



DRIVEN


to successfully prosecute DUI cases in Mississippi



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MADD Awards Mississippi with Five-Star Rating

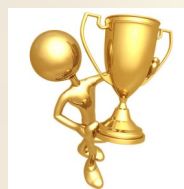
 In November 2006, MADD launched its *Campaign to Eliminate Drunk Driving®* to set the course of creating a nation without drunk driving. The campaign focuses on effective countermeasures that are already in place, laws we can pass tomorrow, and future technologies to make cars safer. MADD monitors progress using a five-star system to rate the states and encourage them to adopt proven countermeasures. Each star a state earns indicates the adoption of a particular law or participation in one of the drunk driving countermeasures.

Stars are awarded for:

- ★ **Ignition Interlock**— requiring ignition interlock for all drunk driving offenders
- ★ **Sobriety Checkpoints**— conducting sobriety checkpoints
- ★ **Administrative License Revocation**— utilizing administrative license revocation
- ★ **Child Endangerment**— enhancing penalties for DUI Child Endangerment
- ★ **No-Refusal**—participating in no-refusal events



In 2015, Mississippi earned its fifth star and became the twenty-second state to pass an all-offender ignition interlock law. Other states that have received five-star ratings include Alabama, Arizona, Colorado, Delaware, Illinois, Kansas, Maine, Missouri, Nebraska, Utah, Virginia, and West Virginia. Rankings are published annually in MADD's *Report to the Nation*, which provides an overview of legislative accomplishments, highlights state-by-state drunk driving reform, and provides a glimpse of what is on the horizon for the year.



For a complete list of state rankings, see: <http://www.madd.org/drunken-driving/state-stats/>

December is National Drunk & Drugged Driving Prevention Month

If you mistake these for
pretty holiday lights,
you shouldn't be driving.



Drive drunk over the holidays and you will get busted.



**DRIVE
SOBER**
OR NO KISSES UNDER THE
MISTLETOE
FOR YOU.

avoid
the
holiday
buzz. buzzed driving is drunk driving.



**SHE'S IN NO SHAPE TO
GUIDE HER SLEIGH
TONIGHT.**



Caselaw Update

Parish v. State

2014-KM-01401-SCT
(Miss. Oct. 22, 2015)

FACTS:

At a driver's license safety checkpoint, an officer approached Parish's car and asked for his driver's license. During the check, the officer noticed that: 1) Parish had ash and green leafy substance all over his pants; 2) Parish was "really nervous;" 3) Parish's vehicle and breath smelled of burnt marijuana; 4) Parish's speech was slurred; and 5) Parish's eyes were red. Parish admitted that he had smoked marijuana approximately 20 mins prior to encountering the checkpoint.

With Parish's consent, the officer searched his backpack and found a hookah pipe inside that smelled of burnt marijuana. The officer then performed an HGN test on Parish, and did not observe any signs of impairment. Next, the officer conducted a lack-of-convergence test. Parish's eyes failed to converge during the test. When the officer administered the Romberg Balance Test, Parish tested within normal range, but exhibited eyelid and leg tremors while performing the test. Finally, Parish consented to blood testing. The blood drawn and the hookah pipe found in Parish's car were sent to the MS Crime Lab. Both tested positive for marijuana. Parish was charged with first-offense DUI and possession of drug paraphernalia.



Parish was found guilty in municipal and county courts. Both convictions were affirmed. On his appeal to the MS Supreme Court, Parish argued that the State failed to prove that his ability to operate a vehicle was impaired by his consumption of marijuana.

HELD:

In reviewing a challenge to the sufficiency of the evidence, the Court looks to whether, after viewing the evidence most favorable to the prosecution, "any rational trier of fact could have found the essential elements of the crime beyond reasonable doubt."

In determining whether a person violates § 63-11-30(1)(d) of the Mississippi Code which prohibits driving under the influence of any illegal drug or controlled substance, the Court applies a *de novo* review. *Dies v. State*, 926 So. 2d 910, 917 (Miss. 2006).

The Court defined "under the influence" as "driving in a state of intoxication that lessen a person's normal ability for clarity and control." *Leuer v. City of Flowood*, 744 So. 2d 266, 269 (citing *Gov't of Virgin Island v. Steven*, 134 F. 3d 526, 528 (3d Cir. 1998)).

Following the reasoning of *Weil v. State* and *Beal v. State*, where both DUI convictions were affirmed, the Court held that the State presented sufficient evidence through the arresting officer's testimony, observations, defendant's blood test and defendant's admission of marijuana.

na use.

Affirmed.

In a 6-2 decision, the Dissent stated that the State had proven the first 3 elements of the crime, but the State produced no evidence that the defendant's ability to operate a vehicle was impaired from his consumption of marijuana.

Bratcher v. State

2014-KM-01060-COA
(Miss. Ct. App. Oct. 20, 2015)

FACTS:

When Bratcher was stopped for speeding, the officer learned that another police department issued a warrant for Bratcher's arrest. The officer then asked Bratcher to exit the vehicle and observed her staggering. The officer believed she was DUI, so he called a DUI officer to the location of the stop. The DUI officer administered several field sobriety tests and 2 portable breath tests. Based on the results, the DUI officer concluded that Bratcher was DUI and placed her under arrest, then transported her to the police station. The intoxilyzer test given to Bratcher at the station indicated that her blood alcohol level was .08%. The breath test results were admitted at Bratcher's trial, and she was found guilty of DUI.

On appeal, Bratcher argued that the evidence against her was insufficient because the Court failed to factor in the "inherent" .005 margin of error of the dry gas used to calibrate the intoxilyzer and/or the alleged .02 margin of error of the intoxilyzer, citing *Barcott* and the MS Crime Lab Implied Consent Policies & Procedures.

The State argued that there was sufficient evidence to convict Bratcher because "there is no

recognized margin of error in the intoxilyzer." The State pointed out that Bratcher's expert witness testified that the intoxilyzer gave a true indication of Bratcher's BAC. Further, the State argued that the No. 0.020 Agreement "is not a margin of error at all, but rather a tolerance value.

The Court of Appeals agreed with the State that the No. 0.020 Agreement is not a margin of error. As a result, the Court of Appeals found that the county court did not err in failing to consider a 0.020 margin of error, and only discussed the .005 margin of error of the dry gas.

HELD:

The Mississippi Court of Appeals affirmed Bratcher's conviction holding that the evidence presented by the State complied with § 63-11-19 by establishing: 1) the officer followed the proper procedures while administering the breath test; 2) the officer was certified to administer the test; and 3) the intoxilyzer was properly calibrated before administering the test.

Additionally, the State met the requirements set in *McIlwain v. State*, which held that before a county court can properly admit a breath test, the State must establish that: 1) proper procedures were followed; 2) the operator of the machine was properly certified to perform the test; and 3) the accuracy of the machine was properly certified.

Affirmed.



Austin v. State

2013-KM-02085-COA

(Miss. Ct. App. Oct. 06, 2015)

FACTS:

Austin and a friend were boating on a river before he docked on a sandbar occupied by an acquaintance and an off duty MS Highway Patrol trooper (each in respective boats). The acquaintance offered Austin and his friend Jell-O shots, showed him where the shots were located, and told him to help himself. The acquaintance witnessed Austin take less than 5 or so shots. Austin, in his boat, and the acquaintance, in his own boat, decided to cruise to a nearby restaurant.



Afterwards, the 2 groups headed out to the main channel where the troopers happened to be headed. The 3 boats were running side by side until a barge traveling towards them approximately a half mile away caused 2 of the boats to veer off to avoid collision. Austin's boat did not veer off and was too close to the barge to clear it. Consequently, Austin's boat collided with the front left side of the barge.

Austin and his friend were thrown into the water. Two watchers dived into the water to save Austin and his passenger, who had sustained severe injuries. 911 was called and the Clay County Sheriff's Department arrived to the scene. A deputy observed Austin's slurred speech and the smell of an intoxicating beverage. The deputy requested that Austin submit to a breath test and he complied. Austin's BAC tested .110. A DUI enforcement officer also on the scene testified to smelling a "pretty strong" intoxicating beverage on Austin's breath and a guest of the trooper tes-

tified that he witnessed Austin drinking beer for approximately 3 hours before the group left the sandbar.

Austin was tried and convicted of boating under the influence. He was sentenced to 24 hours in jail, with his sentence suspended pending payment of a \$1,000 fine and court costs, and 2 years probation. He was also ordered to complete a boating-safety course. Austin appealed his conviction arguing that it was against the overwhelming weight of the evidence.

HELD:

The standard of review for analyzing a claim that a verdict is against the overwhelming weight of the evidence requires the Court to "accept as true the evidence which supports the verdict. Reversal is warranted only when we are convinced that the circuit court has abused its discretion and that allowing the verdict to stand would sanction an unconscionable injustice." *Jones v. State*, 958 So. 2d 840, 843 (¶6) (Miss. Ct. App. 2007) (citation omitted).



The Court affirmed the circuit court's judgment holding that the evidence is more than adequate to support the verdict. Austin's BAC tested above the legal limit; witness testimony reflected that Austin was drinking beer and taking Jell-O shots prior to the crash; and, law enforcement officers on the scene following the crash observed Austin slurring his speech and noted a strong smell of an alcoholic beverage on Austin's breath. Additionally, the Court held that the circuit court did not abuse its discretion, therefore, a reversal was not proper.

Affirmed.

THE CHANGING FACE OF THE IMPAIRED DRIVER

By: Honorable Neil Edward Axel (retired)

National Highway Traffic Safety Administration's Region 2 Judicial Outreach Liaison.

Earlier this year, the National Highway Traffic Safety Administration (NHTSA) released the latest two studies on impaired driving providing increasing evidence that fewer Americans are driving impaired by alcohol, but that an increasing number are driving under the influence of marijuana and other drugs.

The 2013-2014 National Roadside Survey of Alcohol and Drug Use by Drivers¹ the fifth iteration of surveys of night time weekend drivers conducted voluntarily and anonymously. This latest study surveyed a nationally representative sample of approximately 10,000 drivers in 300 locations around the country. What is significant about this survey is that when compared to earlier studies, trends in the use of alcohol and drugs by drivers become clear. By way of example, the use of alcohol by drivers continues to decline, decreasing by 30% since the 2007 survey, and by 80% since the 1973 survey. Specifically, alcohol use was evident in the following percentages of those surveyed:

1973 survey: 35.9%
2007 survey: 12.4%
2013/2014 survey: 8.3%

Over the same periods of time, when looking only at breath alcohol concentrations of 0.08 or higher, we can see the same general downward trend:

1973 survey: 7.5%
2007 survey: 2.2%
2013/2014 survey: 1.5%

Although there are still approximately 10,000 alcohol-impaired fatalities annually, it appears that the broad range of impaired driving policies and programs implemented by all branches of government and numerous other non-governmental organizations are working. Drug use, however, is increasing. Based upon this most recent survey, illegal drug use is up more than 20% since the 2007 survey, and the use of marijuana is up by 47% since the 2007 survey. In the 2013/2014 survey 22.5% of all weekend nighttime drivers were found to have drugs (marijuana, illicit, prescription and over the counter drugs) in their system. The increase in marijuana use is seen when comparing the 2007 and 2013/2014 surveys which found THC present in those surveyed in the following percentages:



2007 marijuana use (THC): 8.6%
2013/2014 marijuana use (THC): 12.6%

These results suggest that marijuana is now the most popular intoxicant used by drivers on our highways. However, it should be noted that the surveys only measure the presence of drugs and not whether there is impairment.

The second study released, Drug and Alcohol Crash Risk, was designed to estimate the risk associated with alcohol- and drug-positive driving. Over a 20-month period of time in 2010-2011 in Virginia Beach, Virginia data was collected from more than 3,000 crash-involved drivers and 6,000 control drivers (not involved in crashes).

(continued next)

THE CHANGING FACE OF THE IMPAIRED DRIVER (continued)

This study confirmed earlier studies of the relative risk of crash involvement associated with alcohol use. Specifically, with a 0.08 BAC, there was 4 times the risk or probability of a crash, and with a 0.15 BAC, there was 12 times the risk or probability of a crash compared to alcohol-free drivers. Drivers testing positive for THC were overrepresented in the crash-involved (case) population. However, when demographic factors (age and gender) and alcohol use were controlled, the study did not find an increase in population-based crash risk associated with THC use.

Clearly prior studies have shown that drugs (including marijuana) may impair psychomotor tasks, reaction times, divided attention tasks, as well as cognitive and executive functions, all of which impact one's ability to safely operate a motor vehicle. However, the role that drugs play in contributing to crashes is less clear.² "Understanding the effects of other drugs on driving is considerably more complicated than is the case for alcohol impairment. This stems from the fact that there are many potentially impairing drugs and the relationship between dosage levels and driving impairment is complex and uncertain in many cases."³

Although a number of states have enacted per se laws that set statutory limits for the presence of drugs in one's system, one challenge that lies ahead is for researchers to be able to definitively assess the relationship between drug concentrations in the body and specific degrees of driver impairment. Currently more research is needed in that "while the impairing effects of alcohol are well understood, there is limited research and data on the crash risk of specific drugs, impairment, and how drugs affect driving related skills. Current knowledge about the effects of drugs other than alcohol on driving performance is

insufficient to make judgments about connections between drug use, driving performance, and crash risk."⁴

With the changing face of the impaired driver, the way in which these cases impact our courts may be significant. Reliance upon drug testing as part of the prosecution case may lead to longer trials, increased demands for drug recognition experts and State chemists. Further, the trial judge will inevitably continue to face evidentiary challenges based on search and seizure, chain of custody, confrontation and related issues.

One can reasonably expect that in the years ahead, research will address improved and more efficient forms of testing for drugs, the relationship between drug levels and impairment, and even standardized field sobriety tests specific to drugged driving cases. In the meantime, these new studies help us see what may lie ahead.



1. For more information, see generally, NHTSA Press Release Feb. 6, 2015 and links to Research Notes, Fact Sheets, and Executive Summaries found at: <http://www.nhtsa.gov/About+NHTSA/Press+Releases/2015/nhtsa-releases-2-impaired-driving-studies-02-2015>

2. Drug and Alcohol Crash Risk, NHTSA Traffic Safety Facts Research Note, DOT HS 812 117 (February 2015) (citations omitted).

3. Drug and Alcohol Crash Risk, NHTSA Traffic Safety Facts Research Note, DOT HS 812 117 (February 2015).

4. Berning & Smither, Understanding the Limitations of Drug Test Information, Reporting, and Testing Practices in Fatal Crashes, NHTSA Traffic Safety Facts, Research Note, DOT HS 812 072 (November 2014).

NHTSA Encourages Parents of Teens to Join the “5 to Drive” Campaign

In recognition of National Teen Driver Safety Week, October 18-24, the U.S. Department of Transportation’s National Highway Traffic Safety Administration urges parents and guardians of teen drivers to discuss with their teens one traffic safety topic each day. Those topics, also the most risky behaviors among teens, include alcohol, texting, failure to wear seat belts, speeding, and riding with extra teen passengers.

“When parents model and reinforce safe driving habits, they equip their teens with the skills to safely navigate the roadways for life,” said U.S. Transportation Secretary Anthony Foxx. “Parents need to take the time to talk with their kids about behaviors that will keep them safe, and those that create greater risk.”

Motor vehicle crashes are the leading cause of death for 15- to 20-year-olds in the United States. In 2013, there were 2,614 teen passenger vehicle drivers involved in fatal crashes and an estimated 130,000 were injured. Yet a survey shows that only 25 percent of parents have had a serious talk with their kids about the key components of driving. During National Teen Driver Safety Week, and as part of the “5 to Drive” campaign, NHTSA urges parents and guardians to make time to have these talks, and to continue those conversations throughout the learning-to-drive process.

“The ‘5 to Drive’ campaign gives parents and teens a simple, straightforward checklist that can help them talk about good driving skills, and most importantly, prevent a tragedy before it happens,” said NHTSA Administrator Mark Rosekind.

To address the issue of underage drinking, NHTSA has joined with the Ad Council to launch a new public service announcement campaign that targets new drivers 16 and 17 years old, and is built around the idea of “Underage Drinking and Driving: The Ultimate Party Foul.” The cam-

paign includes a TV ad, a Tumblr site, web banners and outdoor advertising. A branded emoji keyboard will be available later on both the iOS and Android platforms.

NHTSA has also partnered with the Ad Council to develop new English and Spanish TV PSAs that target motorists who text and drive. The new ads remind people that the kind of overconfidence displayed by those who text and drive is not only selfish – it’s dangerous. The PSAs also make it clear that no one is special enough to text and drive.

The “5 to Drive” campaign addresses the five most dangerous and deadly behaviors for teen drivers.

1. No alcohol – The minimum legal drinking age in every state is 21. However, in 2013, among 15- to 20-year-old drivers killed in crashes, 29 percent had been drinking.

2. No cell phone use or texting while driving – Texting or dialing while driving is more than just risky – it’s deadly. In 2013, among drivers 15 to 19 years old involved in fatal crashes, 11 percent were reported as distracted at the time of the crash. This age group has the highest percentage of drivers distracted by phone use. In 2013, 318 people were killed in crashes that involved a distracted teen driver.

3. No driving or riding without a seat belt – In 2013, more than half (55%) of all 15- to 20-year-old occupants of passenger vehicles killed in crashes were unrestrained.

4. No speeding – In 2013, speeding was a factor in 42 percent of the crashes that killed 15- to 20-year-old drivers.

5. No extra passengers – NHTSA data shows that a teenage driver is 2.5 times more likely to engage in risky behaviors when driving with one teenage passenger and three times more likely with multiple teenage passengers.



Drive Sober or Get Pulled Over Campaign December 16, 2015 - January 1, 2016

State and local law enforcement will participate in the national *Drive Sober or Get Pulled Over* campaign from December 16 to January 1. Law enforcement actively looks for drunk drivers, especially around the holidays. If you are caught driving after drinking, you will be arrested.

The holidays are merry and bright—unless you're drinking and driving.

For many Americans, "holiday cheer" involves drinking alcohol at holiday parties and events. That means, unfortunately, there's a spike in drunk-driving crashes each December. In the single month of December 2013, a staggering 733 people lost their lives in crashes involving a drunk driver.

Law enforcement across the nation is cracking down on drunk driving this holiday season. They're sharing the message: *Drive Sober or Get Pulled Over*. Drunk-driving fatalities happen around the holidays year after year. In crash fatalities in December from 2009-2013, there were a total of 3,857 people killed in crashes that involved drivers with high blood alcohol concentrations (BACs).

Nights and weekends are dangerous: the rate of alcohol impairment among drivers in fatal crashes was nearly four times higher at night than during the day (35% versus 9%). Fifteen percent of drivers

involved in fatal crashes during the week were alcohol-impaired, compared to 30 percent on weekends.

Drunk driving will cost you more than you think.

Too many drunk drivers aren't learning the lesson the first time: in 2013, drivers with BACs of .08 or higher involved in a fatal crash were six times more likely to have prior convictions for DWI. Some drivers think they can just refuse a breathalyzer test if they get pulled over, and avoid the consequences of a DUI. This isn't true: in fact, in many jurisdictions, refusing to take a breath test results in immediate arrest, the loss of your driver's license, and the impoundment of your vehicle. There's no happy ending to drunk driving. You could head to jail in the back of a police cruiser, or worse—you could kill someone or end up seriously injured or dead yourself.

Keep the holidays full of cheer—find a sober ride home.

Before you take your first sip of alcohol, have your plan in place. If you wait until after you've been

drinking, you're more likely to make the wrong decision. Alcohol affects your judgment, so you might think you're "okay to drive" when you're not. Remember: a designated driver isn't the person who's had the least to drink. Make sure your designated driver is a sober designated driver.

Help others be responsible, too. If someone you know is drinking, don't let that person get behind the wheel. If you don't speak up, it could be a choice you regret for the rest of your life. If you see someone driving drunk, call 911 when it's safe to do so, and give a description of the vehicle to law enforcement. It is your business. Getting drunk drivers off the roads saves lives.

Don't ruin the holidays for yourself and others. *Drive Sober or Get Pulled Over.*

DON'T LET GETTING BUSTED FOR DRUNK DRIVING BECOME ONE OF YOUR



THEY'LL SEE YOU BEFORE YOU SEE THEM.



*Seasons Greetings
from your pals on the squad.*



Drive drunk and you will be arrested.



Jim Hood
Attorney General

Molly Miller
*Special Assistant Attorney General
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: 601.359.4254
www.ago.state.ms.us/divisions/prosecutors