New York State
2017 Mock Trial Summer Institute Case Materials

People of the State of New York

v.

P.J. Long

(This case was created in 2012 and was updated in 2016 to include revised Rules of Evidence dated Feb. 18, 2016).

Materials prepared by the Law, Youth & Citizenship Program of the New York State Bar Association®

Supported by The New York Bar Foundation

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STANDARDS OF CIVILITY

". . . [O]urs is an honorable profession, in which courtesy and civility should be observed as a matter of course."
Hon. Judith S. Kaye, Former Chief Judge of the State of New York

The following standards apply to all Mock Trial Tournament participants, including students, teachers, attorneys, and parents/guardians. A Mock Trial Tournament participant's failure to abide by any of these standards may result in the disqualification of his or her team from the Tournament, pursuant to the sole discretion of the New York State Bar Association Law, Youth and Citizenship Committee's Mock Trial Subcommittee.

1. Lawyers should be courteous and civil in all professional dealings with other persons.

2. Lawyers should act in a civil manner regardless of the ill feelings that their clients may have toward others.

3. Lawyers can disagree without being disagreeable. Effective representation does not require antagonistic or acrimonious behavior. All participants in the Mock Trial Tournament shall avoid vulgar language or other acrimonious or disparaging remarks, whether oral or written, about other Mock Trial Tournament participants.

4. Lawyers should require that persons under their supervision conduct themselves with courtesy and civility.

5. A lawyer should adhere to all expressed promises and agreements with other counsel, whether oral or in writing, and to agreements implied by the circumstances or by local customs.

6. A lawyer is both an officer of the court and an advocate. As such, the lawyer should always strive to uphold the honor and dignity of the profession, avoid disorder and disruption in the courtroom, and maintain a respectful attitude toward the court.

7. Lawyers should speak and write civilly and respectfully in all communications with the court and court personnel.

8. Lawyers should use their best efforts to dissuade clients and witnesses from causing disorder or disruption in the courtroom.

9. Lawyers should not engage in conduct intended primarily to harass or humiliate witnesses.

10. Lawyers should be punctual and prepared for all court appearances; if delayed, the lawyer should notify the court and counsel whenever possible.

11. Court personnel are an integral part of the justice system and should be treated with courtesy and respect at all times.

The foregoing Standards of Civility are based upon the Standards of Civility for the New York State Unified Court System.

SIMPLIFIED RULES OF EVIDENCE AND PROCEDURE

In trials in the United States, elaborate rules are used to regulate the admission of proof (i.e., oral or physical evidence). These rules are designed to ensure that both parties receive a fair hearing and to exclude any evidence deemed irrelevant, incompetent, untrustworthy, or unduly prejudicial. If it appears that a rule of evidence is being violated, an attorney may raise an objection to the judge.

The judge then decides whether the rule has been violated and whether the evidence must be excluded from the record of the trial. In the absence of a properly made objection, however, the judge will probably allow the evidence. The burden is on the attorneys to know the rules of evidence and to be able to use them to protect their client and to limit the actions of opposing counsel and their witnesses.

Formal rules of evidence are quite complicated and differ depending on the court where the trial occurs. For purposes of this Mock Trial Tournament, the New York State rules of evidence have been modified and simplified. Not all judges will interpret the rules of evidence or procedure the same way, and you must be prepared to point out the specific rule (quoting it, if necessary) and to argue persuasively for the interpretation and application of the rule that you think is proper. No matter which way the judge rules, you should accept the ruling with grace and courtesy.

1. SCOPE

Rule 101: **SCOPE**. These rules govern all proceedings in the mock trial competition. The only rules of evidence in the competition are those included in these rules.

Rule 102: **OBJECTIONS**. The court shall not consider an objection that is not contained in these rules. If counsel makes an objection not contained in these rules, counsel responding to the objection must point out to the judge, citing Rule 102 that the objection is beyond the scope of the listed objections. However, if counsel responding to the objection does not point out to the judge the application of this rule, the court may exercise its discretion and consider such objection.

2. RELEVANCY

Rule 201: **RELEVANCY**. Only relevant testimony and evidence may be presented. This means that the only physical evidence and testimony allowed is that which tends to make a fact which is important to the case more or less probable than the fact would be without the evidence.

However, if the probative value of the relevant evidence is substantially outweighed by the danger that the evidence will cause unfair prejudice, confuse the issues, or result in undue delay or a waste of time, the court may exclude it. This may include testimony, physical evidence, and demonstrations that do not relate to time, event or person directly involved in the litigation.

Example:

Photographs present a classic problem of possible unfair prejudice. For instance, in a murder trial, the prosecution seeks to introduce graphic photographs of the bloodied victim. These photographs would be relevant because, among other reasons, they establish the victim's death and location of the wounds. At the same time, the photographs present a high danger of unfair prejudice, as they could cause the jurors to feel incredible anger and a desire to punish someone for the vile crime. In other words, the photographs could have an inflammatory effect on the jurors, causing them to substitute passion and anger for reasoned analysis. The defense therefore should object on the ground that any probative value of the photographs is substantially outweighed by the danger of unfair prejudice to the defendant. Problems of unfair prejudice often can be resolved by offering the evidence in a matter that retains the probative value, while reducing the danger of unfair prejudice. In this example, the defense might stipulate to the location of the wounds and the cause of death. Therefore, the relevant aspects of the photographs would come in, without the unduly prejudicial effect.

Rule 202: CHARACTER. Evidence about the character of a party or witness may not be introduced unless the person's character is an issue in the case or unless the evidence is being offered to show the truthfulness or untruthfulness of the party or witness. Evidence of character to prove the person's propensity to act in a particular way is generally not admissible in a civil case.

In a criminal case, the general rule is that the prosecution cannot initiate evidence of the bad character of the defendant to show that he or she is more likely to have committed the crime. However, the defendant may introduce evidence of her good character to show that she is innocent, and the prosecution may offer evidence to rebut the defense's evidence of the defendant's character. With respect to the character of the victim, the general rule is that the prosecution cannot initiate evidence of the character of the victim. However, the defendant may introduce evidence of

the victim's good or (more likely) bad character, and the prosecution may offer evidence to rebut the defense's evidence of the victim's character.

Examples:

A limousine driver is driving Ms. Daisy while he is intoxicated and gets into a car accident injuring Ms. Daisy. If Ms. Daisy sues the limousine company for negligently employing an alcoholic driver, then the driver's tendency to drink is at issue. Evidence of the driver's alcoholism is admissible because it is not offered to demonstrate that he was drunk on a particular occasion. The evidence is offered to demonstrate that the limousine company negligently trusted him to drive a limousine when it knew or should have known that the driver had a serious drinking problem.

Sally is fired and sues her employer for sexual harassment. The employer cannot introduce evidence that Sally experienced similar problems when she worked for other employers.

Evidence about Sally's character is not admissible to prove that she acted in conformity with her prior conduct, unless her character is at issue or it relates to truthfulness.

If an attorney is accused of stealing a client's money, he may introduce evidence to demonstrate that he is trustworthy. In this scenario, proof of his trustworthiness makes it less probable that he stole the money.

Richard is on trial for punching his coworker, Larry, during an argument. The prosecution wants to offer that Richard has, in the past, lost his temper and has neared physical altercations. This evidence constitutes character evidence within the meaning of the rule, because it is being offered to show that Richard has a propensity for losing his temper and that he may have acted in conformity with this character trait at the time he struck Larry.
Therefore, it would only be admissible if Richard, as the defendant, has decided to place his character at issue.

Rule 203: OTHER CRIMES, WRONGS, OR ACTS. Evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person. Such evidence, however, may be admissible for purposes other than to prove character, such as to show motive, intent, preparation, knowledge, or identity.

Examples:

Harry is on trial for stealing from a heavy metal safe at an office. The prosecution seeks to offer evidence that, on an earlier date Harry opened the safe and stole some money from the safe. The evidence is not being offered to show character (in other words, it is not being offered to show that Harry is a thief), but rather it is being offered to show that Harry knew how to crack the safe. This evidence therefore places Harry among a very small number of people who know how to crack safes and, in particular, this safe. The evidence therefore goes to identity and makes Harry somewhat more likely to be guilty.

William is on trial for murder after he killed someone during a fight. The prosecution seeks to offer evidence that a week earlier William and the victim had another physical altercation. In other words, the victim was not some new guy William has never met before; rather, William and the victim had a history of bad blood. The evidence of the past fight would be admissible because it is not being offered to show that William has bad character as someone who gets into fights, but rather to show that William may have had motive to harm his victim.

In the same trial, the evidence shows that the victim died after William struck him in the larynx. William's defense is that the death was completely accidental and that the fatal injury suffered by his victim was unintended and a fluke. The prosecution seeks to offer evidence that William has a black belt in martial arts, and therefore has knowledge of how to administer deadly strikes as well as the effect of such strikes. This evidence would be admissible to show the death was not an accident; rather, William was aware that the strike could cause death.

3. WITNESS EXAMINATION

a. Direct Examination (attorneys call and question witnesses)

Rule 301: FORM OF QUESTION. Witnesses should be asked direct questions and may not be asked leading questions on direct examination. Direct questions are phrased to evoke a set of facts from the witnesses. A leading question is one that suggests to the witness the answer desired by the examiner and often suggests a "yes" or "no" answer.

Example of a Direct Question: "*What is your current occupation*?"

Example of a Leading Question: "*Isn't it true that in your current position you are responsible for making important investment decisions*?"

Narration: While the purpose of direct examination is to get the witness to tell a story, the questions must ask for specific information. The questions must not be so broad that the witness is allowed to wander or "narrate" a whole story. Narrative questions are objectionable.

Example of a Narrative Question: "*Please describe how you were able to achieve your financial success." Or "Tell me everything that was said in the board room on that day.*"

Narrative Answers: At times, a direct question may be appropriate, but the witness's answer may go beyond the facts for which the question was asked. Such answers are subject to objection on the grounds of narration.

Objections:
"*Objection. Counsel is leading the witness." "Objection. Question asks for a narration." "Objection. Witness is narrating."*

Rule 302: SCOPE OF WITNESS EXAMINATION. Direct examination may cover all the facts relevant to the case of which the witness has first-hand knowledge. Any factual areas examined on direct examination may be subject to cross-examination.

Objection:
"Objection. The question requires information beyond the scope of the witness's knowledge."

Rule 303: REFRESHING RECOLLECTION. If a witness is unable to recall a statement made in an affidavit, the attorney on direct may show that portion of the affidavit that will help the witness to remember.

b. Cross-examination (questioning the other side's witnesses)

Rule 304: FORM OF QUESTION. An attorney may ask leading questions when cross-examining the opponent's witnesses. Questions tending to evoke a narrative answer should be avoided.

Rule 305: SCOPE OF WITNESS EXAMINATION. Attorneys may only ask questions that relate to matters brought out by the other side on direct examination, or to matters relating to the credibility of the witness. This includes facts and statements made by the witness for the opposing party. Note that many judges allow a broad interpretation of this rule.

Objection:
"Objection. Counsel is asking the witness about matters that did not come up in direct examination."

Rule 306: IMPEACHMENT. An attorney may impeach the credibility of a witness (show that a witness should not be believed) in the following ways:

1. A witness may testify as to another witness's reputation for truthfulness, provided that an adequate foundation is established for the testifying witness's ability to testify about the other witness's reputation.

   Example:
   Ben testifies at trial. Jeannette then takes the stand and is familiar with Ben's reputation in the community as not being truthful. Jeannette therefore would be able to testify to Ben's reputation for truthfulness.

2. Counsel may ask questions demonstrating that the witness has made statements on other occasions that are inconsistent with the witness's present testimony. A foundation must be laid for the introduction of prior contradictory statements by asking the witness whether he or she made such statements.

Example:

If a witness previously stated that the car was black but at trial testified that the car was red, the witness could be questioned about this prior inconsistent statement for impeachment purposes.

3. An attorney may ask questions demonstrating the witness's bias in favor of the party on whose behalf the witness is testifying, or hostility toward the party against whom the witness is testifying or the witness's interest in the case.

Examples:

"Isn't it true that you are being paid to testify at this trial?" If the witness is paid to testify, he may have an incentive not to tell the truth while testifying.

Steve is on trial for bank robbery, and calls his father as a defense witness to testify that they were watching football at the time of the crime. On cross-examination, the prosecutor could attempt to demonstrate the father's bias that could cause him to fabricate an alibi for his son. Proper questions to impeach the father's credibility might include, "You love your son very much, don't you?" and "You don't want to see your son go to jail, do you?"

Rule 307: IMPEACHMENT BY EVIDENCE OF A CRIMINAL CONVICTION.

For the purpose of attacking the credibility of a witness, evidence that the witness has been convicted of a crime shall be admitted, but only if the crime was a felony or involved moral turpitude, regardless of punishment, and the court determines that the value of this evidence as reliable proof outweighs its prejudicial effect to a party. Crimes of moral turpitude are crimes that involve dishonesty or false statements. These crimes involve the intent to deceive or defraud, such as forgery, perjury, counterfeiting and fraud.

Example:

"Have you ever been convicted of criminal possession of marijuana?"

Objections:

"Objection. The prejudicial effect of this evidence outweighs its usefulness."

"Objection. The prior conviction being testified to is not a felony or a crime involving moral turpitude."

c. Re-Direct Examination

Rule 308: LIMIT ON QUESTIONS. After cross-examination, up to three, but no more than three questions, may be asked by the attorney conducting the direct examination, but such questions are limited to matters raised by the attorney on cross-examination. The presiding judge has considerable discretion in deciding how to limit the scope of re-direct.

NOTE: If the credibility or reputation for truthfulness of the witness has been attacked on cross-examination, the attorney whose witness has been damaged may wish to ask several more questions. These questions should be limited to the damage the attorney thinks has been done and should be phrased so as to try to "save" the witness's truth-telling image in the eyes of the court. Re-direct examination is limited to issues raised by the attorney on cross-examination. Please note that at times it may be more appropriate <u>not</u> to engage in re- direct examination.

<u>Objection</u>:
"Objection. Counsel is asking the witness about matters that did not come up in cross-examination."

d. Re-Cross Examination

Rule 309: LIMIT ON QUESTIONS. Three additional questions, but no more than three, may be asked by the cross-examining attorney, but such questions are limited to matters on re-direct examination and should avoid repetition. The presiding judge has considerable discretion in deciding how to limit the scope of re-cross. Like re-direct examination, at times it may be more appropriate <u>not</u> to engage in re-cross-examination.

<u>Objection</u>:
"Objection. Counsel is asking the witness about matters that did not come up on re-direct examination."

e. Argumentative Questions

Rule 310: Questions that are argumentative should be avoided and may be objected to by counsel. An argumentative question is one in which the cross-examiner challenges the witness about his or her inference from the facts, rather than seeking additional facts.

Example:
"*Why were you driving so carelessly*?"

Objection:
"Objection. "Your Honor, counsel is being argumentative."

f. Compound Questions

Rule 311: Questions that are compound in nature should be avoided and may be objected to by counsel. A compound question requires the witness to give one answer to a question, which contains two separate inquiries. Each inquiry in an otherwise compound question could be asked and answered separately.

Examples:
"Tony, didn't you get sued by the buyer of your company and get prosecuted by the IRS?"

"Did you see and feel the residue on the counter?"

Objection:
"Objection. "Your Honor, counsel is asking a compound question."

g. Asked and Answered Questions

Rule 312: A student-attorney may not ask a student-witness a question that the student-attorney has already asked that witness. Such a question is subject to objection, as having been asked and answered.

Objection:

"Objection. "Your Honor, the witness was asked and answered this question."

h. Speculation

Rule 313: Questions that ask a witness to speculate about matters not within his personal knowledge are not permitted, and are subject to an objection by opposing counsel.

Example:

"Do you think your friend Robert knew about the robbery in advance?"

Objection:

"Objection. Your Honor, the question asks the witness to speculate."

4. HEARSAY

Understanding and applying the Hearsay Rule (Rule 401), and its exceptions (Rules 402, 403, 404, and 405), is one of the more challenging aspects of the Mock Trial Tournament. We strongly suggest that teacher-coaches and students work closely with their attorney-advisors to better understand and more effectively apply these evidentiary rules.

Rule 401: HEARSAY. A statement made out of court (i.e., not made during the course of the trial in which it is offered) is hearsay if the statement is offered for the truth of the fact asserted in the statement. A judge may admit hearsay evidence if it was a prior out-of-court statement made by a party to the case and is being offered against that party. The party who made the prior out-of-court statement can hardly complain about not having had an opportunity to cross-examine himself regarding this statement. He said it, so he has to live with it. He can explain it on the witness stand. Essentially, the witness on the stand is repeating what she heard someone else say outside of the courtroom. The hearsay rule applies to both written as well as spoken statements. If a statement is hearsay and no exceptions to the rule are applicable, then upon an appropriate objection by opposing counsel, the statement will be inadmissible.

REASONS FOR EXCLUDING HEARSAY: The reason for excluding hearsay evidence from a trial is that the opposing party was denied the opportunity to cross-examine the declarant about the statement. The declarant is the person who made the out-of-court statement. The opposing party had no chance to test the declarant's perception (how well did she observe the event she purported to describe), her memory (did she really remember the details she related to the court), her sincerity (was she deliberately falsifying), and her ability to relate (did she really mean to say what now appears to be the thrust of her statement).

The opportunity to cross-examine the witness on the stand who has repeated the statement is not enough because the judge or the jury is being asked to believe what the declarant said.

Example:

Peter is on trial for allegedly robbing a Seven-Eleven store on May 1. A witness who is testifying on Peter's behalf testifies in the trial, "I heard Joe say that he (Joe) went to the Seven-Eleven on May 1." Peter, the party offering the witness's testimony as evidence, is offering it to prove that Joe was in the Seven-Eleven on May 1, presumably to create a question as to whether it could have been Joe at the scene of the crime, rather than Peter. In this example, Joe is the declarant. The reason why the opposing party, in this case the prosecution, should object to this testimony is that the prosecution has no opportunity to cross-examine Joe to test his veracity (was he telling the truth or just trying to help his friend Peter out of a mess) or his memory (was Joe sure it was May 1 or could it have been May 2)?

5. EXCEPTIONS

Hearsay may be admissible if it fits into certain exceptions. The exceptions listed below are the only allowable exceptions for purposes of the Mock Trial Tournament.

Rule 402: ADMISSION OF A PARTY OPPONENT: A judge may admit hearsay evidence if it was a prior out-of-court statement made by a party to the case that amounts to an admission that is against that party's interest at trial. Essentially, the party's own out-of- court statement is being offered into evidence because it contains an admission of responsibility or an acknowledgment of fault. The party who made the prior out-of-court statement can hardly complain about not having had the opportunity to cross-examine himself. He said it, so he has to live with it. He can explain it on the witness stand.

Example:

Pam is involved in a car accident. Wendy was at the scene of the crash. At Pam's trial, Wendy testifies that she heard Pam say, "I can't believe I missed that stop sign!" At the trial, Wendy's testimony of Pam's out-of-court statement, although hearsay, is likely to be admitted into evidence as an admission against a party's interest. In this example, Pam is on trial so she can testify about what happened in the accident and refute having made this statement or explain the circumstances of her statement.

Rule 403: STATE OF MIND: A judge may admit an out-of-court statement of the declarant's then existing state of mind, emotion, sensation, or physical condition (such as intent, plan, motive, design, mental feeling, pain, and bodily health). Such out-of-court statements of pain or intent do not present the usual concerns with the reliability of hearsay testimony. For instance, when a witness testifies as to a declarant's statement of intent, there are no memory problems with the declarant's statement of intent and there are no perception problems because a declarant cannot misperceive intent. When applying this exception, it is important to keep in mind that the reliability concerns of hearsay relate to the out-of-court declarant, not to the witness who is offering the statement in court.

Example:

Mike is on trial for a murder that occurred at the West End Restaurant. Mike's defense relies upon the theory that another person, Jane, committed the murder. The defense then calls a witness who testifies that on the night of the murder he heard Jane say that she intended to go to the West End Restaurant. This hearsay statement is admissible as proof of Jane's intent to go to the restaurant.

Rule 404: BUSINESS RECORDS. A judge may admit a memorandum, report, record, or data compilation concerning an event or act, provided that the record was made at or near the time of the act by a person with knowledge and that the record is kept in the regular course of business. The rationale for this exception is that this type of evidence is particularly reliable because of the regularity with which business records are kept, their use and importance in the business and the incentive of employees to keep accurate records or risk being reprimanded by the employer.

Example:

Diane is on trial for possession of an illegal weapon. The prosecution introduces a written inventory prepared by a police officer of items, including a switchblade knife, taken from Diane when she was arrested as evidence of Diane's guilt. The written inventory is admissible. In this example, the statement that is hearsay is the written inventory (hearsay can be oral or written), the declarant is the police officer who wrote the inventory and the inventory is being offered into evidence to prove that Diane had a switchblade knife in her possession. The reason that the written inventory is admissible is that it was a record made at the time of Diane's arrest by a police officer, whose job required her to prepare records of items taken from suspects at the time of arrest and it was the regular practice of the police department to prepare records of this type at the time of an arrest.

Rule 405: PRESENT SENSE IMPRESSION. A judge may admit an out-of- court statement of a declarant's statement describing or explaining an event or condition made while the declarant was perceiving the event or condition, or immediately thereafter. The rationale for this exception is that a declarant's description of an event as it is occurring is reliable because the declarant does not have the time to think up a lie.

Example:

James is witnessing a robbery and calls 911. While on the phone with the 911 operator, James describes the crime as it is occurring and provides a physical description of the robber. These hearsay statements are admissible because they are James's description or explanation of an event – the robbery – as James perceives that event.

Rule 406: STATEMENTS IN LEARNED TREATISES. A statement contained in a treatise, periodical, or pamphlet is admissible if:

(A) The statement is called to the attention of an expert witness on cross-examination or relied on by the expert on direct examination; and

(B) The publication is established as a reliable authority by the expert's admission or testimony, by another expert's testimony, or by judicial notice.

If admitted, the statement may be read into evidence but not received as an exhibit.

Example:

Dr. G, plaintiff's expert witness, is being cross-examined by defendant's counsel. During the cross-examination Dr. G is shown a volume of a treatise on cardiac surgery, which is the subject of Dr. G's testimony. Dr. G is asked if s/he recognizes the treatise as reliable on the subject of cardiac surgery. Dr. G acknowledges that the treatise is so recognized.

Portions of the treatise may then be read into evidence although the treatise is not to be received as an exhibit.

If Dr. G does not recognize the treatise as authoritative, the treatise may still be read to the jury if another expert witness testifies as to the treatise's reliability or if the court by judicial notice recognizes the treatise as authoritative.

6. OPINION AND EXPERT TESTIMONY

Rule 501: OPINION TESTIMONY BY NON-EXPERTS. Witnesses who are not testifying as experts may give opinions which are based on what they saw or heard and are helpful in explaining their story. A witness may not testify to any matter of which the witness has no personal knowledge, nor may a witness give an opinion about how the case should be decided. In addition, a non-expert witness may not offer opinions as to any matters that would require specialized knowledge, training, or qualifications.

Example:

(General Opinion)

The attorney asks the non-expert witness, "Why is there so much conflict in the Middle East?" This question asks the witness to give his general opinion on the Middle East conflict.
Note: This question is objectionable because the witness lacks personal perceptions as to the conflict in the Middle East and any conclusions regarding this issue would require specialized knowledge.

Objection:

"Objection. Counsel is asking the witness to give an opinion."

Example:

(Lack of Personal Knowledge)

The attorney asks the witness, "Why do you think Abe skipped class?" This question requires the witness to speculate about Abe's reasons for skipping class.

Objection:

"*Objection. The witness has no personal knowledge that would enable him/her to answer this question."*

Example:

(Opinion on Outcome of Case)

The attorney asks the witness, "Do you think the defendant intended to commit the crime?" This question requires the witness to provide a conclusion that is directly at issue and relates to the outcome of the case.

Objection:

"Objection. The question asks the witness to give a conclusion that goes to the finding of the Court."

Rule 502: OPINION TESTIMONY BY EXPERTS. Only persons qualified as experts may give opinions on questions that require special knowledge or qualifications. An expert may be called as a witness to render an opinion based on professional experience. The attorney for the party for whom the expert is testifying must qualify the witness as an expert. This means that before the expert witness can be asked for an expert opinion, the questioning attorney must bring out the expert's qualifications, education and/or experience.

Example:

The attorney asks the witness, an auto mechanic, "Do you think Luke's recurrent, severe migraine headaches could have caused him to crash his car into the side of George's house?"

Objection:

"Objection. Counsel is asking the witness to give an expert opinion for which the witness has not been qualified."

However, a doctor can provide an expert opinion on how migraine headaches affect eyesight.

7. PHYSICAL EVIDENCE

Rule 601: INTRODUCTION OF PHYSICAL EVIDENCE. Physical evidence may be introduced if it is relevant to the case. Physical evidence will not be admitted into evidence until it has been identified and shown to be authentic or its identification and/or authenticity have been stipulated to. That a document is "authentic" means only that it is what it appears to be, not that the statements in the document are necessarily true.

A prosecutor must authenticate a weapon by demonstrating that the weapon is the same weapon used in the crime. This shows that the evidence offered (the weapon) relates to the issue (the crime). If the weapon belonged to the prosecutor, it would not be relevant to the defendant's guilt. The evidence must be relevant to the issue to be admissible.

PROCEDURE FOR INTRODUCING EVIDENCE: Physical evidence need only be introduced once. The proper procedure to use when introducing a physical object or document for identification and/or use as evidence is:

Have exhibit marked for identification. *"Your Honor, please mark this as Plaintiff's Exhibit 1 (or Defense Exhibit A) for identification."*

a. Ask witness to identify the exhibit. *"I now hand you what is marked as Plaintiff's Exhibit 1 (or Defense Exhibit A).* Would you identify it, please?"

b. Ask witness questions about the exhibit, establishing its relevancy, and other pertinent questions.

c. Offer the exhibit into evidence. *"Your Honor, we offer Plaintiff's Exhibit 1 (or Defense Exhibit A) into evidence at this time."*

d. Show the exhibit to opposing counsel, who may make an objection to the offering.

e. The Judge will ask opposing counsel whether there is any objection, rule on any objection, admit or not admit the exhibit.

f. If an exhibit is a document, hand it to the judge.

NOTE: After an affidavit has been marked for identification, a witness may be asked questions about his or her affidavit without its introduction into evidence. In order to read directly from an affidavit or submit it to the judge, it must first be admitted into evidence.

Rule 602: REDACTION OF DOCUMENT. When a document sought to be introduced into evidence contains both admissible and inadmissible evidence, the judge may, at the request of the party objecting to the inadmissible portion of the document, redact the inadmissible portion of the document and allow the redacted document into evidence.

Objection:

"Objection. Your Honor, opposing counsel is offering into evidence a document that contains improper opinion evidence by the witness. The defense requests that the portion of the document setting forth the witness's opinion be redacted."

Rule 603: *VOIR DIRE* OF A WITNESS. When an item of physical evidence is sought to be introduced under a doctrine that normally excludes that type of evidence (e.g., a document which purports to fall under the business record exception to the Hearsay Rule), or when a witness is offered as an expert, an opponent may interrupt the direct examination to request the judge's permission to make limited inquiry of the witness, which is called "*voir dire*."

The opponent may use leading questions to conduct the *voir dire* but it must be remembered that the *voir dire's* limited purpose is to test the competency of the witness or evidence and the opponent is not entitled to conduct a general cross-examination on the merits of the case.

The *voir dire* must be limited to three questions. The clock will not be stopped for *voir dire*.

8. INVENTION OF FACTS (Special Rules for the Mock Trial Competition)

Rule 701: DIRECT EXAMINATION. On direct examination, the witness is limited to the facts given. Facts cannot be made up. If the witness goes beyond the facts given opposing counsel may object. If a witness testifies in contradiction of a fact given in the witness's statement, opposing counsel should impeach the witness during cross- examination.

Objection:

"*Objection. Your Honor, the witness is creating facts which are not in the record."*

Rule 702: CROSS-EXAMINATION. Questions on cross-examination should not seek to elicit information that is not contained in the fact pattern. If on cross-examination a witness is

asked a question, the answer to which is not contained in the witness's statement or the direct examination, the witness may respond with any answer that does not materially alter the outcome of the trial. If a witness's response might materially alter the outcome of the trial, the attorney conducting the cross-examination may object.

Objection:

"Objection. The witness's answer is inventing facts that would materially alter the outcome of the case."

9. PROCEDURAL RULES

Rule 801: PROCEDURE FOR OBJECTIONS. An attorney may object any time the opposing attorneys have violated the "Simplified Rules of Evidence and Procedure." Each attorney is restricted to raising objections concerning witnesses, whom that attorney is responsible for examining, both on direct and cross-examinations.

NOTE: The attorney wishing to object (only one attorney may object at a time) should stand up and do so at the time of the violation. When an objection is made, the judge will ask the reason for it. Then the judge will turn to the attorney who asked the question and the attorney usually will have a chance to explain why the objection should not be accepted ("sustained") by the judge. The judge will then decide whether a question or answer must be discarded because it has violated a rule of evidence ("objection sustained"), or whether to allow the question or answer to remain on the trial record ("objection overruled").

Rule 802: MOTIONS TO DISMISS. Motions for directed verdict or dismissal are not permitted at any time during the plaintiff's or prosecution's case.

Rule 803: CLOSING ARGUMENTS. Closing arguments must be based on the evidence presented during the trial.

Rule 804: OBJECTIONS DURING OPENING STATEMENTS AND CLOSING ARGUMENTS. Objections during opening statements and closing arguments are **NOT** permitted.

Rule 901: PROSECUTION'S BURDEN OF PROOF (criminal cases).

Beyond a Reasonable Doubt: A defendant is presumed to be innocent. As such, the trier of fact (jury or judge) must find the defendant not guilty, unless, on the evidence presented at trial, the prosecution has proven the defendant guilty beyond a reasonable doubt. Such proof precludes every reasonable theory except that which is consistent with the defendant's guilt. A reasonable doubt is an honest doubt of the defendant's guilt for which a reason exists based upon the nature and quality of the evidence. It is an actual doubt, not an imaginary one. It is a doubt that a reasonable person would be likely to entertain because of the evidence that was presented or because of the lack of convincing evidence. While the defendant may introduce evidence to prove his/her innocence, the burden of proof never shifts to the defendant. Moreover, the prosecution must prove beyond a reasonable doubt every element of the crime including that the defendant is the person who committed the crime charged. (Source: NY Criminal Jury Instructions).

Rule 902: PLAINTIFF'S BURDENS OF PROOF (civil cases).

902.1 Preponderance of the Evidence: The plaintiff must prove his/her claim by a fair preponderance of the credible evidence. The credible evidence is testimony or exhibits that the trier of fact (jury or judge) finds to be worthy to be believed. A preponderance of the evidence means the greater part of such evidence. It does not mean the greater number of witnesses or the greater length of time taken by either side. The phrase refers to the quality of the evidence, *i.e.*, its convincing quality, the weight and the effect that it has on the trier of fact. (Source: NY Pattern Jury Instructions, §1:23).

902.2 Clear and Convincing Evidence: (To be used in cases involving fraud, malice, mistake, incompetency, etc.) The burden is on the plaintiff to prove fraud, for instance, by clear and convincing evidence. This means evidence that satisfies the trier of fact that there is a high degree of probability that the ultimate issue to be decided, *e.g.*, fraud, was committed by the defendant. To decide for the plaintiff, it is not enough to find that the preponderance of the evidence is in the plaintiff's favor. A party who must prove his/her case by a preponderance of the evidence only needs to satisfy the trier of fact that the evidence supporting his/her case more nearly represents what actually happened than the evidence which is opposed to it. But a party who must establish his/her case by clear and

convincing evidence must satisfy the trier of fact that the evidence makes it highly probable that what s/he claims is what actually happened. (Source: NY Pattern Jury Instructions, §1:64).

Rule 903: DIRECT AND CIRCUMSTANIAL EVIDENCE

903.1 Direct evidence: Direct evidence is evidence of a fact based on a witness's personal knowledge or observation of that fact. A person's guilt of a charged crime may be proven by direct evidence if, standing alone, that evidence satisfies the fact-finder (a judge or a jury) beyond a reasonable doubt of the person's guilt of that crime. (Source: NY Criminal Jury Instructions).

903.2 Circumstantial evidence: Circumstantial evidence is direct evidence of a fact from which a person may reasonably infer the existence or non-existence of another fact. A person's guilt of a charged crime may be proven by circumstantial evidence, if that evidence, while not directly establishing guilt, gives rise to an inference of guilt beyond a reasonable doubt. (Source: NY Criminal Jury Instructions).

NOTE: The law draws no distinction between circumstantial evidence and direct evidence in terms of weight or importance. Either type of evidence may be enough to establish guilt beyond a reasonable doubt, depending on the facts of the case as the fact-finder (a judge or a jury) finds them to be. [Source: NY Criminal Jury Instructions].

NEW YORK STATE HIGH SCHOOL MOCK TRIAL

TRIAL SCRIPT

The facts of this case are hypothetical. Any resemblance between the person, facts and circumstances described in these mock trial materials and real persons, facts and circumstances is coincidental.

All witnesses may be portrayed by either sex. All witness names are meant to be gender non-specific. It is stipulated that any enactment of this case is conducted after the named dates in the stipulated facts and witness affidavits.

Written and edited by the Mock Trial Subcommittee of the New York State Bar Association's Law, Youth and Citizenship Committee for the 2012 Statewide Mock Trial Tournament.

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CASE SUMMARY

People v. P.J. LONG
Queen's County Indictment No. 2011-01234

P.J. Long, now 22 years old, is a resident of Pew Gardens in Queens County, New York. Last year, at the age of 21, s/he was charged with criminal assault. The victim is Dana Malone, also 21 years old at the time. On March 18, 2011, s/he was assaulted outside a hip-hop establishment frequented by teenagers and young adults called The Joint. The music is mostly rap and very loud. Dana did not see who attacked him/her. S/he remembers hearing, just before being struck from behind, a voice sounding similar to the defendant reciting the lyrics of a song by gangsta rapper DJ ColdBlooded. The lyrics Dana heard were:

If the sucka gets in my way,
he is gonna have to pay,
that all for now I gotta say,
end of this rotten day.

With the tire iron from my trunk
I will deploy in multiple phases
and the sucka I am sure
will soon be pushing up daisies.

from the song entitled "The Sucka Gotta Die" from the album Total Chaos by DJ ColdBlooded.

DJ ColdBlooded is a Grammy-award winning artist who is very popular with the hip-hop crowd. Ryan Tecrest, a friend of Dana's since middle school, had observed P.J. sitting in his/her car about 90 minutes before the attack, and P.J. was listening over and over to DJ ColdBlooded's song "The Sucka Gotta Die." Ryan likes to hang out at The Joint with Dana and their friends. They also spend a lot of time at Gamez & More on Broadway playing video games. About two years ago, Ryan was arrested for Unauthorized Use of a Vehicle in the Third Degree. The owner of the automobile left the car running when he went into Javabuck's to purchase a cup of coffee. Ryan took the car for a joy ride around town, picking up friends along the way. S/he pleaded guilty and received a conditional discharge.

About 30 minutes before the attack upon Dana, s/he was inside The Joint and had accidentally bumped into the defendant, causing P.J. to spill his/her drink. Although Dana did not intend to bump P.J., Dana did not apologize and told P.J. to "watch it!" Dana then shouted across the room, telling Ryan that they needed to leave The Joint in about 30 minutes. Ryan told Dana that s/he would meet him/her at the car. At approximately 9:00 p.m., while outside The Joint and going to his/her car, Dana was struck from behind by someone wielding a blunt-force metal object. Dana was rendered temporarily unconscious and did not see his/her attacker. Ryan was just exiting The Joint to get a ride with Dana and saw his/her friend on the ground. Ryan also saw someone with what appeared to be a lug wrench, a/k/a tire iron, in his/her hand running away. Ryan could not see the alleged attacker's face, but observed that the person was of similar stature to P.J. and may have been wearing a black leather jacket similar to the one P.J. was wearing that night. The jacket is one of those unisex leather coats with a large white eagle in the

back that is popular with the young adult crowd. As Dana was regaining consciousness, Ryan asked him/her what had happened. Dana said, "I think that dirtbag P.J. Long clocked me." Because s/he had to care for Dana, Ryan could not chase after the assailant. Instead, Ryan helped Dana to his/her feet and drove him/her to the hospital for observation and treatment. Fifteen stitches were required to close the gash in the back of Dana's head.

While in the hospital, Dana was visited by police officer Bobby Callahan. Dana and Ryan told Officer Callahan what had happened to Dana and who they believed the perpetrator to be. Officer Callahan had had many run-ins with P.J. Long over the years, having arrested P.J. on numerous occasions for minor criminal infractions. The officer did not like P.J. because P.J. had filed a complaint against the officer in May 2009 for Tasing him/her during an arrest for one of those minor infractions. Internal Affairs determined that the officer had not committed a crime in using the Taser, but did put a letter of reprimand in his/her personnel file admonishing the officer for using the Taser in that instance. Officer Callahan believes the admonishment letter has prevented him/her from being promoted to detective.

Perceived as a "hothead" around the station house, Officer Callahan has had a rocky relationship with the department command. The officer has had many citizen complaints lodged against him/her over the 15 years on the police force. S/he has appeared before Internal Affairs on at least ten occasions. Although s/he is an honest cop, s/he likes to make arrests and will "push the envelope" to do so. S/he likes to use his/her own techniques in catching criminals and prefers to work alone, having turned down offers to be assigned a partner. Some suspect s/he does not want a partner so that s/he can use his/her "special techniques" in making arrests without scrutiny from other officers.

On the evening of March 18, Sal Maurder, P.J.'s best friend and roommate, noticed at about 10:00 p.m. that P.J. was no longer in The Joint. S/he asked several of their friends where P.J. had gone. No one knew. At approximately 10:30 p.m., Sal, whose nickname is Murda, went to their apartment to look for P.J. S/he found P.J. in the apartment sitting in a chair and repeatedly listening to his/her favorite song "The Sucka Gotta Die." Murda recalls that P.J. may have replayed the song three or four times before they left the apartment at 11:00 p.m. to go to the gaming parlor on Broadway.

Officer Callahan took statements from Dana and Ryan and proceeded to his/her precinct to prepare a felony complaint charging P.J. for Assault in the Second Degree, a class D felony. On the morning of the next day (March 19, 2011), Officer Callahan went to the Criminal Court in Pew Gardens to file the felony complaint and to obtain an arrest warrant. With the arrest warrant in hand, Officer Callahan went to P.J.'s apartment in the late afternoon of March 19 to execute the warrant. No one was home. The officer then went to The Joint early that evening to look for P.J. S/he asked the owner of The Joint, Max Miller, whether s/he had seen P.J. that day. Max has had trouble with the State Liquor Authority (SLA) over the years. Teenagers come to The Joint for the music and to socialize with their friends. They are not permitted to purchase alcoholic drinks, although it is widely known that drinking-age clientele will sometimes provide liquor to the teenagers. Max has been fined by the SLA for allowing teenagers to consume liquor on his/her premises. The Joint does check IDs before serving liquor, but Max could use more bouncers to make sure underage drinking is not occurring there. Max is trying to

run a legitimate business; however, the young crowd attracted to The Joint causes many problems. Max could legally exclude the under-21 patrons from The Joint, but s/he would lose significant income from the over-priced soft drinks and energy drinks that these young people purchase. The loss of this income could result in The Joint closing its doors.

Max wanted to know why the officer was looking for P.J. Officer Callahan told Max that P.J. had assaulted Dana in The Joint's parking lot the night before and that s/he had a warrant for his/her arrest. Always concerned about his liquor license, Max said that s/he was not aware of anyone being attacked in the parking lot, but that s/he did remember P.J. being in The Joint last night and that P.J. and Dana had an altercation. However, Max said that s/he did not believe that P.J. would attack someone like that. The SLA had investigated a stabbing in The Joint that had taken place in September of 2010. The SLA warned Max that future criminal conduct or underage drinking could result in a revocation of The Joint's liquor license. Without its liquor license, The Joint would have to shut down. Max told the officer that P.J. had not been in The Joint on March 19, 2011, at all. Officer Callahan told Max that if s/he is covering for P.J., there would be consequences. The officer was aware of Max's troubles with the SLA.

Upon leaving The Joint, Officer Callahan saw Murda in the parking lot and walking toward the establishment. Officer Callahan knew that Murda is P.J.'s best friend. S/he knew that Murda lives with P.J. in an apartment in a rundown building on Dodge Street near Broadway. As the officer was exiting The Joint, Murda saw Officer Callahan, turned around quickly and proceeded to run away. Officer Callahan gave chase and tackled Murda to the ground.

Murda, age 22, dropped out of high school in the eleventh grade. S/he works odd jobs to support himself/herself. Murda received his/her GED while serving time in the Queens County Correctional Facility. S/he had been charged in 2009 with Assault in the Second Degree, having used a lug wrench a/k/a tire iron to viciously beat a helpless victim. S/he pleaded guilty to the lesser crime of Assault in the Third Degree and received a one year sentence. Despite the nickname, Murda has never really killed anyone, although most people who know him/her believe s/he is fully capable. S/he has a quick temper.

Officer Callahan asked Murda why s/he was running. Murda said you know why. The officer said why don't you tell me. Murda told the officer s/he thought there was an arrest warrant out on him/her for repeatedly jumping the turnstiles at the subway station. Callahan sarcastically said, "That's a likely story." According to Officer Callahan, no arrest warrants are ever issued for turnstile jumping. Officer Callahan said to Murda, "I know why you were running. Now, tell me where P.J. is or I might have to use my Taser." Murda said s/he did not know where P.J. was. As the officer was reaching for the Taser, Murda said s/he saw P.J. in the gaming parlor on Broadway about an hour ago. The officer also asked Murda to tell him/her about the attack on Dana. Murda denied having any knowledge of the attack. S/he further stated that s/he did not care about Dana and his/her friends and that Dana deserved what s/he got.

Officer Callahan proceeded to the gaming parlor and arrested P.J. without incident. P.J. was indicted on the charge of Assault in the Second Degree and is out on bail.

Stipulations

1. All witness statements are sworn and notarized.

2. All items of evidence are eligible for use at trial, following proper procedure for identification and submission.

3. No other stipulations shall be made between the plaintiff/prosecution and the defense, except as to the admissibility of evidentiary exhibits provided herein.

4. The Yaz jacket advertisement exhibit in Part V of the materials was placed in the Pew Gardens' Daily Express newspaper on Black Friday, November 26, 2010.

5. The picture of the lug wrench in Part V of the materials is a photograph of the lug wrench that was discovered by Officer Callahan near The Joint. It is not stipulated that this is the weapon used in the alleged assault.

6. The forensic report exhibit in Part V of the materials is original and was prepared by Crime Scene Investigator IV, Horatio Caine.

7. The Joint parking lot exhibit in Part V of the materials was prepared by Officer Callahan lot on March 28, 2011 as part of the investigation of the alleged assault that took place in The Joint's parking lot on March 18, 2011.

Witnesses:

For the Prosecution:
Dana Malone, the victim
Ryan Tecrest, victim's friend
Bobby Callahan, the arresting police officer

For the Defense:
P.J. Long, the defendant
Max Miller, owner of The Joint
Sal Maurder (a/k/a **Murda**), defendant's friend

Please note, the foregoing summary of the case is provided solely for the convenience of the participants in the Mock Trial Tournament. This overview itself does not constitute evidence and may not be introduced at trial or used for impeachment purposes.

STATE OF NEW YORK
SUPREME COURT : QUEENS COUNTY

THE PEOPLE OF THE STATE OF NEW YORK

-vs- Indictment No. 2011-01234

P. J. LONG,
Defendant

THE GRAND JURY OF THE COUNTY OF QUEENS, by this indictment, accuses P. J. LONG of the following crime:

ASSAULT IN THE SECOND DEGREE, in that s/he, the said P. J. LONG, on or about the 18th day of March 2011, in this County and State, with intent to cause physical injury to another person, caused such injury to Dana Malone by hitting him/her over the head with a dangerous instrument, to wit: a lug wrench.

JACK McCOY
DISTRICT ATTORNEY OF QUEENS COUNTY

Grand Jury Foreperson

FILED: Queens County Clerk's Office
April 11, 2011

Court Clerk, Arraignment Part

Affidavit of Dana Malone
Complainant

1. My name is Dana Malone, I am 21 years old. I live with my parents at 259 Hill Drive in Pew Gardens, New York. I work part time as a cashier at a local gas station convenience store. I am the victim of a vicious and cowardly attack by P.J. Long on March 18, 2011.

2. I was leaving my favorite hangout, The Joint, on March 18th at approximately 9:00 p.m. So, I am in the parking lot and walking to my car when I hear someone who sounds like P.J. singing the lyrics to a disgusting song by an even more disgusting rapper called DJ ColdBlooded. The song is "The Sucka Gotta Die" from the album Total Chaos. The lyrics I heard P.J. singing are:

If the sucka gets in my way,
he is gonna have to pay,
that all for now I gotta say,
end of this rotten day.

With the tire iron from my trunk
I will deploy in multiple phases
and the sucka I am sure
will soon be pushing up daisies.

I don't care for rapper DJ ColdBlooded and would never buy any of his music. His music is played on the radio all of the time and many of my friends have this album.

3. I hear from behind me P.J. singing the song as I am walking to my car and I don't think anything of it. Then all of a sudden P.J. strikes me in the back of my head with a very hard object. I apparently lose consciousness for a few seconds and the next thing I remember is being helped to sit up by my best friend, Ryan Tecrest. Ryan saw someone running away who was about the same height and weight of P.J. and wearing a black leather jacket with a big white eagle on the back similar to the one P.J. was wearing on the night of March 18. Now, I know a lot of people have a similar jacket, but the only person I remember wearing a leather jacket in The Joint on March 18 was P.J.

4. Ryan had thought about giving chase to P.J., but did not want to leave me. S/he helped me to sit up and asked me what had happened. I said to Ryan, "I think that dirtbag P.J. Long clocked me." S/he then helped me to stand and to walk to my car. Using my car, Ryan drove me to the emergency room of Queens County Medical Center. It took 15 stitches to close the gash in the back of my head.

5. Before I was released from the hospital, police officer Bobby Callahan came to my room. Someone on the hospital staff must have called the police based on what Ryan and I had told

the staff. I told Officer Callahan what had happened. I told him/her about the minor incident earlier in the evening at The Joint when I accidentally bumped into P.J., causing him/her to spill his/her drink. I said that I may have told P.J. to "watch it," but I did not mean anything negative about it, just suggesting that everyone be careful. You should have seen the look P.J. gave me. If looks could kill, I would have been dead at that instant. I told Officer Callahan that I offered to buy P.J. another drink, but s/he declined my kind gesture. Some people just prefer to make trouble. I told the officer that at about 8:30 p.m. I yelled to Ryan from across the room that I would be leaving The Joint in about thirty minutes and to meet at my car that was parked near the front entrance of The Joint. Ryan said sure. I did in fact leave at about 9:00 p.m. and that is when P.J. attacked me.

6. Ryan told Officer Callahan that the person s/he saw running away looked like P.J. from the rear and the person was carrying what looked like a tire iron. Ryan also told the officer that s/he had seen P.J. around 7:30 p.m. on March 18 sitting in his/her car parked in The Joint's parking lot listening over and over again to the song "The Sucka Gotta Die." The officer said s/he was not surprised that P.J. would attack someone in this cowardly manner and that s/he has had many run-ins with P.J. over the years. The officer thanked us for providing the information and said that s/he would see to it that P.J. is put away for a long time for this shameful act.

7. I am sure P.J. is the person that attacked me. Any suggestion that it was someone else like Shannon Taylor, for instance, is off base. I have had my differences with Shannon. He claims that I have been spreading a rumor that he was stealing money from his employer, Pizza Galore. I believe he was recently fired. I did not start the rumor and have not repeated it. Besides, I did not see Shannon in The Joint on March 18, and would have remembered that if I did.

8. Anyway, Shannon is not a coward like that P.J. and would not hit someone from behind. P.J. and people like him/her, who listen to all of that gangsta rap crap, sometimes act out some of the things they hear. I like rap music like many young people, but I can do without that gangsta rap stuff. That kind of music is a bad influence. See what P.J. did to me!

   To the best of my knowledge, the above is true.

Dated: Pew Gardens, New York
December 12, 2011

Dana Malone

Dana Malone

Affidavit of Ryan Tecrest
Friend of Complainant

1. My name is Ryan Tecrest and I am 22 years old.

2. Since graduating high school in May 2007, I've been living with my parents and attending Queens Community Technical's two-year hair stylist program. I don't go every quarter, but I'll finish eventually.

3. When I graduate, I don't know how long I'll stick around Queens. New York is good for hair, but I bet I'll be good enough to go to L.A. I'm really into the celebrity and music scene and just recently started listening to more rap music at this place I hang out at. The music is so loud you can hardly understand half of it, but I'm starting to pick it up. I hope if I really get to know the music, I can start making connections and styling hair for music video shoots and stuff.

4. When I'm not studying to be a stylist, I like to play video games at Gamez & More. Gamez & More is a super sweet, modern arcade on Broadway in Pew Gardens. Gamez & More has a pretty intense set up, and a lot of serious gamers play nonstop. But it's not some low-key, loner group of video game players, these people know how to party. You'll always see a lot of action on a night at Gamez & More. I also spend a lot of time hanging out with my friends at The Joint. I'm at one of those two places--or sometimes both--practically every night. Sometimes I'm even surprised I have any time for school, life's just one long blur of partying.

5. The Joint is owned and run by this guy/girl named Max Miller. S/He pretends to get so mad at me and my friends because s/he says we are "bad influences" on the teenagers that hang out there, but I know s/he's cool. The Joint's always packed, the music is always loud, and there's not a lot of crowd control trying to keep us from having a good time. Things get so crazy. There was even an attack at The Joint sometime in the fall of last year. And now my friend Dana Malone got attacked there, too.

6. Dana Malone and I have been best friends and partners in crime since middle school. Actually, Dana and I even kept each other out of detention in middle school because one of us could goof off and the teachers would never know who to blame. We certainly weren't going to help them out. It's really messed up what happened to Dana.

7. On this one day in the middle of March, I was hanging out at Gamez & More when I decided to go over to the Joint to wait for Dana and our crew to get there. Dana had told me earlier that s/he wasn't planning on staying out late that night and I wanted to be sure I didn't miss him/her. That's the night that someone attacked Dana. I know it was P.J. Long who did it. That punk heard Dana tell me what time we should meet at the car, Dana yelled it across the room, she even said where the car was parked, so P.J. Long knew Dana would be waiting for me there. By the time I walked out to meet Dana, Dana was already on the ground and I saw that coward P.J. making a break for it with something in hand, I think it was a tire iron. I couldn't see P.J.'s face, but the person who

was running wore a dark leather jacket with a large white eagle on the back that looked just like P.J.'s and the person was the same height and size.

8. When Dana finally came to, I asked what happened, but all Dana said was, "I think that dirtbag P.J. Long clocked me." If that cheapskate Max had lights in the parking lot, this attack on Dana wouldn't have happened. All Max has is this little floodlight on the right side of the front entrance to the bar. It's hardly enough to light up the front of the building, let alone the surrounding area. Someone should file a complaint with the State Liquor Authority about this.

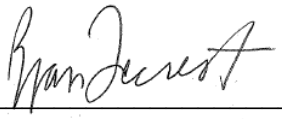
9. Even if I hadn't seen someone who looked like P.J. sprinting away, I just know P.J.'s the kind of person to attack someone. I got to the Joint at about 7:30 p.m. and when I was cutting through the parking lot from its back entrance, I noticed P.J. blasting this song called "The Sucka Gotta Die" over and over in his car. That song's just aggressive. Also, no one saw P.J. in The Joint after Dana was attacked. Explain that.

10. I don't know if I'm more annoyed that P.J. beat up Dana, or that I had to talk to the 5-0 because of it. After I drove Dana to the hospital, we had to tell Officer Callahan what happened. We let him know P.J. was the attacker and exactly where P.J.'s car was parked on that evening. I've got to admit, if I ever have to deal with a cop again, I hope it's Officer Callahan. That guy/lady was so laid back and easy to talk to, I almost forgot s/he carried handcuffs.

11. I've got a criminal record but nothing like P.J. Long has or his/her roommate Murda. I was arrested two years ago for what the cops said was "Unauthorized Use of a Vehicle in the Third Degree," whatever that means. This dude left his car running when he was in Javabuck's buying some $10 cup of coffee or something, so I took it for a little trip. I drove around town and picked up a few of my friends, nothing major. I ended up pleading guilty and got off with a conditional discharge. It was totally worth it. And it's not like the Javabuck's guy couldn't spare a little extra gas.

To the best of my knowledge, the above is true.

Dated: Pew Gardens, New York
December 29, 2011



Ryan Tecrest

Affidavit of Bobby Callahan
Police Officer

1. My name is Bobby Callahan. I am a police officer for Pew Gardens in Queens County in the State of New York.

2. I have proudly served on the force for 15 years.

3. My integrity is without fault. I am an honest officer, despite having had to appear in front of Internal Affairs on at least ten occasions. Anyway, my honesty has never been an issue.

4. I have a reputation in the station as being a bit of a "hothead" due to the run-ins I have had with the department command. I like to use my own techniques in catching criminals and protecting the public. I have received directives from the command to use the traditional techniques, but I find my way to be more effective in combating crime. I am a police officer and this is my job – those pencil pushers have no idea what it is like on the streets.

5. I work alone. I prefer to work alone because a partner can only slow you down and being slow in my line of work can mean the difference between laying your head on a pillow in your own bed or taking a permanent dirt nap over at your local cemetery.

6. People like to question me: "Are you really such a good cop? Why haven't you been promoted to detective?" I'll tell you, it is because of one letter of admonishment from Internal Affairs. Sure, I "push the envelope" in making arrests, but I am effective.

7. As far as the letter of admonishment; in May 2009 I had an encounter with one P.J. Long, one of many times that have led to his/her arrest for minor criminal infractions – stupid stuff! I really hate that P.J. Long – s/he is one bad egg. Anyway, May 2009, I stopped P.J., and made an inquiry regarding a minor infraction to determine if s/he was a participant. S/he was acting like a miscreant, you know a real wise @$&, so I told him/her to stop it and answer my questions or I am going to use my little friend on you. I pulled my Taser out. S/he screamed, "Don't Tase me!" S/he took a step toward me and I Tased him/her. Down s/he went. P.J. was one big jiggling, mouth foaming, and crying mess. P.J. then filed a complaint against me for using my Taser. I was cleared – no wrongdoing. But they issued me a letter of admonishment which became part of my personnel file. Everybody loves sausage, but nobody wants to know how it's made. And that's why I ain't a detective, because of that dirtbag P.J. Long.

8. On March 18, 2011, I received a call regarding a possible assault of one Dana Malone outside a hip-hop establishment commonly known as The Joint. It is owned by a Max Miller, who has had trouble with the State Liquor Authority for serving alcohol to minors. I understood from the call that Mr./Ms. Malone had been transported to the hospital, so I immediately made my way to the hospital.

9. I located the victim, Dana Malone, and a friend, a possible witness, Ryan Tecrest. The E.R. doc had just finished closing a gash on Mr./Ms. Malone's head with 15 stitches. I introduced myself to Mr./Ms. Malone and Mr./Ms. Tecrest and I asked them for their statements. I took notes so that I could refer back to them later when and if I needed to draft a complaint.

10. During my interview, Mr./Ms. Malone told me, "I think that dirtbag P.J. Long clocked me." I learned that P.J. was inside The Joint when Malone arrived. Malone was there to meet Tecrest, who had arrived earlier that evening. Upon entering, Malone bumped into the defendant, causing the defendant to spill his/her drink. No words were exchanged other than Malone telling the defendant to "watch it." Ms./Mr. Malone could only recall being struck from behind before losing consciousness. S/he did not see the attacker.

11. I then interviewed Mr./Ms. Tecrest. I am familiar with Mr./Ms. Tecrest; I recall that s/he was arrested a couple years ago for Unauthorized Use of a Motor Vehicle in the Third Degree and I am certain s/he pled to the charge but s/he received a conditional discharge. I was not the arresting officer. Tecrest told me that s/he noticed the defendant sitting in her/his car around 7:30 p.m. listening to, with the volume turned way up, as those kids do so that everything around them is vibrating, DJ ColdBlooded's song "The Sucka Gotta Die" over and over again. Tecrest then indicated that Malone, the complainant, arrived at The Joint where s/he bumped into the defendant, causing the defendant to spill his/her drink. Tecrest said that s/he heard the complainant say to the defendant, "Watch it!" At approximately 8:30 p.m., the complainant yelled across the room to Tecrest that they had to leave in a half-hour and that they would meet at his/her (the complainant's) car. At about 9:00 p.m.,Tecrest exited The Joint when s/he observed the complainant lying on the ground unconscious. Tecrest further indicated that s/he observed an individual running away with what appeared to be a lug wrench a/k/a tire iron and running towards the area of The Joint's parking lot where s/he had seen P.J.' car parked that evening**.** S/he also observed that this individual had a similar build as the defendant and that this individual was wearing a black leather jacket with a large white eagle on the back. Tecrest noted that s/he had observed the defendant wearing a similar leather jacket that night. Mr./Ms. Tecrest then assisted the complainant back to his/her feet and then proceeded to drive the complainant to the hospital. S/he further added that when the complainant returned to consciousness s/he said, "I think that dirtbag P.J. Long clocked me."

12. After the interviews, I went to the crime scene to look for evidence. Using my flashlight, I completely searched the area where the attack occurred and the area where the attacker reportedly ran. About 50 yards from the where the attack took place, I found a lug wrench under some bushes. I proceeded to my precinct where I turned in the lug wrench for testing. I then prepared a felony complaint charging the defendant with Assault in the Second Degree, a class D felony. The following morning I then filed the felony complaint at the Pew Gardens Criminal Court, where I obtained an arrest warrant for the arrest of the defendant.

13. Late in the afternoon of March 19, 2011, I went to the apartment of the defendant. When I found that no one was at home, I then proceeded to The Joint. At The Joint, I ran into the owner Max Miller and I then inquired as to the whereabouts of the defendant. Miller asked why I was looking for the defendant and I told her/him that the defendant allegedly assaulted the complainant in the parking lot the previous night. Miller indicated that s/he had no knowledge of such an incident, but s/he did recall that the complainant and the defendant did have an altercation last night. Miller then added that ever since the stabbing at his/her place in September 2010 and the subsequent investigation by the SLA, s/he has been running a tight ship.

14. I then exited the premises known as The Joint, when I saw the defendant's best friend and roommate Sal Maurder A/K/A "Murda," walking toward the establishment. As soon as Murda noticed me, s/he proceeded to run away. I gave chase and tackled him/her to the ground. I then asked Murda why s/he was running. Murda then indicated that there was an arrest warrant out on him/her for repeatedly jumping the turnstiles at the subway station. I knew that this was not correct as I knew that no arrest warrants are ever issued for turnstile jumping. I then made a further inquiry, by asking Murda where I might find the defendant. I then placed my hand on my Taser, with no intention of using it, and then Murda cooperatively told me that s/he had last seen the defendant an hour ago at the arcade on Broadway. I then asked him/her if s/he knew anything about the assault last night involving the complainant and the defendant. Murda indicated that s/he had no such knowledge. I then thanked the citizen for his/her cooperation. I then proceeded to the arcade, where I was able to arrest the defendant without incident.

15. The police department's forensic unit tested the lug wrench for evidence. Although traces of blood and hair were found on the lug wrench, there was an insufficient amount of blood to determine the blood-group and there were hair fibers. No fingerprints were found on the lug wrench, probably because the defendant was wearing gloves. We wear gloves in March around here. Nevertheless, I am pretty sure that this is the lug wrench P.J. Long used to attack the complainant. I obtained a search warrant on March 21, 2011 to search Mr./Ms. Long's automobile and discovered that the lug wrench was missing. What more do you need?

16. This talk about Shannon Taylor possibly being the attacker in this case is all wrong. Shannon Taylor is not a suspect. I've learned that there are several individuals who have had differences with Dana Malone. The fact that Shannon Taylor has a leather coat with a white eagle in the back is of no consequence. There are a lot of people around here who have that jacket. It is a popular coat. I arrested the attacker of Dana Malone and it is P.J. Long.

To the best of my knowledge, the above is true.

Dated: Pew Gardens, NY
December 3, 2011

OFFICER BOBBY CALLAHAN
Officer Bobby Callahan

Affidavit of P.J. Long
Defendant

1. My name is P.J. Long. I reside at 534 Dodge Street in Pew Gardens, New York. I was employed at a machine shop until about two months ago. I just started receiving unemployment compensation. I still can't believe that I have been accused of, and even indicted for, something I did not do.

2. I was arrested on March 19, 2011, having been charged with attacking Dana Malone from behind with a tire iron on the evening of March 18. I was told that s/he was assaulted in the parking lot at The Joint. Now, all kinds of dangerous people, including ex-felons, hang out at The Joint. Any one of them could have wracked him/her, because nobody likes Dana. Dana thinks s/he is better than anybody else and struts around like s/he owns the place. It just makes you sick to see how Dana carries himself/herself, so full of himself/herself. While I did not attack Dana, s/he nevertheless deserved what s/he got.

3. This whole thing appears to have started on March 18, 2011 at The Joint. I was sitting at a table with my friends, talking about current events. As I was about to take a first sip from the five-dollar drink I had just purchased, Dana clumsily bumps into me causing me to spill more than two-thirds of my drink. Instead of apologizing, Dana shouts to me, "Watch it!" Can you believe it?! Dana bumps into me, causing me to spill my drink, and it's my fault! Needless to say, I was not happy with this occurrence. At that instance, I could have "gotten into Dana's face." But I did not want to cause any trouble; so, I just let it go. I like going to The Joint and if I started a fight, Max, the owner, would ban me from the place. Max has had enough trouble with those liquor authority people.

4. I've heard that Dana has been telling people that s/he apologized for causing me to spill my drink and that s/he even offered to pay for another one. S/he also has been saying that I refused his/her offer. Trust me, none of this took place.

5. I don't remember when I left The Joint on the evening of March 18, 2011. It could have been before 9:00 p.m. or it could have been after that time. The fact that I don't have someone who could vouch for where I was at the time Dana was attacked does not mean that I was the person who attacked him/her. I remember leaving The Joint at some time on March 18 and driving around the town to clear my head. I eventually went back to my apartment and just listened to music. My best friend and roommate, Sal Maurder, returned to the apartment at about 10:30 p.m. We stayed in the apartment until about 11:00 p.m. and then left for the arcade on Broadway. I stayed at Gamez & More until closing time at 1:00 a.m. I had thought about going back to The Joint, but decided it was best to go home since I was really tired.

6. My lawyer says the prosecution is focusing in on me because I like rap music, specifically the rap music of DJ ColdBlooded. He is really a very cool guy, a Grammy-award winning artist. He has this one song that I like the most, called "The Sucka Gotta Die." The lyrics are catchy and sometimes I will sit in my car and listen to the song a few times. I don't see anything wrong with that. So, let me get this straight: I listen to

my favorite song and this makes me go out and hit someone in the head with a tire iron. Have you ever heard of anything so absurd?

7. This persecution, that's right "persecution," is Officer Callahan's doing. S/he and I have never gotten along. S/he is a "Dirty Harry" kind of cop, thinking s/he has the right to push people around. Officer Callahan once tried to arrest me for no reason. I believe it was in 2009. During the arrest, s/he claimed I was trying to resist and used the Taser on me. I was just trying to tell the officer that I had not shoplifted anything and that the store owner had made a mistake. This so-called "resistance" was too much for the officer and that is when I was Tased. The charges were eventually dropped. I filed a complaint with the police department. Someone from Internal Affairs visited me and took a statement. It is my understanding that the department was not happy with Officer Callahan using the Taser on me and s/he may have been disciplined. Serves him/her right.

8. Sal Maurder has been a great friend. It seems everybody in the neighborhood has a nickname and Sal's street name is "Murda." I don't believe Murda has ever really killed anyone, but you really wouldn't want to get on his/her wrong side. S/he would do anything for me and I would do anything for him/her. Murda has been in trouble with the law and has served time. S/he did a year in the Queens County Correctional Facility for roughing up a person who got on Murda's wrong side. Murda, using a tire iron, beat the crap out of this person who I believe probably deserved what s/he got. So, I guess now anybody I know who gets a tire iron to his/her head, the police will come looking for me or Murda. I don't mean to make this sound like a "pity party," but give me a break! Murda and I don't claim to be saints. We have had our scrapes with the law, but we don't take cheap shots at our enemies.

9. If you ask Murda, s/he will tell you that I was back in the apartment listening to music at about the time Dana claims s/he was attacked. Anyway, I remember Shannon Taylor telling me in January or February of this year that, "If I ever catch Dana alone at night, I'm gonna put a dent in his/her skull." Apparently, Shannon had heard that Dana was spreading rumors that Shannon was stealing money from Shannon's employer, Pizza Galore. Shannon worked the cash register as well as delivered pizzas and wings. I believe I saw Shannon in The Joint on March 18, but I can't be certain. Come to think of it, I have not seen Shannon since April or May of 2011. You have to wonder where he is.

10. So what if I have a black leather jacket with a large white eagle on the back. I know a lot of people that have a leather jacket like mine. As a matter of fact, I believe Shannon has this same exact jacket. So much for the prosecution's case!

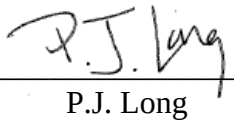
11. The prosecution is making a big deal about the tire iron missing in my car. The car is almost 20 years old and is a piece of crap. I have never been able to lock the trunk, so anyone could have taken it. When I bought the car three years ago, I don't believe there was a tire iron in the trunk. I did not check at the time because it was not something I

was concerned about. I was just glad it was running and did not cost too much. If I ever need to fix a flat, I'll just borrow a tire iron. No big deal. Most people have one.

12. I am sure I will be acquitted of this crappy charge. All the prosecution has, according to my lawyers, is circumstantial evidence. And the prosecution is trying to use everything it has, including lyrics to a rap song. Can you believe it?! While Officer Callahan has spent all of this time focusing on me, the real perpetrator of this crime is still out there.

    To the best of my knowledge, the above is true.

Dated: Pew Gardens, New York
December 21, 2011



P.J. Long

Affidavit of Sal Maurder
Friend of Defendant

1. My name is Sal Maurder. P. J. Long and me live at 534 Dodge Street, in Queens, New York. That's Pew Gardens.

2. P.J. and I came up together. We lived in the Lemuel Haynes Houses. There was a bunch of us who all went to the High School for Strong Citizens. It was supposed to be for strong people, see. Strength through sports, that was the school slogan. Yeah. But to me it was strength through not getting beat up in the hallway, strength through not getting pushed around by teachers, strength through having friends who'll have your back. That school was just bad. No one learned nothing. No one listened to the teachers. People, they just got up out of their seats and walked around the classroom chillin' with their friends. The teachers didn't say nothing neither. They were too scared they'd get beat up. They weren't teaching me nothing. I was just wasting my time, so I quit.

3. What did I do after I quit school? What do you think I did? I moved on, supported myself. I been working all my life, know what I mean? Bagging groceries, shoveling snow, washing cars, that kind of thing. I got my GED when I was doin' time in the county jail. Then when I got out, I worked at McPizza, part time and sometimes at the bodega up there on Broadway.

4. I did some time, yeah, but I'm no criminal. I never killed no one. They call me Murda on the street, my handle. But that's just a play on my last name. So what, I did a year in jail. They charged me with assault second. I pled to assault third, a misdemeanor. It was a crock. That person asked for it. S/he scratched my ride. Not by accident, neither.

5. Okay, so I hopped the turnstile in the subway a few times, or, you know, maybe in the morning when the trains was crowded and people pushed through the swing door, I maybe went in that way without paying. But you know, that's not really a crime. It's not like it hurts someone. You know what's a crime? That they charge so much in the first place. Where they expect me to get that kind of money? But the cops, they don't like it, so when I saw Officer Callahan, I ran. S/he caught me though. The cop asked me why was I running. I told the officer I thought s/he was trying to arrest me for turnstile jumping. The officer then asked me where was P.J. I didn't think it was any of his/her business where P.J. was. So, I lied and said I did not know where P.J. was. Officer Callahan was reaching for his/her Taser, and I said, "Yo! Don't Tase me!" S/he was going to Tase me! There is something wrong with this cop. You know, s/he Tased P.J. a while back for nothing and got into a lot of trouble. P.J. told me the Taser hurts like hell; so, I told the cop that I saw P.J. over at the arcade on Broadway about an hour ago. Then the cop wants me to tell him/her about the attack on Dana. I told the officer I don't know nothin'. I also said I don't care for Dana Malone and his/her friends and that s/he probably deserved what s/he got.

6. You know, me and my friends like video games and we're good at them, too. We meet up at the arcade on Broadway. That's where P.J. and me went after I caught up with him/her again on the night of March 18, 2011. I had seen him/her earlier in the evening at The Joint. But around 10:00 p.m. I noticed P.J. had left without telling me. I don't know what time s/he left The Joint on that night. I asked some of our friends where P.J. was. They did not know. So, at around 10:30 p.m., I went to the apartment to look for P.J. S/he was sitting in a chair and listening over and over again to his/her favorite song "The Sucka Gotta Die." S/he must have replayed the song three or four times before we left the apartment at 11:00 p.m. to go over to the arcade. For some reason, P.J. didn't want to go back to The Joint.

7. That guy/girl, Dana, I've seen him/her before. S/he and his/her friends, wannabes all of them. Acting like they come from a tough neighborhood, y'know. Dancing all hip-hop style in the clubs, that kind of thing. And it's all fake. You hear them talk? People from Haynes Houses, they don't talk like that. That Dana didn't go to no school where kids had to go through metal detectors to get in and where there was a cop on the restroom door so no one would get beat up in there. S/he went to some special school where you got to go on a bus or ride the subway to get to it and they've got lots of computers and they learn Chinese or some such. S/he went to a school where they expect you to go to college after. Not a tough school like we went to.

8. You can't believe anything Ryan Tecrest, Dana's best buddy, says or trust him/her. I remember seeing him/her in county lockup a couple of years ago. I believe s/he was in for stealing a car. I heard s/he was all scared and always sucking up to the correctional officers like they were going to protect him/her. I wouldn't be surprised if s/he didn't become an informant. So s/he sees someone running away after Dana's attack. So what if they were wearing a leather jacket looking like the one P.J. has? A lot of people have this jacket including me, P.J., and Shannon Taylor. I heard that Shannon has a beef with Dana. I haven't seen Shannon around for some time now.

9. I don't know what happened to Dana that night. I guess s/he was hit over the head and I bet s/he asked for it too. Dana Malone doesn't belong in our neighborhood. People like that should keep to themselves up in their own neighborhood, not come down here pretending to be one of us.

To the best of my knowledge the above is true.

Dated: Queens, New York
January 5, 2012

Sal Maurder

SAL MAURDER

Affidavit of Max Miller
Owner and Operator of "The Joint"

1. My name is Max Miller. I currently am the owner and operator of The Joint, a popular Pew Gardens hip-hop establishment frequented by teenagers and young adults.

2. I was born and raised in San Diego, California and spent most of my young adult life as a surfer and part owner of an establishment called the Surf and Turf, a bar in San Diego, until it closed in 1999. At the mature age of 30, I moved to Queens, New York and tended bar in a lower Manhattan nightclub owned by an ex-Marine buddy of my father's. However, after the terrorist attacks of 9/11, the bar closed and a friend of mine told me about The Joint, which at the time was in receivership. I made an offer, which was accepted, and ever since then, The Joint has been the reason for my existence.

3. Despite the relative success I have had operating The Joint, the New York State Liquor Authority (SLA) has been a thorn in my side because of the underage drinking clientele that is attracted to The Joint. Teenagers throng to The Joint for the cool hip-hop music and to socialize with their friends. They are not permitted to purchase alcoholic drinks, but it is known that the drinking-age clientele will provide liquor to the teenagers, something I cannot control.

4. I strictly prohibit the sale of alcohol to the underage clientele that come into The Joint. All of my bartenders check IDs before serving liquor. I could exclude the under-21 patrons, but I would lose significant income from the food and soft drinks they legally purchase while in The Joint. The loss of income would force me to shut down.

5. The SLA has unfairly targeted me by fining me for allowing teenagers to consume liquor on the premises. I am a small-time neighborhood establishment, and do not have enough bouncers on the payroll to monitor everything that happens on the premises. I try to run a legitimate business, but cannot stop the young crowd from frequenting The Joint.

6. In the early evening of March 19, 2011, Officer Bobby Callahan entered The Joint. S/he wanted to talk to me and asked me if I had recently seen P.J. Long, a regular patron of The Joint. When I asked Officer Callahan why s/he was looking for P.J., s/he told me that P.J. had assaulted Dana Malone, another frequent patron, in The Joint's parking lot the night before. S/he also told me that s/he had a warrant for P.J.'s arrest.

7. This was the first I had heard about anyone being attacked in The Joint's parking lot on March 18, 2011. I remember seeing P.J. in The Joint the night before, but I do not believe that P.J. would do something like that. Such an incident would cause me even more trouble with the SLA. The SLA had investigated an alleged stabbing in The Joint in September 2010. At that time, the SLA warned me that any future criminal conduct or underage drinking in The Joint could result in a revocation of my liquor license. With no liquor license, I would have not any choice but to shut down The Joint.

8. Not having seen P.J., I told Officer Callahan that P.J. had not been in The Joint at all on March 19, 2011. However, Officer Callahan seemed to assume that I was covering for P.J. Knowing of my history with the SLA, s/he responded that if I were covering for P.J., "there would be consequences."

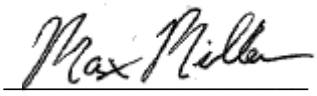
9. Then the officer goes off chasing after P.J.'s friend, Murda, who was on his/her way into The Joint. I learned later that this is all because Ryan Tecrest thought the person running away after the attack was P.J. Ryan based this conclusion on nothing more than that the person was wearing a leather jacket with a white eagle on the back. A lot of my patrons have that jacket. Hell, if I were a few years younger, I would even have one. I've seen Shannon Taylor wear that jacket and I was told Shannon was in The Joint on March 18, 2011. Anyway, I wouldn't trust anything that slimy Ryan has to say. S/he was arrested for stealing a guy's car and joy-riding his/her friends around town all day. It wouldn't bother me one bit if Ryan and Dana never came to The Joint again.

10. I saw the incident in The Joint that Dana believes caused the attack. Dana clumsily bumped into P.J., causing P.J. to spill his/her drink. Instead of apologizing right away, Dana tells P.J. to "watch it." The look in P.J.'s eyes could kill. But cooler heads prevailed and nothing happened. Anyway, everybody knows I don't tolerate fighting in The Joint. I believe I heard Dana offer to buy P.J. another drink, but because of Dana's attitude and because P.J. was so mad, s/he refused the offer.

11. Well, I have had my troubles with the SLA, but I would not try to cover up any crime that might have taken place at The Joint. I really don't believe anyone was attacked in my parking lot on March 18, 2011. Why didn't they call the police right away? I wouldn't put it past Dana and Ryan to have made up all of this stuff.

To the best of knowledge the above is true.

Dated: Pew Gardens, New York
December 2, 2011



Max Miller

PART V

NEW YORK STATE HIGH SCHOOL MOCK TRIAL

OFFICIAL EXHIBITS

Exhibit …Forensic Examination
1 page

Exhibit …Certificate of Conviction-Ryan Tecrest
1 page

Exhibit …Certificate of Conviction-Sal Maurder
1 page

Exhibit …Parking lot map
1 page

Exhibit …Lug wrench photograph
1 page

Exhibit …Jacket advertisement
1 page

Exhibit…Song lyrics

Forensic Examination

People v. P.J. Long

An L-shaped standard lug wrench (a/k/a tire iron) was examined to determine whether it had been used as a weapon in a crime. Preliminary analysis showed the presence of hair fibers and blood on the elbow area of the tire iron.

Using a stereo-microscope, it was determined that the hair fibers were from a human donor. Having obtained hair samples from the victim, it was determined that the source of the hair fibers found on the tire iron appear to be from the victim's.

An examination was conducted to determine whether the blood sample found was human blood. Under appropriate testing, the blood sample was found to contain human antigens. However, the sample was too small to perform the ABO blood type test.

Consequently, this examiner cannot conclude, to a reasonable degree of scientific certainty, that the lug wrench tested was used in the assault upon the victim.

Horatio Caine — Crime Scene Investigator IV
Officer's Signature — Officer's Rank

Horatio Caine — 2345-678
Print or Type Name in Full — Badge/ID No.

Headquarters — Crime Scene Laboratory
Precinct/Zone — Station/Beat/Sector

Calleigh Duquesne, Detective — March 21, 2011/09:45 hour
Reviewing Officer — Date/Time Reviewed

CERTIFICATE OF CONVICTION-IMPRISONMENT Section 380.60 C.P.L.

AT A TERM OF THE CITY COURT
held in and for the County of Queens,
at the Queens City Hall, in the City of
Pew Gardens, on the 28th day of October 2009.

Present-Honorable Judy S. Highland, CCJ
Docket No. 2009ER76543M

THE PEOPLE OF THE STATE OF NEW YORK

ADA: B. FINLEY

DC: A. GORDON

CR: C. HALL

AGAINST

RYAN TECREST, Defendant
DOB: 09-26-1989
DATE OF ARREST: 06-06-2009

The defendant above having pleaded guilty in this Court, on the 21st day of AUGUST 2009, of the crime of UNAUTHORIZED USE OF A MOTOR VEHICLE IN THE THIRD DEGREE - § 165.05 PL personally appears this day for judgment, the Court informs the defendant, the defendant's counsel and the District Attorney of their rights to make statements and rebuttal to the Court's remarks under Section 380.50 of the C.P.L.

Judgment is thereupon pronounced that the said defendant be CONDITIONALLY DISCHARGED. $175.00/$25.00 MANDATORY SURCHARGE/CVAF FEE IMPOSED.

I HEREBY CERTIFY the foregoing to be a true copy of the entry of Judgment upon the minutes in the above-entitled action.

WITNESS my hand and the seal of said court this 9th
day of January 2012

SHARON BROWN
Chief Clerk,
Pew Gardens City Court

CERTIFICATE OF CONVICTION-IMPRISONMENT Section 380.60 C.P.L.

AT A TERM OF THE COUNTY COURT
held in and for the County of Queens, at the
Queens City Hall, in the City of Pew Gardens,
on the 11th day of December 2009.

Present-Honorable Michael L. Mathis
INDICTMENT NO: 2009-01571

THE PEOPLE OF THE STATE OF NEW YORK

ADA: T. ADAMS

DC: S. BARNES

CR: R. CARTER

AGAINST

SAL MAURDER
DOB: 11-15-1988
DATE OF ARREST: 06-30-2009

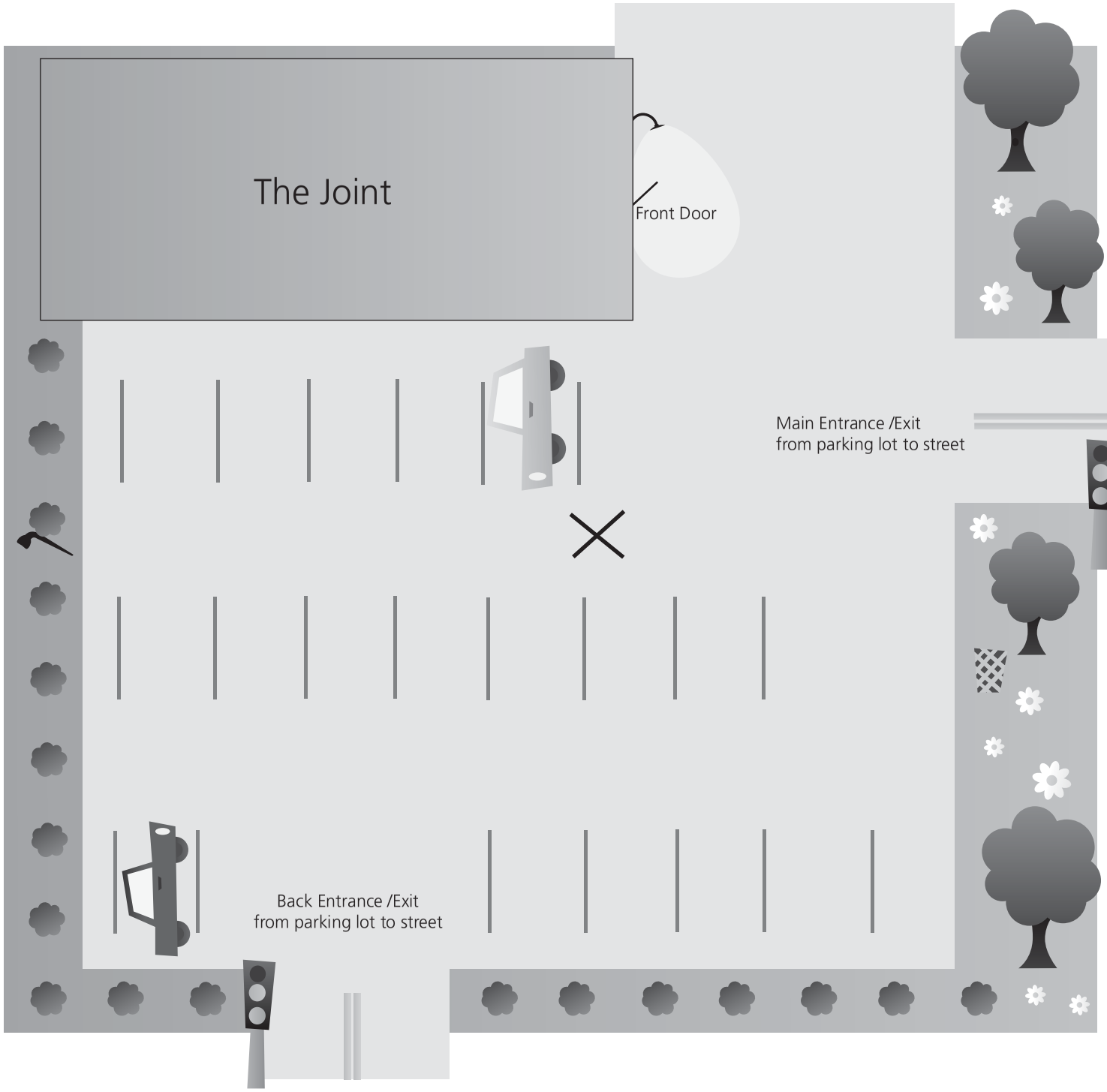
The defendant above having pleaded guilty in this court, on the 9st day of OCTOBER 2009, of the crime of ASSAULT IN THE THIRD DEGREE - §120.00 PL personally appears this day for judgment, the Court informs the defendant, the defendant's counsel and the District Attorney of their rights to make statements and rebuttal to the Court's remarks under Section 380.50 of the C.P.L.

Judgment is thereupon pronounced that the said defendant be imprisoned in the Queens County Jail in Pew Gardens, N.Y., for the term of one (1) year. $300.00/$25.00/$50.00 MANDATORY SURCHARGE/CVAF/DNA FEE IMPOSED.

I HEREBY CERTIFY the foregoing to be a true copy of the entry of Judgment upon the minutes in the above-entitled action.

WITNESS my hand and the seal of said court this 13th
day of January 2012

DAVID J. DOUGLAS
Queens County Clerk



Dana's Car

PJ's Car

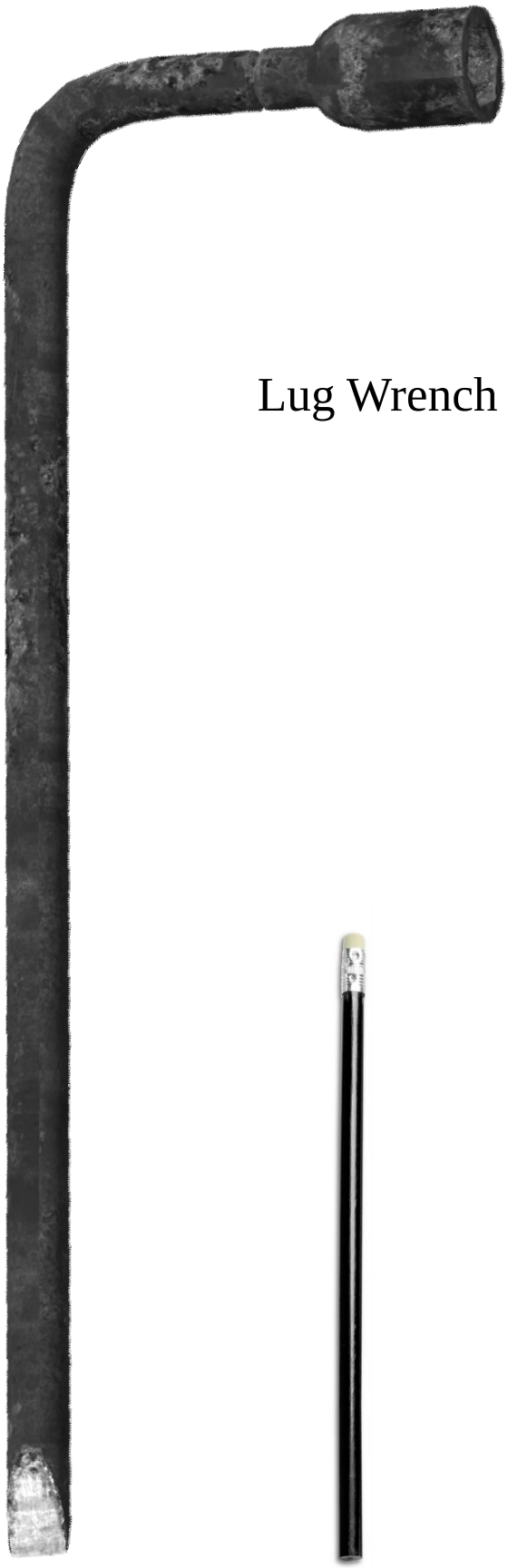
Tire Iron

Trash Can

Light

Dana

Prepared by P.O. Callahan on 03/28/2011.



Lug Wrench a/k/a Tire Iron

MUST HAVE!!

The 2011 Jacket To Own

Exclusively at

Mercy's

Yaz's unisex black leather motorcycle jacket
Classic styling, rich Italian leather with Yaz's signature
Eagle in white leather on back

Regular Price 425.00 Sale Price 379.00

If the sucka gets in my way,
he is gonna have to pay,
that all for now I gotta say,
end of this rotten day.

With the tire iron from my trunk
I will deploy in multiple phases
and the sucka I am sure
will soon be pushing up daisies.

from the song entitled “The Sucka Gotta Die” from the album Total Chaos by DJ ColdBlooded.

NEW YORK STATE HIGH SCHOOL MOCK TRIAL

RELATED LAW

RELATED CASES

RELATED LAW

Penal Law §120.05 Assault in the Second Degree.

A person is guilty of assault in the second degree when:

1. With intent to cause serious physical injury to another person, he causes such injury to such person or to a third person; or

2. With intent to cause physical injury to another person, he causes such injury to such person or to a third person by means of a deadly weapon or dangerous instrument.

Penal Law §10.00 Definitions.

Except where different meanings are expressly specified in subsequent provisions of (the Penal Law), the following terms have the following meanings:

. . .

12. "Deadly weapon means any loaded weapon from which a shot, readily capable of producing death or other serious physical injury, may be discharged, or a switchblade knife, gravity knife, pilum ballistic knife, metal knuckle knife, dagger, billy, blackjack, plastic knuckles, or metal knuckles.

13. "Dangerous instrument" means any instrument, article or substance, including a "vehicle" as that terms is defined in this section, which, under the circumstances in which it is used, attempted to be used or threatened to be used, is readily capable of causing death or other serious physical injury.

. . .

2012 Statewide High School Mock Trial Tournament Materials

Related Cases

People v. Yazum
13 NY2d 302 (1963)

[**Editor's note:** *In the mock trial case, the prosecution is suggesting that the defendant, having listened repeatedly to a violence-laced rap song both before and after the alleged attack, is evidence of the defendant's consciousness of guilt.*] In *Yazum*, the court held that "... any circumstantial evidence, to be sufficient in itself to sustain a conviction, must be inconsistent with all reasonable hypotheses of innocence (*citations omitted*). But the admissibility of each piece of circumstantial evidence is subject to no such rule. Generally speaking, all that is necessary is that the evidence have relevance, that it tend to convince that the fact sought to be established is so. That it is equivocal or that it is consistent with suppositions other than guilt does not render it inadmissible."

People v. Leyra
1 NY2d 199 (1956)

The defendant was convicted of killing his parents, based largely on what the appellate court felt was a confession coerced from the defendant by a psychiatrist and on purely circumstantial evidence. Regarding the circumstantial evidence, the court, referencing well-settled principles applicable to such evidence, held that "... its sufficiency depends upon 'whether the proof points logically to defendant's guilt and excludes to a moral certainty every other reasonable hypothesis (*citation omitted*). Moreover, 'the facts from which the inferences are to be drawn must be established by direct proof; the inferences may not be based upon conjecture, supposition, suggestion, speculation or upon other inferences (*citation omitted*)." The appellate court, in reversing the conviction, went on to say that "... (i)n many cases in which convictions have been upheld, the evidence indicating a consciousness of guilt has bolstered other circumstances which in and of themselves strongly pointed to the defendant's guilt (*citation omitted*)." Finally, the court noted "... that the inference of the consciousness of guilt, though one of the simplest in human experience, may easily be pushed too far (*citation omitted*)."

People v. Price
135 AD2d 750 (1987)

The appellate court affirmed the defendant's 1st degree robbery, 2nd degree robbery and 3rd degree grand larceny convictions. However, the court ruled that when the prosecution has offered evidence tending to establish a defendant's consciousness of guilt, the defendant may explain his behavior and is entitled to any explanation consistent with his innocence.

People v. Cosby
200 AD2d 682 (1994)

The defendant allegedly killed his landlord with a wrench. During the 3-week period prior to the discovery of the body hidden by the defendant, he repeatedly lied to the deceased's family about her whereabouts and about things missing from the deceased's room. The court held that evidence of the defendant's post-altercation behavior, while of limited probative value, constituted circumstantial evidence of his consciousness of guilt.

People v. Drake
19 AD3d 209 (2005)

The defendant was found guilty of assault in the 1st degree and criminal possession of a weapon in the 3rd degree. The court, concluding that the verdict was not against the weight of the evidence, held that "(i)ssues of identification and credibility were properly considered (by the trier of fact) and there is no basis for disturbing its determinations. The eyewitness testimony identifying defendant was corroborated by other proof, including evidence of defendant's actions and statement evincing a consciousness of guilt."

People v. Saunders
292 AD2d 780 (2002)

The defendant was convicted of assault in the second degree. He contends that the trial court should have allowed the jury to consider the lesser-included offense of assault in the third degree. The people presented credible evidence that the defendant struck blows to the victim's head using a tire iron, which caused open wounds that required stitches. The court held that the tire iron was "... readily capable of causing ... serious physical injury" and thus under the circumstances in which it was used constituted a dangerous instrument (*citation omitted*). Therefore, no reasonable view of the evidence would support the view that the defendant committed the lesser offense, but not the greater offense.

People v. Beaton
152 AD2d 992 (1989)

The court held that "(e)vidence that two victims of defendant's assaults with a metal wrench sustained cuts to the head requiring stitches and were in pain for a few days after the incident ... constituted legally sufficient evidence of 'physical injury'..." under the Penal Law (*citation omitted*).

Matter of Kurt EE
199 AD2d 945 (1993)

The victim sustained a cut to his finger while trying to wrest a knife from the defendant. Said victim did not require medical attention, but was in pain for approximately one week. The court held that the evidence was "... insufficient to establish a physical injury within the meaning of (the) Penal Law ... which defines physical injury as 'impairment of physical condition or substantial pain' (*citation omitted*)."