



WELCOME

Robert Featherston

Law Office of Robert H. Featherston, P.C.

REPRESENTING

Iam Sober



FAIRNESS - PARTICIPATION

- There are no **Right** or **Wrong** Answers, we are only trying to **understand your views.**
- Who can be **FAIR!**



Before I Become a Judge, I
Think You Should Know ...

Embarrassed ?

Ask to approach the Judge.



“Intoxicated” means:

- (A) not having the normal use of mental or physical faculties by reason of the introduction of alcohol...
- (B) having an alcohol concentration of 0.08 or more.



Driving While Intoxicated

- (a) A person commits an offense if the person is intoxicated while operating a motor vehicle in a public place.



RESPONSIBLE SOCIAL DRINKERS

Who does not drink ?

Some people say its illegal to
have a drink and drive,

What do you think?



BACKGROUND

- **Objections**
- Meeting in the hall
- Physical problems precluding jury service ?
- Who does not want to serve on this type of case ?



BACKGROUND

- MADD membership ?
- Know any one hurt by a DWI driver ?
- Know the Judge, attorneys, court personnel or witnesses ?
- Any one in law enforcement ?



NORMAL USE

- What is “Normal Use”
- Same through out the day ?
- Fatigue affect it ?
- Stress of arrest affect it ?
- Who’ s “Normal Use” is it?
- “Buzz Scale” & Normal Use



BREATH TEST

- Why would anyone not take a breath test ?



PRELIMINARY ROADSIDE EVALUATION

- Objective ?
- Do they measure “Normal Activity” ?
- What are some reasons one would do poorly on them.
 - ◆ Impaired?
 - ◆ Weight – Physical Condition
 - ◆ Wind, Temp, Slope
 - ◆ Fatigue . . .



WITNESSES

- Professional – Ordinary
- Do Witnesses Lie?
- Police Officers always truthful?
- Who Judges Creditability?
- If you are Arrested for DWI you are GUILTY.
- Police make mistakes & Citizens get nervous.



CHARGE OF THE COURT

- This is your Bible.
- You will swear an Oath to follow the law in the Charge.
- You must follow the law.
- Who agrees with this. – Raise your hand.



THE LAW – WHO' S BURDEN

- The law does not require an accused person to prove his innocence or produce any evidence at all.



THE LAW - TESTIFYING

- A decision by an accused person **not to testify cannot** be considered as evidence or as a circumstance against the accused person and **cannot** be held against the accused person.
- **No conclusion of guilt** can be based solely or in part upon an **election not to testify**.
- You are **not** to consider, discuss, or even refer to this matter during your consideration of this case.



JURY DELIBERATIONS

- In the jury room:
 - ◆ A juror starts to talk about **Javier not testifying**,
- WHAT IS YOUR SWORN DUTY?



Should the Citizen Accused be
Required to prove his/her
Innocence ?

- **NO! - PRESUMPTION
OF INNOCENCE**
- **Fundamental !**

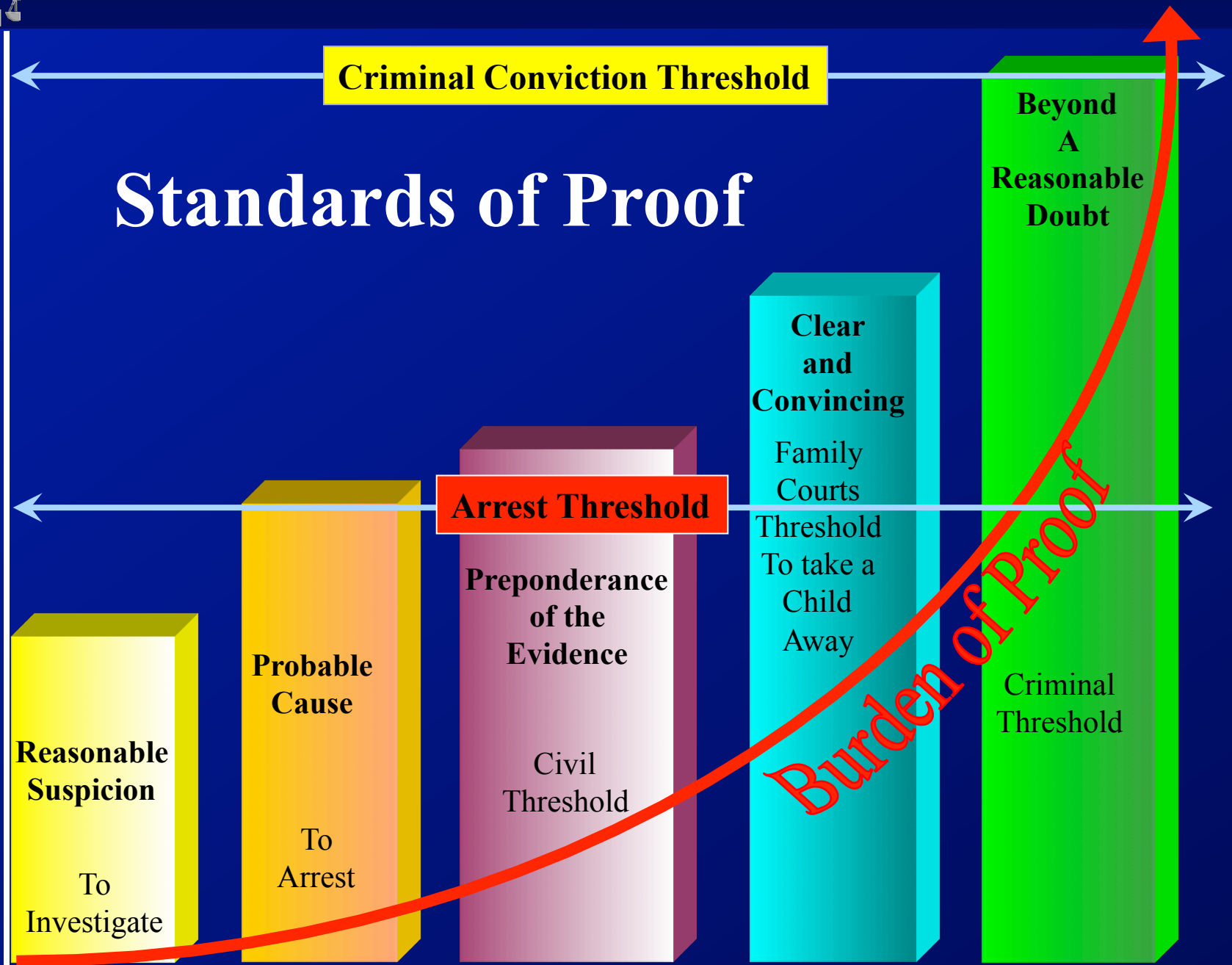


TRAFFIC TICKET - BUMP IN THE PARKING LOT

- Nervous ?
- Justified ?
- Fumble for drivers license ?
- Trouble finding insurance papers?
- Level of proof ?



Standards of Proof





C.C.P. Art. 35.16(a) (10) & (c)(2)

● As I am sits before you right now
how many of you are leaning just a
little bit towards **guilt**, feeling that
it would take **some evidence** to
remove this from your mind?

- ◆ Who says **Yes**?
- ◆ Who says **No**?
- ◆ Who **does not know**?



VERDICT

- After looking at **ALL** of the evidence, if **one piece** of evidence raises in your mind **a reasonable doubt** as to Guilt what is your **duty** as to your verdict ?
- **NOT GUILTY**



Thank you !



BACK UP SLIDES



Art. 35.16. REASONS FOR CHALLENGE FOR CAUSE.

(a) 10. That from hearsay, or otherwise,

there is established in the mind of the juror such a conclusion as to the guilt or innocence of the defendant as would influence the juror in finding a verdict.

To ascertain whether this cause of challenge exists, the juror shall first be asked

whether, in the juror's opinion, the conclusion so established will influence the juror's verdict. (IS THIS GOING TO INFLUENCE YOUR VERDICT?)

If the juror answers in the affirmative, the juror shall be discharged without further interrogation by either party or the court.

If the juror answers in the negative, the juror shall be further examined as to how the juror's conclusion was formed, and the extent to which it will affect the juror's action; and, if it appears to have been formed from reading newspaper accounts, communications, statements or reports or mere rumor or hearsay, and if the juror states that the juror feels able, notwithstanding such opinion, to render an impartial verdict upon the law and the evidence, the court, if satisfied that the juror is impartial and will render such verdict, may, in its discretion, admit the juror as competent to serve in such case. If the court, in its discretion, is not satisfied that the juror is impartial, the juror shall be discharged;



TIME LIMITATIONS

- Preservation of Error:
- Object to the time limitation prior to the end of voir dire.
- Request more time
- List proper questions that were not asked
- Name a seated juror who was not questioned



Batson

- Equal protection clause & Article 35.261 CCP prohibit discrimination in the use of peremptory challenges.
- Prima Facia Case showing the challenge was based on race
- Race Neutral Explanation
- Trial Court Determination



Prima Facia Case

- Must establish race of excused juror and race of those seated on the jury.
- If a party uses their strikes to remove most or all of the members of a group.
- The exclusion of **one** minority juror establishes the prima facia case.
- Even if minority members are on the jury.
- Though the Code requires it, the 14th amendment does not require the defendant to be a member of an identifiable racial group.
- *Kassem v. State, Hous.* 1st 2008



Batson Hearing

- Once a prima facie case is shown, the burden shifts to the responding attorney to give a race-neutral basis for the strike.
- The Court must conduct a full hearing allowing the proponent to cross examine the responding attorney and to call witnesses.



Miller-El v. Cockrell (Supreme Court 2005)

- Fantastic justifications may and probably will be found to be pretexts for purposeful discrimination.
- A race neutral explanation that has a disproportionate impact on minority jurors can be deemed a pretext.
- Jury shuffle requested when minority jurors are seated at the front of the panel was evidence of discriminatory intent.



Synder v. Louisiana (Supreme Court 2008)

- Explanation was that juror looked nervous and would be distracted by his need to finish student teaching.
- All five black jurors were struck by prosecution and *Batson* error on any one requires reversal.
- White jurors with conflicts were not struck.
- Judge made no findings.
- Judge could have made a finding that the nervousness was a credible and race-neutral explanation.
- Since there was no record supporting this, and the other explanation was speculative—case reversed.



Challenges for Cause

- Bias or prejudice in favor or against a Defendant.
[Art. 35.16 (A)(9)]
- Bias is an inclination toward one side rather than the other.
- Prejudice is prejudgment.
- Opinions about a case will not disqualify the juror if they can set those aside and base their verdict on the evidence.
- However, once bias or prejudice is shown as a matter of law, (juror admits he is biased against the defendant) the juror must be excused, even if later they state they can be fair.



Preserving Error on Challenge for Cause

- Make a specific objection for failure to grant the challenge for cause.
- Use peremptory challenge on the juror.
- Exhaust all peremptory challenges.
- Request additional peremptory challenges.
(*Newbury* CCA 2004 failure to do so results in a finding of no harm)
- Identify an objectionable juror who served on the jury.



Bias Against Witnesses

- *Lydia v. State*, proper inquiry to ask whether a juror would automatically disbelieve a witness because they were a convicted felon.
- Though a commitment question, it is proper because it would lead to a challenge for cause.
- Automatically disbelieving a witness who has not yet testified, means the juror cannot impartially judge the witness's credibility.
- Same issue with police officers if juror states that would never believe a police officer could lie.
- Error to refuse to allow the defense to ask the question. *Vann v. State* (Ft. Worth 2007).



FIELD SOBRIETY TESTS

- **NHTSA** SPONSORED:
 - ◆ HGN
 - ◆ Walk & Turn
 - ◆ One Leg Stand
- Objective of tests ?
- Do they measure “Normal Activity” ?
- What level of reliability would you expect ? (25%, 50% 77%, 90%...)