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*This material was developed
through a project funded by the
Tennessee Highway Safety
Office and the National
Highway Traffic Safety
Administration.*

2024 LEGISLATIVE UPDATE

Here are this year's recently passed legislative acts, regarding traffic safety:

Public Chapter #565 (Juvenile interviews must be recorded)

If a juvenile is suspected of a delinquent act or unruly conduct and they are being interviewed, the interview or interrogation must be video or audio recorded. Effective July 1, 2024.

Public Chapter #602 (Tinted windows violation)

Only a "POST-certified law enforcement officer" can detain a motor vehicle for window tint violation. Not a "full-time, salaried police officer." Effective, March 11, 2024.

Public Chapter #612 (Bail must first consider safety of the community)

A Magistrate shall give first consideration to ensuring the safety of the Community when considering bail. Effective July 1, 2024.

Public Chapter #671 ("Ledford's Law" Parole terms)

Parole terms and conditions for Vehicular Homicide by Intoxication or Aggravated Vehicular Homicide must now include: attend substance abuse treatment during parole, and parolee can not possess or consume alcohol or drugs without a valid prescription. Effective July 1, 2024.

Public Chapter #743 (Misdemeanor sentencing can be at 100%)

Amends TCA 40-35-302(d). Authorizes the court to fix the misdemeanor sentence percentage to be served until eligibility for work release at 0%, 10%, 20%, 30%, 40%, 50%, 60%, 70%, 75%, 80%, 90%, or at 100%. Effective March 28, 2024.

Public Chapter #774 (Court may order 1st DUI offenders to an alternative facility)

A Court, not the sheriff, may order a 1st DUI offender to an alternative treatment facility instead of county jail, at the offender's expense. Effective April 8, 2024.

Public Chapter #869 (Bail no longer considers defendant's ability to pay)

A defendant's ability to pay is no longer considered for bail. Effective April 16, 2024.

Public Chapter #870 (License plate flippers are illegal)

It is a B misdemeanor to possess a license plate flipper. It is an A misdemeanor to make, sell or distribute a license plate flipper. Effective July 1, 2024.

(Continued on page 2.)



2024 LEGISLATIVE UPDATE (Continued)

Public Chapter #874 (Misdemeanor for tampering with a monitoring device)

It is a B Misdemeanor if anyone on bond, probation or parole, tampers with a transdermal or GPS monitoring device. It is considered a theft if the device is damaged. Effective July 1, 2024.

Public Chapter #885 (Child (8 or under) abuse, neglect or endangerment a Class B felony)

Amends TCA 39-15-401(d)(1) from a Class D felony, to a Class B felony for placing a child, eight (8) years or less, in imminent danger of death, bodily injury, or physical or mental impairment. Effective July 1, 2024.

Public Chapter #892 (DUI blood sample search warrants expanded)

Law enforcement officers have state-wide jurisdiction to issue search warrants for medical records and blood tests. All Magistrates have state-wide jurisdiction to issue search warrants, if at least one (1) element of the crime occurred within their jurisdiction. All health care providers shall withdraw a blood sample, pursuant to a search warrant, as soon as practicable. They shall enter all test results into the defendant's medical records. They shall not require additional consent to withdraw a blood sample. A further search warrant or court order is not required for the limited testing of an obtained blood sample for alcohol or drugs. Effective May 1, 2024.



Public Chapter #928 (Assault and Aggravated Assault within a Health Care Facility)

Known as the "Dr. Benjamin Mauck Act." Creates the crime of assault within a health care facility for any physical contact that is extremely offensive or provocative, including spitting, throwing bodily fluids or human waste. A class A misdemeanor with a mandatory fine of \$5,000 and a mandatory minimum 30 day jail service. Also creates the crime of aggravated assault within a health care facility if the assault results in serious bodily injury or death, or includes the use or display of a deadly weapon or involves strangulation or attempted strangulation. This is a Class C felony with a mandatory fine of \$15,000 and a mandatory minimum 90 day jail service. Effective July 1, 2024.

Public Chapter #942 (A crime for knowingly violating Bail)

Creates an A Misdemeanor for knowingly violating a term of release. A law enforcement officer may arrest a violator, with or without a warrant, pursuant to TCA 40-7-103(b). A defendant cannot be convicted of both this statute and TCA 39-13-113(i). Effective July 1, 2024.

Public Chapter #948 (Regulates traffic in school zones)

Mandates appropriate signage when approaching school zones. Allows for employees or volunteers to direct traffic in school zones when others are dropping off or picking up students. Regulates qualifications and safety equipment for such employees or volunteers. Creates a \$50 fine only, Class C misdemeanor for ignoring signage or traffic direction. Effective July 1, 2024.

Public Chapter #958 (Allows recovery of damages from others obstructing streets or traffic)

Amends TCA 39-17-307. If a person suffers loss or injury as a result of others obstructing highways, streets or traffic in violation of TCA 39-17-307(a)(1), the injured person may bring a cause of action against the person who is in violation of TCA 39-17-307(a)(1), to recover compensatory damages from the loss or injury. Effective July 1, 2024.

(Continued on page 3)

2024 LEGISLATIVE UPDATE (Continued)

Public Chapter #961 (Creates an Impaired Driving Task Force)

This act is known as the “Tennessee Prevention of Drunk Driving Act.” By no later than September 1, 2024, the Speaker of the Senate and the Speaker of the House of Representatives shall establish an advisory task force to review impaired driving and boating in Tennessee. The task force shall be composed of six members appointed by the Speaker of the Senate and six members appointed by the Speaker of the House of Representatives. The task force will study ways to reduce impaired driving, repeat offenders, and underage offenders. The task force shall submit a report of its findings and recommendations. The Alcoholic Beverage Commission shall be notified within 48 hours of any vehicular homicide that involved alcohol being served from an establishment. The Alcoholic Beverage Commission shall report alcohol statistics relating to traffic and boating crashes and arrests. Alcohol server permits are now valid for two (2) years. The Impaired Driving Advisory Council of the Tennessee Highway Safety Office shall submit an annual report to the General Assembly regarding strategic plans or recommendations to reduce impaired driving in Tennessee. Effective April 23, 2024.

Public Chapter #1011 (Lowers BAC enhancement from .20% to .15%)

Amends TCA 55-10-402(a)(1)(B). For a DUI 1st offense, with a BAC of 0.15% or more, defendant shall serve a minimum of seven (7) days jail, rather than forty-eight (48) hours. Effective July 1, 2024.

Public Chapter #1045 (Adds a Class E felony for assault on a judicial proceedings participant)

Adds a new section of assault on a judicial proceedings participant in a building where judicial proceedings occur. A Class E Felony to knowingly assault by causing physical injury, or by causing offensive or provocative contact with any courtroom participant. Effective July 1, 2024.

Public Chapter #1055 (Bail conditions for A, B, C, and D Felonies)

Amends TCA 40-11-116. If any magistrate imposes conditions on the release of the defendant and the county has pretrial services available, then the court shall require the defendant to participate in pretrial monitoring to ensure that all pretrial conditions are complied with. The pretrial monitoring agency shall notify the court of the defendant’s failure to comply with any conditions. Also, any failure to comply with any condition of a bail bond or recognizance release on an A, B, C, or D felony, the court having jurisdiction at the time of the failure, shall declare a forfeiture of the bond and may issue a warrant for the arrest of the defendant pursuant to TCA 40-11-112(b). If a defendant has been arrested pursuant to a warrant issued under TCA 40-11-112(b), for failure to comply with the conditions of a release, then the defendant shall only be released by a criminal or circuit court judge. Effective July 1, 2024.

Lethal Weapon/Vehicular Homicide

The TSRPs from Tennessee and Kentucky presented a Lethal Weapon/Vehicular Homicide seminar in Louisville, KY, on May 20-23, 2024. Over 50 law enforcement officers and prosecutors from Tennessee and Kentucky participated in a mock crash and many classes presented by Professor John Kwasnoski. Next years’ seminar will be in Tennessee.





SEARCH WARRANTS FOR ELECTRONIC DATA

When preparing or reviewing a search warrant and supporting affidavit of facts and probable cause, we often ask ourselves a series of questions: (1) What type of evidence is sought?¹ (2) Why is the State looking for this evidence (relevance to the offense)? (3) Who owns or controls the evidence (who has a privacy interest)? (4) Where is the evidence located? (5) How is the search going to be conducted? and (6) When did the crime occur or is it ongoing? Now, consider each of these questions as it relates to vehicle data systems and the electronic evidence created by or stored therein. Since this is an area where developing technology and legal analysis of privacy interests collide, it is often difficult to determine how to legally access this voluminous, varied, collected and stored information.

Both the Fourth Amendment² and Article I, Section 7 of the Tennessee Constitution³ provide for the protection of persons, houses, papers, and possessions (effects) against unreasonable searches and seizures and require warrants to issue upon probable cause and that descriptions of the place to be searched and the person or things to be seized be described with particularity or specificity. Rule 41 of the Tennessee Rules of Criminal Procedure reinforces this notion in subsection (c) which reads:

“If the magistrate is satisfied that there is probable cause to believe that grounds for the application exist, the magistrate shall issue a warrant as follows: (A) The warrant shall, as the case may be, identify the property or place to be searched, or name or describe the person to be searched; the warrant also shall name or describe the property or person to be seized. (B) The search warrant shall command the law enforcement officer to search promptly for the person or place named and to seize the specified property or person.”

A search warrant “must enable the searcher to reasonably ascertain and identify the things which are authorized to be seized.”⁴ In other words, “[t]he particular description requirement is meant to leave little discretion to the officer conducting the search in order to prevent general searches and to prevent the seizure of items upon the mistaken assumption that they fall within the warrant’s authorization.”⁵

The description of the electronic evidence or data sought as evidence will necessarily depend on the criminal offense. Logically, the “supporting affidavit must establish a nexus between the criminal activity, the place to be searched, and the things to be seized.”⁶ Since “data” and “electronic data” are broad terms, to avoid a “general warrant” challenge, the focus or object of the search should be narrowed by character, location (vehicle identification number), function (application), and perhaps include other limiting language such as...

1. The word “evidence” as used here, is meant to cover evidence of a crime, contraband or items illegally possessed, as well as instruments used in the commission of a crime or those instruments that may be used to commit a crime that is contemplated by Rule 41 of the Tennessee Rules of Criminal Procedure.

2. The Fourth Amendment of the United States Constitution reads, “*The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.*” (Emphasis added.)

3. Article I, Section 7 of the Tennessee Constitution reads, “*That the people shall be secure in their persons, houses, papers and possessions, from unreasonable searches and seizures; and that general warrants, whereby an officer may be commanded to search suspected places, without evidence of the fact committed, or to seize any person or persons not named, whose offences are not particularly described and supported by evidence, are dangerous to liberty and ought not to be granted.*” (Emphasis added.)

4. State v. Henning, 975 S.W.2d 290, 296 (Tenn. 1998)(citing State v. Meeks, 867 S.W.2d 361, 367 (Tenn.Crim.App. 1993) quoting United States v. Cook, 657 F.2d 730).

5. State v. McLawhorn, 636 S.W. 3d 210 (Tenn. Crim. App. 2020).

6. McLawhorn, at 239 (citing State v. Saine, 297 S.W.3d 199, 206 (Tenn. 2009) quoting State v. Reid, 91 S.W.3d 247, 273 (Tenn. 2002)).

(Continued on page 5)

SEARCH WARRANTS FOR ELEC. DATA (Continued)

references to the relevant time period, examples of the data content sought to be collected, origin of the data generated, etc.⁷ Providing this narrowing language will answer several of the questions, including what evidence is being sought, why it is being sought, and when the evidence was created or stored, as it relates to the commission of the offense.

Providing a description of the evidence is just one hurdle to jump when securing the evidence. Another inquiry centers on ownership or privacy interests in the data. In this high technology dependent world, the determination of ownership, possession, control of data as it relates to individual privacy rights is as complex as the technology itself. Electronic data, unlike tangible property, can be generated by one, but only accessible by another; can potentially exist in multiple locations at the same time; and can record data for seconds, minutes, or years, depending upon the function or purpose of the data collection. For example, consider the original purpose of event data recorders (EDRs), commonly referred to as the “black boxes” of the modern vehicle. Originally, a handful of auto manufacturers installed EDRs to monitor airbag performance and occupant safety as related to the effectiveness of passenger restraint devices.⁸ This data has been expanded to include and store other details of the triggering event or crash. Considered just one of many electronic components of the modern automobile, most individuals do not think of the EDR as a data collection device that can provide details on how they operate their car. However, that is exactly what it is and in the 1990’s the National Transportation Safety Board and the National Highway Traffic Safety Administration began looking to this technology as a means of providing Advance Collision Notification (ACN) and mining the data source for vehicle crash research purposes without guidance or concern as to the privacy of the owner-operators.⁹ This changed, however, with the enactment of the Driver Privacy Act of 2015¹⁰ and federal regulations flowing from the Act. The Act clearly recognized the nature and breadth of this data source and its potential impact upon the privacy of individuals and established that the owner or lessee of the motor vehicle owns the data contained within the EDR. Further, the Act provides for the circumstances the data could be accessed, retrieved, and used by law enforcement, other government agencies, and non-governmental entities.

Now, consider two of the many other data systems contained within the modern vehicle, telematic systems and the infotainment or interactive communication system. Telematic systems can potentially provide real-time location, speed, acceleration, braking, and other driver operation information. Infotainment systems which are the interactive communication system, can provide a litany of data that could include call history, email,

7. The prevailing thought is that electronic data should be described as specifically as reasonably possible under the facts and circumstances dictated by the nature of the investigation. In addition to *State v. McLawhorn*, 636 S.W.3d 210 (Tenn. 2020) referenced throughout this article, see also *State v. Turay*, 532 P. 3d 57, 72 (2023) (“Unlike a warrant to search a physical place, information that is the object of a search for digital data must be described ‘as specifically as reasonably possible in the circumstances,’ and that description must include, so long as ‘relevant and available, the time period during which that information was created, accessed, or otherwise used.’”); *State v. Watson*, 227 S.W.3d 622, 645 (Tenn. 2006) (The warrant seeking email transmissions, chat room conversations, and web sites visited by the user sufficiently described the object of the search though practicality provided that additional material may be observed as an unavoidable consequence.); *Reyes-Castro v. State*, 833 S.E.2d 735, 744-745 (Ga. 2019) (Warrant’s reference to the specific crime at issue and to the specific dates on which the crime was alleged to have been committed, as indicated within the affidavit, was “sufficiently particular” to notify the executing officer of what evidence was authorized to be obtained and prevent a “general exploratory search” of other content for evidence of unrelated crimes or other purposes.)

8. <https://exchange.aaa.com/automotive/automotive-trends/event-data-recorder/#:~:text=EDRs%20first%20appeared%20in%20vehicles,of%20purposes%2C%20including%20crash%20reconstruction>, last accessed on March 28, 2024, at 8:52 a.m.

9. https://www.nhtsa.gov/sites/nhtsa.gov/files/real_world_experience_with_event_data_recorders.pdf, last accessed on March 28, 2024, at 9:42 a.m.

10. 49 U.S.C. § 30101 (2024). See also, *United States 114th Congress 1st Session Senate Report 114-147, Report of the Committee on Commerce, Science, and Transportation on S. 766*, U.S. Government Publishing Office, Washington, September 28, 2015, which sets out the purpose, summarizes the provisions, and provides a legislative history.

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SEARCH WARRANTS FOR ELEC. DATA (Continued)



contacts, audio and video files, navigation history, and information about associated devices used within the motor vehicle for an undetermined amount of time. Some of the data stored within these two systems can originate from sources within and outside of the vehicle system and is often transmitted to, by, or through third party service providers. Although there is no clear federal law, federal regulation, or Tennessee law that indicates that this data belongs to the owner or lessee of the motor vehicle, one case regarding transmitted cell site location information, *Carpenter v. U.S.*,¹¹ suggests that this data shared with a service provider may “belong” to the vehicle owner or lessee, whether retrieved directly from the vehicle systems or through the service provider.¹² Much like the location data in *Carpenter*, this shared information is often transmitted automatically and with little or no notice to the owner or vehicle lessee and stored.¹³ As such, it appears that whether you get this type of data directly from the vehicle or through the third-party service provider, a search warrant would be the safest route you can take to secure it.¹⁴

The only known for future Fourth Amendment analysis is the preference for a search warrant in conducting searches. Whether actions constitute a search or not, is even up for debate under current Fourth Amendment analysis. It is evident from *Riley* to *Carpenter*, that changes in data collection, storage, and transmission will create additional legal and evidentiary challenges in the future. As evidenced in both cases, the court will carefully analyze 4th Amendment issues while anticipating future property and privacy interest developments. With the rise of the use of safety assist systems in the modern motor vehicle, to the development of completely autonomous vehicles, the number of potential data sources will increase exponentially over the coming years, revealing more intimate details of the owner or lessee’s life, and even the lives of individuals unconnected to the owner or lessee. As it does, the legal requirements will have to adapt to not only protect individual privacy interest of the owner or lessee but also to ensure that there is not data overload for those seeking to secure evidence of a crime.¹⁵

11. *Carpenter v. U.S.*, 138 S.Ct. 2206 (2018) (Given the “deeply revealing nature” of cell-site location information, “its depth, breadth, and comprehensive reach, and the inescapable and automatic nature of its collection,” a warrant will be generally required for the government to obtain this information.)

12. The majority in *Carpenter* details the evolution of Fourth Amendment jurisprudence. From the expansion from trespass or physical intrusion to the preservation of what someone seeks to preserve as private, the Court views as a “search.” Once a search has been conducted, the question of whether it is a reasonable one enters the analysis. The Court declined to extend the third-party doctrine to CSLI information and held that a search was conducted when the government requested CSLI information created by *Carpenter*’s cellphone over a period of over 100 days. The decision was a narrow one per the Court’s own words. Tower dumps, other surveillance techniques, and prior cases regarding banking or telephone pin registers were not affected by the Court’s analysis. See *Carpenter* at 2220.

13. Some vehicle manufacturers that utilize third-party service providers for telematic systems are subscription-based services that come with a trial service period while others are just a part of the options package of the vehicle at time of purchase. No matter the case, if it is a modern automobile, chances are this data is stored. For example, the privacy notice for Toyota Connected Services indicates that it will “store driving data in an identifiable format for a period of time not to exceed 15 years from the date of creation” and “store multimedia screen data [infotainment system] in an identifiable format for a period of time not to exceed 10 years from the date of creation”. This information was obtained by the owner of a 2023 Toyota via the Toyota App, Account Settings, Data Privacy Portal access on April 1, 2024, at 1:10 p.m.

14. *Carpenter* at 2221. See Note 12 above. Of course, another way is consent. Consent, however, must be knowing and voluntarily given. Challenges to consent can arise concerning an individual’s understanding as to the scope of the search to be conducted.

15. The purpose of this article is to promote legal discussion. Fourth Amendment precedent is vast. In addition to *Carpenter*, other cases to consider in analysis of this issue include, *Katz v. U.S.*, 389 U.S. 347 (1967); *Smith v. Maryland*, 442 U.S. 735 (1979); *Carroll v. U.S.*, 267 U.S. 132 (1925); *Kyllo v. U.S.*, 533 U.S. 27 (2001); *U.S. v. Jones*, 565 U.S. 400 (2012); and *U.S. v. Miller*, 425 U.S. 435 (1976).

RECENT DECISIONS

State v. William Dangelo Penny, 2024 WL 1803264 (Revocation of probation)

In May of 2021, Mr. Penny was convicted of DUI 1st offense, and other traffic offenses. He was placed on probation for eleven months and twenty-nine days after service of forty-eight hours in custody, consecutive to a two-year sentence in another case. Mr. Penny's driving privileges were also suspended. On April 12, 2023, a Jackson police officer saw Mr. Penny crash his truck into an SUV and then flee the scene. A chase ensued involving Mr. Penny driving in oncoming lanes, at nearly seventy miles per hour. The truck was determined to be stolen. Mr. Penny's probation was revoked and the trial court sentenced him to serve the balance of his original sentence. Mr. Penny appealed his sentence.

The nature of a probation revocation proceeding involves a two-step process with "two distinct discretionary decisions." *State v. Dagnan*, 641 S.W.3d 751, 757 (Tenn. 2022). The "first [step] is to determine whether to revoke probation, and the second is to determine the appropriate consequence upon revocation." *Id.* Mr. Penny admitted that he violated his probation terms. Therefore, the CCA discussed whether serving the full sentence was the appropriate consequence. The trial court was concerned with the nature and seriousness of the violations and the defendant's ability to follow court orders. The CCA agreed with the trial court's findings and affirmed the judgements of the trial court.

State v. Alysha J. Barr, 2024 WL 2845491 (Voluntary consent)

At approximately 11 pm, on June 24, 2018, traffic was stopped on the interstate due to construction. Ms. Barr failed to stop as she approached traffic and she collided with the victim's car, causing the victim to hit the car in front of her, and then veer into a tree. As a result of the crash, the victim broke both of her collarbones. A THP trooper responded to the scene and made contact with Ms. Barr. He smelled alcohol coming from Ms. Barr and noticed that she was unbalanced and had glazed, watery eyes. Ms. Barr initially denied drinking alcohol, but she later admitted to drinking. She was being treated in an ambulance, and the HGN-SFST was conducted (all six clues were present). No other SFSTs could be conducted. The trooper asked Ms. Barr if she would consent to a blood draw and she said, "That's fine." The EMT treating Ms. Barr confirmed that she consented and he obtained a blood sample (the BAC was .0161%). The implied consent form was read, but due to a hand injury, Ms. Barr could not sign the form. The word "verbal" was written on the consent signature line. Once at the hospital, the medical staff also took a blood sample for medical purposes. (the BAC of this sample was .0151%). After a jury trial, Ms. Barr was convicted of vehicular assault, DUI, DUI per se, and reckless endangerment with a deadly weapon. Ms. Barr appealed.

The Court of Criminal appeals determined that the implied consent statute, as written at the time, did not provide for voluntary consent, without the defendant actually signing the implied consent form or giving consent for someone else to sign the form (T.C.A. § 55-10-406 has since been amended and currently allows for a knowing and voluntary consent, without use of the implied consent form or the defendant's signature. See T.C.A. § 55-10-406(b)(2)(B) and subsection (i)). Although the trial court, in this case, should not have let the blood sample obtained by the trooper into evidence at trial, this error was considered harmless error, because the medically obtained blood sample was properly admitted at trial. The medically obtained blood sample indicated a BAC of .0151% (much higher than the .08% per se level).

There was also some discussion regarding expert testimony that should not have been allowed at the trial. However, this was also determined to be harmless error because the expert testimony did not apply to the medically obtained blood sample, which was sufficient for the convictions. The judgments were affirmed.



UPCOMING TRAINING

THE UPCOMING TNDAGC DUI TRAINING SCHEDULE

Protecting Lives/Saving Futures - July 17-19, 2024, Montgomery Bell State Park, TN

This three-day seminar is designed to jointly train law enforcement officers and prosecutors in all aspects of prosecuting drugged driving cases. The agenda includes a brief overview of the investigation technique involved in the detection of drug impaired drivers; how to understand and present impairment evidence in court; and, how to develop and improve courtroom skills and strategies. A wet-lab will be included.

Tennessee Lifesavers Conference- August 14-16, 2024, Franklin, TN

The Tennessee Highway Safety Office is presenting the TN Lifesavers Conference at the Marriott in Franklin. There will be many classes on Impaired Driving, including Pre-Conference, DRE in-service classes.

Cops in Court - September 11, 2024, Johnson City, TN

This course teaches law enforcement officers the challenges and difficulties associated with impaired driving cases. It also includes a mock trial presentation in which each officer experiences a direct and cross examination. Prosecutors are encouraged to participate in the mock trial presentation from 1 p.m. to 4 p.m.

DA Conference: DUI Breakout - October 15-18, 2024, Chattanooga, TN

Our DUI breakout session at this year's conference will provide approximately one and one-half hours of education and training, covering the current issues in prosecuting a drugged driving case.

Victims of DUI - December TBA, 2024, Nashville, TN

Every year the Traffic Safety Resource Prosecutors provide a day of training, for DUI prosecutors and victim witness coordinators, that corresponds with MADD's activities. These classes emphasize addressing the special needs of the impaired driving victims and their family members.

TENNESSEE HIGHWAY SAFETY OFFICE TRAINING CLASSES

Advanced Roadside Impaired Driving Enforcement (ARIDE)

September 3-4, 2024, Denmark, TN
September 23-24, 2024, Chattanooga, TN

Advanced Traffic Crash Investigation

July 29-August 9, 2024, Lenoir City, TN
October 28-November 8, 2024, Chattanooga, TN

Drug Recognition Expert School (DRE)

July 15-25, 2024, Murfreesboro, TN
August 14, 2024, (TN Lifesavers Pre-Conference)
September 19-29, 2024, Nashville, TN (THP only)
October 14-24, 2024, Brentwood, TN

DUI TRACKER

DUI Tracker this last quarter

The results below were taken from the Tennessee Integrated Traffic Analysis Network (TITAN) from April 1, 2024, through June 30, 2024, and reflect the DUI Tracker conviction report for all judicial districts in the State of Tennessee. These numbers include the Circuit Courts, Criminal Courts, General Sessions Courts and Municipal Courts. The total number of dispositions for the period from April 1, 2024, through June 30, 2024, since the last quarter were 2,172. This number is up from the previous quarter by 399 cases. DUI cases have dramatically increased the last few years and a larger number of cases are now being prosecuted.

The increase in total dispositions this quarter is reflective of current case loads. The total number of guilty dispositions during this same period of April 1, 2023 through June 30, 2023 were 1,694. The total number of dismissed cases this quarter, were 154. Across the State of Tennessee, 74.45% of all arrests for DUI were actually convicted as charged. This percentage is higher than the last quarter, ending on March 31, 2024. Only 11.46% of the DUI cases during this current quarter were dismissed or nolle prossed. Also, during this same period of time, only 286 of the total DUI cases disposed of were to different or lesser charges. Therefore, only 13.17% of the total cases were disposed of to a charge other than the original charge.

Fatal Crashes this last quarter

The following information was compiled from the Tennessee Integrated Traffic Analysis Network (TITAN) using an *ad hoc* search of the number of crashes involving fatalities that occurred on Tennessee’s interstates, highways and roadways, from April 1, 2024 through June 30, 2024. During this period, there were a total of 305 fatalities, involving 277 crashes, which is an increase from the previous quarter. Out of the total of 305 fatalities, 59 fatalities involved the presence of alcohol, signifying that 19.34% of all fatalities this quarter had some involvement with alcohol. Further, there were a total of 35 fatalities involving the presence of drugs, signifying that 11.47% of all fatalities this quarter involved some form of drugs. Therefore, over 30% of all fatalities this quarter involved some form of alcohol and/or drug involvement.

The year-to-date total number of fatalities on Tennessee roads and highways is 559. This is down by 75 from the 634 fatalities incurred last year at this same time. This decrease in alcohol and drug related fatalities is a welcomed change to the increases we have been experiencing in recent years. We must stop the pointless death and injuries caused by the preventable crime of impaired driving. Please do not let others drive impaired.

Traffic Safety Resource Prosecutor’s Conference

Every year, Linda and Terry attend the TSRP Conference. This year it was held in Grand Rapids, MI. We trained and networked with other TSRP’s from across the nation. One of our training sessions included a study of how cannabis impairs one’s ability to drive safely. It was presented by Marilyn Huestis, it’s author.



VEHICULAR HOMICIDE MURDERER'S ROW

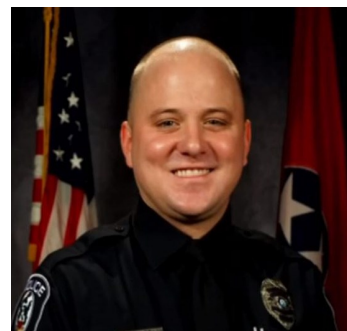
State v. Ashley Bianca Ruth Kroese, 2024 WL 2034366 (PC for Search Warrant/Chain of Custody)



This case arose from a two-car head-on collision on June 18, 2020, at 4:56 a.m. in front of the Brentwood Market and Deli in Williamson County that resulted in the death of Brentwood Police Department Officer Dustin Leguiza as he was nearing the end of his shift. Ms. Kroese was the driver and sole occupant of the other vehicle, a black Jeep. Witnesses testified that she had consumed many drinks throughout the evening. Ms. Kroese was driving without her headlights and in the oncoming lanes of travel at the time of the crash. Vanderbilt University Medical Center drew a sample of blood for medical purposes and a search warrant was obtained for the sample. Her BAC was determined to be 0.166%.

On appeal, the Court of Criminal Appeals addressed two very important issues. The first issue was to determine what qualifies as sufficient probable cause to support and obtain a search warrant for the hospital blood sample. The second issue addressed what sufficient chain of custody is needed for the blood sample. A motion to suppress the BAC result was argued prior to trial, based upon a lack of probable cause, because there was no evidence that the defendant was intoxicated at the time of the crash and that the crash alone is not enough.

The State argued that the crash was not a “mere accident,” but it had “unique features” to support probable cause of “impairment while driving.” The trial court agreed and denied the motion to suppress. The CCA ruled, that a “commonsense approach of the totality of the circumstances suggested that Defendant was not able to safely operate her vehicle. ‘Under that commonsense approach, we can appropriately recognize certain driving behaviors as sound indicia of drunk driving.’” *Navarette v. California*, 572 U.S. 393, 402 (2014); *State v. Van Camp*, 2014 WL 7399671, at *5 (Tenn. Crim. App. Dec. 29, 2014). (Ms. Kroese was seen on traffic cameras traveling without headlights, and in the wrong lanes of traffic, at 4:56 a.m.). Therefore, the ruling of the trial court was reasonable and proper.



Next, the CCA addressed the issue of the chain of custody of the hospital obtained blood sample. A nurse testified that she was the defendant’s primary nurse and that it is her practice to draw blood, assign a specific medical records number (“MRN”), and apply the bar code labels to the blood sample. The sample was then delivered to a secured hospital lab that can only be accessed with an authorized badge. After being served with a search warrant, the blood sample tubes were released to Trooper Nieuwenhuis, who transported the tubes to TBI. There was no evidence that the blood tubes had been tampered with or contaminated with, in any way. The blood sample was then tested by TBI and the BAC results were 0.166%. The trial court ruled that the proper chain of custody had been established. The CCA ruled that the purpose of establishing the chain of custody is “to insure” that there has been no tampering, loss, substitution, or mistake with respect to the evidence. *State v. Daniels*, 656 S.W.3d 378, 389-90 (Tenn. Crim. App. 2022). One manner of establishing the identity and integrity of the evidence is through “the routine practice of an organization, whether corroborated or not and regardless of the presence of eye-witnesses.” Tenn. R. Evid. 406(a). As the CCA has held previously, the State is not required to prove every link in the chain beyond all possibility of doubt. *State v. Singh*, 684 S.W.3d 774, 783 (Tenn. Crim. App. 2023). Therefore, the chain of custody was sufficiently established, which also demonstrated the identity and integrity of the blood sample. The judgments of the trial court were affirmed.

NHTSA 2022 TRAFFIC SAFETY FACTS

Every year, the National Highway Traffic Safety Administration (NHTSA), distributes a year-end review of “Traffic Safety Facts.”¹ Due to the delayed collection of forensic data, 2022 facts have just recently been published. Some key findings from the 2022 year-end data include:

- 1.) In 2022 there were 13,524 fatalities in motor vehicle traffic crashes in which at least one driver was alcohol-impaired. This represented 32 percent of all traffic fatalities in the United States for the year.
- 2.) Traffic fatalities in alcohol-impaired-driving crashes decreased by 0.7 percent (13,617 to 13,524 fatalities) from 2021 to 2022.
- 3.) One alcohol-impaired-driving fatality occurred every 39 minutes in 2022, on average.
- 4.) The 21- 24 year-old age group had the highest percentage (29%) of alcohol-impaired drivers involved in fatal traffic crashes compared to other age groups in 2022.
- 5.) In 2022 there were almost 4 male alcohol-impaired drivers involved for every female alcohol-impaired driver involved.
- 6.) The percentages of alcohol-impaired drivers involved in fatal traffic crashes in 2022 was highest for motorcycle riders (28%) compared to drivers of passenger cars (25%), light trucks (21%), and large trucks (3%).
- 7.) Of the 1,129 traffic fatalities in 2022 among children 14 and younger, 25 percent (283) occurred in alcohol-impaired-driving crashes.
- 8.) In 2022 among the 13,524 alcohol-impaired-driving fatalities, 67 percent (9,047) were in traffic crashes in which at least one driver had a BAC of .15 g/dL or higher.
- 9.) The rate of alcohol impairment among drivers involved in fatal traffic crashes in 2022 was nearly three times higher at night than during the day.

Although the total number of alcohol-impaired driving fatalities in 2022 (13,524) was slightly less than the previous year (13,617), overall alcohol-impaired driving fatalities have risen sharply since 2019 (10,196).² Of the 13,524 people who died in alcohol-impaired driving traffic crashes in 2022, there were 8,012 drivers (59%), who were alcohol-impaired. The remaining fatalities consisted of 1,684 passengers riding with alcohol-impaired drivers (12%), 2,193 occupants of other vehicles (16%), and 1,635 nonoccupants (12%). *Id.*

CHILDREN

A total of 1,129 children, 14 and younger, were killed in motor vehicle traffic crashes in 2022. Of these 1,129 fatalities, 283 children (25%) died in alcohol-impaired driving crashes. Of these 283 child deaths:

- 150 (53%) were passengers of vehicles with alcohol-impaired drivers;
- 89 (31%) were occupants of other vehicles;
- 41 (14%) were nonoccupants (pedestrians, pedalcyclists, or other nonoccupants); and
- 3 (1%) were child drivers.

1. Detailed data on motor vehicle traffic crashes are published annually in *Traffic Safety Facts: A Compilation of Motor Vehicle Traffic Crash Data*. <https://crashstats.nhtsa.dot.gov/>.

2. Fatality Analysis Reporting System (FARS) 2013–2021 Final File, 2022 Annual Report File (ARF); VMT – Federal Highway Administration (FHWA)

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NHTSA 2022 TRAFFIC SAFETY FACTS (Continued)

CRASH CHARACTERISTICS

In 2022 based on known crash characteristic values of alcohol-impaired drivers involved in fatal traffic crashes:

- More occurred in July (10.0%) and August (9.0%) than the other months; February had the lowest percentage (7.0%);
- 62 percent occurred in urban areas and 38 percent occurred in rural areas;
- 92 percent occurred in clear/cloudy conditions compared to 6 percent in rainy conditions and 2 percent in other conditions;
- 69 percent occurred in the dark compared to 27 percent in daylight, 3 percent in dusk, and 1 percent in dawn; and
- 87 percent occurred on non-interstate roads compared to 13 percent on interstate roads.

TIME OF DAY AND DAY OF WEEK

In 2022, the crash statistics indicated:

- The rate of alcohol impairment among drivers involved in fatal traffic crashes was nearly three times higher at night than during the day (32% versus 11%, respectively);
- 33 percent of all drivers involved in single-vehicle fatal traffic crashes were alcohol-impaired, compared to 15 percent in multi-vehicle fatal traffic crashes; and
- 17 percent of all drivers involved in fatal traffic crashes during the week were alcohol-impaired, compared to 29 percent on weekends.

STATE

Among the different states in 2022, the crash statistics indicated:

- Alcohol-impaired-driving traffic fatalities were highest in Texas (1,869), followed by California (1,479) and Florida (940), and lowest in the District of Columbia (12).
- The percentages of alcohol-impaired-driving fatalities among total traffic fatalities in States ranged from a high of 43 percent (Rhode Island and South Carolina) to a low of 22 percent (Utah), compared to the national 32 percent (Tennessee's percentage was 28%).
- The percentages of traffic fatalities in crashes involving a driver with a BAC of .15 g/dL or higher ranged from a high of 33 percent (Rhode Island) to a low of 15 percent (Kentucky and New Jersey), compared to the national 21 percent.

In 2022, Tennessee experienced 1,314 traffic fatalities, with 435 (33%) indicating alcohol impairment.

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