

APPELLATE DEFENDER COMMISSION

SUITE 3300 PENOBSCOT • 645 GRISWOLD • DETROIT, MICHIGAN 48226 • 313/256-9833 • FAX 313/965-0372

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COURT OF APPEALS DESIGNEE

Media Release
March 10, 2015

Contact: Wendy Schaub
Secretary to the Appellate Defender Commission
(313) 256-9833
wschaub@sado.org

Appellate Defender Commission Selects Attorneys Michael A. Faraone and Christine Pagac as 2014 Award Recipients

Michael A. Faraone – Recipient of 2014 Barbara R. Levine Award for Excellence in Appellate Advocacy

Mr. Faraone was selected as the Levine Award recipient not only for his excellent service to his MAACS roster clients since 1992, but also for his extraordinary work in the case of *People v. Levon Lee Bynum*, 496 Mich. 610 (2014).

Mr. Bynum was tried and convicted in the Calhoun County Circuit Court on charges of first-degree murder, two counts of assault with intent to murder, carrying a concealed weapon, and felony-firearm for a fatal shooting at a party store in August of 2010. In addition to eyewitnesses, the prosecution called Battle Creek Police Officers to testify at trial as experts about the circumstances of the crime, and that Mr. Bynum and others involved in the crimes were known members of the “Boardman Boys” gang.

A police officer testifying as an expert witness described gangs, the common characteristics and cultural values shared by gang members, membership types, and specific events involved in the crime. The officer also offered an opinion about Mr. Bynum’s state of mind, in part based upon surveillance footage from the party store.

In reversing Bynum’s convictions, the Michigan Court of Appeals, in a 2-1 decision, found that the officer was properly qualified as a witness, but that his testimony went far beyond proper limits and was, in fact, improper propensity evidence on the essential element of premeditation. On July 11, 2014, the Michigan Supreme Court affirmed the result, remanding for a new trial. The trial court erred in allowing the gang expert to give opinion testimony, in violation of MRE 404(a), that the defendant acted in conformity with the character traits commonly associated with gang members.

Prior to this decision, the applicability of the rules of evidence to gang expert testimony had not been addressed by the Supreme Court. The *Bynum* decision was recently cited as the basis for reversing another murder conviction in a separate case, where the same officer testified beyond the permissible scope of the expertise.

Christine Pagac – Recipient of 2014 Norris J. Thomas Award for Excellence in Appellate Advocacy

In her tenth year with SADO, Christine Pagac was selected as a recipient of the Thomas Award for her recent representation of two clients in successful exonerations, and she joined each of them for their release from prison.

James Grissom

James Grissom served 10 years in prison for a sexual assault he did not commit, vindicated after Ms. Pagac's appellate advocacy and SADO investigation revealed the complainant's history of manufacturing false sexual assault allegations. In 2013, the complainant was convicted of falsely accusing two other men of rape in 2012.

Jimmie Nelson

In this high-publicity Iosco County cold case murder conviction, the Court of Appeals ordered a new trial based on newly discovered evidence of a different suspect and a stipulation with the prosecution for relief. The prosecution subsequently dismissed all charges. Through Ms. Pagac's determined efforts, Mr. Nelson was exonerated after almost four years of wrongful imprisonment.

The *Grissom* and *Nelson* cases are featured on the National Exoneration Registry, <http://www.law.umich.edu/special/exoneration/Pages/about.aspx>

Two exonerations and freed clients in less than two years is a virtually unprecedented accomplishment for an Assistant Defender. In addition to working full time as an Assistant Defender, Ms. Pagac teaches appellate advocacy at the University of Michigan Law School and has also taught several courses at Wayne State Law School. A regular advocate in the Michigan Supreme Court, Christine's other noteworthy cases include *People v. Derror*, 475 Mich. 316 (2006), *People v. Holley*, 480 Mich. 222 (2008), and *People v. Dowdy*, 489 Mich. 373 (2011). Christine has another client on the National Exoneration Registry, Wayne Dabb, who was exonerated in 2008 after serving two years in prison.