

Broadcast One, ¶ 6: The reported facts concerning the case of James Robert Russell were obtained from his offense report and court records. Duncan Aff. ¶ 35 & Ex. 19; 2 Duncan Depo. 267.

[6] In February of this year, police spotted a vehicle weaving on Waco's north side, stopped the car and arrested the 59-year old driver for DWI. Officers found an opened quart of whiskey in the seat next to the suspect. The case was dismissed according to the DA's office in the interest of justice. The suspect says he paid his lawyer about \$1,300.

Information about the whiskey was contained in portion of the police report which is NOT PUBLIC INFORMATION.

The order dismissing the case was signed by David Hodges, on 4/16/85. The same document shows that David Deaconson was the assistant handling the case.

Documents show

Russell arrested on 2/7/85

Case Reset on 3/28/85 to 4/25/85 (indicates guilty plea)

Order dismissing case signed 4/16/85.

Report could still be actionable because the report implies something sinister about the phrase "in the interest of justice."

Duncan was told by Marinell Timmons prior to this broadcast that the judge does not have to accept the prosecutor's recommendation

The report resolves the ambiguity in the manner most unfavorable to Plaintiff [Rebozo]. No evidence that Duncan asked Hodges or Deaconson about this case and he talked to Hodges

been  
could have  
been  
purposefully  
avoiding  
the truth  
& not  
siding for  
explanation &  
interest of  
"..."

Offense Report and court records on Mr. Bowman's case. True and correct copies of those reports are attached hereto as Exhibit 18.

35. I next state,

"In February of this year, police spotted a vehicle weaving on Waco's north side, stopped the car and arrested the 59-year old driver for DWI. Officers found an opened quart of whiskey in the seat next to the suspect. The case was dismissed according to the DA's office in the interest of justice. The suspect says he paid his lawyer about \$1,300."

This information was taken directly from the police report and court records in the case I describe. A true and correct copy of the records on which I relied in making this report is attached hereto as Exhibit 19. The defendant in the case, James Robert Russell, told me in a recorded telephone conversation that he paid about \$1,300 to his attorney to have the case dismissed. A true and correct copy of the audiotape of my conversation with Mr. Russell is attached hereto as Exhibit 20.

36. At the conclusion of Part 1, I state,

"Feazell has refused to be interviewed by Channel 8 News because, as the DA puts it, you're looking for something that isn't there and I don't trust you."

"Tomorrow, some benefits of knowing the right people in the McLennan County DA's office."

The statement from Mr. Feazell was made to me in a telephone conversation. A true and correct copy of my notes from that conversation are attached hereto as Exhibit 21. Mr. Feazell also

1 Q. And then Judge Gassaway also told you that he  
2 heard Deanna Fitzgerald make that statement?

3 A. Well, it wasn't "and then," because Judge  
4 Gassaway told me first, and then Deanna Fitzgerald  
5 confirmed it.

6 Q. That exact statement?

7 A. Yes.

8 Q. Now, in your next statement there, it talks about  
9 a 59 year old driver being stopped, and in the script it  
10 says, "the officer found a quart of whiskey in the seat  
11 next to the suspect." Do you see that in your script?

12 A. Yes.

13 Q. In your episode, your presentation on T.V., you  
14 said an open quart of whiskey. Do you know whether or not  
15 it was an open quart of whiskey?

16 A. Yes.

17 Q. Yes what?

18 A. To your last question.

19 Q. It wasn't open or was it?

20 A. Yes, it was open. It was open.

21 Q. Where did you get that information?

22 A. From the police report.

23 Q. By the way, who told you that -- strike that.

24 Was Ms. Fitzgerald the one that told you that the  
25 secretary mistakenly gave the case to another prosecutor

RUSSELL, JAMES ROBT  
752-9346

Case # 1850497

Dis: "Interest of Justice"

Dis: 4-16-85

D. Itenagar

D.A: "SS"

less than ~~\$~~ 1500

"1200 or 1300 Took care of it"  
"yeh".





NO. 850497CRI

THE STATE OF TEXAS                    §     IN THE COUNTY COURT  
VS.                                       §     OF  
JAMES ROBERT RUSSELL               §     McLENNAN COUNTY, TEXAS

TO THE HONORABLE JUDGE OF SAID COURT:

NOW COMES VIC FEAZELL, Criminal District Attorney of McLennan County, Texas, and asks leave of the Court to dismiss the above entitled and numbered cause for the following reasons, to-wit:  
Dismissed - Interests of Justice.

David N. Deacon  
Assistant Criminal District Attorney

On this the 16 day of April, 1985, came on for presentment the above written motion of the State's attorney for dismissal of the above entitled and numbered cause for the reasons set forth therein;

IT IS, THEREFORE, ORDERED, ADJUDGED AND DECREED that this criminal action be and the same is hereby dismissed and that said Defendant be discharged.

David H. Sobel  
JUDGE

**FILED**  
16 day of April 1985  
FRANK DENNY  
Clerk County Court At Law  
McLennan County, Texas  
By Kay Elliott  
DEPUTY

NO. 1850471

FRANK DENNY  
MCLENNAN COUNTY CLERK  
FILED

IN THE COUNTY COURT

THE STATE OF TEXAS

1985 MAR 28 PM 3:56

AT LAW

VS.

Russell, James R

Ray Elliott DEPUTY

MCLENNAN COUNTY, TEXAS

OFFENSE: DWI

CASE RESET FORM

THE UNDERSIGNED DEFENDANT AND COUNSEL AGREE THIS CASE IS RESET FOR:

- TRIAL BEFORE THE COURT
- TRIAL BY JURY
- PLEA OF GUILTY
- OTHER \_\_\_\_\_
- STATE'S CONTINUANCE
- DEFENSE CONTINUANCE
- OTHER \_\_\_\_\_

DEFENSE ATTORNEY: D Henager

RESET DATE: 4/25 TIME: 1000

ATTORNEY FOR STATE: SS

BONDSMAN: Karl McNair

DEFENDANT'S SIGNATURE \_\_\_\_\_

DEFENSE ATTORNEY'S SIGNATURE \_\_\_\_\_

850328  
DKT  
SETTING APPROVED  
BY ADMINISTRATOR:

Jim Gair

DATE 3/27

DEFENDANT'S MOTION FOR CONTINUANCE

Comes now the defendant in the above entitled and numbered cause and moves the Court for a continuance and would show the Court:

That the defendant and his attorney have not had sufficient time to determine the nature of defendant's plea and/or to prepare for trial.

That it has been explained to the defendant and the defendant fully understands his rights to a speedy trial as provided by Article 32A.02, V.A.C.C.P. and hereby waives same.

WHEREFORE defendant prays that a continuance be granted.

DEFENSE ATTORNEY \_\_\_\_\_

AFFIDAVIT OF DEFENDANT

I, the defendant herein, state under oath that I have read the foregoing Motion for Continuance and Waiver of Speedy Trial and state that the facts therein alleged are true and correct and request that the Court accept a waiver of the Speedy Trial Act, and if said waiver is approved, grant a continuance as herein prayed.

DEFENDANT \_\_\_\_\_

Subscribed and sworn to before me on \_\_\_\_\_, 19\_\_\_\_.

NOTARY PUBLIC IN AND FOR  
THE STATE OF TEXAS

My Commission Expires: \_\_\_\_\_

APPROVED: \_\_\_\_\_  
ATTORNEY FOR STATE

ORDER

The above Motion for Continuance and Waiver of Speedy Trial is granted; the reset

DATE is: \_\_\_\_\_ TIME: \_\_\_\_\_

The above Motion for Continuance and Waiver of Speedy Trial is denied. The reset

DATE is: \_\_\_\_\_ TIME: \_\_\_\_\_

JUDGE \_\_\_\_\_

Priority  Juvenile \_\_\_\_\_ Other \_\_\_\_\_ Case Number 85-02-05248

CO POLICE DEPT. OFFENSE REPORT

1. Victim or Complainant (Last Name First) PARKER, OFFICER Address 721 N. 4TH Res. Phone 752-5555

2. Place of Employment or School WACO P.D. Bus. Phone 752-5555

3. Offense or Incident D.W.I. Describe Location 430

4. Time/Date Reported 10:12PM 2-7-85 Time/Date Occurred 10:12PM 2-7-85 Location of Offense (Address) 3300 BLK. TO 4600 BLK. N. 19TH Describe Location PUBLIC STREET

5. Reporting Person's Name PARKER, OFFICER Address \_\_\_\_\_ Res. Phone \_\_\_\_\_ Bus. Phone \_\_\_\_\_

6. Describe What Happened (MO, etc.)

WHILE ON PATROL I OBSERVED DRIVING IN FRONT OF ME A BROWN FORD PICK-UP TRUCK DRIVEN BY A WHITE MALE. THE PICK-UP TRUCK WAS WEAVING ONTO THE CENTER STRIPE AND THEN BACK ONTO THE OUTER LANE STRIPE. IT WAS TRAVELLING NORTH ON 19TH. THE SUBJECT WAS STOPPED AND FOUND TO BE INTOXICATED AND ARRESTED FOR DRIVING WHILE INTOXICATED.

ONE ARREST.

7. Qty. Description (Size, Color, Model, Style, Material, Condition, Serial No.)

Qty.	Description (Size, Color, Model, Style, Material, Condition, Serial No.)	Value Stolen	Value Rev.

8.  Abandoned  Used in Offense  Parked at PD Year 1974 Make FORD Model Name F-100 Body Type PICK-UP Color(s) BROWN

Stolen  Stored  Vict's Veh  Towed  Canc

Identifying Marks-Condition-Missing Parts

Lic. Yr-State-Number 85 TX CK5566 V.I.N. \_\_\_\_\_

Owner RUSSELL, JAMES ROBERT Address 1905 TANGLEWOOD, WACO

Arr.  Want  Canc

Witn.  Susp. Wrrnt/Arr. No. RUSSELL, JAMES ROBERT Address 1905 TANGLEWOOD, WACO, TEXAS

Race Sex Age/DOB Height Weight Hair Eyes Clothing-Distinctive Marks-Other

W M 59 3-19-25 5'9 BN. BL. BLUE JEAN JACKET, RED AND WHITE PLAID COWBOY SHIRT, BLUE

10.  Arr.  Want  Canc

Witn.  Susp.

SEARCHED \_\_\_\_\_ INDEXED \_\_\_\_\_

SERIALIZED \_\_\_\_\_ FILED \_\_\_\_\_

FEB 10 1985

WACO POLICE DEPARTMENT

OFFICER \_\_\_\_\_

WACO POLICE DEPT.

OFFENSE REPORT

1. Victim or Complainant (Last Name First) Address Res. Phone  
 PARKER, OFFICER 721 N. 4TH 752-5555

INDEX  
 Clerk Sergeant

2. Place of Employment or School Bus. Phone Race Sex Age/DOB Height Weight Hair Eyes  
 WACO P.D. 752-5555

Reviewed By

3. Offense or Incident  
 D.W.I. 430

4. Time/Date Reported

Time/Date Occurred Location of Offense (Address) Describe Location  
 10:12PM 2-7-85 10:12PM 2-7-85 3300 BLK. TO 4600 BLK. N. 19TH PUBLIC STREET

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6. Describe What Happened (MO, etc.)  
 WHILE ON PATROL I OBSERVED DRIVING IN FRONT OF ME A BROWN FORD PICK-UP TRUCK DRIVEN BY A WHITE MALE. THE PICK-UP TRUCK WAS WEAVING ONTO THE CENTER STRIPE AND THEN BACK ONTO THE OUTER LANE STRIPE. IT WAS TRAVELLING NORTH ON 19TH. THE SUBJECT WAS STOPPED AND FOUND TO BE INTOXICATED AND ARRESTED FOR DRIVING WHILE INTOXICATED.  
 ONE ARREST.

PROPERTY  
 7. Qty. Description (Size, Color, Model, Style, Material, Condition, Serial No.) Value Stolen Value Rev.

VEHICLE  
 8.  Abandoned  Used in Offense  Parked at PD Year Make Model Name Body Type Color(s)  
 Stolen  Stored  Vict's Veh  Towed  Canc 1974 FORD F-100 PICK-UP BROWN

Lic. Yr-State-Number V.I.N. Identifying Marks-Condition-Missing Parts  
 85 TX CK5566

Owner Address Est. Value  
 RUSSELL, JAMES ROBERT 1905 TANGLEWOOD, WACO

Arr.  Want  Canc Name (Last, First Middle) Address  
 Wltn.  Susp. Wrnt/Arr. No. RUSSELL, JAMES ROBERT 1905 TANGLEWOOD, WACO, TEXAS

Race Sex Age/DOB Height Weight Hair Eyes Clothing-Distinctive Marks-Other  
 W M 59 3-19-25 5'9 BN, BL. BLUE JEAN JACKET, RED AND WHITE PLAID COWBOY SHIRT, BLUE

PERSONS  
 10.  Arr.  Want  Canc Name (Last, First, Middle) Address  
 Wltn.  Susp. Wrnt/Arr. No. JEANS, BLACK BOOTS.

11.  Arr.  Want  Canc. Name (Last, First, Middle) Address  
 Wltn.  Susp. Wrnt/Arr. No.

Race Sex Age/DOB Height Weight Hair Eyes Clothing-Distinctive Marks-Other

Summary of Investigation, Officer's Opinion, Background to case, etc.

I was travelling north on N. 19th Street, in the 3300 Block, when I observed in front of me a brown Ford pick-up truck, license number CK5566, driven by a white male. It was in the center lane going north on 19th Street, it was approximately 10 or 15 car lengths in front of another white vehicle which was behind him, also travelling north in the center lane. I was in the outside lane and in observing this vehicle I saw him weave toward the center stipe. He stayed on this stripe for a few seconds then went back to the middle lane, and then I observed him go onto the outside lane marker and straddle it for a few feet there at 19th and Park Lake. I continued observing this vehicle in the 4000 Block of North 19th Street. He continued weaving in his lane going to the center stripe and then back to the outside. I then pulled behind this vehicle in about the 44 or 4500 block of N. 19th as he approached College Drive. At one point on North 19th Street, about the 4000 block, I noticed he speeded up to approximately 40 or 45 m.p.h. and then slowed down again for no reason. I turned on my emergency lights and attempted to stop him at 19th and College Drive. I was

Reporting Officer No. Assisting Officer(s) Time/Date Dictated  
 PARKER 123 11:29P 2-7-85  Unfounded  Suspended  Cl. by Arr.  Excep. Cl.

WACO POLICE DEPT

INQUIRY/FOLLOW-UP REPORT

1. Time/Date Dictat 11:29PM 2-7-85

2. Case Number 85-02-05248

3. Offense or Incident

4. Location

5. Beat

6. Date Offense Reported

D.W.I.

3300 BLK. TO 4600 BLK. N. 19TH

430

2-7-85

7. Victim or Complainant (Last Name First)

Address

PARKER, OFFICER

PROPERTY	8 Qty.	Description (Size, Color, Model, Style, Material, Condition, Serial No.)	Value Stolen	Value Rcv.

PERSONS	9	<input type="checkbox"/> Arr. <input type="checkbox"/> Want <input type="checkbox"/> Canc	Name (Last, First Middle)	Address
		<input type="checkbox"/> Witn. <input type="checkbox"/> Susp. Wrnt/Arr. No.		
		Race Sex Age/DOB Height Weight Hair Eyes Clothing-Distinctive Marks-Other		

VEHICLE	10	<input type="checkbox"/> Arr. <input type="checkbox"/> Want <input type="checkbox"/> Canc	Name (Last, First, Middle)	Address
		<input type="checkbox"/> Witn. <input type="checkbox"/> Susp. Wrnt/Arr. No.		
		Race Sex Age/DOB Height Weight Hair Eyes Clothing-Distinctive Marks-Other		

11	<input type="checkbox"/> Abandoned <input type="checkbox"/> Used in Offense <input type="checkbox"/> Parked at PD	Year Make Model Name Body Type Color(s)
	<input type="checkbox"/> Stolen <input type="checkbox"/> Stored <input type="checkbox"/> Vict's Veh <input type="checkbox"/> Towed <input type="checkbox"/> Canc	
	Lic. Yr-State-Number V.I.N.	Identifying Marks-Condition-Missing Parts
	Owner	Address Est. Value

CONTINUATION OF FORM 2 - PAGE 2

directly behind him at this point. He continued driving north on 19th and did not stop until he was in front of his residence at 1905 Tanglewood, which is across from Waco High School. I got out of my vehicle and approached him on the driver's side. He was just attempting to get out of his vehicle when I walked up to him. I could smell an odor of an alcoholic beverage inside the cab of the truck. He got out of the truck and I asked him for his driver's license. He could not understand why I stopped him. I advised him I thought he was driving very erratically, as he was weaving, and I thought that he was intoxicated. Again he said that he was not intoxicated, that he's just had a beer or two and that he was going home and his wife had been following him. Apparently she was in the white car that was behind him. I asked him to walk towards my vehicle for me. As he did, I could tell he was very unsteady on his feet. He swayed back and forth when he was standing still, fumbling through his wallet, trying to get his driver's license out. At this point I did place him under arrest for driving while intoxicated. I could smell a strong odor of some type of alcoholic beverage on his breath and his eyes were very red. He was placed in the back of my police vehicle at this point. I looked in the front of the pick-up truck. In the seat next to him (he was the only occupant of this truck) there was one litre bottle of Seagrams Crown 7 shiskey which was over half empty. I did mark the contents of what was left in the bottle and also my name and initialled it and the case number and placed it in the Property Room as evidence. This should be transferred to the DA's office with all of the paperwork in reference to this case. The pick-up truck was left at his residence. He did keep the keys, and it was locked up in front of his house. JAMES ROBERT RUSSELL refused to take the intoxalyzer test at the County Jail. He was charged with driving while intoxicated. I did fill out a refusal form. All the necessary paperwork was turned into Records. I did run a records check on him, we had no record. I advised DEPUTY ELDRIDGE of this, that we had no hold on this subject. Subject JAMES RUSSELL did sign the Statutory Warning refusal form. This will also be turned in with reference to this case.

12 <input type="checkbox"/> Unfounded <input type="checkbox"/> Suspended	13 Officer Making Report	Badge	Date	Time	Typed By
<input type="checkbox"/> Cl. by Arr. <input type="checkbox"/> Excep. Cl.	PARKER	123	2-8-85	1:40AM	MB
		Reviewed By	Date	X	Clerk
				NON	Sergeant

WACO, POLICE DEPT		C. QUATION/FOLLOW-UP REPORT		1. Time/Date Dictate 12:13P/2-8-85	2. Case Number 85-02-05248
Offense or Incident WI		4. Location 3300 BLK N. 19TH		5. Beat 430	6. Date Offense Reported 2-7-85
Victim or Complainant (Last Name First) OFFICER PARKER				Address 721 N. 4TH	
8. Qty. Description (Size, Color, Model, Style, Material, Condition, Serial No.)				Value Stolen	Value Rcv.
9. <input checked="" type="checkbox"/> Arr. <input type="checkbox"/> Want <input type="checkbox"/> Canc <input type="checkbox"/> Witn. <input type="checkbox"/> Susp. Wrnt/Arr. No.		Name (Last, First Middle) RUSSELL, JAMES ROBERT		Address 1905 TANGLEWOOD; WACO	
Race	Sex	Age/DOB	Height	Weight	Hair Eyes Clothing-Distinctive Marks-Other
W/M		59/3-19-25	5'9"	BRO	BLU
10. <input type="checkbox"/> Arr. <input type="checkbox"/> Want <input type="checkbox"/> Canc <input type="checkbox"/> Witn. <input type="checkbox"/> Susp. Wrnt/Arr. No.		Name (Last, First, Middle)		Address	
Race	Sex	Age/DOB	Height	Weight	Hair Eyes Clothing-Distinctive Marks-Other
11. <input type="checkbox"/> Abandoned <input type="checkbox"/> Used in Offense <input type="checkbox"/> Parked at PD <input type="checkbox"/> Stolen <input type="checkbox"/> Stored <input type="checkbox"/> Vict's Veh <input type="checkbox"/> Towed <input type="checkbox"/> Canc		Year	Make	Model Name	Body Type Color(s)
Lic. Yr-State-Number		V.I.N.	Identifying Marks-Condition-Missing Parts		
Owner		Address			Est. Value

At approximately 9:30A/2-8-85, I contacted the Sheriff's Department and they informed me that MR. RUSSELL had bonded out on DWI charges. I prepared the necessary paperwork and transfered it to Judge CABANISS's office, Judge CABANISS issued warrant # 4378 for DWI, set the bond at \$1000.

After the warrants were signed and issued, I transfered the warrant and the statutory warning form to the Sheriff's Department, where it was turned in to the records clerk.

This case will be prepared and transfered to the DA's office as soon as possible.

CASE CLEARED BY ARREST.

12. <input checked="" type="checkbox"/> Unfounded <input type="checkbox"/> Suspended <input checked="" type="checkbox"/> by Arr. <input type="checkbox"/> Excep. Cl.		13. Officer Making Report HARRISON	Badge 56	Date 2-8-85	Time 1:05P	Typed By EDWARDS	
				Reviewed By	Date	Clerk	Sergeant

85-07-05248

DIC-23 (9/83)

STATE OF TEXAS

COUNTY OF McLennan

Before me, the undersigned authority, on this day personally appeared Douglas N. Parker to me well known and known to me to be a credible person, who having been by me duly sworn, deposed and said:

My name is Douglas N. Parker, and I am a duly constltuted Law Enforcement Officer.  
(Print or Type)

This is to certify that I arrested JAMES ROBERT RUSSELL

Home address 1905 Tangewood WACO TEX 76706  
Street City State Zip Code

Drivers License/ I.D. No. or None 02658058, Date of Birth 9-19-25, on the 7 day of February

19 85 at WACO, McLennan County, Texas. Upon making the arrest, this person was duly requested by me to give a specimen of his/her breath or blood for the purpose of analysis to determine the alcohol concentration or the presence in his/her body of a controlled substance or drug. This person was informed both orally and in writing as to the consequences of his/her refusal to give a specimen as set out in detail in the attached document, DIC-24, which is hereby specifically incorporated by reference for all purposes, as if written and copied herein. Subsequent to and immediately after said request this person refused to submit to such test.

It is further certified that prior to the arrest I had reasonable grounds to believe, and do believe, that this person was driving or in actual physical control of a motor vehicle upon the public highways or upon a public beach in this State while intoxicated. Facts in support of this belief are: I saw a Brown Ford PU Lic # CK-5566 driven by a white male going north on N. 19<sup>th</sup> in about the 3300 Blk. The Truck was in the center lane of Traffic and was weaving onto the center stripe and back to the outer lane. At 19<sup>th</sup> & Park he straddled the outside lane & the center lane for a short distance. The Truck continued north on N. 19<sup>th</sup> on at the 4000 Blk speeded up & then slowed down. I turned on my emergency lights at 19<sup>th</sup> & College Dr & the Truck stopped in front of 1905 Tangewood. The driver now known to me to be James Russell was starting to get out of his Truck when I walked up to him. James Russell got out of the Truck & as I was talking to him I could smell the odor of an alcoholic beverage on his breath. James Russell was unsteady on his feet & swayed when he walked or turned around. His eyes were bloodshot and ~~the~~ <sup>and</sup> I could smell the odor of an alcoholic beverage in the interior of his Truck.

Douglas Parker 123  
Name Badge or ID No.  
Waco Police Dept  
Department

P.O. Box 1370 WACO TEX 7603  
Street or P.O. Box City State Zip Code

Sworn to and subscribed before me this 7th day of February

[Signature]  
Notary Public in and for Waco County, Texas  
1985

My Commission Expires 11-88