

With Prejudice

By Michael Kitchen

He anticipated that this day would come. Ever since his daughter was born, he knew he would have to try to accept the man she would fall in love with. There were junior-high crushes and high-school drama over this boy or that. But moving on to Eastern Michigan University meant a more serious relationship had the potential to develop. And separation jeopardized his fatherly influence.

She had called her mom to ask if Keith could spend the Thanksgiving weekend at the house with them. The dorms would be closed, and the alternative option would be for her to join the boy at his parents' home in Jackson, where they would be alone because the rest of the boy's family had gone to visit relatives in Chicago. His wife had no problem letting the boy stay, and was leaving the decision up to him. Even though there was a guest bedroom in the house, he was not comfortable with it. He considered himself a liberal guy, willing to accept most any boy that made his daughter happy. But when she had mentioned to her mom that Keith was an avid sports fan of all Chicago teams, it made him cringe.

He hated Chicago and their sports teams.

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He saw his client, sitting on a bench at the end of the hallway, far from the courtroom. Her case was before Judge Wallace, in Courtroom A. But she waited for him outside Courtroom D, that of Judge Lincoln. As he approached, he looked up at the end of the hall, noticing the black half-orb of glass on the ceiling.

"I don't believe they're doing this," she said, remaining seated as he approached. "I ain't never done nothing wrong in all my 67 years."

“I know,” he said, taking a seat next to her. “We will fight this.”

“Damn right,” she said, folding her arms in front of her. Her skin was dark, her hair black with speckles of gray. She was dressed appropriately for court, with a coral two-piece jacket and long skirt. The collar was ruffled in a checkered pattern of iridescent mother of pearl, which matched the trim at the end of her sleeves. He imagined that a matching coral hat existed, which would give her Sunday charm. Her light metal cane with its black rubber handle and end slid down the bench and hit the floor, the bang echoing in the hallway. She uncrossed her arms and bent to retrieve it.

Henrietta Johnson reminded him of his grandmother. Feisty, ornery, and convinced that she was always right.

“So what’s going to happen today?” she asked.

“It’s called a preliminary examination,” he explained. “The prosecution has the burden to prove that a crime was probably committed and that you probably committed it.”

“I didn’t do nothing!” she said in a voice that seemed to carry down the hallway, through the brick walls, and into the judge’s chamber.

“We both know that,” he said in a softer tone, hoping she’d mimic him. “However, the prosecutor thinks otherwise.”

“Look,” she said as she stood up. “All I did was spin my cane like this.” She ambled a few steps back and forth, twirling her cane in a rotating motion at her side. “Just like when I was a drum majorette in high school. That ain’t assault with a dangerous weapon.”

“Unfortunately, you twirled it near the person suing you for striking her car in a grocery store parking lot with your cane.”

“And I won that one, too!” she said. “Damn lying bitch and her Cadillac.”

“You had a good witness then,” he said.

“And I have one here, too,” she cackled and sat down.

“Yes, you do,” he said. “But I want you to remember something. The prosecution’s burden is only probable cause. And we’re before Judge Wallace ...”

“Whitey Wallace, I know,” she interrupted. “I heard about him. Everyone in our church votes against him. We’re just outnumbered in this community.”

“So don’t be upset if we don’t beat it here,” he cautioned. “Even if it goes up to circuit court, we have a great chance before a jury.”

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He went into the conference room. The prosecutor sat at a table, a mountainous stack of files on the table before him. A couple of police officers were in the room waiting to find out if they were going to have to testify in their cases or be excused when the defense attorney waived their client’s preliminary exam. He was not going to waive. He had a witness that the prosecutor and court officer overlooked.

He waited his turn with a handful of other defense attorneys. The prosecutor was a young man with whom he had worked before. An intern in the prosecutor’s office, when he passed the bar exam three years ago they hired him. Clean-cut kid, no facial hair, wearing a navy, pinstriped suit.

“Who do you have?” the prosecutor asked when his turn came.

“Johnson,” he replied.

“Yes,” the prosecutor said, finding the file. “The cane-swinger. Isn’t she a little old to be trying out for the Tigers?”

“She didn’t do anything wrong,” he said. “Certainly not assault with a dangerous weapon.”

“Of course not,” the prosecutor said. “She was only being sued for taking her cane to a woman’s car and decided to take a swing at the plaintiff in the court hallway. Nothing wrong with that, right?”

“Who are your witnesses?” he asked.

“I’ve got the victim and Officer White, who came out of Judge Wallace’s court room to take her statement. So are you holding the exam or waiving?”

“What are you offering?”

“I can’t offer much. The victim wants it fully prosecuted, though I see your client doesn’t have a record. If she pleads to a misdemeanor assault charge, I can offer a deferred sentence.”

“No dismissal?”

“Hah!” the prosecutor laughed. “If that’s what you’re looking for, you’re better off waiving it and taking it up to circuit court.”

“No thanks,” he said. “I have a witness, too. We’ll hold the exam.”

“Okay. Let Officer White know, and we’ll take care of it after I’m through with all of these,” he said, patting the stack of files before him.

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He went into the courtroom to check in. Officer White was dressed in uniform. The hair on his head was Crisco white, which matched his bushy handlebar mustache. He looked at him through a pair of gray-rimmed glasses and nodded.

“I’ve got you checked in,” the officer said. “Is Ms. Johnson with you?”

“Yes,” he replied.

“I’m sorry to hear that,” the officer sighed and rolled his blue eyes. “I don’t envy you.”

He set his briefcase on the defense table and opened it. He pulled out the case file and started sorting through it. “Did you actually see it happen?”

“No,” Officer White said. “I was called out into the hallway by the woman’s friend who your client struck. But I talked to a couple people who said they saw her swinging her cane.”

“I see,” he said, and looked at the police report of the incident. It occurred on a day where a motion in the lawsuit against Ms. Johnson was being held. “They saw her swing her cane, but did they say it struck her?”

“Doesn’t matter, it was close enough to the woman who claims she was struck,” Officer White said, then beckoned him to come closer so he could whisper. “There was one black woman who said she didn’t strike her, but those kind stick together, know what I mean?”

He nodded but did not smile. Officer White probably took the nod to affirm his commentary, but he meant it as an affirmation of why his client was charged to begin with.

“So how many days until retirement?”

“Eighteen,” the officer grinned. “Then I can move up north to my cottage, do some hunting and fishing, and get away from these ‘other’ people.”

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He remembered the conversation. She had called to talk to her mother, but she was out shopping.

“What did you want to tell her?” he asked.

“Oh nothing. Just girl stuff.”

“Is it about a boy named Keith?”

“How do you know about him?” She sounded surprised.

“Your mom doesn’t keep secrets from me,” he said. “So what’s the issue?”

“Well ...”

“You can tell me. I am your father.”

“There is something you should know about him that you might not like.”

“Oh? What would that be?”

There was a pause. “He loves Chicago sports teams. Dad? Are you still there?”

“Loves?” He sighed. “What do you mean by ‘loves?’”

“Well ... he has Cubs and Bears logos tattooed on his left bicep and Blackhawks and Bulls logos tattooed on his right.”

He had hated Chicago teams for as long as he could remember. His college roommate was from Chicago. He had a bravado about him that was proud to be from that city and considered it superior to New York, and knew it certainly was better than Detroit. He wasn't the only one. He worked with a guy while going to law school who was from Chicago. Same mentality. Chicago was superior in all ways to any other city in the world. The few visits he made to that town left him unimpressed.

And their sports fans were the worst. Cubs fans threw baseballs hit into the home run bleachers by an opposing player back out on the field. White Sox fans destroyed the field in a pre-game anti-disco rally. And don't get him started on the Blackhawks fans. His college roommate told him of a study done that found that more beer per capita was consumed at a Blackhawks game than was consumed at a Cubs, Bears, and Bulls game combined. He experienced a beer shower at Chicago Stadium one afternoon when he traveled with friends to a Wings-Blackhawks match. He even attended an International Hockey League game between the Detroit Vipers and Chicago Wolves at the Rosemont Horizon and was told by the usher after a pre-game skate brawl that he could not guarantee his or his friends' safety while they wore their Vipers jerseys.

Another Chicago fan was about to enter his life. The boy had a major strike against him.

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He sat at the defense table deeply focused on the testimony of the prosecutor's witness. The prosecutor deftly guided the woman through her testimony.

“And where were you standing?” he asked.

“Just outside the courtroom, waiting to go in for our case to be called.” The silver-haired woman with make-up so thick it was almost clownish demonstrated controlled anger, like a proper lady not intending to make a scene.

“And why were you outside the courtroom?”

“I had a civil lawsuit against the defendant. She struck my car with that cane.”

“So what happened in the hallway?”

“Well, I had my back to her and I felt something hit my side. My sister was with me and she said that woman hit me with her cane.”

The prosecutor ended his examination after a few more questions. He rose to offer his only cross-examination question of the witness.

“What was the result of the civil matter you filed against Ms. Johnson?”

The woman sneered and said, “It was dismissed.”

He ended his cross examination. Mrs. Silverman, the witness, walked out of the witness box. Her lips were pinched tight and her nose was up in the air as she walked past their table.

The prosecutor leaned over to talk to the man sitting with him at the table. He wore a suit and tie and was a little older than the prosecutor. He knew him to be the arresting officer who would have taken witness statements at the scene of the alleged crime. When he went through the police report and the four witness statements, there were three things in common—they saw Ms. Johnson swinging her cane; they did not see her strike anyone; and they were all Caucasian.

After a brief conversation with the officer in charge, the prosecutor said, “Your Honor, I was going to call your court officer to testify, but I believe that Mrs. Silverman’s testimony provides your Honor with enough probable cause to have this matter bound over to circuit court, and the People rests its case.”

“Very well,” Judge Wallace said as he stroked his salt and pepper goatee. “Does the defense have anything?”

“Yes, your Honor,” he said as he rose from his seat. He released the latches on his briefcase and opened it. “Mrs. Silverman claimed that she was struck by Ms. Johnson’s cane. Your court officer went out into the hallway to address the issue, but did not witness the alleged incident. The investigating officer obtained witness statements from individuals who saw Ms. Johnson twirl her cane, but aside from Mrs. Silverman’s testimony, no one witnessed the cane striking Mrs. Silverman. Based on these allegations, we have a prosecutor that jumped on the matter and charged Ms. Johnson with assault with a dangerous weapon. Everything leading up to this moment was conducted irrationally with an overzealous prosecutorial mindset. In their haste and tunnel vision, they all failed to consult the only objective eyewitness to the event.”

He reached within the briefcase and pulled out a compact disc held within an appropriately sized envelope. “That witness is the court security cameras.”

“This DVD,” he continued, “which was burned for me by the court’s administrator, clearly shows that Ms. Johnson twirled her cane up and down the hall several times, showing no intention of directing the action toward Mrs. Silverman. Furthermore, it clearly shows that Ms. Johnson’s cane never made contact with Mrs. Silverman. Mrs. Silverman was never put in apprehension of Ms. Johnson or her cane because her back was to her the entire time.

“I’ll need to see that video,” Judge Wallace ordered. “Court is in recess. Counsel, follow me to my chambers.”

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On the way back from the judge’s chambers, he had a moment while the judge used the restroom to make a call from his cell phone. She picked up on the second ring.

“Hey dad,” she said. “What’s up?”

“I’m in court so I can’t talk long. Your mom said something about you asking about your boyfriend staying at our place over Thanksgiving. And that she was leaving it up to me.”

“Dad,” she said in her distinctive whine, “his family is going to Chicago and he’d have to be all alone during the holiday.”

“I understand, kiddo,” he said. “It’s okay for him to stay with us.”

“You mean it?” She sounded both excited and shocked.

“Yes. He can stay in the guest room.”

He had to give the boy a chance.

“Thanks, dad!” she said. “You know the Lions are playing the Bears on Thanksgiving, right?”

He did. And he would make it okay.

* * *

Twenty minutes later, Judge Wallace took the bench with the attorneys at their appropriate tables and Ms. Johnson to his right. The judge, after clearing his throat, issued the following statement.

“I have had the opportunity to review the security surveillance video of the incident. The video clearly shows Ms. Johnson walking up and down the hallway twirling her cane. It also shows Ms. Johnson pass by Mrs. Silverman several times. Each time Ms. Johnson passes, Mrs. Silverman’s back is to her. It is my opinion that the cane probably did not make contact with Mrs. Silverman. It is also my opinion, upon viewing the video, that Mrs. Silverman could not have been placed in fear or apprehension of being struck by Ms. Johnson’s cane because she clearly did not witness Ms. Johnson twirling her cane. Because of this, the prosecution does not have probable cause to advance these charges and the case is dismissed.”

“Your Honor?” he asked. Before he could finish his question, the judge, staring him in the eyes, answered him.

“Dismissed with prejudice, counselor.”