

Exercise #21—Version A

Your client, Jack Swanson, has been charged with armed robbery and assault with a deadly weapon. The prosecution alleges that Jack entered the Shadow Bar at about 11:30 p.m., June 6, robbed the bartender at gun point and then shot the bartender in the foot. The robbery netted \$250.

Your only witness is Jack Swanson. Jack is 33 and works as a roofer though he hasn't had a steady job in the last year. He is married to Rene (a part time nurse's aide) and is the father of two boys, 7 and 5.

Jack has two prior convictions. The first was 12 years ago when he was convicted in Murray County Superior Court of aggravated assault for beating a cable television repairman with a fireplace poker when the repairman failed to fix his cable connection properly. He was sentenced to 2 years and served 14 months. Five years ago, he was convicted in the same court of selling a half ounce of cocaine to an 8th grader. He was sentenced to 3 years and released after 2 years.

Jack says that he was downtown the evening of June 6 for an evening out with his wife. They had gone to a few bars and were headed home when Jack realized he was out of cigarettes so he stopped and ran into a convenience store to buy a pack while his wife waited in the truck.

When he got back to the truck and started to drive away, his wife (who was very drunk) started yelling at him about work and smoking and all kinds of complaints and he did not notice that there was a police car behind him. He admits he may have been speeding a bit because his wife was distracting him and getting him angry. Finally, he swerved into a fire hydrant and only then did he notice that the police were behind him. Jack admits he had been drinking more than he should.

Jack denies that he heard his wife say anything to Sgt. Cramer. He also denies that he said anything to her or that he threatened her in any way.

Exercise #21—Version B

You are the prosecutor. The accused, Jack Swanson, has been charged with armed robbery and assault with a deadly weapon. The prosecution alleges that Jack entered the Shadow Bar at about 11:30 p.m., June 6, robbed the bartender at gun point and then shot the bartender in the foot. The robbery netted \$250.

Your witness:

Sergeant Russ Cramer has been in law enforcement with the Bolinga Police Department for 21 years. He will testify that he received a radio call from dispatch at 11:35 p.m., June 6, telling him that there had been an armed robbery at The Shadow Bar and to be on the lookout for a white male in his late twenties, about 6 feet tall and 200 pounds, wearing a red short sleeve shirt with a large picture of Homer Simpson on the front.

As he drove toward the Shadow, he saw the defendant, (a white male, about 6 feet tall and 200 pounds), getting into an old pickup truck parked on Broadway, about three blocks from the Shadow Bar. The defendant was wearing a red short sleeve shirt with a large picture of Homer Simpson on the front. There was a female passenger in the truck.

As the truck pulled away from the curb, Sgt. Cramer drove up behind it and turned on his emergency lights. The truck sped up and it appeared to Cramer that the truck was trying to evade him. After about 30 seconds of the truck speeding through traffic, the truck attempted a sharp right turn and collided with a fire hydrant before coming to a stop. No one in the truck was hurt.

Sgt. Cramer determined that the female passenger was the defendant's spouse, Rene Swanson. Rene was quite intoxicated. When Sgt. Cramer asked her what her husband had been up to that evening, Rene slurred: "Robbing folks, as usual." Sgt. Cramer believes Jack heard her statement and a few minutes later he heard Jack whisper to Rene: "You say another word to the police or try to go to court against me and I'll kill you this time for sure." Rene has refused to speak to the police since that evening and she has asserted her marital privilege and refused to testify in this case.

You also have a transcript (next page) of a "911" call from the Shadow Bar at 11:33 p.m. on June 6. The parties have stipulated that this is a fair and accurate transcript of the "911" call but the defense has reserved all objections other than authentication and best evidence. The caller, Jim Jones, has moved out of state and cannot be located for trial.

TRANSCRIPT OF 911 CALL—JUNE 6—2333 hours—Operator 33

Operator: “911. What is your emergency?”

Caller: “We’ve just been robbed and my boss was shot!”

Operator: “What is your location?”

Caller: “This is Jim Jones and I’m calling from the Shadow Bar, downtown Bolinga. A crazy guy just shot my boss and robbed us. He was wearing a Homer Simpson shirt.”

Operator: “Homer Simpson? You were robbed by Homer Simpson?”

Caller: “No. The robber was wearing a shirt with Homer Simpson’s picture on it.”

Operator: “Homer Simpson the cartoon character?”

Caller: “Yes. Send an ambulance. My boss was shot in the foot.”

Operator: “An ambulance has been dispatched to your location. That’s the Shadow Bar on First St.?”

Caller: “That’s right.”

Operator: “And your name again?”

Caller: “Jim Jones, I’m the cook.”

Operator: “Did you see the person who shot your boss?”

Caller: “Uh huh.”

Operator: “Could you describe him?”

Caller: “He was a white guy, really kind of ugly. About 6 foot and maybe 200.”

Operator: “Did he leave in a vehicle? Did you see if . . . ”

Caller: “No. He just ran out the door and down the street—toward Broadway.”

Operator: “The police have been dispatched and will be at your location in just a few minutes.”