

NOTICE TO MOCK TRIAL PARTICIPANTS

The problem in this year's mock trial is a possession of a firearm case. These additional instructions are being provided to assist you in dealing with the roles which must be played. Please discuss the issues and the roles with your Teacher, your Mock Trial Team, and with your Team Advisor.

Law

1. Every person charged with a criminal offence in Canada is presumed innocent unless the Crown proves the case.
2. The Crown must prove a criminal case "beyond a reasonable doubt". This is a difficult concept. Put another way, in order for a Judge to convict she must be much closer to absolute certainty than to a balance of probabilities. This standard of proof is applied to the whole of the case rather than individual pieces of evidence. Your Team Advisors will assist you with this concept.
3. A Judge may accept all, none, or part of the testimony and evidence provided by a witness (including police officers).
4. In a possession of a firearm case the Crown must provide that the defendant possessed a loaded real firearm.
5. Possession has a particular legal definition in Canadian Law. The Crown must prove that the Defendant had physical possession, knowledge, and control over the firearm. This does not mean that the Crown has to prove that the firearm was actually on **Justin(e) PIEBER's** person (e.g. in a pocket). You can have possession over something without actually having it in your pocket or on your person. For example, you may leave your iPhone in your locker at school while attending a class but you still "possess" it given it is in your locker and has your Apps on it.
6. The Crown must prove that the firearm was a real (i.e. it was a real firearm that worked and not a fake gun).
7. The Crown must prove that the "firearm" was loaded with ammunition and that it could fire and cause bodily harm or death.

Circumstances at Trial

8. In criminal cases it is important that the Crown Prosecutor and Defence Counsel meet to discuss the case and decide what issues should be litigated at the trial. Sometimes this leads to agreements that certain issues are not contested or that evidence may be admitted without formal proof. In *R v. Justin(e) PIEBER* the Crown and Defence conducted a resolution meeting and agreed that the Firearms Certificate from Dr. Casey Finnegan is admissible. This means that it can be filed as evidence during the trial by either side. Once the Firearms Certificate is filed the evidence contained on the certificate has been established (i.e. it is a fact).

9. Given that the “firearm” can be proved by agreement ***please do not*** bring any props to the Mock Trial including **real firearms, fake firearms, pellet guns etc.** Your teachers will thank you for this!
10. Joe Anthonie is not available at trial. He is climbing Mount Kilimanjaro in Tanzania.
11. **Justin(e) PIEBER** does not possess a valid license to possess firearms. No one in the car that night has a valid license to possess firearms.
12. The Crown will call **Police Constable Jayson Bourne.**
13. The Defence will call **Marc(ia) ANTHONIE** and **Justin(e) PIEBER.**
14. Participants are to assume that the *Canadian Charter of Rights and Freedoms* has been complied with.
15. In keeping with past mock trials, which were trials in the Superior Court and in which the students presenting the cases were gowned, this matter will be tried by a Superior Court judge sitting alone (no jury).

YOURTOWN

SUPERIOR COURT OF JUSTICE (YOURTOWN)

THE QUEEN) REGIONAL MUNICIPALITY OF YOURTOWN

VS) Friday, the 14th day of

Justin(e) PIEBER) October, 2011

Justin(e) PIEBER stands charged:

1. That on or about the 3rd Day of September, 2010, at the City of YOURTOWN, in the Central Region, did unlawfully possess a loaded firearm, contrary to Section 95 of the Criminal Code of Canada.

RELEVANT LAW

Section 95 of the Criminal Code of Canada

Possession of prohibited or restricted firearm with ammunition

95. (1) Subject to subsection (3), every person commits an offence who, in any place, possesses a loaded prohibited firearm or restricted firearm, or an unloaded prohibited firearm or restricted firearm together with readily accessible ammunition that is capable of being discharged in the firearm, unless the person is the holder of

(a) an authorization or a license under which the person may possess the firearm in that place; and

(b) the registration certificate for the firearm.

Punishment

(2) Every person who commits an offence under subsection (1)

(a) is guilty of an indictable offence and liable to imprisonment for a term not exceeding 10 years and to a minimum punishment of imprisonment for a term of

(i) in the case of a first offence, three years, and

(ii) in the case of a second or subsequent offence, five years; or

(b) is guilty of an offence punishable on summary conviction and liable to imprisonment for a term not exceeding one year.

NAME: Police Constable Jaiyson / Jaimie Bourne

Description of the Witness – Crown Witness

Police Officer who stopped the car driven by **Marc(ia) ANTHONIE** .

DATE OF STATEMENT: Saturday September 3rd, 2010 8:06 AM

Statement of Witness

I am Police Constable **Jaiyson / Jaimie Bourne**.

I have been employed as a police officer by YOURTOWN Police Service for the past 8 years. I work in the Traffic Unit. My duties involve enforcing driving rules and regulations on the road. On Friday September 2nd, 2010 I was working as a general patrol officer. I was working from 7:00 PM to 5:00 AM – the “midnight shift”. I work the midnight shift once a month for 8 days straight. This was my last shift on midnights before I had a few days off. I was wearing full police uniform. I was driving a fully marked police cruiser. My partner was sick that night so I was working alone.

In the early hours of Saturday September 3rd, 2010 I was driving down Olde Street in YOURTOWN. Olde Street is a busy street running in a north to south direction through the downtown core of YOURTOWN. There are lots of shops and businesses on this street and lots of traffic. At approximately 2:07 AM I was driving northbound on Olde Street at Dundas Street. There is a major shopping centre along Olde Street at this location and there was lots of traffic.

I received a call from the police dispatcher that a threat involving a weapon had just occurred at the shopping centre at Olde Street and Dundas. The dispatcher told me that a witness had seen the suspect with blond hair getting into the passenger side of a two-door blue Honda motor vehicle and fleeing northbound on Olde Street. Further, I was advised that the suspect was armed with some sort of weapon.

There was a two-door blue Honda Prelude in front of me. I could see that the front seat passenger was blond and drinking out of a beer bottle. It is a violation of the YOURTOWN Highway Traffic Act to have open alcohol in a motor vehicle. I could clearly see that there were four occupants in the car. The front seat passenger was pointing at me and saying something to the occupants of the car. I also noticed the front seat passenger was leaning forward, reaching under her seat, and moving around a lot.

I put on my flashing lights. When I put on my flashing lights the driver did not pull over right away. The driver had black hair and a baseball cap. I could see the driver looking at me through the review mirror. I put on my siren. The car took another city block to come to a complete stop at the corner of Olde Street and Bloor Avenue.

I went up to the driver side of the vehicle to check IDs. The driver was identified as **Marc(ia) ANTHONIE**. The front seat passenger was nervous and looking out the window away from me. The front seat passenger claimed not to have any identification but provided verbal identification as a **Justin(e) PIEBER**. There was one passenger in the back seat behind the driver of the car who appeared intoxicated and sleep.

I searched the driver and front seat passenger IDs on my police computer. The driver came out clean. The car was registered to his brother Joe Anthonie. Joe Anthonie has a long criminal record involving drug trafficking, possession of drugs, and impaired driving. The front seat passenger **Justin(e) PIEBER** had 4 criminal convictions for theft and possession of stolen property.

I radioed for another police car to come and assist me because I was alone and there were three occupants in the car. When the other unit arrived I went up to the driver's-side door and asked "Who has the alcohol"? There was no response. I told **Justin(e) PIEBER** I saw her drinking alcohol and she looked out the window and ignored me. No one responded. I asked everyone to get out of the car and Justin(e) PIEBER bolted and tried to run up Olde Street. My back-up officer Constable Backup caught her about 10 metres away from the car.

I searched under the front seat passenger seat and located a clear-coloured bottle of Boor's Light Beer. There was still a little bit left in the bottle – maybe a centimetre of liquid in the bottom. As I pulled the bottle out it clinked against something metallic. I shone my flashlight under the seat and found a black handgun. I yelled out "Gun!" and Constable Backup and I arrested all three occupants, handcuffed them, and put them in the back of his cruiser. I pulled the gun out. It was a black semi automatic handgun. It was real. It was similar to the gun that I carry. I checked the gun to see if it was loaded and there was one bullet inside ready to fire. I unloaded the gun and put it and the bullet in the trunk of my police vehicle for safekeeping.

I charged the front seat passenger given her actions that night as it was obvious she hid the gun and the beer under her seat before I pulled the car over. Constable Backup released **Marc(ia) ANTHONIE** and the back seat passenger. They were not charged with anything.

I transported **Justin(e) PIEBER** to the police station and put her into an interview room.

She was given her Rights to Counsel and cautioned about any statement she might make pursuant to the Canadian Charter of Rights and Freedoms. **Justin(e) PIEBER** did not give any statement to me.

The gun and ammunition was sent to the YOURTOWN Forensic Sciences Department to be examined. I checked and **Justin(e) PIEBER** does not have a license to possess firearms.

NAME: Perry Hiliston

Description of the Witness – Crown Witness

Eyewitness from the Party.

DATE OF STATEMENT: Saturday September 3rd, 2010 7:02 AM

Statement of Witness

My name is Perry Hiliston. On Saturday I was at a club party located at the La Mocamba. It's inside a big shopping centre at Olde Street and Dundas.

At around 1: 30 AM I saw **Justin(e) PIEBER** at the club drunk as usual. We used to be friends but I am tired of all the drunken stupid behaviour. **Justin(e) PIEBER** has a drinking problem.

Anyway I was with my friends just having a good time when I heard a commotion on the dance floor. Surprise, Surprise, **Justin(e) PIEBER** was in a fight!

There was a lot of pushing and shoving but no one got really hurt. **Justin(e) PIEBER** basically got beaten by the other side in this fight. I don't know anyone on the other side. It was 3 or 4 of **Justin(e) PIEBER's** friends against 4 or 5 on the other side. The confrontation ended when someone shoved **Justin(e) PIEBER** really hard and **Justin(e) PIEBER** fell down on the floor. I guess it's hard to keep your balance when you are so drunk.

Anyway when she got up I heard **Justin(e) PIEBER** say to the other group -- "You better run! I got something to even up the fight!" There was a lot of name calling. I noticed that **Justin(e) PIEBER's** hand was reaching into a jeans pocket as if to go for something. I figured **Justin(e) PIEBER** had a weapon so I called the police.

Then the two groups took off out of the club.

I saw **Justin(e) PIEBER** getting into Joe Anthonie's car. It's a blue Honda. Oh yeah I forgot to say that **Marc(ia) ANTHONIE** was there too.

NAME: Justin(e) PIEBER

DATE OF INTERVIEW: Saturday November 19, 2010 10:15 AM

Description of the Witness – Defence Witness (The Defendant)

Justin(e) PIEBER has been charged in this case and occupied the front passenger seat in the car. No statement was provided to the police. **Justin(e) PIEBER** has been interviewed by defence counsel in preparation for trial. Here is the interview.

Interview of Client

My name is **Justin(e) PIEBER**. I am 19 years old and in grade 12 at YOURTOWN Public School.

On Saturday September 3, 2010 I was arrested by the police and charged with possession of a gun.

I don't know anything about that gun. It is not mine. I have no need to have a gun. I don't know how it got under my seat.

I have been in trouble before; mostly because the police are always bugging me. I pled guilty those times cause I was guilty. This time I am not.

On Saturday September 3, 2010 me, Markie, and Freddie, and Jenn Lopes were coming back from a party at a club at Olde Street and Dundas. Some people had been drinking. I had one or two drinks at the club but I was not drunk. My friend Jenn drank too much. We all decided to leave because some sort of fight happened on the dance floor. Lots of pushing and shoving! Markie does not drink. Markie was the driver. Markie has a brother named Joe. I think Markie does not drink because of the impact of drugs and alcohol on Joe.

Markie and I have sort have been seeing each other for 6 months.

Jenn and Freddie were in the backseat and they just got together.

I gotta admit that I was drinking beer in the car and I know better. I threw the bottle under my seat when the cop started following us.

The cop pulled us over for no reason. I wasn't hurting nobody. I wasn't even driving! I shouldn't get 3 years in jail for that gun. I shouldn't go to jail for something I didn't do.

NAME: Marc(ia) ANTHONIE

DATE OF STATEMENT: Saturday September 10, 2010 4:18 AM

Description of the Witness – Defence Witness

Driver of the car.

Statement of Witness

My name is **Marc(ia) ANTHONIE** I am 19 years old. On September 3, 2010 I was driving a group of friends home from a party at a club downtown. I was driving my brother Joe's car. It's a two-door, blue Honda Prelude with dark tint on all the windows but the front and low –profile tires. It's really fast. Joe didn't exactly give me permission to drive the car. I decided to borrow it cause I knew we were going out to a party that night. I did not get technical permission but I know Joe would not be upset find out I was driving it. I was driving north on Olde Street near College Street when I noticed a police officer following us. I was the designated driver. I didn't drink that night. I was driving everyone home because they got drunk.

Jenn Lopes and Freddie Mercury were in the back seat. They were really drunk. **Justin(e) PIEBER** was in the front passenger seat and had a lot to drink. I had the music going and I was probably driving a little fast. I didn't notice the police car at first because the car had such a dark tint.

Eventually the police officer put on red lights and pulled us over at Olde Street and St. Klair. The police officer walked up to the car, told us not to move, and rudely demanded my license. The police officer went and looked at a computer in the car and then came back and told us all to get out. Then other police officers showed up and started talking to us. All of a sudden one police officer who was near the car shouted out "Gun!" I looked around and the only people with guns were police officers.

The police officers near us searched us quickly and put me, Justin(e), Freddie, and Jenn into two police cruisers. Next thing I know the officer who called out "Gun!" came back to the cruiser I was in and told me that **Justin(e)** had hidden a gun under her seat.

I don't know anything about that gun. I didn't put it there. I didn't see anyone putting it there. I didn't even see the police find the gun. And now the police have taken my brother's car! There was no real reason to stop me driving. The police are just harassing me. The police have impounded my brother's car. My brother is going to be mad at me for sure.

YOURTOWN Forensic Sciences Certificate

I, Dr. Casey Finnegan, declare that I received the following from the YOURTOWN Police on September 5th, 2010 in relation to R v. **Justin(e) PIEBER** :

- Glock Semi-automatic firearm serial # 135692
- 3 bullets

I examined the above-noted firearm and ammunition for fingerprints with negative results.

The above-noted firearm was reported stolen August 2, 2005 by the legal owner.

I tested the above-noted firearm and:

1. it is capable of firing bullets;
2. the 3 bullets received from the police are capable of being discharged in the firearm;
3. any bullet discharged from this firearm would cause bodily harm or death if a person was hit by a bullet.

I have no other knowledge about the case *R v. Justin(e) PIEBER*.

I did not attend the scene.

I am willing to testify in Court.

Casey Finnegan

Dr. Casey Finnegan