

2018 DWI Prosecutor Taskforce

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Collin County
Asst. Criminal District Attorney
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Chris Nevins
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Hire date: 1/1/2013
County Population: 13,027

***Matthew Brooks will attend in Jo'Shae
Ferguson-Worley's place**

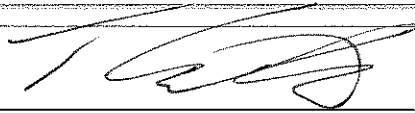
***Bill Reed will attend in Rebecca
Russell's place**

DWI Task Force Meeting
December 14, 2018
Austin, Texas

On-Site Registration Roster

Name: Thomas Ashworth

X



(Signature)

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Name: Lauren Black

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Name: Tom Brummett

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DWI Task Force Meeting
December 14, 2018
Austin, Texas

On-Site Registration Roster

Name: Kriste Burnett

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Title: Asst. County District Attorney

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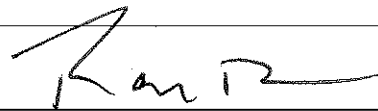
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Name: Ray Duke

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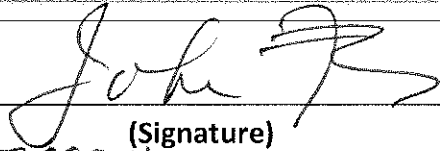
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DWI Task Force Meeting
December 14, 2018
Austin, Texas

On-Site Registration Roster

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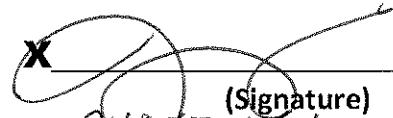
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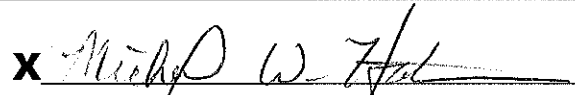
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DWI Task Force Meeting
December 14, 2018
Austin, Texas

On-Site Registration Roster

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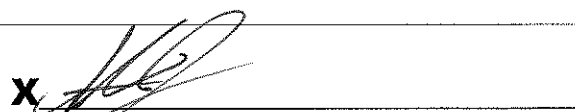
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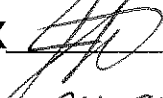
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DWI Task Force Meeting
December 14, 2018
Austin, Texas

On-Site Registration Roster

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DWI Task Force Meeting
December 14, 2018
Austin, Texas

On-Site Registration Roster

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DWI Task Force Meeting
December 14, 2018
Austin, Texas

On-Site Registration Roster

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Name: Matthew Brooks (subing for Joshua Work)

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Name: Bill Reed (subing for Rebecca Russell)

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TEXAS DISTRICT & COUNTY ATTORNEYS ASSOCIATION

DWI Prosecutor Task Force Meeting

TDCAA

Austin, Texas

December 14, 2018

Friday, December 14, 2018

9:30 a.m. Introductions & Overview

10:00 a.m. DWI Resource Prosecutor Grant

- **Publications**
 - **DWI Investigation and Prosecution 2018**
 - **Intoxication Manslaughter 2014**
 - **Predicates 2018**
- **Resources**
 - **DWI Case Law**
 - **SFST Review**
 - **Other**
- **Training**
 - **2019 Update**
 - **Going Forward 2020**

10:30 a.m. Jury Selection Video Project

*Clay Abbott, Brian Klas, Bill Conerly (Video Director & Producer),
Stephanie Greger, Allison Tisdale, Jessica Frazier, Lauren Black*

12:00 p.m. Lunch (Provided)

12:45 p.m. TTI Interlock & Crash Reconstruction

Jena Prescott, Safety Texas A&M Transportation Institute

1:00 p.m. DRE Program

Michael Jennings (APD) & Invited Guest from SHSU DRE Coordinator

2:00 p.m. New Technology

David Pemberton

2:45 p.m. DPS Lab Portal

3:00 p.m. Legislation

Shannon Edmonds, TDCAA Director of Governmental Relations

3:15 p.m. Report Drafting & Assignments

3:30 p.m. Adjourn

DWI Task Force Meeting

Austin, TX

December 14, 2018

Introductions & Overview

DWI Resource Prosecutor Grant

Objective Summary Report sheet

Web Resources

Jessica Frazier talked about the Case Law update. Said she has been toying with the idea of having a search warrant section added. Also let everyone know that if they could think of something else that could be added to the update, let her know and she'd be happy to work it in. Clay said if you see that there is a case that needs to be added that has a good opinion or first opinion, let Jessica know and she can add it. Clay talked about how Stephanie Greger works on the SFST Review Update. Our sheet is now a part of the Texas SFST materials as well. If you have anything that you think needs to be added, just contact Stephanie. Stephanie added she was wanting to expand into drugs in the review and to touch on what affect that has on SFST's.

Jury Selection Training and Specialty Schools

Clay talked about trainings, especially Jury Selection training. Brian said he thought it went very well. Was looking at it from a different perspective and would even put it in for future TDCAA stuff. Extremely effective way to teach *voir dire* training (just focusing on DWI's). Did not cover everything we wanted to, but it was due to time. Everyone was wanting to talk about things (lots of interaction with attendees). People don't understand commitment questions so that was one thing everyone really started a discussion on. Attendees were even asking for the slides from the presentations. It's a way to cover topics we haven't been able to cover in the past. Jessica set them up as an actual panel because they wanted them to show her and she got a lot of good feedback. Giving them something to lead with is very beneficial. Lauren said she had a lot of great feedback. Attendees said it was exactly what they were looking for and really liked they were able to see it happening and then could ask questions. Andrew James said he attended the one in Richmond and it provided new and good examples of how to do things and thought it was great. Stephanie said it was very helpful to demonstrate how she approaches an issue and then Allison would show her way and it worked out great. Got a lot of questions and feedback from attendees.

Video will help get it out there permanently and will reach more people so they can use it before their first actual jury selection. All agreed it was a good one day, 4-hour training. Even though shorter, it was more directed and worked better than doing a TDCAA specialty seminar. Clay asked if it would be good to do the training again. Kelsey said yes because it is hard for misdemeanor prosecutors to watch *voir dire*. Having it on a Friday gives them the chance to go to this training and see it. Catherine said she got a lot out of the training. Clay said we might do the Jury Selection training every other year since we are making the video. Direct in the morning and cross in the afternoon for specialty defenses, but it was agreed the prosecutor only course

should be kept on the table. Adding DWI as a specialty school is not necessary because of Clay's one day training rotation.

Task Force Logistics

When would be a better time to do the Task Force Meeting was discussed. Between civil and the specialty school or specialty school and July PTSC were both explored. Clay suggested May. Everyone discussed how summer is a hard time and it was agreed to keep it in December. Discussed new cities for one day training. Conroe, Victoria, Lubbock, Georgetown, Midland were thrown out. Then discussed doing 4 or 6 cities instead of just 3. Georgetown, Conroe, Denton secondary Lubbock, Tyler or Lufkin, possibly Huntsville and El Paso.

Still getting demand for Rolling Stoned (joint police officer/prosecutor training), what other training would be good? Worst Case Scenario would be a good one to bring back as well. Everyone agreed. If there is significant legislation, an update with common defenses would be appropriate.

Jury Selection Video

Will break it up into two 15 minutes videos and need to script it out so we can stick to that time frame. Discussed what would be good topics/things to cover since won't be able to do everything. People volunteering for talent for video: Lauren Black, Jessica Frazier, Stephanie Greger, Allison Tisdale, Andrew James, Sean Teare, Kelsey Downing, Chris Nevins. Attire – Full courtroom dress, women wear suit jacket/lapels for mics. Bring 2 to 3 options for attire. End of February is the deadline for scripts and recruiting 2 jurors (need headshots of jurors). Will film April 4-5, 2019. If that doesn't work, May 23-24, 2019 as back-up date.

First Video:

Open with a montage and then go to studio and Clay will set up the scope (will go over what will not be covered & that this is built for new attorneys but helpful to old ones because everyone needs a new bit).

County name for video is Armadillo

#1 Nullification (why DWI matters), Introductions and Self & Role, Polling – Jessica Frazier

#2 Intoxication – (Add element slide) Law, 3 Definitions, Billy & Bubba, Drunk vs. Impaired, Normal Use, Bouncing Ball, do a Standefer question – Sean Teare

#3 Proving Intoxication – Signs of Impairment, SFST, Tolerance, Mom's Sobriety Test/Have you ever seen someone impaired – Lauren Black

#4 Police Witnesses – Scaled questions (PowerPoint), expertise vs. creditability, defendants held to the same standard, show a negative to positive loop, script an oversharing juror – Kelsey Downing

Studio close and final will be a closing Montage

+

Second Video:

Open with montage (will go over what will not be covered) Make it fit your case, no canned voir dices

#5 Refusal – Search Warrant/No Search Warrant, Law, Ambuse, Standefer – Andrew James

#6 Disconnect – Video vs. BAC, SFST Fail, Validated, Scope of Use – Stephanie Greger

#7 Drugs – M.J. and Prescription Issue (Xanax & Alcohol), No per se (will touch on it), Dentist/Doctor example, Circumstantial Evidence – Allison Tisdale

Back up 1 – Chris Nevins

Back up 2 – Brian Klas

Topics that will be pulled in:

Tools and Techniques – Polling questions, scaled questions, looping (positive to negative & negative to positive), Group response, Getting ambushed by a juror, oversharing juror.

Montage issues – Standefer (Clay), Causation (Breath Test), Taking Notes (add in Batson), Skunk in the Jury Box, Believe Opinions, Make Jurors Talk (Reveal), Rehab Bad Jurors, To Your Facts – no canned *voir dices*, Be Yourself - Confidence, Make Jury Care, Set for Close, Know Your Jurisdiction, Empower – Make Jurors Detectives, BRD, FTT (Failure to Testify), Be likeable – Be reasonable, Time Management, Willingness to Breach Panel, Operations (Passed out, Crash).

General Prosecutor Jury Selection Segments – Circumstantial Evidence (CSI Effect)

All DWI Jury Selection Topics – Intoxication – Add Element Slides (Tolerance, SFST, Signs of Impairment, Drunk vs. Impaired, Normal Use, Mom’s Sobriety Test/have you ever seen someone impaired, Red Bouncing Ball), Police Witnesses (Cops, Live P.D., Credibility – defendant same standard, Scaled).

Nullifications – Have you called 911 + Self & Role, Victims (MADD), Sympathetic (Young/Professional/Teacher/No Record).

Case Specific DWI Jury Selections Topics – Refusal & Search Warrant/No Search Warrant, Drugs (M.J., Prescription, No per se, Mental vs. Physical), SFST Officer Fail/Good Video

Lunch

TTI

Went over the TTI Data sheet that Jena sent. If you have any information of how Interlock can be more helpful, Clay will put you in touch with Paige or Jena from TTI. TTI is also working on another project called Crash Recon for Prosecutors. Clay told TTI to get in contact with Sean and Andrew for help getting training and curriculum up and running. Hoping to get that training going soon. Most of the trainings will not be taught by prosecutors, but Recon Officers. Sean

elaborated more on the training saying it is basically getting more information out of the Recon expert with the right vocabulary.

DRE Program

Michael Jennings came as an invited expert. Cecil was unable to attend or send a representative from the Texas DRE program. Clay asked the question to everyone how many could use more trained DRE's/ARIDE's in your community. Everyone agreed unanimously. They also agreed unanimously that they are very helpful in DWI cases. Everyone supports the DRE Program. Talked about having ARIDE training online and not just in person. Everyone unanimously supports having an officer ARIDE trained using online training. While not optimal, online training is better than having no training at all. Jessica said that she would like to see a push for bigger counties to have someone employed full time doing DRE evaluations 7 days a week. Sean agrees. Officer Jennings says that they are pushing it in their department since they are a bigger agency and can free up officers to be able to attend the trainings. It's harder for smaller counties to free up officers since that would leave them too shorthanded. It's also about being able to motivate your officers to go and be certified since it is such a hassle to keep up the certification (every two years), going to conferences trainings (getting the money to do that), getting called out more often. Also, Cecil Marquart, who is the Sam Houston State University DRE Coordinator, is the only one who can tell them what to do, it's not the agency the officers work for. They are working with Don Egdorf, Houston Police Department, & Cecil about letting Agencies teach ARIDE trainings. Hopefully they will be able to work something out. DRE program instructor feedback and evaluation can create court room issues. **If an instructor officer refutes or criticizes the DRE who did an evaluation that review is Brady information and must be forwarded to prosecutors to assure it goes to the defense.** Clay was tasked with exploring the issue with the Texas DRE program.

Michael Jennings also reported that on July 1st, he had a lot of guys that needed to be recertified. He asked Cecil to come to APD and train their guys and she said ok. All their guys go through and pass the tests and were never notified that they weren't recertified at that time. They only found out after the officers started doing DRE Evaluations and submitting them and Cecil called and said that they weren't recertified until she says they are. She wanted them to go in and delete out the logs that they had put in ASAP. Michael went to the Travis County Attorney's Office to see if there was anything they could do to keep the evaluations/reports in the rolling logs and they figured out how to make that happen. It is still an issue. Clay has talked to ICP about the issue and they have said that deleting any kind of police report shouldn't happen and would be a good idea to talk to you DRE's to make sure nothing has been deleted out of rolling logs. Everyone agrees that Clay should speak on their behalf that it is a bad idea to delete logs that have already been submitted to prosecutors. Clay said that another issue is that all field certs in the State of Texas take place in the Bexar County SO. We need a local instructor or a traveling instructor to conduct field certs regional/local. Everyone agreed and said that Clay should speak on their behalf for getting local/regional instructors. Clay said he also has problems with STEP. If we want to grow DRE/ARIDE, when you apply for STEP money, your department must have a DRE and the only officers that should be getting major overtime should be an ARIDE certified officer. Everyone supports this stipulation. Waylon said for him the officers don't have motivation in his area to get DRE certified because DWI's aren't being prosecuted, only getting

pre-trial diversion (interlock). Need to talk to Shannon about what we can do to get legislation passed to be able to prosecute more DWI's instead of pre-trial diversion.

(In April Clay met with Cecil Marquart the Texas DRE/ARIDE coordinator and discussed the issues given to him by the task force. The results of that meeting will be greater promotion of ARIDE and DRE at Clay's regional programs. Discovery and Brady issues with reviews will also be an ongoing discussion with Texas DRE and IACP.)

Michael then showed a video regarding the DAX camera his department bought that will record HGN (also showed the DAX camera to everyone). Helps the officer to have control over what is going on. Sean says that HPD is using these cameras and the videos are being used in Intoxication Manslaughter cases in Harris County. Thomas asked if they are being used on every DWI that is coming into the jail. Michael said no, only on Manslaughters and Hospital cases for now since they only have one camera.

New Technology

David Pemberton introduced his device that administers the SFST test mechanically (so to speak). It records the eyes following a light. The device was set up in TDCAA's small conference room so that everyone could take a look at it and test it out over the lunch break before David's presentation video. Thomas asked if it captures any audio and David said that it doesn't. Wanted to know if there was a need for the audio and everyone agreed, including Clay. Clay said that officers may not agree and would probably push back, but prosecutors would like the audio. David said they could also put dots on the bottom of the screen so you can see what lights they are supposed to be following in real time. Sean wants to know what happens when they stop in the middle of the test, can you just start back up where they left off? David said he is working on getting that put in so you can decide to start from where they stopped, start over as soon as they stop or just move on to the next step. Wants to get feedback from the Task Force so he can get a version that officers and prosecutors would be interested in using. Sean asked if it measured lack of convergence. David said that it measures that, HGN, Pupil Diameter, etc. Clay asked about cost. David said he had thought about just renting them out to the jails, but everyone said that it wouldn't work as well that way because only about 4 counties in Texas have 24 hour booking officers that would use it. David asked regarding cost, not renting, what would it be worth to you. Clay asked how video gets stored. David's Associate, Rue, said on a Raspberry Pie (like an old intel laptop – credit card sized computer, costs about \$35). Clay said it should be a two step process: demonstrate you can do it at the station first and then get it mobile to use on the roadside. Everyone agrees. Clay asked if your agency were producing this evidence, would it be helpful to you and everyone said yes, but that they should talk to the Police Departments/Sheriff's Offices and Elected Prosecutors to make it known as an instrument to use. Clay tasked Kaylene with getting David's information out to everyone on the Task Force. Is having a HGN recording device a high priority? No. Does the Task Force support the idea of exploring the best practices and available technologies to capture HGN. Yes they do. It does need to be accessible and have an ease of use for officers. Clay wants to know if there are other issues outside of DRE/ARIDE or recording HGN.

DPS Lab Portal

Legislation

Shannon Edmonds, TDCAA Legislative Liaison, gave a handout showing what DWI Bills are coming up to be voted on this Legislative Session (2019). Talked about the process getting to our Legislative Update trainings and producing the new Legislative Update book. He is the eyes and ears for prosecutors, but not the mouths. Need to have prosecutors come speak/testify on bills (either for or against). Shannon and Clay will support them through the process.

Report Drafting & Assignments

None

Adjourn