



Street Legal

A program of the Kansas Department of Transportation

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Kansas Appoints Traffic Safety Resource Prosecutor

In an effort to educate and support Kansas law enforcement agencies in the prosecution of DUI cases, the National Highway Traffic Safety Administration has partnered with the Kansas Department of Transportation and has named Karen C. Wittman as the state of Kansas' first Traffic Safety Resource Prosecutor (TSRP).

The purpose for establishing a TSRP in each state is to help ensure all prosecutors and law enforcement have immediate access to information and resources needed to help overcome obstacles in traffic and DUI prosecutions.

As the TSRP attorney, Wittman is an expert in Kansas traffic and DUI related laws. She will provide support to enhance the capability of the State's prosecutors and law enforcement, to investigate and effectively prosecute traffic safety violations; specifically DUI and DUI fatality cases. She will serve as a liaison between prosecutor and law enforcement officers; conducting training for prosecutors and cross training with law enforcement.

"Let's face it, defense attorneys are very good at networking when it comes to filing challenges to a DUI investigation," says Wittman.

Wittman believes that by joining forces and having a central location to disperse information that was successful for one prosecutor or law officer, it can be shared with others.

Wittman serves as a Senior Assistant District Attorney for the Third Judicial District, and for the past nine years has prosecuted traffic cases.

"I have been involved with 23 DUI fatal crashes

resulting in charges being filed," says Wittman.

"In one of those cases, the driver was convicted of second degree murder."

Prior to law school, Wittman was a forensic chemist for six years, where she analyzed suspected drug substances and testified in court. She has been deemed an expert in the field of forensic chemistry in the state and federal courts in Florida.

She has evaluated and charged out thousands of DUI cases and participated in over 50 jury trials on DUI. In order to effectively prosecute a case, Wittman has a policy of attending fatality crash scenes in her district to observe first hand the collision. She has experience in preparing search warrants for forensic autopsies on vehicles, and in some instances, has observed the execution of the warrant to get first hand look at the evidence. She has trained with accident reconstruction officers, and participated in wet workshop training of officers for field sobriety testing. She is certified by the manufacturer of the Intoxilyzer 8000 to perform analysis and instruct others in its operation. She has observed active DUI check lanes and successfully defended its constitutionality.

Wittman has provided training on current case law for law enforcement officers and prosecutors. She is on the Breath Alcohol Advisory Committee and SFST Advisory Committee that set the standards on breath testing and officers conducting field sobriety testing.

Wittman has appeared before the Kansas Legislature as an advocate for stronger traffic safety laws, and was efficacious in crafting the current DUI laws for the state. (cont. on page 2)

"In 2006, I participated in the National Highway Traffic Safety Administration Impaired Driving assessment for Kansas," says Wittman. "The assessment was to review and make recommendations for the prevention, investigation, prosecution and treatment of persons charged with alcohol related offenses."

In her position as the Kansas TSRP, Wittman will train prosecutors and law enforcement relating to DUI prosecution, and to DUI related fatality crashes. She has prepared a DUI manual of case law pertaining to all aspects of DUI prosecution and will publish a newsletter with information regarding case law, legislative developments, new technologies, innovative ideas and upcoming events.

"I think the most critical part of the TSRP's job is to provide assistance to prosecutors and other traffic associates on a wide variety of legal and technical issues," says Wittman. "I am honored and privileged to say that I have been chosen to be the first Kansas TSRP."

WHAT DOES THIS MEAN TO YOU?

CONTACT Karen Wittman

- For help with a legal issues dealing with traffic
- For training on specific issues dealing with DUI
- For training for law enforcement officers concerning DUI issues
- To obtain a copy of the DUI manual
- If interested in exploring a FRYE hearing in a case

Karen Wittman 785.230.1106 or kstsrp@gmail.com

Let us **UNITE** to make Kansas a safe place to travel!

LEO Intoxilyzer 8000 Training

July	15-16	Linn Co SD	8 hours
August	12-13	Emporia	8 hours
August	19-20	JOCO Academy	8 hours
October	2-3	KCKS Training Academy	8 hours

LEO SFST Credential Course

June	26	Olathe Police Department	
July	22-23	Barton County Sheriff's Office	
July	24	Olathe Police Department	
August	21	Olathe Police Department	

Impaired Driving National Enforcement Crackdown

August 3 — September 1

14th Annual Training Conference on Drugs, Alcohol and Impaired Driving

August 10-2 Indianapolis, IN

2008 MADD National Conference

Sept. 4-6 Dallas, TX

Impaired Driving: For Prosecutors and LEO's

Sept. 22-23 Wichita

KCDAA Fall Conference

October 20-21 Overland Park, KS

For further information regarding times and location contact Karen Wittman kstsrp@gmail.com

Coming in the next issue

Legislative update... see what the legislature did with the implied consent law as well as other traffic related issues.

Case Law of Interest

DRE CASE

State v. Brown
unpublished 174 P.3d 458

This case involves testimony by a DRE. The DRE was able to discuss non-uniform test results indicating defendant was on both depressants and stimulants. KBI toxicologist testified concerning the urine drug screen. The only issue on appeal was the admission by the District Court of the toxicology report of the urine. The appellate court cited K.S.A. 8-1001(d) that allows for the qualitative testing of urine for the presences of drugs being admissible when there is a question of accuracy or reliability, going to weight rather than the admissibility of evidence. Please note this is the second case dealing specifically with a DRE. See **State v. McHenry**, unpublished, 136 P.3d 964 (Table), 2006 WL 1816305 (Kan.App.)

If the defendant requests the Intoxilyzer source code, contact the TSRP immediately.

CRAWFORD

State v. Dukes,
published 38 Kan. App.2d 958 (1/18/08)

Finally, the court has decided breath test machine certification and driving records are not testimonial and thus not subjected to the confrontation clause. The court states: "Although they {machine certification/calibration docs} are prepared in anticipation of criminal litigation in a general sense, they are not prepared in anticipation of litigation in a particular case." The appellate court also noted a driving record is similar to machine calibration docs and determined they are not testimonial either.

DEFICIENT SAMPLE

State v. Davis, unpublished, 180 P.3d 623, 2008 WL1722284(4/11/08)

The officer conducted the 20 minute deprivation period. The defendant "attempted" to take the test and eventually produced a deficient sample of 0.197. The officer explained this would be considered a refusal and out of the goodness of his soul offered the defendant a "second chance" to take the test. The defendant said he would try again, and without waiting another 20 minutes, the defendant was given the opportunity to blow. This time a sufficient sample was obtained. The defendant moved to suppress the 2nd test because the officer did not wait the 20 minutes required by KDHE protocol before the 2nd test. The appellate court noted there was no "exception" to KDHE protocol to allow for the administration of the 2nd test. The State could not establish a sufficient foundation for submission and the 2nd test should be suppressed. The court did note if the State laid proper foundation for the 1st test, i.e. KDHE protocol was followed, then the State could proceed on a K.S.A. 8-1567(a)(3) theory. If you have a current case with these similar facts, I would suggest you contact KDHE for some expert testimony to help the judge decide.

MIRANDA

State v. Shade, unpublished 172 P.3d 1222, 2007 WL 4578022 (12/12/07)

Investigation v. Interrogation!!! The appellate court concluded ORDINARY traffic stops do not involve custody for the purposes of Miranda. The Court noted other cases that came to the same conclusion: **State v. Price 233 Kan 706**, **State v. Stephens 36 Kan App 2nd 323**, **City of Manhattan v. Ferrell 35 Kan App 2nd 740**, **State v. May 16 Kan App 2nd 527**, and **State v. Almond 15 Kan App 2nd 585**. Hopefully, this will put this old argument to rest!!

UNANIMITY OF VERDICT

State v. Stevens
published 285 Kan.307 (12/07/08)

The court held the DUI statute provides for alternative means of committing the same crime, specifically to operate or attempt to operate. Unanimity is not required as to the verdict by which the crime was committed, so long as substantial evidence supports each alternative means. The court must determine whether a rational trier of fact could have found each means was proved beyond a reasonable doubt. The court must also review all the evidence in light most favorable to the prosecution. Be on the lookout for **State v. Baatrup**, dkt # 98186 (on Court of Appeals, (summary calendar for August) where the same argument concerning ".08 or impaired" should not have to be unanimous either. (i.e. alternative means of committing the crime) still gets ya DUI.

MANUFACTURER'S MANUAL

State v. Wenzel,
published 2008 WL612234 (3/7/08)

Great case for the prosecution!! Officers are not required to review the manufacturer's manual prior to giving the test. The only thing required by the State is showing the testing was done pursuant to the KDHE protocols only. Great quote by court: the court noted that it would make no sense to require several hundred law enforcement officers to separately review the manufacturer's manual each week to decide how to perform breath tests using the Intoxilyzer 5000 machine. We are not required to ignore common sense here because the legislature has clearly provided that it is KDHE's obligation to distill any important requirements from those manuals into a set of testing protocols and it is KDHE's obligation then to certify each officer's ability to run these machines after appropriate training.

From the Fast Lane by Karen Wittman



TSRP, Karen Wittman

Wow, this job is more than I ever imagined! Being allowed to be a part of the big picture in Kansas concerning DUI investigation and prosecution is a great opportunity. To give input on BAC testing, SFST testing, legislative issues and

answering general traffic questions from various entities from around the state is my job. In the first 60 days I have given speeches at high schools about how much a DUI really costs, collaborated with KDHE about training on the Intoxilyzer 8000, spoken with groups interested in stopping underage drinking, talked with law enforcement about DUI investigation and observed a large DUI check lane in Johnson County. And I am just getting started!!!

I wish to use this newsletter to inform prosecutors and police officers of what is happening in Kansas when it comes to DUI issues.

I want this to be THE newsletter to address traffic safety issues in a timely and informative manor. Be on the lookout for topics such as event data recorders, toxicology issues, DRE testimony, not to mention the most current case law and legislative issues. I encourage you to contact me for topics which you are interested in and they will be included. This newsletter is not mine but all of yours and it should have information you want. I am looking forward to working with all of you.

If you would like to continue to receive the newsletter please contact me at ktsrp@gmail.com



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