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Shout Outs

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Shout to Christopher Till of Comanche for the big NG in a recent delivery of meth case. Chris had filed a motion in limine attempting to block a video and audio recording made of the delivery by a confidential informant?who didn?t happen to make it for the trial. In closing he reminded the jury of a defendant?s right to confront the witness against him (which the court had disregarded in allowing the video), and the jury agreed. Way to go, counselor. The night before trial, Chris sought guidance on the listserve, and he had these kind words for the help he received:

??Thank you to TCDLA and its members. As a solo practitioner it is comforting to know you have a group of attorneys that have your back. After my post I had several respond, and I received sound advice from the famous Michael Mowla. Thanks to Michael for his willingness to help and his sound advice. I used the cases cited by him and was able to research the topic late Monday night to be ready for trial Tuesday. I was able to make an excellent argument that the video and audio made by a missing confidential informant should not be allowed into evidence. Of course the Judge let in the video anyway, but I was able to keep out the audio. The video clearly showed my client holding a bag of some substance and handing it to the confidential informant. There were of course pictures admitted from the video showing that, as well as cash and a larger plastic bag. I did however try to make a record for appeal. Next thank you it all the presenters at seminars put on by TCDLA. I always get some ideas on how to improve as an attorney. I have not had the opportunity to thank them through the years, however, Thank you! and TCDLA. I am proud to be part of a group that is so willing to share what they have and know for each other.?

Kudos to TCDLA Board Member Laurie Key of Lubbock for her recent NG in in a four-day trial on an Agg Assault Bodily Injury/Deadly Weapon charge in Terry County. The case involved two *female* cousins, CW

the one with a lengthy history of assaultive behavior: She's known to carry a knife and is 'affectionately' known around town as 'Pank the Shank.' CW heard D was sleeping with a man she herself coveted and after downing a few early one morning went searching for D?going from family member to family member 'looking for that bitch' and proclaiming she would 'get that bitch good.' D was apprised of the situation and went to buy something to drink after work. As she turned from the drink cooler, CW sucker-punched her. D pulled a box cutter from her waistband and took a slice out of her attacker (a 20cm x 6cm abdominal cut). Issue became whether D was justified in using 'deadly force' when CW only used 'unlawful force.' Laurie went with reputation and opinion testimony, as well as the history of the complainant. Complainant no-showed. Laurie notes that judge wouldn't allow her to cross State's witnesses on these issues, so she 'shouted and shouted it was a violation of client's right to confront. I did not discharge one of their witnesses and recalled all in my case in chief. We were able to get in all reputation and opinion and nickname and even specific acts of violence.' Jury agreed and allowed D, a CNA who hadn't worked in two years while awaiting trial, to return to her life. Way to fight for your client, Laurie, and see justice done.

A big shout out to TCDLA members Tristan Bouilly, James Rey, and Aaron Shnider for a huge win in a 7-day trial in El Paso County. D was charged with Indecency with a Child by Contact based on a delayed outcry that allegedly occurred when the CW was around 10 years old. CW, now 17, testified extremely well, but D's team was able to show she had multiple reasons to fabricate these charges?including lies her parents made up about D. Jury apparently agreed and took just 10 minutes to declare D Not Guilty. Defendant expressed major relief to put this case behind him, as the weight of the charges had exacerbated his numerous health issues. Congratulations, team, for a job well done.

A shout out from TCDLA member Michelle Moore, head of the Burnet County Public Defenders, for the team of Nathan Kight, Scott Green, and Amber Ebeling Greer for their recent win on a Agg Assault Deadly Weapon case. D spent six months in the county jail after a dispute with a neighbor over a shed led to a confrontation. Nathan's cross-exam of state's witnesses established a self-defense claim, and the jury agreed, setting D free. Congratulations, team, on a job well done.

Congrats to Bowie County Public Defenders Shoaib Daredia and Sylvia Delgado, who recently scored a mistrial in an Aggravated Sexual Assault of a Child jury trial. The pair gained the win following 'yet another' release of discovery evidence not previously tendered?from both the city of Waco and the DPS. The jury in the case was deadlocked after more than 15 hours deliberating. D was accused of sexual assault of his 5-year-old cousin, alleged to have happened while he was babysitting. The outcry was made on the day of the alleged incident, and the child was immediately taken to get a SANE examination. The SANE nurse made no attempt to gather or preserve any potential DNA evidence, so Shoaib and Sylvia argued at closing that the state couldn't meet its burden based on lack of evidence and improper procedure in collection and preservation of physical evidence. After the mistrial, the prosecution offered a plea of Injury to a child and 10 TDC. Counsels informed the state that they would be prepared to retry the case in front of a jury. The State ended up dismissing the indictment and dropped all sexual assault charges. D was able to walk free. Kudos, team, for a job well done.

Congratulations to Mark Griffith of Waxahachie for a good day in court, which he describes this way: 'Suppression hearing on a 3rd and State Jail Felony. We had no shot on the State Jail felony. Client has been offered 5 years TDC on the 3rd and 400 days on State Jail felony. Suppression starts and prosecutor told me that I had him on the 3rd-degree felony if my opening remarks were what he thought they would be. They were, with case law. He immediately concedes that one and client gets 100 extra days over his 126 days in jail for State Jail (in which we were not going to win the suppression hearing). Show up, do your best, and good things happen. Kudos to the prosecutor that has complete candor to the Court. Rare in my world.' A good day, indeed, Mark. Kudos on your success.

Shout out to Team Thiessen of Houston for a big win for a client facing 5'99 for an Intoxicated Manslaughter Case enhanced with a prior felony. The jury only found him guilty of the lesser DWI, so he

went in facing life and walked out with time served. Dynamic duo Mark and Taly Thiessen expressed thanks to the jury for their verdict and for remaining true to their doubts. D registered a .19 four hours after the accident but accident reconstructionist John Eftekhar was able to show the decedent pulled out in front of D .85 seconds before impact, making it unavoidable. The Ts also thanked forensic toxicologist Amanda Culbertson, who found 100% undeniable tampering with the blood vials (which allowed the jury to not even consider the result). Apparently somebody removed and replaced the integrity seals on all the vials sometime between them leaving the nurse on video and when the lab accessed them. Team T also thanked Jacob Shiffer, John Leo, and Steven Wright, who they say stayed the course and provided invaluable insight. Congratulations, Ts, on another in a string of big wins.

Kudos to Suzanne Spencer of Austin, who recently heard the big NG in an Assault Family Violence Jury Trial in Travis County Court at Law #4. D, as Suzanne notes, was a victim of a scorned ex-lover who tried to play the criminal justice system. CW did not appear to be credible: She was hostile toward the 911 operator when she called and actually hung up on them. She failed to cooperate with law enforcement, and testified to a story very different from the one she reported. Investigating officer didn't do good job of investigating the crime scene, and the alleged injuries didn't show up in the photos. D maintained his innocence throughout and testified in his own behalf. Suzanne also notes that TCDLA member Angelica Cogliano, a new young up-and-coming criminal defense lawyer by way of Emory Law School, sat second chair for the trial. Bravo, team, for clearing the name of this young man and a big win.

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At Mastering Scientific Evidence this year, President David Moore presented Sean Darvishi of Katy (*left*) and Jason Trumpler of Austin with their TCDLA DWI Trial Warrior certificates—signifying that they have attended any five TCDLA DWI seminars within a two-year period. Congratulations, guys, for your hard work.



Texas Criminal Defense Lawyers Association

March 7, 2018

Dear Judge McSpadden:

On behalf of the Texas Criminal Defense Lawyers Association (TCDLA), the nation's oldest and largest organization of attorneys dedicated to defending the rights of the accused and protecting the Constitution, I find some of your recent statements to the Houston Chronicle — specifically, those directed toward blacks in the criminal justice system — inaccurate and unacceptable. I call on you to retract your statements.

In your letter of 3.1.18 (“Judge McSpadden speaks loud and clear on Black Lives Matter”), you opined that “in the case of young black defendants who are disproportionately represented in our [criminal justice] system, they are not receiving good advice from their parents as did my generation, to cooperate with law enforcement at all times, and respect the laws.” You added that, “[t]hey are advised by ragtag groups like Black Lives Matter to have utter contempt for our judicial system.”

It shouldn't be necessary for TCDLA or anyone else to have to educate Harris County's most experienced criminal judge on why African Americans at times have a strained relationship with law enforcement, but I will attempt to do so. One hint: It has nothing to do with what you apparently view as a superior upbringing from your own parents or the advice of the advocacy group “Black Lives Matter,” which wasn't even founded until July 2013.

Numerous studies have proven what criminal justice practitioners and educated Americans have known for decades: When it comes to encounters with law enforcement, blacks and other races are not treated equally. Based on identical behavior, blacks are more likely to be stopped, questioned, searched and arrested. Blacks are more likely to be treated roughly once they are arrested. As we've seen in numerous videos, unarmed blacks are more likely to be shot by police.

As to the post-arrest “experience” (which is where prosecutors and judges get involved), blacks are more likely to be charged with a crime, more likely to be convicted and usually receive stiffer sentences.

If you truly wonder why blacks and law enforcement have a complicated relationship, you might wish to start by examining the basic facts stated above. However, as a judge who likely isn't profiled or targeted by law enforcement or anyone else, it is understandable how you may not be able to grasp what it is to experience the fear that many blacks feel when they simply encounter police — even in instances that do not result in an arrest. How can you possibly know what that's like? Moreover, as a person whose job it is to ponder these issues, how can you not know that there are alternative explanations for people's apparent behavior, to the grossly oversimplified explanation that you offered in your letter to the Chronicle. No one is challenging your upbringing, so why are you challenging theirs?

This response to your letter is not an indictment of your fairness in decisions you make from the bench. I have spoken with many criminal defense practitioners who say you are a fair judge, who isn't afraid to step up and do the right thing, even if it occasionally ruffles a few feathers. TCDLA urges you to use your intellect and reason to acknowledge that your statements about blacks in the criminal justice system are not only wrong, but they perpetuate false, harmful stereotypes that are hurtful to many people. This is especially so, because you are a judge with a great deal of power and influence in Harris County.

TCDLA calls on you to withdraw your public statements about blacks in the criminal justice system and to use your remaining time on the bench to publicly recognize the very real problems between blacks and law enforcement — and the actual reasons for these problems — which I have attempted to outline.

You are an intelligent man and have the power to retract your statements and change your thinking. TCDLA encourages you to do so.

David Moore
TCDLA President

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