

**Eighteenth Annual Thurgood A. Marshall Memorial Moot Court Competition
2015 Official Competition Problem**

On January 1, 2010, in the early morning hours Chaostown (fictional) police discovered a car parked alongside a dirt road just off of rural highway 101. The engine was running, and the lights were on, but there was, at first glance, no one inside the vehicle. Upon closer inspection, however, the police discovered two bodies slumped over in the driver and passenger seats of the vehicle. Police identified the two as Chaostown residents Billy Smith and Sally Jones. They had died of gunshot wounds. Forensic examiners determined that Billy had been shot five times with .30 caliber bullets from a rifle, and Sally had been shot three times, with two of the bullets having been “pass through” bullets from the shots to Billy, who had been seated in the driver’s seat. They also determined that the shooter had been standing close to the driver’s side door when the shots were fired. Later in the morning, the police station in Chaostown received an anonymous call that the shootings arose from a drug deal gone bad.

Chaostown Police Department’s lead investigator, Detective Vincent Binger, began interviewing residents near the area. Although no one in the rural area of the shootings heard or saw anything, a few of the residents told Detective Binger that there had been a large gathering of young people on New Year’s Eve down at “the dock,” a popular gathering place on the shore of Lake Swanee, approximately two miles from where the shootings took place. Detective Binger learned that Jessica Minder was one of the partygoers at the dock. Jessica was known to Chaostown police, as she had been arrested

for underage drinking and marijuana possession in the past. Approximately two weeks after the murders, Detective Binger interviewed Jessica, who told Binger that she had been at a large informal gathering at the dock on New Year's Eve and had arrived with several friends at approximately 10 p.m. She admitted that most of the partygoers were underage and were smoking marijuana and drinking alcohol. She reported that she also had smoked marijuana and drank several shots of cheap vodka, as well as several cans of beer. She identified Kenny Bearson, Sandy Bearson, and Robert Clark as among those she partied with at the dock. Although she knew the victims, Billy and Sally, she did not recall them being at the party. Jessica reported that she did not know anything about the murders and had gotten a ride home with Kenny just after midnight, although the details of the ride home were fuzzy.

Detective Binger then contacted Kenny Bearson, who was in his driveway at the time Detective Binger approached his house. Kenny admitted to being at the party and driving his sister Sandy, Jessica, and Robert home just after midnight. He knew nothing about the shootings, but was acquainted with the victims, as they attended the same high school. Detective Binger asked Kenny if he would mind if Detective Binger "looked around," and Kenny responded that he did not want anyone "nosing around" his house and "getting into his business."

Detective Binger then interviewed Sandy Bearson, who denied knowing anything about the shootings and stated that she passed out from drinking around midnight and was not sure how she got home. Robert Clark was also interviewed, and told Detective Binger

that he had gone to the party at the dock around 9 p.m. with his brothers, but that his brothers left shortly thereafter. He admitted to drinking alcohol and smoking marijuana, but felt that he had sobered up by the time he headed home around midnight. Robert reportedly got a ride home from Kenny, who was also a neighbor he played basketball with on occasions. Robert denied knowledge of the shootings.

Over the next few months, Detective Binger re-contacted all of the witnesses he had interviewed to try to obtain additional information. Robert Clark did not change his account of the night's events, but told Detective Binger that he ran into Kenny a few weeks after the homicides, and that Kenny told him not to talk about the night at the dock with anyone. Robert stated that Kenny warned him in a threatening tone, which made him suspect that Kenny might have "killed those kids."

Detective Binger also re-interviewed Jessica Minder. The community raised reward money for information leading to an arrest, and reward posters were hung up all over the town. Although she had moved away from Chaostown just a few weeks after the shootings, Jessica ran across one while she was visiting her grandmother approximately three months after the homicides. She immediately called the number on the poster and spoke to Detective Binger. She told him that she had lied before when she claimed to know nothing about the shootings. Jessica told Detective Binger that she had been seated in the back seat of Kenny's truck when they left the New Year's Eve party at the dock, and that she was very intoxicated and believed that she was going in and out of consciousness. At some point during the drive, Kenny suddenly stopped the truck.

Jessica felt like she was going to be sick, so she quickly jumped out and went to the rear of the truck to vomit. Robert got out of the truck at the same time, although she was not sure why. She thought she heard some popping noises while she was getting sick behind the truck.

When Jessica came back around to get back into the vehicle, she saw a car parked in front of Kenny's truck with its lights on and engine running. Jessica walked up to the car and saw the two occupants slumped over with a lot of blood on their faces. She heard Sandy Bearson screaming, "What did you do?" or "Why did you do that?" or something to that effect. Jessica said she then took off running down the dirt road and turned into a field toward her home. Because she did not want to wake her parents, she snuck into a back window and went to bed when she arrived home. Jessica told Detective Binger that several days after the shootings, Kenny had threatened her, telling her not to talk about what happened that night. She claimed that she moved away from Chaostown shortly after the shootings because she was afraid of Kenny.

After receiving this tip, Detective Binger decided to re-interview Kenny Bearson. He and three other officers went to Kenny's home to speak to him. As they approached the front stoop of the home, they observed that the front door was open, but that the screen door was closed. They immediately noticed the odor of burnt marijuana emanating from the residence. All of the officers had been trained to detect the odor of marijuana. Marijuana possession can be charged as both a felony and misdemeanor offense in the county in which Chaostown is located, although most cases are charged as misdemeanors.

Detective Binger and his fellow officers stood on the stoop in front of the door and called out to see if anyone was home. A young adult woman, Caroline Bearson, came to the door and identified herself as Kenny's youngest sister. She appeared groggy and told the officers that Kenny was not at home. Detective Binger asked if they could come into the house, and Caroline denied permission. She informed the officers that she was undergoing chemotherapy treatments for cancer at the hospital in town, and that her home is a three-hour drive from Kenny's house, so she stays with Kenny after the treatment for as long as it takes for her to recover. Detective Binger then asked Caroline if she was smoking marijuana. Caroline responded yes, but that she had a prescription for medicinal marijuana. Under Chaostown city ordinances, the possession of personal use marijuana is legal with a physician's prescription for medicinal marijuana. Detective Binger asked to see Caroline's prescription, but Caroline said that she did not have it with her. Detective Binger then informed Caroline that he would seek to obtain a search warrant, at which point Caroline gave the officers permission to come in, but told them that they should not go into Kenny's room or bathroom because she was not allowed in there.

Immediately upon entering the living room of the residence, Detective Binger observed a burnt marijuana cigarette on the coffee table. After finding the marijuana, Detective Binger walked into the kitchen and observed a pawn shop receipt in plain view on the kitchen table. The receipt indicated that Kenny had pawned several rifles, some capable of shooting .30 caliber bullets, three weeks after the shootings. Detective Binger

visited the pawn shop immediately after leaving Kenny's residence, but the rifles were no longer in pawn at the shop.

Approximately one month later, Detective Binger was able to locate and re-interview Robert Clark. Detective Binger told Robert what Jessica had admitted and advised Robert that he should "clear his conscience" and tell him the truth about what happened after the New Year's Eve party at the dock. Robert then proceeded to tell Detective Binger that he rode in the passenger seat of Kenny's truck after they left the party, and Jessica and Sandy were seated in the back. A few minutes into the drive, a car passed them going in the opposite direction. Robert claimed that Kenny immediately turned the truck around and started to follow the car. The car then pulled off onto a dirt road and stopped. Kenny parked his vehicle facing the driver's door of the car, turned off the lights and got out of the truck. At that point, Robert said he got out of the car to see what was going on. He saw Jessica step out of the back passenger door and get sick at the back of the truck. Robert walked towards her to make sure she was O.K. Because it was very dark outside, he could not make out anything more than a few feet away, but heard voices talking. He then heard the driver's side of the truck open and saw a black figure retrieve something from behind the seat and then walk back to the car. He could not tell what the object was, but heard four to five popping sounds, and then heard Sandy screaming. Robert jumped back into the car at the same time as Kenny, and Kenny drove off at a high rate of speed. He did not think Jessica got back in the truck. Robert said that Kenny then dropped him off at home, and that a few days later, Kenny warned him not to

talk to anyone about that night. Robert also said that he continues to see Kenny around the neighborhood, and that they sometimes play basketball together.

Kenny was charged in federal court¹ with two counts of first degree murder. Prior to trial, Kenny's attorney moved to suppress the pawn shop receipt as evidence at trial, arguing that the search and seizure violated his rights under the Fourth Amendment of the Constitution. The trial court denied the motion, and the case proceeded to trial. Both Jessica and Robert testified at trial, and the pawn shop ticket was introduced by the prosecutor as evidence that Kenny had access to a rifle similar to the one used in the homicides. The prosecution presented evidence that both victims died of gunshot wounds from a .30 caliber rifle from close range. No other evidence was presented by the prosecution, and Kenny did not testify or present any evidence. After a three-day trial, Kenny was convicted on both counts of first-degree murder. Kenny timely appealed to the U.S. Court of Appeals for the Thirteenth Circuit. On appeal, he argued that his Fourth Amendment rights were violated by virtue of the warrantless search of his home by Detective Binger and the Chaostown police officers.

Just a few days after Kenny filed his appeal, a deputy with the County Sheriff's Office told Detective Binger that another deputy in his department (Deputy Laura Finster, currently on suspension from the force for public intoxication) told him that Chaostown resident Leopold Lara, Jr. had confessed to the crime. Detective Binger interviewed Deputy Finster. Deputy Finster told him that several months ago (and after the Billy/Sally

¹This problem presumes federal court jurisdiction.

homicides), she was involved in a high-speed chase with Leopold Lara, Jr. She had observed Leopold speeding down the freeway through Chaostown, so she activated the siren in her squad car and tried to pull him over. Leopold engaged her in a several mile chase, until he finally pulled into the driveway of a residence. Leopold jumped out of the driver's side of the truck and took off on foot. Several other individuals got out of the truck and told Deputy Finster that Leopold was drunk and had tried to take a gun from its holster to shoot at Deputy Finster during the chase, but that they had taken the gun from him. Deputy Finster immediately gave chase on foot, eventually catching up with Leopold and placing him under arrest.

As Deputy Finster handcuffed Leopold, he started to cry. Deputy Finster could tell he was intoxicated. Leopold blurted out that he was sorry he killed those kids, that he did not mean to shoot the girl, and that he used a .30 caliber rifle. He asked how Kenny was doing. Deputy Finster told Leopold to be quiet and to stop talking. Leopold was her uncle. She did not handcuff him because she knew he had high blood pressure. Instead of taking him to jail, she took him home and gave him a citation for speeding. Deputy Finster told Leopold that she would have a detective talk to him, but she never did follow up. She also did not write a police report of the incident. When asked later by officers with the Chaostown police department why she did not report the incident, she said that she thought it was just "drunk talk" and did not take it seriously. Deputy Finster is also Jessica Minder's cousin, so Leopold is also Jessica's uncle. Deputy Finster also told Detective Binger that Leopold's father, Leopold Lara, Sr., sells marijuana in the

community, and Leopold works for him sometimes, and they often take guns in exchange for marijuana.

Detective Binger then interviewed Leopold Lara, Jr., who was in the hospital awaiting a liver transplant, but was coherent. Leopold denied saying any such thing to Deputy Finster, claimed that he was very intoxicated, and stated that he thinks police are just harassing him because of his father. He denied telling Deputy Finster that he “killed those kids,” but had said “why don’t you take me to jail for killing those kids,” or something like that, because he figured the police would try to pin something on him. A week later, Leopold’s health took an unexpected turn for the worse, and he died.

Kenny’s appellate attorney, upon learning of Leopold’s “confession” to Deputy Finster, filed a motion for a new trial under Rule 33(b)(1) of the Federal Rules of Criminal Procedure, based upon this newly acquired evidence. The parties stipulated that Leopold was unavailable pursuant to Fed. R. Evid. 804, and thus, the evidence of the confession could only be introduced through another party. The trial court denied the motion however, ruling that the confession was inadmissible hearsay, and that, even if the confession had been admitted at trial, it would not have affected the outcome of Kenny’s trial. Kenny filed an appeal of the trial court’s decision, and the two issues were consolidated on appeal. The Thirteenth Circuit affirmed Kenny’s conviction in a brief, unpublished opinion. In essence, the court held the following: the search of Kenny’s home was not unlawful, as his sister had authority to consent to the search of his residence; the pawn shop evidence in plain view entitled police to seize it; and the trial

court did not err in ruling the confession as inadmissible hearsay, since it lacked adequate indicia of trustworthiness and, even if admitted at trial, would not have affected the outcome.

Kenny Bearson filed a petition for *certiorari* with the United States Supreme Court, presenting the following two issues:

- (1) Was the search and seizure by Chaostown police that took place at Kenny Bearson's home authorized under the Fourth Amendment of the Constitution?
- (2) Did the trial court deny Kenny Bearson his constitutional right to present a complete defense in ruling that Leopold Lara, Jr.'s confession was inadmissible, and that the result of the proceedings would not have been different had it been admitted?

The Supreme Court granted Kenny Bearson's petition on both issues.