

COUNTRY LAWYER:



THE CASE OF THE CONCEALED WEAPON

BY TOM PERKINS, ESQ.

I took it as a dare. Judge Llewelyn Young shook my hand and had me sit down for a minute in his chambers at the Pershing County Courthouse. He was a true gentleman, but weary of the quick turnover of public defenders. He said, "You will be gone in two months."

I didn't know any better, so I lasted four years. I had help. Rod McCormick taught me not to get candy bars for the guys in the jail. Gary Woodbury taught me to be willing to go to trial. John Doyle taught me to never take no for an answer. Dick Legarza taught me that there was never anybody more important than the person across your desk. Hy Forgeron taught me how to laugh. Marty Wiener taught me how to fight, and Richard Wagner taught me to think twice about using the Bible in closing argument. I learned how to get my butt kicked on my own, but most of these guys helped me with that, too.

Joyce Santos was the Justice of Peace in Lovelock, and she was like many of the lay JPs of that time: independent, smarter than most of the attorneys, and not afraid of the police, but not afraid to back them, either. She had a gravelly voice and a quick sense of humor. One of my first cases in her court was a young tough who had been arrested with *nunchaku* (“nunchucks:” a weapon made of two sticks, connected by a short chain or cable) at a local dance hall. He had been to Reno and taken a martial arts course, so he was convinced they were legal, but since he was charged with carrying a concealed weapon, it didn’t matter if they were. He did not track this line of reasoning. Moreover, having impressed his mother with his innocence, it was impossible for him to take a plea. Not guilty by reason of mom-is-watching. With no chance of negotiations, we went to preliminary hearing.

Now the state has to prove all different kinds and stages of probable cause in order to take your liberty, and the police have to make some kind of showing to search you. They must have a reasonable suspicion that criminal activity is afoot. This is a good law which has been broadly interpreted

to protect young people caught smoking pot, and narrowly interpreted to keep bad guys from going free. In the case of a concealed weapon, the police have to have some reasonable suspicion that the defendant has a weapon concealed on his person in order to pat him down. Well, if the accused has done a good job of concealing it, the officers would not have a clue it was there, much less a reasonable suspicion, and no reason to pat him down. This makes these cases difficult for the prosecution, and they are usually successful only when the law finds a concealed weapon in the course of making an otherwise lawful arrest.

I’ll admit I was walking a fine line. The prosecution had offered me a reasonable deal for a misdemeanor, and it was only the naive stubbornness of the defendant and his mother that had forced a constitutional confrontation with the Lovelock police. And it never occurred to me that they were out of line until the hearing got to a start. The officer testified that he came into the hall, approached the defendant, searched him, and found the nunchucks, concealed in his pants. I asked for voir dire, questions in aid of an objection.

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“You did not have a search warrant, did you, Officer?”

“No.”

“And you did not have a warrant for his arrest?”

“No.”

“He was not in a fight?”

“No.”

“Didn’t have a beer in his hand?”

“Nope.”

“You didn’t watch him steal anything, did you?”

“No.”

“And nobody told you that he had stolen anything, did they?”

“No.”

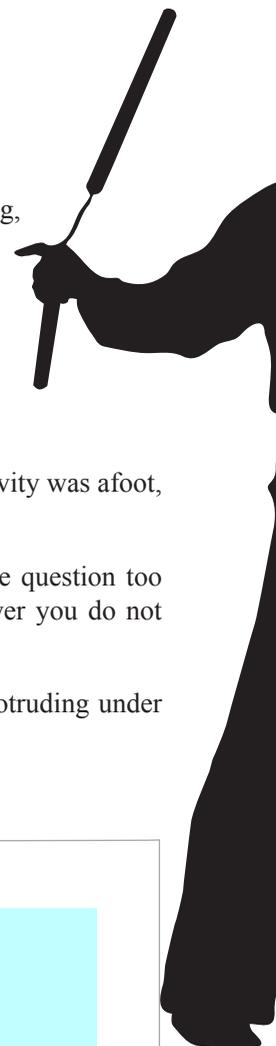
“He wasn’t on probation or parole, was he?”

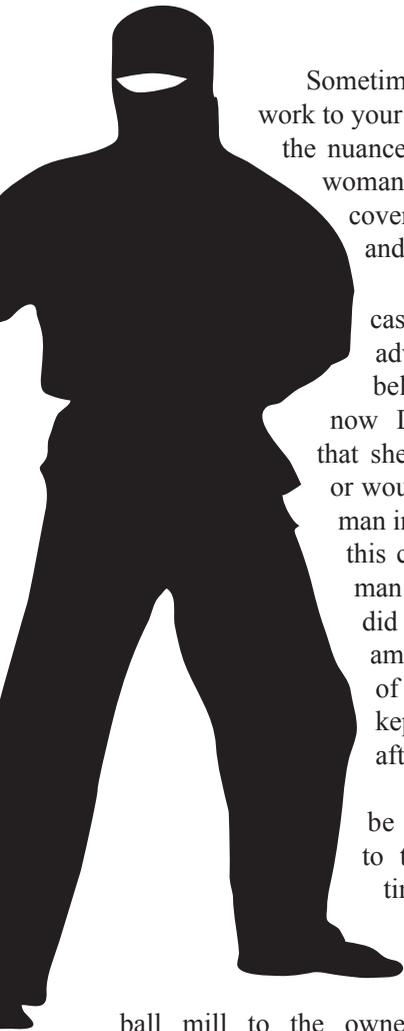
“No.”

“So, there were no signs that any criminal activity was afoot, were there?”

This is how you learn to not ask that one question too many. You ask it, and then you get the answer you do not want to hear.

“Well, there was something long and hard protruding under his pants.”





Sometimes the one question too many can work to your advantage. I was about to explore the nuances of this answer when I heard a woman laughing. It was the judge. She covered her mouth, pretended to cough and called a recess.

I do not remember how the case turned out. I believe the judge advised me to sit still and be quiet. I believe she told the district attorney, now District Judge Richard Wagner, that she did not think the police should or would want to pat down every young man in a dance hall whom they found in this circumstance. I believe the young man walked out of the courtroom, but did not get back his nunchucks. And I am quite sure that the good officers of the Lovelock Police Department kept an eye on him for some time after that.

There may be other tales to tell, like the time my client refused to return a stolen

ball mill to the owner's property because, as he said, "Some thief would steal it," or the time when an ex-con from Texas, charged in a shooting incident, asked me if he could talk to the DA and the judge; "I want to tell them how many times that little pistol has saved my life." One time Doc Belanger tried to get from Lovelock to Denio the back way, on the day before trial, to subpoena a witness and surprise the other side. Instead, he took a wrong turn and got stuck in the mud, way up in the pine forest range. They had to call off the trial and we all went to look for him. Doc spent the night out there and then walked out to the Leonard Creek Ranch and called for help. The other lawyer was mad as hell as soon as he knew that doc was okay.

I enjoyed my time riding the circuit in Nevada, and there are still a number of very lucky lawyers and judges who get to do it. You learn to appreciate the generosity of the people and the clarity of the light. You learn that there is no such thing as a 15-minute hearing, and that most trips to another town will stretch to half a day. You learn that people like to do their business face-to-face, and why, and that it is always best, even in the urban areas, even with all the electronic tools we now have. So, next time you have a case in the country, instead of calling the judge and asking him to sign the order in chambers, take a ride on out there, meet the people on the other end of the telephone, and take some time to visit with your friends. **NL**

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