2020-2021
MYLaw High School Mock Trial Case & Competition

State v. Gardner

We would like to acknowledge our tremendous appreciation for
our talented MYLaw Mock Trial Committee:
Ben Garmoe, Esq., who authored this casebook,
&
Erik Atas, Esq. and the Honorable Kathleen Chapman,
who reviewed this casebook.

With gratitude to the Maryland Judiciary, Maryland Bar Foundation
& Maryland State Department of Education

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MARYLAND YOUTH & THE LAW

December 16, 2020

Dear Coaches, Advisors and Students,

I think most of us will agree that "2020" has changed our view on things—even the simplest day-to-day things. A year marred by the pandemic, riots and contemptuous debates, our lives changed in almost an instant, and in ways most of us never imagined. Even our vocabularies have changed. One year ago, words and phrases like "social distancing," "PPE," "court stacking," or "Antifa" were not commonly known. Yes, it has been a year for the books.

This is why MYLaw is more excited than ever to bring Mock Trial to you. After months of uncertainty and isolation, we feel as though experiences like Mock Trial are more important than ever, to provide some sense of normalcy. It will be different than ever before. For the first time, students will not meet face to face in courthouses across the state. But, for the first time, students from Western Maryland might compete with students from the Eastern Shore, before a presiding judge in Baltimore, without ever stepping out of their homes. The four-letter word that usually strikes horror in the heart of every Circuit Coordinator is a distant memory. "*Snow*," they'll mock? *Bring it on!*

The 2020-21 Mock Trial Competition will be completely virtual. Thanks to a network of incredibly dedicated people, nearly 120 teams across the state will have the invaluable opportunity to prepare and present both prosecution and defense arguments — in precedent setting fashion.

In conclusion, I'd like to leave you with one more word as we put 2020 behind us and welcome in 2021. It's not new, and everyone knows its definition —we just don't always employ it: *patience*. As you prepare, practice, and compete, be patient with one another as well as yourself. Be diplomatic. Be understanding. There will be glitches, as there always are with technology. Rather than complaining about what it doesn't do "right," we can marvel at all it allows us to do! Rest assured that we will do everything in our power to provide the best Mock Trial learning experience possible. But, in a year of firsts, this — like everything else — will be a learning experience for all of us.

Thanks to each and every one of you, for your trust in us, and for your unending excitement for Mock Trial.

Stay safe and be well.

Shelley Brown
Executive Director

Important Contacts for the Mock Trial Competition

Please call your local coordinator for information about your county/circuit schedule.
Your second point of contact is the State Mock Trial Coordinator:
Sonia Dowuona, sonia@mylaw.org, Maryland Youth & the Law

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Teams should plan to compete weekly, beginning the week of January 4 and concluding in mid-March. Please check www.mylaw.org after December 16th for the competition schedule.

Maryland Association for Justice

FOUNDATION

is proud to support the
Maryland Youth and the Law

MY High School Mock Trial Competition

Good luck to all
Mock Trial teams!

Our mission is to support projects that keep families safe, educate the public about the civil justice system, and help those who need it most in Maryland.

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SYNOPSIS

On a cold January evening, two security guards were on patrol at the Walters Art Museum in Chesapeake City, Maryland. Two individuals dressed as Chesapeake City Police officers rang the doorbell indicating they needed to come inside the museum. Once inside, the two individuals tied up the guards and stole several precious artifacts and paintings from the museum. A local resident and former museum employee, Izzy Gardner, has been arrested and charged with theft for allegedly being one of the two people who robbed the museum, as well as assault on the two security guards on duty that day. To this day, none of the stolen artwork has been recovered.

This synopsis is provided for educational purposes only and may not be referenced at trial in any way.

MARYLAND MOCK TRIAL PROCEDURES FOR VIRTUAL COMPETITIONS

I. Courtroom Set-Up

a. More information to come.

II. The Opening of the Court and the Swearing of Witnesses

a. The Bailiff for the Prosecution will call the Court to order through the following steps:
    1. In a loud, clear voice, say, "The Court will now hear the case of State v. Gardner. The Honorable _____presiding."
    2. The judge will ask each side if they are prepared to begin.
b. For the purpose of time, it will be assumed that each witness has already been sworn in.

III. Opening Statement (5 minutes maximum)

a. Once the case has been called, one member from each attorney team will state who they are representing. This is typically done in this format:
    a. If you are the Prosecution:
        i. "Good afternoon, Your Honor. I am (provide your name) representing the State of Maryland. Then introduce your co-counsel: "With me is my Co-Counsel": provide their names.
    b. If you are the Defense:
        i. "Good afternoon, Your Honor. I am (provide your name) from **Wais, Vogelstein, Forman & Offutt** and I represent Izzy Gardner." Then introduce your co-counsel: "With me is my Co-Counsel": provide their names.
b. Prosecution (criminal case)
   After introducing oneself and colleagues to the judge, the prosecutor summarizes the evidence for the court which will be presented to prove the case. The Prosecution's opening statement should include a description of the facts and circumstances surrounding the case, as well as a brief summary of the key facts that each witness will reveal during testimony. The Opening Statement should avoid too much information. It should also avoid argument, as the statement is intended to provide facts of the case from the client's perspective.
c. Defense (criminal or civil case)
   After introducing oneself and colleagues to the judge, the defendant's attorney summaries the evidence for the court which will be presented to rebut (or deny the validity) of the case which the Prosecution has made. It includes facts that tend to weaken the opposition's case, as well as key facts that each witness will reveal during testimony. It should avoid repetition of facts that are not in dispute, as well as strong points of the prosecution/plaintiff's case. As with the Prosecution's statement, Defense should avoid argument at this time.

IV. Direct Examination

The Prosecution/Defense attorneys conduct direct examination of each of their own witnesses. During direct exam, testimony and other evidence to prove or strengthen the Prosecution's/Defense's case will be presented. The purpose of direct examination is accomplish one or more of the following goals:

a. To allow the witness to relate the facts to support the prosecution claim/defense argument and meet or disprove the required burden.
b. Introduce undisputed facts – No facts or information can be considered by the judge or jury until they are placed in evidence through a witness' testimony.
c. Enhance the likelihood of disputed facts – Direct examination is your opportunity to set forth your client's version of the undisputed facts and persuasively introduce evidence which supports that version.
d. Lay foundation for the introduction of exhibits – Documents, photos, writings, reports or other forms of evidence will often be central to your case. In most instances, it is necessary to lay a foundation for the admission of exhibits through direct testimony of witnesses.
e. Reflect upon the credibility of witnesses – The credibility of a witness is always an issue. For this reason, direct examinations should begin with some background information about the witness. After an introduction, the judge/jury should learn why the witness is testifying. Your job is to:
    i. Help the witness tell their story, by asking open-ended questions. Rather than those that draw a "yes" or "no" response, questions that begin with "who," "what," "where," "when," and "how" or "explain…" and "describe…" are helpful during direct examination.
    ii. Questions should be clear and concise, and should help guide your witness through direct examination.
    iii. Be careful to avoid questions that elicit narrative answers. Witnesses should not narrate too long, as it will likely draw an objection from opposing counsel.
    iv. Do not ask questions that "suggest" a specific answer or response.

V. Cross Examination

After the attorney for the Prosecution/Defense has completed the questioning of a witness, the judge then allows the opposing attorney to cross-examine the witness. The purpose of the cross-examination is to cast doubt upon the testimony of the opposing witness. Inconsistency in stories, bias, and other damaging facts may be pointed out to the Judge through cross-examination. General Suggestions:

a. Use narrow, leading questions that "suggest" an answer to the witness. Ask questions that require "yes" or "no" responses.
b. In general, it is never a good idea to ask questions to which you do not know the answer – unexpected responses can be costly and may leave you unprepared and off-guard.
c. Never ask "why." You do not want to give a well-prepared witness an opportunity to expand upon a response.
d. Avoid questions that begin with "Isn't it a fact that…", as it allows an opportunistic witness an opportunity to discredit you.

VI. Redirect Examination

Redirect examination is an additional direct examination conducted following a witness' cross examination. The purpose is to allow the witness to clarify any testimony that was cast in doubt during cross examination. It is limited to the scope of the cross examination.

VII. Recross Examination

Recross examination is an additional cross examination, following a redirect. The purpose is to respond to matters that may have arisen during the re-examination of a witness. Recross can only deal with those subjects that were addressed during redirect.

VIII. Voir Dire

Pronounced "vwahr deer," and translated from French "to speak the truth" or "to see to speak." The phrase has two meanings, only one of which applies to Mock Trial. People are most commonly introduced to the term when they are called for jury duty. The judge and/or attorneys conduct voir dire to determine if any juror is biased and/or feels unable to deal with issues fairly. The voir dire that is applicable to mock trial is the process through which questions are asked to determine the competence of an alleged expert witness.

Before giving any expert opinion, the witness must be qualified by the court as an expert witness. The court must first determine whether or not the witness is qualified by knowledge, skills, experience, training or education to give the anticipated opinion. After the attorney who called the witness questions him/her about his/her qualifications to give the opinion, and before the court qualifies the witness as an expert witness, the opposing counsel shall, if he/she chooses to do so, have the opportunity to conduct a brief cross-examination of the witness' qualifications. Voir dire is to be limited to the fair scope of the expert's report.

IX. How to Admit Evidence

a. The exhibits have been pre-marked.
b. State to the Court which exhibit you plan to use. (Ordinarily, you would approach opposing counsel with a copy of the exhibit, request permission from the judge to approach the witness, and show it to the witness. These steps will be skipped during virtual competitions.)
c. Ask the right questions to establish a foundation:
    i. I am handing you what has been marked as Exhibit X. Do you recognize this?
    ii. What is it?
    iii. Is it a fair and accurate copy?
d. Ask the court to admit the evidence.
e. Ordinarily, you would hand it to the judge (or clerk) to mark the exhibit into evidence. This step will be skipped during virtual competition.

X. How to Impeach a Witness

Counsel can challenge the credibility of opposing witnesses by showing the judge or jury that the witness made inconsistent statement in the past and/or by demonstrating a witness is biased or has personal interest.

a. Get the witness to repeat the wrong statement. Ask, "Is it your testimony that [insert exact quote of oral testimony if possible?]"
b. Find the affidavit of the witness and proceed with the following questions;
    i. "Do you remember making this statement?"
    ii. "And you were under oath?"
    iii. "This is your deposition, correct?"
    iv. "And this is your signature?"
    v. "Now read silently as I read aloud."
    vi. "I read that correctly, didn't I?"
c. The purpose is to emphasize the disparity between the witness' current testimony and prior statement; the goal being to point out that the witness has changed their answer, *not* to give them a chance to affirm the truth of their most recent statement.

XI. Closing Arguments (7 minutes maximum)

For the purposes of the Mock Trial competition, the first closing argument at all trials shall be that of the Defense.

a. Defense/Defendant
   A closing argument is a review of the evidence presented. Counsel for the Defense reviews the evidence as presented, indicates how the evidence does not substantiate the elements of the charge or claim, stresses the facts and law favorable to the defense, and asks for a finding of not guilty (or not at fault) for the Defense.

b. Prosecution/Plaintiff
   The closing argument for the Prosecution/Plaintiff reviews the evidence presented. Their closing argument should indicate how the evidence has satisfied the elements of the charge, point out the law applicable to the case, and ask for a finding of guilt or fault on the part of the Defense. Because the burden of proof rests with the Prosecution/Plaintiff, this side has the final word.

IX. The Judge's Role and Decision.

The Judge is the person who presides over the trial to ensure that the parties' rights are protected and that the attorneys follow the rules of evidence and trial procedure. In mock trials, the Judge also has the function of determining the facts of the case and rendering a judgment, just as in actual Bench trials.

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VIRTUAL COMPETITION RULES

Team members will have reliable internet, functioning devices, and a quiet space to compete.

1. GENERAL

1.1. Applicability. These rules shall apply to all virtual MYLAW Mock Trial competitions. Participants are cautioned that the absence of enforcement of any rule within the preliminary competitions does not mean the rule will not be enforced at the Quarterfinal, Semi-Final, and/or State competition.

1.2. Diversity and inclusion. MYLAW has a policy of inclusion, and welcomes all participants regardless of race, color, religion, gender, sex, sexual orientation, gender identity, national origin, age, disability, ancestry, genetic information, or any other category protected by federal, state or local law.

1.3. Expectation of participants, coaches, hosts and volunteers. Ethical and professional behavior is expected at all times during all phases of the MYLAW Mock Trial Competition. MYLAW prohibits discrimination, retaliation, or harassment in all its forms, by any individual or team. Inappropriate behavior includes but is not limited to:

- Discriminatory comments based upon any ground listed in 1.2;
- Failure to show respect;
- Violating any of the rules outlined within the casebook;
- Adhering strictly to the "No Coaching" rule;
- Engaging in irresponsible behavior that puts oneself or others at risk, including intoxication at any time during competitions;
- Illegal conduct of any sort.

1.4. Ideals of MYLAW Mock Trial. To further understanding and appreciation of the rule of law, court procedures, and the legal system; to increase proficiency in basic life skills such as listening, speaking, reading, and critical thinking; to promote better communication and cooperation between the school system, the legal profession, and the community at large; and to heighten enthusiasm for academic studies as well as career consciousness of law-related professions.

1.5. Integrity. Individuals, teams, coaches and volunteers shall at all times demonstrate the highest standard of ethical conduct, courtesy, legal professionalism, competence and integrity.

2. ROLES

2.1. Teacher Coach. The team's teacher coach is considered the primary contact for each school. For virtual competitions, teacher coaches will serve as co-hosts, and as such, will allow each of their team members to "enter the courtroom." The Coach's primary responsibility is to demonstrate that winning is secondary to learning.

a. Coaching goals**.** The Teacher Coach shall coach and mentor students about the "real world" aspects of judging in competitions; including but not limited to competition rules, sportsmanship, team etiquette, procedures, and courtroom decorum.

b. Coaches' responsibilities. The Teacher Coach shall recruit students for the team; arrange practice sessions and scrimmages; supervise the team during practices and competitions; work within the school and greater community to recruit an attorney advisor; communicate with opposing teams a

minimum of 24 hours prior to competition regarding any relevant issues including the identification of witnesses; and ensure that the team appears at all scheduled virtual mock trial competitions. Every coach has an obligation to instill by example in every student, respect for judges, officials and other members of the MYLAW Mock Trial community.

2.2. Circuit Coordinator. In traditional Mock Trial competition years, the Circuit Coordinator serves as the primary contact for schools. For the purpose of the 2020-21 virtual competition year, Circuit Coordinators will assist with dissemination and collection of information from schools, as well as judge recruitment. Coordinators will also serve as a conduit for coaches' questions and/or concerns which will then be brought to the attention of MYLaw.

2.3. Local and State Bar Associations. The Bar Associations shall advocate involvement of local attorneys in advising teams and hearing/scoring trials.

2.4. Attorney Advisors. It is the role of the Attorney Advisor to teach basic court processes and procedures, to review and explain modified rules of evidence and their application to the case at hand, and most importantly, to exemplify fairness, professionalism, integrity, and the ideals of the American justice system. In the absence of an Attorney Advisor, these responsibilities become that of the Teacher Coach.

2.5. MYLAW. MYLAW shall provide the Mock Trial case, guidelines, and rules for the competition; oversee the virtual competition; disseminate information to each team; provide technical assistance; provide certificates to all registered participants who compete for the season; assist in recruitment of schools; and act as liaison in finding legal professionals to assist teams.

3: REGISTRATION AND PAYMENT

3.1. Registration information. Registration information as well as a list of all participating teams may be found on www.mylaw.org.

3.2. Team Payment. Payment is expected by the registration deadline. MYLAW requests that payments be made online if possible in the 2020-21 competition year. Payments may be made through the PayPal link found on the MYLAW.org website. An invoice is available on the MYLAW.org website for your convenience.

3.3. Primary Contact/Teacher Coach. Each school must have a primary contact person, in most cases the Teacher Coach, in order to register. The Teacher Coach shall be the person MYLAW and/or the Circuit Coordinator communicates with when applicable. All primary contact persons' information shall be current, and shall be listed on the registration form at the time of registration. If a teacher is not available to serve as the primary contact, a parent, administrator or other school affiliate may do so with the permission of the school principal and as much notice as possible to MYLAW and/or the Circuit Coordinator.

4. TEAMS

4.1. Team make-up. A team must be comprised of no fewer than eight (8) but a maximum of twelve (12) student members from the same high school, with the exception of high schools with a Maryland State Department of Education inter-scholastic athletics designation of Class 2A or Class 1A, which may combine with any other schools in the LEA in those classifications to field a team. A team may carry up

to two alternate students, who are permitted to compete only in the event that one of the twelve official members can no longer participate as a member of the team.

4.1a and 41b. Reserved.

4.2. Team Roles. Teams may use its members to play different roles in different competitions.

a. For any single competition, all teams are to consist of three attorneys and three witnesses, for a total of six (6) different students.
b. Reserved.

4.3. Fielding teams. High schools that field two or more teams shall not, under any circumstances, allow students from Team A to compete for Team B or vice-versa.

a. Each team must have its own Teacher Coach and Attorney Advisor, separate and apart from the other team.
b. Reserved.

4.4. Team Information. Teacher Coaches of competing teams are to exchange information regarding the names and gender of their witnesses at least 24 hours prior to any given round.

a. Teacher Coach for the plaintiff/prosecution should assume responsibility for informing the defense Teacher Coach.
b. A physical identification of all team members must be made in the courtroom immediately preceding the trial.

4.5. Attorney Advisor. Every effort should be made for teams to work with an Attorney Advisor to effectively prepare for competition.

5. COMPETITION

5.1. Forfeits. All registered teams agree to attend all scheduled competitions, even in instances where a team has an inadequate number of students. Forfeits shall occur this season only in the event that multiple members of one team are unable to finish the trial. In the event that one student loses connection and is unable to rejoin the trial by the time their next trial function arrives, another student on that team's roster shall fill the missing student's role. If the student loses connection after the trial has begun, the replacement student may include another student already competing in that trial (for example, one attorney could fill two roles or one witness could play two parts). If the connection issues occur before the trial begins, the replacement student may not include another student already competing in that trial. (In other words, if the issue arises before the case is called and it appears likely that the student with connection problems will be unable to reconnect in time to complete their role, their replacement must be someone else on the roster not competing in the round.) In the event a team refuses to designate a replacement competitor, all trial functions not performed should be scored a zero by the scoring judges.

5.2 Notification. Coaches shall make every effort to notify, by email, the local coordinator, MYLaw and the opposition's coach in advance of the competition if there are an inadequate number of team members.

5.3. Structure and dates of competition. In a traditional, "in-person" competition year, areas of competition coincide with the eight Judicial Circuits of Maryland. This year, teams will compete in a true, statewide competition. Teams will compete at least once a week, beginning in early January and continuing through the end of February. Quarterfinal, semi-final and state championship competitions will be held in March, ending before March 26. A complete schedule of competitions will be published in December.

5.4. Reserved.

5.5. Reserved.

5.6. Rendered decisions. Attorneys and judges may preside over, and render decisions, for all matches. If possible, a judge from the Court of Appeals or Court of Special Appeals will preside over, and render, a decision at the State Finals.

5.7. Reserved.

5.8. See Rule 5.3.

5.9. Declared winner of preliminary competitions must agree to participate on the scheduled dates for the remainder of the competition or be eliminated. Any team that prevails in a competition and advances to the next round, must agree to participate on the dates set forth for the remainder of the competition. Failure to do so will result in the team's elimination from the competition and the first runner-up in that division will advance in their place.

6. JUDGING AND SCORING

6.1 PROCess. An online scoring software called PROcess will be utilized throughout the competition season. Each judge will score the competition independently. It is entirely possible that teams will tie, as the "tie point" rule has been removed. Teams will log in to PROcess following the conclusion of each round of competition to view scoresheets, comments and standings.

a. Regular season. During the regular season, every effort will be made to secure two scoring judges for each competition. If, for any reason, two judges aren't able to score, we will identify a judge to review the recording and submit a second score sheet OR the single score sheet will be duplicated.
b. Quarterfinals, Semi-Finals and State Championship. During the playoffs, every effort will be made to secure a presiding judge and three scoring judges.

6.2 Judges' decisions are final. Appeals are not allowed. MYLaw retains the right to declare a mistrial in the event of a gross transgression of the organizational rules and/or egregious attempt to undermine the intent and integrity of the Mock Trial Competition

7. DIRECTLY PROHIBITED

7.1. No coaching. There shall be no coaching of any kind during the enactment of a mock trial:

a. Student Attorneys may not coach their witnesses during the other team's cross examination;
b. Teacher and Attorney Coaches may not coach team members during any part of the competition;

c. Members of the team who are not participating that particular day may not coach team members who are competing;
d. Coaches and team members are prohibited from using their electronic devices for any means of coaching;
e. Reserved.
f. Reserved.

7.2. Notice of team demographic information is prohibited. Team members or other affiliated parties, shall not, before or during the trial, notify the judge of the students' ages, grades, school name or length of time the team has competed.

7.3. Attendance of an opponent's competition is prohibited. Members of a school team entered in the competition, including Teacher Coaches, back-up witnesses, attorneys, and others directly associated with the team's preparation, shall not attend or listen to virtual or in-person enactments of any possible future opponent in the competition.

7.4. Use of Electronics.

a. Cell phones must be completely silenced during the course of the competition.
b. Recording. This rule has changed since the first draft. Teams may not record any portion of competition. CRC Salomon will record each competition in the event that judges need to access a match for the purpose of scoring (i.e. if there is a glitch with the scoring software or if both judges lose their internet connection). These recordings will be held for a period of one week and then destroyed.
c. Team members should turn their microphones and cameras off when they are not actively participating in trial. Judges will be instructed to hide non-video participants.

8. GENERAL TRIAL PROCEDURES

8.1 Time limits. Each team must complete its presentation within forty-two (42) minutes.

a. Each side has a combined total time of forty-two (42) minutes for direct examination, cross examination, re-cross/re-direct and voir dire (if permitted);
b. Opening statements and closing arguments are five (5) and seven (7) minutes, respectively, and are not included in the forty-two (42) minutes permitted under 8.1a.
c. The "clock" pause during objections (including any arguments related to those objections), bench conferences, the setting up of demonstrative exhibits prior to the examination of a witness (where such activity is permitted by the presiding judge) and court recesses;
d. There is no objection permitted by any party based on the expiration of time;
e. The presiding judge shall have discretion to stop time or add time for technical difficulties in a virtual competition that do not rise to the level of an emergency in Rule 10.

8.2 Use of a Bailiff and Tech Chair. Teams are strongly encouraged to employ non-competing Mock Trial team members as bailiff and Tech Chair during each competition. **Once teams reach the quarterfinal competitions, the use of a bailiff is mandatory**. A Tech Chair is suggested so that the sharing of documents is managed by one person throughout the course of the competition, although the bailiff may do both.

a. Each bailiff will keep time for the opposing team. Bailiffs from the two teams will work together collaboratively to ensure the accuracy of their records. The bailiffs will confer using the private chat feature to determine how much time remains for each team.

b. Each bailiff shall have two stopwatches, cellphones, or other timing devices. The second timepiece is intended to serve as a backup device.
c. Each bailiff shall have visual displays (e.g. cards or pieces of paper) of numbers counting down from 42 in 10-minute intervals (for example, 40, 30, 20, 10, etc.). At each of these intervals, the Bailiff may turn on the camera in order to visually display time remaining, or the bailiff may use the chat feature. At the 10-minute mark, the bailiff must turn on the camera to display the remaining intervals of 10, 5, 3, 2, 1 minute intervals. When the number zero is displayed visually, the presiding judge will announce that the team's presentation is concluded. Teams may ask the presiding judge for courtesy time to complete a presentation, but the extension of courtesy time is intended to permit a team to complete a sentence or thought. It should not extend beyond 15 seconds.
d. In the event that only one team brings a bailiff, that person shall keep time for both sides; it is incumbent upon the coaches to notify opposition if they do not have a bailiff.
e. The bailiff(s) will also announce the Judge and call the case. Witnesses will be deemed sworn in ahead of competition.
f. While the use of a bailiff is discretionary during regular season competitions, it is mandated in quarterfinal, semi-final and state competitions.

8.3 Student Attorneys.

a. Roles**.** The Student Attorney who directly examines a witness is the only attorney who may raise objections when that same witness is being cross-examined. The student attorney who raises objections on direct examination must be the same attorney who then cross-examines that same witness. This same principle applies if a Student Attorney calls for a bench conference; i.e., it must be the attorney currently addressing the Court. The student attorney who handles the opening statement may not perform the closing argument.
b. Addressing the Court. In a traditional mock trial, just as if you were in court, the appropriate way to address the court is to stand. In the interest of limiting disruption in the virtual competition process, attorneys shall remain sitting when asking questions or addressing the judge.
c. Appropriate attire, as if you are appearing in court, is expected of all competing team members.

8.4 Evidentiary Materials and Procedure for Introduction of Exhibits.

a**.** All witnesses shall have case materials in their possession, but they may only refer to them when prompted by an examining attorney.
b. Attorneys will not physically approach their witnesses; instead, they will identify the exhibit they wish to show the witness, and request the Court's permission for the witness to view it.
c. Attorneys will not be required to confirm they have shown the exhibit to the opposing counsel.
d. When an exhibit or document is shown to a witness, a member of the examining attorney's team shall make that document available to all participants via "screen sharing." The member of the team posting the exhibit must be a competing team member (including the Bailiff). It is preferable for teams to separately identify a tech chair who handles evidence and a Bailiff who handles timekeeping, but your Bailiff may handle both if necessary.
e. Exhibits or other documents posted in this manner will be considered not to have been shown to the jury unless they are admitted into evidence and formally published to the jury. Publication to the jury is at the presiding judge's discretion.

8.5 Objections. Opposing counsel (i.e. the attorney for the other side who is listening to the direct examination) should keep their camera on but their microphone muted. In the event that counsel wishes to object, they should quickly unmute themselves in order to object in a timely manner.

8.6 Bench Conferences. Bench conferences may be granted, but must be conducted in open court during virtual competition.

8.7 Location of Students & Competition. Each team member shall log in using a separate device. No two students may be in the same room together at the same time during competition.

9. INVENTION OF FACT. This rule shall govern the testimony of all witnesses. Mock Trial competitors shall advocate as persuasively as possible based on the facts contained in the casebook. Teams must rely on the facts as stated in the case rather than creating new facts or denying existing facts in order to benefit their parties.

9.1. Judges' scoring. If a team demonstrates through impeachment that its opponent has made an Improper Invention, judges should reflect that violation in the scores by penalizing the violating team, rewarding the impeaching team, or both.

9.2. Improper Invention. There are two types of Improper Invention: 1) Any instance in which a witness introduces testimony that contradicts the witness's affidavit and/or 2) Any instance on direct or redirect in which an attorney offers, via the testimony of a witness, material facts not included in or reasonably inferred from the witness' affidavit.

> *Facts are material if they affect the merits of the case. Facts are not material if they serve only to provide background information or develop the character of a witness.*
>
> *A reasonable inference must be a conclusion that a reasonable person would draw from a particular fact or set of facts contained in the affidavit. An answer does not qualify as a "reasonable inference" just because it is consistent with the witness affidavit.*
>
> *For the purposes of Rule 9, an affidavit includes the witness's sworn statement, as well as any document in which the witness has stated his or her beliefs, knowledge, opinions or conclusions.*

9.3. Trial Remedy for Violations. If the cross-examining attorney believes the witness has made an Improper Invention, the only available remedy is to impeach the witness using the witness's affidavit. Impeachment may take the form of demonstrating either (1) an inconsistency between the witness's affidavit and trial testimony ("impeachment by contradiction") or (2) that the witness introduced material facts on direct or redirect that are not stated in or reasonably inferred from the witness's affidavit ("impeachment by omission"). The cross-examiner is not permitted to raise an objection to the judge on the basis of "invention of fact."

10. EMERGENCIES IN VIRTUAL COMPETITIONS. In the event of technical difficulties during a virtual competition, the presiding judge shall have discretion to declare a brief recess to resolve technical difficulties that are substantially impairing a student's ability to participate in the trial. If the difficulty cannot be resolved within a reasonable but brief amount of time, then the trial should continue with another member of the impacted team. Before making an emergency substitution, the impacted team must make the presiding judge aware by making a statement similar to the following, "Your Honor, before I begin I would like to inform the Court that I am [insert your name] and I am substituting for [insert name], who is unable to continue due to technical difficulties."

The presentation will be scored based on the performance by the initial team member and the emergency substitute, as a whole.

Our heartfelt thanks to MYLaw's Mock Trial Committee:

Erik Atas, Esq.
Hon. Kathleen Chapman
Ben Garmoe, Esq.

With special thanks to Ben Garmoe for authoring this case!

Good Luck

TO ALL PARTICIPANTS!

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State v. Gardner Case Book Q&A

Q1. On Pg 49, Lines 47-49, Barnes claims to have helped untie the two guards, but every other affidavit and statement in the casebook claims that Barnes arrived after the guards were untied.

> **A1.** This is a drafting error. Barnes' report will be updated to reflect that Barnes arrived after the guards were cut loose from their restraints.

Q2. Banerjee twice gets the time of their breaks wrong -- by 15 minutes each time.

> **A2.** This is a drafting error. Banerjee took their break at 10:30 pm, and Banerjee exited and entered the museum at the times listed in Exhibit 1. Banerjee's affidavit will be updated to correct this information in line 73, and Barnes Exhibit A will be updated to correct this information in line 8.

Q3. Izzy Gardner claims in his/her testimony that he/she was caught stealing from Target in November of 2019. But also claims that the reason he/she was fired from the Walters was because he/she concealed this from the museum. This would make sense, except he/she also claims he/she was fired in November of 2019. Gardner also says that the reason he/she stole from Target was because he/she was desperate for cash -- but later says that without his/her job at the Walters (which, by this timeline, he/she had at the time of the Target robbery) he/she would be desperate. Also, is the 2019 is supposed to be 2018 or 2017.

> **A3.** The timeline of Gardner's arrest, guilty plea, and firing will be clarified in an update to confirm that Gardner's arrest and guilty plea occurred in the beginning of November and the firing from the Walters occurred later in November when the museum learned of Gardner's conviction. The remainder of the issues in this question are addressed fully in the packet and were not drafting errors.

Q4. Exhibit 6 lists the receipt for the uniform with a date of October 2020. But if the crimes were committed in January of 2020, why does a receipt from 10 months later matter? Should it be 2019?

> **A4.** This is a drafting error. Exhibit 6 will be updated to reflect a date of October 29, 2019.

Q5. Detective Barnes is noted to be retained by the Prosecution and serve as party representative for the State. Does that mean that I can't submit Barnes as an expert witness? Also, is prosecution only allowed to submit Dr. Matthews as the expert witness or can I also voir dire Detective Barnes?

> **A5.** Nothing in the packet rules restricts which witnesses may or may not be submitted as expert witnesses. If you believe you can lay the proper foundation to admit Detective Barnes as an expert witness, you are not prohibited from attempting to do so.

Q6. It is stated that Detective Barnes and Izzy Gardner are constructively to remain in trial for the entire duration, Does that mean that they are always present and have their cameras on during the virtual trial period?

> **A6.** Yes, it means that Barnes and Gardner are always present and teams may assume that Barnes and Gardner were constructively present for the entirety of the trial. No, it does not mean they have their cameras on throughout the trial. Barnes and Gardner should keep their cameras off except for when they are testifying.

Q7. On page 25 of the case, there is an “Editor’s Note” about robbery. We had understood the charges to be theft and assault, and we were not sure why the note about robbery was included. Are we supposed to ignore the note or are we also responsible for proving some count with robbery?

A7. You can ignore this note; it is a remnant of when we were considering robbery as a possible charge. It will be deleted in a future case update.

Q8. Dr. Kenya Abara's affidavit states that Dr. Matthews (around lines 203) believes Izzy's phone connected to tower 16x at 1:38 AM and 1:50 AM. However, Exhibit 9 states that at 1:38 am and 1:50 am, Izzy's phone connected to 16y. Is this a typo error?

A8. This is a drafting error that will be corrected in a future update. Tower 16X covers the Walters Art Museum as seen in Exhibits 11 and 12. The references to Tower 16Y in Dr. Matthews' supplemental report will be corrected to refer to Tower 16X, as will the reference to 16Y in line 101 of Dr. Abara's report. Exhibit 9 will be corrected to indicate that Gardner's phone connected to Tower 16X. 16X is the tower that covers the Walters Art Museum and is the tower that Gardner connected to at 1:38 AM and 1:50 AM. 16Y is the tower and antenna that covers the range shown in Exhibit 12c, and Izzy Gardner did not connect to tower 16Y on the night in question.

Q9. The second page of Exhibit 9 says that it's the data from January 5, 2020, 12:00 PM to January 2, 2020, 9:00 AM. I think the PM is a typo since the crime occurred at 1:30 a.m. and the times listed in the chart all show AM.

A9. This is a typo. The revised case packet will change the information on the second page of Exhibit 9 from "January 5, 2020, 12:00 PM" to "January 5, 2020, 12:00 AM (midnight)."

Q10. In Dr. Matthews' report, line 44, page 61, Dr. Matthews says the only information he reviewed was "Exhibit 2, the zoomed-in map of downtown Chesapeake City." Exhibit 2 is the appraisal, so I think this is just a typo and should have been Exhibit 3, which is the map.

A10. This is a typo. Line 44 of Dr. Matthews' report will be updated to reflect the map of Chesapeake City is Exhibit 3.

Q11. In Dr. Matthews' report, line 114, page 62, it says, "You can see that 4:09 connection reflected in Matthews Exhibit 11a." There are no cell towers shown on Exhibit 11a. I believe the writer meant 11c.

A11. Line 114 of Dr. Matthews' report will be updated to read "You can see that 4:09 PM connection reflected in Matthews Exhibit 11c."

Q12. On page 62, line 117, it says that the "phone pings off cell tower 71Z in the orientation shown in Matthews Exhibit 11c. Exhibit 11c shows the orientation of antenna 46Y, not 71Z. I believe the writer meant Exhibit 11d for that one.

A12. The reference to Matthews Exhibit 11c in line 117 of Dr. Matthews' report will be updated to refer to Matthews Exhibit 11d. The same reference in line 120 of Dr. Matthews' report will either be updated to Matthews Exhibit 11d or deleted as redundant.

Q13. In Dr. Matthew's report, lines 132-134, it says, "This cellular tower and antenna include the apartment building where Izzy Gardner lives, and can be seen in Matthews Exhibit 11a." There are no cellular towers or antennas shown on Exhibit 11a.

A13. Lines 133-34 of Dr. Matthews' report will be updated to read "... and can be seen in Matthews Exhibit 11c."

Q14. In Exhibit 6 it says October 29, 2020, on the receipt. However, on the affidavit provided by the Detective for the State, it says October 29, 2019.

A14. See Answer to Question No. 4.

Q15. The signatures of Armani and Izzy are different from the affidavit and the Chesapeake sign-in sheet (exhibit 4).

A15. All signatures in the packet are authentic and witnesses must acknowledge as such. This is addressed in Special Instruction No. 7.

Q16. Indictments pp. 36-37 say "3 paintings" stolen; one was a vase.

A16. The indictment will be updated to reflect that three items were stolen.

Q17. Is Monday January 6th or January 7th? Barnes affidavit p. 52-53 refers to Monday as both, and Tuesday as January 8th. Also did Izzy deposit the $7800 on January 6th or January 7th? Bank record (ex. 7) says 6th but that would be a Sunday (if Monday is the 7th and Tuesday the 8th). Izzy affidavit says deposit was on the 7th.

A17. The packet is intended to reflect real dates, which means that Monday is January 6, 2020. The Barnes report will be updated on line 206 to state "Monday, January 6" and on line 227 to state "Tuesday, January 7." Izzy Gardner's affidavit will be updated on line 146 to read "January 6th."

Q18. Matthews affidavit p. 61 city map is Exhibit 3 not Exhibit 2.

A18. See Answer to Question 10.

Q19. Inconsistencies in use of 16X and 16Y cell tower - Exhibit 9 (cell phone data) shows Izzy's phone in 16Y at time of theft; Matthews report p. 63 and exhibits 11f & 12c show phone in 16X at time of theft (even though they say they're relying on Exhibit 9); Matthews report p. 65 says phone in 16Y at the time; Abara report p. 76 says phone in 16Y.

A19. See Answer to Question 8.

Q20. Is there a hearsay exception for unavailable declarant? Don't see it in Rules pp. 16-17.

A20. We will be adding Rule 804 and the 804(b) unavailable witness hearsay exceptions to the case revision.

Q21. FBI Art Crime Team Report (Ex. 8) p. 94 says Source 1 & Source 2 unaware the other is cooperating with FBI, but then Source 1 comments on Source 2's information.

A21. The intended inference is that the investigator asked Source 1 about the information they received from Source 2. The packet will be updated to clarify this and establish clearly that the investigator asked Source 1 about the information they received from Source 2 without revealing to Source 1 where that information came from.

Q22. Casey affidavit p. 45 says "Springtime" was being cut from the frame, but his statement to detective (Barnes Exhibit B) says it was "Madonna" - mistake or intentional?

A22. The packet speaks for itself on this question.

Q23. "The next morning on Wednesday, January 9, 2020, Chesapeake City Police Officers arrested Gardner as Gardner walked to work" from Barnes line 262-63 - should this be January 8 because that is a Wednesday? Also, in Barnes' affidavit in different parts it said Izzy Gardner made the deposit on Monday and different parts say Gardner made the deposit Tuesday.

A23. See Answer to Question 17. The dates will be corrected, and line 262 will read "Wednesday, January 8." All references to the deposit in Barnes' report will be corrected to reference "Monday, January 6" as the date of Izzy Gardner's bank deposit. The references to Tuesday, January 8 in lines 227 and 236 of Barnes' report will be corrected to read "Tuesday, January 7."

Q24. In exhibit 7, the bank balance starts at $712.64. After spending $16.14 on 7/11, the balance goes down to $296.50. Is the opening balance supposed to be $312.64?

A24. Yes, this is a drafting error. Exhibit 7 will be corrected to reflect an opening balance of $312.64.

Q25. In exhibit 8, the 4th paragraph of Forensic Evidence review talks about "27 swabs to test for potential DNA profiles." It goes on to say "These swaps". There are many other places throughout the case where swaps is said instead of swabs. Should we assume these are all meant to be swabs (see also line 167 of Barnes affidavit)?

A25. Yes, these are drafting errors/typos. References to "swaps" will be corrected to "swabs."

Q26. Lines 274-276 of Barnes' affidavit say Matthews' report confirms that Izzy did not leave when Izzy said Izzy left. However, Matthews says Izzy left at 1:50 and Izzy says Izzy left around 1:50.

A26. Detective Barnes' report will be edited to accurately reflect the conclusions in Dr. Matthews' report.

Q27. Barnes' affidavit isn't super clear about when he joined the Criminal Investigation Division. line 15-16 makes it sound like he joined in 2009, but line 25 and 35 say he joined in 2012. If he joined in 2012, there's a gap in his resume from 2009-2012.

A27. Detective Barnes joined the Criminal Investigation Division in 2009. Lines 25 and 35 of Barnes' report will be updated to change 2012 to 2009.

Q28. Can the State call two expert witnesses or can we only technically qualify one witness as an expert?

A28. Nothing in the rules prohibits the State (or the Defense) from attempting to qualify more than one witness as an expert if they choose to do so.

Q29. On page 27 of the casebook (35 of the pdf) the information regarding second degree assault, particularly subsection C, appears to have a typo. When outlining the charge for Battery it appears to erroneously use the word assault in describing the crime.

A29. This is not a mistake. The references to assault or attempted assault refer to three different methods to prove assault, two of which are titled battery or attempted battery. That language is taken directly from the Maryland Criminal Pattern Jury Instructions.

Q30. Barnes Exhibit A (line 52-54) and Barnes Exhibit B (line 53-54) seem to say that Sidney Ross found Jamie and Casey, cut them loose, and then called the police. However, lines 100-107 of Barnes affidavit say that Sidney found Jamie, cut him/her loose, called 911, and then found Casey. Which version of events is correct?

A30. See Answer to Question 1.

Q31. Line 122- Says Izzy was in the cell tower of the Engineers Club/Art Museum at 4:26 and remained static there. This matches Izzy's statement where they say the arrived to work around 4:30 and is shown apparently in an exhibit with the employee sign-in. However, in Matthews "conclusions" number 3, they say Izzy was not on that same cell tower with the Engineer's Club/Art Museum until 5:06 pm, there is nothing explaining, in the conclusions, where Izzy was from 4:22-5:06 either. So, the question is, is Matthews purposefully wrong in their description of events and this is a catch for defense? Is 5:06 the correct time and the other times are typos? Or are there mistakes in Matthews affidavit?

A31. Line 177 of Dr. Matthews' report will be edited to reflect that Izzy Gardner was connected to a tower that covers the Engineers Club and the Walters Art Museum.

Q32. Are the affidavits to be treated as prior statements "given under penalty of perjury at a...other proceeding..." even though there is no indication as such?

A32. No. Affidavits are not given at another proceeding and do not fit this definition from Rule 801(d)(1)(A).

Q33. The stipulations indicate that certain exhibits are pre-admitted into evidence. Legally this means that every fact in those exhibits are in evidence. However, under the procedures for virtual competitions in item iv(b) it says "No facts or information can be considered by the judge or jury until they are placed in evidence through a witness' testimony." These statements are inconsistent. Can you please clarify whether the documents are in fact pre-admitted and if so what that means for mock trial purposes.

A33. The procedures for virtual competitions are meant to guide competitors and teams as they prepare but they do not control evidentiary issues in trial. The stipulation related to exhibits being pre-admitted controls and the documents are pre-admitted as stated in that stipulation.

Q34. Did Jamie and Izzy spend Thanksgiving 2018 or 2019 together? In one place it suggests 2018 and in another 2019.

A34. Banerjee and Gardner spent Thanksgiving together in 2019. I believe the packet is sufficiently clear on this point.

Q35. On exhibit 5 Drew Shepherd is listed as working a shift as a security guard from 1-9pm on January 4. There is no indication that she left the building on the report in Exhibit 1. Is that a deliberate omission?

A35. Exhibit 1 will be updated to reflect Drew Shepherd’s exit from the Walters Art Museum around 9 PM on the evening of January 4, 2020.

State v. Gardner Change Log – 12/16/20

Author's note: To the best of our ability, the line numbers on this document will line up with the correct lines in the corrected version of the packet. It is possible that small edits may shift text slightly and cause some lines to change slightly, but these citations should point to the area where the change was made.

Rules of Evidence

1. Rule 804 and several subsections of that rule have been added to the Rules of Evidence
2. Rule 901 clarified to include additional ways to authenticate evidence and to specify evidence may be pre-admitted by stipulation

Criminal Pattern Jury Instructions

1. "Theft" instruction edited to delete "editor's note" about robbery

Indictments

1. Both indictments edited to change "3 paintings" to "2 paintings and 1 vase"

Jamie Banerjee

1. Line 73 edited to clarify when Banerjee took their break

Casey Hudson

1. No edits.

Detective Murphy Barnes

1. Lines 25 and 35 edited to change 2012 to 2009
2. Lines 45-47 edited to clarify who found and cut loose Banerjee and Hudson
3. Line 168 "swapped" edited to "swabbed"
4. Lines 206-7 edited to change date to Monday, January 6, 2020
5. Line 231 edited to change date to Tuesday, January 7, 2020
6. Line 239 edited to change date to Tuesday, January 7, 2020
7. Line 251 edited to change date to January 6, 2020
8. Line 266 edited to change date to Wednesday, January 8, 2020
9. Lines 279-280 edited to match the information in Dr. Matthews' report

Barnes Exhibit A

1. Line 8 edited to clarify when Banerjee took their break

Barnes Exhibit B

1. No edits.

Dr. Jordan Matthews

1. Line 45 edited to change Exhibit 2 to Exhibit 3.
2. Line 115 edited to change Exhibit 11a to Exhibit 11c
3. Line 118 edited to change Exhibit 11c to Exhibit 11d
4. Line 120 edited to remove second reference to Exhibit 11c
5. Lines 133-134 edited to change Exhibit 11a to Exhibit 11c
6. Line 177 edited to change 5:06 PM to 4:36 PM

Supplemental Report – Dr. Jordan Matthews

1. Line 39 edited to change 16Y to 16X

Izzy Gardner

1. Lines 32-51 edited to clarify when Izzy was caught stealing, when they pleaded guilty, and when they were fired.
2. Line 149 edited to change date to January 6th

Armani Lee

1. No edits.

Dr. Kenya Abara

1. Line 105 edited to change 16Y to 16X

Exhibits

1. Exhibit 1 edited to add 9:06 PM exit and information about that exit
2. Exhibit 6 edited to correct the date of purchase to October 29, 2019
3. Exhibit 7 edited to correct opening balance to $312.64.
4. Exhibit 8 edited on Page 2 to clarify a detail about the second conversation with Source 1
5. Exhibit 8 edited on Page 3 to change “swaps” to “swabs”
6. Exhibit 9 edited on Page 2 to correct time to 12:00 AM midnight
7. Exhibit 9 edited on Page 2 to change 16Y to 16X

SPECIAL INSTRUCTIONS

1. This is a jury trial set in the Circuit Court for Chesapeake City. Chesapeake City is the largest city in the State of Maryland and is an independent city that is not contained within any other county in the State of Maryland.

2. Because this is a jury trial, competitors should direct their arguments to the "members of the jury." No judge should ever instruct students to argue this case as a bench trial.

3. The State of Maryland has four witnesses available to testify, and the following rules apply to the State only:

    a. The State is required to call Dr. Jordan Matthews and Detective Murphy Barnes.

    b. The State may call **either** Jamie Banerjee or Casey Hudson. Both Banerjee and Hudson were security guards at the Walters Art Museum on the night the museum was robbed.

    c. The State must provide notice before trial about which guard the State intends to call. The State must provide such notice thirty (30) minutes before trial, either by conversation in a virtual courtroom or email to the Defense team's designated contact person.

    d. Under no circumstances may a State team call both Banerjee and Hudson. For the purposes of trial, the affidavit of the guard who is **not** called may not be referenced or used in any way because the intention of the problem drafters is to force teams to choose which affidavit they want to use. (For example, if the State calls Jamie Banerjee, the affidavit of Casey Hudson may not be referenced at any point in that trial.)

    e. Special Instruction 3d does not preclude either team from attempting to introduce statements made by the non-testifying guard if those statements can be brought in through other witnesses. The written statements of Jamie Banerjee and Casey Hudson taken by Detective Murphy Barnes exist in every trial.

    f. When the State calls Jamie Banerjee, the January 21, 2020 Indictment controls and the January 22, 2020 indictment does not exist. When the State calls Casey Hudson, the January 22, 2020 indictment controls and the January 21, 2020 indictment does not exist.

4. The Defense has three witnesses available to testify and must call all three: Defendant Izzy Gardner, eyewitness Armani Lee, and Dr. Kenya Abara. Teams may select the order in which they intend to call their witnesses.

5. Once the State has provided notice to the Defense about their selection between the two optional witnesses, the two sides should provide each other with the call order and pronouns for each witness who will testify at trial.

6. Detective Murphy Barnes may serve as party representative for the State and the Defendant, Izzy Gardner may serve as party representative for the Defense. These two witnesses are permitted to remain constructively in trial for the duration of trial. All other witnesses must be constructively sequestered at the beginning of trial and judges should not entertain any argument to allow any other witnesses besides Barnes and Gardner to remain in the courtroom.

7. Witnesses must acknowledge authorship of any document that purports to be authored by them and the authenticity of any signature that purports to be theirs. A witness whose affidavit, deposition, or report states that the witness is familiar with a particular document must acknowledge, if asked, that the witness is familiar with that document and that the referenced document is the same version as the corresponding document in the current case.

8. This is a closed universe case packet. The only legal materials that competitors may mention or rely upon are the Maryland Rules of Evidence, Statutes, and Case Law provided in this packet. All participants must acknowledge this if asked by a judge.

9. All parties have waived objections specifically related to the United States Constitution and no party may raise any objections specifically related to the United States Constitution.

10. No witness may refuse to answer any questions and no attorney may instruct a witness not to respond to a question based on the witness's Fifth Amendment rights.

11. Witnesses should feel free to use distinctive accents, speech patterns, and mannerisms - but these elements must never become material inventions of fact. For example, a witness may not testify using a distinctive accent and then have an attorney argue in closing that a certain statement must not have been said by that witness because the person who heard the statement did not state that they heard the distinctive accent.

12. This packet has two indictments to provide students with a clean copy of the indictment at each trial. The goal is for the State to prosecute assault against the guard they call to testify and not the guard they do not call to testify. No team may use the differing dates on the indictments as a substantive argument. The indictment not used immediately ceases to exist for that particular trial.

RULES OF EVIDENCE
INTRODUCTION

In American trials, elaborate rules are used to regulate the admission of proof (i.e., oral or physical evidence). Rules of Evidence 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.

1. Judge decides whether a 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 evidence will probably be allowed by the judge. The burden is on the attorneys to know the rules, to be able to use them to present the best possible case, and to limit the actions of opposing counsel and their witnesses.
2. Formal rules of evidence are quite complicated and differ depending on the court where the trial occurs. For purposes of this Mock Trial Competition, the 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 you think proper. No matter which way the judge rules, attorneys should accept the ruling with grace and courtesy.

ARTICLE I. GENERAL PROVISIONS

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. Purpose and Construction. These rules should be construed so as to administer every proceeding fairly, eliminate unjustifiable expense and delay, and ascertain the truth and secure a just determination.

ARTICLE IV. RELEVANCE AND ITS LIMITS

Rule 401. Test for Relevant Evidence

Evidence is relevant if:

(a) It has any tendency to make a fact more or less probable than it would be without the evidence; and
(b) The fact is of consequence in determining the action

Rule 403. Excluding Relevant Evidence for Prejudice, Confusion, Waste of Time, or Other Reasons.

The court may exclude relevant evidence if its probative value is substantially outweighed by a danger of one or more of the following: unfair prejudice, confusing the issues, misleading the jury, undue delay, wasting time, or needlessly presenting cumulative evidence.

Rule 404. Character Evidence; Crimes or Other Acts.

(a) Character Evidence:
   (1) Prohibited Uses: Evidence of a person's character or character trait is not admissible to prove that on a particular occasion the person acted in accordance with the character or trait.

That is to say, mention of a person's typical behavior is not admissible when trying to prove that the person behaved in a way that matches the behavior discussed in the current case.

ARTICLE VI. WITNESSES/ WITNESS EXAMINATION

Rule 601. Competency to Testify in General. Every person is competent to be a witness unless these rules provide otherwise.

Rule 602. Need for Personal Knowledge. A witness may testify to a matter only if evidence is introduced sufficient to support a finding that the witness has personal knowledge of the matter. Evidence to prove personal knowledge may consist of the witness's own testimony. This rule does not apply to a witness's expert testimony under Rule 703.

Rule 603. Oath or Affirmation to Testify Truthfully.
Before testifying, every witness is required to declare that the witness will testify truthfully, by oath provided in these materials. The bailiff shall swear in all witnesses as they take the stand:

> *Do you promise to tell the truth, the whole truth, and nothing but the truth, under the pains and penalties of perjury?*

Rule 607. Who May Impeach a Witness. Any party, including the party that called the witness, may attack the witness's credibility.

Rule 608. A Witness' Character for Truthfulness or Untruthfulness.

(a) Reputation or Opinion Evidence**.** A witness's credibility may be attacked or supported by testimony about the witness's reputation for having a character for truthfulness or untruthfulness, or by testimony in the form of an opinion about that character. But evidence of truthful character is admissible only after the witness's character for truthfulness has been attacked.

(b) Specific Instances of Conduct. Extrinsic evidence is not admissible to prove specific instances of a witness's conduct in order to attack or support the witness's character for truthfulness. But the court may, on cross-examination, allow them to be inquired into if they are probative of the character for truthfulness or untruthfulness of:
   (1) the witness; or
   (2) another witness whose character the witness being cross-examined has testified about.

By testifying on another matter, a witness does not waive any privilege against self-incrimination for testimony that relates only to the witness's character for truthfulness.

Rules 609. Impeachment by evidence of conviction of crime.

(a) Generally. For the purpose of attacking the credibility of a witness, evidence that the witness has been convicted of a crime shall be admitted if elicited from the witness or established by public record during examination of the witness, but only if (1) the crime was an infamous crime or other crime relevant to the witness's credibility and (2) the court determines that the probative value of admitting this evidence outweighs the danger of unfair prejudice to the witness or the objecting party.

(b) Time limit. Evidence of a conviction is not admissible under this Rule if a period of more than 15 years has elapsed since the date of the conviction, except as to a conviction for perjury for which no time limit applies.

Rule 611. Mode and Order of Examining Witnesses and Presenting Evidence.

(a) Control by the Court; Purposes. The court should exercise reasonable control over the mode and order of examining witnesses and presenting evidence so as to:
  (1) make those procedures effective for determining the truth;
  (2) avoid wasting time; and
  (3) protect witnesses from harassment or undue embarrassment.

> *Scope of Direct Examination: Direct questions shall be phrased to elicit facts from the witness. Witnesses may not be asked leading questions by the attorney who calls them for direct. A leading question is one that suggests the answer that is anticipated or desired by counsel; it often suggests a "yes" or "no" answer.*
> *Example of Leading Question: "Mr/s. Smith: "Is it not true that you made several stops after work before returning home?"*
> *Example of a Direct Question: Mr/s. Smith: "Did you do anything after work, before returning home?*

(b) Scope of Cross-Examination. The scope of cross examination shall not be limited to the scope of the direct examination, but may inquire into any relevant facts or matters contained in the witness' statement, including all reasonable inferences that can be drawn from those facts and matters, and may inquire into any omissions from the witness statement that are otherwise material and admissible.

> *Cross examination is the questioning of a witness by an attorney from the opposing side. An attorney may ask leading questions when cross-examining the opponent's witnesses.*
> *In Mock Trial, attorneys are allowed to ask any questions on cross examination about any matters that are relevant to the case. Witnesses must be called by their own team and may not be recalled by either side. All questioning of a witness must be done by both sides in a single appearance on the witness stand.*

(c) Leading Questions. Leading questions should not be used on direct examination. Ordinarily, the court should allow leading questions:
  (1) on cross-examination; and
  (2) when a party calls a hostile witness, an adverse party, or a witness identified with an adverse party.

(d) Redirect/Recross. After cross examination, additional questions may be asked by the direct examining attorney, but questions must be limited to matters raised by the attorney on cross examination. Likewise, additional questions may be asked by the cross examining attorney on recross, but such questions must be limited to matters raised on redirect examination and should avoid repetition.

(e) Permitted Motions. The only motion permissible is one requesting the judge to strike testimony following a successful objection to its admission.

Rule 612. Writing Used to Refresh a Witness's Memory. 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.

ARTICLE VII. OPINIONS AND EXPERT TESTIMONY

RULE 701. Opinion Testimony by Lay Witnesses. If a witness is not testifying as an expert, testimony in the form of an opinion is limited to one that is:

(a) rationally based on the witness's perception;
(b) helpful to clearly understanding the witness's testimony or to determining a fact in issue; and
(c) not based on scientific, technical, or other specialized knowledge within the scope of Rule 702.

Rule 702. Testimony by Expert Witnesses. A witness who is qualified as an expert by knowledge, skill, experience, training, or education may testify in the form of an opinion or otherwise if:

(a) the expert's scientific, technical, or other specialized knowledge will help the trier of fact to understand the evidence or to determine a fact in issue;
(b) the testimony is based on sufficient facts or data;
(c) the testimony is the product of reliable principles and methods; and
(d) the expert has reliably applied the principles and methods to the facts of the case.

A witness cannot give expert opinions under Rule 702 until they have been offered as an expert by the examining lawyer and recognized as such by the court. To have an expert witness admitted by the court, first ask the witness to testify as to their qualifications: education, experience, skills sets, etc. Then, ask the presiding judge to qualify the witness as an expert in the field of ____. The presiding judge then asks opposing counsel if they wish to Voir Dire [vwar deer] the witness.

Voir dire is the process through which expert witnesses are questioned about their backgrounds and qualifications before being allowed to present their opinion testimony or testimony on a given subject, in court. After an attorney who has called a witness questions them about their qualifications, and before the court qualifies the witness as an expert, the opposing counsel shall have the opportunity to conduct voir dire.

Once voir dire is completed, opposing counsel may 1) make an objection as to their being qualified as an expert, 2) request that the court limit their expert testimony to a more specific matter or subject, or 3) make no objection about the witness being qualified as an expert. The presiding judge will them make a ruling regarding the witness being qualified as an expert.

Rule 703. Bases of an Expert. An expert may base an opinion on facts or data in the case that the expert has been made aware of or personally observed. If experts in the particular field would reasonably rely on those kinds of facts or data in forming an opinion on the subject, the need not be admissible for the opinion to be admitted. But if the facts or data would otherwise be inadmissible, the proponent of the opinion may disclose them to the jury only if their probative value in helping the jury evaluate the opinion substantially outweighs their prejudicial effect.

ARTICLE VIII. HEARSAY

RULE 801. Definitions That Apply to This Article; Exclusions from Hearsay.

The following definitions apply under this article:

(a) Statement. "Statement" means a person's oral assertion, written assertion, or nonverbal conduct, if the person intended it as an assertion.

(b) Declarant. "Declarant" means the person who made the statement.

(c) Hearsay. "Hearsay" means a statement that:
(1) the declarant does not make while testifying at the current trial or hearing; and
(2) a party offers in evidence to prove the truth of the matter asserted in the statement.

(d) Statements That Are Not Hearsay. A statement that meets the following conditions is not hearsay:
(1) *A Declarant-Witness's Prior Statement.* The declarant testifies and is subject to cross-examination about a prior statement, and the statement:
(A) is inconsistent with the declarant's testimony and was given under penalty of perjury at a trial, hearing, or other proceeding or in a deposition;
(B) is consistent with the declarant's testimony and is offered:
(i) to rebut an express or implied charge that the declarant recently fabricated it or acted from a recent improper influence or motive in so testifying; or
(ii) to rehabilitate the declarant's credibility as a witness when attacked on another ground; or
(C) identifies a person as someone the declarant perceived earlier.

(2) *An Opposing Party's Statement*. The statement is offered against an opposing party and:
(A) was made by the party in an individual or representative capacity;
(B) is one the party manifested that it adopted or believed to be true;
(C) was made by a person whom the party authorized to make a statement on the subject;
(D) was made by the party's agent or employee on a matter within the scope of that relationship and while it existed; or
(E) was made by the party's coconspirator during and in furtherance of the conspiracy.

The statement must be considered but does not by itself establish the declarant's authority under (C); the existence or scope of the relationship under (D); or the existence of the conspiracy or participation in it under (E).

Hearsay generally has a three-step analysis:
1) Is it an out of court statement?

2) If yes, is it offered to prove the truth of what it asserts?

3) If yes, is there an exception that allows the out-of-court statement to be admitted despite the fact that it is hearsay?

RULE 802. The Rule Against Hearsay. Hearsay is a statement, other than one made by the declarant while testifying at trial, offered in evidence to prove the truth of the matter asserted made outside of the courtroom. Statements made outside the courtroom are usually not allowed as evidence if they are offered in court to show that the statements are true. The most common hearsay problem occurs when a witness is asked to repeat what another person stated. For the purposes of the Mock Trial Competition, if a document is stipulated, you may not raise a hearsay objection to it.

RULE 803. Exceptions to the Rule Against Hearsay.
The following are not excluded by the rule against hearsay, regardless of whether the declarant is available as a witness:

(a) Present Sense Impression. A statement describing or explaining an event of condition, made while or immediately after the declarant perceived it.

(b) Excited Utterance. A statement relating to a startling event or condition, made while the declarant was under the stress of excitement that it caused.

(c) Then-Existing Mental, Emotional or Physical Condition. A statement of the declarant's then-existing state of mind (such as motive, intent or plan) or emotional, sensory, or physical condition (such as mental feeling, pain, or bodily health), but not including a statement of memory or belief to prove the fact remembered or believed unless it relates to the validity or terms of the declarant's will.

(d) Business Records. A memorandum, report, record, or data compilation, in any form, of acts, events, conditions, opinions, or diagnosis, made at or near the time by or from information transmitted by a person with knowledge, if kept in the course of a regularly conducted business activity, and if it was the regular practice of that business activity to make the memorandum, report, record, or data compilation, all as shown by the testimony of the custodian or other qualified witness, unless the source of the information or the method of circumstances of preparation indicate lack of trustworthiness, shall be admissible. The term "business" as used in this paragraph includes business, institution, association, profession, occupation, and callings of every kind, whether or not conducted for profit.

(e) Public Records. A record or statement of a public office if:
- (1) It sets out:
  - (A) The office's activities
  - (B) A matter observed while under a legal duty to report, but not including, in a criminal case, a matter observed by law enforcement personnel; or
  - (C) In a civil case or against the government in a criminal case, factual findings from a legally authorized investigation; and
- (2) The opponent does not show that the source of information or other circumstances indicate a lack of trustworthiness.

Rule 804. Exceptions to the Rule Against Hearsay –When the Declarant Is Unavailable as a Witness.
(a) Criteria for Being Unavailable. A declarant is considered to be unavailable as a witness if the declarant:

(1) cannot be present or testify at the trial or hearing because of death or a then-existing infirmity, physical illness, or mental illness; or

(2) is absent from the trial or hearing and the statement's proponent has not been able, by process or other reasonable means, to procure the declarant's attendance or testimony.

Comment: This rule may not be used at trial to assert that a team has "procured" the unavailability of a witness by choosing not to call that witness.

(b) The Exceptions. The following are not excluded by the rule against hearsay if the declarant is unavailable as a witness:

(1) Former testimony. Testimony that:

(A) was given as a witness at a trial, hearing, or lawful deposition, whether given during the current proceeding or a different one; and

(B) is now offered against a party who had – or, in a civil case, whose predecessor in interest had – an opportunity and similar motive to develop it by direct, cross-, or redirect examination.

(2) Statement Under the Belief of Imminent Death. In a prosecution for homicide or in a civil case, a statement that the declarant, while believing the declarant's death to be imminent, made about its cause or circumstances.

(3) Statement Against Interest. A statement that:

(A) a reasonable person in the declarant's position would have made only if the person believed it to be true because, when made, it was so contrary to the declarant's proprietary or pecuniary interest or had so great a tendency to invalidate the declarant's claim against someone else or to expose the declarant to civil or criminal liability; and

(B) is supported by corroborating circumstances that clearly indicate its trustworthiness, if it is offered in a criminal case as one that tends to expose the declarant to criminal liability.

(4) Omitted.

(5) Omitted.

(6) Statement Offered Against a Party That Wrongfully Caused the Declarant's Unavailability. A statement offered against a party that wrongfully caused – or acquiesced in wrongfully causing – the declarant's unavailability as a witness, and did so intending that result.

Rule 805. Hearsay within Hearsay

Hearsay within hearsay is not excluded by the rule against hearsay if each part of the combined statement confirms with an exception to the rule.

ARTICLE IX. AUTHENTICATION AND IDENTIFICATION

Rule 901. Evidence may be introduced only if it is contained within the casebook and relevant to the case. Evidence will not be admitted into evidence until it has been identified and shown to be authentic or its identification and/or authenticity has been stipulated. Evidence may be admitted before trial upon stipulation of both parties.

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. To satisfy the requirement of authenticating or identifying an item of evidence, the proponent must produce evidence sufficient to support a finding that the item is what the proponent claims it is. Evidence that satisfies this requirement may include:

(a) Testimony of a Witness with Knowledge. Testimony that an item is what it is claimed to be.

(b) Distinctive Characteristics and the Like. The appearance, contents, substance, internal patterns, or other distinctive characteristics of the item, taken together with all the circumstances.

(c) Opinion About a Voice. An opinion identifying a person's voice – whether heard firsthand or through mechanical or electronic transmission or recording – based on hearing the voice at any time under circumstances that connect it with the alleged speaker.

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MOCK TRIAL OBJECTIONS

Objection	Rule	Description
Relevance	401	Evidence is irrelevant if it does not make a fact that a party if trying to prove as part of the claim or defense more or less probable than it would be without the evidence.
More prejudicial than probative	403	A court may exclude relevant evidence if its probative value is substantially outweighed by unfair prejudice. By its nature, all relevant evidence is prejudicial to one side. This rule generally applies to evidence that not only hurts your case but is not relevant enough to be let in.
Improper character evidence	404; 608	A number of rules govern whether it is appropriate to introduce affirmative or rebuttal evidence about the character of a witness and the notice required to introduce such evidence. This objection is made when improper character evidence has been given as testimony in court. *Example: "The defendant has always been very rude to me, and was particularly rude on the day of the incident."*
Lack of personal knowledge/ speculation	602	A witness may only testify to a fact after foundation has been laid that the witness has personal knowledge of that fact through observation or experience. Many teams refer to testifying to an assumption or fact without personal knowledge as "speculation." Whenever proper foundation has not been laid under this rule or others for testimony, "lack of foundation" is also a proper objection. Speculation, or someone's idea about what might have occurred, is generally not permitted. A witness may not jump to conclusions that are not based on actual experiences or observations, as this is of little probative value. Some leeway is allowed for the witness to use their own words, and greater freedom is generally allowed with expert witnesses.
Beyond the scope	611	In Maryland mock trial, the initial cross examination is not restricted to the content of the direct examination. All subsequent examinations (beginning with redirect) must be within the scope of the prior examination.
Form of question - leading	611	This objection is made when counsel starts arguing with the witness, badgering a witness, or becoming overly aggressive. This objection is made by an attorney to protect a witness during cross examination.
Form of question - compound	611	This objection is made when counsel asks a compound question. A compound question asks multiple things.
Form of question - narration	611	This objection is made when either a witness begins telling a narrative as part of their answer, or counsel's question calls for a narrative. It is admissible for a witness to testify about what

		happened, but they must do so in response to a question. This objection prevents long winded witness answers.
Form of question - argumentative	611	This objection is made when counsel starts arguing with the witness, badgering a witness, or becoming overly aggressive. This objection is made by an attorney to protect a witness during cross examination.
Unresponsive	611	This objection is made when a witness does not answer the question being asked by the attorney. This objection can help an attorney corral the witness and get a straight answer to questions the witness may be trying to avoid. Be careful to avoid making this objection when the witness simply gives a different answer than what was expected or desired.
Asked and answered	611	This objection is made when counsel has asked a question and received an answer, and asks the same question again. If an answer is given, a new question must be asked. Counsel can ask a question multiple times if the witness is not giving a full answer, is being uncooperative or unresponsive.
Hearsay	801-802	An out-of-court statement (including a statement by the witness on the stand) may not be used to prove the truth of the matter asserted. That said, there are many exceptions to the hearsay rule.
Hearsay exceptions	803	Provides for exceptions to the hearsay rule in instances when the evidence is technically hearsay, but circumstances would suggest that it will be reliable.
Lacks foundation	602	This objection is made when counsel asks a question without first establishing that the witness has a basis to answer it. This most frequently occurs when the examining attorney is going too quickly and not asking preliminary questions that demonstrate the witness' familiarity with the facts.

Please note: **Invention of Fact** has been removed as both a Rule of Evidence and an Objection. The thinking behind this is as follows: even if a witness tells a falsehood on the stand, it will be better to take up the issue on cross examination, and impeach the witness through the use of their own witness statement. The effect is two-fold: 1) the witness is shown to have lied, and 2) the judge/jury will see the greater skill of the crossing attorney.

STIPULATIONS

1. For the convenience of all parties, all potential exhibits have been pre-labeled and pre-numbered. These numbers should be used for all purposes at trial regardless of which party offers an exhibit or what order exhibits are offered.

2. The following exhibits are pre-admitted: Exhibit 1 (Forensic Report), Exhibit 2 (Art Appraisal Report), Exhibit 3 (Map), Exhibit 8 (Art Crime Team Report), Exhibit 11 (Matthews exhibits), and Exhibit 12 (Abara exhibits). A pre-admitted exhibit has already been entered into evidence before trial and all parties have waived objections to that exhibit. All competitors are free to display pre-admitted exhibits at any time during trial and no competitor may raise an objection to the admissibility of a pre-admitted exhibit.

    a. This stipulation does not prevent teams from objecting to the manner in which a pre-admitted exhibit is used, if a team believes a pre-admitted exhibit is being used in a manner prohibited by the Rules of Evidence.

3. The following items were stolen from the Walters Art Museum on the night of January 4 and 5, 2020:

    a. *Madonna of the Candelabra* by Raphael
    b. *Springtime* by Monet
    c. *Rubens Vase*, a Byzantine-era vase of unknown origin

4. The appraisal values listed in Exhibit 2 are accurate and all witnesses must acknowledge them when asked.

5. Exhibit 7 is a true and accurate copy of the bank statement for Defendant Izzy Gardner at Chesapeake Bank and Trust for the dates of January 1 - 7, 2020. Both sides agree the statement was produced in the regular course of business by Rogers D. Elliott, Chief of Account Administration, Chesapeake Bank and Trust.

6. If the State calls Jamie Banerjee to testify, Casey Hudson is unavailable to testify due to a medically induced coma as a result of a serious fall that has no relationship to this case.

7. If the State calls Casey Hudson to testify, Jamie Banerjee is unavailable to testify due to a medically induced coma as a result of a serious fall that has no relationship to this case.

8. All parties and witnesses are of at least normal intelligence and none has or ever has had a mental condition that would impact a person's perception, memory, or ability to respond to questions on cross examination.

9. Dr. Kenya Abara reviewed the affidavit of Defendant Izzy Gardner when reaching Dr. Abara's conclusions. The statements made by Defendant Izzy Gardner that were reviewed by Dr. Abara are statements that an expert in Dr. Abara's field would reasonably rely on when forming their opinion, and the statements' probative value in helping the jury evaluate Dr. Abara's opinion substantially outweighs any prejudicial effect.

10. All notice requirements have been satisfied for all evidence and exhibits in the case packet and no party may object at any time that they did not receive proper notice that the other side intended to use a particular document or piece of evidence.

11. For the purposes of Rule 5-609(a)(1), theft qualifies as a crime relevant to a witness's credibility.

Maryland Criminal Pattern Jury Instructions (MPJI-Cr)

Presumption of Innocence and Reasonable Doubt (MPJI-Cr 2:02)

The defendant is presumed to be innocent of the charges. This presumption remains throughout every stage of the trial and is not overcome unless you are convinced beyond a reasonable doubt that the defendant is guilty.

The State has the burden of proving the guilt of the defendant beyond a reasonable doubt. This means that the State has the burden of proving, beyond a reasonable doubt, each and every element of the crime [crimes] charged. The elements of a crime are the component parts of the crime about which I will instruct you shortly. This burden remains on the State throughout the trial. The defendant is not required to prove [his] [her] innocence. However, the State is not required to prove guilt beyond all possible doubt or to a mathematical certainty. Nor is the State required to negate every conceivable circumstance of innocence.

A reasonable doubt is a doubt founded upon reason. Proof beyond a reasonable doubt requires such proof as would convince you of the truth of a fact to the extent that you would be willing to act upon such belief without reservation in an important matter in your own business or personal affairs. If you are not satisfied of the defendant's guilt to that extent for each and every element of a [the] crime charged, then reasonable doubt exists and the defendant must be found not guilty of that [the] crime.

What Constitutes Evidence (MPJI-Cr 3:00)

In making your decision, you must consider the evidence in this case; that is

(1) testimony from the witness stand; [and]
(2) physical evidence or exhibits admitted into evidence; [and]
(3) [stipulations; and]
(4) [depositions; and]
(5) [facts that I have judicially noticed.]

In evaluating the evidence, you should consider it in light of your own experiences. You may draw any reasonable conclusion from the evidence that you believe to be justified by common sense and your own experiences.

The following things are not evidence, and you should not give them any weight or consideration:

(1) any testimony that I struck or told you to disregard and any exhibits that I struck or did not admit into evidence; [and]
(2) questions that the witnesses were not permitted to answer and objections of the lawyers; [and]

(3) the charging document. The charging document is the formal method of accusing the defendant of a crime. It is not evidence of guilt and must not create any inference of guilt.

When I did not permit the witness to answer a question, you must not speculate as to the possible answer. If after an answer was given, I ordered that the answer be stricken, you must disregard both the question and the answer.

During the trial, I may have commented on the evidence or asked a question of a witness. You should not draw any conclusion about my views of the case or of any witness from my comments or my questions.

Opening statements and closing arguments of lawyers are not evidence. They are intended only to help you to understand the evidence and to apply the law. Therefore, if your memory of the evidence differs from anything the lawyers or I may say, you must rely on your own memory of the evidence.

Direct and Circumstantial Evidence (MPJI-Cr 3:01)

There are two types of evidence--direct and circumstantial. An example of direct evidence that it is raining is when you look out the courthouse window and see that it is raining. An example of circumstantial evidence that it is raining is when you see someone come into the courthouse with a raincoat and umbrella that are dripping water.

The law makes no distinction between the weight to be given to either direct or circumstantial evidence. No greater degree of certainty is required of circumstantial evidence than of direct evidence.

In reaching a verdict, you should weigh all of the evidence presented, whether direct or circumstantial. You may not convict the defendant unless you find that the evidence, when considered as a whole, establishes [his] [her] guilt beyond a reasonable doubt.

Credibility of Witnesses (MPJI-Cr 3:10)

You are the sole judge of whether a witness should be believed. In making this decision, you may apply your own common sense and life experiences.

In deciding whether a witness should be believed, you should carefully consider all the testimony and evidence, as well as whether the witness's testimony was affected by other factors. You should consider such factors as:

(1) the witness's behavior on the stand and manner of testifying;
(2) whether the witness appeared to be telling the truth;
(3) the witness's opportunity to see or hear the things about which testimony was given;

(4) the accuracy of the witness's memory;
(5) whether the witness has a motive not to tell the truth;
(6) whether the witness has an interest in the outcome of the case;
(7) whether the witness's testimony was consistent;
(8) whether other evidence that you believe supported or contradicted the witness's testimony;
(9) whether and the extent to which the witness's testimony in court differed from the statements made by the witness on any previous occasion; and
(10) whether the witness has a bias or prejudice.

You are the sole judge of whether a witness should be believed. You need not believe any witness, even if the testimony is uncontradicted. You may believe all, part, or none of the testimony of any witness.

Number of Witnesses (MPJI-Cr 3:16)

The weight of the evidence does not depend upon the number of witnesses on either side. You may find that the testimony of a smaller number of witnesses for one side is more believable than the testimony of a greater number of witnesses for the other side.

Election of Defendant Not to Testify (MPJI-Cr 3:17)

The defendant has an absolute constitutional right not to testify. The fact that the defendant did not testify must not be held against the defendant and must not be considered by you in any way or even discussed by you.

Impeachment by Prior Conviction (MPJI-Cr 3:22)

You have heard evidence that the defendant has been convicted of a crime. You may consider this evidence in deciding whether the defendant is telling the truth, but for no other purpose. You must not consider the conviction as evidence that the defendant committed the crime charged in this case.

Presence of Defendant (MPJI-Cr 3:25)

A person's presence at the time and place of a crime, without more, is not enough to prove that the person committed the crime. The fact that a person witnessed a crime, made no objection, or did not notify the police does not make that person guilty of the crime. However, a person's presence at the time and place of the crime is a fact in determining whether the defendant is guilty or not guilty.

Motive (MPJI-Cr 3:32)

Motive is not an element of the crime charged and need not be proven. However, you may consider the motive or lack of motive as a circumstance in this case. Presence of motive may be evidence of guilt. Absence of motive may suggest innocence. You should give the presence or absence of motive the weight you believe it deserves.

Theft (MPJI-Cr 4:32)

The defendant is charged with the crime of theft. In order to convict the defendant of theft, the State must prove:

(1) that the defendant willfully or knowingly obtained or exerted unauthorized control over property of the owner; and
(2) [that the defendant had the purpose of depriving the owner of the property] [that the defendant willfully or knowingly abandoned, used, or concealed the property in such a manner as to deprive the owner of the property or knew that the abandonment, use, or concealment probably would deprive the owner of the property]; and
(3) the value of the property was over $ 100,000.

"Property" means anything of value.

"Owner" means a person, other than the defendant, who has possession of, or any other interest in, the property and, without whose consent, the defendant has no authority to exert control over the property. For example, a security guard charged with the responsibility of securing the property of another has an interest in that property.

"Deprive" means to withhold property of another permanently, for such a period as to appropriate a portion of its value, with the purpose of restoring it only upon payment of a reward or other compensation, or to dispose of the property and use or deal with the property so as to make it unlikely that the owner will recover it.

"Exert control" means to take, carry away, or appropriate to a person's own use or to sell, convey, or transfer title to an interest in or possession of property.

“Obtain” means to bring about a transfer of interest or possession, whether to the defendant or to another.

"Value" means the market value of the property or service at the time and place of the crime, or, if the market value cannot be satisfactorily ascertained, the cost of the replacement of the property or service within a reasonable time after the crime.

First Degree Assault (MPJI-Cr 4:01.1)

The defendant is charged with the crime of first degree assault. In order to convict the defendant of first degree assault, the State must prove all of the elements of second degree assault and also must prove that the defendant used a firearm to commit assault.

A firearm is a weapon that propels [a bullet] [shotgun pellets] [a missile] [a projectile] by gunpowder or a similar explosive.

Second Degree Assault (MPJI-Cr 4:01)

A. INTENT TO FRIGHTEN

Assault is intentionally frightening another person with the threat of immediate [offensive physical contact] [physical harm]. In order to convict the defendant of assault, the State must prove:

(1) that the defendant committed an act with the intent to place (name) in fear of immediate [offensive physical contact] [physical harm];
(2) that the defendant had the apparent ability, at that time, to bring about [offensive physical contact] [physical harm]; and
(3) that (name) reasonably feared immediate [offensive physical contact] [physical harm]; and
(4) that the defendant's actions were not legally justified.

B. ATTEMPTED BATTERY

Assault is an attempt to cause [offensive physical contact] [physical harm]. In order to convict the defendant of assault, the State must prove:

(1) that the defendant actually tried to cause immediate [offensive physical contact with] [physical harm to] (name);
(2) that the defendant intended to bring about [offensive physical contact] [physical harm]; and
(3) that the defendant's actions were not consented to by (name) [or not legally justified].

C. BATTERY

Assault is causing offensive physical contact to another person. In order to convict the defendant of assault, the State must prove:

(1) that the defendant caused [offensive physical contact with] [physical harm to] (name);
(2) that the contact was the result of an intentional or reckless act of the defendant and was not accidental; and
(3) that the contact was [not consented to by (name)] [not legally justified].

Accomplice Liability (MPJI-Cr 6:00)

The defendant may be guilty of (crime) as an accomplice, even though the defendant did not personally commit the acts that constitute that crime. In order to convict the defendant of (crime) as an accomplice, the State must prove that the (crime) occurred and that the defendant, with the intent to make the crime happen, knowingly aided, counseled, commanded, or encouraged the commission of the crime, or communicated to a participant in the crime that [he] [she] was ready, willing, and able to lend support, if needed.

[A person need not be physically present at the time and place of the commission of the crime in order to act as an accomplice.]

[The mere presence of the defendant at the time and place of the commission of the crime is not enough to prove that the defendant is an accomplice. If presence at the scene of the crime is proven, that fact may be considered, along with all of the surrounding circumstances, in determining whether the defendant intended to aid a participant and communicated that willingness to a participant].

[The defendant may also be found guilty as an accomplice of (a) crime(s) that [he] [she] did not assist in or even intend to commit. In this case, in order to convict the defendant of (additional crime), the State must prove beyond a reasonable doubt that:

(1) the defendant committed the crime of (intended crime) either as the primary actor or as an accomplice;
(2) the crime of (additional crime) was committed by an accomplice; and (3) the crime of (additional crime) was committed by an accomplice in furtherance of or during the escape from the underlying crime of (intended crime).]

[It is not necessary that a defendant knew his accomplice was going to commit an additional crime. Furthermore, the defendant need not have participated in any fashion in the additional crime. In order for the State to establish accomplice liability for the additional crime, the State must prove that the defendant actually committed the planned offense, or the defendant aided and abetted in that offense, and that the additional criminal offense not within the original plan was done in furtherance of the commission of the planned criminal offense or the escape therefrom.]

STATUTES

Md. CRIMINAL LAW Code Ann. § 7-104. General theft provisions

(a) Unauthorized control over property. -- A person may not willfully or knowingly obtain or exert unauthorized control over property, if the person:

(1) intends to deprive the owner of the property;

(2) willfully or knowingly uses, conceals, or abandons the property in a manner that deprives the owner of the property; or

(3) uses, conceals, or abandons the property knowing the use, concealment, or abandonment probably will deprive the owner of the property.

(b) Unauthorized control over property -- By deception. -- A person may not obtain control over property by willfully or knowingly using deception, if the person:

(1) intends to deprive the owner of the property;

(2) willfully or knowingly uses, conceals, or abandons the property in a manner that deprives the owner of the property; or

(3) uses, conceals, or abandons the property knowing the use, concealment, or abandonment probably will deprive the owner of the property.

(c) Possessing stolen personal property. – A person may not possess stolen personal property knowing that it has been stolen, or believing that it probably has been stolen, if the person:

(1) intends to deprive the owner of the property;

(2) willfully or knowingly uses, conceals, or abandons the property in a manner that deprives the owner of the property; or

(3) uses, conceals, or abandons the property knowing that the use, concealment, or abandonment probably will deprive the owner of the property.

(d) Penalty. –

(1) A person convicted of theft of property or services with a value of:

i. at least $ 1,500 but less than $ 25,000 is guilty of a felony and is subject to imprisonment not exceeding 5 years or a fine not exceeding $ 10,000 or both

ii. at least $ 25,000 but less than $ 100,000 is guilty of a felony and is subject to imprisonment not exceeding 10 years or a fine not exceeding $ 15,000 or both; or

iii. $ 100,000 or more is guilty of a felony and is subject to imprisonment not exceeding 20 years or a fine not exceeding $ 25,000 or both.

(2) Except as provided in paragraph (3) of this subsection, a person convicted of theft of property or services with a value of at least $ 100 but less than $ 1,500, is guilty of a misdemeanor and:

i. is subject to imprisonment not exceeding 6 months or a fine not exceeding $ 500 or both.

(3) A person convicted of theft of property or services with a value of less than $ 100 is guilty of a misdemeanor and:

i. is subject to imprisonment not exceeding 90 days or a fine not exceeding $ 500 or both.

Md. CRIMINAL LAW Code Ann. § 3-202. Assault in the first degree

(a) Prohibited. -- A person may not commit an assault with a firearm, including a handgun, antique firearm, rifle, shotgun, short-barreled shotgun, or short-barreled rifle.

(b) Penalty. -- A person who violates this section is guilty of the felony of assault in the first degree and on conviction is subject to imprisonment not exceeding 25 years.

Md. CRIMINAL LAW Code Ann. § 3-203. Assault in the second degree

(a) Prohibited. -- A person may not commit an assault.

(b) Penalty. -- A person who violates subsection (a) of this section is guilty of the misdemeanor of assault in the second degree and on conviction is subject to imprisonment not exceeding 10 years or a fine not exceeding $ 2,500 or both.

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Kevin Walter WARFIELD v. STATE of Maryland

Court of Appeals of Maryland (March 29, 1989)

OPINION

I

Doris Weller, 76 years of age, had lived in the same house in Westminster, Carroll County, Maryland, for 40 years. Since the death of her husband, an attorney, she lived alone, with only two small dogs for company. Her property was bounded by Willis Street, Centre Street, and Court Lane. Her dwelling was at the rear of the Willis Street side of the lot. A two-car garage, separate from the dwelling, was at the opposite side of the lot. It paralleled Court Lane and was set back a short distance from Centre Street. Automobile access to the garage was from Centre Street by way of a ramp leading to two doors which were operated by mechanical door openers. There was a small door at the rear of the side of the garage facing Willis Street. Its door was never locked but was self-closing by means of a spring device. There were sidewalks along Willis Street and Centre Street. Within the lot there was a walkway from Centre Street to the dwelling and from Willis Street to the dwelling. The latter walkway ran along the side of the dwelling, crossed the walkway from Centre Street, and continued to the small door in the side of the garage. *See* diagram appended hereto.

The inside of the garage was cluttered, hardly leaving room to squeeze in two cars. There were boxes piled along the wall of the garage adjacent to the side door. Amidst the boxes were two cans containing United States coins. They came from Mrs. Weller's brother, now deceased. From time to time he had tossed his loose change into the cans. When his health failed, he turned the cans over to Mrs. Weller. She put them in the trunk of her car. One can was about 10 inches high. The other was smaller, about the size of a one-pound coffee tin. The coins in the cans were described by Mrs. Weller as "[s]ilvers, halves, quarters, dimes, nickels and pennies." The cans had been in the trunk of the car for some eight years when Mrs. Weller decided to store them in the garage. She put them amidst the boxes by the side door. About 10 days later, she discovered that the small can and its contents were missing. She recounted the circumstances of their disappearance.

After a heavy snowfall, Mrs. Weller hired Kevin Walter Warfield to shovel the snow off the sidewalks and walkways. Warfield was not a stranger. He had worked for her on previous occasions. From her house she "watched every once in a while to see that he was catching everything . . . ." The snow "was deep." At one point he "disappeared" for about a half an hour. She did not know where he went. She was not concerned because she was not paying him by the hour. He had shoveled the snow on Willis Street, "[h]alfways down Centre Street," and "the front walk to the front porch," when she looked out and saw him coming out of the side entrance door to the garage. She had not given him permission to enter the garage. She left the house and confronted him. She "asked him what he was doing in there." He replied: "[W]e'd have to get the garage doors open to shovel the snow." She explained: "There's a . . . little ramp between the street and the garage. He said he had to . . . have the garage doors open to shovel that snow . . . ." She told him: "[Y]ou didn't need to go in the garage for that at all." He said: "Well, I got tired. I went in to rest." According to a police officer, Warfield later said that he went in to clean his boots off. Mrs. Weller looked in the garage and noticed that the boxes stored therein were "dissembled" and that the smaller can of coins was missing. She discussed the missing can with Warfield. He "denied that he had anything to do with it. He kept denying that he had taken -- had anything to do with the can." The discussion ended when Warfield remarked that there was a lot of snow to shovel and indicated that he should be paid more. Mrs. Weller agreed to give him an additional $ 5. He completed the job, and she paid him. She never saw the smaller can or the coins it contained again.

At the time Mrs. Weller confronted Warfield, he was not wearing his jacket, so she saw no "bulging pockets." She thought that the can was too big and heavy to be carried in a pocket in any event. She "knew" that "nobody else went in that garage" because "if anybody comes near that yard, [the dogs] bark their heads off . . . ." She did not know where the dogs were while Warfield was shoveling snow, but she was "inclined to think they might've been up on the porch."

The value of the coins in the missing can was not clearly determined. Mrs. Weller admitted that she "truly did not know" -- she had never counted them. After some urging and suggestion, she thought that the value "couldn't have been less than 50 [dollars] and I'm sure it was more than 50." According to a police officer, she had told him that the value of the coins in the missing can was $ 150.

It was also not certain just when Mrs. Weller had last seen the smaller can after she removed it from the trunk and placed it in the garage. She said that she had last seen the cans the evening of the day before the smaller can was missing. According to a police officer, she told him that she had seen the cans "earlier in the week." Warfield's sister testified that Mrs. Weller told her that she did not know when she last saw the coins. In any event, Mrs. Weller said that the last time she saw the cans, the garage was "undisturbed."

Mrs. Weller's view of the affair can be summed up by her response to the observation by defense counsel at the subsequent trial:

> Now Mrs. Weller, isn't it a fact that you really don't know what coins you had . . . you really don't know when they were missing or what was missing. All you know is that you saw [Warfield] come out of the garage. And, therefore, you surmised that he had taken your coins.

Mrs. Weller said: "Well they were there the night before and they weren't there after he came out of the garage."

Later, thinking the matter over, Mrs. Weller, "got scared." Her house was the only one on the block, her next door neighbors were away, and she thought that somebody should know about the incident. She "didn't know who to call" so she called City Hall. A police officer was sent to investigate. [1]

1 We have gleaned the substantial part of what is recounted above from the testimony of Mrs. Weller adduced at the trial of Warfield in the Circuit Court for Carroll County.

II

The police investigation of the missing can of coins ended with the arrest of Warfield. He was charged in an information filed by the State's Attorney for Carroll County with misdemeanor theft. A jury found him guilty. He was sentenced to 18 months.

Warfield asks us to review the sufficiency of the evidence to sustain the convictions. He declares that the evidence was insufficient and urges us to pass on it.

III

(A)

We pointed out in *In re Petition for Writ of Prohibition, 312 Md. 280, 310, 539 A.2d 664 (1988)*, that what a court does in regard to passing upon the sufficiency of the evidence to sustain a conviction is "strictly circumscribed." The court does not inquire into and measure the weight of the evidence to ascertain whether the State has proved its case beyond a reasonable doubt.

> Weight and credibility are not at issue. The evidence must be read from the viewpoint most favorable to the prosecution and if so read any rational fact-finder would find it sufficient, the motion must be denied.

Id. at 325, 539 A.2d 664. In other words, the evidence is sufficient if there is any relevant evidence, properly before the jury, legally sufficient to sustain a conviction. *See Brooks v. State, 299 Md. at 150, 472 A.2d 981*, and cases therein cited.

(B)

Mindful of the strictures in the exercise of our function to pass on the sufficiency of the evidence to sustain a conviction, we turn to the conviction of Warfield for theft. Maryland Code, Art. 27, § 342 declares, inter alia:

> (a) *Obtaining or exercising unauthorized control*. -- A person commits the offense of theft when he willfully or knowingly obtains control which is unauthorized or exerts control which is unauthorized over property of the owner, and
>
> (1) Has the purpose of depriving the owner of the property . . . .

If the property has a value of less than $ 300, the crime is a misdemeanor. Subsection (f)(2).

We think that the evidence was not sufficient for a rational fact-finder to find beyond a reasonable doubt that Warfield stole the can of coins. It is true that Warfield was at the scene of the crime, but that alone is not enough. We said in *Johnson v. State, 227 Md. 159, 175 A.2d 580 (1961)*:

> Everyone accused of crime is presumed to be innocent; and, in order to justify a finding of guilt, it is incumbent upon the State affirmatively to establish the defendant's guilt beyond a reasonable doubt. We have held that the presence of the accused at the scene of the crime is an important element that may be considered in determining the guilt or innocence of a person charged with the crime, . . . but presence, alone, at the place where a crime has been committed is not sufficient to establish participation in the perpetration of the crime.

Id. at 163, 175 A.2d 580 (citations omitted). It is also true that Warfield had the opportunity to steal the property, but others had the same opportunity between the time Mrs. Weller last saw the can and the arrival of Warfield on the scene. There was no evidence as to whether or not there were footprints in the snow leading to the side entrance to the garage before Warfield cleaned the walks. When Mrs. Weller saw Warfield leave the garage, the can was missing, but it did not appear to be in Warfield's possession, nor is there even conjecture about how he may have disposed of it had he in fact taken it at that time. Although Mrs. Weller checked on Warfield from time to time from her window, she did not see him enter or leave the garage prior to the time which led to the confrontation, and there is no evidence that he did so. Of course, he could have been in the garage during the period Mrs. Weller did not see him working, but she did not ask him where he was during that time, and the record does not reveal his whereabouts. The mere fact that Mrs. Weller did not see him for half an hour is not enough to support a conclusion that he spent that time in the garage stealing the can of coins. A rational inference may be made from the amount of snow shoveled at the time Mrs. Weller next saw him, that he spent at least a good part of the time during his "disappearance" shoveling snow out of the sight line of Mrs. Weller from her station at the window of the house. Although when confronted by Mrs. Weller and pressed to explain his presence in the garage, he offered two different explanations and later gave a police officer a third, the explanations were not that inconsistent and contradictory. He could have been in the garage for all three reasons. Each of the explanations was innocent in itself and could reasonably explain his presence. The only possible support for the notion that Warfield was the thief was his presence at the scene of the crime coupled with the fact that he gave more than one reason for being there. That Mrs. Weller did not hear the dogs bark while Warfield was working has little, if any, probative value. The evidence does not even disclose where they were.

We believe that the circumstantial evidence does not reach so far as to permit a rational fact-finder to conclude beyond a reasonable doubt that Warfield stole the coins. The trial judge erred in denying the motion for judgment of acquittal as to the charge of theft.

CASE REMANDED TO THE CIRCUIT COURT FOR CARROLL COUNTY WITH DIRECTION TO GRANT THE MOTION FOR JUDGMENT OF ACQUITTAL AS TO EACH OF THE COUNT IN THE INFORMATION.

COUPLIN V. STATE OF MARYLAND

Court of Special Appeals of Maryland (October 18, 1977)

OPINION

After a two-day jury trial, the appellant was convicted in the Criminal Court of Baltimore of robbery with a deadly weapon and use of a handgun in the commission of a crime of violence. He received a fifteen-year sentence for the first of these offenses, and a five-year concurrent sentence for the second.

In this appeal, the appellant argues that an error was committed by the trial court, namely:

The court erred in denying his motion for new trial on the grounds that the evidence was legally insufficient to sustain his conviction of use of a handgun in the commission of a crime of violence.

The claim is without merit, and we therefore affirm the convictions.

Sufficiency of the Evidence to Sustain Conviction of Handgun Offense

Appellant's claim here is a "double-barreled" one. Initially, he argued only that Ms. Day's description of the gun used as having two barrels was sufficient to require an acquittal on the handgun charge, upon the assumption that a handgun cannot have two barrels.

The context of her testimony concerning the gun was as follows:

> "Q When he snatched it from you, what, if anything, did he have in his hand?
>
> A A gun.
>
> Q When you say gun, can you describe what the gun looked like? Size, color, anything like that?
>
> A It had two barrels. It was a handgun and that's about it."

Ms. Day was not examined, or cross-examined, further with respect to the gun. Additional evidence on this point was received from Officer Simmons, who responded to Ms. Day's initial call to the police, and who stated that Ms. Day told him that her assailant was "armed with a small pistol."

The fact of the matter is that handguns containing, or appearing to contain, two barrels do exist and, unfortunately, are sometimes wrongfully used; and thus, Ms. Day's description of the gun used as being of that type may well have been accurate. That aside, however, she clearly stated that appellant had a gun in his hand, which she testified was a "handgun", and which she described to Officer Simmons as being a "small pistol". To the extent that the presumed uniqueness of a two-barreled handgun might raise any doubts, it would, at best, go to the relative weight to be given to her testimony on that point -- a matter for the trier of fact to determine. Ms. Day's other testimony coupled with that of Officer Simmons was clearly sufficient to withstand a motion for new trial or for acquittal. *See Miller v. State*, 231 Md. 158, 161 (1963); *Bell v. State*, 5 Md. App. 276 (1968).

The second barrel of appellant's claim is that, under the authority of *Todd v. State*, 28 Md. App. 127 (1975), *Tisdale v. State*, 30 Md. App. 334 (1976), and *Howell v. State*, 278 Md. 389 (1976), it was incumbent upon the State to prove that the gun used by appellant was, in fact, capable of firing a projectile by an explosive propellant. As such proof was not produced, appellant argues that there was insufficient evidence that the weapon was legally a "handgun" within the ambit of MD. ANN. CODE art. 27, § 36B (d).

The full impact of this rather intriguing argument becomes clear when one considers where it leads. What, in essence, appellant is saying is that, (1) in order to sustain a conviction under § 36B (d), the State must prove that a handgun was used; (2) in order to do that, the State must show that the weapon in question was capable of firing a projectile by virtue of gunpowder or similar explosive force; (3) where, as here, the gun was neither fired nor found, there can be, and was, no evidence of its "fireability" by such means; and (4) as a result, he (and others in like circumstances) cannot therefore be convicted under that section.

Appellant's first premise is, of course, correct as a matter of law, and his third is probably correct as a matter of fact. His syllogism collapses, however, upon the weakness of his second premise, because the cases upon which it is based do not support it.

In *Todd, Tisdale*, and *Howell*, a weapon alleged to be that used in the commission of a felony or crime of violence was found and admitted into evidence; and the issue was whether that weapon was, in fact, a handgun. In *Todd*, evidence was offered that the weapon, which had the appearance of a .45 caliber pistol, fired a .22 caliber pellet through the explosive action of a carbon dioxide cartridge; and, based upon that evidence, it was declared by this Court to be a handgun. In *Tisdale*, the weapon was described as a .22 caliber gas pistol, but there was no evidence at all, except the weapon itself, as to what it was or how it worked. Thus, this Court stated that there was a gross insufficiency of evidence as to the nature of the weapon, requiring that the conviction be reversed. In *Howell*, the evidence established that the weapon was a teargas gun, which the Court of Appeals held was not a handgun because, from the evidence, it did not fire a missile propelled by gunpowder or a similar explosive.

It is one thing to say that, where the weapon alleged

to be a handgun is produced and examined, and the evidence either shows that it was not a handgun or fails to demonstrate adequately that it was, there can be no conviction. It is quite another to extend the "sufficiency" theory to produce the same result when, despite credible testimony that the assailant used a weapon described as a handgun, a small pistol, the weapon was not subject to empirical examination because it was not recovered. There is no suggestion in any of the three cases, or in any other brought to our attention, that a conviction is unobtainable under this latter circumstance.

In *Todd*, this Court stated at 28 Md. App. 132 that, "[t]angible evidence in the form of the weapon used in an offense certainly is not an essential to proof of the use of a weapon." *A fortiori*, such proof may rest upon extrinsic evidence as to the nature of the weapon. The statute, § 36B (d), does not require that the weapon actually be fired as an element of the crime, and we do not believe that, in the absence of the weapon's recovery, there is any requirement that it be fired simply to provide evidence of its "fireability." When Ms. Day testified that the appellant stuck a handgun, which she described as a small pistol, in her neck, and there was no other evidence, except appellant's alibi and general denial, to contradict, must less controvert, that testimony, the State, in our judgment, produced sufficient evidence of the use of a handgun in the commission of a felony or crime of violence to have the issue considered by the jury and to sustain the verdict rendered by it.

Judgments affirmed.