

C. STATE V. GOONER

Synopsis and Witness List

A man (X) walks into a store that cashes checks and operates as a pawn shop. He is wearing a dark sweatshirt with a hood partially covering his head and forehead. A second man (Y) remains outside in the getaway car. After browsing the store for a short while, X walks up to the man behind the counter, points a sawed-off shotgun at him and demands all the money from the drawer. He then orders the clerk to open the cabinets and turn over the jewelry and other items that are there. The desk clerk, Lester Morton, hands over cash and some watches and other items. X pistol whips the clerk knocking him down and giving him a concussion and a broken jaw. X then runs out and jumps into the car driven by Y. A woman walking by, Marie Dugan, has her attention drawn to Y who is standing next to his car while the motor is running. She sees X run into the car and watches it take off. She walks into the store, finds the clerk semi-conscious and calls the police.

Upon arriving at the scene, the police find a partial fingerprint but no DNA evidence. The clerk is brought down to the station and shown a mug book with about 75 pictures and tentatively identifies Z as the robber. When the fingerprint comes back belonging to Lloyd Gooner, the police set up a lineup including Gooner, Z and 3 other look-alikes. The clerk identifies Gooner as the robber. He is then arrested and given his rights. He denies involvement in the robbery and when confronted with the fingerprint, he says he has been in that store before, as recently as a week earlier and bought items there. He has no receipt.

Marie Dugan is brought in, shown a series of mug books and identifies a picture of Joey Filostine as the man who is waiting by the car, and he too is arrested. At first he denies involvement and denies knowing Gooner, but when offered a deal, admits to being the getaway driver and implicates Gooner as the robber. A search of Gooner's home finds no gun or stolen property but does find a sweatshirt matching the description. Dugan cannot positively identify the armed robber because he was moving too fast. Shown the same lineup as Morton, she fails to make a positive identification of Gooner as the armed robber, but when asked specifically by the police about #2 (Gooner), she says he generally fits the description.

WITNESSES FOR THE STATE

1. Marie Dugan
2. Detective Joseph Nolan
3. Lester Morton
4. Joey Filostine

WITNESSES FOR THE DEFENSE

1. Lloyd Gooner
2. Dr. Maria Delcampo
3. Horatio Flexer
4. Lloyd Gooner-optional witness

Pre-trial motions were made by Gooner through his attorneys to suppress his statement to the police, the search of his house that produced the dark sweatshirt and the identifications of him made by Morton and Dugan. All motions were denied.

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Stipulations Agreed to by Both Parties

1. Three sets of fingerprints were lifted from the counter of Shady's Pawn Shop on April 1, 2006. The first set was indecipherable, the second set matched the prints of Angela Watkins, and the third set matched the prints of Lloyd Gooner.
2. Shady's Pawn Shop is an 8 mile drive from the Schlock Mart where Gooner works. The corner of 7th and Milagros is about ½ mile from Schlock Mart.
3. A concussion falls within the definition of "serious physical injury" under the Penal Law of the State of Confusion.
4. The York County Hospital Emergency Room record was made and kept in the regular course of business of the hospital and notations on the record are made contemporaneously with the observations noted or the treatment administered.

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STATE OF CONFUSION COUNTY OF YORK INDICTMENT FORM

COUNT I

The Grand Jury in and for the County of York, State of Confusion hereby charges Lloyd Gooner with the crime of Robbery in the First Degree, in that on April 1, 2006, he forcibly stole property from Lester Morton while brandishing what appeared to be a deadly weapon, to wit a shotgun.

COUNT II

The Grand Jury in and for the County of York, State of Confusion hereby charges Lloyd Gooner with the crime of Robbery in the First Degree in that on April 1, 2006, he forcibly stole property from Lester Morton while causing serious physical injury, to wit a concussion.

COUNT III

The Grand Jury in and for the County of York, State of Confusion hereby charges Lloyd Gooner with the crime of Assault in the First Degree in that he intentionally caused serious injury to Lester Morton, to wit a concussion, by hitting him in the head with a shotgun causing a concussion.

Signed:

Alfred Linstrum

Grand Jury Foreman

Dated: April 27, 2006

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APPLICABLE STATUTES FROM THE PENAL LAW OF THE STATE OF CONFUSION

SECTION 3-103:

One commits Robbery in the First Degree when he or she forcibly takes property from another while a) possessing a deadly weapon or b) displaying what appears to be a deadly weapon or c) causing serious physical injury in furtherance of the taking. The sentence for Robbery in the First Degree is a term of imprisonment for no less than 1 and no more than 20 years.

SECTION 5-102

One commits Assault in the First Degree when he or she intentionally causes another person serious physical injury. The sentence for Assault in the First Degree is a term of imprisonment of no less than 1 and no more than 20 years.

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GRAND JURY TESTIMONY OF DETECTIVE JOSEPH NOLAN

April 22nd, 2006

Q. What is your name and where do you work?

A. My name is Detective Joseph Nolan and I am a police detective with the York City P.D. currently assigned to the Robbery Squad.

Q. Tell us what happened on the evening of April 1st, 2006.

A. At about 9:55 p.m. I was told by my captain to respond to a 911 call that had been received about a robbery and assault that had taken place at Shady's Pawn Shop.

Q. What did you do?

A. With my partner, Detective Ryan Schmidt, I went to the pawn shop. There I saw a woman apparently helping a man who was lying on the floor behind the counter and who was bleeding from the head.

Q. What happened then?

A. While Detective Schmidt called for an ambulance I talked to the man on the ground whose name I learned was Lester Morton. Morton told me he is the assistant manager of Shady's and that a man had come in a few minutes earlier, made him turn over some items and then hit him with a sawed off shotgun.

Q. Did you ask Mr. Morton to describe the man who robbed him?

A. Of course. Morton said he was average height and weight and that he clearly remembered the man was wearing a dark blue sweatshirt with the hood pulled over his head.

Q. What did you do next?

A. I conferred with my partner, who by that time had spoken to the woman, Marie Dugan. Apparently Dugan saw the robber run out of the store and get into a late model silver colored Japanese car. Waiting with the car was a man who she described as short and heavy, wearing a leather coat. The two men got into the car and took off.

Q. Did you further check out the scene?

A. Yes I did. I checked for fingerprints and found 3 sets on the counter. From my training in the police academy and extra forensic training I have taken as a detective, I know how to lift prints.

Q. What did you do with the prints?

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A. When I got back to the station house, I sent them off to the police lab.

Q. Did you check elsewhere for fingerprints?

A. I checked the entry door to the store as well but could not find any usable prints.

Q. What happened next in your investigation?

A. We brought Marie Dugan and Lester Morton to the station the morning after the robbery to look at mug books to see if they could identify either of the two perps.

Q. Did they?

A. After at least 20 minutes of looking at the books, Dugan positively identified Joey Filostine as being the man who drove the getaway car, but said she didn't get that good a look at the man with the gun. At a separate session, Morton picked out one Mason White and said he sort of looked like the robber. Lloyd Gooner's picture was not among those shown to either witness.

Q. What did you do next?

A. We checked with DMV and found that a 2003 silver Honda Civic was registered to Filostine. We were able to locate his address and arrested him without incident on April 3rd. At that time, we saw the Honda Civic parked outside Filostine's house. We searched the car but found no stolen property or weapons. We found several fingerprints all of which belonged to Filostine. We were able to get a hair sample from the front passenger seat and the Laboratory performed a DNA test on the sample. We were unable to find a match for the sample, but it did not belong to Filostine or Gooner.

Q. Did you ask Filostine about the robbery?

A. Yes. We administered his Miranda rights. He waived them and told us he didn't know anything about a robbery at the pawn shop. I told him that both he and his car had been positively identified as being outside the pawn shop that night and that we had a witness who saw him drive the robber away. At this point he said he wanted to speak with his lawyer. We immediately discontinued our questioning.

Q. Were you present at his arraignment?

A. Yes that happened the next day, the 4th.

Q. What happened there?

A. After the arraignment the prosecutor asked me to come back to her office. With her there was Filostine, who had made bail, and his lawyer. The lawyer told us Filostine

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would be willing to cooperate if he got a deal. After conferring with me, the prosecutor told them he would be allowed to plead guilty to Robbery 3 and that she'd recommend no more than a year in prison if Filostine told us who the robber was and testified at his trial. After Filostine talked with his lawyer in private for a few minutes, he agreed.

Q. What did he tell you?

A. He told us the robber was a guy he knew only as El, and he gave us a general description of El.

Q. Did you get the results of the fingerprint analysis?

A. Yes, about a week later the lab report came back. One of the prints was indecipherable and a second belonged to a woman named Angela Watkins. We spoke to her and she told us she was in the pawn shop on the night of April 1st at night, but when she left all seemed normal. The third print came back belonging to Lloyd Gooner.

Q. What did you do next?

A. I checked Gooner out, found he had a criminal record, used the nickname "El" and learned where his address was. I then showed his mug shot to Filostine, who made a positive identification. On April 10th I obtained an arrest warrant as well as a search and seizure warrant based on the print and what Filostine had told us. Then I went to his house and placed him under arrest.

Q. Did you then search his house?

A. I did and found a dark blue sweatshirt with a hood but no gun or stolen property.

Q. What happened next?

A. We brought him down to the station house, gave him his Miranda rights and asked if he wished to make a statement. He waived his rights and told us he was working on the evening of April 1st. He claimed he knew that because he works the evening shift at the Schlock Market. We asked if he knew of Shady's, and he admitted to having been there on a few occasions and claimed he bought a watch there. He didn't remember exactly when he bought it, but said it was about a 2 weeks earlier. He said of course he no longer had the receipt.

Q. What action did you take next with respect to Mr. Gooner?

A. On April 11th I set up a lineup including Gooner and Mason White. White was the man whose photo Mr. Morton chose from the mug book. I brought Mr. Morton and Ms. Dugan in separately to look at the lineup. Morton thought White looked familiar but id'd Gooner as the man who robbed him. Dugan was not 100% certain in her identification but said Gooner looked like the man she saw running out of the pawn shop.

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Q. Did you do anything else at that time?

A. I showed the sweatshirt we recovered from Gooner's house to both Morton and Dugan. Dugan could not identify it at all. Morton said it looked similar to the sweatshirt worn by the man who robbed him.

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OFFICIAL YORK COUNTY POLICE DEPARTMENT CRIME REPORT

Report #	Date and time of crime	Location
178342	April 1 st , 2006 at 9:45 p.m.	Shady's Pawn Shop 2110 Burnside Ave., York

Reporting officer
Detective Joseph Nolan #7804

Victim if any
Name- Lester Morton
Address- 1804 Harrison Ave., York
Age-47
Phone #-878-660-9872

Witnesses#1
Name-Marie Dugan
Address-2842 Grand Ave., York
Age-29
Phone#-878-342-0901

Description of crime

Man with sawed off shotgun entered pawn shop threatened victim, asst. manager of store. Victim gave perpetrator watches, ipod, camera, ring, small television and some cash. Perp. then hit victim with barrel of gun causing injury to head and fled from store. Witness #1 saw perp fleeing from store and get into car with another man and drive away. Wit #1 then went into store, attended to victim and called 911.

Description of perpetrator(s)

Perp #1 (man who entered store with gun)-WM, average height, in his 20's, wearing a dark blue sweatshirt with a hood

Perp #2 (getaway car driver)-WM, 5'3"-5'6", heavy set, needing a shave, wearing brown leather coat

Actions taken

4/1-interviewed victim and witness #1, called ambulance for victim, dusted store for prints including door and counter. Lifted 3 sets of usable prints from counter, none from door.

SIGNED-Joseph Nolan, Detective

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GRAND JURY TESTIMONY OF LESTER MORTON

April 22nd, 2006

Q. What is your name?

A. Lester Morton

Q. Where do you live Mr. Morton?

A. 1804 Harrison Ave, York, State of Confusion

Q. What do you do for a living?

A. I work as assistant manager of Shady's Pawn Shop, located at 2110 Burnside Ave in York.

Q. What type of business is that?

A. As the name says, we're a pawn shop. People bring us items for which we give them money. We either sell it to the public or they are able to pay and reclaim the item. Also we cash checks for people, most of whom for one reason or another can't cash them at banks or other places. Of course we take a fee for that service.

Q. Where were you on April 1st, 2006 at 9:45 p.m.?

A. I was working at Shady's, getting ready to close up at 10.

Q. What happened then?

A. I just finished cashing a check for some guy and when he left, the store was empty. Then this man came into the store and asked me if I could show him some cheap watches that worked.

Q. Can you describe the man?

A. He was in his 20's, 5'10" to 6", weighed between 155 and 170 and was wearing a dark blue sweatshirt with the hood up covering his head and forehead.

Q. What happened next?

A. I turned away to get 3 watches out of a drawer and when I turned back around he was holding a sawed-off shotgun pointed at my chest. He told me to give him all the money. I reached into the register and gave him a bunch of twenties, some tens and singles, maybe about \$150. He demanded more cash, but I told him the owner had cleared the register at about 6 that evening. He then handed me a shopping bag and told me to stuff it full with everything in the display cases. I put in about half a dozen watches, an ipod,

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two cameras (one digital), one wedding ring and one of those real small televisions.

Q. What did the man do next?

A. He hit me real hard in the head with the barrel of the shotgun knocking me to the ground.

Q. What happened next?

A. I'm not sure as I was real foggy at that point. Next thing I knew was that I smelled alcohol. It turned out to be coming from the breath of a woman who was standing over me. She asked if I was okay. I'm not sure what I said.

Q. Did there come a time when two police officers arrived at the shop?

A. Yeah, it seemed like just a few minutes later when two plainclothes detectives arrived.

Q. Do you know those two men to be Detectives Nolan and Schmidt?

A. Yes.

Q. What did you tell them?

A. Pretty much all the things I just testified to.

Q. How were you feeling at that point?

A. I was bleeding pretty badly from above my eye and my head really hurt.

Q. What happened then?

A. An ambulance came and took me to the hospital.

Q. What did they do for you?

A. They x rayed my head, and stitched up where I was bleeding above my eye. Also I was given vicodin for the pain.

Q. How long did it take before your head healed?

A. About 3 weeks

Q. During that time did you use medication?

A. When the pain was bad I took a vicodin. The amount they gave me ran out in about 2 weeks. From then on, I just used Advil.

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Q. How long were you there?

A. I stayed overnight.

Q. What were your injuries?

A. A severe cut above my eye, some bad bruises and they told me I suffered a concussion.

Q. What happened next on your case?

A. On the morning after the robbery I looked at some pictures. I pointed to a man who looked somewhat like the robber, but I couldn't be sure.

Q. Now Mr. Morton, tell us what happened with respect to this case on April 10th.

A. I got a call from Detective Nolan telling me they picked up the guy whose fingerprint they got off the counter. He asked me to come down and look at a line-up the next day at 3 p.m.

Q. What happened on April 11th?

A. I went to the police station and was shown a line-up of 5 men. I looked through a one-way glass and told them I thought that while #4 could be the guy, I believed it more likely that #2 was the guy who robbed and hit me.

Q. Had you ever seen the man who robbed you before April 1st?

A. I can't be sure but I think I recognized him from having been in the shop before.

Q. Was #2 the man you now know to be Lloyd Gooner?

A. Yes

Q. Thank you Mr. Morton. You're excused.

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YORK COUNTY HOSPITAL

Emergency Room Record

Date: April 1, 2006 **Time:** 10:20 p.m.

Patient: Lester Morton **Insurance Carrier:** No State
Health Insurance #612839

DOB: Feb. 21, 1962 **Transported:** Ambulance

Cause of Injury: Patient hit in head with shotgun

Temp: 99.4 **Treating Physician:** Mary Clark, M.D.

B.P.: 140/90

Pulse: 60

History: Patient says he was hit in the head with a shotgun by a man he had never seen before.

Examination Findings: Patient suffered contusions and abrasions around his left eye and on his forehead. He had a deep cut above his left eye. Complained of pain around wounds, dizziness and confusion.

Diagnosis: Severe cut above left eye. Grade 2 concussion, contusions and abrasions.

Treatment Administered: Patient was given a CT scan. 14 stitches were administered to the wound above his left eye. He was given Vicodin for his pain.

Disposition: Patient to be kept overnight for observation.

Signed:

Mary Clark
Mary Clark, M.D.

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STATEMENT TO POLICE OF MARIE DUGAN

My name is Marie Dugan and I live at 2842 Grand Ave in York, Confusion. I am an assistant buyer at Macy's.

On the night of April 1st, I was coming home from an April Fools party that my department had after work at a local pub. I don't drink much, so I think I had about 2 beers that evening. At about 9:45 p.m., I'd just gotten off the bus and was walking the two blocks to my home when I saw a man standing outside a car that had its motor running. It was a late model Japanese car I think. And it was silver in color. I noticed him because he was very fidgety. He was about 5'3"-5'6" and heavy set and looked like he needed a shave. He was wearing a brown leather coat.

Just then a man about 5'8"-5'11" with a medium build and wearing a black sweatshirt with a hood came running out of the pawn shop. He was carrying something but he was moving so fast and it was on the other side of his body, so I couldn't tell what it was. I didn't get good as good at look at his face as I did of the other guy's, but I think I saw it enough to identify him if I see him again. He and the guy I saw waiting by the car jumped in and took off like a shot. I ran into the store and saw a man lying on the ground behind the counter with blood coming from his head. I screamed, then calmed down and asked if he was okay. He just mumbled something. I pulled out my cell phone and called the police.

About 5 minutes later two detectives arrived. I told them what happened, and they asked if I would come to the station house the next morning. I went there the next morning and was shown a bunch of mug books. After looking at a few hundred, I recognized the guy standing by the car and told the officer. They told me that man's name was Filostine.

SIGNED:

Marie Dugan 4/2/06

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SUPPLEMENTAL STATEMENT OF MARIE DUGAN

On April 11th I came to the police station to look at a line-up. I saw 5 men but was unable to identify any of them with certainty from the pawn shop robbery. One of the detectives then asked me to look at #2 more closely this time. I said that while I couldn't identify his face for certain, he looked somewhat like the man I saw running out of the store. Also he seemed about the same height and weight. I later learned this man's name was Lloyd Gooner.

SIGNED

Marie Dugan

Date: April 12, 2006

Witness: Detective Joseph Nolan

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STATEMENT OF JOEY FILOSTINE

My name is Joey Filostine and I live at 410 Roosevelt Ave in York. I work in construction but have been unemployed the last 4 months.

Some time in March I got a call from Lloyd Gooner, a guy I had met an organization set up to help ex-offenders work their way back into society. At the time I knew him only by the name El. I hadn't seen Gooner since I stopped going to them meetings about a year ago. I didn't know him real well. We had a few drinks a couple of times after the meetings. I knew Gooner had done time for burglary and robbery. We would joke about working together since I had done my time for being a wheel man.

Anyway Gooner asked me to meet him at Dunleavy's Bar over on 7th and Milagros on Saturday, March 18th at 4 p.m. I asked him what it was about and he said he'd tell me when we met. He said the place would be fairly empty at that time, and it was.

I saw him sitting at a booth in the corner when I got there. We nursed a few beers and he told me about this pawn shop where only one guy was on duty at night, and they had lots of jewelry and electronic stuff displayed and where they probably had some real cash on hand. He said doing a job there would be real easy. I told him I wasn't going to risk going back to jail. He said not to worry and that he'd take all the risk. All he wanted me to do was sit by the car and keep it on so we could get out of there in a hurry after the job was done.

On April 1st I met him on the corner of 7th and Milagros, outside the bar. He got in my car and we drove to Shady's Pawn Shop. He went in while I waited outside with the car on. He was in there about 5 minutes when he came running out and jumped into the car. I asked him what happened and he said he had to hit the guy behind the counter but that he'd be okay. He told me he'd gotten some jewelry and a little bit of cash.

I let him out at the corner where I picked him up. He gave me a hundred dollar bill and that's the last time I saw him.

When the police arrested me, I told them I didn't know nothing about the stick up because I didn't want to go back to jail. After they told me what they had on me and I spoke to my lawyer, I thought it would be in my best interest to tell what I knew. The prosecutor said if I told the truth and testified against Gooner, she'd let me cop out to a bullet (that's a year).

SIGNED

Joey Filostine

Date: April 19th, 2006

Witness: Detective Joseph Nolan

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Official Record of Arrests and Convictions

Of: Joseph (Joey) Filostine
Aliases: JMan
D.O.B.: 2/03/77
Ht.: 5'5"
Wt.: 195 lbs.
Tracking #: F-012-717-9

<u>Date</u>	<u>Charge</u>	<u>Disposition</u>
3/01/96	Grand Larceny Auto	P.G. to Petit Larceny Sent. - Probation
7/18/97	Burglary 2nd	P.G. Att/Burg. 2° Sent. - 6 months Served - 5 months Released 2/04/98
12/16/99	Burglary 2nd	Convicted after trial of Burg 2nd Sent. - 3 years 6 months Released 5/04/03
4/03/06	Robbery 1 st Assault 1 st	pending

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STATEMENT OF LLOYD GOONER

My name is Lloyd Gooner and I live at 411 House Rd in York, Confusion I have been advised of my rights to remain silent, that any statement I make can be used against me, that I have the right to an attorney and that if I can't afford one, the police will get me one. I have chosen of my own free will to waive those rights and talk to the police. I have done this because I have nothing to hide and I am innocent.

I am told that the police think I did a robbery on April 1st. That is not true. I was working on April 1st when the robbery happened. The police told me it was around 9:45 p.m. and I was working at my job at the Schlock Mart at that time. I know that because the 1st was a Saturday and I work every Saturday. I haven't missed one since I started working there.

I know Shady's over on Burnside because I've looked for cheap stuff there on occasion. I even bought a watch there some in March I think. Of course I no longer have the receipt. It's not like you get a warranty with the watch from a pawn shop, so there is no reason to keep it. I have seen a few people working behind the counter in the times I went there.

It's true I have a record. When I was younger I stole to pay for my cocaine habit. I couldn't stop using until I served 3 years in jail. I had to stop there and haven't used since my release. I have a good job now, a girlfriend who I live with and have done no crimes since I got out of jail.

I wasn't sure I knew Joey Filostine until the police showed me his picture. I recognized him from the ex-offender's program I go to. I knew him there as JMan. We hardly knew each other but he seemed like a decent guy so I agreed to have a beer with him one time. He started talking about doing jobs together. I couldn't tell whether he was kidding or not, but I didn't want to find out, so I avoided him after that.

This charge against me is totally bogus.

I HAVE READ THE ABOVE STATEMENT AND IT IS MY OWN.

Signed

Lloyd Gooner

April 3, 2006

Witnessed by Detective Joseph Nolan

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STATE OF CONFUSION

Official Record of Arrests and Convictions

Of: Lloyd Gooner
Aliases: El
D.O.B.: 6/25/81
Ht.: 5'10"
Wt.: 175 lbs.
Tracking #: G-019-432-7

<u>Date</u>	<u>Charge</u>	<u>Disposition</u>
7/01/99	Possession of Cocaine	Conditional dismissal on his attending program
2/17/00	Possession of Cocaine	P.G. to charge Sent. - Probation
4/24/00	Robbery 1° Burglary 1°	Convicted after trial of Robb. 2° Burg. 2° Sent. - 5 years Served - 3 years 1 month Released 5/28/03
4/10/06	Robbery 1st Assault 1st	pending

SCHLOCK MART, INC. TIME CARDS

Employee Name: **Gooner, Lloyd**
Employee ID #: **121-80-1743**

	Sunday, Mar. 26	Monday, Mar. 27	Tuesday, Mar. 28	Wednesday, Mar. 29	Thursday, Mar. 30	Friday, Mar. 31	Saturday, Apr. 1
In			2:50 p.m.	2:55 p.m.	2:50 p.m.	2:58 p.m.	2:54 p.m.
Out			11:13 p.m.	11:07 p.m.	11:09 p.m.	11:10 p.m.	11:03 p.m.
In							
Out							
In							
Out							
In							
Out							
In							
Out							

I affirm under the penalties of perjury that the foregoing time card for Lloyd Gooner is a true and accurate business record kept during the regular course of business.

Horatio Flexer

Horatio Flexer
Night Shift Supervisor
Schlock Mart, Inc.
Reindorf City, State of Confusion
(P) 1-812-555-1212
(F) 1-812-555-1211

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STATEMENT OF HORATIO FLEXER

My name is Horatio Flexer and I live at 3609 James St. in Smack City, Confusion. I am the Night Shift Supervisor at Schlock Mart. Schlock Mart is a medium size department store in York that stays open until 10 at night to serve our many working customers. I supervise the evening shift that runs from 3 to 11:00 p.m.

Lloyd Gooner works the floor during the evening shift and has for about 2 years. Floor workers help stock the shelves, answer questions for the customers, deal with whatever problems arise during the shifts and then help with cleaning and closing the store for the night.

On April 1st, 2006 I was working the evening shift. I remember seeing Gooner on that day because I asked him to help me move around the April Fool's Day signs and sales material some time near the beginning of the shift. I can't say for sure where he was every minute that night, but I would probably have noticed if he was gone for any significant time.

I have brought with me Gooner's time card for that day which shows he punched in at 2:54 and punched out at 11:03 p.m. When workers leave the premises for any reason, they are supposed to punch out and then punch in upon their return. They could leave either for a short break or one 30 minute meal break. Gooner always brings his meal and eats in the employees' lounge, and there is no need to punch out when that happens.

In the time I've known Gooner, he has always been a dependable employee. I don't know much of his life outside the store.

Signed: Horatio Flexer

Date: April 26th, 2006

Witnessed: Larry Crane

This was a statement given to Defendant's investigator Larry Crane.

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Report of Dr. Maria Delcampo*

My name is Dr. Maria Delcampo. I am an experimental and perceptual psychologist and have attached my C.V. to this report. I was asked by the attorney for Lloyd Gooner to review the police report and accompanying documents in the robbery case against Gooner and to offer my opinion as to why the store clerk may have identified Gooner as the robber. As I was shown the earlier testimony of Mr. Morton, I did not feel the need to interview him.

Upon reading the file I was struck immediately by several important facts. First, the robber had a sawed off shotgun and pointed it right at the clerk, Mr. Morton. Second, the robber pistol whipped Morton with the gun. Third, Mr. Morton's description of the man who robbed him was rather vague and general except for the clothing that the robber wore. Finally, I saw the Detective's report that indicated Mr. Gooner said that he had been in the pawn shop a few times in the past and had purchased something there a few weeks earlier.

To me this seemed like it could be a classic case of what is called unconscious transference. Unconscious transference, a term coined by Glanville Williams (see Glanville Williams, *The Proof of Guilt: A Study of the English Criminal Trial* 115 (3d ed. 1963), explains how a composite memory can lead to a misidentification. Put simply, if the victim of a crime has seen the person he identifies as the perpetrator on previous occasions, his unconscious memory may be substituting the person seen previously for the real criminal. The facts of this case as they have been presented to me maximize the possibility that just such an unconscious transference occurred here.

For unconscious transference to occur, generally there must be some gap in the victim's recollection of an important detail of the event, such as the description of the perpetrator. Here the description was vague. The mind is uncomfortable with this gap and so fills it. This process of gap-filling is called confabulation. This gap can be caused by several different factors. Particularly stressful events can cause us to focus on certain aspects of the event, causing us to lose focus on and therefore not recall other aspects of the event. There is a phenomenon referred to as weapon focus which speaks of how when a weapon is pointed at us, we understandably concentrate on that weapon and perceive and therefore recall less of other aspects of what is happening at the time.

Obviously this robbery was a stressful event for Mr. Morton, especially so because a shotgun was pointed at him. Ultimately he was hit and knocked almost unconscious by that gun. It is likely his attention was focused on the gun when it was pointed at him, and this would explain his inability to make a more detailed description of the robber. There was thus a gap in Mr. Morton's recollection of the robbery.

A week later when Mr. Morton was shown Gooner in a lineup, it is quite possible that a confabulation or gap-filling occurred. If Morton had seen Gooner on previous occasions in the pawn shop and was now presented Gooner as one of the subjects in the lineup, the only person present in the lineup that he had seen before, it is hardly surprising that he

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would select Gooner as the robber. Morton's mind could very easily have unconsciously transferred the man who he recognized from having seen in the pawn shop on other occasions to the robber who pointed a gun at him on April 1st.

I am being compensated for the time I spent on this case at my normal fee of \$250 an hour. I spent 4 hours talking to counsel, researching the issue and preparing this report. If called a as witness, I will be reimbursed for my time as well.

Respectfully Submitted,

Signed-Maria Delcampo Ph.D.

Date: November 29, 2006

- see Francis A. Gilligan, Edward J. Imwinkelried and Elizabeth F. Loftus, **THE THEORY OF "UNCONSCIOUS TRANSFERENCE": THE LATEST THREAT TO THE SHIELD LAWS PROTECTING THE PRIVACY OF VICTIMS OF SEX OFFENSES**, 38 B.C.L. Rev. 107 (1996)

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Education

Ph.D. 1999, Johns Hopkins University
Major: Experimental and Perceptual Psychology
M.S. 1995, Johns Hopkins University
Major: Experimental Psychology
B.S. 1993, University of Virginia
Major: Psychology, First Class Honors

Employment

8/02 – present Assistant Professor, Johns Hopkins University
Courses taught: Research Methods and Statistics, Sensation and Perception, Visual Neuroscience (co-instructor), Advanced Topics in Visual Perception (co-instructor)
7/99 – 6/02 Visiting Professor, University of Texas
Courses taught: Undergraduate Statistics, Human Cognition, Eye Movement Methodology (graduate seminar), Theories of Attention (graduate seminar)

Relevant Publications

Delcampo, M., Seeing and Seeing Again: The Effects of Unconscious Transference, 32 Journal of Experimental Psychology, 424-41 (2004).
Delcampo, M., The Anomalies of Human Perception (Harcourt Baker Pub., 2001).

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Honors and Awards

2002 American Psychology Association Best Book Award for *The Anomalies of Human Perception*

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Professional Memberships

American Psychological Association
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