NOT GUILTY v. GOLIATH;
BLOOD Disconnect Defense

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52nd Annual Judge AA Semaan Criminal Law, San Antonio, Texas
April 18, 2015

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David v. Goliath,

1 Samuel 17 (Holy Bible 10th Century, BCE)

The story of David versus Goliath begins as Saul and the Israelites face the Philistines near the Valley of Elah.


MIRACLE
AHEAD

Michelangelo's David

September 8, 1504

Twice a day for 40 days, Goliath, the champion of the Philistines, comes out between the lines and challenges the Israelites to send out a champion of their own to decide the outcome in single combat, but Saul and all the Israelites are afraid. David, bringing food for his elder brothers, hears that Saul has promised to reward any man who defeats Goliath, and accepts the challenge.

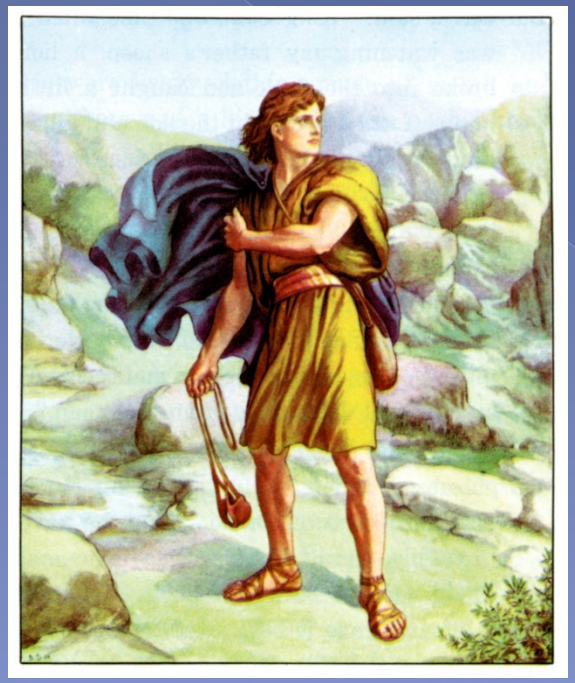
DISCONNECT DEFENSE
(Whaddya got?)

- High Blood Test (0.15 and higher)

  +
- Good Video Performance

  =
- Indisputable Conflict
  - Alleged blood alcohol science
  - Common sense theme of believing what you see.
  - e.g. a DISCONNECT

"Don't worry about this Philistine," David told Saul. "I'll go fight him!" Saul reluctantly agrees and offers his armor, which David declines, taking only a staff, his sling and five stones from a brook.



THE RIGHT FIGHTER

- *Reasonable* Suspicion
  - Speeding, Lights, Signals
  - Weaving – texting, radio, BJ
  - Accidents/ Not Deliberates
- Probable Cause
  - Medical records
  - Height and Weight Chart
  - Heels or boots
- Video

David and Goliath confront each other, Goliath with his armor and shield, David with his staff and sling. David hurls a stone from his sling with all his might and hits Goliath in the center of the forehead.

PREPARING THE SLING

- VOIR DIRE – Where you win your case!
  - Relate common sense to BIG consequence
- Tactic 1: Stop Watch
- Tactic 2: Health Problems
- Tactic 3: Scientists and Computers
- Tactic 4: EPT Test
- Tactic 5: Pure Disconnect
- Tactic 6: Thermometer

BLOOD TESTING (tactic 1)

- **Stop Watch (4.5 – 40 yard dash)**
  - Work for the parents/ Not NCAA Independent
  - Not 1 student at a time
  - Not by Name but by Number
  - Don't measure the speed / Ladanian Tomlinson
  - Don't even know if the student looks fast
  - No one checks my work
  - Never made a mistake
- **How does that make you feel?**

BLOOD TESTING (tactic 2 & 3)

- Health Problem (lyme disease)
  - Mistake in the lab test
    - 1. Tragic diagnosis that's not true; OR
    - 2. Miss something
- NASA / Johnson & Johnson / Air Lic
- Computers?

Is any test *really* error proof? (tactic 4)

hCG (human Chorionic Gonadotropin), a hormone present in urine only during pregnancy.

BLOOD TESTING (Pure Disconnect)(tactic 5)

- 0.08 0.16 0.24

Benches 500lbs

Ran 4.5/40

PROVE IT!!!!

THERMOMETER (tactic 6)

- 102-104 °F Go to the Emergency Room
- 106 °F Emergency Medical Procedures
- 108 °F Convulsions and Death

TWIRLING THE SLING

- Indisputable Conflict
- Start Weaving the Disconnect Thread
- Driving Issues
- Know the NHTSA Manual Better than Police
- Mental and Physical Faculties
  - Innocent reasons for odor, eyes, speech; compromised every SFST; coherent
  - Must lose mental before physical (BTO Manual pg. 44)
  - Neutralize M&P Faculties; Make it rely on the BT score
- Did not urinate or ask to use the restroom!
  - 0.235 equals 12 beers (144 oz) in the system.

DEADLY STRIKES (Blood Drawer)

- Limited Exposure With Defendant
  - notes? (Hearsay 803(8)(b))
  - No opinion of loss of mental or physical faculties
- Knowledge of Gas Chromatography
  - Gas Chromatography; prepared a sample; chromatogram
  - Simply draw and invert the blood
  - Find out the result?
- Proper Cleansing Technique (Forensic v. Hospital)
  - Concentric Circles
  - *Candida Albicans*
  - No alcohol allowed at all!
  - Clorox Wipes/ Hand Sanitizer
- Inversions
  - 180 Degrees
  - 8-10 Times
- Did Not Use the Restroom!

DEADLY STRIKES (Analyst)

- "Expert," But Speak in Lay Terms
  - working knowledge of gas chromatography, alcohol science, and possession of multiple authoritative studies in the field of breath testing
  - Dr. Kurt M. Dubowski, Dr. A.W. Jones, and Professor Dr. E.M.P. Widmark
- Articles/ Learned Treatises 803(18)
  - Dubowski, Kurt M., *Alcohol Determination if the Clinical Laboratory*, Am. J. Clin. Pathol. 74: 747, 749 (1980).
  - Dubowski, Kurt M., *Absorption, Distribution, and Elimination of Alcohol: Highway Safety Aspects*, J. Stud. Alc. Suppl. No. 10: 98, 99 and 106 (1985);
  - Jones, A.W., *Physiological Aspects of Breath-Alcohol Measurement,* Alcohol, Drugs and Driving, Vol. 6, No. 2 (1990).
  - Widmark, E.M.P., *Principles and Applications of Medicolegal Alcohol Determination*, Biomedical Publications, pg 99, Davis, CA (1981).
- Tables
  - Dubowski's table of the Stages of Acute Alcoholic Influence/Intoxication
  - Stages of Alcoholic Influence – Dubowski
  - Elated Disorders: Alcohol, Nicotine and Caffeine
  - Specific Effects of Alcohol Related to BAC

DEADLY STRIKES (Analyst cont.)

- Scientific Method
  - (1) Develop a Question; (2) Conduct Background Research; (3) Develop a Hypothesis; (4) Test the Hypothesis through Experimentation; (5) Analyze the Data; (6) Draw a Conclusion; and (7) Report the Results or Retest
- Problems with GC
  - Assume clean site/ Assume no C. Albicans/ clotting = fermentation/ indirect method of measuring alcohol/ no DNA test/ switching samples/ specific problems with lab or machine
- Retrograde Extrapolation
  - Only if you can explain it to a 5th grader and are in absorptive stage.
- Tolerance
  - The only explanation for the State.
  - Binder of articles
  - Metabolic, cellular, behavioral, initial, acute, acquired, cross,
  - Agree that a person has to practice these tests while intoxicated…
- Video
  - Did you even watch the video?
  - Your determination is purely on the number and not if it matches the table?
- RETEST!!

Then David ran over and pulled Goliath's sword from its sheath. David used it to kill him and cut off his head.

OFF WITH HIS HEAD

- Systematically weaved reasonable doubt through every aspect of intoxication
- Indisputable Conflict = Reasonable Doubt
  - Innocent Man, Insufficient Evidence, Indisputable Conflict
- Use Demonstrations
  - Green, Green, Red
  - Hypothetical Machine
  - Pictures with ridiculous stats
- DISCONNECT: good video, no loss of mental or physical faculties, never urinated, all about the ridiculously high number, either the machine defies science or there is a problem
- Constitutional Duty to Find Defendant **NOT GUILTY**

SHOW NO MERCY!

- Who is the Villain?
  - Blood test? The analyst? The nurse?
  - THE STATE
- Righteous Indignation
  - Police Agency Crime lab
  - DA using bad science to prosecute
  - Protect the Innocent
- Help!
  - Stand up for the people of Texas
  - NG = independent lab/ better science
- Tell Your Neighbor
  - Can't sit silent
  - Be proud of your verdict
  - Lasts forever

Sistine Chapel – Michelangelo 1509

Breath v. Blood

- (1) 20% acceptable range of error;
- (2) self checking for accuracy;
- (3) no warranty for merchantability or accuracy;
- (4) recalled in multiple states;
- (5) newer model available;
- (6) citizen cannot purchase from manufacturer;
- (7) manufacturer refuses to provide source code;
- (8) not available for independent scientific testing;
- (9) destroys the only direct evidence of sobriety/intoxication when the State had the ability to save that evidence;
- (10) operator has no idea how the machine works;
- (11) "scientist," who does, rarely checks it in person;
- (12) any inconsistencies or strange occurrences found in test records; etc…

- (1) contamination in the blood draw room;
- (2) expired materials;
- (3) improper site cleansing;
- (4) improper blood draw technique;
- (5) mishandling of the evidence;
- (6) break in the chain of custody;
- (7) human error in the laboratory;
- (8) pipette problems;
- (9) sample expiration, contamination, or other problems;
- (10) contamination in the injector port, y-splitter, columns, flam ionization detector;
- (11) source code issue;
- (12) sloppy chromatography,
- (13) **0.000**
- (14) Retest?
- (15) Not tested DNA or *Candida*

QUESTIONS???

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