



**FACT PATTERN #1 –
PEOPLE V. MORTIMER SMITH**

CASE SUMMARY

On January 5, 2021, at approximately 4:00 p.m., Officer Anderson responded to the roadside of Interstate 100 West just west of the Lark St. overpass. There, about 20 yards off the left shoulder, he located a 2015 Chevy Cobalt with a large hole in the moon roof. Inside the car he located June Bugg who was covered with blood and unconscious. An ambulance was summoned, and Mrs. Bugg was taken to the hospital.

While at the scene, the police interviewed several motorists who claimed to have witnessed the event.

Witness Leslie Copeland told the police that he was traveling on 100 W when he saw a person standing on the overpass. As he got closer, he saw the person drop a dark object from the overpass striking the vehicle traveling about 10 car lengths in front of him.

At the hospital, physicians later determined that June Bugg suffered a skull fracture and had a brain bleed. Mrs. Bugg underwent several surgeries during her 30 day hospitalization. She reports headaches and memory loss that continues to the present day.

The police arrested Rick Sanchez and charged him with felony assault. When interrogated after his arrest, Rick admitted dropping a bowling ball from the overpass. The police also arrested Mortimer Smith as Rick Sanchez's accomplice. The prosecution theory is that Morty's actions made him an accomplice and therefore also criminally responsible for Rick's act. Rick ultimately pled guilty and was sentenced to 7 years in prison. Mortimer Smith now stands trial.

STIPULATIONS

Procedural matters

1. Federal Rules of Criminal Procedure and Federal Rules of Evidence apply.
2. All witnesses called to testify who have identified the parties, other individuals, or tangible evidence at deposition or prior testimony will, if asked, identify the same at trial.
3. Preliminary hearing testimony is given under oath and contains a full and complete description of all material events that occurred, and all witnesses agree that the statements given are a full and complete statement without errors or additions.
4. All reports and statements were signed under oath.
5. Each party will call one witness. Witnesses may be played by students of any gender. However, witnesses should be referred to by the pronouns indicated in the fact pattern. The Prosecution will call Officer Anderson. The Defense will call Mortimer Smith.
6. Witness Copeland is in the military overseas and is unavailable.
7. Rick Sanchez is in prison and was unable to be transferred for trial, thus he is unavailable.
8. Other than what is provided, there is nothing unusual that would detract from the background information of any of the witnesses that would bolster or detract from their credibility.
9. This competition does not permit a witness to invent a material fact. For clarity's sake, a material fact is a fact that would influence an element or defense in a substantive way to make it unfair for another team to provide a fair rebuttal. Invention of individuals is fair as long as they do not affect each parties' burdens.
10. "Beyond the record" will not be entertained as an objection.
11. All exhibits are considered authentic.
12. Jurisdiction is established. No challenges to jurisdiction shall be entertained.
13. The trial is taking place on August 30, 2022.
14. Pretrial motions can consist of any evidentiary argument made for either side. Each side will have a total of five (5) minutes to do so. Each side will also have a total of five (5) minutes to argue the jury instructions prior to closings. Additional time may be granted at the discretion of the presiding judge for pre-closing motions pertaining to the jury instructions. No motions to suppress evidence on the grounds that it was obtained in

violation of the Fourth or Fifth Amendment were brought prior to trial. No such motions will be entertained or serve as grounds for exclusion at trial.

15. This competition does not allow outside case law for argument.

16. The case summary is not evidence and is to only be used for reference.

Substantive Matters

1. The defense may adopt any theory of defense it so chooses.
2. Exhibit E, the medical records, are stipulated as admissible.
3. Officer Drake is unavailable to testify. However, all parties stipulate that if he were present in court, s/he would testify the defendant made the statement indicated in the supporting deposition.
4. The surveillance cameras were not working on the day in question. No negative inferences may be drawn based on this fact.
5. The measurements in Exhibit F are to be referred to in feet, not inches.
6. Exhibit H, refers to Rick Sanchez's guilty plea for the same case.

EXHIBIT LIST

- Exhibit A Photo of June Bugg taken by Officer Claude Depford on January 5, 2021
- Exhibit B Photo of damage to car taken by Officer Depford on January 5, 2021
- Exhibit C Photo of June Bugg taken by Officer Anderson on January 5, 2021
- Exhibit D Photo of Lark St. overpass
- Exhibit E June Bugg's Hospital Record
- Exhibit F Mortimer Smith's booking photo from January 5, 2021
- Exhibit G Disciplinary Record
- Exhibit H Certificate of Conviction

State of Orange Criminal Trial Court

STATE OF ORANGE

Prosecution,

Vs.

No. 2015 – CV- 034 – CR

MORTIMER SMITH

March 10, 2021

Defendant.

REPORTER'S TRANSCRIPT OF PROCEEDINGS

Grand Jury Testimony

Wednesday, March 10, 2021

APPEARANCES,

CANDACE TRIUMPH

Assistant District Attorney of the County of Clementine, representing the Office of the District Attorney.

DEREK DIXON

Assistant Public Defender of the County of Clementine, representing Mortimer Smith.

HARRISON WALLACE, duly appointed and sworn as the official shorthand reporter of the Clementine County Criminal Trial Court.

HARRISON WALLACE, CSR NO. 1799
Official Reporter

1 The above titled matter came on for hearing for the Clementine County Criminal Trial Court at
2 9:00 a.m. on March 10, 2021, at the Clementine County Courthouse, 176 Cuties Avenue,
3 Valencia, Orange 13256.
4

5 **By the ADA:**

6 Q: Please state your name.

7

8 A: Officer Terry Anderson

9

10 Q: What is your occupation and current position?

11

12 A: Officer with the Luna City Police Department.

13

14 Q: Were you on duty on January 5, 2021?

15

16 A: Yes.

17

18 Q: Directing your attention to January 5, 2021 at approximately 4:00 pm, where were you?

19

20 A: I was traveling in my patrol car on 100 East approaching the Lark St. overpass.

21

22 Q: Describe Route 100.

23

24 A: It's a 4 lane highway that runs through Luna. There are 2 lanes in each direction.

25

26 Q: What did you observe?

27

28 A: I saw a car traveling on 100 West go off the far side of the highway.

29

30 Q: So this car was traveling in the opposite direction you were?

31

32 A: Yes.

33

34 Q: Where on interstate 100 did this occur?

35

36 A: Right near the Lark Street overpass. The car had just gone under the overpass but I was still
37 maybe 2 tenths of a mile from the overpass. I activated my lights and crossed the median and
38 then crossed 100 West where I parked. I exited my vehicle and could observe a Chevy Cobalt
39 that had gone off the shoulder.

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Q: Did you see what caused the car to go off the road?

A: No

Q: When you first saw the car leave the roadway how many people did you observe on the overpass above?

A: 2

Q: Where were they?

A: They were over the West side of the overpass. One was over traffic and the other was toward the side.

Q: Can you describe these 2 individuals?

A: They appeared to be male and white. One had on a white jacket and the other had on a yellow shirt.

Q: When you reached the shoulder of 100 West, what did you observe?

A: I saw a Chevy Cobalt that was about 20 off the shoulder.

Q: What did you do after seeing the car?

A: I called it in so I'd get backup as well as an ambulance then I went down and approached the car.

Q: Describe the car

A: I could see as I got up to it that the car was a dark blue Chevy Cobalt. I could see stickers on the back including: POW/MIA, Police Benevolent Association, and one of those stickers of a stick figure family holding hands.

Q: What observations did you make of the occupants?

A: There was one occupant – an injured woman in the driver's seat.

Q: What injuries did you observe on the woman?

A: I saw she was bleeding from her head and she was unconscious.

Q: Were these serious physical injuries?

A: Definitely, she was a mess.

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Q: Did you secure the scene, look for witnesses, and take photographs?

A: Yes.

Q: What did you observe about the passenger compartment of vehicle Mrs. Bugg was in?

A: I noticed a large hole in the moon roof.

Q: Was Mrs. Bugg wearing a seatbelt at the time of the crash?

A: No.

Q: Given how far the car was off the shoulder, what can you tell us about the speed it was traveling when it was struck?

A: The car was traveling about 55 mph.

Q: Where on the car did you observe this bowling ball sized hole?

A: On the moon roof.

Q: Did you search or inspect the vehicle?

A: I took a look around but did not do an extensive search.

Q: What object did you find inside her vehicle?

A: I found a bowling ball on the floor near Mrs. Bugg's feet.

Q: Where again was the hole?

A: Driver's side of moon roof.

Q: So someone recklessly dropped a heavy object from the overpass despite the high risk of injury or death?

A: Yes.

Q: Did you locate anything else in the vehicle?

A: I found a driver's license.

Q: What did you discern from looking at the license?

A: I learned that it belonged to June L. Bugg and that she is a registered organ donor.

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Q: Did you ever speak to Mrs. Bugg?

A: Briefly yes.

Q: When?

A: I heard her moaning and leaned in as she was trying to speak. She said she wanted to be cremated and then she said the last thing she recalled was seeing a 2 men on the overpass and then an object fall from the overpass.

Q: Did EMTs arrive?

A: Yes.

Q: What did they do?

A: They placed her on a stretcher and carried her up the embankment to an ambulance where they began to treat her.

Q: Did you locate any witnesses who saw the object being thrown onto the car?

A: Yes, I spoke with a Mr. Copeland.

Q: Where was Copeland when the incident took place?

A: He said was driving behind the Chevy Cobalt when it left the roadway.

Q: I understand that after speaking to witness Copeland, you learned that he spoke to Mrs. Bugg before you arrived?

A: Yes.

Q: Where did your conversation with Mr. Copeland take place?

A: On the side of the road near his car. He had pulled over before reaching the overpass so he wouldn't also get hit with falling debris.

Q: Are there surveillance cameras on that overpass?

A: I assume so, most of them have cameras.

Q: The 2 men you observed on the overpass when you first looked up, did you see where they went?

1 A: I saw the one in white run from the overpass and I lost sight of him. The one in yellow I saw
2 running also but I lost sight of him.

3

4 Q: Did you ever see either again?

5 A: Just the man in yellow. I lost sight of him running near the over pass but when I got across the
6 highway and looked down the embankment where the car was I saw him again walking through
7 the grass toward the wrecked car.

8

9 Q: What was he doing?

10

11 A: He was approaching the car. I assume he was going to see what he could steal.

12

13 Q: Did he reach the car?

14

15 A: No, I yelled to him to halt and he looked up and saw me and then ran away. I could not pursue
16 him because I wanted to check on the driver. So I called in his description and direction of travel
17 and he was arrested about a few hours later at his home.

18

19 Q: When you saw the man near the car did you recognize him?

20

21 A: Yes, we have had several previous run-ins and I recognized him immediately as Morty Smith.

22

23 Q: Did you ever go up and inspect the overpass?

24

25 A: After the scene on the road was secured, I did. When I looked around I recovered a bowling
26 ball bag with the initials MS on it. I also observed several show prints near the bag that appeared
27 to be from the same footwear.

28

29 Q: Thank you. No further questions.

30

31 **END OF PROCEEDINGS**

32 **CERTIFICATION:** On this 10th day of March 2021, I certify, under penalty of perjury, that I
33 have carefully reviewed the above preliminary hearing transcript to determine whether the
34 answers contained are true and correct, and whether I had any additional information relevant to
35 the matters therein. I hereby certify, under penalty of perjury, that the grand jury testimony is
36 accurate, and I have no information relevant to the matters discussed other than what is discussed
37 in this grand jury testimony. Everything was covered and nothing was left out.

38

39

1 *Terry Anderson*

2 Signed by Terry Anderson

People
v.
Mortimer Smith

I, Mortimer Smith, born 12/25/02, reside at 123 Fake St. in Luna, Orange. I am providing this voluntary statement to Inv. Drake after being advised of and waiving my Miranda rights.

On January 5, 2021 I got a call from Rick Sanchez. Rick said that he needed to meet with me right away. Rick asked to borrow my bowling ball. He said he had invented an anti-gravity spray he was going to test. He said this spray rendered items immune to the effects of gravity. Rick is always tinkering with one crazy invention after another. Many of his experiments turn end up in disaster. He said that if I loaned it to him he'd get it back to me the next day. I agreed to meet Rick and he suggested we meet on Lark St. near the overpass because it was equidistant from our houses. I grabbed my bowling ball and headed out.

I walked to the meeting and as I got close to the overpass I could see Rick was already across the overpass to my side of the highway. He asked for the ball and I handed him the ball in its bag. He grabbed it and hurried out onto the overpass. I watched as he took out the ball and did something with it. He then said to me: "Morty, we're gonna make history today!" I started to realize then that the crazy son of a bitch was going to drop my bowling ball off the overpass. Right then he pushed the object over the side. I then hear a loud noise and Rick started running over to where I was. He told me: "We've got to get the hell out of here! Let-s go to your house". He ran past me as I hesitated, stunned.

Then I could see a car was on the side of the road at a weird angle and I realized it may have been hit with the ball. I started heading down to the car but a cop yelled at me. I recognized the cop, he and I have had run-ins before. Every time this officer stops me she/he frisks me and vigorously gropes my genitals. I think that officer is a complete pervert and I didn't want to get molested yet again so I got out of there. I got back to my house and Rick was inside.

Later that day the police came to my house and arrested both of us.



1-5-21

Mortimer Smith

Date



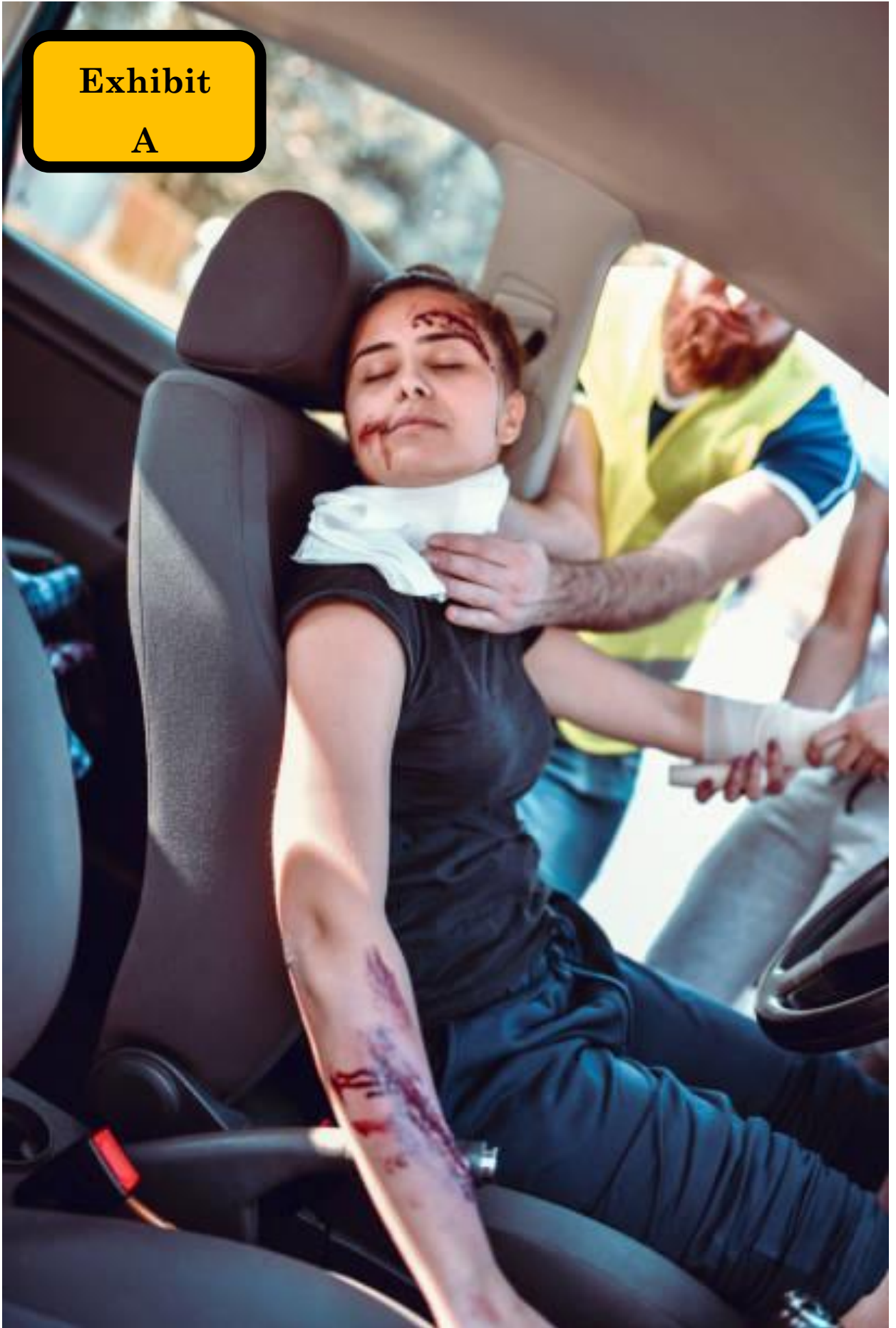
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Witness: Investigator Chris Drake

Date

Exhibit

A





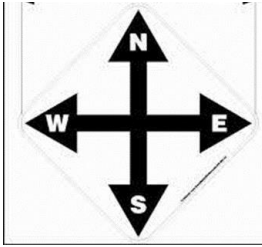
Exhibit

B



Exhibit

C



**Exhibit
D**

Luna City Medical Center

Date: 1/5/21

Patient: June Bugg [2/2/90]

Female, Caucasian.

Patient arrived via ambulance at 4:30 pm on 1/5/21.

Patient admitted to head trauma unit.

Treating physician: Pat Berkowitz, MD.

CT scan performed on head and neck. Multiple skull fractures, moderate traumatic brain injury, and brain hemorrhage detected in the frontal lobe.

Initial diagnosis: Skull fracture, facial fracture, lacerations to scalp.

Surgery performed. Intracranial pressure addressed with insertion of (ICP) monitor and hypertonic saline drip applied to control pressure within the brain. **Craniotomy** performed to obtain access to the damaged vessels.

Prognosis: guarded.

Date 2/2/21:

Patient reports continued memory loss, dizziness.

Patient to be discharged. Follow-up to be scheduled for 30 days out. Referral made to physical and occupational therapist.

Prognosis for complete restoration of memory: fair.

Exhibit

E



**Exhibit
F**

Luna City Police Department

Professional Standards Section

On May 10, 2018, it was alleged that Off. Terry Anderson, in contravention of departmental policy, used a patrol car for personal business when he drove himself to an out of town casino on May 3, 2018.

The investigation unfolded as follows:

- A check of departmental records revealed that Off. Anderson was not on duty on May 3, 2018.
- A check of departmental records revealed that Off. Anderson did have standing permission to drive a patrol car from his residence to the station and back.
- A review of departmental policy revealed that Off. Anderson did not have permission to use a patrol car for personal matters.
- A review of departmental records revealed that on May 3, 2018, Off. Anderson filed a patrol vehicle travel log describing the patrol car in question as having been at his residence all day on May 3, 2018.
- Officer Anderson was interviewed on June 1, 2018 and denied using a patrol car on May 3, 2018 for personal use. A specific denial was entered to the allegation that he drove the patrol car to a casino in Long Branch on that date.
- Surveillance camera recordings from May 3, 2018 at the Deadwood Casino in Long Branch depict a Luna City Police Department patrol car entering the parking lot at 1100 hours and departing at 1600 hours.
- Surveillance camera recordings from May 3, 2018 at the Deadwood Casino in Long Branch reveal a person strongly resembling off. Anderson at a poker table from approximately 1120 hours until 1540 hours.
- Officer Anderson was re-interviewed on June 10, at which time he was made aware of the surveillance recordings. At that time Off. Anderson did admit that he had in fact been at the Deadwood Casino in Long Branch on May 3, 2018 and had traveled by patrol car without permission.

The Luna City Police Department issues the following findings with respect to off. Terry Anderson:

- Departmental Charge #1: Misuse of Departmental Property.
 - It is determined this charge has been SUBSTANTIATED
- Departmental Charge #2: Falsifying a departmental record.
 - It is determined this charge has been SUBSTANTIATED

Exhibit

G

Final disposition:

- Off. Anderson is to be suspended for 2 weeks without pay. Officer Anderson is to undergo retraining on proper police procedures.

State of Orange Criminal Trial Court

STATE OF ORANGE

Prosecution,

Vs.

No. 2016 – CV- 199– CR

RICK SANCHEZ Defendant

CERTIFICATE OF CONVICTION

Guilty PLEA – ASSAULT IN THE SECOND DEGREE
GRADE: FELONY 1

SENTENCE: 7 YEARS

JUDGE: LEYDIG, A.

CERTIFICATION: On this 1st day of March 2021, I certify, under penalty of perjury that above record is true and accurate.

John Anderson

Clerk of Courts

Exhibit

H

JURY INSTRUCTIONS

NOW THAT YOU HAVE HEARD ALL OF THE EVIDENCE AND THE ARGUMENTS OF COUNSEL, IT BECOMES MY DUTY, AS JUDGE, TO GIVE YOU THE INSTRUCTIONS OF THE COURT CONCERNING THE LAW APPLICABLE TO THIS CASE. I WILL READ THESE INSTRUCTIONS TO YOU IN OPEN COURT AND YOU WILL HAVE A COPY WITH YOU IN THE JURY ROOM DURING YOUR DELIBERATIONS. SO, TO THE EXTENT THAT YOU TAKE NOTES, KNOW THAT YOU'LL HAVE THESE INSTRUCTIONS SO YOU DON'T HAVE TO NOTE THESE REMARKS.

This is a criminal case brought by the State of Orange. The government charges the defendant with Assault in the Second Degree.

The defendant has pleaded not guilty to the charges and is presumed innocent unless and until the government proves the defendant guilty beyond a reasonable doubt. In addition, the defendant has the right to remain silent and never has to prove innocence or present any evidence. You may not consider the defendant's decision not to testify against him when determining whether he is guilty, and you may not draw a negative inference against the defendant because he has chosen not to testify.

In order to help you follow the evidence, I will now give you a brief summary of the elements of the crime[s] that the government must prove to make its case:

Assault in the Second Degree

Under our law, a person is guilty of Assault in the Second Degree when that person recklessly causes serious physical injury to another person by means of a dangerous instrument.

The following terms used in that definition have a special meaning:

SERIOUS PHYSICAL INJURY means impairment of a person's physical condition which creates a substantial risk of death, or which causes death, or serious and protracted disfigurement, or protracted impairment of health or protracted loss or impairment of the function of any bodily organ.²

A person acts **RECKLESSLY** with respect to serious physical injury by means of a deadly weapon [or dangerous instrument] when that person:

engages in conduct which creates or contributes to a substantial and unjustifiable risk that serious physical injury to another person by means of a deadly weapon [or dangerous instrument] will occur,

and when he or she is aware of and consciously disregards that risk,

and when that risk is of such nature and degree that disregard of it constitutes a gross deviation from the standard of conduct that a reasonable person would observe in the situation.

DANGEROUS INSTRUMENT means any instrument, article or substance (including a vehicle) 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.

In order for you to find the defendant guilty of this crime, the People are required to prove, from all the evidence in the case, beyond a reasonable doubt, both of the following two elements:

1. That on or about January 5, 2021, in the county of Luna, the defendant, Mortimer Smith, caused serious physical injury to June Bugg by means of a dangerous instrument; and
2. That the defendant did so recklessly.

If you find that the People have proven beyond a reasonable doubt both of those elements, you must find the defendant guilty of this crime.

If you find that the People have not proven beyond a reasonable doubt either one or both of those elements, you must find the defendant not guilty of this crime.

Accessorial Liability

Our law recognizes that two or more individuals can act jointly to commit a crime, and that in certain circumstances, each can be held criminally liable for the acts of the other(s). In that situation, those persons can be said to be "acting in concert" with each other.²

Our law defines the circumstances under which one person may be criminally liable for the conduct of another. That definition is as follows:

When one person engages in conduct which constitutes an offense, another is criminally liable for such conduct when, acting with the state of mind required for the commission of that offense, he or she solicits, requests, commands, importunes, or intentionally aids such person to engage in such conduct.

Under that definition, mere presence at the scene of a crime, even with knowledge that the crime is taking place, (or mere association with a perpetrator of a crime,) does not by itself make a defendant criminally liable for that crime.

In order for the defendant to be held criminally liable for the conduct of another/others which constitutes an offense, you must find beyond a reasonable doubt:

- (1) That he/she solicited, requested, commanded, importuned, or intentionally aided that person [or persons] to engage in that conduct, and
- (2) That he/she did so with the state of mind required for the commission of the offense.

If it is proven beyond a reasonable doubt that the defendant is criminally liable for the conduct of another, the extent or degree of the defendant's participation in the crime does not matter. A defendant proven beyond a reasonable doubt to be criminally liable for the conduct of another in

the commission of a crime is as guilty of the crime as if the defendant, personally, had committed every act constituting the crime.

The People have the burden of proving beyond a reasonable doubt that the defendant acted with the state of mind required for the commission of the crime, and either personally, or by acting in concert with another person, committed each of the remaining elements of the crime.

Reasonable Doubt

A fundamental principle of our system of criminal law is that the defendant is presumed to be innocent. The mere fact that s/he was arrested and is accused of a crime is not any evidence against them. Furthermore, the defendant is presumed innocent throughout the trial and unless and until you conclude, based on careful and impartial consideration of the evidence, that the People has proven them guilty beyond a reasonable doubt.

It is not the defendant's burden to prove that s/he is not guilty. Instead, it is the People that always has the burden of proving each and every element of the crime charged, and that the defendant is guilty of that crime beyond a reasonable doubt. The person accused of a crime is not required to present evidence or prove anything in his or her own defense. If the People's evidence fails to meet its burden, then your verdict must be not guilty. On the other hand, if the People's evidence does prove beyond a reasonable doubt that the defendant is guilty, then your verdict should be guilty.

Although the People have the burden of proving that the defendant is guilty, this does not mean that they must prove its case beyond all doubt and to a mathematical certainty, nor must it demonstrate the complete impossibility of innocence. A reasonable doubt is a doubt that would cause a reasonably careful and sensible person to hesitate before acting upon a matter of importance in his or her own affairs. A reasonable doubt must fairly arise out of the evidence that was presented or out of the lack of evidence presented with respect to some element of the crime. A reasonable doubt must be a real doubt; it may not be an imagined one, nor may it be a doubt manufactured to avoid carrying out an unpleasant duty.

So, to summarize, you may not find the defendant guilty based on a mere suspicion of guilt. The People have the burden of proving the defendant guilty beyond a reasonable doubt. If it meets that burden, then the defendant is no longer presumed innocent, and you should find them guilty. On the other hand, if the Commonwealth does not meet its burden, then you must find them not guilty.

Direct v. Circumstantial

The evidence in this case is of two different types. On the one hand, there is direct evidence, which is testimony by a witness from his or her own personal knowledge, such as something that he or she saw or heard himself or herself.

The other type is circumstantial evidence, which is testimony about facts that point to the existence of other facts that are in question. Whether or not circumstantial evidence is proof of the other facts in question depends in part on the application of common sense and human

experience. You should recognize that it is sometimes necessary to rely upon circumstantial evidence in criminal cases, particularly where the crime was committed in secret.

In deciding whether or not to accept circumstantial evidence as proof of the facts in question, you must be satisfied, first, that the testimony of the witness is truthful and accurate and, second, that the existence of the facts the witness testifies to leads to the conclusion that the facts in question also happened.

Circumstantial evidence alone may be sufficient to prove the defendant's guilt. If there are several separate pieces of circumstantial evidence, it is not necessary that each piece standing separately convince you of the defendant's guilt beyond a reasonable doubt. Instead, before you may find the defendant guilty, all the pieces of circumstantial evidence, when considered together, must reasonably and naturally lead to the conclusion that the defendant is guilty and must convince you of the defendant's guilt beyond a reasonable doubt. In other words, you may find the defendant guilty based on circumstantial evidence alone, but only if the total amount and quality of that evidence convince you of the defendant's guilt beyond a reasonable doubt.

Consciousness of Guilt, Flight, or Concealment

There was evidence, including testimony, that tended to show that the defendant fled from the police. The credibility, weight, and effect of this evidence is for you to decide. Generally speaking, when a crime has been committed and a person thinks he or she is or may be accused of committing it and he or she flees or conceals himself or herself, such flight or concealment is a circumstance tending to prove the person is conscious of guilt. Such flight or concealment does not necessarily show consciousness of guilt in every case. A person may flee or hide for some other motive and may do so even though innocent. Whether the evidence of flight or concealment in this case should be looked at as tending to prove guilt depends upon the facts and circumstances of this case and especially upon motives that may have prompted the flight or concealment.

You may not find the defendant guilty solely on the basis of evidence of flight or concealment.