



HARRIS COUNTY CRIMINAL LAWYERS ASSOCIATION

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The State Commission on Judicial Conduct
Post Office Box 12265
Austin, Texas 78711-2265

April 14, 2015

Dear Members of the Commission:

While sitting as the presiding judge of Harris County Criminal Court Number Two, Judge William Harmon violated the law, the Texas Constitution, and the Judicial Canons in the following ways:

- By displaying in public view, behind his bench, a plaque bearing the acronym "MADD." MADD is the acronym for the well-known anti-drunk driving group Mothers Against Drunk Drivers;
- By knowingly displaying the MADD plaque behind his bench, knowing full-well that said plaque was visible to jury venire and jurors;
- By defiantly refusing to remove said MADD plaque even after being encouraged to do so by another County Court Judge, a Court of Appeals Justice, three Judges from the Court of Criminal Appeals, and the Harris County Criminal Lawyers Association;
- By displaying the MADD plaque behind his bench and thereby giving this special interest advocacy group a completely inappropriate presence in the courtroom; and
- By making deliberate punitive rulings against an attorney who objected to the Court's continued display of the MADD plaque.

BACKGROUND REGARDING JUDGE WILLIAM HARMON'S CONTINUED IMPROPER COURTROOM DISPLAY OF A MADD PLAQUE

Sometime before March 28, 2012, Judge William Harmon placed a plaque bearing the acronym MADD behind his bench. The MADD plaque

leans against the wall behind the judge's chair at the bench, and is clearly visible from numerous points in the courtroom. Potential jurors and jurors sitting in the jury box can clearly see the bold MADD plaque. Photos of the MADD plaque in the courtroom are attached as Exhibit A.

Judge Harmon has been informally approached by defense counsel regarding the impropriety of the display of the MADD plaque, has been asked to consider the obvious appearance of bias created by the MADD plaque, and has been asked to voluntarily remove the MADD plaque. Judge Harmon has declined and still declines to voluntarily remove the MADD plaque.

Judge Harmon's continued display of the MADD plaque ultimately led to the filing of a *Motion to Remove the Plaque* by defense counsel.

On March 28th, 2012, in *State v. Simpson*, Defense counsel Tyler Flood filed a *Motion For Judge to Disqualify or Recuse* himself. The Simpson Recusal Motion stated,

The judge persists in displaying on the judge's bench a prominent plaque from the politically powerful anti-DWI organization Mothers Against Drunk Driving ("MADD"). The prospective jury panel can see the plaque and is aware of its presence and association with the judge of the trial court. The plaque shows that the judge has a bias and prejudice regarding the subject matter in this DWI case and the MADD plaque is clearly grounds to question the court's impartiality.

(Exhibit B.)

On March 30, 2012, Judge Jean Hughes heard the Simpson *Motion to Recuse*. During this hearing, Mr. Flood related to Judge Hughes the following in support of his motion:

1. That Mr. Flood informally asked Judge Harmon to remove the plaque before the Simpson trial started and Judge Harmon refused;
2. That Mr. Flood asked Judge Harmon to make a record of the request to have the plaque removed and Judge Harmon ignored his request;
3. That during voir dire in response to questions regarding the importance of a judge being impartial, more than half the panel indicated that they had noticed Judge Harmon's MADD plaque;

4. That after the panel indicated they could see the MADD plaque and they knew what it meant, Mr. Flood objected to the MADD plaque being displayed during trial and respectfully requested that Judge Harmon take it down;
5. That Judge Harmon, having heard that potential jurors could see the MADD plaque, denied Mr. Flood's motion and persisted in leaving the MADD plaque up during the Simpson trial;
6. That after Judge Harmon so ruled, and while the Simpson trial was ongoing, Mr. Flood had filed the aforementioned Motion For Judge to Disqualify or Recuse himself; and
7. That Mr. Flood contacted the State Commission on Judicial Conduct and spoke with the Executive Director seeking direction on what to do in light of Judge Harmon's conduct.

Judge Jean Hughes denied the *Motion to Recuse*, stating, "The Motion to Recuse is denied, but I would strongly hope that the Judge would do the right thing and take down the plaque." (Exhibit C.)

Simpson was convicted; she appealed to the First Court of Appeals. Among other issues, Simpson argued that the trial court's refusal to remove from its bench a Mothers Against Drunk Driving plaque during the DWI trial deprived her of substantial rights. On June 17, 2014, the court affirmed the conviction, finding that if the display was error, it was harmless error. Justice Sharp issued a biting dissent. In his dissent, Justice Sharp strongly condemned Judge Harmon's display of the MADD plaque. Justice Sharp wrote:

A Texas criminal courtroom is to be a sanctuary from special interests groups and agendas...

The influence of those who may have lobbied for various provisions in those codes has no place in the courtroom. It falls to the tribunal to assure a fair and impartial trial of the citizen accused.

To display behind the trial bench a plaque awarded by one of the most well-established interest groups in the nation not only fails to keep the interest

group at bay, but also invites others to take notice that, in the judge's capacity as a public official, his action has merited the group's commendation. When that interest group is Mothers Against Drunk Driving—a group dedicated to the proposition that the offense for which the accused citizen is being tried in that very courtroom is a very bad and potentially horrific thing—the sanctuary has been twice defiled: not only by the agenda of the interest group, but also by the hubris of the judge charged with the responsibility of assuring a fair and impartial DWI trial.

That a judge so commended would take pride in such an award is understandable. But the criminal court judges of Harris County, Texas all have the benefit of individual private chambers where commendations, books, plaques, photos, etc. can be displayed. Display of such personal items in what is to be a hallowed sanctuary of impartial justice bespeaks a fundamental misunderstanding of the very propriety of that public space; it is the people's courtroom, not an oversized ante-room of some judge's chambers.

A plaque of commendation from one of the nation's most well-established interest groups on display behind the very bench at which a criminal judge presides is an imprimatur of that judge by that interest group.

(Exhibit D.)

On July 16, 2014, Simpson filed a *Petition for Discretionary Review* with the Court of Criminal Appeals. In challenging the lower court's decision, she cited *Lagrone v. State*, 84 Tex. Crim. 609, 209 S.W. 411, 415 (1919). In *Lagrone*, the court stressed the paramount importance of a trial court maintaining the appearance of being impartial.

The court in *Lagrone* stated,

too much caution cannot be exercised in the effort to avoid impressing the jury with the idea that the court entertains any impressions of the case which he wishes them to know, and putting before them matters which should not enter into or affect their deliberations...should in all cases be avoided. To the jury the language and conduct of the trial court have a special and peculiar weight. The

law contemplates that the trial judge shall maintain an attitude of impartiality throughout the trial. Jurors are prone to seize with alacrity upon any conduct or language of the trial judge which they may interpret as shedding light upon his view of the weight of the evidence, or the merits of the issues involved. The delicacy of the situation in which he is placed requires that he be alert in his communications with the jury, not only to avoid impressing them with any view that he has, but to avoid in his manner and speech things that they may so interpret.

Lagrone v. State, 84 Tex. Crim. 609, 209 S.W. 411, 415 (1919) (Exhibit E.)

On October 15, 2014, The Court of Criminal Appeals affirmed the conviction in *Simpson*. Writing for three judges in a concurring opinion, Judge Cochran condemned Judge Harmon's persistent display of the MADD plaque. Judge Cochran wrote,

The recusal motion was then assigned to Judge Hughes for a hearing. At the conclusion of the hearing, Judge Hughes stated, "The motion to recuse is denied, but I would strongly hope that the Judge would do the right thing and take down the plaque. But Judge Harmon did not do the right thing, and the trial proceeded with the MADD plaque plainly visible to the jury."

Judge Cochran further stated,

The Mothers Against Drunk Driving organization is no stranger to courtroom controversy. A MADD-produced video has been played for jurors in an intoxication manslaughter trial. MADD members have carried placards and signs during a trial. Potential jurors are routinely asked, as they were in this case, whether they have ever contributed to MADD so that they may be challenged for cause or struck peremptorily. A MADD representative became a fact witness after doing a ride-along with a police officer on duty. MADD has been a point of reference in jury arguments. MADD letters have been admitted into evidence. And, with some frequency, spectators wearing MADD buttons come to DWI and intoxication manslaughter trials.

In none of these case, however, was the trial judge the source of the actual or figurative MADD presence. Fortunately, there are few cases addressing the impropriety of a trial judge having special-interest group posters or plaques up in his or her courtroom.

(Exhibit F.)

So Judge Harmon's display of the MADD plaque in the people's courtroom was condemned by a fellow County Court Judge, a Court of Appeals Justice, and three Judges from the Court of Criminal Appeals. Notwithstanding those opinions, all of which he knows of, Judge Harmon persists in displaying the MADD plaque. As of the date of the filing of this Complaint with the Commission on Judicial Conduct, the MADD plaque remains on public display in Harris County Criminal Court Number Two. Judge Harmon obdurately refused to follow the strongly worded advice and admonitions of other courts. Acting in a manner wholly inconsistent with the Canons of Judicial Conduct, he continues to use his courtroom to promote MADD even as he presides over DWI trials.

The Harris County Criminal Lawyers Association (HCCLA) represents the interests of approximately 800 criminal defense lawyers. The Association routinely communicates informally with the judiciary in an attempt to resolve criminal-justice issues. Members and leaders of HCCLA have repeatedly made informal attempts to get Judge Harmon to remove the MADD Plaque. All informal entreaties made by the defense bar have gone unheard.

On November 18, 2014, The Harris County Criminal Lawyers Association sent a formal letter to Judge William Harmon asking that Judge Harmon remove the MADD plaque. HCCLA pointed out that the display of the plaque sent the message that Judge Harmon had an improper bias in the courtroom and created the appearance of partiality. HCCLA listed five sections of the Texas Code of Judicial Conduct that were relevant to the improper display. Further, HCCLA reminded Judge Harmon that three Judges from the Court of Criminal Appeals had specifically condemned his display of the MADD plaque. HCCLA reminded Judge Harmon that he had been previously asked to remove the MADD Plaque. (Exhibit G.)

HCCLA has received no response from Judge Harmon other than the continued display of the MADD Plaque in Harris County Criminal Court Two.

**BACKGROUND REGARDING JUDGE WILLIAM HARMON'S IMPROPER RETRIBUTION
AGAINST ATTORNEY OF TYLER FLOOD**

Judge William Harmon's misconduct has gone far beyond his continued inappropriate display of the MADD plaque in Court Two. Judge Harmon engaged in retribution against the attorney who objected to and drew attention to Judge Harmon's MADD plaque. Judge Harmon engaged in a steady campaign of punitive actions against The Law Office of Tyler Flood and the firm's clients. All of Judge Harmon's punitive actions are in violation of the Judicial Canons. By all appearances Judge Harmon's actions were in direct retaliation for Tyler Flood's actions in challenging the MADD plaque in *Simpson*. After the Court of Criminal Appeals opinion was issued on October 15, 2014, Judge Harmon began to engage in punitive action against Tyler Flood.

It is the normal practice of County Criminal Court 2 to reset cases for non-trial settings before setting them for trial. After the *Simpson* appeal, Judge Harmon began resetting all of Tyler Flood's cases for trial. Whether it was the first setting for the case or the case had been pending and it was the first setting after October 29, 2014, when Judge Harmon learned that a defendant was represented by someone from Tyler Flood's firm, Harmon would tell his court coordinator, "Rosie, trial docket!"

Between October 29, 2014 and January 5, 2015 approximately one hundred and eight (108) DWI cases were filed in Harris County Court 2. A review of these 108 cases reveals that no other lawyer's cases were set for trial on the first setting. During this time frame it appears that only Tyler Flood's cases were set for trial on the first setting.

Judge Harmon set Tyler Flood's cases for trial without any request by the State or Flood. Judge Harmon set these cases for trial even when it was clear that discovery was not complete. (Exhibit H.)

In resetting Tyler Flood's clients' cases for trial on the first setting, Judge Harmon engaged in punitive action against Tyler Flood. He risked forcing Tyler Flood's client's cases to trial before discovery was complete. He unfairly and unethically risked the liberty interest of each of Tyler Flood's clients. Below is a review of Tyler Flood's cases that were set for trial on the first setting by Judge Harmon:

1. *State v M.A.* (Case Number: [REDACTED]). Mr. A. was charged with DWI in Harris County Criminal Court Number Two. On October 31, 2014, Mr. A. made his first appearance in County Criminal Court Number Two. Mr. A. was represented by Tyler Flood and Associates. On October 31, 2014, on the first setting in Court Two, Mr. A.'s case was reset for trial. No one from the State or Tyler Flood and Associates requested that Mr. A.'s case be reset for trial on the first setting. Judge Harmon required that Tyler Flood's case be set for trial on the first setting. (Exhibit I.)

2. *State v. M.G.* (Case Number: [REDACTED]). Mr. G. was charged with DWI in Harris County Criminal Court Number Two. On October 31, 2014, Mr. G. made his first appearance in County Criminal Court Number Two. Garza was represented by Tyler Flood and Associates. On October 31, 2014, on the first setting in Court Two, Mr. G.'s case was reset for trial. No one from the State or Tyler Flood and Associates requested that Mr. G's case be reset for trial on the first setting. Judge Harmon required that Tyler Flood's case be set for trial on the first setting. (Exhibit J.)

3. *State v. J.H.* (Case Number: [REDACTED]). Mr. H. was charged with DWI in Harris County Criminal Court Number Two. On November 14, 2014, Mr. H. made his first appearance in County Criminal Court Number Two. Mr. H. was represented by Tyler Flood and Associates. On November 14, 2014, on the first setting in Court Two, Mr. H's case was reset for trial. No one from the State or Tyler Flood and Associates requested that Mr. H.'s case be reset for trial on the first setting. Judge Harmon required that Tyler Flood's case be set for trial on the first setting. (Exhibit K.)

4. *State v D.W.* (Case Number: [REDACTED]). Mr. W. was charged with DWI in Harris County Criminal Court Number Two. Mr. W.'s initial case was dismissed by the State. On November 11, 2014, the State refiled the DWI charges against Mr. W. On November 21, 2014, Mr. W. made his first appearance in County Criminal Court Number Two, on the new DWI charge. Mr. W. was represented by Tyler Flood and Associates. On November 21, 2014, on the first setting in Court Two, Mr. W.'s case was reset for trial. No one from the State or Tyler Flood and Associates requested that Mr. W.'s case be reset for trial on the first

setting. Judge Harmon required that Tyler Flood's case be set for trial on the first setting. (Exhibit L.)

5. *State v. Eric Urban* (Case Number: [REDACTED]). Mr. U. was charged with DWI in Harris County Criminal Court Number Two. On December 11, 2014, Mr. U. made his first appearance in County Criminal Court Number Two. Mr. U. was represented by Tyler Flood and Associates. On December 11, 2014, on the first setting in Court Two, Mr. U.'s case was reset for trial. No one from the State or Tyler Flood and Associates requested that Mr. U.'s case be reset for trial on the first setting. Judge Harmon required that Tyler Flood's case be set for trial on the first setting. (Exhibit M.)

6. *State v. G.L.* (Case Number: [REDACTED]). Mr. L. was charged with DWI in Harris County Criminal Court Number Two. On December 19, 2014, Mr. L. made his first appearance in County Criminal Court Number Two. Mr. L. was represented by Tyler Flood and Associates. On December 19, 2014, on the first setting in Court Two, Mr. L.'s case was reset for trial. No one from the State or Tyler Flood and Associates requested that Mr. L.'s case be reset for trial on the first setting. Judge Harmon required that Tyler Flood's case be set for trial on the first setting. (Exhibit N.)

After the Court of Criminal Appeals opinion was issued in Simpson, Judge Harmon also had his staff set Tyler Flood's cases for trial on days when counsel approached and asked for discovery.

7. *State v. R.G.* (Case Number: [REDACTED]). Mr. G. was charged in Harris County Criminal Court Number Two with DWI. Mr. G. was represented by Tyler Flood and Associates. On December 19, 2014, a lawyer with Tyler Flood and Associates appeared in Court on an off-docket matter to get a discovery order signed. On December 19, 2014, Judge Harmon caused the Mr. G. case to be reset off-docket for trial. (Exhibit O.)

8. *State v. M.S.* (Case Number: [REDACTED]). Mr. S. was charged with DWI in County Court Number Two. Mr. S. was represented by Tyler Flood and Associates. On December 19, 2014, a lawyer with Tyler Flood and Associates appeared on an off-docket matter to get a discovery order signed. On December 19, 2014, Judge Harmon caused Mr. S.'s case to be reset for jury trial. (Exhibit P.)

9. *State v. C.S.* (Case Number: [REDACTED]). Mr. S. was charged with DWI in County Court Number Two. Mr. S. was represented by Tyler Flood and Associates. On January 7, 2015, a lawyer with Tyler Flood and Associates appeared at the Court, off-docket, to get a discovery order signed. On January 7, 2015 Judge Harmon caused Mr. S.'s case to be reset off-docket for trial. (Exhibit Q.)

The Law Office of Tyler Flood sought legal redress in response to Judge Harmon's punitive actions. On January 5, 2015, Tyler Flood filed motions to recuse on those cases. On January 16, 2015, the motions to recuse were denied.

CANONS VIOLATED

CANON 1 PROVIDES:

A judge should participate in establishing, maintaining and enforcing high standards of conduct, and should personally observe those standards so that the integrity and independence of the judiciary is preserved.

Judge William Harmon's conduct in displaying the MADD plaque behind the bench fails to maintain the high standards of conduct required by Canon 1. In displaying the MADD plaque, Judge Harmon has failed to maintain the integrity and independence of the judiciary as required by Canon 1. Judge William Harmon's conduct in displaying the MADD plaque violates Canon 1.

Judge William Harmon's unethical retaliatory punitive actions against Attorney Tyler Flood violate Canon 1.

CANON 2(A) PROVIDES:

A judge shall comply with the law and should act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.

Judge William Harmon's conduct in displaying the MADD plaque behind the bench fails to promote the integrity and impartiality of the judiciary. By displaying the MADD plaque, Judge Harmon demonstrates a clear lack of impartiality.

By engaging in retaliatory punitive actions against an attorney, Judge William Harmon fails to promote confidence in the integrity and impartiality of the judiciary.

Witnesses to Judge Harmon's retaliation against Tyler Flood include:

- Tyler Flood, Andrea Podlesney, Justin Harris, and James Fletcher
1229 Heights Boulevard
Houston, Texas 77008
713.224.4394
- ADA Jason Sanchez
1201 Franklin Street
Houston, Texas 77002
713.755.5800

JUDICIAL CANON 2(B) PROVIDES:

A judge shall not allow any relationship to influence judicial conduct or judgment. A judge shall not lend the prestige of judicial office to advance the private interests of the judge or others; nor shall a judge convey or permit others to convey the impression that they are in a special position to influence the judge.

By displaying the MADD plaque behind his bench, Judge William Harmon lends the prestige of his judicial office to MADD and conveys the impression that MADD is in a special position to influence the judge.

JUDICIAL CANON 3(B)(5) PROVIDES:

A judge shall perform judicial duties without bias or prejudice.

By displaying the MADD plaque behind his bench and by retaliating against Tyler Flood, Judge William Harmon demonstrates bias and prejudice.

JUDICIAL CANON 3(B)(9) PROVIDES:

A judge should dispose all judicial matters promptly, efficiently and fairly.

By punishing Attorney Tyler Flood for challenging his misconduct, Judge William Harmon failed to dispose of all judicial matters fairly.

JUDICIAL CANON 3(C)(2) PROVIDES:

A judge should require staff, court officials and others subject to the judge's direction and control to observe the standards of fidelity and diligence that apply to the judge and to refrain from manifesting bias or prejudice in the performance of their official duties.

A judge should not require his court staff to engage in unfair retaliatory action against an attorney. Judge William Harmon required his staff to engage in punitive actions against Attorney Tyler Flood by resetting Flood's cases for trial on the first setting. By requiring that his staff engage in punitive action against Attorney Tyler Flood, Judge William Harmon caused his staff to act with bias in the performance of their official duties.

CONCLUSION

Judge William Harmon's conduct in this matter is inexcusable. His continued display of the MADD plaque damages public confidence in the integrity and impartiality of the judiciary.

Judge William Harmon has been urged by a fellow County Court Judge, a Court of Appeals Justice, and three Judges of the Court of Criminal Appeals to remove the MADD plaque. Judge William Harmon stubbornly refuses to remove the MADD plaque. He refuses to do the right thing.

Judge William Harmon's retaliatory punitive actions against Attorney Tyler Flood are blatant and disgraceful. Judge William Harmon's punitive actions against Attorney Tyler Flood must be condemned.

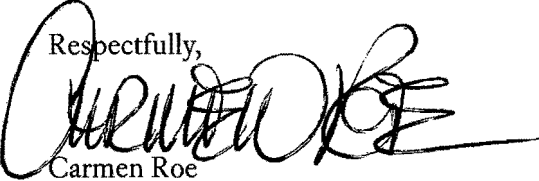
Judge William Harmon is no neophyte judge. To the contrary, he was a district court judge for many years prior to becoming a county court judge. He has many years of experience on the bench, and is very well acquainted with the law and the Texas Code of Judicial Conduct.

Judge William Harmon has defied all who have counseled him to do the right thing. In continuing to display the MADD plaque behind the bench, Judge

Harmon daily endorses MADD and allows this special interest group a wholly improper position of influence in Harris County Criminal Court Number Two.

To restore at least the appearance of impartiality to Harris County Criminal Court Number Two, this Commission should require that Judge Harmon immediately remove the MADD plaque from the courtroom.

The Harris County Criminal Lawyer's Association requests that the State Commission on Judicial Conduct investigate this matter and take all appropriate action.

Respectfully,


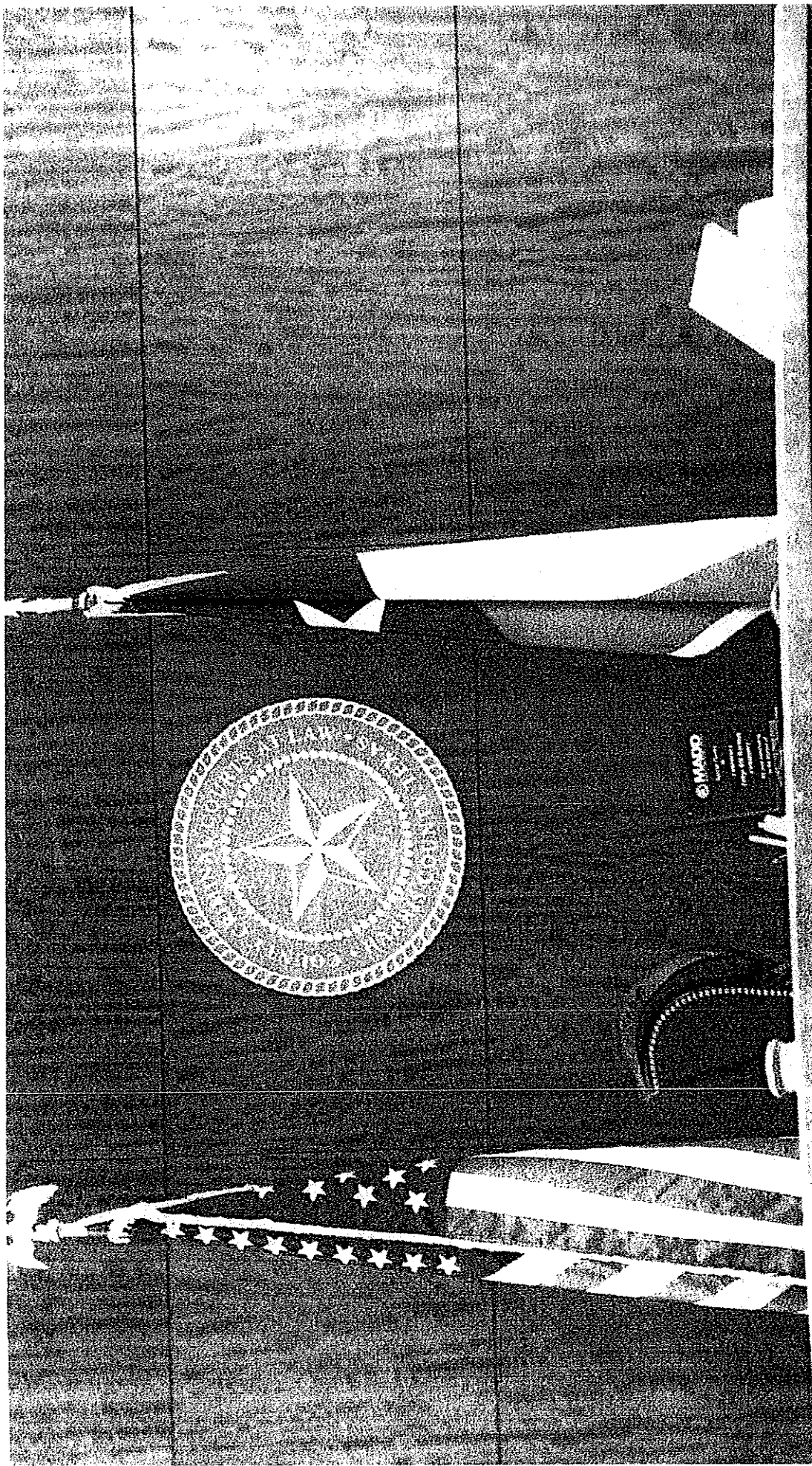
Carmen Roe

President

Harris County Criminal Lawyers Association

EXHIBIT A

**MADD PLAQUE AS DISPLAYED IN HARRIS
COUNTY COURT NUMBER TWO**

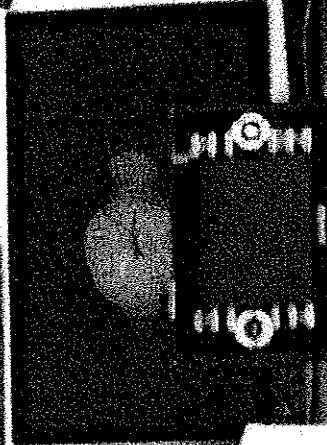


County Criminal Court of Law 12

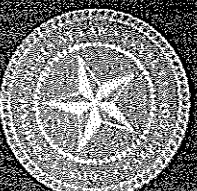
DEFENDANT
EXHIBIT
17539
CS 3012
PENGAD Bayonne, N.J.

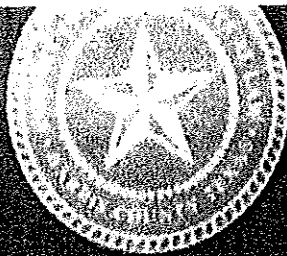
PENGAD-Bayonne, N.J.
 DEFENDANT'S
 EXHIBIT
 CC 3-30-12
 174369

1753989
DEFENDANT
EXHIBIT
CC 33-12
PENGL-Bayonne, N.J.



Judge John J. ...
County Criminal Justice Center





Judge Bill Harmon
County Criminal Court at Law #1

PERIOD 800-631-6800

DEFENDANT'S
EXHIBIT

1

CC 330-12

175395



EXHIBIT B

**MOTION FOR JUDGE TO DISQUALIFY OR
RECUSE**

STATE V. SIMPSON

CASE NO. [REDACTED]

(3-28-12)

MAR 28 2012

14/994

Cause No. [REDACTED]

Time: _____

Harris County, Texas

By _____

STATE OF TEXAS

IN THE COUNTY CRIMINAL

V.

COURT AT LAW # 2

[REDACTED] Simpson

HARRIS COUNTY, TEXAS

MOTION FOR JUDGE TO DISQUALIFY OR RECUSE HIMSELF

To the Honorable Judge of said Court:

Now comes the defendant in the above entitled and numbered cause, by and through his attorney of record and files this his motion to have the judge of said court disqualify or recuse himself in this case and would show the following:

I.

That Judge William Harmon is the presiding judge of the County Criminal Court at Law #2 of Harris County, Texas.

II.

That Judge has such personal bias against the defendant, that the defendant's constitutional right to a fair trial would be violated if Judge continues as the trial judge.

The judge's impartiality might reasonably be questioned.

The judge has a personal bias or prejudice concerning the subject matter or a party.

III.


The judge persists in displaying on the judge's bench a prominent plaque from the politically powerful anti-DWI organization Mothers Against Drunk Driving ("MADD"). The prospective jury panel can see the plaque and is aware of its presence and association with the judge of the trial court. The plaque shows that the judge has a bias and prejudice regarding the subject matter in this DWI case and the MADD plaque is clearly grounds to question the court's impartiality.

RECORDER'S MEMORANDUM

This instrument is of poor quality
at the time of imaging

Wherefore, Premises Considered, the Defendant prays that said judge disqualify or recuse himself from the trial of this case, and that said judge ask the Presiding Judge of this Administrative District to assign another judge for the trial of this case.

Respectfully Submitted,



Tyler Flood
Attorney for Defendant

VERIFICATION

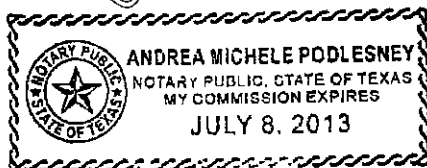
STATE OF TEXAS
COUNTY OF HARRIS

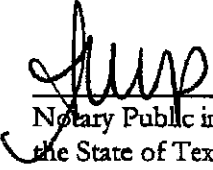
On this day Tyler Flood appeared before me, the undersigned notary public, and after I administered an oath to him, upon his oath, he said he read the motion for judge to disqualify or recuse himself, the facts in it are true, according to his belief.



Tyler Flood

SWORN TO and SUBSCRIBED before me on the 20th day of March, 2012.





Notary Public in and for
the State of Texas

13/997

Cause No. [REDACTED]

STATE OF TEXAS

V.

[REDACTED] *Simpson*

§
§
§
§
§

IN THE COUNTY CRIMINAL

COURT AT LAW # 2

HARRIS COUNTY, TEXAS

ORDER

On this day came on to be heard the above motion, and it appearing that in the interest of justice that said motion should be:

Granted, and

It is therefore Ordered that the undersigned judge here and now recuses himself from the trial of this case and asks the Presiding Judge of this Administrative District to assign another judge to this court for the trial of this case.

Or, it appearing that said motion is without merit:

Denied

to which Defendant objects.

William H. Hannon

Judge Presiding

AFTER OUR DIRE COMMENCED, I WROTE MR. FLOOD A NOTE INQUIRING WHETHER THE DEFENDANT WANTED THE COURT OR JURY TO ASSESS PUNISHMENT AND HE SIGNED this 28th day of March, 2012 WROTE THAT THE DEFENDANT WANTED THE COURT TO ASSESS PUNISHMENT. OBVIOUSLY THE DEFENDANT DOES NOT FEEL THE COURT HAS A PERSONAL BIAS OR SHE WOULD NEVER HAVE MADE THAT ELECTION. *W. Hannon*

13/994

CAUSE NO. [REDACTED]

THE STATE OF TEXAS

VS

[REDACTED] SIMPSON

§
§
§
§
§

IN THE COUNTY CRIMINAL

COURT AT LAW NO. 2

HARRIS COUNTY, TEXAS

**ORDER ON MOTION TO RECUSE
AFTER HEARING**

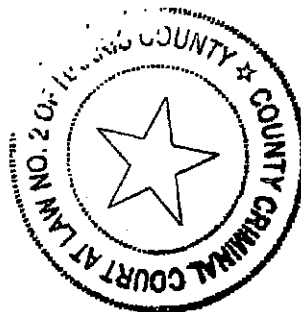
jm
On March ^{30th} ~~25~~, 2012, came on to be heard, the Motion to Recuse filed pursuant to TRCP 18a in the above captioned cause. The Court has considered the Motion, all attachments thereto, and all evidence presented, all citations of authority and arguments of counsel. The Court finds the motion is not supported by the evidence and:

Therefore, IT IS ORDERED that the Motion to Recuse be and is hereby DENIED.

IT IS FURTHER ORDERED that the Clerk of the Court shall forward a certified copy of this Order to:

Presiding Judge
Second Administrative Judicial Region of Texas
301 N. Main, Suite 228
Conroe, Texas 77301
Fax No. 409 538-8167

jm
SIGNED this ^{30th} ~~25~~ day of march, 2012.



Unofficial Copy - Office of Chris Daniel, District Clerk

JUDGE PRESIDING

EXHIBIT C

**TRANSCRIPT FROM RECUSAL HEARING IN
STATE V. SIMPSON**

(3-20-12)

REPORTER'S RECORD
VOLUME 1 OF 2 VOLUMES
CAUSE NO. [REDACTED]

THE STATE OF TEXAS * IN THE COUNTY CRIMINAL
 *
VS. * COURT AT LAW NUMBER 15
 *
[REDACTED] SIMPSON * OF HARRIS COUNTY, TEXAS

MOTION TO RECUSE

On the 30th day of March, 2012, the following
proceedings came on to be heard in the above-entitled and
numbered cause before the Honorable Jean Spradling Hughes,
Judge presiding, held in Houston, Harris County, Texas:

Proceedings reported by machine shorthand.

COPY

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1 PROCEEDINGS

2 (Court in session.)

3 THE COURT: All right. We're here on
4 Cause No. [REDACTED], the State of Texas versus
5 [REDACTED] Simpson. This is a DWI charge, out of
6 County Criminal Court at Law No. 2.

7 This court has purview to hear this
8 pursuant to an order by the Administrative
9 Judge Olen Underwood, ordering me to have a
10 hearing on a Motion to Recuse that was filed in
11 this case.

12 Will the parties present today, beginning
13 with the State, identify themselves for the
14 record, please.

15 MR. ROSE: Brian Rose for the DA's office,
16 Your Honor.

17 THE COURT: Okay. For the Defense.

18 MR. FLOOD: Tyler Flood.

19 THE COURT: Anyone else for the Defense?

20 MR. BENNETT: I'll be assisting Mr. Flood.
21 I'm Mark Bennett, B-E-N-N-E-T-T.

22 MR. FLOOD: Are we going to do this all at
23 the bench?

24 THE COURT: Yeah, if that is okay.

25 MR. FLOOD: All right.

1 THE COURT: Okay. You may proceed,
2 please.

3 MR. FLOOD: Judge, we filed -- we are
4 currently in trial on a DWI in Court No. 2. We
5 started on Wednesday and were -- we broke
6 yesterday. There was no trial yesterday, and
7 we're set to resume today at 11:00 o'clock.

8 Before voir dire I called attention to
9 Judge Harmon's Mothers Against Drunk Driving
10 plaque, which he has sitting behind his bench.
11 And I have a couple of exhibits that I would
12 like to enter for the purpose of this hearing
13 and marked Defense 1 and 6, and I'll tender
14 them to opposing counsel.

15 MR. ROSE: No objections on 1 and 6, Your
16 Honor.

17 MR. FLOOD: And then also Defense Exhibit
18 No. 5.

19 MR. ROSE: No objection on 5, Your Honor.

20 THE COURT: Okay. Defense Exhibits 1, 5
21 and 6 are admitted.

22 (Exhibits admitted.)

23 MR. FLOOD: Okay.

24 Sorry. This is Defense Exhibit 8 that I'm
25 also tendering. It's a little bit clearer

1 version. I meant to introduce this.

2 MR. ROSE: No objection, Your Honor.

3 THE COURT: Okay. Defense Exhibit 8 is
4 also admitted.

5 (Exhibit admitted.)

6 MR. FLOOD: Judge, these are photos from
7 different perspectives in the courtroom. Some
8 from up close, some from far away, showing
9 where the plaque is. It's -- it's not mounted
10 on the wall. It's something that would be easy
11 to remove. It's the only thing that is back
12 there, it's stacked up on a -- propped up on a
13 stack of books, kind of leaning up against the
14 wall.

15 This concerns me because this is DWI trial
16 and people are very familiar -- jurors that
17 show up for jury duty are very familiar with
18 those initials, and they're very bold on that
19 plaque. So, my fear is that this does question
20 the Court's impartiality. It is an endorsement
21 of Mothers Against Drunk Drivers. I asked the
22 Judge off the record before we started if he
23 would please remove or take down that plaque
24 for this trial, and he -- he denied it rather
25 loudly; but the panel was already seated. We

1 weren't on the record. I asked him
2 respectfully off the record; and then I said,
3 okay, Judge, I would like to make a formal
4 objection on the record. And this is where --
5 when he was still at the bench but preparing to
6 step down and go out and begin voir dire. He
7 didn't acknowledge my request to make a record
8 and just proceeded to keep walking. And he
9 said, Tyler, they can't see it, but if you'd
10 like, I can ask them if they can see it, if you
11 want.

12 And obviously that -- we were trying to
13 not draw attention to it, at that point. But
14 he seemed to think that they didn't see it or
15 they couldn't see it, and said that he would be
16 happy to ask them.

17 I said, No, Judge, I think it's improper,
18 and I would like to object on the record.

19 And, basically, he just said good morning
20 to the jury and started voir dire; and then we
21 were on the record.

22 So, during voir dire I felt the need to
23 make a record of what had occurred. And at the
24 end of voir dire we had a discussion with the
25 panel about the role of the different parties

1 in the courtroom. The prosecutor's role,
2 Defense attorney's role, and I had a discussion
3 about the jurors' acknowledgment that, you
4 know, we are not unbiased, neutral parties.
5 Prosecutors have an interest in the case,
6 Defense attorneys have an interest in the case.
7 But then we discussed the role of the judiciary
8 in the case and that they're, in essence, a
9 neutral, unbiased referee calling the balls and
10 strikes, ruling on the law. And the jurors
11 agreed that if they were in the same situation,
12 they would not want to be in front of anything
13 less than a fair and impartial judge in
14 deciding the case.

15 So, then I needed to -- I felt the need to
16 put it on the record that the -- or ask the
17 jurors if they could see the plaque behind
18 Judge Harmon's chair. And I just asked, I
19 said, Okay, understanding that, do any of you
20 see anything up at the bench that has caught
21 your attention?

22 And several of the jurors in the back row
23 kind of smiled and they said, Yeah, we see that
24 plaque up there, and we had noticed it from the
25 beginning.

1 And I asked them, What does it say?

2 And they said, It's obviously MADD, it's
3 Mothers --

4 You know, I said, What does that stand
5 for?

6 Mothers Against Drunk Drivers and --
7 Mothers Against Drunk Drivers.

8 And more than half of the panel
9 acknowledged that they had seen it, they
10 started -- it caused a commotion. But they
11 definitely were able to view it from their
12 viewpoint back in the courtroom.

13 And, so, based on Judge Harmon's
14 off-the-record comments to me that seemed to
15 indicate that if they could see it, it might be
16 an issue to him. If I was able to have the
17 panel acknowledge that they could, in fact, see
18 it, then that might have an impact on Judge
19 Harmon.

20 So, at that point, I respectfully turned
21 to the Judge and pointed out that the panel
22 could, in fact, see the plaque. They knew what
23 it meant, and I objected to it being there
24 during this trial; and I respectfully requested
25 that it be taken down for Ms. Simpson's trial.

1 Judge Harmon just said, Denied.

2 And I turned to the jury and said, Thank
3 you for your time, and concluded our voir dire.

4 So, we did proceed that day. We broke for
5 lunch, I was furiously researching this issue,
6 and we didn't have time to write a formal
7 motion and have it verified before we were set
8 to start back in trial. I knew that that
9 wouldn't have been in compliance with the rule
10 that it be verified.

11 So, I didn't feel an oral motion at that
12 time would have had any merit with the Court,
13 but he could have denied it because it wasn't
14 pursuant to the rule. So, we had another
15 attorney help draft a motion, bring it to
16 court, had somebody come to court while we were
17 in trial, and we had -- I signed it, and it was
18 verified in court. And then as soon as we
19 broke at the end of the day, I did present the
20 motion and file it and raise the issue with
21 Judge Harmon. And he just denied it. I,
22 again, pled with him that, you know, all he had
23 to do was remove the plaque and set it down.
24 That is where we left things on Wednesday, and
25 he said I'll see you back in court on Friday.

1 Right. There is a -- so, I feel that the
2 plaque, in asking him to take it down and
3 denying it and being in front of the jury, I
4 think definitely raises the appearance of
5 partiality. But, additionally, Judge Harmon
6 has a new video on YouTube and we have it cued
7 up if the Court would like to see it. It's
8 titled Confessions of a Teen Killer(sic). It
9 is a 30-minute, very professionally produced
10 video about the perils of drinking and driving;
11 and it chronicles the lives of some teenagers
12 who have been drinking and killed the
13 passengers in their car.

14 There are three main characters in this
15 video: Catherine Evans, Don Egdorf, and Judge
16 Harmon. He's the only Judge that appears.
17 It's -- in my opinion, it is an alignment with
18 law enforcement and an endorsement or an
19 alignment -- an improper alignment with the
20 DA's office; and I think it crosses the line of
21 being impartial, and it's out there for
22 everybody to see.

23 So, I know there is a fine line, and I've
24 had a conversation this morning with Seana from
25 the committee on judicial ethics --

1 THE COURT: Judicial Conduct Commission.

2 MR. FLOOD: That's -- and the executive
3 director.

4 THE COURT: For the record, Seana Willing.

5 MR. FLOOD: Yes, ma'am.

6 THE COURT: Judicial Conduct Commission.

7 MR. FLOOD: And she had pointed me to
8 canons that I had already identified that I
9 felt were in violation. I asked her if she
10 could write me a formal opinion, and she said
11 that she could not, but that she had no problem
12 if I discussed what we talked about and that
13 she was of the opinion that these actions, to
14 her, appear to be crossing the line and
15 probably --

16 THE COURT: Are you talking about the
17 video or the plaque or both with Seana?

18 MR. FLOOD: Well, specifically, Canon 2.
19 Code of Judicial Conduct Canon 2B, with respect
20 to the MADD plaque and not taking it down.

21 It states that, "A judge shall not allow
22 any relationship to influence judicial conduct
23 or judgment." But more importantly, "A judge
24 shall not lend the prestige of judicial office
25 to advance the private interests of the judge

1 or others."

2 So, having one plaque behind your wall, an
3 award from MADD seems to create the appearance
4 that he is advancing personal interests and
5 using the judicial office to do so, especially
6 when we would -- it would have been simple just
7 to have it removed, but would not do so.

8 Also, Canon 3B(5), which Seana pointed me
9 to, "A judge shall perform judicial duties
10 without bias or prejudice." And then when I
11 discussed the video with her on YouTube, she --
12 she thought that that hit on 4A(1) where
13 talking about extra judicial activities in
14 general and that while there is a -- it's
15 encouraged to conduct extra judicial
16 involvement in organizations, there is a line
17 that has to be drawn. And you don't want to
18 give the appearance of aligning yourself with
19 law enforcement in a way that others could
20 perceive it to be in violation of the canons.

21 And she felt that since he is on that
22 video as the only Judge with the DWI task
23 force, and then the top intoxication prosecutor
24 in the DA's office that that violated 4A(1),
25 which would cast -- "A judge shall conduct all

1 of the judge's extra-judicial activities so
2 that they do not cast reasonable doubt on the
3 judge's capacity to act impartially as a
4 judge."

5 So, those are my opening arguments.

6 THE COURT: Anything else?

7 MR. BENNETT: I would only add, Your
8 Honor, that the standard is in Kemp, K-E-M-P,
9 vs State, which is Texas Court of Criminal
10 Appeals 1992, it's 846 SW 2d, 289. In order to
11 prevail on a recusal, the movant has to show
12 facts that -- to establish that a reasonable
13 person knowing all of the circumstances
14 involved would harbor doubts as to the
15 impartiality of the trial Judge.

16 Between the plaque and the video, which I
17 would encourage the Court to -- encourage the
18 Court to view, I think that a reasonable person
19 would question the impartiality of Judge Harmon
20 in a DWI case. There is a Commission on
21 Judicial Conduct Public Statement that is close
22 to on point, not exactly right, but it does
23 mention MADD. It's Public Statement No.
24 PS-2006-1. And, specifically, that was about
25 the -- about a judge's participation on the

1 board of CASA, which is Court Appointed Special
2 Advocates. And the -- the State Commission
3 frowned on that participation because -- and
4 this is a quote, "Although CASA may differ in
5 some ways from typical advocacy groups such as
6 MADD or ATLA, it is nonetheless a victim
7 advocacy group whose volunteers are partisan,
8 not neutral, in the judicial process."

9 And, so, the Judge has a plaque from a
10 partisan advocacy group whose volunteers are
11 not neutral in the judicial process in a
12 prominent position behind his seat at the
13 bench. Which, apparently, the jurors thought
14 that -- they were snickering about it before
15 Mr. Flood pointed it out. The jurors thought
16 that that called into question Judge Harmon's
17 impartiality; and I think reasonably that that
18 would call into question his impartiality when
19 a judge on DWI cases has a prominent plaque
20 from MADD, which is the premiere anti-DWI
21 advocacy group advocating for things like more
22 severe sentences and easier conventions. I
23 think there has to be a question about -- I
24 think there has to be a question in the minds
25 of the people who see it, whether they know the

1 Judge or not, that -- whether he can be
2 partial -- impartial or not in a DWI case.

3 And I have a copy of that Public Statement
4 from the Commission on Judicial Conduct. It's
5 marked as Defendant's 2, and I've given a copy
6 to the State as well.

7 THE COURT: Any objection to D-2?

8 MR. BENNETT: That is what I just gave
9 you.

10 MR. ROSE: No objection, Your Honor.

11 THE COURT: Okay. D-2 will be admitted.

12 (Exhibit admitted.)

13 THE COURT: Anything else from the
14 Defense, at this time?

15 MR. FLOOD: Judge, only other thing I
16 didn't know if you wanted to hear testimony
17 from other witnesses or have Mark -- have me be
18 sworn and testify as an officer of the Court as
19 to what I witnessed, but also Andrea Podlesney,
20 my paralegal is here, and she did witness the
21 conversation trying to object on the record
22 before voir dire began and that wasn't being
23 allowed.

24 THE COURT: I think at this point you've
25 done a pretty good summary. If the State

1 brings something up, and I want something, I'll
2 let you know.

3 MR. FLOOD: Yes, ma'am. And then the
4 video, also, if you would like to watch it.

5 THE COURT: State.

6 MR. ROSE: Yes, Your Honor, I would like
7 to have a witness, Dennis Hung, an Assistant DA
8 who was in the trial testify.

9 THE COURT: Other hand.

10 MR. BENNETT: I don't think he needs to be
11 sworn.

12 THE COURT: He's an officer of the Court,
13 but --

14 MR. DENNIS HUNG,
15 having been first duly sworn, testified as follows:

16 DIRECT EXAMINATION

17 BY MR. ROSE:

18 Q Mr. Hung, how are you currently assigned?

19 A I'm currently assigned to the County
20 Criminal Court at Law No. 2, I'm the No. 2
21 prosecutor in that court.

22 THE COURT: Raise your voice for the court
23 reporter.

24 Q (By Mr. Rose) You're an assistant DA
25 working for the DA's office right now?

1 A Correct.

2 Q In front of Judge Harmon?

3 A Correct.

4 Q The Judge who is the subject of the
5 Recusal Motion, right?

6 A Correct.

7 Q And you have been in there since November
8 of this year, 2011?

9 A Correct.

10 Q Before this incident where the issue was
11 raised in the trial that you're in now, had you ever
12 noticed the MADD plaque on the back area of Judge
13 Harmon's bench?

14 A No.

15 Q All right. Would you describe for Judge
16 Hughes whether the plaque is visible when Judge
17 Harmon is up in his chair on the bench?

18 A Judge Harmon has a much larger chair than
19 Judge Hughes' chair. I've taken pleas up at the
20 bench, and I've never noticed anything.

21 When Tyler did bring up the MADD
22 plaque, I went over to this area right here -- and
23 that is the area where people come in and out of
24 chambers to look -- and there was a plaque sitting
25 on some books against the wall behind his chair.

1 Q And when you say over here, you mean off
2 to the side so you had a different angle to see back
3 behind the Judge's chair?

4 A Correct.

5 Q All right. Would you give your
6 recollection for Judge Hughes' benefit, since we
7 don't have the record in front of us, the responses
8 given by the jurors during voir dire when the issue
9 was brought up?

10 A Well, during voir dire nobody had said
11 anything about a plaque. Tyler began talking about
12 the Judge being the referee, the Judge being a
13 neutral party, and then he specifically mentioned
14 the plaque; and then he said that that was a MADD
15 plaque and had anybody noticed it. Perhaps one or
16 two jurors mentioned the plaque. I don't know if
17 they said they knew what it says, I can't recall
18 that. That was about it.

19 Q Do you remember whether the jurors'
20 responses indicated that they had some question as
21 to the Judge's impartiality?

22 A No, they were just responding to Tyler's
23 question during voir dire.

24 Q Responding to his questions about the
25 existence or visibility of the plaque?

1 A Yes. And they never specifically said
2 anything about the Judge's bias or impartiality.

3 Q All right. You have been present while
4 Mr. Flood has recounted his recollection of the
5 events, right?

6 A Yes.

7 Q Do you have any other observations or
8 disagreements with Mr. Flood's recollection that you
9 would like to offer to Judge Hughes?

10 A Well, I do not recall Mr. Flood talking to
11 the Judge prior to voir dire. I was seated at
12 counsel table, so I wasn't at the bench. If he had
13 communicated with the Judge, it was ex parte, out of
14 the presence of the State.

15 Now, I also -- and my recollection
16 may be different from the record, because I don't
17 remember, but I don't recall Tyler asking the Judge
18 to take the plaque down during voir dire. He may
19 have done so afterwards.

20 MR. ROSE: Pass the witness, Your Honor.

21 CROSS-EXAMINATION

22 BY MR. BENNETT:

23 Q The courtroom -- and Judge Harmon's
24 courtroom is laid out just like this one, except
25 mirror image, right?

1 A I think so.

2 Q Okay. So, would you -- would you point
3 out to Judge Hughes, please, where in relation to
4 her courtroom -- if it were flipped around and this
5 was Judge Harmon's courtroom, where would the plaque
6 be?

7 A Can I go to that place where the plaque
8 would be?

9 THE COURT: Yeah, just come show me.

10 A It's right here behind his chair.

11 Q (By Mr. Bennett) And when you say it's
12 behind his chair, you mean that from the audience
13 his chair is in between it and the plaque?

14 A Correct.

15 Q Between -- his chair is between the
16 audience and the plaque, yes?

17 A Correct.

18 Q But nonetheless, some of the jurors, at
19 least, were able to see the plaque from the
20 audience?

21 A Well --

22 Q Yes?

23 A Yes.

24 Q Some of the jurors at least were able to
25 see the plaque from the audience?

1 A Yes.

2 Q Okay. And where you've described, I'm now
3 standing at the door where jurors would enter the
4 room. You will agree with me that the plaque would
5 be visible to jurors coming into the room?

6 A Possibly.

7 Q And, in fact, it would be about 12 feet
8 away?

9 A I don't have a measuring stick, I don't
10 know.

11 THE COURT: And, for the record, you're
12 talking about coming in where the jury comes
13 into the courtroom from the jury room?

14 MR. BENNETT: Exactly, Your Honor.

15 Q (By Mr. Bennett) And now I'm standing
16 where typically Juror No. 1 would stand or would
17 sit, correct?

18 A Yes.

19 Q Okay. Because we'll have either three on
20 the front row and three on the back row or we'll
21 have six lined up on the front row, right?

22 A Yes.

23 Q Okay. And from here the plaque would be
24 clearly visible as well, correct?

25 A That would be speculation because I've

1 never sat in the jury box before.

2 Q Okay. Well, let's try this. Why don't
3 you put your head where the plaque would be. Can
4 you see my eyes?

5 A I can see you, yes.

6 Q Okay. So, you will agree with me if the
7 plaque could see the juror, then the juror could see
8 the plaque?

9 A I'm not a plaque.

10 Q Do you have another trial lined up after
11 Mr. Flood's trial that would have been starting
12 yesterday? Did you have trial that would have been
13 starting yesterday?

14 A Yes.

15 Q Okay. And who was the lawyer in that
16 trial?

17 A Stephen Lekas.

18 Q Did you and Judge Harmon have a
19 conversation about that trial?

20 A We did.

21 Q With the Defense lawyer not present?

22 A We did.

23 MR. ROSE: Your Honor, I'll object to this
24 as something that is fairly irrelevant to what
25 we're hearing today.

1 THE COURT: Let me see what the relevance
2 is if he ties it up.

3 Q (By Mr. Bennett) And did you have a
4 conversation with Judge Harmon when Mr. Flood was
5 around about that trial without Mr. Lekas around?

6 A I think he was there.

7 Q Okay. And in that conversation with Judge
8 Harmon, was he advising you on how best to prove
9 your case?

10 A No.

11 MR. ROSE: Object to relevance, Your
12 Honor.

13 THE COURT: Overruled.

14 A No, he was not.

15 MR. BENNETT: I'll pass the witness.

16 MR. ROSE: No further questions.

17 THE COURT: Okay. Anything further from
18 the State?

19 MR. ROSE: No further questions, Your
20 Honor.

21 THE COURT: The Court is going to take
22 judicial notice of all of the information that
23 is contained in the clerk's file. Is there any
24 objection to that?

25 MR. ROSE: No objection from me, Your

1 Honor.

2 THE COURT: From the Defense?

3 MR. FLOOD: No.

4 MR. BENNETT: No objection.

5 THE COURT: Just the documents.

6 Anything else?

7 MR. BENNETT: Yes, I would recall

8 Mr. Flood.

9 THE COURT: Okay.

10 MR. BENNETT: Would you like to swear him
11 in?

12 THE COURT: No.

13 MR. TYLER FLOOD,
14 as an officer of the Court, testified as follows:

15 DIRECT EXAMINATION

16 BY MR. BENNETT:

17 Q Mr. Flood, did you hear that conversation
18 between Mr. Hung and the Judge about Mr. Lekas'
19 case?

20 A Yes, I did.

21 Q And what was the nature of that
22 conversation?

23 A Well, it was -- it started off with Judge
24 Harmon indicating that -- or asking Dennis if he was
25 ready for trial the next day, and saying that he

1 would never make him go on a case that he wasn't
2 ready on, so don't worry about that. I was kind of
3 surprised that this conversation was being had
4 candidly off the record with myself and my paralegal
5 in the courtroom able to hear everything easily.

6 There was some banter between
7 Mr. Hung and Judge Harmon, but it was about -- I
8 would say around 10 minutes talking about are your
9 witnesses available? What are you going to use this
10 witness for? Mr. Hung said, I'm going to -- I have
11 this witness for this, and Judge Harmon advising
12 things about, Oh, you know, you might not need that
13 one, you can do it this way. This isn't exact
14 wording, but it was definitely strategy -- trial
15 strategy conversation and Judge Harmon advising
16 Mr. Hung on which witnesses he thought he might need
17 and what for and offering advice as to what
18 testimony they would provide and offering his
19 opinion on whether or not he would need that.

20 THE COURT: Was that in relation to your
21 trial or Mr. Lekas' trial?

22 MR. FLOOD: It was with respect to
23 Mr. Lekas' trial.

24 THE COURT: Okay. I just wasn't sure.
25

1 MR. BENNETT: The point, Your Honor, is
2 that it's another reason to question Judge
3 Harmon's impartiality in a DWI.

4 THE COURT: I just wasn't clear for myself
5 which trial it was.

6 MR. BENNETT: I apologize, Your Honor.

7 A I tried to get in touch with Mr. Lekas the
8 next morning as soon as we found out who the Defense
9 attorney was, but I don't know what happened with
10 that case, nor able to get in touch with him.

11 MR. BENNETT: I'll pass the witness, Your
12 Honor.

13 THE COURT: Anything further from either
14 side?

15 MR. ROSE: I want to cross Mr. Flood for
16 just a moment, Your Honor.

17 CROSS-EXAMINATION

18 BY MR. ROSE:

19 Q Mr. Flood, would it be fair to -- would it
20 be fair to characterize Judge Harmon's discussion
21 with Mr. Hung as the Judge pushing him to go to
22 trial, encouraging him that he should go to trial on
23 that case?

24 A They wanted to go on the indecency case on
25 Thursday, yes. I asked to not have to be in trial

1 on Thursday. The Judge knew there was another case
2 that he could go on. He thought it would be one
3 day, so that is why the conversation was taking
4 place; let's talk about planning for how we're going
5 to make this trial happen tomorrow.

6 Q Well, now, you were just talking about a
7 DWI trial and sort of DWI-type discussion, right?

8 A No.

9 Q What you were just discussing with Judge
10 Hughes was Judge Harmon telling Mr. Hung about a DWI
11 case?

12 MR. BENNETT: That must have been my
13 misunderstanding.

14 A No, it was an indecency case.

15 Q (By Mr. Rose) Okay. All right. So, that
16 was a bit of a misstatement. Really the discussion
17 apparently was -- Mr. Bennett may have misunderstood
18 that.

19 MR. BENNETT: It was my mistake.

20 Q (By Mr. Rose) So, the discussion that you
21 were previously describing to Judge Hughes was a
22 discussion between the Judge and the prosecutor
23 about an indecency case?

24 A Correct.

25 Q All right. Would it be fair to

1 characterize the conversation as the Judge urging
2 the State to go ahead and try their case?

3 A Absolutely not. It was coaching and
4 giving advice on how to prepare your case, what
5 evidence to elicit from certain witnesses, and his
6 opinion on whether or not certain witnesses were
7 even needed.

8 Q What was your impression of whether the
9 Judge wanted to go to trial on that case?

10 A He originally said that that is what they
11 were going to do is go to trial on that case. But
12 he also said, Are you ready, Dennis?

13 And he was showing -- what I found to
14 be surprising because it felt like very one-sided
15 favoritism in favor of Mr. Hung. And he
16 acknowledged, said Dennis, look, if you're not
17 ready, I'm never going to make you go to trial on a
18 case you're not ready on.

19 MR. ROSE: Pass the witness, Your Honor.

20 REDIRECT EXAMINATION

21 BY MR. BENNETT:

22 Q Have you ever heard Judge Harmon tell a
23 Defense lawyer, Look, if you're not ready -- I'm not
24 going to make you go to trial on a case you're not
25 ready on?

1 A Absolutely not. As a matter of fact, I've
2 had the complete opposite experience with him.
3 Every time we have raised an issue, it's been, We'll
4 see you at 11:00 o'clock for trial.

5 MR. BENNETT: Pass the witness.

6 MR. ROSE: Nothing further.

7 THE COURT: Anything further?

8 MR. FLOOD: I would just like to add that
9 Mr. Hung or Mr. Rose brought up the words ex
10 parte in my attempt to ask the Judge to go on
11 the record. Judge Harmon moves at a pretty
12 fast rate. I mean, he was ready to start, his
13 podium was out there, he was getting off the
14 bench, had his papers together. I could tell
15 there was no intention of me being able to
16 allow or -- I was missing my window of being
17 able to make a record on my objection. So, I
18 had to say something to him as he was passing
19 and ask him if we can make a record. So,
20 certainly that -- there was no -- the State was
21 in the courtroom. If Mr. Hung wasn't
22 listening, busy with something else, then I
23 apologize. But my intention was to put it all
24 on the record with all of the parties present.
25 That wasn't allowed. So, my only other option

1 was to raise it in voir dire in order to have a
2 record of it.

3 THE COURT: Okay.

4 Anything else?

5 MR. ROSE: Nothing, Your Honor.

6 THE COURT: The Motion to Recuse is
7 denied, but I would strongly hope that the
8 Judge would do the right thing and take down
9 the plaque.

10 Anything else?

11 MR. FLOOD: No, ma'am.

12 MR. BENNETT: No, Your Honor. Thank you.

13 THE COURT: I'll order y'all to return to
14 County Court No. 2 to resume trial at 11:00
15 o'clock.

16 MR. FLOOD: Yes, ma'am.

17 (Court in recess.)

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3 STATE OF TEXAS

4
5 COUNTY OF HARRIS

6 I, Connie L. Cole, Official Court Reporter in
7 and for the County Criminal Court at Law No. 15
8 of Harris County, Texas, do hereby certify that
9 the above and foregoing contains a true and
10 correct transcription of all portions of
11 evidence and other proceedings requested in
12 writing by counsel for the parties to be
13 included in this volume of the Reporter's
14 Record, in the above-styled and numbered cause,
15 all of which occurred in open court or in
16 chambers and were reported by me.

17
18 I further certify that this Reporter's Record
19 of the proceedings truly and correctly reflects
20 the exhibits, if any, admitted by the
21 respective parties and requested to be made a
22 part of this record.

23
24 WITNESS MY SIGNATURE on this, the 10th day of
25 April, 2012.

Connie L. Cole

Connie L. Cole, TEXAS CSR 6104
Expiration Date: 12/31/12
Official Court Reporter
County Criminal Court at Law #15
1201 Franklin, 11th floor
Houston, Texas 77002
(713) 755-4760

REPORTER'S RECORD
VOLUME 2 OF 2 VOLUMES
CAUSE NO. [REDACTED]


THE STATE OF TEXAS * IN THE COUNTY CRIMINAL
VS. *
 *
 * COURT AT LAW NUMBER 15
 *
 SIMPSON * OF HARRIS COUNTY, TEXAS

EXHIBIT INDEX

On the 30th day of March, 2012, the following proceedings came on to be heard in the above-entitled and numbered cause before the Honorable Jean Spradling Hughes, Judge presiding, held in Houston, Harris County, Texas:

Proceedings reported by machine shorthand.

COPY

A P P E A R A N C E S

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(713) 755-5800
ATTORNEY FOR THE STATE OF TEXAS

- AND -

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Attorney at Law
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405 Main, Suite 820
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713-224-5529
ATTORNEY FOR THE DEFENDANT

- AND -

MR. MARK BENNETT
Attorney at Law
SB# 00792970
7350 Oxford St.
Houston, TX 77007
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ATTORNEY FOR THE DEFENDANT

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DEFENSE EXHIBITS

Defense Exhibit No. 1	4a
Defense Exhibit No. 2	5a
Defense Exhibit No. 5	6a
Defense Exhibit No. 6	7a
Defense Exhibit No. 8	8a

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Defense Exhibit No. 1

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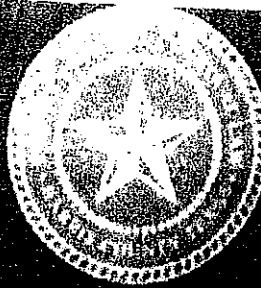
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Judge Bill Barnes
County Criminal Court of Law 21

PERIOD 800-881-8889
DEFENDANT'S
EXHIBIT
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CC 330-12 1753957

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Defense Exhibit No. 2



STATE COMMISSION ON JUDICIAL CONDUCT

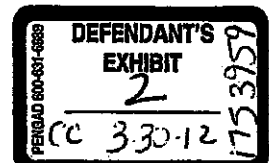
PUBLIC STATEMENT No. PS-2006-1

In July of 2004, a press conference was held by a parents' rights group to announce the filing of a complaint against a judge who they accused of violating the Texas Code of Judicial Conduct for his extra-judicial service on several boards, including Texas CASA ("Court Appointed Special Advocates"). Based on the notoriety caused by the announcement, the State Commission on Judicial Conduct determined that the best interests of the judiciary and the public would be served by issuing this Public Statement addressing the Commission's position regarding the propriety of judges who serve on the Texas CASA board of directors.

Texas CASA, Inc. is a statewide, nonprofit organization devoted to the recruitment, training, and oversight of volunteers who serve as court-appointed special advocates for abused and neglected children in juvenile dependency proceedings. Volunteers for CASA are specially trained to advocate for the best interests of a child involved in a court proceeding. Although CASA may differ in some ways from typical advocacy groups such as MADD ("Mothers Against Drunk Drivers") or ATLA ("Association of Trial Lawyers of America"), it is nonetheless a victim advocacy group whose volunteers are partisan, not neutral, in the judicial process. In many cases a CASA volunteer's recommendations may conflict with the position taken by attorneys for the birth parents or even the minors themselves, all of whom are parties in the proceedings before the judge.

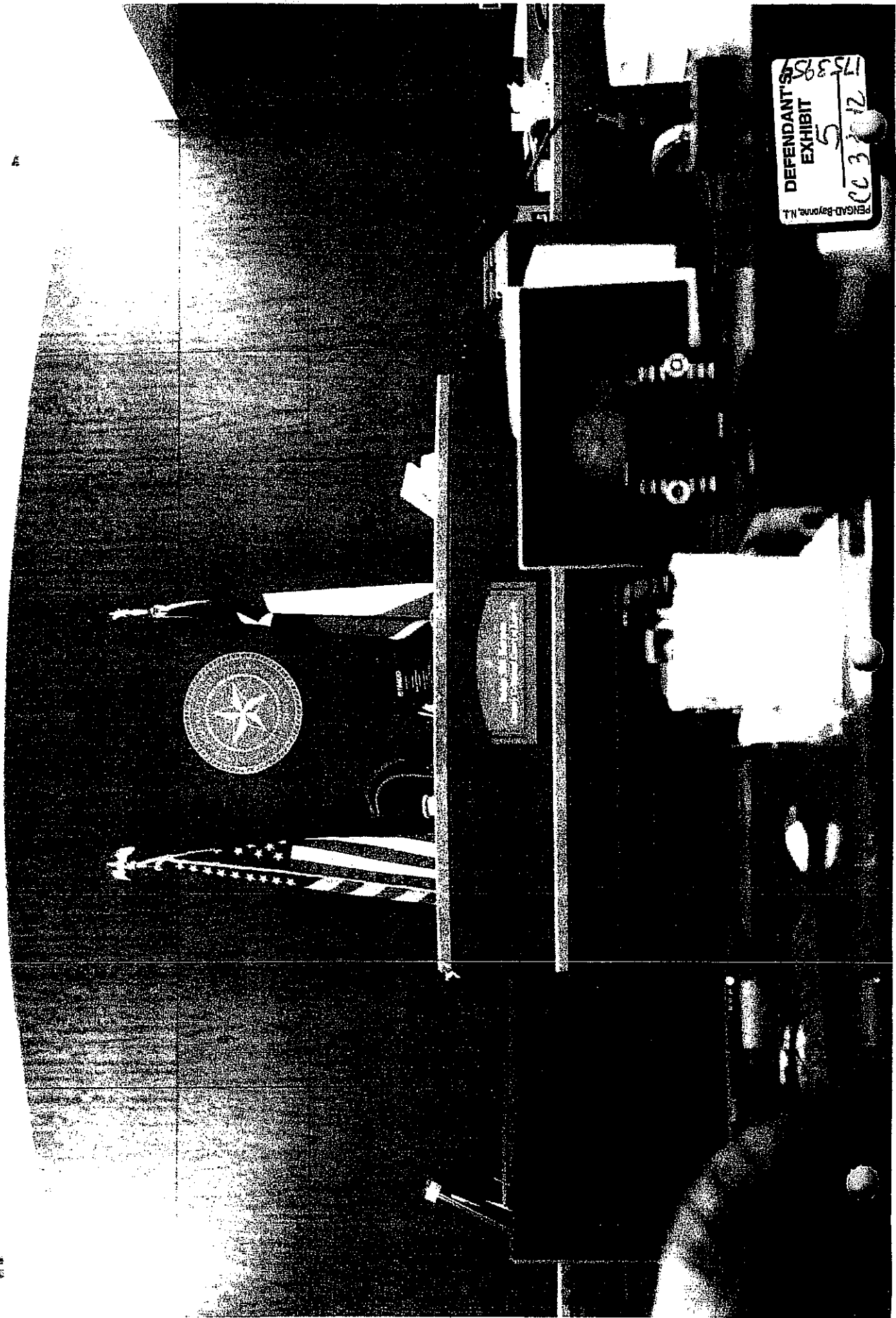
In general, judges are required to avoid impropriety and the appearance of impropriety in all of the judge's activities. Canon 2. In order to promote public confidence in the judiciary, it is not enough that a judge be fair and impartial when deciding cases, he must also *appear* to be fair and impartial. Canon 4A(1) of the Texas Code of Judicial Conduct addresses the appearance of impropriety and partiality by stating that "a judge shall conduct all of the judge's extra-judicial activities so that they do not cast reasonable doubt on the judge's capacity to act impartially as a judge." While judges are encouraged to engage in civic and charitable activities, their participation is restricted to activities that do not reflect adversely upon the judge's impartiality or interfere with the performance of judicial duties. Canon 4C. Likewise, if the organization will be engaged in proceedings that would ordinarily come before the judge or will be regularly or frequently engaged in adversary proceedings in any court, a judge should not serve as an officer, director, trustee or non-legal advisor of the organization. Canon 4C(1).

In order to avoid the appearance of impropriety and partiality, judges should be cautious about serving an organization, even one as noble and praiseworthy as CASA, when such an organization advocates a particular legal philosophy or position. This is especially true when the organization will be involved in proceedings likely to come before the judge. See Jeffrey Shaman, et al., *Judicial Conduct and Ethics* §9.10 (3d ed. 2000). While it is true that judges who serve any sort of advocacy group run the risk that the public will perceive that the judge supports the policy positions of that organization, judges who serve an organization like CASA would likewise endanger the public perception of the judge's impartiality for it would not be unreasonable for the public to believe that a judge who is affiliated with



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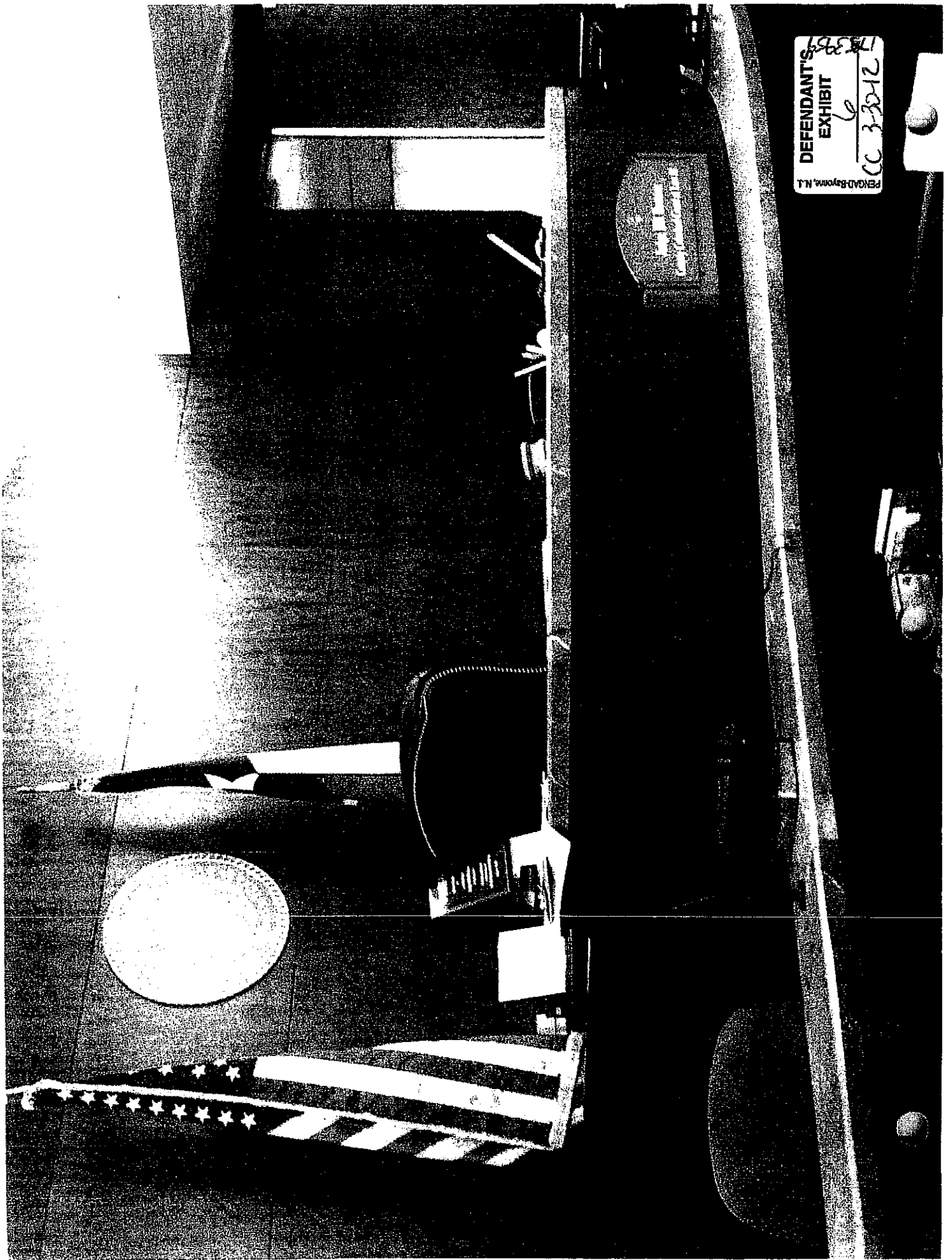
Defense Exhibit No. 5



DEFENDANT'S EXHIBIT
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CC 3212
PERGAD-Boyone, N.J.

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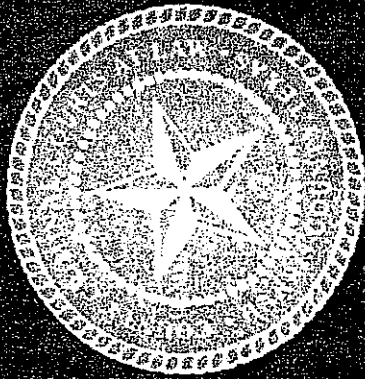
Defense Exhibit No. 6



DEFENDANT'S
EXHIBIT
17-3969
CC 332-12
PERGAD-Byron, N.J.

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Defense Exhibit No. 8



MAADO

Judge: Bill W. Gorman
County Criminal Court at Law 12

PENNSYLVANIA
EXHIBIT
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US 3012
PENGAD-Bayonne, NJ

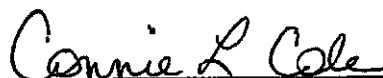
1
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3 STATE OF TEXAS

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5 COUNTY OF HARRIS

6 I, Connie L. Cole, Official Court Reporter in
7 and for the County Criminal Court at Law No. 15
8 of Harris County, Texas, do hereby certify that
9 the above and foregoing contains a true and
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15 all of which occurred in open court or in
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17 I further certify that this Reporter's Record
18 of the proceedings truly and correctly reflects
19 the exhibits, if any, admitted by the
20 respective parties and requested to be made a
21 part of this record.

22 WITNESS MY SIGNATURE on this, the 10th day of
23 April, 2012.

24
25


Connie L. Cole, TEXAS CSR 6104
Expiration Date: 12/31/12
Official Court Reporter
County Criminal Court at Law #15
1201 Franklin, 11th floor
Houston, Texas 77002
(713) 755-4760

EXHIBIT D

**COURT OF APPEALS OPINION
WITH JUSTICE SHARP'S DISSENT
SIMPSON V. STATE
(6-17-14)**

Opinion issued June 17, 2014.



In The
Court of Appeals
For The
First District of Texas

NO. 01-12-00380-CR

██████████ **SIMPSON, Appellant**

V.

THE STATE OF TEXAS, Appellee

On Appeal from the County Criminal Court at Law No. 2
Harris County, Texas
Trial Court Case No. 1753959

MEMORANDUM OPINION

██████████ Simpson filed a motion for rehearing of our memorandum opinion of December 31, 2013. Simpson's motion for rehearing is overruled; the majority opinion of December 31, 2013 is withdrawn; and the following substitute majority opinion is issued in its place.

A jury convicted [REDACTED] Simpson of the misdemeanor offense of driving while intoxicated.¹ The trial court assessed punishment at 180 days' confinement and a \$500 fine, suspended the sentence, and placed Simpson on one year of community supervision. Simpson's appeal raises six issues. In her first four issues, Simpson contends that the trial court abused its discretion in denying her challenges for cause against four veniremembers who each expressed a belief that police officers are more credible witnesses. In her fifth issue, Simpson argues that the trial court's refusal to remove from its bench a Mothers Against Drunk Driving plaque during the DWI trial deprived her of substantial rights. Finally, in her sixth issue, Simpson contends the administratively assigned recusal judge abused her discretion by denying Simpson's motion to recuse the trial judge for bias, as evidenced by the MADD plaque and an anti-drunk driving video previously loaded onto YouTube that includes comments by the trial judge.

We affirm.

Background

Simpson was involved in a two-car accident with W. Pineda. Before the accident occurred, Pineda noticed that Simpson was driving unsafely. When Pineda slowed for the car in front of him to turn, Simpson's car hit his twice from behind. Pineda testified that he spoke with Simpson immediately following the

¹ TEX. PENAL CODE ANN. § 49.04 (West Supp. 2013).

accident. He noticed that Simpson's eyes were red, and he recalled her saying that she felt dizzy. She apologized and offered to pay for the damage to his vehicle. Although Simpson asked Pineda not to call the police, he did.

Officer Zhang arrived and noted that Simpson had glassy and bloodshot eyes, slurred speech, and a moderate odor of alcohol. Because he suspected that Simpson was intoxicated, he administered the Horizontal Gaze Nystagmus field sobriety test. At trial, Officer Zhang testified that Simpson had six of six clues for intoxication during the HGN test.

Officer Zhang drove Simpson to Central Intox, where an evidence technician, Wooten, performed additional field sobriety tests and questioned Simpson. Wooten testified that Simpson told him she rear-ended Pineda because she could not react fast enough and that she had been drinking. When Wooten asked Simpson whether the alcohol affected her ability to drive, she replied that "apparently it did." Based on the physical indications of alcohol use, her performance on the field sobriety tests, and her statements while in custody, Simpson was charged with misdemeanor driving while intoxicated.

At the DWI trial, Simpson's counsel challenged for cause four of the veniremembers based on their statements that they felt police officers were more credible witnesses. Because the trial court denied the challenges for cause, Simpson had to use her peremptory strikes to prevent three of those

veniremembers from being seated on the jury. The trial court denied Simpson's request for additional peremptory strikes, allowing one of the challenged veniremembers to serve on the jury.

During voir dire, Simpson's counsel questioned the veniremembers about a plaque leaning against the back wall behind the trial judge's chair. The veniremembers confirmed that they could tell the plaque said "MADD" and realized it was from Mothers Against Drunk Driving. In front of the jury panel, Simpson requested the trial judge to remove the plaque, but he refused. During the trial—but outside of the presence of the jury—Simpson requested the trial judge recuse himself based on his failure to remove the plaque. The trial judge denied the motion, noting in his order that Simpson had elected to have the court assess punishment which, he contended, was an indication she did not, in fact, believe that he was biased against her.

At the conclusion of the trial, the jury found Simpson guilty of misdemeanor driving while intoxicated. The court sentenced her to 180 days' confinement, assessed a \$500 fine, suspended the sentence, and placed Simpson on one year of community supervision. Simpson appealed.

Challenges for Cause

In her first four issues, Simpson contests the trial court's rulings on her challenges for cause. Four of the potential jurors—jurors number three, eight,

thirteen, and fourteen—indicated during voir dire that they believe police officers are more credible than other categories of witnesses. Simpson’s counsel questioned each of them about their beliefs. The trial court also asked them questions. Simpson moved to strike the four veniremembers, but the trial court denied the motion. Both parties agree that Simpson preserved error to challenge the trial court’s rulings. The State argues that none of the four veniremembers revealed an impermissible level of bias, considering the complete voir dire and not just isolated statements.

A. Standard of review

A bias or prejudice that substantially impairs a potential juror’s ability to carry out his oath and court instructions in accordance with the law disqualifies him from jury service. *See Gardner v. State*, 306 S.W.3d 274, 295 (Tex. Crim. App. 2009). If the potential juror’s bias or prejudice is established as a matter of law, the trial court has no discretion but to disqualify that person from jury service. *See Malone v. Foster*, 977 S.W.2d 562, 564 (Tex. 1998). If, on the other hand, the potential juror makes a statement indicating a bias but agrees he or she will apply the law as instructed, then the trial court has discretion to deny the challenge for cause. *See Feldman v. State*, 71 S.W.3d 738, 744 (Tex. Crim. App. 2002).

The deference given the trial court’s decision is even greater when the veniremember’s statements are “ambiguous, vacillating, unclear, or contradictory.”

Gardner, 306 S.W.3d at 295–96; *Feldman*, 71 S.W.3d at 744. Vacillation includes a statement indicating a bias toward one category of witness followed by a promise to listen to all witnesses before deciding credibility. *See Feldman*, 71 S.W.3d at 744–47. Similarly, an answer to a voir dire question that could be interpreted one way to show bias or another way that would not be subject to challenge is ambiguous and, therefore, left to the trial court’s discretion. *See Gardner*, 306 S.W.3d at 296–97 (holding trial court had discretion to assign meaning to veniremember’s ambiguous statement).

A considerable amount of deference is appropriate because the trial judge is in the courtroom and in the best position to observe the jurors’ demeanor and tone. *See id.* at 295–97; *Feldman*, 71 S.W.3d at 744.

B. The trial court did not abuse its discretion denying challenges for cause

Simpson argues that the four veniremembers “unequivocally stated that they would give more credibility to a police officer over another witness simply because they were a police officer” and, therefore, “demonstrated bias as a matter of law.”

We review the entire voir dire record to determine if there is sufficient evidence to find bias as a matter of law by any of the four challenged veniremembers. *See Feldman*, 71 S.W.3d at 744. This includes the veniremembers’ answers to questions by all counsel as well as the court. *See Anderson v. State*, 633 S.W.2d 851, 854 (Tex. Crim. App. 1982); *cf. Cortez v. HCCI–San Antonio, Inc.*,

159 S.W.3d 87, 91–92 (Tex. 2005) (rejecting argument that veniremember cannot be “rehabilitated” after indicating bias).

An example of deference towards police officer testimony that reaches the level of bias as a matter of law can be found in *Hernandez v. State*, 563 S.W.2d 947, 950 (Tex. Crim. App. 1978). The attorney there asked a potential juror if she believed that police officers would not lie on the witness stand. The following exchange occurred between the attorney and venire member:

Q: I am not talking about making a mistake, I am talking about telling a knowing willing falsehood from the witness stand.

A: I don’t think a police officer would tell a falsehood from the witness stand.

Q: Under any circumstances?

A: No, I don’t.

Id. The veniremember’s firmly held conviction that police officers would never lie demonstrated a bias against the defendant and required that she be disqualified from jury service as a matter of law. *See id.*

During Simpson’s trial, potential juror number three stated that he was good friends with a police officer, he believed officers were more credible witnesses, and the officers’ training caused their testimony to “carry [] more weight,” in his opinion. However, after additional instruction from the trial court, he affirmed that

he would not prejudge the credibility of any witness and would presume the defendant innocent.

Likewise, potential juror number eight began voir dire stating that he felt police officers had more credibility as witnesses. He explained that if he was unsure who to believe—after listening to all the testimony—he would go with the police officer's testimony because police officers are more credible. However, after the trial court explained the importance of waiting until a witness testifies to determine that witness's credibility, the potential juror agreed that he would not prejudge any witness.

Potential juror number thirteen gave a very similar explanation of his deference to police officers, but later agreed that he would not prejudge the credibility of a police officer or any other witness. In fact, he clarified that he already changed his position when counsel explained to him the necessity of waiting:

Venire member: Yes, sir. I did change my answer to I will listen to the testimony.

Court: Can you make me a promise right now you will not prejudge the credibility just because they're police officers?

Venire member: I did understand that after they explained that. I would not prejudge somebody until they actually testified, that is true.

Finally, potential juror number fourteen explained his position as follows: “I would wait and listen to the testimony but being a trained police officer they would have my benefit of any doubt, if there was any doubt whatsoever. They would get the benefit of the doubt.” However, after the trial court explained the importance of waiting to determine credibility, potential juror number fourteen agreed that he would wait for each witness to testify and would not prejudge any witness.

We hold that these statements by potential jurors number three, eight, thirteen, and fourteen were equivocal and, therefore, do not support a conclusion that the veniremembers were biased as a matter of law. *See Feldman*, 71 S.W.3d at 749 (“[W]e will uphold the trial court’s decision when a prospective juror’s answers are “vacillating, unclear, or contradictory.”). Therefore, the question before this Court is whether the trial court abused its discretion in denying the four motions to strike. *See Feldman*, 71 S.W.3d at 749.

The Court of Criminal Appeals repeatedly has addressed challenges for cause against potential jurors who state a belief that police officers are more credible witnesses. *See, e.g., Feldman*, 71 S.W.3d at 747; *Ladd v. State*, 3 S.W.3d 547, 560 (Tex. Crim. App. 1999); *Smith v. State*, 907 S.W.2d 522, 530–31 (Tex. Crim. App. 1995); *Jones v. State*, 982 S.W.2d 386, 389 (Tex. Crim. App. 1998). In doing so, that Court has refused to require complete impartiality. *See Jones*, 982 S.W.2d at 389. This is because it is human nature to give one category of witness a

slight edge over another category of witness. *See id.* Jurors cannot be expected to set aside their natural skepticism during trial. *See id.* The Court explained:

[L]itigants are entitled to jurors who will be genuinely open-minded and persuadable, with no *extreme or absolute* positions regarding the credibility of any witness. . . . [However, c]omplete impartiality cannot be realized as long as human beings are called upon to be jurors. No person sitting as a juror can completely remove his own experiences, beliefs, and values, however hard he may try.

Id.

Thus, a potential juror who says that he would tend to believe a police officer more than another witness may serve on a jury. *See Ladd*, 3 S.W.3d at 560. A potential juror who says he might give more credibility to the testimony of a Texas Ranger, likewise, may serve on a jury. *See Smith*, 907 S.W.2d at 531. As long as these veniremembers agree that they can follow the law as explained to them, regardless of their personal beliefs and leanings, it is within the trial court's discretion to find them suitable for jury service and deny the challenge for cause. *See Feldman*, 71 S.W.3d at 747; *Davis v. State*, 329 S.W.3d 798, 811–13 (Tex. Crim. App. 2010) (“The proponent of a challenge for cause has the burden of establishing that the challenge is proper. The proponent does not meet this burden until he has shown that the venire member understood the requirements of the law and could not overcome his or her prejudice well enough to follow the law.”) (citations omitted); *cf. Cortez*, 159 S.W.3d at 94 (“An initial ‘leaning’ is not disqualifying if it represents skepticism rather than an unshakeable conviction.”).

None of these potential jurors professed firmly held convictions that police officers are always right or should always be believed. They each followed their statements regarding police officer credibility with assurances that they would not prejudge any witness but would, instead, follow the law as instructed. As a result, the trial court had discretion to determine whether these potential jurors exhibited sufficient bias to substantially impair their ability to apply the law. *See Gardner*, 306 S.W.3d at 295; *Davis*, 329 S.W.3d at 807.

These statements, in the context of the entire voir dire record and all of the individual veniremember's answers, did not demonstrate adequate bias to find that the trial court abused its discretion by denying the motions to challenge for cause. We overrule Simpson's first, second, third, and fourth issues.

Display of MADD Plaque

In her fifth and sixth issues, Simpson complains that the trial judge refused to remove a small MADD plaque that was leaning against the back wall behind the judge's chair during her DWI trial. Simpson objected to the display of the plaque and requested the trial court remove it. The trial court denied the request.

Simpson obtained agreement from the veniremembers during voir dire that they could see the plaque and believed it was from MADD, though there is no indication that anything else on the plaque was legible from the veniremembers' location in the courtroom. Subsequently, Simpson moved to have the trial judge

recuse himself, arguing that he did not appear to be impartial. The motion was denied. Simpson presented another recusal motion to a judge administratively assigned to hear her motion. That motion also was denied: “The motion to recuse is denied, but I would strongly hope that the Judge would do the right thing and take down the plaque.” Simpson presents two challenges to these adverse rulings.

A. Simpson’s substantial rights not affected

In her fifth issue, Simpson argues that the trial court erred by refusing to remove the MADD plaque during her DWI trial and that the error violated statutory law and the Code of Judicial Conduct. Simpson contends that the trial judge’s impartiality reasonably was in question and his refusal to remove the plaque adversely affected her substantial rights. Even assuming Simpson is correct that the trial court erred by refusing to remove the plaque, we will not reverse Simpson’s conviction if the alleged error was harmless. *See* TEX. R. APP. P. 44.2(b); *Sells v. State*, 121 S.W.3d 748, 764–65, 764 n.69 (Tex. Crim. App. 2003).

An error is harmless if it fails to affect a defendant’s substantial rights, considering the entire record. TEX. R. APP. P. 44.2(b); *Burnett v. State*, 88 S.W.3d 633, 637 & n.8 (Tex. Crim. App. 2002); *Motilla v. State*, 78 S.W.3d 352, 355 (Tex. Crim. App. 2002). A substantial right is not affected if the reviewing court has “fair assurance that the error did not influence the jury, or had but a slight effect.” *Solomon v. State*, 49 S.W.3d 356, 365 (Tex. Crim. App. 2001) (citation omitted).

If, on the other hand, there is a “grave doubt” that the result was free from the substantial influence of the error, then the defendant’s substantial rights were affected. *See Burnett*, 88 S.W.3d at 637–38. “Grave doubt” means that “in the judge’s mind, the matter is so evenly balanced that he feels himself in virtual equipoise as to the harmlessness of the error.” *Id.*

The law does not place a burden on the defendant to establish harm under Rule 44.2(b). *See Burnett*, 88 S.W.3d at 638. “[S]ome errors may ‘defy’ harm analysis . . . [meaning that] some errors will not be proven harmless because harm can never be determined due to the lack of data needed for analysis.” *Llamas v. State*, 12 S.W.3d 469, 471 (Tex. Crim. App. 2000) (citing *Cain v. State*, 947 S.W.2d 262, 264 (Tex. Crim. App. 1997)). Thus, if a review of the record results in insufficient data to conduct a harm analysis, the error will not be proven harmless and a reversal will result. *See Llamas v. State*, 991 S.W.2d 64, 68 (Tex. App.—Amarillo 1998), *aff’d*, 12 S.W.3d 469 (Tex. 2000); *Cain*, 947 S.W.2d at 264.

In *Llamas*, the defendant contended that the trial court erred by denying his mandatory right to a severance. *See id.* at 470. The court of appeals determined that there was “no way of knowing . . . if or how the consolidation of the charges impacted the jury’s decision” and, based on that conclusion, held that the error defied harm analysis. *Llamas*, 991 S.W.2d at 69–70. The Court of Criminal Appeals disagreed that there was insufficient data on which to conduct the harm

analysis, noting that a reviewing court should consider “everything in the court reporter’s record . . . including all the evidence admitted at trial, the closing arguments, and, in this case, the jurors’ comments during voir dire” to decide whether the trial court’s erroneous decision to deny severance affected a substantial right of the defendant. *Llamas*, 12 S.W.3d at 471; *see also Motilla*, 78 S.W.3d at 355–56 (listing factors to consider in harm analysis, including other evidence, jury instructions, theories of case, closing arguments, voir dire, whether error was emphasized by State, and whether “overwhelming evidence of guilt” exists).

Simpson contends that the record “does not establish any reasonable confidence” that the presence of the MADD plaque “had no effect on the jury’s actions.” We disagree. Our review of the record, including the voir dire of potential jury members, reveals that the presence of the plaque likely had, at most, only a slight effect and, therefore, was harmless.

Simpson implies that the plaque was an award to the judge from MADD and, as such, constitutes evidence that the judge was aligned with the philosophies of the organization. But the record does not support this conclusion. There is nothing in the record to indicate that the potential jurors could read what was written on the plaque. In fact, the record is silent with regard to the inscription on

the plaque. At most, the record shows that it was a small plaque and that the letters "MADD" were legible.

Defense counsel questioned the potential jurors about the plaque, the proper role of the prosecution, and the importance that a trial judge remains neutral. Through this questioning of the venire members, Simpson established that the trial judge's role is to be a neutral and unbiased "referee." The jurors agreed with that characterization:

DEFENSE: Okay, very good. Let me ask you about Mothers Against Drunk Drivers, an organization like that. Has anybody ever given their time or money to an organization such as MADD or Narcotics Anonymous or things like that?

[some jurors indicate "yes"]

DEFENSE: I understand. Okay. With that in mind, this is my last issue. I wanted to know like how you see the different parties here. The government or the state, the prosecutors, they're here to do what?

JUROR: Prosecute, prove the case.

DEFENSE: Right. So the judge is the one that's like the referee that calls the balls and strikes. How would you see his role? What is the judge's role suppose[d] to be in a case? Is it fair to side with one side or the other?

JUROR: No, it's not. He's here to facilitate.

DEFENSE: Right. Would you say neutral?

JUROR: Yes.

DEFENSE: Unbiased. If you were in this situation you wouldn't want to be anywhere else, right? I have—again, I can't say enough about Judge Harmon's reputation in this building and respect I have for him but judges are suppose[d] to be neutral and we got to have that in a trial like this. . . .

We conclude that this is not a case in which we have inadequate information to weigh the possible effect that the presence of this plaque could have had on the jurors. Given the nature of the voir dire, the small size of the plaque, and that, other than the letters "MADD," it was illegible to the jurors, we have fair assurance that any error of the trial court in leaving the plaque at his bench did not influence the jury against Simpson, or had but a slight effect. *Solomon*, 49 S.W.3d at 365. Accordingly, we conclude that display of the plaque was harmless.

We overrule issue five.

B. Reviewing judge did not abuse discretion by denying motion to recuse

Simpson argues in her sixth issue that the judge administratively assigned to hear her recusal motion abused her discretion by denying the motion. The hearing occurred midway through the trial; the judge denied the motion.

1. Standard of review

An order denying a motion to recuse is reviewed under an abuse-of-discretion standard. TEX. R. CIV. P. 18a(j)(1)(A) (West Supp. 2014); *De Leon v. Aguilar*, 127 S.W.3d 1, 5 (Tex. Crim. App. 2004); *Arnold v. State*, 853 S.W.2d 543, 544 (Tex. Crim. App. 1993). The court abuses its discretion only if its ruling

is outside the “zone of reasonable disagreement” or fails to apply proper guiding rules and principles. *Kemp v. State*, 846 S.W.2d 289, 306 (Tex. Crim. App. 1992); *Abdygapparova v. State*, 243 S.W.3d 191, 198 (Tex. App.—San Antonio 2007, pet. ref’d). Our review is fact intensive, considering the entire record from the recusal hearing. *See Abdygapparova*, 243 S.W.3d at 198–99 (noting that review of denial of recusal motion entered at beginning of trial cannot include trial judge’s subsequent actions during trial); *Roman v. State*, 145 S.W.3d 316, 319 (Tex. App.—Houston [14th Dist.] 2004, pet. ref’d). Absent a clear showing to the contrary, we presume the trial court was neutral and detached. *See Steadman v. State*, 31 S.W.3d 738, 741 (Tex. App.—Houston [1st Dist.] 2000, pet. ref’d).

2. The rules governing recusal

Rule 18b(b) provides that a judge must be recused if “the judge’s impartiality might reasonably be questioned” or “the judge has a personal bias or prejudice concerning the subject matter or a party.” TEX. R. CIV. P. 18b(b)(1–2). Rule 18b(b)(1) is a general rule requiring that a judge objectively appear to be impartial, which he fails to do if he “harbors an aversion, hostility or disposition of a kind that a fair-minded person could not set aside when judging the dispute.” *Gaal v. State*, 332 S.W.3d 448, 453 (Tex. Crim. App. 2011); TEX. R. CIV. P. 18b(b)(1). Rule 18b(b)(2) is more specific. It requires a judge not to have actual,

personal bias or prejudice concerning a party or the subject matter of the litigation. TEX. R. CIV. P. 18b(b)(2).

The party seeking recusal must establish that a reasonable person, knowing all the circumstances involved, would have doubts as to the impartiality of the judge. *See Kemp*, 846 S.W.2d at 305; *Abdygapparova*, 243 S.W.3d at 198. The evidence must be sufficient to overcome the presumption of judicial impartiality. *See Kemp*, 846 S.W.2d at 306; *Abdygapparova*, 243 S.W.3d at 198–99. Further, the bias must be “of such nature, and to such extent, as to deny the defendant due process of law.” *Kemp*, 846 S.W.2d at 305; *see also Abdygapparova*, 243 S.W.3d at 199 (noting that this is a “high standard”).

Recusal generally is not required when the judge is accused of a personal bias based solely on his judicial rulings, remarks or actions. *See Gaal*, 332 S.W.3d at 453–54. However, when the judge’s remarks reveal an opinion based on an extra-judicial source (sometimes referred to as “personal” bias), recusal could be warranted. *See id.* In either case, if the comments or actions reveal “such a high degree of favoritism or antagonism as to make fair judgment impossible,” then recusal is required. *See id.* (quoting *Liteky v. United States*, 510 U.S. 540, 555, 114 S. Ct. 1147 (1994) (Kennedy, J., concurring)).

3. Simpson's allegations of bias and partiality

At the hearing, Simpson argued that recusal was proper and that a reasonable person would have doubts about the trial judge's impartiality for three reasons: (1) the MADD plaque displayed during her DWI trial appeared to be an endorsement of that organization by the court; (2) the display of the plaque violated various Canons of Judicial Conduct—Canons 2B, 3B(5), and 4A(1)²—all of which concern impartiality and bias; and (3) a previously posted YouTube video that was said to include the judge and discuss the perils of drunk driving evidenced an “improper alignment” with the prosecution. In addition to her general argument that the plaque was improper, she specifically complains that her request to remove the plaque was denied in front of the jury, which she alleges created an appearance of partiality.

During the recusal hearing, Simpson recounted her requests to the trial judge to remove the plaque, as well as his refusal to do so. She offered as evidence photographs showing the location and general visibility of the plaque to the jurors.

² Canon 2B: “A judge shall not allow any relationship to influence judicial conduct or judgment. A judge shall not lend the prestige of judicial office to advance the private interests of the judge or others” Canon 3B(5): “A judge shall perform judicial duties without bias or prejudice.” Canon 4A(1): “A judge shall conduct all of the judge’s extra-judicial activities so that they do not: cast reasonable doubt on the judge’s capacity to act impartially as a judge” TEX. CODE JUD. CONDUCT, Canons 2B, 3B(5), and 4A(1), *reprinted in* TEX. GOV’T CODE ANN., tit. 2, subtit. G, app. B (West 2013).

Then she summarized the veniremembers' answers to her voir dire questions concerning the MADD plaque.

The State countered that the plaque was not very visible. Moreover, none of the potential jurors indicated that they questioned the trial judge's impartiality; they simply acknowledged that they noticed the plaque.

4. Bias and partiality not sufficiently shown to find abuse of discretion by recusal judge

From the arguments and evidence presented at the recusal hearing, it is clear that Simpson did not claim to have been treated unfairly by the trial judge in any aspect of her case other than by his refusal to remove the plaque and the existence of the YouTube video. Her complaint is limited to these two items, which she contends demonstrate bias and partiality.

Simpson's argument that the judge's ruling—made in front of the jury—to deny her request to remove the plaque demonstrates partiality is without merit. Judicial rulings almost always are inadequate to establish bias. *See Gaal*, 332 S.W.3d at 454 (“Generally, though, recusal is not required when based solely on judicial rulings, remarks or actions. These acts almost never constitute a valid basis for a bias or partiality motion.”) (citation omitted); *Abdygapparova*, 243 S.W.3d at 198 (holding that claims of bias and prejudice based on judicial rulings must show “deep-seated favoritism or antagonism that would make fair judgment impossible” and deny a party due process of law; noting that the rulings would have to

somehow be *wrongful* or *inappropriate*, not just unfavorable to the complaining party) (citation omitted).

A related argument—that the presence of the plaque in the courtroom evidenced support for MADD—alleges an extra-judicial source of bias and partiality. We find this claim to be analogous to cases in which trial courts have made extra-judicial statements regarding a category of offense or punishment. *See Rosas v. State*, 76 S.W.3d 771, 775 (Tex. App.—Houston [1st Dist.] 2002, no pet.); *Chastain v. State*, 667 S.W.2d 791, 794 (Tex. App.—Houston [14th Dist.] 1983, writ ref'd).

In *Rosas*, this Court held that the recusal judge did not abuse his discretion by denying the recusal motion of a defendant charged with sexual assault. 76 S.W.3d at 775. The defendant alleged that the judge had a bias in favor of the prosecution in sex-abuse cases, had been a member of the Children's Assessment Center's judicial counsel, and told the jury during voir dire that she "hates such cases." *Id.* The trial judge had stated on the record:

Nobody likes these cases. I don't like standing up here and reading these allegations to you. I don't even like reading them. Nobody thinks that they want to sit and listen to this type of case. . . . [T]he Prosecutor doesn't love prosecuting these cases. The Defense probably doesn't love defending these cases. But here we are.

Id. We held that the recusal judge did not abuse his discretion when he denied the recusal motion because these statements did not exhibit hostility towards the

defendant sufficient to deny him due process of law. *See id.* These comments were about sexual assault cases as a general category of offense—unrelated to the question whether this particular defendant was guilty of sexual assault. *See id.* Further, the allegation that the judge had an improper affiliation with Children’s Assessment Center did not require recusal because ethical violations, alone, do not mandate recusal of a trial judge. *See id.*; *Gaal*, 332 S.W.3d at 453–54.

Our sister court, likewise, has held that a judge’s extra-judicial expression of personal views will not require reversal. *Chastain*, 667 S.W.2d at 796. There, the judge made statements on a television program that the death penalty should be invoked more often if it is to be an effective deterrent. *See id.* at 794. The program aired after some, but not all, of the jurors had been selected in *Chastain*’s case, which involved a possible death sentence. *See id.* The defendant argued that the extra-judicial statements required the trial judge be recused. *See id.* at 796. The appellate court disagreed:

The judge merely stated his personal views on the death penalty and its effect as a deterrent. He made no statements which indicated that he believed that appellant should receive the death penalty or that he would encourage this jury to [i]nvoke such a penalty. . . . It is presumed that a judge will base his judgment upon the facts as they are developed at the trial.

Id.

We conclude that the display of the MADD plaque is analogous to the judicial comments made in *Rosas* and *Chastain*. While the display of the plaque

could be viewed as evidence the trial judge dislikes drunk driving, it was not a comment on this particular defendant's guilt or innocence and, therefore, did not demonstrate bias against Simpson. *See Rosas*, 76 S.W.3d at 775.

Simpson's evidence fails to overcome the presumption that the trial court was unbiased in presiding over her trial. *See Steadman*, 31 S.W.3d at 741. Further, she has not established judicial bias extreme enough to have deprived her of due process of law. *See Rosas*, 76 S.W.3d at 774.

Simpson's alternative argument that the trial court's actions violated the Code of Judicial Conduct also is unavailing because such violations, even if proven, will not support recusal without more. *See Gaal*, 332 S.W.3d at 455.

Given the abuse-of-discretion standard, the question before this Court is not whether it is advisable to display a MADD plaque in a courtroom during a DWI trial or whether, in our view, the trial judge should have obliged defense counsel's request to take it down. Instead—when reviewing a denial of a motion to recuse—the issues before the appellate court are whether the reviewing judge (1) followed appropriate guiding rules and principles to analyze the recusal motion, and (2) reached a decision, based on information presented at the hearing, that was within the “zone of reasonable disagreement.” *Kemp*, 846 S.W.2d at 306; *Abdygapparova*, 243 S.W.3d at 197–98. To the extent the judge's refusal to remove the plaque supports recusal, it falls within the zone of reasonable

disagreement and, thus, within the reviewing judge's discretion whether to deny the motion. *Kemp*, 846 S.W.2d at 306; *Abdygapparova*, 243 S.W.3d at 197–98.

Finally, we reject Simpson's argument that the judge's statement about drunk driving in a YouTube video required his recusal. Simpson made the YouTube video available to the recusal judge to review, but never played it or offered it into evidence. The result is that it is not before us and, without it, we cannot know the exact statements made by the trial judge or their context.

We overrule Simpson's sixth issue.

Conclusion

The judgment of the trial court is affirmed.

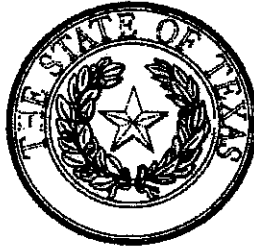
Harvey Brown
Justice

Panel consists of Justices Jennings, Sharp, and Brown.

Justice Sharp, dissenting.

Do not publish. TEX. R. APP. P. 47.2(b).

Opinion issued December 31, 2013



In The
Court of Appeals
For The
First District of Texas

NO. 01-12-00380-CR

[REDACTED] SIMPSON, Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the County Criminal Court at Law No. 2
Harris County, Texas
Trial Court Case No. [REDACTED]

DISSENTING OPINION

A Texas criminal courtroom is to be a sanctuary from interest groups and agendas. The evidence is what it is and the crimes and offenses are as recited in the criminal codes.

The influence of those who may have lobbied for various provisions in those codes has no place in the courtroom. It falls to the tribunal to assure a fair and impartial trial of the citizen accused.

To display behind the trial bench a plaque awarded by one of the most well-established interest groups in the nation not only fails to keep the interest group at bay, but also invites others to take notice that, in the judge's capacity as a public official, his actions merited the group's commendation. When that interest group is Mothers Against Drunk Driving—a group dedicated to the proposition that the offense for which the accused citizen is being tried in that very courtroom is a very bad and potentially horrific thing—the sanctuary has been twice defiled: not only by the agenda of the interest group, but also by the hubris of the judge charged with the responsibility of assuring a fair and impartial DWI trial.

That a judge so commended would take pride in such an award is understandable. But the criminal court judges of Harris County, Texas all have the benefit of individual private chambers where commendations, books, plaques, photos, etc. can be displayed. Display of such personal items in what is to be a hallowed sanctuary of impartial justice bespeaks a fundamental misunderstanding of the very proprietorship of that public space: it is the people's courtroom, not an oversized ante-room of some judge's chambers.

The majority opinion hints that the display of the MADD award may have been error but, determining that it did not affect Simpson's substantial rights, concludes such error, if any, is harmless. Yet, as noted by the majority, "If . . . there is a 'grave doubt' that the result was free from the substantial influence of the evidence, then the defendant's substantial rights were affected." *Burnett v. State*, 88 S.W.3d 633, 637 (Tex. Crim. App. 2002). "Grave doubt" is the situation in which, "in the judge's mind, the matter is so evenly balanced that he feels himself in virtual equipoise as to the harmlessness of the error." *Id.* at 637–38 (quoting *O'Neal v. McAninch*, 513 U.S. 432, 433–36, 115 S. Ct. 992 (1995)).¹

A plaque of commendation from one of the nation's most well-established interest groups on display behind the very bench at which a criminal court judge presides is an imprimatur of that judge by that interest group. The balance of my equipoise notwithstanding, because my review of the case leads me to believe that

¹ In *O'Neal v. McAninch*, the United States Supreme Court opined,

[W]e consider here the legal rule that governs the special circumstance in which record review leaves the conscientious judge in grave doubt about the likely effect of an error on the jury's verdict. (By 'grave doubt' we mean that, in the judge's mind, the matter is so evenly balanced that he feels himself in virtual equipoise as to the harmlessness of the error.) We conclude that the uncertain judge should treat the error, not as if it were harmless, but as if it affected the verdict (*i.e.*, as if it had a 'substantial and injurious effect or influence in determining the jury's verdict').

513 U.S. 432, 435, 115 S. Ct. 992 (1995).

the display was error and that it had a substantial influence in determining the jury's verdict, I respectfully dissent.

Jim Sharp
Justice

Panel consists of Justices Jennings, Sharp, and Brown.

Do not publish. TEX. R. APP. P. 47.2(b).

EXHIBIT E

PETITION FOR DISCRETIONARY REVIEW

SIMPSON V. STATE

(7-16-14)

No. _____
In the Court of Criminal Appeals of Texas

No. 01-12-00380-CR
In the Court of Appeals for the First District of Texas at Houston

No. 1753959
In the County Criminal Court at Law No. 2, Harris County, Texas

 **SIMPSON,**
Petitioner

v.

THE STATE OF TEXAS,
Respondent

PETITION FOR DISCRETIONARY REVIEW

**FILED IN
COURT OF CRIMINAL APPEALS**

July 16, 2014

ABEL ACOSTA, CLERK

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ORAL ARGUMENT REQUESTED

**TO THE HONORABLE COURT OF CRIMINAL APPEALS
OF TEXAS:**

Comes now Petitioner, Kristen Aleia Simpson, by and through her undersigned counsel, and presents this Petition for Discretionary Review pursuant to Tex. R. App. P. § 5.

PARTY IDENTIFICATION

Pursuant to TEX. R. APP. P. 38.2(a)(1)(A), a complete list of the names of all interested parties is provided below:

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Trial Judge:

Hon. William Harmon — Presiding Judge
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STATEMENT REGARDING ORAL ARGUMENT

Pursuant to TEX. R. APP. P. 9.4(g) and TEX. R. APP. P. 39.1, Petitioner requests oral argument to expand the legal theories stated herein and to assist the Judges.

STATEMENT OF THE CASE

The State charged petitioner with driving while intoxicated in violation of TEX. PENAL CODE ANN. § 49.04 (Vernon 2011). Petitioner pled not guilty to the charge. A jury disagreed, found her guilty as charged, and the judge sentenced her to 180 days confinement and a \$500 fine. He then ordered the sentence suspended and placed appellant on community supervision for 1 year.

Simpson unsuccessfully appealed her conviction and now brings this petition.

STATEMENT OF PROCEDURAL HISTORY

The State charged petitioner with driving while intoxicated. She pled not guilty, was convicted by a jury, and was sentenced to 180 days confinement and a \$500 fine (which were probated) on April 2, 2012. Petitioner timely noticed her intent to appeal.

On December 31, 2013, a divided panel of justices from the First District Court of Appeals affirmed petitioner's conviction and sen-

tence in unpublished majority and dissenting opinions. Petitioner filed timely motions for rehearing and en banc reconsideration on February 18, 2014 (pursuant to time extensions granted by the Court). On June 17, 2014, the panel ordered its majority opinion withdrawn and issued a substitute majority opinion that affirmed petitioner's conviction and sentence.¹ *Simpson v. State*, No. 01-12-00380-CR, 2014 WL 2767126 (Tex. App.—Houston [1st Dist.] June 17, 2014) (not designated for publication); No. 01-12-00380-CR (Tex. App.—Houston [1st Dist.] Dec. 31, 2013) (Sharp, J., dissenting) (both attached as Appendix 1).

Any petition for discretionary review is due on or before July 17, 2014. This petition is therefore timely.

¹ The substituted majority opinion expressly overruled motion for rehearing. Neither it nor the Court en banc has ever ruled on the motion for en banc reconsideration, but it would appear that the substituted majority opinion rendered that motion moot.

GROUND FOR REVIEW

The Court of Appeals panel's majority erred in holding that any error stemming from Judge William Harmon's refusal to remove a Mothers Against Drunk Drivers ("MADD") plaque—visible to the jury—from behind his bench in a DWI trial was harmless because it did not affect the DWI defendant's substantial rights. The plaque was the only "personal" item that the judge displayed, and he displayed it directly under his official seal and between the United States and Texas flags. This Court has clearly cautioned judges that jurors will "seize with alacrity" upon expressions they deem to emanate from the judge (see *Blue v. State* and *Lagrone v. State*). Petitioner showed that her jury was aware of the MADD plaque and its meaning, and established that her substantial rights were violated by the judge's refusal to remove it during her trial. The panel's minority correctly held that the judge's actions violated petitioner's substantial rights.

ARGUMENT

The panel majority erred and petitioner is entitled to a new trial in which her presumption of innocence remains intact and absolute. Here, the trial judge erased her presumption of innocence by failing to “maintain an attitude of impartiality throughout the trial.” *Blue v. State*, 41 S.W.3d 129, 131 (Tex. Crim. App. 2000) (plurality op.).

I. FACTS

The trial judge, Judge Harmon, conducted petitioner’s trial with a plaque displayed at his bench behind his chair. The plaque was from “MADD” (Mothers Against Drunk Drivers). During *voir dire*, defense counsel specifically asked the veniremembers if they could see the plaque. Members smiled and nodded that they could. Members acknowledged that it was from Mothers Against Drunk Drivers. Some members acknowledged that they had donated time or money to MADD; one member stated that he agreed with the organization’s philosophy. The plaque was visible to veniremembers in the venire and, more importantly, to the jurors that were selected as they sat in the jury box and as they entered and left the courtroom.

Defense counsel had the venire describe the parties’ roles in the courtroom and had the venire describe the judge’s role as that of an

impartial arbiter. Counsel then asked the judge to remove the plaque during appellant's trial. The judge refused and trial proceeded with the plaque undisturbed.

II. THE PANEL MAJORITY ABUSED ITS DISCRETION IN FINDING THAT THE RECORD IN THIS CASE HAS ADEQUATE INFORMATION FROM WHICH IT COULD DETERMINE THAT THE TRIAL JUDGE'S REFUSAL TO REMOVE A MOTHERS AGAINST DRUNK DRIVERS PLAQUE FROM DISPLAY AT HIS BENCH, ADMITTEDLY VISIBLE TO THE VENIRE AND TO THE JURY, DURING THIS DWI TRIAL HAD, AT MOST, A SLIGHT AFFECT ON THE JURY.

Few things are as important to a defendant's due process rights as an impartial judge. Although lengthy, the following analysis from *Blue* concisely describes the issue:

As the court of appeals noted, the general rule is that counsel must object to the trial judge's comments during trial in order to preserve error. *Blue*, 983 S.W.2d at 812; TEX. R. APP. P. 33.1. However, pursuant to TEX. R. EVID. 103(d), we are authorized to "tak[e] notice of fundamental errors affecting substantial rights although they were not brought to the attention of the court." As we have previously stated, "Some rights are widely considered so fundamental to the proper functioning of our adjudicatory process as to enjoy special protection in the system. A principle characteristic of these rights is that they cannot be forfeited. That is to say, they are not extinguished by inaction alone. Instead, if a defendant wants to relinquish one or more of them, he must do so expressly." *Marin v. State*, 851 S.W.2d 275, 278 (Tex. Crim. App. 1993),

overruled on other grounds, Cain v. State, 947 S.W.2d 262, 264 (Tex. Crim. App. 1997).

More than eighty years ago, we stated that

too much caution cannot be exercised in the effort to avoid impressing the jury with the idea that the court entertains any impressions of the case which he wishes them to know, and putting before them matters which should not enter into or affect their deliberations ... should in all cases be avoided. To the jury the language and conduct of the trial court have a special and peculiar weight. The law contemplates that the trial judge shall maintain an attitude of impartiality throughout the trial. Jurors are prone to seize with alacrity upon any conduct or language of the trial judge which they may interpret as shedding light upon his view of the weight of the evidence, or the merits of the issues involved. The delicacy of the situation in which he is placed requires that he be alert in his communications with the jury, not only to avoid impressing them with any view that he has, but to avoid in his manner and speech things that they may so interpret.

Lagrone v. State, 84 Tex. Crim. 609, 209 S.W. 411, 415 (1919). FN2. Similarly, more than one hundred years ago the United States Supreme Court commented that “[i]t is obvious that under any system of jury trials the influence of the trial judge on the

jury is necessarily and properly of great weight, and that his lightest word or intimation is received with deference, and may prove controlling.” *Starr v. United States*, 153 U.S. 614, 626, 14 S.Ct. 919, 923, 38 L.Ed. 841 (1894) (citing *Hicks v. United States*, 150 U.S. 442, 452, 14 S.Ct. 144, 147–48, 37 L.Ed. 1137 (1893)); see also *Bollenbach v. United States*, 326 U.S. 607, 612, 66 S.Ct. 402, 405, 90 L.Ed. 350 (1946) (citing *Starr*). FN3.

FN2. See also *Anderson v. State*, 83 Tex. Crim. 261, 202 S.W. 944, 946 (1918) (“The law contemplates that the trial judge shall maintain an attitude of impartiality throughout the trial, and it has been often held that his views or impressions of the weight of the evidence or upon the issues in the case may be conveyed to the jury as effectively by other means as by charge of the court.”); *Simmons v. State*, 55 Tex. Crim. 441, 117 S.W. 141, 143 (1909) (“The trial judge is to the jury the Lord’s anointed. His language and his conduct have to them a special and peculiar weight.”).

FN3. More than forty years ago, the Fifth Circuit stated that trial judges “must not only refrain from actions which are prejudicial but as well those which do or might give such impression to a jury of laymen whose awesome respect for the institution of the [j]udge leads them to accord great and perhaps, decisive significance to his every word or intimation....” *Papalia v.*

United States, 243 F.2d 437, 442 (5th Cir. 1957).

The legislature has also prohibited, “at any stage of the proceeding previous to the return of the verdict, [the trial judge from] mak[ing] any remark calculated to convey to the jury his opinion of the case.” TEX. CODE CRIM. P. ANN. art. 38.05.

Blue, 41 S.W.3d at 131-32 (FN1 omitted).

Given this clear statutory and judicial mandate, Judge Harmon’s actions clearly constituted error and affected petitioner’s substantial rights. The panel majority erred in holding any error harmless.²

² Although the panel majority did not directly address whether Judge Harmon’s actions were error, such a conclusion is foregone. In addition to the arguments above, the trial judge’s actions violated his own Code of Judicial Conduct. Specifically, Canon 2 (“Avoiding Impropriety and the Appearance of Impropriety in All of the Judge’s Activities”) states “[a] judge shall not allow any relationship to influence judicial conduct or judgment. A judge shall not lend the prestige of judicial office to advance the private interests of the judge or others” TEX. CODE JUDICIAL CONDUCT, Cannon 2(B). Significantly, Seanna Willing with the Judicial Conduct Commission has stated that Judge Harmon’s actions regarding the MADD plaque violate Cannon 2(B) (RR-MTR1 at 11-12).

Judge Harmon’s display of the MADD plaque during a DWI trial, and subsequent refusal to remove the plaque, also violated Canon 3(B)(5) (“Performing the Duties of Judicial Office Impartially and Diligently”), which states “[a] judge shall perform judicial duties without bias or prejudice.” TEX. CODE JUDICIAL CONDUCT, Cannon 3(B)(5). See also (RR-MTR1 at 12).

Indeed, the Texas Commission on Judicial Conduct has referenced MADD in a public statement as an organization that, if connected with a judge, would call into question the judge’s impartiality. Texas Commission on Judicial Conduct, Public Stmt. No. PS-2006-1. This is because it is “a victim advocacy group whose volunteers are partisan, not neutral” *Id.*

No rational jurist could conclude on these facts that Judge Harmon’s refusal to take down the MADD plaque during appellant’s DWI trial was not error.

The panel majority held that, although petitioner has no burden to prove harmlessness and a record with insufficient information would mandate a reversal, this record has sufficient data from which to discern that the MADD plaque had, at most, a slight effect on the jury. *Simpson*, majority op. at 13-16. The panel majority based its conclusion on the fact that: (1) the voir dire demonstrated that the judge was supposed to be a neutral referee; (2) the plaque was small; and (3) the plaque was illegible except for the letters MADD. *Simpson*, majority op. at 16.

Although it is true that the venire described the judge's role as neutral, the venire also smiled and nodded that they could see the plaque (RR2 at 114-17; RR-MTR1 at 7-8, 18). Venire members acknowledged that it was from Mothers Against Drunk Drivers (RR2 at 114-17; RR-MTR1 at 7-8). Some members acknowledged that they had donated time or money to MADD; one member stated that he agreed with the organization's philosophy (RR2 at 114-17). The plaque was visible to venire members and, more importantly, to the jurors that were selected as they sat in the jury box and as they entered and left the courtroom (RR-MTR1 at 20-22).

Defense counsel had the venire describe the parties' roles in the courtroom and had the venire describe the judge's role as that of an impartial arbiter (RR2 at 114-17; RR-MTR1 at 6-8). Counsel then

asked the judge to remove the plaque during appellant's trial (RR2 at 117; RR-MTR1 at 4-8). The judge refused (RR2 at 117; RR-MTR1 at 4-8).

Moreover, the panel majority's emphasis on the plaque being "small" and its letters illegible beyond "MADD" is misplaced. The plaque is not "small." Indeed, it is approximately the size of a regular sheet of paper. *See Appendix 2, Photos Introduced at Motion to Recuse Hearing.* Although the letters below "MADD" are smaller, the jurors passed by the plaque as they entered and exited the courtroom.

Finally, the plaque's effect is so much more pronounced because **IT IS THE ONLY OBJECT DISPLAYED BY THE JUDGE and sits directly below the court's official seal and between the United States and Texas flags.** *See Appendix 2, Photos Introduced at Motion to Recuse Hearing.*

The dissenting opinion correctly recognized this case for what it is—an abridgment of the defendant's right to be prosecuted in courtroom free from interest groups and agendas:

To display behind the trial bench a plaque awarded by one of the most well-established interest groups in the nation not only fails to keep the interest group at bay, but also invites others to take notice that, in the judge's capacity as a public official, his actions merited the group's commendation. When that interest group is Mothers Against Drunk Driv-

ing—a group dedicated to the proposition that the offense for which the accused citizen is being tried in that very courtroom is a very bad and potentially horrific thing—the sanctuary has been twice defiled: not only by the agenda of the interest group, but also by the hubris of the judge charged with the responsibility of assuring a fair and impartial DWI trial.

Simpson, dissenting op. at 2. The dissent then correctly that:

“If . . . there is a ‘grave doubt’ that the result was free from the substantial influence of the evidence, then the defendant’s substantial rights were affected.” *Burnett v. State*, 88 S.W.3d 633, 637 (Tex. Crim. App. 2002). “Grave doubt” is the situation in which, “in the judge’s mind, the matter is so evenly balanced that he feels himself in virtual equipoise as to the harmlessness of the error.” *Id.* at 637–38 (quoting *O’Neal v. McAninch*, 513 U.S. 432, 433–36, 115 S. Ct. 992 (1995)).

A plaque of commendation from one of the nation’s most well-established interest groups on display behind the very bench at which a criminal court judge presides is an imprimatur of that judge by that interest group.

Simpson, dissenting op. at 3.

The harm arising from Judge Harmon’s actions is obvious: A defendant charged with *DWI* and entitled to the constitutional presumption of innocence was forced to exercise her constitutional right to a jury trial in a courtroom where the judge imparted his personal views in a manner that “shed[] light upon his view of the

weight of the evidence, or the merits of the issues involved,” specifically *DWI* cases:

Jurors are prone to seize with alacrity upon any conduct or language of the trial judge which they may interpret as shedding light upon his view of the weight of the evidence, or the merits of the issues involved. The delicacy of the situation in which he is placed requires that he be alert in his communications with the jury, not only to avoid impressing them with any view that he has, but to avoid in his manner and speech things that they may so interpret.

Lagrone, 209 S.W. at 415. The error is structural in nature and constitutional in nature in that it denied appellant her right to due process, the presumption of innocence, and a fair trial. *Blue*, 41 S.W.3d at 131-32. The panel majority erred in holding the error harmless.

This Court should grant discretionary review, reverse the judgment of the Court of Appeals, and remand this case to the trial court for a new trial held without a MADD plaque on display in the courtroom.



PRAYER FOR RELIEF

For the reasons described above, this Court should grant discretionary review, sustain petitioner's ground for review, reverse the Court of Appeals' judgment, and remand the case to the trial court for a new trial.

Respectfully submitted,

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CERTIFICATE OF SERVICE

- (a) This brief complies with the type-volume limitation of TEX. R. APP. P. 9.4(i) because it was produced on a computer and contains 2,386 words, excluding the parts of the brief exempted by TEX. R. APP. P. 9.4(i)(1).
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CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the foregoing motion was served upon the parties designated below by e-filing on July 15, 2014.

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Appendix 1

Simpson v. State, No. 01-12-00380-CR, 2014 WL 2767126
(Tex. App.—Houston [1st Dist.] June 17, 2014)
(not designated for publication);
No. 01-12-00380-CR (Tex. App.—Houston [1st Dist.]
Dec. 31, 2013) (Sharp, J., dissenting)
(not designated for publication)

Opinion issued June 17, 2014.



In The
Court of Appeals
For The
First District of Texas

NO. 01-12-00380-CR

██████████ SIMPSON, Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the County Criminal Court at Law No. 2
Harris County, Texas
Trial Court Case No. ██████████

MEMORANDUM OPINION

██████████ Simpson filed a motion for rehearing of our memorandum opinion of December 31, 2013. Simpson's motion for rehearing is overruled; the majority opinion of December 31, 2013 is withdrawn; and the following substitute majority opinion is issued in its place.

A jury convicted [REDACTED] Simpson of the misdemeanor offense of driving while intoxicated.¹ The trial court assessed punishment at 180 days' confinement and a \$500 fine, suspended the sentence, and placed Simpson on one year of community supervision. Simpson's appeal raises six issues. In her first four issues, Simpson contends that the trial court abused its discretion in denying her challenges for cause against four veniremembers who each expressed a belief that police officers are more credible witnesses. In her fifth issue, Simpson argues that the trial court's refusal to remove from its bench a Mothers Against Drunk Driving plaque during the DWI trial deprived her of substantial rights. Finally, in her sixth issue, Simpson contends the administratively assigned recusal judge abused her discretion by denying Simpson's motion to recuse the trial judge for bias, as evidenced by the MADD plaque and an anti-drunk driving video previously loaded onto YouTube that includes comments by the trial judge.

We affirm.

Background

Simpson was involved in a two-car accident with W. Pineda. Before the accident occurred, Pineda noticed that Simpson was driving unsafely. When Pineda slowed for the car in front of him to turn, Simpson's car hit his twice from behind. Pineda testified that he spoke with Simpson immediately following the

¹ TEX. PENAL CODE ANN. § 49.04 (West Supp. 2013).

accident. He noticed that Simpson's eyes were red, and he recalled her saying that she felt dizzy. She apologized and offered to pay for the damage to his vehicle. Although Simpson asked Pineda not to call the police, he did.

Officer Zhang arrived and noted that Simpson had glassy and bloodshot eyes, slurred speech, and a moderate odor of alcohol. Because he suspected that Simpson was intoxicated, he administered the Horizontal Gaze Nystagmus field sobriety test. At trial, Officer Zhang testified that Simpson had six of six clues for intoxication during the HGN test.

Officer Zhang drove Simpson to Central Intox, where an evidence technician, Wooten, performed additional field sobriety tests and questioned Simpson. Wooten testified that Simpson told him she rear-ended Pineda because she could not react fast enough and that she had been drinking. When Wooten asked Simpson whether the alcohol affected her ability to drive, she replied that "apparently it did." Based on the physical indications of alcohol use, her performance on the field sobriety tests, and her statements while in custody, Simpson was charged with misdemeanor driving while intoxicated.

At the DWI trial, Simpson's counsel challenged for cause four of the veniremembers based on their statements that they felt police officers were more credible witnesses. Because the trial court denied the challenges for cause, Simpson had to use her peremptory strikes to prevent three of those

veniremembers from being seated on the jury. The trial court denied Simpson's request for additional peremptory strikes, allowing one of the challenged veniremembers to serve on the jury.

During voir dire, Simpson's counsel questioned the veniremembers about a plaque leaning against the back wall behind the trial judge's chair. The veniremembers confirmed that they could tell the plaque said "MADD" and realized it was from Mothers Against Drunk Driving. In front of the jury panel, Simpson requested the trial judge to remove the plaque, but he refused. During the trial—but outside of the presence of the jury—Simpson requested the trial judge recuse himself based on his failure to remove the plaque. The trial judge denied the motion, noting in his order that Simpson had elected to have the court assess punishment which, he contended, was an indication she did not, in fact, believe that he was biased against her.

At the conclusion of the trial, the jury found Simpson guilty of misdemeanor driving while intoxicated. The court sentenced her to 180 days' confinement, assessed a \$500 fine, suspended the sentence, and placed Simpson on one year of community supervision. Simpson appealed.

Challenges for Cause

In her first four issues, Simpson contests the trial court's rulings on her challenges for cause. Four of the potential jurors—jurors number three, eight,

thirteen, and fourteen—indicated during voir dire that they believe police officers are more credible than other categories of witnesses. Simpson’s counsel questioned each of them about their beliefs. The trial court also asked them questions. Simpson moved to strike the four veniremembers, but the trial court denied the motion. Both parties agree that Simpson preserved error to challenge the trial court’s rulings. The State argues that none of the four veniremembers revealed an impermissible level of bias, considering the complete voir dire and not just isolated statements.

A. Standard of review

A bias or prejudice that substantially impairs a potential juror’s ability to carry out his oath and court instructions in accordance with the law disqualifies him from jury service. *See Gardner v. State*, 306 S.W.3d 274, 295 (Tex. Crim. App. 2009). If the potential juror’s bias or prejudice is established as a matter of law, the trial court has no discretion but to disqualify that person from jury service. *See Malone v. Foster*, 977 S.W.2d 562, 564 (Tex. 1998). If, on the other hand, the potential juror makes a statement indicating a bias but agrees he or she will apply the law as instructed, then the trial court has discretion to deny the challenge for cause. *See Feldman v. State*, 71 S.W.3d 738, 744 (Tex. Crim. App. 2002).

The deference given the trial court’s decision is even greater when the veniremember’s statements are “ambiguous, vacillating, unclear, or contradictory.”

Gardner, 306 S.W.3d at 295–96; *Feldman*, 71 S.W.3d at 744. Vacillation includes a statement indicating a bias toward one category of witness followed by a promise to listen to all witnesses before deciding credibility. *See Feldman*, 71 S.W.3d at 744–47. Similarly, an answer to a voir dire question that could be interpreted one way to show bias or another way that would not be subject to challenge is ambiguous and, therefore, left to the trial court’s discretion. *See Gardner*, 306 S.W.3d at 296–97 (holding trial court had discretion to assign meaning to veniremember’s ambiguous statement).

A considerable amount of deference is appropriate because the trial judge is in the courtroom and in the best position to observe the jurors’ demeanor and tone. *See id.* at 295–97; *Feldman*, 71 S.W.3d at 744.

B. The trial court did not abuse its discretion denying challenges for cause

Simpson argues that the four veniremembers “unequivocally stated that they would give more credibility to a police officer over another witness simply because they were a police officer” and, therefore, “demonstrated bias as a matter of law.”

We review the entire voir dire record to determine if there is sufficient evidence to find bias as a matter of law by any of the four challenged veniremembers. *See Feldman*, 71 S.W.3d at 744. This includes the veniremembers’ answers to questions by all counsel as well as the court. *See Anderson v. State*, 633 S.W.2d 851, 854 (Tex. Crim. App. 1982); *cf. Cortez v. HCCI–San Antonio, Inc.*,

159 S.W.3d 87, 91–92 (Tex. 2005) (rejecting argument that veniremember cannot be “rehabilitated” after indicating bias).

An example of deference towards police officer testimony that reaches the level of bias as a matter of law can be found in *Hernandez v. State*, 563 S.W.2d 947, 950 (Tex. Crim. App. 1978). The attorney there asked a potential juror if she believed that police officers would not lie on the witness stand. The following exchange occurred between the attorney and venire member:

Q: I am not talking about making a mistake, I am talking about telling a knowing willing falsehood from the witness stand.

A: I don’t think a police officer would tell a falsehood from the witness stand.

Q: Under any circumstances?

A: No, I don’t.

Id. The veniremember’s firmly held conviction that police officers would never lie demonstrated a bias against the defendant and required that she be disqualified from jury service as a matter of law. *See id.*

During Simpson’s trial, potential juror number three stated that he was good friends with a police officer, he believed officers were more credible witnesses, and the officers’ training caused their testimony to “carry [] more weight,” in his opinion. However, after additional instruction from the trial court, he affirmed that

he would not prejudge the credibility of any witness and would presume the defendant innocent.

Likewise, potential juror number eight began voir dire stating that he felt police officers had more credibility as witnesses. He explained that if he was unsure who to believe—after listening to all the testimony—he would go with the police officer's testimony because police officers are more credible. However, after the trial court explained the importance of waiting until a witness testifies to determine that witness's credibility, the potential juror agreed that he would not prejudge any witness.

Potential juror number thirteen gave a very similar explanation of his deference to police officers, but later agreed that he would not prejudge the credibility of a police officer or any other witness. In fact, he clarified that he already changed his position when counsel explained to him the necessity of waiting:

Venire member: Yes, sir. I did change my answer to I will listen to the testimony.

Court: Can you make me a promise right now you will not prejudge the credibility just because they're police officers?

Venire member: I did understand that after they explained that. I would not prejudge somebody until they actually testified, that is true.

Finally, potential juror number fourteen explained his position as follows: “I would wait and listen to the testimony but being a trained police officer they would have my benefit of any doubt, if there was any doubt whatsoever. They would get the benefit of the doubt.” However, after the trial court explained the importance of waiting to determine credibility, potential juror number fourteen agreed that he would wait for each witness to testify and would not prejudice any witness.

We hold that these statements by potential jurors number three, eight, thirteen, and fourteen were equivocal and, therefore, do not support a conclusion that the veniremembers were biased as a matter of law. *See Feldman*, 71 S.W.3d at 749 (“[W]e will uphold the trial court’s decision when a prospective juror’s answers are “vacillating, unclear, or contradictory.”). Therefore, the question before this Court is whether the trial court abused its discretion in denying the four motions to strike. *See Feldman*, 71 S.W.3d at 749.

The Court of Criminal Appeals repeatedly has addressed challenges for cause against potential jurors who state a belief that police officers are more credible witnesses. *See, e.g., Feldman*, 71 S.W.3d at 747; *Ladd v. State*, 3 S.W.3d 547, 560 (Tex. Crim. App. 1999); *Smith v. State*, 907 S.W.2d 522, 530–31 (Tex. Crim. App. 1995); *Jones v. State*, 982 S.W.2d 386, 389 (Tex. Crim. App. 1998). In doing so, that Court has refused to require complete impartiality. *See Jones*, 982 S.W.2d at 389. This is because it is human nature to give one category of witness a

slight edge over another category of witness. *See id.* Jurors cannot be expected to set aside their natural skepticism during trial. *See id.* The Court explained:

[L]itigants are entitled to jurors who will be genuinely open-minded and persuadable, with no *extreme or absolute* positions regarding the credibility of any witness. . . . [H]owever, c]omplete impartiality cannot be realized as long as human beings are called upon to be jurors. No person sitting as a juror can completely remove his own experiences, beliefs, and values, however hard he may try.

Id.

Thus, a potential juror who says that he would tend to believe a police officer more than another witness may serve on a jury. *See Ladd*, 3 S.W.3d at 560. A potential juror who says he might give more credibility to the testimony of a Texas Ranger, likewise, may serve on a jury. *See Smith*, 907 S.W.2d at 531. As long as these veniremembers agree that they can follow the law as explained to them, regardless of their personal beliefs and leanings, it is within the trial court's discretion to find them suitable for jury service and deny the challenge for cause. *See Feldman*, 71 S.W.3d at 747; *Davis v. State*, 329 S.W.3d 798, 811–13 (Tex. Crim. App. 2010) (“The proponent of a challenge for cause has the burden of establishing that the challenge is proper. The proponent does not meet this burden until he has shown that the venire member understood the requirements of the law and could not overcome his or her prejudice well enough to follow the law.”) (citations omitted); *cf. Cortez*, 159 S.W.3d at 94 (“An initial ‘leaning’ is not disqualifying if it represents skepticism rather than an unshakeable conviction.”).

None of these potential jurors professed firmly held convictions that police officers are always right or should always be believed. They each followed their statements regarding police officer credibility with assurances that they would not prejudge any witness but would, instead, follow the law as instructed. As a result, the trial court had discretion to determine whether these potential jurors exhibited sufficient bias to substantially impair their ability to apply the law. *See Gardner*, 306 S.W.3d at 295; *Davis*, 329 S.W.3d at 807.

These statements, in the context of the entire voir dire record and all of the individual veniremember's answers, did not demonstrate adequate bias to find that the trial court abused its discretion by denying the motions to challenge for cause. We overrule Simpson's first, second, third, and fourth issues.

Display of MADD Plaque

In her fifth and sixth issues, Simpson complains that the trial judge refused to remove a small MADD plaque that was leaning against the back wall behind the judge's chair during her DWI trial. Simpson objected to the display of the plaque and requested the trial court remove it. The trial court denied the request.

Simpson obtained agreement from the veniremembers during voir dire that they could see the plaque and believed it was from MADD, though there is no indication that anything else on the plaque was legible from the veniremembers' location in the courtroom. Subsequently, Simpson moved to have the trial judge

recuse himself, arguing that he did not appear to be impartial. The motion was denied. Simpson presented another recusal motion to a judge administratively assigned to hear her motion. That motion also was denied: “The motion to recuse is denied, but I would strongly hope that the Judge would do the right thing and take down the plaque.” Simpson presents two challenges to these adverse rulings.

A. Simpson’s substantial rights not affected

In her fifth issue, Simpson argues that the trial court erred by refusing to remove the MADD plaque during her DWI trial and that the error violated statutory law and the Code of Judicial Conduct. Simpson contends that the trial judge’s impartiality reasonably was in question and his refusal to remove the plaque adversely affected her substantial rights. Even assuming Simpson is correct that the trial court erred by refusing to remove the plaque, we will not reverse Simpson’s conviction if the alleged error was harmless. *See* TEX. R. APP. P. 44.2(b); *Sells v. State*, 121 S.W.3d 748, 764–65, 764 n.69 (Tex. Crim. App. 2003).

An error is harmless if it fails to affect a defendant’s substantial rights, considering the entire record. TEX. R. APP. P. 44.2(b); *Burnett v. State*, 88 S.W.3d 633, 637 & n.8 (Tex. Crim. App. 2002); *Motilla v. State*, 78 S.W.3d 352, 355 (Tex. Crim. App. 2002). A substantial right is not affected if the reviewing court has “fair assurance that the error did not influence the jury, or had but a slight effect.” *Solomon v. State*, 49 S.W.3d 356, 365 (Tex. Crim. App. 2001) (citation omitted).

If, on the other hand, there is a “grave doubt” that the result was free from the substantial influence of the error, then the defendant’s substantial rights were affected. *See Burnett*, 88 S.W.3d at 637–38. “Grave doubt” means that “in the judge’s mind, the matter is so evenly balanced that he feels himself in virtual equipoise as to the harmlessness of the error.” *Id.*

The law does not place a burden on the defendant to establish harm under Rule 44.2(b). *See Burnett*, 88 S.W.3d at 638. “[S]ome errors may ‘defy’ harm analysis . . . [meaning that] some errors will not be proven harmless because harm can never be determined due to the lack of data needed for analysis.” *Llamas v. State*, 12 S.W.3d 469, 471 (Tex. Crim. App. 2000) (citing *Cain v. State*, 947 S.W.2d 262, 264 (Tex. Crim. App. 1997)). Thus, if a review of the record results in insufficient data to conduct a harm analysis, the error will not be proven harmless and a reversal will result. *See Llamas v. State*, 991 S.W.2d 64, 68 (Tex. App.—Amarillo 1998), *aff’d*, 12 S.W.3d 469 (Tex. 2000); *Cain*, 947 S.W.2d at 264.

In *Llamas*, the defendant contended that the trial court erred by denying his mandatory right to a severance. *See id.* at 470. The court of appeals determined that there was “no way of knowing . . . if or how the consolidation of the charges impacted the jury’s decision” and, based on that conclusion, held that the error defied harm analysis. *Llamas*, 991 S.W.2d at 69–70. The Court of Criminal Appeals disagreed that there was insufficient data on which to conduct the harm

analysis, noting that a reviewing court should consider “everything in the court reporter’s record . . . including all the evidence admitted at trial, the closing arguments, and, in this case, the jurors’ comments during voir dire” to decide whether the trial court’s erroneous decision to deny severance affected a substantial right of the defendant. *Llamas*, 12 S.W.3d at 471; *see also Motilla*, 78 S.W.3d at 355–56 (listing factors to consider in harm analysis, including other evidence, jury instructions, theories of case, closing arguments, voir dire, whether error was emphasized by State, and whether “overwhelming evidence of guilt” exists).

Simpson contends that the record “does not establish any reasonable confidence” that the presence of the MADD plaque “had no effect on the jury’s actions.” We disagree. Our review of the record, including the voir dire of potential jury members, reveals that the presence of the plaque likely had, at most, only a slight effect and, therefore, was harmless.

Simpson implies that the plaque was an award to the judge from MADD and, as such, constitutes evidence that the judge was aligned with the philosophies of the organization. But the record does not support this conclusion. There is nothing in the record to indicate that the potential jurors could read what was written on the plaque. In fact, the record is silent with regard to the inscription on

the plaque. At most, the record shows that it was a small plaque and that the letters “MADD” were legible.

Defense counsel questioned the potential jurors about the plaque, the proper role of the prosecution, and the importance that a trial judge remains neutral. Through this questioning of the venire members, Simpson established that the trial judge’s role is to be a neutral and unbiased “referee.” The jurors agreed with that characterization:

DEFENSE: Okay, very good. Let me ask you about Mothers Against Drunk Drivers, an organization like that. Has anybody ever given their time or money to an organization such as MADD or Narcotics Anonymous or things like that?

[some jurors indicate “yes”]

DEFENSE: I understand. Okay. With that in mind, this is my last issue. I wanted to know like how you see the different parties here. The government or the state, the prosecutors, they’re here to do what?

JUROR: Prosecute, prove the case.

DEFENSE: Right. So the judge is the one that’s like the referee that calls the balls and strikes. How would you see his role? What is the judge’s role suppose[d] to be in a case? Is it fair to side with one side or the other?

JUROR: No, it’s not. He’s here to facilitate.

DEFENSE: Right. Would you say neutral?

JUROR: Yes.

DEFENSE: Unbiased. If you were in this situation you wouldn't want to be anywhere else, right? I have—again, I can't say enough about Judge Harmon's reputation in this building and respect I have for him but judges are suppose[d] to be neutral and we got to have that in a trial like this. . . .

We conclude that this is not a case in which we have inadequate information to weigh the possible effect that the presence of this plaque could have had on the jurors. Given the nature of the voir dire, the small size of the plaque, and that, other than the letters "MADD," it was illegible to the jurors, we have fair assurance that any error of the trial court in leaving the plaque at his bench did not influence the jury against Simpson, or had but a slight effect. *Solomon*, 49 S.W.3d at 365. Accordingly, we conclude that display of the plaque was harmless.

We overrule issue five.

B. Reviewing judge did not abuse discretion by denying motion to recuse

Simpson argues in her sixth issue that the judge administratively assigned to hear her recusal motion abused her discretion by denying the motion. The hearing occurred midway through the trial; the judge denied the motion.

1. Standard of review

An order denying a motion to recuse is reviewed under an abuse-of-discretion standard. TEX. R. CIV. P. 18a(j)(1)(A) (West Supp. 2014); *De Leon v. Aguilar*, 127 S.W.3d 1, 5 (Tex. Crim. App. 2004); *Arnold v. State*, 853 S.W.2d 543, 544 (Tex. Crim. App. 1993). The court abuses its discretion only if its ruling

is outside the “zone of reasonable disagreement” or fails to apply proper guiding rules and principles. *Kemp v. State*, 846 S.W.2d 289, 306 (Tex. Crim. App. 1992); *Abdygapparova v. State*, 243 S.W.3d 191, 198 (Tex. App.—San Antonio 2007, pet. ref’d). Our review is fact intensive, considering the entire record from the recusal hearing. *See Abdygapparova*, 243 S.W.3d at 198–99 (noting that review of denial of recusal motion entered at beginning of trial cannot include trial judge’s subsequent actions during trial); *Roman v. State*, 145 S.W.3d 316, 319 (Tex. App.—Houston [14th Dist.] 2004, pet. ref’d). Absent a clear showing to the contrary, we presume the trial court was neutral and detached. *See Steadman v. State*, 31 S.W.3d 738, 741 (Tex. App.—Houston [1st Dist.] 2000, pet. ref’d).

2. The rules governing recusal

Rule 18b(b) provides that a judge must be recused if “the judge’s impartiality might reasonably be questioned” or “the judge has a personal bias or prejudice concerning the subject matter or a party.” TEX. R. CIV. P. 18b(b)(1–2). Rule 18b(b)(1) is a general rule requiring that a judge objectively appear to be impartial, which he fails to do if he “harbors an aversion, hostility or disposition of a kind that a fair-minded person could not set aside when judging the dispute.” *Gaal v. State*, 332 S.W.3d 448, 453 (Tex. Crim. App. 2011); TEX. R. CIV. P. 18b(b)(1). Rule 18b(b)(2) is more specific. It requires a judge not to have actual,

personal bias or prejudice concerning a party or the subject matter of the litigation. TEX. R. CIV. P. 18b(b)(2).

The party seeking recusal must establish that a reasonable person, knowing all the circumstances involved, would have doubts as to the impartiality of the judge. *See Kemp*, 846 S.W.2d at 305; *Abdygapparova*, 243 S.W.3d at 198. The evidence must be sufficient to overcome the presumption of judicial impartiality. *See Kemp*, 846 S.W.2d at 306; *Abdygapparova*, 243 S.W.3d at 198–99. Further, the bias must be “of such nature, and to such extent, as to deny the defendant due process of law.” *Kemp*, 846 S.W.2d at 305; *see also Abdygapparova*, 243 S.W.3d at 199 (noting that this is a “high standard”).

Recusal generally is not required when the judge is accused of a personal bias based solely on his judicial rulings, remarks or actions. *See Gaal*, 332 S.W.3d at 453–54. However, when the judge’s remarks reveal an opinion based on an extra-judicial source (sometimes referred to as “personal” bias), recusal could be warranted. *See id.* In either case, if the comments or actions reveal “such a high degree of favoritism or antagonism as to make fair judgment impossible,” then recusal is required. *See id.* (quoting *Liteky v. United States*, 510 U.S. 540, 555, 114 S. Ct. 1147 (1994) (Kennedy, J., concurring)).

3. Simpson's allegations of bias and partiality

At the hearing, Simpson argued that recusal was proper and that a reasonable person would have doubts about the trial judge's impartiality for three reasons: (1) the MADD plaque displayed during her DWI trial appeared to be an endorsement of that organization by the court; (2) the display of the plaque violated various Canons of Judicial Conduct—Canons 2B, 3B(5), and 4A(1)²—all of which concern impartiality and bias; and (3) a previously posted YouTube video that was said to include the judge and discuss the perils of drunk driving evidenced an “improper alignment” with the prosecution. In addition to her general argument that the plaque was improper, she specifically complains that her request to remove the plaque was denied in front of the jury, which she alleges created an appearance of partiality.

During the recusal hearing, Simpson recounted her requests to the trial judge to remove the plaque, as well as his refusal to do so. She offered as evidence photographs showing the location and general visibility of the plaque to the jurors.

² Canon 2B: “A judge shall not allow any relationship to influence judicial conduct or judgment. A judge shall not lend the prestige of judicial office to advance the private interests of the judge or others” Canon 3B(5): “A judge shall perform judicial duties without bias or prejudice.” Canon 4A(1): “A judge shall conduct all of the judge’s extra-judicial activities so that they do not: cast reasonable doubt on the judge’s capacity to act impartially as a judge” TEX. CODE JUD. CONDUCT, Canons 2B, 3B(5), and 4A(1), *reprinted in* TEX. GOV’T CODE ANN., tit. 2, subtit. G, app. B (West 2013).

Then she summarized the veniremembers' answers to her voir dire questions concerning the MADD plaque.

The State countered that the plaque was not very visible. Moreover, none of the potential jurors indicated that they questioned the trial judge's impartiality; they simply acknowledged that they noticed the plaque.

4. Bias and partiality not sufficiently shown to find abuse of discretion by recusal judge

From the arguments and evidence presented at the recusal hearing, it is clear that Simpson did not claim to have been treated unfairly by the trial judge in any aspect of her case other than by his refusal to remove the plaque and the existence of the YouTube video. Her complaint is limited to these two items, which she contends demonstrate bias and partiality.

Simpson's argument that the judge's ruling—made in front of the jury—to deny her request to remove the plaque demonstrates partiality is without merit. Judicial rulings almost always are inadequate to establish bias. *See Gaal*, 332 S.W.3d at 454 (“Generally, though, recusal is not required when based solely on judicial rulings, remarks or actions. These acts almost never constitute a valid basis for a bias or partiality motion.”) (citation omitted); *Abdygapparova*, 243 S.W.3d at 198 (holding that claims of bias and prejudice based on judicial rulings must show “deep-seated favoritism or antagonism that would make fair judgment impossible” and deny a party due process of law; noting that the rulings would have to

somehow be *wrongful* or *inappropriate*, not just unfavorable to the complaining party) (citation omitted).

A related argument—that the presence of the plaque in the courtroom evidenced support for MADD—alleges an extra-judicial source of bias and partiality. We find this claim to be analogous to cases in which trial courts have made extra-judicial statements regarding a category of offense or punishment. *See Rosas v. State*, 76 S.W.3d 771, 775 (Tex. App.—Houston [1st Dist.] 2002, no pet.); *Chastain v. State*, 667 S.W.2d 791, 794 (Tex. App.—Houston [14th Dist.] 1983, writ ref’d).

In *Rosas*, this Court held that the recusal judge did not abuse his discretion by denying the recusal motion of a defendant charged with sexual assault. 76 S.W.3d at 775. The defendant alleged that the judge had a bias in favor of the prosecution in sex-abuse cases, had been a member of the Children’s Assessment Center’s judicial counsel, and told the jury during voir dire that she “hates such cases.” *Id.* The trial judge had stated on the record:

Nobody likes these cases. I don’t like standing up here and reading these allegations to you. I don’t even like reading them. Nobody thinks that they want to sit and listen to this type of case. . . . [T]he Prosecutor doesn’t love prosecuting these cases. The Defense probably doesn’t love defending these cases. But here we are.

Id. We held that the recusal judge did not abuse his discretion when he denied the recusal motion because these statements did not exhibit hostility towards the

defendant sufficient to deny him due process of law. *See id.* These comments were about sexual assault cases as a general category of offense—unrelated to the question whether this particular defendant was guilty of sexual assault. *See id.* Further, the allegation that the judge had an improper affiliation with Children’s Assessment Center did not require recusal because ethical violations, alone, do not mandate recusal of a trial judge. *See id.*; *Gaal*, 332 S.W.3d at 453–54.

Our sister court, likewise, has held that a judge’s extra-judicial expression of personal views will not require reversal. *Chastain*, 667 S.W.2d at 796. There, the judge made statements on a television program that the death penalty should be invoked more often if it is to be an effective deterrent. *See id.* at 794. The program aired after some, but not all, of the jurors had been selected in *Chastain*’s case, which involved a possible death sentence. *See id.* The defendant argued that the extra-judicial statements required the trial judge be recused. *See id.* at 796. The appellate court disagreed:

The judge merely stated his personal views on the death penalty and its effect as a deterrent. He made no statements which indicated that he believed that appellant should receive the death penalty or that he would encourage this jury to [i]nvoke such a penalty. . . . It is presumed that a judge will base his judgment upon the facts as they are developed at the trial.

Id.

We conclude that the display of the MADD plaque is analogous to the judicial comments made in *Rosas* and *Chastain*. While the display of the plaque

could be viewed as evidence the trial judge dislikes drunk driving, it was not a comment on this particular defendant's guilt or innocence and, therefore, did not demonstrate bias against Simpson. *See Rosas*, 76 S.W.3d at 775.

Simpson's evidence fails to overcome the presumption that the trial court was unbiased in presiding over her trial. *See Steadman*, 31 S.W.3d at 741. Further, she has not established judicial bias extreme enough to have deprived her of due process of law. *See Rosas*, 76 S.W.3d at 774.

Simpson's alternative argument that the trial court's actions violated the Code of Judicial Conduct also is unavailing because such violations, even if proven, will not support recusal without more. *See Gaal*, 332 S.W.3d at 455.

Given the abuse-of-discretion standard, the question before this Court is not whether it is advisable to display a MADD plaque in a courtroom during a DWI trial or whether, in our view, the trial judge should have obliged defense counsel's request to take it down. Instead—when reviewing a denial of a motion to recuse—the issues before the appellate court are whether the reviewing judge (1) followed appropriate guiding rules and principles to analyze the recusal motion, and (2) reached a decision, based on information presented at the hearing, that was within the “zone of reasonable disagreement.” *Kemp*, 846 S.W.2d at 306; *Abdygapparova*, 243 S.W.3d at 197–98. To the extent the judge's refusal to remove the plaque supports recusal, it falls within the zone of reasonable

disagreement and, thus, within the reviewing judge's discretion whether to deny the motion. *Kemp*, 846 S.W.2d at 306; *Abdygapparova*, 243 S.W.3d at 197–98.

Finally, we reject Simpson's argument that the judge's statement about drunk driving in a YouTube video required his recusal. Simpson made the YouTube video available to the recusal judge to review, but never played it or offered it into evidence. The result is that it is not before us and, without it, we cannot know the exact statements made by the trial judge or their context.

We overrule Simpson's sixth issue.

Conclusion

The judgment of the trial court is affirmed.

Harvey Brown
Justice

Panel consists of Justices Jennings, Sharp, and Brown.

Justice Sharp, dissenting.

Do not publish. TEX. R. APP. P. 47.2(b).

Opinion issued December 31, 2013



In The
Court of Appeals
For The
First District of Texas

NO. 01-12-00380-CR

██████████ SIMPSON, Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the County Criminal Court at Law No. 2
Harris County, Texas
Trial Court Case No. ██████████

DISSENTING OPINION

A Texas criminal courtroom is to be a sanctuary from interest groups and agendas. The evidence is what it is and the crimes and offenses are as recited in the criminal codes.

The influence of those who may have lobbied for various provisions in those codes has no place in the courtroom. It falls to the tribunal to assure a fair and impartial trial of the citizen accused.

To display behind the trial bench a plaque awarded by one of the most well-established interest groups in the nation not only fails to keep the interest group at bay, but also invites others to take notice that, in the judge's capacity as a public official, his actions merited the group's commendation. When that interest group is Mothers Against Drunk Driving—a group dedicated to the proposition that the offense for which the accused citizen is being tried in that very courtroom is a very bad and potentially horrific thing—the sanctuary has been twice defiled: not only by the agenda of the interest group, but also by the hubris of the judge charged with the responsibility of assuring a fair and impartial DWI trial.

That a judge so commended would take pride in such an award is understandable. But the criminal court judges of Harris County, Texas all have the benefit of individual private chambers where commendations, books, plaques, photos, etc. can be displayed. Display of such personal items in what is to be a hallowed sanctuary of impartial justice bespeaks a fundamental misunderstanding of the very proprietorship of that public space: it is the people's courtroom, not an oversized ante-room of some judge's chambers.

The majority opinion hints that the display of the MADD award may have been error but, determining that it did not affect Simpson's substantial rights, concludes such error, if any, is harmless. Yet, as noted by the majority, "If . . . there is a 'grave doubt' that the result was free from the substantial influence of the evidence, then the defendant's substantial rights were affected." *Burnett v. State*, 88 S.W.3d 633, 637 (Tex. Crim. App. 2002). "Grave doubt" is the situation in which, "in the judge's mind, the matter is so evenly balanced that he feels himself in virtual equipoise as to the harmlessness of the error." *Id.* at 637–38 (quoting *O'Neal v. McAninch*, 513 U.S. 432, 433–36, 115 S. Ct. 992 (1995)).¹

A plaque of commendation from one of the nation's most well-established interest groups on display behind the very bench at which a criminal court judge presides is an imprimatur of that judge by that interest group. The balance of my equipoise notwithstanding, because my review of the case leads me to believe that

¹ In *O'Neal v. McAninch*, the United States Supreme Court opined,

[W]e consider here the legal rule that governs the special circumstance in which record review leaves the conscientious judge in grave doubt about the likely effect of an error on the jury's verdict. (By 'grave doubt' we mean that, in the judge's mind, the matter is so evenly balanced that he feels himself in virtual equipoise as to the harmlessness of the error.) We conclude that the uncertain judge should treat the error, not as if it were harmless, but as if it affected the verdict (*i.e.*, as if it had a 'substantial and injurious effect or influence in determining the jury's verdict').

513 U.S. 432, 435, 115 S. Ct. 992 (1995).

the display was error and that it had a substantial influence in determining the jury's verdict, I respectfully dissent.

Jim Sharp
Justice

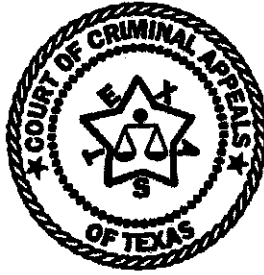
Panel consists of Justices Jennings, Sharp, and Brown.

Do not publish. TEX. R. APP. P. 47.2(b).

EXHIBIT F

**OPINION OF THE COURT OF CRIMINAL
APPEALS**

(10-15-14)



**IN THE COURT OF CRIMINAL APPEALS
OF TEXAS**

NO. PD-0940-14

[REDACTED] SIMPSON, Appellant

v.

THE STATE OF TEXAS

**ON APPELLANT'S PETITION FOR DISCRETIONARY REVIEW
FROM THE 1ST COURT OF APPEALS
HARRIS COUNTY**

**COCHRAN, J., filed a statement concurring in the refusal of the petition in
which JOHNSON and HERVEY, JJ., joined.**

I agree with the Court's decision to refuse appellant's petition for discretionary review because I believe that the error in this case—the trial judge's display of a Mothers Against Drunk Drivers (MADD) plaque in the courtroom during appellant's DWI trial—was neither inherently prejudicial nor actually prejudicial. I write to squarely say what the court of appeals's majority assumed: This was error.

I.

On April 29, 2011, William Pineda was driving a Mustang on Westheimer Road in Houston at around 7:30 at night, when he noticed a woman in a Nissan tailgating him even though traffic was light. He sped up to get away from her, but she sped up also. When another car braked in front of Mr. Pineda to turn left, he braked and was hit from behind by the Nissan—not once, but twice. Mr. Pineda pulled into a nearby shopping center parking lot and “called the cops, and the lady who hit me, she got [out of] her car and she told me, hey, don’t worry; I’ll pay for everything. Don’t call the police.” There was a bit of a language barrier, but Mr. Pineda, who was from El Salvador, understood “70%” of what she said. He was reluctant to settle the matter without police involvement because he had never been in an accident before, and he did not want to jeopardize his commercial license. Two police officers arrived at the scene shortly afterward.

When Officer Zhang approached appellant, he “noticed that she had bloodshot eyes and a moderate smell of alcohol and slurred speech.” When he performed the HGN test on her, he observed all six intoxication clues. He arrested appellant and drove her to “Central Intox” where civilian evidence technician Thomas Wooten administered (and recorded video of) other field tests. Appellant could not physically complete the tests, but Mr. Wooten was “absolutely” certain that she was intoxicated. Appellant herself acknowledged that her drinking “apparently” affected her ability to drive.¹

¹ The interview was described as follows:

Q. So after you conducted the field sobriety test you asked her a series of questions, one of them

Appellant was charged with DWI. During voir dire, appellant's counsel questioned the potential jurors about a plaque leaning against the back wall behind the trial judge's chair. Potential jurors confirmed that they could tell the plaque said "MADD" and realized it was from Mothers Against Drunk Driving. In front of the jury panel, counsel asked the trial judge to remove the plaque, but he refused. During the trial—but outside of the presence of the jury—counsel requested that Judge Harmon recuse himself because "for you to endorse it and having it sitting right behind you makes the court appear impartial [sic]."²

Judge Harmon orally denied the motion. On the written order he noted, "The defendant wanted the court to assess punishment. Obviously the defendant does not feel the court has a personal bias or she would never have made that election."

The recusal motion was then assigned to Judge Hughes for a hearing. At the conclusion of the hearing, Judge Hughes stated, "The motion to recuse is denied, but I would strongly hope that the Judge would do the right thing and take down the plaque." But Judge

-
- was were you driving, and what was her answer?
- A. Yes.
- Q. Were you in an accident, and what was her answer?
- ***
- A. She said she was involved in a two-car accident and that she rear ended someone else because she couldn't react fast enough.
- Q. And you also asked her did she have anything to drink. Did she admit to drinking?
- A. Yes, sir.
- Q. And did you ask her did the alcohol affect your ability to drive?
- A. Yes, sir. She said obviously it did.
- Q. Okay. Now in the video, I mean, she said apparently it did?
- A. Yes, sir, apparently it did.

² Defense counsel obviously meant exactly the opposite—that the MADD plaque made Judge Harmon appear "partial" or "biased" instead of "impartial" or "unbiased."

Harmon did not do the right thing, and the trial proceeded with the MADD plaque plainly visible to the jury.³

After sending out four notes during its deliberations,⁴ the jury found appellant guilty. The trial judge sentenced her to one year of community supervision and a \$500 fine.

Appellant argued on direct appeal that the trial judge erred by refusing to remove the MADD plaque. The majority skirted the issue of whether the judge erred, holding that any error was harmless. The dissenting justice concluded that appellant had not had a fair trial.⁵ Appellant filed for discretionary review, asserting that the dissenting justice was correct.

II.

“The presumption of innocence . . . is a basic component of a fair trial under our

³ Several photographs showing the prominent position of the MADD plaque are in the record.

⁴ The notes read: “Do we need to be unanimous?”; “May we please have the video from Central Intox?”; “Jury is deadlocked; Split is 3-3.” and “May we please see the video again . . . ?”

⁵ *Simpson v. State*, No. 01-12-00380-CR, 2013 WL 6869923, at *25-26 (Tex. App.—Houston [1st Dist.] Dec. 31, 2013) (Sharp, J., dissenting) (not designated for publication) (“To display behind the trial bench a plaque awarded by one of the most well-established interest groups in the nation not only fails to keep the interest group at bay, but also invites others to take notice that, in the judge’s capacity as a public official, his actions merited the group’s commendation. When that interest group is [MADD]—a group dedicated to the proposition that the offense for which the accused citizen is being tried in that very courtroom is a very bad and potentially horrific thing—the sanctuary has been twice defiled: not only by the agenda of the interest group, but also by the hubris of the judge charged with the responsibility of assuring a fair and impartial DWI trial”; concluding that the display had a substantial influence on the jury’s verdict). This is the dissent from the original memorandum opinion. On motion for rehearing, the majority opinion of December 31, 2013, was withdrawn and a substitute majority opinion was issued in its place. *Simpson v. State*, No. 01-12-00380-CR, 2014 WL 2767126 (Tex. App.—Houston [1st Dist.] June 17, 2014). The dissent remained the same.

system of criminal justice.”⁶ To implement it, courts must be alert to factors that may undermine the fairness of the fact-finding process, and “guard against dilution of the principle that guilt is to be established by probative evidence and beyond a reasonable doubt.”⁷ That said, a trial judge has broad discretion to control the business of the court and in how he preserves proper order and decorum.⁸

In *Estelle v. Williams*,⁹ the Supreme Court found that making a defendant wear identifiable prison clothing at his jury trial denies him due process and equal protection because “of the possible impairment of the presumption [of innocence] so basic to the adversary system.”¹⁰ Such “inherently prejudicial” practices are permitted only when justified by an essential state interest that is specific to that trial, and no “essential state policy” is served by compelling a defendant to dress in this manner.¹¹ On the other hand, in *Holbrook v. Flynn*,¹² the Supreme Court found that the presence of four uniformed state troopers sitting in the spectators’ gallery, directly behind the accused, was not so inherently prejudicial that it denied the defendant a fair trial. This was because of “the wider range of

⁶ *Estelle v. Williams*, 425 U.S. 501, 503 (1976).

⁷ *Id.*

⁸ *Hathorne v. State*, 459 S.W.2d 826, 834 (Tex. Crim. App. 1970).

⁹ 425 U.S. 501 (1976).

¹⁰ *Id.* at 504.

¹¹ *Id.* at 503-04.

¹² 475 U.S. 560 (1986).

inferences” that a juror might reasonably draw from their presence.¹³

These cases stand for the following proposition: When a courtroom practice is challenged as inherently prejudicial, the question is whether the practice (1) creates an unacceptable risk that the presumption of innocence will be eroded, and (2) does not further an “essential” state policy.¹⁴ We have held that “inherent prejudice rarely occurs and ‘is reserved for extreme situations.’”¹⁵

If a courtroom arrangement is not inherently prejudicial, then reviewing courts use a case-by-case approach to decide whether its use actually prejudiced the defendant.¹⁶ The “test to determine actual prejudice—the result of external juror influence—would be whether

¹³ *Id.* at 569 (“While shackling and prison clothes are unmistakable indications of the need to separate a defendant from the community at large, the presence of guards at a defendant’s trial need not be interpreted as a sign that he is particularly dangerous or culpable. Jurors may just as easily believe that the officers are there to guard against disruptions emanating from outside the courtroom or to ensure that tense courtroom exchanges do not erupt into violence. Indeed, it is entirely possible that jurors will not infer anything at all from the presence of the guards.”).

¹⁴ See LeRoy Pernell, *The Reign of the Queen of Hearts: The Declining Significance of the Presumption of Innocence—A Brief Commentary*, 37 CLEV. ST. L. REV. 393, 395-409 (1989) (quoting Lewis Carroll’s *Alice’s Adventures in Wonderland* —“‘Let the jury consider their verdict’ the King said . . . ‘No, no!’ said the Queen. ‘Sentence first-verdict afterwards.’”; discussing the history of the presumption and arguing that *Williams* left “open the door for the entry of the Queen of Hearts principle,” and that “the Court made use of this opening in *Holbrook*”; “[t]he uncertainty surrounding when an ‘unacceptable risk’ exists creates a slippery slope down which it is easy to slide into a quagmire of suggestive courtroom setups that, while arguably meeting important governmental interests, directly and indirectly suggest guilt before trial”).

¹⁵ *Howard v. State*, 941 S.W.2d 102, 117 (Tex. Crim. App. 1996) (citation omitted), *overruled on other grounds by Easley v. State*, 424 S.W.3d 535 (Tex. Crim. App. 2014).

¹⁶ See *Id.* (applying *Williams/Holbrook* rule to claim of “external juror influence”; finding neither inherent nor actual prejudice in the courtroom presence of twenty uniformed state troopers and police officers during final argument in the penalty phase of capital murder trial in which victim was a state trooper).

jurors actually articulated a consciousness of some prejudicial effect.”¹⁷ In other words, the defendant must show “a reasonable probability that the conduct or expression interfered with the jury’s verdict.”¹⁸

III.

The Mothers Against Drunk Driving organization¹⁹ is no stranger to courtroom controversy. A MADD-produced video has been played for jurors in an intoxication manslaughter trial.²⁰ MADD members have carried placards and signs during a trial.²¹

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ The current mission statement of MADD reads, “The mission of Mothers Against Drunk Driving is to stop drunk driving, support the victims of this violent crime and prevent underage drinking.” MADD lists, among its victim services, that of “providing advocacy in the criminal and civil justice systems” and “accompanying victims/survivors to court.” See <http://www.madd.org>; see also Steven Grossman, *Hot Crimes: a Study in Excess*, 45 CREIGHTON L. REV. 33, 55 (Dec. 2011) (crediting MADD with playing a significant role in raising public concern about drunk driving by drawing attention to such things as the seriousness of the problem created by the drunk driver, the overly lenient sentences that many drunk drivers received, and the need for new legislation, but noting “a paradigm shift in recent years. . . . MADD has shifted from ‘Don’t drive drunk’ to ‘Don’t drink and drive’ For instance, MADD ‘defines down’ drunk driving by arguing that even low blood alcohol content (‘BAC’) while driving equate[s] to dangerous driving under the influence. MADD does this despite the fact that evidence suggests that driver fatality rates do not increase appreciably until a BAC reaches .1%.”).

²⁰ *People v. Diaz*, 173 Cal. Rptr.3d 594, 608-09 (Cal. Ct. App. 2014) (reversible error to permit the jury to view 33 minute long MADD video that contained highly emotional footage of victims and their families discussing the impact of alcohol-related crashes, unrelated to the charged offense); *Eby v. State*, 702 P.2d 1047, 1050 (Okla. Crim. App. 1985) (by failing to object, defendant forfeited complaints about presence of MADD members in the courtroom during the trial and the failure of the trial judge to properly admonish jury to disregard a television movie about drunk driving which aired during a recess).

²¹ See *Moreno v. State*, No. 04-01-00406-CR, 2002 WL 1573426, at *5 (Tex. App.—San Antonio July 17, 2002, no pet.) (not designated for publication) (defendant forfeited complaint about

Potential jurors are routinely asked, as they were in this case, whether they have ever contributed to MADD²² so that they may be challenged for cause or struck peremptorily. A MADD representative became a fact witness after doing ride-along with a police officer on duty.²³ MADD has been a point of reference in jury arguments.²⁴ MADD letters have been admitted into evidence.²⁵ And, with some frequency, spectators wearing MADD buttons come to DWI and intoxication manslaughter trials.²⁶

presence of members of MADD carrying placards and signs during trial by failing to object on the record).

²² *Railsback v. State*, 95 S.W.3d 473, 482 (Tex. App.—Houston [1st Dist.] 2002, pet. ref'd) (jurors asked if they had ever contributed to MADD or any other victim's rights organizations); *Morales v. State*, 875 S.W.2d 724, 725 (Tex. App.—Fort Worth 1994, no pet.) (same).

²³ *See Slater v. State*, No. A14-89-001159-CR, 1991 WL 19827, at *1 (Tex. App.—Houston [14th Dist.] Feb. 14, 1991, no pet.) (not designated for publication) (noting that mistrial was granted after MADD representative attempted to testify that she had one child killed by a drunk driver and another that had, as a result, committed suicide).

²⁴ *See People v. Chavez*, No. B198991, 2008 WL 4786654, at *5 (Cal. Ct. App. Nov. 4, 2008) (not designated for publication) (upholding prosecutor's argument that defendant knew he would kill somebody because "Everybody knows. . . . I mean, we hear about this all the time, the horrors of drunk driving. That's why we have MADD.").

²⁵ *State v. Hillier*, 887 P.2d 845, 846 (Or. Ct. App. 1994) (reversible error to admit exhibit containing certified copies of administrative rules pertaining to alcohol breath testing and documentation that included letters from MADD relating to the promulgation of those rules).

²⁶ *United States v. Sheffey*, 57 F.3d 1419, 1431-32 (6th Cir. 1995) (noting the "troubling issues" of "the presence in the courtroom during the trial of some four to five members of anti-drunk-driving groups, all of whom were wearing noticeable buttons reflecting their cause" as well as an allegation that "these activists 'even went so far as to eat lunch with the jurors' during his trial," but finding no actual prejudice); *State v. McNaught*, 713 P.2d 457, 468 (Kan. 1986) (holding defendant failed to show that he was prejudiced by the presence of spectators in the courtroom wearing MADD buttons); *State v. Franklin*, 327 S.E.2d 449, 451 (W.Va. 1985) (holding that presence of the spectators wearing MADD buttons led by uniformed sheriff, who was passing out buttons outside the courtroom, including at least one to a potential juror, was reversible error).

In none of these cases, however, was the trial judge the source of the actual or figurative MADD presence.²⁷ Fortunately, there are few cases addressing the impropriety of a trial judge having special-interest group posters or plaques up in his or her courtroom.²⁸

²⁷ Courtroom practices may involve government-sponsored conduct or spectator conduct. In *Carey v. Musladin*, 549 U.S. 70 (2006), the Supreme Court addressed a habeas petitioner's claim that the presence of spectators in the courtroom wearing buttons with a photo of the alleged murder victim prejudiced his right to a fair trial. The defendant invoked the Supreme Court's cases "that certain courtroom practices are so inherently prejudicial that they deprive the defendant of a fair trial." *Id.* at 72. But the prejudicial conduct involved in *Musladin* was courtroom conduct of private actors, and the Supreme Court held that the inherent prejudice test it had applied to cases involving government-sponsored conduct did not clearly extend to the conduct of courtroom spectators acting independently. *Id.* at 77. The Court recognized that federal and state courts are split on whether to extend the inherent prejudice test to private spectators' conduct. Because the question was an open one, it was not a grounds for relief under 28 U.S.C. § 2254. The Court's distinction has its critics. Padraic Foran, Note, *Unreasonably Wrong: the Supreme Court's Supremacy, the AEDPA Standard, and Carey v. Musladin*, 81 S. CAL. L. REV. 571, 582 (2008) (arguing that the distinction between state and private action courtroom practices "is misplaced, because the source of disturbing courtroom behavior is meaningless both to the holder of the right—the accused—and to the body charged with enforcing that right—the trial court."). Texas is one of the states that has applied the inherent prejudice test to private spectators' conduct. *See supra* note 16.

²⁸ *See ACLU of Ohio Foundation, Inc. v. DeWeese*, 633 F.3d 424, 435 (6th Cir. 2011) (holding unconstitutional the courtroom display of a poster of the Ten Commandments and seven secular Humanist Precepts and "editorial comments" that link religion and secular government); *Tyler v. Nelson*, 163 F.3d 1222, 1229 (10th Cir. 1999) (defendant's trial for murdering detective not rendered unfair by the state trial judge's decision not to remove or conceal memorial plaque to the dead detective from the courthouse lobby during trial; "Like the presence of guards at a defendant's trial, the plaque 'need not be interpreted as a sign that [Petitioner] is particularly dangerous or culpable.' The memorial plaque was small and therefore was not necessarily noticeable. Further, it was not located in the courtroom nor did it mention Petitioner's name. Although the plaque may have served as a reminder of a police officer's death, it did not necessarily serve as a reminder of Petitioner's guilt or his special status as a defendant."); *Utley v. State*, 589 N.E.2d 232, 239 (Ind. 1992) (trial not rendered unfair by denial of motion to cover courtroom mural "depicting the story of the judgment of Solomon, I Kings 4:16-28, whereby Solomon determines the true mother of an infant over which custody is disputed"); *Duffitt v. State*, 525 N.E.2d 607, 608 (Ind. 1988) ("the practice of decorating in deference to certain witnesses is altogether inappropriate and has no proper place in our trial courtrooms").

During the voir dire in a Louisiana case,²⁹ the trial judge displayed a three-and-a-half by two-and-a-half foot poster in his courtroom, depicting a grave with a cross on it, and the words “You have the right to drink; You have the right to drive; You have the right to remain silent. Don’t drink and drive; don’t ride with anyone who does.”³⁰ In that case, the trial judge took the poster down when requested, but he nevertheless likened the poster to a piece of furniture in the courtroom.³¹

The Louisiana court held that the presence of the poster was not inherently prejudicial because the exposure was short-lived and the trial judge had told the jury not to view the poster as a reflection of his opinion about the case. Nor did the poster’s exhibition cause actual prejudice because the only prospective juror who indicated he associated the poster with the defendant’s case said that he did not believe it would affect his decision. In so holding, the court disagreed with the State’s argument that the poster was not a reflection of the judge’s opinion on DWI:

The poster was not hung outside the courtroom in the lobby; rather, it was hung over the witness stand next to the judge’s bench and in the view of anyone in the courtroom. Furthermore, the courtroom is the judge’s domain; and the judge is considered the dominant person in that arena. It is conceivable and likely that persons viewing the DWI poster would associate it with the trial

²⁹ *State v. Edwards*, 591 So.2d 748 (La. Ct. App. 1991).

³⁰ *Id.* at 751.

³¹ It is axiomatic that a courtroom is not the judge’s living room for him to decorate as he pleases. It is the taxpayer’s forum for dispensing justice to all citizens—defendants and victims alike.

judge and view it as a reflection of the judge's opinion on DWI.³²

That observation mirrors what we said nearly a century ago: "Jurors are prone to seize with alacrity upon any conduct or language of the trial judge which they may interpret as shedding light upon his view of the weight of the evidence, or the merits of the issues involved."³³

And like the Louisiana court, I believe that jurors would reasonably conclude that the plaque in this case reflected the trial judge's alignment with MADD. The plaque was not hung in his chambers where personal items belong. Rather, as appellant notes, the plaque was the only object displayed by the judge and sat directly below the court's official seal and between the United States and Texas flags. I agree with Justice Sharp that the public display of the MADD plaque "in what is to be a hallowed sanctuary of impartial justice bespeaks a fundamental misunderstanding of the very proprietorship of that public space: it is the people's courtroom, not an oversized ante-room of some judge's chambers."³⁴ Nevertheless, I agree with the court of appeals' majority that there was no actual harm shown in this case.

First, the plaque's presence was not "inherently prejudicial." It was relatively small, and blocked when Judge Harmon was sitting at the bench. The panel was told that the judge was the "neutral" ball-and-strikes caller, and defense counsel—in the midst of his objection

³² *Edwards*, 591 So.2d at 755.

³³ *Lagrone v. State*, 209 S.W. 411, 415 (Tex. Crim. App. 1919).

³⁴ *Simpson v. State*, No. 01-12-00380-CR, 2013 WL 6869923, at *26 (Tex. App.—Houston [1st Dist.] Dec. 31, 2013) (Sharp, J., dissenting) (not designated for publication).

to the plaque—said “Judge, I know you’re very fair. I just would request and object to that sign being up there during this trial. I would ask . . . respectfully that it be removed.”

Like the presence of the uniformed state troopers in the gallery of the courtroom in *Holbrook v. Flynn*,³⁵ the conspicuous (or at least noticeably visible) display of a MADD plaque in a courtroom, even during a DWI trial, is not an inherently prejudicial practice that necessarily undermines the presumption of innocence and the fairness of the fact-finding process. Second, no juror articulated a consciousness of prejudicial effect.³⁶ Though several prospective jurors said that they supported MADD, or at least appreciated “what they are doing,” none said that the plaque made them question the trial judge’s impartiality. Although appellant did not show that the jurors at her trial were, in fact, influenced by the MADD plaque, such partisan displays in any public courtroom should be strongly condemned.

With these comments, I join in the Court’s refusal of appellant’s petition for discretionary review.

Filed: October 15, 2014
Publish

³⁵ 475 U.S. 560, 569 (1986).

³⁶ Rule 606(b) was designed precisely for the purpose of inquiring of jurors after the trial whether such an “outside influence” affected the jury deliberations. A defendant may gather juror affidavits and sponsor juror testimony in a motion for new trial hearing to establish that plaques or other indicia of possible judicial favoritism affected the validity of the verdict. TEX. R. EVID. 606(b).

EXHIBIT G

**LETTER FROM HARRIS COUNTY CRIMINAL
LAWYERS ASSOCIATION TO JUDGE WILLIAM
HARMON
(11-18-14)**



HARRIS COUNTY CRIMINAL LAWYERS ASSOCIATION

POST OFFICE BOX 924523

HOUSTON, TEXAS 77292-4523

713-227-2404

Fax 713-869-5051

www.hccla.org

Officers: 2014-2015

President

Carmen M. Roe

President Elect

JoAnne Musick

Vice President

Mark Bennett

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Tyler Flood

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Lisa Shapiro Strauss

Mark R. Thiessen

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Carolyn Garcia

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Clyde Williams

Robert Pelton

Candelario Elizondo

Allen C. Isbell

David Mitcham

Jim E. Lavine

Rick Brass

Mary E. Conn

Kent A. Schaffer

Dan Cogdell

Jim Skelton

George J. Parnham

Garland D. McInnis

Robert A. Moen

Lloyd Oliver

Danny Easterling

Wayne Hill

Richard Frankoff

W. Troy McKinney

Cynthia Henley

Stanley G. Schneider

Wendell A. Odom, Jr.

Robert J. Fickman

Patrick F. McCann

Mark Bennett

JoAnne Musick

Nicole DeBorde

Earl Musick

Christopher L. Tritico

November 18, 2014

The Honorable William Harmon
Judge, Harris County Criminal Court at Law No. 2
1201 Franklin Street
Houston, TX 77002

Judge Harmon:

We ask that you remove the "MADD" plaque from the bench in County Criminal Court at Law Number Two. The display of a plaque that represents one of the most recognized anti-drunk-driving organizations sends the message that you have an improper bias in the courtroom and creates the appearance of partiality.

As you well know, every judge takes an oath to adhere to certain principles and duties in service to the community. We direct you to the following Texas Judicial Canons, which are particularly relevant to this issue:

- Judicial Canon 2: A judge must avoid impropriety and the appearance of impropriety in all of the Judge's activities (as titled).
- Judicial Canon 2(A): "A judge ... should act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary."
- Judicial Canon 2(B): "A judge shall not ... convey or permit others to convey the impression that they are in a special position to influence the judge."
- Judicial Canon 3(B)(5): "A judge shall perform judicial duties without bias or prejudice."
- Judicial Canon 4: "A judge shall conduct all of the Judge's extra-judicial activities so that they do not ... cast reasonable doubt on the judge's capacity to act impartially as a judge"

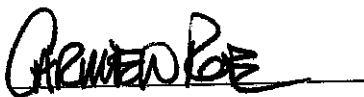
Recently, three Judges on the Texas Court of Criminal Appeals specifically condemned your display of the "MADD" plaque. Judges Cathy Cochran, Cheryl Johnson, and Barbara Hervey recognized that a courtroom "is to be a hallowed sanctuary of impartial justice," and said that to display a "MADD" plaque in the courtroom "bespeaks a fundamental misunderstanding of the very proprietorship of that public space: it is the people's courtroom, not an oversized ante-room of some judge's chambers." They concluded by making clear that "such partisan displays in any public courtroom should be strongly condemned."¹

¹ *Simpson v. State*, No. PD-0940-14, 2014 WL 550625 (Tex. Crim. App. Oct. 15, 2014).

You have been asked before to remove the "MADD" plaque. I hope that the condemnation of three Judges on the highest criminal court in Texas, as well as this written request will assist you in adhering to the judicial canons, maintaining the "hallowed sanctuary of impartial justice," and removing your personal display of partisanship from the people's courtroom.

As always, I am happy to discuss this matter with you further should you wish to talk.
Thank you for your attention to this matter.

Respectfully,

A handwritten signature in black ink, appearing to read "CARMEN ROE", with a horizontal line extending to the right.

CARMEN M. ROE
HCCLA President

cc: Hon. Sherman Ross
Marshall Shelsey

EXHIBIT H
AFFIDAVIT FROM
ANDREA PODLESNEY

AFFIDAVIT

STATE OF TEXAS §

§

COUNTY OF HARRIS §

My name is Andrea Podlesney. I am of legal age, I am in all ways competent to make this affidavit, and have personal knowledge of all facts recited herein.

I am Tyler Flood's Legal Assistant. I am aware of the general practices of Harris County Criminal Court Number 2. In my experience, Harris County Criminal Court Number 2 does not typically reset our firm's cases for Trial on the first setting.

Beginning on or about October 31, 2014, a number of our firm's cases were reset for Trial on the first setting. To my knowledge, our firm did not request that any of these cases be set for Trial on the first setting.

Andrea Podlesney

Signed and sworn to before me this 26th day of February, 2015, to which witness my hand and official seal.

Notary Public
State of Texas

EXHIBIT I
STATE V. AZIZ
(10-31-14)

CAUSE NO. [REDACTED]

THE STATE OF TEXAS

vs.

§

§

§

IN THE COUNTY CRIMINAL

COURT AT LAW NO. 2

HARRIS COUNTY, TEXAS

Charge: DWI**CASE RESET FORM**Reset Date: The undersigned Defendant and Counsel acknowledge that this case is reset from 10.31.14to: 12-18-2015 at 9:30 AM

- ☐ The State has offered: 12-18-2015
- ☐ The State and Defense agree as follows:

1st setting - WOLTINGMAN blood

Attorney for State Signature

Fines, Court Costs, and Restitution

Fine: _____

Costs: _____

Total: _____

Restitution: _____

Time: _____

Harris County, Texas

By _____

Deputy

Defendant Signature: _____

☒ On Bond☐ In JailAttorney for the Defendant (print) Tyler Flood24032057

Attorney Bar #

Attorney Signature

Attorney Email Address

Attorney Telephone No. 713.224.5529Attorney Fax No. 713.224.5533Attorney Tax No. 01901745

Attorney SPN

FOR COURT STAFF USE ONLYReset by: ☒ Defense ☐ Prosecution ☐ Court

Setting Reason:

☐ ARR☐ PLPA☐ RDLH☐ PTMO☐ MAJ / MRP☐ PNDC☐ HEAR☐ SEJS☐ DBIH☐ PTCR☐ DISM☐ MCHS☒ NTRL☐ MOTN☐ DBIV☒ CTRL☐ SBBF☐ MCH☐ DBID☒ JTRL☐ Other _____☐ MCRH**Reason for Reset:**☐ To Hire Attorney☐ No Offense Report☐ No Video / Lab☐ RIP☐ File Unavailable☐ D.A. Chief Unavailable☐ D.A. Re-File As Felony☐ D.A. Evaluate Case☐ Restitution Info☐ Refer to FCLD☐ Defendant On Call☐ Defendant Has New Case☐ Attorney Not Present☐ FELP☐ Need Clearance Letter☐ Compliance MAJ / MRP☐ No MHMR Evaluation☐ Complete Program:☐ Other: _____Setting Date Approved By: [Signature]Date Signed 10-31-2014

Judge / Coordinator

CCL Form 2

DISTRICT CLERK'S FILE

06-18-2013

Cause: [REDACTED] 0 CDI: 2 Court: 2

APPEALS

No Appeals found.

PAYMENT PLAN

No Payment Plan found.

RELATED CASES

No related cases found.

BOOKINGS

No Bookings found.

HOLDS

No Holds found.

WITNESS

No Witness found.

SUMMARY**CASE DETAILS**

File Date	[REDACTED]
Case (Cause) Status	Active - CRIMINAL
Offense	DRIVING WHILE INTOXICATED
Last Instrument Filed	Misdemeanor Information
Case Disposition	
Case Completion Date	N/A
Defendant Status	BOND MADE
Bond Amount	\$500.00
Next/Last Setting Date	[REDACTED]

DEFENDANT DETAILS

Race/Sex	W / M	Height/Weight	5'09 / 138 LBS
Eyes	BRO	Hair	BLK
Skin	MBR	Build	MED
DOB	[REDACTED]	In Custody	N
US Citizen	YES	Place Of Birth	TX

Address [REDACTED]

Markings**COURT DETAILS**

Court	2nd
Address	1201 Franklin (Floor: 8) Houston, TX 77002 Phone: 713 755 6184
JudgeName	William Harmon
Court Type	Criminal

BONDS

Date	Type	Description	SNU
10/24/2014	BOND SET	\$500	999
10/25/2014	BOND FILED	CRT 2 TIME 1314 TYPE SURETY	
10/25/2014	BOND MADE	AMT \$500 DATE 10/24/14 RCPT #	
10/25/2014	BONDSMAN	U.S. FIRE-MCLEHANY, TROY	

ACTIVITIES

Date	Type	Description	SNU/CFI
11/24/2014	DA TAPE NUMBER	DA1408755 SNU: D99	
	5 /	/ DA TAPE NUMBER SNU:	
10/24/2014	COMPLAINT FILED	0900 2 DRIVING WHILE INTOXICAT LEVEL MB	
10/24/2014	BOND SET	\$500	999
10/24/2014	REVIEWED BY	MILES, ABBIE LYNN	
10/24/2014	ORI	HOUSTON POLICE DEPAR OFFENSE NO: [REDACTED]	
10/24/2014	COMPLAINANT	MCRAE, P A	
10/25/2014	BOND FILED	CRT 2 TIME 1314 TYPE SURETY	
10/25/2014	BOND MADE	AMT \$500 DATE 10/24/14 RCPT #	
10/25/2014	BONDSMAN	U.S. FIRE-MCLEHANY, TROY	
01/23/2015	MOTIONS	M/CON'T-WAIVE APPRNC	991
01/23/2015	MOTIONS	FILED CFI 2	
01/17/2015	MOTIONS	RECONSID RECUSE JGE	992
01/17/2015	MOTIONS	FILED CFI 2	
01/20/2015	MOTIONS	M/FOR RUNNING OBJECT	993
01/20/2015	MOTIONS	FILED CFI 2	
01/20/2015	MOTIONS	M/FOR CONTINUANCE	994
01/20/2015	MOTIONS	FILED CFI 2	
01/20/2015	MOTIONS	M/IN LIMINE	995
01/20/2015	MOTIONS	FILED CFI 2	
01/20/2015	MOTIONS	ST M/IN LIMINE	996
01/20/2015	MOTIONS	FILED CFI 2	
01/05/2015	MOTIONS	MO CRT REMOVE MADD P	997
01/05/2015	MOTIONS	FILED CFI 2	
01/05/2015	MOTIONS	MO JUDGE TO RECUSE	998
01/05/2015	MOTIONS	FILED CFI 2	
12/29/2014	MOTIONS	ST M/DISCLOSE EXPERT	999
12/29/2014	MOTIONS	FILED CFI 2	
01/23/2015	ORDER	M/CONTIUNANCE/WAIVE DENIEDD	988
01/23/2015	OFFENSE	DRIVING WHILE INTOXICATED LEVEL MB	
01/21/2015	ORDER	GRT IGNIT INTERLOCK INSTALL	989
01/21/2015	OFFENSE	DRIVING WHILE INTOXICATED LEVEL MB	

63661418	133942 - SUBPOENA	12/30/2014	1
63661419	133943 - SUBPOENA	12/30/2014	1
63661420	133944 - SUBPOENA	12/30/2014	1
63665769	133942 - RETURN OF SUBPOENA	12/30/2014	1
63667125	133941 - RETURN OF SUBPOENA	12/30/2014	1
63668189	133944 - RETURN OF SUBPOENA	12/30/2014	2
63668190	133943 - RETURN OF SUBPOENA	12/30/2014	2
63660467	APPLICATION FOR SUBPOENA BY STATE	12/29/2014	1
63661085	FREEfax Cover Sheet	12/29/2014	1
63674977	STATES DISCLOSURE OF EXPERTS	12/29/2014	3
63674978	NOTICE OF INTENTION TO USE EVIDENCE OF PRIOR CONVICTIONS AND EXTRANEIOUS OFFENSES	12/29/2014	2
63629001	TRIAL - DISCOVERY	12/23/2014	2
63071996	117361 - RETURN OF SUBPOENA	11/06/2014	1
63055572	APPLICATION FOR SUBPOENA BY DEFENSE	11/05/2014	1
63055573	Subpoena Application Attachment DEFENSE	11/05/2014	2
63055895	APPLICATION FOR SUBPOENA BY DEFENSE	11/05/2014	1
63055896	Subpoena Application Attachment DEFENSE	11/05/2014	2
63062390	FREEfax Cover Sheet	11/05/2014	1
63062399	FREEfax Cover Sheet	11/05/2014	1
63063064	117330 - SUBPOENA	11/05/2014	1
63063073	117361 - SUBPOENA	11/05/2014	1
63064103	117330 - RETURN OF SUBPOENA	11/05/2014	1
63002565	ATTORNEY OF RECORD	10/31/2014	1
63006037	CASE RESET FORM	10/31/2014	1
63042184	TRIAL - DISCOVERY	10/31/2014	5
62932822	BAIL - BOND	10/25/2014	3
62911138	CHARGING INSTRUMENT - MISDEMEANOR INFORMATION	10/24/2014	1
62911222	CHARGING INSTRUMENT - COMPLAINT	10/24/2014	1

EXHIBIT J

STATE V. GARZA

(10-31-14)

CAUSE NO. _____

THE STATE OF TEXAS

vs. _____ Garza

IN THE COUNTY CRIMINAL

COURT AT LAW NO. 002

HARRIS COUNTY, TEXAS

Charge: Dwi-/open Alcohol container

CASE RESET FORM

Reset Date: The undersigned Defendant and Counsel acknowledge that this case is reset from 10/31/2014
to: 12-17-2014 at 9:30 A.M.

- ☐ The State has offered: 1-20-2015
☐ The State and Defense agree as follows:

Attorney for State Signature _____

Defendant Signature _____ ☒ On Bond ☐ In Jail

Fines, Court Costs, and Restitution

Fine: _____

Costs: _____

Total: _____

Restitution: _____

FILED
Chris Daniel
District Clerk
OCT 31 2014

Time: _____
By: _____
Harris County, Texas
Deputy

Attorney for the Defendant (print) _____ ☒ Retained ☐ Appointed

Attorney Bar # _____ Attorney SPN _____

Attorney Signature _____

Attorney Email Address _____

Attorney Telephone No.: 713-224-5529

Attorney Fax No.: 713-224-5533

FOR COURT STAFF USE ONLY

Reset by: ☒ Defense ☐ Prosecution ☒ Court

Setting Reason:

☐ ARR

☐ HEAR

☒ NTRL

☐ DISP

☐ PLEA

☐ SEJS

☐ MOTN

☐ RDLH

☐ DPH

☐ DPV

☐ DPID

☐ PTMO

☐ PCCR

☐ CTRL

☒ JTRL

☒ MAJ / MRP

☐ DISM

☐ SFBF

☐ Other _____

☐ PNDC

☐ MCH

☐ MCH

☐ MORH

Reason for Reset:

☒ To Hire Attorney

☐ No Offense Report

☐ No Video / Lab

☐ RIP

☐ File Unavailable

☐ D.A. Chief Unavailable

☐ D.A. Re-File As Felony

☐ D.A. Evaluate Case

☐ Restitution Info

☐ Refer to FCLD

☐ Defendant On Call

☐ Defendant Has New Case

☐ Attorney Not Present

☐ HELP

☐ Need Clearance Letter

☐ Compliance MAJ / MRP

☐ No MHMR Evaluation

☐ Complete Program:

☐ Other: _____

Setting Date Approved By: _____

Judge / Coordinator
CCL Form 2

Date Signed _____

10/31/2014

06-18-2013

DISTRICT CLERK'S FILE

(SPN: [REDACTED])

Cause: [REDACTED] 0 CDI: 2 Court: 2

APPEALS

No Appeals found.

PAYMENT PLAN

No Payment Plan found.

RELATED CASES

No related cases found.

HOLDS

No Holds found.

WITNESS

No Witness found.

SUMMARY**CASE DETAILS**

File Date	[REDACTED]
Case (Cause) Status	Dismissed
Offense	DWI/OPEN ALCOHOL CONTAINER
Last Instrument Filed	Misdemeanor Information
Case Disposition	DISM-012115
Case Completion Date	[REDACTED]
Defendant Status	DISPOSED
Bond Amount	\$500.00
Next/Last Setting Date	[REDACTED]

DEFENDANT DETAILS

Race/Sex	W / M	Height/Weight	5'09 / 130 LBS
Eyes	BRO	Hair	BLK
Skin	MED	Build	MED
DOB	[REDACTED]	In Custody	N
US Citizen	YES	Place Of Birth	TX
Address	[REDACTED]		
Markings			

COURT DETAILS

Court	2nd
Address	1201 Franklin (Floor: 8) Houston, TX 77002 Phone: 7137556184
JudgeName	William Harmon
Court Type	Criminal

BONDS

Date	Type	Description
10/25/2014	BOND SET	\$500
10/26/2014	BOND FILED	CRT 2 TIME 1119 TYPE SURETY
10/26/2014	BOND MADE	AMT \$500 DATE 10/25/14 RCPT #

SNU

999

10/26/2014

BONDSMAN

SCHMIDT, DAVID

ACTIVITIES

Date	Type	Description	SNU/CFI
11/04/2014	DA TAPE NUMBER	DA1408224 SNU: D99	
	4/	/ DA TAPE NUMBER SNU:	
10/25/2014	COMPLAINT FILED	1043 2 DWI/OPEN ALCOHOL CONTAIN LEVEL MB	
10/25/2014	BOND SET	\$500	999
10/25/2014	REVIEWED BY	DUNLAP, TRAVIS JON	
10/25/2014	ORI	CONSTABLE PCT 7 OFFENSE NO: [REDACTED]	
10/25/2014	COMPLAINANT	LEAL, JUAN I	
10/25/2014	CMI/MIN	TIME 1652 AMOUNT \$500	999
10/25/2014		NOT ACKNOWLEDGED BY SHERIFF	
10/26/2014	BOND FILED	CRT 2 TIME 1119 TYPE SURETY	
10/26/2014	BOND MADE	AMT \$500 DATE 10/25/14 RCPT #	
10/26/2014	BONDSMAN	SCHMIDT, DAVID	
01/21/2015	C87 ACTIVITY	DISM OTHER STATUS D CFI 2	998
10/25/2014	C87 ACTIVITY	PCWAR DONE STATUS CFI 2	999
01/17/2015	MOTIONS	RECONSID RECUSE JGE	995
01/17/2015	MOTIONS	FILED CFI 2	
01/05/2015	MOTIONS	MO CRT REMOVE MADD P	996
01/05/2015	MOTIONS	FILED CFI 2	
01/05/2015	MOTIONS	MO JUDGE TO RECUSE	997
01/05/2015	MOTIONS	FILED CFI 2	
12/30/2014	MOTIONS	ST M/DISCLOSE EXPERT	998
12/30/2014	MOTIONS	FILED CFI 2	
10/25/2014	MOTIONS	REQ APPT ATTY	999
10/25/2014	MOTIONS	FILED CFI 2	
01/05/2015	ORDER	RECUSAL REFERRED ADMIN CRT	992
01/05/2015	OFFENSE	DWI/OPEN ALCOHOL CONTAINER LEVEL MB	
01/05/2015	ORDER	MO CRT REMOVE MADD PLAQUE D	993
01/05/2015	OFFENSE	DWI/OPEN ALCOHOL CONTAINER LEVEL MB	
01/02/2015	ORDER	M/DISCLOSE EXPERTS GRANTED	994
01/02/2015	OFFENSE	DWI/OPEN ALCOHOL CONTAINER LEVEL MB	
12/23/2014	ORDER	DISCOVERY SIGNED	995
12/23/2014	OFFENSE	DWI/OPEN ALCOHOL CONTAINER LEVEL MB	
11/20/2014	ORDER	DISCOVERY	996
11/20/2014	OFFENSE	DWI/OPEN ALCOHOL CONTAINER LEVEL MB	
10/31/2014	ORDER	BLOOD DISCOVERY SIGNED	997
10/31/2014	OFFENSE	DWI/OPEN ALCOHOL CONTAINER LEVEL MB	

10/31/2014	ORDER	GRT IGNIT INTERLOCK INSTALL	998
10/31/2014	OFFENSE	DWI/OPEN ALCOHOL CONTAINER LEVEL MB	
10/31/2014	ORDER	CSCD PRETRIAL SUPV	999
10/31/2014	OFFENSE	DWI/OPEN ALCOHOL CONTAINER LEVEL MB	
01/21/2015	COURT ORDER	DISMISSAL	999
01/21/2015	DISMISSAL REASON	MISSING WITNESS	
01/21/2015	JUDG OFFENSE	DWI/OPEN ALCOHOL CONTAINER LEVEL MB	

BOOKINGS

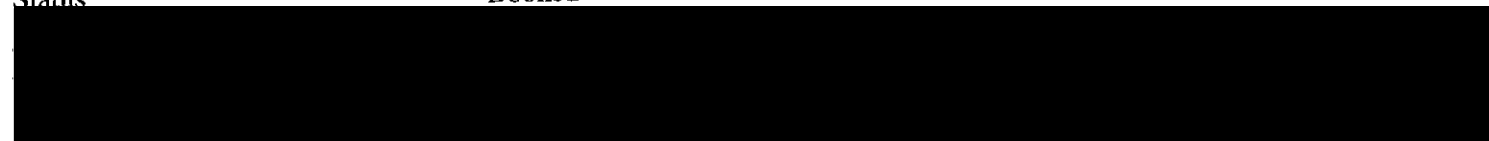
Arrest Date	Arrest Location	Booking Date
10/25/2014 3:59:00 AM	HCTY	10/25/2014 5:51:00 PM

HOLDS

No holds found.

CRIMINAL HISTORY

Case(Cause)Nbr / Defendant Status	Filed / Booked	Ct	Defendant Status	Disposition	Bond Amt	Type of Action / Offense	Next Setting
-----------------------------------	----------------	----	------------------	-------------	----------	--------------------------	--------------



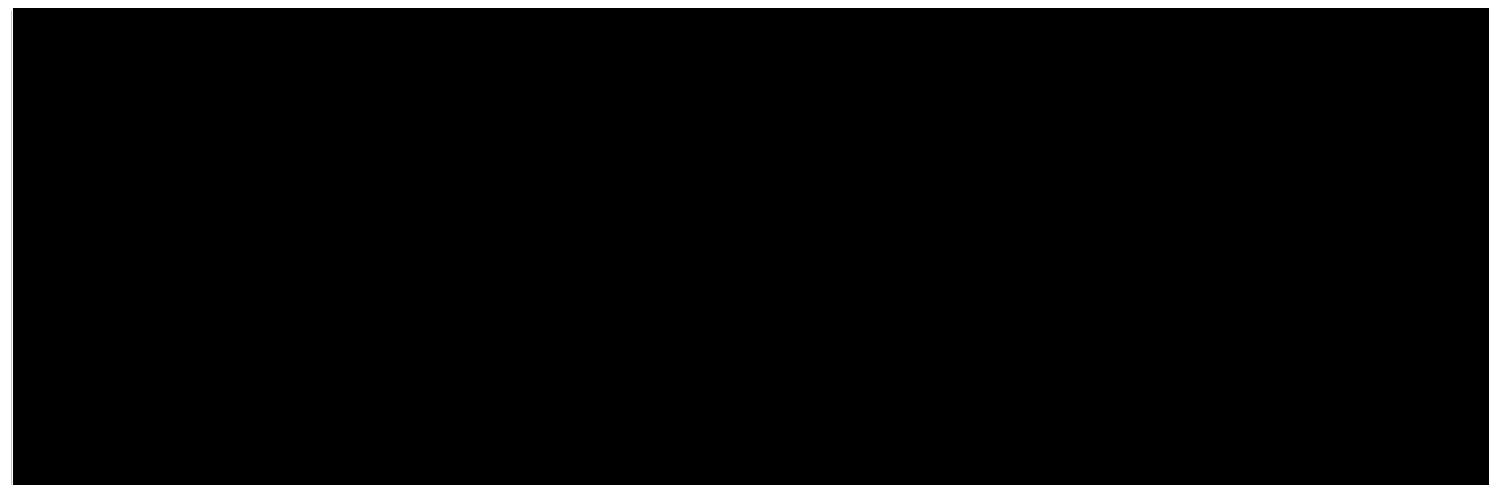
ACTIVE PARTIES

Name	Connection	Post Jdgm	SPN #
FLETCHER, JAMES ROY	HIRED DEFENSE ATTORNEY		02681244
SCHMIDT, DAVID	BAIL BONDSMAN		74357200



INACTIVE PARTIES

No inactive parties found.



DOCUMENTS

Number	Document	Post Jdgm	Date	Pgs
			01/21/2015	1
63935340	DISMISS CASE		01/20/2015	1
63900622	CASE RESET FORM		01/17/2015	4
63944161	MOTION TO RECONSIDER DEFENDANTS MOTION TO RECUSE TRIAL JUDGE		01/17/2015	1
-> 63944162	PROPOSED ORDER		01/08/2015	1
63770995	134189 - RETURN OF SUBPOENA		01/05/2015	3
63757214	ORDER		01/05/2015	10
63776777	ORDER TO RECUSE		01/02/2015	2
63727433	TRIAL - DISCLOSE EXPERTS		12/31/2014	2
63680656	134187 - SUBPOENA		12/31/2014	2
63680657	134188 - SUBPOENA		12/31/2014	2
63680658	134189 - SUBPOENA		12/31/2014	2
63680659	134190 - SUBPOENA		12/31/2014	2
63680660	134191 - SUBPOENA		12/31/2014	2
63683239	134187 - RETURN OF SUBPOENA		12/31/2014	2
63683246	134188 - RETURN OF SUBPOENA		12/31/2014	1
63683351	134190 - RETURN OF SUBPOENA		12/31/2014	1
63683352	134191 - RETURN OF SUBPOENA		12/30/2014	2
63669487	APPLICATION FOR SUBPOENA BY STATE		12/30/2014	1
63680596	FREEfax Cover Sheet		12/30/2014	3
63705503	STATES DISCLOSURE OF EXPERTS		12/23/2014	2
63628999	TRIAL - DISCOVERY		11/20/2014	3
63275724	TRIAL - DISCOVERY		11/11/2014	2
63127767	118011 - RETURN OF SUBPOENA		11/07/2014	1
63095833	APPLICATION FOR SUBPOENA BY DEFENSE		11/07/2014	1
63097824	FREEfax Cover Sheet		11/07/2014	2
63097828	118011 - SUBPOENA		10/31/2014	1
63002567	ATTORNEY OF RECORD		10/31/2014	1
63006047	CASE RESET FORM		10/31/2014	1
63014545	IGNITION INTERLOCK DEVICE		10/31/2014	5
63042185	TRIAL - DISCOVERY			

63042189	CONDITIONS OF BAIL	10/31/2014	4
62932825	BAIL - BOND	10/26/2014	1
62918079	CHARGING INSTRUMENT - COMPLAINT	10/25/2014	1
62918196	CHARGING INSTRUMENT - MISDEMEANOR INFORMATION	10/25/2014	1
62930621	PROBABLE CAUSE & STATUTORY WARNINGS	10/25/2014	1

EXHIBIT K

STATE V. HOWELL

(11-14-14)

CAUSE NO. [REDACTED]

THE STATE OF TEXAS

vs. [REDACTED]

§
§
§

IN THE COUNTY CRIMINAL
COURT AT LAW NO. 002
HARRIS COUNTY, TEXAS

Charge: Driving while intoxicated

CASE RESET FORM

Reset Date: The undersigned Defendant and Counsel acknowledge that this case is reset from

11/14/2014

to: 1-15-2015 at

9:30 AM. ✓

☐ The State has offered:

☐ The State and Defense agree as follows:

Attorney for State Signature

Defendant Signature

☒ On Bond

☐ In Jail

Fines, Court Costs, and Restitution

Fine:

Costs:

Total:

Restitution:

Time:

Harris County, Texas

By

Deputy

Attorney for the Defendant (print)

☒ Retained ☐ Appointed

Attorney Bar #

Attorney SPN

Attorney Signature

Attorney Email Address

Attorney Telephone No.:

Attorney Fax No.:

FOR COURT STAFF USE ONLY

Reset by:

☒ Defense

☐ Prosecution

☒ Court

Setting Reason:

☐ ARR

☐ HEAR

☒ NTR

☐ DISP

☐ PLEA

☐ SEJS

☐ MOTN

☐ RDLH

☐ DPH

☐ DPV

☐ DRID

☐ PTMO

☐ PTCR

☐ CTRL

☒ JTRL

☒ MAJ / MRPH

☐ DISM

☐ SFBF

☐ Other

☐ PNDC

☐ MCH

☐ MCH

☐ MCRH

Reason for Reset:

☐ To Hire Attorney

☐ No Offense Report

☐ No Video / Lab

☐ RIP

☐ File Unavailable

☐ D.A. Chief Unavailable

☐ D.A. Re-File As Felony

☐ D.A. Evaluate Case

☐ Restitution Info

☐ Refer to FCLD

☐ Defendant On Call

☐ Defendant Has New Case

☐ Attorney Not Present

☐ FELP

☐ Need Clearance Letter

☐ Compliance MAJ / MRP

☐ No MHMR Evaluation

☐ Complete Program

☐ Other:

Setting Date Approved By:

RFK

Judge / Coordinator

CCL Form 2

Date Signed

11/14/2014

06-18-2013

DISTRICT CLERK'S FILE

Cause: [REDACTED] CDI: 2 Court: 2

APPEALS

No Appeals found.

PAYMENT PLAN

No Payment Plan found.

RELATED CASES

No related cases found.

BOOKINGS

No Bookings found.

HOLDS

No Holds found.

WITNESS

No Witness found.

SUMMARY**CASE DETAILS**

File Date	[REDACTED]
Case (Cause) Status	Active - CRIMINAL
Offense	DRIVING WHILE INTOXICATED
Last Instrument Filed	Misdemeanor Information
Case Disposition	
Case Completion Date	N/A
Defendant Status	BOND MADE
Bond Amount	\$500.00
Next/Last Setting Date	[REDACTED]

DEFENDANT DETAILS

Race/Sex	W / M	Height/Weight	5'06 / 150 LBS
Eyes	HAZ	Hair	BRO
Skin	FAR	Build	MED
DOB	[REDACTED]	In Custody	N
US Citizen	YES	Place Of Birth	TX
Address	[REDACTED]		
Markings	[REDACTED]		

COURT DETAILS

Court	2nd
Address	1201 Franklin (Floor: 8) Houston, TX 77002 Phone: 7137556184
JudgeName	William Harmon
Court Type	Criminal

BONDS

Date	Type	Description
------	------	-------------

SNU

11/09/2014	BOND SET	\$500	999
11/10/2014	BOND FILED	CRT 2 TIME 0830 TYPE SURETY	
11/10/2014	BOND MADE	AMT \$500 DATE 11/09/14 RCPT #	
11/10/2014	BONDSMAN	AS&CI-MUHARIB, WISAM A	

ACTIVITIES

Date	Type	Description	SNU/CFI
11/11/2014	DA TAPE NUMBER	DA1408465 SNU: D99	
	4/	/ DA TAPE NUMBER SNU:	
11/09/2014	COMPLAINT FILED	0715 2 DRIVING WHILE INTOXICAT LEVEL MB	
11/09/2014	BOND SET	\$500	999
11/09/2014	REVIEWED BY	BARD, LAUREN GWENDOLYN	
11/09/2014	ORI	HOUSTON POLICE DEPAR OFFENSE NO: 142907614	
11/09/2014	COMPLAINANT	PERALES, M	
11/10/2014	BOND FILED	CRT 2 TIME 0830 TYPE SURETY	
11/10/2014	BOND MADE	AMT \$500 DATE 11/09/14 RCPT #	
11/10/2014	BONDSMAN	AS&CI-MUHARIB, WISAM A	
01/23/2015	MOTIONS	M/CONT-WAIVE APPRNC	995
01/23/2015	MOTIONS	FILED CFI 2	
01/17/2015	MOTIONS	RECONSID RECUSE JGE	996
01/17/2015	MOTIONS	FILED CFI 2	
01/05/2015	MOTIONS	MO CRT REMOVE MADD P	997
01/05/2015	MOTIONS	FILED CFI 2	
01/05/2015	MOTIONS	MO JUDGE TO RECUSE	998
01/05/2015	MOTIONS	FILED CFI 2	
01/02/2015	MOTIONS	DISCLOSE EXPERTS	999
01/02/2015	MOTIONS	FILED CFI 2	
01/23/2015	ORDER	M/CONTINUANCE/WAIVE DENIED	991
01/23/2015	OFFENSE	DRIVING WHILE INTOXICATED LEVEL MB	
01/05/2015	ORDER	RECUSAL REFERRED ADMIN CRT	992
01/05/2015	OFFENSE	DRIVING WHILE INTOXICATED LEVEL MB	
01/06/2015	ORDER	GRT MO DISCLOSE EXPERTS	993
01/06/2015	OFFENSE	DRIVING WHILE INTOXICATED LEVEL MB	
01/05/2015	ORDER	MO CRT REMOVE MADD PLAQUE D	994
01/05/2015	OFFENSE	DRIVING WHILE INTOXICATED LEVEL MB	
12/23/2014	ORDER	DISCOVERY SIGNED	995
12/23/2014	OFFENSE	DRIVING WHILE INTOXICATED LEVEL MB	
11/18/2014	ORDER	BLOOD DISCOVERY SIGNED	996
11/18/2014	OFFENSE	DRIVING WHILE INTOXICATED LEVEL MB	
11/14/2014	ORDER	CSCD PRETRIAL SUPV	997

11/14/2014	OFFENSE	DRIVING WHILE INTOXICATED LEVEL MB	
11/14/2014	ORDER	GRT IGNIT INTERLOCK INSTALL	998
11/14/2014	OFFENSE	DRIVING WHILE INTOXICATED LEVEL MB	
11/14/2014	ORDER	STANDING BLOOD TESTING REC	999
11/14/2014	OFFENSE	DRIVING WHILE INTOXICATED LEVEL MB	

HOLDS

No holds found.

ACTIVE PARTIES

Name	Connection	Post Jdgm	SPN #
FLOOD, TYLER ASHLEY	HIRED DEFENSE ATTORNEY		01901745
AS&CI-MUHARIB, WISAM A	BAIL BONDSMAN		74511000

INACTIVE PARTIES

Name	Connection	Post Jdgm	SPN #
BRESKA, MATTHEW RYAN	HIRED DEFENSE ATTORNEY		01701745

SETTINGS

Date	Court Post	Docket Jdgm Type	Reason	Results	Defendant	Future Date	Comments	Attorney Appearance Indicator
11/14/2014 09:00 AM	2	Motions Docket	Arraignment	Reset	Data Not Entered	1/22/2015 12:00:00 AM		Absent
1/22/2015 09:00 AM	2	Motions Docket	Jury Trial	Reset	Present	1/26/2015 12:00:00 AM		Absent
1/26/2015 09:00 AM	2	Motions Docket	Jury Trial		Data Not Entered	1/1/0001 12:00:00 AM		Absent

ALIASES

Defendant Alias	True Name	Race	Sex	DOB	SPN#
-----------------	-----------	------	-----	-----	------

DOCUMENTS

Number	Document	Post Jdgm	Date	Pgs
63934621	CASE RESET FORM		01/22/2015	1
63944157	MOTION TO RECONSIDER DEFENDANTS MOTION TO RECUSE TRIAL JUDGE		01/17/2015	5
-> 63944158	PROPOSED ORDER		01/17/2015	1
63757222	TRIAL - DISCLOSE EXPERTS		01/06/2015	2
63711147	136020 - SUBPOENA		01/05/2015	1
63711148	136021 - SUBPOENA		01/05/2015	1
63711149	136022 - SUBPOENA		01/05/2015	1
63711150	136023 - SUBPOENA		01/05/2015	1
63711151	136024 - SUBPOENA		01/05/2015	1
63711771	136021 - RETURN OF SUBPOENA		01/05/2015	1
63711772	136020 - RETURN OF SUBPOENA		01/05/2015	1
63711954	136022 - RETURN OF SUBPOENA		01/05/2015	2
63716704	136023 - RETURN OF SUBPOENA		01/05/2015	2
63716705	136024 - RETURN OF SUBPOENA		01/05/2015	2
63757208	ORDER		01/05/2015	3
63776784	ORDER TO RECUSE		01/05/2015	10
63709475	APPLICATION FOR SUBPOENA BY STATE		01/04/2015	2
63711016	FREEfax Cover Sheet		01/04/2015	1
63728450	STATES DISCLOSURE OF EXPERTS		01/02/2015	3
63629000	TRIAL - DISCOVERY		12/23/2014	2
63226157	APPLICATION FOR SUBPOENA BY DEFENSE		11/19/2014	1
63226413	APPLICATION FOR SUBPOENA BY DEFENSE		11/19/2014	1
63227002	APPLICATION FOR SUBPOENA BY DEFENSE		11/19/2014	1
63228619	FREEfax Cover Sheet		11/19/2014	1
63228633	FREEfax Cover Sheet		11/19/2014	1
63228675	FREEfax Cover Sheet		11/19/2014	1
63228886	121703 - SUBPOENA		11/19/2014	2
63228887	121702 - SUBPOENA		11/19/2014	2
63228888	121701 - SUBPOENA		11/19/2014	2
63229383	121703 - RETURN OF SUBPOENA		11/19/2014	1
63231758	121701 - RETURN OF SUBPOENA		11/19/2014	2
63231759	121702 - RETURN OF SUBPOENA		11/19/2014	2
63250281	TRIAL - DISCOVERY		11/18/2014	5
63178142	CASE RESET FORM		11/14/2014	1
63178145	ATTORNEY OF RECORD		11/14/2014	1
63197709	IGNITION INTERLOCK DEVICE		11/14/2014	1
63200021	CONDITIONS OF BAIL		11/14/2014	4

63200019	TRIAL - DISCOVERY	11/13/2014	5
63114373	BAIL - BOND	11/10/2014	2
63100398	CHARGING INSTRUMENT - MISDEMEANOR INFORMATION	11/09/2014	1
63100452	CHARGING INSTRUMENT - COMPLAINT	11/09/2014	1

EXHIBIT L

STATE V. WHETZEL

(11-21-14)

CAUSE NO. [REDACTED]

THE STATE OF TEXAS

vs. [REDACTED]

§

§

§

IN THE COUNTY CRIMINAL

COURT AT LAW NO. 002

HARRIS COUNTY, TEXAS

Charge: Dwi-1st**CASE RESET FORM**

Reset Date: 1-28-2015 Defendant and Counsel acknowledge that this case is reset from 11/21/2014
to: _____ at 9:30 A.M.

- ☐ The State has offered:
☐ The State and Defense agree as follows:

Attorney for State Signature [Signature]Defendant Signature [Signature]☒ On Bond☐ In Jail**Fines, Court Costs, and Restitution**

Fine: _____

Costs: _____

Total: _____

Restitution: _____

Time: NOV 21 2014Harris County, Texas

By _____

Deputy

Tyler FloodAttorney for the Defendant (print) [Signature]☒ Retained☐ AppointedAttorney Bar # 24032057

Attorney SPN _____

Attorney Signature [Signature]Attorney Email Address James@tylerflood.comAttorney Telephone No. 713.224.5524Attorney Fax No. 713.224.5533**FOR COURT STAFF USE ONLY**Reset by: ☒ Defense ☐ Prosecution ☐ Court

Setting Reason:

- | | | | | | |
|-------------------------------|--|-------------------------------|--|--|-------------------------------|
| <input type="checkbox"/> ARR | <input type="checkbox"/> DISP | <input type="checkbox"/> RDLH | <input type="checkbox"/> PTMO | <input checked="" type="checkbox"/> MAJ / MRPH | <input type="checkbox"/> PNDC |
| <input type="checkbox"/> HEAR | <input type="checkbox"/> PLEA | <input type="checkbox"/> DRH | <input type="checkbox"/> PTCR | <input type="checkbox"/> DISM | <input type="checkbox"/> MCHJ |
| <input type="checkbox"/> NTRL | <input type="checkbox"/> SFJS | <input type="checkbox"/> DRIV | <input checked="" type="checkbox"/> JTRL | <input type="checkbox"/> SFBF | <input type="checkbox"/> MCH |
| | <input checked="" type="checkbox"/> MOTN | <input type="checkbox"/> DRID | <input type="checkbox"/> Other _____ | <input type="checkbox"/> MCRH | |

Reason for Reset:

- | | | | |
|--|---|---|---|
| <input type="checkbox"/> To Hire Attorney | <input type="checkbox"/> D.A. Chief Unavailable | <input type="checkbox"/> Defendant On Call | <input type="checkbox"/> Compliance MAJ / MRP |
| <input type="checkbox"/> No Offense Report | <input type="checkbox"/> D.A. Re-File As Felony | <input type="checkbox"/> Defendant Has New Case | <input type="checkbox"/> No MHMR Evaluation |
| <input type="checkbox"/> No Video / Lab | <input type="checkbox"/> D.A. Evaluate Case | <input type="checkbox"/> Attorney Not Present | <input type="checkbox"/> Complete Program |
| <input type="checkbox"/> RIP | <input type="checkbox"/> Restitution Info | <input type="checkbox"/> FELP | |
| <input type="checkbox"/> File Unavailable | <input type="checkbox"/> Refer to ECLD | <input type="checkbox"/> Need Clearance Letter | <input type="checkbox"/> Other: _____ |

Setting Date Approved By: RFK

Judge / Coordinator

CCL Form 2

Date Signed 77

11/21/2014

06-18-2013

DISTRICT CLERK'S FILE

Cause: [REDACTED] 010 CDI: 2 Court: 2

APPEALS

No Appeals found.

PAYMENT PLAN

No Payment Plan found.

RELATED CASES

No related cases found.

BOOKINGS

No Bookings found.

HOLDS

No Holds found.

WITNESS

No Witness found.

EXHIBIT F~~Documents Retained~~STATE
Cause No. 1 [REDACTED]**SUMMARY****CASE DETAILS**

File Date [REDACTED]

Case (Cause) Status

Active - CRIMINAL

Offense

DWI 1ST OFFENDER BAC >= 0.15

Last Instrument Filed

Misdemeanor Information

Case Disposition

Case Completion Date

N/A

Defendant Status

SMNS ISS

Bond Amount

\$500.00

Next/Last Setting Date [REDACTED]

ght 6'00 / 220 LBS

Eyes

BRO

Hair

BRO

Skin

FAR

Build

HEV

DOB [REDACTED]

In Custody

N

US

YES

Place Of Birth

Citizen

Address [REDACTED]

Markings

COURT DETAILS

Court

2nd

Address

1201 Franklin (Floor: 8)
Houston, TX 77002
Phone: 713 755 6184

JudgeName

William Harmon

Court Type

Criminal

BONDS

Date	Type	Description	SNU
11/11/2014	BOND SET	\$500	999

ACTIVITIES

Date	Type	Description	SNU/CFI
11/11/2014	COMPLAINT FILED	1504 2 DWI 1ST OFFENDER BAC>=0 LEVEL MA	
11/11/2014	BOND SET	\$500	999
11/11/2014	REVIEWED BY	OVERHULS, DAVID WAYNE	
11/11/2014	ORI	SHERIFF'S DEPARTMENT OFFENSE NO. [REDACTED]	
11/11/2014	COMPLAINANT	BROWN, PAUL A. JR.	
11/11/2014	SI/MIN	TIME 1514 AMOUNT \$500	999
11/11/2014		NOT ACKNOWLEDGED BY SHERIFF	
01/17/2015	MOTIONS	RECONSID RECUSE JGE	997
01/17/2015	MOTIONS	FILED CFI 2	
01/05/2015	MOTIONS	MO CRT REMOVE MADD P	998
01/05/2015	MOTIONS	FILED CFI 2	
01/05/2015	MOTIONS	MO JUDGE TO RECUSE	999
01/05/2015	MOTIONS	FILED CFI 2	
01/05/2015	ORDER	RECUSAL REFERRED ADMIN CRT	997
01/05/2015	OFFENSE	DWI 1ST OFFENDER BAC>=0.15 LEVEL MA	
01/05/2015	ORDER	MO CRT REMOVE MADD PLAQUE D	998
01/05/2015	OFFENSE	DWI 1ST OFFENDER BAC>=0.15 LEVEL MA	
11/21/2014	ORDER	DISCOVERY GRNTD	999
11/21/2014	OFFENSE	DWI 1ST OFFENDER BAC>=0.15 LEVEL MA	

HOLDS

No holds found.

ACTIVE PARTIES

Name	Connection	Post Jdgm	SPN #
FLOOD, TYLER ASHLEY	HIRED DEFENSE ATTORNEY		01901745
FLOOD, TYLER ASHLEY	PREVIOUS HIRED ATTORNEY		01901745

INACTIVE PARTIES

No inactive parties found.

SETTINGS

Date	Court	Post Jdgm	Docket Type	Reason	Results	Defendant	Future Date	Comments	Attorney Appearance Indicator
11/18/2014 09:00 AM	2		Motions Docket	Arraignment	Reset	Data Not Entered	11/21/2014 12:00:00 AM		Absent
11/21/2014 09:00 AM	2		Motions Docket	Arraignment	Reset	Present	1/28/2015 12:00:00 AM		Absent
1/28/2015 09:00 AM	2		Motions Docket	Jury Trial		Data Not Entered	1/1/0001 12:00:00 AM		Absent

DOCUMENTS

Number	Document	Post Jdgm	Date	Pgs
63944167	MOTION TO RECONSIDER DEFENDANTS MOTION TO RECUSE TRIAL JUDGE		01/17/2015	5
> 63944168	PROPOSED ORDER		01/17/2015	1
63871408	138688 - RETURN OF SUBPOENA		01/16/2015	2
63810935	138687 - SUBPOENA		01/13/2015	1
63810936	138688 - SUBPOENA		01/13/2015	1
63810937	138689 - SUBPOENA		01/13/2015	1
63810938	138690 - SUBPOENA		01/13/2015	1
63810939	138691 - SUBPOENA		01/13/2015	2
63818808	138691 - RETURN OF SUBPOENA		01/13/2015	2
63818809	138690 - RETURN OF SUBPOENA		01/13/2015	2
63821034	138687 - RETURN OF SUBPOENA		01/13/2015	1
63824020	138689 - RETURN OF SUBPOENA		01/12/2015	2
63809643	APPLICATION FOR SUBPOENA BY STATE		01/12/2015	1
63810803	FREEfax Cover Sheet		01/05/2015	3
63757206	ORDER		01/05/2015	10
63776787	ORDER TO RECUSE		11/21/2014	1
63271977	ATTORNEY OF RECORD		11/21/2014	1
63271990	CASE RESET FORM		11/21/2014	3
63288809	TRIAL - DISCOVERY			

63200803	ATTORNEY OF RECORD	11/17/2014	1
63200815	CASE RESET FORM	11/17/2014	1
63200796	SUMMONS TO APPEAR BEFORE COURT	11/14/2014	1
63133984	CHARGING INSTRUMENT - MISDEMEANOR INFORMATION	11/11/2014	1
63134024	CHARGING INSTRUMENT - COMPLAINT	11/11/2014	1

EXHIBIT M

STATE V. URBAN

(12-11-14)

CAUSE NO. [REDACTED]

THE STATE OF TEXAS

VS. [REDACTED]

§

§

§

IN THE COUNTY CRIMINAL

002

COURT AT LAW NO. _____

HARRIS COUNTY, TEXAS

Charge: Driving while intoxicated

CASE RESET FORM

Reset Date: The undersigned Defendant and Counsel acknowledge that this case is reset from

12/11/2014

to: Feb. 5, 2015 at _____

9:30A.M.

☐ The State has offered:☐ The State and Defense agree as follows:Attorney for State Signature F. A. [Signature]Defendant Signature FILED FLOOD☒ On Bond☐ In Jail

Fines, Court Costs, and Restitution

Fine: _____

Costs: _____

Total: _____

Restitution: _____

FILED
Chris Daniel
District Clerk
DEC 11 2014
Harris County, TexasAttorney for the Defendant (print) 24032057☒ Retained ☐ AppointedAttorney Signature [Signature]Attorney SPN 01701745

Attorney Email Address _____

Attorney Telephone No.: 713-224-5529Attorney Fax No.: 713-224-5533

FOR COURT STAFF USE ONLY

Reset by: ☒ Defense ☐ Prosecution ☒ Court

Setting Reason:

- | | | | | | |
|-------------------------------|-------------------------------|-------------------------------|--|--------------------------------------|-------------------------------|
| <input type="checkbox"/> ARR | <input type="checkbox"/> DISP | <input type="checkbox"/> RDLH | <input type="checkbox"/> PTMO | <input type="checkbox"/> MAJ / MRP | <input type="checkbox"/> PNDC |
| <input type="checkbox"/> HEAR | <input type="checkbox"/> PLEA | <input type="checkbox"/> DPIH | <input type="checkbox"/> PTCR | <input type="checkbox"/> DISM | <input type="checkbox"/> MCH |
| <input type="checkbox"/> NTRL | <input type="checkbox"/> SEJS | <input type="checkbox"/> DPV | <input checked="" type="checkbox"/> CTRL | <input type="checkbox"/> SFBF | <input type="checkbox"/> MCH |
| | <input type="checkbox"/> MOTN | <input type="checkbox"/> DPID | <input checked="" type="checkbox"/> JTRL | <input type="checkbox"/> Other _____ | <input type="checkbox"/> MCRH |

Reason for Reset:

- | | | | |
|--|---|---|---|
| <input type="checkbox"/> To Hire Attorney | <input type="checkbox"/> D.A. Chief Unavailable | <input type="checkbox"/> Defendant On Call | <input type="checkbox"/> Compliance MAJ / MRP |
| <input type="checkbox"/> No Offense Report | <input type="checkbox"/> D.A. Re-File As Felony | <input type="checkbox"/> Defendant Has New Case | <input type="checkbox"/> No MHMR Evaluation |
| <input type="checkbox"/> No Video / Lab | <input type="checkbox"/> D.A. Evaluate Case | <input type="checkbox"/> Attorney Not Present | <input type="checkbox"/> Complete Program |
| <input type="checkbox"/> RIP | <input type="checkbox"/> Restitution Info | <input type="checkbox"/> FELP | |
| <input type="checkbox"/> File Unavailable | <input type="checkbox"/> Refer to ECLD | <input type="checkbox"/> Need Clearance Letter | <input type="checkbox"/> Other: _____ |

Setting Date Approved By:

RFK

12/11/2014

Judge / Coordinator

Date Signed

CCL Form 2

DISTRICT CLERK'S FILE

29 06-18-2013

APPEALS

No Appeals found.

PAYMENT PLAN

No Payment Plan found.

RELATED CASES

No related cases found.

BOOKINGS

No Bookings found.

HOLDS

No Holds found.

WITNESS

No Witness found.

SUMMARY**CASE DETAILS**

File Date	[REDACTED]
Case (Cause) Status	Active - CRIMINAL
Offense	DRIVING WHILE INTOXICATED
Last Instrument Filed	Misdemeanor Information
Case Disposition	
Case Completion Date	N/A
Defendant Status	BOND MADE
Bond Amount	\$500.00
Next/Last Setting Date	[REDACTED]

DEFENDANT DETAILS

Race/Sex	W / M	Height/Weight	5'08 / 165 LBS
Eyes	BRO	Hair	BRO
Skin	FAR	Build	MED
DOB	[REDACTED]	In Custody	N
US Citizen	YES	Place Of Birth	

Address**Markings****COURT DETAILS**

Court	2nd
Address	1201 Franklin (Floor: 8) Houston, TX 77002 Phone: 713 755 6184
JudgeName	William Harmon
Court Type	Criminal

BONDS

Date	Type	Description	SNU
12/04/2014	BOND SET	\$500	999
12/05/2014	BOND FILED	CRT 2 TIME 0527 TYPE CASH	
12/05/2014	BOND MADE	AMT \$500 DATE 12/04/14 RCPT # 663335	



ACTIVITIES

Date	Type	Description	SNU/CFI
12/08/2014	DA TAPE NUMBER	DA1409079 SNU: D99	
	4 /	/ DA TAPE NUMBER SNU:	
12/04/2014	COMPLAINT FILED	0700 2 DRIVING WHILE INTOXICAT LEVEL MB	
12/04/2014	BOND SET	\$500	999
12/04/2014	REVIEWED BY	HARTMAN, PAULA M.	
12/04/2014	ORI	HOUSTON POLICE DEPAR OFFENSE NO: [REDACTED]	
12/04/2014	COMPLAINANT	VILLARREAL, J C	
12/05/2014	BOND FILED	CRT 2 TIME 0527 TYPE CASH	
12/05/2014	BOND MADE	AMT \$500 DATE 12/04/14 RCPT # 663335	
12/05/2014	BONDSMAN	[REDACTED]	
01/17/2015	MOTIONS	RECONSID RECUSE JGE	996
01/17/2015	MOTIONS	FILED CFI 2	
01/17/2015	MOTIONS	DISCLOSE EXPERTS	997
01/17/2015	MOTIONS	FILED CFI 2	
01/05/2015	MOTIONS	MO CRT REMOVE MADD P	998
01/05/2015	MOTIONS	FILED CFI 2	
01/05/2015	MOTIONS	MO JUDGE TO RECUSE	999
01/05/2015	MOTIONS	FILED CFI 2	
01/21/2015	ORDER	M/DISCLOSE EXPERTS GRNTD	993
01/21/2015	OFFENSE	DRIVING WHILE INTOXICATED LEVEL MB	
01/05/2015	ORDER	RECUSAL REFERRED ADMIN CRT	994
01/05/2015	OFFENSE	DRIVING WHILE INTOXICATED LEVEL MB	
01/05/2015	ORDER	MO CRT REMOVE MADD PLAQUE D	995
01/05/2015	OFFENSE	DRIVING WHILE INTOXICATED LEVEL MB	
12/23/2014	ORDER	DISCOVERY SIGNED	996
12/23/2014	OFFENSE	DRIVING WHILE INTOXICATED LEVEL MB	
12/11/2014	ORDER	GRT IGNIT INTERLOCK INSTALL	997
12/11/2014	OFFENSE	DRIVING WHILE INTOXICATED LEVEL MB	
12/11/2014	ORDER	CSCD PRETRIAL SUPV	998
12/11/2014	OFFENSE	DRIVING WHILE INTOXICATED LEVEL MB	
12/11/2014	ORDER	DISCOVERY BLOOD TEST RECORD	999
12/11/2014	OFFENSE	DRIVING WHILE INTOXICATED LEVEL MB	

HOLDS'

No holds found.

ACTIVE PARTIES

Name	Connection	Post Jdgm	SPN #
FLOOD, TYLER ASHLEY	HIRED DEFENSE ATTORNEY		01901745

INACTIVE PARTIES

No inactive parties found.

SETTINGS

Date	Court Post	Docket Jdgm Type	Reason	Results	Defendant	Future Date	Comments	Attorney Appearance Indicator
12/11/2014 09:00 AM	2	Motions Docket	Arraignment	Reset	Data Not Entered	2/5/2015 12:00:00 AM		Absent
2/05/2015 09:00 AM	2	Motions Docket	Jury Trial		Data Not Entered	1/1/0001 12:00:00 AM		Absent

DOCUMENTS

Number	Document	Post Jdgm	Date	Pgs
63940781	142007 - SUBPOENA		01/23/2015	1
63940782	142008 - SUBPOENA		01/23/2015	1
63940783	142009 - SUBPOENA		01/23/2015	1
63940784	142004 - SUBPOENA		01/23/2015	1
63940786	142005 - SUBPOENA		01/23/2015	1
63940787	142006 - SUBPOENA		01/23/2015	1
63948521	142007 - RETURN OF SUBPOENA		01/23/2015	1

63948522	142006 - RETURN OF SUBPOENA	01/23/2015	1
63948523	142009 - RETURN OF SUBPOENA	01/23/2015	1
63948524	142005 - RETURN OF SUBPOENA	01/23/2015	1
63948526	142004 - RETURN OF SUBPOENA	01/23/2015	1
63948529	142008 - RETURN OF SUBPOENA	01/23/2015	1
63937230	APPLICATION FOR SUBPOENA BY STATE	01/22/2015	1
63937233	APPLICATION FOR SUBPOENA BY STATE	01/22/2015	1
63940625	FREEfax Cover Sheet	01/22/2015	1
63940694	FREEfax Cover Sheet	01/22/2015	1
63906141	STATES MOTION	01/17/2015	1
63906142	STATES WITNESS LISTS	01/17/2015	1
63906143	STATES NOTICE OF INTENT TO USE PHOTOGRAPHS, SCENE DIAGRAMS, MAPS, AND OTHER GRAPHIC MATERIALS	01/17/2015	1
63906144	NOTICE OF INTENT TO USE EXPERT TESTIMONY	01/17/2015	2
63906145	STATES NOTICE OF INTENT TO USE AS EVIDENCE BUSINESS RECORDS ACCOMPANIED BY AFFIDAVIT	01/17/2015	2
63944153	MOTION TO RECONSIDER DEFENDANT'S MOTION TO RECUSE TRIAL JUDGE	01/17/2015	5
-> 63944154	PROPOSED ORDER	01/17/2015	1
63757210	ORDER	01/05/2015	3
63776786	ORDER TO RECUSE	01/05/2015	10
63612939	132051 - RETURN OF SUBPOENA	12/23/2014	2
63629002	TRIAL - DISCOVERY	12/23/2014	2
63597198	APPLICATION FOR SUBPOENA BY DEFENSE	12/22/2014	1
63597501	APPLICATION FOR SUBPOENA BY DEFENSE	12/22/2014	1
63599164	FREEfax Cover Sheet	12/22/2014	1
63599194	FREEfax Cover Sheet	12/22/2014	1
63599375	132051 - SUBPOENA	12/22/2014	2
63599376	132021 - SUBPOENA	12/22/2014	2
63600312	132021 - RETURN OF SUBPOENA	12/22/2014	1
63475439	CASE RESET FORM	12/11/2014	1
63475442	ATTORNEY OF RECORD	12/11/2014	1
63498895	IGNITION INTERLOCK DEVICE	12/11/2014	1
63499128	CONDITIONS OF BAIL	12/11/2014	4
63499136	TRIAL - DISCOVERY	12/11/2014	5
63404367	BAIL - BOND	12/05/2014	5
63389799	CHARGING INSTRUMENT - MISDEMEANOR INFORMATION	12/04/2014	1
63389834	CHARGING INSTRUMENT - COMPLAINT	12/04/2014	1

EXHIBIT N
STATE V. LUK
(12-9-14)

CAUSE NO. [REDACTED]

THE STATE OF TEXAS

vs. [REDACTED]

§

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IN THE COUNTY CRIMINAL

COURT AT LAW NO. 020

HARRIS COUNTY, TEXAS

Charge: Dw1-2nd**CASE RESET FORM**Reset Date: The undersigned Defendant and Counsel acknowledge that this case is reset from 12/19/2014to: Feb. 18, 2015 at 9:30 A.M.

- ☐ The State has offered:
☐ The State and Defense agree as follows:

Attorney for State Signature RymDefendant Signature File Flood☒ On Bond☐ In Jail**Fines, Court Costs, and Restitution**

Fine: _____

Costs: _____

Total: _____

Restitution: _____

Attorney for the Defendant (print) File Flood☒ Retained☐ AppointedAttorney Bar # 024032057

Attorney SPN _____

Attorney Signature File FloodAttorney Email Address file.flood.comAttorney Telephone No.: 713.224.5529Attorney Fax No.: 713.224.5533**FOR COURT STAFF USE ONLY**Reset by: ☒ Defense ☐ Prosecution ☐ Court**Setting Reason:**

- | | | | | | |
|---|-------------------------------|-------------------------------|--|--|-------------------------------|
| <input type="checkbox"/> ARR | <input type="checkbox"/> DISP | <input type="checkbox"/> RDH | <input type="checkbox"/> PTMO | <input checked="" type="checkbox"/> MAJ / MRPH | <input type="checkbox"/> PNDC |
| <input type="checkbox"/> HEAR | <input type="checkbox"/> PLEA | <input type="checkbox"/> DRH | <input type="checkbox"/> PTOR | <input type="checkbox"/> DISM | <input type="checkbox"/> MCHJ |
| <input checked="" type="checkbox"/> NTR | <input type="checkbox"/> SEUS | <input type="checkbox"/> DRIV | <input type="checkbox"/> CTRL | <input type="checkbox"/> SFBF | <input type="checkbox"/> MCH |
| | <input type="checkbox"/> MOTN | <input type="checkbox"/> DRID | <input checked="" type="checkbox"/> JTRL | <input type="checkbox"/> Other _____ | <input type="checkbox"/> MCRH |

Reason for Reset:

- | | | | |
|--|---|---|---|
| <input type="checkbox"/> To Hire Attorney | <input type="checkbox"/> D.A. Chief Unavailable | <input type="checkbox"/> Defendant On Call | <input type="checkbox"/> Compliance MAJ / MRP |
| <input type="checkbox"/> No Offense Report | <input type="checkbox"/> D.A. Re-File As Felony | <input type="checkbox"/> Defendant Has New Case | <input type="checkbox"/> No MHMR Evaluation |
| <input type="checkbox"/> No Video / Lab | <input type="checkbox"/> D.A. Evaluate Case | <input type="checkbox"/> Attorney Not Present | <input type="checkbox"/> Complete Program |
| <input type="checkbox"/> RIP | <input type="checkbox"/> Restitution Info | <input type="checkbox"/> FELP | |
| <input type="checkbox"/> File Unavailable | <input type="checkbox"/> Refer to GLD | <input type="checkbox"/> Need Clearance Letter | <input type="checkbox"/> Other: _____ |

Setting Date Approved By:RFK

Judge / Coordinator

CCL Form 2

Date Signed

12/19/2014**DISTRICT CLERK'S FILE**

06-18-2013

APPEALS

No Appeals found.

PAYMENT PLAN

No Payment Plan found.

RELATED CASES

No related cases found.

BOOKINGS

No Bookings found.

HOLDS

No Holds found.

WITNESS

No Witness found.

SUMMARY**CASE DETAILS**

File Date	[REDACTED]
Case (Cause) Status	Active - CRIMINAL
Offense	DWI 2ND
Last Instrument Filed	Misdemeanor Information
Case Disposition	
Case Completion Date	N/A
Defendant Status	BOND MADE
Bond Amount	\$3,000.00
Next/Last Setting Date	[REDACTED]

DEFENDANT DETAILS

Race/Sex	W / M	Height/Weight	5'04 / 140 LBS
Eyes		Hair	
Skin		Build	MED
DOB	[REDACTED]	In Custody	N
US Citizen	NO	Place Of Birth	
Address	[REDACTED]		
Markings	[REDACTED]		

COURT DETAILS

Court	2nd
Address	1201 Franklin (Floor: 8) Houston, TX 77002 Phone: 713 755 6184
JudgeName	William Harmon
Court Type	Criminal

BONDS

Date	Type	Description
12/13/2014	BOND SET	\$3000

SNU
999

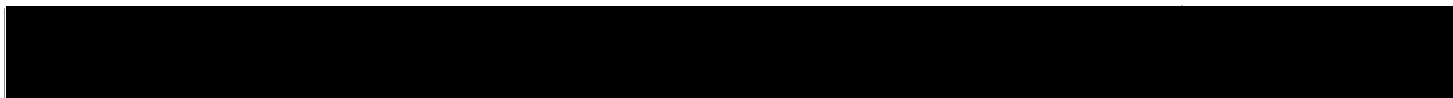
12/14/2014	BOND FILED	CRT 2 TIME 0445 TYPE CASH
12/14/2014	BOND MADE	AMT \$3000 DATE 12/13/14 RCPT # 664780
12/14/2014	BONDSMAN	[REDACTED]

ACTIVITIES

Date	Type	Description	SNU/CFI
01/08/2015	DA TAPE NUMBER	DA1500124 SNU: D99	
	5 /	/ DA TAPE NUMBER SNU:	
12/13/2014	COMPLAINT FILED	0822 2 DWI 2ND LEVEL MA	
12/13/2014	BOND SET	\$3000	999
12/13/2014	REVIEWED BY	OKORAFOR, CRYSTAL SHERREL	
12/13/2014	ORI	BELLAIRE POLICE DEPA OFFENSE NO: [REDACTED]	
12/13/2014	COMPLAINANT	ROMERO, ANTHONY	
12/14/2014	BOND FILED	CRT 2 TIME 0445 TYPE CASH	
12/14/2014	BOND MADE	AMT \$3000 DATE 12/13/14 RCPT # 664780	
12/14/2014	BONDSMAN	[REDACTED]	
01/17/2015	MOTIONS	RECONSID RECUSE JGE	997
01/17/2015	MOTIONS	FILED CFI 2	
01/05/2015	MOTIONS	MO CRT REMOVE MADD P	998
01/05/2015	MOTIONS	FILED CFI 2	
01/05/2015	MOTIONS	MO JUDGE TO RECUSE	999
01/05/2015	MOTIONS	FILED CFI 2	
01/05/2015	ORDER	RECUSAL REFERRED ADMIN CRT	994
01/05/2015	OFFENSE	DWI 2ND LEVEL MA	
01/05/2015	ORDER	MO CRT REMOVE MADD PLAQUE D	995
01/05/2015	OFFENSE	DWI 2ND LEVEL MA	
12/23/2014	ORDER	DISCOVERY SIGNED	996
12/23/2014	OFFENSE	DWI 2ND LEVEL MA	
12/19/2014	ORDER	STAD DISCV BLOOD TEST RECOR	997
12/19/2014	OFFENSE	DWI 2ND LEVEL MA	
12/19/2014	ORDER	CSCD PRETRIAL SUPV	998
12/19/2014	OFFENSE	DWI 2ND LEVEL MA	
12/19/2014	ORDER	GRT IGNIT INTERLOCK INSTALL	999
12/19/2014	OFFENSE	DWI 2ND LEVEL MA	

HOLDS

No holds found.



ACTIVE PARTIES

Name	Connection	Post Jdgm	SPN #
LEGRAND, LESLIE PARIS III	HIRED DEFENSE ATTORNEY		01978143
FLOOD, TYLER ASHLEY	HIRED DEFENSE ATTORNEY		01901745

INACTIVE PARTIES

No inactive parties found.

SETTINGS

Date	Court Post Jdgm	Docket Type	Reason	Results	Defendant	Future Date	Comments	Attorney Appearance Indicator
12/19/2014 09:00 AM	2	Motions Docket	Arraignment	Reset	Data Not Entered	2/18/2015 12:00:00 AM		Absent
2/18/2015 09:00 AM	2	Motions Docket	Jury Trial		Data Not Entered	1/1/0001 12:00:00 AM		Absent

DOCUMENTS

Number	Document	Post Jdgm	Date	Pgs
63944169	MOTION TO RECONSIDER DEFENDANTS MOTION TO RECUSE TRIAL JUDGE		01/17/2015	5
> 63944170	PROPOSED ORDER		01/17/2015	1
63757216	ORDER		01/05/2015	3
63776785	ORDER TO RECUSE		01/05/2015	10

63723568	ATTORNEY OF RECORD	01/02/2015	1
63680655	134233 - SUBPOENA	12/31/2014	2
63682922	134233 - RETURN OF SUBPOENA	12/31/2014	2
63671301	APPLICATION FOR SUBPOENA BY DEFENSE	12/30/2014	1
63680580	FREEfax Cover Sheet	12/30/2014	1
63628998	TRIAL - DISCOVERY	12/23/2014	2
63578729	ATTORNEY OF RECORD	12/19/2014	1
63578760	CASE RESET FORM	12/19/2014	1
63607873	TRIAL - DISCOVERY	12/19/2014	5
63607877	CONDITIONS OF BAIL	12/19/2014	4
63611559	IGNITION INTERLOCK DEVICE	12/19/2014	1
63498271	BAIL - BOND	12/14/2014	4
63497363	CHARGING INSTRUMENT - MISDEMEANOR INFORMATION	12/13/2014	1
63497380	CHARGING INSTRUMENT - COMPLAINT	12/13/2014	1

EXHIBIT O

STATE V. [REDACTED] GOODE

(12-19-14)

CAUSE NO. _____

THE STATE OF TEXAS

§

IN THE COUNTY CRIMINAL

COURT AT LAW NO. 2

HARRIS COUNTY, TEXAS

Charge: DWI

CASE RESET FORM

Reset Date: The undersigned Defendant and Counsel acknowledge that this case is reset from Feb. 19, 2015 to: _____ at _____

- ☐ The State has offered:
☐ The State and Defense agree as follows:

Attorney for State Signature _____

Defendant Signature _____

On Bond ☐ In Jail ☐

Fines, Court Costs, and Restitution

Fine: _____

Costs: _____

Total: _____

Restitution: _____

Attorney for the Defendant (print) Tyler Flood

Attorney Bar # 24032057

Attorney Signature _____

Attorney Email Address file@tylerflood.com

Attorney Telephone No. 713-224-5527

Attorney Fax No. 713-224-5533

FOR COURT STAFF USE ONLY

Reset by: ☐ Defense ☐ Prosecution ☒ Court

Setting Reason:

- | | | | | | |
|-------------------------------|-------------------------------|-------------------------------|--|--------------------------------------|-------------------------------|
| <input type="checkbox"/> ARR | <input type="checkbox"/> DIS | <input type="checkbox"/> RDLH | <input type="checkbox"/> PTMO | <input type="checkbox"/> MAJ / MRP | <input type="checkbox"/> PNDC |
| <input type="checkbox"/> HEAR | <input type="checkbox"/> PLFA | <input type="checkbox"/> DPH | <input type="checkbox"/> PTCR | <input type="checkbox"/> DISM | <input type="checkbox"/> MCHJ |
| <input type="checkbox"/> NTRL | <input type="checkbox"/> SEJS | <input type="checkbox"/> DRV | <input type="checkbox"/> CTRL | <input type="checkbox"/> SFBF | <input type="checkbox"/> MCH |
| | <input type="checkbox"/> MOTN | <input type="checkbox"/> DPID | <input checked="" type="checkbox"/> JTRL | <input type="checkbox"/> Other _____ | <input type="checkbox"/> MORH |

Reason for Reset:

- | | | | |
|--|---|---|---|
| <input type="checkbox"/> To Hire Attorney | <input type="checkbox"/> D.A. Chief Unavailable | <input type="checkbox"/> Defendant On Call | <input type="checkbox"/> Compliance MAJ / MRP |
| <input type="checkbox"/> No Offense Report | <input type="checkbox"/> D.A. Re-file As Felony | <input type="checkbox"/> Defendant Has New Case | <input type="checkbox"/> No MHMR Evaluation |
| <input type="checkbox"/> No Video / Lab | <input type="checkbox"/> D.A. Evaluate Case | <input type="checkbox"/> Attorney Not Present | <input type="checkbox"/> Complete Program |
| <input type="checkbox"/> RIP | <input type="checkbox"/> Restitution Info | <input type="checkbox"/> FELP | |
| <input type="checkbox"/> File Unavailable | <input type="checkbox"/> Refer to CLD | <input type="checkbox"/> Need Clearance Letter | <input type="checkbox"/> Other: _____ |

Setting Date Approved By: [Signature]

Judge / Coordinator

Date Signed 12-19-2014

06-18-2013

DISTRICT CLERK'S FILE

CAUSE NO. [REDACTED]

THE STATE OF TEXAS

VS. [REDACTED]

§

§

§

IN THE COUNTY CRIMINAL

002

COURT AT LAW NO. _____

HARRIS COUNTY, TEXAS

Charge: driving while intoxicated

CASE RESET FORM

Reset Date: The undersigned Defendant and Counsel acknowledge that this case is reset from

12/16/2014

to: 12/16/2015 at _____

9:30 A.M.

☐ The State has offered:☐ The State and Defense agree as follows:

Attorney for State Signature _____

Defendant Signature _____

☐ On Bond☐ In Jail

Fines, Court Costs, and Restitution

Fine: _____

Costs: _____

Total: _____

Restitution: _____

FILED
Chris Daniel
District Clerk

DEC 16 2014

Time: _____

By _____
Harris County, Texas

Deputy

Attorney for the Defendant (print) Tyle Flood☒ Retained☐ AppointedAttorney Bar # 24032057

Attorney SPN _____

Attorney Signature _____

Attorney Email Address tyler@tylerflood.comAttorney Telephone No. 713.224.5529Attorney Fax No. 713.224.5533

FOR COURT STAFF USE ONLY

Reset by: ☒ Defense ☐ Prosecution ☐ Court

Setting Reason:

☐ ARRG☒ DISP☐ RDLH☐ PTMO☐ MAJ / MRPH☐ PNDC☐ HEAR☐ PLEA☐ OPIH☐ PTCR☐ DISM☐ MCHJ☐ NTRL☐ SEJS☐ DRV☐ CTRL☐ SFBF☐ MCH☐ MOTN☐ DRID☐ JTRL☐ Other _____☐ MCRH

Reason for Reset:

☐ To Hire Attorney☐ D.A. Chief Unavailable☐ Defendant On Call☐ Compliance MAJ / MRP☐ No Offense Report☐ D.A. Re-File As Felony☐ Defendant Has New Case☐ No MHMR Evaluation☐ No Video / Lab☐ D.A. Evaluate Case☐ Attorney Not Present☐ Complete Program:☐ RIP☐ Restitution Info☐ FELP☐ Other: _____☐ File Unavailable☐ Refer to FCLD☐ Need Clearance Letter

Setting Date Approved By: _____

12/16/2014

RPK
Judge / Coordinator
CCL Form 2

Date Signed

16 06-18-2013

DISTRICT CLERK'S FILE

Cause: 010 CDI: 2 Court: 2

APPEALS

No Appeals found.

PAYMENT PLAN

No Payment Plan found.

BOOKINGS

No Bookings found.

HOLDS

No Holds found.

WITNESS

No Witness found.

SUMMARY**CASE DETAILS**

File Date	
Case (Cause) Status	Active - CRIMINAL
Offense	DRIVING WHILE INTOXICATED
Last Instrument Filed	Misdemeanor Information
Case Disposition	
Case Completion Date	N/A
Defendant Status	BOND MADE
Bond Amount	\$500.00
Next/Last Setting Date	

DEFENDANT DETAILS

Race/Sex	W / M	Height/Weight	5'09 / 200 LBS
Eyes	HAZ	Hair	BLN
Skin	FAR	Build	MED
DOB		In Custody	N
US Citizen	YES	Place Of Birth	
Address			

Markings**COURT DETAILS**

Court	2nd
Address	1201 Franklin (Floor: 8) Houston, TX 77002 Phone: 7137556184
JudgeName	William Harmon
Court Type	Criminal

BONDS

Date	Type	Description
10/13/2014	BOND SET	\$500
10/14/2014	BOND FILED	CRT 2 TIME 0521 TYPE CASH

SNU
999

ACTIVITIES

Date	Type	Description	SNU/CFI
10/13/2014	COMPLAINT FILED	0614 2 DRIVING WHILE INTOXICAT LEVEL MB	
10/13/2014	BOND SET	\$500	999
10/13/2014	REVIEWED BY	CALLIGAN, CAMERON LEE	
10/13/2014	ORI	WEST UNIVERSITY POLI OFFENSE NO: [REDACTED]	
10/13/2014	COMPLAINANT	SHELOR, DANIEL MORG	
10/14/2014	BOND FILED	CRT 2 TIME 0521 TYPE CASH	
10/14/2014	BOND MADE	AMT \$500 DATE 10/13/14 RCPT # 655272	
10/14/2014	BONDSMAN	[REDACTED]	
01/17/2015	MOTIONS	RECONSID RECUSE JGE	997
01/17/2015	MOTIONS	FILED CFI 2	
01/05/2015	MOTIONS	MO CRT REMOVE MADD P	998
01/05/2015	MOTIONS	FILED CFI 2	
01/05/2015	MOTIONS	MO JUDGE TO RECUSE	999
01/05/2015	MOTIONS	FILED CFI 2	
01/05/2015	ORDER	RECUSAL REFERRED ADMIN CRT	994
01/05/2015	OFFENSE	DRIVING WHILE INTOXICATED LEVEL MB	
01/05/2015	ORDER	MO CRT REMOVE MADD PLAQUE D	995
01/05/2015	OFFENSE	DRIVING WHILE INTOXICATED LEVEL MB	
12/23/2014	ORDER	DISCOVERY SIGNED	996
12/23/2014	OFFENSE	DRIVING WHILE INTOXICATED LEVEL MB	
10/20/2014	ORDER	GRT IGNIT INTERLOCK INSTALL	997
10/20/2014	OFFENSE	DRIVING WHILE INTOXICATED LEVEL MB	
10/20/2014	ORDER	DISCOVERY GRANTED	998
10/20/2014	OFFENSE	DRIVING WHILE INTOXICATED LEVEL MB	
10/20/2014	ORDER	CSCD PRETRIAL SUPV	999
10/20/2014	OFFENSE	DRIVING WHILE INTOXICATED LEVEL MB	

HOLDS

No holds found.

ACTIVE PARTIES

Name	Connection	Post Jdgm	SPN #
FLOOD, TYLER ASHLEY	HIRED DEFENSE ATTORNEY		01901745

INACTIVE PARTIES

No inactive parties found.

SETTINGS

Date	Court Post Jdgm	Docket Type	Reason	Results	Defendant	Future Date	Comments	Attorney Appearance Indicator
10/20/2014 09:00 AM	2	Motions Docket	Arraignment	Reset	Present	12/16/2014 12:00:00 AM		Absent
12/16/2014 09:00 AM	2	Motions Docket	Non-Trial Setting	Reset	Present	2/5/2015 12:00:00 AM		Absent
2/05/2015 09:00 AM	2	Motions Docket	Disposition	Reset	Data Not Entered	2/19/2015 12:00:00 AM		Absent
2/19/2015 09:00 AM	2	Motions Docket	Jury Trial		Data Not Entered	1/1/0001 12:00:00 AM		Absent

DOCUMENTS

Number	Document	Post Jdgm	Date	Pgs
63944159	MOTION TO RECONSIDER DEFENDANTS MOTION TO RECUSE TRIAL JUDGE		01/17/2015	4
-> 63944160	PROPOSED ORDER		01/17/2015	1
63757207	ORDER		01/05/2015	3
63776783	ORDER TO RECUSE		01/05/2015	10
63629004	TRIAL - DISCOVERY		12/23/2014	2
63578776	CASE RESET FORM		12/19/2014	1

63529713	CASE RESET FORM	12/16/2014	1
62861809	112460 - SUBPOENA	10/22/2014	1
62868959	112460 - RETURN OF SUBPOENA	10/22/2014	2
62855035	APPLICATION FOR SUBPOENA BY DEFENSE	10/21/2014	1
62855036	Subpoena Application Attachment DEFENSE	10/21/2014	2
62860936	FREEfax Cover Sheet	10/21/2014	1
62829660	ATTORNEY OF RECORD	10/20/2014	1
62829668	CASE RESET FORM	10/20/2014	1
62866265	CONDITIONS OF BAIL	10/20/2014	4
62876068	IGNITION INTERLOCK DEVICE	10/20/2014	1
62889172	TRIAL - DISCOVERY	10/20/2014	5
62770275	BAIL - BOND	10/14/2014	4
62731078	CHARGING INSTRUMENT - MISDEMEANOR INFORMATION	10/13/2014	1
62731126	CHARGING INSTRUMENT - COMPLAINT	10/13/2014	1

EXHIBIT P

STATE V. [REDACTED] SCOTT

(12-19-14)

CAUSE NO. [REDACTED]

THE STATE OF TEXAS

§

IN THE COUNTY CRIMINAL

NO. [REDACTED]

TY, TEXAS

Charge: DWI

CASE RESET FORM

Reset Date: The undersigned Defendant and Counsel acknowledge that this case is reset from

to: Feb. 18, 2015 at 9:30 AM

- ☐ The State has offered:
☐ The State and Defense agree as follows:

Attorney for State Signature

Fines, Court Costs, and Restitution

Fine: _____

Costs: _____

Total: _____

Restitution: _____

Defendant Signature

☒ On Bond

☐ In Jail

Attorney for the Defendant (print)

☒ Retained ☐ Appointed

Attorney Bar #

Attorney SPN

Attorney Signature

Attorney Email Address

Attorney Telephone No.: 713.224.5520

Attorney Fax No.: 713.224.5533

FOR COURT STAFF USE ONLY

Reset by: ☐ Defense ☐ Prosecution ☒ Court

Setting Reason:

- | | | | | | |
|-------------------------------|-------------------------------|-------------------------------|--|------------------------------------|-------------------------------|
| <input type="checkbox"/> ARR | <input type="checkbox"/> DISP | <input type="checkbox"/> RDH | <input type="checkbox"/> PTMO | <input type="checkbox"/> MAJ / MRP | <input type="checkbox"/> PNDC |
| <input type="checkbox"/> HEAR | <input type="checkbox"/> PLEA | <input type="checkbox"/> DRH | <input type="checkbox"/> PTCR | <input type="checkbox"/> DISM | <input type="checkbox"/> MCH |
| <input type="checkbox"/> NTRL | <input type="checkbox"/> SEJS | <input type="checkbox"/> DEIV | <input type="checkbox"/> CTRL | <input type="checkbox"/> SFBF | <input type="checkbox"/> MCH |
| | <input type="checkbox"/> MOTN | <input type="checkbox"/> DRD | <input checked="" type="checkbox"/> JTRL | <input type="checkbox"/> Other | <input type="checkbox"/> MCRH |

Reason for Reset:

- | | | | |
|--|---|---|---|
| <input type="checkbox"/> To Hire Attorney | <input type="checkbox"/> D.A. Chief Unavailable | <input type="checkbox"/> Defendant On Call | <input type="checkbox"/> Compliance MAJ / MRP |
| <input type="checkbox"/> No Offense Report | <input type="checkbox"/> D.A. Re-file As Felony | <input type="checkbox"/> Defendant Has New Case | <input type="checkbox"/> No MHMR Evaluation |
| <input type="checkbox"/> No Video / Lab | <input type="checkbox"/> D.A. Evaluate Case | <input type="checkbox"/> Attorney Not Present | <input type="checkbox"/> Complete Program |
| <input type="checkbox"/> RIP | <input type="checkbox"/> Restitution Info | <input type="checkbox"/> FEET | |
| <input type="checkbox"/> File Unavailable | <input type="checkbox"/> Refer to CLD | <input type="checkbox"/> Need Clearance Letter | <input type="checkbox"/> Other: _____ |

Setting Date Approved By: [Signature]

Judge / Coordinator
CCL Form 2

Date Signed 12-19-2014

06-18-2013

DISTRICT CLERK'S FILE

APPEALS

No Appeals found.

PAYMENT PLAN

No Payment Plan found.

RELATED CASES

No related cases found.

BOOKINGS

No Bookings found.

HOLDS

No Holds found.

WITNESS

No Witness found.

SUMMARY**CASE DETAILS**

File Date	[REDACTED]
Case (Cause) Status	Active - CRIMINAL
Offense	DRIVING WHILE INTOXICATED
Last Instrument Filed	Misdemeanor Information
Case Disposition	
Case Completion Date	N/A
Defendant Status	BOND MADE
Bond Amount	\$500.00
Next/Last Setting Date	[REDACTED]

DEFENDANT DETAILS

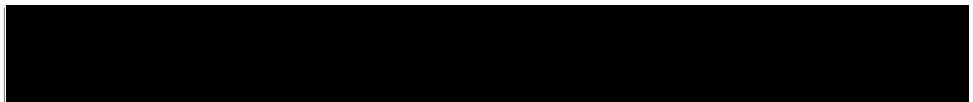
Race/Sex	W / M	Height/Weight	5'06 / 165 LBS
Eyes	HAZ	Hair	BRO
Skin	FAR	Build	MED
DOB	[REDACTED]	In Custody	N
US Citizen	YES	Place Of Birth	
Address	[REDACTED]		

Markings**COURT DETAILS**

Court	2nd
Address	1201 Franklin (Floor: 8) Houston, TX 77002 Phone: 713 755 6184
JudgeName	William Harmon
Court Type	Criminal

BONDS

Date	Type	Description	SNU
11/23/2014	BOND SET	\$500	999
11/24/2014	BOND FILED	CRT 2 TIME 1042 TYPE CASH	
11/24/2014	BOND MADE	AMT \$500 DATE 11/23/14 RCPT # 661830	



ACTIVITIES

Date	Type	Description	SNU/CFI
11/24/2014	DA TAPE NUMBER	DA1408762 SNU: D99	
	4 /	/ DA TAPE NUMBER SNU:	
11/23/2014	COMPLAINT FILED	0924 2 DRIVING WHILE INTOXICAT LEVEL MB	
11/23/2014	BOND SET	\$500	999
11/23/2014	REVIEWED BY	MULDROW, ADAM DANIEL	
11/23/2014	ORI	HOUSTON POLICE DEPAR OFFENSE NO: [REDACTED]	
11/23/2014	COMPLAINANT	ROMAN, J	
11/24/2014	BOND FILED	CRT 2 TIME 1042 TYPE CASH	
11/24/2014	BOND MADE	AMT \$500 DATE 11/23/14 RCPT # 661830	
11/24/2014	BONDSMAN	[REDACTED]	
01/17/2015	MOTIONS	RECONSID RECUSE JGE	997
01/17/2015	MOTIONS	FILED CFI 2	
01/05/2015	MOTIONS	MO CRT REMOVE MADD P	998
01/05/2015	MOTIONS	FILED CFI 2	
01/05/2015	MOTIONS	MO JUDGE TO RECUSE	999
01/05/2015	MOTIONS	FILED CFI 2	
01/05/2015	ORDER	RECUSAL REFERRED ADMIN CRT	994
01/05/2015	OFFENSE	DRIVING WHILE INTOXICATED LEVEL MB	
01/05/2015	ORDER	MO CRT REMOVE MADD PLAQUE D	995
01/05/2015	OFFENSE	DRIVING WHILE INTOXICATED LEVEL MB	
12/23/2014	ORDER	DISCOVERY SIGNED	996
12/23/2014	OFFENSE	DRIVING WHILE INTOXICATED LEVEL MB	
11/26/2014	ORDER	CSCD PRETRIAL SUPV	997
11/26/2014	OFFENSE	DRIVING WHILE INTOXICATED LEVEL MB	
11/26/2014	ORDER	GRT IGNIT INTERLOCK INSTALL	998
11/26/2014	OFFENSE	DRIVING WHILE INTOXICATED LEVEL MB	
11/26/2014	ORDER	DISCOV/PRODUC BLOOD TST REC	999
11/26/2014	OFFENSE	DRIVING WHILE INTOXICATED LEVEL MB	

HOLDS

No holds found.

ACTIVE PARTIES

Name	Connection	Post Jdgm	SPN #
FLETCHER, JAMES ROY	HIRED DEFENSE ATTORNEY		02681244

INACTIVE PARTIES

No inactive parties found.

SETTINGS

Date	Court Post Jdgm	Docket Type	Reason	Results	Defendant	Future Date	Comments	Attorney Appearance Indicator
11/26/2014 09:00 AM	2	Motions Docket	Arraignment	Reset	Present	1/29/2015 12:00:00 AM		Absent
1/29/2015 09:00 AM	2	Motions Docket	Non-Trial Setting	Reset	Data Not Entered	2/18/2015 12:00:00 AM		Absent
2/18/2015 09:00 AM	2	Motions Docket	Jury Trial		Data Not Entered	1/1/0001 12:00:00 AM		Absent

DOCUMENTS

Number	Document	Post Jdgm	Date	Pgs
63944171	MOTION TO RECONSIDER DEFENDANTS MOTION TO RECUSE TRIAL JUDGE		01/17/2015	4
63944172	PROPOSED ORDER		01/17/2015	1
63757212	ORDER		01/05/2015	3
63776776	ORDER TO RECUSE		01/05/2015	11
63628995	TRIAL - DISCOVERY		12/23/2014	2
63578774	CASE RESET FORM		12/19/2014	1
63500538	129008 - SUBPOENA		12/15/2014	2
63506615	129008 - RETURN OF SUBPOENA		12/15/2014	1

63497551	APPLICATION FOR SUBPOENA BY STATE	12/13/2014	1
63497552	Subpoena Application Attachment STATE	12/13/2014	3
63500335	FREEfax Cover Sheet	12/13/2014	1
63344807	APPLICATION FOR SUBPOENA BY DEFENSE	12/02/2014	1
63346371	FREEfax Cover Sheet	12/02/2014	1
63346399	125087 - SUBPOENA	12/02/2014	2
63352296	125087 - RETURN OF SUBPOENA	12/02/2014	2
63318159	ATTORNEY OF RECORD	11/26/2014	1
63318187	CASE RESET FORM	11/26/2014	1
63340494	IGNITION INTERLOCK DEVICE	11/26/2014	1
63341494	CONDITIONS OF BAIL	11/26/2014	4
63341495	TRIAL - DISCOVERY	11/26/2014	5
63292167	BAIL - BOND	11/24/2014	4
63275338	CHARGING INSTRUMENT - MISDEMEANOR INFORMATION	11/23/2014	1
63277466	CHARGING INSTRUMENT - COMPLAINT	11/23/2014	1

EXHIBIT Q

STATE V. [REDACTED] SKINNER

(1-7-15)

CAUSE NO. [REDACTED]

THE STATE OF TEXAS

IN THE COUNTY CRIMINAL

COURT AT LAW NO. _____

HARRIS COUNTY, TEXAS

Charge: Driving While Intoxicated

CASE RESET FORM

Reset Date: The undersigned Defendant and Counsel acknowledge that this case is reset from

to: 2-18-2015 at 9:30 AM

- ☐ The State has offered:
☐ The State and Defense agree as follows:

Attorney for State Signature

Defendant Signature

☐ On Bond

☐ In Jail

Fines, Court Costs, and Restitution

Fine: _____

Costs: _____

Total: _____

Restitution: _____

Attorney for the Defendant (print)

☒ Retained

☐ Appointed

Attorney Bar #

Attorney SPN

Attorney Signature

Attorney Email Address

Attorney Telephone No.

Attorney Fax No.

FOR COURT STAFF USE ONLY

Reset by: ☒ Defense ☐ Prosecution ☒ Court

Setting Reason:

- | | | | | | |
|--|-------------------------------|-------------------------------|--|--|-------------------------------|
| <input checked="" type="checkbox"/> APRG | <input type="checkbox"/> DISP | <input type="checkbox"/> RDLH | <input type="checkbox"/> PTMO | <input checked="" type="checkbox"/> MAJ / MRPH | <input type="checkbox"/> PNDC |
| <input type="checkbox"/> HEAR | <input type="checkbox"/> PLPA | <input type="checkbox"/> DEIH | <input type="checkbox"/> PTGR | <input type="checkbox"/> DISM | <input type="checkbox"/> MCHJ |
| <input type="checkbox"/> NTRL | <input type="checkbox"/> SEJS | <input type="checkbox"/> DEIV | <input type="checkbox"/> CTRL | <input type="checkbox"/> SFBF | <input type="checkbox"/> MCH |
| | <input type="checkbox"/> MOTN | <input type="checkbox"/> DEID | <input checked="" type="checkbox"/> JTRL | <input type="checkbox"/> Other | <input type="checkbox"/> MCRH |

Reason for Reset:

- | | | | |
|---|---|---|---|
| <input checked="" type="checkbox"/> No Offense Report | <input type="checkbox"/> D.A. Chief Unavailable | <input type="checkbox"/> Defendant On Call | <input type="checkbox"/> Compliance MAJ / MRP |
| <input type="checkbox"/> No Video / Lab | <input type="checkbox"/> D.A. Re-File As Felony | <input type="checkbox"/> Defendant Has New Case | <input type="checkbox"/> No MHMR Evaluation |
| <input type="checkbox"/> RIP | <input type="checkbox"/> D.A. Evaluate Case | <input type="checkbox"/> Attorney Not Present | <input type="checkbox"/> Complete Program |
| <input type="checkbox"/> File Unavailable | <input type="checkbox"/> Restitution Info | <input type="checkbox"/> FELP | <input type="checkbox"/> Other |
| | <input type="checkbox"/> Refer to CLD | <input type="checkbox"/> Need Clearance Letter | |

Setting Date Approved By: _____

Judge / Coordinator
CCL Form 2

Date Signed

06-18-2013

DISTRICT CLERK'S FILE

Cause: [REDACTED] CDI: 2 Court: 2

APPEALS

No Appeals found.

PAYMENT PLAN

No Payment Plan found.

RELATED CASES

No related cases found.

BOOKINGS

No Bookings found.

HOLDS

No Holds found.

WITNESS

No Witness found.

SUMMARY**CASE DETAILS**

File Date	[REDACTED]
Case (Cause) Status	Active - CRIMINAL
Offense	DRIVING WHILE INTOXICATED
Last Instrument Filed	Misdemeanor Information
Case Disposition	
Case Completion Date	N/A
Defendant Status	BOND MADE
Bond Amount	\$500.00
Next/Last Setting Date	[REDACTED]

DEFENDANT DETAILS

Race/Sex	W / M	Height/Weight	6'02 / 180 LBS
Eyes	BRO	Hair	BRO
Skin	FAR	Build	MED
DOB	[REDACTED]	In Custody	N
US Citizen	YES	Place Of Birth	TX

Address [REDACTED]

Markings

COURT DETAILS

Court	2nd
Address	1201 Franklin (Floor: 8) Houston, TX 77002 Phone: 7137556184
JudgeName	William Harmon
Court Type	Criminal

BONDS

Date	Type	Description	SNU
09/29/2014	BOND SET	\$500	999
09/30/2014	BOND FILED	CRT 2 TIME 1835 TYPE SURETY	
09/30/2014	BOND MADE	AMT \$500 DATE 09/30/14 RCPT #	

ACTIVITIES

Date	Type	Description	SNU/CFI
10/28/2014	DA TAPE NUMBER	DA1408045 SNU: D99	
	4 /	/ DA TAPE NUMBER SNU:	
09/29/2014	COMPLAINT FILED	2102 2 DRIVING WHILE INTOXICAT LEVEL MB	
09/29/2014	BOND SET	\$500	999
09/29/2014	REVIEWED BY	O'DONNELL, JAMES EDWARD	
09/29/2014	ORI	DEPARTMENT OF PUBLIC OFFENSE NO:	
09/29/2014	COMPLAINANT	PHAM, WINSON	
09/30/2014	CMI/MIN	TIME 0226 AMOUNT \$500	999
09/30/2014		NOT ACKNOWLEDGED BY SHERIFF	
09/30/2014	BOND FILED	CRT 2 TIME 1835 TYPE SURETY	
09/30/2014	BOND MADE	AMT \$500 DATE 09/30/14 RCPT #	
09/30/2014	BONDSMAN		
09/30/2014	C87 ACTIVITY	PCWAR DONE STATUS CFI 2	999
01/17/2015	MOTIONS	RECONSID RECUSE JGE	997
01/17/2015	MOTIONS	FILED CFI 2	
01/05/2015	MOTIONS	MO CRT REMOVE MADD P	998
01/05/2015	MOTIONS	FILED CFI 2	
01/05/2015	MOTIONS	MO JUDGE TO RECUSE	999
01/05/2015	MOTIONS	FILED CFI 2	
01/05/2015	ORDER	RECUSAL REFERRED ADMIN CRT	996
01/05/2015	OFFENSE	DRIVING WHILE INTOXICATED LEVEL MB	
01/05/2015	ORDER	MO CRT REMOVE MADD PLAQUE D	997
01/05/2015	OFFENSE	DRIVING WHILE INTOXICATED LEVEL MB	
12/23/2014	ORDER	DISCOVERY LOG SIGNED	998
12/23/2014	OFFENSE	DRIVING WHILE INTOXICATED LEVEL MB	
10/06/2014	ORDER	STAND/DISCOV BLOOD RECORDS	999
10/06/2014	OFFENSE	DRIVING WHILE INTOXICATED LEVEL MB	

HOLDS

No holds found.

ACTIVE PARTIES

Name	Connection	Post Jdgm	SPN #
FLOOD, TYLER ASHLEY	HIRED DEFENSE ATTORNEY		01901745

INACTIVE PARTIES

No inactive parties found.

SETTINGS

Date	Court Post Jdgm	Post	Docket Type	Reason	Results	Defendant	Future Date	Comments	Attorney Appearance Indicator
10/06/2014 09:00 AM	2		Motions Docket	Arraignment	Reset	Present	11/12/2014 12:00:00 AM		Absent
11/12/2014 09:00 AM	2		Motions Docket	Non-Trial Setting	Reset	Present	1/7/2015 12:00:00 AM		Absent
1/07/2015 09:00 AM	2		Motions Docket	Disposition	Reset	Data Not Entered	2/18/2015 12:00:00 AM		Absent
2/18/2015 09:00 AM	2		Motions Docket	Jury Trial		Data Not Entered	1/1/0001 12:00:00 AM		Absent

DOCUMENTS

Number	Document	Post Jdgm	Date	Pgs
63944165	MOTION TO RECONSIDER DEFENDANTS MOTION TO RECUSE TRIAL JUDGE		01/17/2015	5
-> 63944166	PROPOSED ORDER		01/17/2015	1
63757215	ORDER		01/05/2015	3
63776780	ORDER TO RECUSE		01/05/2015	11
63628997	TRIAL - DISCOVERY		12/23/2014	2
63578773	CASE RESET FORM		12/19/2014	1
63145789	CASE RESET FORM		11/12/2014	1
63123455	118361 - RETURN OF SUBPOENA		11/11/2014	2
63123456	118362 - RETURN OF SUBPOENA		11/11/2014	2

63103285	APPLICATION FOR SUBPOENA BY DEFENSE	11/10/2014	1
63103574	FREEfax Cover Sheet	11/10/2014	1
63104176	APPLICATION FOR SUBPOENA BY DEFENSE	11/10/2014	1
63104334	FREEfax Cover Sheet	11/10/2014	1
63104472	118361 - SUBPOENA	11/10/2014	2
63104488	118362 - SUBPOENA	11/10/2014	2
62735503	108006 - RETURN OF SUBPOENA	10/13/2014	1
62708604	108006 - SUBPOENA	10/10/2014	1
62695826	APPLICATION FOR SUBPOENA BY DEFENSE	10/09/2014	1
62695827	Subpoena Application Attachment DEFENSE	10/09/2014	2
62708540	FREEfax Cover Sheet	10/09/2014	1
62645204	ATTORNEY OF RECORD	10/06/2014	1
62645239	CASE RESET FORM	10/06/2014	1
62677377	TRIAL - DISCOVERY	10/06/2014	5
62546836	PROBABLE CAUSE & STATUTORY WARNINGS	09/30/2014	1
62567903	BAIL - BOND	09/30/2014	2
62541091	CHARGING INSTRUMENT - COMPLAINT	09/29/2014	1
62541222	CHARGING INSTRUMENT - MISDEMEANOR INFORMATION	09/29/2014	1

EXHIBIT R
WITNESS LIST

WITNESS LIST

1. Tyler Flood

1229 Heights Boulevard, Houston Texas 77008

713.224.5529

tyler@tylerflood.com

Mr. Flood has personal knowledge about his firm challenging Judge Harmon's display of the MADD Plaque. Mr. Flood also has personal knowledge about Judge Harmon's retaliation against Mr. Flood and his clients.

2. Justin Harris

1229 Heights Boulevard, Houston Texas 77008

713.224.5529

Justin@justinharrislaw.com

Mr. Harris has personal knowledge as to Judge Harmon's MADD Plaque on display in his courtroom. Mr. Harris has personal knowledge that Judge Harmon has been retaliating against Tyler Flood and his clients.

3. James Fletcher

1229 Heights Boulevard, Houston Texas 77008

713.224.5529

james@tylerflood.com

Mr. Fletcher has personally observed and has knowledge of the challenge to Judge Harmon's display of the MADD plaque in his courtroom. Mr. Fletcher also has personal knowledge of Judge Harmon's retaliation against Mr. Flood's firm and his clients.

4. Andrea Podlesney

1229 Heights Boulevard, Houston Texas 77008

713.224.5529

andrea@tylerflood.com

Ms. Podlesney has personally observed the MADD plaque that is on display in Judge Harmon's courtroom. Ms. Podlesney also has knowledge regarding the retaliation Judge Harmon has shown to Mr. Flood's firm and his clients.