



Cary Clack: Maybe prosecutors should have role-played embarrassing trial

Web Posted: 02/05/2005 12:00 AM CST

San Antonio Express-News

This week, the monotonous parade of DWI cases through County Court-at-Law Judge Phil Meyer's courtroom was interrupted by a case that made a few faces blush, made everyone involved uncomfortable and was hard to ignore.

There probably haven't been many resisting-arrest trials in which the defense attorney asked prospective jurors their views on "nontypical forms of sex."

What happened wasn't a comedy of errors as much as an example that things can go wrong even when everyone on the legal side does their job and innocent citizens mind their own business.

In the early morning hours of Dec. 21, 2002, two San Antonio police officers responded to a 911 call from an anonymous woman that a man with outstanding warrants was at a certain address. The call was low-priority, so it was about 40 minutes later when they went to the West Side residence. They'd already run the man's name and knew there were no outstanding warrants, but they didn't check to see if a man with that name lived at that address. He didn't.

After knocking on the door and receiving no answer, the officers walked toward the back of the house and a small garage that had been converted into living quarters. As they got closer, they said, they heard what sounded like a woman and man arguing.

Seconds later, they heard a woman saying, "Stab me (expletive deleted)! Stab me!" When she repeated it, they kicked in the side door.

The best thing about this story is that the woman wasn't in trouble and no one was in any danger.

The bad thing about this story is that the officers couldn't have known that the couple whose door they'd just kicked in liked to role-play during intimacy and that's what they were doing at the time.

Obviously upset with the intrusion, the couple profanely asked the officers what they were doing in their house, and the woman told them they were getting ready to have sex.

The officers charged the man with resisting arrest and with assault. The assault charge later was dropped, but not the one for resisting arrest.

The defendant and his girlfriend insisted he didn't resist arrest, but merely curled into a defensive position when the officers pulled his arms.

"He was so adamant that he did nothing wrong," said energetic attorney Nico LaHood who, along with

Kerrisa Chelkowski, defended the man.

With the jury out of the courtroom, one of the prosecutors said, "It is a really crappy arrest. But he resisted."

The most uncomfortable moments of the trial were when the defendant's clearly embarrassed girlfriend had to repeat what she'd said that night and admit that they did role-play before getting intimate.

After three hours of deliberation, the jury found the defendant not guilty.

"The jury was surprised that it had gotten this far," said a courtroom observer.

From the day the police kicked in the door two years ago, understandably thinking a woman was in trouble, to the start of the trial, there was ample time for the state to admit a mistake was made and drop the case.

Equally regrettable is that the only one who should, but can't, be punished is the woman whose anonymous call initiated this.

To contact Cary Clack, call (210) 250-3546 or e-mail cclack@express-news.net. His column appears on Mondays, Wednesdays and Saturdays.

Online at: <http://www.mysanantonio.com/columnists/stories/MYSA020505.1B.clack.78292283.html>