

November 24, 2014

Dear Mock Trial Teacher and Attorney Coaches:

The Arizona Foundation for Legal Services & Education and the Young Lawyers of Arizona welcome you and your team to the 2014-2015 Arizona High School Mock Trial Program.

Please review all of the material carefully. If you have any questions about registration or administration of the program, please contact Susan Nusall with the Arizona Foundation for Legal Services & Education at 602-340-7361. If you have any questions about the case, the Rules of the Program or the legal aspects of the program, please post your question(s) on the Mock Trial website, www.azflse.org/mocktrial.

The Regional Tournaments will be held on March 7, 2015. The State Tournament will be held on March 28, 2015, at the Sandra Day O'Connor United States District Courthouse in Phoenix.

Case Materials

As you will see, this year's case is a murder case. The case is fictional, and any similarity or resemblance of any character to an actual person or entity is strictly unintentional and coincidental.

This case was adapted from an original case prepared for the North Carolina High School Mock Trial Program. We thank our friends at The Carolina Center for Civic Education for their permission to use the case materials.

Program and Evidence Rules

All team members are expected to know the Mock Trial Rules of Evidence and the Rules of the Program. As a reminder, we are using the Rules of Evidence used by the National High School Mock Trial Championship. The current Rules of Evidence and the Rules of the Program can be found on the mock trial website, www.azflse.org/mocktrial, in the Download Center.

Trials

This year's case materials include jury instructions to set forth the applicable law. When scoring panels are used, such as at the state tournament, the trial should be presented as a jury trial with the scoring judges serving as the jury. When single presiding/scoring judges are used, such as at most (if not all) regional tournaments, the trial should be presented as a bench trial using the same law and legal principles set forth in the jury instructions.

As you will see, the case materials contain a lot of information--much of which is intended as

background information and not necessarily to be admitted into evidence. As such, teams will have to make strategic decisions regarding what evidence they want to present within the allotted time. It will be impossible for any team to present all of the evidence contained in the materials within the time constraints. Please be advised that the time rules will be strictly enforced.

State Tournament

The State Tournament is scheduled for Saturday, March 28, 2015, at the United States District Courthouse located in downtown Phoenix. Teams that did not compete in the Maricopa County Regional Tournament will be eligible for overnight lodging the evening before the State Finals. More details about the State Tournament will be forthcoming.

National Mock Trial Tournament

The National Mock Trial Tournament will be held May 14-16, 2015 in Raleigh, North Carolina. **Please note that the 2015 National Championship is one week later than the traditional Mother's Day weekend schedule.** It is strongly recommended that schools have a fundraising plan in place in the event that they are the State winners and are eligible to travel to the National Tournament.

We hope you enjoy the problem. Have fun and good luck with your tournaments!

Susan Nusall
Mock Trial State Coordinator

Dewain Fox
Legal Counsel Coordinator

**ARIZONA HIGH SCHOOL
MOCK TRIAL TOURNAMENT
2014-2015**

STATE OF ARIZONA

V.

QUINN PENNER

A program of

Arizona Foundation for
**LEGAL SERVICES
& EDUCATION**

Young Lawyers of Arizona

State of Arizona
v.
Quinn Penner



The Arizona Foundation for Legal Services & Education sincerely thanks The Carolina Center for Civic Education and the North Carolina Advocates for Justice for permission to use this year's mock trial case. These mock trial materials were adapted from an original case created by Susan H. Johnson, CCCE Program Coordinator; and Lionel F. Earl III, then a second year law student at Penn State Law.

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State of Arizona
v.
Quinn Penner

BRIEF CASE SUMMARY:

Detective Quinn Penner was a veteran member of the Phoenix Police Department. On May 24, 2013, Detective Penner encountered Orson Hayes, a repeat criminal offender and suspected drug dealer. Penner thwarted Hayes's attempt to rob a bank, but ultimately Hayes escaped arrest. The following evening, Orson Hayes was shot and killed in the alley of a local bar. According to eyewitness testimony from the victim's cousin, Lee Hayes, Quinn Penner was the murderer. Evidence analyzed by forensic specialist Kris Vinson supports Hayes's claim, and Penner's friend Jamie Spalding confirms that Penner was in the vicinity on the night of the murder and had opportunity to commit the crime. Quinn Penner claims innocence, and Police Officer and eyewitness Andy Hodges supports Penner's story. Testimony from Sam Maddox indicates that a third party may have been responsible for the victim's demise.

STIPULATIONS:

1. All exhibits included in the case materials are authentic and accurate. No objections to the authenticity of exhibits will be honored.

2. All signatures on witness affidavits and other documents are authentic. If asked, a witness must acknowledge signing the document(s) and must attest to the content of the documents(s) and the date(s) indicated therein. The witness affidavits are deemed to be given under oath or affirmation.

3. No objections to the sufficiency of the indictment or the jury instructions will be entertained.

4. Neither the prosecution nor the defense can ask any witness to demonstrate how Quinn Penner runs.

5. The defendant voluntarily has waived his/her Fifth Amendment rights and will testify at trial.

WITNESSES:

Prosecution

Lee Hayes (Victim's cousin)
Kris Vinson (Forensic Specialist, Phoenix Police Department)
Jamie Spalding (Gym owner)

Defense

Quinn Penner (Detective/Defendant)
Andy Hodges (Police Officer, Phoenix Police Department)
Sam Maddox (Phoenix Zoo employee)

EXHIBITS

1. State's Offer on a Plea of Guilty
2. Text Messages on Cellular Phone found on Decedent
3. Map of portion of Phoenix
4. Ballistics Photos
5. Fingerprint Evidence
6. Curriculum Vitae of Kris Vinson
7. Receipt from Rubicon Sports Bar
8. Disciplinary Report
9. Text Messages on Cellular Phone from bank

**State of Arizona
Superior Court**

**CRIMINAL ACTION
DOCKET NO. CR-09-2013**

MARICOPA COUNTY

STATE OF ARIZONA)	INDICTMENT CHARGING VIOLATIONS OF
)	Count 1: First-Degree Premeditated
)	Murder In Violation Of A.R.S. § 13-1105
)	
V.)	Count 2: Second-Degree Murder In Violation
)	Of A.R.S. § 13-1104
QUINN PENNER)	

THE GRAND JURY DOES HEREBY CHARGE:

COUNT 1

First-Degree Murder

On May 25, 2013, in Maricopa County, State of Arizona, Quinn Penner caused the death of Orson Hayes, a human being, by shooting him, intending or knowing that s/he would cause the death of Orson Hayes, and acting with premeditation, all in violation of A.R.S. § 13-1105.

COUNT 2

Second-Degree Murder

On May 25, 2013, in Maricopa County, State of Arizona, Quinn Penner caused the death of Orson Hayes, a human being, by shooting him, (i) intending or knowing that s/he would cause the death of Orson Hayes, or (ii) under circumstances manifesting extreme indifference to human life, recklessly causing the death of Orson Hayes, all in violation of A.R.S. § 13-1104.

A TRUE BILL OF INDICTMENT

S. J. "Max" Farber

Foreperson of the Grand Jury, Maricopa County, Arizona

July 15, 2013

Date

JURY INSTRUCTIONS

PRELIMINARY INSTRUCTIONS

It is your duty as a juror to decide this case by applying these jury instructions to the facts as you determine them. You must follow these jury instructions. They are the rules you should use to decide this case.

It is your duty to determine what the facts are in the case by determining what actually happened. Determine the facts only from the evidence produced in court. When I say “evidence”, I mean the testimony of witnesses and the exhibits introduced in court. You should not guess about any fact. You must not be influenced by sympathy or prejudice. You must not be concerned with any opinion that you feel I have about the facts. You, as jurors, are the sole judges of what happened.

You must consider all these instructions. Do not pick out one instruction, or part of one, and ignore others. As you determine the facts, however, you may find that some instructions no longer apply. You must then consider the instructions that do apply, together with the facts as you have determined them.

In their opening statements and closing arguments, the lawyers have talked to you about the law and the evidence. What the lawyers said is not evidence, but it may help you to understand the law and the evidence.

The lawyers are permitted to stipulate that certain facts exist. This means that both sides agree those facts do exist and are part of the evidence.

You are to determine what the facts in this case are from the evidence produced in court. If the court sustained an objection to a lawyer’s question, you must disregard it and any answer given. Any testimony stricken from the court record must not be considered.

The State has the burden of proving the defendant guilty beyond a reasonable doubt. In civil cases, it is only necessary to prove that a fact is more likely true than not true, or that its truth is highly probable. In criminal cases such as this, the State’s proof must be more powerful than that. It must be beyond a reasonable doubt.

Proof beyond a reasonable doubt is proof that leaves you firmly convinced of the defendant’s guilt. There are very few things in this world that we know with absolute certainty, and in criminal cases the law does not require proof that overcomes every doubt. If, based on your consideration of the evidence, you are firmly convinced that the defendant is guilty of the crime charged, you must find the defendant guilty. If, on the other hand, you think there is a real possibility that the defendant is not guilty, you must give the defendant the benefit of the doubt and find the defendant not guilty.

You must decide whether or not the State has proven the defendant guilty beyond a reasonable doubt. The law does not require a defendant to prove innocence. You must start with the presumption that the defendant is innocent. The State must then prove the defendant guilty beyond a reasonable doubt. This means that the State must prove each element of the charges beyond a reasonable doubt. If

you conclude that the State has not met its burden of proof beyond a reasonable doubt with respect to a particular charge, then you must find the defendant not guilty of that charge.

You must decide whether the defendant is guilty or not guilty by determining what the facts in the case are and applying these jury instructions. You must not consider the possible punishment when deciding on guilt; punishment is left to the judge.

If you find that the plaintiff, the State of Arizona, has lost, destroyed, or failed to preserve evidence whose contents or quality are important to the issues in this case, then you should weigh the explanation, if any, given for the loss or unavailability of the evidence. If you find that any such explanation is inadequate then you may infer that the evidence is against the State's interest, which may create a reasonable doubt about the defendant's guilt.

The State must prove guilt beyond a reasonable doubt with its own evidence. You must not conclude that the defendant is likely to be guilty because the defendant did not testify. The defendant is not required to testify. The decision on whether or not to testify is left to the defendant acting with the advice of an attorney. You must not let this choice affect your deliberations in any way.

The defendant is not required to produce evidence of any kind. The decision on whether to produce any evidence is left to the defendant acting with the advice of an attorney. The defendant's failure to produce any evidence is not evidence of guilt.

Before you may convict the defendant of the charged crimes, you must find that the State proved beyond a reasonable doubt that the defendant committed a voluntary act. A voluntary act means a bodily movement performed consciously and as a result of effort and determination. You must consider all the evidence in deciding whether the defendant committed the act voluntarily.

In determining the evidence, you must decide whether to believe the witnesses and their testimony. As you do this, you should consider the testimony in light of all the other evidence in the case. This means you may consider such things as the witnesses' ability and opportunity to observe, their manner and memory while testifying, any motive or prejudice they might have, and any inconsistent statements they may have made.

The State has charged the defendant with certain crimes. A charge is not evidence against the defendant. You must not think that the defendant is guilty just because of a charge. The defendant has pled "not guilty". This plea of "not guilty" means that the State must prove each element of the charges beyond a reasonable doubt.

Evidence may be direct or circumstantial. Direct evidence is the testimony of a witness who saw, heard, or otherwise observed an event. Circumstantial evidence is the proof of a fact or facts from which you may find another fact. The law makes no distinction between direct and circumstantial evidence. It is for you to determine the importance to be given to the evidence, regardless of whether it is direct or circumstantial.

A witness may give an opinion on a subject upon which the witness has become an expert because of education, study, or experience. You should consider the opinion of an expert and the

reasons, if any, given for it. However, you are not bound by any expert opinion. Give the expert opinion the importance that you believe it deserves.

Evidence of other acts of the defendant has been admitted in this case. You must not consider this evidence to prove the defendant's character or that the defendant acted in conformity with that character. You may, however, consider that evidence only as it relates to the defendant's motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident.

You must evaluate the defendant's testimony the same way as any witness' testimony.

The State need not prove motive, but you may consider motive or lack of motive in reaching your verdict.

I will now tell you about the crime with which Quinn Penner is charged. Quinn Penner is charged with one count of "first-degree murder" and the lesser-included offense of "second-degree murder".

FIRST-DEGREE MURDER

The crime of first-degree murder requires proof that the defendant:

1. Caused the death of another person; *and*
2. Intended or knew that s/he would cause the death of another person; *and*
3. Acted with premeditation.

"Premeditation" means that the defendant intended to kill another human being or knew s/he would kill another human being, and that after forming that intent or knowledge, reflected on the decision before killing. It is this reflection, regardless of the length of time in which it occurs, that distinguishes first-degree murder from second degree murder. An act is not done with premeditation if it is the instant effect of a sudden quarrel or heat of passion. The time needed for reflection is not necessarily prolonged, and the space of time between the intent or knowledge to kill and the act of killing may be very short.

"Intentionally" or "With Intent To" Defined

"Intentionally" or "with intent to" means that a defendant's objective is to cause that result or to engage in that conduct.

Intent – Inference

Intent may be inferred from all the facts and circumstances disclosed by the evidence. It need not be established exclusively by direct sensory proof. The existence of intent is one of the questions of fact for your determination.

“Knew” or “Knowingly” Defined

“Knew” or “knowingly” means that a defendant acted with awareness of, or belief in, the existence of conduct or circumstances constituting an offense. It does not mean that a defendant must have known the conduct is forbidden by law.

Included Mental States – Knowingly

If the State is required to prove that the defendant acted “knowingly,” that requirement is satisfied if the State proves that the defendant acted “intentionally.”

SECOND-DEGREE MURDER

The crime of “first degree murder” includes the lesser offense of “second degree murder.” You may consider the lesser offense of “second degree murder” if either:

1. You find the defendant not guilty of “first-degree murder”; *or*
2. After full and careful consideration of the facts, you cannot agree on whether to find the defendant guilty or not guilty of “first-degree murder.”

The crime of second-degree murder requires proof of one of the following:

1. The defendant intentionally caused the death of another person; *or*
2. The defendant caused the death of another person by conduct which the defendant knew would cause death or serious physical injury; *or*
3. Under circumstances manifesting extreme indifference to human life, the defendant recklessly engaged in conduct that created a grave risk of death and thereby caused the death of another person. The risk must be such that disregarding it was a gross deviation from what a reasonable person in the defendant’s situation would have done.

The above definitions of “intentionally,” “intent – inference” and “knowingly” apply. “Recklessly” means that a defendant is aware of and consciously disregards a substantial and unjustifiable risk that conduct will result in the death of another. The risk must be such that disregarding it is a gross deviation from what a reasonable person would do in the situation.

If the State is required to prove that the defendant acted “recklessly,” that requirement is satisfied if the State proves that the defendant acted “intentionally” or “knowingly.”

The difference between first-degree murder and second degree murder is that second degree murder does not require premeditation by the defendant.

If you determine that the defendant is guilty of either first-degree murder or second degree murder and you have a reasonable doubt as to which it was, you must find the defendant guilty of second degree murder.

You cannot find the defendant guilty of a lesser-included offense unless you find that the State has proved each element of the lesser-included offense beyond a reasonable doubt.

AFFIDAVIT OF LEE HAYES

1 After being duly sworn upon oath, Lee Hayes hereby deposes and states as follows:

2 My name is Lee Hayes and I was born May 20, 1990. Since 1996 I have lived in Phoenix,
3 Arizona. My parents are both journalists who work for *National Geographic*. They married after
4 they met on safari in Africa. They're pretty famous and move frequently for their jobs. When I
5 was little they brought me along with them, but when I got to be school age, they wanted me to
6 have a more stable home life. So my aunt and uncle have taken care of me since I was six.

7 My aunt and uncle are in the restaurant business. After years of working for others, in
8 2002 they finally bought a place of their own: the popular local hangout "Shiny Diner."
9 Unfortunately, as owners they work crazy hours and aren't home much. The best part of living
10 with them was growing up with my cousin Orson, who was three years older than me. Neither of
11 us had siblings, so Orson basically became my older brother. When I used to get bullied at
12 school because my parents "abandoned" me, Orson would beat up the kids responsible. He got
13 suspended a few times because of that.

14 After Orson graduated high school in 2005, he did not have any concrete plans. Instead of
15 attending college or settling on a career, he fell into a bad crowd. He moved out of the house
16 because he didn't like being hassled by my aunt and uncle. For a while he worked part-time as a
17 dishwasher at a bar, and he didn't listen when I urged him to go back to school.

18 I only rarely saw my parents as I got older. I guess those early adventures influenced me,
19 though, because I've always wanted to be a photojournalist and travel the world, too.
20 Unfortunately, even with my family connections, that's easier said than done, as I found out
21 when I graduated from Arizona State University in May 2012 with a photojournalism degree. I
22 had never bothered to apply for internships because I thought for sure I could get a job with
23 *National Geographic*. But the people in charge of hiring wouldn't even take my call. So I
24 bombarded every newspaper and news magazine in the country with my resumes, but no one was
25 interested.

26 Meanwhile, Orson seemed to be doing okay even without a college degree. We didn't see
27 each other much after he moved out; but starting in 2007, whenever I talked to him, he always
28 seemed to have plenty of cash. When I asked how he got it, he wouldn't answer. Yet if I needed
29 money to buy expensive cameras or photography equipment for college, he somehow knew
30 about it and would give me what I needed. I finally quit asking him where the money came from.

31 By October of 2012, having failed in my job search and facing student loan repayments, I
32 called Orson up and pressured him to tell me how he had so much money. That's when he told
33 me to meet him at Paradise Pub the next afternoon and he'd let me in on his secret.

34 Paradise Pub isn't exactly a family place; it's more like a "dive" filled with rough-
35 looking dudes. Many of them seemed to know Orson. We shared nachos in a corner booth; then,
36 when no one was nearby, Orson leaned forward and said, "Well, college boy, guess we never
37 thought you'd be asking me for advice about money, did we? As you can see, I'm well respected
38 around here. That's because this whole part of town is my territory. You could say I'm a mid-
39 level manager." Then he laughed. I was confused, and I said so. That's when I found out that
40 Orson made his money by running a network of drug dealers. He said he also made money
41 gambling on sports because he was pretty good at it, but his real income came from drugs. He
42 offered me a chance to work with him "until you find something else. You're so clean-cut, no
43 one will ever suspect you. Maybe you can help me expand into Arizona State University, too."
44 With no other options, I reluctantly agreed. Orson said he'd make sure I had an easy territory
45 with no chance of getting hurt. "I'll take care of you like I always have."

46 Even though I agreed, I was pretty scared. I'd always stayed far away from drugs in high
47 school and college, and I hated to be involved with them in any way. Orson was not just dealing
48 in marijuana. He was also involved with selling and recruiting others to sell methamphetamine.
49 Within the first few weeks I managed to sell some marijuana at ASU, but I was so unsure of
50 myself that I wasn't very good at it. Orson eventually gave up and said he'd use me in other
51 ways, as his "go-fer" and driver when he had runs to make. I felt better about that and could
52 almost make myself believe that I wasn't doing anything wrong. And Orson paid me a ridiculous
53 amount of money to help him, which eased the pressure of my student loans.

54 But on May 24th 2013 everything went horribly wrong. The date is burned into my
55 memory because it was a few days after my birthday. Orson called me up around 8 a.m. and said
56 he needed help with a problem. He didn't tell me details besides the fact I would be driving.
57 Soon he pulled up in his car and told me to take the wheel. Next thing I knew, Orson told me to
58 park across the street from a bank downtown, and to keep the engine running. I was a little
59 surprised by the request, but I figured he needed to make a quick deposit or something. While I
60 was waiting in the car, I saw a police officer walking down the sidewalk toward the bank. It
61 made me a bit nervous to see him/her. I didn't have any idea what was about to occur, but Orson

62 had been arrested a few times, so we tried to keep away from cops as a general rule. I hadn't seen
63 the cop before, but I know now that s/he was Detective Penner.

64 The cop strolled into the bank. I had my windows down because it was such a nice day,
65 and next thing I knew, I heard shouting, then several rapid gun shots, then Orson came bolting
66 out of the bank. He leaped in the car and told me to floor it. I hit the gas and looked in the rear
67 view mirror, and I saw Detective Penner dash out of the bank and sprint toward our car, pointing
68 his/her weapon toward us. I remember being surprised both by how fast Penner could move, as
69 well as by the odd, jerky way in which s/he ran. With my photojournalism training, I pay
70 attention to unusual scenes and movements, and Detective Penner's motions were very
71 distinctive. Fortunately for us, Penner must have decided it was too dangerous to shoot at us
72 because of all the people nearby, and we got away cleanly.

73 Orson told me to take him to a friend's house and to ditch the car, which I did. I left it in
74 a parking lot near the mall, removed the license plate, used a cloth to wipe my prints off
75 everything, and then caught a bus home. When I heard on the news that a college student had
76 been shot in the bank and was in critical condition, I almost called the cops to turn Orson in. I
77 mean, selling drugs to willing customers is one thing, but shooting innocent bystanders in a bank
78 is totally different. Yet I was afraid I'd be charged, too; and since the police hadn't come to get
79 me, I figured maybe I'd just lay low.

80 The next evening Orson called and asked me to meet him again at Paradise Pub. I didn't
81 recognize the phone number when it popped up on my "caller ID" because it was different than
82 his usual number. When I mentioned it, Orson said he'd lost his phone during the robbery and
83 was using a prepaid phone. He said he needed to skip town for a while and wanted to talk with
84 me before he left. He told me to get to the bar by 10:30 p.m.

85 When I arrived, Orson was watching the NBA playoffs on the big screen TV. The Miami
86 Heat was playing the Indiana Pacers, and I suspected Orson had a lot of money riding on that
87 game. Orson told me he'd recently lost a large amount of money gambling, and he didn't have
88 the cash to pay his drug bosses. That's why he'd taken the extreme step of trying to rob the bank,
89 before his bosses lost patience and "made an example out of him." I'd never seen Orson look so
90 stressed, and several times during the game, he checked his phone for texts. When the Heat beat
91 the Pacers in a last-ditch rally, Orson moaned and said, "Now I'm done for." Then he told me he
92 needed to go outside for some fresh air.

93 By that time, it was almost midnight. But instead of going to the front of the bar, Orson
94 went out the tiny side door to the alley. I wanted to make sure he was okay, so I waited a
95 moment and followed him outside. I heard Orson exclaim, “What are *you* doing here!?” I leaned
96 against the dumpster and tried to listen, although they were talking pretty quietly. At first I
97 couldn’t see very well because there were no lights in the alley. But it was a full moon that night;
98 so after my eyes adjusted to the darkness, I could see better. Twenty feet away from me, a person
99 the same height and build of Detective Penner was standing opposite of Orson, with his/her right
100 hand on the alley wall. His/her left arm was raised towards Orson, and it looked like s/he was
101 holding a large handgun. Then Orson begged loudly, “please don’t do this.” The figure said
102 “You brought this on yourself, and it’s time you get what’s coming to you. No more getting
103 away with stuff. I’m going to make an example of you.” I’m not familiar with Detective Penner’s
104 voice, so I couldn’t identify the person by sound, even if I heard that person again today. Orson
105 lunged at the figure and tried to grab his/her left arm, but the person blocked Orson with his/her
106 right arm and immediately fired several shots. Orson clutched his side and fell to the ground, and
107 the figure ran away, dropping something as s/he went. I rushed over to Orson and tried to stop
108 the flow of blood, yelling “Call 911!”

109 A security guard from the bar across the street ran over to me. I grabbed his/her arm and
110 tried to tell him/her to chase the shooter, but the shooter had already disappeared. The security
111 guard said s/he was an off-duty police officer, Officer Hodges. S/he quickly called an ambulance
112 and then asked if I’d seen or heard what happened. I told him/her about seeing the person leaning
113 on the wall before shooting Orson, and that the shooter dropped something as s/he fled. Hodges
114 searched the area and identified a cigarette pack in the spot where I’d seen an object fall.

115 The paramedics arrived shortly afterward, and I rode with Orson to the hospital. The
116 paramedics kept telling me everything was going to be okay, but Orson died before the doctors
117 could help him. By that time, Officer Hodges had come to the hospital along with several other
118 cops. Before I could even grasp what was happening, they started asking me questions. Officer
119 Hodges asked me if I knew who shot my cousin. I was so stunned by all that had occurred, I
120 could hardly think. I couldn’t even tell the officers about the shooter’s gender or race.

121 The next morning, I was taken to the police station. The same cop, Officer Hodges, had
122 more questions for me. We were sitting in an interrogation room with windows that looked out
123 on the main part of the station. After a few minutes Detective Penner walked by the window, and

124 I was shocked to realize that Penner was the shooter! When I told that to Officer Hodges, s/he
125 looked angry and told me I was crazy, but the other officer in the interrogation room started
126 writing down my statement right away.

127 I thought I'd be free to go after I gave my statement. But before I could finish telling all
128 that I knew, Officer Hodges interrupted and started interrogating me about the bank robbery.
129 Apparently a security camera had caught my image on video and they had connected me to the
130 attempted robbery. I stopped talking until I could get a lawyer.

131 Even though I only drove Orson to and from the bank and didn't know what he was
132 planning, I was charged with assault with a deadly weapon inflicting serious injury, and robbery
133 with firearms. For my testimony against Detective Penner, the state has agreed to reduce my
134 crimes to simple assault and accessory after the fact to robbery with firearms. The state also has
135 agreed to recommend a maximum sentence of 13 months, to be served after I testify. I have been
136 in the Maricopa County jail since then.

137 Even if I hadn't been offered a plea, I would still testify so justice can be served. I'm
138 convinced that Penner is responsible for Orson's murder, although I'll admit I'm not 100% sure
139 because it was difficult to see that night. But the person in the alley was exactly the same size as
140 Detective Penner, and the person ran exactly the same way as Detective Penner ran when s/he
141 dashed out of the bank: fast, and with jerky, unusual motions. I've never seen anyone else run
142 like that. What Orson did was wrong, but he didn't deserve to be shot down like a dog in the
143 alley by a crazy cop.

144 Of the available exhibits I am familiar with the following and only the following:
145 Exhibits 1 and 3. Exhibit 1 is my guilty plea and plea deal. Exhibit 3 is the map of part of
146 Phoenix that shows Paradise Pub.

147 I hereby attest to having read the above statement and swear or affirm it to be my own. I
148 also swear or affirm to the truthfulness of its content. Before giving this statement, I was told it
149 should contain everything I knew that may be relevant to my testimony and I followed those
150 instructions. I also understand that I can and must update this affidavit if anything new occurs to
151 me until the moment before opening statements begin in this case.

152 Elizabeth Eckhardt
153 Elizabeth Eckhardt, Notary Public

Lee Hayes
Lee Hayes

154

AFFIDAVIT OF KRIS VINSON

1 After being duly sworn upon oath, Kris Vinson hereby deposes and states as follows:

2 My name is Kris Vinson and I live outside Phoenix. I am a forensic specialist at the
3 Phoenix Police Department. I studied chemistry at Julian College in Albuquerque, New Mexico
4 because I was originally planning to attend medical school, but I was bitten by the CSI bug and
5 decided to pursue forensics instead. I attended the University of New Mexico to earn my masters
6 in forensic science. Because of my excellent grades, I was chosen for a fantastic summer
7 internship with NCIS near D.C.; I even had a chance to co-author a paper for the *Journal of*
8 *Forensic Sciences* with two of the NCIS agents. I graduated from the master's program in
9 December of 2002, and after a brief training period, I started working as an assistant forensic
10 specialist at the Albuquerque Police Department in March of 2003. In March of 2013 I moved to
11 Phoenix and began working in my present position. My job is nothing like the television shows. I
12 do no crime scene investigation. Instead I stay in the lab analyzing evidence collected from crime
13 scenes by others. Most of the cases I've analyzed have been resolved by plea deals before going
14 to trial. I have testified in court in four previous cases ranging from kidnapping to armed
15 robbery, but this is my first time testifying in a murder trial.

16 I spend most of my time in the lab, so I don't interact with many people at the department
17 besides the other CSI staff. I had worked at the Phoenix PD for several weeks before I even saw
18 Detective Penner. But I had heard about him/her before we met. Most of my coworkers had great
19 things to say about Penner. In 2003 Penner had won an award for his/her excellent work, and it
20 wasn't just a fluke. I was told that Penner was responsible for more convictions than any other
21 detective in each of the previous three years. Yet several officers didn't seem to be as
22 enthusiastic, especially Officer Cochran. My coworkers told me Cochran was jealous because
23 Penner was promoted over Cochran, even though Cochran had been with the police force longer.

24 My first impression of Detective Penner was less positive than his/her record would
25 suggest. I specifically remember that day because I was geeking out over the delivery of our new
26 mass spectrometer, and I came in to work early on Monday to check it out. The officers were all
27 in a buzz because a repeat offender named Orson Hayes had been shot and killed on Saturday
28 night. I'd heard that Detective Penner often generated good case leads right away, and when
29 Detective Penner entered the station in the middle of the discussion, the chief asked Penner who
30 s/he thought might have murdered Hayes. Penner seemed kind of jumpy; s/he blurted out "I have

31 no idea,” and s/he turned abruptly and left the room.

32 From that point on, I didn't have any further interactions with Detective Penner until I
33 was officially put on the Orson Hayes case. Even though I had been hired by the Phoenix Police
34 Department because of my outstanding work in New Mexico, I was a bit surprised to be named
35 the lead forensic specialist on a big murder case so soon after joining the PPD. But when I was
36 told that Penner had been identified as the shooter by an eyewitness, it made sense to me: my
37 lack of personal connections to Penner would be an asset to the investigation. I have always been
38 a facts person. I rely on evidence to draw inferences and conclusions. And after completing my
39 investigation, the facts reinforce my gut feeling that Penner is guilty.

40 From Day One on the case I was swamped. The investigators and technicians delivered a
41 box full of evidence and left it to me to sort everything out. First I analyzed DNA samples. DNA
42 is a biological molecule present in every cell in the body with the exception of red blood cells,
43 and each person's DNA is unique (unless they are an identical twin). Every police officer in
44 Phoenix must give a DNA reference sample when they begin employment. I compared the DNA
45 sample from Detective Penner to a swab taken from under the victim's nails.

46 I was able to complete a Short Tandem Repeat (“STR”) analysis without incident. In this
47 type of test, we examine 15 specific locations (“loci”) on a DNA sample. At those locations, short
48 segments of DNA repeat a specific number of times that varies among individuals. At each locus
49 or marker, a person will have two “alleles” (genetic variants), one allele from each parent. Each
50 person's pattern of alleles at these 15 locations is almost always unique. In addition to the 15
51 markers, the test also contains a special marker which is used to determine the person's gender.

52 The STR test produces a computer-generated graph called an “electropherogram” that uses
53 “peaks” to represent the alleles. In forensic tests, we compare the electropherogram from the
54 evidence with electropherograms from reference DNA samples taken from possible suspects who
55 might have contributed DNA to the crime scene sample. If the electropherograms match, we can
56 calculate the random match probability (RMP). The RMP tells us the probability that a randomly
57 chosen, unrelated person would happen to have the same DNA profile as the evidence sample.

58 As expected, the evidence sample contained a mix of DNA from two individuals: Orson
59 Hayes himself, and the unknown person whose DNA was found under Hayes's fingernails.
60 Detective Penner's DNA sample was the same gender as the evidence sample, and it was
61 identical to the unknown person's DNA in the evidence sample at 13 out of 15 markers. The

62 other alleles were missing, or “dropped,” from the evidence sample as sometimes happens when
63 the sample is amplified to conduct the test. I calculate that the RMP for this sample is one in one
64 billion, which means that the chance of a random person’s DNA matching the unknown person’s
65 DNA profile is only one in one billion.

66 Now, I will admit that, with any DNA technique, jurors should not rely on DNA evidence
67 alone if other factors raise doubt, because sometimes contamination of samples can occur. I did
68 not collect the DNA evidence for this case myself, so I cannot say with 100% certainty that no
69 cross-contamination took place. But from all that I have seen, the Phoenix crime scene
70 investigators are well-trained and very careful to prevent any such problems.

71 In any case, I followed the standard procedure for a DNA test and it was successful. The
72 samples from Penner and the foreign skin cells collected from the victim were a match. Usually
73 this scenario happens when the victim scratches the attacker in a struggle. Unfortunately I have
74 no context for how or when such a struggle occurred. It could be from the time of the murder or
75 earlier. But given that I have complete confidence in our crime scene investigators, I am certain
76 that Penner did have a violent encounter with the victim at some point before the victim’s death.

77 Next, I examined the cigarette pack found at the scene where the fleeing criminal dropped
78 an item. I first tested the pack for fingerprints, but no prints were complete enough for a usable
79 result. I then tested the pack for DNA and again had a match for Penner. Dozens of cigarettes
80 were found in the alley, but I did not test them against Penner or any other potential criminal in
81 our own database or in the local, state, or federal levels of the national CODIS DNA database.

82 Unfortunately, I cannot determine exactly when Penner dropped the cigarette pack. A
83 DNA match can link a person to an item found at a scene but cannot prove exactly when the
84 person was there. So if a person claims they were at a crime scene for a different reason, the
85 DNA evidence alone is not sufficient to prove they committed the crime. But I do know that at
86 some point, Penner dropped a cigarette pack in the vicinity of the crime scene, and it had to be
87 close to the timeframe of May 25, 2013. Otherwise I would have been unable to extract DNA
88 from the cigarette pack because the DNA would have degenerated too much to be analyzed.

89 The detectives lifted a clear latent fingerprint from the alley wall where the victim’s cousin
90 said s/he saw the shooter leaning right before the murder. Fingerprint analysis involves comparing
91 the structure and characteristics of the ridge patterns (or “minutia”) between two sample prints,
92 including the spacing, location, shape, and number of ridges. These ridge patterns are unique; even

93 identical twins do not have identical fingerprints.

94 I was able to match 12 different points on the latent print from the alley wall with the same
95 points on Detective Penner's fingerprint, which qualifies as a match in the state of Arizona. Given
96 how many people use that well-traveled alley on a regular basis, and the excellent definition of the
97 fingerprint, I concluded that it was deposited within a few days of the murder.

98 I must admit that questions have been raised recently about the validity of fingerprint
99 analysis, claiming that analysts can be biased or inconsistent in their findings. Yet my results have
100 never been challenged, and I pride myself on my objectivity in this case. Fingerprint analysis is still
101 heavily used as a reliable method in Arizona and other police departments around the country. Still,
102 it is wise not to rely solely upon fingerprint analysis for a criminal conviction.

103 Next, I examined the bullet taken from the victim. I determined that the bullet, a .357
104 Magnum, came from a Colt Python with a 6-inch barrel. Normally Colt Pythons are pretty rare,
105 sort of a collector's item, because they are no longer manufactured. They're also large, nearly a
106 foot long including the barrel and handgrip. But the police chief told me that one of the local
107 drug gangs uses them when enforcing gang "justice" against those who cross the gang in some
108 way. Evidently they think it's cool to use Pythons to keep people in line.

109 In fact, to do a test firing for ballistics analysis, I used three Pythons that we had in the
110 evidence locker from a raid on the gang. The chain-of-evidence sign-in sheet said that we were
111 supposed to have four Pythons, but one seemed to be missing. Of course, Detective Penner had
112 access to the evidence locker and could have taken one to commit the crime. The murder weapon
113 itself has never been found. The department investigated to determine what happened to the
114 missing Python, but the investigation never turned up any plausible alternatives. If Detective
115 Penner didn't take it, I have no idea what happened to it.

116 I also examined a black leather "fanny pack" found in a trash can near Spaulding's Gym,
117 two blocks from the crime. It was large enough to hold a Colt Python--over 14 inches long in all.
118 Unfortunately I was unable to obtain any usable fingerprints from the case as it was wiped clean,
119 which was rather unusual.

120 A disposable cell phone recovered on the victim's body contained several text messages
121 that Orson had received right before he was killed. The texts had been sent using an unlisted
122 number. They seemed to indicate a meeting had been arranged between Orson and a person
123 trying to collect on a debt Orson owed. This evidence did not fit with the physical evidence

124 implicating Detective Penner, which caused me some concern. But just as I was wrapping up my
125 investigation, Officer Cochran brought me the cell phone that Orson Hayes dropped and Penner
126 recovered at the scene of Orson’s attempted bank robbery on May 24. While most of the texts
127 were unremarkable, one message stood out. It had been sent at 11:00 pm on May 23 and later
128 deleted, but I was able to recover it. The message said “Meet me at Paradise Pub on Saturday at
129 quarter to midnight. Bring what you owe me, or you’ll be sorry.” The message also was sent
130 using an unlisted throwaway one-time use cell phone. I was unable to determine whether the text
131 had been deleted by Orson immediately before the attempted bank robbery, or by Detective
132 Penner before s/he put the phone into the evidence locker.

133 Overall, the evidence indicates that Penner had a violent altercation with the victim in
134 which the victim scratched Penner. Penner was almost certainly in the alley around the period
135 when the murder occurred as revealed by the fingerprint on the alley wall and the dropped
136 cigarette pack. Because of the bank cell phone text, Penner had opportunity to know that Orson
137 Hayes would be at Paradise Pub around the time that Orson was murdered. While I cannot
138 conclusively tie Penner to the bullet that killed Hayes, Penner had access to the type of gun that
139 was used in the murder, since such a gun is missing from the evidence locker. When considered
140 as a whole, these facts, along with Penner’s unusual behavior, are enough to convince me that
141 Detective Penner committed the murder of Orson Hayes.

142 Of the available exhibits I am familiar with the following and only the following:
143 Exhibits 2, 4, 5, 6, and 9. Exhibit 2 is the transcript of the text messages on the disposable cell
144 phone found on the deceased. Exhibit 4 shows the photographs from my ballistics report, and
145 Exhibit 5 shows the fingerprints obtained at the scene. Exhibit 6 is my Curriculum Vitae, and
146 Exhibit 9 is the transcript of the text messages I recovered from the phone that Detective Penner
147 brought to the station after the deceased’s attempted bank robbery.

148 I hereby attest to having read the above statement and swear or affirm it to be my own. I
149 also swear or affirm to the truthfulness of its content. Before giving this statement, I was told it
150 should contain everything I knew that may be relevant to my testimony and I followed those
151 instructions. I also understand that I can and must update this affidavit if anything new occurs to
152 me until the moment before opening statements begin in this case.

153 Brandy Jo Wilson
154 Brandy Jo Wilson, Notary Public

Kris Vinson
Kris Vinson

AFFIDAVIT OF JAMIE SPALDING

1 After being duly sworn upon oath, Jamie Spalding hereby deposes and states as follows:

2 My name is Jamie Spalding. I was born in New York and spent my childhood there.
3 When I was four years old, my parents enrolled me in tumbling lessons. To my teacher's
4 amazement and my parents' delight, I was a natural. After years of grueling training in
5 gymnastics, I entered the 1996 Olympics where I won a bronze medal. Unfortunately, my
6 athletic journey ended when I sustained a serious concussion in 1999. Because it's not a contact
7 sport, most people don't realize that you can become seriously injured doing gymnastics. I was
8 one of those people. Due to my injuries, pressures from my parents, and my waning interest in
9 the Olympics, I quit competitive gymnastics.

10 I spent some time in New Mexico receiving treatment by renowned concussion expert Dr.
11 Bevin Register. Although Dr. Register was able to help me a lot, I still have some lingering
12 problems with short-term memory loss. That's one reason I don't drive without a friend in the
13 car; I get lost too easily, even with a GPS. It's just easier to depend on friends to help direct me
14 or to call a cab.

15 In 2006, I decided to put my knowledge of gymnastics to use and opened my own gym--
16 one which is unconventional, to say the least. To attract both adults and kids, I teach a blend of
17 parkour and gymnastics. Parkour is a noncompetitive discipline, also known as freerunning,
18 which involves acrobatics and movement over obstacles. A lot of college students come to the
19 gym because they think parkour is cool, but I even have doctors, lawyers, and businessmen as
20 members. I think they like pretending to be special agents or something.

21 I first met Quinn Penner in 2011 when s/he joined my gym. Quinn was so friendly and
22 polite, we really hit it off. We started going out after workouts to have a drink or watch a game.
23 It turned out that we were both fans of the Indiana Pacers basketball team. At first I was
24 surprised when Quinn told me s/he was a police officer. I mean, Quinn is very athletic, but
25 his/her demeanor seemed more like that of a businessperson to me. Of course I knew about
26 Penner Enterprises, the huge computer software company founded by Quinn's family, and I
27 originally figured Quinn must work with computers.

28 But when Quinn told me that s/he was a police detective, I could see how that made
29 sense, too. Quinn clearly loves his/her job; s/he often talks about how s/he feels the work is
30 important because it gets criminals off the street and keeps "ordinary citizens" safer. Quinn said

31 parkour was really helpful for his/her job because it made it easier to catch the “perps.” Of
32 course, just as with any other cop I’ve known, Quinn got upset when lawyers would get the
33 criminals off on a technicality. Yet the intensity of Quinn’s emotions when one of the criminals
34 got off “scot-free” seemed out of proportion to me on occasion, at least until I found out the
35 reason behind Quinn’s passion. One night when we were out at a bar and Quinn was ranting
36 about a drug dealer who had just gotten a plea deal, I asked why s/he was so worked up about it.
37 That’s when Quinn told me that back in college, Quinn’s roommate was an innocent bystander
38 who was shot and killed during a drive-by gang shooting. The shooter got off when he turned
39 state’s evidence on another gang member, and Quinn was outraged by the injustice of it. In fact,
40 that event prompted Quinn to change his/her major from a Business degree to Criminal Justice.

41 Quinn was sometimes busy with investigations, so his/her attendance at the gym was
42 sporadic. Even so, Quinn was an ideal student. S/he focused on the athletic elements to promote
43 self-mastery and focused on the acrobatics to help apprehend criminals. Quinn could be pretty
44 intense during workouts and sometimes got upset if s/he didn’t learn a new skill right away. I
45 told him/her to relax and not stress, but Quinn would glare at me and say “I need to get this right
46 so I can get those scum off the street.” It’s almost like Quinn could be two different people:
47 really easy-going most of the time, and then, wham! This intense, almost scary persona would
48 pop out of nowhere. Some of the other gym members even commented on it to me after they
49 observed Quinn’s demeanor at the gym on such occasions.

50 But I never ended the friendship or voiced my concerns to anyone because, I have to
51 admit, being friends with Quinn had its benefits. We don’t use computers very often for our gym,
52 but Quinn still gave us free software from Penner Enterprises. S/he even secured some funds for
53 my gym to start a proper advertising campaign. After Quinn’s help, our gym’s membership
54 doubled! And Quinn made sure that we had extra police patrols on nights that they had awful
55 live bands at Paradise Pub so we didn’t have to worry about vandalism from drunken patrons.

56 Whenever Quinn was available, s/he and I would spend Saturday evenings together. May
57 25th 2013 was a Saturday so, naturally, we had plans to hang out and watch the NBA playoff
58 game. Quinn seemed on edge during the workout, and when I asked if something was wrong,
59 Quinn just said, “I’m just tired of perps getting away with stuff” but wouldn’t say any more.
60 After our workout, we went to Rubicon Sports Bar, part of a chain that started in New Mexico.

61 Even though Paradise Pub is closer to the gym than Rubicon, it draws a pretty rough crowd that's
62 not much to our liking. We usually go to Rubicon because it has bigger TVs and better food.

63 Often we walk to Rubicon because it's only a mile away and parking can be difficult, but
64 Quinn insisted on driving that night to save time. In fact, we were still in our workout clothes
65 because we didn't want to take time to change and miss the game. I had to move a large black
66 "fanny pack" out of my way when I got in Quinn's car. I was surprised by how heavy it felt.
67 When we got to Rubicon, Quinn ordered dinner and we both got several drinks, although I had
68 more than Quinn.

69 I cannot remember the Pacers' opponent in the game, although I remember being
70 disappointed when Indiana lost. Sometime after 11:30 pm, Quinn went outside to smoke.
71 Rubicon has large plate-glass windows, and I saw Quinn open the passenger side door of the car
72 when s/he went outside. I assumed s/he needed to get his/her cigarettes out of the car, and I went
73 back to watching the post-game analysis. I'm pretty sure s/he came back inside by midnight.
74 Quinn seemed slightly out of breath, but at the time, I assumed that it was a result of smoking,
75 even though smoking had never affected Quinn that way before. Quinn also seemed kind of
76 sweaty, but it was a muggy night for May, which is one reason I didn't mind driving to Rubicon.
77 Quinn drove me home around 1:00 am. I don't remember seeing the fanny pack in the car during
78 the ride home.

79 The next day I heard about Orson Hayes' murder on the news, and I remembered that
80 Orson was one of the criminals Quinn had mentioned as "getting away with stuff one time too
81 many." It made me think again about the length of time Quinn was gone from Rubicon's and
82 about Quinn being sweaty and out of breath when s/he came back in. I know Quinn's car didn't
83 move while s/he was outside because I glanced out several times and saw it while Quinn was
84 gone. But I had often heard Quinn brag about how s/he could run a mile faster than any other cop
85 on the force. Given Quinn's great athletic condition and parkour training, Quinn easily could
86 have run to Paradise and back in the twenty-five minutes s/he was outside and away from me.

87 Ordinarily I never would have thought of such a thing, but when Quinn came to the gym
88 several days after Orson's murder, s/he seemed happier than I'd seen him/her in a long time.
89 When I asked why, Quinn said "It's always great when a perp gets what's coming to them.
90 Sometimes it's nice to see justice served, even if it doesn't happen in a court of law." It gave me

91 the chills, and I decided I'd better come forward and tell the police what I knew. If a cop thinks
92 s/he is above the law, all of us are in danger.

93 Of the available exhibits I am familiar with the following and only the following:
94 Exhibits 3 and 7. Exhibit 3 is a map of part of Phoenix. Exhibit 7 is the receipt from Rubicon
95 Sports Bar, which Quinn paid.

96 I hereby attest to having read the above statement and swear or affirm it to be my own. I
97 also swear or affirm to the truthfulness of its content. Before giving this statement, I was told it
98 should contain everything I knew that may be relevant to my testimony and I followed those
99 instructions. I also understand that I can and must update this affidavit if anything new occurs to
100 me until the moment before opening statements begin in this case.

101
102
103
104
105

Jamie Spalding

Jamie Spalding

Fran Chichester

Fran Chichester, Notary Public

AFFIDAVIT OF QUINN PENNER

1 After being duly sworn upon oath, Quinn Penner hereby deposes and states as follows:

2 My name is Quinn Penner and I am a lifelong resident of Arizona. I am the first person in
3 my family to work in law enforcement. My grandfather, Jon Penner, started Penner Enterprises,
4 for which my family is known. Penner Enterprises innovates, develops, and sells computer
5 software throughout the southwest. You would have to travel outside the Four Corners states to
6 find someone who doesn't know my family name. My older brother and sister both entered the
7 family business and have been promoted to high positions in the company. My dad urged me to
8 study Organizational Management in college and join Penner Enterprises, too, which I
9 reluctantly agreed to do. As a kid I had always dreamed of being an FBI agent, but I set my
10 dream aside for a more "practical" career.

11 That all changed when I was a sophomore in college at Arizona State University. I was
12 rooming with my best friend from high school; we had joined the same service clubs and played
13 on intramural sports teams together. One evening s/he made a run to a late-night copy center to
14 print flyers for an upcoming event, and on the way back to the dorm, s/he was gunned down in
15 the street by a low-level drug dealer who was trying to kill a rival gang member. S/he died on the
16 way to the hospital. I couldn't believe it. They caught the shooter, but then they let him plead to a
17 lesser charge in return for testifying against one of the gang leaders. Instead of going away for
18 felony murder, the shooter only got 5 years for voluntary manslaughter and was paroled in just
19 two years. I couldn't believe it; my best friend was dead, and the shooter would be released
20 before I would even graduate from college. I changed my major to Criminal Justice and never
21 looked back. My dad was disappointed at first but eventually understood. I'm fortunate that my
22 family has provided emotional and financial support throughout these proceedings, too. They
23 know I would never do anything to embarrass the Penner name.

24 I graduated cum laude with my degree in Criminal Justice in 2000. Immediately I became
25 a sworn officer at the Phoenix Police Department. I worked on patrol for two years before
26 accepting a position as a vice squad detective. It was quite an honor to earn promotion so soon.
27 Most of my coworkers were glad for me, but Officer Cochran seemed resentful. He's gone out of
28 his way to make disparaging remarks about me at the station. I never did anything to earn that
29 kind of response; I guess he was just jealous about my promotion.

30 Working vice was exhilarating and challenging work. I always felt like my efforts were
31 making a difference. It seems that my superiors appreciated my hard work and passion because
32 in 2003 I won an award for my service. In fact, I'm known at the station for putting away more
33 criminals than anyone else on the squad. I figured if I worked hard enough, I could get promoted
34 to the Homicide division and maybe be police chief one day. That way I could bring honor to the
35 family name in my own way. After my name is cleared, I still hope to do that somewhere--if not
36 in Arizona, then somewhere else in the southwest.

37 I'll admit I've made a few mistakes along the way. In 2004 I led my first investigation
38 and let the stress get to me. I didn't hurt anyone physically, but I was too intense during an
39 interview and scared a potential witness. The only other time I was reprimanded was in 2007.
40 Two drug informants became hostile and uncooperative during a sting operation and I responded
41 with force. My partner at the time vouched for me and explained how my response was harsh but
42 proportional and appropriate, but my superiors disagreed after listening to Officer Cochran's
43 version of events. Besides those two incidents, I've had a great working relationship with my
44 past partners and Police Chief Skupin.

45 To help me deal with job stress, I decided to get involved in sports again. Specifically, I
46 started learning basic gymnastics and parkour from former Olympian, Jamie Spalding. Parkour is
47 a great stress-reliever and lots of fun. It involves moving from place to place in the most efficient
48 manner while dealing with obstacles, kind of like James Bond. Jamie and I are both lefties, so
49 s/he's able to show me some cool moves that right-handed trainers can't really demonstrate.
50 Parkour takes a lot of balance and strength, and it comes in really handy when I have to chase
51 down "perps" on the job. It also helps me to excel in the annual physical fitness tests we have to
52 pass as detectives on the force. Some people joke that I "run funny," but last year I came in first
53 out of the whole station in the mile run.

54 On the vice squad, we focus on apprehending drug dealers and stopping gambling and
55 prostitution. That's how I first encountered Orson Hayes in 2009. My partner and I were working
56 to disrupt the flow of drugs into the county. We started with apprehending dealers and
57 distributors to gain information on the large scale importers. On March 17, we obtained a
58 warrant to search the home of a suspected drug distributor. The suspect wasn't home and we
59 didn't find any drugs, but we did encounter Hayes passed out on the couch. Given Hayes's
60 association with the suspect, we took him in for questioning, but ultimately we released him due

61 to a lack of evidence. Several months later, I encountered Hayes again when we stopped a car
62 that was weaving on the road. He tested positive for marijuana; we also found small amounts of
63 marijuana in the trunk. He was arrested, but as a first-time offender he got off with a slap on the
64 wrist. In June of 2011, Hayes was arrested selling marijuana downtown, and this time he served
65 6 months in jail. He seemed to “lay low” for a while but was arrested in October of 2012 for
66 trespassing at the Phoenix Zoo after he climbed over the fence to get in. Sam Maddox, the zoo
67 facility manager, told me s/he had seen Orson in April at the zoo, talking to a tall scruffy looking
68 guy in a secluded area and acting suspiciously. When Sam yelled at them and started to
69 approach, Orson managed to scale the fence and escape. The zoo security guard caught the other
70 person when he lost his grip on the fence, and it turned out to be none other than Taylor
71 Malcolm, who had recently lost a civil lawsuit against the zoo for injuries suffered on a tram
72 ride. When the cops searched the area where Taylor and Orson had been meeting, they found
73 several bags of methamphetamine. Taylor refused to implicate Orson in any way, but it seemed
74 pretty clear that Taylor was only the “small fry.”

75 We suspected that Orson was moving up in the local drug gang hierarchy, but we had no
76 solid proof yet. I determined to do all I could to get enough evidence to put him away before
77 anyone got hurt. We tried to insert an undercover cop in the gang but were unsuccessful. And
78 none of our attempts to bribe an informant paid off, either. It became clear that someone high up
79 in the gang, higher than Orson, had really put fear into all of them.

80 The last time I saw Hayes was on the morning of Friday, May 24th, 2013. I had just
81 gotten off of a night shift and decided to stop by the bank on my way home. As I entered the
82 bank, I saw Orson pointing a gun at a bank teller, demanding money be put into a bag. Other
83 customers were cowering against the wall. Surprised, I hesitated for a split-second, just long
84 enough for Orson to turn around and see me. As he started to run, I lunged forward to grab him,
85 yelling “Police! Drop your weapon!” Instead of dropping the gun, he panicked and tried to shoot
86 me, firing three shots in quick succession. I kept dashing forward and tried to grab Orson’s gun
87 rather than risk shooting the bank teller, but Orson clawed at my hand, causing me to drop my
88 gun for a second.

89 During the scuffle Orson dropped his gun, and a cell phone fell out of his pocket. He
90 dashed out of the bank while I grabbed up my gun and ran after him. I saw him jump into a car
91 parked on the street and for a moment I raised my gun to shoot at the car. But too many

92 pedestrians were on the sidewalk, so I couldn't risk it. Just then I heard someone in the bank
93 yelling that a customer had been shot. I radioed for help as I turned to run back in the bank. To
94 my horror, I saw a college student lying on the ground in a pool of blood. It made me think of
95 my college roommate's senseless death. Fortunately the student was alive but in a lot of pain and
96 going into shock. I put Orson's cell phone in my pocket so no one would take it while I wasn't
97 looking, and I stayed with the student until the paramedics arrived and loaded the student into an
98 ambulance.

99 When the other officers arrived, I told them what had happened, although in the rush of
100 adrenaline I totally forgot about Orson's cell phone. The officers secured Orson's gun, which
101 turned out to be a Colt Python. The gun was put in the evidence locker and labeled as being
102 connected to Orson's case. After I gave my statement I wanted to go out and help with the
103 investigation, but the chief told me I had just finished my shift and had to get some rest so I
104 wouldn't make hasty decisions from fatigue. I admit I got a bit upset, and the chief put me on
105 administrative leave and told me to take the next two days off. It was hard to follow those orders
106 as the whole bank scene brought back so many memories of my college roommate's murder, but
107 of course I knew the chief was right. I went home and threw off my uniform without thinking
108 about the cell phone, and immediately fell asleep. Six hours later I woke up and found the phone,
109 so I took it to the station and went back home.

110 On Saturday I kept thinking about the shooting at the bank while I puttered around,
111 wishing I weren't on administrative leave. That evening I met up with my trainer, Jamie Spalding,
112 at the gym just as we had already planned to do. I figured the exercise would help to settle my
113 nerves. Sometimes after workouts we have a drink together, and we did so on that night. Around
114 9:30 pm I drove us to Rubicon Sports Bar to watch the Miami Heat versus Indiana Pacers game. It
115 was kind of hard to concentrate on the game, as I kept thinking about that poor student. The day
116 didn't get any better when Indiana lost and was knocked out of the NBA playoffs. It's a small
117 thing, I know, but it didn't help lift my mood any, that's for sure. At around a quarter to midnight,
118 I went outside to smoke. I know it's not healthy and I'm trying to stop. It's just a bad habit I
119 picked up while undercover. I finished smoking by midnight and rejoined Jamie.

120 As I understand it, Orson Hayes was killed around the time I was smoking outside. If
121 that's true, then it was physically impossible for me to be responsible. Rubicon Sports Bar is
122 nearly a mile away from Paradise Pub where Hayes was shot. There's no way I could run to that

123 bar, shoot Hayes, and run back all within 15 minutes. Just like Jamie told the police, I visited the
124 car to get out my cigarettes, but the car itself never moved. I think I left the door unlocked, too,
125 because I noticed the next day that the fanny pack I use as a concealed-carry case was missing.
126 Good thing I didn't leave my gun in it at the time. I am aware that my DNA was extracted from a
127 cigarette pack that investigators found in the alley of Paradise Pub. But the bar is right across the
128 street from Jamie's gym, so I've gone to the alley to smoke on numerous occasions. The only
129 crime that cigarette pack should link me to is littering.

130 I admit that I didn't like Orson Hayes and I'm not sorry he's gone. I have a tendency to
131 get frustrated with criminals, especially repeat offenders. But I would never murder someone.
132 Hayes's murder was sloppy, public, and, most importantly, a heinous crime. I would never be
133 involved with that. I became a police officer to stop criminals, not to become one! Given that
134 Hayes had escalated his crimes from being a drug dealer and cog in the gang machine, to armed
135 robbery of a bank, it seems like Hayes must have owed money to someone above him and was
136 trying desperately to pay it off. Instead of wasting time with me, my colleagues should be trying
137 to find the real murderer.

138 Of the available exhibits I am familiar with the following and only the following:
139 Exhibits 3, 7, and 8. Exhibit 3 is a map of part of Phoenix, and Exhibit 7 is my receipt from the
140 food and drink that Jamie Spalding and I ordered at Rubicon Sports Bar. Exhibit 8 is the
141 disciplinary report from 2007.

142 I hereby attest to having read the above statement and swear or affirm it to be my own. I
143 also swear or affirm to the truthfulness of its content. Before giving this statement, I was told it
144 should contain everything I knew that may be relevant to my testimony and I followed those
145 instructions. I also understand that I can and must update this affidavit if anything new occurs to
146 me until the moment before opening statements begin in this case.

147 Quinn Penner

148 Quinn Penner

149 Patti Parrish

150 Patti Parrish, Notary Public

AFFIDAVIT OF ANDY HODGES

1 After being duly sworn upon oath, Andy Hodges hereby deposes and states as follows:

2 My name is Andy Hodges. I have lived in Phoenix for over 20 years. I was educated at
3 New Mexico State University where I majored in Legal Studies with a minor in Cognitive
4 Science. Immediately after receiving my undergraduate degree in 1992, I relocated to Phoenix
5 where I began working as a patrol officer for the Phoenix police department. In 1998 I was
6 promoted to staff sergeant and put in charge of training all of the new recruits. When Quinn
7 Penner joined the force in 2000, I saw that s/he had real potential to be an outstanding officer. To
8 speed up the process, I partnered us together from 2000 until 2002, when Penner was promoted
9 to vice squad detective. The vice squad focuses on moral crimes like gambling, bookmaking,
10 drugs, and prostitution. Admittedly this promotion was exceedingly rapid, but Detective Penner
11 had demonstrated that s/he was one of our best officers, with a noteworthy ability to locate and
12 arrest criminals.

13 In 2003 Penner won an award for meritorious service. In fact, Detective Penner was
14 consistently at the top of the squad statistics in numbers of criminals arrested and percentage of
15 those arrests that resulted in jail time for the criminal. Because of his/her excellent record,
16 Detective Penner had been first on the list for promotion to the Homicide Division when an
17 opening became available.

18 When I started working with Penner, s/he told me that s/he was related to the Penners of
19 "Penner Enterprises," the renowned software company. S/he didn't want anyone to know s/he
20 came from a wealthy family because s/he didn't want to be treated differently, so I didn't tell
21 anyone else at the station. Penner was the best partner I ever had, extremely courteous and
22 charismatic, with terrific instincts as a cop. S/he was also very athletic and could chase down
23 even the fastest criminals. Admittedly, Penner has an unusual way of running, different from
24 anyone I've ever seen, but somehow it's effective. One time, Penner's quick reactions saved my
25 life when s/he saw that a driver I had pulled over was about to draw a gun on me. Penner
26 grabbed the driver's arm, twisted it to make him release the gun, dragged him out of the car, and
27 handcuffed him. I was thankful that Penner had realized what was about to happen and
28 embarrassed that I had put myself in danger by a moment's inattentiveness.

29 Admittedly, Detective Penner was involved in a troubling incident in 2004. That summer,
30 s/he led an important narcotics investigation. While performing standard street surveillance,

31 Penner harassed a potential witness by yelling and shining a blinding light in her eyes. The
32 witness never pressed charges, but the police chief issued an official warning to Detective Penner
33 even though other detectives have reacted similarly when placed under stressful situations. In
34 2007, Detective Penner was again disciplined, this time for roughing up a couple of drug dealers.
35 To help channel his/her energy, Penner took up sports as a way to vent frustration and stay
36 physically and mentally healthy. S/he told me that s/he had joined a gym which taught parkour,
37 and the physical outlet really seemed to help. I prefer martial arts myself, but to each his/her
38 own.

39 In 2012 my twin sons graduated high school and began attending Arizona State
40 University. To help pay for their tuition, I started moonlighting as a security guard at Thomas'
41 Tavern. Thomas' is a British-themed tavern that caters to a fairly sophisticated clientele. The
42 manager at Thomas' Tavern hires security guards to keep out the lowlifes from the woefully
43 misnamed Paradise Pub across the street.

44 I was working security at Thomas' Tavern on the evening of May 25, 2013 prior to going
45 on police duty at 1:00 a.m. It was a beautiful night with clear skies and a full moon. Paradise Pub
46 was packed with customers watching the NBA playoff game between the Indiana Pacers and
47 Miami Heat. I'm not a big basketball fan myself, so I didn't mind missing the game. At around
48 11:30 pm I had to keep out disgruntled fans leaving Paradise after the Pacers lost, but things died
49 down pretty quickly. I had just checked my watch and noted that it was 11:45 when I heard
50 someone cry out in fear in the alley beside Paradise, followed right away by three rapid gunshots.
51 I ran across the street just in time to see a man lying on the ground with someone bending over
52 him, and another person running rapidly away down the alley. The fleeing person ran in an
53 awkward, unusual fashion, but from the brief glimpse I caught before the person turned the
54 corner, I think the person's motions were distinctly different from those of Detective Penner.

55 The person kneeling over the man on the ground urged me to follow the shooter, but I
56 knew I'd never catch him/her, and I felt it was more important to attend to the injured person.
57 As I bent closer, I was shocked to see that the victim was Orson Hayes, a well-known repeat
58 offender who had served time for drug trafficking. I dialed 911 to report that we needed the
59 police and an ambulance, and then I tried to help Hayes, who was bleeding profusely. I asked
60 Hayes if he knew who shot him, but he just said "Why? Why? I can't believe this is
61 happening Lee, don't make the same mistakes I did." I didn't know who Lee was until the

62 person kneeling over Hayes said, “I won’t, Orson, I won’t. Hang in there, it’ll be okay, just hang
63 in there.” Orson then lost consciousness. Since time is of the essence if arriving officers were to
64 have a chance of catching the shooter, I asked Lee if s/he had seen what happened. S/he told me
65 that the person who shot Orson had been leaning on the alley wall right before the shooting. Lee
66 also said the shooter had dropped something in the alley when s/he was running away. Lee told
67 me where to look, and when I searched, I found a pack of cigarettes. I carefully draped my
68 handkerchief over it to protect it until the police on duty could arrive to collect it as evidence.
69 Then I spoke more with Lee, who told me that s/he was Orson’s cousin. Lee seemed to be in
70 shock and wasn’t really making much sense; s/he couldn’t seem to give many details at all about
71 what had happened.

72 Officer Cochran and his partner arrived only a moment later, as did the paramedics. The
73 paramedics quickly loaded Orson into the ambulance and let Lee ride with them to the hospital. I
74 told the officers what I had seen and showed them the cigarette pack. By the time they finished
75 interviewing me it was nearly the end of my shift at Thomas’ Tavern and time for me to go on
76 duty. We decided it made sense for me to ride to the hospital with the other officers to question
77 Lee. But when we tried questioning Lee, s/he seemed too shocked by all that had happened to
78 remember anything else.

79 The next morning Officer Cochran picked up Lee and brought him/her to the station for
80 more questioning. By that time, we had bank security video footage that showed Lee had driven
81 the getaway car for Orson’s attempted bank robbery two days before. We didn’t reveal what we
82 knew at first because we hoped to get more information about Orson’s shooting. Lee started
83 talking about how the shooter ran funny, and just then Detective Penner walked by the window
84 of the conference room where we were talking. Lee saw Penner, turned white as a sheet, and said
85 “That’s the person! That’s who shot Orson!” I will admit I got a bit upset because the accusation
86 was so crazy, but Officer Cochran eagerly started writing down Lee’s statement. Cochran was
87 always looking for ways to get back at Detective Penner for being promoted over him, so he
88 egged Lee on and almost coached him in his statement, volunteering specific information about
89 the way Penner runs and asking Lee to confirm the details. I got so disgusted that I cut the
90 interview short by telling Lee we knew s/he was involved in the attempted bank robbery. Lee
91 shut up in a hurry when I said that.

92 I wasn't worried by Lee's accusation, though, because I knew the evidence would reveal
93 that Lee was making it all up. It's just crazy to think that an exemplary officer like Detective
94 Penner would murder Hayes in cold blood. That's why I couldn't believe it when Detective
95 Penner was charged with the crime. I knew Cochran would be thrilled with what was happening,
96 and indeed he was, but I couldn't understand why the police chief would believe such an
97 outrageous claim. Maybe he felt threatened by Penner's success? Several other officers seem
98 happy to join the bandwagon against Detective Penner, too, but they were mainly the officers
99 who have been jealous of Penner's record. It's distressing to see, to say the least.

100 Lee Hayes has even been offered a plea deal to testify against Detective Penner. I now
101 can understand Detective Penner's disgust at the way our legal system sometimes fails to pursue
102 the truth in its zeal to punish someone for a crime. I plan to stay here in Phoenix to support
103 Detective Penner and make sure everyone knows that s/he is innocent. But after this all finishes,
104 I think I'll look for a position in New Mexico, because I just can't stand the way some officers
105 have turned on Penner, like a pack of dogs attacking an injured member of the group. It's pretty
106 disgusting.

107 Of the available exhibits I am familiar with the following and only the following: Exhibit
108 1, the plea deal offered to Lee Hayes, and Exhibit 3, the map of part of Phoenix. I hereby attest to
109 having read the above statement and swear or affirm it to be my own. I also swear or affirm to
110 the truthfulness of its content. Before giving this statement, I was told it should contain
111 everything I knew that may be relevant to my testimony and I followed those instructions. I also
112 understand that I can and must update this affidavit if anything new occurs to me until the
113 moment before opening statements begin in this case.

114 *Andy Hodges*
115 Andy Hodges

116 *Beverly Bryson*
117 Beverly Bryaon, Notary Public

AFFIDAVIT OF SAM MADDOX

1 After being duly sworn upon oath, Sam Maddox hereby deposes and states as follows:

2 My name is Sam Maddox. I was born in Colorado in 1986 but my family moved to
3 Arizona when I was small. My parents have a farm where they grow organic vegetables and raise
4 free-range chickens to sell to the gourmet restaurants in Phoenix. I was very involved in 4-H as a
5 child, raising my own goats and cattle for competition, so naturally when it came time for
6 college, I went to the University of Arizona to study zoology. After graduating with my
7 bachelor's degree in 2008, I was fortunate enough to get my "dream job" working as an animal
8 trainer and facility manager at the Phoenix Zoo. Superintendent Jordan Hammond is a fantastic
9 employer; he really cares about his employees as well as making sure the zoo visitors have a
10 memorable experience. I have the chance to work with animals ranging from snakes, to otters, to
11 gazelles, to gorillas! I get to work outside much of the time, which is perfect for me.

12 The zoo grounds are large, with nature paths that allow visitors to see the exhibits up
13 close. Part of my job involves patrolling the paths, making sure that the fences are in good
14 condition and no repair work is needed. Walking around the zoo also gives me a chance to
15 interact with our visitors, which I enjoy most of the time. However, in the last couple of years,
16 we've had some issues with local gangs trying to infiltrate the outskirts of the zoo. It appears that
17 they arrange meetings in secluded places for drug sales. I've had to call the police more than
18 once to deal with the intruders or gather evidence on the ground after dealers have run away
19 when they saw me approaching. It's a real concern, so I always keep my eyes and ears open
20 when I'm patrolling.

21 In fact, one of those arrested for drug sales in April 2012 was none other than Taylor
22 Malcolm, the rowdy college student who incited the gorillas on the tram ride back in 2009. The
23 gorillas attacked the tram, injuring Malcolm and dashing his hopes for an NBA basketball career.
24 After Malcolm lost his lawsuit against Jordan Hammond--and rightfully so!--he evidently turned
25 to drugs. I saw Malcolm in the woods in April of 2012 with a big guy, clearly exchanging drugs
26 for money. Our own zoo security guard was nearby, so I called him on my cell phone and he
27 managed to nab Malcolm before he could escape. The other guy got away; I didn't know who he
28 was at the time. But I would soon find out he was Orson Hayes, because he didn't stay away for
29 long.

30 After that incident in April of 2012, Jordan Hammond asked the Phoenix police if they
31 could increase their patrols of the area surrounding the zoo. They did, which meant the police
32 were able to respond more quickly when we called them about suspected gang activity. I got to
33 know several of the vice squad members, including Detective Penner. S/he was always very
34 courteous and professional when s/he responded to our calls. Detective Penner expressed
35 determination to do all s/he could to catch the “perps,” as s/he called them, because as Penner
36 said, “a zoo should be reserved for zoo animals for little kids to enjoy. It’s our job to keep these
37 other ‘animals’ away by whatever means are necessary.” I am in full agreement with that
38 sentiment!

39 Even with the increased police presence, we still had problems with gangs infiltrating the
40 zoo grounds. In October of 2012 I saw that same large guy back at the zoo again, about to climb
41 over the zoo fence. I hid behind a tree taking photos with my cell phone of him climbing over the
42 fence. I managed to keep the guy in my line of sight without being spotted, and I called the
43 police. Detective Penner responded right away, and I was able to direct the detective to the guy
44 when he got there. Penner yelled, “Orson Hayes, you’re under arrest!” When Hayes saw Penner,
45 he tried to run away, but Penner ran like lightning and threw him to the ground! It was amazing!
46 Hayes struggled quite a bit and yelled and cursed a lot until the detective got him under control.
47 Maybe the detective was a little rough with the guy, but that didn’t bother me. Detective Penner
48 handcuffed him, frisked him but didn’t find any drugs, and hauled him off. Jordan Hammond
49 pressed charges against Hayes for trespassing, which was all we could do. The next time I saw
50 Detective Penner s/he told me Hayes was let off with only a warning. S/he seemed pretty
51 disgusted by the outcome, as was I.

52 I didn’t see Hayes for awhile after that, and the gangs seemed to stay away from the zoo
53 for a bit. But in late April of 2013 it started up again, with me chasing off gang members and
54 finding evidence of drug sales in the outer areas of the zoo grounds. I started patrolling more
55 often. In early May of 2013 we started renovating a number of exhibits at the zoo, and I had to
56 work several evenings in a row to get everything done. The zoo still kept its normal hours of 9
57 am – 7 pm; we didn’t start opening later in the evening until Memorial Day weekend. It was
58 actually kind of peaceful at the zoo after all the visitors left, so I didn’t really mind the late hours
59 too much.

60 On Thursday, May 9 at around 10 pm, I finally finished for the day and was making one
61 last sweep of the grounds. As I neared the corner of the building housing the snake exhibit, I
62 heard angry voices coming from behind the building. I quickly ducked into a dark shadow and
63 listened. I heard a man with a deep voice say in a threatening manner, "I've given you enough
64 time! You owe me over 50 grand for the drugs you were supposed to sell through your dealers,
65 and I want my money NOW!! Otherwise you might find yourself at the bottom of the alligator
66 pond in this zoo!!!" I thought about trying to call the police, but I was afraid they would hear me,
67 so I just kept listening. Then I heard the other guy respond, and I recognized his voice: it
68 sounded just like Hayes! He sounded pretty shaken up, and he begged the other guy to give him
69 more time. He said "I'll get it to you before the end of the month, I promise! I'll get the money
70 from my dealers, and I'm also set to clear a lot of money on the NBA playoff games this month.
71 Just be patient; I'll get it for you!! If you hurt me now, you'll never see it." The deep-voiced guy
72 threatened him a bit more but said he would give him until May 25 and not a day longer.
73 Otherwise he would send "Aaron" or "Erin" after Hayes. The names sound the same, so I'm not
74 sure if he meant A-A-R-O-N or E-R-I-N. Aaron/Erin growled, "yeah, that's right. Don't mess
75 with us or you'll regret it!"

76 Then I heard them split up in different directions, and the angry guy started coming my
77 way! Quickly I ducked behind a trash bin so he wouldn't see me in the dark. The angry guy had
78 a "friend" with him, and they walked within 10 feet of me as I held my breath, hoping the sound
79 of my heart pounding wouldn't give me away. When they got under the dim lights in front of the
80 snake house, I saw them more clearly. The angry guy was huge, much bigger than Detective
81 Penner; his "friend" Aaron/Erin was about the same size as Penner and was holding a cigarette in
82 his/her right hand, cursing under his/her breath. I couldn't tell the "friend's" gender, though,
83 because s/he wore a baggy sweatsuit and had a scratchy voice. S/he seemed agitated and was
84 flinging his/her arms around like a crazy person while s/he talked. It looked weird, like s/he'd
85 been using some of their own products or something. I heard Aaron/Erin tell the big guy that
86 s/he'd be glad to "take care of" Hayes if the big guy just gave the word.

87 I called the police after they were gone, and Detective Penner and his/her partner came
88 right away because they were patrolling together nearby. They were upset to hear that such thugs
89 were on the zoo grounds and promised to do all they could to catch them. They asked for
90 descriptions and I told them that the guy who owed the money sounded like Hayes, although I

91 didn't ever see him and couldn't be 100% positive. Penner looked upset and said "we have to get
92 this guy before he does something desperate." I was able to give a general physical description of
93 the other two people but couldn't identify the gender of Aaron/Erin.

94 I have to say that I wasn't upset when I saw in the newspaper that Hayes had been shot
95 and killed in an alley on May 25. Immediately it made me think of that late-night meeting at the
96 zoo. But when I heard that Detective Penner was arrested for the murder, I couldn't believe it.
97 Sure, Detective Penner is "tough on crime," but from all of my interactions with Detective
98 Penner, I have to say that it's crazy to think s/he would gun down a criminal like that! Detective
99 Penner is always talking about honor and integrity and how s/he wants to make his/her family
100 proud. No way would Detective Penner do anything outside the law. Clearly Hayes was
101 murdered when he couldn't pay this other guy the money that Hayes owed him. The police
102 should be trying to find the real killer.

103 I hereby attest to having read the above statement and swear or affirm it to be my own. I
104 also swear or affirm to the truthfulness of its content. Before giving this statement, I was told it
105 should contain everything I knew that may be relevant to my testimony and I followed those
106 instructions. I also understand that I can and must update this affidavit if anything new occurs to
107 me until the moment before opening statements begin in this case.

108 *Sam Maddox*

109 Sam Maddox

110 *Kelly Owens*

111 Kelly Owens, Notary Public

EXHIBIT 1

STATE OF ARIZONA
v.
LEE HAYES

CASE NO.: CR-09-2013
COURT: Superior Court
COUNTY: Maricopa

STATE’S OFFER ON A PLEA OF GUILTY

1. Charges and Penalties

Charge: Aggravated Assault

Penalty: 20 to 25 months

Charge: Armed Robbery

Penalty: 64 to 80 months

2. Amended Charges (if any)

Amended Charges: Assault; Accessory After the Fact to Armed Robbery

Penalty: 10 – 13 months

3. Reason(s) for Amended Charges (if any)

The defendant, Lee Hayes, has accepted responsibility for criminal actions and has agreed to assist the State by providing a statement of what the defendant Quinn Penner did that resulted in the death of Orson Hayes. This defendant also agrees to testify on behalf of the State at any future trial or hearing.

4. Facts of the Case

On May 24, 2013 in Maricopa County, Arizona, the defendant arranged for Orson Hayes to be transported to and from the commission of an armed robbery with a firearm. The defendant was aware of the intentions of Orson Hayes. During the course of the armed robbery a bystander was shot by Orson Hayes, inflicting serious injury.

5. Recommendations in Exchange for a Plea of Guilty

In the interest of justice, the State recommends as follows: Assault--Time Served. Accessory After the Fact to Armed Robbery--10 to 13 months. This offer comes with the express understanding that the defendant agrees to provide truthful testimony at any future trial or hearing involving the facts aforementioned. The truthfulness element of this agreement shall be determined by the trial judge using a preponderance of the evidence standard. The defendant’s failure to satisfy the defendant’s obligations under this agreement shall result in revocation of this agreement after which the defendant shall stand trial on the charges of Aggravated Assault and Armed Robbery.

6. Offered this day of August 14, 2013.

Lee Hayes

DEFENDANT

Janet W. Craige

ATTORNEY FOR THE DEFENDANT

Samuel J. Ertle

ATTORNEY FOR THE STATE

EXHIBIT 2

Taken from cell phone retrieved on the victim (Orson Hayes)

Type of Report: All text records between specified accounts

Date of report: 6/25/13 11:07 am

Search parameters:

Dates: 24-May-2013 to 25-May-2013

Accounts: 969-545-1928 [Subscriber: Orson Hayes; disposable phone]
969-555-2003 [Subscriber: unknown; disposable phone]
969-555-2009 [Subscriber: unknown; disposable phone]

From:	To:	Date/Time:	Content:
969-545-1928	969-555-2003	5/24/13; 9:06 pm	Purged
969-555-2003	969-545-1928	5/24/13; 9:20 pm	Purged
969-555-2009	969-545-1928	5/25/13; 10:48 pm	Tonight's the night.
969-545-1928	969-555-2009	5/25/13; 10:52 pm	Who is this??
969-555-2009	969-545-1928	5/25/13; 11:00 pm	Don't play games, you know who this is.
969-545-1928	969-555-2009	5/25/13; 11:02 pm	I'll have the money this time. I just need an hour.
969-555-2009	969-545-1928	5/25/13; 11:11 pm	You're out of time. You're gonna regret it if I have to hunt you down.
969-545-1928	969-555-2009	5/25/13; 11:38 pm	Okay, okay. I'm already here. But we need to talk.
969-555-2009	969-545-1928	5/25/13; 11:41pm	I'm almost there.

EXHIBIT 3

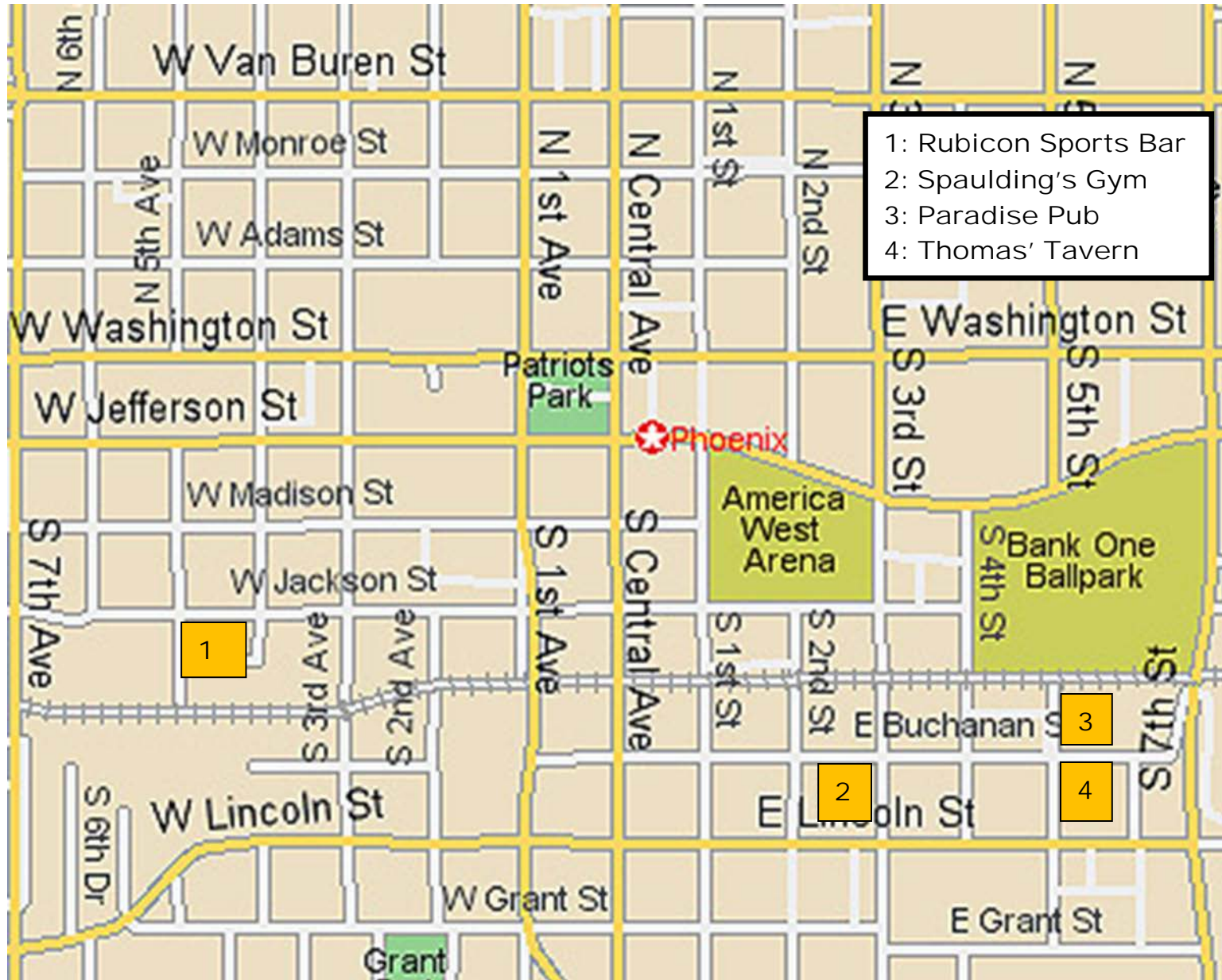


EXHIBIT 4



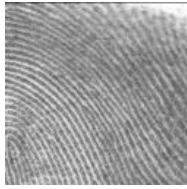
Colt Python, 6 inch barrel



.357 Magnum shells
(Left): from victim
(Center): new, not fired
(Right): test fire shell from Python in evidence locker

EXHIBIT 5

Fingerprints have been enlarged for visibility



**Cigarette pack
(insufficient to make
a determination)**



**Alley wall
(match)**



Quinn Penner

EXHIBIT 6

KRIS VINSON

(921) 111-5555 kvinson@ppd.com
3315 West Juniper Ave., Phoenix, AZ 85053

EDUCATION

University of New Mexico, Albuquerque, New Mexico
Master of Forensic Science, December 2002
Cumulative GPA, 3.75

Julian College, Albuquerque, New Mexico
Bachelor of Science, Chemistry, May 2001
Cumulative GPA, 3.83

WORK EXPERIENCE

Forensic Specialist
Phoenix Police Department, Phoenix, Arizona
March 2013-present

Assistant Forensic Specialist
Albuquerque Police Department, Albuquerque, New Mexico
March 2003-February 2013

AWARDS

Gibbs Outstanding Forensic Science Award, New Mexico Division of the International Association for Identification, NCI AI Conference, Albuquerque, New Mexico, October 2012

Delta Delta Epsilon (Forensic Honor Society), March 2002, University of New Mexico

Phi Beta Kappa, October 2000, Julian College, Albuquerque, New Mexico

PRESENTATIONS

“The Use of Short Tandem Repeat DNA Analysis in Crime Scene Investigation.” Presentation, American Academy of Forensic Sciences Fall Conference, October 5-7, 2012. San Diego, CA

“Basic Evaluation and Comparison of Latent Print Workshop.” Lead presenter for 40 hour workshop, NCI AI Conference, Albuquerque, New Mexico, October 2010

PUBLICATIONS

“An Overview of Ballistic Analysis and GSR Testing for Attorneys.” Abby Sciuto, Donald Mallard, and Kris Vinson. *Journal of Forensic Sciences*, Volume 58, January 2003, pp. 200-232

EXHIBIT 7

RUBICON SPORTS BAR

501 West Jackson Street

Phoenix, Arizona 85003

(602) 112-4544

TABLE	2
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Super Caesar Burger		
Med. Rare, fries	9.00	
Rubicon Chicken Wrap		
Fruit, no fries	10.00	
Coors		
4x 3.00	12.00	
Whiskey & Ginger	3.00	
Whiskey – Black Label	8.00	
Whiskey & Ginger	3.00	

Items: 9

Total	\$45.00
Tip	<u>\$11.00</u>
TOTAL	\$56.00

X *Quinn Penner*

05/26/13 Bill #0011

12:30 am

CARD TYPE ACCT NUMBER

VISA xxxx xxxx xxxx 4001

TRANSACTION APPROVED

AUTHORIZATION #00141

REFERENCE 321568799

EXHIBIT 8

Employee Disciplinary Report

Name: Quinn Penner

Position: Detective

Date of Incident: 11/18/2007

Nature of Incident (Code and Description):

(4) Threatening or Engaging in Violence

(13) Improper Conduct

Witnesses:

Phillip Cochran, Officer

Earl Johnson, Detective

Actions to be taken: Suspension Recommended

Timetable for Improvement: 60 days

Additional Comments:

Suspension was not instituted at this time but will be applied should further incidents occur. Detective Penner will be assigned to desk duty for 60 days with reevaluation at the end of that time.

Signature of Supervisor: *M. Skupin*

Date: 11/19/2007

Signature of Employee: *Quinn Penner*

Date: 11/19/2007

EXHIBIT 9

Taken from cell phone retrieved at bank by Detective Penner

Type of Report: All text records between specified accounts

Date of report: 6/25/13 11:10 am

Search parameters:

Dates: 23-May-2013

Accounts: 969-545-1937 [Subscriber: Orson Hayes]
969-555-2003 [Subscriber: unknown; disposable phone]

From:	To:	Date/Time:	Content:
969-555-2003	969-545-1937	5/23/13; 11:00 pm	Meet me at Paradise Pub on Saturday at quarter to midnight. Bring what you owe me, or you'll be sorry.
969-545-1937	969-555-2003	5/23/13; 11:02 pm	I need more time.
969-555-2003	969-545-1937	5/23/13; 11:11 pm	No. This is it. Be there or else!