

# Driving Under the Influence

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# The DUI UNIT

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- 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
- Monday Morning QB

# THE DUI UNIT

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- JOE'S DISCLAIMERS:
- Listen to your Superiors and Experts
- I don't know everything...just ask my wife
- If I don't know, I will try my best to find out

# Tennessee's DUI Statute 55-10-401

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- (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 there of 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

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- 1: Physical Control of a Motor Vehicle
- 2: On a public roadway or a place frequented by the public
- 3: Impaired to some extent

# PHYSICAL CONTROL

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- 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

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- Admissions to driving
- Combination of physical control and circumstantial evidence
- Don't assume these facts
- Totality of the Circumstances



## State v. 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.



Totality of Circumstances

Probable Cause

State v Bell, 429 S.W.3d 524

(Tenn. 2014)

- 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.

# PROBABABLE CAUSE TO ARREST

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- 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

# CRIMINAL OFFENSE

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- Guilty: Establish facts of each element
  - BEYOND A REASONABLE DOUBT
  - NOT BEYOND ANY DOUBT
  - 'Lay your head on your pillow and have a clear conscious'
  - NOT CSI
  - NEVER HAVE AN 'A-HA' MOMENT IN TRIAL

MUST PROVE EACH AND EVERY ELEMENT BEYOND A REASONABLE DOUBT:

- 1) Driving or in control of a motor vehicle
- 2) On a public road or place frequented by the public
- 3) While under the influence

Totality of Circumstances

Probable Cause

State v. Reynolds, 504 S.W. 3d 283  
(Tenn. 2016)

- Probable cause is based on the totality of circumstances known to the officer at the time of arrest, including all observations, admissions, and HGN

# Per Se Purpose

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



# IMPLIED CONSENT 55-10-406

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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

He refused the Test

IT IS SMART TO READ THE FORM TO THEM

# Birchfield v. North Dakota

136 S.Ct. 2160 (2016).

- 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

# IMPLIED CONSENT 55-10-406

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- Breath Test: You may require a breath test as a search incident to a lawful arrest
- Blood: Must have a Search Warrant or Exigent Circumstances
  - Exigent Circumstances: YOU PROBABLY DON'T HAVE IT
  - GET A SEARCH WARRANT rather than relying on Exigent Circumstances
  - Helpful at Trial that the Defendant Refused
  - Strategy: Issues with Implied Consent Form may let them waive to the GJ
  - IMPORTANT: Make sure you have them/or Indicate the DATE AND TIME
  - PBT's may not be used in Trial unless Calibrated to comply with the Sensing Requirements.

# IMPLIED CONSENT 55-10-406

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- It is the officer's decision as to whether to offer a breath or blood test.
- The defendant is not entitled to consult with anyone, even an attorney, as to whether or not to consent to a blood or breath test.
- The law is continually changing. Do your best.
- Make sure the Defendant signs the form (some will refuse and that is okay).
- Make sure to provide the date and time.
- Make sure to keep the Implied Consent Form in your case file or turn them in with the warrants.

# Key Features of Implied Consent in Tennessee

Operates or controls motor vehicle

Operator shall be deemed to have given consent to a chemical test to determine blood alcohol and/or drug content when probable cause exists for DUI (Must get actual consent)

- Breath – May require Incident to an arrest
- Blood – Must have Consent, SW or Exigent Circumstances
- Refusal may = DL and ignition interlock device requirements

# HGN ADMISSIBILITY

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- State v. Murphy: “scientific, technical, or other specialized knowledge” Rule of Evidence 702.
- May not testify to HGN, 20/20 Class, Qualified as Experts
- But may use HGN when determining probable cause for arrest
- PLEASE DO HGN EVERY TIME
- BEST SFST tests
- DRUG or Combination DUIs

# REFUSE or UNABLE TO PERFORM SFSTS

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- Alternative Tests:
- Romberg 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

# TENNESSEE DUI'S

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- Tennessee has very restrictive laws concerning HGN AND BLOOD TESTS
- Tennessee has favorable decisions concerning probable cause, physical control, Miranda and breath testing



# REASONABLE SUSPICION v. PROBABLE CAUSE

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- **REASONABLE SUSPICION:** a particularized and objective basis for suspecting the subject of a stop of criminal activity, and it is determined by considering the totality of the circumstances surrounding the stop. (MORE THAN A HUNCH).
  - Supported by specific and articulable facts, that a criminal offense has been or is about to be committed.

**PROBABLE CAUSE:** There is a reasonable basis for suspicion of a crime or evidence of a crime. The Whole set of facts and conditions that form a reasonable basis for a reasonable Police Officer to suspect a crime has been committed, a person has committed it, or there is evidence of it in a given place at a given time.

## Reasonable Suspicion

State v. Smith, 484 S.W.3D 393 (Tenn. Crim. App. 2016)

- 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)

# DUI

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- BLUE LIGHTS EQUAL SEIZURE (SAFETY)
- FAILURE TO MAINTAIN LANE (lane departure was impracticable or without safety).
- OBSERVATION OF AN ACTUAL TRAFFIC VIOLATION CREATES PROBABLE CAUSE TO SEIZE
- 911 Citizen Complaint and CORROBORATION
  - Time, Place, Direction, Description and See the Behavior Reported

## Probable Cause

State v. Davis, Jr., 484 S.W.3d 138  
(Tenn. Crim. App. 2016)

- 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

Seizure Based on Call Info  
State v. Hanning, 296 S.W.3d 44  
(Tenn. 2009)

- 911 Anonymous Citizen Call-in
- Information provided detailed description of truck, direction of travel and location.
- Officer verified details and located vehicle as described.

State v. Fallon Jenkins Moore  
2020 Tenn. Crim. App. LEXIS 574

- Defendant's seizure was supported by reasonable suspicion, the informant was a known citizen and the information he provided to police via the 9-1-1 dispatcher could be presumed reliable and the officer corroborated the information.
- The officer located the potential vehicle and confirmed his findings with dispatch within one-minute of receiving the information.

# COMMUNITY CARETAKING FACTORS

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- The nature and level of distress exhibited by the citizen
- The Location
- The Time
- The accessibility and availability of other assistance; and
- The risk of danger if the officer provides no assistance
  - ALL FACTORS ARE WEIGHED
  - TOTALITY OF THE CIRCUMSTANCES

## Community Caretaking State v. McCormick, 494 S.W.3d 673 (Tenn. 2016).

- The community caretaking function is an exception to the warrant requirement of the federal and state constitutions.
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- Totality of the Circumstances provide that community caretaking action was needed and officer's behavior and actions were tailored to address the need.
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Miranda

State v. Frasier, 914 S.W.2d 467 (Tenn.  
1996)

- Miranda and DUI investigations

- Driver had no right to consult with attorney before making decision as to whether to submit to or refuse blood or breath alcohol test.
- Request for suspect to submit to blood alcohol test is not “interrogation,” within meaning of *Miranda*, but rather, amounts to police words or action normally attended to arrested custody.

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.

# Bond Conditions for DUI Cases

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- 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:

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

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

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

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.

[Tenn. Code Ann. § 40-11-118](#)

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 \(Tenn. Crim. App. November 9, 2015\)](#)

Thanks for all that  
each of you do on a  
daily basis!!!

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