

New Misdemeanor Defender Training Fact Problem

State v. Ronny Clements: misdemeanor larceny of beer from Quickie Mart

1) Report of Alice Tubbs, Quickie Mart Clerk

Tubbs is a 60 year-old African American woman who has been working at the Quickie Mart on South Blount Street in downtown Raleigh for two years. On July 11, she was working as the cashier at the Quickie Mart at 10:00pm, when five teenage males came in. Two of them were black and three were white. Some of them had on baggy pants and necklaces and they were “cutting up”. She had the feeling they were up to no good and started watching them using the mirrors in the corners of the store. They spread out in different aisles, cracking jokes and laughing loudly while they handled merchandise.

Two of the white males went to the beer cooler and Tubbs focused on them because they did not seem of age to buy alcohol. One was wearing a black T-shirt with an eagle on it and no hat. His hair was dark but he had long hair in the back dyed blonde, which stood out to Tubbs as unusual. The other was wearing an oversized white T-shirt, a backpack, and a Durham Bulls cap. The one in the cap looked shorter (between 5’6” and 5’9”) and thinner than the male in the black T-shirt, who was at least 6 feet tall and muscular. The one in the cap started to walk in the direction of the store exit, but the taller male yanked him by the backpack, pulled off the backpack, and stuffed it in the smaller male’s hands. Ms. Tubbs could not hear what they were saying, except that the taller man addressed the other, “Boy!” in a stern voice. The one in the cap then unzipped his backpack and held it open while the taller male took a case of Pabst Blue Ribbon beer from the cooler, put it in the backpack, and zipped it. The smaller male in the cap put the backpack on and they both started walking towards the checkout counter. The other three males also quickly approached the checkout counter. One of them asked Ms. Tubbs, “How much is this?” holding up a box of candy, while the two males who had taken the beer walked by the checkout counter and towards the store exit. They were about five feet from the exit when Ms. Tubbs said in a loud voice, “You need to pay for what’s in that backpack.” They all started to run except the young man in the Bulls cap who froze. Someone yelled, “Boy, you better run!” and pulled him by his backpack strap out of the store. All five then took off running down the block.

Ms. Tubbs called 911 and reported the theft. Officer Davis arrived and learned that the store’s video camera was not functional. Ms. Tubbs said the owner of the Quickie Mart was so cheap and mean that he would sooner see his employees get killed than pay a dime for proper security. She had called him to report the theft right after she called the police and he had berated her for causing the store to lose money. She had had it with that man and was going to quit. Now that she thought about it, those kids had done her a favor and she wished they had gotten away with more merchandise.

2) Report of Officer Davis

I knew from Ms. Tubbs' description that the male in the black T-shirt with the eagle on it was Harland White. White has short, dark hair with a long "rat tail" peroxided white, and a muscular build from his high school football days. I have dealt with White many times before. In fact, I asked him some questions about break-ins in the neighborhood earlier this week when I ran into him on Fayetteville Street. I thought he might want to provide a little cooperation since he has a court date coming up for misdemeanor B & E and he already has one on his record.

The next day, July 12, I went to White's home and told him he had been caught on video tape stealing beer from the Quickie Mart. He said, "Man, that was all Ronny Clements. You can't pin that shit on me. I was just along for the ride and had no idea that boy was going to pull that stunt. You know he's joined the family business, dealing smack with his brother Jordie. They are messed up." We discussed the possibility of a PJC for White's pending charge in exchange for his honest testimony against Ronny Clements.

That afternoon, I interviewed Ronny Clements at his apartment building. I told him that he was caught on video tape stealing beer from the Quickie Mart and that Harland White was prepared to testify against him. He said, "Harland White? That guy has always had it in for me. He used to give Jim Sharp and me wedgies in the locker room in high school. He beat the hell out of Jim too when Jim told on him. Broke his drum for marching band too." Ronny denied involvement in the larceny but did not account for his whereabouts, saying, "I know my rights. I don't have to talk to you. This is BS."

Consistent with Ms. Tubbs' description, Ronny Clements was a young, white male, 5'8", and slight of build, wearing a silver chain with a cross on it and a Durham Bulls cap. I obtained warrants for arrest for misdemeanor larceny for Ronny Clements and Harland White.

3) Interview of Client and Family Members

a) Your client, Ronny Clements, a 19 year-old white man, is 5'8", weighs 135 lbs., wears his hair in a "mohawk", and often wears a necklace with a big silver cross on it. He lives in an apartment in downtown Raleigh with his mother and brother. He says that he has two prior juvenile delinquency adjudications for misdemeanor larceny, and one prior adult misdemeanor conviction for possessing marijuana.

Ronny says that he was not at the Quickie Mart on the night of July 11. He was home with his 25 year-old brother, Jordan Clements, from 8:00pm on. (His mother was working an extra shift and was gone all day, arriving home after midnight.) When asked what he and Jordan were doing at home that night, Ronny initially says "Nothing, hanging out," but when pressed, admits he was helping his brother package marijuana and make small sales to clients who dropped by. He only knows the clients by their first names or street names, and does not know how to contact them.

b) Jordan Clements has a record for drug offenses, including two felony convictions of sale of cocaine for which he recently served 12 months in prison. He also pled guilty to forging checks belonging to an elderly neighbor in 2012. Jordan confirms that Ronny was at home with him on

the night of July 11, and remembers that they were watching the Cubs/Cardinals game on TV. Other than that, he claims he does not remember what they were doing or whether anyone visited the apartment.

c) Mrs. Clements says that Ronny graduated from high school, but academics were a struggle for him because he has a learning disability. She had to take time off from work for school meetings about his IEP. She wishes that he would attend college but so far he does not show any interest. She is worried that he is spending too much time with his older brother Jordan, who has had drug trouble and may not be a good influence. Ronny's father died of cancer when Ronny was six years-old, which was very hard on him. He has always been a small boy, and she thinks his size combined with not having a father around made him a target for bullies. He is an obedient son who takes pride in cleaning and maintaining her car.

Cross and Direct Workshop Assignments

1. Decide on a theory of defense.

2. Prepare a direct examination that advances your theory of defense through one of the following witnesses:

- Your client, Ronny Clements
- Your client's brother, Jordan Clements
- Your client's mother, Mrs. Clements
- Jim Sharp

3. Prepare a cross examination that advances your theory of defense through one of the following witnesses:

- Alice Tubbs, the store clerk
- Harland White

The Basics of Cross-Examination

The Purpose of Cross-Examination:

Obtain FACTS that will be used in closing argument (*as opposed to making a closing argument during cross-examination*). [There is crucial difference between eliciting facts from a witness and making an argument to a jury based upon those facts.]

I. Preparation

- 1) List all of the facts you need from each witness.
- 2) Organize, by topic, how you want to elicit (or present) the facts. Use one page for each topic or major fact (i.e., the “chapter” method).
- 3) On each page, list all of the predicate (or foundation) questions required to get the fact or cover the topic.

II. Courtroom Technique

- 1) Never ask a question when you do not know the answer.
- 2) Always ask leading questions.
- 3) Always ask one-fact questions.

DIRECT EXAMINATION WORKSHOP

This workshop will work the same as the cross workshop and you will use the same fact pattern. The potential witnesses for direct examination are:

- Client, Ronny Clements
- Client's brother, Jordan Clements
- Client's mother, Mrs. Clements
- Jim Sharp

They will have to decide which two witnesses would most advance their theory of defense. If they pick the genre that the client was not the guy in the store/alibi, they will most likely call Ronny and his brother Jordan. Discuss whether they run the risk that information about the drug dealing may come out. How might they deal with that concern? If they pick the genre that the client was there at the store but was coerced/had no criminal intent, they will most likely call Mrs. Clements and Jim Sharp on direct.

Susan's "Three P's of Direct Examination" follow will give you an idea of the skills you should focus on in the workshop. There just may be more material to cover than there is for cross. If you find that to be the case, you can ask the participant to limit their direct to key scenes or portions they want to cover.

THE THREE P'S OF DIRECT EXAMINATION

1. PLAYERS

Select witnesses who advance your theory of the case

2. PREPARATION

a. Think about your questions

i. Open-ended

- Who
- What
- When
- Where
- How
- Why
- Tell us about/Describe

ii. Specific

i. Prepare and practice with the witness

3. PRODUCTION

a. Remember primacy & recency

b. Use “chapters” and “signposts”

c. Elicit factual details

d. Tap into your frustrated inner actor

e. Have a conversation with the witness

f. LISTEN