

**DIRECTED  
VERDICTS**

Alfred Jenkins  
Judge, Austin

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**DIRECTED VERDICTS**

and their cousins...

**INSTRUCTED VERDICTS**



JURY TRIAL      NON JURY TRIAL

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**DIRECTED VERDICT**  
Where is it?

Article 45.032: Directed Verdict:  
"If, upon the trial of a case in a justice or municipal court, the state fails to prove a prima facie case of the offense alleged in the complaint, the defendant is entitled to a directed verdict of 'not guilty'."

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## DIRECTED VERDICT

- 1) Describe the history and principles governing the Directed Verdict.
- 2) List the statutes and rules affecting the Directed Verdict.
- 3) Apply the principles and statutes governing the Directed Verdict to issue a ruling.

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## DIRECTED VERDICT Right to Jury Trial

- 1) Evolution of the jury trial - Greece, Rome , Scandinavia, England, 13th century- *Magna Carta* 1687- William Penn publishes *The Excellent Privilege of Liberty and Property*
- 2) US Constitution- Article 3 and 6th Amendment
- 3) Texas Constitution- Constitution of Coahuila and Texas (1827), Texas Constitution, art. I, § 15

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## TRIAL - The PLAYERS

- 1)Adversaries
- 2)Evidence / Witnesses
- 3) Fact Finder:
  - Jury, or,
  - Judge

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## DIRECTED VERDICT

### MERRY OLD ENGLAND...

1685 – Duke of Monmouth fights James I for control of England, Monmouth is defeated at the Battle of Sedgemoor ...our hero Peter Blood is a doctor who was tending to the wounds of a soldier in Monmouth's army and Dr. Blood is captured and tried for treason...during the trial Dr. Blood admits rendering the medical care to a rebel...

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## INSTRUCTED VERDICT

### MERRY OLD ENGLAND...

Video on next slide

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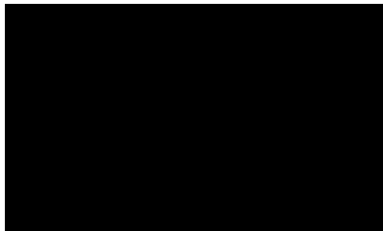
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## INSTRUCTED VERDICT

### MERRY OLD ENGLAND...



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## BIG Difference from Old England

- A judge may not direct a verdict of guilt for the prosecution nor instruct the jury to render a verdict of guilt no matter how conclusive the evidence.
- Sullivan v. Louisiana, 508 US 275, 113 S Ct 2078, 124L Ed 2d 182(1993); US v. Hogue, 132 F3d 1087 (5<sup>th</sup>Cir.1998); US v. Johnson, 718 F 2d 1317 (5<sup>th</sup>Cir.1983).

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## DIRECTED VERDICT

### ROLE OF THE JUDGE

- 1) Judicial Code of Ethics: Preamble: Our legal system is based on the principle that an **independent, fair and competent** judiciary will interpret and apply the laws that govern us. The role of the judiciary is central to American concepts of justice and the rule of law.
- 2) Canon 2A: A judge shall comply with the law and should act at all times in a manner that promotes public confidence in the **integrity and impartiality of the judiciary**.

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## DIRECTED VERDICT

1. As the right to a jury trial evolves so does the doctrine of the directed/instructed verdict.
2. Role of the Judge-Directed/Instructed verdict is a judicial tool to maintain control of the trial when a prima facie case has not been made by the state-a challenge to the legal sufficiency of the evidence. (State v.Todd 242 SW3 126)

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## THE STATUTES

- Article 45.032, CCP: Directed Verdict
- Article 38.17, CCP: Two Witnesses Required
- Article 36.02, CCP: Testimony at Any Time
- Article 44.01, CCP: Appeal by State
- Texas Rules of Evidence 201: Judicial Notice of Adjudicative Facts

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## THE STATUTES

Article 45.032, CCP: DIRECTED VERDICT- If upon the trial in a justice or municipal court, the state fails to prove a prima facie case of the offense alleged in the complaint the defendant is entitled to a directed verdict of “not guilty”.

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## THE STATUTES

Article 45.032, CCP “Prima facie” defined

State v Thomas, 474 SW2d 692, 695  
(Tex.Crim.App 1972):

“By ‘prima facie evidence’ is meant not that the evidence is conclusive, but that it may be rebutted or overcome by the contrary...”

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**THE STATUTES**

Article 45.032,CCP “Prima facie” defined

(continued)

“...(t)his is by no means a conclusive presumption. Such is not the meaning of the term ‘prima facie’. It is merely proof of the case upon which the jury may find a verdict unless rebutted by other evidence.”

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**THE STATUTES**

Article 45.032,CCP “Entitled” defined

“Entitled”= to give a person or thing a title, right or claim to something; furnish with grounds for laying claim.

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**THE STATUTES**

Article 38.17,CCP: Two Witnesses Required:

“In all cases where, by law, two witnesses, or one with corroborating circumstances, are required to authorize a conviction, if the requirement be not fulfilled, the court shall instruct the jury to render a verdict of acquittal, and they are bound by the instruction.”

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## THE STATUTES

Article 36.02, CCP: Testimony at Any Time:

“The court shall allow testimony to be introduced at any time before the argument of a cause is concluded, if it appears that it is necessary to a due administration of justice.”

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## THE STATUTES-

Article 36.02, CCP: When to re-open-

State v Peek, 106 SW3d 72, 79(Tex.Crim.App 2003):

“A trial judge is required to reopen a case under Art. 36.02 only if the proffered evidence is ‘necessary to a due administration of justice’. Given the direction of our case law over the years, the statute’s purpose in granting judges greater discretion, and the...

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## THE STATUTES-

Article 36.02, CCP: When to re-open-

(continued)

“...consequences of each construction, we conclude that a ‘due administration of justice’ means a judge should reopen the case if the evidence would materially change the case in the proponent’s favor. We overrule any cases to the contrary.”

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THE STATUTES

Article 44.01: Can the State appeal?

- Video on next slide

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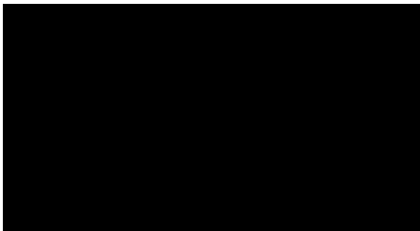
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THE STATUTES

Article 44.01: Can the State appeal?



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THE STATUTES

Can the State appeal?

State v Moreno, 294 SW3d 594,601  
(Tex.Crim.App 2009):

“ The trial judge entered a verdict of acquittal after jeopardy attached. Because the State is not authorized to appeal an acquittal, we affirm the court of appeals’s judgment dismissing the appeal for want of jurisdiction.”

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## THE STATUTES

### Article 44.01: Can the State appeal?

Article 44.01, CCP: Appeal by State:

“(a) The state is entitled to appeal an order of a court in a criminal case if the order:

- (1) **dismisses an indictment, information, or complaint or any portion of an indictment, information, or complaint;**
- (2) arrests or modifies a judgment;
- (3) grants a new trial;
- (4) sustains a claim of former jeopardy;
- (5) grants a motion to suppress...”

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## Texas Rule of Evidence 201 Judicial Notice of Adjudicative facts

- (a) **Scope of Rule.** This rule governs only judicial notice of adjudicative facts.
- (b) **Kinds of Facts.** A judicially noticed fact must be one not subject to reasonable dispute in that it is either (1) generally known within the territorial jurisdiction of the trial court or (2) capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned.
- (c) **When Discretionary.** A court may take judicial notice, whether requested or not.
- (d) **When Mandatory.** A court shall take judicial notice if requested by a party and supplied with the necessary information.

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## Texas Rule of Evidence 201 Judicial Notice of Adjudicative facts

- (e) **Opportunity to Be Heard.** A party is entitled upon timely request to an opportunity to be heard as to the propriety of taking judicial notice and the tenor of the matter noticed. In the absence of prior notification, the request may be made after judicial notice has been taken.
- (f) **Time of Taking Notice.** Judicial notice may be taken at any stage of the proceeding.
- (g) **Instructing Jury.** In civil cases, the court shall instruct the jury to accept as conclusive any fact judicially noticed. In criminal cases, the court shall instruct the jury that it may, but is not required to, accept as conclusive any fact judicially noticed.

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## SITUATIONS

- State v. Kirkpatrick: 2011 WL 1312287 unpublished opinion from CA El Paso (2011).
- State v. Lewallen: 927 SW2d 737, CA, Fort Worth (1996).
- State v. Moreno: 294 SW3d 594, CCA (2009).

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## 2013 TMCEC BENCH BOOK (Page 144)

- Non-Jury: At this point the defense is permitted to request a motion for a directed verdict of acquittal. The motion is based on the belief of the defense that the State has failed to present evidence proving each and every element of the offense.
- If the judge believes that the defense is correct then the judge should return a verdict of not-guilty.

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## 2013 TMCEC BENCH BOOK (Page 167)

- Jury Trial: At this point the defense is permitted to request a motion for a directed verdict of acquittal. The motion is based on the belief of the defense that the State has failed to present some evidence on an element of the offense.
- If the judge believes that the defense is correct then the judge should instruct the jury to return a verdict of not-guilty.

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## 2013 TMCEC BENCH BOOK

- In either the non-jury or jury trial granting the motion for directed verdict has the same practical effect of ending the trial in an acquittal. Overruling the motion results in a continuation of the trial and the defense would be allowed to present its case.

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## Summary

Article 45.032: Directed Verdict:

“If, upon the trial of a case in a justice or municipal court, the state fails to prove a prima facie case of the offense alleged in the complaint, the defendant is entitled to a directed verdict of ‘not guilty’.”

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## QUESTIONS?

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## REFERENCES

- 1) BLUME, William Witt: Origin and Development of the Directed Verdict, Michigan Law Review, Volume 48, No. 5, 555-590 (1950).
- 2) LERNER, Renee Lettow: The Rise of Directed Verdicts: Jury Power in Civil Cases Before the Federal Rules of 1938: George Washington Law Review, February 2013, Volume 81, No. 2.
- 3) TARNOFF, Robert - Evidence - Sufficiency For Directed Verdicts- Can a Judge Hold a Candle to Twelve Reasonable Men?:18 DePaul Law Review, 322 (1968)
- 4) COOPER, Edward: Directions For Directed Verdicts: A Compass for Federal Courts; 55 Minn.Law Review 903 (1970).
- 5) TURNER, Ralph: Magna Carta Throughout the Ages (2003) ISBN: 978-0562436262.
- 6) POPE, Jack, "The Jury," Texas Law Review 39 (1961).
- 7) POTTS, Charles "Early Criminal Law in Texas: From Civil Law to Common Law, to Code," Texas Law Review 21 (April 1943).
- 8) SULLIVAN v. Louisiana, 508 US 275, 113 S Ct 2078, 124L Ed 2d 182(1993); US v. HOGUE, 132 F3d 1087 (5<sup>th</sup> Cir. 1998); US v. JOHNSON, 718 F 2d 1317 (5<sup>th</sup> Cir. 1983).
- 9) State v. TODD 242 SW3 126.
- 10) State v. THOMAS, 474 SW2d 692, 696 (Tex.Crim.App. 1972).
- 11) State v. PEEK, 106 SW3d 72, 79 (Tex.Crim.App. 2003).
- 12) TMCEC 2013 Bench Book