vehicle on a suspended license because his vehicle was unregistered. The defendant was convicted.

MOLOTOV COCKTAILS ON VIETNAM VETS

You never know who might be in the car passing you on Vietnam Veterans Boulevard or any other roadway. A January decision of the 6th Circuit Court of Appeals surprised me. I drive on Vietnam Vets almost every weekday. I started reading US v Buchanon, 2015 WL 247876 (6th Circuit), with increased interest when I recognized the crime scene as part of my daily routine. The 6th Circuit upheld the denial of a motion to suppress evidence and statements.

In Buchanon, Hendersonville Police Officer Connie Cassidy was dispatched to a fender bender two car accident. Buchanon had run into the back of another vehicle. There was minor damage and the cars were not disabled. It looked pretty routine and would have been nothing exciting, except Buchanon showed signs of alcohol impairment. A routine DUI investigation began and ended with Buchanon in cuffs in the back seat of a patrol car.

Things got very interesting after that. The arrestee had left his wallet on the hood of the car. Officer Cassidy looked at it and found a probation card. When she spoke to Buchanon, he indicated he had gotten in trouble for some marijuana. Prior to that conversation, the officer had called the father of the driver to come pick up his car. Pursuant to policy, a second Hendersonville officer conducted an inventory search. During the inventory the second officer found a backpack with marijuana and a computer and a “Guy Fawkes” mask typically used by the “hactivist” group Anonymous. A second backpack contained a Molotov Cocktail. The searching officer, Officer Hampton also discovered lighter fluid, matches and lighters during the search. Based on those discoveries and the possible connection to Anonymous, he believed that “this could be more than someone making explosives in their garage,” and he “was concerned for the safety of the public at that point.” (Docket No. 33 at 12).

Detectives, the bomb squad, and fire trucks soon responded. First, Officer Cassidy confronted Buchanon to find out what she could about the devices and whether any other explosives were in the trunk. She asked various questions that would later raise the ire of defense counsel. The questions were asked prior to Miranda warnings.

Hendersonville Detective Jeffrey Brewer took over the investigation. The defendant was taken to an interview room and Mirandized. The Detective asked some of the same questions and many more after the defendant waived Miranda rights. During questioning the defendant told the detective about more Molotov cocktails in his bedroom. Buchanon lived with his parents. He consented to a search to remove the devices. His parents added their consent and 12 more devices were recovered from the home.

Legal issues in the case were resolved in favor of the State. They included complaints about statements made at the scene and the inventory search policy of the department.

Regarding the custodial interrogation issue, the Court noted, “In *New York v. Quarles,* 467 U.S. 649, 104 S.Ct. 2626,81 L.Ed.2d 550 (1984), “the Supreme Court held that ‘overriding considerations of public safety’ could justify a failure to provide *Miranda* warnings before initiating custodial interrogation.” The Court regarded the Molotov cocktail as the type of danger that would permit questioning to try to alleviate immediate safety concerns.

The Court also considered the inventory search and upheld the use of the search in this incident. The defense tried to apply an Arizona v Gant 566 US 332 analysis, but was refuted as the Court noted Gant applies to a search incident to arrest. The defense argued the inventory search policy of the department was overbroad, but the Court stuck to examining the policy in light of the particular facts of the case and denied relief.

IS FAILURE TO USE A CHILD RESTRAINT DEVICE NEGLIGENCE?

In a recent case in East Tennessee, a driver pled guilty and received a four year sentence for child neglect. His act of neglect was to drive a vehicle off the road killing an unrestrained eight year old passenger. This case caused me to spend some time thinking about charging decisions in cases in which unrestrained children are killed in car crashes. I did a little research and examined eleven cases involving children in 2014. Six of the children were killed. Thirteen children were maimed for life, but survived. In those crashes the driver, often a parent, was killed. The children will always carry emotional and psychological injuries with their physical injuries.

As a Prosecutor, I started examining the crashes to see what kinds of charges were brought in each case in which the driver lived. That led me to the conclusion that charging decisions in these cases were inconsistent, due in part to a lot of variable factors. For instance, is it more of a crime to fail to restrain a child if the driver is impaired or sober? Is it more of a crime to fail to restrain a child, who is a child of the driver or the child of another? Is failure to restrain a child in a motor vehicle negligence every time it happens? I repeat:

IS FAILURE TO RESTRAIN A CHILD IN A MOVING MOTOR VEHICLE CHILD NEGLIGENCE EVERY TIME IT HAPPENS?

I recently had the opportunity to pose this question to a room full of child passenger technicians and advocates. This was a group of people who spend every working hour trying to save the lives of child passengers. When asked the above question with a scenario that the driver was drugged with opiods and methamphetimine, 97% of the people in the room answered yes. The same 97% also agreed that the act was child endangerment and 89% believed failure to restrain was reckless conduct. The group believed the offender should be charged with felony murder or aggravated child endangerment, the Class A felony.

I tweaked the example to show a case in which a sober mother of a child failed to restrain. The car was struck from behind by another sober driver, who did not see the first car had stopped in a lane. The child in the first car was propelled forward and killed. With that scenario 81% of the audience responded that the failure to restrain was child neglect. In that scenario the majority supported a charge of Reckless Homicide (48%), or Child Endangerment (38%). Another 10% would give the driver a ticket for failure to restrain. In the real world, no charge was brought against the mother. In the world of jury trials, law enforcement and prosecutors recognized that any charge against her would pale in comparison to the loss of her baby. Sympathy cancelled out whatever crime had occurred.

An article on March 5th, 2015 in the Knoxville News Sentinel told the story of a couple in McMinn County who were charged with felony murder. Since the case is pending, no comment about the case will be included here, but the article in the News Sentinel indicated alcohol and drugs were involved.

A felony murder charge is within the purview of options a Grand Jury may consider. Felony murder can be based on Aggravated Child Neglect and/or Aggravated Child Endangerment in which a child under 8 years of age is killed. Every case turns on it's own facts, so a case with a felony murder charge in one instance and a case with a minor ticket or no charge at all in another can be the absolute correct call. That's why this issue is one that can cause gray hairs and sleepless nights.

I suspect that those with children might think twice about letting their children ride without a proper restraint device, if they knew there was some chance they would get a life sentence or even a four year sentence as opposed to a ticket for $50. Click It or Ticket may not persuade like Click It or Prison.

	POTENTIAL CHARGES WHEN UNRESTRAINED CHILDREN DIE
TCA 55-9-602	Penalty: $50 fine
TCA 39-15-401	(a) Child Abuse; (b) Child Neglect; (c) Child Endangerment: A Class D Felony
TCA 39-15-402	Aggravated Child Abuse, Neglect, Endangerment: with serious bodily injury: a Class B Felony, or if the child is under 8: a Class A felony
TCA 39-13-102	Aggravated Result. If reckless, a Class D felony
TCA 39-13-202	First Degree (Felony) Murder: Killing occurs in the commission of Aggravated Child Abuse, Neglect or Endangerment. Minimum Sentence is Life Imprisonment.

DELAY FOR ARRIVAL OF DUI INVESTIGATOR APPROVED

State v Montgomery, 2015 WL 1408914 Tenn March 2015 SW (cite not yet available)

The Tennessee Supreme Court in an opinion by Justice Wade has clarified that a fifteen minute delay in a DUI investigation is not unreasonable, when an officer waits for the arrival of a second officer to conduct testing of the suspect. The second officer was investigating the same subject for trespassing and arrived at the scene 10-15 minutes after the first officer had the following information: 1) he was aware that Ms. Brown had indicated that the defendant was intoxicated based on an earlier conversation between the two; (2) he had observed the defendant in the driver's seat of the Mustang with the engine engaged; and (3) he had detected the odor of alcohol and had observed other signs of intoxication, including the defendant's watery eyes and slurred speech.

The Court found that the officer had seized the driver, when he took her driver's license as she sat in her car in the church parking lot. The officer had sufficient information to seize the driver. The driver argued that the officer unreasonably prolonged her detention by waiting for the second officer instead of taking immediate steps to confirm or dispel his suspicions regarding her possible criminal activity. The Court noted that it was wise to have a second officer on the scene to assure safety and that it was prudent as well due to the presence of a passenger in the car.

It is not uncommon to have this type of situation. It is good to see that the Court is aware of safety issues involved in the investigation of DUI offenses. In many instances it takes a few minutes for a back up officer to arrive to assist. Back up officers are usually involved in making sure a suspect and the investigating officer are not struck by other traffic or to minimize the possibility that an officer will be attacked. Many officers have lost their lives during traffic stop investigations. I am particularly reminded of the tragic death of Trooper Calvin Jencks who was murdered during a 2007 traffic stop.

DELAY FOR DRUG DOG NOT PERMITTED

The U.S. Supreme Court in Rodriguez v the United States, No. 13-9972, decided April 21, 2015 that an officer could not hold a driver to wait for a drug dog, when the officer had finished his business with the driver. The officer had stopped the driver for driving on a highway shoulder. He had written a warning ticket. The driver denied a request to have a drug dog walk around his vehicle. A deputy arrived with a dog 26 minutes after the stop and 7-8 minutes after the ticket was completed.

DUI Tracker Report

Data is as good as input allows. Our DUI Tracker is far from perfect, simply because some Judicial Districts are better than others at submitting data. However, that won't stop me from pointing out the top Districts as far as the limited data allows. So, the award for Quarter Number 2 of 2015 goes to (drum roll please):

DISTRICT 16 AND 22 FOR MOST DISPOSITIONS: 178
DISTRICT 16 FOR MOST GUILTY AS CHARGED DISPOSITIONS: 131
DISTRICT 19 FOR MOST NEW CASES ENTERED INTO TRACKER: 267
DISTRICT WITH HIGHEST PERCENTAGE OF GUILTY AS CHARGED CONVICTIONS:
The 26th District (Madison, Henderson and Chester Counties with 89.2% of 102 cases)

Overall 1,845 dispositions were entered statewide. 1235 resulted in guilty as charged convictions accounting for 66.94% of all dispositions. 108 (.05%) cases were reduced to reckless driving or dismissed due to problems with the traffic stop.

LEGISLATIVE UPDATE

The General Assembly has tackled a number of proposals concerning DUI and Vehicular Assault and Homicide this year. Here is the status of bills at the present moment:

VEHICULAR ASSAULT/HOMICIDE SENTENCING

HB 42 by Lamberth and SB 1315 by McNally have passed and been signed by the Governor. This bill requires that every Vehicular Homicide or Assault convict spend at least as much time in custody as if he had been convicted of the underlying DUI. There is no longer an option for total probation for one of these crimes that injures or kills during the commission of a DUI. Public Chapter 125 effective 7/1/2015.

TRANSDERMAL DEVISE REQUIRED

HB 134 by Lamberth and SB 456 by Bell requires that if a person is charged with DUI, Vehicular Assault or Vehicular Homicide by intoxication, the person shall be required to use transdermal monitoring as a condition of bond, if he/she has a prior DUI conviction. The cost of the devise is to be paid by the defendant. Tampering results in a Class B misdemeanor and subjects the person to bond revocation.

AGGRAVATED VEHICULAR HOMICIDE SENTENCING

SB 30 by Overbey and HB 45 by Carr will require that any person convicted of Aggravated Vehicular Homicide serve 60% of the sentence before release. No one sentenced per this bill may accrue credits that would reduce the sentence below 45%. Effective date is 7/1/2015.

CREATION OF AGGRAVATED VEHICULAR ASSAULT

HB 120 by Lamberth and SB 1316 by McNally will create an offense of Aggravated Vehicular Assault. This will increase the penalty for vehicular assault, if the offender has one or more prior DUI convictions. This is Public Chapter 125.

HIT AND RUN

SB 1181 by Crowe and HB 1242 by Van Huss amends 55-10-402 concerning leaving the scene of a property damage accident. The financial threshold changed from $400 to $500 and the Class C misdemeanor has been increased to a Class B misdemeanor. However, if the person committed the offense and did not have insurance the crime is now a Class A misdemeanor subject to a possible license suspension of one year by the Commissioner of Safety.

DUI TECHNICAL CORRECTIONS

HB 99 by McCormick and SB 110 makes certain technical corrections to TCA 55-10-401 and 2. Specifically in 401 it returns the language “or on any streets of alleys” as a location for a DUI offense. In 402, it clarifies that the enhanced 7 day sentence applies to any driver with a .20 BAC or higher. Public Chapter 58.

STUDENT DEATH INFORMATION

HB 98 by McCormack and SB 109 by Norris has passed and been signed by the Governor. It requires the Commissioner of Education to develop an annual report to inform high school students of the deaths of persons under the age of 18 due to driving under the influence of alcohol or drugs. Public Chapter 58.

DUI 3rd Alcohol Prohibition Failed

The General Assembly had some interesting discussions about a bill, HB 744 and SB 699 that failed due to their cost. The bill would have prohibited a person convicted of DUI 3rd from purchasing alcohol. The offender would be given an identification card. The bill was killed due to the cost $90,000 of implementing a new identification card that had a “No Alcohol” message on the card. Several Senators expressed their disappointment at the cost that would be paid to a Department of Safety vendor to create the card.

BOND REVOCATION

FILE TO REVOKE AND/OR INCREASE THE BOND

After the new arrest is discovered, a motion to revoke brings the behavior to the attention of the Judge. TCA 40-11-118 requires, at a minimum, that the **new** case have **at least** twice the ordinary bond. The original case in which the bond condition of no new criminal behavior has been violated opens the door to numerous judicial responses. If your Judge believes the continued criminal behavior is dangerous, he/she may revoke the bond, see **State v. Brown** 2001 WL 1094940, **State v. Stone**, 880 S.W.2d 746, 748 (Tenn.Crim.App.1994), or place conditions including supervision and ankle bracelets on the defendant. We need a proactive response from the prosecutor to stop the impaired driver on a binge. Too often has a victim's survivor asked the question, "why was he still on bond with two pending DUI's?

HOW DOES BOND REVOCATION WORK AFTER BURGINS?

The Supreme Court in the opinion by Justice Lee sets up the procedure to be followed. "After a thorough review of applicable law, we hold that a pretrial bail revocation proceeding under Tennessee Code Annotated section 40-11-141(b) can be initiated by the trial judge, *sua sponte*, or by the State filing a written motion setting forth at least one statutory ground for revocation. The defendant is entitled to 1) written notice of the alleged grounds for revocation and the date, place, and time of the hearing, 2) disclosure of the evidence against him or her, 3) the meaningful opportunity to be heard and to present evidence, 4) the right to confront and cross-examine witnesses, and 5) the right to make arguments in his or her defense. The trial court must conduct an evidentiary hearing at which the State is required to prove, by a preponderance of the evidence, sufficient ground(s) under Tennessee Code Annotated section 40-11-141(b) to support a revocation. The evidentiary hearing need not be a mini-trial of the alleged conduct constituting the ground(s) for revocation. Moreover, the requirements for the revocation proceeding shall be somewhat flexible in that the trial court shall be able to consider factual testimony and documentary proof supporting the grounds for revocation of pretrial bail. In addition to documentary proof, the State must also present testimony from a corroborating witness or witnesses as to facts supporting the allegations contained in the documents. Hearsay evidence may be admitted when the trial court finds that it is reliable. *See generally State v. Wade*, 863 S.W.2d 406 (Tenn. 1993).

At the close of proof, if the trial court finds that the State has shown, by a preponderance of the evidence, that the defendant has violated a condition of release, has committed a criminal offense while released on bond, or has engaged in conduct resulting in the obstruction of the orderly and expeditious progress of the trial or other proceedings, then the trial court may either revoke bail and hold the defendant until trial or continue bail with the possibility of additional conditions or an increased bond amount. In determining which option is appropriate, the trial court should consider 1) whether any additional bail conditions or an increased amount of bail would assure the appearance of the defendant at trial and protect the safety of the community under Tennessee Code Annotated section 40-11-116 and 2) the bail factors listed in Tennessee Code Annotated section 40-11-118.8

Revocation will be appropriate in cases where the court finds that the imposition of additional bail conditions or an increased amount of bail would not be sufficient to assure the defendant's appearance at trial or protect the public's safety."

WILL DUI CONDITIONS WORK? Don't forget the possibility of responding to the new DUI arrest with the request for bond conditions listed at TCA 40-11-118. That statute permits the use of an ignition interlock, transdermal monitoring devise, electronic monitoring with alcohol and or drug testing and even pre-trial residency in an alcohol or drug in-patient treatment center. If any of these conditions will work to keep the community safe, they should be considered as an alternative to revocation. However, if the offender cannot be trusted or has violated these types of conditions previously, he/she will leave the prosecutor with few options, but to file to revoke the bond.

TRAINING NEWS

Crash Reconstruction for Prosecutors

Crash Reconstruction for Prosecutors is almost here. The course is scheduled May 26-29. The course will open at noon at the Tennessee Highway Patrol Training Academy with a crash on the training track. That crash will be used as a teaching tool by renowned Professor John Kwasnoski that afternoon and the next day. Dr Jeffrey Muttart will teach about Human Factors and Perception Reaction time. Real World Crash Data Recorder Technology instruction will come from Sgt. Brad Muir of the Ontario Canada Provincial Police.

Scene from the 2014 Crash

During the conference the prosecutors will receive training to permit them to investigate a crash and report their findings to the experts, who will then critique their work.

2014 Top 10 Troopers honored for DUI Enforcement

Stoney Morton, Chattanooga District - 163 arrests
Michael Sullivan, Jackson District - 128 arrests
Vince Mullins, Fall Branch District - 127 arrests
Adam Cash, Jackson District -125 arrests
Chad Staggs, Lawrenceburg District - 110 arrests
Tommy Lyles, Chattanooga District -102 arrests
William Satterfield, Knoxville District -101 arrests
Shane Roberts, Nashville District -89 arrests
Owen Grear, Memphis District - 88 arrests
Michael Bolton, Memphis District - 86 arrests

126 Law Enforcement Officers killed in 2014

According to the National Law Enforcement Memorial Fund, 126 law enforcement officers died in the line of duty in 2014. Firearms caused 50 deaths, up from 32 the previous year. Traffic crashes caused 49 fatalities, up from 44 in 2014. Nine of the officers were struck outside their cars. Three of the fallen officers were female. The average age was 41, with 12 years of service. On average each officer left behind two children.

GOT EXPERTS?

We've got your back

The ongoing project of the nation's Traffic Safety Resource Prosecutors and the National Association of Prosecuting Coordinators continued in February. TSRP's examined the words of nine different defense experts. Twenty-two transcripts as well as numerous articles, cv's and opinion letters were analyzed. The TSRP's involved included Jim Camp and myself from Tennessee, Garrett Berman and Sharon Traxler of Florida, Ken Stecker, Michigan; Bob Stokes, Kentucky and Melissa Shear, D.C.. A toxicologist advisor, Amy Miles of Wisconsin, helped translate some of the terminology. The National Traffic Law Center, represented by Duane Kokesh, collects the materials and distributes the documents to any prosecutor preparing to face a defense expert. Hopefully, the work of the TSRP's will help prosecutors stop the experts from saying one thing about a topic in Nebraska and the opposite in Vermont or Tennessee.

At the right, the work is being done. The TSRP's (Camp in the jacket, Kimball in purple in the background) hover over laptops, read, outline and capture information for cross examination work sheets to enable prosecutors to prepare for cross examination of an expert thoroughly.

VEHICULAR HOMICIDE MURDERERS ROW

Austin Tomlin, 24, of Unionville, pled guilty to two counts of vehicular homicide by intoxication and received ten years for each to be served consecutively. Tomlin was driving more than 85 mph with a blood alcohol level of .17 when he travelled through an intersection and into a building at Lane Parkway and Elm Street in Shelbyville. During his crash his two passengers, Richard Grijalva, 19, and Tristan Nichols were killed.

Patricia Rhea, 70, was high on prescription medication when she lost control of her car on Highway 11E in Piney Flats and hit the car being driven by Fleming Dwight Sluder, 66, Piney Flats. She was convicted by a jury. Her sentencing is pending.

Corey Bruce Patrick killed his passenger in the Great Smokey National Park after drinking moonshine at Old Smokey Tennessee Moonshine Distillery in Gatlinburg. He was prosecuted in the U.S. District Court for East Tennessee. Patrick entered a plea agreement pleading to Second Degree Murder. If accepted by the Court in August, he will serve 180 months (15 years). He faced a possible life sentence. A minute before the crash occurred, the passenger texted a friend that he was driving fast and crazy. The investigation of the crash was conducted by officers of the National Park Service, The Tennessee Highway Patrol and the Tennessee Bureau of Investigation.

State v Bristow, 2015 WL 1259396 **Nine Year Sentence Affirmed**

The Defendant was driving 84 miles per hour in a 45 mph zone after consuming Yeagermeister and a Monster energy drink. He did not have a valid license to drive. His blood alcohol level was .10. He carried two drinking buddies in his truck. He crossed into the oncoming lane of Drag Strip Road in Clay County and crashed into and killed 91 year old Earl Wilkerson at 1:10 in the afternoon. The defendant had sent a recent text message that said, "Ain't nothing better than being drunk with your boys on a Friday, hell, it gonna be a good night". He was wrong. It would be a very bad day.

The victim was on his way home from feeding his sick wife at the nursing home. He was a World War II veteran who had received a Silver Star, seven Bronze Stars, a Purple Heart, a Victory Medal, a European/ African Middle Eastern Theater Ribbon, a Good Conduct medal and an American Campaign Medal.

After the deadly crash, the wife of the victim quit eating and died within months. Meanwhile the defendant went out and stole a thirty foot cattle trailer and had it taken apart to sell from scrap. The contrast between the lives of these men could not be greater.

The defendant appealed hoping that the Court would grant him an alternative sentence to prison. Due to his theft after the killing, the Court was of the opinion that he lacked the potential for rehabilitation. The Court also found that an alternative sentence would depreciate the seriousness of the offense.

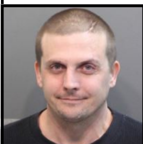
DUI CRASHES

Between January 1 and March 23, 2015, there have been 400 crashes in which a driver was charged with DUI. These crashes have resulted in 530 total injuries and 2 fatalities. *Source: Titan Crash Data*

VEHICULAR HOMICIDE MURDERERS ROW

Larry D Johnson, Jr, 33, of Tazewell, Tennessee, was driving with a revoked driver's license the night of April 13, 2014 due to his 4th DUI. He ran off the right side of the road, struck a road sign and ran into the house. Along the way he struck and killed Daniel Turner, 31 of New Tazewell. Johnson and his female passenger fled the scene on foot and were found nearby a short time later. Johnson pled guilty in January and received a 10 year sentence to serve for vehicular homicide and a two year consecutive sentence on probation for leaving the scene.

Kevin Trent, 38, also of Tazewell, was driving south on U.S. 25 E. when he lost control while negotiating a curve. He crossed the center line and his 2007 Chevy pickup truck slammed head-on into a 2004 Mazda, driven by Karen Freeman of Hulen, Kentucky. Ms. Freeman later died from her injuries. Trent had Oxycodone, Lidocaine and Alprazolam in his bloodstream. He faces a sentencing hearing in March. Both of the cases in Claiborne County were prosecuted by Graham Wilson.



Christopher Hinnard, 36, of Chattanooga, represents the recidivist nightmare that everyone should fear. His 4th DUI resulted in the death of Allen Phillips, Jr. of East Ridge. Hinnard drove under the influence of Oxycodone and other prescription pills. He crossed the center line and drove head on into a taxi driven by Mr. Phillips. Hinnard was sentenced to 15 years. He had DUI convictions in 2000, 2005 and 2008 and was involved in two "accidents" prior to this homicide.

Davis Brooks, 35, of Jackson, Tennessee, killed four women on Christmas Eve in 2011 in Shelby County. Brooks was driving with a suspended license and a blood alcohol level of .26. He drove at a high rate of speed and ran into another vehicle, causing it to spin. A third vehicle then ran into it. All four occupants were killed. The deceased were Tarla Fisher, Majorie Tucker, Crystal Hill and Shirley Watkins. The driver and passenger in the third vehicle were also seriously injured. Brooks pled guilty to four counts of vehicular homicide by intoxication, two counts of aggravated assault, identity theft and driving on a suspended license. A sentencing hearing is pending.

Cody Dingus, 24, of Kingsport, has pled guilty in Washington County of vehicular homicide. Law enforcement responded to a domestic disturbance when Dingus and his passenger Sheridan Nicole Edwards got in the car and sped away when an officer knocked on the car window. Dingus ran through two red lights and a stop sign before he lost control of the vehicle in a curve and ran into and embankment and a utility pole. Ms. Edwards was thrown from the vehicle and died from her injuries. Dingus had a .23 blood alcohol level. Sentencing is pending.

Tammy Murphy, 45 of Alcoa, crossed the center line and crashed into a vehicle driven by Walter Bollan, 89, of Maryville. Murphy was impaired by drugs. She pled guilty and received a 12 year sentence. This was her 3rd DUI. She had a four year old child in her vehicle when she crashed. Charges for possession of schedule 2 and schedule 3 drugs were dismissed when she pled guilty.

THE CRASH PAGE

By Jim Camp

On March 9 the Tennessee District Attorneys General Conference third annual Trial Advocacy Course got underway in Memphis, Tennessee. The course, held at the University of Memphis' Cecil C. Humphreys School of Law, was attended by twenty-nine prosecutors from around the State of Tennessee. The course provides prosecutors with extraordinary trial advocacy instruction and practical training delivered by some of the top trial prosecutors in the state. The course is modeled after the now defunct Trial Advocacy Course at the famed National Advocacy Center (NAC) at the University of South Carolina. This training sponsored by the National District Attorney's Association (NDAA) was terminated several years ago as a result of financial issues experienced by that organization. The Tennessee course was the brain child of former TNDAGC Director James W. Kirby who saw the need to replace this type of practical trial advocacy training for prosecutors. In 2011, a Trial Ad Committee was formed led by Steven H. Strain, Assistant District Attorney General in the 12th Judicial District. General Strain and the other three committee members General Dan Alsobrooks (now retired) of the 23rd Judicial District, Assistant District Attorney General Rachel Sobrero formerly of the 20th District and now staff attorney with TNDAGC, and Jim Camp, TSRP, were all past instructors at the NAC.

Along with Education Director Mary Tom Hudgens and Education Committee Chair Bill Crabtree of the 6th District a course curriculum was created. The curriculum breaks down the various portions of a criminal jury trial from the prosecution perspective. Lectures are presented and followed in most cases by faculty demonstrations of those portions of the trial. The students are divided into four small groups for more of a detailed workshop on those topics. These workshops are led by three faculty members and typically involve more in-depth group discussions and exercises.

Weeks prior to the start of the course participants are provided with two fact patterns with supporting photographs. One fact pattern is an aggravated robbery, the other a vehicular homicide. On the second day, students begin to participate in performance exercises based upon these fact patterns. This allows practical application of the techniques and strategies learned in the lectures and workshops. The participants are encouraged to break out of their comfort zone and try new trial techniques. Performances take place in the small groups and are video taped. At the conclusion of the performances participants receive live constructive critique from two faculty members. Following the live critique a video critique is performed by a third faculty member. The live critiques focus on substantive issues, the video critique focuses primarily on stylistic ones.

Over the past three years a remarkable partnership has developed between the Tennessee District Attorney Generals Conference and the Cecil C. Humphreys Law School. The school, which is located in a renovated former Federal Courthouse building, is as good as it gets. As a result we are provided a rich learning environment for the weeks activities. Each classroom used for the performance exercise is equipped with state of the art technology allowing the students to use computer presentation software and to present evidence using a video presenter. The main lecture hall is equipped with the latest in audio visual equipment and outlets for student laptops. These facilities are graciously provided to the DA's Conference at no charge. In addition to the fantastic facilities Law Professor Dan Schaffzin, Director of Experiential Learning, joins the faculty and adds to it's diverse expertise. Professor Schaffzin also supervises four aspiring prosecutors who are presently third year law students and who participated in the course with the Conference ADAs.

By the end of the course students have studied, prepared and participated in the prosecution of every phase of the criminal jury trial. In addition they have earned 26.5 CLE credits including 3 dual credits. More importantly they have taken a very big step towards dramatically improving their trial skills as prosecutors.

Anyone interested in attending the 2016 Tennessee Trial Advocacy Course should contact TNDAGC Director of Education Mary Tom Hudgens.

Tennessee District Attorneys General Conference

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