TNDAGC

DUI NEWS

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THE BAD SAMARITAN DECISION IS GONE

Supreme Court Overturns Moats

On May 10, 2016, the Tennessee Supreme Court overturned the case that one Justice stated, eviscerated community caretaking in Tennessee. The Court in State v McCormick recognized community caretaking as an exception to the Fourth Amendment of the U.S. Constitution and Article 1 Section 7 of the Tennessee constitution.

Tennessee became the 49th State to recognize the exception after reversed State v Matthew Moats,403 S.W.3d 170 (Tenn 2013) The Moats decision left officers in perilous situations where they had to try to approach unknown situations with a minimal display of authority or risk losing any evidence of any crime they discovered to a suppression motion. Community Caretaking is not a crime suppression strategy, nor has it ever been. The purpose of the doctrine is to allow officers to safely access situations in which a driver may be sick, injured, inebriated or deceased.

Moats

Sometimes, an officer may discover a driver slumped over the wheel due to a heart attack. Other times, the driver may be intoxicated to the point of unconsciousness. In either situation, the officer is trained to approach and respond appropriately. James David Moats was intoxicated and unconscious and charged with a DUI 4th offense. His arrest was suppressed due to the officer activating blue lights prior to her approaching his vehicle. Two of the five Justices dissented in the decision written by the former Chief Justice.

In the case of Kenneth McCormick, Mr. McCormick was also intoxicated and unconscious; however, the "stop" in which an officer approached and discovered him slumped over the wheel resulted in a conviction when the Trial Court ruled that the officer acted appropriately as part of his community caretaking function.

The latest decision, State v McCormick, SW3d, 2016 WL 2742841 dramatically reversed the 2013 Moats decision. A unanimous Court joined the decision of Justice Cornelia A. Clark to override Moats and all other decisions that limited community caretaking to consensual encounters. Justice Clark, a dissenter in Moats, discussed the reasons Moats was incorrectly decided and stated: "Having exposed the faulty foundation on which the Moats holding was based, we exercise our **special duty** to overrule Moats and disavow any other prior or subsequent Tennessee decisions limiting the community caretaking doctrine to consensual police-citizen encounters.

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RECENT DECISIONS

State v Carter, 2016 WL 3044216 , Tenn Crim App May 2016 **NO GOOD FAITH EXCEPTION FOR YOU**

Helkie Nathan Carter was indicted for driving under the influence ("DUI")–third offense; (2) driving with a blood alcohol concentration ("BAC") of .08 or more ("DUI per se")–third offense; and other charges. The Court suppressed the chemical test of his blood alcohol level after his blood was obtained pursuant to statute that mandated an officer to obtain a blood alcohol test, prior to the McNeeley decision. The State sought and was granted permission to appeal, arguing that the defendant gave both actual and implied consent to the blood draw and that, if the good faith exception is adopted in Tennessee, it should apply to this case.

The Appellate Court concluded that the defendant's actual consent was not freely and voluntarily given; Tennessee's implied consent law does not, by itself, operate as an exception to the warrant requirement; and no exception to the warrant requirement justified the blood draw. The Court declined to adopt a good faith exception. The judgment of the trial court suppressing the results of the warrantless blood draw was affirmed.

In the case after probable cause was determined to arrest Carter, a Nashville Metro DUI officer recited the *Miranda* warnings and read the implied consent form to the defendant. The officer also informed the defendant that, because he had a prior DUI conviction, the blood draw was mandatory. The officer told the defendant that, if he refused to give a blood sample, officers would have to hold him down in order to complete the blood draw. The defendant consented to the blood draw at 10:39 p.m., and he signed the implied consent form once he had been transported to the hospital. The defendant's blood was drawn at 11:11 p.m., and results from the test revealed that the defendant's blood alcohol content ("BAC") was .24.

Sergeant Harold Burke was the Sergeant for the DUI unit at the time. He testified that officers did not obtain search warrants for a blood draw prior to the decision being issued in *McNeely.* After *McNeely* was issued, officers stopped taking warrantless mandatory blood samples when the defendant refused. Instead, officers either sought a search warrant for the blood or the defendant was simply charged with violation of the implied consent law. Sergeant Burke noted that, prior to *McNeely,* Davidson County officers thought that the natural dissipation of the BAC over time constituted an exigent circumstance. Additionally, Sergeant Burke believed that, at the time of the defendant's arrest, Davidson County night commissioners could not sign search warrants and that any search warrant sought would have to be signed by a judge.

*Note that the mandatory test for multiple offenders law took effect January 1, 2012. The law permitting search warrants in DUI cases became effective May 9, 2012. McNeeley was decided April 17, 2013 and this case occurred Feb 1, 2013. The Court declined to extend a good faith exception recognizing that the Supreme Court was considering the issue in two pending cases.

State v Nathan, 2016 WL 1627145 Tenn Crim App April 2016 **NO GOOD FAITH FOR YOU EITHER**

In a case similar to Carter (above), the Court reversed the Trial Court, which had applied a good faith exception to deny suppression of a blood test result. This traffic stop occurred June 12, 2012, six months and 11 days after the mandatory test law became effective and one month after search warrants for the crime of DUI were permitted. This one pre-dated McNeeley by ten months. This Court also noted the case pending in the Supreme Court concerning a good faith exception, when an officer relies on the law, which is subsequently changed. Both the U.S. Supreme Court and most States have recognized such an exception, but at this time a Court has not ruled in favor of such an exception. In this case the Court noted that the General Assembly passed a law to establish a good faith exception. That statute was relied upon by the Trial Court. The Appellate Court did not give it any consideration.

State v. Nuemann, 2016 WL 2605765 Tenn Crim App May 2016 **TRIAL SUPPRESSION REVERSED**

In this case a traffic stop was suppressed by the trial court, but that decision was reversed by the Court of Criminal Appeals. At issue was a stop based on speeding. The officer had observed the driver moving at a high rate of speed. The Court suppressed his radar gun reading due to a lack of testimony concerning required training in the use of radar. His observation of high speed was enough to stop the driver.

RECENT DECISIONS

State v Wascher, 2016 WL3251548 Tenn Crim App June 2016 **WATERY EYES ARE NOT ENOUGH TO SEIZE**

The Court of Criminal Appeals reversed the decision of the trial court and suppressed this one for a lack of reasonable suspicion to stop a vehicle that was already stopped. Then the Court found the officer did not have sufficient reasonable suspicion to seize the driver after making contact with her. If that sounds confusing, it is.

This case began when a citizen called 9-1-1 to report a bad driver. It is unknown exactly what the citizen said. The dispatcher sent out a message that the particular car with it's license plate number should be stopped as a possible impaired driver. An officer then saw the car with the license plate stopped in a gas station parking lot. He pulled in behind the car and did not turn on his lights. He got out and walked up to the car. In regards to previous cases in our State, that does not sound like a seizure. An officer may approach a citizen without cause, if the officer is not seizing the citizen. However, the Court stated, "we conclude that the tip provided in the BOLO to Officer Lowe was a bare-bones, conclusory allegation of illegality. Accordingly, it did not bear sufficient indicia of reliability for the officer to credit the caller's account of ongoing criminal activity, which is necessary to support a finding of reasonable suspicion." If this was a consensual encounter, no reasonable suspicion was necessary. However, that was not conclude the case.

The officer found two people at the car. A male citizen stood next to the driver's seat with the door open. He appeared intoxicated. He was not driving. He and the woman sitting in the driver's seat both claimed the woman was the driver. The officer did not indicate why he took the license to investigate the driver, once he made contact, except he had watery eyes and the BOLO was out. The Court concluded, "The only observation Officer Lowe made prior to detaining Wascher was that she had "watery eyes." Significantly, Officer Lowe candidly admitted at the suppression hearing that he did not suspect Wascher of being impaired when he took her license."

The Court found that the driver was seized without reasonable suspicion as the BOLO call and the watery eyes were not enough evidence to take the driver's license from the driver. That makes the initial issue concerning which the court ruled to be a seizure based on a bad BOLO, moot.

State v Moore, 2016 WL 3086431 Tenn Crim App March 2016 **OFFICER TESTIMONY**

Moore complained about his traffic stop, but lost. The officer involved, Deputy Jason Anderson of Wilson County, saw Moore driving directly at him down the middle of the road. He corrected himself and passed by. The deputy turned around, turned on his video and saw Moore crossing off the narrow road to the right. Moore argued that because his driving directly at the officer was not captured by video, there was insufficient evidence to pull him over. The Court accredited the testimony of the officer without having to see everything that happened on a movie.

State v Nwangwa, 2016 WL 1615670 Tenn Crim App Feb 2016 **PER SE GUILT STANDS**

This driver was acquitted of DUI; but convicted of driving with a per se level over .08. He appealed arguing that the verdicts were inconsistent. The Court found all the elements of the crime had been proven. His blood alcohol level was .16.

State v Nichols, 2016 WL 3389987 Tenn Crim App June 2016 **44 YEARS FOR CONSECUTIVE AGG V.H.**

In Henderson County, this defendant pled guilty to the Aggravated Vehicular Homicide of Terri Ann David and her unborn child. He pled guilty to several additional counts. He was sentenced to serve 44 years, 11 months and 29 days. He appealed the sentence, without success. Nichols ignored a yield sign at a paved crossover and t-boned the car driven by Ms. David. Nichols had THC, a marijuana metabolite, diazepam and its metabolite nordazepam and Tramadol. The medications commonly known as valium and a synthetic opioid enhanced the side effects of each drug. Nichols has a long history of 21 misdemeanor offenses including prior DUI convictions, six driving on revoked convictions, two domestic assaults, one attempted vehicle burglary, two thefts, two reckless driving, one disorderly conduct and one simple possession of marijuana. The record justified the use of sentencing enhancement for extensive criminal activity and being a dangerous offender with no hesitation about committing a crime in which the risk to human life is high. Nichols earned consecutive sentencing, because he was on probation when he killed Ms. David and her child, 21 weeks in utero.

DEMOATED (CONTINUED FROM PAGE 1)

We emphasize that the community caretaking doctrine "is not relevant to determining whether police conduct amounted to a seizure in the first place." Luedemann, 857 N.E.2d at 198-99. Rather, the community caretaking doctrine "is analytically distinct from consensual encounters and [may be] invoked to validate a search or seizure as reasonable" under the Fourth Amendment and article I, section 7 of the Tennessee Constitution."

It is very unusual that a Supreme Court decision would be reversed in a little more than three years, Justice Corneila A. Clark spent time discussing the doctrine of stare decisis, the history of the community caretaking doctrine and the fact that all states not named North Dakota are in agreement that community caretaking is a valid exception to the Fourth Amendment and not limited to consensual encounters.

Justice Clark follows by fashioning a test for its application which strikes a proper balance between the public's interest in having police officers assist citizens in need and the individual's interest in being free from unreasonable governmental intrusion.

The Justice writes, "Our framing of a test for the community caretaking exception must begin with the foundational principle that "an action is reasonable" under the Fourth Amendment and article I, section 7 of the Tennessee Constitution, regardless of the individual officer's state of mind, as long as the circumstances, viewed "*objectively, justify the action; "The officer's subjective motivation is irrelevant."*

Later, the Justice writes, *"*we hold that the community caretaking exception will justify a warrantless seizure so long as the State establishes that (1) the officer possessed specific and articulable facts which, viewed objectively and in the totality of the circumstances, reasonably warranted a conclusion that a community caretaking action was needed, such as the possibility of a person in need of assistance or the existence of a potential threat to public safety; and (2) the officer's behavior and the scope of the intrusion were reasonably restrained and tailored to the community caretaking need."

The Court then examines the actions of arresting officer, Sergeant Daniel Trivette of the White County Sheriff's Office and finds them reasonable within the test. Sgt. Trivette was on routine patrol at 2:45 a.m., when he observed a vehicle that appeared to be parked in the roadway in front of a closed grocery store. Sgt. Trivette approached the vehicle to conduct a welfare check when he realized it was parked in a manner that blocked the majority of the grocery's store entrance. This resulted in its left wheel protruding partially into the public roadway. The vehicle's engine was running and its lights were on. Sgt. Trivette parked on the roadway behind the defendant's vehicle and activated his patrol car's rear-facing blue lights to prevent the defendant's vehicle and his own patrol car from bring rear-ended. Sgt. Trivette exited his patrol car, approached the driver's side door of the vehicle, and observed the defendant slumped over the steering wheel, despite a blaring radio, running engine, and headlights activated. After taps on the window failed to rouse the defendant, Sgt. Trivette opened the door to try again. Only then did he detect a strong odor of alcohol on the defendant's breath and person and observed an open beer bottle in the center console. Sgt. Trivette tried to wake the defendant for about a minute before the defendant ever responded. Sgt. Trivette then asked the defendant to exit the vehicle, believing that the defendant was under the influence of some substance. The specific and articulable facts, viewed objectively and in the totality of the circumstances, reasonably warranted Sgt. Trivette's conclusion that a welfare check community caretaking action was necessary and appropriate. The facts confronting Sgt. Trivette suggested either a person in need of assistance or a potential threat to public safety, or both. Additionally, Sgt. Trivette's behavior and the scope of the intrusion were reasonably restrained and tailored to the community caretaking need.

For those of us who help train law enforcement officers, I can state that I am relieved to no longer have to answer questions about what the Court was thinking when they handed down the Moats decision. Officer's would ask if the driver was seized, if they only turned on lights facing away from the driver or if they identified themselves when approaching the vehicle.

Moats is gone. Officers can act as Good Samaritans again without the fear of reprisals. The ultimate ridiculous decision, State v Shouse, 2014 WL 1572451, in which a Judge indicated that the officer who opened the door to check on the slumped over driver had committed a crime is gone as well. A Good Samaritan officer is not a bad guy anymore.

THSO FORMS Impaired Driving Task Force

THSO Impaired Driving Task Force Submits First Strategic Plan Under the FAST Act Authorization
The Tennessee Highway Safety Office's (THSO) Impaired Driving Task Force was formed in 2013 under a requirement of the MAP-21 authorization, to address issues related to impaired during in the State of Tennessee. Under the new FAST Act authorization, this remains a requirement.

This task force unites safety professionals and other interested parties to develop and recommend best practices, and approve a multi-year impaired driving strategic plan. This task force will support the mission of the THSO, the Statewide Strategic Plan, and advocate and support Tennessee's impaired driving program.

The task force boasts a membership of 22 professionals which include members of local law enforcement, the Tennessee Department of Safety and Homeland Security, the District Attorney's General Conference, the Tennessee Department of Health, the Tennessee Department of Mental Health and Substance Abuse, the Administrative Office of the Courts, the Tennessee Department of Correction, the Tennessee Bureau of Investigation, M.A.D.D., our legal community, and probation officers.

The task force met April 27, 2016, and May 25, 2016, to finalize the three-year strategic plan, which is due July 1, 2016.

DUI TRACKER REPORT

RESULTS FROM MARCH 1, 2016 TO JUNE 1, 2016

Results were recorded from 2,829 DUI dispositions during this time frame. The Davidson County District Attorney's office accounted for 803 of the cases. Across the State, 65% of all cases were disposed of as guilty as charged. That standard means a DUI 3rd offense was convicted as a DUI 3rd offense. 656 more cases resulted in a lesser conviction, for instance the DUI 3rd could be convicted as a DUI 2nd. Without Davidson County in the calculation, 73% of offenders in the State are convicted as charged. Twenty-five of the judicial districts entered data into the DUI Tracker during this three month period.

The most dispositions entered in Tracker after Davidson County were the 15th District with 199, the 1st District with 156 and the 4th District with 152. Other Districts with 100 or more dispositions were: the 22nd (138), the 26th (135), the 16th (132) and the 19th (122).

Since the beginning of the year 4,757 dispositions were recorded.

FATAL CRASHES IN THE QUARTER

Using the Tennessee Integrated Traffic Analysis Network ad hoc searching method, I have examined all the fatal crashes between March 1, 2016 and June 1, 2016. Here is what I discovered:

We had 239 fatal crashes losing 258 persons.
In 107 of the crashes (44%), a driver failed to remain in the proper lane of travel.
In 85 of the crashes (35%), the deceased person did not use a seat belt.
In 47 crashes (19.6%), alcohol was involved.
In 29 crashes (10%), drugs were involved.
In 29 fatal crashes (10%), the driver was going faster than the posted speed.
In 21 crashes (8%), the cause was the failure to yield.

The number one factor for fatal crashes is the failure to remain in a lane of travel.

Vehicular Homicide for Prosecutors *by Blake Watson*

As Justice Alito poignantly noted in *Birchfield v. North Dakota*, "[d]runk drivers take a grisly toll on the Nation's roads, claiming thousands of lives, injuring many more victims, and inflicting billions of dollars in property damage every year." The Vehicular Homicide for Prosecutors training held at Lake Barkley Resort, in Cadiz, Kentucky, sought to provide prosecutors from both the State of Tennessee and Commonwealth of Kentucky with the tools necessary to bring those responsible for this grisly toll to justice. On the first day of the training, prosecutors received hands on training in crash reconstruction with a staged pedestrian/motor vehicle collision. This portion of the training focused on six areas of crash reconstruction: 1) area of impact, 2) airbag and steering modules, 3) total station measurement tool and scanner, 4) tire mark evidence, 5) roadway friction measurements, and 6) crash scene investigation.

As to the first, area of impact, an upright dummy pedestrian was struck with a vehicle at an unspecified rate of speed. Prior to the collision, Lieutenant Chad Mills, of the Kentucky State Police, asked the prosecutors to watch the dummy's hat. In the collision, the hat came off of the dummy's head and landed just to the right of the area of impact. Typically, Lieutenant Mills said, a hat will fall almost exactly where the pedestrian was struck but, due to a gust of wind at the time of collision, the hat fell a little to the right. Other indicators of point of impact can be the location of the pedestrian's shoes or socks – left as a result of the sheer force of the collision. These rules of thumb, though, should not be relied upon in isolation but should be considered with the other areas of crash reconstruction.

The second area of crash reconstruction, the airbag and steering modules, or event data recorders ("EDR"), focused on the in-car computer information that provides invaluable information to crash reconstructionists. According to Professor John Kwasnoski, an EDR records on-board data of a vehicles pre-crash activity such as: the vehicle's speed and engine throttle, service brake status, safety belt status, frontal driver and passenger side airbag deployment, and time of the event in question. These, along with the rest of the minimum EDR reporting requirements, can be found in Title 49, Chapter V, Part 563.7 of the Code of Federal Regulation. With these data points, crash reconstructionists can determine the speed of both vehicles prior to collision, which seatbelts were being worn, and the change of speed at impact, all of which are integral to the crash investigation and reconstruction.

The total station measurement tool, the focus of the third area, allows for crash reconstructionists to take exact crash scene measurements. Sergeant Hunter Martin ,of the Kentucky State Police, explained that for measurement integrity, the quicker the total station is deployed to take measurements at a crash scene, the better. After scanning the scene, the information gathered can then be placed into a scale diagram. The operator draws the diagram but the number of measurements taken by the total station will help to improve the diagram's accuracy. For instance, where the roadway is largely straight, the operator may only need three to four measurements to accurately depict the roadway but a scene with a curved road may require many more individual measurements to accurately reflect the roadway's curvature.

Areas five and six of the crash reconstruction go, largely, hand in hand: tire mark and roadway friction measurements. These two measurements are used to calculate the minimum speed at which a vehicle was traveling prior to the event in question. The measurement equation is as follows: $Speed = \sqrt{30df}$ Small "d" represents the average distance of the brake marks and small "f" represents the roadway friction. The length of the brake marks can either be measured by hand or by using the total station. Roadway friction can be measured in multiple ways as well. During the staged reconstruction, participants used the drag sled method and the Vericom vc3000 in-car measurement system. The drag sled method requires the use of the equation: $friction = \frac{F}{W}$ where large "F" represents the average of around ten sled friction measurements and large "W" represents the actual sled weight in pounds. The Vericom measurement system is a computer generated friction measurement based on a "total stop", or slamming on the vehicle's brakes. Each method is subject to manipulation, though. Using an improper drag angle of the drag sled can affect the sled's measurements and failure to conduct a total stop with the Vericom can affect the computer's measurement, each of which result in a lower final speed. When dealing with a defense expert reconstructionist, these are two areas that a prosecutor must address on cross-examination where speed is disputed. Roadway friction may also be measured by general tables but this is not favored as each roadway is unique and the tables fail to take this fact into account.

The final area, crash scene investigation, takes into account all of the above areas but focuses on the more immeasurable areas of the reconstruction: witness interviews and on-scene photographs. Master Patrol Officer Joe Warren of the Chattanooga Police Department explained that every vehicular homicide should be treated with the same care and precision as a traditional homicide. Officers should try to sequester potential witnesses as soon as possible in order to preserve the witness's personal memory of the event. Officer Warren recommended that, when conducting on-scene interviews, officers should take the witnesses to the exact spot where they stood at the time of the wreck to **(continued)**

Vehicular Homicide for Prosecutors *by Blake Watson*

possibly jog their memory or confirm or dispel that the witness could actually see the wreck from that location. Officers should also try to photograph the scene of the wreck not just with evidence in mind, but in a manner that will help to tell the whole story – consistent with the story told by the roadway evidence and the witnesses.

All six of the above areas are necessary to conduct a thorough and accurate crash reconstruction. By knowing what all goes into a crash reconstructionist's investigation and report, prosecutors are able to more adeptly relay that information to a jury which will, hopefully, result in justice against those responsible for killing another on a Tennessee or Kentucky roadway.

Team Approach to Crash Investigation

On the second day of the training, Master Patrol Officer Joe Warren, of the Chattanooga Police Department, spoke on the Team Approach to Crash Investigation. For the last sixteen years Officer Warren has worked as a fatal crash reconstructionist and has participated in the investigation of hundreds of fatal crashes involving vehicles, commercial vehicles, motorcycles and pedestrians. Officer Warren has taken his field experience and authored nationally published articles on the topics of crash reconstruction and scale crash animation. During his tenure as a fatal crash reconstructionist with CPD, Officer Warren implemented a crash investigation team within his department. Officer Warren spoke on the advantages of, and his experiences with, the team approach to crash investigation. His experiences include dealing with the huge scale and various responsibilities that accompany many fatal roadway collisions. In almost every roadway fatality and after securing the scene, officers on-scene are tasked with clearing the roadways, identifying drivers and vehicles, photographing the scene, marking roadway evidence, taking measurements for crash reconstruction, transporting drivers for respective blood draws, and interviewing witnesses. The investigation, though, does not stop after officers clear the scene and traffic begins flowing normally. The off-scene investigation requires officers to prepare scale diagrams derived from the evidence gathered at the scene, write crash reports, and conduct vehicle inspections and formal interviews. These are just a few of the tasks which any given officer can expect to perform when investigating a wreck with injury or fatality.

As Officer Warren explained, the team approach to crash investigation allows for the completion of all of these tasks in a more expeditious and efficient manner. As the "team approach" implies, members of the team perform specific tasks. For instance, those officers who are designated to photographing the scene, photograph the scene, and the officers responsible for measuring and marking roadway evidence, measure and mark roadway evidence. By assigning officers to specific tasks, not only does each officer know what to do as soon as he/she arrives, they also become specialized in those areas. This specialization, ultimately, helps to clear wreck scenes faster and process evidence quicker which leads to more efficient and thorough investigation. As a practice tip for those implementing this approach, Officer Warren recommends having multiple photographers on the team so, during the on-scene investigation of any wreck, more than one eye can capture the scene as it appears on the day of the event in question. In one significant multi-fatality wreck last June on I-75 involving an 18-wheeler, multiple fatalities, burning vehicles, and a mini-van reduced to a total width of twenty-eight inches, Officer Warren employed a unique approach during his on-scene investigation by having a drone fitted with a camera fly above and photograph a number of locations around the wreck.

A wreck with injury or fatality, however, should not be an officer exclusive event. As Officer Warren pointed out, one of his pet peeves is an assistant district attorney getting a cold case file and never having actually been to the scene. By going to the scene, Officer Warren suggests, prosecutors will have a better grasp on what actually happened and compose their cases with more passion than a prosecutor whose only knowledge of the wreck comes through still photographs and scale diagrams. Once prosecutors have the files, though, Officer Warren strongly encourages continuous communication between the prosecutor and the lead investigator. This ongoing communication allows the lead investigator to assist the prosecutor in understanding many of the finer data points of the officer's crash reconstruction report and poking holes in possible defense expert reports. Officer Warren also believes that meeting with the entire investigation team prior to trial can significantly improve the quality of prosecution because the prosecutor can hear from everyone that took part in the investigation and get their individual perspectives on what took place.

Our officers, on any given day, could encounter a wreck, like the I-75 wreck Officer Warren worked above, and experience the stress related to conducting such a large scale investigation. As many of the readers are undoubtedly familiar with the Tennessee Supreme Court's decision in *State v. McCormick*, those same officers now tasked with working a tragedy on the interstate could be coming from working a domestic assault, conducting a routine traffic stop, or returning from any number of other calls. Many of these officers will not have the same crash investigation team at their disposal as Officer Warren or the resources available to such a team, couple that with the ever evolving nature of DUI law, and our officers are facing an uphill battle. With that in mind, we as prosecutors have an opportunity to get in on the ground floor of many of these investigations and should take steps to make ourselves available to assist those officers because, as Officer Warren stated when summing up his presentation, "We are all on the same team and our goal should be a successful prosecution."

New Laws Effective July 1, 2016

Be aware, the new laws are here. Jury instructions, Descriptions for Indictments and more need revisions. The Public Chapters that change traffic safety laws are available in the RESOURCES drop down box on our website at http://dui.tndagc.

Here are the laws and subsections they affect:

- DUI 6th offense amends TCA 55-10-402 and 405;
- Evading Arrest: TCA 39-16-603;
- Failure to Yield: TCA 55-8-197;
- Ignition Interlock adds TCA 55-10-425 and amends 55-10-409 and 417;
- DUI Probation monitoring: TCA 55-10-402;
- DUI Arrest and Conviction Reporting: TCA 8-4-115;
- Driving in Bike Lane adds a section to be numbered at TCA 55-8 and amends TCA 55-8-118
- Slow Poke Law: adds a new section to be numbered at TCA 55-8;
- School Bus driver device ban: TCA 55-8-192 deleted and replaced;
- Underage DWI: TCA 55-10-415.

Read descriptions of these laws in our previous issue in the Newsletter drop down box on the website. It is Issue 54.

REVISIONS TO THE IGNITION INTERLOCK LAW

Remember there are a number of ways a driver can end up with an ignition interlock.
It can be ordered as a condition of bail. TCA 40-11-118 (d)(2) and 148;
Condition of probation: TCA 55-10-417;
Upon application for a Restricted License: TCA 55-10-409;
Voluntarily to remove geographic restrictions to a Restricted License: TCA 55-10-409; or
Dept of Safety Requirement for a 2nd offender to reinstate a license: TCA 55-10-417.

If a person convicted of a violation of § 55-10-401 has a prior conviction as defined in§ 55-10-405 within the past five (5) years, the court shall order the person, or the department of safety shall require the person prior to issuing a motor vehicle operator's license of any kind, to operate only a motor vehicle, after the license revocation period, which is equipped with a functioning interlock device for a period of six (6) months.

What Does This Mean?

A person is ordered to install an interlock for 365 days or longer depending on the conviction. If the person has perfect compliance for the last 120 days, the interlock can be removed and license reinstated. If the interlock has to keep the car from turning on due to a dirty test, the device stays on until 120 days of compliance is completed. Some people could have an interlock for decades!

The person can't wait out the license suspension. To get a license reinstated, the person must go through the process. If the Court decides a person required by statute to have an interlock, the Court must make findings of facts indicating the person did not have a .08 BAC or any alcohol combined with drugs or have a child under 18 in the car or cause a wreck due to intoxication or refuse implied consent after refusing in the last five years

If Court findings do not satisfy the department, an interlock will be required anyway administratively.

If the Court finds an interlock is not required and orders a restricted license, geographic limitations are required.

If a person tampers, drives a vehicle without an interlock or drives outside any restricted times or areas, he commits a Class A misdemeanor. First offense gets a minimum of 48 hours, second gets a minimum of 72 and a third gets a minimum of seven days pursuant to TCA 55-10-417 (a).

TRAINING UPDATE

Things keep hopping in the world of DUI training. I am grateful to everyone who helped during the past few months. During those months, the DUI Training Section taught at 18 training sessions, which included 335 law enforcement officers and 38 prosecutors, in addition to other duties of the department. Sherri Harper has been extremely busy making sure everything happens without any catastrophes.
The Second 20-20 **Understanding the Physiology of Eye Movements and Impairment** was conducted at the

Southern College of Optometry. Twenty-eight highly trained officers and ten prosecutors attended this high level course taught by Professors of Optometry. Evaluations of the course indicated that the physiology of the eye, related structures and nerve responses were extremely helpful topics. The effects of medical conditions and environmental issues gave a greater understanding to permit those who attended to better know when they are being deceived or told the truth. Every one of the officers who attended received very specialized knowledge to enable them to satisfy that prong of Rule 702 to testify as expert witnesses concerning HGN, VGN and additional eye testing in DUI related cases.

Another **Prosecuting the Drugged Driver** occurred, hosted by our friends in the Big Blue nation to the north. Traffic Safety Resource Prosecutor, Bob Stokes, of the Kentucky Attorney Generals Office was our host. Seven of our prosecutors made the journey to Louisville to attend the 14.5 hour course that included topics like Drug Categorization: Signs & Symptoms and Role of the Toxicologist in a DUID Case.

Our **Cops in Court** course was conducted in Hendersonville for 30 officers. Retired District Attorneys Bill Whitesell, Dan Alsobrooks and Mike Bottoms and retired ADA David Puckett added to the enjoyment and education with presentations as well as mock court assistance. ADA's Dan Daugherty, Eric Maudlin, Samantha Dotson and Fred Pickney helped with the mock court experiences for all.

On various occasions I have been asked to help with law enforcement training classes at academies and those sponsored by our Tennessee Highway Safety Office. This quarter ,I learned a little more about the **At Scene Traffic Crash Investigation** course. Pictured on the right is Sgt. Alan Brenneis teaching officers who attended the five-day course. I learned the true value of an impound lot as a site for a classroom. Sgt. Brenneis was able to take the class to view damage to vehicles, which were no longer part of active cases. The students were quizzed about causes of damage. I believe all prosecutors handling crash cases should go through this type of instruction with their local crash reconstruction expert officers.

VEHICULAR HOMICIDE MURDERERS ROW

SPEED AND ALCOHOL

Samuel Huffine, 29, pled guilty to vehicular homicide in Kingsport after killing Bobby D. Jarrett of Church Hill in a head on collision on East Stone Drive and Gibson Mill Road. Huffine was travelling into oncoming lanes of traffic at 73 mph when the speed limit was 45 mph. He had a blood alcohol level of .15. The case was prosecuted by ADA Ben Rowe. Huffine pled guilty to vehicular homicide by intoxication, reckless aggravated assault, reckless endangerment, driving under the influence, driving left of center and speeding. Sentencing is pending in August 2016.

KILLED PEDESTRIAN ON SIDEWALK

(SOURCE: MPD)

Curteria Luellyn, 23, was sentenced to eight years for vehicular homicide involving intoxication and one year for leaving the scene of an accident involving death. This driver drank alcohol and smoked marijuana before killing a pedestrian at Orange Mound in Memphis. Ms. Luellyn was Eastbound on Deadrick Avenue when she lost control striking the South curb with the left side of her 2002 Chevy Malibu. She continued sliding Eastbound across the sidewalk and struck a chain link fence. Then she hit Curtis Echols, 59, of Memphis, a pedestrian walking on the sidewalk. Mr. Echols, a cancer survivor, was walking home at the time. Note how far the damaged fence is from the sidewalk and road. The prosecutor in this case was Michael McCusker.

ALCOHOL, MARIJUANA DRIVER SENTENCED TO EIGHT YEARS

Michael Kidd, 34, had a .07 blood alcohol level and marijuana in his system when he drove up Little Creek Pike and slammed into and killed Della Foust, 33, who was driving south on State Route 297. Kidd pled guilty and was sentenced to eight years.

THEIF, EVADER KILLS PASSENGER SENTENCED TO 14 YEARS

Robert Allen Cook, 23, was sentenced to serve 14 years in Carter County for a fatal crash that killed his passenger, Dalton Reece, 17. Mr. Cook was charged with vehicular homicide, felony evading arrest, theft over $10,000, felony reckless endangerment and driving on a suspended sentence. Mr. Cook stole a Honda Pilot in Newland, North Carolina, and drove it into Tennessee. Officers tried to stop him. He took off and drove over 100 mph on hilly, curvy Crabtree Road near Black Mountain. He crashed killing Mr. Reece. Trooper Edward Tester investigated. Mr. Cook had marijuana in his blood work.

42 YEARS FOR KILLER OF THREE PASSENGERS

Kevin Fleming, 44, who killed his three passengers in a roll-over crash in Campbell County has been sentenced to serve 42 years. The crash and conviction after a four-day trial were featured on this page in the previous issue. He was sentenced in April 2016 for 3 Aggravated Vehicular Homicide charges and DUI 4th offense for a total of 62 years, but one of the homicides is to be served concurrently.

VEHICULAR HOMICIDE MURDERERS ROW

KILLED BROTHER, 8 YEAR SENTENCE

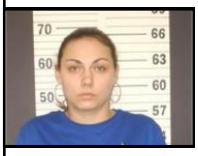
Nickolas James Jackson, 25, of Madisonville killed his passenger brother, Brandon Jackson, 18, when he crashed while speeding, hit a fire hydrant and flipped his 1990 Acura Integra several times. Both he and his brother were ejected. He received an eight-year sentence to serve. He also pled to four other cases including two aggravated assaults, a simple assault and a simple possession of a schedule 2 narcotic.

ALCOHOL, MARIJUANA DRIVER BENEFITS FROM VICTIM BLAMING

Preston Huff, 31, of Johnson City was sentenced to eight years, but will receive probation after one. Huff slammed into another vehicle at a city intersection while driving over 100 mph. He had alcohol and marijuana in his system at the time. The driver of the second vehicle, Adam Cates was stopped at the intersection, when he was killed. According to an article in the Johnson City Press, lawyers indicated the compromise plea agreement was consistent with other cases in which a victim had impairing substances in his/her system. The unknown lawyers indicated that jurors were reluctant to convict when the victim had misbehaved. This victim was properly stopped at an intersection when killed. The family of the victim was upset at the victim blaming process and the sentence. The homicide resulted in a five year old girl losing her father.

Note: Beginning January 1, 2017, probation is no longer available for vehicular homicide cases after passage of a new law.

COCAINE, XANAX INTESECTION CRASH GETS 26 YEARS
PLED GUILTY TO DUI TWO HOURS BEFORE FATAL CRASH



Stephanie Ferguson, 30, has received a twenty-six year sentence for killing two men, Aaron Hall, 66, and Willie Nichols, 64. She was convicted of two counts of aggravated vehicular homicide and vehicular assault. The men were stopped at an intersection. Johnson was driving with cocaine and Xanax in her system. Two hours before the 11:15 a.m. crash on Jefferson Street in Nashville, Johnson had been in court, where she pled guilty to a DUI second offense. This frequent flyer was not taken into custody, but her license to drive was cancelled. She had 23 prior misdemeanor convictions and many more prior charges in Nashville. The judge in the vehicular homicide case, Judge Monty Watkins, indicated that Ms. Ferguson was given many chances, but never changed. Ferguson testified at her sentencing hearing and asked for another chance, which she called a "second chance", despite her long history.

"She knew on the day this occurred it was illegal for her to drive and she did it anyway," said Watkins. "That seriously bothers the court when someone just thumbs their nose at the system."

WEBINAR REMINDER

Investigating Crashes in Rural Areas--The Importance of Teamwork

July 12 2016 from 2-3 p.m.

This webinar will discuss the need for coordinated investigations in cases which involve multiple law enforcement agencies and the crucial role of the prosecutor in assisting those investigations and in bringing everyone together to evaluate the evidence and make appropriate charging decisions. The speaker is Iowa Traffic Safety Resource Prosecutor, Pete Grady.

Sign up by copying this link to your browser:

https://attendee.gotowebinar.com register/9142528615431686145

This is a continuation of the Traffic Tuesday series offered by the nation's Traffic Safety Resource Prosecutors coordinated by Missouri's Susan Glass.

WELCOME BARRY WILLIAMS

Barry Williams has been hired by the Tennessee District Attorneys General Conference to serve as a Traffic Safety Resource Prosecutor beginning July 1, 2016. The position has been vacant since the departure of Jim Camp in 2015.

Barry will serve from an office at the Tennessee Highway Patrol Training Academy and will assist in the traffic safety training program of the Tennessee Highway Patrol. He will serve as a liaison to the Tennessee Highway Patrol and the District Attorney's General Conference and the Tennessee Highway Safety Office. He will assist in the training program of the Tennessee Highway Safety Office with an emphasis on standardized field sobriety test classes. He will also serve as a consultant for prosecutors and law enforcement officers on traffic safety issues and serve as special counsel or in an advisory capacity at trial in DUI related cases that will potentially cause a significant impact in Tennessee law. Also included in his duties are to assist in writing and/or updating the DUI manual for prosecutors; and provide articles for the DUI News and other publications.

Barry served as an Assistant District Attorney in the East Tennessee Gatlinburg area from 2006 to 2012. During that time, he was one of our specialized DUI prosecutors for two years and then took on a general caseload including high profile murders, violent crimes, thefts and narcotics crimes. He left the DA's office to pursue further education and received a Master of Diplomacy with a concentration on International Terrorism from Norwich University in Vermont and an LLM in International Business Law from the National University of Ireland and Catholic University of Lyon, splitting his studies between Maynooth, Ireland and Lyons, France. He received a Homeland Security Executive Certificate from Tel Aviv University. He served as a Foreign Language Instructor and Medical Journal Editor at Tianjin University & Huan Hu Neurological Hospital in China. He also did a pro bono internship in the Ukraine. His references included the former head of the European Region of Interpol and an Army Major in New York.

Barry is very excited to begin working in the TSRP position. I believe he will be a credit to all of us as he proceeds.

WHY I WANTED THE JOB AND FUTURE PLANS *by Barry Williams*

There are many reasons that I took this job, and all of those reasons are equally true and valid; however, the main reason boils down to the practical: I needed a job that allowed me to exercise my creativity in service to my home state of Tennessee and one that allowed me to take advantage of my prosecutorial experience, real world experiences and allow me to join the "good" fight that I have always cared about winning. In short, I found out after working several years under District Attorney General James B. Dunn that I was a career prosecutor.

Another practical aspect that I hope to develop while serving in the role as the Traffic Safety Resource Prosecutor is to help many young prosecutors to develop the skills and willingness to try cases. Generally, this is not a skill that comes easily. More importantly, I see my role in this capacity as being able to inspire confidence. Confidence and self-assurance are very necessary ingredients for a prosecutor to possess. I hope to help develop these skills as part of the training program for prosecutors.

Tennessee District Attorneys General Conference

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