



AFTER THE GUILTY VERDICT

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GOALS FOR THIS SESSION

- Identify targets for cause, strikes & rehabilitation in jury selection
- Cover the law on punishment evidence
- Direct you on where to find punishment evidence
- Develop your strategy for your punishment case
- Identify ways to cross examine defense witness (*even on short notice*)
- Help you outline your punishment argument

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Jury Selection

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Jury Selection

State's Life Case?

-Who can't give life? Get them to commit; agree with them; make them feel comfortable with their answer. Don't fight with them!

Defense Probation Case?

-Set it up for your panel; make them see how probation could be appropriate & how they don't have to imagine or make up a set of facts, but just keep an open mind.

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Jury Selection

- Manage your time
- Include Punishment Issues in your decision-making
- Identify Targets for Cause, Strikes or Rehabilitation

- Re-assure Targets for Cause (lose 'em)
- Educate Targets for Rehabbing (keep 'em)
- Don't waste time on clear strikes (*@#! 'em)



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The Law

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Rules

“...Evidence may be offered by the State and the Defendant as to any matter the court deems relevant to sentencing, including, but not limited to the prior criminal record of the Defendant, his general reputation, his character, an opinion regarding his character, the circumstances of the offense being tried...any other evidence of an extraneous crime or bad act that is shown beyond a reasonable doubt...”

Tex Code of Criminal Procedure 37.07 Sec 3(a)(1)



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Rules

“...by evidence to have been committed by the defendant or for which he could be held criminally responsible, regardless of whether he has previously been charged with or finally convicted of the crime or act. A court may consider as a factor in mitigating punishment the conduct of a defendant while participating in a program under Chapter 17 as a condition of release on bail.”

Tex Code of Criminal Procedure 37.07 Sec 3(a)(1)



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Types of Evidence Allowed

Prior Criminal Record of the Defendant



Defendant's general reputation and opinions about the Defendant's character



Circumstances of the crime for the defendant is on trial



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Or ANY other crime or bad act shown by evidence to have been committed by the defendant!

- It doesn't have to be a crime
 - It doesn't have to be a charged offense
- It doesn't matter if he/she has been finally convicted of the act
 - Venue is irrelevant

Limiting Instruction is Required

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Types of admissible punishment evidence

- Any other extraneous crime or bad act shown by the evidence to have been committed beyond a reasonable doubt.
- Defendant's conduct while participating in a program under Chapter 17 as a condition of release on bail.
- Notwithstanding 609(d), an adjudication of delinquency based on a violation of penal law that is a felony or a misdemeanor punishable by confinement in jail.

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Rules

- Defendant must request notice and it shall be given in the same manner as 404(b).
- File only one notice for 404b, 609(f) and 37.07 even if the defense doesn't request it.
- 10 days is presumptively reasonable, but file your notice well before then.
- Notice must include:
 - ❖ Date of offense
 - ❖ County/State where is occurred
 - ❖ Name of offense
 - ❖ Vitim's name if known
 - ❖ Basic description of bad act/misconduct

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What if my prints suck?!!



Use Other Identifying Information like, photos, SSN, physical descriptors, tattoos

*Match SID numbers, offense dates, types with info off of jail cards. Call officers or witnesses from those crimes. Be creative!!
Flowers v. State of Texas, 220 S.W.3d 919

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Where to look for evidence

- Offense/incident reports or calls for service
- Bar/Store Receipts
- Pretrial reports
- Medical and Therapy records
- Employment records
- School and juvenile records
- Family and friends
- Cell phone records
- Gang records
- CPS records
- Military records
- Mental health records
- County jail records
- Probation records
- Disposed files/cases
- TYC/TJJD records
- TDCJ records
- Parole records
- Social Media (FB, Snapchat, Instagram, TikTok, Twitter, YouTube, Soundcloud)
- Who is your victim (saint or sinner)
- DWI Interlock & SCRAM reports
- Driving Records

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You cannot offer the Complaining Witness' opinion about an appropriate sentence.



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NO's

- Cannot offer prior conviction that is on appeal BUT can offer it as a bad act.
- Cannot offer juvenile adjudication on misdemeanors where the offense occurred before January 1, 1996.
- Cannot talk about how parole or good conduct time will apply.
- State cannot offer evidence that a defendant's race or ethnicity makes him/her more dangerous.
- Cannot offer evidence excludable under Rule 403

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Practical Tips

- Turn over EVERYTHING to defense
 - Michael Morton Act CCP39.14 applies
- Add witnesses to your witness list
- Add Fingerprint Examiner and Gang officers to Expert Witness list
- Request notice for defense experts

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Strategy

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When determining the appropriate sentence a person can evaluate:

The Defendant The Offense

The Victim

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The Defendant

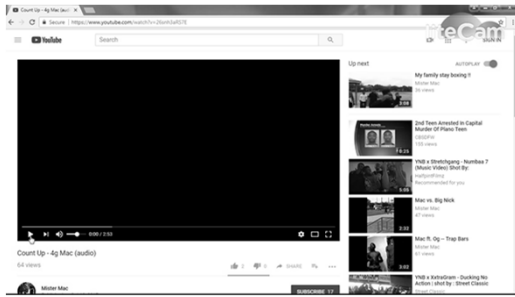
State of Texas

v.

Aeron McDade & Demarcus Williams

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YOUTUBE



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Soundcloud



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Bag It Up
 GlockBoy Mac ft Lul Marcu\$

Bag it up and sell it
 Wrap it up, mail it

Pick him up, throw his ass in the mud
 That's what you get for claiming that you a

Blood. G.B. gang bout that glock boy shit....



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Gang Shit (Freestyle) GlockBoy Mac

I'm like fuck shit, I'm with Bloods I ain't no Crips
Bitch I am a gang nigga and I was with the shit



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Gang Affiliation

He would simply testify as a police officer. He cannot mention that he -- in his opinion, these defendants are -- or he cannot mention that, in his opinion, the Glock Boy Gang is an actual criminal street gang, as well as he cannot mention that he believes, in his opinion, that the defendants are criminal street gang members.

State, you are allowed to get into photographs that these defendants posted and the videos that they have posted.

The trial court further prohibited Nelson from testifying that he has "particular gang expertise."

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Court Held:

There is no direct evidence in the record that appellant was an active member of a gang. However, the social media photos and recordings suggest an affiliation with the Bloods gang, and the recordings refer to gang activity. "As a general rule, evidence of a defendant's gang affiliation and the violent activities of that gang are relevant and admissible at the punishment phase to show the defendant's character." Lara, 2018 WL 3434547, at *8; see also Beham v. State, 559 S.W.3d 474, 484 (Tex. Crim. App. 2018)

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Wire Tap Calls

January 9, 2012: Bonds and Nixon discussed purchasing a kilogram of cocaine; they discussed the pricing of the cocaine.

January 16, 2012: Bonds and Nixon discussed pricing and possible travel to "maybe" pick up the drugs.

January 17, 2012: Bonds and Nixon discussed pricing of kilogram of cocaine.

February 7, 2012: Bonds and Nixon discussed that "It's all good for the 27th."

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Wire Tap Calls

February 9, 2012: Bonds and Nixon discussed "50/50", which meant half powder cocaine and half rock cocaine; they discussed "shaking it up" which meant cooking the cocaine.

February 21, 2012: Bonds and Nixon discussed pricing; they discussed traveling on Monday; and they discussed putting clothes in the car

February 23, 2012: Bond and Nixon discussed leaving on Sunday; they discussed that the person who travels with them was going to work with them on whatever they get.


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Closing Recording 1



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Closing Recording 4



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Punishment Questions

- Have you observed the effects of drug sales and drug addiction in our community?
- Do you believe that drug offenses are a victimless crime? Why not?
- What has been your experience relating to collateral crime resulting from drug sales and drug addiction in this community?

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The Victim
State of Texas
v.
Amber Guyger

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Botham Jean



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Imperfect Victim

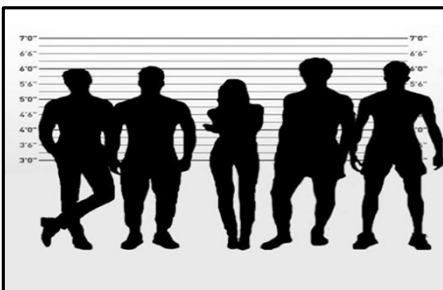
- They have family members who loved them
- No one deserves to lose their life regardless of their life choices
- The victim has already been punished by this defendant
- The victim received a life sentence at the hands of this defendant
- The defendant's family can go visit him at TDCJ.....your victim's family has to visit him at a gravesite

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The Defense's Case

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THE USUAL SUSPECTS



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- Often sympathetic/relatable
- Knows his "good side"
- Knows he is remorseful
- Won't know all the facts
- Will have to sympathize with victim
- Doesn't have to protect community
- Taught him right/wrong

"Momma"



Be Nice to Momma!!!


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"Sweet Sister"

- Unimpeachable
- Positive Impact in Community
- Lets him Babysit
- Light on Facts
- Same Background/Upbringing
- Has A Working Phone

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"THE PASTOR"

- Jurors know him or someone like him
- Has seen second chances work
- May only know Momma
- Check the Calendar

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The Defendant

This is the person you should be most prepped for. Never assume he/she will not testify.

Make them own every choice

What did they leave out in direct?



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Think through your approach in squaring off with the Defendant. Every case won't require the same tactics.



Consider:

- The makeup of your jury
- Sympathetic/Unsympathetic Defendant
- The Facts of your Case
- Your Personal Style

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Probation

- What would he be asked to do?
- What would it take to get him back into court?
- There is no trap door!!!!



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The Road Not traveled...

• What could he/she have taken advantage of while on bond or in jail?

- Drug Treatment Programs
- Religious/Spiritual Programs
- Opportunities to Show Remorse
- Have they worked productively?

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Dallas County Pretrial Services

Frank Crowley Courts Building, 1st Floor Rm A9
133 N. Riverfront Boulevard
Dallas, TX 75207
(214) 875-2324

***Don't Forget! A Defendant's conduct while participating in a program under Chapter 17 as a condition of bond is admissible!**



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Rebuttal

Consider holding something in reserve

Great when the Defense/Defendant steps in it

Be careful, the opportunity may never come



*No notice required for rebuttal evidence

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Punishment Argument

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Permissible Areas of Argument

- Accurate restatement or clarification of jury instructions
- Summation of the evidence
- Reasonable deduction from the evidence

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Permissible Areas of Argument

- Answer to arguments of opposing counsel
- Matters of common knowledge
- Plea for law enforcement

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Impermissible Areas of Argument

- Comment on defendant’s failure to testify
- Injecting new facts not in evidence
- Attacks on opposing counsel
- Comparisons to famous criminals

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Themes

- Too many chances
- What number will make you feel safe?
- Mitigation equates to Mercy – ME, ME, ME

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What Do I Ask For?

- What Does Your Victim Want
 - What Do You Want
- What is Right for the Case

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This is Punishment

- Emotion, Emotion, Emotion
- Take them there...yes all the way there
- Go over any special issues in the charge
- Tell them what is not appropriate
- Remember you can use exhibits
- Tell them how the defendant has acted since the crime
- Focus on your victim & victim's family

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