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-RESEARCH ARTICLE-

DRIVING WHILE INTOXICATED IN TEXAS: *A FICTICIOUS CASE STUDY*

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─Abstract─

The author of this article is a former Assistant District Attorney in the United States and the State of Texas, who prosecuted many Driving While Intoxicated ("D.W.I.") cases. The article describes a fictitious prosecution, which is a mélange of elements taken from actual cases. The reader will follow the story through various critical stages of the D.W.I. legal process, including crime scene investigation, the taking of breath and blood samples, assessing the "probable cause" standard required for an arrest, pretrial practice including jury selection and *voir dire*, proper questioning of witnesses, plea bargaining and case resolution, punishment, and driver's license revocation. Fundamental U.S. legal principles will provide a context for the narrative, including a criminal defendant's "presumption of innocence," the "beyond a reasonable doubt" standard of proof, and "Procedural Due Process." The article will also mention applicable binding case law precedent and statutory laws and codes. Law enforcement statistics indicate D.W.I. is a severe public safety issue in Texas. The purpose of this article is to inform the reader about U.S. and Texas criminal procedure, D.W.I. trial practice, and the potential social and personal repercussions of Driving While Intoxicated.

Key Words: Driving While Intoxicated, Texas, criminal prosecution, presumption of evidence, beyond a reasonable doubt, due process

1. INTRODUCTION

One goal of this study to inform readers about the process of prosecuting Driving While Intoxicated offences in the State of Texas, a process which is guided by binding criminal procedure statutes, criminal codes, and case law. The Texas Penal Code ("Tex. Pen. Code"), the principal criminal code of the State of Texas, defines D.W.I. accordingly: "A person commits an offense if the person is intoxicated while operating a motor

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vehicle in a public place" (Tex. Pen. Code Sec. 49.04 (a)). The Penal Code includes further definitions for "intoxicated," which will be discussed later. Along with the Texas Penal Code, Texas' criminal courts and attorneys are bound by the Texas Code of Criminal Procedure ("Tex. Code Crim Proc."), the Texas Rules of Evidence ("Tex. Rules Evid."), and case law precedents established by the Texas Courts of Appeals ("Tex. App.") and the Texas Court of Criminal Appeals ("Tex. Crim. App."). Texas Court of Appeals and Texas Court of Criminal Appeals cases, respectively, are cited in the following format: *Pointer v. State*, (Tex. App.-Dallas 2011); *Torres v. State*, 182 S.W.3d 899 (Tex. Crim. App. 2005). In addition, the United States Supreme Court exercises judicial review of state cases that potentially run contrary to the U.S. Constitution. U.S. Supreme Court cases are typically cited in this format: Miranda v. Justia (2021).

2. LITERATURE REVIEW

The recent literature relevant to this study can be divided into two primary categories: 1) those publications dealing with the D.W.I. problem and the prosecution of D.W.I. cases in Texas; and 2) those publications addressing U.S. Procedural Due Process issues and the rights afforded to criminal defendants.

W. Clay Abbott and Diane Beckham have produced an essential resource on the enforcement of Texas D.W.I. laws, entitled *DWI Investigation and Prosecution*, which serves as a crucial guide for law enforcement officers and prosecutors; from an initial traffic stop through trial and punishment (Abbott, 2021). Abbott and Beckham supply up to date case law, trial guidelines, and advice on when to exercise prosecutorial discretion and restraint (Fouts, 2011). Diane Beckham's *Prosecutor Trial Notebook* and Robert Barton's *Fundamentals of Texas Trial Practice* offer concise and effective explanations of techniques for D.W.I. case preparation that comply with the Texas Code of Criminal Procedure and the Texas Rules of Evidence (Barton, 2018; Beckham, 2021). Brian Foley's "Objections at every phase of trial" clarifies the value and proper use of an important trial strategy in D.W.I. witness examinations and cross-examinations (Foley, 2020). For the latest statistical information, various publicly accessible national, state, and local databases maintain detailed information pertaining to the annual prevalence of D.W.I. offenses (N. (a). 2021; T. (a). 2021; CDC., 2020; FBI, 2021) . As is mentioned at the conclusion of the references section, there are several electronic databases providing free access to U.S. and Texas case law, including the cases cited in this article.

A rich body of literature exists regarding the history and jurisprudence of U.S. Substantive Due Process and Procedural Due Process. David Bernstein has written on the political implications of due process litigation over the past several decades (Bernstein, 2016). Nathan Chapman and Kenji Yoshino have succinctly summarized the sources of due process rights found in the U.S. Constitution, particularly the Fourteenth

Amendment, and the progressive "incorporation" of the Constitution's Bill of Rights against the states (Chapman, 2021; Strauss, 2021). This essay also touches briefly on "Miranda warnings," which have been addressed in depth in law review articles (Cicchini, 2012). The actual case, *Miranda v. Justia (2021)*, and critical analysis of the case can also be accessed online (Justia, 2021). Concerning the defendant's "presumption of innocence" and the "proof beyond a reasonable doubt" burden of proof, see John Stevens' reflective essay and Thomas Gallanis' historical review, respectively (Gallanis, 2009; Stevens, 2021).

3. METHODOLOGY

This study utilizes two primary methodologies: 1) documentation research; and 2) application of research findings to a complex fictitious case study. The documentation research included reviewing both secondary authorities and primary authorities. The secondary authorities consulted included news reports, government statistical databases, legal treatises relevant to D.W.I. prosecutions, and law review articles. Other scholarly legal writings, such as those published by the Texas District & County Attorneys Association, also proved to be valuable sources. Primary authorities consulted included 1) federal and state case law, with special attention paid to cases heard by the U.S. Supreme Court, the Texas Courts of Appeals, and the Texas Court of Criminal Appeals, and 2) State of Texas statutes and statutory law, including relevant portions of the Texas Penal Code, Code of Criminal Procedure, and Rules of Evidence. Such primary authorities (cases, statutes, and regulations) are authoritative, precedential, and controlling.

Using a fictitious case study, rooted in realistic situations, proved to be an effective pedagogical tool. Employing a fictious case makes it possible to provide compelling contextual information, and to draw attention on specific topics and details for discussion and analysis. Through subtle manipulation of the narrative, the reader's thoughts are directed toward intended issues, for example the distinct stages of criminal litigation, trial strategies, definitions of "intoxication," fundamental legal principles (such as the burden of proof and the presumption of innocence), plea bargaining, and "implied consent" laws. Case studies are a primary method of instruction by law school faculties, because law students (as well as many scholarly journal readers) tend to be "more inductive than deductive reasoners, which means that they learn better from examples than from logical development starting with basic principles" (Dunne, 2004; Learning., 2021).

4. RESULTS: THE CASE STUDY AND ANALYSIS

4.1 The Case Study: An Arrest

Mae Lusanto pulled the curtains back a bit and looked out her window. It was three in the morning. A harsh grating sound from the street in front of her house had awakened

Ms. Lusanto. She saw a red pick-up truck slowly passing by, with a crushed metal trashcan lodged under its rear axle. As the trashcan dragged across the pavement, sparks lit up the underbelly of the truck. The vehicle came to a halt and Ms. Lusanto saw the driver slump over the steering wheel. At first, she could not tell if the driver was a man or a woman, or much about the driver's appearance. Whoever it was, they apparently passed out and seemed to be having a medical crisis, so Ms. Lusanto called the police.

Matagorda County Sheriff's Deputy David Martinez responded to the scene within minutes. Deputy Martinez found the driver still slumped over the steering wheel, asleep. The vehicle's engine was running so Martinez reached into the cab and turned off the ignition. He nudged the driver's shoulder, rousing him from his slumber, and asked him to get out of the truck. After a brief discussion and after examining the driver's eyes, Deputy Martinez told the man to walk to his patrol car and sit in the back seat. The driver dragged his feet and stumbled awkwardly as he walked. Deputy Martinez returned to the truck and shined his flashlight into the cab. He saw a tequila bottle on the floor mat, which was only one-quarter full. The deputy decided not to perform *Standardized Field Sobriety Tests* ("S.F.S.T."). The driver appeared to have lost control of the normal use of his mental or physical faculties, and the deputy feared the man might injure himself. The driver was Clayton Davis.

Even though he did not have a warrant and had not seen Mr. Davis driving, Deputy Martinez placed Davis under arrest and transported him to the station for processing. According to the Texas Code of Criminal Procedure, a peace officer may arrest a person without a warrant if "probable cause" exists that the person has committed an offense and the arrest falls within one of the statutory exceptions to the warrant requirement (See *Pointer v. State,* (Tex. App.-Dallas 2011); *Torres v. State,* 182 S.W.3d 899, 901 (Tex. Crim. App. 2005). One of the statutory exceptions permits a peace officer to make a warrantless arrest "for any offense committed in his presence or within his view" (Tex. Code of Crim. Proc. Sec. 14.01(b)). Deputy Martinez had probable cause to make a warrantless arrest for Public Intoxication because Davis showed clear signs of intoxication in the officer's presence, in a public place, and he was intoxicated "to a degree" that he might "endanger" himself or another person (Tex. Pen. Code Sec. 49.02).

At the station, Deputy Martinez asked Davis to blow into a *Breathalyzer* device. A Breathalyzer detects the level of alcohol in a person's deep lungs, which helps law enforcement officers estimate blood-alcohol content/concentration ("B.A.C."). Davis refused to provide a breath sample, even though Deputy Martinez explained a refusal could result in the suspension of his driver's license. Martinez then took Davis to an interrogation room that was equipped with recording equipment and gave Davis his *Miranda* warnings (Cicchini, 2012; Justia, 2021). In the *Miranda* case, the U.S. Supreme Court held that before a police officer may conduct a *custodial interrogation,* the officer must first inform the suspect of their right to remain silent, and that any statements they make can be used against the person in court, and that the individual has the right to legal

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counsel. If these warnings are not given, the suspect's statements are inadmissible in court. After agreeing to answer questions and signing various consent forms, Mr. Davis provided his statement. Among other things, he claimed he had not consumed any alcohol that evening, "not even a drop," but that he had taken some flu medicine and it made him feel "a little bit drowsy." He said he spent a few hours at a friend's apartment watching movies and then decided to drive home. On the way home, the flu medicine "really kicked in," and he thought he should pull over for a few minutes so he "could snap out of it," for his own safety and the safety of others. Davis said he was merely "resting his eyes" when Deputy Martinez arrived. When the deputy mentioned the tequila bottle, Davis turned away, looked up at the video recorder, and said, "I don't want to point any fingers or anything, but *you* know I didn't have any bottles in my truck." Davis concluded by saying that he was a recovering alcoholic and had not taken a drink in over a year.

4.2 Statistics Indicate the Scope of the Problem

Clayton Davis' case might appear inconsequential, because he did not harm anyone. However, by choosing to drive while impaired, Davis put himself and others at an increased risk of injury or death. Impaired driving is among the most serious social problems facing the United States and the State of Texas. On average, around thirty people die every day in the U.S. in motor vehicle accidents involving alcohol-impaired drivers. More than ten thousand people died in 2019 alone (N. (a). 2021). The problem appears to be growing. Nationwide, traffic fatalities in police-reported alcohol involved crashes increased 9% in 2020 as compared to 2019 ((b). 2021) .In 2019, over one million Americans were arrested for "driving under the influence" of alcohol and/or other substances ("D.U.I."), and males were arrested three times more often than females (FBI, 2021).

The situation in Texas is worse than in most other states and worse than in the U.S. generally. For example, in 2018, Texas had a higher percentage of deaths involving drivers with a blood-alcohol content of at least 0.08% than the national average; Texans were 1.5 times more likely to die in an alcohol-intoxication accident than the national average (CDC., 2020). This difference may, in part, be explained by the fact that Texans admit to driving after drinking to excess approximately 1.3 times more often than Americans as a whole (CDC., 2020).

The Texas Department of Transportation maintains an extensive database of statewide annual statistics for D.W.I. and D.U.I.-involved vehicular crashes ((b), 2021). The data shows Texans between the ages of 26 and 30 have the highest percentage of fatal crashes involving alcohol-impairment. In 2020, 167 people aged 26-30 were killed in D.U.I. crashes in Texas. D.U.I. crashes were much more common in the state's larger counties; Texas' five largest counties accounted for nearly 10,000 D.U.I. crashes in 2020. Texas' largest city, Houston had the dubious distinction of leading the state with 2,355 D.U.I. crashes (of 16,323 statewide). Approximately 80 people died in Houston's D.U.I.

crashes in 2020 (of 495 deaths statewide). There were far more total and fatal D.U.I. (alcohol) crashes on Saturday and Sunday than on other days of the week. Fatal crashes began to increase in frequency around 17:00 and reached a definitive peak between 2:00 and 3:00. Of all fatalities resulting from D.U.I. (alcohol) crashes, around 60% were D.U.I. drivers; 15% were D.U.I. drivers' passengers; 15% were persons in vehicles not driven by D.U.I. drivers; and 5-6% were either pedestrians or bicyclists. These statistics suggest the profile of a typical fatality victim in an alcohol-involved crash: an impaired young man, driving in or near a large metropolitan area, late at night and on the weekend, perhaps after restaurants and nightclubs stop serving alcohol at 2:00.

Although Clayton Davis' case may appear inconsequential, his arrest and prosecution might deter him from making the same mistake again and causing serious harm in the future.

4.3 The Case Study: Defining the Offense

After Clayton Davis had spent a few hours in a cell sobering up, a deputy presented him before a magistrate (Tex. Code Crim. Proc. Sec. 14.06). The magistrate informed Davis that the State had charged him with Driving While Intoxicated, and the magistrate set bail. Davis signed a bail bond and agreed to appear later to answer the criminal charge.

According to the Texas Penal Code, "A person commits an offense if the person is intoxicated while operating a motor vehicle in a public place" (Tex. Pen. Code Sec. 49.04 (a)). The Penal Code provides several definitions and explanations that assist in making the determination of whether a person has committed a D.W.I. offense. The Penal Code defines "intoxicated" as, "not having the normal use of mental or physical faculties by reason of the introduction of alcohol, a controlled substance, a drug, a dangerous drug, a combination of two or more of those substances, or any other substance into the body; or having an alcohol content of 0.08 or more" (Tex. Pen. Code Sec. 49.01 (2) (A-B)). Intoxication may be caused by consuming alcohol (hard liquor, beer, or wine), illicit drugs (like marijuana or cocaine), prescription medications, or even *over the counter* medications, such as flu syrup.

It is important to recognize that the laws of Texas provide two distinct definitions of intoxication. A person is legally intoxicated if they have a blood-alcohol content of 0.08 percent or higher. A person is also considered intoxicated if they have introduced (any amount of) alcohol or "any other substances" into their body and, as a result, they have lost the normal use of their mental or physical faculties. Clayton Davis claimed that he was drowsy because he had taken (presumably legal, over the counter) flu medicine. However, even if that were true and there was no alcohol in his system whatsoever, he could still be charged with Driving While Intoxicated if the flu medicine caused him to lose the normal use of his faculties. Many medicine containers have labels that warn, "May cause drowsiness and dizziness; do not operate heavy machinery or drive while taking this medication."

4.4 The Case Study: Pretrial and *Voir Dire*

Clayton Davis hired a criminal defense attorney (or *counsel*) named Steven Bronson. Bronson was an excellent choice. He had many years of experience representing D.W.I. defendants in Matagorda County, he kept up to date on the latest case law, and he was on good terms with the local Assistant District Attorneys. Bronson visited the D.A.'s office to review the evidence and he tried unsuccessfully to work out a dismissal of the D.W.I. or a plea to a *lesser-included offense*, such as Public Intoxication (See Tex. Code Crim. Proc. Sec. 37.08).

The court administrator assigned Davis' case to Matagorda County Criminal Court of Law No. 17. It would be heard by Judge Edward Robinson and a panel of six jurors (felony trials in state district courts have twelve jurors; but misdemeanor trials in county courts have only six) (Tex. Code Crim. Proc. Sec. 33.01). Davis and Bronson appeared at the courtroom on the date and time appointed for the trial, and the court bailiff directed them to sit at a table in front of the judge's bench and beside the jury box. Jury selection would begin shortly, followed by the trial. Mr. Bronson showed his client a copy of the written charge. In a misdemeanor prosecution, the charge is called "the information" (a felony charge is an "indictment"). The information contained Deputy Martinez's sworn complaint. Davis was surprised by what he considered Martinez's "vague wording."

Davis leaned over toward Bronson, and whispered, "How can they claim I was driving while intoxicated when Martinez doesn't even say I was drunk or that I planned to drive around after drinking that tequila?"

"The State doesn't have to prove you were drinking," Bronson explained. "They'll just say you were intoxicated, either from the tequila or from the flu medicine you admitted taking. Furthermore, the State doesn't have to prove you meant to get intoxicated and drive, just that you *were* intoxicated when you were driving" [*Burke v. State*, 930 S.W.2d 230 (Tex. App. 1996)].

"That doesn't seem fair," Davis muttered.

"Nevertheless," Bronson responded, "it's true. We have absolutely no grounds for a pretrial *motion to quash* (or set aside) the information."

Jennifer Smith was the Assistant District Attorney assigned to prosecute cases in Criminal Court No. 17. Although Smith had been a criminal prosecutor for less than one year, she was confident, based on the evidence, that Clayton Davis had in fact committed the offense of D.W.I. and she believed she could prove that to the jury "beyond a reasonable doubt." Above all else, the "primary duty of all prosecuting attorneys [is] not to convict, but to see that justice is done"(Fouts, 2011). Smith and Bronson told Judge Robinson they were ready to proceed.

First, the attorneys and judge needed to select six jurors from among the *jury pool* (or *array*), the people who had received *jury summonses* in the mail and had appeared at the courthouse to serve (Tex. Code Crim. Proc. Sec. 35.01). In a process called voir dire (a French term very roughly translated "to speak the truth"), the prosecutor and defense counsel ask questions of prospective jurors to reveal unfair biases or to determine whether a person, if selected, could not, or would not, follow the law or directions of the court (Tex. Code Crim. Proc. Sec. 35.016 (9) (10)). If a potential juror will not follow the law, they may be "challenged" and "struck" (or removed) from consideration "for cause." Perhaps the most common reason prospective jurors are "struck for cause" is that they presume the defendant is guilty of something simply because he or she is on trial and stands accused of a crime in a criminal court.

During voir dire, Bronson looked directly at a prospective juror named Harriet Thornton and he asked,

"In spite of growing up hearing about the so-called 'presumption of innocence,' doesn't it look like to you that Clayton must have done something wrong? He's probably a little guilty of something, or he wouldn't be sitting there as a defendant in a criminal case, right? Don't you feel that way Ms. Thornton?"

Harriet Thornton had a serious expression on her face. She paused for a moment, then nodded, and said, "I guess." Later, Bronson asked the judge to "strike" Ms. Thornton from consideration "for cause" and Jennifer Smith objected. Judge Robinson asked the attorneys and Ms. Thornton to approach the bench to clarify her response. Smith asked Thornton unambiguously if she would presume Davis was innocent of the charged offense if she was selected for the jury, and Thornton said, "Oh, yes." She looked at the judge and said she had misunderstood Bronson's question.

"I just meant that I thought he must have done something to be stopped by the police; maybe he had a broken headlight. I don't know. I haven't heard any evidence yet."

Bronson jumped in. "Uh-huh. Maybe he didn't do anything serious, but he did something wrong, or he wouldn't have been arrested and hauled into court, right?"

Ms. Thornton had that serious look again. "Yea, I suppose that's it."

Then the prosecutor rephrased her initial question. "Do you believe Clayton Davis is guilty of any crime as he stands before us today," and Thornton answered firmly, "No, I really don't." Judge Robinson sent Ms. Thornton back to her seat among the jury pool, and Bronson again asserted that she held a bias against the defendant and was not committed to the presumption of innocence, "a law upon which my client, Clayton Davis, is entitled to rely" (See Tex. Code Crim. Proc. Sec. 35.16(a) (9) and (c) (2); *Harkey v. State*, 785 S.W.2d 876 (Tex. App. 1990). Judge Robinson rejected the defense challenge for cause and stated for the record that Ms. Thornton had merely misunderstood Bronson's question (Tex. Code Crim. Proc. Sec. 35.21). She wound up

on the jury. Strangely, neither the prosecutor nor defense counsel had taken the time to recite the relevant law: The fact that a defendant "has been arrested, confined, indicted for, or otherwise charged with [an] offense gives rise to no inference of guilt at his trial" (Tex. Pen. Code Sec. 2.01; *Harkey v. State*, 785 S.W.2d 876 (Tex. App. 1990).

The legal presumption that a person accused of a crime is innocent until proven guilty in a court of law is a central principle of the American system of justice. If Ms. Thornton, or any other juror, harbored a belief that the defendant (Davis) was already culpable of the charge, that belief would deprive the defendant of the benefits of one of the basic requirements of a fair trial. The presumption of innocence is a fundamental element of the constitutional requirement of due process. "The [United States] Constitution states only one command twice. The Fifth Amendment says to the federal government that no one shall be 'deprived of life, liberty or property without due process of law.' The Fourteenth Amendment, ratified in 1868, uses the same eleven words, called the Due Process Clause, to describe a legal obligation of all states" (Strauss, 2021). The Fifth Amendment requires the federal government to provide due process; the Fourteenth Amendment requires the states to do the same.

Over time, the U.S. Supreme Court "incorporated" much of the U.S. Constitution's Bill of Rights (the first ten amendments to the Constitution) into the Due Process Clause of the Fourteenth Amendment (Constitution, 2021). As a result, U.S. citizens living in each of the fifty states enjoy various liberties and rights during a criminal investigation and trial. These include: 1) the right to be free from unreasonable searches and seizures (based on the Fourth Amendment); 2) the right to be free from self-incrimination (Fifth Amendment); 3) the right to a speedy and public trial (Sixth Amendment); 4) the right to confront witnesses (Sixth Amendment); and 5) the right to be free from cruel and unusual punishment (Eight Amendment). Even before his trial began, Clayton Davis had benefited from his due process rights. Deputy Martinez based Davis' *seizure* (or arrest) upon a reasonable belief that Davis had committed a crime. At the police station, Deputy Martinez informed Davis of his right against self-incrimination before Davis decided to give a voluntary statement. During the trial, Davis and his attorney would have opportunities to confront adverse witnesses and to put on a defense, if they thought that was in their best interests. Finally, if the jury ultimately returned a guilty verdict, Davis would face serious consequences, but neither cruel nor unusual punishment.

Like the U.S. Constitution, the Texas Constitution features a Bill of Rights, which refers to "the due course of law." "No citizen of this State shall be deprived of life, liberty, property, privileges or immunities, or in any manner disfranchised, except by the due course of the law of the land" (Texas Constitution Art. I, Sec. 19). Texans, and all Americans, are entitled to Procedural Due Process. The purpose of Procedural Due Process is to ensure the government acts fairly, particularly before divesting a person of fundamental rights such as personal liberty, or the freedom from unjust confinement (Center, 2018). The government may not act to deprive a person of their liberty, without

first notifying that person of the charges and providing an opportunity for the accused to present exculpatory evidence and a defense before a neutral *factfinder* (a judge or jury). The United States and the State of Texas enforce rules of criminal procedure and rules of evidence in criminal cases to protect defendants' Procedural Due Process guarantees.

Although the words "beyond a reasonable doubt" do not appear in the U.S. Constitution, the U.S. Supreme Court has interpreted the familiar standard as part of constitutional law. The Supreme Court held that "the Due Process Clause protects the accused against conviction except upon proof beyond a reasonable doubt of every fact necessary to constitute the crime with which he is charged" (*In re Winship*, 397 U.S. 358 (1970)). A criminal defendant "must be acquitted if the prosecution does not establish the facts of guilt beyond a reasonable doubt" (Gallanis, 2009). The beyond a reasonable doubt *burden of proof* is a difficult standard for prosecutors to reach, much higher than the "preponderance of the evidence" (or the fifty per cent or higher) standard used in civil cases. The jurors must be virtually certain the defendant committed the crime before returning a guilty verdict. Clayton Davis hoped Jennifer Smith would not meet this standard.

4.5 The Case Study: Presenting the State's Case

A Texas D.W.I. trial proceeds in this order: 1) the prosecutor reads the information to the jury; 2) the defendant enters a plea; 3) the prosecutor makes an opening statement and then presents evidence; 4) the defense *may* make an opening statement and *may* also present evidence; 5) rebutting evidence is offered; 6) both sides make closing statements; and 7) the jury deliberates (Tex. Code Crim. Proc. Sec. 36.01). The defendant has an opportunity, but no obligation, to offer a defense. The State has the burden of proof. If the prosecution does not offer sufficient evidence of guilt beyond a reasonable doubt, the jury must find the defendant not guilty. After the State concludes presenting its evidence, defense counsel often faces a difficult decision: whether to offer a full-fledged defense, or not. At this stage, the defendant still enjoys the presumption of innocence, a presumption that endures until the factfinder (jury) returns a guilty verdict. Perhaps one or more of the jurors may believe the prosecution's evidence did not rise above the reasonable doubt threshold. Perhaps presenting defense evidence would do more harm than good. For example, a D.W.I. defendant's testimony might come off as dishonest or unreliable. The defendant's right to testify, or to not testify, can present a dilemma (Barton, 2018).

The State's case against Clayton Davis was not ironclad and the prosecutor, Jennifer Smith, knew she had a couple of major hurdles to get over in order to secure a guilty verdict. The State needed to prove, beyond a reasonable doubt, three elements: that Davis was 1) intoxicated; 2) while operating a motor vehicle; 3) in a public place. Unfortunately, for Smith, she could not rely upon the evidence of field sobriety tests, or a breath/blood specimen, and the arresting officer had not seen the defendant driving.

Judge Robinson asked Smith if she was ready to proceed, and she replied, "Yes, your honor. The State calls Ms. Mae Lusanto to the witness stand." The bailiff looked out the courtroom door and gestured for Lusanto to enter. She was a small, somewhat frail-looking woman. As she slowly walked past the attorneys' tables, Lusanto looked downward at the floor, seemingly avoiding eye contact with Clayton Davis. Ms. Lusanto raised her right hand and swore to tell the truth. After Jennifer Smith asked a few preliminary questions, she began her *direct examination* of the witness.

"Ms. Lusanto, what happened on the night in question?"

"Well, I was asleep in bed around three in the morning when a terrible racket outside my window woke me up. I went to the living room and looked out my front curtains, and I saw a red, Chevy pickup truck going down the road in front of my house and it was dragging a metal trashcan. Oh, it made a terrible racket and flashes, and sparks were flying everywhere. I thought the gas tank was going to explode! Can you imagine?"

"Go ahead please."

"Well, the truck suddenly stopped, right in the middle of the road, right in front of my house! I didn't know what to think. I couldn't see the driver real clearly, right then, but through the truck's back window I did see the driver sort of slump over and hug the steering wheel. I was afraid he or she'd had a heart attack or something. So, I went and grabbed my phone and called the police."

"Ms. Lusanto, please tell the jurors what happened next."

"Well, it wasn't any more than five minutes before the police showed up. I watched the whole thing from my window. A sheriff's car pulled up behind that truck and a deputy got out. I found out later it was Deputy Martinez; he's the one who interviewed me. Anyway, the deputy went up to the truck window and he pushed the driver's shoulder. Not hard, I mean. He just kind a poked him a little to get him to wake up. Then the deputy reached into the truck, and I guess he turned off the key, because the taillights went out and smoke quit blowing out of the exhaust. The driver got out, said something, and started walking slowly, kind a dragging his feet, back to the patrol car. At one point, he stumbled and reached out to steady himself against the deputy's car. I thought he was going to fall down! He made it though. Anyway, the deputy went back and shined his flashlight in the truck and wrote down something in his little notebook. Then they all drove off, I guess to the police station. Wait, I forgot something. Before they left, a tow truck came to take the red truck away. The tow truck driver threw that old, beat-up trashcan in the truck's bed. Like I said already, Deputy Martinez came back, I guess around six or so, and I told him what happened."

Smith asked, "Ms. Lusanto, did you ever get a good look at who was driving that red pickup truck?"

"Well, yes, I got a pretty good look at him. As he was walking back to the deputy's car, he passed under a streetlight that's right outside my house, and a bright light poured over him for a minute. He really stood out. I could see he was a man, about twenty-five or thirty, around six feet tall, with a big belly. He had a white bandana tied around his neck and he was wearing a long sleeve t-shirt that had purple and yellow stripes, like tiger stripes, and big glow-in-the dark letters 'L.S.U.' And he had on this gigantic metal belt buckle that kept flashing in the streetlight. Oh yea, his hair was short, like a crewcut, and he had a bushy red beard, but no mustache. That much I can remember, at least."

The prosecutor took out a photograph, which had already been marked as "State's Exhibit No. 1," and showed it to Ms. Lusanto.

"Ms. Lusanto, I am showing you State's Exhibit No. 1, the *booking photograph* of the man Deputy Martinez arrested that night. Is that the man you saw outside your home?"

"Yes. I'm certain it is."

"Do you see that man in the courtroom today?"

"I do."

"Would you please point to him and describe an article of clothing he is wearing?"

"Yes. He's there and he's wearing the exact same t-shirt." Ms. Lusanto pointed at Clayton Davis.

"No further questions of this witness your honor."

The defense counsel then *cross-examined* Ms. Lusanto. Mr. Bronson's primary objective was to cast doubt in the minds of the jurors concerning the accuracy and reliability of Ms. Lusanto's testimony. Texas' criminal courts generally give defense attorneys "wide latitude to explore a witness' story, to test the witness' perceptions and memory, and to impeach his or her credibility" (*Gutierrez v. State*, 764 S.W.2d 796 (Foley, 2020) (Tex. Crim. App. 1989). To "impeach credibility" means, "adducing proof that such witness is unworthy of belief or credit" (*Ransom v. State*, 789 S.W.2d 572 (Tex. Crim. App. 1989)). Ms. Lusanto did not exhibit any bias toward Clayton Davis and her testimony had been straightforward, so Bronson primarily focused on her ability to perceive. Bronson asked Lusanto if she was fully awake when she looked out her curtains at 3:00. He asked if she had taken any sleeping pills or other medication. He asked if she had been drinking that night. Did she need to wear glasses and was she was wearing her glasses that night? He asked how old she was and whether she had been treated for any cognitive disorders or dementia. Bronson then moved on to the conditions that night. Did Ms. Lusanto recall there being any fog or rain? Was she 100% sure the streetlight

was operating correctly that night? Eventually, Mr. Bronson sensed that the jurors were tiring of this line of questioning, and although Ms. Lusanto at times appeared agitated by Bronson's barrage, she did not waiver. She finally looked at the jury and said, "I saw what I saw."

The State's next witness (and as it turned out the trial's last witness), was Deputy David Martinez. The bailiff looked out into the hallway, and asked him to come in. Deputy Martinez had an impressive bearing; he appeared to be in complete control of his emotions, posture, and outward appearance. He wore a starched dark-green uniform and he had tucked his hat firmly between his torso and upper arm. Martinez strode to the witness stand in a decisive manner and with the expressionless demeanor of a U.S. Marine. Martinez looked directly at the jurors as he passed the jury box, before taking his place at the witness stand. The prosecutor asked the deputy to explain his work, training, and experience investigating D.W.I.s. Then, she asked him, "What happened on the night in question?"

"I was driving southward on State Highway 60 when I received a call to investigate a suspicious vehicle that had stopped in the middle of a public road outside the town of Wadsworth. I proceeded eastward onto FM 521 and made an immediate right onto Dauphine Street, into the Brazos Landing subdivision. In the 200th block, I observed a maroon, 2020 model Chevrolet Colorado truck, in the middle of the roadway. I observed the engine was operating, but the vehicle's transmission was apparently in the park position. I exited my patrol vehicle and directed my spotlight into truck's rear window. I observed a man, whom I later identified as the defendant, slumped against the steering wheel."

"Then what happened?"

"I approached the driver side and observed the occupant. He was in the driver's seat but not wearing his seatbelt. His head was resting on the steering wheel and turned toward the open driver-side window. The driver was mumbling something that I could not understand. I immediately recognized a strong odor of an unidentified alcoholic beverage."

"You said 'the driver' was mumbling. What made you think he had been driving?"

"As I said, the occupant was sitting in the driver's seat and the vehicle's engine was still running. There were no passengers. The vehicle was stopped on a public roadway, in a moving lane of traffic. The occupant had manipulated the gear lever by placing the vehicle in park. Based on my training and experience investigating D.W.I.s, this was all evidence, or *indicia*, that the occupant was the driver and was using the vehicle for its intended purpose [See *Murray v. State*, (Tex. App.-Amarillo 2015); *Barton v. State*, supra and *Pope v. State*, 802 S.W.2d 418 (Abbott, 2021) (Tex. App.-Austin 1991); *Hearne v. State*, 80 S.W.3d 677 (Tex. App.-Houston [1st Dist.] 2002)]. I later received

information from a witness by the name of Mae Lusanto, which corroborated my belief that the defendant had been operating the vehicle."

"Deputy Martinez, do you see the driver in the courtroom today?"

"Yes ma'am."

"Please point to him and describe an article of clothing he is wearing."

"Yes ma'am. The man I saw that night is sitting at the defense table and he is wearing a purple and gold shirt printed with the initials 'L.S.U.'" Deputy Martinez pointed at Clayton Davis.

"Thank you, deputy. Did you perform all of the Standardized Field Sobriety Tests on the defendant that night?"

"No ma'am, I did not. During my investigation, I determined that the defendant was too intoxicated to perform all the S.F.S.T.s safely. I first asked the defendant to exit his vehicle. I studied his demeanor and his movements closely and I immediately recognized signs of severe inebriation. When he exited his vehicle, the defendant was very unsteady. I asked if he was injured. He then stared at my badge for thirty seconds, and finally mumbled something I could not understand. I asked if I could see his driver's license and he complied. I then asked him his name. He seemed confused by my question, but then responded with extremely slurred speech, 'S. T. … S. T. … My name is S. T. Clayton T. Davis … thank you very much.' As he spoke, I noticed a strong odor of alcohol emanating from his breath and his person. I asked whether he had been drinking that evening and he said, again with slurred speech, 'I resent that remark.' I observed the interior of the truck and saw an alcohol container, a tequila bottle, on the floorboard, in plain view. It is my understanding the contents of the bottle were analyzed for today's trial. The defendant's eyes were bloodshot and watery. I performed a Horizontal Gaze Nystagmus test ("H.G.N.") to see if the defendant's eyes exhibited signs of alcohol intoxication, which they did [Deputy Martinez then explained the H.G.N. test in detail. Citek (2003) (Tex. App. 2003). At that point, it appeared the defendant was going to fall over, and he asked if he could sit down on the pavement for a minute. I told him that was not a good idea and escorted him to sit in the back of my patrol vehicle. Before getting into the patrol vehicle, he tripped over his own feet and had to reach out and steady himself against my vehicle's open door. Based on my observations, I believed there was a significant danger he might hurt himself if he was required to perform field sobriety tests. I radioed the station that I was bringing in a suspected D.W.I. I then made a few observations of the scene, waited for the tow truck to remove the defendant's vehicle from the roadway, placed the defendant under arrest, and transported him to the station. He fell asleep on the way."

The prosecutor showed the jurors *dash-cam* and *body-cam* recordings of Deputy Martinez's investigation and arrest, which defense counsel had already reviewed. A person arrested for D.W.I. is entitled to a copy "of any video made by or at the direction of the officer that contains footage of: 1) the stop; 2) the arrest; 3) the conduct of the person stopped during any interaction with the officer, including during the administration of a field sobriety test; or 4) a procedure in which a specimen of the person's breath or blood is taken" (Texas Code of Crim. Proc. Sec. 2.1396). Ms. Smith continued her direct examination.

"Deputy Martinez, did you have a subsequent opportunity to interview the defendant?"

"Yes ma'am, I did. After the defendant went through processing at the station and had a little time to adjust to his new surroundings, I took him to an interrogation room that is equipped with electronic recording devices. The defendant indicated he wanted to make a statement. I explained to him his *Miranda* rights and his rights under Texas law. I informed Mr. Davis that: 1) he had the right to remain silent and not make any statement at all and that any statement he made may be used against him at his trial; 2) any statement he made may be used as evidence against him in court; 3) he had the right to have a lawyer present to advise him prior to and during any questioning; 4) if he was unable to employ a lawyer, he had the right to have a lawyer appointed to advise him prior to and during any questioning; and 5) he had the right to terminate the interview at any time' [Tex. Code Crim. Proc. Sec. 38.22]. He said he understood and waived all those rights, and he signed a statement to that effect."

At that moment, the defense counsel sighed softly and looked disapprovingly at Clayton Davis. If people would only exercise their right to have an attorney present before a custodial interrogation, thought Bronson, my work would be so much easier. The jurors watched the police station video, which was damning evidence. Davis wore a bright orange prisoner's uniform and looked disheveled. His words were slurred; his eyes were blurry; his attitude was belligerent; and his story did not make sense. Davis claimed he had a severe flu and had been taking medicine for a few days, "a cupful at a time." However, he could not recall the name of the medicine. He said he had spent a couple of hours that night with a "female acquaintance," but he refused to provide her name, "because he was a gentleman." He denied there was a tequila bottle in his truck and suggested "maybe it was a plant." Davis told Deputy Martinez that he should be thanking him for stopping to sleep, because "he might have hurt someone otherwise." As Bronson studied the jurors' expressions, which ran from amusement to anger, he suspected the case was lost.

As with his cross-examination of Mae Lusanto, Mr. Bronson's cross-examination of Deputy Martinez focused more on the witness than on the defendant. Bronson made the deputy admit to the jury that he had not seen the defendant drive. He made the deputy admit that he had never asked the defendant whether he wanted to perform field sobriety

tests. He made the deputy admit that he did not know whether the defendant had any physical problems, such as vertigo, that may have made him stumble or appear unwell. Bronson even asked the deputy whether he was "100% certain, without-any-doubt, that the defendant was drunk that night." Before Martinez answered that question, though, Jennifer Smith quickly objected, "That is *irrelevant*, your honor." Smith reminded Bronson and the jurors that Deputy Martinez only needed probable cause to arrest the defendant and it was the jurors' duty (not the deputy's) to determine the defendant's guilt, and only according to the reasonable doubt standard. Whether the deputy was "100% certain," or not, was simply irrelevant. Judge Robinson *sustained* her objection. According to the Texas Rules of Evidence, "Evidence is relevant if: (a) it has any tendency to make a fact more or less probable than it would be without the evidence; and (b) the fact is of consequence in determining the action" (Evidence., 2020). Relevant evidence is generally admissible, but "evidence which is not relevant is inadmissible" at trial (Evidence., 2020; Foley, 2020).

Bronson's cross-examination did raise one issue of apparent concern to two or three of the jurors, who sat straight up in their chairs, listened attentively, and even jotted down a few notes.

"Deputy Martinez, isn't it true that you never asked Mr. Davis to submit a blood sample to test for blood-alcohol content?"

"Yes sir, that is true."

"Well, wasn't that unfair to Mr. Davis? A blood sample may have cleared up this whole misunderstanding, right?"

"No sir, I do not believe I treated Mr. Davis unfairly, and, if you are asking for my opinion, I do not believe a blood specimen would have been helpful to the defendant. With all due respect, I assume you are aware that peace officers are not required to offer a D.W.I. suspect the opportunity to provide a blood sample, and the defendant had already refused to provide a breath sample."

"Well, with all due respect, Deputy Martinez, it really wasn't your decision to make. Mr. Davis had every right to submit a blood sample so he could be exonerated of these malicious allegations, and you never let him exercise his rights, isn't that correct!"

Before the deputy could answer, Jennifer Smith rose from her chair.

"The State *objects* to this line of questioning, your honor. Mr. Bronson has misstated the law, he has misled the jury, and he is *badgering the witness*." [A judge has authority to protect testifying witnesses "from harassment or undue embarrassment" [Tex. Rules. Evid. 611 (a) (3)].

Mr. Bronson quickly responded.

"I withdraw the question, your honor." Bronson looked disapprovingly at the deputy then looked at each of the jurors with a concerned expression. Then, as he sat down, he said, "No further questions of this witness, your honor." Clayton Davis patted Bronson on the back and whispered something in his ear.

On *redirect examination*, Deputy Martinez explained to the jurors that the defendant never requested to submit a blood specimen and he had no duty to advise the defendant about his rights regarding a blood test (*State v. Lyons*, 820 S.W.2d 46 (Tex. App.-Fort Worth 1991). Law enforcement officers can request *either* a breath specimen or a blood specimen, and when they make their request, they need not quote the statutory language, which says an officer may request "one or more specimens of a person's breath or blood" (*State v. Neel*, 808 S.W.2d 575 (Tex. App.-Tyler 1991); Tex. Transp. Code Sec. 724.012 (a)). A D.W.I. suspect does not have a right to a blood test instead of a breath test (*Drapkin v. State*, 781 S.W.2d 710 (Tex. App.-Texarkana 1989). Deputy Martinez had requested a breath specimen and Clayton Davis had refused; nothing else was required.

After Deputy Martinez clarified these matters, Smith said, "I have no further questions for this witness, your honor." Bronson decided not to *recross examine*. Smith then told Judge Wilson, "The State *rests*." This meant the prosecution had concluded presenting evidence at this stage of the trial. The judge asked Bronson if he was ready to proceed with his case, but defense counsel asked if it could first speak with his client for a few minutes. It was approaching noon, so Judge Wilson called an *adjournment* for lunch.

4.6 The Case Study: Resolution

Steven Bronson and Clayton Davis went outside the courthouse and sat down on a bench to decide what to do next. Bronson gave Davis his honest assessment of the State's case.

"It's certainly not the strongest evidence I've seen. The deputy did not actually see you drive; he didn't perform field sobriety tests; and I could tell a couple of the jurors were concerned he didn't give you a chance to provide blood. On the other hand, Ms. Lusanto's testimony didn't help us, and it looked bad that you refused to provide a breath specimen. To be perfectly honest, you appeared intoxicated in the arrest video, and you didn't come off very well in the police station video either. And don't forget you had a nearly empty tequila bottle in the truck."

Davis responded, "That's okay Steven. Look, just put me on the stand. I can explain everything."

"Clayton, I would advise that you exercise your 'absolute right not to testify' [See *Griffin v. California,* 380 U. S. 609 (1965); *Turner v. United States*, 396 U. S. 398, 433 (1970)]. Legally, the jury cannot hold it against you, and, in fact, the prosecutor cannot even comment on your failure to testify [*Quinn v. United States*, 349 U. S. 155 (1955)].

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Based upon my experience and on my discussions with you, I think your testimony would do more harm than good.

"So, what are we going to do?"

"Listen Clayton, I do not feel good about this case. In my professional opinion, the jurors are probably leaning toward conviction, and we do not have much to change their minds. With your permission, I suggest I go over to the D. A.'s office and visit Jennifer Smith. Here's my plan …"

Jennifer Smith was spending the adjournment reviewing her case file. She was certain Davis was guilty, but wished she had more evidence. Still, she thought the odds were good that the jury would vote to convict. As she pondered what the defense might be planning, Steven Bronson knocked on her open door, with a proposal.

"Look Jennifer, we both know this case could go either way. I think I have a resolution. What if my client agrees to plead guilty to a lesser included offense? A few weeks back, we talked about a plea deal to Public Intoxication ("P.I."). Clayton would plead guilty to P.I. right now and accept the full punishment."

A "lesser included offense" is a crime that requires the State to prove "the same or less than all the facts required to establish the commission of the offense charged" (Tex. Code Crim. Proc. Sec. 37.09 (1)). For example, a person commits the offense of Public Intoxication if they are "in a public place while intoxicated" and may endanger someone (Tex. Penal Code Sec. 49.02). A person commits the offense of Driving While Intoxicated if they are in a public place while intoxicated *and* they drive [thereby endangering themselves and others]. Thus, Public Intoxication is a lesser included offense of D.W.I.

"Still no deal Steven," Smith responded. "I have a duty to seek justice and we both know Davis is guilty. I would rather take my chances with the jury on the D.W.I. than let him walk away with an insignificant punishment for P.I. Here is what I'll do. If Davis pleads guilty to D.W.I., I will recommend Judge Wilson *probate* the jail time and half of the fine for a year. If your client complies with c*ommunity supervision* (probation), he'll stay out of jail and save $1,000."

"Yea, but he'll also have to report to a probation officer once a month and pay a fee, perform community service, attend some classes, not drink for a year, and that's not all."

"Correct. Davis should have considered all this before he drove in this county while intoxicated."

"Okay, Jennifer. My client gave me permission to accept that deal. I'll go tell him. The adjournment's almost over. Can you inform Judge Wilson we've reached a deal?"

Smith informed the judge that the defendant wished to amend his plea of not guilty. Prior to accepting the new guilty plea, Judge Wilson *admonished* Clayton Davis that the prosecutor's recommendation on punishment was not binding on the court, but that in this case, he would follow the terms of the agreement (See Tex. Code Crim. Proc. Sec. 26.13). Davis pleaded guilty to the charge of Driving While Intoxicated, and Judge Wilson signed a written declaration of judgment showing the conviction and the terms of the plea bargain (Tex. Code Crim. Proc. Sec. 42.01).

4.7 The Case Study: "Implied Consent"

Driving While intoxicated is a serious offense with serious penalties upon conviction. A first conviction in Texas can result in a $2,000 fine, up to 180 days in jail, and the loss of a driver's license for a year. The penalties grow in severity with each new offense. A third D.W.I. can bring a $10,000 fine, up to ten years in prison, and the loss of a driver's license for two years. In addition, there are State of Texas fines of $3,000-$6,000 upon sentencing (T. (a). 2021).

Clayton Davis' trial had ended with a conviction and a relatively light sentence, and it was time for Davis to leave the courthouse. He turned to his attorney and said, "Say, Steven can you give me a lift home? It's just too hot today to take a bus. Honestly, the worst part about all this is I won't be driving for a long time." Bronson said, "Sure, Clayton, let's go."

Davis had not driven for several months. When Deputy Martinez requested a breath specimen, Davis exercised his right to refuse, even though the deputy explained a refusal could be used against him at trial (as proof of intoxication) and would likely result in the suspension of his driver's license. Texas, like every other U.S. state, has an "Implied Consent Law" (ImpliedConsent.Org., 2021). Texas' Implied Consent Law is included in the Texas Transportation Code ("Tex. Trans. Code"). Any person arrested for D.W.I., "is deemed to have consented … to submit to the taking of one or more specimens of the person's breath or blood for analysis to determine the alcohol content or the presence in the person's body of a controlled substance, drug, dangerous drug, or other substance" (Tex. Transp. Code 724.011). If a person "refuses to submit to the taking of the specimen, the person's license to operate a motor vehicle will be automatically suspended, whether or not the person is subsequently prosecuted as a result of the arrest, for not less than 180 days" (Tex. Trans. Code Sec. 724.013; Tex. Trans. Code Sec. 724.015 (2)).

After Clayton Davis refused to provide a breath specimen, Deputy Martinez confiscated his Texas Department of Public Safety-issued driver's license and gave him a temporary driving permit. For a short period following his arrest, Davis had an opportunity to challenge his license suspension at an Administrative License Revocation ("A.L.R.") hearing (Tex. Transp. Code Sec. 724.015 (7)). Unfortunately, for Mr. Davis at least, the burden of proof at an A.L.R. civil hearing is lower than beyond a reasonable doubt. The

suspension will be sustained if "1) reasonable suspicion or probable cause existed to stop or arrest the person; 2) probable cause existed to believe that the person was operating a motor vehicle in a public place while intoxicated; 3) the person was placed under arrest by the officer and was requested to submit to the taking of a specimen; and 4) the person refused to submit to the taking of a specimen on request of the officer" (Tex. Transp. Code Sec. 724.042). Davis was unsuccessful in challenging his suspension and he lost his license for six months. When he pleaded guilty to D.W.I., the judge suspended his license for an additional six months. That is why he needed to find a ride home from the courthouse.

Texas courts have held that a police inquiry of whether a suspect will submit a breath specimen for a blood-alcohol test "is not an interrogation within the meaning of [the Fifth Amendment]," and introducing evidence of a breath test refusal at trial does not violate the U.S. Constitution's Fifth Amendment protections against self-incrimination (*Bass v. State*, 723 S.W.2d 687 (Tex. Crim. App. 1986); *Shepherd v. State*, 915 S.W.2d 177 (Tex. App. 1996)). If Davis' trial had reached the stage of closing arguments, the State would have reminded the jurors of Davis' refusal to provide a breath specimen even though he knew the consequences. Jennifer Smith undoubtedly would have suggested Davis' refusal indicated his fear that his specimen would provide evidence of his intoxication and of his guilt (*Mody v. State*, 2 S.W.3d 652 (Tex. App.-Houston [14th Dist.] 1999).

5. DISCUSSION

This article presented a fictitious and highly selective case study. It was selective in the sense that the case involved only certain issues that might arise during a D.W.I. prosecution. As mentioned previously, Texas D.W.I. trials proceed in this order: 1) jurors are selected; 2) the charge is read to the jury; 3) the defendant enters a plea; 4) the prosecutor makes an opening statement and presents evidence; 5) the defense may then make an opening statement and present evidence; 6) rebutting evidence is then offered; 7) both sides make closing statements; and 8) the jury deliberates its verdict (Tex. Code Crim. Proc. Sec. 36.01). In this case study, the emphasis was placed mainly upon jury selection, presentation of the State (or prosecutor's) case, and out of court plea bargaining. The purpose of this selectiveness was to highlight central principles of the American system of justice. Specifically, the jury selection narrative drew attention to the binding legal presumption that a person accused of a crime is innocent until proven guilty in a court of law. This legal presumption is a key element of the constitutional requirements of due process. The detailed review of the presentation of the State's case was intended to underscore the State's burden of proving its case "beyond a reasonable doubt." Like the "presumption of innocence," the "beyond a reasonable doubt" burden is a safeguard embedded in criminal prosecutions, which is intended to protect the accused against unjustified trials and convictions. Finally, the section concerning the case resolution, where the attorneys worked out a plea bargain and a reduced sentence,

was intended to demonstrate that often, D.W.I. prosecutions are settled outside the courtroom and outside the confines of binding constitutional principles, case law, and legal codes.

6. CONCLUSION AND RECOMMENDATION

One goal of this article was to stress the potential serious repercussions of driving while intoxicated. D.W.I. is a major social concern in the State of Texas, and the U.S. generally. Approximately thirty people die every day in the U.S. in motor vehicle accidents involving alcohol-impaired drivers; that is, more than ten thousand people every year (N. (a). 2021). Texas' statistics are even worse than the national average, with residents of Texas 1.5 times more likely to die in alcohol-intoxication accidents than Americans as a whole (CDC., 2020). In 2020 alone, almost 500 people died in Texas in automobile crashes involving intoxicated drivers ((b), 2021). No one perished in our fictious case; however, the intoxicated driver, Clayton Davis, was forced to face a serious charge before a jury of his peers, and he received substantial punishment for his offense. Although the U.S. and Texas criminal justice and judicial systems afford D.W.I. defendants extensive constitutional protections, the prudent course is simply to avoid prosecution by not drinking and driving. Driving while intoxicated or under the influence of substances that may impair the normal use of mental or physical faculties endangers the safety of the intoxicated or impaired person and the safety of others. The U.S. Department of Transportation's National Highway Traffic Safety Administration suggests several strategies to avoid drinking and driving, including planning a safe ride home by choosing a non-drinking friend as a designated driver; giving your keys to a non-drinking friend before you begin drinking; and calling a taxi, ride-hailing service, or sober friend when needed (N. (a). 2021). Each of these strategies would have benefitted Clayton Davis and could be of benefit to others as well.

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[Special note. There are several electronic databases freely available to the public to locate U.S. and Texas case law, including the cases cited in this article. Please consider Google Scholar (http://scholar.google.com/); FindLaw (http://lp.findlaw.com/); and Justia (http://law.justia.com/cases/). In addition, the Texas Constitution and all Texas statutes (including the Texas Code of Criminal Procedure and Penal Code) are available at https://statutes.capitol.texas.gov/]