DRIVEN

to successfully prosecute DUI cases in Mississippi

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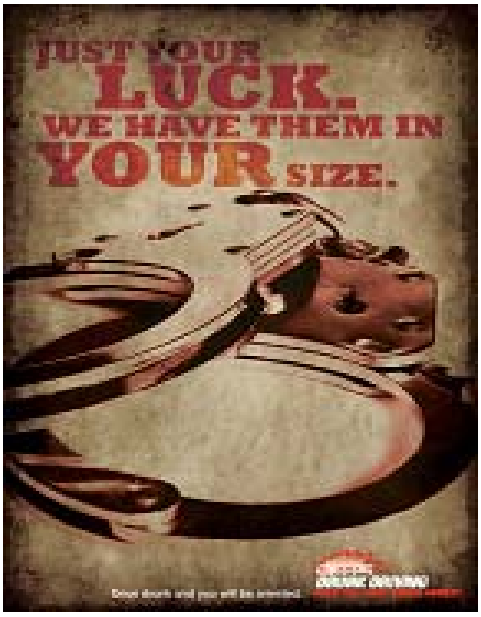
Alcohol is a major factor in fatal crashes over the Labor Day holiday weekend. Therefore, we must work together to ensure the safety of drivers on Mississippi roads during this time. Mississippi state and local law enforcement will be out in full force cracking down on drunk driving this Labor Day. The Impaired Driving-Labor Day National Enforcement Crackdown, sponsored by the National Highway Traffic Safety Administration (NHTSA) runs from August 15th-September 1, 2008.

Over 200 of Mississippi's Law Enforcement Agencies participated in last year's National Labor Day Blitz Campaign from August 17th-September 3rd. During that period, officers performed 1376 DUI arrests, 842 felony arrests, 750 citations for uninsured motorists, 4091 seat belt citations, and 8475 speeding citations.

Sadly, regardless of our continued efforts to fight drunk driving, it remains one of America's deadliest problems. Every 39 minutes and nearly 40 times a day someone in the United States dies in an impaired driving-related crash. Impaired by alcohol, illicit drugs, over-the-counter medications and prescription drugs, many drivers are in no condition to be behind-the-wheel. In fact, Alcohol is cited as a contributing factor in about 32% of the total motor vehicle fatalities in the U.S. which claims more than 13,470 lives every year.



According to a survey released this spring by the AAA Foundation for Traffic Safety, almost 1 in 11 people admitted to driving when they thought they were legally intoxicated. Of 2,509 adults surveyed, 9% said they had driven within the previous 30 days when they believed their blood-alcohol content was .08 % or above (the legal threshold for drunken driving in all states).

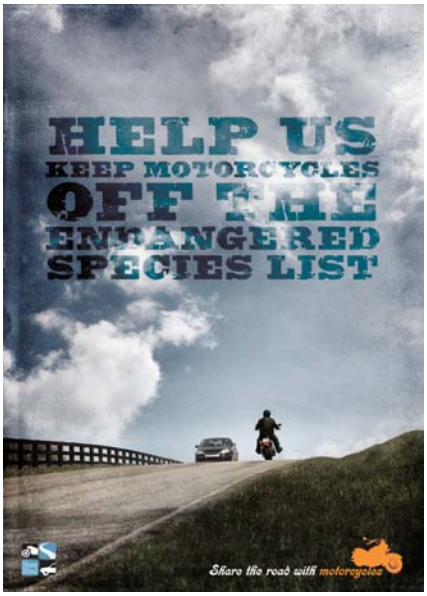
These results resemble those of an unrelated, larger study released in April by the federal government's Substance Abuse & Mental Health Services Administration (SAMHSA). That survey of 127,000 adults found that 15.1 percent of drivers 18 and older said they had driven under the influence of alcohol at least once in the previous year and 4.7% had driven under the influence of illicit drugs.

For more information, visit www.stopimpairedriving.org

Inside this Issue

SHARE THE ROAD

With warmer weather here, more motorcyclists are out on the road– and the drivers of passenger vehicles need to be alert. Motorcycles are small and may be difficult for drivers of other vehicles to see as motorcycles have a much smaller profile than other vehicle drivers. This can make it difficult to judge the speed and distance of an approaching motorcycle. After a crash involving a motorcycle, the drivers of other vehicles involved often say they never saw the motorcyclist and were unable to respond in time. In the event of a crash, a motorcyclist is much more vulnerable and in much greater danger physically than other vehicle drivers. In fact, per vehicle mile traveled, NHTSA estimates that in 2006, motorcyclists were about 35 times more likely than passenger car occupants to die in a traffic crash.



QUICK FACTS

During 2006:

- Motorcycle fatalities increased for the 9th straight year.
- 4,810 motorcyclists lost their lives in fatal highway crashes, meaning motorcycle riders were involved in more than 1 out of 9 in all U.S. road fatalities.
- 55% of all fatalities in motorcycle crashes involved another vehicle in addition to the motorcycle in the crash.
- 93% of all 2-vehicle crashes involving a motorcycle and a passenger vehicle, in which the motorcycle operator died, occurred on non-interstate roadways.
- 51% of all 2-vehicle crashes involving a motorcycle and a passenger vehicle, in which the motorcycle operator died, were intersection crashes.
- In 40% of the 2-vehicle motorcycle crashes involving a motorcycle and another type of vehicle, the other vehicle was turning left when the motorcycle was going straight, passing , or overtaking the vehicle.

DUI COURTS - TRAINED TO BE THE BEST

Across the country, DUI Courts are growing in number and in impact. However, just saying a court is a "DUI Court," does not make it one. There are a number of criteria that must be considered. Is it a court that uses intensive supervision and treatment with rapid accountability when the person doesn't follow through? Is it a court that involves all components in the justice system, such as: law enforcement, prosecutors, defense attorneys, probation, treatment, and, of course, the judge? In DUI Court these individual components work together with a common purpose.

The mission of DUI Courts is "to make offenders accountable for their actions, bringing about behavioral change that ends DUI recidivism, stops the abuse of alcohol, and protects the public; to treat the victims of DUI offenders in a fair and just way; and to educate the public as to the benefits of DUI courts for the community they serve."

The missions of a DUI court, a drug court, and a court that hears both DUI and drug cases are nearly interchangeable. Offender accountability is key in every case. However, distinctions do arise in a couple of areas. First, drug courts must strive to give drug offenders the means to become productive members of society. DUI offenders, on the other hand, are often productive in spite of their alcohol abuse. They already have jobs, families, and homes, and the goal becomes more focused on providing the tools they need to keep what they already have.

Second, although each court must endeavor to educate the public about the benefit of these systems for the communities they serve, proving its case can be a challenge for the DUI community. The public understands that a part of drug court "justice" is treatment, and many believe that treatment is an effective way to counter drug abuse. Fewer people believe that treatment will solve the DUI problem. It is important to convince the public that the greatest danger today comes from repeat offenders, i.e., people with alcohol addictions who, like drug addicts, require treatment to change their behavior.

Training the team together builds an effective DUI Court!

Special Points of Interest on DUI Courts:

There are 110 designated DUI Courts in the U.S.

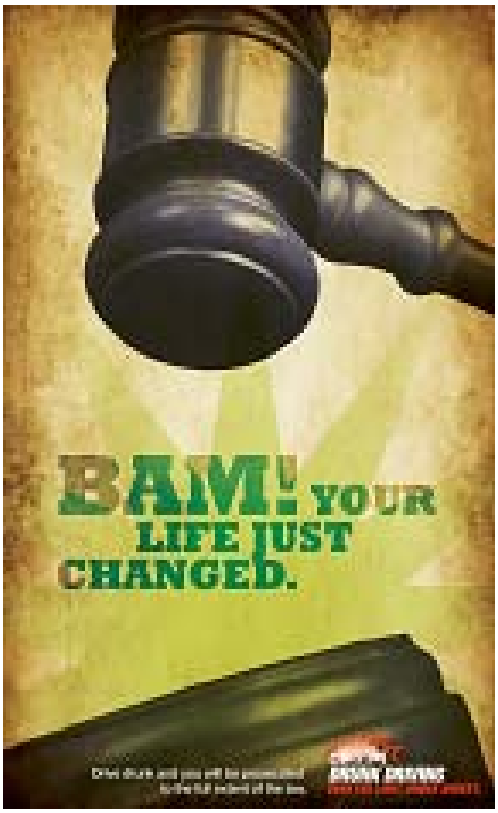
There are 286 "Hybrid" DUI Courts in the U.S. and 16 "Hybrid" DUI Courts in MS. A "Hybrid" DUI Court started as a drug court and then added a track to the docket for DUI offenders.

Drunk driving is a persistent problem, and the so-called "hardcore" drunk driver represents the bulk of the problem. The Century Council defines hardcore drunk drivers "as individuals who fit one or more of the following criteria: a) drive with a high blood alcohol concentration of 0.15 or above, b) who do so repeatedly as demonstrated by having more than one drunk driving arrest, and c) who are highly resistant to changing their behavior in spite of previous punishment."

We know that education programs, license suspension or revocation, and other sanctions do not deter these drivers. In fact, jail time does not even stop them from drinking and driving after they are released from jail.

Why doesn't education or punishment seem to work with the hardcore drunk driver? Because the root cause of the drunk driving is his or her drinking problem. Until that problem is recognized and treated, the vast majority of repeat offense drunk drivers will continue their pattern of drinking and driving. Unfortunately, all too often, this ends with deadly and tragic consequences. The highly successful drug courts offer a model for dealing with high-blood alcohol content (BAC) and repeat offense drunk driving. We must learn from the success of the drug courts and begin to focus on making alcohol treatment a central and integral part of the solution.

For more information on dui courts, visit the American Council on Alcoholism's website at www.aca-usa.org/whyduicourts.htm or email David Wallace at dwallace@ nadcp. org.



Debrow v. State,

No. 2006-KA-01064-SCT

(Miss. Nov. 29, 2007)

FACTS:

Debrow was convicted in Forrest County Circuit Court of his 3rd offense DUI and sentenced to life without parole as a habitual offender. Debrow appealed arguing that the trial court committed plain error by failing to administer the statutory oath when swearing the jury in and admitting evidence of his BAC in violation of his 6th amendment right to confrontation.

Officer Palmer stopped Debrow's vehicle after he tried to avoid a safety checkpoint. Officer Palmer testified that Debrow smelled like alcohol, that his speech was slurred, and his eyes were red and glassy. When Debrow exited the vehicle, he held onto the door for balance and his crotch area appeared wet. Debrow agreed to a PBT, which indicated the presence of alcohol. When the officer discovered that Debrow had two previous DUIs, he obtained a search warrant for a blood sample. The blood test revealed a BAC of 0.243%. At trial, a Medtox toxicologist was accepted as an expert even though he was not directly involved with the testing of Debrow's blood.

HELD:

Although Debrow's claim regarding the violation of his 6th amendment right to confrontation was procedurally barred, the Court reviewed it under the plain error doctrine because it involved a fundamental right. Debrow's right to confrontation was violated by permitting the toxicology expert to testify regarding the results of the blood test, but the violation of this right was harmless.

Pulido v. City of Oxford,

No. 2006-KM-01277-COA

(Miss. App. Jan. 22, 2008)

FACTS:

Pulido was convicted in Lafayette County Circuit Court of his 1st offense DUI and careless driving. On appeal, Pulido argued that the circuit court: 1) lacked jurisdiction to hear an appeal from municipal court; 2) erred in finding that an adequate evidentiary foundation had been laid for the officer's testimony; and 3) erred in failing to allow an inquiry into whether the sobriety testing equipment was properly calibrated and functioning at the time of Pulido's arrest.

Officer Lytle stopped Pulido after observing him weaving in and out of driving lanes. Pulido had blood shot eyes, dilated pupils, slurred speech, and the odor of an intoxicating beverage was coming from the inside of his truck. Pulido was unable to complete field sobriety tests and was placed under arrest and refused an Intoxilyzer test.

HELD:

First, the municipal court's failure to comply with URCCC 12.02 did not deprive the circuit court of jurisdiction to hear this appeal. Second, the trial judge did not err in failing to strike the arresting officer's testimony because there was no evidentiary foundation laid that she was qualified to administer or analyze SFSTs. Under MRE 701, an officer can testify about personal observations of a defendant and need not be tendered as an expert to testify. Finally, there was no error by the court for refusing to allow questions about whether or not the intoxilyzer was properly calibrated and functioning at the time of Pulido's arrest. These questions were irrelevant because no intoxilyzer test results were offered.

Ivy v. City of Louisville,

No. 2007-KM-0007-COA

(Miss. App. March 11, 2008)

FACTS:

Ivy was convicted in Winston County Circuit Court of his 1st offense DUI. On appeal, Ivy argued that the circuit court should have granted a new trial in his case because the verdict was against the overwhelming weight of evidence.

Officer Lovern was helping a stranded motorist when he noticed Ivy traveling in the opposite direction in excess of the posted speed limit. The officer followed Ivy, observed him weaving between lanes of traffic, and subsequently pulled him over. Officer Lovern smelled alcohol, noticed Ivy's speech was slurred, and observed Ivy having trouble finding his driver's license. In addition, a second officer arrived on the scene and made similar observations. Ivy admitted to drinking that evening and a PBT showed that he was well over the legal limit. Ivy stumbled when he was getting out of the car and had to be carried to the patrol car.

Ivy testified at the trial, denied that he was intoxicated when he was pulled over, and claimed he was sober when arrested. Therefore, Ivy claimed that the direct conflict between his testimony and the officers' testimony meant that the evidence was not sufficient to prove that he was impaired within the meaning of the law, especially given the absence of any objective measure of his BAC. Accordingly, Ivy claimed that the officers should have informed him of his right to obtain his own blood test in support of his defense.

HELD:

The evidence presented at trial was sufficient to support Ivy's guilty verdict. Under § 63-11-30(1), a defendant can be charged and convicted for DUI by the testimony of a witness who observed the defendant exhibiting signs of intoxication OR by the results of an intoxilyzer test. Furthermore, Mississippi law does not require law enforcement officers to inform the defendant of his right to obtain an independent blood test.

Lyle v. State

No. 2006-KM-02117-SCT

(Miss. May 22, 2008)

FACTS:

Lyle was convicted in Leake County Circuit Court of his 2nd offense DUI. The issues raised on appeal included: the court erred in refusing to grant Lyle's motion for directed verdict; abused its discretion by reopening the record after the state rested its case; abused its discretion by recessing and allowing the prosecution to obtain a copy of Lyle's prior conviction; and the state failed to prove Lyle guilty of DUI 2nd offense.

Officer Atkinson pulled Lyle over

after observing him driving in the wrong lane and weaving across lanes in the highway. Officer Atkinson noticed the smell of alcohol on Lyle's breath and saw numerous empty beer cans in the bed of his truck. A second officer arrived on the scene and administered a PBT, which indicated the presence of alcohol.

HELD:

Trial courts must not allow the State to reopen its case unless there is a "mere inadvertence or some other compelling circumstance and no substantial prejudice will result." Here, the omission of the essential element was due to the trial judge's misunderstanding of the law—this failure was a "mere inadvertence" and thus, not double jeopardy. Furthermore, the trial court did not expose Lyle to double jeopardy by granting the State a continuance to gather evidence of his 1st DUI conviction.

Stuckey v. State,

No. 2006-KM-01589-COA

(Miss. App. Feb. 19, 2008)

FACTS:

Stuckey was convicted in the Monroe County Justice Court of 1st offense DUI and reckless driving. He appealed his conviction to the Monroe County Circuit Court, which reaffirmed the conviction. Stuckey then appealed the circuit court's decision, asserting that the trial court committed reversible error in overruling his motion to dismiss at the end of the state's case and at the conclusion of the trial.

Stuckey was stopped by Mississippi Highway Patrolman Smith and Mississippi Highway Patrolman Mobley completed the stop. When Officer Mobley arrived at the scene, he observed Stuckey exiting the car and asked Stuckey if he had been drinking. Stuckey confirmed that he had been drinking and that he was headed home when he was pulled over. He consented to a PBT, which indicated the presence of alcohol. No field sobriety tests were done; however, Stuckey displayed signs of intoxication—slurred speech and a sauntering walk. Based on these signs, Stuckey was taken into custody and offered the intoxilyzer test. His BAC registered at .13%.

At the trial, Officer Mobley was present but Officer Smith was not and did not testify. Stuckey claimed that Officer Mobley did not actually witness him driving the vehicle. He also claimed that there was no evidence presented to prove that Officer Smith had probable cause to initiate the stop.

HELD:

Stuckey's conviction was supported by sufficient evidence that he operated his vehicle while under the influence of alcohol. Stuckey admitted that he was headed home, and Officer Mobley testified that he watched Stuckey exit the vehicle from the driver's side. The issue regarding lack of probable cause was waived because Stuckey's counsel failed to object to the introduction of the evidence regarding the vehicle stop.

Jones v. State,

No. 2007-KM-00344-SCT

(Miss. Jan. 10, 2008)

FACTS:

Jones entered a guilty plea in Tunica County Justice Court to 1st offense DUI and careless driving. She was given a fine and 48 hours suspended jail time. Jones appealed to the Tunica County Circuit Court. The circuit court declined to allow Jones a de novo review due to her previous admission of guilt through her guilty plea. Jones appealed claiming that the circuit court abused its discretion by denying her right to a trial de novo after conviction in a justice court.

HELD:

Jones was entitled to a trial de novo after her conviction in a justice court. The right to appeal any conviction of a criminal offense from justice court is provided under § 99-35-1. The statute does not differentiate based upon the manner of conviction, plea, or trial. The mandatory language within the statute, "on appearance of the appellant in the circuit court the case shall be tried anew," precludes dismissal of an appeal by the circuit court.

DISSENT (J. Easley, joined by C.J. Smith)

No factual dispute was alleged by Jones and nothing in the record showed that her plea was not voluntarily and knowingly made. This Court should not be in the practice of making excuses for those that break the law. Jones stated under oath that she was guilty. She made no assertion that she had been misled or coerced into confessing her guilt when she, in fact, was not guilty. What is the point of allowing guilty pleas in the justice court system, if they can automatically be set aside and the case be retried de novo by simply appealing to circuit or county court? The law should protect the innocent, not the guilty.

Wilkins v. City of Florence,

No. 2007-KM-00349-COA

(Miss. App. Dec. 11, 2007)

FACTS:

Wilkins was convicted in the Florence County Municipal Court of 1st offense DUI, careless driving, and speeding and he appealed. The county court, Rankin County, after a trial de novo, convicted Wilkins of the offenses. Wilkins further appealed to the Rankin County Circuit Court, which sitting as an appellate court, affirmed Wilkin's convictions, and he once again appealed the decision.

In both county court and circuit court, Wilkins, in addition to arguing that there was insufficient evidence to support his conviction, argued that he was denied equal protection of the law because he was not afforded a trial by jury.

HELD:

§ 11-51-81 states that no further appeal is permitted unless a constitutional issue is presented, AND an appeal is specifically allowed by either the circuit judge or by a judge of the Supreme Court.

Wilkins presented a constitutional issue, as he claimed a denial of equal protection to permit a jury trial in a criminal misdemeanor case brought in justice or county court but to deny a defendant the same right in a criminal misdemeanor case brought in municipal court. However, there was no order by either the circuit judge or by a judge of the Supreme Court. Therefore, Wilkins appeal was dismissed.

Drug Evaluation and Classification Program

The Drug Evaluation and Classification (DEC) Program was developed to arrest and convict drivers impaired by drugs other than alcohol. The DEC process is a systematic, standardized, post-arrest procedure to determine whether a suspect is impaired by one or more categories of drugs. The process is systematic because it is based on a variety of observable signs and symptoms proven to be reliable indicators of drug impairment. Officers who complete an extensive training program are certified as Drug Recognition Experts (DREs).

In many jurisdictions, the DRE may be put forth as a "technical" expert, one with specialized knowledge whose testimony is based on observation, education, training, skill, and experience. In other words, the DRE has specialized knowledge that will assist the trier-of-fact to understand the evidence. Just as an individual does not have to understand how a television works in order to determine that the set is working, the DRE does not need to know the scientific explanation of how drugs cause impairment to recognize impairment. Prosecutors handling drug-impaired driving cases will find DRE testimony particularly helpful.

In a typical alcohol-impaired driving case, an officer may testify to many indicators of alcohol impairment observed during the investigation. A case of driving under the influence of drugs comes before the court in the same manner. The arresting officer either comes upon an incident or makes a traffic stop because there is a traffic violation or reasonable suspicion to believe that the suspect is driving under the influence of an intoxicating substance. The initial investigation is conducted as any other impaired-driving case.

The DRE usually becomes involved after the suspect takes a breath test and the results do not reflect the level of impairment observed by the arresting officer. For example, the suspect was driving erratically and performed SFSTs poorly but the breath test result is .02 BAC. Whether or not a breath test is performed, sometimes the arresting officer may initially suspect a driver is drug impaired if drugs or drug paraphernalia are observed on the suspect or in the car.

Currently, at least 30 states and the District of Columbia are participating in the DEC program. Mississippi is excited about instituting a DEC/DRE pilot training program in late September of this year.

For further details, see the *Drug Evaluation and Classification (DEC) Program* available for downloading at www.ndaa.apri.org/publications/apri/traffic_law.html.

Jim Hood
Attorney General

Molly Miller
Traffic Safety Resource Prosecutor
550 High Street, Walter Sillers Bldg.
P.O. Box 220
Jackson, Mississippi 39205
E-mail: mmill@ago.state.ms.us
Phone: 601.359.4265
Fax: 601.359.4200
www.ago.state.ms.us/divisions/prosecutors

Mark your Calendar!

Aug. 11-14	SFST Training in Moss Point
Aug. 25-28	CTS in Tupelo
Sept. 8-11	SFST Training in Petal
Sept. 15-19	DRE TRAINING
Sept. 22-26	DRE TRAINING
Sept. 21	Child Passenger Safety Week
Oct. 19-25	National Teen Driver Safety Week
Nov. 11-13	S.T.O.R.M. Fall Conference
Dec. 13-31	"Drunk Driving. Over the Limit. Under Arrest." National Crackdown

DID YOU KNOW?

All 50 States, the District of Columbia, and Puerto Rico have laws requiring that children be restrained in motor vehicles. Child safety seats and booster seats saves lives. They offer the best protection for children in the event of a crash. During the past 30 years, approximately 8,325 children's lives have been saved by the use of child restraints, according to the National Highway Traffic Safety Administration.

National Child Safety Week is an annual campaign to bring public attention to the importance of properly securing all children in appropriate child safety seats, booster seats, or seat belts-every trip, every time. The campaign kicks off on September 20, 2008, with "Seat Check Saturday" inspection events nationwide. Across the country, English-speaking and Spanish-speaking child passenger safety certified technicians will provide free on-site child safety seat inspections to help parents and caregivers make sure their vehicle's child safety seats are appropriately sized and properly installed.