



# DRIVEN

to successfully prosecute DUI cases in Mississippi



Volume 3, Issue 1

Winter 2007



With the holiday season rapidly approaching, it is important to remember that the period between Thanksgiving and New Year's is one of the deadliest and most dangerous times on America's roadways due to an increase in drunk driving.

During the month of December 2006, 1076 people were killed in crashes on America's roadways that involved a drunk driver or motorcycle rider with a BAC of .08 or higher.

Mississippi is one of many states taking preventative action this holiday season to ensure the safety of you and your family while traveling on Mississippi roads. State and local law enforcement will be out in full force cracking down on drunk driving. The message is simple—*Drunk Driving. Over the Limit. Under Arrest.*

Despite the fact that drunk driving is illegal in every state, too few drivers have gotten the message. According to the FBI's

one of America's deadliest problems – and it is against the law. Saving lives on our roads is a top priority, and we need everyone's help to do it. This year's National



Uniform Crime Report, nearly 1.5 million people were arrested for driving under the influence in 2006.

Far too many people still fail to understand that alcohol, drugs, and driving don't mix. Drunk driving is *not* a victimless crime. It is

Christmas/New Year's Highway Safety Blitz campaign runs from December 15th through January 2nd. I encourage the law enforcement community— including prosecutors — to show zero tolerance this holiday season.

Citations issued during this time are meaningless if they are not zealously prosecuted....

Let's make sure that those traveling on Mississippi roads know that no matter what they drive—a passenger car, pickup, sport utility vehicle or motorcycle—if they are caught driving while impaired, they will be arrested.

We want drivers to know that driving while impaired is simply wrong and is not worth the risk of killing themselves or someone else. The consequences are serious and real. Drunk driving violators often face jail time, the loss of their driver's license, higher insurance rates, and dozens of other unanticipated expenses ranging from attorney fees, court costs, car towing and repairs, and lost wages due to time off from work. Whether drivers have had way too many or just one too many, it's not worth the risk.

For more information, visit [www.stopimpairedriving.org](http://www.stopimpairedriving.org)



There is no question that the holiday season is one of the busiest times of the year, from shopping for the perfect gift and trimming the tree to attending countless gatherings with family and friends. While it is easy to get caught up in the hustle and bustle of the holidays, it's important that people be responsible and remember that *Buzzed Driving is Drunk Driving.*

As leaders in law enforcement, we should encourage everyone to call a taxi, a sober friend or family member, or use public transportation to ensure they get home safely.

We can also utilize our community's Sober Rides program—in the Jackson Metro area Mississippi's MADD chapter will be partnering up with AMR on the *Safe Ride Home* and will be offering free rides home this New Year's Eve from 10 p.m. until 3 a.m. Those in need of a ride should call **601-939-0233.**

# UNDERAGE DRINKING: A DEADLY PRICETAG

This holiday season we must remember that underage drinking continues to be a serious problem. Studies show that underage alcohol use is more likely to kill young people than all illegal drugs combined.

In 2001, the monetary cost for underage drinking per year was approximately \$62 billion dollars. With a person killed every 30 minutes in alcohol-related crashes, we in the law enforcement community must show zero tolerance to underage drinking this holiday season.

Though the increase in the legal drinking age across the nation has resulted in a decline in harmful incidents, parents must still watch for signs of intoxication in their children. Parents should also take every measure to prevent their teens from obtaining alcohol. Over 94% of twelfth graders and almost 68% of eighth graders report that alcohol is fairly easy to obtain. Likewise, only 31% of parents believe their child had a drink within the past year compared to the 60% of teens in that age group who reported drinking. Family factors, such as parent-child relationships, disciplinary methods, communication, monitoring and supervision, and parental involvement, exert a significant influence on youthful alcohol use.

Teenagers, in particular, are already more likely to be involved in an automobile accident without the use of drugs or alcohol. In fact, motor vehicle crashes are the leading killer of teens. Adding alcohol use to the equation sets the stage for tragedy.

**Motor Vehicle Crashes:  
Leading Cause of Teen**

**According to a recent AAA survey,**

**61% of teenage drivers admit to risky behavior while driving**

**For example,**

**66% say they have exceeded speed limits by 10 mph or more**

**51% talk on their cell phone while driving**

**11% have driven after drinking alcohol or using drugs.<sup>(1)</sup>**

The State of Mississippi is assessing its DUI laws with regard to underage drinking after a University of Mississippi police officer was killed by a drunk driver. In the wake of such a tragedy, the University of Mississippi has enacted its own "two-strikes" law which requires a semester's suspension for any student who breaks any alcohol-related University policy, or any state or local alcohol-related law more than one time. City officials in Oxford have also toughened their ordinances to include stiff penalties for those students using fake ID's and those establishments that profit from serving alcohol to individuals under the age of 21. The key to these laws is enforcement. The mayor and board of aldermen in Laurel, Mississippi, have begun to lobby state lawmakers for mandatory jail time for first time DUI offenders. Until such time that this change is adopted, judges and juries are left to enforce the charges, resulting from existing law, against underage offenders.<sup>(2)</sup>

In 2002, MADD partnered with the National Highway Traffic Safety Administration (NHTSA) to better identify gaps in the prosecution and adjudication process of underage DUI offenders. Now, when a judge wrongfully dismisses charges against an underage DUI offender, their court is flagged. If the court is flagged too many times, it may be visited by a MADD Court Monitor times. Currently, Mississippi courts are in compliance, and Mississippi's conviction rate for underage DUI offenders is approximately 88%. Still, underage DUI crashes account for 12% of the total licensed drivers involved in DUI crashes, a number that is totally preventable.<sup>(3)</sup>

1. Marketwire.comm (July 10, 2007)

2. Laurel Leader-Call (July 11, 2007)

3. WJTV (November, 2007)

See also [www.stopimpaireddriving.org](http://www.stopimpaireddriving.org) & [www.madd.org](http://www.madd.org).



**Sumrall v. State,**

No. 2005-KA-00072-COA

(Miss.App. May 23, 2006)

**FACTS:**

Sumrall was convicted of manslaughter while driving under the influence. On appeal he alleges an unreasonable search and seizure, ineffective assistance of counsel, constitutional violations, improperly admitted testimony, and improper prejudice in closing arguments and voir dire.



Sumrall and three other passengers had been drinking and continued to drink while traveling in Lauderdale County. Upon entering an intersection, Sumrall failed to stop at a stop sign and collided with Renee Walker’s minivan. Walker’s mother, Debra Bell, was ejected from the vehicle and died at the scene. The four children in the Walker vehicle sustained a range of injuries. Sumrall’s passengers fled on foot leaving Sumrall unconscious at the scene. After arriving at the hospital, Sumrall consented to have his blood drawn after a deputy smelled alcohol on his breath. Sumrall’s BAC was .14%.

**HELD:**

Consent was given by Sumrall to have his blood drawn after he was read his constitutional rights; therefore, there was no Fourth Amendment violation. The Court also held that the State is at liberty to choose whether to charge a defendant with DUI Manslaughter or Culpable Negligence Manslaughter. Moreover, it is not necessary for the State to prove that a defendant shows signs of impairment because the BAC is proof enough. Lastly, the Court held that a proper jury instruction was given regarding the jury’s duty to determine whether or not the defendant was operating the vehicle.

**Ouzts v. State,**

2005-KM-00432-COA

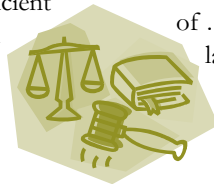
(Miss.App. Sept. 26, 2006)

**FACTS:**

Ouzts was convicted in Holmes County Justice Court of 1st offense DUI

and reckless driving. Ouzts appealed to the Holmes County Circuit Court which affirmed the justice court's ruling. From this ruling, Ouzts appealed on three grounds: Holmes County was not the proper venue, the Court erred in finding Ouzts guilty of reckless driving, and the Court erred in finding Ouzts guilty of 1<sup>st</sup> offense DUI.

While Officer Merrill was performing a traffic stop of another motorist, he observed Ouzts traveling on the wrong side of the road at a high rate of speed. The officer pursued Ouzts from Holmes County to Leflore County where Ouzts stopped and exited the vehicle. The officer testified he smelled alcohol, Ouzts staggered, had slurred speech, and blood-shot eyes. A portable alcohol detector indicated Ouzts was over the legal limit. Ouzts was taken in and refused to cooperate with the officer by biting on the mouthpiece of the Intoxilyzer. After several attempts, only “insufficient sample” would appear, and the officer charged Ouzts with common law DUI and reckless driving.



**HELD:**

The crime was committed in Holmes County; therefore, proper venue was in Holmes County. Evidence was sufficient to support reckless driving as the defendant posed a threat to himself and to others. The evidence regarding the DUI was also sufficient *even without* an intoxilyzer reading because officers can offer opinion testimony as to a defendant’s intoxication.

**Travis v. State,**

No. 2004-KA-00097-COA

(Miss. App. May 15, 2007)

**FACTS:**

Travis was convicted of DUI Homicide in Madison County Circuit Court. Around 2:05 a.m., Sgt. Henderson of MHP received a call regarding an auto accident at the intersection of Hwy. 51 and Davis Rd., just north of Canton in Madison County.

Sgt. Henderson was not the first to respond, but upon arrival, he noticed

one man lying in the intersection and one man standing nearby. The man in the intersection, later identified as Garrett, had no pulse, and the man standing nearby, later identified as Travis, had no apparent injuries. Travis recalled that he was on his way to his girlfriend’s house, but couldn’t remember what happened, or where he was coming from. There were no eyewitnesses to the accident. Travis was subsequently transported to the station where his BAC registered .14%.

Upon further investigation, Sgt. Henderson found that neither car was registered to Travis. In addition, no follow-up was conducted to determine how the car Travis was allegedly operating became involved in the collision. Dr. Steven Hayne conducted an autopsy on Garrett and determined that he died as a result of the car accident. Cecilia Kazery, an accident reconstructionist with MHP, determined that Garrett’s car was “t-boned,” but couldn’t determine the rate of speed. Sgt. Kazery was able to conclude that despite having a BAC of .18%, Garrett was traveling in the proper lane at the time of the accident. It could not be determined, however, whether Garrett used his headlights or whether he obeyed the speed limit.

On appeal, Travis argued that his conviction must be reversed because (1) the evidence was insufficient that he was guilty, (2) the trial court committed reversible error in admitting Henderson’s testimony that he believed Travis had been driving the car, and (3) the prosecution’s argument and attempts to introduce inadmissible evidence of Travis’s silence violated his due process rights against self-incrimination and to a fair trial.

**HELD:**

Reasonable and fair-minded jurors exercising sound judgment could have logically concluded that Travis was guilty. Furthermore, the prosecution sufficiently demonstrated, by reasonable inferences, that Travis drove the car registered to Eddie Winston based on: time & location of collision, condition of vehicles, and Travis’ presence at scene. The Court also held that Sgt. Henderson’s opinion testimony was proper as to his personal knowledge—Travis’ presence, presence of emergency responders, and common sense.

(Note: This was a 5-4 decision & Judge King's dissent is worth reading .)

**Keys v. State**

No. 2006-KA-00138-COA

(Miss. App. May 1, 2007)

**FACTS:**

Keys was convicted by a Perry County Circuit Court jury for the crime of simple assault on a police officer. On appeal, he alleges numerous errors at trial and challenges the sufficiency and weight of the evidence.

A deputy sheriff observed Keys driving with his bright lights on and noticed the vehicle increase in speed when the officer flashed his lights at Keys. The officer began pursuit, and upon stopping Keys, smelled alcohol. The officer attempted a portable breath test, but Keys bit down on the tube and refused to cooperate. A struggle ensued and Keys hit the officer several times and then ran into the woods. Keys later turned himself in.

**HELD:**

A traffic stop alone is not an arrest or custodial interrogation requiring *Miranda* warnings. In addition, a law enforcement officer's testimony alone is sufficient for a jury to convict a defendant of simple assault on an officer.

**Loveless v. City of Booneville,**

No. 2006-KM-00435-COA

(Miss. App. May 22, 2007)

**FACTS:**

Loveless was convicted of 1st offense DUI, possession of beer in a dry county, and speeding. On appeal, he challenged the jurisdiction of the court and the sufficiency of the evidence

**HELD:**

The municipal court and circuit court had jurisdiction based on Miss. Code Ann. § 63-9-21(3)(c) which does not require the courthouse address of the municipal court be contained on the ticket. The court also held that a DUI may be proven based on an officer's testimony—the smell of alcohol, glazed, bloodshot and heavy eyes, slurred speech, unable to multitask when

asked for proof of insurance & when asked where he was coming from. Furthermore, the State only has to prove that Loveless was driving under the influence of an intoxicating beverage, not that his driving ability was impaired.

**Hampton v. State,**

No. 2006-CA-01211-COA

(Miss. App. September 18, 2007)

**FACTS:**

Hampton was convicted of possession of cocaine by a Neshoba County Circuit Court jury, and sentenced to serve a term of four years. Hampton was stopped at a driver's license checkpoint and asked for his driver's license. He replied that he did not have a license, at which time Deputy Johnson observed an open beer bottle on the floorboard and what he believed to be a marijuana cigarette along with crack cocaine in Hampton's shirt pocket. The officer also noticed that Hampton's eyes were red, and that there was a strong smell of alcohol emulating from the vehicle. Hampton admitted that he had been drinking at the casino and was drinking the open beer in the car. The officer verified Hampton's social security card and then placed him under arrest for possible DUI. Following the arrest, a search was conducted of Hampton at which time the officer observed one marijuana cigarette and two off-white rock substances which appeared to be crack cocaine.

During the trial, Hampton made a motion to suppress the evidence seized at the checkpoint submitting that proper policies and procedures were not followed in establishing the checkpoint. The court overruled the motion.

Hampton appeals arguing the court erred in (1) denying his motion to suppress the results of the search of his pocket at the roadblock checkpoint, and (2) in sustaining the State's objection to cross-examination of a law enforcement officer about the published checkpoint policies and procedures of the Neshoba County Sheriff's Dept.

**HELD:**

The Court of Appeals affirmed Hampton's conviction holding that the roadblock was reasonable and valid after

considering testimony by two Neshoba County Deputies who testified that the purpose of the checkpoint was to check for valid driver's licenses. The Court also held that Hampton's argument that the checkpoint was unreasonable was a constitutional issue; therefore, his line of questioning during cross was irrelevant to the issue before the jury, which was possession of cocaine.

**Beal v. State,**

No. 2006-KM-00345-COA

(Miss.App. May 29, 2007)

**FACTS:**

Beal was convicted in the Jefferson County Justice Court and Circuit Court of 1st Offense DUI Other. Beal was stopped for speeding by Trooper Tarleton of the Mississippi Highway Safety Patrol. Tarleton noticed Beal's eyes were bloodshot and very glazed. Tarleton also observed a green leafy substance, which he believed to be marijuana on Beal's shirt, and smelled a strong odor of burned marijuana coming from Beal's car. Tarleton testified that Beal admitted to smoking marijuana earlier that day which Beal denied. Tarleton received a call requesting his assistance at an accident scene. As Tarleton was the only officer on duty, he issued Beal a citation & left to respond to the accident.

**HELD:**

The evidence was sufficient to support the verdict as the trier of fact is allowed to believe whatever testimony it finds most credible. Furthermore, even though the officer allowed Beal to drive from the scene, that does not vitiate the fact that sufficient evidence was presented at trial to support Beal's conviction. The Court did take the opportunity to remind our law enforcement officers that it is improper for an officer to allow a motorist to continue to drive when the officer has determined that the motorist has been driving under the influence.



## TRAINING OPPORTUNITY:

# Volunteer Prosecutors Still Needed at *Cops In Court* Training

Since November 2005, the Attorney General's Office has been working in conjunction with the Mississippi Law Enforcement Liaison's Office and S.T.O.R.M. to provide courtroom training to law enforcement at every Standardized Field Sobriety Tests (SFST) training class. The goal is to give the law enforcement officers an opportunity to articulate the information they have learned during class in the form of testimony.

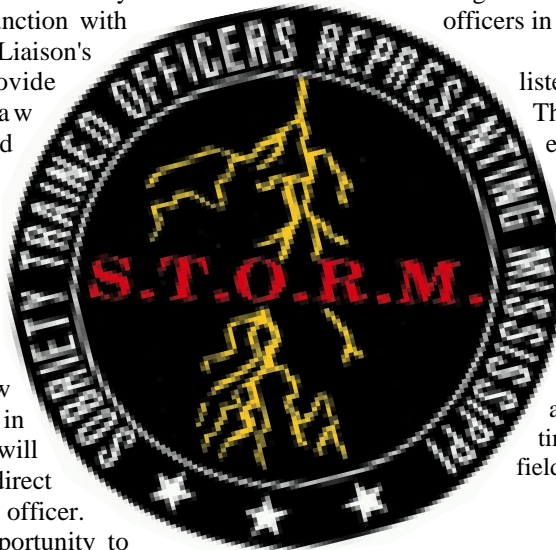
Prosecutors and law enforcement Officers are needed in the regions where SFST classes will be taught. There will be a mock direct and cross examination of each officer. This will allow the officer an opportunity to "testify" about SFSTs and other DUI related issues.

If you would like to volunteer as an attorney please contact me by phone at 601-359-4265 or by email at [mmill@ago.state.ms.us](mailto:mmill@ago.state.ms.us). This opportunity is not only extremely beneficial to the law enforcement officer but to the prosecutor as well. Prosecutors who have participated said this training has enabled them to better understand what actually goes on during a traffic stop, and the training has helped them develop better questions to ask at trial. As a participant/observer, prosecutors also learn about the history of SFSTs. This is an entertaining and educational training to all parties involved. It will also allow for

networking among the prosecutors and law enforcement officers in each region.

The dates for the regional trainings are listed below in the *Mark Your Calendar Section*. The *Cops in Court* day will be the Thursday of each SFST training week. It will last from approximately 1 p.m. to 3 p.m.

Following each *Cops in Court*, there will be a "wet lab" drinking session. This time is dedicated to allowing officers in the class to practice administering SFSTs on real drinkers. Prosecutors are invited to stay and observe officers from their area performing SFSTs. I *strongly* encourage prosecutors to take advantage of this opportunity as it gives them time to observe what the officers are doing in the field.



## MARK YOUR CALENDAR!

Jan. 8-10	SFST Training in Pearl
Jan. 15-17	SFST Training in Meridian
Jan. 22-24	SFST Training in Biloxi
Jan. 29-31	SFST Training in Natchez
Feb. 5-7	Complete Traffic Stop (CTS) in Pearl
Feb. 11-15	Regional LEL Conference
Feb. 18-22	SFST Instructor School in Vicksburg
Feb. 26-28	CTS in Tunica
March 4-6	SFST Training in Hattiesburg
March 11-13	SFST Training in McComb
March 18-20	SFST Training in Oxford
March 25-27	SFST Training in Corinth
April 1-3	CTS in Grenada
April 8-10	CTS in Oxford
April 14-18	Lifesavers Conference
April 23-25	Spring Prosecutors Conference in Biloxi
May 6-8	S.T.O.R.M. Conference in Vicksburg
July 14-18	SFST/DAR Training in Vicksburg



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](mailto:mmill@ago.state.ms.us)

Phone: 601.359.4265

Fax: 601.359.4200

[www.ago.state.ms.us/divisions/prosecutors](http://www.ago.state.ms.us/divisions/prosecutors)

### DID YOU KNOW????

The stats from 234 of Mississippi's Law Enforcement Agencies that participated in the recent National Labor Day Blitz Campaign from Aug. 17th—Sept. 3rd:

\*1376 DUI arrests \*842 felony arrests \*750 uninsured

\*4091 seat belt citations \*8475 speeding citations