

**IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT
IN AND FOR HARRIS COUNTY, STATE OF LONE STAR
CRIMINAL DIVISION**

STATE OF LONE STAR)	
)	
v.)	Case No. 2006-1758
)	
TONY GRUBB,)	
)	
Defendant.)	
_____)	

Prepared by:

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This case file was commissioned by the Texas Young Lawyers Association and was prepared by Tracy E. Leduc for the 2007 National Trial Competition.

State of Lone Star

v.

Tony Grubb

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STATEMENT OF THE CASE

The State has charged Tony Grubb with one count of burglary with assault or battery and one count of grand theft. The facts show that someone broke into a condominium owned by 78-year-old Elsie Stevens and forced Stevens at gunpoint to assist him in locating various valuable items in the home. The assailant then fled with the items. The State contends that Tony Grubb was the assailant on the night in question. Grubb contends that he has been misidentified and that the crimes were actually committed by Virgil "Ace" Hodges.

STIPULATIONS REGARDING EVIDENTIARY MATTERS

Procedural Matters

1. Federal Rules of Criminal Procedure and Federal Rules of Evidence apply.
2. All witnesses called to testify who have identified the parties, other individuals, or tangible evidence in depositions can, if asked, identify the same at trial.
3. Each witness who gave a deposition agreed under oath at the outset of his or her deposition to give a full and complete description of all material events and occurrences and to correct the deposition for inaccuracies and completeness before signing the deposition.
4. All depositions were signed under oath.
5. For this competition, no team is permitted to attempt to impeach a witness by arguing to the jury that a signature appearing on a deposition does not comport with signatures or initials located on an exhibit.
6. Other than what is supplied in the problem itself, there is nothing exceptional or unusual about the background information of any of the witnesses that would bolster or detract from their credibility.

7. This competition does not permit a listed witness, while testifying, to "invent" an individual not mentioned in this problem and have testimony or evidence offered to the court or jury from that "invented" individual.

8. "Beyond the record" shall not be entertained as an objection. Rather, teams shall use cross-examination as to inferences from material facts pursuant to National Rules VII(4)(C) and (D) and VIII(5). Any party wishing to file a complaint concerning a violation of this rule shall use the procedure found in rule VIII(4).

9. The State and the Defendant must call the two witnesses listed as that party's witnesses on the witness list.

10. All exhibits in the file are authentic. In addition, each exhibit contained in the file is the original of that document unless otherwise noted on the exhibit or as established by the evidence.

11. It is stipulated that no one shall attempt to contact the problem drafter about this problem before the conclusion of the 2007 National Trial Competition Final Round. Contact with the competition officials concerning this problem must be pursuant to the rules of the competition.

12. 2007 should be the current year in which this case comes to trial.

13. Presentation and argument on pretrial motions shall be limited to a total time of sixteen minutes divided equally between the parties as follows: (1) the State shall have four minutes to present any pretrial motions; (2) the Defendant shall have

four minutes to respond to the State's motion(s); (3) the Defendant shall have four minutes to present any pretrial motions; and (4) the State shall have four minutes to respond to the Defendant's motion(s).

14. This competition permits teams to argue additional case law and other relevant authority to support the team's argument on motions and evidentiary issues. However, no additions or deletions are permitted to the provided jury instructions.

15. The testimony of Tony Grubb shall conform to the testimony given by him at his earlier trial.

16. No team member is permitted to question any witness or to argue to the jury that the withholding rates and tax rates on Grubb's paystub (Exhibit E) do not accurately reflect federal and/or state tax rates.

Substantive Matters

1. Tony Grubb has entered a plea of not guilty and has requested a trial by jury.

2. The trial court has denied a motion to dismiss the indictment.

3. The State and the defense have agreed to an "all or nothing" verdict; therefore, no lesser included offenses may be argued to or considered by the jury.

4. The State and the defense agree that, despite a thorough search and investigation by the police, no DNA samples were recovered from the crime scene.

This stipulation may be read to the jury at the request of either the State or the defense.

5. The State and the defense stipulate that the trial testimony of Tony Grubb, starting on page 27, is an accurate transcription of his testimony taken from the trial record of a jury trial on December 12, 2006, where, at the conclusion of the trial, the jury was unable to reach a verdict.

6. The stipulated sworn testimony of Joye Walford, who was deposed by the defense and who is unavailable for trial, may be read to the jury, either in whole or in part, at the request of either the State or the defense.

7. Lone Star Statutes (2006) provide the following:

810.04 Burglary.

(1)(a) "Burglary" means entering or remaining in a dwelling, a structure, or a conveyance with the intent to commit an offense therein, unless the premises are at the time open to the public and the defendant is licensed or invited to enter.

* * * *

(2) Burglary is a felony of the first degree, punishable by imprisonment for a term of years not exceeding life imprisonment if, in the course of committing the offense, the offender:

a. Makes an assault or battery upon any person.

* * * *

810.07 Prima facie evidence of intent.

(1) In a trial on the charge of burglary, proof of the entering of such structure or conveyance at any time stealthily and without consent of the owner or occupant thereof is prima facie evidence of entering with intent to commit an offense.

* * * *

812.014 Theft.

- (1) A person commits theft if he or she knowingly obtains or uses, or endeavors to obtain or to use, the property of another with intent to, either temporarily or permanently:
 - (a) Deprive the other person of a right to the property or a benefit from the property.
 - (b) Appropriate the property to his or her own use or to the use of any person not entitled to the use of the property.

* * * *

- (2)(c) It is grand theft of the third degree and a felony of the third degree if the property stolen is:

1. Valued at \$300 or more, but less than \$5,000.

8. The State and the defense agree and stipulate that the fingerprint on the candy bar package, Exhibit B, and the fingerprint on the pawn ticket, Exhibit D, are fingerprints of the Defendant, Tony Grubb. This stipulation may be read to the jury at the request of either the State or the defense.

WITNESS LIST

Witnesses for the State:

1. Elsie Stevens**
2. Dale McIntyre***

Witnesses for the Defense:

1. Tony Grubb*
2. Selena Hardaway**

Each team must call witnesses 1 and 2 listed for their respective party.

* This witness must be a male.

** This witness must be a female.

*** This witness may be either male or female.

A TRUE BILL:

Luida Jackson

Foreperson of the Grand Jury

I, Prosecutor for the Sixth Judicial Circuit, in and for Harris County, State of Lone Star, do hereby aver, as authorized and required by law, that I have acted in an advisory capacity to the Grand Jurors of Harris County previous to their returning the above indictment in the above-styled cause.

Leroy Bartf

PROSECUTOR
SIXTH JUDICIAL CIRCUIT
HARRIS COUNTY

Presented before:

John A. R. Parker
CIRCUIT JUDGE

DEPOSITION OF ELSIE STEVENS

Q. Please state your name.

A. Elsie Stevens.

Q. Ms. Stevens, how old are you?

A. I am 79 years old now.

Q. Where do you live?

A. I own a condominium at 17883 Jamestown Way in Armadillo.

Q. Is that in Harris County?

A. Yes.

Q. How long have you lived there?

A. I bought that condo when my husband died fifteen years ago.

Q. Can you describe the condominium for us?

A. Yes. My unit is on the first floor. The front door opens off a breezeway that has three other doors opening onto it. When you come in the front door, you are in my living room. The dining area is off to the left, and the kitchen is also to the left and to the rear of the dining room. To the right, there are two bedrooms that share a single bathroom.

Q. Other than the front door, is there any way in or out of your condo?

A. Yes, there are sliding glass doors that open off the back of the living room and off the back of my bedroom. Both of those sets of sliding glass doors open onto a fenced patio.

Q. What about windows?

- A. There are windows in the dining room and front bedroom that open onto the breezeway. There is a small kitchen window over the sink that opens onto the patio. The bathroom also has a very small window, but it does not open. It is just a piece of glass.
- Q. Does anyone else live in the condo with you?
- A. No. My grand-niece, Joye Walford, lived with me briefly when she was taking some classes at Lone Star State University, but that was last year.
- Q. Ms. Stevens, I want to turn to July 1 of this year. Do you recall that date?
- A. Oh, yes. That was the day of the break-in.
- Q. I want you to tell me what happened that night, but I want you to start before the break-in. What did you do that evening?
- A. Well, I had gone to the grocery store late in the afternoon. I came home and put my groceries away and made a light dinner. Then I watched TV for a while.
- Q. Then what did you do?
- A. At around 9 p.m., my neighbor, Bob Jackson, came over to see if I needed a ride to church the next morning. We sometimes ride together if neither of us has errands to do after the service. We talked in my doorway for about 5 minutes, and then he went back to his condo.
- Q. What happened next?
- A. I watched a little bit of CNN. Even though I'm old, I like to keep up with current events. Then, around 10:30, I got ready for bed. I believe I turned out the light around 10:45.
- Q. What happened next?
- A. Well, something woke me up. I'm not sure what it was, but I believe it was the sound of the living room sliding glass door opening. But I had been very sound asleep, so I was not sure.

Q. What did you do at that point?

A. I laid there, trying to listen for any other noise. Then I heard a sound like someone moving around, but before I could do anything, I saw a large shape in the doorway.

Q. What was the shape?

A. It looked like a person, a man.

Q. What happened next?

A. I wanted to scream, but when I tried, nothing came out. Then the man flipped on the light and pointed something at me, and told me not to make any noise.

Q. What did he point at you?

A. I could not see exactly what it was. I wear glasses and I did not have them on. Plus, I had been sleeping very soundly and I was kind of groggy. Not only that, but my eyes had not had time to adjust to the light. But the item was shiny and stuck out of his hand. I thought it was a gun.

Q. Did he say anything else to you?

A. He told me to get up and that if I helped him I would not be hurt.

Q. Can you describe the man?

A. Well, he was about six feet tall. I would say he weighed about 225 pounds. He seemed to me to be muscular. He was white and he had light hair - either dark blond or light brown.

Q. Did you get a good look at his face?

A. No. Without my glasses, I was not able to make out any features.

Q. Was he wearing a mask?

- A. No.
- Q. What happened next?
- A. He ordered me to get out of bed and help him. So I got up. He let me put on my robe. Then he asked me where I kept my jewelry.
- Q. Did you tell him?
- A. Well, he seemed to indicate that I needed to show him. So I went to my dresser and showed him my jewelry box.
- Q. What was in there?
- A. Well, I don't keep my good jewelry at the condo anymore. Since my husband died, I really don't wear it. I have that in a safety deposit box at the bank. But I do have a few necklaces and earrings and rings that I keep at home. Nothing extremely valuable, but nice items. I showed him what was there, and he just grabbed what he could get and stuffed it in his pockets.
- Q. What happened next?
- A. He asked if I had any money in the house.
- Q. Did you?
- A. Not really. I gave him the money that was in my wallet, but since I had just been to the store, it was less than \$40.
- Q. Did he still have the item you thought was a gun in his hand?
- A. Yes. He was not pointing the gun at me, but he still had it and he kind of waved it around when he asked me questions.
- Q. What happened next?
- A. He asked if I had any silverware in the house.
- Q. Did you?

A. I did, but I told him I didn't.

Q. Why did you do that?

A. Well, not a lot of people have real silver anymore, and what I had was silver that I had inherited from my sister when she died. I did not want him to take it. I did not care about the jewelry – but I did not want to lose the silver since it was the last link to my sister.

Q. What did he do when you told him that you did not have any?

A. He said "Don't lie to me. I know you have silver. Show me where it is!" And he pointed the gun at me again.

Q. What did you do then?

A. I said I was sorry. I told him I had some, but I asked him not to take it. He said he could not do that and demanded that I show him where it was. So I did.

Q. What did he do then?

A. When he saw the silver in the buffet, he asked if I had any kind of bag. I told him that I had grocery bags in the kitchen.

Q. What did he do then?

A. He went into the kitchen to get a bag.

Q. Did he do anything else?

A. Yes. While he was in the kitchen, he opened the refrigerator. I guess robbing little old ladies made him hungry. Anyway, he took a Hershey bar from a package that I had in the fridge. He then came back into the dining room with a bag and ate the candy while putting the silver in the bag.

Q. What happened next?

A. When he had all the silver, he told me that he was going to leave and that I was not to call the police. He said that he knew that I lived alone and that if I called

the police, he would just come back later and hurt me. He showed me the gun again, grabbed the bag of silver, and left.

Q. What did you do at that point?

A. I was both terrified and relieved. I sat down at the dining room table and just cried for a little bit. I could not believe what had just happened, and I could not believe that my sister's silver was gone. But after five minutes or so, I got mad and called the police.

Q. What happened when the police arrived?

A. They sealed off my condo and brought in some of those CSI people. They also asked me lots of questions.

Q. Did they ask you about anything that they found in your condo?

A. Yes. They found a shiny silver-looking flashlight on my dining room table. They asked if it was mine, but it was not. The only flashlight I have is black plastic.

Q. Did you see anything that the police did in your condo?

A. Yes. They dusted all over the place, I assume for fingerprints. I don't know what they found, but they left a huge mess for me to clean up. They also took the package of candy bars. They also asked me to provide them with a list of the items that were gone.

Q. Was one of those items a necklace?

A. Yes, it was. I had a necklace that I bought on a trip to Chicago. It was a gold rope necklace, but I really liked the individual links. I thought they were very unique. Even though it was not extremely valuable, I got comments and compliments on it whenever I wore it.

Q. How long had you had the necklace?

A. About five years. I bought it at the jewelry counter at the big Marshall Fields downtown. Like I said, it was not overly valuable, but it was unique.

Q. Ms. Stevens, I'm showing you what has been marked as State's Exhibit A for identification. Do you recognize what is depicted in this photograph?

A. Yes, this appears to be a photograph of my necklace that was stolen.

Q. Does it appear to be in the same or substantially the same condition as it was on the night it was stolen?

A. Yes.

Q. Ms. Stevens, you said the police also took the package of candy bars. Can you tell me a little bit more about the package?

A. Well, I like Hershey bars – the ones without almonds. I have never understood why someone would want to ruin perfectly good chocolate by putting nuts in it. Anyway, so I buy these packages of candy bars and I keep the package in my fridge. I had just gotten this package earlier that day when I went to the store, and I opened the package after dinner and had one of the bars as dessert. The rest were still in the package in the fridge.

Q. I'm showing you what has been marked for identification as State's Exhibit B. Do you recognize what is depicted in this picture?

A. Yes, it appears to be the package of candy that I had in my refrigerator.

Q. Does the package appear to be in the same or substantially the same condition as it was when you last saw it?

A. No. I had only eaten one candy bar when I last saw the package. The man ate another. But I did not see the package after that.

Q. Ms. Stevens, what grocery store do you go to?

A. I always shop at the Albertson's on Memorial Road.

Q. Ms. Stevens, I want to jump ahead a little. Did there come a time when the police called you about identifying who had broken into your condo?

A. Yes.

Q. When was that?

A. Oh, it was several weeks later. I don't recall exactly. Probably sometime in late July or early August.

Q. What happened when they called you?

A. The officer – I think it was Officer McIntyre – told me that they had a suspect and asked me to come look at some photos.

Q. Did you do that?

A. Yes, I did.

Q. What were you shown?

A. I was shown a paper with six photographs on it.

Q. Were you able to identify anyone in those photographs?

A. No.

Q. Why not?

A. Well, like I said, I really could not see the man's features without my glasses. From the color and style of the hair, I could say that the man who robbed me was one of two on that page, but I could not tell you which one of those two.

Q. Ms. Stevens, were you scared when the man was in your condo?

A. Well, that's a ridiculous question. Of course I was scared. I was terrified. There was a stranger in my condominium pointing a gun at me and telling me that he would not hurt me if I did what he said. I was in fear for my life, especially when he was taking the silver.

- Q. I have another question that may sound ridiculous. Did you give this man permission to come into your home?
- A. No.
- Q. Ms. Stevens, you mentioned earlier that when you told the man you did not have any silver, he said he knew you were lying. Who knew that you had silver in your house?
- A. Well, many of my neighbors knew because I had had them over for dinner from time to time. But they are all as old as me.
- Q. You mentioned that your grand-niece had lived with you for a while. Did she know about the silver?
- A. Oh, yes, she knew about it. She and I had a big fight over the silver after my sister died.
- Q. What kind of fight?
- A. Apparently at one time, my sister had told my grand-niece that she would leave her the silver when she died. But when my sister died, her will left the silver to me. My grand-niece wanted me to let her have the silver, but I wouldn't. She was very angry with me for a long time, but I think she is over it now. At least she seemed to be when she was living with me.
- Q. Did your grand-niece ever have friends over when she was living with you?
- A. Not often. She was dating a nice young man who came over once or twice. Usually they went to his place because they wanted to be alone. But he was there once or twice.
- Q. Would he have known about the silver?
- A. I don't think so.
- Q. Do you remember his name?

A. No. I remember that he did not go by his real name. He had a nickname of some sort, but I don't recall what it was. I do remember that it had something to do with cards.

Q. Cards?

A. Yes, like playing cards – a deck of cards. But I don't remember the name right now.

Q. Ms. Stevens, I want to go back to one last thing. Do you know the value of the silver that was stolen?

A. No. I would have no idea.

Q. How about the necklace. Do you know the value of the necklace?

A. I think it would be worth about \$400. I did have an appraisal done on it several years ago. I would assume that the amount on the appraisal would still be correct and that would be better than my guess.

Q. Ms. Stevens, I'm showing you what has been marked as State's Exhibit C for identification. Do you recognize that?

A. Yes.

Q. What is that?

A. It is the appraisal that I had done on the necklace.

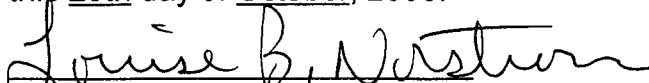
Q. Is this document in the same or substantially the same condition as when you last saw it?

A. Yes. It is the same.



Elsie Stevens

Sworn and subscribed before me
this 25th day of October, 2006.



Notary Public

DEPOSITION OF DALE McINTYRE

- Q. Please state your name for the record.
- A. Dale McIntyre.
- Q. How are you employed?
- A. I am a detective with the Harris County Sheriff's Office.
- Q. How long have you worked for the Harris County Sheriff's Office?
- A. I started there in 1986. I worked my way up through the ranks and became a detective in 2003.
- Q. Is there a particular type of crime that you investigate?
- A. No. The Harris County Sheriff's Department has two detectives assigned to investigate homicides. The rest of us are assigned to cases as they come in regardless of their nature.
- Q. Were you involved with the investigation of a burglary that occurred on July 1, 2006, involving Elsie Stevens?
- A. Yes, I was assigned as the primary detective on that case.
- Q. How did you first learn about the case?
- A. Our overnight officers had been called to Ms. Stevens' condominium after she reported the burglary to 9-1-1. Those officers took Ms. Stevens' initial statement and had the crime scene technicians collect some evidence. I took over the case the next morning.
- Q. What did you do first?
- A. Initially, I spoke with Ms. Stevens again to find out what had happened.
- Q. Did you do anything in response to that?

- A. Based on that conversation, I confirmed that the crime scene technicians had collected a candy bar package and a flashlight.
- Q. Did you do anything else?
- A. I also interviewed several of Ms. Stevens' neighbors, but none of them had seen anything.
- Q. What else did you do?
- A. I also began our process for tracing stolen items that have been pawned.
- Q. Why did you do that?
- A. I understood from Ms. Stevens that her silver was taken and also a necklace that was rather unique. These are the types of items that are often pawned. Because of that, I wanted to be sure that I would be notified if items matching the description of those taken were pawned.
- Q. Did you do anything else at that point?
- A. I sent the flashlight and the candy bar package to our crime lab for fingerprinting.
- Q. Did you get results from that?
- A. Yes. There was a fingerprint on the bottom of the package of candy bars. There was what appeared to be a palm print on the flashlight.
- Q. Did these prints match each other?
- A. We really could not tell. What appeared to be a palm print on the flashlight was too smudged to be of any comparison value.
- Q. Were you able to identify any suspects from either of these prints?
- A. Not at that time.

Q. What did you do next?

A. We did not have many leads. Ms. Stevens could not identify the burglar with enough detail to create any type of composite sketch. None of the neighbors had seen anything. The only forensic evidence did not match anyone at that point.

Q. Did things ever change in your investigation?

A. Yes. We got a break on July 19, when we got a notice that a necklace matching the description of the one stolen had been received at Lone Star Pawn a few days earlier.

Q. What did you do at that point?

A. I traveled to Lone Star Pawn to investigate.

Q. What did you find when you arrived?

A. I spoke briefly with the owner of the shop. He showed me the necklace that had been pawned. It appeared to me to match the description of Ms. Stevens' necklace. I also obtained the pawn ticket from the owner.

Q. Detective McIntyre, I'm showing you what has been previously marked as State's Exhibit D. Do you recognize this?

A. Yes. It is the pawn ticket I received from the owner of Lone Star Pawn.

Q. Is this ticket in the same or substantially the same condition as it was when you received it?

A. Yes.

Q. What did you do once you had this pawn ticket?

A. Well, I collected the necklace from the owner of the pawn shop. I wanted to show it to Ms. Stevens before I reached any conclusions.

- Q. Did you do that?
- A. Yes. I met with Ms. Stevens later that day. She confirmed that it appeared to be her necklace.
- Q. Were there any identifying marks on the necklace that she could point to?
- A. No. Just the somewhat unique links that made up the necklace.
- Q. After you spoke with Ms. Stevens, what did you do?
- A. At that point, I asked the crime lab to see whether the person named on the pawn ticket had fingerprints on file.
- Q. What happened then?
- A. The crime lab checked and found prints on file for Tony Grubb. They checked those against the fingerprint on the candy bar package.
- Q. Do you know the results?
- A. The fingerprint on the candy bar package matched that of Tony Grubb.
- Q. Do you have any explanation for why the fingerprint match was not found back when the evidence was initially checked?
- A. No.
- Q. Were there any fingerprints on the necklace when you recovered it?
- A. I had the crime lab check, but there were no usable prints on the necklace.
- Q. What did you do at that point?
- A. Based on the fingerprint on the candy bar package, I obtained an arrest warrant for Tony Grubb, and I went and arrested him for the crime.

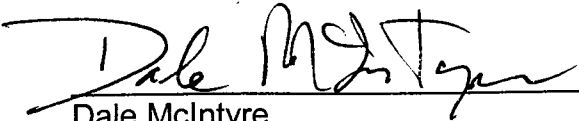
- Q. Did you do anything else?
- A. First, I obtained a search warrant for Tony Grubb's house.
- Q. What were you looking for there?
- A. Specifically, we were looking for the silverware that was stolen from Ms. Stevens. We were also looking for any other pieces of jewelry that might have been hers.
- Q. Did you find anything?
- A. No.
- Q. What else did you do?
- A. I interviewed Tony Grubb after his arrest.
- Q. What happened during the interview?
- A. After I advised Mr. Grubb of his Miranda rights, I asked him what he knew about the burglary at Ms. Stevens' condo.
- Q. What did he tell you?
- A. He denied any knowledge of the burglary or the theft.
- Q. Did you ask him about the necklace?
- A. Yes. He told me that he won it playing pool. He claimed that he was playing pool with Ace Hodges and that when Ace lost, he did not have enough cash so he gave Tony the necklace.
- Q. Did he tell you when that occurred?
- A. He told me that he won the necklace on July 6.
- Q. Did you ask Mr. Grubb about his fingerprint?

- A. Yes. I told him that his fingerprints had been found in Ms. Stevens' residence. He said that that could not be because he had never been in there.
- Q. What did you do next?
- A. Well, to make my investigation thorough, I tried to find Ace Hodges. He is actually named Virgil Hodges — Ace is just his nickname.
- Q. Were you able to find him?
- A. No.
- Q. Did you ask for any help in finding Ace?
- A. Yes. I requested that the Lone Star State Troopers assist with the search. I also checked several national databases that we have available to us, but we have been unable to locate him.
- Q. Can you describe Ace?
- A. Ace Hodges is approximately six feet tall. He is stocky — I would say he weighs about 225-230 pounds, but it is all muscle.
- Q. Does Ace have a prior criminal record?
- A. No. He runs with a crowd that is kind of on the edge, but he does not have any prior criminal convictions.
- Q. After you arrested Tony Grubb, did you ever ask Ms. Stevens if she could identify him?
- A. Yes. I prepared a photopack with six photos. I included both Tony Grubb and Ace Hodges, along with four others. I showed the photopack to Ms. Stevens, but she could not identify her attacker.
- Q. Have any of the other items stolen from Ms. Stevens ever been found?

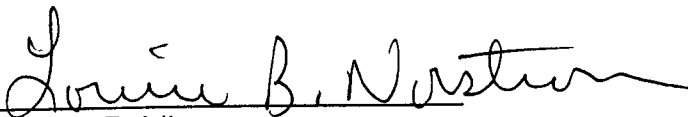
A. Not to date. To the best of my knowledge, the silverware has never been pawned. Neither has the other jewelry.

Q. Tony Grubb claims that he did not do this. What do you think?

A. I think if he did not do this, he is the unluckiest man around.


Dale McIntyre

Sworn and subscribed before me
this 25th day of October, 2006.


Notary Public

PRIOR TRIAL TESTIMONY OF TONY GRUBB

Direct Examination:

Q. State your name.

A. Tony Grubb.

Q. Where do you reside?

A. Currently, my address is 6734 Twelve Oaks Boulevard, Armadillo, State of Lone Star.

Q. How long have you lived there?

A. I have rented that house for about two years.

Q. Does anyone else live there with you?

A. My girlfriend, Selena, and her two kids.

Q. Mr. Grubb, how tall are you?

A. I am about 5 feet, 11 inches tall.

Q. What do you weigh?

A. About 215.

Q. Is that what you weighed back in July of 2006?

A. Yeah. I haven't gained or lost any weight. I haven't gotten any shorter either.

Q. Mr. Grubb, you have been accused of breaking into Ms. Stevens' condo and stealing things from her. Did you do that?

A. No, I did not.

- Q. You heard Detective McIntyre talking about a necklace you pawned. Please tell the jury how you got that necklace.
- A. Every Thursday, I go to the Full O' Bull Pub for a while in the evenings to hang out and shoot pool. I've been doing that for about two years.
- Q. Did you do that on July 6 of this year?
- A. Yes.
- Q. What happened that night?
- A. I had been playing pool for a while when Ace Hodges came up and asked me to play against him. We played a game or two and he won them. He asked if I wanted to bet on the next game, and I agreed.
- Q. What was the bet?
- A. Fifty bucks to the winner.
- Q. Who won that game?
- A. I did.
- Q. Did Ace pay you?
- A. Well, after I beat him, he admitted that he did not have fifty bucks. But he said he had a necklace that he could give me that was worth a lot more than that.
- Q. Did he show you the necklace?
- A. Yeah. It was a gold rope necklace with a kind of unique shape to the links.
- Q. Did you take the necklace?
- A. Yeah. I was pretty mad at first. He is the one who wanted to play for money, and then he didn't have any. But I thought my girlfriend would like the necklace, so I took the necklace and let it go.

- Q. Did you ever give the necklace to your girlfriend?
- A. Yes. I gave it to her the Monday after I won it.
- Q. Did she wear it?
- A. She wore it for a couple of days.
- Q. Does she still have it?
- A. No. She liked it, but she thought that we should pawn it because we needed the money.
- Q. Why is that?
- A. I lost my job at the end of June. I was supposed to start a new job the end of July. So money was kind of tight in July.
- Q. Mr. Grubb, the police also found your fingerprint on a candy package. Any idea how your fingerprint would have gotten there?
- A. Yeah. I used to work at the grocery store where Ms. Stevens says that she shops.
- Q. How does that explain your fingerprint?
- A. I was one of the supervisors of the stock room. I used to supervise the employees who unpacked the stock and took it out and put it on the shelves. Sometimes, when someone called in sick, I had to do the stocking. So my fingerprint could have been on any item in the store.
- Q. Mr. Grubb, I'm showing you what has been marked as Defense Exhibit E for identification. Do you recognize this?
- A. Yes, this is my last pay stub from the Albertson's on Memorial Road.
- Q. Is this a true and accurate copy of your last pay stub?

A. Yes, it is.

Q. Do you know where you were on the night of July 1?

A. I was home asleep.

Cross-Examination

Q. Mr. Grubb, have you ever been convicted of a crime punishable by more than one year in prison?

A. Yes, I was convicted of burglary back in 1992 and served a two-year sentence. I was also convicted of domestic violence battery back in 2002, and I was sentenced to three years of community control.

Q. That 1992 burglary occurred in the same condominium complex where Ms. Stevens lives now, isn't that correct?

A. That's what I have been told. I don't really know for sure since I did not break into Ms. Stevens' condo.

Q. Have you ever been convicted of a crime involving dishonesty or false statement?

A. I only have the two convictions I just told you about.

Q. Mr. Grubb, you didn't tell your girlfriend that you won the necklace playing pool, did you?

A. No.

Q. And that's because you didn't really win it playing pool, isn't that right?

A. No, that's not right. I didn't tell her about the pool game because I figured she would be mad at me for betting on pool when we didn't have any money.

Q. Speaking of not having money, you were fired from Albertson's for stealing beer, weren't you?

- A. I didn't steal any beer from Albertson's.
- Q. Mr. Grubb, I'm showing you what has been marked as Defense Exhibit F for identification. Do you recognize this?
- A. Yeah, I've seen it before.
- Q. What is this document?
- A. It is an employee discipline sheet that my supervisor wrote up in June.
- Q. Is it in the same or substantially the same condition as when you last saw it?
- A. Yeah, as best I can recall.
- Q. Why did you refuse to sign this?
- A. Because none of it was true. I did not steal any beer. I did not drink beer during my shifts. This was just made up to give them a reason to fire me because the new supervisor did not like me. I was not going to sign something that was total bull.
- Q. Mr. Grubb, how do you explain that your fingerprint was found in Ms. Stevens' condo and that you had possession of the necklace that was stolen from her?
- A. I told you I won the necklace. If someone stole it from this lady, that person was Ace -- not me. I already told you how my fingerprint could have gotten on the candy.
- Q. So between being fired and these other coincidences, you're just really unlucky, is that it?
- A. Yeah, that must be it.

[NO FURTHER QUESTIONS FROM THE PROSECUTOR OR THE DEFENSE.]

DEPOSITION OF SELENA HARDAWAY

Q. Please state your name for the record.

A. Selena Hardaway.

Q. Where do you live?

A. I live at 6734 Twelve Oaks Boulevard, Armadillo, State of Lone Star.

Q. Does anyone else live there with you?

A. I live there with my boyfriend, Tony Grubb, and my two kids.

Q. How long have you lived there?

A. I moved in there with Tony about a year and a half ago.

Q. Are you employed?

A. Yes, I work for Artistic Hair Studio as a nail tech.

Q. Ms. Hardaway, was there a time earlier this year when Mr. Grubb gave you a necklace?

A. Yes.

Q. How did that come about?

A. Well, the day or so before the Fourth of July, Tony and I went to dinner. While we were out, he said he had something for me and he gave me a gold rope necklace.

Q. What did you do when that happened?

A. Well, I really liked the necklace, but we did not have the money for it, so I asked him where he got it.

Q. What did he say?

A. He told me that he had been walking through a parking lot and found it on the ground.

Q. What did you do when he told you that?

A. I said that we should put an ad in the paper or put up a sign by the stores in the parking lot saying that we had found it and to call because I figured someone would be upset that they lost the necklace and would want it back.

Q. What did Tony say to that?

A. He said he did not want to do that. He wanted me to have it and that I should let it go.

Q. Did you?

A. At that point, I did.

Q. You said that this was a day or so before the Fourth of July. Why do you remember that?

A. I remember that it was then because I wore the necklace to a Fourth of July party that we went to.

Q. What happened after that?

A. Well, Tony had lost his job at the end of June. He was able to get a new job, but it would not start until late July. One of my kids got sick, and we had to pay a lot for the medicine. Because of that, we started to run low on money and I suggested that Tony pawn the necklace.

Q. Did he do that?

A. Yes. We tried to make it through without having to do that, but I think he ended up pawning it around the middle of the month.

Q. How much did he get for the necklace?

A. I don't know. I do know that he said he pawned some other things as well and he got a total of about \$200 for everything.

Q. What other items did he pawn?

A. I don't know.

Q. Weren't you curious as to what other things you had that were now gone?

A. Not really. I was more concerned about my sick kid and the money.

Q. Ms. Hardaway, you know that Mr. Grubb's fingerprint was found on a candy package in a condo that was broken into. Do you have any idea how that would have happened?

A. Well, Tony worked at the Albertson's on Memorial Road, and we were told that that is where Ms. Stevens shopped. I assume that she picked up a package that he had stocked. That is the only thing that I can think of.

Q. Do you know where Tony was on the night of July 1?

A. He was home with me and the kids all night.

Q. How do you know that?

A. He was asleep in the bed next to me. I would have known if he had left.

Q. Ms. Hardaway, isn't it true that you have a prescription for sleeping pills?

A. Yes. I have been prescribed Ambien. But I wake up when I hear things, so I would have woken up if Tony had left.

Q. Ms. Hardaway, do you or Tony own a shiny silver flashlight?

A. We have a flashlight in the house. It is shiny like silver. I don't know who I would say owns it.

Q. Have you seen that flashlight since July 1?

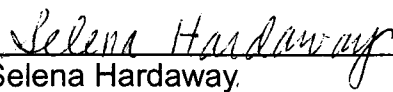
A. No, but I have not looked for it either.

Q. Ms. Hardaway, if Tony goes to prison, where will you live?

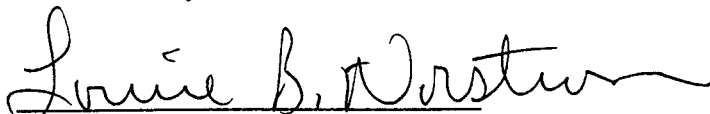
A. I don't know. The lease is in Tony's name, so I assume that I would have to either sign a new lease with the landlord or move out.

Q. So it would be hard on you if Tony was convicted?

A. Yes, it would be real hard on me and my kids. But Tony should not be convicted because he did not do this. He was home with me that night.


Selena Hardaway.

Sworn and subscribed before me
this 27th day of October, 2006.


Notary Public

Stipulated Sworn Testimony of Joye Walford

It is agreed and stipulated that if Joye Walford were to be called as a witness in this trial, she would testify under oath as follows:

My name is Joye Walford. I am the grand-niece of Elsie Stevens, the victim in this case.

In 2002, my grandmother died. Before she died, she had promised that she would leave me the silverware that she had received as a wedding present. After she died, I learned that her will provided that the silverware would go to her sister, my great-aunt, Elsie Stevens. I was very angry about this and I contemplated challenging the will; however, I chose not to do this for the sake of family harmony.

In 2005, I lived with my great-aunt Elsie Stevens in her condominium in Armadillo for several months while I was attending a school for physical therapists. I did have several friends over to her condominium during that time, but I did not tell any of them about the silver or show them where it was.

While I was living with my great-aunt, I dated a man named Ace Hodges; however, I never invited him to my great-aunt's condominium and I did not tell him where I was living. I always met him at the Full O' Bull Pub for our dates. During one date, I did tell him about my disappointment over not getting my grandmother's silver, but it was a brief conversation. I have not seen or heard from Ace Hodges since I moved from Armadillo in March 2006.

- End of Stipulation -



EXHIBIT A



EXHIBIT B

THE JEWELRY JUDGE

APPRAISAL

Elsie Stevens
17883 Jamestown Way
Armadillo Lone Star 77887

One stamped 14kt yellow gold ladies machine made rope link necklace

Weight 10.5 gm.

Replacement \$ 375.00 US

COMMENT


2 mm wide x 18" long with lobster claw clasp.

December 19, 2004

Fred Jones, G.C.

THE JEWELRY JUDGE
4427 W. Kennedy Street Armadillo, Lone Star 555-721-3421

EXHIBIT C

NAME LAST FIRST MIDDLE GRUBB TONY				LOAN/BUY NUMBER 215942		AMOUNT \$200.00		
DRIVER'S LICENSE NO. OR OTHER ID G412-78-777-3421			STATE L.S.	YEAR EXPIRES 2009		TRANSACTION DATE: MO/DAY/YR 07/15/06		TIME 12:22
ADDRESS STREET 6734 TWELVE OAKS BLVD					Trade <input type="checkbox"/> Buy <input type="checkbox"/> PAWN <input checked="" type="checkbox"/>			
					Consign <input type="checkbox"/> Auction <input type="checkbox"/>			
CITY STATE ZIP ARMADILLO L.S. 77889			SEX M	RACE W	HAIR BL	EYES GR	HEIGHT 5-11	WEIGHT 215
ITEM NECKLACE		BRAND N/A		SERIAL N/A			BIRTHDAY: MO/DAY/YR: 11/23/69	
MODEL N/A		MAKE N/A		CAUGAU			RIGHT THUMB PRINT 	
1 14k YELLOW GOLD 18" ROPE NECKLACE WITH BOX LINKS - USED								

x Tony Grubb

CUSTOMER'S SIGNATURE: I certify under penalty of perjury that, to my knowledge and belief, the information above is true and complete and I am the owner, or have authority of the owner, to sell or pledge the property.

STORE PERSON
SIGNATURE 

EXHIBIT D

Albertson's Groceries, Inc.
 6322 Memorial Road
 Armadillo Lone Star 77888

Tony Grubb
 6734 Twelve Oaks Blvd.
 Armadillo Lone Star 77889

Employee Pystub	Check number 29561	Pay period 06/11/2006-06/24/2006	Pay date 06/23/2006	
Employee		SSN	Status	Allowances
Anthony Grubb		***-**-8553	Single	Fed-0/0
Earnings and Hours	Qty	Rate	Current	YTD Amount
Hourly Rate	80.00	11.00	880.00	9680.00
Overtime Rate	00.00	16.50	0.00	1275.00
			880.00	10,955.00
Taxes			Current	YTD Amount
Federal Withholding			-187.00	-1,197.00
Social Security Employee			-84.49	-669.02
Medicare Employee			-19.76	-155.46
Net Pay			588.40	8,933.52

EXHIBIT E

Albertson's Groceries, Inc.
6322 Memorial Road
Armadillo Lone Star 77888

EMPLOYEE INCIDENT REPORT

EMPLOYEE: Tony Frubb

DATE: 4/23/06

EXPLAIN: More beer was missing after Tony's
last shift. He was counseled about this
on 5/19/06 and 4/9/06 and told if
more was missing, he would be
terminated. Today, two empty bottles of
Amstel were found in stockroom trash.

ACTION TAKEN: Termination per prior warning

SUPERVISOR SIGNATURE: Tara Jones

EMPLOYEE SIGNATURE: Refused to sign

NOTE: Employee's signature means only that employee was present and advised of this report, not the employee agrees with incident or actions taken.

EXHIBIT F

PRELIMINARY JURY INSTRUCTIONS

Ladies and gentlemen of the jury:

You have been selected and sworn as the jury to try the case of the State of Lone Star vs. Tony Grubb.

This is a criminal case. Tony Grubb is charged with burglary with assault or battery and grand theft. The definitions of the elements of these crimes will be explained to you later.

It is your solemn responsibility to determine if the State has proved its accusations against Tony Grubb beyond a reasonable doubt. I will decide which laws apply to this case and explain those laws to you. You will decide what the facts of this case are and apply the law to those facts. Thus, the function of the jury and the function of the judge are well defined, and they do not overlap. This is one of the fundamental principles of our system of justice.

Your verdict must be based solely on the evidence, or lack of evidence, and the law. The indictment is not evidence and is not to be considered by you as any proof of guilt. The case must be tried only on the evidence presented during the trial in your presence and in the presence of the Defendant, the attorneys, and the judge. Jurors must not conduct any investigation of their own. Accordingly, you must not visit any of the places described in the evidence, and you must not read or listen to any reports about the case. Further, you must not discuss this case with any person and you must not speak with the attorneys, the witnesses, or the Defendant about any subject until your deliberations are finished.

Before proceeding further, it will be helpful for you to understand how a trial is conducted. At the beginning of the trial, the attorneys will have an opportunity to make an opening statement, in which they may explain to you the issues in the case and summarize the facts that they expect the evidence will show. Following the opening statements, witnesses will be called to testify under oath. They will be examined and cross-examined by the attorneys. Documents and other exhibits also may be received as evidence.

After all the evidence has been received, the attorneys will again have the opportunity to address you and to make their final arguments. The statements that the attorneys now make and the arguments that they later make are not to be considered

by you either as evidence in the case or as your instruction on the law. Nevertheless, these statements and arguments are intended to help you properly understand the issues, the evidence, and the applicable law, so you should give them your close attention. Following the final arguments by the attorneys, I will instruct you on the law.

You should give careful attention to the testimony and other evidence as it is received and presented for your consideration, but you should not form or express any opinion about the case until you have received all the evidence, the arguments of the attorneys, and the instructions on the law from me. In other words, you should not form or express any opinion about the case until you retire to the jury room to consider your verdict.

The attorneys are trained in the rules of evidence and trial procedure, and it is their duty to make all objections they feel are proper. When a lawyer makes an objection, I will either overrule or sustain the objection. If I overrule an objection to a question, the witness will answer the question. If I sustain an objection, the witness will not answer, but you must not speculate on what might have happened or what the witness might have said had I permitted the witness to answer the question. You should not draw any inference from the question itself.

During the trial, it may be necessary for me to confer with the attorneys out of your hearing, talking about matters of law and other matters that require consideration by me alone. It is impossible for me to predict when such a conference may be required or how long it will last. When such conferences occur, they will be conducted so as to consume as little of your time as necessary for a fair and orderly trial of the case.

FINAL JURY INSTRUCTIONS

Members of the Jury, I thank you for your attention during this trial. Please pay attention to the instructions I am about to give you.

In this case, Tony Grubb is accused of Burglary with Assault or Battery and Grand Theft.

To prove the crime of Burglary, the State must prove the following three elements beyond a reasonable doubt:

1. Tony Grubb entered a structure owned by or in the possession of Elsie Stevens.
2. Tony Grubb did not have the permission or consent of Elsie Stevens or any other authorized to act for her to enter the structure at that time.
3. At the time of entering the structure, Tony Grubb had a fully-formed, conscious intent to commit the offense of theft in that structure.

Proof of the entering of a structure stealthily and without the consent of the owner or occupant may justify a finding that the entering was with the intent to commit a crime if, from all the surrounding facts and circumstances, you are convinced beyond a reasonable doubt that the intent existed.

The intent with which an act is done is an operation of the mind and, therefore, is not always capable of direct and positive proof. It may be established by circumstantial evidence like any other fact in a case.

Even though an unlawful entering of a structure is proved, if the evidence does not establish that it was done with the intent to commit theft, the Defendant must be found not guilty.

“Structure” means any building of any kind, either temporary or permanent, that has a roof over it, and the enclosed space of ground and outbuildings immediately surrounding the structure.

The punishment provided by law for the crime of burglary is greater if the burglary was committed under certain aggravating circumstances. Therefore, if you find the Defendant guilty of burglary, you must then consider whether the State has further proved those circumstances.

If you find that in the course of committing the burglary the Defendant made an assault upon any person, you should find him guilty of burglary during which an assault has been committed. An assault is an intentional and unlawful threat either by word or act to do violence to another at a time when the Defendant appeared to have the ability to carry out the threat and his act created a well-founded fear in the other person that the violence was about to take place.

To prove the crime of Grand Theft, the State must prove the following two elements beyond a reasonable doubt:

1. Tony Grubb knowingly and unlawfully obtained property belonging to Elsie Stevens.
2. Tony Grubb did so with the intent to, either temporarily or permanently deprive Elsie Stevens or her property or any benefit from it.

If you find the Defendant guilty of theft, you must then determine whether the value of the property taken was \$300 or more but less than \$5,000.

“Obtains or uses” means any manner of

1. Taking or exercising control over the property.
2. Making any unauthorized use, disposition, or transfer of the property.
3. Obtaining property by fraud, willful misrepresentation of future fact, or false promise.
4. Conduct previously known as stealing, larceny, purloining, abstracting, embezzlement, misapplication, misappropriation, conversion, or obtaining money or property by false pretenses, fraud or deception.

“Property” means anything of value, including tangible or intangible personal property, including rights, privileges, interests and claims.

“Value” means the market value of the property at the time and place of the offense, or if that value cannot be satisfactorily ascertained, the cost of replacement of the property within a reasonable time after the offense. If the exact value of the property cannot be ascertained, you should attempt to determine a minimum value. If you cannot determine a minimum value, you must find the value is less than \$300.

Tony Grubb has entered a plea of not guilty. This means you must presume or believe that Tony Grubb is innocent. This presumption stays with Tony Grubb as to each material allegation in the indictment through each stage of the trial until it has been overcome by the evidence to the exclusion of and beyond a reasonable doubt.

To overcome the Defendant's presumption of innocence, the State has the burden of proving the following two elements:

1. The crime with which the Defendant is charged was committed.
2. The Defendant is the person who committed the crime.

The Defendant is not required to prove anything.

Whenever the words "reasonable doubt" are used, you must consider the following:

A reasonable doubt is not a possible doubt, a speculative, imaginary, or forced doubt. Such a doubt must not influence you to return a verdict of not guilty if you have an abiding conviction of guilt. On the other hand, if after carefully considering, comparing, and weighing all the evidence, there is not an abiding conviction of guilt or, if, having a conviction, it is one which is not stable but one which wavers and vacillates, then the charge is not proved beyond every reasonable doubt and you must find the Defendant not guilty because the doubt is reasonable.

It is to the evidence introduced during this trial, and to it alone, that you are to look for that proof. A reasonable doubt as to the guilt of the Defendant may arise from the evidence, a conflict in the evidence, or a lack of evidence. If you have a reasonable doubt, you should find the Defendant not guilty. If you have no reasonable doubt, you should find the Defendant guilty.

It is up to you to decide what evidence is reliable. You should use your common sense in deciding which is the best evidence and which evidence should not be relied upon in considering your verdict. You may find some of the evidence not reliable or less reliable than other evidence. In doing so, you should consider how the witness acted as well as what he or she said. Some things you should consider are:

1. Did the witness seem to have an opportunity to see and know the things about which the witness testified?

2. Did the witness seem to have an accurate memory?
3. Was the witness honest and straightforward in answering the attorneys' questions?
4. Did the witness have some interest in how the case should be decided?
5. Does the witness's testimony agree with the other testimony and other evidence in this case?
6. Has the witness been offered or received any money, preferred treatment, or other benefit in order to get the witness to testify?
7. Had any pressure or threat been used against the witness that affected the truth of the witness's testimony?
8. Did the witness at some other time make a statement that is inconsistent with the testimony he or she gave in court?
9. Was it proved that the witness had been convicted of a crime?
10. Was it proved that the general reputation of the witness for telling the truth and being honest was bad?

You may rely upon your own conclusions about the witnesses. A juror may believe or disbelieve all or any part of the evidence or the testimony of any witness.

The Defendant in this case has become a witness. You should apply the same rules to consideration of his testimony that you apply to the testimony of the other witnesses.

There are some general rules that apply to your deliberations. You must follow these rules in order to return a lawful verdict:

1. You must follow the law as it is set out in these instructions. If you fail to follow the law, your verdict will be a miscarriage of justice. There is no reason for failing to follow the law in this case. All of us are depending on you to make a wise and legal decision in this matter.

2. This case must be decided only upon the evidence that you have heard from the answers of the witnesses and have seen in the form of exhibits and these instructions.

3. This case must not be decided for or against anyone because you feel sorry for anyone or are angry at anyone.

4. Remember the lawyers are not on trial. Your feelings about them should not influence your decision in this case.

5. Your duty is to determine if the Defendant has been proven guilty or not guilty in accordance with the law. It is the judge's job to determine the proper sentence if the Defendant is found guilty.

6. Whatever verdict you render must be unanimous; that is, each juror must agree to the same verdict.

7. It is entirely proper for a lawyer to talk to a witness about what testimony the witness would give if called to the courtroom. The witness should not be discredited for talking to a lawyer about his or her testimony.

8. Your verdict should not be influenced by feelings of prejudice, bias, or sympathy. Your verdict must be based on the evidence and on the law contained in these instructions.

Deciding a proper verdict is exclusively your job. I cannot participate in that decision in any way. Please disregard anything I may have said or done that made you think I preferred one verdict over another.

Only one verdict may be returned as to the crime charged. This verdict must be unanimous; that is, all of you must agree to the same verdict. The verdict must be in writing and, for your convenience, the necessary forms of verdict have been prepared for you. They are as follows:

[READ VERDICT FORM]

In just a few moments, you will be taken to the jury room by the bailiff. The first thing you should do is elect a foreperson who will preside over your deliberations like the chairperson of a meeting. It is the foreperson's job to sign and date the verdict form when all of you have agreed on a verdict in this case and to bring the verdict back to the

courtroom when you return. Either a man or a woman may be the foreperson of the jury.

Your verdict finding the Defendant either guilty or not guilty must be unanimous. The verdict must be the verdict of each juror as well as of the jury as a whole.

In closing, let me remind you that it is important that you follow the law spelled out in these instructions in deciding your verdicts. There are no other laws that apply to this case. Even if you do not like the laws that must be applied, you must use them. For two centuries, we have agreed to a constitution and to live by the law. No one of us has the right to violate the rules we all share.

**IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT
IN AND FOR HARRIS COUNTY, STATE OF LONE STAR
CRIMINAL DIVISION**

STATE OF LONE STAR)	
)	
v.)	Case No. 2006-1758
)	
TONY GRUBB,)	
)	
Defendant.)	
_____)	

VERDICT

We, the Jury, find as to the Defendant, Tony Grubb, as follows:

As to Count I - Burglary with Assault or Battery

_____	Guilty
_____	Not Guilty

As to Count II - Grand Theft

_____	Guilty
_____	Not Guilty.

So say we all.

Foreperson of the Jury

Date