

**2019
MAINE
HIGH SCHOOL
MOCK TRIAL
CASE**

IN THE SUPERIOR COURT
OF NEW JUSTICE COUNTY
STATE OF MAINE

State of Maine

)

)

v.

)

)

Jordan Spencer

)

**Criminal Action
CR-2019-MT**

NOTE: The names of the characters, places, events, and circumstances in this mock trial case are intended to be fictitious.

****This year's case has been updated by Amanda J. Doherty, Esq. from the 2019 Maine High School Mock Trial case, originally written by Nancy Ziegler, Esq.*

Statement of the Case

Sometime during the night of August 8, 2019, the “Leeway,” a lobster fishingskiff registered in the name of Brook Bentley, sinks while docked at the wharf in the harbor at Spencer Island, Maine. The Island is located in Harmony Bay in midcoast Maine.

When the skiff is pulled to the surface and examined, a symmetrical hole is visible in the hull, raising the suspicion that someone has intentionally sabotaged the boat. The skiff, hauling system, and motor cannot be salvaged and the cost to replace them is in excess of \$7000.00. During his/her investigation of the incident, Marine Patrol Officer Chris Laberge determines that the hole has been drilled and is of an unusual gauge, 7/8th inch in diameter. Following up on a hunch, Officer Laberge searches the boat of commercial lobster fisherman Jordan Spencer and finds a battery- operated electric drill in the cabin. The officer then inspects Spencer’s traps stacked on the dock next to the boat. Finding nothing, Officer Laberge notices Spencer’s truck parked nearby and decides to take a closer look. In the bed of the truck under a tarp, the officer finds a 7/8th inch butterfly (or spade) bit that matches the gauge of the hole drilled in the Bentley skiff.

On August 17, 2019, Officer Laberge arrests Jordan Spencer for sinking Brook Bentley’s skiff on the night of August 8, 2019 and charges him with aggravated criminal mischief, a Class C felony under the Maine Criminal Code. Spencer is also charged with assault, a Class D misdemeanor, for hitting Brook Bentley in the nose during a confrontation between the two that occurs earlier that same day on the dock at Spencer Harbor. The fight is witnessed by Jordan Spencer’s sternman, Frankie MacKenzie, and Westover High School Vice Principal Jamie Truman.

The sinking of the Leeway is seen by some islanders as the culminating event in an escalating feud between Brook Bentley and Jordan Spencer. Bad blood between the two started the year before when both were students at Cranbrook High School in Westover on the mainland. Brook, then a sophomore, turned in Jordan for drinking at a party. Vice Principal Truman suspended Jordan from school for a week and refused to allow him to participate in two key playoff games of his baseball/softball team. The feud has been fueled by an ongoing “gear” war over territorial claims to lobster fishing grounds around Spencer Island. Six generations of the Spencer family have lived on the island and have engaged in lobster fishing. The Spencers have fiercely protected their territory in the most productive lobster grounds. Jordan grew up learning the ropes, first stuffing bait, then working as an apprentice on his father/mother Billie Spencer’s boat and finally earning his Class II lobster fishing license. Upon graduation from high school in 2018, Jordan assumed responsibility for his family’s boat and now makes a good living as a lobster fisherman.

After moving to Spencer Island in 2017, Brook Bentley also took up lobstering and

obtained a student license that allowed him to fish 150 traps. His father bought Brook a skiff, with the idea that lobster fishing would be a good hobby and might help with expenses for college. Brook nearly lost his license when Officer Laberge caught him in the act of molesting lobster traps owned by Jordan Spencer, but the officer let him off with a warning. In his defense, Brook claimed that he was forced to cut the buoy line to Jordan's traps after he accidentally ran over one of Jordan's buoys with his boat and his propeller became entangled in the line. Brook further asserted that, on a prior occasion, his traps had been pulled out of the water and dumped on shore by Jordan Spencer to teach him a lesson for mistakenly drifting into Spencer family territory.

The confrontation between Brook Bentley and Jordan Spencer mirrors a far more serious conflict that threatens to split the island community. Most native islanders want to preserve a traditional way of life on Spencer Island, while a few of them would willingly sell their waterfront homes to the highest bidders. Newcomers, captivated by the island's rugged beauty, hope to develop it as a tourist destination.

Spencer Island is located off the coast of Maine at the head of a chain of islands running north to south in Harmony Bay. The island curves in a crescent towards the mainland, three and one half miles due west. It is five miles in length and almost two miles at its widest point. The island's coves and ledges provide excellent habitat for lobsters and a seasoned lobster fisherman or "high liner" can earn in excess of \$100,000.00 in a good year. Spencer Harbor faces Westover on the mainland, a half an hour away by ferry. It is a small harbor, narrow at its mouth and one half mile deep.

From the mouth, the harbor fans out so that the wharf area is approximately 220 yards wide. The wharf is home to a fleet of full-time lobster fishermen tied up at "South Wharf" on the south side of the broad U-shaped wharf. Recreational sail and motorboats, along with the ferry to Westover, occupy the north side of the wharf. A few skiffs used for part-time lobster fishing also dock at "North Wharf." The wharf consists of two wooden floating docks, each approximately 200 feet in length and ten feet in width, extending out into the harbor and secured by float stands on each end that allow the docks to rise and fall with the tides. The docks are connected by gangways (ramps) to a stationary 325-foot upper section called "The Boardwalk" that runs along the shore.

Most members of the Island community live and work around Spencer Harbor. Homes dot the hillside rising steeply above the harbor. The Spencer Island Community School and the Old Meeting House are a short stroll beyond North Wharf. Since lobster fishing is the Island's primary occupation, all of the structures critical to a working waterfront line the wharf. The trap lot where the lobstermen store their traps is located midway along the Boardwalk. Next to the trap lot is Ruby's Grill anchoring the dock at South Wharf. The Grill has been a popular hangout for the fishermen since it was established in 1958 and is conveniently located next door to the Spencer Island

Lobstermen's Cooperative. Through their cooperative, local lobstermen have been able to pool their resources, establish their own distribution center and gain a measure of independence from the mainland. The Island boatyard is tucked away behind the Grill and the Co-op. The lobster pound sits on the water on the southern edge of the harbor.

The crisis over the Island's future culminates in a dispute between the Spencer Island Lobstermen's Cooperative and Jamie Truman. The Vice Principal is determined to build a four-story hotel and restaurant on the site of Ruby's Grill. Many islanders fear that the development will destroy the working waterfront and that escalating real estate prices will force some of the lobstermen and their families off the Island. Co-op members want to preserve the Island's unique resources and have organized to resist Truman's plans.

Witnesses: for the Prosecution:

1. Marine Patrol Officer Chris Laberge
2. Brook Bentley, high school senior at Westover High School
3. Jamie Truman, Vice Principal at Westover High

Witnesses for the Defense:

1. Jordan Spencer, Defendant and lobster fisherman
2. Francis MacKenzie, sternman on Jordan Spencer's boat
3. Billie Spencer, father/mother of defendant and President of Spencer Island Lobster Fishermen's Co-operative

All witnesses may be female or male.

Exhibits:

1. Repair slip for Jordan Spencer's truck dated August 10, 2019
2. Bentley family phone bill dated for July 15 - August 14, 2019
3. Map of Spencer Harbor
4. Officer Laberge's photo of Brook Bentley's face (to be supplied by teams; maximum size 4"x6")
5. 7/8th inch butterfly bit (to be supplied by teams; may use a mock-up)

Factual Stipulations:

1. ***Almanac for August 8, 2019:***
Sunrise: 5:37 a.m.; Sunset: 7:56 p.m.
Daylight 14 hours, 19 minutes
Moonrise: 5:41 p.m.; moonset: 1:17 a.m.
Full Moon: August 12, 2019
2. ***Marine Forecast for August 8, 2019:***
(From Eastport, Maine to the Merrimac River, Mass. out to 25 nautical miles)
Today: Winds south to southeast at 7-14 knots. Visibility 3-5 miles; lower in any downpour. Waves 2-4 feet.
Tonight: Winds mainly south at 6-12 knots. Visibility 1-3 miles, but lower in areas of fog. Waves 2-4 feet.
3. *High tides:* 8:17 a.m. and 8:34 p.m.; low tides: 2:04 a.m. and 2:12 p.m.
4. *Forecast for coast:* Morning fog; periods of rain, scattered afternoon showers or storms. Highs: 75 to 80 degrees (F.); lows: 63-67 degrees (F.)
5. All Island clocks and watches are synchronized.
6. The illustrated map, while not to scale, accurately depicts the layout of the wharf.
7. A check for \$7237.19 from Gambit and Daughters Insurance Co., payable to Brook

- Bentley in compensation for the total loss of his skiff, motor and hydraulic equipment.
8. As a result of a punch to the nose delivered by Jordan Spencer, Brook Bentley has sustained a broken nose, including swelling along the bridge and bruising under the eyes.
 9. Any person, regardless of gender, who engages in lobster fishing is called a lobster fisherman.
 10. Pre-Trial Suppression Hearing result:
A key piece of evidence for the prosecution of this case is the 7/8th inch butterfly bit that was seized by Officer Laberge from the bed of Jordan Spencer's truck. A Suppression Hearing was held, and the Court ruled that the butterfly bit is admissible as evidence in this case.

Procedural Stipulations:

1. All exhibits included in the problem are authentic and accurate in all respects and no objections to the authenticity of the exhibits will be entertained.
 - a. Both parties must still lay proper foundation prior to entering evidence, and both parties reserve the right to dispute any legal or factual conclusions based on these items and to make objections other than to authenticity.
2. The fact summary provides background information only. Witnesses may only testify to information contained in their witness statements
3. Any signatures on the Witness Statements and other documents are authentic. If asked, a witness must acknowledge signing the document(s). The statements are deemed to be given under oath or affirmation.
4. All witnesses reviewed their statements and reports immediately prior to trial and were given an opportunity to revise them. None did so. All witnesses affirm the truthfulness of everything stated in their statements. When preparing and reviewing their sworn statements, all witnesses were instructed to include everything that they know may be relevant to their testimony.
5. The chain of custody of the evidence may not be contested.
6. No Miranda issues exist.
7. Both parties also waive all objections and motions based on privilege.
8. No motions to dismiss the indictment are allowed.

STATE OF MAINE
NEW JUSTICE, ss.

SUPERIOR COURT
CRIMINAL ACTION
DOCKET NO. CR-2019-MT

STATE OF MAINE

v.

INDICTMENT

JORDAN SPENCER

THE GRAND JURY CHARGES:

COUNT 1:

**17-A M.R.S.A. §805
AGGRAVATED CRIMINAL MISCHIEF
CLASS C**

On or about August 8, 2019, in New Justice County, Maine, **JORDAN SPENCER** did intentionally, knowingly or recklessly damage or destroy the property of another, namely a boat belonging to Warren Bentley, having no reasonable ground to believe that he had a right to do so, said damage exceeding \$2,000 in value.

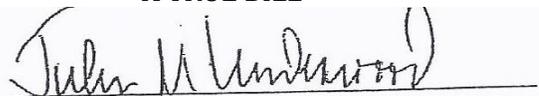
COUNT 2:

**17-A M.R.S.A. §207
ASSAULT
CLASS D**

On or about August 8, 2019, in New Justice County, Maine, JORDAN SPENCER did intentionally, knowingly or recklessly cause bodily injury or offensive physical contact to Brook Bentley.

DATED: September 6, 2019

A TRUE BILL

A handwritten signature in black ink, appearing to read "Julian M. Underwood", is written over a horizontal line.

FOREMAN

STATUTORY LAW

12 MRSA § 6021. Purpose.

The Department of Marine Resources is established to conserve and develop marine and estuarine resources; to conduct and sponsor scientific research; to promote and develop the Maine coastal fishing industries, to advise and cooperate with local, state and federal officials concerning activities in coastal waters; and to implement, administer and enforce the laws and regulations necessary for these enumerated purposes, as well as the exercise of all authority conferred by this Part.

12 MRSA § 6025. Marine Patrol Officers.

Powers and duties. Officers shall enforce all marine resources' laws and may arrest and prosecute all violators. They may serve all process pertaining to marine resources' laws. They shall have jurisdiction and authority in all areas where the laws for which they have responsibility apply. In addition to their specified powers and duties, the marine patrol officers are vested with the authority to enforce all laws of the State and may arrest for violations of any criminal laws ...

Search powers. Any marine patrol officer, in uniform, may search without a warrant and examine any watercraft, aircraft, conveyance, vehicle, box, bag, locker, trap, crate or other receptacle or container for any marine organism when he has probable cause to believe that any marine organism taken, possessed or transported contrary to law is concealed thereon therein.

12 MRSA § 6204. General penalty.

A violation of any provision of marine resources' laws or any regulation authorized thereunder or adopted by legislative directive shall be a Class D crime, unless another penalty has been expressly provided.

12 MRSA § 6306. Consent to inspection; violation.

1. Consent to inspection. Any person who signs an application for a license or receives a license under this Part has a duty to submit to inspection and search for violations related to the licensed activities by a marine patrol officer under the following conditions:

A. Watercraft or vehicles and the equipment located on watercraft or vehicles which are used primarily in a trade or business requiring a license under this Part may be searched or inspected at any time.

B. Any other location where activities subject to this Part are conducted may be inspected or searched during the hours when those activities occur.

C. A location specified in paragraph B may be inspected at any time if a marine patrol officer has a reasonable suspicion of a violation of this Part.

D. No residential dwelling may be searched without a search warrant unless otherwise allowed by law.

2. Seizure of evidence. Any person who signs an application for a license or receives a license under this Part has a duty to permit seizure of evidence of a violation of marine resources laws found during an inspection or search.

3. Refusal. Refusal to permit inspection or seizure shall be a basis for suspension of any or all licenses under this chapter.

12 MRSA § 6421. Lobster and crab fishing licenses.

1. License required. A person may not engage in the activities authorized under this section without a current Class I, Class II, Class III, apprentice, student or noncommercial lobster and crab fishing license or other license issued under this Part authorizing the activities.

2. Licensed activity. The holder of a Class I, Class II, Class III, apprentice, or student lobster and crab fishing license may fish for, take, possess, ship or transport within the State lobsters or crabs and sell lobsters or crabs the license holder has taken. The license does not authorize the license holder to remove lobster meat from the shell or to take, possess, transport or ship lobster parts or meat. The holder of a Class II or Class III license is liable for the licensed activities under this subsection of all unlicensed crew members assisting that licensee.

...

3-A. License limitation. A license authorizes activities by individuals as follows.

A. A Class II license authorizes the license holder to engage in the licensed activities under subsection 2. A Class II license holder may engage one unlicensed crew member to assist in the licensed activities under the direct supervision of the Class II license holder.

E. A student license authorizes the license holder to engage in the license activities under subsection 2. A person issued a student license may not submerge at any one time more than 150 lobster traps in the coastal waters of the State. An applicant for a student license shall designate a sponsor. ... For the purpose of this paragraph, "sponsor" means a person who holds a Class I, Class II or Class III lobster and crab fishing license issued under this section.

12 MRSA § 6434. Molesting lobster gear.

No person may raise, lift, transfer, possess or in any manner molest any lobster trap, warp, buoy or car except as provided in this section.

1. Permitted activities. Lobster traps, warps, buoys and cars may be raised, lifted, transferred, possessed or otherwise molested by the following:

A marine patrol officer;

B. The licensed owner;

C. Any person having written permission from the licensed owner;

...

3. Prohibition. Traps, warps, buoys or cars may not be used for fishing by any person other than the licensed owner unless with written permission from the licensed owner.

4. Additional penalty. If the holder of a lobster and crab fishing license violates this section by cutting a lobster trap line, the court shall:

A. Order that person to pay to the owner of the trap line that was cut an amount equal to twice the replacement value of all traps lost as a result of that cutting; and

B. Direct that person to provide proof of payment of that restitution to the Commissioner of Marine Resources

A penalty imposed under this subsection is in addition to any penalty imposed under section 6204.

17-A MRSA §34. Culpable state of mind as an element.

A person is not guilty of a crime unless that person acted intentionally, knowingly, recklessly or negligently, as the law defining the crime specifies, with respect to each other element of the crime...

17-A MRSA §35. Definitions of culpable states of mind.

1. "Intentionally."

A person acts intentionally with respect to a result of the person's conduct when it is the person's conscious object to cause such a result

A person acts intentionally with respect to attendant circumstances when the person is aware of the existence of such circumstances or believes that they exist.

2. "Knowingly."

A. A person acts knowingly with respect to a result of the person's conduct when the person is aware that it is practically certain that the person's conduct will cause such a result.

B. A person acts knowingly with respect to attendant circumstances when the person is aware that such circumstances exist.

3. "Recklessly."

A. A person acts recklessly with respect to a result of the person's conduct when the person consciously disregards a risk that the person's conduct will cause such a result.

B. A person acts recklessly with respect to attendant circumstances when the person consciously disregards a risk that such circumstances exist.

C. For purposes of this subsection, the disregard of the risk, when viewed in light of the nature and purpose of the person's conduct and the circumstances known to the person, must involve a gross deviation from the standard of conduct that a reasonable and prudent person would observe in the same situation.

17-A MRSA § 101. General rules for defenses and affirmative defenses.

1. The State is not required to negate any facts expressly designated as a "defense," or any exception, exclusion or authorization that is set out in the statute defining the crime by proof at trial, unless the existence of the defense, exception, exclusion or authorization is in issue as a result of evidence admitted at the trial that is sufficient to raise a reasonable doubt on the issue, in which case the State must disprove its existence beyond a reasonable doubt.

...

3. Conduct that is justifiable under this chapter constitutes a defense to any crime....

17-A MRSA § 108. Physical force in defense of person.

1. A person is justified in using a reasonable degree of nondeadly force upon another person in order to defend the person or a 3rd person from what the person reasonably believes to be the imminent use of unlawful, nondeadly force by such other person, and the person may use a degree of such force that the person reasonably believes to be necessary for such purpose. However, such force is not justifiable if:

A. With a purpose to cause physical harm to another person, the person provoked the use of unlawful, nondeadly force by such other person; or

B. The person was the initial aggressor, unless after such aggression the person withdraws from the encounter and effectively communicates to such other person the intent to do so, but the latter notwithstanding continues the use or threat of unlawful, nondeadly force;

...

17-A MRSA § 207. Assault.

A person is guilty of assault if the person intentionally, knowingly, or recklessly causes bodily injury or offensive physical contact to another.

Assault is a Class D crime.

17-A MRSA § 805. Aggravated criminal mischief.

1. A person is guilty of aggravated criminal mischief if that person intentionally, knowingly or recklessly:

Damages or destroys property of another in an amount exceeding \$2,000 in value, having no reasonable ground to believe that the person has a right to do so;

Damages or destroys property in an amount exceeding \$2,000 in value, to enable any person to collect insurance proceeds for the loss caused;

...

2. Aggravated criminal mischief is a Class C crime.

Title 38 § 341-A. Department of Environmental Protection.

1. Purpose. The department shall prevent, abate and control the pollution of the air, water and land and preserve, improve and prevent diminution of the natural environment of the State. The department shall protect and enhance the public's right to use and enjoy the State's natural resources and may educate the public on natural resource use, requirements and issues.

CASE LAW

“Even though fact finder might determine it objectively unreasonable for defendant to believe that unlawful force is imminently threatened, or to believe the degree of counterforce applied is necessary, self-defense is not negated. State, when prosecuting a defendant for a crime such as assault for which recklessness suffices, must further prove beyond a reasonable doubt that either belief is reckless, i.e., a gross deviation from what a reasonable and prudent person would believe.” *State v. Smith*, 472 A.2d 948 (1984).

“Once sufficient evidence is produced to generate self-defense issue, state has burden to negate existence of self-defense beyond a reasonable doubt.” *State v. Smith*, 472 A.2d 948 (1984).

“An individual may use a reasonable degree of force in self-defense, despite being the initial aggressor, if, after withdrawing from the encounter and effectively communicating such withdrawal to the other person, the other person continues to use or threaten imminent, unlawful force.” *State v. Smith*, 472 A.2d 948 (1984).

“In prosecution for assault, in which defendant claimed self-defense, photographs of alleged victim were admissible as tending to establish the unreasonableness of the force defendant used; the probative value of the photographs was not substantially outweighed by their prejudicial effect.” *State v. Smith*, 472 A.2d 948 (1984).

“Trial court erred in excluding evidence and declining to hear offer of proof related to history of dispute between lobstermen about fishing territories. Evidence of prior practices and threats by a group of fishermen, including the accuser, was relevant to the issue of the reasonableness of the defendant's actions and of his beliefs as to what might occur when the accuser came onto his wharf. This history of prior incidents was relevant to question of the defendant's knowledge of the accuser's reputation or propensity for violence.” *State v. McMahan*, 761 A.2d 50 (2000).

“For warrantless search to come within voluntariness exception to warrant requirement, consent must be given freely and voluntarily, and state must show by a preponderance of evidence that objective manifestation of consent was given by word or gesture.” *State of Maine v. Seamen's Club*, 691 A.2d 1248 (1997).

1
2 Witness Statement of Marine Patrol Officer Chris Laberge
3

4 My name is Chris Laberge. I live at 6 Hancock Road in Westover, Maine. I am a
5 Marine Patrol Officer with the Maine Department of Marine Resources. I'm stationed out of
6 Westover and my primary patrol is the waters around Harmony Bay. I have been a Marine
7 Patrol Officer for four years. I patrol at sea and conduct inspections at the docks as part of
8 my responsibility to enforce the Marine Resource laws under Title 12 of the Maine statutes.
9 I have authority to investigate a charge for violating the lobster fishing laws in this
10 jurisdiction. Over the years, I've dealt with a wide range of cases.
11 I've issued citations for possession of short lobsters and of v-notched lobsters, trap
12 molestation, fishing without a license or during closed periods, and violations of trap
13 standards.

14 At 0900 hours on August 9th, 2019, I received a call at the station from Brook
15 Bentley on Spencer Island. Bentley holds a student license to engage in lobster fishing in
16 Zone Q on Harmony Bay. Bentley complained that his fishing skiff had been swamped while
17 docked at the wharf in Spencer Harbor and asked for my help in hauling it out of the water.
18 When I got to the wharf, I found Brook Bentley on the ramp at North Wharf, tugging on a
19 line connected to a boat that was submerged in 12 feet of water. It was just past high tide.

20 Bentley seemed quite upset. He alleged that he was the victim of an unprovoked
21 attack the day before. He said that a local lobster fisherman, Jordan Spencer, threatened
22 him on the water, bumped his skiff and followed him all the way back to the wharf. Bentley
23 further alleged that Jordan Spencer punched him in the nose on the dock after he, Bentley,
24 had asked Spencer to leave him alone. The force of the blow had broken Brook Bentley's
25 nose. Bentley claimed that Jamie Truman, Vice Principal at Westover High School, had
26 witnessed the whole incident. I noted bruising under Bentley's eyes and that his nose
27 appeared swollen. I took a photograph of his face for the record.

28 I helped Bentley haul the boat out of the water and to the boatyard so that we could
29 examine it. It was a 18-foot flat-bottomed wooden work skiff called the "Leeway"
30 registered in the name of Brook Bentley, Registration Number ME 27958J. The skiff was
31 fitted with a hauler, davit and snatch block and a 50-hp outboard motor that had been jury-
32 rigged into a center console. Upon examination of the skiff, I noted that the left underside of
33 its hull was damaged and had been patched with epoxy. I took a closer look at the hull and
34 saw something that made me suspicious -- a symmetrical hole, a little less than 1" in
35 diameter, near the stern that went clear through to the bottom of the skiff. Drilling a hole is
36 a great way to slowly sink a boat. My suspicions were verified when I saw that the line to
37 the bilge pump had been cut. It would take no more than one half hour to sink a boat under
38 those circumstances, yet long enough for the perp to be gone by the time the boat was
39 swamped. I told Bentley that I thought that someone might have intentionally sabotaged
40 the boat. He became agitated and demanded, "You've got to arrest Jordan Spencer. He
41 threatened, then assaulted me. I know he's the one who drilled the hole in my skiff."

42 I told Brook Bentley to cool down, explained that I couldn't arrest Jordan without

43 probable cause, but assured him that I would do a thorough investigation. I had dealt with
44 Brook Bentley before. Last year, I cited him for possession of a v-notched lobster. He
45 promised then to respect the rules and, for the most part, had followed through on that
46 promise. Earlier this summer, I received a complaint from Frankie MacKenzie, sternman
47 on Jordan Spencer's lobster boat, that he saw Brook Bentley trying to cut one of their trap
48 lines. I explained to MacKenzie that I couldn't charge Bentley unless I witnessed the
49 tampering. It's almost impossible to sort out these kinds of disputes.
50 There's always confrontation over territory on the water. If possible, I like the lobstermen
51 to resolve their conflicts themselves.

52 I assured Frankie MacKenzie that I would keep an eye on Brook Bentley. Sure
53 enough, on patrol one day, I spotted him over in Spencer family territory. Brook seemed to
54 be having trouble with his motor so I went over to help him. As I got closer, I saw him cut a
55 red, yellow and white buoy off a trap line and toss it aside. I recognized the buoy as one of
56 the Spencers'. When I confronted Bentley, he explained that he had accidentally run over
57 the buoy trying to weave through the trawl lines, his propeller had snagged a line and he'd
58 had to cut the line to free his skiff. I let him off with a warning, but told him to be more
59 careful about where he let his boat wander. He's a newcomer and just a kid, so I thought I'd
60 go easy on him.

61 Later in the morning of August 9, 2019 while I was out on patrol, I got a call from
62 dispatch that a Mr./Ms. Jamie Truman wanted to speak to me regarding the Bentley
63 incident. I headed back across the Bay to Spencer Island to interview Mr.
64 Truman. I interviewed Mr. Truman at his home overlooking the harbor. He told me that
65 he'd witnessed the tail end of the fight that occurred between Jordan Spencer and Brook
66 Bentley on August 8. Truman stated that he found Bentley lying semi-conscious on his
67 back on the dock, while Jordan Spencer was standing over him with his fists clenched.
68 Truman further alleged that Spencer appeared to kick Bentley in his side while he lay
69 defenseless on the dock. Truman then told me that later that evening at approximately
70 20:10 hours, he saw Jordan Spencer on the dock over by the Bentley skiff. Truman claimed
71 he saw Spencer jump off the skiff, then conceal a bulky object under his jacket. Truman
72 said he knew it was Spencer because of the clothing he was wearing. He gave me a detailed
73 description -- an orange fleece hooded pullover, jeans and a Red Sox baseball cap. Truman
74 stated that there was no explanation for why Jordan Spencer would be snooping around
75 the Bentley skiff and that he was sure Spencer was up to no good.

76 After I took Truman's statement I decided to interview Jordan Spencer. Around
77 1600 hours that afternoon, I found Spencer and his sternman Frankie MacKenzie on their
78 boat baiting their traps for the next day. I liked Jordan and his dad, Billie Spencer. They'd
79 always been straightforward with me. As I approached his boat, Spencer looked up and
80 saw me. He turned towards MacKenzie and appeared to be saying something to him. I
81 noticed that Spencer was wearing a Red Sox baseball cap.

82 I felt almost apologetic asking Jordan Spencer if he knew anything about the
83 Bentley boat going under water. Spencer smiled a little nervously and said, "No, but I'm not
84 surprised. Bentley's been asking for it." He became serious when I told him that Brook

85 Bentley was accusing him of assault. Spencer admitted he'd hit Bentley but declared that it
86 was in self-defense. He then stated, "Brook was swinging a gaff at me and I had to stop him
87 somehow." Next I interviewed Frankie MacKenzie who verified that Brook Bentley was
88 carrying a gaff and that he was threatening to hit Jordan Spencer with it. Frankie stated, "It
89 looked like Brook was about to take a swing at Jordan, so Jordan took him down first."
90 Upon further questioning, MacKenzie reiterated that Brook Bentley never swung the gaff
91 at Jordan Spencer.

92 I thought I should take a closer look so I asked to board Spencer's boat. He said, "Sure.
93 Take a look around." I did a thorough search on the boat. First, I examined all of the gear on
94 deck. I noted the odds and ends scattered about, including rope, buoys, two fishing knives
95 and a worn down gaff. It's characteristic for fishermen to keep anything on their boats that
96 can be used as a tool. In the cabin, I found a cardboard box. Inside the box was an old Sears
97 Craftsman battery-operated drill. In the box with the drill was the standard array of bits in
98 various sizes. The drill and bits were rusted, but still serviceable. I went back out on deck
99 and told Spencer I wanted to inspect the traps he had set aside for repair on the dock. I
100 monitor the fishermen's activities as part of my duty to enforce the lobster fishing laws and
101 like to keep a close eye on the traps. As I inspected the traps on the dock, I noticed Jordan
102 Spencer's blue Chevy pick-up truck parked nearby. When I asked to take a closer look,
103 Spencer shrugged a little and said, "I can't stop you." I strolled over to check it out. There was
104 a canvas tarp draped loosely over the bed of the truck. When I lifted a corner of the tarp, I
105 discovered an odd- sized butterfly bit in plain view, nestled in with Spencer's gear. The bit
106 was shiny, but appeared to have been used recently since it had a residue of wood-dust and
107 gurry on its surface. I showed the bit to Jordan Spencer, told him that I was confiscating it
108 and that it would be returned to him at the end of the investigation. He looked surprised,
109 said he didn't own a bit of that description and wondered how it ended up in his possession.

110 I took the bit, placed it in an envelope, sealed the envelope, and wrote a description
111 of the contents and the date on the outside flap. I took the envelope with the bit back to the
112 boatyard, took the bit out and compared it to the hole that had been drilled in the Bentley
113 skiff. It was a perfect match. I placed the bit back in the envelope, resealed it and took it
114 back to the station for further analysis. I determined that the bit was of an unusual gauge, a
115 7/8th inch butterfly bit that is referred to as a "spade" bit. Although a spade bit can be
116 fitted to any standard drill, it is uncommon to see one, especially near a fishing boat.

117 I did a thorough investigation of the sinking of the Bentley skiff on the night of
118 August 8, 2019. I ascertained the whereabouts of all inhabitants on the island on that
119 night and determined that, with the exception of Jordan Spencer and Brook Bentley, each
120 person was accounted for between the hours of 7 and 9 PM. Based on a review of the
121 phone records of calls from the Bentley family landline, Brook Bentley was at home
122 during that entire time. Given his injuries, I am certain that he went straight to bed. I did
123 not find Jordan Spencer's alibi, that his car wouldn't start, to be credible.

124 Maybe his car needed a tune up, but the auto repair shop could find nothing wrong with
125 the charging system.

126 /s/ Chris Laberge /s/

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Witness Statement of Brook Bentley

My name is Brook Bentley and I live at 5 Channel Road on Spencer Island, Maine. I am a senior at Cranbrook High School in Westover on the mainland. I own an old 18-foot flat-bottomed, wooden skiff called the "Leeway" that I use for lobster fishing in the summer. I should say, my dad, Warren Bentley, bought the skiff for me when we moved to Spencer in 2017, but it is registered in my name. I modified the skiff for lobstering by building in a center console and installing a hydraulic system to haul my traps, including a hauler, davit and snatch block. I'm trying to earn money for college after I graduate from high school next year. I want to go to Rochester Tech. to study engineering.

I hold a student lobster license issued by the State and renewed annually. I do my best to follow the fishing regulations as carefully as possible. I have a sponsor, Mr./ Ms. Jamie Truman, who has taught me all I know about lobster fishing. My goal is to set 150 traps, the maximum trap limit under the terms of my license. In the two years that I have been lobster fishing, I have struggled to achieve that goal. Still, I have never given up.

August 8th of this year was a lousy day for fishing. Morning fog and drizzle affected the visibility on the water and I had trouble locating my buoys. The dense atmosphere made me claustrophobic. Thankfully, by mid-afternoon, there was a break in the weather. The skies cleared and the winds diminished to around 3 to 5 knots coming from the southeast. Even though I was wet and cold, I hauled 40 lbs. of lobster that day, a good catch for me. I knew the calm seas meant that fog would settle in soon, so I headed back to Spencer Harbor around 3:30 p.m.

I was happy for the smooth ride on the way back to port. Spencer Island had been socked in by fog since the first of August. The weather was seriously screwing up my fishing. Two days earlier, I had an unfortunate accident. I was trying to set my traps when somehow I got my leg tangled in the ground line and I was pulled overboard. Two local lobstermen saw me go overboard and quickly pulled me out of the water. I thanked them, but they weren't too pleased to have to cut short their day to give me a lift back to the harbor. They'd been so preoccupied hauling me out of the water that they didn't see my skiff slip away in the fog. They tracked it down where it had beached on the rocks at Tuck's Reef and towed it to the wharf. Unfortunately the bottom of the hull got scraped up pretty bad. I patched up the skiff as best I could and it seemed to be seaworthy.

Anyway, I was making good time home on August 8th until my run in off the Ledges with Jordan Spencer and Frankie MacKenzie. Honestly, I was just crossing over trying to get back to the harbor, but Jordan started yelling at me about invading his territory again. It wasn't true; I was just passing through. The locals measure their boundaries to within a few feet of one another and it's easy to drift into their territory.

Jordan brought his boat around to my starboard side, bumped my skiff hard, and shouted, "What's your problem? Get your friggin' rowboat out of my area! Someone oughta sink that rig!" I yelled back at them that I had a right to be there and to stay away from my skiff. Those jerks just wouldn't stop harassing me. Jordan and Frankie followed

43 me all the way up the west side of the Island and around the point to the harbor. For the
44 entire distance back to the wharf, they were swearing at me. I couldn't hear everything
45 they said over the drone of the engines, but the message was clear. They didn't want me
46 lobster fishing on the bay and were definitely going to do something about it.

47 I hauled my catch to the pound, then tied up my boat. All the while, I was trying to
48 put out of my mind how Jordan and Frankie had been ragging on me. They rammed my skiff
49 pretty hard, so I checked it for damage. Some of the paint had been scraped off, but the hull
50 seemed intact. I was about to head home when I saw Jordan and Frankie by their boat at
51 South Wharf and walked on over to give them a piece of my mind.

52 Jordan was up on the dock, while Frankie was still in the boat putting gear away. I
53 remember going up to Jordan and telling him to his face that I'd had enough, to knock it off
54 and to leave me alone. The next thing I know, a hand is at my throat, a fist is between my
55 eyes and I'm flat on my back on the dock. It took a minute or two to shake it off, but my
56 nose was busted up bad. Mr. Truman happened to be on the dock and he witnessed the
57 whole thing.

58 My folks were out of town for a few days, so Mr. Truman took me to Dr. Hart, the
59 island's physician. Dr. Hart diagnosed a broken nose, along with heavy bruising around my
60 eyes. He gave me medication for the swelling and told me to take it easy for a few days. After
61 the doctor patched me up, Mr. Truman took me home.

62 He dropped me off just before 7:00 p.m. It was about an hour before sunset so I
63 decided to head on down to my boat to check my gear. We live an easy walk from North
64 Wharf where my boat is docked, just a quarter mile away. After a quick look around, I
65 decided to go back home without working on my traps. My nose just hurt too much. Then
66 I realized that my gaff was missing. It took me a few moments to remember that I'd had it
67 in my hand when Jordan punched me. I swear I never raised the gaff at him. I just wanted
68 to give Jordan a piece of my mind. I looked over at Spencer's boat, saw he wasn't there and
69 walked over to search for the gaff. I found it lying on the dock next to his boat. After
70 picking up the gaff, I got out of there fast. No point getting into another confrontation with
71 that bully. As soon as I got home, I called my parents in Boston. We had a long
72 conversation about the tough day I'd had. A look at our phone bill shows that I did not get
73 off the phone until 7:53 p.m. I felt a little woozy from the pain and swelling in my nose,
74 and went straight to bed.

75 The next morning, I went back down to the dock to find my skiff under water. I
76 called Marine Patrol Officer Laberge for help in hauling the boat out of the water. Officer
77 Laberge was concerned when he saw my face and asked what happened. I told him that
78 Jordan Spencer and Frankie MacKenzie had threatened me out on the water and that I was
79 the victim of an unprovoked attack by Jordan Spencer on the dock. Officer Laberge took my
80 photograph, then helped me haul the skiff up and to the boatyard for a closer look. Officer
81 Laberge found a symmetrical hole in the hull, 7/8th inch in diameter, that he was sure
82 someone had drilled on purpose. We also discovered that the line to the bilge pump had
83 been cut. Later, my dad and I tried to flush out the motor so it wouldn't seize up, but it had
84 been underwater too long and couldn't be salvaged. The cost to replace the skiff, motor and

85 hydraulic equipment came to \$7,237.19. I have received an equal amount in compensation
86 from my insurance company for the loss.

87 Officer Laberge did a thorough investigation, but there's no doubt in my mind
88 that Jordan sabotaged my skiff. He's had it in for me for a long time.

89 It was a rerun of my sophomore year of high school when Jordan really got ticked
90 off at me. It wasn't my fault. Jordan and I had been at a party together when, frankly,
91 Jordan, Frankie and some of their gang got a bit drunk. The following Monday, Vice
92 Principal Truman pulled me out of Miss Rancourt's English class to grill me on the party. I
93 was just being up front when I told Mr. Truman that Jordan, Frankie and their friends had
94 been drinking. I didn't have a choice. Mr. Truman insisted I name someone or he wasn't
95 going to let me go back to class. I don't know what the big deal is. Jordan got suspended
96 from school and couldn't play in a couple baseball games, but he should have known
97 better than to violate the Zero Tolerance policy.

98 Well, that incident was just the beginning. Jordan really had it in for me. The real
99 problem was he didn't like outsiders like me lobstering on Harmony Bay. He went out of his
100 way to get me to stop fishing this past summer. He claimed I was fishing on his turf, accused
101 me of keeping oversized lobsters and spoiling lobster fishing for the real pros.
102 I don't see why he has sole claim to the choice areas just because he's a Spencer and was
103 born on the Island. I got my license to fish in this zone and I have as much right to be here
104 as he does. Still, he kept threatening to stop me. Once, he went so far as to pull my traps
105 out of the water and dump them on shore. It took me forever to get the lines untangled.

106 I admit that one time earlier this summer I set my traps in his territory. It was an
107 honest mistake. I didn't mean to encroach on his turf, especially the way he'd been treating
108 me. I'm new at this, but these locals won't cut me any slack. I don't know why they get so
109 upset. Anyway, I accidentally ran over one of his buoys and my propeller got caught in his
110 buoy line. There was so much gear in the area, it was darn impossible to avoid running
111 into something. I had to cut Jordan's line to get my propeller free.
112 Wouldn't you know it, Officer Laberge was patrolling that day and saw me do it. When I
113 explained what happened, he gave me a warning. Luckily, he didn't charge me with
114 molesting Jordan's traps. Last year, I got fined for keeping a V-notched lobster and didn't
115 want to lose my license all together.

116 What difference does it make? After Jordan messed up my skiff, it's not seaworthy
117 any more. Of course, we've got insurance on the boat, but that's not the point. Why would I
118 swamp my own boat? I was looking forward to lobster fishing this summer. Jordan and his
119 buddy Frankie drove me out. Now I'm working checkout at Hannaford's on the mainland.

120 _____
121 /s/ Brook Bentley /s/

1
2 Witness Statement of Jamie Truman
3

4 My name is Jamie Truman. I reside at 11 Cliff's Edge Road on Spencer Island, Maine.
5 I am the Vice Principal at Cranbrook High School on the mainland in Westover. I have been
6 Vice Principal at the school for 19 years. I pride myself on running a tight ship. I have had
7 a lot of success in keeping the students focused on their work. A few years ago, I
8 implemented a "Zero Tolerance" policy to curb alcohol use among the students. It is based
9 on the honor system and I rely on students to help police those who violate the policy.

10 On the afternoon of August 8, 2019, I had my sailboat, "Dawn Delight," out on
11 Harmony Bay. It was a blustery day for sailing. Around 3:00 p.m., the wind died down and
12 the fog drifted in. I brought the boat around, lowered the sail and started motoring back
13 towards Spencer Harbor. No point getting becalmed in heavy fog. The fishing boats were
14 all heading back to the harbor and I knew not to take any chances.

15 I had just pulled up to the dock and tied off when, in the distance at the mouth of
16 the harbor, I noticed Brook Bentley's skiff chugging in towards the dock. I knew it was him
17 because of the purple stripe along the side of his boat. He was being followed by a larger
18 fishing boat, I'd say a 35- footer. I couldn't identify the boat, but it seemed to be dogging
19 Brook's skiff, weaving from side to side in his wake. As the boats came closer to me, I could
20 hear yelling back and forth between the people on board, although I couldn't understand
21 what the fuss was all about.

22 I was stowing my gear when Brook brought his skiff in beside my sailboat. He barely
23 said hello, which was not like him. Instead, he went about his business securing his skiff. He
24 was obviously upset. I asked him what was wrong, but he just muttered, "I'll show that guy."
25 He seemed oblivious to his surroundings. I noticed that he had a gaff in his hand, although he
26 was in such a state that he might not have been aware that he was holding it. Next thing I
27 know, he was marching along the dock over to the south side of the wharf where the big
28 lobster boats are berthed. Several boats had already docked for the day and I could see the
29 fishermen working on their traps. I couldn't see what happened next, but I sure heard a lot of
30 hollering. I decided to go over to investigate.

31 As I got closer, I saw Brook lying flat on his back on the dock, still holding the gaff in
32 his right hand. Blood was gushing from his nose and he seemed dazed. Jordan Spencer was
33 standing over him looking pretty hot under the collar. Then I saw Jordan kick him a little.
34 Frankie MacKenzie was on their boat with a rope in his hands. I heard Frankie blurt out,
35 "Good shot. The punk deserved it." Jordan shrugged, turned away and went back to
36 working on his traps. I put a compress on Brook's nose and helped him up. He seemed
37 badly shaken so I offered to take him to Dr. Hart at First Care, the island medical clinic. Dr.
38 Hart determined that Brook had a broken nose and gave him pain medication. Since Brook
39 was still a bit out of it, I drove him home.

40 When I dropped Brook off at his house it was already 7 p.m. I realized I was late for
41 the meeting of the Spencer Island Lobstermen's Cooperative. I hurried over to the co-op
42 hall next to Ruby's Grill on the south side of the wharf. I bought the Grill two years ago

43 from the Conrad family and have big plans for it. My business partners and I want to
44 renovate and expand the Grill into a four-story hotel with a full service restaurant on the
45 first floor and an outdoor pavilion. We're going to call it The Seaside Manor. We hope to
46 attract the tourists who have discovered the Island in the last few years. I may even
47 conduct lobster fishing tours out of Spencer Harbor since I was once a lobster fisherman
48 myself and still have my Class I license.

49 As a matter of fact, I was delighted to sponsor Brook when he got his student
50 license. I've taught Brook everything I know, including where the best fishing grounds are
51 located. Brook's father, Warren Bentley, and I are good friends and former business
52 associates. Warren had been one of the partners in the hotel project, but recently he pulled
53 out of the deal. I heard he suffered reversals in the bear market and was shying away from
54 new ventures. I was sorry to lose him as a partner, although I totally understood. Both of us
55 already lost money trying to develop a salmon farm off Pt.
56 Hugo on the backside of the Island. Billie Spencer and his Co-op killed that project. They
57 claimed that there wasn't enough flushing action from the Island currents to sustain
58 aquaculture and that there'd be too much pollution from the operation of the farm. They
59 got Officer Laberge and the Department of Marine Resources to go along with that phony
60 science. The real reason is they want the waters around the Island all to themselves as an
61 exclusive lobster fishing conservation zone like out on Monhegan Island. Billie Spencer
62 went so far as to accuse me in open court of doctoring the tidal statistics on my application
63 for a permit, but I swear I tried to be as accurate as possible.

64 Now Billie's campaigning hard to stop my hotel project from going forward. I
65 showed up at the Co-op meeting so they'd know I wasn't intimidated. I've got my license
66 and I have as much right as the rest of them to be a member. There's no reasoning with the
67 Spencer gang. They talk a good line about preserving a working waterfront at Spencer
68 Harbor. The fact is they don't give a darn about preservation of the wharf or conservation
69 of the lobster fishery. They're in lobstering for the money and will do anything to keep
70 others out. Take Brook for example. He's a quick study and was really learning the ropes
71 on the water. It's a shame the Spencers and their cronies forced him out of lobstering.
72 Frankly, I think the lobster fishermen are shortsighted. The Island has been steadily losing
73 year-round residents. The hotel development will give folks jobs and bring much needed
74 revenue to the community. That extra cash will help support the school and the medical
75 clinic.

76 I got sick of listening to Billie Spencer spout off about interlopers, saw that it was
77 getting late and left the co-op meeting a little after 8 p.m. It was getting dark and the
78 foghorns were blaring, but my house is a short walk up the hill, 100 yards or so directly
79 above North Wharf. I was having some difficulty walking up the steep slope in the dark
80 and I stopped to catch my breath half way up the hill. I heard a sharp clatter, like the
81 sound of a bowling ball striking a pin, coming from the dock below me. I stopped to peer
82 down at the line of skiffs snug against the inside of the dock. Then I saw a figure jump off
83 one of the skiffs on the far end of the line. He stumbled a little as he landed and gripped
84 the mooring line with his hand. The person was facing me, but I could not quite make out

85 who it was in the mist. He bent over and with his free hand tried to pick up a bulky object
86 from the dock. Whatever it was, it must have been heavy because it slipped out of his hand
87 and fell back onto the dock. He then stooped down, picked up the object with his other
88 hand and shoved it inside his jacket as he walked towards me to the front of the dock
89 where I could get a better look at him. I'm almost certain it was Jordan Spencer. When he
90 got to the end of the dock, he looked around, turned his back to me and walked away
91 towards The Grill.

92 I thought it was odd for Jordan to be over by the Bentleys' skiff because his boat is
93 tied up on the south side of the wharf. Even though the weather was bad, I'm sure it was
94 Jordan. I recognized his cocky walk, the orange fleece hooded pullover he wore, and his
95 Boston Red Sox cap. He always has that cap on backwards. It used to drive me nuts when
96 he'd wear that cap in class. It was so disrespectful of the teachers. He just didn't seem to
97 care about school. I'd had to discipline him for violating the Zero Tolerance policy by
98 drinking alcohol at a party. He was really stewed about that because he missed some
99 baseball games, but I couldn't let him get away with it. After that he held a grudge against
100 me. Still, it was a fair punishment.

101 The next day I found out from the Bentleys that someone sabotaged Brook's skiff. I
102 immediately called Officer Chris Laberge to report what I'd seen the night before. I know
103 that wise guy Jordan Spencer swamped Brook's skiff. He'd already done enough harm
104 when he hit Brook. Jordan deserves a stiff sentence for his reprehensible actions.

105

106 /s/ Jamie Truman /s/

1
2 Witness Statement of Jordan Spencer
3

4 My name is Jordan Spencer and I live at 54 Winding Way on Spencer Island, Maine.
5 I've lived on the Island my entire life and grew up lobster fishing on Harmony Bay. I
6 graduated last year from Cranbrook High School in Westover. I own a 38-foot lobster
7 boat, the "Cook's Choice." I'm a good fisherman. Typically I fish 600 4 footers, six days a
8 week from June to December when the fishing's good. My dad/mom, Billie Spencer, and I
9 used to set 1000 traps, but we were among the first to voluntarily limit our number of
10 traps to help keep the Bay from being overfished. My dad also pioneered the use of
11 biodegradable escape hatches on traps to help conserve the fishery. It's a good life at
12 times. Except lately, with the price of lobster dropping, it can be tough to make a good
13 living. Off-season during the winter, I do carpentry to make ends meet and spend my free
14 time working out.

15 I inherited my fishing territory off the south side of the Island from my father
16 (mother), Billie Spencer, and he got it from his dad. Our family has been fishing the same
17 grounds for years. It's my birthright. I worked my way up in the business, starting with
18 stuffing pockets (bait bags) as a kid, then as stern man for my dad. Now I've got my Class II
19 license and I'm allowed a stern man, my best friend Frankie MacKenzie. I made a good
20 living until this happened. These newcomers to the Island have no respect for boundaries.

21 On August 8th, the shedders had just hit and we had 900 lbs. off the Ledges at the
22 southern end of the Island. The Big Crawl was on. The lobsters were coming out of their
23 hiding places looking for food. I was just turning the boat towards home when that idiot
24 Brook Bentley came pattering through my area looking for trouble. Frankie and I tried to
25 chase him off, but he didn't seem to understand what we were saying to him. I brought my
26 boat around in close on his skiff and hollered at him to respect the boundary. All he said
27 was, "Don't mess with my boat. It's taking on water." We followed him back to the harbor
28 to make sure he got home safely. The fog had set up pretty thick like it can at that time of
29 year and I knew that Brook didn't have a clue how to navigate. I don't much like him, but I
30 didn't want him to drown.

31 Frankie and I were at South Wharf finishing our work for the day. I was on the dock
32 next to the boat and Frankie was on the deck cleaning up. Then that ingrate Brook came
33 running over, yelling and screaming how he'd had enough of our raggin' on him. He just
34 looked crazed. I backed up a little when I saw that he was carrying a gaff in his hand. Brook
35 rushed at me screaming, "I've had it with you!" and shook the gaff at me. I put my hands up
36 to get him to back off, but he was out of control. To protect myself, I stepped forward and
37 decked him with a punch in the nose. What was I supposed to do? He's as big as I am. I had
38 to hit him to get him off of me. Believe me, he tried to hit me first. Since he was just lying
39 there on the dock barely moving, I might have poked him a little with my foot to rouse him.
40 Honest, though, I'd never kick a guy when he's down. When Brook didn't get up on his own,
41 I leaned over to offer him a hand. Wouldn't you know it, Truman shows up, gives me a
42 dirty look and hauls Brook off the dock. I knew Brook wasn't hurt bad, but Truman insisted

43 on taking him to the doctor. Why can't Brook take care of himself?

44 I never liked the kid since he ratted me out in high school for drinking at a party.
45 Brook was drinking too, but since he's Vice Principal Truman's pet, he got away with it. I
46 got suspended from school for a week and wasn't allowed to play on my baseball/softball
47 team in two important play-off games. I pitch lefty and we lost a game because I was out
48 of rotation. Brook really ticked me off. After that incident, I just tried to stay away from
49 him.

50 Unfortunately, Brook always seems to show up where he isn't welcome. He's been
51 bad news ever since he came to the Island. His folks have a lot of money and bought a
52 house on the water right next to the wharf at Spencer Harbor. That kid is spoiled rotten.
53 His dad bought him a new skiff so he could play at lobster fishing. He just never respected
54 the way we Islanders do things and thought he had the right to fish anywhere on the Bay,
55 no matter who's territory he was in. Since he didn't seem to care whose turf he invaded, I
56 tried to teach him a lesson earlier this summer by tying a half hitch in his buoy line. It
57 didn't seem to make any impression on him. A few days later, he got busted by Officer
58 Laberge for cutting one of my trawls. Brook claimed that he accidentally fouled his
59 propeller running over my buoy and had to cut the buoy line to free his boat. I know better.
60 Everyone uses propeller guards to prevent just that sort of problem. Also, the officer
61 should have known that we always put buoys on both ends of long trawls, so if one buoy
62 gets cut, we won't lose the entire string. Brook didn't even have the courtesy to tie off my
63 line with a jug and call me on the radio to let me know he'd cut it. I lost a string of traps and
64 a good catch because of him. Too bad Officer Laberge let the jerk off with a warning. Brook
65 should have been charged with molesting my traps.

66 Instead now I get framed by that loser. Somehow, mysteriously, his poor excuse for
67 a boat goes down and he accuses me of intentionally swamping it by drilling a hole in the
68 hull and cutting the bilge line. Officer Laberge is so dumb he believes that story. I'm the
69 one who gets arrested because I happen to own a drill. Doesn't everyone?

70 Officer Laberge claims he found a spade bit in my truck that matches the gauge of
71 the hole. He showed the bit to me after I let him inspect my boat and gear. Said he found it
72 under a tarp on the truck bed. I don't know what he's talking about. I don't own a fancy bit
73 like that. I wouldn't have let him search my truck, but I figured he had a right to. I thought
74 he was looking for short lobsters and if I didn't allow him to search my truck, I'd lose my
75 lobster license. I didn't think that clam cop would find a drill bit. Not that I had anything to
76 hide. If I wanted to sink Brook's flimsy rig, a match would do.

77 Two days before I heard that Brook fell overboard trying to set his traps. He was
78 probably in my territory again. He's lucky the Conrad brothers found him when they did.
79 The water's been cold this summer, not more than 58 degrees, due to coastal upwelling.
80 Hypothermia can happen fast. Too bad Brook's boat got lost in the fog and beached on the
81 rocks off Tuck's Reef. I heard Buddy Conrad joking that the skiff got banged up so bad,
82 Brook wouldn't be fishing again any time soon. Fool that he is, Brook was out on the Bay
83 two days later in a boat taking on water, getting in the way and messing things up for
84 everyone.

85 Even if I wanted to, I couldn't have swamped his pathetic boat. I was with Frankie
86 Mackenzie all day on Friday the 8th. Most of the day we were out on the water hauling our
87 catch. Late that afternoon, Frankie and I were cleaning up around the boat, getting ready for
88 the next day. I was working on a trap, minding my own business, when Brook got in my face.
89 Frankie and I left the dock right after because I was so shook up. We went directly to Ruby's
90 Grill for supper. We hung around the Grill with some of the guys until 7 p.m. when we went
91 to the Co-op meeting at the hall. The Co-op had serious business to attend to regarding
92 some stupid scheme Truman has cooked up to build a hotel over the Grill. I left the meeting
93 a little past 8:00 p.m. I was so tired, I just wanted to go home to bed. To cap off a lousy day,
94 my truck wouldn't start. I knew it needed a tune-up. I thought something was wrong with
95 the starter. I worked on my truck for ten or fifteen minutes, but it was dead. I went back into
96 the hall to look for Frankie. He gave me a lift home right after the meeting broke up at 8:30. I
97 live on the far side of the Island almost a mile from the harbor. It's not likely I would have
98 walked all the way back just to drill a hole in a boat.

99
100 /s/ Jordan Spencer /s/

1
2 Witness Statement of Francis MacKenzie
3

4 My name is Francis MacKenzie. Everyone calls me Frankie. I live at 65 Rock Ledge
5 Lane on Spencer Island, Maine. I was born on the Island and I hope to die there. Except for
6 high school over in Westover on the mainland, I've spent all of my life on the Island. I can't
7 imagine being anywhere else. I'm stern man for Jordan Spencer. He's been my best friend
8 for as long as I can remember. He runs a tight ship and we make a good living lobstering
9 around the Island. It's tough work. As captain, Jordan drives the boat and decides where to
10 set the trawls, being careful not to lay them over any other fisherman's lines. I take care of
11 those trawls, which can be anywhere from 8 to 20 traps long. Once Jordan gaffs a buoy, he
12 puts the buoy line into the hauler, hauls the traps up onto the rail, pulls the lobsters out,
13 throws the short ones back, then slides each trap down the deck to me. I quickly rebait the
14 trap and close the door. Then I've got to run each trap to the stern in a specific order so the
15 traps won't get tangled when the trawl gets set back. After that, I band the lobsters. We're
16 always standing. Our only break is to occasionally sit on the rail of the boat. Generally we
17 fish from 6 a.m. to 2
18 p.m. in the summer, but sometimes we're out on the Bay until 5 p.m. Towards winter we
19 fish fewer days per week. We haul 300 traps at a time to account for set-over nights. If we
20 put the traps in on a Monday we've got to go back for them on Wednesday or we'll lose our
21 catch.

22 On August 8, 2019, Jordan and I were out on the water hauling the last of our traps
23 for the day when we saw the Bentley skiff come into our fishing area. We'd had several
24 run-ins with Brook Bentley before. He knew we had the most productive grounds for
25 lobstering and kept trying to infringe on our territory. We tried every possible warning to
26 get that dub to stay away. We told him to back off, tied a half hitch in his line, set our lines
27 over his and threw spoiled bait onto his skiff. He never got the message, even when we
28 hauled his traps out of the water and dumped them on shore. In fact, he tried to retaliate
29 by cutting a buoy off one of our trawls. I caught him in the act and scared him off before he
30 did any damage. When I complained to Officer Laberge, I was told that the Marine Patrol
31 couldn't prosecute unless they witnessed the molestation. I couldn't believe it when I
32 heard later that the officer actually saw Bentley cut one of our lines, but still wouldn't
33 charge him.

34 It's clear we've got to protect our interests ourselves. When we saw Brook sneaking
35 onto our turf again on August 8, we took matters into our own hands. Jordan yelled at him
36 to back off and to take his rig elsewhere. Brook wasn't paying much attention to us because
37 he was too busy trying to control his skiff. Jordan shouted at him, "What's your problem.
38 Can't you handle your boat." Thinking Brook might need an assist, we came up alongside
39 his skiff. We may have bumped it a little, but we were just trying to look out for Brook's
40 welfare. He started swearing at us, gunned his motor and headed for the harbor. We
41 thought we'd better follow him back to the wharf because he didn't look in too good shape.
42 His boat was sitting low in the water. When we saw him safely dock, we peeled off towards

43 the lobster pound and got back to dealing with our catch.

44 I was on deck coiling rope while Jordan was fixing a trap on the dock. The next
45 thing I knew, Brook came marching over to us. I froze when I saw that he was carrying a
46 gaff in his hand. He rushed up to Jordan and started yelling at him. Swore he'd had it, that
47 Jordan would be sorry for what he'd done, and that he was going to get him. Brook was
48 about to take a swing at Jordan with the gaff when Jordan stepped forward and leveled
49 him with one punch between the eyes. Brook looked a little dazed lying there on his back,
50 but we could tell he wasn't really hurt. Jordan might have nudged him a little with his foot
51 to make sure he was ok. Then he offered Brook a hand up from the dock.

52 That's when Vice Principal Truman arrived on the scene. He told Jordan that he
53 was no good and a punk who needed to learn a lesson. Then the VP pulled Brook to his
54 feet and announced that he was taking him to the doctor. Give me a break. It was only one
55 punch. Truman has given us a hard time since high school when he suspended us for
56 drinking at a party. We knew Brook ratted on us. Jordan was scheduled to pitch in the
57 regional play-off game. His dad pleaded with the VP to let him play, but Truman is such a
58 control freak he wouldn't change his mind. The team lost that game because of Brook.

59 Jordan and I finished our work and headed on over to the Grill for a bite to eat. I
60 could tell that Jordan was pretty upset about what happened. I told him that he hadn't
61 done anything wrong and that it was a clear case of self-defense. Jordan seemed to settle
62 down, so we spent the next couple of hours hanging out with the gang. We were all waiting
63 for the emergency Spencer Island Lobstermen's Cooperative meeting scheduled for 7:00
64 p.m. that night. There was no point going home early. Our president, Mr. Spencer, had
65 called the meeting and we all wanted to be there.

66 Just before 7:00 p.m., we headed with the other guys over to the Co-op hall next
67 door. It was an important meeting for the Co-op because we'd heard that Truman and his
68 partners were scheduled to go before the Westover Planning Board for a permit to build a
69 hotel on the spot where Ruby's Grill sits. It would be a disaster for the Island and the Co-
70 op's trying to stop it. Our livelihoods are at stake.

71 All of us locals showed up for the meeting right on time. We had some regular
72 business to attend to before Mr. Spencer addressed us on the hotel fiasco. He had been
73 speaking for about ten minutes when Truman walked in like he owned the place. He
74 strolled up to the front of the room and sat down in the first row right in front of Mr.
75 Spencer. Truman is a pushy guy. He's been trying to get the co-op to back off from fighting
76 his hotel. I think he'd do anything to get his way.

77 A little after 8:00 p.m., Jordan leaned over, told me he'd heard enough and was
78 heading on home to bed. Said he was beat after a long day of fishing. I told him I was going
79 to stay for the end of the meeting. Mr. Spencer was really giving Truman a piece of his
80 mind. I wanted to hear what he had to say. About a minute after Jordan left, Truman piped
81 up, announced that he had the planning board on his side and that the Co-op couldn't stop
82 him. Then he turned around, glared at us, and marched out of the meeting. Truman had a
83 lot of nerve sounding off like that. I decided to follow him out to tell him to back off, but
84 stopped at the entrance to Ruby's where some of the guys had gone to smoke. It wasn't

85 worth messing with that pompous jerk. I watched him lumber slowly up the hill in the
86 twilight. For some reason he stopped up short directly above North Wharf. He hesitated
87 there for a long minute like he forgot his way home. Then he turned back uphill towards
88 his house. I watched him until he disappeared over the ridge and then I went back inside
89 to the meeting. Not more than ten, maybe fifteen, minutes passed when Jordan tapped me
90 on the shoulder and said he needed a ride home. He told me that he'd been trying to get his
91 truck to start, but it just wouldn't. He seemed a bit stressed out when he sat down next to
92 me, which was understandable given his bad luck that day. After the meeting got out
93 around 8:30 p.m., I took Jordan straight home to his place on the east side of the Island. I
94 helped him tow his truck to the shop the next day.

95 I can't believe Jordan's been arrested on trumped up charges. He's always tried to
96 stay out of trouble. Brook was the instigator of the fight. A gaff is a mean weapon.
97 Jordan had every right to defend himself. I don't understand why Officer Laberge showed
98 up the next day to question us about the incident. Except for the ten to fifteen minutes
99 when he was trying to start his car, Jordan was with me the entire evening of August 8th.
100 There's no way he'd have time to grab a drill on the boat, get over to Brook's skiff, drill the
101 hole, run back, drop the spade bit in the bed of his truck and get back to the meeting. If you
102 ask me, Officer Laberge should be investigating Brook Bentley for swamping his own boat. I
103 heard Brook bragging that he had insurance that would cover the entire damage, including
104 the motor, and that he planned to take the rest of the summer off.

105
106 /s/ Francis MacKenzie /s/

1
2 Witness Statement of Billie Spencer
3

4 My name is Billie Spencer and my address is 54 Winding Way, Spencer Island,
5 Maine. Spencers settled the Island in 1851 and have been fishing the waters around here
6 ever since. I know every good cove, channel and ledge where lobsters like to hide, even
7 those places that folks don't know about, like under the dock below Ruby's Grill. I'm the
8 President of the Spencer Island Lobstermen Cooperative. I pride myself on the work the
9 Co-op does preserving the industry and good fishing around the Island. Lobstering is our
10 livelihood. Some of our members were ground fishermen dragging for cod in the Gulf of
11 Maine, who were forced out by the Feds when the government restricted their time out on
12 the water. It was government overkill at its worst. We lost a few of our guys at sea trying to
13 fish in the worst winter conditions. We take care of our own and most of these "boys" now
14 make a good living catching lobsters when the price is right.

15 Don't get me wrong. It's in all of our best interests to conserve our resources here
16 on the Island. I work with the DMR (Department of Marine Resources) to protect the
17 lobsters in the Bay. We tried out all sorts of fancy new traps until we hit on ones with
18 biodegradable escape hatches. There's the added bonus that we don't have to waste time
19 fishing the shorts out of the traps like we used to. Time's money out on the water. Our Co-
20 op is participating in the University of Maine program to record the movement of lobsters
21 in the Bay and analyze how much gets caught and where. All the regulars know that you
22 only catch the big female lobsters during certain times of the year when they're migrating
23 through the Bay, but we're willing to go along with the scientific studies. Old timers like us
24 base our science on experience and don't try to second-guess Mother Nature. For example,
25 I'll be darned if I can understand what the heck the state is doing spraying for brown tail
26 moths. The spray's meant to break down the skeleton of the moth, but the shell's
27 (carapace) so close to the lobster's, spraying could do serious damage to the stock.

28 My boy (girl) Jordan grew up learning the trade from me. He apprenticed on my
29 boat and took over the operation when I retired. I was a high-liner when I stopped fishing.
30 That means I earned top dollar year in and year out and fished the best grounds handed
31 down to me by my father, who inherited from his father, and so on going back six
32 generations on the Island. There's too much interference these days from the government.
33 All the fool regulations get in the way of our livelihood. With expenses running so high I
34 fear there's no profit to be made. I tried to talk Jordan out of taking up the business,
35 wanted him to go to college, but he wouldn't hear of it. Secretly I'm real proud of him. Until
36 these trumped-up charges, Jordan never had any problems with the other guys on the
37 water. He worked hard, minded his own business. Jordan's a born fisherman and has
38 earned good money fishing our grounds.

39 Now the state's letting part-timers in on the action. Trap limits are killing us. It's all
40 about sharing the resource and nothing about our guys making a living. The state's got us
41 in a zone that splits our territory on the Bay right down the middle. The 49-51 clause
42 limits our time fishing on our traditional turf, but lets too many newcomers in. I fear

43 overfishing is going to deplete the stock we've worked so hard to maintain.

44 Outsiders, like Jamie Truman, are buying up all the property around the Island and
45 driving the locals out. That interloper Truman is trying to exploit the Island for his own
46 gain. Jamie Truman stands to make a tidy sum of money off the development of The Grill. It
47 would be a disaster for us. I'm doing everything in my power to stop him. He just got
48 permission from the Department of Environmental Protection to turn North Wharf into a
49 longer, fixed pier to off load all the tourists he says he's bringing to the Island. The Co-op's
50 only recourse is to appeal to the Board of Environmental Protection and maybe even to
51 court.

52 We've done that before, like the time we stopped Truman from getting a permit
53 from the State to farm salmon. He'd of put all those fish in pens like cows and fouled the
54 waters all around the Island. We prevailed by getting Truman to perjure himself in court.
55 We proved he fudged his figures on current velocity, stocking density and such. Truman is
56 lucky he got off with a warning. Believe me, the judge was none too happy with him.

57 Neither are we. The Island's not fit for all the tourists Truman wants to pawn off on
58 us. The wharf won't hold the extra foot traffic. We've got our boats to tend to, our lobster
59 pound, and our trap lot close by, and we're trying to deal with our catch and gear. We can't
60 handle a bunch of seasick people walking around in shorts taking pictures and getting
61 underfoot. Our guys won't even be able to escape on the water if Truman takes all the
62 gawkers out on his lobster boat.

63 Friday, August the 8th of this year was a bitter day. A foul mix of fog, drizzle and
64 rain fell on the Bay. I kept track of the conditions throughout the day by checking the buoy
65 data off shore. I was worried about the guys on the water. Visibility never got better than
66 1.6 nautical miles during the day. By evening, the visibility had dropped to less than a third
67 of a nautical mile. Thankfully, everyone was accounted for by supertime. I called a
68 meeting of the Lobstermen's Co-op for Friday evening on August 8 to organize our
69 members to stop the hotel development. I was heading up to the meeting just before 7:00
70 p.m., when I looked over to South Wharf and saw Brook Bentley coming up from the dock
71 near the Cook's Choice. He was wearing one of those orange hoodies that everyone wears.
72 He was carrying a gaff in his right hand. Judging by the shine on it, that hook was brand
73 new. Bentley's a problem. How he got his lobster fishing license from the State is beyond
74 me. That guy is number than a pounded thumb. Every other day he's getting into trouble
75 on the water. He doesn't abide by the rules and somehow conveniently drifts time and
76 again into Spencer territory, setting his traps every which way instead of north-south like
77 he's supposed to. I tried to give him a lesson on where to trawl, but more than once he lost
78 his traps setting them where the ledge drops-off along Ringer Shoal. He's lucky Conny and
79 Butch fished him out of the water that time he went and heaved himself overboard after
80 his leg got hooked on his warp.

81 I turned away from Bentley below me on the gangway. I had to open up the hall for
82 the members. I like to run an efficient meeting. While I'm conducting business from the
83 podium, I keep an eye on the clock on the wall at the far end of the room behind where the
84 members sit. Got to keep everyone's attention, so I don't waste time. I was reviewing our

85 options against the hotel complex when Truman showed up late, waltzed up to the front
86 and took the seat right under my nose. I ignored him and I could see him getting as red as
87 one of those overboiled lobsters at the Clam Shack over to Westover.

88 Jordan must have heard enough because he stood up, gave me a quick wave and
89 left the hall. I glanced at the clock as he passed beneath it. It was exactly 8:02 p.m. Just
90 then, I guess Truman couldn't take it anymore. He interrupted the meeting, swore that
91 he had every right to build his hotel and that once he got the Planning Board on his side,
92 the Co-op wouldn't be able to do a darn thing about it. Then he stormed out of the hall. I
93 might have gotten a little ruffled by Truman's loose mouth, but not so as I didn't keep a
94 close watch on the time. The clock read 8:02 when Jordan left the hall. Truman left one
95 or two minutes later. Frankie took off after him, but came back inside five minutes later.
96 At 8:20 on the dot, I turned to old business so we could get done on time. Shortly
97 thereafter, Jordan walked back in and sat down next to Frankie. I promptly adjourned
98 the meeting at 8:30 p.m. When the meeting broke up, Jordan told me he came back
99 because his car wouldn't start and that he was getting a ride home with Frankie. After
100 the two of them left, the Co-op secretary and I finished our business. Then I closed up
101 the hall at 8:40 PM and along with the secretary, headed over to the trap lot to get my
102 car to give him a ride home. We stopped to look out at the moon rising through a break
103 in the fog over North Wharf. The dock and boats were clearly visible in the moonlight. I
104 could see that Bentley's skiff was riding real low in the water. The mooring looked
105 secure so I figured I'd call the kid in the morning. Little did I know that the fool had
106 gone and scuttled his own boat! Now he's trying to frame Jordan. That Bentley kid is bad
107 news.

108
109 /s/ Billie Spencer /s/

GLOSSARY OF TERMS

NOTE: Some of these definitions come from the Maine marine resources statutes, 12 MRSA § 6001; other terms are colloquialisms and are more loosely defined.

aquaculture: the culture or husbandry of marine organisms by any person.

butterfly or “spade” bit: A spinning blade. In the center of the blade is a triangle. On each side is a sharp edge. The triangular section starts a pilot hole in the material being drilled. Then the blade hits the drilling surface and bores in.

car: a lobster car, crate, box or other contrivance, whether sunken or floating, that may be used in coastal waters to hold live lobsters.

coastal upwelling: “Persistent winds that blow up the coast from the south or southwest. The winds push away the warm surface layer of water, which is then carried eastward as the Earth spins, a process known as the Coriolis force.” (Portland Press Herald, August 8, 2003)

davit: a stainless steel pole bent at right angle so that it extends beyond the rail of the boat. The snatch block is on the section of the davit that extends beyond the rail.

dub, dubber: a novice fisherman

gaff: a fishing implement with a hook on the end used to retrieve line to a string of traps.

gurry: fish guts

hauler: part of the hydraulic pulley system along with the davit and snatch block.

line: rope used to tie traps to each other. Buoy line is the line running from the buoy to the lead trap. Ground line is the line linking the traps to one another.

lobster: crustacean of the genus *Homarus americanus*.

lobster trap: a lobster trap, pot or other stationary contrivance or device that may be set on the ocean bottom or used for taking lobsters or crabs. A wire, plastic or wood- slatted cage with a funnel-shaped opening to catch the lobsters. Includes an escape vent located next to the bottom edge or on top of the cage.

skiff: a flat-bottomed open boat with a pointed bow and a square stern. Usually has a tiller handle and an outboard motor. Can be modified by installing a center console panel to steer and to operate the motor.

shedders: lobsters that have moulted or shed their shells. During July and August, large numbers of lobsters shed their shells and then hide under rocks on the ocean floor. Once their shells have hardened sufficiently, the lobsters feel safe enough to crawl out from their hiding places to search for food. Called “The Big Crawl.”

short lobsters: Under the statutory minimum lobster size of 3 8/32”. Maximum size is 5”. Measurement

is taken with a double-gauge lobster measure starting from the rear of the eye socket along a line parallel to the centerline of the body shell to the rear end of the body shell. 12 MRSA § 6431(2). This measurement excludes the tail.

snatch block: a block that can be opened on one side to receive the looped end of a trap line. The snatch block is suspended from the davit and is part of the hauling system.

trawls: traps connected to one another by ground lines. Also called stringers.

v-notched lobster: a female lobster that is/has been egg-bearing. "It is unlawful to take, transport, sell or possess any lobster, which is bearing eggs, a female lobster marked with a v-notch in the right flipper next to the middle flipper or any female lobster which is mutilated in any manner which could hide or obliterate the mark. The right flipper shall be determined when the underside of the lobster is down and its tail is toward the person making the determination." 12 MRSA § 6436. Penalty for possession of a v-notched lobster is \$500.00 for violation, plus \$100.00 for each lobster.

warp: rope used to tie lobster traps to one another, as in "pot warp." Also referred to as line.

SEE SEPARATE EXHIBITS FILE.

IN THE SUPERIOR COURT
OF NEW JUSTICE COUNTY
STATE OF MAINE

State of Maine

)

v.

)

Jordan Spencer

)

**Criminal Action
CR-2019-MT**

THE CHARGE OF THE COURT

[For information *only* – not to be read in open court]

Members of the Jury:

You are considering the case of the State of Maine versus Jordan Spencer. The Defendant in this case has been indicted by the Grand Jury of this county for the offenses of Aggravated Criminal Mischief and Assault.

The indictment reads as follows: *(Cover allegations of indictment)*

This indictment was returned into Court on the 6th day of September, 2019.

To this indictment the Defendant has entered a plea of Not Guilty, and this makes the issue which you have been selected, sworn, and impaneled to try.

I caution you that the fact that this Defendant has been indicted by the grand jury is no evidence of her/his guilt. You should not consider the indictment as evidence or implication of guilt. Neither is the plea of Not Guilty to be considered evidence.

This Defendant is presumed to be innocent until proven guilty. The Defendant enters upon the trial in this case with a presumption of innocence in her/his favor. This presumption remains with the Defendant unless and until it is overcome by the State with evidence which is sufficient to convince you beyond a reasonable doubt that the Defendant is guilty of the offense charged

No person shall be convicted of any crime unless and until each element of the crime is proven beyond a reasonable doubt.

The burden of proof rests upon the state to prove every material allegation of the indictment and every essential element of the crime charged beyond a reasonable doubt.

There is no burden of proof upon the Defendant whatsoever, and the burden never shifts to the Defendant to prove innocence. When a defense, except insanity, is raised by the evidence, the burden is on the state to negate or disprove it beyond a reasonable doubt.

However, the state is not required to prove the guilt of the accused beyond all doubt or to a mathematical certainty. A reasonable doubt means just what it says – it is a doubt of a fair-minded, impartial juror,

honestly seeking the truth. It is a doubt based upon common sense and reason. It does not mean a vague or arbitrary doubt, but is a doubt for which a reason can be given arising from a consideration of the evidence, a lack of evidence, a conflict in the evidence, or any combination of these.

If after giving consideration to all the facts and circumstances of this case, your minds are wavering, unsettled or unsatisfied, then that is a doubt of the law, and you should acquit the Defendant; but if that doubt does not exist in your minds as to the guilt of the accused, then you would be authorized to convict the Defendant.

If the state fails to prove the Defendant's guilt beyond a reasonable doubt, it would be your duty to acquit the Defendant.

You must determine the credibility or believability of the witnesses. It is for you to determine what witness or witnesses you will believe and which witness or witnesses you will not believe, if there are some you do not believe.

In passing upon their credibility, you may consider all the facts and circumstances of the case, the witnesses manner of testifying, their intelligence, their interest or lack of interest, their means and opportunity for knowing the facts which they testify about, the nature of the facts which they testify about, the probability or improbability of their testimony, and of the occurrences about which they testify. You may also consider their personal credibility insofar as it may legitimately appear from the trial of this case.

When you consider the evidence in this case, if you find a conflict you should settle this conflict, if you can, without believing that any witness made a false statement. If you cannot do this, then you should believe that witness or those witnesses you think most entitled to be believed.

You must determine what testimony you will believe and what testimony you will not believe.

Members of the jury, it is my duty and responsibility to ascertain the law applicable to this case and to instruct you on that law, by which you are bound. It is your responsibility to ascertain the facts of the case from all the evidence presented. It then becomes your duty and responsibility to apply the law I give you in the charge to the facts as you find them to be.

Evidence is the means by which any fact which is put at issue is established or disproved. Evidence includes all the testimony of the witnesses and the exhibits admitted during the trial. It also includes any facts agreed to by counsel. It does not include the indictment or the opening statements and closing arguments by the attorneys.

Evidence may be either direct or circumstantial or both. Direct evidence is evidence which points immediately to the question at issue. Evidence may also be used to prove a fact by inference. This is referred to as circumstantial evidence. Circumstantial evidence is the proof of facts or circumstances, by direct evidence, from which you may infer other related or connected facts which are reasonable and justified in the light of your experience. To warrant a conviction on circumstantial evidence, the proven facts must not only be consistent with the theory of guilt but must exclude every other reasonable theory other than the guilt of the accused. The comparative weight of circumstantial evidence and direct evidence, on any given issue, is a question of fact for the jury to decide.

Testimony may have been given by certain witnesses who, in law, are termed experts. The law permits with expertise in certain areas to give their opinions derived from their knowledge of that area. The weight which is given to the testimony of expert witnesses is a question to be determined by the jury. The testimony of an expert, like that of any other witness, is to be received by you and given only such weight as you it is properly entitled to receive. You are not required to accept the opinion testimony of any witness, expert or otherwise.

You are not required to accept the opinion testimony of any witness, expert or otherwise.

To impeach a witness is to prove that he witness is unworthy of belief. A witness may be impeached by:

- a. Disproving the facts to which the witness testified;
- b. Proof of general bad character;
- c. Proof that the witness had been convicted of a crime involving moral turpitude;
- d. Proof that contradictory statements have previously been made by the witness regarding matters relevant to the witness' testimony and to the case.

If you find that a witness is impeached by b., c., or d., above proof of the general good character of the witness may be shown. The effect of the evidence is to be determined by the jury.

If any attempt has been made in this case to impeach any witness by proof of contradictory statements previously made, you must determine from the evidence:

- A. First, whether any such statements were made;
- B. Second, whether they were contradictory to any statements the witness made on the witness stand;
and
- C. Third, whether it was material to the witness' testimony and to the case.

If you find that a witness has been successfully impeached by proof of previous contradictory statements, you may disregard that testimony, unless it is corroborated by other creditable testimony, and the credit to be given to the balance of the testimony of the witness would be for you to determine.

It is for you to determine whether or not a witness has been impeached and to determine the credibility of such witness and the weight the witness's testimony shall receive in the consideration of the case.

Should you find that any witness, prior to the witness's testimony in this case from the witness stand has made any statement inconsistent with that witness' testimony from the stand in this case, and that such prior inconsistent statement is material to the case and witness' testimony, then you are authorized to consider that prior statement, not only for purposes of impeachment, but also as substantive evidence in the case.

This Defendant is charged with the offenses of Aggravated Criminal Mischief and Assault. *(Cover elements and definitions on the Statutory Law page of the materials)*

If, after considering the testimony and evidence presented to you, together with the charge of the Court, you find and believe, beyond a reasonable doubt, that the defendant did, on or about the date and time alleged, commit the offense alleged, you would be authorized to find the defendant guilty the offense, and, in that event, the form of your verdict would be: "We, the jury, find the defendant Guilty."

If you do not believe that the defendant is guilty of any offenses, or if you have any reasonable doubt as to the defendant's guilt, then it would be your duty to acquit the defendant, in which event the form of your verdict would be: "We, the jury, find the defendant Not Guilty."

You are only to be concerned about the guilt or innocence of the defendant. You are not to concern yourselves with punishment.

Whatever your verdict is, it must be unanimous, meaning agreed to by all jury members. The verdict must be signed by one of your members as foreperson, dated, and returned to be published in open Court.

One of your first duties in the jury room will be to select one of your members to act as foreperson, who will preside over your deliberations and who will sign the verdict to which all twelve of you freely and voluntarily agree.

You should start your deliberations with an open mind. Consult with one another and consider each other's views. Each of you must decide this case for yourself, but you should do so only after a discussion and consideration of the case with your fellow jurors. Do not hesitate to change an opinion if convinced that it is wrong. However, you should never surrender an honest opinion in order to be congenial or to reach a verdict solely because of the opinions of the other jurors.

No ruling nor comment which the Court has made during the progress of the trial is to be viewed as the Court's opinion upon the facts of this case, the credibility of the witnesses, the evidence, nor the guilt or innocence of the Defendant.

You may now retire to the jury room, but do not begin your deliberations until you receive the indictment and any evidence which was admitted during the course of this trial.

Bailiff, please escort the jury to their room for deliberations.