

8. Gender: Male
Race/Ethnicity: White

EDUCATIONAL BACKGROUND

9. List names and locations of all post-secondary schools attended and any degrees received.

Clayton Jr. College
Morrow, GA

Arizona State University College of Business
Tempe, AZ
Bachelor of Science

Arizona State University College of Law
Tempe, AZ
Juris Doctor

10. List major and minor fields of study and extracurricular activities.

Accounting
U.S. Army Reserve Officer Training Corps

11. List scholarships, awards, honors, citations and any other factors (e.g., employment) you consider relevant to your performance during college and law school.

Dean's List all semesters at ASU College of Business and graduated Magna Cum Laude.

1980 ROTC Distinguished Military Graduate.

Graduated 38th of 136 at ASU College of Law.

I worked 20 to 30 hours per week during both my college and law school years.

PROFESSIONAL BACKGROUND AND EXPERIENCE

12. List all courts in which you have been admitted to the practice of law with dates of admission. Give the same information for any administrative bodies that require special admission to practice.

Admitted to the Arizona State Bar in 1983.

13. a. Have you ever been denied admission to the bar of any state due to failure to pass the character and fitness screening? No If so, explain.
- b. Have you ever had to retake a bar examination in order to be admitted to the bar of any state? No If so, explain any circumstances that may have hindered your performance.
14. Describe your employment history since completing your undergraduate degree. List your current position first. If you have not been employed continuously since completing your undergraduate degree, describe what you did during any periods of unemployment or other professional inactivity in excess of three months. Do not attach a resume.

EMPLOYER	DATES	LOCATION
Justice of the Peace Sierra Vista Justice Court	2003 - Present	Sierra Vista, AZ
Timothy B. Dickerson Attorney at Law	1992 - 2002	Sierra Vista, AZ
Dickerson & Rheinheimer Attorneys at Law	1987 - 1992	Sierra Vista, AZ
U.S. Army Reserves	1987 – 1993	Fort Huachuca, AZ
U.S. Army (active duty) Judge Advocate Corp	1984 – 1987	Fort Huachuca, AZ
Arizona National Guard (2 nd Lt, legal office)	1981 – 1983	McDowell Rd. Phoenix, AZ
AZ Dept. of Revenue (law clerk)	1982 – 1983	Phoenix, AZ

15. List your law partners and associates, if any, within the last five years. You may attach a firm letterhead or other printed list. Applicants who are judges or commissioners should additionally attach a list of judges or commissioners currently on the bench in the court in which they serve.

Gary Ramaeker, Justice of the Peace Pro Tempore

16. Describe the nature of your law practice over the last five years, listing the major areas of law in which you practiced and the percentage each constituted of your total practice. If you have been a judge or commissioner for the last five years, describe the nature of your law practice before your appointment to the bench.

My practice was 40% family law (divorce, custody, support); 10% other civil litigation; 10% wills, trusts, probate, guardianships & conservatorships; 10% business and corporate law; 5% landlord-tenant; and 25% criminal law, including appeals. I had an indigent defense contract with Cochise County and worked 40 to 80 hours per month. Almost all my work under the contract was felonies in the Cochise County Superior Court but I also represented clients in juvenile and dependency actions.

17. List other areas of law in which you have practiced.

I was an Army JAG attorney for three years and served as Legal Assistance Attorney, Claims Officer, Administrative Law Officer, part-time military magistrate.

18. Identify all areas of specialization for which you have been granted certification by the State Bar of Arizona or a bar organization in any other state. None

19. Describe your experience as it relates to negotiating and drafting important legal documents, statutes and/or rules.

While in private practice, I drafted numerous divorce settlements, business buy-sell agreements, and other contracts. I have served on numerous Arizona Supreme court committees in which I drafted or contributed to the drafting of ethics advisory opinions and court rules.

20. Have you practiced in adversary proceedings before administrative boards or commissions? No If so, state:
- a. The agencies and the approximate number of adversary proceedings in which you appeared before each agency.
 - b. The approximate number of these matters in which you appeared as:

Sole Counsel:	<u>NA</u>
Chief Counsel:	<u>NA</u>
Associate Counsel:	<u>NA</u>
21. Have you handled any matters that have been arbitrated or mediated? Yes
If so, state the approximate number of these matters in which you were involved as:
- | | |
|--------------------|------------|
| Sole Counsel: | <u>50+</u> |
| Chief Counsel: | <u>NA</u> |
| Associate Counsel: | <u>NA</u> |
22. List at least three but no more than five contested matters you negotiated to settlement. State as to each case: (1) the date or period of the proceedings; (2) the names, e-mail addresses, and telephone numbers of all counsel involved and the party each represented; (3) a summary of the substance of each case: and (4) a statement of any particular significance of the case.

I closed my law office in 2002 when I was elected justice of the peace and almost all of my case files have been purged. During my 16 years in private practice, I negotiated settlements in hundreds of cases, primary family law cases. While I cannot identify specific cases, I negotiated settlements with all the following attorneys:

Gary Ramaeker, gramaeker@courts.az.gov, 520-803-3817.
Michael Farro, 520-458-8494.
Wallace Hoggatt, whoggatt@courts.az.gov, 520-432-8540.
Karl Elledge, kdelledge@courts.az.gov, 520-803-3320.
John Kelliher, jkelliher@courts.az.gov, 520-432-8530.

23. Have you represented clients in litigation in Federal or state trial courts? Yes If so, state:

The approximate number of cases in which you appeared before:

Federal Courts: 0
State Courts of Record: 5,000+
Municipal/Justice Courts: 1,000+

The approximate percentage of those cases which have been:

Civil: 40%
Criminal: 60%

The approximate number of those cases in which you were:

Sole Counsel: 100%
Chief Counsel: NA
Associate Counsel: NA

The approximate percentage of those cases in which:

You wrote and filed a pre-trial, trial, or post-trial motion that wholly or partially disposed of the case (for example, a motion to dismiss, a motion for summary judgment, a motion for judgment as a matter of law, or a motion for new trial) or wrote a response to such a motion: 5%

You argued a motion described above 5%

You made a contested court appearance (other than as set forth in the above response) 25%

You negotiated a settlement: 75%

The court rendered judgment after trial: 2%

A jury rendered a verdict: 1%

The number of cases you have taken to trial:

Limited jurisdiction court 750+

Superior court 25+

Federal district court 0

Jury 15+

Note: If you approximate the number of cases taken to trial, explain why an exact count is not possible.

My private practice ended 16 years ago and almost all of my case records have been purged.

24. Have you practiced in the Federal or state appellate courts? Yes If so, state:

The approximate number of your appeals which have been:

Civil: 2

Criminal: 500+

Other: 0

The approximate number of matters in which you appeared:

As counsel of record on the brief: 500+

Personally in oral argument: 2

25. Have you served as a judicial law clerk or staff attorney to a court? No If so, identify the court, judge, and the dates of service and describe your role.

26. List at least three but no more than five cases you litigated or participated in as an attorney before mediators, arbitrators, administrative agencies, trial courts or appellate courts that were not negotiated to settlement. State as to each case: (1) the date or period of the proceedings; (2) the name of the court or agency and the name of the judge or officer before whom the case was heard; (3) the names, e-mail addresses, and telephone numbers of all counsel involved and the party each represented; (4) a summary of the substance of each case; and (5) a statement of any particular significance of the case.

I have not participated in a case as an attorney since I was elected justice of the peace 16 years ago and almost all of my case files have been purged; therefore, I am limited to cases which resulted in reported appellant decisions and cases I could locate. Mr. Doyle Johnstun was the prosecutor in many of my felony cases, including several which resulted in jury verdicts. Mr. Johnstun is retired but works part-time for the Cochise County Attorney's Office. His contact information is listed below. The attorneys listed in the answer to question number 22 were opposing counsel in many of my civil cases which were not negotiated to a settlement.

In re the Marriage of Lowell

- (1) 1989-1991
- (2) Dissolution of marriage. Trial in Cochise County Superior Court, DR89-00985, Judge Winkler; Appeal before the Court of Appeals, Div. 2, CA-CV 91-0109, reported at 171 Ariz. 462.
- (3) I represented the petitioner and the respondent was represented by Mark Suagee, then with Riley, Hoggatt & Suagee. Mr. Suagee's contact information is: MSuagee@cochise.az.gov, 520-432-8440.
- (4) The respondent was retired from the federal civil service and the principal issue was respondent's survivorship benefit provided by 5 U.S.C. § 8341.
- (5) The trial court awarded petition the entire survivor benefit and the Court of Appeals affirmed the decision, holding that the award was not preempted by federal law and was proper under Arizona's community property law.

State v Jonas

- (1) 1989
- (2) Court of Appeals, Div. 2 and the Arizona Supreme Court, CR-89-0021-PR, reported at 164 Ariz. 242.
- (3) I represented the defendant in the appeal and the State was represented by Bruce M. Ferg, Deputy Attorney General. I am unable to find current information concerning Mr. Ferg.
- (4) Defendant was convicted at trial of transferring marijuana to a minor.
- (5) The Supreme Court held that defendant's 25-year sentence for sale of one marijuana cigarette to a 14-year-old, to be served without parole and consecutive to his 21-year sentence for trafficking in stolen property, was not disproportionate to his crime and therefore did not constitute cruel and unusual punishment.

State v Gorman

- (1) 2000
- (2) Court of Appeals, Div. 2, CA-CR 99-0405
- (3) I represented the defendant in the appeal and the State was represented by Paul J. McMurdie and David J. Maletta, Deputy Attorney General. Mr. McMurdie: Judge of the Court of Appeals, Div. 1, 602-452-6735; Mr. Maletta: Law Firm of DM Cantor, 602-307-0808.

- (4) Defendant was convicted following a jury trial of two counts of first degree murder and related charges. I filed an appeal, contending that the trial court erred in failing to suppress the defendant's in-custody confession and two guns to which he had lead the police after confessing.
- (5) The Court of Appeals found that the trial court had erred and reversed the convictions.

State v Sturgeon

- (1) 1995
- (2) Jury trial in Cochise County Superior Court, CR95 000255, Judge Desens.
- (3) I represented the defendant and the State was represented by Doyle Johnstun, Deputy County Attorney. Mr. Johnstun: DJohnstun@cochise.az.gov, 520-432-8700.
- (4) The defendant was charged with possession of methamphetamine, which was found in the backseat of the car he was driving.
- (5) The jury returned a verdict of not guilty.

In re the Marriage of XXXXX. See confidential section, page 27.

- (1) 1997 – 1998
- (2) Trial in the Cochise County Superior Court, DO97000775, Judge Borowiec.
- (3) I represented the petitioner and the respondent was represented by Gary Ramaeker. Mr. Ramaeker: gramaeker@courts.az.gov, 520-803-3817.
- (4) The petitioner had both military and State of Arizona retirement and the respondent sought spousal maintenance.
- (5) The parties disagreed on all the issues and a trial was necessary.

27. If you now serve or have previously served as a mediator, arbitrator, part-time or full-time judicial officer, or quasi-judicial officer (e.g., administrative law judge, hearing officer, member of state agency tribunal, member of State Bar professionalism tribunal, member of military tribunal, etc.), give dates and details, including the courts or agencies involved, whether elected or appointed, periods of service and a thorough description of your assignments at each court or agency. Include information about the number and kinds of cases or duties you handled at each court or agency (e.g., jury or court trials, settlement conferences, contested hearings, administrative duties, etc.).

1985 - 1986: I served as a Part-time Military Magistrate at the Fort Huachuca Office of the Staff Judge Advocate. I presided over at least two Summary Court-Martials, a few Article 32 Hearings (the equivalent of a preliminary hearing) and a couple of pre-trial confinement hearings.

2003 – present: I was elected to the office of Justice of the Peace, Sierra Vista Justice Court (Precinct 5) in 2002 and took office in January 2003. Pursuant to an intergovernmental agreement, the Sierra Vista City Court is

consolidated with the Justice Court, so I am also the appointed Magistrate of the City of Sierra Vista.

The Sierra Vista Justice Court was ranked as the 13th busiest justice court in fiscal year 2017 by Administrative Office of the Supreme Court. Complete statistics concerning the court may be found at this website: <https://www.azcourts.gov/statistics/#>.

I am the judge primarily responsible for all criminal cases. In fiscal year 2017, I issued about 250 search warrants and I conducted 32 criminal bench trials. In my 16 years as a judge, I have presided over about 15 jury trials and about 50 to 75 preliminary hearings. Besides my duties as a trial judge, I am also responsible for the court's budget and personnel matters.

I was twice elected by my peers as Presiding Justice of the Peace for Cochise County and served a total of four years in that position.

28. List at least three but no more than five cases you presided over or heard as a judicial or quasi-judicial officer, mediator or arbitrator. State as to each case: (1) the date or period of the proceedings; (2) the name of the court or agency; (3) the names, e-mail addresses, and telephone numbers of all counsel involved and the party each represented; (4) a summary of the substance of each case; and (5) a statement of any particular significance of the case.

State v Michaud, TR2014 01884

- (1) 2014
- (2) Sierra Vista Justice Court
- (3) Prosecutor: Tristian James Bigler, per the State Bar website, he is now with the Maricopa County Attorney's Office. Defense Attorney: Perry Hicks, perry@thecountrylawyer.com, 520-459-6400.
- (4) DUI jury trial
- (5) Typical jury trial

State v Cummings, TR2013 01067

- (1) 2013
- (2) Sierra Vista Justice Court
- (3) Prosecutor: Thomas D. Bennett, per the State Bar website, he is now with the Arizona Attorney General's Office. Defense Attorney: Edward Matchett, matchettlaw@cableone.net, 520-364-3844.
- (4) DUI jury trial
- (5) Typical jury trial

State v Kidd,

- (1) 2018
- (2) Sierra Vista Justice Court

- (3) Prosecutor: Jason Lindstrom, JLindstrom@cochise.az.gov, 520-432-8700. Defense Attorney: The defendant was represented during part of the case by Kyle Henderson, Deputy Public Defender, KHenderson@cochise.az.gov, 520-432-8440, and the attorney during the last part of the case including the trial was Joan M. Sacramento, sacramento.msw.jd@gmail.com, 520-603-7086.
- (4) Misdemeanor assault case bench trial.
- (5) See the confidential section of this application.

State v Gilbert, CR2017 1368

- (1) 2017 -2018
- (2) Sierra Vista Justice Court
- (3) Prosecutor: Kristina Guerrero-Sisneroz, Kristina.Guerrero-Sisneroz@azag.gov, 520-353-5011. Defense Attorney: Joseph P. St. Louis, joestlouis@az.defense.com.
- (4) DUI
- (5) I ruled that there was not probable cause for the DUI arrest.

State v Eichelman, TR2016 00329

- (1) 2016
- (2) Sierra Vista Justice Court
- (3) Prosecutor: Kristina Guerrero-Sisneroz, Kristina.Guerrero-Sisneroz@azag.gov, 520-353-5011. Defense Attorney: Joel Borowiec, info@borowieclaw.com, 520-417-0221.
- (4) DUI
- (5) I granted a motion to suppress, ruling that while a traffic violation may have occurred, there was insufficient evidence that the officer observed the violation and that the officer's mistake of law was not reasonable.

29. Describe any additional professional experience you would like to bring to the Governor's attention.

One of my proudest accomplishments as a judge is the creation of Court Assisted Recovery (CARE) Court.

It is frustrating to place someone in jail, knowing that jail will not do any real good for the person or the community due to the person's mental illness or substance abuse. Jailing a mentally ill person provides no positive benefit other than to temporarily remove the person from the street and a misdemeanor conviction with a jail sentence or a fine may resolve a case, but it does not make any positive changes in the life of a person struggling with mental illness or substance abuse. If the person does try to improve their life, even a misdemeanor criminal conviction may hinder their ability to get a job.

In July 2015, we created CARE Court has an alternative. CARE Court includes a defense counsel for each defendant, court hearings separate from our other caseload, and staffings with the prosecutor, defense counsel, judge, and treatment providers present. CARE participants include persons with mental illness and substance abuse issues. Veterans receive special recognition and a Veterans Administration representative attends the staffings.

CARE Court has had positive results in the lives of several individuals. A mentally ill homeless man spent several months in jail each year, one month at a time, for criminal trespass; when he graduated from CARE, he was living in a group home and he has not been arrested in over 12 months. A female participant went from being a pregnant, homeless heroin user in an abusive relationship to living with her family, participating in treatment, graduating from the program, and giving birth to a happy child.

Whatever else I may accomplish in my professional life, I will feel that I have helped make a positive change in the lives of many people and improved our community by presiding over CARE Court.

BUSINESS AND FINANCIAL INFORMATION

30. Have you ever been engaged in any occupation, business or profession other than the practice of law or holding judicial or other public office, other than as described at question 14? No If so, give details, including dates.
31. Are you now an officer, director, majority stockholder, managing member, or otherwise engaged in the management of any business enterprise? No If so, give details, including the name of the enterprise, the nature of the business, the title or other description of your position, the nature of your duties and the term of your service.
- Do you intend to resign such positions and withdraw from any participation in the management of any such enterprises if you are appointed? NA If not, explain your decision.
32. Have you filed your state and federal income tax returns for all years you were legally required to file them? Yes If not, explain.
33. Have you paid all state, federal and local taxes when due? Yes If not, explain.

34. Are there currently any judgments or tax liens outstanding against you? No If so, explain.
35. Have you ever violated a court order addressing your personal conduct, such as orders of protection, or for payment of child or spousal support? No If so, explain.
36. Have you ever been a party to a lawsuit, including an administrative agency matter but excluding divorce? No If so, identify the nature of the case, your role, the court, and the ultimate disposition.
37. Have you ever filed for bankruptcy protection on your own behalf or for an organization in which you held a majority ownership interest? No If so, explain.
38. Do you have any financial interests including investments, which might conflict with the performance of your judicial duties? No If so, explain.

CONDUCT AND ETHICS

39. Have you ever been terminated, asked to resign, expelled, or suspended from employment or any post-secondary school or course of learning due to allegations of dishonesty, plagiarism, cheating, or any other "cause" that might reflect in any way on your integrity? No If so, provide details.
40. Have you ever been arrested for, charged with, and/or convicted of any felony, misdemeanor, or Uniform Code of Military Justice violation? No
- If so, identify the nature of the offense, the court, the presiding judicial officer, and the ultimate disposition.
41. If you performed military service, please indicate the date and type of discharge. If other than honorable discharge, explain.

January 7, 1987, Honorable Discharge

42. List and describe any matter (including mediation, arbitration, negotiated settlement and/or malpractice claim you referred to your insurance carrier) in which you were accused of wrongdoing concerning your law practice. None
43. List and describe any litigation initiated against you based on allegations of misconduct other than any listed in your answer to question 42. None
44. List and describe any sanctions imposed upon you by any court. None
45. Have you received a notice of formal charges, cautionary letter, private admonition, referral to a diversionary program, or any other conditional sanction from the Commission on Judicial Conduct, the State Bar, or any other disciplinary body in any jurisdiction? Yes If so, in each case, state in detail the circumstances and the outcome.
- I self-reported to the Commission that I had assisted my wife with her campaign work on behalf of a candidate by helping her put up campaign signs. The Commission dismissed the matter with a private comment stating that my acts were improper and should be avoided in the future.
46. During the last 10 years, have you unlawfully used controlled substances, narcotic drugs or dangerous drugs as defined by federal or state law? No If your answer is "Yes," explain in detail.
47. Within the last five years, have you ever been formally reprimanded, demoted, disciplined, cautioned, placed on probation, suspended, terminated or asked to resign by an employer, regulatory or investigative agency? No If so, state the circumstances under which such action was taken, the date(s) such action was taken, the name(s) and contact information of any persons who took such action, and the background and resolution of such action.
48. Have you ever refused to submit to a test to determine whether you had consumed and/or were under the influence of alcohol or drugs? No If so, state the date you were requested to submit to such a test, type of test requested, the name and contact information of the entity requesting that you submit to the test, the outcome of your refusal and the reason why you refused to submit to such a test.
49. Have you ever been a party to litigation alleging that you failed to comply with the substantive requirements of any business or contractual arrangement, including

but not limited to bankruptcy proceedings? No If so, explain the circumstances of the litigation, including the background and resolution of the case, and provide the dates litigation was commenced and concluded, and the name(s) and contact information of the parties,

PROFESSIONAL AND PUBLIC SERVICE
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50. Have you published or posted any legal or non-legal books or articles? Yes If so, list with the citations and dates.

From 2011 to 2018, I wrote about 65 articles concerning the law and operation of the Justice Court for the *Sierra Vista Herald/Review* newspaper.

51. Are you in compliance with the continuing legal education requirements applicable to you as a lawyer or judge? Yes If not, explain.

52. Have you taught any courses on law or lectured at bar associations, conferences, law school forums or continuing legal education seminars? If so, describe.

Yes, I taught a class on contempt of court for failure to pay at conference in approximately 2015 and I was part of a panel that that presented an ethics class at the 2018 Judicial Conference. I have also presented over 50 times at the county-wide quarterly Justice of the Peace meetings regarding legal topics of interest and changes in the law.

53. List memberships and activities in professional organizations, including offices held and dates.

Have you served on any committees of any bar association (local, state or national) or have you performed any other significant service to the bar? No, but I have served on the following Arizona Supreme Court committees:

Small Claims Case Processing Improvement Committee (currently serving)
Committee on Limited Jurisdiction Courts (2005 – 2018)
Commission on Victims in the Courts
Ethics Advisory Committee
Committee on Civil Rules of Procedure for Limited Jurisdiction Courts
Court Automation Advisory Committee
Domestic Violence Workbook & Webcast Workgroup

Fines/Fees and Restitution Enforcement (FARE) Advisory Committee

In 2017 and 2018, I reviewed and revised three chapters of the Limited Jurisdiction Court Reference Manual for the Administrative Office of the Court.

List offices held in bar associations or on bar committees. Provide information about any activities in connection with pro bono legal services (defined as services to the indigent for no fee), legal related volunteer community activities or the like.

While I was in private practice, I accepted one or two pro bono cases each year through Southern Arizona Legal Aid.

54. Describe the nature and dates of any relevant community or public service you have performed.

Sierra Vista Economic Development Foundation, 1997 to 2012
Sierra Vista Regional Health Center Board of Trustees, 2000 to 2002
Boy Scout leader, 1995 to 2005
Coach and sponsor of youth sports, 1995 to 1999
Church, 2000 to present

55. List any relevant professional or civic honors, prizes, awards or other forms of recognition you have received.

2014, Justice of the Peace of the Year, presented by Arizona Justice of the Peace Association.

56. List any elected or appointed public offices you have held and/or for which you have been a candidate, and the dates.

2000, candidate for Cochise County Superior Court, unsuccessful
2002, elected Justice of the Peace, Precinct Five, Sierra Vista
2006, re-elected Justice of the Peace
2010, re-elected Justice of the Peace
2014, re-elected Justice of the Peace
2018, re-elected Justice of the Peace

Have you ever been removed or resigned from office before your term expired?
No If so, explain.

Have you voted in all general elections held during the last 10 years? Yes If not, explain.

57. Describe any interests outside the practice of law that you would like to bring to the Governor's attention.

I am active in my church and in the past 10 years I have served as a Deacon, Vice-President, and President. I enjoy running and participate in several races each year, including half-marathons. My next race will be the Rock and Roll Half Marathon in January in Tempe.

HEALTH

58. Are you physically and mentally able to perform the essential duties of a judge with or without a reasonable accommodation in the court for which you are applying? Yes

ADDITIONAL INFORMATION

59. Provide any information about yourself (your heritage, background, life experiences, etc.) that you would like the Governor to consider.

My military experience and years living and working in a military community make me sensitive to the burdens accepted by those who serve and protect our country. While all cases must be decided based on the facts and the law, I am aware that military duty often makes it more difficult for a person to protect their legal rights and that some former soldiers experience residual health problems from their service.

60. Provide any additional information relative to your qualifications you would like to bring to the Governor's attention.

I have served the community of Cochise County for over 30 years as an Army active duty and reserve JAG Officer, private practice attorney (with a contract with the County to provide indigent defense representation), and Justice of the Peace. I have lived in the area since 1984 and have raised my family as active members of this community. I have volunteered on the Economic Development Foundation planning for the continued growth and success of the local economy. My commitment to the region includes representing the County on statewide judicial committees such as the Committee on Limited Jurisdiction Courts for 13 years.

During this time, I have developed a great relationship with the diverse community of Cochise County, as evidenced by my selection as Presiding Justice of the Peace for the County for two terms. I feel this experience and my commitment to the continued growth of the region make me an ideal candidate to serve as a Cochise County Superior Court Judge.

61. If selected for this position, do you intend to serve a full term and would you accept rotation to benches outside your areas of practice or interest and accept assignment to any court location? If not, explain.

Yes, I plan to serve a full term and am willing and qualified to accept any assignment in Cochise County's Superior Court.

62. Attach a brief statement explaining why you are seeking this position.

I want to serve my community at a higher level of responsibility and authority and I strongly believe that the lessons and skills I have learned in my combined 35 years of legal experience as an Army attorney, an attorney in private practice, and as a Justice of the Peace well equip me for service in the Superior Court.

I know that I have helped people and improved my community by serving as a justice of the peace, but I can be of much greater service on the superior court. Fifty percent of our Superior Court judges are retiring, and the two individuals recently elected do not have judicial experience. My experience as a judge would be very useful to the court.

As an attorney and a judge, I have come to appreciate the importance to the community of a well-run and fair court. It is obviously necessary for a judge to be well-versed in the law, but a judge also needs to know how to manage a court, how to listen, and how to convey to people that their voice is being heard. I want to apply my skills as a judge in cases where the stakes are higher than in my current court.

On a personal level, I am ready for a new challenge. I love my current position and if this is where I am to remain, I will continue to serve to the best of my ability. Having worked in the superior court for 16 years as an attorney, I know that I will find serving there to be exciting and invigorating.

63. Attach two professional writing samples, which you personally drafted (e.g., brief or motion). **Each writing sample should be no more than five pages in length, double-spaced.** You may excerpt a portion of a larger document to provide the writing samples. Please redact any personal, identifying information

regarding the case at issue, unless it is a published opinion, bearing in mind that the writing sample may be made available to the public.

As noted above, most of my files from private practice have been purged, so I have few choices for writing samples from that time period. The first writing sample is a written closing argument which was filed as a part of a dissolution of marriage trial and the second is a petition for review filed in a criminal case.

64. If you have ever served as a judicial or quasi-judicial officer, mediator or arbitrator, attach sample copies of not more than two written orders, findings or opinions (whether reported or not) which you personally drafted. **Each writing sample should be no more than five pages in length, double-spaced.** You may excerpt a portion of a larger document to provide the writing sample(s). Please redact any personal, identifying information regarding the case at issue, unless it is a published opinion, bearing in mind that the writing sample may be made available to the public.

See attached.

65. If you are currently serving as a judicial officer in any court and are subject to a system of judicial performance review, please attach the public data reports and commission vote reports from your last three performance reviews. NA.

Question 63, WRITING SAMPLE ONE

TIMOTHY B. DICKERSON
Attorney at Law
500 East Fry Boulevard, Suite L-10
Sierra Vista Arizona 85635
(520) 459-6183

State Bar No. 009073

Attorney for the Respondent

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF COCHISE

In re the Marriage of:)	
	)	Case No. D097000775
XXX XXXXXX,)	
Petitioner,	)	RESPONDENT'S CLOSING
	)	ARGUMENT
and)	
)	
XXXXX XXXXXX,)	
Respondent.)	
_____)	

Respondent, XXXXX XXXXXX, through his attorney undersigned, submits the following as his closing argument:

I

Proposed Property Distribution

Sierra Vista Residence: Husband will purchase Wife's interest for the sum of \$6,109.81. Husband will borrow against the property to raise the purchase price. Wife to vacate the house upon receipt of funds.

Tucson Lot: The Court should award either party the lot, along with the responsibility for the debt on the lot. The party receiving the lot will be free to retain or sell the lot as they may see fit

Husband's Separate Property: Husband should be awarded his separate property as listed on Exhibit 31.

Personal Property: The parties should be awarded the personal property as set forth in Exhibit 31.

Bank Accounts: Wife should be awarded the Bank of America account and Husband should be awarded the Charles Schwab account.

Individual Retirement Account: Wife should be awarded \$1,097.60 of the Charles Schwab IRA, to be paid by a qualifying order. Husband should be awarded the balance of the account.

Life Insurance: Husband should be awarded the life insurance benefit he receives as an employment benefit.

Arizona State Retirement: Husband should be awarded his retirement benefit. In the alternative, Wife should be awarded one-half of Husband's contribution.

Military Retirement: Husband should be awarded his entire military retirement benefit. In the alternative, Wife should be awarded 4.2% of his regular retirement.

Debts: Husband should be responsible for the following debts: GM Mastercard, Citibank AAdvantage Visa card, and Price Costco. Husband should also be responsible for the GM mortgage on the Sierra Vista house, if he is allowed to purchase Wife's interest. The party awarded the Tucson lot should be responsible for payment of the debt on the property.

Spousal Support: Wife should not be awarded spousal support.

Attorney's Fees and Costs: Each party should be responsible for their own attorney's fees and costs incurred in this matter.

II

Argument

A. Petitioner's Education and Spousal Maintenance.

Respondent's proposal is based on the proposition that petitioner is not entitled to spousal support, is now self-supporting, and that respondent should not be required to fund her higher education by either payment of support payments to her or by a division of property or debt which is based on an assumption that she must remain in school.

Petitioner is able right now to work full time as an LPN at a hourly rate of \$10. Her gross earning ability is \$1,733 a month or \$20,796 per year. She obtained this earning ability during the marriage. The parties' plan prior to the filing of the divorce action was for

petitioner to obtain her LPN certificate and then work full time so the parties could build a house on Tucson lot. The desire to become an RN arose at the same time as the divorce.

It is easy to see how the acquisition of a RN degree will financially benefit the petitioner. As an RN, she will earn a greater income than respondent. It is more difficult to see why respondent should have an obligation to finance petitioner's further education. The fact that he earned his master's degree during the marriage is not material, as the community benefited from his degree through his earnings. Petitioner wants respondent to pay for her further education, even though it will only benefit her.

A.R.S § 25-319 provides four reasons for an award of spousal maintenance.: 1) Lack of property to provide for reasonable needs; 2) Unable to support self through appropriate employment; 3) Contributed to the educational opportunities of other spouse; 4) Marriage of long duration and age which may preclude employment.

Reason number 1 does not apply. Other than his separate property IRA, respondent is not receiving property of an amount greater than what the petitioner will receive. The parties do not have substantial property. Neither party is receiving property with which they could support themselves.

Reason number 4 does not apply. The marriage was not of a long duration and petitioner's age does not preclude employment. She is in fact quite employable in the field of nursing.

As to reason number 3, petitioner claims to have contributed to respondent's education during the period he attended school while she worked, but this time was at the beginning of the marriage and the parties have benefited financially from the education he gained.

As to reason number 2, petitioner is currently able to support herself by full time employment as an LPN. She is capable of supporting herself.

B. Sierra Vista Residence.

The parties agree that there is equity in the residence which should be divided. Petitioner requests that the house be sold. If the house is sold to a third party, there will be many closing costs which will reduce the equity available for the division. If the house is sold it may be on the market for quite some time. If, while the house is on the market, petitioner resides in the house and respondent pays the monthly mortgage, respondent will

have no motivation to sell the house. Disagreements over sales price and repairs are bound to arise. Respondent's proposal is that he buy out petitioner's interest. Petitioner will have her money almost immediately. She can use the money to complete her RN certification. There will in effect be a "sale by owner," with no realtor's commission. Respondent proposes that the parties share this savings by reducing his payment to the petitioner by one-half the commission that would be incurred in a sale to a third party.

C. Charles Schwab Account and Petitioner's Bank Account.

A review of the Charles Schwab account statements at Exhibit 4 show that the respondent's expenditures since the divorce action was filed have not been extraordinary. The parties have been in the habit of withdrawing large sums each month from the account to pay their living expenses, as shown by the following table:

Month	Amount Withdrawn
Jan 1997	\$2,590
Feb 1997	\$1,675
Mar 1997	\$2,332
Apr 1997	\$5,014
May 1997	\$5,589
Jun 1997	\$2,600
Jul 1997	\$3,346
Aug 1997	\$3,260

Respondent entered the marriage with \$22,702 in his Charles Schwab and Merrill Lynch accounts. (Exhibits 19 & 20). The Merrill Lynch account was transferred to the Charles Schwab account and the balance has declined during the course of the marriage. Exhibit 5 shows the use of the funds by the respondent over the last two months. The cash withdrawn was used for his day-to-day living expenses.

Petitioner has had the use of her bank account in which she deposited her earnings from her summer employment. None of these funds have been used to pay community obligations or expenses, as respondent paid the household expenses and debts for both before and after the filing of the divorce action. All the funds went for the petitioner's personal expenses, her education, or her legal fees.

It is therefore an equitable division of the bank accounts to award petitioner her bank account and to award respondent the Charles Schwab account.

D. Retirement Benefits and Accounts.

Respondent proposes that petitioner receive a greater value of the personal property and that he pay the credit card debt, and in return he receive all of his military retirement and State of Arizona retirement benefits. Petitioner's interest in these benefits is quite small. Her interest in respondent's military retirement benefit is 4.2% of his regular retirement, excluding his VA disability compensation. Her monthly interest would be \$33. Respondent's total contribution to his Arizona State Retirement account is \$3,505.32, as of June 30, 1997. Petitioner's interest would be about \$1,753.

As to respondent's Charles Schwab IRA, he deposited only \$2,000 into the account during the marriage. Petitioner should be awarded \$1,097.60, to be transferred directly from the account to an IRA of her own, to avoid income tax consequences.

E. Motor Vehicles and Personal Property.

The only disagreement as to the respondent's separate property is over the 1986 Nissan. Petitioner claims an interest, even though the vehicle was purchased for cash prior to the marriage, because she says she gave funds to respondent prior to the marriage. Respondent denies he received money from petitioner prior to the marriage, and petitioner offered no proof. Even if the Court found sufficient grounds to accept petitioner's testimony, it is clear from the bank statements in evidence that respondent had ample funds prior to the marriage with which to purchase the 1986 Nissan, without financial assistance from petitioner.

Question 63, WRITING SAMPLE TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

STATE OF ARIZONA,)	
)	
Appellee,	)	Court of Appeals
	)	2 CA-CR 97-0108-PR
vs.)	
	)	Department A
CARLOS PAUL ALVARADO,)	
	)	COCHISE County
Appellant.	)	Cause No. CR91-00379A
)	
	)	PETITION FOR REVIEW
	)	BY SUPREME COURT
)	

Appellant CARLOS PAUL ALVARADO, through his attorney undersigned, petitions the Supreme Court of Arizona to review the decision of the Court of Appeals in this matter entered on February 24, 1998, accepting review and affirming defendant's convictions.

I. Synopsis of Court of Appeals' Decision.

That the petitioner failed to establish ineffective assistance of counsel at his preliminary hearing because he did not show that probable cause would not have been established if defense counsel had effectively impeached the State's witness; and that petitioner had not shown that defense counsel's tactical decision to forego cross examination of witness Leon fell below an objective standard of professional conduct or that the jury's verdict would have been different if defense counsel had cross-examined the witness at the preliminary hearing; and that the alleged defects in the preliminary hearing were waived by petitioner's failure to raise the claim by a motion for a new finding of probable cause. The Court found that the trial court did not abuse its discretion in summarily dismissing petitioner's petition for post-conviction relief. A copy of the decision is attached to this petition.

II. Issues.

A. Issues Presented For Review.

Denial of the constitutional right to representation by a competent lawyer at the preliminary hearing stage of the trial. Failure of the State to disclose, prior to the

preliminary hearing, statements by a witness. Failure of the State to disclose benefits granted to a witness in exchange for his testimony.

B. Additional Issues Presented to But Not Decided by the Court of Appeals Which May Need to be Decided if Review is Granted.

None.

III. Material Facts.

This case arises from the death of Edward "Bandito" Vasquez. Vasquez and petitioner were inmates of the Douglas facility of the Arizona Department of Corrections. A preliminary hearing was held on September 12, 1991. Samuel Leon and Jerry Rose, inmates in the Arizona Department of Corrections, testified for the State.

Defense counsel cross-examined Rosen, but as to Leon she agreed to limit her cross-examination in exchange for an interview of Leon at a later date. (Appendix, p. 165.) She repeatedly indicated her awareness that inmate witnesses might not testify at trial. (Id., pp. 4-5.)

Petitioner in his affidavit states that he did not have an opportunity prior to the preliminary hearing to review transcriptions of interviews of Leon and Rosen conducted by officers of the Department of Corrections. He states that he had no contact with his counsel prior to the preliminary hearing, and that he did not know the identity of the State's witnesses until the witnesses appeared at the hearing. (Id., p.93.)

Leon testified that he heard conversations in which petitioner said he was going to "get" the victim. (Id., pp. 75-76.) He testified inmate Mike Garcia had told him that he was going to do a "hit," and that he was worried about retaliation by Vasquez's family members. (Id., p.78.) After the attack on Vasquez, Garcia told Leon that "it's over with." (Id., p. 81.) Garcia told him that "Carlos and I took care of him." (Id.) Leon testified that he was told by Garcia that Gancho and Jesse would be used as lookouts. (Id., p. 84.) He testified that Alvarado and Garcia had discussed in front of him getting Vasquez "high" on marijuana to cause him to sleep. (Id., p. 83.) Leon quoted Garcia as saying that the weapon used was a board. (Id., p. 85.) Leon testified that Garcia did not say he had hit Vasquez. (Id., p. 86.)

Rosen testified that he returned to his housing unit after breakfast, and was told by two inmates that he needed to get out of the area. He started to leave and then returned when he realized he had not locked his locker and he did not want anything placed in his

locker. When he was leaving the area of his housing unit a second time, he saw petitioner hitting Vasquez with a board. (Id., pp. 10-14.)

Leon gave two interviews prior to the preliminary hearing. (Id., p. 89.) A copy of the first interview, which is undated, is at page 94 of the Appendix and is hereinafter referred to as the "First Interview." A copy of the second interview, dated March 26, 1991, is at page 118 and is hereinafter referred to as the "March 26, 1991 interview." Both interviews contain inconsistent statements concerning the offense which could have been used to impeach Leon's preliminary hearing testimony.

Rosen was the subject of a Department of Corrections incident report dated April 24, 1991. (Id., p. 161.) Rosen wrote a letter dated August 21, 1991, to Douglas Whitney, Cochise County Deputy County Attorney which was received on August 23, 1991, 21 days prior to the preliminary hearing. (Id., p. 168.)

On February 19, 1991, Samuel Leon was found to be in possession of marijuana at the Department of Corrections in Douglas, Arizona. He was placed on probation but his probation was revoked on September 28, 1991, three days after petitioner's trial.

Leon and Rosen refused to testify at the trial. The court allowed that State to use witnesses' preliminary hearing testimony. The jury returned a verdict of guilty on September 25, 1992. Petitioner's direct appeal of his convictions was denied by decision dated August 16, 1994, case number 2 CA-CR 92-0949. A Notice of Post-Conviction Relief was filed on March 13, 1996, and the Petition for Post-Conviction Relief was filed on October 31, 1996. On February 5, 1997, the trial court summarily denied the Petition. Petitioner filed a Petition for Review by the Court of Appeals. The Court of Appeals accepted review but denied relief by decision dated February 24, 1998.

IV. Reasons for Granting This Petition And Arguments In Support of Issues Presented For Review.

A. There exists a material issue of fact or law requiring an evidentiary hearing.

A defendant is entitled to a hearing when he presents the trial court with a colorable claim, that is a claim which if true might have changed the outcome. State v. Schrock, 149 Ariz. 433, 441, 719 P.2d 1049, 1060 (1986). Petitioner has presented a colorable claim of ineffective assistance. The facts in support of this claim are set forth below. There exists factual disputes over the following issues: Whether defense counsel were prepared;

whether the documents not disclosed by the State were “statements” for purposes of Rule 5.3.a, Rules of Criminal Procedure; whether the State failed to disclose a promise made to a State witness. The State disputes each of these issues. When doubts exist, a hearing should be held to allow the defendant to raise the relevant issues, to resolve the matter, and to make a record for review. Schrock at 441.

B. Ineffective Assistance at Preliminary Hearing.

The performance of petitioner’s counsel at the preliminary hearing was deficient in that: She did not request a continuance or recess in order to become more familiar with the interview transcripts; and she chose not to cross-examine Leon.

Page 21 of the Opening Brief submitted in petitioner’s direct appeal states that petitioner’s counsel was appointed three days prior to the preliminary hearing and that she was reviewing the statements of witnesses while the hearing was in progress. (Id., P. 171.)

Mr. Maxey testified at the trial concerning the disclosure received by he and Ms. Troup prior to the preliminary hearing and their level of preparedness for the hearing. (Id., pp. 179-181.)

Defense counsel was not adequately prepared to question the State’s witnesses at the preliminary hearing. She obviously could not have made effective use of the interview transcripts when she had to review the transcripts during the hearing. With a continuance or recess, counsel would have had an opportunity to review Leon’s and Rosen’s prior statements.

Question 64, WRITING SAMPLE ONE

COCHISE COUNTY JUSTICE COURT PRECINCT 5
100 COLONIA DE SALUD #108 SIERRA VISTA, AZ 85635 520.803.3800

STATE OF ARIZONA, vs. XXXXXX XXXXXXXX,	Plaintiff, Defendant.	CASE NO. TR2016 00329	MINUTE ENTRY ORDER
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August 22, 2016 – Evidentiary hearing. Prosecutor, defense counsel, and defendant present. The proceeding was recorded. The court took the motion under advisement. After considering the evidence presented and the arguments of counsel, the court rules as follows:

Motion to Suppress/Dismiss

Reasonable Suspicion to Stop: The officer decided to follow defendant's vehicle because he suspected that defendant may have been trying to avoid the officer. The officer stopped the vehicle for failure to stop at a stop line. The intersection in question has a stop sign, a crosswalk, and a stop line. The officer testified that, when the defendant's vehicle stopped, the rear tire of truck was on the stop line.

"The violation of a traffic law provides sufficient grounds to stop a vehicle." *State v Acosta*, 166 Ariz. 254, 257. 801 P.2d 489, 492 (App. 1990).

ARS 28-855.B provides as follows:

B. A driver of a vehicle approaching a stop sign shall stop before entering the crosswalk on the near side of the intersection, or if there is no crosswalk, shall stop at a clearly marked stop line, or if there is no line, shall stop at the point nearest the intersecting roadway where the driver has a view of approaching traffic on the intersecting roadway before entering the intersection except when directed to proceed by a police officer.

At the time of the stop, the officer believed that the defendant violated this statute because he did not stop his vehicle at the stop line.

After the wording of ARS 28-855.B was pointed out to the officer by the prosecutor, he viewed the video of the incident, obtained the dimensions of the type of vehicle driven by defendant, and made measurements at the intersection. He testified that “based on these measurements,” when the rear tire of the defendant’s vehicle was on the stop line, the front of the vehicle was 5 to 6 feet into the crosswalk.

The defendant presented evidence to show that the officer was 260 feet from the defendant’s vehicle when it stopped. Defendant argued in part that the officer 1) could not have seen the stop line from that distance, and 2) should not be allowed to change the reason for the stop from “failure to stop at stop line,” which was the reason given at the time of the traffic stop and stated in the police report, to “failure to stop at the crosswalk.”

This court finds the defendant’s failure to stop at the stop line was not a violation of ARS 28-855.B, because there was a crosswalk at the intersection. When a crosswalk is present, the statute requires a driver to stop at the crosswalk, not at the stop line.

The State’s position is that the stop was nevertheless valid because 1) the defendant failed to stop prior to entering the crosswalk therefore there was a traffic violation, or 2) the officer’s mistake of law concerning ARS 28-855.B was reasonable.

This court finds that while it is true that the front of the defendant’s vehicle was inside the crosswalk when the defendant stopped, and therefore there was a violation of ARS 28-855.B, this fact does not provide a basis for the stop because the officer did not observe the violation at the time he made the stop. The officer testified that based on his review of the video and measurements he took well after the incident, the front of defendant’s truck was 5 to 6 feet into the crosswalk. The

officer did not testify that he observed the location of the front of defendant's truck, prior to initiating the traffic stop.

The facts of this case are different from the facts in *State v Whitman Jr*, 232 Ariz. 60, 301 P.3d 226 (App. 2013). In *Whitman*, the officer testified that he observed three traffic violations, but relied on only two of violations when he made the traffic stop. The Court Of Appeals held that a trial court could rely on an officer's observed traffic violation, even if the violation was not the officer's stated reason for the stop. The Court cited a federal court opinion holding that "a trial court properly may consider all the facts known to an officer" when determining if a traffic stop was valid.

This court finds that "observed traffic violation" and "all facts known to an officer" means observed and known at the time of the stop. There was no testimony that, at the time of the stop, the officer observed or knew that the front end of the defendant's truck in the crosswalk.

This court finds that the officer's mistake of law was not reasonable and therefore the stop is not saved by the United States Supreme Court holding in *Heien v North Carolina*, ____ U.S. ____, 135 S.Ct. 530, 536, 190 L.Ed.2d 475 (2014). The Supreme Court held in *Heien* that if the statute the officer interpreted mistakenly "is genuinely ambiguous, such that overturning the officer's judgment requires hard interpretive work, then the officer has made a reasonable mistake. But if not, not." *Id.* at 541, cited by the Arizona Court of Appeals, Division 2, in *State v Stoll*, 239 Ariz. 292, 370 P.3d 1130, 1134, (App 2016). The wording of ARS 28-855.B is unambiguous and clear: The driver must stop at the crosswalk, not the stop line. We may wonder why the statute is worded this way, but it is not ambiguous.

The court finds that the officer did not *observe* a traffic violation prior to stopping the defendant's vehicle; therefore the stop was not valid. The defendant's Motion to Suppress is granted and all evidence gathered as a result of the traffic stop is suppressed.

Dated:

TIMOTHY B. DICKERSON
Justice of the Peace

Copy to
Deputy County Attorney
Borowiec, Attorney for Defendant

Question 64, WRITING SAMPLE TWO

COCHISE COUNTY JUSTICE COURT PRECINCT 5
100 COLONIA DE SALUD #108 SIERRA VISTA, AZ 85635 520.803.3800

STATE OF ARIZONA, vs. XXXXXX XXXXXXXX,	Plaintiff, Defendant.	CASE NO. CR2017 1368	MINUTE ENTRY ORDER
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April 10, 2018 – Evidentiary hearing. Prosecutor and defense counsel. Defense counsel waived the defendant's presence. The proceeding was recorded. The court took two of the motions under advisement. After considering all the evidence and the arguments of counsel, the court rules as follows:

Motion to Suppress Defendant's Involuntary Pretrial Statements Taken in Violation of Miranda

The court announced in open court that the motion was denied. The court finds that the officer properly informed the defendant of his Miranda rights when the defendant was directed to step out of the truck and was arrested. There was nothing coercive about the setting or the officer's behavior prior to the actual arrest that made it the equivalent of custodial interrogation. The defendant invoked his right to remain silent by repeatedly asking to speak to his attorney.

Motion to Dismiss Based upon Illegal Seizure

The Sierra Vista Police Department received a tip that a white male with gray hair was sleeping in a white pickup truck with a license number of AZ 656JTC, smelled of alcohol, and when he was awakened, drove into a parking lot at 7th Street and Fry Boulevard. The officer arrived at the parking lot within minutes of the call and observed the pickup truck described by the tipster driving on 6th Street. The officer testified that he followed the pickup truck and made a traffic stop after observing two traffic violations: 1) Defendant failed to come to a stop at a stop sign before making a

right-hand turn from 6th Street onto Fry Boulevard, in violation of ARS 28-855B, and 2) The left tires of the defendant's truck crossed the line which separated the defendant's lane from the center turn lane and remained in the turn lane for about two seconds. (The State did not cite a statute for this violation. The court assumes it is ARS 28-729(1), which requires that a driver operate a vehicle within one lane. The court will use the phrase "drive within one lane" to describe the offense.) The State argues that the court should also consider the tip received by SVPD and the additional traffic violation of making a wide right-hand turn, in violation of ARS 28-751(1), which the officer observed when the defendant turned right onto Fry Blvd.

The Court of Appeals held in *State v Whitman Jr*, 232 Ariz. 60, 301 P.3d 226 (App. 2013) that a trial court may rely on an officer's observed traffic violation, even if the violation was not the officer's stated reason for the stop. The Court cited a federal court opinion holding that "a trial court properly may consider all the facts known to an officer" when determining if a traffic stop was valid.

The dash cam video does not establish that the defendant either stopped or failed to stop for the stop sign because the camera was in a fixed position pointing forward and the stop sign was located to the right to of the patrol car. The court accepts the officer's testimony that he observed the violation because the officer's attention was focused on the white truck due to the tip and because the officer had a clear view of the stop sign.

The officer's dash cam video substantiates the wide-turn violation.

The court finds there was not a drive within one lane violation because the defendant's vehicle crossed the line only once and for two seconds.

The court finds that the officer observed two traffic violations and therefore the traffic stop was proper. Either violation alone was sufficient to justify the stop. It is not necessary for the court to decide if the tip alone justified the stop.

of opinion and depends on the person's normal speech. Any slurred speech prior to arrest was very slight. The court finds the defendant's manner of speech after arrest to be suspicious but obviously post-arrest observations cannot be used to justify the arrest.

Traffic violations: The failure to come to a complete stop at a stop sign before making a right-hand turn is a very common offense. The court does not give it much weight as evidence that the defendant was under the influence. As noted above, the court finds there was not a drive within one lane violation. The defendant's driving was otherwise normal, e.g. the defendant used his turn signal when making the two right-hand turns and apparently did not drive too fast nor too slow.

Consumption of alcohol: The officer knew that the defendant had consumed "a little bit" of alcohol, but did not know when the alcohol was consumed or how much was "a little bit." The defendant could have consumed "a little bit" sufficiently before the traffic stop that the alcohol was out of this system or he could have consumed it immediately before the stop and the alcohol was not yet in his system. The odor of alcohol was not considered as a factor because the officer could not determine if the odor was emanating from the defendant or the vehicle.

The court considered the totality of the circumstances and finds that the observations which support a conclusion that the defendant was driving under the influence were the refusal to perform the FSTs, blood shot eyes, and consumption of some alcohol (a weak factor for reasons explained above). The court has also considered the observations which support a conclusion that the defendant was not impaired, such as the overall way he operated his vehicle.

The court finds that the information available to the officer did not reach the level of probable cause and therefore the arrest for DUI was not valid.

The Motion to Suppress Evidence Seized as a Result of an Illegal Arrest is granted.

Dated:

TIMOTHY B. DICKERSON
Justice of the Peace

Copy to
Deputy County Attorney
St Louis, Attorney for Defendant