

PROBLEM 3
(Impeachment)

STATE v. CARROLL
(Paul O'Rourke)
(Amanda Jones)

For the basic facts of this case refer to Problem 6. The case is now at trial. The State called Special Agent O'Rourke as its first witness. A portion of the transcript of his testimony on direct examination follows:

Q. Directing your attention to 2:00 a.m. on November 14, 2002, what did you see?

A. I had just gotten out of my surveillance vehicle and walked up Front Street toward the phone booth. At that time I saw the Defendant, Ms. Carroll, coming from the North toward the phone booth on the opposite side of the street. As soon as I saw her, and before she saw me, I ducked back into the shadows off the sidewalk opposite the phone booth.

Q. How far from you was she?

A. Well, since I was directly across the street from her, I'd estimate a distance of approximately forty feet.

Q. How did she appear at that time?

A. I saw a 5'5" white female, approximately 125 lbs. She had short brown hair, almost like a man, was wearing glasses, and had several earrings in each ear. She was wearing a tan trench coat, belted at the waist, knee-high brown leather boots, and she was carrying a brown leather shoulder bag on her right shoulder.

Q. What did she do at that point?

A. She entered the phone booth and closed the door. When the door closed an interior light came on. The door to the phone booth was glass. I saw her look around and reach into her shoulder bag. She removed a small silver box and placed it in the slot for the phone book. She then left the phone booth, and headed South on Front Street. I got a real good look at her.

Q. Special Agent O'Rourke, let me show you what has been marked as Government's Exhibit I for identification. Do you recognize it?

A. Yes, that's the silver box with I saw Ms. Carroll place in the slot for the phone book in the phone booth on Front Street. It's the same box I later seized from Moore and it's the one that had the Pear chip in it.

Assume that you have in your possession the report prepared by Special Agent O'Rourke which follows this problem. It was received pursuant to a discovery request.

Amanda Jones has testified at trial consistent with her statement with the following exceptions:

Defense Counsel: What time did you drop off Ms. Carroll?

Ms. Jones: Sometime around midnight, maybe a little later.

Q. Did you hear from her again that night?

A. Yes, it was a little after 1:00 a.m. I had just gotten home from dropping off the sitter. Evelyn told me I had left my son's antibiotics at her apartment – he had an ear ache. I asked her to leave them in her mailbox and that I'd come and get them if my son needed them.

Q. Did you do so?

A. Yes, at about 1:30 a.m., my son started to cry and complained about his ears, so we got in the car and drove over to Evelyn's.

Q. Did you see Evelyn's car at that time?

A. Yes, it was parked outside her apartment.

Q. Do you know where Front Street is in Nita City?

A. Yes.

Q. How long would it take to drive from Ms. Carroll's apartment to Front Street?

A. At that time of night, about twenty minutes.

Part A

For the Defendant, conduct a cross examination of Special Agent O'Rourke limited to the matters raised in this problem.

For the State, conduct any necessary redirect examination.

Part B

For the State, conduct a cross examination of Amanda Jones limited to the matters raised in this problem.

For the Defendant, conduct any necessary redirect examination.

EXHIBIT 1—Problem 31

Front Street and Four Buildings

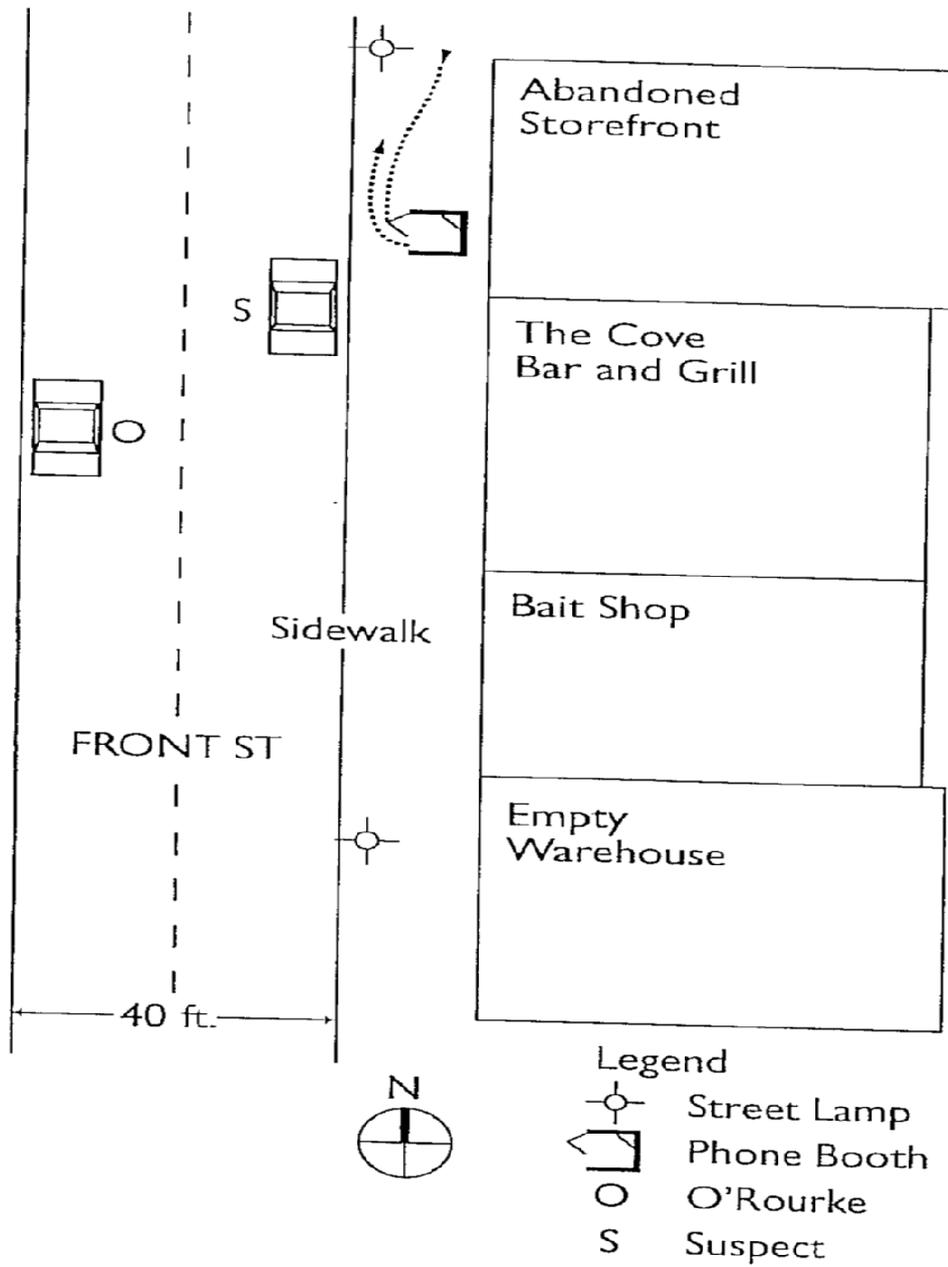


EXHIBIT 2—Problem 31

MEMORANDUM REPORT

November 10, 2002: Pursuant to court-approved interception of George Moore's home telephone (see transcript attached) learned that within the next three days a prototype of Pear Electronics' new "Platinum" chip would be passed from a Pear employee, identity unknown, to George Moore. Drop was to be made at a phone booth outside the Cove Bar & Grill at 1201 Front Street in Nita City.

November 11, 2002: Set up surveillance with Special Agent Richard Robinson outside Cove Bar. Robinson took 8:00 a.m. to 8:00 p.m. shift. I was on surveillance from 8:00 p.m. to 8:00 a.m. Position taken up in unmarked vehicle some sixty feet from drop. Inspected phone booth for anything unusual. Phone booth found clean. No unusual activity observed on this shift.

November 12, 2002: Surveillance continues. No unusual activity observed.

November 13, 2002: Surveillance continues. No unusual activity on Robinson's shift. At 8:00 p.m., I resume surveillance after checking phone booth, which is still clean. At 2:00 a.m. on 11/14 subject sighted. Subject approaches from north of phone booth, enters, looks around furtively, places small container in phone book compartment of booth, exits and proceeds north in direction of approach. Subject is female, 55", approximately 125 lbs., wearing tan trench coat.

Surveillance continues. At 2:10 a.m. Moore arrives in black, late model domestic sedan, parks in front of drop, enters booth. As Moore exits booth, lie is apprehended and searched. Recovered a small metal container containing microchip with Pear logo. The item seized was in the lining of raincoat.

November 14, 2002: Attempted to interview Moore, but he insisted on counsel and refused to sign waiver. Proceeded to Pear Electronics. Spoke with head of security, Stephen Ketainck. Informed he had a suspect. I was shown a photograph of subject. I made positive ID of woman who made drop. Located and arrested Carroll. After full explanation of her rights, she knowingly waived the same and submitted to an interview by this special agent. She denied taking anything from Pear and denied ever being in the phone booth on Front Street. Suspect claims she was home alone at time drop was made.



Paul O' Rourke, SA

Nov. 14, 2002

EXHIBIT 3—Problem 31

STATEMENT OF AMANDA JONES

My name is Amanda Jones. I am a thirty-five year old single mother of my son Jimmy. I work for Pear Electronics, and I have for four years. I was under investigation for stealing confidential information and then giving it to a man by the name of George Moore. I do not know George Moore. No formal charges were ever made against me, so I assume they realized I had nothing to do with stealing anything from Pear.

Evelyn Carol also works at Pear Electronics and she has worked there for three years. She came to the company directly out of school where she got her associates degree in computer technology. To the best of my knowledge, she did not have any previous employment in the field of technology. Pear Electronics has been her one and only job in this field.

Evelyn and I are both single mothers and have developed a friendship throughout the time that she has been working at Pear Electronics. Because of family and work obligations, neither of us has a lot of spare time. However, the free time that we do have we tend to spend together. We spend our workdays together, and when we can, we share a babysitter and go out socially. We talk both about work and about personal situations that arise in our everyday lives. We are each other's confidants. I know that recently Evelyn has been concerned about her finances because her son's father was behind on his support payments.

Pear Electronics is a very large company that employs over 300 employees. There are many female employees that work at Pear Electronics. I'm sure many of them had access to the chip that was stolen.

On the evening of November 13, 2002, Evelyn and I got a sitter and went out to a couple of clubs. Given Amanda's money situation, it was my treat, but as it turned out there were a couple of guys who bought us drinks so it really didn't cost much. I brought my son Jimmy to her home where the sitter was and left him there. We then went out to a club and danced some. Evelyn had several drinks as I was the designated driver. I know she said she was very tired when I dropped her off and picked up my son at 11:30 P.M. No, I didn't see or talk to her after that until the next morning. I then drove the sitter home and was at my apartment at about 12:15. I did see Evelyn the next morning at work. We chatted about our evening out. She did not appear unusual in any way, although she seemed a little groggy. I kidded her about having too much to drink.

I heard from Evelyn the night of November 14 and she told me she had been arrested for stealing a computer chip. She told me they said she dropped the chip on Front Street at about 2:00 a.m. on November 14, 2002. That's impossible; she was home with her son. I'm sure she never stole anything. She's not that kind of person. You have just informed me that she was previously arrested and convicted for a misdemeanor of passing a bad check in 1997, but that doesn't change my opinion of her. I have no reason to think that she would do anything dishonest now.

Amanda Jones read and signed the deposition making no corrections.