



# THE 2008- 2009 CNMI HIGH SCHOOL MOCK TRIAL COMPETITION

Case Materials Adapted  
By the CNMI Bar  
Association

Thank you to the Tennessee Bar  
Association for use of the problem





The CNMI Bar Association and the Mock Trial Committee is proud to welcome you to the 11<sup>th</sup> season of the CNMI High School Mock Trial program.

This year's case is a criminal case brought by the state against Kelley Abogado for murder. In the course of preparing for the competition, if questions arise or there is confusion regarding the problem or rules, please send an email to the CNMI Bar Association at [www.cnmibar.net](http://www.cnmibar.net). We will do our best to clarify. Any clarifications will be posted on the CNMI Bar website.

The CNMI National team continues to shine in the national competition. In May of 2008, the national team from Mt. Carmel School made a strong showing including Leticia Cabrera who was recognized as one of the top ten most effective students in the competition.

Education of students is the primary goal of any mock trial program. We hope that the program provides an educational experience while also developing oral advocacy, team work and fun.

Our continued success of the mock trial program depends on the dedication of the students, teachers, attorney coaches, court and all the volunteers. I extend my gratitude to all the volunteers and dedicated students. We hope you enjoy the case.

Sincerely

Karen Klaver  
CNMI High School Mock Trial Chair

**Witnesses**

**The Following witnesses shall be called by the parties.**

**For the Prosecution**

Riley Lee

Bobbie Day

Detective Avery Smith Jones

**For the Defense:**

Kelley Abogado

Peyton Puno

Taylor Tenorio Thompson

**Exhibits**

1. Crazy Report for Kelley Abogado by Dr. Thompson
2. National Crime Information Center Jesse Day
3. CV for Taylor Tenorio Thompson
4. Answering Machine Transcript
5. Addendum to Police Report by Smith-Jones
6. Photo of Weapon
7. Police Report
8. Diagram of route from Abogado to Day House

Sunday, 05/21/08

## **Assistant A.G. Charged with Murder of Crime Lord Attorney**

By *R. Alexandria Cullen*  
Staff Writer

This afternoon the Northern Mariana Islands Attorney General announced that the Northern Mariana Islands has charged **Kelley Abogado** with murder in the first degree. Late last month, it was reported that local authorities had taken Abogado into custody after an indictment was handed down by the Grand Jury. At the arraignment, Kelley entered a plea of “not guilty by reason of diminished capacity” and was released on a \$500,000 bond.

The Attorney General announced that the State intends to prove that on April 21, 2008, Kelley Abogado, while at the residence of Jesse Day, age 47, stabbed Day several times, killing Attorney Day. Detective Avery Smith-Jones told newspaper reporters that the stab wounds were many and the murder weapon was found at the crime scene.

Detective Smith-Jones further stated a statement was made by Abogado at the scene immediately following the murder. Abogado, the former-Assistant Attorney General for NMI, had just lost a very big prosecution against the infamous crime family Chris Guerrero who had been represented by the victim Jesse Day.

In a statement issued by Abogado’s defense counsel earlier today, Abogado’s legal team intends to prove that Abogado did not have the required mental capacity to commit first degree murder. According to defense counsel, Day was not a well-respected member of the bar in that its clientele was infamous. Day has represented many unsavory defendants in some of the most highly publicized prosecutions in recent history. Phone calls to Abogado’s home were not returned.

## APPLICABLE LAW

### **40.16(b) Crim. 40.16(b)**

#### **Affirmative defense: Insanity**

The defendant has raised the defense that (he) (she) was insane at the time of the commission of the offense.

A person is not responsible for criminal conduct if, at the time of the commission of the acts constituting the offense, the person, as a result of a severe mental disease or defect, was unable to appreciate the wrongfulness of such person's acts.

A mental disease or defect by itself is not a defense. The terms "mental disease or defect" do not include any abnormality manifested only by repeated criminal or otherwise anti-social behavior.

The defendant has the burden of proving the defense of insanity. For you to return a verdict of not guilty by reason of insanity, the defendant must prove both of the following things by clear and convincing evidence:

- (1) *(he) (she)* had a severe mental disease or defect at the time that the acts constituting the crime were committed; and
- (2) that as a result of this severe mental disease or defect, *(he) (she)* was not able to understand what *(he) (she)* was doing, or to understand that what *(he) (she)* was doing was wrong.

"Clear and convincing evidence" means evidence in which there is no serious or substantial doubt about the correctness of the conclusions drawn from the evidence. Lay witnesses have testified with respect to their observations of defendant's appearance, behavior, speech, and actions. Such persons are permitted to testify as to their own observations and other facts known to them. Lay witnesses may express an opinion based upon those observations and facts known to them. In weighing the testimony of such lay witnesses, you may consider: the circumstances of each witness, *[his] [her]* opportunity to observe the defendant and to know the facts to which *[he] [she]* has testified, his or her willingness and capacity to expound freely as to *[his] [her]* observations and knowledge, the basis for *[his] [her]* opinion and conclusions, and the nearness or remoteness of *[his] [her]* observations of the defendant in point of time to the commission of the offense charged.'

You may also consider whether the witness observed extraordinary or bizarre acts performed by the defendant. In evaluating such testimony, you should take into account the extent of the witness' observation of the defendant and the nature and length of time of the witness' contact with the defendant. You should bear in mind that an untrained person may not be readily able to detect mental disease or defect. Also, the failure of a lay witness to observe abnormal acts by the defendant may be significant only if the witness had prolonged and intimate contact with the defendant.

Whether the defendant was insane as defined in these instructions is a question for you alone to decide.' In determining the defendant's mental status at the time of the alleged crime, the jury is entitled to look to evidence of [his] [her] actions and words before, at, and immediately after the commission of the alleged crime.

**CNMIHS Mock Crim. Code § 101.01-  
Presumption of Innocence - Reasonable Doubt - Burden of Proof Generally**

A defendant is presumed to be innocent of the charge(s) against him or her. This presumption remains throughout every stage of the trial and is not overcome unless from all the evidence in the case the jury is convinced beyond a reasonable doubt that the defendant is guilty of the offense charged.

The State has the burden of proving the guilt of the defendant beyond a reasonable doubt, and this burden remains on the State throughout the case. The defendant is not required to prove his or her innocence.

**CNMIHS Mock Crim. Code § 187.01 – First Degree Murder**

(a) First degree murder is:

- (1) A premeditated and intentional killing of another; or
- (2) A killing of another committed in the perpetration of or attempt to perpetrate any first degree murder, act of terrorism, arson, rape, robbery, burglary, theft, kidnapping, aggravated child abuse, aggravated child neglect or aircraft piracy; or
- (3) A killing of another committed as the result of the unlawful throwing, placing or discharging of a destructive device or bomb.

(b) No culpable mental state is required for conviction under subdivision (a)(2) or (a)(3) except the intent to commit the enumerated offenses or acts in such subdivisions.

(c) As used in subdivision (a)(1) "premeditation" is an act done after the exercise of reflection and judgment. "Premeditation" means that the intent to kill must have been formed prior to the act itself. It is not necessary that the purpose to kill pre-exist in the mind of the accused for any definite period of time. The mental state of the accused at the time the accused allegedly decided to kill must be carefully considered in order to determine whether the accused was sufficiently free from excitement and passion as to be capable of premeditation.

***State v. Tate*, 405 CNMIHS Reporter 238 (CNMIHS 2001):**

The State may prove a criminal offense by direct evidence, circumstantial evidence, or a combination of the two. *State v. Akers*, 402 CNMIHS Rep. 822, 833-35 (CNMIHS 1994) ("the cases have long recognized that the necessary elements of first degree murder may be shown by circumstantial evidence"). "Before a jury may convict a defendant of a criminal offense based upon circumstantial evidence alone, the facts and circumstances "must be so strong and cogent as to exclude every other reasonable hypothesis save the guilt of the defendant, and that beyond a reasonable doubt." *State v. Jenkins*, 355 CNMIHS Rep. 487 (CNMIHS 1985).

As in the case of direct evidence, the weight to be given circumstantial evidence and "the inferences to be drawn from such evidence, and the extent to which the circumstances are consistent with guilt and inconsistent with innocence, are questions primarily for the jury." *State v. Jones*, 322 CNMIHS Rep. 111 (CNMIHS 1982).

***State v. Williams*, 335 CNMIHS Crim. App. 888 (CNMIHS App. 1982):**

"As additional evidence of premeditation, the state suggests that the defendant's calmness immediately following the shooting proves that the murder was premeditated. Calmness immediately after a killing may be evidence of a cool, dispassionate, premeditated murder. In this case, however, no evidence exists of the defendant's demeanor immediately after the killing, except his own testimony that he was upset. Although the defendant waited an hour and a half to report the shooting and put his tractor and trailer in the barn before calling the police, there is no evidence concerning his emotional state during this time. Furthermore, the fact that he briefly went to the store and to see a friend without describing the incident does not prove premeditation. One who has recently killed another person recklessly, passionately, or even negligently may be extremely hesitant to reveal the details of the crime, and yet not be guilty of first degree murder. Thus, while the defendant's behavior manifests such indifference to the victim and fear of detection that the jury might discredit his story, Williams' failure to report the shooting to the police fails to establish premeditation and deliberation in advance of the murder."

"Finally, the state claims that Williams' concealment of the gun is proof of premeditation. Again, we disagree. The court in *Rosen v. State*, 145 CNMIHS Reporter 21, 23 (CNMIHS Crim. App. 1971), held that the concealment of evidence may itself be evidence of guilt. The concealment of evidence, however, may be associated with the commission of *any* crime and the accompanying fear of punishment. One who kills another in a passionate rage may dispose of the weapon when reason returns just as readily as the cool, dispassionate killer. The fact that evidence is subsequently hidden from the police reveals nothing about a criminal's state of mind before the crime. Thus, while the concealment of evidence discredits defendant's self-defense excuse, it does not provide evidence of premeditation. *Rosen* simply permits the concealment of evidence to be used as evidence of the commission of a crime generally; it does not prove the specific element of premeditation."

### **AGREED STIPULATIONS**

1. All exhibits included in this problem are authentic in all respects. No objections to the authenticity of exhibits may be made. No props may be used in lieu of evidence included with this packet.
2. Exhibits may be copied for demonstrative purposes if the proper foundation for admission is laid at trial. Teams may use markers and pens to assist in the presentation of witness testimony with respect to an exhibit. No other demonstrative aids are permitted.
3. All witness statements have been sworn to by the declarant.
4. Any similarity to prior mock trial problems is unintentional. Participants may cite only evidence contained herein. Cross-reference to other mock trial problems is prohibited.
5. “Chain of custody” for evidentiary issues is not in dispute.
6. Participants may not cite legal authority outside that presented in this problem, the Rules of the Competition, and the Mock Trial Rules of Evidence.
7. The defendant is charged only with first degree murder, and not any lesser-included offense.
8. The defendant’s mental capacity is at issue. Cross-examination of any competent witness is permissible.
9. No objection on the basis of HEARSAY is permitted in response to any testimony by Detective Smith-Jones as to the results of any medical examiner, toxicology, AFIS, DNA or any other lab test or report.
10. The Police report and any attachments thereto, prepared by Detective Smith-Jones are admissible for any and all purposes.
11. Stipulations may not be contradicted or challenged.



**STATEMENT OF KELLEY ABOGADO  
(WITNESS FOR THE DEFENSE)**

1  
2 My name is Kelley Abogado and I live in Saipan, Commonwealth of the Northern  
3 Mariana Islands. I am thirty-one years old and I am a recently single parent. I have a beautiful  
4 three year old named May. May is the apple of my eye and the reason I wake up each morning. I  
5 am an Assistant Attorney General for the Mariana Islands. I have worked for the Attorney  
6 General's office for four years. In that time I have been a rising star in the department handling  
7 many complex prosecutions "far beyond my years" as some of the old heads have muttered.

8 In early February of 2008, I was lead counsel in the case of Commonwealth of the  
9 Northern Mariana Islands v. Tennessee (T-Bone) Guerrero, a member of the Street Dawgs crime  
10 family, was finally indicted for money laundering, drug dealing, murder and other assorted  
11 corruption charges. I knew that if I were successful it would mean a meteoric rise to the top of  
12 the "food chain" in the office. I readily agreed. I was allowed to choose my second chair and I  
13 chose my faithful side-kick and trusted friend Riley Lee.

14 Riley and I have known each other since grade school and attended law school together.  
15 It just so happened that we started at the AG's office together, but, I had a faster rise to the top. It  
16 never seemed to bother Riley that I had been promoted faster and was given larger cases;  
17 however, I never really thought that Riley had the horse-power to sit as lead counsel. Riley is an  
18 excellent detail person, but does not have nearly the same amount of charisma or trial skills that I  
19 possess. The Guerrero trial had gone almost like clockwork. There is an old saying in the law  
20 that you must beware when all is going right. I kept waiting for the other shoe to drop and for  
21 something bad to happen during the prosecution. None of our witnesses went missing, all of our  
22 evidence came in smoothly, and I believe that I had the jury eating out of the palm of my hand.

23 On the day of closing arguments, prior to standing up to address the jury for my final  
24 time, I leaned over to Riley Lee and stated that we should pack our bags because we had written  
25 our tickets to bigger and brighter things in the office. I truly believed that when we won this case  
26 that we would both be allowed to rise straight to the top.

27 Unfortunately, once the jury retired it took only one hour of deliberation to return a  
28 verdict of not guilty on all charges. Needless to say, I was devastated. This was a two month trial

1 with a year and a half preparation. Almost two years of my life had been wasted, including  
2 missing some valuable moments with my child.

3 I was despondent, depressed and generally numb. It took me several minutes before I  
4 could even wrap my mind around the fact that I had just lost the biggest case of my career. It was  
5 Riley who finally shook me from my stunned silence and prodded me to go to our favorite bar,  
6 The Alibi. I think we got to The Alibi around 1:00 p.m. Of course, drinks were ordered and many  
7 were consumed. I believe that we even had a few shots to try and drown our sorrows. We had a  
8 big meal and we even joked, if I remember correctly, that this big steak dinner that we were  
9 having might be our “last meal” given the outcome of the trial. Basically, we were self-  
10 medicating. After I paid our tab, which if I recall was \$164.00, we both left The Alibi around  
11 4:00 p.m.

12 Although I should not have done so, I drove myself home. All the way home, I could not  
13 help slipping back into a depression, second guessing myself regarding each piece of evidence  
14 and each argument throughout the previous two months. By the time I reached my house, I was  
15 in a quite a state. I think I got out of the car, got back in the car and sat down at least ten times  
16 before I even hit the front door. I don’t even remember actually going through the front door of  
17 my house. It seems odd. I have sections of my memory that are completely blank during this  
18 time. This has never happened before, so it has taken some time for me to piece it all together.  
19 When I finally arrived home, Peyton was worried and immediately ran up to me to ask where I  
20 had been. Peyton was extra upset for many reasons. First of all, Peyton saw the news and knew  
21 that we had lost the case. Second of all, Peyton said something had happened with May. It was as  
22 if someone had struck me with lightning. I immediately came to attention and was able to focus  
23 on every movement and word that Peyton was saying. Peyton told me that May had been at her  
24 best friend, Minami Day’s house, playing. Minami is the daughter of Jesse Day. It just so  
25 happens that Jesse Day was the defense attorney for T-Bone Guerrero.

26 I don’t think I have ever really trusted Jesse. I know that Jesse has been a prominent  
27 national criminal defense trial attorney for twenty some odd years and had represented some of  
28 the most notorious defendants in recent history, but there was always something “not quite right”

1 about Jesse. Over my objections, May had been allowed by Peyton to play with Minami at the  
2 Day house. On one occasion, Jesse had made a comment to me about May. May's aunt had  
3 entered May in a local beauty pageant and we were showing some of the neighbors May's formal  
4 dress with her makeup and hair-do. Jesse said "that sure is the sexiest three-year old I have ever  
5 seen." That struck me in absolutely all the wrong ways. From that moment on I did not trust  
6 Jesse Day with my daughter. However, I had no idea that over the last two months, Minami and  
7 May had become such good friends and played together at each other's houses on many  
8 occasions. Had I known this was going on, I would have ended it immediately.

9         After my attention was focused, I finally realized that Peyton had been crying a great  
10 deal; Peyton's eyes were all puffy. I asked Peyton what was so upsetting. Peyton said that May  
11 had been playing with Minami in the afternoon. After coming home, May, who was in tears,  
12 finally told Peyton that Jesse was "holding her too close" and that Jesse "touched her" and "it  
13 made her feel mad." Obviously, I called May into the room and asked her what had happened.  
14 She repeated what Peyton had just told me. If it felt like I had been hit by lightning before, this  
15 time it felt like the sky was falling. I couldn't breathe, I couldn't see, my legs felt weak and my  
16 heart was racing. I felt this horrible thundering in my eyes as if my head was going to explode  
17 off of the top of my body.

18         At that moment, I knew that I had to see Jesse Day. For some odd reason, the smell of  
19 jasmine immediately filled my nose. I say it is odd as we don't have any flowering plants nor do  
20 we have anything remotely close to jasmine in the house. In addition to that, my mouth began to  
21 taste like licorice and cigarettes. I had not eaten any licorice so I can't explain that either, nor do  
22 I smoke. I knew I had to get to Day's house and confront Jesse. Before I left, I went into my  
23 closet and got a wool hat and put it on. I then walked out the front door and down the walk to the  
24 sidewalk. I started down the sidewalk toward Jesse Day's home.     Although I have never been a  
25 believer in out of body experiences, I am a firm believer in that phenomenon now. It was as if I  
26 was watching myself walk down the street. Actually, I think it was more like I was skipping,  
27 stumbling, and cart wheeling down the street. It looked as if I was a puppet and some cruel child  
28 was pulling the strings. I could hear myself talking and it was just gibberish. Although I have

1 never personally witnessed it, I imagine what I was doing sounded much like those people who  
2 supposedly speak in tongues.

3 At some point, I remember making a phone call to Riley Lee. Something inside of me  
4 told me that I needed to tell Riley about the situation as soon as possible. I called and the phone  
5 rang five or six times. Finally the answering machine picked up and I left a message. I have no  
6 earthly idea what I said on the message but I do remember that “beep.”

7 When I finally arrived at Jesse’s house, Jesse’s spouse Bobbie answered the door. It  
8 looked as if Bobbie had been crying as well. I pushed past her/him and screamed Jesse’s name. I  
9 don’t remember exactly what happened next, but I do remember feeling rage and hatred building  
10 up in my body.

11 The next thing I know, I am on my knees in the middle of the Day’s kitchen covered in  
12 what appears to be Jesse Day’s blood. I say, what appears to be Jesse’s blood, as I have  
13 absolutely no idea how it got there. I realized that I was kneeling in a puddle of blood looking at  
14 Jesse’s limp body. In my hands was a chef’s knife. It looked like it was a knife from my house. I  
15 have no idea how it got from my house into my hand, and down the street. At that point, I began  
16 to sob uncontrollably. Not long after I realized where I was, Detective Avery Smith-Jones of the  
17 Police Department arrived and took me into custody. I asked if Avery was taking me for donuts  
18 and then if we could stop at J’s instead. Although I had been crying, I wasn’t exactly sure why. I  
19 actually felt better then than I had since the verdict was returned in the Guerrero case. I  
20 understand that Jesse Day is now dead and I also know that I have been indicted for the murder. I  
21 do not believe that I am guilty as charged and will proclaim and champion my innocence until  
22 my last breath.



1           It was strange that throughout the preparation for this case and the trial itself, Kelley  
2 didn't quite seem to be normal. Kelley was normally a scheduled individual; very organized and  
3 was a slave to the do list and scheduling. However, during this time period, there would be  
4 occasions where I would walk into Kelley's office and Kelley would be sitting in one of the  
5 guest chairs in the fetal position with knees drawn up to his/her chest and face in hands. I would  
6 ask what the problem was and Kelley would quickly snap out of it and return to normal. Another  
7 odd event occurred was one day during the cross-examination of one of the Defendant's  
8 witnesses. Kelley began to quote scripture from the Bible to this witness instead of proper  
9 questioning. This drew an obvious objection from the defense counsel, Jesse Day, and the  
10 Judge's ruling on the objection seemed to have snapped Kelley out of the "weird state." Before  
11 Kelley stood to make the closing argument to the jury in the Guerrero case, Kelley leaned over to  
12 me and whispered, "This is our ticket to bigger and brighter things- its Miller time."

13           Kelley had also made comments to me that he felt like the case had gone as if it were a  
14 screenplay and Kelley had written the whole thing. I was not as optimistic as there had been  
15 several occasions where our witnesses had gone missing and the evidence did not come into the  
16 record as we had hoped. Going into closing arguments, I thought we had about a 50/50 shot of  
17 winning.

18           Needless to say, we lost. Again, after the jury read the verdict and the jurors were polled,  
19 Kelley sat in the chair for many minutes with this weird smile, almost a vacant stare and smirk  
20 before I was able to physically shake Kelley and get Kelley out of the mood and to focus on my  
21 face. I asked if we should go get a drink at The Alibi and Kelley nodded. The Alibi is not too far  
22 from the courthouse so we walked together. Kelley never said a word to me the whole way there.  
23 Once we reached The Alibi, I ordered us a couple of beers and two shots. Kelley and I made  
24 quick work of this first round. We kept drinking and finally had a big lunch. Kelley was slowly  
25 but surely coming out of the funk and even made a joke about our meal that it might be our "last  
26 meal" and that we might be "dead people walking." We left The Alibi around 4:00 p.m. My  
27 house is not far from there so I decided to go ahead and walk home rather going back to the  
28 garage to get my car. Kelley lives farther out, so Kelley went ahead and drove home. I thought

1 that this was a bad idea but I was in no condition to take the keys away. It's a wonder Kelley  
2 even made it home without getting hurt or hurting anyone else given the condition Kelley was in  
3 when we left the bar.

4         Once I got home, I was so tired and emotionally exhausted that I immediately went to  
5 bed.

6         The next morning I woke up and there was a message on my answering machine. I  
7 pressed the button to play the message. It was Kelley's voice, only it didn't sound exactly like  
8 Kelley. It had this very high lilt to it. It almost sounded as if Kelley was being possessed like in  
9 those horror movies. Kelley was singing that old song, "They're coming to take me away, ha ha,  
10 they're coming to take me away" and other odd things. Then the line was silent for a few  
11 seconds. The next thing I heard on the message was a banging on a door. Then I heard a voice  
12 and shouting. After that the line went dead.

13         I have since learned that Jesse Day was killed that day and that Kelley Abogado has been  
14 charged with the first degree murder of Jesse Day. I know Jesse Day to be a fairly unscrupulous  
15 lawyer who has represented every type of slime in the Pacific. Jesse is a hired gun who often  
16 reportedly is paid cash from clients delivered to Jesse's office in large brown paper bags. A  
17 friend of mine at the bank told me that the number of bank accounts that Jesse Day had opened  
18 rivaled the number of accounts in some small community banks. My friend at the bank also told  
19 me that he thought that this was an effort to avoid the necessity of having to issue a 1099 form  
20 which is required for deposits of cash of \$10,000.00 or more. I thought it was also ironic that  
21 Jesse Day was the defense counsel representing T-Bone Guerrero in the trial that we had lost on  
22 the very day of Jesse's death.



1 As Minami and May would hide under the covers, we would try to “find them.” After a  
2 few minutes of playing “hide and go seek”, May asked Jesse if she could have ice cream. Jesse  
3 told her that we didn’t have any ice cream at the house, but that she could have an ice keki if she  
4 would like. May then said that she “hated” ice keki and became very upset. She had thrown such  
5 tantrums before when I told her she couldn’t have things she wanted. Crying, May ran at Jesse  
6 and began to lash out with her fists. Anticipating this behavior, as we had seen it many times  
7 before when May didn’t get exactly what she wanted when she wanted it, Jesse put out her/his  
8 hands. May ran headfirst into Jesse’s hands but she slipped through and ran into Jesse’s legs.  
9 Jesse grabbed her by the arms and pulled away and made her lie down on the floor to sort out her  
10 tantrum. When she wouldn’t settle down, we decided that it was time for May to leave. She was  
11 told that she had to go home and then she ran out the front door of our house screaming and  
12 crying saying “I’m mad at you.” I went outside and watched her go down the street to make sure  
13 she made it inside her house safely.

14 Later that afternoon, while Minami was sleeping and I was watching Sports Center,  
15 Kelley Abogado started banging on the front door of our house. When I answered the door,  
16 Kelley yelled at me, “I want to talk to the molester.” I asked Kelley what Kelley was talking  
17 about. With a wild look, Kelley then said “Where is Jesse?” I told Kelley that Jesse was in the  
18 kitchen preparing dinner. I then heard Kelley screaming, “I won’t let you do this again.” I called  
19 911, but it was too late. Within a minute or two, Jesse passed away. But before Jesse died, Jesse  
20 said to me, “I never did anything wrong. Why me? I love you.”  
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2 **STATEMENT OF PEYTON PUNO**  
3 **(WITNESS FOR THE DEFENSE)**

4 My name is Peyton Puno. I am 26 years old and a student, nanny and substitute parent. In 2004, I  
5 graduated from University of the Vladivostok with a double major in child psychology and  
6 education, and was accepted into Medical School. My senior year thesis, which was published by  
7 the University of the Vladivostok Journal of Psychology, was entitled “Language, Listening and  
8 Learning: What Toddlers Really Mean”. It focused on grasping the true meaning behind “toddler  
9 speak” through the use of a number of indicators, including speech pattern, context, and age,  
10 among others.

11 During my senior year at UV, my cousin Kelley told me all about the Mariana Islands.  
12 Instead of getting my M.D. and being in school for seven years, not to mention all the loans I  
13 would have had to take out and burden on my family, I decided that I would rather put my degree  
14 to use and work in the US and earn US dollars to support my family and save for medical school  
15 in the states. I moved to Saipan in 2004 to take classes at the college, because of Visa and money  
16 problems then began working with my cousin, in March of 2005. Kelley pays me very well, and  
17 May became the center of my universe and that of Kelley’s. May’s other parent left her last year  
18 in a messy separation with Kelley so I have been working all day and night taking care of May.  
19 May is a very smart child. She has been tested as having an IQ of 160. I think she has the verbal  
20 skills of a five year old. One of her best friends is Minami Day, the daughter of Jesse and Bobbie  
21 Day. The Days live down the street. The Abogados and Days have had dinners at one or  
22 another’s homes once or twice.

23 On April 21, 2008, at around 2:30 p.m., my precious May came home from playing with  
24 Minami at the home of Jesse and Bobbie Day. She told me that she and Minami had gotten into  
25 bed with Jesse Day and that Jesse was “holding her too close.” She then said that Jesse Day  
26 “touched her” and that “it made her feel mad.” Though she already told me, I questioned her as  
27 to where this happened. Beginning to cry, she responded, “In the bed, in the bed.” Remembering  
28 what I had learned in some of my child psychology classes that dealt with traumatic experiences,

1 I knew that the best thing to do was to comfort her and not get visibly upset in front of her. Since  
2 she was already half an hour late for her usual 2:00 nap, I simply rocked her until she stopped  
3 crying, stating over and over that “It will be ok.”

4 I panicked at what Kelley would think when I allowed May to go to the Day’s house. I  
5 just needed an hour to myself and I thought it would be ok. May finally went to sleep around  
6 3:00 and I tried to call Kelley on a cell phone, but I only got voice mail. Around 4:20 that  
7 afternoon, Kelley finally came home. Kelley was in a foul mood as Kelley had just lost the  
8 biggest case against Jesse Day. Realizing what had happened to my charge and seeing my cousin  
9 caused me to break down in tears knowing that my job, my stay in Saipan, my medical career  
10 may all be in jeopardy.

11 I told Kelley what May had told me. Kelley became furious. A look came over in his/her  
12 eyes that I had never seen before as Kelley told me she/he was going over to the Day house to  
13 “get things straight.” Before I could say anything, Kelley ran out of the side door. I stuck my  
14 head out the door to see what was going on Kelley was acting really strange. . .doing all sorts of  
15 crazy things. Kelley’s arms were swinging and yelling; it looked like Kelley was having a  
16 breakdown. It was just after 4:20; I know because I was watching the clock for May’s nap.  
17 Kelley seemed really focused with a blank look. I saw Kelley walk across the Day’s lawn and  
18 ring the doorbell and seemed to get impatient, because Kelley started beating on the door.  
19 Someone answered the door; I think it was Jesse’s spouse Bobbie.

20 Kelley just kind of pushed into the house. I couldn’t hear anything. The house was too far  
21 away. I didn’t see anything else. I went inside and read then the next thing I knew, I saw a police  
22 car outside.

23 My student Visa problems were cleared up after Day was killed. I was worried when the  
24 police questioned me about seeing Kelley but I ended up being granted a student Visa to the US.  
25 The police asked me to draw a diagram of the path that Kelley took from the house to Day’s.

26 The Guerrero Trial had really taken a toll on Kelley. Kelley was only sleeping 2-4 hours  
27 per night for the last six months. Sometimes I could hear Kelley sleep talking about the trial, it  
28 sounded very aggressive and violent. Kelley even stopped coming home for dinner during the

1 last month of the trial. I started noticing some strange behavior by Kelley in late March and  
2 April. Kelley began a ritual every time Kelley would come home. Kelley would touch the door  
3 and go put the keys down, then touch the door again and again. Kelley would lock and relock  
4 the deadbolt exactly six times before going and touching the keys again. Not knowing, if it was  
5 my place or not to question the behavior but given my background, one night I asked Kelley  
6 about this behavior and Kelley denied all of my talking points. I asked Kelley if everything was  
7 alright and Kelley became very sullen then finally said, "I know that I am going to win, but I  
8 can't help thinking that if I lose, my career is over."

1                                   **STATEMENT OF DETECTIVE DR. AVERY SMITH-JONES**  
2                                   **(WITNESS FOR THE PROSECUTION)**

3 I am thirty six (36) years old. I grew up in Saipan and Hawaii. Although I am well educated in  
4 Psychology, and forensics, my childhood dream was to go to the police academy with hopes of  
5 one day being a detective. Not surprisingly, I graduated with top honors from the Police  
6 Academy in May 2004. Once I joined the Police Department, I quickly rose through the ranks to  
7 a detective given my extensive background and amazing education. Not just any detective, but a  
8 homicide detective. We are considered the best of the best, although we have had some “issues”  
9 in our section. Police Chief McDonald is my uncle once removed.

10                   I know Bobbie Day. We grew up together. We were close in high school. There are  
11 rumors that we’re having an “affair”. I refuse to either acknowledge or deny these rumors. I will  
12 say that Jesse Day worked long hours and was obsessed with work. If I were married to Bobbie, I  
13 would spend a lot more time at home.

14                   A year or so ago, I was accused of “possible drug use and distribution” while on the job,  
15 which was just silly and born out of jealousy to my credentials. I’m pretty sure that I was  
16 eventually cleared of all charges. Fortunately, this did not seem to delay my promotion to  
17 detective.

18                   On, April 21, 2008, I was the first detective to arrive at the Day’s house. Bobbie called  
19 911 around 4:30 p.m. and I raced over there as fast as I could. I know all of the short cuts so it  
20 didn’t take long to get there. Bobbie also called me on my cell phone. Bobbie sounded upset, and  
21 was saying something about a knife and lots of blood.

22                   Once I arrived, I found Kelley Abogado on the floor of Bobbie’s kitchen. Abogado had  
23 blood all over the white shirt and Abogado’s hands were covered in blood. Jesse was lying right  
24 next to Abogado. There was broken glass all over the kitchen floor. Abogado was sobbing  
25 uncontrollably and very loudly. Abogado smelled very strongly of alcohol. When I approached, I  
26 could hear Abogado mumbling “I had to do it, Jesse sank my battleship” and “May” over and  
27 over again. At least that’s what I think was said, since the words were slurred. I tried to give a  
28 breathalyzer test, but Abogado refused and then said “not again, not after that last time aboard

1 the mother ship". I cuffed and arrested Kelley Abogado and read Miranda rights. I put the  
2 suspect in the back of a patrol car. Abogado just stared blankly out the window. Abogado didn't  
3 seem to recognize Abogado's house worker when her/his cousin tried to talk to Kelley through  
4 the window. By the time we arrived at the station, Abogado did not remember what had  
5 happened and did not know why we were at the police station. Abogado got very indignant about  
6 being in hand cuffs and the blood on the nice designer suit. I think Abogado gave a sworn  
7 statement to another detective while I was talking to Bobbie. They interrogated Abogado for  
8 quite a while. I'm not sure whether Abogado called an attorney or not.

9 After the day of the murder, I sat in for the examination of Abogado by a doctor of  
10 clinical psychology which determined that Abogado was competent to stand trial. In my  
11 opinion, Abogado appreciates the character of actions and did so on the date of the incident. At  
12 the examination, Abogado was cooperative and friendly if only on a superficial level. Notably, I  
13 saw that Abogado had no history of mental health treatment prior to the murder.

14 I have learned in my studies that extremely stressful situations trigger an amnesia-like  
15 response, where someone does not remember exactly what occurred or what actions they took.  
16 After the extensive examination, the possibility of Abogado having a borderline personality  
17 disorder or a psychotic disorder was ruled out.

18 I agreed with the doctor's diagnoses of Abogado for an intermittent explosive disorder,  
19 which is the occurrence of discrete episodes or failure to resist aggressive impulses that result in  
20 serious assaultive acts and destruction of property. The degree of aggressiveness expressed  
21 during an episode is grossly out of proportion to any provocation or psychosocial stressor. These  
22 aggressive episodes are not due to the direct physiological effects of a substance, such as alcohol,  
23 drugs, or prescription medication or a general medical condition, such as head trauma.  
24 Individuals with narcissistic, obsessive, paranoid, or schizoid traits may be especially prone to  
25 having explosive outbursts of anger when under stress. The disorder may result in difficulties  
26 with interpersonal relationships.

27 This was not the first time Abogado had an explosive aggressive attack. There had been  
28 rumors at the AG's office of fights, both shouting and physical, with other attorneys. Once even

1 with co-counsel, Riley Lee. The file indicates Abogado had gotten into a fist fight with one of  
2 the confidential informants who did not get enough “scoop” to help this case. Abogado described  
3 the aggression as an attack in which the explosive behavior was preceded by a sense of tension,  
4 as if about to explode, followed immediately by a sense of relief. Sometimes Abogado forgot  
5 what happened, other times only remembering bits and pieces of what occurred and actions.  
6 Abogado claims not to remember anything that happened that night with Jesse Day. I find this  
7 highly irregular and feel there may be exaggeration. Interestingly, Abogado does not feel  
8 remorseful, upset, regretful, or embarrassed by this aggressive behavior. This may be because  
9 Abogado claims not to remember anything except being covered in blood, possibly Jesse Day’s  
10 blood.

#### 11 Diagnostic criteria for Intermittent Explosive Disorder

12 A. Several discrete episodes of failure to resist aggressive impulses that result in serious  
13 acts of assault or destruction of property.

14 B. The degree of aggressiveness expressed during the episodes is grossly out of  
15 proportion to any precipitating psychosocial stressors.

16 C. The aggressive episodes are not better accounted for by another mental disorder, e.g.  
17 borderline personality disorder, psychotic disorder, manic episode, conduct disorder, and  
18 are not due to the direct physiological effects of a substance, e.g. drug of abuse,  
19 medication, alcohol, or a general medical condition.

20 I found out that Abogado registered a blood alcohol content of 0.18%, which is almost  
21 the level for medical intoxication, which is 0.21%.



1 in which these mentally ill persons are accused of crimes, my task is to identify the underlying  
2 mental disorder and examine how it could have resulted in the commission of the crime.

3 Temporary insanity is something almost completely different. It is, as the name suggests, a  
4 condition that has no permanence. It typically is triggered by a specific set of stress-inducing  
5 events and lasts only as long as necessary for the body to rid itself of the stress. I think of it as a  
6 circuit breaker system. Sometimes, when the brain is asked to process too much at once, it  
7 overloads to the point that nothing works. Then, a second event flips the switch; the system  
8 resets and the body functions normally again. Those who are temporarily insane and who need to  
9 rid their body of stresses often work out the adrenaline in their systems through some physical  
10 act, usually one marked with violence. Interestingly, it is often the violent act itself that functions  
11 to “flip the switch” and reset the body’s system. So, someone who has committed an act of  
12 violence during a moment of “temporary insanity” will almost instantly recover and immediately  
13 feel deep remorse for the act.

14 Certainly someone who has been temporarily insane will remember the events that  
15 transpired during the insanity; amnesia is not a component of temporary insanity, although  
16 situations of extreme stress have been known to trigger amnesia, as well. Because their logic  
17 system was impaired at the time, they will be unable to explain why they acted the way they did,  
18 and they probably will not remember in precise detail what happened because the brain’s ability  
19 to process and store information was temporarily limited. Still, patients who suffer from this  
20 occurrence will have some recollection of the events.

21 I have long had an interest in the acts of the temporarily insane, and one of the biggest  
22 challenges in the field has been the inability to determine with any precise measure whether  
23 someone has actually had an experience of temporary insanity. For obvious reasons, temporary  
24 insanity can only be examined retrospectively. It would be unethical to confine subjects to a lab,  
25 perform experiments on them, and attempt to force them into temporary insanity so that we could  
26 measure them afterwards. Two colleagues and I therefore set about to develop a test that would  
27 determine whether someone had actually experienced temporary insanity. It is called the Criteria  
28 for Recognition Affect and Z-Protein Yield. The test has now been adopted in a few medical

1 schools, where my staff and I set up programs to teach the test's administration. The test has  
2 three components. First, the subject undergoes laboratory testing in which sweat samples, blood  
3 samples, and tissue samples are analyzed for excess levels of a protein that is excreted during  
4 moments of extreme physiological stress. The Z-Protein, as it is called, has a long half-life in the  
5 body, so once the levels become elevated, they will remain elevated for years. We sample for the  
6 protein and use the amount of protein yielded to determine whether they might have experienced  
7 a bout of temporary insanity and how long ago it might have been. Second, the subject undergoes  
8 a series of standard psychological evaluations focused on personality diagnostics. The purpose of  
9 these is to identify persons who experience extreme stress easily or who process stress in  
10 peculiar ways. The third aspect of the test is a personal interview. Either I or an assistant that I  
11 have personally trained will question the subject in carefully controlled laboratory conditions to  
12 determine if a particularly stress-filled time in his or her life might have resulted in temporary  
13 insanity.

14 I was asked to examine Attorney Abogado, and I have prepared a report based on my  
15 findings. Based upon the three factors stated above, it is my expert opinion that Abogado was  
16 temporarily insane at the time of the incident with Day. Therefore, Abogado could not appreciate  
17 the wrongful nature of the actions. I am compensated for my services at a privately negotiated  
18 rate.