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DUI NEWS

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THE BLUE LIGHT SPECIAL & THE BAD SAMARITAN

Two cases from separate panels of the Court of Appeals indicate that an officer who acts as a Good Samaritan violates the 4th Amendment rights of certain drivers. Since violating the 4th Amendment is a bad thing, these Good Samaritans are now defined by Tennessee courts as Bad Samaritans.

HOW DID THIS HAPPEN?

In State v Moats, 403 S.W.3d 170 (Tenn 2013) the Chief Justice in a 3-2 decision (dissent by Clark joined by Koch), ruled than an officer who approached a driver passed out in a parking lot in the wee hours had violated the 4th Amendment in her approach. The officer had committed the error of activating her blue lights in the parking lot before walking up to the vehicle. Relying on State v Williams, 185 SW3d 311, the Chief Justice ruled the well meaning officer had violated the rights of the DUI arrestee, James David Moats. The stop was suppressed and the case was dismissed. The Court noted that Tennessee was one of four States that embraced a minority view in the nation that community caretaking was only permitted with the consent of the driver. Note, however, that in the other three States, the activation of blue lights does not amount to a seizure.


Moats

Tennessee also takes the minority view in defining the activation of blue lights by an officer as a seizure. In reality, the driver in Moats and the driver in Shouse had no idea if they were seized or not. They were passed out and could not see or hear. In Tennessee that does not matter. See the footnote on page 6 for recent cases in the three States referred to in the Moats decision.

The recent cases from the Court of Criminal Appeals are State v Shouse 2014 WL 1572451 released April 21, 2014 and State v Mustafa, 2014 WL 1369880 released April 7, 2014.

In Mustafa, the intoxicated driver in this case was driving behind another car that inexplicitly stopped causing him to suddenly stop. No one moved for a while. A conscientious Gatlinburg officer, Robert Cantley, testified he turned on his yellow directional arrow to warn any other drivers of danger. He then went to see what had happened. The car in front drove off. He approached the second car to check and see if everyone was okay. He asked the driver to lower the window and discovered the driver had consumed alcohol. His subsequent investigation led to an arrest. The stop was in fact not a stop.

CONTINEUD PAGE 4

RECENT DECISIONS

STATE v BROOKS 2014 WL 2567135 CHAIN OF CUSTODY FOR A BLOOD DRAW

In Maury County, a trial judge suppressed a blood test. He ruled the State failed to prove chain of custody. In another decision by Judge Smith, his suppression of the test was overruled and the case was reinstated for trial. After a crash, while Mr. Brooks was in the back of the ambulance, Trooper McCauley read the implied consent form to Brooks and asked for consent to draw blood. After the driver gave consent Craig Dyer, one of the emergency responders, drew the blood. Trooper McCauley admitted in his "haste of trying to work the scene" he neglected to have Mr. Dyer sign any of the forms. Trooper McCauley physically observed the blood draw. The vials did not leave his presence while the blood draw took place. The Court in reversing the Trial Judge stated that the testimony at trial clearly established the chain of custody from the time of the blood draw to the delivery to the TBI. The testimony of Trooper McCauley alone sufficiently established that the blood sample submitted for testing was appellee's blood and, therefore, the resulting blood alcohol level of the blood could be assumed to be the blood alcohol level of appellee's blood at that time of the crash.

STATE V SCHAFER, 2014 WL 1831020 BREATH TEST SUPPRESSED
OBSERVATION INSUFFICIENT

In Shelby County and a few other counties in Tennessee, breath test devices are in patrol cars. When the driver was apprehended in this case, an investigation into her intoxication resulted in a consensual blood test. The Trial Court suppressed the results of the test. The trial court was not satisfied with the 20 minute observation of the driver. The driver was in the back of the patrol vehicle. The officer observing her was in the front. Some of his observation was conducted by watching the video feed of the driver in the back seat. The Appellate Court affirmed the suppression stating " the State had not proved by a preponderance of the evidence that the observation was adequately performed as to prevent a silent or surreptitious bodily function to have occurred outside of the range of the camera's perception."

STATE V JOHNSON, 2014 WL 2016712 INEVITABLE DISCOVERY

Johnson was stopped twice in two weeks for a tail light violation. On each occasion he was driving with a suspended license. The second time he was arrested. At the jail the officer noticed that Johnson "asked to go the bathroom several times, which kind of alarmed me at that time." Officer Dindar testified, "[W]hen we let somebody go to the bathroom we always let them know do not flush the toilet; and we always watch them due to officer safety issues." Officer Dindar became suspicious that the defendant was hiding something after he had been ordered to be released by the Magistrate. The defendant was searched and drugs were discovered. The defendant argued that "once a magistrate orders a person released upon their personal recognizance then that person is no longer under arrest or in custody." Testimony revealed that even if a person is ordered released, the person is searched for inventory purposes as part of the booking process. The United States Supreme Court has noted that "routine administrative procedures at a police station house incident to booking and jailing the suspect derive from different origins and have different constitutional justifications" than a search based on probable cause. *Maryland v. King,* ——U.S. ——, 133 S.Ct. 1958, 1970 (2013).
The Court stated, "Nothing in the record suggests that the impending search of the defendant was anything other than a routine inventory search inherent to that normal booking procedure. Under the doctrine of inevitable discovery, "illegally obtained evidence is admissible if the evidence would have otherwise been discovered by lawful means." *State v. Cothran,* 115 S.W.3d 513, 525 (Tenn.Crim.App.2003) (citing *Nix v.. Williams,* 467 U.S. 431, 444 (1984); *State v. Ensley,* 956 S.W.2d 502, 511 (Tenn.Crim.App.1996))."

RECENT DECISIONS

STATE v WELLINGTON, 2014 WL 2568149 DUI AND EVADING

In Hickman County, this sixty year old driver refused to pull over for emergency lights for a mile and a half. A deputy was told to be on the lookout for a vehicle matching that driven by the defendant. The daughter of the defendant had called due to her mother driving while intoxicated. When the deputy, Troy Bowman, saw the vehicle, the driver "floored it" and took off. At that point emergency equipment was activated to try to catch up with and stop the driver. Wellington contested whether the officer had reasonable suspicion to effect a stop. The conviction was affirmed. The sentence included a two year felony with nine months to serve.

STATE V HIYAMA, 2014 WL 2754988 CREDIBILITY IS NOT DEPENDENT ON VIDEO

The defendant was driving north on I-65 on a four lane section of highway. Trooper Charles Achinger was on the same road moving in the same direction about one half mile behind the driver. He noticed the driver drift and swerve and he sped up to catch up and watch. The trooper noticed the driver swerve and touch the left lane line. The vehicle then went into a right bending curve and crossed over into the right lane for about seven seconds. The vehicle also crossed over the left hand lane line with both tires in a left bending curve. The trooper activated his lights, which activated his camera and pulled the driver over. The Court found the trooper to be credible and upheld the stop. The defense argued that the Court should rely solely on the video to determine if the stop was valid, citing State v Binette, 33 SW2d 215 (Tenn 2000). The Court rejected the argument noting that Binette was based on the de novo review of a video in which no witness testified. Our supreme court has cautioned that *Binette* only applies "when a court's findings of fact at a suppression hearing are based *solely* on evidence that does not involve issues of credibility." 33 S.W.3d at 217

KINLIN v KLINE, 749 F.3d 573 REFUSAL TO PERFOM FIELD SOBRIETY TESTS ARE PART OF THE PROBABLE CAUSE DETERMINATION

Ohio State Trooper Shawn Kline watched as a car signaled a lane change and cut in front of another car. The trooper determined the maneuver was not safe due to the car in front and the car in back of Kinlin. The trooper activated his lights and pulled over the driver. The driver, Kinlin, told the trooper he had consumed two beers and he refused to perform field sobriety tests. Kinlin later took a breath test that resulted in a BAC reading of .01. Kinlin filed a lawsuit against the trooper! He contended that Trooper Kline lacked probable cause for the initial traffic stop because Kinlin's crossing of the center line was not visible on the cruiser's video recording and because Kinlin's lane change could have been legal. Kinlin's second argument was that Trooper Kline did a poor job of weighing the exculpatory evidence before making the arrest. Trooper Kline responded that Kinlin's unsafe lane change gave rise to probable cause to perform the traffic stop, and that the traffic violation, together with the odor of alcohol, Kinlin's admission that he had consumed alcohol, and Kinlin's refusal to submit to a field sobriety test, provided probable cause to arrest Kinlin. The District Court threw out the lawsuit by granting summary judgment. Kinlin appealed and the 6th Circuit affirmed. The Court states, "Trooper Kline had probable cause to stop Kinlin's car because the video recording indisputably shows that Kinlin executed a sudden lane change that did not leave sufficient space between the car ahead of him and the car behind him." In weighing the totality of circumstances necessary for a probable cause determination, the Court joins the 10th and 11th Circuits agreeing that the refusal to submit to field sobriety tests should be included in the totality of circumstances determination of probable cause. Kinlin (1) made a lane change with only two feet of clearance, (2) smelled of alcohol, (3) admitted to consuming alcohol, and (4) thrice refused a field sobriety test. A valid arrest based upon then-existing probable cause is not vitiated if the suspect is later found innocent." *Criss v. City of Kent,* 867 F.2d 259, 262 (6th Cir.1988)

BAD SAMARITAN

The vehicles stopped without any action by the officer. The act of walking up to the stopped vehicle and asking the driver to roll down his window was found to be a seizure without reasonable suspicion, having the effect of an unreasonable stop. Judge Witt includes in his opinion the conclusion of the Trial Judge: The trial court, lamenting the "tough" nature of the case, observed that recent decisions of our supreme court addressing when a seizure occurs had "shifted a burden, a great burden to law enforcement" and that the limitations created by the court "really put an officer in a dilemma." Judge Bivens in a concurring opinion noted the Supreme Court has eviscerated the community caretaking doctrine in Tennessee.

In Shouse, the Good Samaritan, Sergeant Jeremy Haywood, saw the driver slumped over in an empty parking lot at 11:00 p.m. on a February night. The driver was slumped over leaning against his truck window. Sergeant Haywood pulled into the parking lot. He did not activate his blue lights. He walked up to the pickup truck, saw the driver was motionless and knocked on the window. He tried to wake Shouse for fifteen minutes, but could not. He later testified he was checking on the welfare of the driver. He could not tell from outside the truck whether Shouse was breathing. He could not arouse him by knocking on the window or by shouting through the closed window. Eventually, he opened the driver side door and tried to shake Shouse to rouse him. At that point, Sergeant Haywood smelled alcohol and began to investigate the case as a DUI.


Shouse

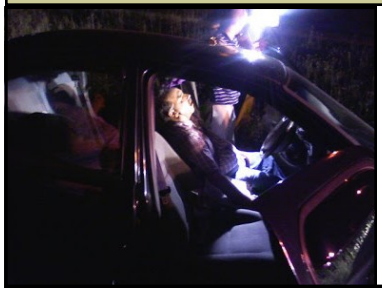
In both cases Appellate Judges, citing the precedent set in Moats, found the actions of the officers were defined as seizures without cause. The officers were found to have committed 4th Amendment violations by seizing the drivers involved. In Mustafa, the author of a concurring opinion, Judge Bivens, noted that the Supreme Court in Moats had eviscerated the community caretaking doctrine in Tennessee.

WHAT DOES IT MEAN?

Good Samaritan officers have been defined as violators of the Tennessee constitution. They appear to have done a good thing. They checked on a person who might be in grave danger, but they have been found to have done a bad thing. The Good Samaritan effort leaves them defined as Bad Samaritans. No one wants to be a Bad Samaritan, so something has to give.

No one wants to be defined as a BAD SAMARITAN! Officers are sworn to protect and serve. They take their oath very seriously. Good people don't become bad people, because of Court opinions that make them look bad. Sergeant Haywood and Officer Cantley should be proud of themselves for intervening in Mustafa and Shouse! They aren't Bad Samaritans, even if the Court disagrees with their actions. No matter how the Court defines these activities, their first duty is to their communities and the public. Officers will and should continue to check on drivers who are motionless in their vehicles in places in which people don't commonly sleep, like Rest Stops. I cannot imagine and don't want to imagine a State in which an officer passes by and ignores a slumped-over driver on the side of the road or in an empty public parking lot. There is a very slight chance that the slumped over driver may have had a stroke or some other medical crisis and the action of the officer will save a life. There is no greater reward.

When the officer sees someone like this what should he/she do?



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WHAT SHOULD WE DO

In my role as one who provides training to law enforcement officers I have taken the time to interview a number of experienced officers about these situations. I have found that experienced officers consistently tell me it is extremely rare to find a slumped over driver with a medical emergency. In the rare case in which a life was saved due to immediate action, the officer receives a commendation and letters of gratitude. Those are noted in the officer's files and etched forever in his/her memory.

In a huge majority of these situations, officers find an impaired driver. Usually, the slumped over driver has passed out from alcohol or drugs ingested and the driver can't keep the eyes open, the head up and remain conscious.

In Tennessee, a person is guilty of DUI if they drive or are in physical control of a motor vehicle. The driver slumped over the steering wheel is definitely in physical control. If an officer approaches that vehicle and has in his experience found that such drivers are impaired a great majority of the time, then the officer should say so on the witness stand. The officer can base his reasonable suspicion on his past experiences with this same scenario.

Every District Attorney who has one of these situations should interview the officer about such experiences.* If their experience is consistent with what I have heard from dozens of officers, the officer should be reminded to testify about those experiences, when the officer testifies about why he stopped to check out the driver. Most often the officer will be able to tell you why they suspected the slumped over driver was intoxicated and in physical control of a motor vehicle.

The term community caretaking should probably be banished, even though officers care and do want to intervene for medical purposes. The officer's experience with these cases will be the factor that supports the argument for reasonable suspicion or the argument for community caretaking. I suspect most officers who have encountered a slumped over driver behind the wheel will have a humorous story about an impaired driver rather than a tragic story about a sick or deceased driver.

If asked, do not advise any officer to ignore a slumped over driver! If the officer relies on that advice and a person dies from a lack of medical attention, you may be partly responsible! It would be very uncomfortable to try to justify advice to ignore this situation by blaming it on appellate decisions. If an officer checks on a slumped over driver and a Court is convinced his reason for doing so was to help a person in distress, a subsequent arrest may be suppressed and a case could be dismissed. However, if the officer does not check on such a person, the person, whether drunk or sober, could die. The second result would haunt someone for a lifetime and leave a member of the community helpless in his final moments. The first would disappoint, but not be fatal.

Footnotes

See: City of Mandan v Gerhart, 783 N.W.2d 818 (ND 2010) (officer rousing slumped over driver was proper use of community caretaking. Odor of alcohol created reasonable suspicion to seize).

See: People v McDonough, 239 Ill.2d 260 (Il 2010) (Officer checking on a car stopped on the side of a highway did "fall within the community caretaking exception to the fourth amendment, rendering Brunnworth's assumed seizure of defendant reasonable."

See: Schuster v. State Dept. of Taxation & Revenue, Motor Vehicle Div. 283 P.3d 288 (NM 2012) holding that the officer acted properly as a community caretaker when he approached a motorcyclist who's bike had fallen over in a bar parking lot. "Although Karst was in uniform and driving a marked police vehicle, he approached Schuster in a non-threatening manner, and his asking Schuster whether he was okay can be viewed objectively as a question that arises out of a concern for Schuster's welfare and not an intent to investigate."

*As will all advise in this newsletter, check with your District Attorney!

DID YOU KNOW?

When fatal crashes occur between midnight to 3 a.m., 62 percent involve alcohol-impaired driving.

CELL PHONES, EVIDENCE AND SEARCH WARRANTS

In the Tennessee General Assembly in 2014, a law sponsored by Senator Mae Beavers and Representative Mike Carter banned the examination of a cell phone, unless the examination was permitted by a search warrant, the consent of the person or exigent circumstances, unless the phone had been abandoned. The law became effective July 1, 2014 and is Public Chapter 785. Five days before the effective date of the law, The United States Supreme Court issued an opinion on the same subject.

Without dissent Justice Roberts issued the opinion concerning two consolidated appeals. The decision held that:

1) interest in protecting officers' safety did not justify dispensing with warrant requirement for searches of cell phone data, and
2) interest in preventing destruction of evidence did not justify dispensing with warrant requirement for searches of cell phone data.

In the first case Riley was stopped for a traffic violation, which eventually led to his arrest on weapons charges. An officer searching Riley incident to the arrest seized a cell phone from Riley's pants pocket. The officer accessed information on the phone and noticed the repeated use of a term associated with a street gang. At the police station two hours later, a detective specializing in gangs further examined the phone's digital contents. Based in part on photographs and videos that the detective found, the State charged Riley in connection with a shooting that had occurred a few weeks earlier and sought an enhanced sentence based on Riley's gang membership.

In the second case, Wurie was arrested after police observed him participate in an apparent drug sale. At the police station, the officers seized a cell phone from Wurie's person and noticed that the phone was receiving multiple calls from a source identified as "my house" on its external screen. The officers opened the phone, accessed its call log, determined the number associated with the "my house" label, and traced that number to what they suspected was Wurie's apartment. They secured a search warrant and found drugs, a firearm and ammunition, and cash in the ensuing search. Wurie was then charged with drug and firearm offenses.

Since the phone is not used as a weapon, there is no search warrant exception based on *Chimel v. California,*395 U.S. 752, 89 S.Ct. 2034, 23 L.Ed.2d 685, even when the phone is found on or near the person charged. The Court also rejected arguments that the data on a phone can be erased in a very short time with a phone call or a remote directive to the phone causing it to reset. The Court cited Missouri v McNeely for the proposition that obtaining a search warrant should only takes moments these days.

You may be wondering about cell phones, texting and traffic crashes. Some crashes occur that have no reasonable explanation except for distraction. A car fails to slow down when another car is stopped for a left turn. The car slams into the rear of the other car and people are killed. A phone is found in the floor board of the vehicle that failed to slow down.

While neither case considered by the Supreme Court took into account a crash scenario based on a texting driver, the holding is pretty clear. The Court stated, **" Our answer to the question of what police must do before searching a cell phone seized incident to an arrest is accordingly simple—get a warrant."**

In our General Assembly the sponsors of PC 785 basically said the same thing. An officer at a crash scene should photograph the phone to show where it was found, drop it in an evidence bag and begin the process of obtaining a search warrant. The officer should hope the evidence is not wiped out remotely. If evidence is eliminated, a tampering with evidence charge should be considered.*

*As will all advise in this newsletter, check with your District Attorney!

Hello, Goodbye, Thank You.

By Tom Kimball & Jim Camp

With elections scheduled for August 7th and the reality that a number of long time DAs are not on the ballot, we in the DUI Training Section recognize that some District Attorneys will be reading our newsletter for the very first time. The information contained in the newsletter is a small sample of what the DUI Training Section does for prosecutors in Tennessee. As we welcome you, perhaps we should inform you of how we might assist.

The DUI Training Section consists of two Assistant District Attorneys, who have the title of Traffic Safety Resource Prosecutors. They are Jim Camp and Tom Kimball. Administrative Assistant Sherri Harper joins us in our collective mission. Sherri and Tom have offices at the District Attorneys General Conference. Jim is located at the Tennessee Highway Patrol Training Facility in Nashville.

The TSRPs each have 32 years of experience as attorneys, Jim practiced in Wisconsin until he joined the program eight years ago. He was the elected District Attorney in Green Lake, Wisconsin for over 16 years. When he was DA, the term of office was two years long. Jim was elected DA nine times. Since Tennessee has eight year terms, there will probably never be a DA in Tennessee elected as many times! Prior to his service to the people of Wisconsin, Jim specialized in civil trial practice. He can regale with tales of trials about subjects unique to the Badger State. He was willing to give it all up to join the DUI Training Section due to his passion for teaching and his desire to save lives. Working with victims of impaired driving had a major affect on his view of the criminal justice system and the need for training in the field.

Tom Kimball spent his first four years in private practice in Cookeville. He hated divorces and bankruptcy cases. He had a passion for the criminal justice and got his foot in the door by taking a position as the directing attorney of the public defender's office in Pikeville, Kentucky in 1987. That's one of the Hatfield-McCoy counties. In two years he got more trial experience than most attorneys get in a career. He supervised four attorneys and worked in three counties. In 1989, Tennessee began its public defender system and Tom moved back and worked as an assistant public defender in Tazewell and then in Athens. When his son enrolled at Notre Dame High School in Chattanooga, Tom took a position with the Chattanooga District Attorney's office and was put in charge of the Vehicular Crimes Unit. As a public defender, Tom fought for his client, one client at a time. As a prosecutor he fought to protect the 350,000 people who drove or rode on the streets of Hamilton County every day. When the Tennessee District Attorney's General Conference received funds to begin a DUI Training Section, Tom was hired and began the DUI Training Division in 2002.

Our section provides a variety of trainings to prosecutors, law enforcement officers and others. Last year we provided training to 172 prosecutors and 1,910 law enforcement officers. We also spoke to the Judicial Commissioners, medical personnel, teen drivers and a variety of other audiences. We are sometimes called to testify in the General Assembly as legislators struggle to find the right laws to reduce traffic fatalities. We work on various Task Forces on a State and National level.

Our program maintains a DUI Prosecutors Trial Handbook in addition to this quarterly newsletter and Tom is the webmaster of a state traffic safety blog at http://tnduiguy.blogspot.com. This blog provides highly pertinent current traffic safety news and instruction. We also maintain a website at http://dui.tndagc.org. This website provides a wealth of in depth information regarding new legislation as well as trial and DUI issues. Please visit these sites. They exist to help make your life easier.

The DUI Training Section also serves as a resource to prosecutors on a regular basis. In Tennessee, we have thirty prosecutors across the State who do nothing but traffic safety prosecution. These prosecutors are experts in their field. We support them and all other prosecutors by providing materials, cases, reports and more when they are facing challenges.

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TRAINING NOTICE

DUI FOR PROSECUTORS

It is that time again, time for prosecutors to gather and receive the latest information about all things related to DUI and traffic safety. Consider attending DUI FOR PROSECUTORS in Memphis September 16-18, 2014. The course will include instruction about Toxicology, the Standardized Field Sobriety Tests, Drug Recognition, Legislation, and the Tennessee Alcoholic Beverage Commission T.R.A.C.E. program, Ethics and Treatment and Monitoring for DUI offenders. This course will be held at the Courtyard Marriott Downtown Memphis, 75 Jefferson Avenue, Memphis, TN.

Contact Sherri Harper at sjharper@tndagc.org before the August 11th deadline. Expenses including travel, lodging and meals will be provided by the DUI Training Section through a grant funded by the Governor's Highway Safety Office and the National Highway Traffic Safety Administration.

Topics will include:
DUI Detection and Standardized Field Sobriety Tests;
The Drug Recognition Program in Tennessee;
Hot DUI Defenses;
The Toxicological effects of alcohol;
The Effects of Drugs;
The Effects of Synthetic Drugs;
Breath and Blood Testing;
Case Law;
Qualifying Expert Witnesses;
Monitoring Offenders with Technology;
Treatment for Offenders;
Treatment Courts;
Ethics and Self Preservation;
Story Telling;
Argument.

HELP WANTED AND APPRECIATED!

On November 12th-13th, 2014, the TNDAGC DUI Training Section will be conducting a two day COPS IN COURT class for members of the Tennessee Highway Patrol. The class is designed to help officers in their deliver of the truth in the courtroom, every time they are in court.

There are many devices that can be used to try to make an officer look dishonest, unprepared or unprofessional. In this course, officers receive training about professionalism, credibility, communication, testimony, report writing and pre-trial preparation. As part of the course, officers undergo direct and cross examination using a video scenario.

Prosecutors are needed to conduct examinations and provide critiques.

This course was offered to members of THP in May. The following prosecutors assisted and are greatly appreciated. Most prosecutors who help get more than they expect from the experience.
Matt Gilbert, Chandler Harris, Nathan Luna, Robin Martin, Rob McGuire, Tammy Meade, Kristen Menke, Sharon Reddick, Meg Sagi, Marcus Simmons, Rachel Sobrero, Steve Strain, Leandra Varney and Talmadge Woodall.

Contact Tom Kimball if you can assist in November. Email Tom at tekimball@tndagc.org or call him at 615-253-6734.

DID YOU KNOW?
A total of 33,561 people lost their lives in motor vehicle crashes in 2012. Another 2.36 million people were injured. The majority of persons killed or injured in traffic crashes were drivers (63 percent).

TRAINING UPDATE

Eight Tennessee prosecutors deserve a congratulatory pat on the back for their efforts mastering the challenges involved in understanding the physics involved in car crashes. Elizabeth Foy, Matt Gilbert and Chandler Harris of the 20th District; Kate Lavery,11th; Joanne Sheldon, 4th; Marcus Simmons, 14th; Terry Stevens, 9th and Karen Willis of the 19th spent three intensive days in Bowling Green, Kentucky. The Vehicular Homicide training is an annual effort by the Kentucky Attorney Generals Office and the Tennessee District Attorneys General Conference. Topics included: a crash scene investigation after live crashes, the study of pedestrian crashes, single vehicle crashes, intersection and inline crashes. Each type of crash leaves behind its own trail of evidence. These prosecutors were able to examine and watch as troopers walked them through and explained the areas of impact, tire mark evidence, airbag and steering module evidence, drag sled and accelerometer calculations and the collection of witness statements.

Prosecutors also examined how to best work with crash reconstruction officers and toxicologists and prepare for anticipated defenses and defense expert witnesses.

Pictured below are Tennessee and Kentucky prosecutors approaching the crash scenes. They were able to watch the crashes occur and then watch as investigative tools were used to calculate speed.

The dummy on the right would be struck by a car travelling about 30 miles per hour. The dummy had a pocket full of change. Prosecutors got to see the impact, the flight of the dummy and then find where the coins landed.
Physics was never this interesting in school. More importantly, the experience and participation in this setting will permit the prosecutors to remember what they learned long after all the textbooks are forgotten.

VEHICULAR HOMICIDE MURDERERS ROW

STATE V ROOT, 2014 WL 1607372 NINE YEAR SENTENCE AFFIRMED

Jessica Root was driving a 2008 Mitsubishi Eclipse 80 miles per hour with a .12 blood alcohol level. She lost control. Her husband was her passenger and was killed in the crash. Ms. Root challenged her nine year sentence and denial of alternative sentencing. Due to a prior DUI conviction and her behavior after the fatal crash, her appeal was denied.

STATE V KRASOVIC, 2014 WL 2931694 TWELVE YEARS; SIX VICTIMS

Kenneth Krasovic, was charged with one count of vehicular homicide by reckless conduct and five counts of reckless endangerment with a deadly weapon stemming from an automobile crash that occurred in Grundy County. The jury found him guilty on all counts and the trial court sentenced him to a total effective sentence of twelve years and six months. Krasovic appealed in part claiming that the trial court improperly limited counsel's closing argument as to the defense of "sudden emergency." The Court found the defense was able to argue his claim without using the language "sudden emergency" in his speculations about which might have or what could have occurred.

STATE V MASSEY, 2014 WL 2902252 EIGHT YEARS AFFIRMED

John Westin Massey pled guilty to a vehicular homicide that occurred in August of 2012. Massey opted to have a sentencing hearing and when he was sentenced to serve eight years in custody, he appealed. With a .12 blood alcohol level, ambien and another sedative in his bloodstream, Massey crossed over double yellow lines into oncoming traffic and killed another driver, Tracy O'Neal. He was talking on the phone at the time. Massey had previously been to rehab and had been convicted of an alcohol related domestic violence case within a year prior to the crash.

PAINKILLER KILLER

Jamie McLain, 22, of Blountville, has pled guilty and has been sentenced to serve four and one half years. McLain killed retired Tennessee Highway Patrol Trooper Barry Myers. She crossed over the centerline and ran into a vehicle being driven by Trooper Myers' son. They were on the way to church, where they sang in the choir. McLain was under the influence of painkillers. McLain requested alternative sentencing, but had failed a drug test and had been accused of shoplifting while on bond.

EVIDENCE ISSUE REDUCES SENTENCE

Brian Childress of Brentwood, pled guilty to vehicular homicide by intoxication in Murfreesboro. He killed taxi driver, Geoffriau Powell, when he was driving 60 miles per hour in a 40 mph zone on Medical Center Parkway. Childress benefitted from the Missouri v McNeely ruling when his mandatory blood draw was suppressed. An agreement was entered that included 90 days in jail the balance of twelve years on probation.

DID YOU KNOW?

Alcohol-impaired driving fatalities have declined from 48 percent in 1982 to 31 percent in 2012 in the USA.

VEHICULAR HOMICIDE MURDERERS ROW

TWENTY YEARS FOR DRUGGED KILLER

Scott Spangler, 50, of Sevierville was sentenced to twenty years for aggravated vehicular homicide. Spangler had five prior DUI convictions as he drove in Knox County on August 23, 2013. He crossed a lane and slammed into a vehicle waiting to make a turn. That vehicle was then shoved into another. Before it was over Benjamin Woodruff, 38, was killed. Ethan, his seven year old son, continues to try to recover his ability to walk and five other people were injured. Spangler had cocaine and xanax in his bloodstream.

PASSENGER DEATH GETS 15 YEARS FOR REPEAT KILLER

Mark A Pack, 48, of McMinnville, drove with drugs including marijuana in his system on March 8, 2013. He crossed the center line and then over corrected leaving the road, crashing and rolling over. His passenger, Angela Hernandez, 27, was killed. Pack had three prior DUI convictions and was sent to prison in 2006 for leaving the scene of an accident causing death. In that crash, he killed a female pedestrian, Michael Wilson, left the scene and turned himself in a few days later. Pack was also convicted for sneaking drugs into a penal institution.

SEVEN TO TWENTY FOR ROGUE TENNESSEE TRUCKER

Ricky Hatfield, 41, of New Tazewell, has pled guilty in a Pennsylvania Court to aggravated assault, DUI and other charges. He will serve a sentence between seven and twenty years. Hatfield, a truck driver, owned a trucking company in New Tazewell. He drove his vehicle while drinking 12 ounces of peppermint schnapps. He slammed into and severely injured Isaac Espinoza and Francisco Ramos-Barcerra. The two gentlemen will battle with their injuries and memories long after Hatfield is released. Hatfield had a prior DUI conviction while driving a commercial vehicle in Utah. After the crash which closed an interstate for eight hours, Hatfield fled and was found in a bathroom. Hatfield will face a lifetime suspension of his commercial driver's license. He will owe more than half a million dollars in restitution once all the medical bills are collected. The Judge in the case noted, " You became a weapon when you decided to drink that 12 ounces of peppermint schnapps while operating the trailer."

DUI TRACKER REPORT

In the quarter ending on June 30th, 24 Judicial Districts reported that they had opened 2,389 new DUI cases and closed 2,755 cases. The District with the most new cases was the 30th (Memphis and Shelby County) with 211 new cases. The District that closed the most cases was the 15th (Jackson, Macon, Smith, Trousdale, and Wilson County) with 355 closed cases.

Other Judicial Districts that opened the most cases were: the 21st (192), the 10th (188), the 15th (186), the 22nd (172), the 1st (151) and the 26th (147).

Judicial Districts that closed the most cases after the 15th were: the 10th (254), 17th, (241), 1st (198) the 21st (197) and 26th (178).

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Hello, Goodbye, Thank You. (continued)

By Tom Kimball & Jim Camp

We know that cases are dependent of facts and facts are dependent on the ability of the witness. In 2003 we designed a Cops in Court class for Tennessee officers and have provided that training to thousands. The class emphasizes delivering truth to the courtroom. We know most of the tricks of cross-examination. We know that an honest officer can be made to look like a deceitful person if he or she is not prepared. If you want us to help you work with your officers, let us know. We will schedule training and invite you to make sure you get your message to the officers who attend.

Vehicular assault and vehicular homicide cases are challenging. A prosecutor is responsible for examining witnesses, who are specialists in toxicology and others who use physics. Prosecutors and other lawyers usually tried to avoid those topics in school. They are not available in law school! Every year we provide specialized training on those subjects. We bring in one of the top instructors in the country to teach about car crashes. We work with the Tennessee Highway Patrol crash investigation teams and crash reconstruction expert officers in various agencies in the State. Some have better communication systems with DA offices than others. We want you to have the best. We can help you establish that connection.

We work with victim groups including Mothers Against Drunk Driving to make sure that citizens receive the knowledge they need to understand what the Courts can and cannot do with their cases. We try to explain our sentencing laws, limitations on the use of evidence and other aspects of cases, so that injured, hurting people will not incorrectly blame you if something happens over which you have no control. We are bluntly honest with these groups. We have explained how our sentencing laws are far from the truth in sentencing. We all know that ten years in prison usually means less than two years in prison for a standard range offender in Tennessee. That is not your fault and you should not be blamed for the early release of a prisoner or for trying to structure a settlement based on reality.

We look forward to meeting you, whoever and wherever you are. As part of our mission, Jim and I travel across Tennessee and we will come to you for a visit as soon as you are settled in and ready to meet. We want you to succeed, because we want more Tennesseans to live. We know the relationship between the prosecution of DUI offenders in your community and the number of fatalities on your roadways depends on you and your law enforcement officers and some other entities.

To our old friends who have moved on, thank you for your assistance and your commitment. Your leadership and efforts have contributed to saving many lives. You will always be heroes, unsung heroes most of the time, but heroes forever.

TENNESSEE LIFESAVERS

Registration for the 2014 TN State Lifesavers Conference is now open!
The 27th Annual Tennessee Lifesavers Conference will continue the tradition of top-quality education and unparalleled networking opportunities. The conference will be held Setember 3-5, 2014 at the Embassy Suites Hotel & Conference Center in Murfreesboro, TN.

Tennessee Lifesavers and Law Enforcement Challenge is **free** to any individual interested in attending. Pre-registration is required. For hotel information and more, go to http://www.tnlifesaverschallenge.com/