



# TIBA TEXAS INDEPENDENT BAR ASSOCIATION

Post Office Box 783  
Austin, Texas 78767  
Tel. 512-354-7823  
Fax: 512-532-6282



Web Site: [www.texindbar.org](http://www.texindbar.org)

⚖ Vol. 21, No. 9, March 4, 2013

## TIBA's Case of the Week

**Case Name:** Megan Winfrey aka Megan Winfrey Hammond v. The State of Texas

- OFFENSE: Capital Murder - Life Sentence
- COUNTY: San Jacinto
- COURT OF APPEALS: Beaumont 2011
- C/A CITATION: 338 S.W.3d 687
- C/A RESULT: Conviction Affirmed
- CCA. CASE No. PD-0943-11      DATE OF OPINION: February 27, 2013
- DISPOSITION: Conviction Reversed
- OPINION: [Johnson, J.](#)      VOTE: 7-2
- TRIAL COURT: 411th D/C; Hon. Robert Trapp
- LAWYERS: [Shirley Baccus-Lobel](#) (Defense); [Richard Countiss](#) (State)

**Ed Note:** (Background Facts) The deceased was found stabbed and beaten in his home without forced entry. At trial, a sheriff's deputy (Keith Pikett) testified about a "scent lineup" he conducted with two bloodhounds. Pikett obtained scent samples from the victim's clothing and from six females, including Appellant. The dogs alerted on Appellant's scent sample, leading Pikett to assume Appellant's scent was on the deceased's clothes. The forensic evidence obtained from the crime scene did not match Appellant. After Appellant was convicted and sentenced to life in the penitentiary, the Court of Appeals affirmed her conviction, with Justice Kreger dissenting. [Winfrey v. State](#), 338 S.W.3d 687 (Tex.App. - Beaumont 2011)(see [⚖](#), [Vol. 19, No. 15](#); 04/18/2011). Appellant's father, also accused of this capital murder, was convicted of the lesser-included offense of murder. His conviction was affirmed by the Court of Appeals but, on discretionary review, the Court of Criminal Appeals reversed his conviction and entered a judgment of acquittal. (Richard) [Winfrey v. State](#), 323 S.W.3d 875 (Tex.Cr.App. 2010)(see [⚖](#), [Vol. 18, No. 37](#); 09/27/2010).

[⚖](#) **536 Sufficiency of the Evidence:** "The only evidence that purported to directly connect Appellant to the crime scene was a 'scent lineup' conducted by Keith Pikett. Appellant challenges the sufficiency of the evidence, asserting "there is no evidence which implicates appellant in this murder either directly or by application of the law of parties." She argues that the majority opinion of the Court of Appeals conflicts with this Court's decision in her father's case. Appellant contends that "[i]t is inconceivable that the jury did not convict on the basis of the scent lineups[,]" regardless of the Court of Appeals's attempt to analyze the evidence wholly without regard to the dog-scent lineup. She argues that the dog-scent lineup evidence "is not sufficiently reliable to be accorded any weight, even a supporting role." Ultimately, Appellant asserts that, unless the

canine scent lineup is treated as primary evidence, “there is no evidence which implicates Appellant in this murder either directly or by application of the law of parties.”

**Holding:** [R]egardless of whether the dog-scent lineup evidence was properly admitted, such evidence is properly considered in a review of the sufficiency of the evidence. \*\*\* As merely supportive evidence, dog-scent lineup evidence cannot itself constitute sufficient evidence of guilt. \*\*\* Basing a finding of guilt [on the evidence presented] is, at best, "mere theorizing or guessing" about [Appellant]'s possible guilt, rather than a reasonable inference based upon evidence and facts presented -- the evidence merely raises a suspicion of guilt and is legally insufficient to support a conviction of capital murder beyond a reasonable doubt.

**Concurring / Dissenting Opinions:** [Presiding Judge Keller](#) filed a dissenting opinion. She argued that “the Court views the evidence in the wrong light and fails to give the jury the deference that it is due.” Judge Meyers dissented without note.