Between the Lines

CHANGE HAPPENS

Volume 25, Issue 3
August, 2017

Mark Your Calendars for these NDAA courses:

Investigating and Prosecuting Homicide In the Era of Crime TV
October 9–13, 2017
St. Petersburg, FL

Office Administration Course
November 13–17, 2017
Santa Fe, NM

Forensic Evidence
December 11–14, 2017
Phoenix, AZ
See the NDAA website for details

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In 1993 the National Traffic Law Center (NTLC) published the first issue of ***Between the Lines***. That first volume featured stories about the establishment of the NTLC, Daubert and Frye standards for the admission of expert testimony, and zero tolerance laws for consumers of alcohol under the age of 21.

In 1993 NTLC staff wrote the articles. The staff included the first Director Tricia Gould, Staff Attorney Jesselyn McCurdy, and Administrative Assistant Candace Rodriguez. Twenty four years later, we are still discussing these topics on a regular basis.

Additional topics that are part of today's discourse include drugged, distracted and reckless driving, the challenges of fatal and injurious crashes, and a host of other topics that have become prevalent. These issues emerge as we strive to bring light to the many challenges facing those who seek to reduce the carnage on our roadways.

The type and formats of *Between the Lines** have changed during the last two decades, but the length of the newsletter has remained the same. The focus has generally been on one significant article. The most recent issue focused on testing devices for marijuana detection. The issue prior focused on autonomous vehicles. To accomplish our goal of enhanced information for our traffic safety partners and advocates, we have decided to expand this newsletter and add some new features.

Since I became the Director of the NTLC in January, I have been astounded by the amount of information that is within the glass building in which the NTLC is housed. I believe we can better serve our nation's prosecutors if they are made aware of the treasure trove of resources available here. Accordingly, I hope we can provide increased services as we expand this newsletter.

Tom Kimball

* A full list of past issues begins at page 21

The Reckless Ones

By Peter J. Grady

AS prosecutors, law enforcement officers and safety advocates struggle to rein in the out of control problem of **Distracted Driving,** we need to remember that we have decades of experience with the problem of reckless drivers. Almost all States have some form of punishing recklessness. Are distracted drivers reckless drivers? That will depend on the definition of recklessness found in the particular State codification of law. Senior Attorney, Pete Grady wrote the following synopsis of those laws.

All 50 states and the District of Columbia prohibit "reckless driving".[1] Most jurisdictions have a specific statute which designates an offense as "reckless driving" and defines and prohibits the behavior.[2] Maine has a statute which prohibits "reckless" conduct , and New Hampshire prohibits "negligent" or "grossly negligent" driving behavior. Kentucky and Missouri have statutes which establish a state specific standard for proper operation of a motor vehicle, to permit the sanctioning of behavior which does not meet the respective standard.[3]

Although most states have a specifically identified "reckless driving" statute, the concept of "recklessness" in those statutes varies from state to state. States have differing definitions of what type of behavior—or what mens rea which accompanies prohibited behavior—constitutes a violation of the statute.

Some states simply prohibit "reckless" driving and then provide a definition consisting of words which describe a "reckless" mens rea. These statutes can fairly be described as "subjective" statutes because the statutory prohibition is focused on the mental state of the driver. Other states prohibit reckless driving when the driver fails to meet an objective standard of reasonableness, or when a "per se reckless" offense is committed. And still other states define reckless driving by combining a subjective standard with an objective standard, or by defining the offense in a way to embrace either standard.[4]

Alabama is an "either/or" state with two definitions of "reckless driving". The first definition provides that a person is reckless if driving "carelessly and heedlessly in willful or wanton disregard for the rights or safety of persons or property"—language which focuses on the driver's mens rea and which establishes a subjective standard of recklessness. However, the next clause of the same statute defines reckless driving as driving "without due caution and circumspection and at a speed or in a manner so as to endanger or be likely to endanger any person or property"—an objective standard which requires consideration of what a reasonable person would deem "due caution and circumspection", or what a reasonable person would consider driving "in a manner so as to endanger or be likely to endanger" persons or property.

1 Reckless "driving" does not always require use of a motor vehicle. In addition to motor vehicles, the Hawaii reckless driving statute covers animals, the Colorado statute covers bicycles and low power scooters, and the Louisiana reckless driving statute covers aircraft, vessels, and "other means of conveyance."

2 See the chart on pages 26-31 of this issue for citations to specific state statutes.

3 In Kentucky, motor vehicles must be operated "in a careful manner, with regard for the safety and convenience of pedestrians and other vehicles. . ." In Missouri, motorists are directed to "exercise the highest degree of care" and to operate motor vehicles "in a careful and prudent manner."

4 The legislative history of the Wisconsin statute is an example of the difficulty of arriving at a precise definition of recklessness. In 1987, the "reckless driving" statute was changed to remove the word "reckless" from everything but the title of the statute. That 1987 change created (most of) the current statute, which uses the word "negligent" to describe the prohibited conduct, and refers to the definition of "negligent" in another statute, where the term is defined as "criminal negligence". After the 1987 legislative change, there was no "recklessness" in the Wisconsin "reckless driving" statute. However, in 1997, the Wisconsin statute was amended to prohibit "recklessly" endangering a person by committing a railroad crossing violation. The 1997 amendment reinserted "recklessness" into the statute, but did not define the concept, so "reckless" behavior is prohibited but not defined in one section of the amended (and now current) Wisconsin "reckless driving" statute.

The New Mexico statute requires proof of both a subjective ***and*** an objective standard. The statute prohibits driving "carelessly ***and*** heedlessly in willful or wanton disregard of the rights or safety of others and without due caution and circumspection and at a speed or in a manner so as to endanger or be likely to endanger any person or property." (Emphasis supplied.)

Many states use only a subjective standard. California, Texas, Pennsylvania, Illinois, Wyoming, Iowa, Georgia, Hawaii, Kansas and other states define recklessness solely by focusing on the driver's mens rea. Statutes in these states (many of which have not been changed or updated in decades) generally prohibit driving with a "willful or wanton disregard of the safety of persons or property".[5]

Some states identify specific offenses as constituting reckless driving. In Utah, one definition of reckless driving is the commission of "three or more moving traffic violations . . . in a series of acts occurring within a single continuous period of driving covering three miles or less of total distance." In Tennessee, a motorcyclist commits reckless driving by operating a motorcycle "with the front tire raised off the ground in willful and wanton disregard for the safety of persons or property"[6] in certain areas—unless the operator is 18 years of age or older, in a parade, and traveling less than 30 m.p.h. Tennessee drivers also commit reckless driving by knowingly ignoring flood warning signs or barricades and driving "into a road area that is actually flooded".

Wisconsin per se reckless

Massachusetts has several per se reckless driving offenses, including violating the speed limit "for the purpose of making a record", leaving the scene, and allowing another to use a license or learner's permit. Other instances of states designating certain acts as per se reckless driving include attempting to elude or flee from an officer (Rhode Island), railroad crossing violations by driving through, around or under a crossing gate (Wisconsin), speeding of 100 m.p.h. or greater (New Hampshire) or speeding in excess of 85 m.p.h. (Connecticut), passing a stopped school bus displaying a flashing red signal (Montana) or a school bus with its arm signal extended (Indiana), drag racing (Minnesota, Massachusetts, New Hampshire and other states), passing "when there is a line in (the driver's) lane indicating a sight distance restriction" (Idaho), and "knowingly" using an incline to cause a vehicle "to become airborne" (Illinois).

Tennessee per se Reckless

Eighteen states enhance punishment for second and subsequent offenses, and Idaho recognizes foreign convictions for purposes of enhancing in-state charges. Several states enhance punishment for causing injury to persons or property.[7]

Some states (Alaska, Maryland, Mississippi, New Jersey, New Mexico, Oregon, Michigan, Montana, Nebraska and South Dakota) have statues defining "negligent" or "careless" driving, and some of those states provide that those offenses are lesser included offenses of a reckless driving charge.

Michigan has a separate statute which punishes causing a death by commission of "moving violation". The Michigan reckless driving statue refers to this "moving violation" statute and provides that the "moving violation" charge may not be considered by a jury which is considering a charge of causing a death by reckless driving. In such cases, "the jury shall not be instructed" regarding the moving violation statute.

5 This is California's statutory language; other states have similar formulations with minor differences in language, Some of those states—Tennessee, South Carolina, Mississippi, Texas, and Delaware—use the archaic spelling "wilful" in defining the required mens rea.
6 Note the combined objective and subjective standards in this portion of the Tennessee law.
7 State statutes which specifically punish causing injury or death by motor vehicle are not included in this review. The absence of language in a statute concerning injury or death does not mean that such statutes do not exist in the respective states.

The Reckless Ones

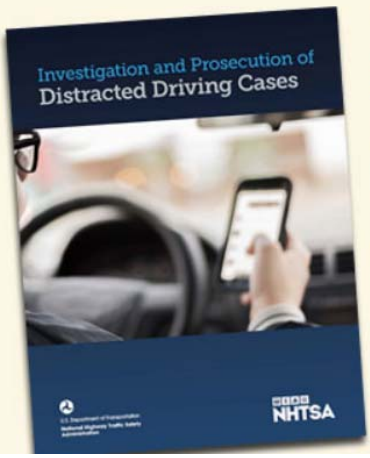
Two states recognize that a reckless driving conviction can sometimes be the result of a plea bargain from a reduced DWI charge (Washington), or that a charge of reckless driving sometimes involves the use of drugs or alcohol (Florida). Reckless driving statutes in those two states provide for special punishments and rehabilitation services to be ordered where drugs or alcohol were involved in a reckless driving prosecution.
The Alabama reckless driving statute provides that "neither reckless driving nor any other moving violation" is a lesser included offense of DWI.
A list of all State Reckless Driving Laws is available starting on page 26.

3,477
Number of peDriving in ople killed by Distracted 2015

DISTRACTION AND RECKLESSNESS

In the past decade, State Legislatures have worked to craft distracted driving laws.[1] In 2011 a study published in the American Journal of Preventive Medicine indicated that 39 States had passed distracted driving laws, but as the study's authors indicated, "Current US laws are not strictly enforced. Punishments are so mild that people pay little attention. Drivers are not categorically prohibited from using phones while driving. For example, using earphones to talk and text with a hands-free device remain legal."[2]
When a texting driver crashes and kills, that driver is usually charged with reckless homicide or a State-defined equivalent to reckless homicide. As "The Reckless Ones" indicates, many States have defined recklessness based on the end result (death), not by the activity of the driver. Was the reckless driver reckless two minutes before the fatal crash while texting? Did the texting only rise to reckless conduct at the point of the collision?
Generally speaking, States have greater penalties for reckless driving than for distracted driving. Perhaps it is time to rethink how we as prosecutors charge distracted drivers and how Legislators can work to either include texting and other examples of distracted driving as per se examples of reckless driving, or make the consequences for those offenses equal to those imposed for reckless driving.

[1] A helpful chart is available from the Governors Highway Safety Association at: http://www.ghsa.org/state-laws/issues/Distracted-Driving
[2] http://dx.doi.org/10.1016/j.amepre.2014.07.004



The National Traffic Law Center announces its latest publication:
Investigation and Prosecution of Distracted Driving Cases

This publication gives a general overview to the issues raised by distracted driving. It was written in collaboration with the National Highway Traffic Safety Administration (NHTSA), the National Association of Attorneys General (NAAG) Traffic Safety Resource Prosecutors and law enforcement contributors.

Visit our **publications section** to find this and other Traffic Law publications.

State Supreme Court Decisions

READING BETWEEN THE LINES

LITIGATION is the bread and butter of lawyers in every State and District. Issues determined in two States whether they are adjacent or distant are sometimes resolved in the same way, sometimes in opposite ways and often somewhere in between. In the field of traffic safety, the same issues tend to be raised across the country. In order to keep our prosecutors, law enforcement officers, judges and other interested parties informed, we have expanded our newsletter to capture the decisions of State Supreme Courts for your perusal. In order to accomplish this task, we asked Traffic Safety Resource Prosecutors (TSRP) to send us short synopsis' of their various Supreme Court decisions. The by line of the synopsis will inform you of not only who wrote the material, but who the State T.S.R.P is in your respective State. These decisions were issued between January 1 and June 30, 2017. The contact information for these TSRP's follows:

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State Supreme Court Decisions

Delaware: submitted by Danielle Brennan

State v. Pardo, 2015 Del. Super. LEXIS 615, 2015 WL 6945310 (Del. Super. Ct. Nov. 9, 2015)

Pardo was convicted of Manslaughter, Leaving the Scene of a Collision Resulting in Death ("LSCRD"), Reckless Driving, and six counts of Endangering the Welfare of a Child. The charges arose from his involvement in a fatal hit-and-run collision with a bicyclist, Phillip Bishop on Brackenville Road in Hockessin.

Issue : Whether Pardo's conviction for LSCRD violated his Due Process rights, as he contended that the LSCRD statute imposes strict liability.

Held: 21 *Del. C.* § 4202 does not impose strict liability because it requires the State to prove beyond a reasonable doubt that a defendant had knowledge that he or she was involved in a collision.

Analysis: Pardo argued that Section 4202 unconstitutionally imposes a felony conviction and a minimum mandatory period of imprisonment without requiring the State to prove the defendant's mental culpability. In other words, he claimed that Section 4202 is a strict liability statute, and is therefore unconstitutional under a test set forth in *Morissette v. United States* because conviction results in a relatively large penalty and "gravely besmirche[s]" one's reputation. Despite the absence of express language in section 4202 specifying a mental state, such as knowledge, the Court did not conclude that none is required and that the offense is a strict liability offense. Rather, the Court found that determining the mental state required, requires construction of the statute and inference of the General Assembly's intent. The Court concluded that a plain reading of the relevant statutory provisions revealed the General Assembly's intent to require the State to prove that the defendant knew he was involved in a collision and left the scene without fulfilling the statutory duties imposed in Section 4202.

State Supreme Court Decisions

Illinois: submitted by Jennifer Cifaldi

The defendant (Ida Way) was found guilty and convicted of Aggravated Driving Under the Influence following a stipulated bench trial. Prior to the trial, the circuit court barred the defendant from introducing evidence that a medical condition possibly caused her to lose consciousness, leading to the crash on the date of the incident. She appealed. The Appellate Court reversed and remanded and the State appealed it to the Illinois Supreme Court. The Illinois Supreme Court reversed the Appellate Court judgment and affirmed the Circuit Court judgment.

The facts of the case were that the defendant drove over the center line and caused a head-on collision with a truck driven by Emily Wood (who was eight weeks pregnant), causing great bodily harm and permanent disability to her and causing great bodily harm to her 14 year-old son. Way consented to blood and urine samples on the day of the crash and the test result was positive for the presence of THC metabolite, resulting from cannabis use. This case occurred at a time when the status of the law was that "any trace amount" of cannabis was the equivalent of a DUI. Since then, legislation has been passed that sets a 5 ng limit for blood and 10 ng limit for "other bodily substances."

The applicable Illinois statute for Aggravated DUI in this case elevates the DUI from a misdemeanor to a felony when in committing the DUI, the crash resulted in great bodily harm or permanent disability or disfigurement to another, when the violation was "a proximate cause of the injuries." (625 ILCS 5/11-501(d)(1)(C)). At the pretrial motion, the Defendant moved to introduce evidence that she had a medical condition that caused her to lose consciousness, cross the center line and strike the other vehicle. The State argued that they were not required to prove impairment. The Illinois Supreme Court held that the Circuit Court erred in barring the defendant from a asserting an affirmative defense, stating "A defendant, who raises this affirmative defense in an aggravated DUI prosecution, however bears the burden of establishing that the alleged unforeseen medical condition constitutes the sole proximate cause of the accident and the resulting injuries." Despite their holding, the Appellate Court's judgment reversing the Circuit Court's conviction was overruled because the Illinois Supreme Court found that the offer of proof submitted by the Defendant was insufficient, in that the defendant could only offer proof that there was a possibility that her medical condition of low blood pressure may have caused her to cross the center line.

State Supreme Court Decisions

Indiana: submitted by Chris Daniels

State v. Brown, 70 N.E.3d 331, 2017 Ind. LEXIS 169, 2017 WL 822643 (Ind. Mar. 2, 2017)

In State v. Brown, 70 N.E.3d 331, the Indiana Supreme Court examined whether or not Miranda warnings were required at Sobriety Checkpoints. Brown had pulled into a sobriety checkpoint in a well-lit Arby's parking lot. The first officer he encountered noticed an odor of alcohol, slurred speech, red watery eyes, and had difficulties obtaining his license. The officer at that point asked whether or not Brown had been drinking, and at that time Brown indicated that he had. State v. Pardo, 2015 Del. Super. LEXIS 615, 2015 WL 6945310 (Del. Super. Ct. Nov. 9, 2015) After further tests, Brown was arrested for Operating a Motor Vehicle While Intoxicated. At trial, the Defense argued that the statements of the defendant, and any subsequent testing, should be excluded as Brown had not been read his Miranda warnings prior to being questioned. The trial court granted the motion to suppress. The Court of Appeals denied the State's appeal, arguing the State could not bring the appeal, however the Indiana Supreme Court granted transfer.

The Defense argued that the defendant's statements should be excluded as the defendant was in custody at the time of the questioning, and therefore Miranda applied. The State argued that even though the questions asked by the officer were designed to elicit potentially incriminating responses, that the defendant was not in custody. The State further argued that a sobriety checkpoint stop was akin to a Terry stop, in which the court found the defendant is not in custody during a brief seizure based on reasonable suspicion. Even though checkpoints are not based on reasonable suspicion, the State argued that the same analysis applies. The court in Terry looked at both the brief nature of the stop, as well as the public setting in determining whether the defendant was in custody. The court in Brown found that the same rationale applied to the checkpoint, finding that the officers had, as part of their checkpoint procedure, limited themselves to no more than two minutes per encounter, and that the checkpoint was in a well-lit parking lot. Due to the stop being only a brief detention in a public place, the Court found that the defendant was not in custody, and therefore the Miranda warnings were not required before the defendant was questioned, overturning the trial court's ruling.

It is worth noting that sobriety checkpoints in Indiana are typically guided by State v. Gerschoffer, 763 N.E.2d 960, which provides a six prong test for judging the constitutionality and reasonableness of a checkpoint stop. One of these prongs looks at the degree of intrusion the checkpoint causes for motorists. In order for a checkpoint to pass constitutional scrutiny, it must be designed to minimize the amount of time motorists are detained. Further cases held that two minutes was a reasonable time period for a person to be detained at a checkpoint without the stop being an unreasonable seizure. The officers in Brown had procedures that limited them to this same period in order to insure any detention was brief.

Iowa: submitted by Christine Shockey *State Supreme Court Decisions*

State v. Coleman, 890 N.W.2d 284 (Iowa 2/10/2017) No. 15-0752. **Traffic stop based upon mistake of fact impermissibly expanded by requesting documentation.** A patrol officer ran the license plate of a passing car and discovered that the registered owner, a female, was suspended. Based upon reasonable suspicion that the registered owner was the driver, the officer initiated a traffic stop. Upon approaching the driver's window, the officer observed that a male, not a female, was driving the vehicle. The officer did not terminate the detention, but rather requested license, insurance and registration, thereby discovering that the driver was barred. Held that pursuant to Rodriguez v. U.S., 135 S.Ct. 1609 (2015), and State v. Pals, 805 N.W.2d 767 (Iowa 2011), a traffic stop may not be extended to request documentation once reasonable suspicion has been resolved, overruling State v. Jackson, 315 N.W.2d 766 (Iowa 1982). The officer may, however, approach the driver and advise briefly of the reason for the stop, thereafter terminating the detention if no separate reasonable suspicion or probable cause is immediately apparent during the approach encounter.

State v. Storm, ____ N.W.2d ____ (Iowa 6/30/17) No. 16-0362. **Automobile exception to warrant requirement still valid.** Defendant was stopped for a seatbelt violation when the officer smelled the odor of marijuana and searched the vehicle, yielding evidence of marijuana distribution. Defendant argued that because officers can obtain electronic search warrants by the side of the road, the automobile exception to the warrant requirement should be abandoned. Held that no procedure for electronic search warrants or process other than personal appearance before a judicial officer exists to obtain search warrants, and easy-to-apply automobile exception is preferable to the alternative – a less predictable, case-by-case exigency determination resulting in prolonged roadside seizures awaiting a warrant, with attendant dangers and no net gain for civil liberties. However, the Court did note that they will revisit the issue at a future time when electronic warrants have become more practical.

State v. Childs, ____ N.W.2d ____ (Iowa 6/30/17) No. 15-1578. **Any amount of a prohibited drug in one's body violates OWI statute, regardless of whether the ability to drive is impaired.** Defendant convicted of OWI after a urine drug screen detected a nonimpairing metabolite of marijuana in his urine, carboxy-THC. Held that §321J.2(1)(c) is not unconstitutionally overbroad by allowing conviction based solely on the presence of a nonimpairing metabolite in the defendant's urine without other evidence of impairment, and policy arguments that the statute is too harsh should be directed to the legislature. The Court also noted that the harshness of the flat ban is ameliorated by the fact that the motorist would be asked to submit to chemical testing only after the officer performed a lawful traffic stop and had reasonable grounds to believe the driver was impaired.

State v. Pettijohn, Jr., ____ N.W.2d ____ (Iowa 6/30/17) No. 14-0830. **Breath test obtained pursuant to implied consent as a search incident to arrest is unconstitutional in boating while intoxicated case, and consent was not voluntary.** Implied consent was invoked after defendant was arrested for Boating While Intoxicated in violation of §462A.14(1), and a breath test was obtained. Held that warrantless breath test incident to arrest based on need to gather evidence is contrary to the Iowa constitution and inconsistent with *State v. Gaskins*, 866 N.W.2d (Iowa 2015), because there is nothing a defendant can do to conceal or destroy the alcohol present in his blood, and the state's interest in collecting evidence expediently does not constitute adequate justification for the search. The Court also found that during the window of delay in observing the defendant, transporting him to the testing location, and setting up the machine, "law enforcement officers who wish to conduct a breath test on an arrestee can seek a warrant electronically." The Court also employed a totality-of-the-circumstances approach to determine whether actual consent under statutorily implied consent is voluntary, and among the factors considered is whether the defendant is intoxicated, whether he was seized before submitting to the test, whether he was advised of his right to refuse, whether the implied consent advisory was misleading, and whether criminal or civil penalties would ensue. Held that because the defendant was intoxicated, transported to the police station, and advised of significant civil penalties for refusal to submit to testing, but was not told that he could withhold consent or that there may be serious criminal penalties if he submitted to the test and failed it, his consent was not voluntary and the results of the breath test should have been suppressed. The Court also stated that, "a person reading this decision should not jump to the conclusion that our analysis will make the statutory scheme governing the operation of a motor vehicle while under the influence unconstitutional."

State Supreme Court Decisions

Michigan: submitted by Ken Stecker

People v. Rea, 2017 Mich. LEXIS 1393, 2017 WL 3137772 (Mich. July 24, 2017)

Law Enforcement officers were dispatched three times to defendant's home because of a neighbor's noise complaints. On the third visit, Northville police officer Ken DeLano parked his patrol vehicle in the street in front of defendant's driveway, which is paved and straight. The driveway begins on the street, passes to the right of defendant's home, and extends to defendant's garage at the end of the driveway. The garage is detached from the home, and it is situated within defendant's backyard. There are no physical obstructions that block entry to defendant's driveway from the street.

As Officer DeLano walked up defendant's driveway to investigate the noise complaint, the overhead garage door opened, and defendant started to back his car down the driveway. After Officer DeLano shined his flashlight to alert defendant of his presence, defendant stopped his car, coming to a rest in the driveway, next to his house. When Officer DeLano approached defendant, who had remained in his car, the officer noticed a strong odor of intoxicants. After a thorough investigation, the defendant was then arrested for operating a vehicle while intoxicated. A blood test later conducted at a hospital revealed a blood alcohol level of .242 grams per 100 milliliters of blood—three times the legal limit.

The Prosecuting Attorney charged defendant with one count of operating while intoxicated (OWI), MCL 257.625(1). Following a preliminary examination, defendant was bound over to the Oakland Circuit Court, where he moved to quash the information. The trial court granted defendant's motion and dismissed the case, finding that the upper portion of defendant's driveway did not constitute an area that is "generally accessible to motor vehicles" for purposes of criminal liability under MCL 257.625(1).

The issue before the Supreme Court is whether the defendant may be charged under MCL 257.625 for operating a motor vehicle in his private driveway while intoxicated. The Court agreed with the People.

The Court held "Because defendant's conduct occurred in an area generally accessible to motor vehicles, the conduct was within the purview of MCL 257.625(1)."

The Court concluded "MCL 257.625 encompasses his private driveway. The Court of Appeals majority did not properly apply the plain meaning of MCL 257.625(1) because it failed to distinguish between 'open to the general public' and 'generally accessible to motor vehicles.'"

Reversed.

State Supreme Court Decisions

OKLAHOMA: submitted by Jeff Sifers

State v. Keefe, 2017 OK CR 3, 394 P.3d 1272, 2017 Okla. Crim. App. LEXIS 2 (Okla. Crim. App. Jan. 31, 2017) *

While driving home, an off-duty Tulsa police officer witnessed the defendant, Keefe, speeding and dangerously driving across highway lane lines. At the time, the officer was in Broken Arrow, a town adjacent to Tulsa. Because the officer was no longer in his jurisdiction, he contacted Broken Arrow dispatch to advise them of the situation and planned to follow the driver until local officers arrived to take over. While following Keefe, the Tulsa officer witnessed her crossing multiple lane lines and almost departing the roadway. Deciding Keefe was in imminent danger to herself and others, the Tulsa officer activated his lights and siren and effectuated a traffic stop. After the stop, the Tulsa officer made contact with Keefe and waited for Broken Arrow officers to arrive to conduct an investigation. Keefe was subsequently charged with driving under the influence of drugs in Tulsa County District Court.
In her pre-trial motions, Keefe filed a motion to dismiss arguing that, as a general rule, except for specific circumstances, an officer's authority does not extend beyond his or her jurisdiction. Further, Keefe claimed, other cases held that once an officer is outside of the city limits of the municipality where they are employed, the officer becomes a private citizen and may not act under "color of law" to make an arrest. The Tulsa County District Court granted Keefe's motion, finding the officer acted improperly under color of law when he used his police lights and siren to conduct a traffic stop. The State appealed.

On review, the Oklahoma Court of Criminal Appeals acknowledged the trial court's frustration in resolving an apparent conflict between existing "color of law" cases; ultimately finding error in the granting of Keefe's motion. The Court initially found that officers outside of their jurisdiction, while a private citizen, may certainly make a citizen's arrest. The Court determined that, in reconciling prior jurisprudence, recent cases had effectively, though not expressly, created a narrow "public safety exception" to the general rule that officers outside their jurisdiction may not act as private citizens under color of law. The Court concluded that trial courts should consider the following factors in determining when to apply this exception:

"(1) the urgency of the situation in that no other course of action promises the relief needed; (2) the need to protect the safety of the public, the suspect or the officer from immediate danger; (3) the primary motivation of the officer involved is to protect the safety of the public, suspect or the officer from immediate danger; and (4) whether the officer's use of the "color of law" was minimal and limited to the means necessary to secure the welfare of himself or others."

State v. Keefe, 2017 OK CR 3, ¶ 13, 394 P.3d 1272, 1277.

The Court applied these factors to the present case and determined Keefe's gross recklessness required the officer to act under color of law. Because the Tulsa officer's primary motivation was to protect the safety of the public and Keefe and no other course of action was available to neutralize the situation, the Tulsa officer's actions clearly fit within the public safety exception. **REVERSED AND REMANDED.**

* In an odd anomaly the high court in criminal cases in Oklahoma is the Court of Criminal Appeals. I don't understand it, but States are free to call it as they like. That 10th Amendment is alive and well.

State Supreme Court Decisions

South Dakota: submitted by Paul Bachand

State of South Dakota v. Steven Alexander Stanage (2017 S.D. 12)

Shortly before 2 a.m. on October 26, 2014 in Brookings County, Stanage ordered food at the drive-up window at a Hardee's restaurant. An employee noticed Stanage's bloodshot eyes and slurred speech. The employee reported his observations to his supervisor who in turn contacted the police and informed the police that a potentially drunk driver was at the drive-up window. A license plate number was provided to the police. No information regarding Stanage's eyes, speech or motor control was relayed. The supervisor indicated that employees had delayed Stanage's order to stall his departure. Police dispatch contacted a sheriff's deputy who was only a block away from the Hardees. At the deputy's request, the Hardee's employees "released" Stanage and the deputy immediately initiated a traffic stop. Stanage was eventually arrested and an analysis of his blood indicated a BAC of 0.204.

Stanage's issue on appeal regarded whether the deputy had a reasonable suspicion to justify the traffic stop. The South Dakota Supreme Court determined that the initial tip was not anonymous, which enhanced the reliability of the tip. The court held, however, that the deputy did not have sufficient information regarding Stanage's behavior to form a conclusion that Stanage was intoxicated. The court indicated that: "Under *Navarette, a conclusory allegation of drunk or reckless driving is insufficient to support a reasonable suspicion of criminal activity." The court concluded that the deputy did not have a reasonable suspicion of criminal activity and thus any evidence resulting from the stop was the product of an illegal search.*

State Supreme Court Decisions

Vermont — copied from opinion. TSRP position is vacant.*

State v. Pomerantz, 2017 Vt. Unpub. LEXIS 12, *4-6, 159 A.3d 650 (Vt. Feb. 9, 2017)

Here, as is required by statute, the officer informed defendant at the time the test was requested that he had the right to obtain additional tests administered at his own expense by someone of his choosing—and then provided defendant with a list of facilities in the area where he could get his blood drawn. The statute does not require that this information be provided after the evidentiary test has been taken. While being read his rights, defendant gave appropriate responses to the officer and elected to consult with an attorney before providing a breath sample. Cf. *State v. Hoffman, 148 Vt. 320, 323, 532 A.2d 577 (1987)*

*(finding that defendant's silence upon being informed of his right to independent test was valid waiver of right where evidence indicated "that defendant understood his rights when they were recited to him and that he coherently answered other questions during the processing"). After processing, defendant left the police station with his wife, who had been a passenger in their vehicle when it was stopped. This is not a case in which defendant was being detained or lodged overnight, and thus there was no need for him to be informed of the other post-test options on the DUI processing form stating his right to have police make arrangements for additional testing. Cf. State v. Karmen, 150 Vt. 547, 549, 554 A.2d 670 (1988) (citing Normandy as controlling precedent where defendant was being detained in custody following processing and was not informed of his right to have police make arrangements for independent [*6] testing); State v. Normandy, 143 Vt. 383, 387, 465 A.2d 1358 (1983) (finding no valid waiver from defendant's silence because defendant, who was being lodged overnight after processing, was never informed of his right to have police make arrangements for additional testing, and parties stipulated that defendant would have requested independent testing if he had been informed of right). We conclude that, given the totality of the circumstances in this case, defendant waived his right to obtain independent testing at his expense, and thus the superior court did not err in denying his motion to suppress.*

Welcome Heather Brouchu ! Heather has accepted the position of TSRP in the Green Mountain State and will begin her new duties September 25th.

State Supreme Court Decisions

West Virgina: submitted by Nicole A. Cofer

State v. Post, 2017 W. Va. LEXIS 254

In July of 2015, Ms. Post was arrested for driving under the influence of a controlled substances with a minor in the vehicle and driving left of center after being observed almost striking an oncoming vehicle while driving left of center by the investigating officer. After initiating a traffic stop, the investigating officer observed Ms. Post had glassy eyes, slurred speech and was emotional. She also admitted that she had taken prescription Subutex prior to operating her motor vehicle. Ms. Post's performance on the standardized field sobriety tests indicated impairment. A preliminary breath test revealed that she had a blood alcohol content of 0.00%. The investigating officer placed Ms. Post under arrest and transported her to the local hospital for a blood draw. She was then issued a citation and released under her sister's supervision.

In December 2015, Ms. Post appeared before the magistrate for a bench trial. She was found guilty of driving under the influence with an unemancipated minor in the vehicle. Ms. Post appealed this decision to the circuit court. In May of 2016, a bench trial was held before the circuit court during which testimony was heard from the investigating officer and Ms. Post regarding the underlying events, including the reasoning behind the observations of her standardized field sobriety tests. During the bench trial, Ms. Post again admitted that she had taken her prescribed Subutex prior to driving, and that dizziness is a side of effect of that medication. Furthermore, it was undisputed that she failed the horizontal gaze nystagmus, walk-and-turn, and one-leg stand tests. The circuit court affirmed the finding of guilt.

Ms. Post appealed this decision to the West Virginia Supreme Court of Appeals and argued that there was insufficient evidence to support a finding of guilt beyond a reasonable doubt. This Court noted that they "have long held that credibility determinations made following a bench trial are entitled to great deference." *State v. Guthrie*, 194 W. Va. 657, 461 S.E.2d 163 (1995). West Virginia Code § 17C-5-2(k) provides that an individual is guilty of driving under the influence of a controlled substance when she drives "a vehicle in this state . . . she is in an impaired state[.]" By code, an "impaired state" means a person is under the influence of any controlled substance." W. Va. Code § 17C-5-2(a). The Court did not elect to hear oral arguments on the matter and determined that there was no substantial question of law, no prejudicial error and that no merit was found to Ms. Post's appeal. The Court issued a memorandum decision which will not be published in the West Virginia Record, may be cited in any court or administrative tribunal in accordance with Rule 21 of the Revised Rules of Appellate Procedure affirming the underlying conviction.

It is worth noting that this case is a prescription case with no mention of actual blood results being had. The Court, in its brief memorandum decision, did not seem to wrestle with the fact that a driver can be impaired by drugs that have been properly prescribed and upheld the conviction.

Wisconsin: submitted by Emily Thompson

In *State v. David Howes, 2017 WI 18, 373 Wis. 2d 468, 893 N.W.2d 812, issued March 1, 2017,* the Wisconsin Supreme Court, in a plurality opinion, held that under the facts of that case, exigent circumstances existed to justify a warrantless blood draw from an unconscious defendant.

Wisconsin Statutes section 343.305(3)(b) allows police to draw blood from unconscious drivers without a warrant, by stating that such a person "is presumed not to have withdrawn [their] consent" under the implied consent law. When Howes challenged this law, the circuit court found the statute to be unconstitutional, because it did not give the unconscious driver an opportunity to provide "actual" consent to a test (citing *State v. Padley, 2014 WI App 65, 354 Wis. 2d 545, 846 N.W.2d 867).* The supreme court declined to address the questions of when consent occurs and whether the statute is in fact constitutional, instead deciding that in this case there were exigent circumstances to support a warrantless blood draw. Those included the facts that due to his prior convictions Howes's PAC was .02, he crashed his motorcycle, and several people detected an odor of intoxicants coming from his person.

In State v. Gary Lemberger, *2017 WI 39, 374 Wis. 2d 617, 893 N.W.2d 232, issued April 20, 2017,* the Wisconsin Supreme Court affirmed the defendant's conviction for fourth offense OWI.

At Lemberger's jury trial, the prosecutor repeatedly made reference to the fact that Lemberger had refused to submit to an evidentiary chemical test of his breath. After his conviction, Lemberger moved for a new trial, arguing that his defense attorney was ineffective for failing to object to the prosecutor's comments on his refusal. He claimed that he had a constitutional right to refuse a breath test, therefore the prosecutor's comments on his refusal were not permitted.

The supreme court held that the defendant's constitutional rights were not violated by the prosecutor's comments, because defendants have no constitutional or statutory right to refuse a breath test, and because Wisconsin's law was settled in that prosecutors are allowed to comment on a defendant's refusal. As a result the defense attorney was not ineffective for failing to object to those comments. It also observed that "in the time since Lemberger's trial, the [United States] Supreme Court has clarified in *Birchfield* [*v. ND*, __ U. S. __, 136 S.Ct. 2160, 195 L.Ed.2d 560 (2016),] that 'the Fourth Amendment permits warrantless breath tests incident to arrests for drunk driving.'" "Thus *Birchfield* provides an additional reason why defendants lawfully arrested for drunk driving have 'no right to refuse' a breath test."

State Supreme Court Decisions

Wyoming: Submitted by Ashley Schluck

Barrowes v. State, 390 P. 3d 1126 (Wyo. 2017) (2017)

In this appeal, Edward Barowes challenges his conviction of aggravated vehicular homicide claiming there was insufficient evidence to establish that he drove in a reckless manner.

Barrowes was a professional semi-truck driver with a Commercial Driver's License (CDL). The Court recognized that a CDL certifies that a person has gone through the required training and testing, and that those holding a CDL have a higher level of knowledge, experience, and skill required to drive a commercial motor vehicle.

While Barrowes was driving his semi-truck, another professional truck driver observed Barrowes' vehicle swerving "pretty bad at times" for approximately 3-4 minutes. Barrowes was swerving so badly, the other truck driver did not pass him and instead slowed down to keep distance between the two rigs. Barrowes' truck continued to swerve, driving erratically, and passed 2 exit ramps during this time.

While Barrowes was driving on the Interstate, another truck had broken down and was on the shoulder of the I Interstate. This truck was properly parked, had its hazard lights flashing, emergency reflective triangles along the road, and the person working on the truck was wearing reflective clothing. The weather was good and visibility was clear.

Barrowes' truck veered and crashed into the parked truck, striking and killing the person working on the truck. Barrowes did not hit the brakes or take any other type of evasive action before the crash because he was asleep at the wheel.

Barrowes acknowledged that "he did not manage [his] drowsiness appropriately". He admitted that he consciously put his schedule ahead of tiredness and ignored safety concerns relating to his impaired state. He passed exits right before the crash even though he knew he was tired, and he unsuccessfully continued to try to fight off the fatigue which caused the fatal crash. It was also significant that he was a professional driver operating a double trailer rig that weighed approximately 110,00 pounds loaded, and the risk of death from a crash involving a vehicle like this is substantial.

The court ruled that there was sufficient evidence for a jury to have concluded that Barrowes drove in a reckless manner by consciously disregarding a substantial and unjustifiable risk because he knew he was tired, but continued to drive.

The Work of the NTLC

In addition to publications the NTLC is often involved in training courses. Speakers have been provided for:

Lethal Weapon (Vehicular Homicide for prosecutors and officers), Maine;
Prosecuting the Drugged Driver, Pennsylvania and Kentucky;
AAMVA CDL Coordinators Conference, Missouri;
National Lifesavers Conference, North Carolina;
National TSRP Conference, Indiana;
Association of Ignition Interlock Providers, Virginia;
American Bar Association, New York;
Prosecuting the Drugged Driver, Arkansas;
IACP DRE annual conference, Maryland;
FMCSA 2017 Midwestern, Eastern and Western Regional Roadshows, Minnesota, Pennsylvania and Colorado
The Missouri Association of Prosecuting Attorneys Annual Conference
Missouri Municipal and Associate Circuit Judges Annual Conference

Our staff often attends conferences at which they speak to learn and pass on information to prosecutors. At the recent DRE conference, for instance, Kimball heard Dr. Matthew Newmeyer and Dr. Marilyn Huestis discuss the effects of marijuana and opioids on the human brain and body.

One marijuana study involved 302 marijuana users evaluated at the University of Iowa driving simulator. Some results:

The walk and turn and one leg stand are effected by marijuana use. Users have a 1.3 times increase in their I inability to satisfactorily perform those two standardized tests. The finger to nose test with two clues is 85.1% accurate by itself in predicting impairment equal to a .08 alcohol and three clues has a 92.9% accuracy rate. The modified Rhomberg test had a 90% accuracy rating when eyelid tremors are indicated. If two of the following are indicated, the tests are 96.9% accurate:
3 misses on finger to nose; eyelid tremors during modified Rhomberg; 2 clues on the walk and turn ad/0r 2 clues during the one leg stand. Any combination with two of the four indicators indicate impairment.

An Australian study of 4,000 drivers in fatal crashes indicates there is a 2.8 times greater likelihood of being involved in a fatal crash if there is **ANY** THC in the driver's bloodstream.
If the users eyes are dilated, that fact is significant, rebound dilation is a strong clue of impairment. If there is sway during the one leg stand, there is an 89.1% accuracy, better than two clues.

For frequent users, a 30 day abstinence period will bring brain receptors back to normal. However nerve transmission repair may take as long as ten years. Cannabis withdrawal is now included as a mental health condition listed in the DSM 5 published by the American Psychiatric Association.

Unfortunately 70% of THC disappears from the bloodstream (not the brain) in 30 minutes and 90% in 1.4 hours, which makes the likelihood of finding THC in blood samples in impaired driving cases very low. Oral fluid testing shows presence of THC much more quickly, but not a B.A.C. level. Blood must be collected as soon as possible in impaired driving cases involving marijuana.

The Work of the NTLC

The National Traffic Law Center has been a very busy place this year. Senior Attorneys, Kim Brown, Romana Lavalas and Pete Grady and Staff Attorneys Sam Pellegrino and Stacey Fersko Grant have been producing great materials and training for the nation's prosecutors.

As FMCSA grant funded attorneys, Romana, Stacey and Director Kimball worked to put on comprehensive training courses concerning commercial driver licensing and court interaction with commercial motor vehicle traffic. These courses were conducted for 83 people in Alexandria, Virginia in January and 93 people in Cincinnati, Ohio in June. Topics included the complexities of masking and diversion as written in the Code of Federal Regulations; impaired, reckless and distracted driving; and human trafficking on the roadways. Attendees included prosecutors, judges, law enforcement officers, driver agency representatives and persons employed by the Federal Motor Carrier Safety Administration. Legal counsel for the FMCSA, Randi Hutchinson pictured below, was the luncheon speaker at the Cincinnati event.

Kimball in Alexandria

FMCSA Chief Counsel Randi Fredholm Hutchinson addresses the conference at Luncheon

NHTSA grant funded attorneys Kim Brown, Sam Pellegrino and Pete Grady were busy updating the dozens of compilations of law that NTLC makes available to prosecutors upon request. The compilations have been in existence for years, but many had not been updated for a very long time.

Completed:
Vehicular Homicide Law
Vehicular Assault
DRE Case Law
Blood Alcohol Time Limit Laws
Vehicular Forfeiture Laws
HGN Laws and Cases

Compilations in the works:
Implied Consent and Refusal Laws,
Refusal Cases including CDL Drivers

In addition to compilations several attorneys have spent dozens of hours rewriting our publication, Commercial Drivers' Licenses: A Prosecutor's Guide to the Basics of Commercial Motor Vehicle Licensing and Violations, which was first published in 2011. This primer on commercial driving grew from 36 to approximately 56 pages as topics were expanded and updated. Additionally, new topics related to CMVs such as "Securing and Evaluating Evidence Needed for a Successful Prosecution" were also added. The attorneys also updated the CDL Quick Reference Guide which is a very handy tool for practitioners (available in both electronic and hard copy).

All publications will be available on our website and can be ordered free of charge by sending an e-mail to Senior Project Coordinator Metria Hernandez at mhernandez@ndaajustice.org. We will even ship them to you.

The National Traffic Law Center

The National District Attorneys Association's National Traffic Law Center (NTLC) is a resource designed to benefit prosecutors, judges, law enforcement officers and other allied professionals in the justice system. The mission of NTLC is to improve the quality of justice in traffic safety adjudications by increasing the awareness of highway safety issues through the compilation, creation, and dissemination of legal and technical information, and by providing training and reference services. NTLC was created in cooperation with the National Highway Traffic Safety Administration (NHTSA) and currently operates under funding received from both NHTSA and the Federal Motor Carrier Safety Administration (FMCSA), both agencies of the United States Department of Transportation.

The professional staff at NTLC is comprised of experienced prosecutors. Assistance is specifically provided in all areas of trial preparation, including methods to counter specific defenses. The staff regularly attends and presents at state and national conferences and trainings on all topics pertaining to the prosecution of traffic safety cases. The staff also facilitates the direct exchange of information among prosecutors, law enforcement, judges, and other criminal justice and traffic safety professionals in the field to prevent duplication of effort. NTLC also works daily with the various state Traffic Safety Resource Prosecutors.

NTLC additionally provides assistance directly to prosecutors and other professionals working on traffic-related offenses and matters. Each year, NTLC receives hundreds of requests from prosecutors and law enforcement officers seeking assistance with specific issues involving traffic offenses. NTLC's support includes substantive legal research, understanding complex toxicological or technical evidence, consultation on trial strategies, expert witness assistance, legislative review and more. Examples of that assistance include:
Building a proper record for the admissibility of horizontal gaze nystagmus and standardized field sobriety tests; how to counter a defense expert in toxicology, or how to obtain and use event data recorder information; responding to challenges to the use and admissibility of breath test instruments, including breath to blood partition ratios, interferents to obtaining a proper breath test result and computer software; and understanding issues involving commercial motor vehicle licensing requirements and the special rules for commercial motor vehicles.
NTLC also operates as a national clearinghouse of resources on various legal issues facing prosecutors and traffic safety professionals, including case law, legislation, research studies, trial documents, and a directory of persons who have appeared as expert witnesses in the fields of breath testing, field sobriety testing, crash reconstruction, toxicology, drug recognition and many others. For example, NTLC maintains a comprehensive data bank of trial transcripts of defense "experts" who testify in cases nationwide. These transcripts are made available to prosecutors preparing to cross-examine one of these witnesses. NTLC also has other substantive material that may be of use for prosecutors preparing for trials with expert witnesses. The data base remains effective as long as prosecutors continue to send transcripts in which these witnesses testify. Accordingly, please remember to help your colleagues as they have helped you and send pertinent materials to NTLC.

From left:
Romana Lavalas, Stacey Grant, Kim Brown behind the victim, Kimball

Missing are:
Sam Pellegrino and Metria Hernandez

ANNOUNCEMENTS

The National Traffic Law Center was recently awarded a grant for Fiscal Year 2017-18 from the Federal Motor Carrier Safety Administration. The grant envisions training efforts, publications, technical advisory efforts and more. An announcement of a Spring CDL training will be forthcoming.

The NTLC would like to add a law student intern to do research and writing. Please contact us, if interested.

An update to the SFST, ARIDE and DRE courses will be published and available toward the end of 2017. The updates are being tested at this time.

NATL Teen Driver Safety Week is October 15-21, 2017.

NATL School Bus Safety Week is October 16-20, 2017.

December is Natl Drunk and Drugged Driving Prevention month.

Two courses, the Prosecuting the Drugged Driver revision and a Prosecutor-Toxicologist joint training course have been ongoing during 2017. NHTSA efforts included bringing together subject matter experts to plan and write. Both are in their final stages.

In 2017 six States, Arizona, Arkansas, Conneticutt, Kansas, New Mexico and New York received funding from NHTSA for ignition interlock programs.

In 2017 six States received funding for a 24/7 program: Idaho, Montana, North Dakota, South Dakota, Washington and Wyoming.

The National Transportation Safety Board recently released the results of its safety study on reducing speeding related passenger vehicle crashes on the nation's roads.
In the study, the NTSB recommends completion of all actions in the DOT 2014 Speed Management Program Plan, assessment of the effectiveness of point-to-point speed enforcement in the U.S., incentivizing passenger vehicle manufacturers and consumers to adopt intelligent speed adaptation systems, and increasing the adoption of speeding related Model Minimum Uniform Crash Criteria Guideline data elements and improving consistency in enforcement reporting of speeding-related crashes.
A synopsis of the NTSB safety study "Reducing Speeding-Related Crashes Involving Passenger Vehicles", including the findings and a complete list of the safety recommendations is available on the NTSB website.

Tom Kimball and TSRP's Bill Lindsey, Ashley Schluck, Jeff Sifers, Kimball, Sarah Garner and toxicologist Joey Jones (pictured from left to right) recently travelled to the National Judicial College to shoot drugged driving videos. The effort was funded by AAA. More information concerning the project will be forthcoming. The faculty and staff at NJC are true professionals and were very helpful and hospitable.

Between the Lines

THE ISSUES

This newsletter began in 1993. All previous issues are available. If you desire a copy of any issue, please contact us.

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Volume 4 1996
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Issue 2: It's All In The Evidence (by John Kwasnoski); Equal Protection Challenges to Drinking / Driving Laws; Meeting DUI Defense Challenges: The Breath Test
Issue 3: What Kind of Expert? (by John Kwasnoski); Meeting DUI Defense Challenges: Direct Examination; Prior Convictions Manual
Issue 4: Miranda and DRE; Identifying the Operator (by John Kwasnoski); Drowsy Defendants
Issue 5: No Math Is The Best Math (by John Kwasnoski); Meeting DUI Defense Challenges: Do SFSTs Test Driving Skills?
Volume 5 (This one is no where to be found, If anyone has copies of Volume 5, please let us know!)
Volume 6 (1997)
Issue 1: Preparing For Cross Examination of the Defense Reconstructionist (by John Kwasknoski); Meeting DUI Defense Challenges: Reasonable Suspicion-Routine Traffic Stops
Issue 2: Cross Examining the Defense Accident Resoncstrucitonist (by John Kwasnoski); Meeting DUI Defenses: Necessity; Prior Convictions in DUI Prosecutions: A Prosecutor's Guide to Prove Out-of-State DUI/DWI Convictions; Ask Doctor Tox
Issue 3: Cross Examination of Computer Assisted Reconstruction (by John Kwasnoski); The Impaired Bicyclist: A Recreation Hazard; Does HGN Test Vision?; Ask Doctor Tox
Issue 4: "It Was the Car's Fault"--Part 1 (by John Kwasnoski); Ask Doctor Tox; Crashes Aren't Accidents; Arresting Developments

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Issue 4: Defeating Attacks on the Police Reconstructionist - Part II (by John Kwasnoski & Patricia Gould); Reliability of Drag Factor; Equations Are Theoretical; Enhanced Penalties for High BACs; When Did a Car Become a Phone Booth?; Arresting Developments; Challenges Inside & Outside the Courtroom

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Volume 11 (2002)
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Issue 3: Ten Things Prosecutors Can Do for Stronger DUI Cases; Go-To Sites for Crash Reconstruction; Personal Alcohol Tests Ripe for Abuse by Defendant
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Issue 3: A New Tool for Better DUI/DWI Offense Reports (by David Sobel); Going on the Offensive at Administrative License Suspension Hearings; One State's Approach (by Dee Brophy)
Issue 4: Enforcing Underage Drinking Laws, Should We? (by David Wallace)

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Issue 2: Making a Difference - In Their Communities and Across the Country (by Elizabeth Earleywine)
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Issue 4: Improperly Licensed Drivers: A Cause for Concern (by Rick Knight)

Volume 16 (2007)
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Issue 2: Strategies in Playing “Cops & Prosecutors” (by Jared Olson)
Issue 3: Reputation Management or What Color Is Your Hat? (by David Wallace and K.C. Steckelberg)
Issue 4: MADD Revamps Court Monitoring Programs and Urges a New Look at First-Time DWI Offenders

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Issue 6: Uncharted Territory: The Anatomy of a Texting While Driving Vehicular Homicide Case (Part 1) (Tara Jenswold)

Volume 21 (2013)
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Issue 5: Discouraging the Dubious Mechanical Failure Defense (John Kwasnoski)
Issue 6: Breaking Down Navarette: 911 Tips Inherently More Reliable (NTLC Will Lathrop)
Issue 7: New Electronic Outline Resource to Combat Defense Experts (NTLC)

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Issue 4: The Significance of Drug Recognition Expert Prosecutor in the Courtroom (Ken Stecker)
Issue 5: Computerized Assessment & Referral System (CARS): The New Frontier in DUI Offender Assessment (Erin Holmes)

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THE NATIONAL TRAFFIC LAW CENTER EST. 1993

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The National Traffic Law Center is a program of the National District Attorneys Association. This document was prepared under Cooperative Agreement Number DTNH22-13-H-00434 from the U. S. Department of Transportation National Highway Traffic Safety Administration and Grant Number FM-CDL-0140-13-01-00 from the U.S. Department of Transportation Federal Motor Carrier Safety Administration. Points of view or opinions in this document are those of the authors and do not necessarily represent the official positions or policies of the Department of Transportation or the National District Attorneys Association.

State	Statute	Operative language	Comments
AL	Code of Ala. §32-5A-190	"carelessly and heedlessly in willful or wanton disregard for the rights or safety of persons or property, or without due caution and circumspection and at a speed or in a manner so as to endanger or be likely to endanger any person or property"	Statute provides "neither reckless driving nor any other moving violation" is a lesser included offense of DWI
AK	Alaska Stat. §28.35.400; Alaska Stat. §28.35.410	"a manner that creates a substantial and unjustifiable risk of harm"; "a risk of such a nature and degree that the conscious disregard of it or a failure to perceive it constitutes a gross deviation from the standard of conduct that a reasonable person would observe in the situation"; second statute is "negligent driving" which requires an "unjustifiable risk" and resulting endangerment (which is proven by the fact of an accident, evasive action, stopping or slowing down to avoid an accident, or "otherwise" endangering persons or property)	Negligent driving is lesser included offense
AZ	A.R.S. §28-693	"reckless disregard for the safety of persons or property"	Penalties enhanced for subsequent offenses
AR	A.C.A. §27-50-308	"a wanton disregard for the safety of persons or property"	Penalties enhanced when physical injury results and/or for subsequent offenses
CA	Cal Veh Code §23103; §23104; §23105	"willful or wanton disregard of the safety of persons or property"	Statutes differ depending upon injury caused
CO	C.R.S. §42-4-1401	"in such a manner as to indicate either a wanton or a willful disregard for the safety of persons or property"; "careless driving" (C.R.S. §42-4-1402) is a lesser included offense	Includes bicycles and low power scooters
CT	Conn.Gen.Stat. §14-222	"No person shall operate. . .(in various places). . .recklessly, having regard to the width, traffic and use of such. . . (place). . ."; also, traveling greater than 85 mph is a violation of the section	Penalty enhanced for subsequent offenses
DE	21 Del.C. §4175	"wilful or wanton disregard for the safety of persons or property"; neither statute nor annotations address whether "careless or inattentive driving" statute (21 Del.C. §4176) is a lesser included offense	Rehabilitation to be ordered if charge is reduced from impaired driving

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DC	D.C. Code §50-2201.04	"carelessly and heedlessly in willful or wanton disregard for the rights or safety of others, or without due caution and circumspection and at a speed or in a manner so as to endanger or be likely to endanger a person or property"	Penalty enhanced for subsequent offenses; charge is "aggravated" if speed more than 30 mph over the limit, or injury to another, or property damage over
FL	Fla.Stat. §316.192	"willful or wanton disregard for the safety of persons or property"; also, "fleeing a law enforcement officer in a motor vehicle is reckless driving per se"; State also has a careless driving statute (Fla.Stat. §316.195)	Penalty enhanced for subsequent offenses and/ or damage to property or injury to another; If alcohol or drugs involved, DUI treatment to be or-
GA	O.C.G.A. §40-6-	"reckless disregard for the safety of persons or property"	
HI	HRS §291-2	"recklessly in disregard of the safety of persons or property"	Also covers "reckless riding of an animal"
ID	Idaho Code §49-1401	"carelessly and heedlessly or without due caution and circumspection, and at a speed or in a manner as to endanger or be likely to endanger any person or property, or who passes when there is a line in his lane indicating a sight distance restriction"	Penalty enhanced for subsequent charges; foreign convictions recognized as prior offenses; "inattentive driving" is lesser included offense
IL	625 ILCS/11-503	"willful or wanton disregard for the safety of persons or property" or "knowingly. . .uses an incline. . .to cause the vehicle to become airborne."	Offense is "aggravated" if injury or disfigurement, or victim is child or school crossing guard

State	Statute	Operative language	Comments
IN	Burns Ind. Code Ann. §9-21-8-52	"unreasonably" high or low "rate of speed under the circumstances" as to "endanger the safety or the property of others" or "block the flow of normal traffic"; or, pass another vehicle from the rear on a slope or curve "where vision is obstructed for a distance of less than 500 feet ahead"; or drive "in and out of a line of traffic" or "speeds up or refuses to give one half of the roadway to a driver overtaking and desiring to pass"; also, recklessly passing "a school bus. . .stopped. . . when the arm signal devices. . .(is). . .extended. .	Penalty enhanced if personal injury or property damage occurs
IA	Iowa Code §321.277	" willful or a wanton disregard for the safety of persons or property"	Prohibited use of "a hand-held electronic communication device" is "prima facie evidence" in reckless driving cases causing death or serious injury; see Iowa
KS	K.S.A. §8-1566	"willful or wanton disregard for the safety of persons or property"	Penalty enhanced for subsequent offenses
KY	KRS §189.290	No specific statute on "reckless driving"; this statute requires operation "in a careful manner, with regard for the safety and convenience of pedestrians and other vehicles upon the highway" and also forbids willful operation on a highway "in such a manner as to injure the highway"	
LA	La.R.S. §14:99	Operation "in a criminally negligent or reckless manner"	Also covers aircraft, vessels, "or other means of conveyance"; penalty enhanced for subsequent offenses
ME	17-A M.R.S. §§35 and 211	No "reckless driving" statute; rather, a statute differentiating among the words "intentionally", "knowingly", "recklessly", "criminal negligence" and "culpable" and a statute prohibiting "reckless conduct" which "creates a substantial risk of serious bodily injury to another person"	

MD	Md. Transp. Code Ann. §21-901.1	"wanton or willful disregard for the safety of persons or property" or "in a manner that indicates a wanton or willful disregard for the safety of persons or property"	Statute also covers "negligent driving"
MA	ALM GL ch. 90, §24	Statute covers DWI and prohibits recklessness or negligent operation "so that the lives or safety of the public might be endangered", "upon a bet or wager", or violation of the speed limit "for the purpose of making a record", or leaving the scene of a property damage crash, or allowing another to use a license or learner's permit, or making a "false statement in an application for registration"; or is a person under 18 or an operator of public transportation using electronic devices, or any operator who is texting while driving and whose driving "is the proximate cause of injury" to a person,	Penalties enhanced depending upon prohibited act; statute also covers leaving the scene of a fatality or personal injury crash
MI	MCLS §257.626	"willful or wanton disregard for the safety of persons or property" when operating "upon a highway or a frozen public lake, stream, or pond or other place open to the general public" including parking lots; see also MCLS §257.601d which relates to causing a death or serious injury when committing a moving violation, because if a death is charged under the reckless driving statute, "the jury shall not be instructed regarding the crime of moving violation causing death" See MCLS §257.626(5). Also, see MCLS §257.626b (careless or negligent operation of a vehicle as civil infrac-	Statute also covers causing serious injury and causing death
MN	Minn.Stat. §169.13	"while aware of and consciously disregarding a substantial and unjustifiable risk that the driving may result in harm to another or another's property"; a risk "of such a nature and degree that disregard of it constitutes a significant deviation from the standard of conduct that a reasonable person would observe in the situation"; racing "constitutes reckless driving whether or not the speed contested or compared is in excess" of the speed limit; statute also governs operation "upon the ice of any lake, stream, or river" and public parking	Offense is aggravated if death or great bodily harm is causes; statute also covers careless driving
MS	Miss.Code Ann. §63-3-1201	"wilful or a wanton disregard for the safety of persons or property"; Miss.Code Ann. §63-3-1213 prohibits careless driving; both statutes provide that careless driving is a lesser	Penalty enhanced for subsequent offenses
MO	§304.012 R.S.Mo.	No "reckless driving" statute; rather, this statute requires motorists "to exercise the highest degree of care" and operate "in a careful and prudent manner and at a rate of speed so as to not endanger the property of another or the life or limb of any person and shall exercise the highest degree of care"	Penalty enhanced if "an accident is involved"

MT	61-8-301 MCA	"willful or wanton disregard for the safety of persons or property" and while passing a stopped school bus displaying "the visual flashing red signal"; see also 61-8-302 MCA, which prohibits "careless driving"	Statute also covers reckless endangerment of a highway worker; changes Oct. 1 2017 to cover "highway work zones" rather than "construction
NE	R.R.S.Neb §60-6,213	"indifferent or wanton disregard for the safety of persons or property"; also has a statute on "willful" reckless driving, which requires "a willful disregard"; see R.R.S.Neb. §60-6,214; another statute prohibits "careless driving", see R.R.S.Neb. §60-6,212	
NV	Nev.Rev.Stat. Ann. §484B. 653	"willful or wanton disregard of the safety of persons or property" or organizing or participating in "an unauthorized speed contest on a public highway"; also, failure to stop for red lights and siren, several specific speed violations and school zone violations, and in various situations if the driver is the proximate cause of a collision with a bicyclist or pedestrian	Penalties enhanced for second, third and subsequent offenses
NH	RSA 265:79 and RSA 262:2	A "general requirements of culpability" statute (RSA 262:2) defines culpable mental states, including acting "recklessly" and "negligently"; that statute controls the definition of recklessness in the reckless driving statute; also, reckless driving is driving "so that the lives or safety of the public" is endangered, or who "upon a bet, wager, or race" or "for the purpose of making a record" or speeding 100 mph or more	Penalty enhanced for second offense
NJ	N.J.Stat. §39: 4-96 and	Driving a vehicle "heedlessly, in willful or wanton disregard of the rights or safety of others, in a manner so as to endanger, or be likely to endanger, a person or property"; a second	Penalty enhanced for second or subsequent
NM	N.M.Stat.Ann. §66-8-113	"carelessly and heedlessly in willful or wanton disregard of the rights or safety of others and without due caution and circumspection and at a speed or in a manner so as to endanger or be likely to endanger any person or property"; a second statute prohibits "careless driving" (N.M.Stat.Ann. §66-8-114)	Penalty enhanced for second or subsequent offense
NY	NY CLS Veh & Tr §1212	"driving or using any. . .vehicle. . .propelled by any power other than muscular power. . .in a manner which unreasonably interferes with the free and proper use of the public highway, or unreasonably endangers users of the public highway."	

State	Statute	Operative language	Comments
WA	Rev.Code Wash. (ARCW) §46.61.500	"in willful or wanton disregard for the safety of persons or property"; special rules (including ignition interlock requirements) if the "conviction is a result of a charge that was originally filed as a violation" of one of two DUI statutes	
WV	W.Va. Code §17C-5-3	Prohibits operation on highways, streets, parking areas, and in some other areas "in willful or wanton disregard for the safety of persons or property" unless in an area "temporarily closed for racing sport events" or park areas designated for exclusive use of motorcycles or other RVs	Penalties enhanced for 2nd and subsequent offenses and for causing serious bodily injury
WI	Wis.Stat. §346.62 and Wis.Stat. §939.25	Prohibits endangering "the safety of any person or property" by "negligent" operation; which is defined in the second statute as "criminal" negligence which is defined as "ordinary negligence to a high degree consisting of conduct that the actor should realize creates a substantial and unreasonable risk of death or great bodily harm to another"; statute also prohibits "recklessly" endangering a person "by driving a vehicle on or across a railroad crossing . . .or through, around or under any crossing gate. . ."	
WY	Wyo.Stat. §31-5-229	"willful or wanton disregard for the safety of persons or property"	

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http://www.ndaajustice.org/ntlc_home.html

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