

## **Court of Criminal Appeals Case Law Update**

**Conference on Criminal Appeals  
May 27-29, 2015**

### **What I'm going to talk about**

- **What's Not in the Paper**
- **Search and Seizure**
- **Evidence**
- **Offenses**
- **Defensive Issues**
- **Jury Instructions**
- **Appeals**
- **Habeas Corpus**

## What's Missing?

- Second revocation hearing can be based upon grounds known but not considered in first revocation hearing – *Tapia v. State*
- Questions about name and phone number outside of “booking” are custodial interrogation – *State v. Cruz*
- Trial court has discretion to hear intellectual disability claim prior to capital murder trial – *In re Allen*

### *McClintock v. State,* 444 S.W.3d 15

- McClintock lived in second floor residence over a business
- Tip – grow operation in residence
  - Saw male coming and going
- Officer smelled marijuana at this “location”
- Dog-sniff alert at door

***McClintock v. State,***  
**444 S.W.3d 15**

- Search warrant based in part on dog-sniff
- ***Florida v. Jardines***
  - Trespass with dog illegal search
- COA reverses
  - Considers warrant without dog-sniff
  - “location” unclear
  - “Walking after midnight” is not PC

***McClintock v. State,***  
**444 S.W.3d 15**

- Unanimous CCA held affidavit insufficient
  - No deference to magistrate on “location”
  - Officer smell of marijuana could have referred to 1<sup>st</sup> floor or 2<sup>nd</sup> floor
- Vacated to consider good faith reliance upon warrant

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