



TRAFFIC SAFETY NEWS

November 2014

No Breath Test? No Problem: Winning the Refusal Case

by Brandon Hughes, Alabama Traffic Safety Resource Prosecutor

Admit it. The first thing you do when you get a DWI case file is tear through it looking for the breath test result. Just how drunk was the defendant? BAC equals plea, right? You find the report, scan the page, then...there it is in black and white: REFUSAL. From zero to not guilty quicker than you can say onomatopoeia.

Everyone involved in a DWI case from the prosecutor to the defense attorney, the judge and even the jury has come to place entirely too much emphasis on the offender's BAC. As a result, any case in which the BAC is unknown is considered at best weak and perhaps even unwinnable. This mentality discounts the work of the law enforcement officer who investigated the case and subsequently made his decision to arrest the defendant.

Why is the evidence of impairment gathered by the officer during the investigation not enough? Do you as a prosecutor need the BAC in order to validate the officer's arrest decision? What if we applied this standard to other criminal cases? Would you dismiss a murder charge simply because there was no confession despite all other evidence pointing to guilt? What about a burglary case getting nolle prossed for the sole reason that fingerprints weren't taken? Of course not. So why do we take that approach to DWI cases with no chemical test?

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Winning the Refusal Case (con't.)

The fact is that many prosecutors look at refusal cases with a jaundiced eye.

To be honest, I would much rather prosecute a refusal than I would a case with a .08 or .09 BAC. In low blow cases, the issue becomes about the number and the number alone. You spend your time justifying the .08 while the other evidence of the defendant's impairment just becomes white noise. Often refusals may also be preferable in the case of a high BAC offender who is a functioning alcoholic. You know the type. They can stand without too much difficulty, their speech is understandable and their performance on the SFSTs isn't what you would expect from a person with a high BAC. The defense attorney argues that the "machine" was clearly wrong because a .22 is "gross intoxication" (which he will deftly get the officer to agree to) and the video is clearly NOT showing a person who is that drunk. You have seen it before or heard the stories. You know as soon as you see the video that it is going to be a tough case despite the high BAC. The jury stays out several hours before rendering a verdict because the case becomes about the breath testing instrument and whether it was working properly. Sure, you bring in people to explain that the instrument was functioning and that the test was accurate, but the jury still has to reconcile what they saw in the video to a BAC that was made out to be deadly by the time the defense attorney was done. If that case were a refusal, there would not have been a number to confuse the jurors. The officer's testimony and video would likely be sufficient, resulting in a substantially higher chance of getting a guilty verdict.

I realize this mentality is generated by judges and juries who like cases nice, neat, perfectly wrapped and topped with a bow, but that is just not reality. No case is perfect but that doesn't mean that justice can't still be achieved. You win these cases the same way you win any case. By giving the fact finder the evidence necessary to reach the conclusion that justice demands: guilty as charged. These cases are made on the roadside before the defendant is transported to the jail, put before the instrument and given a chance to blow. If the driving behavior is the cake and the officer's observations are the icing, then the BAC is just the sprinkles. The confession if you will. Winning the refusal case is simply about presenting the officer's observations and all the evidence gathered during the three phases of the investigative process.

Phase One: Vehicle in Motion

What did the officer observe while the defendant was driving? Crossing the center line, driving into opposing traffic, slow response to traffic signals, accelerating/decelerating rapidly, headlights off, drifting in his own lane, driving below the speed limit, stopping without reason.... The list goes on, but you get

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the idea. Make sure you present these observations to the fact finder in a clear and concise manner. Have your officer explain his observations in detail. For example, crossing the center line is just not enough. How far over the line was he? Two inches or two feet? Did he go completely in the other lane and into oncoming traffic? Your job is to create an image so that the judge or jury can “see” exactly what the officer saw. You paint the picture that the defendant’s driving was clearly not normal.

Phase Two: Personal Contact

Upon making personal contact with the defendant, what did the officer SEE? Bloodshot and/or watery eyes, inability to locate a driver’s license, fumbling fingers, alcohol containers in the vehicle, drugs or drug paraphernalia, disheveled appearance, vomit on his clothing? What did the officer HEAR? Slurred speech, admission of drinking, inconsistent or inappropriate responses to questioning, unusual statements, abusive language? What did the officer SMELL? Odor of alcohol, burnt marijuana, chemical odors, cover-up odors such as cologne, perfume? Did the officer observe anything unusual when the defendant got out of the car? Seatbelt still buckled, leaves car in gear, trouble opening the door, falls upon getting out, leans on the car?

This is evidence gathering. All of these observations go toward proving the defendant was driving under the influence of alcohol to the point he could not safely operate his vehicle.

Phase Three: Pre-Arrest Screening

How did the defendant perform on the SFSTs? How you approach this section is critical. First and foremost, these tests are NOT pass/fail. Remove pass/fail from your DWI lexicon. But “fail” just sounds so good, right? You want the jury to hear that he failed because it sounds bad. Fair enough, but you have been warned. First, if the defense attorney asks the officer if his SFST training included the words pass or fail in regards to someone’s performance, he will have to say no. If asked why he then uses that terminology if he wasn’t trained that way, who knows how he will answer, but rest assured it won’t be good for the case. *Strike one.* Second, what does “fail” even mean in this context? Let’s say there are 20 things the defendant must do on the Walk and Turn (standing during the instruction phase, nine steps up the line, the turn, then nine steps down the line). Say the defendant makes six mistakes and the officer counts that as failing. If I were defending the case, I would point out that the defendant did 14 things correctly. That is a 70% success rate which was passing when I was in school. *Strike two.* Lastly, if I asked how many mistakes are needed to be failed, the

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officer could not give a definitive answer because one does not exist. Now the test sounds arbitrary which calls into question any conclusions drawn by the officer as a result of the defendant's performance. *Strike three.*

So if not pass/fail then what? Use the phrase "clues of impairment" which is more consistent with the officer's training. Taking the above Walk and Turn example, the officer is trained that two or more clues indicate a BAC of .08 or above. Armed with that information, wouldn't you rather point out that the defendant actually showed six clues of impairment as opposed to simply stating that the defendant failed the test? That is substantially more definitive than this abstract idea of failing. Clues of impairment also make for a more compelling closing argument. Especially after the defense attorney has told the jury that you want to convict this poor defendant simply because he couldn't stand on one foot or walk in a straight line (which he will argue has absolutely nothing to do with driving a car). You then get up and tell the jury that the defendant was arrested for and charged with DWI because the officer observed numerous clues of impairment throughout the three phases of investigation. Judges and jurors understand this. Presumably, they have all been around a drunk person at some point in their life, and they formed an opinion that the person was drunk without the benefit of a single field sobriety test and without any clue as to what the person's BAC was. This is a great point to make during your closing argument. Also during your closing, consider going through each of the clues of impairment that were brought out during trial. You can make the point that there was no one reason the defendant was charged with DWI, that it was the sum total of everything. This is particularly effective when the defendant has a reason for each and every clue. He has ten different excuses for the ten clues brought out at trial. You tell the jury that although he has ten excuses, you are giving them one reason for his behavior: he was drunk. By arguing that the officer based his decision to arrest on all of the "clues of impairment" as he was trained to do, it becomes clear that he could not safely release that person back on the roadways.

Alcohol DWI refusal cases are pretty simple when we allow them to be. You only have to prove two things: the defendant was driving a car and that he did so while intoxicated. Understand that the officer's arrest decision and the guilty verdict you are seeking will be based on the same information. It is all based on the observations of the officer from the moment he first observed the defendant's car until he placed him under arrest.

Remember to use the phrase "clues of impairment" and be careful when using the

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term “drunk.” Drunk is common parlance and has no legal significance. By using this term, you may just be increasing your burden of persuasion. Ask ten people to describe a “drunk” person to you and you are likely to get ten different answers, many of which will describe a person in worse condition than your defendant. Stick with the term “impairment.” It is a much easier proposition to prove that someone’s ability to drive a car was affected by alcohol than to prove that someone was drunk.

Finally, make it clear to the jury that the reason we don’t know the defendant’s BAC is because of the defendant’s refusal to give a breath sample. Whatever his BAC was, it was undoubtedly too much on that night to be driving a car.

—This article was originally published as part of “The Crash Course.” It is used by permission but has been edited for length and to remove state specific content. The original article as well as all others in the series can be found at www.alabamaduiprossecution.com.

State Traffic Fatality Totals Year to Date

2014—609

2013—636

**This represents a 4% decrease from 2013.
Drinking was involved in 135 of these deaths.**

*Based on figures provided by the Missouri Division of Traffic and Highway Safety.
Figures are current as of November 3, 2014.*

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Eastern District

Williams v. DOR, No. 100862 (October 21, 2014)

Driver's license was suspended after her arrest for DWI. She had been driving a Ford Escape on a private driveway when she ran off the road, crashed into a tree, and overturned. The trial court reinstated the license finding that because she was not driving on a public road or highway, the suspension statute did not apply. DOR appealed.

There is nothing in section 302.505.1 which requires the state to prove that a person was driving on a public road or highway before his license can be suspended. The word highway is found only in the definition of vehicle. There are two categories of vehicles within the purview of the suspension statute—vehicles designed for use on the highway and vehicles which, despite not being designed for such use, are actually used on the highway at the time of the culpable event. A vehicle must not be both designed for and used on the highway for the statute to apply. In this case, there was no dispute that Driver's traditional vehicle was designed for use on the highway. Thus, it was not necessary to prove additionally that it had been driven on the highway to justify the license suspension here.

NOTE: The court also pointed out that the same is true in criminal cases. There is no requirement that it either be alleged or proved that a vehicle was operated on a public road or highway to sustain a charge of DWI.

State v. Fortner, No. 100156 (October 7, 2014)

Defendant was convicted of second degree felony murder, first degree endangering the welfare of a child, and armed criminal action. On appeal, she challenges the admission of blood alcohol test results and the sufficiency of the evidence.

The evidence presented at trial established that Defendant called her sister and told her that she had her 19-month old granddaughter in the car and had been drinking. The sister told her not to drive. Defendant ended the conversation and drove onto I-55. At some point, she exited the highway and lost control of the car. The car struck a deflector, a street sign, a tree, then crossed through a yard before hitting a house and landing flipped up against a tree. An eyewitness testified that she was going so fast as she exited that two of the car's tires were off

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the ground. Both the defendant and the baby were seriously injured. The baby died the next day. Data recovered from the air bag control module showed that defendant had been accelerating at the time of the crash and never applied the brakes. Four empty wine bottles were found in the car.

While the defendant was at the hospital being treated for her injuries, two samples of blood were drawn. One was taken to the hospital lab while the other was left in the emergency room. Shortly thereafter, an officer arrived and read Defendant the implied consent warning. She agreed that the officer could obtain a sample of her blood to determine her BAC. Because she had already received a transfusion, however, an additional sample could not be drawn. As such, the officer was given the previously drawn sample that was in the ER. Testing on this sample revealed that Defendant's BAC was .226.

In her first point on appeal, Defendant claimed that the blood test result should have been suppressed because it was done on a sample drawn for medical purposes and not at the request of a law enforcement officer. She argued that her consent to have this sample drawn was limited to use for medical purposes only. The implied consent provisions do not apply under the facts of this case because the defendant expressly consented to having her blood drawn for the purpose of determining her BAC. There was no evidence that she placed any limitations on this consent. Nor did the record reflect that she specified that testing could only be conducted on a future sample. The fact that the request for a sample was made after the blood was drawn is irrelevant. The blood alcohol test was properly admitted.

In her second point, Defendant again challenges the admission of the test results this time arguing that the blood was not drawn at the request of an officer, the sample was not collected in a sterile tube containing a preservative and anticoagulant, and the sample was not otherwise obtained in accord with accepted medical practices. Chapter 577 is not the exclusive means to obtain alcohol test results for use as evidence of intoxication in a criminal proceeding. Here, the state did not offer the test results pursuant to the implied consent provisions but relied on Defendant's express consent. The record also shows that accepted medical practices were followed. As such, the trial court did not err in admitting the results.

In her final two points, Defendant challenges the sufficiency of the evidence to sustain her convictions for endangering the welfare of a child and armed criminal

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action. With regard to the endangering charge, she claimed the evidence did not show that she acted knowingly in creating a risk of harm to the baby. To sustain a first degree endangering charge, the state must show that a defendant engaged in conduct that created a substantial risk to the life, body or health of a child less than seventeen years old and did so knowingly. Here, Defendant claims that she lacked the requisite mental state because she could not remember the crash or the events leading to it. There is no requirement that a defendant remember her conduct to show that she acted knowingly. Defendant knew her granddaughter was in the car, admitted she had been drinking, and was familiar with the area where the crash occurred. She still drove at a high rate of speed, without applying the brakes, and hit several objects before running into a house. She chose to drive while intoxicated despite being warned not to do so. This evidence was sufficient to show that she acted knowingly.

With regard to the armed criminal action charge, Defendant argues that the state did not prove that she knowingly used her car as a dangerous instrument. A dangerous instrument can be virtually any item when it is used in a manner where it is readily capable of causing death or serious injury. A car can be a dangerous instrument. It is not necessary to show that a defendant intended to cause harm by the use of a car. Rather, the state must only show that Defendant knowingly used her car in a manner or under circumstances in which it was readily capable of causing death or serious injury. As described above, the evidence here was sufficient. As such, Defendant's convictions were affirmed.

State v. Perry, No. 100483 (September 23, 2014)

Defendant was convicted of three counts of possession of a controlled substance. On appeal, he claimed that he was not pulled over for traffic violations but so that officers could conduct an investigatory stop without probable cause.

The evidence at trial established that officers saw Defendant run a stop sign. They did not immediately initiate a traffic stop but followed him. After the officers witnessed Defendant run another stop sign and fail to signal a turn, they pulled him over. As they did so, they noticed him fumbling with something near the passenger side door. When they asked him for identification, he produced a Missouri state identification card. He also appeared very nervous. When they checked his name, they discovered he had several outstanding warrants. As such, he was placed under arrest for those warrants. He was also patted down again and his pockets were searched. The officers found a roll of money and three bags

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containing heroin, cocaine and hydrocodone pills. Defendant was then arrested for the drugs. He was placed in the patrol car, and his car was searched. No other drugs were found but \$4000.00 was seized from the glove compartment.

The decision to stop a car is reasonable when officers have probable cause to believe that a traffic violation has occurred. Here, officers saw Defendant commit three traffic violations. As such, the decision to stop the car was justifiable and legal. During a traffic stop, officers may detain a person for the time necessary to conduct a reasonable investigation. If an officer observes specific articulable facts that create an objectively reasonable suspicion that the individual is involved in criminal activity, the detention can continue. This suspicion must come about during the time necessary to effect the purpose of the stop. Here, the officers observed Defendant make furtive movements, he was very nervous, and outstanding warrants were discovered. All of these factors constitute a reasonable basis to extend the detention and to search the defendant and his car. Moreover, an officer's intent in stopping a car is unimportant so long as his actions are lawful. As such, the stop was lawful, and the evidence seized from Defendant and his car was admissible.

Southern District

State v. Mammah, No. 33039 (November 4, 2014)

Defendant was convicted of DWI. On appeal, he claimed that the evidence was insufficient to show that he was under the influence of alcohol while he was operating a motor vehicle.

The evidence established that officers found Defendant inside a truck that was stopped in a lane of travel. The engine was running and it was in drive. The defendant's foot was on the brake. Defendant claims this was insufficient because there was no evidence showing that he was intoxicated at the time he fell asleep in his truck. This claim is based on the faulty premise that the state was required to show that he was intoxicated while he was actually driving. This is not true as merely operating a car is sufficient. To operate is to cause to function usually by direct personal effort. A person can be operating even if that person is sleeping or unconscious. Defendant's car was running in a traffic lane, it was in drive, and Defendant was applying pressure to the brakes. This was more than sufficient evidence to show that he operated his truck while in an intoxicated condition. His conviction was affirmed.

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State v. Miller, No. 32730 (October 21, 2014)

Defendant was convicted of two counts of involuntary manslaughter in the first degree. On appeal, he claimed the evidence was insufficient to sustain his convictions because there was no evidence that he was reckless in causing the deaths.

The evidence at trial established that Defendant was driving southbound on a two-lane stretch of Highway 63. He was familiar with the area and had previously driven this part of the highway. He testified that he did not like driving on this part of the highway because it was so narrow and made him nervous. He also testified that he had previously been forced to pull onto the shoulder when he encountered cars passing in the lane for the opposite direction of traffic. On the day in question, Defendant came up behind a car that was traveling at the posted speed limit. He pulled into the northbound lane to pass this car. He did not, however, return to the southbound lane immediately. Rather, he continued to drive in the northbound lane for approximately one to two minutes. He did so even as he entered a no passing zone, a blind curve in front of a bridge, and continued onto the bridge itself. He then struck head-on a car traveling in the northbound lane, killing the young couple inside.

A person acts recklessly when he consciously disregards a substantial and unjustifiable risk that circumstances exist or a result will follow, and such disregard constitutes a gross deviation from the standard of care which a reasonable person would exercise in the situation. In a traffic crash, speed combined with other circumstances can be found to be reckless. In this case, the state produced substantial evidence of speed and other circumstances. Defendant's own testimony established a consciousness of the risk in passing cars in the opposite lane. As such, there was more than sufficient evidence to sustain his convictions.

State v. Smith, No. 32878 (October 9, 2014)

Defendant was convicted of possession of a controlled substance with intent to distribute. On appeal, he claimed that the officer did not have reasonable suspicion to believe that he was involved in criminal activity at the time he was detained and searched.

The evidence presented at trial established that the officer first noticed Defendant when the car he was a passenger in aborted a turn into a driveway, then made the

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first two available turns after he began following it. The car eventually pulled to the curb and the lights were turned off. Defendant got out and approached a house. The officer recognized him as a known drug user and dealer. Defendant knocked on the door, conversed briefly with people inside, then left. Instead of returning to the car, he started walking away from the house. At this point, the officer called him over to the car and instructed him to place his hands on the car so that he could perform a pat down for weapons. Defendant initially complied but quickly began to resist. The officer was eventually able to subdue the defendant and placed him under arrest for resisting. He then searched him and found a rolled marijuana cigarette in his pocket. The officer then approached the car that Defendant had been in. The driver consented to a search, and the officer found a bag containing 158 grams of marijuana under the passenger seat. Defendant admitted it was his and that he intended to sell it.

An officer may make a brief investigatory stop when he is able to point to specific and articulable facts that taken together with rational inferences from those facts and the officer's own knowledge and experience support a reasonable suspicion that illegal activity is occurring. Reasonable suspicion is present when an officer observes unusual conduct which leads him to conclude in light of his experience that criminal activity may be afoot. Conduct which appears innocent in itself may, under the circumstances in which it occurs, support a showing of reasonable suspicion. Nervous and evasive behavior can be a pertinent factor in determining reasonable suspicion. Knowledge of past criminal activity can also be one factor in the reasonable suspicion analysis. Neither of these things alone, however, are sufficient to create reasonable suspicion.

In this case, the officer observed conduct from which he could deduce that the defendant was trying to evade contact with him. This apparent evasiveness combined with the officer's knowledge of his status as a drug dealer and user tipped the scales in favor of reasonable suspicion. As such, the officer's investigatory detention was justified. To justify a search, however, an officer must also have a reasonable suspicion that the person may be armed and dangerous. It is reasonable for an officer to believe that an individual may be armed when that individual is suspected of being involved in drug activity. The time of day, location and whether the officer is alone are other relevant factors. In this case, the officer was alone and it was dark. It was also reasonable for the officer to suspect that Defendant was involved in drug activity. As such, the search was also justified. Defendant's convictions were affirmed.

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State v. Mitchell, No. 32952 (October 3, 2014)

Defendant was convicted of drug trafficking in the second degree. On appeal, he claimed that the search of the vehicle in which the drugs were found was conducted without probable cause.

The evidence established that a deputy arrived at a nightclub to attend a going away party. When he pulled into the parking lot, he noticed two Cadillacs. He saw a person he recognized and knew to have prior drug violations get out of one of the cars with a black duffle bag. He placed this bag into the other car. The deputy recognized the other car as being associated with the defendant. The deputy also recognized the defendant and knew him to have prior drug violations. Both people were also then under investigation by a drug task force. Both cars eventually drove away in separate directions. Based on his training and experience, the deputy believed that he had just witnessed a drug transaction. He began following the second car and observed it make several lane violations. He then requested that the closest officer respond to the area. The responding officer intercepted the car and initiated a traffic stop. While talking with the officer, the defendant denied having been at the night club or letting anyone into his car. He was then asked to step out of the car for further investigation. When the officer patted him down, he noticed a bulge that was consistent with a large roll of money. When asked about this, Defendant said it was approximately \$6200 in cash. When asked about the incident at the nightclub, Defendant said the duffle bag contained clothes. Defendant refused to consent to a search of the car so a canine unit was called. The dog gave a positive alert for the presence of drugs inside the vehicle and scratched affirmatively at the black duffle bag. Inside the bag, the officers found two bricks of marijuana and two bags of crack cocaine the size of tennis balls.

An officer may make an investigatory stop of a person, in the absence of probable cause, where the officer has reasonable suspicion that the person is engaged in criminal activity. Whether a stop is proper involves two questions, whether the circumstances support a finding of reasonable suspicion and whether the officer's actions were reasonably related in scope to the circumstances which justified the stop. In this case, Defendant argued that, at some point prior to the discovery of the drugs, his detention became unlawful as it exceeded the scope of a routine traffic stop. This argument inherently presumes that the officers lacked any specific articulable facts to support an objectively reasonable suspicion that he was engaged in criminal activity other than the traffic violations. This

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presumption is incorrect. Officers are allowed to make use of all the information available to them and to draw on their own experience and specialized training to make inferences about that information. Even if conduct justifying a stop was ambiguous and susceptible of a reasonable explanation, officers are permitted to detain a person to resolve that ambiguity.

Here, prior to any stop of the defendant, a deputy observed conduct that indicated a drug transaction had taken place. Based on those observations, the officers were not limited to investigating traffic violations once Defendant was stopped. This is especially true when, as in this case, additional reasons for suspicion arose during the course of the ensuing investigation. Ten minutes into the detention, a canine unit was requested, which arrived 15 minutes later. This length of time was not unreasonable given the circumstances. As such, the court did not err in finding that Defendant's detention was supported by reasonable suspicion and that the ensuing investigation did not exceed the scope of that suspicion.

State v. Rattles, No. 32918 (October 1, 2014)

Defendant was convicted of DWI as an aggravated offender. On appeal, he claimed that the evidence submitted by the state to prove his status as a repeat offender was insufficient. Specifically, he argued that because the DOR driving record used to prove up the priors showed that two of his convictions occurred on the same days as the offenses, the record was not clear that his right to present a defense was protected in the prior proceedings.

At trial, the state introduced a certified copy of Defendant's driving record from the Department of Revenue. This record showed that he had a DWI conviction in 1983 in Montgomery County Circuit Court, a DWI conviction in 1984 in Monett, and a 2002 conviction for DWI in Monett municipal court. Both the 1983 and 1984 convictions show the conviction date as the same as the offense date. The defendant argued this record was insufficient based on this fact and because the records did not show that he waived his right to counsel in those cases.

To prove that a person is an aggravated offender, the state must show that he has committed three or more prior intoxication related traffic offenses. In 2010, the legislature amended section 577.023 to specifically allow the state to use certified driving records as proof of prior convictions. When the legislature lists a particular source as authorizing a trial court to find the existence of a prior conviction, that source contains all of the information necessary to prove the prior.

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By adding certified driving records to the documents listed in 577.023, the legislature has specifically indicated that they include all of the information necessary to prove the existence of a prior conviction for purposes of sentence enhancement. The state is not additionally required to affirmatively prove that prior convictions were obtained following all applicable constitutional procedures in order to use those records. Here, the driving record offered by the state properly showed that Defendant was an aggravated offender.

State v. Hogsett, No. 32979 (September 25, 2014)

Defendant was convicted of leaving the scene of a motor vehicle accident. On appeal, he claimed the evidence was insufficient to sustain his conviction.

The evidence presented at trial established that Defendant arrived at his father's house and told that him that "Mom's laying dead on the side of the highway going of town." The father called 911 and went out to the highway where he found the body of his ex-wife and Defendant's mother. Deputies who were called to investigate got a tip that Defendant was at a bar. They responded to the bar and arrested Defendant. The next day, during an interview, Defendant told a deputy that he had picked up his mother and they were driving home. During the drive, they got into an argument. He then noticed that the dome light had come on. When he looked to the passenger side, his mother was gone and the door was flapping. He turned the truck around to find her but went to his father's house when he could not. He did not call or go to the sheriff's office or any other police department that night.

The offense of leaving the scene of an accident is complete when a defendant, knowing a person has been injured, drives on without stopping and giving the required information. In this case, Defendant argues that he was not required to stop because there was no accident. The term accident is not defined in the statute, thus courts can defer to common meanings or dictionary definitions. An accident is defined in Black's Law Dictionary as "an unintended and unforeseen injurious occurrence." Here there was evidence that Defendant was driving in a car with a passenger and suddenly the passenger was no longer in the car. A passenger exiting a car traveling at highway speed is an unexpected event. This was sufficient to show that Defendant was involved in an accident. He next argues that there was no evidence of his culpability. Leaving the scene is triggered by an accident OR driver's culpability. Here, there was proof of an accident so the state did not have to prove it was Defendant's fault. The conviction was affirmed.

Traffic Stop Survival: Five Tips that Will Keep You Ready Roadside
By Sergeant Scott Hughes, Calibre Press, October 27, 2014

Traffic stops are undoubtedly the most common task performed by police officers. Unfortunately, because these encounters are frequently uneventful, officers become that infamous c-word—complacent. Despite telling officers that there is no such thing as routine, we find ourselves treating traffic stops as just that.

During my Tactics in Traffic class, I stress several things with the hopes of preventing officers from becoming complacent and to remind them of the dangers associated with stopping vehicles. Here are a few tips and reminders:

1. Notifying dispatch: Make dispatchers aware of your location, the plate number, vehicle description and the number of occupants—prior to activating your overhead lights. This information becomes crucial in the event the violator bails on foot or challenges you in a confrontation. How many times have you been on patrol and an officer cried out for help on the radio and you said to yourself “where are they?” By providing this basic information to dispatch, other officers in the area can begin to float to your location. If things go bad, back-up officers know where to respond.

2. Have a plan before stopping the violator: What will I do if the violator takes off? Do I have any cover or concealment as I’m approaching the vehicle? Do I have backup available? These questions and many more need to be answered before you stop a car and before you make an approach. By mentally rehearsing various scenarios, you will be better prepared when a situation unfolds. Too often officers stop cars and are not tactically prepared. Say to yourself: “When X happens, I’m going to do Y.”

3. Nobody’s feet hit the ground before yours: When you’re preparing to stop a car, you must remove your seatbelt. Unfortunately, there have been situations where an officer has made a stop on a violator and the subject charged the officer fatally wounding or assaulting him before he was able to react because they were trapped inside the police cruiser. Also, don’t forget that sometimes the best response may be to retreat. If you’re making a traffic stop and the violator jumps out of his car and begins charging you while you are in the cruiser, your best option may be to put the car in reverse and get out of there.

4. Watch the hands: Every police officer in the United States has been taught that hands kill. As soon as you make contact with the occupants in a vehicle, find those hands! The more occupants inside the car, the tougher this is going to be. Become an expert in scanning the inside of a car while simultaneously speaking to the occupants.

5. Pay attention: From the moment you notice the traffic violation until the contact is over, pay attention. Seems simply and elementary, but don’t get lulled into a false sense of security just because the first or even second approach went well. There have been plenty of cases where a violator went off after the officer issued a citation or summons to court.

As Lt. Jim Glennon recently wrote, you are constantly training, whether you realize it or not. Don’t let a few easy traffic stops make you think the next one will be easy too. Come to work prepared—well rested, fit, focused and ready to serve—and remember that any stop, if you are not careful, could be your last.

Even Low Blood Alcohol Levels Increases Crash Risk

From Drugfree.org; January 22, 2014

Drivers with blood alcohol levels well under the legal limit are more likely to be at fault for crashes, compared with non-drinking drivers they hit, according to a new study. Researchers from the University of California, San Diego, analyzed data on more than 570,000 fatal auto crashes between 1994 and 2011, and concluded that there appears to be no safe blood alcohol content for drivers. They looked at drivers' blood alcohol levels, as well as indicators of which driver was to blame, such as who drove the wrong way or ran a red light.

The study, published in *Injury Prevention*, found drivers with a BAC of .01 percent were 46 percent more likely to be fully responsible for a crash than a sober driver. The legal driving limit in the United States is .08 percent. An adult man could generate a .01 percent BAC reading by drinking just half of one 12-ounce beer, the article notes. The more a person's BAC increased, the greater the risk of being responsible for a crash, the study found.

In a news release, researchers said, "We find no safe combination of drinking and driving—no point at which it is harmless to consume alcohol and get behind the wheel of a car. Our data support both the National Highway Traffic Safety Administration's campaign that 'Buzzed Driving is Drunk Driving' and the recommendation of the National Transportation Safety Board to reduce the legal limit to .05 percent. In fact, our data provide support for yet greater reductions in the legal BAC."

Save the Dates!

**Training dates for the remainder of 2014 and next year have been set.
Mark your calendars and plan to attend!**

December 9, 2014: Unmasking CDL Convictions; webinar, 2 pm

January 13, 2015: The Myth of the DUI Defense—Rising BAC; webinar, 2 pm

February 10, 2015: Defending the Blood Test Result; webinar, 2 pm

March 4-6, 2015: Protecting Lives, Saving Futures; Columbia

April 14, 2015: State to State Enforcement Issues; webinar, 2 pm

April 17, 2015: High in Plain Sight—Identifying Current Drug Trends; Columbia

June 3-5, 2015: DWI/Traffic Safety and DRE Recertification Conference; Osage Beach

Watch your email for additional details and registration information!