



DUI BASICS

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HINKLE

Aussie Doodle named for Hinkle Fieldhouse which was the largest basketball arena in the country when it was built in 1928 and is home to Butler Basketball

Joe's Perspective

- Introduction/Welcome
- Questions/Pace= Conversation and Not a Lecture
- Look at Real World Situations
- DUIs are the Toughest, Hardest, Time Consuming Cases (TECHNICAL)
- Expensive, Toughest & Smartest Defense Attorneys
- First Degree Murder vs. DUI Statute



DUI Cases have lots of players

First Responders

Patrol Officers

Investigators

Critical Incident Response

TBI Toxicologists

Crash RECON's

DREs

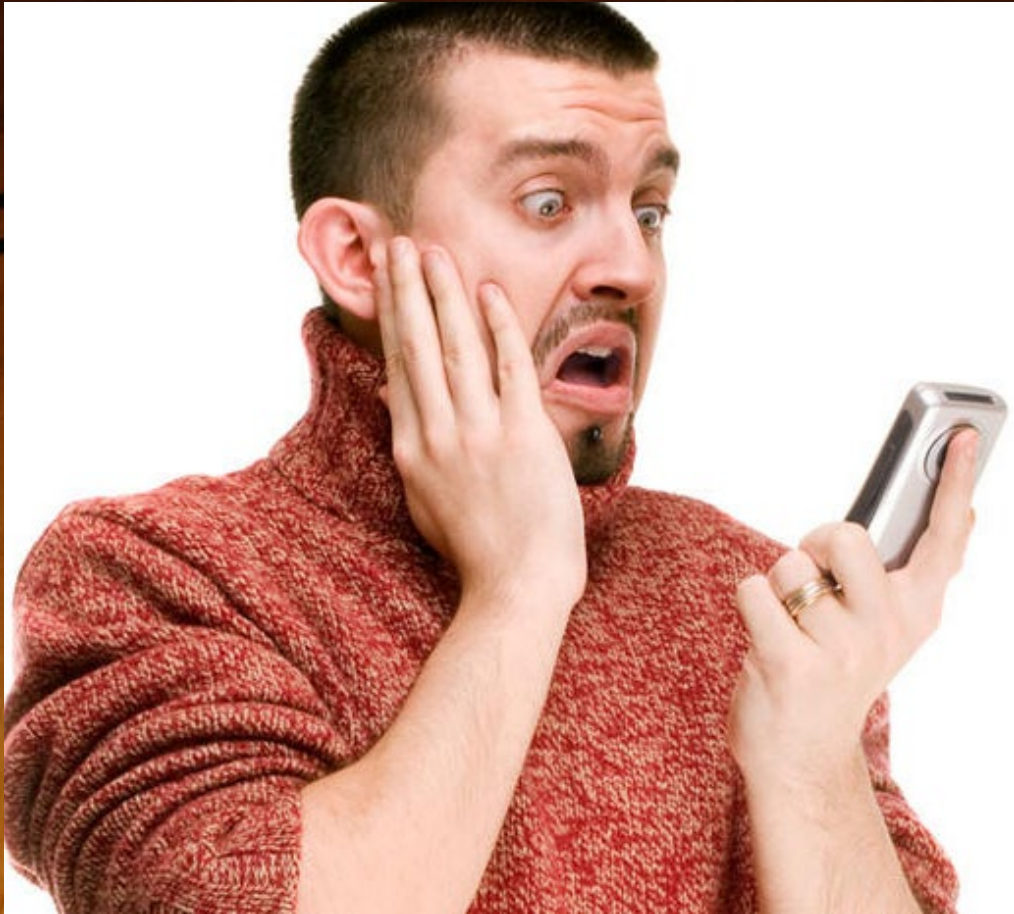
Prosecutors

Defense Attorneys

DRIVING UNDER THE INFLUENCE TCA 55-10-401

- (a) It is unlawful for any person to drive or to be in physical control of any automobile or other motor driven vehicle on any of the public roads and highways of the state, or on any streets or alleys, or while on the premises of any shopping center, trailer park or apartment house complex or any other premises that is generally frequented by the public at large; while:
 - 1) Under the influence of any intoxicant, marijuana, controlled substance, controlled substance analogue, drug, substance affecting the central nervous system or combination thereof that impairs the driver's ability to safely operate a motor vehicle by depriving the driver of the clearness of mind and control of oneself that the driver would otherwise possess.
 - 2) The alcohol concentration in the person's blood or breath is .08% or more; or,
 - 3) CMV is .04% or more.

DUI: THREE ELEMENTS



- **PHYSICAL CONTROL** OF A MOTOR VEHICLE
- **PUBLIC ROADWAY** OR PLACE FREQUENTED BY THE PUBLIC
- **IMPAIRED** TO SOME EXTENT

PHYSICAL CONTROL

- The location of the defendant in relation to the vehicle
- The whereabouts of the ignition key
- Whether the motor was running
- The defendant's ability, but for his intoxication, to direct the use or non-use of the vehicle
- The extent to which the vehicle itself is capable of being operated or moved under its own power or otherwise

PHYSICAL CONTROL

- Admissions to driving
- Combination of physical control and circumstantial evidence
- Don't assume these facts
- ***TOTALITY OF THE CIRCUMSTANCES***

STATE vs. LAWRENCE

- In reaching this conclusion, the TN Supreme Court stated, “It is our opinion that the Legislature, in making it a crime to be in physical control of an automobile while under the influence of an intoxicant, ‘intended to enable the drunken driver to be apprehended before he strikes.’ See *Hughes*, 535 P.2d 1023,1024 (Okla. 1975).

PHYSICAL CONTROL

- *State v. Butler*, 108 S.W.3d 845 (Tenn. 2003)
 - Butler was in physical control while 100 yards from his motorcycle.
 - He admitted driving to the parking lot.
 - Combination of physical control and circumstantial evidence was sufficient.
 - Physical Control and Circumstantial evidence.

PUBLIC ROADWAY OR FREQUENTED BY THE PUBLIC

- **PUBLIC STREETS**
- **HIGHWAYS**
- **INTERSTATES**
- **APARTMENT COMPLEXES**
- **BUSINESS PARKING LOTS**
- **GATED COMMUNITIES**
- **PRIVATE CLUBS**
- **WHAT ARE SOME OTHER 'CLOSE CALLS'?**

IMPAIRMENT

- (1) Under the influence of any intoxicant, marijuana, controlled substance, controlled substance analogue, drug, substance affecting the central nervous system or combination thereof that impairs the driver's ability to safely operate a motor vehicle by depriving the driver of the clearness of mind and control of oneself that the driver would otherwise possess
 - 2) The alcohol concentration in the person's blood or breath is .08% or more; or,
 - 3) CMV is .04% or more

IMPAIRMENT

- “Impairs the driver's ability to safely operate a motor vehicle by depriving the driver of the clearness of mind and control of oneself that the driver would otherwise possess”



PROBABLE CAUSE

Probable cause is **MORE THAN A MERE SUSPICION.**

BUT, remember, it is significantly less than the strength of evidence necessary to find a defendant guilty beyond a reasonable doubt.

Probable cause is based on the totality of circumstances known to the officer at the time of arrest including:

All observations

Admissions

HGN

Totality of Circumstances AND Probable Cause

- The supreme court held that the officer had probable cause to arrest the defendant for DUI without a warrant. Performance on field sobriety tests is but one of the many factors officers should consider when deciding whether to arrest a motorist for DUI or similar offenses without a warrant.
- State v Bell, 429 S.W.3d 524 (Tenn. 2014)

IMPAIRMENT

ALTERNATIVE TESTS TO SFSTs

- Rhomberg Balance Test
- Finger to Nose
- Finger Dexterity
- Alphabet
- Counting
- Lack of Convergence
- VGN
- DON'T FORGET ALL OF THE OBSERVATIONS. WHAT ARE SOME???
- ARIDE CLASSES/DRE CERTIFICATIONS

DRIVING UNDER THE INFLUENCE PER SE 55-10-401 (A) (2)

- Aid in prosecuting DUI offenders
- Show the driver's BAC was at or above the statutory limit
- Raises **ONLY** an inference of guilt
- Often required to secure a conviction

IMPLIED CONSENT T.C.A. 55-10-406

REMEMBER THIS IS A CIVIL VIOLATION

WE MUST BE ABLE TO PROVE:

There was Probable Cause for an arrest for DUI

The Defendant was advised of what could happen if he refuses

The Defendant refused the Test

IT IS SMART TO READ THE FORM TO THEM

Search Warrants



- The Fourth Amendment permits warrantless breath tests incident to arrests.
- Motorists could not be deemed to have consented to submit a blood test on pain of committing a criminal offense.
- The intrusiveness of blood tests requires a knowing and voluntary consent, search warrant or exigent circumstances
- Birchfield v. North Dakota
136 S.Ct. 2160 (2016).

Preference for Search Warrant

Missouri v McNeely, 133 S.Ct. 1552 (2013)

U.S. Supreme Court rules that search warrants are mandatory for blood draw, unless consent or exigent circumstances exist.



SEARCH WARRANTS vs. IMPLIED CONSENT

BREATH TESTS

- **Breath Test:** You may require a breath test as a search incident to a lawful arrest
- **State v Sensing, 843 S.W.2d 412 (Tenn. 1992)**
- The Sensing case established that breath testing devices are reliable and an officer can testify if observation procedures are followed precisely
- PBT's may not be used in Trial unless Calibrated to comply with the Sensing Requirements.

BLOOD TESTS

- **Blood:** Must have
- **1) Consent**
- **2) Search Warrant or**
- **3) Exigent Circumstances**
 - **Exigent Circumstances: YOU PROBABLY DON'T HAVE IT**
 - **GET A SEARCH WARRANT** rather than relying on Exigent Circumstances
 - **IMPORTANT: Make sure you have them/or Indicate the DATE AND TIME**

State v Pulley, 863 S.W.2d 29 (Tenn. 1993)

- Seizure Decision
- The defendant was seized when the officer activated his blue lights.
- Officer must have reasonable suspicion or probable cause to seize a driver by initiating blue lights.....
- Exceptions are rare.



State v. Smith

484 S.W.3D 393 (2016)

- Reasonable Suspicion to Stop
- Ms. Smith once cross and twice touch the fog line (With both right tires)
- Followed for 2 more miles without further infractions
- TCA 55-8-123 Failure to Maintain Lane
- Officer must articulate specific facts for the stop (Lane departure was impracticable or without safety of move first ascertained)

State v. Davis, Jr.

484 S.W.3d 138 (2016)

- **PROBABLE CAUSE TO SEIZE**
- **Crossed the double yellow line (With both left tires)**
- **TCA 55-8-115 Driving on the Right Side of the Roadway**
- **Observation of an actual traffic violation creates probable cause to seize**

State v Hanning, 296 S.W.3d 44 (Tenn. 2009)

- The anonymous tip reporting reckless driving indicated a sufficiently high risk of imminent injury or death to members of the public to warrant immediate intervention by law enforcement officials and justified the brief investigatory stop because the offense was reported at or near the time of its occurrence.
- The report indicated that the caller was witnessing an ongoing offense; the report provided a detailed description of the truck, its direction of travel and location; and the investigating officer verified those details within moments of the dispatch reporting the tip.
- It is extremely helpful if the officer or the 911 dispatcher can get the identifying information of the citizen making the complaint. Also, the more information that the officer can collaborate regarding the complaint, the more reliable the information and the greater chance of winning a suppression motion

Community Caretaking: State v. McCormick

The Court will examine five factors:

- **1) The nature and Level of Distress exhibited by the citizen;**
- **2) The location;**
- **3) The time;**
- **4) The accessibility and availability of other assistance; and**
- **5) The risk of danger if the officer provides no assistance.**

SUMMARY



- To summarize:
- Tennessee has very restrictive laws concerning HGN and blood testing.
- Tennessee has favorable decisions concerning probable cause, physical control, Miranda and breath testing.

Bond Conditions for DUI Cases

- Unless the court determines that the requirement would not be in the best interest of justice and public safety, when the court is determining the amount and conditions of bail to be imposed upon a defendant who has been charged with driving under the influence of an intoxicant, under § 55-10-401, vehicular assault, under § 39-13-106, aggravated vehicular assault, under § 39-13-115, vehicular homicide, under § 39-13-213(a)(2), or aggravated vehicular homicide, under § 39-13-218, and the alleged offense involved the use of alcohol, the court shall require the defendant to operate only a motor vehicle equipped with a functioning ignition interlock device if:



Tenn. Code Ann.
§ 40-11-118

BOND CONDITIONS

(i) The offense resulted in a collision involving property damage;



Tenn. Code Ann.
§ 40-11-118
BOND CONDITIONS

(ii) A minor was present in the vehicle at the time of the alleged offense;



BOND CONDITIONS

(iii) The defendant's driver license has previously been suspended for a violation of § 55-10-406

PAST CONVICTIONS

- or
- (iv) The defendant has a prior conviction for:
 - (a) Reckless driving, under § 55-10-205;
 - (b) Reckless endangerment, under § 39-13-103;
 - (c) Driving under the influence of an intoxicant, under § 55-10-401;
 - (d) Vehicular assault, under § 39-13-106;
 - (e) Aggravated vehicular assault, under § 39-13-115;
 - (f) Vehicular homicide, under § 39-13-213(a)(2); or
 - (g) Aggravated vehicular homicide, under § 39-13-218.



DUI -

STATE OF TENNESSEE

NO: [REDACTED]

BOND CONDITION ORDER FOR DUI CHARGES

Pursuant to Public Chapter NO: 1134, Senate Bill NO: 882, and House Bill NO: 1188 going into effect July 1, 2022, the above defendant in the best interest of justice and public safety shall have as conditions of his/her bail the following;

- Must have any vehicle he/she is driving to be equipped with a functioning ignition interlock device if:
- The offense resulted in a collision involving property damage;
- A minor was present in the vehicle at the time of the alleged offense;
- The defendant's driver license has previously been suspended for violation of 55-10-406 or *20 years ago*
- The defendant has a prior conviction for:

- Reckless driving under 55-10-205;
- Reckless endangerment under 39-13-103
- Driving under the influence of an intoxicant under 55-10-401
- Vehicular assault under 39-13-106
- Aggravated vehicular assault under 39-13-115
- Vehicular homicide under 39-13-213(a)(2) or
- Aggravated vehicular homicide under 39-13-218

If the court imposes a condition of a functioning ignition interlock device then the defendant must report compliance with the condition by submitting proof of ignition interlock to the district attorney general's office within 10 days of being released on bail. **PROOF MAYBE SUBMITTED ELECTRONICALLY.**

- Pre-trial supervision with Community Probation Services. Must report within 24 hours of release on bail.
- Pre-trial supervision with Community Probation Services. Must report before being released from Roane County Detention Facility.
- Defendant must be fitted with a GPS monitor before being released on bail.

DUI BOND CONDITIONS

If you need one of these forms, please let us know and we will get them to you!

WARRANTS vs. CITATIONS

- In Defendant's case, the trial court specifically found that the magistrate "was neutral and detached and capable of the probable cause determination." Defendant does not specifically challenge this finding by the trial court. Instead, Defendant asserts the "Uniform Citation" was void *ab initio* because it fails to make a specific "finding of probable cause, [and] merely contained a signature that the contents had been sworn to under oath." We reject Defendant's argument that the magistrate must specifically state "I find probable cause." Defendant argues that the "Uniform Citation" document fails to qualify as an arrest warrant because it does not have "a finding of probable cause" as mandated by T.C.A. § 40-6-204. Defendant's argument is misplaced. T.C.A. § 40-6-204 addresses the written "examination" of the [*8] law enforcement officer which sets forth facts given by the officer to establish probable cause for an arrest, as is required by T.C.A. § 40-6-203. T.C.A. § 40-6-204 does not require the magistrate to state in the warrant that "I find probable cause exists to authorize arrest of the defendant" or any other similar declaration. Instead, T.C.A. § 40-6-204 merely requires that the written examination mandated in T.C.A. § 40-6-203 set forth the *facts stated* by the affiant which establish probable cause. "The written examination *shall set forth the facts* stated by the affiant or affiants that establish that there is probable cause to believe an offense has been committed and that the defendant committed it." T.C.A. § 40-6-204.

[State v. Hall, 2015 Tenn. Crim. App. LEXIS 901, *7-8, 2015 WL 6872661 \(Tenn. Crim. App. November 9, 2015\)](#)

CITATIONS

- HOLDINGS: [1]-It was not error to deny defendant's motion to dismiss for failure to initiate his DUI prosecution within the statute of limitations in Tenn. Code Ann. § 40-2-102 because the issuance of an arrest warrant was a means of initiating a prosecution, and the citation issued to defendant met all requirements of Tenn. Code Ann. § 40-6-201 for an arrest warrant, as it was issued by a neutral and detached magistrate capable of a probable cause determination, and Tenn. Code Ann. § 40-6-204 did not require the citation to contain the magistrate's finding of probable cause to arrest defendant but only that the written examination mandated in Tenn. Code Ann. § 40-6-203 set forth facts stated by the affiant establishing probable cause.

[State v. Hall, 2015 Tenn. Crim. App. LEXIS 901, *1, 2015 WL 6872661 \(Tenn. Crim. App. November 9, 2015\)](#)



SILAS GABLE FLATT LAW

T.C.A. 55-10-427

Providing vehicle
to intoxicated
individuals or
individuals with
suspended or
revoked license

SILAS GABLE FLATT LAW

- (a) It is an offense for a person to knowingly provide a motor vehicle to another person who the provider of the vehicle knows or reasonably should know is under the influence of an intoxicant, marijuana, controlled substance, controlled substance analogue, drug, substance affecting the central nervous system, or combination thereof.

SILAS GABLE FLATT LAW

- **(b)** It is an offense for a person to knowingly provide a motor vehicle to another person who the provider of the vehicle knows or reasonably should know is a person whose driver license has been suspended or revoked by the court pursuant to § 55-10-404 unless
 - **(1)** The person receiving the motor vehicle has been granted a restricted driver license pursuant to § 55-10-409; and
 - **(2)** The motor vehicle is being provided for a purpose permissible under the court order granting the person's restricted driver license.

Penalties



- **(c)(1)** A person who violates this section commits a Class A misdemeanor.
- **(2)** If the violation is the person's first violation, then the person shall be sentenced to a minimum of forty-eight (48) hours of incarceration.
- **(3)** If the violation is the person's second violation, then the person shall be sentenced to a minimum of seventy-two (72) hours of incarceration.
- **(4)** If the violation is the person's third or subsequent violation, then the person shall be sentenced to a minimum of seven (7) consecutive days of incarceration.

JOE'S Final Shot

- Thank You
- Be Passionate
- Communicate
- Mistakes Happen
- Take Your Time
- Be honest with your Officers
- Reach out to your prosecutors
- Rely on your Judges
- Quiet Heroes
- Think Big



THANK YOU AND THINK BIG!

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