



DRIVEN

to successfully prosecute DUI cases in Mississippi



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SUMMER 2015

DADSS Joins Congress and Safety Advocates at Press Event & Reception

On Thursday, June 4, [2015] DADSS joined the National Highway Traffic Safety Administration, Mothers Against Drunk Driving, and Members of Congress to share the latest advancements in the development of first-of-its-kind technology that can passively, reliably and accurately measure a driver's blood alcohol level.

Held at the U.S. Department of Transportation, the event celebrated the ongoing public-private partnership between NHTSA and the world's leading automakers to research and develop a technology that can invent a world without drunk driving. Speakers included NHTSA Administrator Mark Rosekind, U.S. Senator Tom Udall, U.S. Representative Nita Lowey, MADD President Colleen Sheehy-Church and ACTS President and CEO Rob Strassburger. Members of MADD, in the nation's capital for their national conference, were invited to join to learn more about the technologies, whose develop-

ment are a key component of the Campaign to Eliminate Drunk Driving.

Displays – including videos, technology prototypes and in-vehicle simulations – showed progress made on both the breath-based platform and touch-based platform and where the program and its technologies are headed next.

The DADSS program is researching a first-of-its-kind technology called the Alcohol Detection System (ADS) that will detect when a driver is intoxicated with a blood alcohol concentration (BAC) at or above 0.08 – the legal limit in all 50 states – and prevent the car from moving. It will be made available as a safety option in new vehicles, much like automatic braking, lane departure warning and other advanced driver assist vehicle technologies.

To learn more, watch the YouTube demo video at: <https://youtu.be/vykyT4YRw4A>.

Source: Dadss.org

Despite progress over the past three decades, drunk driving still kills approximately 10,000 people annually in the U.S.* But what if we could invent a world without drunk driving?

A New Approach

The Driver Alcohol Detection System for Safety (DADSS) research program brings together the world's leading automakers and the National Highway Traffic Safety Administration (NHTSA) in one of the most important public-private partnerships in recent years. With support from Congress and safety advocates nationwide, the DADSS program is researching a first-of-its-kind Alcohol Detection System that:

- will detect when a driver is intoxicated with a blood alcohol concentration (BAC) at or above 0.08 — the legal limit in all 50 states — and prevent a car from moving.
- will be made available as a safety option in new vehicles, much like automatic braking, lane departure warnings, and other advanced vehicle technologies.
- will be quick, accurate, reliable, and affordable.
- will be seamlessly integrated into vehicles and not affect normal driving behavior.
- will have customized features to give parents a new level of security and additional peace of mind knowing that if their children have been drinking, they won't be able to drive.



1. National Highway Traffic Safety Administration, "The Economic and Social Impact of Motor Vehicle Crashes, 2010," National Highway Traffic Safety Administration, May 2014, DOT HS 812 013, <http://www.nhtsa.gov/publications/NHTSA1013.pdf>
2. Insurance Institute for Highway Safety, "Alcohol Detection: A New Approach to Reducing Drunk Driving," Insurance Institute for Highway Safety, Nov 2011, <http://www.iihs.org/iihs/newsroom/articles/1104>

Technologies Under Exploration

Combining the sharpest minds in transportation innovation with the world's leading experts in alcohol detection, the DADSS research program is researching two technologies for vehicle integration, including:

- A breath-based system, which performs an instantaneous and contact-free measurement of alcohol in the driver's exhaled breath, as the driver breathes normally.
- The touch-based system, which measures blood alcohol levels under the skin's surface by shining an infrared-light through the fingertip.

The DADSS research program is being overseen by a team of independent engineers and scientists, and the system will be further tested by independent experts before it is made available as a consumer option.

An analysis by the Insurance Institute for Highway Safety indicates that if driver BACs can be limited by a device to no more than 0.08 percent — the legal limit in all 50 states — approximately 7,000 lives could be saved annually.²

The Driver Alcohol Detection System for Safety Research Program: Inventing a world without drunk driving.

For more information, visit www.DADSS.org



A Cooperative Research Initiative

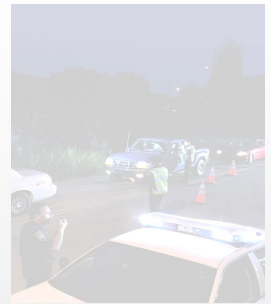


For more information, visit www.DADSS.org

National Roadside Survey of Alcohol and Drug Use by Drivers

A new survey of alcohol and drug use by drivers shows the average proportion of drivers on the road during weekend nighttime hours who have alcohol or drugs in their systems.

The survey was conducted during 2013 and 2014 at a representative sample of 300 locations across the country. More than 9,000 drivers participated in the voluntary and anonymous survey. This was the fifth such survey on driver alcohol use conducted since 1973. This is the second such survey that has collected information on the use of drugs that could affect driving, including both illegal and legal drugs.



Alcohol Findings

The new survey found that the use of alcohol by drivers continues to decline. In 2013/2014, about 1.5 percent of weekend drivers had blood alcohol concentrations at or above the legal limit of .08 breath alcohol concentration (BrAC) and 8.3 percent of drivers had a measurable amount of alcohol in their systems. The proportion of drivers during weekend nighttime hours who are at or above the legal limit of .08 BrAC decreased by 80 percent between 1973 and 2013/2014. The proportion with any measurable amount of alcohol in their systems dropped by about 77 percent. While the estimates of alcohol prevalence in 2013/2014 are down from 2007 for low (.005 to .049 BrAC), medium (.050 to .079 BrAC) and high (.08+ BrAC) levels, the change is statistically significant only at the medium BrAC levels.

Drug Findings

Participating drivers were tested for a large number of potentially impairing drugs using both oral fluid (saliva) and blood samples. The proportion of nighttime weekend drivers with illegal drugs in their systems was 15.2 percent in 2013/2014 while the proportion with prescription or over-the-counter medications that could affect driving was 7.3 percent. The proportion of total drug-positive nighttime weekend drivers increased from 16.3 percent in 2007 to 20.0 percent in 2013/2014, a significant increase. The drug showing the greatest increase from 2007 to 2013/2014 was marijuana (THC). The percentage of THC-positive drivers increased from 8.6 percent in 2007 to 12.6 percent in 2013/2014, a proportional increase of 47 percent.

Survey Participation



The National Roadside Survey collected information from volunteer drivers at 300 research checkpoints across the Nation. The survey methods were reviewed and approved by an Institutional Review Board and all data was completely anonymous. Drivers were free to pass by the research site or pull in to find out details of the survey. A small fee (up to \$60) was offered to compensate drivers for their time. About 85 percent of drivers who pulled into the research site chose to provide breath samples, more than 70 percent provided oral fluid, and over 40 percent chose to provide blood samples.

DRINKING & BOATING: A DEADLY MIX

Labor Day may well spell the end of summer, but with temperatures still in the 90s, boating in Mississippi will go on well into fall. Before the thought of drinking on a boat crosses your mind, consider the physical and legal consequences of boating under the influence of alcohol.

Not only is operating a boat while intoxicated illegal in *all* 50 states, it's also dangerous and can have deadly consequences.

THE LAW

In addition to federal laws against operating a watercraft under the influence, various states also have laws and penalties prohibiting drunken boating. Depending on where you live and boat, you could be subject to harsh penalties if you boat while your blood alcohol level [is].08 percent or above. The legal consequences of drinking while boating range from large fines to jail time, and even suspension of your driver's license. To find the Boating Under the Influence (BUI) laws in your state, head on over to our BUI law page.

THE PHYSICAL EFFECTS

According to the U.S. Coast Guard [,] alcohol use is the leading known contributing factor in boat-related deaths, with 21% of boat deaths attributed to alcohol. This is no surprise considering how alcohol affects your balance, vision and judgement, and these impairments are intensified out on the water. In fact, the U.S. Coast Guard has stated that “a boat operator with a blood alcohol concentration above .10 percent is estimated to be more than 10 times as likely to die in a boating accident than an operator with zero blood alcohol concentration.”

Safe boating means sober boating. While it may be tempting to crack open a can of beer while cruising, keep in mind that your record, license, and *life* may be at stake!

Source: boat-ed.com/blog

Mississippi Alcohol Boating Safety Act
Miss. Code Ann. § 59-23-7

1st Offense:

- Fine of \$250-\$1000,
- Up to 24 hours in jail (or both), and
- The court shall order completion of a boating safety education course.

2nd Offense:

- Fine of \$600-\$1000, and 48 hours -1 year in jail, or Community Service for 10 days-1 year
- The court shall order that the person not to operate a watercraft for 1 year.

3rd Offense:

- Fine of \$800-\$1000, and 30 days- 1 year imprisonment,
- The court shall order that the person not to operate a watercraft for 2 years.

4th Offense (Felony Offense):

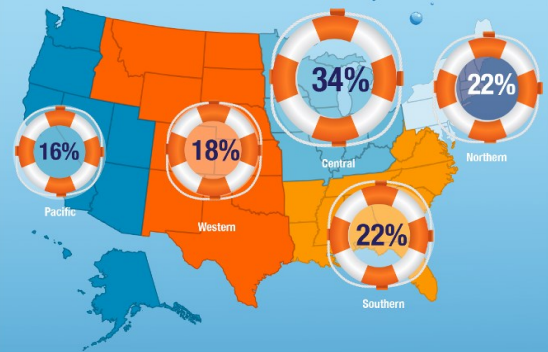
- Fine \$2000-\$5000, and 90 days to 5 years in prison.
- The court shall order that the person not to operate a watercraft for 3 years.

NEVER BUI

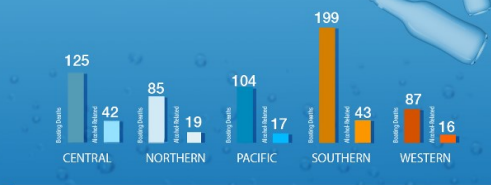
Alcohol use is the leading known contributing factor in fatal boating accidents; where the primary cause was known, it was listed as the leading factor in 21% of deaths.* Safe boating means never boating under the influence (BUI).



PERCENTAGE OF BOATING DEATHS CAUSED BY ALCOHOL IN THE U.S. BY REGION IN 2014



BOATING DEATHS VS. ALCOHOL-RELATED BOATING DEATHS BY REGION IN 2014



**Boat safe. Boat sober.
And #NeverBUI.**

Sources:
<http://www.boat-ed.com/pub-issues.html>
<http://www.uscgboating.org/library/accident-statistics/>
2015/04/01/never-bui



HOW TO DRINK RESPONSIBLY

BEFORE

★
BE 21
OR OLDER

★
Learn how alcohol affects
YOU AS AN INDIVIDUAL

★
PLAN A SAFE WAY HOME
BEFORE YOU GO OUT

★
Know medications and drugs
ACT DIFFERENTLY
when mixed
= WITH ALCOHOL =

DURING

★
EAT A FULL MEAL
AND DRINK WATER OFTEN

★
KIDS ARE BASICALLY LITTLE OVERLORDS
who watch your every move, so keep that in mind while you're enjoying yourself

★
Don't give friends a hard time
if they choose not to drink this time (or ever)

★
STICK TO A STANDARD POUR

★
UNDERSTAND ALCOHOL AFFECTS MEN AND WOMEN DIFFERENTLY

★
IF YOU'RE HOSTING,
SERVE **NON-ALCOHOLIC FOOD & DRINKS, TOO**
AND DON'T OVER-SERVE YOUR GUESTS

★
PACE YOURSELF

AFTER

★
STICK TO THE PLAN
you made before the festivities began,

AND
GET HOME SAFELY

★
KNOW THAT
ONLY TIME

will lower your BAC once the drinking stops
NOT
coffee, a cold shower, or three large pizzas.

★
YOUR BAC
can continue to rise
FOR UP TO 30 MINUTES
after you stop drinking before it starts to come down





Cook v. State

159 So. 3d 534 (Miss. 2015)

FACTS:

Cook was pulled over after Reservoir Patrol Officer Ware received a call from the Reservoir Patrol dispatch to “be on the lookout” (BOLO) for a vehicle that was driving erratically and possibly flashing a badge of some sort. The BOLO originated from an anonymous caller and was not corroborated. Officer Ware did not observe Cook committing any crimes, swerving, or driving erratically, but Cook’s vehicle did match the description provided in the BOLO. Therefore, Officer Ware initiated an investigatory stop and based on subsequent interactions, Cook was arrested for DUI, first offense.

Cook was convicted of misdemeanor DUI, first offense, in Rankin County Justice Court. On appeal, Cook argued that the BOLO which led to the investigatory stop was based on an anonymous tip that lacked sufficient indicia of reliability, and thus, the investigatory stop violated his Fourth Amendment rights against illegal search and seizure. Cook’s conviction was

affirmed by Rankin County & Circuit Court, and the Mississippi Court of Appeals. Specifically, the Court of Appeals found that there was sufficient indicia of reliability because Cook’s vehicle matched the vehicle description provided in the BOLO. In his Petition for Writ of Certiorari, Cook’s only issue was whether officers may conduct an investigatory stop on a vehicle based on an anonymous tip that lacks any corroboration?

HELD:

In determining whether probable cause or reasonable suspicion exists, the Court applies a *de novo* review. *Dies v. State*, 926 So. 2d 910, 917 (Miss. 2006).

Here, the Court held that the stop violated Cook’s Fourth Amendment right because the uncorroborated BOLO tip lacked reliability. Police officers may detain a person for an investigatory stop when the officers have “reasonable suspicion, grounded in specific and articulable facts” which allow “the officers to conclude the suspect is wanted in connection with criminal behavior.” Police officers may gain reasonable suspicion from an informant’s tip; however, it must be ac-

companied by some indication of reliability.

Here, the police officers failed to corroborate the criminal activity reported in the tip, thus the tip lacked sufficient indicia of reliability and the officers lacked reasonable suspicion to stop Cook. An accurate description of Cook’s vehicle and location alone is insufficient.

Without the evidence gathered as a result of the stop, the evidence against Cook was insufficient to sustain a DUI conviction.

Reversed & Rendered.

In a 4-4 decision, the Dissent stated the trial court and the Court of Appeals correctly found the authorities had reasonable suspicion to conduct an investigatory traffic stop consistent with the decision in *Floyd v. City of Crystal Springs*, 749 So. 2d 110 (Miss. 1999). “Indeed, the circumstances of this case presented an ‘ambiguous situation,’ which necessitated a common-sense response. As the county court found, ‘[u]nder the totality of those circumstances, the balancing test here goes strongly in favor of the law enforcement officers, particularly compared to the brief intrusion into the travels of [Cook] for purposes of resolving the



obviously ambiguous situation described in the BOLO.’” Given that a possible emergency situation was at hand, the officer here acted as expected. The Dissent found that a reasonable officer could not have pursued any other prudent course and would have affirmed the defendant’s conviction.

Clack v. City of Ridgeland

139 So. 3d 778 (Miss. App. 2014)

FACTS:

Officer Soto observed Clack driving carelessly and stopped him. The officer testified that Clack was weaving, turned without using his blinker, and stopped in the road “for a matter of seconds.” In addition to Clack admitting to having had three beers earlier that night, the officer smelled an order of an alcoholic beverage in Clack’s vehicle.

Officer Soto administered a portable breath test, which showed a positive presence of alcohol.

Clack’s blood alcohol content tested at .13%, and a series of field sobriety



tests displayed indications of impairment. During discovery, Clack requested the patrol car video of his stop, but the police department did not produce the video stating that there was none available. The officer testified that his patrol car was not outfitted with video equipment at the time the of stop. After the prosecution rested its case-in-

chief, the prosecutor stipulated that the police cars did have video capability, but whether Officer Soto’s was operable at the time of the stop was unknown. Clack was ultimately convicted of DUI and careless driving.

On appeal, Clack argued that the officer did not have reasonable suspicion or probable cause to stop him, and that the City violated its *Brady* obligation by failing to disclose video footage from the officer’s patrol car.

At the hearing for Clack’s motion for JNOV, the prosecution announced that it had obtained the video from the officer’s patrol car, and that it was “potentially exculpatory.” The county court denied Clack’s post-trial motions without reviewing the video stating “[t]he video has not been published or otherwise presented to the [c]ourt...there has been no showing that the video in question will *probably* produce a different result or verdict.” (Emphasis in original). The Circuit Court affirmed.

HELD:

The Mississippi Court of Appeals stated that a review of the officer’s testimony raised obvious concerns about the officer’s veracity and credibility. “The government’s suppression of evidence favorable to the accused violates due process when the evidence is material to his guilt of punishment.” *Brady v. Maryland*, 373 U.S. 83 (1963).

Further, the Court stated that had the City cared enough to file a responsive brief, they might have

been in a better position to judge the extent of the exculpatory nature of the video of the traffic stop.

Because it could not confidently confirm Clack’s conviction, the Court reversed the circuit court’s judgment affirming the County court’s decision. Based on Rule 12.03(A) of the Uniform Rules of Circuit and County Court, when a circuit reviews an appeal from a county court, and the circuit court finds that a new trial is appropriate, “the cause shall be remanded to the docket of the circuit court and a new trial held therein de novo.”

Reversed and Remanded.

Williams v. State

154 So.3d 64 (Miss. App. 2014)

FACTS:

After attempting to steal meat and seafood valued at about \$600 from a Kroger grocery store, Williams led police on a 14-mile chase through Jackson suburbs, exceeding 80 mph at times. The chase ended when Williams ran a red light and struck another vehicle, killing its driver. Williams was charged with vehicular evasion causing death.

At trial, Williams claimed that the other driver’s death was the result of the pursuit, not his flight. Williams was convicted and sentenced to forty years imprisonment, as a habitual offender.

On appeal, Williams argued: 1) that the evasion statute was uncon-

stitutionally vague 2) that his conviction was not supported by sufficient evidence and against the overwhelming weight of the evidence, and 3) that the trial court erred in refusing jury instructions of a lesser included offense.

HELD:

In determining the constitutionality of the statute, the Court relied on *Fulgam v. State*, 47 So. 3d 698 (Miss. 2010) holding that the Court must consider: 1) whether the statute affects a constitutional right, and 2) if the statute implicates no constitutionally protected right, the court should consider whether that statute is impermissibly vague in all of its applications, applying the statute to the complainant's conduct before considering any hypothetical scenarios.

To Williams' first argument, the Court of Appeals found no merit, stating that this argument could be made about any criminal statute. Additionally, the Court held that Williams failed to show that a constitutional right was impacted by the statute, and that no unconstitutional vagueness was shown either on the face of statute or as applied to Williams' case.

Courts found overwhelming evidence that Williams recklessly disregarded others' safety and manifested an extreme indifference for the value of human life. Further, Williams did not have to be "100% at fault" or the "sole proximate cause" of the death to be convicted. Miss. Code Ann. § 97-9-72(4) only requires that the evasion "results" in the death of another for conviction.

"The fact that there was another proximate cause of another cause of the death would not be a defense unless it was an intervening and superseding cause." *Glover v. Jackson State Univ.*, 968 So. 2d 1267 (Miss. 2007).



Additionally, the Court held the State only had to prove that the death resulted from Williams' flight. The Court found the supporting evidence overwhelming and no reasonable jury could conclude that the police pursuit was an intervening, superseding cause of Clark's death that would have excused Williams from criminal liability. Thus, Williams was not entitled to a lesser-included offense instruction without any evidentiary support.

Affirmed.

Krueger v. State

147 So. 3d 887 (Miss. App. 2014)

FACTS:

On May 26, 2012, Krueger and his wife drove through a safety checkpoint. When an officer approached Krueger's car to ask for his driver's license, Krueger's speech was slurred, and he was asked to exit the car. The officer could then smell an alcoholic beverage on Krueger's breath. When the officer asked how much Krueger had to drink, he responded that he had four or five beers, with the last one being about thirty minutes prior to the stop. The officer also asked Krueger to indicate his intoxication on a scale of one to ten,

being the most intoxicated. Krueger answered that he was at about five.

The officer gave Krueger a mixture of common knowledge and standardized field sobriety tests. Krueger only successfully completed one test and failed the others. When asked to take an intoxilyzer breath test Krueger refused, and was cited with DUI test refusal and common law DUI.

Krueger was found guilty in the Justice Court of Scott County. Krueger filed his notice of appeal and the matter went before the Circuit Court, where he was also found guilty, fined, and sentenced to forty-eight hours of jail time. The court suspended the jail time conditioned upon Krueger completing the Mississippi Alcohol Safety Education program. Krueger appealed arguing that the State failed to present sufficient evidence to establish beyond a reasonable doubt the requisite elements of the crime charged and in light of such error, the circuit court erred in denying his motion for a direct verdict.

HELD:

The Court of Appeals affirmed the circuit court's finding relying on *Deloach v. City of Starkville*, 911 So. 2d 1014 (Miss. Ct. App. 2005), where the Court upheld the defendant's common law DUI based solely on the officer's testimony, the field sobriety tests performed, and the defendant's statement to police.

Affirmed.

MHP Says 4th of July Numbers Decreased

Throughout the 4th of July holiday period, MHP issued 4333 citations including 125 DUI arrests and investigated 138 traffic crashes involving 2 fatalities statewide. This was a significant decrease of last year's Fourth of July weekend 7 fatalities.

Public Safety Commissioner Albert Santa Cruz was very appreciative of the 48 new Troopers added to the ranks for the holiday period.

"These additional Troopers not only made a difference from an enforcement aspect, but greatly improved response times regarding traffic crashes," said Santa Cruz.

Colonel Donnel Berry, Director of MHP expressed similar sentiments by saying, "drivers are more inclined to focus on their driving habits when troopers are seen on a regular basis."



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2015 Drive Sober or Get Pulled Over (August 21—September 7)

Mississippi's **Labor Day Weekend** last year resulted in 137 DUI arrests statewide. Troopers worked 113 wrecks. Two people died as a result of those collisions. Nationwide, The National Safety Council (NSC) estimates 395 people were killed & another 47,800 were seriously injured in car crashes during this year's holiday period that began at 6 p.m. Friday, Sept. 4th and concluded at 11:59 p.m. Monday, Sept. 7th. NSC estimates overall traffic deaths are up 14 percent through the first six months of 2015 compared to the same period in 2014. Serious injuries are up 30 percent. Mississippi's exact numbers statewide have yet to be released.

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