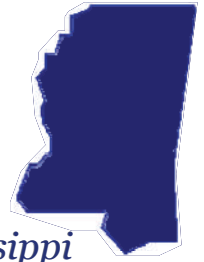




DRIVEN



to successfully prosecute DUI cases in Mississippi

Volume 8, Issue 1

Spring 2011

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A main focus of the MS Legislature in 2010 was to ban "K2" or "Spice" which is a synthetic cannabis product. The product was marketed as incense, and reportedly did not show up in common drug screens.ⁱ

This year has brought a new focus to the chemical drug trend: Methylene-dioxypyrovalerone. This chemical is commonly referred to as MDPV or by the commercial retail names like Vanilla Sky or Ivory Wave.ⁱⁱ

Mississippi took this growing threat to our 2011 Regular Legislative Session, with both the House and Senate introducing bills to ban the substance. House Bill 1205 was approved into law by Governor Haley Barbour on March 11, 2011. The Act, known as the Dewayne Crenshaw Act, includes these cathinone derivative substances in § 41-29-113 of the Miss. Code as a Schedule I narcotic.^{ix} The act is named after a deputy sheriff who was killed in Tippah County where the suspect may



The substance is not reported to appear on common drug screens, but the high can be similarly compared to the high you get from cocaine or large doses of methamphetamines.ⁱⁱⁱ While the effects of the drug are similar, MDVP's high can be much longer and much more intense than most commonly recognized drugs.^{iv} Reports have also shown that there is a more traumatic comedown from the high than typically found in cocaine or other similar drugs.^v Reports on the drug this year have grown. A recent article in Bloomberg Businessweek quoted the Director of the Louisiana Poison Control Center, Mark Ryan: "In the first month of 2011, there have already been 248 bath salts-linked calls na-

"These cathinone derivatives are dangerous chemicals that have been cleverly marketed as bath salts," said Attorney General Jim Hood. "They are known for producing a cocaine-like high that can last ten times longer than cocaine. I applaud our lawmakers for outlawing this dangerous substance... we will save lives with this law."

have ingested this type of drug. The bill adds the cathinone derivatives to the classification of Schedule I drugs.^x The punishment for possession of these cathinone derivatives is the same as any other Schedule I controlled substance as defined in Miss. Code § 41-29-139 which states that less than one-tenth gram or one dosage unit or less may be charged as a misdemeanor or felony.

April 2011

National Distracted Driving
Awareness Month

May 2011

Motorcycle Safety Awareness Month
Primary Message: Motorists and
Motorcyclists Share the Road

Bicycle Safety Month

Primary Message: Make Bicycling
Safe for Riders of ALL Ages

May 23 – June 5, 2011

Click It or Ticket

National Enforcement
Mobilization

OCCUPANT PROTECTION

Primary Message: Click It or Ticket

June 20, 2011

National Ride to Work Day
MOTORCYCLE SAFETY

Message: Share the Road with
Motorcycles



However, amounts greater than one-tenth of a gram or two dosage units are charged as a felony.

The Hinds County Sheriff's Office has promptly begun investigating and seeking out violators of the new law. The first Hinds County arrest since the law passed was made at an adult book store off of McDowell Road.^{xiii} Major Nick Clark commented on the issue, stating: "We have a zero tolerance for any kind of illegal narcotic controlled substance whether it be the sale or anything else."^{xiii} The Hinds County Sheriff's Office will continue to investigate any sale of these chemicals.^{xiv}

ⁱPsychonaut Web Mapping Research Group (2009). Spice report. Institute of Psychiatry, King's College London: London, UK. ⁱⁱPsychonaut Web Mapping Research Group (2009). MDPV Report. Institute of Psychiatry, King's College London: London, UK. ⁱⁱⁱ*Id.* at 3. ^{iv}*Id.* at 5. ^v*Id.* at 5. ^{vi}Amanda Gardner, *Hallucinogens Legally Sold as 'Bath Salts' a New Threat*, Bloomberg Businessweek, Feb. 4, 2011. ^{vii}Mississippi Legislature Website, <http://billstatus.ls.state.ms.us/2011/pdf/history/HB/HB1205.xml> (Last visited March 8, 2011). ^{viii}*Id.* ^{ix}The Dwayne Crenshaw Act, H.B. 1205, Miss. Leg. Reg. Session (2011). ^xJan Shaffer, Press Release. Mississippi Attorney General's Office. (March 3, 2011). ^{xii}*Id.* ^{xiii}<http://www.wapt.com/news/27352633/detail.html>. ^{xiv}*Id.*



Mississippi Officers Receive Training

With increased statewide law enforcement efforts by officers across Mississippi to reduce the number of crashes, injuries, and fatalities caused by impaired drivers, law enforcement officers must be properly trained to catch violators. Many officers attend the statewide Standardized Field Sobriety Testing (SFST) training courses which prepare them for effectively arresting and convicting these offenders. Recently, a select group of SFST certified officers attended the SFST Instructor School to become certified to teach SFST training classes across the state.

The SFST training program (which includes the standardized curriculum developed by NHTSA) is vital to increase the probability of detecting, investigating, arresting and convicting impaired drivers. During the SFST Instructor's Training Class, these select officers enhance not only their knowledge of the SFST class materials, they are also trained in instructor development, proper procedures, and available options for teaching the basic SFST courses. Well done guys!



The 23 new SFST Instructors that completed the instructor training this year are pictured in navy. There are approximately 200 SFST instructors statewide. Master SFST Instructors are pictured in red on the front row. During the recent SFST Instructor school, 2 SFST Instructors, Rob Banks (front row, third from right) and Trent Boyd (front row, far right) were certified as Master SFST Instructors.

CASELAW UPDATE

Setzer v. State

No. 2009-KA-00752-SCT
(Miss. Feb. 17, 2011)

Facts:

Setzer was convicted of two counts of culpable negligence manslaughter and one count of DUI injury. As Setzer's truck approached a traffic light, his vehicle collided with a stationary car in the left hand turn lane. The pickup pushed the car into the intersection, causing a four-vehicle collision. The crash left two people dead, one person partially paralyzed, and another person with serious injuries. The officer observed Setzer appeared impaired and advised him of his Miranda rights.

Held:

The Court held the evidence supported the trial court's determination that the defendant consented to the collection of a sample of his blood, and there was no abuse of discretion in finding that the officer's actions (collecting a sample of blood from Setzer) were supported by probable cause. The conviction and sentence was affirmed.

Reeves v.

City of Crystal Springs

No. 2009-CA-01362-COA
(Miss. Feb. 15, 2011)

Facts:

Reeves ran his SUV into a telephone pole. By the time the responding officer arrived on the scene, Reeves had disappeared. He was located approximately 300 feet away, hiding behind a pillar in front of a building. After confirming he was the driver, the responding officer observed that Reeves had red eyes, dilated pupils, and slurred speech. Reeves submitted to the intoxilyzer which indicated his BAC was over the legal limit. He was convicted in municipal court of DUI 1st, and appealed. His appeal was dismissed for not being filed in a timely manner. Reeves then appealed the dismissal.

Held:

The Court held that the circuit court did not err when determining the

timeliness of defendant's appeal in allowing the city to submit an abstract of record to furnish defendant's date of conviction. Rule 12.02(A)(1) states that an appeal must be filed within 30 days. Here, the notice of appeal was filed on 3/3/09 (Reeves was unaware he had been convicted of DUI until he



Mississippi Supreme Court

received a letter from the clerk stating that his DUI fine was unpaid), and the abstract showed a conviction date of 1/14/09. The Court stated, "While we acknowledge that interpretation may result in a seemingly unfair dismissal of cases, this Court must interpret the rules as written." The Court also held that the defendant's allegations that the dismissal of the appeal resulted in a manifest injustice were without merit. Reeves claimed that circumstances surrounding the administration of the Intoxilyzer test should have resulted in an acquittal; however, he presented no evidence that the officer failed to observe him during the required period or that he took anything by mouth during this period. The Court found the officer's testimony was adequate to support the administration of the test, and there was no indication that proper procedure was not followed. The Court affirmed the circuit court's decision.

Eubanks v. State

No. 2009-CA-01922-COA
(Miss. Ct. App. Feb. 8, 2011)

Facts:

Following successful completion and discharge of sentence of probation for felony driving under influence (DUI), defendant filed a motion to expunge his conviction. The motion was initially granted, but on motion by the Department of Public Safety, the circuit court

vacated the order. Defendant appealed.

Held:

The Court held that the trial court lacked inherent authority to expunge a conviction for felony DUI under §99-15-26. The statute provides in part: "[a] person shall not be eligible to qualify for release in accordance with this section if such person has been charged... with an offense under the Mississippi Implied Consent Law." The MS Supreme Court has held a circuit court lacks the inherent power to order expungements of criminal records except under certain conditions of § 99-15-26. Defendant's conviction falls within the Implied Consent law which is expressly prohibited under § 99-15-26. The Court of Appeals decision is affirmed.

Harness v. State

No. 2007-CT-01415-SCT
(Miss. Jan. 20, 2011)

Facts:

On August 22, 2003, Harness was involved in a head-on collision. When the officer arrived on the scene, the victim appeared lifeless in his car, and Harness was standing near his vehicle. The officer observed Harness's eyes to be "a little glazed," and that he backed away and would not get close when the officer approached. Harness admitted drinking, but that he was not "drunk." Blood samples were retrieved from both the victim and defendant, as beer cans and an unopened bottle of brandy were present at the scene. Harness was indicted for Aggravated DUI. During discovery, Harness requested the blood sample for independent testing. Harness then filed a motion to compel, but prior to the hearing, discovered the evidence



had already been destroyed (pursuant to MS Crime Lab policy).

Harness filed a motion to dismiss the indictment arguing destruction of the blood sampled denied him of his right to an independent test. The trial judge denied the motion, citing no "bad faith" by the state. At trial, Harness was found guilty of aggravated DUI. The Court of Appeals affirmed, and initially the Supreme Court reversed holding that MS law affords greater due process protection than constitutional standards. On motion for rehearing, the Court withdrew their original opinion and affirmed the Court of Appeals



Mississippi Court of Appeals

decision.

Held:

The Court used the three prong test set out in *California v. Trombetta* by the US Supreme Court to determine whether a defendant's due process rights have been violated. Under the test, the defendant must show: 1) evidence had exculpatory value apparent before it was destroyed; 2) the defendant was unable to obtain comparable evidence by reasonable means; and 3) that the police showed bad faith in destruction of the evidence. The Court found the defen-

dant did not meet the first prong—that the blood sample had exculpatory evidence before it was destroyed. Without the first prong met, prongs two and three were irrelevant, and thus, the defendant's due process rights were not violated.

Beecham v. State

No. 2009-KA-00251-COA
(Miss. Ct. App. Dec. 14, 2010)

Facts:

On March 27, 2007, Beecham and Lovelace were involved in a two-vehicle accident in DeSoto County, Mississippi. After being extricated from her vehicle, Lovelace was air lifted to a regional medical center in Memphis, Tennessee, where she eventually died from her injuries. After a trial by jury, Beecham was found guilty of DUI and causing the death of Lovelace. At the sentencing hearing, Beecham was adjudicated as a habitual offender under § 99-19-81. Beecham was then sentenced to twenty-five years in the custody of MDOC. Beecham appealed, arguing error: by allowing blood-alcohol evidence, the testimony of the accident reconstructionist, introduction of the death certificate and photos of the victim's vehicle, in denying the defendant's motion for a directed verdict and jury instruction, and in imposing the maximum sentence.

Held:

The Court of Appeals found no error in admitting the testimony of the accident reconstructionist, the death certificate or the photos. The accident report was also properly admitted into evidence. The MS Supreme Court has held that "police reports prepared

during an investigation of an accident should be admissible into evidence." *Copeland v. City of Jackson*, 548 So.2d 980 (Miss. 1989). The Court also held the smell of alcohol on the defendant at the scene coupled with the defendant being uncooperative with paramedics was sufficient to establish probable cause for the issuance of the warrant. The sentence was not disproportionate in light of the defendant's past and current crimes, and the evidence was sufficient to support the verdict.

Gowdy v. State

No. 2009-KA-00890-SCT
(Miss. Dec. 16, 2010)

Facts:

Upon being pulled over from running a stop sign, Gowdy got out of the vehicle and ran. Once caught, the arresting officer observed Gowdy as unruly, having slurred speech, and smelling of alcohol. He requested the assistance of a DUI officer. The DUI officer described Gowdy as belligerent, smelling of alcohol, and slurring his words. On the scene, Gowdy refused to take a PBT, and was transported to the police station. At the station, the DUI officer testified that Gowdy refused both a field sobriety test and breath test. Being Gowdy's fourth DUI within a five year period, he was indicted for felony DUI. At trial, Gowdy testified in his own defense. He admitted running the stop sign, but denied drinking. He said he was never offered a breath test or a field sobriety test. After his trial, but before sentencing, the State amended the indictment to allege that Gowdy was a habitual offender. Gowdy was sentenced to life in prison without the possibility of parole.

Held:

The Supreme Court held that an amendment as to habitual status, after conviction, was an unfair surprise. Thus, the indictment could not be amended following a guilty verdict just prior to sentencing. The defendant's conviction was affirmed, but his sentence was vacated and remanded for a new sentencing hearing.



Department of Transportation Estimates Three Percent Drop Beneath 2009 Record Low in National Traffic Fatalities

U.S. Transportation Secretary Ray LaHood announced recently that the number and rate of traffic fatalities in 2010 fell to the lowest levels since 1949 despite a significant increase in the number of miles Americans drove during the year.

"Last year's drop in traffic fatalities is welcome news and it proves that we can make a difference," said U.S. Transportation Secretary Ray LaHood. "Still, too many of our friends and neighbors are killed in preventable roadway tragedies every day. We will continue doing everything possible to make cars safer, increase seat belt use, put a stop to drunk driving and distracted driving and encourage drivers to put safety first."

According to the National Highway Traffic Safety Administration's (NHTSA) early projections, the number of traffic fatalities fell three percent between 2009 and 2010, from 33,808 to 32,788. Since 2005, fatalities have dropped 25 percent, from a total of 43,510 fatalities in 2005. The same estimates also project that the fatality rate will be the lowest recorded since 1949, with 1.09 fatalities per 100 million vehicle miles traveled, down from the 1.13 fatality rate for 2009. The decrease in fatalities for 2010 occurred despite an estimated increase of nearly 21 billion miles in national vehicle miles traveled.

A regional breakdown showed the greatest drop in fatalities occurred in the Pacific Northwest states of Washington, Oregon, Idaho, Montana and Alaska, where they dropped by 12 percent. Arizona, California and Hawaii had the next steepest decline at nearly 11 percent.

"The decrease in traffic fatalities is a good sign, but we are always working to save lives," said NHTSA Administrator David Strickland. "NHTSA will continue pressing forward on all of our safety initiatives to make sure our roads are as safe as they can possibly be."

The Department of Transportation (DOT) has taken a comprehensive approach to reducing roadway fatalities by

promoting strong traffic safety laws coupled with high-visibility enforcement and through rigorous vehicle safety programs and public awareness campaigns.

In 2009, Secretary LaHood launched a national anti-distracted driving campaign modeled on other successful NHTSA efforts to reduce fatalities, such as its "Over the Limit. Under Arrest." and "Click It Or Tickle" campaigns to curb drunk driving and increase seat belt use. The U.S. DOT has launched a dedicated website, www.Distracted.gov, to provide the public with a comprehensive source of information on distracted driving.

DOT has also hosted two national summits devoted to the issue, crafted sample legislation which states can use to adopt distracted driving laws, and initiated pilot law enforcement programs in Hartford, Conn., and Syracuse, N.Y.

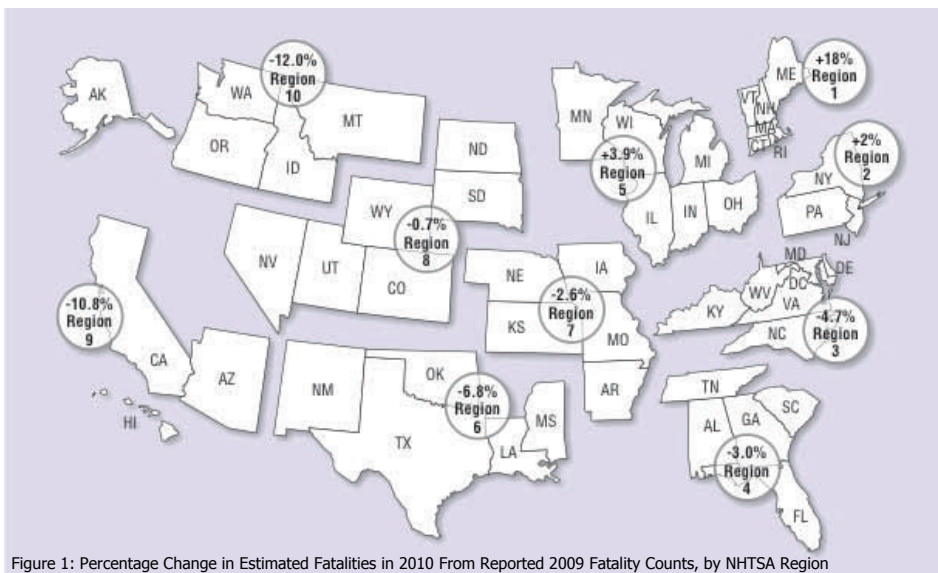


Figure 1: Percentage Change in Estimated Fatalities in 2010 From Reported 2009 Fatality Counts, by NHTSA Region

NHTSA has also taken action to improve vehicle safety. The agency has urged automakers to swiftly and voluntarily report safety defects to keep the driving public safe. NHTSA has encouraged the development and use of technologies to prevent crashes, such as electronic stability control, forward collision warning and lane departure warning systems. The agency unveiled an updated 5-star rating system in 2010 which established more rigorous crash-test standards and began providing consumers with improved information about which cars perform best in collisions.

The U.S. Department of Transportation's Federal Highway Administration (FHWA) has also been encouraging the use of Safety Edge technology -- which reduces drivers' risk of running off the road by shaping pavement edge -- on new road and highway projects. FHWA has also promoted the use of rumble strips and cable median barriers to separate opposing directions of traffic to reduce the incidence of crossover head-on collisions.

Reprinted Courtesy of NHTSA
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ADDITIONAL RESOURCES

National Highway Traffic Safety Administration
<http://www.nhtsa.gov>

Sobriety Trained Officers Representing
 Mississippi—STORM
<http://www.msstorm.net>

MS Department of Public Safety
<http://www.dps.state.ms.us>
www.thesurvivorsclub.org/

Mississippi Department of Public Safety
<http://www.dps.state.ms.us/dps/dps.nsf/>



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Low-risk drinking limits	MEN	WOMEN
On any single DAY	No more than 4 drinks on any day	No more than 3 drinks on any day
	** AND **	** AND **
Per WEEK	No more than 14 drinks per week	No more than 7 drinks per week

To stay low risk, keep within BOTH the single-day AND weekly limits.

Upcoming Training & Conferences

April 2011

- April 26, 2011
A.R.I.D.E¹ Class, Pearl, MS
- April 27-29, 2011
Prosecutor's Conference, Biloxi, MS
- April 27-29, 2011
Prosecutor's DUI Training, Biloxi, MS
DUI: The Visual Trial
- April 27-29, 2011
Trial & Appellate Judges Conference, Jackson, MS

May 2011

- May 3-5, 2011
STORM² Conference, Vicksburg, MS
- May 17-19, 2011
SFST³ Class, Tupelo MS
- May 25-27, 2011
Municipal Court Judges Conference
- May 24-25, 2011
A.R.I.D.E. Class, Winona, MS

FUTURE DATES:

- October 4-7, 2011
Justice Court Judges Conference, Pearl River Resort, Choctaw, MS
- October 26-28, 2011
Prosecutor's Conference, Tunica, MS
- October 26-28, 2011
Trial & Appellate Judges Conference, Jackson, MS

¹ Advanced Roadside Impairment Driving Enforcement
² Sobriety Trained Officers Representing Mississippi
³ Standardized Field Sobriety Testing Training class