

**DISTRICT COURT
CASE MATERIALS**

CASE D20-001

STATE OF MINNESOTA V. SHEM

Grand Larceny

***(Includes pretrial hearing materials regarding the 4th Amendment and
protections against unreasonable search and seizure)***

FACT SITUATION

1 Marty McCulloch, an heir to a railroad fortune, lives in a lakeside mansion in the town of
2 New Prague, located in Scott County, Minnesota. Over many years, McCulloch amassed a
3 prestigious collection of artwork. McCulloch's home art gallery contains exquisite paintings
4 from various artists, including classics from Renoir, Goya, and Cassatt to modern and
5 contemporary works by Andy Warhol, Jackson Pollock, and Faith Ringgold. Art aficionados
6 regularly visit the mansion to admire the paintings.
7

8 Evan Shem is a second-year graduate student at New Prague University. Shem is studying
9 for a master's of fine arts, with an emphasis in the painting styles and techniques of mid-
10 20th century abstract expressionists. Shem acquired a considerable amount of debt as an
11 undergrad, and anticipated graduate school would cost even more. Shem allowed a
12 childhood friend, Charlie Gibbons, to move in to Shem's apartment, but later asked
13 Gibbons to leave.
14

15 McCulloch is a professor of art history at New Prague University. During Shem's first year,
16 Shem was in a class taught by McCulloch. Shem's contributions to the classroom
17 environment, along with Shem's performances on projects and exams, earned Shem an
18 internship at McCulloch's mansion, where Shem was tasked with maintaining McCulloch's
19 vast collection of artwork.
20

21 During the internship, Shem became interested in a particular painting, titled *Treason*, by
22 Fletcher Yazoo. *Treason* was a small, 11 inch by 14 inch canvas painting mounted in the
23 original wood frame from 1977 when it was painted. Edward McCulloch, McCulloch's
24 father, left the painting to McCulloch when he died.
25

26 As had become an annual tradition, McCulloch hosted an exclusive Fourth of July party at
27 the mansion for the high society of New Prague. The living room of the mansion had floor-
28 to-ceiling glass windows facing the back patio as well as sliding glass doors that were
29 open and led to the back patio with a view of the estate. Nearly 200 guests attended the
30 party. Shem was invited to the party, and Gibbons attended as Shem's guest. McCulloch
31 had asked Shem to serve as a docent for the evening. As docent, Shem watched over the
32 artwork and offered insight into the history and technique of the paintings. Sidney Ogden,
33 Shem's and Gibbons's childhood friend, was working as a parking attendant that evening.
34

35 McCulloch's gallery was open for viewing from 7:00 p.m. to 9:00 p.m. When guests were
36 not perusing the gallery, they were enjoying *hors d'oeuvres* and champagne in
37 McCulloch's spacious living area and open patio that overlooked rolling grass hills and New
38 Prague Lake.
39

40 Just before 9:00 p.m., the sky was dark, and McCulloch directed all the attendees to come
41 outside onto the patio where they could watch a display of fireworks illuminating the sky.
42 Then, after the firework show, McCulloch instructed everyone to enter the mansion where
43 dessert was served. The party concluded about midnight.
44

45 On July 5 around 12:00 p.m., McCulloch received a call from MT's Fine Art Auction House
46 (MT), informing McCulloch that someone had previously called MT regarding the value of
47 *Treason*. McCulloch had not made the previous call to MT. After the call, McCulloch

48 examined *Treason* and determined that the painting was not the real *Treason*. McCulloch
49 then telephoned the police. Detective Reese Barron arrived to investigate that same
50 afternoon. After Detective Barron questioned McCulloch, Barron identified Shem as a
51 person of interest. First, Shem had greatly admired *Treason*. Second, McCulloch thought
52 that Shem was a talented artist. Finally, Shem was serving as McCulloch's docent that
53 evening and was instructed to lock the gallery at 9:00 p.m. when the firework show was
54 scheduled to begin.

55

56 With McCulloch's permission, Detective Barron took the painting to police headquarters for
57 further investigation. Bernie Worcester, the official art expert retained by the police
58 department. On July 6, Worcester concluded that the painting was a fake.

59

60 Detective Barron went to Shem's apartment to investigate the matter further. Shem was
61 not home, but Gibbons was outside when Barron arrived. During a casual discussion,
62 Gibbons told the detective that Shem had a knack for creating near-identical replicas of
63 artwork. In addition, Gibbons explained how Shem's apartment functioned as a makeshift
64 art studio, as Shem possessed a thorough collection of brushes, paint, easels, and
65 canvasses.

66

67 On July 7, Detective Barron went to Shem's apartment and got Shem's consent to search
68 it. When Barron searched the apartment, Barron found numerous recreations of many
69 famous pieces of artwork as well as Shem's own original pieces. Barron discovered in the
70 apartment a painting that appeared identical to the one that Worcester had identified as a
71 copy of *Treason*. Barron seized the painting and brought it to the police station to be
72 examined by Worcester. Worcester concluded that the painting found in Shem's home was
73 the original *Treason* by Fletcher Yazoo that had allegedly been stolen from Marty
74 McCulloch's home.

75

76 **[While at Shem's apartment, Detective Barron also searched the storage cabinet**
77 **located near the front of two parking spaces in Shem's carport. The storage**
78 **cabinet contained boxes full of knick-knacks, old clothes, and additional art**
79 **supplies. When looking through a box, Barron found a folder containing a**
80 **handwritten note that had the word "Treason" on it with additional notes listing**
81 **four names of private collectors who own works by the artist Fletcher Yazoo.**
82 **Barron seized the handwritten note and booked it into evidence.]**

83

84 The following day, Detective Barron received and executed a warrant for the arrest of
85 Shem for the theft of the painting *Treason* from McCulloch's home.

86

CHARGE

The Defendant is charged with one count of Grand Larceny.

Minnesota Statutes Sec. 484 (Theft by Larceny)

Every person who takes the personal property of another (and the property taken is of value exceeding \$950), without the consent of the owner, with the intention to deprive the owner of it permanently, is guilty of theft by Grand Larceny.

JURY INSTRUCTIONS (Relating to the Charge)

Theft by Larceny

The defendant is charged with grand theft by larceny. To prove that the defendant is guilty of this crime, the State must prove that:

1. The defendant took possession of property worth more than \$950.00, owned by someone else;
2. The defendant took the property without the owner's [or owner's agent's] consent;
3. When the defendant took the property (he/she) intended to deprive the owner of it permanently or to remove it from the owner's possession for so extended a period of time that the owner would be deprived of a major portion of the value or enjoyment of the property; AND
4. The defendant moved the property, even a small distance, and kept it for any period of time, however brief.

Direct and Circumstantial Evidence

Facts may be proved by direct or circumstantial evidence or by a combination of both. *Direct evidence* can prove a fact by itself. For example, if a witness testifies he saw it raining outside before he came into the courthouse, that testimony is direct evidence that it was raining.

Circumstantial evidence also may be called indirect evidence. Circumstantial evidence does not directly prove the fact to be decided, but is evidence of another fact or group of facts from which you may logically and reasonably conclude the truth of the fact in question. For example, if a witness testifies that he saw someone come inside wearing a raincoat covered with drops of water, that testimony is circumstantial evidence because it may support a conclusion that it was raining outside.

Both direct and circumstantial evidence are acceptable types of evidence to prove or disprove the elements of a charge, including intent and mental state and acts necessary to a conviction, and neither is necessarily more reliable than the other. Neither is entitled to any greater weight than the other. You must decide whether a fact in issue has been proved based on all the evidence.

Circumstantial Evidence: Sufficiency of Evidence

Before you may rely on circumstantial evidence to conclude that a fact necessary to find the defendant guilty has been proved, you must be convinced that the State have proved each fact essential to that conclusion beyond a reasonable doubt.

Also, before you may rely on circumstantial evidence to find the defendant guilty, you must be convinced that the only reasonable conclusion supported by the circumstantial evidence is that the defendant is guilty. If you can draw two or more reasonable conclusions from the circumstantial evidence and one of those reasonable conclusions points to innocence and another to guilt, you must accept the one that points to innocence. However, when considering circumstantial evidence, you must accept only reasonable conclusions and reject any that are unreasonable.

STIPULATIONS

Stipulations are considered to be part of the record. Prosecution and defense stipulate to the following:

1. Exhibits A and B may be reproduced in color, however there may not be any alterations in color between the two exhibits (e.g. brightness, tone, etc.).
2. At the time of arrest, there was sufficient probable cause to issue an arrest warrant for Evan Shem.
3. All physical evidence and witnesses not provided for in the case are unavailable and their availability may not be questioned.
4. Beyond what's stated in the witness statements, no other forensic evidence found was in this case.
5. All witness statements were taken in a timely manner.
6. Bernie Worcester and Jamie Sardegna are qualified expert witnesses and can testify to each other's statements and relevant information they would have reasonable knowledge of from the fact situation and witness statements.
7. Up until July 4 there is no chain of custody issue, and the painting belonging to Marty McCulloch was in fact an authentic Yazoo painting.
8. If the defense's pretrial motion is granted, the bracketed information is excluded from trial, and it may not be used for impeachment purposes. However, in middle school trials the evidence may be used at trial.
9. The search of Evan's apartment is a valid search and there may not be an objection to the validity of the search.
10. There are no known photographs of the original painting *Treason*, by Fletcher Yazoo.
11. [Evan Shem wrote the note listed as Exhibit D and the note contained the names of private collectors of artwork by Fletcher Yazoo.]

WITNESS STATEMENTS

WITNESS STATEMENT—Prosecution Witness: Detective Reese Barron

1 My name is Reese Barron. I am 42 years old and a detective with the New Prague Police
2 Department. My specialty, within the department, is crimes concerning artwork and
3 cultural property, which usually are theft and forgery. I have worked exclusively with art
4 crimes for 16 years.

5
6 On July 5, I was contacted to respond to the theft of a painting that had been reported
7 stolen from Marty McCulloch's mansion. I drove straight there and, upon arrival, was
8 greeted by McCulloch, who looked upset. McCulloch showed me the gallery and the
9 painting and repeatedly insisted that it was a fake. McCulloch explained that someone
10 must have replaced the real painting of *Treason* with this imposter.

11
12 This was quite unusual to me. In most cases of art theft, owners are confronted with a
13 blank, empty space where their painting used to be. Here, however, it seemed as though
14 a thief was hoping McCulloch wouldn't notice. The thief expected to steal McCulloch's
15 painting, replace it with a fake, and continue business as usual.

16
17 Not having the alleged original to compare it to, I was unable to make a preliminary
18 determination as to whether the painting was a fake. I surveyed the perimeter of the
19 structure to locate any break-in points, but nothing I observed suggested an illegal entry.
20 I formed the opinion that this could have been an inside job. We dusted the doorknobs
21 and entryways for fingerprints and took them back to the lab for analysis. Although we
22 found some smudged fingerprints, none were identifiable.

23
24 I asked McCulloch if anyone was recently granted access to McCulloch's home, and
25 McCulloch told me that a large party had been held the previous day. I asked McCulloch to
26 go over the guest list with me. McCulloch seemed drew my attention to a young person by
27 the name of Evan Shem.

28 Apparently, Shem began working for McCulloch in the months leading up to the theft.
29 Shem had a talent for copying other artists' works and had consistently expressed an
30 interest in *Treason*. Furthermore, Shem's job the night of the party was to escort the
31 guests through the gallery, and when the last of the guests had viewed the art collection,
32 Shem was instructed to turn off the lights and lock the gallery door by arming the security
33 system. On the night of July 4, Shem had been the last person to leave McCulloch's
34 gallery where *Treason* was kept. From my investigation and my interview with McCulloch,
35 I formed the opinion that Shem was a person of interest in this case. Although I focused
36 my attention on Shem, the department continued to investigate other guests, but they
37 found no promising witnesses or suspects. We also dusted the frame for fingerprints, and
38 none were identifiable.

39
40 With McCulloch's permission, I took the painting to headquarters, and after a thorough
41 examination of it, art expert Bernie Worcester concluded the next day, that the painting
42 was indeed a fake. On that day, July 6, I went to Shem's apartment. When I arrived, I
43 saw someone leave apartment B with a trash bag. I approached the individual, who self-
44 identified as Charlie Gibbons. I asked, "Do you know Evan Shem?" Gibbons responded,
45 "Yes." I continued to ask Gibbons a few questions. According to Gibbons, Shem had
46 developed a hobby of replicating famous artwork. Shem possessed a respectable

47 collection of various paints and art supplies and would create almost perfect recreations of
48 paintings of various styles. I asked Gibbons, "What does Shem do with these paintings
49 once they are finished?" Gibbons was unable to provide a satisfactory answer. Gibbons
50 said, "You know what? I'm not exactly sure. Once the paintings are done, Evan simply
51 moves on to the next one. It's as though Evan's more interested in the process of creating
52 the painting than having a finished product." I asked Gibbons for permission to enter the
53 apartment and look around, but Gibbons declined.

54
55 On July 7, I returned to Shem's apartment. When I arrived, I asked Shem if I could search
56 the apartment. With a wave of the hand, Shem said "Sure, take a look around." I
57 surveyed the apartment and discovered that Shem's apartment was functioning as a
58 makeshift art studio. The place was covered with paintings, paint supplies, and art books.
59 When I explained why I was there, Shem seemed concerned and confused. Shem kept
60 saying that it was unbelievable that anyone would ever steal *Treason*. Also, Shem
61 remarked how *Treason* was not even that valuable in comparison to the rest of
62 McCulloch's collection, thus making the theft all the more senseless.
63 Furthermore, Shem readily admitted to attempting to make a replica of *Treason*. Shem
64 said, "Sure I attempted to make a copy of *Treason*. I make copies of all my favorite
65 paintings, but they're never as good as the originals. After all, I'm only a student. I'm still
66 learning."

67
68 After searching through Shem's extensive collection, I discovered a loose canvas painting
69 that looked strikingly similar to the one found in McCulloch's mansion. I had a suspicion
70 that the painting was the real *Treason*.

71
72 [After conducting a full search of the apartment, I stepped outside to look around and be
73 sure I did not miss anything. At that time, I noticed a carport adjacent to the building.
74 Near the front of each pair of piggybacked parking spots, there was one storage cabinet.
75 On the ground, the parking spots were marked with white paint that said "Reserved" and
76 an apartment number, which was A, B, C and D. Shem lived in apartment B, so I
77 proceeded over to the spot marked "B." There, I ran into Gibbons, who was getting out of
78 the driver's side door of a car parked in one of apartment B's designated spots. Gibbons
79 was sweating although it wasn't hot outside. I wasn't sure if Gibbons was nervous or just
80 sweats a lot. I asked Gibbons if the storage cabinet belonged to apartment B, and
81 Gibbons replied, "Yes." I then asked if I could search the storage cabinet, and Gibbons
82 replied, "The key is in the kitchen." I believed that Gibbons was Shem's roommate, and I
83 believed that Gibbons gave consent to search the cabinet.

84
85 Then, I proceeded into the kitchen through the back door and found the storage key
86 hanging on a hook beside the refrigerator. Shem was sitting on the living room sofa and
87 did not see me take the key. When I opened the storage cabinet, I saw several containers
88 that were labeled neatly. I continued to look for something related to the theft of *Treason*.
89 That was when I found a folder inside a box labeled "art supplies" that contained a
90 handwritten note with "Treason" written at the top. The note listed four names. I seized
91 this note as part of my investigation. My research later revealed to me that these were
92 names of private art collectors who each owned Fletcher Yazoo paintings.]

93
94 I asked Gibbons if Gibbons knew anything about McCulloch's Fourth of July party. Gibbons
95 told me that Gibbons and Shem had both been there, and that Gibbons had seen Shem
96 running toward the gallery holding a backpack.

97

98 I seized the painting that I suspected to be *Treason*, brought it to headquarters, and
99 contacted Worcester. Worcester authenticated the painting as the real *Treason*. On July
100 8, McCulloch met me at the police station to look at the painting taken from Evan's
101 apartment. McCulloch confirmed that the painting I seized from Evan's apartment was the
102 real *Treason*. I took a photograph of each painting and those photographs are listed as
103 Exhibit A and Exhibit B.

104

105 Based on this information, later that day I secured a warrant for Shem's arrest. I arrived
106 at Shem's apartment, arrested Shem, and went to the station for booking. Shem insisted
107 I was arresting the wrong person and that there had been some sort of mistake. In a
108 subsequent interview, I learned from T.M. Little that Little saw Shem at the Fourth of July
109 party with a backpack.

110

111

112

113

WITNESS STATEMENT—Prosecution Witness: Bernie Worcester

1 My name is Bernie Worcester. I am an art expert retained by the New Prague City Police
2 Department from time to time. In addition, I am the lead curator at MT's Fine Art Auction
3 House. I earned a master's degree in Art History from Notre Dame in 1989, and over the
4 past 25 years, I have attended numerous nationwide seminars, meetings, and forums on
5 appraising techniques. I am a well-known authority on art authenticity, and I have been
6 called on to authenticate paintings worth millions of dollars.

7
8 In my role as the curator of MT's Fine Art Auction House, I frequently receive requests
9 from people all over the world who seek to sell or consign paintings. For someone seeking
10 to sell a painting, we follow a routine procedure for evaluation and authentication before
11 putting anything up for auction. Upon receiving an initial request, we will provide an
12 estimate to the seller as to the price we expect to obtain for such a piece. If the seller
13 remains interested, we require the seller to bring in the painting and paperwork for
14 inspection.

15
16 On July 2, we received a call by someone requesting to sell *Treason* by Fletcher Yazoo.
17 Although *Treason* is a relatively obscure painting, I estimated that it would sell for
18 \$100,000. There is currently a flourishing market for abstract paintings like *Treason*, and
19 collectors are willing to pay top dollar. Yazoo's recent death has resulted in a surge in the
20 market-price for his work. When artists die, their artwork often increases in value because
21 they will never produce more. *Treason* would likely sell for a relatively substantial sum. I
22 remember the caller was excited when I stated the expected dollar amount of the
23 painting. As I recall, the caller uttered, "Oh my goodness! \$100,000? I can't believe it's
24 worth that much!" Other than that, I do not recall anything particularly unusual about the
25 caller or any details about the sound of the caller's voice.

26
27 In evaluating the authenticity of the painting found at Evan Shem's apartment, I can
28 confidently say, in my expert opinion, that it is authentic. A careful visual examination is
29 all I needed to conclude that the painting found in Shem's apartment was the original
30 *Treason* by Fletcher Yazoo, as I will explain.

31
32 Authenticating artwork is an art in itself. Three common approaches are used to
33 determine a painting's authenticity; they are provenance, scientific testing, and
34 connoisseurship. I will address these three in order.

35
36 Provenance pertains to a painting's chain of custody or ownership. Here, given the
37 relatively short lifespan of *Treason*, its provenance is easy to trace. *Treason* was painted
38 by Fletcher Yazoo in 1977, and Edward McCulloch purchased it at an art show in 1978.
39 Upon his death in 1982, Edward McCulloch left *Treason*, in his will, to Marty McCulloch.
40 Thus, McCulloch is the last legitimate owner of the painting. Therefore, the provenance of
41 *Treason* is undisputed.

42
43 Scientific examination involves a variety of complex methods of investigation, such as
44 testing the chemical composition of paint samples and carbon dating. Here, we are
45 dealing with modern art. Testing the chemical composition of the paint would not be
46 useful because the painting was made with acrylic paint that has been commercially
47 available since the 1940s, and carbon dating is usually only used for ancient artifacts. As
48 such, scientific testing is not necessary.

49

50 Connoisseurship is the method of studying and examining the unique and particular
51 stylistic techniques of particular artists. Connoisseurship involves a mastery and
52 appreciation of the art form, paying particular attention to the minute, nuanced details
53 that contribute to a painting's overall appearance. The precision and thoroughness of a
54 connoisseur's analysis lends credibility to their determinations of authenticity. As of now,
55 no computer out there can do the work of a trained and experienced expert.

56

57 There is ordinarily room for argument and debate in the realm of connoisseurship, as I've
58 spent many nights engaged in debate about the particular shading of Dali's clouds or the
59 curvature of Seurat's umbrellas, but here we have an obvious case. It is my professional
60 opinion that the painting found in McCulloch's home is a fake *Treason*; meanwhile, the
61 painting that was found in Shem's apartment is unquestionably the original *Treason* by
62 Fletcher Yazoo.

63

64 Like Jamie Sardegna, I too used traditional Morellian analysis of the two paintings found in
65 Shem's home and McCulloch's home, respectively. This method of analysis, named after
66 19th century Italian art historian Giovanni Morelli, involves identifying paintings by
67 examining the "signature" techniques of the artist in question, like brushstrokes, thickness
68 of paint, palette (range of colors), and the like. I then examine a painting to see if the
69 painting shares those unique facets, and if it does, I can authenticate it. A fraud may have
70 the "gist" of the original without the details I mentioned.

71

72 Fletcher Yazoo was known for his harsh and vigorous painting style. He would rarely
73 simply apply paint to the canvas with gentle brushstrokes. Instead, he tended toward a
74 "painterly style," where the brushstrokes are visible, and even attacked the canvas with
75 his paintbrush. The painting found in Shem's apartment ("Exhibit A") contains the
76 characteristics of authentic Fletcher Yazoo work. The pressure that Yazoo applied with his
77 brush to the canvas is evinced by the trailing remnants of paint that accentuate the
78 primary paint streaks. By pressing the brush up against the canvas, individual bristles of
79 the brush leave rough-edged, irregular lines in *Treason* as opposed to smooth and even
80 lines. He applied the paint thickly almost completely throughout. In my professional
81 opinion, this is the original *Treason*.

82

83 The painting found in McCulloch's home ("Exhibit B") has several of the particularities of
84 Yazoo's work, but there are telltale signs that it is a fake. First, the arrowhead-shaped
85 white paint just above the central circle-form has paint too thickly applied. It looks
86 carefully painted compared to Exhibit A, and Yazoo was not so careful. Just to the right of
87 the "arrowhead" there is a very small pinkish oval. In Exhibit A, however, there is no oval,
88 but rather a tiny pink "streak," clearly a remnant of red paint left on the brush when
89 Yazoo dipped it in white paint. In Exhibit B, it appears to me that the copyist added the
90 pink oval as an afterthought, trying to match the original.

91

92 Moving clockwise from the pink marking, at about three o'clock, there is a downward-
93 pointing white arrow-shape. Again, in Exhibit B, the white paint appears too thick, as if it
94 was carefully applied. By contrast, in Exhibit A, the same shape appears quickly or
95 vigorously applied, consistent with Yazoo's style. This tells me that the copyist painting
96 Exhibit B was stopping and starting to paint, as copyists have to do because they are
97 usually looking back-and-forth from the original (or from a photo) to their own canvas
98 during the painting process.

99

100 Finally, just below the downward-arrow shape is a white streak of paint that resembles a
101 white bone. In Exhibit B, the lower edge of the "boneshape" appears smoother than in
102 Exhibit A. The same shape in Exhibit A has the signature Yazoo rough edge.

103

104 *Treason* was kept in its original form: a small, lightweight canvas pressed into the original
105 wood frame. Neither the canvas found in McCulloch's gallery nor Shem's apartment has
106 markings or adhesive that would indicate either one was framed with tacks or staples.

107 After further examination of the frame, I have concluded that the original *Treason* could
108 have been very easily removed and replaced with the replica using no tools at all.

109

WITNESS STATEMENT—Prosecution Witness: Charlie Gibbons

1 My name is Charlie Gibbons. I am 23 years old and currently unemployed. For the past
2 three years, I worked for a hardware store, but I was recently fired due to a
3 misunderstanding. I was a good employee, but my boss just did not like me and, one day,
4 falsely accused me of stealing his sunglasses and fired me on the spot, without even
5 offering me an opportunity to defend myself.

6
7 Evan Shem and I have been friends since third grade. We were inseparable until our
8 freshman year of high school when we began to drift apart. Evan began hanging out with
9 the artsy theater-kids and got really into painting and drawing. We were no longer a part
10 of the same scene. Also, around this same time, I began shoplifting from local businesses
11 and getting into all kinds of trouble at school. I'm embarrassed about it today, but Evan
12 understandably kept some distance from me back then.

13
14 After high school, Evan went off to college, while I stayed in town and took odd jobs until
15 I landed the job at the hardware store. Evan and I had completely lost touch until Evan
16 moved back to town to start graduate school. Once we started hanging out again, it was
17 like we had never stopped. We did a lot of reminiscing about the good old days. I was also
18 quite impressed to hear about Evan's accomplishments and to see the artist Evan was
19 becoming. Evan even showed me some paintings. I couldn't believe how professional they
20 looked.

21
22 After the hardware store fired me, I lived off my savings for a few months, until I was
23 forced to move out of my apartment. Out of desperation, I asked if I could crash at Evan's
24 place for a couple weeks, just until I found a new job. I could tell Evan seemed reluctant,
25 but still Evan said "all right." Over the next few months, and with the economy the way
26 it's been, finding a job was tough. Evan generously allowed me to stay but eventually
27 asked me to contribute to the rent or leave. I decided to leave at the end of June, but I
28 was crashing on a friend's couch until a room became available for rent. In the meantime,
29 I was storing most of my belongings in my car's trunk, and some of my large belongings
30 were still at Evan's apartment. So, I still had the key to Evan's apartment.

31
32 When I was staying with Evan, I spent most of my days looking for a job. Otherwise, I
33 was hanging out, flipping through the pages of Evan's art books. I had never been
34 interested in art before, but seeing Evan work and watching paintings take shape allowed
35 me to appreciate the skill involved in creating such elaborate work. Evan had developed a
36 unique style, and I felt privileged to witness the creation of Evan's masterpieces.

37
38 Evan was also really good at copying classic artwork. Evan always said that the best way
39 to learn from the masters is to duplicate their work. I remember seeing Evan recreate
40 many famous paintings, sometimes completely from memory. The paintings Evan made
41 looked exactly like the paintings I saw in books and online. I was joking around one day
42 after Evan had painted a near identical replica of Magritte's *The Treachery of Images*. I
43 said something about whether any of those art snobs would be able to tell the difference
44 between Evan's fakes and the real thing. We shared a laugh, and I thought nothing of it,
45 at the time.

46
47 I remember when Evan started working for McCulloch and wouldn't stop talking about this
48 one painting, called *Treason*. Evan managed to work it into almost all of our

49 conversations, so I learned a lot about this painting that I had never seen. One day, I
50 think it was July 2, I was at the apartment packing up some things, and I overheard Evan
51 making a phone call to someone about *Treason*. Evan asked about selling *Treason*. It
52 seemed strange to me because Evan had never mentioned that McCulloch wanted to sell
53 the painting. Anyway, I figured this had something to do with Evan's job at the mansion.
54 What stood out as weird to me was the way Evan referred to the painting as "my
55 painting" on the phone. Evan even made a phony sounding voice during the call, like a
56 weird accent. Evan said something about \$100,000 and sounded excited.

57
58 I don't recall asking Evan about the phone call or how much the painting was worth. In all
59 honesty, I had grown sick and tired of hearing about *Treason*. Also, if Evan was up to no
60 good, I wanted no part in it. Those days for me were long gone, in high school. I also
61 knew that Evan was upset with Professor McCulloch because the professor never paid
62 Evan or something.

63
64 When Evan and I attended McCulloch's party, I thought at least I would see this
65 "incredible" painting for myself. I figured that maybe if I saw the real painting in person, I
66 would be able to understand Evan's obsession. I decided to wear my tan trench coat to
67 the party because I thought it added style to my outfit, besides I had never been to a
68 fancy party before. Once we arrived at McCulloch's mansion, Evan took me down a long
69 hallway and into McCulloch's art gallery. When I saw the painting, I was not impressed. It
70 was much smaller than I expected, and it appeared like the paint was just thrown on in a
71 hurry. I couldn't understand why Evan was so interested in such a tacky, uninspiring
72 painting.

73
74 That evening, when McCulloch asked everyone to go outside to watch the fireworks, I
75 couldn't find Evan. I watched the fireworks from the corner of the patio near the wall that
76 divided the living room and kitchen. At some point during the show, I turned around and
77 looked into McCulloch's mansion. Through the window, I could see Evan holding Evan's
78 own backpack, running toward the hallway that led to the gallery. At the time, I was
79 approximately 90 feet away with an unobstructed view. Looking back on it now, it
80 definitely seems strange, but at that moment I figured maybe Evan was doing some
81 routine work. I didn't go inside the mansion until the fireworks show was over and
82 McCulloch invited us inside for dessert.

83
84 I didn't see Evan the rest of that night, and after the party, I called a taxi to get a ride
85 back to Evan's Place. Evan had agreed to let me sleep on Evan's couch that night. When I
86 got back to the apartment, Evan was already asleep. The next morning, I asked Evan why
87 Evan had left the party without me, and Evan made an excuse about not feeling well.

88
89 A few days after the party, a police officer arrived at the apartment while I was throwing
90 some of my stuff into the trash and began questioning me about Evan's ability to recreate
91 paintings. The whole situation made me nervous, I don't like talking with authority
92 figures. I immediately began talking fast and boasting about how incredibly talented Evan
93 was and how Evan creates perfectly identical recreations of artwork right there in the
94 apartment. I thought I was doing a favor by speaking so highly of Evan's talent, but it
95 must have made matters worse.

96
97 [On July 7, I arrived at the apartment to grab the last of my things. I pulled into one of
98 the designated parking spots for Evan's apartment because there was no street parking,

99 and I was going to make a few trips back and forth to get my things. I knew Evan was
100 home because Evan's car was parked in the carport, but I didn't know the detective was
101 searching the apartment. When the detective approached me and asked me about the
102 storage cabinet, I confirmed that it belonged to Evan, and I said that the key was in the
103 kitchen. I knew where the key was because I had stored my bike in there when I was
104 staying with Evan. I did not think much of it, as I figured that Evan was inside and would
105 need to give the detective the key anyway.]
106
107

WITNESS STATEMENT—Prosecution Witness: Marty McCulloch

1 My name is Marty McCulloch. I am 52 years old, and I have a PhD in art history from NYU.
2 I am a professor of art history at New Prague University. Many students there are training
3 to become studio artists, like photographers, painters, or sculptors, but are required to
4 take art history courses. In addition, I have inherited the family fortune, which my
5 greatgreat grandfather made during the railroad boom in the 19th century.
6

7 Artwork was an important part of my upbringing. My parents were always taking my
8 siblings and me to local museums and art galleries, and our home was elaborately
9 decorated with fine artwork.
10

11 As a teenager, I remember my father being particularly fond of this one painting called
12 *Treason* that hung in our living room. When I was younger, I never could quite fathom
13 what he found so compelling about this piece. He told me that he had bought it at an art
14 show directly from the artist, who himself was kind of a recluse. My father fell in love with
15 *Treason* the moment he saw it.
16

17 When my father passed away, I inherited not only the family fortune, but also many
18 works of art, including the bizarre little painting. Over the years, however, I have grown
19 to appreciate its quirky artistry and my father's amusement with it. It has since become
20 one of my most cherished heirlooms. It is not the most valuable painting in my collection
21 by far, but to me it has enormous sentimental value.
22

23 Throughout the years, I've put together an extensive art collection. Many paintings hang
24 on the walls in my home. But in order to store and protect my most cherished or most
25 valuable paintings, I have a designated a room in my estate as a gallery. The climate-
26 controlled room has no windows and only one entrance. Except for visits from art
27 historians and the like, I always keep my gallery locked. The only way to gain entry is to
28 use a passcode on the electronic keypad. A passcode is used to unlock and lock the door.
29 Entering the code to lock the door automatically arms the alarm system. Currently, I am
30 the only person that can unlock the gallery, as it has its own unique passcode that is
31 distinct from the passcode used to lock the doors. Evan knows the code to lock the gallery
32 and has used the code often.
33

34 Last fall, I had a student in my class named Evan Shem. Evan was a remarkable student,
35 with a brilliant mind, and exuded a true passion for artwork. Evan actively participated in
36 class discussions and would often visit my office to discuss matters further. Evan was a
37 talented painter, too. I was thrilled that a young person like Evan possessed a knack for
38 painting. I did have to occasionally remind Evan that it requires hard work to be a master
39 painter.
40

41 I decided to offer Evan an internship to help me maintain and preserve my collection. I
42 even mentioned to Evan that this could eventually turn into a paid position, but we never
43 discussed the details. I should emphasize how extremely protective I am over my art.
44 When I offered Evan the internship, I made sure Evan understood the significance of the
45 position I was offering.

46 Evan promised to take care of my paintings and ensure they were faithfully preserved.
47 Evan proved to be a competent and loyal intern, always on time and eager to lend a
48 helping hand.

49

50 I was surprised when Evan began expressing interest in *Treason*. It seemed peculiar to
51 me that of all the great artwork in my collection, Evan was most impressed with *Treason*.
52 To be frank, I have paintings worth millions of dollars, and I had never given much
53 thought to the monetary value of this painting. When I last checked, many years ago, it
54 was worth a few thousand dollars. My father had bought it for a few hundred. Again, to
55 me, it was a family heirloom with great sentimental value.

56

57 To Evan, however, it became something of an obsession. Nearly every day, Evan stood in
58 front of the painting, just gazing at it. Evan would be eager to analyze it and discuss it
59 with me. I must admit that these moments were rewarding for me, to see a young artist
60 so inspired by a painting. It also reminded me of when I would discuss the painting with
61 my father.

62

63 I have a tradition of hosting an annual Fourth of July party at my estate. Since Evan was
64 working for me that summer, I invited Evan to the party, including a "plus one" on the
65 invitation. Everyone seemed to have a great time. As the host, I was quite busy the entire
66 evening, making sure everything was going according to plan. I recall seeing Evan arrive
67 with a guest around 6:45 p.m. Upon their arrival, I introduced Evan to several guests, but
68 we didn't see too much of each other for the rest of the night. With a party of this
69 magnitude, it's nearly impossible to keep track of everyone's whereabouts.

70

71 I had also asked Evan to work as a docent that evening, escorting guests through the
72 gallery and sharing knowledge about the paintings. I instructed Evan to keep the gallery
73 open for viewing from 7:00 p.m. until 9:00 p.m. when the firework show would begin.
74 Evan was supposed to turn off all of the lights and lock the door, just as Evan had done
75 before leaving everyday over the course of the internship.

76

77 I am aware an art dealer with whom I have worked in the past, T.M. Little, is testifying on
78 the defendant's behalf. I am unsure what T.M. would know about *Treason*, as we had
79 never done business with regard to this painting. T.M. attended my party, even though we
80 recently ended our business relationship. I felt that T.M. had taken advantage of me when
81 T.M. had insisted that I invest over \$2 million in the purchase of three paintings by
82 Anselm Kiefer. I asked T.M. to allow me time to think it over, but before I knew it, T.M.
83 was demanding my share of the purchase price. I decided that I would no longer need
84 T.M.'s services. T.M.'s presence at the party was a surprise to me, but I do not like kicking
85 guests out and making a scene. We did not, however, acknowledge one another.

86

87 Sometime during the morning after the party, I went into the gallery, just like I do most
88 mornings. I looked at *Treason*, but it failed to elicit its familiar emotional response in me.
89 Something was strange about it, but I couldn't pinpoint what.

90

91 My suspicions were confirmed when I received a phone call from a local art gallery asking
92 about an offer to sell *Treason*. I thought, there must be some mistake, as I would never
93 sell *Treason*. I hung up from that phone call, marched straight into the gallery, looked at
94 the painting, and realized that this was not *Treason*. Some of the brushstrokes just
95 seemed more controlled than I remembered. This was a fake, a fraud. I immediately
96 telephoned the police.

97

98 An hour or so later, an officer arrived at my estate. We discussed the circumstances and
99 looked over the guest list. I had unlocked the gallery at the start of the party, and I
100 trusted Evan to supervise my guests, and arm the alarm system at 9:00 p.m. I noted that
101 the canvas painting was pressed into its original wood frame which would have made it
102 relatively easy to remove and replace.

103

104 After speaking with the police, I called someone who I knew would understand my pain:
105 Evan. Evan answered the phone and, to be perfectly honest, when I shared the news,
106 Evan didn't seem all that upset. As I recall, Evan said, "Oh no! That's terrible Professor
107 McCulloch. I can assure you I would never do anything like that." The reaction was odd,
108 as I was not calling to accuse Evan. I merely wanted empathy and support. If anything, I
109 was actually expecting Evan to be more upset than I was. After all, Evan was utterly
110 obsessed with *Treason*.

111

112 On July 8, Detective Barron had me stop by the police station to look at the painting taken
113 from Evan's apartment. When I looked at it up close, I knew it was the original. All the
114 details matched my memory of the painting, which I had been looking at since my
115 teenage years.

116

117 I concluded that Evan was somehow involved in this fiasco. I sent Evan an email saying
118 Evan's services would no longer be needed, and I refuse to let Evan return to my gallery.

WITNESS STATEMENT—Defense Witness: Evan Shem

1 My name is Evan Shem. I am 24 years old and a graduate student at New Prague
2 University. Since January, I've been working as an intern, curating the art gallery
3 maintained at the home of my art history professor, Marty McCulloch. My fascination with
4 art started while I was in high school. I realized that art, especially painting, was my one
5 true love.

6
7 Around the same time I developed an interest in art, I began to drift apart from my
8 childhood best friend, Charlie Gibbons. We became part of different scenes, so to speak.
9 Also, I was aware that Charlie had started to get in trouble with the law, stealing things at
10 school and around town. I didn't have time for that stuff. I just wanted to focus on my
11 art.

12
13 After high school, I moved away to go to college, where I received my Bachelor of Fine
14 Arts degree. I did well in my classes. My passion for artwork far exceeded my interest in
15 anything else, and I just knew I would be a renowned artist one day. During undergrad, I
16 was living off student loans and credit cards, and I had acquired nearly \$50,000 in debt. I
17 knew that I would need a graduate degree to be taken seriously in the art world, but I
18 was worried that it would cost another \$75,000.

19
20 After college, I enrolled as a graduate student in New Prague University, located in my
21 hometown. I rented an apartment near the school, purchased new art supplies, and
22 planned to pursue my dreams.

23
24 While walking to school one day, I ran into Charlie. It must have been about four years
25 since we last talked. It was refreshing to see Charlie again, but after we had a long talk, it
26 was clear we still had little in common. I was still pursuing art, and Charlie hadn't changed
27 much since high school.

28
29 When Charlie asked to move in with me, I was conflicted. I really did not want to live
30 together, but I felt sorry for my old friend and let Charlie move in. I figured it'd be only a
31 couple of weeks until Charlie found somewhere else to go.

32
33 During my first semester of graduate school, I was enrolled in an art history class taught
34 by Professor McCulloch. From day one, I loved the class. The subject matter was
35 thoroughly captivating, and McCulloch was an unbelievable professor. I was excited to
36 attend class every day. When I would turn in assignments for class, Professor McCulloch
37 and I would have in-depth discussions of art and of my own work. In my free time, I
38 would recreate famous paintings from history. I must admit that I became quite good at
39 this. I would bring these paintings to Professor McCulloch's office for feedback and advice
40 on how to improve my abilities.

41
42 The following semester, I was offered an internship at McCulloch's home to oversee the
43 professor's vast art collection. Professor McCulloch said that after one semester, this
44 internship would become a paid position. Although I was not thrilled by the thought of
45 working without pay, I was willing to make the sacrifice to eventually be paid to do what I
46 love. I knew that unless I became a famous painter in record time, I would be bound to
47 have trouble making my student loan payments after graduation.

48

49 I knew how protective Professor McCulloch was of these paintings and felt privileged to be
50 given such an opportunity. I remember when I first saw the renowned collection. It was
51 the single most comprehensive and impressive private collection I had ever seen.
52

53 One painting in particular stood out. The first time I saw it, I was stunned. It had a
54 hypnotic quality. When I asked Professor McCulloch about the painting, it was explained
55 to me that the piece, titled *Treason*, was inherited from Professor McCulloch's father, and
56 it was the most meaningful painting in the entire collection.
57

58 I worked at Professor McCulloch's mansion two days a week for the remainder of my first
59 year of school and into the summer. The paid position I had been promised never
60 materialized. I asked Professor McCulloch about the offer one day while we were
61 contemplating *Treason*, and Professor McCulloch responded by telling me to be patient
62 because paid positions in the art world are hard to come by. This marked the turning
63 point in my relationship with Professor McCulloch. I knew that I would need to start
64 looking for a real job right away.
65

66 Charlie was still living with me. What was only supposed to be a couple of weeks had
67 turned into many months. I didn't mind it too much, though; Charlie had developed a
68 curiosity about art. Charlie frequently asked about the various paintings I was studying,
69 and Charlie appreciated my ability to recreate famous works of art. I brought most of my
70 art supplies to my apartment and did a lot of my work there. I remember that one day
71 Charlie was so impressed with my near-replica of Magritte's *The Treachery of Images*,
72 that Charlie thought that even art experts wouldn't be able to tell the difference between
73 my fakes and the real thing. It was humorous to me think of my work on that level.
74

75 Although it was fun having Charlie around while I did my work, Charlie's sudden interest
76 in artwork struck me as somewhat odd. Charlie even accompanied me as we traveled
77 from thrift store to thrift store looking for old canvas paintings to wash and paint over. I
78 would often wash old canvases and do my paintings on them because it was less
79 expensive than using new canvas, and it helped give the feel of the time period if the
80 canvas was dated.
81

82 As much as I enjoyed Charlie, Charlie had undoubtedly overstayed the welcome. I gave
83 Charlie an ultimatum: Either start paying rent or move out on June 30. Charlie took it
84 rather well and promised to leave by the end of the month. When July 1 rolled around,
85 and all of Charlie's stuff wasn't out of my apartment, I told Charlie that it was OK to keep
86 the key for a few more days until all of Charlie's belongings were out.
87

88 Back in March, I decided to undertake the challenge of attempting a recreation of my
89 beloved *Treason*. I did not tell Professor McCulloch about this new project because I didn't
90 want the professor to be overly critical of my work. The difficulty I encountered in my
91 attempt to recreate it only increased my appreciation of the piece. My discussions with
92 Professor McCulloch regarding *Treason* grew richer and livelier. One day I commented on
93 how brilliant I thought the artist was and how his paintings must be really valuable. Much
94 to my surprise, McCulloch responded that *Treason* was not worth much money at all
95 compared to other works in the collection, insisting that the sentimental quality of the
96 piece was what gave it value. I just couldn't imagine that a painting as brilliant as *Treason*
97 wasn't worth a lot of money.
98

99 I thought it'd really impress Professor McCulloch if I found out that *Treason* was worth a
100 lot of money. I figured the best way to find its market value would be to contact MT's Fine
101 Art Auction House. I called the auction house and asked about the value of *Treason*. I was
102 very clear that my intention was to know the value of a painting. I did not refer to the
103 painting as mine, nor did I attempt to disguise my voice. I was overjoyed when they told
104 me the estimated value was \$100,000. I was so excited that I couldn't wait to tell
105 Professor McCulloch. I just knew Professor McCulloch would be delighted to hear the
106 news. The annual Fourth of July party was the next day, and I had planned on telling
107 Professor McCulloch then.

108
109 Charlie insisted on coming as my guest to the party. Charlie wore a ridiculous tan
110 overcoat, but I didn't say anything. I didn't want Charlie to feel uncomfortable. When we
111 arrived at the party around 6:45 p.m., we ran into T.M. Little, one of Professor
112 McCulloch's good friends that I have met several times when working in the gallery. Little
113 asked why I brought along my backpack to the party, and I informed Little that I brought
114 my art supplies, as I was hoping to sketch a scene of the guests watching the firework
115 display. Then, Professor McCulloch greeted both Charlie and me. Given the enormous
116 crowd of people at the mansion, I thought it would be a little inappropriate to talk about
117 *Treason's* value on the night of the party.

118 I decided to wait to tell Professor McCulloch on a day when we were alone.

119

120 I found it odd that Charlie seemed especially enthusiastic about *Treason*, insisting that we
121 go see it and inquiring as to how much it was worth. I don't recall telling Charlie how
122 much the painting was worth. Nonetheless, I showed Charlie the gallery and the painting.
123 Charlie seemed impressed, but I wasn't sure if Charlie was just humoring me.

124

125 I had been assigned to be a docent for the evening. Professor McCulloch asked me to
126 escort people through the gallery, talk about the pieces on display, and just generally
127 monitor things there. I was happy to help people appreciate the artwork. I spent a
128 majority of the evening in the gallery.

129

130 As the fireworks display began, and everyone went outside, I escorted the last guests out
131 of the gallery and joined them for the show. That was when I suddenly realized I had
132 forgotten to lock the doors to the gallery. I was instructed by Professor McCulloch to lock
133 and secure the gallery at 9:00 p.m. when the fireworks were scheduled to begin. I
134 couldn't have been gone more than ten or fifteen minutes when I realized I had forgotten
135 to secure the gallery. I rushed back inside and ran to arm the gallery door. I opened the
136 door to quickly ensure no one was inside. Once I saw the gallery was empty I closed the
137 door and punched in the security code to lock and arm the security system. Once
138 everything was secure, I headed back outside. On my way outside, I passed T.M. Little in
139 the foyer, and Little asked how my sketch was coming along. I knew my supplies were
140 still untouched in my backpack that I was carrying but I politely replied,
141 "Great." I hurried outside but I never really had a chance to start my sketch.

142

143 Shortly after the fireworks display I tried to find Charlie. I had agreed to let Charlie crash
144 on my couch for the night but I wasn't going to spend all night looking. It had been a long
145 evening and I was ready to go with or without Charlie.

146

147 The following day, I received a call from McCulloch, who said that someone stole *Treason*.
148 Upon hearing the news, I went into a state of shock. Believe me, I was more upset than

149 Professor McCulloch. I assured Professor McCulloch that I had nothing to do with the theft,
150 as I had been in charge of the gallery the entire night, and I was certain that not a single
151 painting had been disturbed.

152

153 When Detective Barron arrived at my apartment on July 7, I was shocked. When the
154 detective asked to search the apartment, I said, "Sure." I had nothing to hide. Charlie
155 mentioned that a police officer had come by the day before when I was at a family
156 gathering, but I presumed the officer was just doing routine questioning of people who
157 were present at McCulloch's party. I did not understand how McCulloch could believe I
158 would ever do such a thing. I did paint a replica of *Treason* a few months ago, but that
159 painting was still in my apartment. Detective Barron took the replica I had made.

160

161 [As Detective Barron was searching my apartment, I sat in the living room and waited. I
162 was stunned to learn after the search that the detective went into my storage cabinet in
163 the carport outside without my permission, especially because the cabinet was locked. I
164 later found out that Charlie, who was no longer living with me, told Detective Barron
165 where the key to the cabinet was located, and while I sat in the next room patiently
166 waiting for the search of my apartment to end, Detective Barron took my key and went
167 through my cabinet. I would have never consented to the search of my cabinet, as that is
168 where I have many keepsakes and personal items. My understanding was that the search
169 was going to be conducted inside my apartment only.

170

171 The notes that Detective Barron found were just part of my research into *Treason*. I
172 looked up some Yazoo collectors to see if *Treason* was worth more than some of Yazoo's
173 other works. I had planned to contact them but never did. I thought the professor would
174 be happy to know that *Treason* was, perhaps, Yazoo's most valuable piece.]

175

176 On July 8, I found out that I had been fired from my internship with Professor McCulloch
177 via email. I was devastated. I was planning to quit once I found a job, but I did not want
178 my relationship with the professor to end on bad terms. On that same day, I was arrested
179 for the theft of *Treason*.

WITNESS STATEMENT—Defense Witness: Sidney Ogden

1 My name is Sidney Ogden, and I am 24 years old. I work as a librarian at the New Prague
2 Public Library, and on the weekends, I work a second job for a valet company to make
3 some extra money. I attended school in New Prague, along with Evan Shem and Charlie
4 Gibbons. After high school, I went out of state for college and obtained my bachelor's
5 degree in English literature, followed by a master's in library science. I have always
6 enjoyed reading great works of literature. I also found a passion for acting my sophomore
7 year, which was when Evan and I became good friends.

8
9 Before high school, Charlie and Evan were inseparable, but when Evan and I began
10 spending time together, Charlie was no longer around. I overheard that Charlie mingled
11 with the wrong crowd, but I never really saw for myself. I remember Evan talking
12 endlessly about this newfound love of art. As a fellow art enthusiast, Evan and I had much
13 in common. Evan even joined the drama club, and we co-starred in a rendition of The
14 Scottish Play in our junior year. I have some great memories of those days. It seemed as
15 though we spent every waking moment with one another, reciting lines, working on
16 technique, and analyzing Shakespeare's every word. Evan was a great companion. I
17 would even venture to say that Evan is one of the most reliable, hard-working, and honest
18 people I know.

19
20 Evan always had a knack for art, which is why it comes to no surprise that Evan has a
21 talent to replicate famous paintings. When we were in high school, Evan could imitate
22 nearly anyone or anything, always having an eye for the minutest details. Evan had the
23 natural ability to write poems and sketch scenes that everyone would believe were works
24 of professionals. I saw something special in Evan from the moment we met, as did many
25 other people we knew.

26
27 Evan and I had lunch at Evan's apartment back in February. Charlie was not yet staying
28 there, but I knew that Charlie had asked Evan to stay because we discussed it that day.
29 Evan was reluctant to let Charlie move in because of the fear that Charlie did not have
30 much going on, and if Evan helped Charlie too much, Evan feared that Charlie would
31 become lazy and complacent. At the time, Evan was submerged in artwork. Since Evan
32 was not spending much time at home, I suggested that it might be a good idea to have
33 someone around the apartment.

34
35 Evan and I spoke briefly about art school and the new internship in Professor McCulloch's
36 art gallery. When Evan spoke of the collection, I could hear how much Evan cared for
37 each and every piece of art. It was as though Evan cared for the art as much as its owner.
38 I remember thinking that Professor McCulloch's art collection was in good hands; if you
39 were going to trust anyone with millions of dollars and family heirlooms, it would be Evan.

40
41 Before I left, Evan had thought it over and told me that Charlie would likely move in for a
42 while, at least until Charlie found work. Evan didn't really want a roommate, but Evan
43 wanted to help an old friend until Charlie figured things out. I remember thinking that
44 Charlie was lucky to have a friend like Evan. That was when I knew that my good friend
45 Evan from high school hadn't changed one bit.

46
47 After hearing about how amazing Professor McCulloch's collection was, I was more than
48 delighted when I found out that the company I work for on the weekends was providing

49 parking attendants for the annual Fourth of July party. I was hoping to catch a glimpse of
50 the professor's amazing paintings. The night went by smoothly. I greeted everyone who
51 came and left the party. Evan and Charlie arrived relatively early, as Evan had to prepare
52 the gallery for the guests.

53

54 Later that night during the fireworks display, I stood on the covered porch, as there were
55 no cars to attend to. From the covered porch, I could see through the massive living room
56 clear through the rear glass walls to the back of the house where the 200 or so guests
57 stood outside waiting for the firework display. Charlie was standing near the back of the
58 crowd close to the living room and kitchen. I had to strain to see the fireworks in the
59 distance through the glass walls from the front of the house, but I caught some glimpses
60 of them. A couple of minutes into the fireworks, I saw Charlie leaving the hallway where
61 the gallery is located. I thought it was strange that Charlie was wandering around in
62 Professor McCulloch's home when everyone else was outside, but I assumed Charlie must
63 have gotten lost looking for a restroom, as I did earlier when I was trying to find the
64 restroom near the stairs. I did not see Charlie's hands but I did remember that Charlie
65 was wearing a tan trench coat. I found that strange on a beautiful summer night. I
66 resumed trying to catch the fireworks and didn't see where Charlie went. That McCulloch
67 really knows how to put on a show!

WITNESS STATEMENT—Defense Witness: T.M. Little

1 My name is T.M. Little. I am 52 years old, and I have been working as an art dealer for
2 nearly 30 years. I began my art career in Amsterdam, where I spent several years
3 working as a curator at the Rijksmuseum. Eventually, I earned a fellowship under the
4 noted Austrian dealer Thaddaeus Ropac. In the mid-1990s, I returned to the States and
5 started my own business, buying and selling artwork for high-end clientele. As an art
6 dealer, I travel all over the world, frequenting auctions, exhibitions, and artists' studios in
7 search of exciting new works, little-known treasures, and good buys for my clients.

8
9 I met Marty McCulloch shortly after I started my own business, and ever since our first
10 transaction, we have been loyal business partners and lifelong friends. We often buy and
11 resell contemporary artwork as partners, investing together and sharing the profits and
12 losses as they come. Before a recent falling out between the two of us, I would visit
13 Marty's mansion often, both for business and social reasons.

14
15 Back in May of this year, Marty and I had set out to purchase works by a famous German
16 painter and sculptor by the name of Anselm Kiefer. I was concerned that I did not have
17 the bankroll to fund such an investment on my own, but I was sure that we would be able
18 to resell the art and make a profit instantly, as long as we displayed the pieces at Marty's
19 annual Fourth of July soirée. Many of Marty's guests would also attend an event at the
20 Swing Auction Gallery at the end of July, which is the biggest art auction in all of Scott
21 County, and if we displayed the Kiefer pieces at the party, we would be able to expose the
22 artwork to potential buyers, thus building interest. Marty agreed to my request, just as
23 my dear friend has many times over the past 20 years, and I quickly made an offer on the
24 Kiefer paintings.

25
26 Much to my surprise, once I had already transferred the funds and completed the
27 purchase, Marty withdrew from our deal. I was expecting Marty to reimburse me for 50
28 percent of the cost of this purchase, as this is our normal course of dealing. If I'd known
29 that Marty was going to back out, I would have never fronted the money for those
30 paintings. This really puts me in a financial bind until I get those paintings sold. I emailed
31 Marty asking for an explanation, and I never received a response. For the first time in 20
32 years, I was let down by my dear friend Marty McCulloch.

33
34 Although I was upset about the recent deal that went bad, I still decided to attend the
35 Fourth of July party, as I had too many clients who would be there, and I could not afford
36 to allow other art dealers a chance to mingle with them and possibly lose their business. I
37 was not surprised when Marty ignored me at the party. I did not even receive a simple
38 greeting. I was unsure if this was intentional, as I could chalk it up to Marty's being busy;
39 after all, it was quite a party.

40
41 I have met Evan Shem at Marty's mansion on several occasions. Evan always came across
42 as a nice kid, a hard worker, and Marty had boasted about Evan's talent as well. Evan,
43 Charlie Gibbons, and I arrived at the party at the same time. This was the first time I met
44 Gibbons. My first impression of Gibbons was not the best. Gibbons' clothes appeared
45 wrinkled, plus Gibbons seemed nervous and didn't look me in the eye when we shook
46 hands. I remember thinking that Gibbons was going to stick out like a sore thumb in this
47 party full of the high society of New Prague.

49 I did see Evan with a backpack, and I asked what it was for. Evan told me that the bag
50 contained art supplies, as Evan was planning to sketch a scene of the party guests
51 enjoying the firework show later that evening. Throughout the party, as I mingled with
52 my clients, I observed Evan offering explanations of the artwork to guests as they went
53 through the gallery. Evan was courteous, polished, and well versed on the origins and
54 history of each piece of art in Marty's collection.
55

56 In fact, the last time I saw Evan was during the firework show. I stepped inside to use the
57 restroom near the stairs and we crossed each other's paths in the foyer. Evan was walking
58 out of the gallery hallway adjacent to the restroom. I asked Evan how the sketch was
59 coming along, to which Evan replied, "Great!" I cannot testify as to whether or not Evan
60 was acting suspiciously, but I can say that I did not notice anything in Evan's hands or
61 anything unusual. I was shocked when I found out that Evan had been arrested.

WITNESS STATEMENT—Defense Witness: Jamie Sardegna

1 My name is Jamie Sardegna. I am currently employed by Art Experts, Inc., in New York
2 City, where I have worked for the past 15 years. I have a master's in art history from NYU
3 and provide professional research and art analysis to anyone who needs a certificate of
4 authenticity. My specialization in grad school was modern abstract painters, and I did
5 become very familiar with the work of Fletcher Yazoo, among others. Yazoo had a cult
6 following but was reclusive and considered obscure during his lifetime, only occasionally
7 showing works in public. I have seen firsthand what relatively little there is of Yazoo's
8 work. I once briefly viewed *Treason* three years ago when I was brought as a guest to
9 Marty McCulloch's Fourth of July party.

11 As for art authenticity, many art authenticators advertise bogus "secret methods" or
12 "secret computer technology," but the fact is that there are no secret methods, and for
13 now, computers cannot authenticate art. At most, material tests would show whether or
14 not a part of the painting was repainted or if an older painting is a forgery because of the
15 materials used. Here, we have a modern acrylic painting, and material tests will not be of
16 any use in the authentication. By and large, authenticity is determined by examining the
17 painting itself, possibly with the help of special digital image analysis software.

19 Now that I have explained the methods used by the Art Experts, I can offer some insight
20 into the painting in question: *Treason*. I was asked to examine the painting found in Evan
21 Shem's apartment as well as the painting found in Marty McCulloch's art gallery and to
22 verify which painting was, in fact, *Treason* by Fletcher Yazoo. In my expert opinion, the
23 painting in Shem's apartment is not a genuine Yazoo, and the real *Treason* is the painting
24 that was in McCulloch's possession the entire time.

26 I find it hard to believe that any art expert would conclude a painting is authentic before
27 taking the necessary steps of authentication. Art authenticators use the three common
28 approaches to determining a painting's authenticity, all more vigorous than a cursory,
29 visual examination, which are: provenance, scientific testing, and connoisseurship. Based
30 on the prosecution art expert's testimony, the determination of authenticity was made
31 first, followed by an examination of connoisseurship. This expert failed to base the
32 conclusion on facts, but rather based the facts on a conclusion.

34 It is true that provenance and scientific testing are not issues in the case of *Treason*. We
35 know that the painting's chain of custody was not broken, as Edward McCulloch purchased
36 the painting at an art show from the original artist just one year after the painting was
37 finished, and Marty McCulloch directly inherited the painting from Edward. We also know
38 that the painting was finished by Fletcher Yazoo in 1977, and because the painting is not
39 that old, scientific examination would not provide much insight. The chemical composition
40 of paint samples would not differ today from 30 to 40 years ago.

42 However, my concern comes about with connoisseurship, which is the method of studying
43 and examining the stylistic techniques of the artist. In this case, Fletcher Yazoo has a
44 distinct style, which makes it harder to replicate his work. In order to authenticate
45 *Treason*, I spent a tremendous amount of time studying the painting, along with other
46 works by Yazoo, and referencing images with the assistance of digital image analysis

47 software. I found several inconsistencies in the painting found in Shem's apartment that I
48 did not find in the painting found in McCulloch's gallery.
49

50 I realize that my determination is in direct contradiction to the determination made by
51 Bernie Worcester, the New Prague City Police Department's hired art expert; so, please
52 allow me to explain the method I used to make my determination.
53

54 Here, at the Art Experts, we use a method called Morellian analysis, in which we
55 determine whether a painting is false or genuine by examining idiosyncrasies or repeated
56 stylistic details of a particular artist's work, which we think of as the characteristic "hands"
57 of the painter, through scrutiny of minor details that reveal an artist's subconscious
58 touches. One important factor of this analysis is the use of brushstrokes and the
59 application of paints. When looking closer at these brushstrokes, with the help of digital
60 image analysis, we can see everything from the amount of pressure applied to each
61 individual stroke, to the angle in which the painter's hand was working at any given time.
62

63 My analysis of the painting found at McCulloch's mansion on July 5 ("Exhibit B") shows me
64 that it is a genuine Fletcher Yazoo. First and foremost, all of the brushstrokes, to me,
65 appear to be vigorous and quickly applied to the canvas, consistent with Yazoo's style. In
66 almost every place, I see indicators of brush-bristles leaving rough edges of paint,
67 especially in the white streaks. The arrowhead-shape in the center of the painting does
68 appear thicker than the corresponding shape in Exhibit A. The same is true for the so-
69 called "downward arrow" that Worcester discusses. Worcester is correct that copies tend
70 to show stop-start motions, since copyists may need to look away from the canvas. But
71 my analysis is that the thicker paint areas in these two "arrow" shapes are in themselves
72 consistent with Yazoo's trademark style of unevenly applying paint in vigorous motions.
73

74 The pink oval mentioned by Bernie Worcester looks like a remnant of red paint mixed with
75 white on the brush. It is certainly possible that it is an "afterthought" and an "add-on" of
76 pink paint by a copyist, but that interpretation is too subjective. Under the close analysis I
77 did of these areas of the painting, I can say, at best, that it is inconclusive whether or not
78 that pink oval is an add-on. Even if it was, Yazoo himself could have added it. He would
79 add a little spontaneous detail from time-to-time if he was inspired.
80

81 Finally, the lower-right white "bone-shaped" streak in Exhibit B mentioned by Worcester
82 does have fewer brush-bristle markings of white paint around the lower edge than in
83 Exhibit A. But no art expert could say that Yazoo's brushstrokes were 100 percent
84 identically harsh in every instance. The edge appears to me to be rough enough to be
85 authentic Yazoo. By contrast, that same edge in Exhibit A could be the work of a copyist
86 trying too hard to meticulously add "bristle marks" in order to make it more "Yazoo-like."
87 In other words, this particular detail is inconclusive at best. With regard to the painting
88 found in Shem's apartment, I have formed the professional opinion that this painting is a
89 very good copy of Yazoo's *Treason*, but a copy nonetheless, while the painting found in
90 McCulloch's gallery is the original *Treason*.

PRETRIAL MOTION AND CONSTITUTIONAL ISSUE

This section contains materials and procedures for the preparation of a pretrial motion on an important legal issue. The judge's ruling on the pretrial motion will have direct bearing on the possible outcome of the trial.

The pretrial issue involves the Fourth Amendment protection against unreasonable searches and seizures. The question is whether Detective Barron's search of Evan Shem's storage cabinet on July 7 was constitutional. If the search was unconstitutional, the handwritten note about private art collectors found in Shem's storage cabinet may not be used at trial. This is the only issue at pretrial.

The Fourth Amendment protects individuals, their homes and their belongings from unreasonable police searches. If the police have obtained a valid warrant, they are allowed to make a search within the bounds of the warrant. Searches outside of the bounds of the warrant, or in the absence of a warrant, can also be legal if a court recognized exception applies. The exceptions include: the motor vehicle exception, the stop and frisk exception, searches incident to lawful arrests, consent, and exigent circumstances. If the search was either inside the scope of the warrant, or within the warrantless search exceptions, then the search was constitutional.

Here, we focus on the consent exception. Detective Barron received consent to search Evan's apartment. However, the question is whether Evan's consent extended to the search of the storage cabinet. If Evan's consent did not extend to the storage cabinet, the question becomes whether Charlie consented to the search of the storage cabinet and did Charlie have the authority to consent to a search.

The search of the storage cabinet, where the handwritten note was found, will only be deemed constitutional if the person consented to the search. An individual may sometimes consent to the search of another's property when that individual owns or shares the property with the one being searched. For example, a girlfriend can consent to the search of an apartment she shares with her boyfriend.

The sources cited below will help you determine whether Detective Barron's search of the storage cabinet was constitutional.

ARGUMENTS

Prosecution should argue that Detective Barron acted in good faith because it was reasonable for Detective Barron to believe Evan Shem consented to the search of both the apartment and the storage cabinet. Even if Shem did not consent to the search of the storage cabinet, it was reasonable for Detective Barron to believe that Gibbons gave consent for the search. First, Detective Barron saw Gibbons at Shem's apartment throwing out the trash the day before the search. Then, Gibbons was parked in one of the parking stalls designated for apartment B on the day of the search. Furthermore, when Detective Barron asked Gibbons if the storage cabinet belonged to apartment B, Gibbons confirmed and directed Detective Barron to the key. If it is reasonable for Detective Barron to believe that Gibbons was a resident of Shem's apartment, then Gibbons's consent of the search of the storage cabinet is valid. Thus, no warrant is required to search the storage cabinet.

Defense should argue that Gibbons did not give consent to the search of the cabinet, nor did Gibbons have the right to give consent. Even if it were reasonable for Detective Barron to believe Gibbons was a resident of Shem's apartment, Gibbons would have had to consent to the search. Defense should argue that Gibbons was unaware that Detective Barron was requesting consent. Additionally, Gibbons was no longer a resident of Shem's apartment as of June 30 when Gibbons was asked to move out. Defense should point out that Detective Barron assumed Gibbons lived there, but never asked Gibbons, and therefore, Detective Barron was not acting in good faith.

SOURCES

The sources for the pretrial motion arguments are a "closed library," which means that participants may only use the materials provided in this case packet. The materials include excerpts from the U.S. Constitution, the Minnesota Constitution, the Minnesota Penal Code, edited court opinions, the Fact Situation, and all relevant testimony to be found in the Witness Statements of Officer Reese Barron, Evan Shem and Charlie Gibbons.

The U.S. Constitution, U.S. Supreme Court holdings, and Minnesota Supreme Court and Minnesota Appellate Court holdings are all binding and must be followed by Minnesota trial courts. All other cases are not binding but are persuasive authority. In developing arguments for your trial, both sides should compare or distinguish the facts in the cited cases from one another and from the facts in *Minnesota v. Shem*.

LEGAL AUTHORITIES

U.S. Constitution

Amendment IV

The right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Amendment XIV

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the States wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Minnesota Constitution

Article I

Section 13. The right of the people to be secure in their persons, houses, papers, and effects against unreasonable seizures and searches may not be violated; and a warrant may not issue except on probable cause, supported by oath or affirmation, particularly describing the place to be searched and the persons and things to be seized.

Statutory

Minnesota Statutes Sec. 484 (Theft by Larceny)

Every person who takes the personal property of another (and the property taken is of value exceeding nine hundred fifty dollars (\$950)), without the consent of the owner, with the intention to deprive the owner of it permanently, is guilty of theft by Grand Larceny.

MINCRIM 1800 (Jury Instructions)

The defendant is charged with grand theft by larceny. To prove that the defendant is guilty of this crime, the State must prove that:

1. The defendant took possession of property worth more than \$950.00, owned by someone else;
2. The defendant took the property without the owner's [or owner's agent's] consent;
3. When the defendant took the property (he/she) intended to deprive the owner of it permanently or to remove it from the owner's possession for so extended a period of time that the owner would be deprived of a major portion of the value or enjoyment of the property; AND
4. The defendant moved the property, even a small distance, and kept it for any period of time, however brief.

MINCRIM 223 (Jury Instructions) Direct and Circumstantial Evidence

Facts may be proved by direct or circumstantial evidence or by a combination of both.

Direct evidence can prove a fact by itself. For example, if a witness testifies he saw it raining outside before he came into the courthouse, that testimony is direct evidence that it was raining.

Circumstantial evidence also may be called indirect evidence. Circumstantial evidence does not directly prove the fact to be decided, but is evidence of another fact or group of facts from which you may logically and reasonably conclude the truth of the fact in question. For example, if a witness testifies that he saw someone come inside wearing a raincoat covered with drops of water, that testimony is circumstantial evidence because it may support a conclusion that it was raining outside.

Both direct and circumstantial evidence are acceptable types of evidence to prove or disprove the elements of a charge, including intent and mental state and acts necessary to a conviction, and neither is necessarily more reliable than the other. Neither is entitled to any greater weight than the other. You must decide whether a fact in issue has been proved based on all the evidence.

MINCRIM 224 Circumstantial Evidence: Sufficiency of Evidence Before you may rely on circumstantial evidence to conclude that a fact necessary to find the defendant guilty has been proved, you must be convinced that the State has proved each fact essential to that conclusion beyond a reasonable doubt.

Also, before you may rely on circumstantial evidence to find the defendant guilty, you must be convinced that the only reasonable conclusion supported by the circumstantial evidence is that the defendant is guilty. If you can draw two or more reasonable conclusions from the circumstantial evidence and one of those reasonable conclusions points to innocence and another to guilt, you must accept the one that points to innocence. However, when considering circumstantial evidence, you must accept only reasonable conclusions and reject any that are unreasonable.

Stoner v. Minnesota, 376 U.S. 483 (1962)

Facts: Stoner was suspected of robbing a bank. Police learned that he was staying at a hotel. A clerk at the hotel consented to a search of his room. The police found a gun in the room. Stoner moved to exclude the evidence because it was obtained during an unreasonable search.

Issue: Could the clerk give consent to the search of the defendant's hotel room?

Holding: No. The hotel clerk had no authority to give consent to a police search, and the police had no reason to believe the clerk had such authority. Even though the clerk could enter the room to perform his duties, he could not consent to a police search. It did not matter that the police officer believed the clerk had authority if such a belief was not objectively reasonable.

U.S. v. Matlock, 415 U.S. 164 (1974)

Facts: The police came to the defendant's house to investigate a bank robbery. Mrs. Graff, who shared the house and a bedroom with the defendant, answered the door. She consented to a search, and police found money in the bedroom closet. The defendant claimed the search was unconstitutional and the money was inadmissible.

Issue: Could Mrs. Graff consent to a search of defendant's house?

Holding: Yes. Mrs. Graff had joint access and control of the room and therefore could consent to a search. It did not matter that the house belonged to the defendant or that he did not give Mrs. Graff the authority to consent to a search. Co-occupants can consent to searches of common areas.

Fernandez v. Minnesota, 134 S.Ct. 1126 (2014)

Facts: Police officers followed the suspect in a violent robbery into an apartment building, and shortly after, they heard screams coming from one of the apartments. When they knocked on the door, an assaulted woman opened the door and claimed that no one else was home except her and her children. When the police asked to enter the apartment and look around, the defendant came to the door and refused to let the police into the apartment. Under suspicion that he had assaulted the woman, the police removed the defendant and placed him under arrest. After the suspect was detained, the police received written and verbal consent from the woman to search the apartment.

Issue: Can police officers search jointly occupied premises if one occupant consents while the other occupant is detained?

Holding: Yes. An occupant can only object to the search of a premise where the other occupant is consenting if the objecting occupant is physically present. Where the objecting party is absent due to lawful detention or arrest, the other occupant can consent to a search in their absence, even where the detained occupant had previously objected to a search.

Illinois v. Rodriguez, 497 U.S. 177 (1990)

Facts: Gail Fischer came to police and told them that the defendant had drugs in "our apartment." Gail brought the police to the apartment and opened the door with a key. There were drugs in plain view and the police arrested the defendant. Later, it was determined that Gail did not have joint access or control over the apartment, and the defendant moved to have the drugs taken out of the evidentiary record.

Issue: Is the search constitutional if based on consent by someone who did not have access or control over the apartment?

Holding: Yes, because the police reasonably believed Gail had joint access, the police were acting in good faith. The Fourth Amendment only protects against unreasonable searches. Gail had a key, had belongings in the apartment, and claimed to live there. The police had an objectively reasonable basis of believing that Gail could give consent to a search. It did not matter that the belief turned out to be wrong.

Florida v. Jimeno, 500 U.S. 248 (1991)

Facts: A husband and wife were pulled over for a traffic infraction. The officer said he believed they were carrying narcotics and asked to search the car. The husband consented. During the course of the search, the officer found a paper bag in the car. After opening it, the officer found cocaine. The defendant moved to suppress the cocaine on the grounds that the defendant did not specifically consent to a search of the bag.

Issue: Did the defendant's general consent of the car include consent to search the bag?

Holding: Yes. It was objectively reasonable for the policeman to believe that the scope of defendant's consent included the paper bag. The officer told the defendant that he was looking for narcotics, so it was reasonable that the officer would want to look in small containers. The defendant needed to tell the officer if he did not want the officer to search the bag.

U.S. v. Pena, 143 F.3d 1363 (10th Cir. 1998)

Facts: The defendant was staying in a hotel room when police arrived and asked to search the room. The defendant said, "Go ahead." The officers found a couple of marijuana cigarettes in the bathroom ceiling and arrested the defendant. The defendant claimed that he had not consented to the search of the bathroom and therefore the cigarettes were inadmissible.

Issue: Did defendant's consent to a search of the room allow the officers to search the bathroom?

Holding: Yes. An objectively reasonable person would have considered the bathroom as included in the officer's request to search the room. They were both part of the same accommodation, and the bathroom was implied in the officer's request. Also, the defendant did not object to the officer entering the bathroom.

U.S. v. Davis, 332 F.3d 1163 (9th Cir. 2003)

Facts: One of two roommates in a two-bedroom apartment consented to a police search of the entire premises. The officers found a gun in a duffel bag, under the bed of the non-

present roommate. The roommate moved to exclude the gun from evidence as he did not consent to the search.

Issue: Could the roommate give consent to search the duffel bag of her absent roommate?

Holding: No. The gun was in a bag and under the non-present roommate's bed. The consenting roommate did not have joint access over the duffel bag and did not have express authorization from the other roommate to make the search. Thus, the police did not act in good faith and the search was illegal, so the gun could not be brought into evidence.

STATE CASES

Minnesota v. Cruz, 61 Min.2d 861 (1964)

Facts: A few temporary guests at an apartment were suspected of possession of marijuana. One of the transient guests, Ann, told the officer he could "look around." The officer conducted an extensive search lasting several hours. The officer found marijuana in a suitcase of another transient guest, the defendant.

Issue: Could Ann's consent allow the officer to search the defendant's suitcase?

Holding: No. The officer was aware that both Ann and the defendant were temporary guests. Ann could only give consent to items that were hers. Thus, the search of the suitcase was outside the scope of Ann's consent. The officer did not ask the defendant for permission to search the suitcase and such consent would have been necessary for a search. Thus, the police did not act in good faith and the marijuana was suppressed.

Minnesota v. Murillo, 241 Min.App.2d 173 (1966)

Facts: The defendant was staying in the home of a woman. He carried a case in which the woman had stored some personal items. The woman's items were removed, but she kept a key to the case. The police arrested the defendant near the house. When they arrived at the woman's home, she consented to a general search of the apartment and later told the officers that the drugs were in defendant's case. The case was locked, but the police found a key on the defendant, searched the case, and found heroin. The defendant was charged with possession of heroin

Issue: Did the woman give lawful consent to search the case?

Holding: No. The police were not aware that the woman had a key to the case. Therefore, the police could not have considered the woman's possession of the key when determining the scope of her consent. Her general consent of the house was not sufficient for the officers to open the container, even though the woman alerted the police of the container's contents. The defendant was in the room at the time and his specific consent was needed to remove the key from his pocket and open the case.

***Minnesota v. Jenkins*, 22 Min.4th 900 (2000)**

Facts: In a murder investigation, the police asked Diane if they could search her apartment. Diane consented. The police asked if there were any items that belonged to her brother. Diane gave them her brother's unlocked briefcase. The police opened it and found the gun used in the murder. In a trial for murder, the defendant moved to have the briefcase removed from evidence.

Issue: Did Diane have the authority to consent to a search of the briefcase?

Holding: Yes. It was objectively reasonable to assume that Diane had not only joint, but exclusive access over the case at the time of the search. Diane was a family member of the defendant, and the briefcase was kept in her bedroom. When the defendant gave the case to Diane, he reasonably should have assumed the risk that she would consent to a search of it.

PHYSICAL EVIDENCE

Only the following physical evidence may be introduced at trial. The 5 prosecution is responsible for bringing:

1. Exhibit A, a photo of the painting found at Evan Shem's apartment
2. Exhibit B, a photo of the painting found at Marty McCulloch's mansion
3. Exhibit C, a diagram of Marty McCulloch's mansion
4. Exhibit D, a note found during the search of Evan Shem's storage cabinet

EXHIBIT A
Photo of the Painting Found at Evan Shem's Apartment



EXHIBIT B

Photo of the Painting Found at Marty McCulloch's Mansion



EXHIBIT C
Layout of the First Floor of Marty McCulloch's Mansion

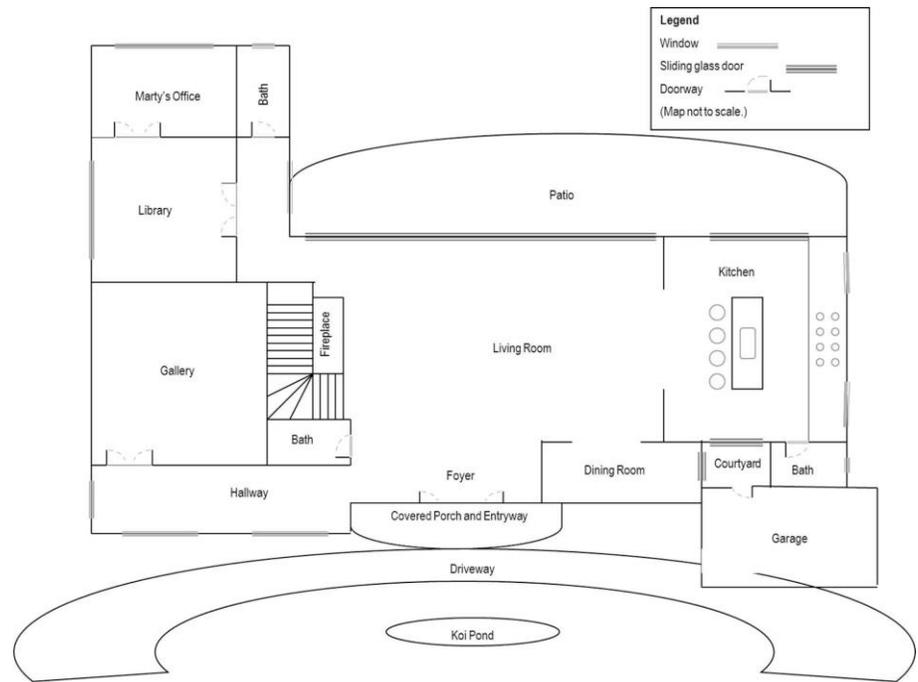


EXHIBIT D

Photo of the Note Found at Evan Shem's Storage Cabinet



CREDITS

Materials adapted from

People v. Shem
Constitutional Rights Foundation, California